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The Politics of the Taliban's Shadow Judiciary, 2003–2013

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Abstract

The Taliban established their own judicial system in Afghanistan as both an instrument of population control and as a means to project themselves as an effective parallel government. Despite the heavy reliance on coercion, the Taliban's method of dealing with common criminality and resolving disputes was often welcome, though the weak appeal system and the rapidity of the trials was sometimes criticized. A more structured approach to coercion, featuring rules, regulation and supervision over the military, allows less use of violence and promises increased predictability for the population, making active resistance less of a necessity. In the long run, the establishment of credible judiciary institutions reshapes the social environment and creates vested interests in favor of Taliban domination.

Keywords

Afghanistan – Taliban – rule of law – judicial system – judiciary

The greatest effort of the Taliban movement in the field of governance since its re-emergence in 2002–2003 has gone into the establishment of a shadow

judiciary. As the judiciary had been a major preoccupation for the Taliban already during the Emirate, it was an obvious place to begin rebuilding their political and religious legitimacy after 2001. Establishing a system of courts is a means for the Taliban to project themselves as an effective parallel (or even the legitimate) government. Inevitably, a judicial system operating in the middle of an insurgency will never meet high standards in terms of the rule of law, respect for procedures, and equal treatment for all. In this regard the Taliban even fell short of their own 1990s standards.[1] The question being tested in this article is what the case of the Taliban judiciary tells us about the Taliban as a coercive organization that claims to be the "legitimate authority" in Afghanistan: are they merely coercing people into obedience or are they trying to legitimize their domination politically? This article analyzes the Taliban's strategy to develop into a political movement around a law-and-order agenda. It shows that a strategy of legitimization can be based primarily on coercion, particularly when coercion is used selectively in a context of war and insecurity.

The information used in the article was largely gathered in 2011–2012 through structured and semi-structured interviews with Taliban judges, Taliban commanders, Taliban court users, and elders both sympathetic and hostile to the Taliban, as well as through conversations with informed individuals in the various districts, including some government officials. In total, the team of Afghan interviewers, led by the authors and independent researcher Claudio Franco carried out face-to-face interviews with 32 Taliban judges, 34 Taliban commanders and officials (mostly team and group leaders, but also one military commissioner, two governors, and two high-level cadres based in Pakistan), 55 elders, 22 Taliban court users, and four government court users. To map the presence of Taliban courts and to follow up on the findings of the face-to-face interviews, an additional four face-to-face and 34 telephone interviews were carried out with Taliban commanders and local elders.

The information gathered was used to determine the functioning of the Taliban courts, as well as to draw a rough map of the areas covered by Taliban courts, district-by-district. Most interviews were carried out by local Afghans (typically journalists and stringers) who were able to gain access to the local Taliban, the local authorities, and the local elders. The Afghan interviewers were organized in two separate groups, which did not know or communicate with each other, so as to minimize the risk of "manufactured" interviews. Furthermore, one of the authors carried out face-to-face interviews with court

1 Complaints about corruption in the Taliban courts started circulating in 2000–2001 and were heard by UN officials (according to Thomas Ruttig, Afghanistan Analyst Network senior analyst, contacted November 2013).

users, elders, and Taliban in Kunar, Jalalabad, Kandahar, Logar, Ghazni, and Kabul. These areas were chosen in order to have a sample that was regionally balanced and where the interviewers could have access. To draw Map 1 Taliban and elders were contacted in every other province of Afghanistan. The results of the interviews were integrated with public domain sources.

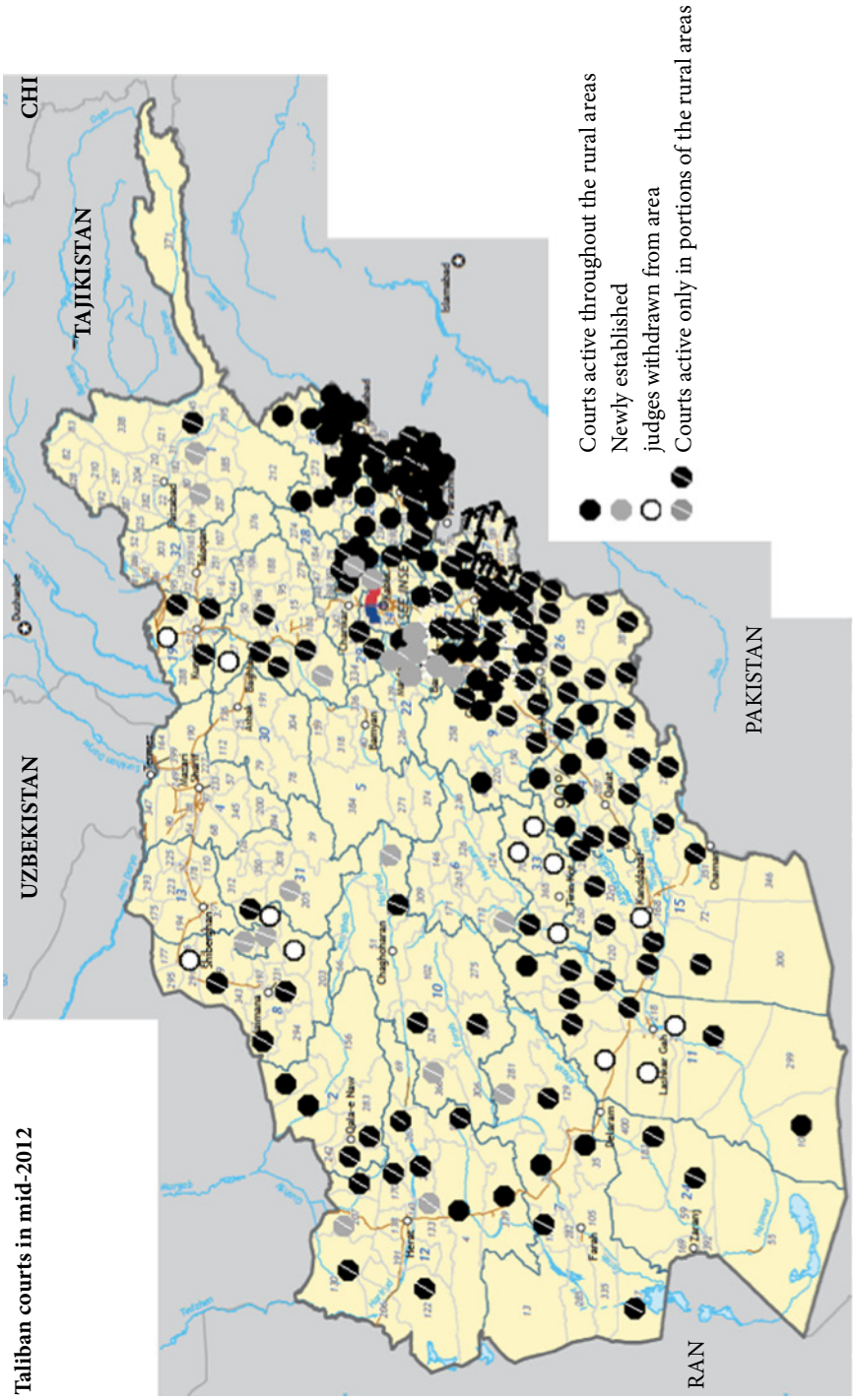
The 52 elders were interviewed primarily to counterbalance the information provided by the Taliban, which inevitably tends to portray their own courts in very positive terms. The elders were all picked from areas of Taliban activity to ensure that they had some direct or indirect experience with the Taliban courts. Some of the elders lived in areas that could be described as being under Taliban control, while others lived in contested areas. Most elders expressed hostile views regarding the Taliban, a fact that encourages the authors to think that their views of Taliban courts were not affected by a positive bias. The elders, however, had little information about the inner workings of the Taliban judicial system; all they could discuss was the functioning of the courts.

The Origins of the Taliban Judicial System in the 1980s and 1990s

When the Taliban appeared as an organized movement in 1994, justice was already at the core of their stated political aims. The emergence of the Taliban and their growth derived largely from their firm stance against the corruption and local rivalries that were fragmenting the country during the factional war that followed the end of the Najibullah regime in 1992. The Taliban appeared in the province of Kandahar as a parochial movement, composed mostly of mullahs, religious students, and some *ulema* (senior clerics), confronting local warlords.[2] During the *jihad* against the Soviets, clerics linked to the various *mujahedin tanzim* (factions) already operated courts all over Afghanistan. This included the so-called Taliban fronts (madrasa-recruited combat groups) that, at the time, were linked to different *tanzims* and colluded with the Taliban movement from 1994 onward. In Kandahar, the main tribunal was located in Mahalajat and run by Mawlawi Nazar Mohammed and, after his death in early years of the anti-Soviet war, by Mawlawi Mohammad Pasanai, who would become a leading religious figure in the Taliban movement.[3] Yet, clerics

2 Mullah Zaeef, *My Life with the Taliban* (London: Hurst, 2010), pp. 75–78; Alex Strick van Linschoten and Felix Kuehn, *An Enemy We Created: The Myth of the Taliban / Al-Qaeda Merger in Afghanistan, 1970–2010* (London: Hurst, 2012), pp. 113–24.

3 Zaeef, *My Life with the Taliban*, p. 22; Carl Forsberg, "The Taliban's Campaign for Kandahar," Washington, DC, Institute for the Study of War, Afghanistan Paper No. 3, 2010, p. 15.



MAP 1 *Snapshot of Taliban Courts in Mid-2012, Indicating Courts Recently Withdrawn and Courts Recently Established.*

remained often dependent on *mujahedin* commanders and, in Kandahar, the strong commanders, such as Mullah Naqib in Arghandab, Mullah Abdul Samad Akhund in Panjwayi, or Mullah Akhtar Jan in Spin Boldak, operated their own courts.[4] The Taliban from 1994 onward followed an essentially similar model, but gradually extended it nation-wide.

In the early years, the Taliban ascent was facilitated by a number of factors, especially Pakistani support and the popular fatigue toward violence, corruption, and disorder. This allowed the Taliban to grow very rapidly while increasing cohesion. In addition, the movement could present itself as an organization with law and order at the core of its ideology.[5] The judiciary was described as "the most revolutionary Taliban practice," as it differed from the model used by other Afghan groups at that time.[6] The Taliban themselves can be heard claiming that judges were the strongest institutions of the Islamic Emirate of Afghanistan between 1996 and 2001.[7]

As a movement of mullahs, the Taliban perceived themselves as engaged in leading society back to the right path after years of civil war and disunity among the *mujahedin*. Through the implementation of Shari'a, the Taliban aimed at bringing disorder to an end. The committee for the Promotion of Virtue and the Prevention of Vice, already created under Burhanuddin Rabbani's presidency (1992–1996 in Kabul, later in Taloqan and Faizabad), was transformed into a ministry, with its own special police, the *mohtasebor amr bi-l-ma'ruf*. Its role was to exert social control by disciplining the population's behavior in relation to religious observance, including clothing and shaving.[8]

Law enforcement, corrections (jail management), and dispute resolution remained the prerogative of the Ministry of Justice, headed by Mullah Nuruddin Turabi. The Taliban decided to re-establish a centralized court system all over the country. Decree 105 of September 10, 1999, instituted three levels of courts: lower courts, courts of appeal, and a higher court. The clerical nature of the Taliban facilitated the creation of bureaucratic rule, both

4 Strick van Linschoten and Kuehn, *An Enemy We Created*, pp. 46–47.

5 Anthony Davis, "How the Taliban Became a Military Force," in William Maley (ed.), *Fundamentalism Reborn: Afghanistan and the Taliban* (New York: New York University Press, 1998), pp. 43-71; Ahmed Rashid, *Taliban: Islam, Oil, and the New Great Game in Central Asia* (New York: I.B. Tauris, 2002).

6 Amin Tarzi and Robert D. Crews, "Introduction," in Amin Tarzi and Robert D. Crews, *The Taliban and the Crisis of Afghanistan* (Cambridge, MA: Harvard University Press, 2009), p. 45.

7 Interview with Taliban judge in Badghis, autumn 2011.

8 Interview with Mawlawi Qalamuddin, summer 2011. Mawlawi Qalamuddin was the minister for the promotion of virtue and the prevention of vice during the Taliban Emirate (1996–2001).

hierarchical and systematic.[9] While there were judges wherever the Taliban were in control, how functional this centralized system effectively was remains unclear; the Taliban did not have much time to consolidate their regime, as they were still fighting to conquer the whole country when they were overthrown in 2001. The justice system was kept largely independent from the rest of the regime, being directly under Mullah Omar's authority. Provincial and district governors had no authority over the judges. In an attempt to ensure honesty, the judges received high salaries, around 5.4 million Afghanis ($1,150 in year 2000), 20 times the pay of the highest civil servants of the Ministry of Foreign Affairs,[10] although this does not mean that corruption did not exist.[11] No punishment was authorized outside of the judicial system and private revenge was strictly forbidden.[12] In practice, however, the new system had not yet been fully implemented by 2001, and, in particular, the secret police (as opposed to *amr bi-l-ma'ruf*) remained above the law, indicating that institutionalization was still in progress.[13]

The Spread of Taliban Courts

With community structures having lost functionality over the 30 years of internal conflict, much of the Afghan countryside had been left in a state where institutions, including judicial ones, were widely absent. After 2001, the state was not able to fully recover the ability to manage the rural areas that it had before the war started, in the late 1970s.[14]

9 Zaeef, *My Life with the Taliban*, pp. 80–90, Gilles Dorronsoro, "Les Taliban ou la révolution des clercs," *Etudes*, 39, no. 6 (1999): 743–51 ; Gilles Dorronsoro, "Les Oulémas afghans au 20e siècle: bureaucratisation, contestation et genèse d'un État clérical," *Archives de sciences sociales des religions*, 3, no. 115 (2001): 63–79.

10 Interview with Mawlawi Osman Tariq, summer 2012.

11 Thomas Ruttig, who was with the UN at that time, recalls constant complaints about corruption in Taliban courts (contacted November 2013).

12 With the exception of the Ministry for the Promotion of Virtue and the Prevention of Vice, whose authority was limited to acts in relation with religious observance and public morality.

13 Gilles Dorronsoro, *Revolution Unending* (London: Hurst, 2005), pp. 283–84.

14 See also Asia Foundation, "An Assessment of Sub-national Governance in Afghanistan," April 2007; Douglas Saltmarshe and Abhilash Medhi, "Local Governance in Afghanistan A View from the Ground," Kabul: AREU, June 2011; Jennifer Brick, "The Political Economy of Customary Village Organizations in Rural Afghanistan," Annual Meeting of the Central Eurasian Studies Society, Washington, DC, September 2008.

When the Taliban started re-mobilizing in 2002–2003, setting up a court system was again a priority. Wherever their armed groups had at least some control over the villages, the Taliban began providing judicial services.[15] Table 1 shows estimates of population reliance on the Taliban judiciary in a number of districts, as provided by elders and Taliban that were interviewed. [16]

TABLE 1 *Estimated Comparative Popular Reliance on Taliban and Government Courts in 2011 (Averages of percentages provided, the first number indicates reliance on Taliban courts and the second on government courts).*

	Interviewees	
Districts	Elders	Taliban
Sayd Abad (Wardak)	80–20	90–10
Panjwai (Kandahar)	70–30	
Zhari (Kandahar)	90–10	100–0
Arghandab (Kandahar)	35–65	40–60
Qarabagh (Ghazni)	70–30	60–40
Qarghayi (Laghman)		70–30
Alisheng (Laghman)		70–30
Ghormach (Badghis)		80–20
Kandahar (Kandahar)		50–50
Alingar (Laghman)		80–20

Note: It was not possible to obtain rough estimates in certain locations.

15 Taliban interviewees across the sample stated that the deployment of the judges was one of the first measures to be taken once the Taliban were in control of an area. The first few districts started falling under Taliban control in 2003 in remote parts of Zabul, Kandahar and Uruzgan.

16 These estimates, without any pretention of representing the actual views of the villagers, simply illustrate the Taliban's self-perception of the extent to which villagers rely on their judiciary and the fact that such a perception has been spreading to village elders as well, many of whom were not sympathetic to the Taliban. Since the Taliban punished ruthlessly anybody caught using the government courts, it is likely indeed that in areas under Taliban control few people would use those courts, which in many cases were not even functional at the district level. This could explain why the elders' estimates did not differ much from the Taliban's own. For the same reason, reliance on Taliban courts it is not, by itself, evidence of their popularity.

According to Table 1, therefore, elders in at least five districts spread around the Pashtun belt agreed that Taliban courts seemed to be widely used in remote rural areas. Elders in various districts of Helmand as well as in the districts of Watapur (Kunar), Dai Chopan (Zabul), and Berg Matal (Nuristan) confirmed the presence of Taliban courts there. We have also additional anecdotal indications that genuine support for the Taliban courts existed in different places and times, coming from press reports and the interviews carried out for this study.[17] The United Nations Assistance Mission in Afghanistan (UNAMA) says it documented activities by Taliban courts in all regions except Bamian; Derzab and Qush Tepa in Jowzjan province and Watapur and Marawara in Kunar province were mentioned explicitly.[18] Shah Jahan Nuri, a member of parliament from Ghazni, reportedly estimated that "as much as 80 per cent of legal disputes in the 14 unsecure districts of the province are resolved by the Taliban, who are often paid in wheat or other produce."[19] In an interview with one of the authors, Shah Jahan Nuri added that some Hazara people living close to Taliban-controlled areas in Ghazni, but not themselves under Taliban control, even preferred to go to the Taliban judge, who they believed did not discriminate against them.[20] *Newsweek* reports that the Taliban may not be popular, but their courts are. Even a senior adviser to Afghan President Hamid Karzai admits that "many Afghans prefer Taliban courts to the government's legal system."[21]

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17 On the presence of Taliban courts near the provincial capital of Paktika, see Tom A. Peter, "Leery of Courts, Afghans Seek Taliban Justice," *USA Today*, March 7, 2012; for Herat, Helmand, Kandahar, and Paktika, see Jami Forbes, "The Significance of Taliban Shari'a Courts in Afghanistan," *CTC Sentinel*, 6, no. 5 (May 2013); Forsberg, "The Taliban's Campaign for Kandahar," p. 34; for Helmand, see Frank Ledwidge, "Justice in Helmand: The Challenge of Law Reform in a Society at War," *Asia Affairs*, 40, no. 1 (March 2009): pp. 77, 87 and Elizabeth Lee Walker, "Culturally Attuned Governance and Justice in Helmand Province, Afghanistan," International Media Ventures, 2010.

18 UNAMA, "Mid-Year Report 2013: Protection of Civilians in Armed Conflict," Kabul, United Nations Assistance Mission in Afghanistan, 2013, p. 22; UNAMA, "Annual Report 2012: Protection of Civilians in Armed Conflict," Kabul, United Nations Assistance Mission in Afghanistan, 2013, pp. 13, 25.

19 Rahmat Alizada, "Reign of the Desert Court," *Afghanistan Today*, August 11, 2011.

20 Such patterns might be specific to Ghazni, where relations among Hazaras, Pashtuns, and Tajiks are often described as better than in the rest of the country. During the civil war, under Qari Baba's rule, Ghazni City was ruled by a multiethnic coalition, which included the interviewee.

21 "Taliban Justice: Frustrated by Corrupt and Plodding Government Courts, Afghans Are Turning to Islamic Judges," *Newsweek*, April 15, 2013.

The Taliban judges seem not to take into account social status, and they have ruled against influential people in some interpersonal disputes. This attitude facilitated the solving of many cases, especially concerning land issues.[22] Carter Malkasian who served in Helmand with the US State Department, observing the Taliban judges from the other side of the divide, commented about one of these judges in Garmser:

> The people were obliged to accept his judgment. If they did not, he could call in fighters to enforce his decision. That said I never heard any complaints about Mawlawi Mohammedullah's judgments. I suspect people heeded his decision because they were fair rather than because they feared him.[23]

Similarly, a Helmand PRT study found that

> In areas where people have an option, the population may choose Taliban justice for a number of reasons, including a lack of effective alternatives, intimidation, expectation of receiving a favorable result, more effective enforcement of decisions, accessibility, and most of all swiftness.[24]

In the absence of a properly sampled survey, it is ultimately not possible to comment accurately about the attitudes toward Taliban courts among the population, nor is this the purpose of this article. It is clear, however, that Taliban courts have spread most of Afghanistan's countryside.

The Organization of the Taliban's Judiciary

Quetta

In the early years of the Taliban insurgency, the judicial functions were typically administered by shadow governors, commanders, and local mullahs sympathetic to the Taliban, without an organized and centralized effort to recruit and deploy judges. In Helmand (not the first province where large areas fell under Taliban influence), "Taliban" judges started appearing in 2004–2006,

22 Interviews with inhabitants of Kandahar, Kunar, and Ghazni provinces, summer 2010, summer 2011, and autumn 2012.

23 Carter Malkasian, *War Comes to Garmser* (London: Hurst, 2013), p. 113.

24 Walker, "Culturally Attuned Governance and Justice," p. 86.

when the Taliban had re-established some armed presence on the ground.[25] These "Taliban" judges were, in fact, local mullahs co-opted by various Taliban networks that were organizing semi-autonomously. In Garmser, Helmand, a dozen local mullahs were involved; something similar was happening in Panjwai, Kandahar.[26] In 2003–2006, the Quetta Shura recorded 1,800 judicial cases processed by the Taliban governors, commanders, and local or itinerant mullahs in Helmand, Kandahar, Zabul, Nimruz, Herat, Uruzgan, and Ghazni.[27]

The pace of their deployment accelerated in subsequent years, with a peak between 2006 and 2008. The first step to establish some centralized control over the Taliban judiciary took place in 2007. The Quetta Taliban leadership created *The Qaziano Komitah* (Judges Committee), consisting of 20 judges based in Quetta to advise Taliban governors, commanders, and pro-Taliban village judges on how to resolve cases in accordance with the Shari'a. Leading figures in the *Komitah* were a number of *mawlawis* (religious notable): Ahmad Jan Akhund, Abdul Razaq Akhund, Zalmai, Abdul Sattar, and one 'Mohammad'. In its first year of existence, the committee intervened in 1,200 cases, according to Taliban sources. Simultaneously, the Taliban established their first real court in Sangin, catering to villagers in the surrounding districts of Helmand as well. During 2008 the *Qaziano Komitah* started deploying about 300 judges to the provinces of Kandahar, Helmand, Zabul, Ghazni, Nimruz, Herat, Farah, Uruzgan, Faryab, Wardak, and others as well, establishing for the first time after 2001 a Taliban-controlled judiciary.[28] As generally acknowledged by observers, by 2008 the Taliban's judiciary was the most noticeable aspect of their governance system.[29] By 2011 the Taliban judiciary had therefore taken

25 Over 50 Taliban commanders and almost 30 community elders were interviewed in Helmand by a team led by one of the authors in 2011–2012, as part of another project. See Theo Farrell and A. Giustozzi, "The Taliban at War: Inside the Helmand Insurgency," *International Affairs*, 89, no. 4 (July 2013): 845–71. At the same time, the first press reports concerning Taliban courts started appearing: "Taliban Kidnap, Threaten to Execute 13 Kidnapped Afghan Police and Officials," Agence France Presse, June 18, 2005; Rachel Morarjee, "Afghan Forces Hunt for British Man Kidnapped in Western Afghanistan," Agence France Presse, September 3, 2005.

26 Malkasian, *War Comes to Garmser*, pp. 112–13; Casey Garret Johnson, "Afghan Islamic Courts: A Pre-Taliban System With Post-2014 Potential?," *New York Times*, April 17, 2013.

27 Personal communication with high-level Taliban cadre in Peshawar, March 2013.

28 Personal communication with high-level Taliban cadre in Peshawar, March 2013.

29 Bilal Sarwary, "What Happened when US Forces Left Afghan Hotspot?," BBC News, December 3, 2011; Soraya Sarhaddi Nelson, "Taliban Courts Filling Justice Vacuum Iin Afghanistan," NPR, December 16 2008; Alizada, "Reign of the Desert Court"; Peter, "Leery of Courts"; Mary Fitzgerald, "Journey into a Land Ruled by Shadows," *The Irish*

the character of a much more organized effort, with a degree of central supervision, most pronounced in the part of the insurgency coordinated by the Peshawar *shura*, but also felt under the Quetta *shura*:

> [In 2007], any commander or any judge could execute people without permission and without investigation, on the spot. But now they can't do that. If they judge someone and want to kill him, they have to get permission from the district chief or the governor or even from Quetta. This change I can see.[30]

Although corruption and favoritism were not absent from the ranks of the Taliban judiciary, by and large the Taliban leadership managed to keep it under control through a combination of internal supervision and external oversight by village elders and *Ulema*.[31] In part, this is achieved through a system of rotation of the judges, enforced centrally. The Taliban therefore assigned the judges to areas where they did not have connections, although gaps in the judges' ranks might also be filled by local judges.[32]

To enable recruitment from outside and rotation, the Taliban judiciary had to be separated from the military structure, which was inherently fragmented because it was based on solidarity networks (*mahaz*), each led by a charismatic mullah and often at odds with each other. As of early 2013, centralization was complete in the areas of Afghanistan subjected to the jurisdiction of the Peshawar Shura (see below),[33] but still ongoing in those of

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Times, May 11, 2009; Jason Straziuso and Amir Shah, "As Taliban Near Kabul, Shadow Gov't Takes Hold," Associated Press, December 27, 2008; Tom Blackwell, "Taliban Runs Parallel Administration," *Canwest News*, October 27, 2008; Steve Rennie, "Locals Live In Fear of Taliban 'Shadow Government' Gripping Parts of Kandahar," Canadian Press, January 4, 2009; Colin Freeze, "Taliban Religious Courts Extend Their Reach into Remote Regions," *Globe and Mail*, June 8, 2009; Anand Gopal, "The Battle for Afghanistan," New York, New America Foundation, 2010.

30 Interview with Taliban commander in Nad Ali, December 2011.

31 See for more details and sources on these findings of A. Giustozzi, C. Franco, and A. Baczko, "The Taliban's Shadow Judiciary", Kabul : IWA, 2012, which discusses at length the issue of corruption within the Taliban's judiciary.

32 An elder in Garmser was certain of the presence of local Taliban judges until 2008–2009 (interviewed June 2012).

33 Nuristan, Jowzjan, Kunar, Wardak, Faryab, Nangarhar, Laghman, Parwan, Kapisa, Takhar, Badakhshan, Kunduz, Baghlan, Ghazni, Bamiyan, Samangan, Balkh, Logar, and Badghis. Some of these provinces, such as Logar, saw the presence of both the Peshawar and the Quetta Commissions.

the Quetta Shura.[34] Quetta lacked qualified judges and continued to rely on local mullahs in many areas; inevitably these local judges were often linked to the networks operating in their areas and escaped Quetta's control. Still, rotations of judges occurred also between Quetta- and Peshawar-controlled areas.[35]

In 2011, however, friction within the Quetta Shura between supporters of two rival Taliban leaders, Mohammad Akhtar Mansur and Abdul Qayyum Zakir, started negatively affecting the judges, also leading to court closures. Their popularity began to decline in the villages, as each faction tried to discredit judges affiliated with rivals. Increasingly, the *Qaziano Komitah* in Quetta started resorting again to "remote control," with qualified judges in Quetta advising via satellite phone the Taliban in the provinces. The new service took the name of *Pun*[36] *Komitah* and end users were expected to bear the cost of the satellite phone call.[37] As Map 1 shows, most closures of Taliban courts in 2011–2012 took place in the Quetta Shura's core areas (Uruzgan, Helmand and Kandahar).

In the areas under Quetta's influence the judges remained under the supervision of the shadow governors, like it had been the case everywhere until 2008; the governor sat on top of the judges together with the so-called Civilian Commission (*Mulki Komisiun*).[38] In provinces responding to Peshawar, however, it was the Military Commission that was in charge of supervising the judiciary: Taliban commanders would ask villagers about the judges, while Taliban intelligence also observed the judges.[39]

Peshawar

The Peshawar Shura was only established in 2005 and had a slow start, but by 2009–2010 its *Komitah* was expanding fast. Not only did its courts became common in the east, but Ghazni became a center of judicial services run from Peshawar after the Quetta Shura started facing internal difficulties in 2011–2012. It did not just aim at the population of that province, but judges were even sent

34 Herat, Farah, Nimruz, Helmand, Kandahar, Zabul, Badghis, Uruzgan, Sar-i Pul, Ghor, Paktika, and Logar.

35 Personal communication with Taliban high-level cadre in Peshawar, March 2013.

36 Pashto pronunciation of "phone."

37 Personal communication with high-level Taliban cadre in Peshawar, March 2013.

38 Sarah Ladbury et al., "Helmand Justice Mapping Study," Kabul, Cooperation for Peace and Unity (CPAU), 2010, pp. 8–9.

39 See Giustozzi, Franco, and Baczko, "The Taliban's Shadow Judiciary," cit., which discusses at length the issue of corruption within the Taliban's judiciary.

toward the south. With 80 judges, Ghazni had probably the highest density of Taliban courts in Afghanistan.[40]

In areas under the Peshawar Shura, a specialized "Executive Council" was subordinated to the Provincial Military Commission. Staffed with religious scholars, the Council supervised the work of the judges; based on its recommendations, the Provincial Military Commission could throw out a sentence. It should be noted that while ordinary judges had power over Taliban commanders and fighters, they did not have power over the Military Commission and its members, who were directly supervised by the leadership in Pakistan.[41]

This increasingly centralized system was run in collaboration with local Taliban authorities and leaders. In early 2013 the Taliban claimed that the Peshawar-run judges' committee alone had 566 judges in 18 provinces and the Quetta-run committee had 324 in 11 provinces.[42] Map 1 shows the geographic expansion of the Taliban courts. In some areas, however, the Taliban courts may invite people to neighboring districts because the Taliban judges felt safer there.[43]

By 2012 the judiciary had probably become the second- or third-largest item in the Taliban's budget after military operations, with a total of $60 million allocated, of which $25 million went to the Peshawar-run committee and $35 million to the Quetta one.[44] The Taliban were ready to pay relatively good salaries for their judges, as shown in Table 2.

TABLE 2 *Monthly Salary of Taliban Judges, in Pakistani Rupees*

	Provincial	**District**
Stera Mahkama (higher court)	50,000	30,000
Ijra'iya Mahkama ("executive" court)	40,000	20,000
Ibtedai'ya Mahkama (low court)	35,000	15,000

Source: Taliban cadre in Peshawar, March 2013.

40 Personal communication with high-level Taliban cadre in Peshawar, March 2013. Ghazni also has a strong presence of Taliban clerical networks, which create a welcoming environment for the courts.

41 This description is based on interviews conducted for this study and on sources contacted within the Taliban structure in Pakistan in 2011–2012.

42 Personal communication with high-level Taliban cadre in Peshawar, March 2013.

43 Elder in Musa Qala, March 2012.

44 Personal communication with high-level Taliban cadre in Peshawar, March 2013.

The September 2011 Reform in Peshawar

Until 2011, the top judicial institution of the Taliban was the same as it had been in the 1990s: the *Markazi Mahkama* (Central Court), the ultimate instance of appeal, in practice permanently based in Pakistan. By 2011 it had, in fact, three branches, under the Quetta judicial commission, under the Miranshah Shura (Waziristan) and under the Peshawar Shura.[45] This system was obviously unpractical in terms of handling appeals, as appellants would need to travel to Pakistan.

From the early post-2001 years the Taliban had been aware of the fact that handling appeals needed a multi-layered judiciary on the ground. A Taliban source stated that the Taliban had initially planned to set up a higher court (*Stera Mahkama*), an "executive" court (*Ijra'iya Mahkama*) at the provincial level, and a lower court (*Ibteda'iya Mahkama*) at the district level. After some early experiments, implementation proved difficult because of the war, although in some areas the Taliban claimed to have set up the system as planned. In Helmand, for example, attempts to implement the three-layered system were abandoned around 2006.[46] In most provinces, until September 2011, only *Ibteda'iya* (lower) courts existed with a varying number of judges but no capacity to handle appeals through the courts. In some areas, an *Ijra'iya Mahkama* ("executive" court) was set up at the provincial level.[47]

As most provinces under the Peshawar Shura leadership lacked higher courts, appeals were handled through the Provincial Military Commission jointly with the Executive Council. The latter also organized coordination meetings and handled complaints, often on a weekly basis.[48] The elders, however, unanimously said that few villagers risked taking appeals to the Commission. The process appeared quite intimidating to them, as the leading Taliban commanders of the province were in attendance:

> Most of the people are afraid of the Taliban and they cannot tell the Taliban judges that their judgment was not fair and just. But some people who have good relations with Taliban commanders in the area are able to say sometimes that their judgment was not fair and that they do not agree with the court.[49]

45 Taliban cadre in Peshawar, contacted in November 2013.

46 Interview with Taliban commanders from Nad Ali, March 2012.

47 Communication with senior Taliban commander, Pakistan, February 2012.

48 An elder from Andar who participates often in judicial affairs in his village, described the presence of a similarly composed commission in some cases (interview with an elder of Andar, summer 2012).

49 Elder in Zhari, summer 2011. A similar view was expressed by an elder in Panjwai, summer 2011.

Elders or villagers linked to the Taliban might influence the court in their favor, contacting their direct proxies within the movement. This process usually followed tribal fault lines or was based on existing patronage relationships between pure Taliban affiliates and their "political" support network.[50]

The Peshawar Judicial Commission, in charge of all judicial activities, was led in early 2013 by Mawlawi Atiqullah, a full member of the Peshawar Shura, and had five more members, at least one of which was a Pakistani. Four of the members were fully qualified religious judges (*Qazi*). The Commission operated an office headed by Mawlawi Zalmai, who coordinated the appointment of the judges in the provinces.[51]

In September 2011 the Peshawar Judicial Commission started implementing a general overhaul of their system, trying to re-establish the three-layered judiciary of the Emirate's time and to separate the judiciary from the military, in order to avoid abuses and intimidation and to facilitate appeals. Under the new system, executions had to be authorized in Peshawar. *Ibtedai'ya* (lower), *Ijra'iya* (executive), and *Stera* (higher) courts were supposed to be gradually established in each district, while at the provincial level another three layers of courts would deal with the cases that the district courts were not able to resolve. By 2013 the Taliban were claiming to have implemented the system in all areas under the Peshawar Shura. The provincial-level judges were the best qualified, hence their appeal role, replacing that of the Taliban Central Court in Garmser (moved from Nawzad, but de facto based in Pakistan). Lower courts would deal with disputes and petty criminal cases, higher courts with appeals on the lower court cases and with all serious criminal offenses, while the appeal court would deal with appeals from the higher courts and act as a Taliban military court. Provincial lower courts would take cases not resolved by district appeal courts and run them to the appropriate court level (petty criminal cases to lower court, etc.). Data obtained from the Peshawar Judicial Commission suggests that the Taliban see the new system as more effective in terms of handling appeals: according to these sources, between September 2011 and September 2012 there were 3,200 low court cases and 1,318 executive court cases, of which a number were appeal cases from the low courts. The higher court reportedly received 314 cases, which, if true, would point to an increase in the number of appeals compared to the negligible level of previous years. The Taliban also reported an increase in the overall number of cases, up 81% from the average of the previous three years, although this could also likely be due to the expansion of the Peshawar Shura. This increase occurred

50 For a more detailed discussion and evidence of this issue see Giustozzi, Franco, and Baczko, "The Taliban's Shadow Judiciary."

51 Personal communication with Taliban high-level cadre in Peshawar, March 2013.

despite a newly introduced 2,000 Afghani (about $40) fee for each case.[52] It is impossible to confirm these figures, and the system was implemented while the interviews for this project were ongoing. Meanwhile, some limited evidence has begun appearing in the press, like an appeal case in Paktia, referred to a Taliban "upper court" based in Pakistan.[53]

Each court was supposed to be staffed by one judge and two assistants, usually local clerics, who would carry out preliminary investigations of cases and resolve them, if possible. Higher and appeal court judges could also operate as lower court judges if required by the workload. At the same time, fixed courts were re-established in many districts and it became possible again to file cases without having to go through the Taliban commanders. The Executive Council inside the Military Commission was abolished, as appeals could now be handled by the *Stera Mahkama* (higher courts), established at the provincial level; the function of vetting and controlling judges was safeguarded by having the three judges' view and counter-sign every sentences. The provincial *Stera Mahkama* (higher court) judge also assumed the role of *De Adalye Qaziyun Meshr* (head of the judges), providing supervision of the judges in the province. As of March 2013, this reform only applied to the Peshawar-based judicial system, where interviews showed that it had been applied at the end of 2011 in Laghman already, and not to the Quetta-based one.[54]

From Deadlock to Reform in Quetta

The 2011–2012 crisis within the Quetta Shura leadership derailed the development of the judiciary in the south, at least temporarily. Sources in Peshawar indicate that while some younger leaders like Abdul Qayyum Zakir were in favor of Peshawar-style centralization, the old political leadership did not see the point of investing the required human and financial resources. The Quetta Judicial Commission could project less authority due to the strength of the southern networks, the lack of will with the Taliban leadership to bring the networks out of individual control, and its weaker financial means. It was also affected by the rivalry between the Akhtar Mansur faction and the Abdul Qayyum Zakir faction. The two rivals started competing for the allegiance of the networks, increasing the latter's autonomy. The Quetta Judicial Commission was staffed as of early 2013 by six *mawlawis*, of which three were aligned with the Akhtar Mansur faction (Zalmai Durrani, head; Zalman Hotak; Ahmad Jan

52 Personal communication with high-level Taliban cadre in Peshawar, March 2013.

53 "Taliban Justice: Frustrated by Corrupt and Plodding Government Courts, Afghans are Turning to Islamic Judges."

54 Personal communication with high-level Taliban cadre in Peshawar, March 2013.

Akhundzada) and three with the Zakir faction (Abdul Rauf, Abdul Salim, and Bashir Ahmad).[55] In 2013, however, the impasse was resolved, and the Quetta Judicial Commission sent judges back into Afghanistan and adopted a reform along the lines of the Peshawar Judicial Commission: three layers of courts, enabling appeals on a significant scale for the first time.[56]

Coercion and Legitimization

Taliban Justice Against State Justice

The Taliban have been using their judiciary as an instrument of domination in competition with the government. They banned people from attending the government courts and channeled them to their own courts. Elders and Taliban largely concurred in the interviews that the Taliban had a standing policy of punishing severely, sometimes with death, those who took cases already judged by them to government courts, even if nobody could cite actual cases of such sanctions being implemented. Though none of them were prompted on this specific issue—they were asked if people were going to government courts—four out of five elders in Kandahar, two out of six in Sayed Abad, and three out of four in Dai Chopan explicitly asserted it. In this way the Taliban ensure that no alternative to their rule persists.

The Taliban courts actively sought cases to deal with and did not wait for villagers to report cases, particularly in areas where the intake of trials was modest. Taliban judges might even suddenly turn up in a village asking about a particular dispute or a criminal case, presumably following a report by the Taliban's own intelligence system.[57] This suggests that the Taliban did not merely conceive the judiciary as a service being provided, but as a strategy to penetrate rural communities. Resistance to the verdict of Taliban judges was rare and generally dealt with swiftly and ruthlessly.[58] One Taliban commander in Sayed Abad could only remember a single case, seven months earlier, of a family who rejected a Taliban sentence and "insulted" the judges. The family head was arrested and executed within hours.[59] As an elder put it, those who lost Taliban trials were afraid of complaining.[60]

55 Personal communication with high-level Taliban cadre in Peshawar, March 2013.

56 Communication with Taliban cadre in Quetta, December 2013.

57 This was at least the case in Kandahar and in Kunar, according to our interviewees there.

58 Taliban judge in Faryab, summer 2011

59 Interview with Taliban commander in Sayed Abad, autumn 2011.

60 Elder from village in Dawlatabad, summer 2011.

In asserting their claim to a monopoly over justice, the Taliban showed little interest for the subtleties of the rule of law. Until late 2011, higher courts and the Central Court played a marginal role as, in general, appeal rights were theoretical; the Taliban tended to perceive appeals as a disguised challenge to the legitimacy of their rulings.

Coercion inevitably created resentment. One interviewee for this project was involved as an elder in Taliban trials, but nonetheless criticized the coercive approach of the Taliban:

> The Taliban do not care about the quality of the services that they provide to people, whether it is good or bad. The only thing that is important for the Taliban is that people believe that the Taliban have a system and judges, and that no villager is allowed to go to the Afghan government court. In other words, the Taliban do not care whether the judges they assigned to a village works impartially according to Islamic Shari'a or not, they just want to terrify people.[61]

The findings of Walker's survey seem confirmed:

> Many Helmandis recognize that the Taliban violate Afghan law by seeking little corroboration or verification of facts before issuing a judgment and punishment, without any chance of an appeal. Unlike the formal court system, the Taliban lack any sufficient investigative infrastructure and information on which to make fair and informed decisions, resulting in mistakes and miscarriages of justice.[62]

Another potential weakness of the was the precariousness or uncertainty over the future of Taliban rule in specific areas:

> There are some people who are not happy with Taliban judgments, because they think that the judgment of Taliban doesn't have a high authority, as they are not an official government. If tomorrow they leave the district, all their judgments and their court become nothing, because all these decision and judgments will have no power and will not stand.[63]

61 Elder in Panjwai, summer 2011.

62 Walker, "Culturally Attuned Governance and Justice," p. 87.

63 Interview with elder in Qarabagh district 2, autumn 2011.

Such weakness appeared to have been compounded by the transition to mobile courts in 2010–2012. The shift conveyed a sense of the Taliban being on the run within the population, particularly where the Taliban had difficulties in moving freely around or could not stay too long in a village.[64] The Taliban recognized the counter-productive character of the extremely quick justice delivered by the mobile courts.[65] During the second half of 2012, the Taliban re-established fixed courts in areas evacuated by ISAF troops.

Despite the resentment created by coercion and the precariousness discussed above, once a sentence was issued, the beneficiaries had a vested interest in siding with the Taliban. Resolving cases created a relationship of dependence between a portion of the population and the authority that administered justice—the Taliban, in this case. For example, in one land dispute in Sayedabad, a Taliban court rejected a claim to a piece of land, but the landlord was aware that he would be exposed to a new claim if the local balance of strength was to change:

> The Taliban judge announced the result of the court in my favour and he told XXX not to disturb me, otherwise he would punish him strongly. I know that as long as the Taliban are active in this district, XXX can't do anything, but if the Taliban leave this place, he will cause me problems.[66]

Taliban Law and Order

Although some elders criticized the summary character of Taliban justice and particularly the rapidity of the trials, the level of interpersonal conflict appears to have reached such a level in many areas of Afghanistan that people appeared more eager for efficient conflict resolution than thorough judiciary decision-making.[67] As long as the source of judgment was seen as impartial and not corrupt, a quick decision would be favored over long deliberations to prevent the further escalation of the conflicts. The preoccupation was thus not so

64 Interviews conducted in 2011 and 2012 with community elders in Helmand, Kandahar, Faryab, and Kunar, as well as Taliban commanders and judges in all the provinces covered by this study.

65 Personal communication with high-level Taliban cadre in Peshawar, March 2013. There was a case in Sayed Abad (Wardak province), for example (interview with two Taliban cadres, December 2012).

66 Farmer in Sayed Abad district, autumn 2011.

67 For one example of what it means to lack efficient, if authoritarian, dispute resolution, see the case of Khost province: Ann Marlowe, "Policing Afghanistan," *The Weekly Standard*, December 22, 2008.

much to win the case, but rather to terminate the dispute with a durable and honorable settlement. One case reported in the press highlighted these concerns: the loser in the trial accepted the ruling, because the Taliban judges argued in terms of Shari'a, which he couldn't reject, and because "the key thing was that the dispute was ended. I have to live and work here. I choose what works."[68]

In another example, in the village of Marid, Ghaziabad district, an inhabitant reported a dispute over a forest, which had paralyzed the village for years. Insecurity was constant between the two families involved, and the tension between the two communities was very high. The disputants went to the Asadabad court, but the judge's decision was ignored by the losing party. They sought the arbitration of Malek Zarin, who was at that time one of the most powerful strongmen in higher Kunar, but again the losers would not submit. The Taliban judge, called in as a last resort, imposed his sentence. He managed to resolve the case because he entered the village with tens of fighters and threatened to burn both houses if the contestants would not abide by his sentence. The person who recounted the story was politically inclined against the Taliban, but he noted the satisfaction of the inhabitants as it had put an end to the cycle of violence.[69] In yet another case reported in the press, a villager who had lost the trial stated that he was happy with the resolution brought by the Taliban court.[70]

The ability to implement sentences, a by-product of the ability to coerce, is a central issue in this regard. Almost all the elders interviewed for the project emphasized the weakness of the Afghan government, its inability to implement judicial decisions, and the lack of alternatives apart from the Taliban; while not necessarily expressing support for the Taliban, they seemed resigned to accept the new status quo. One farmer in Ghaziabad district described the coercive power of the Taliban with a degree of respect, implying that a weak government does not deserve the villagers' esteem: "The difference between the government and the Taliban is that when the Taliban pronounce a verdict, they implement their decision. When they say something, they do it."

Though many rural communities might trust customary justice more than the Taliban system, only the latter could enforce the verdicts. In Kunar the villagers contacted for this study seemed impressed by the Taliban because they

68 Dan Murphy, "Dent in Afghanistan War Strategy: Why Kandahar Locals Turn to Taliban," *Christian Science Monitor*, July 6, 2010.

69 Interview with an inhabitant of Ghaziabad, summer 2010

70 Miles Amoore, "Afghans Flock to Judge Dread and his Butcher Boys," *The Sunday Times*, 23 January 2011.

stressed implementation, punishing those disrespecting the rulings.[71] It was not uncommon to hear interviewees accept the need for a strong element of coercion in the running of the justice system. As a villager in Sayed Abad told the interviewer in autumn 2011:

> I am a member of society; if my community is happy with the Taliban court, I should also be happy with it. It doesn't make sense that I agree with and support the Taliban judges only when a Taliban court rules in my favor, while when I lose in the court, I disapprove of the system or disagree with the judges' decisions.

The importance of this factor seems to be confirmed by the finding of a 2010 survey: rates of acceptance for the Taliban's courts in "bad security areas" were higher than in areas with good security.[72] By presenting themselves through their courts as the "law and order" movement, the Taliban were hoping to find a constituency. The fact that Taliban commanders often cast an image of gratuitous ruthlessness and of weak discipline does not go against this argument: it is exactly because fighting a guerrilla war is not a "law and order" business that the Taliban use their judiciary to redress the balance in terms of image.

Another aspect of domination, with the help of a judiciary system that produces legitimacy, is predictability and neutrality.[73] A judicial system needs to make sure that the verdicts are consistent and impartial and that those who lost a trial can hope to win another in the future. The claim to judge according to a widely accepted legal code, the Shari'a, strengthens their legitimacy in a deeply religious population, particularly when the codes of law used by the Kabul government are little known, misunderstood, and sometimes resented.[74]

The reliance on the Shari'a brought a degree of legitimacy even among people who did not like the Taliban much or those who lose a case. There was a

71 See Antonio Giustozzi, *The Art of Coercion* (London: Hurst, 2011), pp. 204ff. See also Otwin Marenin, *Policing Change, Changing Police: International Perspectives* (New York: Garland Press, 1996).

72 Stephen Hornbeck, "Afghan Women's Perspective on Negotiating with the Taliban," McLean,VA, D3 Systems, 2010.

73 See J.L.M. Gribnau, "Legitimacy of the Judiciary," *Electronic Journal of Comparative Law*, 64 (December 2002), http://www.ejcl.org/64/art64-3.html.

74 Rachel Martin, "Afghan Justice System Fails to Win Public Trust," NPR, April 5, 2006; Nadjma Yassari and Mohammad Hamid Saboory, "Sharia and National Law in Afghanistan," *Jura Gentium: Rivista di filosofia del diritto internazionale e della politica globale*, 2010. For more details on this point, see Giustozzi, Franco, and Baczko, "The Taliban's Shadow Judiciary."

general agreement among the court users interviewed that challenging a judgment generally recognized by elders and mullahs as based on Shari'a was unthinkable, even in the absence of coercion.[75]

The use by the Taliban of the Emirate's logo, official letters, and a procedural and standardized process was also meant to further legitimize the coercion and convey an image of institutionalized authority, whose behavior is predictable, constrained by rules, and not simply one of pure force. We can therefore speak in this case of "coercive legitimization": coercion has a legitimizing impact, especially as the alternative is perceived to be chaos and anarchy.

Coercion can produce legitimization under certain conditions. However, it is an expensive practice and inevitably unmanageable in the long term. Some level of cooperation has to be secured for stability, leading to what political scientists commonly call a "legitimate authority."[76] Sources within the Taliban judiciary expressed great confidence in the quality of the service they provide to the community. Virtually every judge and commander interviewed was convinced that gradually the people would be drawn over to their side. This indicates that the Taliban thought of their judiciary as more than a mere instrument of domination.

Symbolic Violence

The Taliban courts are generally perceived as harsh and rigid. Executions are implemented in an exemplary manner to convey a message of severity and moral order to the people. The Taliban tend to advertise them, and they usually are reported in the Afghan press. Whatever the reasons for a judge to go for the harshest prescribed punishment in a particular case, the Taliban present the verdict as a warning to potential transgressors. For example, when a pregnant woman was executed for adultery in Badghis in 2010, the Taliban spokesman stated: "We gave this decision so that in future no-one should have these illegal affairs. We whipped her in front of all the local people, to show them an example. Then we shot her."[77]

Despite advertising the most extreme forms of punishment from the Shari'a code, the Taliban judges themselves rarely implemented them in civil cases.

75 Court user in Sayedabad, autumn 2011; court user in Sayed Abad, autumn 2011; court user in Qarabagh (Ghazni), autumn 2011; court user in Qarabagh, autumn 2011.

76 Even the most authoritarian governments find it impossible in the long run to rely primarily on coercion, hence the effort to "legitimize." See W. Chambliss and R. Seidman, *Law, Order, and Power* (Reading, MA: Addison-Wesley, 1971), p. 351; Margaret Levi, *Of Rule and Revenue*, (Berkeley, CA: University of California Press, 1988), p. 32.

77 "Taliban Judges Kill Pregnant Woman," ANI, August 10, 2010.

In the early years of Taliban courts in Helmand, harsh punishments appear to have been common and

> Despite this broad tolerance for harsh punishments, the Taliban's punishments based on their interpretation of the Quran (also known as *huddud*), particularly executions and floggings, have gone beyond what many Helmandis consider acceptable under their local views or traditions.[78]

In general, however, this does not seem to have been the rule. In 2012 UNAMA counted 33 executions by the Taliban judiciary.[79] The Peshawar *Qaziano Komitah* reported having sentenced through its courts 220 individuals to death in 2012; 32 amputations were also ordered, out of a total of 5,030 cases being processed. The Quetta *Qaziano Komitah* reportedly issued 120 death sentences in 2012, out of 3,289 cases.[80] Yet most executions probably concerned mostly "political" cases (such as spying) and few civil cases, in which the recourse to extreme punishments was overall not common. This might have less to do with Taliban leniency than a desire to avoid creating bitterness against them. Thus inter-party agreements, blood money, or questioning meant to allow the accused to avoid sentencing were routinely used in adultery cases, for example, to avoid the harshest punishments. Although the Taliban rely on a rule of law system advertised as draconian for its deterrent effect against crime, they adjust to local situations and accept informal searches for solutions—as allowed in fact by the Shari'a.[81]

Co-optation of Elders

In addition, the Taliban have been to some extent co-opting customary justice as part of their effort to legitimize their own judiciary. Concerning the attitude of Taliban judges toward Pashtunwali, the customary norms, there seemed to be strongly varying opinions among them. When asked if they recognized and allowed customary norms, 19 out of 23 Taliban judges answered that only Shari'a was allowable, and four said that codes like Pashtunwali could play a complementary role, claiming it was in full accordance to Shari'a.[82]

78 Walker, "Culturally Attuned Governance and Justice," p. 87.

79 UNAMA, "Afghanistan Annual Report 2012: Protection Of Civilians In Armed Conflict," Kabul: United Nations Assistance Mission in Afghanistan, p. 24.

80 Communication with cadre of Peshawar Judicial Commission, March 2013.

81 For evidence and examples of the punishments inflicted, see Giustozzi, Franco, and Baczko, "The Taliban's Shadow Justice."

82 Interview with Taliban judge in Zhari district, summer 2011; interview with Taliban judge in Alisheng, autumn 2011.

The judges who ruled out the role of customary codes in their courts insisted that anybody who wanted a case to be decided according to Pashtunwali would not go to a Taliban court in the first place. They also stated that the leadership ("Mullah Omar") had explicitly ordered judges not to follow customs and traditions.[83] In practice, however, Taliban courts and customary justice turn out to be often complementary. While in some areas at certain points they might have banned elders from administering justice,[84] in most other cases Taliban judges and commanders said that the movement has encouraged villagers to take small disputes—disputes that do not entail the risk of involving external power-holders or a recourse to violence—to their elders and to resolve them there.[85] Elders confirmed that they were dealing with disputes alongside the Taliban, if not under their control. Villagers would usually first bring a dispute to the attention of the elders and, only if the elders failed to resolve it, would they contact the Taliban.[86]

More importantly, the Taliban judges often co-opt the elders into their trials, allowing them to represent the parties and to negotiate a settlement.[87]

In practice, the system adopted by the Taliban has made the functioning of customary justice increasingly dependent on the Taliban's support, without which communities would often not be able to enforce decisions. When the judges arbitrate a dispute, they rely as much as possible on the local community to implement their verdict in the name of the Taliban. If they fail to do so, a Taliban commander would ensure that the judge's decision is enforced. Armed Taliban fighters will also ensure that the sentence is implemented in cases involving more drastic punishments, such as murder, adultery, or theft.[88] The fact that there is considerable overlap between Shari'a and Pashtunwali allows space for the elders to play a role in Taliban trials and to

83 For example, Taliban judge in Qarghayi district, autumn 2011.

84 TLO, "Formal and Informal Justice in Southern Afghanistan," Kabul, 2011, 17, where a ban on customary justice in Gereshk (Helmand) is reported. However, this does not appear to have been the rule even in Helmand, where the practice of the Taliban referring aggrieved parties to elders and independent mullahs was reportedly common in 2010. See Ladbury et al., "Helmand Justice Mapping Study," p. 112.

85 Sarwary, "What Happened When US Forces Left Afghan Hotspot?"; Walker, "Culturally Attuned Governance and Justice," p. 77; elders interviewed in Logar province, July 2013; interviews with three Taliban judges, Logar, July 2013.

86 Interview with elder in Panjwai, summer 2011.

87 Judges and elders in Kandahar, Qarabagh (Ghazni) and Dai Chopan (Zabul), Asmar (Kunar) confirmed this practice.

88 This description of how the Taliban operate is shared by Taliban judges and the elders who participate in the trials.

mediate disputes. There seems to be clear limits however to how much customary justice is allowed to play a role in Taliban courts; for example in Logar and Ghazni it was found that *baad* (the practice of giving girls as blood money) was completely rejected by Taliban judges, even if the Taliban did not interfere in practice when elders and tribal *shuras* decided autonomously about it.[89]

Conclusion

At the time of this research, the Taliban's judicial system was an instrument of population control, which relied to a large extent on coercion. Some aspects of this coercive effort were more controversial than others. The Taliban's dealing with common criminality and resolving disputes was often welcome, though the weak appeal system and the rapidity of the trials was sometimes criticized. The summary character of the judiciary was perceived as much more problematic in relation to accusations of spying and collaboration with the government.

The Taliban seemed aware that various types of coercion have different impacts. Roaming bands of fighters who simply impose their will on the population are dependent on local military superiority. A more structured approach to coercion, featuring rules, regulation and supervision over the military, allows less use of violence and promises increased predictability for the population, making active resistance less of a necessity.[90] In the long run, the establishment of credible judiciary institutions reshapes the social environment and creates vested interests in favor of Taliban domination.

The Taliban have invested considerable energy and human resources to integrate their coercion over civilians within a judiciary framework. They have faced a number of constraints and problems, ranging from the scarcity of educated cadres to the military pressure over them. The continuous investment in the courts by the Taliban leadership in such a context confirms that their focus on the judiciary was part of a determined political strategy.

The Taliban seem to have realized that they needed to separate their judiciary from the military if they wanted it to be credible. In the areas controlled by the Peshawar *shura* at least, the field military structure remained in charge

89 Interviews with three Taliban judges, Logar, July 2013.

90 In that perspective, the Taliban and the Afghan civil war, in general, illustrate Olson's thesis on roving versus stationary bandits, see Mancur Olson, "Dictatorship, Democracy, and Development," *American Political Science Review*, 87, no. 3 (1993): 567–76.

of supervising the judiciary until late 2011, showing the ambiguities of the requirements of their organizational model: strengthening the position of the judges while retaining control of the judiciary for political ends. Eventually, however, the judiciary and the military were separated.

Finally, the Taliban tried to establish a more cooperative governance framework through the delivery of justice. While the Taliban advertised the toughest punishments of the Shari'a, in practice they typically used all the facilities available within it for achieving negotiated settlements.

The Taliban judiciary system appears rather sophisticated, given that it operates within a context of war. It is part of the Taliban strategy to "hook" the communities up and create locally a vested interest in their presence. Once a case was decided in favor of somebody, he would have something to lose if the Taliban were pushed back and government jurisdiction were to be re-established, while the community as a whole would fear the reopening of the conflict.