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RESEARCH ARTICLE

The Suffering Subject: Colonial Flogging in Northern Nigeria and a Humanitarian Public, 1904–1933

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Abstract

Shortly after the start of colonial rule in Northern Nigeria, a series of scandals over flogging brought international attention. A network of newspapers reported on flogging cases, particularly those involving women and educated, often Christian, Africans from outside the north. International attention focused on these cases as humanitarian outrages. The Nigerian administration and the Colonial Office deflected the scandals through a shifting series of strategies: justifying flogging as appropriate and humane, attempting to ensure floggings were only administered by Africans, carefully regulating the practices of flogging, and investigating cases of flogging to exculpate the officials responsible. These scandals led to a reform of the criminal justice system in 1933, but had long-lasting effects. They entrenched the trope of whipped bodies as a particularly "African" outrage. They helped to institutionalize the notion that particular judicial and governmental techniques were culturally specific. They politicized key markers of personal identity.

Keywords: Nigeria; colonialism; law; violence; bodies; public sphere; flogging; Islam; identity; religion

Northern Nigeria's criminal courts have been controversial for more than a century. Controversy erupted most recently at the start of this century with three cases in which young women were convicted of adultery. In the first of these, a young woman named Bariya Magazu was flogged just as Nigeria's northern states began to reinstitute shari'a criminal law, which had not been in force since 1959. The penalty was improper: Bariya had been convicted for an act that was not a crime at the time it was committed. The sentence was carried out, and she was flogged before her appeals were exhausted. Her own account suggests a gang rape by three much older men rather than a consensual encounter. She was quickly joined by other defendants whose cases emerged in dubious circumstances. Bariya's case became prominent alongside the slightly later cases of Amina Lawal and Safiya Husseini, who were convicted of adultery and sentenced to death by stoning. Many less-prominent cases of adultery

or sodomy emerged at this time and received aid from the feminist organizations that helped Bariya, Amina, and Safiya.

It is tempting to explain these cases simply as a product of their time, when rising tension between Muslims and Christians in the early days of the war on terror intensified Nigeria's religious and ethnic divide during its return to civilian rule, or to suggest they were the inevitable consequence of Islamic law. This article, however, explores a longer-term controversy in northern Nigerian[1] criminal law that emphasized both specific corporal practices of whipping *and* the categories of persons who could or should be flogged. Debates over corporal punishment were inseparable from those of legal jurisdiction, and together they have been central to the ways in which markers of identity like religion, gender, and ethnicity have been recognized by the Nigerian state.

Across the twentieth century, Islamic criminal law in Northern Nigeria regularly generated national and international outrage. Coverage of recent cases often recapitulated discussions a century ago of floggings that outraged humanitarian sensibilities, embarrassed colonial governments and threatened their legitimacy, and undermined claims that colonialism benefitted the populations they governed.[2]

[1]In this text I draw a distinction between northern Nigeria, an area in the north of Nigeria, and Northern Nigeria, a political unit that took on its boundaries with the proclamation of the British Protectorate of Northern Nigeria and which persisted in various forms until Nigeria's Northern Region was abolished in 1967.

[2]For an exemplary version of a Western critique of Bariya's case as a human rights violation, see Rhoda Howard-Hassmann, "The Flogging of Bariya Magazu: Nigerian Politics, Canadian Pressures, and Women's and Children's Rights," *Journal of Human Rights* 3, 1 (2004): 3–20. For a subtler account which reflects empathetic research on the ground, see Ogbu Kalu, "Safiyya and Adamah: Punishing Adultery with Sharia Stones in Twenty-First Century Nigeria," *African Affairs* 102, 408 (2003): 389–408. Beyond these cases, broader literature emphasizes the complexity of Islamic jurisprudence and the importance of respecting local sensibilities; see Ayesha Imam, "Women's Reproductive and Sexual Rights and the Offense of Zina in Muslim Laws in Nigeria," in *Where Human Rights Begin: Health, Sexuality, and Women in the New Millenium*, ed. Wendy Chavkin and Ellen Chesler (New Brunswick: Rutgers University Press, 2005); "Working within Nigeria's Shari'a Courts," *Human Rights Dialogue* 2, 10 (2003), http://www.carnegiecouncil.org/viewMedia.php/prmID/1053; Asifa Quraishi, "What if Sharia Weren't the Enemy? Rethinking International Women's Rights Advocacy on Islamic Law," *Columbia Journal of Gender and Law* 22, 1 (2011): 173–249. For an encyclopedic compilation of the source texts and very useful series of overviews, see Philip Ostien, ed. *Sharia Implementation in Northern Nigeria, 1999–2006: A Sourcebook* (Ibadan: Spectrum Books, 2007). Noteworthy discussions of the issues and their prehistory include Rabiat Akande, "Secularizing Islam: The Colonial Encounter and the Making of a British Islamic Criminal Law in Northern Nigeria, 1903–58," *Law and History Review* 38, 2 (2020): 459–93; Muhammad Sani Umar, "Hausa Traditional Political Culture, Islam, and Democracy: Historical Perspectives on Three Political Traditions," in Wale Adebanwi and Ebenezer Obadare, eds., *Democracy and Prebendalism in Nigeria: Critical Interpretations* (New York: Palgrave Macmillan, 2013); *Islam and Colonialism: Intellectual Responses of Muslims of Northern Nigeria to British Colonial Rule* (Leiden: Brill, 2006); Brandon Kendhammer, *Muslims Talking Politics: Islam, Democracy, and Law in Northern Nigeria* (Chicago: University of Chicago Press, 2016); Sarah Eltantawi, *Shari'ah on Trial: Northern Nigeria's Islamic Revolution* (Berkeley: University of California Press, 2017); Ruud Peters, "Sharia and 'Natural Justice': The Implementation of Islamic Criminal Law in British India and Colonial Nigeria," in A. Christmann and J.-P. Hartung, eds., *Islamica: Studies in Memory of Holger Preissler (1943–2006)* (Oxford: Oxford University Press, 2009); Gunnar J. Weimann, "Islamic Criminal Law in Northern Nigeria: Politics, Religion, Judicial Practice" (PhD, University of Amsterdam, 2010); Murray Last, "The Search for Security in Muslim Northern Nigeria," *Africa* 78, 1 (2008): 41–63; Ousmane Kane, *Muslim Modernity in Postcolonial Nigeria: A Study of the Society for the Removal and Reinstatement of Tradition* (Leiden: Brill, 2003); Allan Christelow, "Islamic Law and Judicial Practice in Nigeria: An Historical

In the earliest years of colonialism in Northern Nigeria, these controversies centered on floggings ordered by colonial officials, often cases where it was applied to criminal defendants whom popular opinion deemed inappropriate—women, Christians, the Western-educated.

Outrage over floggings and attempts at reform made certain categories of culture and identity politically relevant. Attempts at reform thus ultimately helped to codify those categories for the institutions of the modern Nigerian state. The dialectic of scandal and response is a feature of international commentary that posits Africa as corrupt, violent, and savage. Flogging presented a spectacle of bodies injured, suffering at the hands of their own government. That spectacle's power can neither be feted as disinterested humanitarianism nor dismissed as ethnocentric racism.[3] The northern Nigerian judiciary did not act with unique savagery or incompetence. Rather, these cases reveal the imbrication of legal and extralegal systems of violence and coercion in Nigerian political life then and since, which have spawned regular scandal and controversy with wide-ranging consequences. They represent a significant addendum to recent histories of humanitarianism within the British Empire, stretching from the early days of imperial encounters with non-Western peoples and deeply influenced by opposition to and defenses of the slave trade and slavery. The early twentieth century marked a moment in which international humanitarian sentiments were in transition as their aspirations were enfolded into high-colonial projects of governance, bringing pressure on colonial regimes to adhere to somewhat loosely defined international standards of humane rule.[4] Judicial violence in the colonies was potentially troubling precisely because of its uneasy juxtaposition of the "civilizing mission" and bodily violation.

For many years African flogging—a capacious term designating a variety of forms of whipping and caning—received little attention from historians. Starting with Michael Crowder's excellent study of the public response to a European who was flogged by order of an African chief in Bechuanaland,[5] it has drawn increasing

Perspective," *Journal of Muslim Minority Affairs* 22, 1 (2002): 185–204; Alex Thurston, "Muslim Politics and Shari'a in Kano State, Northern Nigeria," *African Affairs* 114, 454 (2015): 28–51; Johannes Harnischfeger, *Democratization and Islamic Law: The Sharia Conflict in Nigeria* (Frankfurt: Campus Verlag, 2008).

[3]For a useful discussion of the role of photography and images of injured Africans in fueling the scandal around Belgian atrocities in Congo Free State, see John Peffer, "Snap of the Whip/Crossroads of Shame: Flogging, Photography, and the Representation of Atrocity in the Congo Reform Campaign," *Visual Anthropology Review* 24, 1 (2008): 55–77. On the longer-term development of sentimentalized and condescending condemnation of Africans' victimization, see Patrick Brantlinger, *Rule of Darkness: British Literature and Imperialism, 1830–1914* (Ithaca: Cornell University Press, 1990); Christopher L. Miller, *Blank Darkness: Africanist Discourse in French* (Chicago: University of Chicago Press, 1985).

[4]Trevor G. Burnard, Joy Damousi, and Alan Lester, "Selective Humanity: Three Centuries of Anglophone Humanitarianism, Empire, and Transnationalism," in Joy Damousi, Trevor G. Burnard, and Alan Lester, eds., *Humanitarianism, Empire and Transnationalism, 1760–1995: Selective Humanity in the Anglophone World* (Manchester: Manchester University Press, 2022). For important reminders of the heterogeneity of humanitarian claims and concerns, see Bronwen Everill, "Humanitarian Priorities and West African Agency in the British Empire," in Joy Damousi, Trevor G. Burnard, and Alan Lester, eds., *Humanitarianism, Empire and Transnationalism, 1760–1995: Selective Humanity in the Anglophone World* (Manchester: Manchester University Press, 2022); Bronwen Everill and Josiah David Kaplan, eds., *The History and Practice of Humanitarian Intervention and Aid in Africa* (Basingstoke: Palgrave Macmillan, 2013).

[5]Michael Crowder, *The Flogging of Phinehas Mcintosh: A Tale of Colonial Folly and Injustice: Bechuanaland, 1933* (New Haven: Yale University Press, 1988).

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interest, as with David Killingray's studies of flogging in the armed forces.[6] A series of excellent studies explored how corporal punishment intertwined with racial domination and terror. In settler colonies whites used it to reinforce racial hierarchy, often under the pretext of defending white women from African men, even though such vigilante floggings were often illegal. Judicial flogging reinforced extrajudicial violence.[7] Scholars have productively viewed corporal punishment as embedded within broader projects of penal and disciplinary control, most notably with Florence Bernault's work on confinement in colonial Africa.[8] Across the past decade, this sophisticated literature has explored the complex economy of corporal violence and its instruments,[9] the political projects within which corporal punishment was embedded,[10] the intricate genealogies of colonial punishment,[11] and the ambivalences of flogging for postcolonial regimes.[12]

[6]David Killingray, "The Rod of Empire: The Debate over Corporal Punishment in the British African Colonial Forces, 1888–1946," *Journal of African History* 35, 2 (1994): 201–16; "'Punishment to Fit the Crime'? Penal Policy and Practice in British Colonial Africa," in Florence Bernault, ed., *Pour Une Histoire De L'enfermement Et De L'incarceration En Afrique, Xixe–Xxe Siècles* (Paris: Karthala, 2000).

[7]David M. Anderson, "Punishment, Race and 'the Raw Native': Settler Society and Kenya's Flogging Scandals, 1895–1930," *Journal of Southern African Studies* 37, 3 (2011): 479–97; Brett Shadle, "Settlers, Africans, and Inter-Personal Violence in Kenya, Ca. 1900–1920s," *International Journal of African Historical Studies* 45, 1 (2012): 57–80; Paul Ocobock, "Spare the Rod, Spoil the Colony: Corporal Punishment, Colonial Violence, and Generational Authority in Kenya, 1897–1952," *International Journal of African Historical Studies* 45, 1 (2012): 29–56; Stephen Peté and Annie Devenish, "Flogging, Fear and Food: Punishment and Race in Colonial Natal," *Journal of Southern African Studies* 31, 1 (2005): 3–21; Stephen Peté, "Keeping the Natives in Their Place: The Ideology of White Supremacy and the Flogging of African Offenders in Colonial Natal—Part 1," *Fundamina* 26, 2 (2020): 374–423; "Keeping the Natives in Their Place: The Ideology of White Supremacy and the Flogging of African Offenders in Colonial Natal—Part 2," *Fundamina* 27, 1 (2021): 67–100.

[8]Florence Bernault, "The Politics of Enclosure in Colonial and Post-Colonial Africa," in Florence Bernault, ed., *A History of Prison and Confinement in Africa* (Portsmouth: Heinemann, 2003); "The Shadow of Rule: Colonial Power and Punishment in Africa," in Frank Dikoetter, ed., *Cultures of Confinement: A Global History of the Prison in Asia, Africa, the Middle-East and Latin America* (London: C. Hurst, 2007); Stacey Hynd, "Law, Violence and Penal Reform: State Responses to Crime and Disorder in Colonial Malawi, c. 1900–1959," *Journal of Southern African Studies* 37, 3 (2011): 431–47; Jocelyn Alexander and Gary Kynoch, "Introduction: Histories and Legacies of Punishment in Southern Africa," *Journal of Southern African Studies* 37, 3 (2011): 395–413; Clare Anderson, *Legible Bodies: Race, Criminality and Colonialism in South Asia* (Oxford: Berg, 2004).

[9]David Crawford Jones, "Wielding the Epokolo: Corporal Punishment and Traditional Authority in Colonial Ovamboland," *Journal of African History* 56, 2 (2015): 301–20; Marie A. Muschalek, *Violence as Usual: Policing and the Colonial State in German Southwest Africa* (Ithaca: Cornell University Press, 2019).

[10]Dior Konaté, *Prison Architecture and Punishment in Colonial Senegal* (Lanham: Lexington Books, 2018); Dior Konaté, "Imprisonment and Citizenship in Senegal, 1917–1946: The Case of the Originaires," *Punishment & Society* 24, 5 (2022): 790–806; Tracy Lopes, "Slave 'Corrections' in Luanda, Angola from 1836 to 1869," *Punishment & Society* 24, 5 (2022): 771–89.

[11]Sarah Balakrishnan, "Prison of the Womb: Gender, Incarceration, and Capitalism on the Gold Coast of West Africa, c. 1500–1957," *Comparative Studies in Society and History* 65, 2 (2023): 1–25; "The Jailhouse Divergence: Why Debtors' Prisons Disappeared in 19th Century Europe and Flourished in West Africa," *Punishment & Society* 24, 5 (2022): 807–23; "Of Debt and Bondage: From Slavery to Prisons in the Gold Coast, c. 1807–1957," *Journal of African History* 61, 1 (2020): 3–21.

[12]Thomas McClendon, "Whipping Boys: South Africa's Limited Reform of Judicial Corporal Punishment in the 1960s and 1970s," *African Studies* 77, 3 (2018): 354–77; David Crawford Jones, "Narrowing the Liberation Agenda: Women, Corporal Punishment, and Scandal in Namibia's Struggle for Independence," *Journal of Southern African Studies* 44, 4 (2018): 543–58; Annie Pfingst and Wangui Kimari, "Carcerality and

Examining corporal punishment provides new insight for an influential debate over how African states are distinctive in consequence of their history of colonial rule: they are unusually reliant on coercion,[13] and rely on violence and disorder as a mode of politics.[14] Flogging scandals highlight an interpenetration of the legal and the extralegal that is neither distinctively "African" nor itself indicative of dysfunction. Instead, the rule of law and violence are interdependent.[15] "Legal" floggings could be difficult to distinguish from "illegal" ones because the criteria distinguishing them were ambiguous and often arbitrary. Bodily violence was often administered first and justified later. Because the legal and the extralegal have intermingled in colonial and postcolonial Nigeria, the routine operation of its court system cannot always be disentangled from improper, illegal abuses, making the distinction not so much a boundary as an assertion, an attempt to absolve state actors for their own insupportable actions. As Michael Lobban has observed, "rule *by* law was often more important than the rule *of* law."[16] This example of a general feature of how legal regimes undermine their own claims to rational-legal legitimacy helps to illuminate the tangled histories of humanitarianism and human-rights discourse, participating in and reinforcing the basic contradictions that perpetuate law's injustice.

Nigeria's twenty-first-century shari'a controversies swirled at a particular moment in history, a decade after hopeful narratives of postcolonial political community and democracy had reemerged internationally at the end of the Cold War. Nigeria had recently returned to civilian rule. Debate over shari'a mapped onto broader regional tensions that had been exacerbated by democratic political competition. However, they emerged from a longer history that took shape early in the twentieth century, as similar scandals were met by a dialectic of official culpability and disavowal that stigmatized indigenous cultural practices. Embodied suffering manifested in flogged criminal defendants became an object of scandal, simultaneously a cliché about

the Legacies of Settler Colonial Punishment in Nairobi," *Punishment & Society* 23, 5 (2021): 697–722; Samuel Fury Childs Daly, "Death in a Black Maria: Transport as Punishment in an African Carceral State," *Punishment* & Society 24, 5 (2022): 857–72.

[13]Achille Mbembé, *On the Postcolony* (Berkeley: University of California Press, 2001); Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996); Crawford Young, *The African Colonial State in Comparative Perspective* (New Haven: Yale University Press, 1994).

[14]Patrick Chabal and Jean-Pascal Deloz, *Africa Works: Disorder as Political Instrument*. (Bloomington: Indiana University Press, 1999).

[15]One influential formulation of the dynamic is Robert Cover, "Forward: Nomos and Narrative," *Harvard Law Review* 97, 1 (1983): 4–68. See also Walter Benjamin, "Critique of Violence," in *Reflections: Essays, Aphorisms, Autobiographical Writings* (New York: Harcourt, 1978); Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" in Drucilla Cornell, Michael Rosenfeld, and David Gray, eds., *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992).

[16]Michael Lobban, *Imperial Incarceration: Detention without Trial in the Making of British Colonial Africa* (Cambridge: Cambridge University Press, 2021), 17. See also Jean Comaroff and John L. Comaroff, "Law and Order in the Postcolony: An Introduction," in, John L. Comaroff and Jean Comaroff, eds., *Law and Disorder in the Postcolony* (Chicago: University of Chicago Press, 2006); Martin J. Wiener, *An Empire on Trial: Race, Murder, and Justice under British Rule, 1870–1935* (Cambridge: Cambridge University Press, 2009); Kim A. Wagner, "Savage Warfare: Violence and the Rule of Colonial Difference in Early British Counterinsurgency," *History Workshop Journal* 85 (2018): 217–37.

African experience and shaper of legal regimes.[17] This article traces the early history of these scandals and the official responses to them, focusing on exemplary incidents that threatened empire-wide scandal and that helped to transform official strategies for justifying and euphemizing state-sanctioned violence.[18] It concentrates on the early colonial period in Northern Nigeria, starting with the earliest inquiries into the practice in 1904 and continuing to a 1933 set of legal reforms that for a time quieted controversies over the practice. This thirty-year period of scandal and accommodation was key to systematizing how certain categories of identity were judicially recognized, helping to codify identity as a category of rule.

Flogging and the Ambivalence of Colonial Law

Flogging in Northern Nigeria long predated colonialism. The Islamic legal system in force under the precolonial Sokoto Caliphate and empire of Borno mandated whipping for many offences and continued to do so after colonization.[19] Courts applying a British criminal code also imposed floggings. Corporal punishment was already controversial both in the metropole and across the empire. Opposition had increased through the nineteenth century, as when shifting debates in India over its application led to its abolition, reimposition, and ultimate abolition both in the armed forces and in the civilian judicial system.[20] At the same time, its use had become

[17]International condemnation of Belgian atrocities in the Congo Free State and scrutiny of German violence in Southwest Africa were important points of transition from earlier moments in which international humanitarian outrage focused on Africans suffering as a result of the slave trade and indigenous oppression, and critiques of colonial regimes themselves. See Nancy Rose Hunt, *A Nervous State: Violence, Remedies, and Reverie in Colonial Congo* (Durham: Duke University Press, 2015); Marouf Hasian, "Colonial Hermeneutics of Suspicion, the Spectacular Rhetorics of the Casement Report, and the British Policing of Belgian Imperialism, 1904–1908," *Critical Studies in Media Communication* 30, 3 (2013): 224–40; George Steinmetz, *The Devil's Handwriting: Precoloniality and the German Colonial State in Qingdao, Samoa, and Southwest Africa* (Chicago: University of Chicago Press, 2007); Elizabeth Roberts Baer, *The Genocidal Gaze: From German Southwest Africa to the Third Reich* (Detroit: Wayne State University Press, 2017); Jeremy Silvester and Jan-Bart Gewald, eds., *Words Cannot Be Found: German Colonial Rule in Namibia: An Annotated Reprint of the 1918 Blue Book* (Leiden: Brill, 2003).

[18]The role of scandal in establishing and institutionalizing imperial power was already well established by these incidents. On the transformative role of the Warren Hastings scandal in colonial India, see Nicholas B. Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Cambridge: Belknap, 2006); Sara Suleri, *The Rhetoric of English India* (Chicago: University of Chicago Press, 1992). On the ambivalences of state and state-sanctioned violence in India, see Anupama Rao, "Problems of Violence, States of Terror: Torture in Colonial India," *Interventions: The International Journal of Postcolonial Studies* 3, 2 (2001): 186–205; Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge: Cambridge University Press, 2010); Deana Heath, *Colonial Terror: Torture and State Violence in Colonial India* (Oxford: Oxford University Press, 2021).

[19]J.N.D. Anderson, *Islamic Law in Africa* (London: Frank Cass, 1970); Ostien, *Sharia*; Eltantawi, *Shari'ah on Trial*; Thurston, "Muslim Politics"; Kendhammer, *Muslims Talking Politics*; Tijjani Naniya, "*The Transformation in the Administration of Justice in Kano Emirate, 1903–1966*" (PhD, Bayero University, 1990); C. N. Ubah, *Government and Administration of Kano Emirate, 1900–1930* (Nsukka: University of Nigeria Press, 1985).

[20]Mark Brown, "The Most Desperate Characters in All India: Reconsidering Law and Penal Policy in British India," *Punishment & Society* 3, 3 (2001): 433–40; Radhika Singha, *A Despotism of Law* (Delhi: Oxford University Press, 1998); "The 'Rare Infliction': The Abolition of Flogging in the Indian Army, circa 1835–1920," *Law and History Review* 34, 3 (2016): 783–818; Alastair McClure, "Archaic Sovereignty and Colonial Law: The Reintroduction of Corporal Punishment in Colonial India, 1864–1909," *Modern Asian Studies* 54, 5 (2020): 1712–47.

associated with hierarchies of race, class, and age and politicized by regimes determined to control populations of freedpeople or armed forces concerned with military discipline.[21]

As early as 1904, Northern Nigeria's High Commissioner, Sir Frederick Lugard (later Lord Lugard), responded to worried complaints from within the Nigerian government that the *bulala*, the hippo-hide whip, was "too brutal an instrument" for penal use.[22] Lugard concluded that the injuries it made were minor, but complaints continued.[23] Floggings had already attracted unfavorable attention in other protectorates. At the turn of the twentieth century, the bulk of attention focused on east and southern Africa, and the scandals there primarily concerned instances of floggings in which Europeans were punishing Africans, often in extralegal settings.

From the proclamation of the protectorate in 1900, Northern Nigeria had two parallel court systems. The more expansive was termed the "native courts." In the empires of the Sokoto Caliphate and Borno, these were venerable Islamic courts run by trained qadis (Hausa *al'kali*, pl. *al'kalai*). Elsewhere, native courts generally consisted of chiefs applying local principles codified as "native custom."[24] Judges' powers depended on a grade that the administration assigned their court, which determined the number of lashes and the size of the fines they could impose.[25] Because the native courts were charged with applying precolonial systems of law to the peoples who would have been subject to them before colonialism, their scope

[21]See Amanda Nettelbeck, "Flogging as Judicial Violence: The Colonial Rationale of Corporal Punishment," in Philip Dwyer and Amanda Nettelbeck, eds., *Violence, Colonialism and Empire in the Modern World* (Cham: Palgrave Macmillan, 2018); Ben Silverstein, "The 'Proper Settler' and the 'Native Mind': Flogging Scandals in the Northern Territory, 1919 and 1932," in Penelope Edmonds and Amanda Nettelbeck, eds., *Intimacies of Violence in the Settler Colony* (Cham: Palgrave Macmillan, 2018); Diana Paton, *No Bond but the Law: Punishment, Race, and Gender in Jamaican State Formation, 1789–1870* (Durham: Duke University Press, 2004); Isaac Land, "Customs of the Sea: Flogging, Empire, and the 'True British Seaman' 1770 to 1870," *Interventions: The International Journal of Postcolonial Studies* 3, 2 (2001): 169–85; Peté, "Keeping, Part 1."; "Keeping, Part 2."; Alan Lester, "The Realpolitik of Emancipation in the British Empire, 1833–38," in Joy Damousi, Trevor G. Burnard, and Alan Lester, eds., *Humanitarianism, Empire and Transnationalism, 1760–1995: Selective Humanity in the Anglophone World* (Manchester: Manchester University Press, 2022).

[22]The U.K. National Archives (TNA), CO 446/41 Conf. 30, Dec. 1904, "Floggings—Hippo-hide whip used in." This complaint arose from a military officer horrified at the instrument used in a flogging he witnessed. It led to an inquiry and statement from the doctor witnessing the incident, who averred it was not unduly severe. Norman to Principal Medical Officer, 27 Feb. 1904, CO 446/44. Conf., 7 Mar. 1904.

[23]Indeed, in 1908 the resident of Sokoto province urged the abolition of all flogging, except for cases that would have been punished by flogging in Britain. Ultimately the governor decided to retain it, and indeed reserved to himself the power to modify sentences, reasoning that "stealing and robbery seem to be on the increase." Nigerian National Archives, Kaduna (NAK) SNP 7/9 5143/1908, "Flogging, Abolition of."

[24]The Supreme Court received appeals and had original jurisdiction limited to Europeans and limited geographical areas. Because colonial officials had greater respect for Islamic law, considering it more civilized than indigenous judicial practice, they encouraged the establishment of *al'kali* courts even in areas that had not had Muslim rulers in the precolonial period and where few if any inhabitants were Muslim. Frederick Lugard, "Memo 3: Judicial and Legal," in *Political Memoranda: Revision of Instructions to Political Officers on Subjects Chiefly Political and Administrative*, A.H.M. Kirk-Greene, ed. (London: Frank Cass, 1970). For a definitive account of this caliphal colonialism within British colonialism, see Moses Ochonu, *Colonialism by Proxy: Hausa Imperial Agents and Middle Belt Consciousness in Nigeria* (Bloomington: Indiana University Press, 2014).

[25]For a description, see Frederick Lugard, "Memo No. 8, Native Courts," in *Political Memoranda: Revision of Instructions to Political Officers on Subjects Chiefly Political & Administrative, 1913–1918*, A.H.M. Kirk-Greene, ed. (London: Frank Cass, 1970), para. 29.

excluded outsiders. They did not try Europeans. Coastal Africans posed a problem: local officials and British officers tended to want native courts to exert jurisdiction, but outsiders often objected. As a safeguard, British officers were supposed to confirm flogging sentences before they were carried out.[26]

In parallel with the native courts was a network of provincial courts that applied a secular criminal code patterned on British law. Until a reform in the 1930s, this system was staffed by political officers trying cases as a subset of their duties; after the reform, the British courts were renamed magistrate courts and staffed by legally trained, specialist magistrates. The provincial courts were more restricted than native courts in the crimes for which they could impose sentences of flogging.[27] In 1907 the residents, who presided over the protectorate's provinces, reported having flogged people for theft, robbery with violence, rape, extortion, impersonating government officials, assault, intimidation, slavery, drinking alcohol, and receiving stolen property.[28] By the time former Governor-General Lugard had published his revised instructions on the matter ten years later, that list had shrunk to impersonation, sexual assault, vagrancy, "endangering trains," robbery, attempted murder, slave dealing, and "casting away ships"—a subsequent commentator glossed the last crime as endangering ships.[29]

Lugard's 1904 inquiry was a symptom of the broader ambivalence increasingly constraining corporal punishment around the world. In 1907 his successor deemed flogging "a form of punishment repugnant to the best ideas of justice," which was nonetheless "necessary in certain cases." The alleged necessity was because most Africans were deemed not yet prepared for gentler modes of punishment.[30] Ideological justifications mapped onto the institutional logic of the colonial legal system: flogging was mandated for some crimes under Islamic law and was also applied by *al'kalai* as a proper exercise of their discretion. British officers demanded protection for their employment of violence, a situation that resulted in the shifting series of offences punished with flogging by the provincial courts.

Both court systems regularly produced politically volatile cases. As detailed below, courts ordered floggings more severe than their mandates allowed, and applied

[26]See the discussion in TNA CO 583/13 Conf. A, "Judicial System: Native Courts Ordce. (1914)," in which Lugard proposed to address the problem by allowing native courts to try "non-native Africans" only with the permission of the Lieutenant Governor; the colonial office responded by delegating the decision to provincial residents, instead. For an excellent account of the challenges posed by Africans from other localities, see Rabiat Akande, *Entangled Domains: Empire, Law, and Religion in Northern Nigeria* (Cambridge: Cambridge University Press, 2023).

[27]TNA CO 446/39 189, 13 May 1904, "Flogging."

[28]NAK SNP 6/3 160/1907, "Crimes for which Lashes Were Inflicted by Residents," 1 Nov. 1907.

[29]Lord Lugard, "Memo 3: Judicial and Legal," Frederick Lugard, *Political Memoranda: Revision of Instructions to Political Officers on Subjects Chiefly Political and Administrative 1913–1918*, 3d ed. (London: Frank Cass, 1970), para. 60. The Criminal Code itself had a somewhat more expansive list of crimes that could be punished by flogging. Just before the penalty was abolished under the code, it was available for official corruption, personation, escaping from custody, "unnatural offenses," vagabondage, attempted murder by convict, disabling for the purposes of criminal acts, endangering train passengers, rape, compelling action by threats or assault, robbery with violence, casting away ships, obstructing railways, and damaging houses or vessels with explosives. TNA CO 583/191/9, "Criminal Code Ordinance, Rules, Etc. under." (1933).

[30]NAK SNP 6/3 160/1907, 20 Dec. 1907.

flogging for crimes for which it was not a mandated penalty.[31] Defending such cases contributed to the elaboration of the protectorate's governing doctrine, its emphasis on the perennial imperial expedient of indirect rule, ruling through indigenous institutions. In the years after he left Northern Nigeria, Lugard's concerted campaign to justify his administration enshrined overt respect for tradition as the cornerstone of colonial government.[32] Insisting that flogging was applied as an aspect of Islamic law helped to ensure that defendants lacked ties to the outside world—Africans from coastal regions were less likely to be Muslim—and demonstrated a respectful deference to tradition. The native courts could therefore be defended as applying a traditional and thus legitimate penalty. By contrast, the provincial courts provided an unavoidable spectacle of European officers, and thus the crown, directly and unambiguously responsible for bodily violence. For defendants with Western education, the abbreviated procedures in the provincial courts, application of Islamic law to non-Muslims, and lack of legal representation in either venue were unjust.

While the native courts and provincial courts were very different, their jurisdictions overlapped. Most cases were tried in the native courts, but political officers had the power to transfer cases to the provincial system. The choice of venue was often arbitrary. Both systems frequently violated the norms they enforced. *Al'kalai* enjoyed great latitude, and they often used their authority to threaten their enemies and extract bribes.[33] In theory, administrators harshly punished such actions, but judicial malpractice came to light mostly when officials had lost favor with their superiors for other reasons.[34] The interface between the two systems was vexed. In the Islamic courts, legal interpretation was based on local practices of textual interpretation, and *al'kalai* could also be idiosyncratic.[35] In consequence, the native courts diverged in their uses of flogging. When questions were raised by British officials, they tended to phrase them as asking about local traditions and practices, while *al'kalai* explained judicial decisions as customary.[36] Under Islamic law, specific penalties are applied to anyone found guilty of a category of offense termed *hadd*. Flogging was therefore automatic for anyone convicted of the *hadd* offenses brigandage, fornication, and drinking alcohol. *Al'kalai* also had the power to inflict floggings at their discretion. From their writings, most officers do not appear to have been aware of the distinction between *hadd* penalties and those applied at the judge's discretion; they relied upon asking *al'kalai* what "native law" was, creating a picture that elided basic principles, their local interpretation, and discretionary practice.

During these early years, the government claimed that flogging was part of the broader project of indirect rule, less than ideal but locally revered. Officers defended it as appropriate for Northern Nigeria's level of social evolution: Nigerians could not be

[31]Lugard, "Memo 3: Judicial and Legal," para. 60; Pierce, "Punishment and the Political Body."

[32]For more detail, see Steven Pierce, *Farmers and the State in Colonial Kano: Land Tenure and the Legal Imagination* (Bloomington: Indiana University Press, 2005), ch. 1.

[33]See Steven Pierce "The Invention of Corruption: Political Malpractice and Selective Prosecution in Northern Nigeria," *Journal of West African History* 1, 1 (2016): 1–28.

[34]Adamu Mohammed Fika, *The Kano Civil War and British over-Rule 1882–1940* (Oxford: Oxford University Press, 1978); Steven Pierce, *Moral Economies of Corruption: State Formation and Political Culture in Nigeria* (Durham: Duke University Press, 2016); Ubah, *Administration of Kano*; Ochonu, *Colonialism by Proxy*.

[35]Patricia Carolyn Gloster, "The Evolution of Maliki Law in Northern Nigeria, 1930–1960" (PhD, Columbia University, 1987); Naniya, "Administration of Justice."; Pierce, *Farmers and the State*; Eltantawi, *Shari'ah on Trial*; Akande, *Entangled Domains*.

[36]NAK SNP 10/2 519P/1914, "Native Court Laws."

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rehabilitated by "gentle" means of punishment like imprisonment. Putative inability to understand other corrective techniques made flogging *more* humane than its alternatives. When investigating local practice for the central government, officers concentrated upon the importance it held in indigenous systems of justice, identifying it as the only penalty likely to have a deterrent effect: "There is a certain class of ruffian to whom nothing appeals so much as causing him physical pain, in order that he should really feel this, I think the 24 lashes given is often inadequate."[37] The resident of Kano, that province's chief political officer, "believed in flogging as the most suitable punishment for the Nigerian native of the present day[.]" Indeed, he thought the whips used on Nigerians "too light an article." They might deter "a white criminal," but Nigerian whips were generally decrepit: "6 or 12 lashes with the frayed strong-ends of the present 'cat-o'-nine-tails' on a leather-skinned old gaol-bird of this country … is generally a farce quite appreciated by both the offender and the Warders."[38] In 1907 officers reported that *al'kalai* predicted a massive increase in crime were flogging to be abolished.[39] The sentiment was shared by Nigerian leaders: during a similar inquiry in 1921, the emirs of Katsina and Zaria, among others, are cited as being emphatically against abolishing flogging, "a convenient and cheap form of punishment … it acts as a deterrent of crime."[40] Even before Northern Nigerian floggings attracted significant outside attention, the colonial government had already elaborated its defense, a constellation of justifications informed by scientific racism.[41] The most effective of these applied to floggings ordered by the Islamic courts. When the defendants were northern men, this framing worked. Flogging was less atrocious if it could be deemed indigenous and applied only to indigenes. Cases ordered by British officers were potentially more explosive, because of the direct implication of European officers and because their victims might interest the outside world.

Publicity and Reform

Complaints were restricted to mutterings among Northern Nigerians and a few Europeans until the maturation of a network of newspapers along the coast of West Africa linked to a broader African-diasporic public.[42] By 1912, links among these newspapers and between them and Northern Nigeria created a more volatile situation. In March 1912, the *Lagos Standard* reported receiving a communication from a clerk in Zaria stating:

[37]NAK SNP 7/9 5143/1908, "Flogging, Abolition of," Minute by G. Malcolm, 30 Mar. 1909.

[38]NAK SNP 7/9 5143/1908, "Flogging, Abolition of," Hewby to Secretary, Zungeru, 10 Oct. 1908.

[39]NAK SNP 6/3 160/1907.

[40]NAK SNP 17/2 17415, vol. 1, Resident Zaria to Secretary, Northern Provinces, 22 Dec. 1932.

[41]Pierce, "Punishment and the Political Body."

[42]George Shepperson, "Notes on Negro American Influences on the Emergence of African Nationalism," *Journal of African History* 1, 2 (1960): 299–312; Fred I. A. Omu, *Press and Politics in Nigeria, 1880–1937* (London: Longman, 1978); Stephanie Newell, *The Power to Name: A History of Anonymity in Colonial West Africa* (Athens: Ohio University Press, 2013); "Paradoxes of Press Freedom in Colonial West Africa," *Media History* 22, 1 (2016): 101–22; "Articulating Empire: Newspaper Readerships in Colonial West Africa," *New Formations* 73 (2011): 26–42; "Newspapers, New Spaces, New Writers: The First World War and Print Culture in Colonial Ghana," *Research in African Literatures* 40, 2 (2009): 1–15; Jennifer Hasty, *The Press and Political Culture in Ghana* (Bloomington: Indiana University Press, 2005).

> A third class Resident, because clerks on meeting him did not prostrate on the ground before him, had them tied and taken to the Native town, a place two miles from the Cantonment. This same third class Resident caused orders to be issued that all clerks on meeting him must prostrate on the ground or they will be arrested and punished. The two clerks arrested were placed in the native cell at Zaria in consequence of which their colleagues sent a telegram to the Governor and the Chief Justice complaining of the high handed treatment being [meted] out to them by this Resident. The clerks by name Taylor and Hall averred that they could not [knowingly omit] to salute a white man when they see one but on this occasion they with others were playing football in the field and had not the slightest idea of who had approached them when they heard the orders to the Dogaries (Native Police) for their arrest. After the arrest the Resident drew his cane and gave each several lashes then he ordered them to be tied and taken to the Native town. On the 15th February in the morning the clerks were brought out in the public market place stripped quite naked and flogged. In consequence of this incident all the clerks in Zaria struck work pending a reply to their telegraph sent to the Governor on the 14.[43]

The story was picked up by a series of other newspapers including the London-based *African Times and Orient Review*, which covered the incident in detail, publishing correspondence from concerned citizens from as far away as an African Methodist Episcopal church congregation in Guyana.[44] The Colonial Office insisted that the incident had been touched off when the clerks' rowdy football game had destroyed goods in the Zaria market rather than through the clerks' failure to prostrate, a proposition with which the press took exception. As a part of its coverage, the *Review* published a letter from the clerk Taylor, who described the incident in a letter written to his superior, which he copied to the newspaper:

> [A]s we were having a game with the football kindly lent us by the District Engineer, a crowd of Dogaris [*dogarai*, police employed by the emirate] suddenly rushed upon us and succeeded in taking a companion and myself. We were presently taken to Resident Laing, who was riding not far from the spot.
>
> We were asked to prostrate on the ground before the Resident, which not being instantly done, the Resident beat us with stick, and gave orders to the Dogaris to tie us with rope on our necks, and take us to native gaol. We were at once knocked down before him and tied most brutally, and nine men on horseback with two Dogaris conveyed us with inexpressible cruelty to native town Zaria, beat us along, iron chains were added to our waist and feet, and we were

[43]"News Notes & Comments," *Lagos Standard*, 13 Mar. 1912. The words in square brackets deduce words blurred in my microfilm copy of the article.

[44]"'Zaria' Protest from British Guiana," *African Times and Orient Review*, Sept. 1912. The *African Times and Orient Review* was an important node in the emergent African-diasporic public sphere linking Africa with diasporic communities in the Americas and Caribbean. See Ian Duffield, "John Eldred Taylor and West African Opposition to Indirect Rule in Nigeria," *African Affairs* 70, 280 (1971): 252–68; "The Business Activities of Duse Mohammed Ali: An Example of the Economic Dimension of Pan-Africanism, 1912–1945," *Journal of the Historical Society of Nigeria* 4, 4 (1969): 571–600; Leslie James, "The Flying Newspapermen and the Time-Space of Late Colonial Nigeria," *Comparative Studies in Society and History* 60, 3 (2018): 569–98.

> confined till Thursday. On Thursday he sent for us and we were brought in chains before him. I asked the Resident what I had done to bring upon myself all this punishment. He said in future when I see him passing I must prostrate as the natives of this country always do before him. Then he ordered the Dogaris to take us again to the open market and flog us twenty lashes.
>
> I am wounded all over, have nearly lost my eye-sight, my hips are blistered, and I am quite unfit to appear at office.[45]

The back-and-forth that ensued between the press, the Nigerian administration, the Colonial Office, and concerned citizens demonstrated patterns that would recur across subsequent flogging scandals. British officials, both in the Northern Nigerian capital of Zungeru and in London were concerned to emphasize the clerks' lack of civilization—playing football without regard to the damage caused—and the limited nature of the punishment itself. The clerks, newspaper reporters, and people who wrote in protest insisted on a different version of the story. Rather than being punished for creating a public nuisance, the clerks were assaulted because they had not prostrated themselves to British officials. For this racial *lèse-majesté*, they were subjected to punishment whose degrading details were self-evidently unsuited to the civilized administration the British purported to provide.

The contours of this discussion would repeat across the next decade. The clerks reported what would become a continuing theme in the *African Times and Orient Review*: demands for prostration by British officers in Northern Nigeria were being violently enforced. While government officials consistently denied this ever occurred, the complaints arose repeatedly. Indeed, demands for obeisance were complained of regularly in the coastal and diasporic press. A letter to the editor of the *African Times and Orient Review* complained about demands for prostration from the *wife* of the officer responsible for the Zaria incident.[46] A 1914 letter to the *Times of Nigeria* noted, "We know of no laws that penalize non-prostration or non-doffing of hats to whitemen, yet it is an almost daily occurrence for the whiteman to assault or arrest people for their non-observance."[47] J. C. Taylor's observation cited above, that the resident wished coastal clerks to "prostrate as the natives of this country always do before him," suggests a demand for the forms of prostration that commoners performed before emirate aristocrats. In a regime ideologically committed to maintaining indigenous political institutions and inserting British officers only at the apex of traditional practice, it is unsurprising that these officers desired to appropriate ceremonial gestures of respect as part of a colonial repertoire of racialized humiliation. The government defended such appropriation through a simple denial that it had occurred.

This tendency to stonewall on the possibility of problematic and improper floggings is illustrated by the response to another 1912 incident, when a telegraph clerk in the northeastern city of Maiduguri—a "non-native of African descent," as the resident of Borno termed him—was flogged for adultery. After his flogging, he went to his office and telegraphed the Postmaster General complaining of his treatment. The Lieutenant Governor, Governor, and Chief Justice all condemned this sentence and the resident's actions for having sanctioned it, and they authorized the

[45] *African Times and Orient Review*, Oct. 1912.
[46] Ibid., Feb.–Mar. 1913.
[47] "Might vs. Right," *Times of Nigeria*, 10 Mar. 1914.

Postmaster General to repost the clerk away from Maiduguri and to compensate him for his ill-use.[48]

An incident that occurred in May 1914 became the subject of an article by "Yanzu" in the *Gold Coast Leader*. Yanzu wrote that he had passed through the town of Bauchi on his way to Maiduguri and witnessed two women being stripped naked in a marketplace and flogged twenty-five lashes apiece. The author questioned a bystander, who explained the women had been discovered inside the living quarters of the assistant resident, J.F.J. Fitzpatrick. This official sent them to the *al'kali* of Bauchi for punishment. Al'kalin Bauchi sentenced them to the flogging and to six months' imprisonment with hard labor. Fitzpatrick had then insisted that the flogging should be repeated every month of the women's sentence. The article cites a second bystander, this one English-speaking, who confirmed these details.[49] This publicity from a coastal newspaper spurred an inquiry into the incident, which was conducted by a more senior colonial officer, Captain P. Lonsdale, who asserted that the two women had been caught in Fitzpatrick's servants' quarters and that they were "notoriously bad characters who had previously undergone sentences of imprisonment for theft."[50] Fitzpatrick does seem to have been unusually enthusiastic about flogging, since he was associated with several other notable incidents. Only a few months later, he was annoyed when a youth "grossly insulted the Resident of [Bauchi] Province and the Emir of Gombe." After ordering the boy to be struck in the face by native authority police, Fitzpatrick sent him to the *al'kali*'s court to be flogged. The young man in question, a sixteen-year-old Southern Nigerian, was working for an officer in the West African Frontier Force. Several mentions of the youth's wearing a green homburg hat suggest that this is what initially attracted Fitzpatrick's unfavorable notice. In defending his actions, Fitzpatrick alleged that the young man was sleeping with his employer and that this was the real reason for the officer's outrage.[51]

[48]NAK SNP 6 176/1912, "Jones, Telegraphist, Maiduguri, Flogging of."

[49]Yanzu, "Trouble in the Northern Province of Nigeria," *Gold Coast Leader*, 25 July 1914. The author's pseudonym is the Hausa word for "now." Duffield concludes Yanzu was "almost certainly a trader named Martin Delaney from the Gold Coast," on the basis of the evidence presented at the libel trial discussed below. Yanzu had contributed several previous articles to the *Leader* in the year before this incident, complaining about the brutality and racism of Europeans in Northern Nigeria. Duffield contextualizes the flogging scandal in resistance to indirect rule and colonial racism among a group of mostly coastal Africans that included Eldred Taylor, the proprietor of the *Africa Times and Orient Review* Dusé Mohammed Ali, and a number of elite Lagosians. The group's activism about the Zaria and Bauchi incidents was part of a longer-term political push for guaranteeing defendants legal representation in court, even northern Islamic courts, and opposing racial discrimination in public institutions. Duffield, "John Eldred Taylor." This period was indeed critical in shaping subsequent waves of Nigerian resistance to colonial rule, perhaps most critically in cementing southern objections to the primacy of Islamic law in the north and deeming it a humanitarian outrage and threat to equity. However, as I argue here and in a related series of writings, this should be seen as one chapter in a much longer history of shifting official stances to identity and culture. See Pierce, *Farmers and the State*; Anupama Rao and Steven Pierce, "On the Subject of Governance," in Edward Murphy, et al., eds., *Anthrohistory: Unsettling Knowledge, Questioning Discipline* (Ann Arbor: University of Michigan Press, 2011); "Discipline and the Other Body: Humanitarianism, Violence, and the Colonial Exception," in Steven Pierce and Anupama Rao, eds., *Discipline and the Other Body: Correction, Corporeality, Colonialism* (Durham: Duke University Press, 2006); Pierce, "Punishment and the Political Body."; *Moral Economies*.

[50]TNA CO 583/83, "Alleged Flogging of 2 Women at Bauchi, Report on Incident," 18 Apr. 1919.

[51]NAK SNP 8/1 202/1914, "Aubin, A. C. Capt, Flogging of Cook by Alkali of Nafada," DO to Resident, Central Province, June 25 1914, Aubin to Resident, 24 June 1914.

The case of the two women received no further attention until 1918, when an article appeared in the *African Telegraph*, a London-based newspaper owned by a Sierra Leonean named Eldred Taylor, who was also a close associate of the publisher of the *African Times and Orient Review*. The *Telegraph* quoted Yanzu's article from the *Gold Coast Leader*.[52] Once the story broke in London, it circulated widely in part because it was picked up by the *African Times and Orient Review*. Given the sensational details of the case, there was a much stronger reaction than had greeted previous floggings of men. The Colonial Secretary explained in parliament that in Nigeria women were flogged only in areas in which "native custom" was "unaltered," and claimed that British officials were not involved in imposing the penalty themselves. The Colonial Office sent an urgent dispatch to the governor of Nigeria asking that he discourage the flogging of women as much as possible. In this case, a simple denial of British responsibility was insufficient to quiet external criticism. Instead, the Colonial Office promised Fitzpatrick financial support for a libel action against Eldred Taylor, the publisher of the *African Telegraph*.[53] Fitzpatrick won his case and received a judgment that bankrupted the publisher and put the paper out of business. The records are silent about Adama and Hassana.

The Colonial Office and its legal advisors consistently suppressed volatile news stories. In correspondence about the libel action, their disdain for Eldred Taylor is palpable, as is their hope to remove his public forum. Nonetheless, these goals revolved around their central concern with the regime's reputation and international image. Although the Colonial Office paid lawyers to defend Fitzpatrick, the Nigerian administration did investigate the 1914 incident via Captain Lonsdale's inquiry. It found that the incident occurred more or less in the way Fitzpatrick had claimed: the flogging was more limited than the *Telegraph*'s correspondent had represented it, and it was at the behest of Al'kalin Bauchi, not Fitzpatrick.

The 1918 outrage over Adama and Hassana was a turning point. Colonial attention to flogging intensified, attempting to ensure it did not reflect badly on British officers. Fitzpatrick's libel case occasioned a shift in the colonial service's willingness to protect officers from the consequences of their conduct, away from its tendency to defend its pragmatic benefits. Fitzpatrick's career was truncated. Although he had been assured that the Colonial Office would cover his costs, the government ultimately deemed its payments a loan that needed repayment. An acrimonious struggle ensued over this demand as Fizpatrick repeatedly wrote to request a reversal of the decision. Meanwhile, he was at the center of several other high-profile disputes: the burning of Protestant churches in Kabba Province, where he was then posted (he was a Catholic), and public questions about his gallantry in military service during World War I. Finally, in 1923 a colleague alleged he had

[52]TNA CO 583/83. Steadman, Van Praagh & Gaylor to CO, "Flogging of Two Women at Bauchi Libel Action, Enclose a Statement of Claim and Defense of Defendant," 8 May 1919.

[53]TNA CO 583/82, 10 Nov. 1919, R. Barber, "Fitzpatrick v. Barber + Others, Libel Action." On the libel case, see Duffield, "John Eldred Taylor." Winston James suggests the four-year delay in widespread publicity for the scandal stemmed from Taylor's having hired a new, more militantly anti-colonial editor in late 1918. He also deems the government's decision to support Fitzpatrick's libel action as a cynical attempt to bankrupt the *Telegraph*. Officials' internal deliberations do suggest their contempt for Taylor and pleasure at his bankruptcy, but James's account downplays the manifest pressure of the broader humanitarian campaign. Winston James, "The Black Experience in Twentieth-Century Britain," in Philip D. Morgan, ed., *Black Experience and Empire* (Oxford: Oxford University Press, 2006).

appropriated government funds to buy a typewriter for himself. An inquiry ensued, and in 1924 Fitzpatrick was forced to retire on a reduced pension.[54] He would spend his declining years bombarding the Colonial Office with long letters detailing scandals in Northern Nigeria's colonial service. There is no direct evidence that the flogging scandals caused Fitzpatrick's departure, but the timing was convenient.

After 1919, the regime justified flogging differently. Where earlier defenses of the practice had emphasized its necessity for ruling "primitive" Nigerians, the new approach was more delicate. The government attempted to ensure British officials were not directly responsible for floggings as part of their official duties and to regulate and monitor floggings in the native courts. Returns of floggings that had been instituted early in the colonial period grew more elaborate. Increasing attention was paid to weapons, how blows were delivered, numbers of lashes, and the circumstances under which flogging was conducted. Careful regulation, or at least recording, of the mechanics of flogging coupled with new modes of characterizing instances of flogging when particular cases demanded outside scrutiny. Such might be deemed to have been imposed by Nigerian officials escaping civilized supervision, or colonial officers in a private rather than a public capacity created another possible escape valve. If a flogging could not be justified for its limited quality, it could be deemed improper and impossible for the government to have prevented. The blurred line between legality and illegality moved, both to restrict *legal* floggings (which were still defended as traditional and pragmatically necessary) and to absolve the government from its responsibility for extralegal ones.

The libel case against Eldred Taylor and the new modes of regulating flogging occurred in the early days of Lugard's successor, Governor Sir Hugh Clifford, who possessed a bent toward systemization and was ambivalent about corporal punishment. Clifford's tour of the protectorate's prisons reinforced his concerns. He wrote with horror of a prison in the southeast, "I saw two prisoners with intractable ulcers on their buttocks, the unhealed effects of floggings administered by the Native court some three weeks previously."[55] The lesson Clifford drew from this pathetic sight was to limit flogging to highly professionalized courts such as the Islamic courts of the north. He proposed also to "let it be generally known that the Government dislikes the idea of women being flogged, and would be glad to see the practice die out." Meanwhile, the provincial courts and commissioners of the Supreme Court would be licensed only to inflict twelve lashes, and those sentences would require confirmation from a higher authority.[56] During the 1920s, flogging became the purview of the native courts. The provincial courts were in practice discouraged from applying it, which (at least in theory) meant that fewer political

[54]TNA CO 583/113 Conf., "Capt. J.F.J. L. Fitpatrick + financial irregularities in Muri Province"; CO 583/120, Cameron to CO, "Charges against J.F.J. L. Fitzpatrick," 10 Sept. 1923; CO 583/125, Cameron to CO, "Capt. J.F.J. Fitzpatrick, Charges Against," 25 Mar. 1924; Edmund M. Hogan, *Berengario Cermenati among the Ebira of Nigeria: A Study in Colonial, Missionary and Local Politics, 1897–1925* (Ibadan: HEBN Publishers, Plc., 2011), 43 ff.

[55]TNA CO 583/87, Conf. A, "Flogging." Clifford to CO, 19 May 1920.

[56]NAK SNP 8 125/1920, "Corporal Punishment—Infliction on Women," Clifford to Secretary of State, 19 May 1920. The Colonial Office received this proposal somewhat impatiently, claiming that little evidence existed that the provincial courts had been abusing their powers and therefore declining to modify the laws governing them. It also noted, however, that it would be appropriate to ban the use of the *bulala* and to enforce existing reporting regulations more strictly. TNA CO 583//87, Conf. A, 19 May 1920.

officers could be at the center of a flogging scandal. The Supreme Court's limited original jurisdiction meant that it was unlikely to impose the sentence itself. But while this state of affairs addressed British officials' implication in the application of a brutal practice, it did less to allay the concerns of the humanitarian public outraged by flogging.

No critics objected to the proposition that flogging was traditional in the northern emirates (it predated colonialism, and it was legal under Islamic law), and the governing conceit of the colonial regime in Northern Nigeria was that its forms of rule retained indigenous practices and were therefore legitimate. However, the public was most energized by the flogging of women and of Christians, which placed emphasis on the identity of the flogged. Flogging women was a problem because it outraged their modesty and ignored feminine fragility. Flogging Christians raised questions of racial and social hierarchy: was it possible to be too civilized to be disciplined through pain? Could a civilized government govern through naked violence? Public squeamishness about women and Christians mapped onto practical differences in how flogging was applied. The government reported that men were flogged for many classes of crime, women usually only for adultery or slander. Boys were flogged more rarely than adult men. The flogging of Muslims was handled differently from the flogging of pagans. These differences emerged in part from various practices among the courts in the region, and from the specific provisions of the forms of Islamic law in force there.[57] The variation of court institutions and sheer chance explained many of the discrepancies, but the humanitarian public sphere seized on incidental details and differences as more meaningful than they necessarily were. Preconceptions built into colonial humanitarianism refracted into elaborate taxonomies of difference when justified by a defensive administration. Different kinds of people were supposed to be susceptible to governance and chastisement in different ways. In particular, gendered distinctions within local practice were interpreted through British understandings of gender and respectability, which paralleled but were distinct from indigenous notions of gendered morality.[58] Similarly, courts applied floggings differently to Muslims and followers of indigenous religions, often limiting the flogger's range of motion when whipping Muslims. Court practice was interpreted as reflecting an evolutionary change in human susceptibility to pain: because the British understood "pagans" as being less socially evolved, it followed that they needed a greater degree of bodily harm to effect an equal degree of chastisement.[59] International outrage and official attempts at justification refracted against axes of gender, race, religion, and culture. Though the ideological configurations have shifted, something similar is at stake in twenty-first-century scandals.

Fitzpatrick's libel case was the high-water mark of official attempts to deal with flogging scandals through simple denial, and one can see the change manifested in the

[57]TNA CO 583/87, Conf. A, "Flogging."

[58]See, for example, Steven Pierce, "Identity, Performance, and Secrecy: Gendered Life and the 'Modern' in Northern Nigeria," *Feminist Studies* 33, 3 (2008): 539–65; "The Public, the Private, and the Sanitary: Domesticity and Development in Northern Nigeria," *Journal of Colonialism and Colonial History* 13, 3 (2013).

[59]TNA PRO CO 583/81, "Flogging of Women, Minutes re Desirability of Stopping in Protectorates +c.," draft despatch to Gov. Nigeria (1919). For more detail, see Pierce, "Punishment and the Political Body."

end of Fitzpatrick's career. As judicial flogging declined as a source of scandal, inquiries into cases in which British officers *were* responsible could absolve the government itself from culpability only if the flogging had not actually occurred, or if the officer were at fault as a private individual rather than as an official. This placed new emphasis on official inquiries, creating a new economy of exculpation and inculpation that might exonerate the system *in toto*. The Nigerian government never directly admitted that its concern was less than principled. Its actions suggested anxiety over British officials implicated in scandal. Restricting floggings from the provincial courts, insisting on flogging's legitimacy as a part of Islamic government, and squeamishness about how to deal with British officers' implication in floggings demonstrated the power of international public opinion.

Gajere and the "Lesson" of Flogging

In January 1924, a former colonial cadet named Edward Henderson made the first of a series of allegations that the Kano Province District Officer Edward Bovill had flogged Nigerians improperly. Not seeing an immediate response, he pursued other avenues, including searching for a Labour minister he might use as a point of contact. In April he presented a sworn affidavit to the Aborigines' Protection Society in which he alleged that Bovill, district officer of Katagum Division, had sentenced two laborers to be lashed after they fought over food rations and disturbed his concentration. He also claimed that Bovill had also improperly imprisoned one of his servants on evidence he knew to be false, and that his complaint about that matter had been improperly dismissed. The records of each man were consulted. Before the initial complaint about the imprisoned servant, Bovill had given good service and was in line for promotion to resident. When that complaint was investigated, he was found at fault and stricken from the promotions list. Henderson had performed poorly as a cadet and was not confirmed in the colonial service. There had been bad blood between the two even earlier: after Henderson wrote a bad £10 check to Bovill, the latter had reported the matter to his superior, the resident of Kano. Henderson appears to have blamed Bovill for his bad reputation in the colonial service.[60]

Because the servant's imprisonment had already been adjudicated and punished, the government charged the resident of Kano with a new investigation concentrating only on the floggings. In the course of this, the resident deposed six witnesses, discovering in the process another problematic case: Bovill had sent a young driver in his employ regularly to be flogged in the *al'kali* court. The resident concluded that all the incidents had occurred but were not nearly as lurid as Henderson had represented them. Indeed, responsibility for the fight was laid at *Henderson*'s doorstep. He had come into town without having made adequate preparations to feed his 150-man party despite having had the opportunity to do so when they went through several days previously. Bovill, who was staying there for different reasons, had been forced to step in and find provisions with little notice. Witnesses differed about the number of lashes that had been delivered, but the resident deemed it unlikely to have been thirty and twenty-four, as Henderson had alleged. Some witnesses (including the man who had performed the flogging) claimed a *bulala* had been used in addition to a bamboo cane. The lieutenant

[60]NAK SNP 17 C.445, "Alleged Illegal Flogging etc. of Natives, Henderson v. Bovill" (1924). Henderson termed it the "Society for the Protection of Aborigines."

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governor concluded that some had misremembered the detail, since "*bulala*" can refer generically to beatings, or indeed can be used as a verb meaning "to beat." The beatings had no legal justification, but the men did not report feeling ill-used and said they had largely recovered from their injuries by the next morning. For these reasons, the acting governor concluded that Bovill should be censured but that no further action should be taken:

> There is no doubt in my mind that in the first case Mr. Bovill caused two carriers to be beaten for quarrelling and making a disturbance. The beatings were not brutal and were probably inflicted with a cane (a polo stick cut down to the length of an ordinary walking stick). Neither of the men made any complaint at Kano, to which they were proceeding, or to Bornu, whence they had come and to which they returned. Mr. Bovill had no right to inflict corporal punishment on people in this summary manner—he does not appear even to have made any close investigation of the case before he caused the men to be beaten—and I consider that he "should be censured and warned that the same thing must not occur again."[61]

Rather than adjudicating whether the beating was a proper use of Bovill's judicial powers, Middleton minimized the violence ("probably" with a cane rather than a whip) and declared that it was not judicial at all, since he had "no right" to do it. The conclusion was that Bovill had not misused his powers but rather had engaged in poor management practice. The state was not responsible for these shortcomings.

The discussion of the flogging of the young driver Gajere was similarly exculpatory, but for different reasons. His testimony, taken in Hausa though the record only includes its English translation, is extremely interesting. He reported:

> I have been employed as motor driver by the native administrations of this Division (Katagum) for about 5 years. When I was first employed Mr. Bovill was in charge of the Division and the Native Administration car was kept at his house. I used to live in the town but spent the day at the District Officer's house when the car was not being used. In the mornings I used to help sweep out the house and at other times I used to sew with Mrs. Bovill who was teaching me. While I was with Mr. Bovill he had me beaten on several occasions—certainly not less than on ten occasions—Shefu [*sic*] Katagum, a messenger was made to beat me two or three times with a bamboo cane but Alkalin Dogarai was generally ordered to beat me, with a hide whip or a switch of Dogologandi.
>
> On one occasion Mr. Bovill's horse got loose during the night. When we were on tour at a place called Keffi Mr. & Mrs. Bovill had gone to bed and four of Mr. Bovill's boys and I went into the town without his permission leaving only one boy at the camp. Next day when we arrived at Gadan Mr. Bovill ordered his messenger, Sadiku, to beat all the five of us. We were each given 12 strokes with a bamboo polo stick.
>
> Q. Were you on that and any other occasion beaten very severely by Mr. Bovill's orders?

[61]TNA CO 583/126, Acting Governor to Secretary of State, 18 July 1924.

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> A. No, I was never badly beaten and never even felt it next day.
>
> Q. For what offences were you beaten by Mr. Bovill's orders?
>
> A. I used to make spokes and axles for the ox-carts and I was beaten several times for making them badly. I was also beaten once for laziness when I was making iron bars for the windows of the D.O.'s house. On that occasion Alkalin Dogarai [the police qadi] was ordered to give me 12 strokes with a Dogologandi switch.[62]

From this testimony, the resident concluded,

> As regards Gajere, the motor-driver, it is proved that he was given corporal punishment by Mr. Bovill's orders on at least two occasions—one of which was at Gadan … [Gajere] though living in the native town of Azare … spent most of his time at or near the D.O.'s house until he apparently almost began to look upon himself as a member of the D.O.'s domestic staff. At that time he was only a youth in his teens and, as he was employed by no particular Emirate, he no doubt received occasional correctional punishment by the direct orders of Mr. Bovill.
>
> It is, however, a very misleading use of the word to say that Gajere was "*flogged*" at the instigation of Mr. Bovill and neither Gajere himself nor those who say that they inflicted the punishments even hint that he ever received more than a light whipping or caning. In making his statement Gajere was quite cheerful and did not give me the impression that he considered he had in any way received harsh or unjust treatment at the hands of Mr. Bovill.[63]

The acting governor agreed:

> In the second case I do not think that Mr. Bovill did more than to have "occasional correctional punishment" (as Mr. Middleton describes it) administered to this young person for youthful indiscretions, and in the case of the stolen tools it was better for the boy that he should be birched rather than sent to prison.[64]

These conclusions refine the techniques of exculpatory inquiry that was already emerging in the 1910s. In the case of the laborers, Bovill was determined to have acted improperly. The violence against the two victims was minimized, but little was done to justify the event itself. Instead, his improper conduct was framed as incidental, not so much a function of his role as a political officer as it was a decision taken by a European managing Africans. Bovill was culpable, but his culpability lay in behaving as a garden-variety European, not as a government functionary. Neither the judiciary nor the government was implicated.

[62]TNA CO 583/126, "Statement of Gajere of Azare to H. Hale Middleton," 4 June 1924.
[63]TNA CO 583/126, Resident Kano to Lieutenant Governor, 6 June 1924, original emphasis.
[64]TNA CO 583/126, Acting Governor to Secretary of State, 18 July 1924.

The later conclusions required more gymnastics. Although Bovill had no more judicial right to inflict violence against Gajere than he had against the two laborers, the inquiry did not focus on whether the violence was proper; instead, it reframed the flogging as being something other than violence. Bovill's superiors repeatedly claimed that Gajere did not take the beatings seriously. While that might be true, Gajere's unequivocal estimate of "not less than ten" beatings got whittled down to two by the time the acting governor reached his verdict, for no clear reason. Just as with the laborers, Bovill was not within his legal powers. Rather than admit he was acting illegally, they found his violence to be literally tutelary. Where in the early colonial period *all* floggings were justified as a way to reach the insufficiently refined sensibilities of Nigerians, by the time Gajere was beaten in 1920 or so the justification emerged only for actual youths—his estimated age at the time was seventeen, and Bovill claimed to believe he was thirteen. The argument was not so much that the corporal punishment was "good"—it had not been administered by an Islamic court applying Islamic criminal law, which was by then the only avenue for legitimate flogging—but that it was neither violent nor judicial. It was the act of a patriarch. The Colonial Office approved this outcome and deemed the matter closed unless Henderson and the Aborigines' Protection Society chose to give the matter wider publicity. In the event, they did not.

The inquiry was a significant undertaking, and it required the energies of two senior political officers, the resident, and the lieutenant governor, as well as considerable attention from their staffs and those in the colonial office. Even in the absence of publicity (and perhaps with the advantage of an implicit threat of revealing embarrassing details about Henderson's career) the administration was eager to avoid scandal. This was a "bad" flogging, implicating a British officer, who had no legal justification for his actions. Even so, Bovill's superiors acknowledged the flogging had certain pragmatic advantages: its victims had not resented the penalty, and corporal punishment was more feasible than proper legal penalties would have been. Still, Bovill was in the wrong, and he was penalized.

The speedy response to Edward Henderson's allegations demonstrated sensitivity to scandals that might resonate around the empire. It also suggests a more general way in which the colonial regime treated its own violence and conceptualized colonial subjects. Many of the same strategies were at play in earlier periods, but the balance had shifted. Minimizing the violence (as with Gajere's insouciance, or the insistence the two laborers had received twelve strokes with a cane rather than twenty-four or thirty with a *bulala*) was insufficient to exonerate Bovill entirely. Either he had exercised his judicial discretion improperly—as he had with the laborers, resulting in his censure—or he had not been acting as a political officer at all but as a quasi-paternal teacher who saved a young boy from judicial penalty. Thus, by the mid-1920s continuing attention to flogging scandals had resulted in a more elaborate attention to flogging in the native authorities, which (in cases where Europeans were not directly implicated) both placed the blame for violence on indigenous culture and demonstrated an attempt to circumscribe and ameliorate it.

Identity and Court Jurisdiction

The strategy of containment and deflection that had developed by the mid-1920s seems to have been more effective than the denialist strategies that preceded them.

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Later instances of flogging did not gain the same levels of attention the earlier ones had. However, institutionalized violence and increasingly convoluted claims about identity continued to throw up problem cases and to trouble government officials. The senior judiciary, the increasingly powerful Lagos bar, and the emergent Anglophone public sphere in the south pushed for equal treatment and procedural fairness. At the same time, both colonial officials and other Europeans continued to insist on racial hierarchy and elaborate spectacles of racial degradation. This chapter of controversy over northern Nigerian criminal law drew to a close in the early 1930s, catalyzed by the very strategies that had been used to contain the earlier scandals. Differentiating between floggings ordered by *al'kalai* and those ordered by Europeans, monitoring the floggings administered by African officials, explaining away floggings ordered by Europeans, justifying floggings on the basis of a defendant's identity or culture were ad hoc strategies that deepened the contradictions they sought to contain. By discouraging the flogging of people whose brutalization might cause scandal, government policy inflected state violence through gender, ethnicity, religion, and culture. The move was effective in the basic sense of helping to prevent further empire-wide scandal, though the 1930s offered many distractions: depression-era austerity meant that Nigeria's government was simultaneously less ambitious and more brutal than during the 1920s.[65]

The proximate cause for this final series of changes was another improper flogging. In 1933 a case emerged in Plateau Province which brought the Islamic courts themselves into question. A Westernized southern Nigerian named Victor Eluaka failed to pay his tax to local authorities. He was taken to the local *al'kali*, and he was sentenced to be flogged. C. C. Adeniyi-Jones of Nigeria's Legislative Council asked a question about the case, which was followed up by a question in parliament. The ensuing inquiry determined that the British political staff claimed to have been unaware of the case until after the flogging had occurred, though they were unsympathetic toward Eluaka, whom they considered a bad character. They blamed the incident on a poorly trained *al'kali*, who was under strain because he was attempting to regulate a region outside of the north's historical emirates and who was therefore inclined to exceed his mandate, applying his authority to a person who should not have been tried under Islamic law or on the qadi's authority. The governor, Sir Donald Cameron, deemed himself "appalled" the court had imposed a flogging on a person for conduct not illegal under the Criminal Code which should have applied to him.[66]

Containing the fallout from this case required more than incremental change. A reform of the criminal legal system was already on the cards, and even before Cameron arrived in Nigeria the proposed reform had included clarifying the question of whether native courts could exert jurisdiction over Africans originating from other areas.[67] Merely clarifying the jurisdiction of the *al'kali* courts was both problematic and insufficient. Exempting outsiders from native court jurisdiction

[65]See Moses Ochonu, *Colonial Meltdown: Northern Nigeria in the Great Depression* (Athens: Ohio University Press, 2009).

[66]TNA CO 583/190/9, "Flogging of a Native (Victor Eluaka) at Bukura for Failure to Pay Tax on Time."

[67]Arewa House SNP 1/13/70 K.7352, vol. I, "Native Courts: Extension of Jurisdiction" (1928). Rabiat Akande provides an excellent account of this reform, though her contrast of a pro-emirate "Lugardian" faction of indirect rulers in opposition to Cameron's embrace of a "secular" state misses some of the broader politics outlined above. Akande, *Entangled Domains*, ch. 2.

might undermine emirate authorities, create a class of Africans immune to their jurisdiction, and swamp the provincial courts and supreme court. Subjecting outsiders to their jurisdiction would be wildly unpopular in the south, generate additional scandals, and raise the question of whether Europeans could be tried there, thereby emphasizing racial questions the regime preferred to finesse.[68] In the event, the government made a more thoroughgoing set of changes, replacing the provincial courts with a new, more professional system staffed by legally qualified magistrates. Outsiders were at least partially protected in the *al'kali* courts by limiting the penalties they could apply. The Criminal Code was reformed, and the relationship between indigenous systems of law clarified. The new system more carefully regulated penalties for offenses criminalized under both systems. Native courts could no longer impose penalties harsher than those awarded by the new magistrate courts.[69]

These reforms would have serious consequences, including a crisis over homicide law in the 1940s and 1950s after the West African Court of Appeal began to overturn some capital homicide sentences passed by Islamic courts on the ground that they would have been deemed manslaughter under the Criminal Code and therefore not received the death penalty. In the context of nationalist politics, the controversy burgeoned, leading eventually to a compromise in which a new Criminal Code supposedly conjoined Islamic and British principles, which ultimately resulted in *al'kali* courts losing their criminal jurisdiction. In the short term the reform quieted scandals over flogging, but the scandals' influence lingered.

Conclusion

Flogging left a deep mark in Nigeria's legal infrastructure and in the logic through which the Nigerian state construed its subjects. Markers of identity such as religion and gender had become central to the question of criminal jurisdiction, as did ethnicity insofar as it was manifested through religion and area of origin.[70] The scandals of the 1910s and early 1920s over southern Nigerians, Christians, and women found a ready audience in the coastal press and the African diasporic public sphere beyond it. An infrastructure of newspapers mapped onto something more important, more profound, and even more politically assertive: an emergent public sphere willing and able to protect compatriots threatened with bodily violence while far from home. This African public sphere was sophisticated and well situated to frame its political demands in an international language of humanitarianism and political equality. It could cooperate with progressive and anti-colonial campaigners

[68]TNA CO 583/177/1058, Cameron to CO, 10 Dec. 1931. By the time Cameron took office, British administrators were debating whether to extend native court jurisdiction to all Africans (or even to all people living in native authority-controlled areas), or whether outsiders ought to be tried automatically in the British system.

[69]TNA CO 583/191/9, "Ordinance. Rules Etc. under." The final amendment of the code with this stipulation, directly targeted at flogging was passed at the very end of 1933. TNA 583/194/13, Criminal Code Ordinance.

[70]This observation is entirely compatible with Frederick Cooper and Rogers Brubaker's well-known admonition about the incoherence of identity as an analytic category. My point is not an interior sense of self was being transformed; rather, categories of the identity took on new importance within legal institutions as a result of the processes discussed in this article. Frederick Cooper and Rogers Brubaker, "Beyond Identity," *Theory and Society* 29, 1 (2000): 1–47.

around the world. The pressure on the Nigerian government was increasingly evident. These networks waxed and waned over the next century, and the African-diasporic and humanitarian public spheres were joined by human-rights activists, feminists, and others. At the same time, idioms of earlier outrage would echo. In the early 2000s Bariya was depicted as a pure victim, who "may not have been able to express her pain and humiliation at being flogged, or may have been sufficiently intimidated not to express it,"[71] a sentiment familiar a century earlier even if dressed up in different idiom within Yanzu's account of the "eyesore" at Bauchi. The victims of flogging were abject, and (despite powerful exceptions like the clerks of Zaria) rarely quoted. Instead, their identity markers were emphasized—age, gender, religion, and occasionally ethnicity.

Anxiety about and emphasis on these identity markers became ever more powerful. As the 1920s gave way to the 1930s the government sought to contain such scandals by accommodating and marking identity within the doctrines surrounding court jurisdiction. In the process, invoking identity became key not only to containing scandal or to adjudicating whether a flogging was "appropriate" or "inappropriate," but to constituting how particular people appeared to the state. Identity determined which systems of law applied to whom *and* degrees of criminal culpability. As urgent inquiries investigated problematic floggings—illegal uses of the law—questions of identity inflected and determined the state's culpability in its own violence. What initially would appear something of a footnote—judicial violence was only a tiny part of the horrors committed by colonial regimes—thus takes on greater historical importance. Flogging was a symptom of how easily the conceits of liberal legality can be stripped away, and how arbitrary violence is at the heart of the rule of law that claims to address all equally. The scandals and responses to them reworked such identities and helped institute new struggles over them. As Bariya Magazu learned so painfully, these consequences persist.

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[71]Howard-Hassmann, "Flogging," 18.

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