

Controversy Surrounding the Grand *Qāḍī* of the Sudan, 1899 – 1956: A Historical Analysis

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Abstract: The establishment of a nominally Anglo-Egyptian partnership, but practically a *defacto* British rule in the Sudan, led the British to appoint Egyptians in religious posts, including the position of the Grand *Qāḍī*. But the British drive to de-Egyptianise the Sudan administration, and the steady rise of Sudanese nationalism led the British government, after a long acrimonious debate, to appoint a Sudanese to be the Grand *Qāḍī*. This move, the historical survey shows, was well received by the Sudanese ‘*ulamā*’ and the *Muftī* apparently went to the extent of “fabricating” religious evidence in its favour.

This study discusses the post of *Qāḍī al-Qudāh*, usually rendered in English as the Grand *Qāḍī*, in the Sudan. It investigates the historical roots that goes back to the first imperialist era in the country, namely the Turco-Egyptian rule of 1821-1885. But the focus of the discourse is on the official rationale for the re-establishment of this post during the second imperialist era, the so-called Condominium period (1898-1956), the heated controversy on and around this post between the co-dominion, Britain and Egypt, and its occupants, the Egyptians and Sudanese.

Grand *Qāḍī*: An Overview

Historically, the establishment of an Islamic legal hierarchy in the country, that was presided by the Grand *Qāḍī*, was first established

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by the Turkish regime. But our information about this experiment, and the newly-created post of Grand *Qādī*, is rather obscure. According to Prof. Hill, the Sudanese chronicler, Aḥmad ibn al-Ḥāj ‘Alī, vaguely records an anonymous *Qādī al-‘umūm* (a *Qādī* over all the Sudan) in 1834-35 who accompanied, in 1835-36, the then *Ḥikimdār* (Governor-General), Khurshīd Pasha to Shendi to handle a case of land dispute between two contenders, Bashīr wad Aḥmad ‘Aqīd, *shaykh al-mashā’ikh* (chief shaykh) of the Ja‘aliyyīn tribe, and some of his tribesmen. The chronicler also records the appointment of a seemingly Egyptian individual, Shaykh Ibrāhīm al-Hināmī, as a *Qādī* over all the Sudan, who arrived in the country in 1845 with the then *Ḥikimdār* Khalid Pasha Khisrū.¹ Richard Hill had also suggested that al-Sayyid Aḥmad al-Salāwī, one of the ‘*ālīms* who accompanied Isma‘īl Pasha’s army of conquest in 1820/21 and returned in 1824 to Egypt, may have subsequently come back to the Sudan as a senior *Qādī*, and took part in the 1840 expedition of the *Ḥikimdār*, Aḥmad Pasha Abū Aḍān (1838-1843) (so-called because of his big ears), to conquer al-Tāka province. His son, Muṣṭafa, seemed to have succeeded him in this position, but was discharged from it during the viceroyalty of Muḥammad Sa‘īd Pasha (1854-1863).²

During the revolutionary system of the Mahdiyyah, that scrapped the administrative system of the Turks, the chief judge of the new hyper *salafī* state was given the title *Qādī al-Islām* (the judge of Islam). The Mahdī’s first appointee to this post was a certain Aḥmad Jubāra, an Azharite of Turkish descent, who, on his death in 8 September 1882, was succeeded by Wad Ḥalāb from the White Nile province. On the latter’s death during the siege of al-Obeid in 1883, Aḥmad ‘Alī, a former judge at Shaqqa in Darfur during the Turco-Egyptian regime, took up the post in 1883. But his death in prison in 1894, probably because he became an over-mighty subject for the autocratic Khalīfah ‘Abdullāhi, marked the practical end of this office.³ For the short and troubled tenures of his successors, Sulaymān al-Ḥajjāz and al-Ḥusain Ibrāhīm w. al-Zahrā, the Mahdī’s chief commissioner for the capitulation of Kassala in 1885, was chiefly noticed because it reflected the historical ambiguity of the *qādī*’s position, arising from his dual allegiance to the political authority and to the *sharī‘ah*.⁴ With his fall, the title of *Qādī al-Islām* seems to have become obsolete, as, according to Prof. Holt, the list of Mahdist

functionaries, drawn up by the British at the time of the conquest, did not include either *Qāḍī al-Islām* or *wakīl* (deputy) *al-maḥkamah* (court). At the head of the law-court was a justice-general (*qāḍī al-umūm*) with six deputies (*nuwwāb*), two of whom had special duties with the bodyguard. However, another source records that al-Zahrā was followed by a Taʿāishi called Shaykh Umbādī and al-Shaykh al-Nadhīr Khālid, who remained in this position until the collapse of the Mahdiyya in 1898, and was subsequently appointed during the Condominium rule as a teacher in *al-Maʿhad al-ʿIlmī* (Omdurman Institute).⁵

In theory, the law of the Mahdist community was exclusively based on the *sharīʿah*, but the Mahdī had in practice exercised extensive powers of legislation through his numerous *manshūrāt* (proclamations), and by his verdicts on many cases. Although Aḥmad ʿAlī was the special delegate of the Mahdī’s judicial functions, the Mahdī himself, as well as his khalīfas and other chief officers, had also heard and determined some legal cases. This is because the Mahdist theocracy was a form of state in which supreme power was presumed to be held by the Mahdī directly from God, and exercised by other officials only by delegation from him. Nonetheless, even before the Mahdī’s death in 1885, his first Khalīfah, ʿAbdullāhi,⁶ had exercised substantial power and became the undisputed ruler of the Mahdist state until its bloody collapse in the battles of Karārī and Umdibaykrāt in 1898/99.

Once the Anglo-Egyptian army conquered the Sudan, the invaders established a Muslim judiciary, much along the lines that existed prior to the Mahdiyyah. The 1902 Sudan Mohammedan Law Courts Ordinance provided for the establishment of a high court, consisting of the Grand *Qāḍī*, the *Muftī*, and one or more other members. The *mudīriyyah* (province), *muḥāfazah* (district), and *maʿmūrīyyah* (sub-district) courts were to consist of one *Qāḍī* each.⁷ The new colonialists revived the post of Grand *Qāḍī* in order to promote *Sunni* Islam and to proclaim themselves as the protectors of Islam.

The Sudanese “Mohammedan” Law Courts, commonly known as the *Sharīʿah* courts, had no power to execute judgments, but were empowered to “acquire the authority charged with the execution of judgment to execute them.” *Sharīʿah* courts were empowered to deal with questions related to marriage, divorce, inheritance,

guardianship, *waqf*, and all other problems concerning the personal status of Muslims.⁸

The policy of entrusting all matters concerning the personal status of Muslims to the *Shari'ah* Courts was considered necessary and wise, as it was expected to enable the Christian imperialist administration to avoid unnecessary friction with the Muslim inhabitants. Besides, it helped to establish an orthodox (*Sunni*) Muslim leadership whose interest would hopefully be bound with those of their British rulers. The *Shari'ah* Courts were also arguably competent to decide upon any question other than those mentioned, provided all parties, Muslim or not, formally undertake to be bound by the ruling of Islamic law. Conflicts of jurisdiction between the Civil and *Shari'ah* Courts were to be decided by a council consisting of the Legal Secretary, the Grand *Qāḍī* and the Judicial Commissioner. Until 1916, no judicial commissioner was, however, appointed by the Governor-General, and his functions were invariably invested in the legal department.⁹

Nonetheless, there was seemingly happy rapport between the British members of the legal department on the one side, and the Grand *Qāḍī*, *Muḥtī* and the *Shari'ah Qāḍīs*, on the other. In the *Shari'ah* division, Sudanese rose up to very senior posts long before their counterparts in the civil administration could do so. This friendly atmosphere, which prevailed throughout, was described by the British Consul General, Lord Cromer, in his 1904 annual report in the following words:

Sheikh Mohamed Harun (the Grand *Qāḍī*) evidently regards Sir Reginald Wingate (the Governor General) and Mr. Bonham Carter (the Legal Secretary) as friends, who desire to assist him in the work of reform on lines which may commend themselves alike to devout Moslems and to those of other creeds. The situation in the Sudan in this connection is therefore full of good augury for the future.¹⁰

By 1915, the Sudan was one of the first Ḥanafī Muslim countries to introduce a reform of the divorce law. The principle of reforming Muslim law in the Sudan, according to any of the four *madhāhib* (singular *madhhab* or school of jurisprudence), was bound to effect future modifications of the Islamic law. The “Mohammedan” Law Courts Ordinance and Procedure Regulations allowed the Grand

Qāḍī's discretion to depart from the usual Ḥanafī practice, a development that helped towards the reform of the family law in the country (well before that in Egypt), in line with the modernizing views of Muḥammad ʿAbduh¹¹ and Qāsim Amīn.¹² The Sudan judicial circular, No. 17, enabled a wife whose husband was presumed dead to remarry, and provided for judicial divorce for wives whose husbands failed to support them, or had deserted them for more than one year. This circular also granted divorce to wives whose matrimonial discord was so acute that only divorce could provide a solution.¹³

The Grand *Qāḍī* was allowed, by the “Mohammedan” Law Courts Organization Regulation of 1905 to hear and decide on any case, whether or not previously heard by a *Shariʿah* court. Besides, it ordered that all suits should be heard in the district where the defendants resided. The Procedure Regulations for *Shariʿah* Courts, published in 1906, stated that any judgment passed by a *Shariʿah* Court should be executed by government officials or police officers. In 1912, The *Maʿdhūn* (recorder and registrar of marriages and divorces) Regulations were published, which stipulated that *maʿdhūns* be appointed on the recommendation of the *shaykhs*, *ʿumdas* or notables, that all marriages and divorces within their districts be registered.¹⁴ With regard to the *waqf* (Islamic endowment), only few *awqāf* had existed in the country at the time of the conquest, and they were neither properly registered in the *Shariʿah* Courts nor effectively administered. To prevent any interference in Sudanese *awqāf* by the Egyptian *waqf* administration, Wingate entrusted their management to the Sudan *Shariʿah* Courts, though this was not fully implemented. This may be noticed in the *awqāf* of Kordofan, which were managed by the provincial authorities at al-Obeid, who built the central market by funds from the *waqf* property, and used its annual rent of £E250 for the maintenance and construction of mosques.¹⁵

Controversy over the Appointment of the Grand *Qāḍī*

The right to appoint the Grand *Qāḍī* became a matter of controversy between the co-dominion. Before 1947, the British had agreed to appoint Egyptians to this post as a kind of concession to Egypt, the junior ruler of the Sudan, and because there were then no qualified

Sudanese for the post. While controlling all the top positions in the civil administration, the British felt it advisable at that time to appoint Egyptians to posts in the lower offices in order to deal with their co-religionists, the northern Sudanese, and thus avoid friction with the Muslim inhabitants of the Sudan. However, when the British decided in 1947 to appoint a Sudanese to the post of Grand *Qādī*, the Egyptians strongly opposed this. Actually, the Egyptian Prime Minister, Şidqī Pasha, had expressed this opposition before the appointment had actually taken place in 1947. The Egyptian government had based their argument on four points. First, the Grand *Qādī* is a religious functionary who should be appointed by a Muslim authority,¹⁶ i.e., the Khedive of Egypt. They supported this position by a *fatwā* (religious opinion) issued by the Committee of al-Azhar which maintained that established rules of the Muslim law provided that (1) the judgeship is a Muslim authority, (2) “non-Muslims has no authority over a Muslim,” (3) “a person who has no authority over a thing does not possess the power to delegate the same to others.” As a result of these three rules, the jurists of the four *madhhabs* ruled that the appointment of a judge by non-Muslim is unlawful. If made, the assertion continues, it would be invalid, and the appointed person could not have a claim to act as a judge, and his judgments would not be enforceable.¹⁷

Second, the Egyptian government claimed that the post of the Grand *Qādī* was traditionally, and since the beginning of the Condominium, held by Egyptians.¹⁸ In a letter to the Governor-General of Sudan, dated February 3, 1947, the Egyptian Premier stated that it has been an established historical practice, long before the conclusion of the 1899 Condominium Agreement, for the Egyptian government to appoint the *Qādīs* in the Sudan. After the said agreement, the *Qādī* occupying that post came to be known as the Grand *Qādī* of the Sudan, with powers to consider cases of personal status as provided in the principles of Muslim law.¹⁹ Since that time, the post of Grand *Qādī* had been occupied by Egyptians, and its very religious nature gave it a permanent link with the system of Egyptian *Sharī'ah* Courts.²⁰ This is evidenced by the fact that the first regulations of the judiciary system in the Sudan were drawn up along the lines of their Egyptian counterpart, a fact which required the holder of the post of Grand *Qādī* to be thoroughly versed in all matters pertaining to the development of procedure in Egyptian

Sharīʿah courts. Thus, only a *Qāḍī* chosen from amongst *Qāḍīs* of those courts can satisfy this condition. This was evident in the method adopted for the appointment of the first Egyptian Grand *Qāḍī* after the 1899 Agreement, Shaykh Muḥammad Shākir, who was nominated by a special committee of *Qāḍīs*, and appointed by a high Khedivial degree.²¹

Third, the 1936 Treaty maintained the *status quo* resulting from the 1899 Agreement, which meant that the Grand *Qāḍī* should continue to be an Egyptian.²² According to the Egyptian Prime Minister, the post of Grand *Qāḍī* is a religious post of a special status that cannot be compared with other administrative posts, thus had been excluded, before and after the 1899 Agreement, from other ordinary civil posts of the Sudan administration. No change in those provisions could be effective except by a special agreement concluded between the co-domini. In any case, the Premier continued, the Egyptian government would by no means agree to any change in this long established arrangement, and a holder of this post should, therefore, always remain an Egyptian in accordance with the tradition hitherto followed.²³

Lastly, the Egyptian government pointed out that the Grand *Qāḍī*ship is the last important post held in the Sudan by an Egyptian, and that the appointment of a Sudanese to it would arouse strong feelings in Egypt, which had so few ties left with the Sudan. Such an appointment would seriously damage Egypt's political aspirations in the Sudan, a development that would tarnish the image of the Egyptian government, and ignite extreme nationalist sentiment towards the whole Sudan question.²⁴ To secure the position of the Grand *Qāḍī* to Egypt, it was further maintained that this would be in line with the *Sharīʿah* law, particularly as no Sudanese was qualified for the post.²⁵

Refuting Egyptian claims, the British maintained that both the Condominium Agreement of 1899 and the 1936 Anglo-Egyptian Treaty gave the Governor-General the supreme right to appoint all officials. His appointments to the posts of the Chief Justice, the Grand *Qāḍī* or the High Court Bench were, however, undertaken in consultation with the outgoing officials.²⁶ Moreover, like the civil courts, the *Sharīʿah* courts were essentially government courts that form an integral part of the state judicial system and of the legal

department. As such, they are sharply distinguished from ecclesiastical courts in certain countries where they do not form an integral part of the State judicial system. The *Qāḍīs* are members of the legal department, employed and paid by the state, and amenable to all ordinances and regulations governing the personnel and machinery of the government. According to the British, the post of Grand *Qāḍī* in the *Shari'ah* Courts is basically similar to that of the Chief Justice in civil courts,²⁷ and the Islamic law does not confine his appointment to a Muslim authority only. It is highly improbable that the '*ulamā*' of al-Azhar would dare base their decisions on this issue on Muslim religious law, and if they did, they would lay themselves open to immediate attacks by their fellow Muslims.²⁸

The Battle of the *Fatāwās*

The British authorities sought the advice of Shaykh 'Alī Qurrā', the President of the High *Shari'ah* Court in Cairo, on the controversy. He came out with a *fatwā*, published in *al-Nīl* newspaper, to the effect that the appointment of *Qāḍīs* by a non-Muslim ruler is perfectly legal, no matter he is just or unjust, their decisions are binding, and their dismissal should follow the same rulings of their appointment. Shaykh 'Alī Qurrā's *fatwā* did not only assert that the Islamicity of a ruler is not an essential requirement for appointing judges, but also argued that a victorious infidel ruler can appoint *Qāḍīs* who have to be accepted as such. Similarly, when an oppressive ruler subjugate a country, his appointees to the judiciary are legal, even though his decrees are not all just. However, if the just men of a country regain power, they should execute what they consider to be just decrees, and turn down what they consider to be unjust. Shaykh 'Alī Qurrā' also emphasized that in case of a dispute by the legists over such a decree, the appointed *Qāḍī* by such ruler should be regarded as any other *Qāḍī*. The Sudan government published this *fatwā* twice, on 3rd and 8th April 1947, in an attempt to silence Egyptian supporters who were accused of using religion to serve their political agenda.²⁹

With regard to al-Azhar's *fatwā*, the *Muftī* of the Sudan argued, on behalf of the Sudan government, that the position of the Ḥanafī *madhhab* gives non-Muslims the green light to appoint judges. The *Muftī* claimed that the learned Ḥanafī Mulla Miskīn supported this

position by a quotation from *al-Kanz*³⁰ that is officially recorded as follows, “[It] is permissible to accept judgeship from a sovereign who is just or unjust, be he a Moslem or non-Moslem.” However, when referring to the original text in *al-Kanz* (page 276),³¹ the authors noticed that Mulla Miskīn did not specifically mention the word “non-Muslim,” which may have been added by the *Muftī* of the Sudan or, more likely, by the intelligence department, to strengthen the case of the government. In fact, the *Kanz* text records that a *Qādī* should be appointed by the Sultan, be he just or unjust, and also by *ahl al-baghi* (rebels) against the Sultan.

The *Muftī* supported his argument by a commentary by Abū al Sa‘ūd and a view of Ibn ‘Ābidīn. Abū al Sa‘ūd’s marginal note on the text, in the *Muftī*’s view, clearly admits the validity of the authority of non-Muslims over Muslims, and endorses appointment to judgeship by non-Muslim rulers. Accordingly, Islamicity is not a condition required for the validity of the authority of a ruler. If the appointment is legal, dismissal should similarly be legal.

The *Muftī* also recorded the view of Ibn ‘Abdīn in *al-Tatarkhaniyya* to the effect that “Islam is NOT a condition for it,” i.e., appointment to judgeship. Thus, if a *Qādī* is appointed by a non-Muslim and accepted by Muslims, such appointment is undoubtedly correct. Hence, the *Muftī* concludes, the appointment by H.E. the Governor-General of the Grand *Qādī* of the Sudan had been lawful without the least suspicion.³² Again, the original text does not specifically mention “non-Muslim,” but records that a *Qādī* could only be appointed by an *amīr* who should be a Muslim. The *Muftī* also argued that the author of *al-Baḥr*³³ cited in his book the above opinion of Mulla Miskīn and did not oppose it, though he quoted the opinions against it as stated in “*El-Fateh*.” The words of “*El-Fateh*,” as quoted by Abū al Sa‘ūd from *al-Baḥr*, were as follows (in translation):

In case there is no sovereign or in any other case where some parts of the Moslem territory which came under a non-Moslem sovereignty, and where Moslems were allowed to run their own affairs on payment of tribute, such as in the Maghrib countries of Kordova and Valencia and in Abyssinia, the Moslems should then agree between themselves and select a ruler among themselves in order to appoint a judge and also to select an Imam for the performance of the Friday prayers etc.

It can be understood from “El-Fateh” words that they agreed with Muslims upon a certain tribute to be collected from them that they allowed them to run their own affairs; but if they were not allowed to manage their own affairs, the appointment of Kadis by non-Moslems would be admitted, otherwise it would cause delay in judicature, which is rather more harmful than acceptance of appointment itself. Acting on the less harmful is in accordance with Sharia Maxim ‘necessities permit prohibitions.’³⁴

The *Muftī* continued to argue that, according to the Hanafite rule, non-Muslim rulers, under circumstances where they exercise authority over Muslims, could appoint *Qādīs* in order to facilitate the administration of justice, which is most essential to the well being of the people. This *fatwa* fits in with the change of times, places, circumstances, intentions and customs, and with the principles of two *Shari‘ah* maxims, namely “when things appear to be so narrow, there is always a way out” and “necessities permit prohibitions.”³⁵ But these two *Shari‘ah* maxims are not applicable in this case as there is no necessity for such a ruling. The *Muftī* was, however, bound to side with his non-Muslim employer, the Governor-General, who appointed him to the senior position of the *Muftī*.

Besides, the *Muftī* had also sought the opinion of the President of the High *Shari‘ah* Court in Cairo, who had reportedly maintained that the validity of an appointment to a *Qādīship* depends upon the conquest, i.e., as long as the ruler was the conqueror or the victorious, the appointment made by him is valid, whether he was just or unjust, Muslim or non-Muslim.³⁶ He who is appointed by such a procedure is lawful, and his judgments are enforceable. Similarly, since they appoint judges, they could also dismiss them. Hence, Islam is not an essential condition for the ruler who appoints judges.³⁷

The *Muftī* of the Sudan concluded that the al-Azhar *fatwa* was based upon general principles. However, there is always an exception to every rule, and it is essential for a *Muftī* to take into consideration the prevailing circumstances when issuing a *fatwa*. According to the *Muftī* of the Sudan, the *Shari‘ah* Courts in the Sudan were established fifty years ago, and throughout these years the Governor-General appointed Grand *Qādīs* and *Qādīs*. The people, the elite, the masses and the various Egyptian governments, were all satisfied with the litigation before them.³⁸ Thus, the *Muftī* insisted, that the

appointment of the Grand *Qāḍī* only by a Muslim authority is entirely unfounded in Muslim law. The ruler, i.e., Governor-General, has every right to make such an appointment, irrespective of his religion. He also refuted the claim that legally the Grand *Qāḍī* should be an Egyptian.³⁹

However, the *Muḥtāb* of the Sudan seemed to have deliberately manipulated some texts of early Muslim scholars to strengthen his argument, though none of them had explicitly accepted the right of a non-Muslim ruler to appoint *Qāḍīs*. Indeed, the *Muḥtāb* was very selective, and he issued the eclectic *fatwa* in order to claim the right of Sudanese to be appointed to the position of the Grand *Qāḍī*. This could further be supported by the fact that the *Muḥtāb* had entirely depended on the Ḥanafī *madhhab*, though he himself was a Mālikī and the majority of the Sudanese followed the Mālikī tradition. In any case, Mullā Miskīn does not represent the whole Ḥanafī *madhhab*.

In response to the Egyptian assertions that all the *Sharīʿah* decrees issued in the Sudan cannot be religiously binding unless there is an Egyptian Grand *Qāḍī* appointed by the Khedive of Egypt, the editor of *al-Nil* sarcastically remarked in 1947 that if this is true, then all *Sharīʿah* decrees issued in the Sudan courts since 1919 should be nullified as all the Grand *Qāḍīs* had thus far been consistently appointed by the Governor-General. Indeed, the latest one, Ḥasan Maʿmūn,⁴⁰ was subjected, like any sub-*maʿmūr* cadet, to an interview in the Sudan Agency in Cairo,⁴¹ and, the appointments of both Shaykh Nuʿmān al-Jarīm in 1932 and Shaykh Ḥasan Maʿmūn in 1941 were actually made by the Governor-General.⁴² The editor admonished the exponents of these “false” ideas, and he dismissed them as “unscrupulous” and “not God fearing.” He warned them to cease playing with the peoples’ beliefs.⁴³

With regard to other Egyptian arguments that the post of Grand *Qāḍī* had traditionally been held by Egyptians, the Governor-General maintained that this was an exceptional practice that was maintained in the past because there were no qualified Sudanese to fill the post, a predicament that had been overcome as early as 1928. Sir Nigel Davidson added later, none of the then two or three Egyptian cadre of the *Mahakim* was suitable for appointment to the post, while of the three senior Sudanese *shaykhs* under the Grand *Qāḍī*, two were

graduates of the Gordon College, *Qāḍī*'s section, of whom one was fully qualified, both character-wise and intellectually, for the post of Grand *Qāḍī*.⁴⁴

The Egyptian government had further argued that the post of the Grand *Qāḍī* did not fall within the provisions of Article 11 (2) of the 1936 Treaty that authorized the Governor-General to appoint all officials in the country, and the holder of this post should thus always remain Egyptian in accordance with the thus far tradition. But this position was challenged by the Sudan government,⁴⁵ who argued that the appointment of a Grand *Qāḍī*, as is the case with all other posts, entirely depended on the availability of qualified Sudanese.⁴⁶ However, the British added that any dispute over the interpretation of the Condominium Agreement or the 1936 Treaty is open for discussion between the co-domini.⁴⁷

Another Egyptian argument was that a Grand *Qāḍī* should be thoroughly versed in all matters pertaining to the development of procedure in Egyptian *Sharī'ah* Courts. But the British maintained that this is neither sacrosanct nor necessary. Moreover, the Sudanese courts could have probably gained from the *Sharī'ah* Courts in other Muslim countries, as they had from their Egyptian counterparts, had they not been in too close a conformity with the Egyptian practice, which hampered their natural evolution. Neither in the 1899 Condominium Agreement nor in the 1936 Treaty was there any provision, expressed or implied, that justified the claim of the Egyptian Prime Minister that the post of Grand *Qāḍī* was excluded from the category of other ordinary civil posts in the Sudanese administration.

This wide discrepancy between the positions of the Egyptian and British governments over the issue had considerably delayed the appointment of a new Grand *Qāḍī* following the due retirement of the Egyptian Shaykh Ḥasan Ma'mūn in 1947. All that the government did was a half-hearted measure, namely, the appointment of a Sudanese, Aḥmad Ṭāhir (1947-1949),⁴⁸ as acting Grand *Qāḍī*. But this delay was sharply criticized by some of the Sudanese nationalists who firmly argued that the selection and appointment of a Grand *Qāḍī* were clearly vested by the 1936 Treaty in the Governor-General, a procedure that had actually been followed in the case of Shaykh Ḥasan Ma'mūn himself.⁴⁹ For those Sudanese

nationalists, a decision to once more appoint an Egyptian to the post would cause great heart burning in the Sudan, where it was generally believed that the post should be filled by a local candidate.⁵⁰ The inability of the Sudan government to forthwith appoint in 1947 a Sudanese to the post had, in fact, extremely damaged its position in the eyes of those nationalists, who regarded it incapable of withstanding Egyptian pressure. The British were also accused of going back on their declared policy of Sudanisation in a post that was eminently suitable for a qualified Sudanese.⁵¹ Finally, however, the British confirmed Shaykh Aḥmad Ṭahir in the substantive post, a development that was expected to help restore the prestige of the Sudan government in the eyes of the Sudanese, and to demonstrate to all of them that the British were determined to maintain themselves against Egyptian pressure, and to adhere steadfastly to the policy of preparing the Sudanese for self-government.⁵² The Acting Grand *Qāḍī* was given a full-fledged appointment on the grounds of his competence during the fairly long time that he spent covering the post, and because this action was in conformity with the policy of Sudanisation.⁵³

The Status of the Grand *Qāḍī*

Another issue regarding the Grand *Qāḍī* was his status and that of the *Sharīʿah* judges compared to the Chief Justice and other judges in the civil courts. Practically, the former were viewed as inferior, and the salaries paid to them were disgracefully low for a legal officer. However, in 1904, the Grand *Qāḍī* introduced a new scale of fees for the *Sharīʿah* Courts, as the previous one had been too high for a poor country like the Sudan. In the following year, he suggested that the registration of transactions relating to land should be left entirely in the hands of the *Sharīʿah* Courts, who had lost more than half of their original jurisdiction, and were confined only to matters arising out of family relations. He felt that this diminishing range of jurisdiction undermined the authority of Islamic law, which he regarded as superior to all others. Needless to say the Grand *Qāḍī*'s attempt to increase his authority and that of the *Sharīʿah* courts was resented by the British authorities.⁵⁴

The number of provincial and district *Sharīʿah* Courts in the Sudan increased from twenty-eight in 1903 to forty-five in 1912. Of these,

eleven were provincial and the rest were district and sub-district courts. Nonetheless, in 1908, the Grand *Qāḍī* declined to increase the number of these courts, notwithstanding the ever-growing pressure of work, because he considered an increase in the wages of the *Qāḍīs* to be more essential. The department's budget did not provide for the inspection of the provincial *Shari'ah* Courts, and their *Qāḍī*'s had to cope as best as they could. The result was that many districts remained without courts, and were visited by a *Qāḍī* only once or twice a year. Hence, many cases which should have been settled by the *Shari'ah* Courts were referred to the British inspectors.

Conclusion

On March 2, 1896, the British government unilaterally decided to topple the Mahdist regime by an Egyptian army led by British officers, and to establish on its ruins a nominally Anglo-Egyptian partnership but practically a *de facto* British rule in the Sudan. Thus was the enactment of the so-called Condominium Agreement in January 1899 that was sarcastically, but appropriately, described by its architect, Lord Cromer, as "the child of opportunism." This agreement vested the supreme military and civil command of the country in a British officer to be called the Governor-General, who was fully empowered to appoint all officials in the country.

However, to satisfy the *amour propre* of the Egyptians, who bore the lion's share of the expenses of the conquest and the new administration, and to avoid friction with the Muslim populace, the British had at first allowed the appointment of Egyptians in religious posts, including the newly-created position of the *Grand Qāḍī*. But the British drive to de-Egyptianise the Sudan administration, particularly since the 1924 pro-Egyptian revolt, and the steady rise of Sudanese nationalism had prompted them to seriously consider, since the 1930s, the appointment of Sudanese nationals to the post of Grand *Qāḍī*. Naturally, this provoked strong Egyptian opposition, who convincingly argued, *inter alia*, that any appointment to this post by the Christian British Governor-General would be incompatible with the *shari'ah* injunctions and therefore null and void. Nonetheless, being frustrated by the Egyptian adamant rejection to accept the presence of their occupation forces in the Canal Zone

and under the pressure of an influential sector of the Sudanese nationalists, the British finally appointed in 1947 a Sudanese to be the Grand *Qāḍī*. Motivated by nationalist sentiments and self-interest, the Sudanese ‘*ulamā*’ jubilantly supported this move, and the *Muftī* seemed to have gone to the extent of “fabricating” religious evidence in its favour.

Notes

1. Richard Hill, *Egypt in the Sudan 1820-1881* (Oxford: Oxford University Press, reprinted 1966), 43, quoting Aḥmad ibn al-Ḥāj ‘Alī’s manuscript *Kātib al-Shūnah*, which had been edited by Makkī Shibayka and al-Shāṭir al-Buṣayyilī ‘Abd al-Galīl. Peter Holt had also translated and edited this manuscript under the title *The Sudan of the Three Niles: The Funj Chronicle, 910-1288/1504-1821* (Leiden: Brill, 1999).

2. *Ibid.*

3. Aḥmad ‘Alī deserted his post as a judge when he heard the rising fame of Muḥammad Aḥmad al-Mahdī. He took a leading part in the storming of al-Obeid for which the Mahdī placed him at the head of the legal jurisdiction of the movement with the title of *Qāḍī al-Islām*. Later, he was accused of acquiring considerable wealth, which was summarily confiscated. He was sentenced to imprisonment and died shortly after due to unexplained circumstances. Richard Hill, *A Biographical Dictionary of the Sudan*, 2nd ed. (London: Frank Coss, 1967) 29; P.M. Holt, *The Mahdist State in the Sudan 1881-1898: A Study of its Origins, Development and Overthrow* 2nd ed. (Oxford: Clarendon Press, 1970), 210-211.

4. Ḥusayn al-Zahra was a religious notable and a renowned poet. His tenure as *Qāḍī al-Islām* was brief and his fall in 1895 was occasioned by an over zealous adherence to the principles of the *Sharī‘ah*. He died in prison. Richard Hill, *A Biographical Dictionary of the Sudan*, 168-169; and P.M. Holt, *The Mahdist State in the Sudan 1881-1898: A Study of its Origins, Development and Overthrow*, 210 & 262.

5. Ḥusain Sayyid Aḥmad al-Muftī, *Ṭaṭawwur al-Nizām al-Qadā’ī fī al-Sūdān*, vol. 1 (n.p., 1959), 130-131.

6. P.M. Holt & M.W. Daly, *The History of the Sudan* (London, Longman, 1980), 85.

7. Gabriel Warburg, *Sudan Under Wingate: Administration in Anglo-Egyptian Sudan, 1899-1916* (London: Frank Coss, 1971), 129.

8. *Ibid.*

9. Ibid.

10. Donald Hawley, *Sandtracks in the Sudan*.

11. Muḥammad ‘Abduh (1905-1949) was very concerned with the reform of Islamic family law in particular and the *Shari‘ah* courts in general. But his reforms faced resistance from conservative circles in Egypt. His student, *Qāḍī* Muḥammad Shākir, whom ‘Abduh appointed in 1899 as the first Grand *Qāḍī* of the country, issued a circular containing sweeping reforms of the Sudanese family law which became a model that was later, in 1925, applied in Egypt.

12. Qāsīm Amīn (1865-1908) was a magistrate in the court of appeal. He struggled for women’s emancipation because, he argued, only a free mother could raise free children. Soon emancipation of women became one of the tenets of the nationalists, particularly Aḥmad Luṭfī al-Sayyid and Sa‘ad Zaghlūl. For details see, Afaf Luṭfī al-Sayyid, *Egypt and Cromer: A Study in Anglo Egyptian-Relations* (London: John Murray, 1968); P.J. Vatikiotis, *The Modern History of Egypt* (New York: Frederick A. Praeger, 1969).

13. Gabriel Warburg, *The Sudan Under Wingate*, 129-130.

14. Ibid., 130.

15. Ibid., 141.

16. PRO, FO 371/62959. Comments by D.M.H. Riches at the Foreign Office and Telegram from Governor-General, 22 March 1947.

17. PRO, FO 371/62959. Commentary by Mufti of the Sudan on El-Azhar Fetwa Concerning Appointment of Kadis by non-Moslem, 17 December 1947.

18. PRO, FO 371/62959. Comments by D.M.H. Riches.

19. PRO, FO 371/62458. Telegram from Sir R.I. Campbell, from Khartoum, to Foreign Office, 3 February 1947.

20. The Egyptian occupants of the position of the Grand *Qāḍī* were: (i) Shaykh Muḥammad Shākir (1899-1904), appointed by a high Khedivial degree (PRO, FO 371/62458. *Telegram from Sir R.I. Campbell*). (ii) Shaykh Muḥammad Hārūn (1904-1908), appointed with the Khedive’s approval in 1904 (PRO, FO 371/62959. *Memorandum on the History of the Appointments of Sudan Grand Kadis*; Gabriel Warburg, *The Sudan Under Wingate*, 131, quoting Cromer’s quotation from a confidential report on the Grand *Qāḍī*; SAD/280/2, 11 Feb. 1907). He resigned in 1908, and was replaced by (iii) Muḥammad Muṣṭafā al-Marāghī (1908-1919). (iv) Shaykh Muḥammad Amīn Kora (1920-1931?), took the post of Grand *Qāḍī* without reference to Egypt, a procedure that triggered criticism in the Egyptian press, and a query by the Residency to the Sudan government to which the latter responded by claiming that there was no political or religious necessity for reference to Egypt (PRO, FO 371/62959. *Memorandum on the*

History of the Appointments of Sudan Grand Kadis.); (v) Shaykh Nu‘mān al-Jarīm (1932-1940) who was appointed as Grand Qādī by the Governor-General (PRO, FO 371/62959. *Memorandum on the History of the Appointments of Sudan Grand Kadis*); and (vi) Shaykh Ḥasan Ma’ mūn (1941-1947), appointed by the Governor-General as the Grand Qādī of the Sudan from 1941 to 1947 (PRO, FO 371/62959. Telegram from Khartoum to Cairo).

21. PRO, FO 371/62458. Telegram from Sir R.I. Campbell, from Khartoum to Foreign Office, 3 February 1947.

22. PRO, FO 371/62959. Comments by D.M.H. Riches.

23. PRO, FO 371/62458. Telegram from Sir R.I. Campbell.

24. PRO, FO 371/62959. Memorandum on the History of the Appointments of Sudan Grand Kadis since the Condominium Agreement of 1899, July 1947.

25. PRO, FO 371/62959. Extracts from *Al-Nīl* about an important Fatwa regarding the appointment of Qadis, 3 April and republished on 8 April 1947.

26. Donald Hawley, *Sandtracks in the Sudan*, 101.

27. PRO, FO 371/62959. Memorandum on the History of the Appointments of Sudan Grand Kadis.

28. PRO, FO 371/62959. Telegram from Khartoum to Cairo, 25 February 1947.

29. PRO, FO 371/62959. Extracts from *Al-Nīl*.

30. The reference here is to ‘Abd Allah ibn Aḥmad Maḥmūd al-Nasafī with commentaries by Muḥammad Aḥsan al-Ṣidiqī and *Faṭḥ al-Mu‘īn ‘alā Sharḥ Mullā Miskīn: Kanz al-Daqā’iq*.

31. The authors are grateful to Prof. Ibrahim Zein for helping them to identify and understand this source.

32. PRO, FO 371/62959. Commentary by the *Muftī* of the Sudan.

33. The reference here is to al-Imām Zayn al-Dīn, popularly known as Ibn al-Nujaym.

34. PRO, FO 371/62959. Commentary by the *Muftī* of the Sudan.

35. Ibid.

36. In his book *Principles of Jurisprudence*, page 282,

37. PRO, FO 371/62959. Commentary by the *Muftī* of the Sudan.

38. Ibid.

39. PRO, FO 371/62959. Memorandum on the History of the Appointments of Sudan Grand Kadis.

40. Ibid.
41. PRO, FO 371/62959. Translation of an article in *Al-Nīl* newspaper about All Sharia Decrees in the Sudan, 8 April 1947.
42. PRO, FO 371/62959. Telegram from Khartoum to Cairo.
43. PRO, FO 371/62959. Translation of an article in *Al-Nīl* newspaper about All Sharia Decrees in the Sudan.
44. PRO, FO 371/62959. Memorandum on the History of the Appointments of Sudan Grand Kadis.
45. PRO, FO 371/62959. Letter from H.J. Huddleston to Maḥmūd Fahmy al-Naqrāshī, 15 March 1947.
46. PRO, FO 371/62458. Telegram no. 27 from Governor-General to Foreign Office, 4 February 1947.
47. PRO, FO 371/62959. Letter from H.J. Huddleston to Maḥmūd Fahmy al-Naqrāshī, 15 March 1947.
48. His full name was Aḥmad al-Fakī ‘Alī, and he was the first Sudanese to occupy the position of the Grand *Qāḍī*. He died in 1949. See ‘Awn al-Sharīf Qāsīm, *Mawsū‘at al-Qabā’il wa al-Ansāb fī al-Sūdān wa Ashhar Asmā’ al-‘Alām wa al-Amākin*, vol. 1 (Khartoum: np, 1996), 66-67. Another Sudanese who occupied the position was Shaykh Ḥasan al-Muddathir (1951- ?). A man of strong character, he proved to be an able *Qāḍī* of the more “modern school.” He was popular and well respected (PRO, FO 371/80360. Letter no. JE10115/63 from J.W. Robertson to R. Allen, 24 December 1947).
49. PRO, FO 371/62959. Letter from H.J. Huddleston to Maḥmūd Fahmy al-Naqrāshī, 15 March 1947.
50. PRO, FO 371/62959. Memorandum on the History of the Appointments of Sudan Grand Kadis.
51. PRO, FO 371/62959. Letter from Sir Robert Howe to Sir O. Sargent, 19 September 1947.
52. Ibid.
53. PRO, FO 371/62959. Comment by Mr. Hanniker of the Foreign Office, 24 September 1947.
54. Gabriel Warburg, *The Sudan Under Wingate*, 131.