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Barbara Lüthi, Jovita dos Santos Pinto

Adjudicating Intimacies in Switzerland

In focusing on the movement of peoples, objects, ideas, policies and practices across borders, transnational and transcultural studies often miss out on the corporeal, emotional, and intimate part of human life and societies. Drawing on postcolonial studies, this paper argues that the governing of the intimate has been strategic for the “requisition of bodies” of the colonized and colonials and for the molding of “new structures of feelings” and have remained effective in the postcolony. Based on a deferred legal case concerning the naturalization of a son of an enslaved woman in Yverdon in the 18th century and on an accusation of a “sham union” of an inter-national couple in Basel before a marriage registrar, the article argues that the adjudication of who was to have sex with whom, marry, and reproduce has not been a private matter, but rather a crucial site, where race, gender, class and sexuality have been invoked in defining how citizens (and non-citizens) should act, and where the boundaries of belonging and inclusion are drawn.

Whereas the better part of transnational and transcultural studies addresses the movement of peoples, objects, ideas, policies, and practices across borders, oceans and continents,¹ they often miss out on the corporeal, emotional, intimate part of human life and societies. Following processes of conquest, territorial expansion and migratory movements, empire-states and nation-states confront people with different patterns of understandings of the intimate and the commitments by which they live those connections.² As states govern intimate ties in legislation, in judicial trials, in registration and licensing procedures, judicial trials and administrative procedures at times produce “flashpoints of controversy” and unpredictability of which unions

1 See for recent reflections on transnational history Thomas Adam (ed.), *Yearbook of Transnational History*, vol. 1, Lanham 2018.

2 Nayan Shah, *Adjudicating Intimacies on U. S. Frontiers*, in: Ann Laura Stoler (ed.), *Haunted by Empire: Geographies of Intimacy in North American History*, Durham 2006, pp. 116–139, here p. 116.

and offspring would be sanctioned by government and which did not fit racial or gendered norms.³ As cultural anthropologist Ann Laura Stoler pointed out, in colonial settings domains of the intimate are not the only place to register hierarchical terrains, but they are strategic for exploring two forms of colonial control – one that works through the “requisition of bodies” of the colonized and colonials and one that molds “new structures of feelings.”⁴ Race undoubtedly has played a crucial role in these processes, especially in defining what race critical theorist David Theo Goldberg has defined as an invisible border line marking both who formally belongs or does not belong, and how the issue could be addressed or not.⁵ In colonial settings, racial affiliations varied according to “who slept with whom, who lived with whom, and who acknowledged doing so; who was recognized as one’s child and by whom one was nursed, reared, and educated: who was one’s spiritual light and by whom one was abandoned. [...] These thresholds of racial membership, sexual access, and colonial status were not ‘private’ sites of respite or retreat. [...] In these ‘tense and tender ties’ of empire, relations of power were knotted and tightened, loosened and cut, tangled and undone.”⁶

In this sense, postcolonial scholarship has played an important role by critically analyzing colonial categories, scrutinizing the local and labor history of colonial societies as well as their continuing political, economic, and cultural aftereffects. Postcolonial scholarship aims at understanding how the microlives of colonial rule worked through interventions in the microenvironments of both colonized and colonizing populations and through the different allocations of privilege and opportunity between them.⁷ Instead of moving away from the “blood, sweat and tears” of colonial relations, we should refocus on the intimate – that is to say, focus on what haunts those social relations, to the often strange familiarity that proximities and inequalities may generate. Affective histories, as Ann Laura Stoler argues, shed light on the uses and abuses that undesired and even desired intimacies may incite.⁸

In the following, intimacy can be understood as one transfer point of colonial relations that cross continents and linger in their aftermaths. The first story reflects on the deferred nationalization of Samuel Buisson, the son of an enslaved woman, Pauline Buisson, who was brought to Switzerland from Saint-Domingue by her Swiss slave-

3 Nayan Shah, *Adjudicating Intimacies on U. S. Frontiers*, in: Ann Laura Stoler (ed.), *Haunted by Empire: Geographies of Intimacy in North American History*, Durham 2006, pp. 116–139.

4 Ann Laura Stoler, *Intimidations of Empire: Predicaments of the Tactile and Unseen*, in: Ann Laura Stoler (ed.), *Haunted by Empire: Geographies of Intimacy in North American History*, Durham 2006, p. 2.

5 David Theo Goldberg, *Racial Europeanization*, in: *Ethnic and Racial Studies* 29/2 (2006), pp. 331–364, here pp. 337 and 349.

6 Stoler, *Intimidations of Empire*, pp. 2–3.

7 *Ibid.*, p. 2.

8 *Ibid.*, p. 14.

holder David-Philippe de Treytorrens in 1776. The second story addresses the case of a couple from Basel (the names must stay anonymous here) which exposes the regulation of what have been called “sham unions” in Switzerland between racialized and gendered migrants and their Swiss partners. Understanding how intimacies played out in these two specific constellations across time cannot be understood without first understanding the colonial history of Switzerland, which is steeped through manifold channels and routes in the history of slavery and migration. Both speak to the racialized and gendered force of administrative power in intervening in and defining the intimate spheres of certain peoples lives while simultaneously casting them beyond national belonging and citizenship.

Newer studies have shown that Switzerland both shaped and was shaped by processes of imperial globalization from colonialism’s beginnings and that Swiss global entanglements informed the lives of and hierarchies between gender groups, social classes, races and religious communities.⁹ Just as well, migration – despite a general amnesia – has played a defining role in Switzerland’s history.¹⁰ What historian Fatima El-Tayeb argues for Europe in general, also counts for Switzerland, namely that migrants and their descendants are routinely denied access to the national, common history. At the same time, they live with the national past as much as the native population, while they frequently simultaneously stand in as its “other”. Such an exclusionary approach of national historiography tends to locate migrants outside of Europe’s past and present.¹¹ This especially counts, as political scientist Noémi Michel has argued, for the “black presence and contribution in the long history of Switzerland.”¹²

A whole selection of historical studies have closely traced the Swiss entanglements with colonialism.¹³ Many of these studies are all the more intriguing since they

9 Bernhard C. Schär, *Global und intersektional. Prolegomena zu einer noch neueren Geschichte der Schweiz*, in: *Didactica Historica* 2 (2016), pp. 42–49.

10 Still, migration studies hold a marginal place in the Swiss academic and research landscape due to the fact that Switzerland largely still does not consider itself to be a migration society. In this context, migration studies, and especially migration history, still show a scarce institutional embedment. For newer studies on migration see André Holenstein, Patrick Kury, Kristina Schulz, *Schweizer Migrationsgeschichte: Von den Anfängen bis zur Gegenwart*, Baden 2018; Barbara Lüthi, Damir Skenderovic (eds.), *Switzerland and Migration: Historical and Current Perspectives on a Changing Landscape*, Basingstoke 2018; Francesca Falk, *Gender Innovation and Migration in Switzerland*, Basingstoke 2019.

11 Fatima El Tayeb, *European Others: Queering Ethnicity in Postnational Europe*, Minneapolis 2011, p. 4.

12 Noémi Michel, *Moving History: Subaltern Histories of Resistance to Racism in Switzerland*. Paper from *Schweizer Geschichtstage*, Panel “Migration neu denken Schweizer Migration im 20. Jahrhundert aus einer postkolonialen Perspektive”, 9th June 2016, University of Lausanne.

13 Pascal Germann, *Laboratorien der Vererbung: Rassenforschung und Humangenetik in der Schweiz, 1900–1970*, Göttingen 2016; Patrick Harries, *Butterfly & Barbarians: Swiss Missionaries and Systems of Knowledge in South-East Africa*, Oxford 2007; Bernhard C. Schär, *Tropenliebe. Schweizer*

also speak to the imaginaries, discourses and practices of entanglements between as well as of drawing boundaries and lines between “natives” and the precariously situated “other”. Furthermore, they demonstrate Switzerland’s national and racialized self-understanding in an increasingly globalized world. Yet, defining the boundaries of belonging is never just an administrative task nor can it be reduced to a legally determined territorial question. Rather, the “threshold between inside and out cuts through families and across them, traces through selective genealogies and adoption agencies, ‘degrees of blood’ and dense webs of fictive kin.” But where the color line was drawn depended mainly on the acceptance of sexual unions, silences about rape, recognition of kinship, genealogies of affiliations, and knowledge of intimacies.¹⁴ As the following examples make clear, we need to look to unexpected agents and places for understanding how the seemingly private spheres of intimacies become highly “public intimacies” (Lauren Berlant) and transgress geographic, legislative, racial and gendered territories.

Whose Son Becomes Swiss?

Samuel Hippolyte Buisson was born in 1790 in Yverdon. He was the “illegitimate” child of a black woman, Pauline Buisson. As a child she had been brought to Switzerland from Saint-Domingue by her holder David-Philippe de Treytorrens. When Samuel Buisson’s mother died in 1826, a litigation started between the Municipality of Yverdon and a nephew and heir of the family. Grounds of the dispute was a will, drafted by de Treytorrens’ wife and sister, who demanded that after their death, Samuel Buisson receive an education and citizenship in his hometown. The disagreement was about which party was responsible for Buisson’s naturalization. The contentious issue was of financial nature rather than the naturalization itself. Nonetheless, the case gives insight into how familial ties were articulated through race, gender and class, shaping notions of who represented a desirable Swiss citizen or not.

Buisson’s mother’s residential status was never regularized. While the Municipality argued that this was not necessary, as she was tolerated *as* an enslaved person by the authorities of the Old Regime, the heir and attorney argued that slavery had never been legal in Switzerland, and the Municipality had failed to intervene. Both

Naturforscher und niederländischer Imperialismus in Südostasien um 1900, Frankfurt/M. 2015; Andreas Zangger, *Koloniale Schweiz: Ein Stück Globalgeschichte zwischen Europa und Südostasien (1860–1930)*, Bielefeld 2011. Also Patricia Purtschert, Harald Fischer-Tiné (eds.), *Colonial Switzerland: Rethinking Colonialism from the Margins*. Basingstoke 2015; Patricia Purtschert, Francesca Falk, Barbara Lüthi, *Switzerland and Colonialism without Colonies: Reflections on the Status of Colonial Outsider*, in: *Interventions: International Journal of Postcolonial Studies* 18/2 (2015), pp. 286–302.

14 Stoler, *Intimidations of Empire*, p. 13.

parties however were in agreement that Pauline Buisson lived in Switzerland as an enslaved person, and both invoked a gendered racist imaginary, thereby expressing their refusal to take any responsibility toward her son. The municipality argued that: “[Pauline Buisson b]eing a young African, from a hot climate, Chevalier de Treytorrens should have known better than to expect a virtuous celibacy from her. [...] Monsieur de Treytorrens brought an inflammable matter from Saint-Domingue, she caused damage and it is now his or his heir’s duty to repair it.” In contrast, the heir and his attorney claimed that since there was no jurisdiction allowing slavery in Switzerland, the authorities had missed their responsibility to intervene. This omission had led to this situation in the first place.¹⁵ Furthermore they argued that a prior request for naturalization had been declined by the old state, because “of his color”,¹⁶ as had the request of a black man shortly before in the nearby Municipality of Payerne.¹⁷ Therefore, the heir saw no incentive to pay for another request doomed to be declined. The two parties agreed on a friendly settlement in 1834. This did not benefit Samuel Buisson anymore; he had passed away two years before.¹⁸

The citizenship of Buisson’s mother, as an enslaved woman, was never questioned, but her race, class and gender were contentious issues in the litigation concerning her son’s naturalization. She was called upon by the municipality as a “danger”, “risk” and as sexually “self-indulgent”, which was not questioned by the opposite party. According to the sources similar reasons were also put forward for the rejection of the naturalization of the black man in Payerne. This framing was not situational, but was consciously deployed to prevent the liberation of black people in other European countries as well.¹⁹

The political career of people of color in Switzerland, such as the national council Alois Wyrsh (1825–1888)²⁰ or the canton council Louis Henri Bourgeois (1800–1831)²¹ show that race per se was not a categorical reason for exclusion from citizenship, as was for instance the exclusion of women based on gender or of Jews based on religion at the time. However, both politicians had been recognized as sons from Swiss noble men, were eventually adopted by their white Swiss wives and married

15 Archives d’Yverdon, Réponse pour M. de Treytorrens, Aug. 1826, p. 11, transl. J. Pinto.

16 Archives d’Yverdon, Réplique pour la Ville d’Yverdon, Nov. 1826, p. 2, transl. J. Pinto.

17 Archives d’Yverdon, Réplique pour la Ville D’Yverdon, Nov. 1826, p. 7.

18 For a summary of the litigation, Thomas David et al., *Schwarze Geschäfte. Die Beteiligung von Schweizern an Sklaverei und Sklavenhandel im 18. und 19. Jahrhundert*, Zürich 2005, pp. 113–119.

19 See Rebekka von Malinckrodt, *Verhandelte (Un-)Freiheit: Sklaverei, Leibeigenschaft und inner-europäischer Wissenstransfer am Ausgang des 18. Jahrhunderts*, in: *Geschichte und Gesellschaft* 43 (2017), pp. 347–380.

20 See Bernhard Schär, *Imperiale Dienste und emotionale Konflikte: Söldner in der Globalgeschichte der Schweiz*, trial presentation University of Bern 6. 10. 2017 (unpubliziert).

21 See Marion, Gilbert, *De la Guyanne à Lausanne: Un métis au Conseil d’État en 1831*, in: *Revue historique vaudoise* 102 (1994), pp. 129–157.

white Swiss noble women as adults. These social resources allowed to restore a white heteronormative reproductive order, even if the men were “not quite white”.²² In the litigation case, Samuel Hippolyte Buisson is not inscribed in the genealogy of a presumably white father, but in the one of his black, enslaved mother, who throughout was invoked within a gendered racist imaginary as deviant and self-indulgent in opposition to a virtuous femininity *and* a white masculinity. Her social and legal status (as unregulated and enslaved), her race (as sexually unbridled), and her gender (as woman) informed each other in the disputes about Samuel Buisson, and whether he was apt to become a Swiss citizen. The litigation shows that who was allowed to have sex with whom, raised by whom, under what power conditions, and accordingly who was recognized as having the right moral affiliation to be(come) a citizen, was less a private matter, than one of state surveillance and governance structured around race, sexuality, gender and class.²³ Whereas in the case of Buisson, affective ties pervading social relations can only be speculated upon,²⁴ “romantic love” becomes the central site of state intervention in the contemporary administration of so called “sham unions”.

Any Other Man?

In 2008 Mrs. G., in her mid-forties, financially stable and mother of a teenager, wanted to marry a younger destitute man from Mauretania. In order to fulfill her wish, she had to pay a 500 Swiss Franc deposit to allow for a “sham union assessment” (Scheinehenabklärung) by an official marriage registrar in Basel, Switzerland. Before the official she was obliged to explain why she wanted to marry this man. In this context, the female registrar commented that the Mrs. G “looked good und could also have any other man.”²⁵ In another case a registrar was reported saying that “[o]ften the women are not even aware that they are living in a sham marriage.

22 See Homi Bhabha, “Of mimicry and man: The ambivalence of colonial discourse”, in: *The Location of Culture* 1994, pp. 85–92.

23 For an exemplary transnational historiography on how people of color navigated different polities of citizenship structured by race, gender and class across three continents in the 19th century, see the seminal book by Rebecca J. Scott, Jean M. Hébrard, *Freedom Papers: An Odyssey in the Age of Emancipation*, Cambridge 2012.

24 For instance: Was de Treytorrens Pauline Buisson’s father? What was the incentive of the two women to write a will demanding Samuel Buisson’s naturalization? Why was it written the same year of Pauline Buisson’s death? Etc.

25 Menschenrechtsgruppe augenau, *Scheinehenabklärung in der Schweiz: Die neue Entmündigung von Frauen*, in: augenau, *Bulletin* Oktober 62/2009, pp. 2–3. See for a detailed analysis of the case Jana Häberlein, *Von Ehehäfen und Ausschaffungsflügen: (Persistente) Geschlechternormen und normalisierende Regulationen im neuen Schweizer Ausländergesetz*, in: *Freiburger Geschlechterstudien* (eds.), *Migration, Mobilität, Geschlecht*, Budrich Unipress 2011, pp. 193–210.

They love their future husband and also feel loved – but the conversation with the fiancé shows us, that there is not much in the way with this love.”²⁶

The statement on the alternative possibilities of the Swiss white woman’s relationships and her failing awareness of her own situation, just as the whole act in itself, reveals the reproduction of sexism and racism. The statements must be read against a normative understanding of marriage, love, and intimacy: First, through law differences between the sexes and ethno-national belonging is (re-)produced. Here the statement that the Swiss white woman “could also have any other man“ alluded to the racial status of the non-white EU/EFTA partner. The racialized black migrant from Mauretania is pushed beyond a possible imaginary of (sexually and nationally) belonging and is regarded as unworthy of being married by a Swiss white women. As cultural anthropologist Anne Lavanchy showed, registration and administrative procedures related to marriage and the question of “sham unions” are powerful in producing “desirable nationals” and play a pivotal role in the (re-)production of an idealized imagined community as a white nation.²⁷

Second, as social scientist Jana Häberlein argues and further examples show, this case not only discloses judicial and existential consequences, but also adjudicates moral, paternalistic and racial differences: Both actors – the supposedly “naive”, non-reflective white woman and the insidious black man – are projected as the “different other” against the white, male, middle-class norm.²⁸

The administrative act as a “flashpoint of controversy” over which unions (and possible offspring) are sanctioned by government and which do not fit racial or gendered norms, here places the black man and white woman beyond the pale of racial and sexual membership and the basic rights of citizenship, namely the right to marry and create a family. Unspoken racialized and gendered categories play a decisive role. This is not a “private matter” but rather “intimate things flash in people’s faces”, covering sexuality, marriage, reproduction. They are not just private concerns but rather are key to debates of what Switzerland stands for and are vital in defining how citizens (and non-citizens) should act and where the limits of belonging and inclusion are.²⁹ In this setting, the racialized figure of the migrant and her offsprings (as slave, as asylum seeker, as refugee or any other stereotyped figure) raises questions on (trans-/national) identity, unity, and cohesion. Immigration and the rise of diasporic communities and lives address issues of hybridity, cultural difference and cultural

26 Ebd.

27 Anny Lavanchy, *Glimpses into the Hearts of Whiteness: Institutions of Intimacy and the Desirable National*, in: Purtschert/Fischer-Tiné (wie Anm. 13), pp. 278–295.

28 Häberlein, *Von Eehäfen und Ausschaffungsflügen*, p. 197.

29 Lauren Berlant, *The Queen of America Goes to Washington City: Essay on Sex and Citizenship*, Durham 1997.

translation, transnationalism, and identity politics.³⁰ At the heart of postcolonial theory and transnational studies is therefore also the need to acknowledge alterity, rather than repudiate it³¹ – alterity that not only plays out in the public sphere, but touches the intimate realms of human life.

30 Parvati Nair, Postcolonial Theories of Migration, in: Immanuel Ness (ed.), *The Encyclopedia of Global Human Migration*, 5 vols., Wiley, Malden, 2013, pp. 2452–2458.

31 Maria do Mar Castro Varela, Paul Mecheril (ed.), *Die Dämonisierung der Anderen: Rassismuskritik in der Gegenwart*, Bielefeld 2016.