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ABSTRACT

While it is often argued that police torture is institutionalised in India, the only authoritative government-backed study of the practice in the history of modern India is the Madras Torture Commission Report of 1855. In the context of the silence that surrounds present-day police violence in India, the rather curious phenomenon of an investigative Commission, instituted by a colonial state, over a hundred and fifty years ago, is particularly interesting. In this article, I attempt a textual analysis of this Report, and an investigation of its ideological and historical context. I argue that the Report primarily served to discursively “manage” the issue of torture, by erasing the complicity of the colonial state in its practice, and that the reforms it suggested resulted in the institutionalisation of a specifically colonial model in the restructuring of the Indian police, a structure that substantially survives to this day.

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“VERY WICKED CHILDREN”: “INDIAN TORTURE” AND THE MADRAS TORTURE COMMISSION REPORT OF 1855

Anuj Bhuwania

1. Introduction

Alec Mellor, in his landmark book on the history of torture, *La Torture*, first published in 1949 in the aftermath of the Second World War, tries to explain the reasons for the supposed *reappearance* of torture in the twentieth century. He suggests three fundamental causes for this resurgence: the rise of the totalitarian state culminating in the USSR; the importance of “intelligence” gathering and “special methods of interrogation” as a result of modern warfare; and finally, the influence of “Asianism” (PETERS, 1985, p. 106). Though the third “cause” does seem rather contrived in the context of the first two, this ethnocentric fetishization of “Asia” as the natural home of torture and other such “barbaric” practices, and its corollary – torture as alien to modern, enlightened Europe – is not an isolated instance. Montesquieu, in his “Persian Letters,” for example, used the idea of the “tyranny of the Turk” as a foil for that of Louis XIV. In fact, such an analysis is representative of a long and chequered history, of a discourse in which such a projection of “despotism” as uniquely “oriental” “helped Europeans define themselves in European terms by making clear what they were not, or rather were not *meant* to be” (METCALF, 1994, p. 7).

In a similar vein, as Talal Asad writes, it has often been observed “that European rule in colonial countries, although not itself democratic, brought about moral improvements in behaviour – i.e., the abandonment of practices that offend against the human” (ASAD, 1998, p. 293). However, the progress made in eradicating such inhuman practices as torture has admittedly been rather uneven. Thus, the accepted account of events is that, although the Europeans tried their best to suppress these cruel practices (that were previously taken for granted in the

Notes to this text start on page 26.

non-European world), they were not completely successful (ASAD, 1998, p. 293). Acknowledging this failure of its pedagogy, the West continues its sincere efforts in arenas like the United Nations, with Non-Governmental Organisations taking up cudgels on its behalf.

In 1973, one such organisation, Amnesty International, published an international survey of torture. In its section on India, it reported widespread use of torture by the Indian police (AMNESTY INTERNATIONAL, 1973). Following this, Upendra Baxi argued that torture is, in fact, institutionalised in India. As he puts it, "custodial violence or torture is an integral part of police operations in India" (BAXI, 1982, p. 123). He notes, however, the difficulty in assessing the magnitude of this phenomenon, because of the lack of any authoritative government-backed study of the practice. Ironically, he says, "when one looks back a little, one finds that the British governing elite was more explicitly concerned with use of torture by the native police, than the governing elite of independent India" (BAXI, 1982, p. 129). Baxi's statement probably derives from the fact that the only comprehensive study of this kind in the history of modern India is the Torture Commission Report of 1855. The Commission was set up by the then Madras Government, under orders from the Court of Directors of the East India Company. Baxi notes that the Commission's conclusions regarding the plight of the victims are still valid today. Police torture is as much a reality now as it was then (BAXI, 1982, p. 130).

In the context of the silence that surrounds present-day police violence in India, the rather curious phenomenon of an investigative Commission, instituted by a colonial state, over a hundred and fifty years ago, is particularly interesting. Why was the British governing elite so explicitly concerned with the use of torture by the native police?

I am not concerned here with examining the degree to which torture was prevalent in pre-colonial, colonial or post-colonial India. My aim is, rather, to examine the discourse of torture, and, in particular, the peculiarities that this discourse assumed in the colonial context of mid-nineteenth century India.

My argument is in two parts: first, I argue that the Report primarily served to discursively "manage" the issue of torture, by erasing the complicity of the colonial state in its practice. Second, I argue that the reforms it suggested resulted in the institutionalisation of a specifically colonial model in the restructuring of the Indian police.

The first section analyses the language of the Report. As an all-European body called upon to investigate the prevalence of torture in a South Indian province in the mid-nineteenth century, how did the Commission interpret its mandate? How did it construct the problem that it was supposed to look into? How did it look at issues of race? Or, more specifically, how did it go about fixing responsibility for the practice on Indians and Europeans? And, finally, what was its diagnosis of the malaise and the solutions it suggested?

The second section tries to examine the curious question of *why* the Commission was set up at all. Why did the Report come to be written the

way it was, and *who* was it written for? In order to answer these questions, this section examines the ideological context of the Report. By the eighteenth and nineteenth centuries, the issue of torture and its abolition had become a crucial moral and humanitarian theme in Europe, and this is reflected in the almost triumphant moral tone of popular histories of the subject. This is followed by an analysis of the nature of nineteenth century colonial discourse with regard to India, which, I believe, is crucial to understanding why the colonial commission on torture came to the conclusions that it did. Specifically, the narrative device of the Report, putting the blame almost entirely on the native police and their supposed propensity to torture,” is placed in the context of the colonial ideological trends of the time.

The final section examines the legacy of the report in terms of the reforms it resulted in. The entire structure of the Madras Police was overhauled, broadly in accordance with the Commission’s recommendations. The Madras model later became the basis for police reforms throughout India. In fact, the same structure endures till today. The organising principle of this structure, as well as that of the Irish Constabulary, on which it was modelled, is next critically examined. In conclusion, I argue that the far-reaching changes thus introduced in the structure of the colonial police must be placed in the context of colonial Indian bureaucracy as a whole, especially if we are to understand what I believe is the specifically colonial character of the modern regime of power in India.

This paper is actuated by the belief that the “root of postcolonial misery” (in Partha Chatterjee’s words) lies in the “surrender to the old forms of the modern state,” as “autonomous forms of imagination of the community were, and continue to be, overwhelmed and swamped by the history of the postcolonial state” (CHATTERJEE, 1993, p. 11).

2. The Torture Commission Report, 1855.

It is not the torture of the high European sort [...] Indian torture is ready, impromptu, ingenious, cheap, annoying, disgusting, revolting and petty in the extreme [...] It is the torture of very wicked children. (The Times, 3 sep. 1855 apud PEERS, 1991, p. 50).

In 1854, the House of Commons was rocked by allegations of torture against the Honourable East India Company. During a debate, based on information from the Madras Presidency, it was said that torture was frequently employed by native officers to compel the ryots to pay the demands of Government (GUPTA, 1974, p. 310). Mr Danby Seymore, MP, accused the Company of using torture and coercion to get ten shillings from a man when he only had eight (RUTHVEN, 1978, p. 183). Soon the British press took over. *The Times* wrote of the “Indian Inquisition” and *Punch* carried a satirical piece on the issue (PEERS, 1991, p. 34). The Court of Directors immediately directed the Madras Government to set up “a ‘most searching inquiry’ and to furnish them a full report on the subject” (GUPTA, 1974, p. 311). Accordingly, on the 9th of September 1854, a three-member Commission¹

was appointed to enquire into the "use of torture by the native servants of the state, for the purpose of realising the Government revenue" (COMMISSIONERS FOR THE INVESTIGATION OF ALLEGED CASES OF TORTURE AT MADRAS [MADRAS], 1855, p. 3). However, the scope of the enquiry was soon enlarged to include "the alleged use of torture in extracting confessions in police cases" (MADRAS, 1855, p. 3). The Commissioners were informed that:

The instructions of Government were at first confined to the Revenue Department, because the imputation of the use of torture solely referred to the collection of the public revenue; but the Governor in Council is desirous of taking this opportunity of ascertaining the extent to which similar practices are resorted to in police matters, in which they have long been admitted to prevail, and the Commission will therefore be requested to extend their investigation to the Police Department, and, in fact, go fully into the whole subject in all its bearings. (MADRAS, 1855, p. 3).

The Commission drew up a notification to make its existence generally known to the people. 150 copies of this notification in English, 10,000 in Tamil, 10,000 in Telugu, 10,000 in Canarese, 5,000 in Malayalam and 5,000 in Hindustani were despatched to all the districts of the Presidency to be generally distributed and to be affixed on all offices (MADRAS, 1855, p. 3). Also, the notification was advertised in all the newspapers of the Presidency and the complaints were to have reached the Commission by the 1st of February 1855. About 519 complainants appeared before the Commission, some from distances exceeding 300 miles. Also, 1,440 complaints were received by way of letters (MADRAS, 1855, p. 4). After having been in existence for about 7 months, the Commission submitted its Report on the 16th of April 1855.

The very first issue that the Report dwelt upon was the question of the novelty of the practice of torture. Relying on "old authorities," it noted the "historical fact" that "torture was a recognised method of obtaining both revenue and confessions" since pre-British times (MADRAS, 1855, p. 5). Specifically with regard to the practice of torture for eliciting confessions, even the Government Order of the 19th of September 1854, extending the Commission's enquiry to police matters, said:

So deep rooted, however, has the evil been found, and so powerful the force of habit, arising from the unrestrained licence exercised in such acts of cruelty and oppression under the former rulers of this country, that it has not been practicable, notwithstanding the vigorous measures adopted, wholly to eradicate it, from the almost innate propensity of the generality of native officers in power to resort to such practices on the one hand, and the submission of the people on the other; and accordingly the abuse still prevails in the Police Department, although undoubtedly not to the same extent as formerly. (MADRAS, 1855, p. 5).

The Commission, accepting this "native propensity," then frames the issue before

it thus: has the “change of government effected any radical change in the habits of the native lower officials?” (MADRAS, 1855, p. 5). The question it examines is:

[...] whether there has arisen anything in the civil administration of the last few years, which has exercised a special influence, or had any preventive operation upon the continuance of the practice, or any particular tendency towards its extinguishtments. (MADRAS, 1855, p. 5).

The Report then goes on to discuss the various British interventions till then regarding torture in criminal cases. It was noted that between 1806 and 1852 as many as 10 circular orders were promulgated by the *Faujdari Adalat* (the Supreme Criminal Court) on the subject of extorting confessions (MADRAS, 1855, p. 8). In April 1826, the Court of Directors of the Company despatched a letter to the Madras Government regarding various reports of torture from the Presidency (MADRAS, 1855, p. 5). Interestingly, the Court in its despatch discusses various judicial pronouncements on torture in Madras, a recurring theme of which is the leniency of the European magistrates towards native police officers, in cases of misconduct (MADRAS, 1855, p. 5-8). These allegations were brushed aside by the powerful Governor of Madras Presidency, Sir Thomas Munro with the comment that:

It is no doubt too certain that many irregularities are used in obtaining confessions, and that in some instances, atrocious acts are committed; but when we consider the great number of prisoners apprehended, and the habits of the people themselves, always accustomed to compulsion where there is suspicion, how difficult it is to eradicate such habits, and how small the proportion of cases in which violence has been used is to the whole mass, the number of these acts is hardly greater than was to be expected, and is every day diminishing. (MADRAS, 1855, p. 8).

In 1832, the Parliamentary Select Committee on East India Affairs examined the issue of torture in British-administered India. Alexander Campbell, who had been the Registrar of the Sudder Diwani and Faujdari Adalat (the Supreme Civil and Criminal Court, respectively) was asked by the Committee:

Are you aware whether the practice of torture by the native officers, for the purpose of extorting confessions or obtaining evidence, has been frequently resorted to? [He replied] Under the native governments which preceded us at Madras the universal object of every police officer was to obtain a confession from the prisoner with a view to his conviction of any offence; and notwithstanding every endeavour of our European tribunals to put an end to this system, frequent instances have come before all our criminal tribunals of its use. (RAO, 2001, p. 4,127).

Next, the Report considers the reports of the contemporary British authorities working in the “interior,” who had been asked to report on the allegations of torture. The Report surmised that the opinion among this section, with very

few exceptions, was that torture did take place, though in varying degrees in various districts. Most of the testimonies were based upon hearsay. In order to explain away the general absence of the actual witnessing of the operation by their countrymen, the Commissioners' noted "the certainty that no native would knowingly venture to have recourse to any such practice in the presence of a European" (MADRAS, 1855, p. 11). The Report, interestingly, next examined the various eyewitness accounts of torture and concluded that "such a body of evidence from credible, and nearly all European, eyewitnesses, is to our minds conclusive" (MADRAS, 1855, p. 15).

The report then dealt with the evidence collected by the Commission from the various complainants. As already noted, there were totally 1,959 complaints. It concluded,

[...] making every allowance for the tendency of the natives to exaggerate, even when their story is founded on fact; being painfully conscious of their untruthfulness, knowing by experience how litigious and revengeful they are, we still think that most of their depositions, as a whole, bear marks of veracity, and that their stories are in the main true. (MADRAS, 1855, p. 16).

The report lastly goes through the records of the previous seven years of cases of torture, which had been investigated by the Courts or the magistracy. The Commissioners note the rarity of successful convictions in these cases on account of a lack of adequate evidence and the extreme leniency of punishment even in these rare cases. However, to set the record straight, they quote with approval Mr Daniel, the agent of the Government at Kurnool, who says, "I have no hesitation in saying, that neither ryots nor any other class of persons entertain any idea that acts of violence in the collection of revenue are tacitly tolerated by the Government or its European officers[...]" (MADRAS, 1855, p. 287-92).

2.1 The Commission's findings

On the basis of this evidence, the Commission concluded

that personal violence practised by the native revenue and police officials generally prevails throughout this presidency, both in the collection of revenue and in police cases; but we are bound at the same time to state our opinion that the practice has of late years been steadily decreasing both in severity and extent. (MADRAS, 1855, p. 31).

The Report found the term "torture" as defined by Dr Johnson - "pain by which guilt is punished or confession extorted" (MADRAS, 1855, p. 31)² - to be applicable to the practices prevalent in the Presidency.

The Report then tried to explain the comparatively fewer complaints about the use of torture to extract confessions compared to revenue cases. Its reasoning makes interesting reading. It expresses the belief (based on testimonies about "the habits of the people") that

torture is ordinarily applied only when there are very good grounds for believing that the really guilty party is the sufferer. [It continues] Indeed it seems to be the universal opinion among the natives themselves, that in criminal cases the practice is not only necessary but right. It excites no abhorrence, no astonishment, no repugnance, in their minds. (MADRAS, 1855, p. 34).

The Report further elucidates under the heading, “Habits of the people”, that

we have instances of torture being freely practiced in every relation of domestic life. Servants are thus treated by their masters and fellow servants; children by their parents and schoolmasters, for the most trifling offences; the very plays of the populace (and the point of a rude people’s drama is its satire) excite the laughter of many a rural audience by the exhibition of revenue squeezed out of a defaulter coin by coin, through the appliance of familiar “provocatives,” under the superintendence of a caricatured tehsildar;³ it seems a “time-honoured” institution, and we cannot be astonished if the practice is still widely prevalent among the ignorant uneducated class of native public servants. (MADRAS, 1855, p. 34).

The Report, however, immediately clarified that the intensity of the practice had declined with European intervention. It relied on the orders passed by the Faujdari Adalat regulating confessions and said they “cannot but have produced their effect” (MADRAS, 1855, p. 34).

It also noted as a disincentive to the practice the fact that an uncorroborated confession was highly unlikely to result in conviction.⁴ The Report then reveals the basis of its faith in European intervention. It says, “[t]here is not a native public servant, from the highest to the lowest, who does not well know that these practices are held in abhorrence by his European superiors” (MADRAS, 1855, p. 34).

The Commissioners then express their anguish at the difficulty that the torture victims face in obtaining redress. But the very first statement in the Report on this subject is to clarify that the Government or its European officers are completely free from blame in this regard and grants them the fullest credit for their efforts (MADRAS, 1855, p. 35). The Report reiterates the awareness among the native officials of their European superiors’ disapproval of the practice. Moving from the native officials to the rest of the native population, they further go on the defensive:

we have seen nothing to impress us with the belief that the people at large entertain an idea that their maltreatment is countenanced or tolerated by the European officers of Government. On the contrary, all they seem to desire is, that the Europeans in their respective districts should themselves take up and investigate complaints brought before them. [Summing up their viewpoint on the matter, the Commission notes] The whole cry of the people, which has come before us, is to save them from the cruelties of their fellow natives, not from the effects of unkindness or indifference on the part of the European officers of Government. (MADRAS, 1855, p. 35).

The Report then seeks to explain the contradiction between the natives seeing the European officials as their saviours and the rarity of complaints from them about the native officials. The Report does consider the high rate of acquittals in prosecutions for torture and the mildness of punishments awarded in such cases as factors (MADRAS, 1855, p. 35). However, it continues to harp on the character of the natives as the primary reason for this and does not seem to consider the European authorities who adjudicated upon these cases and, in effect, condoned the practice of torture, as responsible. This is in spite of the fact that the aforesaid letter from the Company's Court of Directors in 1826, as well as the Commission's own analysis of the previous seven years of cases of torture, clearly showed the extreme leniency adopted in such cases. Finally, the Report pushes the blame further away from the European officers by talking about the enormity of the tasks they perform, the huge size of their areas they administer and the minuscule numbers of Europeans in the administration (MADRAS, 1855, p. 37).

2.2 The recommendations of the Report

The Commissioners noted that although the practice of torture was being powerfully impacted by the reform of the native character through "the spread of education, the opening of communications" and "the increased intercourse of mind and mind," these were only "gradual" and "general remedies" (MADRAS, 1855, p. 39). Instead they suggested a solution to the problem that they thought was specific to the Indian case. The Report states the proposition thus:

It cannot be denied that a greater strength of European government servants in a province must tend to its more perfect administration, and the question is how and in what direction such additional force could be most beneficially employed and rendered serviceable in putting down the native practice of resorting to such illegal personal violence as we have been engaged in commenting on. (MADRAS, 1855, p. 39).

The Report further elaborated on its views regarding the respective characters of the natives and the Europeans. It explains,

the whole police is underpaid, notoriously corrupt, and without any of the moral restraint and self-respect which education ordinarily engenders; and that the character of the native when in power displays itself in the form of rapacity, cruelty, and tyranny, at least as much as its main features are subservience, timidity, and trickery, when the Hindoo is a mere private individual. (MADRAS, 1855, p. 40).

Such a group of people would not surprisingly be capable of a practice, "the bare assertion of the existence of which is as startling to European ears as its reality is abhorrent to European morality" (MADRAS, 1855, p. 40).

The solution was thus simply to have European superintendents of police

for each district. This, according to the Commission, “would in a very short time interpose an effectual check to the resort of torture to elicit confessions” (MADRAS, 1855, p. 42).

The Report, having found the Holy Grail, then enthusiastically details the “powerful effect upon the welfare of the people” that it would have. The final result, it suggested, would be that

the same conduct which has sufficiently guaranteed the peace and safety of European countries during the last thirty years, within which time the science of police may be said to have been entirely originated, would speedily afford to this Presidency an admirable constabulary, preventive and detective. (MADRAS, 1855, p. 43).

The Report concludes by clarifying that its suggestion for “a copious infusion of European agency” into the civil administration was not due to any hostility towards the natives or to deprive them “from their fair share in the government of this country.” It then disarmingly argues for the relative merit of the term “moral” agency (as against “European” agency), as “there are many East Indians and some natives who, in our opinion, might as safely be trusted with power as any among ourselves” (MADRAS, 1855, p. 46).

The Commission finally ends its Report by modestly listing the purposes that its existence has served:

the assurance which has been afforded the people at large, that whatever may have been the practice, it was not countenanced by the Government; the pointed manner in which the attention of all Europeans in authority has been called by government to the subject; the salutary fear which cannot but have been inspired in the breasts of the native officials; the confidence which publicity must have given to the people to resist their oppressors. (MADRAS, 1855, p. 47).

3. Understanding the Report

Torture has ceased to exist. (Victor HUGO, 1874 apud PEERS, 1991, p. 5).

Pain is not merely negativeness. It is, literally, a scandal. (TALAL ASAD apud ASAD, 1998, p. 290).

The question arises: why was the Madras Torture Commission set up? Or, more precisely, why would a colonial government be interested in instituting an enquiry into the practice of torture? As discussed in the previous section, incidents of torture in the Madras Presidency had been reported by various government authorities right from the early nineteenth century, but little or no action had been taken (GUPTA, 1974, p. 308-310). This approach was summed up by a critic of the Company, who wrote, “cases of torture by the police are notoriously of frequent occurrence [...] but as no political purpose can be served by taking

notice of them, they are looked upon with perfect placidity by the government" (PEERS, 1991, p. 51).

However, the revelations in Parliament and the press coverage that followed in 1854 spurred the administration into action, and the Commission was instituted. The original letter from the Court of Directors of the Company, asking for the Commission to be set up, is revealing in its candour. It admits that action would now have to be taken because of the public outcry "rather than the earlier reports of our own servants" (PEERS, 1991, p. 51).

The objective of the Commission was thus to enable the government to deny all allegations. As we have seen, it performed this task admirably. The recurring theme throughout the Report is an anxious attempt at denying any complicity on the part of the British authorities in the practice of torture. However, though the report tries to rationalize it, the Commission's own findings point decisively to some degree of complicity on the British part. The Report discusses, for instance, the 1826 letter from the Company authorities in London to those in Madras, which quotes a circuit judge as saying, "I see no other way of accounting for it than in the leniency with which such aberrations are noticed by their immediate superiors" (PEERS, 1991, p. 49).

Instead of focusing on the role of British superior officers, however, the Report consistently tries to explain the persistence of torture by the "innate propensity of the natives." This "propensity" was seen as so deeply-rooted that even European "moral agency" was only partially and gradually able to undo it. As Anupama Rao puts it in another context, "the police was understood as a cultural institution compromised by the fact of being 'native', and hence fundamentally irrational and prone to excess" (RAO, 2001, p. 4127). The Report is indeed a classic example of the process that I have referred to as "the othering of torture."

Radhika Singha sums it up aptly: "The Torture Committee's primary address," she writes, "was to the British public, to reassure them that the natives could not possibly believe that European functionaries condoned torture" (SINGHA, 1998, p. 305). The language of the Report leaves one in no doubt as to whom it was addressing. It would therefore be pertinent to examine contemporary British attitudes to the question of torture – generally, as well as in the specific context of the history of British rule in India.

3.1 Torture and its histories

In the mythology of the universal history of torture, the nineteenth century is seen as a period when torture disappeared in Europe and, thanks to European influence, declined even in the colonies.⁵ Indeed, from 1750 onwards, the provisions for torture were being gradually removed from the criminal codes of Europe (PEERS, 1991, p.74). Alongside these legal changes, there emerged a burgeoning body of literature which condemned torture on moral grounds. The most famous example of such anti-torture texts was perhaps Cesare Beccaria's *On Crimes and Punishments*. By the nineteenth century, then, the question of torture had become, as Edward Peters puts

it, “the focal point of much Enlightenment criticism of the *ancien regime* (PEERS, 1991, p.74). Torture became a universally pejorative term: the greatest threat to law and reason that the nineteenth century could imagine (PEERS, 1991, p.75). The abolition of torture was a major landmark in the evolutionary path of progress that Europe was supposed to be by the late eighteenth century. The end of torture was now a powerful symbol of the new modern Europe and was used to contrast contemporary Europe with the Middle Ages, making it an important aspect of the self-definition of 19th century Europe.

The new moral sensibility thus gained a central role in the historiography of the abolition of torture. In the work of nineteenth century European and American historians, the process of illegalisation of torture was explained solely by a particular kind of progressivist narrative. Indeed, this history often describes these changes in terms of an “abolition movement” that parallels, for instance, the movement for the eradication of slavery. The story goes that the system of torture continued till the 18th century, when a series of notable publicists like Beccaria and Voltaire revealed its deficiencies and shocked the conscience of Europe, inspiring the great Enlightenment monarchs to abolish torture (PEERS, 1991, p.75).

John Langbein (1977), in his now-classic work, *Torture and the Law of Proof*, dismissed this version of things – rather provocatively – as a “fairy tale.” Rejecting the notion that the humanitarian influence was the decisive factor in the eighteenth century abolition of torture, Langbein emphasises instead that the purely juridical innovations in the law of proof, which were being deployed increasingly from the early seventeenth century, gradually made torture redundant. The Roman canon law of proof, which required either confession or the testimony of two eyewitnesses to convict, was gradually declining. With new forms of criminal sanctions like the galley, the workhouse and the practice of transportation coming into use, judges could exercise greater discretion than before in the sentences they pronounced. Increasingly, therefore, in cases where the high standards of evidence could not be met, even circumstantial evidence could now be used to convict, with a less severe punishment – a practice analogous to the modern system of “plea-bargaining” (PETERS, 1985, p. 84). Torture was thus no longer needed as an essential part of criminal procedure.

However, even Langbein acknowledges that “the writers played some role” in the “outlawing” of torture, and that its abolition “was an event linked to many of the deepest themes of eighteenth century political, administrative, and intellectual history” (LANGBEIN, 1977, p. 69). The condemnation of torture did have moral overtones strongly related to Enlightenment thought. Though recent scholarship has provided far wider and more complex explanations for the abolition of torture than the singular influence of the moral passion of Beccaria et al, the fact remains that the late nineteenth century identification of torture with an entirely rejected world-view was made on moral as well as legal grounds. Indeed, ever since, torture has been attacked primarily on moral grounds, as a symbol of the barbarities of the *ancien regime*. These interventions reshaped the

very meaning of torture – giving it the power of a rhetorical device, so that it became an argumentative trump par excellence.

Darius Rejali, however, argues against the very notion of abolition of torture and thereby contests the linkage of the move from torture to punishment with the transition to modernity. He contends that, far from being a barbaric remnant from the past, torture is in fact integral to the modern state (REJALI, 1994).⁶ In his study of the history of torture in Iran since the late eighteenth century, Rejali shows that torture has been essential for and widely employed by each successive regime there. Taking a Foucaultian approach (FOUCAULT, 1995), he argues that there was a gradual shift away from ceremonial torture in the nineteenth century. This change was considered a sign of progress, especially by the colonialists (REJALI, 1994, p. 16). The new form of torture that replaced it was different. It was carried out outside the public domain, in the context of policing operations and prison discipline, the inseparable components of modern disciplinary society. The public rituals of torture were replaced by a new secretiveness. As Talal Asad explains, “modern torture as part of policing is typically secret, partly because inflicting physical pain on a prisoner to extract information, or for any purpose whatsoever, is ‘uncivilized’ and therefore illegal” (1998, p. 290). This new sensibility about physical pain necessitated that the modern state could practise torture only alongside a simultaneous “rhetoric of denial.” The Torture Commission Report is indeed a classic case of the practice of this rhetoric of denial.

3.2 “Rule of law” and “the native propensity to torture”

This period, when the debates on torture were taking place in Europe was also, of course, the heyday of the colonial encounter in the Indian subcontinent. As the British set about ruling India, they had to devise a vision of India’s past and future in order to justify their rule in India to themselves. Thomas Metcalf (1994) has argued that throughout the “Raj,” the ideas that most powerfully informed British conceptions of India and its people were those of India’s “difference.” Among the most widely-accepted such ideas in this period was the notion of “Oriental Despotism.” This concept became a popular way to conceive of Asians as people who voluntarily submit to absolutism. Enlightenment thinkers like Voltaire and Montesquieu would engage in polemics against the French monarchy by comparing it with “Oriental Despotism” (METCALF, 1994, p. 7). In his *History of Hindostan* published in 1770, Alexander Dow wrote about the Mughul Emperors as quintessential *Oriental Despots* presiding over a lawless state (COHN, 1989, p. 137-140). A contrast was thus made between the despotic times in pre-British India and the law and order that British rule would bring.

The model that had consigned torture to the *ancien regime* in Europe, when faced with “torture” in societies like India, came up with a similar explanation. In this progressivist model, the “primitive” unmodernized Asian state simply replaced the powers of the *ancien regime* and the allegedly primitive nature of early European

culture. Torture now became something that could exist either in Europe's past or in the "Oriental" present. Indeed, as Metcalf puts it:

In India Europe could find, alive in the present day, its entire history. India was at once a land of Teutonic village "republics," it was "the old heathen world" of classical antiquity; it was a set of medieval feudal kingdoms; in the coastal cities "something like a likeness of our own civilization" could even be discerned; and India was, of course, also an "oriental" land forged by despotism (METCALF, 1994, p. 66).

Guided by nineteenth century "historicism," the British histories of India helped construct the difference ascribed to India. Britain's "progress" was complemented by this history of Indian "decline" – making British rule inevitable and necessary. In this view, as John Barrow puts it:

Mankind was one not because it was everywhere the same, but because the differences represented different stages in the same process. And by agreeing to call the process progress, one could convert the social theory into a moral and political one (BURROW, 1966, p. 98-99).

According to Thomas Metcalf (1994, p. 17), the idea of "improvement" and "rule of law" were already central justifications for British rule by the end of the nineteenth century. These themes were famously played out in the high-profile drama surrounding the impeachment trial of Warren Hastings from 1787 onwards. While Hastings argued that as an "Asian" ruler, discretionary authority was needed and justified, his great opponent Edmund Burke sought to make him the symbol of the rapacity with which the East India Company was exercising "arbitrary power" in India (METCALF, 1994, p. 18). According to Sara Suleri, through the trial, Burke and his cohorts were weaving together a "fabric of colonial anxiety." It was not just a trial but "a documentation of the anxieties of oppression, where both the prisoner and the prosecutors are equally implicated in the inascribability of colonial guilt" (SULERI, 1992, p. 53).

Indeed, if Burke's rhetoric was to be followed to its logical conclusion, the whole of Company rule would be on trial, not just Hastings. But this was nobody's aim at the time. Instead, the trial became a spectacle, serving to renew faith in the British rule of law. As Burke said, "I am certain that every means effectual to preserve India from oppression is a guard to preserve the British Constitution from its worst corruption" (METCALF, 1994, p. 19). Arguing for the importance of "improvement," Burke said that there is nothing "which can strengthen the just authority of Great Britain in India, which does not nearly, if not altogether, in the same proportion, tend to the relief of the People" (METCALF, 1994, p. 19-20). The similarity of this case to the Torture Commission – another exercise for the exorcism of colonial guilt – is indeed glaring. In order to characterize British rule as a moral, "civilized" and "civilizing" regime, the idea of "rule of law" was crucial. Its enduring hegemony can be gauged from the fact that, in the 1950s, a group of

eminent historians concluded that the rule of law was the greatest benefit India received from the introduction of English legal ideas (LIPSTEIN, 1957, p. 87). Long before the 1950s, however, Sir James Fitzjames Stephen, legal member of the Viceroy's Council from 1869 to 1872, discussed its importance thus:

The establishment of a system of law which regulates the most important parts of the daily life of the people constitutes in itself a moral conquest more striking, more durable, and far more solid, than the physical conquest which rendered it possible. It exercises an influence over the minds of the people in many ways comparable to that of a new religion [...] Our law is in fact the sum and substance of what we have to teach them. It is, so to speak, a compulsory gospel which admits of no dissent and no disobedience (METCALF, 1994, p. 39).

The obsession with law-making in India began as early as the late nineteenth century, with William Jones attempting to make Cornwallis "the Justinian of India" and himself the Tribonian, by compiling a "complete digest of Hindu and Mussulman Law" (COHN, 1989, p. 146). As Jones wrote to Cornwallis, with such a code the British Government would give to the natives of India "security for the due administration of justice among them, similar to that which Justinian gave to his Greek and Roman subjects" (COHN, 1989, p. 146). The grandiloquent dream of law-making as panacea continued with James Mill, who worked for the East India Company for seventeen years, till his death in 1836. In his classic *History of British India*, first published in 1818, he traced the retrograde and debased state of Indian society to the despotism of native government and suggested a simple solution – codification of "good" laws (STOKES, 1959, p. 68-70). In fact, Bentham is reported to have boasted towards the end of his life that "Mill will be the living executive – I shall be the dead legislative of India" (STOKES, 1959, p. 68-70).

The blaming of torture on the "innate propensity of the natives" placed torture in the same league with the abolition of other "horrible practices" such as *hookswinging*, infanticide, *sati*, *thuggee* and human sacrifice, all forms of cruelty that seemed to characterise Indian society in particular (RAO, 2001). Paradoxically, the liberal enterprise of eradicating these manifestations of Indian "barbarism" itself only further deepened notions of Indian difference. The example of *hookswinging*⁷ is instructive. In Nicholas Dirks' analysis of the inquiry conducted by the British authorities on this ritual, he quotes the presiding British official as concluding that,

It is, in my opinion, unnecessary at the end of the nineteenth century and, having regard to the level to which civilization in India has attained, to consider the motives by which the performers themselves are actuated when taking part in hookswinging, walking through fire, and other barbarities. From their own moral standpoint, their motives may be good or they may be bad; they may indulge in self-torture in satisfaction of pious vows fervently made in all sincerity and for the most disinterested reasons; or they may indulge in it from the lowest motives of personal aggrandizement, whether for the

alms they might receive or for the personal distinction and local éclat that it may bring them; but the question is whether public opinion in this country is not opposed to the external acts of the performers, as being in fact repugnant to the dictates of humanity and demoralizing to themselves and to all who may witness their performances (DIRKS, 1997, p. 192-193).

Talal Asad argues that in their attempts to eradicate such “cruel practices,” what really motivated the Europeans was “the desire to impose what they considered civilized standards of justice and humanity on a subject population – i.e., the desire to create new human subjects” (ASAD, 1998, p. 293). By placing police torture alongside these assorted acts of “barbarity,” the use of violence to extract confessions was normalized in British minds and the colonial context erased, with the Europeans emerging as knights in shining armour, trying against all odds to humanize the Indians: somehow, to save them from themselves.

4. The Legacy of the Report

*Every native of Hindustan, I verily believe, is corrupt.
(Lord CORNWALLIS apud LUDDEN, 1993, p. 255).*

As we saw in the first section, the Commission had recommended reorganisation of the Madras police in a manner that institutionalised and guaranteed complete European supervision of the native police at every level and sought to minimise their discretion. The Report had concluded with the warning that if action was not taken as per their suggested reforms, “the native officials will but have learned another lesson of their own power and impunity” (MADRAS, 1855, p. 47). Police reform was put forward as the solution to the problem of greater surveillance and control within the police force, the need for which was produced by the construction of the native police as fundamentally unreliable because of their racial inferiority.

In the words of the colonialist historian of the Indian Police, Sir Percival Griffith, the Report “galvanised the Madras Government into much needed action.” Proposals for police reform based on the Report were put forward by it in August 1855 itself (GRIFFITH, 1971, p. 81). These were, however, met with initial hesitation on the part of the Company administration in London, as their implementation involved considerable expense. The Court of Directors estimated an additional cost of one million rupees to implement the changes recommended (GUPTA, 1974, p. 322). Responding to these objections, the Governor of Madras replied that the chief additional expense due to the reforms would be the significant increase in European officers. He added that this was “absolutely required” and that “it would be useless to attempt a re-organisation of the force without, in the first instance, appointing a European officer to each district” (GUPTA, 1974, p. 325).

Soon enough, the Court of Directors came around and accepted the

diagnosis of the Report that the chief cause of the failure and inefficiency of the police was that "effectual supervision and control" had seldom been exercised "by the English Officers in charge of the Police" (GUPTA, 1974, p. 354) due to their heavy workload and that the native officers had not been "adequately overlooked and controlled" (ARNOLD, 1986, p. 22). The Court agreed with the Commission that the native police were naturally disposed towards "misconduct and corruption," and that this could only be stopped by "the higher intelligence and sterling honesty" of a sufficient number of European officers (ARNOLD, 1986, p. 22). Incorporating these suggested changes, the Madras District Police Act No. XXIV of 1859 was finally passed. The Madras model was eventually extended to most of British India by the Indian Police Act of 1861, which continues to be the primary statute regulating the police in India till today.⁸ Thus the police reform that resulted from the Torture Commission was the complete removal of Indians from positions of administrative responsibility, and the simultaneous strengthening of European supervision.

4.1 The reformed structure of the Madras Police

The new Madras Police Department was to be structured in such a way as to ensure maximum control and supervision by the superior European officers. In their initial enthusiasm for reform, the Madras authorities were attracted by the model of the London Metropolitan Police set up in 1829. But it was soon felt, as David Arnold suggests, "that a police system designed for the imperial metropolis would not meet all the requirements of a colonial province" (1986, p. 25). The model of the Irish Constabulary began to be seen as much better suited for this purpose. Colonial Ireland had a centralised, paramilitary police force, while England and Wales at the time⁹ had a completely decentralized police system, with separate police forces for almost every county and major city (ARNOLD, 1986, p. 25). This model was obviously not considered suitable for India as the colonial state needed a colonial police, answerable only to itself.

The Irish Constabulary, on the other hand, was completely centralised with an Inspector-General as its chief officer, who was directly answerable to the Chief Secretary of the government. The Irish Police was not responsible to the people of the area, but only to the government. The Irish model was also particularly popular among British officers in India because many of them had had previous experience in Ireland, either because they came from the landed classes there or because they had served there. As Sir Hugh Rose, who had previously served in Ireland and was now Commander-in-Chief of the Indian Army, said in October 1861, "[n]o system of police has ever worked better for the suppression of political agitation, or agrarian disorder, than the Irish Constabulary" (ARNOLD, 1986, p. 26). Since these objectives of the British were also broadly applicable in India and the colonial context similar, the model primarily followed for the reconstitution of the Indian police was that of colonial Ireland, a precedent later followed in many other colonies in the latter half of the nineteenth century (ARNOLD, 1986, p. 27).

The supervisory principle articulated by the Torture Commission and ratified by the Madras Government and the Court of Directors formed the organisational basis of the police structure of the Madras Presidency under the new Act. According to David Arnold, there were three interlocking parts to this new system of supervision and control: first, control over the police department by the civil administration; second, supervision of subordinate Indian police officials by their European superiors; and third, “a rigid hierarchy of rank and function between the superintendency at the top, the inspectorate in the middle and the constabulary proper at the bottom” (ARNOLD, 1986, p. 29). The whole system was organised in such a way as to institutionalise European distrust of Indians, even if they were only serving the colonial state. It was presumed that the corruption and inefficiency of the Indian subordinates could only be rectified by a rigid system of supervision that culminated in European superintendents. Although Indians continued to form the bulk of the police, in terms of numbers, because of resource constraints and the need of local knowledge and language, they were allowed little initiative if inspectors – and none at all if they were constables. On the other hand, the expensive European officials were concentrated in key supervisory posts.

David Arnold (1986, p. 29) argues that the colonial police structure was meant to be an institutional realization of the Benthamite ideal of the Panopticon. Indeed, the designations given to the superior officers of the police force – Inspector, Superintendent, Inspector-General – accurately convey their respective supervisory roles. The superior police officials were there primarily to keep watch over their subordinates and not to actively engage in ordinary police functions. Their role was thus to “police the police” (ARNOLD, 1986, p. 29).

4.2 The colonial bureaucracy

The case of the police is perhaps an extreme example, but the suspicion with which the British viewed the subordinate Indian bureaucracy had a long and chequered history. David Ludden notes how William Jones’ desire to compile a comprehensive “Digest of Hindu and Mohammadan law” in English arose primarily because he did not trust the native interpreters. Similarly, Thomas Munro’s agrarian reforms in Madras were inspired by the idea of avoiding any intermediary authority between the Company and the cultivator (LUDDEN, 1993, p. 254-257). The driving imperative was to control Indian agency in the administration more strictly.

Richard Saumarez Smith has argued that statistics, survey and record operations played a crucial role in providing the British with the technical means to control “native agency” within the bureaucracy (SMITH, 1985, p. 153-176). The technical functioning of the whole subordinate section of the bureaucracy was stringently bound by the mid-1840s. Elaborate manuals were compiled, tightly circumscribing their duties. Using the example of the *patwari* (village accountant) in Punjab, Smith discusses how it was deemed necessary to regulate his activities and the headings under which he compiled information, since he had become the

central figure in the local revenue administration. A remarkable instance of this "Rule of the Manual" is the four-part "educational course for village accountants (*patwaris*)" published in Punjab in 1845. The four parts comprised of official designations of objects (months, crops, Government posts, and types of official documents), including the names of twenty-nine different castes; a computation, which included a special way to write quantities; weights and measures, which included the method of calculating areas from linear dimensions; and a complete model of agricultural and village accounts (SMITH, 1985, p. 159).

While the functions of government expanded, Indians were increasingly confined to subordinate rather than managerial functions, local as opposed to provincial offices and technical as against political functions. As Smith says:

Throughout the period of British rule in the Punjab a partition was maintained between the upper levels of the bureaucracy, manned by the Indian Civil Service working in English, and the lower levels, manned by the provincial and local cadres working in the vernacular. (SMITH, 1985, p. 161).

This racial partition of the bureaucracy is an example of what Partha Chatterjee has called "the rule of colonial difference," which was central to the deployment of disciplinary power in the colonial state. He explains this "rule" thus:

The colonial state was not just the agency that brought the modular forms of the modern state to the colonies; it was also an agency that was destined never to fulfil the normalizing mission of the modern state because the premise of its power was a rule of colonial difference, namely, the preservation of the alienness of the ruling group. (CHATTERJEE, 1993, p. 10).

As the institutions of the modern state were being introduced into the colony in the latter half of the nineteenth century, the European rulers laid down clearly the racial difference between the rulers and the ruled, whether it be in lawmaking, bureaucracy or the administration of justice. The more the process of bureaucratic rationalization gathered momentum during this period, as per the logic of the modern regime of power, the more the question of race kept being raised, further emphasizing the specifically colonial character of British rule in India (CHATTERJEE, 1993, p. 19).

It is the legacy of the Torture Commission Report that the "rule of colonial difference" is inscribed in perhaps even more virulent terms in the structure of the Indian police than in any other bureaucratic apparatus in India.

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NOTES

1. The three Commissioners were E. F. Elliot, H. Stokes and J. B. Norton. Elliot had been Superintendent of police and Magistrate of Madras City from 1834-1853, and Norton had been the Advocate General (GUPTA, 1974, p. 311).
2. The Commission expanded the definition to include extortion of money as well.
3. Revenue collector for the *tehsil*, an administrative unit (cf. SINGHA, 1998, p. xxviii).
4. It would be interesting to note here an article in the *Calcutta Review* of 1846, according to which 70 percent of all convictions in India were based on confessions (cf. PEERS, 1991, p. 48).
5. See, for an interesting example, The Amnesty International Report on Torture (1973).
6. It is interesting to note here Douglas Peers' argument that the growing intrusiveness of the state provided the context for the increased cases of police torture in the Madras Presidency in the mid-nineteenth century. New crimes of a 'moral' nature were being added to crimes against the person and property as behaviour that militated against British sensibilities now came under state monitoring and invited criminal sanctions. These included begging, gambling, selling obscene books, "wantonly destroying trees," disobedience of orders (based on the master-servant laws of Britain), "pretending to witchcraft," "bartering spirits for grain," "riding or driving furiously," "exciting charity by exhibiting bodily deformities" and refusing to pay a promised dowry. Also, vagrancy was supposed to be punished and the activities of "idle" people monitored. Thus, people's activities were being disciplined in ways completely unknown before in India (PEERS, 1991, p. 43).
7. "Hookswinging involves a ceremony in which the celebrant swings from a cross-beam built for the purpose on a cart, suspended by two steel hooks thrust into the small of his back." (ASAD, 1998, p. 306).
8. A Police Act Drafting Committee was formed to re-examine police laws in India, and in 2006 it submitted a new draft law. Though the Parliament is yet to approve the draft, in 2006, the Supreme Court of India issued a directive with some basic principles of policing to State governments. The Court asked State governments to follow these principles in the interim until a new legislation is adopted. Following this, many State governments have begun to revise their police laws. Meanwhile, the Police Act of 1861 still exists in the statutory books, and it remains questionable if the recent reforms would amount to a fundamental departure in the contours of relations of power between the superintendency, the inspectorate and the constabulary, the hierarchy which formed the bedrock of the colonial police. The continued use of terms like "teeth to tail ratio" (the ratio of police officers, from the rank of an Assistant Sub-Inspector and above, to lower subordinates i.e., Head Constables & Constables) in official government documents points towards the enduring nature of the same colonial ideas discussed here. See, for example, www.mppolice.gov.in/crimeinindia/CHAP17.htm.
9. The exception was, of course, London, where the Commissioner had to report directly to the Home Secretary.

RESUMO

Embora seja comumente defendida a idéia de que a tortura policial constitui uma prática institucionalizada na Índia, o único estudo confiável apoiado pelo governo na história moderna indiana é o Relatório da Comissão sobre Tortura de Madras, k de 1855. No contexto do silêncio que encobre a violência policial atualmente praticada na Índia, o curioso fenômeno de uma Comissão investigativa, instituída por um Estado colonial há mais de cento e cinquenta anos atrás, é particularmente intrigante. Nesse artigo experimento uma análise textual do Relatório, e uma investigação de seu contexto ideológico e histórico. Defendo que o Relatório serviu, primeiramente, para discursivamente “tratar” do tema da tortura, negando a cumplicidade do Estado colonial em sua prática, além de argumentar que as reformas por ele sugeridas resultaram na institucionalização de um modelo colonial específico na reestruturação da polícia indiana, uma estrutura que substancialmente sobrevive até os dias de hoje.

PALAVRAS-CHAVE

Tortura – Polícia – Colonialismo.

RESUMEN

Si bien se suele sostener que la tortura policial está institucionalizada en la India, el único estudio respaldado por el gobierno sobre esta práctica en la historia moderna de la India es el Informe de la Comisión sobre la Tortura en Madrás de 1855. En el contexto de silencio que rodea a la violencia policial actual en la India, es particularmente interesante el curioso fenómeno de una Comisión de investigación creada por un Estado colonial hace más de ciento cincuenta años. En este artículo, intento realizar un análisis textual de este Informe y una investigación sobre su contexto ideológico e histórico. Sostengo que el Informe sirvió sobre todo para “manejar” discursivamente la cuestión de la tortura, borrando la complicidad del estado colonial en su práctica, y que las reformas que sugirió resultaron en la institucionalización de un modelo específicamente colonial en la reestructuración de la policía india, una estructura que sobrevive sustancialmente hasta hoy día.

PALABRAS CLAVE

Torturav – Polícia – Colonialismo