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Constructing Humanity's Justice: Accountability for 'Crimes Against Humanity' in the Wake of the Syria Crisis of 1860

Benjamin E. Brockman-Hawe*

In the interests of justice, of humanity, and of the future government of the Province, it is necessary that a great example should be made of those whose hands are deepest dyed in blood.

*Lord Dufferin, British Commissioner to Syria, to
Lord Russell, British Foreign Secretary, 19 December 1860*

7.1. Introduction

In late May 1860 smouldering tensions between the Druze and Maronite Christian communities of Ottoman Syria ignited into full-scale civil war. Reports of the deaths of thousands of Christians under circumstances of unusual barbarity prompted France, Great Britain, Prussia, Russia and Austria, to dispatch troops to the region, as well as an International Commission of Inquiry ('Commission'). Although prosecutions began before the Commissioners arrived in Damascus, they would play a critical role in shaping the (what we would call today) transitional justice process, designing one of the tribunals before which the accused were tried, establishing prosecutorial strategy and ultimately directly deliberating on the guilt of the most high-profile accused, with all of the concomitant agonizing over matters of evidence and law that implies. Over the course of six

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months hundreds of individuals were executed, imprisoned, sentenced to hard labour or banished for their participation in what one Ottoman Porte official described as “crimes against humanity”.¹ While these events have recently received some attention from historians, international law scholars have barely given these developments any consideration.²

¹ Further Papers, Inclosure 5, “Communication made by Abro Effendi to the Members of the Syrian Commission”, in No. 40, Dufferin to Russell, sent 10 May 1861, received 23 May 1861, referring to Damascus as “the scene of a great crime, a crime against humanity, which provoked a severe and immediate punishment”. This marks, if not the first, then certainly one of the earliest uses of the phrase “crimes against humanity” both in a diplomatic communication and to reference mass atrocities that had come under judicial scrutiny. The Porte – in full the Sublime or Ottoman Porte – is a translation of the Turkish title of the central office of the Ottoman government. All translations from the French in this chapter are by the author.

² Leila Tarazi Fawaz, *An Occasion for War: Civil Conflict in Lebanon and Damascus in 1860*, University of California Press, Berkeley, 1994 provides a thorough account of the civil strife and restoration of order in Syria. Ussama Makdisi, *The Culture of Sectarianism: Community, History, and Violence in Nineteenth-Century Ottoman Lebanon*, University of California Press, Berkeley, 2000 expands on this with his expertly written manuscript on the role of sectarianism in the lead up to and aftermath of the events of 1860–61. Ceasar E. Farah, *The Politics of Interventionism in Ottoman Lebanon, 1830–1861*, I.B. Tauris, London, 2000 casts his historian’s eye over the “mechanics of disruption” that characterised relations between the Ottoman Porte and Europe over three decades (1830–1861), skilfully placing the 1860 outbreak and the subsequent Ottoman and European response in a proper historic and geopolitical context.

A number of contemporary accounts were published covering the Syria crisis. Four are of particular interest for the perspective they provide on the transitional justice process in post-conflict Syria: Anonymous, *Souvenirs de Syrie (expédition française de 1860) par un témoin oculaire* [Memories of Syria (French Expedition of 1860) by an eyewitness], Plon-Nourrit, Paris, 1903; M. Saint-Marc Girardin, *La Syrie en 1861: condition des Chrétiens en Orient* [Syria in 1861: Condition of Christians of the East], Didier, Paris, 1862; Ernest Louet, *L’Expédition de Syrie, 1860–1861* [The Expedition to Syria, 1860–1861], Amyot, Paris, 1862; Richard Edwards, *La Syrie, 1840–1862: histoire, politique, administration, population, religion et mœurs, événements de 1860 d’après des actes officiels et des documents authentiques* [Syria, 1840–1862: History, Politics, Administration, Population, Religion and Morals, Events of 1860 from Official Acts and Authentic Documents], Amyot, Paris, 1862. The published British Blue Books for this period, which contain more material of interest than I have been able to distil into a single chapter, is another invaluable resource. Houses of Parliament, Parliamentary Papers, *Correspondence Relating to the Affairs of Syria 1860–1861*, Harrison and Sons, London, 1861 (‘Papers’); *Part II, Correspondence Relating to the Affairs of Syria (in continuation of Correspondence presented to Parliament in April 1861)*, Harrison and Sons, London, 1861 (‘Further Papers’).

As best as I can determine, the domestic prosecutions and international involvement in that process that followed have been mentioned only in two other contemporary works related to international law: Gary J. Bass, *Freedom’s Battle: The Origins of Humanitarian Intervention*, Alfred A. Knopf, New York, 2008, pp. 192–196, 203–12; Davide Rodongo,

The work of the Ottoman courts and the Commission forms part of an underappreciated history of international criminal law. The justice programme in Syria identifies this as an important moment of transition from the era in which states were willing to forswear punishment for atrocities, to one in which massacre would provoke robust military and diplomatic intervention, into matters ostensibly entirely 'local', in humanity's name. Confronted with mass violence, Europeans developed institutions and ways of thinking that are identifiable as progenitors of our modern international criminal law.

The Commission was a physical embodiment of the punitive mandate, but portents of the reasoning that would be critical to subsequent developments in law and policy may also be seen at work in the mind of Europe's educated classes. Sustained interest in the judicial proceedings entangled and entrenched the ideas of appalling bloodshed, crime, punishment and humanity in a manner that moved the concept of 'crimes against humanity' one step closer towards acquiring its contemporary meaning: a repugnant act of violence committed as part of a widespread or systematic attack on a civilian population, in contravention of international law. The questions incumbent to any transitional justice programme were also thought through by European and Ottoman alike: Who to prosecute? How many to punish? What due process rights should be respected? What role, if any, should the international community assume?

Against Massacre: Humanitarian Interventions in the Ottoman Empire 1815–1914, Princeton University Press, Princeton, NJ, 2012, pp. 111–12. Both discuss the punishments of those implicated in the Syria crisis from the point of view of the development of the law of humanitarian intervention. But neither work discusses the trials, the work of the Commission or the intervention in Syria from the standpoint of international criminal law or transitional justice.

The account that follows is based on these sources, as well as a thorough search of material in the US National Archives and Records Administration ('NARA'), the United Kingdom National Archives ('TNA') in Kew, and the Public Record Office of Northern Ireland ('PRONI'). Although it would have been preferable, particularly given that one of the purposes of this volume is to disrupt international criminal law's Western-centric narrative, to consult more of the archives holding relevant materials (particularly the Ottoman archives), lack of knowledge of the relevant languages has prevented me from exploring these sources. I hope that other scholars will pick up where I have left off and continue to investigate this fascinating *caesura* in the development of international criminal law.

Following the lead of Fawaz, I use the terms 'Syria', 'Ottoman Syria' or 'Syria region' throughout this chapter to refer to territory that today comprises Lebanon, Syria, Jordan, Israel and Palestine. 'The Mountain' refers to a region which is today a central part of the state of Lebanon. See Fawaz, 1994, p. xiv; Makdisi, 2000, p. 30.

This chapter proceeds in four sections. In section 7.2. I describe the events, as they were reported to Europe, that triggered international outrage and intervention. In sections 7.3. and 7.4. I attempt to convey the ‘flavour’ of some of the trials before three Extraordinary Tribunals located in Damascus, Beirut and Moukhtara. In section 7.5. I present the work of the Commission as it related to criminal repression. I then offer some general thoughts on the state of international criminal law in 1860 and identify some areas where the activities of the commissioners still resonate (section 7.6.). The chapter concludes with a brief discussion of the legacy of the Commission and an appeal for additional resources to be put into researching international criminal law’s nineteenth-century DNA.

7.2. 1860: “A Year of Fire and Sword, Massacre and Pillage, Desolation and Destruction”

The story of why violence broke out across Greater Syria when it did is complex. The region’s occupation by an Egyptian army between 1831 and 1840 had seriously undermined the traditional balance of power, as new laws that disproportionately favoured Maronite Christians pushed the region’s traditional power, the Druze, into increasingly dire economic and political straits.³ By 1850 sectarian conflict had become a regular feature of their relationship between the two communities.⁴ The Crimean War (1853–6) had turned Ottoman peripheries into scenes where Great Power rivalries played out, and France and Britain were unabashed in their efforts to influence affairs directly at Constantinople and in Syria through their Maronite and Druze protégés.⁵ The war also deprived the Ottoman government of critical cache, blood and treasure, and focused resentment

³ Kais Firro, *A History of the Druzes*, Brill, Leiden, 1992, pp. 61–66, 79–81.

⁴ Joseph Abou Nohra, “L’Evolution du système politique libanais dans le context des conflits regionaux et locaux (1840–1864)”, in Nadim Shehadi and Dana Haffarmills (eds.), *Lebanon: A History of Conflict and Consensus*, I.B. Tauris, London, 1988, pp. 31–48; Firro, 1992, pp. 88–92, see *supra* note 3.

⁵ Makdisi, 2000, pp. 706–7, see *supra* note 2. Leila Fawaz, “The Druze-British Connection in 1840–1860”, in *The Druze – Realities & Perceptions*, Druze Heritage Foundation, London, 2005, pp. 105–113. Alfred Schlicht, *The Role of Foreign Powers in the History of Lebanon and Syria from 1799 to 1861*, *Journal of Asian History*, 14(2) 1980, pp. 97–126.

against foreign powers, a circumstance that disrupted Great Power ambitions not one whit.⁶

The Porte's efforts to reduce foreign influence by eradicating situations that might serve as a pretext for intervention backfired and accelerated the instability. The passage of an edict in 1856 that provided for civil equality and freedom of worship for Christians was regarded with trepidation by Syria's Muslims, who regarded the law as a secular assault on their religious traditions, and feared the loss of their own privileged social status and the injury to their autonomy implied by greater Christian (and by extension French) influence on public affairs.⁷ Economic and demographic factors also played a role in undermining the peaceful co-existence of the Druze and Christians. For decades the Druze had resisted the introduction of Western and Ottoman ideas, preferring to hew to their traditional way of life and maintain their status as best they could as feudal landlords of the Mountain.⁸ The Maronites benefited from this as the advantages of a modernising and expanding economy, built with French assistance, disproportionately accrued to them.⁹ Additionally, the Maronite population had over the span of only a few decades dramatically overtaken that of the Druze. Numerically and commercially, they posed a threat to the traditional Druze elite. These changes, inherently disruptive on their own, also contributed to a perception on the part of Druze and Maronite alike that the other sect was the 'real' minority, and as such had only succeeded by virtue of their own largesse.¹⁰

Finally, unrest in Montenegro and Serbia in early 1860 had necessitated a reduction in the number of Ottoman troops in Syria.¹¹ By April the indicia of the sultan's authority had been significantly diminished and, as a practical matter, the risk of punishment as a consequence of violence was significantly reduced.

⁶ Moshe Mo'az, *Ottoman Reform in Syria and Palestine, 1840–1861: The Impact of the Tanzimat on Politics and Society*, Clarendon Press, Oxford, 1968, pp. 214–15, 218–20; Fawaz, 1994, p. 22, see *supra* note 2; Firro, 1992, pp. 84–85, see *supra* note 3.

⁷ Mo'az, 1968, p. 227, see *supra* note 6; Samir Khalaf, *Lebanon's Predicament*, Columbia University Press, New York, 1987, p. 67.

⁸ Firro, 1992, p. 115, see *supra* note 3.

⁹ *Ibid.*, pp. 115–116; Fawaz, 1995, p. 24, see *supra* note 2. Schlicht, p. 121–2, see *supra* note 5.

¹⁰ Firro, 1992, p. 117, see *supra* note 3.

¹¹ Farah, 2000, p. 603, see *supra* note 2; Ma'oz, 1968, pp. 51–53, see *supra* note 6.

The match that finally set Syria ablaze was a minor incident in Beit Miri over the question of whether some Druze or Maronite men would yield a path to the other. Around 10 individuals were killed in the resulting brawl.¹² Stories of the incident triggered revenge killings, which spurred sectarian skirmishes, which escalated into interethnic massacres. By late May the situation in the southern, western and eastern Mountain districts was being called a ‘civil war’ by foreign consuls.¹³ Both sides were guilty of warmongering, pillage, murder and other abuses, but the worst excesses (and the actions that ultimately prompted European intervention) were attributed to the Druze. The first of what would become several notorious massacres occurred at Hasbeya, where a band of Druze broke through the gates of the seraglio (with the connivance of the local Ottoman commander, it was reported) and massacred the Christian refugees:

[The Druze] rushed like hungry tigers upon the unarmed mob in the court-yard. No man was spared. In ten minutes the very stones were inch deep in human blood. No butchery ever known in history equaled this in ferocity and cowardice. In half an hour upwards of a thousand strong men were hacked to death. Some few tried again the escape, but were driven back by the bayonets of Turkish soldiers (regular troops, not Bashi Bazouks [irregular troops]), and the Druses had their revel of blood undisturbed.¹⁴

Similar scenes played out in the Christian refugee sanctuary of Rasheya and the Christian stronghold of Zahlé.¹⁵ The violence escalated to fever pitch during the Druze attack on the predominantly Christian city of Deir el-Kamar (Deir al-Qamar) on 19 June 1860. Thousands of Christians lost their lives in the attack, vast quantities of goods were plundered, and countless homes and business were destroyed.¹⁶ The descriptions that reached and horrified Europe in the aftermath of the attack

¹² Farah, 2000, p. 542, see *supra* note 2; Firro, 1992, p. 119, see *supra* note 3.

¹³ The phrase used in F[oreign] O[ffice] 195/655, Moore to Bulwer, 30 May 1860, TNA. For some discussion over the “turning point” that elevated the conflict to a civil war, see Fawaz, 1994, p. 49, see *supra* note 2.

¹⁴ “Syria”, *Daily News*, 9 July 1860; Fawaz, 1994, pp. 60–63, see *supra* note 2; Farah, 2000, pp. 566–69, see *supra* note 2.

¹⁵ Farah, 2000, pp. 569, 573–578, see *supra* note 2.

¹⁶ Additional information on and context for these notorious massacres may be found in Fawaz, 1994, pp. 63–74, see *supra* note 2; Farah, 2000, pp. 566–82, see *supra* note 2.

still resonate today. The following from the English *Daily News* represents a typical account:

Here stood, ninety days ago, a thriving town of 8,000 souls and upwards, and when the troubles in Lebanon broke out nearly two thousand Christians from various parts had sought refuge in the place. Where are now these images of God? Where are the comfortable homes, the thriving trades, the right silk crops, the produce of grapes and of olives, the hundreds of working silk looms that this population possessed? Where are the wives and daughters of these traders and landowners, where the happy children, the hearty welcome which all strangers received, the wealth in dress and jewels with which the matrons were adorned? The men of the place – ay, and some of the women, too, for I counted no less than a dozen in one spot – the men are here, these corrupting masses of putrid skulls are all that remains of them; their houses are all burnt or pulled down; their property all plundered or destroyed; their women beggars in the streets of Beyrout; their male children hacked to pieces by the knives of the Druses. [...]

[In the Turkish Governor's room] in the far interior of the Serai [...] the great slaughter seems to have taken place. Here – two and a half months after these murders – the ground of the room was still discoloured and fat with human blood. Here still lay about fragments of torn dresses and clothing, bearing witness to many fearful deeds of blood. And here, below the large window of the room, lay heap upon heap and pile upon pile of corrupting human bodies, a seething mass of advanced purification.¹⁷

In mid-July a tenuous Druze-Christian *boyourouldis*¹⁸ (peace accord) arranging for an “oblivion of the past”, that is an absolution from any “claim or pretention” for “all that has passed from the beginning of the war to the present date”, was signed at the prompting of Khurshid Pa-

¹⁷ “Syria”, *Daily News*, 21 September 1860; “Syria”, *Daily News*, 28 September 1860”. The vice-consul of Sidon, Jacob Abela, described the city as “nothing but dead bodies and ruins”. Papers, Inclosure 2, in No. 104, Moore to Russell, sent 15 August 1860, received 4 September 1860, see *supra* note 2.

¹⁸ Further Papers, Inclosure 2, in No. 27, Moore to Russell, sent 18 July 1860, received 5 August 1860, see *supra* note 2.

sha, the commander of the Ottoman garrison at Deir el-Kamar.¹⁹ For a moment it looked as though matters had been brought to a decisive, if still unstable, end. But the “year of fire and sword, massacre and pillage, desolation and destruction” was not yet at an end, as became clear when news of fresh outbreaks of violence in Damascus reached the European capitals.²⁰ The carnage in the Mountain and influx of refugees had aggravated the relationship between the city’s Christians and poor Muslims. Over the course of eight days a mob, comprising primarily Muslims, but counting among its members Druze, Kurds and, by many reports, Turkish soldiers, killed between 3,000 and 10,000 Christians, and set ablaze the French, Russian, Greek, Dutch, Austrian and Belgian consulates.²¹

¹⁹ Further Papers, Inclosure 4, “Treaty of Peace between the Christians and Druses”, in No. 28, Moore to Russell, sent 19 July 1860, received 5 August 1860. The British consul-general, Noel Moore, felt that the terms of the peace had “been forced upon the Christians, who it is impossible should willingly seal their own ruin” [*sic*]. He also protested that only low-ranking Christian authorities had signed. Further Papers, Inclosure 1, in No. 28, Moore to Russell, sent 19 July 1860, received 5 August 1860, see *supra* note 2.

²⁰ Papers of the American Board of Commissioners for Foreign Missions (‘ABCFM’), ABC 16.8.1, Unit 5, Reel 545, No. 30, “Report of the Beirut Station for the year 1860”.

²¹ Smylie Robson, Presbyterian Church of Ireland missionary and resident in the Christian quarter in Damascus, described the riots as they unfolded outside his window:

For the last two hours and a-half the street past my house has presented a terrible scene; first, the rush and running of men armed, and unarmed boys and women shouting imprecations on the infidel; shouts, imprecations on the infidel Christians, and cries of “Kill them! Butcher them! Plunder! Burn! Leave not one! Not a house, not anything! Fear not the soldier, fear nothing; the soldiers will not meddle with you”. They were right, nobody has interfered. Men, women, boys, and soldiers, for more than two hours have been carrying every sort of thing past my house like fiends from hell. I cannot go to your house. Could I go with my wife and servant into the midst of armed ruffians crying and thirsting for blood? To open my door is as much as my life is worth. I must remain where I am and leave the event with God. Where is your Pasha now? Fifty men could have put the insurrection down. Has any attempt been made to preserve the lives of property of the Sultan’s subjects or the subjects of other Powers?

Further Papers, Inclosure 4, in No. 20, Moore to Russell, sent 13 July 1860, received 3 August 1860, see *supra* note 2.

Sir Henry Lytton Bulwer, British Ambassador at Constantinople, described the escalating violence:

It began by much agitation, the consequence of mutual apprehension; the Christian fearing the Turks, the Turks fearing the Christians and the arrival, forewarned to them, of the French. A slight tumult occurs.

Beginning in early July, the first reports of the violence in the Mountain trickled in to European periodicals.²² Public support for a humanitarian intervention grew as the massacres unfolded in the press,²³ along with (particularly in the British press), demands for the punishment of the "criminals" responsible.²⁴ Particular attention was directed at Ottoman officials reported to have been negligent, complicit or participants in the violence. Khurshid Pasha, Governor-General of Sidon, and Ahmad (Achmet) Pasha, Governor-General of Damascus bore the brunt of the

Some boys are arrested and punished: the mob rescue and side; the Pasha and his military do nothing: the mob increases. It murders and pillages. The better classes of the Mussulmans, however, succor the Christians, and save those they can. Others are received in the Citadel. Some houses, however are set on fire, but as yet the disorder was limited. The Arabs and Druses see the flames and pour in to the town.

TNA, 30/22/88, Bulwer to Russell, 27 July 1860. For a more detailed description of the riots, see Fawaz, 1994, pp. 78–100, *supra* note 2; Farah, 2000, pp. 588–92, *supra* note 2. Farah considers it most likely that 3,000 were killed in the Damascus riots. Farah, 2000, p. 592, see *supra* note 2. Fawaz believes that approximately 2,000 local Christians died during the riots but notes that hundreds more may have lost their lives as refugees. Fawaz, 1994, p. 132, fn. 2, see *supra* note 2.

²² See, for example, *The Times*, 6 July 1860 and *The Times*, 11 July 1860.

²³ See, for example, *The Times*, 25 July 1860: "It is decidedly advisable to treat the Porte as a Government independent and equal with our own, and to occupy the country only under a convention with that Power; but, if such an arrangement cannot be made, then in the name of humanity let us disregard etiquette, and put an end at once to these horrors".

²⁴ The *Birmingham Daily Post*, 12 July 1860, appears to have been the first to appeal for punitive action against individual offenders, linking the practice with the logic of state-building: "[...] unless the officers in command of the Turkish troops at Zahleh, Hasbeiya, and the other scenes of slaughter, are brought to condign punishment for their infamous treachery in standing idly by while they could have prevented the mischief, or worse still, inducing the Christians to deliver up their arms under promise of protection, and the handing them over to be massacred in cold blood by their remorseless enemies [...] a premium is held out for the repetition of similar atrocities at a future day". *The Times*, 25 July 1860, was the next to take up the call: "It will be [the duty of Europe] to insist that the Porte shall punish the chiefs and their accomplices, even though some of the culprits are to be found in the Sultan's own army". The editors of *The Times* would repeatedly insist that the "ring-leaders" and "arch-offenders" face Ottoman justice; see "The Massacres in Syria", *The Times*, 17 August 1860 and *The Times*, 16 August 1860. In "The Syrian Questions", the *Saturday Review*, 4 August 1860 was of the opinion that "if the Turkish Government is not wholly corrupt the insurgent [Druze] chiefs and the delinquent Asiatic Pashas will be punished with exemplary rigor". The *Standard*, "The Syrian Massacres", 27 July 1860, forcefully argued that "[t]here must be no oblivion of the past, no 'Syourouldy' [peace agreement with amnesty] until the chief agents, whether they be coward Turks or bloodthirsty Druses, have met the retribution due to their guilt".

reproach and were presented by the press as the arch-villains or architects of the violence.²⁵ Their peers were the “infamous terrorists of the great French revolution”, their hands dyed deeper in blood “than perhaps any men we read of in modern history”.²⁶ Their “extirpation” was accordingly demanded as a “service to Syria and to the cause of humanity”.²⁷

On 17 July the French Foreign Minister, Edouard-Antoine Thouvenel proposed to the Great Powers the creation of an International Commission to “ascertain” the causes of the violence and the degree to which local Ottoman officials were responsible.²⁸ But the measure was soon overtaken by events on the ground, as news of the Damascus riots quickly convinced Europe’s Great Powers that more forceful measures were required. Throughout August the energies of Britain, France, Austria, Prussia and Russia – each Power keen to either turn the situation to its advantage or frustrate the ambitions of the other Powers – were directed at obtaining the Porte’s consent to a humanitarian mission.²⁹ Although the

²⁵ There were some marginal efforts to establish a counter-narrative in which the Turkish government was not culpable. See, for example, “The Druses and Maronites”, *Liverpool Mercury*, 12 July 1860, asserting that there was no reason to believe Ottoman government was “implicated in the massacre of the Maronite Christians, in any other sense than that in which Sir G. C. Lewis and the London police are implicated in the riots at St. Georges-in-the-East”. See also the *Morning Post*, 19 July 1860, whose correspondent blamed “Christian foreign agents” for the uprising.

²⁶ “Syria”, *Daily News*, 3 September 1860.

²⁷ “The Syrian Intervention”, *Saturday Review*, 11 August 1860. See also “Syria”, *Daily News*, 20 September 1860, in reference to Khurshid Pasha: “[...] outraged humanity calls for vengeance on the men by whose means and at whose instigation such barbarities have been committed”; “The Fearful Massacre of the Christians”, *Morning Post*, 7 September 1860: “No doubt whatever exists as to the complicity of Kurchid Pasha in all those horrors of which the Lebanon has been the scene, and outraged humanity calls for vengeance on the man by whose means and at whose instigation such barbarities have been committed”; “The Syrian Massacres”, *Sunday Times*, 19 August 1860: “Now, in the matter of the two miscreants, Kurchid Pasha, late governor of Beyrout, and Achmet Pasha, late governor of Damascus, if there is any meaning whatever in the English language, these men [...] are guilty, directly guilty, of the blood of thousands, and of the misery and beggary of hundreds of thousands. If there is law or justice in the empire, these men should pay with their lives the wrong they have done God and man in this land”; “Syria”, *Daily News*, 28 August 1860, reprinted in “Syria”, *Irish Times and Daily Advertiser*, 29 August 1860, in reference to Khurshid and Achmet: “If found guilty their sentence must be death – the whole of Christendom will demand no less”.

²⁸ Papers, No. 6, M. Thouvenel to Count Persigny, 17 July 1860, see *supra* note 2.

²⁹ James Williams, the American minister to the Sublime Porte, wrote of Great Power relations in Constantinople at this time:

Porte had already dispatched its Foreign Minister, Fuad Pasha, and around 15,000 troops to quell the unrest, it begrudgingly assented to the intervention on 3 August 1860.³⁰ French troops under the command of General Charles de Beaufort d'Hautpoul reached Beirut two weeks later, just as Fuad's efforts to restore order in Damascus were beginning to show results.³¹

7.3. "[T]he Implementation of Imperial Justice": Ottoman Prosecutions in Damascus

The imperial firman (decree) that set out the terms of Fuad's mandate made clear that justice was to be a cornerstone of his post-conflict efforts to restore order:

You will, by adopting the necessary measures, cause to cease the confusion and civil war which has ensued between the above Maronites and Druses, and procure the return of peace and security to those parts. You will ascertain who have been instrumental in the odious act of shedding human blood, and immediately punish them according to the prescriptions of my Imperial Code. In a word, you are freely entrusted with the adoption of all the military and civil measures, for the extinction of this evil.³²

France as usual is prepared for any emergency. She does not absolutely, or at least not ostensibly deal any blows herself, but she smiles upon Turkey, winks at Russia, and stands ready to seize the lion's share when the ripe fruit falls to the ground. England stands apart, frowning and disconsolate, grumbling as usual, at every thing [*sic*] and every body [*sic*], unwilling that France and Russia shall seize upon the prey which she does not herself covet, she yet feels that it is a herculean task to uphold the Sultan's government, and she even commences to doubt whether it ought to be upheld. The interests and happiness of the people of Turkey first upon their lips, are last in the hearts of either.

NARA, RG 59 M46 R17, No. 97, James Williams to Lewis Cass, 12 September 1860.

³⁰ Papers, No. 59, Cowley to Russell, sent 3 August 1860, received 4 August 1860, see *supra* note 2. See also Farah, 2000, pp. 606–8, see *supra* note 2.

³¹ Fawaz, 1994, pp. 109–19, see *supra* note 2.

³² Papers, Inclosure "Firman", in No. 51, Bulwer to Russell, sent 25 July 1860, received 3 August 1860. A slightly different English translation of the firman appears in Inclosure 2, "Imperial Firman", in No. 65, Consul-General Moore to Bulwer, sent July 21, 1860, received 10 August 1860.

Fuad reached Damascus on 29 July, and for several days remained camped outside its gates, rejecting almost all of the efforts on the part of local notables to establish communication.³³ To the outsider Fuad may have looked passive or weak, but in actuality this was a carefully calculated first move in a well-planned raid-and-arrest operation. With an uncommunicative Extraordinary Commissioner from the Sublime Porte outside their walls, the city's elite worked themselves into an anxious froth. Then, after several days:

A number of the more influential of the inhabitants, about whose conduct unpleasant rumours were current, were invited to wait upon his Imperial Majesty's Commissioner. These men were received with marked politeness, and their opinions as to the measures to be taken were requested. Delighted to find the apprehended storm thus passing over their heads, they manifested a disposition, and even a zeal, to give information against a multitude of their coadjutors.³⁴

Doubtless those who co-operated hoped for amnesty. But denunciation did not translate to leniency, and backed by a second imperial firman placing responsibility for the Damascus violence on the shoulders of local officials, the informants were "quietly handed over to the officers of justice".³⁵ The strategy was employed to great effect among the city's lower-class Muslims as well, and when enough names had been gathered Fuad ordered a telegraphic blackout,³⁶ the closure and guarding of the city gates,³⁷ and the deployment of the military into the city.³⁸ Fuad reported to Consul-General Moore on 4 August 1860 that 330 individuals had been arrested without "striking a blow", and that the number was predicted to swell to 500 by the end of the day.³⁹ The arrests continued as avenues of

³³ "Syria", *Morning Chronicle*, 24 August 1860.

³⁴ "Turkey", *Irish Times and Daily Advertiser*, 28 August 1860.

³⁵ *Ibid.* The second firman may be found in Baron I. de Testa, *Recueil des traités de la Porte ottomane avec les puissances étrangères*. Vol. 6, Muzard, Paris, 1884, pp. 91–92.

³⁶ "Syria", *Daily News*, 23 August 1860.

³⁷ "Syria", *Morning Chronicle*, 24 August 1860; "The Massacres in Syria", *The Times*, 23 August 1860.

³⁸ "Syria", *Morning Post*, 10 September 1860. See also from the Papers: No. 91, Fraser to Russell, sent 8 August 1860, received 22 August 1860; No. 112, "Résumé of Despatches from Fuad Pasha", see *supra* note 2.

³⁹ Papers, Inclosure 1, in No. 87, Moore to Russell, sent 6 August 1860, received 22 August 1860, see *supra* note 2. The correspondent for the *Morning Chronicle*, however, reported that two individuals who resisted arrest were bayoneted by Turkish soldiers, and one man

escape were carefully surveilled; individuals who fled the city through reopened gates but behaved suspiciously at their destination were identified by Fuad's spies, and those attempting exodus by sea found their passage suspended by Turkish officials.⁴⁰ By 10 August 1860 between 700 and 1,000 suspects were in Damascene prisons awaiting trial.⁴¹

The Extraordinary Tribunal established by Fuad to hear their cases sat in the Silimiye mosque of Damascus. Trials were conducted in secret, so there is scant direct information about its operations and verdicts in the foreign diplomatic or press archives.⁴² A private letter to the *Morning Post* reported that the tribunal comprised 13 judges.⁴³ According to consular communications the judges followed the rules "of a military court", convicted individuals *in absentia*,⁴⁴ and heard "any reasonable evidence [...] even as far as that of a single Christian against a Moslem".⁴⁵ Fuad also reversed the usual burden of proof rules, as, in his own words

[i]t would be impossible to prove charges for acts of murder which may have taken place in that outbreak by the production of proofs as in other ordinary cases. Therefore a general rule has been adopted towards everybody of allowing the bereaved Christian inhabitants to denounce such murderers of their relatives or plunderers of their property as they might recognise to prosecute their case by the process of confrontation and to prove it upon oath. When the accused party is unable to repel the charge he is pronounced to be guilty and punished according to the degree of his culpability.⁴⁶

drowned attempting to hide himself in a well. "Syria", *Morning Chronicle*, 24 August 1860.

⁴⁰ "The Massacres in Syria", *Freeman's Journal and Daily Commercial Advertiser*, 29 August 1860.

⁴¹ Papers, No. 91, reporting "nearly 1000" detained, see *supra* note 38; Papers, No. 92, Moore to Russell, sent 10 August 1860, received 27 August 1860, reporting between 700 and 800 arrests; Papers, No. 106, Fraser to Russell, sent 16 August 1860, received 4 September 1860, reporting that Fuad stated on 11 August that 800 had been arrested.

⁴² Papers, No. 91, see *supra* note 38.

⁴³ "Syria", *Morning Post*, 3 September 1860.

⁴⁴ Papers, Inclosure 2, in No. 119, Brant to Russell (sent 25 August 1860, received 13 September 1860); Papers, Inclosure, in No. 138, Brant to Russell (sent 6 September 1860, received 29 September 1860).

⁴⁵ Papers, No. 106, Fraser to Russell (sent 16 August 1860, received 4 September 1860).

⁴⁶ Papers, Inclosure, in No. 244, Bulwer to Russell (sent 31 December 1860, received 18 January 1861). In the enclosed document, which is a letter from Fuad to the grand vizier,

Hundreds of Damascenes were tried and punished by the Extraordinary Tribunal of Damascus. A note from Fuad dated 23 August 1860 suggests that punishments were doled out on the basis of an accused's culpable acts and, to a lesser extent, professional position:⁴⁷

he confirms his understanding that this plan had already been submitted to the Porte and "had met with His Majesty's sanction".

⁴⁷ Papers, Inclosure, 2 in No. 119, Brant to Russell, (sent 25 Aug 1860, received 13 September 1860) (list current as of 22 August). According to Fuad perpetual banishment was reserved for those who were proved "to have taken no actual part in the crimes committed"; Papers, No. 112, see *supra* note 38. The Bagnio was a prison in Constantinople for, among others, "Turks as are intended to be secretly executed", captured slaves and prisoners of war. See F.C.H.L. Pouqueville, *Travels in Greece and Turkey, Comprehending a Particular Account of the Morea, Albania, &c*, 2nd ed., Henry Colburn and Co., London, 1820, p. 266. The prison was generally perceived by Europeans as "the *ne plus ultra* of severity and horror" for which "most travelers have exhausted every epithet of the revolting and the terrible". But the traveller Eyre Crowe toured the facility and ultimately determined that prisoners held there were not treated worse than similarly situated prisoners in Italy or Spain. Eyre Evans Crowe, *The Greek and the Turk; Or, Powers and Prospects in the Levant*, Richard Bentley, London, 1853, p. 326. Fifty-six (or 57, depending on the dispatch consulted) individuals were hanged in the public spaces of Damascus on 19 August 1860. Major Fraser reported that among the hanged were "four or five persons above the common class, leader of armed levies, in the pay of the Government". Papers, No. 97. Fraser to Russell, sent 20 August 1860, received 1 September 1860. Attached to the chest of each of those hanged was a paper announcing their crimes, though few citizens could read. Papers, No. 109, Fraser to Russell, sent 23 August 1860, received 6 September 1860. The executions had a profound effect on the Damascus population. The correspondent for *The Times* in "The Massacres in Syria", 5 October 1860, described Damascus as one would a city under siege:

[W]hen I returned into the bazaars [...] we saw how profound was the terror inspired by Fuad Pasha's vigorous measures. One or two were entirely deserted, and all the shops in them closed. The dogs seemed to be badly off, and not to understand the desertion which was rapidly starving them out. In other bazaars some of the shops were opened – one here and there. A few customers might be seen cheapening a yard or two of calico – and they were mostly Christian women – and Bedouins, Kurds, and Metualis, buying staring handkerchiefs, tobacco, and articles they are accustomed to procure in the town. Terror seemed to have acted in different ways upon the Moslems, for in these bazaars the first batch of criminals had been hanged from the rafters which support the roof. Some of the people we passed among were blanched with fear, others were reduced to a state bordering on cretinism, while no inconsiderable proportions seemed to have had their ferocious hatred of Christians intensified, for they muttered to themselves, perhaps curses, and scowled upon us as we passed, looking, I fancied, as if they were brooding over plans for retaliation, and carefully cherishing their vengeance. A few minutes more and we entered the "street called

Persons condemned to death, as having openly assassinated Christians, and who have been hung	56
Persons condemned to death for having taken part in the disturbances, armed, and who in their capacity of auxiliary soldiers, zaptiés and bachi-bozouks, have been shot	111
Persons condemned to the bagnio for life, as having taken part in the disturbances, with arms in their hands, and who have been sent to Constantinople	139
Persons condemned to exile, for having taken part in the pillage, without arms	145
Persons condemned to hard labour for a fixed period, and kept at Damascus, to be employed in working on the roads	186
Persons condemned by default [in absentia], and who will be executed as soon as they shall fall into the hands of justice	83
Total	720

Between 23 August and mid-November several dozen more Muslims were sentenced by the Tribunal to death, exile, punishment or hard labour, and thousands more conscripted to fight in the Sultan's armies.⁴⁸

Straight," the via recta of the Romans. With the exception of an apothecary's, nearly all the shops are closed, the doors and windows carefully barred, behind which we fancied we could discern inquisitive eyes peering out upon us, and could hear tremulous voices discussing, scarcely above a whisper, who we were. From a barber's shop an apprentice lolled in the window-sill. His occupation was clearly gone. The garrulous owner was asleep on the bench where customers used to sit waiting to be shaved. The focus of Eastern gossip was silent as the tomb.

For official reports of the public reaction to the capital punishments see Papers No. 91, *supra* note 38; Papers, Inclosure 2, in No. 118: "The people of the town are stricken with terror; they evidently never contemplated what has happened, and are trembling at what may still be impending", see *supra* note 47.

⁴⁸ See FO, 195/658, Inclosures, "Extraits du dossier de la procédure des personnes qui ont commis des crimes pendant les événements de Damas" (listing 181 capital punishments) and "Liste des personnes qui ont été envoyées à Constantinople, et jetées au Bagne à Perpetuite pour leur participation aux événements de Damas" (listing 146 persons, all guilty of looting) in No. 109, Dufferin to Russell, 27 January 1861. Conscription was reserved for those least culpable in the riots. Louet, 1862, p. 71: "They will be worthy com-

The vast majority of those punished were “from the rabble”,⁴⁹ as it proved difficult to pin crimes on many of the city’s elite.⁵⁰ This was attributed to fear of retaliation as well as opportunism.⁵¹ There was also a thriving market in “certificates” – attestations of alibi or good character by Christians – as well as testimony that would incline the tribunal toward a guilty verdict.⁵² But Fuad, well aware of how impatiently “[t]he world awaits the implementation of imperial justice”, refused to let investigative difficulties stand in the way of high-profile arrests and punishments.⁵³ About a dozen Damascus notables were rounded up, tried and punished by the Extraordinary Tribunal between August and October.⁵⁴

panions of the Turkish soldiers who attended impassive, arms in hand, all the cruelties committed in Deir-el-Kamar”, see *supra* note 2. See also J. Lewis Farley, *The Massacres in Syria*, 2nd ed., Bradbury and Evans, London, 1861, p. 103, reporting that by 1 September 1860 “upwards of 3,500 mussulman inhabitants of the city have been enrolled as forced conscripts, and sent off to join the army”; Inclosure 3, in No. 118, reporting that 2,000–3,000 would be conscripted; see *supra* note 47. As of 30 August only 1,000 had been conscripted. Papers, No. 126, Fraser to Russell, sent 30 August 1860, received 19 September, 1860. This is consistent with information sent to the US ambassador to Constantinople. RG 84 Vol. 231, Johnson to Williams, 4 September 1860, NARA. It was reported in the British press that many conscripts bought their way out of their service. “Syria”, *Daily News*, 12 January 1861.

⁴⁹ Papers, No. 91, see *supra* note 38. Fuad Pasha complained to Major Fraser that “it was difficult to get evidence” against even low-level perpetrators. Papers, No. 106, Fraser to Russell, sent 16 August 1860, received 4 September 1860.

⁵⁰ Papers, No. 109, Fraser to Russell, sent 23 August 1860, received 6 September 1860.

⁵¹ Papers, No. 126, Fraser to Russell, sent 30 August 1860, received 19 September 1860; “The Massacres in Syria”, *The Times*, 6 October 1860: “The nefarious trade to which I referred in my last, of getting up evidence, is still carried on. [...] The Sheik was arrested, but the Christians are striving to obtain his acquittal, on condition of his restoring to them some portion of their property.”

⁵² As reported in, for example, “Syria”, *Chicago Tribune*, 6 November 1860: “Many Christians of Damascus are now selling their souls to the devil by giving Turks and Arabs of that city certificates of good character, knowing full well that they murdered many of their brethren”; “The Massacres in Syria”, *The Times*, 5 October 1860: “Unless the Turkish authorities make a signal example of these traffickers in blood and false witness, it is to be feared many innocent men will suffer”.

⁵³ Makdisi, 2000, p. 148, *supra* note 2, citing Basbakanlik Devlet Arsivi (Istanbul), Irade-Meclis-I Mahsus [BBA IRADE MM] 851/5, Leff 1, 16 M 1277, 4 August 1860.

⁵⁴ Papers, No. 109, see *supra* note 50; Papers, Inclosure 3, in No. 118, see *supra* note 47. At least nine of these high-profile arrestees were sentenced to exile or imprisonment despite the complete absence of any evidence against them. Papers, Inclosure 1, in No. 173, Fraser to Russell, sent 20 October 1860, received 8 November 1860; Edwards, 1862, p. 402, see *supra* note 2. The arrest of the ‘Sheikh of Damascus’, Abdallah el-Halabi, widely regarded as “a descendent of the Prophet” was considered particularly noteworthy. Louis de Baudi-

The trials of Ottoman officials were handled by a separate Council of War.⁵⁵ Ahmad Pasha was initially arrested and sent to Constantinople for trial, but at the urging of British consuls he was returned to Damascus⁵⁶ where his case proceeded along with those of the commanders and

cour, *La France au Liban*, Dentu, Paris, 1879, p. 167, gives one account of the circumstances of his arrest: "On 22 August, the women who had been shot or hanged surrounded his home, and with cries and lamentations, as only those in Muslim countries know how to make, they shouted at the accused 'It is you who are the cause of everything that happens to us, for the advice you gave to our husbands, following your holy books.' The authority, immediately informed of the fact, arrested the Sheik at home, and after an initial investigation, he was imprisoned with his son". Another source, "The State of Syria", *Freeman's Journal*, 3 September 1860 (republishing correspondence to *Levant Herald* written under the date of 10 August 1860) dates his arrest to earlier in August: "On the forenoon of the 5th, Sheikh Abdullah-el-Halebi, considered to be the prime instigators of the recent slaughters, was arrested, and although he is one of the very leading Mussulmans of the city, and called out lustily to the townspeople to rescue him as he was being dragged by the troops through the bazaars to prison, no movement whatever was made in his behalf, and the soldiers themselves treated him with great indignity". See also Papers, Inclosure 3, in No. 118: Halabi was "considered by the inhabitants in the light of a saint, but in reality a mischievous fanatic and intriguer; although he seeks his pecuniary interest by fraud and chicanery, yet he exercises immense influence over the people. His arrest produced a great sensation"; Papers, Inclosure 10, in No. 175, Dufferin to Russell, sent 26 October 1860, received 8 November 1860: Halabi was "a most influential Moslem". Native Christians and foreign consuls were convinced that "a general massacre never could have been ventured upon, without his consent or connivance"; Papers, No 191, Fraser to Russell, sent 15 November 1860, received 30 November 1860. No evidence could be found to substantiate this claim. Again, this was attributed to self-interest: "a Christian dare not, and a Moslem at the instance of a Christian would not, testify against a man of the Sheikh's position"; *ibid.* Halabi, along with other notables, was condemned to life imprisonment in a fortress despite the admitted absence of evidence against him. Papers, Inclosure 2, in No 173, Fraser to Russell, sent 20 October 1860, received 8 November 1860.

⁵⁵ Farah, 2000, p. 612–3, see *supra* note 2. A list of Ottoman functionaries punished by the Council of War in Damascus and their sentences is available in Edwards, 1903, pp. 402–3, see *supra* note 2, and (with slightly more detail) in FO, 195/658, Inclosure, "Extraits des sentences des fonctionnaires ottomans et des notables de Damas" in No. 109, Dufferin to Russell, 27 January 1861, TNA. See also Papers, Inclosure 2, "Memorandum" in No. 131, Dufferin to Russell, sent 8 September 1860, received 20 September 1860.

⁵⁶ From a first-hand account published in "The Syrian Massacres", *Sunday Times*, 19 August 1860:

Before being sent back [...] for trial, he was, according to an order from the Sultan, publicly degraded from his rank in the great square of the Sarskerist. A large body of the troops and civil functionaries were assembled on the ground to witness the ceremony of degradation, which was performed with all the humiliating precision usual on such an occasion. The imperial order having been read aloud, the brass feston, epaulets, and sword of the degraded general were roughly tak-

sub-commanders of the Ottoman garrisons at Deir el-Kamar, Racheya (Rashaya), Hasbeya and the Christian quarter in Damascus.⁵⁷ A letter from the correspondent for *The Times* suggests that he was convicted es-

en from him, and his deprivation of all rank and honours proclaimed to the spectators. He was then marched back to his prison, and the troops withdrew to their quarters.

⁵⁷ Farah, 2000, p. 613, see *supra* note 2. See also Papers, No. 72, Bulwer to Russell, sent 1 August 1860, received 12 August 1860, attributing the decision to send Ahmad back to a local government official who determined that the misconduct could only be inquired into in Damascus; Papers, No. 92, see *supra* note 41. Moore was of the opinion that “nothing short of this measure would have satisfied the exigencies of the case, or even secured the proper trial by affording the necessary evidence direct and circumstantial, which a local inquiry can alone render available”. See also Papers, Inclosure 1, in No. 65, Moore to Russell, sent 21 July 1860, received 10 August 1860.

The consuls in Damascus spoke of Ahmad’s guilt in terms of negligence, dereliction of duty, pusillanimity and incompetence:

In my opinion Ahmet Pasha is guilty of gross incapacity in his mode of treating his Medhlis, and in not taking precautionary measures often suggested to him; of obstinacy, in maintaining in his post his Tufenkgee Bashi, who was notoriously incompetent, against the repeated warnings of persons of all classes, for weeks before the outbreak; for not endeavouring to rescue the Christians of Hasbeya and Rasheya, although he repeatedly promised to do so, being warned of their danger: for not making any effort to prevent the attack on Zahleh; for perfect indifference to, at least, if not connivance at, the massacres of the Christians by the Druses, regarding which he is reported to have said that there were two great evils in Syira, the Christians and the Druses, and that the massacres of either party was a gain to the Turkish government for the most extraordinary want of foresight as to the consequences of what was going on, and, when matters became more critical, of being still more obstinate and inactive, until at last he appeared to be paralyzed by fear for never appearing without the Serai at the head of his troops, either to prevent the outbreak at the commencement or to check the massacre afterwards, or even to arrest the conflagration. For such neglect of duty, and incapacity in an employé of his high rank, and for such arrant cowardice in a General Officer, by which the lives of probably 10,000 Christians were sacrificed, besides the intense misery occasioned to twice as many by wounds and sufferings, by loss of parents and relations, and of property; by the disgrace brought on his Sovereign, by the ruin on his country, and the indelible stain on his religious faith, supposing even nothing but incapacity for his high functions and cowardice as an officer by proved, the punishment of a disgraceful death has been merited.

Papers, Inclosure, in No. 138, Brant to Russell, sent Sept. 6 1860, received 29 September 1860.

entially for neglect of duty and gives us some flavour of the proceedings at the Council of War:

[Ahmet Agha, né Pasha] was tried by a military tribunal, and when the evidence was collected Fuad Pasha summoned, including General Gescer, a Prussian, 40 officers, selected from the different corps and of various ranks, to whom he confided the duty of pronouncing sentence. His Excellency [Fuad] first compelled them to swear the usual Moslem oath to give a just and true verdict. He next explained the nature of the case and of their duties before giving them the minutes of the evidence. The result of the deliberations of this kind of supreme Court-martial was a verdict of death. One member of the Court voted for hard labour for life, as being a more severe and degrading punishment than death for a person in the position of the ex-Mushir; but when another member observed that the Sovereign prerogative of mercy might be extended to the culprit, and restore him to the army which he had disgraced, the advocate for hard labour gave his vote for death. [...]

Ahmed Agha was charged with a military offence – neglect of duty – convicted of it, and punished for it. He was tried by a military tribunal. [...] [I]f I am correctly informed, although every facility was afforded for the supply of evidence, none was offered tending to establish that Ahmed Agha had aided or abetted the massacres otherwise than by neglecting to do his duty. [...] Consequently, the only crime that could be proved against Ahmed Agha was neglect of duty to his Sovereign, and for that he suffered punishment by death.⁵⁸

⁵⁸ “The Massacres in Syria”, *The Times*, 2 October 1860. See also “The Late Massacres in Syria: Execution of the Turkish Generals”, *The Observer*, 23 September 1860. When Fuad vacillated on following through with the execution of Ahmad Pasha the newly arrived British Commissioner reminded him that “the greater the rigour he displayed, the less occasion would the Commission have to usurp his authority”; FO 78/1625, No. 4, Dufferin to Russell, 8 September 1860, TNA.

If the anonymous author of *Souvenirs de Syrie*, 1903, pp. 242–43, see *supra* note 2 is to be believed, some of these themes ran throughout his trial before the Council of War:

[I]t would doubtless have been interesting to study [Ahmad's] case, though it remained secret. The recitals of the sentence were that he had been condemned to death for failing to satisfy his military duty, for failure of courage before the riot and for not even having dared to attempt repression; in a word, he was condemned as a coward. [...]

7.4. The Extraordinary Tribunals of Beyrout and Moukhtara: Punishing Those who “Caused the Most hHarm to Humanity”

In early September 1860 Fuad left Damascus and shifted his attention to the restoration of order in the Mountain. A second extraordinary tribunal was established in Beirut and a number of prosecutions immediately commenced. A small number of Turkish officials, among them the notorious Khurshid Pasha,⁵⁹ and 11 Druze chieftains, including the ‘supreme head’ of the Druze and friend to the British aristocracy, Said Bey Jumblat.⁶⁰ At first hearings were confidential like those in Damascus,⁶¹ but the

We asked many questions about this subject of some of the senior officers who were part of the council of war, and with whom we maintained friendly relations. Their answers were always consistent with the version of the extraordinary commissioner: the inquiry showed that Ahmet Pasha had more than once called the attention of the Porte to the troubled situation in the country, and on the impossibility of maintaining order with poorly paid and too few troops at his disposal; the government made no response to its representations and, based on that, he had twice offered his resignation. When the riot broke out, Ahmet Pasha lost his head, thinking he was going to suffer the fate of one of his predecessors, and be torn to pieces in the midst of a popular uprising in Damascus. He consulted his *medjliss* on whether to march against the rioters; the *medjliss* dissuaded him, arguing that if the government did, the whole city would be lost; the sacrifice of a part of the population was therefore deemed preferable to the risk that the entire population would be placed beyond the control of authority and enter into open revolt.

This is consistent with “Extraits des sentences des fonctionnaires ottomans et des notables de Damas”, which describes his “type” of accountability as “failing in duties of office”, see *supra* note 55. In terms of direct evidence against Ahmad, Brant reported in late August that a “good deal of plunder” was found in the ex-governor-general’s house (though this evidence was never mentioned again. Perhaps Brant was reporting the rumour, not the fact). Papers, Inclosure 1, in No. 118, Brant to Russell, sent 25 August 1860, received 13 September 1860.

⁵⁹ Fuad met with Consul-General Moore and Admiral Martin one week after he arrived in Beirut. Both urged Fuad to remove Khurshid Pasha from his post and punish him for his role in “a most grievous wrong inflicted upon the civilised world”; Papers, No. 82 (and enclosures), Moore to Russell, sent 26 July 1860, received 17 August 1860. This being done, Khurshid was sent to Constantinople. Papers, No. 90, Fraser to Russell, sent 2 August 1860, received 22 August 1860. He was returned to Beirut along with Ahmad Pasha. Papers, No. 92, see *supra* note 41.

⁶⁰ On Said Bey’s connection with the English upper class, see Ann Pottinger Saab, *Reluctant Icon: Gladstone, Bulgaria, and the Working Classes, 1856–1878*, Harvard University Press, Cambridge, MA, 1998, p. 38. The Extraordinary Tribunal determined that he was

trials soon opened to the public (and even became a tourist attraction).⁶² The English-language press in Beirut reported extensively on the hearings in Said Bey's case, many of them emphasising aspects of the proceedings that flew in the face of European procedure;⁶³ even the decidedly anti-Druze correspondent of the *Bombay Times and Standard* decried how the tribunal had deviated from the "forms of a common legal trial":

The officers of this tribunal, which is to decide on the guilt or innocence of hundreds of men, are as follows:

1st. The Mufti from Constantinople, name Mustuntik Efendi, a man learned in the Moslem law, speaking the Turkish language, and familiar with the Koran as a classic, but not able to converse in Arabic. He is the President of the Tribunal and conducts the entire examination through an interpreter.

2nd. Associated with him are Ahmed Pasha, Governor General of the Province (called the Pashalic of Sidon) a man of some energy, ignorant of the Arabic, and of a very coarse, almost brutish countenance; also Mustapha Pasha, Turkish

the "supreme head" of the Druze. Papers, Inclosure 4, "Judgments passed by the Extraordinary Tribunal at Beyrout on the Chief People inculpated in the late Disturbances in the Mountain", in No. 229, Dufferin to Russell, sent 30 December 1860, received 11 January 1860.

⁶¹ "The Massacres in Syria", *The Times*, 6 October 1860; Louet, 1862, p. 86, see *supra* note 2.

⁶² *Souvenirs de Syrie*, 1903, pp. 269–70: "From disaster (like the sublime) to the ridiculous there is often a step. The foreheads of European assistants unwrinkle when in the presence of the indiscreet curiosity of tourists, mostly English travelers who, taking advantage of an open court, were sketching the faces of the accused and even those of the Ottoman judges, to the great displeasure thereof", see *supra* note 2.

⁶³ The correspondents for *The Times* and the *Morning Post* regarded the trials as flawed; "The Massacres in Syria", *The Times*, 6 November 1860; "Syria", *Morning Post*, 3 November 1860. A few correspondents found the trial eminently fair. See for example "Syria", *Morning Chronicle*, 18 December 1860 reprinting a report from the *Levant Herald*, 28 November 1860: "[The proceedings] would bear a most favourable comparison with many state judicial proceedings in Europe – in Italy, and even in France. The public may rely that those who can be proved guilty before this court will not escape, not do I think the innocent will suffer"; "Syria", *Daily News*, 1 January 1861: "nothing can be fairer than the trials seem to be, and certainly nothing more open than the court". A reporter from a local Arab-language paper attended the proceedings and reported on them weekly; "Syria", *Morning Chronicle*, 24 December 1860 reprinting a report from the *Levant Herald*, 3 December 1860.

Admiral, who was trained in the English Navy; Abro Effendi, Private Secretary to Fuad Pasha, and the Mufti of Beirut.

These persons sit at one end of a long room, which is very luxuriously furnished with divans, carpets, &c., and smoke their cigars deliberately, none of them taking notes or even possessed of writing materials. The great Mufti sits in the middle of the upper end of the room quite by himself, with his legs crossed under him in oriental style, and rocks from one side to the other, puffing his tobacco smoke, resembling not a little a steamer rolling at the anchorage in a Syrian harbor. The prisoner Kasim Hassn-ed Dyn, a Druse old man, Private Secretary to Said Jinblat of Mokhtara. He was a confidential agent of his master, and was a most earnest, instrument in bringing about the massacre at Deir-el-Kamr. He sits in a chair in the end of the room opposite the Mufti. By his side sits six or eight Maronite and Greek Christian witnesses, who appear to testify against him. In the middle of the room and nearly half way between the Mufti and the prisoner, sit the clerk and the interpreter, and opposite them, in a row extending along the side of the room from the Mufti and the Pashas down towards the witnesses, are the seats of the agents of the Five Powers and spectators. The Mufti rocking to and fro, looks at the prisoner and asks the interpreter a question in Turkish. The interpreter writes it down carefully, and then repeats it in Arabic to the prisoner. The prisoner replies to the questions to "what he knows about the cause of the war," that he knows absolutely nothing, that he was a private individual, knowing nothing of what was transpiring, and proceeds in a long speech to exculpate himself, and call upon God to witness that he is innocent, and that the resurrection day will reveal all hearts, &c., &c., The interpreter explains the meaning in a few words to the Mufti, who takes another cigarette, and proceeds to mediate. The other Pashas ask questions, and then the witnesses are examined. None of the examiners take notes either of the questions or answers. The prisoner has no counsel. The witnesses and prisoner converse and dispute together, denying each other's statements, and then in a loud voice, and while the Mufti and Pashas are engaged in conversation, the Druse culprit, notoriously guilty, turns to the witnesses and says, "why do you testify this way, oh my children?" They answer, "because it is true and you cannot

deny it", and the trial drags along. The prisoner is compelled to defend himself, which he does, keeping up a running fire upon the witnesses and interpreter, abounding in assertions of innocence and pious ejaculations just about in proportion to his own iniquity and complicity in crime.⁶⁴

Most of the Ottoman officials hauled before the tribunal were accused of some form of negligence or omission.⁶⁵ Khurshid Pasha was charged with dispatching troops to too few locations to prevent the massacres, failing to confront the Druze or punish their leaders, and neglecting his duty to protect. He objected that sending troops into the Mountain would have left Beirut vulnerable to the violence sweeping through the rest of the region. The tribunal concluded that he had "endeavoured, though imperfectly, to do his duty", and accordingly recommended a sentence of life imprisonment.⁶⁶

⁶⁴ "News Letters: Syria", *Bombay Times and Standard*, 26 February 1861. Press reports of Druze being subject to unfair trials stirred debate in the British Parliament. Russell assured an agitated Lord Fergusson that the Commission had things well in hand:

With regard to the sentences, I have already said that the Commissioners in Syria will have all the evidence laid before them, and that if they think that that evidence is insufficient, or has been unfairly taken, it will be in their power to remonstrate with Fuad Pasha against their being carried into effect.

Hansard, House of Commons Debate, 8 February 1861 vol. 161, cc. 197.

⁶⁵ The sentencing reports communicated to the Commissioners do not identify which articles of the 1858 Imperial Penal Code the Ottoman defendants were charged with violating, but Article 99 looks like a good candidate:

Whoever he may be from amongst great or small officials who shall use or cause to be used influence or coercion for the purpose of opposing the carrying out of the orders of the State or of the provisions of the Laws of Regulations or the collection of any kind of public revenues is punished with the punishment of temporary imprisonment; and if the conduct in this way of officials has taken place of necessity or compulsorily by order of their superiors this punishment does not apply to such but is carried out with regard to him from whom the order has first emanated; and if conduct of this kind is the cause of a more grave Jinayet the punishment for that grave Jinayet is awarded and carried out.

John Bucknill and Haig Utidjian, *The Imperial Ottoman Penal Code: A Translation*, Oxford University Press, Oxford, 1913, pp. 77. This provision is found in Part V of the Code: "Those who abuse the influence of their office and position and who do not fulfil the duties of their office".

⁶⁶ Papers, Inclosure 4, "Judgments passed by the Extraordinary Tribunal at Beyrout on the Chief People inculpated in the late Disturbances in the Mountain", in No. 229, see *supra* note 60.

Tahir Pasha, military commander at Beirut, was charged with having neglected his duty to question or oppose Christians “with flags flying and other symbols of war” or similarly excited bands of Druze. He was also accused of neglecting to protect the area around his camp, and negligently having believed Druze assurances that they would not attack Deir el-Kamar and subsequently withdrawing protective forces two days before the massacre there took place. His defence, that he did not have orders to protect the towns around his camp, that he was not in Deir el-Kamar at the time of the massacre, and that he had ordered the local military commander to protect that city before the massacres broke out, were treated as mitigating factors by the tribunal, which recommended a sentence of life imprisonment.⁶⁷

Colonel Nuri Bey was accused of having squandered the military assets that had been placed at his disposal to prevent the Druze from marching on Zahlé and having “trusted to the words of the insurgent Druze”. Nuri defended by arguing that he had obtained a promise from the Druze chiefs that they would attack the town only if provoked by its Christians, and that he was unable to decamp in Zahlé and protect the city, as he was denied entry by the locals. When word reached him back at his headquarters that fighting had broken out, he felt powerless to intervene “due to the smallness of the force at his disposal, and to the fact that both Christians and Druses were now intermingled”. The tribunal treated these as extenuating circumstances, and recommended a sentence of life imprisonment.⁶⁸

The sentencing report on Wasfi Efendi (*kahia* or secretary to Khurshid Pasha) and Ahmad Efendi (comptroller of property at Beirut and agent for the Druzes and Christians to the local government), who were tried together, is the most enigmatic of those found in the National Archives. These two individuals were accused of having “concerted and combined together, and committed various reprehensible acts, and of having contributed by the moral support they afforded to the Druzes, in bringing about the recent outbreak in the Mountain”. Though this charge was neither “personal” nor “specific”, and there was no “delinquency [...] proved against the individuals which is provided for by the law”, the tribunal advised a sentence of temporary confinement in fortress and depri-

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

vation of rank, on the grounds that "all the people of the country, and the foreign authorities declare that their mutual accord and agreement was not of an ordinary description, but had reference to the affairs of the country; that they intermeddled in the action and measures of the administration, and occupied themselves reprehensibly in matters which were not within their legitimate cognizance".⁶⁹

Twelve Druze chiefs voluntarily surrendered to the jurisdiction of the tribunal. The most notorious among them was Said Bey Jumblat, a powerful Druze chief with deep connections to the British government. The judges deemed him "the moral organizer and author" of the violence on the basis of circumstantial evidence and, without assessing the exculpatory proofs he had brought in his favour, recommended capital punishment.⁷⁰ Only one of the Druze chiefs who surrendered was acquitted;⁷¹ the rest were, like Said, recommended to death.⁷²

⁶⁹ *Ibid.*

⁷⁰ *Ibid.* For the minutes of Said Bey's trial see FO 406/11, Inclosure 1, "Interrogatories of the Druze Chiefs tried by the Extraordinary Tribunal at Beyrout", in No. 42, Bulwer to Russell sent 3 April, 1861, received 13 April 1861, TNA.

⁷¹ The only Druze chief acquitted by the tribunal was extrajudicially sentenced to exile by Fuad when a letter allegedly showing his complicity in the massacres was brought to the attention of the Ottoman Commissioner. He was spared this fate at the last minute by the timely intervention of Lord Dufferin, the British commissioner, who argued with Fuad over the fairness of punishing an individual on the basis of documentary evidence that had not been adduced in court, contested the evidentiary value of the proof, and accused Fuad of violating his agreement to let the Commissioners comment on any sentences on a prisoner who had been tried in the presence of European delegates. Additional Papers, Inclosure 3, in No. 6, Dufferin to Russell, sent 24 March 1861, received 4 April 1861.

⁷² Thirty-three "leaders of the insurgent bands" who had fled into the Mountain's inaccessible interior were deemed worthy of capital punishment after trials *in absentia*. Papers, Inclosure 4, in No. 229, see *supra* note 60. Said Bey and his cohorts were charged with violations of Articles 55, 56 and 57 of the Penal Code, reproduced below.

Article 55:

Whoever personally or indirectly incites the subjects of the Imperial Ottoman Government or the inhabitants of the Ottoman dominions in order to make them to revolt in arms against the Ottoman Government is, if the matter of revolt which was his intention comes to effect entirely or the carrying out of the matter of the revolt shall have been commenced, put to death.

Article 56:

Whoever dares, by making the people of the Ottoman dominions arm themselves against each other, to instigate or incite them to engage in mutual slaughter, or to bring about acts of rapine, pillage, devastation of

On 22 December Ottoman soldiers executed a massive arrest operation, detaining nearly 1,000 Druze men from the rural villages around Beirut and transporting them to Moukhtara for trial before a third extraor-

country or homicide in divers places is, if the matter of disorder comes into effect entirely or if a commencement of the matter of the disorder has been made, likewise put to death.

Article 57:

If a gang of ruffians jointly carry out or attempt to carry out any of the riotous acts set forth in the above written Arts. 55 and 56 those from among the persons included in such band of ruffians who are the actual chief ruffians or the agitators of disturbance are put to death wherever they are caught; and such from among the others who are taken and seized at the place of the Jinayet are placed in kyurek perpetually or temporarily according to the degree of their Jinayet or complicity in the matter of the disorder which may become manifest.

Bucknill and Utidjian, 1913, p. 45–49, see *supra* note 65. Inclosure 4, in No. 229, see *supra* note 60. For the minutes of the examinations of the Druze defendants see FO 406/11, Inclosure 1, TNA, see *supra* note 70.

The author of *Souvenirs de Syrie*, 1903, pp. 268–69, see *supra* note 2, attended the trials, including the sentencing hearings:

[...] the meetings of the Special Court presented matters of strong psychological and artistic interest. We were lucky enough to attend, and we retained a deep impression. What a striking example of the vicissitudes of human existence! We found on the dock prominent figures we had admired a few months earlier, in their picturesque attire, at a costume ball of the French consul's. Their theatrical figures had once inspired thoughts of magic enchantments; but the show had turned to drama, as the tragic troupe marched for the second time before our eyes, in the fifth act. These were the same Druze sheikhs, Said Djemblat, Hussein Talhouk and others, along with the same high based Turkish officials, Khourschid Pasha and his cronies.

However, to continue the comparison, the situation and the decorations were much changed; the players were changed no less. You could see on their faces the traces of their emotions. Khourschid Pasha had completely bleached in prison. Said Djemblat had collapsed under the weight of mental suffering and illness that would soon prevail. Of the rest the calm and impassive attitude of many defendants who paraded before the judges cannot be denied for even a moment. They would have told strangers to the outcome of the trial on which their lives depended. They listened to their convictions with complete indifference, some even with a slight smirk. A single individual, a Druze from the low class, lost his composure when reading his death sentence was over, and fell on his knees crying to seek pardon.

dinary tribunal.⁷³ But when Fuad announced his intention of restricting capital punishment to "a limited number of those who had distinguished themselves by acts of especial atrocity" and asked the Christians to provide evidence against those they considered the "most guilty" the prose-

⁷³ Fuad reported that 949 had been arrested. Papers, Inclosure 2, "Report of the Nineteenth Meeting, held in Beyrout, January 19, 1861", in No. 310, Dufferin to Russell, sent 10 February 1861, received 20 February 1861. The *Morning Post* ("Syria, 12 January 1861) correspondent happened to be in Moukhtara as the prisoners were brought in for trial before the third Extraordinary Tribunal:

As I stood upon the terrace at different time on Sunday I could see knots of soldiers bringing in Druses from different parts of the valley. [...] I have never seen any large bodies of Druses walking together before, and I must confess that their manly carriage, and open, bold countenances, void of any appearance of fear, were calculated to excite one's admiration. Even old men, with fine white beards, walked by the side of the young ones with nearly as elastic a step and as free a gait. A great many of their wives followed in their wake, with very unfavourable impressions as to the result of their arrest. These women were frightened, and could hardly believe that their husbands were going to be put into prison except for some very bloody purpose; crowds of them, white-veiled, were to be seen everywhere in a state of great grief and lamentation. It was duly explained to them, or at least a majority of them, that they need fear nothing, but they were not entirely satisfied by that assurance. It is not, however, unnatural or unreasonable that a women, who has just seen her husband or son shut up in prison and a sentinel mounted before the door, should have her doubts about his fate, and remain weeping near the place; and a great number of these persons have received kindness and consolation [...]. The fact of 1,000 men being suddenly thrown into prison certainly sounds rather formidable, but there are some mitigating circumstances to be explained. I was allowed to go through the whole of the prisons the other night, and I found the men comparatively comfortable. They were rather closely packed together in one or two places, but still, on the whole, they were very well treated, and a few evinced the quiet state of their minds by humming and singing songs. Omar Pasha seems willing, also, to be very lenient with them. The men were, in the first instance, allowed to come outside the doors to converse with their wives, a few soldiers only standing round as guard. This favour is now denied them, and the women complain bitterly of the deprivation, though it is partly their own fault that such a measure has been taken. Yesterday intelligence was brought to the pasha that two men had made their escape out of prison by changing dresses with two women, a trick easily performed, and the disguise is not easily betrayed, as they cover up all but one eye with the thick white sheet which the women are accustomed to wear.

cutions ground to a halt.⁷⁴ Despite Fuad's best efforts to persuade them, the Christians refused to participate.⁷⁵ A bevy of reasons was given for this – fear of retaliation, inability to provide additional evidence, a desire not to invalidate the testimony of those who had already named names, incapacity to call on “the whole” Christian population to furnish evidence – but the most likely scenario is that the Christians were afraid to have their evidence tested, or were gambling that the Ottoman government would capitulate and cave to their demands that those already imprisoned be extra-judicially killed.⁷⁶ Cognizant that Europe would never accept ‘impunity’, Fuad was forced to conduct these trials without the benefit of victim testimony:

[The prisoners] were divided under three different heads, those supposed to be quite innocent of any participation in the late affairs, those who were supposed to be culpable, and those suspected of being rather deep in the mire. The process of sorting was rather interesting; every morning they were assembled in fifties at a time before Omar Pasha and a commission, in the grand yard of the palace, a guard of Turkish soldiers being assembled round about the place, and each individual was separately asked his name, his village, and

⁷⁴ Inclosure, in No. 258, Dufferin to Russell, sent 13 January 1861, received 24 January 1861.

⁷⁵ Among other arguments, Fuad attempted to persuade them that Europe would never tolerate a judicially sanctioned massacre, but that “the heads that must fall are those which, by their social position, have had a fatal influence on the ground, or by the number and atrocity of their crimes, have injured humanity”. “Fuad Pasha to Abro Efendi”, 24 January 1861, to Inclosure 4, “Protocol of the Twentieth Meeting of the Syrian Commission, held in Beyrout, January 24”, in No. 310, Dufferin to Russell, sent 10 February 1860, received 20 February 1860.

⁷⁶ Papers, Inclosure 2, in No. 276, Major Fraser to Lord Dufferin, 14 January 1861. For more on this episode see Farah, 2000, 627–28, see *supra* note 2; Papers, Inclosure 6, in No. 288, Dufferin to Russell, sent 27 January 1861, received 8 February 1861. Most of the Commissioners gave the Maronites the benefit of the doubt. E.P. Novikow, the Russian commissioner, regarded the Christians as genuinely “obliged in conscience” not to participate further. Leon Béclard, the French commissioner, believed that the Tribunal at Moukhtara “inspired in them less confidence than the one at Beiyrout, and they had doubts about the outcome of this procedure, and want to avoid compromising it”. P. von (de) Weckbecker, the Austrian commissioner, attributed their abstention to the “special feeling to the people of this country who do not yet understand anything about the formalities of public justice. This is the first time that it works before them, and then proceeds to lead to repression”. Only Dufferin perceived deliberate malice in the move; he believed that the Maronites were attempting to force Fuad into imposing a blanket punishment on the Druze. Papers, Inclosure 2, “Protocol of the Seventeenth Meeting, December 31, 1860”, in No. 288.

where he was at such and such a time, whether he possessed any property belonging to a Christian at all, &c.; and according to the answer he gave he was placed onto the place allotted for his category.⁷⁷

Fuad would subsequently explain to the commissioners that in the absence of evidence, most convictions were based on a "simple presumption of guilt".⁷⁸

It is difficult to determine from the documents available in the British archives how many punishments were actually doled out for crimes in the Mountain. A chart appended to a 7 March 1861 communication from Lord Dufferin contains the names of 58 Druze for whom death was recommended by the Beirut and Moukhtara tribunals.⁷⁹ Those cases were commuted in Constantinople to perpetual imprisonment in Belgrade in early July 1861.⁸⁰ A list of 248 Druze condemned to deportation or im-

⁷⁷ "Syria", *Morning Post*, 26 January 1861. Makdisi, 2000, p. 154, quotes a communication from Fuad to the "Ottoman commissioner at the tribunal" from around this time that "the heads which must fall [...] are those of men, who because of their social standing, exercised a grievous influence on the masses, or who, because of the sheer number and atrocity of their crimes, caused the most harm to humanity", citing BBA IRADE MM 935/i, Leff. 3, 24 January 1861, see *supra* note 2.

⁷⁸ Papers, Inclosure, "Protocol of the Twenty-First meeting of the Syrian Commission, held at Beyrout, January 29, 1861", in No. 372, Dufferin to Russell, sent 4 March 1861, received 26 March 1861. Ali Bey Jumblat, for example, was sentenced by the Moukhtara Tribunal even after "[t]he Court...recorded that it did not find the charge proved [...]". Major Fraser, who observed his trial and would later petition Bulwer to intercede on behalf of the accused, wrote that he was punished "either in unacknowledged deference to his being signalized as a leader in the denunciatory lists presented by the Christians [...], or in consequence of his near relationship to Said Bey Jumblat [...]". FO 195/660, No. 39, Fraser to Bulwer, 10 August 1861, TNA. Ali's sentence was commuted from exile at Tripoli to local imprisonment. FO 195/660, No. 56, Fraser to Bulwer, 2 October 1861. TNA.

⁷⁹ FO 195/658, Inclosure, "Tableaux des Druses jugés par les Tribunaux de Beyrout et de Mukhtara et considérés comme coupables de la 1st catégorie – 1861", in No. 133, Dufferin to Bulwer, 7 March 1861. According to the chart, 39 of those listed were convicted in Moukhtara, 13 were condemned by the Beirut tribunal for actions related to the massacres, and six were condemned by the Beirut Tribunal for contumacy. See Papers, Inclosure 2, "Protocol of the Twenty-Second Meeting of the Syrian Commission, held at Beyrout, February 27, 1861", in No. 375, Dufferin to Russell, sent 10 March 1861, received 26 March 1861, during which Fuad states that 58 individuals have been recommended to death by the Moukhtara tribunal. The chart does not include the names of the Druze chiefs who appeared before or were condemned *in absentia* by the Beirut Tribunal.

⁸⁰ FO Inclosure, "List of Druse prisoners condemned to perpetual imprisonment, and sent from Beyrout to Belgrade for detention in that fortress (with the exception of those since dead) on the 10th July 1861", in FO 78/1625, No. 3, Dufferin to Bulwer, 8 September

prisonment also appears as an annex to the notes of the Commission's twenty-sixth meeting of March 1861.⁸¹ These are probably the same persons referenced in a 23 March 1861 letter mentioning 245 Druze exiled to Tripoli.⁸² A dispatch from Tripoli a month later reports on the condition of 260 Druze that had arrived.⁸³

7.5. Justice at the International Commission of Inquiry: “The Goddess Themis Never Kinks Beneath the Waves. Tho’ in the Swell of the Great Popular Ocean She is Now and Then Lost Sight of”

In July 1861 the French Foreign Minister Thouvenel suggested the creation of a body to (1) “ascertain the circumstances which brought about the late conflicts”; (2) “determine the share of responsibility of the Chiefs of the insurrection and of the Agents of the local administration”, as well as (3) “the compensation due to the victims”; and (4) “study for the purpose of submitting them to the approbation of their Governments and of the

1860, TNA. These cases were sent for review at Dufferin's urging. FO 195/658, No. 133, Dufferin to Bulwer, 7 March 1861, TNA. These are probably the 68 cases referred to in Dufferin's dispatch of 15 March; FO 406/11, Inclosure 1, in No. 525, Dufferin to Russell, sent 15 March 1861, received 28 March 1861, TNA.

⁸¹ FO 406/11, Inclosure 14, “Annex No. 3 to the Protocol of the Twenty-Sixth Meeting of the Syrian Commission”, in No 105, Dufferin to Russell, sent 26 April 1860, received 11 May 1860, TNA. Fawaz notes a mistake in the numbering of the chart. The correct number of entries is 248. Fawaz, 1994, p. 272, fn. 57, see *supra* note 2. Some 205 of these prisoners are listed as having been “detained” at Moukhtara, the remainder at Beirut.

⁸² FO 406/11, Inclosure 7, in No. 15, Dufferin to Russell, sent 24 March 1861, received 4 April 1861, TNA. Fifty-five of these were sentenced to some term of imprisonment, 155 “simply exiles, merely removed from the country until quieter times should arrive”. The rest were too ill to travel. Dufferin felt that most of those sent to Tripoli could not be considered criminals “in the legal acceptance of the term, inasmuch as very little evidence was produced against any of them”. But despite his misgivings, he conceded that setting the accused at liberty would be disastrous. “Some satisfaction must be given to the Christians, and if persons who are known to have dipped their hands up to their elbows in human blood are immediately allowed to return to the villages where [...] it would give rise to an amount of panic and clamour against the Government which might become extremely embarrassing”. Dufferin was relieved to learn that these individuals would not be treated as prisoners in Tripoli, that they might be permitted to return to the Mountain, in the future, that climate in Tripoli was healthy, and that provision would be made for the prisoners and their families in their place of exile. FO 406/11, Inclosure 1, in No. 525, TNA, see *supra* note 80.

⁸³ FO 406/11, Inclosure, in No. 110, Dufferin to Russell, sent 3 May 1860, received 16 May 1860, TNA. Only 26 arrived as “criminals”. The remainder were “exiles”.

Porte the arrangements which should be adopted with the view of averting fresh misfortunes". Only through an International Commission of Inquiry, Thouvenel argued, could Europe "form a correct idea of past occurrences and the necessities of the situation".⁸⁴ The proposal was immediately accepted by British Foreign Minister Lord Russell with one slight (and seemingly unpremeditated) alteration. Russell agreed to a Commission "to determine the responsibility of all persons concerned in those proceedings; to consider what compensation or punishment may be due; and finally to submit to the Sultan their opinion upon the measures best calculated to prevent further calamities".⁸⁵ Thouvenel's language suggesting that the primary purpose of the commissioners was to produce reports that would enable the governments of Europe to act sensibly was left out, and his four subjects of inquiry now presented as ends to be pursued by the commissioners themselves. The semantic shift stuck, and from this point on the French Foreign Minister would consider it the job of the Commission "to see that the authors and abettors in the massacres were properly punished".⁸⁶

Dufferin, a 34-year-old aristocrat whose experience in the Middle East was limited to hunting on the Nile, organising excavations, and appropriating antiques to his country house in Clondeboyne, was the first commissioner appointed by any of the Powers.⁸⁷ On 30 July 1860 he was instructed to proceed to Constantinople and await further instructions from the British ambassador to Turkey, Sir Henry Bulwer. The purpose of the Commission, he was informed at that time, "will be to obtain security for the future peace of Syria". This, he was told, would require "a speedy, pure, and impartial administration of justice. Those who suffer wrong and see that wrong committed with impunity take punishment into their own hands or rather substitute revenge for due and legal retribution".⁸⁸

⁸⁴ Papers, No. 6, "M Thouvenel to Count Persigny – (Communicated to Lord J Russell by Count Persigny, July 17)".

⁸⁵ Papers, No. 7, Russell to Bulwer, 17 July 1860.

⁸⁶ Papers, No 54, Cowley to Russell, sent 2 August 1860, received 3 August 1860; Papers, No. 56, Cowley to Russell, sent 3 August 1860, received 4 August 1860; No. 61, Cowley to Russell, sent 7 August 1860, received 9 August 1860.

⁸⁷ Sir Alfred Comyn Lyall, *The Life of the Marquis of Dufferin and Ava*, vol. 1, John Murray, London, 1905, p. 93.

⁸⁸ Papers, No. 42, Russell to Dufferin, 30 July 1860.

Thouvenel, concerned that separate instructions increased the risk of “discordant opinions” among the commissioners, suggested that identic notes be sent directly from their governments.⁸⁹ Russell’s counter-proposal that the representatives of the intervening Powers in Constantinople should draw up the proposed instructions was rejected by the French Minister, who fretted that “the character of the Commission which is intended to institute an inquiry [...] would be altered, if the instructions to the members of it were not [...] furnished directly by their different Governments”.⁹⁰ Privately, Russell grew suspicious that the French had proposed the Commission merely as a legitimating cover for military intervention: “If the French had been sincere in wishing to stop the murder of Christians they would have followed up their proposal of the 16th of July by immediate appointment of a Commissioner and instructions accordingly. It looks as if they relied only on the sword”.⁹¹ But he openly professed not to care whence the instructions issued⁹² and Thouvenel shortly produced draft language by which the delegates would propose a political reorganisation of the Mountain, “examine in concert with [the others], into the origin and the causes of events, to determine the amount of responsibility of the leaders of the insurrection, and of the agents of the Government[,] and [...] call for the punishment of the guilty”.⁹³

These instructions were issued by the Powers to their representatives without input from the Porte. When the Ottoman government caught

⁸⁹ FO 406/10, No. 69, Cowley to Russell, sent 2 August 1860, received 3 August 1860, TNA.

⁹⁰ FO 406/10, No. 72, Cowley to Russell, sent 3 August 1860, received 4 August 1860, TNA. See also FO 406/10, No. 78, Cowley to Russell, sent 7 August 1860, received 9 August 1860, TNA. Thouvenel was primarily concerned “that if the Commission was to act upon instructions emanating from Constantinople it would not carry with it the same weight as a Commission acting upon identic instructions coming direct from the several Governments furnishing Commissioners”. Count Rechberg of Austria found himself in agreement with Thouvenel, as in his opinion, “the conflicting jealousies and intrigues which were always rife in that capital [Constantinople] would render the adoption of an identic draft of instructions by all the Ambassadors a matter of difficult achievement”. FO 406/10, No. 109, Fane to Russell, sent 16 August 1860, received 20 August 1860, TNA. The Russians sided with the British, and announced that their commissioner, Novikow, would receive instructions from the Russian envoy at Constantinople. FO 406/10, No. 133, Erskine to Russell, sent 21 August 1860, received 3 September 1860, TNA.

⁹¹ PRO 30.22.104. Russell to Cowley, 9 August 1860, TNA.

⁹² FO 406/10, No. 80, Russell to Cowley, 9 August 1860, TNA.

⁹³ Papers, No. 70, “Proposed Instructions to the French Commissioner in Syria. – Communicated by the Count de Jaucourt, August 11”.

wind of the directive, which memorialised a grant of authority over matters of punishment in excess of what they had envisioned when they had consented to the Commission in late July 1860, they pushed for a declaration that the commissioners had “no judicial functions” and were not “authorized to re-investigate cases on which Fuad Pasha has already pronounced judgment”.⁹⁴ A draft of instructions sent by the Porte to Fuad on 17 September found in the US and UK archives suggests that the Ottoman government achieved this and provides some insight into how the Commission was justified to the Ottoman authorities:

As for the joint inquiry into the events which have occurred, here too it is evident that everyone [Great Britain, Russia, Prussia, France, Austria] will acknowledge the principle that so long as the two contending parties are subjects of the Ottoman Government alone the inquiry in such a case belongs exclusively and independently to their Government. But as in the above deplorable events certain persons who were subjects and inhabitants of Foreign Governments sustained wrong and injury, and as at Damascus some of the Consulates were laid waste, the necessity of a joint inquiry has arisen therefrom. It is owing to these reasons that the participation of the mixed Commission in the requisite investigations cannot be declined.* But this Commission is only authorized to inquire into and make known the information it may have acquired, it has no power to give judgment as a Tribunal. Therefore it is evident that the trial and punishment according to the established laws of the realm of any offenders whom the Commission may think proper to accuse in the course of its inquiries will be exclusively within your special competency.

⁹⁴ FO 406/10, No. 66, Bulwer to Russell, sent 25 July 1860, received 3 August 1860, TNA; FO 406/10, No. 164, Fane to Russell, sent 13 September 1860, received 17 September 1860, TNA. There was also discussion among the ambassadors and Porte officials over whether Fuad was properly considered part of the Commission. Initially the Russian and Prussian ambassadors said no, the French and British Ambassadors yes. “The important point to secure”, wrote Bulwer, “is that the Five Powers and the Porte should seem to be acting together”. Ultimately the ‘yes’ voices won the day. D1071/H/C/3/8/3, Bulwer to Dufferin, 11 September 1860, PRONI.

* Therefore an inquiry into all the crimes which have been committed cannot naturally be removed from their collective action.⁹⁵

There was some variation in the ostensibly identical notes that were sent out. In his dispatch to Dufferin, for example, Russell added to the original language the directive that his work should result in justice “with regard to the Chiefs, as well as the subordinate instruments of crime”.⁹⁶ Moreover, each commissioner almost certainly received some private directives that ordered them to prioritise aspects of their mandate over others or instructed them to adopt a particular ideology, cause or perspective. Dufferin, for example, reached out to Russell to ask him whether he should make an effort to place the Druze, the longstanding “object of the solicitude of the English Government”, in an advantageous position and act as “the apologist of a friend who has put himself in the wrong”, or whether he should “postpone all political considerations to the interests of Humanity” and act impartially to end the internecine warfare on the Mountain.⁹⁷ Russell instructed Dufferin to adopt an impartial attitude toward the Druze and “let them suffer the penalties due to their crimes”, but added that “Koorchid Pasha, Achmet Pacha, and Osman Pacha ought to be shot” as the “Turkish Government and officers are still more to blame

⁹⁵ R59 M46 R17, “Draft of Instructions to Fuad Pasha. Communicated Sept 17th 1860 by the Sublime Porte”, NARA; also available in FO 195/656, TNA. On 8 September 1860 Fuad Pasha met Dufferin for the first time and asked him “whether the Commission was itself to become a tribunal before whom the accused were to be arraigned, and to what extent its functions were to supersede his own as Military and Civil Governor of the Province [...]”. Fuad proposed “that he should be allowed to adjudicate on the cases brought before him, becoming himself responsible to the Commission for the manner in which he carried on the investigations, that on the same terms he should be permitted to determine on the mode of conducting the military operations against the Druzes, and that before the Commission entered upon the discussion of any arrangements for the future, it should be competent for him to take the initiative, submitting to their consideration whatever plan of his own he might be prepared to proposed”. Dufferin replied that he could not know “in what way the Commission might eventually interpret their instructions” but in his personal opinion the commissioners “would be anxious to adopt whatever course would be most likely to preserve in the eyes of its subjects the dignity of the Porte and the authority of its representative”. FO 78/1625, No. 3, TNA, see *supra* note 80. The message was passed along to Russell, but an exhaustive review of the relevant National Archives files has not revealed any reply that addressed this concern.

⁹⁶ Compare FO 406/10, No. 70 “Proposed Instructions to the French Commissioner in Syria Communicated by the Count de Jaucouri August 11” to FO 406/10, No. 99, Russell to Dufferin, 14 August 1860, TNA.

⁹⁷ PRO 30/22/94, Dufferin to Russell, 28 August 1860, TNA.

than the bloody Druses".⁹⁸ Another example may be found in the Archives des affaires étrangères. Upon learning that the French commissioner had clashed with Dufferin during the first few meetings of the Commission, the former was commended by his ambassador for "reminding Dufferin that the official aim of the commission might be to help reestablish the sultan's authority, but its real purpose was to come to the aid of the Christians who had been 'abandoned by the very government which was supposed to protect them'".⁹⁹ Messages like these coloured the views of each delegate and set the stage for subsequent showdowns over the scope of the Commission's punishment powers.

The Commission, comprising Fuad Pasha (represented by Abro Efendi when he was otherwise occupied), Lord Dufferin (Britain), P. von (de) Weckbecker (Austria), L. Béclard (France), Guido von (de) Rehfues (Prussia) and E.P. Novikow (Russia), would sit for 29 sessions over seven months, during the course of which it would be transformed into a quasi-court in which European delegates acted as "Assessors with his Excellency [Fuad Pasha] on the cases brought before him and responsible for whatever verdict might be rendered upon each".¹⁰⁰ This process began even before all of the commissioners had arrived. Dufferin, who reached Beirut just in time for the commencement of the trials of the Ottoman officials there,¹⁰¹ armed with a mandate of (limited) impartiality, expressed an unqualified disdain for the Ottoman justice even before the trials of the Druze had begun:

When those designated for trial by public opinion are declared guilty, the disagreeable conviction forces itself upon one, that though the verdict may be just, its relation to the crime is almost accidental. The Turkish authorities are aware that Europe requires satisfaction for what has occurred, that a certain amount of punishment must take place and that the reputation of the Porte must be cleansed in the blood of the guilty.

⁹⁸ PRO 30/22/116, Russell to Dufferin, 8 September 1860, TNA.

⁹⁹ Fawaz, 1994, p. 199, see *supra* note 2, citing CP/T/348, La Valette-Thouvenel, No. 1, 1 January 1861, Archives des affaires étrangères.

¹⁰⁰ Papers, Inclosure 2, "Minute on the Judgments proposed to be passed on the Turkish Officials and Druse Chiefs by the Extraordinary Tribunal of Beyrout", in No. 351, Dufferin to Russell, sent 24 February 1861, received 13 March 1861.

¹⁰¹ Papers, Inclosure 1, in No. 141, Dufferin to Russell, sent 14 September 1860, received 29 September 1860.

The tribunal acts under pressure; the defendant considers himself a victim surrendered to a political exigency; the plaintiff feels that it is rather a politic propitiation that has been made than that the ends of justice have been satisfied.

The better nature of every one revolts against such blundering jurisprudence.

In the case of the Druse Chiefs it is particularly necessary that those who judge them should be persons who have not only the will to decide impartially, but the intelligence to discriminate sagaciously.

The number of lies which will be ratified by the most solemn oaths will probably be enormous, the mass of conflicting testimony considerable, the distinctions to be drawn extremely subtle. I hardly think a native tribunal will have either the patience, the conscientiousness, or the freedom of opinion necessary to deal with the cases brought before them.¹⁰²

He closed out his communiqué with a suggestion that the Commission “interfere” or discover some other remedy to the “crying evil[s]” of dishonesty, incompetence, politicisation that marred the Tribunal. He would soon get his wish. Two weeks later, at the Commission’s first meeting (5 October 1860), the commissioners challenged Abro over the decision to allow Husni Bey, who was suspected of complicity in some of the massacres before the Beirut tribunal, to serve as a judge¹⁰³ and not to

¹⁰² Papers, Inclosure 2, in No. 147, Dufferin to Russell, sent 23 September 1860, received 26 October 1861.

¹⁰³ Papers, Inclosure 1, “Protocol of the First Meeting of the Syrian Commission, held at Beyrout, October 5, 1860”, in No. 163, Dufferin to Russell, sent 12 October 1860, received 25 October 1860. Fuad announced he would be removed and his role in the massacres investigated during the sixth meeting. The *procès-verbal* of the Commission’s meetings are a mere summary of the statements of the commissioners, and a partial (pro-French, the secretary being a Frenchman) summary at that. FO 406/10, Inclosure 5, in No. 240, Dufferin to Russell, sent 4 November 1860, received 19 November 1860, TNA. The records have a clipped and disorganised feel that makes the lines of inquiry pursued by the commissioners difficult to follow. Utterances that may appear spontaneous or disjointed on the record were probably logical in the context of the actual conversations that took place. Likewise, when it appears that a line of argument simply petered out without resolution, an understanding may have been reached and simply gone unrecorded. Dufferin’s communiqués to London fill some of the gaps, as they sometimes reveal leitmotifs or analytic processes beyond those recorded in the official summaries.

bring any witnesses in the case against Khurshid Pasha.¹⁰⁴ When Abro prevaricated, they addressed a note to Fuad requesting files “related to the proceedings against the accused or guilty”, which would serve as the basis for an opinion on the question of whether new proceedings were “necessary”, demanded clarification of the “nature of the investigation” against Khurshid, other Ottoman authorities and the Druze, and asserted their “right to intervene” in the investigation in a communication.¹⁰⁵ The scope of the “right” in question emerged as a theme at the second meeting (9 October). Weckbecker was convinced that the commissioners lacked the authority to “directly summon” witnesses absent the presence of Fuad, a position shared with Abro, who urged the commissioners to await Fuad’s reply to their joint communiqué, but objected to by the French, Russian and Prussian commissioners as contrary to the “formal admission of the Porte of the principle of collective inquiry, as clearly expressed in its instructions to [Fuad]”.¹⁰⁶

In a letter to the other commissioners, Fuad consented to provide them with information about the trials but balked at conceding a right to participate in the proceedings. He suggested instead that the Commission was intended to first undertake a “general investigation”, that is a “trial between the [Druze and Christian] population to first establish the cause of these events, the general guilt” and then identify “those culpable individuals not yet in the hands of justice”.¹⁰⁷ At their third meeting (11 October) the commissioners unanimously rejected Fuad’s distinction between the “general investigation” and the “judicial inquiry” as artificial and declared that they would attend the trials.¹⁰⁸ Fuad reserved “the opinion of his government” but accepted that the delegates or their proxies could attend the proceedings in Beirut.¹⁰⁹

¹⁰⁴ Abro countered that it “would have been difficult to admit evidence against the premier authority in the province”, by which he probably means that it would have been difficult to find people to testify; *ibid.*

¹⁰⁵ Papers, Annex to Inclosure 1, in No. 163, see *supra* note 103.

¹⁰⁶ Papers, Inclosure 2, “Protocol of the Second Meeting of the Syrian Commission, held at Beyrout, October 9, 1860”, in No. 163, see *supra* note 103.

¹⁰⁷ Papers, Annex 1 to Inclosure, “Protocol of the Third Meeting of the Syrian Commission, held at Beyrout, October 11, 1860”, in No. 168, Meade to Hammond, sent 22 October 1860, received 1 November 1860.

¹⁰⁸ “Protocol of the Third Meeting”, in No. 168, see *supra* note 107.

¹⁰⁹ Papers, Inclosure 12, “Protocol of the Fourth Meeting of the Syrian Commission, held at Beyrout, October 15, 1860”, in No. 175, Dufferin to Bulwer, sent 26 October 1860, re-

The sixth meeting (26 October) was the first time that Fuad attended in person. Naturally, the discussion was principally concerned with the extent to which the foreign representatives could meddle in the administration of Turkish justice at Beirut. Dufferin suggested that delegates be allowed to question defendants and witnesses directly. The Austrian commissioner disagreed, and suggested that intervention should be limited to spectator-like observation on the part of delegates, with the Commission communicating any recommendations to Fuad. The British commissioner considered this unnecessarily wasteful, as the attending delegates themselves were in the best position to provide advice immediately helpful to the judges. The Russian and French Ministers agreed with their continental colleague, citing the risk that the delegates would prejudice the Ottoman judges. Fuad reiterated his rejection of direct intervention in the proceedings, referring to his duty to protect the integrity of Ottoman justice.¹¹⁰

The foreign representatives were able to reach an agreement that the Commission was “vested with a right of exactly the same procedure as those operating in the Turkey Missions and Consulates in any joint trial

ceived 8 November 1860. Dufferin was granted the right to attend or send a representative as a spectator, though he instructed his delegate not to remain passive: “Should you remark any irregularities or partiality in the procedure of the Court, whether in a sense favourable or inimical to the accused, you will subjoin a memorandum on the subject at the foot of your daily report. Should the impropriety which attracts your notice be of a nature to admit of correction on the spot, you will hand to the President of the Court a private communication calling his attention to the circumstance: but in the exercise of this function you will be careful not to transgress the bounds of due discretion”. Inclosure 2, in No. 175, *ibid*. I have not been able to determine whether other commissioners issued similar instructions to their delegates. Dufferin’s desire to interfere did not stem entirely from a concern with the integrity of the proceedings. He was also anxious that the commissioners use the opportunity presented by the trials to root out those members of the Turkish government most implicated in the massacres. Papers, Inclosure 1, in No. 175, Dufferin to Russell, sent 26 October 1860, received 8 November 1860: “[T]o render our intervention in these judicial proceedings really useful and effectual it would seem necessary that our delegates should have the privilege of suggesting to the Court whatever supplementary questions it may appear to them desirable should be addressed to the prisoner or the witnesses. As the members of the Tribunal will be prepared to quash any evidence at all discreditable to the Turkish Government, and even refuse to the prisoner whatever benefit he might derive from being able to prove he acted under instructions, the exigencies of justice would seem to require some such precaution being taken”.

¹¹⁰ Papers, Inclosure 8, “Protocol of the Sixth Meeting of the Syrian Commission, held at Beyrout, October 26, 1860”, in No. 182, Dufferin to Russell, sent 4 November 1860, received 19 November 1860.

judged by the courts of the country", and unanimously requested that "no final judgment be pronounced before [the commissioners] had an opportunity to formulate its opinion on the whole of the investigation, and to suggest, if any, to Fuad Pasha elements of a re-examination it finds necessary to inform his conscience". In the face of an otherwise unanimous ultimatum Fuad had to concede something. His dispensation was narrow as could be: he would "not decline to communicate the reports to the Commissioners, which would tell him what She thought". This pronouncement met with the approval of all foreign commissioners.¹¹¹

The sixth meeting also saw some discussion of whether Said Bey Jumblat should be granted access to counsel. Fuad rejected the suggestion as impractical given that the Ottoman Empire had never developed the "institution of defence advocates", and the likelihood that counsel would resort to use of "the less-than-worthy" to procure favourable testimony.¹¹² An effort on the part of Dufferin to demand additional procedural safeguards in Said Bey's case was denied by Fuad, and prompted Weckbecker to exclaim that the Commission was not here to advocate for the innocent.¹¹³ "She is here", he remarked "only to cause the punishment of the guilty". Dufferin and Rehfues disagreed: "the Commission is interested above all in discovery of truth".¹¹⁴

Dufferin also pressed Fuad to improve the procedural quality of the Beirut tribunal behind the scenes through private letters. The Ottoman commissioner was willing to provide Said Bey with summaries of each day's proceedings and an opportunity to voice his objections to the trial,¹¹⁵ but balked at providing the accused with counsel despite Dufferin's protests that the privilege was "accorded even to prisoners in trial by

¹¹¹ *Ibid.* Fuad explained that the Extraordinary Tribunal itself did not make final judgments, but rather issued recommendations which become final only when confirmed by him.

¹¹² Fuad also expressed concern that Said Bey could use his wealth to suborn witnesses. FO 406/10, Inclosure 5, in No. 240, TNA, see *supra* note 103.

¹¹³ *Ibid.*

¹¹⁴ "Protocol of the Sixth Meeting of the Syrian Commission", see *supra* note 110. From Dufferin's communiqué home: "although the Commission collectively may be considered to discharge the duty of prosecutors on behalf of Europe and Christianity [...] from the moment our Delegates entered Court, the discovery of truth and the attainment of the ends of justice was the sole object that they ought to propose to themselves, and that the acquittal of the innocent was as essentially the logical consequence of this principle as the condemnation of the guilty". FO 406/10, Inclosure 5, in No. 240, TNA, see *supra* note 103.

¹¹⁵ Papers, Inclosure 3, in No. 175, Dufferin to Bulwer, 26 October 1860.

courts-martial whose procedures are the most summary known to European law”.¹¹⁶ The British commissioner later admitted that there had been some visible improvement in the conduct of the proceedings against Said Bey, but nevertheless vowed to continue pushing his colleagues towards obtaining permission to handle witnesses directly. His concerns were partly borne of altruism and a genuine desire to see justice done, and partly from his conviction that the Beirut tribunal was actively hiding evidence which would impugn the Turkish government, and that only direct control over the proceedings would reveal the “absolute truth”.¹¹⁷

By mid-November attention had shifted to the punishment of the lower-level Druze participants in the bloodshed. After the drubbing Fuad had been subjected to over the deficiencies of the Beirut tribunal, he must have relished the prospect of forcing his colleagues to confront the same difficult choices he had. At the tenth meeting (14 November) Fuad presented the commissioners with the option of applying “summary and expeditious” or “regular methodical” proceedings, noting that the former “does not give time to weigh the evidence, or always accurately result in proportion between the sentence and the degree of guilt”, while the latter were only rarely subject to post-trial suspension or revision. The commissioners were unanimous in their support for the summary proceedings. The Austrian commissioner concluded that extraordinary proceedings were justified by the nature of the crimes themselves: “the beginnings of extermination of one race of the Empire by another” amounting to “a fact of civil war, an act of rebellion, a crime of lèse-majesté” as opposed to a “civil” or “individual to individual” offence. The Prussian and French commissioners agreed that only “swift and exemplary” punishment would be effective in restoring peace; Novikow approved on the grounds that Fuad had inoculated himself from reproach, but suggested that “subordinate” culprits should be dealt with in a way that avoided the “excesses of

¹¹⁶ Inclosure 6, Dufferin to Fuad Pasha, 25 October 1860, in No. 175. Dufferin did not want to be perceived as having “at all wished to insist that the formalities and complications known to European law should be practiced on the present occasion”. In his own words: “I am well aware that in such a crisis it is more humane to administer a rough and speedy justice than to allow those manifestly deserving of punishment to escape on any quibble or mere legal pretext. But of any excess in this direction I see no danger”. Inclosure 5, in No. 240, see *supra* note 103.

¹¹⁷ FO 406/10, Inclosure 5, in No. 240, in No. 240, TNA, see *supra* note 103: “[...] one is naturally anxious to take care that Justice while she grasps the sword with one hand should not let her scales slip from the other”.

justice that might be branded as exaggeration"; Dufferin conceded that the method chosen by his colleagues was "painful but inevitable, as the method of due process would not be feasible", but quickly backtracked and noted that even the summary process should be somewhat compatible with due process lest punishment begin to follow "a barbaric principle of decimation". Moreover, he added, those who were not caught up in or survived the summary process should receive the benefit of amnesty, and those found guilty should not have their suffering prolonged, but should be put to death quickly.¹¹⁸

The commissioners also agreed that the trials should take place at the scene of the crime (in the Mountain, as opposed to Beirut), the tribunal's proceedings should be limited in number and brought against "only those whose hands are deeply dyed in blood", non-eyewitness accounts could serve as the basis for indictments, accusers must swear to the truth of their claims before "the Bishop of the rite to which the witness might belong", and Fuad should pay community leaders most likely to solicit helpful testimony to keep quiet about the ongoing investigations in order to reduce the number of accused taking flight.¹¹⁹ Three classes of criminal would be pursued – "instigators who did or did not personally take part in the massacres; gang leaders who led the assassins and arson; individuals denounced by the public voice who committed the largest number of killings or acted in circumstances that aggravate their guilt" – and all three were subject to the death penalty.¹²⁰

¹¹⁸ Fuad was sensitive to allegations by his fellow commissioners that he had been "striking blindly" through his "summary procedure in Damascus", but was concerned that if his proposals went too far in respecting "the formalities of due process" he would be accused of "going too far the other direction". Papers, Inclosure 2, "Protocol of the Tenth Meeting of the Syrian Commission held at Beyrout, November 14, 1860", in No. 195, Dufferin to Russell, sent 23 November 1860, received 6 December 1860. Bécclard bristled at use of the word "amnesty", but relaxed when it was explained to him that what Dufferin proposed was an amnesty from future prosecution, and not, as he had supposed, a reprieve from the anticipated curtailment of the political advantages that they had hitherto enjoyed.

¹¹⁹ "Protocol of the Tenth Meeting", see *supra* note 118; Inclosure 8, Dufferin to Fraser, 28 November 1860, in No. 199, Dufferin to Russell, sent 28 November 1860, received 15 December 1860.

¹²⁰ "Protocol of the Tenth Meeting", see *supra* note 118. The Moukhtara tribunal's (initial) jurisdiction only over crimes worthy of capital punishment was envisioned by Dufferin as a humane measure intended to ensure that the judges would reject all but "the most direct and trustworthy evidence", that "imperfect" summary procedure would not be applied to "complicated or doubtful case", would exclude Druze who "took up arms only in their own defence", even as it ensured the punishment of the most "blood-stained of the assassins".

Two months later a letter from Fuad containing a list of 287 Druze investigated by the Moukhtara Tribunal reached the Commission. In light of the difficulties he had faced in procuring evidence the execution of the capital-punishment-only policy ran the risk of degenerating into judicial massacre, and Fuad solicited the opinion of the foreign commissioners “*pour s’éclairer par ses lumières*”.¹²¹ By his estimation 20 prisoners were eligible for the death penalty. The remaining cases were broken down based on strength of evidence; 57 “of whose greater or lesser complicity in late events, though there was no proof, there was a fair presumption”; 230 “rendered liable to suspicion” by a “few meagre indications”. It was also up to the commissioners to decide what was to be done with the remaining 400 prisoners, against whom there was “not a tittle of evidence”.¹²²

On 24 January 1861 the Commission met to discuss Fuad’s proposal. The European commissioners agreed that there should be fewer executions than at Damascus, but differed over the final number and the rationale that should be applied to calculate it. Weckbecker expressed that a mere 30 to 40 prisoners should be executed in light of the poor quality of evidence at trial. Béclard and Rehfuës chastised Fuad for attempting to implicate the Commission in a decision which should have remained his

sins”. Inclosure 9, in No. 288, see *supra* note 76. Dufferin proposed four additional rules applicable to the work of the Moukhtara tribunal:

That no Druze shall be capitally tried by court martial except on the charge of having murdered in cold blood an unarmed man, woman, or a child.

That the evidence of two eyewitnesses be considered necessary to secure a capital conviction.

That in determining the proportion of those who are to suffer capitally due regard be had to the numbers of the Druze nation who have been murdered with impunity by the Christians since the arrival of the Commission in Syria.

That a less severe measure of capital punishment shall be dealt out to the Druze nation than that which has been considered adequate at Damascus.

These rules were “generally accepted” by the other commissioners at the sixteenth meeting. Papers, Inclosures 2 and 9, “Communication addressed by Lord Dufferin to his Colleagues in the Syrian Commission”, in No. 229, see *supra* note 60.

¹²¹ Meaning “to light by its lights”. Papers, Annex, “Fuad Pasha to Abro Efendi”, in No. 310, see *supra* note 75.

¹²² Papers, Inclosure 4, in No. 306, Dufferin to Russell, sent 1 February 1860, received 16 February 1860.

alone. The former recommended that all those who confessed to crimes be executed, and the later proposing that only those who murdered women, children and priests be put to death. Novikow suggested that, in light of the evidentiary difficulties, the Commission renege on its earlier determination that the Moukhtara tribunal could only impose the death penalty and agree that minor punishments could be doled out by the tribunal as necessary.¹²³ The other commissioners rallied to this idea, including Dufferin, but only with the caveat that even minor punishments inflicted on the innocent, of which he observed there were many on the list of 287, "would be ridiculous, odious, and provoke the indignation of the civilized world". He reminded the commissioners that he had not consented to the creation of a tribunal that was "divested of rules observed even by court-martials of Europe". A joint response to Fuad was prepared including, at Dufferin's urging, language to the effect that only the guilty should be punished:

As a political matter, the twenty death sentences proposed by the Tribunal of Mokhtara are not enough.

It would be appropriate to apply a lower sentence, such as that deportation, those among the 290 individuals included on the Mokhtara list who were not sentenced to capital punishment, and whose guilt would be recognized by the court.¹²⁴

The discussion of the absolute number of Druze to be punished continued through the twenty-first meeting (29 January 1861). Dufferin reiterated his appeals to his peers' better nature to put justice before politics and focus only on the chastisement of the genuinely guilty, as determined by a fair process, even as his foil, Béclard, pushed for acceptance of the principle that the normal niceties of justice had to be set aside in order to achieve "social justice": "[i]t may be that eyewitness accounts are often lacking, which is only natural, since the Druze mercilessly massacred anything that did not flee. But in such a situation, and when 6,000 corpses appear [...] the duty of the courts is to bow to circumstances and convict

¹²³ "Protocol of the Twentieth Meeting", see *supra* note 75.

¹²⁴ *Ibid.* The 400 against whom there was no evidence were allowed to go free. Dufferin reported that the commissioners agreed that under no circumstances should the number of those of capital sentences exceed 50. Papers, Inclosure 4, in No. 306, see *supra* note 22.

on evidence other than that needed in ordinary times”.¹²⁵ The French commissioner changed his tune, however, when he received a communiqué from his home government that his arguments “savoured too much of unnecessary vengeance”.¹²⁶

The transmission of the Beirut tribunal’s sentencing recommendations to the foreign commissioners provoked a second round of intense debates. The kaleidoscope of opinions that emerged over the course of several conferences is summarised in Table 7.1., taken from the official papers:

Prisoners	Béclard (France)	Dufferin (Britain)	Weckbecker (Austria)	Rehfues (Prussia)	Novikow (Russia)
Khurshid Pasha	Death	Death	Perpetual imprisonment	Death	Death
Tahir Pasha	Death	Death	Perpetual imprisonment	Death	Death
Nuri Bey	Death	‘Revised’ to mercy	Perpetual imprisonment	Death	Death
Wasfi Effendi	Death	Confirmation of sentence	Acquitted	Death	Imprisonment for life
Ahmad Efendi	Death	Confirmation of sentence	Acquitted	Imprisonment for life	Imprisonment for life
Said Bey Jumblat	Death	Acquitted	Acquitted	Death	Death
Husayn Talhuq	Mercy on account of age	Acquitted	Acquitted	Recommends mercy	Recommends mercy
Assad Tehuk	Death	Acquitted	Acquitted	Death	Declined to give opinion

¹²⁵ “Protocol of the Twenty-First Meeting”, see *supra* note 78. Weckbecker agreed with Béclard and expressed the opinion that in the absence of direct evidence “the public voice can serve as an indication to justice”. Bulwer was a constant source of encouragement to Dufferin. When the commissioner complained of the challenges of undertaking his duties in the prevailing anti-Druze environment to Her Majesty’s ambassador, he was reminded that “[t]he Goddess Themis never sinks beneath the waves. Tho’ in the swell of the great popular ocean she is now and then lost sight of. As the wind abates she is seen riding as sublime and majestically as ever and those who have clung to her robes are with her”. D1071/H/C/3/8/38, Bulwer to Dufferin, 9 January 1861, PRONI.

¹²⁶ Papers, No. 291, Cowley to Russell, sent 7 February 1860, received 8 February 1860. He called for clemency for those convicted at Moukhtara at the twenty-second meeting. Papers, Inclosure 2, “Protocol of the Twenty-Second Meeting of the Syrian Commission, held at Beyrout, February 27, 1861”, in No. 375, see *supra* note 79. Russell concurred with Thouvenel’s opinion that the execution of a few of the “most criminal” would be sufficient to satisfy justice and “inspire a wholesome fear”. FO 406/10, No. 397, Russell to Cowley, 8 February 1861, TNA.

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Hassim Nakad	Death	Acquitted	Acquitted	Death	Death
Asad Imad	Death	Acquitted	Acquitted	Death	Declined to give opinion
Emir Muhammad Qasim Raslan	Death	Acquitted	Acquitted	Death	Declined to give opinion
Salim Janbalat	Death	Recommends mercy	Acquitted	Death	Death
Jamal al-Din Hamdan	Death	Recommends mercy	Declined to give opinion	Death	Declined to give opinion
Muhy al-Din Shibli	Death	Death	Death	Death	Death
Ali Said	Recommends mercy	Recommends mercy	Revision of trial	Recommends mercy	Declined to give opinion
Bashir Miri	Death	Death	Death	Death	Death

Table 1: Commissioners' opinions at the Beirut tribunal.¹²⁷

The fault lines that isolated each commissioner from the others were whether: (1) the Ottoman defendants deserved the benefit of the mitigating factors that had been taken into account in their case; (2) the evidence had shown that the Ottoman officials and Druze chiefs were guilty; (3) the trial proceedings had been fair and the judges impartial; (4) the commissioners were behaving capriciously by insisting on capital punishments of the Druze chiefs but considering commuting the death sentences handed down by the Moukhtara tribunal; (5) the Druze chiefs had merely acted consistently with "the ordinary hostile encounters which in this country are dignified by the name of war", that is, in self-defence from a Christian attack, or they had "organized the massacres and dipped their hands in the blood"; and whether (6) "murderers who have stuck indiscriminately" or "those who, rather than stop evil, favoured it, either by a decisive impulse or a loose inaction" deserved, as a matter of principle, a more serious punishment.¹²⁸

¹²⁷ Papers, Inclosure 5, "Table of Prisoners, with their Sentences", in No. 375, see *supra* note 79; also available in FO 195/698, Inclosure in No. 132, Dufferin to Bulwer, 7 March 1861, TNA. See also Papers, Inclosure 1, in No. 351, see *supra* note 100.

¹²⁸ Papers, Annexes, as well as "Protocol of the Twenty-Second Meeting", see *supra* note 79. See also Papers, Inclosure 1 in, as well as, No. 375, see *supra* note 79: "But if a distinction is to be drawn between mountain warfare and savage massacre; if each prisoner's case is to be decided on its own individual merits; and if the verdict is to depend on the evidence adduced before the Court by whom the case is examined, of the eleven Druze prisoners tried by the Extraordinary Tribunal of Beyrout, six, including Said Bey must be acquitted. The sentences of three more ought to be commuted and two may be allowed to suffer the just

As consensus eluded the foreign commissioners, Fuad announced at the twenty-third meeting that although their opinions were all “equally respectable” his conscience prevented him from aggravating the suggested sentences on the Ottoman officials.¹²⁹ Moreover, as his task was to “give legal force to the awards made by the Tribunal in accordance with law”, were he to revise the sentences in the direction desired by the majority of the commissioners he “would assume such responsibility with respect to his government that under no circumstances could he take this resolution”. The French Minister testily replied that if Fuad did not use his “full powers to revise the sentence of the Tribunal in the direction of aggravation, then he and his colleagues compelled him to accept a *Démarche* and the resulting delays”.¹³⁰

The conversation then deadlocked over the appropriate sentences for the Druze chiefs. Weckbecker suggested that the gulf between the commissioners was a consequence of their independent readings of the verdict and proposed a “collective reading and exchange of ideas” to reconcile their views. Fuad added that he would make two members of the tribunal available to the Commission to answer any questions they might have. The foreign commissioners unanimously agreed to this over Bédclard’s remonstrance that the Commission was “about to lose its true nature, that of a diplomatic body responsible not for judging the guilty but only for causing their punishment, and turn into a court”.¹³¹

penalty of their crimes”. See also Inclosure 2, “Minute on the Judgments proposed to be passed on the Turkish Officials and Druze Chiefs by the Extraordinary Tribunal of Beyrout”, in No. 351, see *supra* note 100. Fuad defended the difference in the sentences between the Druze and the Ottoman officials by referencing the Criminal Code, which called for the death for those who incited rebellion against one of the Empire’s peoples, but imprisonment for officials who did not perform their duties. Papers, Annex 3, in “Protocol of the Twenty-Second Meeting”, see *supra* note 79.

¹²⁹ Papers, Annexe 3 to Inclosure 2, “Protocol of the Twenty-Second Meeting of the Syrian Commission”, see *supra* note 79.

¹³⁰ Papers, Inclosure 3, “Protocol of the Twenty-Third Meeting of the Syrian Commission, held at Beyrout, February 28, 1861”, in No. 375, see *supra* note 79.

¹³¹ *Ibid.* The Prussian government had instructed its representative to act in concert with Dufferin. When discrepancies in the views of the two commissioners were brought to the attention of Baron Alexander von Schleinitz, the Foreign Minister of Prussia demurred that this was an area where the Prussian Government necessarily maintained independence from that arrangement:

[...] the question of the sentences to be passed on the prisoners at Beyrout was one of conscience, and...the course taken by the Prussian Com-

The twenty-fourth meeting (2 March 1861), attended by two judges from the Beirut tribunal, was devoted exclusively to a consideration of Said Bey Jumblat's case. Over the course of seven and a half hours the commissioners considered whether Said Bey was guilty, and if so whether it was by virtue of his position of authority in the Druze community, in which case he contributed to the violence through his deliberate indifference, or whether he had directly instigated or encouraged the massacres. The possibility that his efforts to quell the fighting and save Christian lives, as well as his voluntary appearance at the tribunal, were part of a master plan to avoid prosecution was debated, the statements of witnesses who had testified at his trial were read and their credibility questioned or championed. There was also at least one disagreement over what evidence the commissioners could take into account. Novikow's reliance on "public knowledge" prompted Dufferin to object that only evidence "collected judicially [and] authenticated" could be used during their "collective revision of the trial".¹³² Ultimately, none of the commissioners changed their minds, a fact which prompted a sententious I-told-you-so moment from the French commissioner:

The Commissioner of France recalls that it had accepted M. Weckbecker's proposal with reservations [...]. In reality, the commission could not be in court. Justice in the Ottoman Empire should be made and has been made in this case by an Ottoman court. The Commissioners role is only to provoke the work of local justice. The awards were rendered, and

missioner was dictated solely by a conscientious feeling of duty. He [Weckbecker] had to act the part of a juror, and his decision was guided solely by the evidence brought before him; it was impossible to judge these matters at a distance, and each Government must therefore rely on the judgment of their Agents.

FO 406/11, No. 84, Loftus to Russell, sent 27 April 1861, received 29 April 1861. In response to a letter from Dufferin, Bulwer noted that "when two out of three Judges are against Capital Punishment it cannot be inflicted. Nor do I think it ought even to be so inflicted except on the perfect unanimity of the Judges. A difference implies that there is doubt in the mind of a competent party as to the justice of Capital punishment, and the infliction of that punishment unjustly is murder". D/1071/H/C/3/8/31, Bulwer to Dufferin, 23 March 1861, PRONI.

¹³² Papers, Inclosure 4, "Protocol of the Twenty-fourth Meeting of the Syrian Commission, held at Beyrout, March 2, 1861", in No. 375, see *supra* note 79.

opinions expressed on these awards. It is for the Ottoman Plenipotentiary to enforce them or not.¹³³

In the absence of a unanimous opinion, Fuad announced that he would maintain the verdicts *ad interim* and refer a decision on all of the Beirut tribunal's verdicts to the sultan in Constantinople.¹³⁴

Fuad's decision shifted the locus of European action from Beirut to Paris and London, where the Druze sentences quickly became a political bone of contention between the two governments. On learning of the decision to leave the fate of the Druze and Ottoman authorities in the hands of the sultan, Russell explained to Dufferin that

[w]hen a tribunal, pretty fairly chosen, has condemned the Turkish officials to a sentence short of death, it would be repugnant to our feelings to demand their execution in pursuance of the requisition of foreign agents who have not heard the evidence, and do not pretend to have examined the proofs of guilt, in a judicial spirit. [...] With regard to the Druses if two of the most criminal and who have been fully and satisfactorily proved to have been guilty of active participation in the massacres are executed in pursuance of their sentence it ought to be sufficient for the purposes of justice and of example. Her Majesty's Government could not give their consent to the execution of the six whom their Commissioner believes to be innocent of the massacres.¹³⁵

¹³³ *Ibid.*

¹³⁴ Papers, Inclosure 1, in No. 375, see *supra* note 79. Dufferin invited Russell to charge Bulwer with taking advantage of the opportunity to push for the "correction" of the "absurd and iniquitous" verdicts, based as they were on "false interpretation of the law and on insufficient evidence".

¹³⁵ Papers, No. 366, Russell to Dufferin, 18 March 1861. Russell also explained in a 28 March communiqué to Bulwer, that he was in agreement with the French ambassador to London:

That the ends of justice would be satisfied by the execution of four or five Druses.

That as we did not object to the Tribunal constituted in Syria we cannot pretend to aggravate the sentence which the Tribunal has pronounced, or to set aside its decisions.

Additional Papers, No. 2, Russell to Bulwer, 28 March 1861. The second point was consistent with the views of Austria. FO 406/11, No. 8, Bloomfield to Russell, sent 28 March 1861, received 1 April 1861, TNA: "[Count Rechberg] said that he must consider that where the Porte was striving to administer justice in a fair spirit, those Powers were rendering a bad service to Turkey who called on her to inflict greater measure of punishment on the prisoners than had been awarded by those charged with their trial, whilst this proceeding fur-

Precisely how interfering with one class of verdicts but not the other was less "repugnant" was not explained, but Russell seems to have been acting on an impulse that to intervene in favour of aggravation of a sentence was reprehensible in a way that interference for the purpose of mitigation was not. Untroubled by this suspicious logic, he immediately took steps to ensure that Said Bey would not be among those executed, instructing Bulwer to threaten to break off relations with the Porte if Said Bey were put to death.¹³⁶ This put the Porte in an awkward position, as the French ambassador, Charles de la Valette, was demanding precisely the opposite.¹³⁷

Thouvenel defended the position of the French government as a matter of principle and politics. The normal course of Turkish justice having been followed and the sentences confirmed by three of the five commissioners, the judgments should be sanctioned by the Porte.¹³⁸ His primary concern, however, was that effective British intervention on Said Bey's behalf would result in a loss of face for France, and he expressed a willingness to accept a commutation as long as Britain's influence was exercised from the shadows.¹³⁹ Russell was unwilling to concede. He wished it to be known that Her Majesty's government inclined to mercy, particularly given the flimsy nature of the evidence that had formed the basis of Said Bey's sentence.¹⁴⁰

When Thouvenel learned that Bulwer had been instructed to threaten to break off relations with the Porte unless Said Bey were freed, he renewed his protest that the Powers ought not to interfere with Ottoman justice:

nished another proof of their desire to bring disrepute on the acts of the Porte, and to seek to undermine its authority".

¹³⁶ FO 406/11, No. 12, Russell to Bulwer, 3 April 1861, TNA. Russell was informed on 30 March that Thouvenel did not, in fact, agree with the position of the French ambassador in London. The Foreign Minister's opinion was that the capital sentences imposed on the Druze condemned by the Beirut tribunal should be maintained. FO 406/11, No. 6, Cowley to Russell, sent 29 March 1861, received 30 March 1861, TNA.

¹³⁷ FO 406/11, No. 21, Russell to Cowley, 5 April 1861, TNA.

¹³⁸ FO 406/11, No. 27, Cowley to Russell, sent 8 April 1861, received 9 April 1861, TNA.

¹³⁹ FO 406/11, No. 33, Cowley to Russell, sent 9 April 1861, received 10 April 1861, TNA.

¹⁴⁰ FO 406/11, No. 34, Russell to Cowley, 10 April 1861, TNA. His assessment of the case against Said Bey was based on Dufferin's comments and media reports. The Interrogatories of the Druze chiefs only reached Russell on 13 April. FO 406/11, No. 42, TNA, see *supra* note 70.

The Commission had neither the quality of a Tribunal or a jury. The Commissioner of the Porte communicated to his colleagues a judgment pronounced by an Ottoman Court of Justice against Ottoman subjects. All that Fuad Pascha could do was ask the delegates if the repairs and changes were sufficient. Four out of five [commissioners] have found the conviction by the Turkish authorities of the Druse chiefs too strong. I am convinced of their sincerity and conscientiousness, but I do not know how they engage the judicial responsibility of those who have formulated [the sentences], and doubt their divergence alters anything, as in my opinion the Porte has the exclusive right to decide freely and without foreign pressure on the cases that Fuad Pasha brought before it [...]. Any constraints in this regard would seem to infringe the dignity and moral independence of the Sultan.

This character [Said] [is] surely not worthy of a particular interest. Two things: if he is guilty of the crimes alleged against him, he merits death. If he is innocent, a commutation of the sentence would not redress the legal error, and this error should be invoked in favour of the others sentenced.¹⁴¹

An apoplectic Russell fired off a reply that same day. After a reminder that one of the objects of the Commission had been to “obtain the punishment of those guilty of directing or participating in the massacre”, he acidly observed out that the Commission had been intimately involved with the two Mountain tribunals almost from the start, and that Thouvenel had himself interposed on the side of mercy in the proposed executions of those condemned at Moukhtara:

If the Sultan was competent to appoint a Tribunal, and to be the sole judge of the decisions of that Tribunal, why was the Commission appointed? Why did it constantly interfere in the trials? Why did M. Thouvenel give his opinion in favour of saving from condign punishment the assassins condemned at Mokhtara? Her Majesty’s Government consider that if Turkish officials who were in command of troops, and who

¹⁴¹ FO 406/11, No. 60, M. Thouvenel to Count de Flahault – (Communicated to Lord J. Russell by Count de Flahault, April 23, 12 April 1861, TNA. Thouvenel also suggested a retrial for all of the accused before a new court of justice. Russell had previously rejected the idea of a retrial for Said Bey as “unjust”. FO 406/11, No. 45, Russell to Cowley, 14 April 1860, TNA.

allowed and connived at the massacres, are not to be punished with death, the execution of Druses who were far less culpable is likely to shake the authority of the Sultan, and disturb the peace of Syria for many years to come. These considerations, and the particular circumstances of the case of Said Bey Joublat, have induced Her Majesty's Government to interfere, and will induce them to continue to interfere at Constantinople, with a view to save the life of that Druse Chief.¹⁴²

But as Thouvenel had, however, promised not to steer the Porte in the direction of capital punishment, Russell informed Bulwer that he could withdraw his threat to sever relations.¹⁴³

Said Bey died in prison before the Porte could make a final decision in his case.¹⁴⁴ The capital sentences were eventually commuted to exile.¹⁴⁵ An amnesty, applicable to all but the Druze found guilty *in absentia* by the Extraordinary Tribunal at Beirut and still at large, was declared in June 1861.¹⁴⁶ The Sultan sentenced Khorshid and Tahir Pashas (and likely

¹⁴² FO 406/11, No. 61, Russell to Cowley, 23 April 1861, TNA.

¹⁴³ FO 406/11, No. 62, Russell to Cowley, 23 April 1861, TNA. Dufferin ordered Bulwer to inform the Porte that executing Said Bey would injure British-Ottoman relations. *Ibid.* Thouvenel later explained that, in his view, the interference with the verdicts passed by the tribunal at Moukhtara was distinguishable from Said's case, inasmuch as Russell was proposing to interfere in the case of a "particular individual". FO 406/11, No. 81, Cowley to Russell, sent 24 April 1861, received 26 April 1861, TNA. In the opinion of Russia "the Sultan should be left, without influence or bias, to decide upon the fate of the accused". FO 406/11, No. 99, Napier to Russell, sent 28 April 1861, received 6 May 1861, TNA.

¹⁴⁴ FO 406/11, Inclosure 1, in No. 105, Dufferin to Russell, sent 26 April 1861, received 11 May 1861, TNA.

¹⁴⁵ FO 195/660, No. 61, Fraser to Bulwer, 17 October 1861, TNA; FO 195/660, No. 75, Fraser to Bulwer, 29 November 1861, TNA; ABCFM, ABC 16.8.1, Unit 5, Reel 546, No. 141. Hunter to Aiken, 13 July 1861: "On the 10th inst. All the Druse Sheikhs in prison (excepting Sheikh Yusef Abd el Melek and the Emir Muhammed Raselan, who are pardoned) were sent into exile to Belgrade, it is said, and about 60 Druses and Muhammedans were exiled at the same time".

¹⁴⁶ Papers, No 65, Rogers to Russell, sent 1 June 1861, received 20 June 1861: "This notification was received without any excitement being produced"; Additional Papers, Inclosure 7, in No. 46, Dufferin to Russell, sent 11 May 1861, received 24 May 1861. The condemned but uncaptured Druze leaders in the Hawran received amnesty in 1865 in exchange for payment of outstanding taxes and accepting an Ottoman administrator in the stronghold. Leila Hudson, *Transforming Damascus: Space and Modernity in an Islamic City*, I.B. Tauris, London, 2008, p. 21.

the other accused Ottoman officials as well) to life imprisonment in the Empire's far-flung fortresses.¹⁴⁷

7.6. "Vindicating at Once the Claims of Humanity": Events in Syria and the Idea of International Criminal Law

There is a certain appeal to casting the International Commission as an "international crimes court" in response to those who would denigrate international criminal law as an unpedigreed, and by extension illegitimate, branch of the law. But efforts to apply *any* of these appellations will be thwarted by the ambiguous, shifting and inconsistent pronouncements and practices of the commissioners and their home governments, the lack of a complete factual record, and the spectre of sliding into anachronism. Consider just one of these terms: court.¹⁴⁸ Do the perceptions of the foreign commissioners, to the extent they considered themselves judicial actors in a legal drama, transform them into judges, as would be found at a tribunal? Is an entity with no formalised rules of procedure, articulated jurisdictional limits, or instructions to apply a particular body of law, a court? Would the relevant stakeholders have considered it a court in 1860? Had a consensus been reached on all of the Beirut verdicts, would Fuad have been bound by the determination of the Commission? Or was their decision merely precatory? Does it matter that the assumption of a judicial role by foreign commissioners was only endorsed by some of their home governments? Does the September understanding reached between the Great Powers and the Sublime Porte, enshrined in the instructions to Fuad and which reserved to him all judicial authority, mean that

¹⁴⁷ FO, 195/660, No. 3, Fraser to Bulwer, 9 July 1861, TNA; No. 141, Hunter to Aiken, see *supra* note 145: "Khurshed Pasha, Tahir Pasha, and other officials have been sent, it is said, to Cyprus or Crete".

¹⁴⁸ The Commission's nebulous mandate bedevilled the analytical efforts of its contemporaries as well. According to Girardin, 1862, p. 92, see *supra* note 2:

The right of supervision and review of the actions of the special tribunal of Beirut that is claimed by the commission is constantly challenged and more difficult to exercise. Fuad Pasha said, it is true, through his delegate Abro Effendi, that members of the Commission may attend the court sessions; but he adds that foreigners without this distinction may also attend, so there is room to doubt whether the members of the International Commission attend meetings of the court as a matter of right or only by courtesy and as foreigners of distinction.

the commissioners were acting *ultra vires* when they considered the evidence against Said Bey? If the 'court' capacity of the Commission was illegal, was it in fact not a court at all? Did the sultan's ultimate discretion over the enforcement of the commissioners' recommendations negate the independent control over verdicts that is the hallmark of a court? Did any of the commissioners have the freedom of action that is the *sine qua non* of a court? How real was the Sultan's discretion over sentences given the willingness of the Great Powers to 'guide' his decisions? How strong was the commitment of the Great Powers to enforcing their commissioners' recommendations?

To pursue this line of inquiry is to willingly throw oneself off a cliff with no bottom. Heaven help the poor scholar who attempts to tackle "international" and "crimes" as well.

Setting aside insoluble matters of taxonomy, the response to the events in Syria suggests a number of interesting things about the state of 'international criminal law' in the mid-nineteenth century. First, it seems that by 1860 at least a few Great Powers had accepted two principles: (1) that a body comprising representatives of various states can assume jurisdiction over matters beyond those affecting their nationals or consulates, and (2) that this body can be endowed with the power to trigger local prosecutions, review national proceedings, correct errors made before national courts, review evidence and allocate punishment. Interestingly, this understanding does not appear to have been limited to Europe's politicians and diplomats. In late July 1860 Sir John Gardner Wilkinson, a well-known British traveller-adventurer and pioneer Egyptologist, suggested in a letter to *The Times* the establishment of a true *ad hoc* international criminal court:

I am sorry to say it, but the truth is there is little difference between the Maronites and the Druses in their vindictive spirit; the former, though the aggressors and confiding in their number, have been worsted, and most cruelly have they been visited for their indiscretion, but it is not by inflicting similar miseries on the Druses that an effectual remedy is to be applied; this can only be done by making the Turks responsible for the future peace of Syria, and, to show that we are in earnest, we should demand that "the Turkish officials" of Damascus and those who treacherously induced the Christians at Dar-el-Kamar to give up their arms, as well as all who commanded Turkish troops in the attack on Zahleh and

other places, be brought down to Beyrout and there tried by a court composed equally of English, French, and Turks, when, if proved guilty, every one according to the magnitude of his offence, should be summarily punished on the spot; in addition to which, the Porte should be immediately forced to make good the whole of the losses sustained by the Christians; the money being delivered to the English and French for distribution among the families of the sufferers. It is useless to say this is an interference in the internal affairs of an independent country. Armed intervention is so, too, but it must be made. The case is peculiar, and we are bound to prevent the recurrence of similar outrages, on a greater scale; which, though others may be the immediate actors, will only be the result of Turkish ill-will against the Christians.¹⁴⁹

Although I can find no evidence that Wilkinson's (remarkably prescient) proposal was picked up by policymakers, or impelled any of the events that followed, his letter to *The Times* confirms that 'international criminal justice' was in the air and that the prospect had some appeal to the chattering classes.¹⁵⁰

In some cases, the violence also precipitated an expanded understanding of the sorts of behaviours that could fall under the auspices of 'crimes against humanity'. The concept of the crime against humanity was not new when the crisis in Syria broke out; by 1842 trafficking in slaves had been identified as "justly stigmatized by every civilised and Christian people as a crime against humanity",¹⁵¹ and slavers, analogised to pirates, were regarded by many states (and some international law scholars) as *hostis humani generis*.¹⁵² But the notion was underdeveloped

¹⁴⁹ "The Massacres in Syria: To the Editor of the Times", *The Times*, 26 July 1860, reprinted, as it was "too interesting to be passed over", as "The Syrian Massacres", *Morning Chronicle*, 14 August 1860.

¹⁵⁰ Further evidence that international justice was accepted by the public may be found in the pages of the *Glasgow Herald*, 14 February 1861. The editors interpreted (and approved of) Russell's 8 February 1861 comments in the House of Lords (see *supra* note 64) as indicating that the commissioners were a "Court of Appeal from the Turkish Court-Martial, who stand as a safeguard against any flagrant injustice being perpetrated by that tribunal".

¹⁵¹ Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights Law*, Oxford University Press, Oxford, 2012, p. 115, citing Henry Wheaton, *Enquiry into the Validity of the British Claim to a Right of Visitation & Search of American Vessels, Suspected to Be Engaged in the African Slave-Trade*, Lea and Blanchard, London, 1842, pp. 4, 16.

¹⁵² *Ibid.*, p. 131.

and inexorably linked with maritime outlawry; terrestrial crimes of mass violence had never fallen within its ambit. The brutality of the 1860 conflict, however, began the process of unshackling the expression from its thalassic roots. Reasoning by analogy was key to the process of imbuing this phrase with new shades of meaning; just as the slaver was like the pirate, so was the cruel terrene warrior, like the slaver. Richard Robert Madden, a member of the Anglo-Spanish Court of Mixed Commission in Havana, which heard cases involving intercepted slave ships, upon learning of the violence in Syria mused that:

In modern times, the cruelties committed by slave dealers on the coast of Africa, caused even the introduction into our official vocabulary of such epithets as "miscreants," "monsters," "enemies of the human race," &c., &c; for with such epithets we find the parliamentary slave trade papers teem. The atrocities, however, committed in Syria on the Maronites who were more immediately entitled to British sympathy, because in point of religious relationship they were bound to us in closer bonds of Christian fellowship, deserved, in my humble opinion, to be placed in the same category of crimes, as those in which are recorded the atrocities of the Spaniards and Portuguese, and to be ranked among the worst outrages on humanity that have ever been committed.¹⁵³

Even as the response to the 1860 massacres enlarged the concept of crimes against humanity, it reinforced among European and Ottoman diplomats, as well as the British public, the bedrock precepts on which this nascent legal category was built; first, that some acts were offensive to the conscience of humanity; second, that mass violence could be framed as criminal, that is, labelled 'crime' or countered with prosecutions; third, that individuals could be punished for their discrete contributions to the

¹⁵³ Richard Madden, *The Turkish Empire: In its Relations with Christianity and Civilization*, vol. 2, T. Cautley Newby, London, 1862, p. 354. See also Gera Burton, "Liberty's Call: Richard Robert Madden's Voice in the Anti-Slavery Movement (1833–1842)", in *Irish Migration Studies in Latin America*, 2007, vol. 5, no. 3, pp. 199–206. With respect to the development of new categories of crime, an offhand remark of B  clard's to the effect that the massacres at Damascus and Deir el-Kamar were not part of a "civil war" but were rather "veritable butcheries" is interesting. Papers, Inclosure 7, "Protocol of the Ninth Meeting of the Syrian Commission, held at Beyrout, November 10, 1860", in No. 190, Dufferin to Russell, sent 17 November 1860, received 30 November 1860.

carnage; fourth, that punishment could be in the name of humanity.¹⁵⁴ Of equal significance, the British press cultivated the idea that allocating responsibility among and punishing accordingly (proto-)international criminals was not only possibly, but properly, a matter of global concern. Early demands that individuals be held accountable fixed Europe's eyes on and built a shared sense of investment in the transitional justice programme in Syria. Discussions of, for example, the appropriate role for Europe in seeing punishments doled out,¹⁵⁵ the number of those who should be

¹⁵⁴ See *infra* notes 24, 25, 26 and 27. Invocations of "humanity", on the part of British diplomats at least, were not merely rhetorical ploys to palliate public opinion. Rather, humanity was treated a body whose integrity could be wounded, as a rightsholder and as a stakeholder, even in private diplomatic correspondence. Papers, No. 139, Moore to Russell, sent 14 September 1860, received 29 September 1860; in reference to Fuad's imposition of punishment of Ahmad Pasha: "His Excellency merits the highest applause for the firmness which pronounced, and the course which carried out a sentence vindicating at once the claims of humanity and the honour of his Government"; Papers, No. 233, Dufferin to Russell, sent 19 December 1860, received 5 January 1860 (quoted below); No 254, Russell to Cowley, 24 January 1861: "The object of the five Powers was to prevent a renewal of those massacres, and to show the fanatical tribes of Syria that such outrages upon humanity could not be committed without punishment and reparation"; Papers, No. 172, Russell to Cowley, 7 November 1860: European troops "went to support the Sultan's authorities in their task of restoring order, and punishing the principal criminals. By the activity of Fuad Pasha, and the energy of General Beaufort, this work of humanity and justice has been in great part accomplished". For Ottoman pronouncements reflecting a similar understanding see *supra* notes 2, 75 and 76.

¹⁵⁵ The *Liverpool Mercury*, in "The Druses and Maronites", 12 July 1860, only begrudgingly lent its support to the French intervention, and felt that the role of the foreign troops, and indeed Europe as a whole, should be negligible: "we have no right to assume that the Porte will fail to comply with any reasonable demand from a European Government for the suppression and punishment of these atrocious outrages, and it is greatly to be desired that the Sultan's authority in the outlying provinces of his empire should be strengthened by exercise rather than it should be superseded by foreign interference". *The Times*, 10 August 1860, suggested that the French were best utilised as a support to the Porte, as "the Turks are strong enough to execute the Sultan's order [the demand that ringleaders be given up] without help"; "The Massacres in Syria", *The Times*, 17 August 1860: Europe should neither "control nor instigate" punishment, as the exercise of this power spoke directly to the preservation of the Ottoman state. In "The Syrian Question", *Saturday Review*, 4 August 1860 on the news that the British and Turkish governments had acquiesced to the dispatch of a French force, the paper thought it unviable to use Zouaves (French troops) to "punish their [the Ottoman leaders'] remissness" to suppress disorder, as this would amount to "making war on the Power from which they derive their commission", also stating that "[t]he plan of superseding them [Ottoman authorities] in the discharge of their duties can only perpetuate anarchy". The *Morning Post*, September 1860 was sceptical that the Porte was serious about accountability, and suggested that unless the Ottoman government's Foreign Minister Fuad Pasha was "closely watched by European commissioners" he would "naturally allow the large fish to escape and only punish the small fry". "The Syrian Mas-

killed,¹⁵⁶ the sufficiency of the sentence against Khurshid Pasha,¹⁵⁷ and the necessity and timing of an amnesty, all unfolded in the papers.¹⁵⁸ The public experienced such a sense of ownership over the proceedings that when news of the poor quality of Said Bey's trial reached Britain and faith in Ottoman justice was at a nadir, *The Times* apportioned Europe a share of the responsibility and symbolically revoked the Powers' imprimatur of Ottoman justice: "It is quite clear that the public opinion of Europe – and it is in some degree under the public opinion of Europe that these proceedings gained their original sanction – will no longer support the jurisdiction of such tribunals".¹⁵⁹

sacres", the *Standard*, 27 July 1860, suggested to let the Sublime Porte first deal with the punishment, but in the event their efforts failed Europe should administer "swift, impartial, and overwhelming" justice. Both the *Birmingham Daily Post*, 20 July 1860, and the *Daily News*, 17 August 1860, expressed confidence in the Ottoman commissioner, but anticipated that his good faith efforts would come to little without a foreign military presence.

¹⁵⁶ "Syria", *Morning Post*, 2 March 1861: "No sooner was it told to the assembled International Commissioners that only 44 Druses were condemned to death, than many protested loudly that that number was insufficient! As though it was a question of killing so many sheep or pigs instead of human beings. [...] Although I myself do not feel particularly blood thirsty, I think there must be something in the air here which exercises a powerful effect on human beings, as the distinguished gentlemen who represent the European Powers would, when in their own country, be shocked at the bare notion of sending back to their judges the sentences of a couple of hundred poor, ignorant men, for the express purpose of selecting 50 of them for capital punishment"; "Syria", *Daily News*, 9 February 1861: asserting (inaccurately) that 130 had been condemned to death, and (unbelievably) that "the Druses themselves say that if they can kill off-hand some 10,000 of their enemies – not calculating what they shot in open war, but merely those murdered in cold blood – at a loss of only 130 of their own tribe, they have gained a great victory. This is looking at the subject from a truly Oriental perspective".

¹⁵⁷ "Turkey", *Morning Chronicle*, 9 February 1861; "Syria", *Daily News*, 12 January 1861; *Morning Post*, 25 January 1861.

¹⁵⁸ *Morning Post*, 9 April 1861: "After the wholesale, and in many cases apparently indiscriminate, arrests which have been made in the Lebanon and the Hauran, it is hopeless to expect any of those who may be conscious that a shadow of suspicion hangs upon their past conduct towards the Maronites to renew the natural occupations of their daily life so long as number equal to the population of small towns are liable to be swept off to prison together, and there tried with deplorably little reference to the real merits of the accusations against them. [...] We trust that the Turkish Government will evince the courage to proclaim it, and we are confident that its policy in doing so would receive the sanction, at any rate, of such a proportion of the great Powers as would enable it to persevere in such a course"; *Morning Post*, 26 September 1860.

¹⁵⁹ *Morning Post*, 16 April 1861. In a broad sense, the preoccupation with punishment in Syria, evident in press reports and in Parliamentally debates, offers an early example of local justice being conscripted by the foreign community to counter atrocity crimes. See, for ex-

Throughout the transitional justice process, one personality is distinguished by his clarity of vision, ability, attentiveness to due process concerns, and sensitivity to the need for a coherent transitional justice strategy: Frederick Hamilton-Temple-Blackwood, 1st Marquess of Dufferin and Ava. His hands, of course, were not entirely clean. No one could accuse Dufferin of not towing Her Majesty's line with respect to seeing Khurshid executed, though ultimately it is difficult to assess how much of this was driven by his own convictions and how much from his eagerness to prove himself capable during what was his first diplomatic posting.¹⁶⁰ What is more, he was willing to compromise his ideals when he was convinced that the benefit to the region outweighed the harm to individuals, as when he (begrudgingly) tolerated the exile of 155 Druze prisoners "whose guilt was not fully proved" to Tripoli.¹⁶¹ But of all the players involved in Syria's post-conflict reconstruction Dufferin was the least willing to sacrifice procedural integrity for political purposes. He acted with an awareness of what was at stake and a genuine conviction that law, not force, was the means by which Syria would be restored to order.¹⁶² He perceived himself as a judge, took this responsibility seriously,¹⁶³ and ex-

ample, Hansard's House of Lords Debate, 14 August 1860, vol. 160, cc. 1241, with Wodehouse remarking that "the conduct of Kurschid Pasha was more than suspicious, and requires strict investigation; and, if it should turn out that he is guilty of those acts of which he is accused, severe punishment".

¹⁶⁰ See text associated with *supra* note 98. FO 406/10, No. 101, Russell to Dufferin, 14 August 1860, TNA: "Pashas like Khoorshid of Beyrout, and Achmet of Damascus, would pervert the best regulations that can be framed".

¹⁶¹ See FO 406/11, Inclosure 1, in No. 525, TNA, *supra* note 80. He also reluctantly instructed Fraser, his representative authorised to assist Fuad with the Moukhtara proceedings, to content himself with "taking such precautions as the circumstances of the case admit", as "we have to deal with an occasion and with a state of society in which a nice adherence to the refinements of European legal practice would be out of place". Papers, Inclosure 9, Dufferin to Fraser, 23 January 1861, in No. 288, see *supra* note 76.

¹⁶² FO 406/10, Inclosure 3, in No. 188, Dufferin to Russell, sent 23 September 1860, received 6 October 1860, TNA: "I entirely agreed with His Excellency [Fuad] in thinking it advisable that, if possible, his progress through the Druze country should have the character of a Judge holding an assize, rather than of a conqueror claiming vengeance"; and Inclosure 7, From a letter to General Beaufort: "But I cannot but think that to effect this object it will be better to delegate so terrible and responsible a duty to the sword of justice rather than to the bayonets of the soldiery, to invest our vengeance with an awful character of a discriminating retribution rather than that of a passionate reprisal, which if carried too far may acquire some resemblance to the crimes we seek to chastise".

¹⁶³ Lyall, 1905, p. 121, see *supra* note 87, quoting a letter from Dufferin to the Duchess of Argyll:

pressed frustration when the abilities of his colleagues did not meet his standards: "[I am astonished] at finding how little the elemental rules of the administrations of justice are understood by my colleagues. As far as I have observed, they seem to me quite unused to the investigations connected with legal proceedings, and to possess but a very inadequate knowledge of the mode in which the sifting of evidence, at the cross-examination of witnesses, and the other practices of a tribunal are conducted".¹⁶⁴ His memoranda and dispatches are written in the tone of one who wishes to *convince*, not *defeat*, and call to mind nothing so much as a magistrate working through a problem or making a case to peers. And when confronted with data that did not conform to his preconceived notions, he revised his opinions.¹⁶⁵

This was the man who would traverse areas of the international criminal law map that would only be charted with any detail in the twentieth century. His pursuit of a justice programme that would restore order and affirm the values of restraint, empathy and humanity forced him to confront many of the same questions encountered by today's community of international criminal law scholars, and it is fascinating to see how closely his answers to the field's most difficult questions hew to our own. His attempt to balance between local and international ownership of the transitional justice programme is particularly on point, for its germinal articulation of the now familiar 'unwilling or unable' test. When he ar-

It is a terrible thing to feel the life of many a man will have to depend on one's judgment, pluck and skill. Moreover, my task is the most difficult one of any. The other Commissioners are merely prosecutors. Provided those whom their governments are determined to think guilty do not get off, they need have no other care. *But I am judge, jury, prosecutor, and counsel for the plaintiff all at once.* These unfortunate Druses are in a most pitiable position. They have committed the most horrible crimes, they are being pursued with the extremity of rancor by the Maronites out of revenge, and by the French out of ambition; they are being sacrificed by the Turks out of fear, and in the hope of saving their own people; and yet their only friend is obliged to a certain extent to place himself in the ranks of their accusers. (emphasis added)

¹⁶⁴ FO 406/10, Inclosure 4, in No. 414, Dufferin to Russell, sent 1 February 1861, received 16 February 1861, TNA.

¹⁶⁵ Papers, Inclosure 1, in No. 351, *supra* note 100, in which Dufferin describes how he was initially of the opinion that the Druze were solely responsible for the massacres, but as he investigated matters he learned that there were "two sides to the story".

rived in Beirut, the scales tilted in favour of minimal international intervention:

I have been informed [...] that Achmet Pacha, late Governor of the city, has been tried, condemned, and sentenced, but that his sentence, whatever it may be, has not been yet made public. [...] In delaying to pronounce sentence upon this egregious offender, His Excellency [Fuad] may be influenced, wither by a desire to await the arrival of the Commission in order to compel them to share the odium he is likely to merit by exercising a due severity [...], or by a habit of hesitation not, I believe, altogether foreign to this His Excellency's character. [In the first event] I shall venture to submit [...] whether it might not be undesirable that so grave a function as the punishment of crime should appear to be exercised at Foreign Dictation rather than proceed from the spontaneous exertion of those plenary powers which have been entrusted to him by his Government.¹⁶⁶

But familiarity with Ottoman justice (and the placing of Druze in the dock) bred contempt, and by early October he was convinced that the government was unable or unwilling to prosecute cases in a manner that would be perceived as fair or would result in “the discovery of the causes of the late events”.¹⁶⁷ Now the scales skewed in favour of direct and international participation:

The contemplation of the circumstances under which those accused of complicity in the late disturbances – whether at Damascus or in the Lebanon – are tried, gives rise to many painful reflections. It seems impossible to constitute a tribunal, composed of subjects of the Porte, capable of inspiring with confidence either the accuser or the accused.¹⁶⁸

[T]he only effective way of conducting a *bona fide* investigation into the circumstances out of which the late disturbances arose would be by acquiring for the Delegates of the Commission, appointed to watch the trial of those concerned in them, the privilege of directing the inquiry into whatever channel seemed more likely to lead to the discovery of the

¹⁶⁶ FO 78/1625, No. 2, Dufferin to Russell, 4 September 1860, TNA.

¹⁶⁷ FO 406/10, Inclosure 5, in No. 240, TNA, see *supra* note 103.

¹⁶⁸ Papers, Inclosure 2, in No. 147, Dufferin to Russell, sent 23 September 1860, received 6 October 1860.

truth [...]. Now, even if they had the wish, no Turkish tribunal possess either the experience or the skill necessary to conduct so complicated an investigation. But we have every reason to believe that the real object which the Beyrout Tribunal has at heart is the concealment of the truth, and the destruction, with as much dispatch as possible, of those whose mutual recrimination would bring to the knowledge of Europe facts with which it is their interest to keep her unacquainted. It becomes, therefore, a matter of great importance that we should have the power of preventing those in the purity of whose intentions we can have so little confidence from stifling inquiry and cooking evidence.¹⁶⁹

Dufferin's distaste for collective punishment foreshadows the turn toward individual culpability that the field would take. He railed against the exceptionally high "penalty tax" Fuad imposed on the Druze, and contrasted it with the more targeted ongoing prosecutions:

In the interests of justice, of humanity, and of the future government of the Province, it is necessary that a great example should be made of those whose hands are deepest dyed in blood. It is only by the severity of punishment that these barbarians can be made to comprehend the enormity of their crimes; but an awful and impartial administration of capital punishment, on a certain number of notorious offenders, is a far different thing from that stupid and unscrupulous system of persecution by which the whole [Druze] nation is being driven to despair.¹⁷⁰

Dufferin encouraged an even-handed process that targeted individuals on the basis of their actions, as opposed to their affiliation with a particular social or religious group:

It seems to me most essential, that whilst the culpable Turkish authorities and the Druse Chiefs are adequately punished, any leaders amongst the Maronites who excited or commenced the recent civil war should not pass unnoticed or unchastised; [...] Murderers and robbers should, I think, be punished as murderers and robbers, not as Mussulmans or Jews, or as belonging to any religious sect. [...] I would be averse to make religion the difference between the ruffian

¹⁶⁹ FO 406/10, Inclosure 5, in No. 240, TNA, see *supra* note 103 (emphasis added).

¹⁷⁰ Papers, No. 233, Dufferin to Russell, sent 19 December 1860, received 5 January 1861.

and his victim, since such a conviction could only make each feel that there was a gulf of blood between them.¹⁷¹

He was also the first among the Commissioners to suggest that both prosecutions and amnesties had a role in rebuilding society.¹⁷²

In other areas his communications merely suggest a future direction for the field without reaching a satisfying conclusion. This is the case with respect to his efforts to square the need to ensure justice for victims with local social norms (anticipating what we would call today the “sociopsychological” or “cultural” defence) and with European practice to the contrary:

[C]onsiderations of some importance must still be permitted to arrest the descending scale of [Justice’s] balance. It is to be remembered that this is a country of vendettas; that in the war carried on between the barbarian tribes which inhabit it, usages prevail as horrible as those which disgraced the middle ages of Europe. It is a principle received and acted upon by all alike that when the “deen” or blood feud exists it is allowable to slay your unarmed enemy, and every male belonging to his house wherever you may find them. In fact beneath the full blaze of modern civilization, we find in Syria habits of thought and practices prevailing for which the only historical parallel can be found in the books of Moses. [...]

In some of the most civilized countries of Europe customs alike hateful to philosophy and religion remain unpunishable by law and uncensured by society: while so great is the allowance it is sometimes found necessary to make for the perversity of human nature that the soldiery of civilized States are occasionally suffered to inflict with impunity on the unoffending women of a city taken by assault horrors equaling in brutality those committed by the Druses during the intoxication of triumph and revenge.

Be that as it may, strict equity would seem to require that in estimating the moral guilt of these unhappy persons the

¹⁷¹ Papers, Inclosure in No. 211, Bulwer to Russell, sent 12 December 1860, received 22 December 1860; Papers, Inclosure 1 and Inclosure 3, in No. 306, Dufferin to Russell, sent 1 February 1861, received 16 February 1861.

¹⁷² Papers, Inclosure 8, in No. 199, Dufferin to Russell, sent 28 November 1860, received 15 December 1860.

standard of European civilization is not altogether applicable. Some allowance must be made for the force of circumstances and of inveterate tradition.¹⁷³

Notwithstanding that much may be said to excuse the conduct of the Druses, it still remains a fact that they slaughtered in cold blood upwards of 5,000 unarmed men and children. Let the moral guilt attaching to their excesses be extenuated as it may, no penalty which fails to make such an impression as will prevent the repetition of similar atrocities would be adequate to the occasion.¹⁷⁴

Remarkably, despite the passage of nearly a century and a half, and all of the changes in law, practice and terminology that time has wrought, we can discern in this aspect of the history of the Syrian justice programme echoes of our own international criminal law endeavours. Many of Dufferin's improvised but reflective epistles, like the 'unwilling or unable' test, have evolved into legal norms, or like the sequencing of prosecutions and amnesties or the even-handed dispensation of justice, into best practices or animating principles. This suggests that these formulations have an intuitive appeal that transcends the epochs of international criminal law. Dufferin's letters also raise the spectre of hypocrisy on the part of Great Powers, affirming and anticipating the centrality of this issue to the field. Although powerful states even today remain capable of shielding their nationals from the mechanisms of international justice, it is mildly cheering that even from the earliest days of international criminal law (and from within the 'inner circle' of the Syria mission no less) the double standards generated a certain amount of cognitive dissonance. Pharisaical pushes for justice, it would seem, will always be met with voices of dissent from within.

¹⁷³ Papers, Inclosure 2, "Substance of an Interpellation addressed by Lord Dufferin to Fuad Pasha, at the Eighth Sitting of the Syrian Commission, November 10, 1860", in No. 190, see *supra* note 153. For more on how these defenses are used today, see Ziv Bohrer, "Is the Prosecution of War Crimes Just and Effective? Rethinking the Lessons from Sociology and Psychology", *Michigan Journal of International Law*, 2012, vol. 33, no. 4. pp. 750–81; Alison Dundes Renteln, "Cultural Defenses in International Criminal Tribunals: A Preliminary Consideration of the Issues", *Southwestern Journal of International Law*, 2012, vol. 18, no. 1, pp. 267–85.

¹⁷⁴ FO 406/10, Inclosure 4, in No. 414, Dufferin to Russell, sent 1 February 1861, received 16 February 1860, TNA.

And, it would seem, from outside as well. I will close this section with a consideration of an editorial from *The Times*, interesting for its implication that the idea that no one guilty of mass crimes is above the law was ultimately exported from the Ottoman Empire back to England. The writer began a paragraph by rejoicing at the punishment of the “malefactors”, particularly Ahmad Pasha and his subordinates, but rejecting the view that Fuad, with “his firmness, his enlarged views, and the summary justice he has executed” represented the “triumph of European civilization”. Fuad’s repressive measures were rather the “justice administered by Eastern despots from the earliest ages”, an extension of the “justice of Darius, or Haroun Alraschid, or Suleiman the Magnificent”. The author then ruminated on the Ottoman psyche: “The troops supported the Pasha with alacrity; and such is Oriental nature that every execution has been received by Moslems composed of Turkish functionaries, have sent the prisoners to death or banishment by droves, because they knew it was the will of the Pasha. The instinct of obedience and the readiness for unsparing slaughter still mark the race as in former days”. Then, an abrupt and odd change of perspective, as the results of Fuad’s efforts are contrasted with those of a ‘civilised’ power in a similar situation: “It would be difficult to induce a European Government to carry out such a sentence on a man so highly placed”. Finally, a shift in focus to the cyclic nature of Ottoman justice: “As in the old times no rank or office, no amount of Imperial favour, insured the servants of the Sultan from the bowstring, so we find even now that an official of the highest class may fall in an hour, and that a court-martial, composed, perhaps, of his own subordinates and sycophants, will send him to his doom when it is known that a greater man than he has given the word for severity”.¹⁷⁵

One might perceive the leaps in narrative as manifestations of the author’s inner struggle to reconcile his distaste for the bloody vengeance being enacted in Syria with his appreciation for its results. There are a number of questions effervescing just beneath the surface here. Is the imperfect justice of Darius preferable to the unaccountability of European officials? What does ‘civilisation’ mean in a world where the Porte achieved a more thorough justice than European Powers could? There is a longing in this paragraph for the best of all worlds, fairness and punishment, within and outside Europe. Justice in Syria, at least in one case it

¹⁷⁵ *The Times*, 2 October 1860.

seems, prompted some of the early, muddled, stirrings of a sentiment that would eventually evolve into demands for recognition of a truly universal right to justice.

7.7. Conclusion

International criminal law was not moribund during the long nineteenth century. Many states were sensitive to atrocity, and prioritized answering the massacre and pillage in Syria with punishment. The Druse-Maronite conflict inspired among Europe's diplomatic and political constituencies an unprecedented willingness to reject a local amnesty and internationalise punishment, and generated sincere and equally unprecedented rhetoric concerning the values and rights of humanity. In Syria and back home, Europeans drew connections between international judicial processes and atrocity, and refined their legal and social lexicon to encapsulate the horrific nature of the violence and justify the recourse to extraordinary international punitive measures. In these endeavours we may discern some of the first stirrings of what would become, in the twentieth century, a revolution in international law.

Surprisingly, international law's luminaries missed opportunities to encourage these roots to take hold. When Gustave Moynier published (a mere 12 years after the Syria crisis) his proposal for an international criminal court to hear cases involving violations of the Geneva Convention, he passed over the Commission, modelled the proposed institution on interstate arbitral tribunals, and analogised between his suggestion and international copyright treaties with a penal component.¹⁷⁶ Francis Lieber's code of conduct, prepared for use by Union troops in 1863, did not cite the tri-

¹⁷⁶ Gustave Moynier, "Note sur la création d'une institution judiciaire internationale propre à prévenir et à réprimer les infractions à la Convention de Genève", *Bulletin international des sociétés de secours aux militaires blessés*, Comité international, 1872, no. 11, pp. 122–31. For more on Moynier's proposal see Christopher Keith Hall, "The First Proposal for A Permanent International Criminal Court", *International Review of the Red Cross*, 1998, vol. 322, pp. 57–74. Moynier was confident as late as 1870 that 'extralegal' sanctions – "retaliation, new hostilities and dishonour" (specifically arraignment "before the tribunal of public conscience" and attendant excommunication from the community of "civilised nations") – would be sufficient to ensure compliance with the Geneva Conventions. Gustave Moynier, *Étude sur la convention de Genève pour l'amélioration du sort des militaires blessés dans les armées en campagne*, Cherbuliez, Paris, 1870, pp. 300–2. The failure of both sides in the Franco-Prussian War to honour the Geneva Convention would disabuse him of this notion, but by then, it seems, the Commission and Syrian trials were lost to the Europe's community of international law scholars.

als in Syria as a precedent for the punishment of war criminals.¹⁷⁷ Indeed, I have been unable to find any reference to the punishments or work of the Commission in any English or French legal text from the nineteenth century. As far as development of doctrine was concerned, the slide into obscurity of the post-conflict experience in Syria was steep and complete.

European and US international lawyers declined to construe transitional justice in Syria as a transformative moment in international law or invoke the Commission as a symbol of the existence of a law of nations rightfully concerned with the conduct of individuals (or, less ambitiously, of an international sentiment to the effect that atrocious conduct demanded condign punishment). But the precedent was not forgotten by Europe's diplomats. The "Bulgarian horrors" of 1876 stimulated, with British encouragement, a series of trials in that Ottoman province.¹⁷⁸ When the

¹⁷⁷ Lieber relied primarily on his previous work "reinforced with the notes and files that he had painstakingly built up during his teaching career". Richard Baxter, *Humanizing the Laws of War: Selected Writings of Richard Baxter*, ed. by Detlev F. Vagts, Theodor Meron, Stephen M. Schwebel and Charles Keever, Oxford University Press, Oxford, 2013, p. 136. See generally, Francis Freidel, *Lieber: Nineteenth-Century Liberal*, Louisiana State University Press, Baton Rouge, 1947. Neither Lieber's 1862 essay *Guerrilla Parties* nor the records of his lectures delivered at Columbia University between 1861 and 1862, archived at the Eisenhower Library, Johns Hopkins University, make any mention of the events in Syria. Still, it is obvious that Dufferin and Lieber drew from the same philosophical well. Just as the former recognised the need for rational and fair punishments in Syria, the latter, in considering the applicability of rules designed for interstate conflicts to civil wars, considered it "certain, that no army, no society engaged in war, any more than a society at peace, can allow unpunished assassination, robbery, and devastation without the deepest injury to itself and disastrous consequences which might change the very issue of the war". Francis Lieber, *Guerrilla Parties Considered with Reference to the Laws and Usages of War*, D. van Nostrand, New York, 1862, p. 186.

¹⁷⁸ Midhat Pasha, the grand vizier, refused to accept a Great Power-backed International Commission that would have been empowered to "help the Ottoman authorities discover the perpetrators of the massacres, ensure the punishment of the guilty, and take part of the revision of the sentences of persons condemned by [an Ottoman] Extraordinary Commission", but counter-proposed that the Great Powers could send "agents" to attend the hearings of a Porte-established Commission. Great Britain. Foreign Office, Turkey No. 2, *Further Correspondence Respecting the Affairs of Turkey, presented to both Houses of Parliament by Command of Her Majesty*, Harrison and Sons, London; Great Britain. Foreign Office, Turkey No. 15, *Further Correspondence Respecting the Affairs of Turkey, presented to both Houses of Parliament by Command of Her Majesty*, Harrison and Sons, London ("Turkey No. 15"), Inclosure in No. 207, Elliot to Derby, sent 8 January 1877, received 20 January 1877. Walter Baring attended the trials as agent of the British government. My preliminary review of the relevant Blue Books suggests that he did not directly participate in the proceedings, but when a verdict was reached that he did not agree with he announced his withdrawal from the Ottoman Commission. The fact that this was perceived

Turkish ambassador complained of difficulties in executing capital sentences on individuals "convicted of massacres and atrocities" and expressed hope that Britain would be satisfied with a minor sentence, the British Secretary of State for Foreign Affairs reminded him "what had been done" in response to the Lebanon massacres and insisted that only death would be considered an adequate penalty.¹⁷⁹ I am confident that additional research will reveal connections between the statesmen involved in the Commission and subsequent European responses to outbreaks of mass violence.

The Syrian experience with justice embodies many of the same tensions that play out today: between Great Power and non-Great Power expectations and perceptions of justice; between competing conceptions of the limits of foreign jurisdiction over local affairs; between the drive to punish massacre versus the perceived necessity of limiting penalties; between those who would embrace the inherently political nature of mass justice and those who would seek to remove politics from the equation; between competing narratives of guilt and victimhood; and between the divergent political objectives and consciousness of metropole and periphery, to name but a few.

The research presented here is but a first step to understanding how these tensions played out in response to the crisis in Syria, and how these events relate to modern debates and doctrine. Much empirical study remains to be done on the trials at Beirut, Damascus, and Moukhtara. The question of the process of selecting defendants, the profiles of those involved, the evolution of trial procedures, the crimes charged, the rules of evidence, the "due process" protections applied, the verdicts issued and how they were received by local stakeholders, the defences raised, and their findings on matters of law, will be of intrinsic interest to the growing number of history-minded international lawyers. And perhaps when that work is over, international criminal law will be invigorated by the incorporation of new experiences generated by a state not traditionally associated with the development of international criminal law, and the judgments will prove to be a fresh source of jurisprudence from which contemporary adjudicators draw inspiration.

as a sanction suggests that the trials before the Turkish Commission were considered 'international' in some sense. Turkey No. 15, *infra*, Inclosure 5, in No. 156, Jocelyn to Earl of Derby, sent 12 February 1877, received 20 February 1877.

¹⁷⁹ Turkey No. 15, No. 163, Earl of Derby to Mr. Jocelyn, 20 February 1877.

I am confident that further research will result in the discovery of additional linkages between episodes where the toolkit of international criminal law was either considered or put into practice, as well as between those experiences and various contemporary social and jurisprudential trends (for example, liberalism, humanitarianism, internationalism, social Darwinism, colonialism, racism, military professionalisation and so on). Pursuing this line of inquiry will not only improve our understanding of the character, morality, process, promise and limits of transitional justice in the present, but will also allow us to draw the sorts of conclusions, for example regarding the factors affecting the durability of the positive outcomes of transitional justice, that only a truly long-term historical perspective permits.

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