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TITLE : MOTHERS AND PROSTITUTES: THE RECONSTRUCTION
OF AFRICAN GENDER RELATIONSHIPS IN SOUTHERN
RHODESIA 1898 - 1923.

Paper presented by : MS DIANA JEATER, Research Student,
School of Oriental and African Studies, LONDON

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MOTHERS AND PROSTITUTES: THE RECONSTRUCTION OF AFRICAN GENDER RELATIONSHIPS IN SOUTHERN RHODESIA 1898-1923.

INTRODUCTION

The European conquest of Southern Rhodesia was much more than the 'last of a series of invasions' of the central plateau lying between the Zambesi and the Limpopo. The first eight years of Rhodes' 'Great Adventure' saw uneasy cohabitation between pioneer and African, punctuated by the invasion and defeat of Lobengula's nation and culminating in the decisive European victory of 1897 which ended two years of war against the combined forces of Shona and Ndebele and consolidated white control of the area. The period of conquest was followed by efforts to reconstruct African-European relations on a more peaceful, if less equitable, basis. The conquerors were there to stay, and presented the newly-christened 'Rhodesia' as a "white man's country"--a reference primarily to its climate, but influenced by the British South Africa Co's need to attract settlers to offset its mining losses. The Africans' role in all this was ambiguous, but Darwinism was cited--fashionably, if somewhat inaccurately--to support the demand that Africans should adapt if they expected to survive in this new environment. They did both, with far greater success than the settlers probably anticipated, but at the expense of significant dislocation and upheaval in established political and social institutions. It was not simply a matter of chiefly power waning before the arrogantly assured control of the BSACo bureaucracy nor of young men taking up opportunities for work in white areas beyond their chiefs' influence. The creation of a new market for African produce upset established labour patterns, even in rural areas ^{not} settled by whites, while different value-systems and mores were partly imposed by Europeans, partly adopted by Africans, as contact between these groups increased. Gender relationships, too, were caught up in this social upheaval. The ways men and women perceived their social roles, the pressures imposed on their sexual behaviour and the opportunities provided for defying gender controls were all shaken up by the changing economic conditions, the imposition of European ideology, and the creation of new social environments (especially towns and compounds) which provided the chance to migrate beyond direct paternal control. A "sexual revolution" was under way.

THE SOCIAL AND POLITICAL BACKGROUND

This "sexual revolution" was not simply an urban phenomenon. One of the most important changes was the upheaval in the gender division of labour in the rural areas. Married men were in a position to control the labour of wives and children. Consequently they were well placed to expand crop production to meet the European market, using women and children as labourers without providing reciprocal help for household tasks, which included the production of food for home consumption. Furthermore, as Africans, particularly in the Shona areas, became more deeply involved in the market economy, they gave more time to cultivation and trade, using the cash to buy things that would previously have been made by the women in the community. Women's work became increasingly that of the agricultural labourer cultivating produce for the market-place.

Moreover, the political significance of marriage alliances as a means of controlling labour and distributing wealth was challenged. Kinship and bridewealth obligations had ensured that junior men were subordinate to the

elders who controlled the lineage's "bride-providing" cattle herds. These obligations also maintained the production levels of richer lineages at the expense of lineages poor in cattle and therefore poor in wives, who--as labourers and procreators--were vital to levels of output.

Now, however junior men were winning a measure of independence from elders by growing surplus crops for the market or undertaking waged work. By these means a man could by-pass the need to apply for family assistance to obtain a wife for himself or his son to set up as an independent householder or to expand production in an existing family. In an attempt to prevent this threat to their authority, lineage heads were forced to tighten their control over women and keep them in the rural areas, where men would return to see them, and women's labour could be used to benefit the lineages of husbands or fathers. The very presence of Europeans as consumers and as employers consequently led to a weakening of African political authority, an alteration in the economic position of rural women and a shift in the gender balance within households as men, but not women, left at intervals to seek waged work.

While this political and economic upheaval was challenging the established African rulers from below, the new European administration was constructing a Native Affairs Department (NAD) and 'Native Policy' to impose a new order from above. The BSACo was forced to improve its administration after a British Government enquiry placed much of the blame for the 1896-7 war at the door of amateurish and exploitative 'Native Commissioners', who perceived their role primarily in terms of raising labour gangs.³ The new bureaucracy established in 1898 laid down detailed instructions for Native Commissioners, which, although they included token gestures towards indirect rule in paragraph 2, largely attempted to transfer the powers and obligations of the chiefs and headmen into the hands of the WC.⁴ This undermining of chiefly power was in keeping with what Philip Mason terms the "Official Doctrine" of integration, which was developed and supported by the upper classes represented in the Colonial Office as well as in the administration of the BSACo. To these people, who were too secure to be threatened by African 'advancement' in the shape of economic competition, the nurturing of a skilled African working-class, involved both as labourers and as consumers in the European economy, held clear advantages. Tribalism was seen as a decaying force whose decline should be encouraged, in anticipation of the time when Africans would no longer need reserves to protect them from too sudden and violent a contact with the white economy and customs.⁵

The policy of integration included some commitment to the provision of hospitals, missions and schools for the Africans as part of the process of 'civilising the natives'. "Civilising", and the assumption that whites had a responsibility of trusteeship to enlighten their darker-skinned fellow men, had enjoyed a period of dominance in the mid-nineteenth century, with the rise of the unholy trinity of 'Commerce, Christianity and Civilisation'. By the end of the century, the divine trust to 'civilise' was somewhat less popular⁶, with Chamberlain's protectionist policies splitting the Tories in England and eugenicists gaining a startling popularity with theories of the inherently inferior and 'uncivilisable' nature of non-European races.⁷ The administration felt that the civilising task could largely be left in the hands of the missions and private charities. Its own contribution to the 'civilising' of Africans consisted mostly of placing its faith in the combined effect of taxes and

market forces. Nonetheless, the NAD was given a watching brief over the progress of all attempts to establish schools and missions in the African areas.⁸

The NAD itself had a slightly ambiguous attitude towards the integration policy. On the one hand, its officers were expected to encourage the decline of 'traditional' authorities. On the other hand, their work became increasingly dependent on preserving the African institutions for which they were responsible. The reports of the South African Native Affairs Commission of 1903-05, which took evidence from Southern Rhodesia, and of the Native Affairs Committee of 1910 supported the general view of the NAD that there were many worthy aspects to African culture which should be encouraged rather than repressed. In 1903 the Department relinquished its labour-raising function to the RNLB, thereby losing its usefulness in the eyes of the settlers who began to see it more as a 'pro-Native' organisation inclined to defend Africans against settler misrule.

The duties of Native Commissioners changed in other respects too. The 1898 Charter had provided only for Magistrates to carry out judicial functions, and the NCs did not officially have any such functions. The 1909 Board of Enquiry reported that NCs had become desk-bound and that, where they did not also double-up as magistrates, their prestige was low. As a response to this, a proclamation issued the following year enabled NCs to try all civil cases where Africans only were involved, and criminal cases where the accused was African.⁹ The NCs therefore began to play a major role in the civil affairs of Africans. Africans themselves did not welcome the NCs' attempts to take the place of the chiefs and headmen, particularly in matters requiring an arbitration hearing, such as bridewealth disputes, even though they recognised that it was often useful to enlist the backing of the State in a civil dispute. By 1923, the NAD was regarded as suspect both by those who supported a policy of integration and by those who did not. Missionaries found the Department over-supportive of pagan customs, the settlers resented its interference and the Company thought the NCs behaved "*like wardens of reserves with vested interests in keeping the Africans as they were*".¹⁰

The policy of integration was itself under attack from another quarter. The influence of the white farmers and smallworkers was growing throughout this period, leading up to the granting of Responsible Government in 1923. These settlers complained constantly of labour shortages, and had no desire to see Africans maintain the option of economic independence as cultivators, enabling them to withdraw their labour from the open job market. On the other hand, the prospect of Africans gaining skills and knowledge which would enable them to compete with the white artisan class worried the majority of settlers far more than it disturbed the administrators and other upper class whites. The problem was expressed with surprising clarity by the Colonial Office Journal in its review of Maurice Evans' pro-segregationist work, *Black and White in South-East Africa*:

The trouble is, in fact, not that it is difficult to educate natives, or that it is necessary to manufacture any distinguishing method for them, but that as fast as they are educated they compete with the whites; in other words, it is not that European education fails, but that it succeeds.¹¹

The doctrine of integration offered very little to Europeans who felt threatened by such competition. It could be used to justify reducing the areas reserved for Africans, on the grounds that the Africans' need for protection was disappearing, but it would not lend itself to much more.¹² On the whole, the settlers were keen to see a policy which would more effectively keep the African unskilled but in need of waged work. By 1909, at least one Chartered official was talking openly of segregation. P.F.Hone, in his book *Southern Rhodesia*, claimed that a policy of segregation was actually the Company's intention in allocating reserved land for Africans.¹³ The call for segregation grew slowly throughout this period, drawing its strength from the fact that it united conflicting European interests regarding 'Native Policy'. This lesson had already been learned further south where, as John Cell comments:

It was remarkably convenient that all of these competing interests could be contained, however uneasily, under the umbrella of segregationist theory.¹⁴

At first the call was simply for a limiting of land, rather than for full-scale segregation in permanently reserved areas. Settlers in the 1910s believed that reserves permitted 'idleness'.¹⁵ However, by 1923, the humanitarians of the Aborigine Protection Society had thrown their weight behind settler demands for complete segregation.¹⁶ The settlers were worried by African competition--sexual as well as economic--in the white areas, while the APS feared that Africans might lose their land rights entirely without permanent reserves. A segregation policy appeared to provide Africans with the opportunity to "civilise themselves" away from white exploitation. But the demand came at a time when Africans were already integrated into the European economy and seeking assimilation. Segregation--on inadequate reserves--effectively prevented assimilation, without allowing Africans the option of withdrawing their labour. The development of the African reserves became the responsibility of the NAD, who were, at last encouraged to 'preserve' African systems of authority. "Thus what had been born of sympathy became the servant of fear and repression"¹⁷

THE DRIVE TO REGULATE MARRIAGE.

Segregation suited the Europeans not least because it prevented sexual contact between the races. One of the pitfalls of assimilation policy had been that it appeared to condone such contact, which was not a welcome idea to the ruling classes. In an attempt to surmount this problem, the administrators had found themselves drawn into a situation--highly distasteful to gentlemen raised in the liberal tradition--where they had to pass legislation covering the 'private' sphere of sexual activity. Coupled with this, the missions kept insisting that something should be done about African marriage customs, which seemed to them a barbaric obstacle to true assimilation.

The Administration had had no initial intention of meddling in the marriage arrangements of the Africans. Unlike in the Cape, where all African marriage customs were banned on the grounds that they were 'contrary to natural justice', the Southern Rhodesian Order in Council of 1898 stated specifically that:

If in any civil case between natives a question arises as to the effect of a marriage contracted, according to native law or custom, by a native in the lifetime of one or more other wives married to him according to native law or custom, the court may treat such a marriage as valid for all civil purposes, in so far as polygamous marriages are recognised by the said native law or custom.¹²

The Company needed to establish peace and security after the war of 1896-7. It would not help this project to start attacking African marriage, however much the missions might press for action. The missionaries were especially shocked by polygyny, while the Company felt that the institution actually checked immorality by keeping down the number of unmarried girls. Moreover, the assimilation policy assumed that African traditions would soon die out anyway--if only because polygyny and bridewealth payments would be too extravagant in a capitalist economy.¹³

However, by 1901 the Company had decided that action should be taken to satisfy the missions, noting meanwhile the added advantage that marriage legislation could be used to encourage African men to undertake waged work. The missions had complained that the practice of bridewealth payments had restricted the freedom of choice available to girls, as parents would force a marriage with the richest suitor. In response to this, the 1901 Native Marriages Ordinance set down a limit to bridewealth payments (4 head of cattle or equivalent; 5 head in the case of a chief's daughter) and instituted a registration procedure at which the details of bridewealth payments would be recorded, to prevent excessive payments. A heavy criminal sanction was imposed if an African claimed, received or caused delivery of bridewealth in excess of the limit. The Company had no intention of abolishing the practice altogether. It was, after all, fundamental to the African kinship-based relations of production, and attempts at abolition would be bound to meet with resistance. As a sop to the missions, the measure was not effective. Nine years later, the Report of the Native Affairs Committee commented:

This restriction was presumably intended by the Legislature to further the object of the enactment giving freedom of choice to girls in connection with marriage...the law is frequently evaded; and, as it is obvious that it is practically impossible to control such

recognise bridewealth exchanges which took longer than twelve months to complete.

Secondly, the registration device with which the Europeans attempted to control African marriage assumed a European model of marriage, as a state- or church-sanctioned event, prior to which the couple is 'unmarried' and after which it is 'married'. An African equivalent of this 'event' or 'moment of marriage' had to be identified if registration was to be workable as a tool of control. The 1901 ordinance failed even to attempt this. There is a clear note of frustration in the words with which Clarkson Tredgold, the attorney-general, introduced a later bill intended to correct the failings of 1901:

The ordinance was obscure, and he [Tredgold] did not desire to attempt to clear matters up by continuously taking cases on appeal to the Supreme Court [at Capetown].²⁸

If African marriage had to be dragged into European courts, the judges needed something other than a European precedent of what constitutes a marriage in order to deal with the situation. Moreover, the judges were aware that the Native Affairs Committee of 1910 had declared the lobolo-limitation provisions of the 1901 ordinance to be unworkable.²⁹ No court enjoys trying to enforce a law when enforcement is impossible. The Administration felt itself to be under strong pressure from the Courts to produce a more workable piece of legislation. Among other things, the ordinances of 1912 and 1917 were an attempt to meet that demand.

If it had been only the Courts that needed satisfaction, the task of the legislators following 1901 would have been relatively straightforward. They were also under pressure, however, from a number of other groups, including the Native Affairs Department. Like the bench, the department was seeking clarification. Were the Native Commissioners simply registering a *de facto* marriage, or were they actually making a marriage in the eyes of the state? The refusal of the courts to recognise an unregistered marriage implied the latter, yet the wording of the 1901 ordinance implied the former. Again, it is possible to detect a note of weary frustration in Tredgold's comment that the ordinance was:

so worded that either a man had to register a thing already registered, or there was nothing that he could register.³⁰

That the ordinance created some measure of chaos during its seventeen years of service is indicated by the rushing-through in April 1917 of a piece of legislation named the Native Marriages Validation Ordinance. This validated marriages improperly registered by "*some young clerks and others*" in out-stations in the absence of NCs. The Legislative Council decided not to tell Africans that these mistakes had occurred as "*it might only lead to a little unrest*".³¹

The chaos was exacerbated in 1912 when the Administration attempted to ban child-pledging in order to satisfy the missionaries and the female labour lobby. 'Child-pledging' was in fact 'girl-pledging' and involved a form of debt rescheduling. Helping a friend from a poorer lineage through a difficult period by loaning cattle was standard practice. If it appeared that the friend was not going to be able to repay his debt, the creditor could write it off against

The passing of the 1912 ordinance marked the first time in Southern Rhodesia that a recognised system of African marriage was not only declared illegal but also made into a criminal offence.³⁹ One effect of this move, which was not raised in the debate in the Legislative Council, was to criminalise part of the African system of loans and patronage, which must have contributed to the destabilising of chiefly power. It is not clear from the reports of the Chief Native Commissioner whether the Administration was aware of this "side-effect" of its legislation, but such a development would have been in line with official 'Native Policy' of the period. It is also interesting that Tredgold played the 'morality' card in introducing the bill to the settler-dominated Council, rather than pointing out the advantages in bringing African women onto the labour market --another "side-effect" which would have suited the assimilation policy of the Administration.

Whatever the Company and Legislative Council might have hoped that the Ordinance would achieve, its actual effect was to create even greater confusion regarding African marriage than had been the result of the 1901 Ordinance. Moreover, it did this without noticeably producing a decline in the practice of child-pledging nor an increase in the number of women presenting themselves on the labour market. A major source of confusion was the fact that the ordinance did not specifically prohibit child-pledging, but imposed a penalty⁴⁰ on:

any person who is a party to the promising or pledging of a native female in respect of her marriage.

This effectively criminalised any affination agreement leading to marriage, but a vaguely-worded exception, "except insofar as authorised by the said [1901] Ordinance", was intended to exclude ordinary bridewealth arrangements.

This was only the start of the problems. The ordinance did not make clear how anyone could tell when there was a child-pledging arrangement rather than a debt rescheduling, or an aspiration regarding a daughter's future choice. Moreover, it was only if the marriage was actually registered that it could become a 'marriage' in European terms, at which point the girl would be of an age to speak for herself, and the 'lack of consent' clause of the 1901 Ordinance would be sufficient to prevent the marriage. The 1912 Ordinance could hardly be used to prevent the match if the girl herself wanted it, if only because there would be no reason to suppose that any earlier pledging took place. In the absence of registration, there was no more than cohabitation between the couple, about which the Ordinance was silent. To crown all this, there was an apparent drafting error in the Ordinance's wording, which substituted "or" for "either". The effect was to imply that any arrangement which pledged a 'native female' in respect of 'valuable consideration', including a wages agreement, would constitute a criminal offence. Having picked his way through all these confusions,⁴¹ Mittlebeeler adds that, in a case in 1916:

the judge remarked that if the clause in point had appeared in a contract, he would have held it void for uncertainty.

Clearly, this sloppy piece of legislation had to go, and in 1917 it was repealed along with the other Native Marriage Ordinances on the Statute book.

The 1917 Native Marriages Ordinance which replaced the earlier Ordinances dropped the project of prohibiting pledging altogether. Instead it concentrated

provision of a fertile woman to his lineage at some later date when a suitable daughter became available for marriage. The woman would not necessarily become the creditor's bride. She may have been wanted as a bride for another man to whom the creditor had a responsibility to provide a wife.³² Either way, the woman's only chance of avoiding this pre-arranged match was to run away to a man whose family would be prepared to pay sufficient compensation to satisfy the creditor's lineage.³³

This 'child-pledging' arrangement was very important in maintaining the stability of kinship-based class systems during times of hardship, when drought or other disasters created a need for loans. Wealthy lineage heads and chiefs found their patronage powers reinforced by their enhanced ability to provide brides for clients. It seems probable that increased differentiation between African producers during the early years of the century, as a result of different abilities to exploit the expanding food market, led to an increase in child-pledging. In 1910, the Native Affairs Committee noted (with rather a cavalier use of the word 'money') that:

Cases have frequently occurred in which children have been so pledged in order that money may be raised to discharge debts.³⁴ (my emphasis)

Missionaries were appalled at this practice, and most Europeans found it distasteful.

In addition to the moral dimension, however, there were also demands that action be taken against child-pledging from other quarters. The Native Commissioners were fed up with having to deal with a steady flow of compensation claims regarding girls who had run away.³⁵ Moreover, throughout this period there was a steady demand for female labour. Girls were especially sought as domestic workers, ^{partly because} ~~also~~ European women were thought to be at risk of sexual attack from black male servants. In an attempt to satisfy this demand, Native Commissioners proposed that the power of the family heads to dispose of young women in marriage should be weakened, in the hope that this would give the girls the choice of taking up waged domestic labour instead.³⁶ The 1901 ordinance did not effectively prevent lineage heads from pledging the girls under their control. The nearest it came to this was the setting-down of the twelve-month limit before registration during which bridewealth had to be paid in full. This time-limit was unenforceable in practice. Clearly, additional legislation was needed if women were to have free entry into the labour market.

The 1912 Native Marriages Ordinance, which was a response to the 1910 Native Affairs Committee Report, attempted to carry out the Report's recommendation that child-pledging "be made criminally punishable as regards both parties to such transactions".³⁷ In introducing the Bill, Tredgold concentrated on the moral aspects of the case. He objected to the practice not only on the grounds provided in the Report--that is, denial of choice to the women--but also on the grounds that debt defaulting by the father could lead to the girl being brought up at her husband's village. What it was exactly that the attorney-general considered to be so particularly horrifying about this possibility, over and above the denial of choice in the first place, is left to the imagination. Nonetheless, when he concluded that "The practice was obviously to be condemned"³⁸, this was an opinion on which the assembled gentlemen could all agree.

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The passing of the 1912 ordinance marked the first time in Southern Rhodesia that a recognised system of African marriage was not only declared illegal but also made into a criminal offence.³⁹ One effect of this move, which was not raised in the debate in the Legislative Council, was to criminalise part of the African system of loans and patronage, which must have contributed to the destabilising of chiefly power. It is not clear from the reports of the Chief Native Commissioner whether the Administration was aware of this "side-effect" of its legislation, but such a development would have been in line with official 'Native Policy' of the period. It is also interesting that Tredgold played the 'morality' card in introducing the bill to the settler-dominated Council, rather than pointing out the advantages in bringing African women onto the labour market --another "side-effect" which would have suited the assimilation policy of the Administration.

Whatever the Company and Legislative Council might have hoped that the Ordinance would achieve, its actual effect was to create even greater confusion regarding African marriage than had been the result of the 1901 Ordinance. Moreover, it did this without noticeably producing a decline in the practice of child-pledging nor an increase in the number of women presenting themselves on the labour market. A major source of confusion was the fact that the ordinance did not *specifically* prohibit child-pledging, but imposed a penalty⁴⁰ on:

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This was only the start of the problems. The ordinance did not make clear how anyone could tell when there was a child-pledging arrangement rather than a debt rescheduling, or an aspiration regarding a daughter's future choice. Moreover, it was only if the marriage was actually registered that it could become a 'marriage' in European terms, at which point the girl would be of an age to speak for herself, and the 'lack of consent' clause of the 1901 Ordinance would be sufficient to prevent the marriage. The 1912 Ordinance could hardly be used to prevent the match if the girl herself wanted it, if only because there would be no reason to suppose that any earlier pledging took place. In the absence of registration, there was no more than cohabitation between the couple, about which the Ordinance was silent. To crown all this, there was an apparent drafting error in the Ordinance's wording, which substituted "or" for "either". The effect was to imply that any arrangement which pledged a 'native female' in respect of 'valuable consideration', including a wages agreement, would constitute a criminal offence. Having picked his way through all these confusions,⁴¹ Mittlebeeler adds that, in a case in 1916:

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on penalising attempts to enforce marriage of a pledged girl without her consent.⁴² This had not previously been an offence, but simply grounds for disallowing a marriage. The measure was passed almost without comment. Given that it was grounded in a genuine paternalist concern, agreement was to be expected. Nonetheless, it is indicative of the extent to which Europeans were now ready to criminalise African affairs that only one voice in the Council was raised against:

multiplying the legislation which would have the effect of further increasing crime.⁴³

This concern was echoed in the Chief Native Commissioner's report for that year which warned that:

We should..be careful to avoid the danger of over-legislation; our aim should be more in the direction of elasticity of native administration and tolerating of native customs, especially when the native is in the transition stage.

This cautionary note, however, was not represented in the Council by the Administration's officers, who regarded the interests of the NAD as secondary and slightly suspect.

The actual success of the child-pledging measure may be judged by a letter from the Rev. Latimer P. Hardaker of the Methodists' Epworth Mission, appealing for help in the '*fight for the emancipation of the native women*'. The letter, dated 1924, states that:

The pledging of daughters is a practice which though illegal is still widely practised...There are places within 50 miles of Salisbury... where there is no girl of the age of 15 or 16 who is not married, and that very often to a man many years her senior.⁴⁴

Even making allowances for the hyperbole of a fund-raiser, it seems clear that the 1917 Ordinance did not succeed in killing off the practice of child-pledging.

Nonetheless, the 1917 Ordinance was a most successful piece of legislation in other respects. It became Chapter 79 of the consolidated edition of the colony's statutes, and remained effective (except in respect of the invalidity of unregistered marriages⁴⁵) until the passing of the Native Marriages Act in 1951. Its great strength lay in its ability to satisfy the various European interests in African marriage. It provided a definition of the 'moment' of marriage which satisfied the courts and administrators, who needed an identifiable 'event' when registration became necessary. This moment was fixed at an early point in the African marriage process, before cohabitation, thus satisfying missionary and paternalist concern that no marriage should be consummated before the woman had had the chance to express her consent at registration.⁴⁶

The first debate of the full committee of the Legislative Council on the 1917 Native Marriages Bill is fascinating, as the hon. members grope towards the final measure which became Chapter 79.⁴⁷ They find the task of pinning down the complex process of African marriage to a particular moment very taxing.

The relevant section was Section 8, which had to achieve three things. Firstly, it needed to satisfy administrators by providing a definite moment at which registration was required, backed up by penalties for failure to register. Secondly, it was intended to prevent 'legalised rape', that is, consummation of a marriage to which the woman did not consent. Lastly, it needed to demonstrate clearly that registration was designed only to ensure these first two things, and was not in any way attempting to criminalise either unmarried Africans who 'cohabited' without registration, or girls who eloped without their father's permission. This third requirement for Section 8 was based on two premisses of European paternalism: firstly, that the State should not interfere in the private affairs of individuals if no other interests were involved, and secondly, that the State had a duty to protect the freedom of choice for young women with regard to their future husbands.

It was a very difficult task to separate out those cases which were in European eyes "special cases" from the standard marriage procedures of Africans. In the case of cohabitation, it was usual practice ^{in many areas} for young people to be allowed to sleep together at a very early stage of the marriage process.⁴⁸ Consequently it would be very difficult for a local administrator to know who might be in the early stages of marriage--and so breaking the law by not registering with full female consent before consummation--and who might simply be having a sexual relationship. Admittedly such a casual liaison seemed unlikely, ^{except in the urban & mining areas} but the possibility was thought to be enough to merit attention. Matters were further complicated in the Committee debate when Lionel Cripps, who represented Eastern district in the Council, and considered himself an expert on 'Native Affairs', asserted that if an African couple slept together they were regarded as married by their villages, adding that "it was a good thing to legalise the native marriage custom".

* see for eg. respon to UNC circular 518/1918 NAZ NS/17
What he meant was mining areas

Notwithstanding this intervention, the Council stopped short of demanding that all non-adulterous sexual relationships should be registered or risk criminal prosecution. Instead, the 'moment of marriage' was defined as happening after full bridewealth arrangements had been settled but before the marriage was consummated.⁴⁹ In such circumstances, it was clear that a marriage was involved, and not simply a sexual liaison. Consent of the woman was also ensured by this means. Moreover, this definition met the needs of the native commissioners, whose task of dealing with disputes over marriage would be made easier by having a record of the bridewealth agreement. Such a record would also ensure that any subsequent bridewealth dispute could not call into question the validity of the marriage, at least in European eyes.⁵⁰

The other "special case" which required clarification with respect to Section 8 was that of elopement. The problem arose from Section 8's attempt to legislate against enforced marriages indirectly, through the penalty imposed on failure to register.⁵⁰ This penalty was extended to apply not only to the husband but also to the woman's father or family head. It was assumed that fathers would not risk the criminal penalty incurred by failure to register, and so would not try to force their daughters into marriages to which they would not consent at the inevitable registration. The problem with this arrangement was that in cases of elopement it exposed both the woman's lover and her father to the risk of prosecution, since such marriages would not be registered. Once again, the situation was complicated by the fact that an elopement could constitute the first stage of a marriage arrangement, to be followed by negotiations about bridewealth and, where applicable, compensation payments. Clearly such a

sequence of events deviated from the neat arrangement regarding the 'moment of marriage' just agreed upon. On the other hand, it seemed very wrong that a man who genuinely did not condone his daughter's action should be penalised for failure to register her 'marriage'. The honourable members were unwilling to solve this dilemma by excluding the father from the penalty, as this exposed the woman to the risk of forced marriage. The whole affair was most frustrating.

Discussion of the Ordinance was delayed by the extended debate on the question of amalgamation with Northern Rhodesia, and did not resume until the 1st May. This second sitting of the Committee was characterised by much more clarity of thought regarding the responsibilities of the woman's father in ensuring registration. It was agreed that a penalty *should* be imposed on the father, since he became entitled to bridewealth on cohabitation and therefore had a motive for avoiding registration where consent seemed unlikely. However, the entire problem of elopement could be side-stepped by a careful definition of terms. In a situation where a daughter was cohabiting without her father's full knowledge and consent, full bridewealth arrangements could not have been made. The cohabitation did not therefore constitute a marriage within the terms of the Ordinance and no penalty could fall on the father.⁵¹ And so the "special cases" were successfully extracted from the general principle. With the passing of the 1917 Ordinance, the Europeans had equipped themselves with a workable piece of legislation with which to mould African marriage practices into a more controllable and acceptable form.

However, not every member of the Legislative Council was totally happy with the Ordinance. There was disquiet from several quarters over the later sections of the Ordinance which dealt with the consequences to Africans of choosing to be married according to Christian rites. The issue was not properly resolved and later legislation (Chapter 150 of the consolidated edition of the Colony's statutes) provided specifically for Christian African marriages.⁵²

In addition to this, doubts were raised about the whole idea of attempting to legislate for African marriage. Two voices in particular stand out in the debate. A blistering attack upon the entire legislation was delivered by John McChlery, the member for Marandellas, at the start of the discussion on the second reading. In his opinion:

If it was passed it would have the effect of turning half the population of the country into criminals.⁵³

Sir Charles Coghlan also failed to see why the Council was wasting its time imposing penalties on those who did not observe the formalities connected with African marriage. He considered that all such legislation only served to perpetuate and legitimise 'heathen customs', and moreover violated the spirit of the 1898 Order in Council. The Order had accepted the validity of African marriage practices without attempting either to lay down rules for such practices or to use criminal sanctions to enforce them. To make such an attempt seemed to Coghlan to be both unwise and unnecessary.⁵⁴ It is noticeable that both McChlery and Coghlan were leading members of the movement for Responsible Government. It was under Responsible Government that segregation was to become the dominant political ideology, maintaining a fiction that Africans had an independent culture which should be left to develop in the Reserves, without European interference. In 1917, however, it was clear to Coghlan, at least, that

the Administration was too deeply embroiled in the issue of 'Native Marriage' to avoid further legislation. Given that a clear, workable ordinance was better than the confusion it replaced, the 1917 Ordinance was cautiously accepted by this future leader of the settler state.

This series of ordinances is a curious mish-mash integrating a variety of 'native policy' options. In the name of 'civilising' and of 'emancipating' African women, the Administration undertook to ensure the registration of African marriages. Yet this, as Coghlan complained, had the result of enshrining in Statute law the detailed practice of those very procedures condemned as 'heathen' and 'barbarous' by the 'civilisers'. Moreover, while humanists such as Cripps welcomed the ordinances because they appeared to affirm the right of Africans to organise their marriages in their own way, the actual effect of the measures was to ensure that it was the State, not the African authorities, who now officially regulated these marriage practices. The 1917 Ordinance was, like the policy of segregation, a 'convenient umbrella' uniting, albeit shakily, the several interests of the European community.

REFERENCES

Introduction

1. See, for example, the letter from Sir Harry Johnston to Lord Salisbury, 31st May 1897 [cited in P.Mason:*Birth of a Dilemma*(1958) p214]:
In districts where...climatic conditions encourage true colonization, there undoubtedly the weakest must go to the wall and the black man must pay for the unprogressive turn his ancestors took some thousand years ago.

Background

2. D.Jeater:*Women and the Origins of Migrant Labour in Shona society 1890-1930*, presented to the Women in Africa seminar series, Univ of London Extra-Mural Centre, Jan 1985
3. T.O.Ranger:*Revolt in Southern Rhodesia 1896-7*(1967)ch.9; Mason, op cit, pp220-23
4. P.F.Hone:*Southern Rhodesia*(1909)ch.5, p51
5. Mason, op cit, p261
6. R. Whitehead:*The Aborigines' Protection Society and the safeguarding of African interests in Rhodesia, 1889-1930*.ch.1. DPhil thesis, Univ of Oxford, 1975.
7. The excitement caused by such theories is reflected in an advertisement for 'Orsmond's Great African Remedy'--an all-purpose tonic--which appeared occasionally in the *Gwelo Times* throughout 1910 to 1913. Having declared:
How we find the most thoughtful men and women of every nation eagerly confessing their belief in the science of race-breeding
--eugenics
the advert. goes on to exhort Europeans to use the remedy to preserve the robustness of their race!
8. This was the first step in the creation of that anomaly, a civil service department whose responsibilities covered every aspect of life for one section of the population. This contrasted with the usual civil service distinction between various departments, each of which deals with only one aspect of administration as it affects all sections of the population. By 1950, the system had grown so unwieldy that the Chief Native Commissioner was threatening, in his annual report, that without more staff and resources, "the whole machine will break down"
9. L.H.Gann:*A History of Southern Rhodesia:Early Days to 1934*(1965) p148
10. P.J.Duignan:*Native Policy in Southern Rhodesia 1890-1923* p164. PhD thesis, Stanford University, 1961.
11. Colonial Office Journal 5(3), January 1912
12. Mason, op cit, p318
13. Hone, op cit, ch.5, p50
14. John W. Cell:*The Highest Stage of White Supremacy*(1982),ch.8, p214
15. Duignan, op cit, p201
16. Whitehead, op cit, ch.6, p229
17. Mason, op cit, p320

18. Southern Rhodesian Order in Council, 1898, para 51
19. E.N.B.Bhebe:*Missionary Activity Among the Ndebele and Kalanga--A Survey*, in A.J.Dachs(ed):"Christianity South of the Zambezi" (1973) pp45-6
20. Report of the Native Affairs Committee, 1910, para 30
21. Native Marriages Ordinance, 1901, Sections 2 and 3
22. Jeff Guy:*The destruction and reconstruction of Zulu society in S.Marks & R.Rathbone(eds):"Industrialisation and Social Change in South Africa" (1982)*
23. C.O.417/320, Milton to Clark, 18th March 1901, encl. in Perry to Chamberlain, 8th May 1901.
[cited by J.M.Mackenzie:*African Labour in the Chartered Company Period in Rhodesian History*1 (1970)]
24. D.Jeater:*Women and Bridewealth in the Restructuring of Shona society 1890-1930*, presented to the African History Seminar, School of Oriental and African Studies, Univ of London, March 1985
25. E.V.Mittlebeeler:*African Custom and Western Law*(1976), ch.5, p46
26. Ibid pp51-58
27. See, for example, C.Lancaster:*Brideservice, Residence and Authority Among the Goba of the Zambezi Valley in Africa*44(1974), where he points to the poverty of the Goba leading to uxori-local brideservice as the only means of providing:

some culturally approved form of commensurate value...exchanged in order to detach a wife from her family of orientation.
28. Debates, Legislative Council of Southern Rhodesia, 13th April 1917
29. Tredgold was himself a member of the Committee
30. Debates, Legislative Council of Southern Rhodesia, 13th April 1917
31. Ibid
32. J.F.Holleman:*Shona Customary Law*(1952) p119
33. Ibid
34. Report of the Native Affairs Committee, 1910, para 31. My emphasis.
35. Mittlebeeler, op cit, p60
36. S/N/Umtali to Chief Native Commissioner, Mashonaland, 4th Jan 1910.
[cited by T.O.Ranger:*Women in the Politics of Nakoni District, Zimbabwe, 1890-1980*(unpublished paper,1981)]
37. Debates, Legislative Council of Southern Rhodesia, 9th May 1912
38. Ibid
39. The Ordinance had provided criminal sanctions for 'harbouring' (Section 7) and for bridewealth payment in excess of the limit (Section 6)--not for the payment itself.
The 1905 Ordinance attempted to include lack of registration in the definition of harbouring and to extend the penalty to 'the parent or guardian' of the woman.
40. £50 fine or one year's imprisonment with or without hard labour.
41. Mittlebeeler, op cit, pp58-65
42. Debates, Legislative Council of Southern Rhodesia, 13th April 1917. It is interesting to note that Tredgold specifically links child-pledging with periods of unusual hardship when he explains that:

They found that there was a custom among the natives, when they were in straitened circumstances, and it was especially prevalent in the Victoria district, where they had suffered on account of the drought, of pledging their girl children.

This implies a deeper understanding of the practice than was displayed in 1912. Much had been learned by Europeans over the intervening five years about African marriage arrangements.

43. Debates, Legislative Council of Southern Rhodesia, 19th April 1917
44. Rev. Latimer P. Hardaker to Miss H.M. Bradford. 4th March 1924. Methodist Missionary Society archives, Box 1052. [held at S.O.A.S., London.]
45. Section 2 of the Ordinance stated that unregistered marriages were not recognised by the Administration. This could be interpreted as a declaration that all children of such marriages were illegitimate, depending upon one's reading of "all civil purposes" in the 1898 Order of Council, para 51. In 1929, Section 2 of the 1917 Ordinance was repealed. although the husband was still subject to criminal liability for failure to register. (In 1951, invalidity was reinstated, but with a measure safeguarding the rights of children of invalid marriages.)
46. Native Marriages Ordinance, 1917, Section 8
47. Debates, Legislative Council of Southern Rhodesia, 23rd April 1917
48. Apparently in an effort to refer to the sexual act without doing so explicitly, the ordinance assumes that consummation takes place when the woman leaves home or when she cohabits with her husband. This second part is a reference to the practice of allowing the suitor to sleep with his intended wife at her home in the early stages of the marriage process.
49. Africans were less impressed by the usefulness of this facility. Holleman (op cit) comments that:

I have not yet seen a copy of the registration certificate being used in cases of rovoru [bridewealth] disputes. Instead, the intermediary [used in the initial bridewealth negotiations] was summoned to give evidence. (p 144)
50. The Ordinance also contained specific prohibitions on enforcing marriages arising out of child-pledging agreements in Section 11
51. Debates, Legislative Council of Southern Rhodesia, 1st May 1917
52. Ibid, 13th April, 19th April, 23rd April and 1st May 1917.

I intend to deal more fully with the question of African Christian marriages in another paper. The debate in 1917 was over two aspects of the situation: firstly, whether European civil law with regard to property within Christian marriage and custody of children should apply to such marriages, and secondly whether polygamy was acceptable within Christian marriage. It was finally agreed that European civil law should not apply in the first case, and that prohibitions on bigamy should refer only to marriages contracted after the Christian marriage. Earlier wives need not be repudiated. Although bigamy constituted a criminal offence, it was deemed to be the responsibility of the churches rather than the State to ensure that the implications of Christian marriage were fully understood.
53. Ibid, 19th April 1917
54. Ibid.



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