

## KILLING THE CONDEMNED: THE PRACTICE AND PROCESS OF CAPITAL PUNISHMENT IN BRITISH AFRICA, 1900–1950s

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**ABSTRACT:** Capital punishment in British colonial Africa was not just a method of crime control or individual punishment, but an integral aspect of colonial networks of power and violence. The treatment of condemned criminals and the rituals of execution which brought their lives to an end illustrate the tensions within colonialism surrounding the relationship between these states and their subjects, and with their metropolitan overlords. The state may have had the legal right to kill its subjects, but this right and the manner in which it was enacted were contested. This article explores the interactions between various actors in this penal ‘theatre of death’, looking at the motivations behind changing uses of the death penalty, the treatment of the condemned convicts whilst they awaited death, and the performance of a hanging itself to show how British colonial governments in Africa attempted to create and manage the deaths of their condemned subjects.

**KEY WORDS:** Colonial state, death, punishment, violence.

THE real question is the humanising influence which the disappearance of capital punishment would have on African races, and perhaps the more important question whether we are justified in exacting the extreme penalty in view of our lack of real knowledge about the native as an individual. That which is best in civilization, self-restraint, humanity, an intelligent insight, seem to make capital punishment impossible.<sup>1</sup>

Capital punishment has a long and controversial history in Africa, beginning largely in the colonial period. State executions were stark enactments of colonial power intended to reinforce local order and the authority of colonial states in British Africa. But the terminal and highly visible violence they employed also disquieted some administrators and law officials, such as Clifton Roberts, the former attorney-general of Nyasaland: how could this violence be reconciled with the supposedly ‘civilizing’ influence of colonial rule? What if the hanging was botched, and instead of a ‘humane’ and ‘efficient’ execution, a slow and painful death resulted in scandal? The death penalty was a crucial element of a colonial state’s coercive capabilities, but it was also a potential marker of its violence and inefficiency.

Colonial penology had its own specific character, shaped by the constant drive to combine the domination of men and of territories, including a reliance on direct violence and racialized application of legal violence.<sup>2</sup> It was

<sup>1</sup> C. Clifton Roberts, *Tangled Justice: Some Reasons for a Policy of Change in Africa* (London, 1937), 88.

<sup>2</sup> See Florence Bernault, ‘De l’Afrique ouverte à l’Afrique fermée: comprendre l’histoire des réclusions continentales’, in Florence Bernault (ed.), *Enfermement, prison et châtements en Afrique: du 19e siècle à nos jours* (Paris, 1999), 40–1.

also marked by the differing forms of governmentality found across Africa and the rapid bureaucratization of the colonial state, and through the tensions between the Colonial Office and territorial governments as to what punishments were suitable for African conditions. With capital punishment, the colonial era in Africa saw an evolution in the practice and rituals of execution from a public symbol of British power to a sanitized judicial murder. But penal or legal reform never eradicates the violence from a punishment like execution; it merely recasts it. As British colonial states developed, the violence inflicted by their legal and penal systems in punishing those Africans who transgressed their laws was to be increasingly reformed according to the dictates of 'civilization' and 'humanity'. Penal violence itself was to become a 'civilizing' force, moulding Africans into obedient subjects. Throughout the colonial period in British Africa, the primary aim and function of the death penalty was one of deterrence: rather than retribution against an individual, an execution was a didactic measure seeking to deter others from challenging colonial order. This judicial 'theatre of death', however, had multiple audiences to impress – metropolitan, official, settler and African – many of whom had differing attitudes to its enactment.

The death of an individual is an extended process in modern executions: the condemned man is stripped of autonomy, movement and social interaction, before finally being stripped of life. Theories of contemporary Western executions tend to read these events through a Foucauldian bio-power lens, and processes of medicalization and sanitization.<sup>3</sup> In order to discuss hanging in Africa, however, where these trends were incomplete, a better analysis can perhaps be made by considering a problematic process of dehumanization: from the generalized de-individualization that marked colonial carceral techniques to the imposition of 'exceptional' status on the murderer whose crimes merited the 'extreme penalty of the law', and finally to the stripping of humanity and life from his body. These transitions occurred in legal realms, the social networks of prisons, and the physical space of execution, as will be explored below. This article is intended as a general overview of the practice and process of capital punishment across British Africa, looking at the different attitudes to state-enforced death which can be glimpsed therein, and highlighting the main issues which were repeatedly raised at local and metropolitan levels. The evidence is primarily drawn from Colonial Office records gathered on the subject, and from in-depth archival research from Kenyan and Nyasaland archives. Whilst there is a wealth of legal and administrative evidence detailing the trial and conviction of murder suspects, the evidence regarding the actual execution of these persons is much more scarce.

#### SETTING THE SCENE: THE DEATH PENALTY IN BRITISH COLONIAL AFRICA

Whilst legislation relating to the death penalty varied across British Africa, most territories had a legal system based on English common law, where the

<sup>3</sup> See Michel Foucault, *Surveiller et punir: naissance de la prison* (Paris, 1975); Foucault, *Security, Territory and Population: Lectures at the Collège de France, 1977–78*, ed. M. Senellart, trans. G. Burchell (London, 2007).

capital sentence was mandatory for murder, high treason and, in a few territories, rape.<sup>4</sup> The vast majority of the death sentences handed down by the colonial courts were for murder.<sup>5</sup> To be convicted and killed, the African murderer had to be created as dangerously 'Other', something violent, uncivilized and less than fully human.<sup>6</sup> The legal process of dehumanization began at trial and sentencing, during which African murderers were stereotyped as dangerous, abnormal, less than fully civilized or 'human' colonial citizens. Ethnic and racial tropes such as African 'primitive mentality' and 'impulsive savagery' were utilized by the prosecution to secure conviction, and by the defence to argue that the accused was not fully responsible for his actions. And yet, in their court trials, accused Africans could also present their lives as individual narratives. Successfully prosecuting someone for murder required a greater knowledge of that person and the circumstances of their crime than for any other offence, and as such the colonial state was required to render the accused as an individual African, as well as a dangerous 'Other'.

After conviction, appeals could be made to High Courts, regional Courts of Appeal, and finally to the Judicial Committee of the Privy Council in London. If an appeal failed, the final disposition of sentence was made by the governor of a colony, advised by his executive council or senior administrators. The governor could either exercise mercy and reprieve a condemned convict, commuting his sentence to one of imprisonment, or he could confirm the sentence and 'let the law take its course': making the death penalty the only punishment which had an expressly political element to its enforcement. Executions usually occurred where murders were determined to have been premeditated, or involved extreme levels of violence or pecuniary motives, and in those murders which targeted colonial authority or involved inter-racial killing, particularly black-on-white. Overall, however, the rate of mercy was relatively high: it was not unusual in Kenya or Nyasaland, for example, for half of the death sentences passed in a year to be commuted, primarily because the majority of murders involving Africans were regarded as unpremeditated and resultant from quarrels between friends and family, types of murder which were regarded as less threatening to law and order and which consequently did not warrant the 'extreme penalty of the law'.<sup>7</sup>

<sup>4</sup> These territories were South Africa, the High Commission Territories, Rhodesia, Nyasaland and Kenya. A mandatory death sentence was on the statute books for instigating foreign invasion, waging war against the sovereign, arson at royal dockyards and piracy, but these regulations seem to have been used rarely, if ever. Most territories also exempted pregnant women and youths under the age of 18 from the death penalty under their penal codes.

<sup>5</sup> The major exceptions to this were during the Chitembo Uprising in Malawi, 1914–15, when 36 men were executed for a combination of murder and high treason, and Mau Mau in Kenya, 1952–60, when some 1,090 men were executed for Emergency offences. National Archives of Malawi (NAM), S1/496/19 (Sir George Smith, 'The empire at war: Nyasaland', 8); David M. Anderson, *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire* (London, 2005).

<sup>6</sup> See Michel Foucault, *Society Must be Defended – Lectures at the Collège de France, 1975–76*, ed. M. Bertani and A. Fontana, trans. D. Macey (London, 2003), 254–7.

<sup>7</sup> Stacey Hynd, 'Imperial gallows: capital punishment, violence and colonial rule in British colonial Africa, c. 1908–68' (unpublished D.Phil., Oxford, 2007). This is a rate comparable with England and Wales during 1900–47, where roughly half of condemned

It should be noted that execution rates were differentiated along racial lines: Europeans were rarely hanged, whereas in Kenya and South Africa a high percentage of convicted Asian murderers went to the gallows.<sup>8</sup> The numbers of people facing judicial execution varied across British Africa during the colonial period.<sup>9</sup> With the exception of Nigeria, few countries executed more than 20 people per year, and for many the number was far lower.<sup>10</sup> In Nyasaland, between 1903 and 1947, the extant records show 897 capital cases, in which 181 persons were executed, but 197 saw their death sentences commuted.<sup>11</sup> In Kenya, a survey of 1,108 extant capital cases (excluding those prosecuted on Mau Mau offences) reveals that 459 persons were executed between 1908 and the beginning of 1956.<sup>12</sup>

‘FRONTIER JUSTICE’: PUBLIC EXECUTIONS AND THE  
ESTABLISHMENT OF COLONIAL RULE

During the partition and ‘pacification’ of Africa, capital punishment was translated into an African context as an integral aspect of ‘frontier justice’, with the aim of displaying the power of the advancing colonial state, and of establishing or maintaining the ‘law and order’ that was central to its functioning.<sup>13</sup> Power in the colonies was a form of social practice, and the public administration of justice was an important aspect of this, creating a colonial public sphere out of the repetitive displays of power by the colonial government.<sup>14</sup> The use of the death penalty was both shaped by this performance of power, and shaped it in turn. To this end, the trial and execution

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convicts were granted mercy. See Peter Wilson, *Twentieth-Century Hangings* (London, 2002).

<sup>8</sup> The exception to this was South Africa, where, between 192 and 1964, a higher percentage of Europeans were executed than of Blacks. See Robert Turrell, *White Mercy: The Death Penalty in South Africa, 1900–48* (Westport, 2005), 262. Convicted Indian/Asian prisoners, however, also experienced high rates of execution in Kenya and South Africa, and more research is needed into the reasons behind this. See Turrell, *White Mercy*, 263; Kenya National Archives (KNA), MLA/1 series; AG/52/238 (HC CC77/19 Sajaad Hussein); AG/52/428 (SC 118/38 Mohamed Shah); Kenya Colony, *Blue Books* (Nairobi, yearly), capital sentencing returns.

<sup>9</sup> Hynd, ‘Imperial gallows’.

<sup>10</sup> Nigeria not only had a greater population, it also had a different system of law: in Northern Nigeria, the emir’s courts were the only Native Authorities (aside from in Buganda before 1917) to retain capital sentencing powers in their own courts. See David Killingray, ‘Punishment to fit the crime? Penal policy and practice in British colonial Africa’, in Bernault (ed.), *Enfermement, prison et châtements, 198–201*; Alan Milner, *The Nigerian Penal System* (London, 1972), 333.

<sup>11</sup> NAM, J5 and S1 series, Annual Returns from Judicial and Prison departments.

<sup>12</sup> KNA, MLA/1 and AG series, Annual Returns from Judicial and Prison departments.

<sup>13</sup> For a wider discussion of colonial coercive capabilities, see David Killingray, ‘The maintenance of law and order in British colonial Africa’, *African Affairs*, 80 (1986), 411–37.

<sup>14</sup> Jan-Georg Deutsch, ‘Celebrating power in everyday life: the administration of the law and the public sphere in colonial Tanzania, 1890–1914’, *Journal of African Cultural Studies*, 21 (2002), 95–100.

of condemned criminals was often conducted in public before the assembled ranks of the local communities to maximize the audience.<sup>15</sup>

Although during the 'pacification' of Africa, executions were sometimes carried out by firing squads, hanging – the method of execution employed in metropolitan Britain – quickly became portrayed as the most effective and humane, and least violent, method of death, making it the most acceptable to British colonial regimes.<sup>16</sup> Early colonial hangings were often improvised affairs, with the gallows being created from a nearby tree, or even a door-frame suspended over a river-bed, and the execution itself was often bungled by untrained administrative or police officers who were forced to undertake the duty.<sup>17</sup> Such events led to employment of public executioners in territories where there were a sufficient number of hangings to warrant the development of this expertise: the public executioner for East Africa from 1912 was Mr. Sellwood of Nairobi, who was paid 75 rupees per hanging, plus second-class rations and travelling allowances, whereas in 1910 Nyasaland seems to have employed an African man named Mwamadi to fill this post.<sup>18</sup>

Resistance to and subversion of the intended meaning of execution – deterrence, authority and efficiency – could occur in many forms, not just through official error. The hanging of three men, including the local chief, in Enugu, Nigeria, in 1918 is a case in point. According to District Commissioner Henry Ward Price:

The two young men had to be forcibly dragged from the prison; they continued to struggle and protest even after their elbows were tied behind them and their ankles bound. When the canvas bag was over their heads, they wriggled so much it was very lucky that they both dropped cleanly and died at once ... The old chief acted quite differently, remaining calm and dignified, and I was very sorry he had not been treated more mercifully. I tried to give him some encouragement in his last moments ... I pulled the loose nail out of the hasp to release the door on which he was standing, with the rope around his neck. He dropped with a jerk, and another member of the 'old order' of things had paid the penalty for being too backward to realize that it was giving place to something new; to new laws; different standards of conduct; and to a foreign people.<sup>19</sup>

Executions have several meanings, both intended and inferred, for different audiences, which can be either affirmed or subverted by the actors involved. The manner in which the condemned went to his death greatly affected the received interpretation of its meaning.<sup>20</sup> Here, both the frantic

<sup>15</sup> See Henry Ward Price, *Dark Subjects* (London, 1939), 90–1; David Rooney, *Sir Charles Arden-Clarke* (London, 1982), 33–4; W. S. Blunt, *Atrocities of Justice Under British Rule in Egypt* (London, 1906), 32–57.

<sup>16</sup> Killingray, 'Punishment to fit the crime?' 198–201. Firing squads, however, continued to be used on occasions when gallows were unable to be quickly transported to the location of an execution, as during the Chilembwe Uprising in Nyasaland in 1914, and in the Samburu district of Kenya in 1923. See Rhodes House Library, Oxford (RHL), MSS.Afr.s.487 (Martin Mahony, Barsaloi Diaries, 21 June 1922); The National Archives of the United Kingdom (NA), CO 533/295 (Kenya 1923 Despatches); NAM, S1/496/19 (Smith, 'The empire at war: Nyasaland', 8).

<sup>17</sup> Ward Price, *Dark Subjects*, 90–1.

<sup>18</sup> KNA, PC/COAST/1/10/7 (Public Executions 1912); NAM, S1/1832/19 (*R v. Philemon*).

<sup>19</sup> Ward Price, *Dark Subjects*, 90–1.

<sup>20</sup> Philip Smith, 'Executing executions: aesthetics, identity and problematic narratives of capital punishment', *Theory & Society*, 25 (1996), 254–6.

struggles of the youths and the calm dignity of the old chief challenged the meaning of the execution and the legitimacy of power it was intended to convey; one through drawing attention to the terror it caused, another by juxtaposing a calm dignity against the raw violence of the gallows. If even a district commissioner's belief in the justice and necessity of execution was undermined, the feelings of the local community are likely to have been all the more negative.

The responses of the central actors in these events – the condemned men and their executioners – highlight the tense and polysemous nature of these judicial killings and their enactment. Sir Charles Arden-Clarke, later governor of the Gold Coast, spent his early career in the 1920s as a district officer in Nigeria, where, despite his reluctance, he had to oversee a number of executions. After one such occasion in Nungu, he wrote: 'This was a terrible business ... Conducted as it was with awesome solemnity and cold-blooded efficiency it had had a terrifying effect on the Mamas, cheap though they normally held human life to be'.<sup>21</sup> Contrary to the Eliasian theory that self-proclaimed 'civilized' societies and peoples come to feel a repugnance for direct violence, many officers like Arden-Clarke confessed their discomfort was less with the taking of life, than with the cold, sanitized rituals of execution.<sup>22</sup> In 1925, Arden-Clarke wrote: 'It's a beastly job; I'll be glad when it's over. It is all so cold-blooded; that is the rotten part of it ... However, it's necessary, right and part of one's duty so there's an end to it'.<sup>23</sup> It was through asserting the primacy of their roles as agents of the state, enforcing judicially and politically sanctioned sentences, that the district officers, prison superintendents and doctors who participated in executions created the moral disengagement necessary to allow them to reconcile their involvement in executions with their belief in their own, and their government's, humanity and civilization.<sup>24</sup>

The attitudes of the condemned themselves when facing death are only infrequently alluded to in the colonial written record. It was assumed by many officers that Africans had a greater acceptance of death than Europeans: 'It may be of course that a native doesn't care how he is hanged. He is merely a native. His native philosophy makes him look at the event in a disinterested sort of way'.<sup>25</sup> Whilst there were many murder convicts who told their judges 'I don't care if you hang me', and refused their right to petition for mercy, dying a 'good death' with dignity and silence according to the colonial state's script, there were others who pleaded their innocence during their trial and in petitions from prison, begging for mercy. Many broke down in tears or screams at the gallows.<sup>26</sup> From the available evidence, it appears that some men met the announcement that they were to be hanged not with disinterest, but with resignation or disbelief segueing into terror.

<sup>21</sup> Rooney, *Arden-Clarke*, 34.

<sup>22</sup> Norbert Elias, *The Civilising Process: The History of Manners and State Formation and Transformation*, trans. Edmund Jephcott (Oxford, 1994).

<sup>23</sup> Rooney, *Arden-Clarke*, 34.

<sup>24</sup> M. Osufsky, A. Bandura and P. Zimbardo, 'The role of moral disengagement in the execution process', *Law & Human Behaviour*, 29 (2005), 371–93.

<sup>25</sup> NA, CO 323/1111/6 ('Executions in the colonies: "Strangled for 14 minutes by law!: the horrors of hanging in Rhodesia"', *Sjambok*, 26 Sept. 1930, anon. note).

<sup>26</sup> See allocutus from KNA, MLA/1 series and NAM, J5 and S1.

A prison officer in Kenya, writing in the *East African Standard* in 1916 told of how:

The majority of the condemned natives when told, seldom say anything in reply, and show no signs of fear. They eat their meal in the usual way, uttering the words 'Shauri ya Mungu, Bwana', when told they are to die the next morning. Three prison warders are locked up with the prisoner, in case a native tries to do anything, or struggle.<sup>27</sup>

However, by the next morning, the condemned man's attitude was very different:

Very few cases occur where the native prisoners walk to the gallows without giving trouble. In nearly every instance they make a fuss, decline their food, refuse to eat, and start to cry. Just before the operations they are so nervous that they shriek at the top of their voices, and struggle for dear life when the Superintendent reads out the order. Eventually a black cover is placed over the prisoner's head, covering his eyes and mouth. The rope is then placed round the neck, the the execution is carried out.<sup>28</sup>

Such acts of resistance by the condemned prisoner at the scaffold, and the reception of these images within public spheres, created a crisis in the meaning of these hangings for the state: the line between judicial killing and murder became blurred. How often these subversions occurred is impossible to calculate, but they were certainly perceived as dangerous by colonial authorities, who needed the condemned's participation in the ritual to 'fulfil the ideological pay-off of an increasingly worrisome penalty'.<sup>29</sup> The combination of struggles at the gallows and botched hangings served to pressure colonial governments towards reforms which would shore up the flawed symbolism of the death penalty; most notably the transition from public to private executions.<sup>30</sup>

#### RE-STAGING DEATH: THE TRANSITION FROM PUBLIC TO PRIVATE EXECUTIONS

Hangings quickly became part of colonial iconography, but the message and meanings they contained altered over the years. Methods of execution reflected both the evolution of sensibilities and structures of government in colonial territories. The pressure to eradicate public hangings in British Africa, however, came not primarily from within colonial governments, but from the Colonial Office itself. Public executions had been outlawed in Britain since 1868, and as such London was against their use in a colonial context. In 1905 a circular was sent out to all colonial governors detailing the British Home Office's execution procedures, and affirming that these should be followed as far as possible: executions were to occur behind closed doors, in prison and using long-drop gallows, carefully calibrated to ensure near-instantaneous death through the dislocation of vertebrae.<sup>31</sup>

<sup>27</sup> 'A prison officer's diary', *East African Standard*, 23 June 1916, 16.

<sup>28</sup> *Ibid.* <sup>29</sup> Smith, 'Executing executions', 236. <sup>30</sup> *Ibid.*

<sup>31</sup> KNA, AP/1/526 (Capital Sentences, Judge Hamilton to Colonial Secretary, 29 May 1909). However, as similar circulars were still being issued in 1953 it seems that not all of the procedural details were followed; NA, CO 859/445 (Capital Punishment – Procedures

Metropolitan pressure for reform meant that by the 1920s–1930s the majority of hangings in British Africa were being carried out in private within prison precincts. The processes of execution were increasingly removed from the public gaze, centralized into a colony's main prison, and sanitized by the use of British techniques of hanging. These changing rituals of capital punishment paralleled the process of colonization itself, being accompanied by bureaucratization and 'modernization', and driven by a desire for efficiency, cost-effectiveness and humanity. But they also mirrored the wider tensions of colonial rule: the reform of capital punishment was neither complete nor unilinear – visible, direct violence retained its place in the penal realm. Calls for, and the use of, public hangings still persisted in the 1930s, as Reuters reported in Uganda, 1932:

Public executions have been instituted by the Government in Uganda in an attempt to check the terrible wave in crime, particularly murder. The first execution took place at Hoima, a large native centre in the Northern Province. Before a crowd of 4,000 Africans, two natives were hanged from an open-air scaffold for murder.<sup>32</sup>

The Colonial Office protested in 1923 against public executions in Kenya and Nigeria when these were brought to its attention.<sup>33</sup> Reports detailing calls for public hangings in Kenya in 1931 and 1934 as a result of 'tribal affrays' and the murder of a white settler, in Somalia in 1943 for inter-tribal warfare, and in Calabar, Nigeria, in 1946 during the moral panic surrounding the 'Leopard Man' murders there were also received with concern.<sup>34</sup> It is clear from these reports that public executions were sought in situations where 'law and order' was felt to be under threat.

Whilst metropolitan pressure was crucial in forcing the pace of reform, it was not the only vector of change. In Nyasaland, executions were centralized in 1924 after the botched execution of two men, Jim and Makoshonga, left one being hanged twice and another shot in the head after the rope broke, an affair considered so scandalous that the chief justice threatened to charge with murder any officer who violated the terms of an execution warrant in such a manner in future.<sup>35</sup> The fear of such scandals was what prompted some colonial administrators to implement reform. Indeed, the frequency of 'inefficient' and 'botched' executions can be held as a metonym for the deficiencies of the colonial state more generally: if the sovereign power of life and death was the apogee of colonial control, and executions could not be

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and Equipment 1952–3, Circular 288/53). See the Gowers Commission for a discussion of British procedures. Great Britain, *Royal Commission on Capital Punishment 1949–53: Report Presented to Parliament by Command of Her Majesty, September 1953*, Cmd. 8932 (London, 1953), 247–56.

<sup>32</sup> Clifton Roberts, *Tangled Justice*, 133. See NA, CO 536/172/14 (Public Executions – Uganda 1932).

<sup>33</sup> RHL, MSS Brit.Emp.s.22 G 241 (Calabar Executions [Oron]1923); NA, CO 533/295 (Kenya 1923 Despatches).

<sup>34</sup> NA, CO 323/1283/2 ('Executions in public in the colonies', *The Times*, 4 July 1943); NA, CO 533/421/4 (Disarmament of Frontier Tribes & Abyssinian Raids, Kenya, 1923–31); NA, CO 323/1862/13 (Legal–Privy Council Appeals 1943, Brigadier G. Fisher to Colonel Jameson, 20 Sept. 1943); Nigerian National Archives, 7/1/1421 (DO J. Allen to Resident, Calabar, 16 Jan. 1946). Many thanks to David Pratten for this information; see Pratten, *The Leopard Man Murders: History and Society in Colonial Nigeria* (Edinburgh, 2007)

<sup>35</sup> NAM, S1/264/23 (*R. v. Jim and Makoshonga*).



adequately carried out beyond the performance façade, this raised serious concerns about the functioning of wider colonial projects of governance.

The removal of executions from public arenas in the first half of the twentieth century created the greatest change in the meanings and rituals of state killing. Restricting the audience, however, created a new problem for colonial states in transmitting their deterrent message. Officers increasingly began to report that Africans did not believe the condemned men were actually being executed: instead local communities believed that magic protected the criminals, that they were imprisoned for life, or were even ‘turned into hyenas’.<sup>36</sup> Such beliefs were further exacerbated by men returning to their villages from prison at the end of a commuted sentence, or where a conviction was overturned on appeal on a legal technicality.<sup>37</sup> To combat this, in 1933 and 1940 the Colonial Office supported calls to follow the ‘Kenyan system’ across Eastern Africa, whereby witnesses from the condemned man’s village would be sent to view him in prison before and after hanging, to transmit the message that the state had really taken his life, with a message being posted outside the prison and the local district officer announcing the death, creating what was in effect a ‘semi-private’ system of execution.<sup>38</sup> The theatre of death might have a restricted audience, but its message was still to be driven home, and it was a message to which many of Britain’s African subjects appear to have become receptive.

Although there is a limited amount of textual evidence available regarding African attitudes to capital punishment, the administrative and legal reports which survive suggest that many African communities came strongly to support hanging for murderers they regarded as having committed unpardonable crimes: usually those threatening established social hierarchies or involving extreme violence, although this varied according to social tensions in local communities and precolonial customs regarding the punishment of murder.<sup>39</sup> Indeed, in many cases, they were more vociferous than either administrative or legal officials in their calls for executions: district officers’ reports surviving from 1947–50 in Nyasaland frequently state that ‘Local opinion is unanimous that the law should take its course’ or ‘if the death penalty is not enforced they will be very upset and will consider that justice

<sup>36</sup> KNA, DC/LDW/2/21/18 (Execution of Murderers, 1925); Government of the Gold Coast, *Report of the Prison Department 1943–4* (Accra, 1944), 3; NAM, 11-15-1F 185.92 (*Medson Evans Silombela v. Regina* 1966).

<sup>37</sup> KNA, DC/LDW/2/21/18 (Execution of Murderers).

<sup>38</sup> Great Britain, *Report of the Commission of Inquiry into the Administration of Justice in Kenya, Uganda and Tanganyika Territory in Criminal Matters, May 1933* [Bushe Commission] (London, 1934), 57–8; Alexander Paterson, *Report on a Visit to the Prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland* (Moriya, 1944), 26; KNA, MLA/1/1368 (Criminal Case – Procedures in Death Sentences 1939–43). See John McGuire, ‘“Judicial violence and the civilising process”: race and the transition from public to private executions in colonial Australia’, *Australian Historical Studies*, 29 (1998), 186–209, for an analysis of ‘semi-private’ executions. Not all territories adopted this system; Nyasaland rejected it in 1940 as ‘contrary to all principles of decency and decorum’, despite having used the same system before 1924. NAM, 4-4-8R 2952 (Judge Thomas, 12 Feb. 1940).

<sup>39</sup> Rooney, *Arden-Clarke*, 33–4. See the various reports by district commissioners on local attitudes to condemned criminals in KNA, MLA/1 series and NAM, PCC/1/16/1-2 (Confidential Reports on Persons Convicted of Murder and Sentenced to Death).

has not been done'.<sup>40</sup> The 1933 Bushe Commission report on criminal justice in East Africa similarly contains evidence from chiefs strongly supporting execution for crimes which threatened local order.<sup>41</sup>

THE PROCESS OF STATE EXECUTIONS: MOVING THE CONDEMNED  
FROM LIFE TO DEATH

With the removal of execution behind prison walls, another new problem arose for colonial authorities: that of the situation of condemned prisoners on 'death row', and their treatment in the days before their death, particularly in overcrowded and under-resourced colonial prison systems.<sup>42</sup> The dehumanization which the death penalty required in order to function was an interactive process between prisons and the condemned man, and 'death row' was the twilight space where this 'Otherness' was finally negotiated. Returning to prison after sentencing, the convicted murderer found the contested individuality that had been negotiated in the courtroom being subsumed and reconstructed within the prison's own social, physical and bureaucratic networks.

Many prisons were basic, unsanitary and insecure: sites of punishment rather than confinement.<sup>43</sup> Conditions were often chaotic due to overcrowding and minimal administration, and this could lead to serious oversights in the incarceration of condemned prisoners. As a result of concerns, colonial penal discourses were, from the 1920s, increasingly marked by a rhetoric of reform, and efforts were requested by the Colonial Office in London to standardize the accommodation and treatment of the condemned during their time awaiting death. They were to be transferred from ordinary prisons to execution centres as soon as possible after sentencing. Where viable, condemned prisoners were to be accommodated in single cells, separate from other prisoners.<sup>44</sup>

Within government prisons across Africa, there were increasing efforts made to segregate both condemned prisoners and the processes of execution from the rest of the prison, although often segregation only occurred along racial or gendered lines rather than by categories of conviction: Europeans, Indians or women were held separately from the main body of African male prisoners.<sup>45</sup> It was not until the post-1945 welfaristic turn in colonial policy, though, that substantive programmes of structural improvement to prisons

<sup>40</sup> NAM, PCC/1/16/1-2 (*R. v. Zakaria, R v. Jason and Wiskot*, 1947).

<sup>41</sup> Bushe Commission, 73-9, 210-15.

<sup>42</sup> See Bernault (ed.), *Enfermement, prison et châtements*; Alan Milner (ed.), *African Penal Systems* (London, 1969). Colonial prisons did not have officially designated 'death rows'; the term is used here to refer to the general state of awaiting execution.

<sup>43</sup> See Florence Bernault, 'The shadow of rule: colonial power and modern punishment in Africa', in F. Dikötter and I. Brown (eds.), *Cultures of Confinement: A History of the Prison in Africa, Asia, and Latin America* (Ithaca, 2007), for an overview of condition in colonial prisons; Daniel Branch, 'Escaping the colonial archipelago: imprisonment and colonialism in Kenya, c. 1930-52', *International Journal of African Historical Studies*, 38 (2005), 239-66.

<sup>44</sup> NA, CO 859/442 (Capital Punishment: Treatment of Offenders).

<sup>45</sup> See for example KNA, AG/16/290 (Prisoner's Record: Nairobi 1368/D, Mrs. Teja Singh Dillon).

were put in place, as a result of the renewed emphasis on making conditions for condemned Africans 'similar' or 'as close as possible' to those in England.<sup>46</sup> The Nyasaland Annual Prison Report asserts that

Condemned prisoners are confined separately in the Central Prison ... it is necessary for them to take their exercise in the main yard in sight of the rest of the prisoners. A separate yard will be constructed in 1948 and ... a row of 8 cells will be made available for such prisoners in complete segregation from the rest of the prisoners<sup>47</sup>

Out of sight, out of mind. In Tanganyika and Kenya, however, the feeling still existed that solitary accommodation was particularly difficult for 'tribal' Africans to bear.<sup>48</sup> The commissioner of prisons in Kenya requested in 1939 that condemned men be kept in twos or threes for companionship. In 1952, Nairobi's prison superintendent reaffirmed this system, stating 'I have considerable experience dealing with condemned prisoners and I am certain that the present system is the best and most humane'.<sup>49</sup> Whether or not it was more humane, it was certainly practical, considering the ever-worsening overcrowding as capital convictions increased exponentially during the Mau Mau Emergency.<sup>50</sup> Overall, prison reform was largely superficial and conditions remained highly punitive.

The segregation and isolation of condemned prisoners was geared towards their control and the elision of their profile within prisons, but often this segregation was only partial due to the incomplete bureaucratization and surveillance techniques of colonial prisons. As a result, the individuality and 'Otherness' of murderers was often mitigated by the generalized social dehumanization of prison regulations – both intentionally and unavoidably. In Sierra Leone, for instance, there were notable

problems with identification of condemned men. On arrival men are asked to give their names and sentences into prison books. Authorities have to rely on remembering a man to identify him, unless he has any scars etc. No fingerprints are taken nor do any of the condemned cells to which the men are assigned bear a number or the name of the occupant.<sup>51</sup>

On the other hand, condemned men in Kenya were literally marked for death: in 1916 it was recorded that their prison uniform sported a large 'X' across their backs.<sup>52</sup> These were the 'condemned', rather than 'men'.

By the 1930s, prison regulations in most territories required that, once received back in prison after trial, condemned prisoners were to be placed under the 24-hour supervision of warders specially detailed for the duty, and visited daily by the medical officer so that their physical and mental health

<sup>46</sup> NA, CO 859/445 (Capital Punishment – Execution Equipment and Procedures); KNA, AP/1/905 (Death Sentence – Correspondence).

<sup>47</sup> Nyasaland Protectorate, *Annual Report on the Administration of the Prisons Department during the Year 1947*, 13.

<sup>48</sup> Tanganyika Territory, *Annual Report on the Administration of Prisons during the Year 1947*, 14.

<sup>49</sup> NA, CO 859/442 (Capital Punishment: Treatment of Offender, 1 Mar. 1952 John Wyatt to P. Rodgers).

<sup>50</sup> See Anderson, *Histories of the Hanged*.

<sup>51</sup> NA, CO 267/674/2 (Capital Sentences, Irregularities in Carrying Out, Sierra Leone, 5).

<sup>52</sup> 'A prison officer's diary', 16.

could be monitored.<sup>53</sup> After their sentences were confirmed, in order to compensate for the psychological stress and grim fate awaiting them, the individuality and ‘humanity’ of the condemned was partially reconstructed. Efforts were made to make what could be the remaining time of a man’s life respectable.<sup>54</sup> In many territories, prison regulations stated that ‘all reasonable indulgement’ was to be granted to those awaiting death: ‘Those who can read are given books and a generous quantity of tobacco is issued daily’; in Tanganyika a daily ration of alcohol was even provided.<sup>55</sup> The possession of items such as tobacco and alcohol was a punishable offence for ordinary prisoners. Prison governors or superintendents in particular could come to have a certain respect for their charges, viewing them as the most ‘manly and honest’ of prisoners: as Alexander Paterson reported, ‘When the time for death draws near, comparing him with the vicious and persistent criminal, with the shambling sneak thief, he is tempted to resort to the cynical couplet: “We kill the best, And keep the rest”’.<sup>56</sup> The dehumanization and ‘Otherness’ of the condemned man was rarely total in the eyes of colonial officials whose frequent paternalism mediated the common trope of a ‘savage’ murderer.

The social interactions of condemned prisoners in their final days were supposed to be few and to be strictly controlled. According to prison regulations, inmates were to be kept in isolation, under constant supervision from prison guards and under frequent observation from the prison doctor.<sup>57</sup> Daily exercise was prescribed, but in segregation from the other convicts.<sup>58</sup> Although condemned prisoners were allowed visits from their families and lawyers, few families from rural areas could afford to visit Central Prisons in a colony’s capital, and few defence lawyers had sufficient time or interest to visit their clients in prison.<sup>59</sup> For many condemned men, the only other social interaction with someone outside the immediate prison network was with a visiting clergyman, who would attempt to offer consolation on earth and save the condemned man’s soul.<sup>60</sup>

The position of condemned prisoners in relation to ordinary convicts is something we know little about. The presence of the condemned could be felt as a constant reminder of the physical violence the colonial state could, and did, employ against them: a sign of death in an already hostile environment. On the other hand, where they were not held in complete isolation from other prisoners or considered dangerous, some condemned men

<sup>53</sup> NAM, S.I.1328.19 (Prison Regulations 1919–29); NA CO 533/462/9 (Death Sentences: Execution and Commutation).

<sup>54</sup> Executions were supposed to occur within thirty days, at most, of the warrant being signed; the actual length of time varied between weeks and one day.

<sup>55</sup> See Protectorate of Nigeria, *Annual Report on the Administration of Prisons* (1947–50); Tanganyika Territory, *Annual Report on the Administration of Prisons* (1941, 1946).  
<sup>56</sup> Paterson, *Report on a Visit to the Prisons*, 26.

<sup>57</sup> See NAM, S.I.1328.19 (Prison Rules, 1919–29); KNA, MLA/1/1368 (Procedures in Death Sentences, 1939–43).

<sup>58</sup> NAM, S.I.1328.19 (Prison Rules, 1919–29); KNA, MLA/1/1368 (Procedures in Death Sentences, 1939–43).

<sup>59</sup> NAM, S.I.1328.19 (Prison Rules, 1919–29); KNA, MLA/1/1368 (Procedures in Death Sentences, 1939–43).

<sup>60</sup> See James Mellet, *If Any Man Dare* (Dublin, 1963), 57, for one such attempt.

integrated easily into prison social networks and spent their days in prison labour like any other convict. The *Law Times* in England cited one anonymous case from Rhodesia in 1933 in which, pending confirmation of sentence, a condemned man was placed in charge of the prison garden, an easy job much sought after by other prisoners. Unfortunately, his papers were mislaid and by the time, eighteen months later, confirmation finally arrived that the prisoner was to be executed, the man had become a well-liked personality within the prison, notorious only for being 'the most inefficient gardener the prison had ever had ... everyone except the prison officials had forgotten why the gardener was in prison at all'. After his hanging, officials were surprised by the refusal of other inmates to take his job until 'close enquiry showed all the other prisoners were firmly under the impression that the late gardener had been summarily sent to join his fathers on account of his very inferior gardening abilities', demonstrating the wry, dark humour that can characterize discourses surrounding capital punishment.<sup>61</sup>

#### EXECUTION - THE PERFORMANCE OF DEATH

It was the transition from 'living on death row' to awaiting death with the arrival of the black-edged warrant of execution that marked the major transition towards final dehumanization and death for a condemned man.

In most territories, the prisoners awaiting execution were transferred 24 hours prior to execution to the condemned cell, which was situated in close proximity to the gallows to avoid the spectacle of parading the condemned across the prison to his death.<sup>62</sup> To minimize the psychological strain on the condemned, prisoners and staff alike, executions were usually held early in the morning, between six and nine o'clock.<sup>63</sup> The process of execution was heavily sanitized and restricted to a select audience, consisting of the hangman and his assistants, the prison superintendent and medical officer, and sometimes a priest and district officer. Detailed procedures were to be closely followed for bringing the condemned to the gallows and positioning him for the drop, and punctuality was to be strictly observed.<sup>64</sup> Rather than it serving as a public warning, not even fellow prisoners were to bear witness to the execution:

The tension of expectancy on the actual morning [of execution] is much increased if the hundreds of other prisoners are awaiting some bang which will announce the moment of death. This occurs when the two leaves of the trap-door are allowed to strike noisily once or more against the sides of the pit. This resounding noise can be reduced almost to nil if the flaps are suitably padded and are caught by a spring to prevent a rebound.<sup>65</sup>

<sup>61</sup> NA, CO 323/1346/16 (Death Sentences - 'Justice?', *Law Times*, 11 Nov. 1933). Although it was not specified where in Rhodesia the case occurred, colonial officers reading the case commented 'probably Southern Rhodesia'.

<sup>62</sup> See Paterson, *Report on the Prisons*, 25-7; NAM, 4-4-8R 2952 (Procedures to be Followed in Murder Cases, 1924-59, 55).

<sup>63</sup> This notably changed during Mau Mau in Kenya, where, due to the high number of executions, many were held after dark in Nairobi Prison, with barely twenty minutes between hangings. KNA, DC/MRU/2/17/2 (Reports of Execution).

<sup>64</sup> NA, CO 859/445 (Capital Punishment, Circular 288/53, Colonial Secretary to all Governors).

<sup>65</sup> Paterson, *Report on a Visit to the Prisons*, 26.

It is this distancing from the condemned which characterizes modern punishment – performed in private, sanitized, and carefully denying its own violence.<sup>66</sup>

Once at the gallows, it was necessary for the condemned man to be blindfolded and pinioned. Alexander Paterson, the Home Office commissioner of prisons who visited Eastern Africa on a tour of inspection in 1939, recorded that

In some cases the European officers are called upon to perform all these distasteful but inevitable tasks. This is not right. It robs them of the prestige they should maintain, if now and then they must take part in a hand-to-hand struggle.

Paterson recommended instead that, where there was no public executioner available, a part-time hangman be found from among the European community, ‘if he is steady of nerve and discreet in demeanour’. Otherwise, a body of African warders should be trained and transferred between prisons to carry out the executions.<sup>67</sup> Not only was it seen as unbecoming for a British officer actively to manhandle a prisoner to the gallows, as it damaged both ‘white prestige’ and claims to moral authority, but in co-opting one ‘native’ to inflict violence upon another, a degree of legitimacy was perhaps conferred upon the action in the state’s view. After certification of death by a doctor, the body would usually be buried in the prison graveyard and, at least in 1950s Kenya, the deceased’s belongings and will were to be returned to his family where possible.<sup>68</sup>

However, despite evidence of changing sensibilities, and an official emphasis on modernization and mimicry of Home Office procedures, the actual practice of executions in many prisons more clearly demonstrated an ad hoc approach to criminal justice and the continued acceptance of casual racial violence, as this unusually detailed 1930 account of an execution in Rhodesia demonstrates. Arriving at the prison at dawn, the narrator David Johnathan tells us:

To the right was the door of the condemned cell and within the cell the jailer and the ‘hangman’ stood trussing up the victim. (The ‘hangman’ by the way, was a man about town who had been asked to do the job for a fee.)

It took three minutes to bind the man, and at two minutes to six he shuffled into the room and was led to the trap doors by Askaris. Around his eyes was a piece of medical bandage. His arms were secured behind him by means of handcuffs, while his knees and ankles were strapped by a couple of Askari’s belts. And at this stage, while the wretched principal was on the trap doors, the following discussion took place between the jailer and the ‘hangman’.

Jailer: ‘Which way do we stand him?’

Hangman: ‘This way I think’ – placing the man in position ... ‘No, the other way’.

So they turned their victim around like a fowl on a spit.

Jailer: ‘Where do we put the knot?’

Hangman: ‘Back of the neck, just under the ear’.

Jailer: ‘Sure? I always thought under the chin, just below the ear’.

<sup>66</sup> David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford, 1990), 236.

<sup>67</sup> *Ibid.*

<sup>68</sup> KNA, DC/MRU/2/17/2 (Reports of Execution).

As the Magistrate uttered a protest, because of the delay, the noose was placed over the man's head and drawn tight until it wrinkled the skin of his neck. The Magistrate waved a signal and the lever was pulled. The trap doors opened with a clatter and the native disappeared into the darkness, the sudden tightening of the rope causing a sickening thud ... the body dangled.

Next day, I met the Doctor and asked a few questions. 'Nasty job yesterday, Doctor?' 'It was', He replied. 'By the way, what was that queer rattle I heard some time after the man had dropped?' 'To tell you the truth', the Doctor replied, 'The fall didn't break his neck. The poor wretch was strangled to death; what you heard was his struggle for breath'. 'How long did it take him to die?' 'Exactly fourteen minutes'.<sup>69</sup>

Due to the nature of inquest reports – which frequently recorded the cause of death simply as 'judicial hanging' – it is difficult to say how frequently such cases occurred, but botched executions could, and did, result in official concern and undermine support for capital punishment.<sup>70</sup> In 1940 a Commission of Enquiry was instituted in Sierra Leone by the Colonial Office after serious irregularities in execution procedures and equipment became apparent. One man died from a fractured skull after collapsing before the trap was opened, and another who died of asphyxiation was found to have been executed without a warrant.<sup>71</sup>

Despite concerns about such events, the pressure from London, however, was always for reform rather than abolition: even when Britain was moving towards abandoning the death penalty between 1947 and 1965 and the Colonial Office suggested the colonies might do so also, the response was overwhelmingly in favour of retaining the penalty as a necessary deterrent against lawlessness and disorder.<sup>72</sup> It is questionable how far the changing penal discourse reflected a genuine concern about the pain and indignity suffered by the condemned, and how far it demonstrated changing political sensibilities; reforms were often made 'more to salve the consciences of state and society rather than to ease the passing of the condemned'.<sup>73</sup> As the rhetoric and practice of state killing was reformed, it became clear that it was trying to satisfy an increasingly conflicting set of political, aesthetic and dramaturgical criteria: execution procedures had to be 'efficient' and 'humane', but they also had to remain sufficiently frightening to inspire respect for colonial authority and law.<sup>74</sup>

#### CONCLUSION

The execution of a condemned convict in British colonial Africa was a process rather than an event. The changing rituals of capital punishment

<sup>69</sup> NA, CO 323/1111/6 ('Strangled for 14 minutes by law!').

<sup>70</sup> It was only after Colonial Office requests for specific causes of death to be recorded that certificates began listing 'dislocation of vertebrae' or 'shock' in hangings. See KNA, AP/1/905 (Death Sentence Correspondence, Circular from L. Amery, 30 Apr. 1929).

<sup>71</sup> NA, CO 267/674/2 (Capital Sentences).

<sup>72</sup> NA, CO 859/164/4 (Capital Punishment: UK Criminal Justice Bill 1948); NA, CO 859/985-90 (Capital Punishment, 1957-9); NA, CO 1032/512 (Capital Punishment for Political Offences in Peace Time 1966).

<sup>73</sup> Turrell, *White Mercy*, 251.

<sup>74</sup> See Carolyn Strange, 'Penal undercurrents: punishment and the body in mid-twentieth century Canada', *Law & History Review*, 19 (2001), 362.

paralleled the process of colonization itself, being accompanied by bureaucratization, 'modernization' and a desire for efficiency, cost-effectiveness and 'humanity'. The search to find an 'acceptable' method of execution showed both the continued social investment in penal violence and the boundaries of colonial public sensibilities, as states sought to discover new methods of performing the terminal violence of execution whilst simultaneously concealing its brutality. This dissonance between the rhetoric of reform and the reality of continued physical and systemic violence in criminal justice in British Africa, as Pierce asserts regarding flogging in Nigeria, was both a product and a condition of the contradictions inherent in the colonial state.<sup>75</sup> But executions also reveal the contradictions in colonial rule: the legal, social and physical processes of dehumanization that marked a condemned man's journey from court to gallows were complex and often internally contradictory, creating him as both dangerously 'Other' and a legal individual deserving of rights. In the end, although the 'theatre of death' had to be recast throughout the colonial period to suit its changing audience, judicial execution remained a valued weapon in the arsenal of state control.

<sup>75</sup> Steven Pierce, 'Punishment and the political body: flogging and colonialism in Northern Nigeria', in S. Pierce and A. Rao (eds.), *Discipline and the Other Body: Correction, Corporeality and Colonialism* (London, 2006), 186–214.