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## INTRODUCTION

### CAPITAL PUNISHMENT AND COLONIAL RULE: PUNISHMENT, VIOLENCE AND 'CIVILIZATION' IN BRITISH AFRICA

In August 1943, as battles and extreme forms of violence raged across the globe during the Second World War, the Director of Prisons for the Gold Coast (present-day Ghana), R. H. Dolan, requested a meeting with the colony's Governor, Sir Alun Burns. In the course of their meeting, they discussed how the condemned Africans awaiting their deaths in James Fort Prison, Accra, should be killed. Nolan noted that the death row accommodation was 'extremely unsatisfactory', and Burns agreed that immediate action was needed, stating 'it is of paramount importance that the condemned cell is in close proximity to the gallows'. At that time, the cell was twenty yards away, which meant that the condemned had to be paraded, or rather dragged, across the prison yard to their deaths in view of the other inmates. Dolan asserted, 'This may seem a small distance scarcely worth mentioning, but in the circumstances under discussion, it is absolutely essential that the distance to be traversed should be the irreducible minimum.' Burns and the colonial secretary in Accra approved funds for the construction of a new condemned cell, with a door wide enough for three men opening onto the gallows so that 'the delinquent could be placed on a scaffold within the space of a few seconds.'<sup>1</sup> Even in the midst of a global war, colonial states were aware that the use of lethal violence against their African subjects had become a fraught and disputed subject. Capital punishment was the lethal apogee of colonial power, aimed at securing law, order and British justice; it was not simply a legal penalty but also a form of violence that served expressly political ends, during both times of peace and crisis. The death penalty was intended to deter colonial subjects from violent crime and disorder. Its use, however, was both contentious and contested, as differing metropolitan, colonial and African views clashed over the levels and forms of violence that were acceptable for use against 'deviant' or criminal subjects under systems of

1. Director of Prisons to Colonial Secretary, 24 August 1943, *Condemned Prisoners – Amelioration of Conditions of*, Public Records and Archives Administration Department, Accra [PRAAD], CSO 15/3/224.

self-proclaimed ‘civilized’ colonial governance. In British Africa, the figuration of capital punishment, and penal systems more broadly, was a result of the dialogical tensions between ‘civilization’ and ‘violence’ within colonial governance. This led to repeated debates across colonies as to who should be executed, and how: how ‘irreducible’ could the minimum of judicial violence be and still achieve its penal and politico-legal aims? And at what point did the legal violence deemed necessary by the colonizer to punish the colonized become an indictment of the nature of colonial rule itself?

The death penalty was foundational to colonial order and structures of power in British Africa, symbolically and sometimes instrumentally. In the early twentieth century, public executions were central to colonial iconographies of violence. Gallows would be erected reflecting the state of local colonial infrastructures – from a rope over a tree to long-drop scaffolds carefully mimicking British technologies of death. African troops would be performatively on view to maintain security and embody the threat of colonial violence, whilst colonial officials, in pristine dress uniforms, gave the order for the execution to commence. Crowds of Africans would be summoned to watch the purported power and majesty of British law, as the condemned person had the noose tightened and was dropped to their death.<sup>2</sup> And yet, less than forty years later, colonial states sought to conceal the evidence of such executions even within their own prisons, reducing (or at least shrouding) their violence to an ‘irreducible minimum.’ As colonization progressed, the role of executions changed. The spectacular display of colonial sovereignty publicly taking the life of an African subject became increasingly unacceptable. Driven by shifting political imperatives and cultural sensibilities, public executions were abolished in favour of carefully calibrated hangings behind prison walls in central prisons, which officials regarded as more humane and civilized.<sup>3</sup> By 1950, Kwame Nkrumah, nationalist leader and future prime minister of the Gold Coast, was imprisoned under emergency regulations in James Fort Prison for leading a civil disobedience campaign. He reflected that ‘the most demoralizing moments that I experienced in prison were when a prisoner was committed to be hanged’. Nkrumah recalled being locked away in an upstairs cell with the other prisoners before 6.00 am so they could not witness any stage of the execution, but still finding ‘an occasional bloodstain on the ground’ afterwards. What colonial states perceived as an ‘irreducible minimum’ of violence in an execution was still lethal violence, and still shocking. Nkrumah wrote that ‘[t]o see a man brought in one day and disappear completely a few days later was something that really affected other prisoners’. His experiences prompted him to question ‘whether

2. For a photographic record of one such execution, see ‘Scaffold for public execution in Mombasa, c. 1910’, Royal Geographical Society, <https://www.gettyimages.co.uk/detail/news-photo/scaffolds-for-public-execution-in-mombasa-there-is-no-news-photo/1034329654> (last accessed 21 November 2021). Photographs of executions are not reproduced in this book on ethical grounds.

3. See Punishment: Execution Equipment and Procedure, The National Archives, Kew, London [TNA], CO 859/445.

capital punishment was a solution to murder cases. Criminals are, after all, human beings. No man is born a criminal, society makes him so.<sup>4</sup>

There was no complete ‘civilizing’ reform of capital punishment in British Africa that reduced penal violence to a minimum, either to render prison hangings ‘humane’ or to limit or abolish the penalty itself. Violence was a constant within colonial societies, and penal reform was only ever intended to reframe and moderate the violence of punishment rather than eradicate it. Hangings may have been hidden behind prison walls, but colonial states never stopped using the death penalty and at certain times its use increased exponentially: this was particularly the case when colonial control came under threat, as during anti-colonial rebellions. Normally, only murder and treason, and in some territories rape, were capital offences under common-law-based criminal justice systems in Britain’s African territories. However, a wide range of lesser offences also became capital crimes under state of emergency legislation to combat anti-colonial insurgencies, as occurred most infamously during the Kenyan State of Emergency. There, records suggest around 1,090 Gikuyu men were hanged under emergency regulations between 1952 and 1960 for being part of what was known in British colonial discourse as the Mau Mau rebellion, in a recrudescence of colonial penal violence.<sup>5</sup> These Kenyan Emergency hangings were the most intensive and extreme use of capital punishment in twentieth-century Africa, and indeed across the whole British Empire in that period, and one of the aims of this book is to contextualize these exceptional executions within the wider normative framework of the imperial gallows.

In a 1910 speech to the British House of Commons, Winston Churchill famously stated that ‘the mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country’.<sup>6</sup> This book explores the evolving usage of capital punishment as a legal sentence, a penal punishment and as a tactic of colonial violence in Britain’s African territories. In doing so, it illuminates ‘the mood and temper’ of colonial states towards their recalcitrant African subjects, but also the attitudes of those African subjects towards the colonial death penalty. It analyses the process of capital sentencing: from the discovery of the crime, through trial, conviction and confirmation of sentence, through to the condemned person’s death on the gallows. Punishment is treated not just as a method of crime control, but as a social institution itself, granting detailed insights into the nature of a society, and its strategies of control and domination.<sup>7</sup> The death penalty is the supreme site of this punishment and

4. Kwame Nkrumah, *The Autobiography of Kwame Nkrumah* (London: Thomas Nelson & Sons., 1957), 131–2. Under Nkrumah, post-independence Ghana did itself execute offenders.

5. David M. Anderson, *Histories of the Hanged: Britain’s Dirty War in Kenya and the End of Empire* (London: Weidenfeld & Nicholson, 2005).

6. *Hansard*, 5th series, 20 July 1910, xix, 1354.

7. See David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford: Oxford University Press, 1991).

control, focusing as it does on the life and body of the condemned subject, and its use touches on many different areas of colonial history and experience. To understand capital punishment properly, we must look its brutal fulfilment on the imperial gallows to view the full scope of the sentence, and the legal, cultural and political contexts which shaped its enactment. This book therefore moves between macro- and micro-scales of analysis, from imperial politico-legal debates down to discussion of an accused murderer's guilt in their local communities. The focus here is not just colonial punishment, but rather colonial penalty. Penalty, as David Garland outlines the concept, is the broader sweep of criminal justice, the networks of laws, processes, institutions and discourses which make up the penal realm from courtroom to government policymakers, to prisons and gallows, and offers a more holistic framework for analysis.<sup>8</sup>

Capital punishment here serves as a lens through which to view the clashes and cleavages of colonial governance and African societies across Britain's African territories. Kenya, Nyasaland (present day Malawi), and the Gold Coast act as central case studies within this study of British colonial Africa in order to compare and contrast the experiences of settler state and 'peasant' states, and those of East, Central and West Africa.<sup>9</sup> As Alexander Paterson, the celebrated British penologist noted of his visit to East Africa in 1939, 'it is inevitable that crime and conscience should not coincide when a penal code that is founded upon a European ethic is imposed upon an African people whose ideas of right and wrong are so completely different'.<sup>10</sup> Colonial and customary African criminal justice systems certainly differed in their definition and punishment of murder, which was the primary offence for which death sentences were pronounced throughout the colonial era. Murder is a prime indicator of sites of extreme social tension within African communities, which were rapidly changing under the impact of colonialism.<sup>11</sup> Its punishment by death illustrates not only the penal practices of a colonial state, and the use of violence in its strategies of governance, but also the boundaries of acceptability and inclusion within that state for its subjects. The death penalty was primarily deployed in colonial Africa as a didactic and deterrent punishment, but it was as much a lesson in white rule as an instrumental penal strategy for

8. *Ibid.*, 17, 249–50.

9. This comparative study builds on previously published work on Nyasaland and Kenya. See, e.g., Stacey Hynd, 'Murder and Mercy: Capital Punishment in Colonial Kenya ca. 1909–1956', *International Journal of African Historical Studies* 45, no. 1 (2012): 81–101; "'The Extreme Penalty of the Law": Mercy and the Death Penalty as Aspects of State Power in Colonial Nyasaland, c.1903–47', *Journal of Eastern African Studies* 4, no. 3 (2010): 542–59.

10. Alexander Paterson, *Report on a Visit to the Prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland* (Morija: Government Printer, 1944), 1.

11. See Paul Bohannan, ed., *African Homicide and Suicide* (Princeton: Princeton University Press, 1964).

crime prevention.<sup>12</sup> Studying patterns in sentencing shows how constructions of race, gender, generation and ethnicity shaped colonial perceptions of what forms of violence were most threatening to social order and colonial control. Above all, tracing the evolution of capital punishment's pronouncement and enactment illustrates the interconnections between 'civilization' and 'violence' in colonial governance, the ideology and practice of which impacted across the whole of colonial experience.<sup>13</sup> The death penalty was fundamentally different from other forms of colonial punishment because it was an expressly politicized penalty – the final decision on every capital sentence lay not with a judge, but with the governor of a territory, to whom the royal prerogative of mercy was delegated. Ultimately, the death penalty is an instrument of state politics, as much as, if not more than, a penal policy, and it is this which makes it a valuable topic for understanding the operation of colonial governance and violence.<sup>14</sup>

*Situating the imperial gallows: Race, violence and penalty  
in colonial capital punishment*

This book offers the first empirical and comparative analysis of the death penalty in colonial Africa, and in the British Empire outside of dominion territories. Britain was not alone in its deployment of capital punishment in its African territories – with the exception of Portugal which had abolished the penalty domestically, all of the European imperial powers did so.<sup>15</sup> However, the death penalty appears to have had a particular resonance in British imperial minds and strategies of governance that makes analysis of its use in British Africa particularly apposite. In part this stems from metropolitan inheritances, with the gallows forming the cornerstone of the English criminal justice system in particular, and occupying

12. Deterrence is the most common justification for capital punishment given by governments, despite the fact that there is no established evidence to support such claims. See Roger Hood and Carolyn Hoyle, *The Death Penalty: Worldwide Perspectives*, 5th edn. (Oxford: Oxford University Press, 2015), 389–425.

13. 'Civilization' is used throughout this text in its emic, normative sense to connote the superiority ascribed by British imperialists to their culture and society in contrast to African societies. Violence is used to refer both to the acts of aggression and abuse intended to cause injury, and to denote the use of political force in the public domain. It has both direct and indirect, physical and symbolic manifestations. See J. Brady and N. Garver, eds., *Justice, Law and Violence* (Philadelphia: Temple University Press, 1993).

14. Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600–1987* (Oxford: Oxford University Press, 1996), vii.

15. See Chapter 2 for more details.

a bloody space in the national consciousness.<sup>16</sup> This book, however, argues that there was no unmitigated, direct importation of the metropolitan death penalty into African colonies: instead, a specifically colonial form of capital punishment emerged, one shaped by the legal demands and racialized regimes of violence that suffused the operation of colonial penalty. This colonial death penalty was widely and systematically deployed across Britain's African territories, more so than in the metropole. According to colonial records, between 1930 and 1955 some 3,821 persons, the vast majority of whom were Black Africans, were convicted and executed under standard criminal codes in Britain's main tropical African territories of Nigeria, Tanganyika, Uganda, Kenya, Northern Rhodesia, Southern Rhodesia, Nyasaland, the Gold Coast and Sierra Leone.<sup>17</sup> This figure rises to around 4,800 when the Kenyan State of Emergency hangings are included.<sup>18</sup> These territories had a combined population slightly less than that of the United Kingdom in 1939, but their use of the death penalty was exponentially greater than the metropole, where some 349 people were executed in the same time period.<sup>19</sup> And this was despite the fact that the royal prerogative of mercy was deployed to commute approximately 30–40 per cent of death sentences in many years.<sup>20</sup> Britain's Black African colonial subjects undeniably faced trial in a racist and unequal criminal justice system that functioned as a tool 'to conquer and control indigenous people by the coercive use of legal means.'<sup>21</sup> As Jackson argues in her study of the death penalty across the Straits Settlements, Fiji and Natal, British colonial punishment was highly racialized at all stages of its enactment, from courtroom to the Royal Prerogative of Mercy, and it particularly focused on crimes that threatened white lives, property, profit or authority.<sup>22</sup> This study demonstrates that racial ideologies of imperial rule underpinned both the exceptional and the routine use of the death

16. See Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London: Penguin Books, 1977); V. A. C. Gatrell, *The Hanging Tree: Execution and the English People, 1770–1868* (Oxford: Oxford University Press, 1994); Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice and Memory* (London: Routledge, 2014).

17. This argument is explored in more detail in Chapter 2. Data taken from the Police, Prisons and Judicial annual reports for these territories.

18. Capital Punishment in Kenya during Emergency, TNA CO 822/1256.

19. See Great Britain, *Report of the Royal Commission on Capital Punishment 1949–53* (London: HMSO, 1953), 298–302 [Hereafter the Gowers Commission]. Last-minute appeals as a convict man went to the gallows irritated officials, who regarded them as legal trickery the face of justice. Last Minute Appeals for Clemency, 1946, TNA CO 1026/27.

20. See Chapters 3 and 4.

21. John L. Comaroff, 'Colonialism, Culture and the Law: A Foreword', *Law and Social Inquiry* 26, no. 2 (2001): 306; Martin J. Wiener, *An Empire on Trial: Race, Murder, and Justice under British Rule, 1870–1935* (Cambridge: Cambridge University Press, 2008), 5–9.

22. April Jackson, 'Execution and Empire: A History of Judicial Killing under British Colonial Rule, c.1826–1970' (PhD, University of Leicester, forthcoming).

penalty in British Africa. Race was a significant but plurivalent factor in capital sentencing, operating through discourses of both dehumanization and colonial paternalism, which meant that the same racist tropes of African ‘primitivism’ that condemned some Africans could, in some circumstance, spare others.

The book sits at the intersection of three fields of historical scholarship, providing a comparative, African-focused intervention into each: global histories of the death penalty; studies of colonial crime, law and punishment in Africa; and histories of British colonial violence. The extensive historical and socio-legal scholarship on the death penalty, both in Britain and across the globe, provides a key intellectual foundation for this study. Global and Eurocentric debate has focused on whether the transition from public to private executions and movements towards abolitionism have been a result of political or cultural change.<sup>23</sup> Orthodox historiography on capital punishment long assumed that the abolition of public execution was a result of progressive, humanitarian reform: a step towards a more civilized and humane administration of the law.<sup>24</sup> Perhaps the most influential perspective however has been Michel Foucault’s work on bio-power and disciplinary regimes, which argued that public punishments were abolished not because they were inhumane, but because they were ineffective.<sup>25</sup> Foucault asserted that in Europe exemplary and demonstrative punishments were replaced in the nineteenth century by a new penal economy of power, which sought more efficient, less arbitrary punishment that acted on the mind rather than the body.<sup>26</sup> In contrast, Norbert Elias’ concept of the ‘civilizing process’ has offered a cultural framework for interrogating the evolution of capital punishment.<sup>27</sup> For Elias, the ‘civilizing process’ describes a long-term socio-cultural and psychic change resulting from the monopolization of violence by the state, lengthening chains of social interdependence and the development of bureaucracy which created a more internally disciplined, restrained citizenry. This led to an increased revulsion against the open display of physical violence such as public executions and a consequent decline and tempering of corporal and capital punishments. However, in a society under threat, ‘civilization’ can be disrupted and

23. See Randall McGowen, ‘History, Culture and the Death Penalty: The British Debate, 1840–70’, *Historical Reflections/Réflexions Historiques* 29, no. 2 (2003): 229–49. David Garland, ‘Why the Death Penalty Is Disappearing’, in *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?*, ed. Lill Sherdid (Ashgate: Taylor & Francis, 2014), 77–91.

24. See Leon Radzinowicz and Roger Hood, *A History of English Criminal Law and Its Administration from 1750: The Emergence of Penal Policy*, 5 vols. (Oxford: Oxford University Press, 1990).

25. Michel Foucault, *Surveiller et punir: naissance de la prison* (Paris: Gallimard, 1975).

26. *Ibid.*

27. Norbert Elias, *The Civilizing Process: The History of Manners and State Formation and Transformation [1936]*, trans. Edmund Jephcott (Oxford: Blackwell, 1994). See Pieter Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (London: Polity, 2008).



rapidly inverted, resulting in a recrudescence of severe, violent punishment on a large scale in the penal realm – what Elias termed the ‘decivilizing process.’<sup>28</sup> But do these Western theories of capital punishment have relevance in a colonial context? The answer is both yes and no. Capital punishment is the ultimate assertion of righteous indignation, of power asserting its own infallibility. Despite its drama and horror, the death penalty is not *sui generis*.<sup>29</sup> Colonial penal regimes operated through very different political structures, social contracts and socio-economic imperatives, but in their governmentality and the mentalities and habitus of the white officials who imposed their punishments, there are resonances that can usefully be interrogated through the application of ideas of both bio-power and the (de-)civilizing process, as the following chapters will show.

Historians of empire are increasingly becoming aware of the usefulness of the death penalty as a thematic lens for viewing colonial violence and governance, but few have sought to explore the full range of its meaning and deployment.<sup>30</sup> Most major explorations of capital punishment in the British world have focused on the White Dominions, with studies of executions and ‘frontier justice’ in Australia and racialized sentencing and discretionary justice in South Africa and Canada illuminating settler colonial dynamics of judicial execution in these territories.<sup>31</sup> In sub-Saharan Africa, David Anderson’s *Histories of the Hanged* tells the stories of the State of Emergency in Kenya from the perspective of capital trials, rather than being an analysis of capital punishment *per se*, so the analysis of the death penalty in Kenya presented herein serves to contextualize and further its account of the brutality of the Emergency executions.<sup>32</sup> Recent work by Thaïs Gendry on the death penalty in French West Africa meanwhile highlights its shifting colonial figurations between 1900 and 1950, from combating rebellion to establishing the parameters of public order, whilst April Jackson’s thesis will provide a first comparative, globally situated, analysis of the death penalty in the British Empire,

28. Elias, *The Civilizing Process*, 273–314.

29. Austin Sarat, ‘Presentist Preoccupations: Reflections on State Killing in the Contemporary United States,’ *Réflexions historiques* 29, no. 2 (2003): 361–2, 373.

30. See Clare Anderson, ‘The Execution of Rughobursing: The Political Economy of Convict Transportation and Penal Labour in Early Colonial Mauritius,’ *Studies in History* 19, no. 2 (2003): 185–97; Michael Vann, ‘Of Pirates, Postcards and Public Beheadings: The Pedagogic Execution in French Colonial Indochina,’ *Historical Reflections/Réflexions Historiques* 36, no. 2 (2010): 39–58.

31. See, e.g., John Mcguire, ‘“Judicial Violence and the Civilizing Process”: Race and the transition from Public to Private Executions in Colonial Australia,’ *Australian Historical Studies* 29, no. 3 (1998): 186–209; Robert V. Turrell, *White Mercy: The Death Penalty in South Africa 1900–48* (Westport: Praeger, 2004); Steven Anderson, *A History of Capital Punishment in the Australian Colonies, 1788–1900* (London: Palgrave Macmillan, 2020); Carolyn Strange, *The Death Penalty and Sex Murder in Canadian History* (Toronto: University of Toronto Press, 2020).

32. Anderson, *Histories of the Hanged*.

taking the Straits Settlements, Fiji and Natal as its case studies.<sup>33</sup> This study draws from these perspectives to analyse the specifically British and African colonial dynamics of capital punishment, highlighting the nexus between civilization, violence, race and law which drove its extensive use. Analysis of the death penalty's use in Africa's past also highlights the colonial legacies that continue to shape its operation in the present, and one of this study's key contributions is to present the first rigorously archival-based analysis to identify these legal legacies in order to facilitate future decolonial research and interventions.<sup>34</sup>

The death penalty however cannot be fully understood in isolation from the broader regimes of colonial criminal justice and penalty.<sup>35</sup> In its analysis, this study draws from across the flourishing field of African criminal, legal and penal histories that has emerged in the last twenty years.<sup>36</sup> In colonial Africa, punishment was primarily a mechanism for states to reinforce their authority and remake subaltern subjectivities in line with the needs of white political and economic dominance.<sup>37</sup> The identification and punishment of new 'social deviants' and

33. Thaïs Gendry, 'Le droit de tuer: la peine de mort au service de l'ordre colonial en Afrique occidentale française, 1900–50' (PhD, Université de Genève, 2020) and "Seule une répression sévère est de nature à contenir leurs instincts sanguinaires": Peine de mort et politique coloniale en Afrique Occidentale française, 1890–1945'. *French Colonial History* (forthcoming); Jackson, 'Execution and Empire'.

34. See Andrew Novak, *The Death Penalty in Africa: Foundations and Future Prospects* (London: Palgrave Pivot, 2014); Aimé Muyoboke Karimunda, *The Death Penalty in Africa: The Path towards Abolition* (London: Routledge, 2014); Biko Agozino, 'Imperialism, Crime and Criminology: Towards the Decolonisation of Criminology', *Crime, Law and Social Change* 41, no. 4 (2004): 343–58.

35. See Diana Paton, *No Bond but the Law: Punishment, Race and Gender in Jamaican State Formation* (Durham, NC: Duke University Press, 2005); Taylor Sherman, *State Violence and Punishment in India* (London: Routledge, 2010); Mark Brown, *Penal Power and Colonial Rule* (Abingdon: Routledge, 2014); Clare Anderson, *Convicts: A Global History* (Cambridge: Cambridge University Press, 2022).

36. For historiographical overviews, see Richard Roberts, 'Law, Crime and Punishment in Colonial Africa', in *Oxford Handbook of Modern African History*, ed. John Parker and Richard Reid (Oxford: Oxford University Press, 2013), 171–88; Richard Waller, 'Crime and the Law in Colonial Africa', *Oxford Bibliographies* (2017), <https://www.oxfordbibliographies.com/view/document/obo-9780199846733/obo-9780199846733-0158.xml> (last accessed 2 November 2022); Erin Braatz, Katherine Bruce-Lockhart and Stacey Hynd, 'Introduction: African Penal Histories in Global Perspective', *Punishment & Society* 24, no. 5 (2022): 759–70.

37. See Florence Bernault, 'De l'Afrique ouverte à l'Afrique fermée: comprendre l'histoire des réclusions continentales', in *Enfermement, prison et châtements en Afrique: du 19e siècle à nos jours*, ed. Florence Bernault (Paris: Karthala, 1999), 15–64 and 'The Shadow of Rule: Colonial Power and Modern Punishment in Africa', in *Cultures of Confinement: A History of the Prison in Africa, Asia and Latin America*, ed. Frank Dikötter and Ian Brown (Ithaca: Cornell University Press, 2007), 55–94.

criminal ‘Others’ were central to processes of state formation and social control. Contrary to Foucauldian narratives of disciplinary penal modernity, colonial penal regimes in twentieth-century Africa normalized high levels of judicial punitiveness, penal excess and embodied violence – including both corporal and capital punishment – as well as extra-legal forms of violence.<sup>38</sup> Capital punishment formed a central pillar of these colonial penal regimes and the ‘coercive networks of empire.’<sup>39</sup> This book argues that capital punishment was systematically deployed throughout the colonial period, although the rate of death sentences pronounced and executed varied between colonies and fluctuated over time in response to local cultures of penalty. With the transition from public to private executions, its use was also shaped by liberal penal reform movements in the inter-war years that sought to make colonial penal systems more ‘humane’ and bring them into line with metropolitan practice. However, metropolitan liberal penalty found limited purchase in over-burdened, under-resourced and racially disarticulated African colonies. Indeed, as some scholars have argued, penal violence was in fact a central element of liberal colonial governance.<sup>40</sup> Colonial penal reform was therefore always more discursive than an enacted reality, and largely unsuccessful.<sup>41</sup> The reform of capital punishment facilitated its continued use in Britain’s African territories rather than abolishing or decreasing the penalty’s deployment, highlighting the tensions between the rhetoric of reform and ‘civilization’ and the realities of systemic violence which underpinned colonial penalty.

As both a politicized penalty and a legal punishment, the colonial death penalty was shaped by the natures of colonial states, and the regimes of violence that underpinned them. The term ‘colonial state’ describes not a static, uniform entity, but a genus of historically fluid forms and processes, underpinned by unique rationalities that were particular to their colonial contexts, and yet influenced also

38. See Foucault, *Punir et Surveiller*; Bernalt, ‘The Shadow of Rule’; Daniel Branch, ‘Imprisonment and Colonialism in Kenya, c.1930–52: Escaping the Carceral Archipelago’, *International Journal of African Historical Studies* 38, no. 2 (2005): 239–66; Emilie Bourgeat, ‘Penalty, Violence and Colonial Rule in Kenya, c. 1930–52’ (University of Oxford, DPhil thesis, 2014).

39. Taylor Sherman, ‘Tensions of Colonial Punishment: Perspectives on Recent Developments in the Study of Coercive Networks in Africa, Asia and the Caribbean’, *History Compass* 7, no. 3 (2009): 659–77.

40. See Brown, *Penal Power and Colonial Rule*; Bourgeat, ‘Penalty, Violence and Colonial Rule’.

41. See Stacey Hynd, ‘Law, Violence and Penal Reform: State Responses to Crime and Disorder in Colonial Malawi, c. 1900–59’, *Journal of Southern African Studies* 37, no. 3 (2011): 431–47; Lizzie Seal and Roger Ball, ‘The Howard League and Liberal Colonial Penalty in Twentieth-Century Britain: The Death Penalty in Palestine and the Kenya Emergency’, *The Howard Journal of Crime and Justice*, <https://doi.org/10.1111/hojo.12513> (last accessed 27 January 2023).

by metropolitan ‘impulses of modernity’.<sup>42</sup> Colonial regimes were never monolithic or omnipotent, but were rather incomplete, and riven with internal tensions between development and repression, liberalism and autocracy, modernity and the preservation of African custom.<sup>43</sup> Colonial governmentality in British Africa was fundamentally marked by two contradictory ideological and instrumental imperatives: ‘violence’ and ‘civilization’. Law was a prime site of these tensions, acting both to protect colonized rights and control violence, and to impose colonial rule and sovereign power.<sup>44</sup> In this latter capacity, colonial states operated a form of ‘lawfare’ ‘to impose a sense of order upon its subordinates by means of violence rendered legible, legal and legitimate by its own sovereign word.’<sup>45</sup> Capital punishment often proved a prime site of this lawfare, particularly in regards to its role in colonial counterinsurgency.<sup>46</sup> This book demonstrates that the colonial death penalty’s operation in twentieth-century British Africa was characterized by its close association with state security and the repertoires of emergency violence. Imperial nostalgia within Britain has encouraged the idea that its imperial rule was relatively benign, but as this study demonstrates, colonialism relied on both normative and exceptional forms of violence to maintain its rule. Historical research has proven that despite all the discourse and rhetoric of the civilizing mission, strategies of violence remained central to governance throughout the colonial period in British Africa, and indeed across all European empires.<sup>47</sup> Colonial violence was not uncontested, however. This study reveals that capital punishment was always a double-edged sword for colonial states, often revealing its weakness and fear as much as, if not more than, its power.

42. John Comaroff, ‘Governmentality, Materiality, Legality, Modernity: On the Colonial State’, in *African Modernities: Entangled Meanings in Current Debate*, ed. Jan-Georg Deutsch, Peter Probst and Heike Schmidt (Oxford: James Currey, 2002), 118–21.

43. See Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005).

44. Michael Lobban, *Imperial Incarceration: Detention without Trial in the Making of British Colonial Africa* (Cambridge: Cambridge University Press, 2021), 17.

45. Jean Comaroff and John Comaroff, ‘Law and Disorder in the Postcolony: An Introduction’, in *Law and Disorder in the Postcolony*, ed. Jean Comaroff and John Comaroff (Chicago: Chicago University Press, 2006), 29–30.

46. See also Ian Brown, ‘Rebels, the Death Penalty and Legal Process in Late Colonial Burma’, *The Historical Journal* 62, no. 3 (2019): 813–32.

47. See Caroline Elkins, ‘Looking beyond Mau Mau: Archiving Violence in the Era of Decolonization’, *American Historical Review* 120, no. 3 (2015): 852–68; See Dierk Walter, *Colonial Violence and the Use of Force* (London: Hurst & Co, 2017); Michelle Gordon, *Extreme Violence and the British Way: Colonial Warfare in Perak, Sierra Leone and Sudan* (London: Bloomsbury, 2020); Thijs Brocades Zaalberg and Bart Luttikhuis, eds., *Empire’s Violent End: Comparing Dutch, British and French Wars of Decolonization, 1945–62* (New York: Cornell University Press, 2022).

*Historical context for colonial punishment:  
The death penalty in precolonial Africa*

The colonial death penalty was shaped by the contours of its metropolitan inheritances and the politico-legal landscapes of imperial governance, but also through its engagement with customary attitudes towards the punishment of murder in local African cultures. Contemporary legal debates on the death penalty in Africa rage over whether it is an authentically African penalty or a colonial imposition, with many abolitionists supporting South African judge Albie Sachs' view that 'the relatively well-developed judicial processes of indigenous societies did not in general encompass capital punishment for murder', whilst retentionists consider that capital punishment has roots in precolonial African cultures and believe abolishing the death penalty would be a capitulation to Western, neo-colonial human rights norms.<sup>48</sup> Historical knowledge about capital punishment in precolonial polities and African communities is fragmentary, with much of the data originating from colonial-era testimonies gathered by administrators or ethnographers that were dictated as responses to colonial interventions, but the preponderance of evidence suggests that the death penalty was a reality in many parts of Africa prior to colonization.<sup>49</sup> Colonial states 'only legalized and extended an existing practice and introduced new methods of execution.'<sup>50</sup>

According to colonial commentators, the greatest difference between customary African and colonial conceptions of law was 'in respect of punishment'.<sup>51</sup> Early colonial governments believed that precolonial African social order and morality had been heavily reliant on 'barbaric' physical punishments. Hector Livingstone Duff, the Indian-born first chief secretary of Nyasaland, noted: 'Murder, battery, abduction, robbery, theft: these are the principal crimes which [the African] recognises, and all of them, like most other offences, he was wont to punish, according to his severe and simple code, by the supreme penalty of death.' Duff recorded that local communities attributed the rise in thefts and adultery under colonialism to the abrogation of such penalties.<sup>52</sup> In West Africa, accounts from military officers or missionaries displayed distinctly racialized views of African

48. *State v. Makwanyane*, 1995 (3) S.A. 391 (C.C.) § 381 (Sachs, J., concurring), cited in Novak, *The Death Penalty in Africa*, 58; Karimunda, *The Death Penalty in Africa*, 2–3.

49. Customary law as it was recorded in the twentieth century was in many respects a colonial invention rather than an authentic pre-colonial inheritance. See Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Portsmouth: Heinemann, 1998).

50. Karimunda, *The Death Penalty in Africa*, 16.

51. See Great Britain, *Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika Territory in Criminal Matters, May 1933* (London: HMSO, 1934), 57. [Hereafter Bushe Commission].

52. Hector Livingstone Duff, *African Small Chop* (London: Hodder and Stoughton, 1932), 335 and *Nyasaland under Foreign Office Rule* (London: G. Bell, [1906]1937), 239, 317.

custom, foregrounding narratives of ‘savage’ violence that conflated murder, human sacrifice and capital punishment.<sup>53</sup> In the Gold Coast, the Asante empire, or Ashanti as it was known in colonial discourse, became infamous in British popular thought for its allegedly widespread use of ‘bloodthirsty’ human sacrifices.<sup>54</sup> African testimonies were shaped by memories of often unsettled years preceding colonial pacification, whilst other accounts were skewed by nostalgia or political motives. Customary law was itself a fluid and contested colonial construct.<sup>55</sup> In general, unlike European legal codes which were based on principles of retribution, systems of law in precolonial Africa were often predominantly restorative, being based upon the re-establishment of social equilibrium through compensation and reconciliation rituals: ‘In the native mind what the British system regards as a crime against the public peace was essentially a private wrong.’<sup>56</sup> The death penalty formed part of both restorative and retributive justice in precolonial Africa, being applied for political offences or crimes against the crown, homicide, supernatural crimes (such as witchcraft or sorcery), sexual offences, and for dangerous or habitual offenders.<sup>57</sup> In Islamic regions of Africa, including Northern Nigeria, Zanzibar and Sudan, capital punishment was permitted for certain *hudud* crimes (offences against God), such as apostasy or heresy, whilst the prevalent Maliki school of Islamic jurisprudence, common in North and West Africa, also recognized a category of ‘heinous murder’ as deserving of the death penalty even where the next of kin pardoned the killer.<sup>58</sup> Methods of execution used across the continent included shooting, spearing, drowning, stoning, mutilation, burying alive, burning alive, cutting the throat, strangling, impalement, or decapitation, but hanging was not a common method of death.<sup>59</sup>

53. Clifford Williams, ‘Asante: Human Sacrifice or Capital Punishment? An Assessment of the Period 1807–84’, *International Journal of African Historical Studies* 21, no. 3 (1988): 433–41; Ivor Wilks, ‘Human Sacrifice or Capital Punishment? A Rejoinder’, *International Journal of African Historical Studies* 21, no. 3 (1988): 443–52.

54. Frederick Boyle, *Through Fanteeland to Coomassie: A Diary of the Ashantee Expedition* (London: Chapman and Hall; 1874), 342–4.

55. See Chanock, *Law, Custom and Social Order*.

56. James S. Read, ‘Crime and Punishment in East Africa: The Twilight of Customary Law’, *Howard Law Journal* 10, no. 2 (1964): 168.

57. See Taslim Olawale Elias, *The Nature of African Customary Law* (Manchester: Manchester University Press, 1956), 260; Bohannan, ed., *African Homicide and Suicide*.

58. Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2006), 44, 49.

59. Some societies also used trial by ordeal which could result in the death of the offender. Karimunda, *The Death Penalty in Africa*, 17–26, 35; Alan Milner, *Nigerian Penal System* (London: Sweet and Maxwell, 1972), 335; E. E. Evans-Pritchard, *Nuer Religion* (Oxford: Oxford University Press, 1977), 293–7; G. M. Wilson, ‘Homicide and Suicide among the Joluo of Kenya’, in *African Homicide and Suicide*, ed. Paul Bohannan (Princeton: Princeton University Press, 1960), 182–3.



Murder was almost universally regarded as a grave offence, one that could trigger spiritual harm for a whole community, but responses to this crime varied widely. A distinction between intentional murder and unintentional homicide often did not exist in customary law: homicide was defined by the harm to the victim, and punishment was often determined by the relationship between the victim and offender and by their relative social status, with offences against chiefs or monarchs being more severely punished.<sup>60</sup> *Awudiei* (murder) was regarded as a particularly serious crime by the Asante, not just because of the loss of life, but because it challenged the *Asantehene's* sovereign monopoly over the right to death.<sup>61</sup> Punishments for homicide could include exile, ostracism or banishment, enforced suicide, or enslavement, but in many societies, murder was atoned for through the payment of compensation – either in material goods or the transfer of a person to the victim's family – and undergoing the appropriate reconciliation rituals to prevent supernatural harm.<sup>62</sup> In the Gold Coast, among Northern Territories communities, murder was apparently regarded as a sin against a victim's lineage and ancestors, reconciliation for which required sacrifices offered by perpetrator's family, to which the victim's family also contributed.<sup>63</sup> Colonial ethnography and postcolonial memory in Nyasaland suggest that capital punishment was seldom inflicted, apart from among the Angoni where a range of treasonable offences against chiefs could result in an individual's death.<sup>64</sup> Chewa communities were reported to punish murder through the payment of *nkuku* (admission of guilt) and *lipo* (compensation), the *lipo* being heaviest where *kucita dala* (intention) was admitted. The death sentence was available for serious or repeat offenders but was generally carried out only where the offender refused to reveal the reasons behind his actions or where his family refused to pay *lipo*.<sup>65</sup> The sentence was determined not by the crime itself but by the level of threat posed to the community by the offender. In Kenya, future anti-colonial leader and President Jomo Kenyatta's

60. Novak, *The Death Penalty in Africa*, 12.

61. R. S. Rattray, *Ashanti Law and Constitution* (Oxford: Clarendon Press, 1929), 295.

62. J. S. Read, 'Kenya, Tanzania and Uganda', in *African Penal Systems*, ed. Alan Milner (London: Routledge and Kegan Paul, 1969), 104–6; D. D. Phiri, *History of the Tumbuka* (Blantyre: Dzuka Publishing, 2000), 51–2; Karimunda, *The Death Penalty in Africa*, 40; John Parker, *In My Time of Dying: A History of Death and the Dead in West Africa* (Princeton: Princeton University Press, 2021), 83–9, 109–16.

63. Meyer Fortes, 'The Political System of the Tallensi of the Northern Territories of the Gold Coast', in *African Political Systems*, ed. Meyer Fortes and E. E. Evans-Pritchard (Oxford: Clarendon Press, 1940), 238–71.

64. C. J. W. Fleming, 'Crime and Punishment in Northern Malawi', *The Society of Malawi Journal* 30, no. 1 (1977): 9; L. J. Chimango, 'Traditional Criminal Law in Malawi', *The Society of Malawi Journal* 28, no. 1 (1975): 25–39; Chanock, *Law, Custom and Social Order*, 6–7, 125–7.

65. W. H. J. Ranglely, 'Notes on Cewa Tribal Law', *The Nyasaland Journal* 3 (1948): 5–10; Duff, *African Small Chop*, 334, 340.

anthropological study of Gikuyu custom asserted that homicide was normally a matter for compensation, but habitual theft, causing death by poison, or witchcraft ‘was looked upon as a crime against the whole community, and the penalty was death by burning.’<sup>66</sup> With the coming of colonialism in the nineteenth and early twentieth centuries however, homicide became increasingly criminalized, leading to the institutionalization of the death penalty across British colonial Africa, and creating a specifically colonial form of capital punishment that attempted to serve often conflicting colonial and African demands for justice.

*Evidence of crime, proof of punishment – Writing  
colonial histories through criminal records*

This empirical study is framed around multiple levels of analysis, combining different methodological perspectives: it ranges from a micro-historical analysis of individual murder trials and their outcomes at a local level, to colony-level social and criminal histories that combine qualitative approaches with some basic quantitative analysis, and finally to broader imperial history perspectives on the wider politico-legal functioning of the death penalty. A central focus of this book is the comparative study of three colony case studies across Britain’s West, East and Southern African territories. This comparative focus facilitates nuanced analysis of how different common law-based legal regimes intersected with racial and ethnic constructions and socio-political concerns to shape the functioning of the death penalty from local to colonial contexts.

The three colony case studies have been selected to highlight how capital punishment operated across varied forms of colonial states. Kenya serves as the East African case study, selected to offer insights into capital punishment in a settler colonial state with a highly repressive penal regime. Kenya joined the British Empire as part of the British East Africa protectorate in 1895, before becoming a crown colony in 1920 until its independence in 1963. Its criminal justice system operated under the Indian Penal Code until 1930 when it moved to an adapted English criminal code.<sup>67</sup> Kenya, as noted above, was also the site of the most infamous and extensive use of the death penalty in the twentieth-century British Empire, during the State of Emergency declared against the so-called Mau Mau rebellion, between 1952 and 1960, when over 1,000 Gikuyu men were hanged for emergency

66. Jomo Kenyatta, *Facing Mount Kenya: The Tribal Life of the Kikuyu* (London: Secker & Warburg, 1957 [c. 1938]), 230. See also J. S. B. Leakey, ‘Some Notes on the Masai of Kenya Colony’, *Journal of the Royal Anthropological Institute of Great Britain and Ireland* 60 (1930): 209. J. S. S. Rowlands, ‘Notes on Native Law and Custom in Kenya: I’, *Journal of African Law* 6, no. 3 (1962): 193; G. S. Snell, *Nandi Customary Law* (London: Palgrave Macmillan, 1954), 63–5.

67. See Weiner, *Empire on Trial*, 193–221; Henry F. Morris and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972).



offences ranging from murder to possession of ammunition, swearing oaths and consorting with terrorists.<sup>68</sup> This study seeks to place these emergency hangings in a broader Kenyan, and colonial African, context. The southern African case study is Nyasaland, known by contemporaries as Britain's Cinderella colony. Nyasaland offers insights into intersecting traditions of judicial leniency and penal severity. British control in the area started with the British Central African Protectorate in 1889, which became the Nyasaland protectorate from 1907 until 1953 when became part of the Federation of Rhodesia and Nyasaland, before gaining its independence from Britain in 1964. This underdeveloped colony highlights the tensions plaguing the operation of colonial justice and penalty in the context of a weak colonial economy, overstretched and understaffed infrastructure, and severe social tensions generated by labour migration, shifting gender roles, economic hardship and dearth.<sup>69</sup> The West African case study is the Gold Coast, which was a British Crown colony from 1821 until its independence in 1957. British rule in the region expanded throughout the nineteenth century until it comprised four separate jurisdictions by the twentieth century: the Gold Coast itself, Ashanti, the Northern Territories, the three regions which this study focuses on, and the mandated territory of British Togoland.<sup>70</sup> The Gold Coast was regarded as a model colony, governed indirectly with the support of traditional chiefs, with a strong colonial legal culture and with early experience of the 'Africanization' of colonial administrations. As a case study, the Gold Coast highlights the complexities of how capital punishment operated across three different regional legal jurisdictions with pluralistic inheritances, including exploring the direct importation of English common law and – unusually – both jury trials for Africans and African judges presiding over capital trials in the Gold Coast Colony, compared with the more penally severe and administrative justice of Ashanti and the Northern Territories.<sup>71</sup> The chronological focus is predominantly on the 1920s to 1950s as this is the period for which the comparative evidence base is available. Nonetheless, as the legal colonization of the Gold Coast began in the mid-nineteenth century, early colonial trends are sketched, and postcolonial legacies are also touched upon. To contextualize these case studies, a broader analysis of capital cases from African territories was conducted through Colonial Office and Dominions Office archives, and from the Colonial Office Legal Department and Treatment of Offenders Committee file series in the National Archives, Kew. This indicates that there were broad similarities in the form and functioning of capital punishment across British colonial Africa in the twentieth century, including in the case study territories, characterized by a strongly racialized form of didactic deterrence that led to a

68. Anderson, *Histories of the Hanged*.

69. See John McCracken, *A History of Malawi, 1859–1966* (Woodbridge: James Currey, 2012).

70. See Roger Gocking, *The History of Ghana* (Westport: Greenwood, 2005).

71. Roger Gocking, 'The Adjudication of Homicide in Colonial Ghana: The Impact of the Knowles Murder Case', *Journal of African History* 52, no. 1 (2011): 85–104.

widespread use of both death sentences and executions whilst discursively asserting the merciful and civilized nature of colonial criminal justice. However, there were localized particularities in the operation of the death penalty in each territory, driven by varying legal codes and political or security concerns. The particularities of Kenya, Nyasaland and the Gold Coast will be explored throughout the following chapters to highlight what variations in penalty can reveal about the multifarious nature of colonial rule.

This is an account of how colonial governments sought to control and shape their African subjects, but it is also about the violent tragedies in the lives of Africans as victims and perpetrators of murder, the main crime for which execution was imposed. The treatment of capital punishment, and particularly of the executions themselves, presents moral, ethical and methodological questions for the historian. We must remember that we are dealing with real bodily violation, real pain, real death. Chief Justice Charles Belcher recalled one meeting in Nyasaland where he was advising the governor and his executive council as to whether the royal prerogative of mercy should be used to spare condemned murders from the gallows. Belcher recalled that the opinion of many officials was “after all, Nyasaland natives are plentiful and not very vocal”. One of those responsible for the advice to exact capital punishment said when it was being discussed, “I do not think that it would hurt to hang a few of them”. And, no doubt, on a very broad view, it would not.<sup>72</sup> Colonial administrators discussing the death penalty for African criminals may have thought it would not ‘hurt to hang a few of them’, but for the condemned individual it certainly did hurt. In 1916, a Nairobi prison officer described execution processes to (predominantly settler) readers of the *East African Standard* newspaper, highlighting how African prisoners ‘make a fuss, decline their food, refused 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.’<sup>73</sup> All the discourses of deterrence, law and justice must not obscure the fact that what we are dealing with is state agents legally killing colonial subjects at the government’s behest – that the greatest victims were those killed by the condemned men and women must also be remembered.<sup>74</sup>

Over 2,300 capital case files, predominantly for murder trials, from the archives of Nairobi, Accra and Zomba comprise the primary evidence base for this study. These legal records are supplemented by legal and administrative records, penal and judicial statistics, law reviews and appeals, and newspaper coverage and colonial memoirs. From the Gold Coast ‘Murder Books’ containing handwritten trial transcripts, full case files, appeal records and death row petitions from Kenya to the district commissioners’ confidential reports on local attitudes

72. Sir Charles Belcher, ‘Reminiscences’, 223, Weston Library, Bodleian Libraries, University of Oxford [WL], MSS.Brit.Emp.s.347.

73. ‘Diary of a Prison Officer’, *East African Standard*, 23 June 1916, 16.

74. Gatrell, *The Hanging Tree*, 29.

towards murders in Nyasaland, this book draws on a seam of rich and previously unexplored archival data. Due to the evidentiary requirements for a capital conviction, murder case records can grant an unprecedented level of insight into the lives of ordinary Africans who became the victims, defendants and witnesses in these cases. These case files are highly variable – some are a scant two pages with no final outcome recorded, others include a profusion of evidence ranging from trial testimonies by the accused, to extensive witness statements, crime scene photographs, High Court transcripts, appeal records, prison records with medical and ethnopsychiatric evaluations, to death row mercy petitions, handwritten notes, marginalia and sketches from the judges, and even, in one case, the still bloodied (and now very rusty) murder weapon. This allows for detailed analysis of both colonial constructions and discourses of African criminality and deviance, and insights into (often contested) African opinions on crime and punishment that highlight the tensions within customary law and local attitudes towards individual offenders. The representativeness of trends identified in the three colony case studies is contextualized against wider developments across British Africa and the British Empire more broadly: Foreign, Commonwealth and Dominions Office legal, penal and social welfare records and ‘Blue Book’ annual statistics from the National Archives at Kew and digital archives provide the supplementary evidence base here, alongside colonial officials’ private papers, newspapers and non-governmental organization archives. Photographs of executions are not reproduced in this book on ethical grounds.

The courts which tried capital cases were not monolithic blocks but sites of contestations where values and beliefs were not only expressed but shaped.<sup>75</sup> Genealogies of violence shifted as colonial peoples exploited colonial misunderstandings about the nature of violence, and employed both truth and fiction in their court-room narratives.<sup>76</sup> Criminal records can reveal how colonial categories of knowledge – in this case the ‘African murderer’ or ‘condemned criminal’ – constituted colonized people as objects of study and control in the service of state power. In a sense, history begins where justice ends. Long after the judge finishes a case and sends its record off to gather dust in the archives, a historian can reclaim it for their own purposes. The colonial legal archive is another ‘technology of rule’, embodying ‘documents of exclusion’ as well as inclusion.<sup>77</sup> In dealing with legal archives, few historians concern themselves so

75. Richard Roberts, ‘Text and Testimony in the Tribunal de Première Instance during the Early Twentieth-Century’, *Journal of African History* 31, no. 3 (1990): 447–60.

76. Ann Laura Stoler, ‘“In Cold Blood”: Hierarchies of Credibility and the Politics of Colonial Narratives’, *Representations* 37, no. 1 (1992): 152–4.

77. Ann Laura Stoler, ‘Colonial Archives and the Arts of Governance: On the Content and the Form’, in *Refiguring the Archive*, ed. C. Hamilton et al. (Cape Town: Kluwer Academic Publishers, 2002), 83, 89; Catherine Colebourne, ‘Crime, the Legal Archive and Postcolonial Histories’, in *Crime and Empire, 1840–1940: Criminal Justice in Local and Global Context*, ed. Barry Godfrey and Graeme Dunstall (Cullompton: Willan, 2005), 100.

long after the crime with the contested issues of guilt or innocence.<sup>78</sup> The value of criminal records for history is not so much what they uncover about a particular crime, as what they reveal about otherwise invisible or opaque aspects of human experience, particularly in Africa where our knowledge of communities' daily lives can be sparse.<sup>79</sup> A reliance on judicial records, however, creates a number of practical and methodological concerns for the historian. Violence, as a concept or action, is not constant across chronology and location, and has its own history and cultural specificity.<sup>80</sup> Murder trial narratives cannot give us a comprehensive view of manifestations of violence within African communities, or its general treatment in courts, nor even of colonial violence itself, as they are by their nature exceptional narratives of lethal violence. As the disposition of cases is so closely linked to the widely varied circumstances of the crimes, it is difficult to determine localized changes in attitudes towards violence among African communities and colonial states, particularly over a relatively short time period. Despite this, and although many records have not survived in the archive or are incomplete, capital punishment is still an invaluable lens for the study both of colonial violence and penalty, and of social conflict and violence within African communities.

There are some striking silences in these texts: not just about the facts and circumstances of particular crimes, but larger, structural silences. Whilst discourses of gender, race, ethnicity and generation resound throughout the records, there is little explicit discussion of class tensions, as these are subsumed within racial hierarchies. There is a relative silence around the impact of changing religious beliefs on attitudes towards punishment and death – somewhat surprisingly considering the spread of Christianity and Islam throughout this period.<sup>81</sup> What discussion there is centres around 'native custom', particularly about how such custom can motivate or sanction homicidal violence, as with the murder of suspected witches or thieves, or on local practices of compensation and reconciliation ceremonies. Rather than attempting to explain the structures of governmental and inter-personal violence, here their lethal manifestation in Africa is analysed as a form of culturally embedded violence, using the lens of trial narratives to elucidate what colonial officers and African communities thought of such crimes and punishments, and to highlight the tensions within, and between, these sectors of colonial society. History of emotions perspectives also used to explore both colonial intentions and African responses to the death penalty, particularly in courtroom testimony, petitions for mercy and execution reporting.

78. Carlo Ginzburg, 'Checking the Evidence: The Judge and the Historian', *Critical Enquiry* 18, no. 1 (1991): 83–4.

79. Edward Muir and Guido Ruggiero, eds., *History from Crime* (Baltimore: John Hopkins University Press, 1994), v.

80. John Carter Wood, *Violence and Crime in Nineteenth-Century England: The Shadow of Our Refinement* (London: Routledge, 2004), 2.

81. See Walima T. Kalusa and Megan Vaughan, *Death, Belief and Politics in Central Africa* (Lusaka: Lembani Trust, 2013); Parker, *In My Time of Dying*.

The structure of this book follows the process of capital punishment: from investigation and prosecution, through sentencing in court to the governor's final decision and then death row and the rituals of execution, whilst looking at the main factors which influenced that decision – law, administration, security, race and politics. The subjects under discussion in the book's three sections illustrate the major contemporary debates on capital punishment which occurred during the colonial period: those relating to the legal limits of the death penalty and the crimes for which it could be inflicted; its role in colonial penal systems; the prerogative of mercy; the use of capital punishment in responses to anti-colonial rebellion; the risk of scandals generated by unpopular or botched executions; and the methods and practice of hangings themselves. Each chapter has a slightly different critical approach as it deals with different types of evidence in assessing these debates. Undoubtedly, there are omissions and elisions in the analysis of capital punishment offered here, but in its thematic and comparative approach this book aims to encourage further study of colonial punishment to fill the gaps, and to challenge or refine the arguments made.

The first section sets out the legal and penal contexts to colonial capital punishment. Chapter 1 concentrates on the legal and administrative processes which shaped the death penalty as a legal sentence in Africa. It looks at the prosecution and sentencing of capital cases, which were predominantly trials for the crime of murder. Debates over how capital cases should be tried raged at two levels: between legal and administrative officers within a colonial state, and between the metropole and colony. Metropolitan universality, with its desire for equitable legal systems between its colonies and for bringing these territories closer into line with English legal practice, clashed with colonial particularism over whether common law and due process standards could or should be applied in African colonies, whilst the dialectical relationship between the provisions of 'Law' and the need to maintain 'Order' created tensions with colonies over issues including African juries, mandatory death sentences and the provision of alternative sentences. Chapter 2 takes a penal history approach to give an overview of the rates of capital convictions and executions across Britain's African colonies and contextualizes capital punishment within broader strategies of colonial punishment from the early to late colonial periods, highlighting the tensions between reformist penal impulses and the realities of continued violence within colonial penality.

The second section delves into capital case files from Kenya, Nyasaland and the Gold Coast to explore social histories of crime and deviance and provide a comparative analysis of how the punishment of capital crimes was shaped by the variegated moral and political landscapes of colonialism. Chapter 3 engages with clemency studies to provide a comparative analysis of the royal prerogative of mercy, highlighting key categories of murderers who were, and were not, thought befitting of clemency. It argues that mercy operated on three levels: as an arbitrary modulation of judicial severity; as the implementation of established principles imported from the metropole and adapted to African climates; and as an expression of the racial politics of colonial rule and local landscapes of power. Chapter 4 develops this analysis by focusing on how mercy was shaped by the ideological

and affective landscapes of colonial governance, with cultural defence narratives operating through both paternalistic and dehumanizing discourses to argue for mercy for individual accused Africans at the price of reinforcing racial stereotypes, and also highlighting how African agency and emotions shaped mercy decisions. Chapter 5 shifts to focus on the greatest source of fear for colonial administrations, looking at the role of capital punishment in combating anti-colonial rebellion, and its functioning as both a didactic and repressive tool in the maintenance of 'law and order'. Bookended by the 1915 Chilembwe Rebellion in Nyasaland and the Kenyan State of Emergency (1952–60), the chapter contributes to scholarship on colonial counterinsurgency by analysing the relationship between capital punishment and states of emergency, between normative and 'exceptional' justifications for the death penalty.

Finally, the third section pans back to a broader imperial overview, focusing on the evolving spectacle of the death penalty. Chapter 6 shifts the focus from colonial courtrooms to imperial and metropolitan politics, showing how the death penalty became increasingly politicized against a background of rising humanitarian, abolitionist and anti-colonial sentiment. It shows how capital punishment became a discursive icon for both the 'civilization' and 'barbarity' of late colonial states. Whilst colonial officers portrayed it as an essential defence of British rule and its 'civilized' order, the death penalty alternatively became a powerful synecdoche of the vagaries of colonial rule in the hands of anti-colonial and humanitarian protestors in both Britain and Africa. This chapter is framed around a series of scandals that shaped imperial penalty, from public multiple hangings in Nigeria, to the proposed execution of elites for fetish murder in the Gold Coast, through to Malawi's postcolonial justifications for publicly hanging of enemies of the state as following colonial practice. Chapter 7 investigates the rituals and processes of execution, from death row to the gallows, which marked the lethal culmination of a colonial state's judicial violence. This chapter draws on socio-legal theories and cultural histories to trace the evolution of colonial executions from public hangings to modernized gallows behind prison doors, looking at how discourses of 'civilization' and 'humanity' were used to reform and retain judicial executions. It demonstrates how the method of execution was as bound up in the politics of colonial society and the dialectics between metropolitan influences and colonial conditions, as it was with transforming sensibilities towards the public infliction of pain upon criminalized, colonized bodies. Throughout the colonial period in British Africa, capital punishment remained integral to the strategies and practice of colonial rule, representing both its violence and its self-proclaimed civilization, as the following chapters will reveal.

