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Making South West Africa German? Attempting imperial, juridical, colonial, conjugal and moral order[1]

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Abstract

This article addresses the origins of a decree prohibiting racially-mixed marriages that was issued in German South West Africa in September 1905. A close reading of the archival sources together with the observation that only a negligible number of such marriages took place raises the crucial question as to why such a drastic measure was deemed necessary. It is argued that a lack of experience in a new and developing legal field combined with administrative inefficiencies to allow a wide leeway to implement whatever was deemed desirable by the respective administrative official in the colony, regardless of what Berlin argued. The determinist, even teleological, notion that German racism was imposing itself in this situation has to be re-evaluated.

Introduction

Once the German Empire had acquired colonies, it faced the task of regularising this new situation legally. As the youngest of the European nation states, established only in 1871 after the Franco-Prussian War, Germany was itself still in the process of state consolidation in 1884, the year in which the first protectorates were established. The codification of its own legislation had not yet been fully achieved. The many formerly separate kingdoms, states, cities, etc. had to be legally and juridically unified and their different law books re-written into one German Imperial law. Against this background, the codification of a standardised body of legislation for its territorial possessions in Africa and the Pacific was fraught with difficulties and resulted in a most convoluted body of legal and judicial regulations and stipulations. In the light of a total absence of colonial administrative and legal experience, notions of a strong German state able to decisively and purposefully enact clear-cut legislation in its colonies to subjugate the colonised need to be reconsidered. This inexperience has to be kept in mind, especially

[1] This paper is based on a chapter of Wolfram Hartmann, *Intimate Matters. Men and Women in Hereroland, 1830s to 1905*, Essen, Otjivanda Presse, forthcoming.

for the following considerations on the development of German legal structures in the colonies.[2]

With a different emphasis, John Iliffe in his 1969 book on German rule in Tanganyika, analysed masterfully as "constitutional anomalies" and "most perplexing" this absence of a coherent body of legal provisions for Germany's colonies. He described the "anomalous position of the colonies in Germany's constitutional structure" and this is clearly what makes difficult the untangling of the issues with which we are concerned.[3] Additionally, the treatment of the topic by scholars to date has suggested that there is a full and chronologically continuous record reflecting all proceedings in terms of colonial law in general, and marriage legislation and Civil Registry issues in the new possessions in particular.

However, the issue is far less well-documented than recent work concedes.[4] Gaps of several years in the documentation between the late 1880s and the 1890s, and again

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[2] By way of illustration, this is how one legal expert on colonial matters, Köbner, summarised almost 20 years of Germany's colonial experience in 1902 in an article entitled "Die Organisation der Rechtspflege in den Kolonien", using language that reflects the convoluted nature of the issues with which we are concerned: "Die gegenwärtige Rechtslage leidet somit an einer erheblichen *Unübersichtlichkeit* [emphasis in original]: Zur Kenntnis der Organisation der kolonialen Rechtspflege müssen jetzt zunächst im Rahmen des Schutzgebietsgesetzes die Bestimmungen des Konsulargerichtsbarkeitsgesetzes festgestellt werden, die auch ihrerseits zum großen Teil keine aus sich selbst heraus verständlichen Normen darstellen, sondern wiederum auf andere Reichs- und zum Teil auch preußische Gesetze Bezug nehmen, sie teils für anwendbar erklärend, teils Vorschriften derselben schlechthin ausschließend, teils sie erheblich modifizierend; des weiteren mehr dann noch jedesmal geprüft werden muss, ob und inwieweit für die Schutzgebiete besondere Abweichungen durch das Gesetz zugelassen und im Verordnungswege durchgeführt sind." Cf. p 343 of Otto Köbner, "Die Organisation der Rechtspflege in den Kolonien", *Verhandlungen des Deutschen Kolonial-kongresses*, 1902: 331-376.

[3] Cf. his *Tanganyika under German Rule, 1905-1912*, Cambridge, Cambridge University Press, 1969:31ff. Cf. also Ludwig Sieglin, *Die koloniale Rechtspflege und ihre Emanzipation vom Konsularrecht*. Hubert Nendrup, (ed.) *Kolonialrechtliche Abhandlungen*, Heft 1, Münster, Coppenrath, 1908: 1 "Sie [the colonial judiciary, WH] ist nun nach dem Eintritte Deutschlands in die Reihe der Kolonialmächte nicht etwa als eine originale geschaffen worden. Vielmehr zog man es vor, für die Kolonien eine bereits anderwärts unter einigermaßen ähnlichen Verhältnissen erprobte deutsche Rechtspflege zum Muster zu nehmen."

[4] Wolfgang U. Eckert, *Medizin und Kolonialimperialismus Deutschland 1884-1945*, Paderborn, Schöningh, 1997; Cornelia Essner, "'Wo Rauch ist, da ist auch Feuer'. Zu den Ansätzen eines Rassenrechts für die deutschen Kolonien", in: Wilfried Wagner, (ed.), *Rassendiskriminierung, Kolonialpolitik und ethnisch-nationale Identität*, Münster, Lit, 1992: 145-160; *idem* "Zwischen Vernunft und Gefühl. Die Reichstagsdebatten von 1912 um koloniale 'Rassenmischehe' und Sexualität", *Zeitschrift für Geschichtswissenschaft*, 45, 1997: 503-519; Pascal Grosse, *Kolonialismus, Eugenik und bürgerliche Gesellschaft in Deutschland, 1850-1918,* New York, Campus, 2000; Birthe Kundrus, *Moderne Imperialisten. Das Kaiserreich im Spiegel seiner Kolonien*, Köln, Böhlau, 2003; Franz-Josef Schulte-Althoff, "Rassenmischung im kolonialen System. Zur deutschen Kolonialpolitik im letzten Jahrzehnt vor dem Ersten Weltkrieg", *Historisches Jahrbuch,* 105, 1985: 52-94; Harald Sippel, "'Im Interesse des Deutschtums und der weißen Rasse': Behandlung und Rechtswirkungen von 'Rassenmischehen' in den deutschen Kolonien Deutsch-Ostafrika und Deutsch-Südwestafrika", *Jahrbuch für afrikanisches Recht,* 9, 1995: 123-159; *idem* "Recht und Herrschaft in kolonialer Frühzeit: die Rechtsverhältnisse in den Schutzgebieten der Deutsch-ostafrikanischen Gesellschaft (1885-1890)", in: Peter Heine/Ulrich van der Heyden, (eds.), *Studien zur Geschichte des deutschen Kolonialismus in Afrika. Festschrift zum 60. Geburtstag von Peter Sebald,* Pfaffenweiler, Centaurus, 1996: 466-494; *idem*

in the very early 1900s, for instance, cannot be accounted for other than with the argument that the issue of marriages in the colony was not deemed as important as we tend to think today, and for that reason fewer documents were archived. It could also indicate the degree to which the colony was not fully under colonial control, and that the erection of a colonial administration in German South West Africa was a far more erratic, uncoordinated and unorganised effort than has been acknowledged.[5] The fact remains that some of the documentation is simply missing from the record and therefore unavailable. As a result some things can only be explained by reasonable conjecture and speculation. Nevertheless, the impression lingers that contemporary administrators had difficulty understanding and applying the regulations, given their very complicated nature and lack of clear categories and definitions.

Within the framework of general legal development in the colonies I will focus attention on legislative issues and the Civil Registry of marriages in German South West Africa. Of course, these deliberations, particularly those bearing on the registration of marriages, were determined not by legal or jural considerations in Berlin alone. In fact, they were determined by conditions on the (colonial) ground. People had married in south western Africa before the advent of German colonialism, no doubt. And they continued to marry while such legal considerations as would impede them were being developed and debated both in Windhoek and in Berlin. The Rhenish missionaries, as the only available solemnisers of such unions, were involved in these questions from the beginning and not only on an organisational level, but also as legal questions pertaining to marriage had sexual-ethical and moral significance. The history of the pre-German decades with regard to the sexual encounter between foreign men and indigenous women bore this out.

The legal framework

German Imperial law was *expressis verbis* only valid inside the borders of the German Empire, and the Imperial Constitution (*Reichsverfassung*) of 1871 neither provided for

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"Die rechtliche Behandlung von ehelichen und nichtehelichen Beziehungen zwischen Kolonisten und Kolonisierten in Deutsch-Südwestafrika", in: A. W. Steffen, (ed.), *Befunde und Berichte zur Deutschen Kolonialgeschichte*, Windhoek/Wuppertal, Internationaler Arbeitskreis für Kolonialwissenschaftliche Forschung, 2001: 73-88; Dirk van Laak, *Über alles in der Welt. Deutscher Imperialismus im 19. und 20. Jahrhundert*, München, Beck, 2005; Lora Wildenthal, "Race, Gender and Citizenship in the German Colonial Empire", in: Frederick Cooper/Ann L. Stoler, (eds), *Tensions of Empire. Colonial Cultures in a Bourgeois World,* Berkely, University of California Press, 1997: 263-283; Jürgen Zimmerer, *Deutsche Herrschaft über Afrikaner. Staatlicher Machtanspruch und Wirklichkeit im kolonialen Namibia*, Münster, Lit, 2001; Jakob Zollmann, "Polemics and other arguments – A German debate reviewed", *Journal of Namibian Studies*, 1, 2007: 109-130.

[5] Cf. Helmut Bley, *Kolonialherrschaft und Sozialstruktur in Deutsch-Südwestafrika, 1894 bis 1914*, Hamburg, Leibniz, 1968: 13-17.

nor defined the eventuality of colonial possessions or external territories.[6] For this reason the Imperial German legal code had no automatic bearing on the new colonies. Hence, political and legislative authority as vested in the German system, with its two chambers, the *Reichstag* and the *Bundesrat*, did not apply to the newly acquired, extraterritorial areas in Africa and the Pacific. To rectify this a-legal situation, a basic law, the 'Law regarding Legal Relations in the German Protectorates' of 16 April 1886 (*Gesetz, betreffend die Rechtsverhältnisse der deutschen Schutzgebiete* also known as *Schutzgebietsgesetz*) was drafted and its provisions promulgated consecutively for the different protectorates; it will henceforth be referred to as the 'Colonial Basic Law', followed by its German abbreviation (*SchGG*).[7]

The legislative and executive powers vested in the *Reichstag* and *Bundesrat* were expressly precluded with regard to colonial possessions and delegated to the German Emperor, making him the *Schutzherr*, Lord Protector, of the colonies.[8] This was done in the name of practicality and convenience, as it was argued that it would be more efficient if colonial authority were concentrated centrally and in one hand.[9] As such he

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[6] Interestingly, the constitution of the immediate forerunner of the German Empire, the North German Federation (*Norddeutscher Bund*) mentions colonisation as an issue governed by it. Cf. *Bundesgesetzblatt des Norddeutschen Bundes*, No. 1: 3.

[7] *Reichs-Gesetzblatt*, 1886: 75. For the following deliberations I have used Johannes Gerstmeyer, *Das Schutzgebietsgesetz nebst der Verordnung betr. die Rechtsverhältnisse in den Schutzgebieten und dem Gesetz über die Konsulargerichtsbarkeit in Anwendung auf die Schutzgebiete sowie den Ausführungs-bestimmungen und ergänzenden Vorschriften*, Berlin, Guttentag, 1910: v "Das Grundgesetz für die deutschen Kolonien ist das Schutzgebietsgesetz." Cf. also his *Die deutsche Kolonial-Gesetzgebung. Sammlung der auf die deutschen Schutzgebiete bezüglichen Gesetze, Verordnungen, Erlasse und internationalen Vereinbarungen, mit Anmerkungen und Sachregister*, Berlin, Mittler, 1893 ff; Otto Köbner, *Einführung in die Kolonialpolitik*, Jena, Fischer, 1908. I also used the original law texts*: Bundes-Gesetzblatt des Norddeutschen Bundes*, 1867ff, *Reichs-Gesetzblatt 1871ff* and Riebow, et al. (ed.) *Die deutsche Kolonial-Gesetzgebung. Sammlung der auf die deutschen Schutzgebiete bezüglichen Gesetze, Verordnungen, Erlasse und internationalen Vereinbarungen*, Berlin, Mittler, 1893ff; Philipp K. L. Zorn, *Deutsche Kolonialgesetzgebung*, Berlin, Guttentag, 1913.

[8] Cf. § 1 *SchGG* "Die Schutzgewalt in den deutschen Schutzgebieten übt der Kaiser im Namen des Reichs aus."

[9] Köbner, *Kolonialpolitik:* 118 f: "Nach dem Erwerb der ersten deutschen Kolonien herrschte Meinungs-verschiedenheit in der parlamentarischen ebenso wie in der wissenschaftlichen Diskussion hinsichtlich der Zuständigkeit der Organe des Reiches für die Regelung der Rechtsverhältnisse in den neuen Gebieten. Die Bestimmungen der Reichsverfassung ergaben keine zweifellose Beantwortung der Frage. [...] Er [Bismarck] erkannte..., dass die praktische Durchführung des Gedankens, wonach der Schwerpunkt der staatlichen Befugnisse bei dem Organ der verbündeten Regierungen, dem Bundesrat, geruht haben würde, untunlich sein müßte. [emphasis, WH] Denn eine energische und planmäßige überseeische Betätigung kann natur-gemäß in erfolgreicher Weise nicht von einer kollegialen Körperschaft, [...] geleitet werden, sondern bedarf einer starken einheitlichen Spitze." Cf. also Gerstmayer, *Schutzgebietsgesetz,* xxii: "Aus Zweckmäßigkeits-gründen wurde es dabei für richtig erachtet, die Ausübung der Hoheitsrechte des Reichs einschl. der Gesetzgebungsgewalt grundsätzlich in die Hände des Kaisers zu legen. Gleichzeitig hielt man es aber für nötig, die Rechtspflege dem Verordnungsrecht des Kaisers zu entziehen und sie zu dem Zwecke in der Hauptsache schon im Gesetze selber zuregeln. Es geschah dies, indem man im § 2 auf das bürgerliche Recht, das Strafrecht, gerichtliche Verfahren und im wesentlichen auch auf die Gerichtsverfassung das Gesetz über die Konsulargerichtsbarkeit vom 10. Juli 1879 (RGBl. 197) und im § 4 auf das

would rule the colonies by decree *(Verordnungsrecht)*, but not by law *(Reichsgesetz)*. For the same reason the Emperor's powers and authority could be delegated to the relevant subordinate departments and officials, mostly the Imperial Commissioners, later the Governors, (*Kaiserlicher Kommissar or Landeshauptmann / Gouverneur*) in the territories.[10] The Emperor's powers were not, however, absolute; they were limited legally by the Imperial Constitution *(Reichsverfassung)*, fiscally by the *Reichstag's* annual budgetary control and, most importantly, by clauses 2 and 4 of the Colonial Basic Law (*SchGG*) itself. Accordingly, the Emperor was instructed to enact existing consular legislation relating to private and commercial law, matters of judicial concern (§ 2 *Bürgerliches Recht, das gerichtliche Verfahren einschließlich der Gerichtsverfasssung*) and Civil Registry issues, such as marriage licenses and birth and death certifications (§ 4 *Beurkundung des Personenstandes*). For clause 2, consular judiciary law (*Gesetz über die Konsulargerichtsbarkeit* vom 10. Juli 1879) was promulgated, whereas for clause 4 a law of 1870 which regulated Civil Registry affairs of Imperial citizens abroad (*Gesetz, betreffend die Eheschließung und die Beurkundung des Personenstandes von Reichsangehörigen im Auslande, vom 4. Mai 1870*) was implemented.[11]

The now finalised provisions of clause 2 of the Colonial Basic Law (*SchGG*) were made applicable to German South West Africa on 1 January 1888 as 'Ordinance regarding Legal Relations in the South West African Protectorate' (*Verordnung, betreffend die Rechtsverhältnisse in dem südwestafrikanischen Schutzgebiet*).[12] The question as to why the law makers did not adjust and apply the legal stipulations of Imperial Civil Law (*Bürgerliches Gesetzbuch*) to the colonies, and why a different (consular) body of laws was applied, must be sought in the fact that to do so the Imperial Constitution would have had to be changed as it was only valid inside the borders of Germany. Consular law seemed to be more appropriate in an extraterritorial context. The issues to be regulated were, after all, far removed from any Berlin-based direct legal control, a fact that would have no little bearing on the questions elaborated upon here. This logistical complication was exacerbated by the fact that at that time no administrative structures existed in the newly acquired territories. Legislators in Berlin were concerned to create legislation that would be practical and applicable without running up against too many structural and organisational problems in the as yet scarcely, let alone effectively, colonised territories,

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Standesamtswesen das Gesetz betr. die Eheschließung und Beurkundung des Personenstandes im Auslande vom 4. Mai 1870 (RGBl. 599) für anwendbar erklärte."

[10] Goering's title was Imperial Commissioner, *Kaiserlicher Kommissar*; von François carried the military title *Kaiserlicher Landeshauptmann*, while Leutwein was the first person to carry the title *Kaiserlicher Gouverneur* from 1893.

[11] Gerstmayer, *Schutzgebietsgesetz,* xxii: "Es geschah dies, indem man § 2 auf das bürgerliche Recht, das Strafrecht, gerichtliche Verfahren und im wesentlichen auch auf die Gerichtsverfassung das Gesetz über die Konsulargerichtsbarkeit von 10. Juli 1879 (RGBl. 197) und im § 4 auf das Standesamtswesen das Gesetz betr. die Eheschließung und Beurkundung des Personenstandes im Auslande vom 4. Mai 1870 (RGBl. 599) für anwendbar erklärte."

[12] *Reichs-Gesetzblatt*, 1887: 535.

where problems of personnel, transportation and communication had to be taken into account.

Another question, namely to whom these laws were to be applied (or not), arose from the specific colonial situation. It was dealt with almost immediately, and a revised version was promulgated for German South West Africa on 10 August 1890. It introduced the category of *Eingeborener*, native or indigene (literally: somebody born in the colony), to which clause 2 – matters of jurisdiction as per consular judiciary law (*Gesetz über die Konsulargerichtsbarkeit*) – was either not applicable or applicable only subject to specific conditions: customary law and the stipulations in the respective protection treaties were to be applied.[13] For non-native inhabitants of the colony, i.e. immigrant Europeans (settlers, soldiers, officials), consular law was stipulated as applicable. Thus the law introduced the dual categories of native and, by implication, non-native; in German *Eingeborener* and *Nichteingeborener*. The chosen English terminology – for want of better words – does not quite catch this nuance. Its problematic German ambiguity cannot be adequately translated. The terms indigenous and non-indigenous are even less exact an equivalent. More important is that this German terminology was understood in a particular way, i.e. as African and non-African, whereas the direct and literal German meaning just expressed where one was born, inside or outside the colony. Strictly applied, yet not intended to be (for legal purposes): an *Eingeborener* could also be a German born in the colony. Definitional clarity was not the result, and this would make deliberations henceforth even more complicated. The 1890 decree ordered the Imperial Commissioner for German South West Africa to define, who was to be considered an *Eingeborener.*[14]

As this provision would have important ramifications for the debates and deliberations in terms of Civil Registry issues in the protectorate, a few contextualising remarks are needed. Civil Law (*Bürgerliches Recht*) was applicable territorially inside the clearly defined borders of the German empire only. Consular law, however, applied when territoriality was not operative; it was aimed at German subjects abroad, and their interaction with non-Germans. The promulgation of such law for the protectorates thus made sense on the one hand, given that Germans had to relate to other nationalities in addition to indigenous populations.[15] In the south western African context, other kinds of

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[13] § 1 of amended *Verordnung, betreffend die Rechtsverhältnisse in dem südwestafrikanischen Schutzgebiet, of 1890*, *Reichs-Gesetzblatt*, 1890:171 reads as follows: "Der Gerichtsbarkeit (§ 1 der Verordnung vom 21. Dezember 1887) unterliegen alle Personen, welche in dem Schutzgebiet wohnen oder sich aufhalten, oder bezüglich deren, hiervon abgesehen, ein Gerichtsstand innerhalb des Schutzgebietes nach den zur Geltung kommenden Gesetzen begründet ist, die Eingeborenen jedoch nur, soweit sie dieser Gerichtsbarkeit besonders unterworfen werden."

[14] Cf. § 2 of amended *Verordnung, betreffend die Rechtsverhältnisse in dem südwestafrikanischen Schutzgebiet, of 1890*, "Der Kaiserliche Kommissar für das südwestafrikanische Schutzgebiet bestimmt mit Genehmigung des Reichskanzlers, wer als Eingeborener im Sinne dieser Verordnung anzusehen ist,...", *Reichs-Gesetzblatt*, 1890:171. The definition was, however, only formulated and issued in December 1893. Cf. NAN-ZBU 666 F IV r 1, p 13f.

[15] Cf. Köbner, *Kolonialpolitik*: 127 "Der ganze Gedanke der Übertragung des Konsularrechts auf das Kolonialrecht geht zurück auf die [...] Grundidee, die dem ursprünglichen kolonialpolitischen Vorgehen

law were also being observed: common law, customary law, and, importantly in our case, British colonial and Roman-Dutch legal practices in force in the different colonial set-ups to the south of the Orange River, and which had been carried into the region by the many traders and hunters from this direction. Consular law seemed to be far better suited for these purposes. On the other hand, however, the protectorates were not legally foreign territory to which German law could *per definitionem* not apply, but areas to which German legal sovereignty, *hoheitsrechtliche Befugnisse*, did apply. Yet, the application of (imperial) consular law to the subjugated, colonised populations would have positioned them as legal equals with rights and duties. To uphold colonial order, these had to be excluded and provided for differently in legal terms.

In clause 4 of the Colonial Basic Law (*SchGG*), the one dealing with Civil Registry issues including marriage, another consular law, the 'Law Regarding Marriages and Civil Status Registration of Germans Abroad' (*Gesetz betreffend die Eheschließung und die Beurkundung des Personenstandes von Reichsangehörigen im Auslande vom 4. Mai 1870*) was made applicable. In it, issues of Civil Registry administration such as the registration of births, deaths and the posting of marriage bans were codified, albeit for German nationals abroad only; within the framework of the stipulations of the Colonial Basic Law (*SchGG*) it applied to Germans in the protectorates only. This much comes from published legal material. A look at the documented archival, unpublished evidence will provide nuance to the picture and improve our understanding of what actually shaped and drove the arguments and developments in the area of conjugal pairing and related Civil Registry issues.

Conjugal order: legally[16]

It was another two years before a missive dated 7 June 1892 from the Foreign Office to the newly installed *Kaiserlicher Landeshauptmann* Curt von François in Windhoek argued that with a growing number of soldiers in the colony, some of whom were due for contractual decommission and would decide to remain, the situation had changed and

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Deutschlands zugrunde lag, wonach man die "Schutzgebiete" nur in loser Schutzverbindung mit dem Mutterlande sich dachte und, von diesem Standpunkte aus ganz logisch, dort eine Rechtsordnung konstruieren konnte, wie sie sich sonst nur in Auslandsverhältnissen findet. [...] Zwischen konsularer und kolonialer Gerichtsbarkeit besteht von vornherein begrifflich ein *grundsätzlicher Gegensatz*, der darin liegt, daß die erstere ihrem Wesen nach immer eine streng *personale* ist, beschränkt auf die Konationalen des Konsularrichters [...]. Hingegen ist die koloniale Gerichtsbarkeit ihrem innersten Wesen nach auf einen solchen Personenkreis nicht bescharänkt; sie ist eine streng *territoriale* und umfaßt grundsätzlich alle innerhalb des *Gebietes* der Kolonien befindlichen Rechtssubjekte." [emphasis in original].

[16] I have drawn on the following bodies of archival evidence. National Archives of Namibia, NAN-ZBU 662, 663, 664 and 666 and from the Federal Archives in Berlin, Germany, BArchB, Bestand Reichskolonialamt 10. 01, 5417, 5418 and 5423. It has to be pointed out, again, that the archival material is very poor with particular regard to information about the role played by substantial numbers of decommissioned soldiers in the early 1890s. For one, the military sources have not survived; also, the documentation in the relevant files of NAN-ZBU seems to have been particularly radically deselected.

there needed to be some form of marriage legislation.[17] A structure for the enactment of the legislation needed to be created and officials and registrars named. The missionaries who had hitherto solemnised marriages also needed to be informed of the changing situation. Finally, roughly five years after the first promulgation of jurisdictional legislation, the Emperor decreed an 'Ordinance regarding Marriages and Civil Registry for the South West African Protectorate' (*Allerhöchste Verordnung, betreffend die Eheschließung und die Beurkundung des Personenstandes für das südwestafrikanische Schutzgebiet vom 1. Januar 1893*).[18] It was announced in the colony by the Imperial Commissioner in July 1893. To be consistent with earlier legislation it also applied only to those who were not *Eingeborene*.[19] The definition of who was considered *eingeboren* was again left to the governor.

Two problems that demonstrate contemporary legal ingenuousness or maybe even blatant inexperience among German lawmakers with regard to colonial issues – more about which further down – surface in this context. Firstly, the letter to von François argued specifically that marriages concluded by missionaries since the enactment of the Colonial Basic Law (*SchGG*) of 1888 were not – in a strict legal sense – valid, since they did not conform to the requirements of the *Gesetz betreffend die Eheschließung und die Beurkundung des Personenstandes von Reichsangehörigen im Auslande* of 4 May 1870. The latter had, however, never been enacted for the territory, so none of the formalised unions could be invalid or even illegal. Secondly, the decreed marriage legislation of 1893 excluded natives/indigenes as possible spouses, although the law of 1870 and its implementing regulation of 1871 made provision expressly for the inclusion of non-German spouses.[20] All future legal elaborations on marriage issues would be fraught with this inconsistency. The decree also prompted the Imperial

[17] Marriage and Civil Registry legislation for the colonies, as provided for in clause 4 of the Colonial Basic Law (SchGG), were obviously considered to be far less urgent than commercial and other judicial issues, the actual presence of Germans in the territory being negligible. Cf. NAN-ZBU 662 F IV n2 Bd 1: 4 "Nachdem das Bedürfnis einer Regelung des Civilstandswesens im Schutzgebiete stärker hervorgetreten ist, wird es an der Zeit sein, für die Einführung des Gesetzes, betreffend die Eheschließung und die Beurkundung des Personenstandes von Reichsangehörigen im Auslande, Sorge zu tragen."

[18] Cf. NAN-ZBU 662 F IV n2 Bd 1: 4.

[19] "...tritt für das südwestafrikanische Schutzgebiet bezüglich aller Personen, welche nicht Eingeborene sind, am 1. Januar 1893 in Kraft.", cf. *DtKolBl*, 1892: 373.

[20] See preceding footnote and § 10 of the *Gesetz betreffend die Eheschließung und Beurkundung des Personenstandes von Bundesangehörigen im Auslande* of 4 May 1870 "Die vorstehenden Bestimmungen über die Eheschließung finden auch Anwendung, wenn nicht beide Verlobte, sondern nur einer derselben ein Bundesangehöriger ist"; cf. also *Instruction des Reichskanzlers zu dem Gesetze vom 4. Mai 1870, betreffend...*etc, § 2. . The catch is that a new category was introduced in law pertaining to the colonies - *Nichteingeborener* - , a category that was not provided for in the metropolitan Imperial codification of law. The latter only knew the categories of *Reichsangehöriger* and *Nicht-Reichsanghöriger*, in earlier terminology *Bundesanghöriger / Nicht-Bundesangehöriger*, In English roughly German and non-German, or Imperial citizen and non-Imperial citizen. This would lead to complications down the road as the Colonial Basic Law (*SchGG*) and its decreed applications in the colony applied different conceptualised pairs of categories: native/non-native and citizen/non-citizen in the fields of justice and civil registry legislation respectively.

Commissioner finally to define who was to be counted as an *Eingeborener.*[21] Although called for in earlier legislation, this had not been complied with. The sources do not reveal any direct reason for this, however, but by conjecture one may argue the following.

The introduction of the new category *Eingeborener* and its implied opposite category *Nicht-Eingeborener* indicates that the application of German law in the colonies to colonial (indigenous) subjects was seen as being problematic; further, the fact that the definition of an indigene or native was only given real attention in the context of marriages suggests that this question was now considered with some urgency.[22] Applying German or colonial law to colonial subjects would inevitably mean that these would, ultimately, be able to make claims of citizenship and nationality status. That had to be precluded and the exclusionary provisions indicate that marriage and related issues relevant to colonial subjects had not been merely matters of theoretical legal concern, planning and execution. The inclusionary stipulation of the law decreed to rule Civil Registry issues in the colony was subsequently nullified when the new *Schutzgebietsgesetz* of 1900 was formulated and streamlined.[23] Despite clarification of this new legal provision, a decree ordering a temporary ban on mixed marriages was issued in September 1905 in Windhoek.

It is therefore necessary to look into the legal debates and deliberations as they were impelled by the events in German South West Africa in the 1890s and early 1900s to see how they in turn influenced developments. Indeed, interested parties – the mission societies, colonial societies, colonially minded individuals in government – had played, and would continue to play a role in the formulation and application of the law in the newly acquired colonies. In the next section I will attempt to describe the developments in German colonial legal marriage regulations over the first two decades of colonial rule in south western Africa, turning to some of the debates and interventions on the ground.

Conjugal order: politically and administratively

Some of the complexity of the legal development has to be sought in its origins, particularly as there were no experts in this youngest of German legal specialisations, colonial law. Aside from problems with the archival documentation, the material clearly shows that judicial commentary was often written by men without sound German legal knowledge and with next to no knowledge of what little had been formulated in terms of colonial law. A legal commentator describes this as the *status quo* until as late as 1909. Contrary to the stipulations of the *Gerichtsverfassungsgesetz (GVG)*, the law which set

[21] NAN-ZBU 666 FIV r1, p 13f. Von François finally decreed on 1 December 1893 that an *Eingeborener* was the following: all members of tribes living in the Protectorate; all members of other coloured tribes; the Bastards.

[22] The exhortation to the governor to define, "wer als Eingeborener im Sinne dieser Verordnung anzusehen ist", cf. § 2 of amended *Verordnung, betreffend die Rechtsverhältnisse in dem südwestafrikanischen Schutzgebiet, of 1890* had never been heeded. Cf. Footnote 39.

[23] Gerstmayer, *Schutzgebietsgesetz* : 8.

forth the requirements for judicial and legal personnel for the German Empire, judicial training for the administration and formulation of law in the colonies was not specifically required. This accommodated the general shortage of colonial judges (*Kolonialrichter*) who should also have been the legislative experts.[24]

On 7 May 1887, *Missionsinspektor* Carl Gotthilf Büttner of the *Evangelische Missionsgesellschaft für Deutsch-Ostafrika*, Dr. phil. Otto Kersten and Herrmann Weser, preacher at St. Mary's in Berlin, wrote a letter to Chancellor von Bismarck.[25] Its background was the intended promulgation of the law with which the establishment and administration of a Civil Registry, according to clause 4 of the Colonial Basic Law (*SchGG*), was to be effected for the protectorates. They requested the assistance of the Imperial Chancellor to ensure that the impending legislation regarding marriages in the protectorates would also extend to marriages between Europeans and coloured indigenes.[26] Their main concern was "a beneficial development", *eine gedeihliche Entwicklung*, of the colony. They made some practical suggestions to alleviate the new territory's logistical problems in terms of a Civil Registry infrastructure, and to back up their arguments and requests added the 'Memorandum regarding Marriages between Whites and Coloureds in the German Protectorates', (*Denkschrift betreffend die Schließung von Ehen zwischen Weißen und Farbigen in den deutschen Schutzgebieten*). This document contains the main arguments, why such conjugal unions were seen to be beneficial.

Von Bismarck passed this correspondence on to the Foreign Office, who forwarded the memorandum with a covering letter to Imperial Commissioner Goering at Otjimbingue in

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[24] Cf. Dr. Dörr, "Deutsche Kolonialgerichtsverfassung", *Zeitschrift für Kolonialpolitik, Kolonialrecht und Kolonialwirtschaft,* 11, 1909, 3: 164 "Eine rechtswissenschaftliche Vorbildung der Kolonialrichter ist wegen Personalmangels im Gegensatz zu §§ 2ff GVG nicht vorgeschrieben, wenn auch tatsächlich möglichst Beamte mit Richterqualität mit der Ausübung der Rechtspflege betraut werden."

[25] BArchB R 10.01-5423: 3. Cf. also NAN-ZBU 666-F IV r 1ff. *Denkschrift betreffend die Schließung von Ehen zwischen Weißen und Farbigen in den deutschen Schutzgebieten*. From two of the men's titles and a self-reference in the document as men "who had busied themselves over the years intensely to propagate Christianity, to advance Germandom and the upliftment of lowly tribes", cf. p. 7, we can infer that they were important exponents of one direction in the German Protestant mission movement with strong nationalist and colonial ambitions. The mission society mentioned, the *Evangelische Missionsgesellschaft für Deutsch-Ostafrika* (EMDOA, also known as Berlin III), was the first clearly colonially-oriented mission society, established in 1886. Büttner himself had been sent by the RMS as missionary to Hereroland where he had been the principal of the Augustineum in Otjimbingue between 1873 and 1880. For Büttner see Gustav Menzel, *C. G. Büttner, Missionar, Sprachforscher und Politiker in der deutschen Kolonialbewegung*, Wuppertal, Vereinigte Evangelische Mission, 1992; also Carl G. Büttner, *Das Hinterland von Walfischbai und Angra Pequena. Eine Übersicht der Kulturarbeit deutscher Missionare und der seitherigen Entwicklung des deutschen Handels*, Heidelberg, Carl Winter's Universitätsbuchhandlung, 1884. More generally see Klaus Bade, (ed.), *Imperialismus und Kolonialmission: Kaiserliches Deutschland und koloniales Imperium*, Wiesbaden, Steiner, 1982.

[26] This they could argue, as the law that was stipulated and set to be applied, did expressly include non-Germans as marriage partners. Cf. § 10 of the *Gesetz betreffend die Eheschließung und Beurkundung des Personenstandes von Bundesangehörigen im Auslande* of 4 May 1870 "Die vorstehenden Bestimmungen über die Eheschließung finden auch Anwendung, wenn nicht beide Verlobte, sondern nur einer derselben ein Bundesangehöriger ist."

German South West Africa.[27] His input was deemed necessary in view of his experience in the region. In a covering letter, feedback was requested not only on the organisational issues raised but also on the fact that since German Civil Registry law could also be applied to non-German members of other civilised nations, it should also apply to natives or indigenes that had converted to Christianity in German South West Africa.[28]

The significance of the document's main argument is that its authors identified a need for lawmakers to regulate sexual conduct in the colony as it would have a direct bearing on its future development and administration. Despite the use of euphemistic contemporary terminology, a clear idea of how sexual behaviour was seen to bear on power and control emerges. The first page of the document set the tone: successful colonial development was tied to the key concepts of *sittliche Tüchtigkeit*, moral competence, *geordnetes Familienleben*, intact, orderly family life, (an idiomatic expression carrying highly moralistic overtones in German) and *leibliche Lebens-gemeinschaft*, sexual intercourse. These concepts referred to the interaction between the two groups of the colony's inhabitants, Europeans and Africans. Nothing, and this is a remarkable statement in this document, must ever happen to antagonise these two groups, but rather, "everything must be done to unite these", the indigenous and non-indigenous population.[29]

The document then continued to argue this extraordinarily inclusivist line against the background of the developments and results of the European-African encounter from the pre-German decades of south western Africa. Despite a condescending tendency among the white male immigrants towards the indigenous population's females, the memorandum argues that very few of these men shied away from entering into carnal relations with the women. The ensuing relationships, concubinages (*Konkubinate*) as they were called, would usually last for years; they were viewed as, and understood to be, fully-fledged marriages by the indigenes. As such they were highly advantageous for conducting and running a business. However and often enough, once a fortune had been made, most (white) men would leave their women, children and the country, taking the acquired riches with them, without even thinking of providing for their wives and offspring. This, the memorandum continues to argue, provoked dissatisfaction among the indigenous population and would lead to resistance against the yet to be established colonial administration. This description and evaluation of mainly pre-

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[27] A distinct administrative unit for colonial affairs had not yet been established in Berlin; colonial matters were handled by the Foreign Office – *Auswärtiges Amt*. More importantly, by strictly adhering to procedure, the quintessential German *Instanzenweg*, everybody was informed.

[28] NAN-ZBU 666-F IV r 1 *Denkschrift betreffend die Schließung von Ehen zwischen Weißen und Farbigen in den deutschen Schutzgebieten* : 2 "Wenn es möglich ist, für die in dem Schutzgebiete lebenden Angehörigen der civilisierten Nationen unter den angeführten Voraussetzungen die deutsche Civilstandsgesetzgebung einzuführen, so würde eine Ausdehnung derselben auf solche Eingeborenen, welche Christen geworden sind, stattfinden können. Hinsichtlich der heidnischen Eingeborenen wird von einer solchen Anwendung abgesehen werden müssen."

[29] Ibid.: 1 "...daß alles zu befördern ist, was dieselben verbindet." (emphasis in original).

German developments does in fact reflect some of the social reality of European-African pairing in Hereroland and harks back to some of the missionaries' experiences.

Full legal recognition of such mixed conjugal unions was then spelled out with regard to the prospective positive and advantageous moral, political and economic implications. Cutting to the main point, it was argued that by legitimising such pairings, families and offspring, a strong and ever-growing German element would be installed in the colony. The "gradual evolution of a new race, one between the autochthonous indigenes and the higher talented strangers, would result in magnificent changes of the at present quite miserable state of affairs."[30] In this train of thinking, it was hoped that intermarriage particularly between indigenous ruling families and the immigrant element would over time create a population of "happy and content subjects of the German Empire."[31] Moreover, citing the Hispanisation of Latin America as a successful example, the legal recognition and protection of mixed German families would in turn result in a substantial German influence in south western Africa, and by implication in all of Africa.[32]

The memorandum addressed all the issues that would inform the course of events in terms of the marriage issue over the next one and a half decades. It was a clear attempt by the nationalists in the German missionary movement to influence the course of German colonial policy, and to position themselves as an important voice in the German colonial world. Anticipating the mission's role with regard to mixed marriages and families in the coming decades, this memorandum clearly indicates the mission's and missionaries' double-bind position between moral-ethical and theological-dogmatical concerns for their parishes, and nationalist and colonialist sensitivities and enthusiasm. Its argument reflects that questions of inclusion and exclusion were being discussed with regard to the establishment of effective colonial control. Who cohabited with whom was an important element in these deliberations, as would later become evident in the final version of the legislation applying to issues of marriage licensing. The memorandum is particularly important as this missionary perspective was clearly formed by the knowledge and experience of Rhenish missionaries from the decades prior to German rule; without actually insisting on missionary concerns, but instead pushing the colonial agenda. As such, it demonstrates aptly how immensely intertwined and inseparably Christian missions and German colonialism operated in the later 1880s. It is also clearly the first important documentation of how colonial control and sexuality were understood to be connected, how the Germanness of German South West Africa was to be ensured by also addressing these sexuality-related issues and how race and ethnic affiliation started to figure in these debates. Interestingly, the authors topped off their deliberations with an interpretation of the role of a handful of Rhenish missionary

[30] Ibid.: 5 "Die allmähliche Entwicklung einer neuen, zwischen den bodenfesten Eingeborenen und den höher veranlagten Fremden stehenden Rasse wird grossartige Umwandlungen der jetzt bestehenden dürftigen Zustände zur Folge haben."

[31] Ibid.: 4.

[32] Ibid.: 5 "...so wird auch in Afrika deutsche Sprache und Sitte nennenswerthe Bedeutung erlangen, wenn deutsche Mischlingsfamilien unter dem Schutze des Gesetzes in größerer Anzahl entstehen."

families. Tacked on to the arguments, they added that the prospect of regularised marriage legislation under German colonial control had been an important motive for chiefs to enter into and sign protection treaties in the 1880s.[33]

When Goering responded to the letter and the memorandum in September of 1887, he set the tone for the way in which the questions raised would be handled over the next decades. He did not argue against the memorandum's general direction nor did he oppose any of the arguments directly. German Imperial bureaucrat that he was, he qualified the memorandum's argumentative thrust as utterly exaggerated, disputing the mission's competency in such questions. He went on to argue that the numbers of mixed marriages would always remain low. Women, local women that is, who had wanted their conjugal bonds validated up until then, had always had the chance to do so because the missionaries had performed the rites. Such marriages had been accepted hitherto, but informally and on a customary law basis. In an aside he acknowledged that such unions as concluded in the region by missionaries had hitherto been accepted as fully legal in the Cape Colony.[34] Goering saw no reason to push for inclusivist marriage legislation and argued that, since even the missionaries had recently discontinued the practice, the mission society must have had a reason to put a stop to these marriages.[35] He suggested that it would be best to neither hinder nor promote such matrimonial unions, nor did he see any reason to act according to the memorandum's requests.[36] The general implication of Goering's response was to await further developments before any legislative action was to be taken. This is corroborated by the following.

After consultations with Goering during the latter's visit to Berlin in February 1888, minutes of a Foreign Office meeting were forwarded as a recommendation to implement the marriage legislation in the Empire according to the law of 4 May 1870. It advised to apply it not only to the white population but also to the indigenous population who entered into conjugal unions with European men and their offspring.[37] The German

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[33] Ibid.: 7. Among the very first missionaries to south western Africa, Johann Hinrich Schmelen, had married into a Nama family. A daughter from this union went on to marry Franz Heinrich Kleinschmidt, one of the founding missionaries in Hereroland. Acknowledging these two women's pioneering roles in the missionary enterprise, Büttner *et al.* then emphasised the remarkable agency of the Kleinschmidt offspring in spreading Germandom across south western Africa. Four Kleinschmidt daughters had married missionaries in Namaland, Hereroland and Ovamboland, the three sons had either gone on to become respectable professionals in Germany or were committed to assist, as traders in Hereroland, in the German colonial undertaking. It is in fact the first but also the only time that these families and their roles were mentioned in the record in a positive light; particularly in the generations of Schmelen and Kleinschmidt these unions had been judged negatively in the missionary record.

[34] This is one of the few, albeit only implied, evidentiary proofs of accepted legal practice in the region. Traders, hunters and explorers had used the Cape colonial legislative setup for adjudication of legal conflict. Cf. also letter of missionary Schaar of Okombahe to government, 17.7.1893, in: NAN-ZBU 666 F IV r 2, Bd 1: 1.1.

[35] Goering here repeated hearsay information only.

[36] NAN-ZBU 666-F IV r 1: 8 "...der richtige Standpunkt mit Bezug auf hiesige Verhältnisse ist, solche Ehen weder zu beschränken noch zu befördern."

[37] NAN-ZBU 662 F IV n2 Bd 1: 21. 2. 1888 "Es empfiehlt sich, den § 4 des Gesetzes vom 17. April 1886 auch in dem Schutzgebiete einzuführen in der Weise, das unter das Gesetz vom 4. Mai 1870 nicht nur die

grammatical style of the instruction is highly conjunctive and therefore cannot be taken to be a clear-cut, authoritative instruction; it expressed a provisional approach to the question. It is, I would argue, a reflection of the uncertainty among lawmakers about the intricacies of colonial law at this time.

The exclusion of the indigenous colonial subject (*Eingeborener*) was the topic when the archival sources begin to flow again. When necessitated by the decommissioning of a first group of colonial troops in 1893, marriage legislation was finally enacted. One piece of correspondence between Berlin and Windhoek deals with how to define an *Eingeborener* in order to fulfil the requirement that the law was only applicable to those that were "not *Eingeboren*". A letter written by *Kolonialdirektor* Kayser in the name of the Imperial Chancellor instructed the *Landeshauptmann* to define the category expressly as applying to the marriage law.[38] It is significant that this legal provision, which already applied to the earlier enactment of commercial and legal legislation, had never been met and the definition of what constituted an *Eingeborener* was finally forced in the context of marriage. Von François decreed on 1 December 1893 that an *Eingeborener* was the following: all members of tribes living in the Protectorate; all members of other coloured tribes (providing for the eventuality of Africans from outside the colony); and the so-called *Bastards.*[39] To keep open a legal back door, a provision was added to allow for exceptions in case an *Eingeborener* challenged this classification, since theoretically and practically someone might, despite the intention of the colonial lawmakers, be a German subject.[40]

In addition to this (rather unclear) instruction, a further complexity surfaced in 1897, when the marriages of four German men to women from the Grootfontein Baster resulted in questions about their male offspring, forcing the problematic issue to the fore.[41] The so-called *Indigenatsgesetz* had a bearing here. It ruled that everyone married to a German automatically became a German citizen. In addition, the legitimate child of a German father was automatically a German citizen with all rights and duties

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weiße Bevölkerung, sondern auch aus der einheimischen Bevölkerung diejenigen Personen fallen sollen, welche mit Weißen eine Ehe schließen, sowie die aus diesen Ehen stammenden Nachkommen".

[38] "In der Verfügung ist ferner ausdrücklich hervorzuheben, daß nur festgesetzt werden soll, wer im Sinne der erwähnten Kaiserlichen Verordnung als Eingeborener anzusehen ist." Cf. NAN-ZBU 666 F IV r 1: 12 Kolonial-Abtheilung to von François, 24. 9. 1893.

[39] NAN-ZBU 666 FIV r1, p 13f. The terms Bastards (German/English) or Baster (Cape Dutch), ethnonymically defined as they were in the south western African context provided for substantial confusion in the legal deliberations between Windhoek and Berlin, as the stricter German meaning of the word means to be either of mixed background, e.g. to be of Jewish-German parentage for instance, or of illegitimate parentage. The proper German term is *Mischling*. It is to the ethnic group that the governorial definition applied and not to the more general *Mischlinge*, which also started to be around as a result of German-indigenous sexual interaction, however.

[40] Some exceptions were thought to be possible if not desired for political reasons by Leutwein, cf. NAN-ZBU 666 F IV r 1, letter Leutwein to Kolonial Abtheilung, 22.8.1898, also BArchB-R 10.01 - 5423: 34ff.

[41] NAN-ZBU 666 FIV r1, p 14f; Sadly, the direct correspondence is lost.

pertaining.[42] Questions over access to German citizenship and military conscription in the colonial context resulted and were referred to Berlin, for in the colony nobody was able to offer legal expertise. Berlin's answer was clear: provided the men had married according to the provisions of the law, their sons would be German nationals and as such subject to German military duty (*Wehrpflicht*).[43] For the first time the unclear term *Eingeborener* had been unhinged and declared irrelevant by legal experts and resulted in a missive to Windhoek to grant those who were affected their right to marry legally. And for the first time, with conviction, Governor Leutwein argued that such unions between German men and indigenous women were considered politically undesirable in the colony.[44]

Far away from Berlin and without any judicial supervision, officials in German South West Africa simply refused, with the support of Governor Leutwein, to grant legal marriage certifications to those who wanted to marry an indigenous woman.[45] Indirect evidence strongly suggests that decommissioned soldiers who intended to settle with a generous start-up land grant would not be allowed to do so if they married indigenous women.[46] Instead, these men were referred to the missionaries to have their unions solemnised, which Leutwein admitted as practice in the colony to circumvent the official legitimation of such unions as were deemed undesirable. Marriages in church, we must remember, were no longer legally binding after 1893.[47] This solved the problem posed by the above-mentioned four men for Leutwein. None of them had married according to Civil Registry legislation, as they most probably had been told that they would not be granted

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[42] Verfassung des Deutschen Reiches, § 3, cf. Bundes-Gesetzblatt des Deutschen Bundes, 1871: 63f and Reichsgesetz über die Erwerbug und den Verlust der Reichs- und Staatsangehörigkeit vom 1. Juni 1870, § 3.

[43] NAN-ZBU 666 F IV r 1: 14 letter Kolonial Abtheilung to Leutwein, 17.8.1897. "Nach dem jetzigen Stande der Gesetzgebung können die ehelichen Nachkommen Deutscher nicht, [...] als Bastards behandelt werden."

[44] NAN-ZBU 666 F IV r 1: 15r ff. Draft letter of Leutwein to Kolonial Abtheilung, dated 22. 8. 1898: "...da ich die Beförderung derartiger Ehen nicht im Interesse der Entwicklung des Sch.[utz] Geb.[ietes] liegend erachte..." Also BArchB-R 10.01 - 5423: 34 letter Leutwein to Kolonial Abtheilung, 28.8.1898.

[45] BArchB-R 10.01 - 5423: 31 personal hand-written notice of Leutwein when he was in Berlin in February 1898. Also BArchB-R 10.01 - 5423: 34 letter Leutwein to Kolonial Abtheilung, 28.8.1898 "Denn mancher Deutsche hat schon von der Eheschließung mit einer Eingeborenen Abstand genommen, wenn ihm eröffnet worden war, daß er nicht standesamtlich getraut würde, sowie daß seine Kinder Bastards seien." Also in NAN-ZBU 666 F IV r 1: 15r ff. Draft letter of Leutwein to Kolonial Abtheilung, dated 22. 8. 1898.

[46] NAN-ZBU 666 F IV r 2, Bd 1: 6f copy of letter Missionsdirektor Schreiber to Kolonialdirektor Kayser, 26.3.1896.

[47] This problem sparked another lengthy debate among legal experts in Berlin. It was over whether marriages concluded in church before 1893 were legally valid. It is here that a faint missionary voice can sometimes be heard, as the latter were very worried about this for their parishes, where marriages concluded would suddenly face legal invalidation. For the general debate over mixed marriages, this debate had no bearing.

proper and legal marriage licenses anyway. Their unions were thus considered invalid for the extension of German citizenship rights and duties.[48]

This legal practice was possible, yet rested on thin ice, as it depended on the men's legal incompetence and only as long as nobody challenged such administrative *dicta*.[49] Moreover, the impossibility of legal redress and the general absence of an effective judiciary made these issues almost impossible to address for those men denied marriage to the women they had chosen. One such case of a man whose wish to be married legally was turned down has survived in the record; it demonstrates the legal reality on the (colonial) ground. Friedrich Heuer, who had come to the territory as a soldier in 1893 and who was decommissioned in 1896, had met his future wife, the daughter of the trader Danti in Otjimbingue. In a letter to the governor in Windhoek he asked for permission to marry her in church. The answer from Windhoek to Heuer, relayed through the official at Otjimbingue, told Heuer to go ahead and marry his bride in church, as for this he needed no governmental approval. However, "a Civil Registry marriage is under these circumstances obviously impossible", he was told, without any further explanation given.[50] With "these circumstances" was meant the fact that Heuer's wife-to-be – she remained without a name throughout this correspondence – had a Bastard maternal grandmother, which Heuer had readily conceded.[51] The style and manner of Heuer's letter suggest that he was eager to comply with the rules, that he was not well-versed with legal procedure and that he lacked any real knowledge of what he was or was not entitled to. The way in which the government addressed the request clearly counted on the petitioner's legal ineptitude.

The death of settler Otto Johr propelled the issue to the fore. He had been married to a Bastard woman in church only, and his offspring were subsequently denied access to their inheritance because they were considered illegitimate and therefore not legally German. Settler Wilhelm Panzlaff, whose request to be married legally had been turned

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[48] BArchB-R 10.01 - 5423: 31 personal hand-written notice of Leutwein when he was in Berlin in February 1898. No further evidence could be traced to confirm this, however.

[49] German notions of absolute military obedience – *Kadavergehorsam* – certainly played out in this context; also, the general *Bildungsstand* of such individuals as were asking for marriage permissions was desperately low. The German colonial militia was not drawn from the highly educated middle and ruling classes. Such soldiers were from the labouring classes with often abysmally poor education. Leutwein complained about this in a letter to the *Deutsche Kolonialgesellschaft*, by referring to *schreibgewandtes Material*, i.e. the unavailability of human material that was able to write, hence employable in the administration. Cf. BArchB 8023 - 170: 168.

[50] NAN-ZBU 666 F IV r 2, Bd 1: 9, letter Heuer to government, 21.9.1897 with the answer from Windhoek in draft form in its margins. Additionally, Otjimbingue was asked to supply information on the paternal background of Heuer, as this would have, theoretically, a bearing on the citizenship status of his offspring. Once this information had been supplied, Heuer's request was finally denied; cf. NAN-ZBU 666 F IV r 2, Bd 1: 10, 7.10.1897 and draft answer of 4.1.1897.

[51] Two names for her were found in the Okahandja church records, Eveline and Emma Heuer. The marriage's solemnisation could not be ascertained directly; however the church register of Okahandja reveals their marriage as having been solemnised as a son was christened in 1907. ELCRN VI. 20. Okahandja.

down repeatedly since mid-1897 and with the same eventuality in prospect, insisted on legal recognition of his marriage.[52] His request, and that of one other settler, was turned down again as the governor had obviously decided to adhere closely to his reading of the law. Given that Berlin had already, in the preceding years, challenged the colonial legal exegesis, Panzlaff's insistence forced Leutwein to also send to Berlin for direct instructions, as the opinion of the only legal expert in the colony, Judge Richter, who had already been asked for an opinion on whether mixed marriages could be outlawed legally, was not in accordance with Leutwein's policy. Richter had argued the impossibility of prohibiting mixed marriages on the basis of the existing legislation: "...marriages are also permitted, even if only one of the betrothed is a 'non-indigene'".[53]

Richter's opinion, issued in January 1898, however, was reiterated by Berlin in the case of Panzlaff. It was a condensed recapitulation of the prolonged legal debate between the Colonial Office in Berlin and the colonial government in Windhoek since 1893, when the law ruling marriage in the colony had been decreed with the addition that it did not apply to *Eingeborene*.[54] There is nothing new in his view but he formulated with particular clarity the line taken by the legal authorities on Berlin, that it was impossible to prohibit marriages between German men and indigenous women.[55]

The underlying problem was, quite obviously and without ever being mentioned in the sources, that the provisions of the relevant law were fundamentally altered by an ordinance tacked on to the actual law. Some considered the exclusionary provision of the decree that enacted the law in the colony not in contradiction to the law's inclusionary provisions. In other words, the legal opinion in the colony held that the marriage legislation, regardless of what it regularised, was meant to apply only to non-*Eingeborene*. The Berlin legal experts, however, argued that the exclusionary provision did in fact not overrule the inclusionary character of the law in question. As the

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[52] Cf. NAN-ZBU 666, FIVr2, Bd 1: 11ff, letter from *Gerichtsassessor* Richter to Leutwein, dated 10 June 1899. The sources indicate that he had raised this question with the authorities repeatedly, but always to no avail.

[53] NAN-ZBU 666 F IV r 1: 18ff. *Gutachten betr. die Zulässigkeit der Eheschließung zwischen Nichteingeborenen und Eingeborenen im Schutzgebiete*, 15.1.1898 "Das Gesetz vom 4. Mai 1870 ist durch Allerh. Verordnung vom 8. November 1892 für das Schutzgebiet bezüglich aller Personen, welche nicht Eingeborene sind, mit dem 1. Januar 1893 in Kraft gesetzt. Der Sinn dieser Verordnung ist m. E. der, daß für das Schutzgebiet in dem Gesetze an Stelle des Begriffes "Bundesangehöriger" der Begriff "Nichteingeborener" tritt und daß im übrigen das Gesetz im Schutzgebiete in derselben Weise gilt, wie in dem ursprünglichen Geltungsbereiche des Gesetzes. Da nun eine Abänderung der Bestimmung des § 10 des Gesetzes für das Schutzgebiet nicht vorgesehen ist, so folgt hieraus, daß eine Eheschließung auf Grund des Gesetzes im Schutzgebiete z. Z. zulässig ist, wenn auch nur einer der Verlobten ein "Nichteingeborener" ist."

[54] NAN-ZBU 666 F IV r 1: 12.

[55] NAN-ZBU 666 F IV r 1: 18ff *Gutachten betr. die Zulässigkeit der Eheschließung zwischen Nichteingeborenen und Eingeborenen im Schutzgebiete*. "Ein Verbot der Eheschließung zwischen einem Nichteingeborenen und einer eingeborenen Person kann m. E. aus der Verordnung vom 8. November 1892 [which had been enacted in January 1893, WH] nicht gefolgert werden und ist auch sonst nicht ergangen. Auch nach dem in Deutschland geltenden Gesetz über die Beurkundung des Personenstandes vom 6. Februar 1875 steht der dortigen standesamtlichen Eheschließung zwischen einer weißen und farbigen Person nichts entgegen."

Eingeborener proviso was only part of the ordinance enacting the law – not the law itself – it did not have the legal power to overrule what the law stipulated.[56] Hence, a letter was sent from Berlin ordering the colonial authorities in Windhoek to act no further to prevent Panzlaff from marrying with civil rites Magdalena van Wyk of Rehoboth, and finally to legitimise his family.[57] This ruling covered all similar cases in future. This decision was posted to all Civil Registry offices and officers of the colony in September 1899.[58]

Conjugal order: morally

Given the inherent interest of missionaries in moral order, they were also involved in the debates over the legal regularisation that I have described above. Indeed these arguments and developments were sparked off by the 1887 'Memorandum regarding Marriages between Whites and Coloureds in the German Protectorates' (*Denkschrift betreffend die Schließung von Ehen zwischen Weißen und Farbigen in den deutschen Schutzgebieten*). Its moral-ethical arguments, which were concerned inherently with sexual behaviour among the inhabitants of Hereroland, the central part of German South West Africa, presented an essentially missionary voice.

The memorandum's line of argument had connected morals with political and economic concerns from a metropolitan perspective and argued these with respect to questions of control and overlordship. Its importance lies in the fact that missionary goals were clearly connected to nationalist goals and a colonialist agenda. This would henceforth be one consistent line of argument in the debates about marriages in the colony. Discernibly different was a second line of thought reflecting missionary presence in the field. Here the concerns were over questions of Christian respectability and church order in the parish as they pertained to sexual congress between female converts and German men. With the debates over and implementation of legal regularisation, despite its slowness and inefficiency, the missionaries were presented with a new challenge. Their role as the moral arbiters in their parishes was drastically reduced as the colonial administration reserved to itself the right to have the last word over what constituted a legally valid marriage.[59] The exclusionary application of marriage legislation to the non-indigenous inhabitants of German South West Africa (*Nichteingeborene*), called into

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[56] Gerstmayer, *Schutzgebietsgesetz*: 8.

[57] Cf. NAN-ZBU 666-FIVr2, Bd 1: 16, dated 3 August 1899. Marriage bans were advertised in *Windhuker Anzeiger* of 21 Dec. 1899 and the civil registry marriage was concluded on 23 Dec. 1899; they had been married in church by the Rehoboth missionary Heidmann since 2 May1894; cf. NAN-ZBU 666 FIVr2, Bd 1: 12; the baptism of their first daughter is recorded in the church registers for Windhoek, cf ELCIRN-Parochial Registers VI. 36 Windhoek-Damara, also, NAN-BWI 263 S13d, Bd 2. Panzlaff was among the first group of soldiers under von François. cf. also BArchB-R 10.01 - 5423: 42ff.

[58] NAN-ZBU 666 FIV r1, p 21f , 3 August 1899 and subsequently as notice posted to all districts by the governor.

[59] This point shines through in the correspondences only and missionary indignation at this provision seems to have been muted. As open rejection of it would have amounted to illegal behaviour, it was not openly voiced.

question those mixed marriages the missionaries had solemnised and precluded these in the future. This, the missionaries argued, would force many men and women into concubinage and sexual illegitimacy. Thirdly, these same missionaries were also pastorally responsible for the German colonials and settlers who were often violently opposed and highly critical of the missionary enterprise; additionally the missionaries were Germans themselves, and as such not immune to nationalist thought and expression as played out in the colonial context both in the protectorate and the metropole. These different motivations for missionary engagement in the moral questions over sexuality and marriage between members of different groups in German South West Africa were tightly intertwined and inseparable, creating an untidy situation in the chronology, the archival record and the arguments. Underlying all these different arguments and common to all missionaries was a deep-seated sense of moral respectability, a deep concern with the assumed disintegrative force of illegitimate sexual interaction. This position, however, was employed in many directions and could serve the argumentative requirements of the missionaries, be they nationalist-political or pastoral-theological. All of this has to be kept in mind as I proceed to illustrate how the missionaries tried to intervene and make themselves heard in the first two decades of German colonial control.

Interestingly, the missionaries were initially very much disturbed by the theoretical possibility that marriages concluded between 1888 and 1893 might not be legally valid; this would have amounted to 'living in sin', though not in a religious sense, but still irksome to the missionaries as they now contravened a legal provision. This was felt to be "too embarrassing" to those living in such unions.[60] That unions concluded after 1893 between African and European members of their congregations had been declared legally impossible took the missionaries longer to realise. This concern over illegitimacy, this time much clearer in terms of the sexual implications, motivated RMS director August W. Schreiber in 1896 to lend his support to a scheme to import women to German South West Africa to remedy a scarcity of marriageable European women for decommissioned soldiers.[61] The missions' logistical support was offered for this project. Also in 1896 there is a letter from Schreiber to the Colonial Office in Berlin in which he argues that the exclusionary clause should be scrapped from the marriage law. He reasons that decommissioned soldiers should be allowed to legally marry whoever they wanted, otherwise they would set themselves up in concubinage relations; this would

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[60] Cf. e. g. letter of Missionsdirektor Schreiber to Auswärtiges Amt, 3.11.1893, NAN-ZBU 662-FIVn3: 6 "...weil solch eine Handlung für die betreffenden schon vielleicht seit Jahrzehnten in der Ehe lebenden Eheleute doch etwas gar zu peinliches haben würde..."

[61] Karen Smidt, *"Germania führt die deutsche Frau nach Südwest": Auswanderung, Leben und soziale Konflikte deutscher Frauen in der ehemaligen Kolonie Deutsch-Südwestafrika 1884-1920; eine sozial-und frauengeschichtliche Studie*, Magdeburg, PhD Diss. 1995, published 1998, Lit Verlag, Münster; Lora Wildenthal, *Colonizers and citizens: bourgeois women and the woman question in the German colonial movement, 1886-1914*, unpubl. PhD, University of Michigan, 1994, UMI. For this particular argument see Krista E. O'Donnell, *The colonial woman question: gender, national identity and empire in the German colonial society emigration program, 1896-1914*, unpubl. PhD, SUNY-Binghamton, 1996, UMI: 34ff.

counteract "the development of healthy moral conditions", hence sexual morality in the colony.[62]

The following illustrates that the missionaries had reason to be concerned about healthy moral conditions in the colony. It also demonstrates that missionaries were not taken very seriously and their concern for the maintenance of morality derided.[63] Victor Franke, *Stationschef* of Otjimbingue, who also had a record as a rapist, had been asked to be the godfather to one settler Carow's newly born child.[64] Missionary Olpp, however, who was requested to perform the baptism ritual, refused to accept Franke. His argument was that Franke was living an immoral life. In a letter to his uncle, the missionary Rev. Viehe, Olpp detailed Franke's antagonism towards him and related the latter's sexual misconduct in more than one respect.[65] Franke, he wrote, had repeatedly taken great pleasure in exposing him to material of explicit pornographic nature. On one occasion, when totally drunk, he had tried to ride his horse into the missionary's house to extort more alcohol. Finally, the missionary related the rape. As Franke was the highest official at Otjimbingue, the missionary had no means of curbing this excessive behaviour.

This so-called Franke-Olpp affair, a conflict between a local missionary and a representative of the colonial state, was debated widely in mission circles both in the field and at home.[66] At issue was that the missionary had insisted on a morally responsible, i.e. sexually well-behaved, godfather, applying the same strict standards he used in his mission parish. Though his local colleagues did back Olpp, he was gently admonished by his superiors in Germany not to apply the same strict standard to white people: should white people apply for baptisms of illegitimate children they should not be refused, nor were individuals living in concubinage relations to be excluded from the sacrament. How this substantial difference in approach over an important question of principle was resolved, if ever, remains unclear. More important is the fact that a double standard was imposed from the mid-1890s to pacify a potentially antagonistic colonial

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[62] NAN-ZBU 666 F IV r 2, Bd 1: 7, letter Schreiber to Kolonial-Abtheilung, 10.3.1896.

[63] Circumstantial evidence suggests that missionaries, settlers and soldiers related only uneasily to each other in the colonial situation.

[64] Cf. Hartmann, "Urges": 42.

[65] ELCIRN I 1. 21 letter dated 1.6.1898, Otjimbingue "...weil Francke sein Lebenswandel ein anstößiger ist. [...] Francke bei meinem allerersten Besuch, den ich ihm im Aug. 1896 abstattete, sich nicht scheute, mich, den ihn besuchenden Geistlichen, auf ein gemeines Bild (eine Gruppe nackter Weiber darstellend) hinzuweisen mit den Worten: "Ist das nicht fein?" Er hat das Bild mit blauer Seide eingerahmt über seinem Sopha hängen. Ich glaubte, es sei bei meinem ersten Besuch genügend, wenn ich ihm mit einem bedenklichen: 'Na, na' antwortete. Das hinderte aber nicht daß er bei einem zweiten Besuch, bei welchem ich ihn grade über dem Lesen von Witzblättern fand, mich wieder auf ein derartiges Bild hinwies mit denselben Worten. Da mußte ich mir dann doch sagen, daß ich es hiermit einem lüsternen Menschen zu tun habe, dem es selbst nicht darauf ankomme, diese innere Gesinnung dem Missionar zu offenbaren. Von der Zeit an stand schon mein Urtheil fest. Mich aber mußte er wohl für einen solchen halten, da von der Universität her über solche Dinge nicht zu scharf urtheile."[!]

[66] VEM-RMG 2.491: 217 letter of RMS management to missionaries in Hereroland, undated 1898.

administration.[67] Their role of Christian moral arbiter was compromised – if it had ever been uncompromised – as the colony developed, and the missionaries' strict concerns over proper sexual conduct, both among their African parishes and the colonising European men dissolved.[68]

To return to the issue of exclusive marriage legislation, a missionary fixation on the sexual aspect was clear. The main argument was that to prohibit marriages between European men and indigenous women would force the former into illegitimate, purely sexual relations. That was considered even worse than mixed (yet sometimes even really stable) pairings in concubinage, for which the missionaries did not uphold any idea of sanctity. Marriage was seen to be the only context for legitimate sexual interaction. If such sexual activity could not be exercised in a marriage among equals, a mixed marriage was considered the next best thing.

Conjugal order: practically

As argued elsewhere, the number of settled conjugal relations between German men and indigenous women, and settled families, remained negligible.[69] This is in contrast to the prominence of the issue in contemporary German legal and colonial debates, and

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[67] VEM-RMG 2.491: 230, January 1900 letter of RMS management to missionaries in Hereroland.

[68] It is in this light that the actions and words of Windhoek's ebullient missionary Carl Wandres, must be evaluated. He repeatedly interfered when the military authorities of Windhoek used force and brutality in rounding up women for compulsory venereal disease inspections. Whereas I described these events elsewhere with regard to their effect on Windhoek's indigenous women, here we are interested in Wandres' side, his possible motivations to interfere. Two aspects seem to be important. First, he only interfered because it was women from his parish who were subjected to the demeaning inspections, and on their account only, making sure they got an exemption. Secondly he objected because he felt that these inspections violated general notions of modesty, undermining Christian respectability. Even worse, the visiting mission director noted after his visit to the parish and discussions with Wandres and Meier that this treatment destroyed the sense of modesty, sittliches Gefühl, among those women who still possessed such a sense. This is the attitude that motivated Wandres' approach. He was not motivated to protect the women of his parish, not to speak of the non-Christian females, from vaginal inspections because these were enforced, inhuman and degrading. His main concern was the assumption that such inspections would tempt the women to be immoral, less modest, which translates as sexual promiscuity and lascivious behaviour. How such assumption came to be is difficult to say and open to speculation. It demonstrates, however, that the concerns were over sexual behaviour. Cf. Hartmann, "Urges": 45; VEM-RMG, 2.533a: 214f. Visitationsbericht Spiecker, Windhoek, 1906, "...noch sittliches Gefühl..." being the catch phrase here.

[69] Franz Seiner, *Bergtouren und Steppenfahrten im Hererolande*, Berlin, Süsserott, 1904: 33 and corroborated in *Jahresbericht über die Entwicklung der Deutschen Schutzgebiete im Jahre 1903/1904.* Beilage zu Deutsches Kolonialblatt. Berlin, Mittler u. Sohn, 1904: 256. Also Hartmann, *Matters*, forthcoming: passim with detailed calculations and concise figures. By way of an overview: 1893/4: 37 married men represented 34% of all civilian European men, excluding the missionaries, established since pre-German period. Of these 37 men, 22 or 59.5% had married local women, whereas 15 or 40.5% were married to women of European background. Of the 22 men married to indigenous women, 5 or 23% were listed as German nationals, whereas 17 or 77% percent were categorised as non-German. Of five Germans married to local women, two had been in the country before 1884, one had arrived with the first military contingent and two were recent arrivals. The remaining mixed marriages had taken place in the non-German trading community, and can be viewed as being proto-colonial as identified by their names.

also contrary to suggestions in most recent writing about German colonialism.[70] For 1902, Franz Seiner reports 39 such 'mixed marriages' in the whole territory. This represents 6.75% of all marriages of colonial men in the colony as a whole, and for Windhoek the respective figure is 8.3%. A computation from material found in the Civil Registry files for Windhoek, starting in August 1898, and from information in the marriage prohibition deliberations after September 1905, arrives at fifteen named married couples in the Windhoek district.[71] These couples had married either in church only or according to the legal requirements.

The Civil Registry files also suggest that marriages between German men and local women were legally sanctioned well into 1905.[72] Official marriage registry documentation for Windhoek, which was only started in 1898 despite having been legally required since 1893, revealed only four such mixed relationships legalised; one each in 1899 (Panzlaff, of which we have heard already), 1901 (Karsunke), 1902 (Jankowski) and 1903 (Kurz).[73] A list compiled in 1907 to establish the number of legally registered mixed marriages after a marriage prohibition decree had been issued, produced only one more name (Rittmann).[74] Another list of October 1905, found in material directly about the marriage prohibition decree, and compiled after its issue, reveals two more names, Becker and Wahl.[75] Thus no more than seven couples had applied for and been granted Civil Registry marriage in Windhoek. All of these unions had been previously

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[70] Cf. footnote 4.

[71] However, the official statistic is 14 marriages for 1903 in Windhoek; cf. *Jahresbericht über die Entwicklung der Deutschen Schutzgebiete im Jahre 1903/1904*: 256. See also NAN-ZBU 666 F IV r 1: 25f.

[72] Marriage documentation other than for Windhoek could not be found which biases these deliberations towards Rehoboth where all the women involved in these marriages came from. Rehoboth was part of the Bezirk Windhuk, the governmental administrative unit until 1907. For other marital unions the documentation is only circumstantial; some could be culled from divorce proceedings in court material for instance. A case in point is the marriage of Betjy Kahitjene to the German transport rider Kaspar Leinhos, whose civil registry marriage of 1904 in Okhandja could only be ascertained through her divorce papers. Cf. NAN-ZBU 666 F IV r 1: 78ff. Another case is John Ludwig of Klein-Windhoek, who pursued a divorce from his Baster wife Maria Anna Elisabeth neé Bentz in 1897 because she had allegedly committed adultery. Cf. NAN-GWI 1,A 4/97. German-generated civil registry material was taken over by South African local magistrates and continued to be used until the administration had been properly South Africanised; most of this material never found its way to the archives. Pers. comm. Jochen Kutzner, Former Director, National Archives of Namibia. This distorts the evidence towards marriages with Rehoboth Bastard women, which indeed for Windhoek seem to have been the preferred marriage partners. Circumstantial evidence for other civil registry offices was not traceable, but circumstantial evidence suggests that in other districts, German men also tended to chose their wives from the nubile females of mixed background. Clearly, these marriages were concluded to maintain and secure civil status as a German for oneself and one's offspring.

[73] The files NAN-BWI 261-269 Standesamtssachen, containing civil registry documentation were kept, contrary to notions of German efficiency and orderliness, highly untidily; cf. NAN-BWI 263 S 13 d, Bd 2 for Panzlaff; NAN-BWI 263 S 13 d, Bd 3 for Karsunke, Jankowski and Kurz.

[74] NAN-BWI 268 S 13 g.

[75] NAN-ZBU 666 F IV r 1: 24 contains a list of all men who were married, legally and/or in church in Rehoboth by 1905; the list was compiled after the marriage prohibition decree had been issued, to determine, retroactively, how many marriages actually were involved, as the prohibition decree was meant to apply retroactively too.

ritually sanctioned in church. Aside from these seven legal marriages in the *Bezirk* Windhoek, in October 1905 there were another eight existing mixed marriages, all solemnised by the Rhenish missionary in Rehoboth (which formed part of the administrative unit Bezirk Windhoek) and five couples intended to apply for legal marriage; the list does not say anything about their current civil status, however.[76]

A rush of marriage applications in the months before the marriage prohibition decree was issued in September 1905 points to the fact that rumours about this were rife. A handful of men hastily applied to have their relationships properly legalised. Evidence of these applications in the form of written requests to the Imperial Government in Windhoek is available for the following men: Becker (15 April 1905), Wahl (22 April 1905), Pecken (19 July 1905) Angermund (19 July 1905) and Wede (8 August 1905). The April applications were granted, but Pecken, Angermund and Wede were too late.[77]

This rush is significant and needs to be explained. In the archival marriage legislation documentation held by the Namibian National Archives and the Federal Archives in Berlin there is a gap of roughly four years from 1900 through 1903 which complicates any attempt to explain the surge.[78] A hand-written notice of November 1899 expressed the hope that the questions surrounding the permissibility of marriages between coloniser and colonised would be resolved in the course of the revision of the Colonial Basic Law (*SchGG*). This scrap of paper admits legal insecurity, *Rechtsunsicherheit*, with regard to such unions.[79] This could explain the documentary gap, as the deliberations were probably conducted elsewhere or not at all. Another explanation could be that only one such mixed marriage was legalised in each of these years, except for 1900, when none was registered: the minimal number of such marriages attesting to the relative unimportance of the issue in general. On the other hand it has to be noted that the new Colonial Basic Law of 1900 (*SchGG, 1900*) had clarified the problematic provisions.[80] However, these had not been taken note of in German South West Africa, as demonstrated by the few marriages concluded after 1900. As the record does not yield any clear-cut and direct, chronological information, circumstantial evidence will be used to construct and argue more precisely the origin and nature of the marriage prohibition decree of 1905.

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[76] *Ibid.* footnote 73. This list does not contain those that had not lived to see the marriage prohibition decree of 1905. It is here that the missing church records of Rehoboth are most sorely felt; for instance the earlier mentioned Otto Johr was married to somebody from Rehoboth; his full name was only found coincidentally in a long defunct grave-yard.

[77] NAN-ZBU 666 F IV r 2, Bd 1: 21ff; what had triggered this wave could not be ascertained from the documents themselves. Their names are actually included in the list of October 1905.

[78] NAN-ZBU 666 F IV r 1 and BArchB-R 10.01 - 5423; NAN-ZBU 666 F IV r 2, Bd 1 contains a few insignificant documents; the gap can only be explained with the reorganisation of the archives after 1910, as old paginations point to an earlier and different organisation of the material.

[79] BArchB-R 10.01 - 5423: 41.

[80] The Colonial Basic Law was revised in the context of the revision of German civil law, issued as *Bürgerliches Gesetzbuch* in November 1900 and made applicable as of 1 January 1901.

Mixed marriages prohibited: the *Mischehenverbot* of September 1905

> I intend to obtain a ruling by the Colonial Department in the Foreign Ministry regarding the permissibility of marriages between Whites and Natives, more precisely . Bastards, which, according to the new version of the Colonial Basic Law of 10 September 1900, has become questionable. With regard to this doubt such marriages are, until further notice, not to be concluded. I remark with emphasis that these marriages are considered legally, politically and socially undesirable by government.[81]

This is the full text of an order, sent to all Civil Registry offices in German South West Africa on 23 September 1905 by the deputy governor Tecklenburg, to temporarily stall the conclusion of legal marriages between whites and natives, which included *Bastards*. As such it can be defined as the culmination of the exclusionary legal tendency regarding marriage in German South West Africa, as described in the preceding sections. It is also the first time that the changed provisions of the new Colonial Basic Law that had been enacted in 1900 (*SchGG*) were actually taken up in the debate. The order has become known as the *Mischehenverbot*, or mixed marriage prohibition; in fact it was only a temporary measure to prevent further marriages from being concluded until the legal situation had been clarified by the Colonial Office in Berlin. The missive sparked off an at times highly charged debate over who should be allowed to marry whom in the colony, particularly as over the next few years this instruction was implemented retroactively. The debate only subsided with the termination of German colonial occupation when, in the context of World War I, South African troops conquered the colony. By then the Colonial Office in Berlin still had not come up with a formal, written and binding decision.

The order left deep traces in the lives of those it touched, its emotional, social and economic fall-out leading to real hardship as it stalled intended marriages, affected the registration of mixed offspring from already legalised unions, and hardened public opinion against such unions in the colony. Consequently, it also resulted in a considerable body of archival evidence. This and the literature based on it have shaped our understanding of this issue as being predominantly about race. To be sure, the prohibition decree was an expression of German cultural hubris; it is therefore legitimate to argue the decree as one of the many precedents for German racism's culmination during the years of the Third Reich. Yet for all its validity, this view has not addressed the legal and social history of the prohibition order in the colony and as influenced by the different legal positions taken in the Colonial Office in Berlin and the colonial government in Windhoek. Given a negligible number of such marriages until then in

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[81] Cf NAN-ZBU ZBU 666 - F IV r 1: 22 "Wdhk, 23. Sept. 1905/An sämtliche Standesämter/Ich beabsichtige eine Entscheidung des Ausw. Amtes, Kolonialabteilung, über die nach der neuen Fassung des Schgebgs v 10/9 1900 zweifelhaft gewordenen Zulässigkeit standesamtl. Trauungen zwischen Weissen und Eingeborenen bzw. Bastards herbeizuführen. Mit Rücksicht hierauf sind solche Trauungen bis auf weiteres nicht vorzunehmen./Ich bemerke ausdrücklich, dass dieselben diesseits wegen der rechtlichen, politischen und sozialen Folgen als durchaus unerwünscht erachtet werden./D. K. G./I. V./T[ecklenburg]".

German South West Africa, the crucial question to be asked is why such a drastic measure was deemed necessary.

Could it really have been the small number of legal marriages concluded? What influence did the German-Colonial Wars of 1904-1907 have? How far was the development and contradictory implementation of marriage legislation tied to the personal convictions and views of the different colonial administrators in the protectorate? Was the ever-changing colonial *situation érotique*, which prevailed both before and during the war in German South West Africa, connected to this development, and in which ways?

A short article published in a colonial periodical in 1903 seems to have caught somebody's attention in the Colonial Office in Berlin in September of that year. That is also when the archival sources start to flow again after almost four years.[82] Under the heading "The legal position of the Bastards in German South West Africa", its author, a certain Gentz, wrote a sentence that would have irked any German bureaucrat. In it he described what he considered to be an unacceptable situation in the colony and alleged that whether one was considered a German or an *Eingeborener* depended on the personal interpretation and convictions of each individual district officer (*Bezirks-hauptmann*). He was referring to the fact that, far away from Berlin and Windhoek and the attempts at legal clarification, one's status was, more often than not, dependent on the inclinations of the colonial official in charge.[83] Further he suggested that sexual congress between German men and indigenous women was the order of the day and considered normal, even accepted social behaviour, adding that something needed to be done as it would undermine European rule in the territory.[84]

If seen through the eyes of a German civil servant, these were glaring administrative and legal deficiencies. And they triggered an official to suggest that something needed to be done. Tecklenburg, then a high ranking colonial official with experience in south western Africa, who was in Berlin at the time, was asked to comment on Gentz' article.[85] His response provides for the first time a clear-cut argument based on racial concepts. In a few sentences he made clear that the problem was not really about the status of the *Bastards* vis-à-vis the Germans, but that the question raised was about vigilantly guarding against "coloured blood."[86] Referring to experiences with people of mixed racial background in the Cape Colony he brought up the case of Mrs. Panzlaff, whom he mentioned as *Hottentottenweib*. Although he admits that mixed marriages had not yet

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[82] BArchB-R 10.01 - 5423: 54.

[83] (Paul?) Gentz, "Die rechtliche Stellung der Bastards in Deutsch-Südwestafrika" in: *Beiträge zur Kolonialpolitik und Kolonialwirtschaft,* 1902/03, Heft 3: 91: "Es ist ein unhaltbarer Zusatnd, daß heute z. B. ein Mann als Europäer behandelt wird, morgen dagegen, wenn ein neuer Bezirkshauptmann mit enderen Ansichten die Geschäfte übernimmt, plötzlich wieder als ein Eingeborener gelten kann."

[84] *Ibid.* 91: "Schon das Ansehen der Europäer den Eingeborenen gegenüber erfordert es, daß derartige Fälle [racially mixed liaisons,WH]unmöglich sind."

[85] BArchB-R 10.01 - 5423: 54r; whether Tecklenburg had already been designated deputy governor of GSWA could not be ascertained.

[86] BArchB-R 10.01 - 5423: 54r "In erster Linie kommt es darauf an, die Reihen der Europäer gegen das Eindringen farbigen Blutes zu schützen."

become a problem, this 'Hottentot wench' was to be taken as an example of what should not happen, namely that other non-German indigenous women would also be considered of equal social standing in settler circles.[87]

Tecklenburg offered suggestions as to how existing laws needed to be amended to solve a problem which he described as "a deplorable state of affairs, which over the course of time would become ever more unbearable."[88] A handwritten response by another Berlin official, however, made clear that such suggestions were barely workable from a strictly legal standpoint.[89] Tecklenburg's statement was sent to the governor in German South West Africa for comment towards the end of 1903.

Judge Richter, who in years past had written legal opinions on the issue, wrote another of his lengthy memoranda in response. He was standing in for Leutwein, who was occupied with the Herero-German War, which had broken out in the meantime, in January 1904. Level headed and straightforward, he refuted the Tecklenburg opinion and dismissed as unnecessary his suggestions since there was no need for action as far as he was concerned. Clearly refuting Tecklenburg's calumny of Mrs. Panzlaff and rectifying the facts about her, he went on to describe a situation of relative acceptance of mixed marriages among the settler and military population in the territory.[90] In another statement he made clear that it was legally impossible to prohibit such marriages. He added, however, that he personally was not in favour of them and that they could be prevented to a large degree by making it next to impossible for indigenous women to get the documentation needed for proper marriage registration.[91] The next documents, chronologically, in the archives are the decree that temporarily banned mixed marriage, the covering letter with which it was sent to all Civil Registry officers in the protectorate in September 1905 and a memorandum addressed to Berlin, in which it was argued.[92]

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[87] BArchB-R 10.01 - 5423: 56r 24.9.1903 "Jetzt spreizt sich auf Krieger- und Schützenvereinsfesten das Panzlaffsche Hottentottenweib neben unseren deutschen Frauen, allerdings noch ohne viel Anschluß zu finden. Das würde sich ändern, wenn eine zweite und dritte in dem Kreise Zutritt fände."

[88] BArchB-R 10.01 - 5423: 54.

[89] BArchB-R 10.01 - 5423: 57r.

[90] BArchB-R 10.01 - 5423: letter Richter to Kolonial-Abtheilung, 20.2.1904. He dismissed Tecklenburg's description of Mrs. Panzlaff, arguing instead that she was from one of the best Bastard families of Rehoboth. Moreover, the Panzlaff children were going to school with other children in the government school, without anybody being offended by it. Gentz, "Stellung": 91 dscribes the same situation in these words: "Bisher ist eine scharfe Grenze noch nicht gezogen worden. Eine Anzahl angesehener 'Bastard'-familien und einzelner 'Bastards' (besonders Frauen weißer Ansiedler) sind gesellschaftlich stillschweigend als Europäer anerkannt worden und genießen auch die politischen und juristischen Rechte der Europäer."

[91] At this point there is a suggestion in the sources that Tecklenburg, the hardliner, knew about the new version of the SchGG of 1900 and its clarified exclusionary provision; however, most probably nobody in the colony had ever taken notice of it. Clearly, Richter in his comment on the Tecklenburg opinion did not refer to this provision. For Richter's last statement before his voice vanishes in the record see BArchB-R 10.01 - 5423: 65ff, obviously written while Richter was in Berlin in August 1904, as it is in his hand-writing, informally on sheets of paper, retroactively provided with official references.

[92] NAN-ZBU 666 F IV r 1: 22ff.

Important events had meanwhile drastically changed the general situation in German South West Africa: they are reflected in the new direction that the marriage deliberations took. The Herero-German War had come to its gruesome end, but the German-Nama War was still raging. Five German men (Angermund, Becker, Pecken, Wahl and Wede, – we have met them earlier) had applied to be married legally to indigenous women. Governor Leutwein, an opponent of mixed marriages who had nevertheless been ready to honour legal expertise from Berlin and to carry out directives from the Colonial Office in the colony, had been recalled amidst allegations of having been too liberal and soft on the indigenous population. Some even argued that he was responsible for the wars of 1904ff.[93] Tecklenburg, whom we saw to have been a hardliner in mixed marriage issues deputised for him in 1905, until towards the end of that year Friedrich von Lindequist was installed as Leutwein's successor. Comparatively liberal men – Judge Richter and Governor Leutwein, both respected legal positions and possibilities even if they did not conform with their privately held opinions – had been replaced with hardliners. These were General von Trotha, Tecklenburg and Friedrich von Lindequist, to which must be added Oscar Hintrager – men who combined a more ruthless approach to securing imperial power in the colony with a willingness to exploit legal provisions in the interest of their politics and not keep to the letter and spirit of the law.[94]

To return to the memorandum that argued the necessity of a marriage prohibition: it was, according to the hand writing authored by Oscar Hintrager, and corrected by the deputy governor, Tecklenburg. Although Tecklenburg signed it, one can actually argue shared authorship by Hintrager and Tecklenburg. The authors admitted that the surge of applications for marriages between April and August 1905 had spurred this memorandum. Referring to and disputing the last communication with regard to mixed marriages sent by Judge Richter in February 1904, the authors established the hitherto ignored fact that the inclusionary provision of the marriage law of 1870 had been rescinded four years earlier in the new Colonial Basic Law (*SchGG* of 1900). The application of marriage law to *Eingeborene* was excluded. From this legal platform the authors continued the argument by drawing attention to the *Indigenatsgesetz*, which would indeed give legal offspring of German men the rights and duties of German nationality, a consequence that was described as contrary to the goal of keeping the German race pure, opposed to German morality; moreover, it would endanger the

[93] Bley, *Kolonialherrschaft*: 193f.

[94] Oskar Hintrager also served as deputy governor under von Lindequist and his successors. By the time German colonialism came to an end he was the *eminence grise* of German colonial administration in the territory. Widely travelled and exposed to different colonial contexts, Hintrager had been to i.e. the United States of America, but more tellingly, the Boer Republics just before and after the South African War. Cf. "Lebenslauf des Geheimrats Dr. Oskar Hintrager von ihm selbst geschrieben ein Jahr vor seinem Tod", *Afrikanischer Heimatkalender*, 1982: 57-62. Cf. also his *Südwestafrika in der deutschen Zeit*, München, Oldenbourg, 1955, particularly chapter 9 "Mischehenverbot 1905 und Frauenfrage" where he describes his experiences and involvement *en detail*. As most of the relevant documents in this context have survived in hand-written form it is possible to trace specific positions to these different administrators as the hand-writing of all five men is clearly distinguishable.

overlordship of the white man.[95] They cited the existing mixed marriages in the Windhoek district, both the legalised and the church-only unions, to calculate possible mixed population growth figures over the next three generations, which they projected to be in the thousands. A marriage prohibition decree needed to be instituted, they went on to argue, since these numbers were a threat to the power position of the whites. To back this claim the authors underscored their argument with the term *verkaffern*, a colloquial expression only very clumsily translatable as 'going native'.[96] It referred to those German men who had married indigenous women and had not been able to 'civilise' their spouses but had themselves 'reverted' to the latter's uncivilised and lower cultural status. As this was the usual result of such unions, they needed to be prevented. The memorandum comes around full circle to the memorandum written in 1887, where the Hispanisation of Latin America had been used to propose an inclusive approach to marriages in the colony. Less than twenty years later, the same concept was now used to argue an exclusive approach, as the historical experience of Latin America was argued to have led to racial degeneration and cultural degradation.

The give-away formulation is *Geschlechtsverbindungen*, sexual unions, when Hintrager and Tecklenburg are actually arguing against marriages. This clearly indicates that it was not the marriages that were meant to be targeted by the proposed marriage prohibition decree, but rather the more general *situation érotique* in the colony. To recall this situation, this is what missionary Freerk Meier, Carl Wandres' colleague, wrote to his management in Barmen, Germany, to illustrate the situation in Windhoek in mid-1904, roughly four months after the war had broken out.

> Allow me to relate to you a conversation, which a while ago our school teacher Franz had with a white man. The latter, a marine, talked with Franz about this and that. Some things he liked, particularly the beautiful singing of the natives. But then he continued (maybe he was just wanting to hear an opinion): "One thing I do not like. How can you [natives] put yourself onto the same stage as the whites?" Franz, a wonderful person, quick-wittedly answered: "We have never put ourselves on the same stage with whites, we have not yet reached that stage. But we do not really need to do that, as they come to us. Whenever they engage with our women and girls, don't they lower themselves onto our stage?" Isn't that a wonderful reply?[97]

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[95] NAN-ZBU 666 F IV r 1: 27r: "Diese Konsequenzen sind in hohem Grade bedenklich und bergen eine große Gefahr in sich: Durch sie wird nicht nur die Reinerhaltung deutscher Rasse & deutscher Gesittung hier, sondern auch die Machtstellung des weißen Mannes überhaupt gefährdet."

[96] Cf. the entry "Verkafferung" in: Heinrich Schnee, (ed.), *Deutsches Kolonial Lexikon,* Leipzig, Quelle & Meyer, 1920, III: 606.

[97] VEM-RMG 1.657: 143ff, letter of Missionary Meier to Inspector, dated 20/5/1904 "Es sei mir noch gestattet, Ihnen eine Unterhaltung mitzuteilen, die vor einiger Zeit unser Schullehrer Franz mit einem Weißen hier hatte. Letzterer, ein Seesoldat, besprach sich mit Franz über allerlei. Manches sagte ihm zu, besonders der schöne Gesang der Eingeborenen. Dann aber fuhr er fort, (vielleicht that er es, um nur einmal zu hören): "Eines jedoch gefällt mir nicht. Wie könnt ihr euch mit den Weißen auf eine Stufe stellen?" Franz aber, ein prächtiger Mensch, ist auch nicht auf den Kopf gefallen. "Wir haben uns", entgegnete er, "noch nie mit den Weißen auf eine Stufe gestellt; soweit sind wir noch lange nicht. Doch das thut auch nicht not, daß wir uns mit ihnen auf eine Stufe stellen. Sie kommen ja zu uns. Wenn sie sich mit unseren Frauen u.

Meier's rendering of a particular of the *situation érotique* prevailing in Windhoek attests to the reality of a rather crude and brutal everyday sexual culture, in a nutshell. The conversation between a German soldier and Franz Hoësemab, an evangelist and teacher in the mission's parish of Windhoek, situated the sexual encounter between colonising men and colonised women as a central and everyday interface of the colonial encounter. This was reported from a situation where an ever growing number of German soldiers, present on account of the ongoing war since January 1904, resulted in a surge of sexual activity, the details of which have already been dealt with. But it also threw some light on how the sexual encounter between indigenous women and colonising men was conceptualised in terms of status and class. The missionary proudly reported how the teacher Franz Hoësemab had in a rather witty manner dressed down the German soldier and relativised his claim of social and cultural superiority by pointing out that German men visited indigenous women for sexual services, thereby 'lowering' themselves to the status of the natives. That this conversation centred on the issue of white-black fornication and that the missionaries of Windhoek and elsewhere repeatedly commented on this, attests to the fact that the relationship of coloniser and colonised was, to a very substantial degree, conceived of as a sexual relationship first and foremost, certainly in the light of questions about social standing and political consequences.[98]

The argument in the memorandum is that by preventing conjugal unions, "a not to be underestimated influence could be had on the settlers, who are still quite immature with regard to mixed sexual liaisons." In short, by banning marriages it was hoped that sexual intercourse between German men and local women could be reduced.[99] The influx of substantial numbers of soldiers had brought with it a certain normalisation in the sexual economy of the colony. Not only were these new soldiers, i.e. those that had been brought in to fight the German-Herero war in early 1904, drinking rum with their black fellows, the Baster and Damara "Kameraden", from the same bottle, they were also sharing the same pipe of tobacco.[100] Continuing in this vein, the authors argued that these men were also using the native women not only for sexual gratification, they were even courting them like they would do at home in Germany with the maid or the peasant's daughter. This, the institutionalisation and normalisation of sexual interaction, even the psychological need to establish such liaisons with more than just the mere

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Mädchen abgeben, steigen sie dann nicht hernieder auf die Stufe, auf der wir uns befinden?" Ist das nicht eine prächtige Entgegnung?"

[98] The fact that Missionary Wandres reported a similar interaction in which Franz H. played a role about a similar issue suggests that these are not totally fictitious; cf. VM-RMG 2.533: 287. And, indeed, the missionaries' voice surfaced in the record in the context of immoral sexuality only; when the missionaries feared that a prohibition decree on marriages would just force men to continue engaging carnally outside the confines of legalised marital bonds.

[99] NAN-ZBU 666 F IV r 1 28r "Durch diese Behandlung wird auch ein nicht zu unterschätzender Einfluß auf die in dieser Hinsicht leider meist sehr unreifen sozialen Anschauungen unserer Ansiedler ausgeübt." Hintrager in his *Südwestafrika in der deutschen Zeit*: 73 corroborates this 50 years later, in 1955, writing that "Die Entsendung von rund 15 000 deutschen Soldaten zur Niederwerfung des Aufstandes zeitigte dieses Problem [the problem of German-indigenous sexual interaction,WH.]"

[100] These were comrades in arms, Baster ancillary troops and Damara mercenaries to the *Schutztruppe*.

sexual act and gratification in mind, was perceived to be of the gravest danger for the colony. The courted women would then insist on being married legally.[101] This train of argument most clearly establishes the influence of the *situation érotique*, as it had developed during the roughly 18 months of German-Colonial War in the colony, as the immediate context and *raison d'être* of the marriage prohibition decree. The issuance of a marriage prevention decree, even if it was only meant to induce a proper legal provision from Berlin, was the culmination of attempts in the colony to come to terms with the uncontainable sexual and erotic interaction of large numbers of German men with indigenous women.[102] Quite ironically, it would seem, one of the authors of this memorandum, Tecklenburg, had not been able to contain himself sexually either; Missionary Meier, in a long deliberation about the offspring of mixed unions added a list of men who had fathered children with indigenous Windhoekers, among whom *Regierungsrat* Tecklenburg featured prominently.[103] Whether Tecklenburg, together with his hardliner friends Hintrager and von Lindequist, battled their own, probably uncontrollable sexual inclinations and desires by expressing them through legal repression, remains a speculative question.[104]

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[101] NAN-ZBU 666 F IV r 1: 33 "Und leider ist oft die Art des Verhältnisses des Weißen zur Eingeborenenfrau eine andere als früher. Wie die jetzigen neuen Soldaten nichts darin finden, auch mal mit den eingeborenen "Kameraden" aus einer Rumflasche zu trinken, aus einer Pfeife zu rauchen, so sehen sie auch vielfach in dem Eingeborenenweibe nicht lediglich das Mittel geschlechtlicher Befriedigung, sondern sie machen ihr den Hof wie ihrer Berliner Köchin oder deutschen Bauerntochter. Die Folge davon ist daß die Eingeborene die stdsamtl. [standesamtliche, WH] Eheschließung beansprucht." The terms 'Berliner Köchin' and 'deutsche Bauerntochter' both carry notions of a lower social and class status of these women, one that was usually coupled with some 'sexual-availablility' implications in German parlance. The terms, however, also carry certain notions of consent, monogamous stability and even intimacy.

[102] The arguments and suggestions from Windhoek in favour of a proper marriage prohibition decree legal provision never resulted in such law being issued. However, a fact that has been overlooked in the discussion of the marriage prohibition decree, is that the *Reichsjustizamt* was asked to look into the matter. It found in May 1906 that it was still not possible, legally, to prevent mixed marriages from being concluded. If things were to be changed and regularised legally, a proper law needed to be written, as the present condition was untenable. Cf. BArchB-R 10.01 - 5423: 89, a hand-written memo mentions this; no further traces of this were found in the consulted record, however. NAN-ZBU 666 F IV r 1: 34. An undated addition in Hintrager's handwriting acknowledges the fact that the *Reichsjustizamt* had conferred over the issue. Its contents are, however, not clearly understood: "nach einer Privatnachricht v. Juni 06 hat das Reichsjustizamt s. *de lege fontella* (Kais. VO) auf den Standpunkt dieses Berichtes gestellt. Hi[ntrager]" It suggests that the experts in the Reichsjustizamt did consider the Windhoek prohibition decree to be in accordance with political considerations and as such in order. Hintrager, again corroboratingly cited, argued in his 1955 publication, *op. cit.*: "Die Kolonialabteilung des Auswärtigen Amtes hat aus innenpolitischen Rücksichten [...] eine grundsätzliche Entscheidung in der Sache nicht getroffen, aber dem Gouvernement in Südwestafrika freie Hand gelassen."

[103] VEM-RMG 1.657, 143ff, letter of Missionary Meier to Inspector, dated 20/5/1904 "Im folgenden teile ich Ihnen noch, bitte aber vertraulich, die Namen etc. von einigen dieser Väter mit. Major v. François, früherer Gouverneur,.. . Regierungsrat Tecklenburg hat 1 Kind; ... . Veterinärrat Rieckmann hat 2 Kinder; ... . Herr von Goldammer 1 Kind...." More names of civilians follow.

[104] From the hand-written versions it seems as if Tecklenburg was the more fervent moralist as the sections which argue sexuality as explicit as was possible under the conditions were written by Tecklenburg. If sexual

The marriage prohibition decree of 1905 was clearly instituted to uphold German power and white rule in German South West Africa, particularly as the latter had been effectively challenged in the German-Colonial Wars since the beginning of 1904.[105] As a result of the war conditions, large-scale sexual interaction of German men with indigenous women became everyday occurrences around the military barracks and garrisons, where thousands of soldiers' libidinous urges could not be accommodated by the few European women who were present in the colony, and were mostly married anyway. Notwithstanding some white prostitutes, indigenous women were both taken advantage of and provided sexual services on their own account.[106] As it was impossible to directly and effectively prohibit men from having sexual intercourse with a proscribed group of women, a marriage prohibition decree was the next best thing. Through it, a message could be sent that casual fornication between German men and indigenous women was considered undesirable. This marriage prohibition decree has to be understood against the background of legal and historical developments as sketched out here. Lack of experience in a new and developing legal field combined with administrative inefficiencies to allow a wide leeway to implement whatever was deemed desirable by the respective administrative official in the colony, regardless of what Berlin argued. The determinist even teleological notion that German racism was imposing itself in this situation has to be refuted. Different approaches fed by different evaluations of colonial power and vision were brought to a contest and played out differently at different times. A pragmatic voice from the colony (Leutwein) was challenged by Berlin's legal experts. On account of infrastructural restrictions, Leutwein was able to implement his vision of a colonial conjugal order. Once German rule had been challenged, the more assertive voices of Tecklenburg and von Lindequist were able to prevail. Despite its racist undertones, the main contention that German rule was threatened by too close a relation between coloniser and colonised was argued in a sexual discourse. Moral reticence prevented this from being an open discourse about sexual relations and sexuality. Marriage between coloniser and colonised thus took the place of an open conversation about carnal relations. The hardliners Tecklenburg and von Lindequist, aided by Hintrager, pushed for this vision, to which end new terminology entered the rationalisations. It is this new terminology which divulged that it was the sex between German men and indigenous women that was considered the real problem. To this end, Tecklenburg and Hintrager inserted the notion of *deutsche Gesittung*, German morality, as an ingredient in the debate, culminating in the question about how German women could ever be made part of the colonising enterprise as spouses if they knew that German men had cohabited sexually with indigenous women. Again, one may be tempted to connect Tecklenburg's consummated sexual congress – we do not know anything about von Lindequist's and Hintrager's sexual exploits – to this question. A direct biographical connection clearly existed in Tecklenburg's case, and questions of

congress would be legitimised through legal marriages, he argued in the memo, white women would be even less attracted to the colonies.

[105] This line was argued by Bley, *Kolonialherrschaft*: 249.

[106] Cf. Hartmann, "Urges": 60 ff.

moral purity and sexual contamination, mixed with nationalist sentiment, surely drove some of the arguments that were put forward. How this tied in with larger developments in metropolitan Germany cannot be discussed here and will have to await future consideration.

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