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The “Reasonable Man” in Colonial Nigeria

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Abstract

A key scholarly debate in late colonial law concerns the interpretation of the ‘reasonable man’. The reasonable man, whose paradigmatic status was itself a contested subject for English law, was all the more problematic for colonial law when the idea of a ‘reasonable native’ was presumed in and of itself to be questionable. Should the ‘native’ be held to the same standard of reasonableness as the Englishman? And if not, what standard of reason was valid? This article examines how popular literature of the period, both fiction and memoir, reflects these concerns. Focusing on accounts of colonial Nigeria, I show how this literature repeatedly complicates the perceived ‘reasonableness’ of both Europeans and colonial subjects. Moreover, I demonstrate that these complications, frequently dramatised through narratives of the uncanny, make visible colonial anxieties about the distinction between native custom and colonial authority.

In 1964, a young law lecturer in New Zealand/Aotearoa, Bernard Brown, set out what he perceived to be the challenges of invoking the paradigm of the ‘reasonable man’ in colonial and commonwealth legal contexts.¹ If the paradigmatic status of the ‘reasonable man’ was a contested subject for English law, Brown argues, it became all the more problematic when applied to indigenous and immigrant populations whose own paradigms of ‘reasonable’ behaviour could not be mapped onto ‘Anglo-Saxon attitudes’ (1964). In this article I explore how the legal standard of reasonableness, which Brown queries, was represented in a variety of early twentieth-century fiction and memoirs about Nigeria.

While there is an increasing body of scholarship on the place of the law in colonial fiction there has been surprisingly little that attends specifically to that set in West Africa.² Nonetheless, as I have discussed elsewhere, the turn of the century saw a distinct mushrooming of fiction that took the legal figure of the District Commissioner in West Africa as its subject matter.³ These novels and stories, where they have been discussed at all, have tended to be categorized in more general terms as examples of the popular colonial imaginary, without recognition of the significant shift in the legal machinations of colonialism that they illustrate in this period. Attending to their legal focus, however, reveals ambivalences and complexities in their literary representation of the colonial project. As I hope to demonstrate, in dramatizing questions of law and psychological states, these publications repeatedly complicate the idea of reasonableness. Moreover, in doing so they highlight the underlying contradictions of colonial rule in Nigeria in this period.

The Reasonable Man

Chris Dent argues that the ‘reasonable man’ as a legal standard of English law emerges out of a nineteenth-century context of post-Enlightenment capitalism (2017). As Dent explains, the ‘reasonable man’ provided a useful hypothesis to which the judge could direct the jurors ‘as a way to distance [them] from their more immediate response to the case’ thereby reducing ‘the chance of them deciding simply on the basis of whether they thought the defendant was morally culpable’ (2017: 416). The value of the ‘reasonable man’ in this legal context resides precisely in his hypothetical state: he is a standard ‘against which the behaviour of others can be assessed’ rather than a ‘*norm* of behaviour’ for the general populous (Dent 2017: 424; italics in original). The ‘reasonable man’ is not therefore imbued with specific characteristics

or qualities that remain stable across different contexts. Rather the ‘reasonable man’ is conjured by the specifics of the case in which he is invoked. Dent gives the example of the standard’s early use in negligence law where, in *Blyth v. Birmingham Waterworks*, negligence is defined as the ‘omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do’ (Dent 2017: 408). The ‘reasonable man’ is reasonable by virtue of his prudent action or inaction in response to his context. The hypothetical nature of the ‘reasonable man’ is what makes ‘him’ a useful paradigm in law but, as we shall see, it also creates aporias in the law when reason as a standard comes under pressure.

Brown highlights the protean qualities of this hypothetical standard when it is activated in a (post)colonial context. The ‘reasonable man’, Brown argues, ‘is a player of many parts’ (1964: 207). In criminal law especially, the inevitably contextual understanding of provocation – what would the ‘reasonable man’ do when provoked thus? – blurs the line between standard and norm that Dent draws. Moreover, Brown posits a specific challenge to the standard in his invocation of ‘a country whose nationally acknowledged characteristics, when measured against an important yardstick of guilt, become translated into criminally deviant practices’ (1964: 212). Brown gives the example of ‘the Indo-Pakistan sub-continent’ whose diverse ‘racial, religious, cultural and economist interests’ present, he argues, ‘a formidable barrier to the acceptance there of any one truly representative criterion of criminal responsibility’ as measured against English law (1964: 212-3). In consequence, he argues, the courts have various options available to them in determining the gravity of provocation and therefore whether the defendant’s actions might be considered those

of a reasonable man in the context. These range from a blunt application of an Anglo-Saxon model of the 'reasonable man', through to the 'normal man of the same class or community as that to which the accused belongs' (1964: 213; quoting David JC, A.I.R. (1939) Sind. 183).

The cultural diversity that Brown attributes to South Asia was matched in the first decades of the twentieth century by Nigeria, the focus of my present argument, whose shifting internal and external borders encompassed multiple languages, religions, and cultures. The British colonial government sought to accommodate this diversity through indirect rule. The ideal of indirect rule was to preserve Nigerian custom, including legal custom, whilst sharing with the indigenous populations the benefits of civilisation. In practice, this meant the application of multiple legal systems: Islamic law, customary law, and English law.⁴ Islamic legal systems were already well established under Hausa-Fulani rule in the north, where Frederick Lugard, the architect of indirect rule, first governed. In the southern regions pre-colonial legal custom had been varied. The colonial administration therefore more or less manufactured the 'tradition' of Warrant Chiefs, who were appointed to administer customary law at a local level.⁵ These two legal systems were nevertheless regulated by the colonial administration. Firstly, the repugnancy test sought to ensure that no customary law was enforced that was contrary to 'natural justice, equity and good conscience' and it was, of course, the British colonial administrators who were the arbiters of that test.⁶ Moreover, all laws were required to be compatible with English law, with more serious crimes frequently passed from customary to English courts and customary practice scrutinised for its consistency with English legal norms. Thus, depending on which court heard a given case, different standards or norms of reasonableness might be applied.

Colonial Fiction

If, in the early twentieth century, the hypothesis of the ‘reasonable man’ was an ideal for English jurisprudence (if not a reality), because it encouraged objective consideration, fiction was at liberty to indulge in the subjective view that the standard of the ‘reasonable man’ sought to avert. Intriguingly, as I will show, colonial narratives about Nigeria in this period repeatedly complicate the ‘reasonableness’ of both Europeans and colonial subjects and do so in sometimes quite surprising ways.

Least surprising is the regular stereotype of native irrationality and lack of reason, especially when measured against the standard embodied by the colonist, most commonly the District Commissioner. Indeed, we find in the District Commissioner a fictional version of Dent’s legal standard of ‘the reasonable man’, whose course of action is always justified. By contrast the local populations are repeatedly characterized as susceptible, superstitious, untrustworthy and capricious. This characterization is underpinned by a tendency to present Nigerians as a mass: ‘Millions of men and women lived within the vast forest-belt and amongst the towering hills of the Hinterland, savage and cruel as the gods they worshipped’ writes Arthur E. Southon in his preface to *The Laughing Ghosts* (1928: iv). This mass of people all too easily becomes an unthinking crowd, swayed by an anticolonial demagogue, for example, or excited to a frenzy of blood lust. More broadly, as ‘pagans’ and ‘savages’, many of the local populace are distinguished at an essential level from, and by, the European emissaries of civilisation. Even monotheistic Nigerians are presented as not wholly reasonable: Muslim Northerners are almost invariably untrustworthy whilst Christians are at best self-deluded and at worst (anti)social agitators, like Coker in Joyce Cary’s *The African Witch* (1936).

If this were all that we find in these publications, then the work that they do in presenting British colonial rule in Nigeria would be straightforward. This is not the case, however, and it is not uncommon to find accounts that complicate this stereotyping allocation of unreason and superstition to natives and reasonableness to Europeans. Indeed, Europeans fall prey to bouts of mental illness, and even District Commissioners themselves can be psychically drawn to the dangerous, irrational rituals of indigenous secret societies. Moreover, even where the Commissioner is presented as sound of mind, he is regularly called upon to ‘think like a native’ to solve a crime or to resolve a legal dispute. This capacity is used to signify the Commissioner’s exceptionalism, demonstrating his ability to enter imaginatively into the psychology of the colonial subjects whilst maintaining *his* hold on reason. What this exceptionalism makes visible, in turn, is the aporia on which the paradigm of the ‘reasonable man’ is constructed. The Commissioner can be subject to irrational behaviour whilst still embodying reasonableness because his colonial status as bearer of civilisation excepts him from the rule that divides irrationality from reason.⁷

One of the most prolific writers of Nigerian colonial legal fiction was Edgar Wallace. Wallace initially made a name for himself as a journalist and author of military and crime fiction but in 1911 he turned his hand to colonial adventure fiction and in doing so created his most popular hero, Commissioner Sanders. Wallace published five more collections of Sanders stories between 1911 and 1918, and went on to publish a further four by 1928 when his final volume in the series, *Again Sanders*, appeared.⁸ Wallace’s Sanders, like other protagonists of District Commissioner fiction, descends directly from the adventure hero lineage that Patrick Howarth characterizes as ‘Newbolt Man’ (1973: 14). Howarth traces this tradition through from mid-Victorian muscular Christianity to the heroes of early twentieth-

century adventure fiction, for whom ‘dedication to service’ was a defining feature (1973: 118). Sanders embodies this dedication to service in his role as District Commissioner, a role which, as we shall see, legitimates his exception from the legal norms of reasonableness.

Wallace’s first Sanders collection, *Sanders of the River* (1911), includes a good number of stories in which Europeans fail to live up to standards of reasonableness whether legal or psychological. In ‘The Witch Doctor’, for example, we meet Professor Sir George Carsley, sent by the British Government ‘to study tropical diseases at first hand’ (1935: 195). Sir George professes an ambition to become a ‘Witch Doctor’ and thereby to learn from the local populations, an aspiration that Commissioner Sanders dismisses out of hand. Sure enough, however, Carsley disappears, goes ‘native’ as ‘the Devil Man’, and is eventually found, in a state of apparent delusion, about to operate on a young female sacrifice, whom he has diagnosed with ‘a bad case of trynosomiasis’ (1935: 207). Sanders steps in and ‘Sir George Carsley, a great scientist, consulting surgeon to St. Mark’s Hospital, London, and the author of many books on tropical diseases, went with him like a child.’ (1935: 207) Sir George’s solipsistic scientific interests, Wallace implies, make him particularly susceptible to a fascination with witchcraft, and his descent into madness is thus explained as a result of these twin obsessions.

Likewise, the trading ambitions of Cuthbert, ‘a plutocratic young gentleman, who, on the strength of once having nearly shot a lion in Uganda, was accepted by a large circle of acquaintances as an authority on Africa,’ (1935: 66) are brought up short by his failure to believe that, contrary to the maps he has been supplied with by the Isisi Exploitation Syndicate, Ltd, Sanders’ district contains no ivory. Having bought all sorts of rights to the region Cuthbert falls into a decline: convinced that he

has sleeping sickness, he wanders off to die, injecting himself with monkey blood to stave off the inevitable. Sanders however detects an alternative cause for his lethargy: Bosambo's parting gift of 'native tobacco'! Cuthbert is packed off home to detox and the Syndicate is heard of no more. Thus whilst Sir George fails because he is too scholarly in his approach, Cuthbert fails because he doesn't know enough.

Figures like Sir George and Cuthbert provide useful hooks for the stories' plots, and the Sanders series is peppered throughout with similarly feckless Europeans.⁹ But they also help us understand Sanders, by providing a clear indication of what he is not. Above all he is reasonable while they, for all their confidence and intellect, fail to act reasonably. This contrast set up between Cuthbert, Sir George and Sanders reflects a common attitude in the colonial administration from the second half of the nineteenth century onwards, which valued a sturdy constitution and a sense of fair play over scholastic prowess. Nonetheless, occasionally we find stories where even the District Commissioner himself must confront the irrational. In Arthur E. Southon's *A Yellow Napoleon* (1923), for example, the District Commissioner, Harley Fane, is so overcome by the mesmerism of tribal dancing and music at a secret rite that he fails to shoot the eponymous high priest, Tunasi, who has become leader of a secret cult bent on eradicating European rule. Elsewhere, in his 1930 memoir, *Ju-Ju and Justice in Nigeria*, Frank Hives narrates his own chilling experience in a haunted rest house, to which we will return in due course.

Edgar Wallace also embraced the possibilities that the supernatural offered to complicate his depiction of Sanders' psyche, most notably in a strange story in *Sanders of the River* called 'The Keepers of the Stone'. At the start of the story we learn the legend of 'a strange, flat stone "inscribed with the marks of the devils" ... which was greatly worshipped and prized, partly for its magic powers, and partly

because of the two ghosts who guarded it. It was a fetish of particular value' (1935: 29). The stone is accompanied by 'ghosts clad in brass' – 'fantastic and warlike shades who made peaceable men go out to battle' (1935: 37). The story proceeds to tell of a row between two tribes who want to possess the stone and its powers. When Sanders confiscates the stone he also sees the ghosts. To his and our surprise, they are Roman centurions and, as Sanders discovers, the stone is their grave marker.

The story manages this supernatural vision intriguingly. Up to this point the power of the stone and its ghostly guards has been presented as the product of 'native' superstition. Sanders himself, whilst taking seriously the psychological power of the local tribes' belief in the stone, does not necessarily attribute supernatural powers to it himself. When he first sees the ghosts, therefore, he presumes he is going down with fever, providing a medical rationale for this uncanny vision. When he realises that his soldiers have seen the ghosts too and no further fever symptoms occur, however, he is stumped. Then he translates the 'devil marks' on the stone from Latin and discovers their origin (1935: 45). Sanders' translation, which is given in the text, provides an explanation for the stone's presence in West Africa: the soldiers had been serving in Egypt and, having travelled south, were shipwrecked only to be 'worshipped by the barbarians' who discovered them (1935: 46). In this regard the stone's power is brought back under the power of reason through Sanders' application of his civilised knowledge of Latin. But the ghosts remain unexplained: in Sanders' words their presence is 'rum' (1935: 46). There is a pleasure here for Wallace's contemporary reader in being able to retain the sense of civilised superiority that the Roman imperial soldiers and their Latin inscription represent, while indulging in the taste of superstition that was otherwise the forbidden fruit of native custom.

Slavery and Sacrifice

What is going on in these stories? How do they shape their reader's perception of the colonial mission? Firstly, what emerges is that Sanders and his fictional fraternity frequently embody those traits that in others prove their downfall. While he may have failed miserably in his Constitutional Law exams, Sanders' disregard for his formal training, which in others like Cuthbert is presented as misplaced arrogance, is in keeping with his qualities of modesty and practicality. In several stories, moreover, this disregard for institutionalized knowledge also contributes to Sanders' affinity with the simplicity and superstitions of the natives. However, once again, whilst these characteristics in the natives are used to primitivize them and demonstrate their mental limitations, in Sanders simplicity and superstition become additional weapons in his administrative armoury. On the one hand, his simplicity gives him an innate sense of fairness, on the other hand, his attunement to local superstitions allows him to understand the natives and to operate effectively within the customary, even to the extent of passing as a Nigerian prince in the short story, 'The Lonely One'.

There is something else going on here too, however, in addition to this cultivation of the District Commissioner's exceptionalism. The impetus for Sanders' decision to 'black up' in 'The Lonely One' is his suspicion that 'there's devilry of sorts' among the Isisi (1935: 209). This devilry is slave trading. Slave trading had, of course, been one of the original sources of British interest in West Africa but following the bill of abolition in 1807 the British established the West African Squadron of the Royal Navy to prevent slaving. The Squadron was charged with stopping both British and foreign ships suspected of engagement in the trade. By the mid-nineteenth century the transatlantic slave trade had by and large been quashed

and Britain turned its attention instead to eliminating slavery *within* the subcontinent and across its Indian Ocean territories.

In consequence, slaving became a mobile taboo, applied in a variety of contexts to signal legal and moral repugnancy. In 'The Lonely One', the slavers are Arabs, to whom the Isisi sell captured local rivals, vulnerable strangers in their territory, and others placed outside the community. Although the Isisi are implicated in the trade, it is the orientalisised other, the Arab, who controls the operation. Wallace's slave traders fit neatly into larger contemporary narratives of Arab cruelty and oriental despotism. They also signal an oblique critique of Islamic rule in Nigeria and, indeed, unlike later authors, such as Joyce Cary, Wallace chooses not to represent Islamic law in his fiction. Thus, while Sanders is supported by Hausa troops (that is to say troops drawn from the Muslim north of Nigeria), Wallace limits the legal systems portrayed in his fiction to English and customary law. Islamic law reappears in this story by proxy and as a trace, however, embodied in the dubious transnationalism of Wallace's Arabs who perpetuate the illegal, and legally 'repugnant', trade in slaves across the borders of French and British West African territories.

In the civilizational rhetoric of colonialism, slavery was closely tied to human sacrifice. Whilst slavery was commonly associated with Arab and Islamic influence in West Africa, however, human sacrifice was attributed to indigenous custom. In fiction and memoir, the need to stamp out the corruption of slavery and the irrational superstition of human sacrifice is repeatedly used to structure narratives and justify the European civilising mission. The suspicion that both slavery and human sacrifice were rife and/or an imminent threat created a productive sense of dramatic suspense and moral urgency. It is unusual, then, to find literature from the early to mid-

twentieth century that doesn't in some way invoke both at some point, and it is common to find texts returning repeatedly to these connected themes. In doing so, as we shall see, they also return us to Brown's anxieties about the relativity of the 'reasonable man.'

In fact, human sacrifice in Nigeria was rarely undertaken as a community ritual outside of times of absolute extremity, as Samuel Oyewole explains (2016: 38). Indeed, Oyewole suggests that human sacrifice for individual benefit became more prevalent due to the individualism cultivated by colonialism. Thus, the very attempts by the British to penetrate the African interior and stamp out witchcraft and human sacrifice may well have fed its influence, as communities and individuals sought supernatural protection from colonial incursions.¹⁰ More significantly for our purposes here, the 'ju-ju' rituals recorded in fiction and memoirs were, in fact, more often than not legal processes themselves, rather than ritual sacrifices, as Idowu (2005) and others point out. The witch doctors, represented by Wallace and Southon as craven fiends intent on wielding oppressive power over susceptible communities, were in reality often acting in a judicial fashion. In the Yoruba Ogboni cult, for example, the members of the Ogboni are one and the same as the community's council of elders (Idowu, 2005: 185). Likewise the Arochukwu complex, home to Ibn Ukpabi (the Long Ju-Ju), was used as a court for disputes.

Furthermore, the Arochukwu complex usefully illustrates the connection between slavery and human sacrifice that was made in the minds of British colonialists. Those found guilty in the Arochukwu complex were frequently sold into slavery. This was not the blood-letting of human sacrifice that caught the colonial imagination in fiction, but instead a judicial and financial process aimed at regulating

civil society and generating income for the Arochukwu complex, albeit one that perpetuated the regional slave trade.

Joyce Cary's novel, *The African Witch*, provides an intriguing and ambivalent account of the place of ritual complexes in colonial Nigeria. Set in Rimi, an imagined district in northern Nigeria, the novel explores different approaches to indirect rule and the competition for power between four Nigerians who represent four different juridical modes. The 'witch' of the novel is Elizabeth, head of a ju-ju complex, and an influential figure in the spiritual and political life of the town. Her challengers include Salé, a young Muslim who is jockeying for position to inherit the Rimi Emirate; her Oxford-educated brother, Louis/Aladai, who represents the new intellectual Nigerian elite; and the mixed race Coker, an uneducated Christian convert whose rabid anti-colonialism is channelled through a violent interpretation of Christian sacrifice and the Eucharist. By the end of the novel it is Elizabeth and Coker who prove the most powerful because they are able to appeal to the superstitious and herd mentality of Rimi's Nigerian population. But while both display violence, Coker's perversion of Christianity, which leads to repeated human sacrifices to a Crocodile ju-ju, is clearly intended by Cary to offend the test of repugnancy and to represent the abhorrent irrationality regularly attributed to mixed race characters in such colonial fiction. Elizabeth, by contrast, represents politically astute and pure native custom. The judicial proceedings of her ju-ju complex are violent but the narrative also gestures to how the complex provides opportunities for women who have been cast out by their communities. By virtue of the protection that Elizabeth's ju-ju complex affords, these women, who have usually been accused of witchcraft themselves, create a mobile network of allegiance that shields them from the violent retribution of their families and villages. Thus, without valorising pagan custom per se, Cary's novel does

ambivalently endorse the social and juridical role of Elizabeth's complex in Rimi and distances it from the human sacrifice with which it is associated at the start of the novel.

In *Joyce Cary's Africa* (1964), Molly Mahood, still perhaps the most authoritative critical voice on Cary's African fiction, opens her chapter on *The African Witch* by identifying the specific locations, people and events on which Cary drew for the novel. Having established these sources, however, she avoids considering their specific implications for the narrative, averring instead that—for all its apparent satire of British colonialism in West Africa—we should read the novel primarily as a meditation on 'mental life ...[and] fundamental passions' (1964: 150). Nevertheless, in its dramatization of the repugnant and more reasonable quasi-legal proceedings that Coker's and Elizabeth's rituals embody, *The African Witch* hints, even if unwittingly, at a fine irony inherent in British colonialism in Nigeria at the time. For while the British were intent on establishing 'native courts' to administer customary law (a central plank of indirect rule) they were busy stamping out established customary jurisprudence by defining it as irrational ju-ju. Moreover, in its place, the repugnancy test meant that the most serious crimes were meant to pass not through the customary courts but were subject to English law. In Rimi, by contrast, the Islamic and customary courts are inoperable because of the constant jockeying for power amongst those who should oversee them, while the colonial Senior Resident pursues a policy of non-intervention to mask his inability to divine the political machinations of his district. In this legal vacuum, ju-ju, rather than a colonially established 'native court', re-emerges as the only effective juridical form for controlling Rimi's population.

There is an additional irony to the colonial programme to abolish native ritual practice as ju-ju. Criminals tried under English law were frequently sentenced to forced labour. In this way, the judicial process of judgement and slavery that characterised cults like the Ibn Ukpabi, and which the British fought bloodily but unsuccessfully to eradicate, was neatly replicated in the colonial system. Adele Eberechukwu Afigbo points to colonial correspondence in 1912 in which officials bemoan the continued connection between the Ibn Ukpabi cult and the market in slaves in Bende district (2006: 61). Thus, instead of being wiped out, slavery not only persisted as a product of ritual judicial practices but was also reinvented and expanded in the punitive use of forced labour under colonial English law. Moreover, just as the European slave trade had transported its victims to new countries, under British rule, those subject to forced labour could find themselves shipped to neighbouring colonies where there were labour shortages, such as the Gold Coast (Thomas 1973: 80).

The Ghosts of Reason

Unsurprisingly, the parallels between colonial uses of forced labour produced through the courts and the juridical operations of cults are invisible in colonial fiction and barely discernible in the colonial memoirs produced in this period. With a few exceptions, such as *The African Witch*, both literary genres focus instead almost exclusively on the literal sacrifice of life associated with these cults. Thus in his memoir, *Ju-Ju and Justice in Nigeria*, Frank Hives describes the Kamalu oracle (associated with the Arochukwu complex) in this way:

charges for consulting it were paid in slaves; a certain proportion of these being sacrificed to the ju-ju, and the remainder sold to relatives of deceased

chiefs, who used them for sacrificial purposes, with the object of providing a retinue for the departed when he entered the next world. (1940: 24)

Hives' account characterises the slaves not as potential labour but as lives marked out for mortal sacrifice. Moreover, slaves here are payment for oracular consultation rather than being a legal product. This characterisation obscures any parallel between the oracle's transactions in slaves and colonial forced labour. Instead, it presents the oracle as operating not as a legal mechanism but in the realm of superstition at the border of this world and the spirit world. The oracle is thus exoticized and estranged from Hives' assumed British reader, for whom this account confirms the popular belief that native behaviours were incomprehensible to civilised 'reason'.

Nonetheless, in *Ju-Ju and Justice* we do find one intriguing instance where the parallels between customary and colonial jurisprudence emerge. 'The Haunted Rest House' is an unexpected ghost story in which the ghost of a 'witch doctor' encapsulates strikingly the *unheimlich* implicit in the displacement of indigenous ritual law with the legal machinations of colonial administration. The eponymous rest house had been built by Hives' predecessor on the site of a 'ju-ju sacrificial grove' in which 'hundreds of people' had been sacrificed in earlier days (1940: 79). When the rest house was finished, the last remaining ju-ju priest hung himself from its highest beam. Several years later, and with no prior knowledge of this incident, Hives finds himself accommodated in the rest house overnight whilst on his rounds of duty. His evening is disrupted by a variety of spooky incidents that culminate in a vision of a hideous ghost climbing the building frame with a length of rope – the ghost of the ancient ju-ju priest re-enacting his suicide. On learning the site's macabre history the next morning, Hives orders the rest house to be burnt to the ground. In this supposedly non-fictional account, the law and the oppression of the sacrificial grove

returns to haunt the new law and oppression of colonial administration. Likewise, the repugnant, ghostly body of the ju-ju priest threatens to erase the distance that Hives would like to draw between himself, a reasonable man, and the ‘native’ other.

Hives’ story of the haunted rest house at first seems little more than a titillating ornamentation to his larger narrative of eradicating ju-ju in Nigeria. Certainly, we may assume that the parallels between colonial and native justice that it suggests were not conscious for Hives. Nonetheless, the haunting of the colonial officer by his indigenous predecessor reconfigures the precepts of reasonableness and repugnancy (it is surely no coincidence that the witch-doctor is drawn in emphatically hideous terms) that regulated the hierarchies of law under indirect rule. Hives’s decision to burn down the rest house suggests an at least subconscious awareness of the possibility that colonial rule is repugnant to the natural justice, equity and good conscience of the Nigerians subject to his law; a possibility that the ghost of the suicidal witch doctor bodies forth disturbingly. While Hives, Cary, Wallace and others sought to justify the colonial administration in Nigeria during the first half of the twentieth century, their works are nonetheless haunted by the possibility that reasonableness may not reside as securely as they might wish in the figures of colonial law. Instead, the (racial) instability of reasonable behaviour that Brown sought to illuminate several decades later repeatedly troubles the pages of these publications, even where it is used to provide the exception to prove the rule. In these works, therefore, we find reflected a fear that both the standard and the norm of reason, which, as the foundations of civilised behaviour, underpin the rationale of colonialism, are mere illusions – ghostly apparitions that might evaporate in the cold light of day.

Competing interests

The author has no competing interests.

¹ In 1964 Bernard Brown had only recently taken up an academic appointment at the University of Auckland, New Zealand. Brown's interest in the colonial application of the 'reasonable man' paradigm stemmed in part from his prior experience of court martial and riot squad operations in pre-independence Singapore where he was stationed on National Service. This interest was expanded considerably by his research into law in Papua New Guinea (see Brown [1969]).

² For examples of recent work on the nexus of law and literature in (post)colonial fiction see Morton (2013) and Kortenaar (2015).

³ See Baxter (2019). The appearance of this subgenre of District Commissioner fiction coincides with and was informed by the British government's assumption of responsibility for territories that had previously been governed by the chartered Royal Niger Company.

⁴ For a more detailed account of indirect rule on the African continent see Mamdani (1996), particularly Chapter III 'Indirect Rule: The Politics of Decentralized Despotism'.

⁵ Chinua Achebe dramatizes in fine detail the deleterious impact of this fabrication of Warrant Chiefs in *Arrow of God* (1964).

⁶ See Taiwo (2009) for a more detailed discussion of the repugnancy test in Nigerian law.

⁷ For an extended discussion of exceptionalism in District Commissioner fiction see Baxter (2019) pp. 26-53.

⁸ *Sanders of the River* (1911), *The People of the River* (1911) *Bosambo of the River* (1914), *Bones* (1915), *The Keeper of the Kings Peace* (1917), *Lieutenant Bones*

(1918), *Bones in London* (1921), *Sandi the Kingmaker* (1922), *Bones of the River* (1923), *Sanders* (1926). Republished at the end of the war in 1919, *Sanders of the River*, alone, went on to be reprinted in 1933, 1945, 1963, 1972, 1986, 2001 and 2011, with the first American edition appearing in 1930. The novel was also translated into Danish (1925), German (1928), Swedish (1930), and Hebrew (1955) with many of these translations also going into reprint.

⁹ In *Sanders of the River*, for example, we also encounter Mr. Niceman, whose rather obvious niceness leads to his swift demise and his ‘head, stuck on a pole before the king [of Isisi]’s hut’ (1935: 11).

¹⁰ For an extensive account of a particular outbreak of ritual murder in late colonial Nigeria see Pratten 2007.

References

Achebe, C 1964 *Arrow of God* London: Heinemann.

Afigbo, A E 2006 *The Abolition of the Slave Trade in Southeastern Nigeria, 1885-1950* Rochester: University of Rochester Press.

Baxter, K I 2019 *Imagined States: Law and Literature in Nigeria, 1900-1966* Edinburgh: Edinburgh University Press.

Brown, B 1964 The ‘Ordinary Man’ in provocation: Anglo-Saxon attitudes and ‘Unreasonable Non-Englishman’. *International and Comparative Law Quarterly*, 13: 203-35.

Brown, B (ed.) 1969 *Fashion of Law in New Guinea* Sydney: Butterworths.

Cary, J 1936 *The African Witch* London: Victor Gollancz.

Dent, C 2017 ‘Reasonable Man’, his nineteenth-century ‘Siblings’, and their legacy. *Journal of Law and Society*, 44(3): 406-32.

- Hives, F and G Lumley 1940 [1930] *Ju-Ju and Justice in Nigeria* Harmondsworth: Penguin.
- Howarth, P 1973 *Play Up and Play the Game: The Heroes of Popular Fiction* London: Eyre Methuen.
- Idowu, W 2005 Law morality and the African cultural heritage: the jurisprudential significance of the *Ogboni* institution. *Nordic Journal of African Studies*, 14(2): 175-92.
- Kortenaar, Neil ten 2014 Law and Literature: Special Issue *Cambridge Journal of Postcolonial Literary Inquiry*, 2(1).
- Mahood, M M 1964 *Joyce Cary's Africa* London: Methuen.
- Mamdani, M 1996 *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* Princeton, New Jersey: Princeton University Press.
- Morton, S 2013 *States of Emergency: Colonialism, Literature and Law* Liverpool: Liverpool University Press.
- Oyewole, S 2016 Kidnapping for rituals: article of faith and insecurity in Nigeria. *Africology: the Journal of Pan African Studies*, 9(9): 35-52.
- Pratten, D 2007 *The Man-Leopard Murders: History and Society in Colonial Nigeria* Edinburgh: Edinburgh University Press.
- Southon, A E 1928 *The Laughing Ghosts* London: Sheldon Press.
- Southon, A E 1923 *A Yellow Napoleon* London: Hodder and Stoughton.
- Taiwo, E A 2009 The repugnance clause and its impact on customary law: comparing the South African and Nigerian positions – some lessons for Nigeria. *Journal for Juridical Science*, 34(1): 89-115.

Thomas, R G 1973 Forced labour in British West Africa: the case of the northern territories of the Gold Coast 1906-1927. *The Journal of African History* 14(1): 79-103.

Wallace, E c.1935 *Sanders of the River* London: Ward, Lock and Co.