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“Reconsidering the Colonial Security State: Notes from the NW Frontier of British India”

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I have recently begun a book length study of the history of British rule on India’s northwest frontier, in the borderlands that currently divide Pakistan from Afghanistan. My attention has been drawn to this area not only because it is a focal point in today’s US “war on terror” but also because it played such a critical role in the way the British conceptualized and administered their global empire. Just as some Americans see this area as “Ground Zero”¹ in the “war on terror,” Britons a century ago saw the defense of this zone as a matter of vital significance for the whole Empire.

Britons understood the NW frontier as the “gateway to India,” the road by which previous empires had entered and conquered the subcontinent. They believed that the security of British India depended upon securing a strong military position in this rugged and mountainous region. The expense of holding the frontier always exceeded the revenue extracted from it and a subvention from the central government was required each year to close the budget gap. Alternately using the carrots of accommodation and conciliation and the sticks of force and repression, both of which were costly, colonial administrators struggled for a century without success to establish dominance over a people who, in James Scott’s formulation, seemed to have mastered “the art of not being governed.”²

In colonial discourse, the tribes (primarily ethnic Pushtuns) and the territories they inhabited were described as organic elements of an inscrutable and unchanging natural ecosystem. Their historical progress was seen to be as slow as that of their geological surroundings:

these were a people situated far off in space and frozen in time. To the Pushtun, Lieutenant C.M. Enriquez of the 21st Punjabis wrote, “it is still the tenth century.”³ Frontier officer-cum-historian C.C. Davies wistfully observed, “Hidden away in dark inhospitable nullahs and still darker ravines, in lonely mountain passes and on barren wind-swept plains, dwell a people, the human flotsam and jetsam of the past.”⁴ This mountainous geography and the tough type of man it inevitably produced – “savage, chivalrous, desperate, adventurous, alluring”⁵ – were seen to be the main obstacles to British influence.

The colonial archive contains a wealth of material documenting the construction of tribal otherness. While I am fascinated by the genealogy of this discourse, the purpose of my project is not to trace the production and transmission of colonial knowledge. Rather, I am interested in how rhetorical acts translated into legal, physical, and political acts.⁶ The pervasive legalism in the British Empire – the notion that colonial power and legitimacy rested on a rule of and by law – required ways of securing control within a legal framework.⁷ This fact remains an enduring mystery to me, one which I continue to probe by exploring the relationship between colonial law and colonial violence in sites of imperial darkness.

The logic and rhetoric that defined colonial frontier policy rested on the assumption that exceptional circumstances demanded exceptional treatment. This resulted in the creation of a parallel legal system that established an extraordinary jurisdiction, which was enacted according to a political logic of emergency and justified by a cultural narrative of barbarism. The discourse of tribal difference reached beyond the symbolic realm to define what could and would be done to people on the frontier.

At its height, the British Empire controlled more than half a billion people, one quarter of the earth’s land mass, and was the undisputed master of the seas. With a colony on almost every

continent, Britain's dominion was so vast that, as the saying went, the sun never set on it. In contrast to their Spanish rivals, whom Britons saw as brutal and illegitimate conquerors, British colonists argued that their empire's legitimacy derived from its rule of law. Colonial law not only secured colonial control, the promise of British justice was an ideology of empire that justified colonization. In India, the notion that prior rulers enslaved people under the tyrannical mode of governance called "Oriental despotism" made law a critical instrument with which the British simultaneously established their authority and differentiated their order from the anarchy of pre-modern regimes. As the guardians and guarantors of fairness and justice, Britons believed that an impartial legal system would win the loyalty of their colonized subjects and anchor the stability of their vast Indian empire. As one British official observed, "The foundation of our empire in India rests on the principle of justice, and England retains its supremacy in India mainly by justice. Without justice we could not hold India for a moment."⁸

As a space of peculiar imperial significance, the NW frontier had to be governed by different principles from those obtaining elsewhere in British India, the primary object being to make it and keep it a strong military position. This tension between law and force on the frontier raises a number of important questions: What did British justice look like in a contact zone where security concerns dominated policy and politics? Could the neat dichotomy that divided colonial law and order from indigenous chaos and violence be upheld when the practical imperatives of imperial defense trumped the theoretical promise of fairness and impartiality? How far would the Empire go in bending its own laws to secure its own power?

Following nine months of archival research in India and London, I am just beginning to digest and evaluate my findings. Coincidentally, in the past year I have been invited to talk at two conferences, both with titles that read something like "Beyond the Security State in South

and Central Asia.” However, I am not quite ready to move beyond the history of the colonial security state, a history which has largely been told from the perspective of the colonizers. The history of the northwest frontier is under-researched. Much of what we know about the frontier was written by former colonial officials. After the invasion of Afghanistan in November 2001, U.S. military strategists relied on nineteenth century British ethnographies to prepare for war in the region. In the 1960s, the pioneering work of anthropologist Fredrik Barth created an opening for ethnographic studies of cultures and societies along the frontier. And more recently, a handful of fine historical monographs have explored aspects of the history of colonial rule and anti-colonial resistance on the frontier. However, none have focused specifically on the history of colonial laws used to govern the frontier, which forms the central focus of my study.

I wish to situate frontier history within a post-colonial framework that draws connections across imperial space, historical time, and academic disciplines. I am also committed to doing more than simply trace how the British saw the tribal “others” by asking questions that endeavor to understand the tribes on their own terms. How did people on the frontier see the British? What motivated them in their interactions with the colonial state? How did they utilize colonial laws to their own advantage? In what ways did their ideas about justice and fairness differ from those of their foreign rulers?

By the 1930s, after eight decades of British rule, literacy rates on the frontier districts hovered around 6% for men and 1% for women. Due to this fact and to the stifling impact of repressive colonial laws, until the 1920s, there was not a single local newspaper in the North-West Frontier Province. The limited availability of written sources makes it difficult to understand the mentalities, values, and ideas of the tribes. In dealing with this problem of sources, I use two strategies. First, borrowing insights from scholars such as Ranajit Guha and

James Scott, I seek to read colonial records in reverse to explore how the logic and rhetoric of colonial rule formed the basis for local acts of rebellion and resistance. Rather than understanding the tribes as irrational objects of colonial control, I wish to situate them as active subjects of their own history.

Second, I am tapping into non-traditional historical sources. Inhabitants of the frontier were described by colonial observers as people without history – meaning people who did not change or develop over time and who had no written record of their past. In fact, their timeless existence served as proof of their barbarous pre-modernity, which, in turn, called out for colonial domination. However, as we know from folklorists and cultural anthropologists, the frontier tribes do have ways of recording their own stories and memorializing historical events. These are to be found in oral traditions, such as the folk ballads that celebrated the deeds of local heroes and were sung by minstrels from village to village to spread their fame.

This paper is comprised of three narrative fragments that represent my preliminary efforts to retell the history of the colonial security state.

The NW frontier came under British influence in 1849 following the conquest of Punjab. Until 1901, when a separate North West Frontier Province was formed, the frontier was administered by the Punjab Government. Colonial cartography on the frontier consisted of a double border. The Durand Line (drawn in 1893) marked the external political boundary separating Afghanistan from British India. To its east, lay an internal boundary, the “administrative border,” which separated the “settled districts” (an area of fertile valleys, plains, and low hills approximately 13,400 sq. miles in size populated by 2.25 million people) from “independent” tribal territory, a strip of hilly terrain 50 miles wide, 25,500 sq. mi. total, inhabited by 3 million people (mostly Pushtuns).⁹ One colonial administrator described the tribal area

between India and Afghanistan as “A huge mountain mass buttressing the Afghan highlands for hundreds of miles, held and owned by a race as hard and ruthless as its peaks and precipices.”¹⁰

The cartographic distinction between the settled districts and the tribal tracts had a double meaning. On the one hand, a “settled” district was an area where a land survey and revenue assessment had been done (and where taxes were collected). The internal frontier also had rhetorical purchase as it marked the limits of civilization and law, dividing the ordered realm of colonial law from the wild realm of Pashtun lawlessness where only the “perfect law of liberty” reigned.¹¹ As Lauren Benton has recently shown, there is a long tradition in European intellectual thought contrasting the civilized plains with the primitive mountains. In the colonial imagination, the mountains were defined as a space of political isolation, violence, and backwardness; a site of legal primitivism where archaic notions of justice were as unchanging as the primordial hills.¹²

One of the first things that captured British attention on the frontier was the high level of violence, much of it committed in pursuance of blood feuds and vendettas. At the time of annexation, colonial officers estimated that there was one murder a day in the Peshawar Valley. This murderous violence was not restricted within tribal society – by 1867, 16 British officers had been killed or badly wounded on the Punjab frontier, not including those who escaped attempts on their lives. The violence directed at their own men struck terror into colonial administrators and strengthened their stereotypes about the brutal and bloodthirsty tribesmen. Of course, the notion of a “troubled” frontier populated by “turbulent” tribes justified colonial domination and legitimized the brutal violence committed by the British themselves. In the first thirty years of frontier rule, there were no less than forty “punitive expeditions” in which entire villages, crops, and livestock were burned to the ground by colonial troops.¹³ These “shock and

awe” military strategies – sometimes called “butcher and bolt” – were designed to project colonial power and to coerce submission by teaching the tribes a “lesson,”¹⁴ as a “swift and certain”¹⁵ hand was supposedly the only thing such “savages” understood.¹⁶ As John Kaye opined in the 1850s, “We cannot rein wild horses with silken braids.”¹⁷ Echoes of this view can be heard in what Derek Gregory refers to as “the colonial present.” In Iraq, for example, a senior American military officer recently commented, “The only thing these sand niggers understand is force and I’m about to introduce them to it.”¹⁸ Ironically, Faisal Devji has found that in their public statements, Al Qaeda members repeatedly state that violence is the only language the “West” understands.¹⁹

Around the same time that the Punjab authorities were experimenting with methods to establish political control over the frontier, the Government of India was creating a modern judicial machinery for all of British India, including a uniform code of laws and a hierarchical system of law courts. Punjab was a Non-Regulation Province, which meant that ordinary laws and regulations enforced in the Regulation Provinces did not apply unless specifically extended by the Government of India. Colonial Punjab was defined by its personal and paternal mode of governance. Executive, revenue, and judicial authority was concentrated in one person, the “man on the spot,” who possessed broad discretionary power to rule according to local circumstances.

On the frontier, the Punjab authorities claimed that the “elaborate laws and procedures of civilized States”²⁰ (namely the Anglo-Indian Codes) were unsuitable to the “wants of a barbarous frontier.”²¹ “The niceties of procedure must be waived,”²² they insisted. Citing the “primitive sentiment” of the people, Lieutenant-Governor Mackworth Young urged that “the remedies must have regard to the causes of the evil,” which he identified as the backward condition of society and “the rigid demands of our system of law.”²³

Of course, these “rigid demands” – including due process, a written trial record, formal rules of evidence, the right to legal representation, the right to appeal one’s conviction, and so forth – were introduced into India by the British themselves as part of their rule of law. A fair and neutral system of administering justice was a fundamental colonial institution and an ideology of empire that differentiated British governance from the arbitrary Oriental despotism of pre-colonial times. The codification of law in India was guided by two contradictory impulses. On the one hand was Jeremy Bentham’s vision of a complete code of laws founded on abstract, universal and scientific principles. On the other was the founding principle of colonialism, the rule of colonial difference, which posited that colonized people, due to various forms of otherness (whether racial, civilizational, or religious) were to be governed by something different from the general principles of modern governance. The NW frontier was a doubly different space, if you will, a place where the Anglo-Indian Codes were deemed to be inapplicable to the backward state of tribal civilization.²⁴ A place where frontier officials pressed for “rough-and-ready” procedures that would give them a freer hand to make decisions on the spot, unconstrained by legal rules and technicalities. What moves would a freer colonial hand make?

I. *“To burn or not to burn?: Controlling ‘Murderous Outrages’ on the North-West Frontier of British India”*

On October 1, 2005, one day after a firefight in Gumbad village in northern Kandahar province that left three Afghans dead, two American soldiers from the 173rd Airborne Brigade burned two of the bodies. Hours later, two soldiers from a U.S. “Psychological Operations loudspeaker team” parked their Humvee near the smoldering corpses and exclaimed through loudspeakers attached to the truck’s roof: “Attention, Taliban, you are all cowardly dogs. You allowed your fighters to be laid down facing west and burned. You are too scared to come down and retrieve their bodies... You call yourself Talibs, but you are a disgrace to the Muslim

religion, and you bring shame upon your family. Come and fight like men.” All of this was captured on film by embedded Australian journalist Stephen Dupont.²⁵

Initially, the Pentagon’s public reaction to the Gumbad incident was outrage: mistreatment of the dead violates military law and the Geneva Convention on Human Rights. The potential for a global Islamic backlash loomed large. Subsequently, an official military investigation determined that the soldiers had burned the corpses for hygienic reasons and with no intent to desecrate the bodies of the dead. They were found not to have committed war crimes but to have displayed “poor decision-making and judgment, poor reporting and lack of knowledge and respect for local Afghan customs and tradition.” The four soldiers received cultural training and “non-judicial punishment,” administrative action imposed for wrongdoing that does not constitute a crime.²⁶

The history of burning Muslim corpses in British India was a debated feature of colonial practice and policy since the mid-19th century, one which offers a different perspective on this contemporary event. Contrary to the military’s assertion that the American soldiers in Gumbad lacked cultural knowledge, the history of this issue, and the message broadcast by the PsyOps specialists themselves, suggests that the soldiers knew exactly what they were doing. This incident raises provocative questions about the ways in which 19th century British colonial knowledge is figuring in America’s 21st century war on terror;²⁷ and about past and present uses of cultural knowledge as a weapon of war and strategy of counterinsurgency.²⁸

Following the conquest of Punjab in 1849, the territorial dominion of British India expanded considerably to the west and northwest, bringing profit and peril. In 1867, the colonial government passed one of a series of special laws designed to protect “servants of the Queen” and to secure British control on the vulnerable northwestern border. The Punjab Frontier

Murderous Outrages Act (MOA) gave local officials in certain frontier districts extraordinary powers to summarily try and execute alleged “fanatics” on the spot in proceedings that far exceeded their normal judicial authority.²⁹ Suspected “fanatics” were deprived of rights and procedures mandated by the ordinary law, including the right to appeal, the right to counsel, and the right to have a capital sentence confirmed by a higher tribunal. Not only could a fanatic be tried and executed on the same day, his property could be seized and his body disposed of as the Government saw fit. The most common method of disposing corpses of executed fanatics in the 19th century was to burn them.

The MOA was an extraordinary piece of legislation not only in the sense of having uncommon provisions but also in ways that it departed from the ordinary law. Officials in the frontier districts found the “highly scientific”³⁰ Anglo-Indian codes to be “unsuited to a population whose ethics are little in advance of the Dark Ages”³¹ In Baluchistan, administrators sought “a rough-and-ready procedure better adapted to the wild frontier lands than the more regular Penal and Criminal Procedure Codes.”³² With all of their cumbersome rules and technicalities, the modern codes were found to hinder the decisive political action required by the man on the spot. Extraordinary legislation quickly displaced ordinary law on the frontier. In Giorgio Agamben’s formulation, India’s NW frontier was the quintessential space of exception: a place outside of the normal juridical order where the logic and rhetoric of rule rested on the assumption that exceptional circumstances demanded exceptional treatment.³³ As one British official vividly remarked: “The frontier is always a powder magazine, and even at the cost of sacrificing the ideas of theoretical liberty, it is essential to keep the match away from the powder.”³⁴ Just how far would the British go in sacrificing the liberty of the subject to secure their power on the frontier?

In March 1866, the Punjab Government wrote to the GOI to express concern over three “murderous assaults” committed against Christians in the prior twelve months, the most recent being the attempted assassination of Mrs. Ashton Brandreth, wife of Lieutenant Brandreth, an Executive Engineer in the Kohat Division.³⁵ On February 28, 1866, Mrs. Brandreth was being carried in her *jampan* by 4 bearers when a man approached and fired his pistol at such close range that Mrs. Brandreth’s hair and eyelashes were singed. The bullet passed across her collar bone and through the front of her neck, sparing Mrs. Brandreth serious injury. Her assailant, Summad, was immediately apprehended by the bearers and tried on the spot in the Court of Magistrate. Summad confessed to the crime claiming that he “came straight to Kohat in order to kill an European; that he formed the design thinking it a meritorious action, having heard that it was a meritorious action from some Moollahs of Teerah some years ago, and he thought that he should achieve a name for himself by doing it.”³⁶ Three days later, the trial proceedings were reviewed in the Court of the Peshawar Division Commissioner, J.R. Becher. Becher convicted Summad of attempted murder and causing hurt (IPC s. 307), remarking in his judgment that: “The fierce fanaticism directed against the lives of the ruling race of India is a special danger of this frontier, and one which requires to be taken into account in determining punishment... in my judgment it is necessary to adopt more than ordinary measures to prevent an evil so great and so fraught with political consequences.” Summad was sentenced to death and hung the same day.³⁷

The Punjab Government claimed that the attack on Mrs. Brandreth was not an “ordinary” attempt at murder and urged that “for this part of India, some *special legislation* is required to admit of such offences being more severely and promptly dealt with than is authorized by the Indian Penal Code and the Code of Criminal Procedure.”³⁸ In response to this plea, Law Member Henry Maine began to explore ways to change the frontier law and procedure.³⁹ Maine modeled

the “Bill for the suppression of murderous outrages in certain Districts of the Punjab”⁴⁰ on an existing law that applied to what he called a similar “class of assassins”⁴¹: the Mappilas of Malabar.⁴² To Maine, the frontier fanatics looked a lot like the unruly and fanatical Mappilas, described by one local official as “anticipated murderers” who created a “constant state of siege” in Malabar.⁴³

The “Act for the suppression of the Outrages in the District of Malabar in the Presidency of Fort St. George,” better known as the Mappila Act, was another “special” law crafted to meet “special” conditions. It applied to Muslim Mappilas who committed “murderous outrages” against inhabitants of Malabar “belonging to other classes.”⁴⁴ It was passed in 1854 under pressure from local Hindus who petitioned the government for repressive measures against Mappilas in what they called the “fanatic zone.”⁴⁵

Madras administrators believed that the common thread connecting the Malabar “outrages” was a spirit of religious fanaticism.⁴⁶ The Mappila Act gave the Governor of Madras the extraordinary powers his government sought to act “on the exigency of the moment without regard to [ordinary] regulations or laws;”⁴⁷ providing a “strong hand” to “overawe” the people and crush the Mappila pandemic before it spread.⁴⁸ Disease metaphors were frequently used to describe the contagious pestilence of Mappila violence: “The Moplah disease and the remedy proposed are both severe,” wrote the Acting Magistrate of Malabar, and the remedy must “strike at the canker-worm itself.”⁴⁹ The Mappila Act permitted the Government to seize the property and burn or bury in the jail precincts the bodies of offenders executed by the state or killed in action.⁵⁰

The extraordinary measures taken to suppress and punish Mappila “outrages” aimed to serve several purposes. In its totality, as special Commissioner T.L. Strange wrote, “The great

object of the [Mappila] act is to operate *in terrorem*,” a Latin term meaning “in order to frighten.” In legalese, *in terrorem* is used to describe a warning given in the hopes of compelling someone to act without resorting to a lawsuit or criminal prosecution. A primary objective of the Mappila Act was to prevent fanatical outbreaks by striking terror into the heart of the Mappila community, “enlisting the fears and interests of every Moplah on the side of order.”⁵¹ After Malabar Magistrate H.V. Connolly was murdered by Mappilas in September 1855, the Madras Government directed that “the bodies of the murderers after hanging for a short time on the gibbet, on which they have been exposed, should be burnt; care being taken that the very ashes be so disposed of that they be not collected nor made objects of fanatical veneration.”⁵²

A gibbet is a gallows-type structure from which the corpses of executed criminals in England were hung on public display. Gibbeting was a common law punishment which a judge could impose in addition to execution. It was regularized with the passage of the Murder Act of 1751 which stipulated that “in no case whatsoever shall the body of any murderer be suffered to be buried.” Cadavers of executed murderers were to be publicly dissected or left hanging in chains. The dissection, anatomization, gibbeting, decapitation and consignment of hanged bodies to unconsecrated and quicklime graves inside prisons were deliberately designed by English legislators to strike at popular anxieties and to deter would-be criminals. For maximum effect, gibbets were usually placed next to public highways (often at crossroads) and waterways.⁵³ The practice of gibbeting ceased in England in 1832. (Public executions were abolished in 1868.)

In Malabar, the corpses of Mappilas were also gibbeted to create a “spectacle”⁵⁴ and burnt to prevent the remains from becoming an object of worship and site for the building of shrines (*ziarat*).⁵⁵ In addition to the influence of English law, colonial knowledge about Muslim burial practices also impacted the framing of the Malabar law. The lengthy description of

Mappila funeral rites found in the *Madras District Gazetteer* indicates that colonial authorities knew how Mappilas treated their dead.⁵⁶ The studied destruction of Mappila thus corpses offers a dark perspective on the relationship between colonial knowledge and colonial power, revealing the ways in which cultural knowledge was used to enhance techniques of physical and psychological violence.⁵⁷

The Punjab Murderous Outrages Act (1867), which was based on the Mappila Act and extended to Baluchistan in 1890, authorized a speedy mode of trying and punishing “fanatics” who committed “murderous outrages.” It rendered murder and attempts at murder made under the influence of fanaticism punishable with death (under the IPC, attempted murder was punishable only with transportation).⁵⁸ One of the more perplexing features of the law is that it did not define the term “fanatic.” The original version of the Bill specifically targeted “ghazees,” described by Viceroy John Lawrence as “soldiers enlisted in a war against infidels... A Ghazee is a man devoted to war and the extermination of infidels.”⁵⁹ Due to political concerns about singling out Muslims as a class, a revised iteration of the Bill substituted the expression “political or religious fanatic, who murdered persons whose religion differed from that of the offender.”⁶⁰ The final version of the law simply referred to “fanatic,” establishing but not defining a new class of criminals over whom colonial officials possessed enhanced powers of prosecution and punishment.⁶¹ [The Mappila Act did not use the term “fanatic”.]

The Punjab MOA was designed to provide “special protection” for members of the ruling race and to relieve them of liability to murder charges as summary executions were performed on the frontier prior to their being legalized (cf. Morant Bay). The MOA did not specifically authorize the burning of bodies but gave local officials the authority to dispose of the body of an offender as they saw fit follow proceedings that were not necessarily recorded.⁶² (Hence the

difficulty of exploring the mentalities of the fanatics themselves.) In most instances, convicted “fanatics” were hanged and burnt. The execution of fanatics and the burning of their corpses were designed to be punitive penalties with deterrent effects. Because frontier officials believed that a Muslim whose body was burnt after death would be denied a place in Paradise, the annihilation of the corpse ensured that the executed fanatic did not achieve the eternal martyrdom he sought.⁶³ As in Malabar, this practice was also designed to prevent the erection of shrines and to strike terror into the heart of would-be fanatics. As W.R.H. Merk noted ominously, “The essence of the terror is in the flames.”⁶⁴

How often were the bodies of fanatics actually burned on the frontier? According to the official record, convicted fanatics were hanged and burned rather frequently. In 1895, the Government of India compiled a short list of cases in which the bodies of fanatics had been burned in Punjab and Baluchistan. Between June 1883 and August 1895, the list records twenty-one instances.⁶⁵ Over the next five years in Baluchistan alone, there were another twelve.⁶⁶

The frequency of this practice should not be taken as indicative of any kind of unanimity of official opinion about either its legitimacy or its effectiveness. Indeed, the burning of bodies was a controversial practice around which there was never any consensus.⁶⁷ Disapproval of the practice was generally articulated in moral and political terms. Some officials were appalled by the idea of taking punitive action against the dead. Punjab’s Mackworth Young denounced the “notion of resorting to the religious tenets of those whom we govern to discover means of enhancing or inflicting punishment or of deterring others from similar crimes.”⁶⁸ Others warned that the moral outrage generated by the practice would lead to political disturbances.⁶⁹ Former Baluchistan official H.S. Barnes called the “disgrace of being cremated after death” an indignity and an ineffective deterrent pointing out that there was little evidence to support the colonial

assumption that a burned Muslim body was denied a place in paradise. In fact, in Barnes' view, the greater indignity bestowed on a fanatic, the greater his reward.⁷⁰

Those who supported the practice insisted that fear of burning had a strong deterrent effect. Colonel Harold Deane (NWFP) claimed that: "It is the fear of being burnt, not the fear of death or anything else that places any check whatever on *ghazism*."⁷¹ Major-General James Brown (Baluchistan) warned that any change to the practice would increase fanatical crime on the frontier, which he (like the Malabar officials) described using disease metaphors: "The burning and supposed annihilation of the body is the only measure which has the least deterrent effect upon Afghans, or even, under certain circumstances, upon Baluchis... The bacillus of the ghazi rabies, which can only be fed by the hopes of a future life, can only be starved by the collapse of all future spiritual hopes for the soul, as the result of the annihilation of the body."⁷²

Viceroy Lord Curzon took a particular interest in this issue. In 1899, he had ordered local officers across India to report back on "all collisions between Europeans of all classes and Natives" and all "outrages which have a political aspect," including murderous attacks on Europeans on the frontier. In his April 1901 speech at the Quetta Darbar, Curzon publicly proclaimed his determination "to put an end to these abominable crimes. I shall shrink from no punishment, however severe."⁷³ Privately Curzon mused: "Is it possible, under the law, to flog these horrible scoundrels before we execute them? Supposing we remove them for execution to another and distant jail, could we flog them in the first jail before removal? I believe that if we could postpone the execution for a few weeks and give the criminal a few good public floggings – or even one, were more not possible – it would act as a real deterrent. But I have a suspicion that British law does not smile upon anything so eminently practical?"⁷⁴ Contemporary English law did not permit flogging in addition to a capital sentence.

The debate about the moral and political expediency of burning was reignited in connection with Curzon's decision to form the North-West Frontier Province.⁷⁵ Despite special legislation designed to suppress it, fanatical murders on the frontier had actually increased rather than decreased in frequency over time.⁷⁶ This raised a host of questions. Was the burning of bodies an expedient punishment? Did it deter fanatical outrages by preventing prospects of a future with the houris? Officials in Baluchistan were doubtful, noting that the murderer of Colonel Gaisford received the sentence of immediate execution "with a kind of rapture."⁷⁷ Given that martyrdom in death was the "everlasting reward"⁷⁸ presumably sought by fanatics, what other kinds of punishments would "degrade rather than elevate"⁷⁹ him in the eyes of his fellow tribesmen? Were severe public floggings a more effective form of punishment? Harold Deane noted that flogging was not only physically painful, it also held particular cultural significance: "Flogging on the bare person is an absolutely awful disgrace to the Pathan... The effect is infinitely more deterrent than the fear of hanging. If we could only flog, hang, and burn, how much more so would it be."⁸⁰ Flog, hang, burn, annihilate: was there anything the government could do to stop a "determined fanatic" from murdering a British officer? Not according to R.E. Younghusband who warned that, "If a Ghazi is made up his mind to kill an Englishman and is absolutely reckless of the consequences, no conceivable legislation will stop him from doing so."⁸¹

In 1901, a new "Regulation to make better provision for the suppression of murderous outrages in certain frontier tracts" was passed. Like its Punjab predecessor, the Murderous Outrages Regulation neither sanctioned nor outlawed the practice of burning bodies, of which no mention was made.⁸² It did provide alternative modes of punishment, permitting imprisonment and transportation instead of death; as well as whipping in addition to these punishments.⁸³

Michel Foucault has argued that public hangings in early modern Europe were ritual acts of vengeance designed to display sovereign power and to produce terror in the body politic. The disappearance of punishment as spectacle in the modern age of penal reform signaled a new moral economy of punishment. Torturous instruments like the scaffold and the gibbet were replaced by reformatory institutions like the prison where the convict was sequestered and subjected to power in private.⁸⁴

The shock and awe penal strategies on the NW frontier – publicly hanging people long after the practice was abolished in England and then burning their bodies in an effort to terrorize local communities by exploiting knowledge of their religious practices – clearly index official fears and vulnerabilities. They also evidence the survival of pre-modern forms of torture and terror in the colonial context. Or perhaps I should say contexts, for the Punjab Murderous Outrages Regulation was a repressive law passed contemporaneously with other imperial emergencies to which British officers in India frequently referred, including the Morant Bay Rebellion in Jamaica and the Fenian Uprising in the UK, when Irish grievances against British rule were manifested in armed “outrages” (as they were called) on the British mainland.

Moving slowly through historical time and stealthily across colonial space, the “turbulent Pathan,” like the anarchic Irishman, demanded special treatment – different laws, different procedures, different punishments. Barbarous measures, like flogging and burning, were justified as methods suitable to “local conditions,”⁸⁵ which on the frontier were in a perpetual state of emergency. As Denys Bray observed in 1925, “Emergency is the normal condition of things on the frontier.”⁸⁶ Excessive violence was routinely employed on the NW frontier to project power and to coerce submission.⁸⁷ The practice of burning the bodies of fanatics might usefully be

understood alongside the many punitive expeditions undertaken by British troops on the frontier where entire villages, crops, and livestock were regularly burned to the ground.⁸⁸

If the frontier fanatic could not be reformed, he would have to be taught a “lesson of obedience” in the form of punishments deliberately designed to maximize the suffering of offenders and “to excite a just terror in the would-be murderer (J. Lawrence).” Frontier fanaticism was likened to other culture-bound forms of sociopathic frenzy and homicidal mania – the Mappila disease in Malabar, running amok in Malaysia, Fenian outrages in Britain. These special classes of crime were described in scientific terms as contagious diseases carried by the vectors of publicity and rumor – where one occurred a second was likely to follow. To prevent the spread of pestilence required swift and severe measures, including the annihilation of the criminal’s body. On the frontier, these extraordinary measures were justified by ideas about the backward status of the “turbulent and excitable races.” As one frontier officer remarked in 1900, “It is at times imperative to treat the barbarous with a heavy hand.”

II. *“Taming the Turbulent Pathan: Crime and Control on British India’s NW Frontier”*

British legal historian Cecil T. Carr once observed that: “In the eternal dispute between government and liberty, crisis means more government and less liberty.”⁸⁹ In the British view, the NW frontier was in a perpetual state of crisis and the balance between liberty and government was tipped completely in favor of executive power.⁹⁰ In 1872, the passage of the Frontier Crimes Regulations (FCR) created a jurisprudence and a jurisdiction of exception – one that remains the legal framework for dealing with the tribal territories in Pakistan today.

Condemned by the Indian National Congress as a “lawless law,”⁹¹ the FCR was an “extraordinary” law not only in the colloquial sense that it contained some unusual provisions, but also in the literal sense that it functioned outside of the ordinary law. The FCR was primarily

designed to strengthen the hand of the district officer, to rule in an indigenous idiom, and to suppress frontier crime, which colonial officials thought could not be done by the ordinary laws and law courts. It was used in both the settled districts and the tribal tracts and among its many extraordinary features were provisions for:

1. Collective responsibility and punishment: Under the FCR, an entire tribe whose members acted in a hostile or unfriendly manner to Government could be detained, barred from British territory, and have their property confiscated. Families and villages who colluded with or harbored criminals could be collectively fined.⁹² The FCR's collective provisions were based on the idea that civilized laws and procedures were incommensurable with tribal codes of honor. As the frontier tribes tended to sympathize with the criminal rather than assist the state's investigative machinery, a more powerful executive control was needed. The guiding principle was that "Special circumstances demand a special treatment."⁹³ Extortionist tactics, such as taking hostage members of hostile tribes as security to ensure the "good behavior" of the lot, were implemented in the name of maintaining peace and order. Such provisions suggest just how far the imperialists went while, in Coetzee's words, "*waiting for the barbarians.*"

2. The FCR also provided for preventive authority: local officials could take security "for good behavior" or arrest persons suspected of being about to commit certain crimes.⁹⁴ In the 1930s, the security provisions of the FCR were regularly invoked to imprison those connected with anti-colonial nationalist movements.

3. Extraordinary jurisdiction: probably the most novel feature of the FCR was the creation of an alternate tribunal called a "jirga" or council of elders, composed of three members, selected by the deputy commissioner who could refer any civil matter he thought likely to lead to a breach of peace and any criminal matter found undesirable to try in an ordinary court. In most

instances, criminal cases were referred when there was insufficient evidence to convict under the ordinary law. Sometimes this happened prior to trying a case, and sometimes it happened in the middle of a trial itself. The accused was not required to appear before the jirga and usually remained in lock-up while the council deliberated, without knowledge that his/her case was being heard. Jirga proceedings were not guided by formal rules of evidence, no oaths were administered to witnesses, and no written record was kept. In fact, most jirga members were illiterate. Without a written record, appeal was practically impossible.

Under the first FCR (1872), jirgas were permitted to impose a fine after coming to a guilty verdict. In 1887, the power to punish was transferred to the DC who could impose sentences of up to 7 years imprisonment based on the jirga's finding. In 1901, the maximum punishment was increased to 14 years, which was still significantly lighter than the punishments prescribed under the IPC (e.g., death for murder). The jirga was described by colonial officers as a native institution convened according to tribal custom; one that allowed the British to win the hearts and minds of the people while also suppressing crime in an indigenous idiom. Freed from the rigidity and technicality of ordinary laws and procedures, the jirga was supposed to be able to obtain convictions in cases where a colonial court could not. "‘Jirgahs’ have the means of arriving at the truth which cannot be secured by any other mode of investigation,"⁹⁵ wrote one administrator. "Jirgas as a rule convict on suspicion, more or less strong, without going into the nicety of ‘proof,’"⁹⁶ observed another.

There are a few observations I would like to make on the FCR before offering a thought or two about how a study of the colonial system of frontier law contributes to the theoretical literature and comparative historiography on states of exception.

First, the colonial *jirga* was a largely invented tradition. Although the *jirga* was dressed in the garb of native custom, the uses tasked to its colonial incarnation were inconsistent with local practice. Historically, the main function of the *jirga* was to decide political matters affecting the welfare of the clan not to act as arbiters of guilt and innocence. And, of course, members of the *jirga* were not historically appointed by foreign rulers! Under British rule, critics condemned the emergence of a “*jirgabaz*,” a class of professionals who regularly came to the colonial courts and reaped huge bribes.

Second, *jirgas* did not reduce violent crime.⁹⁷ To the contrary, as local people became acquainted with the law, they exploited its provisions and the number of murders went up. For example, by committing murder in the dark of night, there was little likelihood of eye witnesses and less evidence for a prosecution in a colonial court, thereby ensuring a *jirga* trial and a light punishment. In the 1890s, colonial officials repeatedly noted in their annual criminal administration reports that local people planned murders anticipating that the satisfaction they would receive by killing an enemy was worth the light penalty imposed by a *jirga*. One official described hearing a convicted murderer leaving a *jirga* telling his friends: “It is alright. My enemy is dead. Seven years’ imprisonment and so much is fine.”⁹⁸ In contemporary socio-legal terms, the supposed “savages” were apparently quite sophisticated legal forum shoppers.⁹⁹

Any thoughtful analysis of the colonial system of frontier law must consider the recent literature on the “state of exception.” Agamben describes the “state of exception” as a paradigm of modern governance based on emergency without visible end.¹⁰⁰ It is “neither internal nor external to the juridical order,” but “a space without law... a zone of anomie” that produces state violence which has “shed every relation to law.”¹⁰¹ From a postcolonial perspective, Achille Mbembe extends Agamben’s argument, defining the colony as a “the site where sovereignty

exists fundamentally in the exercise of a power outside the law (*ab legibus solutus*).”¹⁰²

Colonialism, in Mbembe’s view, is the paradigmatic state of exception.

As a legal historian who studies the history of how laws in the empire were created and implemented, I am intrigued by these spatial figurations of law and lawlessness, inside and outside. However, I am not convinced that colonial power was exercised “outside the law.” There is no doubt that on the NW frontier, the colonial state was, in Mbembe’s chilling words, a “terror formation.” Laws like the MOA and FCR indicate that the British empire functioned as a state of terror (operating outside the ordinary rule of law, though inside a specially created extraordinary system of law) even as it defined itself as a state against terror (controlling a wildly violent, fanatical and turbulent population). These special laws were self-consciously crafted to extend colonial authority within a legal framework, albeit one that allowed for unbridled and sometimes unthinkable acts of coercion, violence, and degradation (such as the burning of corpses). It is hard to conceive of the colonial frontier as a space of “non-law” or “anomie” given the copious correspondence between British officers at all levels of government concerning questions of law and legality.¹⁰³

Colonial law on the NW frontier comprised a parallel legal system designed to strengthen and stabilize colonial power. While it could certainly be said that British actions on the frontier were “lawless” in the sense that they were coercive, wildly violent, and immoral, colonial power was not exercised in a “lawless” space where law was absent. Laws such as the MOA and FCR provided colonial officials with extrajudicial powers to hold or order legal proceedings beyond the jurisdiction of the ordinary colonial courts. They expanded colonial power beyond the limits of the ordinary rule of law and authorized excesses of judicial authority in an extraordinary jurisdiction. However, these extraordinary powers were sanctioned by extraordinary legislation

and were not therefore “extralegal.” These special regulations sought to bring “ungovernable” people and places within the ambit of colonial authority by enabling local officers to circumvent the ordinary rule of law in the service of colonial rule itself. Frontier law was based on representations of tribal otherness and derived legitimacy from the colonial conviction that a people differently described required a differently system of rule. The frontier system of law was based on colonial ideas about civilizational status, geographical space, and historical time that was crafted in conversation with broader imperial ideas and imperatives.

In Pakistan, the FCR survived the formal termination of British rule and remains the legal framework in the region now known as the Federally Administered Tribal Areas (FATA). The FCR’s provisions for preventive detention, collective responsibility and punishment, jirga trials, and guilt by association have led human rights activists to condemn it as unconstitutional and inhumane. Amnesty International recently described the FCR as a “British Raj” system of law that “codifies authority for a range of human rights violations, is part of a tapestry of an antiquated and draconian system of limited government with little or no recognition of or respect for human rights, the rule of law, due process, political representation, or democratic institutions (Amnesty International 2010).”

Ironically, it is the weakness of the Pakistani state and its creation of an exceptional legal zone outside of the ordinary rule of law that has enabled terrorists groups such as the Taliban to find sanctuary in the region. When the Pakistani government invokes provisions of the FCR to fight insurgents in FATA, by, for example, detaining women and children related to tribal chiefs in an effort to pressure them to capture and hand over militants, it not only violates international human rights laws but it also reveals its own capacity to oppress and terrorize. Such practices tend to produce new “unlawful combatants” who not only have a living memory of the colonial

past but who view the fight against (rather than with) Pakistani and American forces as an act of courage and valor in the colonial present.

III. The Archival Remains of a Frontier Rebel

On February 11, 1900, Mullah Powindah [MP] finally consented to meet with the Wana Political Officer, Mr. H. D. Watson. In preparation for the meeting, MP sent 100 of his followers to the British post to serve as hostages (the taking of people as human security was a common colonial practice in the 19th and 20th centuries).¹⁰⁴ On February 27, he arrived at the designated meeting point in truly grand style. Preceded by two men carrying red flags, the Mullah strode in slowly and deliberately on horseback. A large bedstead covered with a red quilt was carried alongside him and over 100 followers marched behind in solid ranks, many armed with breech-loading rifles in defiance of Watson's prior demand that no armed men be present at their meeting. Watson watched impatiently as the Mullah, masterfully practicing an "art of resistance," leisurely traversed the nearly one mile of terrain to where Watson sat waiting, impatiently. As his party drew near, a small contingent broke off and proceeded to a spot about a quarter of a mile away. Mullah Powindah soon followed them. For a few moments, the two sides were frozen in a standoff: Mullah Powindah refused to come towards Watson just as Watson and his men refused to budge, "not only," as Watson wrote, "because it would have been beneath our dignity to do so, but also because the place selected was out of view of our picket on the ridge above." Although he didn't say so in his report, Watson appeared to be frightened.

In seeking to bridge the gap that separated them, Watson pointed to a spot not far from where he was sitting and the Mullah slowly began moving in that direction. But then he and his armed following stopped and sat down in semi-circle waiting for Watson to make his move. Watson, who had been warned by some of the leading Maliks that they would not be responsible

for his safety if Watson went “into the lion’s jaws,” took pause. Sensing Watson’s reluctance, Mullah Powindah turned away defiantly as if to leave. Annoyed by the Mullah’s game of maneuver, but reluctant to see this highly anticipated meeting sabotaged, Watson sent word that he would return to Jandola at once unless the Mullah Powindah moved further away from where his followers were seated. Mullah Powindah then advanced to a spot near that which Watson had originally indicated.

When Watson and his collective rode up, the Mullah rose to his feet and saluted him. Watson’s group dismounted and sat opposite the Mullah Powindah on chairs which they had brought with them from the post. The Mullah Powindah and two or three of his Sheikhs then squatted back down on the bed. Nearby on the ground near sat several more Sheikhs, most armed with rifles. At a little distance behind Watson, a formidable body of three hundred or so men sat facing the Mullah Powindah. On the other side, in the direction of Jandola from which Watson had come, the Maliks and their followers sat in a semi-circle behind the Mullah Powindah. Hardly a Malik of any importance was absent and, according to Watson, every notorious Mahsud badmash was there. In total, there were over one thousand Mahsuds present, with five or six hundred breech-loading rifles of various sorts among them, to say nothing of their many revolvers, muzzle-loading guns and other weapons. As Watson understatedly described it, “the scene was a rather striking and memorable one.”

Mullah Powindah was a big heavy man with a short thick black beard and full features. He wore a red jacket and a coat of chain-mail that hung down to his waist. Over an Astrakhan cap hung a chain-mail helmet and tucked into his belt were a dagger and a revolver. He spoke slowly in a low voice and at first it seemed to Watson that he, too, was nervous. After exchanging niceties, Watson asked what requests Mullah Powindah had to make of the

Government. The Mullah replied that he wished to be allowed to practice his religion in peace and without molestation and that Government lay down boundaries to fix the limits of interference in Mahsud affairs. Watson attempted to draw the Mullah into a discussion of his personal requests, the colonial practice at the time was to pay mullahs “allowances” to buy the peace as it were. But the Mullah shied away from making any financial request, speaking only on the subject of Government interference with his tribe. The interview lasted for two hours and ended with Watson and the Mullah Powindah riding off on horseback in opposite directions, both reasonably contented with their achievements at the meeting.¹⁰⁵

Four months after their meeting, MP agreed to accept a monthly allowance of Rs. 100 under the condition that no one should know “so that I may not be disgraced.”¹⁰⁶ This arrangement was sanctioned by the Government of India against the wishes of Sir Mackworth Young, Lieutenant-Governor of Punjab, who viewed MP as “one of the most unscrupulous ruffians on the frontier” undeserving of any “semblance of friendship” with Government.¹⁰⁷

Most of what I know about MP comes from the colonial archive, as he was carefully tracked by British agents and their surveillance machinery from 1893 until his death in November 1913.¹⁰⁸ Indeed, much of what we know about the history of the colonial frontier in general has been written by colonial officials. I am struck by the ways in which this limited range of sources has impacted the breadth and character of history-writing on the NW frontier. Colonial knowledge about the frontier was produced by British colonial officials – men like Mountstuart Elphinstone, William Henry Paget, C.C. Davies, William Barton, and Olaf Caroe in the 20th.¹⁰⁹ The institutionalized knowledge generated by the administrative official on the spot and by the military officer on the march produced and reproduced a coherent repertory of ideas about the frontier and a narrative tradition in which the voices and perspectives of local people

are largely absent.¹¹⁰ As Edward Said so insightfully remarked decades ago, the discourse of Orientalism created the “Oriental,” in this case the tribesman, as an object to be represented while obliterating him as a human being.¹¹¹

The production of a closed system of ideas and assumptions about the frontier was, in the first instance, enabled by political conditions – Colonel W.H. Paget of the 5th Punjab Cavalry wrote what amounted to a six-volume ethnography of the NW frontier tribes following the Punjab Government’s request for an account of military expeditions that would serve as a “valuable guide to those who might have future dealings with these turbulent neighbors.”¹¹² These narratives also assisted colonial expansion, serving as political and military reference books not only in the British colonial period but also today in the US “war on terror”.

Due to geo-political circumstances, I have been unable to travel to the region to explore what other kinds of sources about MP might be available. Hence, I am stuck with records from the official archives in Delhi in London, archives which record the history of colonialism from the colonizer’s perspective. In an insightful essay titled, “Mad Mullahs and Englishmen,” David Edwards describes the colonial archive as a space to “mine for metaphors” rather than a source base to determine “what really happened.”¹¹³ While I greatly admire his work and sympathize with his skepticism, I wonder if there is a danger to his method. An overemphasis on colonial discourse – even in a critical mode – perpetuates the tendency to figure frontier people as mute objects of analysis rather than as active subjects of history.

At the risk of sounding horribly simplistic and blithely conventional, I do want to get some sense of “what happened” – committed post-modernists, please forgive me! – or at least I want to entertain the notion that the colonial archive can be mined not only for metaphors but also for multiple perspectives. Although official sources may be of limited evidentiary value in

terms of what they can tell us about the mentalities and values of tribal communities, they are certainly of use when it comes to exploring local perceptions and experiences of empire. It is in this regard that Mullah Powindah has become an important figure in my current research.

In his work on anti-colonial peasant resistance movements in rural India, Ranajit Guha theorizes that by reading official accounts through a “distorting mirror,” or “against the grain,” the historian is able to reveal the tactical intentions and political consciousness of subordinate groups from behind the veil of official rhetoric.¹¹⁴ A kindred interpretative insight into understanding “people without history” is offered by James Scott whose recent work on stateless societies traces the strategies employed by people who seek to remain outside of the formal framework of empires and nation-states.¹¹⁵

The presumed unruliness and backwardness of tribal groups on the frontier formed the basis for acts of colonial violence and repression. Stock images of the wild, unruly, and fanatical tribes justified colonialism in advance and minimized colonial terror, which was coded as a necessary response to local conditions rather than a chosen imperial policy. One does not have to do much reading against the grain to figure out that the logic and rhetoric of colonial rule formed the basis for local acts of insubordination, resistance, and refusal. It is in this regard that MP becomes visible in the archive, for he committed the sin of all colonial sins: murder of British officers.

The NW border of British India, which stretched for 1000 miles from Karachi to Kashmir, was of particular concern to the colonial state due to what lay beyond it: Afghanistan, Central Asia and Russia.¹¹⁶ Security of the border was intimately tied up with the intractable problem of controlling the tribes inside the border in the semi-autonomous tracts. The Durand Line marked the formal external border between British India and Afghanistan. Within British

India, to its east, a second administrative border marked off the “settled” districts from the independent tribal tracts.¹¹⁷ This fifty mile wide strip of land was described by Olaf Caroe as “a no-man’s-land of unknown extent which acknowledged neither Kabul nor Calcutta as suzerain”¹¹⁸ and by William Barton as “A huge mountain mass buttressing the Afghan highlands for hundreds of miles, held and owned by a race as hard and ruthless as its peaks and precipices.”¹¹⁹ The tribal tracts comprised the bulk of territory in the North-West Frontier Province (25,472 square miles of the Provinces total 38,665)¹²⁰ and was predominantly people by Pushtuns, including the Mahsuds of Waziristan, for whom the British were legally responsible but over whom they could never quite establish control.¹²¹

The British alternately used the carrots of accommodation and conciliation and the sticks of force and aggression in their attempt to control the NW fringe of their Indian Empire.¹²² This seemingly paradoxical strategy involved “shock and awe” shows of British strength (from the “butcher and bolt”¹²³ punitive expeditions of the 19th century to aerial bombings of the 20th) while also attempting to co-opt local headmen through coercive schemes such as the *maliki* system, which I will return to shortly.

Consistent with the logic that special conditions demanded special laws, practices, and institutions, colonial frontier policy posited that only through violence could peace and order be established among the independent border tribes. Between 1849 and 1901, the Punjab Government embarked on no less than fifty-two punitive expeditions into tribal territories, in which local villages were raided by colonial troops, people were shot, their homes, livestock, and crops burned to the ground as collective retribution for the offences committed by a few of their members.¹²⁴ The British also attempted to “force the tribes to terms”¹²⁵ through “ordinary everyday”¹²⁶ methods of control employed by their Afghan and Sikh predecessors, such as

baramta (the seizure of people, animals and property belonging to a tribe or individual at fault to bring pressure for restitution) and *bandish* (blockades designed to exert economic pressure on the tribes by closing them off from trade and supplies, essentially starving the people).¹²⁷

Frontier policy until 1901 can roughly be divided into two periods. From 1849-1878, colonial administrators experimented with a close border policy, which entailed the use of military force without permanent occupation. Following the second Afghan War (1878), there was a shift to a forward policy, which favored moving into tribal territory, enlisting the tribes as allies, and building a strategic line of defense against foreign aggression.¹²⁸ The people of Waziristan fiercely opposed British rule – which from their perspective, of course, was foreign aggression – and neither of these policies were successful. Mahsud country was forcefully invaded under a policy known as “burn and scuttle,” in which principal villages were burned to the ground and then troops were quickly withdrawn to within the administrative border. But even after 17 such invasions, the British were unable to control, disarm, or administer the Wazirs.

In the late 19th century, the fundamental framework of colonial politics in Waziristan was the *maliki* system. Having failed to force the Mahsuds into submission through the use of violence, the British attempted to bring them “to terms” through a policy of control through tribal leaders (Maliks). Maliks were selected by the government, graded according to their presumed power and influence, and paid allowances (*mowajib*) accordingly. The Maliks produced a certain number of their tribesmen for paid service as Levies (akin to police). The Maliks and Levies were expected to serve Government by controlling their clansmen, minimizing trans-border raids, and surrendering individual offenders for trial and punishment by the British, and not by the tribe.¹²⁹ This system of so-called friendly and conciliatory intervention, based on that designed by R.G. Sandeman in Baluchistan, was referred to as a policy of non-interference –

which, of course, it was not!¹³⁰ The *maliki* system was explicitly designed to enable the British to indirectly control tribal territory through a self-selected class of loyalists without incurring the full costs of actual occupation. To strengthen their authority, the Government pledged to deal with the tribes exclusively through the Maliks, denying the requests of other parties, like MP, to be included in any negotiations.¹³¹ However, the *maliki* system failed to subdue Mahsud resistance as some Mahsuds sided with the Maliks while others, including MP, did not.

For over two decades, MP was a galvanizing figure in Mahsud opposition to the colonial occupation of Waziristan. In his memoir, former army officer George Dunbar described him as “an intriguing priest-leader with immense influence who made trouble on the Frontier and instigated murder from 1894 until his death nineteen years later.”¹³² Less kind in their descriptions were Lord Kitchener, who nicknamed MP the “Pestilential Priest”¹³³ and C.C. Davies who referred to him as “the evil genius of Waziristan.”¹³⁴ According to official sources, MP’s “first public act was the endeavor to administer an oath to the tribe to fight against the British.”¹³⁵ As did many of his contemporaries, MP articulated popular Mahsud political opposition to the British and their Malik collaborators in a religious idiom, preaching that Mahsud country should not be surrendered to the British Government without religious war.¹³⁶

MP first appeared on the colonial radar screen in 1893 in connection with a series of murders of great political importance. On June 30, 1893, Major J.J. Kelly, a Public Works Department overseer employed by the Baluchistan Agency, was ambushed and shot by a group of Waziris within Zhob jurisdiction.¹³⁷ In an effort to capture the murderers, sixty members of the tribal sections to which the accused persons belonged, including some of their relations, were apprehended and imprisoned. Under pressure, the Mahsud Maliks surrendered the alleged criminals and agreed to try them by jirga under the FCR. Two of the men were convicted and

given prison sentences of seven years; three others were sentenced to two years of rigorous imprisonment and fines. All were later found to be associated with Mullah Powindah.

There was tremendous local discontent with the actions of the Mahsud Maliks as many feared that in the future they too could be handed over to colonial authorities.¹³⁸ Not long after their conviction, Mullah Powindah's followers attempted to spring the 5 men from jail. Failing this, they murdered three of the Maliks who had surrendered them. The British viewed these murders as "the commencement of a stand-up contest between all elements of disorder and fanaticism in the country with the elements of order which were friendly and favorable to Government, and probably we have not seen the end of this struggle yet."¹³⁹

Mullah Powindah's power and influence grew in tandem with the expanding colonial effort to control Waziristan. In October 1894, a Boundary Delimitation Commission led by the Commissioner of Derajat was dispatched to Wana to demarcate the Afghan-Wazir border. Mullah Powindah's first response was to gather 1000 followers and send an ultimatum to the British Commissioner demanding the evacuation of Mahsud territory and the release of the prisoners who had been convicted of Kelly's murder. On November 3, 1894, having increased his gathering to 3000 men, Mullah Powindah led a night-time attack on the boundary commission, killing and wounding 120 troops, including several British officers. Following the Wana "outrage," as it was called, Mullah Powindah was expelled from Mahsud territory. Shortly thereafter, Lieutenant-General Sir William Lockhart sent a telegram to the Foreign Secretary in Calcutta informing him that Mullah Powindah's residence in Idak had been destroyed.¹⁴⁰

MP remained a target of colonial surveillance for another two decades. In November 1895, he appeared on the Punjab Government's list of leading Mullahs on the Peshawar and Derajat Frontiers, as "the most important Mahsud Mullah at the present time."¹⁴¹ His movement

and activities were carefully and continuously tracked in the fortnightly frontier reports and diaries until his death in Nov 1913.

Mullah Powindah not only attacked the British directly through acts of violence committed against British officers, he indirectly threatened British rule by undermining the moral and political authority of the Maliks. He preached that all tribesmen who accepted allowances from the Government were infidels who should not be allowed to read prayers or attend mosques and that no mullah should perform burial ceremonies on them or their families.¹⁴² He also sought to undermine the Maliks' ability to fulfill their obligation to the Government by willfully committing criminal acts.¹⁴³

The authority and responsibility delegated to the Maliks made them vulnerable to political rivals like MP, for the friendly face of the *maliki* system had a punitive flipside. When Maliks refused or were unable to control their clansmen, they faced harsh measures as individuals (including forfeiture of allowances) as did the tribe collectively (such as exclusion from administered territories and military expeditions). The Mahsud Maliks had two politically tough options for dealing with MP: either they could hand him over to colonial authorities, an act sure to invite the hostility of their own tribesmen; or, failing to control the mayhem caused by the Mullah's men, they could accept the inevitable British reprisal, which would not only cause collective physical suffering to the Mahsuds but was likely to increase their opposition to the British and their collaborators – the Maliks. By instigating crime, MP sought to expand his own power by placing the Maliks in breach of their responsibilities to the colonial state and thereby destabilizing the colonial system of frontier control. As Wana Political Agent L.M. Crump noted in frustration, “The Mulla is frankly impossible: if he has full power in the tribe, he retains it by instigating fanatical murders; if he has not, he discredits his rivals by instigating raids.”¹⁴⁴ In

August 1896, the Mahsud Maliks went so far as to implore colonial officials to directly occupy Mahsud country, citing their inability to control MP whose actions “will bring us into disrepute and give Government much trouble.”¹⁴⁵

The initial official strategy for dealing with MP was to ignore him. By not giving him countenance, frontier officials not only sought to diminish MP’s sense of his own importance, they also stuck to the fundamental premise of their policy which was to avoid strengthen the position of the Maliks by dealing with them exclusively. Defying this “policy of passive toleration,”¹⁴⁶ the Mullah Powindah attempted to accentuate his power among the Mahsuds and build an impression of his significance before the British by repeatedly crossing the border to meet with the Amir of Afghanistan.

MP was one of many “mad mullahs”¹⁴⁷ whom the British fixated on as individual agents of collective disorder and dissent on the frontier. Unlike other religious figures such as the Mad Faqir or the Faqir of Ipi, MP was perceived by colonial officials as a political animal with a single secular aim, that: “the Mahsuds should retain their independence and that he should be their leader and their representative in their relations with us.”¹⁴⁸ Although MP periodically threatened the British in a religious idiom, fanaticism was not the register in which he was interpreted.

By the time of his death in 1913, MP was suspected of complicity in the murder of at least 10 British officials – 3 of whom were assassinated within a span of eighteen months – as well as involvement in numerous other criminal “outrages,” including rifle-raiding attacks on colonial military posts, shootings of sepoys, thefts, and kidnappings (most of which occurred after he began taking the allowance).¹⁴⁹ A rich body of scholarship on crime and criminality in colonial India has demonstrated how the British used law to discipline and punish various groups

who, in David Arnold's words, "did not conform to the colonial pattern of settled agricultural and wage labor."¹⁵⁰ The history of Mullah Powindah, as pieced together from his fragmentary remains in the colonial archive, allows us to see how local actors transgressed law to exploit the logic and stability of colonial authority and to expand their own power.

Conclusion to follow!

¹ Remarks made by Senator John Kerry in January 2009: www.washingtontimes.com/news/2009/jan/23/pakistan-needs-our-support

² James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (Yale University Press, 2009). A skilled colonial officer who failed to convince the chief of an impoverished and starving frontier tribe about the benefits of British rule recalled him saying: "We can bear want, we can bear cold, we can bear hunger, we can bear even blood, but we cannot bear a master." Memorandum by E.C. Bayley, 20 June 1876, National Archives of India Foreign/Political A/February 1876/149-15.

³ Enriquez, *Pathan Borderland*, 94. To army officer George Dunbar, the 20th century Pasthun and the 18th century Rob Roy were one and the same man, give or take a kilt, a rifle and a few centuries: "the Pathans of today must be rather like our own clans two or three centuries ago... Exchange Rob Roy's claymore for a modern rifle – used with equal skill; take the kilt off the Highlands and put him into baggy trousers, a gaudy waistcoat, and a *pagri*; hand him a chanter instead of his set of pipes, with a [?] drum to beat; give him the characteristic nose of one of the Lost Tribes – and you more or less have the tribesmen of the North-West Frontier." *Frontiers* (1925), p. 50.

⁴ C.C. Davies, *The Problem of the North-West Frontier*, p. 37.

⁵ Curzon, *Frontiers*, 55.

⁶ The Bush administration's labeling of America's political enemies as "unlawful combatants" created a category of persons beyond the reach and protections of international law and provides a sobering contemporary example of the links between rhetorical and legal acts.

⁷ On the assimilation of emergency powers into colonial law, see John Reynolds, "The Long Shadow of Colonialism," *Comparative Research in Law and Political Economy* Research Paper No. 19, vol. 6, no. 5 (2010): 1-52

⁸ J.T. Sunderland, *India in Bondage: Her Right to Freedom* (Delhi, 1929), p. 105.

⁹ The legal and constitutional status of the people in the buffer zone between the administrative border and the Durand Line was also an ongoing subject of debate. Although it was routinely referred to as "independent" territory, from an international legal perspective, it lay within the sphere of British influence and was not technically independent. In 1924, it was determined that tribesmen on the Indian side of the Durand Line were neither foreigners nor British subjects but (like the inhabitants of princely states) "British protected persons" entitled to recognition and protection in foreign countries in the same way as British subjects were. The Government of India granted itself the discretion to respect their internal independence while guaranteeing their external security so long as they abided by their agreements with the government and remained at peace with their neighbors. This ambivalence about the legal status of the tribes was sustained by a political uncertainty as to whether or not the territory right up to the Durand Line should be formally incorporated into the Empire or left semi-autonomous.

¹⁰ Sir William Barton, *India's North-West Frontier*, p. 4.

¹¹ F. Cunningham, "Tribes of the North-West Frontier of India," *World Review* (February 1947), pp. 23-9, in Cunningham's Private Papers, IOR Cunningham Collection Mss EUR D670/28.

¹² See Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1800* (Cambridge: Cambridge University Press, 2010), chapter 5 (pp. 222-278).

¹³ Sir William Barton, *India's North-West Frontier* (London: John Murray, 1939), p. 59.

¹⁴ Punjab Lieutenant Governor Dennis Fitzpatrick observed that "when we first took over the Punjab the frontier tribes had been in the habit of raiding pretty much at their good will and pleasure. They had to be taught what our

strength was and one of the most effectual ways of teaching them was by punitive expeditions. They took a long period to learn their lesson, and during that period punitive expeditions were numerous, but, as time went on, the necessity for them diminished.” Cited in Samarth’s “Minute of Dissent,” *Report of the Frontier Regulations Enquiry Committee and Minutes of Dissent by Mr. T. Rangachariar and Mr. N.M. Samarth (Government of India, 1923)*, p. 137 [NAI Foreign and Political/1923/File No. 34-F.].

¹⁵ *Report of the Committee Appointed to Consolidate and Amend the Frontier Regulations for the Suppression of Crime* (1886), IOR L/PJ/6/202, File 776.

¹⁶ Critics called them “butcher and bolt”.

¹⁷ J.W. Kaye, *History of the War in Afghanistan*, Volume I (London, 1857), p. 124.

¹⁸ K. Brown, “‘All They Understand Is Force’: Debating Culture in Operation Iraqi Freedom,” *American Anthropologist* 110, 4 (2008): p. 445.

¹⁹ Devji, *The Terrorist in Search of Humanity*.

²⁰ T.H. Thornton, Secretary to the Government of Punjab, to C.U. Aitchison, Secretary to the Government of India, Foreign Department, 27 June 1870, NAI Foreign/Political A/July 1870/278-279.

²¹ James Fitzjames Stephen keepwith dated 23 February 1871, NAI Foreign/Political A/March 1871/21-25.

²² T.H. Thornton, Secretary to the Government of Punjab, to C.U. Aitchison, Secretary to the Government of India, Foreign Department, 27 June 1870, NAI Foreign/Political A/July 1870/278-279.

²³ Young to Officiating Commissioner and Superintendent, Peshawar Division, 15 February 1886,

²⁴ Benton argues that this view of mountainous regions as requiring a certain kind and amount of law that matched their level of development was a typical feature of European colonial governance. Benton, *A Search for Sovereignty*, p. 225.

²⁵ Dupont writes: “My aim was to photograph US military operations and show what type of war is going on in this country... It became very clear that it was not just the fighting that needed to be captured, more importantly it was the methods of war used on the local people and the unseen enemy.”

http://bop.nppa.org/2006/still_photography/winners/INN/61569/118527.html [accessed September 28, 2010] Video of the burning corpses: <http://www.youtube.com/watch?v=sbezXKt1B7U> [accessed September 28, 2010]

²⁶ The official investigation report from the Combined Joint Task Force 76 (CJTF-76) is no longer available on Centcom’s website. For a summary, see <http://www.defense.gov/news/newsarticle.aspx?id=18205> [accessed September 30, 2010]

²⁷ It is a well-documented fact that army strategists with Task Force 121 used 19th century British northwest-frontier anthropology to prepare for the war in Afghanistan. (Task Force 121’s primary mission was the apprehension of “High Value Targets” in the war on terror.) See Montgomery McFate and Andrea Jackson “An Organizational Solution for DOD’s Cultural Knowledge Needs,” *Military Review* (July-August 2005).

http://findarticles.com/p/articles/mi_m0PBZ/is_4_85/ai_n15674581/ [last accessed October 5, 2010]. Lacking resources and ability to collect and analyze current cultural knowledge, one Special Forces colonel assigned to the Undersecretary of Defense for Intelligence admitted to McFate, “we literally don’t know where to go for information on what makes other societies ‘tick.’ So we use Google to make policy.” Montgomery McFate, “Does Culture Matter?: The Military Utility of Understanding Adversary Culture,” *Joint Forces Quarterly*, Issue 38, http://www.e-mapsys.com/Cultural_Matters.pdf [last accessed October 5, 2010]. McFate currently holds the chilling title of Senior Social Scientist for the US Army’s Human Terrain System (<http://montgomerymcfate.com/>).

²⁸ Cultural knowledge has become a key component in the “gentler” approach to the war on terror advocated by General David Petraeus. Petraeus argues that successful counterinsurgency strategies must understand the human terrain of culture as well as the geographical terrain. Since 2009, the US Army offers cultural trainings and produces educational materials, including Smart Books for Afghanistan, Pakistan and Yemen, and Culture Smart Cards for Afghanistan and the Horn of Africa. See Rochelle Davis, “Culture as a Weapon System,” *Middle East Report* 255 <http://www.merip.org/mer/mer255/davis.html> (last accessed October 4, 2010). Also see Sheila Miyoshi Yager, “The Uses of Cultural Knowledge,” produced under the auspices of the Strategic Studies Institute, Army War College, http://www.au.af.mil/au/awc/awcgate/ssi/jager_cultural_knowledge.pdf [last accessed October 4, 2010]

²⁹ Ordinarily, magistrates were restricted to summarily trying offenses not punishable with death, life imprisonment, or imprisonment for a term exceeding two years.

³⁰ Note by F.D. Cunningham, Commissioner and Superintendent Peshawar Division, 3 April 1900, NAI Foreign/Frontier (A)/ Proceedings August 1901, Nos. 63-72.

³¹ Comment of Peshawar Sessions Judge Barton, quoted in *Report of the Frontier Regulations Enquiry Committee and Minutes of Dissent by Mr. T. Rangachariar and Mr. N.M. Samarth*, NAI Foreign and Political/1923/File No. 34-F.

³² NAI Foreign/A-Political-E/October 1883/Nos. 353-355.

³³ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998).

³⁴ Mr. E.H. Kealy, former Secretary to the NWFP Chief Commissioner, quoted in Samarth's "Minute of Dissent," *Report of the Frontier Regulations Enquiry Committee and Minutes of Dissent by Mr. T. Rangachariar and Mr. N.M. Samarth*, NAI Foreign and Political/1923/File No. 34-F.

³⁵ The other two incidents were the murders of Major Adams and Lieutenant Ommaney.

³⁶ *The Crown vs. Summad, Afreedee, inhabitant of independent territory, Court of the Commissioner, Peshawur Division, 3 March 1866* in IOR/L/PS/543, Collection 51/2.

³⁷ In the case, Becher exceeded the maximum punishment proscribed by law (transportation for life) and his judicial authority by authorizing the immediate execution of the prisoner without confirmation from the Punjab Chief Court.

³⁸ T.H. Thornton, Secretary to Punjab Government to Secretary to Foreign Department, Government of India (hereafter GOI), 5 March 1866, IOR/L/PS/543, Collection 51/2.

³⁹ Better known for his socio-legal work on comparative jurisprudence and Roman law, Maine has some interesting thoughts about crime and punishment. He was a proponent of whipping, a punishment that was not included in the original draft of the Indian Penal Code. In response to those such as Charles Trevelyan who condemned the inhumanity of flogging, Maine pragmatically responded: "What was intended when it was said that whipping brutalized? Was it that it appealed to the offender's animal nature as distinguished from his moral nature? Why every punishment deserving of the name inflicted physical pain. If you shut a man up in a gaol who was used to the open air; if you deprived him of stimulants when he was habituated to them; if you made him work when he was accustomed to be idle; in all these cases you inflicted physical pain, and pain sometimes even severer than the pain of flogging. Some persons... appeared to forget that when you sentenced a criminal to punishment you deliberately made up your mind to render him extremely uncomfortable and for his part Mr. Maine could not the least understand why one form or degree of physical pain should brutalize more than another (122)." Maine lamented that the reformation of punishment begun in the early 19th century and designed to reform offender has taken "all the sting out of punishment (124)" and produced more criminals. See Maine's February 17, 1864 speech on whipping in *Sir Henry Maine: a brief memoir of his life*.

⁴⁰ Proceedings of the GOI, Home Department, Legislative (1866) IOR P 436/53.

⁴¹ Henry Maine to John Lawrence, 21 April 1866, IOR MSS Eur F90/35, 25.

⁴² The origins of the MOA must also be understood in a wider imperial context. Passed in 1867, less than a decade after the Great Rebellion, the law was practically contemporaneous with other imperial emergencies such as the Morant Bay Rebellion (1865) and the Fenian Rising (1867). The fearful thinking of British lawmakers in India about the threat posed by frontier "fanatics" was undoubtedly molded by these other imperial emergencies.

⁴³ See Strange's report in Madras Judicial Proceedings IOR P/327/60, No. 25. Following the Mappila Rebellion of 1921-22, Commander-in-Chief Henry Rawlinson described the Mappilas as "a turbulent and fanatical community... notorious for their lawlessness." See his "Report on the Operations in Malabar," IOR L/PJ/6/1782.

⁴⁴ William Plumbridge Williams, *The Acts of the Legislative Council of India relating to the Madras Presidency from 1848 to 1855* (Madras: The Church of Scotland Mission Press, 1856) [IOR V 4589], pp. 293-6

⁴⁵ The "fanatic zone" was defined as the area within a 15 mile radius from Pandalur hill and Ernad taluk. C.A. Innes and F.B. Evans, *Madras District Gazetteer: Malabar and Anjengo, Vol. I* (Madras, 1915), p. 85. Many of the punitive provisions in the Mappila Act were based on suggestions made by Hindu petitioners. See Madras Judicial Proceedings IOR P/327/42, No. 16.

⁴⁶ For a critique of this view, see K.N. Panikkar, *Against Lord and State: Religion and Peasant Uprisings in Malabar, 1836-1921* (Delhi: Oxford University Press, 1989), and Conrad Wood, "The Moplah Rebellions between 1800-02 and 1921-22," *Indian Economic & Social History Review* 13 (January 1976): 97-106.

⁴⁷ Minute by Henry Pottinger, Governor of Madras Presidency, 6 February 1852, *Correspondence on Moplah Outrages in Malabar for the years 1849-59* (V 3212).

⁴⁸ T. Clarke, Magistrate of Malabar, to J.D. Bourdillon, Secretary to Madras Judicial Department, 23 October 1855, *ibid.*

⁴⁹ P. Grant, Acting Magistrate of Malabar, to T. Pycroft, Chief Secretary to Madras Government, 9 February 1859, *Correspondence on Moplah Outrages in Malabar for the years 1849-59* (IOR V 3212). A pathological approach to understanding violent crime can also be seen in British treatment of *amok* in colonial Malaysia. An editorial in *Friend of India* titled, "The 'Law of the Suspect' in Malabar," argued that the ordinary law was powerless to deal with people for whom death has no "terrors": "These Moplahs, like Malays when running a muck, are not entitled to be considered men at all. They are simply wild beasts, to be shot down as we shoot down tigers, not because we hate tigers, or because they are not perfectly justified in their acts, but because they are dangerous to the lives of rational

beings.” *Allen’s Indian Mail, and Register of Intelligence for British and Foreign India, China and all parts of the East*, vol. XII, Jan. – Dec. 1854 (London: W.H. Allen & Co., 1854), p. 325.

⁵⁰ The draft Act initially written by special Commissioner T.L. Strange did not contain any provision permitting the burning of bodies. Nor did the amended Act introduced into the Legislative Council in March 1854. Unfortunately, the Legislative Proceedings from May 1854-1858 [P/208/3-4] are missing from the IOR. Thus, I cannot explain how, when or why s. 3 was added to the law passed in November. See Strange’s report and three draft Acts in *Correspondence on Moplah Outrages in Malabar for the years 1849-59* (IOR V 3212); the draft Act in the *Calcutta Gazette* on April 12, 1854; and the final Act printed on November 1, 1854, in *Calcutta Gazette*, IOR V/11/382. Despite periodic expressions of concern raised by the Government of India about the inflammatory effects of this practice, the burning of Mappila corpses in Malabar continued until 1919.

⁵¹ Minute No. 352, 16 May 1854, Madras Judicial Proceedings, IOR P/327/61, p. 1530.

⁵² Extract from the Minutes of Consultation, 3 October 1855, in *Correspondence on Moplah Outrages in Malabar for the years 1849-59* (IOR V 3212).

⁵³ Many English people were disturbed by the desecration of the criminal’s corpse. They sometimes protested this display of state power by making relics out of the mutilated remains and by providing the dead with proper burials. V. A. C. Gatrell, *The hanging tree: execution and the English people, 1770-1868* (Oxford: Oxford University Press, 1996), p. 87.

⁵⁴ Collett to Pycroft, 21 September 1855, *ibid.*

⁵⁵ In May 1852, the joint Magistrate of Malabar ordered a tomb erected over the body of a deceased fanatic to be destroyed. See R. Chatfield, Joint Magistrate of Malabar, to H.V. Connolly, Magistrate of Malabar, 10 May 1852, *ibid.*

⁵⁶ “When a man dies, his body is undressed and legs made to face towards Mecca. Big toes tied together and hands crossed on the chest, right over left. Mullas called to read Koran over the corpse, which is continued until it is removed to the cemetery. When relatives arrive, body is washed and laid on the floor on mats over which a clean cloth has been spread. Cotton wool placed in the ears and nose, between the lips, fingers and toes and body shrouded in cotton cloth. Body is then placed on a bier brought from the mosque and borne to the mosque where it is placed along the western wall. Mourners arranged in lines offer prayers. Bier then taken to grave which is dug north and south. Body lowered, winding sheets loosened, and body turned so as to lie on right side facing Mecca. Handful of earth placed below right cheek. Grave then covered with laterite stones over which mourners throws a handful of earth reciting the kalmia and passages from the Koran. Laterite stones placed at the head and foot of the grave and some mailanji at the side. Mulla seats himself at the head of the grave and recites passages from the Koran called *tilku* or teaching, intended to instruct dead man how to answer questions about his faith, which it is supposed that the angels are then asking him. Funeral concludes with distribution of money and rice to poor. For 3 days, a week, or 40 days, according to the circumstances of the deceased, Mullas read Koran over the grave without ceasing day and night. Koran also read at home for at least 3 days. On 3rd day, visit made to tomb after which *maulad* is performed, Mullas paid, alms distributed, and feast given to relations, including deceased’s relations by marriage who should come on this day. Similar ceremony performed on 40th day, which concludes the mourning and by the rich on anniversaries. Widows should keep secluded in their houses for 3 months and 10 days without seeing any men, after which they may remarry.” Innes and Evans, *Madras District Gazetteer*, p. ?

⁵⁷ Most of the recent scholarship on colonial knowledge emphasizes the “epistemological violence.” See Nicholas Dirks’ Foreword to Bernard Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), p. xii. Mukulika Banerjee adroitly describes the strategies of humiliation and brutalization used by the British to repress Red Shirt activities on the frontier (e.g., being stripped naked, smeared with black coal tar and paraded on roof tops) as evidence of the use of cultural knowledge in psychological warfare. Mukulika Banerjee, *The Pathan Unarmed: Opposition & Memory in the North West Frontier* (Oxford: James Currey, 2000).

⁵⁸ When the Mappila Act was reenacted in 1859, members of the Legislative Council likened the need for extraordinary powers in Malabar to a similar need in Ireland. Charles Trevelyan wrote: “this is a case in which more than the *ordinary* powers of the Law are required to prevent outrage founded upon a highly organized system of secret association, similar in many of its features to the Irish agrarian system for the repression of which Laws of equal stringency, taking the different states of society into consideration, have been enacted [sic] – a fine upon the town lands to pay for the Extra Police has been added in my time.” Minute by President C.E. Trevelyan, 6 June 1859, *ibid.* T. Pycroft urged the Madras Member of the Legislative Council, H. Forbes, to impress upon its members the need for extraordinary powers by drawing parallels to “Chinese Secret Societies and the Roman Catholic White Boys of Ireland.” Pycroft to Forbes, Member for Madras of the Legislative Council of India, 16 June 1859, *ibid.*

⁵⁹ Lawrence to Maine, 21 April 1866, IOR Mss Eur F90/37 John Lawrence Collection, Letters to Members of Council.

⁶⁰ of Legislative Council Proceedings, 1867 (IOR V/9/10).

⁶¹ David Edwards offers the insightful observation that “Establishing the enemy as fanatical denies him moral status and affords those whose moral superiority is thus affirmed a free hand in defending their interests.” David Edwards, “Mad Mullahs and Englishmen: Discourse in the Colonial Encounter,” *Comparative Studies in Society and History* 31, 4 (October 1989), p. 655. Section 2 of the MOA read: “any fanatic who shall murder or who shall, within the meaning of the IPC, section 307, attempt to murder any servant of the Queen of other person, shall, on conviction thereof, be punished either with death or with transportation for life, and all his property shall be forfeited to Government.”

⁶² The initial Bill had a provision (similar) to the Mappila Act for a body to be burned within the precincts of the jail.

⁶³ NAI Foreign/Secret (F)/ Proceedings May 1896, Nos. 322-332.

⁶⁴ Merk, Derajat Division Commissioner and Superintendent, to Punjab Government, 17 December 1900, NAI Foreign/Frontier (A)/ Proceedings August 1901, Nos. 63-72.

⁶⁵ The list was compiled by E.H.S. Clarke, Assistant Secretary to GOI on 12 June 1895 in *Ibid*.

⁶⁶ “Statement showing particulars of all fanatical cases which have occurred in the administered districts of the Baluchistan Agency since 1st January 1895,” NAI Foreign/Frontier (A)/ Proceedings August 1901, Nos. 63-72.

⁶⁷ The examples below are drawn from a query sent by the Government of India to frontier officials in 1895.

⁶⁸ Keepwith dated 6 May 1882, NAI Foreign/Secret (F)/ Proceedings May 1896, Nos. 322-332.

⁶⁹ See the debate in NAI Foreign/Secret (F)/ Proceedings May 1896, Nos. 322-332

⁷⁰ H.S. Barnes to GOI, Foreign Department, 15 June 1895, *ibid*. Barnes was not opposed to the principle of terrorizing punishment. “In our own Christian land, the body of a criminal executed for murder is buried within the precincts of the jail where he is executed; and anyone who has seen the ‘Birdhouse Walk’ in Newgate, by which the criminal has to walk to his trial, and from it after sentence, where the initials carved on the wall mark the places where the bodies of murderers have been buried in quicklime under the pavement below, will understand how much this disposal of the body after death must add to the terrors of the punishment.” Barnes to GOI, Foreign Department, 26 June 1895, *ibid*.

⁷¹ Deane’s letter of July 1895 quoted in E.H.S. Clarke’s keepwith of 9 March 1905, NAI Foreign/Secret - F/July 1905, Nos. 178-182.

⁷² Browne even suggested that the practice of burning bodies provided a *purdah* (or an excuse) to those who might otherwise be goaded into committing outrages “by the taunts of women (a common cause of this crime) or by the teaching of mullas: The text ‘Cast not yourselves into destruction’ acquires a double force when the destruction in question is not merely death, but the practical annihilation of the body.” Major-General James Brown, Agent to the Governor General in Baluchistan, to GOI, Foreign Department, 8 April 1896, NAI Foreign/Frontier (A)/ Progs August 1901, Nos. 63-72.

⁷³ In characteristically caustic fashion, Curzon told the gathered *Sardars*: “There have recently taken place in British Baluchistan, a number of murderous attacks upon Englishmen and Europeans, which are sometimes called, or miscalled, *Ghaza*. Believe me *Sardars* that the idea that any one can earn the favour of Almighty God by killing someone else against whom he bears no grudge, and who has done him no wrong, simply because he follows another religion which is only another way of worshipping the same God is one of the stupidest notions that ever entered into the brain of a human being. NAI Foreign/Internal B/February 1899/Nos. 429-430.

⁷⁴ Curzon’s note of 30 August 1900 in NAI Foreign/Frontier (A)/Proceedings August 1901, Nos. 63-72.

⁷⁵ NAI Foreign/Frontier (A)/ Proceedings August 1901, Nos. 63-72.

⁷⁶ In 1896, the Government of India ordered local officials to limit the practice to “cases of true fanatical outrage – e.g., cases of men whose object is to gain martyrdom by killing an infidel and who seek that object by assassination – as distinct from acts of guerilla warfare, such as firing into camps, plundering convoys, etc.” W.J. Cunningham, Secretary to GOI, to Punjab Government, 20 February 1896, NAI Foreign/Secret (F)/ Progs May 1896, Nos. 322-332.

⁷⁷ Colvin’s memo of 4 January 1901, *ibid*.

⁷⁸ Lieutenant-Colonel C.E. Yate, Agent to Governor General, Baluchistan, Foreign Department, GOI, 22 January 1901, *ibid*.

⁷⁹ Yate, 22 January 1901, *ibid*.

⁸⁰ Deane’s comments from March 1901 quoted in E.H.S. Clarke’s keepwith of 9 March 1905, NAI Foreign/Secret - F/July 1905, Nos. 178-182.

⁸¹R.E. Younghusband, Peshawar District Commissioner and Superintendent, Peshawar Division, 20 June 1889, NAI Foreign/Frontier – A/Proceedings August 1901/41-44.

⁸²The amended section 2 read: “Any fanatic who, within the meaning of the IPC, commits murder, or *does any act* with such intention or knowledge, and in such circumstances, that, if he by that act caused death, he would commit murder, shall be punishable with death or with transportation or with imprisonment for life, and all his property shall be forfeited, and when such a fanatic is sentenced to transportation, or imprisonment for life, he may also be sentenced to whipping in addition to such transportation or imprisonment.” See Regulation No. IV of 1901, “The Frontier Murderous Outrages Regulation, A Regulation to make better provision for the suppression of murderous outrages in certain frontier tracts,” *The Punjab and North-West Frontier Code* (1916).

⁸³Other changes included imprisonment of persons (like mullahs) charged or suspected of abetment; and provisions to enforce family, village, and tribal culpability.

⁸⁴Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage, 1995).

⁸⁵“The Frontier Regulations: A Paper Read by Rai Bahadur Diwan Jamiat Rai, Settlement Extra Asst Comm and Rev Asst to the Rev Comm in Baluchistan, at the Baluchistan Provincial Service Dinner on the 25th Oct 1917, and subsequently revised.” (Quetta: S.G.H. Sahni Bros., 1919) in IOR R/20/A/3283.

⁸⁶Quoted from Foreign Secretary Denys Bray, Legislative Assembly debates of 10 February 1925, IOR V/9/66. This quote is eerily reminiscent of the “permanent state of emergency” said to describe contemporary manifestations of imperialism and the US war on terror. See Michael Hardt and Antonio Negri, *Empire* (Cambridge: Harvard University Press, 2000) and Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2003). For a compelling argument that the state of emergency emerges from the rule of law (rather than in opposition to it), see Mark Neocleous, “The Problem with Normality: Taking Exception to ‘Permanent Emergency’,” *Alternatives* 31 (2006): 191-213.

⁸⁷Keith Brown, “‘All They Understand Is Force’: Debating Culture in Operation Iraqi Freedom,” *American Anthropologist*, vol. 110, issue 4, pp. 443-453.

⁸⁸In the first thirty years of British rule, there were no less than forty punitive expeditions. Sir William Barton, *India’s North-West Frontier* (London: John Murray, 1939), p. 59.

⁸⁹Cecil T. Carr, “Crisis Legislation in Britain,” *Columbia Law Review* 40, 8 (December 1940), p. 1324.

⁹⁰The history of British rule on the NW frontier provides a vivid example of what Giorgio Agamben calls the “state of exception,” which is when the state of emergency becomes a normal form of governance. Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005).

⁹¹Excerpt from All India Congress Working Committee, reported in *Pioneer*, 2 January 1930, in NAI Foreign and Political/Frontier/1930/File No. 22-F.

⁹²This notion of collective responsibility and punishment was substantively different from the notion of collective criminality found in contemporaneous colonial laws such the Criminal Tribes Act (1871). The latter conceived of classes of “born” criminals (mostly members of itinerant communities) and provided for their forcible registration and settlement.

⁹³H.T. Robinson, Assistant Commissioner, Rajanpur, 1 October 1874, NAI Foreign Department/Political (A), Pros August 1876, Nos. 1-11.

⁹⁴Particularly murder, culpable homicide, and crimes likely to lead to blood-feud.

⁹⁵Signature indecipherable, keepwith sent from the India Office, Whitehall, IOR L/PJ/6/202, File 776.

⁹⁶Justice H.M. Plowden, Punjab Chief Court Judge, July 1886, IOR L/PJ/6/202, File 776.

⁹⁷In 1933, NWFP Inspector General of Police noted that in relation to the population, murders in the NWFP were eighty times higher than in England, which he cited as “sufficient evidence of an emergency requiring special measures.” J.H. Adam, Inspector General of Police, NWFP to NWFP Government, 27 June 1933, IOR L/PJ/7/79.

⁹⁸Note from Major Deane in Annual Criminal Administration Report for 1894, NAI GOI Legislative Proceedings, Sept. 1901, Nos. 10-13.

⁹⁹**Lauren Benton**, *Law and Colonial Cultures: Legal Regimes in World History*.

¹⁰⁰In the model of Foucault, Agamben defines himself as a theorist of paradigms, not a historian. Ulrich Raulff, “Interview with Giorgio Agamben – Life, A Work of Art Without an Author: The State of Exception, the Administration of Disorder and Private Life,” *German Law Journal* 5, 5 (2004): 609-14.

¹⁰¹Agamben, *State of Exception*, pp. 27, 50-1, 59.

¹⁰²Mbembe, “Necropolitics,” p. 23.

¹⁰³Nasser Hussain has similarly noted that the proliferation of new laws, procedures and classifications in Guantanamo Bay contradicts the idea of a space of exception where law is absent or suspended. See Nasser Hussain,

“Beyond Norm and Exception: Guantanamo,” *Critical Inquiry* 13 (Summer 2007): 734-53; and “Hyperlegality,” *New Criminal Law Review* 10, 4 (2007): 514-31.

¹⁰⁴ The taking of hostages was a common colonial practice on the frontier. It was both a technique of collective punishment meted out to tribes whose members committed a crime against the government as well as a security measure in which human beings were handed over to the government as security to ensure the “good behavior” of members of their community and prevent “hostility”.

¹⁰⁵ My narrative description of this event is based on Watson’s account. NAI Foreign/Frontier A/July 1900/Nos. 17-84

¹⁰⁶ NAI Foreign/Frontier A/July 1900/Nos. 17-84.

¹⁰⁷ NAI Foreign/Frontier A/August 1900/Nos. 11-18.

¹⁰⁸ The report on his death in the archive has no details NAI Foreign/Frontier B/Dec 1913/6-8.

¹⁰⁹ See B.D. Hopkins, *The Making of Modern Afghanistan* (London: Palgrave Macmillan, 2009).

¹¹⁰ See Haroon and Nichols.

¹¹¹ Said, *Orientalism*, p. 27.

¹¹² W.H. Paget, *Frontiers and Overseas Expeditions from India* (reprint, Simla: Government Monotype Press, 1907), p. i.

¹¹³ David Edwards, “Mad Mullahs and Englishmen: Discourse in the Colonial Encounter,” *Comparative Studies in Society and History* 31, 4 (October 1989): 651.

¹¹⁴ Ranajit Guha, *Elementary Aspects of Peasant Insurgency in Colonial India* (Durham, Duke University Press, 1999).

¹¹⁵ James Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven, Yale University Press, 2009).

¹¹⁶ A dominant theme in the frontier historical literature is imperial defense. See Lal Baha, *NWFP Administration Under British Rule, 1901-1919* (Islamabad: National Commission on Historical and Cultural Research, 1978); and Olaf Caroe, *The Pathans* (London: Macmillan, 1958). A very thorough analysis of the North-West Frontier as a regional geographic entity, see David Dichter, *The North-West Frontier of West Pakistan: A Study in Regional Geography* (Oxford: Clarendon Press, 1967).

¹¹⁷ The cartographic distinction between the settled districts and the tribal tracts had a double meaning. One the one hand, a “settled” district was an area where a land survey and revenue assessment had been done (and where taxes were collected). The internal frontier also had rhetorical purchase as it marked the limits of civilization and law, dividing the ordered realm of colonial law from the wild realm of Pashtun lawlessness where only the “perfect law of liberty” reigned (See F. Cunningham, “Tribes of the North-West Frontier of India,” *World Review* (February 1947), pp. 23-9, in Cunningham’s Private Papers, IOR Cunningham Collection Mss EUR D670/28). As Lauren Benton has recently shown, there is a long tradition in European intellectual thought contrasting the civilized plains with the primitive mountains. In the colonial imagination, the mountains were defined as a space of political isolation, violence, and backwardness; a site of legal primitivism where archaic notions of justice were as unchanging as the primordial hills (Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1800* (Cambridge: Cambridge University Press, 2010), chapter 5 (pp. 222-278)).

¹¹⁸ See Caroe, *The Pathans*, p. 347.

¹¹⁹ Sir William Barton, *India’s North-West Frontier*, p. 4.

¹²⁰ *Imperial Gazetteer of India*, vol. XIX (New Edition, Oxford: Clarendon Press, 1908), p. 138.

¹²¹ There was a longstanding question about the national status of the tribesmen. Although they were referred to as “independent,” those on the Indian side of the Durand Line lived on land in British India. Of course, the tribes themselves were not signatories to the Durand Agreement and never acceded to British control. In 1933, the Government of India formally defined the tribesmen as “British protected persons” rather than subjects of His Majesty, which meant they were from point of view of international law entitled to recognition and protection in foreign countries in the same way as British subjects. So long as they behaved, so to speak, the Government of India promised to respect their internal independence while guaranteeing their external security. Thus, although they referred to the tribes as “independent,” the British saw themselves as having the right to control the tribes as they saw necessary. See NAI Foreign and Political/1933/File No. 587-F.

¹²² For an overview of the evolution of frontier policy, see the “Note on Frontier Policy” prepared by the General Staff Branch, NAI Foreign and Political/1931/File No. 356-F.

¹²³ C.C. Davies, *The Problem of the North-West Frontier, 1890-1908* (London: Curzon Press, 1975) [2nd edition], p. 27.

¹²⁴ See Rangachariar's Minute of Dissent in, *Report of the Frontier Regulations Enquiry Committee and Minutes of Dissent by Mr. T. Rangachariar and Mr. N.M. Samarth, 1923*, NAI Foreign and Political/1923/File No. 34-F. These expeditions came at no small cost to British troops, which suffered 4196 casualties in these campaigns. Table II: Expeditions Undertaken against Frontier Tribes since the Annexation of the Punjab, *Imperial Gazetteer of India*, vol. XIX, pp. 209-10. 908 of these British casualties were suffered in the Ambela campaign of 1863. From 1896-1921, total net expenditure incurred on frontier expeditions was Rs. 364,761,551. NAI Foreign and Political/Frontier B/April 1921/No. 35.

¹²⁵ Davies, "The North-West Frontier," p. 452.

¹²⁶ Barton, *India's North-West Frontier*, p. 59.

¹²⁷ See Caroe, *The Pathans*.

¹²⁸ Sameetah Agha argues that the difference between these two strategies was not so significant. See Agha, *The Limits of Empire: British-Pukhtun Encounter on the North-West Frontier of British India* (forthcoming).

¹²⁹ For a detailed description and critique of the *maliki* system, see W.R.H. Merk, Commissioner and Superintendent, Derajat Division, to Punjab Government, July 24, 1900, NAI Foreign/Secret F/December 1900/Nos. 1-6.

¹³⁰ J. Douie, Officiating Secretary to Punjab Government, to Secretary to the Government of India, Foreign Department, August 17, 1900, NAI Foreign/Secret F/December 1900/Nos. 1-6.

¹³¹ NAI Foreign/Secret F/October 1896/Nos. 382-439.

¹³² George Dunbar, *Frontiers* (London: Iver Nicholson & Watson, 1932), p. 46. Dunbar's numbers were off: the Mullah Powindah's association with murder began in 1893 and ended with his death twenty years later.

¹³³ C.C. Davies, *The Problem of the North-West Frontier, 1890-1908* (London: Curzon Press, 1975) [2nd edition], p. 130.

¹³⁴ Davies, *The Problem of the North-West Frontier*, p. 123.

¹³⁵ "History of British Relations with the Mulla Powindah," NAI Foreign/Secret F/September 1906/Nos. 167-218.

¹³⁶ NAI Foreign/Secret F/October 1895/Nos. 429-433.

¹³⁷ NAI Foreign/Secret F/May 1895/Nos. 6-9.

¹³⁸ The very act of surrendering criminals for trial in British tribunals symbolized the weakened nature of tribal autonomy and local authority under the *maliki* system.

¹³⁹ See the report by R.I. Bruce, Commissioner and Superintendent, Derajat, NAI Foreign/Secret F/ June 1895/Nos. 1043-1056.

¹⁴⁰ Letter of February 26, 1895, NAI Foreign/Secret F/June 1895/Nos. 164-339.

¹⁴¹ H.A. Anderson, Commissioner and Superintendent of the Derajat Division, to the Punjab Government, November 6, 1895, Foreign/Secret F/February 1896/Nos. 68-70.

¹⁴² H.A. Deane, Chief Commissioner and Agent to the Governor-General, NWFP, to Secretary to Government of India, Foreign Department, May 8, 1905, NAI Foreign/Secret F/August 1905/Nos. 66-95.

¹⁴³ H.D. Watson, Political Officer, Wana, to Commissioner and Superintendent Derajat Division, August 1, 1899, NAI Foreign/Frontier A/October 1899/Nos. 31-33.

¹⁴⁴ Crump to A.H. Grant, Secretary to Chief Commissioner and Agent to the Governor-General, NWFP, May 4, 1907, NAI Foreign/Secret F/October 1907/Nos. 13-111.

¹⁴⁵ See the petition of July 17, 1896, in NAI Foreign/Secret F/October 1896/Nos. 382-439.

¹⁴⁶ A.J. Grant, Political Officer, Wana, to Commissioner and Superintendent, Derajat Division, October 14, 1896, NAI Foreign/Frontier A/May 1897/Nos. 28-59.

¹⁴⁷ David Edwards, "Mad Mullahs and Englishmen: Discourse in the Colonial Encounter," *Comparative Studies in Society and History* 31, 4 (October 1989): 649-70.

¹⁴⁸ L.W. Dane, Officiating Chief Secretary, Punjab Government, to the Foreign Department Secretary, Government of India, January 12, 1897, NAI Foreign/Frontier/ May 1897/Nos. 28-59.

¹⁴⁹ In addition to the attacks on British officers, the Mullah Powindah was suspected in connection with a murderous attack on the 5th Punjab Cavalry (1899); the attempted kidnapping of a British officer at the Zam post (1899); and the murder of eight men in the 27th Punjab Infantry at Toi Khulla (1902).

¹⁵⁰ David Arnold, "Crime and Crime Control in Madras, 1858-1947," in Yang (ed.), *Crime and Criminality*, p. 85.