

“With characteristic sagacity and verve, Martin Wiener tackles one of the central themes of modern British imperial history—the relationship between liberalism and empire. His wide-ranging and richly documented study of colonial interracial murder trials gives a human face to a subject too often approached as a theoretical abstraction. Vivid, nuanced, and provocative, this book challenges us to look more closely and think more carefully about racial domination and the rule of law in the British Empire.”

—Dane Kennedy, George Washington University

“This original and well-written study can be read with great profit by scholars of law and of empire; it adds an important and long-neglected dimension to both areas of study, and in the process reveals yet more of the rich and complex web and warp of the history of British imperial rule.”

—David Killingray, Goldsmiths College, University of London

“In *An Empire on Trial* Martin Wiener gives us an absorbing account of the tension between the principles of British law and its rendering in the colonies. Wiener does a superb job of demonstrating the profound variation in colonial experience of the law and of revealing the ever-fraught relationship between local and central objectives. His extraordinarily wide-ranging comparative approach, his carefully argued position, and his deep knowledge of the criminal law all serve to make this study an important and original contribution to legal and to imperial British history.”

—Philippa Levine, University of Southern California

“One of the many virtues of *An Empire on Trial* is the way it persuades the reader of the significance of the history of criminal justice and demonstrates the centrality of the law in Britain and colonial society. At another level Wiener interprets the evolution of the law in relation to new trends in the social, economic, and cultural history of Britain and the Empire in the nineteenth and twentieth centuries. The book is thus a historiographical landmark, but it will also be of interest to the general public because of its clear and compelling style and the dramatic focus on murder trials. In every way *An Empire on Trial* is a *tour de force*.”

—Wm. Roger Louis, University of Texas at Austin

“In this important, path-breaking study in comparative colonial history, Professor Wiener engagingly and persuasively demonstrates the complex and conflicting pulls on the criminal justice systems of a range of multi-racial British colonies. Confidently steering between reductionist and complacent renderings of imperialism, he shows the extent to which British politicians, the Colonial Office, colonial officials, the judiciary, and, not least, the colonized pushed for genuine equality before the law for all residents of these possessions, typically in the face of visceral opposition by European minorities with their own limited and self-interested vision of the rule of law and its protections.”

—John McLaren, Emeritus Professor of Law,
University of Victoria, British Columbia

AN EMPIRE ON TRIAL

An Empire on Trial is the first book to explore the issue of interracial homicide in the British Empire during its height – examining these incidents and the prosecution of such cases in each of seven colonies scattered throughout the world. It uncovers and analyzes the tensions of empire that underlay British rule and delves into how the problem of maintaining a liberal empire manifested itself in the late nineteenth and early twentieth centuries. The work demonstrates the importance of the processes of criminal justice to the history of the Empire and the advantage of a trans-territorial approach to understanding the complexities and nuances of its workings. *An Empire on Trial* is of interest to those concerned with race, empire, or criminal justice and to historians of modern Britain or of colonial Australia, India, Kenya, or the Caribbean. Political and postcolonial theorists writing on liberalism and empire, or race and empire, will also find this book invaluable.

Martin J. Wiener is Mary Gibbs Jones Professor of History at Rice University. He is the author of numerous works, including *English Culture and the Decline of the Industrial Spirit, 1850–1980*; *Reconstructing the Criminal*; and *Men of Blood*. Dr. Wiener is a Past President of the North American Conference on British Studies and a Fellow of the Royal Historical Society.

An Empire on Trial

*Race, Murder, and Justice under
British Rule, 1870–1935*

MARTIN J. WIENER

Rice University



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
 978-0-521-73507-0 — An Empire on Trial
 Martin J. Wiener
 Frontmatter
[More Information](#)



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom
 One Liberty Plaza, 20th Floor, New York, NY 10006, USA
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia
 314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
 103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
 a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
 education, learning and research at the highest international levels of excellence.

www.cambridge.org
 Information on this title: www.cambridge.org/9780521735070

© Martin J. Wiener 2009

This publication is in copyright. Subject to statutory exception and to the provisions
 of relevant collective licensing agreements, no reproduction of any part may take
 place without the written permission of Cambridge University Press & Assessment.

First published 2009

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

Wiener, Martin J.

An empire on trial : race, murder, and justice under British rule,
 1870–1935 / Martin J. Wiener.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-51365-4 (hardback) – ISBN 978-0-521-73507-0 (pbk.)

1. Great Britain – Colonies – Race relations. 2. Great Britain – Colonies – History – 19th century. 3. Great Britain – Colonies – History – 20th century. 4. Criminal justice, Administration of – Great Britain – Colonies – History. 5. Racism – Great Britain – Colonies. 1. Title.

DA125.A1W487 2008

364.152'30917124109034-dc22

2008018061

ISBN 978-0-521-51365-4 Hardback

ISBN 978-0-521-73507-0 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence
 or accuracy of URLs for external or third-party internet websites referred to in this
 publication, and does not guarantee that any content on such websites is, or will
 remain, accurate or appropriate. Information regarding prices, travel timetables, and
 other factual information given in this work is correct at the time of first printing but
 Cambridge University Press & Assessment does not guarantee the accuracy of such
 information thereafter.

Contents

<i>Preface</i>	<i>page</i> ix
<i>Acknowledgments</i>	xiii
Introduction	i
1 On the High Seas	20
2 Queensland, 1869–1889	39
3 Fiji, 1875–1885	71
4 Trinidad and the Bahamas, 1886–1897	95
5 India: The Setting	128
6 India: In the Legal Arena, 1889–1922	156
7 Kenya, 1905–1934	193
8 British Honduras, 1934	222
Conclusion	230
<i>Bibliography</i>	235
<i>Index</i>	249

Preface

In recent years many historians have become dissatisfied with the limitations of national history and have sought to move toward a broader perspective. Historians of the British Empire have been feeling a similar confinement. Consequently, interest has grown in studying the relationships between imperial “center” and “periphery” or, even better, between center and multiple locales, and between one locale and another, in the Empire. Such history, interactionist and comparative, might best be called “trans-territorial.” Important recent works following one particular theme through different parts of the Empire, like Douglas Hay and Paul Craven’s *Masters, Servants, and Magistrates in Britain and the Empire* and Philippa Levine’s *Prostitution, Race and Politics: Policing Venereal Disease in the British Empire*, have shown how much about the workings and meaning of Empire becomes clear only when a wider and interrelated view is taken.

This book similarly takes one issue – interpersonal interracial homicide – and seeks to follow, through a broad range of imperial contexts, how it was dealt with and what that “dealing with” reveals about the nature of the British Empire at the height of its power. At first glance this problem may appear to be a rather small and limited one, but it involved portentous questions of how nonwhite races were to be governed, particularly where they came into regular interaction with whites, and of how the liberalism so strong in modern Britain was to be reconciled with the imperial rule of non-Britons. Large, indeed global, questions were worked through in small, specific contexts. Only through, in Clifford Geertz’s words, “a continuous dialectical tacking between the most local of local detail and the most global of global structures” can the student of

the British Empire come to a deeper understanding of its workings, past or present.¹

I also aim here to move beyond the increasingly sterile debate between “celebratory” and “accusatory” histories of the Empire. If for many years the dominant note of imperial historiography, from the vigorous assertions of J. R. Seeley in 1883 through the more measured language of the *Cambridge History of the British Empire* (1925–1959), was close to a eulogizing of the Empire’s contributions to the advance of “civilization” and “modernity,” this was succeeded by an equally pervasive tone of indictment of “colonialism” as violent, racist, and exploitative. This accusatory historiography was at first strongly Marxist, but as Marxism lost its intellectual sway it became predominantly culturalist, taking its new lead from Edward Said’s *Orientalism* (1978). It has matched the earlier historiography’s self-satisfaction with a new self-satisfaction of the formerly colonized and their self-appointed Western spokespersons. As the distinguished historian of Africa and of British colonialism there, Frederick Cooper, has recently argued, it is past time to put away tendentious and abstract claims for and against colonialism, and to look more closely, and dispassionately, at the complexities of the historical phenomenon that was the British Empire.²

One of these knotted complexities was the endemic tension between everyday racial inequality evident throughout the Empire and the deep-rooted liberal premises of the criminal law that extended everywhere in that Empire. In exploring this complication, I have tried to also give due attention to the elements – of individual personality, of the contingency of events – that undermine the simple generalizations toward which both celebratory and accusatory history have inclined. As the great historian Marc Bloch (who never shied from generalizing when that was appropriate) warned, “the ABC of our profession is to avoid these large abstract terms” and instead “to try to discover behind them the only concrete realities, which are human beings.”³

This study draws upon my previous exploration of the workings of the criminal law in England and of the relationships formed over time

¹ “From the Native’s Point of View: On the Nature of Anthropological Understanding,” in *Interpretive Social Science: A Reader*, ed. Paul Rabinow and William M. Sullivan (Berkeley, 1979), p. 239.

² See *Colonialism in Question: Theory, Knowledge, History* (Berkeley and Los Angeles, 2005), particularly the introductory essay.

³ *L’Etrange Defaite: Temoignage Ecrit en 1940* (Paris, [1946] 1990), p. 57 (my translation).

between the law and the people making use of – or being used by – that law. The experience of writing my earlier books *Reconstructing the Criminal* and *Men of Blood* has convinced me that the criminal law was a crucial part of British society, and its export throughout the world was a significant if underexamined part of imperial history. It has also shown me how small a part of the criminal law can be understood through the doorway of legal history alone; only by integrating the operation of the law with social, economic, political, and cultural history, as this book attempts to do, can we come to an adequate appreciation of its place in the history of Britain and the British Empire.

Acknowledgments

The research for this book was made possible by a grant from the John Simon Guggenheim Memorial Foundation and by support from Rice University and its Dean of Humanities, Gary Wihl. I was greatly helped by everyone in Fondren Library's Inter-Library Loan office and by Anna Shparberg, a wonderful locator and acquirer of research material. Librarians and staff at the British Library, the National Archives, and the Bodleian Library (especially the watchman at Rhodes House who let me in after hours to retrieve a briefcase in time to catch a train) and the staff of the Queensland State Archives were all of invaluable assistance.

I am indebted to Michael Miller and Mary Lindemann of the University of Miami and to the organizers of various conferences at which parts of this work were first presented: the workshop "New Histories of Criminal Justice" at the Baldy Center for Law and Social Policy of the University at Buffalo Law School; the conference on the Cultural History of Violence at the University of York; the annual meeting of the North American Victorian Studies Association at Purdue University; the conference "Crime, Violence and the Modern State – Historical Perspectives" at the University of Crete; the Fourth British Worlds Conference, at Bristol University; the Fifteenth British Legal History Conference at Oxford University; and the First British Scholars Conference at the Center for British Studies of the University of Texas at Austin. Parts of this book were previously published in *The Cultural History of Violence*, ed. Stuart Carroll (London: Palgrave Macmillan, 2007); and in *Modern Histories of Crime and Punishment*, ed. Markus D. Dubber and Lindsay Farmer (Stanford: Stanford University Press, 2007), © 2007 by the Board of Trustees of the Leland Stanford Jr. University, all rights reserved, by permission of the publisher.

I would also like to thank James Epstein, Dane Kennedy, Elizabeth Kolsky, Philippa Levine, Roger Louis, John McLaren, David Philips, and

David Thomas for suggestions and criticism, and my students Martin Wauck, David Getman, and Chris Davis for assistance. Most of all (as always), I thank my wife, Meredith Skura, for stimulation, inspiration, support, and companionship, without which the writing of this book would have been not only much slower, but much less pleasant.