

## THE FIGHT FOR MIXED MARRIAGES

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This study deals with the topic of marriages between German citizens and members of the native population in German Southwest Africa. The instructions issued to registrars in September 1905 banned these marriages and also made the marriages occurring before the ban void. Archival sources contain several cases where German fathers tried to legitimise their children or a case of a woman seeking a divorce instead of having her marriage proclaimed as void. They appealed to the courts, but the legal situation in German Southwest Africa was not clearly defined and thus, the decisions and reasoning of courts in the cases differed. The study looks at the ban on mixed marriages in the context of race and racist attitudes in the early 20th century and introduces the historical background to the ban. The attitudes of the representatives of the colonial administration and Berlin institutions were influenced with the racial theories and racist worldview. The sources indicate the progress of the topic from the intellectual racial and racist discourse to its institutionalisation and instrumentalisation.

**Key words:** German Southwest Africa, racism, mixed marriages

### **1. Introduction to the topic of discussion on mixed marriages**

The topic of mixed marriages belonged to the important concepts of racial policies of Wilhelmine Germany. The unions with the members of the local population were limited in several German colonies, but Germany was not the only country that tended to restrict the intimate relations with the colonised. The beginning of the 20th century was the time when social and sometimes also legal control over these unions gained importance in the most of the colonies. For instance, although the ban on mixed marriages was not issued in French colonies, the years after 1900 were typical with the pressure to ostracise such couples. Until that time, mixed unions were often understood as the tool of

French acculturation in the colonies.<sup>1</sup> The restrictions concerning sexual relations between white women and African men were introduced in Southern Rhodesia, Natal, Cape Colony and Orange Free State in the years 1902 – 1903. The regulation of female sexual behaviour was much more common.

The phenomenon of the ban on mixed marriages in some of the German colonies is even more interesting if we take into consideration the fact that the real number of those marriages was very low and yet the issue still attracted extensive popular attention and aroused strong emotions. Discussions were led on several levels – the institutional frame was represented by both by the colonial authorities and the institutions in the mother country. The responsibilities for solving the questions of this type belonged to the colonial governor and his deputy who could issue instructions to the local registrars. The institutions that dealt with the issues related to colonies and had their seat in Germany were the Ministry of Foreign Affairs and its Colonial Department (*Kolonialabteilung*), and later the Imperial Colonial Office (*Reichskolonialamt*). The discussions at institutional level culminated in a parliamentary debate, which began in March 1912.

Historiography recognises several approaches to the topic. The ban on mixed marriages is sometimes interpreted as the consequence of the political situation that existed in the colony itself – it is especially discussed in relation to the Herero uprising. It started on 12th January, 1904 and resulted in the insecurity of German authorities about their position in the colony.<sup>2</sup> The rise of insecurities caused by the revolt of native ethnics could be similarly used to explain the overreaction of the German public. However, even if we supposed that similar marriage restrictions in German East Africa in the year 1906 were influenced by a similar situation – the Maji-Maji uprising, it would not provide us with an explanation for the ban in Samoa in the year 1912. Samoa belonged to the conflict-free territories and the ban was issued several years after the restrictions in German Southwest Africa (GSA) and German East Africa. There is also another problem with this theory – Cameroon was the site of several minor uprisings, but the ban on mixed marriages was never issued. It seems that uprisings might have had their influence to a certain extent; however, this theory alone is not sufficient.

Another approach is close to the explanations related to the gender studies. It pays attention to the conflict between the traditional imperial patriarchy, which was intertwined with the sexual exploitation, and this intervention into what was perceived as a “white man’s right”. From this perspective, the ban on

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<sup>1</sup> KUNDRUS, B. *Moderne Imperialisten. Das Kaiserreich im Spiegel seiner Kolonien.* [Modern Imperialists. The Empire in the Mirror of its Colonies], p. 221.

<sup>2</sup> e.g. BLEY, H. *Kolonialherrschaft und Sozialstruktur in Deutsch Südwestafrika.* [Colonial Rule and Social Structure in German Southwest Africa], p. 252.

mixed marriages can be seen as an attempt for compromise between the emphasis on the “racial purity” and these old patterns of behaviour in colonies because there was no ban on sexual intercourse – the legislation only dealt with the case of matrimony.<sup>3</sup>

The first more important attempt to interpret the phenomenon of the ban on mixed marriages as a result of efforts to reach racial segregation was made by Helmut Stoecker.<sup>4</sup> The works of older theoreticians of racism, e.g. Arthur Gobineau (1816 – 1882) and Houston Stewart Chamberlain (1855 – 1927), added to the formation of specific intellectual climate. The racial terminology was already established at the time when the German colonial administration had to cope with the new task and define her legal relationship to the African and Asian population. These authors contributed with the theoretical frame, terminology and opened the topic of race in the pseudo-academic discussions. Later, the biologists like Eugen Fischer, who attempted to study the mixed population of Rehoboth in the year 1908, offered important support to the racist discussions – the most problematic parts of his work *The Rehoboth Bastards* (*Die Rehobother Bastards*) were put into the field of ethnology and psychology and he did not use any proper methodology in those parts of the book; however, his scientific reputation as a biologist also added the importance and recognition to those chapters of the work.

Mixed marriages fell together with other colonial agenda within the scope of the Imperial Colonial Office (*Reichskolonialamt*). The matters of German colonial territories (*Schutzgebiete*) were originally solved by the Inspectorate for German Overseas Interests (*Dezernat für die deutschen überseeischen Interessen*), which was a part of the Foreign Office (*Auswärtiges Amt*). The special Colonial Department (*Kolonialabteilung*) was opened on 1st April, 1890. The Colonial Department was directly under a chancellor’s control. The Ministry for Foreign Affairs only dealt with those colonial matters that were related to other states. The Imperial Colonial Office (*Reichs-Kolonialamt*) began its activity in the year 1907 and, just as the previous institution, the Imperial Colonial Office was also controlled by a chancellor.

It is interesting that the marriages were banned in these colonies, although the marriages between German citizens and locals were not numerous there and the number of children born from those unions was proportionally relatively minor to the number of inhabitants. It is important to keep in mind that a legally valid marriage came into existence only if it was formally registered by a state’s registrar. Subsequently, only the children from the marriage that was registered and authorised by the state were considered to be legitimate and thus entitled to inheritance. Some of the couples did not have any recognition of their legal

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<sup>3</sup> WILDENTHAL, L. German Women for Empire, 1884 – 1945, p. 82.

<sup>4</sup> e.g. STOECKER, H. The Position of Africans in the German Colonies, p. 126.

status from a state registrar; however, their marriages were solemnised by the church. Missionaries were in contact with the farmers more frequently as the colonial authorities and were willing to travel to more distant places. Some of them visited unmarried couples and offered the possibility to solemnise the union.<sup>5</sup> Missionary Schreiber, an inspector of the Rhenish Missionary Society, tried to open a discussion on the future conduct of civil marriages by missionaries – they would be able to perform both religious and civil marriage.<sup>6</sup>

As it has already been mentioned, the number of mixed marriages was insignificant relative to the number of farmers. Oskar Hintrager (1871 – 1960), a colonial official, sent a report on mixed marriages to the Imperial Colonial Office on 20th June, 1910. The report contains the comparison to the time before 1st October, 1905 (the day instructions were given not to register any mixed couples) and in the following years. The report shows that some of the religious marriages were not accompanied by official registration at the marriage registrar. Some of the couples got married outside of GSWA, typically in the British territory of Walvis Bay. There were 20 mixed marriages that had been registered by civil registrars until October of 1905 in GSWA and 4 such marriages that were registered outside the territory of GSWA.<sup>7</sup>

The report does not say anything about the children from those unions. However, considering the low number of marriages that would be understood as legally valid, the number of legitimate children would not be high. The report from 1911 discusses the responsibilities of German fathers to the children from unions with African women and says nothing about their exact numbers, but it shows that the number of children considered illegitimate even before 1905 was proportionally higher than of those considered to be legitimate.<sup>8</sup>

We can use data from Togo to compare the situation. Missionary Schreiber left records from the year 1913 to show the number of mixed children (he did not divide them into legitimate and illegitimate). There were 254 men with European ancestry in Togo and 240 mixed children.<sup>9</sup> The proportions are even more interesting, if we consider the data from 1907, which also includes the number of Catholic priests (not likely to be fathers). In 1907, there were 244 males with European ancestry and 43 of them were Catholic priests.<sup>10</sup> Despite the high number of mixed children relative to the number of German men (or men with European ancestry), mixed marriages were not banned.

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<sup>5</sup> Schreiber to Emperor. 10.3.1896. Bundesarchiv Berlin-Lichterfelde (further BAB), fund (further f.) R 1001/5423, p. 19.

<sup>6</sup> *Ibid.*

<sup>7</sup> Hintrager to the Imperial Colonial Office. 20.6.1910. BAB, f. R 1001/5423, p. 131.

<sup>8</sup> Seitz to Lindequist. 24.2.1911. BAB, f. R 1001/5423, pp. 146 – 147.

<sup>9</sup> Schreiber to the Imperial Colonial Office. 16.7.1913. BAB, f. R 1001/5423, p. 33.

<sup>10</sup> STORNIG, K. *Sisters Crossing Boundaries. German Missionary Nuns in Colonial Togo and New Guinea*, p. 14.

The restriction issued in GSWA was often backed with the argument on the inadmissibility of succession and citizens' rights for the offsprings from those unions. Even if we omit that this argumentation itself is racist, the number of children was really minor. Still, this kind of argumentation was used. The specific position of GSWA and other colonies with the restrictions on mixed marriages can be partially explained by their main characteristics within the colonial system – these colonies were settlers' colonies. Primary sources introduce settlers' colonies as specific with regard to the questions of race. One of the instances is the report written by governor Theodor Leutwein in 1904. Leutwein explains that the questions of coexistence of two races need to be solved in the colonies intended for settlement. He asks if it is possible for two races to coexist in the same territory without complete subjugation to one of them. This problem has a priority in settlers' colonies over the plantage or tradesmen colonies.<sup>11</sup> Although the rate of mixed children was high in Togo, the territory did not belong to the colonies that were planned as extensions of German settlement. There were practically no small German farmers in Togo and the German or other European population was represented almost exclusively by tradesmen.<sup>12</sup> It seems that the colonies of settlers' type were more influenced by racial and racist argumentation than those of different types. GSWA, German East Africa and Samoa were presented as the colonies with good conditions for settlement and the press described them as the oases of a better life.<sup>13</sup>

Process of settlement was close to the idea of living space – *Lebensraum*. The German population was growing at the end of the 19th century and the rise of the population was especially obvious in urban areas. The topic of living space had deeper roots. The general public began to reflect on the idea mostly after the work of Friedrich Ratzel (1844 – 1904). Ratzel's work *Lebensraum* (1901), together with others of his works, helped to add the concept of *Lebensraum* to the important concepts of Wilhelmine politics. Friedrich Ratzel understood the question of space as one of the crucial issues for the growing nation and its prosperity. He also used the ideas of Social Darwinism, e.g. to explain the subjugation of the American native population and of colonised ethnics in the other parts of the world. Ratzel's concept intellectually justified and morally

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<sup>11</sup> Leutwein's report: Die historische Entwicklung des Schutzgebietes und deren Zusammenhang mit Hereroaufstände [The Historical Developments of the Colony and its Relation to the Uprising of Hereros]. n.d. BAB, f. R 1001/2116, n.d., p. 147.

<sup>12</sup> APPIAH, A., GATES, H.L. Encyclopedia of Africa. Volume I., p. 478.

<sup>13</sup> Such a presentation was opposed e.g. by Samoan governor Wilhelm Solf (1862 – 1936). He was against the influx of poor men, because they were not able to bring a German wife and entered unions with local women. Solf to the Imperial Colonial Office. Bericht über die Mischlinge. [The Report on the Mixed-race]. 15.9.1907. BAB, f. R 1001/5432, p. 33.

legalised the conquest, subjugation and extermination of the colonised – it was acceptable in order to obtain the living space.<sup>14</sup>

The characterisation of the colony as a settlers' place added to the culmination of an ideological background and conscious or subconscious racist indoctrination into the practical decisions that aimed to keep "racial purity" and stop "racial defilement". This kind of colony was closely intertwined with the concept of a "new Germany". It was not, as in Togo, the time-limited stay of tradesmen or plantage owners. On the other hand, the colonies that are profiled as settlers' destinations carry the idea of permanent settlement and formation of community. The agricultural tradition in GSWA was not significant – one of the important agricultural cultures were Ovambos, but this ethnic was rather an exception in this territory. Farmers had to gradually cultivate the soil and could not count on a quick profit and early return to their homeland. It seems that mixed marriages were feared much more in the settlers' colonies than anywhere else.

It is necessary to say that although mixed marriages were extremely rare, the cohabitation was very common. Written evidence about the situation is mostly preserved in the reports and memoirs of missionaries. One of them – Johann Irle, describes the commonplaceness of such unions in his work *The Hereros (Die Herero. Ein Beitrag zur Landes-, Volks- und Missionskunde)* from the year 1906. His work was published during the Herero uprising and he summarised the years before the uprising.<sup>15</sup> He complains about the deterioration of Herero moral values, which had been continuing since the arrival of the Germans in 1885. He explains that soldiers and farmers preferred the cohabitation to marriages even in the earlier years because marriages were socially punished. He also writes about the spread of prostitution.<sup>16</sup>

## 2. Legal frame of marriages in GSWA

The first law on the organisation of colonies was the *Law on Legal Relationships in the German Colonies (Gesetz, betreffend die Rechtsverhältnisse der deutschen Schutzgebiete)* from 16th April, 1886. It is often referred to as the *Colonial Law (Schutzgebietgesetz)*.<sup>17</sup> *Reichstag* and *Bundesrat* left the full power to decide on colonies in the emperor's hands – he was referred to as a

<sup>14</sup> KAKEL, C.P. *The Holocaust as Colonial Genocide. Hitler's Indian Wars in the Wild East*, p. 14.

<sup>15</sup> HARTMANN, W. (2007b) *Urges in Colony. Men and Women in Colonial Windhoek, 1890 – 1905*, p. 45.

<sup>16</sup> *Ibid.*

<sup>17</sup> Law no. 1647. *Gesetz, betreffend die Rechtsverhältnisse der deutschen Schutzgebiete*. In *Deutsches Reichsgesetzblatt*, Vol. 1886, No. 10, pp. 75 – 76.

*Lord Protector (Schutzherr)* with regard to colonies. The centralisation of power had a practical background – it was expected that the colonies would demand fast and flexible interventions.<sup>18</sup> The emperor delegated the power to the governor or commissary. Legal regulations were in the form of orders.

However, the ruler's power was partially limited financially. The most important limitation in an emperor's decisions was a state budget, which had to be endorsed by *Reichstag* every year. The emperor was also limited by the Constitution and some of the articles of Colonial Law. For instance, the Article 2 of the Colonial Law stated that colonies will be governed in accordance with consular law.<sup>19</sup> *The Law on Jurisdiction of Consular Law* from 10th July, 1879 (*Gesetz über die Konsulargerichtsbarkeit vom 10. Juli 1879*) was applied in this case.<sup>20</sup> This step was inevitable because the constitution was only valid in Germany itself and if the colonial territories were to be governed with the *Civil Code (Bürgerliches Gesetzbuch)*, a change of constitution would be necessary.

Article 4 of the Colonial Law is interesting because it defines the matters related to marriage. A legal document from 4th May, 1870 was implemented into this article – it was the Law on Marriage and Registrars of Empire's Citizens Abroad (*Gesetz, betreffend die Eheschließung und die Beurkundung des Personenstandes von Reichsangehörigen im Auslande, vom 4. Mai 1870*).<sup>21</sup> This law was valid since the time of North-German Confederation.

The *Colonial Law* began to be valid in GSWA on 1st January, 1888 after the *Order on the Legal Relations in the Colony of Southwest Africa (Verordnung, betreffend die Rechtsverhältnisse in dem südwestafrikanischen Schutzgebiete)*.<sup>22</sup> The order was novelised in 1890 and more precise definitions of terms were introduced – the population in GSWA was divided into categories of native inhabitants – *Eingeborene* and the rest of the population – *Nichteingeborene*.<sup>23</sup> The order was generally not valid for the natives, but the commissary could change it and extend the validity to the person in the category of *Eingeborene*.

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<sup>18</sup> HARTMANN, W. (2007a) Making South West Africa German? Attempting imperial, juridical, colonial, conjugal and moral order. p. 54.

<sup>19</sup> Law no. 1647. Gesetz, betreffend die Rechtsverhältnisse der deutschen Schutzgebiete. In *Deutsches Reichsgesetzblatt*. Vol. 1886. No. 10. p. 75.

<sup>20</sup> Law no. 1319. Gesetz über die Konsulargerichtsbarkeit vom 10. Juli 1879. In *Deutsches Reichsgesetzblatt*. Vol. 1879. No. 26. pp. 197 – 206.

<sup>21</sup> Law no. 584. Gesetz, betreffend die Eheschließung und die Beurkundung des Personenstandes von Reichsangehörigen im Auslande, vom 4. Mai 1870. In *Bundesgesetzblatt des Norddeutschen Bundes*. Vol. 1870. No. 45. pp. 599 – 602.

<sup>22</sup> Order no. 1760. Verordnung, betreffend die Rechtsverhältnisse in dem südwestafrikanischen Schutzgebiete. In *Deutsches Reichsgesetzblatt*, Vol. 1887, No. 47, p. 535.

<sup>23</sup> Order no. 1915. Verordnung, betreffend die Rechtsverhältnisse in dem südwestafrikanischen Schutzgebiete. In *Deutsches Reichsgesetzblatt*, Vol. 1890, No. 26, pp. 171 – 174.

He could also decide who belonged to this category.<sup>24</sup> The order called *Order on Marriage and Registrars of the Empire's Citizens in the Southwest-African Colony (Verordnung, betreffend die Eheschließung und die Beurkundung des Personenstandes für das südwestafrikanische Schutzgebiet vom 1. Januar 1893)* stated the details on the organisation of offices with the power to perform civil marriages in 1893.<sup>25</sup> The question of categorisation was touched in the instructions, which stated that the *Eingeborene* is “a member of native tribes, any other coloured tribes and of Rehoboth Bastards”.<sup>26</sup> The careful exclusion of the colonised ethnics from the German legal system was related to the matter of citizenship. Theoretically, if the *Colonial Law* took the native population under its jurisdiction, the question of their citizenship could be opened.<sup>27</sup> It meant that the *Colonial Law* and the regulations related to the marriages were not valid territorially and were only valid for persons with German citizenship.

Another aspect, which asks for our attention, is the basic legal contradiction that was implied in the situation. The order from the year 1893 excludes the native inhabitants from its validity, but the *Law on Marriages and Registrars of the Empire's Citizens Abroad* paid attention to a marriage with a person who was not a German citizen. The order from 1893 did not forbid mixed marriages, but it did not state the requirements for a German citizen to contract a valid matrimony with a native person. The legal position of mixed marriages in the colonies was not transparent and the uncertainties in the interpretation of the laws caused some applications for civil marriages to be accepted and some rejected.

### 3. Ban on mixed marriages and its consequences

The situation became more complicated after the Herero uprising broke out at the beginning of the year 1904. GSWA was governed by Theodor Leutwein (1849 – 1921) at that time. The uprising was only noticed by the Colonial Department of the Ministry of Foreign Affairs during the initial phase. The uprising broke out on 12th January, 1904 and relatively early, on 8th February, the responsibilities were shifted to Alfred von Schlieffen (1833 – 1913), chief of the General Staff.<sup>28</sup> The Colonial Department tried to employ the Ministry of

<sup>24</sup> Ibid.

<sup>25</sup> Order no. 2054. *Verordnung, betreffend die Eheschließung und die Beurkundung des Personenstandes für das südwestafrikanische Schutzgebiet vom 1. Januar 1893* In *Deutsches Reichsgesetzblatt*, Vol. 1892, No. 42, p. 1037.

<sup>26</sup> *Deutsches Kolonialblatt*. [German Colonial Paper]. Berlin, 1894, p. 122.

<sup>27</sup> HARTMANN, W. (2007a). Making South West Africa German?, p. 59.

<sup>28</sup> Alfred von Schlieffen was an experienced military official at that time – he had been chief of the General Staff since the year 1891.

War (*Kriegsministerium*), but Emperor Wilhelm II decided for the General Staff and thus personally assumed the responsibility for the methods of war.<sup>29</sup>

The employment of the highest war institutions suggests that Berlin ceased to consider the events to be the local matters of the colony. A state of emergency was declared and the chancellor's responsibilities were shifted to the General Staff, i.e. also Wilhelm II. The atmosphere within the General Staff was unsettled because the situation in GSWA was becoming more serious. Governor Leutwein's unsuccessful attempts to suppress the uprising were criticised and subsequently, general Lothar von Trotha (1848 – 1920) was appointed to take over the power in GSWA. Theodor Leutwein remained without any power and left the country after disagreements with Trotha at the end of the year 1904.<sup>30</sup> Following Leutwein's departure from GSWA, the highest representative of civil power in GSWA became the governor's deputy Hans Tecklenburg. Although general von Trotha was appointed as ad interim governor, he paid attention exclusively to his military campaign and the civil administration remained among Tecklenburg's responsibilities.

Hans Tecklenburg was already before 1904 well-known as an opponent of mixed marriages. He was one of the first high officials in GSWA who did not oppose mixed marriages or cohabitation in relation to morals, but started to operate with the notions of "racial purity" and the "dangers of race-mixing" that was supposed to have economic, cultural and biological consequences for the German nation.<sup>31</sup> He attempted to make the legitimacy of children born in existing mixed marriages more difficult to achieve. He suggested the regulation according to which all the children from mixed marriages would have been categorised as *Eingeborene* and thus were excluded from the claim for German citizenship even when the parents had a civil marriage. The discussion on mixed marriages also included the question of a precise definition about who would be categorised as *Eingeborene*. If a man had wanted his children to be legitimate, he would have needed to submit an application that would have asked for the rights of *Nichteingeborene* for his fiancée – this procedure needed to take place before a marriage. Basic requirements for obtaining such rights would be having at least three quarters of *Nichteingeborene* origin and the proof of European family education.<sup>32</sup>

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<sup>29</sup> SARKIN, J. Germany's Genocide of the Herero. Kaiser Wilhelm II, His General, His General, His Settler, His Soldiers, p. 188.

<sup>30</sup> Correspondence revealing the disagreements between Theodor Leutwein and Lothar von Trotha are stored in Berlin. The governor blamed the general especially for his zeal in the fight against Hereros, which caused that other parts of the country remained unprotected.

Leutwein to the Colonial Department, 10.9.1904. BAB, f. R 1001/2133, pp. 30 – 31.

<sup>31</sup> WILDENTHAL, L. German Women for Empire, p. 93.

<sup>32</sup> *Ibid.*, p. 94.

The importance of Tecklenburg's suggestion lies in the fact that it added a new dimension to the debate on the topic. The biologically defined requirement was added to the traditional requirements of cultural and phenotypic closeness. Tecklenburg's suggestion implied even the attempt to define the extent of biological ancestry that was still acceptable for the person to be considered "white". His attempt to form a definition was still considerably benevolent – American "one-drop-rule" considers a person with any non-European ancestry to belong to a different race. It is interesting that the district court in Windhoek later used the one-drop-rule in the case of mixed marriage divorce.<sup>33</sup> Tecklenburg's idea was neither supported by the Colonial Department, nor found the support in GSWA. Theodor Leutwein was rather an opponent of mixed marriages, but the court in Windhoek, represented by judge Richter, decided that no legal hindrances existed.

Judge Richter left the country after the conflict between governor Leutwein and general von Trotha. Friedrich von Lindequist (1862 – 1945), a new governor, only landed in GSWA on 19th November, 1905. His appearance was preceded by the arrival of his deputy Oskar Hintrager who became the second highest official in the colony – Tecklenburg held the most important civil position until the arrival of the new governor. Lothar von Trotha was left in the colony until 2nd November, 1905 as a representative of military command and a person with power and influence over important matters in the colony. Tecklenburg did not find any opposition in von Trotha, or Hintrager who belonged to the nationalist circles within the highest German officials. This participation of nationalist or racist officials in the colonial area seems to be logical in the context of the radicalisation of the political climate in Germany. This fraction of military and civil officials, well-known for their radical nationalism and racism, got into the leading position in GSWA in the years 1904 – 1905.<sup>34</sup>

These circumstances opened the way to the ban on mixed marriages. On 23rd September, 1905, Tecklenburg issued the order to the registrars that banned a civil matrimony between persons from the categories *Eingeborene* and *Nichteingeborene*. Its validity should have started on 1st January, 1906. Friedrich von Lindequist confirmed the validity of the order after his arrival in November and even changed its validity retrospectively to 1st October, 1905.<sup>35</sup>

The *Colonial Department* got the information on the ban in the report from 23rd October, 1905. Tecklenburg elaborates the legal and moral considerations

<sup>33</sup> Hintrager to the Imperial Colonial Office, 20.6.1910. BAB, f. R 1001/5423, pp. 132 – 134.

<sup>34</sup> KUNDRUS, B. *Moderne Imperialisten. Das Kaiserreich im Spiegel seiner Kolonien.* [Modern Imperialists. The Empire in the Mirror of its Colonies], pp. 292 – 293.

<sup>35</sup> Lindequist to the Colonial Department. 12.8.1906. BAB, f. R 1001/5423, p. 80.

related to mixed marriages in this report.<sup>36</sup> His explanations were accepted and there are no sources that would show the opposition of Berlin in the matter of new politics in GSWA. Hans Tecklenburg in his report on the admissibility of mixed marriages from 23rd October evaluates the legislative developments and adds his moral view. The first legal document he mentioned was the law from 4th May, 1870 – the *Law on Marriage and Registrars of the Empire's Citizens Abroad*. He pointed out that this law was crucial in Richter's decision on the admissibility of mixed marriages. Tecklenburg also mentioned Leutwein's position in the discussion on mixed marriages – he claims the governor considered the *Order on Marriage and Registrars of the Empire's Citizens in the Southwest-African Colony* from 8th November, 1892 as proof of mixed marriages inadmissibility.<sup>37</sup> Hans Tecklenburg considered various rights that would become available to the children from mixed marriages and also to the native population and described his fear from the political and social consequences of those marriages. His considerations were motivated ideologically – he emphasised the “purity of the German race” and keeping German morals:

*“Male mongrels will be conscripted, they will obtain the possibility to apply for public offices and the future can bring them the right to vote and other rights related to state citizenship. The woman from the native population and her children will be excepted from special legislation for the natives, e.g. related to the consummation of alcoholic beverages, obligation to carry a passport, special regulations on keeping guns. These consequences should be carefully considered because they hide an immense danger: the purity of the German race and German manners, as well as the powerful position of the white man will be endangered through these consequences.”*<sup>38</sup>

Mixed marriages stirred up emotions in a significant way and it also seems that the political questions of power played their role in the discussion. Tecklenburg's words do not carry the importance merely for this specific situation in GSWA – they are much more important in the general sense. The concepts of the “purity of race”, “purity of blood”, “Germanness”, degeneration

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<sup>36</sup> Tecklenburg to the Colonial Department. Bericht, betreffend Zulässigkeit von Eheschließungen zwischen Nichteingeborenen und Eingeborenen. [Report on the Admissibility of Marriages between Non-natives and Natives], 23.10.1905. BAB, f. R 1001/5423, pp. 67 – 72.

<sup>37</sup> Tecklenburg to the Colonial Department, 23.10.1905. BAB, f. R 1001/5423, p. 67.

<sup>38</sup> Tecklenburg to the Colonial Department, 23.10.1905. BAB, f. R 1001/5423, p. 68.

and many others were being elaborated in the works of theoreticians on racism at least since the 1850's.

Arthur Gobineau and Houston Stewart Chamberlain can be cited as the instances of modern intellectual racism. Gobineau is interesting e.g. for his primacy within so called cultural racism. He was one of the first who did not interpret the notion of race from the biological viewpoint – he began to see the race as a “spiritual matrix”.<sup>39</sup> The crucial notions of his work *An Essay on the Inequality of the Human Races* (1853 – 1855) are the crossbreeding of races and the degeneration related to this process. Gobineau used the term degeneration for the cases when blood “ran too far” from its original composition as a consequence of crossbreeding.<sup>40</sup> Another important notion is blood. It does not only represent the biological relatedness, it is also a carrier of the “racial qualities” and the nation ceases to exist when the last remnants of the blood of ancestors disappears – the degeneration grows together with the decline of “pure blood”.<sup>41</sup> Race is, for Gobineau, a key to the understanding of history and its purity keeps the civilizations alive and the “racial degeneration” is the reason of biological, cultural and moral decline.

Chamberlain's position among the most important theoreticians of racism is based partially on the contents of his work *The Foundations of the Nineteenth Century* (1899) itself and partially on the huge popularity that the book obtained at the beginning of the 20th century. The race in Chamberlain's work is also related to history. However, history is explained at the background of the racial fight and thus the notion of race is much more dynamic than in *An Essay on the Inequality of the Human Races*. Chamberlain is preoccupied with two “races”: Germanic and Jewish, but his work can be applied much more generally.

Hans Tecklenburg can be viewed as an example of the reflexion of the intellectual racism in the colonial sphere. The ban on mixed marriages represents the instrumentalisation and institutionalisation of the intellectual racist discourse. Tecklenburg's report does not mention the names of the writers who formed the ideas of modern intellectual racism, but the author, in fact, uses their terminology and ideas from his position as a colonial authority. He used the argumentation similar to that of theoretical racism and elaborated it as a justification of his policies in the colony.

The fear of “racial crossbreeding” and of a “mongrel”, so typical for the theoreticians of racism, is felt in Tecklenburg's discourse in many places. He writes about the Rehoboth Bastards – the members of a small community living in Rehoboth that solely consisted of people with mixed descent. Tecklenburg

<sup>39</sup> HRABOVSKÝ, M. Rasová mytológia. [Racial Mythology], p. 112.

<sup>40</sup> GOBINEAU, J.A. Versuch über die Ungleichheit der Menschenrassen I – IV. [An Essay on the Inequality of the Human Races], pp. 31– 32.

<sup>41</sup> Ibid., p. 44.

refused to treat them differently – they were Christians for a long period of time and their traditions were mostly European and thus, according to Tecklenburg, some of his contemporaries suggested a different way of treatment towards them. The author of the report considers such thoughts to be mistaken and on the contrary, he sees this religious and cultural argumentation as aggravating:

*“Bastards<sup>42</sup> are the offspring of Europeans and Hottentot women. However, all of the reasons for inadmissibility of matrimonies between natives and non-natives are also valid for them, only to a larger or smaller extent – depending on the mixing of their blood. It is especially true because their bad character features outweigh those good ones.”<sup>43</sup>*

The solution introduced by Hans Tecklenburg included the strict ban on any civil marriages between Germans and natives, which would hinder the rights of children born in those unions. He completely rejected a compromise that would restrict the civil rights of those children, but left them entitled to inherit their father’s property.<sup>44</sup>

The German discussion on mixed marriages omitted the case of matrimony between German woman and African man. It is even more interesting, to realise that if any debate on the restriction of mixed unions arose in other colonial countries, it paid attention predominantly to this topic and the relationships of European women with native men were much more ostracised than the opposite situation, which included European man and native woman. Those marriages were, of course, prohibited in GSWA, but the discussion on the topic was scarce. It seems that no marriage between European woman and native man existed in GSWA at that time.

A German woman was understood as a carrier of German culture and values in the colony. Her task consisted of many tiny facets – except for the farming work, she was supposed to cultivate the community, to take care of her families health, to prevent man’s alcoholism and, last but not least, to prevent a German man from short-term affairs or long-term relationships with native women.<sup>45</sup>

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<sup>42</sup> Bastards still live in the town of Rehoboth in contemporary Namibia. They were called “Rehobother Bastards” in the German sources from the beginning of the 20th century. The term already had a derogatory connotation at that time and I decided to use the term in the translation into English to keep the preciseness of the translation and the authenticity of discourse. It is similar as in the case of the word Hottentot, the word for members of the ethnic od Nama, which is understood as derogatory today.

<sup>43</sup> Tecklenburg to the Colonial Department, 23.10.1905. BAB, f. R 1001/5423, p. 71.

<sup>44</sup> *Ibid.*, p. 72.

<sup>45</sup> WALGENBACH, K. Die weisse Frau als Trägerin deutscher Kultur. Koloniale Diskurse über Geschlecht, “Rasse” und Klasse im Kaiserreich. [White Woman as a Carrier of German Culture. Colonial Discourses on Gender, “Race” and Class in the Empire], p. 226.

The role of a German woman in a colony was related to compensating the influence of the foreign environment. She was supposed to bring stability and “real Germanness” into the life of a man. The notion of Germanness was closely bound with a woman in the imagination of militaristic Wilhelmine Germany – a German colonist is able to apply his own national identity only together with a German woman.<sup>46</sup>

As it has been mentioned, no marriage between a German woman and an African man was recorded in GSWA, but there are records of three cases of intimate extramarital relationships.<sup>47</sup> Several German women lived in mixed marriages; however, all of those couples lived in Germany. African spouses were from Togo and German East Africa and the ban in GSWA did not touch those marriages. From a legal point of view, the validity of their marriages would not be endangered even if one of the spouses came from GSWA as the instruction not to register mixed marriages was valid and only followed in the territory of GSWA. A German citizen only followed the Civil Code, if in Germany, and so this kind of matrimony was understood as a marriage with “with a person of other than German citizenship”. If German citizens married the inhabitants of colonies in Germany, the matrimony was considered to be valid in Germany and also in the territory of colonies, with the exception of GSWA, and later German East Africa and Samoa.

There are several cases when the men asked the authorities to decide on the validity of their marriages and subsequently, to validate the unions, if they had not been valid before. The interest in the validation of marriages was, as a rule, motivated by the effort to provide the children with the right to assume the property of their fathers. There was also a case when a woman categorised as *Eingeborene* asked the court to decide on the legal status of her marriage. The marriage broke down, but she wanted to get a divorce instead of having her marriage claimed to be void. This effort was, again, motivated by the interests for her children – she wanted them to be considered legitimate.

The sources in German Federal Archives contain the cases, when the authorities based in Germany tried to interfere. One of such cases was Martin Wede’s case. Martin Wede came to GSWA as a soldier for the colonial army force (*Schutztruppe*) in the year 1893. He got married in a religious ceremony in 1897. His wife Sophie Diergaadt was a Baster from Rehoboth. Three children – Elisabeth (1898), Ida (1901) and Martin (1904) were born to the couple by

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<sup>46</sup> KUNDRUS, B. *Blind Spots. Empire, Colonies and Ethnic Identities in Modern German History*, p. 92.

<sup>47</sup> WALGENBACH, K. *Rassenpolitik und Geschlecht in Deutsch-Südwestafrika (1907 – 1914)*. [*Racial Policies and Gender in German Southwest Africa (1907 – 1914)*], p. 169.

October 1905. Martin Wede applied for civil registration of their marriage in August or September 1905.<sup>48</sup>

It seems that the news on the future regulations of mixed marriages spread because several applications were submitted to the registrars shortly before the ban. Applications came from farmers Becker (15th April, 1905), Wahl (22nd April, 1905), Pecken (19th July, 1905), Angemund (19th July, 1905) and Wede (8th August, 1905/September, 1905).<sup>49</sup> Two applications from April were accepted before October 1905, but Pecken's, Angemund's and Wede's applications were not processed. Martin Wede was the only one from the above mentioned who attempted to obtain the legitimisation of his marriage after 1st October, 1905.

Farmer Wede sent a letter to chancellor von Bülow on 25th June, 1907. He built his argumentation on two main points – the impossibility to find a white woman in GSWA and the excellent ancestry of his wife. He emphasised how moral reasons led him to reject the life in concubinate and described the merits of his father-in-law Johannes Diergaadt, a Rehoboth Baster who fell in the battle when fighting for the Germans.<sup>50</sup> Martin Wede also emphasised that since the missionaries had been permitted to perform religious wedding ceremonies, he had not expected any problems in the future: “*If the state did not want to allow these marriages, the existence of religious marriages should have been prevented.*”<sup>51</sup> It seems that Martin Wede did not get any answer to his letter, resp. it has not been found yet, and the case was not solved during the existence of the German empire.<sup>52</sup> Local authorities in GSWA acted in accordance with the ban and rejected Wede's application. Chancellor Bernhard von Bülow remained passive.

Martin Wede's case is even more interesting because he could avoid social ostracisation in spite of the strong general disapproval of long-term relationships with local women. He was able to keep his social position and remained a member of the Farmers' Union, which excluded several other men for this reason.<sup>53</sup> Moreover, Wede's case was also supported by a district

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<sup>48</sup> There is an uncertainty in the date – Martin Wede states September, but Wolfram Hartmann worked with the original of the application in the archives in Namibia and he states August. Martin Wede to von Bülow. 25.6.1907. BAB, f. R 1001/5423, p. 98. See also HARTMANN, W. (2007a). Making South West Africa German?, p. 73.

<sup>49</sup> HARTMANN, W. (2007a). Making South West Africa German?, p. 73.

<sup>50</sup> Martin Wede to von Bülow. 25.6.1907. BAB, f. R 1001/5423, p. 98.

<sup>51</sup> Ibid., p. 99.

<sup>52</sup> The case of Martin Wede is also mentioned by Birthe Kundrus who similarly states the problem was not solved. KUNDRUS, B. *Moderne Imperialisten. Das Kaiserreich im Spiegel seiner Kolonien.* [Modern Imperialists. The Empire in the Mirror of its Colonies], p. 265.

<sup>53</sup> AITKEN, R. *Exclusion and Inclusion. Gradation of Whiteness and Socio-Economic Engineering in German Southwest Africa, 1884 – 1914*, p. 128.

administrator (*Bezirkamtsmann*) Vietsch. The official contacted governor Seitz in 1914 to call attention to the question of Wede's marriage.<sup>54</sup>

The case of another settler Rudolf Brühshaver was more complicated. He applied for the validation of his marriage, but died before the case was solved. Consequently, it was inevitable to deal with the question of property after the deceased. Rudolf Brühshaver had the offspring from two marriages – those from the marriage with the Baster woman Emma Williams and also children, now entitled to assume the full inheritance, from the second marriage with a German woman. His first marriage merely existed as a religious matrimony. Two children were born in this union – daughter Emma Else Magdalene in the year 1896 and son Hermann Ernst Heinrich in 1901.<sup>55</sup> Their mother died several months after the birth of son Hermann and Rudolf Brühshaver married again in December 1902. He had other two children with his new wife, a German woman, Karolina Hermann.<sup>56</sup> Before his second marriage, he tried to make sure that his children from the first marriage would be considered legitimate and would be entitled to inherit a share of his property. It seems he previously did not realise the fact that the religious ceremony was not sufficient for a valid marriage. He also neglected the obligation to register his children with the registrar – the procedure inevitable for their legal status of legitimate children. After recognising that his older children would not be considered legitimate, he sent an explaining letter to the governor on 22nd August, 1902. The case is interesting because also at that time, judge Richter who acted in defence of mixed unions after 1905, supported Brühshaver and recommended the validation of his marriage. He signed the application together with Rudolf Brühshaver.<sup>57</sup> However, it is important to say that Richter acted as a private person in this case and thus employing his moral authority rather than the authority of the court. His opinion did not help and Rudolf Brühshaver's children were left without the registration.

Brühshaver did not continue to solve the problem and after his death in 1908, his children from the first marriage were left without being legally entitled to inheritance. The children were not present in GSWA anymore at the time of their father's death. They were staying at a boarding school in Germany. It is probable that their physical presence in Germany was the reason why the case got more attention and serious treatment from German institutions than other cases. Local Court (*Amtsgericht*) in Berlin-Mitte assigned the official legal

<sup>54</sup> KUNDRUS, B. *Moderne Imperialisten. Das Kaiserreich im Spiegel seiner Kolonien.* [Modern Imperialists. The Empire in the Mirror of its Colonies], p. 265.

<sup>55</sup> Ministry of Justice to the Imperial Colonial Office. 26.2.1909. BAB, f. R 1001/5423, p. 122.

<sup>56</sup> Hintrager to the Imperial Colonial Office. 26.12.1908. BAB, f. R 1001/5423, p. 109.

<sup>57</sup> Brühshaver to Leutwein. 22.8.1902. BAB R 1001/5423, pp. 112 – 113.

custodians to both children. Attorney Lüdicke, Emma's custodian, addressed the District Court in Windhouk with the application, which asked acceptance of the legitimate status of the children, based on Brühshaver's application from 22nd August, 1902.<sup>58</sup> The District Court in Windhouk resent the application to the Imperial Colonial Office and the office sent it further on to the Ministry of Justice. State Secretary Rudolf Nieberding (1838 – 1912) did not permit the exception in the case of Rudolf Brühshaver. The Imperial Colonial Office was informed of the dismissal and got the obligation to also inform custodian Lüdicke.<sup>59</sup>

After obtaining this information, attorney Lüdicke addressed the chancellor and submitted Brühshaver's application from the year 1902 again.<sup>60</sup> This is the last record on case. Lüdicke's letter was sent on 10th August, 1909 at the time when Bernhard von Bülow was officially still chancellor. Several days later, on 14th July, Theobald von Bethmann Hollweg (1856 – 1921) took over office, but available sources do not mention any solution to the question.

The archival sources also reveal the cases when settlers tried to avoid the validity of the ban with a wedding ceremony outside the territory of GSWA. Such was the case of farmer Hermann Guthke. Available sources do not state the exact date when he entered the marriage with a woman from Rehoboth, but we know it happened after 23rd September, 1905 in the town of Walvis Bay – a small enclave in the southwest of contemporary Namibia, which belonged to the Cape colony at that time. The letter from 1st January, 1908 written by Karibib district administrator Wehle and addressed to governor Bruno von Schuckmann (1857 – 1919), shows the situation when the local authorities refused to recognise the validity of Guthke's matrimony and did not register his new-born son Walther as a legitimate child.<sup>61</sup>

As a next step, Hermann Guthke submitted the application that asked to register his son into the registry of the Imperial Colonial Office. He based his claim on state secretary Dernburg's recommendation that the authorities should deal with the matter. On 21st February, 1908 the Imperial Colonial Office decided against Guthke's application. The District Court in GSWA also decided against the registration of Guthke's son and the decision was explained in terms of accordance with the attitude of the Imperial Colonial Office.<sup>62</sup>

One of the most interesting cases is the marriage of farmer Hans Denk and Baster woman Cornelia Johanna Beukes. The story of the marriage is

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<sup>58</sup> Ministry of Justice to the Imperial Colonial Office. 26.2.1909. BAB, f. R 1001/5423, p. 122.

<sup>59</sup> Ibid.

<sup>60</sup> Lüdicke to the chancellor. 10.7.1909. BAB, f. R 1001/5423, p. 124.

<sup>61</sup> Wehle to Schuckmann. 1.9.1908. BAB, f. R 1001/5423, p. 104.

<sup>62</sup> Ibid.

interesting not only with regard to the attitudes of authorities that dealt with it, but also because of Hans Denk himself. Unlike other settlers, his life can be traced until the years of the Second World War. He entered the NSDAP in the 1930's<sup>63</sup> and became actively engaged in promoting Nazi politics in the region.<sup>64</sup>

Hans Denk also married his wife Cornelia Beukes in Walvis Bay. The marriage took place on 16th February, 1906. At first, the couple planned to get married in Rehoboth, but the local registrar refused to perform the ceremony. Several years later, on 1st November, 1910 attorney Hugo Skopnik contacted the Imperial Colonial Office in order to obtain its opinion and possibly the help in the case of Hans Denk's marriage.<sup>65</sup> The letter indirectly touches another conundrum of German law that could have influenced the life in the colonies, although it was never employed. The lawyer emphasised that 27-year-old Hans Dens was temporarily staying at his mother's house and that he had not lived outside Germany for more than ten years since the time he reached maturity. This remark shows Denk's concern that his own citizenship could be questioned during the process of solving the legal matters relating to his marriage. This problem was linked to the *Law on Obtaining and Loss of Federal and State Citizenship* from 23rd June, 1870 valid from 1st July, 1870 (*Gesetz über die Erwerbung und den Verlust den Bundes- und Staatsangehörigkeit*).<sup>66</sup> Article 13 of this law mentions the possibility of losing citizenship, if a person stays more than 10 years beyond the territory of Germany.<sup>67</sup> It is probable that Hans Denk personally travelled to Germany in 1910, also to make sure that this issue would not arise. The discussion on the obtaining and loss of citizenship had occasionally reappeared since the year 1897. The voices promoting the ethno cultural model of citizenship began to be stronger at that time. The model was closely intertwined with the notion of ethnicity and its supporters asked for the cancellation of Article 13 of the *Law on Obtaining and Loss of Federal and State Citizenship*. The long lasting debate brought forward the dilemma of the priority for the national body (*ius sanguinis*) or territorial state (*ius soli*). The core of disagreement over these two concepts was the idea, whether the passive ethnicity was enough to keep state citizenship, or the individual was supposed

<sup>63</sup> EBERHARDT, M. Zwischen Nationalsozialismus und Apartheid. Die Deutsche Bevölkerungsgruppe Südwestafrikas 1915 – 1965. [Between National Socialism and Apartheid. Groups of German Population in Southwest Africa, 1915 – 1965], p. 284.

<sup>64</sup> ERIKSEN, T.L., MOORSOM, R. The Political Economy of Namibia. An Annotated Critical Bibliography, p. 160.

<sup>65</sup> Skopnik to the Imperial Colonial Office. 1.11.1910. BAB. f. R 1001/5423. p. 137.

<sup>66</sup> Law no. 510. *Gesetz über die Erwerbung und den Verlust den Bundes- und Staatsangehörigkeit*. In *Bundesgesetzblatt des Norddeutschen Bundes*, Vol. 1870, No. 20, pp. 355 – 360.

<sup>67</sup> Ibid, p. 357.

to demonstrate his belonging to the state – e.g. also with the stay in its territory.<sup>68</sup> The position of the colonies was uncertain with regard to the law on citizenship. The law was still valid during Denk's fight for recognising his marriage and there were obviously concerns that the law might imply the loss of citizenship of those who lived in the colonies.

The District Court in Windhouk issued its decision proclaiming the marriage to be void on 23rd May, 1911 and three days later, Cornelia Beukes appealed against the judgment.<sup>69</sup> The Higher Imperial Court (*Kaiserliches Obergericht*) subsequently decided that the ban on mixed marriages did not exist because the officials and registrars were merely instructed by Tecklenburg in September 1905. Following this viewpoint, the marriage of Hans Denk and Cornelia Beukes was considered to be valid.<sup>70</sup> This judgment shows how problematic the legislative background of this matter was. Apart from this decision, the registrars continued to dismiss the applications of German settlers to perform the marriage ceremony with a member of the native population.

The case is even more interesting if we notice that even Denk's lawyer was not inclined to raise the question of the invalidity of the ban in his letter of 1st November, 1910. His argumentation rather tended to be built around the vagueness of the notion "coloured tribes" (*farbige Stämme*) as he tried to suggest that Cornelia Beukes was not their member, but a Baster.<sup>71</sup> Hugo Skopnik attempted to expound the theory of Bastards being different from the native population because of their share of European ancestry. He also pointed out that there was an exception being regularly made in the treatment of Japanese as they were similarly never categorised as "coloured tribes".<sup>72</sup>

Hans Denk later married for the second time and his new wife was a woman of German origin. In the year 1936, when the territory was administered by Britain, he became chairman of the Agricultural Chamber (*Landwirtschaftskammer*), which laid emphasis on the unity of German and Afrikaner farmers.<sup>73</sup> He was also engaged in the organisation of German immigration to Africa during the interwar period. He emphasised the idea of Germanness (*Deutschtum*), which should have remained untouched in the eyes of British authorities and thus, he opposed the influx of poverty-stricken and incompetent immigrants. In his view, the idea of Germanness itself was

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<sup>68</sup> SARGENT, H. *Diasporic Citizens. Germans Abroad in the Framing of German Citizenship Law*, p. 28.

<sup>69</sup> Decision of the Higher Imperial Court in Windhouk in the case of the void marriage of Cornelia Beukes and Hans Denk. 25.8.1911. BAB, f. R 1001/2124, p. 144.

<sup>70</sup> *Ibid.*, p. 161.

<sup>71</sup> Skopnik to the Imperial Colonial Office. 1.11.1910, BAB, f. R 1001/5423, p. 138.

<sup>72</sup> *Ibid.*

<sup>73</sup> ERIKSEN, T.L., MOORSOM, R. *The Political Economy of Namibia*, p. 160.

threatened by those people.<sup>74</sup> It was shortly before the Second World War when he and his family left back to Germany. He returned to Africa again when he joined a secret mission in Southwest Africa. His former marriage almost had the consequences for his later politically inclined career – the information on the first matrimony of Hans Denk spread in the year 1942 and it opened the discussion on his further membership in the NSDAP. It was decided that Denk's merits were extensive enough to keep him a member even with regards to his past.<sup>75</sup>

The treatment of the topic of race was also important in the case of a divorce petition sent to the court by Ida Maria Leinhos. The woman was born in 1864 in the Cape Colony as a daughter of an English citizen (born in Canada) Fredrik Thomas Green and Herero woman Kaipukire.<sup>76</sup> She married Gottfried Getzen, a British citizen, in the 1880's and they lived in Cape Town until the death of her husband. Ida Maria moved to GSWA and married German Kaspar Friedrich Leinhos. The state ceremony took place on 24th May, 1904.<sup>77</sup> Three years later, in 1907, Ida Maria Leinhos filled a divorce petition and stated drunkenness and domestic violence as the grounds. The court dismissed the petition with the reasoning that the marriage had never existed. It is important to remember that this legal decision not only accepted the ban, but also confirmed its retrospective validity – Kaspar Friedrich and Ida Maria Leinhos entered the marriage before the year 1905.<sup>78</sup> Ida Maria Leinhos appealed against the decision, but the Higher Imperial Court confirmed the statement of the lower court that the marriage was void and thus, no divorce was possible.<sup>79</sup>

Both judgements focused on the definition of *Eingeborene*. Ida Maria Leinhos attempted to base her claim for the validity of marriage and subsequent divorce on the grounds that her father, legally married to her Herero mother, was a British citizen, as well as her first husband and she was not supposed to be categorised as *Eingeborene* for those reasons. However, the Higher Imperial Court in Windhoek insisted on referring to the petitioner as *Eingeborene* and thus dismissing her claim for divorce as unnecessary because the marriage was

<sup>74</sup> WALTHER, D.J. Creating Germans Abroad. Cultural Policies and National Identity in Namibia, p. 121.

<sup>75</sup> EBERHARDT, M. Zwischen Nationalsozialismus und Apartheid, p. 410.

<sup>76</sup> SIPPEL, H. Rechtspolitische Ansätze zur Vermeidung einer Mischlingsbevölkerung in Deutsch-Südwestafrika. [Legal Policies Hindering the Mixed Population in Southwest Africa], p. 147.

<sup>77</sup> LINDNER, U. Koloniale Begegnungen. Deutschland und Großbritannien als Imperialmächte in Afrika 1880 – 1914. [Colonial Encounters. Germany and Great Britain as Imperial Powers in Africa 1880 – 1914 ], p. 344.

<sup>78</sup> Decision of the Higher Imperial Court in Windhoek in the case of the divorce of Ida Maria a Kaspar Friedrich Leinhos. 10.11.1909. BAB, f. R 1001/2086, pp. 68 – 70.

<sup>79</sup> Decision of the Higher Imperial Court in Windhoek in the case of the divorce of Ida Maria a Kaspar Friedrich Leinhos. 10.11.1909. BAB, f. R 1001/5423, pp. 132 – 134.

void: “*The notion Eingeborene has never been defined by law. The general view – and that is the same as the view of this court, states that this category includes everything. The blood related members of the natural or semi-cultured nations that are native to the colony or settled in the colony and their descendants. The offspring born from the sexual relations with the white race are considered to be members of native nations because of their blood relatedness.*”<sup>80</sup> The most important aspect of this court decision is the use of the one-drop-rule, which had occurred in the United States before.

#### **4. Discussion on mixed marriages in the year 1912**

The topic of mixed marriages also got into the programme of the *Reichstag*. The first time the issue was officially mentioned was March 1912. Until that time, the discussion had appeared in the press and, if it had been brought forward to a political level, the debate was solely limited to the local colonial authorities and specialised institutions in the mother country – the Colonial Department of the Ministry of Foreign Affairs and later the Imperial Colonial Office. Other institutions, such as the Ministry of Justice or Chancellery only entered the discussion occasionally, e.g. in the case of the late Rudolf Brühaver’s property.

The March discussion in the *Reichstag* was opened by the Social Democrats. SPD (*Sozialdemokratische Partei Deutschlands*) suggested that mixed marriages should be explicitly discussed in law and permitted. The party also attempted to fix the maintenance obligation of German fathers to the children they had with native women. The correspondence between governor Theodor Seitz (1863 – 1949) and state secretary Lindequist reveals that there had been attempts to solve the legal vagueness before,<sup>81</sup> but the formal debate only started in March 1912 after it had been brought forward by the SPD. A more extensive discussion began two months later and took place in the days from 2nd to 8th May, 1912.

The opponents of mixed marriages characterised them predominantly as the topic related to the defilement of race and the children born from those unions – *Mischlingsfrage*. The discussion tended to be emotional and other members of parliament were asked to consider the question in the main interest of the nation and not to evaluate it from their political positions. The longest and most important speech was delivered by Wilhelm Solf (1862 – 1936), the state secretary of the Imperial Colonial Office and the former governor of Samoa, where he also introduced restrictions on mixed marriages. Wilhelm Solf used stereotypical racist tropes that had already been elaborated on in the

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<sup>80</sup> Ibid., p. 133.

<sup>81</sup> Seitz to Lindequist. 24.2.1911. BAB, f. R 1001/5423, p. 147.

pseudoscientific way in the works of the theoreticians of racism. The most common and strongest argumentation was based on the supposedly degenerated racial features of “mixed-race individuals”. He expounded the theories of degeneration with regard to crossbreeding in the United States, Latin America, India and the Dutch colonies.<sup>82</sup>

The views opposing mixed marriages were also presented by the National Liberals (*Nationalliberale Partei*) and by the representatives of the Christian-Social Party (*Christlich-soziale Partei*). Their members used the arguments related to the idea of a civilising mission – the doctrine about the white man’s task to “civilise” the “uncultured nations”. The opinion of the National Liberals stated that it was necessary for Germans to keep a much higher position than natives in order to transmit their culture successfully.<sup>83</sup> The argumentation also included the ideas on “racial instincts”,<sup>84</sup> which were previously well elaborated e.g. in the work of Houston Stewart Chamberlain.<sup>85</sup> A Christian-Social Party representative made references to the works of Arthur Gobineau and the members of the Bayreuth Circle, the informal group of nationalist and anti-Semitic writers and public figures based in Bayreuth.<sup>86</sup>

In spite of these views, the result of the parliamentary discussion was an agreement to prepare the law that would fix the legal confusion, confirm the validity of mixed marriages and state the maintenance obligation. The law was not passed during the existence of the German empire.

## 5. Conclusion

The topic of mixed marriages and their ban was closely related to the notion of *Mischlingsfrage*. The colonial authorities were disturbed by the idea of the civil rights that would have been bound by considering the children from mixed marriages to be legitimate. The representatives of the colonial administration and also some of the speakers in the *Reichstag* were opposed to the idea of the offspring of mixed marriages being positioned at the same level in the social

<sup>82</sup> 53. Sitzung. Donnerstag den 2. Mai 1912. In *Reichstagsprotokolle*. 1912/14,3, pp. 1648 – 1649.

<sup>83</sup> *Ibid.*, pp. 1728 – 1729.

<sup>84</sup> *Ibid.*, p. 1729.

<sup>85</sup> Compare: “And here a fact occurs to me which I have received from various sources, viz., that very small children, especially girls, frequently have quite a marked instinct for race. It frequently happens that children who have no conception of what “Jew” means, or that there is any such thing in the world, begin to cry as soon as a genuine Jew or Jewess comes near them!” In CHAMBERLAIN, H.S. *The Foundations of the Nineteenth Century*, p. 537.

<sup>86</sup> 55. Sitzung. Dienstag den 7. Mai 1912. In *Reichstagsprotokolle*. 1912/14,3, p. 1733.

hierarchy like Germans – e.g. to obtain the same succession rights or to be conscripted into the regular German army.<sup>87</sup> This kind of argumentation already implied racist approaches.

This concern about the citizenship and succession rights might be viewed as expectable with regard to the contemporary racist atmosphere in the society. However, the public turmoil caused by this topic seems to be exaggerated to the extent that is hardly to be explained even in an era when racism was not considered an improper worldview. The most important aspect of this topic was the low number of such marriages. Archival sources reveal that only 24 mixed marriages existed in the whole territory of GSWA. It seems that the character of colony might play a role in the treatment of the issue. The topic of mixed marriages was a more sensitive subject in the territories that were understood as settlers' colonies. It cannot be considered the only aspect that played role in the ban in GSWA, German East Africa and Samoa, but the “mixing of races” was perceived as more dangerous in the colonies that were supposed to become an extension of German “national body” and to create a permanent German community or “new Germany”.

The issue of mixed marriages was only opened in the *Reichstag* in the year 1912. The argumentation of the opponents of mixed marriages was elaborated around the racist arguments and sometimes directly backed with the theses thesis of the theoreticians of racism. The problem of race, elaborated previously at theoretical level by the theoreticians of racism, also extended its influence into the colonial area. Sources indicate the progress of the topic from the intellectual racial and racist discourse to its institutionalisation and instrumentalisation. The race did not remain only a theoretical problem – it was institutionalised in the form of legislative steps. The attitudes of the representatives of colonial administration and Berlin institutions were influenced with the racial theories and racist worldview. The most instrumentalised aspect of the issue of mixed marriages was the idea of a mixed-race person (*Mischling*) – the notion also dreaded and elaborated in the works of the theoreticians of racism.

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<sup>87</sup> Native inhabitants were typically the members of colonial troops, but they were treated in a different way (e.g. smaller alimentary rations).

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