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WITCHCRAFT AND BRITISH COLONIAL LAW

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WHEN the early colonial legislators were first called upon to deal with the problem of witchcraft in Africa, the official view was the sceptical English one, but this had in practice to recognize the native's general and whole-hearted belief in the supernatural element in magical claims. The law therefore summarily dismissed the practitioner's pretentions to occult powers, but at the same time it was forced to take account of the numerous occasions on which magic furnished the powerful motive for some course of action. Certain anomalies therefore occur in the various ordinances, and some curious discrepancies are to be found in the records of cases tried under them.

As usual with British colonial legislation, examination reveals a considerable divergence in practice; each country appears to have worked out its own salvation, and the variation in result is surprising. In some cases the law is lengthy and detailed, and the punishments drastic, while in other instances the matter is dismissed with a few paragraphs and the penalties are comparatively mild.

Taking actual examples, the Northern Rhodesia Ordinance of 1914 was detailed and severe. It declared that 'whoever indicates any person as a wizard or witch or imputes non-natural means in causing death, injury, damage, or calamity, or alleges adultery as having caused death' may be sentenced to three years' imprisonment, a fine of fifty pounds, and twenty lashes. Again, 'whoever is proved to be by habit or profession a witch-doctor or witch-finder' may be sentenced to seven years' imprisonment, a fine of a hundred pounds, and twenty-four lashes, professing to be a witch-doctor being punishable similarly.

Further provisions are directed against administering any ordeal, employing any witch-doctor, professing knowledge of charms and other forms of witchcraft. Even presence at an ordeal is punishable, and a person found in possession of a charm 'shall be deemed to have intended' this for 'a use punishable by the Ordinance unless he can

NOTE. This paper was read at the International Congress of Anthropological and Ethnological Sciences held in London in 1934.

prove to the contrary'. Any dealing in witchcraft was in fact made one of the most serious crimes on the statute book; the provision presuming guilty possession of a charm unless the accused can prove to the contrary being an unusual feature in English law.

The Kenya provisions are milder; the Ordinance of 1928 penalizes any person who pretends to exercise supernatural power, making this punishable with one year's imprisonment and a fine of £50; or if with intent to cause death, disease, injury, or misfortune, seven years imprisonment and a fine of £200. The term 'witch-doctor' does not appear, though it did in the Ordinance of 1925. It will be noted that flogging is not included in the punishments; further, that the severity of the law is reserved for cases where the claim to supernatural powers has had some evil purpose. Authority is also given to order persons practising witchcraft to reside in some specific locality. The preliminary reference to the Governor before proceedings against a chief are initiated, which was a feature of the Ordinance of 1918, no longer appears.

The Nigerian law seems to be directed mainly against ordeals. Any one who shall 'direct, control, or preside at' such a proceeding, may be awarded ten years' imprisonment, while a year is the punishment for being present at such a ceremony, or making or owning material for one. Further, 'any person who . . . represents himself to be a witch or have the power of witchcraft', or accuses another of this, or possesses any charm, is liable to six months in jail. Chiefs failing to report cases of witchcraft are liable to three years' imprisonment, and the possession of charms intended to facilitate the commission of crime may entail a sentence of five years. The very onerous duty imposed on the chief, of reporting cases of witchcraft, is noteworthy.

The Tanganyika Ordinance of 1928 is shorter and less detailed than the older examples. It contains no reference to a 'witch-doctor' but penalizes any pretence to 'occult power or knowledge' with one year's imprisonment and fifty pounds fine, and it punishes any one who declares some one else to be a witch acting with intent to cause injury, with seven years' imprisonment and a fine of two hundred pounds. This Ordinance replaced a milder one of 1922, in which 'intent . . . to cause death, disease, injury, or misfortune' was an essential for prosecution; the position thus adopted—that the mere claim

to magic powers was innocuous—appears to have been found untenable.

The Uganda Protectorate, with its wide measure of native authority, might be expected to provide different treatment of the problem. Chapter 130 of the *Laws*, however, states that 'whoever holds himself out as a witch-doctor or witch-finder . . .' shall be liable to five years' imprisonment, while if the intent to injure is present, the term is extended to seven years.

From the foregoing summary the divergence in the various laws will be obvious. A man who poses as a witch-doctor was in Rhodesia liable to seven years' imprisonment, a fine of one hundred pounds, and twenty-four lashes; in Uganda he may be imprisoned for five years; in Nigeria he may receive six months only; while in Kenya or Tanganyika he is liable to one year, though in the latter he would formerly have got off scot-free.

Other discrepancies exist as to the possession of charms; organization of, or presence at, a trial by ordeal; accusation of possession of occult powers; and the duties of chiefs in connexion with such matters. Closer study of the various laws will indeed show a very wide measure of discordance.

Considering this body of legislation as a whole, certain features will be conspicuous. Perhaps the most noticeable is the lack of accurate definitions and the use of vague wording to a degree that must render this subject unique in British jurisprudence. Terms such as 'witch-doctor, charm, ordeal' are freely used, though the exact meaning of them is most disputable; the recognizable characteristics of the various practitioners are not laid down, and their identification seems usually to depend on native reputation. Again, the logical application of some of the provisions of the various laws would produce curious results; thus, a motor-car mascot is a suspicious possession in some parts of Africa, the charms sold for inclusion in a Christmas pudding might give rise to grave charges, and cricketers who spin a coin for the innings would certainly seem to be presiding at a trial by ordeal. In practice, the criminal nature of the act appears to be assessed by its motive and association; if native opinion generally regards it as having occult significance, it becomes punishable, though the method of establishment and proof of this native opinion is vague.

Punitive action must obviously be confined to those cases which for some reason attract attention; any attempt to stamp out the whole practice of witchcraft by means of police measures would involve a task of immense difficulty and doubtful advisability. The various laws thus reflect the aspects of witchcraft which have given most trouble in the country concerned; murder and malicious injury are the prominent features in some countries, trial by ordeal in others, while cannibalism is apparently the serious element in the French colonies.

There is one characteristic of all these laws against witchcraft, and that is the obvious absence of any native share in their compilation. Of late years there has been an increasing tendency to consult the people and their leaders on all matters of importance, while the authority of the native courts has been in many cases widened and strengthened. In this matter of magic, however, there seems to be a tacit reservation of the whole subject; it is dealt with from the point of view of the twentieth-century European, and trials of offenders are generally conducted before white magistrates, Africans being presumably regarded as too superstitious to be trustworthy in such cases. The subject thus presents perhaps the most conspicuous instance of the superimposition of the white man's law and opinion, without any consideration of the African's view. In consequence, there is probably no other subject on which the two races differ so widely, or towards which the attitude of the European is so incomprehensible and illogical in the eyes of the African. Such a divergence must tend towards friction and misunderstanding, and some effort to eliminate it seems highly desirable.

The European official attitude regards magic as merely a form of fraud, by means of which various kinds of cheat victimize or terrorize their dupes for their own nefarious purposes. No discrimination is shown between the different forms of witchcraft, and each case is judged according to the results achieved in acquisition or influence.

To the African, such a standpoint must be most bewildering, since it confuses the good and the bad, and regards the physician and the poisoner as equally reprehensible. Magic plays a very important part in his life, and he sees himself constantly exposed to misfortune resulting from the action of evil spirits or malign magicians who can control

them; he therefore may be desperately in need of the services of the benign practitioner who can defeat the machinations of the enemy. What then can be his opinion of a law which merely denies his need for help, and punishes his benefactor?

That the efficacy of legislation depends upon the respect which it inspires is an axiom the truth of which has been manifested conspicuously of late years; the situation is therefore a serious one when the bulk of the people for whom a law is made, regard it with fear and distrust, as being a positive protection to evil-doers.

The strictly legal standpoint denies the possibility of dealing with an element the very existence of which the Court must disclaim; there is no such thing as magic, and therefore the law cannot recognize any degrees or variations in it. Nevertheless, it takes account of the tenets of widely differing religions, and respects the believer's prejudices, although the attitude of the Court may be a purely agnostic one. Might not the genuine and deeply-rooted conviction of the reality of magic which is characteristic of the African meet with some measure of recognition?

The missionary and the educationist are, of course, engaged on a struggle against the widespread dominance of witchcraft in Africa; its conquest, however, is likely to prove a prolonged task, and meanwhile, the law must deal in some manner with this potent source of crime, according to European standards. Obviously, murder, cannibalism, and similar grave offences must be adequately punished, but in the case of less serious charges some effort might surely be made to achieve an attitude which would take into account the African view of these questions, and would thus enlist the support of native opinion?

The following is an attempt to present the various aspects of the subject as they may appear to the African. There is firstly natural magic, dealing with the weather, plagues, crops, and so forth, carried on by rain-makers and such functionaries; there is ceremonial magic, where the infraction of some ancient observance or prohibition has entailed the automatic incidence of a curse which can only be removed by the suitable intermediary; there are the diviners who forecast lucky periods or seek explanations of questions; and there are the makers of numerous charms which confer immunity from disease, accident,

or calamity. In another category come the wizards and witches, who by supernatural means cause harm to their neighbours, and who are thus the class hated and feared by all; and in contradistinction to them come the detectors or 'witch-doctors' who find out and defeat their evil schemes. Finally, there is the victim, who is suffering from the effects of malice or supernatural wrath, and must therefore seek aid from some competent practitioner; in this class, almost every African expects to find himself at some time or another, and in consequence he regards the 'witch-doctor' as an ally of the utmost importance. In the native view, society must be protected against the maleficence of those who intentionally exercise baneful magical activities, such as wizards, or equally, those who have perhaps unwittingly fallen under evil control, and have become werewolves, vampires, or such creatures. Without appropriate safeguards, life would be dominated by malign spirits, and the enemies of humanity would be triumphant.

The foregoing distinctions tend, of course, to become confused, and the functions of the various performers will overlap; nevertheless, three main distinctions are of importance; the malevolent witch or wizard, the patient, and the doctor who endeavours to defeat the evil-doer. To treat these three in exactly the same way, and to punish them as though they were all equally culpable, must be quite inexplicable to the African mind. Since the fact of the crime and the reputation of the criminal can only be established in law by native evidence, it would seem logical to take the further step of admitting this to show the degree of guilt. Testimony as to motive or premeditation is admissible in the case of alleged murder or manslaughter; it seems not unreasonable to suggest that the vague accusation of witchcraft should be divided into varying degrees of culpability.

Furthermore, this surely is a matter in which native assessors would be of great service to the Bench; the subject is a most elusive one, and the establishment of guilt will depend mainly on native evidence about obscure practices and vague beliefs. The need for the presiding European to have the help of shrewd and experienced Africans would seem obvious.

The foregoing summary of the existing legal position will perhaps serve to show that there are undeniably some grounds for suggesting the reconsideration of the established attitude, particularly with refer-

ence to greater consideration for the native point of view, and the need for securing a larger measure of respect for the administration of justice in this matter. G. St. J. Orde Browne.

Résumé

LA LÉGISLATION SUR LA SORCELLERIE DANS LES TERRITOIRES BRITANNIQUES

Les lois existantes sont fondées sur le scepticisme anglais à l'égard de la sorcellerie, par conséquent elles refusent d'en reconnaître l'aspect surnaturel et s'occupent seulement du côté pratique.

La législation varie beaucoup suivant les régions. Les sanctions que l'on peut infliger à un docteur en sorcellerie s'étagent de 10 ans d'emprisonnement, d'une amende de £100 et 24 coups de fouet à six mois d'emprisonnement. On établit des distinctions très larges en ce qui touche le jugement par ordalie, les charmes, les accusations de sorcellerie et les devoirs des chefs en pareille matière.

La plupart des lois sont caractérisées par la définition très vague qu'elles donnent de la sorcellerie; elles sont aussi, de toute évidence, une production sortie d'esprits européens qui ne se sont pas préoccupés de l'opinion africaine. Par suite elles s'opposent à cette forme de conception indigène qui croit fermement à la réalité de la magie dans ses différentes formes.

La sorcellerie englobe d'ordinaire trois personnes: l'auteur qui cause du mal par la magie, la victime qui en souffre, et le docteur indigène qui soigne le patient en écartant le sorcier. Les lois actuelles considèrent chacun d'eux comme également coupable et punissable. C'est pourquoi il est recommandé de modifier la législation sur ce point en introduisant en outre les notions de cause et de préméditation.

De même on suggère d'utiliser les assesseurs indigènes dans les jugements, de façon à posséder dans une certaine mesure l'opinion africaine. Enfin il est proposé de réviser la conception européenne qui existe et d'opérer une révision générale de la loi.