

Enforcing the Empire: The Administration Police and Colonial Control in Kenya, 1890–1928

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Abstract

Original Research Article

Historians have either been reticent or have lagged in engaging with research on contemporary policing or in investigating how society in the past dealt with crime and disorder. Yet, understanding how and why police institutions have grown and developed, and how these institutions have constantly related to the societies in which they functioned, is key to understanding problems inherent in modern policing. Administration Police is the most controversial and oldest institution of policing because it has been viewed as a tool of the state. This has led to citizens having a negative attitude towards it. However, it has a positive but unfortunately not so apparent aspect which is that it has been used to enhance development. Governance of the police, the use of force, and the management of public disorder has, in many cases, not been sufficiently explored. This paper, therefore, is a historical examination of the emergence and development of the Administration Police from colonial time. The study focuses the Administration Police in Colonial Kenya: Formation, Role, and Impact (1890-1928) Through academic investigations the Administration Police emerge as the force that was used as an instrument of state administration and coercive power.

Keywords: Askari: Askari Kanga: Baraza: Tribal Police: Khaki.

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INTRODUCTION

The origins of modern policing can be linked directly to its English heritage [1]. Ideas concerning community policing, crime prevention, the posse, constables, and sheriffs developed from English law enforcement. A broad reform effort began to emerge toward the end of the nineteenth century. Stimulated mainly by a group known as the Progressives, attempts were made to create a truly professional police force [2].

Traditionally, the engagement of the police in Kenyan history has taken the form of commemorative writings and autobiographical accounts, often biased towards a positive and legitimizing narrative, which generally did not meet the standards of scholarly research

and style of presentation. However, this has changed significantly in recent years. Several initiatives for research studies have improved the quality of research into police history in the Kenya context by bringing together academic historians, communicating scholarly approaches to the police and practitioners, and providing the 'inside' perspectives.

But it is still important to examine the history of policing in Kenya to better understand how it has developed and changed over time. The purpose, duties, and structure of police agencies have allowed this profession to evolve from ineffective watch groups to police agencies that incorporate advanced technology

¹ Cf. Bacon, S. (1939) *The Early Development of American Municipal Police: A Study of the Evolution of Formal Controls in a Changing Society*. Unpublished dissertation, Yale University. University Microfilms No. 66–06844. Ballagh, J. (1968) *A History of Slavery in Virginia*. New York: Johnson Reprint Company. Blassingame, J.W. (ed.) (1977) *Slave Testimony: Two Centuries of Letters, Speeches, Interviews, and*

Autobiographies. Baton Rouge, LA: Louisiana State University Press

²Cei, Louis B. "Law Enforcement in Richmond: A History of Police Community Relations, 1737-1974," Ph.D. dissertation, Florida State University cited from https://www.researchgate.net/publication/242604086_The_Development_Of_The_American_Police_An_Historical_Overview 1 1975. [accessed Aug 21 2018].

and problem-solving strategies into their daily operations.

Law and order are configurations of rules that structure interactions among divergent social forces, actors, and interests. They then logically open up to channels of opportunities for pursuing an array of goals in the political arena [3]. Naomi Chazan, *et al*, contend that the state apparatus provides the framework within which social groups form and in which some political actions are made possible while others are circumscribed [4]. Thus, the organization of the state and its nature affect the types of political issues raised and the way they are played out.

Over the last quarter-century, there has been considerable historical research into crime, police, and policing. Historians have been perhaps a little reticent about engaging with some of the claims about the golden age and in challenging (what to them have been rather familiar) 'new' solutions to crime and disorder. An understanding of how and why police institutions developed, and how they related to the societies in which they functioned will not provide easy solutions to contemporary problems, but, if nothing else, it will ensure that participants in the debates are better informed.

Before the formation of the IBEAC in Mombasa, there seems to be little or no mention at all of a police force being in existence in Mombasa. It is indicated by Mr. Foran that the only form of a police force in Mombasa that existed before the IBEAC was the Baluchi Soldiers stationed at Fort Jesus by Seyyid Bargash of Zanzibar (1870-1888) [5]. The Kenyan East Africa Protectorate that became Colony in 1920 still had an uphill task trying to tie up two parallel economies. Already aspects of British Common Law and the Indian Penal Code were in place but the contradictions in the formal and native economies brought about different values and diametrically opposed norms and incompatible cultures and laws. The Kenya Police who were already in existence were focused on the urban areas, the railway routes, and areas of the propertied classes while the Tribal Police were in the rural areas. The creation of African Reserves in 1926 for each of Kenya's tribes, which left the White Highlands exclusively for Europeans, raised the need for a Tribal Police force focused on policing the African areas. The

Kenya Police was more of an 'urban force' and therefore catered for the needs of Europeans who were considered to be urbanized.

The village headman had in the meantime to rely on village "toughs" and bullies to effect the often unpopular policies of the Colonial Government and to put in place arbitration and other enforceable mechanisms. These local toughs took up the role of Native Police [6]. In 1929 the Tribal Police Ordinance was enacted to give legal backing to the Native Police and their training taken up by the respective regional agents, most of whom had a military background. The training, uniform and kitting differed from one district to another and elements of Kenya Police and Kings African Rifles (KAR) assisted in the training. Largely, the uniforms borrowed designs from colonial military regalia with a combination of local culturally respected symbols of authority [7]. Except for frontier areas, the Force remained generally unarmed and in small numbers. Major expansion of the Tribal Police force started around 1948 with increased native agitation and the fear of widespread rebellion countrywide. Even as their numbers increased in Central Province and armament became universal, their strength in all areas bordering the province was increased to prevent the spread of Mau Mau influence during the Emergency years.

In 1958 the Tribal Police Ordinance was changed to the Administration Police Act and the Force commenced centralised training at Ruringu, Nyeri. The focus of the training was on basic recruits' instruction, promotional and prosecution courses for the Native Courts. Upon attainment of Independence in 1963, the Provincial Administration and the Administration Police were moved from the Ministry of Native Affairs to the Office of the Prime Minister, and then to the Office of the President where they have remained to date [8].

From the point of the centralised training in 1958, the Commandant Training was the senior-most officer of the Administration Police followed by his Adjutant. These offices were reserved for Europeans. The other ranks were African and the highest being Senior Sergeant Major (Warrant Officer I). All the District Officers and Commissioners held the officer ranks. The Administration Police Officer was generally deployed in one District and if transferred had to be re-

³Lawrence Mute Kioko W, *Building an Open Society: The Politics of Transition in Kenya*. Claripress (Nairobi, 2002)

⁴Naomi Chazan *et al.*, *Politics and Society in Contemporary Africa*, (Boulder, 1988), p. 38

⁵Foran W.R. *The Kenya Police 1887-1960* (London, 1962), P.6

⁶David Anderson M, *Black Mischief: Crime, Protest and Resistance in Colonial Kenya* Historical Journal, 1993 (36/4) 851-877.

⁷Bruce Berman, *Control and Crisis in Colonial Kenya: The Dialectic of Domination*. (London, 1990)

⁸John Lonsdale, and Bruce Berman, *Coping With the Contradictions: The Development of the Colonial State in Kenya, 1895-1914* Journal of African History, 1979 (20) 487-505.

issued with a new identity card or re-endorsed for duty in the new District [9].

Centralisation of training and command continued in the sixties with Embakasi Training School being set up in 1967 at the present day JKIA and finally moving to the present day Administration Police Training College in 1972. Although the AP transformed gradually starting in 1958 from a localized police service to a national structure, it continued to offer localised policing services. The force was given the AP name simply because it was used by IBEAC to administer colonial rules and policies within the protectorate.

This study *inter alia* investigates and analyzes the problems and challenges encountered by the Administration Police Force in their function of delivering effective policing services as required by law and expected by the public. The force has evolved from a pro-imperial colonial police (founded to subjugate the colonized 'native populations') to what it is today. Originally formed as a colonial constabulary, the institution was not created as a people's police, but as a reactionary instrument of conquest and repression to achieve the imperial objectives of resource extraction and political domination.

This peculiar history of pro-imperialist coercion and anti-locals disposition is what preponderantly shaped the institutional character and operations of most African police forces, including the KPF [10]. It is in this historical context that one can properly understand the role of KPF in the crackdown of the anti-colonial struggle and brutalization of activists in the nationalist movements for independence, such as the famous Mau Mau [11]. One of the greatest but rarely appreciated challenges of independence in Kenya and Africa was the need to transform the inherited colonial police force from an anti-people to a legitimate national police protective instrument for, and owned by, the people.

Sadly, the necessary transformative reform of the police force has been mostly elusive in the majority of the post-colonial states of Africa, not least in Kenya.

Evidence from the twenty-four years of President Daniel Arap Moi's regime reveals that the KPF was responsible for a catalogue of human rights violations, including politically motivated disappearances and targeted killing of many perceived opponents. Many leading pro-democracy activists that campaigned for the expansion of the political space were repeatedly harassed and brutalized by the KPF. Unlawful and prolonged detention without trial of opponents was rampant. The media houses were not spared as a number of critical private media were banned [12].

Also, owing to the prolonged undemocratic rule by President Moi, the police institution became highly politicized with the result that recruitment and promotion of officers were for the most part based on cronyism and clannism. The police force was seemingly dominated by hegemonic ethnic groups. Corruption became widespread even as violent crime soared. The 1990s witnessed an astronomically high crime rate, especially in the Nairobi area [13]. The image and reputation of the police force was at its lowest ebb in post-independence history. Moi presided over a highly regimented one-party state largely sustained by an unprofessional police force that many critics likened to the Gestapo (secret state police) of defunct Nazi Germany.

Theoretical Framework

This study draws primarily on modernization theory as articulated by W.W. Rostow and the dialectic of domination proposed by Bruce Berman, to examine the historical development of policing in colonial Kenya from 1902 onward. These frameworks are complemented by insights from Marxist and Weberian traditions, which provide deeper understanding of the intersection between state power, coercion, and institutional legitimacy [14]. Theories of modernization illuminate the colonial state's aim to reshape African societies along European models of bureaucratic control and industrial development [15], while Berman's dialectical approach reveals the tension inherent in establishing authority through local intermediaries and coercive policing. Together, these theories uncover how colonial policing functioned not just as a tool of order,

⁹Y.P Ghai and Mc Auslan, J. P. W. B *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government From Colonial Times to the Present*. (Nairobi, 1970)

¹⁰Achille Mbembe, *On the Postcolony* (California: University of California Press, 2001).

¹¹Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the legacy of Late Colonialism* (London: James Currey, 1996).

¹²Human Rights Watch, "Playing with Fire: Weapons Proliferation, Political Violence and Human Rights in Kenya" (New York: Human Rights Watch, 2002).

¹³Katumba Musambayi and Lionel Cliffe, Nairobi – *A City Besieged: The Impact of Armed Violence on Poverty*

and Development (Bradford: Centre for International Cooperation and Security Department of Peace Studies, 2005).

¹⁴Eweje, Gabriel. *Marxist Perspectives on Policing and Social Control*. African Journal of Political Economy, 2006

¹⁵Tipps Dean C. "Modernization Theory and the Comparative Study of Societies: A Critical Perspective" *Comparative Studies in Society and History* (1973) 15:199-226

but as a mechanism of domination woven into the broader project of state formation [16]. The development of policing systems in colonial Kenya cannot be understood in isolation from the broader sociopolitical and economic structures that shaped state formation and colonial governance. These lenses are further supported by Marxist and Weberian perspectives that contextualize the role of policing within structures of power and legitimacy [17].

The development of policing systems cannot be understood in isolation from their sociopolitical context. Theories in this area examine how policing is intertwined with broader power structures and social hierarchies. Marxist theories, for example, argue that policing serves to protect the interests of the ruling class by maintaining order and suppressing dissent [18]. According to this perspective, the police are instruments of state power used to enforce social and economic inequalities. Weberian theories, on the other hand, focus on the role of the state in monopolizing legitimate violence. Max Weber argued that the modern state is defined by its exclusive right to use physical force, and policing is a key mechanism through which this power is exercised [19]. This view emphasizes the legal-rational authority of the state and the professionalization of policing as part of the broader process of rationalization and modernization.

The history of policing is also deeply affected by the processes of colonialism and state formation. Colonial powers established policing systems in their colonies to maintain control and suppress resistance. These colonial policing systems were often characterized by their repressive and militaristic nature, designed to enforce the colonial order and extract resources rather than to serve and protect the local populations [20]. In post-colonial states, the legacy of colonial policing continues to influence contemporary practices. The transition from colonial to independent rule often involved the retention of colonial policing structures, leading to ongoing tensions between the police and the citizenry. Thus, theories used in this study examine how these legacies of colonialism shape current policing practices and the relationship between the state and society [21].

From Conquest to Ordinances: Instrumentation of the Native Regulations, 1902-1929

It is important to note that effective colonial government rested on the maintenance of law and order to uphold the authority of the administration [22]. This was institutionalized through the passing of Ordinances. Ordinances acted as coercive instruments of control and domination. The ordinances were important pillars of colonial governance and discrimination. Some of these ordinances were discriminatory and later led to control of the Africans. A good example of such legal instruments of control was the Vagrancy Ordinance of 1896.

Vagrants are often transient persons who move from place to place and do not remain in any one place for a significant length of time. In colonial phraseology, vagrancy referred to a person of African descent with no fixed abode. The Ordinance criminalized begging and homelessness and made it a crime for people to wander from place to place without visible means of support. Implementation and control of these three “native regulations” were mainly left to policemen. They experienced problems in executing the rights that Africans were denied under these new regulations, often finding them to be unenforceable. Unsurprisingly, conflict, fear, and punishment came to dominate the relations between Africans and police personnel. As banditry and other forms of unruliness proved, many Africans did not readily accept the colonial claim to power. Colonial administrators were thus all too well aware of the fragility of their ruling structures from the onset as hundreds of African labourers were arrested, prosecuted and hounded into jail for failing to prove that they had a dwelling place. By so doing, the British ensured that Africans sought wage labour in the settlers’ farms [23].

Following the enactment of the Ordinance in 1902, Headmen were mandated with opening up of areas inhabited by the indigenous African communities, referred to as reserves, to help modernize local economies. Through the headmen, the colonial government planned to bring the Africans into the tax bracket, money system, dispute resolution, and to regulate the movement of the Africans, domestic animals, agriculture, and general law enforcement [24].

¹⁶ Bruce Berman, *Control and crisis in colonial Kenya, The Dialectic of Domination* (Nairobi, 1990)

¹⁷ Eweje, Gabriel. *Marxist Perspectives on Policing and Social Control*. African Journal of Political Economy, 2006

¹⁸ Ibid

¹⁹ Meyer, John W., and Sanklecha, Anil. *Weberian Theory and the Modern State: Policing and Legitimate Violence*. Comparative Studies in Society and History, 2009.

²⁰ Grim, John. *Colonial Policing in Africa: Mechanisms of Control and Suppression*. The Journal of African History, 1994.

²¹ Lind, Jeremy. *Post-Colonial Policing: Legacies and Contemporary Challenges in African States*. African Affairs, 2018.

²² For detailed information see the effects of Northey circulars in Van Zwanennerg, pp.126-136

²³ See The Vagrancy Ordinance of 1896.

²⁴ Republic of Kenya, *Administration Police Strategic Plan: 2004-2009* (Nairobi: Government Printer.), pp.1-4

Recruitment criteria were biased towards males who were physically fit, tall, dark complexion, muscular, and athletically endowed with minimum consideration for academic qualifications [25]. They were required to be morally upright and shave their beard always [26]. These warriors, equivalent of the Village Constable in England, became Native Police as the Force was then known, and would in the course of duties bully fellow Africans creating bad blood with locals [27]. Eustace recorded:

...that the "native police at the boma in 1904 were an extraordinarily ragged lot, almost untrained, and had little in the way of uniforms. In fact, when the new commissioner, Sir Donald Stewart, visited the boma shortly after his arrival in the country, I bought them all white trousers (pantaloon type) and they looked quite smart on parade [28].

That state of affairs was equally true of the police everywhere in the protectorate for several more years. But things changed gradually for the better as we shall see later. On June 1, 1904, Harry Rayne was appointed an inspector of the B.E.A. police and posted for duty. It is recorded that Ewart had informed him that he would teach him his police duties. But with only two weeks of service, this was a case of the blind leading the blind. As no quarters were available, he lived at his brother's masonic hotel at the railway end of Victoria Street. Rayne was a New Zealander who had served with the New Zealand Mounted Rifles during the South Africa war. He had no previous police experience. He was promoted assistant district superintendent on June 14, 1905, and was moved to Kisumu in the middle of October that year. Rayne commanded a police column with the Sotik punitive force in 1905 and also another with the Nandi field force (1905-1906). In the words of a retired second-generation police officer:

I am a retired police officer (Kanga) I can't remember much about the native police but I managed to recollect stories and even decorations and clothes of those that had been recruited as early as 1906, I have a short and jacket. They were directly made in England.... [29].

"Early in 1905, there occurred a severe outbreak of bubonic plague at Kisumu. Periodical

epidemics of this deadly disease had been known previously at Kisumu and Mombasa but this one was by far the most severe. I had only Sergeant Instructor J.M. Milton with me at Kisumu, and the major responsibility for putting into effect strict quarantine measures rested with us. Before long, it was found necessary to co-opt the services of all the other available Europeans. We had a hectic time and were given little rest during the six weeks that followed. It was then considered safe to lift the quarantine ban imposed on the township. There were about thirty deaths a day amongst the Asian and African communities, and all the bodies had to be cremated. This nauseating task was given to the police to perform. The dead were cremated behind the prison. Those who participated in fighting this disease successfully later received a special letter of thanks from the Right Honorable A. Lyttelton, the Secretary of State for the Colonies," according to Rayne.

Aspects of British Common Law and the Indian Penal Code were being enforced but contradictions between formal and informal African economies led to a conflict of value systems, norms, incompatible cultures, and laws [30]. The Village Headmen Ordinance 1902, for instance, stated *inter alia* that:

"It shall be lawful for H. M. Commissioner as regards any part of the Protectorate for a Sub-Commissioner acting under the directions of the Commissioner as regards his Province to appoint any native or natives to be the official headman or collective head (hereinafter referred to in the singular only as headman) of any village or group of villages and to make the headman of any Village subordinate to the headman of any other Village. Such headman shall be the representative of his village or villages and an order made against him in his official capacity shall be enforceable against all the inhabitants of his village or villages. The Commissioner or by his direction a Sub-Commissioner may require any headman to keep order in an area adjacent to his village or villages and to keep any public road in any such area in good condition and repair. If an outrage occurs in any area in which a headman is responsible for the preservation of order and the perpetrator of such outrage cannot be discovered the sub-Commissioner may in his

²⁵ Kenya National Archives, "The Tribal Police Ordinance, 1929: Correspondence, General", *Colony and Protectorate of Kenya* (Nairobi: KNA, AG/16/252/1, 1929), Folios 4 (A)-6.

²⁶ Kenya National Archives, "Matters Concerning Tribal Police", *Colony and Protectorate of Kenya* (Nairobi: KNA, bb/43/24, 1963), Folios 3, 5, 8,9,13. Accessed on 08/07/2015.

²⁷ Kenya National Archives, "The Tribal Police Ordinance, 1929: Correspondence, General" *Colony and Protectorate of Kenya* (Nairobi: KNA, AG/16/252/1, 1929), Folio 4 (A). Accessed on 8/07/2015.

²⁸ Kenya police review (October, 1949), "the story of the Kenya police"-11, by colonel H.P.Rice, O.B.E.

²⁹ OI, John Wafula Wanyonyi, Kakamega, 2018

³⁰ Republic of Kenya, *Administration Police Strategic Plan: 2004-2009*, (Nairobi: Government Printer, 2004), pp.9-12.

discretion impose a fine upon such headman unless he proves to the satisfaction of the Sub-Commissioner that the outrage could not have been prevented by reasonable vigilance on the part of the headman or his people. The Commissioner may make rules conferring upon any headman in any village or group of villages the power to hear and determine petty native cases to such extent and upon such conditions as to appeal and procedure as the Commissioner may determine. The Commissioner may provide for the remuneration of any headman by a rate to be levied upon the inhabitants of the headman's village or villages in such manner as the Commissioner may approve [31].

Basic training of recruits was localized where the package offered was simple and covered firearms skills and making arrests [32]. The nature of training was paramilitary and aimed at hardening personnel to endure challenges in their work environment. This was mandated to the respective Regional Agents subject to the direction of Provincial Commissioners most of who were ex-soldiers. Each district was unique in terms of personnel recruitment, training, uniform, and kitting [33]. Kenya Police and King's African Rifles Personnel assisted in training which focused on basic recruits' instruction, promotion, and prosecution courses to serve the African Courts [34]. Initially, salaries were determined and paid by Regional Authorities and not the central government [35]. No specific body was tasked with the salaries and remuneration. According to a second-generation police officer:

My father was a native police officer, and of course, he inspired me to join the police after the Second World War. He told me that the native police had greater benefits than those other police officers. They commanded a lot of respect from the people and also from the colonial authorities. The only limitation is that they were not given time to visit their homes or even vacations... [36].

Almost from the time when the railhead reached Nairobi, there began a spate of African women prostitutes. By 1904, this had become a grave social menace. Periodically they were rounded up and returned

to the headman of their village with instructions that they should be kept there but they would be back again in Nairobi within a few days. Their shocking lodgings at the rear of Victoria Street provided a rendezvous for bad characters and a repository for stolen goods. A search of these hovels was generally rewarded with the recovery of much property which had been reported as stolen. Often, too, it furnished a clue to, or the arrest of, the criminal types implicated in crime. Although a blot on Nairobi's social life, these women were nevertheless useful to the police in this way.

At the railway end of Victoria Street was a wood-and-iron bungalow occupied by a number of Japanese women from Zanzibar, but they conducted themselves in an orderly fashion and made no trouble. It was popularly known as the "Japanese legation". Officially, the police sanctioned its continued existence for as long as no complaints were received about anything untoward happening there.

The unfortunate African police were poorly catered for and were ragged, ill-armed, and generally badly equipped. Sergeant Instructor J.H. Milton was gradually getting them better drilled, disciplined, and more creditably turned out. Replacements for worn and disgracefully ragged uniforms were not easily procurable, as essential supplies seemed to be lacking at headquarters. Nubians predominated amongst the African rank and file, most of them having served previously with the I.B.E.A. Company, while some were ex-mutineers from Uganda. These old soldiers, many wearing medals, were the backbone of the small unit at Kisumu. The police lines, the usual mud-and-thatch huts, occupied the grounds at the rear of the government offices. Gradually, Luo, Nandi, and Baganda were attracted to the force and enlisted, but did not prove an unqualified success at first, although Sergeant Instructor Milton soon improved them. For duty in Indian Bazaar and to guard the railway's premises, a small detachment of a sergeant, a corporal, a lance corporal, and 20 Asian constables had been enlisted at Bombay by the agents of the government of the protectorate. They were housed in railway quarters near the shipbuilding yard.

I recal my father telling me that Jivanjee was a place where the Asian police were picked for the service.

³¹ An Ordinance enacted by Frederick John Jackson Esquire, C.B. C.111.G. Acting Commissioner for the East Africa Protectorate. October, 23RD 1902, No. 22 OF 1002.

³² Kenya National Archives, "Tribal Police Ordinance, 1929: Correspondence, General", *Colony and Protectorate of Kenya* (Nairobi: KNA, AG/L/306/3, 1929), Folios 4, 4B, 4C. Accessed on 08/07/2015.

³³ Administration Police, *Five Year Review: Highlights of 1 AP Strategic Plan, 2004-2009* (Nairobi: Government Printer, 2009), pp.10-11.

³⁴ Republic of Kenya, *Administration Police Strategic Plan: 2009-2013*, (Nairobi: Government Printer,), pp.10-12.

³⁵ Kenya National Archives, "Tribal Police Ordinance, 1929: Correspondence, General", *Colony and Protectorate of Kenya*-Legal Department (Nairobi: KNA, AG/L/306/3, 1929), Folios 4A, 4B, 4C. Accessed on 08/07/2015.

³⁶ Kamau Njoroge, 80 years old served as AP from 1958, Nakuru, 2017

There were so many influential Asians who had British favour and they were mainly picked to protect the colonial image in the force [37].

The second Nandi rebellion had broken out towards the close of 1905. The police at Kisumu and a company of the 3rd K.A.R, commanded by Captain Maples, were able for a few months to cope with the outbreak. Muhoroni was their headquarters. The force was later withdrawn as the Nandi appeared to be behaving more circumspectly, but the withdrawal of troops was only an invitation for them to intensify their activities. It was then decided to dispatch a strong punitive force against them. That was on October 18, 1905, and military operations did not conclude until July in the following year when the Nandi had had enough and surrendered.

The Masters and Servant Ordinance of 1906 and 1910 were meant to compel Africans to work for private employers [38]. It provided coercive pressure to assist settlers in the recruitment and retention of labourers. The Ordinance provided penal sanctions for desertion and other related labour "offences." It also increased pressure on Africans to leave the reserves and work on state projects. The provisions of this Ordinance ".....shall not apply to any contract of service made by any porter registered under the Native Porter and Labor Regulations 1902 whereby such porter agrees to serve with or accompany a caravan within the meaning of the last-mentioned Regulations, and nothing in this Ordinance shall be deemed to affect the provisions of those Regulations except in so far as the same are expressly repealed by this Ordinance. The provision of the Ordinance continued....

Nothing in this Ordinance shall prevent any employer or servant from enforcing their respective rights and remedies for any breach or non-performance of any lawful contract of service made out of the British East Africa Protectorate, but the respective rights of such parties under such contract as well as against each other as against third parties invading such rights may be enforced in the same manner as other contracts arising may be enforced as if this Ordinance had not been made; provided that whenever any such contract has been executed in conformity with this Ordinance it shall be enforced in the same manner as a contract entered into under this Ordinance.

But no written contract, the tenor and execution of which are not in conformity with this Ordinance, shall be enforced as against any party thereto who is unable to

read and understand writing. Any such contract shall be deemed executed in conformity with this Ordinance which is signed by the names or marks of the contracting parties, and bears. If the contract was made in the United Kingdom or elsewhere in His Majesty's dominions the attestation may be by any Justice of the Peace or other officer authorized by law to take affidavits; if made in any foreign parts the attestation may be by any Judge or Magistrate, being authenticated by the Official Seal of the Court to which he is attached, or by any British Minister³⁹, the Ordinance further provided.

In 1910 and 1912, the ordinance gave statutory powers to local administrators to call out able-bodied men within the reserves for six-day quotas of unpaid "communal" labour on roads and other projects. In addition, the Kenya police could arrest and prosecute a labourer without specific complaints from an employer. Failure to comply with this Ordinance led to maximum penalties up to a fine of \$5 or imprisonment of up to six months [40].

The Native Authority Ordinance of 1912 authorized the Governor to appoint chiefs and Headmen who were empowered to arrest or order for the arrest of Africans [41]. They were also empowered to issue orders to be obeyed by the Africans within the local limits of their jurisdiction. Any act or conduct which, in the opinion of the headmen, led to riots, disturbances, or breach of peace, prevention, and evasion of any tax, would lead to arrest.

The colonial government passed ordinances that were in every respect legal instruments. Those Kenyans who contradicted colonialism after a prolonged struggle submitted to the powerful colonial instruments of control and domination. Practically, in the whole of Africa, the imposition of colonial rule was resisted. Such resistance inevitably provoked military retaliation from the colonial powers. Colonial powers imposed their new mode of punishment like the prisons [42].

New crimes emerged and became evident as conflict was established between the colonizers and the colonized. The introduction of the British system of administration and its attendant colonial capital was incompatible with African culture and customs. But anyone who did not conform to the new style was treated as a criminal. This new way of life created antagonism between the Africans and the Europeans. Many fell foul of the British system and this led to the establishment of prisons. However, some indigenous instruments of control were retained but altered in order to serve the

³⁷ OI, Jagit Sing, Nairobi 2017

³⁸ Berman, *Control & Crisis in Colonial Kenya*, p.63

³⁹ The East Africa Protectorate: An Ordinance enacted by His Majesty's Commissioner for the East Africa Protectorate, Mombasa, Dated this 2nd day of April,

1906. Hayes Sadler, His Majesty's Commissioner. No. 8 of 1906

⁴⁰ Berman, *Control & Crisis in Colonial Kenya*, p.6

⁴¹ Native Authority Ordinance (Nairobi, 1912)

⁴² Ibid, p.21-22

emergent colonial capitalism. These were chiefs and headmen in most of the African communities.

Power, Punishment and Native Control

As already indicated, policing was part of the foundation of the colonial state. As such, the police were specifically given the duty to be in charge of the implementation of the colonial order and to spearhead the continuity of the deep traditions of power and authority and popular debates around them that limited what African political entrepreneurs and colonial officials could promote as custom [43]. Despite these limits, however, the invention of tradition gave rise to what Sara Berry calls 'an era of intensified contestations over custom, power, and property' within colonial courts [44]. One of the central debates was the appropriate level of subservience that wives, junior males, and other dependants owed to household heads. Women and men brought their conflicts before the colonial courts in attempts to gain control over their lives during a period of rapid change in which colonial conquest led to the dissolution of local polities and existing forms of authority. Many of these disputes were efforts to invoke 'moral economies' about the limits on exploitation and were thus efforts to reduce social vulnerabilities and enhance stability through familial and social networks. These struggles did not necessarily challenge the gendered nature of power in the household, however. Social stability remained grounded within patriarchal systems of belonging [45].

The colonial state was especially devoted to physical violence as a method of discipline and alternative to imprisonment, fines, or other forms of punishment [46]. Courts in most British African colonies, from native courts in Northern Nigeria and Uganda to magistrate courts in Gold Coast and Kenya, sentenced offenders to corporal punishment in varying degrees. In colonies with white settlements such as Kenya and South Africa, a cult of the cat o' nine tails was formed to humiliate disobedient African chiefs, suppress resistance, and emasculate male sexuality to salve fears of black peril. Corporal punishment was also a key

instrument in establishing racial hierarchies. Moreover, the use of the *kiboko* in Kenya was a common method to coerce and discipline male African labor. Whether a method to punish criminal behavior, display racial superiority or inculcate labor discipline, corporal punishment became an "essential pedagogical tool" of the colonial encounter, teaching through physical violence [47].

Colonial Office unease with corporal punishment in the empire played a role in this change. In 1897 and again in 1902, the Secretary of State for the Colonies, Joseph Chamberlain, ordered all territories to submit annual returns of corporal punishment for Parliament's perusal. Officials in the East Africa Protectorate complied, submitting detailed registers of adult and juvenile corporal punishment. When Colonial Office staff found irregularities or illegalities in the registers, they badgered magistrates to sentence offenders more carefully [48]. Yet, influence from London must not be overstated. Its year-end complaints had little effect on painful sentences carried out months before. Moreover, the Colonial Office had no alternative than to let protectorate officials carry on as usual. In these early years, the protectorate's prison system was in its infancy and the rattan cane had become the "ordinary corrective" to be applied to "delinquent natives." In short, magistrates had few alternatives at their disposal.

But in the 1920s, the colonial state in Kenya restricted corporal punishment yet again. The continued shift away from adult corporal punishment reflected changing ideas about the efficacy and ethics of caning. In 1923, the Native Punishments Commission reviewed the various forms of punishment at use in the colony. It recommended a reduction in the use of corporal punishment on adults. Some commission members - argued that caning had a morally deleterious effect on convicts, magistrates, and prison officials. Others questioned whether Africans could even be "flogged to a higher morality." The commission was not unanimous in its disapproval of corporal punishment. Dissenting members praised caning as an inexpensive and efficient

⁴³ Thomas Spear, 'Neo-Traditionalism and Limits of Invention of Tradition in British Colonial Africa', *Journal of African History*, 44/1 (2003); see too Carolyn Hamilton, *Terrific Majesty: The Powers of Shaka Zulu and the Limits of Historical Invention* (Cambridge, Mass.: Harvard University Press, 1998).

⁴⁴ Sara Berry, *No Condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa* (Madison, Wis.: University of Wisconsin Press, 1993), 8

⁴⁵ Emily Burrill and Richard Roberts, 'Domestic Violence, Colonial Courts, and the End of Slavery in the French Sudan, 1905-12', in Burrill *et al.*, *Domestic Violence*.

⁴⁶ David Killingray, "Punishment to Fit the Crime? Penal Policy and Practice in British Colonial Africa," in Florence Bernault, ed., *A History of Prison and Confinement in Africa* (Portsmouth, NH: Heinemann, 2003), 107-108.

⁴⁷ Richard Waller, "Rebellious Youth in Colonial Africa," *Journal of African History* 47 (2006), 7792; and Richard Waller, "Bad Boys in the Bush? Disciplining Murran in Colonial Maasailand," in Andrew Burton and Helene Charton-Bigot, eds., *Generations Past: Youth in East African History* (Athens: Ohio University Press, 2010), 135-74.

⁴⁸ KNA, ARC/MD/4/1/3, A. Creech Jones to Government of Kenya, Circular, 15 Jan. 1948.

punishment, which, they argued, Africans preferred over tedious trips to the courthouse or lengthy prison terms. While the commission debated the future of adult caning, it never questioned the necessity of the juvenile variety. All committee members believed the rattan cane was a suitable disciplinary instrument for young offenders under the age of sixteen - that the young could indeed be "flogged to a higher morality." The commission went so far as to make recommendations on the size of the cane, the number of strokes, and procedures to be followed in juvenile cases.

CONCLUSION

Colonialism became a fact of life in Kenya whose effect was the transplantation of the British legal system within African traditional social systems. This led to the recognition of both systems and the gradual relegation of the indigenous system, otherwise called customary law. In its regulated and controlled state, its operation became dependent on the satisfaction of the rules of common law equity and good conscience. We have seen that colonialism had a serious effect on law and order in colonial Kenya and as such there was a need to police and enforce such laws and order. Colonial officials used the law to promote both the legibility and the stability of African societies. In practice, colonial legal systems promoted conflict by imposing rules and expectations that were not widely shared or deeply embedded in African discourses of political and social authority. The law, however, was only part of wider and intersecting processes of change. Law, order, and control statuses were all used to lay the foundation of the colonial economy and political domination. All these were accelerated to pacify and establish permanent British control of Kenya.

Policing was therefore part of the foundation of the colonial state in Kenya. It extended the range of state authority and gave it a tangible presence. As an agent of the law, it turned random retribution into predictable punishment. It kept the perimeters of a new society, justifying the state's assumption of a monopoly of force within it. Without policing, the colonial state would have remained dependent on a seemingly endless expense of mere force: pacification without peace. Once the East Africa Protectorate had been established, the need for a civilian police force and a corresponding reduction in the use of the military was apparent. Police would be cheaper, less confrontational, and under local control. They would also signal a transition from conquest to the establishment of public order, as the state learned to tame itself. As such these were the theoretical beginnings of policing in Kenya. This chapter, therefore, accounts for the ordinances that led to the beginnings of policing in general and in particular traces the developments of tribal police, the frontrunner of the administration police.

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