FORUM

Becoming a Subject in Court: Law, Subjection, and Resistance in the German Colony Cameroon

Ulrike Schaper

ABSTRACTS

In colonial jurisdiction, the colonial state and the colonized population met. The article examines the role which various actors attributed to jurisdiction in the relationship between the colonial state and its subjects, using documents of the German colonial administration in Cameroon and legal publications. First, it shows that the German colonial power granted its colonial subjects only limited rights by considering them legally minor and attributed a central role to the judiciary in disciplining them into obedient subjects. The second part examines how individuals of the Duala society in Cameroon employed colonial institutions to advance their interests and struggled for access to courts. Colonial jurisdiction, the analysis illustrates, had both subjugating and empowering effects.

In der kolonialen Gerichtsbarkeit begegneten sich der koloniale Staat und die kolonisierte Bevölkerung. Anhand von Akten der deutschen Kolonialverwaltung in Kamerun und juristischen Publikationen arbeitet der Artikel heraus, welche Rolle verschiedene Akteure der Gerichtsbarkeit im Verhältnis von Kolonialstaat und seinen Untertanen zuschrieben. Es wird zunächst gezeigt, dass die deutsche Kolonialmacht ihren kolonialen Untertanen über die Assoziation rechtlicher Minderjährigkeit nur eingeschränkte Rechte einräumte und der Gerichtsbarkeit eine zentrale Rolle in deren Disziplinierung zu gehorsamen Untertanen zuschrieb. Der zweite Teil untersucht, wie einzelne Individuen der Dualagesellschaft in Kamerun koloniale Institutionen für die Durchsetzung ihrer Interessen bemühten und dabei um den Zugang zu Gerichten kämpften. Koloniale Gerichtsbarkeit, so wird argumentiert, hatte gleichermaßen eine unterwerfende und ermächtigende Wirkung.

Comparativ | Zeitschrift für Globalgeschichte und vergleichende Gesellschaftsforschung 33 (2023) Heft 2, S. 225–241.
DOI: 10.26014/j.comp.2023.02.05

1. Introduction

In 1912, the Duala Dualla Vambe wrote to the German colonial government of Cameroon demanding that it help him in a conflict with his German employer:

> *Because I, as a member of the German colony, have no alternative than present my complaints to the authorities of the colony, I ask the Imperial Government obediently to take steps so that I can get my money.*[1]

Dualla Vambe said, his employer had imprisoned him for leaving his job without listening to his reasons. The employer had now filed a demand to punish him because Dualla Vambe refused to sign a contract extension. Dualla Vambe also complained that he had not received wages for an entire year.

Dualla Vambe derived the right and the necessity to turn to the colonial government from his status as a member of the German colony. It is difficult to reconstruct the circumstances of this case in detail as we would need further sources to do so. Nevertheless, this letter is an example of how members of the colonized population in the colony of Cameroon "consumed" colonial state power by using colonial legal institutions. In the colonial situation, different understandings of law and ideas about the status of the colonized population and their rights and duties towards the colonial state collided. Dualla Vambe's case raises the question of how legal contexts formed an arena in which colonial authorities and the colonized subjects interacted, how they negotiated colonial rule, and the status and rights of the colonized population.

Research on German colonial law has focused on the mistreatment of the colonized population. It described colonial jurisdiction as a means of domination and emphasized its brutality and arbitrariness.[2] Colonial law institutionalized colonial difference and excluded colonized populations from obtaining individual rights.[3] These observations fall into the literature on colonial statehood that revolves around the specificities of colonial states and the subject position it ascribed to the colonized.[4] Essential to understanding the functioning of colonial states is their underlying racist ideology and its implications

1 Archives Nationales Yaoundé, Cameroon (ANY), FA 1/616, Dualla Vambe to the colonial government (Gouvernement) of Cameroon, January 1912, 142–143, at 143 (all translations of quotations from German are mine).

2 R. Schlottau, Deutsche Kolonialrechtspflege: Strafrecht und Strafmacht in den deutschen Schutzgebieten 1884 bis 1914, Frankfurt am Main 2007; M. Schröder, Prügelstrafe und Züchtigungsrecht in den deutschen Schutzgebieten, Münster 1997; G. Walz, Die Entwicklung der Strafrechtspflege in Kamerun unter deutscher Herrschaft: 1884–1914, Freiburg/Breisgau 1981.

3 D. Nagl: Grenzfälle: Staatsangehörigkeit, Rassismus und nationale Identität unter deutscher Kolonialherrschaft, Frankfurt am Main 2007; H. Sippel, Die Klassifizierung „des Afrikaners" und „des Europäers" im Rahmen der dualen kolonialen Rechtsordnung am Beispiel von Deutsch-Südwestafrika, in: A. Eckert and J. Müller Transformationen der europäischen Expansion vom 16. bis zum 20. Jahrhundert, Loccum 1997.

4 See, for example, J. Herbst, States and Power in Africa: Comparative Lessons in Authority and Control, Princeton, NJ 2000; M. Pesek, Die Grenzen des kolonialen Staates in Deutsch-Ostafrika 1890–1914, in: A. Chatriot and D. Gosewinkel (eds.) Figurationen des Staates in Deutschland und Frankreich 1870–1945 / Les figures de l'État en Allemagne et en France, Munich 2006, pp. 117–140; M. Pesek, Koloniale Herrschaft in Deutsch-Ostafrika: Expeditionen, Militär und Verwaltung seit 1880, Frankfurt am Main 2005; C. Young, The African Colonial State in Comparative Perspective, New Haven 1994.

for the status and participation of the colonial population, as addressed in concepts such as the "rule of colonial difference" (Chatterjee), the "bifurcated state" (Mamdani), or "states without nations" (Comaroff).[5] It was race, Hammer and White argue, which naturalized the exclusion of the colonized from the modern political body and "made the free colonial subject unthinkable".[6]

While it is essential to consider the racism, force, and arbitrariness that dominated colonial jurisdiction, Dualla Vambe's claim suggests that law was more than a means to discipline colonial populations. I will address law and jurisdiction as vital arenas in which colonial authorities, legal scholars, and members of the colonized population negotiated subjecthood in the German colony Cameroon, examining the potentially empowering effects that colonial law unleashed.

I thereby draw on research that emphasizes the role of legality in colonial statehood.[7] Scholars have shown that legal conflicts – particularly over the status or influence of different groups – contributed to the emergence of the colonial state and its authority, as well as to its fractures.[8] Law played a crucial role in establishing and maintaining colonial rule. Legal disputes of colonial subjects influenced the day-to-day governing of the colony. Some members of the colonized populations could deploy colonial jurisdiction for their purposes.[9] Research has examined the conditions under which the use of courts enabled the colonized to exercise agency, as well as the conditions that constrained their

5 P. Chatterjee, The Nation and its Fragments: Colonial and Postcolonial Histories, Princeton, NJ 1993, p. 22; J. L. Comaroff, Governmentality, Materiality, Legality, Modernity: On the Colonial State in Africa, in: J.-G. Deutsch, P. Probst and H. Schmidt (eds.), African Modernities. Entangled Meanings in Current Debate, Portsmouth, NH 2002, J. L. Comaroff, Governmentality, Materiality, Legality, Modernity: On the Colonial State in Africa, in: J.-G. Deutsch, P. Probst, and H. Schmidt (eds.), African Modernities. Entangled Meanings in Current Debate, Portsmouth, NH 2002, pp. 114–115; M. Mamdani, Citizen and Subject, Contemporary Africa and the Legacy of Late Colonialism, Princeton, NJ 1996, pp. 16–21.

6 R. Hammer and A. White, Toward a Sociology of Colonial Subjectivity. Political Agency in Haiti and Liberia in: Sociology of Race and Ethnicity 5 (2019) 2, pp. 215–228, at 217.

7 M. Chanock, The Making of South African Legal Culture, 1902–1936: Fear, Favour, and Prejudice, Cambridge, UK 2001; Comaroff, Governmentality, Materiality, Legality, Modernity, pp. 107–134.

8 L. Benton, Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State, in: Comparative Studies in Society and History 41 (1999) 3, pp. 563–588.

9 See, for example, L. Benton, Law and Colonial Cultures: Legal Regimes in World History, 1400–1900. Cambridge, UK, 2001; D. Groff, The Dynamics of Collaboration and the Rule of Law in French West Africa: The Case of Kwame Kangah of Assikasso (Côte d'Ivoire), 1898–1922, in: K. Mann and R. Roberts (eds.), Law in Colonial Africa, Portsmouth, NH 1991, pp. 146–166; R. Rathbone, Law, Lawyers and Politics in Ghana in the 1940s, in: D. Engels and S. Marks (eds.), Contesting Colonial Hegemony: State and Society in Africa and India, London 1994, pp. 227–247; M. D. Lewis, Geographies of Power: The Tunisian Civic Order, Jurisdictional Politics, and Imperial Rivalry in the Mediterranean, 1881–1935, The Journal of Modern History 80 December (2008) 4, pp. 791–830; S. Serulnikov, Disputed Images of Colonialism: Spanish Rule and Indian Subversion in Northern Potosí, 1777–1780, in: The Hispanic American Historical Review 76 (1996) 2, pp. 189–226.

actions.[10] Moreover, scholars have begun to discuss the role that law and jurisprudence played in colonial subjectivation.[11]

These reflections tie into the work that transfers Foucault's concept of productive power to the colonial situation. The colonial context for subject formation differed from the European context. Colonial institutions did not extend far into African societies. Power relations were arterial rather than capillary.[12] The colonial state's limited administrative capacity and its intermediary structure prevented deep access to the colonial population. The colonial society that potentially produced subjects through interacting forces was remarkably heterogeneous, encompassing different cultural contexts and social networks as the native population was dominated by foreign rule, which often aimed to segregate Europeans and non-Europeans.[13] Colonial authorities and the colonized population had a limited common understanding; social relations between colonial officials and the colonized were usually confined to the administrative centres or individual personal relationships.[14] For the most part, members of the colonized population and Europeans lived in separate legal spheres.[15] However, scholars have pointed out that colonial subjects that made use of a colonial institution acted within a colonial governmentality.[16] The analysis, thus finally, speaks to these debates on the complex relations of subjection and resistance that unfolded in colonial settings, enhancing previous empirical works that emphasized that colonial rule did not just rely on coercive means.[17] It also builds on theoretical readings of law and the discourse of "rights" that employed a Foucauldian perspective.[18] Such works have emphasized the productive nature of the law in produc-

10 See e.g. E. Kolsky, Colonial Justice in British India. White violence and the rule of law, Cambridge UK, 2010; Mann and Roberts (eds.), Law in Colonial Africa; R. L. Roberts, Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895–1912, Portsmouth, NH 2005; R. Voigt and P. Sack (eds.), Kolonialisierung des Rechts: Zur kolonialen Rechts- und Verwaltungsordnung, Baden-Baden 2001.

11 T. Frederiksen, Authorizing the "Natives": Governmentality, Dispossession, and the Contradictions of Rule in Colonial Zambia in: Annals of the Association of American Geographers 104 (2014) 6, pp. 1273–1290; J. McDougall, The Secular State's Islamic Empire: Muslim Spaces and Subjects of Jurisdiction in Paris and Algiers, 1905–1957, in: Comparative Studies in Society and History 52 (2010) 3, pp. 553–580.

12 F. Cooper, Conflict and Connection: Rethinking Colonial African History, in: The American Historical Review 99 (1994) 5, pp. 1516–1545, at 1533.

13 Megan Vaughan has argued that official colonial discourse hardly transformed local contexts: M. Vaughan, Curing their Ills: Colonial Power and African Illness, Stanford, CA 1991, p. 24.

14 M. Pesek, Foucault Hardly Came to Africa: Some Notes on Colonial and Post-Colonial Governmentality, Comparativ 21 (2011) 1, pp. 41–59, at 47.

15 For the term legal spheres, I draw on S. E. Merry, The Articulation of Legal Spheres in: M. Hay and M. Wright (eds.), African Women and the Law: Historical Perspectives, Boston 1982, pp. 68–89, at 71.

16 U. Kalpagam, Colonial Governmentality and the Public Sphere in India, in: Journal of Historical Sociology 15 (2002) 1, pp. 35–58, at 49; D. Scott, Colonial Governmentality, in: Social Text, 43 (1995), pp. 191–220, at 212.

17 On the relation between resistance and subjection, see for example D. Engels and S. Marks (eds.), Contesting Colonial Hegemony: State and Society in Africa and India, London 1994; M. Lazarus-Black and S. F. Hirsch (eds.), Contested States: Law, Hegemony, and Resistance, New York 1994; J. C. Scott, Domination and the Arts of Resistance: Hidden Transcripts, New Haven 1990; addressing the economic colonial subject in Zambia, Frederiksen argues for including the "enabling, less coercive aspects of colonial power" into the analysis of colonial domination: Frederiksen, Authorizing the "Natives", pp. 1279–1280.

18 P. Fitzpatrick, Law as Resistance: Modernism, Imperialism, Legalism, Aldershot, VT 2008; B. Golder, Foucault, Rights and Freedom, in: International Journal for the Semiotics of Law 26 (2013) 1, pp. 5–21.

ing subjects in contrast to a liberal narrative that sees rights as protecting the freedom of subjects standing before the law.[19]

Following these reflections, I examine how the relationship between the state and its subject was understood differently by colonizers and colonized and how this relationship was regulated and negotiated through law. In the first part, the analysis focuses on the perspective of the colonial power, beginning with how officials used court sessions to conform the colonized to colonial rule and coerce them into obedience. Using official documents from the colonial administration, including reports of court sessions, as well as then-contemporary publications on colonial law, I examine how legal scholars and colonial administrators construed relations between the state and its subject relations in the colony, how legal regulations implemented these concepts, and how they contained and sanctioned racism, notions of segregation, and claims to white supremacy.

The second part addresses the colonized population. I gather scattered traces in documents of the colonial administration of how members of the colonized society referred to colonial institutions, in which they derived from their belonging to the German colony an obligation of the colonial authorities to enforce their interests. I use these incidents to explore how these individuals understood their relationship to the colonial government and their status as subjects of the colonial state. I then discuss how court use was related to subjugation and resistance within the colonial situation. Using theories of subjectivation and incorporating courts in considerations of colonial governmentality, I examine to what extent these individuals became subjected to the colonial state when they adopted the logic of its institutions or whether they contested colonial domination when they fought for their rights in the courts of the colonial power.

By highlighting the complex function of law in relation to colonial power and domination, I argue that law played a fundamental role in colonial subjection in the German colony of Cameroon. In court sessions, members of the colonized population were addressed as colonial subjects and claimed to be such – although their and colonial authorities' concepts of subjecthood were embedded in differing understandings of colonial rule. In exploring how the relationship between the state and its subject was presented, regulated, and negotiated in these encounters, I argue that court sessions produced ambivalent effects – simultaneously subjugating and empowering.

2. Colonial Subjects and their Legal Status

German colonial rule in Cameroon was established by a treaty – at least as the rival European powers were concerned.[20] Representatives of two German trading companies and influential Duala leaders signed this treaty in July 1884. The Germans continued their formal appropriation of the colony through further treaties with political authorities of

19 Golder, Foucault, Rights and Freedom, p. 11.

20 Bundesarchiv, Berlin-Lichterfelde, Germany (BArch) R 1001/4447, contract, 12 July 1884, p. 3.

other societies and forceful subjection of resisting groups. Colonial rule did not effectively change the legal situation in the early years. Legally, the colonies were not included in the territory of the German Reich.[21] German law therefore did not apply in the colonies; legal matters were hardly regulated. Since the colonial administration controlled only small parts of the colony, the accessible coastal regions in particular, colonial reality limited any claim to shaping legal relations.

The German authorities first attempted to formalize a legal order in the colonies in 1886 when the parliament passed a law on legal relations in the colonies (*Schutzgebietsgesetz*).[22] The *Schutzgebietsgesetz* introduced German law into the colonies via consular jurisdiction, which allowed consuls to have jurisdiction over Germans abroad under certain circumstances. Consular law was now applied to the colonies accordingly, all German laws relevant to consular jurisdiction applying to Germans and foreigners with citizenship of a state recognized under international law.[23] The *Schutzgebietsgesetz* did not regulate the legal relations of the colonized population, which fell under the legal status of natives (*Eingeborene*).[24] It transferred legislative power in these matters to the Kaiser, who could delegate it to officials in the colonies. Over time, these authorities issued several imperial decrees concerning only certain legal aspects.[25] Jurisdiction over the colonized population was delegated to colonial officials. These were supposed to consider German criminal law as well as the legal sensibilities of the local population and local law in non-criminal cases. However, officials often decided legal cases at their discretion. Heterogeneity, transitional solutions, and legal uncertainty characterized the jurisdiction over the colonized population.

2.1. Trials as arenas for state power

The colonial power's view of the colonial subjects was rooted in power-political necessities that made law primarily a means of discipline and control. Legal scholars and German colonial authorities saw colonial jurisdiction as an instrument for implementing colonial domination, as court sessions created a space where the colonized experienced German rule: "This [an orderly jurisdiction] is a very effective means of making the natives aware of German rule."[26] Court sessions symbolically displayed the presence of the colonial conqueror; they staged the colonial claim to power and provided a space to

21 K. Straehler, Schutzgebietsangehörigkeit, in: H. Schnee (ed.), Deutsches Kolonial-Lexikon, vol. 3, Leipzig 1920, pp. 312–313.

22 Riebow (ed.), Deutsche Kolonialgesetzgebung, vol. 1, Berlin 1893, no. 15.

23 Nagl, Grenzfälle, pp. 41–44.

24 I use "native" only to refer to the legal status of Eingeborene.

25 See J. Ruppel (ed.), Die Landesgesetzgebung für das Schutzgebiet Kamerun: Sammlung der in Kamerun zur Zeit geltenden völkerrechtlichen Verträge, Gesetze, Verordnungen und Dienstvorschriften mit Anmerkungen und Registern. Aufgrund amtlicher Quellen herausgegeben, Berlin 1912.

26 H. Hesse, Eingeborenen-Schiedsgerichte in Kamerun, in: Deutsche Kolonialzeitung 9 (1896) 38, pp. 299–300, at 299.

communicate the colonial order. As central colonial rituals, they helped to impart and enforce colonial rule in everyday practice.[27]

Court sessions made colonial authority visible, especially in the context of a geographic and social space that the colonial administration had only fragmentarily opened up. Where the colonial government had not set up stations, officials held court days as they travelled around their districts.[28] On the court days, the officials publicly heard cases and responded to requests brought before them. For the colonial authorities, these court days were both an opportunity to learn about the colonized and a peripatetic staging of the colonial claim to power.[29]

The court sessions were more than a mere spectacle of colonial rule. In court, the colonized came into contact with representatives of the state, its procedures, and its legal order. Court sessions were spaces where participants often learned for the first time about the working of colonial "law" represented by local officials and experienced the colonial state's claim to control jurisdiction. German officials hoped to consolidate their authority and legitimize their rule through effective conflict management. As one official wrote: "For the exercise of jurisdiction is at the same time the noblest and also the most difficult means in the exercise of administration, the means of gaining influence over the population and arousing its trust."[30] Rational and just jurisdiction (as opposed to a supposedly arbitrary traditional legal system) was thus intended to convince the colonized of the benefits of German rule in general.

German authorities intended to establish the colonial government as a guarantor of order and stability, through which litigants became consumers of state power that reconciled their conflicts. While the officials performed juridical functions, they acted as representatives of a colonial government that claimed control over conflict resolution in the colony as its sovereign right.

However, the state did not merely provide conflict resolution for the subjects to use at their discretion. Force and violence were ubiquitous elements of colonial jurisdiction. Attempts to codify colonial criminal law were unsuccessful, and German criminal law did not apply to the colonized population. Local colonial officials, who until the last years of German colonial rule were often military officers without legal training, were responsible for criminal justice.[31] The officials acted as both prosecutor and judge. In

27 J.-G. Deutsch, Celebrating Power in Everyday Life: The Administration of Law and the Public Sphere in Colonial Tanzania, 1890–1914, in: Journal of African Cultural Studies 15 (2002) 1, pp. 93–103; Pesek, Koloniale Herrschaft in Deutsch-Ostafrika, pp. 278–283.

28 Documentation of court journeys can be found in ANY FA 1/96 to 1/101.

29 For peripatetic forms of rule, see J. Paulmann, Peripatetische Herrschaft, Deutungskontrolle und Konsum: Zur Theatralität in der europäischen Politik vor 1914, in: Geschichte in Wissenschaft und Unterricht 53 (2002), pp. 444–461.

30 BArch R 1001/5490, statement of the military station in Banjo on delegating criminal jurisdiction to travellers in the interior, 10 October 1913, p. 6, no. 21.

31 K. Hausen, Deutsche Kolonialherrschaft in Afrika: Wirtschaftsinteressen und Kolonialverwaltung in Kamerun vor 1914, Zurich 1970, pp. 97–100; J. W. Spidle, The German Colonial Civil Service: Organization, Selection, and Training, PhD thesis, Stanford University, 1972, pp. 121–123; Walz, Entwicklung der Strafrechtspflege, p. 109.

addition, they had considerable discretionary powers over trials. Defence lawyers – often missionaries or prominent members of the local elites – were not formally permitted until 1902.[32] In prosecutions by colonial authorities, the colonized population experienced legal uncertainty and brutality.

In Germany, judicial corporal punishment had been abolished in 1871 and was now used only in reformatories, schools, and the family sphere.[33] In Cameroon, corporal punishment was a frequent sentence. If subjects disobeyed, officials beat the new order into them. Jurists, politicians, and anthropologists justified the sentencing of Africans to corporal punishment by invoking racist stereotypes. Corporal punishment, they argued, corresponded with Africans' low cultural level and their limited capacity for abstract thought, which required punishment that quickly followed the deed.[34] Africans were supposedly less sensitive to pain than Europeans; beating did not dishonour them.[35]

Colonial politicians, officials, and jurists saw criminal justice primarily as a means of transforming the colonized into obedient subjects. Colonial officers used corporal punishment to secure authority, to punish lack of submissiveness, and to discipline. As a judge in Cameroon wrote in 1901:

> *There* [in the colony] *the administration of criminal justice is primarily intended to have an educational effect, to teach the natives respect for the personality and property of others, and to accustom them to obeying the precepts and prohibitions of a state hitherto unknown to them.*[36]

Rigorous punishments should accustom the colonized to European legal principles and turn them into obedient colonial subjects. In this view, criminal justice could spread European values and "implant European views of decency and morality in the population".[37] Such considerations missed to reflect that harsh punishment could also spark opposition to the punishing authority rather than obedience.[38] Given the fragility of the colonial

32 Dienstvorschrift des Gouverneurs, betreffend die Ausübung der Strafgerichtsbarkeit gegenüber den Eingeborenen, Mai 1902, § 9 in: Ruppel, Landesgesetzgebung, no. 403.

33 Schröder, Prügelstrafe und Züchtigungsrecht, pp. 9, 11–12.

34 H. Hesse, Strafgewalt über die Eingeborenen in den Schutzgebieten, in: Zeitschrift für Kolonialpolitik, Kolonialrecht und Kolonialwirtschaft 6 (1904) 2, pp. 122–125, at 125; M. von Stetten, untitled, in: F. Giesebrecht (ed.), Behandlung der Eingeborenen in den deutschen Kolonien. Stellungnahmen deutscher Kolonialpioniere, Berlin 1898, pp. 105–110, at 109.

35 J. Graf Pfeil, untitled, in: Giesebrecht (ed.), Behandlung der Eingeborenen in den deutschen Kolonien, pp. 130–140, at 138; C. von Morgen, untitled, in: ibid., pp. 102–105, at 104; Weickhmann, Ueber die Frage der Schaffung eines selbständigen kolonialen Strafrechts, in: Verhandlungen des Deutschen Kolonialkongresses 1910 Berlin, pp. 470–492, at 475.

36 ANY FA 1/292, District judge Diehl to the colonial government, 15 July 1901, pp. 52–87, at 57.

37 P. Bauer, Die Strafrechtspflege über die Eingeborenen der deutschen Schutzgebiete, in: Archiv für öffentliches Recht 19 (1905) 1, pp. 32–86, at 70.

38 T. von Trotha, „One for the Kaiser" – Beobachtungen zur politischen Soziologie der Prügelstrafe am Beispiel des „Schutzgebietes Togo", in: P. Heine and U. van der Heyden (eds.), Studien zur Geschichte des deutschen Kolonialismus in Afrika. Festschrift zum 60. Geburtstag von Peter Sebald, Pfaffenweiler 1995, pp. 521–551, 531; A. Rüger, Der Aufstand der Polizeisoldaten (Dezember 1893), in: H. Stoecker (ed.), Kamerun unter deutscher Kolonialherrschaft, vol. 1. Berlin (East) 1960, p. 97–147.

power structures and the lack of state presence in large parts of the colony, violence was in this sense a sign of weakness of the colonial state rather than of its strength.[39]

2.2. Africans as legal minors

The concept of educational punishment shows how the colonial power viewed its relationship with the colonial subjects despite the fragmented and fragile power structures on the ground. For the German colonial authorities, effective punishment involved a paternalistic duty to protect subordinates and an abundance of power. As Governor Eugen von Zimmerer wrote to Chancellor Leo von Caprivi:

> *It must always be kept in mind that the punishment of the natives mainly pursues an educational purpose so that it must also be possible to punish cases that are not included in the criminal law* [Reichsstrafgesetz] *under crimes or offenses, just as the father also chastises his children for other than merely criminal offenses.*[40]

In this view, the educational ruler needed to be able to impose educational punishments for any action that displeased him.

The concept of educational punishment also followed from a self-image of cultural superiority. From this superiority, the colonizers derived a responsibility to educate and discipline the colonized and a duty to transfer the achievements of the supposedly superior culture to the colony.[41] This educational responsibility was based on the collective infantilization of Africans. African inferiority was constructed as a consequence of both ontogenetic and phylogenetic underdevelopment, thereby linking a universal history of human progress to the concept of individual development.[42] This supposed inferiority served to justify colonial rule and legal discrimination against the colonized. Legally, it was translated into a status of being minor, as one legal scholar proposed: "We maintain order in the colonies most securely and justly by making the legal personality of the native like that of a pupil to the educator."[43] The image of the child-like African legitimized the exclusion of Africans from German law. As he argued in a different article:

> *To bless savages suddenly with our civilized law* [Kulturrecht] *would be to treat children like adults, i.e., to spoil education* ab ovo. *We rule and direct both more safely and more justly if we* […] *leave the children as long as it is at all possible their games, and the*

39 Pesek, Grenzen des kolonialen Staates, p. 138.

40 ANY FA 1/292, Governor von Zimmerer to Chancellor Caprivi, 4 May 1894, pp. 2–6, at 3.

41 M. Schubert, Der schwarze Fremde: Das Bild des Schwarzafrikaners in der parlamentarischen und publizistischen Kolonialdiskussion in Deutschland von den 1870er bis in die 1930er Jahre, Stuttgart 2003, p. 114.

42 Johannes Fabian showed how the topos of the childish African contributed to the domination of Africans: J. Fabian, Time and the Other: How Anthropology makes its Object, New York 1983, p. 63; for the image of the child-like African, see M. Adas, Machines as the Measure of Men: Science, Technology, and Ideologies of Western Dominance, Ithaca 1989, pp. 305–307.

43 J. Friedrich, Eingeborenenrecht und Eingeborenenpolitik, in: Zeitschrift für Kolonialpolitik, Kolonialrecht und Kolonialwirtschaft 11 (1909) 6, pp. 466–480, at 476.

> *adults in the infantile developmental stage of humankind, the savages, as far as we can answer it with our conscience, for the time being, their legal habits.*[44]

The application of German law was framed as overburdening Africans, consequently excluding them from certain rights.
The promise of legal equality and civil rights was then linked to the prerequisite of a successful civilizing mission that would make Africans aware of their duties to the state. In a lecture to the German colonial society, it was asserted:

> […] *those who see in the N*, too, only the human being and a member of humankind called to share in the full human dignity, will have to admit that we must first lead the N* 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.*[45]

According to this logic, Africans needed discipline, paternalistic guidance, and the constant threat of punishment until they were civilized enough to attain equal rights.
While the above is an analysis of a particular conversation focussed on criminal law and its function for colonial rule rather than a description of how colonial domination worked, it illustrates that the authorities' concept of colonial subjecthood was shaped by their general understanding of colonial rule. They associated colonial subjecthood with duties rather than rights; full citizenship was only thinkable as resulting from a disciplinary process.

3. Acting as a Subject

Individuals from the colonized population that chose to involve colonial institutions in their legal matters, had a very different understanding of their relation to the colonial state. As the colonial legal situation was characterized by a high degree of legal pluralism, African litigants could often choose between different institutions for conflict resolution. In Cameroon, both colonial officials and local authorities who the German authorities empowered to preside over non-criminal cases adjudicated cases of the colonized population. This variety of judicial institutions allowed the colonized to choose, in non-criminal cases, the institution from which they hoped to obtain the most favourable decision or avoid a decision by appealing to another court.[46]
If litigants placed the outcome of cases in the hands of officials, they accepted colonial institutions as legal authorities, at least situationally, and acted as subjects towards them. In Duala, the colonial government established a special department for filing legal

44 J. Friedrich, Strafrechtsgewohnheiten der Eingeborenen in deutschen Schutzgebieten, Zeitschrift für Kolonialpolitik, Kolonialrecht und Kolonialwirtschaft 13 (1911) 4, pp 283–300, at 300.

45 Leo, Die Arbeiterfrage in unseren afrikanischen Kolonien. Vortrag in der Abteilung Kassel der Deutschen Kolonialgesellschaft am 14. Februar 1902, in: Beiträge zur Kolonialpolitik 4 (1902/1903) 2, pp. 44–53, at 44.

46 For a seminal text on the strategy of forum shopping, see K. von Benda-Beckmann, Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra, in: Journal of Legal Pluralism and Unofficial Law 13 (1981) 19, pp. 117–159.

cases among the colonized population and conducting trials, the *Palaverbüro* (office for palaver).[47] Officials often complained about the tedious nature of these court sessions. The large number of court records from the *Palaverbüro* in the National Archive indicates that members of the colonized populations often approached officials with their legal cases. The cases were varied and included conflicts related to trade, boundary matters between communities, and cases regarding women and their affiliation, whereabouts, or bride price matters, which, according to the officials, were most frequently brought to them.[48] Litigants either appeared at district offices, stations, and places where officials held their court days to present their requests, or they submitted a written statement.

Despite many discriminations within the colonial legal system, colonial legal institutions did not automatically work in favour of Europeans. In following legal procedures, judges sometimes worked against the interest of their fellow Europeans with whom they shared the superior position as members of the colonizing power. A district judge's report on the Lomie district court in the south-eastern part of the colony illustrates how colonial courts could work against the interests of Europeans. The judge's report responded to complaints that the number of lawsuits against Europeans in his district had increased and that he had allegedly encouraged the colonized population to sue Europeans. He denied the allegations regarding his responsibility for the increase. Instead, he pointed, first, to the frequent and increasingly unlawful behaviour of the Europeans, which suggests that racial hierarchies did not completely remove the court's function of punishing misdoings. Second, regarding the factors that led individuals from the colonized population to accuse Europeans, the district judge assumed that African clerks and messengers who worked at the court spread the word about the possibility of suing Europeans.[49]

Individuals from the colonized population needed knowledge of the existence and the functioning of colonial legal institutions to (successfully) bring their cases before a colonial court. Moreover, it helped if they knew the legal principles that applied there. The elites of societies that lived in the administrative and economic centres were, therefore, more likely to use the colonial legal procedures than members of populations that lived far from these centres and had little direct contact with Europeans. The Duala were comparatively more exposed to colonial rule. Located in the estuary of the *Wuri River* (today Wouri), they had dealt with European traders for years. They dominated the intermediate trade between the coast and the areas further inland and had economic and political influence in the coastal region. From the beginning of German colonial rule, the Duala elite developed a complicated and often tense but generally peaceful relationship with the German colonial government.[50] The introductory example and the case I will discuss

47 Minutes of court proceedings in ANY FA 4/55–FA 4/283.

48 See, for example, BArch R 1001/5003, Governor to Chancellor Caprivi, 9 December 1890, pp. 22–25, at 23; ANY FA 1/70, annual report of the station in Jabassi 1907/1908, pp. 50–64, at 53; ANY FA 1/614, District office Buea to the colonial government, 4 July 1905, pp. 22–25, at 24.

49 ANY FA 1/299, copy of a report of the judge Schuhmacher in Lomie, 8 August 1913, pp. 20–21, at 20.

50 See R. A. Austen and J. Derrick, Middlemen of the Cameroons Rivers: The Duala and their Hinterland, c. 1600–c. 1960, Cambridge, UK 1999.

below refer to Duala, which is no coincidence, but in the spatial and social distribution alludes to where colonial processes of subjectivation primarily began to take place within the fragmented sphere of German colonial domination in Cameroon.

3.1. Fighting for access to courts

In colonial contexts, access to courts was often a neuralgic point where colonial power relations and concepts of order became visible and negotiated.[51] In what follows, I will turn to incidents in which members of the colonized population derived from their affiliation with the German colony an obligation to have officials attend to their legal cases, even when they were denied access to colonial courts. Typically, such cases involved both Europeans and natives, so-called mixed cases. Because natives and Europeans fell under different laws, mixed cases were at odds with the segregated legal order. No regulation determined which law applied in mixed cases nor which court was responsible. In practice, the legal status of the defendant or accused determined which court had jurisdiction. However, this practice was controversial and led to conflicts over access.

The question of which court had jurisdiction over conflicts between natives and Europeans sparked a more general debate about Africans' access to colonial legal institutions. It materialized in a separate file in the administrative records, which primarily documents discussions about the political and legal implications of dealing with these cases. However, it also contains some copies of statements filed by African litigants, mostly from court cases involving the district court, whose files have been lost. The statements in the file on the mixed cases serve to tap into the colonial subjects' perspective on the matter.

In Duala, after 1900, district judges repeatedly refused to grant requests by natives to prosecute Europeans who had offended and injured them. The judges argued that there was no public interest in prosecuting such cases.[52] They also denied natives private suits, which the German law provided for in cases in which the criminal lawsuit was abandoned. Basing their decisions on a racist logic that normalized violence against the colonized and declined them the protection of their physical integrity by state institutions, these judges denied African individuals access to colonial legal institutions.

The Duala Lobe Manga Bell was one of the individuals whose accusations against his European superior were dismissed. Without the court record, it is hard to contextualize the case or to reconstruct Lobe Manga Bell's motivation. Nonetheless, his demand, as handed down in the mixed cases file, offers insights into his understanding of his position vis-à-vis the state.

He considered the colonial court an essential institution for resolving his conflict with a European and enforcing his rights. In response to the dismissal, he complained to the

51 For a case study on how the assignment to courts exposed contradictions and inconsistencies in the colonial architecture of power in the French protectorate of Tunisia, see Lewis, Geographies of Power.

52 BArch R 1001/5517, the colonial government to the secretary of the colonial office, 23 November 1911, p. 266.

chief justice. He demanded that the colonial state prosecute or at least allow him a private suit against his opponent:

> *The maltreatment inflicted on me by the store manager Elter, which has caused me pain, should, in my opinion, be in the public interest. If, however, this should not be the case, I would very politely request that a private suit be allowed in this case, for I cannot see why such misconduct on the part of Europeans towards the natives could be exempt. Far be it from me to get into a quarrel with Europeans, which makes a bad impression of a native. It is precisely for all these reasons that I am in need of judicial assistance.*[53]

Lobe Manga Bell referred to European legal concepts, such as "public interest" and "private suits". He spoke as a subject with individual rights, which the colonial state and its legal institutions could and should protect.

Lobe Manga Bell's demand helps to reflect the relationship of the colonized to the colonial state as they conformed to the colonial legal system. His demand involved both a form of submission and a form of resistance. By appealing to invoking colonial legal institutions and drawing on German legal concepts, African litigants adapted to the colonial legal system while gaining a means to resist colonial power within the legal system. It is worth noting that Lobe Manga Bell had lived in Europe for several years.[54] He had acquired knowledge of German legal institutions through his contact with colonial officials in Cameroon but probably also through his encounters in Germany. This example, again, indicates how vital knowledge of the legal system was for Africans to use colonial legal institutions.

As for the relationship between knowledge and subjection, Judith Butler, following Louis Althusser, stresses that speaking the rulers' language and mastering their practices are part of the subjection. The better subjects can master these practices, the more complete their subjection.[55] Applied to the colonial context, mastery of legal language and court procedures can be understood as part of the subjection to colonial rule, even though they were the prerequisites for (successfully) suing for legal rights and thus potentially empowering.

Lobe Manga Bell's complaint reflects the complex interconnections between subjection and resistance. He conceded that "a native" who fights with a European gives a "bad impression", which could be translated as an admission that he was not acting according to the colonizer's expectations of a submissive colonial subject. He presumably expressed this sign of obedience for strategic reasons, to support his general claim to legal assistance. Hence, his "ritual of subordination" would disguise his audacity and increase his chance of succeeding with his claim.[56]

53 Quoted in BArch R 1001/5517, decision of the chief justice, 21 September 1911, pp. 267–276, at 268–269.
54 Ibid., p. 268.
55 J. Butler, The Psychic Life of Power: Theories of Subjection, Stanford, CA 1997, pp. 115–116.
56 Scott, Domination and the Arts of Resistance, p. 96.

Interestingly, the chief justice initiated disciplinary action against the judge for denying Lobe Manga Bell justice. Furthermore, the chief justice decided that the district court should allow a private suit. After a complicated juristic explanation, he concluded that:

> *While it may seem undesirable to the racial consciousness of the European judge to see natives before him as plaintiffs in criminal cases, it must be impossible for his judicial consciousness to turn away unheard from this threshold those seeking justice who come before him with claims for legal protection founded in substantive law against persons subject to his jurisdiction.*[57]

In weighing the need for racial segregation against upholding the principles of the *Rechtsstaat* (state under the rule of law), the chief justice leaned towards the latter. His professional ethos as a jurist presumably demanded formal adherence to rules and principles of legal order, which he should not override for political reasons. Similar to the case of the judge in Lomie, a trained jurist chose to uphold legal principles rather than strictly subordinate the colonial legal system to the principles of power politics and racial hierarchies.

Subsequently, the colonial administration discussed the extent to which private lawsuits by Africans against Europeans should be permitted. The discussion resulted from the tension between different functions and ambivalent effects of law within the colonial order. Even though law served as a means of exercising power, it could become an empowering resource because of the legitimizing claim of a rule of law and its consequential, at least formal, adherence to legal principles.

Legal theorist Peter Fitzpatrick's reflections on the contradictory functions of law for resistance help explain this tension. Fitzpatrick distinguishes two notions of law-related resistance: a weak one and a strong one. According to the weak notion of resistance, law is closely connected to power. Law is, therefore, a target of resistance, something to be resisted, for example, when minorities fight against discriminatory legal regulations. In the strong notion, resistance is an irreducible counterpart to power and law; resistance can challenge power since it is responsive to its alterity. This is the case when political struggles against particular legal institutions obstruct the operation of the political system and induce a fundamental change in legal and political relations.[58]

Applied to the case of Lobe Manga Bell, resistance can be identified in the weak and strong sense: colonial law was the object of resistance and the mode of resisting. Within the architecture of colonial law, colonial subjects had limited rights. Lobe Manga Bell did not accept the discriminatory practice within jurisdiction. He directed his formal complaint against the colonial legal system. However, his claim was granted according to the principles of the same legal system. The recognition of his right to access a colonial court undermined the racist colonial order. It is impossible to estimate the frequency or absolute number of such cases. They were presumably only rare incidents since they

57 BArch R 1001/5517, decision of the chief justice, 21 September 1911, pp. 267–276, at 276.

58 Fitzpatrick, Law as Resistance, p. xi–xxiii; see also Golder, Foucault, Rights and Freedom, p. 19.

would mainly occur within the more formalized courts in the administrative centres rather than the discretional jurisdiction colonial official exercised further inland. Even if rare, such cases illustrate the empowering effect that the colonial legal system could have when it was invoked by individual subjects claiming their rights.

Colonial authorities in the metropole modelled colonial rule on the modern state. An administrative state enforced colonial rule through local officials who implemented the abstract claim to power at the local level.[59] Colonial rule as state rule included – at least as an ideal that the central administration in Berlin tried to uphold – observance of administrative procedures and the few legal regulations that had been enacted for the colonies.[60] It was precisely the ideal of *Rechtsstaatlichkeit*, the claim that the actions of state representatives were bound by law, that created opportunities for the colonized to take legal action against colonial officials.

The conflicts over the handling of mixed cases within the colonial administration show that colonial authorities did not grant colonial subjects these opportunities very willingly. At the very least, the extent to which they could subject the law to political goals and reduce the jurisdiction to an institution of punishment and intimidation was controversial. On site, officials often decided these issues in favour of power politics.

Still, colonial subjects used colonial legal institutions to undermine the colonial apparatus of power or to fight for their rights. Even the chief justice's insistence that courts were obligated to open their doors to Africans seeking justice was not unique to the case of Lobe Manga Bell. In response to Dualla Vambe's demand, the chief justice also noted in the file that Dualla Vambe should be referred to the district court for legal action.[61] These cases are more than peculiar exceptions in an otherwise structurally racist legal system. Rather, they point to a fundamental tension between two different logics that permeated this system: a racist logic, in which law served as an instrument of power politics, and the – albeit limited – principle of the rule of law that unfolded through colonial statehood.

3.2. Litigating between resistance and subjection

Examples such as Lobe Manga Bell's complaint can serve to explore the extent to which colonial subjects who used colonial legal procedures to challenge colonial rule needed to accept the colonial order and may even have supported sustained subjection to the colonial system in the long run.[62] Lobe Manga Bell's resistance operated with the tools of the colonial legal system but remained within the boundaries of that legal system imposed by the colonial power. In claiming or exercising his right to use colonial legal institutions, abiding by their rules, and arguing in line with colonial legal regulations or principles,

59 T. von Trotha, Koloniale Herrschaft: Zur soziologischen Theorie der Staatsentstehung am Beispiel des „Schutzgebietes Togo", Tübingen 1994, pp. 62, 132–133.

60 U. Schaper, Koloniale Verhandlungen: Gerichtsbarkeit, Verwaltung und Herrschaft in Kamerun 1884–1916, Frankfurt am Main 2012, pp. 143–156.

61 ANY FA 1/616, Dualla Vambe to the colonial government, January 1912, pp. 142–143, at 143.

62 For a similar argument in the case of Bolivia, see Serulnikov, Disputed Images of Colonialism.

Lobe Manga Bell thus adapted to fundamental aspects of the logic of colonial rule and critical features of colonial (self-)government. Claiming the right to appear before colonial courts thus produced them as subjects in relation to the colonial power.
Even as these procedures were directed against colonial authorities, they also produced colonial subjection.[63] Lobe Manga Bell, who wanted to speak and be heard as a colonial subject, had to adjust to the regimentation of colonial discourse and related to European legal principles. In doing so, he aligned his actions and self-knowledge with colonial categories. Seen in this light, Lobe Manga Bell's insistence on being heard in court was a consequence of colonial subjection.
By denying individuals such as Lobe Manga Bell and Dualla Vambe the right to appear in court, German colonial authorities not only sought to maintain the segregated court system but also deprived colonial subjects of the right to speak (up) in the colonial legal space. This refusal also served to implement their notion of colonial subjecthood that relied on discipline rather than freedom to rule the colonized.
The occasional legal case could not liberate the colonized population from their inferior legal and political status, the dual legal system, the legal uncertainty inherent in the colonial legal order, nor the racialized restrictions that determined their opportunities to participate in the political process. Still, in a sense, such trials against colonial officials did undermine the legal order because these trials contradicted the colonial hierarchies and the unconditional superiority that the Germans claimed over the colonized population in Cameroon. When Dualla Vambe and Lobe Manga Bell litigated against Europeans, they claimed a different subject position than that ascribed to them by the colonial system. Their agency in these cases was an effect of their subordination to colonial legal institutions, which they directed against the colonial power apparatus or its representatives.

4. Conclusion

German colonial government ascribed only limited rights to the status of the colonial subject. In their view, the relationship with their subjects was defined by the need to discipline and civilize them. Only when Africans had become accustomed to the workings of a modern state were they to be given comprehensive political rights. Legally, this translated into minority status and restricted rights.
In adjudicating legal cases of the colonized, colonial officials affirmed the colonial state's claim to control the law and conflict within the colonial state's territory. Colonial jurisdiction should transform the colonized population into governable subjects submitting to the demands and regulations of the colonial state. By entering jurisdiction, individuals from the colonized population became visible, were addressed, and behaved as subjects.

63 For a theoretical reflection on the political ambivalence of rights as both enabling and disabling, see Golder, Foucault, Rights and Freedom, esp. pp. 18–19.

Colonizers and colonized both resorted to legal means and legal spaces to negotiate colonial rule and subject-state relations.

However, since German colonial rule was fragmentary and short-lived, it is questionable to what extent it could shape the self-perception of the colonized, how far it bound them to a colonial identity based on self-knowledge, shaped by colonial discourse, and to what extent it could intervene in their psychic life – all crucial aspects of a Foucauldian concept of subjectivation.[64] Even for colonial regimes in Africa that lasted longer than the German colonial empire, the question has been raised to what extent colonialism created subjects who – upon entering its discourse as speaking subjects – were produced by modern power.[65]

Despite these limitations, the cases show that by litigating for money and accusing colonial officials or European employers of misconduct, members of the colonized population made the colonial state a guarantor of their rights and, as subjects of the colonial power, claimed the support of its institutions. Contested notions of colonial subjecthood underlay these conflicts. While colonial authorities sought to instrumentalize law as a means of power politics, individuals from the colonized population, sometimes with the help of European judges, made the officials discharge their juridical duties, basing their claims on their affiliation with the colony. At least for distinct groups within the administrative centres, colonial legal institutions thus became a point of reference for their self-positioning vis-à-vis state institutions and their actions. By demanding legal action, they expressed a position as subjects of the colonial state or at least derived claims against state institutions from their membership in this political entity.

In the colonial situation, law was more than an instrument of repression and forceful subjection. Its effects oscillated between subordination and empowerment. By litigating, Africans conformed to the colonial rationality, as far as they played by the rules of the state. At the same time, they gained new opportunities to act and a new parameter for their self-positioning and self-knowledge, as, for instance, individuals with rights, as subjects with complaints against the state. By claiming to introduce the principle of the rule of law, the colonizers made it possible for Africans to sue Europeans. Members of the colonized population used this opportunity and thereby claimed a subjecthood counter to colonial hierarchies. They invoked the law and claimed rights to which they were entitled to a limited extent within the framework of colonial statehood, despite the racist subordination of the colonial population. Through these legal acts, they submitted to the colonial system while trying to resist some of its abuses.

64 M. Foucault, The Subject and Power, in: Critical Inquiry 8 (1982) 4, pp. 777–795, at 781.

65 Vaughan, Curing Their Ills, p. 11.