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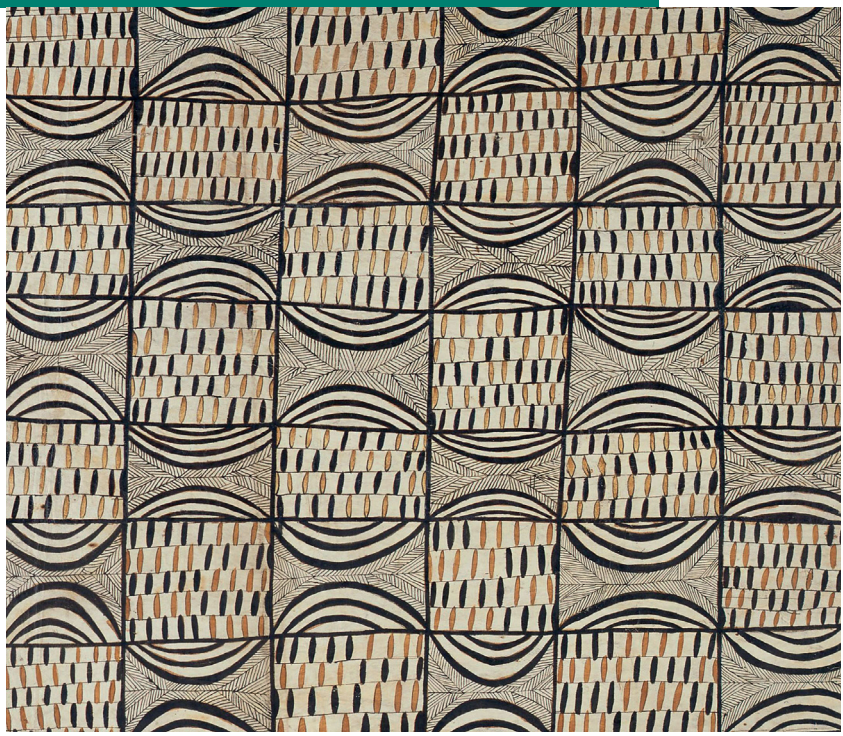
JULIA HÜTTEN

German Identity, Intermarriage, and Divorce in Colonial Samoa (1900–1914)



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German Identity, Intermarriage, and Divorce in Colonial Samoa (1900–1914)

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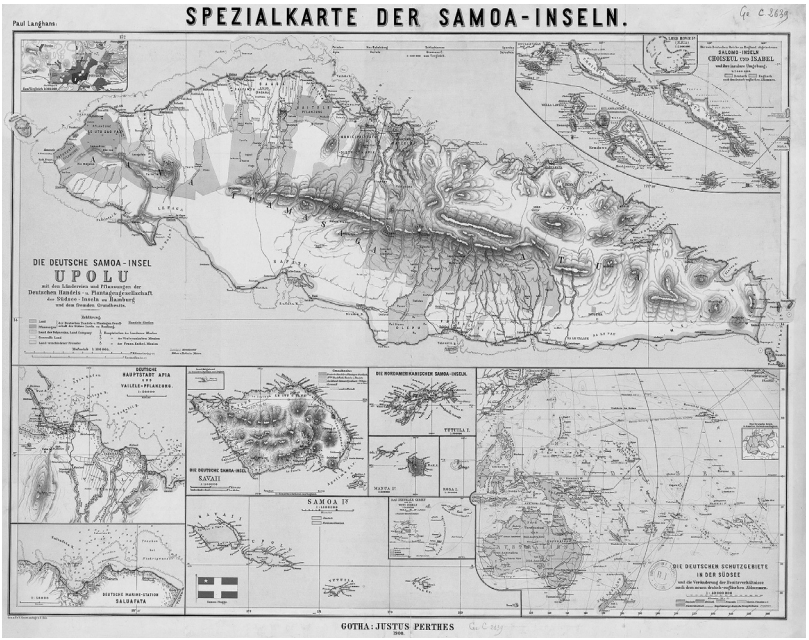

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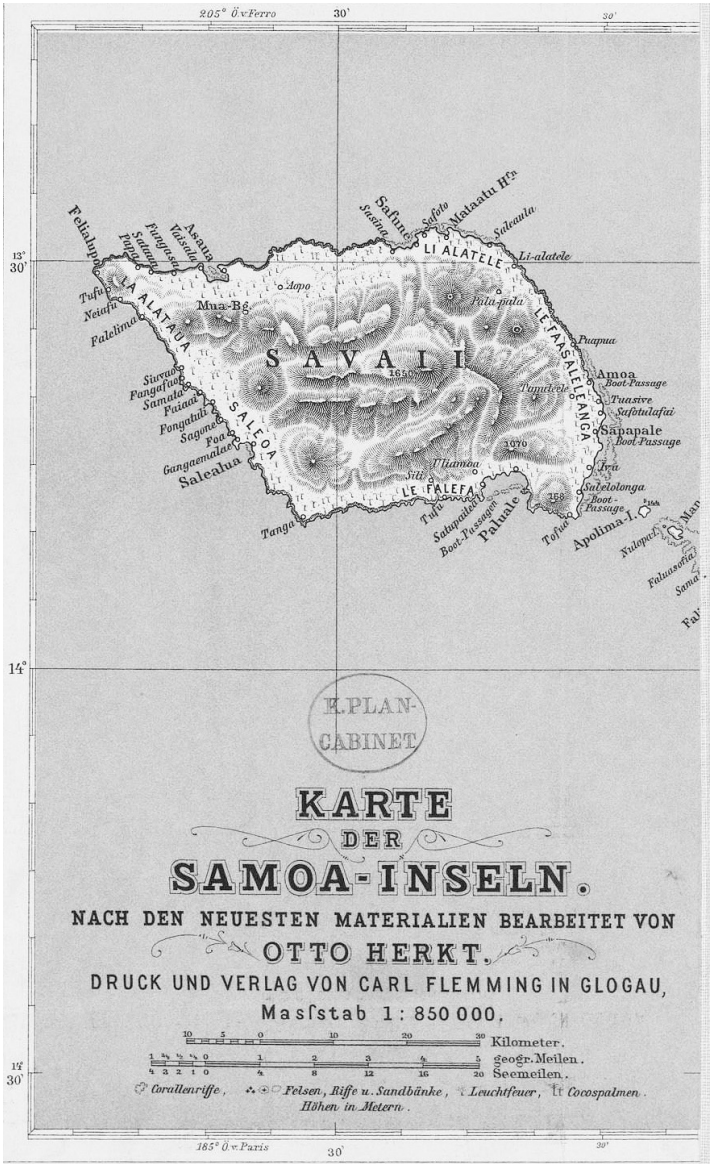

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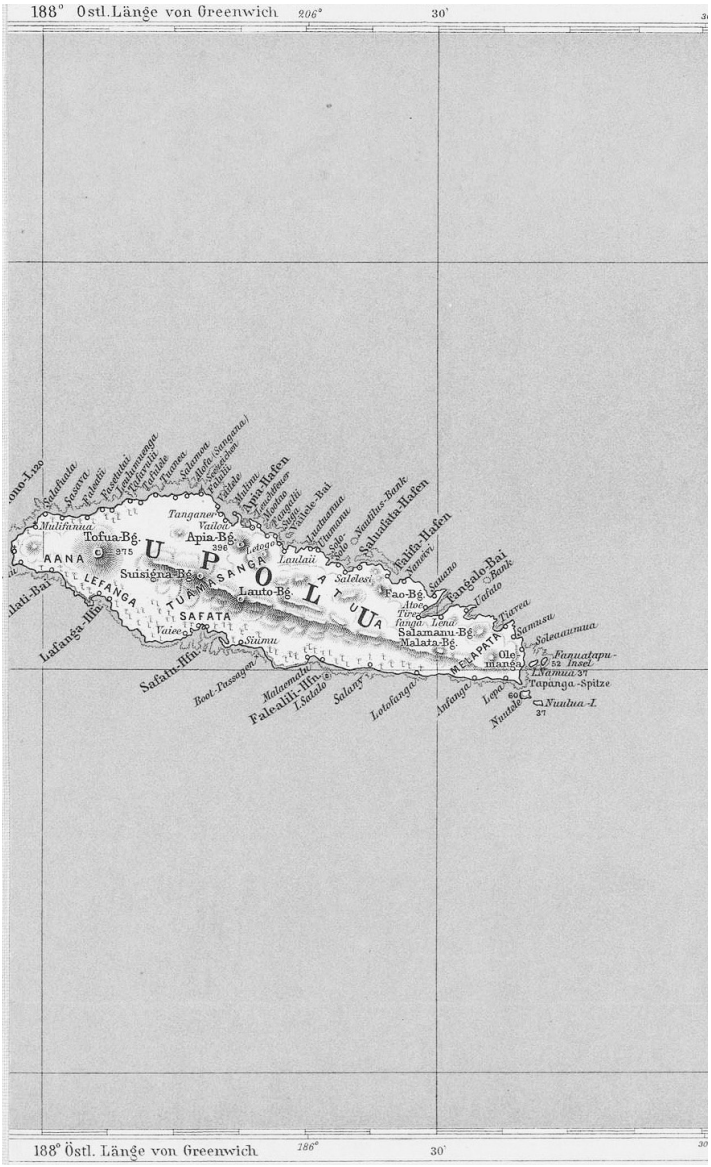

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Foreword

The endeavors of the latecomer German empire to find its "place in the sun" among other European powers in the late 19th and early 20th centuries are shrouded in misinformation, obscurity, or neglect. Over the years that I have researched and written this thesis, when asked about my thesis topic by non-historians in Germany, the conversation unfortunately often followed with questions about where Samoa is, comments about Namibia, or even surprise that Germany once had colonies. Perhaps in this way, one can see how successful the Colonial Administration was in separating colonial subjects from German citizens in that some European families were – and many are still unaware – that they have cousins in Samoa. Despite its relatively short colonial administration of only 14 years, the German presence has not been and cannot be forgotten in Samoa. It is vividly visible in the straight lines of planted acres of coconut trees, in the lists of surnames in the telephone book, and the storm-tortured visage of the colonial courthouse. The ripples of family constellations created by forebears who had children during the German period touch the lives of the living today and the subconscious of both the modern cultures of Samoa and Germany. For German identity – "*Deutschtum*" – can also be defined by what elements of history it neglects and the echoes of the empire's colonial populist rhetoric, as well as those of its opponents, can be found in contemporary political German discourses.

To my parents –
for all their love, support,
and sacrifices on my behalf.

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I would like to acknowledge the work of my two translators Mikael Saelua and Laufaleaina Lesa for their diligence and accuracy in properly translating photos of decaying, often nearly illegible texts with old-fashioned phrasings. Thank you also to Jakob Anderhandt, Murray McNae, Dr. Christiane Birr, Dr. Otto Danwerth, Prof. Dr. Albrecht Cordes, Prof. Dr. Guido Pfeifer, Dr. Clemens Butzert, the German honorary consul in Samoa Arne Schreiber, Christine Liava'a, Wojciech Rzadek, Dr. Lena Darabeygi, Shin Eun Kyoung, Sunneva and Theodora Hütten, Prof. Dr. Lieselotte Bieback-Diehl, Fotu at the Samoan Outrigger, Moritz Hütten, and the former research assistants of the fourth floor of the RuW for coffee and discussions about Babylonian contracts.

Introduction

The Samoan Islands, or "Samoa," are a group of islands in the southern Pacific Ocean, or "South Sea." Culturally and geographically, the islands are part of Polynesia, which also includes the islands and island groups of Hawaii, Fiji, and New Zealand. The first European contact with Samoa occurred in the mid-18th century, after which whaling ports were established. The population of Samoa at that time was estimated to be approximately 40,000 to 50,000 people.[1] An influx of European traders, many of whom were German, commenced beginning in the 1830s. The equatorial and wet climate of the islands was especially suited for growing coconuts and secondarily for cocoa. The Europeans developed large plantations in Samoa for producing the dried coconut meat known as "copra" as an export to Europe and America. The largest company in Samoa was the *Deutsche Handels- und Plantagen-Gesellschaft der Südsee-Inseln* (DHPG, known until 1871 as Cesar Godeffroy & Sohn of Hamburg), which had its headquarters in Hamburg. A German traveler coined an epithet for Samoa which remained synonymous with the islands during the colonial period: "the Pearl of the South Sea."[2] Firstly, a pearl is a Western symbol of purity. Samoa was very romanticized by author Robert Louis Stevenson and others as being a society of "noble savages" that was innocent, pure, and untainted by the outside world. The idea of Samoans as being innocents who required protection became part of the policy driving the politics of the colonial government. Also, the "pearl" implies great value. This description was meant to attract investment and settlement, but it is ironic in that use because Samoa was only a marginal colony; it never yielded much profit for investors during the colonial period.

The establishment of Germany's colonies, known as protectorates, began shortly after the unification of the Germanic states under one empire, yet Samoa was a latecomer in 1900 to Germany's colonial territories. European – including German – contact had been established in the 18th century, but in the 19th century European presence increased as visits by whalers, traders,

1 Meleisea (1987a) 24.
2 Ehlers (2008).

and missionaries were followed by warships.[3] By the mid-19th century, the United States, Britain, and the free city of Hamburg had appointed consuls. The three European powers struggled for control of the islands and fueled two bloody civil wars among Samoan chiefs. The second civil war, in which the Americans supported the son of the deceased high king *(Tafa'ifa)* Malietoa Laupepa,[4] Malietoa Tanumafili I and the Germans supported Mata'afa Iosefo. The resulting large number of casualties and Western property damage prompted the Western powers to resolve the conflict through diplomacy. The 1889 Treaty of Berlin was an agreement of the three Western powers in Samoa that declared Samoa a nominally independent, neutral kingdom under the protection of the three powers. The treaty marked the first attempt by Western powers to govern Samoa in an official capacity, which included the first establishment of a Western administration and judiciary. For ten years after the Treaty of Berlin, the United States, Great Britain, and Germany (Hamburg) jointly governed all the Samoan Islands in a condominium. However, an official attempt at colonization did not occur until the Tripartite Convention of 1899 under which Great Britain surrendered its interests in exchange for Germany's rights in Tonga; other rights involving areas in the Pacific and Africa and the islands were divided between Germany and the United States. The eastern islands, with a much smaller land area and population, were governed without any goals of establishing a colony by the United States Naval Administration with the seat in the well-situated port of Pago Pago, Tutuila.[5]

The German Empire asserted control of the western islands under the governorship of Wilhelm Solf, with the seat at Apia on Upolu, with the intent of expanding its investment in copra through plantations and thereby establishing a "protectorate." Yet, as with all colonial relationships, the colonizers and the colonized must retain their boundaries to maintain a system that will provide an economic benefit rather than simply operating as a territory or additional state. Postcolonial theories provide the analytical tools

3 Keesing (1934) 60–62.

4 Susuga Malietoa Laupepa had been installed as *Tafa'ifa* at the end of the first civil war. For more information on the civil wars in Samoa, see Meleisea (1987a).

5 The chiefs in the major eastern island of Tutuila ceded the island to the Americans voluntarily for protection after the Tripartite Convention. There were many indications that the Samoans trusted the Americans more than the Germans due to past aggression of the German navy against Samoan factions.

to describe and deconstruct existing dependencies between the colonizing "self" and the colonized "other." The popular, romantic view of the idyllic South Sea and its inhabitants set the stage for the German protectorate. With the German presence came its government and legislative system: a parliamentary federal government with a semi-constitutional monarchy. The united German Empire, the area of which in the early 19th century before the Prussian War had been confederations of states and Prussia, was still in the process of defining itself and what it meant to be "German" in common in the empire.

The most personal struggle for defining *Deutschtum* (German identity) was among the family unit of couples and their children, and how the law governed questions of jurisdiction, citizenship, marriage, and divorce in Samoa, and that struggle is the focus of this thesis. German legislation based in those areas primarily had its roots in Roman Law and Christian values, and the raising of the Empire's flag in Apia coincided with a brand-new unifying civil law code: the *Bürgerliches Gesetzbuch*. Before European presence, customary law in Samoa was somewhat more diverse among different *'aiga* (extended family groups). As the indigenous people of Samoa became embroiled in the power struggle, incitation to civil war, and indirect rule of European powers during the 19th century, they organized themselves under their chiefs *(matai)* to maintain influence over themselves and their islands and to advocate for their traditions and customs. At the establishment of the German administration in Apia, customary law in Samoa in the area of family law was already a mixture of *fa'a Sāmoa* (Samoan way)[6] and also, like Germany, Christian values, with additional political influence from the European powers which had been present for decades preceding. With these two legal systems and backgrounds in mind governing matters of family law, what one sees in the German period of Samoa is the cohesion of shared Christian values regarding marriage and dissidence over whether valid marriages and divorces should require state involvement rather than being purely customary or spiritual. Thus, to maintain the colonial hegemony, the *Deutschtum* was in part defined by focusing on the differences between these two legal systems: the requirement of civil marriage and civil divorce. Ideas of *Deutschtum* also influenced how German law was interpreted and applied in Samoa, and not all those in the administration had the same view.

6 Meleisea (1987b) vii.

The views of each involved individual in the higher ranks of the German Administration and the Colonial Office weighed heavily on what ordinances were made and how the judges in Apia interpreted the law. The governor carried the greatest weight, as he had the power to issue ordinances in the name of the emperor. During most of the protectorate period, Governor Dr. Wilhelm Solf had a protectionist, paternalistic policy toward the Samoan people and had a vision of gradually adapting them to German rule by leaving some powers of the *matai* intact and giving jurisdiction over many matters involving Samoans to the *matai*. On the other hand, the views of some other government officials and Europeans residing in Samoa were influenced by racial constructs and Darwinism, and this surfaces in their letters to Dr. Solf and even in their judicial opinions. One can therefore say that even among members of the German administration, views of *Deutschtum* differed.

The research and analysis presented in this thesis intend to fill a gap in existing published research on Germans in Samoa. Several authors have written about marriages between Westerners and Samoans during the colonial period. Some of these include Evelyn Wareham's *Race and Realpolitik* (2002), Damon Salesa's MA thesis *Troublesome Half-Castes* (1997), as well as the theme being explored in journal articles and handbooks such as Hermann Hiery's *Die Deutsche Südsee* (2001). However, with my research, I wish to re-examine the topic of *Deutschtum* and mixed marriages in Samoa with the eyes of a legal historian highlighting the juridical sources. For example, the Samoan divorces with their legal opinions written by Dr. Erich Schultz never before had been translated or referenced, nor have I seen the family law cases from the German administration in German legal jurisdiction referenced in any academic work. I firmly believe that incorporating these legal opinions and case files, in addition to the political background and examining how the laws were actually applied by the administration, is necessary to achieve the most complete picture of the kind of German identity that the German administration wanted to project in Samoa. By bringing these documents to light, one can see how the laws affected individuals' lives and homes and glean more of the intent behind the governor's ordinances and the individual judges from context and subtext.

Within the scope of legal history and in consideration of historical and postcolonialist perspectives, this dissertation explores the effects of asserting the

subjective concept of *Deutschtum* on the Samoan protectorate on its most fundamental level: the base family unit of couples and their children. The general objective of this study is to increase our understanding of the period of the German protectorate in Samoa and what the German governance of domestic matters under its pluralistic legal system can tell us about the actual and projected sense of German identity. I have done this by studying legal opinions from divorces and other matters of family law, the letters and minutes of the German administration, and, of course, the applicable German laws and legal procedures. Were laws and legal procedures governing marriage and divorce a vehicle to define German identity against that of non-Germans to maintain colonial hegemony? If so, whose perceptions of *Deutschtum* did they reflect? Did the encounters between "self" and "other" in the context of marriages and divorces in Samoa form patterns, and did those patterns pre-defined the "other" or further define the German "self"? How "effective" was the legislation in realizing the goals that the administration, Colonial Office, and other members of the government to delineate and define German identity in contrast to that of the indigenous people had for Samoa? How did the decisions involving Europeans ("foreigners"), Samoans, and "half-castes" play out in family law disputes involving the courts, and how close to the legal intent was its practical application? By investigating the case files and the relevant documents of the administration, the parties involved in a suit, and the government policy makers, it has been possible to ascertain the actual application of the law and to infer knowledge about the impact of enforcing the policies outlined in law on both foreigners and Samoans.

The research of this thesis implements an interdisciplinary approach by combining legal analysis of the customary laws involving areas categorized as "family law" in the modern sense (marriage, divorce, domestic violence, maintenance, and legitimacy of children) and sociological – primarily post-colonial – perspectives on national or ethnic self-identity. Traditional jurisprudence and anthropological studies of law conceptualized and described the law in terms of Western and non-Western societies, bearing forth a legal pluralism where indigenous peoples continued to follow their own customs along with the Western laws imposed under colonial rule.[7] Because of the effective two legal systems operating in Samoa during the

7 Nader (1965) 3.

protectorate period, that of the colonial administration and also the limited self-government of the chiefs for issues concerning "natives," my research delves into both German law and Samoan customary law. For purposes of defining German identity, my legal analysis therefore primarily concerns those customary laws which were potentially enforceable or were actually enforced in the courts or by the administration. Because my research focuses on marriages or divorces where at least one party was categorized as having "foreigner" legal status (i. e. not "native"), and by the colonial administration laws such a combination would relegate jurisdiction to the German courts, I have not researched in detail which customary laws in these areas would be binding among Samoans. Most previous research into marriages between Samoans and foreigners in Samoa has been presented from historical, sociological, or anthropological rather than legal perspectives. The historical school jurists, including Savigny, Maine, and Spencer, recognized primitive societies as part of their models of the evolution of law. Anthropological study of law in "primitive" societies became widespread due to 20th-century colonialism. Western anthropologists purported to identify concepts of law that apply in non-Western societies using a more holistic approach, but the intent was either to record "vanishing cultures" or to remit information that may help govern or "civilize" the population.[8] The first analysis of Samoan customary law by a Western jurist was that of Dr. Erich Schultz (later Schultz-Ewerth), first a high court judge and later briefly governor of Samoa, which combined anthropological and legal analysis.[9] His initial work on Samoan family law and inheritance was *Die wichtigsten Grundsätze des samoanischen Familien- und Erbrechts* (1905), which was translated and published in the primarily anthropological *Journal of the Polynesian Society* in 1911, but later articles and analyses were published in German in law journals and handbooks.[10] By recording in detail the customary laws of Samoa, Dr. Schultz intended to disengage Samoans from the standing Western assumption that the absence of a full, written legal code was a marker of primitivity.

8 Some well-known Western anthropologists and ethnographers of Samoa during the late 19th and early 20th century include Margaret Augustin Krämer, Margaret Mead, and Felix M. Keesing.

9 Schultz (1905) and idem (1911) 43.

10 Schultz-Ewerth (1922; 1930).

The methods used are historical and comparative with qualitative rather than quantitative research. The historical approach is used to provide a context for the legal framework and to trace the sources of legal pluralism. Nevertheless, this dissertation is primarily a comparative legal study in which facets of the pluralistic legal framework provide lenses to view how the "self" and "other" were seen. The amount of available primary sources in the form of court files and decisions, which is the highlight of my research, do not lend itself to a quantitative study due to the population at the time and the fact that divorce was discouraged by the *Bürgerliches Gesetzbuch* (German Civil Law Code) and generally uncommon in Western societies at that time. Also, court files are often incomplete or so badly damaged that parts are illegible. Many divorce cases do not include opinions because the parties ultimately chose not to pursue a divorce. The plethora of available documents in the forms of government files, personal correspondence, administrative documents, memoirs, and newspaper articles nonetheless has lent itself well to a rich qualitative analysis.

Primary sources for this dissertation were gathered from archival research in Berlin, Koblenz, Apia, Wellington, Pago Pago, and Frankfurt. In particular, the family law records originate from the Archives New Zealand (ANZ) and the Archives of the Ministry of Education, Sports, and Culture in Samoa. In many cases, the condition and legibility of the documents were very poor, and the files in matters of family law and the legal status of half-castes are sometimes incomplete. To the best of my knowledge, the files related to Samoan divorces had never before been used for academic research and required translation, as Dr. Erich Schultz wrote the opinions in Samoan, and the poor state of many documents in German required careful transliteration from *kurrent* handwriting. To avoid redundancy of existing exemplary research on the policies involving half-castes in Samoa focusing on the writings of Dr. Wilhelm Solf, I also paid close attention to the records of subalterns in the government and the community. Writings of contemporaries living in Apia, genealogical research, newspaper announcements, and other resources supplemented and provided a context for the ordinances and legal decisions.

Challenges involved in research for this dissertation were the condition and completeness of archival documents and the dearth of documents giving voice to the views and experiences of Pacific women. To provide a fuller interpretation of the context of the primary sources, secondary sources

include the modern works of historians such as Hermann Hiery, Peter Hempenstall, Malama Meleisa, and Lora Wildenthal as well as sociologists, anthropologists, post-colonialists, and Pacific Studies researchers including Ann Laura Stoler, Damon Salesa, Penelope Schoeffel, and many more. Although this dissertation attempts to provide a legal analysis that considers the Samoan perspective, the predominance of Western documentation from the period belies any pretense of near objectivity. The supporting documents in legal files concerning divorces often included testimony provided by Samoans, and I have used these in my research whenever possible. As historian Malama Meleisa aptly wrote:

> The idea […] was to have a history of Samoa from a Samoan point of view. After three years, […] we can now ask: what is a 'Samoan point of view?' […] Even 'common' historical knowledge such as well-known legends, are controversial. Each has many versions, but the version of the teller is the truth as far as he or she is concerned. […] So what is 'truth?' What is history?[11]

11 Meleisea (1987a) 7 n. 1.

Chapter 1
Samoa, Pearl of the South Sea

As with other colonies, the geography, climate, and history of European contact with Samoa influenced the path of Samoa's colonization. An archipelago in the southern Pacific Ocean, the islands of Samoa are geographically part of Polynesia. At the time of the first European contact in the mid-18th century, the population of Samoa was estimated to have been approximately 40,000–50,000.[1] In 1899, the Western powers of Germany, Great Britain, and the United States divided the kinship groups[2] *('aiga)* and their lands geographically between the eastern and western islands; ever since then, two separate states have existed among the islands.[3] The western Samoan islands, formerly the German protectorate, are now the Independent State of Samoa, while the eastern islands are an unincorporated territory of the United States. Between the nine islands of Western Samoa and the five southeastern islands of American Samoa, the largest and most populated islands were and remain the islands of Upolu and Savaii in independent Samoa and Tutuila in American Samoa. Apia on Upolu, now the capital of independent Samoa, was the seat of the German colonial government. Pago Pago harbor on the island of Tutuila in American Samoa has been the location of an American naval station since 1899.[4] However, the

1 Meleisea (1987a) 24. Estimate based on an estimate made by Rev. John Williams of the London Missionary Society in 1832.

2 "The term *'aiga*, as is the case of the English equivalent 'family', may refer to many levels of kinship, including all those descended from a common ancestor. Some *'aiga* […] are represented by groups of important titles, all originating from the same ancestral lineage […]. All *'aiga* and their *matai* titles are historically connected to one or more of the maximal lineages associated with important titles and famous historical figures." So'o (2008) 5. See Duranti (1981).

3 Meleisea (1987b) 46. It is notable that the *'aiga* which shared cultural identity and family ties in the Samoan islands could, prior to the division of the islands in 1899, travel easily in a *fautasi* (small longboat) among the islands. The division by the Western powers has had long-term effects. Today, a visa is required for citizens of independent Samoa to visit family in American Samoa.

4 The United States Naval Station Tutuila, built in 1899, is located at the Pago Pago harbor and is still an active U.S. naval base.

islands of Upolu and Savaii once colonized by Germany are by far the largest in independent Samoa, making up approximately 99 % of the land mass, and the total area of German Samoa was 2572 sq. km.[5] Due to the land area and geography, Tutuila was more suitable as a military and maritime location than a potential colony; its predominantly high altitude land area with a steep volcanic landscape has considerably less arable land than the western islands of Upolu and Savaii.[6]

1.1 Morality and the Samoan climate

In evaluating the establishment of Samoa as a German colony, the remote location and tropical climate played important roles in shaping the colonial discourse. The tropical climate in Samoa along with the coastal areas, where most of the population resides, is uniformly warm to hot; it hovers yearlong at an average of 26–28° C and there are two seasons of rainy or dry weather.[7] Its tropical location between 13 ½–14° S and 168–173° W makes long days of direct sunlight. The equatorial and wet climate of the islands is especially suited for growing coconuts and secondarily for cocoa. In Germany during the late 19th and early 20th century, it was believed that tropical climate could contribute to both physical disease and psychological impairment in Europeans. Unlike the German colonies in East Africa and South-West Africa, where temperatures in populated areas ranged lower, Europeans perceived the stable tropical climate in Samoa as less hospitable and contributive to deviant behavior including sexual deviance.[8] Tropical climates such as in Samoa were thought to have degenerative effects on the health and morality of the "white race."[9] Both the climate and scarcity of arable land for raising livestock influenced the German Foreign Office and Governor Solf

5 Schultz-Ewerth (1922) 84 n. 10. See Buchholz (2001) 69–71. Accounts of temperature range vary slightly.

6 Meleisea (1987b) 46 n. 14.

7 Buchholz (2001) 71–73 n. 16.

8 Walther (2002) 16. Court documents from other German colonies in Polynesia detail tropical climate as being contributive to psychological disability and *widernatürliche Unzucht*. For more information on sodomy and tropical climate, see Walther (2002). For more information on tropical climate in Samoa as contributing to psychological incapacity, see the guardianship case of *Caecilie Burmeister*: ANZ, Burmeister (1902).

9 Samulski (2004) 342.

against encouraging small settlers in Samoa (unlike in German South-West Africa).[10] Reports to the Foreign Office evaluating the potential of Samoa for colonization advised against small settlers due to factors including climate, type of agriculture, and the unavailability of cheap and willing local labor; after unsuccessful attempts to encourage Samoans to work on plantations, the plantation owners imported Melanesians and sought and obtained approval from the governor to import Chinese indentured labor in 1903.[11]

Colonial discourses on hygiene, health, and "racial degeneracy" supported sexual sanctions such as the prohibition of interethnic marriage in the colonies which enforced the middle-class conventions of respectability that characterized the colonial ideal of *Deutschtum*.[12] Climate and popular eugenics were intertwined; eugenics not only targeted the poor and colonized, but it was used by colonial authorities against their degenerate colonial citizens.[13] Connections between native blood and degeneracy and where Samoans and Germans fit within contemporary racial theories will be further discussed in part two of this book. During the 19th and early 20th centuries, the connection of nerves (known as "neurasthenia" or nerve exhaustion) to what would be described in modern terms as stress or mental health disorders, and the connection between moral integrity, personality, and health were scientifically accepted truths, and neurasthenia was the most commonly diagnosed illness among European missionaries and colonizers in the colonies.[14] Unlike neurasthenia that occurred in Europe, which was thought to be caused by an overload of modern life, cases of neurasthenia in the colonies were thought to be caused by the distance from civilization and proximity to the colonized.[15] Popularized by American neurologist George Miller Beard starting around 1870, neurasthenia quickly became the "catch-all" illness of the late 19th and early 20th centuries and was an evolution of the masturbatory insanity commonly diagnosed in the early 19th century.[16] Similar to Voltaire's catalog of masturbatory illness in the *Philosophical Dictionary*, Beard's catalog of symptoms is exhaustive; the cause

10 Solf (1908) 17–24.
11 Liua'ana (2004) 29–30.
12 Stoler (1989) 634.
13 Stoler (1989) 644.
14 Price (1913).
15 Stoler (1989) 646.
16 Gilman (1985) 199–203.

of both sets of predominantly passive symptoms is "social as well as sexual."[17] Beard's neurasthenia became immediately popular in German translation and through writings of the German medical community as a way of understanding and dealing with deviant and degenerate sexuality.[18]

A role model for the establishment and administration of the German colonies, Great Britain already had established the medical conclusion that tropical climates were degenerative of whites and tied in this medical conclusion with scientific race theories. Sir Havelock Charles, physician to the Prince of Wales and Sergeant Surgeon to King George V, clarified the connection in his paper on neurasthenia and "the decay of the northern peoples of India" read to the Society of Tropical Medicine and Hygiene in 1914.[19] According to the tropical country of instigation, the neurasthenic symptoms described by Charles, often referred to as "Bengal Head," "Burmese Head," or "Sudan Head," would cause even a good officer to become forgetful, shirk responsibility, and suffer from fatigue. According to Charles, the humidity and light of the tropical climate caused neurasthenia in whites and exacerbated the neurasthenic conditions of those who would already be predisposed to the nerve breakdown of neurasthenia in temperate climate zones.[20] Therefore, whites required long retreats in their temperate home countries to renew their blood before returning to the tropics. Perhaps most important is Charles's connection between the degenerating tropics and racial theories of Aryan superiority. "The European hustles," he states, and "the native is placid." In his paper, Charles went on to warn against long-term European settlement without breaks in tropical India by reasoning that the destructive combination of their Aryan heritage and the tropical climate

17 Gilman (1985) 200.

18 Gilman (1985) 201–203. Germans who wrote influential medical manuals and articles about neurasthenia in the late 19th century included Eduard Reich, Otto Dornblüth, Paul Julius Möbius, and several others.

19 Unknown Author (1914b) 727.

20 Unknown Author (1914b) 727: "The primary causes are […] the humidity and the sun, with its light and heat, which produce an abnormal condition of the body, characterized by lowered pulse-rate and tension, an irritable heart, lessened respiratory function owing to deficiency of intake and rarefaction of the air, extra work thrown on the liver, followed by continued congestion, and atonic dyspepsia leading to chronic auto intoxication. The climatic conditions lower the powers of resistance and render the individual more liable to fall a victim to the attacks of the specific forms of disease."

contributed to the decline of the Mogul civilization.[21] Criminality, immoral behavior, and distancing oneself from European society ("going native") also were often attributed to the degenerative effects of tropical climate. Europeans in the colonies were interacting in cultures where acceptable sexual orientation and expression often differed significantly from their homelands.[22] In court cases involving sodomy between Europeans and natives in other German colonies in New Guinea and Africa, judges reasoned that tropical climate had exacerbated a dormant tendency toward performing criminal and immoral acts and pushed the perpetrator into actually performing the act.[23] The progression of linking tropical climate with sexually amoral acts is part of the discourse of "tropical temptation" and the darker side of the romanticism of the beauty and sexual allure of Polynesian women; for those who believed that Samoans were racially inferior and were opposed to interethnic marriages, the tropical climate was a corruptive contributive cause. Others, such as anthropologist and botanist Franz Reinecke, who was in Samoa from 1893–1895 for research, also mentioned the draining effects of the tropical climate on Europeans, but nonetheless highly praised Samoan women as potential partners to European men through the "colonizing" relationship of raising the Samoan woman's educational or cultural development while at the same time enjoying sensual pursuits.[24] Rudolf Virchow, a prominent German medical researcher, believed that only a "hybrid race" could survive in the tropics.[25]

Governor Solf's colonial politics concerning relations between Samoans and Europeans were enrooted in these contemporary scientific presumptions concerning climate and health. In his publication of his gubernatorial speech published in 1908, "*Eingeborene und Ansiedler auf Samoa*," Solf wrote, "[t]he uniform, relentless heat during otherwise cool seasons is detrimental

21 Unknown Author (1914b) 727: "The last kingdoms of Bengal and Behar, owing to the nervous exhaustion of the race, fell a prey to the climate and to an environment which sapped their original vigour. The Moghuls at Delhi, who were highly civilized, broke down under pressure from the peoples rising up around them because their energy was worn out."

22 See, for example, sexual activity in New Guinea; see Moore (2019).

23 Walther (2008) 11.

24 Schwarz (2013) 82–84.

25 Schwarz (2013) 84. For a detailed discussion of the views of Reinecke and Virchow, see ibid., 3.1.3.

to our race and harmful in the long-term," and that several groups of people were predisposed to the corruptive influence of tropical climates like Samoa and therefore should take precaution before emigrating.[26] Such groups, according to Solf, included those with weak nerves, syphilis, disorders of the heart, or digestive disorders. Also included were those with "choleric" temperaments, inflexible personalities, and persons with "unsteady morals."[27] Of course, the accepted science behind Solf's argument served to support his colonial politics against small settlers in Samoa and desire to retain Samoa as an expatriate settlement, but it also helped define which qualities were preferred for a German settler in Samoa: one who is physically fit and, more importantly, morally upstanding. These definitions will be discussed in more detail later in this chapter in relation to defining what is German and what is "other." In general, Solf's colonial policies are marked by what historian Birthe Kundrus aptly described as a "paternal racism," for the other side of the coin was the interpretation that the culture and race of the colonized people should be protected and preserved so that they are not "corrupted" by the progressive Western ways and sensitive European blood.[28]

Degradation of health caused by the tropical climate was not a problem confined to only European males. Women were not only deemed more susceptible to neurasthenia, but also as generally more susceptible to the ill effects of tropical climate on European health. Until at least the 1890s, colonial doctors and bureaucrats had advised men to leave their European wives in Europe before moving to the colonies.[29] During the May 1912 debate in the German parliament some months following Solf's ordinance against interethnic marriage, the fitness of German women for life in Samoa was discussed in detail. Among many other reasons, the scarcity and unsuitability of German women due to the climate were discussed.[30] Paradoxically,

26 Solf (1908) 19–20: *"Die gleichmäßige Wärme ohne Unterbrechung durch kühlere Jahreszeit ist unserer Rasse unzuträglich und auf die Länge schädlich."*

27 Solf (1908) 20.

28 Solf (1919); Hempenstall / Mochida (1998) 153; Hiery (2001b); Wareham (2002); Kundrus (2003); Kundrus (ed.) (2003) 15.

29 Wildenthal (2001) 42.

30 Proceedings of the German Parliament, 55th Session (May 7, 1912), 1726: *"Ferner eignen sich die Frauen, die aus Europa bezogen werden, vielfach auch nicht für diese Gegenden, weder für das Klima noch für die dortigen wirtschaftlichen Verhältnisse."*

many opponents of interethnic unions believed that bringing more German women to the colonies would make the need for legally restricting men's sexual behavior obsolete because the German men would choose German women over native women.[31] However, since European women were considered more susceptible to neurasthenia and the tropical climate exasperated or caused neurasthenia, many politicians believed the settling of European women in tropical colonies to be an impractical solution against the supposed moral depravity of interethnic marriages.[32]

1.2 European contact and the *matai* political system[33]

Before European contact, the Samoan islands had been inhabited continuously for about 3500 years.[34] The first European contact with Samoa occurred in the early 18th century, after which whaling ports were established. Apia and Pago Pago were regular ports of call for whalers following the establishment of the London Missionary Society and Wesleyan missions in the 1830s.[35] The population of Samoa at that time was estimated to be approximately 40,000–50,000 people.[36] Although the first recorded face-to-face contact between Europeans and Samoans occurred during the late 18th century, the first encounters with a French navigator and the British navy did not end peacefully, which delayed regular contact until the early 1800s.[37] Increasingly, European and Samoan whaling ships made contact, and individual ship deserters and escaped convicts settled in the islands. From 1830 to 1900, increasingly more European settlers were drawn to Samoa. The London Missionary Society (LMS), Catholics, and Wesleyan

31 Wildenthal (2001) 4–5.

32 Proceedings of the German Parliament, 53rd Session (May 2, 1912), 1648–1652.

33 For purposes of this thesis, I will focus on Samoan history from the point of European contact. For an excellent historical overview of Samoa, including Samoa's traditional authority and the changes due to Christianity and the imposing of European interests, see Meleisea (1987b).

34 The first known inhabitants of Samoa were the Lapita, a pre-historic people who were the ancestors of the Polynesians. The oldest archaeological site on Upolu at Mulifanua has been dated to 1000 B.C., Meleisea (1987a) 18–19.

35 Wareham (2002) 23.

36 Meleisea (1987a) 24.

37 Meleisea (1987b) 12.

Methodist Missionary Society established the first missions starting in the 1830s.[38] European settlers, merchants, and land speculators, primarily from Germany, Great Britain, and the United States, infiltrated the traditional system of Samoan power and authority to exercise their interests as well as those of their own nations.[39] An influx of European traders, many of whom were German, commenced beginning in the 1830s, and by the 1850s several British and American businesses had been established in Samoa. The LMS initiated the exportation of coconut oil – which would later take a more efficient form after the introduction of European extraction and refining methods as the export copra – in the 1840s for its "contribution system."[40] In 1857 the famous Hamburg merchant house, Godeffroy & Sohn, later renamed and re-imagined as the colonial *Deutsche Handels- und Plantagen-Gesellschaft*, established a branch near Apia and significantly expanded its estates in the early 1870s.[41] Godeffroy & Sohn's focus on establishing coconut plantations and on producing copra (dried coconut) for export – rather than the time and space-consuming local extraction of coconut oil – revolutionized the commercial economy of Samoa.[42]

At the time of European contact, and for at least 300 years prior according to accounts of oral history, Samoa had a traditional political system in place based on chiefs, or *matai*. Although historians disagree as to whether the Samoans were politically centralized prior to interference by Westerners, the islands did have what Meleisea calls a "unitary system of dispersed power."[43] Even before the arrival of other settlers, the missionaries encouraged centralizing political power in Samoa and elsewhere in Polynesia because it increased the chances and rate of peaceful and uniform religious conversion when the mission could establish favorable relations with a central figure of

38 Liua'ana (2004) 4–11. The LMS, Catholic Church, WMMS, and Mormons were the first Western religions to establish missions in Samoa during the 19th century. However, some Samoans had already been introduced to Christianity prior to the missions through contact with Tongans and beachcombers.

39 Meleisea (1987b) 21.

40 Gilson (1970) 165.

41 Gilson (1970) 177–178; also Meleisea (1987b) 35.

42 Meleisea (1987b) 35. Copra was more practical because it did not require purification upon reaching Europe, as did coconut oil. Oil could be extracted from copra directly and the residue used for cattle feed.

43 Meleisea (1987b) 1–4; Bargatzky (2002) 611–612.

authority. Although all Samoans had certain uses of the land, including cultivation, hunting and gathering, and residence, traditional Samoan authority was based on rank.[44] A dual system of titled chiefs (called *matai*) owned land, determined its general use and had authority over the people living on it. *Matai* were either high chiefs *(ali'i)* or orators *(tulāfale)*.[45] High chiefs incorporated dignity and orators incorporated power; as ceremonial orators, *tulāfale* were assigned to high chiefs and spoke for them on certain special occasions, thus exercising their authority through the high chiefs. The extended family *('aiga)*[46] was the core of the chiefly power, and individuals acknowledged the *'aiga* to which they belonged through service and residence, yet it was the senior members of the *'aiga* who determined succession to the *matai* titles.[47] Although a son might succeed to a title his father held, the *'aiga* could bestow the title on a stranger if its members consented; therefore, titles were not hereditary.[48] Furthermore, a *matai* could lose his title if he were to act in certain matters unilaterally without the consent of the extended family, such as by selling land.[49] Among the

44 Meleisea (1987a) 26–28.

45 Although the chiefly system still remains in Samoa, some changes have taken place since the 19th and early 20th century which are not relevant to this historical work. Therefore, rather than distinguishing differences, I have chosen to describe all aspects of the chiefly system in past terms. For a more detailed description of the traditional Samoan government, see especially Bargatzky (2002) 611–612; Meleisea (1987a); Tuvale (1968).

46 The legal definitions and use of the word *'aiga* in Samoan law are diverse. Dr. Erich Schultz (Schultz-Ewerth), German judge in colonial Samoa, described the various definitions. "The fundamental concept behind Samoan law is the *'aiga*. This word is commonly translated as "family." However, it primarily does not mean the single family *(Einzelfamilie)*, i. e. the community of the married pair and their children." It may have one of three meanings: (1) The entire family group, the *Sippe* (clan), which includes all blood relatives and adopted persons, as well as those who recognize the familial authority. (2) The collective in a village or locality together with all living family comrades *(Familiengenossen)* (3) subdivisions into which village families are divided as part of large and powerful clans; these subdivisions each are headed by a *matai*, and one designated as a head chief *(matai sili)* (4) a single family. Schultz-Ewerth (1930) 683.

47 Meleisea (1987a) 27. Much of the chiefly system has remained intact, but for the purposes of this book it is discussed from the historical perspective. See Meleisea (1987b) 15.

48 London Missionary Society's George Turner further wrote in 1884: "A chief, before he dies, may name some one to succeed him, but the final decision rests with the heads of families as to which of the members of the chief family shall have the title and be regarded as the village chief." Turner (1884).

49 Turner (1884).

ʻaiga were politically autonomous communities known as *nuʻu*, which very roughly translates to village.[50] A typical *nuʻu* in the mid-19th century could be made up of multiple *ʻaiga* had approximately 150 residents. Each *ʻaiga* could elect a number of *matai* leaders in the *nuʻu*. Multiple *nuʻu* had affiliations with each other in a ceremonial capacity, which formed districts.[51] The highest traditional legislative, executive, and judicial organ was the *fono* of the village councils. A dispute presented in the *fono* of either the "village" *nuʻu* or district *nuʻu*, depending on whether both parties were from the same "village" *nuʻu*. The chiefs of each side presented different perspectives on the dispute and all members in the *fono* had the opportunity to speak, regardless of whether they represented either party.[52] Before the German administration, all kinds of disputes were settled in the *fono*, including adultery and disputed divorces (before the colonial administration assumed jurisdiction); for marriages *faʻa Sāmoa* which did not involve the daughters of chiefs, divorce was customary and usually did not require resolution in the *fono*.[53] Under the German administration, although the *fono* remained intact, its jurisdiction and the powers of the chiefs were restricted.

The power and authority of the high chiefs were legitimized by ancestral supernatural spiritual authority *(mana)* and descent from a god, whereas the orators derived their titular, formal political authority *(pule)*[54] from the high chiefs and exercised that authority only in the names of their high chiefs and the *nuʻu* of those high chiefs.[55] However, the orators as a group bestowed the highest titles for the high chiefs. Therefore, the authority of the orators was restricted, and the authority of the high chief was dependent on the orators. In addition to the dual chiefly system of the *matai*, there were four *tama-a-ʻaiga*, or "royal paramount chiefs". The paramount chiefs each held titles called *ao* or *pāpā* titles which were associated with their aristocratic line-

50 Bargatzky (2002) 612. *Nuʻu* are not accurately described as villages because these communities are social units with more complex political and administrative roles.

51 Bargatzky (2002) 613. Incidentally, these districts composed of familial *ʻaiga* were also called by the same word *ʻaiga* although they were not based on blood ties.

52 Meleisea (1987b) 56–57.

53 Schultz-Ewerth (1930). See especially regarding adultery Meleisea (1987b) 56.

54 In this use, *pule* should not be confused with "Pule" as used in "Tumua and Pule".

55 Meleisea (1987b) 14–15. Meleisea compares Samoa's traditional legal authority to the distinctions between rational-legal authority and traditional authority as outlined by Max Weber.

age.[56] If all four *pāpā* titles were bestowed on one person, he or she became the high king of Samoa (*tupu* or *tafa'ifa*). Unlike with the *matai* titles given by the *nu'u*, only the progeny of former holders of *pāpā* titles, the progeny of aristocratic families, could have claims to the titles, and those claims were backed by district *nu'u*.

> Thus succession to paramount titles involved large-scale contests between allied districts through their kinship networks and senior and paramount titles. These alliances might be considered the traditional equivalent of modern-day political parties, in the sense that they had a degree of solidarity to pursue certain political goals collectively, especially succession to the *pāpā* titles.[57]

Historically, however, high kings rarely occurred because it required several district *nu'u* to agree to bestow the titles on one person and therefore for the interests of many extended families to agree. *Pāpā* titles could be seized through war, but one could not be nationally recognized as *Tafa'ifā* if the titles were not given by the *tulāfale* of the main island of Upolu *(Fale Upolu)*.[58] The first known instance of the *pāpā* titles being bestowed on a single person was in the case of Salamasina, who was descended from several royal bloodlines including that of Tongan royalty; she was the first known queen of Samoa and lived eleven generations before the time of German Samoa.[59]

German scholars describe the Samoan chiefly system as being decentralized,[60] but it also has many noteworthy attributes of a rational-legal authority because of the "circular" nature of the rules and their authority. To grasp the type of authority, Samoan historian Malama Meleisea draws on Max Weber's tripartite classification of authority.[61] In essence, Weber offers an account for a traditional type of leadership which is derived from believing in the eternal character and the divine descent of the order in place. In contrast to the modern rational-legal notion, the authority is not attributed to the rules themselves, but instead to those who exercise it. Any ruling is tied to the tradition, and novelty can only be generated retrospectively as

56 So'o (2008) 4. The four paramount chief *(Tama-a-'āiga)* titles are *Malietoa, Mata'afa, Tupua Tamasese*, and *Tu'imaleali'ifano*. Bargatzky (2002) 614.
57 So'o (2008) 5–9.
58 Meleisea (1987b) 39.
59 Schnee (2005 [1920]).
60 Bargatzky (2002) 611–612.
61 Meleisea (1987b) 14–16.

derived through divine afflatus. He further accounts for a possible division into caste structures under traditional authority, hence allowing for further authority figures which are to a certain degree autonomous from the leader under traditional authority. Although the legal authority of Samoa *(fa'a matai)* could be in some ways described by Max Weber's tripartite classification of authority as a traditional legal authority rather than as a rational-legal authority, some distinctions exist.[62] According to Weber, a traditional authority (also known as traditional legitimation) is legitimated by the sanctity of tradition. "Commands are legitimate in that they are in accord with custom and power-subjects obey out of a feeling of personal loyalty to the power holder."[63] Although the right to rule is often passed down through heredity under traditional authority, the conference of traditional authority was more complex than the patrilineal heredity characteristic of European traditional authority. Weber's characteristics of traditional authority include that it does not change over time, does not facilitate social change, tends to be irrational and inconsistent, and perpetuates the status quo. While much of the concept of traditional authority does apply in the case of Samoan chieftainship, it seems it cannot account for all aspects of the authority structure in Samoa and a more wholesome account can be achieved if aspects of Weber's account of rational-legal authority are included. While one should not overstate the similarities, and though Weber strongly focused on bureaucracy as the role model of rational-legal authority, some aspects of his definition provide for a more accurate account of those aspects of Samoan ruling which transcend an overly strict application of the traditional type of authority. An indicator for diverting from the strong sense of hierarchy that is present in Weber's account is the frequently mentioned decentralized character of the Samoan authority structure. Even though describing the system as decentralized falls short in some respects, it does reflect the strong role of deliberation. Although the Samoan *matai* system displays a fundamental and undeniable parallel to traditional authority because chieftainship is derived from *mana*, the resulting derivative positions of the *tulāfale* can dwell on the transitive quality of that authority while being more secularized themselves. In other words, the *tulāfale* maintain the chiefly authority and at

62 Weber (1964).
63 Matheson (1987) 206–207.

the same time allow for a more procedural and contingent ruling that shows some aspects of rational-legal authority.

The increase of European interests in Samoa brought with it profound legal changes in how property was handled, particularly real property.[64] As the number of speculators and businesses involving commercial agriculture increased, the issue of land claims and titles became a major point of dispute. One may say that two of the sources of conflict rooted in the contact between Samoans and Western people and nations extending beyond German Samoa into the period of New Zealand colonial rule were power struggles involving interethnic unions, and those involving land and titles. At first, as Meleisea writes:

> Land and titles were at the heart of Samoan political struggles of the 19th century, and land was the principal source of dispute between Samoans and foreigners. Again and again, war was the instrument of settlement of these disputes and offered foreigners the opportunity of gaining an increasing hold over Samoan affairs.[65]

Indeed, these statements reflect the core of the bloody civil wars instigated by the three Western powers of Germany, the United States, and Great Britain from the 1830s until the 1889 Treaty of Berlin divided the islands and established German Samoa and American Samoa. At first, traditional land use customs, ownership, and consent to sell may have slowed the process of land alienation, but that changed quickly.[66] Because of the multiple use-rights to land, a Samoan would not only need the agreement of his *nu'u*, but also the agreement of the *tama fafine* (uterine descent line) to grant secure tenure to land or other otherwise convey the use of land such as leases.[67] The *tama fafine* were the progeny of the female members of an *aiga*; despite the generally virilocal residence of Samoans, these descendants who often lived outside the *nu'u* retained some use rights to the mother's family lands. Because of the interests of the *tama fafine*, half-castes presented a problem in connection with the German administration's ordinance against further alienation of land from Samoans because German protections from

64 For further reading on the complex problems created in land and titles up to then and now, see Olson (1997). See also Ye (2009).

65 Meleisea (1987b) 21.

66 Gilson (1970) 162–163. Western powers began intervening to secure land titles in the 1870s.

67 Gilson (1970) 163. See also Meleisea (1987b) 31. Meleisea and Gilson disagree as to whether the Samoans understood the implications of land transactions with Westerners.

alienation of land were based on racial categories; this will be discussed further in part three. The transfer of land in Samoan society also was closely tied with assimilation into the social structure of the grantor. Meleisea writes, "[t]ransfer of land between Samoans always obliged the recipients of the land to accept the authority and common identity of the *'āiga* and *nu'u* who bestowed it."[68] A gap, therefore, existed between the European and Samoan understanding of land transactions, and sometimes the same land was sold multiple times to different Western interests.[69] By the 1880s there were so many Western claims on Samoan lands that the Treaty of Berlin included the creation of a Lands Commission (first established in 1903) to settle conflicts. From the 1870s until the establishment of German Samoa, the Western powers developed different competing influences and correspondingly the Samoans developed different perspectives on them. Because of the LMS and the powerful role that the church played in Samoan society, particularly involving the chiefs, the British had considerable influence. Because of the establishment of the copra trade and land claims of Godeffroy & Sohn, the Germans were seen as having primarily commercial interests and influence. Since the Americans had no influence in the church or in commerce, Samoans generally perceived them as neutral.[70]

Contact with Westerners changed the face of warfare in Samoa. In Samoa, feuds and civil wars typically had been waged over *matai* title succession contests, insults,[71] and murder of high chiefs.[72] Women and men related by *tama fafine* were considered neutrals in war. The introduction of

68 Meleisea (1987b) 31; Gilson (1970) 162–163.

69 Meleisea (1987b) 36.

70 Meleisea (1987b) 37. The U.S. wanted to establish a coaling station for American shipping at Pago Pago.

71 Meleisea (1987b) 22–24. Such insults usually involved rape or seduction of a *taupou* (ceremonial virgin) or the adultery. As Meleisea writes, "[t]o take another man's wife or for a woman to leave her husband for another man was grounds for insult to the husband, his *'aiga* and his *nu'u*. The higher the title of the husband, the greater the offence." Particularly offensive verbal insults could also instigate war. War caused by insults often involved women: adultery with women or the rape or seduction of a *taupou* (ceremonial virgin) by a man from another *nu'u*. In 1866, LMS missionary William Pritchard wrote that Samoan wars always concerned chiefly titles, murder of chiefs, or women, but Meleisea qualifies that the wars involving women usually could be referred back to conflicts involving rivalries for chiefly titles. See also Pritchard (1968 [1866]).

72 Meleisea (1987b) 22–27.

steel to carve weapons and make spears as well as the importation of firearms propelled factions warring over the *pāpā* titles for the right to be high king of all Samoa. The Western powers exerted their influences considerably during the latter half of the 19th century to try to secure their interests by supporting particular Samoan factions and thus fueling bloody civil wars. After the "land grabs" of 1869–72 and following a civil war between chiefly factions, in 1873 the Samoans sought to establish a confederate government ("Ta'imua and Faipule") to protect Samoan interests; in particular, the new government wanted to have land claims "officially recognized and legally registered."[73] Although the missions and small settlers welcomed peace and a central Samoan authority, other Europeans were less receptive because of the new government's policy that all unproven land claims, including the many claims made during and following the recent civil war, be dismissed.[74] Furthermore, the Ta'imua and Faipule wanted the U.S. to establish a protectorate over Samoa with the goal of having Samoan self-government.[75] This confederation was undermined quickly by conniving Western interests, resulting in the deportation of King Malietoa Laupepa (one of the two kings) by the Ta'imua and Faipule. Malietoa's government was supported by German commercial interests, as Godeffroy & Sohn representative Theodor Weber had negotiated for acknowledgment and protection of German property rights and other privileges.[76] The two split sides fought over their claims to govern in 1877, and Malietoa's government *(Puletua)* was defeated; this left the Ta'imua and Faipule as the *de facto* Samoan government. After realizing that the Americans would not establish a protectorate, the Ta'imua and Faipule appealed to Great Britain but they would only agree to cessation rather than a self-governing protectorate.[77] After Samoan support for the

73 Meleisea (1987b) 36–38. "The government consisted of two kings, a *Fono a Ta'imua* ('council of the front line') representing the major districts and a *Fono a Faipule* ('council of law-makers') representing the sub-districts."

74 Meleisea (1987b) 36–37.

75 Meleisea (1987b) 37. The Samoans had negotiated with U.S. Colonel Albert Steinberger, who apparently did not have the authority to make these negotiations and was eventually deported by King Malietoa Laupepa upon persuasion by the American consul and a British LMS representative. It was later discovered Steinberger had made an agreement in secret with German commercial interests.

76 Gilson (1970) 345–346.

77 Meleisea (1987b) 38.

Ta'imua and Faipule waned due to public perception of the Ta'imua and Faipule "giving the country away,"[78] and Samoan support shifted back to the Puletua government which reorganized itself as the Pulefou. The Germans once again put their fingers into the mix by supporting the establishment of another rival government under Tupua Tamasase Titmaea and the *tulāfale* of Tumua.[79] Again civil war broke out between the Tamasese and Pulefou governments. Malietoa Talavou died in 1880, and Malietoa Laupepa succeeded him.[80] After a truce was reached in 1881 and a coalition government was established, the Germans dropped their support of Tamasese under the coalition and refused to acknowledge the new government.[81] The Samoan government once again appealed to Great Britain for status as a protectorate, and Godeffroy & Sohn (through Weber) countered by claiming ownership of the land at Mulinu'u (near Apia) where the Samoan government was located and accordingly expelling the government. The Samoan government split again and the Germans once more supported Tumua Tamasese; Eugen Brandeis of the *Deutsche Handels- und Plantagengesellschaft* (DHPG, formerly Godeffroy) was instated as Tamasese's premier in exchange for German recognition of Tamasese as king.[82] Supported by German warships, Tamasese attacked Malietoa in 1887. Malietoa was captured and deported by the Germans to the Marshall Islands. Scottish author Robert Louis Stevenson, who moved to Samoa in 1899, described this period of Samoan civil war from 1882–1892 in detail.[83] Stevenson described Tamasese's government as a "vista of puppets" in which "people did not trouble with Tamasese, if they got speech with Brandeis; in the same way, they might not always trouble to ask Brandeis, if they had a hint direct from Hamburg native Misi Ueba ['Mister Weber,' i. e. Theodor Weber]."[84] German (Hanseatic) commercial interests (DHPG) were taking control of the copra trade through the government by taxing its New Zealand competitor MacArthur and pressuring local

78 Gilson (1970) 346.
79 Meleisea (1987b) 38.
80 Ibid. Despite strong claims to the Malietoa title and public support, Mata'afa Iosefa lacked the necessary Western support.
81 Meleisea (1987b) 39.
82 Ibid.
83 Stevenson (1892) details this period of Samoan civil war from 1882–1892 in a romantic and subjective fashion.
84 Stevenson (1892) 34–39.

officials to order Samoans not to take money from them. The 1906 memoirs of Llewella Pierce Churchill (Samoan resident and wife of American ethnologist William Churchill) give a vivid description of the development of Godeffroy & Sohn and DHPG commercial interests in Samoa:

> What brought the Germans to Samoa, what gave them that absolute trade supremacy which they were perfectly right to seek to defend at all cost and at every hazard (and it did cost dear, and much was indeed hazarded), was not the adventure of deep-sea cruising, was not the instinct of annexing new lands, but plain ordinary commerce, the selling dear and buying cheap, extending credit to a people who never yet have learned that between a bill and a receipt there is any difference worthy of consideration, and who would mortgage anything for the future to obtain the object of present desire. Let the credit fall to the memory of the man to whom it was due, a genius in his way, to Theodor Weber, that "Misi Ueba," who is probably the only man whose superiority the Samoans were compelled to confess. It was not Germany that went out into the South Sea and carved out an empire. At that time there was no Germany, there were no more than Germanic kingdoms, and duchies and principalities, so petty that in any case if you didn't like it you could go around it without the loss of much time. Above all were the free cities, those Hanseatic republics, and of these it was Hamburg that stood foremost. Out of Hamburg came Theodor Weber, what the Germans call "commis," but in his way a genius in discovery. He found Samoa and annexed it to the Firma Godeffroy, whose servant he was, John and Caesar Godeffroy, merchant princes preeminent in a city full of such.[85]

In 1888, civil war broke out once more as Tui Atua Mata'afa Iosefo challenged Tamasese and the German interests represented by him.[86] The Western consuls banded together in support of Tamasese against the Samoan supporter of self-governance, Mata'afa. In addition to Samoan factions inflicting casualties on each other, German naval forces retaliated and both sides suffered heavy casualties.[87] In 1889, a hurricane engulfed the six Western warships at Apia, which had been sent to reinforce Tamasese's smaller army, and Mata'afa won the war. However, the three Western powers, refusing to acknowledge defeat, compromised by selecting the formerly deported Malietoa Laupepa to be king and signed the Berlin Act to establish a condominium government between Germany, Great Britain, and the United States in Samoa.

85 Churchill (1902) 17–18.

86 After the deportation of Malietoa Laupepa, the Malietoa title had been passed on to Mata'afa by some of the *'aiga* (Sa Malietoa). Meleisea (1987b) 40.

87 Gilson (1970) 394–395.

Chapter 2
German Identity and Colonialism

"The family is the basic pillar of the Samoan state," wrote Chilean-born German ethnographer and naturalist Augustin Krämer in his 1902 ethnology on the Samoan islands.[1] Samoan society was also extremely hierarchical; a family's or individual's status was vis-à-vis, and accordingly, marriage was an instrument of jockeying within these hierarchies. Most marriages for both high-status and low-status daughters were arranged for the benefit of the family. The influx of Christian morality regarding sex and marriage had effected many relatively recent changes in Samoan marriage customs with the prohibition of polygamy and the encouragement of female pre-marital abstinence and chastity. In particular, the availability of chastity made a form of the high-status "virginal" marriages previously available only for high-ranking girls and women attainable for those of lower status. At the same time, the increase of foreign men in Samoa was eroding the existing controls of families over their daughters. More and more women were choosing their marriage partners among Samoans, Westerners, Chinese, and sometimes Melanesians. The German government introduced legal requirements for formal marriage, which had previously been satisfied by ecclesiastical marriage, in an attempt to control the increasing numbers of half-castes. In this chapter, the development of Samoan marriage up to and during the period of the German administration will be examined, as well as Western marriages during the German colonial period.

The period from the establishment of Christian missions in Samoa through the German colonial period and beyond affected several changes in the role and practice of marriage in Samoa and, accordingly, the social roles of women, especially those from lower-ranking families. When the first missionaries from the London Missionary Society (LMS) arrived in 1830, some Samoans had already been introduced to Christianity through contact with European sailors, beachcombers, traders, and escaped convicts, as well as from contact with Tonga where the LMS had already established a mis-

1 Krämer (1994 [1902]) 33.

sion.[2] The Wesleyan Methodist Missionary Society[3] and the Roman Catholic Church[4] (1845) also established missions in Samoa shortly thereafter, and then the Latter Day Saints and Seventh Day Adventists.[5] The LMS, WMMS, and Catholics were the most influential missions and competed ardently to convert the greatest number of people and chiefs. Despite divergent dogmas and various political agendas, a common ground between the competing missions was the regulation of marriage and the control of sexuality. This included the eradication of polygamy, condemnation of pre-marital or extra-marital sex, and the encouragement of specifically female chastity before marriage. The form of marriage promoted by the missionaries was one of religiously sanctioned marriage to a single, freely chosen companion in a monogamous, sexually exclusive relationship.[6] This contrasted sharply with existing Samoan marriage practices where marriage was usually polygamous,[7] young women often could engage in pre-marital sex, in some cases there was ceremonial defloration,[8] and marriages were usually arranged

2 Liua'ana (2001) 4–5. See also Gründer (2002).

3 Gründer (2002) 638.

4 The Catholics (Societas Maria) in Samoa appealed to the Samoan affinity for ceremony, but their "radical stand against polygamy was an obstacle to conversion, as well as the prohibition of divorce which had restrictive consequences for the traditional social structure." Gründer (2002) 638.

5 Liua'ana (2004) 11. The Mormons (LDS), originally a religious group where polygamy was encouraged, did not establish a mission shortly after the beginning of the German government and they arrived at a time during which the islands were already well-saturated with competing missions. The first Mormon missionary, Joseph Dean, arrived in Samoa in 1888, yet it took several years to establish a mission. See also The Church of Jesus Christ of Latter-Day Saints.

6 Grimshaw (2007 [1907]) 270–271. Beatrice Grimshaw, an Irish travel writer, published her book in 1907.

7 Samoan men had two to six wives, according to LMS missionary Williams. Moyle (1984) 142.

8 An exception to the sexual freedom of unmarried and deflowered Samoan women was ceremonial virgins, or *taupou*, whose rite of deflowering concluded with marriage to a chief. In a defloration ceremony, the hymen was ruptured by a chief or orator using the fingers. Defloration ceremonies of *taupou* were public, whereas those of lower ranking women were at least sometimes private. "The gift of virginity allowed the highest-ranking chiefs to act the part of the gods that they represented on earth: gods associated with fertility, abundance, and renewal." Schoeffel (2005) 63–65. See also Moyle (1984) 256. For a detailed description of the defloration ceremony from the late 19th century, see – quoting jurist and former consul general Oscar Stübel – Krämer (1994 [1902]) 39.

through the family. The concept of chastity was not foreign to Samoa; young women of some statuses were expected to retain their virginity until their defloration ceremonies, and it was considered to strengthen the family if a woman engaged in sex before her defloration ceremony.[9] However, after the defloration, young women had been free to engage in sex with partners of their choosing from other villages (i. e., outside their *'aiga*).[10] Women from the *aualuma* (council of unmarried women), including chief's wives who had been put aside in favor of the current wife, were also encouraged to have sex with guests as part of their hospitality duties.[11] Although one certainly may not assume that marriage and sexual practices were static before European contact, it may nonetheless be concluded that the changes affected by the missionaries caused comparatively quick changes in existing marriage and sexual practices due to the rapid conversion to Christianity over a period of up to 20 to 30 years.[12] The missionaries condemned many Samoan customs which included what they considered sexual promiscuity, while at the same time recognizing the presence of existing practices similar to that of European Christian fidelity and chastity. In addition to the aforementioned changes in the institution of marriage, the missions also were for the prohibition of public defloration (especially that of the *taupou*), adultery, immodest dress, and any practices they considered fornication and prostitution.[13]

Before conversion to Christianity, chiefs and other Samoan men had used polygamous marriage as a form of political alliance; indeed, marriage and sexual relations were viewed as a way to increase status and form alliances. For chiefs and the families of the wives, polygamy was integral in maintaining status by regularly forming new alliances and accruing new wealth in the

9 Schoeffel (2005) 65.

10 Ibid.

11 Pritchard (1968 [1866]) 133–134.

12 Despite the rapid conversion, the conversion should not be "mistaken for a wholesale acceptance of missionary efforts and a felicitous blending of two cultures." Shankman (1996) 555–559.

13 Gilson (1970) 96–97. Unsurprisingly, issues of modesty and control of sexuality were of high importance to missionaries. This went on to include partitioning of houses for privacy and mandating "appropriate" hair styles for men and women. In his reference to prostitution, Gilson may be referring to the night dance at the *poula*, which included a dance called the *sa'ē* performed naked by women. For more information on the *poula*, see Krämer (1994 [1902]).

form of fine mats and other gifts which were exchanged before, during, and after the marriage.[14] Under Samoan polygamy, the previous wife usually would return to her family and the new wife would take her place. The prior wives retained their marriage to the man but usually not the husband's domicile,[15] and no stigma was attached to them. While at the same time condemning polygamy as promiscuity, despite that its motivations and function were social rather than for casual and recreational reasons,[16] some of the protestant missionaries turned a blind eye to the polygamy of chiefs[17] and at the same time sought to make divorce more accessible to preserve some aspects of the social function of polygamy and thus ease the transition to Christian monogamy. This practice was sharply criticized by the Western governments. In his 1901 report to the U.S. Secretary of State, New Zealander Edwin W. Gurr, Secretary of Native Affairs in American Samoa, described the history of the adaption from polygamy in detail.[18] "The marriage question has been one of the most serious to grapple with […]. In this [ordinance], an attempt has been made to rid the Samoans of one of their most injurious and ruinous customs."[19] According to Gurr, the early attempts to circumvent monogamy went thusly:

> The practice prevailed among couples that, if either took a fancy to another of the other sex, frequent attempts would be made to create quarrels between the two, so that eventually one would declare to the other a desire to be released from the marriage vows. A mutual agreement to separate was not recognized by the Catholic mission, but it was by the others. This practice enabled parties to resort to subterfuge, to defeat the precepts taught by the missionaries, and to be retained, or to gain admission into the church as a member, and, at the same time, to satisfy sexual desires as of olden times. I might mention, as an illustration, of the effect of the custom recognized by certain of the missionary societies, a man has been marred

14 Schultz-Ewerth (1930).

15 Some sources conflict as to whether the wife typically remained in her husband's domicile after a new wife was taken. See Tuiteleleapaga (1980) 63.

16 A Samoan chief writes an opinion on the interpretation of polygamy as being promiscuous in his self-published work: Isaia (1999) 142.

17 Robson (2009) 31, referencing Gunson (1972) 95. Gunson asserts that LMS missionary Williams became "more liberal in his approach to island culture" by welcoming chief Malietoa Vainu'upo's conversion without making an issue of the chief's polygamy (which would usually preclude church membership).

18 Upon the dividing of Samoa between the Germans and the U.S. in 1899, both governments immediately issued ordinances defining and regulating marriage by 1900.

19 Gurr (1901) 11.

> three times in less than a year, and two out of the three times by the same missionary.[20]

Where divorce was not easily obtainable, Gurr wrote that some men would play the missionaries against each other to retain polygamy and elude the mission's regulations on marriage and divorce:

> Again, the missionaries promulgated their laws as to marriage and divorce. If it happened that a man could not obtain the consent of the missionary of the denomination to which he belonged, to his marriage with a woman because he was already married to another, he would turn to the opposite denomination, where he would be taken as a new convert, and allowed to marry, notwithstanding his former marital relations.[21]

Some Western men in Samoa embraced the existing practice of polygamy during the 19th century, and it is likely that for this reason, as well, marriage was one of the earliest areas that the Western powers sought to regulate even well before the Tripartite Government Period. For example, the first American commercial agent, Jonas Coe, married at least six Samoan women, including a daughter of a Malietoa chief, and fathered at least 18 children.[22] The laws reflected the fear of "going native"[23] and the degradation of Western culture through native "promiscuity." In the period before the German administration, consular officers of European or American nationals could exercise customary jurisdiction over their own citizens in matrimonial matters.[24] For example, in 1873 the Samoan council of the United States strictly forbade polygamy and defined marriage as "a contract between man and woman that they shall be one till death part them" and stating that "[t]here

20 Ibid.

21 Gurr (1901) 12.

22 Collins (2014) 2131, 2161. Emma Forsayth-Coe, daughter of Jonas Coe and Le'utu Talelatale Malietoa, became the famous and highly influential merchant and plantation owner known as "Queen Emma" in Herbertshöhe, German New Guinea. See also Robson (1973). Other examples include the half-caste American citizen Joseph Collins as discussed in High Court Apia (1933).

23 Schnee (2005 [1920]) s.v. "*Verkanakern. Unter V. versteht man in den deutschen Südseekolonien das Herabsinken von Weißen auf die Stufe der Eingeborenen (Kanaker, Kanaka, s. d.), ähnlich wie in Afrika das Wort Verkafferung (s. d.) gebraucht wird.*"

24 Samoan Public Trustee (1933) 73. "I am unable at the moment to quote the authority whereunder the Consular officers of Germany and the United States were given a specific jurisdiction over the nationals of their respective countries. However, I merely refer to the English Acts and the Order in Council to illustrate the constitutional position of Samoa."

shall be no divorce or separation; once married [the couple] shall live together till parted by death."[25]

The Criminal Laws of 1892 enacted by king Malietoa Laupepa[26] regulated other matters relating to marriage and sexuality, including rape, bigamy [polygamy], abortion, adultery, incest, and fornication.[27] These laws enforced serious punishments for rape and seduction, especially of girls under age 12, and also criminalized the practice of forced elopement through rape.[28] The regulation of bigamy in the 1892 laws also conformed to a Western standard of monogamous marriage and the Christian concepts which had been generally accepted by Samoans by this time. It prohibited remarriage of a man or woman who had previously been married without first obtaining a "lawful grant of divorce in writing." Without a written, legal grant of divorce, a subsequent marriage was considered bigamy and a person convicted of bigamy could face one to three years of imprisonment, with or without hard labor, at the discretion of the judge. Interestingly, a man who committed bigamy with a *married* woman also could face the same penalty with two to six years of imprisonment. This additional penalty for men only may have been an attempt to prevent civil wars which in the past had sometimes been instigated by the insult of taking a chief's wife. By the time of the establishment of the German protectorate, polygamy presumably had been abolished. Reflecting on his observations in his text on Samoan customary law, German judge and Governor Erich Schultz wrote:

> Polygamy *(taunonofo)*, which in earlier times had been the prevalent practice by at least chiefs, if not also others, no longer exists. Its abolition was a service of the missions, and, regardless, Samoan women today are no longer accustomed to putting up with romantic rivals.[29]

25 Steinberger (1874) 60.

26 The kings were influenced by competing Western powers.

27 ANZ, Laupepa (1892).

28 ANZ, Laupepa (1892) [without pagination]: "Any man ravishing a woman in order to make her wife or the wife of another man shall, on conviction, be imprisoned not less than two nor more than six years with or without hard labor, on the discretion of the judge."

29 Schultz-Ewerth (1922) 155: "*Vielweiberei, taunonofo, früher wenigstens bei Häuptlingen die Regel, besteht nicht mehr; ihre Abschaffung ist Verdienst der Missionen, auch ist die heutige Samoanerin nicht geeignet, sich eine Nebenbuhlerin gefallen zu lassen.*"

However, the 1901 report of Gurr from American Samoa indicated to the contrary that in at least some areas – though perhaps less or not at all in the more populous and Westernized areas near Apia which were observed by Schultz – polygamy was still practiced.[30]

The abolition of polygamy had consequences on marriage and sexuality beyond simply eliciting monogamy, and it thus changed the face of marriage and sexuality significantly by the time of the German colonial government. Most importantly, both men and women of high rank were engaged in strategic "serial marriages" by divorcing or otherwise setting aside former spouses to remarry new ones, and in this way substituting some prior functions of polygamy.[31] Also, the social positions of unmarried women, especially *taupou*, began to change. Shortly before the missionary and colonial period, the roles of the *taupou*, or ceremonial virgin, and the *aualuma* were two of the most important in the social and political functions of their *'aiga*. The *taupou* was the head of the *aualuma*, which was the group of women without husbands in an *'aiga* (unmarried, divorced, or widowed).[32] The *aualuma* served the *taupou* and were responsible for receiving and entertaining guests.[33] In the period shortly before German Samoa, *malaga*, or "visiting parties" with religious and political functions, visited other villages to foster political relations and for courtship purposes, and the *aualuma* was

30 Gurr (1901). The U.S. stance against polygamy in American Samoa is still in effect through the American Samoa Civil Code A.S.C.A. section 41.0615 (11) authorizing deportation of non-permanent residents who practice polygamy. This statute was invoked as recently as 1986 in *Falelua v. Immigration Board* involving a Western Samoan man who had, at one point, remarried without first obtaining a divorce. American Samoa Bar Associations (2020).

31 PMB, Neffgen (1907–1916). This was still practiced at the time translator Neffgen wrote his "Samoan Sketches" shortly after the German colonial period.

32 Samoan villages were divided into two gender groups called the "village of the ladies" *(o le nu'unu'u o* tama'ita'i*)* and the "village of the gentlemen" *(o le nu'unu'u o ali'i)*. The *aualuma* was the part of the "village of the ladies" for unmarried women. For more on political gender roles in Samoan villages, see especially Meleisea (1987a) 27–28.

33 The entertainment was led by the *taupou* and performed by the *aualuma*. The *taupou* had been trained for many years in perfecting graceful dances. Chief's wives who had become secondary to new wives were encouraged to have sexual relations with high-ranking members of the *malaga*, though this practice declined after condemnation by missionaries who likened it to prostitution. This hospitality was still practiced during the colonial period, including for members of the German administration. See ANZ, Haidlen v. Solf (1912).

also responsible for caring for these guests.[34] As polygamy declined, so did the importance of the *taupou* and consequently the *aualuma*. Augustin Krämer wrote in his ethnology that the ceremony of the *taupou*'s defloration was being abandoned because the *taupou* were *eloping* rather than waiting for their arranged marriages. Shortly after the colonial period, F. J. H. Grattan[35] wrote:

> Altered political conditions and social change like monogamy and church and life marriage render a plurality of these *[taupou]* no longer necessary or possible, and although […] *taupou* may both be seen discharging other ceremonial duties and clothed in the traditional manner, they have lost something of their former importance in this respect at least.[36]

The uncertainty of the *taupou* providing an advantageous alliance through her marriage no longer justified the great expense of training and formally conferring titles upon her.[37] By the 1920s, less than a century after Christianization, ethnologist Felix Keesing's fieldwork revealed that *taupou* had become a rare exception in socially conservative areas such as Manu'a (in American Samoa).[38] To understand the significance of this change from arranged marriage to eloping, I will first describe the two basic forms of Samoan marriage and then outline the evolution of the role of the *taupou* and the significance of the *taupou*'s virginity in Samoan sexual and marriage practices.

2.1 Samoan courtship and marriage

The courtship and marriage of lower-ranking women entailed considerably less pomp and circumstance; the greater the rank of the two parties involved, the more celebration, ritual, and exchange of gifts took place. Courtship of Samoan women was fundamentally similar regardless of rank, but increased in ritual, complexity, and gift exchange with the greater rank of the woman courted. Although the marriage of low-ranking women often was simple in

34 Meleisea (1987a) 27–28.
35 F. J. H. Grattan was a "public servant with a diploma in anthropology from Cambridge who worked in Western Samoa for many years, beginning in 1929." Shankman (1996) 560.
36 Grattan (1948) 152.
37 Schoeffel (2005) 65 citing Keesing (1937).
38 Keesing (1937) 5–6. See also Shankman (1996) 560.

practice, obtaining the consent of the woman's parents before (or after the fact, in some cases of lower-ranking women) nonetheless was expected. Courtship in Samoa usually was conducted through the means of a third party known as a *soa*; for courtship between lower-ranking Samoans, this was the man's friend or brother.[39] The *soa* was sent to the village of the chosen woman to bring presents to her and her family (usually food), and to seek approval from the woman herself and others close to her.[40] In the case of lower-ranking women, the acceptance of the proffered food was an acceptance of the marriage offer.[41] Parents often contracted their daughters to marriage after reaching the age of maturity, though the young woman's consent was also requested as a secondary consideration; [42] this applied to daughters of all ranks.

The act of marriage also depended on the rank of the woman involved. For marriages to chiefs, and most elaborately for marriages between chiefs and *taupou*, the marriage involved a ceremony with many festivities. The marriage itself was delayed for several months so that sufficient property for the gift exchange could be collected.[43] For women not of high rank, the act of marriage simply involved the woman either changing her domicile from that of her parents to that of her intended husband (a practice known as *avanga*)[44] or simply having sexual intercourse with a man in his own home rather than elsewhere.[45] *Avanga* could be done with the permission of the parents (known as *avanga i le loto o le teine*), in which case the marriage

39 Mead (2001 [1928]) 63–65. Mead also mentions that a man may not use his female relatives due to taboos against discussing such matters with female relatives, but he may in some cases use a girl who is unrelated to him. Mead writes that a *soa* was used for sexual rendezvous without the intent of marriage, but I have not found evidence of this use in any writings prior to Mead's fieldwork in the 1920s and the sexual openness of Samoan adolescents portrayed by Mead has been since subjected to much scrutiny. – See as well Grattan (1948) 171–173.

40 Stair (1983 [1897]) 171–173. Also Turner (1984 [1884]) 91–92.

41 Krämer (1994 [1902]) 41.

42 Turner (1984 [1884]) 92.

43 Schultz-Ewerth (1930). For a detailed description of what seems to be the marriage of a high-ranking woman or *taupou*, see Turner (1984 [1884]) 93–96.

44 Schultz-Ewerth (1930) 693.

45 "The various ceremonies […] were only observed on the marriage of persons of rank; on other occasions but little form or ceremony was used." Stair (1983 [1897]) 174. Also: "Whatever intercourse may take place between the sexes, a woman does not become a

was accepted by the family and a complex customary exchange of gifts over a long period ensued which involved the distribution of *'oloa* (goods of male production)[46] to the husband's family and *tonga* to the woman's family, including many other gift exchanges.[47] If she made *avanga* without her family's permission, her family would attempt to retrieve her. If she and her partner managed to cross the village border without being caught, the *avanga* was successful and she would be outcast from her family. Samoan marriage (especially *avanga*)[48] as opposed to marriages sanctioned by either the church or a Western government,[49] was known in many colonial writings as marriage *fa'a Sāmoa*, or marriage "in the Samoan way,"[50] and by the time of the colonial period, it was still in practice but existed together with church marriages and state marriages due to the influences of missionaries and Western governments over the latter half of the 19th century.[51] In all marriages, the woman was expected to have the consent of her parents *(avanga I le loto o le āinga, o ona matua)*, although young people often eloped

man's wife unless the latter takes her to his own house. A woman receiving visits at the *fale-tele*, or at her own house, or at the house of a friend, and becoming a mother, cannot claim the status of a wife, and the child is illegitimate. The mother may fasten the parentage upon the father, but that is all. One rendezvous in the house of the man, makes her his wife, and the child is legitimate." Pritchard (1968 [1866]) 134.

46 Tcherkézoff (2017). *'Oloa* includes male-made goods such as pigs, baskets of food, tools, and canoes, and *tonga* are female-made goods such as tapa, coconut oil, ceremonial mats.

47 Schultz-Ewerth (1930) 694.

48 Also spelled in modern texts as *āvaga*. The translation of *avanga* by Schultz-Ewerth is inconsistent with that of Grattan, who translated *avanga* specifically as "runaway marriage."

49 For information on church and secular Western marriages and their validity, see later in this chapter.

50 Sometimes the term used by Western colonial writers for Samoan marriage is simply "fa'a Samoa," without a noun to indicate marriage, which is an aberration of the term. Since this thesis focuses on German identity, I will use the term "marriage *fa'a Samoa* when referring to marriages as described in this paragraph (i. e., marriages that would not have been considered legally valid by the German colonial government).

51 According to Schultz-Ewerth, the Samoan terms for marriage were *fa'aipoiponga* (Christian marriage in the European way – etymologically derived through the missionaries from the Rarotonga language) and *fa'apoulipouli* (marriage in the heathen way). The division of marriage into these two categories based on procedure rather than the rank of the parties involved already reflects significant contemporary changes in the social function of Samoan marriage. Schultz-Ewerth (1930) 693.

without or against her parents' will by the early 20th century.[52] Aggressive seduction or rape[53] was severely discouraged and could result in retributive actions against the perpetrator, his family, and his village.[54] Eloping without or against the will of the parents *(avanga i le loto o le teine)* was frowned upon and could result in the woman being estranged from her family.[55] Elopement would also entail the defloration ceremony and a ceremonial meal.[56] In some cases, reconciliation between the bride and her parents and between the two families could nonetheless occur after elopement, and could then, in cases of higher ranking couples, be followed by the same gift exchange of *'oloa* and *tonga (tōga)* as in marriages described above which had prior parental consent.[57] All forms of *avanga*, with or without parental consent and including aggressive seduction and rape, were valid forms of Samoan marriage under Samoan customary law. Additionally, all women – except wives of chiefs – and low-status men could have serial marriages. Wives of chiefs could not divorce and remarry without the existing husband's permission, which was usually not given.[58]

The joining of the couple in matrimony was typically tied to substantial exchange of gifts by the families during the course of the marriage.[59] If the woman married with the consent of her family, an elaborate exchange of goods followed. Gifts from the groom and his family consisted of food and other items *('oloa)* prepared by men, such as canoes, weapons, tools, drums, furniture, and sometimes Western goods.[60] The bride's family replied with their own gifts of items prepared by women *(tonga)* which could include valuable fine mats, native cloth, sleeping mats, bark cloth, woven fans, and

52 Krämer (1994 [1902]) 41: "In most cases, the young people elope *(avanga)*, while the superior ones or older ones ask the parents or brother of the girl for her hand, bringing at the same time food, the acceptance of which signifies an affirmative answer."

53 In cases of rape, the change of domicile was still required for a valid marriage.

54 Schultz-Ewerth (1930) 693–694.

55 Not only would the gift exchange fail to take place, but this caused problems because the woman typically returned to her own family to give birth rather than remaining in her husband's home. Krämer (1994) 54.

56 Krämer (1994 [1902]) 41.

57 Schultz-Ewerth (1930) 694.

58 Pritchard (1968 [1866]) 133.

59 Grattan (1948) 179.

60 Schultz-Ewerth (1930) 694; Pritchard (1968 [1866]) 136; Grattan (1948) 161.

dyes.[61] This custom of the exchange of *'oloa* by the groom's family and the reciprocation of *tonga* by the bride's family continued on multiple occasions throughout the marriage.[62] These exchanges reflected a continuous flow and exchange of property between the families, which were typically from different villages, and strengthened their economic, social, and political ties. Also, the higher the status of the families involved, the greater the number of gifts.[63] The equitability of the gifts could become a sore point between the families or even the married couple if one family did not view the reciprocal gift to be sufficient. One may also wonder if the gift exchange process did not experience even more performance pressure since the eradication of polygamy, as the decreased number of partnerships would have significantly decreased the flow of gift exchange. In cases where a woman married a Westerner, the important social function of gift exchange was disrupted since the Western groom lived independently of extended family in Samoa and therefore, depending on his wealth and resources, may not have been able to participate in this exchange of goods. Although one may assume that only women from lower-ranking families married Westerners, this was not the case. Other attributes, such as bringing new skills or bringing new physical diversity to the family, often were seen as assets worthy of parental consent to marriage to a Westerner.

2.2 *Taupou*, abstinence, and the sexuality of young Samoan women

Taupou were specifically chosen daughters or adopted daughters of *matai*,[64] and they were expected to retain their virginity until an arranged marriage for the benefit of the village chief and the families of both parties. Aside

61 Grattan (1948) 161–162; Pritchard (1968 [1866]) 136.

62 Stair (1983 [1897]) 173.

63 Schultz-Ewerth (1930) 694. Note that Stair and Schultz-Ewerth differ on descriptions as to which ranks gift-exchange of *'oloa* and *tonga* occurred. Schultz-Ewerth implies that it took place even with some lower ranking marriages such as eloping, where consent of the parents was given before or after the fact. Stair, however, implies that it only occurred for high ranking women. I interpret this as a spectrum where the families of women of the lowest ranks may have been exempt from gift exchange altogether, whereas the obligation increased with the rank and prestige of the woman and her family. See also Stair (1983 [1897]) 174.

64 "By strict custom, the *taupou* should be a daughter or close female relative of the chief's sister or a descendant of his paternal aunt: this being one of a number of social mecha-

from their destiny to politically beneficial marriages, *taupou* were usually the highest-ranking women in a Samoan village. Keesing describes the *taupou* system thus:

> At first sight, the *taupou* system would appear to contravene basic principles of social classification according to rank, age and sex within Samoan life. The *taupou*, a maiden perhaps fifteen or sixteen years old, was given a place of foremost honour and respect by the men. She took part in ceremonies of the *matai* (chiefs and orators), mixing the *kava* drink for them on high ritual occasions. Should she be in a visiting party, she enjoyed an exalted seat in the *kava* circle and a precedence in drinking over all but the highest chiefs […]. The wives of the chiefs and orators nurtured her, while she would never be without older women as attendants and guardians. She was the *so'a'aualutna*, or leader of the unmarried girls and unattached women *(aualuma)*. These formed her entourage, and customarily slept along with her in a special house […]. The life of the *taupou* thus differed vastly from that of other girls of her generation, even her own sisters. The *taupou*-elect underwent careful instruction in dancing and other social graces, also in the ritual of her office. As *taupou* she had charge of the entertainment of visitors, and served as the nucleus for many village activities designed for pleasure and social advancement. In order to protect her beauty she was given the best of foods and kept from exposure and the harder forms of work.[65]

At the time of the first missionary contact, the duties of the *taupou* always included undergoing a public defloration ceremony upon her marriage (usually to a chief).[66] Her marriage included an extensive and elaborate exchange of *'oloa* and *tonga* on the part of both families.[67] Only one *taupou* could exist in the village at any given time, and her role ended upon her marriage and a new *taupou* was chosen by the chief. Under polygamous Samoa, the turnover of *taupou* was regular because chiefs took new wives to secure alliances. Some chiefs had seven or more wives, and often the wives

nisms in Samoan life by which a man and his descendants *(tamatane)* are linked *(feangainga)* to his sister and her descendants *(tamafafine)*. Actually, however, she was often instead a daughter of the chief, or of the *tamatane* line. In any case, qualifications of birth were subordinated to personal qualities of beauty and intelligence in choosing the *taupou*-elect. Should those of highest descent be unsuitable, she would be drawn from a more distant line of relatives." Keesing (1937) 4.

65 Keesing (1937) 2.

66 The defloration ceremony of the *taupou* or brides of chiefs were public, whereas those of lower-ranking women, if they were virgins at marriage, took place at home. Krämer (1994 [1902]) 41.

67 Keesing (1937) 3.

of high-ranking chiefs were *taupou*.[68] Under polygamy, once a chief married a *taupou*, his village might begin searching for a new marital alliance to secure even soon afterward. If a new *taupou* marriage was arranged, the previous wife would return to her family with prestige and could not remarry without the consent of her husband and his family.[69] During and after the conversion to Christianity and the subsequent decline of polygamy, *taupou* were being appointed less frequently and, at the same time, the availability of eligible marriage partners for them declined since chiefs were practicing monogamy. Rather than wait for their village to arrange a marriage for them, many *taupou* were eloping without the consent of their village. This was a highly significant and radical change because the defloration of the *taupou* and the retention of her virginity on behalf of the village was a matter of pride so important that sometimes, in pre-Christian times, a *taupou* could be stoned to death if it were found upon her defloration that she was no longer a virgin. Although elopement was frowned upon but not uncommon for girls of lower rank,[70] when a *taupou* had pre-marital sex or eloped, it disgraced her village. During the period of the German colony, defloration was forbidden by the colonial government. According to Schultz-Ewerth and Krämer, defloration ceremonies had become obsolete by the end of the 19th century, though later ethnologies mention the continued practice in at least some areas.[71]

The extent of the missionaries' influence on the change in the sexual practices of young Samoan women is a hotly debated topic by ethnologists, anthropologists, and historians since the popularity of Margaret Mead's *Coming of Age in Samoa* (1928) and its subsequent criticism by Derek Freeman in *Margaret Mead and Samoa*: *The Making and Unmaking of an Anthropological Myth* (1983).[72] No complete ethnography per se exists for the Ger-

68 Pritchard (1968 [1866]) 133.

69 Keesing (1937) 3.

70 Grattan (1948) 153; Schultz (1911) 9.

71 Mead (2001 [1928]) 99; 190–192. According to Krämer writing in 1902, the practice of public defloration was extinct, but he also mentions that it was performed as recently as in 1897 near Apia.

72 It is important to note that Mead's field work, though conducted in a relatively conservative rural area, was performed in the mid-1920s; Freeman's field work was in the 1960s. For purposes of this thesis and to obtain a more accurate picture of the time period between 1900–1914, I prioritize observations from Westerners which were made most

man colonial period, though the writings of missionaries, travelers, and other Westerners document Samoan social practices regarding sex and marriage at the time from a Western perspective.[73] The partial ethnography of Samoa by German naturalist Augustin Krämer originally published in 1902[74] combined with earlier writings of missionaries – though also certainly biased – and modern ethnographies by Samoan writers and historians and, importantly, the writings of German governor Solf and jurist Erich Schultz (known later by Schultz-Ewerth) help form the picture of the views of sexuality and marriage during the colonial period upon which this research is based. "Open sexual relationships are common with young people," wrote Schultz-Ewerth. "Pre-marital abstinence is not required, with the exception of the *taupou*, whose physical virginity is an absolute must."[75] Although Schultz-Ewerth wrote that *taupou* still were required to be virgins in the early 20th century, Krämer disagrees on this point. According to Krämer, the practice of public defloration had become obsolete not because of the restrictions by Western governments or the moral teachings of the missionaries, but because most young women were no longer virgins at marriage. In the case of the *taupou*, many were choosing to elope and

closely to the time period (i. e., not later than the 1920s). Nonetheless, many points of Mead's research have been contested by Samoan scholars and later anthropologists, and there are several discrepancies between Mead's work and the observations of earlier travelers (for example, regarding young women's sexual freedom and regarding the upbringing of children). Therefore, I refer to Mead where points do not contest with other literature I have read, but one must take any outside observation – not only Mead – with a grain of salt. I often compare observations by Mead to those of Grattan, who also had an academic background in anthropology and was also in Samoa during the 1920s. I occasionally cite references for marriage practices from Williams (1830–1832) and Pritchard (1866) 60–70 years prior to the colonial period, because they in great parts concur with significant points in Schultz-Ewerth's description of marriage. Nonetheless, I do not usually cite after field work from the 1920s because it is my impression that marriage and sexual customs, due to conversion to Christianity and colonial government, were changing at rapidly increasing rate after the mid-19th century. For a detailed analysis of the points of contention from both Mead and Freeman regarding Samoan sexual conduct, see Shankman (1996) 115.

73 LMS missionary John Williams's writings in Moyle (1984). British consul William Pritchard's memoirs in Pritchard (1968 [1866]).

74 Krämer (1994 [1902]). Krämer was a ship's doctor by profession. His ethnography contains detailed accounts of his observations in Samoa.

75 Schultz-Ewerth (1930) 693.

reconcile with families after the fact – if the partnership survived longer than a few days – rather than to wait for the ceremony including defloration. In other cases, the *taupou* may have used, with the help of their older female attendants, chicken blood to simulate or a shark tooth to cause actual bleeding at the time of the defloration ceremony.[76]

Anthropologist Jeanette Mageo has argued that the promotion of chastity by the Christian missions enabled access to a "high-status marriage" for low-status Samoan women. This supposition is based on the elevation of the *taupou* through her closely guarded virginity and accordingly pampered and elite status. If we are to assume the truth of Krämer's assertion that even *taupou* usually were no longer virgins by the beginning of the 20th century, and also taking into consideration that public defloration was forbidden and private defloration had been available to non-*taupou* even before the 19th century, this supposition seems less likely. However, a "leveling" of marriage for status may have developed. Since the availability of partners for *taupou* had been decreasing since the eradication of polygamy, and since there is some anecdotal evidence (from foreigners) that older *taupou* who waited too long for a suitable match had a demoted status and decreased value for political matches,[77] it may have been that *taupou* were not practicing abstinence as often (or were eloping, possibly due to forced seductions or rape),[78] but lower-ranking women who were interested in making higher-match marriages were practicing Christian principles of remaining chaste until marriage.

During the colonial period, despite pressure otherwise from the missions and prohibitions on dances and styles of dress that the missionaries considered sexually provocative, unmarried Samoan women still practiced some of the sexual freedoms experienced before Christianity, and even a loosening of sexual restrictions in some cases. Several incidents of young women wishing to entertain guests, Western men in the documented cases, were mentioned

76 Krämer (1994 [1902]) 47.

77 Churchward (1887).

78 It is also possible that *taupou* were eloping more often by the early 20th century because they were being forcibly seduced or raped. I base this supposition on the fact that later in the 20th century, wooing a girl by bringing gifts to her family had become less common than sudden elopement, and many sudden elopements were prompted by rape by stealth. Schoeffel (2005) 67 referencing Freeman (1983).

by missionaries and civil servants from the early 19th century up through colonial times.[79]

2.3 Marriage of Samoans in the Western manner

Marriage in the Western manner had been introduced with the arrival of the missionaries and Western governments; it could be defined as fitting one or both of the following: predominantly fitting legal requirements for a valid marriage, or undergoing a marriage ceremony sanctioned and performed by an authorized church official. During and prior to the German protectorate, some Samoans chose to be married together by pastors or priests, but their marriages did not require licenses or filing with the court, as did marriages under German law involving at least one "foreigner" because marriages between Samoans – unlike divorces – fell under Samoan customary law rather than German jurisdiction. Marriages where both parties were Westerners in Samoa were infrequent due to the dearth of unmarried Western women in Samoa, and the few that took place followed both church and legal requirements.[80] Marriages between Samoan men and Western women were either extremely rare or nonexistent during the German colonial period.[81] Almost all marriages being performed in a Western manner, therefore, were marriages between Western men and European women both before and during the German protectorate. Western marriages between Samoan women and Western men began as soon as both missionaries and unmarried Western men were present in Samoa. Because of these interethnic marriages between Westerners and Samoans, Samoa was already a multiethnic society even before the flag-raising of the German protectorate.[82] In German Samoa,

79 Schoeffel (2005) 65. Quoting the journal of missionary George Platt in 1836. See also PMB, Neffgen (1907–1916).

80 For example, the marriage of German judge Imhoff to an English school teacher. Imhoff (1951).

81 One possible exception was the mention of a British mother and a "half-caste" daughter by British consul Churchward in his memoirs. Churchward encountered them on a ship without the father present, and it is uncertain whether the girl's father was Samoan. Churchward (1887) 299–303. In my research, I came across the marriage of a man of Samoan-German heritage and a German woman born in Samoa which would have occurred in the 1920s.

82 Gilson (1970).

the legal pluralism that existed between the *matai* and the colonial government caused much confusion for Westerners who wanted to marry Samoans.

The legal requirements for a valid marriage underwent several transformations through the mid-19th to early 20th century, which resulted in confusion over the requirements for valid marriage and contributed to legal disputes over the validity of marriage and thus the legitimacy of half-caste children in German Samoa. The legitimacy of marriages between Westerners and Samoans remained an important topic of legal debate during and well after the German protectorate. For example, half-castes of legitimately married parents were classified as foreigners until the 1912 *Mischehenverbot*, and foreigners had the right to enter hotels and bars, purchase alcohol, jurisdiction in the German court, and other special permissions. Even after the Germans withdrew with the outbreak of World War I and Samoa was occupied by New Zealand, the legitimacy of marriages performed before the German government continued to be a topic of debate in legal opinions from the New Zealand court concerning inheritance. The so-called "gray areas" come from the pre-tripartite era, confusion regarding requirements for legitimate marriage, and marriages performed between the 1912 *Mischehenverbot* and the beginning of the New Zealand occupation.

Until 1885, British men in Samoa could not obtain marriage permits and therefore the marriages between British men and Samoan women could not be civilly registered, even where a church ceremony took place, and were not considered legally valid.[83]

> [P]revious to the Malietoa law [of 1890], neither its [the LMS] church nor the church of any other Mission had direct legal authority to celebrate marriages in Samoa. Still Samoan custom recognised and accepted these marriages as valid, but not to the exclusion of marriages performed in accordance with its own rites.[84]

British consul Churchward wrote that he was first authorized to issue marriage permits ("licenses") in 1885[85] and that after that some, but not all,

83 This date comes from British Consul Churchward and refers to British subjects: Churchward (1887). Note that until Weber's appointment as Imperial Consul of Germany in 1870, Weber was previously representing Hamburg and the North German Confederation as the first German consul to Samoa from 1861–1869. A consular office existed for the United States since 1853 and Great Britain since 1847.

84 Samoan Public Trustee v. Collins et al. (1933) 74.

85 Churchward (1887) 307.

existing marriages which had undergone church ceremonies were "grandfathered in" with civil registration where the parties went to the trouble of doing so.[86] In 1875, the Pacific Islanders Protection Act of Great Britain asserted jurisdiction and the power to apply legislation to British subjects in the Pacific Islands in the same way that such laws would be applied "within any territory acquired by cession or conquest."[87] In 1890, the so-called Malietoa Law, or the Ordinance of 1890, was the first statutory enactment regulating marriage and divorce that was directly legislated with the support of a Western government.[88] The 1890 Malietoa Law passed by King Malietoa Laupepa stated that:

> 1. A marriage between a Samoan and a European shall be performed by the Consul of the Government of the European.
>
> 2. The Government of Samoa has not recognized in the past nor will it recognize in the future any marriages between a Samoan and a European which have not been performed by the Consul of the Government of the European.[89]

Part two applied only to marriages after July 12, 1881, and therefore did not solve questions of legitimacy relating to marriages prior to that date. Part three (not quoted) asserted that Samoan courts could not dissolve a consular marriage and part four concerned authorization of religious ceremony by the consul. Parts one and two of the 1890 Malietoa Law meant that, under the tripartite government and Malietoa, marriages between Samoans and citizens of Germany, Great Britain, and the U.S. only would be valid, legally recognized marriages if performed by the consul of the Westerner. However, the law contains no language expressly invalidating marriages performed before 1890, and for this reason the High Court of Apia under the British

86 Quoting from Steinberger (1874), in: Samoan Public Trustee v. Collins et al. (1933) 74.

87 Great Britain (1875). The "Kidnapping Act" of 1872 had also been incorporated into the 1875 Act. The matter was first brought to the attention of the Parliament when British ships were kidnapping Pacific Islanders to use as forced labor. The Kidnapping Act forbid British ships from transporting natives and the 1875 act reasserted jurisdiction to enforce this and other legislation. Pacific Islanders Protection Act 1875 (38 and 39 Vict., c. 51).

88 Note that some laws passed by Malietoa were influenced by Western governments, as he was crowned king with Western support in 1881.

89 From the Samoan as translated by the High Court Apia. Samoan Public Trustee v. Collins et al. (1933) 74.

held that marriages performed in accordance with Samoan custom prior to "any civilized government" (i. e., prior to the 1890 Malietoa Law) performed and maintained according to Samoan custom are valid marriages. The judgment was affirmed further by the Supreme Court of New Zealand in 1961.[90] Thus the Malietoa Law and the *Collins* decision's interpretation of it has had lasting effects for issues of land and titles inheritance – still a hotly litigated arena – well after the Germans withdrew from Samoa.

In German Samoa from 1900 until the ordinance against mixed marriages in 1912, the validity of a marriage determined whether the children of a Western-Samoan couple would be legally classified as "native" or "foreigner," with all the rights or restrictions attached to that classification. Proving the validity of marriage of the parents was a large determining factor during the early colonial government which lessened toward the end as factors became more focused on racial and cultural attributes rather than law. In 1900, the *Samoanisches Gouvernementsblatt* published an ordinance that "[h]alf-castes issued of a legitimate marriage of a foreigner with a person of native descent gain the legal status of their fathers."[91] This follows similar legal reasoning to German citizenship laws from the time, which will be further discussed in a subsequent chapter. Since the legitimacy of the marriage – i. e., a legally valid marriage according to one of the three Western powers which had been present in Samoa – was the determinant factor, many of the half-castes whose parents had been married before permits were being issued and who believed that their parents were legitimately married were being default categorized as native by the German government because they could not produce a marriage certificate for their parents. In particular, couples who had been married in a Western manner before the availability of marriage permits raised significant legal questions and disputes regarding the inheritance of property by the surviving Samoan spouse or half-caste children.[92] Yet another legal question for such marriages was the purchase of alcohol, which the colonial government had restricted to foreigners only, and therefore many half-castes from married parents who had been socially accepted

90 Samoan Public Trustee v. Collins et al. (1933).

91 Solf, Bekanntmachung vom 1. Juli 1900, SamGbl., Bd. III, No. 3 (9. August 1900), S. 13.

92 Keesing (1934) 152; Mischlingswesen (1913), concerning Blanche Reid, Samoa Ministry of Education, Sports and Culture Archives, IDO 5 F5.

as being Western were being restricted from purchasing alcohol. Other rights were curtailed, such as the right to take loans.[93] The churches also were affronted because the marriages they had performed before permits were available were suddenly no longer considered valid under the new government. This eventually led to new legislation in 1903 which created the "half-caste list" and allowed individuals previously classified as illegitimate and therefore native to apply for foreigner status.

2.4 Marriage under German law

The matrimonial legislation of the German Empire had several similarities to Samoan customary law of the early 20th century. For example, both Samoan customary law and German law had extensive provisions against incestuous marriage,[94] provisions that segregate work responsibilities according to gender,[95] the requirement of the woman first reaching an age of physical maturity before marriage,[96] and provisions against adultery. German imperial law also had a provision prohibiting subsequent marriages without the dissolution of a previous marriage, just as the Malietoa Law and the missionaries had asserted.[97]

Under the *Bürgerliches Gesetzbuch* or "BGB" (in effect since January 1, 1900), the requirements for a valid marriage rested on at least one party being a German citizen, regardless of the nationality of the other party or the residence of either party to the marriage. A church marriage ceremony alone was not recognized as a valid marriage; the couple was required to have a civil marriage ceremony regardless of whether a church ceremony took place. To obtain civil marriage, the couple needed to go together to the registrar and express their desire to get married without any time restrictions or other conditions.[98] The registrar then asked each party individually, in

93 Solf, Bekanntmachung betreffend das Verbot des Schuldenmachens fuer die Samoaner vom 10. Januar, SamGbl., Bd. III, No. 65 (18. Januar 1908), S. 207–208, here 208.
94 § 1310 BGB.
95 §§ 1356–1362 BGB.
96 § 1303 BGB. The man must have reached the majority age, and the woman must be at least 16 years old.
97 § 1309 BGB.
98 § 1317 BGB.

front of two witnesses[99] if one wishes to marry the other. After each party answered affirmatively, the registrar pronounced them to be a legally married couple and recorded the marriage in the civil wedding registry.[100] The certificate of marriage filed in the register had to include the full names and citizenship of the parties, age, status or profession, birthplace and place of residence; the names, ages, status or profession, and residence of each party's parents and the witnesses; and, if requested by the registrar, a statement by the parties as to their connection *("abgegebene Erklärung der Verlobten, sowie die erfolgte Verkündigung ihrer Verbindung")*.[101]

The registrar himself must have been, with exception where the office officially gave another civil servant the authority, the corresponding marriage registrar for the district where one of the parties lived or was ordinarily a resident. For those without a residence in Germany, § 1320 further provides:

> If neither of the parties had his or her current residence or usual residence within the country *("im Inland")*, and also only one of the parties is German, then the corresponding marriage registrar from the head regulating authority of the federal state to which the German belongs must confirm the marriage. If the German does not belong to any federal state, then the imperial chancellor must confirm the marriage.

Obviously, this would have been a hurdle for any German citizen born in Samoa had the German administration not been given the authority to act as a civil registration office within the protectorate.

Another issue was the validity of marriages between persons who had different classifications, i. e. "native" and "foreigner," under the March 1900 ordinance in the German protectorate in Samoa.[102] "Natives" were Samoans and "foreigners" were non-Samoans, including Germans, other Europeans, and Americans. These distinctions were first published in the *Samoanisches Gouvernementsblatt* on March 15, 1900, in § 2 as separating jurisdiction for

99 Witnesses could be relatives of the parties or of the registrar through marriage or blood, but they could not be persons who had previously had their rights regarding marriage revoked resulting in being unable to remarry.

100 § 1318 BGB.

101 Gesetz, betreffend die Eheschließung und die Beurkundung des Personenstandes von Bundesangehörigen im Auslande, BGBl. NdB (1870), § 9.

102 Solf, Allerhoechste Verordnung betr. die Rechtsverhaeltnisse in Samoa vom 1. März 1900, SamGBl., Bd. III, No. 1 (15. März 1900), S. 1–3.

natives and then later what clarified as two distinct jurisdictions.[103] "Members of other colored tribes," i. e. other Pacific Islanders, were included under the moniker of "native."[104] Shortly thereafter in August 1900, the legal status of half-castes was further defined, stating that half-castes born of legitimate marriages were classified as foreigners; for half-castes born from a non-legally recognized union between a foreigner and a Samoan, the legal status would be decided by the imperial governor or judge on a case to case basis based on their way of life *(Lebensführung)*.[105] This classification itself, though it echoed existing *jus sanguinis* principles of a legitimate child of parents of mixed citizenship taking the father's citizenship, contradicted existing German civil law where an illegitimate child of a non-German mother and German father would have the mother's citizenship by default and a petition otherwise by the father would be decided based on the father's desire to legitimize the child as his own rather than any attributes of the child himself.[106]

2.5 Marriages between Samoans and Chinese

Marriages between Samoans and other islanders or Chinese also occurred. Intermarriage especially between high-ranking Samoans and Tongans for political incentives was already somewhat common in lineages dating before the mid-19th century, though marriages with Melanesians were less common because their appearance, and in particular dark skin color, did not rate well with traditional ideals of physical beauty. Since other islanders were classified as "natives" under the German administration, marriages between Samoans and other islanders fell within native jurisdiction.

For the Chinese, however, marriage was more complicated. Before the widespread establishment of German plantations at the end of the 19th century, a few Chinese already resided in Samoa as foreign merchants with Samoan wives.[107] In 1901, most of the thirteen Chinese who were not plantation workers had entered as servants of government officials or had

103 Ibid., § 2.
104 Ibid., § 3.
105 Solf, Bekanntmachung vom 1. Juli 1900, SamGBl., Bd. III, No. 3 (9. August 1900), S. 13.
106 Laws concerning the legitimization and legal status of half-caste children was applied inconsistently. See also Wareham (2002) 128–129 for individual instances where fathers' petitions were rejected.
107 Wareham (2002) 107–108.

settled there before Malietoa Laupepa forbid Chinese entry in 1880.[108] However, during most of the German administration, the majority of Chinese were laborers who had been brought in as contract workers by the plantations. These indentured workers were men only and their contracts were limited to three years upon which they were required to return to China. By 1906, the number of Chinese had jumped to 770, and by 1914 there were about 2500 Chinese contract workers in Samoa, plus the 17 so-called "resident Chinese."[109] In 1903, shortly before the arrival of the first Chinese laborers, the resident Chinese were distinguished from the Chinese laborers, and before the second wave of Chinese laborers arrived in 1905, an ordinance was passed that changed the legal status of Chinese indentured laborers from foreigner to native.[110]

This meant that marriages between Chinese workers and Samoan women would be marriages *fa'a Sāmoa* with children who were also classified as native. Practically speaking, it also meant that because of the repatriation requirement for the workers, the marriages had a limited term, and families were destined to be broken apart. The lives of the Chinese plantation workers were bleak and difficult due to the extremely inhumane treatment that they received even after attempts were made – prompted in part by letters and posters in China and Hong Kong revealing the atrocities, and an inquiry by the Chinese government in 1908 – to reform their treatment by repeatedly revising the Chinese indentured laborer ordinance.[111] In the small amount of free time or holidays that they had, some indulged in opium addictions or gambling, and some met Samoan women and began families. The Chinese workers were viewed by the Planters' Association and administration as being an unwelcome necessity. Samoan workers were too expensive and more difficult to recruit for grueling plantation labor.

Unlike distinctions between "natives" and "foreigners" based on nationality and race, the separation of the Chinese workers from the resident

108 Liua'ana (1997) 29–31. Most of the workers were recruited from Shantou, Toishan, Fujian, and Guangdong departed from ports at Swatow and Hong Kong. See also Laupepa (1892) 225.

109 Schnee (2005 [1920]) s.v. "Chinesen".

110 Solf, Gouvernements-Verordnung, betreffend die chinesischen Kontraktarbeiter vom 25. April 1905, SamGBl., Bd. III, No. 41 (29. April 1905), S. 183–188, here 183, § 3.

111 Liua'ana (1997) 33. Chinese workers were beaten to death for minor offenses, given very little to eat, and allowed no rest or medical treatment during illness, etc.

Chinese was a legal separation based on class; perhaps for this reason, the colonial administration declined to legislate directly against marriage between the Chinese and Samoans despite pressure from the missions and Planters' Association. Advertisement of sex and interethnic unions had been used to recruit these workers but was discouraged upon their arrival. Some recruitment posters depicted happy Chinese relaxing with Samoan women holding "almond-eyed" babies.[112] The reality was, however, that both the Samoan chiefs and the "foreigners" wanted to prohibit these interethnic unions. The desire of the Samoan chiefs to prohibit Chinese unions culminated shortly after the end of the German administration with Colonel Logan of the New Zealand administration issuing "Proclamation No. 42" forbidding Chinese to enter the houses of Samoans and forbidding Samoans to receive Chinese into their houses. Logan wrote that the *faipule* voiced that "the race was becoming intermingled with Chinese blood owing to the cohabitation of the Chinese with their daughters. The Samoans are particularly anxious to keep their race pure Samoan, and I acceded to their request to public Proclamation No. 42."[113] Under the German administration, since the Chinese were classified as "native," the chiefs would have had jurisdiction over the regulation of these marriages, yet such would have been difficult to enforce since the Chinese workers resided on foreigners' plantations and more or less belonged to them for the period of their contracts. Other legal matters involving the Chinese, such as criminal matters, fell under the jurisdiction of the German courts despite their official status of "native." This duality indeed further enforces the idea that their classification was one of class rather than race, for the intention was to prevent Chinese workers from having property, merchant, or settlement rights.

Despite urgings from plantation lobbyists and missionaries to curtail interethnic unions between Chinese workers and Samoans due to the "racial impurity," no actual legislation was published in the *Samoanisches Gouvernementsblatt* by the German administration prohibiting marriages between Chinese and Samoans.[114] Some historians have written, without citing the

112 Wareham (2002) 110. Referencing descriptions of posters in the Westbrook Papers (Alexander Turnbull Library, Wellington), Folder 62, and cited by Field (1991) 30–31.

113 Jackson (1917). A letter in which Jackson is quoting another letter he received from Col. Logan.

114 Wareham (2002) 107–108.

law, that the German administration prohibited unions between Chinese and Samoans, but as to official laws against such, none were published in the *Samoanisches Gouvernementsblatt* or any other bulletins.[115]

115 ANZ, Jackson (1917). Not only do the known records evidence this, but the letter of Yue H. Jackson reiterates it in his letter to the Chinese Consulate. In her published M.A. thesis, Evelyn Wareham also noted the inconsistencies between historians' claims that such laws existed and the lack of actual laws. She traced the citations back to a statement made by Keesing which itself has no citation of law: Wareham (2002) 109. See also Keesing (1934) 453.

Chapter 3
Breaking Up Families – The Ban on Interethnic Marriage

Despite that only some of half-castes in the entirety of the German colonies were issue of legitimate marriages, interethnic marriage was nonetheless a prominent topic of heated debate in the early 20th century German empire. Several factors brought the issue of half-castes and interethnic marriages to the attention of public criticism by creating the perfect storm for the bans on interethnic marriage in the protectorates. Some of the primary contributions and catalysts were: (1) the movement toward German identity and citizenship being seen as ethno-culturally defined, (2) the publication and popularization of scientific studies which supported views of racial hierarchy on a biological basis, and (3) the 1904 Herero Rebellion in German Southwest Africa (DSWA). Those opposed to interethnic marriages or unions in the colonies, including governors, other administrators, politicians, and lobbying associations such as the *Deutsche Kolonialgesellschaft* (DKG), presented arguments based on downward social mobility, racial degeneration, and loss of culture ("going native"). Colonial political debates combined elements of the newer biological overtones toward understandings of race and the existing presumption of race in the colonies as being a class distinction. Some divisions of the DKG together issued a statement that a man's German identity was lost in a mixed marriage and his mindset alienated from his homeland because, through his marriage to a native, he could never relate to his native wife on a deep spiritual level and her day-to-day running of the household was chaotic and slovenly.[1] In this chapter, I will discuss the three factors above that led to the miscegenation bans throughout the protectorates, the events in other German colonies which influenced the eventual ban in Samoa, and the reasons why the ban in Samoa came later than in the other colonies. I will also discuss the correspondence between Governor

1 BArch, R 8023/895b: Deutsche Kolonialgesellschaft, 552.

Solf, the Colonial Office, and the German judges in Samoa regarding whether and how to issue the *Mischehenverbot*, as well as the debate in the parliament following the issuance of the ban in Samoa.

3.1 Changing views on race and ethnicity

The anthropological and biological research upon which ideas of racial superiority were based helped bolster the political arguments in favor of bans on interracial marriage because it provided "scientific proof" for excluding the racial "other" from an increasingly ethnically defined Germany. By the early 20th century, racial epistemology was in the process of de-emphasizing social and cultural defining factors and instead highlighting biological and genetic factors. Racial mixture was considered important for studying heredity and evolution under the scientific racism theories of Gobineau, as well as contemporary, often pseudo-scientific expansions on the evolutionary and genetic theories of Darwin and Mendel. Racial intermixture was seen as both a social and evolutionary problem having both genetic or biological effects as well as socio-cultural consequences. Scientists in Germany such as anthropologist Otto Ammon and sociologist Ludwig Woltmann posited that these two realms of effect overlapped since racial mixing biologically degraded the intellectual capacity and moral capability of a white racial group which presumably possessed superior traits to all other races.[2] Studies on racial mixing were conducted in the colonies to ascertain the extent of such biological and socio-cultural effects. For example, the early field research of Eugen Fischer,[3] later "*Rassenhygieniker*" (racial hygienist) to the Nazi regime, conducted on a half-caste population known as the Rehoboth Basters in German Southwest Africa in 1908 concluded with the recommendation that half-castes should not be allowed to further reproduce. Fischer had misgivings that critics of his study had missed its primary intent of drawing anthropological conclusions by using Mendel-like methodology focusing on heredity, yet his study nonetheless was influential on colonial policies regarding interracial marriage and on *Rassenhygiene*

2 See Schulte-Althoff (1985) 567.

3 Gessler (2000). Eugen Fischer's scientific background by 1908 included a medical doctorate and habilitations in anthropology and anatomy.

(racial hygiene or eugenics) during the Third Reich.[4] His essays on the subject of mixed-race people were published between 1909–1912, and the study upon which these essays were based was conducted by examining physical differences, as accomplished by measuring according to loosely anthropological methods and by categorizing and comparing physical attributes, in combination with researching genealogies of the individuals. Fischer's study concluded that the Rehoboth Basters were not biologically inferior to whites, but their "cultural" psychological and intellectual aptitude was inferior to that of whites.[5] The most important point to contemporary critics was Fischer's conclusion that the Rehoboth Basters were not inferior to the external race, but instead an enhancement of the external race. The inverse conclusion of this point which was drawn by contemporaries fueled political debates at the time against racial mixing: that if "colored" peoples (in this case, Herero and Nama) were enhanced by mixing with whites, thus producing the purportedly superior Rehoboth Basters, then accordingly the creation of Basters was a degeneration of whites.[6]

Up until the turn of the century, half-castes were not generally considered an abject population and, in many cases, instead were seen as half-whites who acted as a bridge between cultures to facilitate the growth of industry and commerce, thus advancing the development of the colony. The three factors mentioned above changed the view of half-castes in the colonies and brought the question of their place within the German identity, now defined through the German family, into the forefront. In particular, Fischer's attention to the genealogy pointing toward the racial mixing facilitated a "scientific" basis encouraging Germans to feel threatened by the intrusion of other races mixing within their own culture and family lines, and Fischer's essays on the Rehoboth Basters published beginning in 1909 followed on the heels of the Herero-Nama war of 1904–1908. As a result, the study came at the

4 Lösch (1997) 76–77; Fischer (1913). Between 1909 and 1912, Fischer published seven essays concerning half-castes. The German administration at first counted all Basters as "colored," meaning of mixed or half-caste descent, but then later changed the criteria for "colored" classification among the Basters to one based on physical appearance. Lang (1998).

5 Campt (2004) 39–40. Campt also points out that the chapter drawing the conclusion of cultural and intellectual inferiority was not based on any empirical basis or scientific data.

6 Lösch (1997) 76–78.

right time to bolster fears of a half-caste threat after the bloody rebellion and genocide.[7] As Tina Campt argues aptly in her work, *Other Germans*:

> Using the body as a conceptual model for analyzing the functioning of this discourse of racial mixture reveals a more complex picture of the power of a conception of racial mixture as a danger to the German national and cultural identity, particularly when this identity is articulated through the authority of a scientific discourse of race as essence. Bodily boundaries correspond in many ways to the socially and ideologically constructed boundaries of society and the national body politic.[8]

By "intruding" into the culture and biology of a national identity which was increasingly defining itself in terms of a racial construct influenced by accepted contemporary science, the mixing of races represented to many a threat comparable to an infection of the German nation which could contaminate biologically, culturally, and politically.[9] Because of their biological similarity to whites, half-castes came to be seen as subtly invasive as opposed to the more distinctively different native.

Racial discourses based on perceived biological and cultural differences were not the only justification for preserving colonial hegemony and for defining the German national identity as opposed to the subjugated colonial subjects. Indeed, the biological arguments did not widely consolidate themselves into a concept of "race" within Germany itself until around the time of World War I, though in the colonies' arguments for preserving the status quo based on racial superiority and inferiority were evident several years earlier. As Fitzpatrick writes:

> [The] understanding that biological racism was not the hegemonic discourse of race before World War One in Germany itself, is essentially correct, albeit with the minor caveat that there was a small but discernible leakage of colonial understandings of race to Berlin by 1912 – a considerable period after the genocidal events of 1904.[10]

The defining of the "other" in preserving the colonial hegemony was the most predominant reason why interethnic unions and *Mischlinge* were at

7 Fitzpatrick (2009). Matthew Fitzpatrick argues that the 1904 Herero rebellion was the major turning point for the sentiments against half-castes described. However, I would argue that it was a major factor but not the most decisive one.

8 Campt (2004) 40.

9 Campt (2004) 41.

10 Fitzpatrick (2009) 359.

once alluring, admired, and anathema.[11] However, views of biological racism and the need to define a national identity through blood were known and becoming increasingly popular from the turn of the century until World War I.

The pressing need for distinguishing self-national identity from the "other" in the context of citizenship becomes all the more relevant when one considers the fact that Germany, unlike its neighbors Great Britain, Holland, and France, did not become a colonial power until 1884 and had been only recently united. Michel Foucault reflected on these concepts in his *Collège de France* lectures of 1970. In reminiscence of Clausewitz, Foucault considered that politics could be stated to be a mere continuation of war by other means, and thus the maintenance of the asymmetry of forces would be its purpose.[12] While the colonized were at first perceived through the prism of the utility of their productive forces, at the same time also being a tighter fit to the category of the "clearly alien,"[13] the half-castes were seen as half-whites. This view later came under scrutiny, with one of the main contributions to that change of view being the Herero Rebellion of 1904 discussed below. The increased contact with the natives had led to an erosion of the boundary between the in-group and the "other" – a boundary which previously was believed to be much more evident. If the distinction lay at the heart of the political, its erosion became even more problematic. It led to a re-evaluation of those who – whether citizens or natives – had been passing back and forth between the two groups. With the re-emergence of the underlying conflict, political events were set in motion that would reinforce that distinction.

In the context of the Herero War, historian Matthew Fitzpatrick argues that "state-sanctioned biological racism in German Southwest Africa (DSWA) was primarily a product rather than a cause of colonial genocide" and points out that sentiments toward half-castes and mixed families changed significantly following the rebellion at the beginning of the war: "[A] state policy of racism that judged people according to the biology of the parents rather than their cultural state was then introduced in order to regularize the dichotomous mechanic of colonial governmentality."[14] The

11 See also Kundrus (2003); Wildenthal (2001); Stoler (1995).
12 Foucault (2001 [1970]) 32.
13 Fitzpatrick (2009) 358.
14 Fitzpatrick (2009) 362.

genocide of the Herero War, which resulted in the deaths of over 30,000 Herero and Nama, was intended as a collective punishment for a revolt by a few tribes which resulted in the deaths of several German settlers. At the same time, fear arose that half-castes would likewise turn against their "masters" or even their own white family members.[15] Whereas half-castes in DSWA had often been seen as "half-white" – or in citizenship terms, as German citizens when legitimately born – they came to be considered "half-black."[16] Previously, half-castes had been seen as being potentially positive for the establishment of the empire. In DSWA, it was estimated that the majority of white male settlers had a sexual relationship with a native woman, and in DSWA this was usually informal rather than a marriage. In 1909, there were 6851 half-castes (2567 Boer-Nama or Boer-Hottentots and 4284 Rehoboth Basters) and 11,791 whites; between 1908 and 1909, 462 half-castes were born.[17] After the Herero rebellion, being part black associated half-castes with the traitorous nature of the rebellious natives, and their presence within the German family was seen as even more insidious. The rising numbers of half-castes provoked a fear that the colonies would become overrun with half-castes and therefore no longer ethnically or culturally "German" since half-castes had been re-categorized as being biologically and socially more black than white.[18] By comparison to DSWA, the number of half-castes in German Samoa was approximately double that of the whites and more than triple the number of German whites.[19] Although the rebellions in German Samoa generally were political rather than violent and were usually focused on the chiefs rather than involving the population in general, the sentiments arising from events in DSWA and the accompanying

15 Walther (2002) 34–37.

16 Fitzpatrick (2009) 361.

17 *"Es gab Schätzungen, nach denen mehr als 90 % aller Weißen in den Kolonien Konkubinatsverhältnisse mit farbigen Frauen unterhielte."* The citation is based on testimony of missionary P. Kassiepe in 1912; it is important to note that this is an estimation rather than a statistic based on census. Schulte-Althoff (1985) 52–53. See also Schnee (2005 [1920]) for statistics.

18 Fitzpatrick mentions this as "the fear of *Verkafferung*." In commentaries regarding German Samoa, a similar fear is expressed using the word "*Verkanakerung*." For more on *Verkafferung*, see Fitzpatrick (2009) 362–363; for *Verkanakerung,* see Samulski (2004) 335–336.

19 Schnee (2005 [1920]) s.v. "Mischlinge" and "Samoa." In 1912–1913, there were 1025 half-castes and 557 whites (329 Germans).

attention to the "half-caste problem" put additional pressure on Solf and the Colonial Office to contain the half-caste "problem."

There were significant differences in the governors' plans, reasoning, and execution of the mixed marriage bans in Samoa and DSWA. Whereas Governor Wilhelm Solf's plans on how to manage mixed marriages and half-castes in this context went through changes based on observation and political climate in both Germany and Samoa and thus delayed the ban until 1912, Governor von Lindequist's ban in DSWA (1905) was the first such ban and was very definitively based on ethnic and especially racial definitions of *Deutschtum*. In 1906, Lindequist banned church marriages, and in 1907 all 30 existing marriages legally performed before the ban were declared invalid through a decision of the high court at Windhoek.[20] As was noted in the previous chapter, a legitimate marriage under German law required a properly performed civil ceremony; church marriage alone was not sufficient. The governor's ban on church marriages between whites and natives therefore was superfluous from a legal standpoint since it had no effect on the number of legitimately married interethnic couples or legitimate half-caste children, but it did reiterate Lindequist's sentiment that *"die weiße Minderheit sich durch die Reinhaltung ihrer Rasse in ihrer Herrschaft über die Farbigen behaupten muß."*[21] Most of the mixed marriages were between Rehoboth and whites, which further emphasizes the predominantly racist as opposed to the ethnic or cultural exclusionist motivation of Lindequist's ban; the Rehoboth Basters were culturally distinct from the Nama part of their heritage, for they had adopted a strictly Christian way of life.[22]

3.2 Citizenship law and *Deutschtum*

The need for defining *Deutschtum* through distinguishing one's national identity from the "other" in combination with increasingly racial-ethnic attributes being ascribed to national identity contributed to major changes in German citizenship law during the early 20th century. During this period, the acquisition of citizenship was through community of descent, yet retaining one's citizenship depended on being part of the territorial community,

20 Schulte-Althoff (1985) 61.
21 Ibid.
22 Essner (1992) 146.

thus mixing some *jus sanguinis* and *jus soli*[23] principles. Just before the end of the German administration in Samoa, The Nationality Act of July 22, 1913 *(Reichs- und Staatsangehörigkeitsgesetz vom 22. Juli 1913)* was passed following prolonged public criticism from interest groups such as the *Alldeutscher Verband*. Through the Act, the German empire tightened the *jus sanguinis* principles within its citizenship law, and the core of this law is still in effect today.[24] In the German empire up until 1913, (in other words, covering almost all of the period in which German Samoa existed) German citizenship law under the Citizenship Law of 1870 *(Gesetz über die Erwerbung und den Verlust der Bundes- und Staatsangehörigkeit vom 1. Juli 1870)* as it had been amended and incorporated as the introductory act *(Einführungsgesetz zum Bürgerlichen Gesetzbuch vom 18. August 1896)* of the *Bürgerliches Gesetzbuch*[25] was a mixture between two different models: the older model of citizenry as a territorial community, and a newer model of citizenry as a community of descent.[26] For example, prior to the 1913 law, Germans residing abroad[27] could lose their citizenship by living abroad for ten years; the intent behind living abroad was irrelevant – citizenship could be lost whether it was intended to be temporary for purposes of work or not.[28] Somewhat paradoxically, non-citizens could not acquire German citizenship by living in a German territory for a prolonged period. Bismarck had played an essential role in keeping sympathies toward the expansionistic ideals of

23 Even prior to the 1914 law, German citizenship was still *jus sanguinis* (by descent). However, the territorial limitations echo elements of *jus soli*.

24 Reichs- und Staatsangehörigkeitsgesetz, RGBl. (1913). The *Alldeutscher Verband*, or "Pan-German League," in particular was interested in removing the restrictions on citizenship for Germans living abroad, enabling naturalization for ethnic Germans living abroad, and at the same time making naturalization more difficult for foreigners in order to establish a more "ethnonationally" united Germany. Ernst Hasse, president of the *Verband* and member of the National Liberal party, introduced a resolution to this effect in 1894. Eventually the proposition concerning the removal of the 10-year restriction was widely supported by other interest groups and all parliamentary parties, despite that only some of the right party members (i. e., *Reichspartei* and Conservatives) agreed with the ethno-cultural reasoning presented by Hasse. See also Hasse (1905).

25 Einführungsgesetz zum Bürgerlichen Gesetzbuche, RGBl. (1896).

26 Brubaker (1996) 117. See also Nadelhoffer (1906).

27 The German protectorates were not considered extraterritorial or "abroad" for purposes of citizenship.

28 Nadelhoffer (1906) 39. One could apply for an exception to the loss of citizenship in some cases by registering at a consulate. Brubaker (1996) 115.

Großdeutschtum in check to avoid threatening neighbor states.[29] After Bismarck stepped down in 1890, those ideals grew more influential again, which led to an increasing political interest in the fate of the *Volksgenossen* in other countries.[30] The changes under the new law reflected this movement toward a definition of *Deutschtum* built on a mixture of statist nationalistic sentiment and reasoning which were based on ethnicity and blood; this primarily manifested in the desire to include Germans residing abroad *(Auslandsdeutsche)* and to exclude *Volksfremde*.[31] The new law supported Germans who wished to live or work abroad by removing the possibility of losing one's citizenship through long-term or even permanent residence abroad, and through *jure sanguinis* principles successive generations legitimately born to German fathers abroad could pass on their German citizenship without ever having set foot in Germany or its colonies. The increasingly ethnocultural definition of *Deutschtum* differed from the legal category of *Reichsdeutsche* (citizens of the empire) because it included millions of ethnic Germans living outside the German empire yet not having recognized citizenship, and excluded *Reichsangehörige* who were not ethnic Germans.[32] The distinction between persons being "ethnically" or "racially" German differed depending on political affiliations and personal beliefs and, during late 19th- and early 20th- century Germany, could be defined by anything from common language to cultural to physical attributes. At the time, race and ethnicity were one and the same for many, especially for supporters of the *Alldeutscher Verband*.[33]

Native women could become citizens by marriage through the naturalization process, though the formality of a German naturalization was prob-

29 Schieder/Wehler (1992) 50–52.

30 Schieder/Wehler (1992) 52.

31 Brubaker (1996) 114–115.

32 Brubaker (1996) 117–118.

33 I have adopted Brubaker's terminology and his analysis (see citations) because I believe that "ethno-cultural" and "ethno-national" encompass ideas of nationalism which would have included – but not have been limited to – race as a factor of ethnicity and *Deutschtum*. As Wildenthal points out, "Brubaker does not argue specifically that the German conception of citizenship has been racial; instead, he uses terms such as *'Volk,'* 'ethnocultural,' or 'ethnonational' to describe ideas in historical debates on citizenship." Wildenthal (1997) 264.

ably rare since most couples remained abroad.[34] This meant that, theoretically, not only ethnic German men could pass on their citizenship to native wives and to their children of that marriage in any protectorate *if* their marriage was considered legal – in other words, where no administrative degree in a protectorate had outlawed mixed marriages. Natives or other non-Germans could do so, as well, if naturalized, thus increasing the number of German citizens who were not ethnically or culturally German. Since increasingly more interethnic marriages were taking place in the German protectorates of Southwest Africa and Samoa in the first several years of each colony's establishment, the governors of both colonies issued administrative decrees forbidding them with the driving policy of preserving an ethnocultural idea of *Deutschtum*: German citizenship for those who were ethnically and culturally German. Although the issue rarely was discussed directly, it was *marriage* which for the law sought to provide normative regulation rather than intercourse or concubinage because of the fear that men, because of their sexual needs, would be more likely to resort to homosexual intercourse if their female native outlets for sexuality in the absence of white women were removed.[35]

Marriages between ethnically German men and native women in the protectorates exemplified how citizenship law should preserve *Deutschtum* and furthered the hierarchies of gender and race. As Lora Wildenthal points out in her essay "Race, Gender, and Citizenship," an analysis of German citizenship law is indivisible from gender, and the marriages between Germans and natives in the colonies – while untypical of the usual application of citizenship law regarding marriage between a German and non-German – "tested the limits of citizenship law and forced Germans to clarify their

34 Gesetz wegen Abänderung des Gesetzes, betreffend die Rechtsverhältnisse der deutschen Schutzgebiete, RGBl. (1888) § 6: "*Ausländern, welche in den Schutzgebieten sich niederlassen, sowie Eingeborenen kann durch Naturalisation die Reichsangehörigkeit von dem Reichskanzler verliehen werden. Der Reichskanzler ist ermächtigt, diese Befugniß einem anderen Kaiserlichen Beamten zu übertragen. Auf die Naturalisation und das durch dieselbe begründete Verhältniß der Reichsangehörigkeit finden die Bestimmungen des Gesetzes über die Erwerbung und den Verlust der Bundes- und Staatsangehörigkeit vom 1. Juni 1870 (Bundes-Gesetzbl. S. 355), sowie Artikel 3 der Reichsverfassung und § 4 des Wahlgesetzes für den deutschen Reichstag, vom 31. Mai 1869 (Bundes-Gesetzbl. S. 145) entsprechende Anwendung. Im Sinne des § 21 des bezeichneten Gesetzes sowie bei Anwendung des Gesetzes wegen Beseitigung der Doppelbesteuerung vom 13. Mai 1870 (Bundes-Gesetzbl. S. 119) gelten die Schutzgebiete als Inland.*"

35 Stoler (1995) 181–182.

terms."[36] The *jus sanguinis* principles were based on patrilineal descent; the German *male* passed on his citizenship to his children or non-German wife. The non-German wife gained German citizenship upon marriage to a German citizen and, at the same time, lost her prior citizenship; the couple's children would also be German. In contrast, a woman born a German citizen could not pass her German citizenship on to her own children, legitimate or illegitimate, if the father was not German because the citizenship of descent was patrilineal. A German woman who married a non-German citizen could not bestow her German citizenship on her new husband. In this way, the laws had exclusions on conferring citizenship based on the gender of the German spouse or parent, but no exclusions based on ethnicity. In the very few cases where a German woman married a native man (all cases were in Africa), the woman should have assumed the husband's native legal status since, under German law, a wife lost her German citizenship and assumed that of her non-German husband upon marriage. In these cases, according to Wildenthal, the women were "roundly denounced for having forsaken German civilization," and in at least one case, the couple was expelled from the colonies yet no point was made of removing the wife's German citizenship even though this could have been done.[37]

3.3 The example set by German Southwest Africa

To better understand the history behind the creation of the half-caste list and the ultimate *Mischehenverbot*, one must first consider the nature, prevalence, and regulation of interethnic unions and half-castes in other German colonies. Despite Samoa's much lower overall population compared to the African colonies, of the approximately 166 interethnic marriages in the colonies (as of 1907–1908), almost 60 % of those interethnic marriages were in German Samoa, and those marriages involved a higher percentage of German

36 Wildenthal (1997) 265, 267–281.

37 Wildenthal (1997) 265. For an account of the 1904 marriage between East African lecturer Mtoro Bakari and German Berthe Hilske, see Wildenthal (1994) 239. Mtoro Bakari, born in East Africa, was a guest lecturer at Berlin University when he met and married his landlady's daughter. The scandal surrounding the marriage caused him to lose his job, and both he and his wife were expelled, with little legal basis, from East Africa upon attempting to return. The couple continued on to live in poverty in Germany through at least World War I.

men as opposed to other Westerners.[38] For example, in German Southwest Africa (*Deutsch-Südwestafrika*, DSWA), which had become a protectorate in 1884 and boasted the largest number of German settlers, a much lower percentage of interethnic marriages occurred even before its prohibition in 1905.[39] In 1892–1893, 38 interethnic marriages between Westerners and natives existed in DSWA, of which only seven were with German men.[40] By 1903, that number had grown to 42 mixed marriages among a total of 622 married white men.[41] The white population of DSWA, in general, was also significantly larger than Samoa and included more white women: in 1903 there were 4604 whites (2998 Germans), of which 1249 were women. The native wives of the whites were counted in the census among those with typically "white" citizenships.[42] In contrast, German Samoa had a peak number of 98 marriages between Western men and non-Western women in 1907, a figure which almost had doubled since the first government census in 1902 and declined slightly over the next several years.[43] Most of the Germans married to Samoan women were public officials in some capacity. Despite the comparatively low number of interethnic marriages in the German African colonies, bans on intermarriage – but not bans against sexual intercourse between Western men and native women, as had been done in DSWA[44] – were passed.[45]

38 Fleischmann (1910) 549.

39 The ban on interethnic marriages in German Southwest Africa was issued by Deputy Governor Hans Tecklenburg (for Governor Friedrich von Lindequist) in 1905.

40 Kundrus (2003) 220. Citation from National Archives Windhoek, ZBU, A. VI.c.4.

41 By the time Lindequist issued the ban, there were only 30 mixed couples in SWA. One may speculate that the reason for the significant disparity or decrease could have been that the larger count included those whose marriages were invalid due to other reasons (for example, having only a church ceremony and no civil ceremony) or the relocation of families due to the political climate which gave rise to the ban. Leutwein (1908) 232.

42 Citizenships of whites in DSWA in the 1903 census included Germans, Boers and Capelanders, English, Austrians, Swedes, Norwegians, Russians, and Dutch. The census counted 4640 whites and 4682 persons of varying citizenships; 42 marriages with native women explains the difference. Leutwein (1908).

43 The cause for the gradual change and overall slight decline of variation between +1 to −8 per year after 1907 (especially to 76 by 1913 and 70 by 1914) is uncertain, but could be due to relocation, divorce, death, or due to invalidity of marriage or recategorization of women as "native" after 1912. ANZ, Personenstand (1912).

44 Tobin (2015) 135.

45 Lindner (2009) 57, 63–65.

Two of the governors of DSWA, Theodor Leutwein (governor 1896–1905) and Friedrich von Lindequist (governor 1905–1907/1908) expressed sentiments against mixed marriages.[46] Leutwein's primary reasoning was that the husband would "sink" *(herabsinken)* in the marriage with a native, and he complained of the problem that the lower-class German men, particularly soldiers, treated their native women with whom they cohabited as equals and therefore these native women were expecting equal treatment as well, which did not fit within the colonial paradigm.[47] Leutwein's correspondence also voiced fears of the fear of racial degeneration through the biological mixing of the races.[48] In his memoirs, he blamed the propensity of mixed marriages on the deficiency of white women in the colony, and wrote that the half-castes born of mixed marriages were *"ein Stamm Bastards mit der Zugehörigkeit zu einer weißen Nation"* and *"Dass ein Umsichgreifen dieser Rasse nicht wünschenswert sein würde, liegt auf der Hand."* Leutwein follows these statements with a quote from Bergrat Busse in Koblenz:

> Es ist eine bekannte Tatsache, daß sich bei Mischehen zwischen Weißen und Farbigen die schlechten Eigenschaften der Eltern auf die Kinder in höherem Grade vererben als die guten. Diese bei den Mestizen in Amerika, den Mischlingen in Ostafrika hochvortretende Tatsache hat sich auch bei den Bastards in Südwestafrika bestätigt, die […] doch bei weitem unter der Wertstufe ihrer germanischen Voreltern geblieben sind.

Busse described his view of how the marriages between Nama and German men caused the men to sink below their education level and become comfortable with the more ignorant home atmosphere of their wives.[49] Leutwein follows the quote with the conclusion that if these dangers are ignored, the German colony will cease to exist as German and instead become a "bastard colony" belonging to a separately identified, mixed population.[50]

However, there was quite a difference between the demographics of the whites living in the African colonies and those in Samoa, and significant

46 Note that between Leutwein and von Lindequist came the brief but bloody governorship of Lothar von Trotha from May 1904–November 1905. Von Trotha, formerly a military commander in German East Africa, was appointed as Commander in Chief to quell the Herero Rebellion. See also Lindner (2009) 63–69 and Lindequist (1912).

47 Leutwein (1908) 233.

48 Essner (1992) 146.

49 Leutwein (1908) 233–234.

50 Leutwein (1908) 234.

differences between the administration's long-term development goals for those colonies. In Samoa, a Land Commission was established with the General Act of Berlin (1889) in reaction to the "land grab" by foreigners, and later further limitations on the available land for settlement by the Land Alienation Act of 1899.[51] During the pre-Tripartite Government Period, much land had been alienated from Samoans and there was much confusion over good title because of the complicated nature of Samoan land ownership and whether the contracts for sale of land were valid (i. e., had the consent of all necessary parties) or had sufficient consideration. The limitation of land transfer also was intended to encourage the "right kind of settlers"; Governor Solf's strong opposition to *Kleinsiedler* was, on one hand, similar to the reasoning within SWA in that it was based on the belief that more affluent settlers would uphold ideals of *Deutschtum* better than low-class Germans who were susceptible to "going native" because of their lack of economic independence and strong ethics. On the other hand, Solf's opposition differed from that of SWA in that it was also based on the kind of agricultural development for which Samoa was better suited. Whereas the geography of DSWA lent itself to livestock, an agricultural pursuit well suited to operation by a single German family with smaller-scale reliance on native labor, Samoa's main agricultural product was coconut and the production of copra. Agriculture in Samoa depended on large numbers of imported laborers under the direction of a few white managers, since most Samoans disdained the grueling work of clearing jungle in the tropical heat for paltry wages, and the intensive work required for copra production and maintenance of the trees lent itself to plantation-style agriculture. In Solf's opinion, *Kleinsiedler* without sufficient income, connections, and business experience simply were destined to fail in their proposed endeavors and become economic and social burdens on the administration. Furthermore, the proximity of settlements in Samoa, due to its smaller land mass, suitable for settlement (i. e., lowlands as opposed to the steep volcanic mountains unsuitable for farming) placed *Kleinsiedler* near Samoan settlements and made interac-

51 Berliner Samoa-Konferenz – in English, The Neutrality and Autonomous Government in Samoa, or General Act of Berlin (June 14, 1889). Its article IV was ratified in 1890 by the Tripartite powers. See Deutsche Kolonialgesellschaft (ed.) (1899); Neutrality and Autonomous Government in Samoa (General Act of Berlin) (1969). See also Meleisea (2015) 22–26.

tion between *Kleinsiedler* and Samoans or half-castes inevitable. Isolation was nearly impossible, and contact between cultures was inevitable. As part of preserving the colonial hegemony, Germans in Samoa especially needed to put their best face forward by being represented by admirable examples of middle or upper-class Germans rather than lower classes. One should not infer that low-class Germans generally were encouraged to settle in SWA. Although SWA was more inclusive than Samoa in its solicitation of settlers, the Central Information Office for Emigrants, a part of the *Deutsche Kolonialgesellschaft* sanctioned by the government, nonetheless dissuaded the many low-class prospective emigrants, who often did not have even enough money for the trip, from settling in the colony. Unlike in Samoa, however, ex-soldiers who themselves often came from a working-class or low-class background were encouraged to settle in SWA and even had financial incentives from the government to settle there.[52]

3.4 Defining the legal classification *(Rechtsverhältnis)* "native" in the German colonies

The three main imperial laws which formed a general framework for all German protectorates were the *Gesetz, betreffend die Rechtsverhältnisse der deutschen Schutzgebiete* of April 17, 1886 (known as the *Schutzgebietsgesetz*, or SchGG) and its amendment from 1900, the *Bekanntmachung wegen Redaktion des Schutzgebietsgesetzes* of September 10, 1900; and the *Verordnung, betreffend die Rechtsverhältnisse in den deutschen Schutzgebieten* of November 9, 1900.[53] Section 2 of the ordinance of November 9, 1900, decreed that natives within a protectorate would have the same legal status as members of foreign colored tribes, as long as the governor did not specify otherwise with the consent of the *Reichskanzler* (Imperial Chancellor):

52 Walther (2002) 14–16, 29.

53 Gesetz, betreffend Abänderung und Ergänzung des Gesetzes über die Rechtsverhältnisse der deutschen Schutzgebiete, RGBl. (1899). Also of interest is the Kaiserliche Verordnung, betreffend die Rechte an Grundstücken in den deutschen Schutzgebieten, RGBl. (1902). This ordinance defines general land rights for natives and "other colored" in the protectorates. "*Den Eingeborenen werden im Sinne des § 4 und des § 7 Abs. 3 des Schutzgebietsgesetzes die Angehörigen fremder farbiger Stämme gleichgestellt, soweit nicht der Gouverneur (Landeshauptmann) mit Genehmigung des Reichskanzlers Ausnahmen bestimmt. Japaner gelten nicht als Angehörige farbiger Stämme.*"

> For the purposes of § 4 and § 7 para. 3 of the Protectorate Act, members of foreign colored tribes shall be treated the same as natives, unless the governor determines exceptions with the approval of the Imperial Chancellor. Japanese are not considered members of colored tribes.

To summarize, a person within a protectorate must fall into one of these three categories:

> 1. Members of the empire *(Reichsangehörige)*, i. e., persons who are considered members of the empire because of their citizenship in a state within the German Empire
>
> 2. Foreigners *(Ausländer)*, i. e., the subjects of states which enjoy the protection of German consular authorities ensured by treaty or contract between the German Empire and the foreign government. Also, persons "of German nationality" who have lost their status as members of the empire and have been accepted by application to a protected status. This category also includes members of "other civilized nations."
>
> 3. Natives *(Eingeborene)*

The legal procedures of determining who was "native" reflected the uncertain, transitional attitudes of distinguishing the self-identity of *Deutschtum* and cultures or peoples which were perceived to be within the same level, or "civilized," against those cultures or peoples who were of an inferior level or "uncivilized." Unlike in the first two categories, the criteria for determining who should be considered "native" is not defined in statutory terms, but instead, authority is delegated to the colonial governors or other protectorate administrators to define the status and set out some details of how the legal status of "native" as laid out, for example, in how the *Schutzgebietsgesetz* would be handled from a jurisdiction and venue standpoint. The authority to make the determination was delegated first from the emperor to the *Reichskanzler* and then through the *Reichskanzler* (or *Auswärtiges Amt* or, later, the Colonial Office) to the protectorate's governor with oversight approval from the *Reichskanzler*. For this reason, there was a scant umbrella of an imperial legal framework to define what was "native" for purposes of legal status and jurisdiction, and the result was that, although most of the ordinances applying to individual protectorates regarding the authority to determine the "native" legal status were similar, there were some noteworthy differences between some protectorates. The emperor, who was responsible for exercising protective authority *(Schutzgewalt)*, issued several ordinances regarding legal classifications in the protectorates. In these ordinances, the

emperor either delegated authority to the Imperial Chancellor *(Reichskanzler)* to define the classification of "native," or else authority was delegated subsequently from the chancellor to the protectorate's governor:

> Der Reichskanzler bestimmt […], wer als Eingeborener im Sinne dieser Verordnung anzusehen ist, und inwieweit auch Eingeborene der Gerichtsbarkeit zu unterstellen sind.[54]

Or:

> Der Gouverneur […] bestimmt mit Genehmigung des Reichskanzlers, wer als Eingeborener im Sinne dieser Verordnung anzusehen ist, und in wieweit auch Eingeborene der Gerichtsbarkeit zu unterstellen sind.[55]

Consequently, the chancellor decreed through the provision of November 1, 1886, for New Guinea that those which are to be considered natives are 1) the members of tribes native to the protectorate, and 2) the members of "other colored tribes." The same determination is echoed in the decree of the *Reichskanzler* from December 2, 1886, regarding the Marshall Islands.[56]

In Cameroon, Togo, and German East Africa, the governors were empowered to define the term "native" through the imperial ordinances in 1888 and 1891.[57]

A gubernatorial order *(Verfügung zur Ausführung der Kaiserlichen Verordnung, betreffend die Eheschließung und die Beurkundung des Personenstandes für das südwestafrikanische Schutzgebiet vom 8. November 1892)*[58] defined "natives" as:

1) The members of tribes native to the protectorate
2) The members of other colored tribes
3) The so-called bastards *(die sogenannten Bastards)*

54 Verordnung, betreffend die Regelung der Rechtsverhältnisse auf den zum Schutzgebiet der Neu-Guinea-Kompagnie gehörigen Salomonsinseln, RGBl. (1887).
55 Verordnung, betreffend die Rechtsverhältnisse in den Schutzgebieten von Kamerun und Togo, RGBl. (1888).
56 Verordnung, betreffend den Eigenthumserwerb und die dingliche Belastung der Grundstücke im Schutzgebiete der Marschall-Inseln, RGBl. (1889).
57 Verordnung, betreffend die Rechtsverhältnisse in Deutsch-Ostafrika, RGBl. (1891). In German Southwest Africa, the imperial commissioner *(kaiserlicher Kommissar)* made the decision with the permission of the chancellor.
58 Verordnung, betreffend die Eheschließung und die Beurkundung des Personenstandes für das südwestafrikanische Schutzgebiet, RGBl. (1892).

In Samoa, the proclamation issued by Governor Wilhelm Solf in March 1900[59] defined natives as:

> 1) The Samoans
> 2) The members of other colored tribes

In Kiatschou, Germany's leased territory in Imperial China, there was no specific regulation of the native classification. It was only decreed in the *Kaiserliche Verordnung* of April 27, 1898, that all persons in the protectorate fell under German jurisdiction, except some Chinese under certain circumstances. The governor could, with the approval of the chancellor through the ordinance above, decide to what extent the German jurisdiction would apply to Chinese in Kiautschou.[60] Moreover, he was authorized to exclude members of colored tribes from jurisdiction.

The *Schutzgebietsgesetz* of 1900[61] redacted and created new law concerning the term "native." In § 4 it stated:

> Die Eingeborenen unterliegen der im § 2 geregelten Gerichtsbarkeit und den im § 3 bezeichneten Vorschriften nur insoweit, als dies durch Kaiserliche Verordnung bestimmt wird. Den Eingeborenen können durch Kaiserliche Verordnung bestimmte andere Theile der Bevölkerung gleichgestellt werden.

Those classes of persons who were to be equated with natives were designated through implementing § 2 of the imperial ordinance of November 9, 1900 regarding the legal statuses in the German protectorates quoted above.[62]

Neither in §§ 4 or 7 Abs. 3 of the *Schutzgebietsgesetz*,[63] nor in § 2 of the imperial ordinance of November 1900[64] is it clear or definitely stated who should be seen as a "native." Instead, the term was presumed to be known. Considering the earlier ordinances of the chancellor and the governors, and from the comparison of the designations "natives" and "members of other

59 Verordnung, betreffend die Rechtsverhältnisse in Samoa, RGBl. (1900).
60 Verordnung, betreffend die Rechtsverhältnisse in Kiautschou, RGBl. (1898).
61 Bekanntmachung wegen Redaktion des Schutzgebietsgesetzes, RGBl. (1900).
62 Verordnung, betreffend die Rechtsverhältnisse in den deutschen Schutzgebieten, RGBl. (1900).
63 Bekanntmachung wegen Redaktion des Schutzgebietsgesetzes, RGBl. (1900).
64 Verordnung, betreffend die Rechtsverhältnisse in den deutschen Schutzgebieten, RGBl. (1900).

colored tribes" in § 2 of the imperial ordinance of November 1900,[65] one must assume that the descendants of indigenous persons living in the protectorates were intended to be included.

Even if the descendants of indigenous persons (implicitly including those with non-indigenous parents) are implied to have been included in the ambiguous terms of "native," there are still some crucial restrictions. Firstly, the governor, with the approval of the chancellor, could arrange for exceptions under § 2 of the November 1900 imperial ordinance. It was in this way that Arabians, Syrians, Goanese, Ceylonese, and Parsi living in German East Africa were excluded from the legal status of "native" and instead legally classified as "non-native." The Japanese were another exception. The fact that Japanese were specifically excluded in § 2 implies that, despite being recognized as a separate race, the Japanese were considered civilized and Japan had political ties with the imperial government.[66] On one hand, the wording of "colored tribes" describes both a physical, or racial, distinction; on the other hand, the buck is passed to the governor to make the final call and Japanese are exempted in the case that any physical attributes defining race may cause an interpreter of this law to believe that Japanese were members of a "colored tribe." The specific mention of the Japanese within a section that fails to otherwise define what "natives" or "colored tribes" are reflects a legislative intent of calculated ambiguity and a reservation against directly defining legal statuses based on race. In this way, the ethnocultural (i. e., neither solely ethnic nor solely cultural) nature of *Deutschtum* was reflected in legislation.

Another exception was in § 9 of the *Schutzgebietsgesetz*[67] (of September 1900) according to which:

> Foreigners who settle in the protectorates, as well as natives, may be granted Imperial citizenship by naturalization by the Imperial Chancellor. The Imperial Chancellor is authorized to delegate this power to another imperial official.[68]

65 Ibid.

66 For ministerial ordinances of the executive, there are no official published justifications. Since the ordinances were issued by their respective ministries, they also were not subject to parliamentary deliberations. Therefore, the intent behind the language of the ordinances and specifically the exception for Japanese must be inferred from the political and cultural climate at the time of drafting.

67 Bekanntmachung wegen Redaktion des Schutzgebietsgesetzes, RGBl. (1900).

68 *"Ausländern, welchem den Schutzgebieten sich niederlassen, sowie Eingeborenen kann durch Naturalisation die Reichsangehörigkeit von dem Reichskanzler verlieben werden. Der Reichskanzler ist ermächtigt, diese Befugniß einem anderen Kaiserlichen Beamten zu übertragen."* Other

Citizenship could be conferred on natives and those persons legally equivalent with natives (i. e. usually members of "colored tribes") through naturalization, though doing so accordingly would change their legal status. Once naturalized, natives would become *Reichsangehörige* and thus cut themselves off from the legal circles of the native government. However, perhaps the most important consideration of § 9 and the application of naturalization laws was that natives, just as the citizens of nations recognized under international law, upon relinquishing their ties to their former governments and naturalizing, would have the same legal status as any other *Reichsangehörige*.

Because of this, the concept of "native" remained a question of legal status in German legislation. Even if in most cases persons who were considered belonging to another race were natives, and most of those with the legal status of *Reichsangehörige* were of European descent, the determination of legal status was not made on the basis of any concept of racial differences but rather on legal demarcations that denied association with concepts of race while at the same time reflecting a legislative intent to maintain an increasingly emerging concept of German "purity." The term "native" is not defined in either of the *Schutzgebietsgesetze*. Also, the two ordinances above contained no provisions as to whether the legitimate or illegitimate descendants of German colonists and "colored" women would be counted among natives or not, with the exception of the order of Southwest Africa from November 8, 1892, which specifically mentioned "bastards." In the case of the "bastards," it was understood that the term referred to the numerous descendants of the Boers and Hottentot women which began before German colonization. In the situation where the two classifications were either "native" or *Reichsangehörige et al*.[69] the Rehoboth Basters required additional

laws referenced in § 9 follow: *"Auf die Naturalisation und das durch dieselbe begründete Verhältniß der Reichsangehörigkeit finden die Bestimmungen des Gesetzes über die Erwerbung und den Verlust der Bundes- und Staatsangehörigkeit vom 1. Juni 1870 (Bundes-Gesetzbl. S. 355, Reichs-Gesetzbl. 1896 S. 615) sowie Artikel 3 der Reichsverfassung und § 4 des Wahlgesetzes für den Deutschen Reichstag vom 31. Mai 1869 (Bundes-Gesetzbl. S. 145) entsprechende Anwendung. Im Sinne des § 21 des bezeichneten Gesetzes sowie bei Anwendung des Gesetzes wegen Beseitigung der Doppelbesteuerung vom 13. Mai 1870 (Bundes-Gesetzbl. S. 119) gelten die Schutzgebiete als Inland."*

69 *"Reichsangehörige et al."* meaning *Reichsangehörige* and members of other "civilized" nations (in effect, whites and Japanese).

clarification because they were not members of an internationally recognized nation, nor did they clearly fall into one of the two legal designations of *"Reichsangehörige et al."* In both *Schutzgebietsgesetze*, the term *"Mischling"* (half-caste) does not occur at all. Also, the listed ordinances are not conclusive as to whether the legitimate and illegitimate descendants of German colonists and native women should be counted as native or not, with the exception of the order of Southwest Africa from November 1892 mentioning the Basters.[70] This, however, only describes the descendants of the Boers and Hottentot women from the time before German colonization. Because of that, it was dubious whether the *Mischlinge* were to be considered "natives" or not if one were to only consider the federal *Schutzgebietsgesetze* apart from ordinances and rulings within the protectorates themselves.

The high court of DSWA in Windhoek narrowed the interpretation of the 1870 law concerning naturalization and loss of citizenship[71] in which persons could get German citizenship through naturalization, but not through inheritance, marriage, or legitimation.[72] The court reasoned that:

> the membership of a race is rooted in biological ancestry; it does not matter whether it is the father or the mother. The half-castes are natives, to what degree is irrelevant. As long as any native blood is provable, the person should be categorized as native. It would be conceivable that over generations the amount of native blood could dilute so that the descendants could no longer be considered natives. It could be conceivable to define a boundary where membership to the native race would end. However, the court cannot define this boundary itself and accordingly must err on the side of considering everyone who has living native relatives as native.[73]

Individual ordinances applying to particular protectorates, all passed between 1886 and 1900, reiterated the language in the three aforementioned laws but some had additional distinctions particular to that protectorate. In Samoa, the delegation of authority was reiterated in § 2 of the Statutory Order Concerning Legal Relationships in Samoa of March 29, 1900 *(Verord-*

70 Verordnung, betreffend die Eheschließung und die Beurkundung des Personenstandes für das südwestafrikanische Schutzgebiet, RGBl. (1892).

71 Gesetz über die Erwerbung und den Verlust der Bundes- und Staatsangehörigkeit, BGBl. NdB (1870). This imperial ordinance only applied to the extent set out in § 9 of the *Schutzgebietsgesetz*.

72 Passarge (1911). Unfortunately, the author does not cite a source for the decision in Windhoek.

73 Passarge (1911) 590.

nung, betreffend die Rechtsverhältnisse in Samoa).[74] Unlike the statutory orders concerning legal status from some of the other protectorates, the language of the statutory order concerning Samoa was slightly different in that its § 2 delegated the authority directly to the governor with approval of the Reichskanzler/AA:

> Der Gouverneur bestimmt mit Genehmigung des Reichskanzlers (Auswärtiges Amt, Kolonial-Abtheilung), wer als Eingeborener im Sinne dieser Verordnung anzusehen ist, und inwieweit auch Eingeborene der Gerichtsbarkeit (§ 1) zu unterstellen sind.

In a similar statute from 1886 concerning the Marshall-, Brown- und Providence Islands, the language states only that the Reichskanzler had the authority to make the determination and his ability to delegate that authority to a governor is implied.[75] In the African protectorates of Southwest Africa and East Africa, the *Verordnungen, betreffend die Regelung der Rechtsverhältnisse* do not have any express language specifying that any government official has the authority to determine the extent of the legal status of natives. The African statutes contain only one brief paragraph referring back to the "Law concerning Consular Jurisdiction of July 10, 1879" (*Gesetz über die Konsulargerichtsbarkeit vom 10. Juli 1879*, *RGB*, p. 179) and to § 2 of the *Gesetz, betreffend die Rechtsverhältnisse der deutschen Schutzgebiete* of 1886, neither of which have any specific provisions regarding the general legal status of natives. Since natives in the African protectorates did not have the consular protection of foreigners who were subjects of states which had contracted consular representation with the German empire nor were members of "civilized" states, they did not have jurisdiction under the law concerning consular jurisdiction. The fact that their governors (or, in the case of New Guinea, the New Guinea Company) were not *explicitly* authorized to give them special legal status (other than the general power assigned in the SchGG) sets them apart from natives in other protectorates.

74 Verordnung, betreffend die Rechtsverhältnisse in Samoa, RGBl. (1900).

75 Compare also with the earliest statute regarding *Rechtsverhältnisse* in a specific protectorate from New Guinea (published June 9, 1886), which states: "*Der Reichskanzler bestimmt nach Anhörung der Direktion der Neu-Guinea-Kompagnie, wer als Eingeborener im Sinne dieser Verordnung anzusehen ist, und inwieweit auch Eingeborene der Gerichtsbarkeit (§ 1) zu unterstellen sind.*" Here, the New Guinea Company and the Imperial Chancellor are both specified. Verordnung, betreffend die Rechtsverhältnisse in dem Schutzgebiete der Neu-Guinea-Kompagnie, RGBl. (1886).

Gubernatorial ordinances defining the specifics of "native" status under which the *Schutzgebietsgesetz* and other imperial ordinances would be interpreted within the individual protectorates differed and reflected the varying degrees to which the German administration in a particular colony considered the natives subordinate.

In the proclamation issued by Governor Wilhelm Solf on July 1, 1900, it was decreed that:

> Bei Mischlingen, die aus einer ungesetzlichen Verbindung eines Fremden mit einer Eingeborenen stammen, hat der Kaiserliche Gouverneur von Fall zu Fall zu bestimmen, ob dieselben mit Rücksicht auf ihre Lebensführung bezüglich ihres Gerichtsstandes als Fremde oder als Eingeborene einzusehen sind.[76]

Here, the *Lebensführung* (way of life) was the crucial factor for determining whether a half-caste would be considered legally a native or a foreigner. What becomes evident in the practice of this 1900 proclamation from the files left by the colonial administration of Samoa is that there was a narrowing of interpretation as to which half-castes would be considered foreigners over the years, and the narrowing culminated in the unpublished *Mischehenverbot* issued by Solf in his capacity as colonial secretary. In a time where the other German colonies were often resigning to racial-based categories, this progression toward a more conservative interpretation of the law clung to a test of factors which should appear to be a non-racial test to determine the jurisdiction of half-castes.[77] For example, a change in criteria of the classification of Rehoboth Basters took place between 1910 and 1912, as they began to be classified based on their racial appearance rather than citizenship.[78]

3.5 The *Mischehenverbot* in Samoa

When looking for legal regulation of interethnic unions, the BGB neither condemned nor specifically addressed interethnic unions. The admissibility of interethnic marriages in the German protectorates was purely a legal question according to colonial law, despite emerging interests in policy supporting the colonial hegemony or racial purity. In the case of a natural-

76 Solf, Bekanntmachung vom 1. Juli 1900, SamGBl., Bd. III, No. 3 (9. August 1900), S. 13.
77 Lang (1998) 384–385.
78 Lang (1998).

ized native, which rarely or never existed, a marriage between a naturalized native (i. e., a native with German citizenship) would have been required to marry according to German civil law *(standesamtlich)* and in fact, would have no longer had the option to marry according to tribal law. Since natives were rarely or never naturalized in the protectorates, their legal status being defined in other terms, being a native excluded the option of marrying another native under German civil law (though in Samoa at least divorce between natives was nonetheless handled by the colonial courts after 1904) and the admissibility of marriages between German citizens and natives was a gray area. In the regulation of marriage, the BGB lists prohibitions to marrying parties based on blood relation, fault to divorce, or relation by marriage. Prohibition of marriage based on concepts of race was not a significant enough issue at the time of the drafting of the BGB, which was first drafted in 1888 and finally approved by the parliament in 1896, to merit such provisions. Although ideas of racial hierarchy based on evolution had become popular by that time in the German Empire, the issue was not present in the nearly homogenously ethnic European population of the mainland empire, and within its existing colonies in Africa and the Pacific, the desire for interethnic marriage was less present than in what would later become German Samoa. From a perspective of legal status as opposed to race, the idea that interethnic unions between those in the protectorates who were considered "natives" and Westerners – whether German or otherwise – should be prohibited was fundamentally rooted in the colonial structures of power. The source of colonial control is based on the ability to maintain a hierarchy between the colonizers and the colonized and distinguishes a colony from annexation – call it a colony or a protectorate, the desired results are the same: inexpensive labor and land which supplies goods otherwise unavailable or insufficiently available to the colonizing state with minimum economic or political investment. To establish and maintain such a disparate hierarchy, the distinction between colonizers and "other" must be established within the legal framework.[79] Simply defining what was "native" and by default defining everyone else as "foreign" was a castle built on sand which was eroded, in the case of Samoa, by the importation of non-native, non-Westerner workers, by an increasingly educated half-caste population, and by the presence of others who did not fit perfectly into the schema such

79 Zollmann (2014) 255–259.

as Chinese non-workers. The *Mischehenverbot* was an attempt to build a levy against the rising numbers of interethnic families who were perceived as a threat to the colonial hierarchy and German identity. The prohibition of interethnic marriages was not so much an attempt to prevent actual racial "mixing" so much as it was an attempt to prevent the half-caste children of native women from obtaining civil rights equal to their fathers; for this reason, rather than attempting to prohibit heterosexual sexual relations between natives and Germans, intermarriage was prohibited in order to preserve colonial order and the national identity in the colonial settlement. The extension of the prohibition to other Westerners besides Germans was based on the assertion of jurisdiction over foreign nationals having regular residency in a colony rather than on racial definitions, and this was exemplified by interethnic couples in Africa who, after interethnic marriages were banned, married in South Africa where it was allowed and returned to their home colonies in Germany where their marriages were at least partially recognized as legally valid.[80]

The decision to prohibit marriages between "natives" and "foreigners" in Samoa was ultimately passed in an ordinance (or administrative decree) issued in January 1912 to the colonial administration in Apia from the Colonial Office by the former governor of Samoa, Colonial Secretary Wilhelm Solf. The ordinance was not published in the *Samoanisches Gouvernementsblatt*, though it nonetheless also was widely discussed in the privately-owned newspaper, the *Samoanische Zeitung*. The decision by then deputy governor Erich Schultz not to publish the ordinance officially and publicly in the *Gouvernementsblatt* was deeply entangled in the politics of the existing and established half-caste population and, in particular, the influence of the more affluent half-castes and their families.[81] After January 1912, marriage announcements between half-castes classified as "foreigners" continued to be published occasionally in the *Samoanische Zeitung*, but the legal apprehension was apparent in their phrasing and placement in that they were now published exclusively on the front page and with details on each party's

80 Kundrus (2003) cites an example of an African woman and a German man who married in South Africa; the woman attempted to have her marriage to an abusive husband declared invalid in the German colony of Southwest Africa, but the court denied her and upheld the foreign marriage as valid.

81 Wareham (2002) 141–142.

parentage and legitimacy, as well as a statement of marital legitimacy under the imperial law of May 4, 1870, (with citation) and before the presence of a public official.[82] The publication of notices in this way may have intended to help secure "foreigner" status after the *Mischehenverbot* by clarifying that the marriage was not a "mixed marriage" between a foreigner and a native, and by listing a typically Western profession for the man thus asserting the family's "way of life" *(Lebensführung)* criteria to determining whether a half-caste could be on the list as a foreigner, should the legitimacy of the parents' marriage ever be questioned.

To say that the *Mischehenverbot* in Samoa was an attempt to clarify the lack of racial definitions in imperial law or to enforce legal distinctions between "foreigners" and "natives" for administrative or judicial purposes within Samoa itself would be a gross oversimplification. Likewise, a conclusion that the vagueness of the legal categories of "foreigner" and "native" not having any racial definitions was an attempt to circumvent racial separation and hierarchy would also be naïve, for the reasoning of administrators and politicians, files from the administration and Colonial Office on mixed marriages and half-castes, minutes of the colonial administration, and the parliamentary debate subsequent to the issuance of the *Mischehenverbot* all contain voices expressing varying degrees of a belief in the need to reinforce a racial hierarchy based on the contemporary view of "natural" racial evolution in order to preserve German identity or even the "German race." Nonetheless, the fact that language bearing racial distinctions does not itself surface in the language of the actual legislation against interethnic unions and that the consideration of *Lebensführung* rather than physical qualities could be determinate of a half-caste's legal status does exhibit a reluctance to commit to a colonial hierarchy based on race such as existed in British India or the Dutch East Indies. At the turn of the century, sentiments in Germany, as in other Western countries, were divided over how to define and preserve national identity in the face of an increasingly mobile and diversifying industrialized world. Since the German empire was still relatively young, its territories united peoples who themselves spoke often vastly dissimilar dialects of the German language in comparison to today's standard German *(Hochdeutsch)*

82 Aufgebot von Viktor Langkilde und Blanche Lilian Yandall (1912). Langkilde had a Samoan mother and a Danish father, and Yandall also had both Samoan and European ancestry.

and still were adapting to the emergence of a highly literate and politically active middle class. Divisions over the definitions of *Deutschtum* and how to preserve it existed among individuals, political parties, and even among the members of the colonial administration. While the tackling of issues such as class equality and women's voting rights were effecting political change within the mainland empire, its protectorates were predominantly isolated from such changes and attracted a more traditional and conservative view of German identity. This is reflected in the writings surrounding the question of interethnic unions and marriages from the German administration in Samoa, civilians writing to newspapers and diaries, debates in the parliament, and correspondence with the Colonial Department.

The very creation of the half-caste list had been an anomaly of law, for it conflicted with the principles in the BGB regarding legitimacy and citizenship. Under the BGB, a child born outside of marriage automatically assumed the citizenship of its mother.[83] However, a provision allowed for the father to petition to legitimize the child even if the parents remained unmarried.[84] Additionally, there was a section which stated that children of invalid marriages which were thought to be valid would be counted as legitimate:

> A child of an invalid marriage, who in the case of the marriage's validity would have been legitimate, is considered legitimate as long as both parties to the marriage did not know of the invalidity of the marriage at the time it was performed.[85]

For many of the half-castes born of the "good faith" marriages in pre-protectorate Samoa before Western consuls were given the authority to perform marriages, this provision should have clarified questions of legitimacy, yet in practice, it was not applied to these half-castes. Since the Law Concerning

83 § 1705 BGB.

84 § 1723 BGB: *"Ein uneheliches Kind kann auf Antrag seines Vaters durch eine Verfügung der Staatsgewalt für ehelich erklärt werden. Die Ehelichkeitserklärung steht dem Bundesstaate zu, dem der Vater angehört; ist der Vater ein Deutscher, der keinem Bundesstaat angehört, so steht sie dem Reichskanzler zu. Über die Ertheilung der einem Bundesstaate zustehenden Ehelichkeitserklärung hat die Landesregierung zu bestimmen."*

85 § 1699 BGB: *"Ein Kind aus einer nichtigen Ehe, das im Falle der Gültigkeit der Ehe ehelich sein würde, gilt als ehelich, sofern nicht beide Ehegatten die Nichtigkeit der Ehe bei der Eheschließung gekannt haben."* The section goes on to state that the former does not apply if the invalidity of the marriage is due to a defect of form and the marriage was not entered on the wedding registry.

Consular Jurisdiction of July 10, 1879, had extended the BGB to the protectorates (where it applied as long as no local laws of the protectorate overruled sections of it), theoretically any other provisions regarding the legitimacy of children and their legal status should have been available in Samoa. No laws had been issued by the governor or colonial office which should have precluded the possibility. However, in practice, the legitimization of illegitimate half-castes was discouraged after the first five years and even rejected in German Samoa without supporting legal authority.[86] The ordinance creating the half-caste list had effectively taken the power out of the hands of German fathers who had access to a petition process involving the *Landesregierung* and put it into the hands of one person – the governor – to legitimize (or even to withhold foreigner status) to illegitimately born half-castes regardless of the father's wishes in life or posthumously.[87] However, entry on the half-caste list did not grant the same rights of paternally recognized birth legitimacy in the same sense as the §§ 1699–1704 BGB; it only changed the jurisdiction of the half-caste in question. For example, being on the half-caste list was different from being legitimized extramarital offspring in that it did not necessarily grant legitimacy for purposes such as that of intestate succession. The consequences of determining legitimacy, such as the right to inherit, citizenship, child support, and child custody, are elaborated upon in the chapters regarding divorce and half-caste children.[88]

3.6 Planning the *Mischehenverbot*

The issue of interethnic marriages in Samoa was addressed early in the establishment of the German protectorate with the *Allerhoechste Verordnung betr. die Rechtsverhaeltnisse in Samoa* of March 1, 1900.[89] Section 9 clarified

86 Wareham (2002) 126–130.

87 The loss of a father's "right" to withhold foreigner status from his illegitimately born half-caste son or daughter only applied to adult progeny, as under the §§ 1699–1704 BGB, the father would have needed to petition for a minor child's legitimization. To petition for entry on the half-caste list in Samoa, either the Western father of the minor child could apply, or the adult half-caste petitioner himself.

88 See also §§ 1705–1718 BGB: Rechtliche Stellung der unehelichen Kinder.

89 Solf, Allerhoechste Verordnung betreffend die Rechtsverhaeltnisse in Samoa vom 1. März 1900, SamGbBl., Bd. III, No. 1 (15. März 1900), S. 1–3.

that the law concerning the performance of marriage and the *Beurkundung des Personenstandes von Reichsangehoerigen im Auslande, vom 4. Mai 1870*[90] applied to all persons in the protectorate who were not natives according to § 2. As per § 2, there was no jurisdiction for natives other than defined in § 1 referring back to the *Gesetz über Konsulargerichtsbarkeit vom 10. Juli 1979*. The issue of interethnic marriages was inseparable from the question of the *Gerichtsstand* of half-castes and illegitimately born half-castes in particular; in combination, these two interconnected issues are often referred to in documents from the administration and Colonial Office as the so-called *"Mischlingsfrage"* or "half-caste question."

Over the next few years, the administration of the colonies and especially the issue of interethnic marriages among settlers in the colonies came to the attention of the public and pressured the Colonial Office to take action against them. Because of the large number of half-castes already existing in Samoa when it became a German protectorate, and because of the influence of existing interethnic families in German Samoa, Solf wished to delay settling the matter.[91] In 1905, the Colonial Office began to push for more regulation of the legal status of half-castes. For example, the file concerning *Mischlinge und Mischehen* contains notes of the file being re-submitted repeatedly in 1905 with Solf again asking for more time and making clear that he does not wish to approach the matter immediately.[92] A newspaper editorial from August 16, 1906, published in the *Rheinisch-Westfälische Zeitung* criticizing the colonial politics of Samoa argued that marriages between "colored" women and civil servants *(Beamte)* should be forbidden, and that, since white men would be ashamed to equate themselves with native or half-caste men, elevating Samoan or half-caste women to the same level as white women was likewise inacceptable.[93] This editorial drew the attention of the Colonial Office, and Solf was asked whether it was necessary to respond

90 Gesetz, betreffend die Eheschließung und die Beurkundung des Personenstandes von Bundesangehörigen im Auslande, BGBl. NdB (1870); Stier-Somlo (1923) 141–142.

91 In June 1905, he wrote to the Colonial Office stating that he had had other pressing matters to attend and wished to wait to discuss the issue of half-castes personally during his upcoming trip to Berlin.

92 BArch, R 1101/5432: Verwaltungsbehörde des Deutschen Kaiserreichs, Mischehen und Mischlinge in Samoa (1903–1914), Anlage.

93 BArch, R 1101/5432: Verwaltungsbehörde des Deutschen Kaiserreichs, Mischehen und Mischlinge in Samoa (1903–1914), 22.

to this attack and whether such marriages existed. Solf was measured in his reply and wrote that although forbidding such marriages was desirable, it would have been impossible at the time because, to forbid marriages with civil servants, interethnic marriages then would need to be forbidden to the entire population. After having attempted to dissuade civil servants from marrying native or half-caste women, Solf had been the target of outrage and threatening letters.[94]

In 1908, the Colonial Office directed Solf's attention to an eight-page article written by Werner von Bülow and published in the *Hamburger Nachrichten* arguing strongly that forbidding interethnic marriages in Samoa was integral to preserving *Deutschtum*.[95] Von Bülow, the owner of a rubber plantation on the island of Savaii, had lived in Samoa since 1881 and was known for writing books and articles on Samoa.[96] Von Bülow's piece made emotional appeals to xenophobia and the fear of racial and moral degeneration: again, the fear of *"Verkanakern."* He paraphrased a quote popularized by Scottish missionary David Livingstone in Africa: "Lord made the Whites and Lord made the Blacks but the Devil made the half-castes!"[97] In his piece, the situation of half-castes in Samoa is compared with precautionary examples from Tahiti, the U.S., and British India. Von Bülow begins with a cautionary comparison of the "Negro-Question" in the United States, stating that rather it is actually a *Mischlingsfrage* since, of the 9 million U.S. citizens descended from West African former slaves, there are very few who are "not mixed." He complained of the "misplaced humanism" in Lincoln's executive order freeing the slaves known as the Emancipation Proclamation (1863) and in the XIII Amendment to the U.S. Constitution (1865),[98] and further claimed:

94 Ibid., 22–23b.

95 Ibid, 25. Typed copy of von Bülow's article from *Hamburger Nachrichten*, No. 506 from July 21, 1908.

96 The Cyclopedia of Samoa (1907) 106–107.

97 Livingstone (1875) 33: "What a humane native of Portugal once said of them is appropriate if not true: 'God made white men, and God made black men, but the devil made half-castes.'"

98 Lincoln (1863): "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Additionally, von Bülow's description of the Emancipation Proclamation as "humanist" is not entirely accurate, as it only freed slaves in the Confederacy but not in the Union.

> The Negro was happy under the old, patriarchal relationship of service and dependency […]. Now the Negro is a free citizen of the United States and can – if he is not lynched first – even become President. The theoretical equal rights of Negroes, and the desire which is rooted in the racial instincts of a self-aware folk to inhibit the realization of this theory through guile and violence, led to legally and factually disastrous consequences in America. Moralists like to preach so much against the barbarity of lynching justice, but it will persist until the moral code of the people and state law agree.[99]

Von Bülow's natural law argument reflected the sentiments of conservative party members for whom the issue of preventing moral depravity by encouraging mixed marriages to provide an alternative for concubinage had, since the mid-19th century, been overshadowed and replaced by a desire to preserve colonial hegemony and distance one's family and "folk" from the corrupting effects of the "other." His next "cautionary example" concerned Polynesian half-castes in the French colony of Tahiti where, he wrote, a founding on "false principles" has resulted in a population that is "depraved, degenerated, and debauched."[100] The sentiments expressed reflect influence from studies such as that of Eugene Fischer's Rehoboth study; he writes that a Samoan half-caste raised in the native mother's household may, by virtue of his European intelligence, solve the "Eurasian Question" that comes up in so many colonized areas, despite the common sentiment that half-castes inherit bad qualities from both races.[101] In other words, he believed that half-castes make better Samoans but poor Europeans. Finally, von Bülow complained that, under the current legal framework, Samoan women could marry German men, and thus they and their children can be treated as German according to law even though they "may be tattooed and run around half-naked." Von Bülow blamed the propensity of marriages in Samoa partly on the missionaries, who had encouraged Samoan women to expect marriage in a Christian manner. He suggested two remedies: the first, more radical solution would be to limit the German form of marriage to non-natives only and forbid future marriages between non-natives and natives. However, he warned, the government must be strong enough to withstand those who,

99 BArch, R 1101/5432: Verwaltungsbehörde des Deutschen Kaiserreichs, Mischehen und Mischlinge in Samoa (1903–1914), 27. Translation by author.

100 BArch, R 1101/5432: Verwaltungsbehörde des Deutschen Kaiserreichs, Mischehen und Mischlinge in Samoa (1903–1914), 28.

101 For more on the "Eurasian Question" in British India, see Mizutani (2011).

"through ignorance, a false sense of humanity, or misdirected morality," would side with the missions; here, he is implicating those in the Centrist and conservative Christian party who still promoted marriage over concubinage.[102] A second proposed solution as a "middle way" was to impede mixed marriage through bureaucracy: by requiring papers stating that the Samoan woman has given up all claims to land and property within her *āiga* for life. Although von Bülow did not detail why this would be effective, his proposition's goal was to discourage German small settlers from marrying Samoan women for reasons of gaining land use and at the same time discourage Samoan women by removing the safety net of property from her Samoan family for herself and her children, especially if she should be divorced, abandoned, or widowed. Von Bülow's last proposed solution was to increase the immigration of white women and girls to Samoa and to minimize the number of small settlers immigrating since they are most likely to marry Samoan women. In his last suggestion, von Bülow and Governor Solf agreed on the subject of small settlers, though the reasoning behind it differs significantly; in Solf's response to the Colonial Office following the publishing of von Bülow's article, he agreed in part, but tactfully states that, as in most of von Bülow's articles, "truths and falsehoods are garbled." Although he conceded that the ordinance of 1900 (establishing the half-caste list and the classifications of "foreigner" and "native") was mostly unsuccessful, he emphasizes the importance of considering a half-caste's way of upbringing in determining status to prevent the undue harshness of downgrading half-castes with European education and upbringing to the status of native. For this reason, he wrote, the half-caste question could only look to future regulation and the legal banning of marriages between whites and natives, as well as a revision of the half-caste list to remove half-castes who live with their native families.[103]

The positions of von Bülow and Solf in his response to him evidence the evolution of Solf's policy toward half-castes and foreshadow arguments presented in the heated parliamentary debate following Solf's eventual administrative order banning interethnic unions. Up until his response to von

102 BArch, R 1101/5432: Verwaltungsbehörde des Deutschen Kaiserreichs, Mischehen und Mischlinge in Samoa – Allgemeines: Bd. 1 (1903–1914), 29–30.

103 Ibid., 34.

Bülow's article in 1908, Solf's policy toward interethnic marriages and half-castes had been evolving from a lenient, passive approach to an active approach heavily influenced by pressures in the home country to preserve *Deutschtum*. To fully understand Solf's standpoint and its evolution, one must consider Solf's own political views and experiences prior to his governorship in Samoa.[104] Wilhelm Solf was born in 1862 to a highly educated, upper-middle-class family in Berlin (then part of Prussia); his upbringing and education contrasted with that of many high-ranking German colonial officials who had gained the privilege to climb the ladder of rank due to their noble family names.[105] He studied Indology and wrote his doctoral dissertation on the 11th century erotic Sanskrit poem the *Pañcâçika*, or in the Kasmir version, the *Caurapañcāśikā*, as well as served a number of years in the diplomatic service working for the German Consul in Calcutta.[106] The life and influences on the diplomacy and governing of Solf have been thoroughly explored by other authors, with a detailed biography *The Lost Man* by historians Peter Hempenstall and Paula Mochida and Solf's own noteworthy text on his colonial politics, *Kolonialpolitik: mein politisches Vermächtnis*.[107] Other than the aforementioned changes in popular sentiment through the widely publicized Herero Rebellion and the increasingly accepted racial science of researchers such as Fischer, there were also movements within some political parties pushing for permission for interracial marriages, and the interests of these parties influenced officials working in the Colonial Office and protectorates. For example, the conservative Centrist Party (*Deutsche Zentrumspartei*, a forerunner of the Christian Democratic Party) wished for interethnic marriages to be allowed in the protectorates because interethnic marriage was a morally preferable alternative to the debauchery of inevitable situations of concubinage or prostitution. Within the Centrist Party, however, strong voices against interethnic marriages arose by the early 20th century and increased in number. The sentiments of von Bülow, who himself was supported by the Centrist Party, reflected the turning tide against such marriages within the conservative parties.

104 Hempenstall / Mochida (1998).
105 Hempenstall / Mochida (1998) 28.
106 Hempenstall / Mochida (1998) 30.
107 Solf (1919); Hempenstall / Mochida (2005).

The tenth anniversary of Samoa as a German protectorate was not celebrated by all, for 1910 was also the year in which the cinch on interethnic marriages was tightened. The arrival of district judge Schlettwein in 1909 marked the advent of dramatic change in the administration's approach toward interethnic marriages and half-castes, as did the departure of Governor Wilhelm Solf in 1910. Having already served from 1904–1908 as a district judge in the German colony of Togo, Adolf Schlettwein favored the legal interpretation of the *Schutzgebietsgesetz* (SchGG) used to support the ban there. He shared Solf's and Schultz's objective of phasing out half-castes by preventing an increase in their population and by assimilating them into either the native or foreigner community. Both Solf and Schlettwein believed this objective could be in part achieved through long-term goals of providing existing legitimate half-castes with European-style school educations.[108] To accomplish this objective, the first imminent step was to prevent an increase in "foreigner" classified half-castes by (1) making requirements for addition to the half-caste list stricter and by removing "unworthy" half-castes from the existing list of foreigner-classed half-castes, and (2) by preventing more legitimate half-castes from being born by prohibiting marriages between foreigners and Samoans. Although the ordinance officially prohibiting marriages between natives and non-natives did not take place until Solf issued it as Colonial Secretary in 1912, Schlettwein had implemented a ban in practice by refusing to issue marriage permits to interethnic couples as early as 1910, and this practice was neither opposed by Solf as governor nor by his successor, former high judge Erich Schultz. As first mentioned in the previous chapter, Schlettwein interpreted that the ambiguity of the SchGG on the issue of marriage and the absence of explicit permission allowing for mixed marriage indicated the legislature's intent to forbid such marriages. Avoiding any middle ground allowing for popular reasoning that Samoans were higher in the racial hierarchy than other natives in the colonies or more suitable for marriage to whites due to more similarity, Schlettwein dismissed such arguments without addressing them by prioritizing an even application of a single legal interpretation concerning mixed marriages for all the protectorates. According to Schlettwein's argument presented in a memo to Solf, since the law must be interpreted

108 BArch, R 1101/5432: Verwaltungsbehörde des Deutschen Kaiserreichs, Mischehen und Mischlinge in Samoa – Allgemeines: Bd. 1 (1903–1914), 19–20.

uniformly among all protectorates, and because the legislature could not have possibly intended to allow a marriage between a white woman and an African man because it would be "against racial sensibilities," the SchGG should be interpreted to disallow mixed marriages in Samoa as well as in the African and other protectorates. In other words, the need for a uniform application of a particular interpretation of the SchGG should trump any interpretation of the SchGG giving governors the power to set their own policies through *Verordnungen* which may be particular to the situation in their own colonies.[109] As to the question of whether existing marriages would be valid under his applied interpretation of the SchGG, Schlettwein advised that such marriages should be legitimized for just and moral reasons retrospectively through an ordinance. Schlettwein refuted the possibility that § 1324 Abs. 2 BGB could have been applied to existing marriages between natives and non-natives to retroactively legitimize them. § 1324 Abs. 2 provided a remedy to legitimize some marriages which normally would have been invalid due to improper performance under § 1317. Under § 1324, if a marriage which was invalid due to improper performance had been nonetheless entered in the wedding registry and the marriage partners had lived together as husband and wife for either ten years or until the death of one partner (with a minimum of three years of living as husband and wife before death), the marriage could be considered valid from its beginning.[110] Similarly, § 1699 provided that a child of an invalid marriage would be considered legitimate as long as both marriage partners were unaware of the marriage's invalidity and if the marriage, when invalid due to a mistake in form, nonetheless had been entered in the wedding registry.[111] These provisions indeed could have been convenient solutions to pacify prominent opponents in Samoa by allowing many long-term marriages of prominent

109 BArch, R 1001/5432: Schlettwein (1910) (translation): "While it is clear that the Samoans are closer to us from a racial perspective, the law must be valid for all the protectorates equally."

110 § 1324 BGB: "*Ist die Ehe in das Heiratsregister eingetragen worden und haben die Ehegatten nach der Eheschließung zehn Jahre oder, falls einer von ihnen vorher gestorben ist, bis zu dessen Tode, jedoch mindestens drei Jahre, als Ehegatten mit einander gelebt, so ist die Ehe als von Anfang an gültig anzusehen […].*"

111 § 1699 BGB: "*Ein Kind aus einer nichtigen Ehe, das im Falle der Gültigkeit der Ehe ehelich sein würde, gilt als ehelich, sofern nicht beide Ehegatten die Nichtigkeit der Ehe bei der Eheschließung gekannt haben. Diese Vorschrift findet keine Anwendung, wenn die Nichtigkeit der Ehe auf einem Formmangel beruht und die Ehe nicht in das Heiratsregister eingetragen worden ist.*"

interethnic families in Samoa to continue to be considered legitimate, and their children as well, while at the same time invalidating most marriages between foreigners and natives which had taken place since the raising of the German flag. However, Schlettwein advised that § 1324 could not be a solution because, under § 4 of the SchGG, the BGB applied to the foreigner in the marriage but *not* to the native. Thus, he recommended that, in the interests of morality and justice, the existing marriages be validated through separate legislation. Governor Wilhelm Solf's departure from Samoa in late 1910 and his subsequent instatement as *Wirklicher Geheimer Rat* and State Secretary of the Colonial Office in 1911 enabled Solf to strengthen the ban through an administrative order issued by then-governor Erich Schultz.[112] Had the protectorate remained, the Lifestyle Test set forth by Schultz in the case of Blanche Reid (discussed at the end of the following chapter) likely would have been implemented to determine whether a person was predominantly "native" or "foreigner."

112 Solf filled the position of State Secretary after the resignation of former DSWA governor Friedrich von Lindequist.

Chapter 4
Divorce and Matters of Family Law in the German Courts of Samoa

As the time of Samoan-European contact progressed from the beachcombers and explorers of the early to mid-19th century to the increasing European and American influences of the mid- to late 19th century Tripartite Period, the ending of marital partnerships became a point of cultural and religious contention. Many early beachcombers and explorers had embraced *fa'a Sāmoa* marriage practices, much to the chagrin of missionaries and later the consulates. The European and American cultures from which they came, concurrent with the period, regarded divorces as embarrassing, scandalous, or morally reprehensible, and as the divorce rate was rising in their industrialized home countries, legislation in much of Europe and the United States was also working to stem the climbing rates of divorce at home. As mentioned in the previous section on Samoan marriage, the Christian missionaries in Samoa either worked to promote permanent marital partnerships, as in the case of the Catholic missions, or chose to focus on eradicating polygamy by providing access to divorce, as in the case of the Wesleyans.[1] The situation in Samoa was not acceptable to the foreign powers with stakes in it at the turn of the century. By the time the Germans raised the flag of the Kaiser in Apia and less than a month after naval commander Benjamin Tilley signed the Deed of Cession with local chiefs making him acting governor of the American side, ordinances had been passed in both the German and American territories to regulate divorce.

4.1 New policies in the regulation of divorce in the German Empire

In the late 19th century, divorce was governed by the German states which would form the empire. In some states, no-fault divorce had been legal until 1900; in others, particularly the Catholic states, divorce had been predom-

1 Gurr (1901).

inantly unavailable. Under pre-1900 divorce legislation, generally, three sets of laws existed: common law, the Prussian General Code (ALR), and the Napoleonic Code. Under the German common law which governed 12 states, canon law was a strong influence; Catholic couples were not allowed divorce at all, and Protestant couples only for severe misconduct. Under the Napoleonic Code effective in four states, misconduct was the primary grounds for divorce. Though divorce by mutual agreement was technically available, it was seldom practiced because of the complicated process. In eight states, the ALR had governed divorce and had allowed for some grounds of no-fault divorce since 1794, including divorce by mutual agreement[2] *(einverstaendliche Scheidung)* and divorce on the grounds of "insuperable aversion" *(Scheidung wegen unueberwindlicher Abneigung)*.[3] In its divorce laws, the ALR was the most liberal of the three sets of laws among the German states as it reflected the ideals of individual autonomy and a return to the more Roman concept of marriage as a rescindable contract rather than a religious sacrament overseen by the Church.[4] The overall reasoning for the liberal divorce laws of the ALR was that it would be bad for the population when irreconcilable spouses were compelled to remain married.[5] The husband did not have discretionary power over the wife in matters outside her familial obligations, and the wife had the right to reserve and retain property obtained prior to marriage upon divorce (i. e., the character of the property reverted to separate property of the wife upon divorce), unlike in the subsequent BGB.[6]

Lawmakers of diverse political persuasions believed that the German family was threatened by the increasing rate of divorce and the steady increase in the number of women entering the workforce and earning their own wages in industrialized Germany.[7] The increase of divorce often was

2 Allgemeines Landrecht für die Preußischen Staaten [ALR] (1794), Zweyter Theil, Erster Titel, §§ 716, 718: Mutual divorce only for childless pairs.

3 Glass et al. (1971) 540–542.

4 Voegeli (1982) 132.

5 Voegeli (1982) 134.

6 Voegeli (1982) 235. See also II. 1, § 197 ALR and II. 1, § 221 ALR. See also § 1363 BGB. Under the BGB, property brought into the marriage by the wife transmuted to community property managed by the husband.

7 Quataert (1979) 27. Socialists not included. Approximately 30 % of German women in the early 20th century were employed. Compare to 14 % in the U.S.

seen as a moral failing and a need to reinforce Christian values, or "*christliche Gesamtanschauung*," which diverged from the overarching secular core concepts of the *Reichspersonenstand*.[8] Arguments of natural law did not play a role in the development of divorce statutes in the BGB.[9] In the 1840s, jurists, including Prussian conservative Protestants along with Friedrich-Karl von Savigny, pushed to change the laws to limit the catalog of permissible grounds for divorce; it was argued the God-defined role of marriage as a non-redeemable *(unkündbar)* pact and guarantor of societal order on the foundations of the family unit was being threatened. Among the grounds for divorce they wished to reform were no-fault and spousal abuse. Although the aims of Savigny and his conservatives were not completely fulfilled, they influenced the new civil code and ultimately succeeded in making divorce more difficult and costly by moving it from the trial courts *(Gericht erster Instanz)* to the higher and often harder to reach regional appeal court *(Oberlandesgericht)*.[10]

Between 1900 and 1914, in the empire, divorce was regulated by the seventh title of the Civil Code of 1896 (1900) known as the *Bürgerliches Gesetzbuch* (§§ 1564–1587 BGB). For the purposes of this text, the applicable version of the BGB is its original 1900 version and referred to as BGB. At the establishment of the German protectorate in March 1900, the BGB as a unified code for the German states was quite new, having only been in effect since January of the same year. Although, in general, the BGB reflected the forward-evolving ideals of Wilhelminian Germany, such as further individual rights to property ownership *(Eigentumsfreiheit)*, freedom to enter contracts *(Vertragsfreiheit)*, and property inheritance, in matters involving family law, the BGB took a more conservative stance which was reflective of the contradictory nature in the empire at that time – a contradiction of promoting general modernization while at the same time obstructing particular societal developments.[11] The BGB had revised German family law to legislate a so-called "unified" morality for the new German empire. Grounds for divorce due to irreconcilability or mutual desire, characteristic of the liberal individualism in the ALR, were not incorporated, yet, as in the ALR, the

8 Schmoeckel (2018) 790.
9 Ibid.
10 Dilcher (1984) 304–359.
11 Dilcher/Staff (eds.) (1984).

family was also seen as a factor in the formation of the German state.[12] The goal was to take the decision to divorce out of the control of the marital community.[13] The "new" 1900 BGB thus made divorce more difficult for some citizens of some areas, and less so for others, but its policy was clear: the divorce rate, which had almost doubled between 1889 and 1899, should be reduced. The new laws resulted in only a temporary decline in divorce in the German empire, which had caught up by the middle of the protectorate period, yet its conservative policy toward the marital community would remain for decades-long after the departure of the German administration from Samoa.[14]

One way that the policy set by the BGB sought to stint the deteriorating effects of industrialization on the foundation of the pillar of the "German" family and marital community was by effectively establishing that a married woman's first obligation was the home, and once that obligation was fulfilled, she could enter the work force. Few independent rights were solidified, and rights within the marital community were limited. Although a woman no longer needed her husband's permission to work and controlled the income she earned during marriage, the husband still administered the property that she added to the marital community. Paid occupations were viewed as male endeavors.[15] The change reflected a shifting legal understanding that increasingly disadvantaged married women by casting them as subordinates of their husbands even in a post-Enlightenment, industrialized society where they had the potential to bring economic benefit to themselves as well as their families.[16] A further consequence of this view was that women's choice of husband was limited by the man's ability to provide upkeep and food for her, which was a condition necessary to obtain

12 Voegeli (1982) 135: "*Die Familie wird zwar noch als Untergliederung im Staatsaufbau angesehen, jedoch ist das Verhältnis der Ehegatten untereinander, wie gezeigt, bereits individualisiert.*"

13 Schmoeckel (2018) 750.

14 Scholars disagree about whether the 1900 BGB was effective in lessening divorce. Wolf et al. (1959) concluded that the new legislation essentially had little or no effect, but a statistical analysis by Glass et al. (1971) shows that the trends in the German states for filing of *Sühneversuch* and divorce were somewhat reduced for a period of two years after the legislation was introduced. According to Glass et al., the legislation was effective in that it reduced the rate of increase in divorces, though the rate of divorce continued to rise shortly after it went into effect.

15 Gestrich (1998) 28–29.

16 Ibid.

a marriage license, though it could also work in a wife's favor since the lack of said means could be a supporting factor for grounds of divorce[17] (see the case *Suwe*), and the *herrliche Vormundschaft* of the husband had fewer limitations than in the ALR. As a result of this retrograde during a period where, in practice, many women were not only working in the home, women in industrialized Germany often were saddled with double duties, and this prompted an exodus of some women to the colonies seeking lives as *Farmersfrau*, the idealized vision of German women in the colonies. The concept of the *Farmersfrau*, which had been popularized starting around 1900 through fiction and diaries, presumed to offer women lives in the colonies where their domestic labor contributions were valued in a station that exceeded boundaries of class. In some depictions, the *Farmersfrau* was economically independent.[18] Although this paragon was usually set against the backdrop of the African colonies, defending the German way of life against the Africans, one could see the wife in *Ettling* (below) painted in the portrait of a *Farmersfrau*, and some of the wives of settlers encouraged by Deeken may have had this role in mind. In the divorce records remaining from Samoa, some wives of German origin (see *Ettling* and *Suwe*) may have been abandoning this shattered vision.

In this chapter, I will examine each case involving family law (divorce, maintenance, child custody, and guardianship) where one or both parties had "foreign" personal jurisdiction and other recorded situations not in the file which concern the aforementioned family law matters. No large-scale statistics can be made regarding the divorces in Samoa, although, in representation of the population, ample records of divorces and other family law-related actions were filed with the administration between 1900–1913. The primary source of these divorces are archival files from the archives of the Samoa Ministry of Education, Sports and Culture in Samoa (SMESCA, now also known as the National Archives of Samoa) and the Archives New Zealand in Wellington. Cases from the SMESCA such as those of Blanche Reid's petition for maintenance in *Mischlingswesen*[19] and Alfred Schwenke's divorce mentioned in the file *Gerichtsstand der Mischlinge* (which, unlike

17 Ibid.

18 Wildenthal (2001) 151–156.

19 ANZ, Verwaltungsbehörde des Deutschen Kaiserreichs (1913–1914), "Mischlingswesen".

Reid, was ultimately determined to have "foreign" jurisdiction)[20] suggest that the official divorce file may have been incomplete. Among the population of those with the potential to have foreign personal jurisdiction (census categories white, half-caste, and Chinese [later "resident Chinese"]) ranged between 896 (1900) and 1639 (1914), I have been able to locate 18 records of family law actions and references indicating that others (for example, maintenance petitions) may have been made and that other records may have existed which were later lost or ruined.[21] The records recovered include, in cascading number, divorces *(Ehescheidung)*, divorces with domestic violence *(Ehescheidung mit Sühneversuch oder Körperverletzung)*, alimony and child support actions *(Unterhalt)*, and trusteeship *(Pflegeschaft)*. Thus the available records indicate a rate of more than 1 % of the potentially "foreign" population had been involved in family law actions. Comments in the files often allude to annoyance, which may indicate that such actions, despite their plethora of fees, were a drain on the administration's floundering coffers or simply on the nerves of its officials.[22] The officials involved in these disputes were high judge *(Oberrichter)* Erich Schultz or district judge Ludwig Imhoff, along with the support of court clerk *(Gerichtsassistent)* von Egidy, and often Governor Wilhelm Solf and his government secretary Klinkmüller were involved where the governor's authority was necessary.[23]

4.2 Application of family law from the BGB in Samoa

The marriage and divorce provisions of the BGB were applied to the German protectorates, including Samoa, through § 3 of the *Schutzgebietsgesetz* (1900) in combination with § 19 of the *Gesetz über die Konsulargerichtsbarkeit* (1900).[24] As of the beginning of the founding of the protectorate in Samoa

20 SMESC, Gerichtsstand der Mischlinge (1904).

21 ANZ, Verwaltungsbehörde des Deutschen Kaiserreichs (1913–1914), "Mischlingswesen". No information regarding whether there was an outcome of maintenance for the children was found in the file, and it can be assumed that the matter was not resolved.

22 ANZ, Suwe (1903). See also: ANZ, Meredith (1906).

23 Klinkmüller stayed on in Samoa after the German removal and worked as an attorney, where he represented a party in Collins (2014).

24 Bekanntmachung wegen Redaktion des Schutzgebietsgesetzes, RGBl. (1900); Gesetz, betreffend die Eheschließung und die Beurkundung des Personenstandes von Bundesangehörigen im Auslande, BGBl. NdB (1870); Gesetz über die Konsulargerichtsbarkeit, RGBl. (1900).

and until 1912,[25] marriage between Germans and other Germans or natives could be legally performed before an authorized German official under § 7 I of the *Schutzgebietsgesetz* (1900) and in conjunction with the *Gesetz, betreffend die Eheschließung und die Beurkundung des Personenstandes von Bundesangehörigen im Auslande.* When the Imperial Colonial Office *(Reichskolonialamt)* issued an order on January 17, 1912, under the leadership of by then State Secretary Wilhelm Solf (former governor of Samoa) that forbid marriage between "natives" and "foreigners" and enforced a differentiation between children born to a legitimate marriage and those who were not. Up until then, legitimate marriages had been possible between "natives" and "foreigners" in Samoa whereas they had been forbidden in the other protectorates. Thus in Samoa, §§ 4, 7 SchGG were not interpreted as they were in other protectorates. For divorce, there was no special imperial ordinance for the protectorates, and thus the law was applied according to the personal jurisdiction of the parties involved or according to any orders of the colonial governor. Divorces between Samoans thus fell under Samoan customary law with a venue of tribal judges until they were moved to the German courts in 1906. The validity of a Samoan-Samoan marriage preclusive to having a divorce decided in the German court may have been supported by the marriage being formally performed before the *mālō*.[26]

Of course, when the BGB was applied to German Samoa, where the population was multi-cultural and divorce *fa'a Samoa* had been practiced by Europeans as well as Samoans, the policies supported the colonial hegemony in a way for which the families living in Samoa were unprepared and created initial costly problems for the administration. The divorce laws of the BGB were not designed for the reality of the foreign society in Samoa, neither for the German women married there nor for the interethnic women with foreigner status. Firstly, for Samoan women married to foreigners, the authority of the husband under the BGB was a marked change from the status of women under Samoan customary law under which women were subject to less or no guardianship by their husbands, though some limited

25 When the Imperial Colonial Office *(Reichskolonialamt)* issued an order on January 17, 1912, under the leadership of by then State Secretary Wilhelm Solf (former governor of Samoa) that forbid marriage between "natives" and "foreigners" and enforced a differentiation between children born to a legitimate marriage and those who were not.

26 SMESCA, Mu v. Saia (1912). The district magistrate notes that Saia's second marriage was invalid because the first was "properly married before the mālō."

guardianship through fathers and their *'aiga*, though not to the extent as under the BGB. Secondly, the fulfillment of legal process was difficult. As can be seen in several cases below, the mere service of notices was costly, unreliable, untimely, and often impractical. Parties to divorce moved between islands or even sometimes relocated throughout the Pacific during the legal process.[27] If one spouse was found at fault, the court fees allocated to him or her often went unpaid at a time when the administration was overburdened with lawsuits and a struggling budget. The German administration in its entirety consisted of fewer than 50 officials, only a few of whom were involved in court functions, to govern approximately 33,000 Samoans.[28] Furthermore, the attempt to simplify the so-called *Mischlingsproblem* by separating half-castes into either foreigner or native jurisdiction failed to acknowledge the reality of intercultural families. Unlike "foreigners" in Germany's African colonies, the interethnic families and couples in Samoa not only had an existing middle and upper-class influence in Samoa, they had an existing *practice* of Samoan divorce in their community supported by the Samoan community in which they lived, not only concurrently, but *interdependently*. Thus Solf's new plan of reform in 1907 to work toward ending mixed marriage, the appointment of Judge Schlettwein in 1910 and his reinterpretation of German imperial law in regards to marriage (applying interpretations similar to those in South West Africa), and the ultimate 1912 *Mischehenverbot* by Solf as Colonial Secretary undoubtedly were influenced by the burden of deciding these divorces under German law. The *Mischehenverbot* was necessary to realize and preserve the vision of the German nuclear family outlined in the BGB while at the same time realizing Solf's paternalist "protection" of the natives from the inequity of having German divorce law and the penalties of fault being applied to them for customary divorce practices (see *Blacklock* and *Smalley*). Though the record is limited, the attention to detail regarding process and reasoning in the legal opinions declines around 1907 after the preceding "messy" cases, and the number of divorce filings on record nearly vanish after 1910. The change may evidence that the administration's changed stance was saving

27 Some examples (not all) include in *Suwe*, the defendant hopped all over West and Central Australia as the court attempted to serve notice. During *Smalley*, the plaintiff delayed proceedings to visit family in Fiji. In *Blacklock*, the defendant worked on another island and the police were unreliable in delivering notices from the court.

28 Adressbuch für Deutsch-Neuguinea, Samoa, Kiautschou (1912).

them legal manpower and money, and it also partially coincides with the appointment of the stringent high court judge Schlettwein in 1910. However, the most influential factor was the reiterated pressure by Solf on judges to implement his stricter policy on marriage. An English version of a notice translated and published in the Samoan language *O le Savali* (or *Savali*) from Erich Schultz as acting governor in Solf's absence to the Samoan judges[29] sheds much light on the situation between 1908 and 1910.[30] The letter was translated to Samoan and published in *O le Savali* the following in December 1910:

> *See the "Savali" December 1910.*
>
> To Judges.
>
> In the Savali of July 1906 and that of August 1908 it has been clearly declared to you what is proper to be done regarding marriages and I am surprised in that it is now known to me that some judges do not obey what is lawful but not according to their own wishes. It is impossible for any to plead that they have not done wrong: for the regulation was broken after it was published. Many married couples have come to me having been lawfully married, having separated, and then to my surprise I found that some one or other had been remarried by a judge without a written permit from the Government.
>
> You must not on any account perform marriage before you have carefully acquired from the parties wishing to marry whether any obstacle to it exists and if you cannot from them obtain clear statements on the point, it will be possible to get such from witnesses: and separation and divorce are different: for although a married couple may separate from one another yet they cannot be divorced until the matter is thoroughly inquired into before me; when should there not be just cause for divorce, then application for it will be refused: but should it be proved on inquiry that divorce is just they will then receive a permit authorising such divorce.
>
> Do not marry any couple with the strong hand: when both persons do not desire it; when one of the parties desires the marriage but the other does not.
>
> You are commanded to obey this regulation.
>
> Mulinuu 18. November 1910
>
> (Signed) Schultz.
> Acting Imperial Governor.

29 SMESCA, Schultz (1910).
30 Ibid.

A topic for further research, if written records are still available, would be to find out how many divorce cases where one or more parties were half-castes landed in the tribal court after 1910. Finally, a trend can be seen in both divorce and maintenance cases that the cases where both parties or their families were prominent members of the community (for example, having Samoan titles, owning businesses, working for a government at some time, etc.) tend to have more detailed files than those where one or both parties were not from "prominent" backgrounds.

The BGB's provisions and application regarding spousal and child maintenance were also problematic in Samoa. Perhaps most important to the situation in the late period of German Samoa was that unmarried mothers of illegitimate children were discriminated against in terms of support obligations by fathers. Unmarried mothers of extramarital children did not suffer discrimination in terms of support, though support was primarily provided by the extended family of the mother or sometimes the father when the child was older. It is easy to understand why Samoan or half-caste mothers of children to German fathers would want to maintain the legitimacy of their marriage under German law, and, if possible, foreigner status in the case of divorce or abandonment to provide support for their children. Title VI of Book Four of the BGB includes provisions for the maintenance of illegitimate children which would have helped support the non-marital children or post-nullification ordinance children of a Samoan woman where the father was a foreigner and thus had no family to help support the children (Samoan children of couples who were no longer together were usually supported by the extended family of both parents). The 1912 *Mischehenverbot* created a problem for Samoan and half-caste women who had been married to foreign men because the statutory support for illegitimate children under the BGB no longer applied to them since they then were under tribal jurisdiction unless they personally had foreigner jurisdiction as a half-caste – a status which had also been starkly limited by 1912. A primary example of the discrepancy between remedies in questions of child support based on status and validity of marriage and how legal remedies in child support cases were undercut by the 1913 decree declaring mixed marriages illegal will be discussed further in this chapter as relates especially to the case of *Blanche Reid*. Maintenance statutes in the BGB and their application in Samoa will be discussed further and in detail later in this chapter.

Upon marriage, under German law, a wife of another nationality assumed German citizenship. For this reason, regardless of being in a protectorate, a Samoan legally married to a German would have been considered German and thus "foreign;" as such, petitions sometimes refer to a Samoan wife as "previously Samoan."[31]

Also, § 1312 BGB did not seem to be applied.

> Eine Ehe darf nicht geschlossen werden zwischen einem wegen Ehebruchs geschiedenen Ehegatten und demjenigen, mit welchem der geschiedene Ehegatte den Ehebruch begangen hat, wenn dieser Ehebruch in dem Scheidungsurtheil als Grund der Scheidung festgestellt ist.
>
> Von dieser Vorschrift kann Befreiung bewilligt werden.[32]

4.3 Grounds for divorce under the BGB

Under the Civil Code (BGB), the only admissible grounds for divorce were specifically mentioned circumstances of highly immoral or ignominious conduct. The grounds for divorce were divided into two categories: "absolute" fault-based divorce *(Verschuldungsprinzip)* and "relative" based on irretrievable breakdown of the marriage *(Zerrüttungsprinzip)*. Grounds for divorce were applied equally to males and females.[33]

A plaintiff could obtain a divorce as a matter of right (absolute fault-based) if the defendant spouse could be proven to be at fault under one of the provisions in §§ 1565–1568: adultery,[34] criminal acts of being already married or sodomy,[35] an attempt on the plaintiff's life,[36] wrongful desertion,[37] inflicting severe bodily harm to the plaintiff through the performance of marital duties or other severe abuse, or adultery. Successful counterclaims could assign fault to both spouses.[38] One additional ground which

31 ANZ, Nauer (1908): *"Ich beabsichtige, mich von meiner Ehefrau, der früheren Samoanerin Filomena, scheiden zu lassen."*
32 § 1312 BGB.
33 Schmoeckel (2018) 878–879.
34 §§ 1565–1568 BGB.
35 § 1565 BGB.
36 § 1566 BGB.
37 § 1567 BGB.
38 § 1574 BGB.

was absolute but not fault-based was the spouse's prolonged mental illness (§ 1569).[39] Divorce which would be criminally prosecuted (bigamy, polygamy, and "unnatural sex")[40] did not require case-by-case jurisdiction for purposes of granting the divorce.[41] As a matter of process, the plaintiff who filed for divorce under §§ 1565–1568 needed to do so within six months of first becoming aware of the bad conduct, and all petitions had a limitation of ten years from the act itself.[42] If the spouses were not living together, the time limit was suspended from the time that the spouses ceased to live together. If the defendant spouse wished to call upon the petitioner for either a restoration of the joint household or to begin the process of a legal action, the clock for the time limit began at the time the defendant spouse made his or her wish known to the other. If the marriage was successfully dissolved under grounds of §§ 1565–1568, the defendant was found at fault, and the petitioner could be deemed to be guilty as well if the defendant made a counterclaim against the plaintiff for misconduct that would likewise constitute grounds for divorce even if the time limit for filing based on that misconduct would have already lapsed.[43] The so-called *Sühneversuch*, the attempt at reconciliation or atonement, was relatively new to civil law, having been previously carried out by protestant ministers in Prussia and not codified as civil law until 1879. It was not codified in the BGB but was carried over from the Code of Civil Procedure *(Civilprozeßordnung)* (§§ 608–611 CPO) and the German administration frequently applied it to divorces involving foreigners. A divorced woman could either retain the family name of the former husband or return to using her prior surname unless she was found guilty and the man filed a petition for her to cease to use his family name.[44]

39 § 1569 BGB: "*Ein Ehegatte kann auf Scheidung klagen, wenn der andere Ehegatte in Geisteskrankheit verfallen ist, die Krankheit während der Ehe mindestens drei Jahre gedauert und einen solchen Grad erreicht hat, daß die geistige Gemeinschaft zwischen den Ehegatten aufgehoben, auch jede Aussicht auf Wiederherstellung dieser Gemeinschaft ausgeschlossen ist.*"

40 "Unnatural sex" *(widernatürliche Unzucht)* was sex between men or sex with animals: § 175 StGB (1871).

41 §§ 170–171, § 175 StGB (1871); Schmoeckel (2018) 879.

42 § 1571 BGB.

43 § 1574 BGB.

44 § 1577 BGB.

4.4 Divorces among the *fa'a pālagi*

In cases of divorce and other family legal matters among individuals with foreigner jurisdiction, including half-castes, German law according to the BGB should have been applied, but the application was inconsistent. For purposes of evaluation, all "family law" cases are examined together: divorce and *Sühneversuch* (in practice, an incomplete divorce), child custody, matters of domestic violence, restitution of conjugal rights, and guardianship. The population and incompleteness of the archival records do not allow for statistical analysis, yet the available cases illuminate the policy in practice and reveal much about the struggle to preserve identity and rein in the increasingly influential and numerous "half-castes" whose marriage announcements in the newspaper, marriages with Europeans, and attendance to high society events blurred lines between colonizers and the colonized. In some cases, genealogical research helps to fill in the gaps where the records have been incomplete or had insufficient information, and sources have been noted and verified. As is often the case in matters of family law and especially where the community was relatively small as in the foreign community of Samoa, each case tells an intimate story that would be incomplete if related in purely legalistic terms.

Governor Solf's stance had changed from calling a complete ban on interracial marriage "out of the question" in 1906 to include a ban as being part of his program of colonial reform when writing the new colonial secretary Dernburg in 1907.[45] I strongly suspect that the divorces among half-castes with "foreigner" status contributed to the change in his opinion. From the administration's perspective, they were a financial and administrative drain because the court fees often went unpaid. In cases where a party lived far from Apia, the costs of service were higher. In some cases, one or both parties were unable to speak the working languages of the administration, German and English, and if they had no legal representative who could do so, then communication was difficult. Of course, not all complicated and expensive divorces involved half-castes (see, for example, *Suwe*), but with the

45 BArch, R 1101/5432: Verwaltungsbehörde des Deutschen Kaiserreichs, Mischehen und Mischlinge in Samoa – Allgemeines: Bd. 1 (1903–1914), 75–76. Solf to Colonial Department, August 18, 1906; Solf to Colonial Secretary Dernburg, September 15, 1907; Solf to Colonial Secretary von Lindequist, October 3, 1911.

increasing number of half-castes with foreigner jurisdiction as well as the importance of divorce to Samoan tradition, Solf may have foreseen divorce and maintenance petitions as a cost on the administration which would exponentially increase over time.

The records of these family law actions come almost entirely from the national archives in Wellington, New Zealand, which come from the so-called "BMO" or British Military Occupation files from the post-German period. In contrast, all of the divorces between two Samoans were found in the Samoan Ministry of Culture archives in Apia.

Three of the actions are between married persons of foreigner personal jurisdiction of whom presumably neither are half-castes: *Suwe* (1903), *Ettling* (1906), and *Brown* (1909). None of these cases involves custody or maintenance for children; indeed, the marriages in *Ettling* and *Suwe* were almost certainly childless.[46] These two can be compared with the other cases in which half-castes or Samoans are involved. Importantly, although these eleven petitions for the first step toward divorce *(Sühneversuch)* in the foreigner jurisdiction are alone a statistically large number for a population as small as "foreigners" in Samoa, some evidence suggests that the archival files were not comprehensive.

Timeline of divorces with foreigner jurisdiction

1901–1903 Suwe
1903–1904 Blacklock
1903–1904 Smalley
1905–1907 Laurenson
1906 Ettling
1906 Meredith (withdrawn)
1907 Schwalger
1908 Nauer
1909 Brunt (unfinished)
1909 Brown (unfinished)
1910 Landells (unfinished)
1910 Easthope (unfinished)
1914 Nelson (withdrawn)

46 Loosen (2014) 648–675.

Suwe (1901–1903)

A case full of circus acts of the defendant evading the court, Suwe involved two non-half-caste parties with foreigner personal jurisdiction and no children. Elisabeth Suwe nee Ber[y]ens[47] filed for divorce against Captain Peter Nicolaus Suwe, a German. In *Suwe*, the divorce was granted on grounds of abandonment *(bösliche Verlassung)*. The citizenship of the wife was not specified, but it can be assumed that she had foreigner jurisdiction and was probably of non-Samoan descent. The couple's domicile was in Apia.[48] Early in the couple's marriage, the husband was tried and convicted of fencing *(gewerbliche Hehlerei)*, sentenced first to a year in a penal workhouse, and then on appeal to serve a one-month prison sentence.[49] The case was overseen by Erich Schultz when he was a high court judge.

The first pages of the file are the petition of the wife written by her attorney, Peters, describing the situation.[50] Apparently, the petitioner had already filed a petition for divorce that had been denied and she had been ordered to pay court costs.[51] The plaintiff was unable to restore the marital household because the defendant was convicted of and sentenced to a month in jail for commercial fencing *(gewerbsmässige Hehlerei)*. After his sentence was completed, the defendant moved away from Apia without notice. The petition concluded that the defendant was neither in the financial position to pay for the fare for the petitioner to join him in Australia nor to pay for their residential or living expenses. Furthermore, it declared the marriage broken down, requested that the court refrain from an attempt at

47 ANZ, Suwe (1903). The spelling of the wife's maiden name is unclear. The name is written twice in the file: the first time, the writing is distorted because a page number was later written on top of it, and the second time is in her signature. The name might be "Bergens," "Beryens" or "Berijens." The signature is definitely not "Behrens," such as in the name of Antonie Behrens in Samoa at the time.

48 ANZ, Suwe (1903).

49 The exact date of the marriage is unclear because the petition (September 2, 1901) states October 14, 1899, but Schultz's final opinion states October 28, 1898.

50 Petition dated September 2, 1901, attorney *(Gerichtsaktuar)* Peters. The list of dates at the beginning of the file reflects that the petition was probably filed the same day.

51 Unnamed decision was June 6, 1900. Records of that first petition in June 1900 are referred to as evidence in the September 1901 petition, but no such file seems to remain in archives.

reconciliation *(Sühneverfahren)*, and that the marriage be dissolved with the defendant being solely guilty.

The court seemed to be sympathetic to Ms. Suwe's petition on this second attempt. On the left side of the first page are notes from Schultz that the *Einlassungsfrist* (time for entering an appearance) was six weeks, set a date for the hearing (February 19, 1902), and, most importantly, waived the need for the *Sühneversuch* by invoking § 611 CPO *(Civilprozeßordnung)*.

According to § 611 CPO (1898):

> Der Sühneversuch ist nicht erforderlich, wenn der Aufenthalt des Beklagten unbekannt oder im Auslande ist, wenn dem Sühneversuche ein anderes schwer zu beseitigendes Hinderniß entgegensteht, welches von dem Kläger nicht verschuldet ist, oder wenn die Erfolglosigkeit des Sühneversuchs mit Bestimmtheit vorauszusehen ist.
>
> Über das Vorhandensein dieser Voraussetzungen entscheidet der Vorsitzende des Landgerichts ohne vorgängiges Gehör des Beklagten.[52]

The district court *(Amtsgericht)* would usually not be responsible for deciding if the *Sühneversuch* should be waived, but since the aforementioned official was not existent in the protectorate, the decision fell to the district court.

Although not specifically mentioned in the petition, the petitioner may have been asking for divorce primarily on grounds of not fulfilling spousal duties of financial support and "unbearable conduct" based on the imprisonment for fencing (§ 1568 BGB) because the abandonment would have required by definition at least one year to prove:

> Ein Ehegatte kann auf Scheidung klagen, wenn der andere Ehegatte durch schwere Verletzung der durch die Ehe begründeten Pflichten oder durch ehrloses oder unsittliches Verhalten eine so tiefe Zerrüttung des ehelichen Verhältnisses verschuldet hat, daß dem Ehegatten die Fortsetzung der Ehe nicht zugemuthet werden kann. Als schwere Verletzung der Pflichten gilt auch grobe Mißhandlung.

Divorce on grounds of abandonment § 1567:

> Ein Ehegatte kann auf Scheidung klagen, wenn der andere Ehegatte ihn böslich verlassen hat.
>
> Bösliche Verlassung liegt nur vor:

52 § 611 Civilprozeßordnung.

> 1. wenn ein Ehegatte, nachdem er zur Herstellung der häuslichen Gemeinschaft rechtskräftig verurtheilt worden ist, ein Jahr lang gegen den Willen des anderen Ehegatten in böslicher Absicht dem Urtheile nicht Folge geleistet hat;
>
> 2. wenn ein Ehegatte sich ein Jahr lang gegen den Willen des anderen Ehegatten in böslicher Absicht von der häuslichen Gemeinschaft fern gehalten hat und die Voraussetzungen für die öffentliche Zustellung seit Jahresfrist gegen ihn bestanden haben.
>
> Die Scheidung ist im Falle des Abs. 2 Nr. 2 unzulässig, wenn die Voraussetzungen für die öffentliche Zustellung am Schlusse der mündlichen Verhandlung, auf die das Urtheil ergeht, nicht mehr bestehen.

The wording in the petition is certainly specific and alludes to the statutory language when it states that the aforementioned behavior is "indeed justifiably to be seen as dishonorable"[53] and has caused such a great schism that the petitioner cannot be expected to be burdened with the continuation of the marriage. Upon Schultz's waiver of the *Sühneversuch* period, abandonment (§ 1567 Abs. 2 BGB) might have applied.

Schultz wrote that notice was served to him on December 15, 1901, thus the six-week *Einlassungsfrist* was fulfilled when the hearing was set to April 2, 1902. In April, Schultz scheduled a new hearing because the defendant had not given his advocate, Niedrighaus, a legally binding form for power of attorney and thus the defendant was not present or represented (see § 618 CPO); the defendant's letter stating that Niedrighaus would speak for him was not considered sufficient. Schultz granted the plaintiff's request for a new hearing and set it for September 24, 1902.[54] It seems that the only evidence that Niedrighaus had of Mr. Suwe's intent to give him power of attorney was a letter addressed from Mr. Suwe to Postmaster Nauer and intended to be submitted to the court. In the letter, Mr. Suwe wrote that his wife demanded that either he divorce her or leave Samoa and that he earned enough monthly to support a household (a reference to an enclosed bank statement which is not in the file). Presumably, the hearsay statement was meant to defend against any claim of intentional abandonment (§ 1568)

53 ANZ, Suwe (1903). Schultz: "*Das vorstehend dargelegte Verhalten ist wohl mit Fug und Recht als ehrloses zu begreifen und hat in seinen Folgen zwischen den Ehegatten eine so tiefe Zerrüttung herbeigeführt, dass der Klägerin die Fortsetzung der Ehe kaum zugemutet werden kann.*"

54 Niedrighaus was an innkeeper with no professional legal background.

55 Here, *Vollmacht* means "power of attorney."

and the proof of income was meant to defend against breach of spousal duties regarding his ability to financially support her (§ 1568), yet the letter did not speak to claims of "dishonorable conduct" under § 1568 which the plaintiff has claimed through mentioning the defendant's conviction for fencing. The court did not accept that Niedrighaus speak on the defendant's behalf, considered the defendant to have been absent *("nicht erschienen")*, and scheduled a new date for oral hearing on September 24.

Notice of the new hearing was sent to the defendant Mr. Suwe in Australia via the consulate, and the consulate secretary replied asking on the defendant's behalf for a proper *Vollmacht*[55] form to be signed and asked that the trial be scheduled later to ensure that there is enough time to send back the form. Judge Schultz sent a simple self-written power of attorney form for the defendant to date and sign to the German consulate in West Australia with a return receipt requested and later provided. Correspondence in the file between the consulate secretary and Schultz indicates that the defendant received the letter from Schultz. A letter from Niedrighaus confirmed that he received the *Vollmacht* form from Mr. Suwe. Despite Niedrighaus finally having received the proper Vollmacht, at the final hearing on September 24, 1902, no one appeared on behalf of the defendant.

With all the pomp and ceremony of proper form and procedure having been followed and documented, despite possibly intentional efforts on the part of the defendant to avoid service, Schultz then wrote a detailed final opinion as to why the plaintiff's request for divorce was then granted. Unsurprisingly, the aforementioned primary point of contention, the form of the Vollmacht, was discussed. Schultz reasoned that because the plaintiff in a divorce action requires a *"besondere auf den Rechtsstreit gerichtete Vollmacht"* under § 613 CPO, then the court may interpret this to require the same of the defendant; not requiring the same form of *Vollmacht* for the defendant as well as the plaintiff would not be *"rechtlich."*[56] Schultz briefly discussed the defendant's personal jurisdiction: since the defendant notarially left his residence (domicile) in Samoa without expressing the intention to return in January 1901, that (more than a year later) he no longer had

56 ANZ, Suwe (1903), 22: *"Der Bevollmächtigte des klagenden Ehegatten bedarf einer besonderen, auf den Rechtsstreit gerichteten Vollmacht. Das Gericht hat den Mangel der Vollmacht von Amtswegen zu berücksichtigen."*

57 Bunsen (1900). *"In Ehesachen ist das Landgericht, bei welchem der Ehemann seinen allgemei-*

general domestic (in the protectorate) jurisdiction. Therefore § 606 Abs. 2 Satz 1 CPO applied.[57]

The divorce finally was granted on grounds of *bösliches Verlassen* and irreconcilable. Unlike in the ALR, abandonment in § 1567 BGB proceeded differently depending on whether the whereabouts of the abandoner were known or not. If the location of the abandoner was known, a court had to declare an intention to preserve the community *(Sühneversuch)* and judgment against the spouse accused of abandonment could not be finalized until after a year.[58] Because of the new policy in the BGB to hinder divorce by mutual consent and prevent a backdoor for obtaining a divorce by mutual consent, proof of not only the petitioner's intention to reunite but also of the defendant's intentional staying away despite knowing that doing so would be held against him or her in the legal process was integral.[59]

Schultz outlined the points necessary for proof of the aforementioned intentions. He stated that the parties were married less than a year before they parted, and, because the defendant notarially departed from Samoa immediately after serving his prison sentence, there was no reasonable prospect of reunion. Schultz reiterates that the plaintiff furthermore was unable to follow the earlier order that the parties resume a common household. He pointed out that grounds for divorce under § 1567,[60] § 1571 BGB[61] could

nen Gerichtsstand hat, ausschliesslich zustaendig. Hat der Ehemann im Inlande keinen allgemeinen Gerichtsstand, ist aber das deutsche Recht auf das eheliche Verhaeltnis anwendbar (CPO), so kann die Klage bei dem Landgerichte erhoben werden, in dessen Bezirk der Ehemann beider letzten Wohnsitz hatte, und, wenn ein solcher nicht vorhanden ist, bei dem Landgerichte der Hauptstadt des Heimatstaates. (CPO *§ 606 Abs. 2 und dazu § 15 Abs. 1 Satz 2 und 3).*"

58 Schmoeckel (2018) 880.

59 Ibid.

60 § 1567 BGB: "*Ein Ehegatte kann auf Scheidung klagen, wenn der andere Ehegatte ihn böslich verlassen hat. Bösliche Verlassung liegt nur vor: 1. wenn ein Ehegatte, nachdem er zur Herstellung der häuslichen Gemeinschaft rechtskräftig verurtheilt worden ist, ein Jahr lang gegen den Willen des anderen Ehegatten in böslicher Absicht dem Urtheile nicht Folge geleistet hat; 2. wenn ein Ehegatte sich ein Jahr lang gegen den Willen des anderen Ehegatten in böslicher Absicht von der häuslichen Gemeinschaft fern gehalten hat und die Voraussetzungen für die öffentliche Zustellung seit Jahresfrist gegen ihn bestanden haben […]. Die Scheidung ist im Falle des Abs. 2 Nr. 2 unzulässig, wenn die Voraussetzungen für die öffentliche Zustellung am Schlusse der mündlichen Verhandlung, auf die das Urtheil ergeht, nicht mehr bestehen.*"

61 § 1571 BGB: "*Die Scheidungsklage muß in den Fällen der §§ 1565 bis 1568 binnen sechs Monaten von dem Zeitpunkt an erhoben werden, in dem der Ehegatte von dem Scheidungs-*

apply; more than a year had passed since the order to resume a common household. Furthermore, Schultz stated that reconciliation was impossible because of the defendant's financial situation: he would be unable to pay for her passage to follow him and her upkeep. Finally, he used a line in the defendant's letter against him. In his letter from December 15, 1901, the defendant wrote, "*dass ein Fortleben mit der Frau ausgeschlossen sein muss.*" For this reason and because the defendant had not been present to deny it, Schultz assumes that the defendant intentionally left the plaintiff and conjectured that he had married her for her money.

Blacklock (1903–1904)

Blacklock and *Smalley*, both filed in late 1903, involved questions of choice of law and venue because both involved petitioners with American citizenship. In both cases, the BGB ultimately was applied, but the legal reasoning in *Blacklock* was far more detailed than in *Smalley*. The difference in detail may lie in several factors, including that in Smalley the two parties were half-castes, and in *Blacklock*, the petitioner was a naturalized American of Scottish parents who, as former U.S. vice-consul and an extensive property owner, undoubtedly in the eyes of the administration had political and financial influence in the area exceeding that of the parties in *Smalley*. The absence of detailed legal reasoning regarding the question of law in *Smalley* in contrast to *Blacklock* echoes the paternalistic approach of Solf's administration toward Samoans.

The 1903 case of *Blacklock* between plaintiff William Blacklock with American citizenship and defendant Apele Ti'eti'e Blacklock, a Samoan woman, is rife with questions of jurisdiction and conflicts of the cultural understanding

grunde Kenntniß erlangt. Die Klage ist ausgeschlossen, wenn seit dem Eintritte des Scheidungsgrundes zehn Jahre verstrichen sind. Die Frist läuft nicht, solange die häusliche Gemeinschaft der Ehegatten aufgehoben ist. Wird der zur Klage berechtigte Ehegatte von dem anderen Ehegatten aufgefordert, entweder die häusliche Gemeinschaft herzustellen oder die Klage zu erheben, so läuft die Frist von dem Empfange der Aufforderung an. Der Erhebung der Klage steht die Ladung zum Sühnetermine gleich. Die Ladung verliert ihre Wirkung, wenn der zur Klage berechtigte Ehegatte im Sühnetermine nicht erscheint oder wenn drei Monate nach der Beendigung des Sühneverfahrens verstrichen sind und nicht vorher die Klage erhoben worden ist. Auf den Lauf der sechsmonatigen und der dreimonatigen Frist finden die für die Verjährung geltenden Vorschriften der §§ 203, 206 entsprechende Anwendung."

of divorce.[62] The couple was married in Apia in 1887 while William Blacklock was American vice-consul and had five children during their marriage. In his petition, Blacklock stated that the defendant began to give him reason to want to dissolve the marriage when she began leaving their home for days at a time and having extramarital affairs about ten years later. He obtained a *Besserungsmandat*[63] from the American consul shortly thereafter, but it was unsuccessful. The petitioner further stated that since the couple separated about five years ago, his wife had had a child with a man with whom she had an affair at the time, and presented the man, Fa'alata, to the court as a witness.[64] The defendant wife confirmed that she had a child with Fa'alata in 1899, that she had been living apart from her husband since 1897 or 1898, and that she agreed with the divorce.

Petitioner Blacklock and his lawyer used the situation to their advantage; without first understanding how the divorce procedure under the German administration would play out, when asked, the defendant Apele admitted adultery in writing and agreed to the divorce without contest. However, despite her self-admission of extramarital affairs, Judge Schultz declined to declare her *formally* at fault.

> Die Schuld der Beklagten an der Scheidung formell auch im Urtheilstenor auszusprechen, hat das Gericht Bedenken getragen, da hierdurch möglicherweise einer Entscheidung über die vermögensrechtlichen Folgen der Ehescheidung zu Gunsten des deutsches Rechts präjudiciert würde.

The defendant was ordered to pay the court costs under § 91 CPO, which amount to a whopping 100.50 M; the *Streitgegenstand*, however, was 2000 M. It was mentioned that the petitioner had residences in Apia and Pago Pago.

Schultz may have thought that the petitioner was "forum shopping." Both the reasoning in his decision and his letter to Apele reiterating that she may appeal the decision if she found it unfair suggest that this may have been the case. Indeed, alone the frequent references to Mr. Blacklock as an owner of businesses and landlord in unrelated divorce cases I have read from American Samoa suggest that he had enough contact in American Samoa to have

62 ANZ, Blacklock (1904).

63 A *Besserungsmandat* was an order similar to a *Sühneversuch*, sometimes given by a priest or minister, that demanding that a spouse desist in immoral or extramarital activities.

64 Fa'alata and Apele may have been initially unaware that their statements would put Apele at a disadvantage since fault-based divorce did not exist under Samoan law.

claimed domicile there. Certainly, the husband's American citizenship and sufficient contacts in American Samoa would have been sufficient for jurisdiction and venue there. Despite this, William Blacklock's established residency in the Apia area cannot be disputed. He had served as American vice-consul in the Tripartite Period and lived there as a clerk at least as early as 1887 (he is mentioned by Robert Lewis Stevenson).[65] However, it also cannot be disputed that Blacklock was a significant property and business owner on the American side, had American citizenship (as a former consul), and the availability of an American court.[66] Schultz certainly realized that Mr. Blacklock benefitted from the particular legal situation in the protectorate and the ordinance which had granted all foreigners personal jurisdiction in the German courts.[67] Had the German court determined that Mr. Blacklock had primary domicile in American Samoa and his contact in German Samoa as insufficient, then he, as an American citizen with a native wife, would have been hard-pressed to petition for divorce by applying German law *if not for* the ordinance which asserts German personal jurisdiction for foreigners regardless of their citizenship.[68] He would have had venue, but not the personal jurisdiction, and either the court would have considered the divorce to go to the Samoan tribal court applying Samoan customary law, or, if the court had considered the marital domicile to have been American Samoa, then American law would have been applied under Abs. 4 of § 606 CPO:

> Sind beide Ehegatten Ausländer, so kann die Scheidungsklage im Inlande nur erhoben werden, wenn das inländische Gericht auch nach den Gesetzen des Staates zuständig ist, dem der Ehemann angehört.

65 Stevenson (1892).

66 Court cases from American Samoa (personal collection) frequently mention Blacklock as a landlord and business owner. His business in Pago Pago ran multiple advertisements in the *Samoanische Zeitung*, yet his large store in Apia and residence Matamoana also speak to contact on the German side. Blacklock played a significant role in the Malietoa-Mata'afa conflict of the Tripartite Period.

67 Verordnung, betreffend die Rechtsverhältnisse in Samoa, RGBl. (1900).

68 Kolonialzentralverwaltung im Reichsministerium (1890–1920). § 8 (1) of the Verordnung des Herrn Reichskanzlers vom 25. Dezember 1900. See also Solf, Allerhoechste Verordnung betreffend die Rechtsverhaeltnisse in Samoa vom 1. März 1900, SamGBl., Bd. III, No. 1 (15. März 1900), S. 3, § 9: *"Das Gesetz, betreffend die Eheschliessung und die Beurkundung des Personenstandes von Reichsangehoerigen im Auslande, vom 4. Mai 1870 (Bundes-Gesetzblatt S. 599) findet in dem Schutzgebiete auf alle Personen, welche nicht Eingeborene (§ 2 Abs. 2) sind, Anwendung."*

The husband is a foreigner by default as being non-Samoan under the *Rechtsverhaeltnisse Verordnung*, and the wife's personal jurisdiction as "foreigner" through her civil marriage to the petitioner was uncontested. Schultz considered Mr. Blacklock's *Grundeigenthum* and businesses in Apia sufficient to establish domicile, but, *"[d]a die Parteien indessen Ausländer sind, ist noch weiter zu pruefen, ob das Bezirksgericht in Apia auch nach dem amerikanischen Gericht zuständig ist."*[69] Schultz consulted Wharton's Conflict of Laws (1881), a popular deskbook of the time regarding the application of American law in questions of international law; Schultz quoted, "[f]or the purposes of divorce either party may acquire an independent domicile;"[70] supported by Apele having had a publicly known, longstanding residence in the protectorate. *"Als materielles Recht,"* Schultz wrote, *"würden in erster Linie die amerikanischen Gesetze, insofern sie uebereinstimmend mit dem deutschen Recht die Scheidung zulassen, in Betracht kommen (Art. 17 EGBGB Abs. 1 & 4)."*[71]

Under this "cross-reference" of American and German divorce laws, then divorce based on the fault of adultery was allowed in *Blacklock* under § 1565 BGB. However, as U.S. divorce laws then and now are state laws, or laws of a particular territory (as in American Samoa), the laws of a particular state or territory would be applied. In the early 20th century, grounds for divorce varied widely, but all states (except South Carolina, where divorce was prohibited) had provisions for fault-based divorce on grounds of adultery. If the plaintiff had brought his claim to the court in American Samoa, the jurisdiction of the court in Tutuila, being an unorganized, unincorporated U.S. territory with a naval station, the *Regulation Concerning Divorce* (1900) would have applied. Under the regulation, the

69 ANZ, Blacklock (1904).

70 ANZ, Blacklock (1904); Wharton (1881). Schultz citing Wharton's *Conflict of Laws*, 310.

71 Niedner (ed.) (1899) 59, 52–53. Divorce is governed by the laws of the state to which the husband belongs at the time the action is brought. A circumstance which occurred while the husband belonged to another state may be asserted as grounds for divorce only if that circumstance is also grounds for divorce or separation under the laws of that state. If, at the time the action is brought, the husband's nationality was no longer German but the wife's nationality remained German, the laws of Germany nonetheless would apply. Divorce may be granted on the basis of a foreign law in Germany only if divorce would be permissible both under the foreign law and under German law.

grounds for divorce or legal separation were similar to those in the BGB: adultery, either party having a spouse still living, habitual cruelty, or imprisonment of a spouse for a minimum of ten years. Additionally, under U.S. common law, a judge may apply relevant or established precedent toward the interpretation of the law.[72] Some precedent may have been considered, recorded, or unrecorded, had this 1903 case been held in the U.S. court, as in those years several divorce cases had already been decided and kept on file and the official *American Samoa Reports* began recording precedential decisions in 1901. If Schultz considered specifically the divorce laws of American Samoa, much less any precedent, it is not mentioned in the opinion, and no reference is made to the divorce regulation. One may either assume that Schultz was unaware of the promulgation or the necessity of its specific application under American law – an unlikely supposition for an experienced jurist with a keen interest in foreign and tribal customary law – or, more likely, that Schultz intentionally declined to directly cross-reference the specific naval promulgation with Title VII of Book Four of the BGB.

The decision to grant the *Blacklock* divorce under § 1565 BGB when at least one party is not "formally" at fault by having committed adultery is a paradox that can only be explained by the relationship of the German administration to the Samoan people. Schultz's argument that, in questions of choice of law between American and German law, he should decline to judge the defendant "at fault" may have been an excuse for a policy ruling in sympathy with Samoan cultural marital practice because, under the naval promulgation, the only applicable ground in *Blacklock* would also have been divorce due to adultery with the possibility of the adulterer paying damages. Possibly, Schultz may have wished Apele to challenge the court's decision to cross-reference German law, for if she could have established that her husband's domicile was in Tutuila, then she may have been able to apply to (7) of the promulgation which states that the High Court is not bound to pronounce a decree of dissolution if the petitioner is guilty of "unreasonable

72 Statute adopts common law of England as applied and modified by U.S. courts at time statute adopted and since construed. Tung v. Ah Sam (1971), American Samoa Law Reporter, 754–1969, 764. The *American Samoa Reports* also began recording precedential decisions in 1901. Some precedent may have been considered, recorded or unrecorded, had this 1903 case been held in the U.S. court, as in those years several divorce cases had already been decided and kept on file.

delay" in presenting his petition under adultery.[73] In his opinion, Schultz mentions that the *Frist* under § 1571 BGB is not exceeded because the clock was suspended when the husband moved out *("Die Frist läuft nicht, solange die häusliche Gemeinschaft der Ehegatten aufgehoben ist.")*. Since the husband left the couple's residence less than six months after witnessing the acts of adultery and did not resume a common household with her, German law would allow him to still file his petition while the American territory would have likely considered his five-year delay between discovering the adultery and petitioning for divorce to be "unreasonable."[74] The case of *Blacklock* thus may have been indicative that Solf's diplomatic policy extended toward the court through all possible attempts to soften the application of the fault-based divorce law on the defendant. Schultz also may have been sympathetic to the defendant, himself being aware that her marital partnership with Blacklock would have been properly dissolved under Samoan law and that her initial admission of a relationship with another man was a conflict of cultures of which her husband and his attorney had taken advantage.[75]

Smalley (1904)

Charley Cowley Smalley, an American citizen born in Apia and officially entered on the half-caste list, petitioned for divorce against his wife An[n] nee Stephenson, also a half-caste born in Apia. There were no children born to the marriage, and no maintenance was sought. The petitioner provided a certificate of their 1901 marriage in Fiji by a Methodist missionary. The petition for a *Sühneversuch* was filed in October, and then in December, a hearing was held where *Sühneversuch* was declared unsuccessful due to both

73 Unknown author, United States Naval Station Tutuila, A Regulation Concerning Divorce, Order No. 9, U.S. National Archives (1900): "The High Court shall not be bound to pronounce a decree of dissolution if it find that the petitioner has during the marriage been guilty of adultery or if the petitioner in the opinion of the court has been guilty of unreasonable delay in presenting or prosecuting such petition or of cruelty to the other party to the marriage or of having deserted or willfully separated himself or herself from the other party before the adultery complained of and without reasonable excuse or of such willful neglect or misconduct as has conduced to the adultery."

74 Ibid. Furthermore, the High Court would not have considered a divorce decree final until six months after the *decree nisi*, giving the wife time to appeal.

75 Unknown Author (1914a). According to the article, W. Blacklock left Samoa in 1902.

parties' admissions to adultery. The wife is referred to in the petition by the Samoan name "Tuta;" she was the daughter of planter George Stephenson and his Samoan wife.[76] The court called several witnesses and their testimony was transcribed (or, in one case, the transcription begun and then struck through with a note that he has nothing of worth to say). That so many witnesses came forward, including the pregnant partner of the husband, and no attempts to undermine or mitigate their testimonies were made may imply that the parties had mutually agreed to a divorce but were unable to pursue one otherwise because only fault-based divorce was allowed under the BGB.

The first half of the case was processed by Justice Schultz, and the latter half and decision by district judge Dr. Krauss.[77] Krauss wrote, "[b]ecause the domestic household of the spouses has been abolished, and consequently the deadline of § 1565 BGB on the claim and also there has been no forgiveness, both parties are divorced on grounds of adultery *(Ehebruch)*." To the matter of choice of law where the petitioner was an American, Krauss wrote only: *"Die Anwendbarkeit des BGB ist gegeben, denn das hier massgebende Amerikanische Recht verweist in solchen Klagen auf das am Wohnsitze des Klaegers geltende Recht."*[78] The discussion is succinct and concurrent with that of Schultz in *Blacklock*, which had been decided about three months before, but it lacked the detail in reasoning present in *Blacklock*. In *Blacklock*, the parties were *legally* of the same standing as those in *Smalley* – an American "foreigner" petitioner and a Samoan defendant, whom Schultz referred to as both being "foreigners" for purposes of § 606 – yet Judge Krauss's analysis did not mention § 606. Certainly, the question of any statutory time limitation between the *Ehebruch* and the petition is not present in *Smalley*, nor can there be a question of the unfairness of the penalty for adultery due to choice of law as there was where one party unilaterally admitted to adultery as in *Blacklock*. However, the lack of any discussion of the parties as being "foreign" is notably absent here because the parties were both half-castes, and the witnesses involved were also half-castes. Had there been a discussion of whether An[n] Smalley should have been considered a native or a foreigner,

76 Stephenson's wife's name is partially illegible: Ufan??a.

77 Possibly, Schultz may have had his hands full with the concurrent *Blacklock* case and other matters, passing it on to Krauss.

78 ANZ, Smalley (1904).

then, absent her registration as a "foreigner" on the half-caste list, she would have been considered as having Samoan personal jurisdiction because her parents (foreigner and Samoan) were unmarried. The paternalistic policy of protecting the Samoan wife in *Blacklock* is thus reiterated upon comparison of the absence of the application § 606 CPO in regards to *Smalley*, and the reality of the ordinance dividing personal jurisdiction into "foreigner" and "native" thus was *not* applied uniformly in matters of family law; here, the Solf administration's policy toward protecting the natives but not the half-castes leaked through.

Once again, the costs of the divorce were significant, but the parties' share was paid in this instance. The costs (calculated according to § 98 CPO) were 200 Mark with 33 Mark divided equally among the parties, since both were equally at fault, and receipts were noted that each paid his or her "16.50 M.". As for the 200 Mark, this was probably absorbed by the administration and reflected the substantial time and effort to produce the divorce.

Ettling (1906)

In the case of planter Carl Ettling against his wife Charlotte "Lotte" Ettling nee Kappstein, both parties were German and thus had foreigner jurisdiction.[79] This file pays much attention to detail regarding the process being followed properly, yet even this falls short of complete proper form (for example, the *Sühneversuch* period is shortened, presumably because the wife has a ticket to go home on the next ship). The file is also incomplete; its earliest contents refer to actions that were already filed and begins with a reply from defendant Carl Ettling asking for his wife to appear at a scheduled hearing and stating that he has included supporting documents (presumably referring to ownership and assets) such as letters from the defendant's father-in-law and brother-in-law, and letters from the couple to H.I. Moors in 1904 – none of these supporting documents from the husband are still in the file. However, the file does include a typed statement from Judge Imhoff and a handwritten letter from Lotte Ettling. In the end, the action was unsuccessful because, as Imhoff wrote: *"[Die Einigung der] Parteien konnte nicht erzielt werden. Der Sühneversuch war deshalb als erfolgslos zu*

79 ANZ, Ettling (1906).

betrachten." In *Ettling*, the wife had already filed for a divorce on grounds of abandonment *("bösliches Verlassen")* under § 1567 of the BGB, as well as maintenance *(Gewährung von Unterhalt)* and *Einraeumung des Miteigentumsrechts* an *Grundstücken und Inventar* (request for co-ownership of property). *"Bösliche Verlassung"* is as above in *Suwe*.

Ship passenger logs from my research reveal that Charlotte Kappstein arrived in Samoa probably in either 1902 or 1903, and then in April 1906 traveled through Honolulu on the way back to Bremen or Berlin as a "tourist" under the name "Mrs. Lotte E Kappstein" at age 21 from Pago Pago through Sydney to Germany along with a 28-year-old Miss Gertrude Kappstein.[80] The action was filed in January 1906, however. Whether Ms. Ettling was already in American Samoa or not at the time of the filing is unclear.

The judge granted the plaintiff's request not to have a public hearing, referred to the attached letter from the defendant regarding the granting of co-ownership, and states that an *"Einigung der Parteien konnte nicht erzielt werden."*[81] Therefore, the attempt at reconciliation *(Sühneversuch)* was unsuccessful. The letter from Lotte Ettling was not mentioned in the file as being one of the (lost) letters submitted by Carl Ettling, and its presence in the file is somewhat mysterious. The letter, written February 2, 1905, is an indignant letter to Mr. Partsch (probably G.W. Partsch, a merchant).[82] In it, Frau Ettling wrote to Mr. Partsch complaining that her and her husband's debts were grossly disproportionately assessed in comparison to others'. Whether this letter was submitted by either party as evidence in the divorce is unknown, but one important thing can be gleaned from it: Judge Imhoff wrote that the parties were "irreconcilable" in January 1906, but the letter from Lotte Ettling was written "with friendly greetings from my husband" in February 1905. If the couple were still together at the time the letter was written, as the author implies, then neither condition precedent to *bösliches Verlassen* in respects to the necessary year's time having passed either separated or refusing a possible *Herstellung der häuslichen Gemeinschaft* could have been fulfilled at the time that Imhoff wrote his decision. What occurred ultimately regarding the division of property is unknown.

80 Ancestry.de: Mrs Lottie E. Kappstein.
81 ANZ, Ettling (1906).
82 Fitzner (2006 [1906]).

Meredith (1906)

In *Meredith*, the petitioner wife, Christina Meredith nee Levison (also Levinson), petitioned for a *Sühneversuch* against her husband due to gross abuse *(grobe Mißhandlung)*.[83] The first page in the file is a note from July 13 which stated that the wife wanted a divorce because her husband hit her and that she should obtain a statement from a doctor. A scribble at the top indicates that she will come early in the morning, so the court assistant von Edigy should be ready. The part requiring the doctor's note is struck out, probably because her appearance at court later proved the doctor's note unnecessary. A noted brief side note states that her request for official separate living from her husband *(vorläufiges Getrenntleben)* should be approved. The second page from July 14 is the wife's petition to the court for the separation and *Sühnetermin* as the first step toward divorce. No other pages are in the file.

The husband, Samuel Hornell Meredith, was a half-caste of British paternal heritage and nephew of James Meredith, a prominent trader and former DHPG employee.[84] The wife's heritage is uncertain.[85] She was the daughter of T., a Samoan woman, and Captain Georg Christoph Levinson, a somewhat infamous northern German employee of Godeffroy & Sohn who was in charge of transportation in the routes connecting Apia with the Bismarck Islands, Palau Islands, and other island groups involved in the copra and

83 ANZ, Meredith (1906). Christine's family name has been spelled Levison, Levinson, and Levinsohn in various sources.

84 The Cyclopedia of Samoa (1907).

85 Anderhandt (2013) 115–120; idem (2020). Christina Meredith was probably an adopted daughter of Levinson rather than his biological daughter, and she may have been entirely "native" through biological paternity rather than a so-called "half-caste." She could not have been the daughter of T.'s former partner, an Englishman named Jamieson who was an agent for the Hanseatic J.C. Godeffroy. Jamieson and T. were attacked by native people on the Gazelle Peninsula in January 1877; Jamieson was killed, and T. fled into the bush where she hid for at least several weeks. She was then found, attacked, and sexually assaulted by a large group of Gazelle Peninsula men. A trader found her and brought her to the Wesleyan Mission station of Kinawanua on Duke of York Island for recovery. Because the date of Jamieson's death was eleven months before the birth of Christina (December 28, 1877), he cannot be her biological father. Levinson was her father if she was conceived while T. was recovering from her injuries at Kinawanua.

coconut oil trade. She may have been a "half-caste," but was probably adopted and entirely native by biological ethnicity but legally a half-caste with foreigner jurisdiction through her father.[86] However, since the wife obtains foreigner jurisdiction by being married to someone classified as a foreigner, it was unnecessary for the court or administration to discuss her heritage. As is common in brief files such as *Meredith*, no section of the BGB is referenced, but § 1568 would have applied to gross abuse. Physical abuse was viewed as "gross abuse" for these purposes.[87] Christina requested that her husband be required to leave the house rather than her because the company operated under his name belonged to her, and she stated that it would be financially ruined if she were to leave the home. At the same time, she wrote that she "could not stay in the conjugal home because I would be subjected to severe maltreatment."

From the two pages in the file, it can be assumed that the court was prepared to receive the wife's petition and use a proper and detailed analysis of § 1568 if the case had proceeded. Christina withdrew her petition two days after it was filed for unknown reasons.[88] The couple remained together for at least a few more years, as their last known recorded baptized child was born in 1908 and Christina died the same year.[89]

Schwalger (1907)

Samoan wife Silefaga Schwalger filed for a *Sühneversuch* as the first step toward divorce against her husband, the German planter Wilhelm Schwalger.[90] The parties were married before the district court during the German period on September 11, 1900. No grounds for the *Sühneversuch* or divorce are stated in the papers. Although the *Sühneversuch* following an oral hearing was successful, the records do not include a finalized divorce decree, and since the couple continued to have children together it is probable that

86 Anderhandt (2013) 115–120; idem (2020). Christine Levison's date of birth rules out paternal descent from Captain Levison.

87 Schmoeckel (2018) 880–882. *"Als schwere Verletzung der Pflichten gilt auch grobe Mißhandlung."*

88 ANZ, Meredith (1906).

89 McNae (2020); Familysearch.org: Baptism of William Frederic Meredith (1908).

90 ANZ, Schwalger (1907).

they remained married during the German protectorate period.[91] No record of the details in either the petition or the hearing is in the file; indeed, it is remarkably scant. The absence of any detail in the file is a change from previous cases involving at least one party with foreign personal jurisdiction and may thus indicate a change in the administration's handling of these cases.

Nauer (1908)

Nauer also reflects the abrupt trend around 1907 toward files that do not include the details or relevant citations or references to the applicable BGB. Adolf Nauer, a German, petitioned to divorce his formerly Samoan wife Filomena and begin the *Sühneversuch* in 1908.[92] The judge was Imhoff. No grounds for divorce are mentioned in the file, yet it can be implied from a note that "the defendant promised not to leave the house again without the husband's permission" that the petition may have been based on adultery under § 1565.[93] The file ends without completion of the *Sühneversuch*, and it may be implied by further records of subsequent births of the couple that the *Sühneversuch* was successful for some time, but the husband followed through with the divorce on grounds of adultery under the New Zealand administration in 1919.[94]

Brunt (1909)

The 1909 petition for divorce by Jane Brunt nee Cornwall v. Charles Selby Brunt involved both parties as half-castes with clear foreigner jurisdiction, both of whom were prominent and wealthy in the foreigner community and with prominent contacts in the Samoan community.[95] Charles S., known for his daring manner and handsome appearance, had even taken a *matai*

91 Obituary of W. Schwalger (1917), Find a Grave (2021). Fritz Schwalger (b. 1910) is listed as a son on Silefaga's family grave, but Wilhelm Schwalger is not listed as buried in the same grave. The author found an obituary of a "W. Schwalger" of Falleula and Saleimoa, and gratitude for condolences for his wife in *Samoanische Zeitung*.

92 ANZ, Nauer (1908); Familysearch.org: Baptism of Franz-Xaver Nauer (1902).

93 ANZ, Nauer (1908).

94 Unknown author (1919), Adolf Nauer, a German subject […].

95 ANZ, Brunt (1909).

title, which was not allowed for half-castes with foreigner status, thus fluffing some feathers in both the German administration and in the Samoan community.[96] The file contains a petition and a brief record of the public hearing, but no final decree.[97] Jane Cornwall was the sole heir to the estate of Magia, and other valuable plantations and properties; her inheritance of land was by far the largest of any private individual in Samoa at the time.[98] Jane was born from the marriage of Scotsman Frank Cornwall and Samoan Manaema.[99] As a young woman not yet 20 years of age, Jane inherited the estate as her parents' sole surviving heir while she was married to William Frederick Meredith. After Meredith passed away early in their marriage, Jane thereafter married Charles Selby Brunt in 1902. Charles was the son of Englishman Charles Mellor Brunt (b. 1862) and Jane (Sieni) Ape Vui of Savai'i.[100] Charles Selby was mentioned in the 1907 Cyclopedia of Samoa as being a wealthy planter and storekeeper who later was awarded £ 20,000 in a suit against McArthur and Co. of London, Sydney, and Samoa, which ended in appeal in the House of Lords.[101]

The petition by Jane and her attorney was based on "*Ehebruch verbunden mit Bedrohung des Lebens.*" The BGB was not cited but would have fallen under § 1566. Details concerning the incident are not in the file, nor are any notes requesting or requiring a doctor's statement (as in *Meredith*) nor evidence of the spouse's behavior (as in *Easthope*). The brevity of the file may be because Charles S. Brunt moved to Fiji soon afterward and remarried there

96 Meleisea (1987b). He had taken the *matai* title Tagaloa through is mother's Vui descent, much to the chagrin of Governor Solf. The legitimacy of the ceremony was accepted by most in the Samoan community except the nu'unu'u of Fasito'otai and Fasito'outa, who protested to Solf. Solf did not intervene, probably because of Charles S.'s status.

97 Aufgebot (1911). While the absence of a final divorce decree is not absolutely conclusive that the divorce was not finalized (the file may have been incomplete), Jane Brunt's mention in a 1911 newspaper under her married Brunt name may further suggest that the divorce was not finalized.

98 The Cyclopedia of Samoa (1907).

99 Brunt (2018); McArthur & Co. v. Cornwall et al. (1892).

100 Brunt (2018).

101 Brunt (2007). Interestingly, Mc Arthur and Co. was the same firm by which Frank Cornwall, the father of Charles Selby's wife, was employed when he acquired his large land claims. See also Brunt (2018). Charles S. later remarried Janet Wilson and moved to Fiji, where he was incarcerated and presumably died in jail.

in 1921.[102] One may note that this 1909 file contains no mention of lineage or question of jurisdiction based on lineage, which further evidences differences in the way cases were handled by the administration when they involved "foreigner" half-castes from wealthy families or with political connections, and that in such cases the members of the administration seemed not to deem it necessary to discuss the personal jurisdiction of the parties at all. The Cornwall and Brunt families did exhibit a culturally Western lifestyle. For example, Charles was educated in New Zealand as a baker, and Jane's Scottish father had been employed by McArthur and Co. Jane had lived in England some time with her previous husband, and she herself had been educated in a Western manner; she wrote her letter to the court in German with an elegant *kurrent* handwriting.[103] However, at the same time, one cannot deny the ties of families to the Samoan community, particularly in the case of Charles S. and his *matai* title. It could be implied that Charles S. Brunt represented the kind of separate elite half-caste society that Governor Solf ultimately wanted to stem with the ordinance against mixed marriages to prevent further blurring of the boundaries between the colonizers and the colonized.

Brown (1909)

Wife Lilian Brown filed for a *Sühneversuch* on the basis of domestic abuse *(Körperverletzung)*, presumably under § 1568 BGB:

> Ein Ehegatte kann auf Scheidung klagen, wenn der andere Ehegatte durch schwere Verletzung der durch die Ehe begründeten Pflichten oder durch ehrloses oder unsittliches Verhalten eine so tiefe Zerrüttung des ehelichen Verhältnisses verschuldet hat, daß dem Ehegatten die Fortsetzung der Ehe nicht zugemuthet werden kann. Als schwere Verletzung der Pflichten gilt auch grobe Mißhandlung.[104]

102 Jane Meredith Brunt (nee Cornwall) died in 1918.

103 Familysearch.org: Jane Meredith (1901). Jane's ability to write German indicated an advanced education. Born in ca. 1854, she would have been about 55 years old at the time of writing and thus educated well before significant German contact in Samoa. Before 1900, most education in Samoa taught primarily English with some French or Latin available from Catholic missions. Birthdate estimated from census while living with first husband, William Meredith, in England.

104 §§ 1564–1587 BGB.

Again, as in Brunt, the papers did not discuss or even mention the personal jurisdiction of the parties. Other sources reveal that the husband was British, having been born in New Zealand, and the wife also would have had foreign jurisdiction through her husband and was of "white" ancestry.[105] The petition is for a *Privatklage wegen Körperverletzung* as well as a *Sühneversuch*. The oral hearing several days later was documented and the *Sühneversuch* was declared unsuccessful, but the file ends with that hearing and no further papers suggesting that the divorce was completed, nor any further references to the private action. Notably, no doctor's statement for proof of the bodily harm was required, as in *Meredith* (1906).

Easthope (1910)

English-born hotel owner and former DHPG employee Robert Easthope filed a petition for a *Sühnetermin* against his Samoan wife Sigafea in 1910.[106] The marriage was performed 27 years ago by a judge in Tonga, and the court considered it a legitimate marriage. Easthope was the owner of a fine tourist hotel and livery and a former long-term DHPG employee. "*Eilt*" (urgent) is written on the side margin.

The petition was filed with Peters, the secretary acting at the time as a surrogate judge, but was shortly thereafter picked up by Judge Schlettwein, who very recently had arrived in his post as district judge in Samoa. Schlettwein was key in arguing for a more conservative *Mischehenverbot*, as mentioned in the previous chapter. Schlettwein wrote in the file that "Mrs. Easthope has been a drunkard for a long time and frequently in delirium. In this state, she throws burning lamps at the floor, smashes obstacles, and makes wild demands and threats against her husband."[107] Schlettwein further wrote that he asked Dr. Goleck to go to the Easthopes' apartment to observe the wife and "*mir Mitteilung zu machen, falls behoerdliches Einschreiten notwen-*

105 The Cyclopedia of Samoa (1907); Fairbairn-Dunlop (2005). In an oral account recorded by the author, Mr. and Mrs. Herbert Brown are referred to as a "*palagi*," or "white" couple. In this account is recorded an uncommonly documented pregnancy of the Browns's daughter in 1903–1904 from a native man (probably Samoan or Fijian).

106 The Cyclopedia of Samoa (1907); ANZ, Easthope (1910). The file spells her name "Sigafee" and then corrects it to "Sigafea." Some other sources (Museum of Samoa) have spelled her name "Sinafea."

107 ANZ, Easthope (1910).

dig sein sollte." Schlettwein then wrote that the doctor then took the wife into his care and kept her under strict watch, and that official intervention was not necessary according to the doctor.

Although no records in the file mention the section of the BGB under which the petitioner is seeking a divorce, the most likely applicable section would have been again § 1568 Abs 1.

Drunkenness could be interpreted under § 1568 BGB as a possible manifestation of marital breakdown, but the judge would have had to decide on a case-by-case basis taking into account the history of the marriage.[108] Certainly, *Easthope* has signs pointing toward such a determination in the file notes, such as the mention by Schlettwein (without stipulating a source of the observations) that the wife in her "drunken delirium" threw burning lamps on the floor, smashed objects, and threatened her husband point toward proof of § 1568.[109]

The file itself is composed mostly of receipts of notice and the simple notations of hearings being held with no legal bases, no citations of BGB, ZPO, nor other law, nor analyses. However, the file includes letters from both parties. First, there is a letter from the petitioner explaining that he was unable to attend the first scheduled hearing because his transport was late, and two poignant letters from the defendant and petitioner. The first letter from the wife to her husband, written in Samoan a few days before the *Sühneversuch* hearing, was an apology and declaration of love, and requested the husband to resume the marriage. The brief answer from the husband, written the same day, stated that he disagreed with reconciliation and that "the court and I think that we are better parted" because he cannot be "worried night and day" and that the court should settle the matter. Interestingly, the *Sühneversuch* was still declared unsuccessful, despite the wife's apology and written wish to resume the marriage. The file does not include a final divorce decree, and the lack of one seems to be a consistent trend with all known divorce proceedings in the "foreign" jurisdiction of the German court since *Ettling* in 1906. As was seen in *Meredith*, the absence of a final decree does not necessarily mean that the couple did not at some point

108 Schmoeckel (2018) 881.

109 It may have also possibly opened the way for § 1569 BGB which allowed divorce if, for at least three years during the marriage, the spouse were insane to "such a high degree" that the "spiritual union" of the spouses was not possible.

complete their divorce. However, one may assume that the Easthopes remained separated but married.

The reading of *Easthope* cannot be divorced from the views of Schlettwein and the context of the Easthope family in foreign society. At first blush, *Easthope* would seem to indicate a trend toward more detail and precision in divorce decrees. Although it does not juristically compare to earlier decisions with citations to procedural codes and the BGB, it does include some gathered evidence and details. However, the very absence of citations or references in Schlettwein's notes among the lists of evidence and Schlettwein's unannounced intrusive search of the wife's apartment for evidence only one day after the petition was brought point toward a determination to achieve a means to an end in a non-objective manner. Schlettwein had recently come from his post in the German colony in Togo carrying ideas about marriage in the colonies which had been influenced by the interpretation in the "*Musterkolonie*" (exemplary colony) similar to those implemented with the 1905 mixed marriages ban in German South West Africa. Schlettwein was against marriage between natives and white foreigners, and his views in support of banning such marriages were justified partially on a physically perceptible and racial definition with cultural factors as mitigating decisions where half-castes were involved.[110] He interpreted the German Protectorate Law's ambiguity concerning the legitimacy of marriage contracts between people with different legal statuses to prevent marriages between foreigners and natives and only allow those between foreigners and half-castes with the governor's permission.[111] Since the *Easthope* case involved a marriage between a native (the descent of the wife was either Samoan or Tongan) and an English foreigner – despite it being a long-standing marriage of 27 years – the prejudice of Schlettwein against such unions cannot be ignored. The Easthopes were a prominent family in Samoa. Mr. Easthope was the manager and proprietor of the fine hotels Tivoli and Malifa in Apia, was a direct importer of alcoholic drinks and cigars; Ms. Easthope had attended numerous foreigner galas over the years and was active in foreigner circles.[112]

110 BArch, R 1001/5432: Schlettwein (1910).
111 Wareham (2002) 139.
112 Unknown Author (1895); Unknown Author (1896).

Landells (1910)

William J. Landells petitioned for divorce against his wife Hertha Landells nee Netzler on grounds of adultery. The husband was born in Australia to English parents, and the wife's country of birth and heritage of her parents are unclear.[113] The petition apparently was abandoned.

Nelson (1914)

Nelson occurred on August 13–18, just a few weeks before the German administration was forced to withdraw from Samoa.[114] Rosabel Nelson nee Moors, daughter of the well-known American resident H.J. Moors and Samoan Fa'animoimo "Nimo" Asiono, sought a divorce from her husband, Ta'isi Olaf Frederick Nelson. Both parties had "foreigner" jurisdiction, since the wife was officially an American citizen and the husband had a Swedish father and a Samoan mother and had been entered on the Half-Caste Registry.[115] The petition was made on grounds of an incident of domestic violence on the evening of August 1 which was not described in detail (thus assumed to fall under statutory *grobe Mißhandlung*).

The couple did not follow through with the separation; the court administrator's summary of the proceedings stated that the wife agreed to return to her husband because, "[he] declared his willingness to take in his wife at any time." More children were born subsequently, though the couple seems to have separated later. Both husband and wife separately played significant roles in the Mau Movement for Samoan independence.[116]

113 Hertha Netzler was probably a daughter of Carl "Charles" Frederick Netzler (b. 1844) originally of Schleswig-Flensburg and one of his wives of Samoan-European heritage. She may have also gone by the name Henrietta, as several genealogists list a Henrietta Netzler (b. 1870) – daughter of Carl Netzler – who had an English maternal grandfather and Samoan maternal grandmother and married to a William J. Landells. It is, however, worth noting that Landells had more than one wife with the surname Netzler.

114 ANZ, Nelson (1914).

115 Ancestry.de: Rosabel Edith Moors.

116 O'Brien (2014); Sacks (2019) 170–174.

4.5 Divorces among Samoans in the German courts

In 1904, divorces where both parties were Samoan were moved from Samoan jurisdiction from the Samoan judges *(Fa'amasino)* to the German courts. Not all of the decisions survived; the archival holdings are incomplete.[117] More than 31 records of Samoan divorces by the German administration remain, all of which are held in the archives of the Ministry of Culture in Apia.[118] Since the scope of this thesis does not center on Samoan divorce, some individual cases are discussed as a comparison and should not be taken as a comprehensive list. The first cases handled by the German court were in the file *Sammelakten der Ehesachen Band I* which included a register of cases beginning in 1905.[119] Unfortunately, only about a third of the cases remain in the folder, all from 1905 except for one loose one from 1906, and some have damaged and illegible pages.[120] A register of civil cases for the years 1911–1913 already shows more divorce and adultery cases between Samoans than exist in the archive, though there are fewer than one would expect in light of traditional practice.[121] Comparing the earlier cases with the later ones, the early cases include extensive notes, letters, and testimony by the parties. With the assistance of translator "S. Tolo," and secretary Te'o Tuvale,[122] these cases primarily were decided by judge Dr. Erich Schultz, as he was the only judge fluent in both German and Samoan and had significant knowledge of Samoan customary law, though a couple were decided by Imhoff and at least one by Schlettwein, and at least one (*Tui'uli v. Vine* [1913]) by Te'o Tuvale.[123] The intent of the change of juris-

117 Remaining cases are not representative. There are several cases from 1905, then a gap where no cases remain, and cases ranging from 1908–1912 with most being from the later dates.

118 Some are collected together in one file, while others are in individual archival files. The files are IDO 9 F1, IDO 8 F2, IDC 10 F3, IDO 15 F6, IDC 8 F1, IDC 10 F1, and IDO 15 F5. Archives of Samoan Ministry of Culture.

119 The front of the file states that the file was "closed" in 1911, but this would not seem to indicate that it would have included files up to that time because the third of the divorces in the file which remain only occur over one year (1905).

120 SMESCA, Ananpu v. Faapo (1906).

121 SMESCA, Zivil- und Gerichtsprozessregister (1911–1913).

122 The documents are very clearly signed as "S. Tolo," though the government interpreter known was named Taio Tolo.

123 Dr. Erich Schultz decided most of these cases, since he was the only judge fluent in Samoan language, but at least a few others such as Imhoff heard Samoan divorces with the help of translators.

diction was not only to reduce the number of divorces according to the motivations of both the Germans and the missions, as discussed in previous chapters, thus promoting the contemporary German cultural standards reflected in the new BGB, but also to increase the Samoan population as opposed to the increasing half-caste population. The decisions were written in Samoan with no legal analyses, yet they were far more profuse in recorded details of the parties' testimony than many of the divorce cases in foreigner jurisdiction.[124] Interestingly, the arguments of the parties and details of the facts in the case are often well documented, in contrast to cases decided solely in the German courts. The notes by Schultz are extensive in many cases, especially the earlier ones, though the legal reasoning in them is implicit, not explicit, and can be gleaned from what information is requested, the final decision, or the assignment of court costs. In contrast, cases from 1908–1913 have shorter notes from Schultz, fewer letters enclosed, and generally fewer supporting statements.

Although the jurisdiction of divorces between two categorically Samoan parties being moved from Samoan courts to German courts in 1904, the German divorce law of the BGB was not applied to these cases. German judges applied an unofficial mixture of German divorce law and customary law. For example, fault was seemingly applied as a condition precedent for divorce based on the grounds described in §§ 1565 to 1569, yet the reconciliation attempt period *(Sühneversuch)* was not required to be proven; in most cases, the parties had been separated a year or more, though in at least one they had been separated not quite one year. Most of these cases were decided by Judge Erich Schultz, who was fluent in the Samoan language and had researched Samoan customary law. The Samoan court, or *mālō*, thus regulated the legal performance of marriages between Samoans as per the wish of the administration to regulate matters concerning marriage and divorce.[125] The case files of these solely Samoan cases, the opinions of which are written mostly in Samoan, are now in the archives of independent Samoa and often

124 The absence of legal analysis in the German court cases contrasts with similar cases in the court of U.S. Samoa, which often contained some legal analysis and also much circumstantial detail. All Samoan divorce cases were stored in the Ministry of Culture Archives in Apia. Similar cases from the U.S. Naval Station referenced by the author were stored in a closet and viewed in the hallway of the office of the High Court in Pago Pago, American Samoa.

125 SMESCA, Mu v. Saia (1912).

consisted of only a few paragraphs. Due to the brevity of the records, one may assume that Schultz wrote notes about the cases for his own reference, and, since he had exhibited an interest in recording and even publishing the details of Samoan customary law, Samoan language idioms, and many other aspects of Samoan culture, one may speculate that perhaps the dearth of record was intentional. In sharp contrast are the divorce cases between Samoans in the American jurisdiction from the archives of American Samoa during the same time period. In the American courts, American law was applied and the records are detailed in comparison. Political peace among Samoans was important to the Solf regime; volatile divorces and jockeying for position among clans through marriage were not part of a lucrative colony. A resurgence of the civil wars of the 19th century was to be avoided, but at the same time so was the assimilation of Samoans into a German culture which might threaten the authority of the administration and even the identity of Germany itself. Thus the German administration did not have the same invested interest as the missionaries in preserving monogamous marriages among Samoans for Westernizing religious purposes, nor did it envelop the locals under conformity through the presence of a military station as in Pago Pago. The occasional "forum shopper" even made the way from German Samoa over to Pago Pago where there would be no question of jurisdiction for half-castes and American law concerning child custody could be more favorable.[126] The political situation back on the mainland in Germany was pushing to dam the rise of divorce through its conservative legislation and the administration in Samoa felt the pressure to regulate divorce there as part of maintaining German standards and identity in the colony. At the same time, the administration, by necessity, had to rule pragmatically on the spot to maintain the factual order. In light of this conundrum, one might understand why Schultz decided Samoan divorces in the German court but with brevity.

While on one hand the divorce judgments may have sometimes sought to maintain order without too much disruption, individual divorces may have been a means of asserting dominance of the administration where higher status parties were involved. Though status of the parties was not specifically discussed in case files, it can sometimes be inferred from supporting documents and the inclusion of titles with the names. In *Atalina v. Salefai* (1908),

126 High Court of American Samoa (1900–1914).

a decision by Judge Imhoff, a letter from a "Salanoa T M" is included which discusses an official trip to Tutuila by the petitioner husband's father who had been summoned to court and could thus not appear. In that case, the petitioner was fined 5 Mark and two days in jail for failing to appear at a court date – something which was not repeated in subsequent cases, though perhaps because subsequent cases were heard almost solely by Schultz rather than Imhoff. Files with more developed decisions tend to be those where Samoan parties submitted their own written letters to the court (usually in Samoan, sometimes in English), whereas brief decisions such as those lumped together in the file *Sammelakten der Ehesachen* ("combined files regarding marriage") were brief and almost always solely in Samoan without supporting letters from the parties. Thus the cases with more detailed decisions and a more stringent application of the BGB intent are those which must have been involving literate, higher status parties.

Later cases (1908–1913) reflect a move by Schultz away from taking into consideration customary law in his decisions and instead clearly assigning fault. The strategy of Schultz in handling these cases was to gradually assimilate the Samoans into a German way of matrimony and divorce. One case, *So'e v. Sina* (1910), even includes a brief transcript in Samoan of his lecture in Samoan to the parties about proper marriage practice (translated here):

> Dr. Schultz: Did So'e do anything bad to you to cause you not to love him anymore?
>
> Sina: So'e didn't do anything bad.
>
> Dr. Schultz: A wedding is sacred. A married couple shouldn't be doing anything bad to each other. What do you both think about your marriage?
>
> So'e: I wholeheartedly want our marriage to be dissolved because I have been patient with Sina for so long and yet she kept on doing bad things to me. There's no use for us to continue to be together as she is not a good person.
>
> Sina: I agree with So'e to dissolve our marriage as I have sinned.
>
> Dr. Schultz: A decision will be made today for you both.[127]

Monogamy had already more or less been accepted by that time with the efforts of the missionaries, but *fa'a Sāmoa* marriages and divorces were still very present, and the removal of divorce to the German jurisdiction was

127 SMESCA, So'e v. Sina (1910).

intended to support monogamy and also curb unofficial divorces. The membership of the parties in a particular church was often noted; several belonged to the London Missionary Society church and one attempt by a Catholic to remarry after a divorce where the priest was "uneasy about marrying [them]."[128]

Divorce was granted in all of these cases except one where the parties decided to remain married, and, as according to the BGB, had some determination of fault but no explicit reasoning or decision spelled out the fault of a party. Schultz nonetheless implicitly made a determination of fault which can be inferred from the assignment and amount of the court fees. Notably, these later cases always have distinctive decisions with court fees of a minimum 40 Mark total ordered to be paid by one or both parties, and it is by the assignment of the court fees is clearly determined by an assignment of fault, usually due to adultery. In two cases, the amount is 60 Mark with the extra 20 Mark seemingly punitive due to an attempt to one in which the husband attempted to mislead and bribe the court, and another in which a woman remarried twice without divorcing.[129] In cases where the wife claimed to have left her husband due to battery, no fault was assigned to the husband. In *Lemuli v. Sia'a* (1912), the wife agreed that she had left her husband and remarried Chinese men twice after the first new husband died but said that Lemuli had left her first and beat her often when they were together.[130] Regardless, she was ordered to pay court fees of 60 M, and her husband nothing. In all cases where a party was accused of adultery, he or she never refuted the accusation, but the question of who did it first and why might be argued. However, the earlier cases include some situations where both parties are approaching the court together to request a divorce by mutual agreement and one or both have already remarried, and there are

128 Quote translated from Samoan. Four cases where parties were noted as being in the LMS church and one noted as Catholic. This does not exclude others from being church members.

129 SMESCA, Tuiuli v. Vine (1912). In this case, the husband petitioner wrote the court to ask for a divorce saying that his wife of more than 12 years wanted him to remarry so that he could have a child and enclosing 15 tala "for court costs." It later came out that the wife had no knowledge of her supposed good will. In *Lemuli v. Sia'a* (1912), the wife was apparently saddled with all court costs plus a fine, presumably because of twice remarrying (the first new husband died); SMESCA, Lemuli v. Sia'a (1912).

130 Ibid.

no accusations of adultery. In contrast, the later cases have no such situations, and the parties freely argue fault by adultery or, unsuccessfully, battery. Perhaps, as time progressed, either those who wished to continue *fa'a Sāmoa* divorce were already wise to the new requirements or else the change to divorce only by fault drummed up ill will among parties who would have otherwise parted more peacefully.

Interestingly, although the presence of children and how many children of the marriage were still living was almost always mentioned, maintenance for the children was never discussed in the Samoan cases and the requirement of court fees to be paid or awards to the innocent party was not always uniform. The amount that a husband – if found the guilty party – had to pay was sometimes not described as to whether the amount referred to court fees or an award to the wife. The standard court fees were, beginning in 1909, 40 M. If both parties were at fault, then the fees were split equally. Sometimes the amount to be paid was described as court fees, and at least once there was an award to the husband of 40 Mark to be paid by the admittedly guilty wife with no mention in the decision of court fees at all (*Isaia v. Leaumau* [1911]). Regarding maintenance, the BGB would have required a husband, if found guilty in a divorce, to pay maintenance for his children and alimony to his wife. This does not appear in the Samoan divorces. The awards to the innocent party, when specified, seem to be punitive. The lack of maintenance for children shows an assumption that the extended family would provide for the children.

4.6 Women's testimony in divorce

In the determination of fault as a condition precedent to divorce in both foreigner and native cases, husbands most often implicated fault on their wives by claims of adultery, and wives claimed adultery, abandonment, bigamy, or domestic violence. Claims of adultery often were uncontested, or witnesses made statements in favor or against the claims. The court generally accepted the witness statements at face value.[131] Although the sample size of cases is quite limited, concerning patterns can be noted: (1) the claims of white foreigner women against their husbands seemingly required less evi-

131 Except in the case of Blanche Reid.

dence, and (2) "foreigner" half-caste and Samoan women who made claims of physical abuse against their husbands often had their claims questioned or ignored. Section 1568 covering immoral behavior and gross abuse should have been a counterclaim against other implications of fault but were not taken as such.[132] In his Decennial Program, Solf wrote, "Samoans are not allowed to take oaths because they do not understand what is involved. When family matters are at stake, one may lie […]".[133] Solf surely did not have divorces in mind with this statement, but it does reflect doubt in the veracity of Samoan testimony, and the court's weighing of testimony by Samoans in divorce cases – particularly that of Samoan women – seemingly supports such doubt when determining fault. To the German judges, it was a given that, because of residual prior cultural practices, Samoans often would commit adultery or remarry without first obtaining a divorce, so testimony to that effect was not questioned. However, testimony relating to physical abuse was sometimes ignored or questioned. In the Samoan-Samoan case of *Lemuli v. Sia'a* (1912), the wife Sia'a admittedly had remarried twice, but she made counter claims against her first husband that he beat her, forcing her to flee to her family; § 1568 covering immoral behavior and "gross abuse" *(grobe Mißhandlung)* could have been grounds for divorce at fault of the husband. Certainly, counterclaims could and did sometimes allow both parties to be declared at fault.[134] Neither party presented any evidence other than their own testimony, yet Sia'a was saddled with the court fees and a punitive amount (to be paid to the court) totaling 60 M. Although in *Lemuli* the wife's remarriage before first obtaining a divorce is evidence of certain fault, in the Samoan cases where both parties remarried, there is no attempt to assign fault based on who breached the marriage first; instead, where both parties were at fault due to *adultery*, there were no punitive fees. In *Meredith* (1906), the prominent half-caste wife's testimony of abuse was questioned with a note – later scratched out – that she should go to the doctor for a statement. In contrast, in *Brown* (1909), the non-half-caste foreigner wife was not asked to present doctor's statement. No certain conclusions can be drawn from these points alone; the records are often scant and not compre-

132 Research into whether women's claims of gross abuse were successful as counterclaims of fault in courts in Germany at the same time would make an interesting comparison.

133 Knoll / Hiery (eds.) (2010) 104–105.

134 § 1574 BGB.

hensive. The question of whether the court handled the testimony of Samoan and part-Samoan women differently than that of "white" women could be a subject of further research by examining additional types of trials, as could a comparison of how the contemporary counterpart courts in Germany handled divorce petitions based on domestic violence.

4.7 A change of stance of Governor Solf in 1907?

As discussed in the previous chapter, Governor Solf's stance changed from calling a complete ban on interracial marriage "out of the question" in 1906 to including a ban as being part of his "decennial program" of colonial reform when writing the new colonial secretary Dernburg in 1907.[135] Despite Samoa having finally achieved a "favorable balance of trade" for the first time in 1906, pressure to streamline the administration and prevent costs and time associated with lengthy divorces would have been a stressful concern for Solf because that same year the parliament reduced Samoa's colonial budget by a third, and two years later the protectorate became self-funding.[136] *Suwe* (1903) and *Smalley* (1904) had led the administration on a merry chase and left significant unpaid service and court fees. The court fees for Samoan divorces probably often went unpaid as it would have been impracticable to enforce without "foreigner-sourced" wages to garnish. That following trend beginning around 1906–1907 of less or no explicit legal analysis and generally fewer details in the divorce files is probably no coincidence.[137] The costs and strain on the courts from lengthy divorces was almost certainly a factor in Solf's policy of reform, and the atmosphere back in Germany was one of imperialism with a critical eye on the colonies after the 1907 "Hottentot Elections" which saw conservative, centrist, and national liberal parties gain together heavily in the parliament, and the parliament, in turn, would review the Colonial Department's annual budget. At the same time, the thorn in Solf's side, small planter advocate Richard Deeken, returned to Samoa, and Solf probably foresaw that there could be an increase

135 Solf. BArch R 1001/5432 (1906, 1907, 1911).

136 Wareham (2002) 28; Hempenstall/Mochida (2005) 68–69. The protectorate became self-funding in 1908.

137 A notable exception is *Easthope* (1910), but as the Easthopes were a prominent family in Apia, more attention may have been necessary to handle a delicate situation.

in marriages and subsequently divorces if the small planter population increased.

Unlike other German colonies and even American Samoa, Samoa did not have special ordinances regulating divorce or child support and custody of half-caste children. In his Decennial Program, Solf once again advised that a governor of Samoa should be like a *tama*,[138] or father figure, which somewhat reflects his admiration of the British administration of colonies regarding natives; he was influenced by experiences in his youth working for the German consul in Calcutta, and openly expressed admiration of the English way of handling natives, especially during his visit to Africa.[139] His desire to tailor the laws to the situation in Samoa certainly held him back from forcing through an ordinance against mixed marriages while he was still governor.[140]

4.8 Maintenance

Whether included in the divorce decision or filed as a separate action, the determination of maintenance for ex-spouses and children was also determined by the German court for actions concerning parties with foreigner jurisdiction.[141] Notably, this meant that legally married couples would have foreigner jurisdiction, but claims for child support by Samoan women who were not legally married would not be handled by the German administration. Additionally, in the divorces where both parties were Samoan, maintenance of children or ex-spouses was rarely discussed or awarded. Thus although the divorce statutes of the BGB were applied to Samoan-only divorces, the maintenance provisions were not. This probably can be attributed to the existing custom that the *'aiga* of the ex-wife (or husband) would provide support for the children, but certainly, it can be argued that if the BGB saddled the Samoans with fault-based divorce, its provisions regarding maintenance should have also been applied. Instead, an informal mixture of German law and customary law at the judge's discretion was applied.[142]

138 Knoll / Hiery (eds.) (2010) 103.
139 Hempenstall / Mochida (2005) 34–35, 65–66; Knoll / Hiery (eds.) (2010) 414–416.
140 Knoll / Hiery (eds.) (2010) 94.
141 Here, "maintenance" refers to awards for support of children and alimony for ex-spouses.
142 SMESCA, Jamaima v. Tui (1907). See also SMESCA, Fagamita v. Lefiti (1909) and all other Samoan cases involving divorce on grounds of adultery.

Although there are no references to the BGB in the Samoan-Samoan divorce and maintenance cases, the influence of fault on the determination of maintenance points toward German divorce law rather than Samoan customary law as was recorded by German legal scholars such as Schultz and later by anthropologists such as Felix Keesing (1934). In those cases, which contain no legal references to the BGB, the court's rule was to award maintenance *fa'a' Samoa* only in *Naturalien.*[143] As Judge Imhoff wrote in *Jamaima* (1907), a case where the husband Tui was found guilty of adultery, *"[d]er Vater der Klaegerin beantragt Alimente in Geld. Es wird beschieden, dass fa'a' Samoa Unterhalt nur in Naturalien zulaessig sein. Tui will zum Unterhalt der Jemaima beisteuern. Jamaima behaelt das Kind."* In the overwhelming majority of the cases, the custody and support of children were not mentioned.

In those unions where the parties were legitimately married and at least one party had foreigner status fell under the BGB through the Protectorate Law with some redundancies and additions from ordinances in the *Samoanisches Gouvernementsblatt* (most notably in 1914 when compulsory alimony payments for illegitimate children were ordered).[144] Wives of German men, regardless of their previous citizenship or lineage, were accorded German or other European citizenship per the laws of the husband's native country, and the children born of these valid marriages the citizenship of their father per *jus sanguinis*.[145] However, had any foreigner women been married to native men, the husbands would not have been accorded the European citizenships of their wives. For purposes of this analysis, the native spouse will always be a wife and the foreigner the husband, since no legal marriages between male natives and female foreigners had been discovered at the writing of this thesis.[146] However, as married to foreigner men, legal wives would have had foreigner status in any divorce, but legal actions relating to maintenance

143 SMESCA, Jamaima v. Tui (1907).

144 Schultz, Verordnung des Gouverneurs von Samoa betreffend die Rechtsverhaeltnisse der unehelichen Mischlinge vom 20. Mai 1914, SamGbl., Bd. V, No. 16 (30. Mai 1914), S. 99–100.

145 Reichs- und Staatsangehörigkeitsgesetz, RGBl. (1913). The Prussian concept of *jus sanguinis* was adopted into the German Empire until the *Reichs- und Staatsangehörigkeitsgesetz* was passed in 1913.

146 I have discovered two references to children of foreign women and native men. One reference to a daughter of a foreign woman and a man of unnamed native descent is mentioned in the English Consul's memoir, and the illegitimate son of the Brown

for illegitimate children could be brought either on a foreigner v. foreigner or native v. foreigner basis. Enforcement, calculation, or adjustment of the maintenance of legitimate children post-divorce retained the foreign jurisdiction of the divorce despite the wife potentially losing her foreigner status after the divorce (see *Blacklock* [1904]). Requests for maintenance of illegitimate children by native women had native jurisdiction, presumably since under German law the illegitimate children belonged to her.[147] As it happened at least occasionally, some men of foreigner status (whether half-caste or otherwise) with half-caste or native former partners failed to honor support orders for their children. Support orders (referred to in German law at the time as *Alimonie*, or alimony, regardless of whether they were for the maintenance of wife or child), were ordered in either the court of the German administration or by Samoan judges. In this text, I use a more modern interpretation of the terms. "Child support" will refer to payments legally ordered for the regular upkeep of children, and "alimony" will refer only to payments for the upkeep of the ex-spouse; "maintenance" will refer to both.

In situations where orders of maintenance or property awards upon divorce were made in a native court against men with foreigner jurisdiction, the enforcement of these maintenance orders was extremely difficult for women, presumably because the *matai* did not have the authority to garnish wages from German or other foreign employers. In such situations, a half-caste woman with foreigner status could apply to the German administration to enforce the maintenance order.[148] The government was becoming increasingly restrictive on which half-castes could have foreign status, even if they had previously been entered on the half-caste register, and at least some of them *(Laurenson)* were working for foreign employers from whom wages would need to be garnished upon deliberate non-payment.

The amount of the maintenance settlement was not statutorily regulated,[149] but §§ 1578–1583 of the 1900 BGB regarding maintenance imple-

family's daughter is mentioned in a collection of oral family histories: Fairbairn-Dunlop (2005). Though very rare, it cannot be ruled out that some more unions between women with foreigner status and men with native status may have existed during the German colonial period, even possibly ones solely with church marriages which occurred prior to the protectorate period.

147 § 1708 BGB.

148 SMESCA, Mischlingswesen (1914).

149 Schmoeckel (2018) 922–923.

mented the basic concepts suggested by jurist Gottlieb Planck, with one significant exception of the differentiation between men and women in § 1578:

> Der allein für schuldig erklärte Mann hat der geschiedenen Frau den standesmäßigen Unterhalt insoweit zu gewähren, als sie ihn nicht aus den Einkünften ihres Vermögens und, sofern nach den Verhältnissen, in denen die Ehegatten gelebt haben, Erwerb durch Arbeit der Frau üblich ist, aus dem Ertrag ihrer Arbeit bestreiten kann.
>
> Die allein für schuldig erklärte Frau hat dem geschiedenen Manne den standesmäßigen Unterhalt insoweit zu gewähren, als er außer Stande ist, sich selbst zu unterhalten.

"A significant departure from Planck's concept was that in 1578 the consideration of neediness was more closely differentiated and above all formulated differently for the two sexes."[150] If no fault was found to the wife at divorce, she would not be required to work – as long as she had not previously been employed – or look to her assets to determine her maintenance need. Also new was that a divorced and "innocent" husband could be entitled to maintenance from an at-fault wife if he had the need.[151] The consideration of "need" could have shaped the idea that maintenance in Samoan divorces should be bestowed on the ex-spouse only in *Naturalien*, or "payment in kind" (here, in goods and foods rather than money). The German judges may have supposed that Samoans living in the Samoan community did not require money, despite charging court fees in Marks.

4.9 Maintenance of illegitimate children

Before 1914, the legal status and rights of illegitimate children with foreigner jurisdiction (in practice, half-caste children who were on the foreigner half-caste register) would have been governed by §§ 1705–1718 BGB.[152] Whether these provisions of the BGB were ever applied is dubious, since maintenance for children born of *fa'a Sāmoa* partnerships could only be paid in *Naturalien*.[153] A child born outside a valid marriage would be considered,

150 Schmoeckel (2018) 905.
151 § 1578 BGB.
152 §§ 1699–1718 BGB.
153 SMESCA, Jamaima v. Tui (1907).

for legal purposes, the same as a legitimate child of her mother's family. The child's mother was responsible for his or her care (§ 1707) or, in absence of the mother, his or her direct maternal family line (§ 1601). The father was required to pay financial support to the mother for the expenses of the child according to the mother's status *(Lebensstellung)* (§ 1708); this maintenance included all the necessities of life as well as the costs of education and training for a vocation until the age of 17.

Since a native mother was not able to bring a claim of child support to the German court for her illegitimate child – since an illegitimate child has the citizenship of his or her mother – only half-caste mothers registered on the half-caste list as *foreigners* could bring claims related to child support for their illegitimate children with foreigner fathers (see also *Reid* below). One can see a disconnect between the theory and practice, for certainly, a significant number of illegitimate children of native mothers and foreigner fathers existed, but enforcement of a native child support order against a foreigner would have been difficult or perhaps impossible.

Under the BGB, a father could legitimize children born outside of marriage (§§ 1719–1740), but the ordinances published in the *Samoanisches Gouvernementsblatt* superseded those of the BGB in this case by taking the *choice* of legitimization out of the father's authority and instead placed it under the authority of the state:

> Half-castes born of a legal marriage between a foreign man and a native woman receive the legal status of the father. In the case of half-castes who are born of an illegitimate relationship between a foreign man and a native woman, the Imperial Governor or the Imperial Judge is to decide from case to case, in view of their way of life, whether they are to be regarded legally as foreigners or as natives.[154]

Several ordinances in the *Gouvernementsblatt* supported and clarified provisions in the BGB. In 1900, the *Gouvernementsblatt* reiterated that *Mischlinge* born to a legal marriage of a foreign man and native woman have the legal status of the father.[155] The status of *Mischlinge* born outside of legal marriage to a native woman and foreign man were to be decided by the governor or judges on a case-by-case basis according to their way of life. Details of the legitimacy of half-castes in relation to their citizenship status, including the provisions of the BGB and the issuance and reception to the relevant guber-

154 Solf, Bekanntmachung vom 1. Juli 1900, SamGBl., Bd. III, No. 3 (9. August 1900), S. 13.
155 Ibid.

natorial ordinances, were discussed in this thesis. The 1900 ordinance was a concession in light of the situation in Samoa in 1900; had the BGB been applied in its purest form, it would have caused the new administration much grief by disrupting the existing status quo. Families of interethnic heritage had existed for several generations, many of whom were married *fa'a Samoa* and to Samoans of high rank. Several members of the administration itself were married to native or half-caste women. Moreover, many couples existed in 1900 who had putative marriages; they believed their marriages to be valid because they were married in a church (English law, for example, would not have required an additional civil marriage as in German law), access to consular marriage in the Tripartite Period was impractical, or documents or registries were lost. The aforementioned 1900 ordinance thus allowed a recourse for the children, adult or minor, of such couples while still giving the administration the reins on restricting which of these families' children would have the lifestyle deemed to be "foreign" enough – the interpretation of the way of life *(Lebensführung)* could and did change over the subsequent years. The 1900 ordinance and subsequent 1903 procedural ordinance resulted in the creation of the half-caste register. In January 1912, in addition to the ban on mixed marriages, Wilhelm Solf as Secretary of the Colonial Office issued an ordinance decreeing that all children born after the marriage ban would be considered illegitimate and only those children previously entered on the half-caste register would be entitled to child support.

4.10 Maintenance after the 1912 *Mischehenverbot*

The question of whether the half-caste mother seeking maintenance for herself and her children had jurisdiction to pursue maintenance among native judges or in the German administrative court became even more integral to the administration after the *Mischehenverbot*. The number of Samoan or half-caste women seeking maintenance for the children they had with foreign fathers would have increased after the *Mischehenverbot* since, especially if Solf succeeded in discouraging *Kleinsiedler*, the number of German women in Samoa was not expected to come near to leveling with that of German men and the foreign men living in Samoa would have continued to have relationships with local women even if they were not allowed to legally marry them. Despite the short time that followed between

the *Mischehenverbot* and the beginning of the British occupation of Samoa at the advent of WWI, the administration had already prepared a file called *Mischlingswesen* (1914) to set precedence in such situations.[156] The file was comprised solely of documents relating to a maintenance petition from a half-caste woman which broke down details of her life and history to form a sort of "test" of whether a half-caste – at least in situations related to maintenance, but possibly with a wider application – could be considered a foreigner based on his or her "lifestyle" *(Lebensführung)* was predominantly Samoan or European. A mother who was a "foreigner" and thus had, for legal purposes, the lifestyle of a foreigner would receive more financial support than a native woman. The administration took into consideration that a European lifestyle was more expensive and even, in some cases, that a native mother received food and shelter support from her Samoan family.[157] Thus if she were a half-caste, her jurisdictional classification had a direct and, in most cases, significant effect on how much financial support she would receive for her children. When a Samoan or half-caste woman with native status was abandoned and left to provide for her children, she would not have been able to file for maintenance in the German court because neither she nor her children would have had jurisdiction there. Effectively, a support order from a Samoan judge would have had no practical means of enforceability on a foreigner who refused to pay. One exception may have been if the illegitimate children of the mother filing for maintenance were on the half-caste register, but such an instance has not been revealed in current research.

At the end of the colonial period, Schultz, having succeeded Solf as governor, published an ordinance in the *Samoanisches Gouvernementsblatt* on May 30, 1914, redacting part of the previous ordinance by requiring compulsory child support payments for all illegitimate children.[158] Although Schultz had not wished to make "special laws" in Samoa, he ended up having to do so. The ordinance would have buffered the effects of the

156 ANZ, Verwaltungsbehörde des Deutschen Kaiserreichs (1913–1914), "Mischlingswesen" (1914).

157 Ibid.

158 Schultz, Verordnung des Gouverneurs von Samoa betreffend die Rechtsverhaeltnisse der unehelichen Mischlinge vom 30. Mai 1914, SamGbl., Bd. V, No. 16 (30. Mai 1914), S. 99–100.

1912 ordinance prohibiting further mixed marriages and prevented an increase in the number of women appealing to the court for non-payment of maintenance. Other scholars have argued that this ordinance may have been intended to protect children (Wareham) or to discourage interethnic relationships (Shankman).[159] The requirement of child support payments by fathers does not have an effect of reducing the number of illegitimate children born where modern methods of birth control are not present, and therefore this author does not believe that foreign men in Samoa would have remained abstinent among a dearth of marriageable foreign women, nor that Schultz would have believed that it would have had that effect. However, it may have been meant to deter the small settlers from moving to Samoa – at least, not without German wives. It was also meant to prevent tragedies of which Schultz was aware, such as the abandoned children of Blanche Reid, described later in this chapter, who were left by their *Kleinsiedler* father without support. Schultz may have agreed with Solf's view of the small settlers being "dumb and exploitative" and seeing Samoans as only potential objects of exploitation.[160] The ordinance was indeed "special," as it had some differences from Book Four, Title VI of the BGB on illegitimate children. For example, the support obligation in Samoa was limited to 14 years rather than 16.[161] However, Schultz makes it a point in his ordinance that § 1717 BGB applies: cohabitation with the mother within 180 to 302 days before the birth implicates paternity, and that injunctions for child support can be made before the birth and a payment must be made before the birth. In a country where many foreign men still entered *fa'a Sāmoa* unions with Samoan women and infant mortality was high, this was a huge gain for Samoan women, especially for those who had limited resources. Finally, the ordinance granted the same for illegitimate children of foreigners as for legitimate children: payment of cash support, by choice of monthly payments or a lump sum. The specific mention of a lump sum payment would have prevented excuses by fathers relocating outside Samoa.

Since Schultz's ordinance was only in effect for four months before New Zealand troops invaded and occupied Samoa, how the ordinance would have played out cannot be known. The file *Mischlingswesen* concerning

159 Shankman (1989, 2001); Wareham (2002) 39.
160 Knoll/Hiery (eds.) (2010) 93–94.
161 § 1708 BGB.

Blanche Reid and her appeal for child support from small settler Georg Haensell (described below) most certainly influenced Schultz in his drafting of the ordinance.

4.11 Samoan divorce cases (a selection)

Fa'ao'o v. Laurenson (1904–1907)

Laurenson was to be decided by the young judge Ludwig Philipp Imhoff who had just finished his doctor of law four years prior.[162] In *Laurenson*, the couple had, before the petition was filed in the German court, obtained a divorce from Samoan Chief Justice Tamasese. In the divorce decree to which both parties agreed and signed in January 1904, wife Fa'ao'o [Vaiese] should have received 80 Mark or $ 20 monthly from husband William "Uele" Laurenson for the support of her and her children. The Samoan decision by Justice Tamasese, which is included in the file in both Samoan and English translation, had granted the divorce by mutual agreement of the parties, apparently applying Samoan customary law since mutual agreement was not a permissible ground for divorce under the BGB, and because husband Uele Laurenson had another wife while still married to Fa'ao'o. After Fa'ao'o had not received the agreed payments for nine months nor the transfer (in the name of their minor son) of a small one-and-a-half acre piece of land in Vaimoso,[163] she filed for a *Sühneversuch* in December 1905 in the German court because "I […] nevertheless want to first try by expedient attempt to motivate the defendant to comply with his promises."

The case file, which I obtained from the archives in Samoa, is incomplete and contains written letters and notes written by the court judges and officials related to a *Sühneversuch* or enforcement of an alimony decree. Fa'ao'o was a Samoan woman who had been married to William Laurenson, a "half-caste" carpenter. William was registered as a "foreigner" on the half-

162 Imhoff (1951).

163 Decision of Judge Tamasese in translation within the case file states that the land was to be used for the residence of the wife and children. This part is only found in the original Samoan text, not in the translation (both in the case file). Also, the divorce occurred before the November 1907 ordinance which prohibited transfer of land from natives to foreigners without the consent of the governor, and thus this would not have been a relevant issue here.

caste list and born to James Laurenson, formerly of the Shetland Islands, and Mary Taitua Marshall, a "half-caste."[164] Petitioner Fa'ao'o was described as a Samoan woman. The couple was married at the Mormon Mission and lived together for about eight years. At their divorce in 1904, Fa'ao'o was awarded alimony and support for the couple's two living children, Alice and William. However, Laurenson had not paid anything to Fa'ao'o. The problem in their case was one of jurisdiction. The judge in the Samoan divorce of Fa'ao'o and Laurenson was Tamasese (probably Tupua Tamasese Lealofi I), a Samoan high chief. At the end of the proceedings, the parties signed a contract that required Laurenson to pay his ex-wife 80 Marks per month.[165] In legal matters involving a "foreigner" or European and a Samoan, the jurisdiction would have gone to the German court. Furthermore, the German court had jurisdiction over all divorces as an exception. Fa'ao'o repeatedly files for enforcement of the alimony award in the German court starting in December 1905. After Laurenson still had not paid, the court attempts to involve his employer, the Upolu Cacao Company, to have the amount taken directly from his wages. Finally, two years later, the matter is taken to Governor Solf himself.

Solf examined the documents and makes the district judge aware that the matter between Fa'ao'o and Laurenson should be considered a *native* legal matter and that the decision should be left to the governor. Then, he invited the couple to an arbitrative meeting with a translator present. The next note from Solf in the file describes the results of the meeting. He wrote,

> [t]he hearing from […] Tamasese should have absolutely no worth. Tamasese was never a high court judge and never had the right to preside over legal matters and absolutely not divorces. Not only that, but the alimony of 80 Marks per month is unreasonably high. Fa'ao'o should be happy if she gets 20 Marks from Laurenson. Both parties were in agreement.

Although Solf did not mention § 1579 regarding the limitation of maintenance obligation, under it the former spouse's maintenance payment obligation should have been capped at *"von den zu seinem Unterhalte verfügbaren*

164 Gott (2019). Mary Marshall's father, Herry Marshall, was born in England.

165 Translation from Samoan: "The marriage of Uele, the half-caste of Vaimoso Tuamasaga on the island of Upolu, and Fa'ao'o, a lady from Salelavalu Iva Savai'i has been annulled after they have come before me and both consented to annul their marriage."

Einkünften zwei Drittheile oder, wenn diese zu seinem nothdürftigen Unterhalte nicht ausreichen, so viel zurückzubehalten, als zu dessen Bestreitung erforderlich ist."

Despite the decision of Solf, Laurenson still did not pay Fa'ao'o. She wrote a plaintive appeal to the court, stating that Laurenson's employer, Mr. Norman, was not upholding his agreement to garnish his wages and send the support amount to the court. In her letter addressed directly to Governor Solf, she wrote:

> Therefore as I want to put an end to this matter, I should also lodge a complaint against Mr. Norman, but Misi Norman understands the law, and he's rich; but I am a Samoan, I don't know the laws and I am poor. That's why I'm begging your Worship, the Father of Samoa, to give me a lawyer or a representative to stand for me against Misi Norman.

A few months later, Laurenson hired a lawyer to attempt to be alleviated of his obligations in the agreement based on a work injury. Unfortunately, the file ended at this point with no further documentation of how and whether the matter was ultimately settled.

In the case of Laurenson, two motifs stand out: the political power struggle between Solf and Tamasese and the powerlessness of the German courts to adequately enforce justice for Samoan women who did not have the means for a long-term pursuit of enforcing a maintenance order. Noting that *Laurenson* occurred between 1905–1907, the timing of these proceedings and the written rant of Solf against Tupua Tamasese's assertion of jurisdiction over the divorce was not coincidental. Tamasese had narrowly missed being relieved of his position along with most others in the *Ta'imua* after the "'Oloa and Pule" incident during which some *matai* tried to establish their own Samoan trading company *('Oloa)* during Solf's absence in New Zealand (1905).[166] The ringleaders were imprisoned by Schultz, as acting governor, and Schultz's denial of high chief Mata'afa's request to release them was viewed as an attack on Samoan authority *(Pule)* which caused an uprising of which Tamasese was a part.[167] Undoubtedly, Solf was furious at discovering this evidence of Tamasese's assertion of authority in an area of German authority and interpreted the high maintenance award as being politically

166 Under the German government, the Ta'imua was an elite group of Samoan leaders selected to represent the primary *'aiga* (clans). Meleisea (1987b) 50, 80.

167 Meleisea (1987b) 78–80.

motivated. The German courts had assumed jurisdiction over all divorces by 1904, including those between two Samoans even if Laurenson had been categorized as such. Solf nevertheless describes the divorce as a "native legal matter" and as such should be decided by the governor, thus reinforcing that he, not the *mālō*, had the power to decide even matters between natives.[168] This statement also makes Laurenson's legal status as foreigner or native irrelevant and implies that the governor's authority to determine the personal jurisdiction of a half-caste would supersede that of the half-caste register or the *mālō*.

Tautau v. Hannemann (1904)

The Samoan woman Tautau sought child support for her one-month-old daughter whose father was sales clerk "G. Hannemann," probably Gustav Tafu Hannemann (b. 1881), the son of Gustaf Hermann Albert Hannemann born in Pomerania (1852) and his Samoan wife Maugatula Fa'ata'alili.[169] Since Hannemann was the legitimate child of his parents, he would have been considered German and thus foreigner for jurisdiction purposes. However, the file is brief. An attached letter written in Samoan and notes indicate that the parties agreed through Tautau's father on a support obligation. A decision by Krauss scribbled in the left margin of the last page sets the support: "The disputed amount is settled at 600 Marks, using the 10th monthly alimony payment as a basis."[170] Although the file would be predictably brief in this situation because the parties had agreed, the notes and writing of the decision are scribbled on the side, showing a trend of more orderly files where both parties were well-known figures in the community; one may assume that the court did not fear further legal entanglement from the petitioner and her family, neither of whom were listed as having titles and were from a small village rather than Apia.

168 ANZ, Fa'ao'o v. Laurenson (1907): "*Es besteht zwischen dem Herrn Bezirksrichter und mir Einverständnis, daß der Streit zwischen Fa'ao'o und Laurenson als Eingeborenen-Sache zu behandeln ist und daß die Entscheidung dem Gouverneur überlassen werde.*"

169 ANZ, Tautau v. Hannemann (1904).

170 "*Der Wert des Streitgegenstandes wird auf 600 M festgesetzt, bei Zugrundelegung von 10ten monatlichen Alimenten.*"

4.12 The case of Blanche Reid and the "Lifestyle Test"

Perhaps the most documented example of the interpretation of the "way of life" factor was the file *Mischlingswesen* beginning in 1913 which concerned the case of the alimony and custody claim of Blanche Reid.[171] The 1913–1914 file *Mischlingswesen* would have set a dismal precedent for half-caste women with children from foreign fathers and severely disadvantaged those with limited financial means or less influential Samoan status, and it may have been the impetus behind Schultz's 1914 ordinance on child support.[172] Reid was born in 1889 outside of marriage to a Samoan woman named Sealeï [Sialie] and an Irish-born former captain in the English Royal Navy named Edgar Reid.[173] Edgar Reid personally requested that his daughter Blanche and other children be entered on the list of half-castes to be treated as foreigners (the so-called *Mischlingsliste*) per § 1 of the ordinance of March 3, 1903.[174] Reid had applied to the administration seeking to enforce an order for alimony (i. e., child support) and to be declared the legal guardian of her children with German planter Georg Theodor Haensell. To press her claim under German law, Blanche Reid asserted in her testimony that she had the jurisdiction of a foreigner. Reid had lived with the planter Georg Theodor Haensell[175] for seven years on his plantation and the couple had together several children.[176]

171 The Blanche Reid here should not be confused with another daughter of Edgar Reid born earlier (with a different mother) who was also named Blanche after her paternal aunt but died young.

172 SMESCA, Mischlingswesen (1913), concerning Blanche Reid, Samoa Ministry of Education, Sports and Culture Archives, IDO 5 F5. The title of the file is *Mischlingswesen* and the marked number on the front is 90/74. This file should not be confused with the 1914 file of the same title concerning Alfred Schwenke.

173 The Official Non-Conformist and Non-Parochial BMDs Service, RG32/02 BMD (1889), https://bmdregisters.co.uk/; Familysearch.org: Pa'ahana. His former occupation was in the navy. According to the same source, Edgar Reid was married to a Samoan woman, but Blanche's mother was not his wife. The Blanche mentioned in the family history is not the same Blanche Reid whom Edgar Reid registers in the "half-caste registry" and to whom Georg Haensell was married.

174 Liste der den Fremden gleichgeachteten Mischlinge (half-castes), SamGBl., Bd. III, No. 23 (23. Mai 1903), 73–74.

175 Jørgensen (2016), http://www.akj-cbj.dk/hans/f1250.htm. Georg Theodor Haensell, b. 1881, d. after 1921.

176 SMESCA, Mischlingswesen (1913), concerning Blanche Reid. The number of children of Reid and Haensell is unclear. The file *Mischlingswesen* contains two accounts, one of which

The circumstances surrounding petitions in matters of family law cannot be ensured not to sway the judge to stray from a purely legal consideration of a case, but nevertheless one may assume that this particular case was assigned to a separate file titled *Mischlingswesen* because it was intended to be used as a benchmark for the anticipated future similar legal claims which never came due to Germany's abandoning Samoa at the beginning of World War I. Not mentioned in the file are other potentially relevant facts which would have been known to then-governor Schultz concerning Reid's former partner. Georg Theodor Haensell and his brother Wilhelm Haensell were owners of a large plantation and active on the committee for defense against the rhino beetle (an invasive and destructive species damaging to plantations) and members of the Apia Planter's Association. Georg's brother Wilhelm was still in the administration at the time of the file. Georg Haensell was born in Riga to German parents.[177] A so-called *Kleinsiedler* living in or near Aleisa in Upolu, during the contentions between anti-*Kleinsiedler* Governor Solf and settler proponent Richard Deeken, Haensell, a planter himself, had been listed by Solf in a letter to the Colonial Office as a supporter of Deeken who was either mentally weakened by life in the tropics or a frequent drinker.[178] Georg left Samoa in August 1913, apparently leaving his Samoan wife and children without arranging for payment of support. Shortly thereafter, he met and married a Danish woman in May 1914.[179] Thus, Haensell was still alive at the time Reid filed her petition, but, like Captain Suwe of the aforementioned case, attempting to serve process on

states that the couple had six children with five living, and another which states the couple had three children. Another genealogical source mentions the children being Arnold, Otto, and twins Tile and Line (https://familysearch.org/photos/artifacts/9139966).

177 Jørgensen (2014): Birthdate March 26, 1881. Parents were Adolf Gottfried Haensell, a teacher born in Riga, and Johanna Julie Haensell nee Seeck born in Jena, Germany. Despite Adolf Haensell's birth in Riga, he was a German citizen by *jus sanguinis*. Attendant to the wedding in Denmark was the lawyer Otto Friedrich Haensell from Jena, a family member on the paternal side.

178 Wareham (2002) 83–84.

179 SMESCA, Mischlingswesen (1913), concerning Blanche Reid. Whether Haensell and Reid were married *fa'a Samoa* or had been married in the Catholic Church in unclear. Family historians of the Reid family state that they were indeed married. The file does not specify. Letters in the file in support of Reid from the Catholic priest may suggest they had had a church wedding. The file does not use the word "wife," however, and she retains the surname "Reid." Ancestry.de: Sterberegister der Berliner Standesämter 1874–1955; Jørgensen (2014).

him would have been difficult, as he had been traveling to Angola, Denmark, and then shortly afterward to Java where his son with his new wife was born in 1915.[180] Schultz and all parties involved would have been aware of the circumstances and departure of Haensell when the testimony and analysis in the file were written, though the information concerning Haensell's departure was unmentioned. Whether Reid or Schultz was aware that Haensell would not return is unknown. A narrow application of the *Reid* decision would have affected many half-caste mothers, and its likely intended wider application would have used the factors of "lifestyle" to determine, with a great burden of proof on the half-caste, whether he or she had European jurisdiction regardless of prior registration on the half-caste list. The file has illegible and faded pages, is fragmented, and the decision was delayed because of Reid's severe illness and never resolved either because of the end of the German protectorate in 1914 or because of her early death.[181]

In her petition, which comprises the *Mischlingswesen* file, Reid asserted the *Gerichtsstand* of a "non-native." She was attempting in 1913 to sue in the German court for spousal and child support (as an *Alimentationsanklage*). Reid had been previously awarded child support in the amount of 100 Mark per month,[182] but Haensell had not made any payments. To have standing in a German court for purposes of child support for illegitimate children, she needed to be on the official half-caste register. The file on her case contains correspondence between officials regarding her right to be on the list. Ultimately, her father's registry of her on the list was insufficient. Governor Schultz considered her lifestyle as a condition necessary (in addition to being on the half-caste list) to have jurisdiction for her maintenance petition.

The factors which were considered to determine Reid's "way of life" *(Lebensführung)* are the following, in no particular order:

1. Whether the person attended a *papālagi [pālagi]* ("foreigner") school

2. Whether the person can speak a European language (here the emphasis is on speaking; understanding is insufficient) and write his or her name

180 Ancestry.de: Dänemark, Kirchenregister, 1812–1924; Ancestry.de: Sterberegister der Berliner Standesämter 1874–1955, 1874–1986.

181 Familysearch.org: Pa'ahana.

182 When this was done is not mentioned in the file.

3. What kind of clothing the person wears (i. e., Samoan or European style dress)

4. Whether the person currently resides in a Samoan or European style house

5. Whether the person currently eats Samoan or European style food

Reid gave a statement to the district officer on November 6, 1913, to which Governor Schultz referred in his notes on the above factors, which were those he believed to be important to determine whether one's lifestyle was sufficiently "foreign" (European or American) to characterize a party as "foreign" or "Samoan." In her file, the district manager who presumably interviewed her wrote that Reid had attended a Samoan school rather than a European one, could understand English but not speak it, could not write, lived with her maternal Samoan family in a Samoan style house, purchased food which she shared with her maternal family, and wore Samoan clothes sometimes although she had received "enough" European clothes from Haensell. The notes were immediately followed up by a recommendation from the same district manager that not only should Reid be struck from the half-caste list, but the maintenance order for the "girl's" children should be reconsidered.[183]

Interestingly, official statements from Reid's acquaintances attesting to her European dress and general good standing were recorded by the police only a few days after her initial petition and *before* her interview with the district manager. The fact that the brief statements specifically mention her European dress suggests that the criteria of European clothing was already known to be a factor in the assessment. As Reid's petition was presented before the child support ordinance, an enforcement of the maintenance order by the German court would have been effectively the only possibility to enforce Georg Haensell to pay because a support order from a Samoan judge would not have been enforceable against the absent Haensell. Reid would have known that Haensell had moved away from Samoa, but she may not have known that he was not in Germany or Riga. She may have hoped

183 According to the file, Reid could understand some English but not speak it. The casual reference to her as a *Mädchen* (girl) in contrast to the foreign *Frauen* (women) of other cases involving young European women summarizes the attitude of the administration toward Reid and, perhaps, hearkens to the longstanding objectification of the exotic.

to collect maintenance from possible assets of Georg's held by his brother Wilhelm, who was still in Samoa.

Four letters in support of Reid had been submitted to the court, one of which was sent by the Catholic Mission and recommended that the administration try to prevent a divorce.[184] Therefore, it may be possible that Reid and Haensell were married in a church without civil marriage, but even if so, the marriage would have been annulled under German law by 1913 due to the *Mischehenverbot*.[185] Another consideration was whether the striking of Reid from the list would "endanger" the child support of Reid and Haensell's children, which has been determined based on "*papālagi* law." At the time, Reid had an order to receive 100 Mark per month in support ("alimony")[186] for the children, but Haensell had made no payments.[187] The brief reply within the file from former high court judge Governor Schultz apparently ignored the district officer's question as to the jurisdiction of the child support claim and confirmed the striking of Reid from the list. Despite that no letters in the file speak against Reid's classification as a foreigner, she was struck from the list of half-castes considered foreigners. One letter specifically stated that Reid was "clean and clothed in a European fashion" and that "striking her from the list would be a great hardship for her." Indeed, as the district officer mentioned as a point against foreign jurisdiction, Reid shared food and lived with maternal Samoan relatives who live in the Samoan style. That Reid, due to the situation which prompted her petition, presumably had little choice of what manner of food she consumed, or in what kind of house she lived, unfortunately had no bearing on the analysis.

The education of the children in Samoa was not only of vital importance in the determination of *Lebensführung*, but also a topic of prime concern to the colonial administration. The Christian missions, particularly the Catho-

184 SMESCA, Mischlingswesen (1913).

185 The letter from the Catholic Mission in the file *Mischlingswesen* suggests that Reid and Haensell may have been married in the church or in the Samoan fashion. That she retained her maiden name suggests that she probably had never been married under German law (i. e., no German civil marriage). Regardless, the administration refers to neither marriage nor divorce in the file except for in reply to the letter from the Catholic Mission.

186 Here, "alimony" refers to child support rather than solely to financial support of an ex-spouse.

187 SMESCA, Mischlingswesen (1913).

lics and London Missionary Society, had established mission schools in the islands beginning in the mid-1800s and by 1911 many native children of school age attended mission schools. The European manner of education through schools teaching reading and writing was seen as belonging primarily to the superior "intellectual human" rather than to the inferior "emotional human." The requirement that a half-caste speak a European language and be able to write his or her name was intended from the beginning to separate natives from non-natives. Under the German administration were two general types of schools: the German schools and the parochial schools. The German schools were the German school in Apia (Savalalo harbor), founded privately in 1888, and the government school for natives in Apia (Malifa) was established for boys only in 1908.[188] Parochial schools included those run by the Marists, the London Missionary Society, and the Australian Methodists.[189] Promotion of the German language was of primary concern to the German administration because it was deemed essential to establishing a long-term German colony in islands that had only recently experienced an escalated civil war fueled by the competing interests of three Western nations. In other words, the German administration and German Colonial Association *(Deutsche Kolonialgesellschaft)* wanted to diminish the influence of their former two English-speaking competitors by promoting German culture through language instruction. Even the so-called German school had, at the time of its establishment, English as its primary language for school instruction, and German continued to play a subdued role well afterward. As Hiery wrote, *"Deutsch war und blieb nur eine Fremdsprache"*.[190]

Despite being called a "government school for Europeans," the German school in Apia was in practice a school primarily for half-caste children with German fathers and Samoan mothers founded by an association of German settlers and later run by the colonial administration.[191] The designation as a

188 Hiery (2002) 234. The government school for natives had much older pupils; for example, in 1912 all 60 pupils were over 17 years old.

189 Hiery (2002) 234.

190 Hiery (2002) 235. In reference to the German school.

191 Hiery (2002) 232. Hiery cites that only 7 of 62 pupils were Europeans in 1902–1903, and only 14 of 141 in 1910–1911. The school also included pupils with other paternal backgrounds, such as from British, American, or Scandinavian. The school was funded in part by the Foreign Office *(Auswärtiges Amt)* and the German Colonial Association *(Deutsche Kolonialgesellschaft)*.

"school for Europeans" was by no stretch of the definition intended to denote any geographical origin or racial restrictions, as children of Americans (including the son of an African-American and a Samoan) and a Swahili boy brought to Samoa by Solf prior to his assignment as governor attended the German school.[192] Since the start of the German administration, the number of pupils approximately had doubled by 1912.[193] Nevertheless, many graduates of the first complete graduating class in 1914 became government workers and it was evident that the German school had become like a finishing school for recruiting government workers.

The German Governor Solf ordered that all mission schools must have Samoan as the primary language of instruction beginning on July 1, 1901, although most native schools already used Samoan as their primary language of instruction.[194] The idea was to preserve the native culture and to inhibit further English influence on the Samoan culture. At the same time, large amounts of money were being pumped into the mission schools for the "furtherance of the German language."[195] When the mission schools were reviewed by administrative officials, most were found to lack adequate and capable instruction in writing and foreign languages; many pupils could not write sufficiently.[196] In particular, the German language instruction was very poor and often both teachers and students spoke the language with gross inaccuracies. Almost all of the teachers were native themselves.[197] Core subjects such as languages and religion were taught to boys and girls together where schools included both sexes.

The literacy and foreign language requirements of the *Lebensführung* test were, as an end result, stacked against most half-castes. Half-caste Samoan women born outside of marriage were particularly at a disadvantage since they were often – as in the case of Blanche Reid – raised in the home of their

192 Hiery (2002) 232. Some Samoan children also attended the German school prior to the establishment of a government Samoan school.

193 Hiery (2002) 232. The number of pupils fluctuated throughout the year, but 1901/1902 saw 64 pupils at the end of the year, and by 1911/1912 the end count was 111.

194 Hiery (2002) 204–208.

195 Hiery (2002) 204.

196 Ibid. Among the foreign language instruction offered in mission schools were most commonly English and German, but also French. Basic Latin instruction was offered in the Catholic mission schools.

197 Hiery (2002) 209.

Samoan maternal relatives and therefore would have had less exposure to a European language at home. Also, the majority of the pupils in the native parochial schools were male (approximately 60 % in parochial schools, 100 % in the native government school[198]), and writing and language instruction were poor in parochial schools. Not only did the mission schools prefer male pupils, but the Catholic Marist elementary schools and occupations schools had only male pupils.[199] In the case of Blanche Reid, her being Catholic and female therefore would have made it difficult to attend an elementary school. There also were often reservations among Samoans against sending girls to schools permeated by foreign cultures,[200] and some parochial schools for girls only took daughters of pastors and chiefs.[201] Finally, if the pupil – male or female – lived too far from the Apia area, he or she could not attend the German school even if entered on the half-caste list or counted as a "foreigner" due to being born to legally married parents before 1912.[202] Therefore, a half-caste living far from the Apia area would already be likely to fail points one and two of the test simply by virtue of location. This effectively would have limited the *Lebensführung* test to admitting half-caste children of government officials or other foreigners wealthy enough to send their children away from home to the German school.

In the *Mischlingswesen* file's *Lebensführung* test, the administrative officer writes that "[Reid] has herself never been to a *papalagi* school." He also later refers to the support order under *papālagi* law. Though it likely was used offhandedly by the official, the word *papālagi* is telling. The officer does not refer to a German school or German law, nor *Fremde*; this word choice reflects the growing dichotomy within the administration's policy; a dichotomy of "foreigners" (hence *papālagi*, sometimes spelled *pālagi*, which had its origins from early contact with Europeans) and non-foreigners. The word meaning someone who is born an outsider has racial connotations and its use excludes application of German law to those born of at least one Samoan parent. If the basis of this word use were solely cultural and devoid of racist

198 The government school for natives is not relevant to the *Lebensführung* test because it was for sons of *matai* and other high ranking Samoan men.

199 Hiery (2002) 212–214. At least one parochial school for girls existed.

200 Hiery (2002) 210.

201 Hiery (2002) 233. Such as the *Höhere Mädchenschule für Pastoren- und Häuptlingstöchter der LMS in Papauta*.

202 Hiery (2002) 210.

or elitist influences, then how could all "foreigners" be grouped under a word which holds a connotation of excluding "half-castes" when speaking of law (particularly when that law *can* be described under either a national or colonial description) or when speaking of a school which is named "German school?" Indeed, the attendance of the German school dropped significantly between 1911/1912 (ca. 111–124) and the 1912/1913 school year (ca. 80–89).[203] The change in attendance may have been due to the *Mischehenverbot*, but further research would be necessary to determine whether that was the cause.

As to points 3 to 5 in the *Lebensführung* test, the *Mischlingswesen* file only suggests what criteria may be used to evaluate dress, housing, and food. The officer makes a point of mentioning that Reid lives with maternal relatives in a Samoan house *(Samoahaus)*, that she receives Samoan food from those relatives, and that she sometimes buys and shares food with her relatives. These points certainly point to a determination based on cultural practices, particularly when mentioning the sharing of food which was typical within Samoan extended families.

The right to remain on the half-caste register had therefore been reduced to factors which one may argue are not only cultural but also socio-economic. Under the Lifestyle Test alone and before the 1914 ordinance concerning child support, Samoan women without finances or a strong and influential family network would have been at a severe disadvantage to obtain *any* support for illegitimate children from foreigner fathers who chose to skirt their obligations. Not only was this a moral question, as the presence of a copy of the letter in the file favoring of recognizing Samoan-European marriages as legal from French priest Pierre-Jean Broyer for moral reasons indicates, but it was also a question of *Deutschtum*. Was considering native women and half-caste children as expendable, as Solf believed the small settlers generally did, a measure of German identity by contrasting oneself against the "native," or was it a better measure of German identity to promote values codified in the BGB of taking responsibility for one's illegitimate children? The question was answered with Schultz's decision to ignore the recommendations of the district manager and instead issued an ordinance concerning the maintenance of illegitimate children that was very much in line with the policy behind the paternal responsibilities for illegitimate children in the family

203 Hiery (2002) 232.

law of the BGB. When it came to the question of whether Germans should care for their illegitimate children, the clothing, language, education, and food of the mother were of no consequence to Schultz. The father's obligation as a German trumped any matter of the mother's jurisdiction and lifestyle, and the requirement to provide support was very much in line with the paternalistic policy set in place by Solf.

4.13 Why the "Lifestyle Test"?

The protectorate in Samoa was outgrowing the jurisdictional distinctions of "foreigner" and "native." Despite Solf's best efforts, the *Kleinsiedler* were there to stay; the other German colonies of German South West Africa and German East Africa both had already introduced settler self-government by 1910, and a proposal for a *Kommune* sent in 1911 was being considered by the administration in Samoa.[204] The need for a decision on how to reassess legal rights was looming, since it would determine whether non-German foreigners, half-castes with foreign status, or Chinese who were also categorized as "foreigners" would have influenced the new government. The Lifestyle Test was thus the best solution to place German interests forefront to preserving a German cultural identity in Samoa.

On the surface, its checklist of lifestyle analysis based on language, food, clothing, literacy, and social associations would have seemed to be a regulated process for determining if a person was more culturally Samoan or foreign. However, as can be seen in *Reid*, it also allowed room for subjective decision-making because it looked for a "propensity" of practice in one direction or another. In cases of maintenance claims by women, the Lifestyle Test was ludicrously impractical because the claimant was not informed of the factors under which she was scrutinized and therefore had no opportunity to defend her actions. For example, in *Reid*, the fact that the petitioner had been at the time living and eating with her Samoan family was held against her despite that in practice she would have had no other possibilities to provide for herself and her children. Samoan women petitioning for maintenance would have been reliant on Samoan familial support rather than any "foreigner" support system since small settlers such as Haensell

204 Wareham (2002) 65–68, citing "Schultz to Reichskolonialamt," letter from January 9, 1912.

typically came without extended family. Women, both in Germany and in foreigner society in Samoa, would have had difficulty making ends meet without a family network.

The factors in the analysis concerning education, language, and literacy appear to be more practical at determining cultural identity but are also male-preferential. In the early 20th century, Germany had a high rate of literacy, and the literacy rate in Samoa was also quite high due to the presence of both mission and state schools.[205] In Samoa, however, the language of instruction was usually English or Samoan;[206] despite the government's efforts to promote German, this was still the situation in the later period of the protectorate because most of the school staff were non-German. Compulsory school attendance was impossible to enforce in Samoa, and significantly more boys attended parochial schools than girls.[207] The factor for literacy thus seems reasonable as a factor of foreign lifestyle for males but less reasonable for females who were born before the establishment of the state schools. The factor requiring knowledge of a European language would have been more practical for half-caste women living in or near Apia where they would be able to use and practice it. Again, with the lower proportions of girls attending mission schools and fewer opportunities to practice using a European language outside of Apia, the factor of speaking a European language seems to be in favor of men. In *Reid*, it was stated that she could understand some English but not speak it; this is conceivable for a woman who had an English-speaking father but had not frequently been to Apia, but considering she also had lived with Haensell on his plantation for seven years, one must wonder if such an assessment was accurate.[208]

The dichotomy between the theory and practice of the education, literacy, and language lifestyle factors could not have been lost on the administration, as they were well aware of the demographics and educational opportunities, yet the actual situation was not taken into account as a mitigating factor. In this requirement, the administration may have been preparing to give favor to those who attended the then recently established German-language state

205 97 % of native pupils attended mission schools. Hiery (2002) 201–202.

206 Hiery (2002) 206–207.

207 Hiery (2002). The German state school for natives in Apia was an exception, as it had more female pupils than male.

208 SMESCA, Mischlingswesen (1913).

schools and thus further German culture and language. This factor was a direct reflection of the ideals of Solf, who both rejected the legal classification of half-castes based on skin color and who, even several years earlier, had wished to allow foreign classification of illegitimate half-castes who had a demonstrated conformity with European lifestyle.[209] Solf's preference for "respectable" settlers over the small settlers, whom he held in disregard came with the caveat that he hoped to eventually eradicate the "half-caste problem," and the settlers who came to work for the large trade companies were less likely to remain and "go troppo" by cohabiting with or marrying a Samoan and thus increasing the number of half-castes. The Lifestyle Test's factors of education or literacy and food would have been in favor of Samoan partners living in Apia, such as those working for large companies rather than the partners of small settlers further removed from foreigner schools and trade.

4.14 The German interracial marriage debate *(Mischehendebatte)* in May 1912

The ordinance against interethnic marriages in Samoa issued by Wilhelm Solf as Colonial Secretary in January 1912 was the catalyst for an intense debate in the parliament in May of the same year. The edict of the governor of Southwest Africa against the same, already in effect since several years, had not sparked the furor and urgency of the May 1912 parliamentary debate, though it could also be said that Solf's ordinance was the final straw. The ban had gained popular attention because of the popular increasingly racial-focused perceptions of colonial subjects; whereas, for example, native peoples in the African and Melanesia German colonies were viewed by much of the German populace as being at best curious or quaint and at worst savage and racially inferior, the Samoans had long been romanticized by Europeans. Traveling shows, postcards, and books of the time especially showcased and praised the beauty of Samoan women in Germany.[210] The idea of the equality of humans under the law would have been anachronistic even during the decline of the colonial period; objectification, whether positive or negative, influenced politics and subsequently the law. The romanticized

209 ANZ, Government Council Minutes (1907), 211.
210 Thode-Arora (ed.) (2014); Deutsches Historisches Museum (ed.) (2016).

views worked to the advantage of interethnic couples in Samoa, as political parties such as the SPD Revisionists strongly objected to the ban, and the SPD at the same time seized this prime opportunity to challenge the authority of the Colonial Office to instruct its governors to issue such edicts, thus essentially bypassing the parliament in legislation.

At discussion was whether the Colonial Office and governors had the sovereignty to legislate in this capacity, whether parliament should pass a resolution to draw up a law to allow valid marriages between whites and natives in the German colonies generally, and to determine the rights of illegitimate children. The crux of the debate rested on the imperial ordinances which gave the colonial governors the power to issue edicts or ordinances (in this case, those which regulated marriage) which bypassed parliamentary approval, as well as on the administrative power of the Colonial Office. Therefore, not only was the subject of the debate a topic of popular interest, but it also provided the parliament with the perfect opportunity to assert its authority to regulate the legislative power claimed by the colonial office.[211] Yet the debate itself was one that hinged largely on emotional appeal and pseudo-political argument. The chaotic and often ludicrously illogical and inconsistent cacophony of arguments rife with rumors, stereotypes, and anecdotal evidence thinly screened the repugnant rising influence of Darwinistic *Rassenhygiene* and fears of loss of male control and status quo both at home on the colonial "frontier." Colonial Secretary Solf had been working up to this point and had much invested interest in preventing the parliament from interfering. In his opening argument, Solf himself set the tone of the debate in support of the Colonial Office's ban with an "appeal to instincts" rather than political or legal discourse, to the parliament with rhetorical questions meant to invoke a feeling of panicked fear.[212] "You are sending your sons to the colonies. Do you want them to bring back home black daughters-in-law? Do you want them to lay woolly-haired grandchildren in the cradle for you?"[213] His question was answered – probably unexpectedly – by a "carnivalesque laughter."[214] Directed at the majority SPD, he further

211 Essner (1992) 151–152.

212 Schwarz (2002).

213 Proceedings of the German Parliament, 53rd Session (May 2, 1912), 1648: "*Sie senden Ihre Söhne in die Kolonien: wünschen Sie, daß sie Ihnen schwarze Schwiegertöchter ins Haus bringen? Wünschen Sie, daß sie Ihnen wollhaarige Enkel in die Wiege legen?*"

214 Essner (1992) 151–152; Schwarz (2002).

made it a point that the working-class men were most likely to marry native women. In response to questions as to whether Germans wanted the women sent to the colonies to bring back "Negro" husbands, the raucous laughter diminished; Solf had struck a chord.[215] His call to uphold the ban appealed directly to a particular view of German identity sought to circumvent established interpretations of *jus sanguinis* German citizenship law where mixed race or native race had been previously irrelevant: "*Wir sind Deutsche, wir sind Weiße, und wollen Deutsche bleiben.*" Solf argued that the ordinance harmed the lower class rather than the upper class because the farming settlers in Samoa were the ones who were too poor to bring or "maintain" wives from Germany and therefore were most likely to marry native women, appealing to the "threat" to the status quo of the working-class man:

> We are whites and want to remain whites. This is not some gentlemanly point of view to be reviled by Social Democrats; the proletarian is also the master of the colored people, and the proletarian is a gentleman, too, and you of all people, the head of the social democrats, should share my point of view. For it is not a well-off man who acquiesces to marry a native woman – no, it is the poor man, the little man, who comes into this conflict, and you have made it your duty to protect him. And you can only do that in the colonies if you accept my view and condemn mixed marriages.[216]

The full text of Solf's opening speech translated to English can be read in the appendix.

The more leftist political parties with greater lobbies for the working class, such as the Social Democrats (SPD), which at the time was the largest represented party, argued against the ban, while more conservative parties and those who represented more interests in larger businesses and colonial investments argued in favor of the ordinance. Arguments concerning the ban focused on the availability of women in the colonies and on the effects of racial mixing on maintaining German cultural integrity and control over the natives. At the time of the debate, there were fewer than a hundred known interethnic marriages in German Samoa and approximately 1000 half-castes, meaning that half-castes would have counted for less than 3 %

215 The fact that this particular question by Solf struck a chord is evidenced by many vehement statements by members against German women having sexual interactions with black men when, in fact, it was extremely rare.

216 Proceedings of the German Parliament, 53rd Session (May 2, 1912), 1649.

of the population.[217] A comparison to the German colonies in New Guinea and Southwest Africa sheds light on why the ban took longer and why it was a point of contention for arguments involving culture and popular concepts of racial Darwinism. In German Samoa, the percentage of half-castes – particularly living in or near the capital – was especially high and interethnic marriages accounted for most marriages involving Europeans and Americans (who were not half-castes) in Samoa. Although the percentage of half-castes was similarly high in, for example, Southwest Africa (at least 2.0 %, depending on census statistics), few marriages had existed before the ban and the area did not have Samoa's existing generations of interethnic families established and integrated in the community prior to the establishment of a German colony. For the aforementioned reason and also largely because a ban against mixed marriages had existed already for many years in SWA, the number of children of mixed heritage who were legally German citizens at the time of the ban because their parents were legally married was significantly higher. The statistics do not even include the many *fa'a Sāmoa* marriages in which Germans were married to Samoan women according to Samoan custom but were not entered in the marriage registry.

The Centrist and Social Democratic cited a German duty to improve the lives of the native races through European acculturation, religious conversion, and education, and that the ban would hinder such aims. Of those who spoke against the ban, only Georg Ledebour, a radical member of the Social Democrats (SPD) who had been highly critical of the Herero and Nama genocide, was fully opposed to the implications of Solf.[218] Ledebour reasoned that because unions between natives and whites would occur regardless of whether intermarriage was legal, they argued, failure to legally recognize such unions would reduce native women to mere concubinage because bans had failed to do so in other European colonies and with the freed slaves in the United States.

217 Adressbuch für Deutsch-Neuguinea, Samoa, Kiautschou (1912) 33. During the debate, Gröber of the Centrist party cited a 1908 statistic registering 938 half-castes.

218 Wareham (2002) 149. Wareham compares Ledebour's justifications to the theories of Friedrich Ratzel, a contemporary German scientist who "argued that humanity was divided by degree rather than by uncrossable clefts, and was a healthy, progressive product of hybridity, while 'purity' was negative and abnormal."

> If you prohibit civil marriage in our colonies, will you actually extirpate concubinage and uncontrolled sexual intercourse? Not in the least! In other words, the supposed desired result, the purity of our race, the non-mixing of the white master race, with the subordinate black race – everything that your argument purported – doesn't have anything at all to do with the matter.[219]

The arguments of other politicians against the ban focused on showing that marriage to an acculturated native wife was as satisfactory as to a German wife, and that Samoan women in particular were as beautiful as German women. Therefore, they argued, "half-caste" children of legitimate civil unions between Germans and Samoans who were raised according to German culture were a valid form of a German family.

Arguments in support of the ban were primarily based on the fears against racial intermixing to which Solf had appealed and views of racial intermixing as a sexual perversion. Karl von Richthofen-Damsdorf of the National Liberal Party and Rev. Johannes Zürn (a Protestant minister) of the German Reich Party bemoaned the immorality of interracial unions and condemned racial mixing. Rev. Zürn iterated that, "children arising from mixed marriages [develop] towards the bad side."[220] German Conservative Party's Karl von Böhlendorff-Kölpin insisted that Germans going to the colonies be taught not to engage in interracial cohabitation or marriage and said that the head of the Catholic mission in SWA called it a situation "worse than brothels."[221] Carl Braband of the Free-Minded People's Party *(Freisinnige Volkspartei)* conceded that interethnic unions were inevitable because of the preponderance of German men over women in the colonies, yet he agreed with Solf's implications and complained that during the traveling shows white women had thrown themselves into the embrace of black men. As Prof. Thomas Schwarz described Braband's argument in his analysis of the debate, "[t]he metropolises and colonies here are made equivalent and portrayed as problematic contact zones in which a white woman – 'deprived

219 Proceedings of the German Parliament, 53rd Session (May 2, 1912), 1649.

220 Proceedings of the German Parliament, 55th Session (May 7, 1912), 1732: *"Ich möchte hier besonders auf die Portugiesen hinweisen – hat es gezeigt, daß das immer zum Unheil ausschlägt, und daß die Kinder, die aus Mischehen hervorgehen, sich nach der schlechten Seite hin – möchte ich sagen – entwickeln, und daß sie unserem nationalen Volksbewußtsein entschieden Abbruch tun."*

221 Proceedings of the German Parliament, 55th Session (May 7, 1912), 1728: *"Er hält die Einrichtung der vorhandenen Bordelle sogar gegenüber den Mischehen für das kleinere Übel."*

of her racial senses' – could develop the 'wish' to marry a Negro."[222] Because such a woman would follow the residency of her husband and lose her German citizenship, Braband stated that his party would vote against petitions to legitimize marriages between "whites and coloreds." Braband's and others who wished to uphold the ban on "mixed marriages" arguments problematized interethnic marriages based on a population policy which ignored the negligible numbers of "half-castes" within the overall German population; Ledebour pointed out the numerical insignificance of the number of only approximately 80 marriages between whites and Samoas as a supporting reason for legitimizing the marriages and questioned the sense of a ban which would be statistically negligible and only serve to shame those 80 married couples.[223] The policy behind oppositional arguments was symptomatic of an increasingly popular eugenics-based population policy which would not refrain from limiting personal liberties.[224] Indeed, the *Deutsche Handels- und Plantagen-Gesellschaft* also disapproved of interethnic marriages because they wanted to maintain control over the private lives of their German workers.[225] Both governors of Samoa, Wilhelm Solf and Erich Schultz, had similar concerns and disliked the influence of the small settlers on the Samoans through their relationships with female Samoans and *Mischlinge*, just as it was feared that German cultural example would be threatened by such unions.[226]

The Social Democrats (SPD), the Social Democratic Revisionists, and the Centrists were most firmly against the ban, though the Christian Socialists were also against it for other reasons. One particularly noteworthy argument against the ban was that of the aversion to having anti-miscegenation laws such as those existing in the Southern and Western United States. Adolf Gröber of the Centrists argued that by making sexual relations between

222 Proceedings of the German Parliament, 55th Session (May 7, 1912), 1731: *"Die Großstadt und die Kolonie werden hier gleichermaßen zu problematischen Kontaktzonen stilisiert, in denen eine weiße Frau 'aus Mangel an Rassegefühl' den 'Wunsch' entwickeln könne, einen Neger zu heiraten."* See also: Wildenthal (2001) 172–174; Schwarz (2002) 329.

223 Proceedings of the German Parliament, 53rd Session (May 2, 1912), 1650.

224 Schwarz (2002) 329–330. Schwarz further connects thinking such as Brabant's with the population politic of the Nazis, especially since Brabant, in his speech, groups "mixed marriages" along with the need to prevent people with inherited diseases from marrying.

225 Meleisea (1987b) 160.

226 Samulski (2004) 335.

two races illegitimate, it would create an underclass of citizenry similar in status to the former slaves in the United States. He stated, "[i]f we want to get the same social evils, then we must do just as the Americans have done. But if we want to avoid that, then we must consider it our task to raise the natives culturally so that they can eventually join our people on the same cultural level."[227] Although even in this 1912 parliamentary debate, Gröber already berated anti-miscegenation statutes in the U.S. for being unconstitutional, they were not declared unconstitutional until the 1967 U.S. Supreme Court decision of *Loving v. Virginia*.[228]

Both sides in the discussion agreed on one point: that Samoan woman were attractive as potential wives to German men because of their beauty and capability. Gröber mentioned in his argument for allowing the marriages that Samoan women were better equipped to handle life in the colonies and made attractive and pleasant wives. The National Liberal Carl Freiherr von Richthofen-Damsdorf, though against racial mixing, stated that Samoans as a people were more educated and on a higher cultural level than Africans because, "as Mr. Gröber so beautifully presented to us, the Samoan women are much lovelier than the Negro women."[229] Views propagated by popular Darwinism that the Samoan people were "superior" and more "Aryan" than the natives in, for example, Africa may have spared the Samoans from suffering the full effects of racial prejudice in a colonial society.[230] Also, fears provoked by the rebellion of the Herero-Nama Genocide (also known as the Herero-Nama War) in Southwest German Africa may have played a strong role. In 1904, the Herero tribe rebelled against German rule

227 Proceedings of the German Parliament, 55th Session (May 7, 1912), 1727: "*Wenn wir dieselben Übelstände bekommen wollen, dann müssen wir es gerade so machen wie die Amerikaner. Wenn wir das aber vermeiden wollen, dann müssen wir es als unsere Aufgabe betrachten, die Eingeborenen kulturell so zu heben, daß sie sich mit unseren Leuten auf der gleichen Kulturstufe schließlich zusammenfinden können.*"

228 At the time of that decision, there were still 16 states enforcing "anti-miscegenation" legislation. The irony of the anti-miscegenation legislation in the U.S. is that although some territories were required to repeal their statutes as a prerequisite for joining the United States leading up to the start of the Civil War, many existing states did not repeal their laws until much later and new anti-miscegenation laws were legislated after the Civil War, particularly in the newer Western states where African American and East Asian workers were an integral part of settling the West.

229 Proceedings of the German Parliament, 55th Session (May 7, 1912), 1730.

230 Meleisea (1987b) 177.

and the ensuing struggle resulted in the genocide of the Herero by the German military on orders of General Lothar von Trotha. It catalyzed a change in the way that the colonial authorities viewed race and racial mixing. Whereas race had once been a sign of social status, an increasingly prevalent view was that of race as an "intrinsic determinant of biological inferiority."[231] In 1905, shortly after the uprising, all half-castes in Southwest Africa were legally redefined through a gubernatorial decree as both socially and biologically black and therefore could no longer be considered German citizens.[232] The ban was part of the period of colonial reform intended to bring law and order to the colonies following the war.[233]

Supporters of the Colonial Office's ban, including von Richthofen-Damsdorf of the National Liberals, Braband of the Free-Minded People's Party, former governor Solf and current governor Schultz, felt that racial mixing – to whatever extent – would result in the degradation of German culture in the colonies. During his term as governor in Samoa, Solf had written that Germans must include "concept of racial pride" and racial purity if Germany wanted to maintain its colonial power in Samoa.[234] In March 1913, a year after the ban, Solf stated in his speech to the parliament that the natives are like wards and that Germany has a moral duty to preserve rather than exterminate them. This outlook contrasted with the views of Heinrich Schnee, a man strongly influenced by Darwinist racial ideas and who served under Solf as deputy governor from 1900–1904 and later became governor of German East Africa. Yet Solf's paternal racism had strengthened during his gubernatorial service, invigorated by animosity with Deeken and troubles with the small settler lobby, challenges to his authority through the Mau independence movement, and perhaps most relevantly by the divorces of the "half-castes." The Solf of the parliamentary debate in 1912 was not the same Solf who was present at the hoisting of the imperial flag in 1900, and the struggles of the "half-caste" divorces – especially ones such as *Smalley* and *Laurenson*, which had exhausted time and resources as well as providing further opportunity for his authority to be challenged such as by the Tupua Tamasese chiefs in *Laurenson* – likely had magnified the "half-caste problem"

231 Fitzpatrick (2009) 358.
232 Hintrager (1955) 76.
233 Wildenthal (1997) 268.
234 Solf (1908) 17.

of these married couples in his eyes beyond their "statistical significance" to the empire.

For all parties involved in the debate expressed one sentiment in varying degrees unanimously: that "racial mixing" was objectionable. Of the debate, Lara Wildenthal wrote, "[t]he real debate all along had been over the extent of the protection to be offered German men as their old colonial prerogative of sexual access came to be reformulated as race mixing."[235] However, though her statement is partly true, the root of the debate was in the struggle to define German identity in a rapidly changing empire. The very politicization of all sexual unions from legitimate marriages to cohabitation to single interludes and the children of interethnic unions itself evidence the struggle. The "colonial prerogative of sexual access" was still a seldom experienced one among the general population in Germany; the arguments against and aversion to interethnic unions and German children being of "mixed race" reflect a much deeper threat: that of self-identity. The underlying agreement between the parties was actually that German identity should be maintained. What aspects that defined German identity were debatable, as were the importance of "merits" of that identity, and therefore the arguments of the parliamentary members differed. For those against mixed marriages, appearance or the emerging paradigm of "racial purity" based on research of Eugen Fischer and others was the most defining factor; for others, lifestyle. If some Germans dress as natives and do not speak German, if some Germans do not appear to be "white," practice a sexual lifestyle different from the "norm," does that dilute what it means to be a German citizen and will it influence other Germans to adopt similar lifestyles? How can those living in the colonies maintain their German identity? Gröber of the Centrist Party was for allowing legitimate marriages only in order to maintain morality since he believed that the only alternative was morally degenerate concubinage. No matter how it was manifest, the Germans saw themselves as a Prometheus of culture, bringing the fire their "high culture" to the colonized who would otherwise be left in the dark.[236]

The result of the debate was a resolution on May 8, 1912, requesting that the government draft a law that would secure the validity of marriages between whites and natives in all German colonies and outline the rights

235 Wildenthal (2001) 128.

236 For discussion of Germans as "bringers of culture," see Schwarz (2002).

of illegitimate children. The vote was starkly split, with 203 votes from Social Democrats, Centrists, and Free-minders in favor of the resolution, 133 votes against, and one abstaining. The final outcome of the resolution and the political sentiments expressed would never find closure; partly because of the advent of World War I, though the upper house of the German parliament *(Bundesrat)* probably would not have approved it.[237] Regardless, the Colonial Office attempted to meet some of the points addressed in the resolution with three ordinances which were drafted in 1913 but never issued.[238] One legalized marriages between foreigners and natives by constructing a limited form of marriage where the wife and children would not assume the legal status of the husband: "*eine Ehe minderen Rechtes*" or "marriage of inferior rights." In the second ordinance, the spouses of natives assumed the legal status of the native spouse; this echoed existing ordinances in SWA which prevented German men who cohabitated with native women from voting. The third ordinance allowed natives to apply for foreigner jurisdiction by passing a cultural test.[239]

237 Wareham (2002) 151.
238 Essner (1992) 109; Wareham (2002) 151.
239 Essner (1992) 157–158.

Conclusion

The policies of the German administration toward personal jurisdiction and matters of family law revealed the competing views struggling to define German identity and justify German rule in Samoa. The history of relations between foreigners and Samoans presented unique challenges to maintain colonial hegemonies. Governors Solf and Schultz struggled to maintain a status quo in a community where Europeans and Samoan families were already intertwined both in blood and in culture. At the same time, the views of members of the community, administration, and the Colonial Office were often in dissonance with competing visions of whether colonial rule should be based on concepts of German superiority, racial superiority, assimilation, or paternalistic and protectionist policies. How the German administration dealt with Samoa's unique challenges to enforcement of a colonial hegemony through legislation and legal matters involving Samoans and half-castes revealed the competing and evolving perspectives on *Deutschtum* in the early 20th century. Within the foreign and inter-ethnic community, a multitude of voices and viewpoints existed among small settlers, precolonial foreign residents, recent and longstanding interethnic families, those with interests in the large plantation firms, and, of course, even within the administration.

The German administration used imperial legislation, local ordinances, and legal processes as tools to maintain colonial hegemony by attempting to force half-castes, interethnic partners, and interethnic families into the administration's colonial paradigm. Matters of legal procedure and judicial process could be influenced by a judge's individual vision of *Deutschtum*, the governor's colonial policy, and prejudices based on previous individual experiences and prejudices. Since the *Kaiser* and Colonial Office had given the governors of the colonies full power to issue their own ordinances without any requirements of prior approval of the Colonial Office or political processes, oversight was distant both physically and ideationally. The vision of Governor Solf was highly influential on the political and legal framework in Samoa, as other academics have discussed, but in practical terms, the decisions of the high court judges in divorces and other matters of family law

reflect the conflicts between German colonial policies, individual members of the administration, and the members of the community.

Specifically, the uneven procedural and judicial treatment of divorces by the German administration speaks volumes to the colonial policies and the prejudices of the judges. In these proceedings, the courts often did not function in a purely juridical capacity to interpret law, but in practice as an instrument of enforcing colonial policies or even the judges' personal interpretations of colonial policy. Cases involving high-ranking Samoans or foreigners were given much attention and legal reasoning was tailored with blinders to some applicable law, as in *Blacklock*. The views of racial superiority of Judge Schlettwein recorded in his correspondence with Solf became evident in the documents related to *Easthope* in which he personally visited the home of the Samoan defendant wife in an attempt to "bring her to justice" and possibly to expose her condition. The attempts of young Judge Imhoff to avoid prejudice in *Laurenson* ran into the interests of Solf in restricting the powers of a Samoan chief and left the court with many ultimately unpaid bills for attempting service on the defendant; the costs and energy of a more equal application of law in this case involving two half-caste "foreigners" of modest means were not to be repeated in the German courts. In conclusion, although it was foreseeable that a more homogenous application of law was not guaranteed in a colony so far from Germany, the divorce cases over time reflect less and less investiture in an attempt at an even and holistic application of law. Through the supporting documents and even judicial opinions, the individual interpretations of German identity of Solf and other members of the administration are evidenced.

The research and conclusions of this thesis open up several other possibilities for future research within legal history, and the themes present in this research are even applicable to contemporary research areas in political science and sociology regarding German identity. German identity being defined by a delineation between "self" and "other" in the colonial period is still relevant to the divisions throughout Europe and in Germany today. In 2013, the *Alternative für Deutschland* (AfD) party was founded on a populist platform and rapidly gained popularity throughout the German states and 83 seats in the parliament in 2021 with its anti-immigration, anti-European Union, and anti-Islam rhetoric. Police and newspaper descriptions of suspected criminals often describe them physically as "*südländischer Typ*," a term which is itself derisive, evokes racial stereotypes, and defines a German

identity exclusive of darker skin color (i. e. if one is of dark complexion, one must be *südländisch* and not German). Populist politics and casual references echo the delineations of "self" and "other" to define who can be "German," appealing to fears of a "mixed" culture similarly to colonizers afraid that the syncretism or even amalgamation of German and Samoan culture would be a degeneration of German identity. Finally, even today, German citizenship by birth is granted almost solely on *jus sanguinis* principles, and the citizenship law offers only a very narrow *jus soli* opportunity for children born to foreign parents in Germany to obtain citizenship along with their parents. Thus a child born to foreign parents may grow up in Germany, speak German as a first language, and define herself as German, but lack citizenship. Indeed, even today, a child born to an unmarried non-European mother and a German father may have German citizenship and remain in the country, but his mother may not remain in the country based on her relationship to the child. Such examples highlight the relevancy and potential for comparison of legal policies and political arguments set forth to define *Deutschtum* between the period of the German protectorates and today.

Notably absent from this analysis are perspectives of the parties involved in the cases and that of the Samoan chiefs and community on the procedural and juridical fairness of the administration's handling of issues of family law. To this purpose, command of the Samoan language would have enabled me to research archival documents and political writings in Samoan newspapers (such as *O le Savali*, the LMS publication *O Le La*, the Pago Pago paper *O le fa'atonu*) to potentially include a fuller scope on the ordinances, the decisions, and their effects. To limit the scope of this thesis, I have not significantly researched the correspondence of the missions and members of the community who were not directly involved in either the administration or the legal matters discussed. Such secondary sources could help provide a more complete analysis.

At the beginning of my research phase, I planned to compare the divorce opinions of American Samoa during the same period with those of the German administration. To these ends, I gathered divorces from archives of the high court at Pago Pago which have not been used in this thesis. An analysis of or comparison of these legal opinions which have otherwise not been studied would present another fascinating research topic of historical interest.

Appendix I: Samoan terms

Diacritical marks in the Samoan language: The glottal stop (‘) indicates that the vowel is joined with no connection to the preceding vowel. The macron (¯) indicates a long vowel.

‘aiga	kinship groups
ali‘i	high chiefs
aualuma	council of women
avanga	elopement without family permission; also, rape and forced marriage
fa‘a matai	the political, chiefly system of Samoa (n.); according to the traditional legal authority of Samoa (adj.)
fa‘a Sāmoa	“in the Samoan way;” according to Samoan customary law
fono	organ functioning in a judicial, executive, and legislative capacity
kava	ceremonial drink
malaga	visiting parties with religious and political functions
mālō	here, *mālō* refers to government
mana	power having spiritual authority
matai	titled chiefs, including *tulāfale* and *ali‘i*; their power was derived from *mana*
Mulinu‘u	location of the Samoan *fono* near Apia
pāpā	titles held by chiefs, along with *ao*
paplagi	refers to “whites” of European descent; may be used as a noun or adjective
pule	titular, formal political authority
nu‘u	village made up of multiple *‘aiga*, or district
tafa‘ifa	a chief holding all four *pāpā* titles could become a “high king”
tama-a-‘aiga	royal paramount chiefs
tama fafine	uterine descent line used to grant secure tenure to land
taunonofo	polygamy
tulāfale	orators; their power derived from *pule*
taupou	ceremonial virgin

Appendix II

Translation of Dr. Wilhelm Solf's opening statement
to the German parliament (May 2, 1912)[1]

Gentlemen, the question now under discussion is a very serious one, and I ask you to allow me to remind you today for the first time of what I took the liberty of explaining to you as an introduction to my budget speech: I ask you to consider the mixed-race question, not from a party point of view, but from a general national point of view. I have one wish and one request to the House: that it reform the resolution of the Budget Commission and not adopt it.

Gentlemen, the problem of mixed marriages is an extraordinarily difficult one and, as I said here a few weeks ago, very difficult to understand for those Germans who live in the homeland and do not know those countries where black and white converge. I do not want to make any legal remarks; I only want to let the facts affect you, the facts as they have been established in other states and nations which have been pursuing colonial policy longer than we have. For the evil consequences of intermarriage have been recognized by all nations which their colonizing profession has brought into contact with colored peoples of inferior culture and civilization. All the facts relating to the question of mixed marriages are summed up in India under the heading of the Eurasian question, and the solution of this question, which is becoming more and more difficult as time goes on, is a headache to the Indian statesmen – and to analogous questions in the other English colonies of the British colonial administration in general. Similar, gentlemen, is the situation of the Dutch in their Malay possessions, like the Latin state entities in South America, and if you, gentlemen, leaf through the book of the history of Brazil, you will find arguments for the position I take against mixed marriages on nearly every page.

1 Proceedings of the German Parliament, 53rd Session (May 2, 1912), 1648–1649.

["Very true!"]

And, gentlemen, what is the "negro question" – the Negro question in the United States of America but a mixed-race question? Of the 11 million – I emphasize 11 million, because the budget prints say 11000 – citizens of the United States who are of West African descent, only a vanishingly small proportion are unmixed; the vast majority are mixed-bloods of all shades from the former African slaves and Americans. Gentlemen, the 13th Amendment to the Constitution of the United States and the Lincolnian Emancipation Edict are warning portents to all colonizing nations. Misplaced humanitarianism takes its revenge, as does undignified degradation to the lower race.

["Very true!"]

Gentlemen, you may be opposed to slavery – and I have already emphasized the other day that we are naturally against slavery and must be from our ethical standpoint – what you will: but, gentlemen, the Negro felt better in the old patriarchal conditions in the Southern States than he must now feel inwardly, as a human being.

["Very true!"]

Gentlemen, the recognition of the Negro as a white citizen in theory and the efforts of a self-conscious people to prevent the consequences of this theory are leading to monstrous consequences in America. Now the Negro is free! He can even become president – if he is not lynched first!

[raucous laughter]

Gentlemen, you may say as much as you like about the brutality of lynching, it will remain until state law and popular feeling are in unison. Gentlemen, I urge you to be guided by your instincts in this matter, I urge you not to bring socio-political and dogmatic moments into the problem of mixed marriages. I ask you to simply let the bare facts sink in. You send your sons to the colonies: do you wish them to bring black daughters-in-law into your house? do you wish them to bring wool-haired grandchildren into the cradle?

[raucous laughter]

But even worse, the German Colonial Society spends 50,000 marks a year to send White girls to Southwest Africa. Do you want these White girls to return with Hereros, with Hottentots and bastards as husbands? No, gentlemen, let these facts affect you, your instincts as Germans, as Whites! The whole German nation will be grateful to you if you have no other // consideration than this: we are Germans, we are White and we want to remain White. This is not the point of view of superiority[2] which is reviled by the Social Democrats; towards the colored people, the proletarian is also a master, and you, the Social Democrats, should share my point of view. For it is not the wealthy man who gets into the position of marrying a native woman outside – no, it is the poor man, the little man, who gets into this conflict, and it is precisely him to whom you have made it your duty to protect. And you can do that in the colonies only if you accept my view and condemn the mixed marriages. Gentlemen, I am leaving legal and other considerations completely aside; I ask you to stick only to the salient facts. Yesterday, Mr. delegate Schwarze rightly said that we must do everything in our colonies to ensure that the cotton[3] is not mongrelized. Is not our shirt closer than our skirt, should we tolerate that our race is mongrelized? I therefore ask you, gentlemen, to reform the decision of the Budget Commission and ask you to take the stand on which the Reich Government stands, namely, to speak out against intermarriage.

["Bravo!"]

2 The word Solf uses is *"Herrenstandpunkt,"* which at the time had a connotation through *"Herren-"* of noble, superior, or well-bred, and *"Standpunkt"* meaning position or point of view. The combination of *"Herren-"* in this sense eventually was used in a term of Nazi ideology to describe "master race" *(Herrenvolk)*.

3 The use of the word "cotton" *(Baumwolle)* is unclear here. German East Africa produced cotton at that time, and the use of the word thus may have referenced workers in Germany receiving that cotton.

Sources and Bibliography

1. Unpublished Sources

Archives New Zealand, Wellington (ANZ)

Blacklock (1904), Complaints, Private Property Disputes, Divorce 1901–1918, Archives New Zealand, E01/03

Brunt (1909), Complaints, Private Property Disputes, Divorce 1901–1918, Archives New Zealand, A12/09

Burmeister (1902), Archives New Zealand, B05/01

Easthope (1910), Complaints, Private Property Disputes, Divorce 1901–1918, Archives New Zealand, C51/10

Ettling (1906), Complaints, Private Property Disputes, Divorce 1901–1918, Archives New Zealand, C1/06

Fa'ao'o v. Laurenson (1907), Complaints, Private Property Disputes, Divorce 1901–1918, Archives New Zealand, A18/06

Government Council Minutes (1907), Archives New Zealand, GCA 2/6/12/1

Haidlen v. Solf (1912), High Court case files and administration records, Archives New Zealand, H75/1912

Jackson (1917), Letter of Yue H. Jackson to Chinese Consulate in Apia, 30 November 1917, Archives New Zealand, AGCM/18974

Laupepa (1892), The Criminal Laws of 1892 from Susuga Malietoa Laupepa, Business with Samoan Judges, Archives New Zealand, GEN 2

Meredith (1906), High Court Case Files, Archives New Zealand, A04/07

Nauer (1908), Archives New Zealand, A01/16

Nelson (1914), Archives New Zealand, A08/14

Personenstand (1912), Archives New Zealand, Micro No. 5762, R24050134

Schwalger (1907), Archives New Zealand, A09/07

Smalley (1904), Archives New Zealand, E03/03

Suwe (1903), Archives New Zealand, E02/01

Tautau v. Hannemann (1904), Complaints, Private Property Disputes, Divorce 1901–1918, Archives New Zealand, A05/04

Verwaltungsbehörde des Deutschen Kaiserreichs (1913–1914), "Mischlingswesen (fragment)", Archives New Zealand, R24050445

Bundesarchiv, Berlin-Lichterfelde (BArch)

R 1001/5432: Solf, Wihelm (1906), Letter to Colonial Department
R 1001/5432: Solf, Wilhelm (1907), Letter to Colonial Secretary Dernburg
R 1001/5432: Solf, Wilhelm (1911), Letter to Colonial Secretary von Lindequist
R 1001/5432: Schlettwein, Adolf (1910), Letter to Governor Wilhelm Solf from June 19, 1910, Mischehen und Mischlinge in Samoa – Allgemeines: Bd. 1 (1903–1914), 51–56
R 1101/5432: Verwaltungsbehörde des Deutschen Kaiserreichs, Mischehen und Mischlinge in Samoa – Allgemeines: Bd. 1 (1903–1914)
R 8023/895b: Deutsche Kolonialgesellschaft (1887–1936), Rechtsverhältnisse in den deutschen Schutzgebieten: Bd. 1

Pacific Manuscripts Bureau, Australian National University, Canberra (PMB)

Neffgen, Heinrich (1907–1916), Samoan Sketches, in: Notes on Samoan administration, missions and customs, Pacific Manuscripts Bureau AU PMB MS 66

Samoa Ministry of Education, Sports and Culture Archives, Apia (SMESCA)

Ananpu v. Faapo (1906), Samoa Ministry of Education, Sports and Culture Archives
Fagamita v. Lefiti (1909), Samoa Ministry of Education, Sports and Culture Archives
Gerichtsstand der Mischlinge (1904), concerning Charlie Schwenke, Samoa Ministry of Education, Sports and Culture Archives, IDO 7 F1
Jamaima v. Tui (1907), Samoa Ministry of Education, Sports and Culture Archives
Lemuli v. Sia'a (1912), Samoa Ministry of Education, Sports and Culture Archives
Mischlingswesen (1913), concerning Blanche Reid, Samoa Ministry of Education, Sports and Culture Archives, IDO 5 F5
Mischlingswesen (1914), concerning Alfred Schwenke, Samoa Ministry of Education, Sports and Culture Archives, IG 21 F1
Mu v. Saia (1912), Samoa Ministry of Education, Sports and Culture Archives
Schultz, Erich (1910), To Judges, Samoa Ministry of Education, Sports and Culture Archives, IDO 15 F5
So'e v. Sina (1910), Samoa Ministry of Education, Sports and Culture Archives
Tuiuli v. Vine (1912), Samoa Ministry of Education, Sports and Culture Archives
Zivil- und Gerichtsprozessregister (1911–1913), Samoa Ministry of Education, Sports and Culture Archives

Further archival sources

Gurr, Edwin W. (1901), 1901 Report of the Secretary of Native Affairs, United States Department of Navy Archives, Washington, T-1182/1, 1901

High Court of American Samoa, Archives, (1900–1914), Pago Pago
Lincoln, Abraham (1863), Emancipation Proclamation, January 1, 1863; Presidential Proclamations, 1791–1991; Record Group 11; General Records of the United States Government, U.S. National Archives
Unknown author [Department of the Navy, American Samoa, Office of the Governor], United States Naval Station Tutuila, A Regulation Concerning Divorce, Order No. 9 (1900), U.S. National Archives and Records Administration, National Archives Identifier (NAID) 297006

2. Internet Sources

Ancestry.de

Dänemark, Kirchenregister, 1812–1924 für Georg Theodor Haensell, https://www.ancestry.de/imageviewer/collections/61607/images/48551_B412185-0245A-V?pId=3591350 (accessed 5 March 2025)
Mrs Lottie E. Kappstein, in Honolulu, Hawaii, USA, Liste ankommender und abreisender Passagiere und Mannschaften, 1900–1959, Record Group 85, https://www.ancestry.de/imageviewer/collections/1502/images/41256_B125856-00369-?rc=&queryId=ad8ff8bd-b3c5-469b-846a-3d8f26618099&usePUB=true&_phsrc=xSS193&_phstart=successSource&pId=15019019 (accessed 5 March 2025)
Rosabel Edith Moors, Konsulare Registrierungszertifikate USA 1907–1918, https://www.ancestry.de/imageviewer/collections/2995/images/40457_2421401697_06-25-00172?rc=&queryId=9bc5d0ff-7cdd-4dfc-b810-6272dbf907f2&usePUB=true&_phsrc=xSS196&_phstart=successSource&pId=35164 (accessed 5 March 2025)
Sterberegister der Berliner Standesämter 1874–1955, 1874–1986 für Georg Haensell, https://www.ancestry.de/imageviewer/collections/2958/images/48459_prep711%5E001128-00123?pId=66306258 (accessed 5 March 2025)

Familysearch.org

Baptism of Franz-Xaver Nauer (1902), https://www.familysearch.org/ark:/61903/1:1:6CBN-LR1F (accessed 28 February 2025)
Baptism of William Frederic Meredith (1908), https://www.familysearch.org/ark:/61903/1:1:4GR7-G5ZM (accessed 28 February 2025)
Jane Meredith, England and Wales Census (1901), https://www.familysearch.org/ark:/61903/1:1:X918-Z2F (accessed 28 February 2025)
Pa'ahana, Luana, Reid Family History, https://www.familysearch.org/en/memories/memory/9139966 (accessed 28 February 2025)

Other Internet Sources

Find a Grave (2021), Silefaga Schwalger, https://de.findagrave.com/memorial/1911536 80/silefaga-schwalger (accessed 28 February 2025)

Gott, Tony (2019), North Isles Family History: William Laurenson (1882–1930), https://www.bayanne.info/Shetland/getperson.php?personID=I260959&tree=ID1 (accessed 28 February 2025)

Jørgensen, Arne Bjørn (2016), Hans Bjørn Galbo-Jørgensens familie, Edgar Reid og Sealeï Reid, http://www.akj-cbj.dk/hans/f1250.htm (accessed 28 February 2025)

Pacific Islands Legal Information Institute: Samoan Public Trustee v. Collins et al. (1933), Western Samoa Law Reports, 70, https://www.paclii.org/ws/cases/WSLawRp/1933/1.html (accessed 28 February 2025)

The Official Non-Conformist and Non-Parochial BMDs Service, RG32/02 (1889), https://bmdregisters.co.uk/search/advanced/bmd/non-conformist/full/?uid_type=1&id=719509272 (accessed 5 March 2025)

3. Published Sources

a) Official Publications

Deutsches Reichsgesetzblatt, Berlin (RGBl.)

Bekanntmachung wegen Redaktion des Schutzgebietsgesetzes vom 10. September 1900, Deutsches Reichsgesetzblatt, Bd. 1900, Nr. 40, S. 812–817

Bürgerliches Gesetzbuch [BGB] (1900), Viertes Buch: Familienrecht, Deutsches Reichsgesetzblatt, Bd. 1896, Nr. 21, S. 416–522

Civilprozeßordnung [CPO] (1898), Sechstes Buch: Ehesachen. Feststellung des Rechtsverhältnisses zwischen Eltern und Kindern. Entmündigungssachen, Deutsches Reichsgesetzblatt, Bd. 1898, Nr. 25, S. 525–540

Einführungsgesetz zum Bürgerlichen Gesetzbuche vom 18. August 1896, Deutsches Reichsgesetzblatt, Bd. 1896, Nr. 21, S. 604–650

Gesetz, betreffend Abänderung und Ergänzung des Gesetzes über die Rechtsverhältnisse der deutschen Schutzgebiete vom 14. Juli 1899, Deutsches Reichsgesetzblatt, Bd. 1899, Nr. 29, S. 365–366

Gesetz, betreffend die Rechtsverhältnisse der deutschen Schutzgebiete vom 17. April 1886, Deutsches Reichsgesetzblatt, Bd. 1886, Nr. 10, S. 75–76 [Schutzgebietsgesetz, or SchGG]

Gesetz wegen Abänderung des Gesetzes, betreffend die Rechtsverhältnisse der deutschen Schutzgebiete vom 17. April 1886, vom 15. März 1888, Deutsches Reichsgesetzblatt, Bd. 1888, Nr. 11, S. 71–75

Gesetz über die Konsulargerichtsbarkeit vom 10. Juli 1879, Deutsches Reichsgesetzblatt, Bd. 1979, Nr. 26, S. 197–206

Gesetz über die Konsulargerichtsbarkeit vom 7. April 1900, Deutsches Reichsgesetzblatt, Bd. 1900, Nr. 15, S. 213–228
Kaiserliche Verordnung, betreffend die Rechte an Grundstücken in den deutschen Schutzgebieten vom 21. November 1902, Deutsches Reichsgesetzblatt, Bd. 1902, Nr. 47, S. 283–290
Reichs- und Staatsangehörigkeitsgesetz vom 22. Juli 1913, Deutsches Reichsgesetzblatt, Bd. 1913, Nr. 46, S. 583–593
Verordnung, betreffend den Eigenthumserwerb und die dingliche Belastung der Grundstücke im Schutzgebiete der Marschall-Inseln vom 22. Juni 1889, Deutsches Reichsgesetzblatt, Bd. 1889, Nr. 14, S. 145–147
Verordnung, betreffend die Eheschließung und die Beurkundung des Personenstandes für das südwestafrikanische Schutzgebiet vom 8. November 1892, Deutsches Reichsgesetzblatt, Bd. 1892, Nr. 42, S. 1037
Verordnung, betreffend die Rechtsverhältnisse in dem Schutzgebiete der Neu-Guinea-Kompagnie vom 5. Juni 1886, Deutsches Reichsgesetzblatt, Bd. 1886, Nr. 17, S. 187–189
Verordnung, betreffend die Rechtsverhältnisse in den deutschen Schutzgebieten vom 9. November 1900, Deutsches Reichsgesetzblatt, Bd. 1900, Nr. 52, S. 1005–1008
Verordnung, betreffend die Rechtsverhältnisse in den Schutzgebieten von Kamerun und Togo vom 2. Juli 1888, Deutsches Reichsgesetzblatt, Bd. 1888, Nr. 31, S. 211–215
Verordnung, betreffend die Rechtsverhältnisse in Deutsch-Ostafrika vom 1. Januar 1891, Deutsches Reichsgesetzblatt, Bd. 1891, Nr. 1a, S. 1–5
Verordnung, betreffend die Rechtsverhältnisse in Kiautschou vom 27. April 1898, Deutsches Reichsgesetzblatt, Bd. 1898, Nr. 18, S. 173–174
Verordnung, betreffend die Rechtsverhältnisse in Samoa vom 17. Februar 1900, Deutsches Reichsgesetzblatt, Bd. 1900, Nr. 12, S. 136–138
Verordnung, betreffend die Regelung der Rechtsverhältnisse auf den zum Schutzgebiet der Neu-Guinea-Kompagnie gehörigen Salomonsinseln vom 11. Januar 1887, Deutsches Reichsgesetzblatt, Bd. 1887, Nr. 2, S. 4

Samoanisches Gouvernementsblatt, Apia (SamGBl.)

Liste der den Fremden gleichgeachteten Mischlinge (half-castes), Samoanisches Gouvernementsblatt, Bd. III, Nr. 23 (23. Mai 1903), S. 73–74
Schultz, Erich, Verordnung des Gouverneurs von Samoa betreffend die Rechtsverhaeltnisse der unehelichen Mischlinge vom 20. Mai 1914, Samoanisches Gouvernementsblatt, Bd. V, Nr. 16 (30. Mai 1914), S. 99–100
Solf, Wilhelm, Allerhoechste Verordnung betreffend die Rechtsverhaeltnisse in Samoa vom 1. März 1900, Samoanisches Gouvernementsblatt, Bd. III, Nr. 1 (15. März 1900), S. 1–3

Solf, Wilhelm, Bekanntmachung vom 1. Juli 1900, Samoanisches Gouvernementsblatt, Bd. III, Nr. 3 (9. August 1900), S. 13
Solf, Wilhelm, Gouvernements-Verordnung, betreffend die chinesischen Kontraktarbeiter vom 25. April 1905, Samoanisches Gouvernementsblatt, Bd. III, Nr. 41 (29. April 1905), S. 183–188
Solf, Wilhelm, Bekanntmachung betreffend das Verbot des Schuldenmachens fuer die Samoaner vom 10. Januar 1908, Samoanisches Gouvernementsblatt, Bd. III, Nr. 65 (18. Januar 1908), S. 208–209

Other Official Publications

Allgemeines Landrecht für die Preußischen Staaten [ALR] (1794), Berlin, Zweyter Theil, Erster Titel, Von der Ehe
Gesetz, betreffend die Eheschließung und die Beurkundung des Personenstandes von Bundesangehörigen im Auslande (4. Mai 1870), Bundesgesetzblatt des Norddeutschen Bundes (BGBl. NdB), Bd. 1870, Nr. 45, 599–602; auch in: Höinghaus, R. (ed.) (1871), Gesetz-Sammlung für das Deutsche Reich, 1867 bis 1870, […] nebst Verfassung für das Deutsche Reich, Berlin, 459–462
Gesetz über die Erwerbung und den Verlust der Bundes- und Staatsangehörigkeit (1870), Bundesgesetzblatt des Norddeutschen Bundes (BGBl. NdB), Bd. 1870, Nr. 20, S. 355–360
Laupepa, Susuga (Malietoa) (1892), Proclamation from September 15, 1892, Samoa Royal Gazette 1,2, 1
McArthur & Co. v. Cornwall et al. (1892), in: A.C. 75, The Law Reports of the Incorporated Council of Law Reporting 75, House of Lords Privy Council 79
Pacific Islanders Protection Act 1875 (38 and 39 Vict., c. 51)
Proceedings of the German Parliament (1912), Verhandlungen des Reichstages, Bd. 285, Berlin: 53rd Session (May 2, 1912), 1609–1652; 55th Session (May 7, 1912), 1697–1737
Steinberger, Albert Barnes (1874), Report Upon Samoa, Or the Navigator's Islands: Made to the Secretary of State (January 1874)
Tung v. Ah Sam (1971), American Samoa Law Reporter, 754-1969 (April 5, 1971), 764–773

b) Newspaper articles

Aufgebot (1911), in: Samoanische Zeitung, Apia, April 22, 1911
Aufgebot von Viktor Langkilde und Blanche Lilian Yandall (1912), in: Samoanische Zeitung, Apia, January 13, 1912
Obituary of W. Schwalger of Faleula (1917), in: Samoanische Zeitung, Apia, 24 February 1917

Passarge, Anton (1911), Wer ist ein Eingeborener?, in: Deutsche Kolonialzeitung 28, Nr. 35, September 2, 1911, 589–590
Unknown author (1877), Reported Poisoning & Massacre at York Island, in: Press, May 31, 1877, Volume XVII, Issue 3700, p. 3
Unknown author (1895), A Trial Solicited. Club Hotel, Apia, Samoa: "A Noted House for Good Liquor. R. Easthope", in: Samoa Weekly Herald, June 22, 1895
Unknown author (1896), Queens Birthday, in: Samoa Weekly Herald, June 6, 1896
Unknown author (1914a), Lokal-Nachrichten, in: Samoanische Zeitung, Apia, November 21, 1914
Unknown author (1919), Adolf Nauer, a German subject […], in: Samoanische Zeitung, Apia, November 15, 1919

c) Other Published Sources

Adressbuch für Deutsch-Neuguinea, Samoa, Kiautschou (1912). Nach amtlichen Quellen bearbeitet, Zwölfte Ausgabe, Berlin
Bunsen, Friedrich (1900), Lehrbuch des deutschen Civilprozeßrechts, Berlin, https://doi.org/10.1515/9783111604602 (accessed 10 March 2025)
Churchill, Llewella (1902), Samoa 'Uma – Where Life is Different, London
Churchward, William B. (1887), My Consulate in Samoa: A Record of 4 Years' Sojourn in the Navigators Islands, London
Deutsche Kolonialgesellschaft (ed.) (1899), Die Generalakte der Samoa-Konferenz. Mit e. Karte: Die Samoa-Inseln und die gegenwaertigen Besitzverhaeltnisse der Kolonialstaaten im Indischen und Grossen Ozean, Berlin
Fischer, Eugen (1913), Die Rehobother Bastards und das Bastardierungsproblem beim Menschen, Jena, https://doi.org/10.1007/BF01943440 (accessed 10 March 2025)
Fitzner, Rudolf (2006 [1906]), Deutsches Kolonial-Handbuch, Berlin
Fleischmann, Max (1910), Die Mischehen in den deutschen Schutzgebieten, in: Verhandlungen des deutschen Kolonialkongresses zu Berlin am 6., 7. und 8. Oktober 1910, hrsg. vom Redaktionsausschuss, Berlin, 548–571
Grimshaw, Beatrice (2007 [1907]), In the Strange South Seas, London
Hasse, Ernst (1905), Die Besiedelung des deutschen Volksbodens, Munich
Knoll, Arthur J., Hermann J. Hiery (eds.) (2010), The German Colonial Experience. Select Documents on German Rule in Africa, China, and the Pacific 1884–1914, Lanham (MD), https://doi.org/10.5771/9780761850960 (accessed 10 March 2025)
Krämer, Augustin (1994 [1902]), The Samoa Islands: An Outline of a Monograph with Particular Consideration of German Samoa. Translated by Theodore Verhaaren, 2 vols., vol. I: Constitution, Pedigrees and Traditions, Honolulu (HI) [German original published in 1902: Die Samoa-Inseln: Entwurf einer Monographie mit besonderer Berücksichtigung Deutsch-Samoas, 2 vols., vol. I: Verfassung, Stammbäume und Überlieferungen, Stuttgart]

Leutwein, Theodor (1908), Elf Jahre in Deutsch-Südwestafrika, Berlin
Lindequist, Friedrich von (1912), Deutsch Ost-Afrika als Siedlungsgebiet für Europäer, Berlin
Livingstone, David, Charles Livingstone (1875), A Popular Account of Dr. Livingstone's Expedition to the Zambesi and its Tributaries; and of the Discovery of the Lakes Shirwa and Nyassa, 1858–1864, London, https://doi.org/10.5962/bhl.title.60214
Mead, Margaret (2001 [1928]), Coming of Age in Samoa: A Psychological Study of Primitive Youth for Western Civilisation, New York
Nadelhoffer, Emil (1906), Einfluss familienrechtlicher Verhältnisse auf die Erwerbung und den Verlust der Reichs- und Staatsangehörigkeit, München
Neutrality and Autonomous Government in Samoa (General Act of Berlin), signed June 14, 1889 (1969), in: Bevans, Charles I. (ed.), Treaties and Other International Agreements of the United States of America, 1776–1949, vol. I: Multilateral treaties (1776–1917), Washington D.C., 116–128
Niedner, Alexander (ed.) (1899), Das Einführungsgesetz vom 18. August 1896, Köln
Peters, Emil (1906), Der Begriff sowie die staats- und völkerrechtliche Stellung der Eingeborenen in den deutschen Schutzgebieten nach deutschem Kolonialrechte, Göttingen
Price, George Basil (1913), Discussion on the Causes of Invalidating from the Tropics, in: The British Medical Journal 2, 2759, p. 1290–1296, https://doi.org/10.1136/bmj.2.2759.1315 (accessed 10 March 2025)
Pritchard, William (1968 [1866]), Polynesian Reminiscences, or, Life in the South Pacific island, London
Schnee, Heinrich (2005 [1920]), Deutsches Kolonial-Lexikon, Frankfurt am Main
Schultz, Erich (1905), Die wichtigsten Grundsätze des samoanischen Familien- und Erbrechts, Apia
Schultz, Erich (1911), The Most Important Principles of Samoan Family Law, in: Journal of the Polynesian Society 20,78, 43–53
Schultz-Ewerth, Erich (1922), Samoanisches Recht, in: Blätter für Vergleichende Rechtswissenschaft und Volkswirtschaftslehre 18,7–9, 83–134
Schultz-Ewerth, Erich (1930), Samoa, in: Schlettwein, Adolf (ed.) (1930), Das Eingeborenrecht: Sitten und Gewohnheitsrechte der Eingeborenen der ehemaligen deutschen Kolonien in Afrika und in der Südsee, 2 Bde., Bd. II: Togo, Kamerun, Südwestafrika, die Südseekolonien, Stuttgart, 657–712
Solf, Wilhelm (1908), Eingeborene und Ansiedler auf Samoa, Berlin
Solf, Wilhelm (1919), Kolonialpolitik: mein politisches Vermächtnis, Berlin
Stair, John B. (1983 [1897]), Old Samoa: or, Flotsam and Jetsam from the Pacific Ocean, New York
Stevenson, Robert Louis (1892), A Footnote to History: Eight Years of Trouble in Samoa, London
Stier-Somlo, Fritz (1923), Sammlung in der Praxis oft angewandter Verfassungs- und Verwaltungsgesetze und Verwaltungsverordnungen des Deutschen Reiches mit preußischen Ausführungsgesetzen und Verordnungen, 3. Aufl.,

München [u. a.], https://doi.org/10.1515/9783112408001 (accessed 10 March 2025)
The Cyclopedia of Samoa, Tonga, Tahiti, and the Cook Islands […] (1907), Sydney
Turner, George (1884), Samoa a Hundred Years Ago and Long Before: Together with Notes on the Cults and Customs of Twenty-Three Other Islands in the Pacific, London
Turner, George (1984 [1884]), Samoa: A Hundred Years Ago and Before, Suva
Tuvale, Te'o (1968), An Account of Samoan History up to 1918, New Zealand Electronic Text Collection, https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE28500933 (accessed 12 August 2024)
Unknown author (1914b), Neurasthenia Among Europeans In India, in: The British Medical Journal 1,2778, 727–728
Wharton, Francis (1881), A Treatise on the Conflict of Laws, Philadelphia (PA)

4. Bibliography

Anderhandt, Jakob (2013), Mord an einem Eutiner Südseefahrer? Kapitän Georg Christoph Levinson (1845–1879), in: Jahrbuch für Heimatkunde Eutin 47, 113–145
Anderhandt, Jakob (2020), Personal communications to Julia Hütten, June 30, 2020–September 6, 2021
Bargatzky, Thomas (2002), Die Weltanschauung der Polynesier unter besonderer Berücksichtigung Samoas, in: Hiery (ed.), 607–631
Brubaker, Rogers (1996), Citizenship and Nationhood in France and Germany, Cambridge
Brunt, Tony (2007), Family History, (self-published), Auckland
Brunt, Tony (2018), From Asau to Falelima: How Frank Cornwall's 26 km² Private Estate Became a 20th Century Liability, Auckland
Buchholz, Hans (2001), Die naturräumliche Struktur der ehemaligen deutschen Südseekolonien, in: Hiery (ed.), 59–91
Campt, Tina (2004), Other Germans: Black Germans and the Politics of Race, Gender, and Memory in the Third Reich, Ann Arbor (MI), https://doi.org/10.3998/mpub.17684 (accessed 10 March 2025)
Collins, Kristin A. (2014), Illegitimate Borders: *Jus Sanguinis* Citizenship and the Legal Construction of Family, Race, and Nation, in: Yale Law Journal 123,7, 2134–2235
Deutsches Historisches Museum (ed.) (2016), Deutscher Kolonialismus: Fragmente seiner Geschichte und Gegenwart, Darmstadt
Dilcher, Gerhard (1984), Ehescheidung und Säkularisation in Christentum und modernes Recht, Berlin
Dilcher, Gerhard, Ilse Staff (eds.) (1984), Christentum und modernes Recht: Beiträge zum Problem der Säkularisierung, Frankfurt am Main
Duranti, Alessandro (1981), The Samoan Fono: A Sociolinguistic Study, Canberra

Ehlers, Otto Ehrenfried (2008), Samoa. Die Perle der Südsee, Düsseldorf
Essner, Cornelia (1992), "Wo Rauch ist, da ist auch Feuer". Zu den Ansätzen eines Rassenrechts für die deutschen Kolonien, in: Wagner, Wilfried et al. (eds.), Rassendiskriminierung, Kolonialpolitik und ethnisch-nationale Identität, Münster, 145–160
Fairbairn-Dunlop, Peggy (2005), Tama'ita'i Samoa: o a latou tala, Stockton
Field, Michael J. (1991), Mau: Samoa's Struggle for Freedom, Auckland
Fitzpatrick, Matthew P. (2009), The Threat of 'woolly-haired grandchildren': Race, the Colonial Family and German Nationalism, in: The History of the Family 14,4, 356–368, https://doi.org/10.1016/j.hisfam.2009.08.002 (accessed 10 March 2025)
Foucault, Michel (2001 [1970]), In Verteidigung der Gesellschaft. Vorlesungen am Collège de France (1975–76), Frankfurt am Main
Freeman, Derek (1983), Margaret Mead and Samoa: The Making and Unmaking of an Anthropological Myth, Cambridge (MA)
Gessler, Bernhard (2000), Eugen Fischer (1874–1967). Leben und Werk des Freiburger Anatomen, Anthropologen und Rassenhygienikers bis 1927, Frankfurt am Main
Gestrich, Andreas (1998), Geschichte der Familie im 19. und 20. Jahrhundert, München
Gilman, Sander L. (1985), Difference and Pathology: Stereotypes of Sexuality, Race, and Madness, Ithaca (NY)
Gilson, Richard P. (1970), Samoa 1830 to 1900: The Politics of a Multi-cultural Community, Melbourne
Glass, Gene, George Tiao, Thomas Maguire (1971), The 1900 Revision of German Divorce Laws: Analysis of Data as a Time-Series Quasi-Experiment, in: Law & Society Review 5,4, 539–542, https://doi.org/10.2307/3052770 (accessed 10 March 2025)
Grattan, F. J. H. (1948), An Introduction to Samoan Custom, Apia
Gründer, Horst (2002), Die Etablierung des Christentums auf Samoa: Konfessionelle Rivalität und politische Implikationen, in: Hiery (ed.), 636–646
Gunson, Niel (1972), John Williams and his Ship: The Bourgeois Aspirations of a Missionary Family, in: Crook, D. P. (ed.), Questioning the Past. A Selection of Papers in History and Government, St. Lucia, Queensland, 73–95
Hempenstall, Peter J., Paula T. Mochida (1998), The Yin and the Yang of Wilhelm Solf: Reconstructing a Colonial Superman, in: The Journal of Pacific History 33,2, 153–162, https://doi.org/10.1080/00223349808572867 (accessed 10 March 2025)
Hempenstall, Peter J., Paula T. Mochida (2005), The Lost Man: Wilhelm Solf in German History, Wiesbaden
Hiery, Hermann J. (2002), Schule und Ausbildung in der deutschen Südsee, in: Hiery (ed.), 198–238
Hiery, Hermann J. (ed.) (2002), Die deutsche Südsee: 1884–1914, Darmstadt
Hintrager, Oskar (1955), Südwestafrika in der deutschen Zeit, München

Imhoff, Ludwig P. (1951), Weite Welt und breites Leben, Frankfurt am Main
Jørgensen, Arne Bjørn (2014), Personal communication to Julia Hütten, July 8, 2014–August 4, 2019
Keesing, Felix M. (1934), Modern Samoa. Its Government and Changing Life, London
Keesing, Felix M. (1937), The Taupo System of Samoa: A Study of Institutional Change, in: Oceania 8,1, 1–14, https://doi.org/10.1002/j.1834-4461.1937.tb00403.x (accessed 10 March 2025)
Kundrus, Birthe (2003), Moderne Imperialisten: das Kaiserreich im Spiegel seiner Kolonien, Köln
Kundrus, Birthe (ed.) (2003), Phantasiereiche: zur Kulturgeschichte des deutschen Kolonialismus, Frankfurt am Main
Lang, Hartmut (1998), The Population Development of the Rehoboth Basters, in: Anthropos 4,6, 381–391
Lindner, Ulrike (2009), Contested Concepts of 'white'/'native' and Mixed Marriages in German South-West Africa and the Cape Colony 1900–1914: A histoire croisée, in: Journal of Namibian Studies 6, 57–79
Liua'ana, Featuna'i Ben (1997), Dragons in little paradise: Chinese (Mis-)Fortunes in Samoa, 1900–1950, in: Journal of Pacific History 32,1, 29–48, https://doi.org/10.1080/00223349708572826 (accessed 10 March 2025)
Liua'ana, Featuna'i Ben (2004), Samoa Tula'i: Ecclesiastical and Political Face of Samoa's Independence, 1900–1962, Apia
Loosen, Livia (2014), Deutsche Frauen in den Südsee-Kolonien des Kaiserreichs: Alltag und Beziehungen zur indigenen Bevölkerung, 1884–1914, München, https://doi.org/10.1515/transcript.9783839428368 (accessed 10 March 2025)
Lösch, Niels C. (1997), Rasse als Konstrukt: Leben und Werk Eugen Fischers, Frankfurt am Main
Matheson, Craig (1987), Weber and the Classification of Form of Legitimacy, in: The British Journal of Sociology 38,2, 199–215
McNae, Murray (2020), Personal communication to Julia Hütten, August 5, 2020–November 27, 2021
Meleisea, Malama (1987a), Lagaga: A Short History of Western Samoa, Suva
Meleisea, Malama, (1987b), The Making of Modern Samoa: Traditional Authority and Colonial Administration in the History of Western Samoa, Suva
Meleisea, Malama, Penelope Schoeffel (2015), Land, Custom and History in Sāmoa, in: The Journal of Sāmoan Studies 5, 22–34
Mizutani, Satoshi (2011), The Meaning of White: Race, Class, and the 'Domiciled Community' in British India 1858–1930, Oxford, https://doi.org/10.1093/acprof:oso/9780199697700.001.0001 (accessed 10 March 2025)
Moore, Clive (2019), Tulagi: Pacific Outpost of British Empire, Acton, http://doi.org/10.22459/T.2019 (accessed 10 March 2025)
Moyle, Richard Michael (1984), The Samoan Journals of John Williams, Canberra

Nader, Laura (1965), The Anthropological Study of Law, in: American Anthropologist 67,6, 3–32, https://doi.org/10.1525/aa.1965.67.6.02a00920 (accessed 10 March 2025)
O'Brien, Patricia (2014), Ta'isi O.F. Nelson and Sir Maui Pomare: Samoans and Māori Reunited, in: Journal of Pacific History 49,1, 26–49, https://doi.org/10.1080/00223344.2013.878288 (accessed 10 March 2025)
Oliver, Douglas L. (1989), The Pacific Islands, Honolulu, https://doi.org/10.1515/9780824843892 (accessed 10 March 2025)
Olson, M.D. (1997), Regulating custom: Land, law and central judiciary in Samoa, in: Journal of Pacific History 32,2, 153–179
Quataert, Jean (1979), Reluctant Feminists in German Social Democracy, 1885–1917, Princeton (NJ)
Robson, Andrew E. (2009), Malietoa, Williams and Samoa's Embrace of Christianity, in: The Journal of Pacific History 44,1, 21–39, https://doi.org/10.1080/00223340902900761 (accessed 10 March 2025)
Robson, Robert W. (1973), Queen Emma, Sydney
Sacks, Benjamin (2019), Cricket, Kirikiti and Imperialism in Samoa, 1879–1939. Studies in Sports and Politics, New York
Salesa, Damon Ieremia (1997), Troublesome Half-Castes: Tales of a Samoan Borderland, MA thesis, University of Auckland
Samulski, Roland (2004), Die "Sünde" im Auge des Betrachters: Rassenmischehen und deutsche Rassenpolitik im Schutzgebiet Samoa 1900 bis 1914, in: Becker, Frank (ed.), Rassenmischehen, Mischlinge, Rassentrennung: Zur Politik der Rasse im deutschen Kolonialreich, Stuttgart, 329–356
Schieder, Theodor, Hans-Ulrich Wehler (1992), Das Deutsche Kaiserreich von 1871 als Nationalstaat, Wiesbaden
Schmoeckel, Mathias (2018), Historisch-kritischer Kommentar zum BGB, Bd. 4: Familienrecht, §§ 1297–1921, Tübingen
Schoeffel, Penelope (2005), Sexual morality in Samoa and its historical transformations, in: Gross, Claudia, Harriet D. Lyons, Dorothy Counts (eds.), A Polymath Anthropologist: Essays in Honour of Ann Chowning, Auckland, 63–70
Schulte-Althoff, Franz-Josef (1985), Rassenmischung im kolonialen System: Zur deutschen Kolonialpolitik im letzten Jahrzehnt vor dem Ersten Weltkrieg, in: Historisches Jahrbuch 105, 52–94
Schwarz, Thomas (2002), Die Mischehendebatte im Reichstag 1912 – Hybridität in den Verhandlungen zwischen deutscher Biopolitik, Anthropologie und Literatur, in: Dokilomunhak. Deutsche Sprach- und Literaturwissenschaft 19, 323–350
Schwarz, Thomas (2013), Ozeanische Affekte: die literarische Modellierung Samoas im kolonialen Diskurs, Berlin
Shankman, Paul (1989), Race, Class, and Ethnicity in Western Samoa, in: Howard, Michael C. (ed.), Ethnicity and Nation-building in the Pacific, Tokyo, 218–243

Shankman, Paul (1996), The History of Samoan Sexual Conduct and the Mead-Freeman Controversy, in: American Anthropologist 98,3, 555–567, https://doi.org/10.1525/aa.1996.98.3.02a00090 (accessed 10 March 2025)
Shankman, Paul (2001), Interethnic Unions and the Regulation of Sex in Colonial Samoa, 1830–1945, in: The Journal of Polynesian Society 110,2, 119–148
So'o, Asofou (2008), Democracy and Custom in Sāmoa. An Uneasy Alliance, Suva
Stoler, Ann L. (1989), Making Empires Respectable: The Politics of Race and Sexual Morality in 20th Century Colonial Cultures, in: American Ethnologist 16,4, 634–660, https://doi.org/10.1525/ae.1989.16.4.02a00030 (accessed 10 March 2025)
Stoler, Ann L. (1995), Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things, Durham (NC), https://doi.org/10.1515/9780822377719 (accessed 10 March 2025)
Tcherkézoff, Serge (2017), Gift-giving in Western Polynesia: Lifting the Contradiction between Samoa and Tonga, Apia
Thode-Arora, Hilke (ed.) (2014), From Samoa with Love? Samoa-Völkerschauen im Deutschen Kaiserreich: eine Spurensuche, München
Tobin, Robert D. (2015), Peripheral Desires: The German Discovery of Sex, Philadelphia (PA), https://doi.org/10.9783/9780812291865 (accessed 10 March 2025)
Tuiteleleapaga, Napoleone A. (1980), Samoa, Yesterday, Today, and Tomorrow, New York
Voegeli, Wolfgang (1982), Funktionswandel des Scheidungsrechts, in: Kritische Justiz 15,2, 132–136, https://doi.org/10.5771/0023-4834-1982-2-132 (accessed 10 March 2025)
Walther, Daniel J. (2002), Creating Germans Abroad: Cultural Policies and National Identity in Namibia, Athens (OH)
Walther, Daniel J. (2008), Racializing Sex: Same-Sex Relations, German Colonial Authority, and Deutschtum, in: Journal of the History of Sexuality 17,1, 11–24, https://doi.org/10.1353/sex.2008.0001 (accessed 10 March 2025)
Wareham, Evelyn (2002), Race and Realpolitik: The Politics of Colonisation in German Samoa, Frankfurt am Main
Weber, Max (1964), The Theory of Social and Economic Organization, translated by A. M. Henderson, ed. with an introduction by Talcott Parsons, New York
Wildenthal, Lora (1994), Colonizers and citizens: Bourgeois women and the Woman Question in the German colonial movement, 1886–1914, Ann Arbor (MI)
Wildenthal, Lora (1997), Race, Gender, and Citizenship in the German Colonial Empire, in: Cooper, Frederick, Ann Laura Stoler (eds.), Tensions of Empire: Colonial Cultures in a Bourgeois World, Berkeley, 263–284, https://doi.org/10.1525/california/9780520205406.003.0008 (accessed 10 March 2025)
Wildenthal, Lora (2001), German Women for Empire, 1884–1945, Durham (NC), https://doi.org/10.2307/j.ctv12102dx (accessed 10 March 2025)
Wolf, Ernst, Gerhard Lüke, Herbert Hax (1959), Scheidung und Scheidungsrecht: Grundfragen der Ehescheidung in Deutschland, Tübingen

Ye, Ruiping (2009), Torrens and Customary Land Tenure: A Case Study of the Land Titles Registration Act 2008 of Samoa, in: Victoria University of Wellington Law Review 40,4, 827–861, https://doi.org/10.26686/vuwlr.v40i4.5249 (accessed 10 March 2025)

Zollmann, Jakob (2014), German Colonial Law and Comparative Law, 1884–1914, in: Duve, Thomas (ed.), Entanglements in Legal History: Conceptual Approaches, Frankfurt am Main, 253–294, http://dx.doi.org/10.12946/gplh1 (accessed 10 March 2025)

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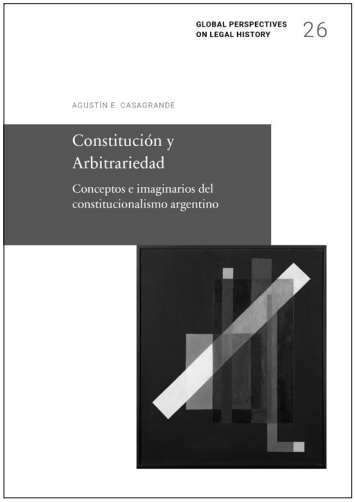

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Conceptos e imaginarios del constitucionalismo argentino

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