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# Whiteness, Masculinity and the Ambivalent Embodiment of 'British Justice' in Colonial Burma

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## ABSTRACT

When British judges in colonial South Asia attempted to perform their duties with detached objectivity they were also performatively enacting a particular construction of imperial white masculinity. This was an ambivalent embodied enactment. When the figure of the objective judge was confronted by critics as white and male, its claims to be objective were under threat. As a result of this ambivalence, it was an imperial white masculinity that could not name itself. Instead, it was a white masculinity constructed through a differentiation that was made with feminised, non-white bodies that were deemed partial.

## KEYWORDS

Whiteness; masculinity; gendered violence; justice; colonial Burma

## Introduction

Reading colonial legal documents recording cases of gendered violence is often a difficult and upsetting task. The historian is confronted with the details of terrible crimes and traumatic events that are rendered in the detached language of an imperial judge. Where the testimonies of survivors have been preserved, these passages are often framed, picked apart and occasionally undermined by this surrounding legalistic prose. The juxtaposition of the horror of the cases with the plain, restrained manner in which they have been represented, no doubt contributes to the researcher's feelings of unease.<sup>1</sup> It is my contention that this impersonal prose was indicative of a particular construction of white masculinity that was implicit in the idealised figure of the magistrate and the judge in a colonial context. The act of writing in this self-consciously 'objective' fashion was part of the performativity of the white male imperial judge.<sup>2</sup>

Recent work has gone a long way to historicise normative understandings of whiteness and masculinity in British imperial contexts. Without wanting to be diverted into a long exposition of the emergence of these historiographic concerns, it is worth noting that this move has come later than research deconstructing discourses on black and Asian racial 'others' as well as notions of femininity. In some senses, the study of whiteness and of masculinity face the same challenge; how to trace the history of something that was often treated as an implicit universal? This is a challenge that has proved to be far from insurmountable. Historians of colonial settler societies in Australia and north American have shown how over time a white identity emerged encompassing myriad distinct European identities and against racialised

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'others', such as black populations and First Nations' peoples – although it is important to note that not all Europeans have been easily incorporated into this shared sense of whiteness.<sup>3</sup> The work of historians such as Angela Woollacott, Warwick Anderson and Alison Bashford has shown how empires provided important intellectual frameworks for the formation of white identities.<sup>4</sup> The recent attention that has been paid to the parallels between the colonial experiences of imperial actors in settler and non-settler societies enables an expansion in the purview of whiteness studies beyond its principal concern with settler identities.<sup>5</sup> Following in this vein, the context for this study is that often-neglected corner of the *Raj*, British Burma.<sup>6</sup>

The study of masculinity has attracted more attention than whiteness has in South Asian studies. Masculinity is a subject that has been particularly well studied in histories of colonial India.<sup>7</sup> Mrinalini Sinha's ground-breaking study of colonial discourses that contrasted English masculinity to the perceived femininity of Bengalis, now over twenty years old, continues to be the touchstone for much work in the field.<sup>8</sup> Four years after she published *Colonial Masculinities*, Sinha reviewed the growing field and suggested new avenues that work on masculinity might explore. One of the avenues that she identified and that has since remained understudied was the embodiment of 'imaginary mappings' of gender difference.<sup>9</sup> Whilst studies of gender ideologies have proliferated in recent years, Sinha's point that more could be done to denaturalise the assumed link between gendered discourses and sexed bodies remains relevant.<sup>10</sup> Just as scholars of whiteness examine the historical processes by which people become white, Sinha encourages historians to examine how people become men.

When British judges attempted to perform their duties with detached objectivity they were performatively enacting a particular construction of imperial white masculinity. In the same instantiation, they were also embodying British justice. But this was an ambivalent embodiment. When the figure of the objective judge was confronted by critics as white and male, its claims to be objective were under threat.<sup>11</sup> As a result of this ambivalence, it was an imperial white masculinity that could not name itself. Instead, it was a white masculinity constructed through a differentiation that was made with feminised, non-white bodies that were deemed partial. Judith Butler has perhaps captured this process best: 'This is a figure of disembodiment, but one which is nevertheless the figure of a body, a bodying forth of a masculinized rationality ... whose imaginary morphology is crafted through the exclusion of other possible bodies.'<sup>12</sup>

Before moving on to examine the empirical material I use to uncover how British justice was embodied as white and male, an important caveat is necessary. This study does not mean to draw attention away from historical research on non-white or female legal actors in colonial contexts. As recent studies have shown, individuals who are not easily characterised as either coloniser or colonised, nor helpfully understood as collaborators, were crucial agents in shaping the law and notions of community.<sup>13</sup> In a sense, this article attempts to build on the approaches taken in studies of these often exceptional people. These studies have shown how lawyers and legal scholars from particular colonised communities engaged with legal systems in order to reshape their sense of selfhood and the wider identity of their communities. Something similar can be done for British imperial identity in colonial Burma. Rather than taking British judges' whiteness and masculinity as a given, historical approaches can explore how their own racialised, gendered selves were constructed through their legal performances and writings.

The remainder of the article has been divided into two sections. The first introduces a distressing rape case that occurred in colonial Burma in 1911. It explores the gendered logics

that were deployed by imperial magistrates and judges in interpreting the evidence.<sup>14</sup> This first section offers a context for situating the ambivalent embodiment of British justice as white and masculine that is explored in the second section. This following section reads the rising controversy surrounding the case alongside the autobiographical and fictional writings of British judges who served in Burma. Reading across these different genres of imperial text, it teases out the implicit understandings of race and gender at work, and uncovers some of the inherent tensions of embodying of these normative understandings.

## Sexual Violence, Gendered Victims

Victoria Point in the Tenasserim Division was one of the furthest flung towns in the Indian Empire. It was located at the southernmost tip of the province of British Burma as it extended down the east coast of the Bay of Bengal. Bordering the northern Malay states that had remained under the authority of the Siamese Government following the Anglo-Siamese treaty of 1909, it was situated at the frontier of formal colonial rule in South Asia. But despite its apparent remoteness, this town provided the backdrop to a horrible case of sexual violence that threatened to become a damaging imperial scandal.

In July 1911, a report written by a local sub-divisional officer was received by the District Magistrate, G. P. Andrew. It concerned the actions of a British rubber planter called Captain McCormick. It was alleged that he had kidnapped a young Malay child of about 11 years of age called Ainah and raped her. Following this, it was alleged that he then refused to return her to her family for three months, keeping them at bay with physical violence, until the police intervened. Andrew described the report as a 'highly coloured account', a criticism that reinforced the importance ascribed to the performance of detached objectivity. Even though his District Superintendent of Police felt that there was no case to be heard against McCormick, Andrew decided to hold a magisterial enquiry into the accusations.<sup>15</sup>

The precise nature of this enquiry is unclear. At times it is referred to as a trial within the official correspondence and at other times it is described as an enquiry. McCormick, it seems, was not formally charged with the crimes. Nevertheless, witnesses were questioned under oath and formal evidence was gathered. In this quasi-trial, the planter countered the accusations with his own version of events. He claimed to have discovered that Ainah was suffering from what he believed to be gonorrhoea, a disease that he stated she had contracted as a result of her being prostituted by her parents. Having found this out, he had taken pity on her and put her in the custody of his cook's wife whilst she received medical attention. Based on the evidence gathered in his enquiry, Andrew discharged McCormick from having to face any charges on either the allegation of abduction or the accusation of rape.<sup>16</sup>

This might have been the end of the case had it not been for a couple of strongly worded articles that appeared in a Rangoon-based newspaper in April 1912, a year after Ainah had been abducted. The author of the articles, William Channing Arnold, accused the local government of participating in a gross miscarriage of justice. We will examine the substance of his allegations in the following section, but the result of this negative publicity was that both Andrew's decision and the evidence that he had gathered were scrutinised by the Chief Court of Lower Burma in November that same year. Reviewing this material the presiding judge, Judge Hartnoll, concurred with Andrew's view that there was no *prima facie* case to be brought against McCormick.<sup>17</sup> In this section I will uncover why it was that British judges consistently argued that despite the apparent evidence against McCormick – his own

statements in which admitted that he had taken Ainah against her parents' will, Ainah's testimony that stated that she had been raped by him and medical evidence that suggested she had been subjected to a sexual assault but had not been a prostitute – he was not only innocent but that there was not enough evidence to even frame charges against him.

Central to the judgements made of the evidence by British imperial officials were wider ideologies of gender and race. Both Ainah and her mother testified that McCormick had abducted and raped her. During the time that she was held captive, Ainah's mother had given birth and her father had died. In the absence of her parents, attempts had been made by her wider family to recover her. Evidence produced by these other family members stated that the attempts they made to have Ainah released on the parents' behalf were met with violence from McCormick and his staff. However, the evidence provided by these witnesses and the testimonies of Ainah and her mother were not deemed credible. Andrew and Hartnoll pointed to inconsistencies and discrepancies in their statements. The argument put forward in Channing Arnold's articles, and also made by Ainah's mother, that many of the statements were taken in a hostile environment and in the presence of McCormick whilst he cleaned his gun were not addressed or taken account of. Moreover, the discrepancies in McCormick's evidence, when these were mentioned, were explained away by Andrew and Hartnoll rather than viewed as inherently weakening his case, as they were for non-white testimonies. McCormick's alternative explanation of the events was not scrutinised to the same degree as the case against him. This imbalance in assessing the testimonies of witnesses was typical of what Ann Laura Stoler has called colonial 'hierarchies of credibility'; the underlying criteria according to which the truth of competing explanations of violent events was judged.<sup>18</sup>

Within this hierarchy in British India, the ascribed race and gender of the person producing the evidence had a pivotal influence on official judgements of its credibility. According to the 'cultural psychology' deployed by white imperial judges in the colony, 'native' women and children made untrustworthy, mendacious witnesses.<sup>19</sup> The motives of female, Indian witnesses were always questionable and the honesty of children was similarly doubted. It was often thought they were acting on behalf of hidden interests. In the case against McCormick, British officials came to believe that Ainah's mother was motivated to bring the case by the encouragement of a local powerbroker called Mohamed Din, a man who apparently bore a grudge against the planter.<sup>20</sup> Within official writings about women in Burma, these types of fears were particularly pronounced. The belief that Burmese women were independent and the more powerful partner in marriages led to a concern that they might use their feminine influence to interfere with official business and corrupt British justice.<sup>21</sup> As one veteran official put it, along with indigenous rulers, thieves and the boughs of trees, women in Burma were not to be trusted.<sup>22</sup>

If female witnesses were mistrusted when they were heard as mothers and children, this distrust was even more profound when they were suspected of involvement in prostitution. McCormick's suggestion that Ainah was being prostituted by her parents may have added an additional axis for doubting the evidence against him. As historians of prostitution have shown, as well as being a shifting and increasingly capacious legal category during the nineteenth century in British India, the 'prostitute' was also a moral category.<sup>23</sup> Evidence that showed that Ainah had been a dancer in a *pwe* (a theatrical festival) troupe would have likely compounded this question over her and her family's morality. Although the British recognised that *pwes* were not a form of sex work – a process of categorisation that was more

complex in the case of Indian nautch dances – they did view them as troublingly sensuous and disorderly, and attempted to regulate them.<sup>24</sup> Given the weight placed upon on the race, gender, age and sexual conduct of a witness by imperial judges as salient factors in judging the credibility of their evidence, it is unsurprising that the statements of Ainah and her female relatives were subjected to a greater degree of critical scrutiny than that of McCormick.

In this context, Andrew's judgement that the evidence that had been produced was not sufficient to frame a charge to be heard in a colonial court was probably accurate. Recent studies of imperial justice in British India amply demonstrate that the colonised struggled to get justice in cases where they had been the victims of white violence. The legal system was structured by exemptions and processes that recognised and sustained the privilege of white Europeans within colonial society, even while the lack of equality under the law was viewed by government as an anomaly and a threat.<sup>25</sup> In addition to this, the chances of getting a successful conviction in a case of rape were also slim in British India. In the Indian Empire – as was also the case in Britain – women's testimonies were doubted and the class and 'character' of both the victim and the accused had a major bearing on the outcomes of cases.<sup>26</sup> In Burma, at the end of the nineteenth century and into the early twentieth century, state practices from the lowest ranks of officialdom upwards served to make it extremely difficult to get rape cases heard in court, let alone secure a conviction.<sup>27</sup> The asymmetries of colonial justice meant that the odds were firmly against Ainah and her mother winning any case that might have been framed against McCormick.

Medical evidence also played an important role in the decision to discharge McCormick. As Elizabeth Kolsky has shown, the perceived unreliability of women's testimonies led to courts putting greater weight on medico-legal evidence in cases of suspected rape. How this evidence was produced and read was also subject to wider imperial prejudices.<sup>28</sup> Ainah's genitalia was medically examined on, at least, two occasions to judge whether she had been vaginally raped and whether she had been inflected with gonorrhoea. The first doctor to examine her, Dualat Ram, found that her hymen was broken and that she had 'purulent discharges' that he then treated. Later she was also examined by a civil surgeon called Evers who found that he could only 'penetrate' Ainah's vagina 'partially' when he used two lubricated fingers. Hartnoll noted that the evidence of Ram did not state definitively that Ainah had been penetrated by a penis or that the discharge was a symptom of gonorrhoea. He speculated that Ram's evidence might be read as having been the result of masturbation or the insertion of something other than a penis. The evidence proffered by Evers was used by Hartnoll to suggest that Ainah had not been raped.<sup>29</sup> Hartnoll's interpretation of the medico-legal evidence was informed by questions surrounding Ainah's sexual conduct and morality, and by a restrictive definition of sexual intercourse, one that distinguished between 'partial' and 'full' penetration. It was not mentioned that according to this same reading of the medical evidence, McCormick's own explanation of events – that Ainah was a child prostitute whom he rescued – was also undermined. The interpretation of medico-legal evidence was also informed by the wider 'hierarchies of credibility' used by colonial judges.

I noted that Ainah was examined *at least twice* because according to his own testimony McCormick had also examined her genitals for symptoms of gonorrhoea. Having dismissed the charges of abduction and rape, Hartnoll found this admission harder to dismiss as it potentially could have been used to frame a charge under section 354 of the Indian Penal Code. This section ran that anyone who 'assaults or uses criminal force to any woman

intending to outrage or knowing to be likely that he will thereby outrage her modesty shall be punished'. For Hartnoll, the issue turned on whether Aina had consented to be examined by McCormick, indeed whether given her young age she was legally capable of consenting. Bizarrely, after citing the section of the code that defines the age of consent as twelve years and above, Hartnoll stated that since she was between eleven and twelve at the time she was capable of freely consenting.<sup>30</sup> Aina's age was disputed throughout the investigations into the case. Her mother's claims that she was younger than eleven were disbelieved, since it was said that among her 'class' very few people kept an accurate account of age. Medical evidence suggested that she had not yet reached puberty. Nevertheless, imperial officials assumed that she was older than her mother stated and revised her age upwards to the digital age qualification of 12.<sup>31</sup> As Ishita Pande has argued, the early twentieth century saw a shift in colonial India away from defining the age of consent according to a biomedical definition of a child based on physiological knowledge, to a numerical one based on actuarial documentation.<sup>32</sup> Aina's case occurred at a time when this shift was still incomplete, leaving her age open to be defined by imperial officials. In the absence of paperwork, or what they deemed to be a credible source, they found her to be roughly 12.

The testimonies of Aina and her family, along with the medico-legal evidence that Andrews and later Hartnoll examined, were interpreted favourably to McCormick's case. That he had kept Aina under his own custody rather than informing the police was not thought suspicious. Because of the doubt surrounding much of the 'native' testimony that was gathered, it was believed that she might have been put in McCormick's care with the consent of her guardian – she had been staying with one of her mother's friends who were employed by McCormick whilst her mother was in seclusion during her pregnancy.<sup>33</sup> This picture fits with the position that European planters held in colonial Asia. In British India, despite concern about the class of men who became planters and the problems periodically caused by scandals stemming from their violent treatment of their employees, planters could exercise extra-judicial powers of private punishment on their estates.<sup>34</sup> Although McCormick did not have legal authority to confine Aina, it was not viewed by British officials as unusual that he apparently adopted the role of benevolent patron to protect her, particularly if he suspected that she was being employed as an underage prostitute – a role adopted by other planters on estates in British Malaya with respect to Malay women.<sup>35</sup>

The perceived lack of a *prima facie* case against McCormick demonstrates the influence of gender ideologies on the practice of law in British India. It is another historical example of a colonised woman – or in this case girl-child – becoming the victim of white violence and receiving scant legal redress in British Burma.<sup>36</sup> The ability of the colonised to successfully mobilise female subject positions, such as girl-child and mother, to get justice was evidently highly circumscribed. Limited conceptions of womanhood were intrinsic to what Radhika Singha has called the 'infrastructural power' of the law. By this she is referring to the way in which the law shaped underlying identities and rationalities.<sup>37</sup> As we have seen, through this infrastructural power, colonised female subjects were often characterised as unreliable legal actors, especially when questions were raised about their sexual conduct – although such characterisations were also conditioned by notions of both caste and class.<sup>38</sup> Intrinsic to this framing of Asian women as problematic legal subjects were British judges' performative enactment of whiteness and masculinity. In Andrew and Hartnoll's readings of the evidence they presented colonised female subjects as partial and mendacious. Through these characterisations, they implicitly positioned themselves as detached and objective.

However, this embodiment of the impartial judge as a white man was an ambivalent one since acknowledging this embodiment could call into question their claims to impartiality. This was an intrinsic tension in the law's embodiment though imperial white masculinity.

### **Ambivalent Embodiments of British Justice**

William Channing Arnold's knowingly salacious articles in the *Burma Critic*, both published on 28 April 1912 under the title 'A Mockery of British Justice', brought the events that had occurred at Victoria Point to a wider audience. The first article devoted the opening two pages to a long, apologetic explanation of why the story was being published in the paper. Channing Arnold stated that he was initially disinclined to bring a case of this nature out into the public domain. He wrote that he would have preferred to have had the matter settled through the Lieutenant-Governor of Burma re-opening the case following Aina's mother's petition requesting this. But, since the Lieutenant-Governor had found no reason to question the decisions made at Victoria Point, Channing Arnold felt that he had to bring the public's attention to the case in order to defend 'British justice'. He wrote that this was necessary to combat what he believed to be a growing perception among the colonised population that the law was marked by racial inequality.<sup>39</sup> The second article then went into greater detail into how, he believed, Andrews and the Sub-Divisional Police Officer colluded to protect McCormick from being brought to justice.

Channing Arnold's articles were principally about preserving the reputation of British justice. This manner of argumentation was commonly employed by imperial critics of government policies in Burma. An example from the same year was Mrs. Archibald Mackirdy's book on the trafficking of European women called *The White Slave Market*. It contained a chapter that dealt specifically with the state's connivance with prostitution that was believed to be going on in colonial Burma. The chapter, titled 'Burma Marriages: Western Men with Eastern Morals' – re-using the title of articles on the subject published in the missionary paper *Truth* – claimed that young British and north American men, who worked for various companies in the colony, routinely bought Burmese girls as young as thirteen to be sexual companions during their sojourn in the East.<sup>40</sup> Drawing attention to these kinds of abuses was not a strategy used to further a nascent anti-imperialist agenda. They were instead part of a call for an imperialism that lived up to its claims to be moral and just.

It is notable that these allegations were not made about officials – who were blamed primarily for allowing these immoral acts to go on unchecked – but unofficial white men residing in the colony. In this vein, Channing Arnold characterised McCormick as 'an overbearing violent tempered man, intemperate in his habits, a loose liver, a boastful bully'. He was the kind of person Channing Arnold believed an 'Oriental' country especially was 'better without'.<sup>41</sup> As Elizabeth Kolsky has persuasively shown in her work on the development of the Indian legal system, the presence of troublesome, unofficial whites was a source of considerable anxiety for the Government of India. Their crimes and unruly behaviour forced the state to act to control them. Nevertheless, the imperial project depended upon the white privilege that they represented. Kolsky describes them as the 'third face' of colonialism, between the colonial state and the colonised. Their violent acts were episodes in which the tension between the liberal desire for uniform, equal justice and the imperial imperative of maintaining a hierarchical racial division between the colonisers and the colonised was most



acute.<sup>42</sup> The events in Victoria Point brought this tension to the surface and Channing Arnold's article gave a voice to the imperial anxiety that accompanied it.

If this 'third face' of colonialism was at the crux of an axiomatic tension to liberal imperialism in India, one that Kolsky shows inspired the development of a compromised legal system that accommodated colonial racial hierarchies, then magistrates and judges were in a particularly delicate position. The prominence of magistrates in the British Empire had grown during the nineteenth century as a way of overcoming colonial jurisdictional problems whilst ensuring metropolitan oversight of legal decisions.<sup>43</sup> In the process they had become pivotal legal actors. Individuals like Andrew and Hartnoll were thus at the frontline of the tension between equal justice and white privilege, having to simultaneously satisfy both demands in their judgements as best as they could. As a result, critics such as Channing Arnold directed their central complaints towards the actions of these lawmakers for failing to apply the law equally. As his articles made clear, for Channing Arnold it was not so much McCormick's terrible crimes that had damaged the reputation of British justice, as it was his apparent shielding from justice by legal officials. He pointed out that Andrew and McCormick were friends and stated that this was 'a very important factor in the gross miscarriage of justice.'<sup>44</sup> For Channing Arnold, Andrew's decision not to prosecute McCormick was a sign of his failure to treat the case with the detached impartiality and objectivity that he believed was expected from British justice.

The Lieutenant-Governor disagreed. Finding no flaw in Andrew's conduct in the enquiry or in his reading of the evidence, he wrote to the Government of India for sanction to prosecute Channing Arnold for defamation.<sup>45</sup> For the Government of Burma too, this was a matter that affected the wider reputation of British justice in the colony. The accusations made in the *Burma Critic* had brought the independence of the magistracy into question. The decision was made to allow Andrew to make a complaint against Channing Arnold. In short, to salvage the reputation of one imperial lawmaker, the objective judgement of another was required. As we have already seen, Judge Hartnoll concurred with Andrew's decision-making. Channing Arnold was found guilty of defamation and lost his subsequent appeal. Leaving the individual characters aside, at the heart of these legal disputes was the figure of the judge itself. The intention of the inflammatory articles and the intention of the defamation suit were, in this regard, one and the same: to maintain the myth that British justice was safeguarded in the figure of the objective judge. The irony was that these attempts to preserve this figure as a linchpin of a disembodied, universal system of justice in fact drew greater attention to the embodiment of this figure in white men. How judges and magistrates managed this tension can be uncovered by situating the documents and records produced in courts and legal proceedings alongside an analysis of the autobiographical and literary writings of British judges.

Maurice Collis' published account of his time as a magistrate and then a judge in British Burma in the late 1920s and early 1930s is one such text that can provide us with some insights. As we shall see, in his writing on cases where white privilege and the equal application of the justice came into conflict, his ambivalence at embodying the law is most marked. In contrast, writing about his time as a district magistrate, Collis bemoaned the tedium of the 'hack-work' that he had to get through. In his description of this labour he deploys a thoroughly depersonalising metaphor: 'I was to be a sort of recording machine, which, set in motion, turned accused persons into convicts.'<sup>46</sup> He was not merely an impartial and objective figure in this characterisation, but an inhuman automaton. These low-level

criminal cases involving only the colonised population did not cause him to reflect on his race or the difficulties of equal justice in a colonial society, it only inspired a brief commentary on imperial boredom.<sup>47</sup> Looking back on this time in his career, he wrote that he would come to wish that he was still 'only the machine'.<sup>48</sup>

In what proved to be his last case in the colony, Collis had to try a European soldier who had ignored traffic directions when driving his car in Rangoon – it was suspected, under the influence of drink – and crashed into another vehicle. Two female Burmese passengers who were travelling in the car that he hit were grievously injured in the collision. The case had caused a sensation in the Burmese press and consternation among the British residents in the city. Recalling feeling pressurised into producing a sentence short of imprisonment by military men and officials, and having identified the fine as the easiest option for him personally, he reflected on how the case affected his sense of self: 'It was a very tempting course of action. But I could not shut my eyes to the simple truth that a fine alone was not the proper sentence. And I knew that if I inflicted only a fine I should never again be able to hold up my head. I should be doing myself an essential violence.'<sup>49</sup> In this passage his description of his feelings served to portray him as a man of principle and honour. In the book's overarching narrative, it operated to heighten the tension and drama of the trial itself. Overall, Collis was adding to the ultimate sense of injustice at how he had been treated; officially marginalised and eventually pushed out of both his job and the country. However, what is interesting in this passage for our discussion is the intensity of his identification with the role of the judge. In marked contrast to his alienation from everyday magisterial work, labour that made him become a 'recording machine', this decision risked the infliction of 'an essential violence' against himself. In these circumstances, becoming the idealised detached and objective judge meant the dissolution of the boundary between Collis the judge and Collis the man.

In this case and throughout the book, Collis emphasises that during his career in Burma his actions were always taken with the defence of British justice in mind. This meant showing that as a white man his judgements were fair, in order to demonstrate that him being a white man had no bearing on his judgements. The context for these performances of a self-consciously white, masculine judicial objectivity during the interwar years was an upsurge of anti-colonial nationalism. As Taylor Sherman has shown for the rest of British India during the early twentieth century, the Indian National Congress and other anti-colonial political movements developed strategies for making the government appear to be illiberal and unequal in its application of justice. The government in turn attempted to present itself as fair-minded and just.<sup>50</sup> Judges and magistrates were at the frontline of this contest, having to perpetuate the image of their detached objectivity whilst enforcing repressive legislation. Collis wrote about finding himself in this situation when he had to try the nationalist Mayor of Calcutta, Sen Gupta, for an allegedly seditious speech he gave whilst visiting Rangoon. As a Congress politician, the Mayor refused to participate in the trial. This was a manoeuvre calculated to force Collis into imprisoning him for a longer sentence than his initial crime had warranted and appear unjust. Collis recognised his role in this piece of political theatre and refused to play his part in it: 'to be a magistrate who, thinking to please a government, gave a wrongful order which also pleased its opponents; to be at once unfair and a fool.'<sup>51</sup> In the end, Collis sentenced him to ten days' simple imprisonment, denying the Congress a 'martyrdom' through his 'inconvenient fairness'. Collis' embodiment of his legal role was central to this. He wrote that although the nationalists might laugh at the government for

bringing the case against the Mayor, 'they could not laugh at the British nation, for the court which had tried the case was a British court, presided over by a British magistrate.'<sup>52</sup>

At the time of the McCormick case, nationalist fervour was not as high as it was in the febrile climate of the 1930s, but similar pressures existed. Groups that began life as Buddhist organisations were adopting increasingly nationalist platforms, languages and grievances.<sup>53</sup> Hartnoll would have been conscious of this emerging critical audience among the Burmese population when he was making his judgements, even if the pressure from this quarter would not have been as acute as it was for Collis almost twenty years later. Hartnoll would also have been aware that the case would have had an audience in the more radically nationalist press in India. In these newspapers cases in which Europeans were accused of rape were widely reported and the apparent freedom of women in Burma was used to counter imperial claims to be improving women's lives.<sup>54</sup> In addition to these interested parties, he would have known that the case was being discussed across the Empire. Questions were asked about the details of the case in the House of Commons.<sup>55</sup> Newspapers across the British world reported on the defamation case against Channing Arnold and, as a result, the accusations against McCormick. The *New Zealand Herald* described it as a 'lurid' episode and reported on the case under the title, that had now become short-hand for such cases, 'Western Men with Eastern Morals'.<sup>56</sup> Although it was a different political context, Hartnoll's performance of detached objectivity was also being scrutinised.

Reading across imperial writings that were contemporaneous to the case, we also find evidence of this ambivalent embodiment of British justice in white men. In the 1913 novel *Fascination*, written by Cecil Champain Lewis, who had worked as a magistrate and a judge in colonial Burma, the author details how sexual desires were perceived as a threat to objectivity. The novel is narrated by an assistant superintendent, with magisterial powers, called Chepstowe, who is stationed in a remote outpost in northern Burma. He is, like the protagonists of Lewis' first two novels set in Burma,<sup>57</sup> a bachelor, approaching middle-age, who has a stoic temperament and a wry outlook on the world. In all three of these novels, Lewis' writing suggests a strong association between himself as the author and his protagonists. There was a blurring of writer and narrator. This was evidently his idealised form of masculinity, one that was inclined to moderate social detachment and took pride in being 'balanced' in making legal judgements. In the story, Chepstowe has found himself on holiday with the Cavishams, a dysfunctional family from England. In an important passage in the narrative, Mr. Cavisham becomes captivated by a young female snake charmer called Ma Kin. In a fit of jealousy his adulterous wife throws one of the snakes at her. Ma Kin, having discussed the matter with one of Chepstowe's earnest Burmese subordinate officials, decides that she wishes to make a case against Mrs. Cavisham for assault. But Chepstow successfully dissuades her.<sup>58</sup> How Lewis details the different actors' relationships with the law in this section of the book is revealing.

Drawing on the wider gender norms discussed in the first section of this article, Lewis makes Chepstowe the embodiment of an equitable and judicious lawmaker in contrast to Ma Kin. When she visits him in order to place her charge, he is surprised and alarmed to find her quoting sections of Indian Penal Code to him – incidentally it is under section 354 on the outraging of a woman's modesty, discussed above in relation to Ainah's case, that Ma Kin wishes to make her case. But her knowledge of the law, as well as that of his eager Burmese subordinate who helps her, is portrayed as superficial. They do not possess an internalised understanding of its content and meaning. Instead, Lewis/Chepstowe locates

their legal knowledge in the law books that they carry, the weight of which they cannot handle: 'She [Ma Kin] was literally lop-sided with the weight of the volumes'.<sup>59</sup> This representation of Burmese legal actors as imperfect mimics of the British has wider resonances in imperial writings. Township Officers – who throughout the colonial period were the most numerous Burmese lawmakers employed by the colonial state, even after promotions to higher levels of the judiciary became more common in the interwar years – were widely viewed as incompetent, self-aggrandising and often corrupt by British imperial writers.<sup>60</sup> Similarly, Mabel Cosgrove Woodhouse Pearse, the British ex-wife of the celebrated, late nineteenth-century, English-educated, Burmese barrister and legal scholar Chan-Toon, portrayed her erstwhile husband's adoption of a sense of justice as entirely superficial. In her fictionalised account of their doomed marriage she portrayed him as an insecure, social-climbing tyrant beneath the veneer of a civilised lawyer.<sup>61</sup>

The imperfect embodiment of British justice in non-white legal actors sustained the implicit embodiment of British justice in white men. However, Lewis' fictional writings also reveal that the objectivity and detachment that they were supposed to embody in the role of magistrates and judges was at risk because of the supposedly innate bodily urges and desires of white men for colonised women. As Mr. Cavisham becomes enthralled with Ma Kin, Chepstowe struggles to suppress and police similar desires in himself. His desire for her is at its strongest when she appeals to him as a supplicant, begging for his forgiveness or help in his capacity as a magistrate.<sup>62</sup> Although these desires cause him to make some questionable decisions in the increasingly complex – indeed, farcical – legal case that unfolds in the novel, ultimately Chepstowe avoids any major lapses of morality. The weakness of Mr. Cavisham serves as a warning for him. Cavisham becomes a 'heaven-sent "awful example"' that Chepstowe can learn from for the sake of his own 'salvation'.<sup>63</sup>

Lewis' writings suggest that the detached objectivity necessary to safeguard British justice was implicitly figured as a facet of imperial whiteness and masculinity. But at the same time his novel warned that embodied in white men this detached objectivity was at threat from the urges and desires said to be common among officials posted to the colony. Lewis' writings were not alone in posing this as a heightened threat in Burma. A New Woman novelist writing under the pseudonym Victoria Cross produced a similar scene to Lewis in her 1901 book *Anna Lombard*. In it a British official is almost seduced by an eleven-year-old Burmese girl, also a snake charmer, who comes to him as a supplicant.<sup>64</sup> The Secretary of State for India, Lord Hamilton, wrote to Viceroy Curzon – who was at the time attempting to fight the practice of taking Burmese mistresses in the colony – to say that he found this aspect of the novel compelling and convincing, although overall he thought the book to be 'clever but disgusting'.<sup>65</sup> Channing Arnold also acknowledged that this was an almost inevitable threat to white men in the colony, writing, 'We do not... look upon it as strange that an unmarried white man with human passions, in a place like Burma, in spite of the warnings... regarding the attraction and allurements of the women of the country, should sometimes form illicit connections'.<sup>66</sup> For Lewis, at least part of the solution was to engage oneself in pursuits that instilled the habits of detached observation as 'a way of escape from something elemental and disquieting'. In the novel, Mr. Cavisham attempts to control his passions by throwing himself into detailed archaeological and ethnographic research, a field in which Lewis himself worked.<sup>67</sup>

Underpinning Lewis' narrative was the idea that detached objectivity was maintained by remaining aloof to the wiles of colonised women. Restraint is the characteristic of masculinity

that is most lauded in the novel. Self-control, policing sexual desire and resisting the temptation to succumb to the supplicatory pleading of Burmese women were deemed crucial to being detached and objective. Historians have unpacked the muscular masculinity constructed through iconic imperial activities such as the hunt.<sup>68</sup> Alongside this there were subtler and often unacknowledged norms of masculinity at work in empire. Imperial masculinity could be enacted through the hunter's dramatic performances of dominance over nature and displays of sporting heroism. It could also be enacted through the magistrate's detached objectivity. Hartnoll's painstaking deconstruction of the evidence against McCormick was an example of this. The detached tone of his judgement and his refusal to be taken in by the testimonies of Asian women were both part of his performative enactment of his role as a judge. This was an objectivity that was implicitly embodied as white and male.

This performance of detached, objective white masculinity requires teasing out of written sources through careful and close readings of a range of genres of imperial text because it usually went unstated. British justice was supposed to be a disembodied set of values, even while it was embodied in white men as magistrates and judges. As in Lowis' novels, the implicit masculinity intrinsic to the idealised figure of the judge emerges instead through descriptions of feminine, non-white 'specular others' who cannot embody these values, only mimic them. It was only at times when the tensions of liberal imperialism were heightened, as in the cases tried by Maurice Collis, that the embodiment of justice in white men became visible and explicit. But even then, the law's embodiment in white men was acknowledged only in an attempt to show critics that their whiteness was irrelevant.

### **The Imperial Genealogy of a Myth**

The idea of detached objective judges presiding over the courts of the British Empire was a myth. All colonial judges had bodies, interests and prejudices. They all operated in constraining social, cultural and political contexts. The myth served to mask the somatic normativity of imperial masculinity and whiteness. Returning, briefly, to reflect on the failure of the case against McCormick, it might not be helpful to contrast the decision to discharge the planter against a hypothetical and counterfactual 'objective' decision. To paraphrase Frantz Fanon: for Ainah, objectivity was always directed against her.<sup>69</sup> We must instead historicise how judicial objectivity was understood and embodied at the time. That way we might recognise that Andrew and Hartnoll's decisions to discharge McCormick were the result of their performance of a particular white, masculinised objectivity. By being sceptical of the testimony of Asian women they were enacting their supposed detachment.

In a powerful and convincing essay the legal scholar Erica Rackley has argued that a similar myth still pervades the British justice system. This is the myth of the objective judge. One of the problems with this myth is that it is based on an unacknowledged gendering of the objective judge as a man. For female judges to become seen as objective, they have to act according to the established norms of behaviour associated with male judges. She argues that, like the Little Mermaid in Hans Christian Anderson's fairy tale, for female judges to join this society they have to lose their voice.<sup>70</sup> The imperial history of law can offer a genealogy of this myth, uncovering not only how the judge has become figured as male but also as white. It might also explore how the myth has been appropriated, transfigured, challenged and subverted in postcolonial contexts as non-white and female bodies have attempted to occupy the imprints left by this somatic norm associated with the imperial judge.<sup>71</sup> Such

investigations might make an incremental contribution to calls to acknowledge that all judges live within cultural and social contexts. Dispelling the myth of the objective judge, as Rackley argues, can help bring about judicial practices that take better account of how structural inequalities become embedded in legal systems.

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