

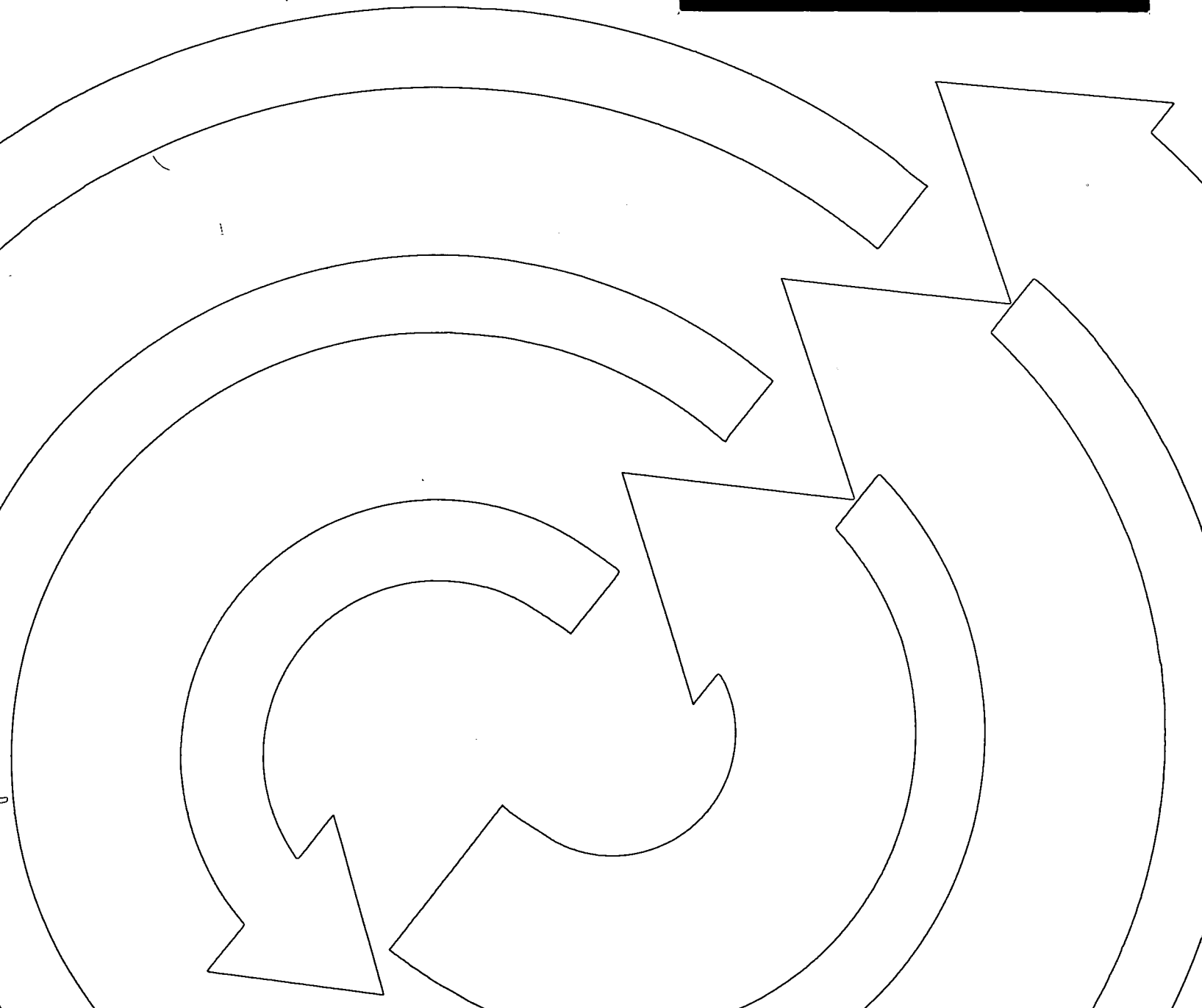
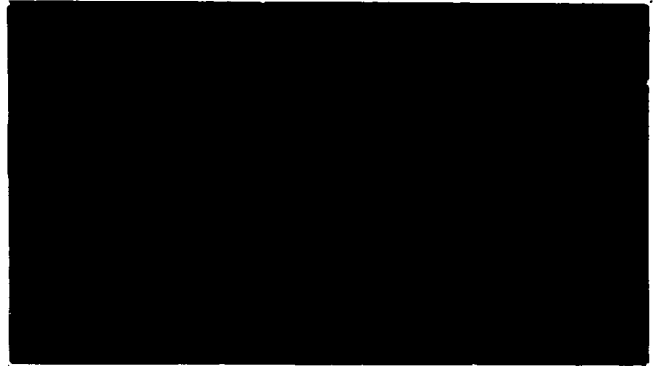


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**CULTURAL DIFFERENCES AND
DISCRIMINATION: SAMOANS BEFORE A
PUBLIC HOUSING EVICTION BOARD**

by
Richard Lempert

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

**RICHARD LEMPERT
UNIVERSITY OF MICHIGAN**

**KARL MONSMA
NORTHWESTERN UNIVERSITY**

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

Justice wears a blindfold. There is no subtle point here. As thinkers from Weber (1968) to Luhmann (1988) have recognized the law's ideal is to decide cases in terms of its own categories (which Justice presumably holds in her head). Such socially defined categories as race, religion and social status are seldom recognized in the law and when not recognized should play no role in legal decision making. Yet there is a feeling that Justice occasionally peeks, and numbers of studies of judicial decision making have tried to catch her in the act.

Usually these studies focus on race, for in the United States racial prejudice seems so powerful and ubiquitous that it is difficult to believe that court decisions would not reflect racial bias. In some instances bias is clear. When it was permissible to punish rape with death, for example, the punishment was largely limited to Southern states and within those states it was ordinarily reserved for black men who had raped white women. Indeed, to judge by the punishment statistics one would believe that no white man ever raped a black woman (Wolfgang 1973). In most investigations, however, Justice has fared remarkably well, given that expectations of a strong racial influence are not unreasonable. Discrimination appears either to be too complex or indirect to be categorized as simple racial bias or it is not found in the data. Thus in the capital punishment area Garfinkel's (1949) early finding of discrimination based on the victim's race¹ has been replicated in a number of recent, more sophisticated studies, but outside of the rape area the evidence suggesting discrimination based on the defendant's race or even on the interaction between the defendant's race and the victim's race² is ordinarily weak or ambiguous (Paternoster 1987, Baldus and Cole 1990, Gross and Mauro 1989). With respect to other crimes and judicial actions the evidence after controlling for legally relevant variables is, as Hagan and Bumiller's (1983) review of the sentencing literature indicates, inconsistent. Many studies find no evidence of discrimination, many find that blacks are treated worse than whites, and some find that blacks receive lighter sentences. Moreover, when racial effects are found they are almost inevitably quite weak and dwarfed by such "legitimate" factors as offense seriousness and prior record.³ Results are similar in studies of

¹ Those who kill whites are more likely to be sentenced to death than those who kill blacks.

² The expectation would be that as in rape blacks who assault whites would be punished more severely than defendants in any other criminal-victim combination.

³ These results do not mean there is no discrimination in the criminal justice system. Most sentencing studies have not controlled adequately for selection bias (Klepper et al 1983), and indirect or institutional racism can also explain null results. With respect to the first issue racial discrimination at the early levels of criminal justice processing (e.g. arrest, decision to charge) may mean that whites who reach the sentencing stage are, on a variety of consequential but unmeasured variables, guilty of more heinous offenses than blacks. If so, equal sentences across races would actually evidence racial discrimination. With respect to the institutional racism issue, it may be that blacks are for reasons of discrimination more likely than whites to be poor sentencing risks. For example, if unemployed whites and unemployed blacks receive the same

other court decisions such as conviction (Warren 1974, LaFree 1980) and bail setting (Nagel 1983).

The ideology of blind justice applies to informal courts as well as to formal ones. Indeed, informal neighborhood tribunals have sometimes been defended on the grounds that dispute settlement is fairer when the judges share the disputants' cultural understandings (Danzig 1973), and advocates of small claims courts claimed that they were needed to provide litigants in the lower socio-economic classes with meaningful access to courts. Similarly the critique of institutions of informal justice has often involved theoretical (Abel 1982) or empirical (Moulton 1968) arguments that poor people are systematically disadvantaged in these settings. However, there has been virtually no research searching for racial discrimination in such institutions. Yngvesson and Hennesy, for example (1975), in their synthesis of the small claims court literature report no study that focused on racial discrimination and in Abel's (1982) The Politics of Informal Justice the index to the essays on "The American Experience" contain no headings for "discrimination", "race" or "racism."⁴

As a theoretical matter it would not be surprising to find that racial biases motivate decisions in informal courts. Indeed, one might expect to see stronger race effects in informal courts than in formal ones because the very features that make for judicial formality are designed to limit the influence of such legally irrelevant factors as the personal characteristics of parties. Informal courts, on the other hand, often make a virtue of treating litigants as people, and an individual's racial identity is an inescapable part of what he or she is as a person. It would be particularly unsurprising if tribunals that used citizen judges were to show racial biases, for as Donald Black (1971) long ago demonstrated in his study of arrest, when legal decisions turn on popular input, those decisions will reflect the preferences of those who provide that input.⁵

In this paper we examine the decision making of an informal tribunal; the Hawaiian Housing Authority's (HHA) eviction board. We begin in a fashion that is conventional in studies searching for discrimination. We develop a model of measurable variables that might influence board decision making regardless of the defendant's identity. We also include in the model a dummy variable that captures membership in the group that is the hypothesized target of discrimination (in our case Samoans). Should we find a significant negative coefficient on the dummy variables we can conventionally treat it as evidence of discrimination; if

sentence increment as a result of the recidivism risks suggested by unemployment, the comparative sentencing data will reveal no race-based discrimination. The fact that blacks are unemployed may, however, result from workplace discrimination.

⁴ Volume 2 of Abel's book which presents "Comparative Studies" has a heading for "racism" in its index, with respect to Mozambique colonial courts.

⁵ Black found that the tendency of police to respect a complainant's wishes led the police, other things being equal, to arrest a higher proportion of blacks who were complained about than of whites. Interestingly this occurred because black complainants were more likely to seek the arrest of black trouble makers than white complainants were to seek the arrest of white trouble makers. The effects of complaints in cross-race situations were not investigated. If they had been, the racial effect might have increased because white complainants might have been especially likely to seek the arrest of black trouble makers.

the coefficient is small and not significant convention suggests that we are not confronting a discriminatory process.

This approach to spotting discrimination treats discrimination as a residual category. To use ethnic discrimination as an example, if a substantial bivariate relationship exists between ethnicity and adverse outcomes, the conventional approach does not treat that relationship as evidence of discrimination unless it persists when the influence of factors that one might suppose would affect the decision regardless of the party's ethnicity are also taken into account. When, however, ethnicity does add significantly to the ability of other variables to predict adverse outcomes, we regard that as evidence of ethnic discrimination and are more certain the more adequately we have accounted for variables other than ethnicity that might plausibly have affected the decision in question.

This conventional approach does not, however allow one to trace out all the disadvantaging implications of ethnicity no matter how adequately the variables that might plausibly 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 race of the defendant before her. However, discriminatory decisions by police or complainants may mean that the typical black defendant had more or more serious prior arrests than the typical white defendant. Second there is cultural discrimination, a phenomenon seldom recognized in studies of discriminatory legal decision making. A decision maker may value certain behaviors and disvalue others regardless of the ethnic identity of the person exhibiting them. But the decision maker's values may reflect her cultural roots and she may fail to respect or even to recognize the ways in which the behavior of others is tied into a different cultural value system. For example, a state legislature may make it illegal for a parent to withdraw a youth 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 the 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 the compulsory schooling law act without reflecting on the possibility that, if agricultural production statewide were technologically similar to that of the Amish, withdrawing children from school at age 14 might seem natural.

The word "discrimination" has, of course, taken on a pejorative connotation, and there is some question as to whether one should label the kind of cultural domination we identify "discrimination." For most legal purposes unless actors are responding to tokens of group membership with an intent to disadvantage group members one does not have legally remediable discrimination. Moreover, the moral status of a person who intends harm to another because of group membership is certainly different than that of a person who believes she is responding to a characteristic other than group membership and may not even be aware of how cultural differences influence her actions. The net result of cultural discrimination may, however, create a pattern of group disadvantage similar to what one would expect if discrimination were intentional, and the law allows clear

patterns of group-linked disadvantage to be taken as evidence that discrimination is intentional.⁶

In what follows, we begin our search for discrimination in conventional fashion by presenting quantitative models of eviction board decisions. Controlling for a variety of relevant variables we find that Samoan ethnicity is not associated with the probability of eviction in cases brought for nonfinancial reasons, but it is positively associated with the chances of eviction in cases brought for financial reasons. The significant positive coefficient on the "Samoan" variable in cases brought for non-payment of rent or other financial debts suggests that Samoans are discriminated against because of their ethnicity. This is consistent with some qualitative evidence we gathered by interviewing almost everyone who, over the twenty year period we examine, had a decision making role in the eviction process. However, the greater portion of the qualitative evidence appears inconsistent with the simple discrimination hypothesis, for decision makers can point to reasons other than ethnicity for disproportionately evicting Samoans. These reasons often appear legally adequate and are not captured in our quantitative model. Taking these reasons into account, we cannot say that Samoans suffer a residual disadvantage that can only be explained by their ethnicity. Thus by the standards that guide most conventional searches for discrimination in legal decision making, we cannot say that Samoans have been discriminated against.

But pushing the level of investigation to yet another level, a different picture emerges. The disadvantages Samoans suffer appear in large measure attributable to behavior that members of other ethnic groups are unlikely to engage in and, more importantly, to excuses that members of other ethnic groups are unlikely to give. These behaviors and excuses in turn reflect aspects of Samoan culture that are either not recognized or not respected by the members of the dominant culture who judge Samoan tenants. Thus Samoans are systematically disadvantaged in the eviction process because of their ethnic heritage. Yet even this view holds dangers of misleading. As a final complication we describe two cases which illustrate that, when cultural understandings differ, it may be difficult for members of a dominant culture to ascertain what disadvantaging behavior should count as discrimination.⁷

In examining how Samoans fare before an eviction board, we are looking at an unfamiliar minority group before an unusual court. Nonetheless, what we learn should be of more than specialized interest. The different layers we unpeel in our search for discrimination caution against too facily accepting the

⁶ As a clear pattern of group-linked disadvantage becomes visible a decision maker may become aware that a characteristic she was responding to was proxying for group membership. In these circumstances a continued response to that characteristic may have an element of intentional discrimination. A key issue is the legitimacy of resting the disadvantage on the characteristic responded to. Thus an employer must prove the job-related validity of an employment test if that test disproportionately screens out members of some cognizable group but not otherwise (Griggs v. Duke Power, 401 U.S. 424, 1971).

⁷ One might, for example, reasonably suspect that white teachers label black students as "disruptive" in part because they fail to appreciate aspects of black culture. However, Farkas and his colleagues in a study of one large Southwestern school district, found that black teachers were substantially more likely than white teachers to label black students disruptive (Farkas et al. 1990).

conclusions of studies limited to data that is less rich. The kinds of cultural discrimination that we can spot because of the distance between the Samoan and the dominant culture is also likely to exist in other situations where members of one group pass judgment on members of another. If the effects of such discrimination are less pronounced where cultures are more similar, discrimination will be harder to discern.

The legal decisions we examine in this paper are decisions of the Honolulu Housing Authority's (HHA) eviction board during the years 1966-1985. This board consisted of a group of citizen-volunteers whose assent was necessary before the HHA could proceed to evict tenants. We have described this board and the HHA's eviction process and the way each changed over time in other publications (Lempert 1989, Lempert and Monsma 1988, Monsma and Lempert in press). Here we will only mention those details that are important in understanding what follows.

Throughout the period 1966-1985 procedures before the eviction board were informal. Tenants appeared, usually without lawyers. The Authority's case was briefly presented, usually by questioning the project manager, and the tenant was allowed to respond in whatever way she wanted. Almost always the Authority's charges were admitted. In three quarters of the cases the charge was non-payment of rent and the fact of non-payment was almost always indisputable, but even when some other lease violation, like fighting or keeping pets, was charged, the tenant usually admitted the violation but sought to excuse it. After the tenant replied, usually with explanations, promises or excuses, board members, the Authority's prosecutor and occasionally the project manager often asked the tenant questions. Board members on occasions also lectured the tenant, either scolding her for her failings or offering her advice about how to deal with her situation or how to keep from getting in trouble in the future. Throughout the tone was informal. Dress was usually casual, the tenant's children might be sitting on her lap or playing on the meeting room floor, and there was considerable effort to ensure that the tenant understood what was being said. The time of the typical hearing, between twenty and thirty minutes, appears generous when compared to the typical hearings of some small claims courts (Conley and O'Barr 1990) and misdemeanor trial courts (Mileski 1971).

While the informality of the basic hearing remained more or less the same over time, other features of the eviction process and the board's decision making changed. Interested readers will find the changes described in detail in Lempert (1989). For present purposes it is enough to know that 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.

The data we work with are drawn from the HHA's files on every eviction action brought between the years 1966 and 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.

The Authority's eviction files sometimes included information on ethnicity, but most files did not have ethnicity information. Where ethnicity was not reflected in the Authority's file, 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 names. The coding was done by a research assistant native to Hawaii and conversant with island culture. Since Samoan names are usually distinctive we have some confidence in this coding. By coding a tenant as Samoan if only the first name was Samoan we included some Samoans of mixed parentage, but we will have missed any Samoans of mixed parentage whose first and last names were non-Samoan in origin. We do not believe that these procedures cause important biases, for misclassification is likely to dampen any effects we find.

In addition to the information we collected from the Authority's files we interviewed almost everyone in Hawaii in 1987 who had been connected with the eviction process from 1966 on. This included most eviction board members, project managers, HHA prosecutors, lawyers who appeared occasionally as defense counsel and HHA central office officials who served during the period for which we have eviction file data. Thus we can complement our file data with information about the observations and attitudes of those who, apart from the ever-changing tenants, figured most prominently in the eviction process.

Our data do not allow us to determine whether the eviction board treated members of ethnic groups other than Samoan better or worse than might be expected on the basis of tenant and case characteristics, but there is reason to believe that if ethnicity adversely affected a tenant's prospects before the board, these effects were limited to Samoans and perhaps one or two other ethnic groups that were present in public housing in much smaller numbers. The first reason is simply what people told us in their interviews. Problems with Samoans were often spontaneously raised. Only three other ethnic groups were similarly mentioned, Laotians, Vietnamese and Tongans, and there were far more mentions of Samoans than of these groups. Indeed, when these other groups were mentioned, it was usually in conjunction with Samoans. Tensions between the Vietnamese and Laotians on the one hand and Samoans on the other were mentioned by several informants, and one or two informants linked Tongans and Samoans together in discussing problems of Polynesian peoples.

The second reason is that Samoans in Hawaii have many of the characteristics of an underclass. Their per capita income is the lowest of any ethnic group in Hawaii for which separate statistics are kept (Kincaid & Yum 1987, U.S. Commission on Civil Rights 1979). Samoan women are less likely to work than women of any other ethnic group (Hect et al. 1986). Their average education is low, with more than half of the Samoan adults in Hawaii having nine years of school or less (Baker 1986). Unemployment rates are high (Hect et al. 1986, Grekska et al. 1986). A disproportionate number of Hawaii's Samoans are in prison (Howard 1986), and Samoans generally are 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). Finally, a study of the opinions held of each other by five Hawaiian ethnic groups (Caucasians, Japanese Americans, and immigrant generation Filipinos, Vietnamese and Samoans), including three of low income and status, revealed that among all groups except their own, Samoans were at the bottom when moral traits such as industriousness were measured along semantic differentials. Except for Samoans, whose average ranking on the six measured dimensions was close to the neutral point, these Hawaiian ethnic groups had generally positive stereotypes of each other (Yum & Wang 1983).

Thus we expected that if we were to find any discrimination by the eviction board on the basis of ethnicity, it would involve discrimination against Samoans. Other ethnic groups did not seem objectively to be as poorly off as the Samoans and did not seem to be as stigmatized.

Overall Samoans account for about 21% of the eviction actions the Authority commenced by subpoena and for about the same proportion of cases in which hearings were held.⁸ Because we do not have data on the ethnic composition of the Authority's projects, we cannot say whether Samoans are disproportionately represented in these data. The proportion of actions involving Samoans is 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 an increase in the speed with which the HHA processed non-payment cases. For reasons that will become clear, we think Samoans are more likely than other tenants to have family or church networks they can draw on for financial support if given enough time to mobilize aid.

Table 1 compares the reasons why eviction actions were brought against Samoans and other tenants. Samoans were more likely than other tenants to be subpoenaed for fraud or non-payment of rent and less likely to be subpoenaed for pet violations. The difference in fraud subpoenas may reflect the fact that many Samoan tenants spoke English poorly or not at all. Very often when fraud, which usually involved the concealment of income, was charged, the tenant's defense would be that she didn't understand that certain income had to be reported. In the case of Samoans this defense might have in fact explained some cases, since language problems may have prevented clear understandings. In the late 1970s there were at least two instances where tenants avoided eviction hearings by prevailing in grievance arbitration with a defense of failure to understand.

The proportion of cases brought for non-payment of rent may be slightly higher among Samoans than in other ethnic groups because Samoans in the United States often face demands for money which they do not feel they can resist. Samoan families that help members emigrate to the United States often expect regular cash remittances in return (Holmes 1974), and all Samoan families expect that even distant members will help with cash contributions on special occasions such as funerals and weddings (Ablon 1970, 1971). Churches too make regular financial demands and these are especially important institutions for many emigrant Samoans. Thus Samoans are more likely than other tenants to find themselves in a position where social pressures induce them to spend a portion of their rent budget for other purposes.⁹

⁸ Hearings might not be held because a tenant moved out upon receiving a subpoena or because the problem was resolved without a hearing and the Authority chose to cancel the action. Of 1268 cases commenced by subpoena, 1007 had a board hearing.

⁹ In traditional Samoa, Samoans are very closely bound to their aiga or extended family group, and the head of the family, or matai, will largely control the resources family members possess and the things family members do. Even though these traditional arrangements are breaking down particularly in American Samoa with the growth of wage labor and a cash economy, extended family connections and status within the extended family are still important to most Samoans. In the United States there is an effort to reconstruct the aiga as best possible, but families will be split and the matai may remain in Samoa. In these circumstances the church

The tendency for propensity of Samoans to be subpoenaed for financial reasons, which is to say for fraud and non-payment, is not explained by factors that changed over time. The percentage of cases brought for financial reasons is higher among Samoans than among non-Samoans in each of the periods that captures important changes in the eviction process over time.

The low percentage of pet cases is probably the result of three factors. First, keeping dogs as pets (and almost all pet cases involve dogs) is not a Samoan custom. Second, Samoans are more likely than most tenants to live in the HHA's one low-income high rise, a living arrangement that is not conducive to keeping pets. And third, many of the pet cases arose during the earlier time periods when a lower proportion of public housing tenants were Samoan.

As a first step in determining whether Samoans, when they are subpoenaed to appear before the eviction board, suffer any discrimination we present a series of probit models using as controls the variables defined in Table 2. Several of these variables were not coded for cases before 1969 and were coded for only a random sample of cases for the years 1979 through 1985. We have used the smaller sample with more complete information for this analysis. In all models the data are weighted to reflect the composition of all cases for the 1969 through 1985 period. We analyze these data separately for financial violations and for other reasons for action.

Table 3 presents a probit model for the chances of eviction in cases brought for reasons other than non-payment or fraud. The weak and non-significant coefficient for the Samoan dummy variable in this model provides little evidence that Samoans are discriminated against in these kinds of cases.

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 some variables, such as the amount of money owed, that are only relevant 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, based on the control variables, has 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 sixth period. The estimated Samoan effects increase across periods, hinting that discrimination against Samoans increased over time. The estimates provide no more than a hint of interaction, however, because whether taken individually or jointly, they are nonsignificant (for joint test of significance $X^2 = .85$, 3 d.f.).

helps fill the family leadership vacuum, and ministers will be accorded some of the respect that in Samoa goes to the Matai (Janes 1990).

One way in which the board may discriminate against Samoans is by applying the criteria used to determine evictability more strictly to Samoans than to tenants of other ethnic backgrounds. Given reactions to how Samoans handle money or a general prejudice against Samoans, the board may hold Samoans to higher financial standards than other tenants. 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 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. This means that the amount of money owed has a stronger effect on the probability of eviction for Samoans than it does for other tenants. This interaction is consistent with evidence we shall present 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 repaid, rent delinquency history, appearance number) show no significant interaction.

Tenants evicted by the hearing board can appeal to the HHA's Board of Commissioners. There is no overlap between the Board of Commissioners and the eviction board; the Commissioners are political appointees who are ultimately responsible for everything the HHA does. This board too proceeds informally, and it has discretion to allow tenants whose eviction has been ordered by the eviction board to stay in housing subject to whatever conditions the Commissioners choose to designate. To some degree, therefore, decisions of the Board of Commissioners can be used to replicate findings from the hearing stage. Table 5 presents probit models for outcomes at the appeal stage. Due to the small number of cases appealed, these models include only some of the variables included in the models for the hearing stage.¹⁰

In model 1 of Table 5, the estimated effect of being Samoan on the chance of eviction is actually negative, but it is not statistically significant. The negative coefficient may be due simply to instability in the estimate caused by the fact that only 100 cases were available with which to estimate this model.

In addition, the Samoan coefficient at the appeal stage may be negatively biased due to selection at the hearing stage. To the extent that Samoans are discriminated against at the hearing stage, evicted Samoans will be less deserving of eviction on variables not included in the models. If Samoans are as likely as non-Samoans to appeal eviction orders, their lower evictability on unmeasured variables would negatively bias the Samoan effect estimated for the appeal stage. However Samoans were more likely than other tenants to appeal eviction decisions, which may counteract any bias caused by discrimination at the hearing stage.¹¹

¹⁰ A dummy variable for whether the tenant repaid all of her debt is used rather than the percent repaid because the exact amount owed at the time of appeal was not available and because in the last period, at least, tenants were told that if they could repay everything that was owed their appeal would almost certainly be granted.

¹¹ About 52.4% of evicted Samoans appealed, but only 35.6% of non-Samoan tenants appealed. This difference may exist because of the close communal ties of Samoans makes them more likely than others to know of evicted tenants who successfully appealed or to have family or friends who could instruct them in the appeal process. Such a difference would also be expected if Samoans

Model 2 in Table 4 includes a term for the interaction of the Samoan variable and the amount owed. The estimated coefficient is positive and significant at the .05 level (one-tailed). At the appeal stage as at the hearing, increasing indebtedness is more detrimental to Samoan than to non-Samoan tenants.

Taking the quantitative analysis as a whole, it appears that Samoans accused of financial violations fare somewhat worse in the eviction process than non-Samoans accused of similar violations who are comparable on other eviction-relevant characteristics. We may call this Samoan disadvantage "discrimination," but we should be aware of precisely what this means. It means that given the characteristics we are able to control for, Samoans are more likely to be evicted than other tenants who are similar with respect to the control characteristics.

One possible reason for this is the fact that Samoans, as we noted above, are socio-economically the least advantaged of the various ethnic groups that populate Hawaii, and they are apparently stigmatized on this account. In deciding whether to evict, the board members may be reacting negatively to the fact that Samoans are before them, or the Authority's prosecutor or manager-complainants may push harder for eviction in Samoan cases than when the tenants are of a different ethnic background. There is some evidence in interviews with prosecutors, project managers and board members that negative stereotypes of Samoans exist.

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 fifty 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. At another point the same prosecutor in discussing the appeal process and the fact that a tenant must sign a stipulated agreement¹² if she wants to stay complained:

Yea, we would be sitting there just like you and I are talking and I would ask if they understand and to explain it in your own words. They would explain it in their own words and then we would go in there (the Board Room where the Commissioners sat), and they would

had a greater ability than non-Samoans to acquire enough money to clear their rent debts because in the most recent periods tenants knew that a successful appeal was unlikely unless all the money owing was repaid. Finally the difference is consistent with apparent discrimination against Samoans at the hearing stage, for this discrimination means that evicted Samoans tend to owe less money than other evictees, which in turn suggests a greater than average ability to pay back what is owed and thus a greater expectation of success on appeal.

¹² In a stipulated agreement a tenant promises to pay her rent on time for a year and agrees that she may be evicted without any further hearing should she violate the rent payment requirements or any other lease provision within that year.

freeze up and start talking Samoan. It was, it got ridiculous; so now we have a translator.

One board chair conveyed his image of Samoans in apologizing for the fact that a non-payment 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, who 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 ...

When asked whether Samoans cause problems on the projects she continued:

I have found in the past, yeah. I am not stigmatizing them, but I have found that if you get three or four of them they are apt to get more rambunctious - it is [true of] any nationality, but for some reason Samoans I have found to be not the best people to sit down and drink with; so I kind of shy away from them.

A former board member and chair in commenting on his efforts to explain to evicted tenants why the board had no choice but to evict them described several instances in which evicted tenants thanked the board:

In fact one of them was a Samoan tenant, family. You know how hard they are.

Finally, a long time project manager who was admired by tenants for his humaneness, commented:

But it is true, Samoans are antagonistic or hostile. But as I say, they weren't my problem tenants on delinquency. I was more afraid of them on a physical basis where they would mug me or gang up on me.

[Did anyone ever attack you?]

No. I had one guy who verbally said, "Oh, who do you think you are." I don't think this prejudice is really hostile with any kind of base to it. 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 that these remarks reflect might suggest that managers and prosecutors push harder for eviction when Samoans are defendants,¹³ and that board members are 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 non-financial reasons. If a generalized prejudice against Samoans were the main reason they fared worse than other tenants 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 non-financial 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 a generalized prejudice. For example, one former board member when asked whether any special accommodations were made for Samoans who had, by their own lights, good cultural reasons for spending rent money on something else (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.

If this board member is correct and the board ended up "judging [Samoans] the same way [it] would anybody else" it would appear that the board did not illegally discriminate against Samoans since illegal discrimination implies differential treatment on the basis of some impermissible characteristics such as ethnicity. Yet if there was no illegal discrimination how can one explain the disadvantage that attaches to Samoan status in our data? The answer we think lies in the differing cultural 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

¹³ The project manager's preference can influence the eviction board. In non-payment cases that we observed the project manager was invariably asked whether, apart from the charged lease violation, the tenant caused any problems. It may be that project managers bringing cases for financial reasons are more likely to tell the board that Samoan tenants have been responsible for other problems on the project than they are to report similar difficulties with tenants from other ethnic groups. Such reports might reflect actual behavior, for the stereotypes of both tenants and project managers indicate that Samoans cause trouble in ways that are harder to prove than financial violations.

If the board in deciding whether to evict is responding to managerial judgments of overall tenant character, the board is not discriminating in an invidious racial sense since regardless of the tenant's ethnicity the board might consider what the manager told them. However, the eviction process is not working legally as it should. The board does not have the legal authority to evict a tenant who would otherwise have been given a second chance simply because a manager has made an unproven allegation that the tenant is a trouble maker. This discussion we should note is speculative. We have no reason in our data to believe that Samoans charged with non-payment of rent are evicted for reasons other than their non-payment. If the non-payment 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 owing, but the interaction between ethnicity and rent owed which we found runs in the opposite direction.

pattern of decisions similar to what one might find had the board intentionally treated Samoan ethnicity as a factor weighing in favor of eviction. We were in our interviews able to identify two ways in which differing cultural logics apparently had this effect.

First, Samoans were more likely than others to have some relative or friend speak for them. In part this was because Samoan tenants often did not speak English or were not confident of their English and brought translators with them.¹⁴ But it also reflects the fact that in Samoa there is a class of orators renowned for their speaking ability, who other Samoans, even high chiefs, let speak for them on formal occasions. Thus a Samoan would have found it natural to bring a fellow Samoan as a spokesperson.

It is possible that it is more difficult to make a convincing case for leniency when it is necessary to speak through a translator. Our data do not allow us to evaluate this possibility. However, it seems clear that Samoans were not helped and were probably hurt when they brought orators to speak to the board for them. One tenant board member recalls how one repeat player alienated the board:

This one particular man; he comes when there is a Samoan tenant who is going to face the board.... He is a talking chief¹⁵ for the Samoan council, but that has nothing to do with the real courts. Now they come in and right off the bat make accusations - that we are all going to wind up in court. Some of them do not want to reveal what happened....

We have seen the files on several cases in which this talking chief, also a public housing tenant, appeared. No doubt thinking it appropriate to the board setting, the talking chief acted as if he were a lawyer, making legal motions and arguments and threatening to go to circuit court with a variety of claims. Yet he had no legal training, and to a lawyer not only do his "legal" arguments appear hopeless, but the formality with which he tries to expound them often appears ludicrous.¹⁶ Moreover, in concentrating on pseudo-legal arguments, this chief neglected to make the kinds of informal explanations and arguments for leniency that might have persuaded the board to give the tenant a second chance. These are arguments which, ironically, genuine lawyers often make with some success (Lempert and Monsma 1988, Monsma and Lempert in press). Shortly after one of this talking chief's most elaborate cases, in which he went so far as to file "motions" in circuit court when his "client" was evicted but then never followed up on his action, he himself was evicted from public housing for non-payment of rent.

¹⁴ From our observations and conversations it appears that these were most often the tenants' children who had grown up in Hawaii and so were fluent in English or ministers or other church representatives.

¹⁵ A talking chief is special in two ways in Samoa. He is both an orator and a person who can claim noble status (Grattan 1948; Holmes 1974).

¹⁶ The chief himself was apparently caught between two cultures. He tried to use the language of one culture (Western law) and the style of another (Samoan argumentation). The result was speech that the board members greeted with impatience and recounted with laughter.

While we cannot be certain that the tenants this man represented would have done better without him, they almost certainly would not have done worse. If the board evicted tenants he or others like him represented when they would have given a second chance to similarly situated tenants who gave excuses or pled for mercy, the board's decisions cannot be attributed to some simple anti-Samoan bias since it responds to the quality of the cases presented, but Samoans are nonetheless disadvantaged where non-Samoan tenants would not be. This possibility cannot, however, explain most of the disadvantage that in our quantitative model seems attributable to Samoan ethnicity, for there are too few Samoans with such representation to account for the quantitative results.

The second factor that we are unable to capture in our coding which might explain the pattern of board decision making is the quality of excuses that tenants make. The excuses that Samoans make may simply receive less respect, and in Western eyes deserve less respect, than the excuses other tenants make. Tenant excuses for skipping rent payments usually refer to factors beyond their control, such things as illness, unemployment, thefts of wallets and the like. The excuses Samoans offer often refer to expenditures that to Westerners seem within a person's control but to Samoans may seem every bit as compelling as the excuse that one had to pay doctors' bills.

To put it simply, a good Samoan is a bad public housing tenant.¹⁷ For Samoans what is central in life is the aiga or extended family, the matai, or family chief, and, especially in the United States, the church (Grattan 1948, Holmes 1974, Jane 1990). A Samoan achieves status through the aiga both because the Samoan shares in the status of his aiga and because, in the case of males, the aiga chooses its own chiefs.¹⁸ The matai as head of the family controls all 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 gather the money to send their relatives to the United States (or, in the case of Western Samoa, New Zealand) as an investment, with the return taking the form of regular "remittances" once the relatives have gotten jobs (Ala'Ilima and Stover 1986). It is particularly important that cash gifts be sent in connection with certain ceremonial occasions, especially funerals and weddings (Ablon 1971). To fail to do so would bring dishonor to both the individual (thus making it unlikely he will ever achieve chiefly status) and, if the family cannot make up the shortfall, the aiga. Moreover, a failure to contribute can lead to substantial insecurity because a

¹⁷ Most Samoan immigrants to the United States, including most Samoan public housing tenants, come from American Samoa. The portrait that follows is today truer of Western Samoa than it is of American Samoa, where traditions have more rapidly broken down. However, studies during the past twenty years of Samoans in the United States indicate that elements of the traditional culture persist, and they would have been more deeply rooted in the head of household generations at the time our cases arose than they were in younger, American-born generations or are today.

¹⁸ In Samoa when a man marries he has a choice of living in his wife's aiga or his own. The choice will often be determined by the number and quality of the older males in each aiga and what these imply for the person's opportunity to advance to chiefly status.

Samoan who is a member in good standing of his or her aiga knows that in a crisis situation he/she can turn to family members for support.¹⁹

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 typically are resident in Samoa. In these circumstances the church steps in to fill gaps, and provides a general trans-family support network for its members. In return, however, Samoans are expected to respond to church needs in much the same way as they would respond to their aiga's requests. This means that Samoan churches in the United States are another source of hard to resist demands for funds.²⁰

The result of these institutional ties is that Samoans may be pressured to give to the family or church money that is needed for rent. Board members can be particularly resentful when, as is often the case with public housing tenants, the money that is sent to Samoa or given to the church was money provided by welfare and earmarked for rent. Thus, while board members may recognize the special pressures that Samoans may be under, 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 explain lease violations] but there comes a place where I think that they must adjust, and the two cultural patterns do not.

¹⁹ Several studies have suggested that Samoans may in certain ways show less stress than other immigrant groups because of the security the aiga provides (Janes 1990, Lazar 1985).

²⁰ There are other aspects of Samoan culture that make good Samoans poor housing tenants. The tremendous stress on family and a pattern of emigration in which Samoans expect to spend months if not years living with relatives before setting out on their own means that the pressures on Samoans to break guest rules in housing and to overcrowd units are undoubtedly great. Family ties mean that it is very difficult if not impossible for a Samoan family to ensure that a project trouble maker leaves the family and does not return when the trouble maker's continued presence is likely to lead the Authority to seek eviction. Moreover the Samoan culture accepts occasional violent outbursts in men (so long as they are not directed against Samoans of a higher hierarchical position) (Lazar, 1985) as natural, and the physical discipline with which Samoans raise their children (it is severe enough that some Westerners would see it as child abuse) may conduce to violent outbursts as well (Baker, 1986). These features of Samoan culture, as well as the generally large body size of Samoans, may explain why Samoans are often stereotyped as violent and feared on the projects. These aspects of Samoan culture are not discussed in the text because while they affect the quality of Samoans as housing tenants and may well affect stereotypical views of Samoans and what managers tell the board about tenant character, they do not figure directly when financial cases are at issue.

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 to - so you learn to become a little bit more, you know, you don't believe all the things that they tell you.

Sometimes, the excuses may be unbelievable,²¹ but the excuses that this board member is talking about are credible within the context of Samoan culture even when they are repeated by tenant after tenant.²² Perhaps if the excuse were that a wallet were stolen or that a child had fallen ill,²³ the board member, while remaining skeptical, would have been more likely to credit the tenant's reason.

²¹ The Authority's only Samoan project manager in talking about the reasons Samoans give for not paying their rent 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 board] for it."

²² 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-Samoans 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 the true from the false. In these circumstances it is likely that the board members are more prone to believe excuses involving events or circumstances that they might experience than they are to believe an excuse that they would never make.

²³ Samoans are probably less likely to make illness excuses than other tenants because ordinarily they prefer Samoan healers to Western doctors and Samoan healers are not expensive (Cook 1983). Indeed, the medical setting contains an even better example of culture conflict than the eviction setting. Cook (1983) tells of a Samoan mother who took a sick child to a hospital emergency room in Hawaii. The nurse seemed to be scolding her and seemed to be handling her child roughly as she felt for infected abscesses. The mother took the child from the nurse and ran away. The hospital called the Honolulu child protective services to try and 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 nurses actions suggested there was a disharmony between her and the mother which further threatened the health of her child. From the nurse's

Moreover, even a willingness to credit Samoan excuses does not mean they will be accepted. Some managers and board members believe that the only way that Samoans will learn how to be "good" housing tenants is if particularly Samoan excuses are not tolerated.²⁴ 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. And ironically, he might be depriving them of their ability to call upon church and family when for a good Western (or Samoan) reasons the family falls behind on rent and needs a lump sum to clear its debt. Both managers and board members report that it is not uncommon for Samoans who are behind on their rent to be able, once the crisis of eviction is real, to acquire from church or family enough money to pay everything that is owing.²⁵

Thus despite comments that suggest prejudice against Samoans on the part of some board members and Authority officials and despite data which shows that other measurable variables being equal Samoans fare worse than other tenants, 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 allows greater insight into what influences the board than students of discrimination in judicial processes ordinarily achieve. The difficulty exists because the Samoan example makes problematic what we mean by discrimination. From a purely legal standpoint there is probably no discrimination, for the board members are arguably responding in the same way to Samoans as they would to other tenants making similar excuses. But other tenants seldom make similar excuses; their repertoire of stock excuses is different. Swidler (1986) argues that the influence of culture lies not in shaping the values toward which action is oriented but rather 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 often ill-suited to the end of persuading the eviction board to leniency. Yet they are suited to other ends, such as maintaining status within the aiga, that Samoan tenants value. Not only do Samoan tenants find themselves in a dilemma that other tenants need not confront, but often,

point of view, this was a case of child neglect. Indeed, since Samoans typically go to native healers first, they often bring themselves or their children to doctors only after the illness is in an advanced state. Doctors see this as unconscionable neglect and scold the Samoans for their behavior, which leaves Samoans yet less easy with their doctors. In addition, Samoan healers are paid only when the patient recovers. The demand of American doctors to be paid upon treatment is itself cause for suspicion.

²⁴ Cf. the treatment of witchcraft in British-ruled African colonies (Lempert & Sanders 1986, 79-83).

²⁵ It may be that those Samoan tenants who are actually brought before the eviction board owing rent have fewer family or church resources to draw on or that, despite their excuses, they have not been as good Samoans as they should have been and so are unable to benefit from reciprocity.

because of the taken for granted nature of many cultural assumptions, they do not 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.²⁶ For these reasons, Samoans are disadvantaged because of their ethnic heritage as surely as if the board was peopled by bigots who would not give Samoans an even break. The Samoan disadvantage exists because Samoan tenants live in a setting in which the rules of another culture dominate, and they must litigate cases before a board whose members share the taken for granted assumptions of the dominant culture. It is this form of cultural domination that might be called cultural discrimination.

One must, however, be cautious in assuming that the adverse outcomes visited on a cultural minority would be avoided if that minority were judged by its own cultural logic rather than that of the dominant culture. This is nicely illustrated by a pair of cases we discovered.

In 1981 the Authority sought to evict a 71 year old Samoan high chief, and former head of Hawaii's Samoan Council of Chiefs, because one of his sons had stabbed and killed another man on project premises.²⁷ This gave rise to the most litigated eviction action in HHA history, as the case was eventually appealed to the Supreme Court of Hawaii before it was finally resolved in the Authority's favor. The tenant had several substantial claims. First, he had obviously not condoned or cooperated in his son's behavior and was responsible for it only in the vicarious sense that the lease imposed such responsibility. Second, the chief with some justification could claim he had been a good tenant. Indeed, the year before he had been commended by the HHA and received an award from the Mayor of Honolulu for his part in organizing a Samoan patrol which, following the Samoan custom of blowing on a conch shell, enforced a curfew on the youth who lived within the project. 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, a sign of reconciliation between the families (Filoiali'i & Knowles 1983). Finally, it was correctly pointed out that the son who did the killing was in prison and had no present prospect of returning to the project grounds. Despite these considerations

²⁶ One public housing manager during the later years of our time period was Samoan. He managed a heavily Samoan project area, and he waited longer before bringing tenants up for eviction than any of the other housing managers who served concurrently with him. This probably reflects his willingness to give credence to Samoan excuses. He was, for example, the manager we describe in note 21 who did not bring a tenant up for eviction the first time the tenant said he had sent his rent money to Samoa as a contribution to his uncle's funeral but did act six months later when the tenant, repeating the same excuse for another missed payment, inadvertently claimed the same uncle had died. Other project managers would probably not have accepted the first excuse, nor had they accepted it had the foresight and suspicion to ask which uncle had died. In an analysis that is not reported we controlled for cases brought by this manager and found that his presence could not explain the negative coefficient on Samoans in our probit models.

²⁷ The chief was charged with violating one lease provision relating to unauthorized guests and another which requires the lessee to ensure that those on the premises with his consent conduct themselves in a peaceful manner. Several past incidents of intimidation involving the chief's family members were alleged along with the stabbing, but the past incidents had been overlooked when they occurred, and it is clear that the stabbing was the reason for the action.

and the chief's age and status, the Authority insisted on evicting and eventually was able to enforce its will. The chief and his family had to leave the project forever. Did the board's strictness reflect an anti-Samoan bias? Would a board that was more genuinely appreciative of Samoan culture have decided differently? Let us look to Samoa.

Less than a decade before a quite 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 highest chief following a quarrel. The son was arrested and taken to jail. 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, the traditional sign of reconciliation. The remaining high chief had known nothing about his son's intent, and there was nothing he could have done to prevent the killing. Later the other chiefs of the village met to decide how the matter ought finally to be resolved. They ordered the chief who was father to the killer and all his lineal descendants to leave the village, never to return again (Shore 1982).

Conclusion

We began this paper by noting that Samoans in Hawaii have many of the characteristics that are associated with an underclass. For this reason we thought they might be discriminated against in the eviction hearing process. We first approached this question in a traditional sociological fashion. We constructed a model which included those variables in our data set which might, in a legal-normative sense, be legitimately considered by the eviction board in its decision making processes or which might proxy for variables that could be so considered. 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 and courts stop, we would have concluded that as expected Samoans ethnicity triggered discriminatory decision making.

However, we had other information available to us. First, conversations with eviction board members, project managers and others revealed that some of these people had unfavorable opinions of Samoans, but there were more managers and board members who claimed to appreciate the special situation of Samoans and to some extent expressed empathy with them. Moreover, even if generalized prejudice on the part of some board members and managers occasionally disadvantaged Samoans, the weak and nonsignificant Samoan effect among cases that do not involve financial debts indicates that the effect of such generalized prejudice is not strong and can account for only a small part of the Samoan disadvantage.

Our interviews indicate instead that a large part of the disadvantage experienced by Samoans in the eviction process seems traceable to the fact that Samoans tend to excuse rent payment lapses with rationales the board will not accept. It is also possible that the frequency with which Samoans make "traditional" excuses hurts Samoans who make excuses like the "child's illness" excuse, which board members would ordinarily be more receptive to. This is because the board's general experience with Samoans may lead some board members to stereotype all Samoans as managing money according to the wrong

priorities. This would be a variant of what Wilson (1991) has called "statistical discrimination." Our interview data neither support nor refute this possibility, although they do show a general willingness to stereotype Samoans.

Our paper raises the question of whether it is discrimination to credit excuses that are valid within the dominant North American culture but not those that are only valid within Samoan culture? By the law's standard there seems to be no discrimination here. But in a broader, more sociological sense, one can claim that discrimination exists. Consider Feagin and Eckberg's definition of racial or ethnic discrimination as "the practices and actions of dominant race-ethnic groups that have a differential and negative impact on subordinate race-ethnic groups" (1980, p.9). By this standard Samoans clearly do face discrimination at the hands of the eviction board except the practices that disadvantage them are now not so much those associated with a dominant ethnic group (no one ethnic group dominates in Hawaii and the values that underlie board decisions are broadly shared) as they are those associated with a world view and values common across modernized ethnic groups in North American society.

Yet calling a tendency not to accept the excuses of a culturally alien subordinate group discrimination does not say what, if anything, could or should be done about it. One might argue, as more than one board member did, that in moving to the United States and accepting welfare subsidies Samoans knowingly entered a system which imposed constraints on their ability to honor cultural obligations. Although the more extreme versions of this argument erroneously assume that the United States is a cultural homogeneous society and that Samoans are foreigners (American Samoans are U.S. citizens), it is probably true that movement into an alien environment inevitably requires some adaptation. Sensitivity to cultural differences is not just a one way street and requires understanding and adaptation on all sides.

Given this, what does ensuring fair and equal treatment of Samoan tenants mean? Should the HHA's eviction board have continued to reject Samoan excuses and hoped that Samoans would learn to make rent payment a higher priority than cultural obligations? Should it have accepted some excuses when they were made by Samoans but not when they were made by other tenants, and risked "reverse discrimination" lawsuits by non-Samoans who were evicted after using their rent money to support relative or churches? Should the board have begun accepting typically Samoan excuses from all tenants, and risked dramatic increases in rent debts owed by tenants? There is no easy answer. Cultural pluralism brings up important questions about what equality both sociologically and before the law means. As immigrants from around the world continue to arrive in the United States, a wide variety of tribunals are likely to face such dilemmas.

In fact, the HHA's eviction board appears to have solved its fairness dilemma, although its solution was not born of a concern for fairness. By the last year of our time series the HHA's board had retreated into formalism. The law allowed tenants to be evicted whenever they were behind in their rent and the Authority, after years of trying, was finally able to persuade the board to adopt the general policy of always evicting when rent was owing regardless of the reason (Lempert, 1989). Under this policy Samoans are not disadvantaged vis-a-vis other tenants by the quality of their excuses. Excuses have ceased to count. But Samoans may still be disadvantaged in housing if their culture leads them to give

or lend money and consequently owe rent when other tenants would not.²⁸
Formalism by silencing excuses renders this disadvantage invisible.²⁹

It is clear that to determine whether the eviction board we studied discriminates, we must first ask what we mean by discrimination and what are the standards by which we measure it. Should we also ask these questions in studies of formal courts that seek evidence of discrimination? We think so. Can we answer them if all we have is the kind of archival data that courts routinely collect? Only, our experience in Hawaii suggests, if we are willing to accept impoverished and perhaps misleading answers.

²⁸ Conversely they may be advantaged if when they fall behind on their rent for reasons like unemployment or illness they can call on their church or aiga for financial assistance. Whether Samoans as a group are in fact disadvantaged vis-a-vis other tenants depends on the balance between the resources that Samoans give to the aiga and church and those that they receive from these sources. This balance may, however, depend on the Authority's institutional arrangements. The speed with which the Authority processed evictions in the most recent years of our time series may have prevented Samoan tenants from receiving support that would have been available given enough time.

²⁹ There is another aspect of formalism that deserves mention. Even had the eviction board retained discretion to refrain from evicting when money was owing, the situation we describe might have been different had the board been a formal legal tribunal. When a party confronts a formal tribunal she has reason to know that the language of tribunal proceedings is unlikely to be her own. Formality is a cue to acquire representatives, in the case of a tribunal they are usually lawyers, whose expertise consist 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 them better.

Table 1. Distribution of Reason for Subpoena among Samoans and Others.

Reason	Samoans	Others
1. fraud	10.3%	8.3%
2. nonpayment	78.5	72.6
3. guests	3.8	4.2
4. pets	1.9	6.2
5. other trouble	5.4	8.7
total	99.9	100.0
N	261	1000

Chi-Square = 12.08, 4 d.f.

Table 2. Abbreviations and Descriptions of Variables.

Abbreviation	Description
Appearance#	Number of eviction actions brought against tenant, including the current appearance.
Children	Number of children living with tenant.
Finanprb	Financial problem index. Number of financial problems in family. Occurrence of unemployment, substantial debt, illness, or garnished wages each add 1 point to the index.
Incvolid	Coded 1 if family income information is not missing, 0 if it is missing.
Lnfaminc	Natural log of family income (in constant 1982-84 dollars).
Lnrntowed	Natural log of constant 1982-84 dollars owed at the time of subpoena.
Outcome	Coded 1 if tenant was evicted, 0 if tenant was allowed to stay (including cases in which tenant was technically evicted but enforcement of order was stayed).
Pctpaid	Percent of rent debt at time of subpoena paid before the hearing.
Period	Time period. 1=1966-74, 2=1975-77, 3=1978-79, 4=Hearing Officer A, 5=Hearing Officer B, 6=Hearing Officer C.
Reason	Reason for subpoena. 1=falsification, fraud or miscellaneous (generally technical), 2=nonpayment, 3=guests, 4=pets, 5=other trouble behavior.
Rntdel2yr	Substantial rent delinquency. Coded 1 if tenant has more than 2 years of rent delinquency history, 0 otherwise.
Samoan	Coded 1 if family is all or part Samoan, 0 otherwise.

Table 3. Probit Model Predicting Outcome at Hearing among Cases Subpoenaed for Reasons Other Than Nonpayment or Fraud.

Independent Variables	
Constant	.06534 (.139)
Period	
1-3	-.4968 (-1.244)
4	(-.04211)
5	-.108 -.4875 (-1.222)
(6)	
Reason	
3. guests	-.2981 (-1.045)
4. pets	-.3339 (-1.148)
(5. other trouble)	
Appearance#	.4327 (-1.791)
Children	-.06010 (-.873)
Finanprb	-.2578 (-.855)
Periods 1-3*Finanprb	-.3193 (-.655)
Samoan	.09678 (.299)
Likelihood ratio chi-square	14.41
d.f.	10

Notes: N=142. Cases are weighted. Outcome coded 1 if tenant was evicted, 0 otherwise. T-ratios are in parentheses.

Table 4. Probit Models Predicting Outcome at Hearing among Nonpayment and Fraud Cases.

Independent Variables	1	2	3
Constant	-3.009 (-4.306)	-3.045 (4.328)	-2.645 (3.711)
Period			
1	-1.529 (-3.913)	-1.450 (-3.513)	-1.590 (-4.012)
2	-.3719 (-1.041)	-.2991 (-.788)	-.3803 (-1.062)
3	-.5428 (-1.725)	-.4509 (-1.296)	-.5567 (-1.772)
4	-.2626 (-1.380)	-.1883 (-.839)	-.2642 (-1.383)
5	-.6973 (-3.925)	-.6689 (-2.905)	-.7026 (-3.924)
(6)			
Reason			
1. fraud, etc.	2.813 (4.237)	2.795 (4.202)	2.808 (4.226)
(2. nonpayment)			
Appearance#	.4147 (3.461)	.4119 (3.439)	.3918 (3.248)
Children	-.08765 (-2.091)	-.08560 (-2.034)	-.07727 (-1.827)
Finanprb	-.08273 (-.853)	-.08620 (-.887)	-.08085 (-.827)
Periods 1-3*Finanprb	-.6118 (-2.549)	-.6231 (-2.559)	-.5907 (-2.455)
Reason 1*Lnrntowed	.09210 (1.751)	.09149 (1.737)	.03868 (.668)
Reason 2*Lnrntowed	.4603 (5.010)	.4566 (4.948)	.4125 (4.401)
Pctpaid	-.01148 (-6.476)	-.01130 (-6.334)	-.01160 (-6.508)

Table 4 (continued).

Independent Variables	1	2	3
Rntdel2yr	.4355 (2.493)	.4276 (2.430)	.4592 (2.613)
Incevalid	4.821 (4.178)	4.859 (4.203)	4.905 (4.225)
Incevalid*Lnfaminc	-.5128 (-4.203)	-.5163 (-4.226)	-.5299 (4.309)
Samoan	.3814 (2.602)	.4957 (1.690)	-1.081 (-1.506)
Periods 1-3*Samoan		-.3611 (-.562)	
Period 4* Samoan		-.3537 (-.759)	
Period 5*Samoan		-.06262 (-.175)	
Samoan*Lnrntowed			.2424 (2.093)
Likelihood ratio chi-square	183.82	184.67	188.59
d.f.	17	20	18

Notes: N=620. Cases are weighted. Outcome coded 1 if tenant was evicted, 0 otherwise. T-ratios are in parentheses.

Table 5. Probit Models Predicting Outcome at Appeal among Nonpayment and Fraud Cases

Independent Variables	1	2
Constant	.2020 (.236)	.6280 (.697)
Period		
1-3	-.5086 (-.807)	-.6203 (-.946)
4	-1.222 (-1.950)	-1.409 (2.121)
5	-.2587 (-.603)	-.4581 (-.990)
(6)		
Appearance#	-.1630 (-.562)	-.2817 (-.947)
Finanprb	-.4310 (-2.489)	-.4965 (-2.656)
Lnrntowed	.2559 (2.290)	.2457 (2.122)
Paidfull	-2.612 (-4.908)	-2.815 (-4.743)
Samoan	-.2835 (-.751)	-1.081 (-1.955)
Samoan*Lnrntowed		.1848 (1.975)
Likelihood ratio chi-square	57.37	61.49
d.f.	8	9

Note: N=100. Cases are weighted. Outcome coded 1 if tenant was evicted, 0 if tenant was allowed to stay. T-ratios in parentheses.

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