SASDAYA
Gadjah Mada Journal of Humanities

EISSN 2549-3884
Email: sasdayajournal.fib@ugm.ac.id

Equal Despite Different Entitlements? M.C. Piepers' Ambiguous Conceptualization of Legal Equality (1898)

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ABSTRACT

In 'Gelijkstelling van Vreemde Oosterlingen met Europeanen' ('Legal Equation of Foreign Asians with Europeans'), published in 1898 in Tijdschrift voor Nederlandsch-Indië, the liberal intellectual M.C. Piepers argued against the legal equation of the resident Japanese subjects in the Netherlands Indies with the Europeans. To make such equation happen, Parliament in the Netherlands discussed a change in the Law in order to alter the provisions with respect to the binary colonial distinction between Europeans and all other people in the Netherlands Indies as laid down in article 109 of the 'colonial constitution' ('regeringsreglement') of 1854. The change was needed for the 1896/1897 trade-agreement between the Netherlandic Empire and Imperial Japan to be implemented. Piepers warned against this 'surrender' to Japanese claims, arguing that the change emerged from a wide-spread misunderstanding of the legal and constitutional regulations with respect to legal entitlements in the Netherlands Indies. This article interprets Piepers' passionate defense of the judicial status quo concerning equality founded on 'legal' definitions of difference, as an avant la lettre constitutional 'apartheid' argument. Piepers' view on Netherlands Indies state formation started from a legal pluralism with subjectively defined groups. We will argue how in these subjectivities resonate three levels of power relations around 1900: a) geopolitical; b) national/state/colonial c) individual; with long-living aftermaths. Piepers final line of defending the status quo is the distinction between the just de jure equality in colonial society and the unjustified de facto hierarchical relationships between the different population groups. This very opposition between just laws and unfair practices in colonial governance obscures how the Eurocentrism of European (liberal) legal thought inevitably resulted in racist practice.

Keywords: Netherlands Indies; Japan; equation; gelijkstelling; apartheid; law; regeringsreglement

INTRODUCTION

In November 1898, the prominent legal expert and liberal intellectual M.C. Piepers (1835-1919) published a seventy-five pages long article, in *Tijdschrift voor Nederlandsch-Indië*. It also appeared as an off print: 'Gelijkstelling van Vreemde Oosterlingen met

[1] This chapter is written in the context of the NWO funded programme 'Colonial Normativity – Corruption and difference in colonial and postcolonial histories of empire and nations' (Vrije Universiteit Amsterdam / Gadjah Mada University Yogyakarta, 2019-2025). It was first presented in June 2023 at a Dutch conference in Amsterdam, and published in Dutch in Linde and Legêne, 2024.

Europeanen' ('Legal Equation of Foreign Asians[2] with Europeans'). The article laid out Piepers' views on a new law presented at Dutch Parliament to legally equate the resident Japanese subjects in the Netherlands Indies with the Europeans. The law – which would alter the provisions with respect to the binary colonial distinction between Europeans and all other people as laid down in article 109 of the 'colonial constitution' ('*regeringsreglement*') of 1854 – was a consequence of the 1896/1897 trade-agreement[3] between the Netherlandic Empire[4] and Imperial Japan.[5] Eventually the law would be accepted by parliament – but not without conflict – and in 1899 the resident Japanese[6] in the colony finally received European legal status (Tjiook-Liem, 2005, 206). Piepers warned for the potentially grave political and legal consequences of this 'surrender' to Japanese claims, arguing that the law originated from a wide-spread misunderstanding of the legal and constitutional regulations of the Netherlands Indies. In the following we interpret his defense of the judicial status quo concerning equality founded on 'legal' definitions of difference, as an *avant la lettre* constitutional 'apartheid' argument. The verb '*gelijkstellen*' (granting equal rights) for Piepers implied the same kind of 'equal-but-different' argument which until 1954 would also justify segregation laws in the USA. Piepers' view on Netherlands Indies state formation started from a legal pluralism with subjectively defined groups. We will argue that in these subjectivities with respect to the categorization of legal entitlements and their underlying notions of inclusion and exclusion resonate three levels of power relations around 1900: a) geopolitical; b) national/state/colonial c) individual; as well as their aftermaths.

Our approach aims to react to – and further explore – the call by Betty de Hart, professor of Family Law at the VU, who stated in her inaugural lecture:

> '*We tend to understand European legal systems as historically democratic, liberal, tolerant, and non-racist (again, with the exception of the Nazi legal system), even anti-racist, in spite of everything we know about how racism and colonialism worked. In my*

[2] We have opted to use the term 'Foreign Asians' instead of the literal translation of the Dutch term '*Vreemde Oosterlingen*' with its racist connotation and which would be 'Foreign Orientals' or 'Foreign Easterners'.
[3] Trade-agreement signed in The Hague (1896) whereafter it was accepted by parliament (1897). See *Nederlandsche Staats-courant*, 15 October 1897; for more on the complex history behind the treaty, see Tjiook-Liem, 2005.
[4] In order to avoid the 'ethnic' connotation of the term 'Dutch', as in 'Dutch Empire', we use Netherlandic Empire as a more neutral term that acknowledges the multinational character of the empire itself.
[5] As with the term 'Netherlandic Empire', the term 'Imperial Japan' is more inclusive than the ethnic term 'Japanese Empire'.
[6] These Japanese diasporic communities did not solely consist of ethnic Japanese, but also of a plethora of ethnic groups living in the territories of Imperial Japan such as various 'Chinese' groups in present-day Taiwan.

> *view, these assumptions need to be challenged. There is an urgent need for more research and academic debate on the particularities of European racialising processes and the role that the law has played in it*' (Hart, 2019, p. 1).

For Piepers, indeed, the way in which colonial legislation and institutions had been devised was perfect – almost beyond critique – fair, just and equal, 'a masterpiece of constitutional policy' ('*een meesterstuk van staatkundig beleid*').[7] It was an equality adjusted to a diverse and colonial society that legalized difference. How was this diversity and difference conceptualized?

The first obstacle we met to answer this question was Piepers' writing style and the way he employs a plethora of different voices, registers and authoritative frames. To us – in our deliberate reflection on Piepers' discourse from our fundamentally different 21st century frame of reference with respect to what equality means – this style indicates his problem of getting arguments straight, borne out of the inherent conflict between legal theory and colonial practice. Throughout the piece, Piepers stresses that legal colonial categories were *not* ordered hierarchically, but rather grounded in different needs by different cultural groups.[8] At the very last page, he even draws a final line of defense by stressing the need for the administrators to come to terms with the difference between the just *de jure* equality and the unjustified *de facto* hierarchical relationships between the different population groups (p. 75). We will argue here that this very opposition between just laws and unfair practices in colonial governance obscures how the Eurocentrism of European (liberal) legal thought inevitably resulted in racist practice. We will try to trace its basis in the Constitution of the Netherlands that after 1848 underpinned 'the House of Thorbecke', which refers to the main author of this Constittion.

The ambiguities and inconsistencies in Piepers' supposedly liberal theory interacted with the racializing logic of the condition of 'ruling an empire' (Cooper, 2005, p. 27, p. 30). It turned *Gelijkstelling* into a treatise which argued for what we now might call *apartheid,* as in the following central section:

> '*Although all citizens have the same constitutional position, it allows* [...] *the population be divided into different classes according to the differences that actually exist, each under the appropriate institutions, in such a way that this constitutional elimination of the*

[7] Piepers, 1898, p. 55 full quote in our translation: '*This rule of such excellent practical value, as it enables the full growth of such utterly different elements in the same society, side by side, without one hindering or dominating the other, thereby guaranteeing the effect of the superior on the inferior and furthermore making the life of the State move towards as much political equality of all citizens as possible, may indeed be called a masterpiece of constitutional policy.*'

[8] For instance in the case of different penal sanctions with respect to imprisonment or forced labor for Europeans and indigenous Indonesians or *Bumiputera* **(see footnote 13)** - (Piepers, 1898, pp. 38-39 and pp. 71-72**)**

> *aforementioned factually existing difference causes little disturbance in the day-to-day life, but meanwhile both classes, living next to and among each other, must exert such an influence on each other as will necessarily lead to a strong reduction of this difference in the course of time; while always ensuring that the higher civilized notions receive such support that their influence will be by far the most powerful*.' (Piepers, 1998, pp. 54-55).

Mismanagement by the imperial legislature and bureaucracy and patchwork repair explained for Piepers the dissonance between the theory of the constitutional rules and practice. *Variis modis male fit*, he states (1998, p. 17), legal mistakes are covered up by new mistakes through instant improvisation. We will argue, however, that Piepers' critique of incoherent rule cannot rule out the incoherences in his own argument to defend what was ultimately undefendable in the face of the unliberal character of a colonial rule based on 'difference', just as it would ultimately be undefendable in other contexts where *apartheid* ruled (Cf. Rousseau, 2019). The immediate and long-term severe societal consequences cannot be argued away by referring to incorrect application of correct laws, rules and regulations.

FINDINGS AND DISCUSSION

Piepers and the Problem of Legal Equality in the Colony

Piepers was in many respects a highly eccentric character. Nevertheless, he was taken seriously by both politicians and journalists. He saw himself at the forefront of a battle for the 'rule of law' ('*rechtsstaat*') in the colony.[9] In fact, H.A. Idema (1941) characterized Piepers as one of the most important protagonists who introduced Netherlandic liberal constitutional thought outside of the Netherlands in the context of colonial rule (Idema, 1941, 173). Born in Amersfoort, in the Netherlands, and son to a judicial official (P.E. Piepers), who in 1859 graduated in Law from Leiden University, he ventured in 1861 to the Netherlands Indies, where after a short service in the colonial bureaucracy, he entered a colonial judicial career in 1864. After a spell as court clerk, he became chairman of a 'Country Court' ('*landraad*'); by 1879 he was admitted into the upper echelons of the judicial officialdom in the colony and instated in the office of advocate general in the colonial supreme court. In 1882 he was promoted as judge for this same institution, and in 1890 he became the vice-president of the colonial supreme court (Orie, 2013). Both during and after these positions he was a prodigious

[9] Piepers was well known from his controversial early publication *Macht tegen recht*. In this work he provided his readers with a – chaotic – critique of what he considered to be the corrupt European bureaucratic corps on the Netherlands Indies. See also Idema, 1941, p. 179; Ravensbergen, 2019, pp. 159-160, p. 162, p. 165.

writer.[10] In 1894 he retired and settled in The Hague, the Netherlands, while continuing to write on a variety of topics (Idema, 2014, pp. 226-227).

Piepers' *Gelijkstelling* at its core argues against the categorically legal equation of subgroups of Foreign Asians to Europeans. It is a 'warning' against such equation, in a style which reads like an *assemblage* – a composition of styles, arguments, languages, themes, anecdotes and personal attacks on perceived intellectual opponents which were meant to provide the reader with something akin to a panoramic – though highly personal – vision of the legal problem at hand. Piepers' heavily vacillated between the employment of judicial jargon and a spoken polemical style. While in a certain sense Piepers' article could be argued to belong to the typical Indies' literary genre known as *tropenstijl*,[11] we argue that these meanders and turns mean more than 'just' style.

Gelijkstelling opens with a full quote of another article by Piepers published in the metropolitan daily *De Avondpost* (21-10-1898). That article within the article, boldly named 'Warning' ('*Waarschuwing*') conveys the sense of urgency Piepers felt with regards to the political and legal topic of changing the law in the Netherlands in order to equate Japanese citizens to Europeans. Piepers envisioned a threat on multiple levels, but what was ultimately at stake was the very fate of the legal system of the colony:

> '*Here after all it pertains to nothing less than a question of governmental policy, which, if it is continued in the same way, will inevitably lead to the wholesale overturning of the Indies' polity, from which probably then also the demise of the Netherlands Indies archipelagic empire will result*.' (Piepers, 1898, p. 3).

After this first three pages long inserted piece, the assemblage continues with a full quote of article 109 of the colonial constitution, pertaining to the legal distinctions between those classified as Europeans and those who we here will indicate as *Bumiputera*,[12] as well as the legal option for the colonial state to move *individuals* to another class by way of exception. Piepers then descends into an extensive discussion of a contemporary case of legal equation (the so-called 'sons of Abdul Aziz' affair), which in his view deemed to be a wrongful decision. This, then, meanders into a reflection on the ambiguous (that is, Afro-Eurasian) nature of the Ottoman Empire and its religious and cultural diversity, followed by a chaotic account of his conversations – around 1894 – with the Ottoman consul-general at Batavia on equation

[10] See for a selected bibliography of his publications: Idema, 1941, pp. 227-230 and Orie, 2013.
[11] See for instance Zuiderweg, 2017, p. 50, p. 56, p. 64, p. 75, p. 106. Zuiderweg characterises the *tropenstijl* as: sarcastic, vicious, polemic, resentful, rude, loose and anecdotal.
[12] Piepers refers consistently to the (archaic and racist) Dutch colonial term 'inlander' ('native') which was also referred to as *Pribumi*, with the same connotation. Today instead the term *Bumiputera* is used, as we do here.

rules. He then (pp. 13-18) finally gets to the subject-matter at hand: the proposed law in Dutch Parliament to equate Japanese (and Japanese colonial subjects) legally with Europeans in the Netherlands Indies. Piepers emphasizes the dubious consequences of this action for others, like the existing Chinese diasporic communities (both *peranakan* and recently migrated Chinese) in colonial space. Thereafter follows a long inserted francophone excurse – *Mémoire*[13]– for the Ottoman sultan (Abdulhamid II). The *Mémoire* was meant to explain to the sultan why he should abstain from pressing for a European legal status for Ottoman subjects in the Netherlands Indies. Piepers does so in two parts. In the first part of this French article-within-the-article Piepers explains the *rationale* of legally differentiating different categories of subjects in the Netherlandic Empire. He emphasizes that the rights of the Foreign Asians were well-protected by the Netherlandic authorities and laws. In the second part, Piepers discusses the topic of freedom of religion in the Netherlandic Empire – again finishing off with the 'reassuring' note that the Ottoman authorities may rest assured of the rights of the Ottoman subjects and Muslims in general in the Netherlands Indies.

After the *Mémoire*, Piepers returns to the subject of the legal equation of the resident Japanese populations in the colony with Europeans. He underlines that the legal differentiation between different types of subjects – Bumiputera, Foreign Asian, European – was not based on privileges (*bevoorrechting,* p. 51), but rather on respecting difference in harmony with the needs of the respective groups. When by exception someone is *individually* equated, this was not a 'promotion' or an 'emancipation' of any sorts. Rather, the legal transfer would come with gains and losses, as in the case of voting-rights. Whereas Europeans residing in the colony lost their right to vote, the *Bumiputera* actually *had* a right to vote in their own village communities (p. 52). The Europeans themselves, however, *incorrectly* believed that their status was superior to the other legal communities – and this perception and practice of social hierarchies, was naturally adopted by those who 'saw this happen' (this 'view of the masses' (in Dutch *gezichtspunt der menigte uitgaande,* p. 52; see also p. 35 of the French text) seems to us akin to an alienated expression of the experience of discrimination).

For Piepers, this error in popular view resulted from the confusion between constitutional law ('*staatrecht*') and the political conditions as they existed at the time (p. 52). Therefore, Piepers warns his readers, the proposed law to categorically equate the Japanese with Europeans constituted a mistake in terms of legality and should be fixed (p. 56, 70-71). *Gelijkstelling* then ends with two other 'warnings', the first with respect to the experience by Foreign Asians of discrimination – despite being

[13] Piepers, 1898, pp. 19-50. '*Mémoire sur le droit civil, penal et fiscal auquel sont soumis les sujets ottomans résidant aux Indes orientales neérlandaises*' ('Memoir on the civil, penal and fiscal law to which the Ottoman subjects residing in the Dutch East Indies are subject')

protected by the law – and the other concerning the dangerous governmental involvement with Islamic institutions in the colony (p. 75). This relates to his arguments about Freedom of Religion as secured in the Dutch constitution and integrated in the *regeringsreglement,* as he also explained to the ottoman Sultan in the *Mémoire.* Piepers regards this freedom of religion, without state intervention, as a crucial element in securing legal equal rights for the separate categories of colonial subjects (p. 15, 42-50). This is one of the very few (and only implicit) references by Piepers to the metropolitan constitution.

Ambiguous Classifications: Equal but Different?

We do not view Piepers' *assemblage* style of polemic as an interesting or bizarre curiosity. It reinforces how the whole question of legally equating the Japanese with the Europeans was shrouded by ambiguities, and expressions of anxiety and fear. We argue that these resided in the impossibility to reconcile liberal or humanitarian discourse and theory with the colonial status-quo entailing the maintenance of a system of racial segregation with all the internal inconsistencies and ambiguities of the theories and discourses themselves (Fasseur, 1994; Tagliacozzo, 2005; Ravensbergen, 2018; Rush, 1990). Piepers, like other participants in the political and public debate as we will see further below, actively de-emphasized race and racial hierarchy in his argument. His equal-but-different style of argumentation instead suggested a position of cultural relativism. However, this cultural relativism is negated by Piepers' own uncompromising insistence on the normative superiority of the 'Christian' civilization. This argument, in fact, was a common argument in international law to *exclude* non-European powers on the world stage during the 19th century, as 'civilization' was increasingly defined with Christianity – or at least Christian norms and values (Horowitz, 2004, pp. 452-453). This becomes clear, for example, when Piepers touches upon the conditions for *individual* legal equation: the person in question should adhere to Christian civilizational norms, maintain a European public appearance ('*uiterlijke staat*'), should be fluent in Dutch and possess tangible evidence of European education (p. 63).

The internal logic of Piepers' arguments evaporates further when we look at the specific laws and regulations attached to non-European legal status. The very concept of 'Foreign Asian', for example, clearly demonstrates an opportunistic policy undercurrent on the side of the colonial government: in all aspects of life *except for private law* – which touched on commercial interaction with Europeans as in the case of commercial law, and was therefore partly harmonized with European private law – Foreign Asians were subject to the same laws and regulations as the *Bumiputera* (p. 35-42, 51). Thus it appears as if the 'in-between' category of 'Foreign Asian' was

created in order to oil the commercial interactions between the mercantile colonial middle classes consisting especially of Chinese and Arab entrepreneurs and traders and the export-oriented European entrepreneurs, while maintaining legal boundaries between the two classes (Fasseur, 1994, pp. 32-39; Tagliacozzo, 2005, p. 130; Tjiook-Liem, 2005, p. 193, p. 207). This can also be observed in specific regulations and laws meant to prevent geographical mobility and above all, monitor the Foreign Asians by measures such as the 'pass system'. Such measures were legitimated in colonial discourse in (racist) terms: 'protecting' the *Bumiputera* communities against the defrauding Foreign Asians – an often heard stereotype Tagliacozzo, 2005, pp. 129-130; Liu, 2014, pp. 87-110).

The internal logic of Piepers' argumentation reflects the ambiguity of the legal category of 'Foreign Asian'. At times he argued on the basis of homogenous binary categories embedded in the legal structure of the colony (European and non-European), but his additional emphasis on the threat associated with Islamic elements such as the Ottoman Arab diaspora betrays that in reality he was aware of the diversity of the Asian communities in the colony. In this light his quintessentially culturally relativistic argument of a legal system adjusted to *two* categories of people – for Piepers Foreign Asians were basically equal to the *Bumiputera* – with different culturally-adjusted *collective* needs does not hold. After all, why should a Buddhist and a Muslim be culturally closer to each other than, say, a Christian and a Muslim? Furthermore, even though Christians would ostensibly share a common cultural framework according to Piepers' argument, the *regeringsreglement* explicitly makes an *exception* for them: they were to be equated to the other *Bumiputera* (Tjiook-Liem, 2005, p. 193).

Piepers' problem in getting his arguments straight was mirrored by the parliamentary debates on the proposed law – which were both directly and indirectly informed by Piepers arguments.[14] Minister of Colonial Affairs J.Th. Cremer (in office: 1897-1901), despite employing an 'equal-but-different' style of argumentation himself, insisted on acceptance of the law and criticized references to Piepers in parliament.[15] A strong undercurrent of dread was visible among many MPs in the Lower House. Almost nobody who spoke during the debate was an enthusiastic proponent of the proposed law, yet a majority of MPs eventually came to feel that it was inevitable – probably mainly for international political reasons (Tjiook-Liem, 2005).

Three lines of argumentation that also are the weft and warp of Piepers' *Gelijkstelling*, strongly figured in the parliamentary debates: 1) a geopolitical argument related to

[14] Handelingen Tweede Kamer 1898-1899, 1 March 1899: 807-828, esp. 809-810.
[15] Idem, esp. 811.

Netherlandic vulnerability in the Asia-Pacific region in the face of emerging Japan; 2) a civilizational argument downplaying Japan's European credentials by emphasizing the need for 'Christian' norms in order to be truly civilized; 3) an individualizing argument which focused on means to legitimate the existence of separate legal communities on the basis of arguments other than 'race' in order to justify the boundaries between European and non-European. With respect to geopolitics, one MP stated:

> '*We also have to hold up our honor in the face of Japan. We know, that Japan not always views other peoples with high regard; I shall just refer to the Chinese. Let us therefore take care, that we do not become in the eyes of Japan the Chinese of Europe*.'[16]

Several MPs, among whom A. Kuyper, the chairman of the rapidly emerging Anti-Revolutionary Party agreed to this argument, stating:

> '*I too do not wish to forget, that we against Japan, despite being a European Power, will be the weaker* [party] *and will therefore lose* [in case of conflict].'[17]

Concerning the civilizational argument, we found the words of both Piepers and several MPs in parliament to carry a strong semblance to Huntington's *Clash of Civilizations* – at least in the sense that 'civilizations' were viewed in an essentialist way. Piepers, for example, recurringly presented the civilizational qualities of Western European and North American powers in a binary opposition with Imperial Japan, Qing China and the multicontinental empires of the Ottomans and Romanovs.[18] With respect to the civilizational argument, the MPs argued that *despite* the fact that Imperial Japan had adopted the outward trappings of European civilization, it could not – at least not in the near-future – really transform, due to the unchristian nature of the polity. The geopolitical arguments thus converged with the second line of reasoning, with the strongest criteria for accepting a power as civilized being the adoption of Christianity. Bart Luttikhuis (2013) stressed that Christianity was one aspect among many when judging an individual's European credentials in late colonial society (Luttikhuis, 2013, p. 549). In the case of the collective equation of the Japanese, however, it appears that Christianity was generally singled out as *the* defining marker of 'Europeanness' by the political opposition to the legal equation. Or, as one MP stated:

> '*It has struck me, that in parliament there have been no comments concerning the flip side of the medal, namely that the Dutch in Japan have to stand trial in front of a pagan*

[16] Handelingen Tweede Kamer 1898-1899, 1 March 1899: 809.
[17] Handelingen Tweede Kamer 1898-1899, 28 February, 1899: 805.
[18] Figure 9.1 'The Global Politics of Civilizations: Emerging Alignments' shows a striking resemblance, cf Huntington, 1996, p. 245.

> *judge* […]. *Even though Japan has designed its books of law after the European model, with that it can still not be claimed that Japan had instantly become a civilized country. It has, nobody will deny this, in the last years visibly developed rapidly. True civilization however could only have been acquired if the Japanese people had adopted Christianity: then the spirit of the new laws* [Western laws] *could have penetrated the whole people.*'[19]

Kuyper added to this argument that the European credentials of Imperial Japan were not self-evident at all. Westernization in his view, did explicitly *not* prove Japan's 'civilized' status. The differences Kuyper observed between Japan and European civilization were deeper, more structural, as in his reference to compulsory education instated by Imperial Japan. This, Kuyper argued, might suggest to outside observers that Japan was ahead of the Netherlands in the field of education policies. However, he immediately negated this by emphasizing that Japan remained an uncivilized country, since, whereas the Japanese might have such progressive legislation, the level of school attendance there remained low, whereas in the Netherlands were such legislation was lacking virtually all children were attending school. For Kuyper this proved the essential difference in levels of civilization between Imperial Japan and the Netherlands[20], conveniently omitting that this was only true for the Netherlands itself – not for its colonies. For the *Bumiputera* there was no option whatsoever for Western education, as C.Th. van Deventer would argue in 1899 in his pivotal article '*Een Eereschuld*' (A Debt of Honour) in which he severely criticizes the complete absence of schools other than for Europeans ((Deventer, 1899, pp. 205-257).

Finally, with respect to the third argument concerning individual exceptions, the parliamentary debates reveal a fear of opening the flood gates.

> '*What situation will emerge when this proposed law will be turned into an actual law? Then the Formosan Chinese who may come to the Netherlands Indies – there are two million* [of them] *– will be equated with Europeans; but their Chinese neighbors, who do not derive from Formosa, will* [still] *be equated with natives. Is this a sustainable situation?*'[21]

Minister Cremer as well as the minister of Foreign Affairs W.H. de Beaufort (in office 1897-1901) steadfastly defended the proposed law in parliament. Cremer countered all three arguments, partly by reversing the geopolitical objections: if Imperial Japan constituted such a grave danger as asserted by the MPs, then, according to Cremer, the Netherlandic parliament was better not to irritate Imperial Japan by not equating their citizens. He added to this that the Netherlandic Empire was only following the

[19] Handelingen Tweede Kamer 1898-1899, 28 February 1899: 785-806, quote on 795.
[20] Idem, 795-797.
[21] Handelingen Eerste Kamer 1898-1899, 16 May 1899: 393.

general global trend at the moment: many Great Powers of Europe and North America had preceded the Netherlandic Empire in conceding equal status to Imperial Japan.[22] With respect to the civilizational argument, although Cremer was partially perceptive to the defined boundaries between civilization and non-civilization as drawn by several MPs, he actively played with the inconsistencies in their argumentation:

> '*He* [an MP] *stated furthermore that it would be an apogee to equate the Mongols with the Europeans. I believe that the dear speaker, stating this, has missed his goal. I believe for example that he would not protest if native Christians would be equated to Europeans.*'[23]

Against those in the political opposition who in the same vein argued that the colonial constitution of 1854 had devised legal categories on the basis of religion, Cremer countered that while historically speaking this might be true, times had changed and definitions had evolved to make more specific categorizations. In what seemed a cultural definition of what constituted a legal European, he defended such a classification for all Japanese, as they had westernized much of their institutions and laws.[24] With respect to the third line of argumentation concerning individuals, finally, Cremer defended a geographical concept of Europe regardless of religion, when against an opposing MP (while possibly referring to the 'sons of Abdul Aziz affair' discussed by Piepers as well) he insisted that Islamic Turks from the European part of the Ottoman Empire were Europeans and would remain so wherever they lived.

> '*The notion has always been the same. Just once there has been a difficulty concerning the Turkish sons of a European Turk, and the notion has been this at the time, that these too are Europeans in the Indies, whatever their religion might be*.'[25]

As Piepers had argued as well in *Gelijkstelling,* the proposed law had far too many complications to pass in Parliament without criticism. Meanwhile the mass media of the Netherlandic Empire – both in the metropole and in the colony – by-and-large received the treatise by Piepers and the proposed law in more simple terms. *De Locomotief* published an extremely concise though sneering critique of Piepers' treatise, which concluded that his arguments were probably inaccurate as well as poorly written (*De Locomotief*, 28 December 1898). However, other news coverage strongly expressed the fear for Imperial Japan. For example, the popular metropolitan newspaper *De Telegraaf* regarded the idea of categorically equating the resident Japanese subjects in the Netherlands Indies with Europeans as a looming 'danger'

[22] Handelingen Tweede Kamer 1898-1899, 28 February 1899: 800-803; Handelingen Eerste Kamer 1898-1899, 16 May 1899: 396-397.
[23] Handelingen Tweede Kamer 1898-1899, 28 February 1899, 803.
[24] Idem, esp. 800-803.
[25] Idem, 803.

('*gevaar*'). The Netherlandic armies were no match for the armies of Imperial Japan, and any confrontation would in all likelihood result in a massive and humiliating disaster ('*débâcle*'), surpassing the Spanish loss of the Philippines in that same year.[26]

CONCLUSION: EQUAL DESPITE DIFFERENT ENTITLEMENTS?

In our introduction we summarized the three levels of power relations with long afterlives rooted in the colonial structures defended by Piepers and that also popped up in the Parliamentary debates in the Netherlands: geopolitical (in ways that foreshadowed Huntington's *Clash of civilizations*), national/state-colonial (a legal reasoning which we recognize in later *apartheid* and segregation policies), as well as individual. To start with the latter, a reference to the criteria of 'rooted in Indonesia' ('*in Indonesië geworteld*') for rejecting permission to migrate to the Netherlands after 1950, may suffice here. The novelist Lisette Lewin remembered with wonder and shame how she, some 20 years old towards the end of the 1950s, rejected applications for emigration from Indonesia to the Netherlands, based on outward appearances (bare feet, dark skin, vague kinship relations, not Christian).[27] Geopolitically, Piepers' emphasis on the threat posed by equating the Japanese in the colony with Europeans returned in the media during the First World War, in a discussion of the military vulnerability of the Netherlandic Empire in the Asia-Pacific region (*De Sumatra Post*, 8 March 1917). One may wonder what at the time weighed the most: the balance between commercial interests and geopolitical fear of losing the Empire, the belief that civilization implied Christianity, or the implicit racism that equated European-ness with whiteness and Christianity (Locher Scholten, 2000, pp. 30-32). In 1919, while in the USA the Jim Crow laws in the South were on the rise, Japan would insist on adding an amendment on racial equality among nations in the final Versailles Peace Treaty and Covenant of the League of Nations but failed. Or, as the British ministry of Foreign Affairs wrote in a Memorandum of 1921: 'however powerful Japan may eventually become, the white races will never be able to admit her equality' (Stuurman, 2017, p. 484). Finally, in the emerging world of nations after the Second World War and decolonization, the legal reasoning of segregation would never disappear, with the current example of the different status of refugees from for instance the Ukraine or Syria as a case in point.

Our introduction also posed the question whether the 1848 Constitution of the Netherlands and its respective revisions as such provided the ground for obscuring

[26] *De Telegraaf* cited in *De Sumatra Post*, 6 December 1898.
[27] Lewin, 2010, pp. 111-124, esp. pp. 121-122; See also the book series that resulted from the SOTO project (Foundation for Research into Remigration and Care), https://www.archieven.nl/nl/zoeken?mivast=0&mizig=210&miadt=298&micode=889&miview=inv2; [last accessed on: 24-7-2023]

how the Eurocentrism of European (liberal) legal thought inevitably resulted in racist practice. Suffice it here, to refer to Article 1 of the Constitution, which ever since 1814 has referred to the geographical space of the Kingdom of the Netherlands in Europe. The colonial possessions (up to 1848 ruled by the King) were mentioned in other articles. As from 1887 Article 1 added the names of the overseas possessions, but explained in Article 2 that the Constitution was solely binding for the European part of the Empire. In 1983 Article 1 was replaced by the current 'non-discrimination' article.[28]

Piepers stressed that ruling different people differently did not imply hierarchies and inequalities, *de jure* it was not discriminating. Many historians and jurists today have an opposite view, because *de jure* as well as *de facto* it installed a discriminating hierarchy in terms of citizenship entitlements. One might wonder what Piepers would make of this. Would he argue that our assessment of the law at the time just repeats the contemporary misconceptions among the Europeans in the colony that he targeted in his polemical *Gelijkstelling* essay? Would he object against our comparison of article 109 of the *Regeeringsreglement* with *apartheid* and segregation, would he have knocked us out of the debate, explaining that we had never been there and didn't know the obligations that came with the civilizing mission? Would we have lost him? If it is correct that Piepers was one of the best legal experts of his time, we hope that, in a way comparable to Lisette Lewin, he would wonder today about the blind spot of racism in his legal thought, in the same way that many have to today, when confronted with systemic racism grounded in laws, rules and regulations.

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[28] In translation: 2: '*Coverage of the Constitution – The Constitution is solely binding for the Empire in Europe* […] *When there is reference to the Empire in following articles, this solely pertains to the Empire in Europe*.' See also: Legêne, 2011, pp. 244-246.

https://research.vu.nl/en/publications/some-cursory-remarks-on-race-mixture-and-law-by-three-dutch-juris [last accessed on 24-7-2023]

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