

## **Talanoa methodology in Samoa law and gender research: The case for a Samoan critical legal theory and gender methodology**

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### **Abstract**

The need for more scholarly reflection on alternative ontological voices and indigenous methodology serves to deconstruct the often exclusionary or one-dimensional approach to research on gender and law. The critical review on what the most culturally competent research method to employ in research about indigenous issues, by both indigenous, and non-indigenous researchers is a recent phenomenon. Samoan perspectives in gender and law research may not always be harmonious; and this diversity carries the potential to widen the scope of methodologies that can be employed in order to engage with power relations at the intersection of indigenous voices. This article examines some of the prevailing assumptions underpinning legal and gender methodology, and why such assumptions may either be discarded or used to enrich the design of indigenous methodologies in law and gender research. This article examines the merits of a more inclusive and uniquely Samoan critical theory and gender methodology (for which there is none) underpinned by fa'asamoa principles.

**Keywords:** *Talanoa*, methodology, law, gender, *fa'atama*, legal, indigenous, Samoa, *Fa'asamoa*, Pacific, normative, descriptive, critical, theory, qualitative

### **Introduction**

Within the field of law, there is a growing diversity of methodology employed in legal and gender research which often revolves around the three common methods: doctrinal, socio-legal and critical (Davis, 2005; Dent, 2017; Hutchinson and Duncan, 2012; Payne, 2005; Powles, 2005; Wilkinson,

2011). Alongside this are the common types of legal understandings of the law, which often fall into two categories: Descriptive, or Normative (Beever, 2015). Evidently, over the last two decades there has been a significant rise in decolonial research in the academic fields of law and gender (Farran, 2014; Gluck & Patai, 1991; Kabutaulaka, 2015; Mulitalo, 2018; Tupuola, 1994). This is often attached to the grounded theory and ethnography methodologies, as both of these are widely adopted in indigenous research. More recently, some criticisms from the “defenders of science” point to the lack of scientific and empirical evidence employed in indigenous science or *Matauranga Māori* (May, 2021; Stewart, 2021). Although this is not the place to fully explore the relative merits of criticisms levied against qualitative research, and indigenous research, such criticisms point to the presumption of adopting an “anything goes” type approach in grounded theory, based on the lack of theoretical sophistication employed in analysis, with an overemphasis on conducting interviews guided by purposive sampling (Glaser, 1992; Locke, 1996). Although this is not be the case for all ethnographic studies, ethnography is criticised largely due to the emphasis on snap-shot, or ad hoc observations with limited genuine participatory engagement (Goulding, 2002). This highlights the demand for qualitative methodologies in law and gender research, applied in their most appropriate and truest context to yield powerful insights that are valid and credible, and which may aid in building a knowledge base to support the development of theory, policy, laws and evidence-based decision making. This article examines some of the Pacific research methodologies that can be adopted, to assist in resolving indigenous and Pacific or Pacific-specific issues, which have featured in their applications within the fields of gender and law. It points to some key learnings from many studies that have applied the techniques, and summarises their potential for future gender and law research involving indigenous communities. This article further explores the socio-legal and critical methodology pathways (Fa'amatua'inu, 2021a), whilst highlighting the paucity of data and research exploring Samoa's *fa'atama* (masculine women who are “like men”). According to the empirical data collected in this research, all *fa'atama* identified as transmen. Thus, it puts forward a case for the development of a uniquely Samoan gender methodology and critical legal theory drawing on *fa'asamoa* (literally, “the Samoan way” or essence of Samoan) principles to critically address the experiences of Samoa's Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual (LGBTQIA) and Sexual Orientation, Gender Identity Expression and Sex Characteristics (SOGIEC) people (Fa'amatua'inu, 2020b; Fa'amatua'inu, 2020b; Fa'amatua'inu, 2021a).

### **Inquiry in this study and the critical researcher**

The aim of this article is to provide an overview of the process involved in carefully selecting the most appropriate methodology for research on Samoa law reform and recognition of *fa'atama* in Samoa. It further captures some of the challenges at the interface between law, gender and indigenous communities. I also examine how traditionally dominant notions and understandings of legal philosophy may help facilitate and enrich aspects of research where guidance from indigenous research in law and gender is scant. While not the original intention of this article, this research reinforced the frustrations I encountered due to the non-existence of Samoan critical legal theories and gender

methodologies and, as such, I attempt to address why this is the case and how we may navigate our way in this uniquely uncharted space. Insights are also drawn from my engagement with a number of interdisciplinary law, public health and gender research projects in the South Pacific region.

### **Establishment of a research question**

The *Talanoa* will serve as the main theoretical and analytical framework guiding this socio-legal and qualitative research (Faafetai, 2009; Kvale and Brinkmann, 2009; Mulitalo, 2018; Vaioleti, 2006), whilst adopting an exploratory constructivist approach (Liamputtong and Ezzy, 2005).

The principal research question under investigation is: What gender discriminative practices faced by *fa'atama* influence their low recognition in Samoa's law reform process and village governance?

The secondary research questions are as follows:

1. What are the historical, cultural and legal challenges that prevent *fa'atama* from being recognised by local customs and laws?
2. How do we legally address gender discriminatory practices impacting *fa'atama* in Samoa?
3. How do Samoa's colonial, Christian and cultural beliefs inform Samoa's village governance and law reform process?
4. How much agency do *fa'atama* have in participating in, and facilitating the process of their legal recognition?

### **Methodologies: Indigenous and Pacific**

The involvement of cultural competence in methodologies plays a constituent role in the design, management and execution of decolonial research (Burn et al., 2019). It resonates well with the "by Pacific, for Pacific" approach as it pertains to the design of methodologies conducted by Pacific and indigenous researchers. This approach may also help guide non-Indigenous researchers interested in research focused on Pacific and indigenous communities. The research on Samoa law reform and recognition of *fa'atama* was conducted in the Pacific Islands, specifically, Samoa. I adopted the *Talanoa* methodology (discussed below) where the appropriate selection and use of methodology must be contextually appropriate to the local realities as well as to the social and cultural challenges that impact law reform and gender diverse communities in Samoa. The studies on postcolonial and other Pacific methodologies will be discussed to illuminate their potential for use in future gender and law research involving Pacific communities. We now examine these in turn.

#### **Postcolonial methodologies**

Postcolonial methodologies are considered an alternative to the status quo (i.e., methodologies adopting western research paradigms) built on indigenous approaches and methods. As a more recent phenomenon, in the 2000s, evidently more research on indigenous studies focused on decolonising or unpacking the longstanding dominant tradition of oppressive colonial research and thus, it became

widely known as “postcolonial indigenous research” (Chilisa, 2012; Mulitalo, 2018). This is premised on the emancipatory perspectives and assumptions of the colonised, through critical self-reflection as a means to understand their own perspectives and assumptions of the world.

There are numerous studies conducted by and on indigenous communities from which to draw meaningful insights. The core theme emanating from countries such as Aotearoa (Bishop, 2008), India (Cook-Lynn, 2008) and South Africa (Krog et al., 2008) with a strong colonial legacy are the shared experience of core challenges in the development of uniquely indigenous methodologies. On the whole, their contribution to critical indigenous inquiry focuses on the need to adopt critical (Cook-Lynn, 2008) and culturally appropriate methodologies based on respecting the ethical principles, traditions and knowledge of the indigenous peoples from within those communities to which they will be most applicable (Gonzalez and Lincoln, 2006; Lincoln and Denzin, 2008). This requires a conscious shift away from the oppressive aspects of the dominant colonial perspective whilst retaining aspects that may still be of value.

In this research, I focus on the Samoan law and gender context, therefore, this research is informed by the relationship between relational ontology (philosophies underpinning the social realities of Samoan people in relation to the internal-external, physical-metaphysical and current-past), axiology (ethics and values systems or value of the individual research participant (or “respondent”) to the research as a beneficiary, contributor or participant), and epistemology (Samoan ways of knowing – embodied in storytelling, *tatau* (tattooing), *nu'u fa'avae* (villages), and so on (Creswell, 1997; Mamea, Ioane and Slater, 2019; Mulitalo, 2018; Vaka'uta, 2013).

### ***Critique of Western legal methodology***

*The legal scholar must go deeper than the skin of the law in order to explain, justify and properly critique what is found there (Beever, 2015: 44)*

For the purposes of my research, I critique some of the different approaches to legal understandings to help facilitate areas with critical indigenous knowledge gaps where the use of normative approaches may address limitations to descriptive approaches.

In this research, the first phase involved an exhaustive literature review followed by doctrinal analysis of relevant primary and secondary material, including statutes, court judgments, Hansard debate records, national reports and local newspaper articles (Davis, 2005; Dent, 2017; Payne 2005, Hutchinson and Duncan, 2012; Powles, 2005; Wilkinson, 2011) in line with both a descriptive and normative approach to law.

The mix and match of Pacific and Western methods is not uncommon in Pacific research contexts. This is echoed by Suaalii-Sauni and Fulu-Aiolupotea (2014: 336): “a research process that always keeps at the forefront a respect for cultural context and meaning, no matter what the research”. Here, they

argue that indigenous researchers have the discretion to adopt methodological autonomy. Thus, talanoa methodology (discussed later in the article) may be compatible with western research methods (in modified form) provided the cultural context, decolonizing effects, meanings and values remain at the forefront of the research process. This way, the integrity of the research is not compromised and the *vā* between researcher and participants is upheld. The ‘Otupuku Project is an example of this as focus groups were adopted using a Talanoa methodology which enabled longer time frames for focus groups (‘Otunuku, 2011).

In terms of the different types of legal understandings adopted, this research also explores the descriptive and normative approaches (prescriptive and interpretive) in contrast to each other (Beever, 2015).

A descriptive analysis of the law simply describes what the law is, as likened to a form of journalism, where it serves to provide information (i.e., legislation or case law) with less overt analysis (Beever, 2015). However, there are areas where more descriptive analysis is warranted such as in legal history and in comparative law. The legal history is a form of analysis used to “tell a ‘story’ about certain events in the past... examine the background to an important case or piece of legislation in order to reveal why it took precisely the form that it has” (Beever, 2015: 32). This complements the *talanoa* method (discussed next) and research process which is useful when seeking to unpack the impact of colonial laws, the nature of laws and the relationship between the law and implications on society - a feature indicative of a common law worldview specific to developing countries with similar post-colonial history to Samoa (Mulitalo, 2018).

Another kind of descriptive analysis is comparative law. Building on the legal history as a form of descriptive analysis discussed above, also cross-cuts with comparative law elements as it pertains to this research. The legacy from the ‘colonial’ era links to the history of the German administration in 1900, followed by the New Zealand administration in 1914, to when Samoa became a United Nations Trust Territory in 1946 (Meleisea, 1987). This research also critiques the legal environment of non-heteronormative people as well as domestic laws of Samoa; and by casting the net much wider (*Upega i fili* (Motusaga 2017)) – discussed below in the *Talanoa* methodology section) to comparative legal developments in the Pacific region, and beyond to learn from their successes and failures.

The normative approach generally adopts two forms: the prescriptive and interpretive. Firstly, the prescriptive approach is focused on what the law ought to be. In terms of legal analysis, prescriptive analysis is considered weak when used as a separate stand-alone tool to prescribe how law should be reformed in line with how it should be which is why prescriptive analysis is more fruitful when used alongside descriptive analysis. The limitation lies in the lack of suitable legal training, intellectual rigour or tools that are available to adequately guide lawyers to offer solutions to legal problems. The status quo is to focus only on legal aspects of prescriptive analysis or arguably, “gut feelings or personal political preferences” (Beever, 2015: 34) as opposed to critical engagement with more sophisticated

disciplines (such as moral philosophy, legal philosophy or economics) that embed prescriptive elements and tools to help researchers analyse the impact of law or determine recommended areas for law reform. On the other hand, interpretive analysis is reliant on some theory or aspect of law, often declared as the best approach used by the Courts (tasked with traditionally interpreting law by way of doctrinal analysis) for the interpretation of the law and thus, “interpretive”. In my PhD research, the first phase involved an exhaustive literature review followed by doctrinal

### ***Pacific-specific methodologies***

As a relatively new phenomenon, the debate on Pacific-research methodologies has been around since the early 1990s, and home-grown here in Aotearoa (Anae, 1998; Tamasese, 1997; Tupuola, 1993). In Aotearoa, Linda Tuhiwai Smith (1999) wrote the leading text on decolonising methodologies. It proposed the use of a *Kaupapa Māori* approach alongside seven ethical principles: 1. *Aroha ki te tangata* (a respect for people), 2. *Kanohi kitea* (the seen fact, that is present yourself to people face to face), 3. *Titiro, whararongo...korero* (look, listen...speak), 4. *Manaaki ki te tangata* (share and host people, be generous), 5. *Kia tupato* (be cautious), 6. *Kaua e takahia te mana o te tangata* (do not trample over the *mana* (pervasive power) of people), 7. *Kaua e mahaki* (don't flaunt your knowledge) (Smith 1999:120) for research by and for Māori people which placed a high trust on respect towards Māori mana and research outputs that benefit Māori communities. Similarly, Anae's (2001) Samoan *ten le vā* methodology applied in education research as highlighted in the *Pasifika education research guidelines* had influenced the development of Pacific-specific methodologies, and the need for more culturally appropriate methodologies to be applied when undertaking research by, and for Pacific communities. This reflects the multi-dimensional, multi-cultural and gender diverse make up of Pacific communities which lends support to the use of interview methods conducted in the Pacific Islands (Unaisi et al., 2004). Smith's (1999) seven ethical principles are similar to the original eight ethical research principles of “respect, cultural competency, meaningful engagement, reciprocity, utility, rights, balance and protection” (Mulitalo 2018: 38 cited in Health Research Council 2005) adopted by the Health Research Council of New Zealand in 2005 which was later revised in 2014 (Health Research Council of New Zealand 2014) to four ethical research principles of communal relationships, reciprocity, holism and respect (Health Research Council of New Zealand 2014). The rationale for the reduction in principles was unclear from my review of the document, however, it is clear that methodology conducted in Pacific communities must be responsive to Pacific cultures and thus, sensitive to the cultural protocols governing relationships between Pacific peoples.

The development of other Pacific methodologies by Pacific researchers – including the *Kakala* framework (Tongan - Kavatake-McGrath, 2021; Thaman, 2003) - offer alternative methodologies to conduct research in indigenous communities. *Talanoa* will be discussed next as the methodology adopted in this research on the basis of empirical focus groups *talanoa* and one-to-one interviews *talanoa* conducted virtually and in-country to inform the findings of the overall study.

## Talanoa methodology

The Talanoa is a pan-Pacific approach to holding an inclusive, participatory and transparent dialogue; it means to have a ‘meaningful conversation’. The *Talanoa* research method complements the ethics, philosophies, local realities and value systems of the Samoan culture. The free translation of *talanoa* means to tell (*tala*) and without boundary (*noa*), which is often associated with the free and less inhibited rules of exchange, in terms of social structure and linguistics, without any formal expectation for an agenda and dialogue without any form of restrictions (Faafetai, 2009). The *Talanoa* aligns with the relational and hierarchical aspects embedded in Samoan culture, which captures the deeper social, spiritual and cultural components that form constituent parts of the *Talanoa* and forms part of the “phenomenological research family” (Suaalii, 2009 cited in Mulitalo, 2018: 42; Vaiioleti, 2006).

*Upega i Filiga* (Motusaga, 2017) should be embedded into the design of any research methodology to enhance the process. Metaphorically, it describes the difficult process of using a net to catch pigeons, which is synonymous with the process that a researcher follows when deciding on the appropriate conceptual framework and method to use for research. Unlike the Talanoa methodology (see above), *Upega i filiga* is not a qualitative method as such, but rather a built in self-critical evaluative or reweaving process tool. This is required when reflecting upon the appropriate methodological tools to use that can enable questions under investigation to be explored and effectively answered.

## Contextualising the talanoa approach

In terms of appropriate methodology to adopt for this research, I reviewed the merits of Anae’s *Ten le vā* paradigm which was originally adopted in education research and uniquely Samoan in scope, which has also gained credibility in general health and gender research. However, *Ten le vā* does not have an explicit gender lens (Sumeo, 2017).

It is worth mentioning that Anae’s *Ten le va* complements *Upega I filiga* (mentioned above) as she asserts “[f]or some it is a need to unlearn Western philosophies in order to re-learn and embrace one’s spirit as a “native”...So, presenting both the context of the community as well as one’s own positioning (in regard to that context) is extremely important in qualitative work” (Anae, 2005: 1, 4). It further complements intersectional spaces as it relates to power and knowledge creation which aligns with critical feminist methodology (Sumeo, 2017).

The *Talanoa* methodology is guided by Samoan cultural values to support the qualitative methods being used in this research. As the principal framework for theoretical and research analysis, the *Talanoa* is often adopted in qualitative focus group *talanoa* (FGT) and in semi-structured interview *talanoa* (IT). The *Talanoa* methodology (Ka’ili, 2005; Prescott, 2009, Naepi et al., 2020; Thomsen et al., 2021; Vaiioleti, 2011) is further explored as aspects of reflexivity and critical self-reflection that are historically part in parcel of the Samoan culture.

Like *Teu le va*, the *talanoa* process does not have a gender lens and does not critique power relations. In the words of Sumeo (2017: 69-70) "One could argue that at a strategic level, *talanoa* and *noa* are unquestioned domains for male discourse. This then resembles the situation that spurred feminist methodology in order to make visible women's voices and causes in western settings politics, and research".

Arguably, the transformative nature of the *talanoa* facilitates further debate about the legitimacy of deeper issues at the interface between representation, recognition and power dynamics in between and amongst the same gendered non-binary groups. Similarly, it could also be submitted that the *talanoa* itself is not academic and robust enough to fit the requirements of any credible methodology. What this highlights is not necessarily the absence of a critical gender lens to power relationships, but the inability to understand the premise of the *talanoa* approach. Thus, part of the "epistemological task" is to persistently interrogate the very norms of our institutional practices which are complicit in the social reproduction of structural injustices (Adebisi 2021). Indeed, the task ahead is not to limit the scope of enquiry to debates on how to define the *talanoa* or what it lacks, but rather to examine what the *talanoa* makes possible.

Technically, the *talanoa* approach is more appropriate to diverse power relationships, which makes it more inclusive to the experience of SOGIEC of Samoa. Given the reflective nature of gender and law research in Samoa (Dent 2017; Langford 2017), the *talanoa* is the most culturally appropriate research tool. This is also due to the sensitivity of investigating discriminatory practices experienced by gender diverse groups (*fa'atama* and lesbian) in Samoa. As bijuralism (or co-existence of the customary legal system and the state legal system) is adopted in Samoa, the *talanoa* process will help facilitate discussions in this complex and often undocumented area. The *talanoa* approach brings out and highlights the need to develop a uniquely Samoan critical theory and gender methodology foregrounded on *fa'asamoa* principles.

*Talanoa* critical to the second phase of this research. This phase will involve face-to-face contact with respondents via FGT followed by in-depth semi-structured IT. The indicative questions and prompts used during the FGT and IT was guided by the emergent themes from the literature review and doctrinal analysis (the first phase). The respondents included representatives from the village, public sector and private sector. The FGTs took place first followed by the ITs to allow for gaining a better understanding of the respondent's attitudes, beliefs and experiences which is not always feasible within a FGT. The key respondents (FGT and IT) were invited to share their views, and to reflect on their own cultural journey whilst providing a non-threatening and empowering safe space where they feel comfortable to participate (Ka'ili, 2005; Prescott 2009). While *talanoa* is commonly adopted as an oral cultural practice, the *talanoa* is focussed on building and creating relational narrative inquiry, dialogue and discussion which is not exclusively oral but also written, often prefaced by an initial *talanoa* in person or online (Naepi et al., 2020; Thomsen, 2020; Thomsen et al., 2021). As such, the *talanoa* is not merely the act of talking or discussing but a complex and multi-layered dialogue from free-flowing

*talanoa* to critical *talanoa* conducted in the language of the respondent, whether Samoan, English or both (Vaiotele, 2011).

An ethical guideline of responsible research will be adopted in the appropriate selection of a purposive sample of targeted individuals from: respected Village experts (i.e., government women representatives, village mayors, village council members); respected State experts (i.e., members of parliament, judiciary, government lawyers, government chief executives); respected Private sector experts (i.e., business community, non-government organisations) and FGT comprised of up to 10 individual experts. The ethics application was sought from the Auckland University of Technology Ethics Committee (AUTEK) and granted on 24 August 2021. Data collection was interrupted due to the impact of COVID-19 amongst other factors.

### ***Limitations to Talanoa approach***

I argue that in order for researchers to address shortcomings prevalent in gender and law research methodology requires one to be engaged in alternative ontologies to the existing system. On this view, ontological (ways of being) understandings can engage with other ontologies (pluriversities), but cannot be enacted when still operating in the system. This is why decolonial thought and approach in knowledge production is needed to transform the functional decay in a discipline deeply entrenched in coloniality and unequal power (Adebisi, 2021; Hetu-Thaman, 1998).

In a Pacific context, communication and transmission of knowledge is encompassed “through the senses” (Vaiotele, 2006: 32). Thus, it is critical that researchers, both Pacific and non-Pacific are knowledgeable in Pacific autonomous contexts. In a Samoan context, it is imperative that one is experienced in *Teu le va*, Anae’s *Teu le va* paradigm governs the expression of *fa’asamoa* values and beliefs in practice and ‘in any context, [whereby] respectful and polite communication is adhered to by all’ (Ponton, 2018). On this view, Fa’avae (et al., 2016) cautioned that the depth of respectful relationships between participants and researcher should not be overlooked. This is echoed by Anae (2010). Thus, the *talanoa* relationship is inextricably contextualised to Pacific ontological, social and spiritual understandings.

Therefore, it is instructive that in its design, construction, and delivery, Samoan gender and law methodology should not only complement the principles of *Teu le va* but also be applied by experienced practitioners capable of working in cross-cultural and inter-disciplinary contexts. Consequently, the theorising generated from knowledge production runs the risk of being poor quality and misleading if a researcher is an inexperienced *Talanoa* or *Teu le va* practitioner.

With respect to *Teu le va*, it is based on three concepts which govern how relational connections to the *va* (relationship) are defined and expressed. First, there is *va fealoa’i*, defined as ‘spaces between relational arrangements’ (Anae and Mila-Schaaf, 2010), which are both ‘physical and metaphysical’

(Anae 2005). Secondly, there is *vā tapuia*, defined as the 'relationship of respect' (Meleisea et al., 2012), or 'sacred spaces of relationship arrangements' (Anae and Mila-Schaaf, 2010). The onus is on the *Teu le vā* practitioner (or facilitator adopting *Teu le vā* traditionally in focus groups, *fono* [meetings], or interviews, within a Samoan context), to understand and to be aware of such relational connections, which are inextricably tied to how they behave or approach others (Ponton, 2018). The *teu le vā* practitioner's gender, status, or relationship to others is vital to strengthening a relationship with *tapu* dimensions, which helps to enrich the *vā tapuia* between brothers and sisters, mothers and fathers and so forth. Thirdly, there is *Teu le vā* itself, defined as 'to value, nurture, look after, if necessary to tidy up the *vā* (the relationship)' (Anae, 2005; Anae and Mila-Schaaf, 2010). It acknowledges the special connections and principles required to maintain authentic and respectful methods of communication within and outside the Samoan community. Therefore, the *Teu le vā* paradigm is holistic and adopts a pan-Pacific, cross-cultural, cross-disciplinary approach, whilst governing familial and non-familial contexts.

At the risk of oversimplifying, to use the *Teu le vā* paradigm is to facilitate interactions in the *talanoa* that enable the use of the senses. Importantly, understanding the *agaga* (spirit, essence) beneath the skin of the *talanoa* encounter must be foregrounded in core Pacific values, principles, expressions and emotions to bring out the participants truth. Consequently, it is at the core of quality Pacific research and enriches research knowledge privileging relationality and maintenance of the *vā* (relational space) (Matapo and Baice, 2020; Siilata, Samu, and Siteine, 2017).

Critics argue that Pacific epistemology have different origins to non-Pacific epistemology. Thus, it is problematic to adopt non-Pacific research methodologies, methods, instruments and knowledge reflective of, for instance, the dominant hegemonic culture alongside their dominant values that differ in origin to Pacific epistemology. To understand the specific peculiarities and depth of knowledge unique to the lived reality of the Pacific context is predicated on the assumption that only Pacific people can provide solutions for their respective communities (Vaioleti, 2006). While there is merit to this argument, it is worth negotiating this further in the academic space. I argue that if the "*talanoa*" originated in Pacific epistemology and not dominant Western epistemologies, the reasoning would follow that the *talanoa* was not originally positioned as a research methodology, method or tool to facilitate knowledge production and generate theory. On this view, it is understood that the *talanoa* was shaped by western epistemologies and is recognised as 'academic'. Thus, to retain the *agaga* of the *talanoa* is largely dependent on understanding the context to which it is applied (Vaioleti, 2006). In the words of Suaalii-Sauni and Fulu-Aiolupotea (2014: 332) "academic researchers who work with Pacific peoples benefit most, in our experience, when there is deliberate and mutual sharing and probing of Pacific and Western epistemologies inherent in contemporary Pacific research". I view this as a powerful argument.

In the Hon. Prime Minister, Afioga Fiame Naomi Mataafa's (2022), inaugural address at Auckland University of Technology, she shared some insight about her path to becoming Samoa's first female

Prime Minister. In her address, she raised some plausible explanations about the conceptualisation of the *talanoa* in practice in modern Samoa. She described her recollection of the General Election campaigning having joined the Fa'atuatua i le Atua Samoa ua Tasi (FAST) political party initially as a special guest on their roadshow. In her words, "The FAST roadshow was about walking to the people" (Mata'afa, 2022). When she discussed public forums they held, she described them as "*talanoa* sessions" where there was "no customary protocol" observed in order to appeal to the broader cohort. Consequently, "no food, just water" was served as refreshments which disrupted traditional customary practice. When asked what does the "va" mean to you? Mata'afa (2022) replied:

"We never talk about va in Samoa...I'm fascinated by all the discourse in Aotearoa. We practice it. My own understanding is the *vā fealoai*, respectful relationships with people and environment. In the *palagi* [Western] context, people talk about respect having to be earned, my take from the samoan context of respect, for us, it's a given, you can only lose it. The expectation is that it is there, something automatic. Unfortunately, I think we're losing that in many ways, not just in relationships between people, you see it mostly in the environment. How much that whole idea has been lost. We have traditional practices, rarely practiced but ...now because of the discourse and diaspora and academic circles, why are we talking about adaptation etc when we've been doing all this stewardship "taking care" of...very happy with this discourse in Aotearoa, multi-cultural and there are cultural lenses in how people talk to each other. No simple answers. When policy was set to recognise the indigenous culture in Aotearoa...where does this put all the others? I see that discourse happening. Being a Samoan, we have to go find out our aiga ties to the Maori"

In short, the *talanoa* is more than a "superficial cultural ritual" (Fa'avae et al., 2016: 142). This is echoed by Adebisi that "...decolonising knowledge is more fundamental and intricate than ticking a box" (2020: 472). To enact Pacific decolonial methodology such as embedding *Talanoa* and *Teu le vā* actively engages participants to disrupting the system by enabling other expressions of knowing (pluriversities) (Grosfoguel 2013).

## **Fa'asamoa principles**

In the past Samoans have been at a disadvantage because literature, although written about us, appears to be collated and written in a form that "appeals only to a small, educated elite...firmly confined to the Universities" (Watt, 1985: 286). Many of the theories and models used within the social sciences to analyse Polynesian societies have been loaded with Western language and structures to describe our behaviour (Ralston, 1988)...When Samoans have been studied, some have not had the power to choose what is said, how it is expressed and how their words should be written because that control seems to be exercised by the "all-knowing author Tupuola (1994: 183).

Before delving further into a proposed blueprint for the Samoa critical theory and Samoa gender methodology, it is instructive to offer a brief outline of the core values of *fa'asamoa* as it applies here (Mailo, 1992; Vaá, 2009). The *fa'asamoa* underpinning social action and the ethic of care are *usita'i* (obedience), *fa;a'aloalo* (respect), *alofa* (love) and *tautua* (service) (Anae, 2001; Gilson, 1970; Mailo, 1992; Meleisea, 1987). It is important to note that the expression of *fa'asamoa* may not always be explainable and may often lack uniformity across different nu'u fa'avae in Samoa (Tuala-Warren, 2002).

What is often missing is a critique of the *fa'asamoa* principles. *Fa'asamoa* principles are historically entrenched and were practised for centuries prior to colonisation (Va'a, 2009; Motusaga, 2017). Motusaga (2017: 92) claims that the introduction of Christianity was “not the only tool of colonisation in the history of countries like Samoa”. The negative impact of colonialism not only undermined, but further contradicted, the traditional high status ascribed to gendered communities. Thus, the combined impact of colonisation and Christianity meant that women in Samoa were subjected to maternal/domestic roles in the private domain, further removing women from active participation in decision-making in the public domain (Douglas, 1999; Hermkens, 2011).

It is important to point out that adopting *fa'asamoa* principles in indigenous gender and law research in Samoa does not require the researcher to share the religious and cultural beliefs of the Samoan people. In short, a proposed Samoa critical legal theory and gender methodology must be inclusive enough to undergo a comprehensive unpacking and deconstructing exercise where a fundamentally collective and individualistic community may be brought together to critique, develop and understand the character, rationale, purpose and scope of Samoan gender methodology and critical legal theory.

### **Exploring a new methodology: Samoa critical theory and gender methodology**

*Our quest should not be for a revival of our past cultures, but for the creation of new cultures, which are free of the taint of colonialism and based firmly on our own pasts. The quest should be for a new Oceania* (Wendt, 1982: 206, 215).

This self-determining argument put forward by Professor Albert Wendt and other Samoan post-colonial scholars is a call for emancipation from the shackles of colonialism. It is a call for self-critical reflection, innovation and a new freedom from the oppression of coloniality. On this view, decoloniality is grounded in the colonial matrix of power (“CMP”) comprised of both modernity and coloniality. Coloniality is a colonial concept while modernity is not. To understand the interdependence between the two involves an understanding about how the CMP transformed from the historical foundations five centuries ago to the present (Mignolo and Walsh, 2018). Following this line of reasoning, research delinks from the standard approach (i.e., a discussion of theory first followed by application). A decolonial approach is “rooted in the praxis of living and in the idea of theory-and-as-praxis and praxis-and-as-theory, and in the interdependence and continuous flow of movement of both” (Mignolo and Walsh, 2018: 7). This approach is part of the re-existence from

western theoretical and conceptual tenets. Consequently, indigenous efforts to enable, decolonize, ‘re-story’ development and re-image laws is a slow process (Monson et al., 2022). The starting point is the presumption of subordination from the western tools of colonisation including the introduction of colonial institutions – legal systems, church, schools and decolonisation from the transmission of power from colonial administrators to modern day law making in Samoa (Kabutaulaka, 1997; Thaman, 2003). The negative impacts of colonisation in Oceania highlight the need to privilege the interdisciplinary and multidimensional approaches in the production of legal scholarship and anti-essentialist theory. Thus, disrupting western and oppressive frameworks in legal scholarship is a form of anti-subordination (Thaman, 2003; Valdes, 2015).

In response, this emancipatory research seeks to explore the extent to which similar experiences among *fa’atama*, *fa’afafine* (literally translated as “in the manner of women”) and SOGIEC people avoid essentialist and homogenous understandings of diverse gender identity. While transgenderism in non-western cultures may be cited in feminist and queer literature as evidence of a liberal attitude towards gender (Besnier, 1996), the presence of *fa’atama* in Samoa is more likely to imply a greater rigidity to the boundaries of gender (Schmidt, 2005). In the 2016 submission to the United Nations periodic review on human rights, the Samoa Fa’afafine Association (SFA) questioned whether the National Human Rights Institution (NHRI, Samoa Office of the Ombudsman) had adequately reported on *fa’afafine* and *fa’atama* as a marginalized sector of the community. The SFA submission also emphasized that most *fa’afafines* and *fa’atamas* are not transgender, and that addressing their concerns under the LGBTIQ framework ignores their connection to culture (SFA, 2016). It further highlights the need for innovation and development of a new Samoan gender methodology to adequately address the lack of critical legal scholarship and praxis of *fa’atama* experiences in Samoa.

The growing diasporic Pacific global community residing outside of their ancestral homelands are afforded more human rights and legal protection of their gender rights than their Pacific counterparts residing in the Pacific Islands (Farran, 2014). In stark contrast, the vast majority of *fa’atama* in Samoa and the wider Pacific region are still explicitly marginalised by oppressive, draconian laws and policies (Crichton, 2018). On this view, by drawing on the developments of critical thinker communities and academic scholarship driven and led by marginalised communities, it is imperative that critical scholars represented across the multidimensional understandings build their own gender methodology and critical theories. Consequently, this was enabled increasingly by social media with the rise in organised dialogues, protests, and critical legal scholarship. One notable example of this is the *Black Lives Matter* movement during COVID-19 global pandemic.

While it is suggested that Samoa driven critical legal theory scholarship and a gender methodology is driven and determined by the local Samoan community, it must also be inclusive of the diasporic Samoan and wider Pacific community outside Samoa. On this point, rhetoric, critical legal theory and gender methodology that adequately responds to Samoa’s *fa’atama* and SOGIEC community is a vital area that demands immediate attention. In light of the obvious institutional and systemic barriers faced

by navigators in the development of a critical Samoa movement in both gender and law, such as the lack of Samoan gender and legal scholars and the overall underrepresentation within the wider Pacific community, we can turn to resilient examples evident in Melanesian communities which have re-appropriated colonial terms such as Melanesia, historically deployed to invoke “blackness”. It has since been transformed and deployed as vital tool of empowerment, progression and self-determination, for example with Arts and Music festivals (Kabutaulaka, 2015). In the spirit of Wendt’s enduring message, turning what was once derogatory and oppressive into a source of pride and hope.

## Conclusion

*There is not merely one appropriate methodology, nor one type of research project, that all scholars should rush to duplicate. No blanket prescription will help us, we need, rather, to engage in self-critical examination of our practices and to go on to develop a range of models from which to select our procedures according to the needs of specific, and often unique, research situations (Gluck & Patai, 1991: 222).*

While I critically discuss the merits of the talanoa methodology to be adopted in this research exploring “Samoa law reform and recognition of fa’atama: A Talanoa approach”, I also draw on key lessons from numerous studies that have adopted indigenous and Pacific-specific methodologies. I also rely on understandings gained from critical legal research to address key gap areas of indigenous research. Although not fundamentally in opposition to the decolonial, socio-legal and critical approaches to research, engaging with law based literature and research does enrich the scope of my research inquiry. And although this article does not address why there is an emerging need to develop our own critical legal theories and methodologies in response inadequate multi-dimensional issues connected to the law and justice system pertaining to gender equity and human rights, what is clear is that this development should not be exclusive to scholars, the academic community or indigenous researchers only.

There is no explicit Samoa gender methodology and Samoa critical legal theory currently available. In light of the challenges (noted earlier), it would be instructive to not draft a blueprint that is then presented to the local community or academic community as this merely reinforcing the exclusive and one-dimensional use of the “master’s tools” (Lorde, 1983). While this is bold, it is also quite problematic, because in the true spirit of authentic Pacific engagement, this process should begin with a talanoa in the community we seek to serve. Tupuola (1994: 185-186) captures this well: “Every culture is different and it is therefore imperative for “others” to read or examine our culture only within our worldview. Therefore, some academics may be culturally insensitive when they compare our experiences with other cultures without allowing our stories and truths to stand on their own first”.

This calls for a more comprehensive approach to law and gender research by, and for indigenous communities in the Pacific region, and for a wider range of legal analytical methods, including

extensive fieldwork informed by an appropriately designed methodology developed in consultation with the local community. Such approaches would be more likely to generate the information regarding power dynamics and socio-cultural relations that is essential for an authentic, culturally sensitive and non-exploitative Samoa gender methodology and critical theory. As such, the pursuit of this is not necessarily “innovative” at all but rather a reflection of the “communication style of Samoan people and the nature of fa’asamoa” (Tupuola, 1994: 182).

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### Authors' biographies

**Bridget Fa'amatua'inu** has worked at three Universities in Aotearoa/New Zealand (University of Auckland, Victoria University of Wellington, Auckland University of Technology (AUT)) and more recently, at a University in the South Pacific (National University of Samoa) before re-joining AUT, this time as a law academic in the School of Law. Bridget recently transitioned into law academia in 2017, teaching a range of private law papers (Commercial law, Contract law, Employment law) in Apia, whilst building on experience from Samoa's law and justice sector (law reform, practising law (public and private sector) and consulting). Prior to work in the South Pacific region, her interdisciplinary research experience began in Aotearoa, having worked in grassroots and large organisations, coupled with regional and international project work, spanning across the public and private sector, in public health, law, justice and gender development fields. This background culminated in Bridget's decision to return to Auckland and commence a PhD in law with publication at AUT exploring a Talanoa approach to Samoa law reform and recognition of fa'atama. Bridget is also an enrolled Barrister and Solicitor of the High Court of New Zealand and an enrolled Barrister and Solicitor of the Supreme Court of Samoa.

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