Received: 6 January 2022 | Accepted: 12 July 2022

DOI: 10.1111/hojo.12513

The Howard Journal of Crime and Justice | Howard League for Penal Reform

WILEY

ORIGINAL ARTICLE

The Howard League and liberal colonial penality in mid-20th-century Britain: The death penalty in Palestine and the Kenya Emergency

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Funding information
British Academy, Grant/Award Number: BA/IC3/100170

Abstract

This article analyses the Howard League's campaigning against the death penalty in mid-20th-century British colonies. It examines two case studies: the Howard League's campaign to limit the death penalty in the Palestine Mandate in the 1930s and their silence on mass executions during the Kenya Emergency in the 1950s. Drawing on Ben-Natan's (2021) concept of the dual penal regime, we argue the Howard League concentrated its intervention in ordinary penal regimes and demarcated emergency penal regimes as outside its sphere of interest and influence. Consequently, it was silent on the penal excess of colonial authorities during periods of counter-insurgency. Criminology as a discipline largely shares this demarcation of the penal measures associated with colonial wars, militarism and states of emergency as beyond its purview. Inclusion of these aspects of colonial penality into the criminological narrative highlights the significance of colonialism and colonial ways of thinking to penal liberalism.

KEYWORDS

colonialism, death penalty, Howard League, Kenya Emergency, Palestine, penal liberalism

1 | INTRODUCTION

On 2 June 1930, the Howard League for Penal Reform's Colonial Subcommittee held its first meeting.[1] At this time, the Howard League had a keen interest in international penal reform. The establishment of this subcommittee followed the opening of the Howard League's International Bureau in Geneva a year previously, which had a special focus on prison conditions and aimed to get penal reform onto the agenda of the League of Nations.[2] The purpose of the Colonial Subcommittee was to gain an overview of penal administration in the colonies of the British Empire and to intervene to bring about improvements and modernisation. The subcommittee was argued to be necessary 'especially in regard to the treatment of the natives'.[3] In keeping with the Howard League's priorities, the Colonial Subcommittee intended to maintain a focus on prison conditions, especially those for young people.[4]

The work of the Colonial Subcommittee also involved intervention in relation to capital punishment. Their stance on the colonies was that the death penalty should be abolished, but they were willing to intervene to ameliorate its use in lieu of full abolition. In 1932, in response to the imposition of 60 death sentences in Kenya for the murder of someone believed to be a witch, the Colonial Subcommittee resolved to approach the Colonial Office to suggest revising the law to enable discretion in sentencing and the use of alternatives to capital punishment, which would bring the law in Kenya in line with the Indian Penal Code.[5] At this time, the death penalty in Britain was mandatory for murder so the Indian Penal Code was more liberal on this issue than the law in the metropole.

This article analyses the Howard League's campaigning in relation to the death penalty in mid-20th-century British colonies. It does so through two case studies: their campaigning to limit the death penalty in the Palestine Mandate in the 1930s and their silence on mass executions during the Kenya Emergency in the 1950s. The majority of the Howard League's work in the colonies concerned prisons but the death penalty is also instructive as an example through which to understand its involvement with colonial penality. As Dubber (2018, p.7) argues, capital punishment is 'the sharpest point of the sharp end of the stick of state penal power', which shows the distinction between the 'abstract threat of penal violence' and 'the infliction of that threatened violence on a particular person'. As we shall discuss, the civilian death penalty was not the sharpest end of the stick of colonial penal power. Penality is bound up with the legitimacy of state power, but this power operated differently in colonial territories and protectorates than in the liberal state (Ben-Natan, 2021).

We draw on Ben-Natan's (2021) analysis of the 'dual penal regime' in Palestine to contextualise the discussion of the Howard League's campaigning activities. She adapts Dubber's (2018) concept of the dual penal state, according to which liberal penal governance rests on the duality of the penal law and penal police. Dubber (2018) argues that these two paradigms coexist but are in opposition, creating a paradox. The penal law has an egalitarian identification, whereby crime is the violation of one person's autonomy by another. The penal police is hierarchical and crime is an offence against the state's sovereignty. Empire is more openly illiberal than the liberal state and colonial penality needs to be understood differently from the national dual penal state. There is no pretence in colonial settings that 'penal law' applies equally to everyone (Ben-Natan, 2021). In particular, racialised enemy populations – those perceived as a threat to colonial rule – are targeted by colonial law. The dual penal regime encapsulates the separate penal regime established by use of emergency powers that ran (and runs) in parallel to the ordinary penal regime. Emergency statutes 'feature broad criminalization of political and military resistance, prosecution of

civilians by military courts, summary proceedings, and harsh punishments' (Ben-Natan, 2021, p.742). Emergency powers remove restrictions on military action without the need for martial law (Thomas, 2018). Ben-Natan argues that colonial authorities do not acknowledge that penal emergency regimes are part of the penal system.

We adopt this concept of the dual penal regime to discuss the Howard League and the death penalty in both Palestine and Kenya. Their intervention in Palestine concentrated only on the ordinary penal regime, not the emergency one. Their very limited attention to 1950s Kenya suggests the executions that took place in the emergency penal regime were understood to be beyond their remit.

The Howard League was created in 1921 via a merger of the Howard Association and the Penal Reform League. It has been described as a classic example of an 'insider' organisation with close connections to government, particularly the Home Office and the Prison Commission, and having a liberal, rather than radical, orientation. The Howard League was (and is) the most influential penal reform group in England and Wales. It had a relatively small membership, which skewed middle to upper middle class, and a metropolitan orientation (Ryan, 2003). Ryan (2003) notes that policymaking was undertaken by members of the Executive Committee and its subcommittees as experts, who frequently wielded influence informally in addition to sitting on committees and advisory councils linked to government.

A leading proponent of penal liberalism, the Howard League emphasised the need for rationality, expertise and a scientific approach in penal policymaking and practice. Penal intervention should be directed towards rehabilitation. The death penalty was perceived as contrary to this penal modernism and a relic of barbarism. The League adopted abolition of the death penalty as one of its campaigning priorities in 1923 and the National Council for the Abolition of the Death Penalty (NCADP) was founded in 1925. This was a separate organisation from the Howard League but was based in the same building and shared key members (it merged with the League in 1948). The campaign for the abolition of capital punishment in Britain gathered speed in the 1930s and at the same time the Howard League and NCADP undertook limited campaigning in relation to the colonial death penalty.

The Howard League's focus on the ordinary penal regime was consistent with the priorities of liberal colonial penality, which is defined further below. Part of the significance of examining both the Howard League's intervention and lack of intervention in relation to the colonial death penalty is that the organisation's assumptions about what counted as the appropriate sphere of influence for British penal reform are replicated by British criminology as a discipline in terms of the controlling regimes that it counts as penal. As highlighted by the criminology of war, critical analysis of state-based violence, while not completely absent, has not been included in criminology's 'core set of concerns' (Walklate & McGarry, 2015, p.5). War and states of emergency entail increased use of social regulation, punishment, ideological control and techniques of surveillance – all of which require penal regimes (Jamieson, 2016). Similarly to Ben-Natan (2021), Jamieson (2016) argues that war and occupation are underpinned by the 'convergence of normal and exceptional penal practice' (p.xxi). Colonialism and counter-insurgency during the era of decolonisation relied on violence and militarism. Dirty wars entailed 'highly demonstrative acts of collective violence that [were] designed to compel popular compliance' and which primarily targeted civilian populations (Thomas, 2018, p.505).

The wars, militarism and states of emergency linked to colonialism should fall within criminology's purview because they entail forms of penal control which, as Ben-Natan (2021) argues, are denied as part of the penal system by authorities. Criminologists should ask how attention to colonial penality potentially modifies understanding of penality in the metropole. Canonical

stories about the development of modern Western penology omit analysis of penal colonialism and of penal mixing between the metropole and the colonies. In relation to management studies, Frenkel & Shenhav (2006) employ Latour (1993) to describe this process of writing out non-Western influences and developments as 'purification'. The story of mid-20th-century Britain's penal culture and practice looks very different if it is narrated through colonial settings, particularly emergency penal regimes. The mass executions carried out under emergency powers during colonial dirty wars in Kenya and Malaya are sharply divergent from the declining use of capital punishment in Britain itself after the Second World War.

This article contributes to burgeoning work that incorporates the significance of colonialism, and the legacies of Empire, into criminological analysis. As Agozino (2003, 2004) argues, Western criminology has paid scant attention to the harms of slavery and colonialism even though these harms dwarf much of what it chooses to focus on in terms of effects and legacy. For Agozino, criminology's silence about colonialism is an effect of colonialism. A parallel can be drawn with interpretations of British penality in the mid-20th century. The story of the development of penal welfarism in Britain is portrayed as commitment to the use of rehabilitative measures as constituting progress, underpinned by faith in practitioners and experts to bring about a correctionalist agenda (Garland, 2001). This story does not incorporate British colonial penality, whatever its character, correctionalist or brutal. King (2017) argues that contemporary colonial reason hides the legacies of colonialism. Construing the counter-insurgency in 1930s Palestine or the Kenya Emergency as separate from British penal practice and culture accepts colonial reason. Dimou (2021) draws on Quijano's (2000, 2007) concept of coloniality to analyse the colonial foundations of criminology. Coloniality shapes ways of being, interacting and perceiving and is constitutive of modernity, forming its 'dark side'.

Penal modernism, which as Brown (2002) highlights incorporates penal excess, is inevitably colonial. British criminology should examine this coloniality because the British Empire was the most extensive empire in history and coercive networks were essential to its maintenance (Sherman, 2009). Despite a growing body of criminological work on the significance of colonialism to crime and punishment and a well-developed historiography of penality in different colonial settings, British criminology remains largely unaware of, and uninterested in, the penality of the British Empire and its legacies (Moore, 2020). Following Brown (2002), we argue that penal excess is a constituent part of penal modernity and not a departure from it; penal coloniality must be included in the analysis to fully understand this point. We discuss penal coloniality and the use of emergency penal regimes to contextualise our examination of the Howard League's campaigning on the colonial death penalty, but our analysis is not of the development of penal coloniality and emergency penal regimes per se.

2 | SOURCES AND METHODS

This article is developed from a research strand of a larger project entitled Reforming British Law and Policy on the Global Death Penalty (BA/IC3/100170). The strand was an analysis of historical and contemporary British-based NGO campaigns that oppose(d) the death penalty worldwide. The sources for the research into the international campaigning activities of the Howard League and NCADP in relation to the death penalty were meeting minutes, correspondence, reports and copies of the journal *Penal Reformer* held in the Modern Records Centre (MRC), University of Warwick for the period 1921–1965. The MRC is a repository for archives of trade unions, employers' organisations, small political parties and pressure groups. We extended the data collection to

the Howard League's colonial and international work more generally, rather than only on capital punishment. This extension was to gain a fuller understanding of the organisation's perspective and actions related to colonial penality. The Howard League gave us permission to read and photograph uncatalogued records held at their London offices. These contained some extra documents, but many duplications of records held in the MRC.

Meeting minutes constituted important sources for this research but have limitations. As a genre, minutes frequently document consensus, downplaying debate, disagreement and conflict (Wolfe, 2006). The minutes kept by the Howard League and NCADP can be understood as 'action oriented' (Wolfe, 2006), meaning that they focused on future actions and responsibilities rather than recording all aspects of the discussion that took place. They are indispensable sources of decisions taken and action points decided on but do not represent debate over, or dissent from, these decisions.

The archival sources were photographed and compiled into folders, and annotated catalogues were created. Notes were made on the basis that a particular item had a relationship to the death penalty and British colonies, international and colonial work, relationships with other NGOs and the Colonial Office or intersections of these categories. Notes for items of particular interest were highlighted. For the case study on Palestine, we also drew on news articles from the 1930s identified from searches of the digital archives of *The Times* and *Manchester Guardian*. The more extensive historiography of the Kenya Emergency meant we consulted secondary works for how the press reported this conflict.

As part of the research, we constructed a prosopography of the relevant decision-making committees of the Howard League and NCADP in the period of interest. Prosopography is 'collective biography, describing the external features of a population group' (Verboven, Carlier & Dumolyn, 2007, p.39). In both organisations, it was the Executive Committee and subcommittees that ran things, determined policy and facilitated interaction with the outside world. Ordinary members could attend an AGM, but otherwise had no formal input into the organisations' policies and campaigning activities. Ryan's (1978) description of the Howard League in the 1970s as 'a small, well connected London based elite with no adequate democratic structures' (p.86) applied also prior to the 1970s. Rose (1961) argues that the Howard League's membership did not want to play a role in formulating policy; they wanted 'a body of experts who press upon the authorities an attitude of mind with which the membership in general agree' (p.264).

The Executive Committees of the Howard League and NCADP comprised people who had backgrounds in Quakerism, suffragism, conscientious objection and political affiliations with the Fabian Society, the Labour Party and the Independent Labour Party. Legal experience, whether as lawyers, judges or, for women, justices of the peace, was a common denominator. Women were strongly represented, with ten out of 17 leading members of NCADP being female. The Howard League's Colonial Subcommittee in the 1930s included members with military backgrounds in British colonies and experience of colonial administration. For example, there was a former Inspector General of Prisons, Bengal and a former Senior Commissioner, British East Africa Protectorate (later Kenya). The Howard League's post-war Executive Committee continued to be drawn from people with experience as magistrates, judges, lawyers or barristers, as well as academic criminologists. Connections to the Labour Party remained, with Labour MPs such as John Paton and Charles Hale having membership. The majority of leading members of the Howard League and NCADP were from upper-middle-class backgrounds, with very few from the working class. No people of colour sat on the committees of either organisation.

3 | LIBERAL COLONIAL PENALITY

Liberal colonial penality transplanted the tenets of penal liberalism and penal modernism to penal administration in colonial settings. It was not the only form of colonial penality, but it was the one that cohered with the priorities of the Howard League as a penal reform organisation. Penal liberalism refers to the belief that government should respond to crime and punishment 'in ways that, above all, seek to preserve "civilised values"' and was espoused (and enacted) by politicians, senior civil servants, penal reformers and academic criminologists (Loader, 2006, p.563). The mid-20th-century advocates of penal liberalism comprised a 'closely networked world of colleagues and friends' who moved between academia, the civil service and penal reform organisations (Loader, 2006, p.563). Loader (2006) situates the heyday of these 'platonic guardians' in Britain as the 1950s and 1960s but his description also applies to the earlier part of the mid-20th century. Penal liberalism entailed a commitment to rehabilitation, which was perceived as both a humane way to treat people and one grounded in expertise and scientific principles. As such, rehabilitative approaches were consistent with the 'wider civilizing purpose' of liberal government (Loader, 2006, p.565).

In Loader's (2006) assessment, penal liberalism was underpinned by the 'liberalism of fear', which is driven by the fear of violence – from individuals who would commit violent crime and the state's potentially violent response. Penal liberalism opposed bodily punishment, like corporal and capital punishment. Liberal colonial penality evinced less interest in, or fear of, the violence of colonial government but it shared the guiding assumption that such violence should be constrained in the ordinary penal regime. It also prioritised rehabilitation and decent prison conditions as constituting a civilised approach. We do not argue that penal reformers such as the Howard League approved of, or contributed to, the repression enacted in emergency penal regimes, but they did not organisationally oppose it. In accepting the emergency penal regime as a separate sphere beyond their interest, they tacitly accepted its legitimacy.

Penal liberalism's language of civilisation was shared by, and entirely consistent with, colonial penality, whether liberal or otherwise. Brown (2004) analyses the significance of different forms of liberalism to British imperialism, distinguishing between orthodox and authoritarian liberalism. Orthodox liberalism's 'narrative of uplift' was based on the notion that British colonial governance would advance colonised populations up the civilisational ladder, making them ready for self-governance. Authoritarian liberalism's 'narrative of debasement' saw colonised populations as having no capacity for civilisation. British colonial rule would secure their well-being but would not act as a transition to self-governance. Common to both discourses was belief in colonialism's 'civilising mission'. Brown (2004) argues that ultimately both forms of liberalism rested on the necessity of repression to secure colonial governance.

Penal networks were 'a key nexus of colonial authority' through which colonial states sought to maintain order and 'civilise' the population (Hynd, 2011, p.432). There was, however, a tension between the violence of colonial rule and its civilising claims (Bruce-Lockhart, 2017; Hynd, 2015). Imprisonment and fines were the most commonly used penalties, but as Hynd (2011) asserts: 'the apex of the colonial state's penal response remained corporeal – and particularly capital – punishment' (p.442). Executions were deployed as a deterrent to uphold colonial order and to underline its authority. In the 19th century, capital punishment took different forms across the British Empire, which often varied with practices in the metropole. Execution was used to punish 'ordinary' criminals but also to quell resistance to imperial rule, sometimes under martial law (Anderson, 2015). Practices such as displaying corpses had ended in Britain and spectacles such

as blowing Indian mutineers from canon had no metropolitan equivalent. Local populations were viewed as inherently different from white British people, making differential punishment acceptable (Wagner, 2016). A racial divide between white people and people of colour existed across the Empire and the use of excessive violence reinforced hierarchies of race (Wagner, 2016; Wiener, 2009). Exceptionality and the use of criminal law to target certain racial groups did not require a state of emergency but was part of the ordinary penal regime in colonies (Brown, 2004; McClure, 2020). Public displays of colonial violence were assertions of sovereign power and a means of governance (Anderson, 2015; Wagner, 2016).

When public hanging was abolished in Britain in 1868, the amendment was sent to colonies excluding India but not all complied (Anderson, 2015). In the early 20th century, execution in many African states took place in public, although this changed to mainly in private by the 1920s and 1930s (Hynd, 2008). Incidents of public execution occurred in other colonies in the 1930s. In 1934, the Howard League's members' journal *Penal Reformer* noted that NCADP had asked Samuel Hoare, Secretary of State for India, to inquire into the circumstances in which two men were hanged before a large crowd in Sind.[6] In 1935, the journal recorded that Hoare had declined to forbid public execution in India on the grounds it was 'necessary for the preservation of law and order'. The editorial commented that legal terrorism 'begets terrorism'.[7] This example demonstrates that the Howard League was willing to be critical of colonial penality and to highlight the repressive use of penal violence when it happened under the ordinary penal regime.

From the 1920s onwards, colonial penality embraced discourses of reform, emphasising modernisation and becoming more bureaucratic. This shift paralleled changes in the administration of colonialism itself (Hynd, 2015). In the 1930s, the purpose of colonial imprisonment was redefined away from violent punishment towards rehabilitation via scientific means (Bruce-Lockhart, 2017; Hynd, 2015). There was a growing commitment to penal welfarism and emerging networks of professional knowledge in relation to colonial imprisonment (Bruce-Lockhart, 2017; Hynd, 2015). This professionalisation did not mean coercive violence disappeared from colonial prison systems and the use of corporal punishment against Black African prisoners was sometimes interpreted as a type of 'civilising violence' (Hynd, 2015). Capital punishment remained in use, as it did in Britain, with rates of the execution of non-politically motivated criminals not necessarily higher than in the metropole (see Campbell, 2015; Hynd, 2012).

The establishment of the Howard League's Colonial Subcommittee in 1930 was emblematic of reformist developments, as was its work with the Society of Friends and League of Nations Union to successfully persuade the League of Nations to adopt a set of global minimum standards for prisoners in 1934 (Bruce-Lockhart, 2017). Consistent with the priorities of penal welfarism, provision for women and young people was of particular interest to colonial penal reform, as was the development of probation systems (Hynd, 2011, 2015). However, the 'civilising mission' of liberal colonial penality conflicted with 'the imperatives of indirect rule' (Hynd, 2012, p.89). Colonial violence and repression remained routine, increasing at times when colonial authority was challenged or opposed. As Hynd (2011) argues: 'colonial legal regimes ultimately remained dependent upon the threat and application of state-sanctioned violence' (p.447). Excessive violence was 'intrinsic to the colonial encounter' and 20th-century massacres of civilians such as at Jallianwala Bagh in Amritsar in 1919 functioned as a form of punishment, recalling the mass public executions in India of the 19th century (Wagner, 2016, p.189).

Penal anxiety that colonialism could mean the imposition of uncivilised forms of punishment was at the heart of the Colonial Subcommittee's intervention to revise the law relating to the death penalty and corporal punishment in Palestine. In the interwar period, the justification for colonialism was one of tutelage to societies that were supposedly not ready for self-rule (Gopal,

2019; Thomas & Thompson, 2014). Article 22 of the League of Nations' Covenant established the mandate system, which was based on this principle of tutelage by colonial powers, and modernised and legitimised colonialism as something which could be 'humane' (Gopal, 2019). Colonial tutelage was not incompatible with the promotion of social justice and the protection of minorities, but this was based on paternalism rather than the notion that different groups had inherent rights (Thomas & Thompson, 2014). There was resistance to the imposition of the mandates and the emergence of an international anticolonial movement (Gopal, 2019).

4 | THE NEW CRIMINAL CODE FOR PALESTINE

British forces conquered Palestine in 1917 during the First World War. Prior to that, it was part of the Ottoman Empire. From 1922 until the founding of Israel in 1948, Britain ruled Palestine under a League of Nations mandate having previously held it under military occupation. In 1929 there were riots and attacks on Jewish communities across Palestine by Palestinian Arabs. The Shaw Commission (1930) was established to examine the riots and what caused them. Its report recommended replacing the Ottoman Penal Code as it had 'inadequate provisions about the law of homicide' (Bentwich, 1938, p.72). Under the Ottoman Code, murder was only a capital offence with evidence of premeditation, which had a technical meaning of having been planned at least 24 hours before the murder took place (Bentwich, 1934). Most rioters could not be charged with this and were not eligible for the death penalty. The other part of the rationale for the new criminal code was to bring the law in Palestine into line with 'English models' (Bentwich, 1938, p.72).

Norman Bentwich, the Attorney General in Palestine through the 1920s and until 1931, joined the Colonial Subcommittee in 1933. He argued in an article for the *Howard Journal* that the new Palestinian Criminal Code, proposed in 1933, recognised 'a more scientific statement of the Law should be enacted' (Bentwich, 1934, p.61). However, he noted 'two major innovations in the proposed code call for anxious consideration, because in both cases they run counter both to popular feeling and to modern principles of penology' (p.61). These innovations were to make the death penalty mandatory for murder and introduce flogging as a judicial penalty. Bentwich argued that both Muslim and Jewish people in Palestine were opposed to capital punishment and that corporal punishment did not exist under the Ottoman Penal Code. The proposals were culturally inappropriate; in a later article Bentwich (1938) described the 'severity' of the mandatory death penalty as 'altogether alien to Arab morality' (p.73). The extension of the death penalty and introduction of flogging ran counter to penal modernity and induced penal anxiety; in this case, the British colonial authorities would violate principles of rationality, science and civilisation by deploying archaic bodily punishment.

Bentwich drew the attention of the Howard League's Colonial Subcommittee to 'certain reactionary features' in the New Draft Penal Code and the Subcommittee resolved to send a resolution to the Colonial Office protesting against the capital and corporal punishment clauses.[8] The Colonial Office referred the resolution to the High Commissioner for Palestine, who had legislative and executive authority.[9] The Howard League and NCADP agreed to jointly make representations to MPs on the issue.[10] The Howard League's Colonial Subcommittee asked other organisations to contact the Colonial Office objecting to the proposed code; the Society of Friends Penal Committee and the Women's International League sent their own resolutions and the Association of Moral and Social Hygiene contacted a member in Palestine.[11] The Colonial Subcommittee wrote to the Grand Mufti of Jerusalem, a senior Muslim cleric, with their concerns.[12]

The Howard League's involvement in Palestine extended beyond objection to the New Draft Penal Code to penal welfarist concerns such as the development of probation and separate provision for young people. Demonstrating this interest, the *Howard Journal* published an article in 1935 by Margaret Nixon (1935), Welfare Inspector for the Palestine Government, about incarcerated women and girls in Palestine. As part of her role, Nixon inspected the women's prison and lock ups, and superintended the girls' reformatory home. Her article evinces the tenets of liberal penal colonial penality and the assumption that the imposition of British colonialism meant a superior way of doing things. Reflecting gendered principles of rehabilitation, women prisoners worked in the prison's laundry, kitchens and garden to gain suitable domestic skills. A distinct system for young people was an important aspect of penal welfarism and a girls' reformatory was established, where previously girls had been incarcerated with women. Nixon also explained that a system of probation was growing. The Howard League supported the extension of the use of probation in Palestine up until the Second World War via representation on the Standing Advisory Committee on Penal Administration, which in 1943 became the Advisory Committee on the Treatment of Offenders in the Colonies.[13]

A Revised Criminal Law Bill was published in Palestine in 1936, which restricted the death penalty to certain types of murder: premeditated, in the course of another crime, to escape punishment or for the murder of someone's own father, mother, grandmother or grandfather. The Revised Bill did not include flogging. Bentwich (1938) noted there had been local opposition to the previous Criminal Law Bill but argued without objections from the Howard League and other British-based organisations, it was unlikely it would have been defeated. The Howard League's Annual Report 1936–1937 stated that its representations meant the 'most objectionable' clauses of the Palestinian Penal Code had been redrafted and 'a wise effort made to relate the Code to the peculiar racial and other conditions existing in the territory'.[14] The Howard League's intervention garnered success in restricting the application of bodily punishment as judicial punishment in Palestine and, as such, was consistent with liberal colonial penality. The assumption that 'peculiar racial and other conditions' meant the suitability of different treatment of Palestinian Arabs and Jewish people from each other, as well as from white British people, reflected the long-standing division in colonial penality between practice in the colonies and the metropole.

The account provided by Nixon about women and girls sheds light on one half of the dual penal regime in Palestine, as does the success of the Howard League's campaign to revise the proposed penal code. However, the origins of the new penal code pointed towards the other half. The reason for advancing a mandatory death penalty for murder in the first place was because of the riots of 1929 – in other words, for reasons of shoring up colonial authority. This expansion of capital punishment was averted in terms of the criminal law, but the emergency penal regime enabled widespread repression, including executions.

5 | THE EMERGENCY REGIME IN PALESTINE

The British imposed martial law when they conquered Palestine in 1917 and established military courts during the riots of 1929 (Ben-Natan, 2021; Bentwich, 1920). The Palestinian Arab Rebellion commenced in April 1936. This was a nationalist uprising against the Mandatory Power and against policies of open-ended immigration for Jewish people that aimed to establish a Jewish homeland. In the same year that the new penal code was introduced, the British also established Defence (Emergency) Regulations, emergency powers which were adapted from those previously deployed in Ireland and India. These regulations made the use of repressive

and brutal counter-insurgency measures legal, including press censorship, curfews, collective fines, confiscation of property, demolition of houses, arrest and detention without warrant, and shooting of rioters by soldiers on sight. Collective punishment was not unique to the emergency regime but was permitted under ordinances introduced by Mandate authorities in 1922 (Hughes, 2010). In 1936, military courts could impose the death penalty for sabotage, arson, carrying arms or ammunition, firing on the police and throwing bombs with intent to cause death, serious injury or damage to property. Damaging railway lines and interfering with communications carried a life sentence, or the death penalty if these actions were deemed to endanger life. These emergency penal measures were racially coded in their effect, meaning hundreds of Palestinians were imprisoned and dozens executed (Ben-Natan, 2021).

The introduction of emergency powers in Palestine was reported approvingly in the British press. The *Manchester Guardian* (1936) stated: 'The authorities are finally indicating that there will be no surrender to intimidation or violence', and *The Times* (1936) commented: 'The severity of the new regulations is to be welcomed' although made the qualification that regulations would only make an impression when enforced. This reporting is significant for its tone, but also because it reveals that discussion of the emergency powers was in the public domain and would have been known to the Howard League's Colonial Subcommittee. The Rebellion resumed in 1937 after the Peel Commission (1937) recommended the partition of Palestine to create a separate Jewish state and continued until 1939. British counter-insurgency measures intensified and elements of spatial control such as the demolition of houses and buildings were used more widely. In addition to emergency penal measures, British soldiers and colonial police perpetrated unofficial brutality and torture, such as electric shocks, mock executions, beatings, waterboarding and indiscriminate killings (Hughes, 2009, 2010; Norris, 2008). By early 1938, Palestine was under de facto martial law, which enabled British troops 'to operate with relative impunity' (Hughes, 2010; Norris, 2008, p.28). The British government resisted imposing martial law officially, despite censure from the League of Nations Mandates Commission for not having done so, due to the perceived embarrassment of doing this in a 'Category A' mandate, one recognised as on the way to independence (Norris, 2008).

On 10 January 1939, the War Office issued a statement to refute allegations in the German Nazi controlled press 'of atrocities by British troops in Palestine' (*Manchester Guardian*, 1939a), which the *Manchester Guardian* published in full and *The Times* summarised. The statement explained in Palestine 'the active rebel and the peaceful citizen are inextricably mixed' and that '[v]irtually every village in the country has at one time or another harboured and supported the rebels and assisted in concealing their identity'. It adhered to the logic of colonial counter-insurgency that civilians' connection to regime opponents justified collective violence (see Thomas, 2018). The statement denied that 'wholesale demolition' of Palestinians' houses was taking place but acknowledged that demolition was 'occasionally' used as collective punishment, which was justified as 'fully recognised and understood by the Palestinian Arab'. This highlights another aspect of colonial counter-insurgency (and colonial penality more widely), the racial coding of violence (Thomas, 2018). The statement outlined three types of collective punishment in use: collective fines, collective demolition and curfews. The process for spatial control enacted via collective demolition was marking houses 'either of suspected bad characters or of village notables who can, and should, control the village' as a warning and demolishing them if there were further acts of terrorism (*Manchester Guardian*, 1939b).

French (2011) argues that establishing physical control over the population was key to British military success in counter-insurgencies. The use of collective punishments was 'not an incidental part of these operations, they were a deliberate and calculated part of the security

forces' policy' (p.108). Coercion through force 'was everywhere the mainstay of British counter-insurgency policy' (p.116). The significance of the counter-insurgency against the Arab Rebellion in Palestine 1936–1939 was that it established tactics subsequently used by the British during the era of decolonisation after the Second World War – again in Palestine, and in Malaya, Cyprus, Nyasaland, Aden and Kenya, with the Malaya and Kenya Emergencies representing the most brutal examples (Drohan, 2017; Norris, 2008).

During the period of the Arab Rebellion in Palestine, the Howard League's Colonial Subcommittee took no further action in relation to the death penalty, despite its expansion under the emergency regulations. Examples of death sentences and executions for carrying arms in Palestine were reported in *The Times* so were not difficult to discover (*The Times*, 1937a, 1937b). The Howard League's Report for 1937–1938 records that the Colonial Subcommittee was approached by the National Council of Civil Liberties, who were receiving 'frequent allegations of ill treatment in Palestinian prisons'. A meeting was held with the National Council for Civil Liberties and the Palestine Subcommittee of the Society of Friends. It was resolved that Norman Bentwich would investigate prison conditions during a visit to Palestine in 1938.[15] Prison conditions in Palestine were discussed at the March 1938 meeting of the Colonial Subcommittee with concerns raised about unauthorised beatings of prisoners, and acknowledgement of the need to investigate concentration camps and police stations as well as prisons.[16] Bentwich's visit to Palestine is recorded in the May 1938 minutes, although there is little detail about what he found.[17]

Prison conditions and the extension of rehabilitative measures such as probation and juvenile reformatories were the main focus of the Howard League's international and colonial campaigning and work. What this focus demonstrates in relation to Palestine in 1938 is that the Howard League restricted itself to the ordinary penal regime and demarcated the emergency regime as beyond its purview. Collective punishment, whether by curfew, fine or demolition of homes, outrageously violated penal liberalism, as did the expanded use of capital punishment. Instead, it reflected the long-standing imperial logic that different, bluntly authoritarian measures were needed to assert power in the colonies (Wagner, 2016; Wiener, 2009). The dual penal regime sectioned off measures of colonial repression and brutality as unconnected to ordinary penality (which is not to deny that repression was an aspect of ordinary penality). However, as Ben-Natan (2021) argues, the emergency penal regime was not outside the penal realm but reflected the duality of penal power in colonial contexts. The difficulty of maintaining this separation of the ordinary and the emergency in terms of the penal realm is illustrated by the reference to concentration camps in the Howard League minutes. These were established in Palestine in 1936 to detain nationalist rebels (Moore, 2010). As such, they were part of the emergency regime.

6 | LIBERAL COLONIAL PENALITY AFTER THE SECOND WORLD WAR

The Howard League's international and colonial campaigning paused during the Second World War. International work continued after the war via involvement in United Nations led meetings, conferences and initiatives related to penal issues and a new International Subcommittee was established in 1949. In 1947, Executive Committee members Margery Fry and Hermann Mannheim met with representatives from the Anti-Slavery and Aborigines' Protection Society, the Colonial Bureau of the Fabian Society and the Royal African Society to explore the possibility of creating a new Colonial Subcommittee. Ultimately, these plans were shelved – in part because

Executive Committee member Fry sat on the Treatment of Offenders Subcommittee of the Colonial Office's Committee on Social Welfare (formerly the Standing Advisory Committee on Penal Administration). The original iteration of this subcommittee was set up by Howard League member Denis Pritt and Fry's membership meant that the Howard League had a voice in relation to colonial matters, but – unlike its erstwhile Colonial Subcommittee – one that was not independent from government.

In 1951, Fry published 'Penal reform in the colonies' in the *Howard Journal*, which elaborated a vision of liberal colonial penality. She characterised penal reform in the colonies as 'the work of bringing colonial penal administration more into line with modern ideas' (Fry, 1951, p.90). Fry commented that 'communal responsibility, the duty of a tribe or village to make good the wrong-doing of one of its members, is not in accordance with our modern ideas of justice' (p.91). She did not intend this reflection as a criticism; Fry was pioneering in her attempts to bring elements of restitution and restorative justice to the criminal justice system in Britain (Logan, 2017). However, this 'modern' notion of individual responsibility only applied to the ordinary penal regimes in British colonial states. Collective punishment as deployed in 1930s Palestine paid no regard to individual responsibility. Fry did not mention this contradiction but rather wrote approvingly of probation, 'the necessary foundationstone of a rational treatment', appearing in the colonies and of the spread of juvenile justice systems including children's courts, approved schools and borstals (p.94). Fry concluded that much still needed to be done in terms of the modernisation of colonial penal systems, but a 'new spirit' of collaborative working had emerged (p.95). Exactly what Fry thought about colonialism is unknown. Her biographer notes: 'there is no evidence that she addressed the wider issue of colonial power or the ethics of imperial domination' but given Fry's left-wing politics, she was unlikely to have enthusiastically embraced imperialism (Logan, 2017, p.130).

Campaigning and work by the Howard League in relation to British colonies on particular issues was rare in comparison with the 1930s, especially when it came to the death penalty. The salience of capital punishment as an issue rose in Britain, with unsuccessful attempts at abolition in 1948 and 1956. The Howard League waged an active domestic campaign against the death penalty during this period. Following the merger of NCADP with the Howard League in 1948, the League's Capital Punishment Subcommittee was created. Members of the League provided written and oral evidence to the Royal Commission on Capital Punishment 1949–1953 (Seal, 2014).

The only clear mention of the colonial death penalty in the Howard League archives for the post-war era concerned Kenya in 1951. The Colonial Office wrote to the League highlighting the 'infliction of the death penalty for rape in Kenya' and explaining that they had urged Kenya, Northern Rhodesia and Nyasaland, the only three British territories where rape was a capital offence, to remove the death penalty for rape. The minutes of the Executive Committee sum up the discussion thus:

> Very few crimes were still punishable with death, and the Colonial Office was persistently trying to reduce them; but it was difficult for it to impose its will when the colonies had certain degrees of self-government and fuller self-government was the end in view. The committee felt that repressive punishments were the result of the insecurity felt by the small white population in the midst of a large coloured population, but without further knowledge no comment could be made.[18]

This summary excuses the Colonial Office's apparent inaction as lack of authority. Members of the Executive Committee had an awareness of 'repressive measures' in colonial regimes and

that the use of such measures was related to race. The phrasing of a 'small white population in the midst of a large coloured population' suggested some sympathy with the 'white population', although the minutes do not provide further elaboration. The Executive Committee was not interested in taking this issue further, representing a shift from the 1930s when the repressive use of capital punishment in ordinary penal regimes was a matter for intervention. The early 1950s was the era of decolonisation during which there was frequent mass violence in the collapsing British and French Empires. Thomas & Thompson (2014) identify a humanitarian double standard, whereby disintegrating colonial powers such as Britain and France espoused a new language of global human rights while their Empires collapsed amid mass violence towards civilian populations.

7 | THE KENYA EMERGENCY

Kenya in the 1950s makes an instructive example of this violent imperial collapse. The British waged a brutal and repressive counter-insurgency against the 'Mau Mau' rebellion 1952–1960, an uprising for self-government mainly fought by Gikuyu people. A state of emergency was declared in October 1952. The range of crimes eligible for the death penalty expanded under the emergency regulations and like in Palestine included firearms offences, as well as administration of oaths and consorting with terrorists (Anderson, 2005; Ben-Natan, 2021; Drohan, 2017). Over a thousand Kenyans were executed and summary execution was rumoured to have taken place (Anderson, 2005; Drohan, 2017). The British targeted individuals suspected of supporting the insurgency via mass arrests, deportation and detention without trial in forced labour camps. Confinement was used extensively, reaching 71,346 people in December 1954, 98% of whom were Gikuyu. As part of the dirty war, security forces engaged in beatings, torture and murder (Anderson, 2005). Other measures included collective punishments such as cordon and search operations, curfews, forcible population resettlement (villagisation), limitation of populations' access to food and free fire zones (French, 2011). Thomas (2018) defines dirty war as 'highly demonstrative acts of collective violence that are designed to compel popular compliance, with other, more covert actions' (p.505). The civilian population is the primary target.

In late 1952, the Howard League was informed of a series of new ordinances in Kenya which included use of anonymous witnesses in trials, registering new organisations and printing presses with the authorities, blacklisting and banishment. Margery Fry and Violet Creech-Jones, Howard League members who sat on the Colonial Office's Treatment of Offenders Subcommittee, raised the banishment law with the Colonial Office but accepted its opinion that it was a matter for the Kenyan Government and Parliament.[19]

Public attention was drawn to the Kenya Emergency in the mid-1950s. The *Daily Mirror* published a series of articles by Labour MP Barbara Castle, which highlighted the disappearance of people into prison camps and raised the deeply racialised use of these punishment measures by asking if it was possible for Black men in Kenya to get white justice (Gopal, 2019). In July 1956, a Howard League member asked the Executive Committee whether prison conditions in Kenya 'fell within the scope of the League'.[20] The issue of conditions in prison camps in Kenya had been debated in the House of Commons, following the publication of Eileen Fletcher's whistleblowing pamphlet *The truth about Kenya* in March 1956, which caused a 'political firestorm' (cited in Bruce-Lockhart, 2015, p.816). Fletcher, a Quaker social worker with the Community Development and Welfare Department, designed the rehabilitation programme at the Kamiti Detention Camp for women and worked with juvenile girls in the camp as a 'rehabilitation officer'. She made complaints to the Kenyan Government about conditions in the camp before writing the article.

She highlighted practices of hard labour and solitary confinement for girls who sang 'Mau Mau' songs. Fletcher attributed the high number of executions of Black Africans and discrepancies in justice between white and Black people to 'white supremacy' (Bruce-Lockhart, 2015). In the House of Commons, Labour MP (and former Colonial Secretary), Howard League member and husband of Violet Creech Jones, Arthur Creech Jones, argued that confinement in the camps was essentially internment without trial and that lengthy and life sentences had been given to children. Fenner Brockway, Labour MP and former vice-president of the Howard League, stated that out of 1,015 people executed in Kenya over the previous four years, only 297 were executed for murder. More than 40,000 were detained without trial or held despite having been cleared by the emergency courts (Historic Hansard, 6 June 1956). In 1954, Brockway had founded the Movement for Colonial Freedom, which campaigned to end British colonialism. This group published Fletcher's pamphlet (Bruce-Lockhart, 2015; Gopal, 2019).

In response to the member query, Executive Committee member Cicely Craven suggested that Margery Fry and Violet Creech Jones, as the League's representatives on the Standing Advisory Council at the Colonial Office, should ask whether conditions in Kenyan camps had been investigated.[21] The Executive Committee agreed the allegations warranted an inquiry. Alan Lennox-Boyd, the Colonial Secretary, announced that a Parliamentary Delegation might be sent to Kenya and at the Executive Committee's September 1956 meeting, Ulster Unionist MP Montgomery Hyde offered to join the delegation as representative of the Howard League.[22] However, this delegation, which visited Kenya in 1957, did not include Hyde.

These two examples – the new ordinances of 1952 and the member query about conditions in prison camps in 1956 – are the only instances of the Kenya Emergency appearing in the Howard League's archives. The House of Commons 'Hola Camp' debate of June 1959 raised the mass beatings of 85 detainees in the Hola Detention Camp in March 1959, which killed eleven men. This camp was intended for 'hardcore' Mau Mau and coerced the men into hard labour (Anderson, 2005). The 'Hola massacre' was a scandal and generated outrage in Britain about late imperialism. The Kenyan authorities and the British government acknowledged that the massacre was a shocking tragedy (Toye, 2017). Neither the massacre nor the parliamentary debate is mentioned in the Howard League's minutes. The Malayan Emergency of 1948–1960 is not mentioned at all; counter-insurgency measures there involved mass executions, forcible population resettlement, collective punishment and massacres (Dixon, 2009).

In her speech in the House of Commons that made the Hola massacre public, Barbara Castle asked how attitudes would have differed if it had happened in a British prison (Toye, 2017). This question was not posed or answered by the Howard League, whose archive is characterised mainly by silence about the violent and punitive actions taken under emergency regulations in the era of violent colonial collapse. From this silence, it appears that the organisation did not perceive emergency penal regimes to be within their sphere of interest. The Howard League's Executive and Colonial Committees had in the 1930s included individuals such as Fenner Brockway and Denis Pritt who became high-profile anticolonial campaigners (Pritt, a QC, led the defence of Jomo Kenyatta when he was tried in 1953 for instigating the Mau Mau rebellion: Gopal (2019)). The imperative for the League to remain non-political and work closely with government, including with the Colonial Office, made an organisational anticolonial stance unlikely.

8 | CONCLUSION

The Howard League as an organisation did not outline its views on colonialism or colonial penality. It was an avowedly non-political insider group and this probably accounts for why it did not

campaign against, or raise the issue of, punishment under emergency regimes in British colonies. In 1949, the Irish Prisoners Welfare Committee (IPWC) contacted the League about the sentences being served by Irish political prisoners and the conditions in Crumlin Gaol in Belfast. Cicely Craven sent a reply informing the IPWC that the Howard League was non-political, and stating that the IPWC needed to make representations to the authorities at a political level.[23] Like the Howard League's acceptance in 1952 of Colonial Office advice that repressive ordinances in Kenya were a matter for the Kenyan Government, this example sheds some light on how the Howard League drew boundaries around their areas of interest and intervention at this time. The organisation was less willing to intervene in relation to state violence in the era of decolonisation than it was in the 1930s, when it did highlight the perceived misuse or extension of the death penalty in ordinary penal regimes.

From the perspective of 21st-century British criminology, it makes intuitive sense that the Howard League did not intervene in emergency penal regimes. Its influence did not stretch to matters of counter-insurgency and there would have been the risk of compromising its work in areas where it did hold sway. However, as Ben-Natan (2021) argues, accepting a separation between ordinary and emergency penal regimes obscures the penal element of emergency powers. This is not to argue that the Howard League could have prevented colonial atrocities in 1930s Palestine or 1950s Kenya, but to highlight that the development of 20th-century penal liberalism rested on silence about the violent, repressive tactics of illiberal emergency penal regimes in the Empire and by implication construed those regimes as something other than penal. According to penal liberalism, penal power should be limited, rational, beneficial and fair. These aspirations clashed both with colonial and emergency penality, which operated on logics of different and worse treatment, which was often racially coded. Collective punishment, prison camps and mass execution illustrated this clash with penal liberalism.

Criminological analyses of British penal modernism and penal liberalism, including in the mid-20th century, follow the same demarcation of colonial emergency penal regimes as beyond the scope of criminology and usually pay no attention to colonial penality at all. The legacy of penal liberalism at play in British criminology is reflected in the under analysis of both state-based violence and the interaction between normal and exceptional penal practice during war, occupation and counter-insurgency (Jamieson, 2016; Walklate & McGarry, 2015). The narrative has been purified of colonialism, which is an effect of colonialism (Agozino, 2003; Frenkel & Shenhav, 2006; King, 2017). Attention to emergency penal regimes provides a fuller picture of mid-20th-century British penality beyond its own shores and unsettles the narrative of a 'kinder' paradigm demolished by neo-liberalism.[24] It upends the argument that penal modernism abjured bodily punishment – this discomfort applied in the metropole only (Brown 2002; Hogg & Brown, 2018). Integration of colonial penality into assessments of British penal modernism helps to push beyond a solely Eurocentric interpretation and exposes the 'dark side' of penal modernism. This integration can be understood as work towards a better understanding of how coloniality affects criminology (Dimou, 2021; Quijano, 2007).

ACKNOWLEDGEMENTS

The authors would like to thank their co-researchers who worked on the project from which this article was derived: Lynsey Black, Bharat Malkani and Florence Seemungal. They would also like to thank Smadar Ben-Natan for her helpful comments on an earlier version of the article, and the two anonymous reviewers, as well as Anne Logan for sharing research notes.

ENDNOTES

[1] Modern Records Centre, MSS 157/3/CAP/4/1–13, minutes of the meeting of the Colonial Subcommittee, 2 June 1930. All archival references are to the Modern Records Centre, unless otherwise stated (Howard League for Penal Reform Collection, 1788–2002; National Council for the Abolition of the Death Penalty Collection, 1923–1949).
[2] MSS 157/3/CAP/4/1–13, report on Howard League International Work 1929.
[3] MSS 16B/1/1, minutes of the meeting of the Colonial Subcommittee, 27 May 1930.
[4] MSS 16B/1/1, minutes of the meeting of the Colonial Subcommittee, 30 June 1930.
[5] MSS 16B/1/1, minutes of Colonial Subcommittee, 7 March 1932 and 18 April 1932.
[6] MSS 16B/1/6, *Penal Reformer*, current comment, October 1934.
[7] MSS 16B/1/6, *Penal Reformer*, current comment, January 1935.
[8] MSS.16B/1/2, minutes of the meeting of the Colonial Subcommittee, 13 November 1933.
[9] MSS 16B/1/2, minutes of the meeting of the Executive Committee, 19 January 1934.
[10] MSS 16B/ADP/1/5, minutes of NCADP Executive Committee, 17 January 1934.
[11] MSS 16B/HLP/1/2, minutes of the meeting of the Executive Committee, 16 February 1934.
[12] MSS 16B/1/2, minutes of the meeting of the Colonial Subcommittee, 27 November 1934.
[13] The National Archives/CO192/3. With many thanks to Anne Logan for sharing her notes with us about the Advisory Committee on the Treatment of Offenders in the Colonies.
[14] MSS 16B/4/1/1–16.
[15] MSS 16B/1/5, Annual Report 1937–1938.
[16] MSS 16B/1/3, minutes of the Colonial Subcommittee, 31 March 1938.
[17] MSS 16B/1/3, minutes of the Colonial Subcommittee, 12 May 1938.
[18] MSS 16B/1/5, minutes of the Executive Committee, 20 April 1951.
[19] MSS 16B/1/6, minutes of the Executive Committee, 21 November 1952.
[20] MSS 16B/1/6, minutes of the Executive Committee, 20 July 1956.
[21] MSS 16B/1/6, minutes of the Executive Committee, 20 July 1956.
[22] MSS 16B/1/6, minutes of the Executive Committee, 14 September 1956.
[23] MSS 16B/1/5, minutes of the Executive Committee, 9 September 1949.
[24] With regard to Northern Ireland, failure to incorporate the emergency penal regime as part of British penality means failure to apply this analysis to the United Kingdom as a whole, nevermind further afield.

REFERENCES

Agozino, B. (2003) *Counter-colonial criminology: a critique of imperialist reason*. London: Pluto Press.
Agozino, B. (2004) Imperialism, crime and criminology: towards the decolonisation of criminology. *Crime, Law and Social Change*, 41, 343–58.
Anderson, C. (2015) Execution and its aftermath in the nineteenth-century British Empire. In: Ward, R. (Ed.) *A global history of execution and the criminal corpse*. Basingstoke: Palgrave Macmillan.
Anderson, D. (2005) *Histories of the hanged*. London: Phoenix.
Ben-Natan, S. (2021) The dual penal empire: emergency powers and military courts in Palestine/Israel and beyond. *Punishment & Society*, 23, 741–763.
Bentwich, N. (1920) The legal administration of Palestine under the British military occupation. *British Year Book of International Law*, 1, 139–148.
Bentwich, N. (1934) The Palestine criminal code. *Howard Journal*, 4, 60–63.
Bentwich, N. (1938) The new criminal code for Palestine. *Journal of Comparative Legislation & International Law*. 20(1), 71–79.
Brown, M. (2002) The politics of penal excess and the echo of colonial penality. *Punishment & Society*, 4, 403–423.
Brown, M. (2004) Crime, liberalism and empire: governing the Mina tribe of northern India. *Social & Legal Studies*, 13, 191–218.
Bruce-Lockhart, K. (2015) The 'truth' about Kenya: connection and contestation in the 1956 Kamiti controversy. *Journal of World History*, 8, 815–838.
Bruce-Lockhart, K.D. (2017) 'Imagining modernity in the Uganda Prisons Service, 1945–1979' (unpublished doctoral dissertation, University of Cambridge).

Campbell, J. (2015) Murder appeals, delayed executions, and the origins of Jamaican death penalty jurisprudence. *Law and History Review*, 33, 435–466.
Dimou, E. (2021) Decolonizing Southern criminology: what can the 'decolonial option' tell us about challenging the modern/colonial foundations of criminology? *Critical Criminology*, 29, 431–450.
Dixon, P. (2009) 'Hearts and minds'?: British counter-insurgency from Malaya to Iraq. *Journal of Strategic Studies*, 32, 353–381.
Drohan, B. (2017) *Brutality in an age of human rights: activism and counterinsurgency at the end of the British Empire*. Ithaca, NY.: Cornell University Press.
Dubber, M.D. (2018) *The dual penal state: the crisis of criminal law in comparative-historical perspective*. Oxford: Oxford University Press.
French, D. (2011) *The British way in counter-insurgency*, 1945–1967. Oxford: Oxford University Press.
Frenkel, M. & Shenhav, Y. (2006) From binarism back to hybridity: a postcolonial reading of management and organization studies. *Organization Studies*, 27, 855–876.
Fry, M. (1951) Penal reform in the colonies. *Howard Journal*, 8, 90–95.
Garland, D. (2001) *The culture of control: crime and social order in contemporary society*. Oxford: Oxford University Press.
Gopal, P. (2019) *Insurgent empire: anticolonial resistance and British dissent*. London: Verso.
Hogg, R. & Brown, D. (2018) Rethinking penal modernism from the Global South: the case of convict transportation to Australia. In: Carrington, K., Hogg, R., Scott, J. & Sozzo, M. (Eds.) *The Palgrave handbook of criminology and the global south*. Cham, Switzerland: Palgrave Macmillan.
Hughes, M. (2009) The practice and theory of British counterinsurgency: the histories of the atrocities at the Palestinian villages of al-Bassa and Halhul, 1938–1939. *Small Wars & Insurgencies*, 20, 528–550.
Hughes, M. (2010) From law and order to pacification: Britain's suppression of the Arab Revolt in Palestine, 1936–39. *Journal of Palestine Studies*, 39, 6–22.
Hynd, S. (2008) Killing the condemned: the practice and process of capital punishment in British Africa, 1900–1950s. *Journal of African History*, 49, 403–418.
Hynd, S. (2011) Law, violence and penal reform: state responses to crime and disorder in colonial Malawi, c. 1900–1959. *Journal of Southern African Studies*, 37, 431–447.
Hynd, S. (2012) Murder and mercy: capital punishment in colonial Kenya, ca. 1909–1956. *International Journal of African Historical Studies*, 45, 81–101.
Hynd, S. (2015) 'Insufficiently cruel' or 'simply inefficient'?: discipline, punishment and reform in the Gold Coast prison system, c. 1850–1957. In: Miller, V. & Campbell, J. (Eds.) *Transnational penal cultures: new perspectives on discipline, punishment and desistance*. Abingdon: Routledge.
Jamieson, R. (2016) *The criminology of war*. Abingdon: Routledge.
King, S. (2017) Colonial criminology: a survey of what it means and why it is important, *Sociology Compass*, 11, e12447.
Latour, B. (1993) *We have never been modern*. Cambridge, MA.: Harvard University Press.
Loader, I. (2006) Fall of the 'platonic guardians' liberalism, criminology and political responses to crime in England and Wales. *British Journal of Criminology*, 46, 561–586.
Logan, A. (2017) *The politics of penal reform: Margery Fry and the Howard League*. Abingdon: Routledge.
Manchester Guardian (1936) Death penalty in Palestine: series of fresh outrages. 15 June.
Manchester Guardian (1939a) War Office defence of troops in Palestine. 10 January.
Manchester Guardian (1939b) British troops in Palestine. 10 January.
McClure, A. (2020) Archaic sovereignty and colonial law: the reintroduction of corporal punishment in colonial India, 1864–1909. *Modern Asian Studies*, 54, 1712–1747.
Moore, J.M. (2020) 'Law', 'order', 'justice', 'crime': disrupting key concepts in criminology through the study of colonial history. *The Law Teacher*, 54, 489–502.
Moore, P. (2010) 'And what concentration camps those were!': foreign concentration camps in Nazi propaganda, 1933–9. *Journal of Contemporary History*, 45, 649–674.
Nixon, M. (1935) Palestine: women and girl offenders. *Howard Journal*, 4, 135–138.
Norris, J. (2008) Repression and rebellion: Britain's response to the Arab Revolt in Palestine of 1936–39. *Journal of Imperial and Commonwealth History*, 36, 25–45.
Peel Commission (1937) *Palestine Royal Commission Report*. London: HMSO.

Quijano, A. (2000) Coloniality of power, eurocentrism, and Latin America. *Nepantla: Views from South*, 1, 533–580.
Quijano, A. (2007) Coloniality and modernity/rationality. *Cultural Studies*, 21, 168–178.
Rose, G. (1961) *The struggle for penal reform: the Howard League and its predecessors*. London: Stevens.
Ryan, M. (1978) *The acceptable pressure group: inequality in the penal lobby, a case study of the Howard League and RAP [Radical Alternatives to Prison]*. London: Saxon House.
Ryan, M. (2003) *Penal policy and political culture in England and Wales: four essays on policy and process*. Winchester: Waterside Press.
Seal, L. (2014) *Capital punishment in twentieth-century Britain: audience, justice, memory*. Abingdon: Routledge.
Shaw Commission (1930) *Report of the Commission on the Palestine Disturbances of August, 1929*. London: HMSO.
Sherman, T.C. (2009) Tensions of colonial punishment: perspectives on recent developments in the study of coercive networks in Asia, Africa and the Caribbean. *History Compass*, 7, 659–677.
The Times (1936) Death penalty in Palestine: new measures to restore order. 15 June.
The Times (1937a) Terrorism in Palestine. 11 November.
The Times (1937b) Death sentence in Palestine. 25 November.
Thomas, M. (2018) Violence, insurgency and the ends of Empire. In: Thomas, M. & Thompson, A. (Eds.) *The Oxford handbook of the ends of Empire*. Oxford: Oxford University Press.
Thomas, M. & Thompson, A. (2014) Empire and globalisation: from 'high imperialism' to decolonisation. *International History Review*, 36, 142–170.
Toye, R. (2017) Arguing about Hola Camp: the rhetorical consequences of a colonial massacre. In: Thomas, M. & Toye, R. (Eds.) *Rhetorics of empire*. Manchester: Manchester University Press.
Verboven, K., Carlier, M. & Dumolyn, J. (2007) A short manual to the art of prosopography. In: Keats-Rohan, K.S.B. (Ed.) *Prosopography approaches and applications: a handbook*. Oxford: Unit for Prosopographical Research (Linacre College).
Wagner, K.A. (2016) 'Calculated to strike terror': the Amritsar Massacre and the spectacle of colonial violence. *Past and Present*, 233, 185–225.
Walklate, S. & McGarry, R. (2015) Introduction: Placing war within criminology. In: Walklate, S. & McGarry, R. (Eds.) *Criminology and war: transgressing borders*. Abingdon: Routledge.
Wiener, M.J. (2009) *An empire on trial: race, murder, and justice under British rule, 1870–1935*. Cambridge: Cambridge University Press.
Wolfe, J. (2006) Meeting minutes as a rhetorical genre: discrepancies between professional writing textbooks and workplace practice tutorial. *IEEE Transactions on Professional Communication*, 49, 354–364.

How to cite this article: Seal, L. & Ball, R. (2023) The Howard League and liberal colonial penality in mid-20th-century Britain: The death penalty in Palestine and the Kenya Emergency. *The Howard Journal of Crime and Justice*, 62, 149–166. https://doi.org/10.1111/hojo.12513