

Architecture of Denial: Imperial Violence, the Construction of Law and Historical Knowledge during the Mau Mau Uprising, 1952–1960

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Abstract

In 2013, the UK government settled a class action suit, which alleged that the British Colonial Government had subjected Kenyans to detainment, ill treatment and torture during the 1952–1960 ‘Kenya Emergency’. During the trial proceedings, the efforts of three expert historical witnesses for the prosecution – Caroline Elkins, David Anderson and Huw Bennett – led to the discovery of a cache of over 8,000 historical files from 36 former British colonies. The material contained within these documents suggested not only that Britain was aware of pervasive human rights abuses occurring throughout Kenya during the Emergency, but that the use of such violence was in fact endorsed and systematically regulated at the highest levels of the colonial administration. Drawing on Foucault’s conception of historical archives as ‘systems of discursivity’, and making use of the testimonies of the three experts, this article explores how the British Colonial Administration was able to dominate the discursive

space surrounding Kenyan law and Mau Mau identity, allowing it both to justify the implementation of systemic violence throughout the Emergency, and to evade legal responsibility for these abuses at the time, and for decades afterward.

Keywords

Hanslope Disclosure – colonial violence – alternative narrative – moral culpability – legal responsibility – Colonial Administration

1 Introduction

On 6th June 2013, the United Kingdom's Foreign Secretary William Hague issued a statement to Parliament announcing that the government had agreed to compensate 5,228 Kenyans who had suffered abuse and torture under Britain's Colonial Administration during the Kenyan Emergency (herein *the Emergency*) of 1952–1960.¹ This unprecedented settlement came in the wake of a class action lawsuit, brought against the United Kingdom's Foreign and Commonwealth Office (FCO) by the UK based law firm Leigh Day at the behest of the Kenya Human Rights Commission (KHRC). Leigh Day issued the 'Mau Mau Claims' against the British government in 2009 on behalf of five elderly Kikuyu – Ndiku Mutua, Paulo Mzili, Wambugu Nyingi, Jane Muthoni Mara, and Susan Ngondi – who alleged to have been subjected to 'physical mistreatment of the most serious kind, including torture, rape, castration and severe beatings' by British colonial and military staff throughout the Emergency.²

The FCO ardently contested these claims, deeming that no torts were committed against the claimants, and thus the liability for these alleged acts had transferred to the Kenyan government upon independence.³ This defense constituted both a technical legal argument, as well as a historical assertion regarding the British government's level of awareness of, and complicity towards, the use of violence in Kenya prior to decolonisation. Although juridical proceedings

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- 1 W. Hague 'Statement to Parliament on settlement of Mau Mau Claims' Gov.UK (6 June 2013) Retrieved from <https://www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims>. Accessed on 10th March 2020. Hague announced that the compensation would amount to £19.9 million, which works out to just shy of £4,000 each.
 - 2 *Mutua and 4 Others v The Foreign and Commonwealth Office*. [2011] EWHC 1913 (QB).
 - 3 *ibid*, 5, 11, 56. Justice McCombe declared such an attempt to have the case dismissed on a legal technicality 'dishonorable'.

often entail implicit historical arguments regarding liability, professional historians have rarely been called upon to offer their expertise in sorting historical truths from historiographical fictions. Holocaust specialist Dr. Richard Evans' testimony against David Irving during his 2000 libel trial serves as a notable exception to this trend, although this trial revolved around the scholarly merits of Irving's writing, and thus the testimony of a professional historian seemed rather common-sense.⁴ In an attempt to counter the FCO's historical narrative of British governmental innocence during the Emergency, Leigh Day called upon three specialists on Kenyan history – Caroline Elkins, David Anderson and Huw Bennett – to serve as expert witnesses for the prosecution. The testimony of these historians led to the discovery of a cache of government documents – over 8,800 files from 37 former British colonies⁵ – which had been surreptitiously returned to Britain immediately prior to decolonisation. The material contained within the documents suggested that not only was Britain aware of pervasive human rights abuses occurring throughout Kenya during the Emergency, but that the use of such violence was in fact endorsed and systematically implemented and regulated at the highest levels of the Kenyan and British administrations.⁶ The discovery and interpretation of these documents – which would come to be known as the Hanslope Disclosure or the 'migrated archive'⁷ – by Elkins, Anderson and Bennett, served as the lynchpin for the prosecution's eventual victory, and would constitute perhaps the single most prominent example of historians 'directly reshaping the course of history itself, or having an obvious major impact on legal or political systems.'⁸

As a result of this court case, and the efforts of its expert historical witnesses, Britain's complicity in sanctioning and implementing an emergency political system fundamentally underpinned by violence and torture has become widely accepted within the historical scholarly community. Having suffered considerable embarrassment and media scrutiny following the discovery of these secret archives, Hague announced a renewed 'commitment to transparency'

4 RJ Evans, *Lying About Hitler: History, Holocaust. And the David Irving Trial* (New York: Basic Books, 2001).

5 A Badger, 'Historians, a legacy of suspicion and the "migrated archive" Small Wars & Insurgencies' 23 [2012] 800.

6 DM Anderson, 'British abuse and torture in Kenya's counter-insurgency, 1952–1960.' (2012) 23 Small Wars & Insurgencies 700.

7 DM Anderson, 'Guilty Secrets: Deceit, Denial, and the Discovery of Kenya's "Migrated Archive"' (2015).

8 S Howe, 'Flakking the Mau Mau Catchers' (2011) *The Journal of Imperial and Commonwealth History* 695.

and speedily set to work releasing the documents into the public domain via The National Archives (TNA).⁹ Historians of The British Empire and decolonisation have continued to sift through this voluminous cache in recent years, lending increasing credibility to the now dominant narrative depicting British colonial violence as official policy. This essay will not seek to further reinforce this particular historiographical contention; the question of British complicity in human rights abuses during Kenya's Emergency was settled rather conclusively during the Mau Mau court case. Rather, we will explore how and why Britain was able to successfully implement and justify this system of structural violence, and how it was able to evade legal responsibility and moral culpability for these abuses at the time.

This success was to a great extent underpinned by the ability of the British Colonial Administration (Colonial Administration) to construct dominant discourses on the necessity, legitimacy and extent of imperial violence throughout the Emergency, and to suppress alternative narratives that sought to uncover and challenge these practices. At the outset of the Emergency, the Colonial Office actively manipulated colonial law – already exclusionary towards the native African population – in order to attain imperial control over the colony, and to subsequently legitimise and rationalise the implementation of policies that would typically have been perceived as illegal or morally abhorrent. As the Emergency wore on, tales of violence in detention camps and villages became more widely known in Kenya and internationally, prompting a variety of both state and non-state actors to demand a halt to abusive detention practices. The British administration effectively manoeuvred around or suppressed these demands for greater transparency by seeking to actively renegotiate legal legitimacy, by interfering directly with the legal process in Kenya, by suppressing the propagation of damaging information, and by perpetuating narratives of both African cultural inferiority and British good governance. These narratives served as the foundation for subsequent historiographical myths – most importantly, that Britain perennially abided by the principle of minimal force in its colonial dealings, and that violent acts were committed by 'bad apples' or 'dispositional individuals'¹⁰ – which have allowed Britain, until very recently, to avoid accountability and liability for colonial crimes. International civil society movements, embodied by the confluence of actors involved in the Mau Mau case, have only recently been able to successfully challenge and

9 Hague quoted in M Banton, 'Destroy? Migrate? Conceal? British Strategies for the Disposal of Sensitive Records of Colonial Administrations at Independence' *The Journal of Imperial and Commonwealth History* 324.

10 Anderson, 'British Abuse and torture' (n 6) 701. M Hughes, 'Introduction: British ways of counter-insurgency,' (2012) 23 *Small Wars & Insurgencies* 580.

dispel this narrative. This success, however, owes as much to the fact that the British executive gradually abandoned its commitment to the construction of a dominant narrative of legitimacy and innocence in regards to its colonial conduct, as it does to the strength of nascent revisionist discourse.

This discussion of the discursive technologies of governance employed by Britain throughout the Emergency has considerable relevance not only to the historiography of British decolonisation, but also to ongoing debates regarding the legal, normative and ideological tenets which underpin dominant discussions of international law and global governance. Britain's conduct in Kenya serves as a troubling reminder that the law – particularly international law, for which there is no central authority – can be abandoned, manipulated or reconstituted in order to construct identities, to exclude others, and to achieve political impunity.¹¹ Although this is not the central aim of this essay, such an analysis may lend credence to extant criticisms of the international human rights regime, cosmopolitan democracy or European conceptions of modernity which seek to problematise purportedly impartial and universal ideologies and legal concepts.¹² Britain's conduct throughout this period also casts doubt on the historical influence of, and motivations behind, international institutions and the global human rights regime as a whole. Although Britain was party to a series of international conventions which would have legally or morally prohibited its conduct in Kenya – specifically the International Labour Organization's 1930 Forced Labour Convention and the United Nations' 1948 Universal Declaration of Human Rights (UDHR) – these commitments were brusquely ignored throughout the duration of the Emergency. This lends credibility to revisionist appraisals of the human rights regime, such as that of Samuel Moyn, who asserts that, until the 1970s, human rights were a vague concept not initially intended to precipitate the emancipation of the Global South, but rather to continue to accommodate Western imperial and neo-colonial interests.¹³ Finally, the British Colonial Administration's successful manipulation of discourses on truth and legitimacy during and after the Emergency is of enduring relevance to all students and scholars of history. Archives and other

11 WAM Van der Linden, 'The acquisition of Africa: The Nature of Nineteenth-Century International Law.' (DPhil thesis, Tilburg University 2014). WAM.

12 See U Heuer and G Schirmer, 'Human Rights Imperialism' (1998) 49(10) *The Monthly Review* 5. D Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton University Press, 2000) (On "provincializing" European modernity); JA Scholte, 'Reinventing Global Democracy' (2014) 20(3) *European Journal of International Relations* 3 (On cosmopolitanism's inherent eurocentrism); and Uwe-Jens Heuer and Gregor Schirmer, "Human Rights Imperialism," *The Monthly Review* 49, 10 (March 1998): 5–16. (On the imperialism of human rights discourse).

13 S Moyn, *The Last Utopia: Human Rights in History* (Cambridge MA and London: The Belknap Press of Harvard University Press 2010).

repositories of documentary information – what Foucault calls ‘the system of discursivity’¹⁴ – shape the production of knowledge, and therefore determine what truths or histories it is possible to reconstruct and know. Thus, as Derrida has claimed, ‘archivization produces as much as it records the event.’¹⁵ When states, the longstanding arbiters of archives, actively seek to influence the production of archival knowledge to further parochial and geopolitical self-interests, the methodological tools and epistemological certainties of historians are eroded. This raises several key questions. If ‘objective truths’ cannot be reliably ascertained through empirical archival research, how may historians seek to compensate for this limitation? Furthermore, how can historians increasingly seek to challenge the discursive control states maintain on the production of historical truth, as have Anderson, Elkins and Bennett during the Mau Mau case?

2 Origins of the Kenyan Emergency: The Intersection of Race, Law and Violence

The Mau Mau Emergency officially began on October 20, 1952 when the Governor of Kenya, Sir Evelyn Baring, successfully petitioned British Colonial Secretary Oliver Lyttleton to announce a State of Emergency throughout the colony, in response to an emergent threat posed by a violent Kikuyu organization known as Mau Mau.¹⁶ Although the movement’s origins and significance remain historiographically contested, Mau Mau is generally said to have

14 M Foucault, *Archaeology of Knowledge* (AMS Smith (tr), London and New York: Routledge, 1969).

15 Derrida quoted in M Manoff, ‘Theories of the Archive from Across the Disciplines,’ *Libraries and the Academy* 12.

16 Witness Statement of Caroline Macy Elkins, *Ndiku Mutua and 4 Others and the Foreign and Commonwealth Office*, Case No. HQ09X02666 (London, Royal Courts of Justice, 20 February 2011), 5, 15. Much of the empirical historical evidence throughout this paper has been drawn from the 9 total witness statements made by Elkins, Anderson and Bennett throughout the Mau Mau case. Outside of TNA in Kew, London, these statements offer perhaps the most comprehensive means of accessing the material contained within the migrated archive. Under the strictures of the High Court’s juridical protocols, the three historians were disallowed from providing their own scholarly opinions throughout these statements, and as such they represent a largely impartial overview of the documentary material most relevant to the case (facts, dates, names and correspondence). When citing information drawn from these statements, I have avoided citing the original document and file numbers from which the authors have taken their information; rather, I simply cite the specific court documents and page numbers. All of these documents are available and easily accessible on Leigh Day’s website at: <https://www.leighday.co.uk/>

emerged in response to failed expectations for political self-determination following the Second World War, and the continued worsening of living conditions and poverty amongst the Kikuyu ethnic group resulting from the exploitive and racially discriminatory policies of the white settler dominated Kenyan Colonial Government.¹⁷

Aided by state subsidies and preferential land legislation, white settlers had increasingly displaced Kikuyu farmers from the most fertile regions of Kenya's Central Province since Britain's acquisition of the colony in the late 19th century. In conjunction with the increasing mechanisation and productivity of settler agriculture, this effectively forced a majority of Kikuyu to commit themselves to either urban poverty or to the exploitive system of squatterdom¹⁸ on settler farms. This agricultural crisis coincided with a politico-cultural crisis within the Kikuyu community, engendered by Britain's policy of indirect rule.

Kikuyu polities had traditionally been governed by a decentralised coalition of elders whose leadership was conditional and subject to generational transfer after roughly 25 years. Colonial rule rigidified this political structure as the British appointed 'waged chiefs-for-life' who wielded significant economic and political influence, yet were widely viewed as illegitimate amongst the Kikuyu.¹⁹ Mau Mau was the product of this economic deprivation and political disaffection amongst the Kikuyu, who pledged to reclaim both their stolen land and a pre-colonial communal identity and affinity through a series of oathing ceremonies.²⁰ There existed seven total oaths that needed to be taken before one could be considered a full-fledged Mau Mau supporter, and thus willing to take up arms against British settlers,

International-and-group-claims/Kenya/The-Mau-Mau-claims/Historical-background-to-the-Mau-Mau-claims.

- 17 A Duffy, 'Legacies of British Colonial Violence: Viewing Kenyan Detention Camps through the Hanslope Disclosure' (2015) 33 *Law and History Review* 489.
- 18 Originally, the term squatter as used in this context was applicable to the Southern African region of mainly British agricultural settlements such as the Rhodesia and Natal. Generically, the term was applicable to British Southern, Central and Eastern Africa. It referred to an arrangement between Africans in these mentioned areas and white farmers where Africans were permitted to live on lands of white farmers and at the same time use a small portion of the land for subsistence farming. In return for this, the Africans worked the lands of their white owners. In Kenya, the term was used to describe the Kikuyu. Squatter was therefore applicable to Kikuyus living and providing labour to their white land owners for about a third of the year and in return they cultivated a plot of land, graze their cattle and raise their children. (Fitzhenry 1979; Elkins 2005).
- 19 W Speitkamp, "Forgive and forget"? The Mau Mau Uprising in Kenyan collective memory' in D Geppert and FL Müller (eds), *Sites of Imperial Memory: Commemorating Colonial Rule in the Nineteenth and Twentieth Centuries* (Manchester University Press 2015) 209–10.
- 20 *ibid.*, 211.

loyalist chiefs²¹ and all those who supported either. While few Kikuyu had demonstrated this level of allegiance to the nascent movement, by 1950 the Colonial Government estimated that roughly 90% of the 1.5 million Kikuyu population had taken at least the first oath.²²

Unsettled by the implications of Mau Mau, the Colonial Government banned the movement in the summer of 1950; however, attacks on settler property and livestock, and on Kenyan loyalists continued. Baring and Lyttleton declared the Emergency two years later when Waruhiu wa Kungu, paramount Chief of Kikuyuland, was assassinated by a group of Mau Mau gunmen.²³ The colonial Kenyan legal system promoted a form of 'dual law' wherein native customary law operated alongside English common law; this system devolved sovereignty on legal issues to native courts and customary law except in instances when European interests were at stake.²⁴ The Emergency regulations invoked this exception by further concentrating the political control of the colonial executive – existing mainly in the personage of the Governor – allowing Baring sweeping powers of arrest and detention without trial through the issuance of Governor's Detention Orders (GDO) and Delegated Detention Orders (DDO).²⁵ Although the Emergency did not technically supplant Kenyan law for Martial Law, these ordinances empowered Baring and his Provincial and District Commissioners to arrest whomever they saw fit, as detention orders could be issued based on the accusation of a British official or African loyalist alone.²⁶

This initial reconfiguration of Colonial law served as the foundation for the Colonial and British administrations' civil security and counterinsurgency

21 Loyalist in general referred to individuals, mostly indigenes in African colonies who acted in service of the colonial administration and in pursuit of their narrowly defined interest. Within the context of the Mau Mau Uprising, loyalist chiefs were British installed Kikuyu chiefs, who provided uncompromised loyalty to the colonial administration as their very existence depended on the colonial office. In Kikuyu districts and certainly in the eyes of the Mau Mau, these chiefs were an entrenched part of the exploitative colonial system and a parasitic leech that ought to be crushed. This is exemplified by the gruesome murder of Senior Chief Waruhiu who was considered a loyalist by the Mau Mau in 1952 (Branch 2007; Elkins 2005). Boahene (1987) referred to such loyalist also as collaborators. In British East, West and Central Africa, the institution of chieftaincy was viewed with suspicion by the nationalist intelligentsia. While this was the case in Kenya, Rathbone (2005) also chronologizes the tension that brewed between President Nkrumah, for instance and chiefs in Ghana.

22 *Muttua*. Witness Statement of Elkins February 2011 (n 16), 6–7.

23 DM Anderson, *Histories of the Hanged: The Dirty War in Kenya and the End of Empire* (New York and London: W.W. Norton & Company 2005) 55–57.

24 Duffy, 'Legacies of British Colonial Violence,' (n 17) 500.

25 (n 16), 8.

26 *Muttua and 4 Others v The Foreign and Commonwealth Office*, [2011] EWHC 1913 (QB) (Witness Statement of David Anderson, 21 December 2010).

policies throughout the Emergency, and would serve to justify the pervasive use of extrajudicial detention and violence against suspected Mau Mau adherents. In October of 1952, Operation Jack Scott was initiated on the Governor's orders, leading to the arrest and detention of 181 Kikuyu suspects, including the politically moderate Jomo Kenyatta.²⁷ In March 1953, the Colonial Administration began construction on a series of detention camps wherein suspected Mau Mau supporters would be detained and 'rehabilitated' throughout the remainder of the Emergency.²⁸ That same month, Mau Mau rebels launched a raid on a police station in Naivasha in search of armaments, and 120 Kikuyu – mainly women and children – were massacred by Mau Mau forces in the prosperous Christian community of Lari.²⁹

These two incidents prompted a drastic reorientation of the Colonial political and security command structure: General George Erskine was seconded to Kenya, appointed as Commander-in-Chief and given full responsibility for the restoration of law and order within the colony. The dispatch of Erskine to Kenya bifurcated Baring's previously unchallenged authority and relegated the Colonial executive to an advisory role; the British Government – by way of Erskine, who reported directly to the War Council in London – had assumed full control over the Emergency.³⁰ This command change prompted an escalation of existing policies of arrest and detention. Fearing that the Kikuyu civilian population was supporting the Mau Mau forest fighters and operating as a fifth column against the British administration, the War Council ordered the implementation of a 'villagisation' program throughout the colony. By the end of 1955, 1,050,899 Kikuyu – mainly women, children and the elderly – were forcibly relocated into 804 make-shift villages out of which some were enclosed by barbed wire, spiked dry-moats, and around-the-clock military guard.³¹ Following the launch of Operation Anvil in April 1954 – which led to the arrest of nearly 17,000 suspected Mau Mau within

27 Both Angelo (2020) and Elkins (2005) agree that Kenyatta was relatively conservative and an upwardly mobile personality who sought to capitalise on the opportunities made available by the new colonial system. On several occasions he never hesitated to denounce his support for the Mau Mau movement and more particularly its central committee and given the opportunities as demonstrated in speeches he distanced himself from Mau Mau.

28 (n 16), 16–18.

29 Anderson, *Histories of the Hanged* (n 23) 126–129.

30 *Mutua and 4 Others v The Foreign and Commonwealth Office*, [2011] EWHC 1913 (QB) (Witness Statement of Huw Charles Bennett 18 February 2010) 4–6.

31 (n 16), 18–19; see also MPK Sorrenson, *Land reform in the Kikuyu Country: A study in Government Policy* (Oxford University Press 1967), 110, 18–19. (Further clarity is given this point when Sorrenson (1976) remarked that among the 800 villages, some were considered 'loyal' villages and as such were administered differently, albeit such villages could still suffer abuses).

Nairobi and the surrounding area – Erskine’s war of counterinsurgency against the Mau Mau forest fighters had effectively concluded.³² Despite the elimination of Mau Mau as a legitimate military threat by 1954, the Emergency and its sprawl of extrajudicial detention camps and guarded villages remained in effect for another six years.

The recent contributions of Elkins, Anderson and Bennett to the historiography of the Mau Mau Emergency have demonstrated that violence within these camps and villages was the principal object of British and Colonial policy, rather than a consequence or symptom of it. Why this violence was the goal of high-level policy, and the means by which it was legitimised and implemented, is somewhat murkier. According to Anderson, Mau Mau was as much a civil war within the Kikuyu population as it was an anti-colonial liberation movement, a fact which is made plainly evident by the massacre at Lari and the extraordinarily high death-rates of loyalist chiefs and policemen during the initial years of the Emergency.³³ Although there were a few highly publicised Mau Mau attacks on Kenya’s white settler population, only about 100 Europeans (military personal, government officials and civilians) were killed in total throughout the war, in contrast to over 1,800 loyalists. These numbers pale in comparison to the reported 11,000 Mau Mau killed by British and loyalist forces throughout the conflict – this figure was self-reported by the Colonial Administration, suggesting that the death-toll was, in reality, likely considerably higher.³⁴

Poorly trained, possessing minimal access to military equipment and materiel and hopelessly outgunned, the Mau Mau insurgency likely never posed a legitimate, objective existential threat to the Kenyan Administration or British rule over the colony. Moreover, Mau Mau demands for representation and redistribution could have been managed politically, rather than through repressive force. However, these demands for African self-determination were constructed and construed to represent a threat, not only to British rule in Kenya, but to modernity itself – one which would help justify

32 *Mutua and 4 Others v The Foreign and Commonwealth Office*, [2011] EWHC 1913 (QB) (Witness Statement of Huw Charles Bennett, 25 May 2012). 12–13, 16–17.

33 Anderson *Histories of the Hanged* (n 23) 126–9 (Although this is commonly held within the historiography, Anderson declares Lari the turning point which demonstrated that Mau Mau was, in fact, a civil war amongst the Kikuyu, engendered by the preferential access to land, resources and political opportunity occasioned by British divide and rule colonial policy rule colonial policy): – J Lonsdale, ‘Mau Maus of the Mind: Making Mau Mau and Remaking Kenya’ (1990) 31 *The Journal of African History* 397. John Lonsdale notes that the death rate amongst loyalist police and chiefs was roughly 10% during the first year of the war alone.

34 C Elkins, *Imperial Reckoning: The Untold Story of Britain’s Gulag in Kenya* (Henry Holt and Company (2005)).

the implementation of a detention system built upon the infliction of dehumanising violence.

Despite a national commitment to the egalitarian principles enshrined within the UDHR, Britain's colonial order 'rested on a mental construction of social separations' which was informed by racialised narratives of European modernity and superiority.³⁵ Indigenous minorities were expected to complacently internalise these narratives, and to gradually self-assimilate, assuming their proper position upon the lower ranks of the imperial social hierarchy. Mau Mau's active rejection of a modern European identity shattered this illusion and fundamentally unsettled the discursive reality of British colonial governance and its claims to represent linear social progress.³⁶ The politico-economic, social and cultural complexities which undergirded the Mau Mau movement went largely unappreciated by the British and Colonial political class and settler population. An appreciation of African demands for self-determination and economic opportunity would require the British to further deviate from the narrative of racial superiority and beneficent British rule. In this sense then, although the Mau Mau rebels did not themselves pose an existential military threat to the colonial state, their challenge to the discursive rule of British Empire did pose a significant threat to British colonialism.

In response to this challenge, the colonial government actively sought to construct Mau Mau as evidence of a pervasive pathopsychological sickness amongst the Kikuyu population – an affliction of collective atavistic insanity which entailed a rejection of both modernity and humanity itself.³⁷ This took the shape of a concerted propaganda campaign on the part of both the Colonial Office and the Colonial Administration. The 'Horror of Mau Mau' was conveyed and accentuated through the distribution of official handouts, leaflets and photographs depicting Mau Mau atrocities.³⁸ These visual materials were supplemented by radio broadcasts and public speeches made by Lyttleton and Baring, while the Kenya Government Press Office actively shaped the British press' interpretation of Mau Mau terrorism.³⁹ The aim of this propaganda campaign was to dehumanise the Mau Mau, and to present them as a threat necessitating elimination, pacification or a combination of both.⁴⁰

British and Kenyan liberals largely believed that Mau Mau evidenced a transitional crisis of identity amongst the African population – 'on its psychic

35 Lonsdale, 'Mau Maus of the Mind: Making Mau Mau and Remaking Kenya,' (n 33).

36 *ibid.*, 404.

37 Duffy, 'Legacies of British Colonial Violence,' (n 17) 492.

38 Elkins, *Imperial Reckoning* (n 34); see also H Bennett, *Fighting the Mau Mau: The British army and counter-insurgency in the Kenya emergency* (Cambridge University Press 2013).

39 Duffy, 'Legacies of British Colonial Violence,' (n 17).

40 Elkins, *Imperial Reckoning* (n 34) 49.

frontier between tradition and modernity' – an affliction which could be rehabilitated through the reconstruction of Kikuyu individuals into suitable colonial subjects.⁴¹ Conservatives took a grimmer view, believing that the only means of combatting 'black savagery' was through commensurate brutality; the 'liberal imperial promises which had aroused primitive envy' would be retracted, and Mau Mau supporters would be purged or punished for their attempts to uproot the colonial realities of race.⁴²

As we shall see, the Emergency detention system evinced a syncretic blend of both of these schools of thought. Both rehabilitation and elimination of the Mau Mau disease necessitated, in the minds of the British and Kenyan Administrations, the use of extraordinary measures. In the words of Hannah Arendt, by constructing Mau Mau as an existential threat to civilised modernity, one lacking all humanity, 'African officials declared that "no ethical considerations such as the rights of man will be allowed to stand in the way" of white rule.'⁴³ Having effectively dehumanised the Mau Mau enemy, the British and Colonial governments had little difficulty – initially – in 'abolish[ing] the fences of laws between men' in Kenya.⁴⁴ If violent rehabilitation was to be the principal goal of Emergency detention, it necessitated legal as well as discursive justification and legitimisation.

To construct appropriately amenable colonial subjects out of the anarchic primitivism of the Mau Mau movement, the Kikuyu population first needed to be excluded from conventional protections of legality and morality, before they could, eventually, be reintegrated into British colonial civilisation. This exclusionary system was to be achieved throughout the Emergency by way of the detention camps and guarded villages which constituted an apparatus of total domination and subjugation, zones in which the Kikuyu's Mau Mau fever could be forcibly broken and prevented from contaminating the general population.⁴⁵

No meaningful distinction was made between combatants and civilians. The entire Kikuyu population was assumed to represent potential Mau Mau insurgents or supporters, which resulted in the detention of nearly the entire population during the course of the Emergency. Of a total population of 1.5 million, Elkins estimates that, in addition to the 1 million women and

41 Lonsdale, 'Mau Maus of the Mind: Making Mau Mau and Remaking Kenya,' (n 33), 405.

42 *ibid*, 404.

43 H Arendt, *The Origins of Totalitarianism* (San Diego: Harcourt Brace & Company 1973) 221.

44 *ibid*, 466.

45 B Grob-Fitzgibbon, 'Further Thoughts on the Imperial Endgame and Britain's Dirty Wars' (2012) 40 *The Journal of Imperial and Commonwealth History* 503, 507.

children detained in the village reserves, perhaps upwards of 320,000 Kikuyu passed through the detention system over the course of the war.⁴⁶

The initial Emergency ordinances provided a veneer of legality for this monumental civilian detention program; however, in order to effectively purge the Mau Mau sickness, measures of extreme ‘rehabilitation’ and violent social engineering were seen as additional necessities.⁴⁷ The system of detention camps – known as the ‘Pipeline’ – would eventually comprise roughly 100 facilities divided into holding camps, work camps, special detention camps, chief camps and women and juvenile camps.⁴⁸ The objective of the Pipeline was to determine the severity of a detainee’s adherence to Mau Mau through an initial screening process wherein suspects were interrogated, almost invariably through the application of severe beatings and torture (mostly for ‘hard core’ detainees), forced to confess to their level of oathing, and assigned a colour classification denoting their threat level.⁴⁹

Little effort was expended to conceal the classification system’s blatant racial undertones, as the most ardent Mau Mau supporters were classified ‘black’, those deemed slightly less recalcitrant were labelled ‘grey’, and the most cooperative were screened as ‘white’. Detainees were channelled through the Pipeline – from the most severe Special Detention Camps to the least restrictive Chief Camps – until they had been sufficiently ‘made white’ through rehabilitation. Screening and interrogation procedures were initially rather loosely coordinated. The vast majority of interrogations took place outside the confines of the officially designated screening centres, detention periods frequently surpassed official legal stipulations, and the behaviour of the screening teams was thus largely unchecked by executive regulation.⁵⁰

Due to this initially hands-off regulatory approach on the part of the government, the pervasive employment of torture and abuse within these camps emerged somewhat organically from 1952 to 1956. Infused with notions of Mau Mau maleficence, and empowered by the permissive legal structure afforded by the Emergency ordinances, individuals including Terence Gavaghan and John Cowan systematised and ‘perfected’ methodologies of violence intended to break detainees, and force them through the Pipeline. John Cowan acted as the senior Prisons Officer at the Gathigiriri

46 C Elkins, ‘Alchemy of Evidence: Mau Mau, the British Empire, and the High Court of Justice’ (2012) 39 *The Journal of Imperial and Commonwealth History* 731, 37.

47 (n 16) 6–7.

48 (n 16) 17–23.

49 (n 16) 18.

50 *Mutua and 4 Others v The Foreign and Commonwealth Office*, [2011] EWHC 1913 (QB) (Witness Statement of Caroline Macy Elkins, 1 April 2011) 6; Anderson, ‘British Abuse and Torture’ (n 6) 702–703.

detention camp. Here, in 1956 he developed a screening procedure which became known as the 'Dilution Technique', which involved isolating small numbers of recalcitrant detainees from the broader prison population, and 'systematically using force, together with confessed detainees, to exact compliance and cooperation.'⁵¹ The dilution technique was further enhanced and systematised under the independent leadership of Terence Gavaghan in the five detention camps located in the Mwea plains. The dilution technique was yet further enhanced by Cowan and implemented as the 'Cowan Plan' at the Special Detention Camp in Hola; here noncompliant detainees were separated from the prison population and forced to labour on the Hola irrigation scheme. The dilution technique and its corollaries led to numerous fatalities amongst the detained Kikuyu, including most famously at Hola Camp where, in March 1959, 11 detainees who had refused to labour under the Cowan Plan were beaten to death by prison guards.⁵² In the Manyani Special Detention Camp it is now estimated that roughly three inmates died per day during the year of 1953–1954 as a result of the dilution technique and the abusive screening procedure.⁵³

Between 1952 and 1956 these practices of violence and torture were developed independently by a variety of Camp officials including Cowan and Gavaghan, filling what Anderson has dubbed a 'functional and normative' role within the broader parameters of detention, interrogation and counterinsurgency.⁵⁴ Although this violence initially emerged without official governmental sanction, Governor Baring, General Erskine and London's Colonial Office were all aware of the various iterations of the dilution technique, as well as the fact that they were the cause of innumerable detainee deaths.⁵⁵ Although the executive tacitly endorsed these practices until 1956, it was also acutely aware of the fact that they contravened a variety of international agreements – most importantly the International Labour Organisation's ban on forced labour and the UDHR's prohibition against torture – and violated the already lax legal protections for Kenyan civilians embodied in the Emergency Laws.⁵⁶

Rather than attempting to corral the flagrant and pervasive use of extrajudicial force and coercion throughout the detention Pipeline, this realisation prompted British and Kenyan colonial officials to debate the 'legal limits of

51 *Mutua and 4 Others v The Foreign and Commonwealth Office*, [2011] EWHC 1913 (QB) 17–20 (Information on detention and dilution procedures).

52 *ibid*, 18.

53 'Legacies of British Colonial Violence,' (n 17) 522.

54 Anderson, 'British abuse and torture' (n 6) 702.

55 *Mutua and 4 Others v The Foreign and Commonwealth Office*, [2011] EWHC 1913 (QB) (Witness Statement of David Anderson 18 June 2012) 42.

56 (n 16) 59.

coercive force', and to retroactively amend Emergency legislation in an attempt to legitimise illegal practices which had gradually suffused the colony's civil security apparatus.⁵⁷ Disobedience, for example, was retroactively reconceptualised as 'a major offense, punishable by corporal punishment,' thereby justifying fatal beatings throughout the camps.⁵⁸ The most blatant example of the executive's attempts to shape prevailing discourses on legal legitimacy occurred on January 19, 1955 when the Colonial Administration and the Colonial Office declared a General Amnesty, which was issued under the pretense of presenting Mau Mau rebels with more favourable conditions for surrender.⁵⁹

In reality, the upper echelons of the British and colonial administrations intended for the amnesty to serve as a means of absolving colonial officials of any legal liability for the acts of torture and abuse so many of them had routinely committed – public knowledge of which would, in Erskine's words, prove 'shattering'.⁶⁰ The documents contained within the migrated archive demonstrate these legal machinations clearly. In a letter sent to the Kenyan Attorney General Eric Griffith-Jones by Provincial Commissioner Carruthers 'Monkey' Johnston the following year in 1956, Johnston urged the Attorney General to use the amnesty as a pretext for refusing 'to institute any enquiry into allegations of malpractice.'⁶¹ Griffith-Jones responded to Johnston noting specifically that the Emergency regulations then in effect – which had been significantly broadened since 1952 – were in breach of Britain's international commitment to the Forced Labour Convention; 'if, therefore, we are going to sin,' the Attorney General concluded, 'we must sin quietly.'⁶²

Although the Kenyan Colonial and British executives actively attempted to redefine legal discourses on the legitimate use of punitive and compelling force prior to 1956, these efforts continued apace from 1957 onward, after the Colonial Administration and Colonial Office embraced the multiple versions of the dilution technique as official policy, and subsequently exported them to the remaining detention facilities (particularly where 'hard core detainees' were being held) throughout Kenya.⁶³ From this point forward, the British and Kenyan executives were staunchly committed not only to the endorsement of

57 *Mutua and 4 Others v The Foreign and Commonwealth Office*, [2011] EWHC 1913 (QB) (Witness Statement of David Anderson, 1 April 2011) 6.

58 DuffyDuffy, 'Legacies of British Colonial Violence,' (n 17), 523.

59 Mutua, Anderson Witness Statement June 2012 (n 55) 15. See also DM Anderson, 'Making the Loyalist Bargain: Surrender, Amnesty and Impunity in Kenya's Decolonisation, 1952–63' (2017) 39 *The International History Review* 48.

60 Mutua, Anderson Witness Statement June 2012 (n 55) 15.

61 Mutua, Anderson Witness Statement April 2011 (n 57) 7.

62 Mutua, Anderson Witness Statement December 2010 (n 26) 8.

63 *Mutua and 4 Others v The Foreign and Commonwealth Office*, [2011] EWHC 1913 (QB) (Witness Statement of Caroline Macy Elkins 25 May 2012).

a system fundamentally based upon the infliction of human rights abuses, but also to its defense – a position which committed them to the perpetuation of a discourse which continually attempted to normalise and legalise torture and murder.

As we have seen, torture, punitive violence and forced labour were endemic within the detention facilities established during Kenya's Emergency. This system evolved organically as a product of dominant settler and British discourses on racial hierarchy which, emboldened and entrenched through official state propaganda, successfully depicted the Mau Mau – and by proxy the entire Kikuyu population – as a threat to civilisation itself. In order to rehabilitate Mau Mau adherents, and to reconstruct them as productive, malleable colonial subjects, it was first necessary to cast them outside the traditional protective bounds of morality and legality. Only in this legal limbo could they be subjected to the violence believed necessary to free them from the psychic restraints of barbarity and primitivism. This process was aided at first tacitly, and eventually overtly, by the Kenyan and British executive, who capriciously reinterpreted the law in order to legitimate acts of violence which had become normalised within that discursively defined social structure, but which they recognised were indefensible under international law and normative morality.

3 **Perfidious Albion: Constructing Truth and Suppressing Alternative Discourses**

Although this redefinition of legal and moral legitimacy went relatively unchallenged during the first years of the Emergency, this did not long remain the case. Much like the more recent international civil society movement which has forced the UK government to settle out of court in the *Ndiku Mutua and Others* case, there were several moments during the Emergency itself when a diverse cast of actors attempted to promote justice in Kenya. A variety of individuals and non-state organisations emanating from within and outside colonial Kenya attempted to cast a light onto, and bring an end to, the officially sanctioned atrocities that were being committed within the camps and villages that comprised the Pipeline archipelago.

These movements are of critical importance from a historical and historiographical standpoint, in that they demonstrate that while torture and human rights abuses became normalised and routinised within the dominant socio-political structures in Kenya, colonial and imperial violence in Kenya and elsewhere was not a monolithic, uncontested process. Quite the contrary, there existed numerous dissenting voices who actively decried, and sought

to challenge this system. These actors were largely unsuccessful in doing so due to an admixture of historically contingent factors and forces. Perhaps most critically, the actors who comprised the Colonial Administration and the Colonial Office were continually able to dominate the 'system of discursivity' and thus the discourses which could be presented and deemed legitimate within the context of the actions of the state. By controlling the outflow of information regarding the abuses being committed within Kenya's detention camps, by continually manipulating the colony's legislative and juridical processes, and by reinforcing contemporaneously dominant discourses on racial hierarchy, the executive was able to shape how its actions were, and could be, interpreted, thereby allowing it to suppress dissenting narratives.

In February 1956, around the time when the dilution technique and Cowan Plan became incorporated into official state policy, 'Monkey' Johnston wrote to Griffith-Jones, nervously predicting that:

It would now appear that each and every one of us, from the Governor downwards, may be in danger of removal from public service by a commission of enquiry as a result of enquiries made by the C.I.D. [Criminal Investigation Department] in respect of incidents which occurred prior to 18 January 1955 [the date of the amnesty announcement].⁶⁴

Johnston's concern demonstrates an acute awareness within the Colonial Administration and Office that, despite their normalization within the camps and their retroactive legalization, the recently adopted and sanctioned screening, interrogation and detention practices could likely not withstand external scrutiny.

As such, even prior to 1956, the withholding and suppression of information regarding the true nature of Kenya's Pipeline assumed a policy position of the highest importance, accompanying the perpetuation of the violence itself. This first took the form of suppressing a number of internal dissenters to Kenya's structural violence – predominantly liberal progressives who refused to fully ingest the narratives of racial superiority and Mau Mau inhumanity which enabled the system's self-perpetuation. In 1954 a European settler-farmer named Jack Hopcraft complained to his District and Provincial Commissioners that two of his Kikuyu farmhands had been so severely beaten during screening at Nakuru camp that they were unable to stand.⁶⁵ Unsatisfied with the subsequent official apathy regarding his concerns, Hopcraft issued a formal written complaint to the Attorney General, in which he included

64 *Mutua*, Anderson Witness Statement April 2011 (n 57) 7.

65 *Mutua*, Anderson Witness Statement June 2012 (n 55) 17.

the written testimony of all of his employees who had been subjected to violence during screening, as well as confessions from several European officers who admitted to participating in the abuse.⁶⁶ These complaints passed over the desk of the Complaints Co-Ordinating Committee – an administrative organization purportedly intended to address misconduct within the camps and whose briefings were widely circulated to all senior Colonial Office and Colonial Administration officials – and were summarily dismissed.⁶⁷ Hopcraft was subsequently subjected to a concerted smear-campaign on the part of the Colonial Administration which sought to ‘undermine his character and reputation and so diminish the significance of his claims.’⁶⁸

Although Johnston’s above comment signified official apprehension regarding the ability of the Criminal Investigation Department to impede the systematic implementation of violent measures throughout the detention centers, repeated executive interference in the legal process effectively hamstrung the CID. Colonel Arthur Young, Kenya’s Commissioner of Police, tendered his resignation in December 1954 after the Colonial Administration had repeatedly obstructed his attempts to bring cases of extraordinary abuse and murder within the camps to court. Determined to curb indiscipline within police ranks and detention camp staff, Young had cooperated with Assistant Police Commissioner and head of the CID, DG MacPherson in laying the groundwork for 16 cases of ‘torture, ill-treatment and murder by government forces’ in Camp Ruthagathi.⁶⁹ Intent on preventing the conviction of government staff, Baring and his representatives interfered with Young and MacPherson’s inquiries through a variety of methods including: ‘the production of false reports, testimonies and evidence by Chiefs and Home Guards, as well as the deliberate falsification of evidence by European Colonial Administrators.’⁷⁰ Executive meddling in the proceedings of the Ruthagathi case prompted a beleaguered Young to quit his post, whereupon he attempted to have his letter of resignation made public to the media or Parliament in order to mobilise support for an independent investigation into the conduct of colonial security forces – an attempt which was blocked by Baring and Alan Lennox-Boyd, Lyttleton’s successor to the post of Colonial Secretary.⁷¹

Thomas Askwith, the Commissioner for the Department of Community Development, shared a similar fate to Young in 1957. Concerned by the lack

66 *ibid*, 17–20.

67 *ibid*, 4.

68 Anderson, ‘British Abuse and Torture,’ (n 6) 705.

69 *Mutua*, Anderson Witness Statement June 2012 (n 55) 9–11.

70 *Mutua*, Anderson Witness Statement June 2012 (n 55) 11.

71 *ibid*; (n 50), 23.

of standardised screening procedures throughout the Pipeline, and shocked by the harshness of the conditions within the camps, Askwith circulated multiple memoranda to numerous ministries conveying an urgent need to regulate and restrict the conduct of camp officials.⁷² Askwith was horrified by: ‘the use of deprivation – food denial with starvation for up to three days, sleep deprivation through water been [sic] thrown over detainees to wake them – and regular brutal beatings “on a variety of pretexts” which he had witnessed in the Mwea camps.’⁷³ Askwith’s calls for heightened regulation and official investigations into the camps were suppressed and, for his efforts, he was ‘quietly marginalised by the Kenyan administration.’⁷⁴

Despite the best efforts of Baring and Lyttleton to prevent cases of torture and murder within the camps from reaching the Colonial judicial system, some of these instances of abuse did filter into Kenya’s Assize Courts. In reference to atrocities committed against Kikuyu detainees at the notoriously brutal Ruthagathi Home Guard Post,⁷⁵ Acting Justice Cram issued a particularly damning judgment regarding the emergent character of the detention system in 1954 – a judgment which Baring tried unsuccessfully to suppress.⁷⁶ The severity of Cram’s criticisms, and the level of uncertainty and shock it conveyed regarding what occurred behind the barbed wire enclosures of the detention camps, highlights the executive’s success in obfuscating the true nature of the Pipeline. After comparing the Ruthagathi guards to the Gestapo, Cram stated:

Looking at the evidence in this case that there exists a system of guard posts manned by headmen and chiefs and these are interrogation centres and prisons to which the Queen’s subjects whether innocent or guilty are led by armed men without warrant and detained and as it seems tortured until they confess to the alleged crimes and are then led forth to trial on the sole evidence of those confessions, it is time that this Court declared that any such system is constitutionally illegal and should come to an end and these dens emptied of their victims and those chiefs and headmen exercising arbitrary power checked and warned.⁷⁷

72 *Mutua*, Elkins Witness Statement April 2011 (n 50) 12.

73 *Mutua*, Anderson Witness Statement April 2011 (n 57).

74 Duffy, ‘Legacies of British Colonial Violence,’ (n 17) 517–518.

75 DM Anderson, ‘Surrogates of the State: Collaboration and Atrocity in Kenya’s Mau Mau War’ in G Kassimeris (ed), *The Barbarisation of Warfare* (London 2006) 162, 178–81.

76 *Mutua*, Anderson Witness Statement April 2011 (n 57) 19.

77 *ibid*, 18.

Cram's denunciation of the Pipeline's systemic and systematic use of torture and murder catalysed an official internal investigation – dubbed the Holmes Enquiry after its presiding judge – into the Kenyan detention system. The report's publication was, however, jointly blocked by Baring and Lyttleton.⁷⁸

Although the Colonial Administration and Colonial Office endeavoured tirelessly, and with much success, to conceal the true purpose of the Pipeline – to break and reconstruct the Kikuyu population through the application of seemingly unrelenting punitive violence – scattered reports of misconduct and abuse within the detention system had begun to arouse international suspicions that something was rotten in the heart of British Kenya. Understandably alarmed by the tales of governmental human rights abuses which had filtered through the colonial veil of secrecy – though entirely unaware of the Colonial and British executives' complicity in these acts – several British Members of Parliament called for independent investigations into the detention camps during the final years of the Emergency.

In 1958 Mau Mau's political intelligentsia, who were being detained indefinitely in isolation at the detention camp within the Lokitaung (in the semi-arid districting Turkana), managed to send a letter to *The Observer*, detailing the abuses and abhorrent living conditions they endured in their imprisonment.⁷⁹ In response, over 200 MPs signed a motion calling for Lyttleton to implement an independent investigation into the conditions and administrative practices at Lokitaung and throughout the detention system.⁸⁰ In the wake of the Hola massacre – where the Cowan plan for forced labour resulted in the deaths of 11 detainees and the hospitalization of dozens more – Barbara Castle and Enoch Powell lambasted Lennox-Boyd in the House of Commons and again demanded a transparent investigation into the structural conditions of the Pipeline.⁸¹

During these last years of the Emergency, a variety of media outlets and non-government organizations – including church organizations and the International Committee of the Red Cross – added their voices to these calls for independent inquiry in Kenya, and placed further scrutiny on Baring and the Colonial Secretary.⁸² Despite demands for transparency and justice in Kenya on the part of politicians, individuals and non-state organizations, the Colonial Office and Colonial Administration never conceded to an independent investigation into the detention Pipeline. The Colonial Secretary

78 *ibid.*, 19.

79 Elkins, *Imperial Reckoning*, (n 34) 195–97, 334.

80 *Mutua*, Witness Statement of Elkins February 2011 (n 16) 62.

81 *ibid.*, 54–55.

82 *Mutua*, Anderson Witness Statement June 2012 (n 55) 38–41.

repeatedly invoked the ‘bad apple’ or ‘dispositional individual’ defense in the House of Commons, denying that abuse was in any way widespread, and repeatedly insinuating that incidents of torture and murder – those that he could not outright deny – were invariably committed by undisciplined African loyalists rather than civilised and temperate European officials.⁸³ The British and Kenyan executive paid lip service to demands for tighter regulation within the camps by conducting a variety of internal investigations, however these inquiries were all conducted under immense political pressure and were never free from executive interference.⁸⁴

Despite the confluence of political, media and non-state pressure brought to bear on the Colonial Administration and Colonial Office, the systemic human rights abuses committed throughout the Kenyan Emergency were never fully exposed at the time, and those responsible for their endorsement were never held accountable. Despite significant external and internal dissent, the British and Colonial governments’ framing of these events was not successfully displaced until over 50 years later. The officially constructed narrative which sought to dehumanise Mau Mau adherents held considerable and enduring currency among European – and particularly British – audiences; a majority of the British public genuinely believed that ‘the very roots of civilisation [were] threatened by unspeakable terror’ manifested in the bloodthirsty atavism of the Mau Mau cult, which bears testament to the visceral symbolic power of a relatively few isolated cases of real violence against Europeans throughout the Emergency.⁸⁵ In the post-WWII colonial context wherein the dominant social discourse and epistemology remained largely informed by 19th century conceptions of Britain’s civilising role within an inflexible racial hierarchy, popular and official concern for the ‘human rights’ of an ethnic group still viewed to be unfit to partake in the fruits of modernity remained ambivalent at best.⁸⁶

4 Coda: Aftermath

British and Kenyan colonial policy had gradually endorsed and then systematically propagated a system of civilian detention in which brutal violence was seen as essential to the maintenance of colonial political and racial order. Torture, murder and routinised abuse became structurally diffuse and

83 *ibid.*, 42; *Mutua*, Anderson Witness Statement April 2011 (n 57) 23; Hughes, ‘British ways of Counter- Insurgency’ (n 10) 581.

84 *Mutua*, Anderson Witness Statement June 2012 (n 55), 14.

85 Elkins, *Imperial Reckoning*, (n 34) 308.

86 *ibid.*, 309.

normative in what was perceived as a legitimate means of pacifying and reconstructing the Kikuyu as suitable colonial subjects. This task necessarily required the Kikuyu to be expelled from the protective umbrella of legal rights and normative morality before they could be permitted to rejoin colonial society as citizens, or even humans. This expulsion was ironically achieved by way of the juridical structures intended to safeguard the state's population. By actively reinterpreting the law and its institutional expressions, the Colonial Administration and Colonial Office were able to justify unjustifiable acts by producing dehumanised individuals against whom no crime could be committed.⁸⁷

Recognizing that the full extent of these policies could only be deemed acceptable within the confines of Kenya's socio-culturally and historically contingent discursive framework, individual members of the executive took drastic steps to prevent the dissemination of knowledge regarding the Pipeline's true purpose and inner workings. This state's ability to dominate discourses on identity, the legality of violence, and – by virtue of its monopolisation of access to information – truth itself allowed it to evade non-state demands for transparency, and to subjugate the alternative narratives of individual actors seeking to question its legitimacy.

The Mau Mau Emergency detention system failed miserably to 'rehabilitate' Kenya's indigenous population. Rather, official policy of violence, denial, and suppression of information throughout the war shattered an already subjugated and divided indigenous population. As the Colonial Administration prepared to withdraw from Kenya in the lead-up to its independence in 1963, nearly 3.5 tonnes of government documents were earmarked for the incinerator, while 294 boxes containing 1,500 files were 'migrated' back to London.⁸⁸ By withdrawing or destroying the official record of the abuses that occurred against Kenya's population at the hands of the British Colonial government, historiographical myths of British restraint and good governance throughout its decolonization process – compared to France, Belgium or Portugal – were enabled, while the legacy of imperial violence in Kenya was allowed to fester unresolved like an open wound. Until the recent disclosure of the Hanslope files this has been impossible in Kenya. Mau Mau has endured as a fundamentally contested and divisive national trauma, viewed by some as a national

87 Duffy, 'Legacies of British Colonial Violence,' (n 17) 505. Giorgio Agamben refers to such unfortunate individuals as *homo sacer* ("the accursed man") in reference to the Roman mythological figure who could be killed without the killer being regarded as a murderer.

88 *Mutua*, Elkins Witness Statement May 2012 (n 63), 56; A Cary, 'The Migrated Archives: What Went Wrong and What Lessons Should We Draw?' (Foreign and Commonwealth Office, 24 February, 2011).

liberation movement, and by others as an opportunistic and murderous gang. Although the documents detailing the British Empire's role in constructing and mobilizing Mau Mau as a social phenomenon during the Emergency are now publicly available, the UK's settlement and admission of wrongdoing in the Mau Mau case will likely prove insufficient to mend the social and psychic scars of colonial violence in Kenya, which have themselves long since inflicted new, post-colonial wounds.

It must also be mentioned that, despite Hague's recently avowed commitment to transparency, Britain did not willingly relinquish its hold on the system of discursivity which first facilitated imperial violence, and subsequently perpetuated historical narratives of British colonial restraint and good governance. Kenya formally requested that its archival materials be returned by Britain in 1967, 1974 and again in the early 1980s, and each time the UK government dismissively refused.⁸⁹ International organisations including the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the International Council on Archives declared archives cultural property, and launched campaigns throughout the 1970s to petition post-imperial powers to return migrated archives to their former colonial holdings – these exhortations fell on deaf ears within the British FCO.⁹⁰

Gradually, this official culture of denial gave way to 'bureaucratic bungle,' as the migrated archives were genuinely lost track of by the administration, caught in a liminal zone between FCO and TNA responsibility and subsequently forgotten.⁹¹ Although Britain's intentional policy of discursive manipulation and informational concealment in regards to its colonial conduct had waned in the decades following independence, the discovery of these documents was not the result of a newfound commitment to accountability and transparency, but rather to the efforts of three historians who had become embroiled in what would prove to be one of the most influential class suits in recent memory.

The Mau Mau case, and all of the actors involved in seeing it to trial, exposed a cache of documents whose contents and history have fundamentally challenged longstanding historiographical orthodoxies, and have provided Kenyan victims of colonial human rights abuses an opportunity to achieve transitional justice. However, this court case has also exposed the challenges faced by

89 DM Anderson, 'Mau Mau in the High Court and the "Lost" British Empire Archives: Colonial Conspiracy or Bureaucratic Bungle?' (2011) 39 *The Journal of Imperial and Commonwealth History* 708.

90 Anderson, 'Guilty Secrets,' (n 7) 149.

91 Anderson, 'Colonial Conspiracy or Bureaucratic Bungle?' (n 89) 713.

non-state and individual actors who seek to counter dominant, state-sponsored discourses. When states or state actors are motivated to maintain control over systems of discursivity, they are able to shape the production of knowledge which informs political, social and legal imaginaries and institutional realities; which allowed the British and Kenyan Colonial administrations to effectively maneuver around and suppress the competing narratives of individuals, non-state actors, and internal dissidents throughout the Emergency. This raises pressing concerns for non-state policymakers and scholars alike. For policymakers, particularly those supporters of the increasing disarticulation of power away from states, this history raises questions regarding the means by which states can be held accountable when they monopolise the mechanisms of discursive production.

For historians, state mediation of archives – the quintessential system of discursivity and the longstanding fount of empirical historical research – problematises traditional methodological practices. If states actively manipulate the archive, through omission or destruction of documents, then historians are, at best, tasked with assembling fragmentary elements of broader historical ‘truths’ and, at worst, relegated to reinterpreting already selective (re)interpretations of history. As Caroline Elkins has cautioned, ‘We must consider interrogating the ways in which the production of the British colonial archive reflected the nature of the colonial state itself,’ which generated a class of colonial officials who ‘sought to create a particular kind of fiction that shaped and validated the colonial project in the past, present and future.’⁹² Although it is impossible to determine how commonplace archival manipulation of this kind is in reality, this possibility should at least encourage historians to peer outside the archive, and to supplement traditional research methods and sources with new or interdisciplinary approaches.

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92 C Elkins, ‘Looking Beyond Mau Mau: Archiving Violence in the Era of Decolonisation,’ (2015) 120. *The American Historical Review* 852.

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