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The Boot and the Spleen: When Was Murder Possible in British India?

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In the middle of the hot night, the fan stops, and a man in the barrack-room, roused to desperation by heat and sleeplessness rushes forth, careless of the consequences, and kicks the fan-puller in the wrong spot, his spleen. Do you blame him? Yes and No. It depends partly on whether he stopped to put his boots on.

———Capt. Stanley de Vere Julius, *Notes on Striking Natives* (1903)

Judicial officers should also be aware that for Europeans to commit murders is an impossibility.

———Amrita Bazar Patrika (8 June 1880)

Could Britons in India commit murder? More precisely, could they be prosecuted and sentenced for doing so? As these epigraphs suggest, the Raj was deeply preoccupied with elaborating minute taxonomies of violence and death. In a variety of ways, British violence toward indigenes was made an object of policy initiatives by the Government of India. Defining violence, both indigenous and foreign, was one key task of the Raj, along with clarifying the boundary between legitimate and illegitimate violence. But this boundary shifted constantly over the colonial period, and indeed, it has continued to do so ever since. Given the extensive *legal* violence of colonial conquest, when and why were specific acts of white violence defined as murder?

This article analyzes the illegal deployment of deadly violence by Britons in India and the changing responses to these fatally violent acts by colonial authorities and indigenous critics. Specifically, I seek to elucidate the complex historical relationship described in the first epigraph above: that is, the relationship between British boots and Indian spleens. Captain Julius' meditations on the niceties of "striking natives" echoed a key trope of colonial India's judicial world. One type of case appeared again and again in court records and

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press reports: a British man kicked (or pushed or struck) an Indian, fatally rupturing the Indian's spleen.[1] Was this Briton a criminal? Was he a murderer?

In the late nineteenth century, colonial medico-legal scholars adopted these questions, taking the indigenous spleen as the object of their research. They concentrated on Bengal and Assam, where many residents suffered enlarged spleens from repeated bouts of malarial fever.[2] Because these regions were also flashpoints of interracial violence and nationalist agitation, medical evaluations of the Indian spleen were deeply relevant to criminal jurisprudence. Studies of the Indian spleen, which generated fierce reactions from the Indian nationalist press, had an unpredictable impact on homicide trials. At first, these studies seemed to serve the prosecutorial interest. But ultimately, the colonial judiciary deployed this brand of medico-legal scholarship in order to mitigate British violence in India. Through the investigation of the Indian spleen, the British boot was rendered something less than murderous.

Despite contemporary claims that colonial justice grew more effective over time, sentences for British attacks on Indians were harsher at the beginning of the nineteenth century than at the end. Under the East India Company, when soldiers composed a significant percentage of the foreign population in South Asia, such violence was discouraged because it posed a threat to military discipline. The Bombay General Orders of 6 October 1814 vowed to dismiss any officer "who shall be proved to have been guilty of cruelty to any Native, either by *violently* and illegally *beating*, or otherwise maltreating him." Soldiers who violated these orders were charged with mutinous conduct on the grounds that their behavior breached the articles of war.[3] In these early cases, murder charges for Britons were generally uncontroversial. Racial prejudice was rarely mentioned; the chief prosecutorial concern was to circumscribe Britons' extra-legal actions.[4] By the early twentieth century, such charges had nearly vanished. In 1870, 78 percent of European defendants in India charged with a serious crime were convicted. But by 1905, this conviction rate had declined sharply to less than 45 percent.[5]

In this article, I analyze a subset of homicide cases (c. 1870s–1920s): the "boot and spleen" cases evoked so vividly by Captain Julius. These cases

[1] Overwhelmingly, these cases involved male-male violence. On European violence against Indian women, see Durba Ghosh, "Household Crimes and Domestic Order: Keeping the Peace in Colonial Calcutta, c.1770–c.1840," *Modern Asian Studies* 38 (2004): 599–623.

[2] Robert Harvey, *Report on the Medico-Legal Returns Received from the Civil Surgeons in the Bengal Presidency* (Calcutta, 1876).

[3] William Hough, *A Case Book of European and Native General Courts-Martial Held from the Years 1801 to 1821* (Calcutta, 1821).

[4] See George Fenwick's murder trial in *Times* (London), 27 Dec. 1824; and "Case of Captain Andrew Nesbit Riddell" (Board's Collections, F/4/1311/ File 52145, India Office Collections, British Library, London), 1832.

[5] Richard C. Hula, "Calcutta: The Politics of Crime and Conflict, 1800 to the 1970s," in Ted Robert Gurr et al., eds., *The Politics of Crime and Conflict: A Comparative History of Four Cities* (Beverly Hills, Calif., 1977), 467–616.

illuminate a pattern of declining murder charges for Britons in India and serve as a lens on the broader question of interracial violence in colonial environments. I focus here on homicide—that is, violence that results in death. But "violence" also encompasses other kinds of physical force, as well as nonphysical coercion such as assaults on the victim's dignity.[6] Indeed, historians have debated whether homicide rates are an accurate index of violence in a given society.[7] My emphasis on deadly force does not negate the importance of other violent acts in colonial societies. Rather, I draw upon one judicially significant form of violence in order to evoke others that may be legally invisible.[8] When was violence against Indians judicially recognizable? Why did so few cases meet the criteria for murder? Who had a stake in eradicating white violence and who had a stake in maintaining it?

Unequal sentencing for Indians and Europeans was always the norm. In Calcutta, Indian prisoners' sentences exceeded those for Europeans by a factor of ten. Indian defendants were more than twice as likely to face murder or attempted murder charges for violent crimes.[9] But sentences for Britons were not uniformly light. Although such outcomes were very rare, Britons had been put to death for killing Indians: John Rudd in Bengal (1861), four sailors named Wilson, Apostle, Nicholas, and Peters in Bombay (1867), and George Nairns in Bengal (1880). Military courts imposed heavier punishments for interracial attacks than civilian authorities, and the urban High Courts were stricter than magistrates in remote hill stations.

In late nineteenth-century India, a seeming paradox emerged in the colonial treatment of interracial homicide. White violence was more strongly disavowed than ever, especially by high-profile leaders such as Lords Lytton and Curzon. Yet it was also less likely to be judged murderous. Although executive governors developed complex strategies to manage white violence, the colonial judiciary worked to downgrade such violence from murder. The "right to brutality" formed an axis of conflict between the executive and the judiciary, but also among different groups of settlers.[10]

[6] Nancy Scheper-Hughes and Philippe Bourgois, eds., *Violence in War and Peace* (Oxford, 2004), 1.

[7] J. S. Cockburn, "Patterns of Violence in English Society: Homicide in Kent 1560–1985," *Past and Present* 130 (1991): 70–106; Adrian Gregory, "Peculiarities of the English? War, Violence and Politics: 1900–1939," *Journal of Modern European History* 1 (2003): 44–59; J. A. Sharpe, "The History of Violence in England: Some Observations," *Past and Present* 108 (1985): 206–15; Lawrence Stone, "Interpersonal Violence in English Society 1300–1980," *Past and Present* 101 (1983): 22–33; and L. Stone, "A Rejoinder," *Past and Present* 108 (1985): 216–24.

[8] See Arthur Kleinman, "The Violences of Everyday Life: The Multiple Forms and Dynamics of Social Violence," in Veena Das et al., eds., *Violence and Subjectivity* (Berkeley, 2000), 226–41.

[9] Hula, "Calcutta," 539, 557.

[10] The phrase "right to brutality" is from Diana Paton, *No Bond but the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780–1870* (Durham, 2004).

The "disappearing" murder charge was not unique to India. Britain witnessed a dramatic decline in recorded murder charges as well.[11] As the number of capital offenses was reduced and new codes of respectability tempered episodes of interpersonal violence, the rates of violent crime—at least as reflected in official statistics—fell between the 1840s and the 1920s.[12] At the same time, the deadliest forms of judicial violence were hidden and reduced. After the abolition of public executions in Britain in 1868, the most serious type of violence enacted by the state was banished from public view. Fatal violence (whether committed by criminals or by the state) was decreasingly visible in the late nineteenth- and early twentieth-century metropole.[13]

It is possible to see the decline of murder charges for Britons in India as an extension of these metropolitan trends. Martin Wiener proposes an "export" model of deadly violence: that is, the murder rate dropped in Britain because the most aggressive citizens were busily wreaking havoc overseas.[14] By the turn of the century, he argues, the pressures of liberal metropolitan opinion and the increased security of white settlers produced a new embarrassment regarding white violence in the colonies. Subsequently, race "mattered less" in homicide trials.[15]

In contrast to this view, I argue that the cases under investigation here illustrate the centrality of race in constructing ideas of homicide and violence itself. Colonial culture was not always tolerant of white violence. But the cases in which the Raj punished such violence revealed just as much about the ways in which race mattered as those in which white criminals went free. This article aims to recapture the (often contradictory) strands of Indian, Anglo-Indian, and metropolitan thought and policy on the problem of white violence under the Raj. In exploring the trajectory of official and public reactions to one category of homicide cases in which racial ideology

[11] V. A. C. Gatrell, "The Decline of Theft and Violence in Victorian and Edwardian England and Wales," in V.A.C. Gatrell et al., eds., *Crime and the Law: The Social History of Crime in Western Europe Since 1500* (London, 1980): 238–337; Martin Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830–1914* (Cambridge, 1990); Wiener, "Judges v. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth-Century England," *Law and History Review* 17, 3 (1999): 467–505. See also Clive Emsley, H*ard Men: The English and Violence since 1750* (London, 2005).

[12] Shani D'Cruze, "Unguarded Passions: Violence, History and the Everyday," in S. D'Cruze, ed., *Everyday Violence in Britain, 1850–1950* (London, 2000): 1–24.

[13] Randall McGowen, "Punishing Violence, Sentencing Crime," in Nancy Armstrong and Leonard Tennenhouse, eds., *The Violence of Representation: Literature and the History of Violence* (London, 1989): 140–56.

[14] Martin Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge, 2004), 11.

[15] Martin Wiener, "Murder and the Modern British Historian," *Albion* 36 (2003): 1–11; and see also Martin Wiener, "Probing the Fault Lines of Imperial Authority: Inter-Racial Homicide Trials in British India," MS, 2005. Notably, although Asians and Africans tried for homicide in Britain were convicted at high rates, they were less likely than whites to be executed for their crimes. Carolyn Conley, "Wars among Savages: Homicide and Ethnicity in the Victorian United Kingdom," *Journal of British Studies* 44 (Oct. 2005): 775–95.

proved particularly significant—the "boot and spleen" cases of British India—I seek to engage broader methodological questions about the politics of writing the history of physical violence that cross geographic and chronological borders.

HOW TO WRITE THE HISTORY OF VIOLENCE

One might say that violence is so fundamental to history that it is difficult to isolate as an object of study.[16] In terms of the Raj, the problem is compounded by the fact that the colonial state was so intent on forging categories of violence—indigenous and, more surprisingly, its own—that we have lost track of its definitions. When scholars have noted the physical violence of the Raj, they have typically supposed that it was widely, if tacitly accepted.[17] In one sense, there is nothing more banal about colonial projects than their violence. What is striking about the cases under discussion is not that they involved violence, but that this violence was deemed worthy of criminal prosecution. In his 1914 history of imperial law, James Bryce cheerfully noted that, "the native of course suffers from violence more frequently than does the European, whose prestige of race ... keeps him safe."[18] Based on texts like these, I am not asking *whether* white violence was an integral part of the colonial structure in South Asia, but how we might analyze the historical specificities of this violence rather than taking its existence for granted.

Violence highlights the importance of events such as war and colonization; it is the coat-hook on which political narratives are hung. But for this reason, historians have often treated violence as epiphenomenal, as the byproduct of other events rather than as a topic of analysis in itself.[19] Scholars of revolutionary France, Nazi Germany, and Stalinist Russia have offered fruitful analyses of relations among violence, law, and the state, although that rich topic is not my focus here.[20] Above all, historians

[16] One exception has been scholarship on the history of physical pain. Esther Cohen, "The Animated Pain of the Body," *American Historical Review* 105, 1 (Feb. 2000): 36–68; Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford, 1985).

[17] Douglas M. Peers, "Privates Off Parade: Regimenting Sexuality in the Nineteenth-Century Indian Empire," *International History Review* 20, 4 (Dec. 1998): 823–54; Anupama Rao, "Problems of Violence, States of Terror: Torture in Colonial India," *Interventions* 3, 2 (2001): 186–205.

[18] James Bryce, *The Ancient Roman Empire and the British Empire in India* (Humphrey Milford, 1914), 24.

[19] James Barnhart, "Violence and the Civilizing Mission: Native Justice in French Colonial Vietnam, 1858–1914," Ph.D. thesis, University of Chicago, 1999.

[20] Albert Camus, "Reflections on the Guillotine," in *Resistance, Rebellion, and Death*, Justin O'Brien, trans. (New York, 1960), 131–79; Peter Holquist, "State Violence as Technique: the Logic of Violence in Soviet Totalitarianism," in Amir Weiner, ed., *Landscaping the Human Garden* (Stanford, 2003): 19–45; Mark Mazower, "Violence and the State in the Twentieth Century," *American Historical Review* 107 (Oct. 2002): 1158–78; James Sheehan, "What It Means to Be a State: States and Violence in Twentieth-Century Europe," *Journal of Modern European History* 1 (2003): 11–23.

of slavery have produced compelling theoretical frameworks for understanding the function of law in regulating interracial violence.[21] Most violence against slaves was absolutely legal, and I do not wish to lose sight of that distinction. But even this violence was never totally unchecked. By the late eighteenth century, persons convicted of willfully killing slaves were occasionally executed. In 1791, North Carolina defined the killing of a slave as murder, which was to be punished as if the victim were white. Certainly, violence by slaves against whites was considered more socially dangerous, but even slave societies upheld some tradition of prosecuting white brutality; it was precisely this prosecutorial system that decriminalized a broader culture of violence by defining only *certain forms* of physical force as unacceptable.[22]

Within the historiography of physical violence, colonial occupations have played a peculiar role. While there are studies of specific cataclysmic events in colonial history—the German massacre of the Herero, for example—the absence of systematic or comparative studies of colonial violence is striking.[23] The idea that colonists have been brutal is neither new nor extraordinary, but surprisingly little attention has been paid to understanding how colonial states perceived this brutality at the time, and when and why they perceived it to be illegal. Discussions of colonial violence have revolved largely around the anachronistic question of whether acts of aggression committed by European powers against non-Europeans meet contemporary definitions of genocide.[24]

My larger project here is to de-familiarize colonial violence (the casual "of course" of Bryce's history of conquest) by rendering these violent acts strange to us, rather than treating them as routine, banal, and ultimately invisible. I focus on a British colony in part because of the longstanding mythic

[21] Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492–1800* (London, 1997); Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York, 1972); Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York, 1997).

[22] Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill, 1996), 2.

[23] Kenneth Cmiel, "The Recent History of Human Rights," *American Historical Review* 109, 1 (Feb. 2004): 117–35. One exception, although it does not deal with interracial crime, is Graeme Dunstall, "Frontier and/or Cultural Fragment? Interpretations of Violence in Colonial New Zealand," *Social History* 29 (2004): 59–83.

[24] See, for example, "Colonial Genocide," Special Issue of *Patterns of Prejudice* 39, 2 (2005); G. Jan Colijn, "Carnage Before Our Time: Nineteenth-Century Colonial Genocide," *Journal of Genocide Research* 5, 4 (2003): 617–25; Isabel V. Hull, "Military Culture and the Production of 'Final Solutions' in the Colonies: The Example of Wilhelmine Germany," in Robert Gellately and Ben Kiernan, eds., *The Specter of Genocide: Mass Murder in Historical Perspective* (Cambridge, 2003): 141–62; Benjamin Madley, "Patterns of Frontier Genocide 1802–1910: The Aboriginal Tasmanians, the Yuki of California, and the Herero of Namibia," *Journal of Genocide Research* 6, 2 (2004): 167–92; A. Dirk Moses, "An Antipodean Genocide? The Origins of the Genocidal Moment in the Colonization of Australia," *Journal of Genocide Research* 2, 1 (2000): 89–106; Alison Palmer, *Colonial Genocide* (Adelaide, 2000).

"peaceableness" of the British and the British investment in the rule of law. British society was never actually nonviolent; national illusions of peaceableness depended on rendering certain forms of violence acceptable or invisible. As official crime rates plummeted, working-class violence came under increasing scrutiny and metropolitan governments focused on external factors that could be resolved through liberal reform: alcohol, poverty, urban overcrowding. Elite violence, while never absent, was typically perceived as legitimate or honorable rather than as a social problem.[25]

What role did colonial violence play within this "peaceable" culture? Recently, Britain has taken its place beside Germany and the Netherlands as one of the "genocidal" colonial regimes, particularly with regard to Tasmania and East Africa (though, explicitly, not India).[26] Although there is a litany of cases of British brutality for nearly every colony, the official explanatory framework for these cases varied by region. In Kenya, for example, European violence against African servants was excused in judicial channels as the necessary byproduct of retaining and controlling indigenous labor. Whites in Kenya who were prosecuted for deadly assaults against Africans were often characterized as participating in a system of "rough justice," in which their physical chastisement of black workers was treated as an extension or delegation of the state's power to punish wayward laborers.[27]

One might consider this situation the precise opposite of that under the Raj, where the colonial government in India aggressively thwarted any usurpation of its authority by white planters. Whereas white violence in slaveholding and settler societies was generally perceived as an extension of the social order, white violence in colonial South Asia was more typically seen as a threat to it. Furthermore, although numerous voluntary societies claimed to uphold indigenous peoples' rights in other colonial regions,[28] India did not engender the same degree of humanitarian fervor in the metropole. In South Asia, much of the burden of humanitarian intervention—with all its attendant contradictions and limitations—fell on the colonial executive.

Perhaps one of the most intriguing questions to ask about white violence in India is how we are able to know so much about it. Historians of more recent British colonial brutalities—namely, the suppression of Mau Mau—have

[25] Judith Rowbotham, "'Only When Drunk': The Stereotyping of Violence in England, c. 1850–1900," in Shani D'Cruze, ed., *Everyday Violence in Britain, 1850–1950* (London, 2000), 155–69.

[26] Mark Cocker, *Rivers of Blood, Rivers of Gold: Europe's Conflict with Tribal Peoples* (London, 1998); Caroline Elkins, *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya* (New York, 2005); Palmer, *Colonial Genocide*.

[27] David M. Anderson, "Master and Servant in Colonial Kenya, 1895–1939," *Journal of African History* 41, 3 (2000): 459–85.

[28] Elizabeth Elbourne, "The Sin of the Settler," *Journal of Colonialism and Colonial History* 4 (2003); Mark Finnane and Jonathan Richards, "'You'll Get Nothing Out of It?' The Inquest, Police, and Aboriginal Deaths in Colonial Queensland," *Australian Historical Studies* 35 (2004): 84–105.

referred to the wholesale destruction of records that obstructs their task.[29] But the richness of the archive about white violence in India is evident in courts-martial, the metropolitan press, and indigenous newspapers.[30] More surprisingly, such reports appear regularly in the Government of India files. Rather than being "hidden," these cases were hyper-documented by the colonial government, relentlessly brought to light. Typically, reports of white violence surfaced first in the vernacular press, particularly in cases that had been thrown out by a magistrate or lower court. The governor would then decide whether to pursue an inquiry, generating masses of correspondence to legal scholars, police, and reporters. New investigations often yielded harsher sentences for the officials who had failed to punish the initial crime. Rarely did they lead to increased penalties for the accused himself.

The most striking divergence between the Indian and British sources is that the latter tended to view episodes of white violence as episodic, atypical—the work of "rogue" individuals—whereas the former saw them as deeply embedded in the structures of colonial rule. The journalist Ram Gopal Sanyal argued that the seeming "openness" of the Raj's judicial records left major archival ellipses to confront in reconstructing the history of white violence. The investigation of white crimes, he noted, must not be limited to the high courts where Britons were tried.[31] Sanyal cited an 1851 case in which a British plantation manager and his Indian servants at the Hizlabut factory were charged with kidnapping; the manager was never brought to trial and the case records were therefore located in the Nizamut Reports even though the ringleader was British. What appeared to be an "Indian" crime was actually instigated by an act of white violence.

Within British sources, there were significant conflicts about how to study white violence. One richly detailed text that illustrated the potential pitfalls of undertaking such a study is the massive India Office file, "Return Showing the Number of Assaults Committed by Europeans on Natives and By Natives on Europeans in the Five Years 1901–1905."[32] This report was prompted by a

[29] David Anderson, *Histories of the Hanged: The Dirty War in Kenya and the End of Empire* (New York, 2005); Elkins, *Imperial Reckoning*.

[30] On colonial archives, see Antoinette Burton, *Dwelling in the Archive: Women Writing House, Home, and History in Late Colonial India* (Oxford, 2003); Nicholas Dirks, "Colonial Histories and Native Informants: Biography of an Archive," in Carol Breckenridge and Peter van der Veer, eds., *Orientalism and the Postcolonial Predicament: Perspectives on South Asia* (Philadelphia, 1993), 279–313; Nicholas Dirks, "The Crimes of Colonialism: Anthropology and the Textualization of India," in Peter Pels and Oscar Salemink, eds., *Colonial Subjects: Essays in the Practical History of Anthropology* (Ann Arbor, 1999), 153–79; Carolyn Hamilton et al., eds., *Refiguring the Archive* (Dordrecht, 2002).

[31] Ram Gopal Sanyal, *Record of Criminal Cases as Between Europeans and Natives for the Last Hundred Years* (Calcutta, 1896).

[32] "Return Showing the Number of Assaults Committed by Europeans on Natives . . . in the Five Years 1901–1905" (L/P&J/6/781, File 3445, IOC), 21 July 1904, 10 Dec. 1904, 24 May 1905, and 29 July 1905.

Parliamentary skirmish between Colonel Long and Sir Mancherjee Bhownaggree in July 1905, on the eve of London's sanction of the partition of Bengal. Long requested the Government of India's statistics on attacks committed "on white people by Natives." Bhownaggree, the Conservative Member of Parliament for Northeast Bethnal Green and the most prominent South Asian in Britain, promptly asked for the numbers on murders committed "on the people of [India] by foreigners." Secretary Brodrick retorted that no such statistics existed; homicides in India were not recorded by the race of the attackers or victims, but simply by the category of the offense. That is, the mode of categorization was by type of crime, not by the race of either party.

In order to produce the "Return," police reports in India were culled and reexamined by race. The racial element of violent crime was isolated in ways that were fundamentally at odds with colonial police archives. The primary metropolitan concern was with indigenous terrorist responses to the partition of Bengal. But in trying to document the breadth of Indian crimes, the British were compelled to write themselves into the story. Most of the Indian deaths involved coolies or servants rather than *swadeshi* activists, and their cases were unrelated to political terrorism. Labeling victims and attackers in a colonial setting was a complex process. When Lieutenants Thompson and Neave of the First Essex Regiment shot an Indian boy while hunting in Bangalore, the villagers forcibly confiscated Neave's gun; two villagers were sentenced to six months' imprisonment, and the case was filed as "Natives Against Europeans." According to the statistical data, European assaults on Indians (392 cases with 27 deaths) were more frequent and deadlier than that by Indians on Europeans (251 cases with 12 deaths). But the compilers' gloss is equally significant. Eleven out of the twelve fatal assaults on Europeans were listed as murders. But in 55 percent of the Indian fatalities, the "Return" stated that death was caused by accident or "slight" assault. Only one case was "clearly" murder, and the killer was found insane. European acts of deadly force were neatly downgraded from murder to assault.

White offenders in India were more likely to be charged with a crime if they undertook a public display of violence that damaged their prestige.[33] Physical violence undermined the principle of racial separation because of the intimacy of bodies it engendered; Britons were urged to use canes or swords when striking indigenes in order to reduce this degrading contact. Furthermore, the Raj had a vested interest in seeing itself as the primary agent in eradicating indigenous violence.[34] Thus, when Britons delegated their violence to Indian agents without supervision, their sentences could be heavier than if they had committed the killing themselves. Take the case of Lieutenant

[33] Pamela Kanwar, *Imperial Simla: The Political Culture of the Raj* (Delhi, 1990).

[34] Douglas M. Peers, "Torture, the Police, and the Colonial State in the Madras Presidency, 1816–55," *Criminal Justice History* 12 (1991): 29–56.

Jackson, court-martialed for murder in 1863. Jackson, who was stationed on the Punjab frontier, had accused his servants of stealing his silver. He ordered a Muslim priest to administer the rice ordeal, the idea being that fear would prevent a guilty person from being able to chew a grain of rice. One servant, Munnoo Khan, failed the test and was tied up and beaten. Jackson personally gave him ten blows and called for more switches from a nearby date tree. Jackson claimed that he then left the scene and the beating continued without his authorization; Munnoo Khan died in the hospital ten days later. Jackson was sentenced to four years for culpable homicide, and his name was erased from the Roll of Engineers.[35]

In another prominent case, the English defendant, Reid—the manager of a tea estate in Assam—slapped his servant, Joy Lal, in the face because he believed that the boy had stolen from him.[36] Reid's *chaukidars* then took the boy away and beat him to death. Reid claimed that his own utilitarian slap was legitimate correction, whereas the "frenzied" beating of his *chaukidars* was murder. But the prosecution argued that the *chaukidars* believed they were acting with Reid's authority; he had handed Joy Lal over with orders to extract information and he had set them the bad example of slapping the boy first. Guilt was determined not only by who struck the fatal blows, but by who was morally accountable for the welfare of indigenous workers.

Many scholars have documented the colonial obsession with indigenous crimes, illuminating the ways in which the Raj's treatment of Indian criminals operated as a powerful technique of governance.[37] Because this approach has concentrated primarily on British perceptions of "native" wrongdoing, it thus risks replicating the colonial mindset that linked indigeneity and criminality in the first place. It is this association that my study seeks to disrupt. White criminality in India was politicized in ways that have not yet been fully understood.[38] This phenomenon depended on three key factors: the articulation of legal status for Britons in India, the Europeanization of the Islamic law of homicide, and revaluations of the Indian body within colonial medical jurisprudence.

[35] *Times* (London), 12 June 1863.

[36] "Death of a Native Boy from a Beating on the Dhendai Tea Estate, Assam" (L/P&J/6/731, File 2392, IOC), 20 July 1905.

[37] Padma Anagol, "The Emergence of the Female Criminal in India: Infanticide and Survival Under the Raj," *History Workshop Journal* 53 (2002): 73–93; Clare Anderson, *Legible Bodies: Race, Criminality and Colonialism in South Asia* (Oxford, 2004); Vinay Lal, "Everyday Crime, Native Mendacity, and the Cultural Psychology of Justice in Colonial India," *Studies in History* 15 (1999): 145–66; Satadru Sen, *Disciplining Punishment: Colonialism and Convict Society in the Andaman Islands* (Oxford, 2000); Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi, 1998).

[38] On white criminals in South Africa, see Jock McCulloch, *Black Peril, White Virtue: Sexual Crime in Southern Rhodesia, 1902–1935* (Bloomington, 2000); and Pamela Scully, "Rape, Race, and Colonial Culture: The Sexual Politics of Identity in the Nineteenth-Century Cape Colony, South Africa," *American Historical Review* 100, 2 (Apr. 1995): 335–59.

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BRAHMINS AND PARIAHS: THE PROBLEM OF HOMICIDE IN BRITISH INDIA

The first element in the colonial state's project of confronting white violence was to define who was considered "British" with regard to the criminal law. The production of legal rights for Britons in India was always intertwined with their amenability to criminal prosecution. The earliest power emanating from the Crown for the administration of justice over Britons in India dated back to James I, who in 1622 authorized the East India Company to "chastise and correct all English persons residing in the East Indies."[39] From its origins, the British rule of law referred explicitly to the need to protect indigenous residents from foreigners. As Macaulay famously warned, if Britons refused to subject themselves to the laws of the land, then they risked replicating indigenous systems of injustice: "God forbid that we should inflict on India the curse of a new caste, that we should send her a new breed of Brahmins, authorized to treat all the native population as Pariahs." By the nineteenth century, this administrative wariness regarding the presence of white criminals in India was coupled with increasing concern about the flaws and limitations of the colonial law of homicide.

Prior to 1833, European migration to India was tightly controlled, and Europeans who took up residence without permission were deported, fined, or imprisoned. Between 1814 and 1831, only 1,253 individuals were granted the East India Company's permission to travel to India; special efforts were made to bar poorer emigrants who might drift into crime.[40] The termination of the Company's trade monopoly marked the mass migration of Europeans into India and an era of heightened concern about the indigenous population's vulnerability to white violence.[41] Throughout the 1830s and 1840s, the protection of indigenes from white crimes—ranging from financial exploitation to homicide—was an explicitly stated policy initiative of the Company.

From the Company's earliest days, both white legal status and white criminality were major administrative concerns. But the nineteenth century witnessed a new vocabulary of white legal privilege in the creation of the "European British subject." The European British subject was a working equivalent of an older term, "British subject." But the older usage had included naturalized Indians; the more recent designation excluded Indians and thus narrowed the racial parameters of British legal identity in India. The European Vagrancy Act of 1874 defined "persons of European

[39] *History of the Changes in the Civil and Criminal Jurisdiction Exercised by the Courts in India over European British Subjects* (V/27/140/3, IOC), 1883.

[40] David Arnold, "White Colonization and Labour in Nineteenth-Century India," *Journal of Imperial and Commonwealth History* 11, 2 (1983): 133–58.

[41] Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," *Law and History Review* 23, 3 (2005): 631–706.

extraction" as persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal, or the Cape Colony, plus their sons and grandsons. Eurasians and East Indians were unambiguously disqualified. Whites could lose their status as European British subjects if they had no fixed residence. Behavior that damaged white prestige, such as homelessness or vagrancy, was thus criminalized and rendered non-British.

Judicial opinion differed as to whether the term "European British subject" designated all whites in India, all Christians, or all people born in Company territory.[42] According to the Code of Criminal Procedure, European British subjects were Christians who could trace their ancestry to Europe. But the "European British subject" might well be racially impure: "imagine that a Bengali coolie were to go to Demerara and marry an African who was domiciled there. Their offspring would, I take it, be European British subjects . . . though there was not a drop of European blood in their veins."[43] The judicial methods for establishing the racial identity (and thus the legal privileges) of defendants were never systematic. The defendant's plea that he was a European British subject was accepted by the High Court if it were satisfied by his physical appearance that this claim was true; alternatively, defendants might testify about their knowledge of European countries and their emotional and financial ties to relatives in Europe.[44]

Privileges for European British subjects persisted in criminal law far longer than in civil law. The best-known episode in the history of these privileges is the Ilbert Bill controversy (1882–1883).[45] The bill sought to correct the regional and racial imbalance of justice in India. Previously, Indian magistrates were barred from punishing European British subjects for crimes where the prison sentence exceeded one year. Complainants against these subjects had to travel to the urban High Courts to pursue their cases. The Ilbert Bill offered Indian civil servants criminal jurisdiction over *all* residents—including European British subjects—in country stations. Had the original bill passed, it would have seriously curtailed the system of judicial privilege for Britons in India. The ensuing "white mutiny" forced a compromise: Indian magistrates won criminal jurisdiction over European British subjects in country stations, but these defendants could demand trials in which half of the jury were Europeans or Americans.

The creation of the European British subject both protected the privileges of the white population in India and ensured that this population was not

[42] Sir Courtenay Ilbert, *The Government of India* (Oxford, 1907); John D. Mayne, *The Criminal Law of India* (Madras, 1904); Ernest John Trevelyan, *The Law Relating to Minors as Administered in the Provinces Subject to the High Courts of British India* (London, 1906).

[43] *A Few Remarks on the Ilbert Bill* (Calcutta, 1883), 21.

[44] S. S. Vencataramana Aiyar, *The Criminal Court Manual* (Madras, 1907), 334.

[45] Mrinalini Sinha, *Colonial Masculinity: The 'Manly Englishman' and the 'Effeminate Bengali' in the Late Nineteenth Century* (Manchester, 1995), ch. 1.

wantonly criminal. But the relationship between race and *violent* crime was perceived by colonial officials to be especially complex. In 1880, the Indian Law Commission argued that although crimes of property were culturally specific, murders were "identical wherever opportunity for committing them exists."[46] What policy did the colonial state adopt with regard to murder? Was the act of murder believed to transcend race and culture? Or was it yet another site of racial differentiation?

Until the early nineteenth century, the administration of criminal justice in British India was dominated by Islamic criminal law. Under this law, there were five types of illegal homicide: willful, quasi-deliberate, erroneous, involuntary, and accidental. These distinctions rested on the intention of the accused and on the instrument used to commit the crime; the use of blood-drawing instruments, for example, prompted more serious charges. The Islamic law—unlike European penal codes—made gradations beyond the dichotomy of "guilty" and "not guilty." The Islamic view of causality was complex, and it was possible to have a partial share of the responsibility for a crime.

British administrators generally viewed the Islamic law of homicide as deeply defective. Their key objection was that the Islamic judicial system treated murder as a wrong done to the injured party, and not as an offense against the state. The public good was subordinated to the wishes of the victims' families. British observers portrayed the practice of "compromising" heinous crimes with the payment of money as a mark of indigenous venality.[47] Numerous cases of white violence involved British attackers making cash payments to the victim's family, which struck many colonial officials as disturbingly close to the Islamic custom of "blood money."[48] But, in theory, Britons were forbidden to make such payments in murder cases.

In the late eighteenth century, British officials began "Europeanizing" homicide law in India in order to eliminate notions of private justice.[49] The act of taking life was perceived as a threat to the sovereign power of the East India Company, regardless of the reactions of the victims and heirs.[50] The famed Cornwallis Code of 1793 stated explicitly that when an heir refused to prosecute the killer of one of his relatives, the state could still try the killer. In 1801, the murder of children and slaves became a capital offense. Theoretically, Cornwallis's reforms ensured that the social status of the victim (child, slave, woman) was irrelevant to the

[46] "Report of the Indian Law Commission" (V/26/100/12, IOC), 1880.

[47] Radhika Singha, "The Privilege of Taking Life: Some 'Anomalies' in the Law of Homicide in the Bengal Presidency," *Indian Economic and Social History Review* 30, 2 (1993): 181–214.

[48] "Resolution of Bombay Government on the Criminal Proceedings Against W. Hewett" (L/P&J/6/103, File 1317, IOC), 17 July 1883.

[49] Jörg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769–1817* (Wiesbaden, 1983), 57.

[50] Singha, "Privilege."

punishment of the killer (Brahmin, master, man).[51] In the nineteenth century, the Indian Penal Code divided homicide charges into two categories: culpable homicide amounting to murder (which I refer to as "murder") and culpable homicide not amounting to murder (which I call "culpable homicide"). Culpable homicide carried a prison term of one to seven years, and was roughly equivalent to the English charge of manslaughter: unpremeditated killing committed upon a passionate impulse. It was a common charge in cases of fatal white violence; its distinctive feature was that the killer lacked deadly intentions.

Colonial legal scholars did not always view the "Europeanization" process in positive terms. The law of homicide was widely described as the most deeply flawed section of the Indian Penal Code. When the Code was drafted in 1837, it had a stricter focus on the act of murder as the most salient act of killing. But this strictness was lost during the era of codification in the 1860s. The esteemed legal scholar, Sir James Fitzjames Stephen, noted the Code's failure to distinguish properly between murder and other fatal crimes: the genus (culpable homicide) and the species (murder) were defined so similarly that it was difficult to tell them apart.[52] Similarly, Sir George Claus Rankin, Chief Justice of Bengal, criticized the "weak" and "cumbrous" distinction between these two categories of death in British India.[53] The differentiation rested on the finer points of mental states that were difficult for juries to grasp. Codification, colonial judges agreed, had undermined the distinctiveness of the murder charge. The unique qualities of murder were more visible in England than in India.

The Code's treatment of interpersonal violence differed profoundly from that in English criminal law. As soon as the fact of killing was proved against a prisoner in England, the law assumed such malice on his part as to make the charge murder; the defense had to prove the facts extenuating the charge. In India, the burden was on the prosecution to show that the accused had had intention to kill. Although such provisions were not overtly racialized, they were cited in vernacular newspapers as a key factor in the escalation of white violence, "embolden[ing] cruel men to vie with one another in murderous deeds as the safest means of gratifying their feelings of animosity."[54]

Murder charges in India could be reduced in a number of ways. The right of self-defense was expressed in wider terms in India than in England because of Macaulay's concern about native "slackness" regarding physical attacks.[55] This latitude on self-defense was meant to rouse a "manly spirit" among

[51] Fisch, *Cheap Lives*.
[52] V. B. Raju, *Culpable Homicide and Murder* (Ahmedabad, 1949), 169.
[53] George Claus Rankin, *Background to Indian Law* (Cambridge, 1946), 211.
[54] *Aligarh Institute Gazette* (INR, L/R/5/53, IOC), 15 Sept. 1876.
[55] Bryce, *The Ancient Roman Empire*, 116–17.

Indians, although Macaulay conceded that Britons were more likely to exercise this right. Culpable homicide was not murder if the offender was a public servant who had caused death by an act that he believed to be necessary for the discharge of his duties. If the accused committed the fatal act under grave provocation, then the charge was reduced. "Provocation" was not limited to the threat of physical force, but included such acts as failing to work in a speedy manner and using insulting language.[56] In contrast to English law, the law relating to provocation in India considered the relative physical strength of the participants and the ethnic and temperamental traits of the accused. Indian law also allowed a lapse of time between the provocation and the retaliatory act. Overall, defendants could plead provocation much more easily in India than in England.

Because of the preservation of privileges for European British subjects in criminal law, the Code's lack of clarity on the relationship between culpable homicide and murder, and its broad conceptualization of self-defense and provocation, murder charges for Britons in India were atypical. But what happened when such charges were filed? Medical jurisprudential debates about the status of evidence in India were key in illustrating that white violence—even when deadly—was not to be judged as murder. By depicting the Indian body as a highly valuable, yet fragile source of judicial information, British medico-legal scholars helped to decriminalize white violence against indigenes.

PUTTING IN THE BOOT: BRITISH WEAPONS, INDIAN BODIES, AND MEDICAL JURISPRUDENCE

Debates about evidence in India revolved around the problem of how to produce a legal mechanism that would extract truth from an untrustworthy population. The Indian, it was said, "prevaricates like a philosopher."[57] False charges—even murder charges—were seen as endemic in India: "where the Italian stabs with the stiletto, the Native strikes with the sword of law."[58] But John Mayne argued that colonial judges should not dismiss indigenous testimony outright; rather, they should sift through the

[56] Aiyar, *Criminal Court Manual*, 129.

[57] Macdonald, *Awakening*, 115. See also C. R. Baynes, *A Plea for the Madras Judges, Upon the Charges Preferred Against Them, by J. B. Norton, Esq.* (Madras, 1853); Major H. Bevan, *Thirty Years in India: Or, A Soldier's Reminiscences of Native and European Life in the Presidencies, from 1808 to 1838* (London, 1839); Norman Chevers, *A Manual of Medical Jurisprudence for India* (Calcutta, 1870), 84–86; Greval, *Medical Jurisprudence*; Major Arthur Griffiths, *Mysteries of Police and Crime*, vol. I (London, 1898); Lieutenant-Colonel P. Hehir and the late J.D.B. Gribble, *Outlines of Medical Jurisprudence* (Madras, 1908); Earl of Lytton, *Pundits and Elephants: Being the Experiences of Five Years as Governor of an Indian Province* (London, 1942); J. Ramsay Macdonald, *The Awakening of India* (London, 1910); John Bruce Norton, *The Administration of Justice in Southern India* (Madras, 1853); Sir Erskine Perry, *A Bird's-Eye View of India* (London, 1855).

[58] Ilbert, *The Ilbert Bill*, 32.

Indian speaker's adornments and dig out the underlying facts.[59] Such claims about the "painful patience" required to filter Indian evidence were vital to the preservation of English judicial privilege during the Ilbert Bill compromise. Interestingly, W. H. Sleeman, the scholar of Indian crime, explicitly connected Indian perjury with white violence. When violent Britons protected one another in court, they created a culture of falsehood that infected their native servants. The origins of Indian lies, he argued, were in British crimes.[60]

Within these debates about the reliability of Indian witnesses, the status of medical evidence was a major preoccupation of colonial courts, especially in homicide cases. Medical experts possessed high status in late nineteenth-century British courtrooms as well. But in India, medical evidence was used specifically to circumvent the "degraded" testimony of untruthful native witnesses.[61] The cause of death was harder to determine in India than in Europe; decomposition set in quickly and people thought to have died from an act of violence were also often in a state of disease. Also, the prevalent practice of burial or cremation within a few hours of death made post-mortem evidence hard to obtain, and British examiners complained that Hindu officials avoided contact with corpses because they would then need to be ceremonially cleansed.[62]

The Indian body was viewed as a source of knowledge that could potentially remedy the weakness of evidence in colonial courts. Starting in the late nineteenth century, medico-legal scholars elaborated key "facts" about the fragility of indigenous bodies. Specifically, coroners' investigations in interracial homicide cases began to focus on pathologies of the Indian spleen. Physical fighting would rarely rupture a healthy spleen. But when the spleen was diseased from malarial fever (as was common in Bengal and Assam), even a slight blow—produced by a light kick, an open hand, or even a simple push—could "accidentally" cause rupture, hemorrhage, and death.[63] That is, according to medico-legal scholars under the Raj, persons with enlarged spleens could be killed by violence that would otherwise be "exceedingly trivial."[64]

[59] Mayne, *Criminal Law*, 559.

[60] W. H. Sleeman, *Rambles and Recollections of an Indian Official*, vol. 2 (London, 1844), 133–34.

[61] W. D. Sutherland, "Notes of Medico-Legal Cases," *Indian Medical Gazette* 37 (1902): 244–46.

[62] Greval, *Medical Jurisprudence*, 22–24.

[63] D. G. Crawford, "Notes on Rupture of the Spleen," *Indian Medical Gazette* 37 (June 1902): 211–21; E. G. Russell, *Malaria, Its Causes and Effects* (Calcutta, 1880). See also Elizabeth Kolsky, "'The Body Evidencing the Crime': Gender, Law, and Medicine in Colonial India," Ph.D. thesis, Columbia University (2002), esp. ch. 5.

[64] R. S. Mair, *Statistics of Unnatural Deaths in Madras and Other Presidencies and Provinces in India* (Madras, 1868), 14. Such cases appeared as plot devices in popular fiction; see Frank Desmond's *Fate's Legacy: A Tale of Anglo-Indian Life* (London, 1908).

In the early nineteenth century, the diseased spleen was interpreted as a phenomenon afflicting Europeans and Indians alike. William Twining's 1828 study of the spleen in Bengal included examinations of sick Europeans, and noted that adults in England who had never been to India could suffer enlarged spleens after protracted fevers.[65] But by the mid- to late nineteenth century, the medical argument had changed. Europeans were described as "resistant" to the aftereffects of malarial fever because of their healthier living habits. Malaria was taken as a sign of racial degeneration that threatened the efficiency of the Indian labor force and required British sanitary intervention.[66] Only Europeans who indulged in "native" practices, such as opium abuse, were considered susceptible to pathologies of the spleen.[67]

Increasingly, British observers characterized the diseased spleen as an endemic Indian trait. Alexander Carnegie, a tea planter's assistant in Assam, wrote in 1866 of the 400 coolies in his charge that they all had enlarged spleens.[68] Carnegie described himself as a "small king among the niggers," and bragged of the coolies, "they are always getting ill and I am doctor and have made some wonderful cures." These cures included his own "splendid receipt" for spleen ailments, which proved fatal to at least two workers in his care. Similarly, the planter George Barker's depiction of Indian spleens was integrated into a larger racist caricature of the servility of coolie bodies. He claimed that the "unsightly" enlarged spleen gave nine out of ten Indians a "ludicrous" appearance, which he sketched in a cartoon for his memoirs.[69]

This shift to describing the enlarged spleen as a uniquely Indian characteristic likely reflects the more divisive biological theories of race in the late nineteenth century. But it was also marshaled in the service of judicial punishment. The Fuller case (1875) underscored the ways in which racialized claims about Indian bodies bore on critiques of white violence. Robert Augustus Fuller, a British lawyer, fatally assaulted his groom, Katwaroo, for unpunctuality. According to the coroner, Katwaroo's spleen was diseased; "moderate" violence could have ruptured it. Three witnesses testified that Fuller had kicked Katwaroo in the stomach, rather than striking his face with an open hand as Fuller claimed. But the joint magistrate of Agra, R. J. Leeds,

[65] William Twining, *Observations on Diseases of the Spleen, Particularly on the Vascular Engorgement of that Organ Common in Bengal* (Calcutta, 1828).

[66] David Arnold, "'An Ancient Race Outworn': Malaria and Race in Colonial India, 1860–1930," in Waltraud Ernst and Bernard Harris, eds., *Race, Science and Medicine, 1700–1960* (London, 1999): 123–43. On racialized perceptions of disease, see also Mark Harrison, *Climates and Constitutions: Health, Race, Environment and British Imperialism in India 1600–1850* (New Delhi, 1999).

[67] C. R. James, "Six Cases of Ruptured Spleen," *Indian Medical Gazette* 37 (1902): 221–24.

[68] Alexander Carnegie to Atty (Mss Eur C682, IOC), 4 Apr. 1866.

[69] George Barker, *A Tea Planter's Life in Assam* (Calcutta, 1884).

discounted this testimony, arguing, "it is *prima facie* improbable that a European would kick his servant in the stomach."

According to Leeds, any Briton who corporally disciplined a servant would have used more restrained means than a booted kick. Fuller's alleged actions did not accord with Leeds' racialized norms of violence. During this period, different types of physical violence were characterized as typically "Indian" or as uniquely "English." In one high-profile homicide case, the expert testimony that an Indian cook had been beaten to death with someone's fists was taken as definitive proof that an Englishman was involved, because the fist—as a weapon requiring courage—was one "that natives do not use."[70] Conversely, a corpse that displayed signs of "fearful" beating was used to acquit the English defendants.[71] Colonial texts warned that even "trifling" violence with a shoe or foot toward high-caste Indians could result in litigation, not because of any "real" injury done, but because of the social affront implied.[72] These accounts focused on "illogical" Indian superstitions about caste status rather than the illegality of British attacks.

Leeds determined that any harm inflicted by Fuller's actions was committed under provocation (Katworoo's lateness) and by way of correction (as was appropriate with a servant of any race).[73] He found Fuller guilty of voluntarily causing hurt and sentenced him to fifteen days' imprisonment or a fine of thirty rupees paid to Katwaroo's widow. The case aroused bitter protests from the vernacular press, and Lord Lytton, the Governor General, decided to intervene in the judicial process.[74] In a controversial Minute, Lytton argued that the Government of India was obliged to protect indigenous servants from their violent masters; Fuller should have been charged at least with culpable homicide. But Lytton also claimed that white violence in India was especially reprehensible because it was "known to all residents in India that Asiatics are subject to internal disease which often renders fatal to life even a slight external shock." Presumably, Lytton referred to malaria, which was estimated to have killed over 100 million Indians between 1857 and 1947.[75] His analysis was reflected elsewhere; a *Mofussilite* article, "Hands Off!" reminded readers that although hardy Englishmen might endure violent blows, "our dark

[70] Lord [George Nathaniel] Curzon, "Assaults Committed on a Native Cook named Atu and on a Native Pankah Puller named Bhola by some Men of the Ninth Lancers of Sialkot" (Curzon Papers, Mss Eur F111/402, IOC), 1902.

[71] "Death of a Native Boy..."

[72] Eric R. Watson, *The Principles of Indian Criminal Law: An Introduction to the Study of the Penal Code* (London, 1907); J.L.H. Williams, "Tea Plantations, Stanmore Estate" (Mss Eur C796/3, IOC), n.d.

[73] Leeds did not acknowledge that such a beating would have been illegal in England after 1860.

[74] *Times* (London), 24 July 1876; 31 July 1876; 28 Aug. 1876; 4 Sept. 1876; 5 Sept. 1876; and 30 Sept. 1876.

[75] Ira Klein, "Development and Death: Reinterpreting Malaria, Economics and Ecology in British India," *Indian Economic and Social History Review* 38, 2 (2001): 147–79.

775 followers are apparently so fragile that the only safe rule to be guided by is not
776 to hit them at all."[76]
777 In Lytton's view, anyone who kicked, slapped, or pushed an Indian was
778 fully aware that he risked causing his victim's death. This argument did not
779 presume that Fuller had special knowledge of Katwaroo's personal health;
780 rather, all Indian bodies were pathologically fragile. Lytton racialized the
781 principle from Anglo-American tort law of *talem qualem* (the "eggshell
782 skull" doctrine), which stated that the wrongdoer takes his victim as he
783 finds him: if you stab a hemophiliac, and he bleeds to death, then you are
784 responsible even if you had no way to foresee the impact of your
785 actions.[77] Lytton's insistence that Fuller be held responsible for an act
786 that would not have killed a healthy person was not a uniquely colonial
787 phenomenon. But his claim that the entire population of India shared the trait
788 of fragility—that all Indians had, as it were, eggshell skulls—demonstrated
789 a deeply racialized understanding of the impact of bodily difference on
790 criminal law. Here, the tendency to universalize rather than individualize
791 the Indian body provided an important measure of legal protection. Accord-
792 ing to Lytton, no man could deny that even minor violence against an Indian
793 was potentially murderous.
794 Immediately after the Fuller case, scientific evidence about the Indian
795 spleen was deployed in order to de-legitimate violence against indigenes.
796 But this period was very brief. In 1880, a British airman named Fox struck
797 and killed a *punkha* coolie who provoked him by working in a "lazy and ineffi-
798 cient" manner.[78] The judge held that because the coolie's spleen was diseased,
799 Fox could not have predicted the coolie's death as a probable consequence of
800 his act. He was to be treated as if the coolie had survived: a clear rejection of
801 *talem qualem*. This shift reflected the extent to which Lytton's executive inter-
802 vention had been bitterly resented by the Anglo-Indian judiciary. Colonial
803 judges resisted further interference by casting their lot against Lytton's con-
804 stellation of arguments about race and justice. They claimed independence
805 in part by rendering the violence of the boot less criminally meaningful.
806 After the Fox case, medical "facts" about pathological Indian bodies were
807 co-opted by British defendants.[79]
808 The "ruptured spleen" defense served as a powerful point of satire for the
809 Indian nationalist press. *Amrita Bazar Patrika* asked pointedly why Indians
810 were so much more likely to die of ruptured spleen when they were struck
811
812 [76] *Mofussilite*, 3 Mar. 1875.
813 [77] William M. Landes and Richard A. Posner, "Causation in Tort Law: An Economic Approach," *Journal of Legal Studies* 12 (Jan. 1983): 109–34.
814 [78] Watson, *Principles*, 73.
815 [79] Sir Cecil Walsh, *Crime in India* (London, 1930), 30; "Case of Henry Wilson, Tried at Poona
816 for Causing the Death of a Syce by a Rash and Negligent Act" (L/P&J/6/525, IOC), 1889; "Death
of a Burmese Man from a Kick Given to Him by Mr. F. C. Gates" (L/P&J/6/291, File 2193, IOC),
817 1890.

by whites than by members of their own race;[80] the spleen was "a witness in favor of European murderers."[81] Just after the Fuller case, *Som Prakash* characterized "boot and spleen" cases as so formulaic and scripted as to have become "proverbial": what the editors termed "That Old Story Again."[82] In the *Oudh Punch* of 1884, an allegorical Spleen addresses the capricious forces of nature that have rendered it so peculiarly vulnerable to foreign violence: "Spleen complains that it has a very deadly foe in the fist of rampant Anglo-Saxons, and no system of medicine, English or native, can prescribe anything which may make it strong enough to stand the blows of its adversary.... Under these circumstances, Spleen earnestly prays that it may not be placed in the bodies of natives, where its fate is sealed, but may be sent to some other region, where it may be beyond the reach of its enemy."[83] Rather than serving as a warning against violence between Britons and Indians as Lytton intended, the medicalization of the Indian spleen had come to function as a legal mechanism for excusing this violence. Within the apparatus of colonial medical jurisprudence, death by ruptured spleen was always an accident—never murder.

By the early twentieth century, medical jurisprudence texts often devoted a chapter to the question of precisely what degree of violence would cause Indians' deaths. In 1902, D. G. Crawford, civil surgeon of Hooghly, studied 300 cases of death from ruptured spleen and dismissed the claim of "educated Bengalis" that the pathology of the spleen was a convenient judicial fiction.[84] Crawford noted that ruptures were commonly caused by beatings with a *lathi*: a heavy bamboo staff sometimes tipped with iron: a "native" weapon that Britons were unlikely to use.[85] Other researchers described "spontaneous" ruptures that resulted from indigenous epidemics rather than foreign attacks.[86] The "ruptured spleen" defense—a joint project of colonial law and medicine—provided a compelling judicial framework within which Britons could cause the deaths of Indians without being charged with murder.

What about the other side of the "boot and spleen" equation—what about the boot? The boot was an unmistakable marker of foreignness in India (the western shod foot versus the bare foot of the Hindu), and thus evoked a chain of racialized associations. During the era of "boot and spleen" cases,

[80] Shishar Kumar Ghose, *Indian Sketches* (Calcutta, 1898), 125.

[81] *Deshi Mitra* (INR, L/R/5/138, IOC), 17 May 1883.

[82] *Som Prakash* (INR, L/R/5/2, IOC), 5 June 1876.

[83] *Oudh Punch* (INR, L/R/5/61, IOC). 29 Jan. 1884.

[84] D. G. Crawford, "Notes on Rupture of the Spleen (Second Series)," *Indian Medical Gazette* 41 (Mar. 1906), 2.

[85] Although European police in India used truncheons in order to control mass protests, these were replaced by *lathis* as the police force was Indianized. The *lathi* is still in use as a weapon of crowd control in India and Pakistan. David Arnold, "Armed Police and Colonial Rule in South India, 1914–1947," *Modern Asian Studies* 11, 1 (1977): 101–25.

[86] James, "Six Cases of Ruptured Spleen."

English leather boots and shoes were boycotted in Bengal. The boot was also linked to multiple forms of crime in the metropole. In 1875, *Punch* published a satirical song, "The British Boot, subtitled 'The True British Brute.'" The verses focused on the boot's use in cases of domestic violence: "No horn'd epidermis/ So hard and so firm is,/ For 'nobbling' our wives—such the delicate term is,/ As the thick leather sole, with stiff 'uppers' to suit,/ of that sweetest of weapons, the stout British Boot!"[87] The chorus, however, connected the brutality of the boot at "home" to its deployment abroad:

> And who has been ever yet found to resist
> That modern Thor's hammer, the true British fist?
> But now we must sing
> Quite a different thing. . .
> Let JOHN BULL, with the world and his wife at his foot,
> Lift a paean in praise of the stout British Boot!
> . . .all Britons are brave, and the kick
> Is becoming their favorite militant trick. . .
> Let us sing, let us shout for the leather-shod foot,
> And inscribe on our Banners 'The Stout British Boot!'[88]

This song, published in the same year as the Fuller case, is notable for labeling a particular type of violent crime as characteristically and uniquely British. The targets of the boot, this source suggested were ubiquitous—"women or weaklings"—but the agent of its violence was always a British "patriot."

The *Punch* song reflected a broader metropolitan concern with kicking as a fatal form of domestic abuse; *The Times* of London was rife with such cases in 1874–1875.[89] A satirical report on "The Philosophy of Kicking" (1874) claimed a "vogue" of the boot among British men; "it seems rather unfair that, while columns are devoted to the doings of . . . savage races, one of the most distinctive customs of a civilised nation should be left comparatively unnoticed."[90] The article cited several variations of the deadly British kick, from the "running punce" (the assailant circled the victim before kicking him in the head) to the Lancashire specialty of kicking with clogs.

The legal conceptualization of the boot differed greatly in Britain and India. By the late nineteenth century, metropolitan cases of fatal kicking often resulted in charges of willful murder.[91] In India, kicking deaths were typically charged as "causing hurt" or "committing a rash and negligent act." Judicial

[87] On metropolitan judicial responses to domestic violence, see Anna Clark, "Domesticity and the Problem of Wifebeating in Nineteenth-Century Britain," in Shani D'Cruze, ed., *Everyday Violence*, 27–40; A. James Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London, 1992); Wiener, *Men of Blood*.

[88] "The British Boot," *Punch* 68 (30 Jan. 1875), 50.

[89] *Times* (London), 19 Aug. 1874; 1 Sept. 1874; 4 Sept. 1874; 15 Sept. 1874; 28 Sept. 1874; 28 Nov. 1874; 25 Dec. 1874; 8 Jan. 1875; 8 Feb. 1875; 11 Feb. 1875; 18 Mar. 1875; 19 June 1875; 10 July 1875; 17 Aug. 1875; 15 Sept. 1875; and 17 Nov. 1875.

[90] *Times* (London). 3 Sept. 1874.

[91] Wiener, *Men of Blood*.

discussions of the victim's physical pathologies were largely absent in the metropole. Overwhelmingly, metropolitan kicking cases involved working-class men—fishmongers, colliers, tailors—attacking their wives, each other, or, occasionally, some figure of authority. Because it was illegal to beat or kick servants in England after 1860, kicking assaults were typically viewed as intra-class "ruffianism." In India, corporal punishment of servants remained legal, and the boot was used primarily against social inferiors. When Mr. Harwood, a dairy manager in Simla, kicked a *mistri* for shirking his duties, missed the man's buttocks and broke two of his ribs, the case was compounded.[92] If the blow had reached its intended target, it would not have been treated as a criminal act at all. The issue was not that physical violence should be excluded from imperial rule, but that only a precise degree of violence—the kick of the buttocks, delivered in private—was acceptable.[93]

Britons of all classes deployed the boot in India. But its strongest association was with Tommy Atkins, the prototypical working-class British soldier. In an era of ceaseless drilling and parading, the boot was both a material marker of territorial conquest and part of the spectacle thereof. The "boot and spleen" cases coincided with a new set of anxieties about the brutality of British troops abroad. The Army Enlistment Act of 1870 allowed recruits to take shorter terms of service and resulted in a significantly younger army—recruits under twenty-five increased from 33 percent of the British Army in India in 1877 to 55 percent by 1898.[94] The vernacular press characterized these new soldiers as "intoxicated beasts"; the Government of India criticized them for their careless cruelty toward indigenes.[95] In Captain Julius's *Notes on Striking Natives* (1903), the soldier's donning of the boot is a transformative moment that converts his casual irritation into something criminally blameworthy. Although the barefoot kick might be legally and ethically forgivable, the booted kick was not. Julius never explained whether the seriousness of the booted kick derived from the fact that it demonstrated a greater intention to injure, that it constituted a violation of Hindu cultural norms, or simply that it was more dangerous. What he

[92] "Return (Europeans against Natives)," 2 Apr. 1902.

[93] E. M. Collingham, *Imperial Bodies: The Physical Experience of the Raj, 1800–1947* (Cambridge, 2001), 109.

[94] Mark Harrison, *Public Health in British India: Anglo-Indian Preventive Medicine, 1859–1914* (Cambridge, 1994), 63; Philippa Levine, *Prostitution, Race, and Politics: Policing Venereal Disease in the British Empire* (London, 2003), 273.

[95] *Karnatak Vaibhav* (INR, L/R/5/161, IOC), 7 Apr. 1906. British soldiers also committed intra-racial violence, although this attracted less executive attention; European officers often refused to enter the barracks after dark without an escort. "Complaint about Outrageous Behavior by European Officials in Vepery" (Board's Collections, F/4/1418, File 56023, IOC), 1833; Kenneth Ballhatchett, *Race, Sex, and Class under the Raj* (London, 1980); Philippa Levine, "Rereading the 1890s: Venereal Disease as Constitutional Crisis in Britain and British India," *Journal of Asian Studies* 55, 3 (1996): 585–612; Douglas M. Peers, *Between Mars and Mammon: Colonial Armies and the Garrison State in India* (London, 1995).

947 stressed was that he saw the violence of the boot as judicially separate from
948 other types of physical force, and as distinctively British. On this point, metro-
949 politan and colonial sources agreed.
950 The "boot and spleen" cases of late nineteenth- and early twentieth-century
951 British India serve as a lens onto the broader phenomenon of interracial vio-
952 lence in colonial milieus. In particular, these cases exemplify the tension
953 between the desire by members of the colonial executive to regulate and
954 abolish the most deadly forms of violence in India and the judicial reluctance
955 to class this violence as murder. Such cases, if lightly punished in the courts,
956 were not "invisible" in colonial South Asia, even in the late nineteenth
957 century. Indeed, after the rebellion of 1857, several viceroys sought to make
958 the eradication of white violence one of the hallmarks of their rule.[96] Signifi-
959 cantly, these governors broke with the metropolitan practice of viewing cases
960 of white crime as isolated aberrations and offered more systemic interpret-
961 ations of racial prejudice.
962 Most famously, Lord Curzon, Governor-General of India (1899–1905),
963 wrote that episodes of interracial violence "eat into my very soul," and he
964 intervened in several infamous cases involving military personnel.[97] In the
965 Ninth Lancers homicide case (1902), drunken English soldiers stationed in
966 Sialkot fatally assaulted the Indian cook, Attu, attached to their regiment.
967 Attu had apparently been ordered to procure a prostitute for the soldiers,
968 who beat him when he refused; he subsequently died of his injuries. One
969 coroner insisted that Attu died of a ruptured spleen due to an advanced
970 state of disease, but Curzon found this report unconvincing. Ultimately,
971 Curzon imposed collective punishments upon what he saw as collective
972 crimes. Because the entire regiment had helped conceal the killing,
973 Curzon treated all its members as *particeps criminis*: partakers in the crim-
974 inal acts. The commanding officers had acted as accessories by dismissing
975 indigenous testimony without cause and defaming Attu's character.
976 Curzon's harshest criticism was reserved not for those who broke the law
977 with violence, but for those who failed to uphold the law after a crime
978 had been committed.
979 This decision to use collective punishments on British troops was deeply
980 controversial. The Lancers were an extremely popular regiment, with major
981 victories in the recent South African War. After Curzon disciplined the
982 Lancers, the men were loudly cheered—even by Curzon's own guests—at
983 the durbar to celebrate Edward VII's accession: a humiliating moment for
984
985 [96] See, for example, Theodore Walrond, ed., *Letters and Journals of James, Eighth Earl of*
986 *Elgin* (London, 1873), 414–15.
987 [97] Quoted in David Dilks, *Curzon in India*, vol. I (New York, 1969), 199. Curzon referred to
988 151 military cases between 1880 and 1899, which resulted in 77 Indian deaths. Curzon, "The
Case of the Ninth Lancers. Communiqué to Press" (Curzon Papers, Mss Eur F111/402, IOC),
989 20 Nov. 1902.

Curzon, who wrote of his "gloomy pride in having dared to do the right."[98] But Curzon's punishments were unpopular for another reason, which was closely tied to the Raj's racial theories. The colonial state devoted disproportionate resources to eradicating Indian crimes committed by groups: for example, gang robbery. This strategy was linked to broader ethnographic understandings of India's so-called "criminal tribes," who were seen as genetically predisposed toward illegal acts. British officials generally assumed that Indians committed crimes together (in tribal or ethnic groupings); white Europeans acted alone.[99] Collective punishments were typically reserved for indigenes. Curzon's regimental sanctions were seen not only as unjust, but also as racially insulting.

Curzon's executive intercession reflects his interest in making soldiering more "scientific," subjecting the army to his notion of Christian, gentlemanly discipline.[100] Regulating the behavior of British troops codified military occupation with the trappings of civility.[101] Curzon likened the military's attitude about indigenes to that of a cricket bowler who, having inadvertently killed a man with a ball that struck him on the temple, exclaimed—"Why did the d—d fool get his head in the way?"[102] In 1900, he revised the shooting rules for soldiers on hunting expeditions in an effort to reduce the number of incidents in which Indian villagers were killed. Passes were given only to "steady and well-conducted men." At least one member of each shooting party must be fluent in the local dialect. Shooters were forbidden to enter villages, and the army had to warn villagers about any shooting parties a week in advance.[103]

Crucial to these new regulations was the notion of the "accidental death." Curzon presumed that Indian deaths from shooting incidents resulted not from racial prejudice, as in the death of Attu, but from an unregulated access to weapons. That is, in cases of the boot, Curzon focused on trying to infuse the higher ranks with a sense of responsibility for Indian life. When it came to the gun, his aim was to regulate violence rather than to eradicate its underlying causes. The "cure" for shooting deaths was to be sought in governmental regulations and not in interracial relations. The idea that shooting incidents were less embarrassing to the Raj than cases in which

[98] Michael Edwardes, *High Noon of Empire: India Under Curzon* (London, 1965). 178.

[99] David Arnold, "Crime and Crime Control in Madras, 1858–1947," and Sandria Freitag, "Collective Crime and Authority in North India," both in Anand Yang, ed., *Crime and Criminality in British India* (Tucson, 1985); Sandria Freitag, "Crime in the Social Order of North India," *Modern Asian Studies* 25, 2 (1991): 227–61; Lal, "Everyday Crime"; Sen, *Disciplining Punishment*; Peter Stanley, *White Mutiny: British Military Culture in India* (New York, 1998).

[100] Dilks, *Curzon in India*, 197; David Gilmour, *Curzon: Imperial Statesman* (London, 1994), 194.

[101] Purnima Bose, *Organizing Empire: Individualism, Collective Agency, and India* (Durham, 2003), 59.

[102] Earl of Ronaldshay, *The Life of Lord Curzon*, vol. 2 (London, 1928), 244.

[103] Lord Curzon, "Minute by his Excellency the Viceroy on the Revision of the Shooting Pass Rules" (Curzon Papers, Mss Eur F 111/402, IOC), 26 Sept. 1900.

Britons killed Indians with their bare hands (or shod feet) was widely shared.[104] Firing with small shot was generally considered evidence of intention to wound, not to kill; therefore, the resulting deaths were never considered as murder.[105]

Significantly, the two British leaders who concerned themselves most with violence against Indians—Lord Lytton and Lord Curzon—were both portrayed by the vernacular press as deeply bigoted. How did their critiques of white violence in India mesh with their broader discriminatory policies? For Curzon, "strict and inflexible justice" was the only stable foundation for British rule. Regarding the Ninth Lancers, he wrote, "if it be said, 'don't wash your dirty linen in public,' I reply, 'don't have dirty linen to wash.' " Curzon painstakingly exposed the squalid details of military cases because he believed they illustrated the most important lesson of the Raj: "the English may be in danger of losing their command of India, because they have not learned to command themselves."[106] Whites in India, he stressed, could not preserve their rule if they failed to exercise self-restraint. Rather than diminishing racial difference, the prosecution of white crimes was for Curzon a way of preserving the doctrine of racial superiority via humanitarianism. His solutions could be resolutely technological. After Private O'Hara of the Royal Scots Fusiliers battered a *punkah*-coolie to death with a dumb-bell at Umballa, Curzon began replacing coolies in the barracks with electric fans.[107] If the impetus to violence was interracial contact, then Curzon saw the reduction of this contact as a humane policy.

What ideological function did cases against Britons serve? In part, they allowed British officials to narrate a history of the Raj in terms of self-improvement. Although the conviction rates for violent crime were actually higher in the early colonial period, the extortions of the Empire's early days were repeatedly contrasted with the sober rule of the nineteenth century.[108] Prosecuting Britons in India reassured the metropolitan public that the bad old days of the East India Company were dead and gone. This caricatured view overlooked the Company's own obsession with the appearance of equity as well as Cornwallis's reforms in the sphere of homicide law. But the punishment of white criminals highlighted the contrast between an eighteenth-century empire of Company jobbery and a new empire purified

[104] "Shooting Affray between Three European Soldiers and Certain Villagers in the Agra District" (L/P&J/6/364, File 2512, IOC), 1893.

[105] Wilson to Chief Secretary of Government, Bombay (L/P&J/6/103, File 1317, IOC), 10 May 1883; *Samaya* (INR, L/R/5/9, IOC), 28 May 1883.

[106] Curzon, "Notes," 12.

[107] On the use of electricity in cantonments as a solution to soldiers' fatal assaults on *punkha*-coolies, see Senex, *Memoirs of a Magistrate, Or Crime of All Descriptions* (Allahabd, 1947), 15.

[108] Bryce, *The Ancient Roman Empire*; Charles Grey, *European Adventurers of Northern India, 1785–1849* (Lahore, 1929); Herbert Eastwick Compton, *A Particular Account of the European Military Adventurers of Hindustan from 1784–1803* (London, 1892).

by post-1857 evangelizing. The progress of empire was measured not just by the pacification of the indigenous population, but also by disciplining colonial officials with their own principles of justice. Significantly, British scholars noted that the brutal expropriations of earlier days were not necessarily illegal. The Raj's moral status—and its claim to hold the rule of law as preeminent—depended not only on the successful prosecution of white criminals, but also on identifying certain forms of colonial exploitation as criminal in the first place.

Furthermore, the punishment of Britons for attacks on Indians afforded important opportunities for differentiating white populations—civil servants, army officers, planters—and allowed the official white community to police the behavior of those uncovenanted "interlopers." One Tirhoot song lamented the plight of the white planter in the face of condemnation from civil service elites:

> Now if a native's only charged with any serious crime,
> Do all you can to let *him* off, at most with a simple fine.
> But the white man must be sent to jail, for that's the modern mode
> In which our magistrates now-a-days read 'The Indian Penal Code.'[109]

One effective method of keeping poor whites marginal to colonial authority was to displace responsibility for criminal acts onto them.[110] Prosecutions thus operated as a way of maintaining class distinctions among white populations of the Raj. Although judicial sources suggested that British defendants were from diverse occupations, both the metropolitan and the Anglo-Indian presses focused overwhelmingly on the crimes of soldiers and planters. Thus, the notion that the civil service enjoyed a more humanitarian relationship with indigenes was preserved in the public record.

Cases of white crime also served as a compelling focal point of Indian nationalist energies. Reports of British soldiers "ecstatically" killing Indian children by stomping on their chests, or civil servants biting an Indian woman's breast until she died functioned as exhortative atrocity narratives for indigenous readers.[111] The slogan that no Britons had ever hanged for murdering Indians, while not technically true, was a powerful nationalist mantra, the gospel of the youthful Bengali patriot.[112] Reports on "boot and spleen" cases galvanized post-partition Bengal, where they countered Anglo-Indian narratives about the rise of Bengali terrorism: "the English are transgressing the law they themselves made ... Oh! inhabitants of Bengal, why then are

[109] *Tirhoot Rhymes. By 'Maori'* (Calcutta, 1873), 45–47.

[110] Ann Laura Stoler, "Rethinking Colonial Categories: European Communities and the Boundaries of Rule," *Comparative Studies in Society and History* 31, 1 (Jan. 1989): 134–201.

[111] The second story was retracted as a false charge. *Manorama* (INR, L/R/5/112, IOC), 22 Sept. 1905; and in the same volume, *Kerala Patrika*, 28 Oct. 1905; and *Nagedannadi*, 15 Sept. 1906.

[112] S. M. Mitra, *Indian Problems* (London, 1908), 21.

you like women submitting to the assaults of the European *gunda*? Learn to be *gunda* yourselves, gather brute strength yourselves."[113] This call for vigilante justice linked individual Britons' deadly acts to the equally fatal state-sponsored "crime" of partition. The hierarchy of white violence established by colonial lawmakers was largely erased in the nationalist press; criminal acts by planters or off-duty soldiers were juxtaposed with those by Britons acting in an official capacity.

The nationalist portrayal of white violence explains in part the Raj's stake in prosecuting white criminals: that is, to offer an explicit denial of indigenous accounts of white violence as routinized and unpunished. If these cases were under new investigation, then the nationalist reports could be viewed as untruthful attempts to provoke hatred of colonial rulers. Such reports were prosecutable under the Indian Penal Code's definition of sedition. Indeed, several major nationalist newspapers faced sedition charges in the early twentieth century because of their reports on white violence, at least one specifically pertaining to "boot and spleen" cases.[114] Ultimately, the Raj's scrutiny of white crimes legitimated the harassment and censorship of the Indian press.

CONCLUSION: THE RE-APPEARANCE OF MURDER

Interracial violence was never eliminated in colonial South Asia. Indeed, from the 1870s right through the 1940s, the details of interracial homicide cases are depressingly repetitive. To some extent, "boot and spleen" cases were replaced in the twentieth century by shooting incidents; one might ask whether the gun supplanted the boot as the most visible agent of interpersonal violence in colonial India. But despite the long life of interracial violence under the Raj, certain elements that explained the absence of murder charges for Britons in India at the turn of the twentieth century—for example, the racial parameters of criminal jurisdiction and the intensely racialized claims of medical jurisprudence—underwent important shifts in the interwar period.

One of the Raj's vestigial acts in the realm of law was the reintroduction of the murder charge for European British subjects. In 1931, Privates Armstrong, Gray, and Stewart of the Border Regiment were found guilty of murdering Muhammad Roshan, a tea-vendor in the Nunnee hills. The British soldiers had apparently tried to rob the vendor, and then assaulted him; he died of his injuries four days later. The soldiers were charged under section 394 of the Indian Penal Code (robbery with violence) as well as section 302—murder, at last! The government's investigation focused less on Roshan's

[113] *Yugantar* (INR, L/R/5/31, IOC), 4 Nov. 1906.

[114] Walter Russell Donogh, *A Treatise on the Law of Sedition and Cognate Offenses in British India* (Calcutta, 1911); Anthony Lester and Geoffrey Bindman, *Race and Law* (London, 1972), 346–47, n. 7.

physical characteristics (e.g., his spleen) than on the extent to which the British soldiers' conduct might be considered mutinous.[115] Throughout the 1930s, the Government of India worked to identify regiments that had a history of violence toward indigenes and pressed for Britons who killed Indians to be charged with murder.[116]

How might we explain the reappearance of murder charges for Britons in India? Why did "boot and spleen" cases fall out of fashion? In metropolitan Britain, the catastrophic losses of the First World War amplified fears about the consequences of uncontrolled violence and prompted a renewed public investment in the myth of British peaceableness. By the 1920s, peaceableness was valorized as a uniquely British trait. Political violence —for example, in Ireland—was defined as "alien" even when executed by British agents.[117] In this context, protests against colonial atrocities played a complex role. As was typical of such protests, they functioned as part of an international contest for territory. Reports of Germany's crimes in Africa cemented Britain's claims to act as a civilizing colonial power during the interwar years. But the resuscitation of murder charges for Britons throughout the Empire after World War One also encouraged the occlusion of the most recent intra-European violence by preserving the notion of Western Europe as a zone of law and civility.[118]

To take one example, the Foreign Office's 1918 Blue Book report on German atrocities in Southwest Africa aimed to rule out the return of African territories to German agents by illustrating Germany's unsuitability as a colonial power.[119] The report focused on murders committed by Germans against indigenes just before the British takeover of Union territory. In one case, an African corpse was discovered on a German farm by invading British soldiers, who promptly began a murder investigation; the report thus explicitly linked the prosecution of white violence to the arrival of British troops. The compilers noted that the archive on German crimes in Africa was scanty compared with the extensive documentary record for British territories. German colonists had committed the most brutal crimes "without adequate motive," and had also erased such crimes from the official record. British superiority was moral, legal, and archival.

[115] "Assault on an Indian Tea-Vendor by Four British Soldiers at Upper Barian, Murree Hills" (L/P&J/7/213, File 4674, IOC), 1931–1932.

[116] "Shooting of Indians by British Soldiers" (L/P&J/7/419, File 4279, IOC), 1932–1940.

[117] Gregory, "Peculiarities of the English?"; Jon Lawrence, "Forging a Peaceable Kingdom: War, Violence and Fear of Brutalization in Post-First World War Britain," *Journal of Modern History* 75 (Sept. 2003): 557–89.

[118] Eliga Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772," *William and Mary Quarterly* 60, 3 (2003): 471–510.

[119] *Report on the Natives of South-West Africa and Their Treatment by Germany* (London, 1918); Horst Drechsler, *"Let Us Die Fighting": The Struggle of the Herero and Nama against German Imperialism* (London, 1980).

Although the compilers acknowledged that violence against indigenes had frequently occurred under British rule in Africa and South Asia, they insisted (against considerable evidence) that such incidents had been confined to individual homes, and never involved the cooperation of British state resources: police, courts, or armies. Furthermore, the report argued that British judicial violence against African workers—namely, the use of corporal punishment in cases of stock theft—served as a corrective to illegitimate German brutality. If German farmers trusted that British courts would adequately punish African thieves, then German settlers would be less likely to attack the thieves themselves. Notably, the Blue Book collapsed the distinction between individual and state-sponsored violence for Germany. Reports of the "rough justice" that German farmers meted out to African laborers were interspersed with accounts of larger punitive expeditions carried out by the German police that were sponsored by the metropolitan government and could nowise be seen as the work of renegade individuals. That the British colonial judiciary seemed willing in the 1920s and 1930s to treat "renegades" in their own midst as murderers lent credence to the contrast with Germany.

The revival of murder charges for Britons in India was thus part of a global interwar strategy to lay claim to both territory and civility. Yet this resuscitation was also deeply rooted in local circumstances. Most notably, the Amritsar massacre of 1919, which has been termed the single event that did most to undo British rule in India, brought to a culmination the previous century of ambivalent thinking about the role of deadly violence in colonial expansion. On 13 April 1919, the forces of Brigadier-General Reginald Dyer opened fire without warning on a gathering of more than 20,000 people at the Jallianwala Bagh. Official figures state that 379 people were killed and 1,200 wounded; Indian estimates are much higher. Metropolitan reaction to Amritsar turned largely on the question of the "singularity" of Dyer's actions: for example, Churchill's insistence that the episode was without precedent in the history of the Empire. In this interpretation, Amritsar was both sinister and singular: a tragic aberration for which one man was solely responsible.

Indian voices on the massacre generally saw Dyer's actions as prototypical of the entire regime: the design of British bureaucracy, rather than one man's deed. But the denial of Amritsar's singularity was not confined to critics of imperialism. Many of Dyer's supporters defended his claim that the massacre was no aberration, but simply his unpleasant "duty," his fulfillment of the obligation of rulers when the ruled behaved wrongly.[120] The Hunter Committee criticized Dyer for firing without giving the assembly a chance to disperse, but he was merely retired early and not prosecuted for any crime. He was

[120] Derek Sayer, "British Reaction to the Amritsar Massacre 1919–1920," *Past and Present* 131 (May 1991): 130–64.

censured by Commons, but not by the House of Lords.[121] The Secretary of State for India, Edwin Montagu considered trying Dyer for culpable homicide under the Indian Penal Code, but was advised that no jury in India or England would convict him.

The "boot and spleen" cases differed from Amritsar in important respects, both because of their individualized scale and because they typically involved civilians or off-duty soldiers rather than military expeditions. But they establish an important prehistory for Amritsar, dramatizing the ways in which colonial and metropolitan opinion fractured around the connectedness of individual and state-sponsored violence. Censuring individuals such as Dyer for exceeding the colonial state's limits on the use of force allowed all other violent incidents to be rendered normal. When the most overtly brutal acts were made illegitimate, the colonial enterprise was distanced from its constitutive violence.[122] As the outpouring of support for Dyer suggested, though, the official insistence on his "singularity" was not universally shared. Although Dyer's fate was settled relatively quickly, the broader question of the relationship between violent crime and the legitimate use of force proved far more divisive.

Murder charges for Britons in India bracketed the colonial period, typifying in different ways the mindsets of early and late colonial rule. By the end of the interwar period, charging a European British subject with murder was "possible" again. This shift was due in part to a general revaluation of the role of physical violence in colonial governance following the First World War. Furthermore, in the aftermath of Amritsar, it was vitally important to criminalize acts of white violence by private citizens in order to underscore the gulf between such acts and the right use of physical force by agents of the state. Legislative changes were also undertaken in the interwar years, although in rather a minor key. The Criminal Procedure Amendment Act of 1923 abrogated the right of European British subjects to be tried by European judges or magistrates. But these subjects maintained their right to be tried by a jury consisting of a majority of Europeans or Americans in cases where the sentence might exceed six months until the Criminal Law (Removal of Discriminations) Act in 1949.

More significantly, a new kind of medical jurisprudence emerged in 1920s and 1930s India, spurred primarily by indigenous researchers. These authors documented the existence of "normal" Indian spleens that ruptured only in cases of "extreme" force, usually from a rib fractured by a severe blow or blunt weapon.[123] Some of the "ruptured spleen" cases that were previously

[121] The Indian members of the committee submitted a minority report comparing Dyer's "un-British" actions to German atrocities in France and Belgium.

[122] Bose, *Organizing Empire*.

[123] Rai Bahadur Jaising P. Modi, *A Textbook of Medical Jurisprudence and Toxicology* (Calcutta, 1936); Rames Chandra Ray, *Outlines of Medical Jurisprudence* (Calcutta, 1925).

1291 classified as accidental deaths were now re-definable as homicides. Pro-
1292 fessional revaluations of the Indian spleen were judicially important in pro-
1293 moting a broader conceptualization of Indian bodies as healthy and resilient
1294 rather than pathologically fragile.[124] The production of new medical norms
1295 about the Indian body meant that one of the key legal palliatives for European
1296 British subjects—that is, the ruptured spleen defense—was increasingly
1297 difficult to uphold.
1298 It is difficult to measure the impact of anti-colonial movements on the resur-
1299 gence of murder charges for Britons in India. What these movements high-
1300 lighted was the fact that Britons no longer held a monopoly on deadly
1301 violence. In 1925, an article in *Prabhat* titled, "Their Boots and Our
1302 Spleen" reported that a British man in Assam had been fined 200 rupees for
1303 kicking a coolie to death. By this time, the customary refrain of boot and
1304 spleen was grotesquely familiar to Indian readers. But now the reiteration of
1305 this particular type of white violence was explicitly linked to Indian retribu-
1306 tion: "The answer to why Indians are dissatisfied with the British rule is to
1307 be found in such incidents. Such painful disregard of Indian life cannot but
1308 produce a deep impression upon the heart of every Indians and no wonder
1309 that despite Mahatma Gandhi's insistent advice regarding non-violence, revo-
1310 lutionary conspiracies are heard of in the misguided India. So long as this
1311 relation exists between the boot and the spleen, India will be the most untouch-
1312 able and degraded country in the world."[125]
1313 The call here was not for British justice, but for recognition of the interde-
1314 pendence of two equally illegitimate types of violence. What we see here is the
1315 origins of an important historiographical trend. The history of British vio-
1316 lence—the brutally repetitive imposition of boots on spleens—is occluded
1317 or eclipsed by an investigation into revolutionary terrorism and, ultimately,
1318 "communal" or Hindu-Muslim violence: a shift in emphasis that has
1319 marked studies of conflict in South Asia since the late colonial period.[126]
1320 Thus, the colonial practices of displacing British violence onto indigenous
1321 subjects that we witnessed in the cases of Jackson and Reid (for example, dif-
1322 fusing torture through the Indian police or requiring Indians to be flogged by
1323 other Indians) extended into the postcolonial world.
1324 The trajectory of "boot and spleen" cases points to an inverse relationship
1325 between the documentary record on white crimes and the pursuit of justice
1326

1327 [124] Ruptured spleens were cited in intra-racial (that is, Indian-Indian) homicide cases through
1328 the postcolonial period, but the weapon was almost exclusively the *lathi* rather than the boot.
Keshava Chandra Mehotra, *Culpable Homicide and Legal Defence* (Lucknow, 1967).
1329 [125] *Prabhat* (INR, L/R/5/98, IOC), Dec. 1925.
1330 [126] Veena Das, "The Anthropology of Pain," in *Critical Events: An Anthropological Perspec-*
1331 *tive on Contemporary India* (Delhi, 1995), 175–96; Patricia A. Gossman, *Riots and Victims: Vio-*
lence and the Construction of Communal Identity Among Bengali Muslims, 1905–1947 (Boulder,
1332 1999); Denis Vidal, *Violence and Truth: A Rajasthani Kingdom Confronts Colonial Authority*
1333 (Delhi, 1997).

against them. During the nineteenth century, the official archive on British violence expanded as murder charges for Britons declined. But at the precise moment at which the Raj revitalized its prosecution of Britons for murdering indigenes, British violence seems to have become historically and historiographically invisible. Ultimately, the Raj may have had more to gain from preserving its records on white violence than from destroying them. The process of hyper-documenting cases of white crime served the Raj by creating a textual artifact of the "fairness" of the colonial state. More significantly, this venture of detailing the crimes of individual Britons—many of whom were off-duty soldiers who had ceased their drilling and put down their guns—also fundamentally obscured any relationship *between* individual and state-sponsored violence. This was a relationship that Britain explicated all too readily for other European colonial powers, but all too rarely for itself.

The "boot and spleen" cases of colonial India illustrate the ways that racial ideologies impacted on colonial courts far beyond a simple racism that devalued Indian life. In the late nineteenth and early twentieth centuries, violence by Britons against indigenes was regulated and suppressed but, overwhelmingly, kept distinct from the realm of murder until the Raj was on the wane. Race mattered critically, not only when justice was denied, but also when it was pursued. The colonial negation of murder depended on an intertwining of law and medicine that stressed the racial specificities both of modes of violent action and of responses to violence, producing a mutually constitutive relationship between British boots and Indian spleens.