Cameroon: A Mixed Jurisdiction?  
A Critical Examination of Cameroon’s Legal System Through the Perspective of the Nine Interim Conclusions of *Worldwide Mixed Jurisdictions*  

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Cameroon is a legally complex country. Multiple legal systems have grown within its borders as a result of a colorful past of colonization combined with custom-based law. Most notably, common law and civil law coexist. At times, this coexistence produces two legal systems that are at complete odds with one another because of their differing language, constitutional backgrounds and methodologies, treatment and interpretation of laws, and judicial training. This combination of legal systems has led some legal scholars to declare Cameroon “two different countries in one.”¹ However, at times the civil and common law interact much like a Venn diagram, in which civil and common law overlap. When this occurs, the civil and common law appear to be in conversation with one another, and this intertwining of systems creates a third legal family—a mixed jurisdiction.

This paper will examine the interaction and separation of common and civil law in Cameroon to determine if Cameroon is in fact a mixed jurisdiction; or if it is merely a civil law system with common law transplants in the form of two Anglophone provinces. To achieve this goal, this paper will examine Cameroon in the context of Professor Vernon Valentine Palmer’s

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nine interim conclusions of shared traits of classical mixed jurisdictions, found in his book *Worldwide Mixed Jurisdictions*. It will examine when Cameroon is aligned with the traits shared by classical mixed jurisdictions and analyze the reasons behind the commonalities. It will also describe when Cameroon deviates from the traits shared by classical mixed jurisdictions and examine the reasons behind the differences. Overall, this paper will determine whether similarities outweigh differences and whether one can conclude that Cameroon is a true mixed jurisdiction.

I. What Is a Mixed Jurisdiction and the Nine Interim Conclusions of *Mixed Jurisdictions Worldwide*

Mixed jurisdictions exist all over the world, though they can be overlooked and mistakenly categorized as a common law state with civil law transplants or vice versa. This mistaken categorization occurs because the terminology “mixed jurisdiction” is relatively new. While many states may in fact fall into the third legal family of mixed jurisdictions, there are fifteen states—both independent and non-independent systems—that are classical mixed jurisdictions. Examples of independent classical mixed jurisdictions are: Scotland, Israel, South Africa, and the Philippines. Non-independent states, states that are not self-governing countries, are classical mixed jurisdictions as well, and include Louisiana, Puerto Rico and Quebec.

Mixed jurisdictions share three main characteristics. First, the legal system of the mixed jurisdiction is built on a dual foundation of both common and civil law. Second, this dual foundation will be noticeable to outside observers and it will be present in the culture and identity of the society. Third, there is a common structure between the division of civil and common law—the private law tends to be continental civil law while the public law tends to be Anglo-American common law. These three characteristics are further explored and dissected in the nine interim conclusions that this paper will be utilizing when discussing Cameroon.

The nine interim conclusions of Professor Palmer’s *Mixed Jurisdictions Worldwide* outline the findings of in-depth studies of seven classical mixed jurisdictions. In this paper, the nine interim conclusions operate as section headings (two of the sections have been combined) and will be the tools utilized to best examine the Cameroonian legal system. The nine interim conclusions will be discussed individually in different sections of the paper. The interim conclusions this paper will be applying are: (1) The Founding of the Mixed Jurisdiction; (2) The Cultural Voices of the Jurists; (3) The Magistrates and the Courts; (4) The Linguistic Factor; (5) *Stare Decisis* and Legal Reasoning; (6) The Penetration of Common Law and Higher Forms of

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3 Id. at 4.
4 Id. at 4.
5 Id.
6 Id.
7 Id. at 7.
8 Id. at 8.
9 Id. at 9.
10 See id. at 15.
Legal Creativity; (7) Impact of Anglo-American Procedure; and (9) the Commercial Law of the Dominant Economy.\textsuperscript{11}

II. The Founding of a Mixed Jurisdiction

As diverse as all classical mixed jurisdictions are, their founding tends to follow three similar historical tales.\textsuperscript{12} The first is intercolonial transfer between a civil law and a common law colonial power, as was demonstrated in Puerto Rico, the Philippines, Louisiana, and South Africa.\textsuperscript{13} Second is a merger of sovereignties, as was the case in Scotland.\textsuperscript{14} Finally, the jurisdiction is founded “in reverse,” which includes Israel.\textsuperscript{15} Cameroon falls into the first category, that of intercolonial transfer.

Intercolonial transfer often led to mixed jurisdictions because the colonial power typically faced great cultural and logistical resistance when attempting to apply its own legal system while administering the country.\textsuperscript{16} Due to a fear of an uprising or resistance to attempts to change infrastructure and legal systems in the conquered territory, the colonial power chose to retain aspects of original law, which typically was civil law.\textsuperscript{17} This retention formed hybrids between the common and the civil law—usually by retaining civil law in the private sphere while applying common law to the public sphere.\textsuperscript{18} This approach then outlasted the colonial powers and became the modern legal system within the country.

Applying this intercolonial exchange conclusion to Cameroon, this section will examine the colonial exchange, colonial policies and the legal development in the reunification of the country after the end of colonization that may have enabled a hybrid to be formed between the common and civil law.\textsuperscript{19}

A. Kamerun to Cameroon: The Intercolonial exchanges

Cameroon shares a common history with other African countries. It exchanged colonial hands many times before gaining its independence. These exchanges influenced and shaped the present legal system, since each colonial power administering the country brought a new legal system that became ingrained in the culture and the infrastructure of the country.\textsuperscript{20}

The colonial history began in the 1500s with Portugal.\textsuperscript{21} The Portuguese stay in Cameroon was brief due to outbreaks of malaria, but the Portuguese did leave a namesake. The

\textsuperscript{11} Id. at 76-80 (Titles of nine interim conclusions).
\textsuperscript{12} Id. at 18.
\textsuperscript{13} Id. at 19.
\textsuperscript{14} Id. at 29.
\textsuperscript{15} Id. at 30.
\textsuperscript{16} Id. at 21.
\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} MARIO AZEVEDO, CAMEROON AND ITS NATIONAL CHARACTER 33 (Blackwell Lithographers 1984).
Portuguese explorer Fernando Po allegedly named the country Cameroon—derived from a Portuguese word “Camaroes” meaning shrimp. 22 After the Portuguese left it wasn’t until the 1870s that Cameroon had its second colonial claim, this time by the Germans. 23 In 1884, during the Berlin Conference, what is now Cameroon and several parts of neighboring countries became the German colony of “Kamerun.” 24 The Germans controlled Cameroon until combined British and French expeditionary forces defeated the Germans in Cameroon during World War I and took control of the country in 1916. 25

The British and the French split the territory of Cameroon into two uneven parts: the British took control of two disconnected sections that they named “Northern” and “Southern” Cameroon while France took the larger central portion, totaling four-fifths of the country. 26 This arbitrary division between the French and the British was later formally recognized by the League of Nations. 27 On June 28, 1919 the League of Nations conferred mandates on the two colonial powers to administer their territories, which were later superseded by trustee agreements when the United Nations was created in 1945. 28 During the administration period, the French administered their portion of the country as part of their colony of French Equatorial Africa, while the British administered their sections as part of their neighboring colony in Nigeria. 29

Cameroon formally gained its independence from France on January 1, 1960. 30 The following year the United Nations conducted a plebiscite on February 11, 1961 in the British territories of Cameroon. 31 The Northern part of Western Cameroon (the Sadawna province) chose to unite with the Federation of Nigeria (the Gongola State), while the Southern Cameroonians chose to be “re-unified” with the Francophone regions of Cameroon—forming the “Federal Republic of Cameroon.” 32 Eleven years later in a referendum the federal form of the government was changed and the two federated states of Western Anglophone Cameroon and Eastern Francophone Cameroon were united into one: the United Republic of Cameroon. 33 In February 1984 the country took the final step in adopting its modern appearance. By presidential decree the name “United Republic of Cameroon” was abandoned and replaced with “Republic of Cameroon.” 34

B. The Development of Cameroon’s Legal System

As Cameroon switched colonial hands the legal system within the country continually evolved, depending on the power administering the country. During those transitions, three major periods in the Cameroon legal system emerged: the pre-colonial, the colonial, and the
These periods not only shaped Cameroon’s history but created its current bijural legal system.

First, there was the pre-colonial period. In the pre-colonial period, the primary legal system was customary law. In the North the Foulbe tribes, who had originally invaded the territory from Northern Africa, introduced the Islamic law of Sharia, which was practiced in large areas of the northern region. Different ethnic groups also practiced unwritten indigenous law in varying degrees.

Next was the colonial period, beginning with the German colonial period of the late 1870s to 1916. When Germany administered the country as their colony they attempted to record and codify the customary law practiced in the various regions. However, World War I interrupted this effort. Of the six tribes studied during that period, similarities were found in basic legal concepts and applications—one common practice was “trial by ordeal.” This practice of customary law was administered by a series of ad hoc bodies typically ruled over by a community leader: a family head, chief and chief’s council, or a quarter head. While administering Cameroon, Germany created and operated two parallel systems of courts, one exclusively for the European settlers where German law was applied, and the other exclusively for Cameroonians where the Germans supervised the application of custom-based traditional law.

The second colonial period of law began in 1916 with the combined colonial administrations of France and Britain, ending in 1960 and 1961 respectively. Under Article 9 of the League of Nations, “full powers of administration and legislation” were delegated to these colonial powers so they could administer the territory according to their laws and culture (depending on local conditions). Under this article, British and French customs and laws—French civil law and British common law—were exported wholesale to their respective territories of Cameroon.

The British colonial period that began in 1916 continued until Southern Cameroon gained its independence in 1961. The British colonial policy was one of “indirect rule,” which allowed for retention of customary law as long as it was not “repugnant to natural justice, equity and good conscience or incompatible with any existing laws.” During their administration, the British chose to simply adopt the same laws and policies they were administering in their neighboring Nigerian colonies to Northern and Southern Cameroon. This legal system was one

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36 Id.
37 Id.
38 Id.
39 Id.
40 Id.
41 Id.
42 Id.
43 Id.
44 Id.
45 Id.
46 Id.
47 Fombad, Experiment in Legal Pluralism, supra, at 214.
of separate courts based on the type of law being practiced. The Germans, on the other hand, separated their courts based on race. These courts had two separate parts: one for the traditional population, mainly native Cameroonians, and a modern sector primarily for the European population or Cameroonians that preferred that court of law.

English common law along with some Nigerian laws and ordinances were applied in Cameroon through Section 11 of the *Southern Cameroons High Court Law* of 1958 and section 29 of the *Magistrates’ Court (Southern Cameroons) Law* of 1955 (SCHL). Both these statutes allowed the common law practiced in England on January 1, 1900 to be exported and applied to Cameroon. Most of these exported doctrines and statutes covered general applications of laws. Additional statutes enabled the exportation of law for specific areas. For example, Section 15 of the *Southern Cameroons High Court Law* applied common law to family matters, probate, and divorce in the Cameroon High Court. Similarly, Section 27 enabled customary law to be retained as long as it was not repugnant to “natural justice, equity and good conscience or incompatible, whether directly or indirectly, with any law in force.” In the Cameroonian constitutions that have followed the British colonial rule, these statutes and the application of common law have been recognized and maintained in the English-speaking provinces as long as the laws are not superseded by local legislation.

While the British administered the Southern and Northern regions of Cameroon, the French administered the rest of the country from 1916 to the Francophone Cameroonian independence of 1960 according to their own laws and practices. The French colonial policy was one of assimilation with the goal of exporting French culture and customs in order to make Cameroon an “integral part of France” and transform the Cameroonian population into “Frenchmen.” The assimilation strategy created an elite group of assimilated Cameroonians that enjoyed higher status than the rest of society. Therefore, there was a cultural and legal distinction between this combined group of French citizens and assimilated Cameroonians and the ordinary Cameroonians who were referred to as “subjet” (indigenous people). The French applied this strategy by appointing native chiefs to local positions of power, while still keeping them subordinate to their administrative and political officials—to ensure that only those they trusted to further their goals would have positions of power among the Cameroonians and those they did not trust were removed.

The French then administered two parallel systems of courts for these two groups. One covered ninety-eight percent of the Cameroon population—the “subjets”—while the second

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49 *Id.*
50 *Id.*; Fombad, *Experiment in Legal Pluralism*, supra, at 214.
51 Fombad, *Experiment in Legal Pluralism*, *Id.*
52 *Id.*
53 *Id.*
54 *Id.*
55 *Id.*
56 AZEVEDO, *supra*, at 33.
57 *Id.*
59 AZEVEDO, *supra*, at 33.
court was for the French citizens and the assimilated Cameroonians—the “citoyens.” The French administered and presided over the traditional courts for the “subjets” in accordance to customary law, retaining local chiefs or notables as assistants or assessors. The French administered the second court for the “citoyens” according to French law.

French civil law was exported from France and applied in Cameroon through a French decree of May 22, 1922. The decree was supposed to extend all laws and decrees created and enacted in France to all of French Equatorial Africa. In practice, however, French civil law was only accessible to unassimilated Cameroonians piece-meal over time until independence in 1961 when French statutes were modified or specifically enacted for all of Cameroon. All the exported French laws have remained protected in the constitution as long as not superseded by local legislation.

While French law was exported according to decree, the actual application of the law took on a “trial and error” approach and faced many challenges. Enacted laws would be “amended, repealed, re-enacted” or replaced. A specific challenge was that laws, decrees and regulations could only be exported and executed in Cameroon by decree of the French Head of State—a practice that meant long delays. At times when no special decree was given, a penal law could not be applicable in Cameroon (unless it was locally created and enacted).

The “post-colonial” era was Cameroon’s third phase of legal development. This phase began at the end of the colonial trusteeships in 1960 and 1961 when Cameroon gained its independence; however, it should be mentioned that there were earlier movements for independence before the United Nations action. For example, in the Western province there was a movement for separation from Nigeria in favor of either an independent trusteeship or reunification with the Francophone regions of Cameroon (the French Trust Territory of Cameroon), which failed to gain support. Francophone Cameroon gained its independence first in 1960 and became the Republic of Cameroon. In the following year, two separate United Nations plebiscites were conducted and the Anglophone region gained its independence and joined the Francophone region of the country to form a federal system.

A major obstacle in the reunification process arose on October 1, 1961, because the lawyers entering into the process of designing and implementing a legal infrastructure were

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62 Id.
64 Id.
66 Id.
67 Id.
68 Id.
69 Id.
70 Id.
71 Id.
72 AZEVEDO, supra, at 34.
73 Id.
74 Id., at 25.
75 Id.
coming from drastically different legal backgrounds and training.\textsuperscript{76} The Cameroonian lawyers from the Anglophone region had received common law training in Britain while the Cameroonians from the Francophone regions had received civil law training in France.\textsuperscript{77} Therefore the training colored the way the lawyers interpreted and reasoned the law and approached their judicial system—so from the beginning there was not a single accepted understanding of law in Cameroon.\textsuperscript{78} With that challenge, two federated states were created in Cameroon, each under the control of the Federal Ministry of Justice and retaining their own inherited colonial legal system.\textsuperscript{79}

Ten years later in 1972, Cameroon abandoned the federated two-state format for one system of government: the “United Republic of Cameroon.”\textsuperscript{80} With this change came a new constitution containing Ordinance No. 72/4 of August 26, 1972, which created a civilian-style unitary system of Courts to replace the different court structures operating in two states.\textsuperscript{81} The continuous application of both common and civil law in the two regions were mentioned, via inference, in Article 68 of the Constitution that enabled the laws in force to remain in force as long as not superseded or repugnant.\textsuperscript{82} Despite the unified court structure, the two legal systems continued to operate separately.\textsuperscript{83}

In the modern legal system in Cameroon, limited customary law still applies but only to certain persons—those traditionally subject to it—and governs only a limited legal field.\textsuperscript{84} The practical application is that it only applies to the rural populations and, even then, its application is optional.\textsuperscript{85} In the Northern part of the country, Sharia law is still practiced and governs a large population of rural people and personal legal matters.\textsuperscript{86}

Though Cameroon has traveled a similar path of classical mixed jurisdictions by developing its legal system through intercolonial exchange, Cameroon also shares some of the fundamental traits of classical mixed jurisdictions in its founding. Like classical mixed jurisdictions, there was an intercolonial exchange in Cameroon that led to the country having a legal system built on a dual foundation of common and civil law; however, unlike classical mixed jurisdictions, there was no retention of civil law to avoid potential conflicts or resistance between a civil law society and common law colonial power. Civil law is retained in the region where it was administered by the French and common law is retained in the region administered by the English. The retention of the two systems are not related to the settlement or colonial system of the other. Therefore, Cameroon does now have both common law and civil law within

\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Fombad, Cameroonian Law, supra, at http://www.nyulawglobal.org/globalex/Cameroon.htm.
\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{86} Id.
its borders but not as a result of an exchange of colonial powers as is the case in classical mixed jurisdictions.

III. The Cultural Voices of the Jurists

Within mixed jurisdictions, unique legal cultures exist that are manifested in particular jurist groups: the purists, the pollutionists and the pragmatists. The orientations of each of these groups is aligned behind a legal perspective that is often a remnant of its colonial ancestry; and each group fights over the fate of its legal system and its application accordingly. Legal purists are jurists who strive to keep the civil law intact and true to its source, free from the contamination of common law. They tend to be culturally of continental heritage or civilian descent, and this can be by virtue of their familial or linguistic background. On the other side of the spectrum are the legal pollutionists who are usually Anglo-American or English speaking common law advocates. The pollutionists will push for the incorporation of common law, or the retirement of civil law for common law, while often self-servingly unaware of the effects their proposed legal shift will have on the culture of the society. Somewhere in-between those two vocal jurist groups are the pragmatists who tend to stand for a broader cross-cultural approach and detached perspective to the mixing of common and civil law. The pragmatists are proponents of the mixed jurisdictions, seeing the mixing of the systems as an evolutionary step in creating a richer legal system that combines the best of both legal worlds. They would advocate for the “practical and functional” aspects of a legal method over a blind adherence to one legal system. Finally, these groups’ orientations, along with the legal history and developments of the country, are colored by the “fortunes and the fervor of these cultural alignments.”

In Cameroon, these jurist groups do not appear to be present. However, there are similar cultural alignments and tensions being played out between the Anglophone jurists and the Francophone jurists. The Anglophone jurists, similar to pollutionists, advocate for the existence of common law because of their legal training and colonial background, just as the Francophone jurists advocate for the existence of civil law because of their legal training and colonial background. The Anglophone and Francophone jurists in Cameroon deviate from the classifications of purists, pollutionists and pragmatists found in mixed jurisdictions because each group just wants to protect its legal system from the encroachment of the other, which is naturally occurring because of Cameroon’s reunification. Both the Anglophone jurists and the Francophone jurists would prefer their legal systems to be pure and both jurists want their legal systems to have equal recognition and protection in the legal infrastructure, administration, and

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87 PALMER, supra, at 31.
88 Id. at 32.
89 Id.
90 Id.
91 Id. at 33.
92 Id.
93 Id.
94 Id. at 77.
95 See generally, EMONCHONG, supra, at 20.
constitution of Cameroon.97

A. The Colonial Birth of the Francophone and Anglophone Tension

For forty-six years Cameroonians were exposed and highly influenced by the separate colonial schemes, resulting in a strong and present colonial cultural heritage, identification and loyalty—which is present in their desire to retain their respective legal systems and laws.98 These administration tactics also influenced the culture and social differences between the Francophone and Anglophone jurists.99 Their colonial influence in the form of language, administrative structure and court system has had a lasting effect that is “spilling over into the modern structure of Cameroon.”100 Some theorists argue from a sociological and anthropological viewpoint that these schemes have had such a lasting impact because of cultural trends that existed in the ethnic tribes before the colonists arrived, and the colonists were then able to effectively channel the same hierarchies and lineage leadership found naturally in the tribe dynamics into their own colonial efforts.101 Others argue from a geographical perspective that the vast separation of the Cameroon population by topographical boundaries has made communication and unity difficult, resulting in “uneven political consciousness and a lack of common political goals” and enabling the tensions between the Anglophone and Francophone jurists to continue.102 However, no matter the theory, the conclusion is the same: the loyalties of each group, the Anglophones and the Francophones, developed from a separate colonial heritage. The Anglophone and the Francophone jurists favored their own specific colonial heritages and therefore were greatly shaped by the different colonial schemes each colonial country employed.103 The British and the French differed because of the different goals embedded in their colonial schemes.104 The French colonial mission was based on the goal of assimilation.105 The French administered their colonies so as to present their culture as an “object to worship”—to turn the French culture into something that should be strived for and revered—and they measured their progress according to their acculturation.106 The British wanted to spread British rule and commerce so they measured their success by the economic benefits they gained from the colony.107 While the British may have been envied for the privileges and wealth they possessed, they did not strive to inspire a “large-scale commitment to English culture per se.”108

98 Fombad, Experiment in Legal Pluralism, supra, at 210.
99 ENONCHONG, supra, at xi.
100 AZEVEDO, supra, at 25.
101 Id., at 28.
102 Id., at 31.
104 Id.
105 Id.
106 Id.
107 Id.
108 Id.
B. The Post-Reunification Tension Between the Anglophones and the Francophone Jurists

In post-reunification Cameroon, tension between the Anglophone and the Francophone jurists still influences the country’s legal and political development and the way the population interacts. The Anglophone population viewed reunification as the “lesser of two evils” in comparison to joining the Federation of Nigeria, but preferred outright independence, had it been possible. As a result, both parties felt forced together rather than reunited; as stated by one writer, Susungi, “the re-unification episode was far from being the reunion of two prodigal sons who had been unjustly separated at birth, and was more like a loveless arranged marriage courtesy of the UN, between two people who hardly knew each other.” Further, it was quickly discovered after reunification that the Anglophone region was being absorbed into a fully functional and independent country with an existing constitution. The Francophone failure to embrace the Anglophone population did not help the growing tension between the groups. As stated by Alexandre-Dieudonne Tjouen, a renowned Francophone jurist and academic, “the Anglophones, by voluntarily opting to re-unite with the Francophones in 1961, had implicitly undertaken to unconditionally accept and adapt to all existing laws in the former East Cameroon, and therefore have no legal choice in the matter [regarding land reform laws].” Ad hoc commissions appointed to assist in reunification were composed primarily of Francophone jurists and didn’t appear to take into account the new bijural nature of the country in the process. This disinterest and lack of representation further reinforced the feeling of doubt many Anglophones felt at the prospect of reunification with the former French Cameroon.

The centralized legal system is highly influenced by the divide between the Francophone and the Anglophone jurists, but the method used to control the development of the legal system is politics. For example, proponents of the common law often feel politically marginalized and lack a strong political voice; as a result, their concerns are often lost in the process of creating uniform laws and centralized legal systems. The reunification has been described as a “functional integration which has led to the restructuring of many aspects of the Anglophone social, economic and education system in conformity with French models.” This feeling of marginalization reflected in the association of reunification as “de-identifying” the Anglophone population. Now the Anglophone population demands the right to participate in the governance of the country and wants to be protected in the country as both Anglophones and Cameroonians. After the First All Anglophone Conference of 1993, groups have been formed and mobilized in Anglophone regions, such as the Cameroon Anglophone Movement, Southern Cameroon Restoration Movement, Southern Cameroon Liberation Front and the Free West

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109 Fombad, Experiment in Legal Pluralism, supra, at 213.
110 Id.
111 Id., at 218.
112 Id.
113 Id.
114 Id., at 219.
115 Id.
116 Fombad, Constitutional Conundrum, supra, at 140.
117 Fombad, Experiment in Legal Pluralism, supra, at 218.
118 Id., at 217.
119 Id., at 218.
120 Fombad, Constitutional Conundrum, supra, at 123.
Cameroon Movement, that strive for equal recognition or even independence from their Francophone opposition.\textsuperscript{121} This further deepens the divide between the Anglophones and the Francophone population, who resist Anglophone demands and derogatorily refer to them as “les ennémis dans la maison” (the enemies within the house).\textsuperscript{122} It is yet to be seen how this tension will further manifest itself or eventually be resolved.

Though this cultural divide between the Anglophone jurists and the Francophone jurists is interesting, and worthy of its own study, this is not the same cultural division as in classical mixed jurisdictions. Unlike classical mixed jurisdictions, Cameroon does not have the same cultural jurist groups of purists, pollutionists and pragmatists. While Cameroon does not have these self-identifying cultural groups of jurists, similar cultural tensions shared by those jurists exist between proponents of the common law and proponents of the civil law in Cameroon. The Anglophone jurists and Francophone jurists do wish to retain their own laws free from the contamination of another legal system; however, both the Anglophone and the Francophones cannot be clearly defined as strictly purists, pollutionists, or pragmatists because sub-groups within the Anglophone and Francophone regions seek different legal outcomes that draw from, but do not entirely embody, their exact ideals or causes. Some Cameroonian groups want for their law to be retained or pure from outside influence like the purists in classical mixed jurisdictions, while other groups advocate for their legal system to extend over the country and be implemented as the central law, like the pollutionists. Others are similar to pragmatists, preferring to see the two legal systems become more cohesive and uniform by creating a centralized legal system and laws that take from both the common and the civil law.

When examining Cameroon there are political movements and historical developments that do appear to be influenced by the force of these groups, but there is no “resistance” or similar historical period that would exactly mirror those found in classical mixed jurisdictions that came as the result of the “fortune and fervor” of the cultural jurists.\textsuperscript{123} Though similarities can be drawn from the plights of the Anglophone and Francophone individuals in Cameroon to the cultural jurists in classical mixed jurisdictions, there appear to be too many differences for this paper to conclude that this interim conclusion is fulfilled.

IV. Magistrates and the Courts

Commonly in mixed jurisdictions there is a melding of common and civil law. Typically civil law is incorporated into an Anglo-American institutional framework.\textsuperscript{124} Because mixed jurisdictions apply an Anglo-American common law framework, the courts are more powerful than they are in civil law and they are unitary institutions.\textsuperscript{125} This wider scope of the courts influences the actual substance of the civil law.\textsuperscript{126} In addition, mixed jurisdictions tend to largely import the common law of equity into the civil law system.\textsuperscript{127}

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\textsuperscript{121} Id. at 140.
\textsuperscript{122} Id. at 139.
\textsuperscript{123} PALMER, supra, at 77.
\textsuperscript{124} Id. at 77.
\textsuperscript{125} Id.
\textsuperscript{126} Id. at 78.
\textsuperscript{127} Id.
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To determine if Cameroon fulfills this interim conclusion this paper will first examine the Cameroonian courts, then the Cameroonian judiciary, and finally the treatment of judicial independence.

A. The Cameroonian Courts

To see if the mixed jurisdiction trait of civil law being incorporated into the Anglo-American institutional framework occurs, this paper will first describe the court system in Cameroon and its jurisdictional designations.

First, in the ten provinces in Cameroon—the North, the Far North, the Centre, the South, the West, the South-West, the North-West, the East, the Littoral, and the Adamawa Provinces—common law is practiced in the West and the South-West while the rest of the provinces practice civil law. As stated earlier, Cameroon offers no *de jure* constitutional recognition or protection for the bijural legal system. This constitutional recognition or protection was not noticed when there were two federated states in Cameroon, since each could continue to administer themselves without the intrusion of a unitary government; however, in 1972 when the state became a republic, the structure of the clashing legal systems became more apparent. In 1972, the Cameroonian constitution attempted to organize and structure the judicial system, but it left out any specific instruction of how the law would actually be applied in mixing common and civil law and the effect it would have on the judicial system that the constitution was trying to create. Instead, the constitution made inferences. The best inference was the vague language of Article 68, which stated that “legislation applicable in the federal state of Cameroon and in the Federated states on the date of entry into force of this constitution shall remain in force in so as it is not repugnant to this constitution, as long as it is not amended by subsequent laws and regulations.” Ever since reunification, successive constitutions have continued to indirectly sanction the existence of both the Francophone civil law and the Anglophone common law in Cameroon. Today the Cameroonian legal system is described as bijural, yet the practical outcome of that label is that French civil law is applied in the eight Francophone provinces and English common law is applied in the Anglophone provinces.

In separating the legal systems, each legal system has maintained its own unique procedures and systems. The Anglophone system is accusatorial and cases are appealed mainly by way of rehearing, while the Francophone courts is inquisitorial according to civil law procedural rules and cases are appealed by way of retrial.
Aside from the Francophone and Anglophone division, the courts in Cameroon can be divided into two main categories: first, courts with ordinary jurisdiction and second, courts with special jurisdiction. Courts with special jurisdiction address specialized matters delegated to that court by the nature of the law or by the nature of the particular class of persons the law addresses. These special court jurisdictions include the Constitutional Council and other Administrative and Audit Courts that are not part of the typical country judicial hierarchy. Both of these courts were created through amendments in the fourth and final Cameroonian constitution, written in 1996. Some courts with special jurisdiction in Cameroon are: the Court of Impeachment, the Military Court, and the State Security Court. As of 2008, twelve years after being passed, most of these special jurisdiction courts have still not been implemented.

As in most Francophone and Luxophone African countries, questions concerning constitutionality of laws are exclusively reserved for special constitutional tribunals. These special tribunals tend to be quasi-administrative bodies appointed and controlled by the president, so the reality of the tribunal is that it tends to deliver biased decisions favoring the government.

The Court of Impeachment is a tribunal with the authority to try the President for treason and to try governmental ministers for political crimes such as conspiracy against the state. The jurisdiction of the Military Court, located in capital Yaounde, is more vague, as civilians have been brought before it and convicted in situations that ordinarily would have been dismissed in a criminal court. The State Security Court has exclusive jurisdiction to try felonies and misdemeanors pertaining to the internal and external security of the state.

Courts with ordinary jurisdiction are courts with the authority to hear all matters relating to civil, criminal or labor disputes. The Supreme Court has jurisdiction over the whole national court system. Cases can be appealed up to the Supreme Court, however, that is the one court that connects the varying courts; otherwise ordinary jurisdiction courts are highly decentralized. Ordinary courts are divided into two categories, those with original jurisdiction and those with appellate jurisdiction. The courts with original jurisdiction have the authority to hear the case first. These courts include magistrate courts that operate at a subdivision level and High

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139 Id.
140 Id.
141 Id.
142 Id.
143 Fombad, *Constitutional Conundrum*, supra, at 137.
145 Id.
147 Id.
148 Id.
149 Id.
150 Id.
151 Id.
152 Id.
Courts that operate at a divisional level—both types of courts may cover multiple subdivisions or divisions.\textsuperscript{153}

The courts with appellate jurisdiction are the High Courts, the Court of Appeals and the Supreme Court.\textsuperscript{154} The High Court has limited appellate jurisdiction while the Courts of Appeals, located in the headquarters of each of the 10 provinces, function as the main appellate courts.\textsuperscript{155}

The Supreme Court has exclusive jurisdiction over the country’s administrative and institutional matters that have been appealed from lower courts, so in a sense it does operate like an appellate court, however it will not decide the conflict but instead instruct a lower court to resolve the matter.\textsuperscript{156} In reality however, the Supreme Court is rarely an effective tool to resolve disputes but instead serves to frustrate or delay parties in the case because it is so backlogged with cases that it is slow and inefficient.\textsuperscript{157}

B. The Magistrates

In Cameroon the magistrates are educated according to the practices of their particular legal system. During the colonial period this meant that legal training occurred in the country of the colonial power—so civil law jurists were trained in France and common law jurists were trained in England. After Cameroon became independent, in the Anglophone region judicial candidates were appointed after years of serving as advocate, barrister or attorney to ensure professional experience, maturity and legal awareness of the bench while the Francophone region preferred a system of educational training followed by appointment to the bench. However since 1972 the judicial selection process has gradually changed to take on a more uniform civilian approach.\textsuperscript{158} In this civilian system, judicial candidates must attend a two-year professional course to be trained in adjudication at the National School of Administration and Magistracy (ENAM) Yaonde after completing their law degree and passing an entrance exam.\textsuperscript{159} The course and the school are structured based on a French school in Paris and the curriculum is predominately civilian law and procedure, providing minimal training in common law for the common law judicial candidates that attend.\textsuperscript{160} After completing the course the judicial candidates are typically appointed to the bench.\textsuperscript{161} In both the traditional Anglophone and Francophone systems the executive branch determines the actual appointment after receiving a recommendation from the Judicial Service Commission or a similar body.\textsuperscript{162}

\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Id.
\textsuperscript{158} Fombad, Cameroonian Bi-Juralism, supra, at 30.
\textsuperscript{159} Id.
\textsuperscript{160} Id.
\textsuperscript{161} Fomad, Judicial Independence, supra, at 38.
\textsuperscript{162} Id.
C. The Cameroonian Constitution and the Protection of Judicial Independence

The Cameroonian constitution, like many African constitutions, is one that is highly shaped by the country’s colonial heritage.\(^\text{163}\) Typically in African countries that adopted their constitution from a colonial power, there are two typical constitutional formats: the British parliamentary or Westminster model, which was designed by the Colonial Office in London, and the Gaullist model, which was designed in Paris and based on the Constitution of the French Fifth Republic.\(^\text{164}\) Cameroon’s constitution followed the Gaullist model.\(^\text{165}\)

Judicial independence is not ensured in the constitution of Cameroon, which is a feature of the Gaullist model.\(^\text{166}\) In Anglophone countries, judicial independence has always been recognized and protected, beginning with the common law doctrine: the Act of Settlement of 1701.\(^\text{167}\) This act protects judicial independence by ensuring judicial personnel will not be dismissed without the participation of both houses of parliament.\(^\text{168}\) This act was followed by years of political protection of the judiciary, such as legislation protecting security of tenure, fiscal independence, impartiality and freedom from executive influence, and ensured that the judiciary remains independent.\(^\text{169}\) On the other side of the spectrum, the French approach to the judiciary greatly differs from that of the British because it was shaped by a French history of “obsessive Gallic fear” of judicial dictatorship—the idea of an oppressive and controlling “government of judges.”\(^\text{170}\) This has been the perspective of the judiciary since pre-revolutionary France, and has been reflected in subsequent constitutions.\(^\text{171}\) In the 1958 Constitution of the French Fifth Republic a mistrust of the judiciary is expressed in Article 64, which states that the president is the guardian over the independence of the judiciary.\(^\text{172}\) This article positions the executive over the judiciary as its protector. The executive is also at a higher level of power.\(^\text{173}\) This power dynamic is further reinforced by the president’s given authority to control the judiciary by appointing, transferring, promoting and dismissing members.\(^\text{174}\) Therefore, in constitutional approaches that reflect this Gaullist model judicial independence is compromised.\(^\text{175}\)

In Cameroon, a country that applies the Gaullist model, judicial autonomy in the 1996 constitution is treated in the same manner of the French Fifth Republic Constitution—hesitant, unresolved and contradictory.\(^\text{176}\) Article 37(2) contradictorily states that judicial power is independent of executive and legislative influence, so judges when discharging their judicial

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\(^{163}\) Id. at 23.
\(^{164}\) Id.
\(^{165}\) Id.
\(^{166}\) Id.
\(^{167}\) Id.
\(^{168}\) Id.
\(^{169}\) Id. at 24.
\(^{170}\) Id.
\(^{171}\) Id.
\(^{172}\) Id.
\(^{173}\) Id.
\(^{174}\) Id.
\(^{175}\) Id.
\(^{176}\) Id.
duties will be governed by law and their conscience. However, in the next article, Article 37(3) is the statement that, “president of the Republic shall guarantee the independence of the judicial power.” This contradictory article creates the same power dynamic as existed in France, enabling the judiciary to be subordinate to the control of the watchful executive. The constitution is also vague regarding the nature of judicial disciplinary measures, stating only that subsequent laws may be developed to address the judiciary. Having such laws created outside of the Constitution means that not only is judicial independence threatened, but also that the transparency of governmental action taken against the judiciary may be compromised. Therefore, the vague language and ambivalent attitude towards the judiciary contained in Article 37(3), raises concerns about Cameroon’s ability to ensure an independent judiciary without undue interference of the legislature or executive.

Applying the shared traits found in the magistrates and the courts of classical mixed jurisdictions to Cameroon, there doesn’t appear to be any similarities. First, civil law is not incorporated into an Anglo-American institutional framework—there are separate courts in separate legal systems handling the common law differently from the civil law. The one centralized court in the country, the Supreme Court, is not helpful in determining how law is applied through any legal procedure because it is often so backlogged and ineffective that many cases are never heard (or never reported, but this will be discussed later in the paper). Further, the courts, the training of the magistrates and the attitude towards judicial independence tend to reflect more civilian qualities than those found in classical mixed jurisdictions. Cameroon does not seem to share in the same traits concerning magistrates and courts as those shared by classical mixed jurisdictions.

V. Linguistic Factor in Mixed Jurisdictions

Language plays a vital role in the founding and the development of mixed jurisdictions, and the treatment and retention of languages during transitions in the country reflects the policies and attitudes towards the legal systems. There are five linguistic traits typical to mixed jurisdictions. First, typically in mixed jurisdictions a fear of a massive language turnover results in retention of original laws: the colonial powers are concerned that a change in language would result in the population being unable or unwilling to follow or understand the new common law statutes. Second, there are typically two source languages to support and maintain the bijural system and competency in both is essential to the retention of both common and civil law. Third, translation of laws is vital for both systems. Fourth, the language of the jurist will often

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177 Id.
178 Cameroon Constitution, article, 37(3)
179 Fomad, Judicial Independence, supra, at 24.
180 Id. at 34.
181 Id.
182 Id. at 30-31.
183 PALMER, supra, at 78.
184 Id.
185 Id.
186 Id.
reflect one’s own legal and cultural orientation.\textsuperscript{187} Finally, English tends to be the lingua franca in the mixed jurisdictions.\textsuperscript{188}

In Cameroon, there are only two official languages but more than 280 indigenous languages spoken by some 250 separate tribes within the country.\textsuperscript{189} As in many mixed jurisdictions the two official languages are English and French.\textsuperscript{190} Approximately eighty percent of the Cameroonian population speaks French while the remaining twenty percent speaks English.\textsuperscript{191} The bilingual characteristic of Cameroon is and has been protected by all four of the Cameroonian constitutions, including the current constitution under Article 1(3): “The official languages of the Republic of Cameroon shall be English and French, both languages having the same status.”\textsuperscript{192} Though both languages do have equal status, most official communications in the country are conducted in French.\textsuperscript{193}

Buried in the history of the four Cameroonian Constitutions is one discrepancy in the treatment of linguistics. The 1961 French-style Constitution contains the same provision as the current Article 1(3) protecting both official languages, however, it expressly states that in the event of conflict in the interpretation of French and English then the French text “must prevail.”\textsuperscript{194} This appears to be the only formal mention of a language preference in Cameroon that still exists today, with French being institutionally and culturally favored over English.\textsuperscript{195} On the subject of bilingual status in Cameroon, Professor Charles Fombad states, “Bilingualism in Cameroon, because of the lack of clear-cut goals, has been more of a vain hope than a practical fact.”\textsuperscript{196} Therefore, despite the constitutional provision recognizing the equal and official status of both languages, in practice the dominating culture of the Francophone and the assimilation policy of “Frenchification” has led to an asymmetrical recognition and treatment of the two languages—where Anglophones are required to learn and be fluent in French while those in the Francophone region do not have to learn English and, in fact, may not even understand basic English.\textsuperscript{197}

Therefore, while Cameroon does possess some of the linguistic traits shared by mixed jurisdictions it differs on others. As in mixed jurisdictions, Cameroon is bilingual and that bilingual status is constitutionally protected. Similarly, these two source languages support and maintain the operation of the bijural system. English supports the common law system and French supports the civil law system, reflecting their legal and cultural orientation. However, this is where the similarities end. This bilingual status did not come from the same origins that are typical of mixed jurisdictions. Unlike other mixed jurisdictions, French appears to be the lingua

\footnotesize{\textsuperscript{187} Id. \\
\textsuperscript{188} Id. \\
\textsuperscript{190} Republic of Cameroon Constitution \\
\textsuperscript{191} Fombad, Comparison of Botswana and Cameroon, supra, at 88. \\
\textsuperscript{192} Republic of Cameroon Constitution; Fombad, Experiment in Legal Pluralism, supra, at 216. \\
\textsuperscript{193} Fombad, Comparison of Botswana and Cameroon, supra, at 88. \\
\textsuperscript{194} ENONCHONG, supra, at 21. \\
\textsuperscript{195} Fombad, Constitutional Conundrum, supra, at 152. \\
\textsuperscript{196} Id. \\
\textsuperscript{197} Id.}
franca because it is spoken by the majority of the country and is the only language that is required to be taught in schools. Translation efforts between English and French are weak and inconsistent, much to the detriment to the English-speakers as more official documents are prepared or reported in French.\textsuperscript{198}

Legal scholar Professor Fombad has noted that the constitution protects the bilingual status of the country while not explicitly protecting the bijural status of the country.\textsuperscript{199} This paper concludes that there is a connection between the treatment of the bilingual system and treatment of the bijural system—and this sloppy treatment of the bilingual system is an indication of the treatment and feelings towards the bijural system in Cameroon.

VI. \textit{Stare Decisis} and Legal Reasoning

Legal reasoning and legal sources share a common role in mixed jurisdictions and often take on three basic traits. First, in mixed jurisdictions, as in common law, there is judicial reliance on past decisions and those judicial decisions are accepted as \textit{de facto} courses of law.\textsuperscript{200} In three of the mixed jurisdictions judicial decisions are even accepted as an official source of law, ranked only behind legislation.\textsuperscript{201} Second, since judicial decisions are sources of law, the highest court determines the law, binding all of the inferior courts by its rulings.\textsuperscript{202} Third, the legal method takes on a bifurcated approach, allowing cases to be divided and examined as separate legal parts with separate legal issues.\textsuperscript{203}

In Cameroon, sources of law have been “significantly shaped by the dual English-French colonial heritage.”\textsuperscript{204} The main sources of Cameroonian law are threefold: first, the constitution; second, legislation; and third, judicial precedents and customary law.\textsuperscript{205} Though it’s not explicitly stated, the Cameroon constitution is considered to be the supreme law of the land.\textsuperscript{206} The Constitution does state that the rulings of the Supreme Court are binding on all inferior courts; however, this is complicated by the use of \textit{stare decisis} and the judicial organization.\textsuperscript{207}

A. \textit{Stare Decisis}

Whether judicial precedent is treated as a source of law depends on the jurisdiction of Anglophone common law or Francophone civil law. The civil law system in Cameroon does not treat judicial precedent as a source of law though it is highly persuasive.\textsuperscript{208} However the common law system treats judicial precedent differently because the English law doctrine of binding

\textsuperscript{198} Fombad, \textit{Comparison of Botswana and Cameroon}, supra, at 88.
\textsuperscript{199} Fombad, \textit{Experiment in Legal Pluralism}, supra, at 216.
\textsuperscript{200} PALMER, supra, at 78-79.
\textsuperscript{201} Id. at 79.
\textsuperscript{202} Id.
\textsuperscript{203} Id.
\textsuperscript{205} Id.
\textsuperscript{206} Id.
\textsuperscript{207} Id.
\textsuperscript{208} Id.
precedent or *stare decisis* was inherited in the Anglophone province from the general importation of English common law.\(^{209}\)

Though *stare decisis* is applied in the Anglophone region it is difficult to find examples of its application for two reasons: first, because the majority of cases are not reported and second, because of different interpretations of the *Magistrates’ Court (Southern Cameroons) Law 1955* statute (SCHL).

According to Professor Fombad, a leading Cameroonian legal scholar, “it is extremely difficult to find decided cases in Cameroon mainly because they are not usually reported and one often has to rely on the original manuscripts of the judge or the court—sometimes, these are not available for a variety of reasons, including the fact that some are hand written.”\(^{210}\) Therefore, this paper concludes that if it is not possible for cases to be publicized then it is difficult for *stare decisis* to be utilized and developed, since the concept depends on access to previous cases and judicial reasoning.

Further, another difficulty in finding applications of *stare decisis*, and in actually applying *stare decisis*, is the conflicting interpretation of section 11 of the SCHL 1955.\(^{211}\) This statute states:

“Subject to the provisions of any written law and in particular of this section… (a) the common law; (b) the doctrines of equity; and (c) the statutes of general application which were in force in England on the 1st day of January 1900, shall insofar as the legislature of the Southern Cameroons is for the time being competent to make law, be in force within the jurisdiction of the court.”\(^{212}\)

There are conflicting interpretations of the limiting date of January 1, 1900 in section (c) of the SCHL 1955 statute.\(^{213}\) Common law scholars and judges are divided over what law is excluded by the limiting date.\(^{214}\) One interpretation asks if the limiting date applies to common law and doctrines of equity or if it is limited to only statutes of general application.\(^{215}\) The other interpretation is more absolute and interprets the limitation date to exclude all post-1900 common law developments—from the doctrines of equity to statutes of general application.\(^{216}\) Therefore, what law is recognized as an authority in a courtroom is decided on a judge-by-judge basis.\(^{217}\) Because of different judicial interpretation of section 11(c), some judges accept and cite post-1900 English cases and statutes as authority while other judges reject those same cases and statutes.\(^{218}\) Therefore, it is difficult to examine the application and use of *stare decisis* in

\(^{209}\) *Id.*
\(^{210}\) Email from Charles Manga Fombad, Professor of Law, University of Botswana, to Stella Cziment, Law Student, Tulane University Law School (Nov. 21 12:59:00 CST) (on file with author).
\(^{211}\) Fombad, *Experiment in Legal Pluralism*, supra, at 224.
\(^{212}\) *Id.*
\(^{213}\) *Id.*
\(^{214}\) *Id.*
\(^{215}\) *Id.*
\(^{216}\) *Id.*
\(^{217}\) *Id.* at 225.
\(^{218}\) *Id.* at 224-225.
Cameroon because different authority is valued differently and some authority is inaccessible because it is unreported.

B. Legal Reasoning and Conflict of Laws

As for the legal reasoning, there is no recognition for conflict of laws.219 Typically in mixed jurisdictions, judges presiding over a case with a civilian subject matter may fill in discrepancies or holes in the civilian code with common law, inserting a mixture of laws in the opinion. The judge will then address the conflict of laws and provide a justification for applying the law to the situation when it may seem appropriate.220 However, Cameroon does not appear to fully recognize conflicts or potential when applying laws from the common and civil systems.221

Cameroon is a country with two legal systems divided by only territorial limits.222 Civil law is applied in the eight Francophone provinces and common law is applied in the two Anglophone provinces and due to the lack of a functioning centralized court structure, aside from the backlogged and ineffective Supreme Court, there is relatively no interplay between the two legal systems.223 The result is that law is applied based on the lex forti, the forum hearing the case, instead of the lex causae, the law that might be best for the particular dispute.224 This is particularly worrisome in a country that allows for free movement of individuals into the different legal territories.225 A legal protection, status, or obligation that an individual may possess in one legal system may, in identical circumstances, be denied in the other legal system.226 Therefore a contract formed in an Anglophone region may be breached in a Francophone region then have the civil law applied to resolve the dispute.227 The law the individual is accustomed to or may have built the agreement on is not acknowledged when a conflict arising from the agreement is addressed.228

For example, in the issue of marriage, the Anglophone courts apply the principle of law of the domicile, governed by personal law, while the civil law rule to marriages is governed by a person’s nationality in the Francophone courts.229 Cameroon attempted to address this discrepancy by creating a harmonized ordinance, the 1981 Civil Status Registration Ordinance, to unify the formal and procedural elements of the received English and French law.230 However, the half-hearted attempt to harmonize the laws left substantive holes in the ordinance such as divorce, which was not even mentioned.231 In Lelpou v. Lelpou a Francophone marriage

219 Id. at 220.
220 PALMER, supra, at 79.
221 Fombad, Experiment in Legal Pluralism, supra, at 220.
222 Id.
223 Id.
224 Id. at 221.
225 Id.
226 Id.
227 Id.
228 Id.
229 Id.
230 Id.
231 Id.
contracted based on the civil law applied in a Francophone province, Yaounde, is dissolved in an Anglophone province, the Buea High Court. In granting the divorce by applying common law through the relevant sections of the Matrimonial Causes Act of 1973, the Anglophone court never addressed the fact that both parties were Francophone Cameroonians and the marriage was contracted according to civil law. In the reverse situation in Affaire Mme Neba nee Juliette Bih c. Niba Aaron Such, the Francophone Douala High Court automatically applied the French Civil Code, without acknowledging any conflict of laws, to a divorce petition of two Anglophone individuals for a marriage created under common law.

Similarly, in a breach of contract case, Olabi Fayez v. Compagnie Industriel d’Automobile du Cameroun, the contract was created and performed in Douala, a Francophone region, but it was settled in the Buea High Court because the plaintiff was based in Kumba which is an Anglophone region so the common law was applied without acknowledging the civil law where the contract was formed. Similarly, in Upper Nun Valley Development Authority v. Bitsong Yombo Mousa, the Anglophone Bamenda High Court applied common law without mentioning possible conflicts with the Civil Code involving a breach of contract dispute between an Anglophone individual and a Francophone individual for a contract that was to be performed in a Francophone region. In tort law there are similar conflicts in the laws being applied. For example in Cameroon and Afric Auto v. Albert Nqafor, common law was applied as the lex fori to an action for the tort of detinue, even though the tort occurred in a civil law province which was also the defendant’s place of residence.

Some legal scholars claim the conflict of laws are not acknowledged in Anglophone courts because it is a rule that if a party wants to rely on foreign law, that party must plead that as a fact, but if the party fails to do so then the court is bound to resolve the dispute as if it were a domestic case—meaning if it was governed entirely by the lex fori of common law.

In conclusion, Cameroon technically fulfills the first two traits of this interim conclusion. First, there is judicial reliance on past decisions. Second, judicial decisions are sources of law and do bind the lower courts. This paper cannot determine the final trait, it is unknown if the legal method may adopt a bifurcated approach. Though Cameroon fulfills the first two traits in theory, in practice it has demonstrated severe shortcomings. Cases are not reported, stare decisis is applied unevenly if at all, and as examined in the previous section, cases are rarely heard by the Supreme Court and it is unknown if the judicial opinions are reported in order for them to be known and binding on the inferior courts. Therefore, though Cameroon may possess the majority of the traits in this interim conclusion it does not seem to apply these traits practically.
VII. The Penetration of Common Law in Mixed Jurisdictions and Higher forms of Legal Creativity

In Professor Palmer’s book, Mixed Jurisdictions Worldwide the penetration of common law in mixed jurisdictions is a separate interim conclusion from that regarding higher forms of legal creativity, however, in this paper both will be examined in the same section. Both are examined together because Cameroon greatly differs from other mixed jurisdictions in both conclusions and the reasons for this difference are connected.

First, in mixed jurisdictions it is the common law that penetrates the practice of civil law.239 This common law penetration occurs in mixed jurisdictions through similar patterns of judicial involvement with the same judicial justifications for their interweaving of common law principles into the civil law system.240 This pattern is systematic—meaning that some areas of law are proven to be more malleable than others—for example, the field of obligations tends to be more easily influenced in civil law while personal issues such as property and family law tends to be more resistant to common law influence.241

Second, mixed jurisdictions are more than a fusing of common and civil law elements in one system.242 Instead, they are a venue for the creation of novel legal arguments and systems—higher forms of legal creativity. This results from the traditional training of the judges clashing with the subject matter that they are examining.243 These new interpretations allow for the creation of new different laws, “amalgamations” of civil law and common law approaches and concepts.244

Cameroon does not have the typical penetration of common law in the courtroom or in its legislation. There is relatively no mixing between the common and civil law. As law professor and legal scholar Professor Dickerson of Buea University explained, “The courts are different—expect to find the lines of notaries in the inquisitorial civil law court and the judges in curly white wigs in the adversarial common law court.”245 The common and civil law coexists, but only through constitutional inferences.246 For that reason, the penetration of common law does not occur in Cameroon. This lack of common law penetration affects the ability of higher forms of legal creativity to occur as it would in mixed jurisdictions.

Higher forms of legal creativity do not appear to be present in the courtrooms or in the legislation of Cameroon. As examined in the previous section on legal reasoning, courts tend not to acknowledge conflicts of law in the courtroom and instead blindly apply the lexi forti.247 In the opinion of this paper, this lack of recognition in the conflict of laws keeps the bench from

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239 PALMER, supra, at 79.
240 Id.
241 Id.
242 Id.
243 Id.
244 Id.
245 In-person Interview with Claire Dickerson, Law Professor, University of Buea/Tulane Law School (Nov. 3, 2009).
246 Fombad, Experiment in Legal Pluralism, supra, at 216
247 Id. at 221.
creating new legal arguments since they are not participating in creative problem solving by taking from both the *lexi forti* and the *lexi causae*.

Higher forms of legal creativity do not appear to be in the legislation either. In the opinion of some legal scholars this is because any steps toward creating new “amalgamations” between the civil and common law only dismantle the existence of common law in Cameroon since these new laws tend to take exclusively from the civil law or the drafters tend to be predominately civil law jurists. Therefore, the creation of “new” harms the existence of common law. There are many reasons behind this occurrence, but training and background of the jurists drafting the laws tends to be a large factor. For example, in the formation of the first uniform Labour Code of 1967 a French expert who participated in the drafting stated that the code tended to be drawn from French law of December 15, 1952 simply because of the committee’s “inability to come to grips with the intricacies of the English labour law. Therefore, the Anglophone region seems to be hesitant to embrace the opportunity to create new legislation because it threatens the existence of their legal system. Without the presence of the Anglophone region in the creation of new laws, the country cannot capture the dynamic nature of its bijural system, and without this mixing of the systems it can’t create new amalgamations.

Therefore, Cameroon differs from mixed jurisdictions because there is no traditional penetration of common law nor is a higher form of legal creativity being applied in the courtrooms or in the legislation of the country.

VIII. Impact of Anglo-American Procedure

The eighth conclusion is that in mixed jurisdictions substantive civil law is applied in an Anglo-American procedural system and this procedural process has an impact on the way that civil law is practiced. This merging of the systems means the courtroom procedure takes on a common law form while the substantive law being reasoned or addressed may be civil law. This occurs when the courts were established in an Anglo-American format then presided over by common law trained judges, therefore it seemed natural that the use of English procedure was adopted to the law being practiced. Finally, this adoption of the Anglo-American courtroom procedure would have occurred within and by courts themselves—the courts had the power to proclaim the rules without political or legislative oversight.

This conclusion does not appear to be relevant in Cameroon because the Anglo-American procedure being applied to civil law does not appear to be present. This may be due to two factors. First, the centralized court -- the Supreme Court -- has taken on more of a civil law

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248 Id. at 210.
249 Fombad, *Constitutional Conundrum*, supra, at 139.
251 Id.
252 See Fombad, *Constitutional Conundrum*, supra, at 139.
253 PALMER, *supra*, at 79.
254 Id. at 63.
255 Id. at 65.
256 Id.
procedural process and it is unknown how common law is practiced in that courtroom format.\textsuperscript{257} Second, common law is not practiced in the Francophone or federal system and to go further, common law or the conflict of laws is not even addressed in the courtrooms, so in common law courts common law is practiced even if the \textit{lex causai} is clearly civil law, and vice versa. Therefore, civil law is also not practiced in a court with an Anglo-American procedural structure.\textsuperscript{258}

IX. Commercial Law of the Dominant Economy

The malleable nature of the commercial law shared in mixed jurisdictions is the final conclusion this paper will examine.\textsuperscript{259} All the mixed jurisdiction systems borrow Anglo-American commercial law into a mixed jurisdiction legal system, which eventually leads to abandonment of the continental commercial law.\textsuperscript{260} This adoption of common law in commercial matters is justified by self-interested economic reasons along with the argument that continental commercial law was inadequate for the changing economy.\textsuperscript{261} Therefore, this adoption tends to be an internal decision of the mixed jurisdiction based on local business and the domestic economy and not the result of outside influence.\textsuperscript{262} Finally, the mixed jurisdictions adopt the content and structure of Anglo-American law as well as the larger common law unitary concept of commercial law.\textsuperscript{263}

First, Cameroon is unlike other mixed jurisdictions because Cameroon has renounced its legislative and judicial sovereignty in matters concerning business law in order to adopt an international treaty regulating business and commercial law—the Organization for Harmonization in Africa of Business Law, OHADA.\textsuperscript{264} Therefore, unlike mixed jurisdictions, Cameroon addresses business law through the OHADA treaty.\textsuperscript{265}

Though Cameroon does not resemble other mixed jurisdictions in this final section, Cameroon’s interaction with the OHADA treaty will be briefly examined because it does speak to some concerns shared by mixed jurisdictions. Because of Cameroon’s two differing legal systems and its constitutional recognition of its bilingual state, Cameroon has interacted differently with the treaty than other treaty-parties. The Anglophone provinces of Cameroon resisted this treaty because it was originally considered an instrument of the French and francophone neo-colonialism.\textsuperscript{266} However, OHADA scholars posit that OHADA may bridge gaps between Anglophone and francophone systems as an “emerging tool” that could

\begin{footnotesize}
\begin{enumerate}
\item Fombad, \textit{Cameroonian Bi-Juralism}, supra, at 26.
\item Fombad, \textit{Experiment in Legal Pluralism}, supra, at 220.
\item PALMER, supra, at 80.
\item Id.
\item Id.
\item Id.
\item Id.
\item MARTHA SIMO TUMNDE, née NIKAM, supra, at 73.
\end{enumerate}
\end{footnotesize}
“progressively become the common business law in Anglophone and Francophone African countries, taking the best from the civil law and common law systems.”

Before Cameroon adopted OHADA the country had not made an effort to modernize its business laws. Cameroon, like the majority of African countries, was ambivalent on the concept of law reform. Further, what weak attempts were made in Cameroon to update commercial or business laws failed to properly represent the bijural nature of the country. For example the Civil Code Commission was majority Francophone and only two of the ten members practiced common law. Similarly, in the Commission on Harmonization of Commercial Law, there was only one common law jurist on a commission of fifteen members. Therefore, in the absence of modern uniform commercial laws Cameroon continued to rely on colonial laws, some of which are still in operation today. For example, outside of business law that is governed by OHADA, the Anglophone provinces still continue to apply common law doctrines of equity and pre-1900 statutes of general application via Section 11 of the SCHL 1955 along with pre-1960 Nigerian laws. In the Francophone provinces, French laws that were promulgated in French Equatorial Africa before January 1, 1924 and decreed applicable in the region later that same year were used for business and commercial law. Years after Cameroon declared independence from the British and the French their laws were no longer imported into the country, so Cameroon continued to rely on out-of-date legislation, most of which has been abandoned in the countries where the law originated. Examples of such legislation would be the Commercial Code 1807, Civil Code 1804, Sale of Goods Act 1893 and the Partnership Act 1890. Therefore, countries like Cameroon sorely needed a treaty like OHADA when it was formed in 1993.

A completely separate paper could be written on the mixed elements of the OHADA treaty and how it interacts with societies like Cameroon that have both common and civil law systems, however, for the sake of this subject this paper will only examine a few of the issues relating to OHADA that interact specifically with aspects of Cameroon’s bijural system and touch on elements of mixed jurisdictions. First is the language issue. OHADA is made up of sixteen west and central African countries, most of which are Francophone. The policies and the language of the treaty reflect the strong Francophone influence and this has been the point of tension in the bijural bilingual state of Cameroon. Under Article 42, the working language to be applied to the treaty is French. This is a point of tension in bilingual Cameroon where both
English and French are official languages.\textsuperscript{282} Though there is an amendment to add more languages to OHADA, which would include English, the official OHADA documents, such as the treaty and Uniform Acts, are to be translated from French so the French translation will remain the authentic version and the controlling text in the case of differences in translation.\textsuperscript{283}

Second, the necessary step that OHADA disputes are handled in the Common Court of Justice and Arbitration based in Abidjan, Cote d’Ivoire has been resisted as it takes the control out of the Anglophone courts with their culturally acceptable judges and places it in a civilian court system with civilian trained judges.\textsuperscript{284} First, the CCJA applies civilian procedure and its decisions are based on dossiers.\textsuperscript{285} Second, judges in the CCJA are exclusively trained under the civil law, so the Anglophone practice of elevating accomplished barristers to the bench as judges is not practiced and this results in many Anglophones being skeptical of the CCJA rulings and uneager to send claims.\textsuperscript{286} In the future it would be best if common law judges could be appointed to the bench to adjudicate on issues originating from Anglophone courts in Cameroon.\textsuperscript{287}

Currently, the concerns of the common law jurists in Cameroon are unresolved. Because of the strong civil law influence in all aspects of the treaty, from the structure and language to the enforcement mechanisms, the common law jurists in Cameroon do question if the treaty is compatible with common law.\textsuperscript{288} However, proponents of OHADA, both inside and outside of Cameroon, hope to overcome these obstacles and learn from the process. Cameroon has become an experiment on how this treaty will interact with Anglophone legal systems.\textsuperscript{289}

X. Cameroon: a Mixed Jurisdiction?

This paper examined Cameroon’s bijural legal system through the perspective of Professor Palmer’s nine interim conclusions of \textit{Mixed Jurisdictions Worldwide}. Through these conclusions, this paper analyzed Cameroon’s legal development, infrastructure and culture to determine if Cameroon is a mixed jurisdiction.

The first issue examined was the founding of the legal system. This paper determined that though Cameroon’s legal system developed through a method of intercolonial change, there were fundamental differences between the creation of the civil law and common law dual foundation in classical mixed jurisdictions and Cameroon. Next, Cameroon differed from mixed jurisdictions because there is no formal existence of purist, pollutionist and pragmatists cultural jurists in the country. This paper determined that Cameroon does not have the same court system as classical mixed jurisdictions because common and civil law is not mixed in the courtroom at the discretion of the judges. In classical mixed jurisdictions, common law penetrates the civil law because judges intertwine their own culture or educational background of one legal system into

\textsuperscript{282} Id. at 73.
\textsuperscript{283} Id. at 73.
\textsuperscript{284} Id. at 75.
\textsuperscript{285} Id. at 75-76.
\textsuperscript{286} Id. at 75.
\textsuperscript{287} Id. at 76.
\textsuperscript{288} Id. at 73.
\textsuperscript{289} Id. at 79.
the other. This forms novel legal arguments because typically civil law is being applied through a common law system or common law is becoming infused in civil law. This paper concluded this classical mixed jurisdiction infusion of common and civil law does not occur in Cameroon. Civil law is not practiced through a common law lens and common law does not creep into the civil law courtrooms. The laws remain separate, as do the judges, legal ideas and legal procedures.

Not only is the structure of the courts in Cameroon different from classical mixed jurisdictions, but also so is the practice of the law—with limited and inconsistent use of *stare decisis* and legal reasoning unlike that practiced in classical mixed jurisdictions. Also because the legal systems are not mixing the legal creativity that normally flourishes in mixed jurisdictions, this higher legal creativity is stunted in Cameroon.

Finally, the country adopted an international treaty to apply to all business law—further differentiating itself from classical mixed jurisdictions.

Applying Professor Palmer’s nine interim conclusions it is easy to see that Cameroon is not a mixed jurisdiction. However, what is it then? Though Cameroon does not match the shared traits of classical mixed jurisdictions it may still be a mixed jurisdiction—just a different one, unlike the formally recognized countries that Professor Palmer studied. Or Cameroon may in fact be a mixed jurisdiction but one still developing and growing into itself.

Further in presenting and analyzing Cameroon, this paper has faced many obstacles and as a result has shortcomings. Due to the developing nature of the country, cases are often unreported, so this writer was analyzing legal reasoning and the use of *stare decisis* without access to judicial opinions. Cameroon is still relatively inaccessible to the western legal world in some ways, as this paper had to rely on one dedicated and knowledgeable Cameroonian legal scholar, Professor Fombad, for more than half the sources cited, and many of the works prepared by those outside the country were anywhere from ten to forty years old. This leads the writer of this paper to wonder what information is in Cameroon, yet to be critically examined and reported to the international legal community. Cameroon may be a different place, a different legal world, when examined from the inside.

In the course of the research conducted for this paper, the writer has read and heard Cameroon be declared many things—a bijural legal system, a mixed jurisdiction, a loveless arranged marriage by the UN, two countries in one, a civil law country with common law transplants, and a great legal experiment. This paper will add another declaration—under Professor Palmer’s *Mixed Jurisdictions Worldwide* nine interim conclusions, Cameroon is not a true mixed jurisdiction as of yet, although it may still one day grow into that potential.