Law and Colonial Order: Legal Policy in German Cameroon between Civilising and Public Peace

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RESÜMEE

Der Artikel untersucht Recht und Gerichtsbarkeit als Instrumente deutscher Kolonialherrschaft in Kamerun. Rechtspolitische Maßnahmen bewegten sich in einem Spannungsfeld zwischen Zivilisierungsbestrebungen und dem vor Ort für die Kolonialregierung weitaus wichtigeren Bedürfnis nach der Aufrechterhaltung von Ordnung. Die indigene Bevölkerung gestaltete die Umsetzung der rechtspolitischen Maßnahmen durch ihre Re- und Interaktionen mit und setzten Recht in beschränktem Maße als Mittel zur Selbstbehauptung ein. Recht bildete so ein Instrument, das von unterschiedlichen Gruppen für ihre Interessen genutzt werden konnte. Der Konflikt zwischen den kolonialpolitischen Zielen einer‚Zivilisierung' und der Aufrechterhaltung der Ordnung wurde durch das Aufschieben zivilisatorischer Maßnahmen in eine unbestimmte Zukunft gelöst.

> *Especially the criminal part of the colonial judicature is, in an eminent sense, a political task of the colonising people. One has to mediate wisely between on the one hand the will to implant European ideas of common decency and morality into the population, the will to maintain law, public peace and order in the country, and on the other hand the irrefutable demand to consider at all times the actual power relations, and, through wisely protecting what the natives hold right and holy, to not force them under German rule, but to win them for it.*[1]

As this quote from an article on criminal jurisdiction over the natives in the German colonies from 1905 shows, the importance of law within the process of colonisation is a subject that has not only recently attracted the attention of historians and legal anthro-

1 P. Bauer, Die Strafrechtspflege über die Eingeborenen der deutschen Schutzgebiete, in: Archiv für öffentliches Recht, 19 (1905) 1, pp. 32-86, here p. 70. (All translations from German are my mine.)

pologists,[2] but was also already seen as an important issue by contemporaries. In these few lines the author brings together two fundamental aims of colonial legal policy: the transfer of European ideas and the maintenance of order. The author implies that the power basis of German rule was fragile, and that the "actual power relations" needed to be considered "at all times". Thus he implicitly warns that the indigenous might react with opposition to measures in pursuit of this aim. He proposes that the indigenous population should consent to rather than be forced under German rule, and that law, or moreover the conservation of legal customs, of "what the natives hold right and holy", will contribute to win them over for new masters.

Studies that deal with law within German colonialism are often, but not always, written by jurists. One part of the literature focuses on historical legal debates over colonial law and the structure and functioning of the colonial jurisdiction with an emphasis on criminal law.[3] They primarily address these topics without contextualising the historical debates or considering the negotiation of legal processes between the colonial administration and the population of the colonies. Another set of works examines law within the larger frame of political discourses in the metropole. Questions of 'mixed marriages' and 'nationality', as well as the political position of the parliament in the colonial legislation, form the main objectives of such studies.[4]

Still neglected within German colonial historiography is the question of how German colonial law and jurisdiction functioned within the establishment and maintenance of colonial power. Similarly, studies about the effects of German colonial rule on the laws of the colonised and the question of how the colonial law was itself shaped by interactions with the colonised are still a neglected part of German colonial historiography.[5]

This article contributes to filling in these gaps by analysing how legal policy was discussed and used as a means of native policy. It shows that the reactions of the colonised to colonial law were part of the elaboration and implementation of legal political measures and that the outcomes of these measures were shaped by their reactions and interactions.

2 As a few examples among many which deal with the relation of colonialism and law and the interactions of state law and the law of the colonised and their mutual modifications, see: K. Mann / R. Roberts (eds.), Law in Colonial Africa, Portsmouth (N. H.) / London 1991; W. J. Mommsen / J. A. d. Moor (eds.), European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-century Africa and Asia, Oxford 1992; L. A. Benton, Law and Colonial Cultures: Legal Regimes in World History, 1400–1900, Cambridge 2002.

3 For example: H.-J. Fischer, Die deutschen Kolonien. Die koloniale Rechtsordnung und ihre Entwicklung nach dem ersten Weltkrieg, Berlin 2001; N. B. Wagner, Die deutschen Schutzgebiete. Erwerb, Organisation und Verlust aus juristischer Sicht, Baden-Baden 2002; R. Schlottau, Deutsche Kolonialrechtspflege. Strafrecht und Strafmacht in den deutschen Schutzgebieten 1884 bis 1914, Frankfurt am Main 2007; R. Voigt / P. Sack (eds.), Kolonialisierung des Rechts. Zur kolonialen Rechts- und Verwaltungsordnung, Baden-Baden 2001; G. Walz, Die Entwicklung der Strafrechtspflege in Kamerun unter deutscher Herrschaft 1884–1914, Freiburg 1981; M. Schröder, Prügelstrafe und Züchtigungsrecht in den deutschen Schutzgebieten Schwarzafrikas, Münster 1997.

4 D. Nagl, Grenzfälle. Staatsangehörigkeit, Rassismus und nationale Identität unter deutscher Kolonialherrschaft, Frankfurt am Main 2007; B. Kundrus, Moderne Imperialisten. Das Kaiserreich im Spiegel seiner Kolonien, Köln / Weimar / Wien 2003; M. Grohmann, Exotische Verfassung. Die Kompetenzen des Reichstags für die deutschen Kolonien in Gesetzgebung und Staatsrechtswissenschaft des Kaiserreichs (1884–1914), Tübingen 2001.

5 An example of the development of 'customary law' under German colonialism is supplied by: S. F. Moore, Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880–1980, Cambridge 1986, pp. 95-109.

Finally, the article presents some thoughts on how contradictions that appeared between the attempt to civilise and the need to sustain public order were 'solved'. It proposes that these contradictions were resolved by prioritising and subsequently addressing them based on the different 'urgencies' assigned to them. The article argues that legal policy was used as an important means to governing the indigenous population of the German colony of Cameroon, and that law and jurisdiction were a crucial factor within the exercise of colonial rule. Yet, law was also utilised by the colonised to pursue their interests, which were often contrary to the colonial government's goals.

1. Law as a servant of civilisation and order

When Germany took over the rule of her colonies, the government had no elaborated concept of the legal arrangement in the colonies.[6] In the time following, orders were enacted mainly as a reaction to certain problems and necessities. German laws were introduced for all Europeans, but the population of Cameroon was excluded from these laws because they were thought to be too 'uncivilised' to fall under German law.[7] Their legal cases, especially those which concerned what German law understood as criminal law, were decided by the local administrative officials. The substantive law was not fixed, and only some regulations concerning criminal procedure were enacted.[8] As late as 1902 a manual stated that a criminal procedure could only be opened for those actions that were forbidden by German law or decrees.[9] The local officials' list of punishments, which they had to hand in regularly to the Gouvernement, as well as the constant correction of non-existing offences by the Gouvernement or the Colonial Office (*Reichskolonialamt,* before 1907 *Kolonialabteilung des Auswärtigen Amtes*) in Berlin, show however that this principle was not implemented on the spot, and that the disregard for this principle had no consequences for the officials.[10] Until 1916 neither criminal law was properly introduced nor were the sentences for the offences fixed. In addition to the colonial jurisdiction of the officials, the Germans empowered Cameroonian chiefs to preside over cases. This was perceived as a continuation of earlier practices. Both the colonial jurisdiction and the 'native courts' were utilised as instruments of native policy.

6 D. Nagl, Grenzfälle (footnote 4), p. 23.

7 Gerstmeyer, Eingeborenenrecht, in: H. Schnee (ed.), Deutsches Kolonial-Lexikon, 3 vol., Leipzig 1920, v. I, pp. 507-514, here p. 508.

8 The regulations can be found in: J. Ruppel (ed.), Die Landesgesetzgebung für das deutsche Schutzgebiet Kamerun, Berlin 1912, no. 400-421.

9 Dienstvorschrift des Gouverneurs, betreffend die Ausübung der Strafgerichtsbarkeit gegenüber den Eingeborenen, vom Mai 1902, in: J. Ruppel (ed.), Die Landesgesetzgebung (footnote 8), no. 403.

10 The central colonial authorities often remarked upon the listing of incorrect offences, see: Auswärtiges Amt, Kolonialabteilung to Gouverneur, 22 May 1903, in: Archives Nationales du Cameroun, Yaoundé (ANY) FA 1/292, sheets 89-91; Gouverneur to Station Johann-Albrechts-Höhe, 22 May 1898, in: ANY FA 4/1066 without page-numbers; Gouvernement to Bezirksamt Edea , 9 March 1909, in: ANY FA 1/618, sheet 13.

1.1. On uplift and development: Law as an object and instrument of civilising efforts

Germany as a colonising power is generally not assessed as having put a strong emphasis on the civilising mission, especially when compared to Great Britain or France.[11] Contemporaries as well as historians stress that the purpose of the German colonial project lay primarily in contributing to Germany's prosperity and international importance.[12] However, although a civilising mission was not drawn upon as an official ideology by the government, the conviction of one's own superiority as being 'civilised', a conception of a universal progress of civilisation and a notion of developing the colonised cultures, nevertheless formed the core of the attitude towards the indigenous population and a self-legitimation of the colonial expansion.[13] It corresponded with a wide acceptance of Social Darwinism around the turn of the century and a tendency within legal anthropology to focus on the development of primitive societies into civilised states.[14] Consequently, in the discussion of the policy concerning the colonised population, the transformation of the colonised cultures into the ideal of the Western civilisation appeared as one aim. The assumed fundamental inferiority of the colonised helped to construct the necessity for paternalistic guidance and the liberation from 'despotism', 'superstition' and 'barbarism'. This article uses a wide concept of 'civilising', including sometimes contradicting educational purposes, disciplinary efforts, and concepts of relative as well as absolute development, which build on the supposed superiority of the Germans to the colonised. All measures, which in a context of hierarchal cultural difference aimed at some sort of change towards 'civilised' standards, are in the following subsumed under the term of 'civilising'.

As much of the literature on the civilising mission pointed out, proposing to introduce civilised standards into the law served to justify the colonial expansion. But not all of

11 For Great Britain and France, see: M. Mann/H. Fischer-Tiné (eds.), Colonialism as Civilizing Mission: Cultural Ideology in British India, London 2004; L. Pyenson, Civilizing Mission: Exact Sciences and French Overseas Expansion, 1830–1940, Baltimore / London 1993; M. Adas, Machines as the Measure of Men: Science, Technology, and Ideologies of Western Dominance, Ithaca/London 1989.

12 K. Hausen, Deutsche Kolonialherrschaft in Afrika. Wirtschaftsinteressen und Kolonialverwaltung in Kamerun vor 1914, Zürich 1970, pp. 175-176; H. R. Rudin, Germans in the Cameroons, 1884–1914: A Case Study in Modern Imperialism, Hamden (Conn.) 1968 [1938], pp. 297-298; B. Barth, Die Grenzen der Zivilisierungsmission. Rassenvorstellungen in den europäischen Siedlungskolonien Virginia, den Burenrepubliken und Deutsch-Südwestafrika, in: B. Barth / J. Osterhammel (eds.), Zivilisierungsmissionen. Imperiale Weltverbesserung seit dem 18. Jahrhundert, Konstanz 2005, pp. 201-228, here p. 202.

13 Nina Berman has shown that 'development' and 'modernisation' are ideas with a long history in the German encounters with Africa. In several case studies she elaborates that the ambition to modernise and the belief of helping the Africans have influenced the actions of individuals and continue to do so. N. Berman, Impossible Missions? German Economic, Military, and Humanitarian Efforts in Africa, Lincoln / London 2004, esp. pp. 2-3.

14 Before 1900 German anthropology constructed a difference between civilised people ('Kulturvölker') and primitive people who remained as a part of nature ('Naturvölker'). In contrast to evolutionary theories, these people were less likely to be included in the general narrative of progress. A. Zimmerman, Anthropology and Antihumanism in Imperial Germany, Chicago/London 2001, pp. 49-51, 214-215; F. v. Benda-Beckmann, Rechtsethnologie, in: K. F. Röhl (ed.), Ergänzbares Lexikon des Rechts, Neuwied 1986, Gruppe 3/160, pp. 1-7, here p. 2.

these proposals can be seen as mere strategy or rhetoric.[15] A notion of 'uplifting' and 'improving' built a frame of reference for the policy concerning the colonised. It resulted in different measures that included educational programmes (although limited in content and scope and mainly supplied by the missions), medical care, christianisation, introduction of modern technology and infrastructure and a disciplination of the indigenous population often discussed under the slogan of "education to work" (*Erziehung zur Arbeit*), which in the German case was a dominant topic in the debate over civilising.

Some local legal customs were discussed as an object of civilising processes. The laws in the colonies were perceived as 'primitive', of a lower state of development. The highest end of this hierarchy was equated with European civilisation.[16] Although it was believed that in general the local customs should be kept, the introduction of 'civilised' principles into the legal system included the abolishment of any customs which were seen as "repugnant to culture" (*kulturfeindlich*) – meaning they contradicted European ideas. In this view, observed customs like polygamy, communal property and feuds formed the object of the civilising efforts. The realisation often failed, and in respect to practicability certain practices were excluded from these civilising efforts, as I will show later.

But law was not only seen as an object, but also as an instrument of civilising efforts. Jurisdiction was discussed as an effective instrument to transform the indigenous populations' customs and sense of justice, for example through the control of the so-called native courts.[17] More importantly, the criminal law in the hands of local officials was understood as an instrument of 'education'.[18] Through strict prosecution the Cameroonians were to be acquainted with what was understood as 'civilised law'. They were to be taught European conceptions of property, to be transformed into useful wage labourers and to incorporate European moral standards. As the judge of the district Duala (*Bezirksrichter*) reports to the Gouvernement in 1901:

> *[In the colony] the criminal jurisdiction should above all have an educational effect. It should teach the native respect for other people's person and property, it should get them used to obeying a state's precepts and interdictions, a demand formerly unknown to them.*[19]

Contrary to the general pretension to introduce more rational principles into the law in the colonies, the lack of control over local officials often resulted in maltreatment and abuses within the jurisdiction. Some of the abuses which became known in Ger-

15 W. Mommsen, Introduction, in: W. J. Mommsen / J. A. de Moor (eds.), European Expansion (footnote 2), pp. 1-14, here p. 8.

16 M. Adas, Machines as the Measure (footnote 11), p. 203.

17 Annual Report of the Station in Jabassi 1907 in: ANY FA 1/70, sheets 50-64, here sheet 53, Gouverneur to Reichskanzler, 16 September 1893, in: Bundesarchiv, Berlin-Lichterfelde (BAB) R1001/5003, sheets 60-61, here sheet 60; Copy Gouverneur Seitz, 21 July 1896, in: BAB R1001/5003 sheets 155-157, here sheets 155-156.

18 P. Bauer, Die Strafrechtspflege über die Eingeborenen (footnote 1), p. 80; F. Doerr, Die Entwicklung des materiellen und formellen deutschen Kolonial-Strafrechts seit 1907, in: Zeitschrift für Kolonialpolitik, Kolonialwirtschaft und Kolonialrecht, 12 (1910) 2, pp. 69-72, here p. 71.

19 Bezirksrichter in Duala to Gouvernement, 15 July 1901, in: ANY FA 1/292, sheets 52-87, here sheet 57.

many underwent severe criticism in the German parliament and the German public.[20] The German government reacted to these incidences with attempts to regulate criminal jurisdiction and thus prevent abuse.[21] But in general brutal punishments, even corporal punishment or chaining, which had already been abolished in Germany, were justified by the concept of the Cameroonians' low state of development and by racist stereotypes of lazy and childish black people who needed to be treated with astringency.[22]

1.2. Law and colonial order: Keeping the colony governable

The second aim of legal policy discussed in this article was much more relevant to the present situation within the colony: The necessity of keeping public peace and order was vital for the upkeep of colonial governmental power. German authority had to be maintained, and the safety of the Germans in the colony secured. Public peace formed the basis for keeping up trade and economy and for governing the colony.
Contrary to civilising attempts, which at their core aimed at reducing cultural difference, attempts at order were mainly to be achieved by establishing and maintaining difference between the colonising and the colonised. In contrast to civilising demands, these segregating practices played a crucial role not only in the debates, but also in the political measures in the colony. Colonial order was constructed around the segregation of Germans from the population of the colony.[23] Law was one area in which the establishment of a clear division between the coloniser and the colonised was attempted. Historiography on colonial law, which examines connections between German colonial history and the developments under National-Socialism, has pointed out that race played a crucial role in German colonial law.[24] Although the legal term of 'the native' was disputed and never universally defined by law,[25] in practice the division of those who fell under Ger-

20 For example the cases of vice Gouverneur Leist 1893 and assessor Wehlan 1896, see: Stenographische Berichte über die Verhandlungen des Reichstags, 9. Leg. Per., 4. Sess. 1895/1897, v. 144, sessions 59 and 60, 13 and 14 March 1896, pp. 1419-1475; Resolution der Kommission für den Reichshaushaltsetat, in: Drucksachen des Reichstags, 9. Leg. Per., 4. Sess. 1895/1897, v. 3, no. 157, p. 3..

21 Stenographische Berichte über die Verhandlungen des Reichstags, 9. Leg. Per., 4. Sess. 1895/1897, v. 144, sessions 59 and 60, 13 and 14 March 1896, pp. 1425, 1455.

22 M. Schröder, Prügelstrafe und Züchtigungsrecht (footnote 3), pp. 9, 30-33; for advice of astringency in the treatment of the colonised, see also: R. v. Uslar, Die Entwicklung des Kamerun-Schutzgebietes unter der deutschen Schutzherrschaft (IV.), in: Beiträge zur Kolonialpolitik und Kolonialwirtschaft, 1 (1899) 10, pp. 302-314, here p. 311; G. G., Strafrechtspflege in deutsch-afrikanischen Schutzgebieten, in: Deutsche Kolonialzeitung, 9 (1896) 36, pp. 282-283, here p. 283.

23 See: G. Balandier, Die koloniale Situation: ein theoretischer Ansatz, in: R. v. Albertini (ed.), Moderne Kolonialgeschichte, Köln / Berlin 1970, pp. 105-124, here p. 117.

24 For a discussion of the racist elements and the relation of the colonial laws to the Nurnberg Laws: C. Essner, "Border-line" im Menschenblut und Struktur rassistischer Rechtsspaltung. Koloniales Kaiserreich und "Drittes Reich", in: M. Brumlik (ed.), Gesetzliches Unrecht. Rassistisches Recht im 20. Jahrhundert, Frankfurt am Main 2005, pp. 27-64.

25 D. Nagl, Grenzfälle (footnote 4), pp. 53-61. The only German colony which decreed a definition of the term was German Southwest-Africa in 1893, see: Verfügung zur Ausführung der Kaiserlichen Verordnung, betreffend die Eheschließung und die Beurkundung des Personenstandes für das südwestafrikanische Schutzgebiet vom 8.11.1892, 1.12.1893, in: A. Zimmermann (ed.), Die Deutsche Kolonialgesetzgebung, v. II, (1893-1897) no. 55, Berlin 1898.

man law and those who fell under so-called "native law" (*Eingeborenenrecht*) was drawn in reference to racialising concepts. A memorandum in the Colonial Department of the Foreign Office (*Kolonialabteilung des Auswärtigen Amtes*) about the question of who was to be seen as 'a native' in a legal sense in the German colonies stated: "In Cameroon, the members of all the native tribes in the protectorate, as well as all other coloured people who are present in this area, fall under the class of natives".[26] This implied a distinction between the potential master and the potential dominated on the basis of a racialising division into 'white' and 'non-white' people.[27] Through the repeated subjection of the colonised to separate laws and separate jurisdictions, this legal dualism was part of the performative process of (re-)producing the colonial order of segregation.

On a more instrumental level the conservation of local customs and the inclusion of 'chiefs' as judges were seen as serving some of the pragmatic needs of governing the colony. First of all, local customs were conserved in order to prevent resistance which the intervention into the social structure might provoke.[28] Through establishing continuity a peaceful development was to be guaranteed and acceptance for the German government generated. At a congress organised by the German colonial society in Berlin in 1902 a presentation expressed this thought as follows: "Nothing makes a fruitful and peaceful colonisation easier than the conservation of the old and familiar customs and legal concepts."[29] For the sake of stability even customs considered as 'repugnant to culture', which were at the same time rooted too deeply in the social organisation and religious beliefs, like polygamy, should be kept at least for the moment.[30] Second, through the nomination of local leaders as judges, the colonial government tried to create a loyal elite. Through their support the colonisers hoped to maintain colonial domination. The right to judge was an eligible position, because it included the collection of fees. It was linked with the position of a chief (*Häuptlingswürde*) and secured influence over the political community. The appointment of judges thus distributed privileges in order to secure their support. These intermediaries functioned as concrete addressees for the administration; they had to pass on and assist in implementing administrative orders. The district office Buea wrote to the Gouvernement in 1905: "The chiefs are the main organs given to support the government. They have to be developed into functionaries

26 Memorandum on the question, who is counted as native, 1896, in: BAB R1001/5543, sheets 2-15, here sheet 7, see: J. Ruppel (ed.), Die Landesgesetzgebung (footnote 8), no. 403.

27 M. Pesek, Die Grenzen des kolonialen Staates in Deutsch-Ostafrika 1890–1914, in: A. Chatriot / D. Gosewinkel (eds.), Figurationen des Staates in Deutschland und Frankreich 1870–1945 / Les figures de l'Etat en Allemagne et en France, München 2006, pp. 117-140, here pp. 133-134.

28 See for example: Gouvernement to Staatssekretär des Reichskolonialamts, 21 September 1907, in: BAB R1001/5004, sheets 2-3, here sheet 2; Attachment to the report of the Station Akoloniga, 21 August 1912, in: ANY FA 1/622, sheet 106; v. Schreiber, Die rechtliche Stellung der Bewohner der deutschen Schutzgebiete, in: Zeitschrift für Kolonialpolitik, Kolonialwirtschaft und Kolonialrecht, 6 (1904) 10, pp. 760-775, here p. 768.

29 Köbner, Die Organisation der Rechtspflege in den Kolonien, in: Verhandlungen des Deutschen Kolonialkongresses 1902, Berlin 1903, pp. 331-376, here p. 336.

30 For example: v. Schreiber, Rechtsgebräuche der Eingeborenen der deutschen Schutzgebiete in Afrika, in: Beiträge zur Kolonialpolitik und Kolonialwirtschaft, 5 (1903/1904) 8, pp. 237-256, here p. 238; see also the file concerning regulations of the native marriage 1908–1914, in: ANY FA 1/622.

of the government […]".[31] Third, the chiefs' jurisdiction was designed to disburden the colonial administration from the many cases which were taken to them.[32] Integrating local authorities into the judicature was intended to secure an efficient and economic provision of jurisdiction in Cameroon.

The jurisdiction of the colonial officials was supposed to contribute to the maintenance of public peace as well. Colonial order subjected the indigenous population to the Germans. To secure this hierarchy, law was used as an instrument to punish any lack of respect for colonial authorities, even if they were only assumed by the Germans. In 1911, for example, a Cameroonian was punished with two weeks prison for not greeting the district officer. The district officer himself was the judge for this case.[33] This demonstrates to what extent the local officials used jurisdiction as a means of suppression and power in direct contact with the colonised.

Within this exercise of power punishment played a crucial role. It served to assert the absolute power of the local officer and the futility of opposition. Drawing on racist stereotypes such as the African's lack of a sense of freedom and the inability for abstract thinking, corporal punishment was presented as the most adequate penalisation for them. Arguments in favour of corporal punishment stated that it could quickly follow the deed and allow the person to return to work quickly, and they presented it as a traditional punishment, as a punishment the Africans understood best.[34] Imprisonment on the other hand was seen as unproductive, because Africans were held as unimpaired by the loss of personal freedom and as rather enjoying the free food and shelter.[35] For that reason, imprisonment as a punishment was combined with forced labour.

Corporal punishment functioned as an instrument of forceful subjection to the colonial order. The powerlessness of the beaten person gave the beating official a feeling of power and control.[36] Through the trials violence against the colonised was legitimised, establishing among others the distinction between the colonised, the body that could be beaten, and the coloniser, who was 'too civilised' to undergo such a punishment. The

31 Bezirksamt Buea to Gouvernement, 4 July 1905, in: ANY FA 1/614, sheets 22-25, here pp. 23-24.

32 See: Gouvernement to Bezirksamt Edea, 31 January 1906, in: ANY FA 1/614, sheets 28-29, here sheet 28; Gouverneur to Reichskanzler, 16 September 1893, in: BAB R1001/5003 sheets 60-61, here sheet 60; Gouverneur to Auswärtiges Amt, Kolonialabteilung, 23 April 1904, in: BAB R1001/5003, sheets 168-169, here sheet 168.

33 Edimo Ekwe to the Gouvernement, 19 August 1911, in: ANY FA 1/616, sheets 31-32, statement of the Colonial Officer, in: ANY FA 1/616, sheets 34-35.

34 Weickmann, Ueber die Frage der Schaffung eines selbständigen kolonialen Strafrechts, in: Verhandlungen des Deutschen Kolonialkongresses 1910, Berlin 1910, pp. 470-492, here p. 475; H. Hesse, Strafgewalt über die Eingeborenen in den Schutzgebieten, in: Zeitschrift für Kolonialpolitik, Kolonialwirtschaft und Kolonialrecht, 6 (1904) 2, pp. 122-125, here p. 125; R. Hermann, Die Prügelstrafe nach deutschem Kolonialrecht, in: Zeitschrift für Kolonialpolitik, Kolonialwirtschaft und Kolonialrecht, 10 (1908) 2, pp. 72-83, here p. 73; for legal debates on the necessity and educational function of corporal punishment, see also: M. Schröder, Prügelstrafe und Züchtigungsrecht (footnote 3), pp. 29-33.

35 Drucksachen des Reichstages, 9. Leg. Per., 4. Sess. 1895/1897, v. 7, no. 624, p. 46; Kölnische Zeitung, no. 683, 27 July 1896, morning edition, in: BAB R1001/5530, sheet 56.

36 T. v. Trotha, "One for Kaiser" – Beobachtungen zur politischen Soziologie der Prügelstrafe am Beispiel des "Schutzgebiet Togos", in: P. Heine / U. v. d. Heyden (eds.), Studien zur Geschichte des deutschen Kolonialismus in Afrika. Festschrift zum 60. Geburtstag von Peter Sebald, Pfaffenweiler 1995, pp. 521-551, here p. 531.

colonial officials' wide-spread use of violence can be seen as a product of the colonial state's weakness, its fragile power basis and its lack of legitimation through the African population.[37] In the face of this instability, anything which might threaten the colonial order had to be punished, and corporal punishment was part of the violent maintenance of order. It was a sign of the local officials' despotic domination, and the concentration of power in their person.[38]

1.3. Might is right: The subordination of law to colonial politics

The integration of local institutions was used to stabilise the political situation. The strength of the jurisdiction as a means of subjection followed from the lack of legal security for the colonised. This can be illustrated by the debate on the codification of native law (which included local customs and German colonial law). Codification was discussed as one means of modernising the traditional legal systems by introducing fixed and guaranteed laws for the colonised. From the 1890s onwards the Colonial Department in Berlin showed some efforts to codify a penal code for the colonies. These efforts can be interpreted as a reaction to the demands of the parliament. As a consequence to the abuses in the jurisdiction it requested greater securities for the colonised in the trials.[39] But codification also had many opponents. Critics put forward that the political situation and the state of development in the colonies did not allow for the enforcement of rigid regulations.[40] The officers were supposed to have enough freedom to react to any event that threatened order. Many opponents of codification argued that in the colony law had to be subjected to politics. An author of an article on the struggle of 'white' against 'black' stated frankly,

> *[…] if we want to keep to the premise made above that we want to stay the masters of the country, we have to continue to violate the basic rights. […] In the struggle for life, might is right.*[41]

Gyan Prakash has pointed out that in the colonies the rhetoric of civilisation was put into action by a quite different practice, one which drastically qualified 'Western' values proclaimed as universal. He states that the exceptional circumstances of the colonies were cited to justify the overthrow of principles that were pronounced to underlie civilising or

37 Similar interpretations give for example T. v. Trotha, Zur Entstehung von Recht. Deutsche Kolonialherrschaft im "Schutzgebiet Togo", 1884–1914, in: Rechtshistorisches Journal, 7 (1988), pp. 317-346, here pp. 318-326; M. Pesek, Die Grenzen des kolonialen Staates (footnote 27), pp. 124, 138. See also the article by Ulrike Lindner in this volume.

38 T. v. Trotha, Zur Entstehung von Recht (footnote 37), p. 324.

39 Drucksachen des Reichstages, 9. Leg. Per., 4. Sess. 1895/1897, v. 3, no. 157; Verhandlungen des Reichstages, Sten. Ber., 9. Leg. Per., 4. Sess. 1895/1897, v. 144, sessions 59 and 60, 13 and 14 March 1896, pp. 1419-1475.

40 W. Schütze, Farbe gegen Weiß in Afrika, in: Zeitschrift für Kolonialpolitik, Kolonialwirtschaft und Kolonialrecht, 8 (1906) 10, pp. 727-740, p. 728; Gouverneur v. Zimmerer to Reichskanzler Caprivi, 4 May 1894, in: ANY FA 1/292, sheets 2-6, here sheet 3.

41 W. Schütze, Farbe gegen Weiß (footnote 40), pp. 727-728.

colonising actions.[42] The picture drawn of the arbitrariness of the jurisdiction, its inconsistency and brutality, also stood in extreme contrast to the rhetoric of civilisation. But these grievances should not be seen as failures in realising the civilising mission; they are not a 'degeneration' of the idea of civilising which occurs on the spot. Such contradictions have to be seen as inherent to the concept of civilisation. They were the product of a complex system of thought that transformed cultural difference into a hierarchy of levels of culture and into a question of development.[43]

The lack of fixed regulations, the actual unity of judiciary, administrative and quasi-legislative functions in the person of the colonial officer, the Gouvernement's and Colonial Office's little or lacking opportunities to control the local officials all contributed to enabling arbitrary punishments. Very likely, one reason why the codification of a penal code was not achieved was because it would have reduced the officials' power.[44] The large manoeuvring room made criminal law a strong instrument for enforcing obedience. Thus it was not always law itself, but quite often the fact that legal regulations did not exist, that specifically made criminal jurisdiction such a brutal instrument of opression.

2. Adapting legal policy: Cameroonian interactions with law and jurisdiction

Recently, reflections of post-colonial theory on the agency of the colonised, as well as the interpretations of colonial rule, which emphasize disorder, lack of colonial presence and scarce penetration in the colony, have given new weight to the question in howfar certain individuals from the colonised population influenced the realisation of colonial rule on a daily basis. Following such approaches an analysis of legal policy has to ask how the transition from the idea into the immediate local legal means was shaped by the colonised themselves. The following section will therefore focus on the colonised as acting subjects who contributed to forming political processes and on the implementation and outcome of legal policy in Cameroon.

As seen above, the fear of potential resistance was an important factor within legal policy and was the main reason to reduce interference with the local laws. This is one example of how the colonial legal politics developed in relation to the expected reactions of the

42 G. Prakash, Introduction: After Colonialism, in: id. (ed.), After Colonialism: Imperial Histories and Postcolonial Displacements, Princeton 1994, pp. 3-17, here p. 3.

43 For the mechnism of transforming spatial or cultural difference into temporal difference, see: J. Fabian, Time and the Other: How Anthropology Makes Its Object, New York 1983, esp. pp. 15-18, 25-31.

44 T. Kopp, Theorie und Praxis des deutschen Kolonialstrafrechts, in: R. Voigt / P. Sack (eds.), Kolonialisierung des Rechts (footnote 3), pp. 71-92, here pp. 81, 87. Some works on the studies of Rudolf Asmis in Togo come to a similar conclusion: A. J. Knoll, An Indigenous Law Code for the Togolese: The Work of Dr. Rudolf Asmis, in: R. Voigt / P. Sack (eds.), Kolonialisierung des Rechts (footnote 3), pp. 247-269, here pp. 263-264; R. Erbar, Kolonialismus, Rassismus und Recht. Die versuchte Kodifizierung afrikanischer Gewohnheitsrechte und deren Konsequenzen für das Kolonialrecht in der deutschen Kolonie Togo, in: W. Wagner / U. van der Heyden (eds.), Rassendiskriminierung, Kolonialpolitik und ethnisch-nationale Identität, Berlin / Münster 1992, pp. 134-144, here p. 140.

colonised. The fragile position of the officials and their dependence on the support the local population limited the legal political concepts.

The colonised's encounters with the colonial jurisdiction can also be connected to resistance to colonial rule. As much as brutal punishments were intended to suppress attacks on the German authorities, they held the potential of provoking or confirming the colonised to act out their opposition to the colonial government. For example, in 1893, police-soldiers, which the government had bought from the King of Dahomey, started an armed rebellion as a reaction to the brutal and humiliating punishments of the chancellor of the colony and vice governor Leist. Leist had ordered to flog several of the soldiers' wives under the eyes of their husbands. This flogging induced an armed attack on the station.[45] Such acts of resistance severely questioned German authority and could often only be suppressed by more violence.[46]

Another extraordinary example of opposition to the practice of punishment is provided by the Duala – a group from the coast who mainly lived on trade with the inner country. They submitted petitions to the Gouverneur and to the German government and parliament (*Reichstag*) that criticised among other things the use of flogging and the different treatment of black and white people before the law. They denounced the grievances of the colonial jurisdiction and demanded to sentence the responsible officials in a just trial.[47] With the petitions they adopted practices of political expression that met principles, which were proclaimed to be introduced within a rationalisation of the native law – like formal procedures. In doing so, the Duala assumed the role of equal political subjects, of subjects of the German Reich. They undermined the racist image of a 'savage' and 'primitive' Africans. These petitions to the German Government and parliament in Germany also questioned the authorities in the colony by taking their political demands to the metropole. This questioned the competence of the institutions in the colony and drew attention to their practices. In order to avert this attack, the colonial authorities, resorted again to law for suppressing such threatening actions. The Akwa chiefs – the Akwa being one of the important Duala families – who signed a petition in 1905, were prosecuted for slander.[48] The harsh prosecution aroused a debate in the parliament. The trial was reviewed, and most of the objects of complaint were confirmed to be true. But although the second judge stated in his reasons a right to complain despite "the recognition of the necessity of masterhood (*Anerkennung des Herrenstandpunkts*) of the white

45 A. Rüger, Der Aufstand der Polizeisoldaten (Dezember 1893), in: H. Stoecker (ed.), Kamerun unter deutscher Kolonialherrschaft, 2 vol., v. 1, Berlin (East) 1960, pp. 97-147; M. Schröder, Prügelstrafe und Züchtigungsrecht (footnote 3), pp. 35-38.

46 A.-P. Temgoua, Résistances à l'occupation allemande du Cameroun 1884–1916, Thèse pour le doctorat d'état ès lettres, Yaoundé 2004 / 2005; V. Ngoh, History of Cameroon since 1800, Buea 1996, pp. 100-119.

47 Chiefs of Duala to Gouverneur, 29 October 1892, ANY FA 1/37, sheets 211-217; Manga Bell to Auswärtiges Amt, Kolonialabteilung, 13 August 1902, BAB R1001/4299 sheets 53-56, here sheets 54-55. Petition der Akwa-Häuptlinge, Drucksachen des Reichstages, 11. Leg.-Per., II. Sess. 1905/1906, no. 294, esp. pp. 11-12, 23, 25-26, 29-30, 38, 46. See: A. Eckert, Die Duala und die Kolonialmächte. Eine Untersuchung zu Widerstand, Protest und Protonationalismus in Kamerun vor dem zweiten Weltkrieg, Hamburg/Münster 1991, pp. 124-130, 136-159.

48 For the two trials, see: G. Walz, Die Entwicklung der Strafrechtspflege (footnote 3), pp. 133-146.

race over the black, as long as they have not achieved an equal or near to equal cultural level",[49] some statements of the petition were still assessed to be slander. The judgement was attenuated, but not repealed. This shows one important mechanism through which the officials used law to deal with colonised reactions: By classifying acts that were assumed to undermine German authority as treason, civil disorder, and riot, which appear in large number on the reports on the punishments of the stations and district offices,[50] they were transferred into the legal sphere and thereby criminalised. In consequence political resistance became a crime and could simply be met by punishment.

As shown above, interference with the laws of the colonised were justified by a mission to modernise and civilise them. However, as the debate on the codification has shown, the claim to increase legal security, to introduce a rational, uniform legal system was never met. Nevertheless, if only to some extent, trials could be and were used by Cameroonians to fight for their rights. Cameroonians for example sued Europeans for wages or because of bodily injury. Yet, asymmetrical power relations reduced the power of law in the hands of the Cameroonians. A draft-decree concerning the legal representation of Africans in trials between Europeans and Africans assessed the position of the colonised:

> *Under the present-day conditions, in consequence of the ignorance of the court language, of the law and the procedures, as well as in consequence of illiteracy and the factual impossibility of defending one's interests with an advocate who is familiar with the law and the procedures, for the natives it is extremely complicated to undertake a trial against a European.*[51]

In addition, the wide-spread racist conviction that Africans had a tendency to lie[52] weakened the position of the Cameroonian litigant. One manifestation of this conviction was the fact that Cameroonians were not sworn in as attestors. This practice was presented as a protection of the Cameroonians, who were seen as not capable of estimating the consequences of testifying under oath.[53] The missing oath weakened the statements. Standing against statements of a sworn-in European, statements of Cameroonians thus often did not suffice to sentence or recognise a claim against the European.[54] But even reduced to a minimum, the fact that Cameroonians could take their cases before a court had the potential to shake the fundaments of colonial order. This can be seen in the complaints

49 Drucksachen des Reichstages, 12. Leg. Per., 1. Sess. 1907/1909, no. 323, pp. 1-72, here p. 67.

50 See for example the reports on punishments of the stations Duala 1913/1914, in: ANY FA 1/617 and Edea 1908, in: ANY FA 1/618; Walz also connects criminal offences to acts of resistance when he explains the decline of the number of death penalties for offences against the state as a reflection of the pacification of the colony, G. Walz, Die Entwicklung der Strafrechtspflege (footnote 3), p. 273.

51 Copy of a draft-decree concerning the representation of natives by attorneys in mixed trials designed by the court in Kribi, 24 January 1910, in: BAB R1001/5517, sheets 249-252, here sheet 250.

52 See for example: P. Bauer, Die Strafrechtspflege über die Eingeborenen (footnote 1), p. 45; Drucksachen des Reichstages 12. Leg. Per., 1. Sess. 1907/1909, no. 323, pp. 1-72, here p. 8; Schwörende Neger, in: Hamburger Nachrichten, no. 38, 21 March 1909, in: BAB R1001/5544, sheet 30; see also: G. Walz, Die Entwicklung der Strafrechtspflege (footnote 3), p. 294.

53 G. Walz, Die Entwicklung der Strafrechtspflege (footnote 3), pp. 291-293.

54 Memorandum on the question of native attestors, in: BAB R1001/5544, sheets 21-23, here sheet 21.

of European tradesmen about a judge who supported Cameroonians' legal proceedings against Europeans. The judge assessed: "The Imperial district court of Lomie has always been troublesome for the tradesmen, and it has caused even more trouble since the natives have recognized its significance."[55] This demonstrates that Cameroonians took the opportunity to use law as a means of self-assertion. They did not only bring Europeans to court, but also used the 'native courts' in the following way.

In 1904 a 'native court' which had been appointed by the Germans, fined a chief because he had executed the station's order to deliver workers to clean the river. The court judged this ordered duty to work as a deprivation of personal freedom.[56] Although the station quickly revised this decision, it still forms an extreme example in which Cameroonians used the legal means the German colonial government had introduced to stand up to the local officers' orders.

As the last example already shows, the Germans could barely control all of the effects of the intermediaries' actions. Chiefs who were entrusted with certain functions could relieve the colonial government and build a link to the population. Nevertheless, for the Germans they also formed an uncertain factor within the power structure. The chiefs used the power their position held to pursue their own interests and did not act as passive instruments of the government. In the colonial documents such cases appear as problems, as a misuse of delegated powers or as mistaken decisions. The judges, for example, often tried to make money with their position, an action the colonial government tried to fight with intensified control.[57] The chiefs also used their position to secure political influence. For example, a report on an expedition from Jaunde to Duala in 1907 sorrowfully observed that the Akwa made use of the native courts and their intermediary position contrary to the German interests. They used

> *the native courts and the empowerment of some Bakoko-Chiefs, with whom they had negotiated [...] to act as masters of this region. Moreover, as a link to the colonial government, because of their ability to write and because of the lack of control over their still unknown trade routes to the East, they actually exercised a kind of rule.*[58]

In addition to the deliberate undermining of the colonial government's interest, the intermediary position itself was fragile.[59] As much as their position was strengthened through the competences the colonial government transferred to them, it was also weakened because they had to carry out orders against the will of their people, and because they were dependent upon the colonial government. The inevitable tension in the role

55 Copy of a report of the judge Schuhmacher in Lomie, 9 August 1913, in: ANY FA 1/299, sheets 20-21, here sheet 21.

56 Station Jabassi to Gouvernement, 24 September 1904, in: ANY FA 1/615, sheet 1-4, here sheets 2-3.

57 Criticism of native courts which defraud money, in: ANY FA 1/613, sheets 26, 28.

58 Expedition of Stein-Lausnitz 1907, Copy in: ANY FA 1/94, sheet 41.

59 T. v. Trotha, Koloniale Herrschaft. Zur soziologischen Theorie der Staatsentstehung am Beispiel des "Schutzgebietes Togo", Tübingen 1994, pp. 294-316; K. Hausen, Deutsche Kolonialherrschaft (footnote 12), pp. 166-167; J. Osterhammel, Kolonialismus. Geschichte – Formen – Folgen, München 2006, p. 76.

of the intermediary lay in the fact that his power to fulfil the orders of the colonial government relied on his independent authority, and at the same time, this authority was undermined by the connection with the colonial government.
These examples show that in the colonial situation law could yield manifold effects. Different individuals and groups took legal actions in order to try fighting for their rights. The integration of certain 'chiefs' into the legal structure was itself partly a reaction to the fact that many people took their cases to the colonial officials. It gave the empowered chiefs space to adapt the input of the colonial administration and thus to shape how the legal system in the colony worked. As shown, this had conflicting consequences for the stability of German rule. Sometimes local officials even questioned the chiefs about draft decrees.[60] These representatives thus participated in the process of developing legal regulations, if only in a commenting and advising role. These examples give only the first broad idea of how the legal order was negotiated not only between the metropole and the colony, but also between the colonial government and the indigenous population.

3. Different urgencies: Postponing the civilising mission

As shown above, the attempt to 'civilise' and the means to maintain public order often conflicted with each other. The emphasis on the different goals varied depending upon the concerns of the groups that formulated them. Especially with regard to academics, the colonial administration in Berlin and the Gouvernement of Cameroon emphasized that legal policy had to contribute to civilising the colonised. The differences partly resulted from a clash between on the one hand, theory, civilising claims from the legal profession or the colonial office in Germany, and on the other hand practice, the immediate need of the men on the spot to sustain order – the limited impact of civilising efforts in Cameroon itself have to be seen in this context. But the contradiction cannot be fully explained by dividing the aims into theory and practice. The conservation of local customs – propagated and praised by many jurists who had never been in the colonies and ordered by the colonial office in Berlin – stood in contrast to the civilising process of law.[61] Jurists as well as the colonial office were extremely concerned that the abolishment of certain customs would disturb the social and economic structure, cause resistance, and thus destabilise the colony. On the other hand, the local officials, although primarily confronted with the practicability of measurements and the shortcomings of colonial governance, nevertheless perceived the treatment of the indigenous population as a mat-

60 See for examples the comments of the local authorities to the draft decree concerning the marriages of the natives in 1908–1909, in: ANY FA 1/622, Ossidinge: sheet 27, Jabassi: sheet 30, Buea: sheet 39, Johann-Albrechts-Höhe: sheet 50.

61 E.g. J. Friedrich, Eingeborenenrecht und Eingeborenenpolitik, in: Zeitschrift für Kolonialpolitik, Kolonialwirtschaft und Kolonialrecht, 11 (1909) 6, pp. 466-480, here p. 478; H. Wick, Das Privatrecht der Farbigen in den deutschen Schutzgebieten, Diss. Münster 1913, p. 3; Gouverneur to von Bismarck, 21 December 1885, in: BAB R1001/5003, sheets 4a-6, here sheet 4a.

ter of development, even when this idea was reduced to the complaint about the low cultural level of the colonised.

One strategy for solving this conflict between the will to 'civilise' the Cameroonian population and the need to sustain order was to establish priorities and attach different time frames and levels of urgency to the aims of legal policy. The civilising mission remained a general vanishing point, but it was seen as more of a long term goal; the "purification of the tribal law" (*Läuterung des Stammesrechts*) should find an end "over the *years*".[62] It was not seen as a short term project. For the present situation, political necessities eclipsed the civilising mission as soon as its pursuit seemed to endanger colonial rule. In view of the fragility of the colonial state, order was the more pressing achievement. Civilising in a concrete and short term sense was rather seen as a task to create governable colonial subjects.

Apart from the allusions to civilising efforts made in order to justify the punishments, civilising aspects played a very minor role in the jurisdiction over Cameroonians. In the preparation of new decrees, it was however part of the discussion – as an ideal and general guideline, but not necessarily relevant for the moment. Most often the local officials responded that the proposed measures were too early and the actual condition in their district did not meet the necessary standards.[63] The will to reconcile both goals sometimes yielded peculiar results. The implementation of a decree concerning the registration of Cameroonian marriages caused a debate as to whether only the first marriage or all marriages could be registered. The wish to reduce the number and length of trials by clarifying and documenting legal relations was confronted with the civilising intention to abolish polygamy. The circular accompanying the decree expresses this tension. It also shows how absurdly the two aims were put together as a compromise. The circular advised that more than one marriage could be registered, but only the registration of the first marriage should be supported. The registration of more than four marriages was not allowed.[64]

Often, as a first step, civilising attempts were reduced to formalities. The above mentioned circular declares that the registration of marriages should adjust the marital customs to European law, at least "in form" for the time being.[65] The same emphasis can be found when the native courts were requested to write transcripts of their proceedings. This emphasis on formality and the dominance of the "education to work" concept in the German civilising discourse can also be seen as an example that measures discussed under the label of 'uplifting' were at the same time directed toward meeting the requirements of the colonial administration. The value of such measures for governing

62 Bezirksamt Jaunde to Gouverneur, 13 November 1913, in: BAB R1001/5490, sheets 22-23, here sheet 22, my emphasis.

63 See for example responses in the files concerning regulations of the native marriages 1908–1914, in: ANY FA 1/622 and concerning general regulations on exercising jurisdiction over the natives 1894–1909, in: ANY FA 1/292.

64 Runderlass no. 27, 11 April 1914, in: ANY FA 1/622, sheets 147-151, here sheet 147.

65 Ibid.

the colony already gave them significance for the present situation. Neither reducing 'civilisation' to rationalisation and governability nor postponing civilising efforts were German specialities.[66]

But what has to be taken in to account while reflecting on the timescale of the German colonial policy is that the Germans did not anticipate the impending loss of their colonies. They were thinking in very long periods. Measures were seen as "for now still too early", for such actions "time had not come", they "were not due", or the situation "was not ripe".[67] These were the variations of the general tenor of the opinion towards most of the proposed measures. They all implied a development that would allow such measures in the future. For the moment, the state of development in the colonies was seen as too low.[68] Even just before World War I, after which Germany lost its colonies, the state of the colonies was seen as a starting point in a transitory, constantly changing situation (*dauernder Wechsel*, *Zustand der Entwicklung*) in which civilisation was steadily proceeding (*fortschreitende Zivilisation*).[69]

Within this slow process of development little steps were to be taken one after another. "Gradually"[70] was a keyword in the advice for and description of the legal policy. Law should develop organically without ruptures or radical changes.[71] The slow transformation of local customs should prevent ruptures in the everyday social and economic life. If and when fixed laws could be guaranteed for the population of the colony was left unclear. Since order and stability were the main and most pressing concerns, other aims had to be subjected to them. The vague aim of civilisation was postponed. The stabilisation of German rule and the general cultural 'uplift' of the colonised population were seen as pre-conditions for the full transference of European laws.

66 Wolfgang Mommsen states that none of the European colonial authorities intended a far-reaching politics of modernisation, but rather tried to rationalise customary law in order to run their colonies smoothly. W. Mommsen, Introduction, in: W. J. Mommsen / J. A. de Moor (ed.), European Expansion (footnote 2), pp. 1-14, here p. 11.

67 Drucksachen des Reichstages, 11. Leg. Per., 1. Sess. 1903/1905, v. 1.2, no. 54, p. 48; Drucksachen des Reichstages, 9. Leg. Per., VI. Sess. 1895/1897, v. 3, no. 88, p. 42; Bezirksamt Duala to Gouverneur, 2 January 1914, in: BAB R1001/5490, sheet 27; Copy, statement of Referat A5 (legal administration and native jurisdiction), in: BAB R1001/5529-1, sheet 9.

68 Bezirksamt Kribi to Gouverneur, 4 January 1914, in: BAB R1001/5490, sheet 29.

69 Bezirksamt Duala to Gouverneur, 2 January 1914, in: BAB R1001/5490, sheet 27; Bezirksamt Jaunde to Gouverneur, 13 November 1913, in: BAB R1001/5490, sheets 22-23, here sheet 22.

70 For a few of many examples, see: K. Perels, Eingeborenenrecht in den deutschen Kolonien, in: Die Grenzboten, 71 (1912), pp. 5-12, here p. 11; Gouverneur's announcement concerning the introduction of the decree concerning the marriages of Cameroonians, 11 April 1914, in: ANY FA 1/622, sheets 147-151, here sheet 147; Jahresbericht über die Entwickelung der Schutzgebiete in Afrika und der Südsee im Jahre 1906/07 (as supplement to Deutsches Kolonialblatt), Berlin 1908, p. 6.

71 H. Hesse, Eingeborenen-Schiedsgerichte in Kamerun, in: Deutsche Kolonialzeitung, 9 (1896) 38, pp. 299-300, here p. 299; F. Meyer, Die Erforschung und Kodifikation des Eingeborenenrechts, in: Zeitschrift für Kolonialpolitik, Kolonialwirtschaft und Kolonialrecht, 9 (1907) 11, pp. 847-869, here p. 848.

4. Conclusion

In the process of colonisation law played several conflicting roles. It could be used by different groups to pursue their interests. In the hands of the local officials it functioned as an instrument of subjection and legitimized the use of violence. In the case of the chiefs it secured income and political influence. And it was used, if only to some extent, as a means of self-assertion by Cameroonians. The colonial government used legal policy as native policy. In designing this policy the assumed reactions of the colonised played an important role. The Gouvernement could only partly control the effects of their measures, which were also shaped by actions and adaptations by the colonised subjects. The conflict between the aims of legal policy was mainly solved in establishing stability as a priority and in subjecting the more abstract and idealised aim of civilisation to the upkeep of order. Postponing the civilising mission also followed the logic of the justification of colonialism: The civilising mission was never allowed to be completed, because in that case colonialism – or at least the justification for colonial enterprises – would have vanished.[72] The ambivalence of the civilising mission, which in the colonisers' logic could and were never to be completed, can be seen in the contempt for such colonised subject, who in the eyes of the Germans assumed too much of a 'white' lifestyle and habitus. The so-called negro in trousers (*Hosenneger*) attracted derision for his assumed hubris to think himself equal with the 'whites'.[73] The narrow limitations of the civilising mission also affected the Duala. In a similar manner to the '*Hosenneger*', their undertaking was punished because it was based on the assumption of a position of equality. As another presentation at the colonial congress of 1902 demanded:

> *[…] those, who see in the Negroes only the human and a member of humankind who is called to participate in the full human dignity, have to admit that we have to lead the Negro to the full consciousness of this dignity, to bring him to the consciousness of the servant to the state, before we can make him a free citizen.*[74]

Following this logic, the population of the colonies needed paternalistic guidance until they were civilised enough to be free citizens and gain equal rights. From this argument the need for different laws was derived and brutal punishments defended as the necessary way to achieve this goal, a goal which was at the same time postponed to a vague and far distant future.

72 M. Mann, "Torchbearers Upon the Path of Progress": Britain's Ideology of a "Moral and Material Progress" in India: An Introductory Essay, in: H. Mann/H. Fischer-Tiné, Colonialism as Civilizing Mission (footnote 11), pp. 1-26, here pp. 5, 24; G. Balandier, Die koloniale Situation (footnote 23), p. 117.

73 A. Eckert, "Der beleidigte Negerprinz". Mpundu Akwa und die Deutschen, in: Etudes Germano-Africaines, 9 (1991), pp. 32-38, here p. 32.

74 Leo, Die Arbeiterfrage in unseren afrikanischen Kolonien. Vortrag in der Abteilung Kassel der Deutschen Kolonialgesellschaft am 14. Februar 1902, in: Beiträge zur Kolonialpolitik und Kolonialwirtschaft, 4 (1902–1903) 2, pp. 44-53, here p. 44.