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Réseaux

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Conflicting codes and contested justice: Witchcraft and the State in Kenya

Katherine LUONGO

My dissertation investigates the ways conflicts between state authorities and Africans over “witchcraft”-related crimes constituted an important space in which larger questions of who and what determined justice, law, and order were contested in twentieth century Kenya. My project entails close-readings of a range of “witchcraft” murder and assault cases occurring in Kenya throughout the colonial era and examines how the intersections of “witchcraft,” justice, law, and order have been understood, imagined, felt, and discussed by state and non-state actors. It analyzes various “critical moments” at which violence related to “witchcraft” has challenged state authority and analyzes the historical ineffectiveness of law and state policies in dealing with such violence. My thesis addresses how contemporary discourses, actions and policies concerning “witchcraft”-related violence mirror those of the colonial-era. It argues that while popular discourse continues to employ “witchcraft” as a metaphor for and explanation of misfortune, the post-colonial Kenyan State’s discourse on “witchcraft” continues to construct “witchcraft” as a convenient category-of-the-State, mobilized to explain away persistent underdevelopment and disorder.

My project uses oral sources in order to elucidate the ways in which Africans’ attitudes towards “witchcraft” and law have changed (or not) and to develop perspectives on “witchcraft” and related crimes inaccessible through archival research alone. My research contributes to Kenyan and African studies by treating contests over “witchcraft”-related crimes as central, critical means by which to investigate and understand the construction of state power in Kenya. It supplements scholarship on violence and literature about “witchcraft” by identifying and analyzing “witchcraft” not as an anthropological curiosity, but as a popularly and practically recognized source of violence in contemporary Kenya. And, my research engages and advances cross-regional and theoretical approaches to “witchcraft” and state power.

My archival research—conducted over four summers and one Fulbright-Hays dissertation year in the Kenya National Archives (KNA), the Public Record Office (PRO) and various libraries across Britain, Kenya and the U.S.—revealed a range of witchcraft murder and assault cases in several different British colonies in East and West Africa. Such cases were particularly numerous and well-documented in Kenya, and the most high-profile “witchcraft” murder case of the colonial period, *Rex versus Kumbaka s/o Mulumbi*, was tried in Nairobi during 1931. These cases foreground the numerous instances in which colonial definitions and “local” understandings of “witchcraft” came into contest. Also, these cases highlight key moments when British and African conceptions of justice and crime collided. Colonial-era “witchcraft” cases neither settled the meanings of “witchcraft,” law, justice, and crime, nor effectively articulated what role the state should take in relation to them. Rather, these cases introduced many of the terms which inform the present-day Kenyan state’s negotiation of law, crime, and justice.

The broad subjects of administration, law, and witchcraft have long interested Africanist scholars. Literature on administration has explained the mechanisms of colonial and contemporary governance (Ghai & McAuslan, 1970; Ambler, 1988). Scholars have also established that far from being hegemonic, administrative control was often contradictory, tenuous, and ad-hoc (Berman & Lonsdale, 1990; Cooper, 1996). Yet, recent scholarship demonstrates that colonial administration created a strong distinction between state and public that continues to influence present-day governance in Kenya (Robertson, 1997; Thomas, 2003). My project expands existing scholarship by employing “witchcraft” as a new category through which to analyze fault-lines and fissures in administrative control.

Scholarship examining law in Africa has focused on relationships between “customary” law and the state. Early scholars cataloged “customary” law, treating it as a closed and static system (Rattray, 1929; Schapera, 1955). Subsequent work pointed out that new “social situations” of colonialism rendered “customary” law that dated from the precolonial era open to change, but did not assign the state an active role in rearticulating and implementing it (Balandier, 1951; Gluckman, 1965). In contrast, recent research foregrounds the state’s dominant role in constituting “customary” law (Chanock 1985; Mann & Robertson, 1991). Alternatively, literature addressing colonial officials’ opposition to codifying “customary” law (Shadle, 1999) and scholarship analyzing the role of “customary” law in

present-day governance and society suggests instead that “customary” law comprised an easily flexible body of rules and norms which predated colonialism, changed according to circumstance, and continue to do so today (Cohen & Odhiambo, 1992; Widener, 2001.) My research departs from this literature by addressing the fraught ways in which “customary” law was fashioned and re-fashioned by state officials and Africans in contests over “witchcraft” and related crimes.

Early scholarship on African “witchcraft” aimed to debunk the irrationality of “witchcraft,” and figure it as a rational response to the social and material environments (Evans-Pritchard, 1937; Gluckman, 1955). Recent literature has not strayed far from this model, focusing on how “witchcraft” is a reaction to and explanation of the social, economic, and political problems of “modernity” (Geschiere 1995, 1998; Masquelier, 1997). Scholarship on Southern Africa is especially concerned with tracing the ways in which “witchcraft” was a matrix of generational conflict over and resistance to apartheid (Comaroff, 1993; Niehaus, 2001), and how it draws upon insecurities and gives rise to anxieties about urban living in the post-apartheid era (Ashforth, 2000). My research expands this scholarship by analyzing the intersection of “witchcraft” and politics in the fresh context of Kenya. Further, instead of treating “modernity” as a “catch-all” category, my project traces and theorizes how the content and meaning of “modernity” varied according to socio-historical context.

Literature on “witchcraft” in East Africa, particularly for Kenya, is considerably less developed than scholarship on West and Southern Africa. Middleton and Winter’s 1963 edited volume is the most recent monograph on the broad subject of “witchcraft” in East Africa. Researchers have examined “witchcraft” ordinances as part of larger studies on legal administration in Kenya (Mutungi, 1977; Anderson, 1992) and have studied “witchcraft” practices and beliefs among specific ethnic groups in Kenya (Fadiman, 1993; Waller, 1993; Ciekawy, 1998). My research brings legal and ethnographic studies of “witchcraft” together and investigates the ways in which administrative and ethnographic knowledge intersected or not.

My dissertation thus contributes to the larger literatures on law, administration, and “witchcraft” in Africa by analyzing how crimes related to “witchcraft” tested the state’s attempts to construct order and administer justice in Kenya. It argues that “customary” law was not a rigid system constructed “on the spot” through the self-interested maneuverings of colonial officials and with limited input by

“local” authorities. “Customary” law related to “witchcraft” and the type of justice this law produced, persisted outside the bounds of the state legal system and alongside state conceptions of what constituted justice. Overall, competing ideas about how to define and achieve “justice” in the context of “witchcraft”- related crimes existed because the state lacked the material and epistemological means to deal effectively with the complexities of “witchcraft.”

My dissertation also argues that “witchcraft” was not simply a category of “the native,” but equally a category of the state. “Witchcraft” cases in colonial Kenya suggest that “witchcraft” represented perceptions of dislocation and disruption, of the unsaid and the unthinkable, as frequently for state officials as they did for Africans. These cases demonstrate that British authorities were aware that “witchcraft” did not denote a bounded, pre-existing category, but was instead fluidly defined and invoked to delineate a range of Africans’ beliefs and practices.

These cases also show that “witchcraft” in colonial Kenya was not “modern” in any sense other than it was engaged in the “here-and-now.” In a reverse of the popular scholarly paradigm that locates the “modernity” of “witchcraft” in the politics of the everyday, “modernity,” in its valorizing aspect, was squarely the provenance and preoccupation of the state in colonial Kenya, a condition that in many ways persists into the present. Such cases also demonstrate that though “witchcraft” control was a politicized state concern across the British Empire, “witchcraft” was not invoked by Africans as a targeted means of political resistance in colonial Kenya.

During 2004, I spent several months doing detailed readings of British colonial archival documents on “witchcraft” and related criminal cases in the Kenya National Archives (KNA) in Nairobi and researching these issues in other libraries across Nairobi. At the KNA, I examined provincial and district reports produced by British administrators in Kenya, judicial reports from the Attorney General’s Office and the High Court of Kenya and the High Court of Appeal for Eastern Africa, and legislative reports from the Kenya Legislative Council. Also, at the KNA and in other Kenya libraries, I researched correspondence and private papers generated by British administrators, colonial and metropolitan newspaper reports, and colonial-era and contemporary monographs, journal articles and theses on “witchcraft” and law unavailable in the U.S and Britain.

I employed questions like: When, why, how and through whom did incidences or accusations of “witchcraft” enter colonial records and become the focus of official concern? (Das, 1989). How is an “event” transformed into a “crime” in these records? (Amin, 1995). To what extent did discussions of “witchcraft” contain “fictive” elements that transformed accounts of “witchcraft” from isolated or serialized events into narratives that were broadly intelligible to British officials? (Davis, 1987). How did colonial discourses about “witchcraft” rely on “culturally reasonable conjecture” to understand and manage it? (Stoler, 1992). Did colonial knowledge about “witchcraft” add up to a usable “colonial lexicon” that British authorities across the empire could use in dealing with “witchcraft”? (Hunt, 2000). How did the literary conventions of colonial reports shape what was said and what was *not* said in discussions of “witchcraft”? (Bornstein, 2000). What do “fragments” of non-state actors’ voices in the archives tell us about gaps in state control? (Pandey, 2000).

These colonial and contemporary sources suggest that “witchcraft”-related violence has been a consistent societal problem and has challenged the State at several “critical moments.” They also suggest that the state’s responses to such violence remain largely unchanged up to today. Drawing on these sources, I broadened the scope of my project to examine cases of “witchcraft”-related violence stretching into the post-colonial period and to address various “critical moments” and their implications for the Kenyan State’s present-day policies and practices.

First, my research additionally revealed that during a two-year period in the early 1940s, more than ten percent of the capital murder cases tried in the Supreme Court of Kenya was directly related to the defendants’ belief that the deceased had “bewitched” him or her. Faced with the glut of “witchcraft”-related capital murder cases and cognizant of the international furor caused by the death penalty verdicts in the 1931 *Rex versus Kummaka* trial, the court developed an *ad hoc* policy of sentencing to death, but recommending to the Governor-in-Council’s clemency, murder defendants who were able to convince the court of their “real but mistaken belief” in the deceased’s “witchcraft.” Claims of the deceased’s “witchcraft” remain a viable defense to murder charges in contemporary Kenya.

Second, my research revealed that during the anti-colonial Mau Mau revolt of the 1950s the State broke with its policy of not using “occult” methods to deal with “witchcraft”-related violence and

instead used “witchcraft” to combat “witchcraft” activities which various state and non-state actors perceived as key pillars of Mau Mau violence. Heeding calls from British and African officials on-the-ground in Mau Mau strongholds, the State organized a series public and openly sponsored “witchcraft cleansings” conducted by “witchdoctors” in the state’s employ who ritually burned the “witchcraft” paraphernalia belonging to the “witches” who were alleged to offer Mau Mau fighters ritual protection, to administer the Mau Mau oath, and to terrorize local populations with threats or acts of “witchcraft.” The State induced close to 1,000 “witches” to surrender themselves and their paraphernalia during this campaign. The State’s employ of “occult” methods and means to deal with “witchcraft”-related violence remains an accepted and viable strategy in present-day Kenya.

Third, my research reveals that during the early 1960s, the infant post-colonial State launched a campaign to counter “witchcraft” and “witchcraft”-related violence. Various state officials, including President Jomo Kenyatta, (re)mobilized colonial discourse and publicly decried “witchcraft” as a “superstitious” barrier to development. Yet, the State simultaneously issued permits for “witchdoctors” to conduct government-sponsored cleansings of alleged “witches” whose activities had precipitated waves of anti-“witch” violence and resulted in the killings of several alleged “witches.” The aims of this campaign were bi-fold. First, it sought to restore order and assert the State’s authority by stemming the tide of violence against the “alleged” witches. Second, the campaign was part of the new State’s effort to construct itself as both “African”—considering local beliefs and practices in its policies—and “modern”—concerned with detrimental sway that “superstition” held over its citizens. This campaign was effective in the short-term, but did not have long-term results. Indeed, the Kenyan State continues to apply these strategies to periodic waves of “witchcraft”-related violence.

Reading archival and oral sources in conversation, I also conducted 30 interviews of elderly Kenyans in Nairobi and Machakos District (a central site of colonial and contemporary “witchcraft” activities and the home district of some Kenya’s most notorious “witches”). Ethnographic research generated a range of perspectives and information absent from the archives, confirming archival information, and at odds with archival data. I enjoyed intellectual and cultural challenges of “doing” ethnography despite occasional

difficulties such as having to hitch-hike to interview in the back of a bread truck and being spat upon an informant. Fortunately, reading in the IFRA library had prepared me with the knowledge that elderly Wakamba spit to offer *baraka*, or blessings.

From archival and published sources, I identified market towns in Machakos where notable “witchcraft”-related criminal cases had occurred during the colonial era. I traveled to these towns and sought out their most elderly residents and younger townspeople with reputations as “local historians.” Using a combination of English and Kiswahili and with the help of a Kikamba translator, I conversed with these townspeople in sittings lasting two to three hours each about “witchcraft” beliefs and practices generally and also engaged them in conversations about colonial legal cases and various “critical moments” in order to learn how these events were remembered or not. While in the field, I also drew upon popular and material culture (Burke, 1996) and rumor, gossip, and sentiment (Price, 1998; White, 2000; Stoler, 2001) to understand the roles that ideas about “witchcraft,” “justice,” and the “state” play in the negotiation of everyday life in contemporary Kenya. In examining my data I attended not only to what was “spoken” about “witchcraft,” but also to “silences” surrounding it, in order to learn what was left unsaid and what was deemed unspeakable (Trouillot, 1995).

My ethnographic research revealed that “witchcraft” beliefs and practices in Machakos District are widespread, consistent and prevalent. Interviewees generally described “witchcraft” alternately as a substance which could be “bought” and as a set of inherited, malevolent powers used to harm others for material gain or for the pleasure of exercising power. In most cases, interviewees stated that they were unfamiliar with colonial and contemporary legislation dealing with “witchcraft.” Most interviewees shared the opinion that violence against “witches” was a more effective at preventing “witchcraft” than was prosecuting “witches” in court, although they knew the State forbids killing generally. Asked if they thought “witchcraft” had increased or decreased over their lifetimes, most interviewees stated that they had seen “witchcraft” increase and attributed this increase to *decreased* retributive violence against “witches” although various sources indicates increases in the *reports* of such violence since the colonial period.

When queried about “witchcraft” murder cases such as *Rex versus Kummaka* and about the various “critical moments” elaborated above, most interviewees professed no knowledge of the events or

stated that they had heard of them only in passing. Elderly interviewees in the particular market towns in Machakos where the Mau Mau “witch cleansings” were held were able to describe the “cleansings” and their aims, but younger interviewees from these towns and interviewees of all ages from other towns were unfamiliar with them. The continued belief that violence is the most effective means to deal with “witches,” the persistence of “witch-killing” cases up to the present day, and the lack of knowledge about or memory of the State’s efforts to combat “witchcraft”-related violence suggests that these efforts have been ultimately unknown or unimportant to the very people who they have been meant to address.