

# Loopholes in the Law

## How the Performance of British Masculinity Saved the Lives of Honor Killers in Mandatory Palestine

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Katie Laird

Mohammed Joumeih Abu Kalbein was his parents' oldest son and the leader of his family in the village of Silwan, just outside of Jerusalem. For months, the family had been troubled by rumors and gossip surrounding Mohammed's sister, Naameh, and her conduct with men in the village. Shamed by his sister's worsening reputation, Mohammed went to her house and stabbed her to death with a kitchen knife, killing both her and her unborn child while her ten-year-old son watched. The next day he told police he had killed Naameh because of her "bad character". During his subsequent trial, the court asked Mohammed why he should not be punished for his crime. His response: "I defended my honour."<sup>1</sup>

The sufficiency of male honor as an excuse for murder appeared self-evident.

Mohammed and Naameh's story is a typical example of what has been termed an "honor killing". What qualifies as an honor killing can vary, and has provoked considerable debate over the past three decades. The Council of Europe Committee on Equal Opportunity offered the following definition in 2003: "The murder of a woman by a close family member or partner as a result of (suspected or alleged) shame being brought on a family by the action (a suspicion or allegation will be enough) of the woman."<sup>2</sup> This particular type of violence is regarded by many in the communities that practice it as not only justifiable, but necessary to absolve the woman's family of the shame her behavior has brought upon them.

Honor killings have become a common topic of debate and concern over the past few decades, and for good reason. A 2018 study published by the United Nations found that 50,000 women around the world are killed every year by intimate

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1 "In Defence of Family Honour", *The Palestine Post*, 21 December 1939. The identity or whereabouts of the child's father are not mentioned in the report.

2 Ann Cryer: "So-called 'Honour Crimes': Council of Europe Committee on Equal Opportunities for Women and Men, Report 9720", *Council of Europe Parliamentary Assembly*, 7 March 2003, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10068&lang=EN> (accessed 11 May 2022).

partners or family members.<sup>3</sup> Described as a “pandemic of femicide and gender-based violence against women,”<sup>4</sup> conversations about honor killings often arise among American and western European media in response to lurid images of women being stoned or sensational stories of stabbings and stranglings in places like Turkey, Afghanistan, or Saudi Arabia. Such accounts have also been used to further geopolitical agendas in the time-honored tradition of “white men saving brown women from brown men.”<sup>5</sup>

And yet, for all the talk that surrounds these tragedies, very little scholarship exists exploring the history of the phenomenon. Naameh’s murder took place almost a century ago when Palestine was under British rule, but it still bears an uncanny resemblance to many of the honor-motivated murders that occur today, such as the indictment filed in December 2021 by German prosecutors against two brothers who murdered their older sister for divorcing her husband and pursuing a “Western way of life.”<sup>6</sup>

One of the unfortunate results of the current discourse about honor killings has been an essentialization of the phenomenon as Islamic, and a propagation of the view that honor killings are endemic to Muslim-majority communities and cultures. This discourse is not new; it is merely an echo and continuation of the rhetoric used to justify administrations like the British Mandate over Palestine. In her seminal work on the complexity of Muslim women’s lives, Lila Abu-Lughod has argued that to ignore the “dynamic historical transformations” of honor crimes “strip[s] them of moral complexity” and fails to understand the inherent structural inequalities

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3 Dubravka Šimonovic: “Urgent action needed to end pandemic of femicide and violence against women, says UN expert”, *United Nations Human Rights Office of the High Commissioner*, 25 November 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26533&LangID=E> (accessed 11 May 2022). The standard estimate for honor killing specifically has hovered around 5000 for over a decade. (See “Impunity for domestic violence, ‘honour killings’ cannot continue”, *UN News*, 4 March 2010, <https://news.un.org/en/story/2010/03/331422> (accessed 11 May 2022). However, the general consensus is that such estimates are extremely low, given the long history of underreporting of such crimes.

4 Šimonovic, “Urgent action needed”.

5 Gayatri Chakravorty Spivak: “Can the Subaltern Speak?”, in: Patrick Williams/Laura Chrisman (eds.): *Colonial Discourse and Post-Colonial Theory: A Reader* (New York: Columbia University Press, 1994), 92. As one example of this, the George W. Bush administration drew on such images and a discourse of oppressed Muslim women and the American duty to rescue them to garner support for the 2001 U.S. invasion of Afghanistan. See, for instance, Laura Bush’s radio address: Laura Bush: “Radio Address”, *The White House*, 17 November 2001, archived version available at <https://georgewbush-whitehouse.archives.gov/news/releases/2001/11/20011117.html> (accessed 11 May 2022).

6 “Germany: 2 men charged in killing of their sister”, *Associated Press*, 28 December 2021, <https://apnews.com/article/europe-germany-berlin-478931c3c1f59502b412af8ded53415f> (accessed 11 May 2022).

that inform the practice.<sup>7</sup> This chapter attempts to follow Abu-Lughod's directive by restoring historicity to honor killings in Palestine through analyzing British participation in and reactions to the practice during the Mandatory period (1920–1948).

As one of the top industrial and imperial powers of the early 20th century, Britain embodied the contradictions of a self-proclaimed liberal democracy's attempts to reconcile "Eastern" culture with those acultural values the British attributed to the European Enlightenment. And yet, for the better part of 30 years, British Mandate officials excused, downplayed, and commuted the sentences of honor killers while simultaneously upholding death sentences for murderers motivated by the more pedestrian motive of pecuniary gain.

Badi Hasisi and Deborah Bernstein are so far the only scholars to have written on this topic. In their compelling 2016 article, "Multiple Voices and the Force of Custom on Punishment: Trial of 'Family Honor Killings'", Hasisi and Bernstein suggest that British officials' pattern of leniency for honor killers was motivated by the overriding need to prevent public unrest, the assumption being that to impose execution for these crimes that had barely been prosecuted as manslaughter under Ottoman rule would provoke a backlash.<sup>8</sup> In this chapter, I will argue that, while the British did seek to minimize conflict in the region, it was precisely because the victims of honor violence – always women of "bad character"<sup>9</sup> – threatened the dominant British masculinity that British officials refused to fully punish the men who eliminated that threat for them.

While Hasisi and Bernstein focused on the legal decisions reviewed first by the Supreme Court and then passed on to the High Commissioner, I analyzed a broader swath of honor cases, including those that never went beyond the District Court level. Including the lower courts' decisions in the analysis provides a more expansive view of how judges were conceptualizing honor as a mitigating factor in murder, particularly in light of the 1927 Supreme Court holding that a woman's character could be used in determining the defendant's guilt.<sup>10</sup> I also analyzed murder cases

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- 7 Lila Abu-Lughod: *Do Muslim Women Need Saving?* (Cambridge: Harvard University Press, 2015), 136.
  - 8 Badi Hasisi/Deborah Bernstein: "Multiple Voices and the Force of Custom on Punishment: Trial of 'Family Honor Killings' in Mandate Palestine", in: *Law and History Review* 34:1 (2016), 115–154.
  - 9 As Abu Kalbein described his sister to the authorities during his trial. "In Defence of Family Honour", *The Palestine Post*, 21 December 1939.
  - 10 Assize Appeal 16/26, *Abu Jasser v. Attorney General*, 2 Rotenberg 543 (1927). This holding surely influenced all of the lower courts' decisions in subsequent years, with the net result of dramatically lowering the number of cases that were charged as murder – which were instead charged as manslaughter. This would also mean that review by the higher courts and the High Commissioner never happened. Hasisi and Bernstein never mention this decision in their analysis.

unrelated to honor, for the purpose of establishing a comparative framework that would illuminate the assumptions underpinning judges' thoughts on provocations such as honor violations that justified mitigation.<sup>11</sup> I drew on the work of British historians about British murder rates and punishments to show how Mandate judges treated the murder of women in Palestine compared to murders of women in Britain. Newspaper articles in Palestine often reported on family honor murders, and correspondence from and between British officials to the Colonial Office reveals the way these men were thinking and talking about women in Palestine and their place in the social order.

The ambivalence with which officials treated honor violence a century ago still haunts contemporary conversations about the phenomenon. For instance, many have advocated for the elimination of the term honor killing entirely, as, "No killing of a woman, no matter what the reason, is honorable," and conceding to the use of the term "serves the purpose of preserving the social power of informal structures and fulfilling their material and social interests."<sup>12</sup> Nadera Shalhoub-Kevorkian has proposed using the term "femicide" as an alternative descriptor for "all violent acts

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11 Not only does this comparative analysis enrich knowledge on honor violence, but casting a wider net catches many of the honor killings that were categorized under the lower charge of manslaughter by judges, or else disguised to look like "ordinary" homicides, accidents, or suicides. In his study of 17th century Jerusalem, Dror Ze'evi found an unusually high number of court records describing the "accidental" deaths of women and girls, while there were virtually no records of females being murdered for reasons of honor. Ze'evi points out that when the death of a female was reported to authorities, evidence given by a male relative frequently sufficed, even when the cause of death was suspicious, such as girls accidentally tumbling off roofs or stones accidentally "falling" onto their heads. As Ze'evi wryly notes, "Reports of this kind, about women who slid into wells, fell off roofs, or were buried by stone avalanches, are fairly numerous, certainly more so than similar cases involving men. This may suggest that women worked on roofs, near wells, or in small stone quarries more than men did, but it is more likely that these incidents represent attempts to avoid murder charges where questions of 'family honor' were concerned." (Dror Ze'evi: *An Ottoman Century: The District of Jerusalem in the 1600s* (New York: SUNY Press, 1996), 177–78). This practice has continued into the 21st century, as reports such as Tina Susman and Ceaser Ahmed demonstrated during the 2003 American invasion of Iraq. Ahmed and Susman found that much of the increase in violence against women in the wake of the invasion took the form of honor killings, which, according to human-rights advocates, were often disguised to look like "regular" homicides (Tina Susman/Ceaser Ahmed: "Tale of murder, rape and tradition", *Los Angeles Times*, 23 April 2009, <https://www.latimes.com/archives/la-xpm-2009-apr-23-fg-iraq-woman23-story.html> (accessed 11 May 2022)).

12 Nadera Shalhoub-Kevorkian/Suhad Daher-Nashif: "Femicide and Colonization: Between the Politics of Exclusion and the Culture of Control", in: *Violence Against Women* 19:3 (2014), 295–315, here 297. "Informal structures" in this context refers to the traditional, kin-based structures of power and social control versus formal, usually legal or government-based structures of power.

that instill a perpetual fear in women or girls of being killed under the justification of honor.”<sup>13</sup> While I acknowledge these concerns, the term honor killing stems from the actors’ own definition and view of familial relations and gender power structures. In an effort to understand the actors on their own terms, I will use the term while recognizing that it is a type of femicide, which refers to the larger category of killing women for reasons rooted in gender. I also recognize and reject the term’s inherent attribution of blame to the victim, who, in the killer’s view, causes her own death through her aberrant conduct.

Such aberrant conduct was viewed by some Palestinian communities as a major destabilizer of community cohesion, something which was already under threat; first from the Great War, to which Palestine lost at least six percent of its population, and next, to the invasion and occupation of the British.<sup>14</sup> In just under six years, in other words, the social structure Palestinians had known for over 400 years crumbled.<sup>15</sup> As a result, there was perhaps no group more intensely focused on and conflicted about identity formation than the population of Palestine during the ensuing interwar period, with Arab Muslims and Arab Christians and Mizrahi Jews and newly arrived European/Ashkenazi Jews, as well as Zionists and anti-Zionists and the British all thrown together, jockeying for the power to establish what it meant to be Palestinian. The stakes were high, for whoever won this battle would establish the norms and determine the definitions, set up the boundaries of belonging, and punish those who breached them.

Often obscured in the shadow of this identity quagmire were the evolving notions of gender that informed and underpinned the entire process. Competing concepts of masculinity in interwar Palestine were undergoing significant changes before, during, and after the Great War. If one accepts Joan Scott’s proposition that gender serves as “one of the recurrent references by which political power has been conceived, legitimized, and criticized,” an analysis of how gender influenced British responses to the killing of women for family honor illuminates important ways all

13 Ibid.

14 Abigail Jacobson: “Negotiating Ottomanism in Times of War: Jerusalem During World War I Through the Eyes of a Local Muslim Resident”, in: *International Journal of Middle East Studies* 40:1 (2008), 69–88.

15 It is tempting to speculate whether the rate of honor violence increased due to the upheaval and large-scale dissolution of the social structure, as social scientists have found that violence against women often experiences an upsurge during such periods. (See, for example, Donna Pankhurst, “Post-war backlash violence against women: What can ‘masculinity’ explain?”, in: Donna Pankhurst (ed.): *Gendered peace: Women’s struggles for post-war justice and reconciliation* (New York: Routledge, 2007), 293–320; Henny Sleight et al.: “‘I can do women’s work’: Reflections on engaging men as allies in women’s economic empowerment in Rwanda”, in: *Gender & Development* 21:1 (2013), 15–30. However, further research needs to be done to determine pre-war rates of violence in Palestine.

parties were negotiating across class, racial, and political divides to define and challenge current structures of power in the quicksand of interwar Palestinian politics.<sup>16</sup>

## The Logic of Honor Killings

Evidence of honor violence has appeared among many cultures, countries, religions, and ethnicities.<sup>17</sup> Given such a wide variety of settings, it is unquestionably a contingent and complex phenomenon.<sup>18</sup> Recep Doğan has also argued that honor killings are “qualitatively different from other kinds of murders.”<sup>19</sup> First, the meaning of the word “honor” in the context of an honor killing is not an accumulative commod-

16 Joan Scott: “Gender: A Useful Category of Historical Analysis”, in: *The American Historical Review* 91:5 (1986), 1053–1075.

17 Although the majority of honor killings today take place in communities where Islam is the majority religion, honor violence featured in various forms in a wide variety of religious cultures and legal codes long before some adherents to Islam adopted the practice. Even with the inherently vast underreporting that must be assumed with such a crime, early twenty-first century numbers show that honor crimes have been reported in at least 31 countries around the world, including Argentina, Australia, Bangladesh, Brazil, Colombia, Ecuador, Egypt, France, Germany, Haiti, Guatemala, India, Israel, Iran, Iraq, Jordan, Lebanon, Morocco, the Netherlands, Pakistan, Palestine, Peru, Punjab, Sweden, Syria, Turkey, Uganda, the UK, the U.S., Venezuela, and Yemen (United Nations 2002, 4, 10, 12). Ancient Roman law actually punished men who failed to kill their wives or daughters who misbehaved sexually, and Italy, Spain, Portugal, France, and various states in the United States all allowed for a variety of mitigating defense for honor killings until well into the 20th century. (See Matthew A. Goldstein: “The Biological Roots of Heat-of-Passion Crimes and Honor Killings”, in: *Politics and the Life Sciences* 21:2 (2002), 28–37; “The Horror of Honor Killings, even in U.S.”, *Amnesty International*, 10 April 2012, <https://www.amnestyusa.org/the-horror-of-honor-killings-even-in-us/> (accessed 11 May 2022)).

18 As most honor killings today take place in Muslim communities, some assert that very conservative and pointed interpretations of the Qur’an could conclude that the book condones the practice, but others vigorously oppose this, claiming that the Qur’an strictly forbids the practice (see Salam Alkhatib: “Social Death: A Grounded Theory Study of the Emotional and Social Effects of Honour Killing on Victims’ Family Members – A Palestinian Family Perspective.” (PhD dissertation, University of Manchester, 2012)). See also Andrzej Kulczycki/Sarah Windle: “Honor Killings in the Middle East and North Africa”, in: *Violence Against Women* 17:11 (2011), 1442–1464. It is also worth noting that honor killings have not been present in regions such as Indonesia and Malaysia, which have some of the highest populations of Muslims in the world (see Pieternella van Doorn-Harder: *Women Shaping Islam: Qu’ran in Indonesia* (Urbana/Chicago: University of Illinois Press, 2006), 15).

19 Recep Doğan: “Is Honor Killing a ‘Muslim Phenomenon’? Textual Interpretations and Cultural Representations”, in: *Journal of Muslim Minority Affairs*, 31:3 (2011), 423–440, 423.

ity that can be earned.<sup>20</sup> This first kind of honor, referred to in Arabic as *sharaf*, can be earned by acts of bravery or the attainment of wealth and power. The concept of honor that fuels honor killings, however, is called *ird*, and applies to the entire patrilineal clan, as opposed to just the individual.<sup>21</sup> *Ird* cannot be earned or increased; it can only be diminished, and usually only by acts of the female members of the clan.<sup>22</sup>

The literature is generally consistent in concluding that this asymmetrical power structure developed over time in communities lacking strong centralized leadership.<sup>23</sup> Kinship-based clans required constant vigilance to protect the group from external threats. The need for protection was valued most heavily for female members of the clan to maintain the purity of clan bloodlines.<sup>24</sup> This kind of social structure often results in women possessing “immense negative power”,<sup>25</sup> as their bodies are seen as the “boundaries of their nations”, the only viable options to both physically and culturally perpetuating the kin group.<sup>26</sup> Honor violence can be seen as a control mechanism for a group’s reproduction and survival. An attack on a woman’s body was regarded as an attack on the group as a whole, and particularly on those men responsible for the group’s protection and survival. In this way, a man’s honor was contingent upon his ability and success at protecting the women in his group from being “contaminated” by outsiders.<sup>27</sup>

- 20 Although I use the Arabic term for this type of honor, this is more due to the region of focus for this chapter as opposed to any implication that such a concept is endemic to or even at all pervasive in Arabic-speaking cultures. As footnote 17 discusses, honor systems have existed in dozens of cultures and nationalities throughout history.
- 21 Nancy V. Baker/Peter R. Gregware/Margery A. Cassidy: “Family Killing Fields: Honor Rationales in the Murder of Women”, in: *Violence Against Women* 5:2 (1999), 164–184. Baker et al. distinguish between “systems of honor” that rely on the behavior of others to prop them up and those that depend on internal factors, or the merits of the individual. They argue that those communities with systems that lean on others for honor of the power holders are integral to the perpetuation of violence against weaker members of the group.
- 22 Manar Hasan: “The Politics of Honor: Patriarchy, the State and the Murder of Women in the Name of Family Honor”, in: *The Journal of Israeli History* 21:1/2 (2002), 1–37.
- 23 Cees Mari/Sawitri Saharso: “Honour Killing: A Reflection of Gender, Culture and Violence”, in: *Netherlands Journal of Social Sciences* 37:1 (2001), 52–73.
- 24 “Racist practitioners must enforce domination not just on their racial targets but on both sides of the purported racial divide. For instance, racism demands domestic gender domination, too. Preventing ‘contamination’ of women of a group by men of another race requires restricting women’s personal choices.” (Ben Kiernan: *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur* (New Haven: Yale University Press, 2009), 22).
- 25 Deniz A. Kandiyoti: “Emancipated but unliberated? Reflections on the Turkish case”, in: *Feminist Studies* 13:2 (1987), 317–338, here 322.
- 26 Valerie M. Hudson: *Sex and World Peace* (New York: Columbia University Press, 2012), 7.
- 27 Aylin Akpinar: “The honour/shame complex revisited: violence against women in the migration context”, in: *Women’s Studies International Forum* 26:5 (2003), 425–442. Akpinar focuses on Turkish immigrant women in Sweden and the control that male relatives exercise over

The pressure men face to protect in this context almost inevitably mutates into a need to control and possess.<sup>28</sup> This rationale also underpins the occasional killing of rape victims, as a woman's will has no bearing in the status of her male relatives' honor; her defilement, whether consensual or not, represents her relatives' failure to protect her. Thus, as the embodied symbol of family's tainted honor, she must be eliminated.<sup>29</sup>

I argue that the shame men feel in these situations is a direct result of the demands of a contingent and dynamic masculinity. Should a different masculinity be constructed, in which a man's worth were not tied to the sexual choices of his female relatives, much of that shame would likely dissipate, sparing the lives of countless women and girls. But men embedded in this particular gender dynamic are led to see themselves as victims, not perpetrators. This in turn "animates one's sense of justice, i.e., retaliation for harm received. Retributive acts are seen by its perpetrators as fair and righteous deeds."<sup>30</sup> By acting out sexually, the women in their lives publicly expose a man's lack of control. Lack of control diminishes this form of masculinity, causing intense shame. Shame, in the words of historian George Stearn, is "a cry for recognition and respect."<sup>31</sup> By using violence to establish control over the woman who diminishes his manhood, a man restores equilibrium to the original

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female relatives in situations in which ethnic identity takes on elevated importance while living in a foreign environment. Women are controlled and abused, Akpınar argues, because of "the function of women as carriers and bearers of group identity". As such, "the definition of acceptable femininity" in such circumstances shifts to mirror the blood boundaries of their ethnic community."

28 Hudson, *Sex and World Peace*, 6–7.

29 Ibid.; Tina Susman/Cesar Ahmed: "Shame, secrecy and honour killings in Iraq; violence against women has been seemingly on the rise since the U.S.-led invasion altered the social structure of the country", *The Vancouver Sun*, April 2005. Susman and Caesar reported on an incident where a young woman in a prison north of Baghdad wrote home begging for help after becoming pregnant from multiple rapes by prison guards. Her brother responded by traveling to the prison and, with permission from the guards, walking into his sister's cell and shooting her dead. According to the two journalists, the brother murdered his sister and her five-month fetus in order to avoid the shame her condition would have imputed to the family.

30 Peter N. Stearns: *Shame: A Brief History* (Chicago/Urbana: University of Illinois Press, 2017), 12. See also Aaron J. Kivisto et al. "Antisociality and Intimate Partner Violence: The Facilitating Role of Shame", in: *Violence and Victims* 26:6 (2011), 758–773. The authors' study found a direct correlative relation between shame and antisociality and partner violence: As shame increases, antisociality and partner violence increase. Kaplenko et al. found that shame played a key role in motivating domestic violence in men through its "influence on authority" (Hannah Kaplenko/Jennifer Loveland/Chitra Raghavan: "Relationships Between Shame, Restrictiveness, Authoritativeness, and Coercive Control in Men Mandated to a Domestic Violence Offenders Program", in: *Violence and Victims* 33:2 (2018), 296–309, here 296).

31 Stearns, *Shame*, 12.



power dynamic, that of the man's "perennial sense of entitlement to women's bodies."<sup>32</sup> While he may have failed to control her sexual behavior, he will exercise the ultimate control by ending her life.

Because shame in this context is connected with the bloodline of a kin group, the majority of honor killings are perpetrated by a woman's agnate relatives, although sometimes that could include her husband, if he happens to be within the same clan. As such, cousins, brothers, uncles, and fathers tend to be the most common perpetrators of honor crimes.<sup>33</sup> A common feminist interpretation of honor violence centers on their function as enforcing the patriarchal demand of "clear familial connections and lines of inheritance."<sup>34</sup> Killing the female involved in the sexual violation is often seen as the "cheaper social price" than killing the man with whom the offense was committed, as that could instigate a blood feud with his family that could last years.<sup>35</sup>

It is perhaps easy to underestimate the enormous pressure faced by men in communities where honor operates as a powerful tool of social control. A man in such a community is "constantly forced to prove his honor", and he frequently "uses the concept of honor and shame in order to assess his own conduct and that of his fellows."<sup>36</sup> However, similar pressure is not unknown to men even in communities that do not use honor violence. Researchers have found that achieving manhood in many North American and European communities is both "elusive" and "tenuous," that it not only must be proven by a set of established rituals or skills – in contrast to womanhood, which is seen as a biological inevitability – but that even if earned, its retention is not guaranteed.<sup>37</sup> In other words, performing masculinity is a lifelong endeavor, the rules are often changing, and it is always at risk of being undermined.<sup>38</sup>

In his fieldwork interviewing convicted honor killers in Turkey, Recep Doğan concluded that many times, the decision to kill the transgressing family member

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- 32 Cynthia Cockburn: "Sexual violence in Bosnia: How War Lives on in Everyday Life", *Open Democracy*, 28 November 2013, <https://www.opendemocracy.net/en/5050/sexual-violence-in-bosnia-how-war-lives-on-in-everyday-life/> (accessed 11 May 2022).
  - 33 Baker/Gregware/Cassidy, "Family Killing Fields", 173–74. The authors found that this practice of a woman's natal and extended family controlling her behavior, sexual and otherwise, was practiced in Middle Eastern, Mediterranean, Latin American, southwest Asian, and Chinese elite societies.
  - 34 Reza Barmaki: "Sex, Honor, Murder: A Psychology of Honor Killing", in: *Deviant Behavior* 42:4 (2021), 473–491, here 473.
  - 35 Hasan, "The Politics of Honor", 2.
  - 36 Recep Doğan: "The Dynamics of Honor Killings and the Perpetrators' Experiences", in: *Homicide Studies*, 20:1 (2016), 53–79, in 56.
  - 37 Jennifer K. Bosson/ Joseph A. Vandello: "Precarious Manhood and Its Links to Action and Aggression", in: *Current Directions in Psychological Science* 20:2 (2011), 82–86.
  - 38 Ibid.

is “an acute dilemma” for the killer, as he must decide between “insult, humiliation, exclusion and condemnation” from his community or a lengthy prison sentence and the possibility of execution from the law.<sup>39</sup> The following excerpt describes this dilemma experienced by a man who finally killed his daughter after experiencing months of intense social shame:

My daughter used to run away. I used to spend most of my time to look for my daughter and bring her back. I used to go to the train station at night, where youngsters hung around, to look for my daughter. But many people, including my own brothers, did not believe me. They were accusing me of forcing my daughter into prostitution. They used to say ‘You found a way to earn easy money, soon you will be a patron.’ [...] At nights, even after midnight, they would shout, ‘You are running a house, you are doing this business; you are dishonourable. Your daughter is a slut.’ As I spent most of my time looking for her, I was having difficulty to find a permanent job as a concrete worker. Such treatment went on for a long time. Then I thought that moving to another town might solve my problem. However, when I was packing, my daughter objected to the idea of moving and said ‘I will do it my own way. I chose my path and I am happy with it.’ So, I lost my control and killed my daughter by using a rope that I was using for packing.<sup>40</sup>

Notably, some have argued that the responsibility in many North American and European communities for controlling a woman’s actions has merely transferred from a communal context to “the individual man”, be that her partner or her father.<sup>41</sup>

## Law under the Mandate

By the time Britain took over Palestine in 1920, British officials were sufficiently convinced of their own expertise at wrangling order out of the chaos that accompanied what they saw as the uncivilized masses that populated most any region outside of western Europe. The prolonged ebb of crime in London throughout the last quarter of the 19th century not only led Scotland Yard to declare that the city was the safest in the world, but also provided fodder to justify and obligate the imposition of similar order elsewhere.<sup>42</sup> Law was even seen by some like the English judge, Sir James Fitzjames Stephen, as a more effective and lasting exercise of imperial power than

39 Recep Doğan: “Did the Coroners and Justice Act 2009 get it right? Are all honour killings revenge killings?”, in: *Punishment & Society* 15:5 (2013), 488–514, 498.

40 Ibid., 499.

41 Baker/ Gregware/Cassidy: “Family Killing Fields”, 166.

42 Martin J. Wiener: *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830–1914* (Cambridge: Cambridge University Press, 1994), 216.

military force: “Our law is, in fact, the sum and substance of what we have to teach them. It is, so to speak, the gospel of the English, and it is a compulsory gospel which admits of no dissent and of no disobedience.”<sup>43</sup>

Sir Stephen and others had grounds to hold such views in light of the deeply racialized notion of criminality that prevailed in interwar Britain. Many believed criminal behavior was an inherent trait of less developed civilizations that must be trained out of the people with the implementation of strict laws and even stricter enforcement mechanisms.<sup>44</sup> It was partly this belief, pretext or not, that informed and legitimized the ostensible purpose of the Mandate. As the Covenant of the League of Nations declared, the people in Palestine, as well as the other war-born mandates, were “not yet able to stand by themselves under the strenuous conditions of the modern world.”<sup>45</sup> As such, the law, particularly in a colonial context, “embodied the desires and interests of groups in power” and could justifiably be and often was used as a “blunt instrument deployed against (indigenous and other nonelite) populations.”<sup>46</sup>

This blunt instrument often took the form of criminalizing any action by indigenous peoples that demanded self-government or more rights than the British were

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- 43 James Fitzjames Stephen cited in: Leslie Stephen: *The life of Sir James Fitzjames Stephen: by his brother* (Oxford: Oxford University Press, 2017), 268.
  - 44 Havelock Ellis: *The Criminal*, second edition (London: Walter Scott, 1899).
  - 45 Article 22, Covenant of the League of Nations, 28 April 1919, online available at: <https://avalon.law.yale.edu/20thcentury/leagcov.asp#art22> (accessed 11 May 2022).
  - 46 Sally Engle Merry: *Colonizing Hawaii: The Cultural Power of Law* (Princeton: Princeton University Press, 2000), 264. Although, it is worth pointing out that extensive scholarship in this area has proven that colonized populations frequently also used the law of the colonizer to strike back and leverage conflicts to their own advantage. See also Caroline Elkins: *Legacy of Violence: A History of the British Empire* (New York: Knopf, 2022); Lauren Benton/Lisa Ford: *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge: Harvard University Press, 2016); Nasser Hussain: *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2019); Shaunnagh Dorsett/Jack McLaren (eds.): *Legal Histories of the British Empire: Laws, Engagements and Legacies* (Abingdon/New York: Routledge, 2014); Ronald J. Daniels/Michael J. Trebilcock/Lindsey D. Carson: “The Legacy of Empire: The Common Law Inheritance and Commitments to Legality in Former British Colonies”, in: *The American Journal of Comparative Law*, 59:1 (2011), 111–178; Martin J. Wiener: *An Empire on Trial: Race, Murder, and Justice under British rule, 1870–1935* (Cambridge: Cambridge University Press, 2009); John McLaren: *Dewigged, Bothered, and Bewildered: British Colonial Judges on Trial, 1800–1900* (Toronto: Osgoode Society for Canadian Legal History, 2011); Lauren Benton: “Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State”, in: *Comparative Studies in Society and History* 41:3 (1999), 563–588; Jack P. Greene, “‘By Their Laws Shall Ye Know Them’: Law and Identity in Colonial British America”, *Journal of Interdisciplinary History* 33:2 (2002), 247–260.

prepared to cede to their “less developed” people under their control.<sup>47</sup> Such a system not only kept rebellious colonized peoples in check, but the proliferation of criminalized actions continued the British need to rule in perpetuity.<sup>48</sup> This self-perpetuating system of control reflected the way honor violence operated: Any assertion of self-determination in women was immediately criminalized within the communal order and violence was used to subordinate the criminal. Just as British-led government violence was legitimized under the auspices of state control, many in Palestinian communities viewed honor violence as legitimate means to maintain control of “criminal” women.

This may have been why the often harsh edge of British justice was softened somewhat when it came to murders committed for family honor, although the British put up a convincing front in their complaints about the leniency of the Ottoman Code on such crimes. The standard British approach of adhering as much as possible to indigenous customs in their imperial endeavors quickly became a vexing problem for administrators where the Ottoman Code was concerned.<sup>49</sup> After taking control of Palestine in 1917, General Edmund Allenby had issued a public decree assuring the people that the military government would aim to retain as many Ottoman laws as possible.<sup>50</sup> But with the installment of a civil administration in 1920, the new officials found the Ottoman Code utterly inadequate to serve “the needs of a progressive state.”<sup>51</sup> As the first British High Commissioner, Herbert Samuel, complained, “All this new wine could not be contained in old bottles.”<sup>52</sup> Norman Bentwich, the British Attorney General in Palestine from 1922 to 1931, claimed that the murder rate in Palestine was the highest of anywhere in the world, and that murders committed in the name of family honor were “rife” throughout the region.<sup>53</sup> The reason for this widespread violence, he claimed, aside from the

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47 Caroline Elkins: *Legacy of Violence: A History of the British Empire* (New York: Random House, 2022), 14.

48 Ibid.

49 Officials were limited to applying English law in accordance with Article 46 of the Palestine Order in Council, or inasmuch “as the circumstances of Palestine and its inhabitants and the limits of His Majesty’s [sic] jurisdiction permit and subject to such qualification as local circumstances render necessary.” (The Palestine Orders in Council, 1922–1939, *The Palestine Gazette*, 25 February 1943).

50 Allenby’s Instructions for the military administration of all occupied territory in Syria and Palestine, 23 October 1918, in: Robert Jarman (ed.): *Palestine and Transjordan Administration Reports, Volume I* (Slough: Archive Editions, 1995), 3.

51 Mogannam E. Mogannam: “Palestine Legislation Under the British”, in: *The Annals of the American Academy of Political and Social Science* 164 (1932), 47–54, here 48.

52 Ibid.

53 Norman Bentwich: “The New Criminal Code for Palestine”, in: *Journal of Comparative Legislation and International Law* 20:1 (1938), 71–79, 78.

natural criminality endemic to the inhabitants, was the inadequacy of the Ottoman Code's provision against murder, which was not strict enough to act as a deterrent.<sup>54</sup>

But the British were met with strong resistance in their attempts to anglicize Ottoman law. Not only did the Arabs protest, but some from the Jewish population also resented the intrusion, as importation of foreign elements was exactly what they were trying to avoid in order to revive and reconstruct a "pure" Jewish identity through their own legal system.<sup>55</sup> Some did not see law as a universally applicable code of human justice, but rather unique to each nation, and "just as each nation had its own language [...] both law and language were reflections of the unique spirit of the nation, its *Volksgeist*."<sup>56</sup> British officials were therefore obligated to operate under a slowly evolving hybrid of Ottoman, French, and English codes, giving rise to the quip that Palestinian law was "not Mosaic, but a mosaic."<sup>57</sup>

It took the British council 15 years of debating, constructing, drafting, and re-drafting to finally push through a revised criminal code. The riots of 1929 invigorated the process, partly because, despite the numerous arrests and charges for murder in connection with the riots, prosecutions pursuing the death penalty were made much more difficult by the provision in the Ottoman Code that required proof of least 24 hours' preparation for a murder to establish the element of premeditation. Even with such restrictions, the executions the British succeeded in carrying out sparked protests against the unjustness of applying British law outside Britain. This no doubt contributed to British officials' low opinion of the Ottoman Code but makes their decisions to commute death penalties for honor killings stand out even more starkly in contrast.

Those advocating for the establishment of a more anglicized law argued that the Ottoman Penal Code lacked any deterrent effect, as it 1) allowed for murder to be reduced to manslaughter with evidence of adequate provocation, and 2) allowed for a complete reneging of charges if the accused could prove the murder had been a direct result of his discovery of the victim committing an act of adultery. With such lenient terms, it was no wonder murder continued unabated in the region, British officials argued.<sup>58</sup> Those opposing the Ottoman law claimed that only stricter laws

54 Ibid.

55 Assaf Likhovski: "The Invention of 'Hebrew Law' in Mandatory Palestine", in: *The American Journal of Comparative Law* 46:2 (1998), 339–373.

56 Friedrich Karl von Savigny: *Of the Vocation of our Age for Legislation and Jurisprudence* (London: Littlewood and Col, 1831), 24–27. Von Savigny was a German legal theorist who led a movement against the adoption of uniform German legal code à la Napoleon. His work influenced and informed many European nationalist movements, including the Zionist movement in Palestine.

57 Bentwich, "The New Criminal Code", 71.

58 Ibid.

against murder – establishing homicide as the a priori charge instead of manslaughter, for instance – and harsher punishments would carry the requisite prophylactic weight to counterbalance the pervasive criminality.<sup>59</sup>

The 1936 Palestine Criminal Code Ordinance (PCCO-1936) was the resulting compromise. It retained the a priori manslaughter charge for homicide but eliminated the female relative as a mitigating factor while still allowing for lesser punishment if the accused could prove the murder was committed under sudden provocation such that he lost control of his reasoning faculties. Section 216 of PCCO-1936 required three elements for a murder conviction: 1) Resolution to kill; 2) Cold blood with no immediate provocation; and 3) Preparation to kill. If the judges found that all three elements had been met, execution was the punishment.<sup>60</sup>

In his analysis of the revised code, Bentwich predicted that the new definitions of murder represented a “definite departure from the customary social morality”, and as such, would “likely [...] multiply the cases in which the High Commissioner will be called upon to consider the execution of a death sentence.”<sup>61</sup> In this prediction, Bentwich was specifically referring to honor killings, and he indeed proved prescient. But instead of upholding the death penalties meted out by the justices according to the revised code, the High Commissioner commuted many of them, often at the behest of the very justices who had just issued the conviction under consideration. This about face, particularly in light of the international scrutiny of and tenuous justification for Britain's presence in the region, stands out as a peculiar irregularity, even for an empire like Britain's, which was “built upon a contradiction.”<sup>62</sup> That contradiction, as Martin Wiener has explained, was “justified as a benevolent liberating mission to many [...] enslaved by ignorance, oppressive traditions, and misrule.”<sup>63</sup> The British saw their law as the most important tool for effecting this self-proclaimed mission of liberation.

## Gendered Sentencing

No one was in more need of liberation than the women of Palestine. At least, that is what British officials told themselves and the British public after obtaining a Mandate over the region from the League of Nations in 1920. Forged through generations of British discourse as a miserably oppressed group who were subject to the despotic rule of the Ottomans, Islam, and their husbands, there was no better place

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59 Ibid.

60 Section 216, Palestine Criminal Code Ordinance of 1936.

61 Bentwich, “The New Criminal Code”, 77.

62 Martin J. Wiener, *An Empire on Trial*, 1.

63 Ibid.

for British men to prove and produce more British masculinity than a land full of suffering women. Not only did the so-called liberation of women help justify British rule in Palestine, but this particular mode of “liberation” was both constitutive and intrinsically contributive to the concept of British masculinity that had been forming since the late 18th century.

With the defeat of Napoleon and Britain's rise to world dominance over the course of the 19th century, British notions of gender underwent a gradual but significant change. Men came to be seen as inherently and uniformly dangerous, prone to violence, greed, and impulsivity. To become a true man, specifically a true British man, one had to learn self-control and “cool-headedness”.<sup>64</sup> As with any masculinity, this one drew heavily for definition on the corresponding contours of femininity. Real British men protected women – importantly, the *right* women – from the abuse and violence of those men who adhered to alternative, inferior masculinities.

In his analysis of Gothic novels in Victorian England, Cannon Schmitt found that the female suffering that pervaded the popular genre “produce[d] or confirm[ed] Englishness” by evoking this “reimagined” British masculinity.<sup>65</sup> Some argue that this change in masculinity was partly due to the rise in numbers of British men who were traveling to and working in the empire.<sup>66</sup> Although violence against women had been common in Britain for centuries, witnessing similar acts committed by others in different settings, particularly by men seen as racially inferior, provided British men a way to differentiate themselves from those they ruled by assuming the role of protector.<sup>67</sup> As a result, a new British masculinity was created which centered around treatment of women and “became a touchstone of civilization and national pride.”<sup>68</sup> The important caveat to this protectionary mandate for British masculinity, however, was that the women being protected must fit the parameters of femininity that corresponded to this masculinity in order to validate that masculinity and confirm its dominance.

This emphasis on protecting women manifested itself most visibly in British courts, where the conviction and execution rate of men who killed women increased steadily into the 20th century.<sup>69</sup> And yet, at its core, this British masculinity de-

64 Martin J. Wiener: *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2006).

65 Cannon Schmitt: *Alien Nation: Nineteenth Century Gothic Fictions and English Nationality* (Philadelphia: University of Pennsylvania Press, 1997), 161.

66 Wiener, *Men of Blood*, 3.

67 Ibid.

68 Ibid.

69 Ibid., 6. John Tosh notes that the “rising tide of revulsion” against violence such as wife-beating and the like was also due to the rise in literacy and news reports, which provided “repeated reminders of the shocking reality of matrimonial abuse to fuel intolerance of

pended on the suffering of women, and that suffering depended largely on the presence of subordinate masculinities in order to cause the suffering from which true men would protect and rescue women to prove their manhood. If women did not need the protection of men, either because there was no threat or the woman herself did not require or want it, this naturally caused a rupture to the sense of manhood so painstakingly erected by British men.

While the stricter criminalization of men's violence benefited women in many ways, the cost of improved security was the restructuring of femininity into a narrow, artificially elevated box of moral purity, inherent spirituality, and innocent fragility that must be preserved. And, as with the logic of honor killings, the line between protection and control of these purportedly fragile women was often very thin. Thus, those women who would or could not conform to these structural requirements embodied a threat to the masculinity that depended on that particular femininity to give it meaning.

Such women qualified as “unnatural” and a threat to the social order – aka, the dominant masculinity and its correlative femininity – by failing to marry or refusing to stay with and support a parental figure; by exercising independent thought or way of life, such as living alone, supporting themselves financially, or most significantly, by manifesting desire through the choosing of sexual partners, particularly outside the bonds of legally recognized marriage. Choice moves an individual closer to the source of decision-making power, and despite the variation in masculinities over time and place, domination over women and over inferior masculinities is always a central objective of the prevailing masculinity; interwar British masculinity was no exception.<sup>70</sup> While public violence in Britain decreased during this time, helping to feed the widespread perception of self-controlled British manhood, violence in

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it” (John Tosh: *Masculinity and the Middle-Class Home in Victorian England* (New Haven: Yale University Press, 2001), 62). Tosh also found that the middle class tended to attribute this behavior to the working class, which helped deflect any conversation or exposure of similar violence taking place in middle-class homes. This again illustrates the operation of the dominant masculinity at play, where those men who had proved themselves “real” men by purging themselves of the violent, uncontrollable impulses could use this gendered capital to justify and increase their control over both the women who needed continued protection from the lesser men, and the lesser men themselves. See also Lynn Hunt: *Inventing Human Rights: A History* (New York: W. W. Norton, 2007), where she argues, inter alia, that the rise in epistolary novels and the concept of bodily integrity through portraiture helped Europeans develop empathy and moral autonomy of the individual, which in turn contributed to a decrease in violence and in the tolerance of violence, eventually leading to “the invention” of human rights as a concept.

- 70 Michael Kaufman: *Cracking the Armour: Power, Pain and the Lives of Men* (Toronto: Penguin, 2002), 26. See also Kristin L. Anderson/Debra Umberson, “Gendering Violence: Masculinity and Power in Men’s Accounts of Domestic Violence”, in: *Gender and Society* 15:3 (2001), 358–380.



the domestic sphere did not.<sup>71</sup> Thus, the public image of controlled, rational British manhood was both true and entirely false, while the public perception justified domination of both colonial peoples whose masculinities were perceived as the opposite of the cool-headed British man and of the women who were subject to the uncontrolled violence of those lesser men. As long as such conditions prevailed, the need for British men to protect and rule would continue, and so British imperial agents had a delicate confluence of priorities to balance: Do just enough to present and uphold the image of liberator to the world while not quite enough to obviate the need for the liberator.

Through this lens, British judges' decisions to ascribe lesser convictions and sentences to men who killed women for violating sexual norms are not only unsurprising but make sense as a natural outcome of the contemporary gender dynamics that upheld British imperial rule. By changing the criminal code, doling out more convictions, and giving lip service to the cruelty of honor violence, British Mandate officials reinforced their image at home and on the international stage as the saviors of oppressed women and models of enlightened justice and human rights. Behind the scenes, however, British justices and multiple High Commissioners signaled their tacit approval of men's prerogative to use violence to control women in order to maintain the very role they vaunted as women's greatest protectors.

When Justice Randolph Copland made to sentence Mohammed Joumeah Abu Kalbein for the murder of his sister, as described in the opening paragraph of this chapter, for instance, he revealed his mastery of this multi-layered ambivalence that characterized the dominant British masculinity. In his speech concluding the trial, he first admonished the defendant for the crime, classified it as "serious", but then let the man off with a mere ten years.

I am quite aware of the unfortunate tradition and custom which is particularly prevalent in the villages, and know that you probably do not regard yourself as guilty. Whatever you think of that, you have committed a crime and killed a human being, and for that you have to be punished. We are taking into consideration everything that there is in your favour, but we find that the crime is serious. The sentence of the Court is ten years' imprisonment.<sup>72</sup>

Here the justices decided that even though Mohammed had known about his sister's actions for several weeks, it was "probable" that he did not know she was pregnant, and because he used his sister's own kitchen knife to kill her, there was no reason to think he had planned the murder. Kalbein's lack of foresight to bring his own murder weapon saved him a conviction of premeditation. But most significantly, the jus-

71 Wiener, *Men of Blood*, 6.

72 "In Defence of Family Honour, Ten Years for Arab who Murdered Sister", *The Palestine Post*, 21 December 1939.

tices found that learning his sister was pregnant was sufficient provocation to reduce Kalbein's charge from murder to manslaughter.

While provocation has maintained a longstanding presence in British codes as a mitigating factor for murder, what qualifies as provocation often serves as one of the most telling sites of inquiry into the current state of a community's moral priorities.<sup>73</sup> By using women's "bad character" as a justification for murder, British men not only made themselves the ultimate arbiters of what constituted acceptable femininity, but they helped ensure their continued control over the region by perpetuating the need for British men to protect women from the murders that those same men continued to excuse.

This contradiction embedded in the judges' approach to honor violence was recognized by some of the justices themselves, even after the revision of the code. In July 1942, Mohammad Ahmad Salem Ishreim Ishreim was convicted of double homicide after stabbing to death his wife Azizeh and her mother, Sabha. The three justices who reviewed the case upheld the defendant's conviction, *despite* the victims' bad character, which consisted of leaving the village, presumably without the defendant's consent.<sup>74</sup> But notably, the justices came to this decision because although family honor could serve as "an extenuating circumstance in the case of one murder [...] it cannot possibly be an excuse for two murders."<sup>75</sup> The reason for this parsing of justifiable provocation is not immediately clear, particularly in light of Chief Justice Trusted's statement the previous year disavowing recognition by the Court of "honour as in any sense a defense" to murder.<sup>76</sup> But the justices in 1942 may have been trying to play both sides of the fence, as their report to the High Commissioner continued:

For over twenty years now, since the British Occupation, this barbarous custom has continued unchecked, and whilst I agree that education may in time affect a

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73 Danielle Tyson: *Sex, Culpability and the Defence of Provocation* (London: Routledge-Cavendish, 2012); Pascale Fournier et al.: "Dishonour, Provocation and Culture: Through the Beholder's Eye?", in: *Canadian Criminal Law Review* 16:2 (2012), 161–193; Mitchell N. Berman: "Justification and Excuse, Law and Morality", in: *Duke Law Journal* 53:1 (2003), 1–77; Caroline Forrell: "Gender Equality, Social Values and Provocation Law in the United States, Canada and Australia", in: *Journal of Gender, Social Policy & the Law* 14:1 (2006), 27–45; Mandy Burton: "Sentencing Domestic Homicide Upon Provocation: Still Getting Away with Murder", in: *Feminist Legal Studies* 11 (2003), 279–289; William I. Torry: "Social change, crime, and culture: The defense of provocation", in: *Crime, Law and Social Change* 36 (2001), 309–325.

74 *Attorney General v. Mohammad Ahmad Salem Ishreim*, July 1942, The National Archives (TNA), CO 733/434/16. There were two Arab justices assigned to this case – Khayat J. and Abdul Hadi J. – and one British justice, who wrote the opinion. Unfortunately, the name of the British justice is not legible in the records.

75 Ibid.

76 *Abu Miriam v. Attorney General*, in: M. Levanon/A.M. Apelbom/H. Kitzinger/A. Goralí (eds.): *Annotated Law Reports* (Tel Aviv: S. Bursi, 1941), 128.

change, I feel that, in a particularly bad case like this, an example might perhaps be made, and would act as a deterrent in the future. Your Excellency will remember that in India it was only a strict enforcement of the law that the custom of suttee, or self immolation of widows, amongst the Hindus, was finally eradicated, and suttee had a religious sanction behind it, which a 'family honour' murder has not.<sup>77</sup>

The justice in this case attests to the fact that, despite the change in law six years earlier, the practice had "continued unabated", and even he believed that this was partly due to the leniency with which the courts had treated the practice for the past two decades. He was implicitly arguing that it would take the unified determination of the legal establishment to curb such a practice.<sup>78</sup> I would suggest that effective deterrence would not have arisen merely from the threat of a potential death sentence, but also because such an act would reconstruct the elements of the dominant masculinity by signaling to the community that using violence to control women's behavior no longer constituted a foundational or acceptable pillar of manhood.

But it is quite clear that the dominant masculinity of British men at this time was not ready to concede its power contained within the law, either through custom or code, that upheld this gender order. The anemic advocacy like that in the preceding case, where the justices were comfortable accepting the murder of one woman for honor, but not two, is the only evidence that justices were ever troubled enough by the weak law to suggest a change.

In 1927, the Palestinian Supreme Court had held that "conduct and character of the [murdered] woman" qualified as a mitigating factor in the sentencing of a defendant in a murder trial.<sup>79</sup> It goes without saying that those who embodied and propagated the dominant masculinity – namely white British men of the upper class – were those who decided if the "conduct and character" of a murdered woman strayed far enough from the dominant femininity to absolve her murderer of full responsibility for her death.

While tolerance for violence against women had been declining in Britain throughout the 19th century, the first half of the 20th century started to see a strong

77 Ibid.

78 He may have been on to something, as many legal scholars have argued that lenient legal policies are the main culprits in the continuation of honor killings. See, for example, Alkhatib, "Social Death", 39: "Most of the reviewed studies considered legislation that legitimizes HK [honor killings] as the most important reason for perpetuating it." Hasan, "The Politics of Honor", considered it to be legislation, not culture that encouraged men to kill women for honor. He argued that the existence of the phenomenon of HK in Arabic societies is reinforced inter alia by the legal system, which gives 'honor' murderers exemption. Legal systems serve both the governments and the guardians of tradition, forging an alliance between both of them.

79 Assize Appeal 16/26, *Abu Jasser v. Attorney General*, 2 Rotenberg 543 (1927).

backlash against the perceived power that women were gaining in British society.<sup>80</sup> Those most likely to leave Britain for posts in the empire were those whose power was most threatened by the rising women's movement. As John Tosh notes, being at home meant "constant negotiation" with women, and in Britain, those women "were often perceived to hold the advantage."<sup>81</sup> By the 20th century, over 30 per cent of men serving in the empire were public school graduates, men who had been educated within traditional models of strong patriarchy and complete male dominance over home, wife, and children.<sup>82</sup> The "men-only sphere" careers in the empire appealed to men who grew up engaging in and seeking after a highly concentrated homosocial environment, where approval from and friendship with other men motivated much of their social behavior.<sup>83</sup> Such men were regarded as having a "veneer of good manners and social poise", but they lacked "respect for women of their own or any other class."<sup>84</sup>

The angst over the gains women had managed to wrangle must have only increased when British men arrived in Palestine and realized that the same spirit of insubordination had infected the women there. In 1933, High Commissioner Arthur Wauchope gave voice to this anxiety when he wrote to the Secretary of State for the Colonies that women, even "good" women from "good famil[ies]" had participated in the latest demonstrations against the Mandate, not only through violent assaults against security forces, but they also "did all they could to urge the male members of the demonstration to defy police orders."<sup>85</sup> Such a disquieting change in the behavior of the oppressed women of Palestine likely entrenched British officials further in their determination to maintain both the political and gender power structures; indeed, both were mutually dependent on the other.

This contradictory stance towards women mirrors the legal approach these men took towards honor violence. For instance, a decade after the 1927 Supreme Court holding, Chief Justice Harry Herbert Trusted denied that honor had ever been treated by the court as a mitigating factor in murder cases, but was instead, he said, merely one factor among many that the High Commissioner took under consideration when deciding whether to commute a petitioner's sentence.<sup>86</sup> This loophole allowed judges to find a defendant guilty of murder instead of manslaughter, but then kept them from having to truly punish them for murder. Not only did Justice Trusted's declaration refute the spirit of the Supreme Court's holding, if not the

80 Pankhurst, "Post-war backlash violence"; Tosh, *Masculinity*, 177.

81 Tosh, *Masculinity*, 177.

82 Tosh, *Masculinity*, 176.

83 Ibid.

84 Ibid.

85 High Commissioner (HC) to Cunliffe-Lister (Secretary of State for the Colonies), 23 October 1933, TNA, CO 733/239/5.

86 *Abu Miriam v. Attorney General*, in: Levanon et al. (eds.): *Annotated Law Reports*, 128.

language on its face, his statement was belied by numerous cases, including ones he had presided over.

For example, in 1939, he and the other Supreme Court justices recommended mercy for a man who had confessed to the carefully planned and executed murder of his daughter after she left her husband and took up with another man.<sup>87</sup> Justice Trusted wrote to the High Commissioner after upholding the defendant's murder conviction, explaining that, "Your Excellency's predecessor *always recognized this traditional excuse for murder*, and when satisfied that the crime was so committed, commuted the sentence of death to one of imprisonment."<sup>88</sup> He then recommended mercy, and the High Commissioner granted it.

The same year that Justice Copland reduced the brutal murder of Naameh and her unborn child to manslaughter (1939), the recently knighted Chief Justice Trusted wrote to the High Commissioner asking for mercy for Haj Darwish El Ankar, whom Trusted and his colleagues on the court had just convicted of murder. El Ankar had meticulously planned and carried out the murder of his 35-year-old daughter for having run away from her husband.<sup>89</sup> After making clear that the defendant's guilt was certain, the justices opined that, because the accused "belongs to the past generation who have one idea of the punishment of a loose daughter, and that is by killing her, the Court is willing to recommend to His Excellency the High Commissioner to exercise his prerogative of mercy."<sup>90</sup> The High Commissioner commuted the sentence.

And yet just a few months later, the High Commissioner upheld death sentences for both Khalid Haj Hassan Suleiman and Salah Muheyideen Ahmad Jum'a after they shot a woman over a quarrel about olives.<sup>91</sup> The High Commissioner that same month also refused to commute the death sentence of a 19-year-old man who murdered his friend in order to steal his friend's gold watch to get out of debt.<sup>92</sup>

## Intraimperial Tolerance for Honor Violence

Such murders as those committed in the course of robbery or over a quarrel about property were familiar to British justices. The sacrosanct nature of private property was one of the foundational pillars of British common law and an oft-cited justification for and benefit of British rule in the benighted lands that had yet to grasp

87 *Attorney General v. Haj Darwish El Ankar*, July 1939, TNA, CO 733/390/3.

88 *Ibid.* (emphasis added).

89 *Ibid.*

90 *Ibid.*

91 *Attorney General v. Khalid Haj Hassan Suleiman and Salah Muheyideen Ahmad Jum'a*, April 1940, TNA, CO 733/390/3.

92 *Attorney General v. Muhammad Hussein Bakr*, November 1943, TNA, CO 733/390/3.

this concept. But killing to protect the dominant masculinity was also familiar to the British sensibility. While British law in the early 20th century did not excuse killing for family honor, the role of fathers and male relatives in protecting the chastity of their sisters and mothers was well established, and this value showed up again and again across the empire before and during Britain's occupation of Palestine.

A century earlier, British lawmakers in India had paid tribute to what they saw as the "universally accepted norm" that a man's honor was worth the life of a woman by codifying honor as an excuse for murder:

We think that to treat a person guilty of such homicide [for purposes of honor] as we should treat a murderer would be a highly inexpedient course; a course which would shock the universal feeling of mankind and would engage the public sympathy on the side of the delinquent against the law.<sup>93</sup>

Beth Baron has shown that British officials quickly singled out honor killings as one problem justifying British occupation and implementation of British law in Egypt in the late 19th century.<sup>94</sup> By 1928, hundreds of such murders were being reported every year, but the standard sentence for murders motivated by honor was just five years, causing even those men who had murdered for other reasons to alter their story to obtain a lighter sentence.<sup>95</sup>

British officials showed the same tolerance for honor violence in Iraq. An anonymous author wrote to *The Palestine Post* lamenting the way honor violence was indulged by the judiciary. The author related the story of a recent case tried in the Baghdad Court of Sessions, where a man had stabbed a girl 18 times "to save the family's name" after she ran away from home to marry a man of her own choice.<sup>96</sup> Authorities returned her to her home, despite her pleas that her father would kill her. Her father assured the authorities he would leave her alone, and he kept his promise; the next day her uncle killed her instead. "Having regard to his reasons for committing the murder," (which fulfilled every element of premeditated murder) the court gave the defendant a mere ten years.<sup>97</sup> This was a "typical" case, according to the author. He or she went on to say,

All enlightened Iraqis must view with misgiving the 'lenient' attitude which is still shown by the courts of justice towards certain crimes of a most heinous nature which, in a more advanced country, would never be pardoned except on the

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93 Indian Law Commission/Thomas Babington Macaulay: *The Indian Penal Code, As Originally Framed In 1837* (Madras: Higginbotham, 1888).

94 Beth Baron: "Women, honour, and the state: Evidence from Egypt", in: *Journal of Middle Eastern Studies* (2006), 1–20.

95 Ibid.

96 "Murder and the Family Honour", *The Palestine Post*, 23 January 1933.

97 Ibid.

ground of lunacy, and which would bring on the murderers the obloquy and contempt of all good citizens.<sup>98</sup>

India, Egypt and Iraq – all showed similar patterns of leniency toward men who killed for honor, giving credence to the proposition that the same legal approach in Palestine was not merely an effort to appease a restless populace, but rather the result of years of deep-seated gendered sentencing dressed up to look like protection for women, but which proved to be the opposite. Each decision to excuse a man who killed for honor fortified the structure of British masculinity. By convicting the killer of murder, the British man distinguished himself from the man who succumbed to impulsive passion and senseless violence; the conviction also showed the British man's willingness and ability to protect women from irrational and dangerous men. But by reducing his sentence, the British man maintained his control through the implicit message such a sentence conveyed: that a woman's life was only worth as much as her willingness to submit her will to male control.

## Conclusion

Hasasi and Bernstein argue that British officials tolerated honor killers because they did not perceive this kind of violence as a threat to British rule. On the contrary, I argue that it was precisely because “bad” women – or those who dared to exercise their agency against the will of their male relatives – were seen as a threat to the dominant masculinities of both British and Palestinian men that British men refused to punish these women's murderers to the full extent of the law. The revision to the criminal code that ostensibly precluded honor as an extenuating circumstance to murder operated rather as a thin veneer to justify British presence in the region and satisfy the conviction of the British that they were protecting and liberating women. To allow Palestinian women, over whom the British had ultimate control, to disobey their own fathers and brothers and husbands would set a precedent that could ultimately destabilize the dominant masculinity to which British men laid claim.

A historical analysis of Britain's encounter with honor crimes in Mandatory Palestine reveals the roots of western complicity in the perpetuation of violence against women in the name of male honor and imperial policy. A historical approach also re-centers western powers' integral role in the toleration and implicit condoning of such crimes through the manipulation of colonial law, the effects of which are still being felt today. By restoring historicity to the interplay of western imperial agendas within early 20th century community frameworks in the Levant, it becomes clear that blaming “traditional” or Muslim cultures as the originators

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98 Ibid.

and sole perpetrators of this particular form of gendered violence has failed to effectively curb honor crimes and complicates the assumption that western European countries have successfully eradicated misogyny from their own socio-legal structures.

Legal scholars have argued that the culpability of a criminal defendant is only one part of the legal contract; if the party or institution to whom the defendant is ostensibly answerable lacks moral standing, the defendant cannot be held accountable to a standard the accusers have not themselves upheld.<sup>99</sup> This could perhaps be one factor at play in Britain's struggle and ultimate failure to control Palestine, as well as a continuing factor in the ongoing problem of honor killings in both Britain and Israel today.<sup>100</sup>

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99 Matthew Matravers: "Responsibility, Morality, and Culture"; in: Will Kymlicka/ Claes Lernerstedt/Matt Matravers (eds.): *Criminal Law and Cultural Diversity* (Oxford: Oxford University Press, 2014).

100 See, for example, Nadera Shalhoub-Kervorkian/Suhad Daher-Nashif: "Femicide and Colonization: Between the Politics of Exclusion and the Culture of Control", in: *Violence Against Women* 19:3 (2014), 295–315, here 297. They argue that, prior to even investigating cases of suspected femicide, Israeli "police routinely resort to the pretext of 'honor' upon learning of the murder of a Palestinian woman or girl by her brother or father. Classifying such crimes as 'honor' crimes allows the police system to relegate the crime to an 'internal family matter' and 'cultural issue', and hence one in which they cannot effectively intervene [...] The unwillingness on the behalf of the formal Israeli legal system to intervene is itself an act of male domination."