Irresponsible Boys, Promiscuous Girls: Maturity, Gender, and Rape Myths in the Criminal Tribunals of Colonial Dahomey, 1924-1940

Garçons irresponsables et filles immorales. Genre, âge et viol devant les tribunaux du Dahomey colonial, 1924-1940

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Irresponsible Boys, Promiscuous Girls: Maturity, Gender, and Rape Myths in the Criminal Tribunals of Colonial Dahomey, 1924-1940

Dahomeans believed maturity or rather immaturity played a crucial role in defining what sex acts constituted rape in both the precolonial kingdom of Dahomey and the French colony of the same name. This belief shaped indigenous assessors' perceptions of who could legitimately claim victimhood versus who could not and who they would consider a rapist and who they would not. This connection between maturity and rape generated two foundational rape myths that guided decision making in colonial tribunals. Prior to the 1931 reorganization of native tribunals, the French controlled tribunal sentenced youthful offenders convicted of rape to a few months jail time and sometimes a small fine. After indigenous assessors gained a deliberative voice in 1931, the colonial tribunals dismissed the charges of rape against teenage defendants. While men of all ages admitted to "messaging around" with girls who accused them of sexual assault, this defense proved most convincing in instances of sexual relations occurring between male and female peers in their teen years or younger. The choice of the phrase "messaging around" euphemistically framed an act of non-consensual, forced sex as a benign event. The second rape myth that affected the outcome of rape cases concerned the tribunals' expectations about elder girls' alleged promiscuity. The tribunal presumed that elder, teenage girls were both willing participants and dubious witnesses concerning their sexual experiences. There existed a sexual double standard where the colonial tribunals believed that fourteen and fifteen-year-old boys acted without discernment when engaging in sex play with their peers and could not be held accountable because of their supposed lack of knowledge about sex. On the hand colonial tribunals assumed that girls, who were the same age or younger than the boys, possessed knowledge that denied them access to claiming victimhood. This article examines accusations of child or adolescent sexual assault when the perpetrator and victim were peers with approximately five years or less separating their ages. Such cases represented a minority of cases in the colonial tribunal where the median ages of girl victims averaged just over ten years of age and that of the male perpetrators twenty-eight. Examining these select cases of peer sexual encounters reveals norms—and their transgressions—of youthful interactions between peers of different genders as well as colonial stereotypes about youthful, African sexuality.

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Les Dahoméens pensent que la maturité ou plus précisément l'immaturité est un facteur déterminant pour que des relations sexuelles soient qualifiées, ou non, de viols. Cette croyance, présente à l'époque précoloniale, persiste et évolue sous le régime colonial. Elle influence les conclusions des assesseurs indigènes dans leur perception des affaires de viols, et dans leurs définitions des victimes légitimes et des agresseurs potentiels. Ces liens entre maturité et viol créent deux mythes principaux dans les tribunaux coloniaux du Dahomey : d'une part, seules les jeunes filles pré-pubères sont considérées comme des violées probables et d'autre part, après 1931, les assesseurs indigènes et leurs homologues français décident que les jeunes garçons de moins de 20 ans ne peuvent pas être des violeurs. Avant la réorganisation des tribunaux (3 décembre 1931), les juridictions sont dominées par les Français qui condamnent les jeunes délinquants reconnus coupables de viols, à quelques mois de prison, voire à de légères amendes. Ensuite, les assesseurs indigènes obtiennent une voix délibérative : on assiste dans les tribunaux coloniaux à l'annulation des charges contre les jeunes violeurs. Alors que les hommes de tous âges admettent « s'amuser » avec les jeunes filles qui les accusent de violences sexuelles, ce type de défense semble encore plus convaincant lorsque les relations sexuelles se déroulent entre pairs, pendant l'adolescence. Le choix de ce terme « s'amuser » transforme un acte sexuel, non-consenti et forcé en un évènement bénin. Ensuite, les qualifications de viol dépendent des perceptions du tribunal concernant les adolescentes pubères et leurs connaissances sexuelles. Les juridictions considèrent que les adolescentes les plus âgées sont tout à la fois des participantes enthousiastes aux expériences sexuelles, et des témoins douteuses dans ces affaires. Il existe ici un double standard sexuel, puisque les tribunaux coloniaux croient que les garçons de 14 ou 15 ans agissent sans discernement quand ils s'amuse sexuellement avec leurs pairs. Ils ne peuvent être reconnus comme coupables au vu de leur méconnaissance sexuelle. Alors que de l'autre côté, ces mêmes tribunaux considèrent que les jeunes filles, du même âge, ont elles une connaissance qui empêche de les considérer comme des victimes. Cet article examine aussi les accusations de viol de fillettes ou d'adolescentes dont les agresseurs sont leurs aînés de plus de 5 ans. Ces cas sont minoritaires puisque l'âge médian des jeunes filles victimes est en moyenne de 10 ans alors que les jeunes prévenus ont autour de 28 ans. L'étude de ces quelques situations de relations sexuelles entre pairs révèle ainsi les normes – et leur transgression – en termes d'âge, de genre et de « race ».

Keywords: rape, sexuality, Dahomey, Benin, colonial tribunals, French West Africa, sexual consent, maturity.

Mots-clés : viol, sexualité, Dahomey, Bénin, tribunaux coloniaux, Afrique occidentale française, maturité sexuelle, consentement.

Since the kingdom of Dahomey's founding in the seventeenth century, rape was a potent word with the harshest sort of condemnation attached to it. Oral tradition in the early twentieth century credited the kingdom's founder Ouégbadja with declaring rape a capital offence during his reign from c. 1645 to c. 1685.¹ Historians know little about what sorts of sexual violence constituted rape during the period prior to the French conquest of 1892-1894. During the colonial era 1894-1960, Dahomean views of rape encountered French ones in tribunals composed of men from both cultures. Nowhere in any colonial law from Dahomey, nor in the metropolitan Napoleonic Penal Code of 1810 is the term rape formally defined. How did this hybrid colonial legal body define rape? How did this definition change over time?

Cultures continually reshaped the legal definition of rape and the cultural profiles of who could be victims of this crime and who could perpetrate it.² Historically speaking, rape was always a gendered crime with a female victim and male perpetrator. Besides gender, what other factors became foundational in popular colonial myths about rape and rapists? Historian Joanna Bourke has explained that the danger of rape myths is that they create unified communities that transform "commonplace assumptions into objective truths."³ On which assumptions did French colonial officials and Dahomean assessors find common ground and then proceed to transform these stereotypes into truths? In colonial Dahomey, the maturity of both the victim and the assailant were important factors in delineating the line between illicit crime and youthful sexual

1. HERSKOVITS Melville J., *Dahomey: An Ancient West African Kingdom*, vol. 1, New York City, JJ Augustin, 1938, p. 87-88 & 290.
BRUNET-LA RUCHE Bénédicte, "'Crime et châtement' aux colonies : poursuivre, juger et sanctionner au Dahomey de 1894 à 1945", Doctoral thesis, université Toulouse le Mirail - Toulouse 2, 2013, p. 76.

2. FREEDMAN Estelle B., *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation*, Cambridge, Harvard University Press, 2013, p. 3-6.

3. BOURKE Joanna, *Rape: Sex, Violence, History*, Emeryville, Counterpoint, 2007, p. 23-24.

4. For French West Africa, Kane included the age of victims, but she did not include it as a substantive variable in her analysis. See KANE Aminata, "Violences sur les femmes, violences des femmes en Afrique occidentale française (1895-1960) : Histoire des femmes d'après les registres judiciaires", Doctoral thesis, université de Provence-Aix-Marseille I, 2008. The literature on histories of sexual violence is expanding and concentrates on South Africa. The following sources mention age or indirectly discuss the youthfulness of victims, THORNBERRY Elizabeth, "Virginity Testing, History, and the Nostalgia for Custom in Contemporary South Africa", in *African Studies Review*, n° 58 (3), December 2015, p. 129-148. SHADLE Brett L., "Rape in the Courts of Gusiland, Kenya, 1940s-1960s", in *African Studies Review*, n° 51 (2), 2008, 27-50.

BENSON Koni and CHADYA Joyce M., "Ukubhinya: Gender and Sexual Violence in Bulawayo, Colonial Zimbabwe, 1946-1956", in *Journal of Southern African Studies*, n° 31 (3), 2005, p. 587-610.

5. Here I am using peer to mean youthful persons who are approximately the same age and generally no more than five years difference in age.

6. For an overview of some of the complex issues associated with using age in African Studies, see AGUILAR Mario I. (ed.), *Rethinking Age in Africa: Colonial, Post-Colonial, and Contemporary Interpretations of Cultural Representations*, Trenton, Africa World Press, 2007. In 2017, UNICEF stated that two out of every three births were not recorded in Sub-Saharan Africa.

exploration that went too far. Age profiling in rape cases in Dahomey became a determining element in how popular myths about rape obscured the evaluation of the evidence presented to the colonial tribunal.

Histories of rape in Sub-Saharan Africa may mention the age of rape victims, but rarely do they consider it as a meaningful category in the analysis or consider the age of the perpetrator at all.⁴ This article places maturity at the center of the analysis of rape. In doing so, it illuminates underlying assumptions about gendered stereotypes of juvenile sexuality. As these stereotypes became shared between Dahomean and French male legal authorities, they influenced the decision-making processes of colonial tribunals.

This article examines incidences of juvenile peer sex acts that Dahomeans brought to the district administrators in colonial Dahomey in the hope of seeking formal redress in colonial tribunals.⁵ Here "peer" indicates that the victim and the perpetrator were both teens or younger, generally the cases involved girls aged ten to sixteen and boys aged fifteen to eighteen. Age is a problematic concept in African history, but one of the necessary criteria used to designate juvenile status. Across colonial Africa, age was estimated with recordkeeping of births being virtually non-existent until the postcolonial era.⁶ Estimated ages should be thought of as a reflection of the perceived maturity of the individual. The ages that the tribunals assigned these young people should be taken as estimates and a reflection of their social ages. Social ages were calculated on girls' and boys' assessed level of their maturity based on

a combination of factors including their socio-economic roles in households, their physical maturation, and their familial status.

CHOOSING TO GO BEFORE THE COMMANDANT:

CASES OF PEER RAPE IN CONTEXT

Dahomeans did not perceive colonial tribunals as the obvious or even preferred choice for addressing juvenile sexual assault involving peers. This was due to a variety of factors including the relative newness of colonial tribunals, the continued functioning of precolonial means of dispute resolution, and the reticence from girls to disclose sexual assaults to family members or authorities. Approximately eight percent of cases of colonial rape or nineteen of the available two hundred and thirty-two cases fit into the category where both victim and perpetrator were in their teens or younger.⁷ Each of these nineteen cases had varying degrees of documentation in an assortment of forms. Some had only a brief entry in the *État des jugements*, whereas others had relatively complete legal dossiers including multiple *procès-verbaux*, *réquisitoires*, and medico-legal certificates. The *procès-verbal* recorded the questions of tribunal members as well as the responses of those testifying to these prompts. *Procès-verbal* from witnesses, the accused, and the victim formed the core of the pre-trial dossier. The *procès-verbal* contained much unfiltered information that disappears from the *réquisitoire*, or formal indictments.

Due to the vagaries of archival preservation, the evolution of indigenous court usage, and changing recordkeeping procedures, ninety percent or just over two hundred of these cases are concentrated in the period 1924-1940.⁸ Native courts began operating in the *Afrique occidentale française* (AOF) in 1905.⁹ France then reorganized the structures and procedures of these indigenous courts periodically, in 1912, 1924, 1931, and 1941. While both French and Dahomean men staffed the colonial criminal tribunals, a French officer acted as a gatekeeper in the opening of an investigation into charges. This administrator then served as the head magistrate or president in criminal courts. Two French and two indigenous assessors assisted the head magistrate. While always subordinate to a French colonial official, the role of the indigenous assessors evolved with each subsequent reorganization. The 1924 and 1931 reorganizations progressively gave more authority to indigenous assessors in

7. While the focus of this article is on this relatively small group of cases, I do contextualize these and contrast them with knowledge gained from analyzing the two hundred other cases where rape was the exclusive charge. This figure comes from an exhaustive review of all cartons of judicial material available in the 1M series at the Archives Nationales du Bénin (ANB). This series contained 190 cartons of materials of which 23 were empty or missing and 6 had 2 cartons per their numeric designation for a total of 173 cartons of materials.

8. For a detailed account of the state of organization of the ANB, see BRUNET-LA RUCHE, "Crime et châiment aux colonies...", *op. cit.*, p. 53-55.

9. For a history of the establishment of the native court system, see ROBERTS Richard, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895-1912*, Portsmouth, NH, Heinemann, 2005. There was a second, separate system for French citizens. The AOF was composed of Senegal, Mauritania, French Guinée (Guinea), French Soudan (Mali), Haute Volta (Burkina Faso), Côte d'Ivoire, Niger, and Dahomey (Benin).

10. These administrative reorganizations affected recordkeeping procedures, regulations concerning colony- and federation-level oversight of local courts, procedural norms, the composition of the tribunal, and the role of indigenous members in the investigative and decision-making processes. The names and jurisdictions of these tribunals changed. MILLERAND A., "Arrêté promulguant en Afrique occidentale française le décret du 22 mars 1924, réorganisant la Justice indigène en Afrique occidentale française", in *Journal officiel de l'Afrique occidentale française (JOAOF)* 20 (1026) 1924/05/24, p. 398-406; CARDE Jules, "Circulaire sur la réorganisation de la Justice indigène", in *Journal officiel de l'Afrique occidentale française*, 20 (1026), 1924/05/24, p. 395-398; BRÉVÉ Jules, "151 A.P. Arrêté promulguant en Afrique occidentale française le décret du 3 décembre 1931, réorganisant la Justice indigène en Afrique occidentale française", in *JOAOF*, 1932/02/06, p. 125-134. The empowerment of indigenous assessors in more substantive roles was part of a larger shift from an assimilation approach to association. See Gouvernement général de l'Afrique occidentale française, *Circulaires de*

M. le Gouverneur général Jules Brévié sur la politique et l'administration indigènes en Afrique occidentale française / Gouvernement général de l'Afrique occidentale française, Gorée, Imprimerie du gouvernement général, 1935. BETTS Raymond, *Assimilation and Association in French Colonial Theory: 1890-1914*, New York City, Columbia University Press, 1961. CROWDER Michael and OBARO Ikime, (ed.), *West African Chiefs: Their Changing Status under Colonial Rule and Independence*, New York, Africana Publishing Corporation, 1970.

11. For more information on this teenage repeat offender see cartons 1M81, 1M94, 1M100, 1M168, & 1M182 in ANB. Note that dossiers are not compiled for individual cases. Documents concerning a single rape case may be randomly in multiple archival cartons.

12. For a fuller discussion of the many possible reasons for Dahomeans' avoidance of colonial tribunals in all types of cases, see "Chapitre 2. Ne pas porter plainte : contourner et s'opposer à la justice indigène" in the fourth chapter of BRUNET-LA RUCHE, "Crime et châtiement" aux colonies...", *op. cit.*, p. 549-58.

the higher-level tribunals.¹⁰ Whether this made the tribunals a more attractive option to Dahomeans for the adjudication of juvenile rape cases or not is difficult to determine. Nine cases of juvenile peer rape are from the period 1924-1931 and ten cases are from the period 1932-1940. Eight of the nine from the earlier period resulted in convictions with one case whose outcome remains unclear. The archives contain no information on cases that resulted in dismissal, acquittal, or no formal judgement during this period. This contrasts with the ten cases from 1932-1940. Only one of these cases resulted in a conviction and this was due to the fact that the offender was a teenage recidivist rapist.¹¹

The documented nineteen cases likely represented only a small fraction of incidences of juvenile peer sexual assaults. Parents may have preferred to adjudicate these matters in forums outside of the colonial courtrooms, such as privately with lineage elders settling the matter, with a village chief using his powers of conciliation to come to a resolution which both parties found acceptable, with a religious leader prescribing an appropriate means of recourse, or with the colonial administrator informally proposing an out of court settlement, which he did not record since it was not an official judgement.¹²

Dahomeans frequently sought alternatives to the colonial courts or turned to these officially sanctioned legal forums only after other means of dispute resolution failed or produced unsatisfactory results. Barbara Cooper rightly cautions fellow historians of Africa against placing too much importance on formal colonial legal

institutions because other undocumented venues for mediation existed alongside these courts throughout the colonial era.¹³ Despite the inherent limitations of juridical records from the colonial era, they do provide some of the only insight on the evolution of ideas of juvenile sexuality and the criminalization or decriminalization of certain sex acts due to the immaturity of the victim and perpetrator.

Dahomeans chose when they preferred to engage, or alternatively to avoid, the colonial legal system. For rape cases, the most readily observable and consistent factor in this calculation was the age of the victim. In 1911, Auguste Le Hérissé, a French colonial administrator stationed in Dahomey, stated in his ethnographic history *L'ancien royaume du Dahomey: Mœurs, religion, histoire*:

“The Dahomeans do not distinguish from the point of view of wrongdoing, attempted rape from consummated rape, when the victim is a child. On the other hand, Dahomeans believe it impossible for a woman or a pubescent girl to be raped.”¹⁴

Le Hérissé's explanation of indigenous male elders' views made it clear that the maturity or rather immaturity of the victim played a crucial role in defining what sex acts constituted rape in the precolonial kingdom of Dahomey. African male elders' motivations for crafting “customary” law to suit their own needs has been well-documented across Africa.¹⁵ In this instance though, plaintiffs' use of the court system during

13. COOPER Barbara, *Marriage in Maradi: Gender and Culture in a Hausa Society in Niger, 1900-1989*, Portsmouth, Heinemann, 1997, p. 20-39.

14. LE HÉRISSE Auguste, *L'ancien royaume du Dahomey : Mœurs, religion, histoire*, Paris, Émile Larose, 1911, 76-77. For a list of the Dahomean men Le Hérissé interviewed, see the *avertissement*, p. 4. For a brief biography on Le Hérissé see HOUNGNIKPO Mathurin C. and DECALO Samuel, *Historical Dictionary of Benin*, 4th edition, Lanham, Scarecrow Press, 2013, p. 239.

15. For a trenchant discussion of customary law during the colonial era, see chapter 4 in MAMDANI Mahmood, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton: Princeton University Press, 1996, 109-137. In African history, scholars should always be cognizant of the power dynamics at play and

it is always possible this “tradition” was invented. For the historiographical debates over invented tradition see, RANGER Terence, “The Invention of Tradition in Colonial Africa”, Eric HOBBSBAWM and Terence RANGER (ed.), *The Invention of Tradition*, Cambridge: Cambridge University Press, 1992, p. 211-262. RANGER T. O., “The Invention of Tradition Revisited: The Case of Africa”, Terence RANGER and Olufemi VAUGHAN (ed.), *Legitimacy and the State in Twentieth-Century Africa*, London, Palgrave Macmillan, 1993, p. 62-111. SHADLE Brett L., “Changing Traditions to Meet Current Altering Conditions”: Customary Law, African Courts and the Rejection of Codification in Kenya, 1930-1960”, in *The Journal of African History*, n° 40 (3), 1999, p. 411-431. SPEAR Thomas, “Neo-Traditionalism and the Limits of Invention in British Colonial Africa”, in *The Journal of African History*, n° 44 (1), 2003, p. 3-27.

the 1920s and 1930s supports a close association between immaturity and the popularly accepted conception of a rape victim.

From 1924 to 1940, the age of reported rape victims varied from three to forty years old. While this was a broad range, the tribunal recorded nearly three quarters or seventy-two percent of all victims as being less than fourteen years of age, the traditional age of maturity in the pre-colonial kingdom of Dahomey.¹⁶ This overwhelming majority attested to the fact that the precolonial preoccupation with the victim's maturity recorded by Le Hérissé endured decades into the colonial era. The mean age of victims during this period was just under twelve years old.¹⁷ Girls twelve and under would have not yet completed their training with a *tokono*, a "lips-vagina-mother" or a woman in charge of a cohort of girl's sex education and their physical preparation for sex and eventually marriage.

Although Le Hérissé failed to mention the perpetrator's maturity as a factor in defining rape, it seemingly influenced Dahomean decisions regarding when the colonial tribunal was the appropriate venue to hear a case of sexual assault in the 1920s and 1930s. Rarely did Dahomeans approach the courts when the rapist was less than sixteen years of age. In 1924, the judicial reorganization established sixteen as the age of penal majority, but in the absence of a juvenile court system colonial tribunals judged at least four exceptional cases involving younger perpetrators aged ten to fifteen.¹⁸ Rapists convicted in Dahomey's colonial courts were aged fifteen to sixty years old. The accused rapists' mean age was thirty-one years old. The avoidance of official channels to punish youthful perpetrators of sexual assaults tacitly acknowledged that coerced, forced, or even violent sex acts committed by teenage or younger offenders did not warrant the powerful designation of rape.

Cases heard within colonial courts contain limited information regarding why families chose to go to the district commandant and orally lodge a complaint when they did.¹⁹ Many Dahomeans often turned to them as a matter of last resort. Oftentimes the investigation into sexual assault allegations revealed a significant lapse in time from the assault to reporting the assault to the French authorities. This delay in some instances was due to attempts by the two parties to agree to an out-of-court settlement. During the colonial era, Africans often engaged in a process of venue shopping and hopped from one

16. Oral tradition, as recorded by Melville Herskovits during his 1931 fieldwork, stated that in the pre-colonial kingdom of Dahomey, the census recognized the age of fourteen as the age of maturity. HERSKOVITS, *Dahomey...*, *op. cit.*, vol. 2, p. 76. Roger Sandall questions the feasibility of this account of census taking, see SANDALL Roger, "Herskovits' Last Day in Dahomey", in *Anthropology Today*, n° 15 (6), 1999, p. 18-20.

17. 11.75 was the average age of all plaintiffs in rape cases from 1924 to 1940. See fonds 1M at the ANB.

18. For these cases, see 1M5, 1M9, 1M106, 1M81, 1M100, 1M182, and 1M130 at ANB.

19. See "Chapitre 1. Porter plainte en justice" in the fourth chapter of BRUNET-LA RUCHE, "'Crime et châtement' aux colonies...", *op. cit.*, p. 509-48.

20. ROBERTS, *Litigants and Households...*, *op. cit.*, Portsmouth, Heinemann, 2005, p. 18.

forum to another until they achieved a favorable outcome or exhausted their options.²⁰

Select cases do mention unsuccessful attempts at out-of-court negotiations. For example, in one 1924 case when the perpetrator was a Muslim man, the parents of the victim, who was not Muslim, chose to go to the neighborhood marabout to adjudicate the matter. The colonial tribunal eventually judged the case when the two parties reached an impasse because the accused denied having raped the girl.²¹ Both parties recognized the marabout as a legitimate figure to settle the matter. The rape victim's family decided that at least initially they preferred this religious leader to adjudicate the matter rather than the French district administrator.

Seemingly, admitting guilt was a crucial element of successfully brokering an out of court settlement in Dahomey. Muslim religious authorities were not the only authorities who demanded that perpetrators accept responsibility for their transgressive acts before indigenous authorities would render a judgement and assign an appropriate course of resolution. In a case from 1933, the families of the victim and the perpetrator tried to resolve the matter privately out of court. Once the parents of ten-year-old Kinhodé learned that Sogbossi had raped Kinhodé,²² Kinhodé's parents then met with Sogbossi's parents. This was easily enough done since the two families lived next to one another. Families that knew one another likely strove to informally negotiate a settlement that both lineages found appropriate considering that these families would continue to reside next to one another even after the judgement. Sogbossi's mother pleaded with Kinhodé's parents. She begged for their forgiveness for her son's transgression. The two parents decided that they would not take the matter to the tribunal if Sogbossi came himself and confessed his crime before the gathered members of Kinhodé's lineage. Sogbossi however refused and he denied that he raped Kinhodé.²³ At twenty years of age, Sogbossi was better equipped to resist the pressure his parents exerted on him to settle the matter out of court. Juvenile perpetrators just a few years younger than Sogbossi likely bent to the wills of their parents and guardians. Parents who negotiated out-of-court settlements pressured and intimidated recalcitrant boys to admit guilt and resolve the matter informally leaving no documentation in the archives.

Dahomeans continued to utilize precolonial indigenous means of adjudication to address wrongdoing and seek just recompense throughout the

21. D'ALMEIDA C. B., "Extrait du registre des jugements du Tribunal du 2^e degré de Ouidah: Jugement, n. 39 Affaire Adamon - viol", 1924/11/24, p. 4, 1M154, ANB.

22. Since the perpetrators and victims in these cases were juveniles, I have chosen to identify them by their first name only. This requires the omission of last names in document titles as well. I have kept the first names for several reasons. Firstly, going to court was as Richard Roberts has said a public affair. These girls and their families knew that the proceedings were recorded and archived. It takes away their agency in seeking formal recourse to completely erase their identities. Secondly, I have done so to allow for transparency and documentation of my research. Where I have omitted a last name in the citation in a legal reference I have put an ellipse [...].

23. Illegible, "Réquisitions: Affaire ... Sogbossi", 1933/01/11, 1M139, ANB.

colonial era. The colonial legal system did not require Dahomeans to seek out these alternative authorities, but due to ease of access, familiarity with the processes, or for other reasons they often approached leaders not formally recognized by the colonial state as having legal authority over rape cases. Dahomeans likely preferred to resolve improper, coerced, and forced sexual contact between young peers outside of the formal colonial court structure. Colonial courts may not have been the most important or popular means of recourse, but they were the only forum documented.

THE “MESSING AROUND” MYTH: JUVENILE MASCULINITY, SEX PLAY, AND PEER RAPE, 1924-1940

Colonial tribunals in Dahomey treated cases with accused juvenile rapists differently than ones involving older men. Rape myths created a recognized framework that enabled perpetrators to place their actions within accepted norms and withdrew legitimacy from victims, who would contest this contextualization of the perpetrators' actions.²⁴ One such rape myth was that certain perpetrators could not be rapists because of their male youthfulness, which made them irresponsible for rape. Key to the framework supporting this rape myth was the concept that youth engaged in accepted forms of sexual activities with one another or forms of sex play. Tribunals acted on the assumptions that yes, boys sometimes went too far in this play, however forced sex in the context of youthful “play” could only rarely be condemned as a crime as grave as rape in Dahomean colonial tribunals.

In France, and Europe more broadly, by the nineteenth century sex play was less culturally acceptable than ever before. Throughout Europe during the nineteenth and twentieth centuries, class-based differentiation in attitudes about youthful sexuality and sex education developed with bourgeois respectability linked to cultivating self-control of desire and inculcating restraint of one's sexuality.²⁵ French culture expected elite and bourgeois girls to be virtually ignorant of sexual intercourse and to have an identity devoid of sexuality. Working class French girls lived and worked in an environment where their “virtue” could not be similarly protected.²⁶ Experts, legal officials, and the population expected working class girls to have had premature sexual relations both as willing participants and coerced partners. These stereotypes about

24. BOURKE, *Rape...*, *op. cit.*, p. 23-24.

25. STOLER Ann Laura, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*, Durham: Duke University Press, 1995. See especially chapter 5 “Domestic Subversions and Children's Sexuality”, p. 137-164.

26. STEWART Mary Lynn, “Science Is Always Chaste’: Sex Education and Sexual Initiation in France, 1880s-1930s”, in *Journal of Contemporary History*, n° 32 (3), 1997, p. 381-394. Protestant activists protested this conservatism and silence, see MACHEN Emily, “The Modern Protestant Girl: Education, Social Engagement, and Sexuality in Turn-of-the-Century France”, in *The Journal of the History of Childhood and Youth*, n° 6 (1), 2013, p. 81-104.

working class girls' precocious sexual development and libertine behavior compounded with racist ideas about African sexuality in the colonial milieu. French officials serving on colonial tribunals expected that African girls working as hawkers became sexually active very young like working class French girls.

Cultures across Africa accepted "messaging around" with peers as part of the maturation process. Adults tacitly sanctioned certain forms of sex play. The limits placed on acceptable forms of precocious sexuality varied by region and religion in Africa during the twentieth century. In Kenya, Kikuyu adults encouraged youths to engage in *ngweko* or sex play occurring between initiated, unmarried young women and men that "remained on the surface" and stopped short of intercourse. When participating in a *ngweko* pairing young women pulled and secured their leather apron between their legs to ensure that this play did not progress to actual intercourse.²⁷ The Zulu ethnic group in South Africa have a similar practice called *ukusoma*, which is translated as "high sex". Rather than using an apron, the young woman crosses her legs to avoid vaginal penetration when the young man rubs his penis against her thighs.²⁸

In Dahomey, adults allowed young children of both sexes aged less than approximately eleven years of age to play together freely.²⁹ This helps explain why so many of the given ages of victims were less than eleven years of age. Dahomeans recognized the period from birth to ten years old as an age of innocence without any knowledge of sexuality or sex, and free from sexualized acts of any kind. Nineteenth century French legislators had concurred with Dahomean views when they set the age of sexual minority as eleven years old in 1832 thus criminalizing sex acts with younger children. In 1863, French law raised the age of sexual minority to thirteen and under. Fourteen remained the age of legally recognized sexual majority in France until 1945.³⁰ Both Dahomeans and French authorities agreed that sexual assault during the first decade or so of life constituted a disruption in proper maturation and doubly traumatized the victim because of the physical violence wrought on her and the psychological harm inflicted with the introduction of sex acts at too immature a life stage.

Once girls and boys in Dahomey approached puberty and began physically maturing between the ages of eleven and thirteen, adults began monitoring cross-gender interactions between peers. Adults forbid boys and girls of this age from playing together during the daytime. This was also when gender

27. SHAW Carolyn Martin, *Colonial Inscriptions: Race, Sex, and Class in Kenya*, Minneapolis: University of Minnesota Press, 1995, p. 72. THOMAS Lynn M., "Imperial Concerns and 'Women's Affairs': State Efforts to Regulate Clitoridectomy and Eradicate Abortion in Meru, Kenya, 1910-1950", in *The Journal of African History*, n° 39 (1) 1998, p. 127. Thomas does not mention the leather apron precaution.

28. HUNTER Mark, *Love in the Time of AIDS: Inequality, Gender, and Rights in South Africa*, Bloomington, Indiana University Press, 2010, p. 35-36 & 52-58.

29. HERSKOVITS, *Dahomey...*, *op. cit.*, v. 1, p. 275-276.

30. IACUB Marcela, *Through the Keyhole: A History of Sex, Space and Public Modesty in Modern France*, trans. Vinay Swamy, Manchester, Manchester University Press, 2016, p. 22.

31. HERSKOVITS, *Dahomey...*,
op. cit., v. 1, p. 277-285.

32. *Ibid.*, p. 280.

33. For examples of the tribunals' use of "discernment" in cases with juvenile perpetrators, see for example 1M5, 1M9, 1M81, 1M94, 1M100, and 1M182 at the ANB.

34. Tribunal du cercle de Cotonou, "État des jugements rendus en matière correctionnelle : Jugement n. 9 ...", Jacob - tentative de viol", 1924/03/15, 1M130, ANB.

35. There is an extensive literature on female market traders in West Africa, but until recently much less attention has been paid to the young girls whose labor supports these enterprises. GEORGE Abosedo A., *Making Modern Girls: A History of Girlhood, Labor, and Social Development in Colonial Lagos*, Athens, Ohio University Press, 2014. GEORGE Abosedo, "Within Salvation: Girl Hawkers and the Colonial State in Development Era Lagos", in *Journal of Social History*, n° 44 (3), 2011, p. 837-859.

36. Tribunal du cercle de Cotonou, "État des jugements rendus en matière correctionnelle : Jugement n. 9 ... Jacob - tentative de viol."

segregation increased, and the socialization of gender roles intensified. Groups of boys and girls in the preteen to early teen age groups met clandestinely during the nighttime to play games with sexualized components. Dahomean adults prohibited overt sexual contact.³¹

Dahomean men interviewed in 1930 by Melville Herskovits, an American anthropologist and the "father" of African Studies in the United States, insisted that boys knew little about sex other than that sex involved embraces. Curious boys, Dahomean men admitted, might learn through spying and furtive observation of adults in their compound. Their knowledge about the mechanics of sex though remained limited until their later teen years. Herskovits stated, "[T]he fact remains that most [male] youths [in Dahomey] are without sex knowledge of a definite order until they are well into adolescence."³² Colonial tribunals dismissed charges against accused rapists as old as fourteen because they believed these boys were "too young to act with discernment."³³

Fifteen-year-old Jacob was the youngest convicted rapist on record. In her testimony, the ten-year-old victim Abodounrin stated that on March 9, 1924, she walked the streets of Cotonou, the economic capital of the French colony of Dahomey, with a tray of oranges balanced on her head.³⁴ She, like other girls her age across the region, spent many hours wandering the streets searching for buyers for her produce. These youthful, mobile salesgirls were often called "hawkers" in West Africa.³⁵ This day started off in a mundane fashion for Abodounrin. Jacob flagged her down telling her he wanted to purchase 0,50 francs of oranges. In this instance, it is not entirely clear why she entered Jacob's room, but she did. Girls would sometimes enter residences when customers asked. Hawkers like Abodounrin knew of the dangers, such as theft or sexual assault, once they left the relative safety of the crowded streets. Hawkers worked in a highly competitive environment where they took certain calculated risks in order to sell their allotted goods. Other times, assailants gave the hawkers no choice and physically forced these girls to enter secluded places. Perhaps since Jacob was her peer Abodounrin felt less threatened and she exercised less caution than she might have otherwise. After entering Jacob's room, Jacob closed the door and forced her onto his bed. He then attempted to rape her. Abodounrin or "the child", as the court's clerk described her, succeeded in escaping her assailant.³⁶ Apart from her success in fleeing the attempted sexual assault, this narrative of events is typical of rape cases heard in colonial tribunals

in Dahomey. The *État des jugements* concluded with the note that once arrested, Jacob admitted his actions and his guilt to the administrator of the district. Unfortunately, the rest of the dossier for the case has not been preserved. The tribunal sentenced Jacob to just three months of prison and no fine.

Jacob's extremely lax punishment was likely attributable to his age. Typically, teen boys convicted of rape between 1924-1931 received sentences of less than one year, a relatively light punishment at the time considering that some rapists received sentences of ten to fifteen years or even life imprisonment. More commonly, the colonial courts sentenced adult men to between two and five years for rape.³⁷ While there was never any legally recognized age of discernment, article 54 of the 1924 judicial reorganization established sixteen as the age of penal majority.³⁸ After Jacob's conviction, colonial tribunals dismissed or reduced the charge to indecent assault when the perpetrator was less than sixteen years of age.

Patterns of "slapping the wrists" of youthful offenders during this period laid the groundwork for an attitude of "boys will be boys", and the colonial tribunals tolerated and normalized teen boys' coercion of their female peers to engage in sexual acts. During the first three decades of the twentieth century, a rape myth about masculine immaturity became embedded in colonial legal processes alongside the one about female immaturity. It stipulated that there was an age at which boys were too young to be considered rapists. In 1924, the judicial reorganization articulated a formal limit in the age of penal majority. Before the 3 December 1931 decree reorganizing the indigenous tribunals took effect in April 1932, most cases of peer rape resulted in a six-month jail sentence for the accused and sometimes a varying fine paid to the guardians of the victim or rarely, to the girl herself. After April 1932, no further cases of peer rape were successfully prosecuted. These cases do not disappear from the record, but their outcomes and the investigatory processes were markedly different. Colonial tribunals enforced the truthfulness of rape myths through their actions, such as lax punishment of convicted teenage defenders before the 1931 reorganization and the refusal to convict accused teenage rapists after the reorganization.

37. Prior to the 1924 reorganization a handful of rapists were sentenced to ten and fifteen years, but ten was the upper limit from 1924 to 1931.

38. CARDE, "Circulaire sur la réorganisation...", *op. cit.*, p. 395-98. This is reiterated in Article 12 of the 3 December 1931 decree.

THE PROMISCUITY MYTH: ELDER GIRLS, FORCED SEX, AND GENDERED DOUBLE STANDARDS AFTER THE 3 DECEMBER 1931 DECREE

The second rape myth concerned the tribunals' expectations about elder girls' alleged promiscuity. Rape cases from the 1920s and 1930s showed a rigid distinction between female mature sexuality and immature asexuality. The tribunal presumed that elder, teenage girls were both willing participants and dubious witnesses concerning their sexual experiences.

After the 1931 reorganization, stereotypes about female sexuality came to the forefront of deliberations about whether coerced or forced sex could be tried as rape in the colonial tribunal. These stereotypes seemingly came from the Dahomean assessors, not the French members of the tribunal. Article 3 of the 1931 decree enlarged the power of the two Dahomean assessors to be equivalent to their two French peers on the criminal tribunal. While the district commandant still outranked all of the assessors as the head magistrate of the tribunal, indigenous assessors now had a deliberative, rather than a consultative voice. Into these deliberations they brought with them dominant male stereotypes about female sexuality. One of Herskovits's male informants told him one of these stereotypes in 1930, "Among us Dahomeans it is always the woman who teaches the man [about sex]."³⁹ Dahomean assessors' actions as engaged participants in tribunal debates reflected this preconceived notion that fourteen and fifteen-year-old boys acted without discernment and could not be held accountable because of their supposed lack of knowledge about sex while girls, who were the same age or younger than the boys, possessed knowledge that denied them access to claiming victimhood.

After 1931 the tribunal accepted the precolonial norm that fourteen years of age was a marker of maturity, for girls at least. The age of fourteen was also significant for the French officials judging the cases. This age was more than a simple numeric designation in rape cases, attaining fourteen years of age altered the way tribunals treated accusers. In 1937, the colonial tribunal debated the age of Houedanou. She and her parents gave her age as nine. The French doctor who performed the medical exam assigned her the age of fourteen. In the deliberations, the tribunal decided that her "real" social age was fourteen. "Well, it is consistent that at the age given to Houedanou by the expert [the doctor],

39. HERSKOVITS, *Dahomey...*, *op. cit.*, v. 1, p. 282. Female informants denied this and told Melville Herskovits's wife Frances Herskovits, that girls learned about sex from their experiences with their husbands or other men older than themselves.

and in accordance with the observations of the investigator – who is well placed to know in this matter the customs of the country – the girls in the region have already had numerous sexual relations with young guys.”⁴⁰ There was an expectation that by the age of fourteen a girl had knowledge of sex, had prepared her body for it through undergoing *axoti*, a group of practices which manipulates the labia, had engaged in sex play with peers, had completed her training with the *tokono*, and had likely engaged in sexual relations.⁴¹ Once a girl reached this age of maturity she was, according to the tribunal, “no longer a child” and her sexual experience or developing sexuality made her sufficiently knowledgeable about sex in order to “consent”, in some fashion, to the sex that took place⁴².

In addition to the expanded role of the indigenous assessors, the 1931 decree also elevated rape to a felony crime, the only sex crime receiving that designation. This newly assigned and restricted jurisdiction meant that the tribunal needed to draw a clear line between rape and other types of indecent assault. This new criterion necessitated much more detailed and invasive examinations of girls’ sexual histories. Unlike their French counterparts, Dahomean assessors did not emphasize virginity as exhibited by an intact hymen as a crucial marker in the maturation process.⁴³ Virgin or non-virgin status was of little consequence in precolonial or colonial Dahomey.⁴⁴ This disagreement between French and Dahomean views over virginity is clear in the way virginity is inconsistently and contradictorily used as evidence. The sexual histories that the tribunals

40. Cossou, “Réquisitoire N. 104 Affaire Sekogbelou Dangbe - viol suivi de mort”, 1937/12/28, 1M18, ANB.

41. HERSKOVITS, *op. cit.*, p. 278-283.

42. MONTOUROY Robert, “N. 1477 TLO Objet : Plainte de Adindé pour viol de sa fille Quinsi contre le nommé Agoumalo”, Telegram, 1938/03/11, 1M71, ANB.

43. For a discussion of the development of forensic science in rape cases in France and the use of the hymen as evidence, see VIGARELLO Georges, *A History of Rape: Sexual Violence in France from the 16th to the 20th Century*, trans. Jean BIRRELL, Cambridge, Polity, 2001, p. 54-57 & 81-82.

44. BAY Edna G., *Wives of the Leopard: Gender, Politics, and Culture in the Kingdom of Dahomey*, Charlottesville, University of Virginia Press, 1998, p. 246. Chastity at various life stages or while fulfilling certain social roles was expected, but virginity independent of these social roles was not expected.

collected went beyond simply status as a virgin or not. It included observations concerning reputations as well as physical manifestations of preparations for sex for females as they matured. *Axoti*, or manipulation of the labia, was the most readily apparent signifier of sexual preparation. Over several years, Dahomean girls with the assistance of a *tokono* enlarge the outer labia through stretching them with their hands, specially shaped wooden implements, and horns. They also further thicken the vaginal tissues through puncturing them or using other irritants including certain plants and the bites of night warrior ants.⁴⁵ Europeans had long been fascinated with African.

The importance of reputation and evidence of *axoti* was most striking in a 1936 case where a fifteen-year-old girl accused three teenage boys aged between sixteen and eighteen years of age of rape. A loquacious scribe expressed in the strongest terms the stereotypes about teenage girls' sexuality. According to his translation of her narrative, Akpoto, a fifteen-year-old street hawker who sold *lokapo*, a prepared cornmeal dish, exited a house in distress and entirely nude. She then claimed that three young "guys" had had relations with her against her will. The recorder used the term "*jeunes gens*" to describe the three alleged teenage rapists. This choice of phrase supported the rape myth of "messing around" because it emphasized that they were young and not yet fully-grown men or *hommes*. The recorder mockingly asked a rhetorical question: "Is this exactly what happened? Did they lure her into their residence on the pretext of buying *lokapo*, and each take a turn? That seems highly doubtful!"⁴⁶ The tribunal dismissed the case when one of the three accused "guys", Ogoudélé, admitted to having sex with her and provided a very "plausible" reason for Akpoto's accusation. The *chambre d'accusation* stated that Ogoudélé knew of Akpoto's "rather wild virtue" and propositioned her. He offered to pay her 2,50 francs for sex.⁴⁷ Older teen boys defended themselves through impugning the reputations of their victims. In this case, Ogoudélé claimed that since her reputation preceded her, he felt entitled to proposition her and he expected that she would exchange sex for money. He did not see anything wrong with freely admitting this to authorities.

The doctor who examined Akpoto supported Ogoudélé's assertion about Akpoto's "wild virtue" through his including as evidence his remarks about her labia exhibiting signs that she had stretched and scarred her outer genitalia.⁴⁸ The medical evidence of Akpoto's prior manipulation with her genitalia

45. *Axoti* should not be confused with female genital cutting. In 1893, Richard Burton emphasized this point in his account. "The sister operation [of male circumcision], excision, wonderful to say is entirely unknown..." Burton continued that "the reverse being so much the custom, that a woman in a natural state is derided by others." The practices in Dahomey resembled those practiced in South Africa known to Europeans as the "hottentot apron." HERSKOVITS, *Dahomey...*, *op. cit.*, 1, 1938, p. 282-283.

46. Tribunal Colonial d'Appel du Dahomey, "Réquisitoire no. 175 (1936): Affaire Ogoudélé ... et consorts, viol", Cotonou, 1936/10/26, 1M005, ANB.

47. *Ibid.*

48. For a detailed explanation of female initiation and the associated genital practices see, HERSKOVITS, *Dahomey...*, *op. cit.*, v. 1, p. 282-283. Herskovits was able to get this detailed information through informants' discussions with his wife who conducted some of the research and data collection.

cast critical doubt on her claim to victimhood, in the view of the tribunal's members. This point of view, along with the fact that the alleged perpetrators were roughly the girl's peers, led the authorities to redefine the sexual act into youthful "messaging around", despite the violence Akpoto had described and the distress she exhibited. The criminal tribunal believed Ogoudélé's narrative of events.⁴⁹ It dismissed Akpoto's case.

Even a pristinely virtuous reputation may not have been enough to overcome the rape myths about youthful sex play and female promiscuity that the indigenous assessors and their French counterparts held. Fifteen-year-old Lokossi, like Akpoto, traveled door-to-door selling goods. A group of four "young guys" invited her in to their house on the pretext of buying food from her. The tribunal stated it was a "certitude" that these four guys aged seventeen to twenty each took his turn and raped her—the exact scenario that the scribe in Akpoto's case had dismissed as incredulous. A witness interrupted the gang rape upon hearing Lokossi's cries. Despite a witness and a medical exam confirming her virginity prior to the attack, all charges in the case were dismissed.⁵⁰ The tribunal despite admitting that a rape occurred refused to convict the three teenagers and one twenty-year-old of felony rape.

Colonial tribunals in Dahomey acquitted all accused teenage rapists from the time that the 3 December 1931 decree took effect until the subsequent reorganization a decade later in 1941. From 1932 onward, the criminal tribunal was no longer a place to adjudicate these sexual acts with youthful perpetrators. More often than not the charges were dismissed and in a few cases harm was recognized under a reduced charge such as indecent assault, a misdemeanor. This should not be interpreted as a relaxation or general acceptance of rape as part of culture. On the contrary, elder adult men were severely punished with some receiving life sentences or twenty years of imprisonment. However, the attitude that certain girls were "old enough to know" what would happen if they went somewhere private with teenaged peers became the prevailing wisdom of the court. How they defined "old enough" varied, but it depended heavily on bodily evidence.

CONCLUSION

During the colonial era, indigenous views on maturity continued to shape when the term rape applied to an illicit sex act. The cases of peer rape judged in

49. Tribunal Colonial d'Appel du Dahomey, "Réquisitoire no. 175 (1936)..."

50. Tribunal Colonial d'Appel du Dahomey, "Réquisitoire n. 83 : Affaire Houkponou..., Zannou..., ..., et Avoce ...-viol", August 29, 1939, 1M159, ANB.

colonial courts show that in Dahomey a colonial legal culture evolved, which accepted the *mea culpa* defense of “messing around” when both perpetrator and victim were teens or younger. As the colonial legal system matured and allowed indigenous assessors to play a larger role in the legal process, these authorities reached a consensus with their French counterparts. After the 1931 reorganization, Dahomean and French legal officials concurred that teenage boys who coerced or forced their peers to have sex were not, in a legal sense, rapists. This rape myth joined in popular consciousness the older one stating that only prepubescent girls could be victims of rape. These rape myths became institutionalized and recognized stereotypes about youthful sexuality became the predominant lens through which colonial tribunals judged peer rape cases. Immaturity proved to be a crucial element in colonial constructions of both rape victim and rapist identities.

Dahomeans rarely brought forth cases of juvenile peer sexual assault to colonial tribunals; however, those instances that did reach these official forums reflected male Dahomean expectations of juvenile masculine curiosity about sex and stereotypes about youthful, feminine sexual experimentation and knowledge. The views of the Dahomean members of the tribunal became enmeshed with European racist ideas about black promiscuity, but they were not dominated by them. As the role of indigenous members of colonial tribunals expanded previously muted trends became more distinct in regard to how cases involving teenage or younger males sexual assaults of girls their age or younger should be handled.

In the context of Dahomey, the customary assertion that only prepubescent girls could be victims of rape became a *de facto* truth in the minds of victims, plaintiffs, the accused rapists and indigenous assessors. In addition, there were two correlated “truths”, one left unmentioned in Le Hérissé’s recording of customary legal practices concerning rape. Firstly, the logical extension of this premise was that elder pubescent girls and women could not be raped. Throughout the 1920s and 1930s, women and elder girls accused men of rape in colonial tribunals, but their cases resulted in increasingly fewer convictions. Secondly, observable in tribunal records, was that youthful naivety was double edged. It afforded prepubescent girls the ability to claim victimhood while it exculpated youthful boys as being too immature to be rapists of their peers.