

# NAVIGATING ANTI-CORRUPTION AND CUSTOM: ELECTORAL LAW IN NEW ZEALAND AND SAMOA AND THE TEIENIWA VISION

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*This article analyses the feasibility of a united pan-Pacific vision against corruption, focusing on the divergent sociopolitical governance systems of New Zealand and Samoa. It argues that due to the pervasive nature of colonisation, both through direct contact and international relations, a Western standard of morality in democracy has been implemented and enforced. As a result of distinct experiences with colonialism, custom remains a vital part of daily life in Samoa as a post-colonial state, compared to New Zealand's as a settler colonial state. The article contends that whilst recent changes in Samoan electoral law may appear at face value to align with Western moral standards, there exists a deep-seated tension between indigenous and Western concepts, sites and expressions of power. Fa'amatai (the system of chiefs) and Western democratic principles are often at odds with one another, particularly in the realm of electoral law, illustrating the challenge of reconciling two distinct epistemologies. No true amalgam which gives proper effect to both conceptions is possible; rather, one system must prevail over another. Consequently, it implores those considering the anti-corruption movement in Samoa to contemplate the role custom plays in contemporary life, and whether its diminishment to align more closely with Western democracy is genuinely desirable.*

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## **I INTRODUCTION**

It has long been understood that corruption acts as a mechanism to undermine democratic principles, disestablishing trust in institutions, fair process and public services. It has been widely

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recognised as an issue prevalent in the Pacific. Former Prime Minister of the Cook Islands and Pacific Island Forum Secretary General, Henry Puna, said in 2024 of corruption that:<sup>1</sup>

... in all its forms and across all parts of our communities [it] has beset the governance and government agenda from the founding days of our nations, threatening peace and security, unity, and rule of law.

In Transparency International's most recent report, no Pacific Island nation, outside of Australia and New Zealand, ranked within the top 50 countries in the Corruption Perceptions Index; the lowest-ranking Pacific Island nation, Papua New Guinea, ranked 133rd.<sup>2</sup> This prevalence is also evidenced by recent cases of corruption led by public officials and elected representatives in, for example, Fiji.<sup>3</sup>

Initiated during the first Pacific Regional Anti-Corruption Conference held in 2020, hosted with the assistance of the Pacific Islands Forum Secretariat (PIFS) and the United Nations Office on Drugs and Crime (UNODC), the Teieniwa Vision (the Vision) represents pan-Pacific unity against corruption.<sup>4</sup> Influenced by preceding PIFS declarations including both the Biketawa Declaration agreed to at the 31st Summit of the Pacific Islands Forum Leaders (held in October 2000),<sup>5</sup> and the Boe Declaration agreed to at the 49th Summit of the Pacific Island Forum Leaders (held in September 2018),<sup>6</sup> nations recognised that a peaceful and prosperous Pacific may not be possible without introducing further anti-corruption measures.

Two countries that are both party to the Vision are New Zealand and Samoa. Despite New Zealand's occupation of Samoa, Samoan culture and *fa'asamoa* (loosely, "the Samoan way of life") have remained steadfast and engrained in everyday life. Distinct electoral law and practice, informed by cultural beliefs and practice, highlights stark differences between perceptions of morality and corruption.

This article analyses whether differing cultural contexts, which produce distinctive conceptions of corruption, are too distinct to reconcile and allow for a viable "united Pacific" against corruption, by examining closely the electoral law of both systems. It argues that any differences are, on their face, not too vast for a shared vision to be viable, but that "anti-corruption" acts upon a Western sense of morality enforced by international relations, which is pervasive to the preservation of *fa'samoa* and *fa'amatai*. Part II of this article will make a statement of positionality in relation to the research

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- 1 Henry Puna, Secretary General of the Pacific Islands Forum "Remarks: PIF SG Henry Puna at the Teieniwa Talanoa Event on Pacific Unity Against Corruption" (5 February 2024) <[www.forumsec.org](http://www.forumsec.org)>.
  - 2 Transparency International "Corruption Perceptions Index" <[www.transparency.org](http://www.transparency.org)>.
  - 3 "Former Fiji leader Frank Bainimarama, suspended police chief avoid jail in corruption case," *Radio New Zealand* (online ed, 28 March 2024).
  - 4 Teieniwa Vision, Pacific Islands Forum (signed 5 March 2020).
  - 5 Biketawa Declaration, Pacific Islands Forum (signed 28 October 2000).
  - 6 Boe Declaration, Pacific Islands Forum (signed 5 September 2018).

undertaken and its presentation. Part III will canvas indigenous sites and concepts of power and socio-political governance structures in both New Zealand and Samoa. Part IV will briefly outline the introduction of Western democratic principles in New Zealand and Samoa against the background of colonial contact and its effect on indigenous praxis. Part V will discuss in further detail the regional instruments driving anti-corruption efforts in the region. Part VI will critically analyse how the influence of culture has led to distinct developments in electoral law which are, on their face and for the purposes of the Vision, congruent, but have produced distinctive delineations of acceptable conduct which highlight irreconcilable differences between indigenous and Western sites and expressions of power.

## **II STATEMENT OF POSITIONALITY**

At the outset, the author finds it important to recognise that "democracy" in the collectively known sense is a Western ideal.<sup>7</sup> Its inception and promotion is rooted in Western nations, and academic perceptions of democratic principles tend to focus on Westernised assumptions and histories.<sup>8</sup> The imposition of Western structures on the lives of contemporary indigenous peoples is salient. It is an often uncomfortable exercise to witness attempts at reconciliation of indigenous governance and decision-making with a foreign system of thought, examples of which include the boards of post-settlement governance entities, and Iwi-Māori Partnership Boards.<sup>9</sup> Many indigenous peoples would not label their traditional socio-political systems as "democratic", as the "collectively-known ideal" has generally been an imported system of governance and control, used as a weapon to further colonial efforts.

The author also recognises democracy can be an open, agile concept that lends itself to acknowledge different epistemologies and understandings. It can refer to more than a fixed or "pure" definition stemming from solely Western epistemology and ideas of morality. For the purposes of this article, where comparisons are made between indigenous praxis and democracy, this is solely to illustrate the imposition of colonial concepts on socio-political governance. It does not serve to diminish indigenous praxis or impose Western ideals as superior.

Additionally, the author recognises his position as a Pākehā and Samoan, New Zealand-born student undertaking studies in both law and psychology at Te Herenga Waka—Victoria University of Wellington. Their experiences with, and learnings from, academia are in institutions with colonial roots and based in New Zealand culture.

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7 See Kylie Smith and others "Practicing Democracy from Childhood: Democratic Praxis in Te Ao Māori" (2021) 8(2) *Democratic Theory* 19 at 21.

8 At 20.

9 See generally Miriama Jordan King and Jason Paul Mika "The design and operation of post-settlement governance entities. A management contribution" (2023) *MAI Journal*; and Te Aka Whai Ora "Iwi-Māori Partnership Boards" <[www.teakawhaiora.nz](http://www.teakawhaiora.nz)>.

As a consequence of said position, and in considering the likely audience of this article, comparative discussion centres around Samoan cultural phenoms and ideals as compared to their New Zealand counterparts. This is not to diminish the "validity" or "appropriateness" of *fa'asamoa* or Samoan electoral law or practice, or to impose the form or practice of New Zealand electoral law or practice as superior or a standard to be met.

### **III INDIGENOUS AND WESTERN SITES AND CONCEPTS OF POWER**

On a broader level, Western democracy and indigenous socio-political governance structures share similar themes. In examining the sites and concepts of power in each, parallels in key concepts can be made.

#### **A New Zealand**

Noting the above discussion, it can be argued that democratic praxis can be seen in early Māori society before the arrival of British colonialism. The ascribing of mana, the exercise of rangatiratanga and the importance of kōrero define early socio-political governance.

##### *1 Mana*

Mana acts as the site of power in indigenous Māori society.<sup>10</sup> Whilst difficult to define in te reo Pākehā, mana may be loosely translated as ultimate power.<sup>11</sup> It is the root of authority to act in respect of certain matters and forms a fundamental basis for socio-political organisation in te ao Māori.<sup>12</sup>

While in te ao Māori it is believed that mana is originally "derived from the gods", one may be ascribed mana through multiple mechanisms. For example, mana tūpuna is power derived from ancestors, whilst mana whenua is the mana deriving from the land which is vested in those people or groups which belong to said land.<sup>13</sup> That everyone has mana, inherent and ascribed at birth, can be said to be similar to suffrage in contemporary democracy.

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10 Ross Bowden "Tapu and Mana: Ritual Authority and Political Power in Traditional Māori Society" (1979) 14 *The Journal of Pacific History* 50 at 56–60.

11 Te Aka "Mana" <[www.maoridictionary.co.nz](http://www.maoridictionary.co.nz)>.

12 Bowden, above n 10, at 60.

13 McCully Matiu and Margaret Mutu *Te Whānau Moana: Ngā Kaupapa me ngā Tikanga – Customs and Protocols* (Reed Publishing, Auckland, 2003) at 162, cited in Carwyn Jones "A Māori Constitutional Authority" (2014) 12 *NZJPIIL* 187 at 194.

## 2 *Rangatiratanga*

Rangatiratanga can be loosely translated as "leadership",<sup>14</sup> but may be more accurately described as an exercise of leadership which upholds the mana of those people or that land affected.<sup>15</sup>

## 3 *Kōrero*

Traditional Māori life was defined by kōrero or communication, and as such, processes like hui are critical to the sociopolitical structures governing early Māori society.<sup>16</sup> Often employed by whānau, hapū and iwi, decision-making, through negotiated discussion and in the context of status dictated by community deliberation, illustrates principles close to democracy, including participation of citizens, equality, political tolerance and stringent application of the rule of law.<sup>17</sup> Often, this practice reflected a representative responsibility where whānau, hapū and iwi leaders would represent their respective communities, but participation remained open where all free men had a right to speak.<sup>18</sup>

## **B Samoa**

In a similar fashion to early Māori society, democratic praxis can also be seen in deeply woven indigenous Samoan custom relating to socio-political governance and organisation. The ascribing of *matai* titles and related responsibilities, and the role of the *fono* and *itūmālō* in collective and representative decision-making, show stark similarities to Western conceptions of democracy.

### 1 *Matai*

*Fa'amatai* is the indigenous sociopolitical governance structure of Samoa, forming the basis of *fa'asamoa* or "the Samoan way of life" upon which *aganu'u fa'asamoa* (Samoan culture) hangs;<sup>19</sup> its name can be loosely translated to "system of chiefs".<sup>20</sup> Its basis comprises the *matai*, or chief, acting as the primary instrument of power in the lives of both families and villages, as well as the nation

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14 Te Aka—Māori Dictionary "rangatiratanga" <[www.maoridictionary.co.nz](http://www.maoridictionary.co.nz)>.

15 Margaret Mutu "Mana Māori Motuhake: Māori Concepts and Practices of Sovereignty" in B Hokowhitu and others (eds) *The Routledge Handbook of Critical Indigenous Studies* (Routledge, 2020) at 271.

16 Smith and others, above n 7, at 24.

17 At 24.

18 At 29–30.

19 This is a generally accepted definition across literature. See for example Samoa Law Reform Commission *Pule a le Matai Sa'o* (FR18/17, February 2017) at 9.

20 Elise Huffer and Asofou So'o *Governance in Samoa* (Asia Pacific Press, Canberra, 2000).

through its role in modern electoral law.<sup>21</sup> A *matai* is selected by the "*aiga potopoto* (extended family) from *suli* (or heir to the *matai* title) to advance the interests of their family and to maintain harmony in the chance of a dispute".<sup>22</sup> They are disposed to a reciprocal relationship comprised of respect and service with their "*aiga* (family) for whom they have been chosen to represent".<sup>23</sup> The selection of a *matai* and the *tautua* (service) intrinsic to this relationship is similar to the election of, and relationship with, a politician in a Western democratic system.

A distinction exists amongst *matai* titles, creating two categories: *ali'i* ("high" chiefs) and *tulafale* ("orator" chiefs).<sup>24</sup> *Ali'i* were known to be descended from the gods, whereas *tulafale* were "politicians" acting on behalf of the *ali'i*;<sup>25</sup> this is similar to the idea of *mana* in te ao Māori, also derived from gods. This is reflected in the song "na tofia e le Atua Samoa ina ia pulea e matai / Auā o lona suaga ua vaelua iai" ("God has chosen Samoa to be ruled by *matai* / because to them His name has been shared").<sup>26</sup>

## 2 Village fono

Of similar importance to *fa'asamoa* is the organisation of power bestowed on *matai* by titles, prescribed by the *fono*. A *fono* can be loosely translated as a "formal meeting" such as a council. In the context of a village, the *fono* acts as the governance mechanism comprised of its *matai*. It works towards the advancement of the village as a whole through robust debate and negotiation,<sup>27</sup> similar to that of indigenous Māori societies. Modern *Gagana Samoa* (Samoan language) reflects this importance; Samoans were unfamiliar with the notion of expressing preference through counting

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21 Tamasa'ilau M Suaali'i-Sāuni "E Faigatā le Alofa: The Sāmoan Fa'amatai – Reflections from Afar" in A So'o (ed) *Changes in the Matai Systems – O suiga i le fa'amatai* (National University of Samoa, Apia, 2007) 33 at 35 and 37; and see Electoral Act 2019 (WS), s 8.

22 Aioana Fanaafi Le Tagaloa "The Samoan Culture and Government" in Ron Crocombe and others (eds) *Culture and Democracy in the South Pacific* (Institute of Pacific Studies of the University of the South Pacific, Suva, 1992) 117; and Iati Iati "Are Samoa's Political Institutions Democratic? A Critical Examination of the Fa'amatai and the 221 General Election" (2022) 57(4) *The Journal of Pacific History* 451 at 466–467.

23 CC Marsack *Notes on the practice of the court and the principles adopted in the hearing of cases affecting (1) Samoan matai titles; and (2) land held according to customs and usages of Western Samoa* (Land and Titles Court of Western Samoa, Apia, 1958).

24 Malama Meleiseā *The Making of Modern Samoa: traditional authority and colonial administration in the history of Western Samoa* (Institute of Pacific Studies of the University of the South Pacific, Suva, 1987).

25 Malama Meleiseā and others "Old Samoa" in *Lagaga: a short history of Western Samoa* (University of the South Pacific, Suva, 1987) 24 at 27.

26 Leituala Roger B "Letters to the Editor: The sad part about the Mau" *Samoa Observer* (online ed, Apia).

27 Meleiseā, above n 24.

procedures such as secret ballots or a show of hands, and consequently Samoan does not have a word for "vote" but rather uses *palota* as meaning "to vote" (a word loaned from the English "ballot").<sup>28</sup>

The village *fono* can be loosely compared to a local government in the sense of a Western democratic model; they are comprised of local community members and are the mechanism by which decisions impacting local community members are made. This may include the development and use of village land for economic advancement, or the punishment of individuals guilty of "village misconduct".<sup>29</sup>

### 3 *Itūmālō*

Whilst most formal governance was conducted at a village level, *matai* would often align themselves into district entities for the purposes of advancing the common.<sup>30</sup> This would form the basis of the *itūmālō*; this can loosely be translated as a district or confederation of villages (or "the winning side"). The *laumua* (capital or leading village) of each district was charged with administering and coordinating the affairs of the district and confers each districts' paramount title.<sup>31</sup> Local affairs would be under the discretion of the paramount title holder who would convene meetings of the village *fono* for deliberation of affairs.<sup>32</sup> The *itūmālō* represents the most "centralised" way in which power was held before colonial contact. However, it is important to recognise that their power existed in the *matai* that formed them. This can be contrasted to a Westminster Parliamentary system, where elected members hold power by virtue of being a member of the institution.

## **IV THE INTRODUCTION OF WESTERN DEMOCRACY TO INDIGENOUS AOTEAROA AND SAMOA**

Electoral law in both New Zealand and Samoa, and its subsequent structures and institutions of power, has developed over time and has been heavily subject to the influence of colonial contact. While not an acute focus of the present article, it is important to recognise that although the legal systems of both realms are widely regarded in contemporary scholarship as pluralistic, this pluralism has developed differently as a result of different histories; as such, it is central to the presentations of conflict between Western democracy and indigenous custom. This section of the article canvases these different histories.

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28 Ioane Lafoa'i "Universal Suffrage in Western Samoa" (1991) 26(3) *The Journal of Pacific History* 67 at 70.

29 Village Fono Act 1990 (WS), s 5(2)(a), 5(2)(b) and 5(3).

30 Government of Samoa "About Samoa: Itūmālō" <[www.samoagovt.ws](http://www.samoagovt.ws)>.

31 Government of Samoa, above n 30.

32 Augustin Kramer "The Constitution and the Fa'alupega of all of Samoa" in *The Samoa Islands* (University of Hawaii Press, Hawaii, 2000) at 19.

Key to the differences in these developments is that New Zealand exists as a settler-colonial state; that is, Māori were subject to "a method of colonising" which involves "the creation and consumption of a whole array of spaces by settler collectives that claim and transform places through the exercise of their sovereign capacity".<sup>33</sup> In contrast, Samoa exists as a post-colonial state, whereby it gained independence from New Zealand after its annexation. As a result, efforts to reconcile indigenous culture and practices with those introduced by colonial contact have produced combined systems where the role and significance of indigenous traditions vary as discussed in this section. However, they both share the tension between systems common to pluralistic societies.

### ***A Samoa***

Although past sociological and anthropological scholars may argue that the role and form of *fa'amatai* has undergone great changes with European contact, contemporary Samoan scholars are of the view that it has been well established since time immemorial.<sup>34</sup> For this reason, democratic ideals introduced by European contact following independence were not often readily accepted by a substantial majority of the population whose lives were governed by the existing socio-political system. In this way, the tension between long-held cultural beliefs and institutions and Western ideals of law and power have existed since first colonial contact and have persevered through Samoa's independence.

Early institutions of power derived from the *fa'amatai*. The influence of this epistemology is illustrated through the importance placed on *matai* as representatives of families and villages across a range of mediums, including in the village *fono* and the *itūmālō*. Shortly after first colonial contact, Captain Charles Wilkes of the United States Exploring Expedition arrived in Apia to investigate America's interests in the whaling industry.<sup>35</sup> To this end, he called a meeting with "representatives" of the Samoan "government"—namely, a group of *matai* representing an alliance between Manono and its Sa Mālietoa allies—to form the Wilkes Code.<sup>36</sup> All were leading figures in the *itūmālō*, but this did not delegate them the power to enforce the provisions contained in the Code, intended to govern the entirety of Samoa.<sup>37</sup> While in the eyes of Wilkes they were in operation a "government", at best they represented the closest approximation of this Western concept, which did not exist in

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33 See generally Moana Jackson "Where to next? Decolonisation and the stories in the land" in Rebecca Kiddle *Imagining Decolonisation* (Bridget Williams Books Ltd, Wellington, 2020); and definition of 'settler colonialism' sourced from Adam Barker "Locating Settler Colonialism" (2012) 13(3) *Journal of Colonialism and Colonial History*.

34 Asofou So'o *Democracy and Custom in Sāmoa: An Uneasy Alliance* (IPS Publications, Suva, 2008) at 1.

35 At 28.

36 At 28–29.

37 At 28–29.

*fa'amatai*.<sup>38</sup> This was the genesis of the imposition of imported ideas of Western democracy, and the first attempt to reconcile a clear system of decentralised power with these ideas.

The first "central" government of Samoa came into existence as a result of the drafting of a constitution in August 1873.<sup>39</sup> This form of government comprised one *ta'imua* (leader) for each of the major political districts.<sup>40</sup> However, less than two years later, pressure from consuls resulted in large changes to this form of government. They sought the appointment of a king and a reduction in the power granted to the number of *faipule* (representatives) to further centralisation efforts.<sup>41</sup> As a compromise, the number of *ta'imua* was doubled, and the *faipule* now selected one representative from Sa Tupuā and Sa Mālietoā to be in practice "joint-kings".<sup>42</sup> This concept of two eligible lineages to the patriarchy was a major departure from the cultural praxis of the time. The naming of these two lineages as "*Āiga Tupu*" illustrates this misalignment; loosely meaning "one from whom people descend or grow", which does not imply sovereignty but rather highlights the cultural belief that a title and the district in which it is paramount relies on shared ancestral connections.<sup>43</sup> As is discussed, the concept of "paramount titles" as pathways to centralised power exists in some form today. Moreover, it illustrates that even early attempts to reconcile the two praxes did not give proper effect to custom.

Against this background, subsequent occupying powers sought to instead erode traditional polities and shift power from the *nu'u*, *itūmalō* and, most prominently, *matai* to a central administration. The last tension between indigenous power structures and Western rule before Samoa's independence was the Mau movement against the New Zealand occupation, driven by the people's pride, nationalism and the desire for self-determination.<sup>44</sup> It "was a demonstration of Samoan solidarity to protect their institutions".<sup>45</sup>

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38 At 29.

39 At 35.

40 At 35.

41 At 37.

42 At 37.

43 At 37–38.

44 See generally Kilifoti Sisilia Eteuati "Evaevaga a Sāmoa: Assertion of Sāmoan Autonomy 1920-1936" (PhD Dissertation, Australian National University, 1982); and Brian T Alofaituli "Indigenous Protest in Colonial Sāmoa: The Mau Movements and the Response of the London Missionary Society, 1900-1935" (PhD Dissertation, University of Hawai'i at Mānoa, 2017).

45 Malama Meleiseā *The Making of Modern Samoa: Traditional Authority and Colonial Administration in the Modern History of Western Samoa* (Institute of Pacific Studies of the University of the South Pacific, Suva, 1987) at 213.

Samoa gained independence in 1962.<sup>46</sup> In this year, the first Parliament of Samoa opened.<sup>47</sup> Under initial electoral law, both standing for elections and voting rights were reserved for *matai* as a recognition of their importance in Samoan society and their role as representatives of their families and villages. This represented a retention of *fa'amatai* as prominent and desired sites and structures of power. Despite a political system for central government in which they were more involved, some Samoans did not see central government as an instrument responsive to their will and responsible to the resources which they provided; centralised power was a foreign idea only introduced by colonial powers as they imposed a form of sociopolitical organisation familiar to them but different to those guided by *fa'asamoa*.

## **B New Zealand**

Tikanga Māori was the first law of Aotearoa New Zealand. It arrived with the first Pacific settlers and effectively served as a socio-political framework for many years until colonial contact.<sup>48</sup> It was highly workable and adaptable.<sup>49</sup> Tikanga, however, has been largely displaced by the operation of colonial law and governance structures.

Traditional leadership structures, such as the role of chieftainship, developed in Aotearoa differently as compared with Samoa. The Māori concept of chiefs (*rangatira*), their duties and conferred powers in Māori society (*rangatiratanga*), were never integrated into the imposed administrative and governance system.<sup>50</sup> While pervasive, this brought with it benefits for Māori; leadership remained close to community groups, and it absolved them of being regarded as spokespeople for the settler-colonial Crown and their policy implementations.<sup>51</sup> However, this was not an outcome chosen by Māori, but rather forced upon them. It has meant that seniority by birth, empowered by *mana ariki* (chiefly power), still exists as ceremonially important but does not impact the everyday affairs of life in the same way. It impacts to a much lesser degree than it can be said to in Samoa, where it remains that only *matai* may run for Parliamentary seats, and only those with a paramount title may be eligible (by convention) for Prime Minister.

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46 Parliament of Samoa "History of the Parliament" <[www.palemene.ws](http://www.palemene.ws)>.

47 Parliament of Samoa, above n 46.

48 Ani Mikaere "Are We All New Zealanders Now? A Māori Response to the Pākehā Quest for Indigeneity" in *Colonising Myths – Māori Realities: He Rukuruku Whakaaro* (Huia Publishers, Wellington, 2013) 80 at 87–89.

49 Tā Edward Taihakurei Durie "Custom Law" (discussion paper prepared for Waitangi Tribunal, 1994) at 1–2; and Mikaere, above n 48, at 87–89.

50 Te Ara: Encyclopedia of New Zealand "Maori Social Structure" <[www.teara.govt.nz](http://www.teara.govt.nz)>.

51 Te Ara: Encyclopedia of New Zealand, above n 50.

The general position of many Pākehā anthropologists and sociologists is that Māori have retained their individuality, and have never assimilated, because they have preserved a number of elements of culture and custom, adapted them and fit them into their pattern of living today.<sup>52</sup> While it is important to acknowledge that indigenous systems of power and governance were always malleable to natural, slow developments in indigenous epistemology, it is insidious to commend Māori for preserving parts of Māoritanga when acknowledging the background amongst which it occurred. Revitalisation efforts were hard and were hard fought. The persistence of settler-colonialism meant that the hands of Māori were forced; adapt, and somewhat assimilate, or relinquish.

Lasting efforts for revitalisation as a result of the state's settler-colonial status are often at the hands of the Crown. The Waitangi Tribunal, for example, while operating as an institution based upon tikanga, is a creature of statute subject to the discretion of ministers.<sup>53</sup> Its recommendations are routinely ignored by the Crown. As discussed by Ani Mikaere, it is the *manuhiri* (visitors), or the Crown in this instance, which are dictating the way that things are done in the tangata whenua's domain; it is the wronged party (Māori) that is expected to submit to terms imposed by the wrongdoer.<sup>54</sup>

## **V REGIONAL INSTRUMENTS DRIVING ANTI-CORRUPTION EFFORTS**

The Pacific Islands Forum is a regional co-operative organisation which aims to increase capacity for development by sharing knowledge and workloads across island states in the Pacific region. It acts as the governing body of policy development in the region. The PIFS has 18 members including both New Zealand and Samoa, amongst others.<sup>55</sup>

Although there is merit to discussion of international instruments working across Pacific nations, including the United Nations Convention Against Corruption (UNCAC), other United Nations conventions, the United Nations 2030 Agenda (comprising partly of the Sustainable Development Goals) and the United Nations Pacific Strategy, their substantive contents and practical effect has been well canvassed in existing scholarship. This section of the article will focus more closely on regional instruments driving anti-corruption efforts, which are more often driven by ascension by nation members of regional cooperation organisations such as the PIFS.

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52 Te Ara: Encyclopedia of New Zealand, above n 50.

53 Mikaere, above n 48, at 91–93.

54 At 89–92; and see generally Ani Mikaere "Tikanga as the First Law of Aotearoa" (2007) 10 Yearbook of New Zealand Jurisprudence 24.

55 The Pacific Islands Forum "The Pacific Islands Forum" <[www.forumsec.org](http://www.forumsec.org)>.

### ***A The PIFS and the "Blue Pacific" Identity: Critiquing a Constructivist View***

The role of the PIFS has long been contingent on the formation of a "Blue Pacific" identity; that is, the term coined to describe the region containing Pacific Island nations and their collective interests. A constructivist view would argue that this form of collective identity formation amongst Pacific Island states is closely related to region-building, and that it serves to empower said states to assert their own security interests (for example, pertaining to climate or anti-corruption) as a bloc despite the lack of institutional integration.<sup>56</sup> In contrast, the author contends that great Western powers, due to the wider international context they have created, have coerced Pacific Islands nations to co-opt a collective identity. Rather than remaining preserved, it serves to portray Pacific states as more palatable to engage with in international relations and foreign policy. It forces the states to roll over to the narrow, prescriptive perspective imposed upon them, and is a reflection of the hegemony over international law; it perpetuates the deeply unequal global structures of power.

This is not to say that the "Blue Pacific" identity arises solely from this need to appear palatable; the interconnectedness of Pacific Islanders is intrinsic to their culture, in spite of any delineations. The Pacific were not "islands in a far sea", but rather "a sea of islands".<sup>57</sup> Early Polynesians conceived of their space to govern as not only the land surfaces they inhabited, but also comprising the surrounding oceans as far as could be traversed and utilised to support life.<sup>58</sup> They saw their duty as caretakers of the vast Pacific Ocean a reciprocal relationship of taking or harvesting, and giving or caring for. Only as a result of colonial contact were state boundaries drawn and separations established.<sup>59</sup>

Pacific nations were long subject to a perspective enforced by international foreign aid experts and economic advisors interested in the region: that their success was dependent on migration of peoples abroad, relying on remittances and foreign aid as primary income.<sup>60</sup> Colonial powers never believed that Pacific nations were capable of independent development, and their actions reinforced this belief.<sup>61</sup> The direct role that colonialism and industrialisation plays in the climate crisis is an illustration of such a perspective. This is an issue said colonialism and industrialisation created and

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56 Moe Wada, Gabriel Wurst Cavassa and Roy Ikeda "The Blue Pacific in Search of a Collective Identity: Towards Success in Regional Security amid US–China Rivalry" (2024) 11(1) *Journal of Asian Security and International Affairs* 27 at 35–36.

57 Epeli Hau'ofa "Our Sea of Islands" in *We Are the Ocean: Selected Works* (University of Hawai'i Press, Honolulu, 2008) at 31.

58 At 31.

59 At 33.

60 At 29.

61 At 150.

given Pacific Island nations' vulnerability to the climate crisis, they now need foreign aid to support their resilience to it. It was amongst this framework, and these sentiments, that international relations were conducted.

The author contends that "region-building" organisations such as the PIFS were formed partly in response to the wider international context, and that this is reflected in broad regional instruments that attempt to provide a sweeping response and solution to issues such as corruption. To encourage Western powers to engage more productively, the Pacific needed to engage in a foreign form of regionalism and curate a refocused collective identity to encourage support for security interests, namely to act against the effects of climate change.<sup>62</sup> This is exacerbated by foreign policy that treats the Pacific as a bloc, rather than supporting individual nations to determine purpose-built and context-aware solutions and uplifting communities.

By no means is regionalism entirely nefarious. In fact, it is argued that regionalism works to counter the pervasive effect globalisation may have on indigenous communities by encouraging both greater economic and political integration to limit the effect of external actors.<sup>63</sup> Staunch supporters of regionalism may argue that this co-operation allows Pacific Island countries to be better placed to mitigate corruption; when co-operating, there are more resources available to tend to the issue. The author does not disagree with this statement. They contend, however, that the use of regionalism was the result of a forced hand to garner legitimacy. The Pacific alone cannot negate the effects of globally reaching phenomena such as climate change or pandemics. It is amongst this background that we should consider any arising instruments, including the Teieniwa Vision.

### ***B Biketawa Declaration***

In the wake of the 2000 Fijian coup d'etat, the Biketawa Declaration was introduced and assented to by all members of the Forum at the 31st Summit of Pacific Island Forum Leaders.<sup>64</sup> To achieve its purposes, it commits members of the Forum to eight core values.<sup>65</sup> The Declaration is a recognition of the need for action to be taken by the Forum in response to crisis or members' requests for assistance. It allows the Forum to address "difficult and sensitive" issues, including the underlying causes of tension and conflict.<sup>66</sup>

The signing of the declaration was seen as a major turning point in regional security cooperation, and in the role and standing of the PIFS as a regional co-operation organisation. Following its

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62 Wada, Wurst Cavassa and Ikeda, above n 56, at 33 and 35–36.

63 Andie Fong Toy "The Pacific Islands Forum and Regional Cooperation" in Jenny Bryant-Tokalau (ed) *Redefining the Pacific? Regionalism Past, Present and Future* (Routledge, London, 2017) 33 at 38–39.

64 Biketawa Declaration, above n 5.

65 Article 1.

66 Article 2.

accession, Prime Minister of New Zealand Helen Clark stated she "believed that it would allow the [PIFS] to evolve into a 'significant regional organisation ... taking a step beyond talk, talk, talk'".<sup>67</sup>

Under the guise of this declaration, for example, Australia sent 2000 troops, police and other officials to the Solomon Islands on a "regional assistance mission" to disarm combatants and rebuild institutions that dealt with finance and criminal justice. This became known as RAMSI. The mission "restored law and order" and supported the rebuilding of institutions of the above nature, and as such, supported anti-corruption efforts in the region.<sup>68</sup> This is the kind of benefit envisioned to support "good governance" in the region as per the PIFS' mandate, including the "observance of democratic principles and values, the rule of law, the defence and promotion of all human rights, gender equality, and commitment to just societies";<sup>69</sup> it acted upon the broad contention that these kinds of institutions were under strain, or attack, across the region.

### ***C Teieniwa Vision***

While the Biketawa Declaration focused on response to regional crises, the Teieniwa Vision, adopted at the 51st Forum Leaders' Meeting, acts as the members' official regional commitment to achieve Pacific unity against corruption, calling on leaders of Pacific nations to "... champion integrity and advocate and implement anti-corruption practices in their Parliaments, public services ... and entire communities" and to "draw on regional mechanisms to further [the Vision], including greater collaboration through regional architecture and development partners".<sup>70</sup> In essence, it recognises corruption as a "crisis" facing the region, "threatening peace and security, unity, and [the] rule of law".<sup>71</sup> There are references to international instruments which the member nations have assented to, including the requirement for regional collaboration against anti-corruption as required in art 5 of the UNCAC.<sup>72</sup>

The Vision builds strongly on previous declarations concerned with strengthening governance in the region, and places emphasis on the importance of "good governance" to ensure regional security and solidarity for the Pacific.<sup>73</sup> It serves as a practical manifestation of commitment to this value.

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67 Christopher Richter "Security Cooperation in the South Pacific: Building on Biketawa" (2004) 8(2) *Journal of South Pacific Law*.

68 Te Ara: Encyclopedia of New Zealand "Story: Peacekeeping" (1 June 2025) <[www.teara.govt.nz](http://www.teara.govt.nz)>.

69 The Pacific Islands Forum "Governance" <[www.forumsec.org](http://www.forumsec.org)>.

70 Teieniwa Vision, above n 4.

71 Puna, above n 1.

72 Natacha Wisstt "Anti-Corruption Initiatives in the Pacific Islands" (2022) *New Zealand Yearbook of International Law* 34 at 44–45.

73 Teieniwa Vision, above n 4.

The Vision has resulted in assented member states taking actions towards manifest and tangible change to achieve this purpose. For example, Australia chose to implement an independent anti-corruption body at a federal level to enhance the integrity of both elected and unelected officials.<sup>74</sup> The body is afforded strong investigatory powers; for example, no evidence may be withheld from the body on the basis of legal professional privilege.<sup>75</sup> The "trade-off" to allow for these extensive powers is, in this instance, that the body cannot prosecute. While it may issue a finding that a person has engaged in corrupt conduct, it may not issue a finding of criminal guilt where other rules of evidence and proof apply.<sup>76</sup> Domestic action has similarly been taken in Samoa, as discussed in further detail in the remainder of this article.

## ***VI INTERPLAY OF CULTURE AND LAW: SAMOAN ELECTORAL LAWS***

As a result of the Teneniwa Vision, and a changing attitude towards corruption in Samoa, the National Anti-Corruption Policy was introduced in 2023.<sup>77</sup> It utilises the definition of "corruption" as is contained in Black's Law Dictionary: "the act of an official ... who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person".<sup>78</sup> Salient in that definition is the moral (wrongful) component to an act of corruption, distinct from an "unlawful" use of power.

The policy highlights that a focus for the near future should be to define what corruption is in the cultural context of Samoa, deciding what corruption is and what it is not when cultural practices are involved. Against the background of comparative socio-legal analysis with a country such as New Zealand, in which the impacts of colonisation on indigenous governance have differed as discussed above, the author contends that this "Samoanisation" of corruption is not possible. Rather, utilising this definition of corruption will always produce a perspective rooted in a Western moral standard as perpetuated by the Great Powers through international relations. It can only act pervasively against *fa'asamoa* and its core concepts, worsening the tension between Western and indigenous sites and expressions of power.

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74 PLG Brenton, National Anti-Corruption Commissioner of Australia "Teieniwa Vision: from strategy to action" (10th session of the Conference of the States Parties to the UN Convention Against Corruption, Atlanta, 13 December 2023).

75 Brenton, above n 74.

76 Brenton, above n 74.

77 Samoa Public Service Commission "National Anti-Corruption Policy & Strategy" (26 February 2023).

78 Samoa Public Service Commission, above n 77.

## *A O'o and Momoli*

Traditions of gift-giving and the idea of "reciprocal relationships" have long been a part of the culture of Pacific nations. However, a Western view may determine this to be morally wrong in the context of an election. In fact, for Pacific peoples, meeting culturally imposed gift-giving obligations remains a central tenet of the way of life. It can act as a means of expressing cultural identity, sustaining social support structures and receiving social recognition.

It forms a central facet of *fa'amatai*, albeit with the caveat that these relationships should not form the basis of behaviour that could be construed as bribery under national laws. In many Pacific nations, electoral candidates often face obligations to "bear gifts" as a sign of hospitality and continued service to the constituents they are looking to serve.<sup>79</sup> In Samoa, these obligations fit chiefly into the influence of *fa'amatai* over elections; namely, where candidates must hold a *matai* title to be considered for election to Parliament, and where the conferring of a *matai* title comes with expectations of continued service for those of the village in which they are highly regarded.

Most aptly for those seeking political capital, gift-giving in traditional societies acted as a means of both gaining and maintaining support and alliance.<sup>80</sup> The view of some Western anthropologists is that gifting in a Pacific context introduces an inalienability whereby the giver of a gift is "bound" to the object given.<sup>81</sup> This produces a "gift-debt" whereby a relationship is formed in which it is expected that something will be returned.<sup>82</sup> In the context of both traditional and contemporary Pacific leaders (or those who hold power in their societies), the "thing" to be returned can be said to be the aforementioned support and alliance. It represents a core tenet to the symbiosis between leader and subject in these instances. The same cannot be said, however, about a leader in a Western context, where gift-giving is not necessarily interpreted as an appropriate medium by which to garner said support and alliance.

The difficulty in drawing the line between appropriate "gift-giving" and conduct amounting to bribery by electoral candidates has been a longstanding concern of authorities in Samoa. Historically, there have been numerous cases brought before the courts following elections where unsuccessful

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79 Peter Lamour "Corruption and the Concept of 'Culture': Evidence from the Pacific Islands" (2008) 49 *Crime Law Soc Change* 225 at 230.

80 Asofou So'o, Ruta-Fiti Sinclair, Unasa LF Va'a, & Sonny Lāmeta *National Integrity Systems: Country Study Report (Sāmoa 2004)* (Transparency International, 2004) at 5.

81 CA Gregory "Gifts to Men and Gifts to God: Gift Exchange and Capital Accumulation in Contemporary Papua" (1980) 15(4) *Man* 626 as cited in Anne Abraham and Murray Miller "Applying a Gift Exchange Perspective to Effective Volunteering in Papua New Guinea" 84(4) *Pacific Affairs* 687 at 689.

82 Gregory, above n 81, as cited in Abraham and Miller, above n 81, at 689.

candidates have claimed that their rivals have won by "bribing" their constituents.<sup>83</sup> Samoa has squarely addressed these claims by legislating that:<sup>84</sup>

... the presentation of the traditional O'o and Momoli by a Candidate or Member ... is not considered as treating, bribery or an illegal or corrupt activity if it is presented within 3 years after the date of the declaration of results for a general election.

However, despite the inclusion of this provision, it would be a naivety to say that it prevents the act of an *o'o* or *momoli* from carrying with it some expectation, or mere garnering, of political support and alliance. To do so would be to ignore the purpose of the practice itself.

This obligation formed by the "gift-debt" cannot be said to be one-sided, either. While upon presentation of an *o'o* or *momoli* it is intended that there will be a return to the gifter, in a reciprocal symbiotic relationship it is expected that any support will earn an *o'o* or *momoli* from the *matai*.

A key issue here is that "bribery" is a foreign concept based on an imported moral system. New Zealand legislation provides a clear definition of bribery marked by inappropriate conduct such as "gives any money ... to ... any voter ... to induce any voter to vote or refrain from voting".<sup>85</sup> An *o'o*, however, can seemingly fall squarely within this definition. Traditionally, this presentation was performed to inform a constituency of one's intention to contest an election. The reciprocal relationship between candidate and constituent, and the resulting obligations such as an *o'o*, are more than likely to induce a voter to vote; it can even be argued that it can induce a voter to vote for the relevant *matai*. While gifting and receiving gifts may be perceived as morally wrong from a Western lens, it is an expectation of *fa'amatai* and is a core obligation of chiefly duties.

In fact, the courts utilise cultural relativism to provide boundaries to determine which conduct is permissible in an attempt to delineate electioneering with participation in cultural events. In cases for bribery where customary practices are involved, key reasoning engaged by the courts includes that a failure to reciprocate would be "an affront to customary etiquette" and the suggestion that any other option, including choosing not to reciprocally gift, is "unrealistic" and inconsistent with cultural expectations.<sup>86</sup> Therefore, while on its face the provision may seem to excuse liability for all who undertake gifting, the engagement with culture can act as a key regulating factor. This is a common theme where these contentions arise and will be a recurrent answer to these issues as discussed throughout this article. In this instance, *fa'asamoa* defines what *o'o* and *momoli* are, and can act to recognise when a presentation does not conform to this definition.

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83 See generally for example *Timani v Vaai* [2023] WSSC 20.

84 Electoral Act 2019 (WS), s 101.

85 Electoral Act 1993, s 216(2)(a).

86 *Timani v Vaai*, above n 83, at [35].

## ***B Changes to Monotaga***

*Monotaga* and developments to its legislative definition act as another example illustrating where cultural differences arise when a concept is isolated from its cultural context and applied in a Western framework. A definition of *monotaga* is provided in the Electoral Amendment Act No 5 passed by the Samoan Parliament in 2015. It reads as follows:<sup>87</sup>

"monotaga" means the compulsory service, assistance or contribution (such as, contribution in form of cash, kind or goods) rendered for customary, traditional or religious activities, events, function or similar purposes pursuant to the customs of a particular village.

The relevant Act requires all potential candidates to have rendered such service for a minimum period of three years, ending on the day in which their nomination is lodged with the Electoral Commissioner as a requirement for candidacy.<sup>88</sup> *Monotaga* is distinct from voluntary service or contributions as it only includes when service is called upon by the village and the *matai* is thereby obligated to serve. In this way, it follows logically that if the service is not accepted by the village, then it cannot be *monotaga*.<sup>89</sup>

These prescriptions attempt to explicitly define a cultural practice, rather than allowing a cultural practice to define permitted behaviour, such as the earlier discussed *o'o* and *momoli*. Often, however, conceptions of *monotaga* differ by family and by village; each would establish an expectation of the type of *tautua* (service) they would expect to constitute *monotaga*, and of the *matai* to carry out said *tautua* as part of their obligations.<sup>90</sup> Legislating a definition in practice limits what was once open-ended and defined by those for whom it would benefit, directly imposing the views of centralised institutions upon long-held views of decentralised institutions, as was the goal of those who made colonial contact.

While in the instance of *monotaga*, culture provides "limits" or expectations of behaviour which may satisfy this requirement, the Samoan legislature has attempted to provide further limitations. An example is the removal of "religious" *monotaga*, or service to the church, as included within the definition.<sup>91</sup> To illustrate this point, a candidate who was asked to leave his village meetings and was unable to render service through this avenue brought a case before the court. He argued that it was

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87 Electoral Act (WS), s 8(5) definition of "monotaga".

88 Section 8(5) definition of "minimum of 3 years".

89 See generally for example *Tausaga v Electoral Commissioner & Anor* [2020] WSSC 81.

90 Tamasailau Suaalii-Sauni "Legal Pluralism and Politics in Samoa: The Faamatai, Monotaga and the Samoa Electoral Act 1963" in P Butler and C Morris (eds) *Small States in a Legal World* (Springer, Cham, 2017) 165 at 176–178.

91 Maina Vai "Samoa's Electoral Act Challenged in Supreme Court" *Samoa Global News* (online ed., Apia, 2 September 2020).

unfair that he could no longer stand for election following the removal of religious service from the definition of *monotaga*, as this was the primary way he remained connected to and served his community.<sup>92</sup>

In this way, Parliament is empowered to alter the meaning of a cultural practice which derives from cultural norms and practice. This power to do as such, unfettered by checks and balances, could work not only to the advancement of a particular party in government, but also to erode the role that *fa'amatai* and *fa'asamoa* play in elections. It can be argued that this approach to the influence of culture may garner more or less favourable results depending on how a society may wish for its electoral law to develop with culture. For example, changes in perception of an *o'o* may affect its legal definition and interpretation in the courts. Contrastingly, the definition of *monotaga* may not, unless amended by Parliament. Any amendments to the legislated definition, however, may attempt to change custom. In any instance, its legislated definition attempts to ensure that the reciprocity underpinning *monotaga* continues, but in practice acts against the agency of *fa'amatai* and *fa'asamoa* as a regulating and determining factor of its own concepts and custom.

### ***C Entrenchment and Constitutionality***

The treatment of entrenchment of law differs vastly between New Zealand and Samoa. A vivid demonstration of this point arises when examining changes made to electoral boundaries. In 2019, the Human Rights Protection Party (HRPP) government passed the Electoral Constituencies Act 2019 (WS). The Act allowed the Head of State, on the recommendation of Cabinet, to appoint three members to review electoral boundaries.<sup>93</sup> It further prescribes that these members report back to the Legislative Assembly and Cabinet for approval.<sup>94</sup> In essence, the ruling party is afforded unbridled power to alter electoral constituency boundaries.

In New Zealand, electorate boundaries are regularly reviewed, normally before a general election. The process involves the Government Statistician calculating how many electorates there should be, and the average populations of these electorates, from data collected in the Census to ensure that each electorate has about the same number of people (and the number of people in each electorate cannot be more or less than five per cent of its population quota).<sup>95</sup> The Representation Commission, an independent body comprised of public officials and Government and Opposition appointees, then considers existing electorate boundaries, communities of interest, topographic features, infrastructure

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92 Vai, above n 91.

93 Section 3.

94 Section 3.

95 New Zealand Electoral Commission "Working out how many electorates there should be" <[www.elections.nz](http://www.elections.nz)>.

that connects communities and projected variations in population over a five-year period.<sup>96</sup> Any changes bind and apply for the following election. More importantly, the Commission is governed by provisions contained in the Electoral Act 1993.<sup>97</sup>

This illustrates two distinct approaches to electoral law. In New Zealand, electoral law pertaining to the division of the country into general electorates is entrenched, meaning it can only be changed by a vote in favour by more than 75 per cent of the House of Representatives, or more than 50 per cent of a vote in favour by the general public in a referendum.<sup>98</sup> There is tension between entrenchment of laws and the doctrine of Parliamentary supremacy; that is, that Parliament is the supreme lawmaking authority, and that any law passed by Parliament shall be held to be superior over court decisions. This doctrine hangs upon the idea presented by Western democracy that, because the people have elected the House of Representatives to represent them, and because judges are unelected, we should take favour of legislation. However, this entrenchment acts as a mechanism to mitigate and circumvent any proposed amendments to electoral manner and form, such as electorate boundaries, that may be pursued in bad faith or in a self-serving manner.

In Samoa, rather, only the Constitution is treated as entrenched as the supreme law of the state.<sup>99</sup> It may be amended or repealed in accordance with art 109, which states that any provision may be repealed or amended if supported by the votes of two thirds of the Members of Parliament. In fact, this sole entrenchment serves a cultural purpose; so as to not adversely affect custom or tradition, it was intended during drafting that custom would be implicit.<sup>100</sup> Some may even argue that this served a dual purpose, including ensuring that colonial authorities such as New Zealand and the United Nations were convinced Samoa was prepared for independence. Samoan electoral law is not entrenched and is instead relatively malleable, often taking on amendments which would not be seen in a New Zealand context. This is particularly salient when recognising that interaction with *fa'asamoa*, such as the inclusion of the *o'o* and *momoli* in the Electoral Act, can leave the door open for legislative reform and changes to definitions that develop alongside cultural shifts amongst Samoans.

The author contends, however, that entrenchment is not perceived as having the same importance in both societies. Entrenched law in New Zealand acts as a tool against corruption; that is, to ensure power is not misappropriated or used for blatant self-interest (at the exclusion or expense of others). In contrast, *fa'asamoa* and *fa'amatai* can act as a clear moral regulating factor, as illustrated by the

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96 New Zealand Electoral Commission "What happens in a boundary review" <[www.elections.nz](http://www.elections.nz)>.

97 Sections 28, 35, 41 and 42.

98 Te Ara: Encyclopedia of New Zealand "Constitution" <[www.teara.govt.nz](http://www.teara.govt.nz)>.

99 Constitution of the Independent State of Samoa 1960 (WS), cl 2(1); and see for summary Samoa Law Reform Commission *Care and Protection Legislation to Protect Children* (IP 03/09, 2009) at 9.

100 Huffer and So'o, above n 20.

fact that electorate boundaries traditionally revolve around *itūmālō* and their associated governance structures. Changes to electoral boundaries that were plainly perverse and deemed culturally inappropriate would likely be met with harsh opposition, and would engage the same checks and balances that underpin "Western democracy".

The view that culture can act as an appropriate regulating factor is not necessarily widely held, however. Following her resignation from her position as the Deputy Prime Minister of Samoa, and deputy leader of the contemporarily governing party, the HRPP, Fiamē Naomi Mata'afa proposed an independent electoral office in Parliament, citing that the Commissioner's Office's ability to pass "self-interested legislation" posed an issue to the rule of law and that reform was necessary to "guarantee there is equality in our elections ... so that there is no bias or discrimination against others".<sup>101</sup>

#### ***D Anti-Defection Laws***

On the surface, anti-defection laws may be seen as a driver of anti-corruption. Samoa is one of 13 "newer democracies" (as of 2007) that maintain anti-defection laws.<sup>102</sup> Anti-defection laws have largely been driven by Samoa's largest party, the HRPP, holding a monopoly in Parliament, acting in practice for many years as a one-party system. One explanation for this could be that Samoa, as a relatively recent adopter of Western democracy as imported through the Westminster system, may feel that loyalty to parties is an important reflection of the close-knit, intricate relationships formed under *fa'asamoa* between *'aiga, nu'u* and the *matai*.

Some may argue that anti-defection laws work to combat the incidence of political corruption, where Members of Parliament may be elected and then be vulnerable to being "bought" or crossing party lines to undermine the stability of their originating party.<sup>103</sup> It can be argued that such laws stabilise a two-party system, alternating between government and opposition. However, anti-defection laws can also be considered to worsen corruption, providing a party and its leader with wide discretion and control over its members. Many nations regard switching parties as compatible with their adoption of democratic principles, and that the absence of anti-defection laws permit or, in some cases, promote competitive party politics.<sup>104</sup>

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101 Tina Mata'afa-Tufele "Samoa First wants independent electoral office" *Samoa Observer* (online ed, Apia, 29 September 2020).

102 Kenneth Janda "Laws Against Party Switching, Defecting, or Floor-Crossing in National Parliaments" (paper presented to 2009 World Congress of the International Political Science Association, Santiago, July 2009) at 3–4; and Electoral Act (WS), s 141(2)(a) and (b).

103 Janda, above n 102, at 12–13.

104 At 15.

In 2001, New Zealand passed an anti-defection law to be in force for the following two general elections.<sup>105</sup> Following its lapse after the second election, the Solicitor-General stated of a bill introduced to reinstate the original Act that "the Bill does not protect what I have described as 'legitimate dissent' in the House by an individual member concerning his/her party or its policies", illustrating that rather than enforcing a focus on loyalties, the purpose was to allow for further diversity of thought from that of the "party line" without punishment—a purpose which it seems to have failed to achieve.<sup>106</sup>

Anti-defection laws may also be seen to, in effect, worsen the trust that voters have in elections in general, which they purport to protect by allowing members to express dissent. Of the Philippines, Monitonla argues:<sup>107</sup>

... the parties' lack of political consistency and unbridled party-switching ... understandably reinforced the notion among voters that parties were neither robust nor meaningfully differentiated ... parties were merely temporary electoral and legislative alliances designed to maximise the election chances of individual politicians.

The power to switch parties means that, whilst democratically elected, the ultimate power defining government lies in the hands of the members themselves. For example, in the United States, the Democratic Party gained control of the Senate in 2001 when one Senator defected from the Republican Party.<sup>108</sup> Similar incidences have occurred in the Samoan Parliament in years past, such as in 1985 when 11 HRPP members left the party to form a coalition with other members.<sup>109</sup> While not forming a majority, this certainly demonstrated a notable dissent with the party's politics which may have had the effects discussed above.

Anti-defection laws may be considered a reflection of the cultural constructions underpinning electoral practice in Samoa (that is, *fa'amatai*). The loyalty and reciprocity that exists in the relationships of service between *matai* and their families and villages (or, in the case of a Member, their constituents) means that an anti-defection law fits the cultural context. Many Samoan voters tend to align politically according to familial ties and familiarity with parties, and it is generally expected that those elected remain affiliated with these parties as a reflection of the views of their constituencies. Further, we have seen a stabilised two-party system, where HRPP and FAST now exist as the two most prominent parties. A Western perspective may argue that anti-defection laws instead

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105 Electoral (Integrity) Amendment Act 2001.

106 Janda, above n 102, at 20.

107 At 12.

108 At 6–7.

109 Caroline Morris "Anti-Defection Laws in Three Small South Pacific Parliaments: A Cautionary Tale" (2022) 20(3) International Journal of Constitutional Law 1188 at 1206–1207.

work to the detriment of anti-corruption, diminishing a sense of trust in centralised institutions of power. They may argue that this should be avoided at all costs, even at the detriment of cultural foundations. However, should these laws be abolished, the system would likely be less reflective of the underpinning relationships in Samoan politics.

### ***E Widened Scope for Electoral Roll Registration***

In 2024, the Samoan Parliament passed the Electoral Amendment Bill 2024, affording citizens of Samoa who live overseas the opportunity to register to vote. This amendment has sparked a lively debate that engages *fa'asamoa* and traditional perceptions of its sociopolitical governance, and the desire for the diaspora to feel connected to the place from which they come.

Samoa has not long allowed its citizens over 21 years of age to vote in general elections. Only in 1991 was a bill passed that abolished the requirement for a person to hold a *matai* title to vote. This change was wildly popular with the general public, ensuring that the government in power at the time the bill was passed remained in power, but it was not without controversy. After the election, some voters who were suspected of having voted for a candidate not chosen as preferential by the village *fono* were punished.<sup>110</sup> In this way, the system did not act as intended; it did not allow people to freely vote.

Recent amendments to electoral roll registration requirements have also been met with disdain, and for similar reasons. For example, the MP for Sagaga No 2 noted he took issue with the fact that 107,000 Samoans living in New Zealand would now become eligible to vote in elections, claiming that they will have an undue influence over the governance of Samoa from the "outside" without contribution to Samoan society.<sup>111</sup> What underpins these criticisms is the shift away from *fa'asamoa*, *fa'amatai* and its core values. Respect for seniority and reciprocity were core organising features of early Samoan society. They have been intrinsic to the Samoan way of life since time immemorial.

This difference highlights the thread that runs through the argument presented by this article: what is deemed morally or inherently right in one society may not be viewed in the same way by another. This contention, between a Westernised sense of morality and traditional Samoan socio-political organisation, means that there can never be one true amalgamation which gives ample effect to both systems. There must be a trade-off: one must be more prominent than the other.

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110 Asofou So'o "Regime Change and Regime Maintenance in Asia and the Pacific: Universal Suffrage in Western Samoa: The 1991 General Elections" (Research School of Pacific Studies of Australian National University, Canberra, 1993) at 11.

111 Finau Fonua "Samoa legislators pass electoral amendments despite concerns" *Radio New Zealand* (online ed, 8 March 2024).

## VII CONCLUSION

The differing treatment of indigenous cultures in both New Zealand and Samoa by colonially imposed socio-political governance structures has led to different manifestations of their pertinence in everyday life for citizens today. Those in Samoa will argue that *fa'asamoa* and *fa'amatai* remain intact in practice and in theory, and are maintained as a strong framework upon which to consider power and its exercise. Te ao Māori is not necessarily as explicitly implemented in New Zealand's colonially imposed institutions, whose electoral law and practice is more congruent with Western ideals.

Samoan electoral law and government entities are moving towards a system which strives for anti-corruption. The Samoan Public Service Commission has published a National Anti-Corruption Policy. However, this can only be considered against the background of colonialism, pertinent in the idea of "anti-corruption" itself, which acts upon an imported notion of morality. This notion of morality is further empowered by the colonial efforts of engagement in international relations. It works to undermine the traditional concepts and sites of power indigenous to Samoans. This is illustrated through new legislative definitions of *o'o*, *momoli* and *monotaga*. It neglects to consider that *fa'asamoa* and *fa'amatai* can act as an apt regulating factor for behaviour that is self-interested to the exclusion or detriment of the people served, as illustrated by the starkly different approaches to entrenchment and anti-defection laws.

The Teieniwa Vision addresses this issue by stating "As the Blue Pacific, and noting the different contexts in defining corruption ...".<sup>112</sup> In this way, on its face, the push for anti-corruption in both jurisdictions is congruent; both strive for a society where this self-serving behaviour does not occur. However, the "Samoanisation" of corruption mentioned as important by the Samoan Public Service Commission will be a difficult, if not impossible, task. It will require Samoans to rethink the role that *fa'asamoa* and *fa'amatai* play in contemporary sociopolitical governance, and whether their diminishment at a centralised scale to align more closely with ideals of Western democracy is a worthy relinquishment.

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<sup>112</sup> Teieniwa Vision, above n 4.