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BOTH SWORD AND SHIELD: THE STRATEGIC USE OF CUSTOMARY LAW IN
THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

by
Helen A. R. Robbins

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A Dissertation Submitted to the Faculty of the
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2001
As members of the Final Examination Committee, we certify that we have read the dissertation prepared by Helen A. R. Robbins entitled Both Sword and Shield: The Strategic Use of Customary Law in the Commonwealth of the Northern Mariana Islands and recommend that it be accepted as fulfilling the dissertation requirement for the Degree of Doctor of Philosophy.

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Final approval and acceptance of this dissertation is contingent upon the candidate's submission of the final copy of the dissertation to the Graduate College.

I hereby certify that I have read this dissertation prepared under my direction and recommend that it be accepted as fulfilling the dissertation requirement.

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STATEMENT BY AUTHOR

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This dissertation is based on ethno-historic fieldwork in the Commonwealth of the Northern Mariana Islands (CNMI). In the CNMI there is a complex interaction of customary law within the framework of an American legal system. By studying land disputes in a historical context, I examine how custom is represented, reconfigured, and constructed through law and the dispute process. Law reflects and reproduces ideology through its relationship with the state while at the local level of the case one can analyze the specific ways individuals access, affect, and are affected by the legal system. Courts are a site for the production of meanings that includes state-level forces, such as the law and procedural rules, as well as the impact of individuals, such as attorneys, litigants, and witnesses.
CHAPTER 1
FIELDWORK IN THE COMMONWEALTH

When I first went to Micronesia in the fall of 1994 to determine the subject of my dissertation research, the last topic I wanted to study was land tenure. After all, research on land ownership and use was dull. I knew because I had been forced to read about it in several anthropology classes. Furthermore, in previous years, more than one anthropologist had told me that legal anthropology was passé and tedious. I, however, found legal research interesting. Nevertheless, I did not want to compound my research’s potential for being boring by adding land tenure to the mix. Prostitution or the influence of organized crime in the Marianas sounded a lot more exciting. I was determined to avoid studying land, but to no avail.

On that first trip I spent six weeks conducting preliminary research in Guam and in the Commonwealth of the Northern Mariana Islands (CNMI). I interviewed scholars, attorneys, and did archival research at the Micronesia Area Research Center (MARC) located at the University of Guam and at the Commonwealth archives on Saipan, CNMI. The Chamorro indigenous rights movement on Guam sounded promising, as did the study of contract workers on the islands of Saipan and Rota. Despite my desire to discover a “hot” topic, I was also committed to studying an issue that Chamorros and Carolinians
thought was important. In the few days that I spent on Saipan I met a number of local and non-local people. Unfortunately for me, I thought, most of them began telling me about land conflicts on Saipan. I heard lengthy and detailed stories about how families were feuding, the inflated value of land, and the long and involved court battles over family property. I could not escape it. When I went back to Arizona I decided to do my research on the island of Saipan and came to the conclusion that land tenure and law, in some form, was going to be the focus of my dissertation.

Ironically, when I returned to Saipan in 1997, very few people wanted to talk to me about land disputes. The first few months of fieldwork appeared hopeless. Not only did I have trouble finding people to talk to about legal conflicts and family disputes over land, but I realized that some of my theoretical assumptions were wrong and that I needed to re-think my approach. Fortunately, research got progressively easier. I found disputes to observe, people to interview, data to collect, legal and historical documents, and transcripts of testimony to photocopy. Nevertheless, during the course of that year and the three weeks in the fall of 1998 when I returned to collect data on specific court cases, conduct more interviews, and to visit friends, many locals still would not talk about land disputes. I knew some of these people fairly well, yet they never told me about their own family’s disputes. They were aware of what my research
was about and I knew from other sources that they had been engaged in intra-familial land conflicts for many years, yet we never spoke about their personal experiences. Revelations of family discord would undermine the picture of family harmony that signaled adherence to traditional cultural values, which they wanted to project to me. Perhaps more importantly, Chamorros and Carolinians know perfectly well what anthropologists do and what they write about. The people in the Commonwealth are aware of the implications of anthropological research for them and their community.

**Places**

In 1997, I began a yearlong ethno-historical project that included archival research, interviews, and participant and court observation. Over the course of that year I spent the majority of time doing fieldwork on Saipan, CNMI, but visited the islands of Rota, and Tinian on several occasions for interviews. I also went to Guam periodically to talk with scholars at the University of Guam and use the research facilities at MARC. When I moved to Saipan, I first lived in one of the more "modern" villages that consisted of apartment complexes and houses that were occupied by some Chamorros and Carolinians, but more frequently by Koreans, Filipinos, (non-Chamorro and Carolinian) Micronesians, state-sider Americans, and various other foreign residents. Although the village of
As Tino*¹ was not my ideal site for research because of the large number of temporary residents and apparent lack of community cohesiveness, living there turned out to be a wonderful opportunity. I only stayed in this village for four months, but during that time I met some of my neighbors, their friends, and families. I would not have encountered most of these people during the normal course of my research. Some of those I met were professionals, small business owners, and "ex-pat" Americans. Others were contract workers, a couple of whom were on-island illegally. Through them I got a broader picture of life on Saipan and was introduced to a few of the many "sub-cultures" that exist in the Commonwealth. For example, I saw how the Filipino community was connected through an array of social, kin, reciprocal, and economic networks.

Through the help of one of my neighbors I found a new residence. I moved out of As Tino in June, 1997 to the more "traditional" village of Chalan Hanom* where I lived until I completed my research in early January, 1998. It was here, surrounded by small farms and extended families that I felt the most comfortable. My new neighbors made me feel welcome and I was invited to participate in card games, eating, beer

¹ The asterisk indicates that the name of this village has been changed. I will use an asterisk throughout the dissertation to denote that I am using a pseudonym for names of places, individuals, or court cases.
drinking, and conversation, and was introduced to the intricacies of betel nut chewing. I also had the joy of children running through my apartment, which often kept the loneliness at bay.

Documents

Although I was a participant and observer in the two villages where I lived, a large amount of my research did not take place in either locale. During the first few months on Saipan I spent time familiarizing myself with materials housed at the Commonwealth Archives, located at Northern Marianas College (NMC). There, I examined government, military, and anthropological materials that had come from the Trust Territory Government. Some of the documents included declassified papers from the Hoover Institute, policy letters, correspondence, and descriptions of the Trust Territory. There were also copies of papers and reports written by Trust Territory personnel, judges, and local scholars on Trust Territory law, local custom, and land tenure in Micronesia. These types of documents gave me insight into the American naval and civil administrations of the Trust Territory, changing policies, the history of the Marianas, and provided historical depth to the court and interview data that I was collecting.

A month or two into my research, I discovered that the Commonwealth Superior Court in Susupe had its own archives
located in the attic of one of the court buildings. Opinions, motions, rulings, and transcripts from cases going back to the early 1950s filled the attic space. As a result, I spent less time at NMC than I had originally anticipated and, instead, spent most of my time doing archival research at the court. After spending many hours sifting through the wealth of case materials, I realized that I could not hope to remember or keep track of all of the information. The solution was the purchase of a portable photocopier, which provided the cheapest and fastest way to collect the data.

Over the year and with the help of the archivist, I selected 24 cases that involved intra-familial disputes, custom, and land. Other than content, the choices were based on several criteria. First, I wanted to study any cases that lawyers had recommended to me either because they were particularly interesting disputes or because the attorney had been involved in the case. Second, I looked at those cases where I had met the litigants or expert witnesses. A couple of on-going cases were selected because I had the opportunity to observe the hearings in court, hear gossip about them in the community, or read about them in the newspaper. Finally, I chose cases that had been cited as precedents on custom in the case law. In this way I began building a chronology of the legal interpretations of several different Chamorro and Carolinian customs to see how previous decisions influenced later cases.
In order to get a more complete perspective on the dispute and about the attorneys, judges, witnesses, and litigants involved, I collected as much information on each case as possible. The materials available at the court archives included legal motions, evidence, Superior and Supreme Court opinions, briefs, and transcripts of evidentiary hearings. The case study method allowed me to examine a variety of questions such as: How does case law influence legal arguments?; How has American law affected custom and land tenure in the Northern Marianas?; How do Chamorros and Carolinians negotiate their disputes in an American legal system?; How and why do attorneys use custom in their arguments?; and, How do judges rule on custom?

The amount of material available for each case, however, varied considerably. The earliest cases from the Trust Territory period often only included the judgement order, pre-trial orders, and mimeographed copies of exchange agreements, deeds, and birth and death certificates, whereas most of the more recent cases had far more information. Some of the materials included appeals to the Commonwealth Supreme Court, transcripts of depositions and evidentiary hearings, and attorneys' motions. The examination of legal documents, historical records, and case studies complemented the information gathered from interviews with litigants, attorneys, and witnesses. Although the information from these different sources did not provide me with uniform information
on each case, there was enough overlap to make useful comparisons between the disputes. The longitudinal and diverse types of data enabled me to see trends in the way that custom was determined in the courts and to examine the interaction of American law and custom in the CNMI courts. It also gave me the opportunity to more fully comprehend activities and attitudes in the community, and in the legal and social system (cf. Dominguez 1986; Mertz 1988; Moore 1990; Nader 1990; Philips 1998). The case history method expands the temporal frame of analysis and can potentially clarify contemporary conflicts and inconsistencies by accessing the origins of a particular dispute and the context of legal reasoning.

**Contentious Cases**

Observing trials proved to be far more difficult than copying court documents. My original intent had been to gather the majority of data on land disputes by observing trials until I discovered that most of the big probate cases had been tried between the late 1970s and early 1990s. Once a week Probate Court was convened, but the majority of probates were simple bureaucratic matters that the judge could resolve in a short time. I did, however, have the opportunity to observe some more complex probates and a few evidentiary hearings. The simpler probate matters were usually settled in five or ten minutes where the judge appointed the administrator for the estate
and/or heard claims for money owed by the decedent. Periodically, however, conflicts emerged about who should administer the estate or who the legal heirs were. These matters took anywhere between a couple of hours to a few days to be presented in court. Although my appearances at probate court were not always as fruitful as I had hoped, I was able to get to know some of the legal professionals and litigants and observe their demeanor. Further, the time spent in court gave me a better sense of the court context and the styles and personalities of the attorneys, judges, and litigants than the documents could provide.

As I sat in probate court observing evidentiary hearings on the disposition of land and property, and while reading transcripts and legal documents from past land dispute cases, I was repeatedly struck by a feeling of uneasiness. These cases with their associated materials were, and are, all public record. I had access to them as did any other interested person, but what I heard and read did not feel public. Often, testimony detailed family fights and individual animosities--some that had endured for decades. Although the language used by the attorneys could make me feel ill at ease, my discomfort stemmed primarily from statements and accusations found in the testimony of witnesses and litigants. There were many instances where witnesses would accuse close family members of lying, would recount shameful acts committed by their relatives, friends,
and neighbors, such as stealing, cheating, and abusing their parents. A few times people in the court’s gallery would yell out at the witness that he or she was lying.

These expressions of open hostility were in conflict with my experiences and idealized expectations of Saipan. In general, Chamorros and Carolinians whom I had met seemed especially hesitant to speak ill of others, particularly family members. The importance of family, community, and respect are central components of Chamorro and Carolinian society. Because of the importance of these values, representations of ‘‘harmony’’ are requisite (cf. Moore 1990). The appearance of unity and familial respect must be maintained even if ‘‘lying’’ is necessary to conceal the conflicts. Also, on an island, there is a need to sustain relationships and to avoid overt hostility, but the transcripts showed a distinct lack of harmony.

The opposition between polite, private, and respectful behavior and the open hostility that could be expressed during probates and civil actions was surprising and baffling to me. I wondered if the litigants were fully aware that the court was a public forum where strangers, like myself, could observe. A local attorney, who I asked about this, explained that litigants are very cognizant of the public dimension of the court and know that ‘‘private family matters’’ are now in the public forum. He said that the disputants fully intend to win the case and want to be publicly vindicated.
Nevertheless, the knowledge that the court is a very public forum does not mean that local people expect that outsiders, like anthropologists, will be observers or write about them. Furthermore, I do not think that most people, whether they are in the CNMI or in the United States, realize how accessible court materials are. Because of this, I have attempted to disguise the identities of the people who took the time to speak with me. Despite the fact that all of the probate cases and civil disputes I discuss are public record, in a few of the disputes I present in this dissertation I have substituted an assumed name for the “real” name of the case and marked it with an asterisk. I have done so for the following reasons. First, some of the relevant information I include may not be public record. Second, many of these cases have already caused deep fissures within families and I do not want to exacerbate any current conflict or reopen old wounds that may have been healing. Third, I use a pseudonym for any case that is ongoing or being appealed. The real names, however, are used for most of the cases mentioned in this dissertation.

Bars, Cafes, Hotels, and Offices: The Interview

I discovered early on in my fieldwork that researching land disputes entailed interviewing a broad spectrum of people. Commonwealth residents who knew about land, law, history, and custom included Chamorros, Carolinians,
Filipinos, and state-siders. They were land surveyors, politicians, teachers, attorneys, farmers, judges, litigants, expert witnesses, government officials, and business people. Although I enjoyed meeting a variety of people, I frequently felt that I was going about the whole interview process all wrong. First of all, I interviewed people in weird places like hotel lobbies, coffee shops, and bars. I wondered if I could really be conducting research while drinking a beer or eating sushi. Second, because I was meeting with people from different social and cultural communities on Saipan, I was concerned that the data I gathered would be superficial. I never became fully established, in an ideal participant-observer kind of way, in any one community. Despite these kinds of anxieties, no single ethnic or economic group represents the Commonwealth. Although social separation and ethnic cleavages exist, the CNMI is very heterogeneous.

During the three trips to the Marianas I conducted forty-five “formal” interviews and countless informal interviews using a semi-structured interview strategy. I define a formal interview as one where I had made a specific arrangement to meet with the person and came to the meeting prepared with a series of questions. The questions were primarily thematic in order to promote lengthy and anecdotal answers (Bernard 1994; Marshall and Rossman 1989). I used many of the same questions when interviewing legal professionals or government and land officials, but tailored
the interview based on information I had already gathered about the person and his or her work. In general the style I used was open-ended and I tried to avoid "yes" and "no" types of questions. Often, as the conversation progressed, the topics of the interview would expand and I would ask or answer questions relevant to our discussion. These spontaneous discussions allowed me to get a deeper and more detailed sense of the person and their history, but also gave the interviewee the chance to get to know me and ask questions about my research.

Interviews ranged in duration from around 20 minutes to three hours and some people were kind enough to allow me to interview them on more than one occasion. Sixteen of the interviews were tape-recorded and during the rest I took copious notes. The reason that not all of the interviews were taped was because many times I felt too embarrassed to ask to record the interview, on other occasions the person did not want to be recorded. Out of the forty-five formal interviews, 19 were with attorneys or judges who had been active participants in land dispute litigation. I also interviewed several of the "founding fathers" of the Commonwealth who were involved in the Covenant negotiations with the United States. The ethnic mix of the sample is, unfortunately, skewed. I conducted twenty formal interviews with Chamorros, sixteen with state-siders residing in the Marianas, and one with a former Trust Territory employee living in the United
States, and eight with Carolinians. One reason that there are significantly more Chamorros represented is that my research goals emphasized interviews with legal professionals and there were no (Saipanese) Carolinian attorneys practicing in the Commonwealth. Second, I lived in a primarily Chamorro village and so had less opportunity to meet Carolinians. Lastly, several Carolinians who I approached were reluctant to speak with me in any detail.

Although unanticipated, informal interviews were extremely informative and helpful. These meetings took place at rosaries, restaurants, symposia, political fund raising events, fiestas, birthday parties, and community events. In these social settings I met Chamorros, state-siders, Carolinians, Filipinos, Japanese, and Micronesians from the Caroline Islands. The discussions lasted anywhere from a few minutes to several hours, but all contributed to my understanding of the community. Several of the people I would never have known to contact because they were not connected to the network of people that I knew, but they were extremely interesting and knowledgeable. Furthermore, they often assisted me by providing introductions, giving me names of people to call, and explaining aspects of the community that I knew nothing about.

Because of confidentiality issues, fictitious names have been used as attributions for the quotes and in the personal stories that are recounted in this dissertation. The
exception is when the person named is a public figure and the information is part of the historic record. To further assure anonymity when discussing attorneys, I do not differentiate between the judges, justices, private attorneys, or Assistant District Attorneys. In other words, I refer to them all as lawyers or attorneys and do not specify their job title. Periodically throughout this text, I refer to the ethnicity and sex of the informant, but not consistently and sometimes I only state that the person is "local" or "non-local."

**Dissertation Summary**

The fifteen islands making up the Marianas cover only a small land area, about four hundred square miles, but their location in the Western Pacific have given them great historic, although at times cyclical, importance. The northernmost island, Farallon de Pajaros, is four hundred and fifty miles north of Guam. The islands are located in the northwestern Pacific Ocean lying 1,500 miles east and northeast of the Philippines, and 3,200 miles west southwest of Honolulu, Hawai‘i. The island chain is composed of coral and volcanic islands often separated into a southern and northern group. The southern islands, Guam, Rota, Tinian and Saipan, although of volcanic origin, are the result of coral uplift and elevated reef building (Bryan 1951). The northern islands of Farallon de Medinilla, Anatahan, Sariguan, Guguman, Alamagan, Pagan, Agrihan, Asuncion, Maug Islands, and
Farallon de Pajaros are volcanic; some of which are still active. The Marianas are tropical and hot year round averaging between 79 and 82 degrees Fahrenheit with an annual rainfall of over 80 inches a year. They have an annual monsoon that brings much needed water to the islands, but also can bring devastating typhoons.

The geographic location of the Marianas so near to Asia, its harbors, and fresh water have given the islands a recurring geopolitical significance. The strategic location of these islands became a rationale for four different colonial powers to rule the region. Chapter 2 describes the history of the Marianas beginning with the prehistoric Chamorro settlement of the islands, followed by Spanish colonization, the German administration, Japanese rule, and ending with the Second World War. Chapter 3 focuses on the political relationship between the United States and the Northern Mariana Islands from 1944 until the present. These two chapters provide the context for understanding the discussion of land and law in the later chapters. An understanding of the colonial history of the Marianas is important because as Balandier (1965: 38) notes, facts and signification have been put through the filters of the dominant. The Commonwealth’s complex history not only frames the analysis, it also informs the way meaning and identity are constructed in the present.

Chapter 4 addresses the cultural and familial importance
of land in the Northern Marianas and examines some of the reasons why so much conflict exists over its use and title. First, the chapter explores how colonialism, war, natural disasters, bureaucracy, ethnic cleavages, and corruption have caused gaps in and confusion over land title. Second, the chapter describes the complex issues surrounding the large pool of public lands in the Commonwealth and the problems and benefits that have resulted from land ownership restrictions. The chapter ends with a discussion, influenced by Godelier (1999), about the tension that exists between indigenous and Western conceptions of land ownership and use. In particular, why deeds of gift are perceived by many Carolinians and Chamorros to be revocable. Further, this section considers how land in the Northern Marianas, although a commodity, is often viewed as being inalienable.

Chapters 5 and 6 explore the ideological importance of custom in the Commonwealth and the way that hegemonic meaning is created through the interpretation and use of custom in law. The court is the site for the production of meanings that includes both state level forces such as the law and procedural rules as well as the impact of individuals. As Vincent (1991: 7) writes, "the courtroom is the ideal site of the dialectical hegemonic moment." The emphasis in Chapter 5 is on the way custom has been integrated into Commonwealth law and how institutions, such as the legislature, and American legal practice actively shape its interpretation.
Chapter 6, on the other hand, focuses on how individuals, such as Judges, attorneys, experts, anthropologists, witnesses, and litigants, construct and interpret custom during disputes. The court is the site where several categories of people engage in the production of meaning. Ultimately, the legal use of custom is strategic and opportunistic, but has a profound impact on future rulings that affect inheritance rights and land tenure (cf. Turk 1978). Custom can be used as a weapon to deny others rights to inheritance or as shield to protect individuals or groups from partitioning their land.

Specifically, I examine land litigation as a strategy to explore how the legal system produces ideological and practical change within the community and, in turn, to assess how the local population accesses and has influence in this system. This study contributes to comparative studies focusing on colonial and customary law, colonialism, and United States history by examining the ideological impact of the American legal system in the Commonwealth and the work of indigenous peoples in the restructuring of that legal system. Ultimately, ideology is constructed and perpetuated by hierarchical systems, but also by those who participate in those systems.
CHAPTER 2
HISTORICAL TRANSFORMATIONS IN THE MARIANA ISLANDS: PREHISTORY TO 1945

This chapter examines the historical precursors to the Commonwealth of the Northern Mariana Islands' (CNMI) political association with the United States. The Northern Mariana Islands, administered until 1976 as part of the Trust Territory of the Pacific Islands (TTPI), has had a long history of colonial influence, both direct and indirect. Prior to 1944, the year the United States forcibly took control of the islands, Spain, Germany, and Japan had already fundamentally transformed the region and the people. The U.S. possession of the Mariana Islands, which will be discussed in Chapter 3, can only be understood in light of a series of events that began with European imperialism in the fifteenth century. These prior colonial influences facilitated the attempts by the United States' Navy Department and Department of the Interior to order and control local Micronesian populations in a manner consistent with and based upon American (Western) concepts of progress, civilization, and development. Thus, examining the region's history and prehistory is essential to any discussion about contemporary culture, law, and political identity in the Commonwealth, and delineates some of the preconditions that have been influential in decision making and change.

Few U.S. citizens know that the Commonwealth of the
Northern Mariana Islands and Guam are part of the American political family. Even fewer people understand the historical origins of this relationship or how these two territories are legally and politically integrated into the American system. My primary concern is with the Northern Mariana Islands, but Guam will be discussed where relevant. As the southernmost Mariana Island, it is culturally and historically bound to the CNMI. Moreover, the people living in the Northern Marianas have had the opportunity to critically observe Guam's hundred-year association with the United States and to use those observations in their own political and economic decision making.

Any discussion of contemporary issues in the Commonwealth of the Northern Mariana Islands must therefore be grounded in an understanding of what came before (Marx 1977). History provides a critical framework that allows us to begin an interpretation of the recently formed CNMI, its legal system, and (the often acrimonious) land disputes, and hopefully to give insight into political processes that may seem otherwise discontinuous or discordant. The CNMI's history, culture, and present political status are inherently complex due to an incomplete prehistoric record and the successive occupations of four foreign nations. The intricacies of these colonial regimes are further obscured by the subjective filters embedded in the histories we use and the primary documents we study, which both omit important
perspectives and experiences—especially of those who had no access to the formation of written history, were non-literate, and were not part of the dominant group engaged in creating the histories and documents.

Levi-Strauss (1967) argued that the past always defines the present. Culture "has come to be," and, as such, constantly transforms itself into something different but not altogether new. And so, anthropology must consider history. Yet history is not analytically or morally neutral or constant; it is ideologically saturated (Popular Memory Group 1982). History exists as "truth" only through chance, the strategic and fortuitous retention of oral and practiced tradition, and the written word. Histories are constructed and are the result of sifting and evaluative processes that only appear to represent objective truth. They are, in fact, written to justify the present and assure the legitimacy of word and deed in the future. Histories are fundamentally political (Ibid.: 211) and are influenced, as all social practices are, by the vagaries of subjectivity.

Society needs history, a vital part of a group's conception of self, to validate its practices and policies. Wrongs that may have been committed in the past, however, can be strategically expunged from official memories through active coercion or collective denial. Another possibility is to acknowledge past iniquities as strategic benefits. Instead of these wrongs negating the validity of contemporary
actions, they can serve as justifications of the greater good, or as aberrations that further validate a more "evolved" social system in the present.

History is not just a passive tool used for the construction and interpretation of events, but is an active and dynamic force that continues to work in the present. As social scientists construct, validate, or reject histories and traditions, they must consider their own fragmented part in the production of temporally transcendent meaning. Regardless of this contemporary role, historiography and anthropological interpretation have come to include the special complexities of analysis where only partial histories exist. This understanding is further complicated when considering colonial contexts. Colonialism is a complex process that overpowers and re-configures the realities of the dominated. Thus, the interpretation of colonial texts and subsequent histories calls for an interpretive method that allows for a re-presentation of events. The meanings and motivations behind the words have to be transposed into new frames of reference and analysis. This process often requires the consideration of multiple and/or underutilized documents such as court documents, letters, and diaries, or the search for histories that exist only in the memories of living people (c.f. Wachtel 1990).

This chapter summarizes the history of the people of the Mariana Islands from prehistoric times, through three
colonial administrations, to the end of World War II. Although this chronology is not comprehensive, it outlines political, cultural, and social changes that occurred prior to 1945, and describes specific global events and processes, like colonialism, that had a direct impact on the Mariana Islands. Further, this chapter traces changes in the use and value of land, and the gradual process by which land became commodity. For this reason, particular emphasis is placed on the Japanese administration of the Marianas. It was during this pivotal period that land was most effectively, if not completely, transformed into a commodity. The increasing economic importance of land from the Spanish period to the present day, however, has not erased its cultural or symbolic meanings for the Chamorro and Carolinian people.

**Chamorro Origins**

While the current population of the Northern Mariana Islands and Guam is culturally diverse, consisting of, among others, an admixture of Micronesians, Koreans, Japanese, Chinese, Russians, Filipinos, "state-sider" Americans, and the indigenous Chamorro and Carolinians, the prehistoric population of these islands was ethnically homogenous (Hunter-Anderson and Butler, 1995:16). Archaeological
evidence,\(^1\) mostly accumulated since the late 1960's, and comparative linguistic analysis widely agree that all contemporary Oceanic peoples, including Chamorros, are the descendants of Proto-Austronesian (PAN) speakers who shared a common culture approximately 7,000 years ago. Reconstructions suggest that their economy was based on agriculture and fishing and was supplemented by gathering and hunting. These peoples made pottery and were proficient at sailing their outrigger canoes.

The PAN homeland is hypothesized to be insular Southeast Asia, probably Taiwan and coastal China (Chang 1985). It is from these locales that scholars (such as Bellwood 1991; 1995; Blust 1996; Chang 1985; Goodenough 1996; Chang and Goodenough 1996) argue that the large and rapid spread of the now some 1,200 Austronesian (AN) languages began at around 2,500 B.C. This diaspora resulted in the radiation of AN speakers throughout Oceania and parts of Southeast Asia. Chamorros are thought to be descendants of the PAN speakers who migrated first to the central Philippines,\(^2\) but then

\(^1\) Spriggs (1999) argues, however, that researchers often disagree in their conclusions because of differing methodological and theoretical orientations. Further, he points out that among indigenous communities archaeology has important political ramifications that must be considered by researchers.

\(^2\) An exact Chamorro homeland, however, is unlikely to be found. The central Philippines is the most likely region, but the migrations to the Marianas may have been multiple, further decreasing the chance of discovering a specific origin (Hunter-Anderson and Butler 1995: 30).
moved into Western Micronesia approximately 3,500 years ago. Chamorro, Palauan and possibly Yapese are all loosely part of the large Western Malayo Polynesian (WMP) subgroup of AN, which includes Malagasy.

Despite certain Chamorro and Palauan linguistic affinities, these groups are quite distinct as a result of temporal and geographic divergence. Migration to the Marianas occurred at least 1,500 years prior to the settlement of Palau and Yap, from separate homelands in the west. Dates recovered from sites on Saipan, Guam, and other islands indicate that Chamorro mariners had established themselves in the Marianas Archipelago prior to 1,600 B.C., becoming the first colonists of Western Micronesia. The rest of the Micronesian Island populations, however, are thought to have come from Melanesia in different waves of settlement from between 1800 B.C. and A.D. 810 (Rainbird 1994). Micronesians, except those inhabiting the two Polynesian outliers of Kapingamarangi and Nukuoro, are part of the AN language group called “nuclear” Micronesian, which is an eastern oceanic subgroup.

The ancestral Chamorro navigators made a home for themselves on the gently arcing volcanic Marianas island chain. According to Hunter-Anderson and Butler (1995), initial prehistoric settlements were coastal, concentrated on the largest southern islands of Guam, Saipan, Rota, and Tinian, and relatively mobile in order to adjust to
environmental factors. Population increases during the prehistoric periods resulted in the use of interior sites and the growth of more continuous and dense settlement along the coasts (Ibid.: 34, 66). Settlements ranged in size from small hamlets consisting of only a few houses to large villages with over 100 buildings (Thompson 1971: 12). At the time of Spanish colonization in 1668, there was a population of 30,000 to 40,000 persons living on all the islands; approximately half were living on the island of Guam (Hezel and Driver 1988: 139).

Villages were loosely grouped into "districts" under the authority of a male chief or chiefs called maga‘lahi. Although men had authority and inherited positions of power within the clan and in the society in general, women had land rights and wielded a great deal of economic and social control, as they continue to do today (Cunningham 1980: 18-26). Generally, early Chamorros have been considered to be culturally homogenous, although there may have been dialectical variability between the islands (Hunter-Anderson and Butler 1995: 16).³ They participated in inter-island trade within the Marianas and shared a basic socio-political

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³ Even today, the Chamorro spoken on the Island of Rota is noticeably different than the Chamorro spoken on the other islands. Locals on Saipan consider the Rotanese to have a more traditional speech style, especially during public speaking, and to speak in a more "sing-song" way.
organization.

Rainbird (1994: 334), however, suggests that there may have been greater cultural variability between the separate islands than heretofore thought. He bases his analysis on archaeological research that shows the presence of local variation in ceramic assemblages, as well as recent skeletal data that suggest the possibility of a Jomon migration from Japan (Ibid.: 329). Significantly, there is a distinct likelihood of long-distance trade prior to European contact between the Marianas and the Central Caroline islands and Philippines using seafaring canoes and complex navigational knowledge.\(^4\) Similarities in artifacts in the Marianas and Central Carolines, European written accounts, as well as Carolinian oral history suggest trade between these two regions (cited in Hunter-Anderson and Butler 1995).\(^5\) The degree and consistency of association between these island groups, however, is unknown, as is the chronology of interaction. Further, Hunter-Anderson et al. (1995) hypothesize that rice (along with the words for rice) was introduced to the Marianas as a prestige food around A.D. 1,000 from Southeast Asia, possibly the Philippines. If correct, this theory opens up the exciting possibility of

\(^4\) See Finney's (1996) article on prehistoric navigation and colonization.

\(^5\) Also see Transcript of Proceedings of In re Estate of Rofag, Civil Action No. 88-392P (1989), 341-354.
long distance exchange networks and cultural interactions between Chamorros and peoples to the west at least 600 years prior to European contact.\textsuperscript{6}

Researchers have inferred the early Chamorros' social structure, familial organization, and belief systems (i.e. Alkire 1977; Cunningham 1980; Driver 1983; 1988a; Hezel and Driver 1988; Hezel 1982; Hunter-Anderson and Butler 1995; Rogers 1995; Safford 1905; Thompson 1942; 1971). These descriptions rely heavily on archaeological data along with early European documents and accounts, such as those of Louis de Freycinet, Fray Juan Pobre de Zamora, Charles Le Gobien, and Miguel López de Legazpi. Although the historical sources are not unbiased, they suggest that the inhabitants of the tropical Mariana Islands consisted of matrilineal clans with avunculocal residence and age-based rankings. Early Chamorros appear to have had a bipartite caste system that differentiated the relative status of two, perhaps three, hierarchical rankings of people. It is unclear, however, whether these divisions were rigid as Thompson (1942; 1971) and Spoehr (1954: 36) posited, or whether more general distinctions were used to differentiate rank and class divisions (Rogers 1995: 36).

With the knowledge and technology they had imported, the

\textsuperscript{6} For a related discussion on the possibility of extensive AN trade networks see Chang and Goodenough (1996).
early Chamorros took advantage of rich ocean resources and abundant arable land. Their primary protein source came from reef, bottom, and deep sea fishing, and the bird eggs, shellfish and other ocean edibles they gathered. Increasingly, their marine diet was supplemented by the cultivation of introduced plant species such as taro, banana, yam, and breadfruit, which complemented endemic species like coconut, tropical almond, fruit bat, and varieties of crab (Hunter-Anderson and Butler 1995: 23). Although clans owned land collectively and probably also gathering and fishing locales, the use of these resources seems to have been organized by the district chief (Thompson 1942: 69). Pre-conquest Chamorros felt an intense connection to their family lands, which is a sentiment that resonates in contemporary Chamorro society despite rapid and recent changes in land ownership patterns.

The importance of family land was inextricably tied to the Chamorro belief system, which revolved around ancestor worship. Prehistoric Chamorros worshipped and revered spirits who lived in the jungle and in the trees, and they kept skulls of family members in their houses (Driver 1983: 214). The ancestors were not ghosts, but were supernatural beings with incredible strength who inhabited the districts from See Safford (1905) for a detailed description of Guam's plants and animals.
which they came, and acted as guardians to their descendants (Thompson 1942: 133-143). Most contemporary Chamorros continue to believe in the taotaomo’na, the "people of before," to varying degrees.® There are still sightings of supernatural beings in the jungle, and modern Chamorros show respect to the male and female "grandparents," guela, guelu, by asking their permission before urinating or defecating outside of family territory. The taotaomo’na continue to be associated with family lands and are believed to protect their descendants and guard their ancestral turf from unwanted or disrespectful intruders.

Initial Contact

An event in 1494 marked the beginning of profound changes for the indigenous people of the Marianas. It was in this year, under the arbitration of Pope Alexander VI, that the Treaty of Tordesillas was signed, and the entire unclaimed non-Christian world was divided between Portugal and Spain. Pacific Islanders and other future colonial citizens, however, were blissfully unaware of this capricious pact. The partition, based on a 1493 Papal Bull, consisted of

® For the purposes of my discussion I use "taotaomo’na" here to characterize all supernatural beings because it was the word most commonly used by contemporary Chamorros on Saipan. However, Thompson (1971:20-23) and Spoehr (1954: 201-209) in their discussions of Chamorro spiritual beliefs differentiate between several types of non-human beings.
an artificial line that bisected the largely uncharted world at the forty-sixth meridian (more or less). The agreement was meant to forestall escalating hostilities between these two sparring nations. The exact location of this line, however, was unclear. As a result, the ownership of the much desired spice-rich Moluccas Islands, among other regions, was actively disputed (Hezel 1983: 13). Portugal had exclusive rights to the lands and waters east of the line and so was able to explore a route around Africa to expand their colonial initiative and launch lucrative trade markets. Spain, on the other hand, was given dominion over regions west of the line. Forced to forego a more direct path to the Moluccas, Spain needed to find an alternate passage by approaching them from the newly discovered Americas.

Ferdinand Magellan came to Spain with a proposal to cross the "South Sea" using a westward route, and found the support he needed. The Pacific Ocean was a vast unexplored space, which Spain hoped would be the means to sate its hunger for wealth, and fulfill its central colonial mission of saving benighted savages through Catholicism. It was during Magellan's famous journey in 1521 that he landed on Guam, the southernmost of the Marianas. He named them the Islands of the Lateen Sails, Islas de Las Velas Latinas, in
homage to the quick and tactical proas\(^9\) used by the Chamorros. The sails and rigging bore some resemblance to that of the Mediterranean merchant vessels that were so important during the medieval period in Europe.

The encounter, however, was brief and inauspicious. Suffering from months at sea without adequate food and water, and sick, hungry, and thirsty, the crew was eager for trade, but the exchange between the two groups quickly went awry. From the perspective of the crew, who knew nothing of Pacific cultures, traditional exchange, and reciprocity patterns, the Islanders were thieves who eagerly and aggressively tried to abscond with every portable item on the boat, and who did succeed in making off with the ship’s skiff.\(^{10}\) After chasing the Chamorros off the ship with arrows, the weakened crew retaliated further the next day. They went ashore and proceeded to burn down buildings and kill several Chamorros heedless that their zealous and bloody response out-weighed the triggering event (Hezel 1983: 1-4). Magellan and his crew stayed in the Marianas for only three days, but his "discovery" had an insidious impact on the Chamorro people that would not begin to be fully realized for another 145 years.

\(^{9}\)Also spelled prao.

\(^{10}\)Because it was the only lifeboat brought on the voyage, Magellan and his crew saw its theft as a direct threat to their survival.
These so-called Islas de Los Ladrones, Islands of Thieves, were then ignored by Spain until 1565, when the explorer Miguel López de Legazpi, charged with securing lands discovered by Magellan, landed on Guam to make a formal claim of sovereignty. Over the next hundred years the Marianas were used as an occasional port and trading site for reprovisioning and trade by Dutch, English, and French merchant ships, as well as privateers (Safford 1905). Periodically, Spanish galleons, laden with silver, gold, spices, and exotic goods from the Orient, on their annual route between Acapulco and Manila, would stop for provisions of food and water using metal for trade in the form of cask hoops, knives, and old nails, and other objects made from iron, copper, and brass. There was another source of foreign influence in the Marianas during the late sixteenth, and early and middle seventeenth centuries. A small number of escaped slaves and marooned sailors inhabited the Marianas, and many chose to live out their lives there. Also, a few priests began intermittent missionizing efforts among the Chamorros (Driver 1983; 1988a). But the islands remained relatively unimportant to Spain and out of the fray of European politics and expansionism.

It was on one of these Spanish galleons in 1662 that Father Diego Luis Sanvitores, a fervent Jesuit missionary on his way to his new mission in the Philippines from Spain via Mexico, found his calling: to bring God to the Chamorro
people. Although, during this period, Spain continued to claim territories and seek sources of wealth in the Americas and the Far East, Spanish dominance was on the wane; its once abundant coffers were diminished, and the government was weak and corrupt (Hitchman 1992). Given these circumstances, establishing an outpost in the Marianas was not a priority for Spain, but Sanvitores strenuously pleaded his cause. One of his main supporters was Spain’s devout Queen, Mariana de Austria, wife of Philip IV, in whose honor Sanvitores was to name the islands. After several years of lobbying for approval and financial support, Sanvitores, along with a small contingent of Jesuit fathers, soldiers, and laymen, finally arrived in Guam in 1668 to start the first colony in the Pacific Islands.

**Early Colonial Consequences**

Spain’s colonization of the Marianas began the unintended decimation of the majority of the 40,000 islanders whom they had come to emancipate from barbarism. Sanvitores’ mission was based at Agana, the largest and most important Chamorro village (Hezel 1982: 118). Agaña is located on the western side of Guam overlooking the Pacific, and today is the site of the biggest city in the region. The colonization effort was fraught with difficulty from the outset. Spain provided only nominal financial support, and the priests found that converting the Chamorros was more difficult than
anticipated. The _indios_ were initially quite taken with Catholicism, but, for the majority, the novelty of the rituals and tokens given away by the priests quickly wore off.

Baptism became a central point of discontent after Choco, a stranded Chinese trader who had been living in the Marianas since 1648, told the local people that the baptismal water was poisonous (Hezel 1982: 120; Ibáñez y García 1992: 30; Rogers 1995: 49). Consequently, Chamorros reacted violently when infants were baptized without the permission of the parents and when adults and children died soon after being given the "poison water" by the priests—despite the fact that many of those baptized were already terminally sick or injured (Coomans 1997).¹¹ Further, Hezel (1982: 136; 1998) argues that Chamorro attacks against the interlopers may have been intended to avenge insulting acts of public humiliation by priests and soldiers. He argues that Chamorro attacks against missionaries all occurred after incidences of public accusations, scoldings, insults, and executions.

While many Chamorros tentatively accepted religion, others actively rejected Christianity and Spanish rule. Ultimately, the choice to ally with or reject the mission and

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¹¹ The high caste Chamorros were also offended that baptism and other potential benefits were not for their sole benefit, but were to be shared equally among the populace (Hezel 1982: 120).
its message may have been predetermined by existing inter-group conflicts between natal regions. Several scholars speculate that the groups who fought the mission were the traditional adversaries of those who chose to support it, as there had been a long history of inter-village and inter-island rivalries, although not particularly bloody (Hezel 1982: 118-119; Thompson 1942: 136). The main supporters of the Spanish were primarily the high caste, Chamorri, from around Agaña. The Spanish readily took advantage of the entrenched regional rivalries by using them to divide the Chamorros and increase support for themselves (Hezel 1982; 1998).

For Spain, the subjugation of the Marianas was a costly endeavor that necessitated the expenditure of significant capital and other resources. Twelve priests, including Sanvitores, were martyred, and the Spanish lost over a hundred soldiers and other workers, most of whom had been brought from the Philippines. For the Chamorro people, the loss was far greater. Before the Spanish-Chamorro wars officially ended in 1698, hundreds, perhaps thousands, of Chamorros had died violently.\(^{12}\) But it was the diseases,\(^{13}\)

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\(^{12}\) Estimates of fatalities due to warfare vary greatly. Rogers (1995:71) writes that for every Spaniard killed, a hundred Chamorros died, putting the death toll over ten thousand. Hezel (1982: 133-4; 1998), on the other hand, suggests that, during each battle, Chamorro deaths rarely went into double digits, and that the total number of deaths directly due to Spanish violence amounted to around 300. Hezel's
brought by the foreigners on trading and exploration ships, such as small pox, influenza, and syphilis, that were ultimately responsible for the drastic decline of the original population from an estimated 40,000 to only 3,539 Chamorros in 1710, and to half of that (1,576) by 1742 (Hezel 1982: 133; Rogers 1995: 79; Underwood 1973).

Within a mere fifty years of active colonization, the entire Chamorro way of life had been transformed through disease, urbanization, evangelism, and intense acculturation. By 1730, all of the Chamorros from the inhabited islands north of Guam, such as Tinian, Saipan, and Pagan (except those who managed to hide on Rota), had been relocated to Guam in order to better Christianize them. The virulence of the imported diseases was exacerbated by this centralization (reducción) policy. Relocation quickened the spread of illness and caused a generalized despair among the people, who sometimes responded with suicide, infanticide, abortion, or self-sterilization (Garcia quoted in Safford 1905: 16; Underwood 1973: 18).

The colonial administration claimed for the crown all of the newly abandoned lands on the northern islands, and a

estimates are supported in Underwood (1973: 17).

Prasad and Kurland (1997) suggest that the Amyotrophic lateral sclerosis and Parkinsonian-dementia complex that is present on Guam, locally known as lytico and bodig, may have originated in the Spanish period because of behavioral changes caused by colonialism.
significant amount of property (about 10 percent by 1810) on Guam (Thompson 1942: 71). Further, lands confiscated from rebel Chamorros were redistributed to Filipinos who had been part of the colonial force and to the loyal Christian Chamorros (Souder 1971: 193). As wealthy Chamorro, manak’kilo, families accumulated the majority of land on Guam and the Catholic Church became a major landowner through bequests, many lower class Chamorros, manak’papa, remained landless (Rogers 1995: 74-75). Thus, through conversion, allegiance, and acculturation, a new Chamorro elite, the Chamorri, was solidified.

The majority of the increasingly Hispanicized and urban ruling class had been high caste prior to contact, but association with the new regime further consolidated their wealth, particularly in the form of land. Also, their adoption of Spanish dress, language, and behavior, as well as intermarriage with non-Chamorros emphasized the Chamorri’s social and cultural distance from the often landless laboring Chamorros (Joseph and Murray 1951: 25-26; Rogers 1995: 75). Initially, it was the high caste and those who lived near Agaña who intermarried. But, over time, the Chamorros married Spaniards, Filipinos, Mexicans, and other foreigners, so

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14 It is possible, however, that lower caste people also benefited economically and socially from their allegiance to the new rulers by elevating them into the newly structured elite. In this way the Spanish may have altered the composition of the upper class.
that, by the end of the nineteenth century, a thorough mixing had taken place, creating a "neo-Chamorro" population (Underwood 1973: 22).

The prevalence of Hispanicized cultural elements, such as European-style dress, the official use of Spanish, increased urbanization, the centrality of the church and Catholic religion, and a Spanish social and political structure, however, overlay a strong Chamorro framework fundamentally based on the family. Knowledge of Spanish may have been necessary, but the Chamorro language was still spoken at home and was passed through mothers to their children. And, despite the imposition of a money economy, Chamorros maintained a barter system amongst themselves until 1844 (see Driver and Brunal-Perry 1996: 19). The core elements of family and language sustained the population despite powerful western influences; the Chamorros retained their own distinct identity throughout the Spanish period (and continue to do so regardless of the adaptations they made to survive the effects of four colonial administrations).

**Erosion of Spanish Hegemony**

Given the devastating result of the Spanish presence for the vast majority of the Chamorros, it is ironic that Spain’s commitment to the Marianas had always been expressed with ambivalence. Despite being possessed for 300 years and
colonized for 200, the Marianas were always on the periphery of Spain’s colonial vision. Political forces in Europe and the Americas directly affected how the islands were managed and the degree to which resources would flow into the colony. Spain had been involved in several very expensive and unsuccessful wars during the late eighteenth and early nineteenth centuries in Europe that contributed to the mismanagement of her far-flung colonies. To make matters worse, money and goods intended for the Marianas were vulnerable to the avarice of colonial officials and entrepreneurs. A series of corrupt governors on Guam systematically exploited their positions, marking up prices at the government store to as much as 500 percent and pocketed the profits, stealing money from the annual situado (when it infrequently arrived), investing in the galleon trade, and loaned money at outrageous rates of interest (Driver 1988b; Hezel and Driver 1988).

As a result of this generalized neglect, corruption, large war debts, and the global spread of revolutionary movements in the wake of the Enlightenment, Spanish dominion began to crumble. In 1810, Mexico initiated its fitful struggle for independence that ultimately succeeded in 1821. The burgeoning violence in Mexico resulted in the end of the Pacific galleon trade in 1815. Perhaps the most significant result of Spain’s loss of Mexico as a colony was the abrupt end of large amounts of wealth, especially silver, flowing
out of Mexico into Spain's coffers, wealth that had been used to finance Spain's other colonies.

For the inhabitants of the Marianas, the end of the galleon trade in 1815 had profound consequences, resulting in budget cuts, greater separation from Spain, and a new colonial administration based in Manila. Throughout the nineteenth century, the Marianas and its governors were often neglected. Cut off from Spain, the inhabitants, both European and native, had to endure years without regular contact, supplies, and financial support. Guam's new budgetary restrictions precluded maintenance of a ship, making travel to the uninhabited islands north of Guam and elsewhere difficult. Concomitant with Spain's rapidly shrinking empire was a shift in global politics that (ironically) increased Guam's contact with the outside world. The United States, France, Russia, and other nations began to expand their boundaries and exploit parts of the world that had previously been under Spain's sole control. In the 1800s, foreign exploration, trading, and whaling ships began to arrive in Guam to reprovision (Rogers 1995: 88-96; Safford 1905: 25-32). Trade, however, only benefited a small minority of the population (primarily the Spanish and the elites) who had a monopoly on trade. And with the ships came more disease, exacerbating the already poor conditions of the populace.

Spain's power had been ebbing since before the arrival of Sanvitores in the Marianas and continued to do so through
the nineteenth century. There was no gold, silver, laborers or significant agricultural resources in the islands to bring wealth to Spain, and the cost of the islands' maintenance was high. But there were periods when Spain considered the Marianas to be of commercial and strategic importance. In those times the beleaguered islands would receive an influx of capital that sustained Spanish domination and kept the colony stumbling along. Through the early nineteenth century, the Marianas were a useful port for the galleons on their way to Acapulco and the Philippines, but, more importantly, control over the islands allowed Spain to deny other European nations access.

For instance, in the mid- to late 1800s, Germany began to extend its commercial and colonial interests into Micronesia. Spain had virtually ignored the Marshall and Caroline Islands over the previous 200 years and had never established any outposts there. But, with German incursions into these regions and assertions of sovereignty, Spain began reaffirming its historic claim to the Carolines and, in 1875, tried to require foreigners to purchase trading licenses and pay taxes (Grattan 1963: 343). These counter claims for the island territories resulted in escalating hostilities between the two nations that nearly led to war in Europe. Instead, at Bismarck's insistence, Spain and Germany brought the dispute
before Pope Leo VIII for arbitration. The resulting agreement, signed in 1885, gave Spain formal rights to the Carolines, but Germany was given trading rights in the islands and allowed to establish naval stations there (Hezel 1983: 298-313).16

Unlike other colonial powers, which were interested in expanding their markets through extensive trade, the Spanish followed a policy of social and economic isolationism throughout the Americas and Pacific. Lying to the east of the Philippines in the northern Pacific, the location of the Marianas was a great asset to Spain, as it would be to the islands' later colonial rulers. Ownership of these islands helped the Spanish limit commerce in the Pacific through control of ocean routes and protect its colony in the Philippines from expansionist maneuvers.

Strategic denial became a primary issue for the Spanish at the end of the nineteenth century when Spain had lost all its colonies in mainland North and South America, retaining only Cuba, Puerto Rico, and its territories in the western Pacific. Spain's historic policy of monopolistic mercantilism was not economically determined. Rather, it was a policy rooted in religion and Spain's determination to keep

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15 See Hezel (1983) and Grattan (1963) for a more detailed discussion.
16 Spain did not assert any claim over the Marshall Islands and so Germany, with the approval of Great Britain, annexed these islands in 1886 without any argument from Spain (Hezel 1983: 309).
heretical influences out of its colonies, influences that trade and association with non-Catholic nations might engender (Hitchman 1992). Ultimately, isolationism facilitated the impoverishment of the empire because Spain could not compete with the free market practices of her rivals. Spain, nevertheless, achieved her goal; the Catholic religion has prevailed, and Spanish-Catholic culture and beliefs still endure.  

Carolinian Arrival

Despite the relative isolation and economic depression of the Mariana Islands during the nineteenth century, it was a period of substantive change. Two of the most significant events were the immigration to the Marianas of a new and culturally distinct indigenous group, the Carolinians, and the gradual economic exploitation and repopulation of the uninhabited islands north of Rota. Carolinians were not strangers to the Marianas archipelago. In pre-colonial times, there had been an established trade route, the metawal wool, between the Caroline Islands, located southeast of Guam, and the Marianas. The Carolinian islanders were expert navigators  

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17 It is important to note that the effect of Spain's colonization of the Marianas was that the (ethnically mixed) local inhabitants became educated (by European standards). Consequently, Chamorros had a higher status and were perceived by the Spanish and future colonists to be superior to other Micronesians.
by necessity due to the paucity and vulnerability of natural resources on their small atoll home islands. To trade, fish, and resupply their islands after storms or tidal waves, they could travel great distances in their ocean-going canoes by reading the stars, currents, and sea birds. The Carolinians, however, discontinued contact with the Chamorros after experiencing and observing European and Spanish aggression during the early colonial period.

Sporadic contact between the two island groups resumed in the eighteenth century, but it was not until 1805 that the metawal wool was reopened due to the initiative of one of Guam’s prominent mestizo residents, Luis de Torres (Hezel 1983: 103-104; Rogers 1995: 85, 89). In 1788, Torres encountered the Carolinians who came to Guam by canoe to obtain iron. These navigators were killed, however, in a storm during their return voyage. As a result, no more voyages were made until Torres, wondering why the Carolinians had never returned to Guam, took it upon himself to travel to the Carolines and reestablish contact. His actions paved the way for the resumption of annual trading voyages between the Caroline and Mariana Islands that would be beneficial to both parties. The Carolinians acquired iron and copper, cloth, and foodstuffs not available on their atoll homes, and the Guamanians received wooden boats and rope. Most importantly, they took advantage of Carolinian sailing and diving expertise. When the canoes returned home, many of the
Carolinians stayed on Guam through the next year and worked for the colonial government, transporting the officials to and from the other islands, or diving for beche de mer and salvaging shipwrecks (Hezel 1983: 105-106).

Coincident with the end of the galleon trade was the occurrence of a typhoon, in 1815 (Spoehr 1954: 70) in the central Carolines, that inundated several islands. Many of the survivors from the deluged islands of Satawal and Elato sailed to Guam and the Satawal chief, Aghurubw, requested permission from Guam's Governor Medinilla to settle on the uninhabited island of Saipan, while the others, led by chief Nguschul, went on ahead to Saipan (Farrell 1991: 199-201).18

From the perspective of a colony short on resources and lacking inter-island transport, the timing of the Carolinians' arrival could not have been better. The Governor readily agreed to let them live on Saipan, having received by 1819 formal permission from Manila (Hezel 1983: 106), and gave them land rights. In exchange, the new immigrants agreed to live peacefully in the islands, and to slaughter the feral cattle and pigs running wild on Tinian, cure the meat, and bring it to Guam twice a year in the form of jerky. This agreement began a relationship between the Carolinians and Spanish colonial authorities that would not only be

18 According to Underwood (1973: 29) approximately 200 Carolinians settled on Saipan in 1815.
advantageous to both parties, but would also develop and ultimately change the Marianas.

In the 1820s, this handful of Carolinian refugees built a new home for themselves on Saipan, the second largest Mariana Island, and started the village of Garapan. According to Driver (1998), there were forty-one Carolinians in all of the Marianas in 1828. Other natural disasters, like the 1849 earthquake that caused flooding on several atolls, provoked the immigration of even more refugees from islands such as Lamotrek and Satawal (Driver 1998; Driver and Brunal-Perry 1996). Saipan's abundant land contrasted to the atolls from which the Carolinians came. This triggered a gradual migration from the Caroline Islands in the next few decades. The Carolinians brought their matrilineal clan-based culture and traditions with them. Unlike Guam, which was very Hispanicized, life on Saipan remained relatively free of colonial influences until the latter half of the nineteenth century, despite the presence of a Chamorro mayor and a small number of Chamorro administrators, lepers, and servants.

In 1865, there were 424 Carolinians and nine Chamorros living on Saipan (Spoehr 1954: 71). The Carolinians continued to wear traditional clothes, own land in common, and follow a subsistence economy, growing taro, yams and breadfruit. They

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19 Underwood (1973: 23) writes that there were 55 Carolinians living on Saipan in 1830.
also remained reliant on the sea. The Carolinians did have some contact with Guam because of their role as navigators for the Spanish; they transported produce and meat, and acted as messengers between the islands. They were, however, fairly autonomous, remaining culturally separate from the Chamorros, mestizos, and the Europeans (Seidel 1981: 12; Spoehr 1954: 72).

For the colonial administrators on Guam and in Manila, the arrival of the Carolinians and the growing Carolinian population was a great boon, particularly in light of Spain’s continuous imperial decline and its consequences to the Pacific colonies. These new residents were a potential solution for many of the administrative problems in the Marianas, and could facilitate some of Spain’s colonial objectives (Driver 1998). Saipan, Tinian, Pagan, and the other ten northern islands had been uninhabited for almost a century, but they were important to the Spanish for the agricultural potential of their natural resources and were needed to perpetuate Spain’s policy of strategic and economic denial.

This Carolinian immigration, like that to Saipan, solved the problem of repopulating the northern islands. Disease and

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20 There were, however, small groups of people, such as British sailors and pirates, who periodically inhabited some of Northern Islands for short periods of time (Farrell 1991: 186-189; Safford 1905: 12-32).
Spain's own policy of centralization had caused the depopulation, but a human presence on the main islands of Saipan and Tinian was needed to discourage foreign ships from landing there, and to keep other nations from claiming the islands for their own. The Carolinians' skills as canoe makers and navigators allowed the colonial officials, who still did not have the financial resources to maintain a ship, to move freely throughout the Marianas. Also, the Chamorro, mestizo, and European population on Guam was small and unwilling to work as laborers, whereas the Carolinians would. Carolinians were at first employed as workers at the leper colony that was initially established on Saipan and later moved to Tinian. Eventually, they were needed to work on the copra plantations on the northern islands.

After the 1850s, the Spanish began to actively develop and repopulate the northern islands, and to try to develop the islands commercially. An agricultural entrepreneur named J. H. G. Johnston\(^1\) leased several islands, including Tinian and Pagan, from the Spanish to provide the land needed for establishing copra plantations. Besides land, he needed laborers. Johnston began importing people from the Carolines as workers and, by 1866, he had brought nearly a thousand

\(^1\) Sources do not agree on the spelling of his name. Some refer to him as "Johnson" (i.e. Spoehr 1954: 71; Underwood 1973: 23) whereas others call him "Johnston" (i.e. Driver 1998; Farrell 1991: 220-222).
Carolinians in by ship to work for him (Ibid.).

Although the Carolinians remained the numeric majority throughout most of the 1800's, during the last third of the nineteenth century, Chamorros increasingly began to relocate from Guam to Saipan. Some Chamorro settlers were motivated to move in 1885 to take advantage of the opportunities presented when the crown lands in the islands were opened up for settlement and agricultural development (Brunal-Perry 1998). Johnson, the Senior Land Commissioner in the Marianas for the Trust Territory, writes that:

Because of the small number of returnees and the availability of land, the [Spanish] administration was liberal—even casual—in its dealings.

The Spanish considered land public not government owned. To obtain land an individual merely took possession and filed with the administration on Guam a 'possessory title', describing as best he could the land he occupied (1969: 3).

Due to this liberal policy, both Carolinians and Chamorros settlers could acquire title to lands they used. These two ethnic groups lived in close proximity to each other but remained culturally and socially distinct; there was a division of space and class that included social stratification and resulted in Carolinian marginalization (Joseph and Murray 1951: 29-30; Spoehr 1954: 71-73). The hispanicized and relatively well-heeled Chamorros, many of whom held official positions in the Spanish administration, considered as primitive the social organization, culture,
dress, and customs that the Carolinian community had retained.

**Twentieth-Century Colonialisms**

The isolation of the Mariana Islands was underscored when officials on Guam were unaware of the outbreak of war between Spain and the United States in April 1898. When an American war ship, accompanied by three transport vessels, sailed into Guam in June of that year, the outpost was unprepared, and the United States easily took possession of the island. The battles of the Spanish-American war were short-lived, as Spain did not have the resources to fight a war or to protect and maintain her remaining colonies.

Apart from Guam, which served as a coaling station, cable station, and naval base, the United States had no interest in the rest of the Mariana Islands. The possession of Guam in conjunction with the annexation of the Hawaiian Islands in 1898 and Wake island in 1899, provided the United States with access to the Philippines. The decision to only take Guam, however, proved to be ill-advised given the emergence of Japan as a super-power in the early twentieth century. The Treaty of Paris, signed in December 1898, determined Guam’s fate. Along with Puerto Rico, Cuba, and the Philippines, it became an American possession after a slim vote in the U.S. Senate in February 1899. This vote pitted
conservatives against anti-imperialists. In less than a year, the United States was able to claim complete victory over the Spanish, but "pacification" and rule were to prove far more difficult, especially in the Philippines, where the U.S. military spent several years violently suppressing a Filipino independence movement under the leadership of Emilio Aguinaldo.

Despite early acquisition of Guam by the United States, the western Pacific region continued to be tangential to most American concerns until the Second World War (Gale 1979: 31-32). Guam was officially a ward of the United States under the jurisdiction of the U.S. Department of the Navy and the direct command of a navy officer appointed as governor. Beginning with a small naval station, over the next forty years the naval administration built an infrastructure of roads and services, but Guam remained relatively undeveloped (Ibid.: 31).

American democratic principles were actively taught to the Guamanians, who, in turn, began to expect and demand the fundamental rights defined by the Constitution and the United States Supreme Court. These were rights protecting their liberty, property, and lives (Beers 1944: 20; Maga 1985). The

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22 During the debate, racist fears were also expressed that Philippine annexation would corrupt the American system by giving "inferior" and "barbarous" people access to the "body politic" of the United States (McFerson 1997: 40-41).
long promised benefits of American Constitutional rights and laws, however, were not extended to the people of Guam. American authorities justified the exclusion of the Guamanian people from the American political process by arguing that these islanders were not yet "ready" for inclusion. The situation on Guam worsened after 1918, when paternalism gave way to the interests of national security. The United States increasingly viewed Japan as a threat and defense became the sole priority on Guam. Democratic ideals, such as citizenship and self-government, were compromised in favor of serving the greater good, that is, the security of the United States (Maga 1985).

The historical implications of America's colonial foray into the Pacific after the Spanish-American war continue to be debated. Some perceive it to be the beginning of the United States' formal entry into imperialism. Others argue that the U.S. had been engaged in colonialism outside of North America since the 1850s, such as in Hawaii, the Virgin Islands, and Puerto Rico. Strangely, at least one imperialist act was motivated by the country's dire need for fertilizer to revitalize the soil after decades of agricultural overuse. Access to deposits of guano, petrified bird droppings used as fertilizer, was essential, and the

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See O'Donnell (1993) for a discussion of that debate.
United States had become dependent upon Peru's monopoly over this scarce resource. However, beginning in 1855, a series of discoveries of small guano-laden islands in the Pacific Ocean gave the United States the opportunity to own, and control the price of, its own source of guano. The Guano Act of 1856 asserted the sovereign rights of the United States over these newly discovered islands, including Baker, Jarvis, Howland, and Johnston, thereby denying access to the guano deposits and territory to any other nation (Ibid.). The United States further extended its imperial dominion by purchasing Alaska from Russia in 1867 and annexing the Hawaiian Islands in 1898.

Questions regarding the timing, definition, and motivation of American territorial expansion underscore the ideological ambivalence at the heart of American policy. Since the American Revolution, which pitted democratic principles against British colonialism, the United States and its citizenry have promulgated a rhetoric that condemns imperialistic policy. But the requirements of nation-building, national security, pragmatic needs resulting from population growth, and the desire to increase markets have necessitated and justified the acquisition of territory (Dulles 1932; McFerson 1997). The conquest of the American West was a vast colonial endeavor, but there remains a perception that it was a "natural" outcome, not a result of political, colonial, or racial policies.
Germany: Enlightened Self-interest

At the close of the Spanish-American War, Germany was able to consolidate and solidify its holdings in the Pacific by purchasing the remaining Spanish-held islands for approximately 4 million dollars, including the Caroline, Palau, and Mariana Islands. German influence in the Marianas was profound despite their short fifteen-year tenure, but did not cause serious upheaval or dislocation of the indigenous people because there was never a large number of German nationals in the Marianas (only seven after 1907). Also, the Chamorros and Carolinians were treated relatively well, although because of labor shortages, some Chamorros were sent to work in the mines or on the copra plantations in the Carolines, where German commercial companies often mistreated and abused the islanders (Joseph and Murray 1951: 33-35). The German colonial enterprise in the Marianas, however, stood in stark contrast to the experience faced by the Marshall, Caroline, and Palau islanders, whose islands were subject to intensive German phosphate mining and resource exploitation, some since the 1870s.

24 The Navy’s report on the TTPI characterized the German administration in the Pacific as having a "policy of enlightened self-interest" (Report on the Administration of the Trust Territory of the Pacific Islands Islands 1951: 6. Henceforth cited as OPNAV 1951).
25 Germany controlled the Bismarck Archipelago, the northern Solomon islands, and the northeastern portion of New Guinea. In 1899, after negotiations with Britain and the United States, Germany acquired Western Samoa (Hepenstall 1994).
During the early 1900s, a steady increase in the Chamorro and Carolinian populations was a direct result of programs instituted by the German administration. The total indigenous population of the Marianas in 1901 was 2,102; by 1912, it had increased to 3,029 (Spoehr 1954: 78). It was during the German period that the Chamorro population began to exceed that of the Carolinian community, with the ultimate result that the Chamorros increasingly became the dominant majority while the Carolinians became a disenfranchised minority.

The Germans established public health programs that had been virtually non-existent during the Spanish period. They administered smallpox vaccinations for the Carolinians and Chamorros, built a hospital, and stationed a resident government doctor on Saipan (Ibid.: 75). They also set up a very attractive homestead program, including boat fare, that lured many Chamorros from Guam. Further, ninety-six Carolinians moved to Saipan from Guam in 1901 because of tensions with the American administration that had unsuccessfully tried to force them to wear western style clothes and abandon their customs. In 1907, around 700 Carolinians were brought to Saipan and permanently settled there after their islands had been hit by devastating

26 Beers (1944: 47), a naval historian, however, states that the Carolinians were deported from Guam by the American Administration.
typhoons. Three hundred people from the island of Woleai came and founded Oleai village and 400 refugees from the Mortlocks, Satawal, and Losap settled in Puerto Rico village and in Chalan Lau Lau (De Leon Guerrero 1968: 4).

The German-instituted homestead program was not simply an act of altruism. Rather, the German administration was faced with a labor shortage in the Northern Marianas for their anticipated copra industry, and needed workers to develop the area commercially. The German’s biggest stumbling block in attracting labor was their inability to entice Carolinians and Chamorros to work for wages, as both groups did not have a great need for money. To promote monetary dependence, the Germans continued the program of mandatory unpaid public work required by the Spanish.27 They also raised taxes and promoted expensive imported goods (Joseph and Murray 1951: 34).28

The most significant policies instituted by the German administration -- ones that would have long-term ramifications -- involved restructuring land ownership and use. Germany changed land policy and holding patterns in the Marianas in an attempt to promote copra production (as a way to make the colony self-supporting), and to retain a

27 Similar to the “tequio” system that exists throughout Mexico (Rees 1999: 34).
28 Also, see Firth (1973) and Fitzpatrick (1980) for related discussions.
subsistence pattern for the local Chamorro and Carolinian population. This required surveys and the registration of all private property. Another policy required that all land owners fence their property; all unfenced land would be confiscated and became part of the public domain. In turn, the public domain land became available for new Chamorro and Carolinian homesteads or could be leased by Germans. A third policy required that cattle be fenced or tethered, or the animals would become government property. Additionally, each property owner was mandated to grow coconuts and to dedicate one quarter of a hectare of land to agricultural and edible crops.

The primary German objective of these policies was to break up the large tracts of land allotted to a handful of Chamorros during the Spanish period. They also wanted to free up privately and governmentally owned land in order to promote copra production, to instill a (German) work ethic, and to ensure that the population would be self-sufficient. The German administration was only partially successful. Copra production did increase, but, according to Fritz (1984:________)

29 One case during the Trust Territory period that unsuccessfully challenged the German administration's condemnation of unfenced land is Dolores T. Cabrera v. TTPI, Civil Action No. 2, (1952).
30 The Marianas were too distant from Germany to attract many colonists, although there was one established German plantation family. The rigors of colonization, however, may not have been the only reason that few Germans settled on Saipan. Seidel (1981: 22-23) reports that the foreign ministry in Berlin discouraged would-be settlers.
46), most locals preferred to gather wild coconuts rather than to actively cultivate coconut palms. Also, the increasing Japanese domination of the copra trade during the period of the German administration made local copra production less profitable (Hanlon 1994: 106; Peattie 1988: 1-33).

Local Chamorros and Carolinians remembered the German period as a time of benign rule (Joseph and Murray 1951: 43-44). Georg Fritz, the first district administrator on Saipan from 1899 until 1906, was concerned with improving the conditions of the islanders. He began agricultural programs, imported seeds, and started a school where he taught until a permanent teacher arrived in 1905.31 Fritz was greatly interested in history and culture and wrote a brief, but important, ethnography about the Chamorros (1984). Although he considered the Chamorros to be lazy and not particularly interested in monetary gain, Fritz found them "intellectually more ambitious" than the Carolinians, who were "at a lower cultural level" (Ibid.: 45, 68).

German officials expected the locals to conform to the new laws and to work for German copra interests, but there was no active attempt to radically acculturate the people. Still, administrators were successful in instilling change in many Chamorros. Both Carolinians and Chamorros attended
school, but, according to the Germans, it was the Chamorros who excelled academically because they were more willing to adapt to and adopt German values and culture (Fritz 1984; Seidel 1981). Several Chamorro students were sent to schools overseas, such as like Tsingtao, a German colony on the northeast coast of China, and even to Germany (Spoehr 1954: 76).

Interestingly, during the beginning of the German period, the social separation of Chamorros and Carolinians increased. According to Seidel (1981:11), the Chamorros did not want to inter-marry with the Carolinians because "the Chamorro believe themselves to be too superior to the naked, uncultivated Carolinians." The Chamorro valuation of family, church, and farm remained, alongside their increased capitulation to a German market economy and work ethic. Their attempts to consolidate wealth by taking advantage of the homestead program and starting small businesses manifested the Chamorros' growing acceptance of capitalism. The Carolinians, on the other hand, were perceived as more content to continue their own traditional culture, which included dance, the wearing of traditional dress, and canoe building.\(^{32}\)

\(^{31}\) Locals had also been teaching school since 1900.

\(^{32}\) It is unclear, however, whether the Chamorros who embraced German values were doing so because of values instilled during the Spanish colonial period, or if in some way the Germans simply considered the
The German colonial goal, their civilizing mission, was to infuse the values of hard work, wealth accumulation, status, progress, and efficiency. While they had some degree of success, the Germans did not train locals to be administrators or to be self-governing. Despite the improvements in infrastructure, education, and public health, the political power of the indigenous people actually diminished during the German period. Local village mayors and supervisors remained, but they were appointed by the Germans and had no real authority or jurisdiction, having mostly a supervisory role (Fritz 1984: 67). The German economic objectives were ultimately unsuccessful, as Germany lost money on its colonial possessions (Bowers 1951: 33). Increasing Japanese commercial dominance in the early twentieth century foreshadowed Germany’s territorial loss, and Japan’s ultimate control over the region.

**Japan: A New Kind of Colonial Imperative**

Germany’s sovereignty over the Marianas and their other Micronesian territories was short-lived. The outbreak of World War I in 1914 resulted in the rapid loss of all of Germany’s Pacific territories to the Japanese. Japan’s involvement in WW I was opportunistic, having its antecedents Chamorros more civilized than the Carolinians and overtly or covertly promoted Chamorro advancement more, and correspondingly neglected Carolinian economic development.
in the economic expansion into the Pacific region that began in the late nineteenth century. Japanese merchants controlled 80 percent of all trade in German Micronesia by 1906, a reality that facilitated and partially motivated Japan's eventual total takeover of the region (Hanlon 1994: 106). Japan had never had a large number of people in the Pacific Islands prior to 1914, but those who were there had transformed Japan into a dominant trader in copra and other goods. Commercial development in the islands of the north Pacific was synchronous with Japan's burgeoning imperialism, manifest by the creation, under the tutelage of Great Britain, of a powerful and modern naval fleet, and Japanese territorial expansion into Manchuria and Taiwan (Peattie 1988: 34-44).

The growing prominence of Japanese economic and territorial interests in Micronesia was solidified at the outset of WW I. Ostensibly to help the British, Japan moved to take over Germany's possessions in the fall of 1914. Britain, although deeply ambivalent Japanese involvement and fearful that Japan would extend its reach into the Pacific,

33 Peattie (1988) is the primary source for the sections on the Japanese in Micronesia and pre-war Micronesia, except where otherwise noted.
34 The Japanese government maintained that it intervened to assist the British because of the Anglo-Japanese Alliance of 1902, "but the claim...that Japan joined in the fight against Germany because of obligations under that alliance was specious" (Peattie 1988: 38).
wanted an ally whose military support could be at British disposal. Despite its assertions to the contrary, Japan did want to expand its territory and the war was the perfect opportunity to do so without expending too much effort or risking a great deal of resources (Peattie 1988: 38-47).

Japan sent in naval cruisers, capturing Germany's islands, which the German fleet had abandoned, with ease and quickly achieving control (with the exception of Guam and other American-held islands) of this far-reaching territory. Although unhappy about Japan's presence in Micronesia, in the early months of 1917, Britain and her European allies made secret treaties with Japan promising to support its claim to German Micronesia. In return, the allies were promised naval support, but, more importantly, Australia and New Zealand, still part of the British Empire, would be supported by Japan in their claims to the former German possessions south of the equator, such as New Guinea and the Bismarck Archipelago. Meanwhile, Japan entrenched itself in Micronesia during the war years by establishing an administrative infrastructure that ruled with naval efficiency, emphasizing education and prioritizing the Japanese worldview and Japanese business interests.

The United States became an active combatant in World War I in April 1917, but President Wilson was not aware of the agreements made between the Japanese and Europeans until near the end of the war. Woodrow Wilson's dream of a new
international order, one that he hoped would be realized in the formation of the League of Nations, was reinforced by his understanding of the strategic and defensive needs of the United States. Motivated by idealism while buttressed by pragmatism, Wilson advocated a mandate system supervised by the League of Nations to administer the former colonies of the defeated countries, Germany and Turkey.

After much wrangling, a compromise was made. Greatly weakening Wilson's proposal and the restrictions he had envisioned, the compromise divided the former colonies into three different types of mandated territories based on an evolutionary model of political development. The class “A” mandates, like Iraq and Palestine, and the “B” mandates, including Rwanda and Burundi, were destined for independence and were given economic equality with countries in the League of Nations (Richard 1951: 36). The class “C” mandates, on the other hand, were not considered ready for independence. They were not given economic equality, and were administered as a fundamental part of the mandatory power responsible for them. The League, however, did restrict the absolute authority of the mandatories by forbidding military installations, expecting regular reports on the progress of the mandated territories, and requiring free trade.

The League of Nations added a veneer of respectability to the colonial enterprise of both Britain and Japan. There was no expectation of future independence for the class “C”
mandates, located in the Pacific and Africa, since the people were not considered competent to govern themselves in the foreseeable future (Meller 1969: 10). These mandates remained de facto colonies, but under new rulers, the mandatories, and with a new international classification. Needless to say, the League did not include the populations of the former Turkish and German colonies in their decision-making process. The indigenous people of these newly created "C" mandates may have had some influence in local governance, but they were excluded from access to the global processes and negotiations that directly affected them. Micronesia, except for Guam, became part of the Japanese Empire. Although this solution was repugnant to both the Americans and Australians, who feared Japanese territorial ambitions, the mandate system did enable Australia to rule New Guinea, and New Zealand to retain Western Samoa.

The United States began to fear Japan's increasing global prominence and military power as early as 1905, after Japan's surprising defeat of Russia in the Russo-Japanese War. It began to rue its decision to only claim Guam and the Philippines after the Spanish-American War. According to Peattie (1988), during the first third of the twentieth century, both Japan and the United States explored the

35 Significantly, Japan's victory was the first time that an Asian country had defeated a European one.
possibility of war, and actively developed military strategies and models.

The Japanese Navy considered the strategic and economic potential of a southward movement into Micronesia and formulated a plan to defeat the superior naval forces of the United States by repeated small scale attacks (Ibid: 36). The United States developed Plan Orange, an anticipatory strategy that was constantly revised as political events unfolded. American fears, often racially based, escalated with Japan's adroit entrance into Micronesia in 1914. The American perception of a Japanese threat, however, waned after 1922 when the two countries signed a naval limitations treaty assuring the protection of American interests. Japan restated its promise not to fortify the Micronesian islands and gave the United States access to the cable station located on Yap. Ironically, the United States never took advantage of these hard won concessions, thereby losing any strategic edge it had gained. Despite the war games, back room strategizing, and anticipation of the inevitability of war, by the end of the 1930's, the United States was unprepared for Japan's offensive into the Pacific.

The Northern Marianas Under Japanese Rule

During World War I, the Japanese Navy ran and administered Micronesia, but, with the implementation of the League of Nations mandate in 1922, the navy was forced to
cede its control to civilian administrators. Japan’s newly formed South Seas government, Nan’yo-Cho, was staffed by highly efficient civil servants who began intensive colonization, initiating order and focusing on development. Two primary goals of the Japanese were to make their new possessions economically self-sufficient and to use the islands to alleviate the population pressures in the Japanese home islands, exacerbated by several natural and economic disasters (Peattie 1988: 155-56). This move into Micronesia was a new kind of colonial venture, distinct from the Spanish and German colonial projects. The ruling nation was now in close proximity to its new territory. Japan not only had relatively easy access to Micronesia, especially the Marianas, but also envisioned them as an integral part of the Japanese Empire, which would continue to stretch southward.

In the first few years of Japanese administration, the new territory was an economic liability and there was little progress in its commercial development. Japanese businessmen and entrepreneurs had been gradually relocating to Micronesia since the beginning of World War I, but the creation of new industries and markets in an undeveloped Micronesia was difficult. Many of the early business ventures failed due to incompetence, corruption, and poor management; moreover, abuses of the local people were common. As a result, the Japanese government instituted more restrictions on business and was more proactively involved in the effort to
economically exploit the islands. In the Marianas, the first large-scale attempt to develop a sugar industry failed, with devastating consequences for the Okinawans and Koreans brought to Saipan as laborers. The sugar company simply pulled out, stranding a thousand or so workers who were forced to eke out a living in their new surroundings.

Despite its hapless beginnings, the Marianas’ sugar industry ultimately became the economic foundation for the Japanese mandate. As a result, it caused dramatic changes in the lives of the Carolinians and Chamorros. The success of sugar was due to the vision and expertise of Matsue Haruji, who saw the agricultural potential of the Mariana Islands. He was determined to rescue the abandoned workers from their impoverished condition. In 1921, Matsue, later known as the “Sugar King,” began his plans for Saipan by garnering the necessary capital investment from Japan and negotiating the rent-free use of public land on Saipan. The resulting corporation, the Nan’yo Kohatsu Kaisha (NKK), or South Seas Development Company, had rocky beginnings, but was destined to become one of the most profitable and influential ventures in Micronesia. After developing Saipan, Matsue expanded his sugar operation to Tinian and eventually to Rota. The entire island of Tinian became a virtual plantation. Moreover, he

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36 Phosphate mining in Angaur, Palau was Japan’s second most profitable industry in Micronesia.
created a new business, distilling liquor from the waste products of sugar processing.

The success of the NKK, in cooperation with the Japanese South Seas government, promoted more investment in Micronesia. This radically changed the landscape, economy, and demographics of the Marianas. The creation of a thriving industry brought wealth to Japanese investors and turned the floundering territory into an economic asset for Japan, although the sugar boom rarely benefited the islanders who were most affected by the new industry. To plant, cultivate, and harvest the cane, and to build the roads and railway necessary to access, transport, and process the sugar, the NKK imported thousands of Okinawans to the Marianas as laborers and tenant farmers. This massive and ever-increasing influx of people dramatically changed the demographic make-up of the islands, turning the Chamorros and Carolinians into a small minority. In 1920, there were 1,758 Japanese, mostly Okinawans, in the Saipan District. By 1930, the Japanese population had expanded to 15,656, and, by 1940, there were 45,922 settlers spread throughout the Marianas, with the vast majority living on Saipan and Tinian (Oliver 1971: 31).38

37 The sugar industry eventually paid rent for the use of public land.
38 Before the start of World War II there were close to 10,000 Japanese troops living on Rota, more than 17,000 Japanese, Okinawans, and Koreans on Tinian, and up to 25,000 Japanese (civilian and military) living on Saipan (Underwood 1973: 38).
The demographic impact of the imported work force and the growing number of Japanese homesteaders were core elements in the shift from a Spanish and German style of colonial enterprise to the restructured and reconceptualized Japanese colonial administration. Both Spanish and German colonial policy had been premised on the use of and the need for the indigenous people as workers, farmers, and petty bureaucrats who in turn became a market for the colonizers' imported goods. The Japanese resettlement policy and its goal of completely integrating the mandated territory into the Japanese Empire made the indigenous people virtually unnecessary. Other than as workers in the Angaur phosphate mines, the islanders, or actually their labor and resulting buying power, no longer had any intrinsic value (Joseph and Murray 1951: 45; Peattie 1988: 116). All of the Micronesians were affected by the new colonial agenda, but it was the Chamorros and Carolinians in the Marianas who had to face the impact of foreign inundation.

In the ethnically based hierarchical Japanese social order, all Micronesians were deemed third-class citizens, placed just under the second-class Okinawans and Koreans, and were further stratified according to their racial characteristics and apparent level of social development (Peattie 1988: 112). The Chamorros resided at the top of the Micronesian social order, and beneath them, the Carolinians and Marshallese, derisively classified together as "kanaka,"
with the Yapese at the very bottom. The separation in the Marianas between Chamorros and Carolinians continued, reinforced by the Japanese colonial class system and economic disparity, although there was some interaction and intermarriage between the two groups, mostly in the village of Tanapag (Spoehr 1954: 88-89). Traditional Carolinian social organization and customs, such as men’s houses, canoe building, and clan structure, deteriorated. Carolinian men increasingly engaged in wage labor, often working as stevedores.

During both the German and Japanese eras, the administrators often ignored the Carolinian matrilineal and collective land tenure system by putting land title in the name of individual male Carolinians. Also, Carolinian men could obtain homesteads, retaining title as individuals, from the German administration and could leave the property, or parts thereof, to individual heirs. Nevertheless, many of these homesteads eventually became clan property at the death of the original owner. Further, the Japanese administrators abrogated all political and legal responsibilities previously held by both the Carolinians and Chamorros (Ibid.: 89, 330). Despite these and other changes, the Carolinians retained a collective sense of identity and community, and, although differentiations based on rank were (and are) made, the divisions were far less rigid than among the Chamorro.

Class had always been a salient feature of Chamorro
society and during the Japanese period the divisions widened with an increasing economic disparity within the Chamorro community. While most Chamorros benefited materially during the Japanese occupation, some Chamorros began accruing a great deal of wealth, as well as the external trappings of affluence, which both accentuated and increased class distinctions between families (Spoehr 1954: 89). The wealth accumulation happened in two ways. First, having the opportunity and desire to learn skills, Chamorros were able to engage in relatively lucrative work as trades people, nurses, technicians, and policemen, and some began small businesses, whereas most Carolinians were relegated to manual labor. Second, because of the NKK's expanding need for land to grow sugar cane and the large migration of people to the Marianas, including tenant farmers, land had become an important, but increasingly scarce, commodity. Prior to 1931, Japanese law forbade its own citizens from purchasing land in Micronesia, so locals could make money by leasing their land to Japanese individuals and to the NKK.

Some of the locals, however, were tricked or forced into making business deals with the Japanese. De Leon Guerrero (1968: 7) writes that unscrupulous Japanese would ply locals with alcohol. Once inebriated, the Carolinians and Chamorros would unwittingly agree to lease their land or sign other legal contracts. Further, Joseph and Murray (1951: 45) trace how Japanese business people often made loans to poor local
farmers who, unable to pay back the money, were forced to work as copra laborers along with their families on some of the distant islands without access to medical care or education.

To accommodate the growing island population, most public land during the German period had been available for homesteading by Chamorros and Carolinians. However, under the Japanese administration, public land was now intended for the use of the NKK and was closed to the indigenous people. Lack of access to public land meant that neither Chamorros nor Carolinians could accumulate any more land; indigenous property rights such as ownership and the benefits thereof were now immutable.

The increasing scarcity of land and the growing perception of land as a commodity caused conflicts within Carolinian and Chamorro families, as heirs began to vie for the ever diminishing, and potentially valuable, family land (Emerick 1958: 222). Because land ownership was frozen, locals who owned large amounts of land prior to the Japanese arrival were able to lease their property to the Japanese, live off the proceeds, and still retain some property for themselves, becoming rich in the process (Joseph and Murray 1951: 45; Spoehr 1954: 89). According to Spoehr, at least 75 percent of privately held land on Saipan was leased (1954: 86). However, many Chamorros and Carolinians, mostly those who had never owned a great deal of land, were unwilling or
unable to significantly profit from leasing land.

Although land leases could be lucrative, the combination of the disappearance of public land and the ever-increasing number of lease agreements was a foundational component in the incremental alienation of indigenous rights as a whole. Chamorros and Carolinians no longer had access to the majority of land on their islands and consequently had less control of the environment around them.

From the moment they arrived, the Japanese began to systematically map and measure their new island possessions (Emerick 1958: 227). They established a land office that recorded titles, sorted out land disputes, and imposed order onto all facets of land use and ownership. Indigenous land ownership and titles confirmed and granted during the German administration were honored by the Japanese, but all "unused" land was put into the public domain (cf. Von Benda-Beckmann F. and K. 1985: 256). This, in turn, was only available for use by Japanese companies or citizens (Joseph and Murray 1951: 45; Johnson 1969: 5). By the early 1930s, as a result of the expanding needs of the highly successful sugar industry, the South Seas government initiated forced land exchanges.

On the island of Rota, the southernmost of the Northern Marianas, forced exchanges began in 1930. Japanese began migrating to the island to mine phosphate and farm and grow sugar cane, taking the best arable land. By 1936, the
Japanese population had swelled to nearly 5,000, while the indigenous population was only 800. It was in this year that the entire village of Song Song was forced to relocate up the coast to the newly created village of Tatacho (Peattie 1988: 167). The villagers were reimbursed, but the land was less fertile and they could no longer live on their ancestors’ land, iyong manaina. Forced exchanges such as this one, as well as other questionable land transactions, were the basis of many land claims after World War II. Through the 1990s, they have continued to be points of contention within the courts, and are still widely remembered and resented in the community.

Coincident with the growing land pressures, the Japanese government changed its policy regarding foreign ownership of land. Initially, Japanese individuals and companies could not buy land; they could only lease land for up to ten years. But, in 1931, laws changed, allowing the fee simple purchase of land. This change in law and land policy was a concrete realization of the process of land alienation that had been

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39 Ironically, the descendents of some of those forced to exchange their lands have benefited economically. Land that may have been worth little in the early part of this century now has great monetary value because of its size and/or potential for tourist development.

40 For example, the following cases address some of the conflicts over land that arose during the Japanese Administration: Wasisang v. Trust Territory, 1 T.T.R. 14 (1952); Martin v. Trust Territory, 1 T.T.R. 481 (1958); Esebei v. Trust Territory, 1 T.T.R. 495 (1958); Cabrera v. Trust Territory, Saipan Appellate Division, Civil Action No. 2; Alig v. Trust Territory, 3 T.T.R. 603 (1967).
going on since the early 1920s. Peattie (1988) argues that the total alienation of native land by the Japanese government was not initially premeditated, because, in the early years of Japan's occupation, the success of the colonial enterprise was still in doubt. Later, however, as the sugar company prospered and migration intensified, it was abundantly clear that more and more land was needed to continue making money and for the ultimate integration of the Marianas into the Japanese empire. The process of land alienation in the thirty years of Japanese control was gradual, but it was also cumulative and inexorable. In the minds of Japanese policy makers, not only would indigenous land ownership fade away, but the indigenous people would disappear as well (Joseph and Murray 1951: 48). This belief was based on the simple, racially derived, evolutionary principle that the superior Japanese would inevitably supplant the inferior Micronesians.

In the first twenty years of Japanese occupation, the indigenous Chamorros and Carolinians were distinctly ambivalent about their rulers (De Leon Guerrero 1968; Joseph and Murray 1951; Peattie 1988; Spoehr 1954). While many locals were generally content under Japanese rule, they also

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41 See Peattie (1988: 96-100, 112-117) for a more detailed analysis of Japanese land policies and attitudes about their colonial charges.
felt resentment. Therefore, there was a great deal of bitterness that resulted from ethnic segregation and the Japanese relegation of indigenous people to a lower social level. Exclusion from higher status jobs, limitations of business opportunities, and restricted social activities were most deeply felt by the status-oriented Chamorros. All indigenous people were excluded from "white collar" types of work and were not permitted to engage in the most lucrative jobs, like commercial fishing. Children were segregated in native schools. Health care and education were adequate; there was a clinic and most children attended school for three to five years, the most successful and assimilated of which were taken on trips to Japan and given special privileges. The primary goal of the schools and Japanese instructors, however, was not education and intellectual advancement. Their intention was to transform indigenous students into loyal, subservient citizens, imbuing them with Japanese attitudes and values.

Nevertheless, and despite the discriminatory wage scale, Chamorros and Carolinians had a greater ability to purchase

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42 De Leon Guerrero (1968) writes that during the early part of Japanese rule, when the locals were suffering from lack of food as a result of several natural disasters, the Red Cross packages sent to them from Guam were confiscated and that they had to buy them at greatly inflated prices. He also alleges that the Japanese purposefully brought in a coconut pest to destroy their trees, burned down trees, and promoted alcohol dependence amongst the local population.
imported goods and luxuries than they had during the German period. The more well-to-do Chamorros could associate with the Japanese, albeit lower-tier Japanese, and, in some cases, inter-marriage resulted. In contrast, during the German administration, there was a distinct separation between the indigenous people and the highly ranked colonial officials. Despite the dislocation that Japanese rule brought, many locals liked the order and discipline that the Japanese imposed on their lives. They got along with their Japanese neighbors, and were treated well—at least in the period before war preparations began.

**Japan Prepares for War**

As a consequence of global events and major shifts in Japanese political and social policies and goals, the decade of the 1930s was a period of qualitative change in the Marianas. Japan's relationship with members of the League of Nations and the United States was on a downward spiral as a result of suspicions deeply held by both sides. Japan's withdrawal from the League of Nations in 1935 was symbolic of a swelling Japanese nationalism, culminating in a vision of a Japan destined to expand south and east, dominating much of Asia and the Pacific. Despite Japan's secession, it

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maintained its claim over the mandated islands (which had essentially become annexed territory), and continued to report to the League on the progress of the mandate until 1938.

In the Marianas, Japanese global policies began to be felt after 1935, as the administration of the islands became increasingly repressive and conditions grew worse for the local people. During the second half of the 1930’s and into the early 1940’s, sugar production continued alongside the Japanese Navy’s intensifying efforts to develop the islands, and the South Seas Government’s decision to make the islands self sufficient by emphasizing agriculture. In order to meet the need for land, labor, and resources, in 1939 the Japanese government began forcing the islanders to do heavy labor. They also imported Koreans as well as Japanese convicts to supplement the inadequate supply of “native” workers engaged in the construction of airfields and naval facilities (Peattie 1988: 251-252).

In the early years of Japanese rule, locals had been free to practice Catholicism, a central and meaningful part of their daily lives, and were able to remain in contact with their relatives who lived on Guam. But, in the late 1930’s, the Japanese administration withdrew its previous support of the Catholic Church and forcibly curtailed Chamorro and Carolinian religious observances, a profound hardship to a devout people. They were no longer permitted contact with
Guam and travel became restricted when, in 1938, the Marianas became a closed military area (OPNAV 1951: 6). The implementation of such new laws and policies throughout the 1930's and into the war years decreased indigenous rights and increased Japanese authority. As a result, the generally positive attitudes about the Japanese people and administration heretofore held by Carolinian and Chamorro populations inevitably began to erode.

Meanwhile, Japan's deteriorating relationship with the member nations of the League and the United States was an outgrowth of a multitude of factors that compounded and amplified the mutual and preexisting suspicion between these nations. First, in 1930, Japan, represented by moderates, signed the London Naval treaty (an updated naval limitations agreement) with the United States and England. Military hard-liners and much of Japan's increasingly nationalistic citizenry condemned this treaty and the entire international treaty system (Peattie 1988: 242). The growing disaffection with the international community and anger at attempts to limit Japan's territorial and military growth spurred militarist and isolationist sentiment in Japan.

Second, many nations were deeply disturbed by the Japanese military takeover of Manchuria in 1931 and 1932, a move that extended Japan's colonial hold in Asia and which demonstrated that Japan had both the ability and desire to acquire more territory. This act of imperialism was amplified
in 1937 when the Japanese military began attacking mainland China and acquiring even more territory. Third, there was widespread and growing speculation as early as the 1920’s in the United States and amongst its allies that Japan had been building up the military assets of the mandated islands in preparation for war. Fueled by racial bias, the rumors regarding the duration and amount of military build-up of Micronesia were initially unfounded. Yet, these and other unsubstantiated rumors were later buttressed by Japan’s intention to withdraw from the League of Nations in 1933 (realized in 1935), Japan’s increasing secrecy about the islands, and the announcement in 1935 that Japan intended to relinquish all its pre-existing treaty agreements the following year.

According to Peattie, prior to 1935, Japan had not gone against the restrictions of its League mandate and did not actively build up the military assets of the islands until 1939 or 1940. They did, however, begin to skirt the League’s requirement of non-fortification after 1935 by improving the infrastructure of the islands. The Japanese navy initiated the construction of airfields, improved harbors and facilities, and generally reconsidered

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44 Peattie (1988), however, makes an important distinction contrasting the act of building fortifications with the Japanese Navy’s assessments of the strategic possibilities of Micronesia, and its plans and to fortify the islands and wage war.
Micronesia’s strategic potential. All of the improvements either had arguably commercial applications or were not explicitly precluded in the text of the treaties. Yet the effect was to improve military readiness.

Before 1930, the islands’ strategic value was limited to their location (as it had been during Spanish rule), and the consequent potential to limit access and use of ocean routes by other nations. There was a paucity of natural harbors and militarily useful geographic features in Micronesia, but, with advances in aviation, the islands had the potential to be a military asset (Peattie 1988: 231-233). Micronesia would eventually become an integral part of Japan’s imperial strategy. Its harbors and airfields provided crucial support in fulfilling Japan’s destiny to the south.

**War Comes to the Marianas**

The war in Europe set Japan’s expansionist plans into motion. Between 1939 and 1941, Japan began the active, military fortification of Micronesia and prepared for an imminent offensive into Asia and the Pacific. The perfect opportunity arose when, after two years of war, Germany’s initial successes in Europe had left the Far East colonies of Britain and the Netherlands exposed and relatively undefended (Peattie 1988: 223). On December 7th, 1941, Hawai‘i time, Japan attacked Pearl Harbor, simultaneously striking the American airfields and ships in the Philippines on December
In Micronesia time, and initiating strikes on other targets in the Pacific and Southeast Asia, such as Wake Island, Makin and Tarawa in the Gilbert Islands, and Indonesia. On December 10th Japanese forces easily captured Guam.

For the indigenous people, the implications of a war in the Pacific were profound. Land and other possessions no longer had to be legally purchased, but could be seized for the building of military installations. The Micronesians were generally used by the Japanese for heavy labor and were conscripted to work for the military as police, scouts, and translators, although some islanders actually volunteered for active military duty. In the Marianas, locals who had heretofore been loyal Japanese subjects (or at least not antagonistic to Japanese rule) began to feel antipathy towards the Japanese (Lloyd 1996a; 1996b). The Chamorros and Carolinians were forced to help build military installations, such as the airstrip at As Lito on Saipan—often working from six in the morning until ten at night. The workers, given only a cup of rice a day in exchange for their labor, included children as young as eight who, instead of going to school, were set to work digging and shoveling (Ibid. 1996a).

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45 Saipanese Chamorros participated in the Japanese occupation of Guam, working as interpreters, guards, and police. Consequently, for decades after the war, Guamanian Chamorros felt hostility towards Chamorros in the Northern Islands. This divisiveness led to Guam’s rejection of political unification with the Northern Mariana Islands in 1969.
Once the war began, an atmosphere of suspicion and antagonism prevailed, as the Japanese began to see the islanders as potential enemies. There was an increase of violence towards locals and, in a few extreme cases, some of the lighter-skinned Chamorros were executed after being accused of being American spies (Lloyd 1996b). By 1943, conditions became even more serious in Micronesia. Japan was no longer winning the war, and the United States and its Allies had begun a series of successful offensives against the Axis powers.

Because Japan's strategy had been offensive, the Japanese were caught unprepared for the siege that ensued. Too late, Japan realized its vulnerability in the Marianas and began repatriating its civilian citizens to Japan both for their protection and to free up space and resources for the military. Despite these efforts, approximately 16,000 civilians were stranded in the Marianas for the duration of the war. Furthermore, the Japanese military, who felt secure in its knowledge that its own forces were far superior to those of the Allies and did not believe that an allied attack was imminent, had not yet installed adequate defenses in the Marianas. Many fortifications were still under construction on the eve of the invasion. The Japanese in Micronesia also suffered from shortages of necessary supplies and raw materials like food and cement from Japan because Allied ships controlled the central Pacific region.
As a result, the Allies were able to restrict the flow of necessary resources to and from Japan and its territories. They had succeeded in destroying large numbers of transport vessels headed to the Pacific Islands. The indigenous people, suffering from lack of food, illness, and years of forced labor, were exiled to their farms in the interior and left to face the consequences of the Allied invasion (Peattie 1988: 281). Despite these conditions, the people of the Northern Marianas were spared the degree of brutality from the Japanese military that people experienced on Guam. Nevertheless, military totalitarianism and scarcity in the Northern Marianas were extremely difficult to endure.

The Allied Invasion of the Marianas

The Second World War and the American takeover of Micronesia resulted in extensive destruction, dislocation, and economic collapse. Much of the infrastructure, like roads and buildings, was destroyed, and many islanders were killed or injured throughout Micronesia. In the early summer of 1944, American forces attacked the unprepared Japanese on Saipan in a massive bombardment and subsequent invasion by two Marine divisions. But because the 30,000 Japanese troops so fiercely defended the island, the Americans had to send in an Army division to reinforce the Marines. While the fighting raged in Saipan, American forces began attacking the islands of Tinian and Guam. Locals, the Japanese military, and
Japanese civilians on Saipan fled to the interior and to caves, some of which had been fortified, to hide from bombs, shrapnel, and bullets, or to make a final stand against the Americans.

After weeks of intense fighting on Saipan and with defeat imminent, thousands of Japanese, primarily military but also civilian, committed suicide individually or en masse to avoid capture. Many were motivated by the widespread belief, perpetuated by military propaganda, that they would be tortured and killed, or raped. Others chose death with honor over the shame of capture. Some took their own lives with guns and grenades. Often entire families leapt from the cliffs, despite pleas in Japanese from American translators (Richard 1957a: 139). Both the military personnel and civilians who remained in hiding throughout the duration of the weeks-long battle suffered or died from lack of food and water, illness, exposure, and the injuries incurred during the fighting. Some of the young local men, however, came out of hiding to join the Americans and became "provisional Marines," taking up arms against the Japanese and working as forward scouts. By the time the Americans had reasonably secured the island and largely quelled Japanese resistance, over 3,000 American troops had been killed and over 23,000 Japanese, including approximately 3,500 Japanese civilians, had died. Roughly 300 indigenous Chamorros and Carolinians
were dead (Peattie 1988: 290, ff. 59; Spoehr 1954: 91-92).46

Once the Chamorro, Carolinian, Japanese, and Korean civilian survivors were coaxed out of hiding or surrendered, they were rounded up and placed into three separate makeshift internment camps in Susupe: one for the Carolinians and Chamorros, a second for Korean civilians, and a third for the Japanese civilians (Richard 1957a: 438-475). Japanese Prisoners of war, in contrast, were placed in a stockade separate from the civilian camps.47 The Americans were initially unprepared to support the thousands of people in their charge, especially while fighting still continued in the interior of the island. Saipan's infrastructure was destroyed and there was a paucity of food, medical supplies, potable water, and shelter in the camps, exacerbating the condition of the inmates—many of whom arrived sick, injured, 

46 Given the invasion's devastating impact on Saipan, it is remarkable that not more local Saipanese were killed. The relatively high survival rate was in part due to the efforts of a Japanese officer, Lt. Mori, who warned his Chamorro friends of the impending invasion. He also told them to bring supplies and Catholic icons in order to demonstrate to the American soldiers that they were not Japanese (McPhetres 2000).

47 Richard (1957a: 444-445) writes that:

Prisoners of War (POW's) included Japanese military personnel, home guards, civilians bearing arms, and Japanese, Koreans, or other civilians in the employ of the military. Of the 29,622 defenders of Saipan on D-Day, few were left to be interned as POW's when the battle for the island was over. At least 24,000 enemy were known to have been killed. No more than 1000 were ever captured and many of the captives died from wounds or malnutrition. Most of the survivors hid in caves for months and usually killed themselves rather than be captured... The permanent stockade... first accommodated 500 men; later it was extended 75 feet to provide space for 600 persons.
malnourished, and suffering from war-induced traumas (Ibid.: 429-445).

Both the Chamorro and Carolinian survivors had seen family members and friends killed or severely wounded. Some had been forced to leave their sick and dying relatives behind in order to escape to relative safety. Later, after most of the shelling had stopped, survivors leaving their hiding places had to walk over the thousands of bodies of the dead that lay maimed and rotting. The trauma of these experiences is permanently etched into the memories of Carolinian and Chamorro survivors who, even now, in the 1990's, exhibit signs of stress when they discuss what they saw and what they were forced to do to survive. One man, who was a child during the invasion, described to me how he had seen part of his sister's head blown off during the invasion, and in the camp, watched as his infant nephew died of injuries. He also described the illness, lack of food and water, and ubiquitous death at Camp Susupe. These contemporary recollections are similar to those described by Joseph and Murray (1951) in their psychiatric study of the Chamorros and Carolinians between 1947 and 1948. Some of the consequent behaviors resulting from the traumas include intense fear of deprivation, war, and nuclear bombs, and insecurity around authority figures (Lloyd 1996a; 1996b; 1996c).

Gradually, as the fighting abated, conditions in the
camps greatly improved, especially for the Carolinians and Chamorros. Civilian affairs officers took charge of the camps and more supplies arrived. The Chamorros and Carolinians were moved into buildings in the village of Chalan Kanoa and were allowed out during the day to farm; some worked for the Americans as guards, police, nurses or guides. Eventually, others participated in trade cooperatives or began small businesses, including masseur, cobbler, candy, and barber shops (Richard 1957a: 511; 515). Eventually, all three of the camps became somewhat self-sustaining, with their own governments, schools, and cooking facilities. Some contemporary critics have likened the fenced camps where the Chamorros and Carolinians lived to German concentration camps, but the barbed wire was there less to keep the indigenous people in than to keep others out (Richard 1957a: 472; Lloyd 1996b). Just as local Carolinian and Chamorro men acted as police and guarded their camp from possible external threats, the Japanese and Korean camps had their own police forces. There were still small groups of armed Japanese soldiers around the island, and unexploded ordinances. Perhaps most importantly, the local people were being protected from the American troops who were likely to rape the women.\footnote{Joseph and Murray (1951: 250-253) give an account of a mentally ill Carolinian woman who was "frequently the victim of rape by American
those who were there as children, while remembering the death and disease that surrounded them, also have fond memories of the first democratically held elections on the island, the re-establishment of religious services, and of some of their interactions with the American personnel (Ibid.)

Nevertheless, approximately 2,000 people died from all three camp sectors (Lloyd 1996b).

Although some Japanese soldiers managed to remain in hiding until December 1, 1945, American forces in the Pacific had effectively reversed Japan's domination in the Pacific when they secured Saipan on July 9th 1944. Control over Saipan gave the Allies a strategic advantage, allowing them to strike the Japanese home islands by air, as well as facilitating attacks on other targets. By early August, Tinian was captured, fortunately with far fewer civilian soldiers."

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49 The same man who saw his sister critically wounded also spoke joyfully about running along the fence line at camp Susupe, talking to the GI's, and trying to bum cigarettes off them for his older brother.

50 According to Richard (1957a: 484-485), the most deaths, 73 percent, were the result of dysentery, diarrhea, and malnutrition. Furthermore, She writes:

The death rate in the months immediately following D-Day was appalling. The total number of deaths between June 15 and July 15, 1944 was 515; the number between June 15 and September 30 was 2002: 1888 Japanese, 24 Koreans, and 140 Chamorros and Carolinians. The total deaths for July were 786; for August, 711; for September and October, 733, an average annual rate of 225.6 per thousand people. After October 1944 the mortality rate decreased.
casualties,\textsuperscript{51} and Guam was recaptured. The remaining Mariana Islands were "neutralized" by aerial attacks, even though technically remaining under Japanese control.\textsuperscript{52} The Allies, for example, did not secure Rota until September 1945. The American Navy's control and administration of the Marianas through the final years of the war entailed a huge infusion of personnel and materials, and included intensive war-related construction. While some soldiers continued to search for Japanese soldiers, others fortified Saipan, Tinian, and Guam in preparation for the planned invasion of Japan. The Navy Seabees turned Tinian into a giant airfield that would become the origin of the infamous nuclear strikes on Hiroshima and Nagasaki.

At the close of World War II, the American Navy retained control over the former Japanese mandated islands until such time as the Allies, under the jurisdiction of the United Nations, determined Micronesia's future political trajectory. In the Marianas, the Naval Administration began to create order and take charge of repairing the damage wrought by the

\textsuperscript{51} Camp Churo was established on Tinian to house the Japanese, Korean, and Chinese civilian prisoners and the Japanese POWs. The majority of POWs, however, were moved to the Saipan stockade and the few Chamorros who had been living on Tinian were sent to Camp Susupe (Richard 1957a: 553-561).

\textsuperscript{52} A group of Japanese, still believing that the war continued, lived on the Northern Mariana Island of Anatahan until 1951 (Richard 1957c: 180-187). Based on a book by Michiro Maruyama, the dramatic events that took place during these years are depicted in the film The Saga of Anatahan.
invasion and by the subsequent Allied fortification of the Marianas. This project entailed clearing away massive amounts of rubble, building new structures—some military, recreating infrastructure, and re-vegetating those islands, like Saipan, that had suffered nearly complete deforestation. But, as the Navy bulldozed to remove debris and rebuild, they also destroyed important, extant features. Most of the boundary markers that had survived the bombardment, both natural and man-made, were bulldozed along with the rubble. The use of crushed coral for roads and construction ruined large amounts of previously arable land. Finally, the military appropriated a great deal of public and private land, and imposed new land policies in the region.

Although Chamorros and Carolinians welcomed the liberation of their islands from the Japanese after so many years of hardship, American rule continued the colonial process, albeit in a different form, that had begun with the Treaty of Tordesillas. The people of the Mariana Islands, along with other peoples and nations across the globe, had become part of an imperial stratagem that assumed that European nations were predestined to rule. It is in these instances that history seems the most arbitrary, at least to those who have been its unwilling subjects. The Mariana Islanders became part of a global colonial and missionizing process that spanned five centuries and forever changed their society. This force even now imposes what seem to local
people unreasonable and incomprehensible rules, laws, and standards.
CHAPTER 3
OUTPOST OR COLONY?: THE DEVELOPMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS

In the first half of the twentieth century there was a worldwide reaction against imperialism. Yet, with the advent of the cold war, there was also the desire to draw in and control other regions of the world. The Allies had been in dispute over the ultimate disposition of captured territory since the signing of the Atlantic Charter in August 1941. This agreement, which laid the philosophical groundwork for the creation of the United Nations, set forth the principles of self-government for colonized peoples, and repudiated the territorial ambitions of the signatories (Adams 1972: 85; Richard 1957b: 56). At the Cairo Conference in November 1943, Churchill, Roosevelt, and Chiang Kai-shek determined that Japan would be stripped of all of the territory it had acquired since 1914. Although no formal decision was made in Cairo as to which nations would control Micronesia, there was a tacit understanding that the United States would play a significant role.

1 According to U.S. Secretary of War Henry Stimson the newly acquired islands of Micronesia "are not colonies; they are outposts" (quoted in Gaffaney 1995: 30).

2 According to Gale (1979: 51), "There... appeared to be agreement at Cairo and later at Potsdam, that none of the Allies had any intention of competing with the United States for control of Micronesia, although there was still some uncertainty about the islands south of the equator."
The U.S. Navy had administered the Marianas and the rest of Micronesia since 1944, but, at the close of the war, more permanent arrangements had to be made about the future political status of these distant properties. Post-war planning began as early as 1942 in the United States. Although the Navy's role as administrator of the Pacific Islands was not agreed upon by various government departments until April 1943, the School for Military Government was started in January 1943 at Columbia University to train Naval Reserve Officers in civil administration (Richard 1957a: 16-59). Also, the Advisory Committee on Postwar Foreign Policy was formed to address the future of non-self-governing people. The committee subsequently drafted a proposal promoting a system of international trusteeship. The plan was similar to the League of Nations' Mandate system, but emphasized independence and the administering nation's

3 Although the U.S. military branches began divvying up their post-war responsibilities early on, there was no formal Allied agreement that the United States would take charge of Japan's former territories. See footnote 2.

4 The school was eventually transferred to the larger campus of Princeton; there, naval officers took charge of educating the students. In 1946, the School of Naval Administration (SONA) was founded at Stanford (Richard 1957a: 46-61).

5 See Richard (1957a; 1957b; 1957c) for a comprehensive history in three volumes of the Trust Territory from 1942 until 1951. Her work is the primary resource for this period.

6 These graduates, however, were not prepared or trained for the disaster conditions that they were to encounter in war-ravaged Micronesia (Ibid.: 453).
responsibility to prepare people for this eventuality (Richard 1957b: 55-82).

For several reasons, immediate self-determination was not a possibility for the Micronesians, nor did the victorious Allies seriously consider it (Gale 1979: 47-48). First, the pervasive effects of the war had left Micronesia in economic disarray. Because the islands' infrastructures had been destroyed and the majority of people were malnourished, sick, injured, and homeless, the indigenous inhabitants had no means to sustain themselves or rebuild their economies. At the end of the war, the Allies were obligated to participate in the reconstruction of the islands not only because they were partially responsible for the destruction, but also because they were bound by a new moral force that promoted international accountability (Sayre 1948: 263).

A second consideration for the Allies, especially the Americans, was the issue of national and international security. By the early 1940s, the strategic importance of Micronesia had become patently clear. The United States was not going to repeat its previous mistakes made after the Spanish-American War and in the following decades by losing control of the region. Moreover, many Americans felt they had a claim to Micronesia because of the incredible loss of lives and expenditure of resources that were required to capture the islands from the Japanese (Adams 1972: 84). The (belated)
recognition of Micronesia's military potential was compounded by the considerable fear that the former Mandates and colonial territories could become a spawning ground for dissent and aggression (Friedman 1994: 38). Micronesia was thought to be particularly susceptible to political instability and vulnerable to military aggression because of the economic devastation and because Micronesians were regarded as backward and not ready for self-government (Friedman 1994: 47; Sayre 1948: 263).

Despite the post-WWI ideological transformations that had led to the creation of the League of Nations and the commitment to dependent peoples reflected in the Atlantic Charter, de-colonization was not universally embraced (cf. Kiste 1993). The British bristled over the idea of "independence," fearing the demise of their empire, and many in the United States wanted to annex the former Mandates to ensure national and international security. On the other hand, the U.S.S.R., despite its own history of expansionism, vehemently opposed the perpetuation of any form of colonialism in the negotiations before and after the war (Sayre 1948; Richard 1957c: 40-41). Furthermore, branches of the United States government did not all share the same post-

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7 According to Sayre (1948: 280-1), after the creation of United Nations, the United States interpreted the term "self-government" broadly so that it would not automatically mean independence.
colonial vision. There was considerable antagonism between the Departments of Interior, Navy, State, and War, and between Navy and Army officials within the military.⁸

Conflict between the U.S. departments mirrored the broader ideological issues debated within the United States and between the Allies regarding the fate and future of non-self-governing territories (Friedman 1994: 36). The tension created by the dual, and often opposing, goals of security and anti-expansionism, moreover, caused incoherence in post-war planning and policy (Gale 1979: 50; Kiste 1993: 70; 1994: 230; Petersen 1979: 28; Richard 1957b: 55). On one side of the debate, American military officials were concerned that the Japanese would recuperate and try to regain their former power. They were also increasingly troubled by the threat of communism posed by the U.S.S.R. and China. With the support of several members of Congress, both the Army (and Army Air Force) and Navy advocated the complete retention of and dominion over Micronesia. Members of the State and Interior Departments, in contrast, opposed any form of colonialism and vocally criticized the Navy's history of unenlightened administration over Guam and Samoa (Adams 1972: 90; Friedman 1994: 45-47). The military and civilian departments, however, ⁸ For a detailed account of the inter-departmental rivalry and debate over annexation and independence see Adams (1972), Friedman (1994) and Richard (1957b; 1957c).
did agree that the United States should be the administering authority in Micronesia.

Eventually, the allied nations compromised and, on April 2, 1947, signed a draft trusteeship agreement at Lake Success, New York. The trusteeship system was designed to integrate the goal of global security with the promise of self-government and the termination of colonial systems. Nevertheless, this ideological fragmentation required the creation of new legal and international categories that would subsume possible conflict and simultaneously ensure the preservation of certain extant systems of governance.

Although modeled on the League of Nations Mandate system, the U.N. trusteeships differed in several significant ways. Whereas the League strictly prohibited military facilities of any kind in the Mandates, the United Nations promoted the establishment of military forces in all of the trust territories.9 Although the Soviets disagreed, the majority of nations believed that the territories should share the responsibility of protecting their own countries and actively

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9 Article 84 of the United Nations Charter states that:

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.
participate in international security. Non-self-governing territories, however, were only to be used in support of the United Nations in its fight for human rights, and not for the self interested ambitions of any one nation (Sayre 1948: 287-288).

One major compromise in the agreement was the creation of two types of trusteeships, ordinary and strategic (Gaffaney 1995: 30). Although the United States had to succumb to the demands of altruism and international respectability, they were able to use their (substantial) influence to have the Trust Territory of the Pacific Islands (TTPI) designated as the first (and only) strategic trust. Congress approved the Trusteeship Agreement on July 18, 1947, giving the United States control over most of Micronesia (Richard 1957c: 43). Ordinary NSGTs, of which there were ten, were under the purview of the Trusteeship Council, which in turn, was subject to review by the General Assembly (Richard 1951: 37; Richard 1957b: 67; Sayre 1948: 277). Strategic Trusteeships, however, were under the authority of the Security Council and were not answerable to the General Assembly. Furthermore, the United States, like the four other

10 The Trust Territory of the Pacific Islands, just as Japan's C Mandate before it, encompassed all of Micronesia except for Guam, the Gilbert Islands, and Nauru.

11 The United States, the U.S.S.R. (now Russia), China, France, and Great Britain are the five permanent members of the Security Council.
permanent members, had and has veto power in the Security Council.

In practical terms, the designation of a trusteeship as strategic permitted the administering nation to have virtual autonomy over the region. This meant that the area could be fortified without any U.N. oversight, large areas of land could be used for the military, and the United States could close off parts of the area and even exclude U.N. representatives (Richard 1951: 41). Furthermore, unlike the administrators of the ordinary territories who were required to treat all members of the United Nations equally in economic matters, the United States could economically discriminate by giving American companies commercial advantages (Ibid.). Finally, the Trusteeship Agreement could only be terminated with the United States' consent because of the veto power held by the United States as a permanent member of the Security Council.

Although the Security Council oversaw the TTPI and the United States agreed to fulfill the four general objectives\(^\text{12}\)

\(\text{12} \) Article 76 of Chapter XII, International Trusteeship System, in the Charter of the United Nations states the following:

a to further international peace and security;

b to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory...;

c to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex,
of trusteeship and submit reports to the United Nations, the United States had the right to unilaterally decide which trusteeship obligations should be fulfilled (Richard 1951:41; 1957c: 1035-64). Technically, the United States was accountable to a higher authority but, in actuality, had almost unlimited control.\(^{13}\) The Trusteeship Agreement (like all the trusteeships) required that the United States prepare the Micronesian people for eventual independence or self-government through the creation of modern economic, educational, and political systems (see footnote 12).\(^{14}\) In reality, the Trust was also designed to justify the continuation of processes of rule that the international community held to be obsolete and which were ideologically antithetical to the American ideals of self determination for all people (Kiste 1993: 69).

Of fundamental concern to President Roosevelt, and subsequently Truman, was that the United States not appear to be acquiring territory or materially benefiting in any way

\(^{13}\) As Richard (1951: 43) points out, this arrangement requires a large degree of "good faith" on the part of the administering authority.

\(^{14}\) The three status alternatives available to terminate trusteeship were independence, free association, and complete integration into another sovereign nation.
from the trusteeship system. Although both presidents were ideologically and personally more connected to representatives from the State and Interior Departments, they were also highly cognizant of issues surrounding national security (cf. Vincent 1947). As part of his commitment to de-colonization, Truman ordered the end of the Naval military administration on July 18, 1947, the same day that he signed the resolution making the United States the administering authority of the Pacific Islands Territory (Richard 1957c: 47). Although the military government was disbanded, the Navy remained as administering authority over the civilian government until Truman designated a permanent civilian administration in 1951. The Navy’s civilian government, despite changes in nomenclature, was not substantively different from the military administration.\(^\text{15}\) And whether administered by the Interior or the Navy, the entire Trust Territory was central to America’s policy of strategic denial, a tactic that continues to this day albeit in a different form.

In the years immediately after the war, the naval administrations, both military and civil, were confronted with the task of massive reconstruction.\(^\text{16}\) The Navy began

\(^\text{15}\) See Richard (1957c), for a detailed account of the Navy’s civil administration of the territory.
\(^\text{16}\) For in-depth descriptions of the post-war years on Saipan see Joseph
setting up schools, rebuilding the villages, developing local
governments, instituting medical and dental care, and
establishing a new infrastructure (OPNAV 1951; Richard 1957b;
1957c). In the Marianas, the Navy, at the request of 277
Carolinians and Chamorros who had formerly lived there,
assisted in the resettlement of the islands of Agrihan and
Alamagan.¹⁷ The Navy also repatriated a group of 217
Chamorros who had been living on Yap since before war.¹⁸
These Chamorros were settled on the virtually empty island of
Tinian and given homesteads (Richard 1957c: 565-570; Spoehr
1951).¹⁹ Despite the improvements the Navy made in repairing
the islands, they faced shortages of essential goods as well
as personnel and ships (Oliver 1971: 24). The effects of
America's already nebulous policy were exacerbated by the
lack of administrative continuity caused by the frequent
turnover of personnel.

Concurrent with the Navy's military administration of

and Murray (1951), and Spoehr (1954). All three authors conducted their
research on Saipan in the late 1940s.
¹⁷ The Naval administrators were also in charge of the difficult task
of returning the tens of thousands of American troops to the United
States and repatriating the thousands of Japanese civilians and POWs
remaining in the internment camps, a feat not completed until 1947.
¹⁸ In the immediate post-war years the Navy took part in relocating
and/or repatriating several groups of Chamorros and Carolinians. See
Poyer (1999) for discussion of some of the issues surrounding these
relocations.
¹⁹ Spoehr (1951: 16) writes that there was a Leprosarium on Tinian that
had approximately 100 patients from throughout the Trust Territory.
the former Japanese Mandates was the reestablishment of naval rule in Guam after the Allied invasion in 1944. Because it had been an American possession before the war, Guam reverted to its previous administrative status. In 1949, however, Truman announced his intent to end the Navy's tenure and transfer control to the Department of the Interior. On August 1, 1950, with the passage of the Organic Act, Guam officially became an unincorporated territory and its citizens became U.S. citizens. Guam, however, "is essentially an instrumentality of the U.S. government," and does not have the rights that had been conferred upon the early U.S. territories (McCormick 1993: 521).

Originally, territorial status was conceived of as a transitional stage while a region prepared to become a state (McKibben 1990: 257). During this time, presidential appointees would build the governmental infrastructure and develop the requisite legislative and judicial systems. When the United States began to acquire overseas properties after the Spanish-American War, however, new legal, social, and political issues began to arise. Of particular concern was the (future) citizenship and constitutional rights of these non-white populations.\(^{20}\)\(^{21}\) A series of Supreme Court

\(^{20}\) In his opinion in *Downs v. Bidwell*, 182 U.S. 244, 287 (1901), Justice Brown states:
*If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation, and modes of*
opinions, collectively referred to as the Insular Cases, fundamentally changed the process and principles of territoriality (McKibben 1990: 257-64). Justice White's concurring opinion in Downes v. Bidwell, however, has had the most serious consequences to the rights of territorial citizens. In this opinion, White developed the theory of "territorial incorporation," thereby creating a distinction between territories that were and territories that were not destined for statehood. As a result, only "fundamental" parts of the U.S. Constitution apply in unincorporated territories (cf. McFerson 1997; Torres 1994), creating "an

thought, the administration of government and justice, according to Anglos-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that ultimately our own theories may be carried out, and the blessing of a free government under the Constitution extended to them.

21 See McFerson (1997) on the importance of race in American overseas policy.


24 It can be argued that this "distinction" is a false one. As Justice Harlan stated in his dissenting opinion in Downes, 182 U.S. at 382: "I am constrained to say that this idea of 'incorporation' has some occult meaning which my mind does not apprehend. It is enveloped in some mystery which I am unable to unravel."
insurmountable obstacle to their attainment of statehood" (McKibben 1990: 263), and has obfuscated the issues surrounding continued American colonial rule in American Samoa, Guam, Puerto Rico, and the Virgin Islands.

Ironically, the Insular Cases became a central legal justification supporting the special provisions found in the 1975 Covenant of the Northern Mariana Islands, which amplify the rights of the indigenous population (Willens and Siemer 1977). Sections of the Covenant limit the applicability of the U.S. Constitution in the Commonwealth (c.f. Herald 1992; 1995; Isenberg 1985; Tamanaha 1989). In consideration of the CNMI's unique circumstances, the Covenant, for example, provides for a malapportioned Senate and restricts land ownership (cf. Meller 1997). The Insular Cases (and post-Insular Cases) have been used as precedents in the argument to give the Commonwealth more autonomy, an interesting reversal from their previous applications. In the early twentieth century, the incorporation doctrine was used to curtail the rights of American overseas territories, such as Puerto Rico, and justified a racist policy to deny these territories equality and complete Constitutional protections (Leibowitz 1989: 17-26; McFerson 1997). In the

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25 The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States.

26 As Justice Harlan argues in his dissent:

The idea that this country may acquire territories anywhere upon
Commonwealth's case, the Insular Cases have been interpreted in a way to grant more rights, including that of land tenure, for the indigenous inhabitants of the Marianas.

**Administering the Northern Marianas: 1951-1962**

On July 1, 1951, administrative control over the entire Trust Territory was transferred to the Department of the Interior. Its jurisdiction over the Northern Marianas, however, would prove to be brief. In 1952, Saipan and Tinian were returned to the authority of the Secretary of the Navy for security reasons, effective January 1, 1953; on July 17, 1953, all of the remaining islands north of Saipan came under the Navy's control. Strangely, between 1953 and 1955, Rota was neither a district nor part of a district (UNVM 1956: 29). In March of 1955, however, Rota became its own district under the Department of the Interior and so was

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the earth, by conquest or treaty, and hold them as mere colonies or provinces,--the people inhabiting them to enjoy only such rights as Congress chooses to accord them,--is wholly inconsistent with the spirit and genius, as well as with the words, of the Constitution.

And

...the Constitution does not sustain any such theory of our governmental system. Whether a particular race will or will not assimilate with our people, and whether they can or cannot with safety to our institutions be brought within the operation of the Constitution, is a matter to be thought of when it is proposed to acquire their territory by treaty.

27 By Executive Order 10265.
28 Rota was under the jurisdiction of the Island Commander of Guam from 1945 through 1946 (Richard 1957b: 95, 99).
administratively split from both Guam and the other Northern Mariana Islands and geographically isolated from the rest of the Trust Territory.

Although the Navy and the Interior had separate organizations in Micronesia, they had parallel systems of governance which shared the same obligations as delineated in the U.N. Charter. The TTPI government derived its legal status and authority primarily from the following sources: the Charter of the United Nations, the Trusteeship Agreement with the Security Council, Executive Orders, Congressional Acts, Proclamations made by the High Commissioner, applicable U.S. statutes, and the Trust Territory Code (Code of the Trust Territory of the Pacific Islands 1952; 1959; 1980; Miller 1951a: 152-155; TTPI 1958: 6; TTPI 1960-61: 9).

Oliver (1971: ix), as do other authors (e.g. Gale 1979; Kiste 1986; 1993; McHenry 1975), characterizes the 1950s as the nadir of America’s administration of the Trust Territory. Not only did the U.S. government prioritize security over all other matters, but it also espoused a strange blend of Americanism and social evolutionism (Heine 1969; TTPI 1958: 11). The ideals of democracy and capitalism coexisted with a

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29 The Executive Orders changed through the history of the TTPI. For example, Executive Order No. 10265 gave the Secretary of the Interior responsibility for the Territory in 1951. Executive Order No. 10408, signed in 1952, transferred authority over Saipan and Tinian, and Executive Order No. 10470, signed in 1953, transferred the remaining Northern Mariana Islands to the Secretary of the Navy.
limited vision of economic development. The administration's stated goal was self-sufficiency; the emphasis, however, was on agricultural subsistence, not economic prosperity (Taylor 1951; TTPI 1958: 52-53; UNVM 1956: 41). Administrators saw themselves as facilitating Micronesia's "natural evolutionary process of advancement" (TTPI 1958:11). Much to Oliver's chagrin, economic studies and proposals that were done in the early post-war years, such as his own, were ignored. The United States and, to a lesser degree, the United Nations were hesitant to introduce foreign capital to the region or introduce Micronesia into the global economy lest local business interests be overwhelmed (United Nations Visiting Mission to Trust Territories in the Pacific 1956: 43-44).

Nevertheless, there were many locals, Chamorros in particular, who embraced entrepreneurial endeavors (Spoehr 1954: 114), although the benefits were restricted by the difficulty of access to markets, including Guam. It is with some resentment that people now remember the extreme differences in pay for Micronesians and for the workers imported from the United States or with the salaries in Guam. Also, many local people did not want to return to an agricultural lifestyle (assuming they had one before),

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30 Henceforth cited as UNVM.
31 In 1947, for example, wages ranged from $7.50 to $75.00 per month. See Richard (1957b: 488-493; 1957c: 641-657) for a more detailed discussion of the Territory pay scale.
despite the Navy's promotion of agriculture and the fact that
the Marianas were the largest vegetable and fruit producers
of the Territory (UNVM 1956: 31). The Administration's intent
was to protect Micronesia from the pitfalls of rapid
advancement and allow its political systems to emerge
gradually. The result was "economic stagnation" (Meller 1969:
17). One important effect of this subsistence policy was that
land, an important commodity during the Japanese
Administration, lost much of its monetary value. Ultimately,
this policy of protectionism and paternalism backfired when,
in the 1960s, a new focus on the region caused embarrassment
to the United States and its administrative policies.32

On Saipan and Tinian, the American Naval administration
focused on its own strategic needs through extensive military
development. Although the Navy only actively used two
islands, all of the other islands, including Guam, were part
of a buffer zone and as such constituted a closed military
area that required a security clearance from the Defense
Department for admittance (McPhetres 2000). In theory, Trust

32 According to the Solomon Report (1963: Vol. 1, 8):
The emphasis of our trusteeship has been on protection, not
adaption and development, for example, the protection of local
languages against English, which offers superior means of
communication in the world today; the protection of local
subsistence economy against American capital and management that
could improve low-income levels, inadequate transportation and
wretched housing. The indefinite, but obviously long-term nature
and vague goals of the trusteeship contribute greatly to that
protective attitude.
Territory citizens were free to move to and from the islands as part of their guaranteed freedoms, "subject only to the requirements of public order and security" (OPNAV 1951: 49). The 1956 U.N. Visiting Mission, however, reported that many locals, especially Rotanese, complained about difficulties entering Guam or the Saipan District. The Mission was told that "clearance had been rarely denied and that permission to enter was generally granted without delay" (UNVM 1956: 36). Nevertheless, with thinly veiled irony and guarded criticism, the Mission acknowledged that it was not "within [its] competence to pass judgement on administrative arrangements based on considerations of strategy and security," but wondered if "the people of the Saipan district would not be better served by the transfer of the administration of the District to the civil government of the Trust Territory." Statements such as the above, foreshadowing harsh criticism five years later, indicate the international

33 The following statement is a good example of the tension between security and personal freedoms that was manifest in American policy:

Freedom of movement within the territory is guaranteed by the Bill of Rights and is subject only to the requirements of public health, order, and security. There have been no instances of indigenous inhabitants leaving the Territory in search of employment apart from the movement of a few individuals and small groups to Guam. No serious problems have been created by this instance of labor migration. The Administration does not allow large numbers of laborers to leave the area and thus deplete local manpower (Carey 1951: 174)(emphasis added)).
community's strong preference for a civil administration and their awareness of the Naval Administration's convoluted dissimulating despite limited information.

Of particular notoriety was the construction of a secret CIA training installation on Saipan, referred to as the Naval Technical Training Unit (NTTU), at a cost of approximately 28 million dollars (Lincoln 1972: 126; Willens and Siemer 2000: 9, 32-34). It was at this facility that the CIA trained Nationalist Chinese guerillas as part of an effort to stop the advance of communism. The high level of security enforced by the NTTU required that substantial portions of Saipan, such as Marpi and Kagman, be restricted. The presence of the CIA, however, did have some benefit for the local people. The Navy was a source of jobs (although generally not skilled), provided a market for local goods, was a source of money, resources and educational opportunities, and, most importantly, left an infrastructure that ultimately gave the Marianas a large advantage over other parts of the Territory.34

In the Trust Territory, 102 municipalities were formed within the seven districts. Although the Trust Territory government promoted the development of these distinct local

34 It was because of these modern and extensive facilities that Saipan became the new Capital of the Trust Territory in 1962, despite original plans to have it more centrally located in Chuuk (Willens and Siemer 2000: 34-35).
governments, administrators and U.N. representatives were concerned about the cultural cleavages and separatism that prevailed throughout the territory. The United Nations, through the Visiting Mission, showed its philosophical investment in Micronesia's political unity when it advocated spending funds to promote a "territorial consciousness" (1956: 34). Nevertheless, in the mid- to late 1960s and early 1970s, the Northern Marianas Islands, challenging the prevailing sentiment against fragmentation, fought for and won the right to separate negotiations with the United States.

Despite the limitations consonant with the islands' secure status and military administration, Chamorros and Carolinians became active (and vocal) in their own governance.35 As the American naval administration promoted the principles of democracy, the local people became increasingly educated and politically more sophisticated than the majority of the other island districts (McPhetres 1992b; Richard 1957c: 484; Willens and Siemer 2000). In the municipalities of Rota, Saipan, and Tinian, representative governments were established (UNVM 1956: 30; TTPI 1958 28-29; TTPI 1960-61: 23-26). Rota had a Municipal Council with a

35 See Farrell (1991); McPhetres (1992b; 1997), and Meller (1969) for more detailed discussion of local government in the Marianas during the Trust Territory administration.
Chief Commissioner, Tinian had a municipal Congress and Mayor, and, on Saipan, there was the unicameral Saipan Congress. This district legislature became bicameral in 1962, with a Mayor at its head, as well as ten Commissioners for six of the villages (TTPI 1958: 28-29).

**Land Issues After the War**

One obstacle to the creation of economic stability in the Marianas was the issue of war claims. Although the United States began developing their policy on the settlement of claims before the end of the war, as early as 1943, and systems were in place immediately afterward, there was no remuneration until decades later (Miller 1951b; Richard 1957a: 235-239). Numerous land claims were settled fairly early on in the American administration, such as two land exchange programs that included exchanges for land that had been placed in the military retention area and for land severely damaged during the war (Johnson 1969: 18). Most claims directly related to the war, however, such as reimbursements for death, injury, damages to property due to destruction or coralization,\(^\text{36}\) or revocation of property, were not forthcoming. As Spoehr writes:

\(^{36}\) Coralization refers to application of crushed coral to build, for example, roads. Once this is done the area affected can no longer be used for agricultural purposes.
Having no clear title to farm land and conscious of the fact that neither their village houses nor the plots on which the houses stand are legally theirs to dispose of as they see fit, the Chamorros have held a considerable number of inheritances in abeyance until the questions of land ownership are more nearly resolved (1954: 135).

Many factors hampered resolution, including the destruction of documents and boundary markers, the complexities of Micronesian land tenure, a paucity of funds, and the long deferred resolution of negotiations between the United States and Japan (Leibowitz 1989: 532-34; Willens and Siemer 2000: 13-15, 94; UNVM 1956: 38). Because many people were left in limbo about their lands and other claims, they remained unsure of their futures. A February 15, 1956, letter from Melchior S. Mendiola, the Chief Commissioner of Rota, to the United Nations expresses some of the intensity that the issue of war claims evoked:

During the Second World War the people of Rota suffered much and lost much. We have received nothing as indemnity as have people of other Islands and other countries. Several people were killed by the Japanese when they were suspected of being spies or working against the Japanese. Others were severely punished with lasting ill effects that have incapacitated them. All of the men, women and children of the island were used as slave labour. All of us lost our homes, our farm equipment, our tools, runs, animals, even our clothing. All of the men of the island from the age of thirteen up were imprisoned towards the close of the war by the Japanese, who intended to put us all to death ... Therefore we sincerely request that the matter of reparations which we sincerely feel to be due us, be reopened and Japan be requested to make just reparations (UNVM 1956: 49).

Despite continued requests, war reparations were not
completely finalized until the late 1980s.

The United States paid 10 million dollars in 1966. Although Japan, by treaty, was not required to contribute monetarily to the reparations program, it gave 5 million dollars worth of fishing boats, school buses, and the like to the Trust Territory, ex gratia. Both the Japanese and American payments, however, were deemed insufficient in the early 1970s. Consequently, the United States established a war claims commission to compensate the people for damage done during combat and to remunerate the indigenous people for land taken by the U.S. military immediately after hostilities, but prior to the end of the war. In 1976, the United States paid approximately 16 million dollars to claimants or heirs of claimants in the Northern Mariana Islands (McPhetres 1992a: 227; 1992b: 259; 2000). Then, in the late eighties, the United States paid the rest of claims when Japanese foreign aid, also ex gratia, reached 50 percent of the total compensation.37 Given the small population in the Northern Marianas, the large influx of cash transformed the islands. Suddenly, individuals and families had large amounts of money that could be spent on cars, concrete

37 McPhetres (2000) notes that this is the only example of the U.S. paying war damage compensation to inhabitants of an area formerly held by the enemy. Even Guam was never paid compensation for Japan's occupation or subsequent destruction as a result of the American liberation of the island.
houses, boats, and entertainment. Furthermore, because many of the original claimants were dead and/or the property had changed hands, conflicts arose between the heirs of claimants who argued over the rights to the war claims distributions.\textsuperscript{38} Numerous people in the Commonwealth point to the large disbursement in 1976 as a turning point that triggered intra-familial hostility, litigiousness, and the move away from traditional Chamorro and Carolinian values.

Directly related to war claims were the constant and contentious land problems that surfaced immediately after the war. From the beginning, the chaos caused by the war and subsequent military activity made land issues paramount to the administrators.\textsuperscript{39} In its first decade of rule, the Administration formed a Land Titles Commission, assigned Title Officers to each district, commissioned anthropological research, and initiated a series of studies dedicated to land tenure (Emerick 1958; Richard 1957b: Appendix 21, 549; 1957c; Taylor 1951). Also, in order to determine land ownership the Administration heard extensive testimony on customary descent and distribution, and interviewed claimants and their

\textsuperscript{38} For example, see Nicolasa Babauta Camacho v. Juan Pua Naog, et al., CA 197-76 (1977), Civil Appeal No. 199 and 227, (1982), 8 T.T.R. 269.

\textsuperscript{39} Trust Territory Policy Letter, P-1, dated 29 December 1947, from Deputy High Commissioner C. H. Wright states:
The guiding principle of land policy is to safeguard native land rights and land ownership; and, so far as possible, to provide each family with land sufficient for adequate subsistence, and to assure community-wide access to essential land resources.
neighbors about the land's history and boundaries. Yet, despite the Navy's early recognition of the problem, land policy in the Marianas was in constant flux and disarray throughout the American administration. One cause, according to McGrath and Wilson (1971: 184), was that the Trust Territory Administration did not prioritize the resolution of land issues. Spoehr (1954: 120, 128-130), for example, criticized the Administration for the way they were handling many of the land problems. He noted that half of Tanapag village had become part of a military reservation and that a golf course had been built on private land for the benefit of the military, but that the owners had yet to be compensated. Another factor contributing to the confusion was the disappearance of records, maps, and documents collected during the Navy's military administration (Miller 1951b: 162; Richard 1957c: 502). Apparently, when the Trust Territory administration was transferred from the Navy to the Interior in 1951, many documents were lost or put into storage. A former Trust Territory employee who worked on Saipan in the early 1950s, however, alleges that Navy personnel, angry at the administration shift, destroyed a great deal of the documents to thwart the new administrators.

In 1944, local customs regarding land were an amalgam of

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40 For example, Saipan Land and Claims unpublished minutes of interviews on custom, January 23, 1951.
Spanish, German, and Japanese systems superimposed on pre-colonial traditions. The nascent American administration added a new wrinkle to the already complex Chamorro and Carolinian land tenure systems by imposing new land laws and policies (Johnson 1969). Because of the difficulty in determining ownership of land from the onset, a series of short-term solutions were promulgated. One plan was the creation of a system of revocable permits. The rationale behind temporary grants of land was to facilitate immediate access to land and return the people to a subsistence economy. Some Chamorros and Carolinians returned to their former properties with the hope that they would be able to prove ownership. Many others, however, could not go back to their land because it was in the military retention areas or was too badly damaged to be habitable or suitable for agriculture.

Not surprisingly, revocable permits ultimately caused more problems than they solved. That local people knew that their land could be taken away at any moment proved to be a disincentive for establishing and working the land. Many crops like coconut take many years to establish, so there was little reason to plant only for the short term (Miller 1951b:

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41 In the last year of the war and years immediately following it was imperative to begin agriculture because of shortages of basic necessities. The people of the Marianas were suffering from malnutrition.
162). Also, as the land claims process progressed and title was proven, land exchanges between individuals or families and the Trust Territory were required because much of the former privately owned land was located in the military retention areas. Consequently, because the Administration did not have enough available public land to fulfill their obligations in the exchanges, all of the revocable permits were rescinded (Emerick 1958: 232). Subsequently, the Administration instituted homestead programs and short-term leases with variable success.

The Trust Territory Government could engage in land exchanges and provide homesteads because of its control over "public" land. When the war ended, all land that had been previously owned by the Japanese Government (public domain), as well as land owned by Japanese companies, such as Nan'yo Kohatsu Kaisha (NKK), or individuals, was vested in the Alien Property Custodian. Approximately 434 square miles of the TTPI and, significantly, 90 percent of the Marianas were determined to be public (UNVM 1956: 40). The United States did not own this property, but rather held it in trust for the Micronesians. Some of the military retention areas were

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42 Previously called the Enemy Property Custodian and Area Property Custodian.
43 See page 23 of The Future Political Status of the Trust Territory of the Pacific Islands, Report of the President's Personal Representative for Micronesian Status Negotiations on the Status Talks Held at Hana, Maui Island, Hawaii, October 4-12, 1971, Washington, D.C. Hereafter
consisted of public land, but a great deal was privately owned. The solution, referred to above, was to instigate land exchanges so that all of the land in question became part of the public domain and the original owners received other property of equal value. Apart from the logistical problems arising out of these exchanges, Chamorros and Carolinians subsequently claimed much of what the U.S. Government deemed to be alien property. Significantly, because much of the alien property had been owned by Japanese businesses and government, it was located along the coast and/or on the best arable land. Despite the confusion and numerous conflicts over land ownership, one undisputed benefit of the Trust Territory's policy on land was that land ownership was restricted (cf. Latukefu 1974). As part of its policy against continuing forms of colonialism (globally) at the end of World War II, the United Nations mandated that only the indigenous population could own land (Oliver 1971: 12; Sayre 1948; TTPI 1958: 59-60).

The Development of an American Legal System

Despite America's initial inability to adequately advance the needs of the Trust Territory, administrators were cited as Report of the President's Representative 1971.

44 Equal value did not necessarily mean equal size. If the value of the land used by the TT government was more than the exchanged parcel, the land exchanges were 2:1 or up to as much as 1:19.
extremely successful in the development of American systems of control (cf. Pospisil 1979). There were many phases of judicial authority that will be discussed only in part here, but all were influential in the process of Americanization that has taken place in the past fifty years. The legal system enabled the United States to maintain social order and infuse Western values into the workings of everyday life (Tamanaha 1989). Initially, after the military courts were dismantled, the Navy developed a six-tiered legal system that was simplified when the Department of the Interior took over in 1951. The Interior established a Judiciary independent from the Executive and Legislative branches of the Trust Territory Government, with a chief justice and a minimum of one and a maximum of four associate justices appointed by the Secretary of Interior (Arnett 1985: 167-175; TTPI 1961: 17; 5 TTC § 1 (1980)). Furthermore, in 1952, the Trust Territory Code (TTC) was enacted, delineating a uniform set of laws for the entire region. The TTC applied uniformly throughout Micronesia, but additional local laws could be added as was

45 See Arnett (1985) for a detailed summary of the development of the American Legal System in the TTPI. For other descriptions of the legal system in Micronesia see Bowers (1951); Miller (1951a), Richard (1957b); Spoehr 1954: 102-4; TTPI 1958, and the Code of the TTPI.
46 King (1999: 366) notes that Judge Furber was referred to as a district judge not chief justice in 1951.
47 The TTC was first enacted in 1952, but was subsequently revised on several occasions.
appropriate to the specific Micronesian region. The TTC also recognized local customs as long as they were not in conflict with the Code or the aforementioned sources of law (TTPI 1958: 12, 42-43).

The Trust Territory Judiciary consisted of a High Court with an Appellate and Trial Division, District Courts, and Community Courts. The Saipan District had a comparable system to the High Court called the Saipan Court of Appeals, also with an Appellate and Trial Division, as well as its own District and Community Courts (TTPI 1961: 17). The High Court opinions were published in an eight-volume set called the Trust Territory Reports that covers the period from 1951 through 1988. The High Court consisted of American-trained lawyers who were in charge of its appellate and trial divisions, where they dealt almost exclusively with Trust Territory and U.S. law (Arnett 1985; King 1999). Micronesians who were considered knowledgeable often were called upon as advisors to the justices on issues of custom as provided for in the Code. The lower District and Community Courts were

48 TTC § 14 (1952) states: "Due recognition shall be given to local customs in providing a system of law, and nothing in this Chapter shall be construed to limit or invalidate any part of the existing customary law, except as otherwise determined by the High Commissioner." See 1 TTC § 102 (1980) for the more contemporary version of this section.

49 See, for example, TTC §§115-150 (1952) and Title 5 of the Trust Territory Code, 1980 edition for descriptions of the Judiciary.

50 "A judge presiding in the Trial Division of the High Court may select one or more assessors to sit with him at the trial of any case to
run by prestigious Micronesian laymen (apparently all male) with little or no training in legal procedure, but who were under the watchful eye of American expatriates. Procedural rules and forms were loosely followed in the early years, but, as time passed, a more structured system emerged along with an increase of American-trained lawyers (Arnett 1985: 175).

A significant feature of the U.S. administration was the creation of laws and a legal system based on a combination of indigenous customary law and American jurisprudence. Although the Trusteeship Agreement required the consideration of indigenous legal systems and custom, it was also an important ideological device that gave the American administrators more credence and authority in local matters (Sayre 1948). The incorporation of custom into the American legal system was an effective strategy of assimilation that gave the appearance that the changes were simply procedural not substantive.\(^{51}\) In

advise him in regard to the local law and custom which may be involved but not to participate in the determination of the case” (TTC § 126, (1952)).

\(^{51}\) Abel (1979: 168) addresses the issue of the imposition of western legal systems in more detail. For example, he rights: The “law” imposed is not a substantive rule but a legal institution or category of institutions—western courts. This shift in emphasis from substantive rules to institutions is one of the distinctive contributions of a sociological viewpoint, which sees rules, institutions, and processes as equally significant parts of a larger whole...I am not asking whether these new institutions attained their “purpose” but am rather looking for their inadvertent, unintended, unforeseen, or latent consequences.
this way, the transformed representation of custom became an effective way for the Trust Territory government and court to manage the indigenous people. As Merry (1988: 883) writes, "custom when penetrated by state law, changes its nature fundamentally and becomes part of state law." The applicability of customary law in the Trust Territory courts, however, was limited. Local custom could only take priority over American common law, not written law, and even here the Court made exceptions when custom was deemed contrary to American democratic principles, or when it interfered with criminal prosecutions or land disbursement (Arnett 1985: 185-197; Leibowitz 1989: 498-99; Tamanaha 1989). Moreover, as King (1999) argues, the Trust Territory High Court regularly "made pronouncements as to both custom and law" without explaining or referencing its assertions. The High Court's "creativity" in determining issues of law, fact, and custom has ramifications in the present as Trust Territory cases continue to be used as precedents today (see Chapters 5 and 6).

52 Similarly, other colonial administrations, such as in Africa, have applied the "repugnancy principle" to exclude certain customs deemed "repugnant to justice and morality" (Griffiths 1986: 7; Hooker 1975: 305; Merry 1988: 870; Okoth-Ogendo 1979: 160).
53 King (1999: 378) further contends that, as a result of its use of ex parte anthropological data among other actions, the "court was fundamentally eroded as an institution."
Changes in Attitude: The 1960s

As part of widespread changes in American policy toward the Trust Territory, Naval rule in the Northern Marianas came to a halt in 1962 when the administration of the Islands was returned to the Interior. One trigger for this shift was Kennedy's 1961 address to the United Nations General Assembly (Kiste 1986; Lane 1972: 67-69). Responding to increasing pressure from the Soviets and Asian and African nations for the total abolition of colonialism, Kennedy proclaimed his commitment to self-determination and simultaneously attacked the communists' role in the subjugation of peoples. The United Nations Visiting Mission, however, in that same year, criticized America’s administration of the TTPI. It charged the United States with neglect and pointed to inadequacies throughout its administration (Kiste 1986: 129; Leibowitz 1989: 496).

The embarrassment caused by this public censure prompted the Kennedy administration to take decisive action. Changes in policy included vastly increased funding\(^{54}\) for education, economic development, and health services (McHenry 1975:14-15). In 1962, Kennedy sent economist Anthony Solomon and his team to Micronesia to report on conditions and make

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\(^{54}\) U.S. appropriations for the TTPI increased 132 percent from almost 24 million dollars in 1962 to well over 55 million dollars in 1963 (Gaffaney 1995: 36-39).
recommendations, with the proviso that Solomon not question or challenge America’s strategic policy in the region (Gaffaney 1995: 38). The two-volume Solomon Report provides a summary and analysis of the political, economic, and social conditions in Micronesia. The Report, although an indictment of past American policy and administration in the Trust Territory, has also been widely condemned. In it, for example, is the recommendation for “Capital Investment for Overall Development” that (optimally) proposes the allocation of 9.9 million dollars for education and 13 million for public works (S-25). In keeping with America’s strategic interests, however, the suggested policy changes were aimed at readying Micronesia for “eventual permanent association” with the United States. Consequently, critics have

55 See Willens and Siemer (2000: 38-60) for a detailed and interesting account of the Solomon Commission.
57 For example the Report states:

The Mission regrets to report that a major obstacle to the overall development of the Trust Territory is the creaky functioning of the quasi-colonial bureaucracy in the Trust Territory government. Unqualified American officials with remarkable (sic) long periods of bureaucratic longevity, many from the days of the Navy Military government, are more the rule than the exception (S-27).

58 The Solomon Report (p. S-2) summarizes the United States’ position and therefore the Commission’s mandate:

Micronesia is said to be essential to the United States for security reasons. We cannot give the area up, yet time is running out for the United States in the sense that we may soon be the only nation left administering a trust territory...

In recognition of the problem, the President, on April 18,
interpreted the Solomon Report as a strategic map that plotted the co-optation of Micronesians because it promoted policy changes that would push the territory away from the political status of independence, which was part of the UN mandate (Kiste 1986: 129; McHenry 1975: 16-19).

The impact of the Report, however, was limited. After Kennedy’s assassination, the Johnson administration was more concerned with new agendas and did not prioritize reform in the Trust Territory. Increase in outlays continued, nevertheless (Gaffaney 1995: 38). In fact, the new administration withheld the Report by classifying the first volume as “secret” and the second as “confidential.” These classifications cast a pall over the Report and curtailed any potential it might have had for ameliorating the conditions in Micronesia (Willens and Siemer 2000: 49). Furthermore, some critics contended that the large inputs of money and resources in the 1960s and 1970s (as well as the implementation of some of Solomon’s recommendations) did less to promote independence and instead increased dependence on the United States (Gaffaney 1995: 38-41; Kiste 1986: 129-130;

1962, approved NASM [National Security Action Memorandum] No. 145 which set forth as United States policy the movement of Micronesia into a permanent relationship with the United States within our political framework. In keeping with that goal, the memorandum called for accelerated development of the area to bring its political, economic and social standards into line with an eventual permanent association.

In conjunction with the increased attention focused on the TTPI in the 1960s, the region, especially the Northern Mariana Islands (NMI), was becoming increasingly politicized. It was during this time that the Trust Territory's political organization started to change and the region's leaders began to explore the question of their future political status. In 1965, under the jurisdiction of the Secretary of the Interior, the bicameral Congress of Micronesia (C.O.M) was established,\(^5^9\) with its headquarters located on Saipan.\(^6^0\) Although the High Commissioner had veto powers, full legislative authority over the TTPI was vested in the Congress of Micronesia.\(^6^1\)

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\(^5^9\) See Meller (1969) for an in-depth discussion.

\(^6^0\) The use of Saipan as the site for the C.O.M. was significant because it gave the people of the Marianas material advantages and increased political access and sophistication just as the location of the Trust Territory headquarters on Saipan had (see footnote 34).

\(^6^1\) Page 1 of "General Information," a publication put out by the Congress of Micronesia, Third Congress, summarizing the Congress of Micronesia's background and Legislative powers states:

1. **Power.** The legislative power of the Trust Territory of the Pacific Islands is completely vested in the Congress of Micronesia, consisting of two houses, a Senate and a House of Representatives; such power extends to all rightful subjects of legislation not inconsistent with:

   (a) Treaties or international agreements of the United States;

   (b) Laws of the United States applicable to the Trust Territory;

   (c) Executive Orders of the President of the United States and Orders of the Secretary of the Interior; or

   (d) Sections 1 through 12 of the Code of the Trust Territory (fundamental human rights and freedoms).
Due to the lack of initiative shown by the United States, the Congress of Micronesia established its own Future Political Status Commission in 1967 (cf Heine 1969; Kiste 1993; Willens and Siemer 2000).\footnote{According to Willens and Siemer (2000: 122), the Commission may have been the brainchild of Francisco Ada of the Northern Mariana Islands who made the recommendation while speaking with his friend Legislator Lazarus Salii of Palau.} Consisting of six members, one representing each district, its purpose was to explore the TTPI's different status options.\footnote{For more information see the Report of the Political Status Delegation of the Congress of Micronesia, Third Congress, Third Regular Session, July 1970. Hereafter Political Status Delegation Report.} The membership examined independence, free association, continuing Micronesia's status as a trust territory, and integration (with the United States) as an unincorporated or incorporated territory, or as a commonwealth (Kiste 1993: 131; Willens and Siemer 2000: 122-124). Initially, the Commission took an unbiased position regarding their options, but in 1969 recommended free association\footnote{As the Political Status Delegation Report (1970: 10) states:
The primary purpose of Free Association is to enable the people of a the free associated state to advance from a colonial status to a new and free status which satisfies their basic aspirations to rule themselves and protects their individuality and cultural characteristics, while recognizing the practical considerations which must apply to a territory of small population and limited resources. The greatest advantage in this arrangement is that it in no way hinders a further move either to closer association with the former administering authority, to association or federation with neighboring states or territories, or to sovereign independence. Further, according to the Commission, the basic principles of free association consist of the following:} or independence as the best
choices.

In that year, the C.O.M created the Micronesia Political Status Delegation, consisting of ten members, to further pursue Micronesia’s political alternatives and to discuss these options for a new status with representatives from the United States. The majority of the Northern Mariana Islands, however, was not wedded to a continued political association with the rest of Micronesia. Ever since the late 1950s, the Northern Marianas had investigated various options, including a closer relationship with the United States. One group established the Popular Party (Territorial Party, later Republicans) to support the political reunification of the Northern Marianas with Guam. In response, the Progressive Party (later Democrats) was formed, whose members also advocated a closer relationship with the United States but opposed integration with Guam (McPheters 1992a: 220-221).  

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(a) That sovereignty in Micronesia resides in the people of Micronesia and their duly constituted government;
(b) That the people of Micronesia possess the right of self-determination and may therefore choose independence or self-government in free association with any nation or organization of nations;
(c) That the people of Micronesia have the right to adopt their own constitution and to amend, change or revoke any constitution or governmental plan at any time; and
(d) That free association should be in the form of a revocable compact, terminable unilaterally by either party (Ibid.: 11).

65 See Willens and Siemer (2000: 22-25, 36–37) for in depth discussion of these parties and their role in the Marianas.
Although Carolinians were involved in the political system, especially the Progressive Party, many did not advocate separation from the other districts. Carolinians wanted to retain (or re-establish) political and social relationships with the rest of Micronesia. Although transformations have occurred because of geographic and historic separation, family, clan, and cultural ties remain strong between the Carolinians of the Marianas and their islands of origin (cf. Olopai and Flinn nd; Willens and Siemer 2000: 188-89).

The people of the Marianas actively sought out closer ties with the U.S. and separation from the rest of Micronesia for a variety of reasons. First, they had economically benefited from their relationship with the United States more than any other Micronesian group. The Marianas had better education, economic opportunities, and infrastructure primarily because of the islands' strategic importance and because the NTTU and later the Trust Territory headquarters were located on Saipan. Second, they prioritized development, economic prosperity, and political stability that permanent association with the U.S. could provide. Since the end of the war, people in the Northern Marianas had watched Guam progress and modernize while their business opportunities were limited by Trust Territory policy. Third, because of their long colonial history, Chamorros felt socially and economically more advanced than the other Micronesians and did not want to be dragged down by political association with
them.

Despite administrative opposition to fragmentation, the separatist tendencies of the Northern Mariana Islands' citizenry continued throughout the 1960s and into the early 1970s. Neither the United Nations nor the United States wanted the Trust Territory to break off into smaller political entities. The goal of keeping these disparate and dispersed island groups as one political entity and retaining preexisting (although arbitrary) boundaries was motivated by a fear of widespread ethnic upheaval, and the need to better control the region and simplify the negotiation process (Gaffaney 1995: 39; Hanlon 1989; Willens and Siemer 2000: 2, 126-8, 176-177). The priorities of the U.N. and the United States, however, were quite different. Whereas the U.N. was committed to independence for Micronesia, the United States remained concerned with national security interests and retaining dominion in some form, preferably territorial status, over the TTPI (Isenberg 1985; Miller and Thompson 1972). Despite the growing tensions between the Marianas and the rest of Micronesia over their differing status goals, representatives from the Marianas, knowing that there was no guarantee for separate negotiations, hedged their bets and continued to actively participate in the C.O.M and in the debate over status (Willens and Siemer 2000: 222-237).

In 1970, discussions were held on Saipan between the U.S. representatives and the C.O.M. Delegation. It was at
this round of meetings that the United States offered Commonwealth status to the delegates, a status that appealed to the Marianas. The Marianas wanted a closer relationship with the United States that included U.S. citizenship, the most self-government possible, and economic development (Willens 1997: 2). The other districts, however, desired Free Association and were adamant in the rejection of the commonwealth option (cf. Hirayasu 1987; Isenberg 1985; Michal 1993; Petersen 1985; 1994). The conclusion of the resulting report states that:

Under our present quasi-colonial status, the identity, individuality, and dignity of the people of Micronesia are being suppressed. American power and influence are currently so dominant in Micronesia that Micronesia and its people are being "Americanized" at an ever-increasing rate. This is having a tremendous effect upon all aspects of Micronesian life and society, and it will be impossible to control this influence until the people of Micronesia can establish their own government (Political Status Delegation Report 1970: 46).

The C.O.M.'s vehemence widened the rift between the Marianas

Under the terms of the Commonwealth status offered by the United States, Micronesia would become a part of the United States and would, as a result, assume certain obligations and receive certain rights and benefits. The relationship would involve much closer ties than either of the Micronesian proposals contemplates. The relationship would not be as close as that of a state of the union nor would it be one which implies any further change as is the case of an unincorporated territory. As a Commonwealth, Micronesian would permanently join the political family and political area which make up the Union under the United States Constitutional system.
and the other islands (Kiste 1993; Willens and Siemer 2000).  

Representatives from the Marianas, undaunted by previous rejections to their constant requests, eventually convinced the United States to agree to separate negotiations in 1972. A major reason that the U.S. finally agreed to consider an independent agreement with the Marianas was their strategic location. The cold war, Vietnam, as well as the possibility that the U.S. would lose its military facilities in Okinawa and the Philippines heightened the potential strategic value on the Marianas (Willens 1997; Willens and Siemer 2000; Pangelinan 1997). Consequently, the United States was motivated to negotiate with the Northern Marianas and, in turn, the Marianas had bargaining power. The ensuing negotiations began the complex process of defining Commonwealth status and the specifics of the relationship between the United States and the Northern Mariana Islands. 

After several years of research and negotiations, the Marianas Political Status Commission designed the relationship they wanted, given some of the U.S.-imposed restrictions. The end result was the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. The Covenant

67 See Report of the President's Representative 1971, for more information.
specifically defined this new relationship (cf. Herald 1992; 1995; Leibowitz 1980-81). Its provisions included, for example, U.S. citizenship, "the right of local self-government;" the restriction of land ownership to people of Northern Mariana Islands descent; the transfer of public lands from the TTPC government to the Northern Mariana Islands Government; but also United States sovereignty over the Commonwealth; the leasing of property to the United States Government; and U.S. control over foreign affairs and military.

In 1975, the Marianas held a plebiscite in which a large majority, 78.8 percent, voted in favor of the Covenant to become a Commonwealth (McPhetres 1992a: 222). The U.S. Senate approved the Covenant and President Ford signed it into law on March 24, 1976. The Covenant did not come into complete effect, however, until the application of the Trusteeship Agreement was lifted by Presidential Proclamation on November 3, 1986. Subsequent to the plebiscite and as required by the Covenant, a constitutional convention was held on Saipan in 1976. The Constitution provided for the Commonwealth's governmental organization: an executive branch, a bicameral legislature, and a judiciary. The Constitution of the Northern Mariana Islands which resulted was approved by the

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voters in early 1977. The people elected the first constitutional government on December 10, 1977, and the following January the first elected governor and legislators took office.

The Commonwealth Legal System

The CNMI has two types of courts, Commonwealth and Federal. The Commonwealth judiciary derives its authority from Article IV of the Commonwealth Constitution (Arnett 1985: 180-184; Ottley 1993;). Included in the Article’s eight sections, for example, are provisions for the establishment of a trial and appeals court, the appointment of judges, and the judiciary’s rule-making power. The appeals court, however, was not established by the legislature until the Commonwealth Judicial Reorganization Act of 1989. At that time the Commonwealth Trial Court was renamed the Superior Court, and the Supreme Court was created. Prior to the formation of the CNMI Supreme Court, the Federal District Court acted as the appellate court. The CNMI Supreme Court is made up of two associate justices and one chief justice. Currently, the Superior Court consists of four judges and one presiding judge. Although the CNMI Constitution, Article IV §

69 Judge Manibusan and former Justices Dela Cruz and Villagomez were presenters in a forum on the Commonwealth judiciary on July 14, 1997. Much of the information in this section on the CNMI legal system comes from their presentations and comments.
7, states that judges must not contribute to, or participate in, political campaigns and organizations, the Commonwealth judges are all political appointees chosen by the governor and then confirmed by the Senate.

The District Court for the Northern Mariana Islands is a federal court that was provided for by the Covenant, Article IV §§ 401-402, and established by a Congressional Act in 1977 (cf. Willens and Siemer 1977; 48 U.S.C. 1821). The District Court has one full-time judge who is appointed by the President with the advice and consent of the Senate. The Superior Court has original jurisdiction over civil and criminal cases that arise in the CNMI involving the interpretation of Commonwealth law. The District Court, on the other hand, has jurisdiction over cases that have to do with U.S. constitutional and statutory law. The Commonwealth Supreme Court reviews appeals from the Commonwealth Superior Court and, like U.S. state supreme courts, is the court of last resort on issues that are only local in scope. The U.S. Court of Appeals for the Ninth Circuit has jurisdiction over appeals from the Marianas District Court and from the CNMI Supreme Court if a federal question is involved. The U.S. Supreme Court hears appeals from the Circuit Court. Until the year 2004, the Ninth Circuit has appellate jurisdiction over
the CNMI Supreme Court,\textsuperscript{70} after which appeals from the CNMI Supreme Court will go to the U.S. Supreme Court.

One unusual feature of the Commonwealth legal system, which derives from the Covenant § 501, concerns the right to a jury trial (cf. Herald 1995). In the United States, jury trials are a constitutionally guaranteed right in criminal cases and most civil cases, but, in the CNMI, jury trials are not a guaranteed right except as provided for by the Commonwealth legislature.\textsuperscript{71} The legislature has allowed for jury trials in criminal cases where a guilty verdict would result in more than five years in prison or more than $2,000 in fines, although this right can be waived. In civil disputes, a person can ask for a jury trial, but he or she must pay the fees for the jury. Six people make up a complete jury in the Commonwealth. The reason that a jury trial is not a guaranteed right lies in the unusual circumstances that arise within island communities. It is extremely difficult, for example, to find six people on an island who do not know, know of, or who are not related to one of the parties involved in a criminal or civil trial (Ottley 1993: 555).\textsuperscript{72}

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\textsuperscript{70} Appeals go to the Circuit Court for the first fifteen years after the creation of a CNMI appellate court Covenant § 403(a).
\textsuperscript{71} CNMI Constitution, Art. 1, § 8.
\textsuperscript{72} Chapter 5 addresses the CNMI legal system in more detail.
Contemporary Situation

Since the creation of the Covenant, the CNMI has experienced incredible economic growth and prosperity. The primary reason for the transformation was that Chamorros and Carolinians were committed to developing the islands and improving their standard of living. Apart from their determination, they were able to achieve their goals for a series of reasons. First, when the Trust Territory government withdrew, the local people were no longer constrained by its protectionist policies and so were able to explore economic opportunities previously unavailable to them, such as establishing or expanding their own businesses. Second, political association with the United States provided prospective investors with the assurance of political stability and economic security. As a result, individuals and the CNMI Government were better able to attract foreign investors and tourists.

A third contributing factor to the development of the CNMI has been the role of Japanese investors. With the signing of the Covenant, access to the Northern Mariana Islands by foreigners as well as state-side Americans increased dramatically. In the late 1970s, direct air routes opened up between Saipan and Tokyo that coincided with a booming Japanese economy. To summarize one long-time Commonwealth resident who is critical of Japanese business ventures and the economic and social direction the
Commonwealth has taken:

The Japanese had been eyeing the Marianas and considered it to be theirs. Then Japanese restrictions on the outflow of capital were removed and banks began giving out loans at approximately 120 percent of the appraised value. Speculators did not have to put anything down and then would get an extra million from the banks...They thought it was easy money.

As a result, large amounts of money flowed into the CNMI's economy. The Japanese built hotels, resorts, and golf courses. Tourism, foreign investments, and business were all features in the increased land values that occurred in the 1980s and that transformed land into an important commodity. Tourism, garment factories, and business investment have all contributed to the prosperity experienced in the CNMI during the 1980s and early 1990s, but it has come at a cost. In the 1990s, the Japanese economic bubble burst, and, although the effects were not immediate, the Commonwealth has experienced a serious recession. Also, land values have dropped drastically, but many retain the expectation that they can lease their land or sell it for millions of dollars. Investors have pulled out of the Islands, leaving empty stores and warehouses and partially developed properties.

Features of the Covenant also contributed to the prosperity in the Commonwealth. During the negotiations, the N.M.I representatives were able to convince the United States to give them some concessions, such as federal funding, at least on a temporary basis (Hirayasu 1987). Another
concession is § 503 of Article V, which addresses the applicability of federal minimum wage and immigration laws in the Commonwealth. According to this section, the CNMI is not required to follow federal laws concerning minimum wage and immigration. These exceptions to federal law, however, are not a guaranteed, permanent right; Congress, at any time it so chooses, can require the CNMI to follow federal law.\textsuperscript{73} A third economic advantage is that companies in the CNMI can ship their products to the United States without paying the kind of tariffs that apply to foreign imports (McPhetres 1992a: 223). Because of these exceptions, locally- and foreign-owned businesses are able to hire contract workers from all over Asia at a relatively low wage rate without being required to abide by federal immigration and minimum wage laws. Consequently, the Commonwealth has been able to attract investors and businesses to the Islands, such as garment factories, that want to take advantage of low

\textsuperscript{73} § 503 of the Covenant states:

The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

(b) except as otherwise provided..., the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.
production costs, tax incentives, and the protections that come with the American flag.

Until relatively recently, the economic benefits arising from these industries to the CNMI, partially in the form of taxes, have been great, although contested. Some argue that the strain on the infrastructure created by these factories and the thousands of workers they employ negates the benefit.74 Because of the huge influx of foreign contract laborers, the population of the Commonwealth has risen to nearly 80,000, only about 27,000 of which are U.S. citizens. The Commonwealth has also had to face negative reports in the press that accuse individuals and companies of a wide range of labor abuses, including unsafe living and working conditions, non-payment of wages, and the exploitation of workers (cf. McPhetres 1992a: 222-237; 1992b: 255-257; Stayman Report 1997). These reports of abuses, corruption, and other types of illegal activity have had a negative impact on the relationship between the United States and the CNMI. U.S. representatives feel that America's international reputation has been tarnished and are under fire because of accusations that the Marianas garment industry has taken jobs

74 It is estimated that 60 percent of the waste in the landfill is from the garment industry (from, Federal-CNMI Initiative on Labor, Immigration, & Law Enforcement in the Commonwealth of the Northern Mariana Islands, Third Annual Report, July 1997, page 10, footnote 6. Hereafter referred to as the Stayman Report).
away from American textile workers. Many people in the Marianas, however, believe that these criticisms are unjust and hypocritical. They counter that the U.S. has not lived up to its enforcement responsibilities. The above issues, among others, have prompted the United States to threaten to impose federal immigration and minimum wage laws in the Commonwealth. In response, the CNMI Government and business associations have promised to improve conditions for the workers and begin following federal (OSHA and FLSA) health and safety standards.

Moreover, the people of the Marianas experience federal criticism and threats as direct attacks on their rights to self-government and self-determination that were assured in the Covenant (cf. McKibben 1990: 280-287). One consequence of this has been a growing ambivalence among Chamorros and Carolinians in their attitudes towards the United States and commonwealth status, the assessment of which has been informed by over 400 years of foreign administrations. Debate continues in the CNMI about the advantages and disadvantages of commonwealth status and political association with the United States. Some locals believe that commonwealth status has not been advantageous, resent federal interference in local government, and believe that the United States took advantage of the Northern Marianas in the negotiation of the Covenant. They point to the large amounts of land leased by the federal government for military use, and the fact that
they do not have any representation in the U.S. Legislature and cannot vote for president. In particular, the younger generation of Chamorros and Carolinians are reassessing the relationship. Many, after having been educated in the mainland United States or Hawai‘i and having experienced racial prejudice, have returned with a far more negative view of the United States than the previous generation. In contrast, most of those who negotiated the Covenant with the United States feel a great deal of pride in their role and are, in general, pleased with the relationship. They believe that they got a good deal that included large amounts of federal funding, and a fair amount of autonomy in local matters. These “founding fathers” have no regrets about the relationship, even while they oppose federal interference in local affairs.

Regardless of the conflicts that have arisen between the CNMI and the federal government, political association with the United States in combination with the efforts and abilities of local people have created many opportunities. As the details of this relationship continue to be debated and negotiated, the people in the CNMI will have to choose whether permanent association with the United States is in their best interests or whether they desire a more autonomous
political status, such as independence.\footnote{The Covenant between the Commonwealth and the United States can be terminated by mutual consent of both parties and a new status negotiated. Although several alternative statuses are available to the Commonwealth, such as becoming a freely associated state, two of the more realistic options for the CNMI are reunification with Guam and Independence (McPhetres 2000). There are five mutual consent provisions in the Covenant: Articles I, II, and III, and Sections 501 and 805.}
CHAPTER 4
BROKEN LINKS: LAND AS CONTESTED SITE

In the Commonwealth of the Northern Mariana Islands, land is a both a cultural signifier and a contested site. On the one hand land is an ethnic marker that symbolically and materially links Chamorros and Carolinians to their culture, community, history, and family (Crocombe 1972; Emerick 1958; Fritz 1984; Smith 1972; 1974; Spoehr 1954; Tamanaha 1989). It is also, however, an opportunity for wealth, which may create conflict with the very cultural and familial values that land indexes. Like all contemporary island dwellers, the local population must contend with limited land availability and conflicts over its use and title. Furthermore, the post-Covenant economic boom due to tourism, industry, and other entrepreneurial endeavors resulted in the swelling of property values in the Marianas. Concomitant with this escalation of land prices has been many local peoples' increased perception of land as a commodity and a source of revenue. As a result, the meaning and use of land has been transformed.

This land inflation has triggered increased intra-familial and community conflict. Politicians and citizens of the Commonwealth have been trying to negotiate between competing claims for a "clean and healthful environment," 'traditional' land use, the continuation of the homestead
program, and the financial benefits that come from leasing to foreign nationals and corporations.¹ The above tensions are exacerbated by a growing population and the fact that 72 percent of land is under government control. The consequence has been pervasive legal disputes over land and resources in the CNMI.

This chapter traces some of the underlying, and often interconnected, factors that have contributed to contemporary land disputes. Because land is fundamentally intertwined with social relationships, conflict over ownership and use rights is a product of historical contexts and a complex array of social, political, and economic forces. Furthermore, "[p]roperty is also an important means through which positions of sociopolitical authority are acquired" (Von Benda-Beckmann, F. 1995: 311). While on the surface it appears that the majority of land disputes in the Commonwealth can be attributed to economic pressures, money is rarely the sole cause of disputes. Rather, it is more often a catalyst that motivates people to engage in litigation. Power disparities between individuals and ethnic groups, economic considerations, and long-standing interpersonal and intra-familial angers and rivalries have all contributed to the current tensions over land in the

¹ For example see Torres v. Marianas Pub. Land Corp., 3 NMI 484.
Origins of Conflict and Confusion

While land issues in the Commonwealth are local in character, they are fundamentally enmeshed in regional and global conflicts over use and title. As discussed in Chapters 2 and 3, the complexity and dissent over ownership of this resource is rooted in, and complicated by, four hundred years of successive colonial occupations by Spain, Germany, Japan, and the United States. Each of these foreign administrations modified the existing ownership and inheritance practices of Micronesia (cf. Rees 1999). Socio-cultural change, of course, did not end with foreign administrations (just as it did not begin with them). Since the signing of the Covenant, new factors, such as the influx of tourism and capital, have exacerbated extant conflicts or created new ones. Moreover, the United States and the local CNMI Government actively engage in the construction of meanings through the creation and interpretation of laws (see Chapter 5). These, in turn, have a direct effect on the use, value, and signification of land.

Problems in the Chain of Title

The inherent complexity of land ownership in the Marianas is exacerbated by incomplete and unreliable title histories for much of the land. Many of these gaps can be
attributed to the devastating effects of the war. Bombs, fighting, and post-war reconstruction caused the destruction or loss of documents and the annihilation of natural and constructed boundary markers that could assist in title determinations.\(^2\) Also, the impact of the typhoons has been great, especially before concrete block buildings became common. The storms periodically pass over the islands, ripping houses and government buildings apart and drenching the remains. These structures often contain documents, photographs, and family papers detailing the ownership history of local properties. The dearth of documentation and landmarks has called into question the ownership and size of both privately and publicly owned land. As a result, many Carolinians and Chamorros who claimed property in the decades after the war often lacked the necessary documentation to determine title.

Conversely, the Government has had difficulty proving that land does not belong to those who claim it. Further complicating matters, land leases and sales made during the Japanese period are often absent or incomplete. Without adequate records it has been nearly impossible for Chamorros and Carolinians to prove that land was leased rather than

\(^2\) Even though the Nan'yo Kohatsu Kaisha lease and sales records were recovered and translated, they were not always accurate (see Chapters 2 and 3).
sold to Japanese. As Neas (1968: 5), a War Claims officer for the Attorney General of the TTPI, explains:

With such a large number of foreigners on the island [Saipan], there was considerable pressure on the local people to lease and to sell their land. It appears a favorite play\(^3\) of the Japanese was to lease land and later convert the lease to a sale. Nearly all leases of Saipan land to Japanese required the lessee to pay the entire rental, even for as much as 10 years, in advance. With many of the leases for 20 years, it is now difficult to tell whether the land was sold or leased. It is extremely difficult to reconstruct any of the land transfers between local people and Japanese...

So, in the absence of adequate documentation, land reverted to the public domain.

Initially, it appeared as though gaps in title histories were primarily attributable to the war, natural disasters, and time. As I spent more time on Saipan, however, I heard less about the impact of the war and typhoons and more about how individuals, organizations, or groups of people were responsible for land disputes. Repeatedly, I was told stories about land grabbing, land theft, and corruption of government officials that were at the root of many long-standing hostilities within and between families or with the government.

Some of the incidents that CNMI residents recounted to me resulted in litigation, but many did not. For example,

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\(^3\) The word "play" might actually be "ploy," but the microfilm was unclear.
several people allege that individuals who worked at the Land and Claims Office and others who went there to research their property stole and/or destroyed documents that did not support their own or their family’s or friends’ claims to specific parcels. An assertion that specific people stole important records out of the Land Claims Office is very difficult to prove in court because so much had been lost or destroyed. Moreover, theft cannot be legally demonstrated if there is no proof that a document ever existed and/or that it was not destroyed during the war or as a result of a typhoon. In other cases, the disputes have been settled out of court or the statute of limitations has run out on possible settlements. Whether or not the accounts of fraud, theft, and deceit could be proven in court is not relevant to this discussion. Rather, the allegations point out the distrust and dissatisfaction that many people in the Marianas feel about the way land matters have been resolved in the past and how they continue to be handled in the present. Further, their belief influences their actions, their treatment of others, and their decision-making. Although not comprehensive, the following examples in this section represent a spectrum of factors that have contributed to the current conflicts over land ownership and inheritance in the Commonwealth.
Early Trust Territory Title Determinations

As was discussed in Chapter 3, after World War II, the Navy administered the Marianas first as a military unit, then as a civilian administration until 1951. Critics charge that many title determinations made by the Navy immediately after the war were faulty. The chaos that engulfed the region accounts for many of the errors; local people wanted to return to their property, and exchanges had to be made for lands that had become part of the military retention area. The Navy needed to settle land matters quickly, but did not fully comprehend the complexity of land issues in the Marianas and throughout Micronesia.  

An error that was repeatedly made by title officers was to assume that if lands were not claimed in the first years after the war, no claimants existed. Initially, people working at the Claims office publicized their efforts in Chamorro, Carolinian, and English, requesting citizens to register their lands. In some cases, no claimants came forward and adequate records did not exist for specific parcels. As result the Navy made ad hoc appointments of land

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4 As Richard (1957a: 425) writes:
Few records concerning ownership of land were found. Most of the Japanese records had been removed from the islands and the natives kept no records as such. But the Marshallese knew who owned every square foot of land and from the day when military government first became involved in who owned what land they viewed with silent amusement the administration's attempt to settle the "land question."
trustees, further complicating title issues. Moreover, some of the appointed land trustees (whether they were the legitimate trustees or not) believed that their appointment translated into ownership. According to a local attorney:

Where the original owner has died and then they [the Land and Claims officials] look to who is the oldest surviving heir of that decedent that will be appointed by the land title office to serve as land trustee. And, and the question at that point is whether that land actually belongs to the particular land trustee in his own right because that is land that was given to him by partida or otherwise...and the land documents have not yet reflected that...and sometimes there is a third category where the land trustee is named and he somehow thinks that being named as land trustee he has the right to that [land], the land is his now and no longer belongs to his...siblings then.

Equating an appointment as land trustee with ownership occurred for a variety of reasons, including a lack of familiarity with American law and terminology, avarice, or the Claim office’s use of misleading terminology. Eventually, land policy changed so that documents were made out “to the heirs of” the (known) deceased owner in order to avoid ambiguous or faulty ownership determinations.

In other cases where no one came forward to claim land, the title officers assumed the land was “public” (if any determination was made at all), at which point, the property was condemned and became part of the public domain. All property deemed public was managed by the Trust Territory government. Public land could be used for homesteads, land exchanges, and public works or become part of the military
retention areas. Consequently, owners whose property was condemned not only had to prove ownership in a timely manner, but had to wrest title and gain possession of the land from the subsequent owner or the TT administration. Not surprisingly, the title-holder, be it an individual or the Trust Territory government, often did not want to give up the land. In many cases, the original owners lost title to the condemned properties, although some received other land in exchange.

Because administrators needed to expedite land issues, they neglected to consider the multiple reasons why people had not made claims. One reason that landowners or heirs of those killed during the war were unaware of the title proceedings was because they were residing elsewhere. Some Chamorros were living in Guam. Other Chamorros and Carolinians had migrated to the islands north of Saipan immediately after the war. Still others were residing elsewhere in Micronesia, as they had been throughout the war, but still owned property in the Marianas.

Another reason that Chamorros and Carolinians did not file claims for land in a timely manner was fear. Many locals were frightened of the Americans who controlled the region.

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5 Some of those living on Guam were incarcerated by the Americans for their roles as translators, guides or guards for the Japanese during the war.
One Carolinian woman told me that she and her family did not make claims early on because of their experiences with the Japanese. Chamorro and Carolinians, especially in the later years of the Japanese administration, had been beaten and otherwise intimidated into leasing or selling their land. Carolinians, in particular, felt intimidated by the new administrators and the (primarily) Chamorros who worked for the Americans. Few Carolinians spoke any English and were, in general, less educated and sophisticated than their Chamorro contemporaries. As a result many never came forward with claims to property or did so after many years and were therefore blocked by the statute of limitations on claims. Currently, much of the land that people continue to think of as their own has been developed or exchanged and is now owned by other families, ensuring ongoing conflicts.

Land Sales During the Japanese Administration

During the more than two decades that the Japanese administered the Marianas, they had acquired and developed some of the best agricultural and coastal areas. A large percentage of the land used by the NKK was public domain, but the NKK as well as Japanese individuals also leased land from local people. After 1931, restrictions on land ownership were lifted and the Japanese were free to purchase property from
Chamorro and Carolinian landowners. Many of the original property owners, however, leased or sold their land under duress. This was especially true in the years immediately prior to and during the war. Theoretically, the Trust Territory’s policy was designed to nullify deeds of sale made after 1935, if the sale were coerced (Johnson 1969: 19; Neas 1968). In actuality, proving coercion was extremely difficult, and many claims that were brought forward were not even considered because of the statute of limitations on land claims (cf. King 1999).

Furthermore, the Trust Territory High Court invoked the doctrine of ancient wrongs to deny land claims to people who had been forced to sell their property (Arnett 1985: 191-192; King 1999; Waisisang v. TTPI, 1 T.T.R. 14, 1952). The theory behind this doctrine is that the new ruling nation has no legal obligation to redress wrongs committed by a previous sovereign. Although the doctrine had the intended effect of limiting what potentially could have been limitless litigation against the United States as administrator of the TTPI, it had other results as well. First, the doctrine upheld policies and laws promulgated by previous administrations that changed customs and patterns of land

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6 See Chapter 2.
7 King (1999) discusses this doctrine in detail in his critical analysis of the TTPI High Court’s rulings regarding land.
ownership towards more western forms. Second, the denial of property claims resulted in the contested lands remaining vested in the Alien Property Custodian. Significantly, the lands that claimants argue were forcibly taken by the Japanese government, military, citizenry, or businesses were often the "best" lands. Because most of these properties were located along the coast or on arable (flat) land, they were both convenient and strategic. So, although the Naval and civilian administrations of the TTPI engaged in extensive land exchanges with the indigenous owners of land, the American administrators had a vested interest in keeping certain lands "public." Consequently, Chamorro and Carolinian property owners question the CNMI Government's right to these properties and continue to consider pursuing litigation.

Land Acquisition After the War

The committee found that no systemized method was used by Land and Claims official (sic) in determining land ownerships, nor was there any systemized method by which individuals who either owned themselves or whose parents owned land prior to the war could make claim for these lands (Reyes et al. 1968a: 14).

During interviews, I heard two, apparently contradictory, views about land claims immediately after the war.

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8 See Neas (1968) for a detailed discussion of land claims.
war. One assertion was that Chamorros and Carolinians were extremely honest in their land claims when the Americans took charge. One government official attributed their veracity to the influence of the Japanese culture that emphasized obedience and honesty, and to their fear of corporeal reprisals if they misinformed Japanese land title officers. Others, however, speak of the time after the war as a period of wholesale land grabbing. They charge that some locals took advantage of the general disarray of land documents and confusion over boundaries to benefit themselves, their families, and friends. These two accounts, however, are not mutually exclusive. While the majority of Carolinians and Chamorros reconstructed their pre-war property fairly accurately, a relatively small number of powerful people were able to acquire large amounts of land. For example:

Those native inhabitants who served as advisors to United States naval officials were not qualified and used their position of trust to increase the land holdings of their relatives to the detriment of others (Reyes, et al. 1968a: 7).

These individuals, because of family ties or wealth, received preferential treatment in the receipt of homesteads or land exchanges, or expanded their property’s boundaries by encroaching onto public or private land.

Questions continue to be raised about the actions of individuals who worked in the Land and Claims offices throughout the Trust Territory period. A Chamorro man, Joe
Taitano,⁹ talked about how a particular Land Title officer cheated his parents out of land. After the war when everyone was entitled to a homestead, Taitano's parents moved from their home in Garapan to the village of Chalan Lau Lau in the belief that this was their homestead. To their surprise, without knowing it, they had exchanged their land in Garapan for the land in Chalan Lau Lau. As a result, his parents did not receive an agricultural homestead and lost their original property in Garapan. Taitano attributed this event to the corruption of a government official who only accommodated people who were nice to him and who gave him gifts. According to Taitano, "during that time if you were a government employee you were king." Although the details differ, this account corresponds with many others that were told to me. It is repeatedly contended that government officials took land from claimants by deliberately misinforming them about the contents of documents, by denying legitimate claims, or by changing boundaries.¹⁰

In 1966, the Marianas District Legislature appointed a committee made up of local people to study land problems in the Marianas. The following excerpts from the detailed report that resulted identify some of issues and conflicts

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⁹ This is a pseudonym and the village names have been changed.
¹⁰ See testimony in Ramon P. Calvo v. TTPI, CA No. 118, Civil Appeal No. 29 (1969), 4 T.T.R. 506, where attorney accuses land officer of misconduct.
encountered by the Committee:

Persons who owned property during the Japanese administration never received their land back or any land in exchange (Reyes 1968b: 5).

Some individuals have received several homesteads while other applicants have not been granted a homestead at all (Ibid.).

Individuals have requested homesteads in certain areas and were told that the particular area was reserved for some other use, only to learn at a later time that some other person has been allowed to homestead the requested area (Ibid.).

The placing of restrictions on the use of homesteads by some people, and allowing others to make any use of their homestead (Ibid.).

In addition, evidence showed that the Land and Claims office would keep appointing a land trustee over lands until they found one that would agree to the exchange. (Reyes et al. 1968a: 19).

The records indicate that relatives of Land and Claims officials were given the choice land (Ibid.: 38-39).

[T]he Committee found that during the negotiation stages for land exchanges, land owners were induced to exchange their lands by being led to believe that larger parcels would be granted by the government if the exchange agreement was signed (Ibid.: 10).

As a result of the above types of actions made by officials, many members of elite families or employees of the TTPI became wealthy from the land they acquired. Furthermore, these same factors have contributed to the notable diminution of public land on Rota and Saipan and have been the subject of several official inquiries.

The influence of elite families in politics, business, or land acquisition is a recurring theme in the Marianas. The
special benefits that accrue to the "upper caste" are common knowledge, but those out of the reciprocal loop rarely speak up and complain. In part, this is because those who are disenfranchised feel powerless and/or do not want to make their own situation worse by going up against powerful people. Another reason for the lack of protest is the important role of forgiveness and the need to get along with relatives and neighbors to survive on an island. A third component can be traced to the cultural importance of respect, specifically, respect for elders and leaders, that is shared by Chamorros and Carolinians. Therefore, while many local people who have been adversely affected by the actions of the few may talk about what has happened to them or their families and/or avoid the perceived perpetrators, rarely will they make formal complaints or testify against them. Revenge, however, may be meted out at a later date, sometimes decades or even a generation after an incident took place.

Public Lands in the Commonwealth

In recent years the allocation of public lands has been a frequently debated topic in the Commonwealth. As discussed in Chapter 2, the Germans modified land ownership and restricted the size of parcels by requiring owners to fence property boundaries. Then, the German administration took the property that was not fenced as well as the "unused" or unclaimed lands and created a pool of public lands that was
available for homesteads or commercial endeavors. When Japan began administering the Northern Mariana Islands, it took over the management of public lands. After the invasion of the Marianas by American forces, the public land as well as all of the land owned by Japanese individuals or companies was clumped together under the aegis of the Alien Property Custodian. As a consequence, 90 percent of the land in the Northern Marianas became part of the public domain. Finally, with the creation of the Covenant, Article VIII sections 801-804, the Trust Territory Government transferred the remaining public land to the new Government of the Northern Mariana Islands, effective no later than the conclusion of the Trusteeship Agreement.

Currently, 72 percent of the land in the Northern Marianas is public, that is, administered by the Department of Public Lands and Natural Resources. Although this sounds like a relatively large amount, the figure is somewhat misleading for two reasons. First, this percentage includes the sparsely populated or uninhabitable islands north of Saipan, such as Pagan, Alamagan, and Anatahan, where all the land is public. These northern islands make up 60 percent of

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11 Also see Article XI section 1 of the Commonwealth Constitution.
12 Ottley (1993) reports that public land accounted for 80 percent of the land. When I did research in 1997, but according to McPhetres (2000) the number has dropped to approximately 60 percent because of the large number of homesteads being given out.
all the land in the Marianas, but many are not habitable because of volcanic activity. Of the remaining 40 percent of land, half is private and half is in the public domain.

Second, as provided for in the Covenant, the U.S. Military leases a large amount of the public land:

Section 802.
(a) The following property will be made available to the Government of the United States by lease to enable it to carry out its defense responsibilities:
   (1) on Tinian Island, approximately 17,799 acres (7,203 hectares) and the waters immediately adjacent thereto;
   (2) on Saipan Island, approximately 177 acres (72 hectares) at Tanapag Harbor; and
   (3) On Farallon de Medinilla Island, approximately 206 acres (83 hectares encompassing the entire island, and the waters immediately adjacent thereto...

Section 803:
(a) The Government of the Northern Mariana Islands will lease the property described in Subsection 802(a) to the Government of the United States for a term of fifty years, and the Government of the United States will have the option of renewing this lease for all or part of such property for an additional fifty years if it so desires at the end of the first term.
   (b) The Government of the United States will pay the Government of the Northern Mariana Islands...the total sum of $19,520,600,...

Not surprisingly, many in the CNMI many Chamorros and Carolinians feel that they were cheated out of their land and believe the military leases should be terminated to make the land available to the growing local population (McPhetres...
1995; Ottley 1993).\textsuperscript{13}

How the remaining (usable) public land should be allocated or managed continues to be debated. One option is to use a portion of public lands to create wildlife sanctuaries to protect the rapidly diminishing native birds and plants from the ravages of development. The importance of the environment is addressed in the Commonwealth Constitution, Article 1, Section 9, which states:

> Each person has the right to a clean and healthful public environment in all areas, including the land, air, and water. Harmful and unnecessary noise pollution, and the storage of nuclear or radioactive material and the dumping or storage of any type of nuclear waste...are prohibited except as provided by law.

A second alternative is for the CNMI Government to lease the land to (primarily foreign) investors. While some public land is already leased, there are residents of the CNMI who believe that a great deal more should be rented out. The advantages of leasing public lands are multiple. The leases themselves would bring in revenue as well as income from taxes. Also, the land would be developed at little cost to the Commonwealth and new businesses would draw tourists or more businesses to the islands. Another benefit is that

\textsuperscript{13} Initially, the United States intended to build a military base on Tinian. Many in the Marianas considered the presence of a large military facility beneficial to the community at that time because it would provide employment opportunities, millions of dollars in revenue, and diversify the economy (Willens 1997).
certain types of development might have some immediate value to the community, such as a water park or a recreational center. The downside is that the CNMI Government has been leasing the property at extremely low rates and there has been some question about whether certain investors or corporations have been given special consideration.

**Public Lands and the Homestead Program**

A third and more popular option is to divide most of the public land to create homesteads for the local residents and future generations. Homestead programs were an important part of the Trust Territory's land policy and have been continued by the CNMI, albeit in a different form. Article XI of the Commonwealth Constitution established the Marianas Public Land Corporation (MPLC) to manage, with the advice and consent of the Senate, public lands in the CNMI.\(^{14}\) Section 5 (a) of the same Article states that "[t]he corporation shall make available some portion of the public lands for a homestead program." The homestead program was intended to keep people from living on the streets and assure those who had little income or land a place to live. Instead,

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\(^{14}\) In recent years, however, charges of corruption against previous MPLC members have caused upheaval in the organization. Allegations include favoritism, land grabbing, receipt of kickbacks, administrative oversight, and corrupt land exchanges. One prominent Chamorro spoke of the "evil ways during the MPLC."
homesteads today are perceived as an entitlement that everyone of NMI descent should receive regardless of their family's wealth in money and/or land.

Program requirements are designed to insure that the intent of the program would not be subverted, with only needy people receiving a homestead. First, a homestead applicant must be at least one quarter of Northern Mariana Islands descent, must be eighteen years old, cannot own land, and cannot earn more than $70,000 per year. Second, once a person gets a homestead,\(^\text{15}\) he or she must fulfill certain minimum requirements in the first three years to receive a deed. At this point the homestead owner can live on or rent the property, if the proceeds from the lease are used to improve the property. Ten years later, the homestead owner is free to sell the property.

Although the homestead program was meant for the homeless, the requirement of building a house excludes the truly poor, as they do not have the resources to pay or to get a loan. Or, as one land official noted, "you are encouraging people to build shanty houses." Furthermore, these conditions have not been sufficient to limit the applicant pool. As a result, virtually any person who is of

\(^{15}\) Most new homesteads are part of large developments where the land itself is undeveloped, but the government has built roads and put in an infrastructure, such as Kagman. Some homesteads, however, are in undeveloped areas.
NMI descent and has reached the age of eighteen is eligible for a homestead. Apart from the illegal transfer of homestead deeds by members of the MPLC or other influential locals to their family and friends, people have been able to get homesteads by taking advantage of loopholes in the law. One common (legal) strategy has been for the families of homestead applicants to delay probate of their ancestors' estates so that the individual who is applying for a homestead will not have legal title to any property and therefore remain eligible. In the same vein, another tactic is to put the title to an applicant's property in the name of another family member, which is then transferred back at a later date. As a result, members of some of the richest families in the Marianas have received homestead allotments. Although technically not illegal, these types of practices have undermined the program and have caused dissent among many locals, especially as the wait for homesteads grows longer. The problems with the homestead program are particularly salient because of the rapidly diminishing availability of public land, the growing population, and economic pressures on many local families.

A second major obstacle to the success of the homestead program has been the lack of adequate enforcement to assure that those who receive homesteads obey the regulations. Some homestead parcels remain unimproved years after their allocation. Also, many of the homesteads have been illegally
leased before the requirements have been fulfilled. Because of the above issues and the decreasing availability of land, some advocate the end of the program. One solution promoted by a prominent Chamorro is that only non-locals should run the land programs in the CNMI. He reasons that because statesider Americans cannot own land in the CNMI and therefore do not have a vested interest in it, there will be fewer abuses in general, and, specifically, it will end the numerous instances where land officials show preference to family members. Other options include renting homesteads at a very low rate, adding restrictions, and building condominium-type residences. Despite all of the criticisms, the government's homestead program remains extremely popular and the majority of people appear unwilling to abolish it.

**Carolinians: Biases in Land Allocation**

Although Carolinians and Chamorros have shared many of the same challenges and conflicts with regards to land since the end of the war, Carolinians have had to contend with additional obstacles. One major disadvantage was their lack of education relative to their Chamorro contemporaries. Another factor has been the undercurrent of racism against Carolinians that continues to a lesser degree to this day. As a result of these obstacles, the American administration, as a general rule, did not hire Carolinians for higher level positions in the TTPI Government, which, in turn, perpetuated
their disenfranchisement. Moreover, Carolinians still feel shunted aside in the contemporary government. They question the relative absence of Carolinians in important political positions and point out that most Carolinians who have succeeded in the CNMI were only able to do so because they were related to powerful Chamorros. Another frequent criticism is that politicians who have Carolinian blood only show up during election time and do little to support the community. Inadequate representation in the government is linked to social and economic inequity and has had the broader consequence of limiting Carolinians' access to government resources, such as public land.

The following example briefly summarizes the problems a Carolinian couple encountered when trying to acquire a homestead. Mr. Kapileo* had requested an agricultural homestead and was told by the Land Claims Office to go out and find one. After he did so and cleared the land, land officials told him he could not have that particular parcel and to find another. Kapileo chose the parcel of land they now occupy, again clearing the land and planting trees. After he filed for a deed, two officials from the Public Lands Office came by repeatedly to take photos. When Kapileo returned to the land office to get his deed, the officials told him that he could only have two hectares, even though he had cleared approximately seven hectares. Finally, in utter frustration, he asked the official: Why are you doing this to
me? Is it because I am a Carolinian? According to Mr. Kapileo, the official responded yes. Their story is similar to that of many other Carolinians who, during the Trust Territory period and in the present, have experienced bias when trying to acquire homesteads or resolve land claims.

Another typical problem that occurred during the Trust Territory was that, because Carolinians were less savvy about business, they were therefore more susceptible to deceit. Prior to the establishment of the Commonwealth, it was unusual for Carolinians to partition or divest their clan lands. Nevertheless, during the TTPI, several entrepreneurial Chamorros managed to acquire Carolinian land. During the time I spent on Saipan, Carolinians, Chamorros, and state-siders gave similar explanations about how many Carolinians lost title to land or how the size of their holdings were diminished. According to one commonly told account, in the decades after the war, several Chamorros set up their own grocery-type shops. Some of these shopkeepers extended relatively large amounts of credit to young Carolinians so they could purchase beer and other items. Over time, the amounts of debt increased to the point that these Carolinians could not hope to pay the proprietors, who then approached their families. Because most people in the Marianas at that time had few assets other than land, the clan elders often were forced to pay off the markers with land. In this way several individuals acquired a great quantity of land, much
of it beachfront, and subsequently became extremely wealthy.

**Article XII: The Restriction of Land Ownership**

As was discussed in Chapter 3, the Covenant contains several provisions that restrict the applicability of the United States Constitution in the Northern Mariana Islands (cf. Willens and Siemer 1977). One of the most debated and important exceptions allows for the restriction of ownership of or long-term interest in land to people of Northern Mariana Islands descent:

Section 805. Except as otherwise provided in this Article, and notwithstanding the other provisions of this Covenant, or those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands, the Government of the Northern Mariana Islands, in view of the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against exploitation and to promote their economic advancement and self-sufficiency:

(a) will until twenty-five years after the termination of the Trusteeship Agreement, and may thereafter, regulate the alienation of permanent and long-term interest in real property so as to restrict the acquisition of such interests to persons of Northern Mariana Islands descent; and

(b) may regulate the extent to which a person may own or hold land which is now public land.

Section 806.

(a) The United States will continue to recognize and respect the scarcity and special importance of land in the Northern Mariana Islands...

This very unusual and significant exception is elaborated in the six sections of Article XII of the Commonwealth
Constitution. For example,

**Section 4: Persons of Northern Marianas Descent.**

A person of Northern Marianas descent is a person who is a citizen or national of the United States and who is at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof or an adopted child of a person of Northern Marianas descent... For purposes of determining Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands by 1950 and was a citizen of the Trust Territory of the Pacific Islands before the termination of the Trusteeship with respect to the Commonwealth.

Ostensibly a racial category, Northern Mariana Islands descent (NMId) is actually an arbitrary political designation of ethnicity. For example, a person is considered a “full-blooded” Chamorro or Carolinian based on their place of birth or residency, and citizenship at an arbitrary date. Thus, a person, theoretically, could be a “full-blooded” descendent of Japanese born in the Northern Marianas and qualify, while a “full-blooded” Chamorro or Carolinian would not qualify if he or she were not a U.S. citizen or were Guamanian.¹⁶

Ambassador Haydn Williams promoted the inclusion of the land alienation provision in the Covenant during the negotiations. The provision was designed to protect the local people who were not yet sophisticated in financial matters

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¹⁶ Northern Marianas descent was specifically designed to exclude Chamorros from Guam, which is why the 1950 cut-off date coincides with the Guam Organic Act that gave Guamanians U.S. citizenship.
and Western forms of land transactions, and to safeguard against unscrupulous business people. The goal was to avoid what has happened in Hawaii, where very little indigenous-owned land remains and the native Hawaiians have been widely disenfranchised. One negotiator from the Northern Marianas supported Article XII because he saw it as a way to "cripple U.S. sovereignty." Nevertheless, Chamorros and Carolinians did not uniformly embrace the restriction and it was only included after a tie-breaking vote by Edward DLG Pangelinan, chairman of the NMI commission.

Leasing land to non-locals for up to fifty-five years, however, is allowed and many leases have been transacted. Because of the huge amounts of money that could be made in the Marianas due to the high values of land, especially during the 1980s, many local and non-local people have tested the limits and legality of Article XII. It has been challenged (unsuccessfully) on Constitutional grounds (Herald 1995; Pierce 1993; Torres 1994).\(^\text{17}\) It also prompted a great deal of lengthy and expensive litigation after locals and non-locals tried to get around the provisions of Article XII. One such technique was to engage a third party to buy the land, who would then lease the land to the person or persons

\(^{17}\) For example see Aldan-Pierce v. Mafnas, 2 N.Mar.I. 65, (1991); Ferreira v. Borja, Civil Action 86-796, and 1 F.3d 960 (9th Cir. 1993); Wabol v. Villacruses, 1 N.Mar.I.19, (1989), 11 F.3d 124, 125 (9th Cir. 1993).
who had actually paid for the purchase of the property.

Article XII is still debated by locals and non-locals alike. There are many that want to abolish it when the mandatory twenty-five years come to an end. They see Article XII as hindrance to the development and modernization of the Commonwealth and want to reap the economic benefits of freely buying and selling land. Others want to keep the law as a protection for themselves, the forthcoming generations, and the Chamorro and Carolinian cultures. A primary concern, even among those who support Article XII, is that the blood quotient requirement will prove to be too stringent because of the large amount of inter-ethnic unions in the CNMI. To own land a person must be one-quarter NMI descent, but many Chamorros and Carolinians have children who are half NMIId and grandchildren who are already one-quarter NMI descent. One recommendation is to lower the blood quotient to 12.5 percent. That solution, however, would be only temporary, leaving the original problem unresolved: How can the Chamorro and Carolinian cultures be preserved and what is the best way to protect the CNMI from rampant foreign (including state-side American) infiltration and eventual political, economic, and ethnic dominance.
Deeds of Gift

Deeds of gift or quitclaim deeds\(^\text{18}\) are common in the CNMI, but are also frequently a source of intra-familial conflict. In general, parents or other family members employ this property transfer for practical reasons, a by-product of Westernization and capitalism. Fee-simple ownership\(^\text{19}\) is necessary to obtain loans from banks, which are needed to pay for a child's education in the United States, to build a new concrete house, to start a business, or to buy a pickup truck. Banks will not loan money to a person who owns land in common with his or her family or clan, nor will they give a loan based on the promise of inheritance. One widely employed solution to this problem is for families, especially parents, to "give" land to the relative so that he or she can obtain a loan. At a later date and for a variety of reasons, the giver often wants the land returned, but rarely will get it back. The recipient either cannot return the land because it has been sold or mortgaged, or will not return it because he or

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\(^{18}\) According to Black's Law Dictionary (1983: 215, 651), a deed of gift is simply "A deed executed without consideration." Whereas a quitclaim deed is a "deed of conveyance operating by way of release; that is, intended to pass any title, interest, or claim which the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants for title."

\(^{19}\) According Black's Law Dictionary (1983: 317): An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate.
she does not feel obligated to do so. The frequent consequence of this has been irreparable rifts between family members.\textsuperscript{20}

Most Chamorros and Carolinians understand that a deed of gift or quitclaim deed is irrevocable in the American legal system, but a fundamental tension exists between locals' understanding of American law and their conception of how family members should behave. Chamorros have been subject to Western land practices for four hundred years and the Carolinians for perhaps a hundred years. Chamorros and Carolinians have engaged in land exchanges, leases, and sales at least since the Japanese times. They have also, since 1898, observed events on Guam. They watched the process by which Chamorros lost rights to lots of land, but also saw the economic development of Guam and relative wealth of Guamanian Chamorros. They are familiar with the principles of fee simple ownership, and even if they do not practice individual ownership, deeds of gift are widely understood to be a permanent Western transaction. Yet Chamorros and Carolinians are confounded when they decide to rescind their gifts of land and cannot.

The disparity between their understanding of American law and their expectations of behavior is partly attributable

\textsuperscript{20} For example see \textit{Díaz v. Taylor}, Civil Action No 97-879D.
to the four different governments and various practices of these foreign administrators. During their history, property has been taken away, returned, and redistributed. Title has not always provided absolute rights to land. For example, German land policies succeeded in subverting Spanish land grants by instituting difficult requirements that resulted in the shrinkage of the original parcels. In contrast, long-term leases made with the Japanese before W.W. II were nullified when the Americans took over the administration of the Marianas. Carolinians and Chamorros remember their histories and have seen foreigners come and go. As a result, some perceive imposed laws as negotiable and impermanent.

Another reason the acceptance of Western legal traditions has never been absolute, is because custom has been intertwined, to varying degrees, with foreign ideas of ownership, value, and use. State-sider Americans residing in the CNMI perceive a deed of gift or a sale to be fixed and permanent and are perplexed when they hear about locals who try to rescind them. For state-siders and some locals, land is a commodity and the gift is a finite transaction that alienates the seller from the property (Godelier 1999); after a sale of land or a house the relationship between seller and

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21 This is clearly a generalization. Many people in the West have very strong ties to land, especially if it has been owned by their family for many generations and/or has been a source of sustenance.
buyer is over as is the connection between the seller and property. For the Chamorros and Carolinians who want their land returned, however, the gift is part of a relationship. Implicit in the gift is a contract, an expectation of reciprocity that has nothing whatever to do with American law and everything to do with their understandings of custom, family, and respect. As Godelier (1999: 12) writes:

"Giving thus seems to establish a difference and an inequality of status between donor and recipient, which can in certain instances become a hierarchy: if this hierarchy already exists, then the gift expresses and legitimizes it. Two opposite movements are thus contained in a single act. The gift decreases the distance between the protagonists because it is a form of sharing, and it increases the social distance between them because one is now indebted to the other" (Emphasis added).

Property binds the giver to the recipient. The deed of gift is not a simple singular transaction, but part and parcel of a relationship based on exchange, respect, and obligation. It is neither a neutral act, nor is it a singular momentary event. Rather it is one part of an entire relationship that cannot be seen in isolation.

One reason behind the conflicts between the expectations of the giver and the recipient is that for one land is alienable, but for the other land and the giving of the land are indexical. The giving of the gift is only one event in an ongoing exchange that creates obligations while simultaneously reaffirming the relationship between the one
who gives and the one who gets. Land is alienable because, in the western legal tradition and system, land can be bought and sold like any commodity. Examples of this are deeds of sale, deeds of gift, and leases, all of which are part of the practice of fee simple ownership. Many Chamorros and Carolinians, however, do not perceive land simply to be a commodity. Land, family, and culture are intertwined and although land in the contemporary CNMI can be given, bought, and sold, there still exists a symbolic relationship to the land that is transcendent (cf. Moore 1973: 731).

Land provides a tangible connection to culture and ethnic identity and therefore is imbued with meanings. Land is a material tie to the past and the family; it indexes relationships and family ties to the living and to the ancestors. Although the land itself is important, it is the exchange and what the exchange signifies for the givers versus what it means for the receiver that is at the crux of the conflict. When Chamorro parents "give" a piece of property to their child, for example, implicit in the gift is the expectation that that child will take care of them, will act respectfully, and fulfill his or her familial and social responsibilities (Flinn 1996). If the son or daughter does not reciprocate by carrying out his or her duties that are

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22 See Godelier (1999) for a detailed and comprehensive discussion of the issues associated with gifts and gift giving.
required by the relationship and which are symbolized by the gift, then the parents have the right of reversion (cf. Woodman 1969: 136). According to some Carolinians and Chamorros, they can, by custom, take back the land, yet by American law they cannot. The understanding that deeds of gift are irrevocable coexists with the knowledge that respect due the parents is paramount and that gift giving is part of ongoing reciprocal relationships.

Interestingly, the United States government, the CNMI Legislature, and the Judiciary also advocate this inalienable aspect of land. In Section 805, the federal government recognizes "the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands" and, in Section 806, states that: "The United States will continue to recognize and respect the scarcity and special importance of land in the Northern Marianas." Thus, land is linked to Chamorro and Carolinian culture. Moreover, the following excerpt from a judicial opinion explicitly associates the use and ownership of land with the perpetuation of custom:

By virtue of the economic boom in the Northern Marianas, the rapid replacement of a subsistence economy by a cash economy, and the expeditious growth in land value and development, there is an increasing tendency for dissension among land owners, including Carolinian family land owners as to land use and ownership. Customary beliefs and practices are being rapidly eroded and Carolinian family land use and ownership are affected. In the case at hand, the land is still intact, but its future is unpredictable and may someday become
The victim of "progress". Until then, it shall remain intact (In re Estate of Lorenzo Igitol, CA No. 88-70(P), slip op. at 6 (Tr. Ct. 1988), (emphasis added).

The above examples conceptually tie culture, ethnic identity, and land together. Because land in the Marianas is not just an alienable commodity, conflicts over its use and title will continue to be about more than money.

As was alluded to at the beginning of the chapter, many people attribute the quantity and intensity of conflicts over land in the CNMI to people's greed. Certainly, avariciousness accounts for some of the disputes, but, as the above discussion indicates, more frequently the need or desire for money has been a motivator rather than the sole cause of conflict. In the Commonwealth, a trigger for land disputes was the shift from a subsistence economy to one dependent on markets. The meaning, use, and value of land changed. This fundamental economic transformation that began during the German administration, was elaborated in the Japanese period, and then by example during the TTPI period, was most fully realized in the 1970s when the people of the Commonwealth were finally free to fully engage in the international marketplace. One consequence of this integration was a dwindling reliance on agriculture and the increased need for money to buy goods, invest, and develop. The need for cash and collateral were considerable incentives for Chamorros and Carolinians to obtain clear title to land. In order to get
title locals had to probate estates, which in turn brought any underlying tensions between family members or confusion over title and boundaries to the foreground. But as the above sections demonstrate land title in the Commonwealth sits on a substrate of confusion and conflict.
CHAPTER 5

THE INTERSECTION OF AMERICAN LAW
AND CUSTOM IN THE CNMI

Because the probate code is not applicable to Ernesto’s estate, we will follow true Carolinian land custom. Under this custom, ownership continues collectively in the females (In re Estate of Rangamar, 4 N.M.I. 78 (1993), emphasis added).

The legal system in the Commonwealth of the Northern Mariana Islands is structurally, procedurally, and ideologically American. Law in both the United States and the CNMI is organized hierarchically and is based on the principles set forth in the Constitution. The practice and appearance of law, however, differ in several ways. In the United States, the paramount source of law is the Constitution, followed by statutory law, case law, and American (English) common law. Law in the Northern Mariana Islands, in contrast, is derived from the Covenant and select, “fundamental” provisions from the U.S. Constitution

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1 See Chapter 3 for a discussion of the development of the American-style legal system in the CNMI since W.W. II.

2 Only certain parts of the United States Constitution as specified in the Covenant apply to the Commonwealth of the Northern Mariana Islands as they do in the fifty states. These are: Article I, Section 9, Clause 2; Article I, Section 9, Clause 3; Article I, Section 9, Clause 8; Article 1, Section 10, Clause 1; Article I, Section 10, Clause 3; Article IV, Section 1; Article IV, Section 2, Clause 1; and Article IV, Section 2, Clause 2. Those parts of the Constitution that do not apply, for example, have to do with land alienation, the right to jury, and Legislative apportionment (see Herald (1992, 1995); McKibben (1990); and Willens and Siemer (1977)).
and applicable United States law. Following these primary sources of law are the Commonwealth Constitution, some Trust Territory law, Commonwealth law, custom, and American common law (Ottley 1993).

Custom can become a source of law in the CNMI in basically three ways. First, the Commonwealth legislature, as a lawmaking institution, can make custom statutory. Second, as the courts make decisions that relate to Chamorro and Carolinian custom, these determinations become precedents in the form of case law. Third, the court can determine and define custom on a case-by-case basis. If an issue of custom comes up during a probate dispute, for example, the judge can order an evidentiary hearing, and use the evidence presented as the basis for his or her ruling.

As a result, custom has evidentiary weight in certain types of proceedings, such as family, probate, and land cases. Furthermore, Chamorro and Carolinian customs take precedence over American (English) common law. Although custom follows statutory and case law, and is therefore tertiary, it has also been integrated into Commonwealth statutory law, and over the past fifty years has become embedded in the case law. This pluralist legal system enables

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3 Of the three Supreme Court Justices and five Superior Court Judges in the Commonwealth, one is female. Pro-tem judges, both male and female, are also used in the CNMI on an as needed basis, such as when conflict of interest issues arise.
Carolinians and Chamorros to argue custom in certain circumstances.⁴

Custom, thus incorporated into the Commonwealth's legal system, was created to be both a signifier as well as a conveyor of (traditional) culture.⁵ Like other formerly colonized Pacific Islanders, Chamorros and Carolinians sought to affirm, promote, and preserve the indigenous heritage of the Northern Mariana Islands within the framework of the (imposed) American legal system (Olson 1997; Tamanaha 1989: 73; Turcott 1983; 1989; Meller 1985: 261-281). Custom, as a legal category, symbolically ties the people of the Marianas to their past, and asserts an (ethnic) identity that is independent from their status as American citizens. Furthermore, through law, Chamorro and Carolinian culture continue to be indexed, and customs, having the force of law, are perpetuated. In this way the CNMI, recognizing the ideological force of law, seeks to create and maintain socio-legal categories that can be sustained in the face of the potentially homogenizing effects of an American system of governance and American law.

However, the project to include and apply Chamorro and

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⁴ Griffiths (1986) refers to this as a "weak" form of pluralism that "has been a fixture of the colonial experience."

⁵ Guam, in contrast, does not incorporate custom and it is not a recognized source of law (McCormick 1993: 520).
Carolinian customs in the CNMI carries (and requires) the implicit assumption that not only can customs be transposed into an American legal system, but that custom itself is a tangible entity that can be discovered and circumscribed. In this view custom can be extricated from daily life, existing in isolation from its cultural context (cf. F. Merry 1988: 875; Von Benda-Beckmann, K. 1986). To conceive of custom as something identifiable suggests objective factuality; that is, it indicates the possibility of locating the true and authentic. The Commonwealth’s incorporation of custom into statute and the application of custom in the courts reflect, and are predicated on, the belief that Chamorro and Carolinian customs are fixed entities. As a result, the CNMI courts must not only determine the facts of a case and interpret the law, but also must, in theory, discover, retrieve, and then follow “true” custom.

In practice the integration of custom into the Commonwealth’s legal system is not a process of discovery, but one of production. Through the use of custom, individuals and institutions, such as the courts, create, define, and negotiate meanings (cf. Cohn 1989; Comaroff and Roberts 1981; Mertz 1988; Olson 1997; Von Benda-Beckmann F. and K. 1985). Furthermore, once the Commonwealth lawmakers and the courts make a determination on custom, their decision becomes part of law. The resulting statutes or case law are, as all laws are in American jurisprudence, authoritative and
constraining. Future court rulings, therefore, must conform to the extant statutory law and be situated within the context of the emerging case law.

Chapter six will address the way participants in legal disputes, such as judges, attorneys, and litigants, actively (and often strategically) define custom during land disputes. This chapter, on the other hand, examines how institutions and institutional processes in the CNMI's legal system engage in the construction of hegemonic meanings through statute, case law, and case-by-case determinations of custom. Statutory law will be addressed first. Case law and case-by-case determinations will then be considered together. For the sake of clarity, these primary sites of law production will be addressed separately, but are fundamentally intertwined.

Legislative Determinations of Custom: The Probate Code

The Bedrock of Carolinian custom is the cohesiveness of the family unit. Family land is generally used as communal property available for use by the entire family. Although the effects of modernization and the enticement of increased land values threaten the traditional notions of Carolinian custom, *it would be impractical to view customary law as a flexible, ever-changing, adaptable source of law.* If the court viewed custom in such a manner, there would be no consistency or predictability in its application. The legislature realized how impractical such a notion was from a legal standpoint when it codified the traditional Carolinian customary practices. (*In re Estate of Rangamar,* CA No. 89-369, Order, Slip op. at 10, (1992), emphasis added).

On February 15, 1984, the Commonwealth Code Title 8,
Division 2 Probate Law and Procedure, enacted by the Commonwealth Legislature, came into effect. Title 8, Family Law and Probate, is divided into two parts, Division 1 and Division 2. Division 1, titled Domestic Relations, addresses issues related to marriage, divorce, family, adoption, and child custody, and is subdivided into eight chapters, some of which contain separate articles. According to the Commission Comment regarding Division 1, this section primarily derives from the Trust Territory Code (TTC) title 39, but many parts were “modified” to “make them conform to the organizational structure of the Commonwealth government” (8 CMC 101). Most relevant to this discussion, however, is Division 2, which focuses on issues related to probate, such as the disposition of estates, wills, surviving heirs not included in wills, and intestate succession. Division 2 includes nine chapters with two articles and is generally based on the Uniform Probate Code that has been adopted in several parts of the United States (8 CMC § 2101).

The formation of the Probate Code in 1984 (henceforth the Code) resulted from the CNMI government’s conscious attempt to integrate both Carolinian and Chamorro customs into statutory law. CNMI lawmakers, as well as many legal professionals, had promoted the creation of a new probate
code that specifically addressed custom. The motivation behind the creation of an inclusive (pluralist) code was multiple. First, there was a desire to simplify probates and to assist judges in determining custom; it was widely believed that the courts were having too much difficulty determining custom on a case-by-case basis. Further, at the time the Code was created, most of the judges in the Commonwealth, as well as the vast majority of attorneys, were state-siders, not locals, who did not know or fully understand Chamorro or Carolinian customs.

Second, the Code was intended to forestall redundant examinations of custom. It was felt that with the Code in place there would be no need to go through an evidentiary process to define a custom each time it came up in probate. Third, the inclusion of custom into Commonwealth law was a public affirmation of the primacy of indigenous identity in the Marianas. Fourth, an unstated concern was that attorneys would choose experts who they could influence to testify on

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6 It is interesting to note that as early as 1946 there were recommendations to codify custom:

Native concepts about land tenure must be regarded with respect. In order to ascertain present-day native concepts regarding land ownership, the people of each Culture Area should be required to codify these concepts after all sections of the community have had a chance to express their ideas on the subject. No attempt should be made to create uniformity of land-tenure concepts in Micronesia for the sake of convenience on the part of the administrators" (Oliver 1971:12).
custom. As a result some proponents of the Code feared that CNMI case law would ultimately become tainted by "wrong" custom.

The following section from the first chapter of division 2, entitled General Provisions, delineates the intent of the Probate Code:

§ 2104. Purposes.
(a) This law shall be liberally construed and applied to promote its underlying purposes and policies.
(b) The underlying purposes and policies of this law are:
To simplify and clarify the law and custom concerning the affairs of decedents and missing persons;
To discover and make effective the intent of a decedent in distribution of his property;
To promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors; and
(4) To realize the compelling interest of the Northern Mariana Islands in preserving the historic traditions and culture of its citizens of Northern Marianas descent (8 CMC 202 (bold in original, emphasis added)).

The formation of the Code, its stated intent, and the Court's reliance on it, however, have been problematic for several reasons. First, from the beginning there have been disagreements and criticisms as to the interpretations of custom presented in the Code. Second, there is disagreement in the legal community as to whether statutory law should have primacy in probate proceedings. Third, while arguably

7 The implicit issue was that attorneys or their clients could buy expert testimony. The role of expert witnesses will be discussed in greater detail in chapter six.
all (Western) law is inherently ambiguous and open to interpretation (Cohen 1950; Llewellyn 1989; Mermin 1975), the asserted importance of custom throughout the text creates even more ambiguity. This stems from the fact that although the Code is statutory, it also asserts the primacy of (non-statutory) custom in certain contexts.

The Probate Code, however, only applies to the estates of those who die after the Code came into effect on February 15, 1984. For deaths prior to 1984, the court relies on the Trust Territory Code (particularly Title 13, Probate Law and Procedure), applicable custom, and case law, including cases that were decided by the Trust Territory courts, but did not codify procedures in cases of intestate succession. This lack of codification has become an issue since a large number of probates in the CNMI are cases of intestate succession, at least according to American law. Although the new Probate Code does not apply to cases prior to 1984, it has been used as a reference in several of these cases to demonstrate the codification of "pre-existing" Chamorro and Carolinian custom.

To include customary provisions in the Probate Code, the legislature had to determine what the Chamorro and Carolinian customs were, decide which customs were relevant to the Code, 

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8 That is, customs as they were practiced during the life of the decedent and at his or her death.
and attempt to integrate these cultural practices into statutory law. The Code was not meant to be a comprehensive statement of custom completely binding the judiciary. Rather, the intent was to codify, as much as possible, the consensus reached about those customs relevant to probate so as to preclude having to determine and define the relevant customs in every case.

To begin the process of establishing a normative statement on custom, the legislature hired the Chamorro attorney Jesus C. Borja (later a CNMI Supreme Court Justice and Lt. Governor) to write the Code. Borja researched custom by interviewing male and female members of both the Carolinian and Chamorro communities using the following criteria: first, the age of the informants, targeting elders (man‘amko’), and second, whether the informants were respected in the community (implicitly considered knowledgeable about custom). A third criterion only applied to Carolinian informants: status -- whether or not they had high rank and were descended from a chiefly lineage. This last factor did not determine his choice of informant, but he considered Carolinian lineage in his evaluation of the information. Borja’s conclusions came primarily from these interviews, but he also considered written documents such as Spoehr’s (1954) book, *Saipan: An Ethnography of a War Devastated Island*, and Emerick’s (1958) article, “Land Tenure in the Marianas.” Both references have been widely used in
the Superior and Supreme courts before and after 1984 as authoritative sources defining customary practices.\(^9\)

Once Borja submitted a draft of the Code, the CNMI legislature held public hearings on its contents before approving a final draft.\(^10\) Chamorro and Carolinian citizens came forward and testified on the customary provisions. Some of the witnesses' testimony differed from that of each other and/or from the definitions of custom included in the proposed code. The greatest number of disagreements, and the most contentious, revolved around the Carolinian customs. Several Carolinians angrily left the hearings in protest of the majority representation of their customs. As Flinn (1996) argues, for example, the Code does not take into account the complexity of Carolinian cross-sibling relationships and privileges genealogy over obligations and behavior.

In spite of the Probate Code's mixed reception, it became a permanent part of CNMI statutory law, and, as of this writing, there have been no organized efforts to change or abolish it.\(^11\) Nevertheless, the Code continues to be a

\(^9\) The inclusion of anthropological texts as authorities on custom will be discussed in more detail in Chapter 6.
\(^10\) All of my data regarding the legislative hearings on custom come from interviews.
\(^11\) The possibility of changing the Code remains and is promoted by some members of the community, but to do so would introduce several new conflicts. The most prevalent concern is that legislators and attorneys tasked with rewriting the Code would be motivated by self-interest.
focus of contention. This is because debate about the Code reflects broad and fundamental ideological concerns about custom, indigenous identity, ethnicity, the preservation of custom, and the role and meaning of law in the Commonwealth and throughout the Pacific Islands. Those citizens and legal professionals in favor of the Code argue that it has effectively simplified probates and has made issues of adoption, divorce, and inheritance more straightforward. They also believe that the Code accurately represents customary law and practice.

Further, legal professionals concerned with the preservation of Chamorro and Carolinian culture and identity maintain that the codification of custom is the best, and perhaps only, way to preserve traditional beliefs. One local attorney expressed his belief that American law was more dominant in the Northern Marianas because the Commonwealth lacks a well-defined position on custom. Although he argued that definitions of custom should come from the case law

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12 Regardless of their position on the Code, most legal professionals in the CNMI believe Mr. Borja did an admirable job despite the time constraints imposed by the legislature.

13 I emphasize attorneys here, as opposed to average citizens, because it was they who elaborated on the Code’s impact on Chamorro and Carolinian culture during conversations with me. Further, it was they who had spent the greatest amount of time formulating a position about the Code. There were, however, (several) attorneys and lay people with whom I spoke that either did not care about cultural preservation or believed that Chamorro custom, in particular, was all an invention and so disagreed with any attempts to codify custom, preserve it, or apply it in the courts.
rather than from legislative action, he agreed that it was necessary to enumerate custom in order for it to have the power and authority of American law.

In contrast, those who criticize the Code either believe that the customary provisions are too much of a compromise and/or question their veracity. Some of these critics believe that Borja didn’t interview enough people or the “right” people, while others regard the Probate Code and its application as problematic. Those in the latter group may also disagree with the interpretation of custom, but, for them, it is the Code in its entirety that gives them pause. They do not believe that custom should be codified, and opine that the primacy of statutory law in probate proceedings is inappropriate because it removes custom’s inherent flexibility (cf. Olson 1997; Tamanaha 1989). The best way to preserve the Carolinian and Chamorro customs and culture, they argue, is not through statute, but by continuing to apply and interpret customs on a case-by-case basis.

These critics also contend that when custom is codified, its meaning, in the sense of value, substance, and definition, is changed or (sometimes) erased. To them once custom is extracted from its (ever-emerging) contexts and is fixed in law, it is no longer custom. Any definition of Chamorro and Carolinian custom, along with its component features, becomes (essentially) permanent and concrete instead of remaining fluid. Finally, critics assert that the
primacy of the Code over custom in the court has the negative result of limiting, and in some cases removing, the judge's role as fact finder (truth finder). Although the codification of custom in the Code has not completely precluded the ability of judges, attorneys, and litigants to argue custom during probate hearings, once custom becomes statutory, judges are no longer as free to interpret custom, weigh facts, and evaluate custom in a broader context. Nor can they apply other qualitative or subjective factors such as the witnesses' and family members' demeanor in the decision-making process.¹⁴

Another source of criticism of the Probate Code results from the underlying (but ubiquitous) tension between Carolinians and Chamorros in the CNMI. Carolinians believe that they are systematically discriminated against in all levels of government in the predominately Chamorro-controlled Commonwealth. They argue, and some Chamorros agree, that as a group they are politically and socially excluded and are underrepresented in the CNMI legal system. Thus criticisms of the Code, the legal system, and court decisions by Carolinians and Carolinian advocates are part of a broader, ongoing critique of the socio-political systems in the CNMI. At the time of this writing there were no Carolinian judges

¹⁴ For a related discussion on the evaluation of evidence see Philips (1993a).
or Saipanese-Carolinian attorneys practicing law. Some of the judges and attorneys in the CNMI are part Carolinian by blood, but none are "culturally" Carolinian. They do not know Carolinian customs, were not raised in the Carolinian community, and do not speak the language fluently. The absence of Carolinian legal professionals reinforces the sense of qualitative segregation.

As a result, the Carolinian response to any legislation or legal ruling that affects the Carolinian community is interpreted in light of the long history of Chamorro-Carolinian association and in relation to contemporary experiences and contexts. That is not to say that there is always agreement within the Carolinian community because, as with any group, there is division and variability. Rather, while Carolinian critiques of the governmental system and legal codes may be multiple, individuals in the Carolinian community are all cognizant of their numeric minority and the ethnic hierarchy in the community. How each member interprets that divide varies, especially given the growing "Chamolinian" population.

15 There is one Carolinian lawyer practicing, but he is not from the Marianas. Recently, a local Saipanese Carolinian got her law degree, but at the time of my research she was not yet practicing.

16 According to the 1995 census figures on ethnicity there are 13,844 Chamorros, 2,382 Carolinians, 3,276 ethnically mixed Chamorros, and 659 ethnically mixed Carolinians living in the CNMI (CNMI Department of Commerce, Central Statistics Division, 1998: 14).
It is interesting to note that, although the Probate Code has had the effect of making certain customs concrete—some would say in making custom—many aspects of the Code are open to interpretation. For example, the Code both asserts the legal priority of statutory custom and affirms the importance of non-statutory custom. This is only a seeming paradox: the Probate Code, as codifying statute, is the first (most important) source of law, but, concomitantly, explicit statements in the Code do not invalidate customary (non-statutory) practice. Non-statutory custom, however, cannot supersede those customs and customary procedures that are (for better or worse) interpreted and clearly defined in the Code.

There are certain sections of the Code in which Chamorro or Carolinian custom is explicitly interpreted and sections where the specific procedures to carry out custom are systematically laid out. Elsewhere, however, statements assert the importance of custom in general or refer to a particular custom without explanation or definition of the custom in question. Zorn (1991: 22) describes the situation in Papua New Guinea, where the "Constitution admonishes the courts to ground the law in custom but without a clear definition of custom, of whether it consists of norms and shared beliefs or whether it is a tally of common behavior patterns." Similarly, in the CNMI, custom is a source of law, but how the courts should define and apply it remains
ambiguous.

Both of the following examples of this ambiguity concern adoption. The first excerpt is from Chapter 4, Division 1 of Title 8, Family Law. The second excerpt is from Chapter 9, of Division 2 on intestate succession.

§ 1419. Construction of Chapter; Rights of Persons Affected by Adoption.

This chapter shall be liberally construed to the end that the best interests of the adopted children are promoted. Due regard shall be given to the rights of all persons affected by a child's adoption. Nothing in this chapter shall be construed to impair any rights or responsibilities created pursuant to customary Chamorro or Carolinian adoption (bold in original, emphasis added).


Unless the family consents or agrees otherwise, a person adopted by law or custom into a Carolinian family shall be treated under this law as if he were born into a Carolinian family (bold in original, emphasis added).

While Chapter 4 is devoted entirely to adoption, only the ambiguous excerpts above address the issue of customary adoptions. Nowhere in this chapter are customary adoptions, either Chamorro or Carolinian, defined. The second section addresses Carolinian adoptions in cases of intestate succession. Again, what constitutes a Carolinian adoption is not explained, although there are arguably at least three types of Carolinian "adoptions," and the inheritance rights of the adoptees vary depending on the type of adoption. While a certain lack of precision is a normative and necessary feature of any body of law, the meaning of custom presented
both specifically and generally in the Probate Code is arguably more amorphous than most statutory law.

The practical ramifications of the sections of the Code mentioned above are twofold. First, they elevate custom over statutory law. Therefore, non-statutory custom has recognized legal validity in the Commonwealth. Second, these inclusions of non-statutory and undefined custom in the Code can be seen as a way to reaffirm the importance of Chamorro and Carolinian culture in the relatively confining framework of the American legal system. Third, the periodic and ambiguous reference to non-statutory custom, as well as allusions to custom that remain undefined, impose a degree of flexibility in the Code's text. The ambiguity creates an opportunity for broader and more fluid interpretations of custom. Moreover, generalities in the Code enable the continuation of the legal applicability of custom into the future. Customary adoption is but one of many examples where the Code cites an applicable custom without defining the custom in question or articulating the procedures used to apply or determine said customary practice.

Nevertheless, the enactment of the Probate Code has had the primary and intended effect of constraining, and in many cases excluding, consideration of any sources of law other than itself (see Llewellyn 1937: 250). In this way, not only is statute structurally prioritized, but also once a person employs Western legal procedure, the use of custom as a legal
avenue is attenuated. For example, the Code recognizes the (ideological) importance of preserving customary wills (partidas). However, if both an oral will, such as a partida, and a valid written will exists, the written will, for all practical purposes, will have legal authority:¹⁷

§ 2302. Wills Made Under Customary or Prior Written Law.
(a) Validity of Customary Wills and Partidas.
Nothing in this chapter shall prevent the making of a will or partida in accordance with the historical traditions and customs of the Northern Mariana Islands, be it Chamorro or Carolinian custom, nor shall anything in this chapter affect the validity of a will or partida made in accordance with such customary law. (§ CMC 211 (bold and italics in original)).

§ 2303. Execution.
(a) The courts of the Commonwealth shall give effect to a written will duly executed. In the absence of a written will, heirship shall be determined in accordance with customary law and the probate laws of the Commonwealth, as may be applicable under this division (bold in original, emphasis added).

§ 2308. Revocation by Writing or by Act.
A will or any part of a will is revoked:
(a) By a subsequent will which revokes the prior will or part expressly or by inconsistency; or
(b) By being burned, torn, cancelled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in the testator's presence and by the testator's direction (bold in original).

In the above examples, customary inheritance becomes, in

¹⁷ As discussed in chapter four, another example is that a written deed is binding regardless of custom.
effect, secondary to (Western-type) written wills. Of course, a person may make a customary division of property that is legally valid. But, because a written will nullifies any and all previous dispositions of property and cannot be verbally nullified, it is the written will that has legal force.

Furthermore, because of the high value of land in the CNMI, the large number of disputed probates, and the urging of attorneys, there is increasing pressure for Chamorros and Carolinians, but Chamorros in particular, to make written wills and discontinue customary inheritance practices (Ottley 1993:561). As a result, the customary oral transfer of estates is being phased out.

The most detailed discussion of custom in the Code is in Chapter 9 on intestate succession. This chapter enumerates how a decedent's estate devolves when there is no will or customary equivalent. Intestate succession of Carolinians, Chamorros, and persons not of Northern Mariana Islands descent are distinguished and addressed separately. The treatment of custom presented in Chapter 9 is particularly significant for two reasons. First, the procedures it sets forth for distribution of an estate apply not only when there is no will, customary or written, but also when a customary transfer of an estate cannot be proven to have occurred.¹⁹

¹⁸ Note that there is no explanation of a partida given.

¹⁹ This would be an issue between heirs that were in conflict with one
Therefore, if the heirs of a Chamorro person cannot
demonstrate that a partida occurred, then the estate will be
divided according to the Code unless all heirs agree on
another distribution.

Second, because the intestate succession chapter is very
specific about Chamorro and Carolinian customary distribution
it is consequently the most restrictive. Note the level of
detail in comparable sections of the Code:

§ 2902. Chamorro Custom: Ancestors' Land.
Ancestors' land passes in intestacy in the following
manner:
(a) The surviving spouse obtains a life estate,
with the issues obtaining a vested remainder in fee
simple by representation.
(b) If there is no surviving spouse, the surviving
issue of the decedent obtain all of the properties by
representation.
(c) If there is no issue, the surviving spouse
obtains a life estate, with the remainder to the
decedent's siblings, or if they are not living, to their
issue by representation.
(d) If the decedent is unmarried and without issue
at the time of death, decedent's land passes to his
siblings, or if they are not living, to their issue by
representation.

(a) Unless the family consents or agrees otherwise,
family land passes to a new customary trustee in the
following manner.
(1) Upon the death of the customary trustee,
title passes to the oldest surviving sister of the
decedent;
(2) If there is no surviving sister, the
oldest surviving brother of the decedent obtains
title;

another and at least one heir argued that there was a partida. There
was, however, no preponderance of proof that a partida existed or if one
did, what it specified.
(3) If there is no surviving sister, or surviving brother, title passes to the oldest surviving daughter of the decedent and of this brothers and sisters;

(4) If there is no surviving sister, brother, or daughter, title passes to the oldest surviving son of the decedent and of his brothers and sisters;

(5) If there is no person capable of taking title listed above, title passes to the decedent’s grandchildren in the same manners as that set forth in subsection (a)(3) and (4) of this section.

(6) In the event the court determines that no person is designated by subsection (a) of this section to hold title, the members of the family with use rights to the land shall select a customary owner who shall serve as customary trustee of the land. In the event the members of the family with use rights to the land are unable to agree upon a customary trustee, the court shall select a customary trustee in accordance with customs of the Carolinian people.

(b) All members of the family shall have the same equal rights to the use of the land as the customary trustee has.

(c) Unless the family consents or agrees otherwise, family land shall not be passed on by will, devised, sold, leased, exchanged, mortgaged, partitioned, or otherwise disposed of by the customary trustee (bold in the original).

The court must follow the specific procedures that are set forth in the Code and can no longer take into account customary considerations that can make a significant difference in the amount and type of an heir’s inheritance. Some relevant customary issues for the Chamorro include: birth order (age) and sex of the children; whether or not and to what degree the children cared for their parents in their old age; and whether or not the children were respectful to other family members and contributed financially to important family events, like weddings and rosaries. As Makoba (1992:
201) explains, "traditional law tends to stress obligations rather than rights." The Code's effect is to grant all Chamorro children equal inheritances regardless of custom, and judges no longer have the authority to consider other (relevant) factors in their determinations.

Another interesting feature apparent in Chapter 9 is the contrast in the relative representation of Carolinian versus Chamorro custom (see examples above). Although the descriptions of Carolinian custom in the Code lack the specificity and complexity of actual practice (Flinn 1996), they are far more elaborate than the comparable sections on Chamorro custom. Moreover, there are many Chamorro customs that are omitted or poorly explained in the Code, such as adoption, partida, and consent, yet which regularly come up in probate disputes and have a direct effect on inheritance (cf. Olson 1997).

I do not dispute that the devolution of Carolinian clan land is complex and requires detailed explanation or that Chamorro inheritance is far easier (for a Westerner) to understand. Rather, what stands out in Chapter 9 and throughout the Code is the implication that Carolinian customs are not normative and, because most people (non-Carolinians) do not understand them, they must be very carefully explained. In contrast, Chamorro customs being those of the dominant group are believed to be widely understood and thus are assumed to require little
explanation. Yet, there are many subtleties and intricacies of Chamorro customs that emerge in case law and are very salient in actual practice, but which are lost in the Code.

As a case in point, Chamorro customary adoption, *poksai*, was and still is quite common, and can be the cause of familial jealousies and disputes over inheritance, but is not addressed in the Code. Grandparents, for example, frequently adopt their grandchild and raise him or her as their own. Consequently, this child becomes the *de facto* sibling of the grandparents' other children (including his or her biological parent) with the equivalent rights and responsibilities. This adopted child may inherit equally with his or her classificatory siblings, or may be entitled (by custom) to inherit more because he or she was the one to care for the grandparents in their old age.

Ironically, because Chamorro customs are substantively absent from statute or because what is represented is highly diluted, they may have less and less legal relevance in the CNMI despite being considered normative. Another potential consequence of this textual silence would be the gradual loss of the subtleties and complexities of Chamorro custom. This eventuality would only be mitigated by the explication of custom in the case law. Conversely, not only are Carolinian

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20 The custom of *poksai* has been elaborated in the case law.
customs more complexly presented in the Code, but the predominantly Chamorro judges are more likely to see the need for evidentiary hearings in cases involving custom. Although judges are only supposed to draw their interpretations of custom based on the law and the evidence presented, there is no doubt that they use their commonsense understandings of custom to some degree in their rulings and decisions to call for evidentiary hearings (Llewellyn 1989: 78-81).21 Both local and state-sider judges are less likely to feel familiar with the Carolinian customs and, as a consequence, Carolinian customs with their divergent interpretations are more likely to be expressed and embraced during court cases.

Despite the existence of the flexible features mentioned above, the Probate Code fundamentally transforms custom. First, the applicability of the Code in Probate Court has the effect of limiting, and in some cases excluding, the use of non-statutory custom during probate proceedings. By prioritizing the custom as defined by law, the Code effectively limits or can exclude the use of other definitions of custom in the CNMI courts. As a result the legal applicability and significance of non-statutory custom is ultimately diminished. Second, custom is only

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21 Interestingly, in his discussion of British imperialism in Yorubaland, Laitin (1985: 307) writes that: "Most important, however, has been the creation of a 'common sense' as the ideological force of hegemony."
superficially represented in the Code, so what is preserved through statute does not fully represent the complexity and variability of custom. Third, in much the same way Snyder (1981) discusses the impact of European law on African custom, Chamorro and Carolinian customs are transformed as they become integrated into the Commonwealth's legal system. In order for customs to fit into American legal categories they must be reinterpreted. That Carolinians and Chamorros were the ones who transposed custom into statutory law does not alter the fact that the customs have been changed and will continue to change as they are interpreted through the filter of American legal principles.

The Code's proponents would argue, however, that the benefits of codifying custom outweigh its disadvantages. Codification greatly simplifies the application of custom in legal contexts. In combination, statute and case law lessen interpretive ambiguity, making the job of judges and attorneys far easier.\textsuperscript{22} Second, codification gives custom the force of law so that it has ideological weight as well as material consequences. Finally, once established in the law, Chamorro and Carolinian customs, as representatives of culture and tradition, are less vulnerable to external

\textsuperscript{22} Rodman (1993: 62) describes how on the island of Ambae pragmatism was of primary concern in the codification of their customs.
assimilating forces, ultimately allowing Chamorro and Carolinian culture to continue, at least discursively.

Eventually, all the estates of people who died prior to 1984 will have been probated. As a result, the Code, despite being contested, will become the primary source of law and authority on custom. During the fifties, sixties, and even into the seventies, Chamorros and Carolinians had resisted probating estates for a variety of reasons. As one local attorney explained:

Just the idea of filing something in court irritates people. I mean it’s, it’s, not something that people, I guess Chamorros, the local people here are accustomed to. You don’t bring somebody to court unless it’s just ultimately the final straw. I mean he makes you mad, or he did something terrible to you, and so the idea of, of, even the notion of, trying to probate the estate is not seen as being a friendly gesture.

Tradition and the desire to avoid conflict kept local people from legally probating familial estates, but, during the 1980s, many of these estates were probated to take advantage of high land values.

Nevertheless there remain decades-old unsettled estates. In some cases, these include smaller or less valuable pieces of property, often located in the interior, and so the pressure to probate has not been so intense. In other cases, some Chamorros and Carolinians, because they prefer to handle family matters privately and in “customary” ways, have resisted going to probate court or using the (American) legal
system at all. Those few who have been able to completely avoid probate and obtain clear title to land are families that have been financially able to resist the need for legal title. They have not needed to sell or lease their property to sustain themselves, to use their land as collateral to obtain loans, or have not had individual family members force them into probating their inheritance. The need to probate these old estates, however, will increase over time due to population, social, and economic pressures.

Once all the pre-1984 estates have been settled, the Probate Code will become the primary representative of custom, followed by case law. Concomitantly, the need for evidentiary hearings will be virtually eliminated and with them the use of expert witnesses. The end result will be that interpretations of custom will be confined to statute, case law, and perhaps scholarly documents, such as those by anthropologists (cf. Woodman 1969). Furthermore, the Code will become an authority on custom in and of itself, as attested to by the fact that the Code has been cited in cases where it does not apply. The ability of attorneys and litigants to argue divergent interpretations of custom will be attenuated and judges will be constrained by established

law in their interpretations and decisions.

One of the most interesting features of the Probate Code is the intersection of individual interpretations of custom with state-level construction of meanings. In the case of the CNMI, the intangible, but ubiquitous, "state" is both the Commonwealth and the United States. Resistance, consent, domination, assimilation, and compromise are all embodied in the Code. The interpretation of custom presented derives from multiple sources, including Carolinians, Chamorros, anthropological texts, legislators, and attorneys. Although consensus was obtained, it was not without controversy. The individual and community contributions to the Code's customary content were substantively transformed to create the appearance of a unified, if restricted, representation of custom.

First, the Commonwealth, as represented by elected officials and attorneys, wanted to create a coherent set of principles and policies to alleviate the legal ambiguity of custom. This project, however, required compromise, simplification, and the rejection of contradictory interpretations of custom (cf. Abel 1979; Olson 1997). The formation of the Probate Code was a process by which meanings were constructed, ethnicity was produced, and authenticity implied in the Code's configuration of custom. Out of necessity, complexity and variability were compromised and dissents over the creation, use, and contents of the Code
were silenced. As a result, a diluted version of custom has been made concrete. Moreover, the Code's interpretation of custom has significant material consequences. Probates, for example, are a central way in which property ownership is determined and transferred (cf. Von Benda-Beckmann, F. 1995).

Second, the Commonwealth's intent was to preserve cultural values and Northern Mariana Islands' traditions by indexing them through custom. By integrating customs into the Commonwealth legal system, the people of the Commonwealth overtly rejected a homogenizing and all-encompassing American system. Nevertheless, the acceptance of American legal procedure and ideology (requisite with the decision to become a part of the American political family) was a form of consent that paved the way for co-optation (Fitzpatrick and Blaxter 1979: 117; Kidder 1979). Law is a powerful assimilating force that is fundamental to the creation and perpetuation of the state. Law and legal institutions are not only effective in the day-to-day maintenance of order and control by the dominant group, but are also instrumental in the production and reproduction of ideology (cf. Gramsci; Philips 1993b: 6; 1994; Sumner 1979). Custom is constantly transformed as a consequence of being modified and adapted to the procedural and ideological requirements of American jurisprudence.
Cases and Case Law

The law is not a homeless, wandering ghost. It is a phase of human life located in time and space...

The legal system of any country has a definite history which helps us to understand its provisions and shows how it changes according to varying social conditions, and even according to the will of certain powerful individuals (Cohen 1950: 4).

Despite the legal priority of statute in the American hierarchy of law and the increasing relevance of the Probate Code in the Commonwealth, it is case law (*stare decisis*) that forms the foundation of American judicial practice (Llewellyn 1937, 1989; Mermin 1975). While statute constrains how the courts apply precedent, it is also meant to reflect the long history of judicial decisions and reasoning that is embodied in American case law. Moreover, the courts do not apply statutory law in an epistemological vacuum. Rather, statute and precedent are dynamically interconnected and are considered in conjunction with each other. Finally, case law is the primary source of law in situations where no applicable statute exists.

The principle of *stare decisis*, which is paramount in American jurisprudence, is applied in much the same way in the CNMI as it is in the United States. Judges and attorneys in the CNMI, however, not only consider the vast body of "American" case law (both state and federal) that has developed over the past two hundred years. They also apply the growing number of precedents from the relatively young
Commonwealth Courts (Superior, District, and Supreme) and, significantly, draw on the circumscribed body of case law decided by the Trust Territory Courts during the American administration of Micronesia. All of the Trust Territory cases, including those from the other island districts, such as Palau, Ponape, and Yap, can apply as precedent in the Commonwealth. Consequently, CNMI courts draw on a broader range of case law than comparable courts in the United States.

Although the Trust Territory precedents were made within American-style courts and by American judges, many of the cases directly address customary issues and principles. Furthermore, the Trust Territory courts made a concerted effort to apply customary law in their decisions and only use American law as a guide (Blas v. Blas, 3 T.T.R. 104, (1966)). The combined body of Trust Territory and Commonwealth case law is the primary, authoritative source of, and repository for, legal interpretations of custom in the CNMI. The extant case law includes precedents on the following Carolinian and Chamorro customs: adoption, illegitimacy, intestate succession, iyôn manaina (Chamorro ancestor's land), family/lineage land succession (Carolinian), marital assets/spousal inheritance rights, matrilineal descent, and

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24 This is the spelling used in the Trust Territory Reports. The more current spelling is Pohnpei.
partida. As a result, precedent is central to the
collection of hegemonic interpretations of custom in the
CNMI.

The law created by an original opinion, however, is
neither static nor deterministic (Llewellyn 1989; Mermin
1975: 244). Rather, it is merely the foundation onto which
future opinions are built. During this process of accretion,
the law (embodied in precedent) is transformed. The opinions
of future courts ascribe new meanings and nuances through
their interpretations. This process, however, is not
systematic and the ultimate form of the law has an uncertain
quality. As a result, the law can continue to change or the
original interpretation can be strengthened over time. In the
latter case, a series of opinions on a particular issue may
culminate in a relatively fixed and accepted interpretation.
When this occurs, the law is less susceptible to the vagaries
of judicial interpretation or attorneys’ legal strategizing;
the precedents become authoritative regardless of their
accuracy or comprehensiveness and the interpretations widely
accepted by the courts.

Case law is pertinent to most legal proceedings in the
Commonwealth and is particularly important in cases where
issues of custom arise. Apart from Title 8 of the
Commonwealth Code, Family Law and Probate, the legislature
has only peripherally included Chamorro and Carolinian custom
into statute (Ottley 1993). Consequently, in the majority of cases that involve custom, whether they are civil disputes, criminal cases, or probates, the courts must be guided by applicable precedent. Furthermore, case law is especially relevant as a source of law in probate determinations because the Probate Code only applies in estates of those who died after 1984.

Extensive evidentiary hearings to determine custom have become increasingly rare. The majority of customary issues are now encompassed in statute and case law. Unlike case law in the United States, which developed over generations, case law in the Marianas, which begins with the formation of the Trust Territory, has accrued relatively rapidly. Most legally significant Chamorro and Carolinian customs have been addressed to some degree in precedent. The first series of important precedents occurred during the American administration of Micronesia by white judges in a Western legal system. Judges during this period tried to make clear and accurate determinations, applying local customs, but

25 For example, the court must consider local custom as a mitigating factor in criminal offenses (Ottley 1993: 553).
26 Evidentiary hearings continue to be important to determine the facts of a case and certainly there will continue to be issues of custom that will need to be decided by the courts, but these types of cases are relatively scarce. A recent example is the Civil Action, Diaz v. Taylor, Civil Action No 97-879D, in which the attorney for the plaintiff tried to argue that a deed of gift should be nullified because the beneficiaries of the deed broke customary law.
aware of their own limitations. But they had little guidance and scant understanding of the complexities of the issues they were dealing with. Moreover, they did not consider historical transformations and contemporary context when they interpreted custom and were further constrained by their own biases and association with the foreign administering authority (cf. King 1999).

The second significant period of court decisions occurred in a climate of rapid social and economic change that came with the ending of the Trust Territory and the creation of the Commonwealth in 1976.27 From the late seventies into the early nineties, the courts had to contend with overwhelming issues of conflict and manifestations of greed. The Northern Mariana Islands were no longer insulated or limited by the protectionist and economically restrictive policies of the Trust Territory administration. To promote development, the CNMI government, as well as individual entrepreneurs, emphasized the tax advantages and investment security that came with being a United States Commonwealth. By encouraging investors and embracing opportunities in the global market, such as tourism and garment manufacturing, the Commonwealth surpassed all expectations for economic

27 The Commonwealth agreement was not fully implemented until 1986 and the United Nations did not terminate the Trusteeship Agreement or officially recognize the Commonwealth until 1990 (McPhetres 1997: 205).
development and growth.

The rapid influx of money created unprecedented opportunities for local people and the Commonwealth as a whole. Not surprisingly, however, prosperity also triggered conflict as the demand for land and its value as a commodity increased. Litigation often ensued and the courts were faced with interpreting the Commonwealth Constitution and local customs in a climate of intense economic pressure and social change. Many authoritative interpretations of "culture" were developed in this brief period and became an integral part of case law. As one attorney noted, the renderings of custom developed in the case law are a "patchwork quilt," completely dependent upon the quality of the rulings and the attorneys' work; as he said, "garbage in, garbage out." The meanings created by these rulings and their consequences were deeply affected by social context and some might say "tainted" by the financial incentives of winning these disputes.

The courts had to mediate between "progress," and all that that entails, and preservation of the Northern Marianas traditions, as well as the future impact their rulings would have on the culture and the land. It was during this "land boom" period that many of the big estates were brought to court to be probated. Not only did a significant number of the estates consist of large amounts of property (often oceanfront), but also land prices were at an all-time high. Japanese speculators were willing to pay millions of dollars
to lease and sometimes just for the option to lease prime real estate. Consequently, heirs were motivated to go to probate court and establish clear title on estates of relatives who had died decades prior. Land transactions were so frequent and lucrative that, according to one attorney, millionaires were being made every week. As estates were probated, people (and their attorneys) tested the limits and loopholes of Article XII, the land alienation provision of the CNMI Constitution, in both the Commonwealth and Federal Courts.

The quantity of estates being probated during this period, and the fact that the Probate Code did not apply to many of them, resulted in a spate of evidentiary hearings to determine custom. Because of issues discussed in Chapter 4, many of the probates became contentious and resulted in civil actions between family members, which consequently increased the need for evidentiary hearings. Heirs and potential heirs, often spurred on by their attorneys, engaged in lengthy and legally involved court battles. Some of the probate disputes that began in the late 1970s and early 1980s remained unresolved at the time of my research in 1997. The relatively large number of 1980s cases determined that dealt with

28Article XII, Section 1, on the Alienation of Land states that: "The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent."
Chamorro and Carolinian custom and land has resulted in an unusual situation, that is, many of the customary precedents emerged during a brief historical period in a very specific social context.

A number of legal anthropological studies that emphasize ideology and the role of hegemony within legal systems are relevant to the current issues in the CNMI. These works consider the construction of meaning in historical and colonial contexts, and how the law itself reflects and shapes the context in which it functions (Cohn 1989; Comaroff and Roberts 1981; Hirsch 1991; Merry 1990; 1991; Mertz 1988; Messick 1988; Moore 1990; Philips 1992; 1993b; 1994; Vincent 1991). Governmental and cultural systems motivate social change and behavior, in that there is an observable interplay between the state, as represented by the court, and its citizens (Nader 1990; Philips 1991).

While law and the legal system are hegemonic, both law and hegemony are also inherently polysemic (Koch 1969: 12; Merry 1991; Philips 1994). The meanings reflected in the law and reconfigured and produced through the legal system are multiple and often contradictory. The courts embody a complex dialectic that encompasses past and present rulings, which in turn reflect the influence of judges, attorneys, litigants, judges are political appointees.

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29 In the Marianas, judges are political appointees.
history, cultural context, and chance. As customs are transformed into law through precedent, those opinions resonate and ramify into the future, epitomizing the emergent and quixotic quality of law. As a result the precedent system is integral to the interpretation, representation, perpetuation, and construction of custom in the Commonwealth.

Case law creates meaning through the written opinion in individual cases. As discussed above, once an opinion is rendered in one case, taken singly or cumulatively, it becomes law, and as such can become the legal basis for subsequent rulings. Part of the opinion is the holding based on the ratio decidende. In both Trust Territory and Commonwealth decisions that address customary issues, the opinion is likely to contain a detailed definition of the custom in question and include the procedural requirements to fulfill the custom. Meanings are produced through the ratio decidende, the reason that justifies the court's decision, as well as through dicta. The dicta are "[e]xpressions in court's opinion which go beyond the facts before court and therefore are individual views of author of opinion and not binding in subsequent cases" (Black's Law Dictionary 1983: 236). The line that separates the legal ruling from the

30 Black's Law Dictionary (1983: 655) defines ratio decidende as: "The ground or reason of decision. The point in a case which determines the judgement."
dictum, however, is unclear (Mermin 1975: 253-254). Dictum (especially in a Supreme Court opinion) can have legal relevance because judges or attorneys can later interpret dicta as law. At the very least, dictum is an indication of the ideological inclinations of the judge or justices (who are, in turn, functionaries of the state).

There are two ways in which custom can be relevant in an actual hearing. In those cases in which statute and precedent do not apply or are unclear with regards to a question of custom, the CNMI judge determines the law based on the facts presented during the hearing. In the evidentiary hearing, litigants call their own expert witnesses to testify as to the custom of a particular event, such as adoption, partida, or illegitimacy. But custom is itself also an issue of fact; an attorney arguing custom must establish that the custom did, indeed, take place.

The court can base its definition of custom, and justifies its ruling, on the testimony given during the course of the trial from experts or from other authoritative sources, or a combination of the two (see Chapter 6). These definitions are not, however, simply the facts of the case, but are the court’s interpretation and evaluation of those facts (Llewellyn 1989). In other words, judges choose between conflicting definitions of custom argued by the attorneys and presented by the expert witnesses. As Galanter (1981: 13) argues, the courts “produce not only decisions, but messages.”
They have a double product: what they do and what they say about what they do." Moreover, legal decisions not only affect meaning, but also produce tangible, material consequences (Merry 1991: 2). Commonwealth probate determinations have an impact on the individuals and families who stand to gain or lose land and/or financial resources. A ruling on Carolinian and Chamorro customs has an immediate effect on those litigants before the court, but also has significant consequences for future litigants, as the following discussion will show.

**Partida**

The Chamorro custom of *partida*, not surprisingly, is frequently an issue in Probate Court (Ottley 1993: 561). A *partida* (in the absence of a written will) guides the court in its distribution of the estate. Spoehr (1954:136-137), whose definition has been repeatedly relied on by the court, describes some of the elements of *partida* as follows:

It is by custom considered right and proper that every male head of a family should make a *partido* before his death...

When a husband and wife become so old that they no longer are active, they call their children together. The father and husband, who has previously consulted his wife, tells each child what his or her share of the land is to be. If the father has previously allocated various

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31 For example, see *In re the Estate of Jose P. Cabrera, Deceased*, 2 N.Mar.I. 226 (1991).
tracts of farm land to the sons who are married, the formal announcement acts as validation of the previous allocation. Furthermore, the father’s word is not to be disputed, there or thereafter. Parental respect is one of the major emphases of traditional Chamorro culture...

The formal partido prior to the father’s death is a traditionally sanctioned act preliminary to the inheritance of land by the heirs...

Regardless of the formal aspects of the partido, Chamorro custom dictates that family holdings should be divided at each generation.

Although the customary distribution of land by means of a partida is fairly straightforward in principle, in practice many disputes revolve around this one issue. Disagreements can arise as to whether or not a partida actually took place, one of the underlying issues being what specific behaviors need to be fulfilled in order to constitute a partida. Once the court establishes that a partida took place, other questions arise, such as: How much should each heir inherit and what was the deceased’s intended distribution? When a partida is made, does the land immediately vest in the heir? Or, can the parent or parents revoke a partida and change how the estate is divided before their death? In the last instance, the court has ruled in the negative, but some locals disagree. One Chamorro woman I spoke with was adamant that parents can change or revoke the partida if they wish. She emphasized that this was especially true if the child had not fulfilled his or her obligations to the parents. As Spoehr (Ibid.: 137) explains, “[w]hen...generalizations are checked against case material, one finds that each is true
under special circumstances, and that they represent poles of a continuum that includes a considerable variety of cases."

The questions mentioned above cause a great deal of conflict between heirs and are the types of issues that the court must resolve. The following discussion includes brief descriptions of cases that have been significant in legally interpreting *partida*. It is important to note, however, that because customs are part of everyday cultural practice, it is unusual for only one custom to be at issue during probate disputes. So, although this discussion emphasizes the legal interpretation of *partida*, other customs are often relevant as well. Nevertheless, a specific custom may be central to the lawyers' arguments or become a pivotal issue in the case.

**Blas v. Blas**\(^3^2\)

After the death of Juan B. Blas, the widow and second wife, Guadalupe, petitioned the court to inherit land owned by her late husband. She claimed that the deceased gave her the land because she (as opposed to his daughter) had cared for him. Guadalupe also claimed ownership based on her rights as a widow to marital assets. She argued that the land in question was acquired during their marriage and therefore was

community property. Regina, the daughter of the deceased from his first marriage, however, also claimed the same parcel of land. With the support of her siblings, she argued that she had acquired the land as a result of a partida made by Juan before World War II, when his first wife was still alive.

Although the Trust Territory High Court ruled on many issues of law in *re Blas*, there are two central and connected issues around which the case revolved. The first, of course, is the custom of *partida*. The second involved the origin and cultural classification of the land that was disputed. At the time that Juan Blas performed the (alleged) *partida*, he designated what land his two sons and one daughter would receive and stated that he would retain only a small part of the farmland for himself. All of the land remained in his possession until after the war and his first wife's death. At that point he gave full ownership to his sons, but, with her agreement, kept control over the land promised to Regina. Subsequently, Juan Blas partook in a land exchange with the Trust Territory administration. He traded the parcel, originally owned by his father, for a comparable property. Regina, although she never made formal claim to the property, was told that she would inherit the exchanged land instead of the original property.

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33 This discussion does not include all of the elements of the case that were addressed in the decision.
The significance of the exchange lies in the classification of the original piece of property as *iyon manaina*, ancestors’ land.34 *Iyon manaina* is land that has been owned by a family for more than one generation. It can be distinguished from any land purchased from outside the family during the lifetime of the deceased. The Court’s distinction between these two categories of land was quite significant in this case because of the questions that arose: While the original parcel was *iyon manaina* because Juan had inherited it from his father, was the land that replaced the original property also ancestors’ land? Or was the land no longer *iyon manaina* because it had been exchanged? And moreover, was it a marital asset because the land exchange took place during the marriage of Juan and Guadalupe, and did the verbal gift of land to his wife nullify the *partida* giving the land to his daughter Regina?

The court ruled that the case should be determined by Chamorro customary law and that American case law would only be applicable “by way of analogy—some of it quite remote” (3 T.T.R. 104). The interpretation of customs was primarily based on Spoehr and Emerick’s research, as well as on witness testimony (cf. King 1999).35 The Court, however, recognized

34 Also spelled “ancestor’s land.”
35 At least nine witnesses testified in this case. Three were the respondents and one was the petitioner, Guadalupe Blas.
how problematic the interpretation and application of customary law is in an American legal context. The opinion states:

It is believed, however, that great care must be taken not to place undue emphasis on or draw undue inferences from any one statement taken alone in either of those explanations...

Extensive evidence was taken as to Chamorro custom on Saipan and the court is satisfied that many of the uncertainties as to rights under Chamorro customary law arise from an unintentional tendency to impose on or read into Chamorro concepts other concepts which are foreign to Chamorro ones, because terms taken from other systems, which do not exactly fit the Chamorro concepts, have been used to try to explain them (3 T. T. R. 105).

The insight of this observation and the court's consideration of multiple sources on custom are notable. Nevertheless, the decision in *Blas* did impose meaning onto Chamorro concepts. The opinion also contains the presumption of interpretive clarity.

Although the court decided several important legal and customary issues in the case, including spousal rights, this discussion emphasizes the court's treatment of *partida* and *iyon manaina*. The Court ruled in favor of the daughter, Regina, finding that a *partida* did take place and that that designation overshadowed Juan Blas' subsequent gift of the land to his wife. In order to find that Regina had inherited the land through *partida*, the court had to both decide on a

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36 Here the opinion is referring to Spoehr and Emerick's research.
The legal definition of *partida* and, given their interpretation, determine if a *partida* had indeed taken place. The opinion in *Blas* addressed *partida* as follows:

*Ideally*, a father should at some time before his death call his family together and designate a division of all family lands, including those brought in by the wife, (and sometimes also important pieces of personal property) among the children, or the children and his wife. This is done presumably with the consent of the wife and the children, but the principle of parental respect is traditionally so strong that the father's word is not supposed to be disputed, though he is expected to act fairly by Chamorro standards (3 T.T.R. 108-109, emphasis added).

The court therefore holds that the designation of division by the deceased set in the second finding of fact constituted a "*partida*"... [Regina] had beneficial interest in it [the land] from the time of the *partida*, subject to her father's right to administer it for life... and that the deceased's informal efforts to give the lot to his wife as the one who served him were of no legal force and effect (3 T.T.R. 110).

What is of particular interest is that the court's definition had the ultimate effect of both broadening and narrowing the legal interpretation of *partida*, as will be shown (cf. Mather and Yngvesson 1980-81; Llewellyn 1989: 74-76).

In *Blas*, *partida* is depicted as an event associated with specific behaviors. Some elements of a *partida* are as follows: the father calls together the family (presumably with the wife's consent); he distributes his estate for the immediate or eventual use of his children; all of the family
members are present; and it is a formal event and not done in a casual way. Although there may be general agreement that a partida is an oral distribution of an estate, it was left for the future courts to decide what minimum requirements are necessary to effect a partida, and what the heirs must do to prove that one had taken place. The court consciously limited the application of their ruling by stating that: “The court makes no determination as to just what the legal situation would be as to land on Saipan under any other circumstances than those disclosed here” (3 T. T. R. 110). Nevertheless, the characterization of these elements as “ideal” left the door open for future courts to legally recognize a partida that was not, in fact, ideal by that definition.

For example, in the case of Cabrera v. De Castro (1 N.Mar.I. 102), the Appeals Court advanced the notion (citing Pangelinan v. Tudela, 1 CR 708, 711 (D.NMI App. Div. 1983), aff’d, 733 F.2d 1341 (9th Circuit); and In re the Estate of Taisakan, CR 326, 333, (D. NMI App. Div. 1982)) that a partida was a flexible custom. Their ruling overturned the Superior Court decision that had found that no partida had taken place. The justices remanded the case to trial because of the “possibility” that a partida had occurred.

We note that the elements stated by the lower court necessary to prove a “partida” are elements necessary to prove an ideal “partida.” A “partida” is inherently flexible and can be shown through ways other than through the ideal “partida” (Cabrera v. De Castro, 1 N.Mar.I. 104 (1990), emphasis in the original).
The Court’s decision to relax the legal definition of *partida* eases the burden of heirs who want to argue that a *partida* has taken place. As a result, there is an implied presumption in favor of an assertion of *partida*, which, in turn, is strengthened by the fact that it is more difficult to prove that an event did not take place and confirm the negative.

For example, in one relatively recent probate dispute, the court did not have to decide the legal meaning of *partida*, but had to make a “factual” determination. In *re the Estate of Matagolai,* the children were battling over the disposition of one remaining piece of property on Saipan that had belonged to their parents. One brother, Roman,* asserted that a *partida* had taken place over the course of several meetings and that he was the sole beneficiary. The other siblings claimed that *partida* had never occurred and that all of the children had an equal interest in the land. The testimony indicated that there had been a long history of conflicts over financial matters and that Roman had been estranged from most of his siblings since the years following World War II. Although it was only Roman’s word against the rest of the potential heirs, the Court, basing its decision on the demeanor of the witnesses, the clarity of Roman’s account, and the record, found that Roman’s testimony had
Although the courts have promoted a broad interpretation of *partida*, they have also constructed it narrowly by taking the position that a *partida* is a final disposition of an estate. In other words, a *partida* once made (and proven in court) is permanent. As a consequence, the decedent or decedents can not change their minds. For example, in *Blas*, Juan Blas decided to give the land originally promised to Regina to his second wife. The Court, however, held that the subsequent gift was informal and that the *partida* could not be changed. The rigidity of this interpretation of *partida* can have the (actual if not intended) effect of taking away a person or a couple’s right to reallocate their assets later in time and given changing circumstances.

Although the rulings are meant to reflect custom and many would argue that they are a true representation of fact, the problem remains as to whether the court is actually reflecting or creating custom. While some Chamorros may view *partida* as a final distribution, others view it in more flexible terms. They believe that a *partida* can be changed based on the desires of the person making the distribution. In this view, *partidas* can be changed just like written wills. As was shown in *Blas*, the father (allegedly) decided

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37 This case was on appeal at the time of my research.
to give the lot he had previously promised to his daughter to his second wife. Whether he should have or not, or whether he actually did or not, is not at issue. The point is that the court has determined that his original partida overshadowed his later actions despite significant changes in his circumstances.

The court's decision to give Regina the property hinged on a second and equally important custom that bore directly on the question of partida and on whether or not the second wife had rights to the land: As the original land had been iyon manaina, but had been exchanged with the government, the court ruled that the land in question was also iyon manaina and that children have "an inchoate right" to these family lands. By designating the exchanged land as ancestors' land, the ruling legally confirmed a special category of Chamorro land and gave children a preferred right to that land. Significantly, the decision to characterize the exchanged parcel of land as iyon manaina constructs family land as an idea rather than as a specific place.

The widow of Blas argued that it was a marital asset because it was acquired during their marriage. The Court, however, held that because exchanges with the government were often forced, the exchanged land takes on all of the attributes of the original land:

On the question of whether the land involved here is to be considered as acquired during the period of the
deceased’s marriage to his second wife, the court is satisfied that Chamorro custom clearly recognizes, at least in the case of exchanges made with the government where there is the express or implied threat or possibility of a taking by governmental authority, that the land acquired in the exchange takes the place of that given up and carries with it all the incidents that were attached to the land given up. ...In this particular, Chamorro custom is in accord with American practice, but the court believes it is the local custom and not the American practice which controls the situation (3 T. T. R. 106-107).

Because the court decided that the exchanged property was *iyon manaina*, the children had a prior right to it that superceded any potential rights of the second wife. Interestingly, as the above quote demonstrates, the opinion maintained that it was Chamorro custom to consider exchanged land as symbolically equivalent to the original parcel.

The decision to treat this land as *iyon manaina* was also politically expedient. The United States had forced people to give up their original properties, or had simply taken them during and after the war to make room for roads, military facilities, and other types of development. Therefore, while affirming the custom and importance of ancestral lands, the court simultaneously diminished the meaning of what ancestors’ land was. As discussed in Chapter two, ancestors’ land is special because it is where one’s forbears were laid to rest. It is there that the *taotaomo’na* protect you as their descendents. This ruling, in essence, mitigated the symbolic and familial importance of a specific piece of property, which could now be transferred onto land exchanged
by the Trust Territory administration. As a result, the American administrators could keep the land they needed, while the Court preserved customary inheritance patterns by recognizing the importance of *yon manaina* and simplifying the complex land claims process.

The Probate Code, case law, and evidentiary hearings discussed above demonstrate a structural range of the way meaning, through the definition of custom, is constructed, reconstructed, and applied in the CNMI. Because legal opinions on custom accrue and form the basis for subsequent legal arguments, the court is engaged in the ongoing creation and transmission of meaning. The courts are not only defining what custom was in the past and what it is today, but are determining how it will be defined in the future. Although courts base their opinions on the “facts” of the case, law does not embody a neutral representation of custom. Facts may be incomplete or inaccurate. Further, the judge, the presenters, and the interpreters of the facts are affected by the historical and social context in which they live. In turn, the customs themselves are not neutral behaviors with simple meanings. Rather, they are fluid and changing expressions of a people’s ethos and actions. Nevertheless, the court’s interpretation of Chamorro and Carolinian custom becomes embedded in precedent and, as such, carries the weight of law.
CHAPTER 6

BOTH SWORD AND SHIELD: THE STRATEGIC USE OF CUSTOM

When...there is a dispute as to the existence or effect of a local custom, and the court is not satisfied as to either its existence or applicability, such custom becomes a mixed question of law and fact, and the party relying upon it must prove it by evidence satisfactory to the Court (Teitis vs. TTPI, Criminal Case No. 146 quoted in Basilius v. Rengil, 2 T.T.R. 432, (1963)).

The courtroom is an interactional context where all the participants engage in the construction of meaning (Merry 1991). This chapter focuses on how categories of persons influence how the court legally defines custom (cf. Snyder 1981). During probate disputes in the CNMI, judges, attorneys, litigants, witnesses, and anthropologists, separately and in conjunction with each other, interpret and define custom. Because the American legal system is adversarial, each party to the action attempts to present an argument that the court will accept as the best, most accurate and reasonable, or truthful. Both the legal argument presented by the attorneys and the judgement of the court, however, are constrained by the extant law and the (apparent) facts.¹ Nevertheless, within these parameters the participants in a dispute not only have an impact on the result of that particular case, but also influence the

¹ American courts are also constrained by procedural rules.
outcome of future cases.

As was argued in the previous chapter, the creation of law in the Commonwealth, specifically law derived from custom, is an ongoing process that occurs at several structural levels. The legislature, judiciary, and citizenry, as elements of and participants in the state, produce law—statute and case law—and, as a consequence, create (emergent) meanings that have material consequences. This chapter examines the way custom is constructed in the courtroom. Custom plays a central role in most probate disputes because it is both a "question of law and fact." Custom is an issue of fact when the litigants argue that a particular custom, such as partida or mwei-mwei,\(^2\) did or did not take place. The disputants' ability or inability to prove that a custom took place has a direct effect on the distribution of the estate. As a matter of law, the litigants argue and the court must decide whether a certain behavior is a custom and what elements define that custom. Because the court's interpretation of custom can determine the outcome (ruling) of a case, it can be pivotal to a disputant's argument.\(^3\) As a consequence, custom is more than a matter of fact and law: it is used as a weapon to attack or as a shield

\(^2\) A type of Carolinian adoption.

\(^3\) See Chapter 5 for a discussion on how judges have an impact on the interpretation of custom.
to ward off the opposition.

Most probates are simple bureaucratic transactions in which the court oversees the settlement of an estate, such as the transfer of property or the payment of debts, and assures that the remaining assets go to the legitimate heirs. Probates in the CNMI, however, can become convoluted and contentious, especially when they involve land. In situations where families, heirs, and/or potential heirs are in conflict and the facts are in dispute, the court will order an evidentiary hearing. During the course of the trial, attorneys present their arguments on behalf of the litigants, witnesses and/or expert witnesses will testify, and the judge, of course, rules. As this chapter argues, these participants influence and shape meaning through their arguments, interpretations, and representations of custom. Their portrayals are based on the assumption that an objective definition of custom exists, yet, as they make their cases, each participant can broaden or narrow a custom’s meaning and how it is enacted (cf. Mather and Yngvesson 1980-81).

**Litigants and Attorneys**

A person who consults no lawyer, or a bad one, must bear the consequences of his own folly (Llewellyn 1989: 84).

The flexibility of American law, the fact that the intent and substance of a law can be transfigured, discussed
in Chapter 5, is one of its greatest strengths. Whether the law's susceptibility to external influences is always a benefit, however, is a matter of opinion. As Llewellyn (1989: 85) argues, attorneys have a profound impact on American case law. Their arguments influence, modify, and ultimately change the interpretation of law (Moore 1978: 1). This has certainly been the case in the Commonwealth, where lawyers have been very instrumental in the way that custom can be used in court and how it is legally defined. As they artfully mix American law with custom, these attorneys shape the interpretation of custom in their arguments. If they win the case, their rendering is perpetuated in some form through case law. Moreover, the client or clients in conjunction with the attorneys play an important role as witnesses and co-constructors in the interpretation of "facts." The active transformation of custom both as fact and law in the CNMI is well illustrated in probate hearings. The following discussion addresses one argument, in particular, that attorneys have successfully used in Carolinian land disputes. As a result, attorneys have shaped the interpretation of Carolinian custom and limited the ability of litigants to argue custom in court.

Equitable Estoppel and Traditional Mold: A Carolinian Example

In a series of Carolinian probate cases, attorneys elaborated the "traditional mold" argument that is now
established in the case law[^4] and has significantly changed the way Carolinian custom can be argued in court.[^5] The argument is based on the western legal principle of equitable estoppel. Black’s Law Dictionary (1983: 280) defines the doctrine as that "by which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had..." In the context of CNMI land disputes, the successful application of equitable estoppel to Carolinian land cases has prevented litigants from arguing custom as plaintiffs or as defendants. Despite the priority of custom in CNMI law and the court’s proclivity to rule in favor of "traditional" land tenure, this argument has prevailed.

Briefly, the reasoning is as follows. In a Carolinian land dispute, neither party can use custom as an argument to deny the other party from inheriting, using, living on, dividing, selling, or leasing the land in question if they themselves have not used the land in accordance with Carolinian custom. One of the attorneys who has most eloquently (and successfully) developed the "traditional mold" argument in court explained the principle in a written

[^4]: For example see, Tarope v. Igisiar, Civil Action No. 86-668 (NMI Tr. Ct. 1987); In re Estate of Igitol, Civil Action No. 88-70(P); In re Estate of Rangamar, 4 N.M.I. 72 (1993).
[^5]: Flinn (1996) addresses how the "traditional mold" argument has resulted in the division of Carolinian clan lands.
Equitable estoppel was developed as a doctrine to do justice when injustice might otherwise result... The incorporation of such a doctrine in the area of our complex tenure systems, which are constantly evolving, is brilliant. It prevents "custom" from being invoked only as a weapon, by those who otherwise never use it. And, it allows the court to escape unfairly straightjacketing families with a custom that they, in reality, have never observed (In re the Estate of Lorenzo Igitol, Civil Action No. 88-70 (P) (Argument in Support of Motion to Partition by the attorney for the Petitioners at 4).

Thus, to invoke custom in court, the land must have been used according to custom throughout its history of ownership by the clan engaged in the dispute. This means, for example, that if a person's grandmother (even with the consent of the entire clan) leased and/or sold parts of the property to a Japanese person in the 1920s, the land was taken out of the "traditional mold" by the Carolinian clans' own actions. As the following order states:

Essentially the court is asked to answer the question if a Carolinian family can, by its own acts, destroy the traditional land tenure pattern so that a holder of an interest in the land can demand a partition. It is concluded that the answer is in the affirmative...

[T]he Carolinian family in this case had, by its own acts, taken the land out of the traditional mold (Tarope v. Igisaiar, Civil Action No. 86-668, Order Denying Motion for Summary Judgement, July 31, 1987, Slip op. at 6, 7).

As with equitable estoppel, the "traditional mold" argument has its basis in a (western) conception of fairness: people cannot require one another to behave in a particular manner
if they have not done so themselves. In Chamorro and Carolinian society the concept of fairness is also culturally relevant, but it is an issue connected to reciprocity, respect, and consent and therefore cannot be so easily correlated.  

Those who are in favor of applying equitable estoppel to Carolinian land argue that custom should not be used as an opportunistic strategy. Some Carolinian litigants have invoked custom only because it could be used to their advantage rather than because they themselves conformed to customary usage. In one case, a Carolinian man named Romolor,* opposed a partition based on custom, but several years prior had advocated the distribution of the land. In the previous distribution that Romolor had proposed he would have gotten a significantly larger parcel than the other heirs would have. In the new distribution that he was opposing basing his argument on customary grounds, however, he would have only received an equal share. The above is a clear example of a litigant who invoked custom for purely strategic reasons. As one local attorney remarked, "if you

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6 As the opinion in Blas v. Blas states:
In [Chamorros'] minds, the matter of inheritance in its strict sense of what a person is absolutely entitled to by descent without any for of gift, will, or agreement about it, appears to be entirely obscured by the thought of what a person should be given, on the principle of fair disposition according to need, by either the head of a family before his death or by agreement among the remainder of the family after his death (3 T.T.R. 106, 1966).
want custom to protect you, you must follow custom." The example of Romolor, however, is unusual in that his motivations for using custom to benefit himself and disadvantage his relatives were fairly apparent. More frequently, the motivations behind invoking custom are subtler.

Although attorneys developed the "traditional mold" argument, judges have upheld it, and many Carolinians have benefited from it, some attorneys and Carolinians in the community reject its logic and are angry that the partitioning of Carolinian land has been facilitated. They maintain that the traditional mold principle undermines Carolinian culture and is simply another strategy to divest Carolinians of their land base. Moreover, these critics argue that Carolinian custom is not about how land is used or has been used, but is about consent. In other words, true custom is manifest by the collective decision-making process, not by the decision that is made. As Flinn (1996) discusses in greater depth, the fact that Carolinian clans have used land in ways that the court has ruled are not traditional is not in itself a deviation from custom. Rather, Carolinian custom emphasizes consent. Therefore, if the clan agrees to lease or quitclaim a portion of the land, that decision, the argument goes, is consistent with Carolinian custom. The court's limited interpretation of traditional land use, critics argue, negates Carolinian culture by ignoring its intangible
substance; it does not matter how the clan chose to use the land, they claim, it is only important that there was agreement among its members.

Underlying both sides of the "traditional mold" argument is the issue of authenticity, that is, the assumption that only real custom should become incorporated into law. Proponents see the invocation of custom by those who have not followed "true" custom as disingenuous. Critics, on the other hand, argue that the court's decision to support the preclusion of customary arguments when custom has not been followed paradoxically subverts, although it is meant to promote, Carolinian custom. The requirement that Carolinians must follow (authentic) custom in order to have the legal right to argue against the partitioning of clan lands is unrealistic in the modern world; it ultimately results in the division of clan lands because no one can live up to such a standard of practice. At the same time that the court is ostensibly supporting "true" Carolinian custom and traditional land use, it is actually eroding custom. They argue that when Carolinian clan land is subdivided, the clan system is worn away, matrilineal authority is diminished, and clan ties, which are strengthened by proximity and the shared connection to family land, are weakened.

Regardless of the ideological conflicts, the application of equitable estoppel to Carolinian land has become established in the case law. As the above example
demonstrates, attorneys in conjunction with their clients have successfully constrained the applicability of Carolinian custom. As Mather and Yngvesson (1980-81: 781) point out: "[k]nowledge of 'the law' and skill in manipulating its language become critical resources for defining and transforming disputes." The success of an argument in one such case ramifies to future cases and has a material impact on future litigants. Nevertheless, the question remains whether or not custom should be used solely as a weapon to reap economic benefits. The use of the "traditional mold" argument is just one example of how litigants and their attorneys shape the outcome of land disputes. What begins as a strategy to win a case, however, can have implications that may not be desired by the litigants themselves. For example, Carolinians who use this argument in court are sometimes the same people who vehemently oppose the division of clan lands and the disintegration of Carolinian culture that has come with modernization.

A very different type of argument has been used, unsuccessfully, to oppose the court's stringent application of custom in Carolinian land disputes. Those who support this view assert that the use of custom to deny or support a claim, in fact, ghettoizes Carolinians. Proponents of this position maintain that the court's intent to protect Carolinian culture and preserve the land base by its continued reliance on custom has had the effect of curtailing
Carolinian economic advancement. One attorney who makes this argument asks:

[A]re we imposing a largely archaic, impractical, and unobserved ideal. Should the Court assign a custom, which, although given lip service, was not universally or even generally the force and effect of written law? (In re the Estate of Lorenzo Igitol, Civil Action No. 88-70(P) Notice of Motion and Motion for Reconsideration of Petition for Partition, by attorney for Victorino Igitol, February 21, 1989, at 9).

And, in a later motion, he argues that:

In effect, the Court is relegating the parties to planting yams and bananas; telling them they cannot lease the property...

It is quite plain that if Petitioner and the Decedent were of the Chamorro race, there would be no impediment to a partition...Thus, the Court has denied to a Carolinian person a legal remedy which a member of any other land-owning race may have for the asking...

Carolinians will be disadvantaged compared to Chamorros, and deprived of lucrative rental incomes from their property - in effect, relegated to the impoverished subsistence existence from which they emigrated and in which their traditions and customs developed (Memorandum in Support of Motion for Reconsideration of Petition for Partition, June 27, 1989, at 16, 17)

Those who subscribe to this position maintain that restrictive customs are no longer viable in the modern world. Without individual ownership of land, Carolinians cannot lease or sell land, cannot obtain loans, and are thus unable to advance economically like their Chamorro contemporaries. One reason that this last argument has heretofore been unsuccessful is that the court and the community are ideologically committed to preserving ethnic identity through
the continued application of custom. An interesting problem, as the above discussion indicates, is whether the strict application of custom actually preserves culture or whether the practice somehow turns back on itself and results in the breaking up of Carolinian lands. Only an assessment of Carolinian land and law in the future will tell.

The Problem of Experts

In the Commonwealth Superior Court (formerly the Commonwealth Trial Court), attorneys frequently enlist expert witnesses to testify about one or more customs during a probate dispute. If any of the parties argue custom as a factual and/or a legal issue, local experts are brought in from the community to testify for each side (cf. Woodman 1969). The attorneys choose experts who most closely share the interpretation of custom that they are espousing to win the case. These experts play a pivotal role in the identification and interpretation of Chamorro and Carolinian customs for the court, which weighs the experts' testimony, veracity, and experience whenever it rules on a custom. Experts, however, frequently disagree about customs and what behavioral elements are required for a custom to have occurred. As a result, attorneys attempt to impugn the opposing experts' testimony and the experts themselves try to persuade the court that their interpretation is the correct one.
Witnesses are established as experts in two primary ways. First, when a witness is brought in to testify for one of the litigants, the attorney can then try to establish that witness as an expert. The attorney asks the witness questions about their age, job, place of birth, and experiences to lay a foundation for establishing them as an expert on custom. The opposing attorney, not surprisingly, usually challenges the use of that witness as an expert. But, if the court allows the witness to be used as an expert, despite the witness’s connection to one of the parties in the dispute, he or she can then answer questions about custom.

More frequently, attorneys will use an established expert witness from the community. Chamorros and Carolinians can become experts on custom in a variety of ways. One widely known expert engaged in his own ethnographic research in the community. He conducted interviews and read widely on the history of the Northern Mariana Islands and its people. Although other locals may question his interpretation of Carolinian custom, his decades of research gave him a great deal of authority in the court where he was widely used as an expert. Others are considered experts because they worked in the Land and Claims Office during the Trust Territory administration and after. As part of their jobs, these officials researched Carolinian and Chamorro custom and the history of land ownership in the Marianas. Their expertise derived from their understanding of specific land disputes as
well as more general knowledge about land tenure patterns. Third, Chamorros and Carolinians from the Marianas who have exceptional knowledge because of their age, experiences, and status within their community are also used as experts. Interestingly, the quantity of appearances before the court can in and of itself become the basis for expert status. Finally, a few Carolinian experts on custom lived in the Central Carolines to study their heritage and the origins of their customs. These experts view the customs that are currently practiced in the Carolines to be more pure or authentic. They aver that Carolinian customs as they are practiced on Saipan are substantially diluted and corrupted by Chamorro and Western influence (cf. Flinn 1996; Olopai and Flinn nd).

Despite the variety of ways in which a person can qualify as an expert on custom, attorneys have difficulty finding (credible) experts to appear in court. Many experts who people in the community consider knowledgeable and who are well respected are unable to testify because they are related to the litigants, are connected in some other way to the case, or do not want to take sides. Those, on the other hand, who are not connected to the dispute and are willing to testify, may not know Carolinian tradition. Lastly, elders in the community who could potentially be used as experts may not want to stand up in public or be labeled as experts. The latter case represents the cultural hesitancy to put oneself
above others; Carolinians and Chamorros do not want to appear arrogant and shy away from being termed an expert. As a result the same few people are repeatedly, if not always joyfully, called in to court to testify.

The attorneys with whom I spoke expressed a great deal of ambivalence and cynicism about the use of experts in court. As one attorney said, “expert testimony, pretend experts.” Nevertheless, these same attorneys have used customary experts frequently, and often successfully, in the past and continue to do so. The criticism about local experts varies in the specifics, but the themes expressed are much the same. One criticism is that the experts do not really have a good understanding of “authentic” Chamorro and Carolinian customs. The attorneys believe that their experts are unaware of the true customs or are too invested in certain interpretations to be objective. Also, as was discussed above, it is hard to find witnesses on the islands who are not connected in some way to the parties in the dispute. Generally, a witness’s biases are discovered prior to or during the hearing, but often, hidden biases exist. For example, although not directly involved with the dispute on hand, the expert may be connected to an analogous dispute that has not yet been litigated, which could then benefit from the expert’s testimony.

Lawyers are also concerned about the hidden biases derived from long-term inter-family rivalries, which can
trigger retaliation in court. A local, talking about forgiveness and the long memories of Chamorros, said in an interview that

while, for example...a public show of your emotion is not looked favorably upon, also, by us. You have hurt me. When we see each other, I'll be cordial to you. But should the opportunity arise where I can hurt you also, it will be done.

Consequently, experts and other witnesses, as well as the litigants, may use the court as a public and powerful forum in which to punish another person or family. The offense may have occurred to them or to a relative decades prior, but the anger can still exist, even if masked.

Attorneys are not alone in their criticism of expert testimony. Experts, themselves, are often quite critical of other customary experts, but, because of the importance of respect, people rarely criticize another's interpretations of custom directly. Although explicit criticism of other experts is uncommon, it is difficult to find two people who interpret various customs in exactly the same manner. As was discussed in Chapter 5, Chamorros and Carolinians often agree on the generalities of a custom, but are at odds when discussing specifics and cultural nuances. These subtleties are often, in legal terms, central to the disposition of the case. For

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7 See, for example, In re Rangamar, 4 N.M.I. 72 (1993); Willbanks v. Stein, 4 N.M.I. 195 (1994).
example, in a Carolinian inheritance dispute, *In re Estate of Rofag*, the court had to decide whether or not a customary adoption had taken place. The following summary only briefly touches on the issues presented in this extremely lengthy and complex case. Several Carolinian customs were at issue during this case, such as matrilineal ownership and clan rights, but this discussion will only focus on the question of adoption.

The original owner of the contested property was a Carolinian man named Lorenzo Rofag, who died in 1944. He originally gained title to this property through the German homestead program, which is why he was sole owner and did not share the right to the land with the rest of his clan. His estate included land in Lower Base and Tanapag that had, since his death, become quite valuable. The probate of the estate did not take place until 1988, when the contested heirs, Jose and Juan Naog, chose to sell some of the property for well over $5 million. They claimed a right to Rofag’s estate because he had adopted their mother and Rofag’s biological niece, Magdelena Pua, according to the Carolinian custom of *mwei-mwei*. Rofag had no other children.

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8 *In the Matter of the Estate of Lorenzo Rofag, Deceased, Civil Action No. 88-393(P), 2 N.Mar.I. 27 (1991).*

9 The Transcript of Proceedings is well over 1,600 pages long. Consequently, this discussion omits many of the details relevant to the final outcome.
Significantly, many years prior to the probate, the Naog brothers had received $78,205 in compensation from the War Claims Commission for damage done to Rofag's land during the invasion. The fact that no other family member had contested the Naogs' right to the war claims money cast a shadow on their later claims to his estate.

At the time of the probate, the Naogs asserted that because they were Magdelena's children they were Rofag's sole heirs. The other relatives, however, argued that since he had died intestate and was childless, Rofag's living siblings and the deceased siblings' children should inherit his estate. They denied that Rofag adopted Magdelena by the Carolinian custom of mwei-mwei, and argued that Magdelena only had rights to the estate that were equivalent to those of Rofag's other nieces and nephews. In other words, the Naogs should only share in the distribution of the estate in common with the rest of the family. The court ordered an evidentiary hearing to determine the legitimate heirs.

The disputants argued about the specific details of customary adoption and each party to the dispute used their own expert witness to either assert or refute that one had taken place. Some of the elements of adoption that were contested included: What is the maximum age at which a child can be adopted by Carolinian custom?; Can a child be adopted if he or she is over the age of ten?; Are single men allowed to adopt?; and Can an adoption take place if people in the
community are unaware of it? In this case, like in many others, the experts disagreed.

Apart from determining if there had been a customary adoption, the court had to decide which type of Carolinian adoption had occurred. Carolinians practice several types of adoption, such as *mwei-mwei* and *amalau*, that are substantively different from one another, but are, unfortunately, all glossed in English the same way. In other words, the word "adoption" applies to different cultural practices. In Carolinian custom, some types of "adoption" do not automatically confer inheritance rights to the child. In fact, one traditional Carolinian adoption, in which the child has relatively few rights, is more akin to slavery. To confuse matters even more, the experts who testified in re *Rofag* did not agree how to distinguish between the different practices, nor did they concur about the inheritance rights of the "adopted" child. Consequently, the interpretation of custom and of the events that had occurred over forty years earlier were central to the disposition of this case.

Ultimately, the court found that Rofag had adopted Magdalena by *mwei-mwei* and therefore determined that the Naog brothers inherited the estate in full. As a result, the custom of *mwei-mwei* became elaborated in the case law. Expert testimony was not the sole determinant of the outcome, but was considered in conjunction with legal arguments and other evidence. Nevertheless, the testimony considered most
reliable by the court in *re Rofag* had a direct impact on the inheritance rights of the litigants, and has become the basis for future rulings on Carolinian customary adoptions. The experts in this case, as they have in other disputes, are active participants in the complex process whereby custom becomes incorporated into law. Because the court is a forum where meaning emerges through contestation, experts, attorneys, litigants, and judges are all its co-constructors. Nevertheless, their ability to produce and reconfigure custom is constrained by the American legal system and also should be considered in light of the effect of colonialism.

The Anthropologist as Expert

Both the Trust Territory courts and the Commonwealth courts have relied heavily on anthropological research to determine custom (cf. King 1999). Spoehr’s (1954) book, *Saipan: The Ethnography of a War Devastated Island*, and Emerick’s (1958) article, “Land Tenure in the Marianas,” are the two texts primarily used in the Trust Territory and Commonwealth courts. Although Emerick’s work is used with some frequency, he is less widely known than Spoehr by Chamorros and Carolinians. Consequently, Emerick has had less influence on locals’ perceptions of anthropologists and anthropological research done in the Northern Marianas. Spoehr is considered to be the best source on Chamorro and Carolinian customs as they were practiced in the 1940s. Both
in and out of court, legal professionals and lay people reference his ethnography and offer opinions as to its accuracy. On occasion, the courts have also relied on historical documents from the Spanish period that address custom and written statements by anthropologists or historians. Spoehr and Emerick, however, remain the paradigmatic texts.

As is to be expected, many attorneys and local people question the use of these texts and doubt their veracity. Some of the most common criticisms of Spoehr include the following: He was only living on-island for one year; he interviewed the wrong people—people who didn’t know the “true” customs; he was wrong in general or most of the time; he did not provide enough detail about the customs or explore all of the contexts of customary practice; and, because his research took place in the immediate post-war period when the Marianas were in great disarray, Spoehr did not see and experience authentic custom. The most frequently expressed criticism centers on his research on Carolinians. Attorneys and Carolinians maintain that he did not spend enough time with the Carolinians and did not adequately distinguish between the customs practiced in the different Carolinian villages. The CNMI courts must contend with not only differing Carolinian and Chamorro customs, but also must distinguish between various customs associated with Carolinian island origin and the customs that were in
practice at the time of resettlement. In retrospect, one local attorney who had used Spoehr and Emerick on several occasions questioned his own use of anthropological texts:

I say I'm sorry [that I relied on Spoehr and Emerick] because, you know, with the recent doubts raised on Margaret Mead's work on America Samoa...and, boy, I'm saying all these anthropologists and all their work was really nothing.

Despite the various criticisms, attorneys, judges, and justices continue to refer to anthropological research and use it as a central basis for interpreting Chamorro and Carolinian customs. One reason that the court has relied so heavily on anthropology is because the court must apply customs as they were followed at the time the deceased was living. As the number of local people who lived before 1950 diminish, the court will become more reliant on Spoehr, who did his research in 1947, to uncover past customary practice.

Whatever Spoehr's and Emerick's intentions, it is unlikely that they wrote anticipating that their research would form the basis of future legal opinions. As one attorney who was critical of the use of anthropological texts in court said during a taped interview:

I mean, we argue at the Supreme Court level about the paragraphs in Spoehr's book as if he's some kind of authority...I don't think Spoehr ever thought he was going to be held out as an authority. I don't know if he's alive or not but, I mean, if he was and we say, you know, we argue about you in the Supreme Court, he would probably be shocked.
The legal significance of both Spoehr and Emerick is reminiscent of Pospisil's (1979) discussion of the ramifications of his own research on the Kapauku. After he had published a book on Kapauku customs, he returned to the region and was mortified to discover that Dutch officials were using his monograph as the source of customary law.

All of the problems inherent in using anthropological research in court are amplified when considering the use of living anthropologists as expert witnesses. In general, the CNMI courts have eschewed the use of anthropologists, preferring to use Chamorros and Carolinians. Apart from the fact that local people are disinclined to trust an outsider's interpretation of custom, there are several other reasons why an anthropologist's testimony would be problematic in the Commonwealth and, arguably, elsewhere. First, one must question whether anthropologists should take sides in inter- and intra-familial disputes and influence land disbursement. Because custom is integrated into probate law in the Commonwealth, most (non-criminal) cases where expert testimony is required concerns land. As has been discussed previously, land is centrally tied to Carolinian and Chamorro concepts of family and ethnic identity and, importantly, can be worth millions of dollars. An anthropologist's testimony can affect the outcome of a case and therefore has a material impact on the litigants. A second related issue is whether anthropological interpretation should determine what
constitutes "authentic" custom. Because of the case law and the principle of precedent, an anthropologist's testimony could unfairly, and potentially erroneously, determine a case's outcome.

As King (1999) notes, anthropologists during the TTPI period were loath to testify on custom and land disputes because of ethical issues. Because anthropologists were important to the American administration of the Trust Territory, a section of the Trust Territory Code was created to make specific data gathered by anthropologists privileged. Consequently, they were not required to testify except in certain situations. As Section 342 states:

Subject to the limitations provided in this section, conversations held with an anthropologist in confidence in his professional character shall be privileged. No statement made in such a conversation nor the substance thereof, shall be divulged without the consent of the person making, nor shall the identity of any person making such a statement on any particular subject be divulged without his consent, except as provided below. This privilege, however shall not extend to the professional opinions or conclusions of an anthropologist even though they may be based in whole or in part on such conversations, nor shall it or the prohibitions against divulging such statements or the identity of persons making them apply to admissions or confessions indicating that the person making them has committed murder in the first or second degree or voluntary manslaughter or is threatening to commit a crime in the future (T.T.C. 1959).

King (1999), however, argues that anthropologists, because of their association with judges and other administrators, were influential in the High Court's rulings even if they did not
appear in court.

Apart from the ethical issues that arise, anthropologists must also consider the possibility that the data they collect are fallible or incomplete. If the court, attorneys, or litigants ask anthropologists to conduct research in the Marianas and testify on a specific custom, anthropologists need to recognize that the information they collect may be biased. The locals that are interviewed often know the history of the family that is in conflict (sometimes in great detail), the history of the land, and the broader social context. Frequently, informants in the community have already made their decision as to who should win in a family dispute. It would be rare to find a Chamorro or Carolinian adult who did not have an opinion about a land determination. Consequently, when the anthropologist asks about particular customs which are known to be at issue in court disputes, he or she is likely to hear an interpretation that is canted in favor of one of the parties to the dispute. What the anthropologist believes to be “pure” data is, in fact, likely to be pre-filtered and could potentially unfairly bias the outcome of the dispute. The informants, however, are not necessarily purposefully misleading the anthropologist. Rather, their answers incorporate a vast array of variables that they perceive to be relevant. Their interpretations of custom are contingent on context and circumstance.

Regardless of the ambivalence in which anthropological
research and anthropologists themselves are held in the Marianas, anthropological data has had a significant impact on the outcome of land dispute cases in the TTPI and CNMI. As attorneys and the courts use these texts as authorities and the basis of custom, even if only partially, the research becomes embedded in the law. As was discussed in Chapter 5, anthropological research has been influential in the content of the Probate Code, case law, and case-by-case determinations. Through its use as a reference and in direct application, anthropological data have imbued meaning in and, implicitly, ascribed objectivity to legal interpretations of custom. Spoehr and Emerick's work in particular has had broad reaching effects with tangible consequences for those engaged in land litigation. As has been argued in this dissertation, customs have an ideological dimension in the Commonwealth. Anthropologists in the Northern Marianas, knowingly or not, have participated in the legal construction of custom that, in turn, is ultimately transformative.

Summary

Within the confines and constraints of the courtroom, individuals, both local and non-local, inscribe meaning onto custom and create law. Litigants and their attorneys work to create a coherent and legally viable argument. Lawyers intertwine the facts (evidence) of the case, the extant law (statutory and case law), and witness and expert testimony to
frame an interpretation of the case that benefits their clients (cf. Turk 1978). Each party to the dispute, however, does not act independently. Rather, disputants must respond to the opposing argument by adapting and attempting to reframe their own position. The dispute process entails constant co-construction, modification, and re-negotiation. The judge also participates in this dialectic by his or her rejection or acceptance of particular representations of fact, witness and expert testimony, and interpretations of law.

The incorporation of custom into Commonwealth law has created multiple opportunities for interpretation and legal strategizing. As it is applied in court, custom is neither factually nor legally neutral. Litigants use custom to deny others access to land, relationships, or wealth, or to protect themselves and their families. Witnesses, experts, anthropologists, and judges are active participants in this process. Attorneys, however, must structure their representations within externally imposed parameters that are both procedural and interpretive. As Chapter 5 argues, the American legal system limits how facts can be presented and the content and application of law. Further, the Commonwealth’s acceptance of American legislative and juridical systems was not unconditional.

The CNMI's legal system is an expressly political context that engages American and indigenous juridical
practices. Through its negotiations during the Covenant and its integration of custom into statutory and case law, however, the CNMI has modified American law in order to constrain the imposition of American ideology in the Commonwealth. Through legislation, such as the Probate Code, the Commonwealth has asserted the importance of ethnicity, injected its own interpretation of custom, and has symbolically and discursively indicated its separation from the United States. As Dominguez (1986: 10) argues, identity is premised on legal definitions and categories, and "social identities do not exist without public affirmation." The legal interpretation of land tenure and custom reflects political and practical attempts to formulate an autonomous identity (cf. O'Brien 1991; Popular Memory Group 1982; Wolf 1982; Worsely 1985).

Participants must conform to the systems of ideological control, but have a degree of interpretive freedom, as Abel (1979: 169) writes:

The disputant's choice of a forum immediately affects both his adversary and himself, for each forum will have its own substantive and procedural rules, which influence the outcome of the dispute and the subsequent relations of the parties to each other and to the society.

Nevertheless, the Commonwealth's use of and people's participation in the American legal process entails a degree of acquiescence. The contemporary economic context requires
Chamorros and Carolinians to engage in the legal system to reap the benefits of bank loans, education, and prosperity. They are also well aware of the historical transformations brought about by shifting administrations, with their attendant policies and laws. Colonialism, for example, brought about changes in population, land tenure, custom, and social organization. From their vantage point, the strategic use of custom has become a successful tool with which to reintroduce political, ethnic, and cultural autonomy to the American legal terrain in which they now find themselves.

Ultimately, the colonial project was responsible for concretizations of custom and tradition. In colonial contexts throughout the world, the rulers studied, interpreted, and dictated customary law, land tenure, and inheritance patterns (Arnett 1985; Cohn 1989; Comaroff and Roberts 1981; Ranger 1984), while anthropologists and others participated in the codification of indigenous forms of social control (Mason 1953). The colonists' purpose was to incorporate local systems into the new jural and political structures in order to better control the indigenous populations (Dirks 1992b). The result, however, was to freeze inherently dynamic cultural forms and traditions into synchronic and unbending codes (Stoler 1989). This reification of custom has consequences in the present as Chamorros and Carolinians attempt to reconfigure institutions, such as the American legal system, and reinterpret customs so that they reflect
the CNMI's ethnic and political identity.

An extensive literature on colonialism has transformed our thinking about cultural change and processes of domination, while demonstrating its far-reaching impact (Asad 1987; Balandier 1965; Cohn 1989; Chanock 1985; Comaroff and Comaroff 1988, 1989; Dirks 1992a, 1992b; Mintz 1985; Said 1989; Wolf 1982; Worsley 1984). These and other works, influenced by Marx, have challenged ahistorical conceptions of non-Western cultures as isolated and unchanging by exploring colonial macro- and micro-environments in both the Old and New Worlds. Many recent works have forced us to reconsider "natives" as agents in cultural change and resistance (Asad 1987; Cooper and Stoler 1989; Diaz 1994; Gledhill 1994; Scott 1990). These burgeoning insights have led anthropologists to recognize that colonialism cannot be identified as unitary in its expression or development, but is a complex process. Through the study of history, whether oral, or contained in written documents, we can look at shifting patterns of disputes and changing discourses about social practices through time.

As a result of these theoretical influences, I included two lengthy chapters summarizing the history of the Northern Marianas from Chamorro settlement to the present day. One goal was to contextualize and frame my research on land disputes and the CNMI legal system. A second objective was to demonstrate how multiple external forces, over long periods
of time, shape and constrain systems and events in the present. Ideology, hegemony, and society do not emerge whole from a vacuum, nor are they unitary or unchanging. Meanings that exist in the present, be they hegemonic or counter-hegemonic, are the products of multiple influences. For example, Chamorro and Carolinian customs and land tenure patterns have changed over time as a result of four foreign administrations, tourism, and capitalism, to name only three factors. Moreover, as was demonstrated in Chapters 5 and 6, Chamorros and Carolinians interpret custom in multiple ways.

Although historical method and theory contributed to my interpretation of Commonwealth law and land disputes, I was also influenced by research in law and legal anthropology. There have been an increasing number of legal anthropological studies that emphasize ideology and identity formation within the legal system that are relevant to the current issues in the CNMI. These works consider the construction of meaning in historical and colonial contexts, and how the law itself reflects and shapes the context in which it functions (i.e. Cohn 1989; Comaroff and Roberts 1981; Hirsch 1991; Merry 1990, 1991; Mertz 1988; Moore 1990; Nader 1990; Olson 1997; Philips 1992; 1994; 1998; Vincent 1991). The use of legal anthropological methods provides access to the governmental and cultural systems that motivate social change and behavior. These methods recognize that there is an observable interplay between the state, as represented by the court, and
its citizens.

Through legal studies we can begin to see the way powerful institutions impose meanings and identities onto people (Cohn 1989; Comaroff and Roberts 1981; Lazarus-Black 1997; Mertz 1988; Pospisil 1978). Cohen (1950: 175) states that "law deals with human affairs and human nature" and, I would add, is therefore anthropology. Law both reflects and reproduces cultural ideology through its relationship with the state (Fitzpatrick 1980; Sumner 1979). Moreover, at the micro-level of the case, one can analyze the specific ways individuals access, affect, and are affected by the legal system (Collier 1975; Merry 1991; Nader 1967; Philips 1984; Yngvesson 1991). Courts are a site for the production of meanings that includes state-level forces, such as the law and procedural rules, as well as the impact of individuals, such as attorneys, litigants, and witnesses (cf. Abrams 1988). Therefore, through studying law and legal institutions, researchers have a method to better apprehend the processes involved in the construction of social practice and meaning.

Recent scholarly legal literature on the region provides a critical assessment of law and the formation of the Commonwealth and its relationship with the United States (Arnett 1985; Herald 1992; Hirayasu 1987; McCormick 1993; McKibben 1990; Meller 1985; Tamanaha 1989; Ottley 1993; Willens and Siemer 2000). These works provide crucial
material about the instantiation of the American-type legal system and policy, but emphasize only the structural aspects of the legal system and macro levels of analysis. The literature does not deal with how law and the legal system are experienced by Carolinians and Chamorros. There is no discussion of court practice or how litigants interact with each other or the system, nor any suggestion of how individuals negotiate legal disputes or how they participate in the substantive transformation of Commonwealth law. In contrast, this dissertation's discussion of historical and contemporary cases illuminates the complex effects of law on interpretations of custom and perceptions of ethnicity. Further, by emphasizing actual court and community practice, this study explores how Chamorros and Carolinians frame their relationship with the legal system and conceptualize land issues.

In particular, the study of law and legal institutions enables us to understand, at least in part, processes that are essentially amorphous and ethereal. Ideology, hegemony, meaning, and culture are words that are used to express the intangible forces that affect individuals and society, but which have real effects and consequences and are materially produced. In this regard, my objectives are dual, but intertwined. First, I want to demonstrate the way meanings, although historically constrained, are constructed by state systems, such as the legislature and the courts. Second, my
goal is to illustrate how individuals actively participate in the production of meanings. In other words, I wish to show how individuals create and reproduce ideology, but also, and simultaneously, change and reconfigure it. Chamorros and Carolinians have "agency" in the legal system; they are active participants in the construction of ideology through their participation in the government and in the courts, as attorneys, judges, and litigants (cf. Kidder 1979). Nevertheless, their "agency," their ability to choose, is not total, but is, by its definition, constrained by contexts, historical and social (Abel 1979).

In Chapter 5, I delineate the three ways custom can become law in the CNMI: through statute, precedent, and case-by-case determinations. Chapter 6, on the other hand, focuses on the role of individuals in the courts and how their representations of custom can become integrated into the legal interpretation of custom. My intent is to demonstrate how meaning, in the form of law, is constructed at multiple levels of the state, and how individuals and groups participate in the production of law at all these different levels. Law is not imposed, ideology is not perpetuated, and hegemony is not enforced by a single system of dominance. By looking at the processes by which custom becomes law in the CNMI we can see how authoritative systems are reproduced. Further, this research demonstrates how meanings are not only created and imposed from above, but are also produced from
below and in all the places in between. Thus, as participants in society, we are all complicit in the perpetuation of hegemony as we take part in the very systems that dominate us.
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