Cultural Differences and Discrimination: Samoans before a Public Housing Eviction Board

Richard O. Lempert  
*Michigan School of Law, rlempert@umich.edu*

Karl Monsma  
*Northwestern University*

Available at: [https://repository.law.umich.edu/book_chapters/429](https://repository.law.umich.edu/book_chapters/429)

Part of the Civil Rights and Discrimination Commons, Housing Law Commons, and the Law and Race Commons

**Publication Information & Recommended Citation**

Race and Ethnic Relations in the United States

Readings for the 21st Century

Christopher G. Ellison
University of Texas, Austin

W. Allen Martin
University of Texas, Tyler

Foreword by Joe R. Feagin
University of Florida

Roxbury Publishing Company
Los Angeles, California
Contents

Foreword ........................................... xii
Introduction ....................................... xiii
Acknowledgements ................................. xvi

Part I. Racial and Ethnic Populations
in the United States

African Americans

Introduction ........................................ 3

1. The Continuing Significance of Race:
   Antilblack Discrimination in Public Places .......... 9
   Joe R. Feagin
   Feagin shows the range of discriminatory practices
   that confront middle-class African Americans in public
   places and the strategies they use to deal with these
   slights.

2. A Dozen Demons ................................ 18
   Ellis Cose
   Cose identifies twelve ways in which stereotyping and
   subtle racism hinder the progress and undermine the
   self-confidence of African Americans in corporate
   America.

3. The Cost of Racial and Class Exclusion
   in the Inner City ................................ 25
   Loic J.D. Wacquant and William Julius Wilson
   Wacquant and Wilson trace the alarming increase of
   urban social problems to the loss of job opportunities
   in the inner city, and the resulting decline of social
   networks and community institutions.

4. Living Poor: Family Life Among Single Parent,
   African-American Women .......................... 34
   Robin L. Jarrett
   Challenging conventional portraits of poor African
   American single mothers, Jarrett demonstrates that
   many of these women share the family values and life-
   style goals of their middle-class counterparts.
Cultural Differences and Discrimination: Samoans Before a Public Housing Eviction Board

Richard Lempert
Karl Monsma

In the 1971 case, Griggs v. Duke Power (401 U.S. 424), the United States Supreme Court held that if an employment test (or other mechanism for screening job applicants) had a disparate impact on a group protected by Title VII of The Civil Rights Act of 1964, discrimination in violation of the Act would be presumed unless the employer could prove the "job-relatedness" of the test. (For details on the Griggs case, see England 1992 chap. 5.) The Griggs case represents a high-water mark in the Supreme Court's jurisprudence of discrimination, for it establishes proof rules that can catch both intentional and indirect (or inadvertent) discriminators in their net. Under the Fourteenth Amendment, discrimination ordinarily requires evidence of unequal treatment and not just a disparate impact; when the Griggs case was decided Title VII could be interpreted in the same way.

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

Identifying Discrimination

We illustrate these points and elucidate the concept of cultural discrimination by examining the decisions made by an informal tribunal—the Hawaii Housing Authority's (HHA) eviction board.

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

This conventional approach does not, however, allow us to trace out all the disadvantages faced by someone who may be affected by a discriminatory action. We illustrate these points and elucidate the concept of cultural discrimination by examining the decisions made by an informal tribunal—the Hawaii Housing Authority's (HHA) eviction board.
Second, there is what we call "cultural discrimination," a phenomenon typically ignored in studies of discrimination in legal decision-making. Decision-makers may value certain behaviors and devalue others, regardless of the ethnic identity of the person exhibiting them. But the decision-makers' values may reflect their cultural roots, and they may fail to respect or even to recognize the ways the behavior of others is part of a different cultural value system. For example, a state legislature may make it illegal for parents to withdraw children from school before age 16, and the state's judges may punish Amish parents who violate the law in the same way they would punish non-Amish parents. Not only does this law and its enforcement fail to respect the reasons why Amish beliefs counsel against schooling past the eighth grade (Wisconsin v. Yoder, 406 U.S. 205 [1972]), it also fails to recognize that schooling until at least age 16 came to seem "natural" to the state's citizens only when urbanization and the mechanization of agriculture reduced the value of child labor to that of more educated adults. Thus both the makers and enforcers of compulsory schooling laws have acted without considering that, if agricultural production statewide were technologically similar to that of the Amish, withdrawing children from school at age 14 might seem "natural."

While the legal system provides ready examples of cultural discrimination (Post 1988), the phenomenon is not limited to legal decision-makers. . . . [We are interested in] members of a particular ethnic group who, in comparison to others from the same social class, are disadvantaged by the application of apparently legitimate criteria in a universalistic fashion. The "legitimate criteria" reflect cultural understandings shared by the judges but not by all of those judged.

Cultural discrimination has been most readily identified in education. Various authors have discussed how language and other culturally acquired characteristics children bring to school can affect their treatment, and ultimately their success, in educational institutions (Erickson and Mohatt 1982; Labov 1972; Lareau 1989; Phillips 1983). . . . We illustrate the implications of culture for outcomes in a different setting—an informal legal tribunal—and add to the existing literature, not only by emphasizing the problematic and political nature of what counts as discrimination, but also in other important ways. . . . [In] most studies that show people are disadvantaged because of cultural traits, class is confounded with culture. Our study, however, deals only with low-income public housing tenants, all of whom would be conventionally categorized as lower class. This allows us to avoid culture-class confusion, because variation among our subjects cannot be due to class differences.

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

In examining how Samoans fare before the HHA's eviction board, we are observing an unusual opportunity to study cultural differentiation before an actual court. This situation, in fact, enhances our ability to identify and explore nuances of cultural discrimination, and what we learn contains important general lessons. The different layers we peel away in our search for discrimination caution against too readily accepting the conclusions of studies limited to data that are less rich. Moreover, cultural discrimination of the sort we identify is also likely to exist in other situations where members of one class or status group pass judgment on members of another.

Data and Subjects

The Research Setting

We examine the legal decisions of the Hawaii Housing Authority's (HHA) eviction board from 1966 through 1985. This board consisted of a group of citizen-volunteers whose assent was required for the HHA to evict a tenant. . . . The study included the years 1966 to 1985, procedures before the eviction board were informal. Tenants usually appeared without lawyers. The HHA's case was briefly presented, usually by questioning the housing project manager, and the tenant could respond however he or she wanted. Almost always the HHA's charges were admitted. In three-quarters of the cases, the charge was nonpayment of rent, and the fact of nonpayment was almost always indisputable; but even when some other lease violation was charged, like fighting or keeping pets, the tenant usually admitted the violation and made excuses for it. Ordinarily, after the tenant presented explanations, promises, or excuses, board members, the HHA's prosecutor, and occasionally the project manager questioned the tenant. Throughout, the tone was informal, and there was considerable effort to ensure that the tenant understood what was being said. The typical hearing took between 20 and 30 minutes . . .

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

In addition to the data collected from the HHA's files, in 1987 we conducted semi-structured interviews, usually lasting 30 to 90 minutes, with the HHA's prosecutors, board members, and others who had been connected with the eviction process from 1966 on. This group includes the four people who prosecuted most of the cases in our sample, almost all eviction board members (including every chairperson), all the current housing project managers, and many former ones, staff supervisors (including current and past Executive Directors), the two legal aid paralegals who most often appeared in eviction actions, and private and legal aid lawyers who served on occasion as defense counsel. The majority of those interviewed were not Caucasians, although Caucasians and people of Japanese ancestry were the most frequently represented ethnic groups. Other interviewees were of Chinese, Hawaiian, Filipino, Korean, Samoan, or mixed heritages. The board members were citizen-volunteers from a variety of backgrounds. Apart from the two public housing tenants on each panel, most were from the middle class. . . .

These interviews complement our file data with information on the observations and attitudes of those who, apart from the tenants, figured most prominently in the eviction process. In addition we attended and either recorded or took detailed notes on all eviction board hearings held during the summers of 1969 and 1987.

About Samoans in Hawaii

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

More importantly, we thought Samoans were the likeliest victims of discrimination because Samoans in Hawaii are a particularly disadvantaged group. Their per capita income is the lowest of any ethnic group in Hawaii for which separate statistics are kept, (Kincaid and Yum 1987; U.S. Commission on
Civil Rights 1979). More than half of the Samoan adults in Hawaii have nine years of school or less (Baker 1986). Unemployment rates for Samoans are high (Hect, Orans, and Janes 1986), and Samoans in Hawaii are generally regarded as a violent and dangerous people (Howard 1986; Hect et al. 1986). Indeed, even among California’s Samoan immigrants, it is recognized that “Samoans in Hawaii are stigmatized” (Janes 1990). This view is confirmed in a study of the opinions held of each other by five Hawaiian ethnic groups (Caucasians, Japanese Americans, and immigrant-generation Filipinos, Vietnamese, and Samoans) [Yum and Wang 1983]. . . .

<table>
<thead>
<tr>
<th>Table 24.1 Percentage Distribution of Reason for Subpoena Among Samoans and Other Ethnic Groups: 1966 to 1985</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason for Subpoena</td>
</tr>
<tr>
<td>----------------------</td>
</tr>
<tr>
<td>Falsification, fraud</td>
</tr>
<tr>
<td>Nonpayment of rent</td>
</tr>
<tr>
<td>Guests</td>
</tr>
<tr>
<td>Pets</td>
</tr>
<tr>
<td>Other trouble</td>
</tr>
<tr>
<td>Total percent</td>
</tr>
<tr>
<td>Number of cases</td>
</tr>
</tbody>
</table>

Note: X^2 = 12.08, d.f. = 4

Overall Samoans account for about 21 percent of both the eviction actions that the HHA commenced by subpoena and the cases in which the hearings were held. Because we have no information on the ethnic composition of the HHAs housing projects, we cannot say whether Samoans are disproportionately represented in these data. . . .

Reasons for Eviction

Samoans charged with violating HHA rules were somewhat more likely than other tenants to be subpoenaed for fraud or nonpayment of rent and less likely to be subpoenaed for pet violations and other kinds of troublesome behavior (see Table 24.1). The ethnic difference in subpoenas for fraud may occur because many Samoan tenants spoke English poorly or not at all. Fraud usually involved accusations of concealing family income, and the tenant’s defense was often that he or she didn’t understand that certain income had to be reported.

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

The high proportion of Samoans subpoenaed for nonpayment of rent or for fraud is not explained by changes over time in the HHAs eviction process. The percentage of cases brought for financial reasons is higher among Samoans than among non-Samoans in all time periods we use to distinguish important changes in the eviction process.

Evidence for Discrimination

. . . [Analysis of quantitative data on HHA evictions indicates that] Samoans accused of financial violations fare worse in the eviction process than similarly situated non-Samoans. We may call this Samoan disadvantage “discrimination,” but we should be aware of precisely what this means: Samoans threatened with eviction have a somewhat worse chance of remaining in project housing than tenants from other ethnic groups who are like them [in terms of case characteristics, tenant-authority history, and various household characteristics, such as income and financial resources, number of children, and other factors].

Qualitative Evidence From Interviews

. . . [It is certainly possible that] discrimination occurs; that, is, that board decisions are motivated by prejudice against Samoans. Samoans are socioeconomically the least advantaged of the various ethnic groups that populate Hawaii and are apparently stigmatized on this account. In deciding whether to evict, the board members may be biased against Samoans, or the HHAs prosecutor or manager-complainants may push harder for eviction when Samoans are involved. Interviews with prosecutors, project managers, and board members indicate that some do hold negative stereotypes of Samoans.

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

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

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

One board chairperson conveyed his image of Samoans in apologizing for the fact that a nonpayment case we observed was nothing special:

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

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

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

The attitudes reflected in these remarks might suggest that managers and prosecutors push harder for eviction when Samoans are defendants, and that board members are more likely to hold against Samoans in close cases. But in our interviews, board mem­bers and others were more likely to comment on the special situation of Samoans than they were to make remarks suggesting gen­eralized prejudice. For example, a former board chairperson, who commented about her stance toward nonpayment of rent cases, said about Samoans and Micronesians:

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

A former board member, when asked whether any special accommodations were made for Samoans who had, in their own minds, good reasons for spending rent money on something other than their rent (e.g., contributing to a funeral in Samoa), commented:

I think all of us had an empathy, and per­haps even a sympathy, for these folks [Sa­moans], and board members indicated that we never had to stop and think, well maybe they really don’t understand. We always had to appreciate the cultural difference,
and I think all of us took that into consider-

Cultural Discrimination

The three board members we have quoted, and others as well, all realized that Samoans faced substantial pressure to spend rent money to meet their cultural obligations. They had, in different degrees, sympathy for the Samoans' plight and saw their fellow board members as similarly understanding. However, ultimately all of them, with varying degrees of reluctance, concluded that if Samoans could not pay the rent by drawing on their "cultural situation" or in some other way, the board had to evict them. If, as one board member said, the board ended up "judging [Samoans] the same way it would anybody else," the board did not discriminate within the meaning of the Fourteenth Amendment's Equal Protection Clause since this requires discrimination on the basis of a protected characteristic, such as race. Yet if Samoans were not selected for harsh treatment because of their race, how can one explain the disadvantage that attaches to Samoans in quantitative [data on evictions]? We think the answer lies in the differing cultural logics of Samoan tenants and eviction board members. What seemed natural or appropriate to Samoans did not seem natural or appropriate to board members. In judging Samoans like anybody else, in failing to take for granted what Samoan tenants took for granted, the board produced a pattern of decisions similar to the pattern that might have resulted if Samoan ethnicity were intentionally treated as a factor weighing in favor of eviction. Our interviews and our knowledge of Samoan culture convince us that this pattern is primarily due to the unique ways Samoans were prone to excuse rent payment lapses.

The Quality of Excuses

The excuses most housing tenants give for skipping rent payments usually refer to factors beyond their control, such as illness, unemployment, thefts of wallets, and the like. The excuses Samoans offer, however, often refer to sending money to relatives for weddings and funerals, traveling to Samoa for the aiga (extended family), and especially in the United States, the church (Grattan [1948] 1985; Holmes 1974; Janes 1990). A Samoan achieves status through the aiga because Samoans share in the status of their aigas and because, in the case of males, the aiga chooses its own chiefs. As head of the family, the matai controls the family's property and allocates the family's wealth. While the status of matai control over property has broken down in recent years as a cash economy has largely replaced the property-based subsistence economy in Samoa, a concomitant aspect of this change is that Samoans are expected to make cash contributions to their matai and aiga. Indeed, Samoan families often fund their relatives' emigration as an integral part, with the return to the family taking the form of regular remittances once the relatives have gotten jobs (Ali'Ilima and Stover 1986). It is particularly important that cash gifts be sent in connection with certain ceremonial occasions, especially funerals and weddings (Ablon 1971). Not doing so dishonors both the individual (making it unlikely he will ever achieve chiefly status) and, if the family cannot make up the shortfall, the aiga. It may also mean that in a crisis situation the individual cannot count on the aiga for support.

Samoans in the United States often have relatives living near them, so the aiga can in part be reconstituted in this country. However, even when there are numbers of relatives in the United States, the aiga and its matai are likely to live in Samoa. In these circumstances the church fills the gap and provides a general trans-family support network for its members. In return, however, Samoans are expected to support their church's needs in much the same way as they would support their aiga's requests. This means that Samoan churches in the United States are another source of culturally-reinforced demands for funds. Facing such strong cultural pressures, Samoans may give rent money to the aiga or church. Board members treat rent payments as a primary obligation and can be particularly resentful if, as is often the case, the tenant's primary source of income comes from welfare. Thus, while board members recognize the special pressures that Samoans face, most do not regard them as legitimate excuses for not paying the rent. Another board member, who clearly recognized the cultural reasons for certain Samoan behavior patterns, similarly concluded:

I think that many of the cultural things that have held up and have proven good in island countries cannot withstand the city. ... [My feeling is ...] that if they come to this urban situation, nobody is forcing them, and they come to it; they must adjust to it. I am willing to take into consideration that [cultural reasons explain lease violations], but there comes a point when I feel that they must adjust to the culture and the two cultural patterns do not.

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

Oh, well, from experience I guess. There are so many of them that come on and say, especially the Samoans; I mean they always say that they cannot pay their rent because they have to support the church and things like that. But after you get 10, 15 of them telling you the same things, ... [Or funerals or things like that?] Yes, or they gotta go home; they gotta go back to Samoa. So the body is sick over there or things like that. But you know, when you come down to it, they are all on welfare, and they are using your money too—so you learn to become a little bit more, you know, you don't believe all the things that they tell you.

Sometimes, tenants' excuses may be hard to believe, but the excuses this board member mentions are credible within the context of Samoan culture, even if they are repeated by tenant after tenant. Perhaps if the excuse were that a wallet had been stolen or that a child had fallen ill, this board member, despite some skepticism, would have credited the reason.

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

Prosecutor:

How come you got behind in this?

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

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

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

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

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

[We told Samoans whose rent money had gone to meet obligations] that they did help at one time and they helped someone in a period of need; now they are in a period of need. . . . And we would say, now it is your turn to go to the coalition in your time of need for them to help you. And if you can get that, fine. This is the parameters in which you have to deal. That's all.

As this chairperson's remarks indicate, even a willingness to credit Samoan excuses did not mean they would work. Indeed, some managers and board members went further and argued that the only way that Samoans could learn how to be "good" housing tenants was if particularly Samoan excuses were not tolerated. As one project manager said:

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

If this manager succeeds, he will be making his Samoans better public housing tenants, but worse Samoans. Ironically, he might also be depriving them of their ability to call upon church or family when, for good Western (or Samoa) reasons, the family falls behind on rent and needs a lump sum to clear its debt. Managers and board members report that once the crisis of eviction is real to them, Samoans are often able to accept, or even recognize the dilemmas they are in. Samoan excuses, real or made-up, do not move managers or board members who share a very different taken-for-granted world. For these reasons, Samoans are disadvantaged because of their ethnic heritage, just as surely as they would be if the board were peopled by whites who would not give Samoans an even break. The Samoa disadvantage exists because Samoan tenants live where the rules of another culture dominate, and they must litigate cases before a board whose members, while even recognizing the distinctive features of Samoa culture, share the assumptions of the dominant culture and resist those of the domain they visited. It is this form of cultural dominance that might be called cultural discrimination. . . .

Conclusion

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

But what follows from defining the Samoan disadvantage as discrimination? Does it follow that we have identified an immoral practice that should be eliminated? Or is it reasonable to argue, as more than one board member did, that rejecting traditional Samoa excuses was fair because moving to the United States and accepting welfare subsidies Samoans knowingly entered a social system that imposed constraints conflicting with their cultural obligations? Moreover, Samoan culture provides ill-suited to the end of persuading an eviction board to lenient. Yet they are suited to other ends that Samoan tenants value, such as maintaining status within the aiga. Not only do Samoan tenants find themselves in a dilemma that other tenants need not confront, but often, because of the taken-for-granted nature of many cultural assumptions, they do not even recognize the dilemmas they are in. Samoan excuses, real or made-up, do not move managers or board members who share a very different taken-for-granted world. For these reasons, Samoans are disadvantaged because of their ethnic heritage, just as surely as they would be if the board were peopled by whites who would not give Samoans an even break. The Samoa disadvantage exists because Samoan tenants live where the rules of another culture dominate, and they must litigate cases before a board whose members, while even recognizing the distinctive features of Samoa culture, share the assumptions of the dominant culture and resist those of the domain they visited. It is this form of cultural dominance that might be called cultural discrimination. . . .

McCleskey presented the Supreme Court with statistics showing that in cases like his, murderers of Black victims were more likely to receive the death penalty than murderers of Black victims. The Court held that the statistical evidence of discrimination did not help McCleskey, because it could not show that in his particular case there was an intent to discriminate on the basis of his race's victim's race. A similar attitude would mean that to show discrimination by the eviction board, Samoan tenants would have to show, not that they faced higher probabilities of eviction because they were Samoan, but that they were in fact evicted because they were Samoan rather than because of the lease provisions they violated. This is an almost impossible task, and the Court that decided the McCleskey case knew it.

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

This brings us back to Griggs v. Duke Power, which we, called a "high-water mark" in the jurisprudence of discrimination. The Griggs test has the potential to condemn actions that reflect cultural discrimination, because a court could find that the practice at issue is not just legally but morally neutral. In circumstances should Feagin and Eckberg's definition apply?

We may also ask whether legally remediable discrimination exists. The question is more complicated than it appears, for the law applies different tests of discrimination in different contexts. The most directly relevant case is McCleskey v. Kemp (481 U.S. 279 [1987]) which examined apparently discriminatory court decisions. In the McCleskey case the defendant argued that the Georgia death penalty statute was administered in a racially discriminatory fashion that violated the Eighth and the Fourteenth Amendments.
We are not the first to note disadvantages that people can suffer when judged by members of another culture. But the concern of most prior researchers, particularly those focusing on education, has been on situations where decision-makers do not realize the cultural roots of their taken-for-granted assumptions and thus misinterpret another's behavior. Indeed, some of this literature seems to carry the optimistic implication that, given people of good will, if cultural assumptions were obvious, problems of biased decision-making would disappear. Our research indicates that decision-makers may decide cases according to their own cultural understandings, even when they recognize, and to some extent respect, the cultural roots of others' actions. We suggest that when one culture's understandings dominate a decision-making arena, conflict with and the subordination of other cultures is inevitable, whether or not cultural differences are appreciated.

... [The processes studied here make] problematic the very label "discrimination." This is not to say that cultural discrimination is a misnomer, but in more ways than one discrimination is a matter of perspective. To perceive this is to realize that the definition of discrimination is an object of political struggle. Ultimately, it is power that will determine whether cultural discrimination becomes a legal as well as a sociological concept.

References


