
Routledge Studies in South Asian Politics
THE SECURITY STATE IN PAKISTAN
LEGAL FOUNDATIONS
Syed Sami Raza
ROUTLEDGE

The Security State in Pakistan

The War on Terror, a war which has directly contributed to growing security regimes in its frontline states, has been going on for over a decade, and it shows no signs of winding down in the near future.

This book focuses on the legal dimensions of the War on Terror and security in Pakistan. It highlights the growth of the security state in Pakistan and questions the growing, and now entrenched, legal security regime in the country. The book traces the roots of the present security laws in colonial and postcolonial times. One broader dimension through which the legal security regime of Pakistan is analysed in this book is in highlighting specific issues concerning the legal identity of the subject, such as the rights of aliens (in the background of state power versus liberal constitutionalism) and the rights of terrorism suspects (in the background of deploying a death sentence as a tactical, psychological tool in contrast with the absolute right to life of every individual). By critically reflecting on the increasingly institutionalized form of the security apparatus in Pakistan, the book (indirectly) suggests the legal ways to resist the growing legal security regime and its derogation from human rights.

Offering a theoretically engaged and critically reflective overview of the current state of individual identity, rights, and freedoms in face of a burgeoning legal regime of security in Pakistan, this study makes advances in critical legal studies and critical International Relations. It will be of interest to academics working in the fields of security studies and South Asian Studies (particularly Pakistan), and those with an interest in the War on Terror.

Syed Sami Raza received his PhD from the University of Hawai'i at Mānoa, US. He is Assistant Professor in the Department of Political Science at the University of Peshawar, Pakistan.

Routledge Studies in South Asian Politics

9 Pakistan's Democratic Transition
Change and Persistence
Edited by Ishtiaq Ahmad and Adnan Rafiq

10 Localizing Governance in India
Bidyut Chakrabarty

11 Government and Politics in Sri Lanka
Biopolitics and Security
A. R. Sriskanda Rajah

12 Politics and Governance in Bangladesh
Uncertain Landscapes
Edited by Ipshita Basu, Joe Devine and Geoffrey Wood

13 Constitutional Democracy in India
Bidyut Chakrabarty

14 Radical Politics and Governance in India's North East
The Case of Tripura
Harihar Bhattacharyya

15 The Security State in Pakistan
Legal Foundations
Syed Sami Raza

For more information about this series, please visit: https://www.routledge.com

The Security State in Pakistan

Legal Foundations

Syed Sami Raza

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2019
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data
A catalog record has been requested for this book

ISBN: 978-1-138-30910-4 (hbk)
ISBN: 978-1-315-14329-3 (ebk)

Typeset in Times New Roman
by codeMantra

For my parents
Prof. Jawed Hussain & Perveen Jawed

Contents

Preface

The initial idea of this book began to turn over in my mind in the summer of 2011. The impetus came from two incidents of cold-blooded violence at the hands of law enforcement agencies that took place in Pakistan. These incidents, or parts of them, were incidentally captured on camera and soon afterwards became available on both electronic and social media. One incident related to the killing of a group of aliens/foreigners at a check-post outside Quetta and another of a young man near a park in metropolitan Karachi. In both cases, the law enforcement agencies claimed to have operated under the security legal regime, even though they used excessive force. They also tried to cover up the incidents, but in the latter case, failed, as the Supreme Court intervened.

These violent incidents and the diametrically different response that they received from the superior judiciary made me think of the nature of our criminal justice system. I also began to think of the legal regime of security and how it is impervious to judicial intervention as well as how it derogates from substantive and procedural rights. As I began more and more to think about and conduct research on these questions, as well as on the problematic in general, I became gripped with the (entrenched) nature and historical growth of the legal regime of security. My initial response was published the following year (2012) in a section in my PhD dissertation. Later, as I kept working in this direction, my second response was published in a couple of articles, which I mention later. To give the gist of my findings, I would say that the legal regime of security in Pakistan has grown gradually with long-drawn exposures to states of emergency. The distant roots of the regime stretch back to the colonial security corpus, while its recent branches entangle with the current Anglo-American anti-terrorism laws. Since much of the security legal regime is based on procedural laws, it is therefore more susceptible to executives' control, while judiciary's writ has often been truncated through creation of special courts and/or through placing outright constitutional and statute bars.

Given the (apparently) unending project of the War on Terror, it doesn't seem that Pakistan will be able to wind down its expanded and, by now, entrenched legal regime of security. It is also difficult to guess whether the

regime has yet reached its peak. Moreover, it needs to be noticed that the War on Terror was just one more stimulus to the recent growth of the security regime, which was in fact already maturing by the time the War on Terror began. Accordingly, since it seems as if it will remain in force for quite some time, and since it will keep encroaching upon our both substantive and procedural rights, the legal regime of security is of urgent and abiding significance. Although much has been written on Pakistan's War on Terror and counter-insurgency programmes, not much has been written on the legal dimension of the war and the security regime. This book is a modest effort to fill part of this academic gap.

I would like to acknowledge that some threads of thought in the first two chapters were published earlier, in the fourth chapter of my dissertation—"Constitutional Order in Pakistan: The Dynamics of Exception, Violence and High Treason"—and in an article entitled "Anti-Terrorism Legal Regime of Pakistan," published in *Review of Human Rights.* Chapter 5 was published earlier in a journal called *Counter Terrorist Trends and Analysis* with a slightly different title ("After the Peshawar School Attack: Law and Politics of the Death Sentence in Pakistan"). Chapter 6 and the epilogue were also published earlier with slightly different titles: "Legal Sovereignty on the Border: Aliens, Identity, and Violence on the Northwestern Frontier of Pakistan" in *Geopolitics* and "Divine Violence after the Kharotabad Killings" in *Review of Human Rights,* respectively.

Acknowledgement

I owe much of my thinking, ideas, and analysis in this book to the camaraderie of scholars, practitioners, and students working at the intersections of law, politics, and theory. In this regard, I extend my first note of gratitude to my teachers. I have learnt a great deal from my teachers at the University of Hawai'i at Mānoa, especially Michael J. Shapiro, Sankaran Karishna, Manfred Henningsen, and Nevzat Soguk. I have also learnt a great deal more from my graduate office mates, small writing circles, and class-fellows: Alvin C. Lim, Samson Opondo, Melisa Casumbul, Umi Perkins, Rohan Kalyan, Amir Moheet, Ozge, Rex Troumbly, Guenpei, Brianne Gallagar, Noah Viernes, Jason Adams, David Toohey, Jimmy Weir, and Lorenzo Renilli.

At the University of Peshawar, I learnt the basics of political science at the hands of Nazir Kakakhel and Taj Moharram Khan. I would also like to mention some other colleagues and friends, in Pakistan and elsewhere, who have inspired me in different ways: Qibla Ayaz, Rasul B. Rais, Abdul Rauf, Shahida Amaan, Noreen Naseer, Ayub Jan, M. Zubair, Amir Raza, Hassan Abbas, Jan Peter Hartung, and James Caron.

I am thankful to Dorothea Schaefter, editor of Routledge Studies in South Asian Politics, for her interest in this book project and for encouraging me through all stages of the editorial process. In this regard, I am also indebted to Lily Brown for her quick correspondence and facilitation.

I owe my special gratitude to my parents, who have remained the source of my strength: Jawed Hussain and Perveen Jawed. My brothers Tahir, Ali, and Faisal and my sisters Saima and Anbarin have all been waiting to see this project materialise, for which I am thankful.

Dulcis in fundo I would like to thank my little family—Ghazala Rafi and Aryan Raza. It is their patience, courage, and love to which I owe the finishing of this project. I owe special thanks to my wife for making me excellent cups of coffee, which kept me going.

Abbreviations

AACPR	The Actions (in Aid of Civil Power) Regulations (2011)
AIR	All India Reporter
ARCA	The Anarchical and Revolutionary Crimes Act (1919)
ATA	Anti-Terrorism Act (1997)
ATC	Anti-Terrorism Court
CrPC	The Code of Criminal Procedure (1898)
DIA	Defence of India Act (1915 & 1939)
DIR	Defence of India Rule (1915 & 1939)
DORA	The Defence of the Realm Act (1914)
DPO	The Defence of Pakistan Ordinance (1965 & 1971)
DPR	The Defence of Pakistan Rules (1965 & 1971)
EBDO	The Elective Bodies (Disqualification) Ordinance, 1959
FATA	The Federally Administered Tribal Areas
FC	Frontier Corps
FCR	Federal Court Reporter
FCR	The Frontier Crimes Regulation (1901)
JJSO	The Juvenile Justice System Ordinance (2000)
KPK	Khyber-Pakhtunkhwa province
LEAs	Law Enforcement Agencies
MLD	Monthly Law Reports
MPOO	The Maintenance of Public Order Ordinance (1960)
NAP	The National Action Plan (2014)
NIEPA	The Northern Ireland (Emergency Powers) Act (1973)
PAA	The Pakistan Army Act (1952)
PAFO	The Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance (1998)
PATA	The Provincially Administered Tribal Areas
PCrLJ	Pakistan Criminal Law Journal
PLD	The All Pakistan Legal Decisions
PLJ	Pakistan Law Journal
PPA	The Pakistan Protection Act (2014)
PPO	The Pakistan Protection Ordinance (2013)

PRODA	The Public and Representative Offices (Disqualification) Act, 1949
SCA	The Special Courts for Speedy Trials Act (1992)
SCMR	Supreme Court Monthly Review
SPA	The Security of Pakistan Act (1952)
STAA	The Suppression of Terrorist Activities (Special Courts) Act (1975)
TAAA	The Terrorist Affected Areas (Special Courts) Act (1992)
TSNM	Tehreek-e-Nafaz-e-Shariat Mohammadi
TTP	Tehreek-e-Taliban
YLR	Yearly Law Reporter

Introduction

What is the security state?

Before I discuss the legal foundations of the security state in Pakistan, it seems to be an imperative to define what I mean by the concept of security state. Broadly speaking, a security state can be defined in a number of ways. It depends on the state's historical context, present challenges, and future orientations, as well as on subject matter such as the policies adopted, laws made, and governmental machinery or law enforcement infrastructure raised at a given time. Moreover, any definition will also have to draw on a certain academic approach or a school of thought. To instantiate this, let us have a look at certain broad and widely used definitions of the security state, after which I will present my own understanding of it, based on my inductive analysis of Pakistan. This understanding, or definition, will remain our point of reference for the analysis I make in the book.

One widely accepted definition of the security state, which comes from the realist school of thought in International Relations (IR), places the state in its international political context where strife and struggle among the community of states is an ever-present condition. On the international stage, states are almost always faced with insecurity, and therefore they have to make security arrangements on their own. From the point of view of this school of thought, the security state can be defined as "a state that accords primacy to the protection of national borders, physical assets, and core values largely through military means."[1] In line with the general approach adopted in the realist school of thought, this definition warns the state about the anarchical nature of international politics. Given the growing presence of warfare in the world, each nation state is expected to develop a certain defence policy—for instance, raising a large army and/or making alliances with other states—to protect its borders, sovereignty, people and national interests.

Another somewhat similar definition, also based on the context of an international system, says: "the national security state is that, in any state, [where] the political institutions [are] responsible for the conduct of foreign security policy."[2] This definition comes from mainstream IR, as it relates

security to foreign policy and thinks of security as an external threat. A critical variation of the two previous definitions is the critical IR school of thought, which defines the security state from the ontological vantage ground. Based on the theory of critical IR, this definition holds the view that the security state creates, or else benefits from, the political ontology of "us" versus "them" and "inside" versus "outside." It believes that the modern security state consciously engages in seeking or conjuring up the enemy.[3] Accordingly, it also criticises that the political discourse of the War on Terror is part of the strategy of the security state's war-making policy.

There are other scholars who define the security state from a domestic, institutional context. They believe that a security state is one that has "institutionalized the provisions of security and prioritized it over all other functions of state."[4] One study, for instance, refers to the enactment of the National Security Act in the United States in 1947, under which security apparatus such as the National Security Council (NSC) and the Central Intelligence Agency (CIA) began to develop. This definition points to yet another relevant concept, by Harold D. Lasswell, of the "garrison state."[5] A garrison state is one dominated by the military–industrial complex, which seeks to promote an economy heavily dependent on military and war spending.[6] For Lasswell, the United States grew as a garrison state during the Cold War era, developing a war economy on the one hand and curtailing civil liberties on the other. Lasswell writes,

> …we are moving toward a world of "garrison states"—a world in which the specialists on violence are the most power group in the society. From this point of view the trend of our time is away from the dominance of the specialist on bargaining, who is the businessman, and toward the supremacy of the soldier.[7]

The concept of garrison state has also been applied to Pakistan and has generated considerable debate.[8]

For the purposes of this book, I present a definition of the security state which is based on the vantage point of law, especially security law and the state of emergency. By security state, I mean a state that is faced with (again) a real or perceived state of emergency. This state of emergency arises from a real or perceived external threat to the state's defence and security or from an internal threat to its public order. The state also feels insecure about its control over the physical means of violence. Due to this real or perceived state of emergency, the security state responds by creating a relatively large corpus of security laws. These laws result in the making of an almost parallel criminal code as well as an abridged criminal procedure. The superior courts receive a large number of writ petition cases for safeguarding individuals' liberties and fundamental rights. The security state also provides for a wide range of powers to law enforcement agencies, including the power to detain and kill. A variety of forces are normally involved in coping with

the problem of insecurity, fear, and violence—including the civil and paramilitary forces and intelligence agencies, even though these agencies are not trained for either policing or counterterrorism.

Political context: the state of emergency

One of the crucial factors in the development of the security state in Pakistan is its long-drawn exposure to the state of emergency. By the state of emergency, I mean its three manifestations at the minimum: the state of emergency declared (a) in the wake of a war, (b) after a *coup d'état* and (c) under the power granted in the constitution. No matter what type of emergency was declared in Pakistan, it exhibited the tendency on the part of the government to prolong it. In simple words, states of emergency in Pakistan have tended to extend well beyond the events that produced the need for them in the first place. And interestingly, often one manifestation of emergency has led to another. It is during these prolonged emergencies that the legal regime of security has grown and thrived in Pakistan.

In recent times, an eminent philosopher of law and politics, Giorgio Agamben, has made certain crucial observations about the state of emergency that are quite relevant for the purpose of the present study. First, he has observed that the state of emergency tends to continue even after the emergency event. It is the emergency event that affords the pretext for making the elaborate structure of emergency laws and the government's discretionary powers. Second, he has observed that the modern state uses security and emergency as a tool of governance.[9] In the case of Pakistan, both these observations hold true, and I would, in the course of this study, explain and keep them as our point of reference.

Let me point to another of Agamben's observations here, which regards the historical growth of the paradigm of security in Europe, especially in England. I point to this observation because it is relevant in the context of this study or, rather, the point of my beginning in the present study. He says that the modern paradigm of security in Europe began with World War I.[10] In the wake of the war, a state of emergency was imposed in England, and the Defence of the Realm Act and Rules (1914) were enforced in the country. Towards the end of the war, the emergency continued and a new law—the Emergency Powers Act (1920)—was enforced. With these emergency laws, during and after the war, the government was able to restrict subjects' liberties and rights. In 1915, in India, the colonial administration also declared a state of emergency and enforced a similar law, the Defence of India Act and Rules (1915). Just as Agamben has pointed out that World War I and emergency laws paved the way for the modern security paradigm in England, I suggest similarly that the state of war and emergency laws also prepared the ground for the paradigm of security in colonial India. And just as new emergency laws were enforced in England, in colonial India, the Anarchical and Revolutionary Crimes Act (1919) was enforced, which indirectly continued the emergency.

Elsewhere, Agamben points out that the distant legal roots of the modern state of security in England stretch back to the Mutiny Acts of the 17th and 18th centuries.[11] In Chapter 1 of this book, I similarly demonstrate that the legal roots of the colonial paradigm of security in India are also related, although indirectly and distantly, to these English Mutiny Acts. To explain this, I point to the introduction of Regulation X of 1804 in colonial India, which was one of the foremost criminal and security regulations. The colonial administration designed this regulation on the model of English Mutiny Acts. Just as the English Mutiny Acts envisaged martial law and courts in England, the Regulation X also envisaged martial law and courts in colonial India. Furthermore, in England, in the late 18th and early 19th centuries, the government, in the wake of the war with France, passed laws for suspension of *habeas corpus*. Soon afterwards, in India, in 1818, the British colonial administration introduced Regulation III, which allowed suspension of *habeas corpus* in the form of "safe custody" and preventive detention.

The colonial state of security that began during World War I further expanded throughout the interwar period, and by World War II (when once again the emergency and the Defence of India laws were invoked) it reached its peak. In 1935, colonial India was given a so-called Constitution—the Government of India Act (GIA) (1935). The Constitution came without having entrenched fundamental liberties and rights. It was, rather, burdened with the provisions of preventive detention. Later, after independence, when Pakistan and India drafted their respective constitutions, they adopted this colonial constitution as their model and incorporated the provisions of preventive detention. During World War II, the Federal Court of India, however, ventured to try and wrestle some ground for the fundamental liberties and rights of colonial subjects. It did so by way of exercising its judicial review power in favour of subjects' rights, but unfortunately, the government frustrated the Court through its overbearing powers and tactics. Nevertheless, the Federal Court set a decent precedent for the postcolonial states' higher courts to follow suit.

When the war ended and colonial India achieved independence, the legal foundations of the colonial security state were inherited by the postcolonial states of Pakistan and India, especially due to the adoption of much of the colonial legal corpus. In the initial years after independence, there were several security laws in place, both at the national level and in the provinces in Pakistan. Often, at the expiry of one security law, a new one was enforced. Moreover, the new laws were often given retrospective effect to continue the unbroken chain of security regime. With the passage of time, the state also began to consider consolidation of the security laws and bringing uniformity in them throughout the country. For instance, the different security ordinances and acts were combined in the Security of Pakistan Act (1952) and the various provincial and the central public safety ordinances and acts were consolidated into the Maintenance of Public Order Ordinance (1960). On

the north-western border in the tribal areas, the Frontier Crimes Regulation (FCR) (1901) was allowed to continue. Even after the adoption of the constitution (1956) the tribal areas neither were reorganised to make them settled areas nor was the FCR removed from them. Rather, the Supreme Court's decision in the *Dosso* (1958) gave further life to the FCR. Since then, the higher courts have not been able to exercise their jurisdiction there nor provide relief relating to fundamental liberties and rights to the tribal people.

In 1965, when a war broke out between Pakistan and India, President Ayub Khan declared a state of emergency and the colonial defence laws were once again invoked in the forms of the Defence of Pakistan Ordinance and the Defence of Pakistan Rules (1965). Although the war ended in about seventeen days, the emergency and the laws that were enforced in its wake continued for the next two decades. Over time, they were supplemented with more security laws and even with two martial laws. President Ayub Khan also laid the foundation for trial of civilians in martial courts by introducing two ordinances—Ordinance III and IV of 1967—that amended the Army Act (1952). Later, the Supreme Court in *F.B. Ali* (1973) upheld these ordinances as constitutional. However, in 1977, when Zulfikar Ali Bhutto's democratic government enforced martial law and wished to create martial courts in Karachi, Hyderabad, and Lahore, the Supreme Court made a bold decision and struck them down. But to the Court's dismay, only few months afterward, General Zia-ul-Haq took power, once again imposed martial law, and later, set up hundreds of martial courts throughout the country.

In the early 1990s, the Nawaz Sharif government was faced with the menace of local terrorism in the country. Accordingly, it initially enacted two laws for creating special courts, which tried certain heinous offences through speedy trial. These laws also afforded wide-ranging powers to the law enforcement agencies. Later, in 1997, his government replaced these acts with a more comprehensive law, the Anti-Terrorism Act (ATA).

In October 1999, Pakistan faced yet another emergency in the form of a military *coup d'état*. General Pervez Musharraf took over and suspended the Constitution. The jurisdiction of higher courts was restricted, and fundamental liberties and rights were withdrawn. Through this emergency, Musharraf's government continued to work on the ATA (1997). A couple of weeks before the terrorist attacks of September 11, 2001 in New York City, Musharraf's government introduced an amendment to the ATA (1997). This amendment made several changes to the act, including one to its definition of terrorism, redefining terrorism based on the definition in the British Terrorism Act (2000). After the 9/11 attacks, when the United States began its international war against terrorism, Pakistan joined the war and, in fact, became a frontline state. In 2005, Pakistani armed forces began their own operations in South Waziristan. The same year, an amendment was made to the ATA (1997) to increase punishments for various offences of terrorism. After the operations in South Waziristan, more operations began in other tribal agencies. In 2008 and 2009, the armed forces carried out massive

operations in the Swat valley and its neighbouring districts and agencies. During these operations, thousands of terrorism suspects were arrested and detained in internment camps specifically set up for this purpose, though without proper legal and constitutional sanction. Accordingly, in 2011, the government exercised its emergency powers under Article 245 to issue the Actions (in Aid of Civil Power) Regulations (AACPRs), which provided legal framework to these prolonged detentions.

The next set of security laws were passed by Nawaz Sharif's third government beginning in 2013. By then, the country was faced with the highest-ever level of incidence of terrorism. The government set up a committee to propose reforms to the ATA (1999). Later, in December 2014, when terrorists attacked a school in Peshawar, the government announced the National Action Plan and resolved to make tougher anti-terrorism laws. The laws that were eventually made included proposed amendments to the ATA (1997), the Protection of Pakistan Ordinance and Act (2013 and 2014), the Army (Amendment) Acts (2015 and 2017) and two constitutional amendments (21st Amendment, 2015 and 28th Amendment, 2017). The most notable of these laws included amendments to the Army Act, which authorised the Armed Forces to set up martial courts and try civilian suspects of terrorism. To protect the martial courts from the judicial review power of the higher courts, the government also passed two constitutional amendments.

Legal foundations

What are the legal foundations of the security state in Pakistan? In other words, how does the security state ground itself in law? To answer these questions, we need to begin by understanding the nature of the security law. The security law in Pakistan is procedural in nature, rather than substantive. The Supreme Court, in a decision in 2001, also acknowledged this fact with the following words: "[…] although this act [the ATA, 1997] to some extent contains the substantive law […] it is procedural in nature."[12] What we need to know is the difference between the two—procedural versus substantive law—as well as why it is important to know this difference. In 1969, the Supreme Court described the difference between the two by drawing on Sir John Salmond's opinion. The Court said:

> True it is not easy to draw a line between substantive and procedural law, but the task is not impossible if the essential difference is kept in mind. 'The law of procedure may be defined as that branch of the law which governs the process of litigation…All the residue is substantive law, and relates, not to the process of litigation, but to its purposes and subject matter.'[13]

On the question as to what constitutes substantive law, the Supreme Court, in a number of decisions, has relied on Black's Law Dictionary, defining

substantive law as "an essential part or constituent or relating to what is essential."[14] In light of these definitions, the security law in Pakistan can be understood as the one describing criminal procedure adopted in the process of litigation. The substantive part in it is little: for example, the definition of terrorism and what it constitutes. But we know that this definition only came in its refined form in 2001 through the amendment made to the ATA (1997). The rest of the ATA, and for that matter, other security laws, detail the procedure adopted in dealing with suspects: the use of force, the mode of arrest and detention, the creation of special courts, the procedure adopted for trial, and the punishable offences and the amount of punishment for them.

Since the security law is more procedural in nature, it is also more prone to government's control. For instance, the government can make any number of special courts, send any number of cases to them and/or from one court to another and include any number of scheduled offences through a simple notification. Similarly, the executive can restrict procedural rights more easily than substantive rights. Since the criminal procedure given in the security laws is often abridged, it becomes difficult to defend procedural rights otherwise guaranteed in the Code of Criminal Procedure (1898) and established through case law. However, it is worth noticing that the higher courts have noted that substantive rights (compared to procedural rights) of subjects or of accused persons remain unaffected in case of the procedural laws of security.[15]

Security laws normally come with the provision of overriding effect. However necessary and logical the provision may appear, the precedence/override of security laws over the ordinary criminal law shows how a security state is different from other states—or even from itself, at a different time when it relies upon its regular criminal justice system. The overriding effect of security laws also enhances the government's discretionary power. The government can enforce or withdraw a security law anywhere in the country with a simple notification and thus override the ordinary criminal justice system. The government can incorporate any offence into the list of scheduled offences through a simple notification and can send cases to special courts as well as remove cases from ordinary courts and send them to special courts. The provision of the overriding effect became crucial when the question of conflict between the ATA (1997) and the Juvenile Justice System Ordinance (JJSO) (2000) arose. Both these laws came with the provision of overriding, and the courts were asked to decide on the question. Although different courts made different decisions, a trend seemed to develop in favour of the ATA. Later, the same conflict arose between the Army (Amendment) Act (2015) and the JJSO (2000). Once again, the higher courts decided in favour of the former, which provided for setting up military courts.

Inasmuch as security laws are special laws, they have necessitated the making of special courts for their adjudication. Although not all security laws provide for special courts, for the government, they have been an

imperative, because only with them could the government hope to achieve the objectives of both speedy dispensation of justice and enhancing its own powers. The special courts have normally been given similar powers to a Session Court and those of the First Class Magistrate, as well as the same power to issue contempt of court available to the High Court. Moreover, just as the security laws enjoy precedence over ordinary criminal laws, the special courts also enjoy jurisdictional precedence over ordinary criminal courts. However, they normally take cognizance of cases when the government decides to send them.

It is worth mentioning here that the creation of special courts has remained a bone of contention between the executive branch and the higher courts for a long time. This is because the creation of special courts has consequences for the doctrine of separation of judicial power from the power of the executive branch. Since special courts can be created through both regular legislation and executive's ordinance-making power, the judiciary has always feared executive encroachment in the judicial sphere. This fear has haunted the judiciary since 1943, when the governor-general created special courts through his ordinance-making power, and the Federal Court challenged the governor-general's power. However, whether created by the legislature or the executive, the higher courts have jealously guarded against the creation of special courts, which lead to the creation of a *parallel judiciary*. In other words, the judiciary has almost always insisted upon its appellate, supervisory, and administrative jurisdiction over special courts, while the executive branch has also always tried to bring the special courts under its control. The historical evidence shows that the executive branch has been considerably successful in developing and maintaining its control over special courts. The government has sought to achieve this control through a number of ways. First, it has often provided for a lower level of qualifications for the appointment of special judges. By lower level we mean that just any practicing lawyer could be appointed as a special judge on government's discretion, without meeting the regular requirement of passing competitive examination organized by a public service commission. Second, in the appointment process the executive branch has also often exercised its discretion in picking and choosing from among the existing regular judges and magistrates. Moreover, the executive branch has at times provided in security laws that for appointment of special judges consultation with chief justices of the concerned High Courts was not required.

It was not until the *Mehram Ali* (1998) and *Liaquat Hussain* (1999) that the Supreme Court effectively brought the special courts under the oversight of higher courts. The Supreme Court set guidelines for the appointment and tenure of the judges of special courts. It also struck down the appellate special court and instructed that all appeals should go to the relevant High Courts. Moreover, the Supreme Court advised that, while speedy trials should be carried out in the Anti-Terrorism Courts (ATCs), the regular criminal procedure

should be followed as nearly as possible. To these instructions, however, the government responded by making changes to the ATA (1997); but it also later resorted to setting up martial courts that did not follow these instructions.

Historically speaking, military courts have been set up during martial law, as well as during civilian rules. Let me point out quickly that it is the military courts set up during civilian rules that are the matter of our interest in this study. As early as in *Asma Jilani* (1972), the Supreme Court denounced the imposition of the 1969 martial law. However, the next year, in *F.B. Ali* (1973), the Supreme Court, in order to curry favour with Bhutto's government, decided that martial courts set up under the amended Army Act (1952) could validly try civilians who were indirectly involved in offences under that act. The possibility of trying civilians in martial courts was, in fact, created by President Ayub Khan, who had promulgated two ordinances earlier—Ordinance III and IV of 1967. In *F.B. Ali* the Court simply upheld these ordinances and said that they did not contravene with the separation of powers doctrine or with the fundamental rights guaranteed in the Constitution. Later, in 1977, when Bhutto tried to impose martial law in Karachi, Lahore, and Hyderabad, and wished to create martial courts, the Supreme Court struck down both the martial law and its courts.

Recently, in 2015, Nawaz Sharif's government decided to cope with terrorism through military courts. The decision came in the wake of the cold-blooded attack on an Army public school in Peshawar. Accordingly, the Army Act (1952) was amended, and this amendment was further protected by an amendment within the Constitution.[16] Initially, these courts were set up for a period of two years, but towards the end of that period, their life was extended for two more years. What is important to note about the present military courts is that they can try civilians, as well as aliens, but only when cases are sent to them by the government. However, in their functioning, they remain almost outside both the control of the government and the jurisdiction of the civilian higher courts. This aspect has been established by the Supreme Court in a case (2015) challenging military courts.[17] The Court decided, on the same lines as set in *F.B. Ali* (1973), that the higher courts could not exercise jurisdiction over martial courts except on two conditions: *mala fide* and *corum non judice*.

Apart from giving special courts enhanced powers and jurisdiction, the security state also equips them with special criminal procedure. What is special about the criminal procedure is that it is meant to achieve speedy trials, and for that purpose, it can let go of certain features of regular criminal procedure. The special procedure includes the following aspects: the special courts are required to hear a case every day without giving adjournments (the special courts do not give adjournments, except in exceptional circumstances); the maximum period in which they are asked to give a decision varies from one month to seven days; they do not need to hear a witness again or recall evidence; they can also hold trials in absentia and trials in

camera; and finally, a limited time is given to appeal against the decisions of special courts.

With the special procedure, the special courts try scheduled offences. Technically speaking, the major security laws of Pakistan do not prescribe any new offences. The offences that are provided in the schedules attached to the security laws are those offences already available in the Penal Code or other laws. For instance, the categories of heinous offences and so-called offences against the state are often provided in security laws, which are borrowed from the Penal Code. Once these offences are provided as scheduled offences in security laws, they are, however, related to different purpose and design. In the ATA (1997), for instance, we find that the offences punishable as terrorism are mostly heinous offences, offences against the state and certain other offences taken from other laws, but they are all linked to the political purpose and design of causing fear, insecurity, and terror in the public.

While security laws in Pakistan often derogate from fundamental liberties and rights, they normally seek their sanction from the Constitution. For instance, the preventive detention laws seek their legality from Article 10 of the Constitution, which provides for safeguards against arbitrary arrest and detention. Similarly, the laws relating to requisitioning the armed forces in aid of civil authorities seek their legality from Article 245. Under this article, the armed forces are called in for emergency purpose, but they are also given the regular powers of law enforcement and policing even when they are not trained for that. As long as they provide aid to a civil authority, the fundamental liberties and rights effectively remain suspended. However, the civilian courts keep functioning, and military tribunals do not replace them.[18] The armed forces have been called in aid of civil authority in Karachi a number of times since the 1990s, and recently, they have been called in for operations in the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA).

Apart from Article 245, a more serious form of emergency power is available to the government under Article 232. Under this article, the President can implement emergency in the entire country or in any part of it, and under Article 233 can suspend the fundamental rights guaranteed in the Constitution. Zulfikar Ali Bhutto had declared the first emergency under the present Constitution only few hours after its adoption. Later, this emergency took the form of a martial law under Zia-ul-Haq. In 1999, and again in 2008, General Pervez Musharraf declared emergency in the country and suspended fundamental rights. The second time he declared emergency, he had to face tough resistance at the hands of a movement led by judges and lawyers, which eventually led to his removal.

Even as the security state seeks to base security laws in the Constitution, their constitutionality is mediated by the judicial review power of the higher courts. The history of such exercise of judicial review goes back to the colonial Federal Court, as I mentioned earlier. The Court struck down a number of the executive branch's arrest and detention orders, as well as the legal

provisions on which they were based. In the postcolonial state of Pakistan, the Federal Court continued to exercise judicial review power. However, in the 1970s, Zulfikar Ali Bhutto curtailed the power of judicial review and jurisdiction of higher courts through passing constitutional amendments. For the next couple of decades, the higher courts exercised their judicial review power only sparingly. Towards the end of the 1990s, however, the Supreme Court once again began to make some bold decisions, as in *Mehram Ali* (1998) and *Liaquat Hussain* (1999). In 2008, the Supreme Court had a direct confrontation with the executive branch over the declaration of emergency. The judges, led by Chief Justice Iftikhar Chaudhry, refused to accept the emergency declaration and take fresh oaths. Eventually, when President Pervez Musharraf stepped down from power and a new democratic government was elected, the judiciary reclaimed its independence through the constitution's 18th Amendment.

Although the security regime might not survive without constitutional ground or constitutionality, it also has roots in case law and the legal debate both inside and outside the courts. The higher courts have explained, clarified, and at times, fixed the meaning, scope, and applicability of security laws. While it is not possible to present an account here of the long history of legal debate and case law relating to the security regime, I want to point to certain key dimensions that are important for this book. First, the case law shows that the superior judiciary has remained torn between upholding executive powers and individual liberties and rights. Nevertheless, when seen in the long view, the judiciary's approach seems to show an inclination towards the latter. Second, a number of precedents have been set in reviewing the powers and/or orders of the executive under the security laws. The courts have often set these precedents at the risk of losing their own wider jurisdiction and judicial review power. Third, even though case law shows a check on the making of a parallel judiciary in the form of special courts, nowhere has it declared (in line with a liberal criminal justice system) that special courts are unconstitutional or outside the law-making power of the executive branch and the legislature. Lastly, with more and more decisions in constitutional cases, the scope of security laws often become restricted with the passage of time, but then it creates the need for new security laws with even more strong protections.

Overview of the book

For more than a decade now, the War on Terror has gone on with no signs of winding down in the near future. Accordingly, through this book I propose that it is high time that we revisit and critically reflect on the growing legal regime of security in the frontline state of Pakistan. As this regime of security takes a more institutionalised form by grounding and entrenching the security apparatus in the law, there is need to (a) trace its development, (b) highlight its operation, and (c) critique its relationship with the notion of

a liberal criminal justice system in the country. And just as we focus on the security laws of Pakistan, we need to discern their normative and discursive linkages with security laws of the allied states (the United States and the United Kingdom), especially to keep the larger global paradigm of security in the backdrop. This book teases out and makes sense of the normative and ethical aspects of the state control regime in Pakistan.

The book approaches the debate on the legal regime of security by taking up some specific and urgent issues: for instance, the rights of aliens (within the background of state power versus liberal constitutionalism), and the rights of terrorism suspects (including the deploying of death sentences as a tactical, psychological tool contrasted with the absolute right to life of every individual). Another urgent issue the book discusses is the relationship between the border and freedom of mobility and state controls. Moreover, the book also indirectly suggests legal ways to resist the growing legal security regime and its derogation from human rights. The methodological scope of the book makes advances in critical legal studies and critical International Relations fields. However, the initial discussions begin with descriptive, genealogical, and/or illustrative approaches. More detail about each chapter is given below.

In the first chapter—"The Colonial State of Security"—I shed light on the genealogy of the anti-terrorism legal regime, from preventive indefinite detention to special courts and speedy trials. Moreover, because this regime is often criticised in the West as Pakistan's failure to defend human rights, I trace the genealogy of this legal regime in Pakistan to highlight its historical linkages with Anglo-American legal regimes. I demonstrate that there is much in common between Anglo-American and Pakistani legal regimes. Furthermore, I point out that the latter bases its legal form and substance on the former.

The second chapter—"The Postcolonial State of Security"—follows the genealogical threads of the colonial security regime into the postcolonial state of Pakistan. I shed light on the development of security and the anti-terrorism legal regime of Pakistan after its independence, with an emphasis on the most recent developments. In this chapter, I use the same genealogical and comparative approaches, and highlight the linkages between Pakistani and Anglo-American security regimes.

In the 1990s, Pakistan saw unprecedented amount of violence, especially sectarian and ethnic bloodshed. This violence reached its peak by the mid-1990s. To cope with the growing menace of violence, the government passed the ATA in 1997, which is the focus of the third chapter. Through this act, terrorism was not only defined for the first time but also became central to the official discourse on security. What practically constituted terrorism was not anything new, but rather, the already existing offences, such as offences against the state or heinous offences. Under the ATA, these offences were now to be coped with through increased police power, special courts, and an abridged criminal procedure. However, the Supreme Court reviewed

the constitutionality of the act and struck down certain provisions of it that contravened with higher courts' jurisdiction and/or fundamental rights. But with the beginning of the international War on Terror, the Act became at once more relevant and timely.

In the fourth chapter, "Expansion and Entrenchment of the Legal Regime of Security in Pakistan," I analyse the anti-terrorism laws in the second decade of the War on Terror (2010–2017), especially with the view to see how they lead to further expansion and entrenchment of the legal regime of security. In this decade, a number of important legislations were passed, among these the Actions (in Aid of Civil Power) Regulation (2011); the Protection of Pakistan Ordinance (2013); the Protection of Pakistan Act (2014); the National Action Plan (2014); the Military (Amendment) Act (2015); the Constitution (21st Amendment) Act (2015); the Military (Amendment) Act (2017); and the Constitution (28th Amendment) Act (2017). Apparently, these security legislations came in the wake of the resurgence of terrorism. For instance, according to the Global Terrorism Index in 2013, Pakistan ranked second among the most terrorism-hit countries in the world, with casualties soaring up to three thousand. In this decade, the government has carried out both large- and small-scale military operations in the border tribal territories as well as in certain major cities. To support the armed forces in their operations, the government passed some of these legislations and provided for preventive detention, special courts, military courts, and speedy trials. Within the criminal justice system of the country, the most worrisome of all these laws were the amendments made to the Army Act that allowed for trying civilians in martial courts.

The December 2014 terrorist attack on the Army public school in Peshawar brought the question of death sentences for terrorism convicts back into the public debate. However, this meant not only arriving at a consensus to lift the six-year-long moratorium, but also justifying death sentences as a worthwhile tool in fighting terrorism. In the fifth chapter, entitled "Security and the Absolute Right to Life: Critical Reflections on the Revival of Capital Punishment," I reflect, though relatively briefly, on the politics of legitimising death sentences, in the context of local political scene and its criminal justice system. The chapter discusses the law and politics of capital punishment from four different dimensions: (a) the pathos of national politics, (b) the menace of expanding necro-power, (c) the ethos of Islamic jurisprudence, and (d) the aporia of modern justice dispensation.

In the summer of 2011, two incidents of cold-blooded violence took place at the hands of law enforcement agencies (LEAs) in Pakistan. One incident involved the killing of a group of foreigners/aliens traveling across the Pakistan–Afghanistan border near Kharotabad, and the other involved the killing of a citizen in an area under curfew in the metropolitan city of Karachi. The Supreme Court of Pakistan took a *suo moto* action in the case of the latter incident, while remaining silent on the former. Meanwhile, the Pakistani government, instead of reviewing the powers of LEAs, increased

them by passing new security laws in the following years. In the sixth chapter—"Aliens, Identity, and Legal Regime of Security on the Border"—I focus on these two incidents of violence to question how and why aliens are treated differently from citizens in Pakistan's criminal justice system. I trace the legal genealogy of that differential treatment and highlight the different stages of its growth. I also shed light on the way lethal force was used on the victims in order to show the drawbacks of the operational side of law enforcement. Finally, I engage critical theory to understand the nature of this violence, which now resides in the structure of the legal regime of security.

In the epilogue, "Kharotabad Killings: Security and Political Responsibility," I focus again on the incident of violence at Kharotabad. The incident took place on May 17, 2011. The group, consisting of five people (including three women), was stopped at a checkpoint outside the city of Quetta, Baluchistan and were killed by law enforcement on suspicion of being suicide bombers. Interestingly, the incident was recorded on camera, as the media had arrived on the spot before the order to kill them was given. The government tried to defend the actions of law enforcement, but failed because of the video and photographs that were taken by the media and subsequently made public. One of these photographs became iconic. In this photograph, an injured woman is shown lying on the ground near the sandbag-covered checkpoint, stretching her arm upward and pointing to the sky. This photograph became so sensational that it later forced the government to carry out a judicial inquiry into the incident. In this epilogue, I discuss the politics of aesthetics related with the photograph. In other words, I critique the precarity of what Agamben calls "bare life" when it is faced with security *dispositif* (apparatus).

Notes

1 The definition is based on Deudney, "Nuclear Weapons and the Waning of the Real-State"; Ripsman and Paul, *Globalization and the National Security State*, 10.
2 This definition is based on the idea of Ripsman, *Peacemaking by Democracies: The Effect of State Autonomy on the Post-World-War Settlement*; Ripsman and Paul, *Globalization and the National Security State*, 11.
3 Shapiro, *Cinematic Geopolitics*; Shapiro, *Violent Cartographies*; Raza, "Desiring Enemy: An Ontological Reading of the Military Operations and Small Wars on the North West Frontier."
4 This definition is based on the ideas of Yergin, *Shattered Peace*; Raskin, *Essays of a Citizen: From National Security State to Democracy*; Ripsman and Paul, *Globalization and the National Security State*, 11.
5 Lasswell, "The Garrison State."
6 For a recent take on the military–industrial complex economy, see Der Derian, *Virtuous War*.
7 Lasswell, "The Garrison State," 455.
8 See, for instance: Ahmed, *Pakistan: The Garrison State*; Siddiqa, *Military, Inc.: Inside Pakistan's Military Economy*. For a perspective on the colonial garrison state in the Punjab, see Yong, *The Garrison State*.
9 Agamben, "For a Theory of Destituent Power."

10 Agamben, *State of Exception*. Especially, see Chapter 1.
11 Ibid., 18.
12 *Mumtaz Ali Khan Rajban v. Federation of Pakistan*, PLD 2001 SC 169.
13 *Nabi Ahmad v. Home Secretary, Govt. of W. Pak*. PLD 1969 SC 599.
14 See *Hakim Khan and 3 others v. Government of Pakistan through Secretary Interior and Others*, PLD 1992 SC 595; *Mahmood Khan Achakzai and others v. Federation of Pakistan and others*, PLJ 1997 SC 550.
15 *Mehram Ali v. Federation of Pakistan,* MLD 1998 1411.
16 The Military (Amendment) Act 2015, the Constitution (21st Amendment) Act, the Military (Amendment) Act 2017, the Constitution (28th Amendment) Act 2017.
17 *District Bar Association, Rawalpindi*, PLD 2015 SC 401.
18 *Liaquat Hussain and others v. Federation of Pakistan,* PLD 1999 SC 504.

References

A Copy of the Penal Code, 1837, Prepared by Indian Law Commissioners and Published by Command of the Governor-General of India in Council, Hertford: Stephen Austin, Fore Street, Bookseller to the East India College.

Abbasi, Ansar . “Why Hanging Was Banned.” The News International. December 17, 2014 , sec. Pakistan. www.thenews.com.pk/article-168932-Pakistan-to-end-death-penalty-moratorium-in-terror-cases.

Agamben, Giorgio . “For a Theory of Destituent Power.” Critical Legal Thinking: Law and the Political. February 5, 2014 . http://criticallegalthinking.com/2014/02/05/theory-destituent-power/.

Agamben, Giorgio . Homo Sacer: Sovereign Power and Bare Life. California, CA: Stanford University Press, 1998.

Agamben, Giorgio . State of Exception. Translated by Kevin Attel . Chicago: University of Chicago Press, 2005.

Agamben, Giorgio . “What Is a Destituent Power.” Translated by Stephanie Wakefield . Environment and Planning D: Society and Space 32 (2014): 65–74.

Ahmed, Ishtiaq . Pakistan: The Garrison State. Karachi: Oxford University Press, 2013. https://oup.com.pk/academic-generalbooks/pakistan-studies/pakistan-the-garrison-state.html.

Bayly, Chris A. Rulers, Townsmen and Bazaars: North Indian Society in the Age of British Expansion, 1770–1870. London: Cambridge University Press, 1983.

Benjamin, Walter . “Critique of Violence.” In On Violence: A Reader, edited by Bruce B. Lawrence and Aisha Karim , 268–291. New York, NY: Duke University Press, 2007.

Bennett, Jill . Empathic Vision: Affect, Trauma, and Contemporary Art. Stanford, CA: Stanford University Press, 2005.

Blackstone, William . Commentaries on the Laws of England: In Four Books. 15th ed., Oxon: Professional Books Limited, 1982.

Brubaker, Rogers . Citizenship and Nationhood in France and Germany. Cambridge, MA: Harvard University Press, 1992.

Butler, Judith . Frames of War: When Is Life Grievable? London: Verso, 2009.

Butler, Judith . Precarious Life: The Power of Mourning and Violence. London: Verso, 2004.

Dana, David and Susan P. Koniak . “Bargaining in the Shadow of Democracy.” University of Pennsylvania Law Review 148, no. 2 (1999): 473–559. doi:10.2307/3312797.

Der Derian, James . Virtuous War: Mapping the Military-Industrial-Media-Entertainment Network. Boulder, CO: Westview Press, 2001.

“Death Penalty Moratorium Lifted Completely in Pakistan: Officials.” Dawn. March 10, 2015 . www.dawn.com/news/1168652.

“Death-Row Prisoner Dies of Heart Attack.” Dawn. December 21, 2014 . www.dawn.com/news/1152232.

Deudney, Daniel . “Nuclear Weapons and the Waning of the Real-State.” Deadalus 124, no. 2 (Spring 1995): 209–231.

Dinnerstein, Leonard . “The Supreme Court and the Rights of Aliens.” This Constitution 8 (Fall 1985): 25–35.

Eule, Julian N. “Temporal Limits on the Legislative Mandate: Entrenchment and Retroactivity.” American Bar Foundation Research Journal 12, no. 2–3 (1987): 379–459. doi:10.1111/j.1747-4469.1987.tb00542.x.

“Fatalities in Terrorist Violence in Pakistan 2003–2017.” South Asia Terrorism Portal, 2017. www.satp.org/satporgtp/countries/pakistan/database/casualties.htm.

Fisk, Catherine and Erwin Chemerinsky . “The Filibuster.” Stanford Law Review 49, no. 2 (1997): 181–254. doi:10.2307/1229297.

Fletcher, George P. “Ambivalence about Treason.” North Carolina Law Review 82 (2003): 1611.

Foucault, Michel . Security, Territory, Population: Lectures at the Collège de France 1977–1978. New York, NY: St Martins Press, 2009.

Foucault, Michel . The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979. New York, NY: Picador, 2010.

Galtung, Johan . “Violence, Peace, and Peace Research.” Journal of Peace Research 6 (1969): 167–191.

“Global Terrorism Index 2012: Capturing the Impact of Terrorism from 2002–2011.” New York, NY: Institute for Economics and Peace, 2012. http://economicsandpeace.org/.

“Global Terrorism Index 2014: Measuring and Understanding the Impact of Terrorism.” New York, NY: Institute for Economics and Peace, 2014. http://economicsandpeace.org/.
“Global Terrorism Index 2015: Measuring and Understanding the Impact of Terrorism.” New York, NY: Institute for Economics and Peace, 2015. http://economicsandpeace.org/.
Grahl-Madsen, Atle . The Status of Refugees in International Law. Leyden: A. W. Sijthoff, 1966.
Haider, Mateen . “Nawaz Removes Moratorium on Death Penalty.” Dawn. December 17, 2014 , sec. Pakistan. www.dawn.com/news/1151408/nawaz-removes-moratorium-on-death-penalty.
Hashim, Asad . “Army Courts to Try Pakistan Terror Suspects.” AlJazeera. January 11, 2015 .
Human Rights Case No. 29388-K of 2013. PLD SC 305 (2014).
Hussain, Faqir . “Pakistan.” In Preventive Detention and Security Law: A Comparative Survey, 173–192. Dordrecht: M. Nijhoff, 1993.
Hutchinson, Ron . “Durand’s Line.” In The Great Game: Afghanistan, edited by Nicolas Kent , 31–48. London: Oberon Books Ltd, 2010.
Jamaat-e-Islami Pakistan v. Federation of Pakistan. PLD SC 111 (2000).
Kennedy, Charles H. “The Creation and Development of Pakistan’s Anti-Terrorism Regime, 1997–2002.” In Religious Radicalism and Security in South Asia, edited by Satu P. Limaye , Mohan Malik , and Robert G. Wirsing , 387–411. Honolulu: Asia-Pacific Center for Security Studies, 2004.
Khan, Hamid . A History of the Judiciary in Pakistan. Karachi: Oxford University Press, 2016.
Khan, Hamid . Constitutional and Political History of Pakistan. Karachi: Oxford University Press, 2005.
Khan, Iftikhar A. “Bar on Death Penalty Lifted in Toto.” Dawn. March 11, 2015 . www.dawn.com/news/1168820/bar-on-death-penalty-lifted-in-toto.
Khan, Ismail . “The Charge-Sheet against NAP.” Dawn. August 28, 2016 , Online Edition. www.dawn.com/news/1280318.
Kristeva, Julia . Strangers to Ourselves. New York, NY: Columbia University Press, 1991.
Lasswell, Harold D. “The Garrison State.” American Journal of Sociology 46, no. 4 (1941): 455–468.
“LHC Told 1952 Security Act Still in Force.” Dawn. February 15, 2003 . www.dawn.com/news/82189.
Lord McNair, C.B.E. , and A.D. Watts . The Legal Effects of War. Cambridge: Cambridge University Press, 1966.
Maddow, Rachel . “Obama Justifies FEMA Imprisonment of Civilians!” Rachel Maddow Show. MSNBC, May 26, 2009 .
Marsden, Magnus and Benjamin D. Hopkins . Fragments of the Afghan Frontier. Karachi: Oxford University Press, 2013.
Martel, James . “Waiting for Justice: Benjamin and Derrida on Sovereignty and Immanence.” Republics of Letters: A Journal for the Study of Knowledge, Politics, and the Arts 2, no. 2 (June 2011). http://arcade.stanford.edu/rofl/waiting-justice-benjamin-and-derrida-sovereignty-and-immanence.
Mbembe, Achille . “Necropolitics.” Public Culture 15, no. 1 (2003): 11–40.
McCain, John . 2011. “Remarks by Senator John McCain in Support of the Conference Report of the National Defense Authorization Bill.” United States Senate. http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.FloorStatements&ContentRecord_id=42bad0e5-978f-9b8b-b74c-845aa6a7e33a.
McGinnis, John O. and Michael B. Rappaport . “Symmetric Entrenchment: A Constitutional and Normative Theory.” Virginia Law Review 89, no. 2 (2003): 385–445. doi:10.2307/3202436.
Michel, Foucault . “Questions of Method: Why the Prison.” In The Foucault Effect: Studies in Governmentality, edited by Graham Burchell , Colin Gordon , and Peter Miller , 73–86. London: Harvester Wheatsheaf, 1991.
“Military Injustice in Pakistan: A Briefing Paper.” Geneva, Switzerland: International Commission of Jurists, June 23, 2016 . www.icj.org/pakistan-military-justice-system-unjust-and-ineffective-new-icj-paper/.
“Military Injustice in Pakistan: Questions and Answers.” Geneva, Switzerland: International Commission of Jurists, December 2016. www.icj.org/wp-content/uploads/2016/12/Pakistan-military-courts-QA-Advocacy-2016-ENG.pdf.
Nail, Thomas . Theory of the Border. New York, NY: Oxford University Press, 2016.

Neuman, Gerald L. Strangers to the Constitution: Immigrants, Borders, and Fundamental Law. Princeton, NJ: Princeton University Press, 2010.
Newberg, Paula R. Judging the State: Courts and Constitutional Politics in Pakistan. Cambridge South Asian Studies. Cambridge and New York, NY: Cambridge University Press, 1995.
Nichols, Robert . A History of Pashtun Migration 1775–2006. Karachi: Oxford University Press, 2008.
“Pakistan Hangs 100th Convict, Amnesty Slams ‘Shameful Milestone.’” Dawn. April 28, 2015 . www.dawn.com/news/1178715.
“Pakistan to Continue Moratorium on Capital Punishment.” Dawn. October 3, 2013 . www.dawn.com/news/1047193.
Posner, Eric A. and Adrian Vermeule . “Legislative Entrenchment: A Reappraisal.” The Yale Law Journal 111, no. 7 (2002): 1665–1705. doi:10.2307/797534.
“Protection for Military Courts.” Dawn. February 26, 2015 , sec. Editorial. www.dawn.com/news/1165901.
Raskin, Marcus G. Essays of a Citizen: From National Security State to Democracy. Armonk, NY: Sharpe, 1991.
Raza, Syed Sami . “Anti-Terrorism Legal Regime of Pakistan and the Global Paradigm of Security: A Genealogical and Comparative Analysis.” Review of Human Rights 2, no. 1 (Winter 2016): 4–35.
Raza, Syed Sami . “A Preliminary Note on the Genealogy of the Concept of Enemy Alien in Pakistan.” Pakistan Journal of Criminology 7, no. 2 (April 2015): 43–54.
Raza, Syed Sami . “Critical Reflections on the Reality of Drone Warfare: Thinking with Jean Baudrillard.” IPRI Journal XVI, no. 1 (Winter 2016): 1–21.
Raza, Syed Sami . “Desiring Enemy: An Ontological Reading of the Military Operations and Small Wars on the North West Frontier.” Journal of Political Studies 21, no. 2 (2014): 91–107.
Raza, Syed Sami . “The North West Frontier of Pakistan: Preoccupation with ‘Unveiling’ the Battlefield and the Continuing Violent Cartographies.” In The New Violent Cartography: Geo-Analysis after the Aesthetic Turn, edited by Samson Opondo and Michael J. Shapiro , 173–194. New York, NY: Routledge, 2012.
Riaz, Wasim . “Death Row Convict Dies of Brain Hemorrhage in Lahore Hospital.” Dawn. December 31, 2014 . www.dawn.com/news/1154047.
Ripsman, Norrin M. Peacemaking by Democracies: The Effect of State Autonomy on the Post-World-War Settlement. University Park, PA: Penn State University Press, 2002.
Ripsman, Norrin M. and T. V. Paul . Globalization and the National Security State. New York, NY: Oxford University Press, 2010.
Salter, Mark B. “When the Exception Becomes the Rule: Borders, Sovereignty, and Citizenship.” Citizenship Studies 12, no. 4 (August 2008): 365–380.
Sarat, Austin , ed. The Killing State : Capital Punishment in Law, Politics, and Culture: Capital Punishment in Law, Politics, and Culture. Oxford: Oxford University Press, 1998.
Schmitt, Carl . Political Theology: Four Chapters on the Concept of Sovereignty. Translated by George Schwab . Chicago: University of Chicago Press, 2005.
Shapiro, Michael J. Cinematic Geopolitics. New York, NY: Routledge, 2009.
Shapiro, Michael J. Politics and Time. Cambridge, MA: Polity Press, 2016.
Shapiro, Michael J. Reading Adam Smith: Desire, History, and Value. Newbury Park, CA: Sage, 1993.
Shapiro, Michael J. Violent Cartographies: Mapping Cultures of War. Minneapolis: University of Minnesota Press, 1997.
Sherazi, Zahir Shah . “Jailbreak Threat Looms for KP Prisons as Execution Moratorium Lifted.” Dawn. December 18, 2014 . www.dawn.com/news/1151610.
Siddiqa, Ayesha . Military, Inc.: Inside Pakistan’s Military Economy. London: Pluto Press, 2007.
Singh, S. B. “Clash between Indian Judiciary and Executive during Second World War.” Proceedings of the Indian History Congress 54 (1993): 451–457.
Soguk, Nevzat . States and Strangers: Refugees and Displacements of Statecraft. Minneapolis: University of Minnesota Press, 1999.
“State of Human Rights in 2016.” Islamabad: Human Rights Commission of Pakistan, May 10, 2017 . http://hrcp-web.org/hrcpweb/wp-content/uploads/2017/05/State-of-Human-Rights-in-2016.pdf.

Steffen, Lisa . 2001. Defining a British State: Treason and National Identity, 1608–1820. New York, NY: Palgrave.
Suo Motu Case No. 10 of 2011. PLD SC 997 (2011).
The Indian Penal Code (Act XLV of 1860) 1861. Compiled with Notes by Walter Morgan and A. G. Macpherson . Calcutta: G. C. Hay and Co., 56, Cossitollah. London: 2 Crescent Place, Blackfriars.
Tyner, James , and Joshua Inwood . “Violence as Fetish: Geography, Marxism, and Dialectics.” Progress in Human Geography 38 (2014): 771–785.
“ UN Human Rights Committee , 120th Session, Geneva: Submission Of The International Commission Of Jurists In Advance Of The Examination Of The Initial Report Of Pakistan Under Article 40 Of The International Covenant On Civil And Political Rights.” Submission to UN Human Rights Committee. Geneva, Switzerland: The International Commission of Jurists, June 2017.
http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_CSS_PAK_27600_E.pdf.
Wonders, Nancy A. “Global Flows, Semi-Permeable Borders, and New Channels of Inequality: Border Crossers and Border Performativity.” In Borders, Mobility and Technologies of Control, edited by S. Pickering and L. Weber , 63–86. Amsterdam: Springer, 2006.
Yergin, Daniel . Shattered Peace. Boston, MA: Houghton Mifflin, 1977.
Yong, Tan Tai . The Garrison State: The Military, Government and Society in Colonial Punjab, 1849–1947. New York, NY: SAGE Publications, 2005.
Yusufzai, Afshaq and Richard Spencer . “Taliban Burned Teachers Alive in Pakistan School Attack.” The Telegraph, December 17, 2014 .
www.telegraph.co.uk/news/worldnews/asia/pakistan/11300078/Taliban-burned-teachers-alive-in-Pakistan-school-attack.html.
Zahra-Malik, Mehreen . “Kharotabad Killings and the Cover Up.” AlJazeera. August 4, 2011 .
http://www.aljazeera.com/indepth/features/2011/08/201182103339774942.html.
Žižek, Slavoj . Violence: Six Sideways Reflections. London: Profile Books, 2010.