

From "The Dual Mandate in British Tropical Africa."

- Sir F.D. Lugard.

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"Native Customary law (even Koranic law), speaking generally, regards offences as having been committed against the individual rather than against the community, and punishment therefore takes the form of vengeance and reprisal. An African despot regarded rebellion as a crime against himself, and he resorted to burying or burning alive, to successive mutilations till the victim expired, or to impalement. Witnesses and prisoners were tortured to extort evidence, or a confession of guilt. Imprisonment was rare, and could only be inflicted in a capital city possessing a dungeon. I have described in Chapter x. the dungeon at Kano.

The conception that the suppression of crime for the public benefit is the function of the State, and that it can be effected by punishments which are deterrent though humane, and by the reform of the criminal, while the individual aggrieved has his own remedy in a civil action for damages, is one which has to be instilled into the rulers and the courts. The punishments inflicted upon the African by his own rulers were sufficiently deterrent, but chiefs complain that wherever the white man comes crime increases, and they are not allowed to inflict punishments which will check it."

From "The Dual Mandate in British Tropical Africa."

Sir F.D. Lugard.

"In reviewing the findings of a native court a nice

discrimination is often required between unnecessary interference with native custom on the one hand, and the violation of natural justice on the other. Thus the payment of blood-money in expiation of certain cases of homicide may not be repugnant to natural justice, and when admissible under Moslem law it has been ruled that interference is not necessary, though the penalty does not accord with our views. But to demand it from relations or fellow-villagers, where no connivance has been shown, would not be in accord with justice. Lifelong imprisonment for debt would be equally inadmissible.

Some even of the devout Moslems who interpret the Koranic law are not immune from a lingering belief in the power of the "Evil Eye", and in their endeavours to give due regard to pagan custom are found to differ considerably in their treatment of witchcraft cases, whether it be the complaint of the person bewitched or the murder of a person supposed to be a wizard. The same difficulty is presented in a British court, and confronts the Governor in his exercise of the prerogative.

It may, for instance, be in evidence that the ordeal by poison was actuated by a profound belief that it would be harmless if the accused were innocent. The accuser may or may not have been actuated by malice, and those who administered the ordeal may have had no option but to do so when it was demanded, or the accuser may have killed the supposed witch in defence, as he believed, of his own life. Or twins may have been murdered, or even human sacrifice perpetrated to avert, as they believed, disaster from the village.

The degree of criminality is lessened by the superstitious terror which prompted the crime, but the necessity for stamping out such practices compels recourse to deterrent penalties, and since fear of death was the motive, no less penalty than death will be deterrent. It appears to me, therefore, that the only course that an administration can follow is to see that it is

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thoroughly understood in every village that participation in such deeds will involve the death penalty, while exercising the prerogative in any case in which any extenuating circumstances can be shown, and discriminating between wizards who exercise their supposed powers beneficently, or for gain or revenge.

As a general rule, offences against the person are appropriately dealt with by a native court, while offences against public order would be tried in a British court. Competent authorities assert that it is more in accord with native modes of thought that the latter class should be regarded as private wrongs, and that actions for damages should be encouraged rather than trials for criminal offences.

A British court would, of course, deal with all offences which are not such under native law, or are not made justiciable by a native court, by virtue of a by-law. Even if thus brought within the purview of a native court, offences which we regard as serious may to them appear venial, and in such a case they would preferably be dealt with by a provincial court."

From The Ila-speaking Peoples of Northern Rhodesia. by  
Edwin W. Smith & A. Murray Dale.

"And it is important to observe that changes in traditional customs, and the establishment of new customs, are due largely and probably mostly, not to the ruling chiefs, but to those who are the mouthpieces of the gods - the prophets. They are actually the law-givers, and of course do not base their demands upon anything they are in themselves, but upon the authority of the god. We do not lose sight of the fact that a prophet may be prompted by a chief, who uses his alleged supernatural gift when his own power fails. It must not be thought, however, that every word uttered by a prophet proves acceptable; his decrees may hold for a time and then be neglected, or they may never be accepted at all: it depends largely upon the status of the seer, and attendant circumstances. One prophet, for example, gave it as a message from Leza, that the use of the Kamwaya bush in scattering inconvenient clouds was to cease. But immediately afterwards two men on

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their way home were overtaken by a storm, and one of them plucked some Kanwaya twigs and frantically waved them above his head, to turn the clouds and thus enable them to get home with dry skins. His companion remonstrated, reminding him of the prophet's message, but the impious fellow continued, until presently there was a flash of lightning and he fell dead. This was accepted by all as a confirmation of the prophet's orders and the news quickly travelled through the country. It will be interesting to know whether in a few years the use of the Kanwaya has ceased. We are persuaded that many a custom, and many a change of custom, might, if we had the means of doing so, be traced to the inspiration of prophets."

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