

Zitierhinweis

Mendes Mendonça Moreira, Karolyne : recension de : Fernanda Thomaz, Casaco que se despe pelas costas. História do colonialismo, justiça e agências africanas em Moçambique, Juiz de Fora : Editora UFJF, 2022, dans : Rechtsgeschichte, 32 (2024), p. 226-227, téléchargé depuis Website



copyright

Dieser Beitrag kann vom Nutzer zu eigenen nicht-kommerziellen Zwecken heruntergeladen und/oder ausgedruckt werden. Darüber hinausgehende Nutzungen sind ohne weitere Genehmigung der Rechteinhaber nur im Rahmen der gesetzlichen Schrankenbestimmungen (§§ 44a-63a UrhG) zulässig.

The last chapter looks beyond independence to the debates at the 1977 Constitutional Conference over whether there should be a Federal Shari'a Court of Appeal with jurisdiction over Muslim personal law. The pre-independence reforms had left a Northern Region Shari'a Court of Appeal to deal with such matters, but when Nigeria was divided into component states in 1967 each state was left with its own highest court to deal with such matters. The 1977 proposal aimed to create a court to harmonise decisions across state Shari'a courts of appeal. However, the proposal reopened debates about the nature of secularism. The Muslim proponents of the court saw it as an effort to counter the secularism left by the colonial state, which they regarded as privileging Christians. Christians opposed the proposal which they saw as an attack on the state's separation from all religions. In this process, the rhetorical position of the different parties shifted. Christians who had in the early twentieth century denounced the

ideology of British imperial secularism as a ruse to favour their religious rivals and made loud appeals to be accorded the right to religious liberty now sought to defend secularism and denounced Muslim arguments in favour of religious liberty as attempts to »Islamicize Nigeria«. In response, Muslims denounced secularism, which they associated with a colonial ruler who had supplanted Shari'a law.

This book offers a fascinating study of the nature of indirect rule in Nigeria, and of the impact of the »secular« state on religion. It makes an important contribution to our understanding of the nature of imperial rule in West Africa. It also sheds important light on the aims and impact of secularism, demonstrating that rather than the secular state standing above the religious fray, the »secular« and »religious« remained constantly entangled in complex ways.



Karolyne Mendes Mendonça Moreira

Empowering Voices: African Agencies in Northern Mozambique*

In *Casaco que se despe pelas costas*, Fernanda Thomaz guides readers through the intricate web of relationships between diverse African communities in Northern Mozambique, particularly in Cabo Delgado, and the Portuguese judicial system from 1890 to 1940. The book sheds light on African agency in the face of colonial imposition, meticulously reconstructing the various interactions and legal frameworks on the ground.

The author explains (11) that the title of the book derives from an ancient proverb of the Macua communities, which translates as follows: »The *milando*, resolved by whites in the administration, is like the coat that comes off at the back.« (»Eku-nya, ekasakó; enrureliwa ottulí.«). *Milando* was the generic term used by the Portuguese to designate

the process of resolving conflicts between Africans, usually conducted by local leaders within their own villages. However, with the advent of colonial justice, *milandos* were also conducted by Portuguese authorities. The ironic manner in which Africans referred to the administration's handling of the *milandos*, likening it to shedding a disposable garment, serves as a poignant indicator of African protagonism in the daily redefinition of law. In this sense, the main objective of the book is to portray the ways in which Africans reinterpreted, translated and (re)acted within the colonial world, navigating the constraints imposed by established power structures.

The primary documents on which Thomaz' analysis is based comprise 165 criminal lawsuits

* FERNANDA THOMAZ, *Casaco que se despe pelas costas. História do colonialismo, justiça e agências africanas em Moçambique*, Juiz de Fora: Editora UFJF 2022, 225 p., ISBN 978-65-89512-48-6

related to cases of homicide, rape, assault, and abuse of authority, among others, located in the Historical Archive of Mozambique. These records, produced during the implementation, construction and consolidation of the administrative structures of colonial power, are fundamental to the analysis of African agency in a context of intense domination.

In addition to archival sources, Thomaz draws on ethnographic accounts, newspapers, colonial administration reports, and interviews with local people. This wide and varied range of sources, especially local ones, enables a nuanced exploration of the manifold legal frameworks existing in the region, beyond those officially recognised by the Portuguese legal system. The use of interviews in this research is particularly noteworthy. Although not the most significant sources of analysis, they are essential for complementing the court cases.

The book is organised in two parts. In the first section, entitled »Colonial justice: between domination and custom«, the author analyses the social history of justice in Mozambique. The focus is on detailing the structure of the colonial justice system and examining how the dynamics of power relations influenced conflict resolutions. To this end, the author describes the functioning of the *Juízo de Direito* (court of first instance that judged all conflicts in the territory), demonstrates the changes that occurred with the creation of the *Tribunal Privativo dos Indígenas* (court that began to specifically judge only conflicts between Africans) in 1930, and concludes with the debates surrounding the creation of a specific penal code for Africans. This section also includes an analysis of the role that the construction of a racialised colonial penal doctrine played in the exploitation of African labour.

In the second part, entitled »Colonial relations and African agencies«, the author unravels the quarrels and daily practices of African men and women in the district of Cabo Delgado. Here, colonial justice is the backdrop for stories of African agency that demonstrate how people understood, made use of, and resisted the legal apparatus. In this part, the ancient legal, economic and socio-cultural aspects of the different peoples who occupied the territory – notably the Macuas, Macondes, Muanis and Ajauas – are explored. Thus, law is not just understood as a set of state-referenced norms and rules. For the author, law

arises from the concreteness of everyday life and its various instruments for ordering society.

The author's analysis transcends simplistic interpretations that reduce African actions to a dichotomy between resistance and collaboration. In her work, Thomaz demonstrates that relations of subjection and coercion assumed multiple configurations, forms and intensities. On the one hand, she highlights that the administrators' lack of familiarity with the powers and values of the colonised peoples often served as a loophole for African litigants and advisors to present information according to their interests in colonial courts. On the other hand, she points out that the very fact that Africans made use of colonial justice also reinforced and legitimised their domination over the territory.

The book includes a series of examples that demonstrate the complexities of this interplay. In detailing the judicial structure, the author sheds light on local African chiefs who, in many cases, took on the role of advisors to the colonial judges, particularly in the *Tribunal Privativo dos Indígenas*. This position, which gave them a place as informants about the so-called local »uses and customs«, gave them immense power in certain situations. After all, by taking advantage of the colonisers' ignorance, they could circumvent certain judicial procedures and even define the outcome of a sentence. However, it is important to mention that the integration of these chiefs into the colonial system took place in a subordinate way, within the established power limits. In several cases, as the author also demonstrates, the opinions of these advisors were not recognised and the claims brought by Africans to colonial judges were not accepted. Therefore, the work avoids analyses that portray those who dominated and, above all, those who were dominated in a monolithic way.

This does not mean, however, that the author has denied the value of resistance as a concept or as a historical phenomenon; quite the contrary. Analysing the agency of those »underneath«, based on the idea of resistance as a concept and as a practice, remains fundamental to promoting innovative interpretations of the experiences of those who have been denied a voice during their lives.

In this sense, *Casaco que se despe pelas costas* is an essential work for the study of the justice system and African agencies in the history of Mozambique. ■