Review: André Tiebel, Die Entstehung der Schutztruppengesetze für die deutschen Schutzgebiete Deutsch-Ostafrika, Deutsch-Südwestafrika und Kamerun (1884-1898), Frankfurt am Main, Lang, 2008.

The history of German colonial forces is severely under-researched. However, as the boom in colonial historiography – especially on the former German colonies – continues, it was only a matter of time before the German Schutztruppe, literally the German ‘Protection Forces’ in the colonies, also came under more intensive scrutiny by historians, legal scholars, anthropologists and others.

A book on the making of the laws governing the colonial forces in German East Africa, German South-West Africa and the Cameroons (1884-1898) is welcome for several reasons. First of all, this dissertation in legal history, written in Berlin under the supervision of renowned legal scholar Hans-Peter Benöhr, focuses on the origins of the Schutztruppen and their legal basis within the framework of German public law. While it is often only the last ten years of German colonial rule which are taken into consideration when examining German colonialism, this work also assesses the humble beginnings of these activities from the point of view of a legal historian. Secondly, this book fills a gap in the (growing) literature on German colonial law.

An overview of the subject was provided in the works of Hans-Jörg Fischer and Norbert Berthold Wagner. The excellent treatise by Marc Grohmann, Exotisches Verfassungsrecht, on the forging of German colonial law, budgetary laws, civil service laws by the Imperial administration in Berlin and the ensuing parliamentary and academic debates (and their influence) has provided the best account of the integration of colonialism into the corpus of German public law and dogmatics up to now. Grohmann’s book serves as a benchmark for any work on related issues. Hans-Jörg Huber’s dissertation on the self-governance of settler communities in German South West Africa and the relevant imperial ordinance of 1909 gets closer to the colonial situation ‘on the ground’ than any of the works mentioned before. However, the effects on individual lives of those rules and of the power structures evolving in the colonies are barely touched upon. Therefore, the most important criticism of all the above-mentioned research is that those who are often (still) called ‘the natives’ (but also the settler population apart from a few administrators) have not been taken into consideration at all; sometimes with the excuse that they are not the ‘subject


3 Hans-Jörg Huber, Koloniale Selbstverwaltung in Deutsch-Südwestafrika: Entstehung, Kodifizierung und Umsetzung, Frankfurt am Main, Lang, 2000.
of this work’. Essentialism and stereotyping is at times ‘rampant’. These legal historians barely describe any reaction of ‘the natives’ and do not look for forms of their agency; although it would have been fair for a legal historian to ask how, for example, the governance of ‘native quarters’ in German South-West Africa was seen by Africans and Germans. Sometimes colonial history is apparently still written without reference to those being colonized. It seems that the writing of dissertations on colonial legal history in German Law Faculties simply does not require one to take into account an immense body of literature on the colonial context and power relations, not to mention the post-colonial turn. However, there are examples of successfully integrating archival sources of colonial origin into a framework of legal questions, as proven by Ralf Schlottau’s work on the German colonial penal law 1884 – 1914.4

It is against this background that the work of Tiebel on the making of laws governing the German colonial forces in Africa is to be assessed. Unfortunately, he too remains mostly within the narrow limits of legal dogmatics and parliamentary debates, although he does present extensive archival research from the Federal Archives in Berlin and original quotations. Individuals, especially those from the colonies, are almost completely absent from his book and when they do appear then often in essentialistic terms. Tiebel remains in his analysis and conclusion completely immanent – or to use a legal term ‘positivistic’.

The book is subdivided in three major parts and leaves a rather eclectic impression: Part 1 outlines in an odd style the “three large African colonies” by summarising their “geography, climate, ethnology” and [German] occupation [Erwerb]”. He deems such sketch of “Land und Leute” (p. 19) necessary, although it turns out that it remains more or less unrelated to the remainder of the book. Its content and terminology is completely outdated. A fact which can already be traced from the sources used: The “ethnology” of German East Africa is dealt with in six lines by pointing to “remainders of native population [‘Reste der Urbevölkerung’], Bantu, Hamiten and Semiten”, as stipulated in a work of 1941(!), not to forget “Somali, Oman- and Hadramaut-Arabs, Beludschis, Parsis and groups of Indians” (p. 24). So far so good – but what did these people have to say to the German military law being introduced to their territories? The story of the German “occupation” [Erwerb] of Cameroon, German East and South West Africa is recounted the same way Tiebel has recounted it in numerous entries in colonial handbooks or general treatises since the early 1900s. But simply retelling on two pages what Carl Peters or Adolf Lüderitz did or allegedly did in 1884/85, does not further our understanding of colonial rule. Instead such reiterations, irrespective of original quotations from archival findings, perpetuate the notion of Europeans acting at the expense of ‘natives’, who from time to time take up arms. For Tiebel the ‘ethnology’ of

German South West Africa requires a few more lines, mostly due to the ‘fact’ that the Nama “living in Gross-Namaland” and the Herero (“Bantu people”) “living in Damaraland” “had often conflicts” until these quarrels were ended by the Germans. In a way one feels reminded of Brigitte Lau’s important article ironically titled “Thank God the Germans came”.5

Part 2 describes in 50 pages the predecessors of the colonial forces (Vorläufer der Schutztruppen) in the three colonies. Here, Tiebel rightly emphasizes the difficulties created by the unwillingness of the African populace to be subdued by the Germans. Revolts made a military force necessary. Since private colonial enterprises, which — according to the intentions of Imperial Chancellor Otto von Bismarck — should have administered and secured the colonies at their own cost, were unwilling and unable to do so, state intervention by the Imperial administration beyond the deployment of a few naval vessels was required. Otherwise, the colonies would have been lost. For East-Africa Tiebel gives the example of the “Arab rebellion” of 1888, led by alleged slave traders, and the ensuing debate in the German Parliament. Whereas Bismarck and the young Emperor Wilhelm II were still hesitant to send troops, others in the Imperial administration as well as many parliamentarians wanted to see a more vigorous German engagement against the slave trade. Bismarck finally recognized that he had to make a decision between either loosing the East-African protectorate to the rebels (or the British) or sending a state funded expeditionary force to suppress the rebellion. In January 1889 the first bill before the Reichstag regarding the financing of the German military in Africa found an easy majority, due to favourable votes of conservatives, national liberals and the catholic centre party. However, contrary to the intentions of Bismarck, the parliamentarians used their ‘power of the purse’ right from the beginning to debate the pros and cons of colonialism and its costs. Although one would have liked to know more, Tiebel correctly states that during the parliamentary process leading to the use of military force in Africa the colonial policy was regularly questioned as a whole.6 The execution of the new state funded military campaign under Captain Hermann Wissmann along the East-African coast beginning in April 1889 is illustrated by Tiebel in more detail, using the sources from the Federal Archives in Berlin. He mentions the dispute between Wissmann and the German navy commander about the deployment of marines on land as well as the Imperial administration’s eagerness to avoid any involvement of troops in the hinterland beyond the coast. The steadily increasing costs of the campaigns in Africa and thus the necessity to debate the colonial budgets in the Parliament were also a constant source of concern for the administrators. By 1890 almost 200 German troops were stationed in East-


6 “Regelmäßig wurde bei der schrittweisen Verrechtlichung des Truppeneinsatzes in Afrika auch die gesamte Kolonialpolitik als solche in Frage gestellt.” (p. 54).
Africa. For Tiebel such employment of troops marked the transition from “informal empire” to Imperial colonial administration. District borders and responsibilities had to be defined, regulations needed to be stipulated.

A somewhat similar situation evolved in Cameroon and German South-West Africa, where, however, a German Imperial commissioner, Heinrich Göring, had arrived as early as 1885 (together with the administrator Louis Nels and constable Hugo von Goldtammer). This was due to the lack of financial means of the colonial society which was supposed to administer the areas ‘bought’ by Adolf Lüderitz. As these three men were not able to deliver what had been promised by the Germans in their treaties with the Africans — protection — the latter soon turned their back in disappointment on the Germans. In 1888 a first small military detachment was formed, which was, however, unable to exert any power. Göring, after having escaped to the British administered Walvis Bay, requested a force of between 400 and 500 men, a request at first rejected by Bismarck. However, in January 1889 a related demand was put before the parliament and it was agreed that under the ‘private’ command of Captain Curt von François around 50 men would be detached to South West Africa. Although it ran contrary to their orders German officers began their own ‘small wars’ soon after the arrival, hoping for honour and rewards. This destabilised the situation further. In particular the Nama under Hendrik Witbooi refused to collaborate with v. François, whereas Maharero signed a treaty with the Germans in May 1890, accepting their ‘protection’. It wasn’t until three years later, when his troops were increased by 220 men that v. François could dare to attack Witbooi at Hornkranz — without success as it turned out. When v. François’ successor Theodor Leutwein finally signed a treaty with Witbooi in September 1894, the Schutztruppe, as it was now called, had grown to 540 men, fully financed by the Imperial budget. However, most regulations regarding responsibilities and their legal basis were still lacking.

Tiebel narrates all these well known facts on the basis of his archival findings and a few quotations from secondary literature. However, as a kind of introduction to the subject of his treatise on the (early) laws governing the German colonial forces, these first 90 pages are rather long and this reviewer failed to recognise the connection to the subject: what problems arose during these early colonial years as a result of the lack of a legal basis ‘on the spot’ and in Berlin? How did the military and civilian protagonists react to any such problems, if at all? Did they use the lack of regulations as a justification for their deeds or were they the first to deplore this kind of uncertainty and demanded clarification?

Part 3 on “politics and military legislation for the protectorates” contains the genuine research on colonial military law promised in the title. It commences with a lengthy introductory section on Bismarck’s colonial tenets, colonial politics in parliament and among the German parties, colonial budgeting and it provides an overview of the German colonies under international and constitutional law. The
latter issue was, as pointed out by Marc Grohmann, highly disputed among legal scholars: it remained unclear whether the German Schutzgebiete were actually *Kolonien*, colonies proper and whether they should be considered — under constitutional law — *Inland* or *Ausland* — domestic or foreign territory. From a legislative point of view they became de facto domestic German territory as the Reichstag either passed laws which were specifically meant for one or all of the Schutzgebiete or extended and amended existing German laws so they were valid and applicable in these African (or Asian) territories. Colonial military law, based on parliamentary vote and signed by the Emperor, as it had been enacted since 1891 was a peculiarity within the body of German military law, a detail Tiebel touches on only briefly when — under the heading “Constitution and Military”— he reminds the reader that the German forces were no “Parlamentsheer” (p. 109).7 Instead, the Emperor ruled the military with almost absolute power. Although mentioned in the constitution of 1871 the military remained quasi-extra-constitutional. A discussion of the reasons why colonial military law deviated from this tenet could have been the legal focal point of Tiebels work. However, he delivers a rather weak, official justification, when he reiterates that rights and duties of German citizens in the colonies were affected by military law and therefore a formal parliamentary law and not just an Imperial ordinance was required. The parliamentary debates on the three military laws of 22 March 1891, 9 June 1895 and 7 July 1896, often covering the colonial policies in general, are presented by Tiebel, detailing the social democrats’ and some liberals’ criticism of colonialism and militarism. In general the laws specified responsibilities in organisational matters — the Emperor was the commander-in-chief — and in personnel, discipline, jurisdiction and pensions. Their execution on African soil is not described as extensively. Although in part 2 of his thesis Tiebel correctly pointed to the German difficulties, part 3 evokes at times the impression that the abstract principles of military law could have been executed without abbreviation. Whereas the law of 1891 concerned German East Africa only, the law of 1895 was meant to regulate the conditions the colonial forces in the Cameroons and German South West Africa (which were also no longer private enterprises) with some adjustments, in order to offer the soldiers equal pensions or services in case of invalidity. However, the experience of four years showed that the military — based on this law — exerted more and more influence on civilian rule and often infringed on the latter’s power, as the liberal Eugen Richter, leader of the German Freeminded Party (Deutsche Freisinnige Partei), complained. He deplored a “dualism” of civilian and military administration ( overseen by the Imperial Naval Office, Reichsmarineamt, in Berlin) in the colonies (p. 126).

Whereas in 1891 it wasn’t only the need for Schutztruppen that was disputed but the very colonies themselves, the debate on the new colonial military law in 1896 centred on the notion of civil-military “dualism” and the deployment of colonial troops. However, Tiebel leaves it to his readers to decide how much influence parliamentarians could exert on the stipulations of the laws he analyses. Even more worthy of criticism is that he begins his analysis of the legislative procedure with the drafts discussed in the First Chamber, the Bundesrat, where the sovereign princes of Germany were represented. This is deplorable for the Schutztruppengesetz of 1896 in particular, which united earlier laws and was applicable for all German colonies in Africa until 1914 (p. 139). The decisive step in making this law – which had already been taken by the civil servants in Berlin drafting it – was the exclusion of the Naval Office from the colonial administration (including military affairs), which became henceforth the exclusive realm of the Foreign Office’s Colonial Department under the Reichskanzler, thus a civilian responsibility. The Colonial Director Paul Kayser had to work hard to convince the Emperor, Chancellor Hohenlohe as well as other civil servants to support him against military intrigues and bestow on him the responsibility for the Schutztruppen. None of these decisive political machinations are mentioned by Tiebel. In 1897 the high-command of the Schutztruppen (Oberkommando der Schutztruppen), headed by a staff officer, was integrated into the Colonial Department and thus supervised by Colonial Director Kayser (p. 145). This civilian superiority was also introduced in the German colonies, where the civilian governor assumed a higher ranking role to that of the commander of the local Schutztruppe in order to avoid “frictions” and conflicts between military and civil administration “on the ground” due the “dualism” as described before by Eugen Richter and others (p. 139; 142). The majority of German parliamentarians had no objections to a “Parlamentsheer” in the colonies – as the conservative von Arnim pejoratively dubbed the Schutztruppe (p. 138). Besides the separation of the colonial forces from the German army and naval forces, another novelty of the law of 1896 was the fact that Germans living in the colony could from now on be drafted in the colony itself. The pension system of the colonial military became far more

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8 The Emperor remained commander-in-chief according to Section 1 of SchTrG, as repeatedly emphasized by Paul Kayser during the parliamentary debate (p. 138). The Emperor reserved for himself the right to appoint and promote officers of the Schutztruppen (p. 143); see also Grohmann, Verfassung: 134f.

attractive than in the German army and naval forces. Details not only of the pensions, but also of, for example, the recruiting Germans and Africans, military penal and disciplinary systems and other rights and duties were to be stipulated by ordinances of the Imperial Chancellor (p.141), the most important of which was published in 1898 and applicable in all German colonies in Africa (p. 146).

Tiebel rightly points out that, despite the political and economic necessity (latest since 1889) for Schutztruppen to ensure the German Empire held onto its colonies, they were generally assigned “police tasks” (p. 150). Section 1 of the Schutztruppengesetz of 1896 stipulated cautiously: “To maintain public order and security in the African colonies […] Schutztruppen are deployed”. For anything else they were simply too small, as became evident during the first months of the Herero- and Maji-Maji wars. Without enforcements from Germany the Schutztruppen were – at times – almost helpless against concerted African military action and later during World War I against British forces. However, such a cautiously chosen legal definition of the colonial military’s task to “maintain public order” and the small number of military personnel employed (in GSWA less than 2,000 Germans in 1913) taken together with a tendency to enhance internal military regulations by law or ordinances (and put them under civilian control), raises the question of how the use of force by the Schutztruppe was regulated — and exercised; and whether or not there was a connection between regulation and execution. Tiebel mentioned in part 2 of his work several “revolts” which led to brutal reprisals by German colonial troops. Considering the meagre number of troops and funds at their disposal, were the laws Tiebel examined merely a means for the Germans to improve military efficiency? Characterising colonial wars, the historian Dierk Walter recently stated that modern colonialism was simply based on violence and referred to colonial rule as being “structurally latent genocidal”. An important question for a legal historian to answer would thus whether it is possible to trace (potentially) “genocidal structures” within the legal frameworks of those forces of colonialism most likely to conduct (possibly genocidal) wars. The civil supervision of the German colonial forces, which made it a Parlamentsheer, may evoke the notion of a more civilised way to exert colonial power. However, ‘civilising missions’ often ended in a rampantly de-civilised way of conducting warfare — the German case being no exception. Did the legal framework of the German colonial forces somehow embrace or at least invite such de-civilising behaviour in conflict and war? Such questions are also of importance in a comparative context of colonial historiography. Setting these suggestions aside, Tiebel’s Die Ent-

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10 “Zur Aufrechterhaltung der öffentlichen Ordnung und Sicherheit in den afrikanischen Schutzgebieten […] werden Schutztruppen verwendet.”

stehung der Schutztruppengesetze für
die deutschen Schutzgebiete Deutsch-
Ostafrika, Deutsch-Südwestafrika und
Kamerun is an essential read for scholars
and students of the German colonial
forces and calls for continued research
in this field of study.

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Bukarest