

Hukm: THE CREOLIZATION OF AUTHORITY IN CONDOMINIUM SUDAN*

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ABSTRACT: Recent scholarship on ‘neo-traditionalism’ and colonial governance in Africa has challenged assumptions about the ‘invention of tradition’ and the ability of the colonial state to create wholly innovative kinds of local authority. This article explores one episode in the development of the authority of Ali el Tom, probably the most famous ‘traditional’ ruler in Condominium Sudan. It suggests that Ali el Tom’s authority was a creole product, which drew on local moral codes and colonial forms of authority, but was not fully part of either. The willingness of his people to accept this sometimes abusive authority relied on a partly illusory sense that it was familiar; but this willingness was not unlimited, and on occasion actions from below set limits to the invention of authority and tradition.

KEY WORDS: Sudan, colonial administration, chieftaincy, courts, governance.

I have seen a few cases here of gross misuse of the old hukms which would never have been tolerated if the nas had understood what was happening¹

SLIPPING the occasional word of the language of their subjects into their speech was a common enough affectation amongst colonial officials. Whether or not the speaker actually possessed any fluency in the language they appropriated, this was a device which simultaneously asserted confident mastery of an exotic people and claimed membership of an elite group of men who knew the language and the country; the command of language was, as Dianna Jeater has noted, an ‘esoteric skill’.² Yet these linguistic cross-overs have further significance, if we consider the nature of the colonial administrator’s task as one of turning policy devised in one language into a practice of rule which was spoken in another – or, as the author of the example above rather more carefully put it, ‘interpreting to [the tribes] policy and instructions’.³ The terms from this interpretation which blow back into the

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¹ Hamilton to MacMichael, 8 Mar. 1928, National Record Office, Khartoum (NRO) 1CIVSEC 1/33/89.

² D. Jeater, ‘Speaking like a native: vernacular languages and the state in Southern Rhodesia, 1890–1935’, *Journal of African History*, 42 (2001), 449–68.

³ Hamilton, ‘Devolution’, attached with Civil Secretary (CS) to all governors, 7 Apr. 1931, NRO 1CIVSEC 1/35/94. Jeater also notes the complexity of the task of ‘interpretation’; ‘Speaking like a native’, 458.

language of the ruler from the language of the ruled surely tell us something both of the language and practice of rule: for they suggest that these were not simply translations, manifesting an equivalence of meaning – but rather were new phenomena. The untranslatability of certain terms hints at the existence of a space which lies between the worlds of colonizer and colonized – to what some would call hybridization.⁴ But the evocation of Homi Bhabha may be problematic – partly because hybridization (with its implications of the genetic mixing of two clearly distinct strains) seems a curiously inappropriate term for cultural processes, but also because Bhabha's focus on mimicry and the 'mimetic or narcissistic demands of colonial power' misstates the ambitions and fears of both colonizers and colonized. The emergence of a language and practice of rule might more usefully be seen as a creolization – not in Benedict Anderson's limited definition of the emergence of a colonial culture of purely European extraction, but rather with the full linguistic implications of that term – the emergence of something new, through cultural processes, which was more than simply a blend of its constituent parts.⁵ In Condominium Sudan, *hukm* and *nas* were terms in a system of governance which lay between and beyond the moral and linguistic worlds of colonizer and colonized. *Hukm* connoted a complex bundle of judicial practices associated with 'native administration'; at its most basic, it meant the ability to punish through a government-recognized court. *Nas* referred to those without authority of any sort – the 'subjects', in the full sense in which Mahmood Mamdani uses the word.⁶

This paper concerns the *hukm* of one of the most famous 'native authorities' of the Sudan: Ali el 'Tom, the *nazir* – the government recognized paramount – of the Kababish, whose status as the *beau idéal* of British imaginings of traditional nomad Arab rule has been widely noted by academics.⁷ It explores one particularly revealing example of the exercise of his *hukm*, and in so doing recurs to a familiar theme of African history in this period – the central importance of judicial innovation in changing the nature

⁴ H. Bhabha, *The Location of Culture* (London, 1994), particularly 112–22.

⁵ B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London, 1991), 47, gives the narrow definition of 'Creole'. The sense in which the term is used in this paper accords rather more with Anderson's use of the term *inlander* and his discussion of language change in Indonesia: see 122 and 132–3.

⁶ M. Mamdani, *Citizen and Subject. Contemporary Africa and the Legacy of Late Colonialism* (Princeton, 1996). *Hukm* is derived from a root with multiple forms and implications across the Arabic-speaking world; it relates to spheres of order, control, medicine and justice. This paper will argue that in Condominium practice, pulled from Arabic not-quite-into English, this particular word had a simpler register, describing the act or power of punishing through a government-recognized court. *Nas* (ناس) is a word used more widely in Arabic to mean 'people', but in the Condominium it was used as the plural form of *zol*, a word used for ordinary rural Sudanese, whose derivation from the root زول apparently hints at loss and separation. S. Hillelson, *Sudan Arabic: English-Arabic Vocabulary* (London, 1930); H. Wehr, *A Dictionary of Modern Written Arabic* (Wiesbaden, 1961). Interestingly, a Condominium guide to polite usage clearly differentiated between *nas* – used to describe the subjects of a headman – and *ahl*, translated as 'folk', implying people of some significance: V. Griffith and A. R. Ali Taha, *Sudan Courtesy Customs* (Khartoum, 1936), 7 and 82.

⁷ M. W. Daly, 'Introduction', in C. A. E. Lea, *On Trek in Kordofan: The Diaries of a British District Officer in the Sudan*, ed. M. W. Daly (London, 1994), 7.

of the authority wielded by African subordinates of the colonial state. Across the continent the law was, as Martin Chanock has put it, 'the cutting edge of colonialism'. In British territories 'customary law' was central to the attempts to 'regularize' or 'strengthen' or 'revive' – the terminology varied, though the implication did not – the allegedly traditional powers of those on whose assistance they relied.⁸ Yet the familiarity of the theme should not obscure the diversity of historical experience: some courts produced multiple appeals to higher authority, others did not; some were flooded with 'cases', and others were not. As Richard Roberts and Kristin Mann have shown (and as Brett Shadle has recently reminded us), courts were not always arenas for the unquestioned exercise of colonial and patriarchal power.⁹ One might say, crudely, that some of these experiments in 'traditional' justice did what administrators hoped they might do – maintain order with minimal supervision, and without generating substantial resistance – and others did not. The example discussed here is of a court which usually did what administrators hoped, but on one occasion did not; this one aberration suggests how judicial innovation could work so effectively, and how it could create a novel governance – a creole governance, born of local circumstance and speaking its own, novel language, in which the bounds of propriety were uncertain.

ABBADI ALI AND HIS WIFE KHADIJA

In March 1936, Ali Salim Bilal went on a tax-collecting mission at Marakh, in the northern part of Sudan's Kordofan Province. Ali Salim's only formal position was as a member of the native administration court which operated under the authority of the recognized *nazir*, or ruler, of the Kababish tribe. But Ali Salim was the son of Salim Bilal, the president of the local subordinate court, and he was also the nephew of Salim Bilal's brother, Ali el Tom – the *nazir* of the Kababish, to whom Salim Bilal's court was subordinate, and the effective ruler of the whole vast swathe of northern Kordofan, some 50,000 square miles in all, which formed a sub-district of its own and was routinely known as Dar Kababish – the land of the Kababish.¹⁰

The use of relatives in administration was a central element of Ali el Tom's rule. He relied heavily on members of his Nurab section, and particularly the Awlad Fadlallah lineage, who monopolized membership of the main court of Dar Kababish. This clan rule was bolstered by the employment of various other agents, who were not related to Ali el Tom but were his personal clients, raised from poverty and obscurity in his service. British officials accepted, and even encouraged, the use of this retinue of family and clients for 'routine work'; one approvingly quoted a nicely ambiguous comment on the attitude of Ali el Tom's brother, Muhammad, to his constant

⁸ M. Chanock, *Law, Custom and Social Order* (Portsmouth NH, 1998 [1st edn Cambridge, 1985]), 4.

⁹ R. Roberts and K. Mann, 'Law in colonial Africa', in K. Mann and R. Roberts, *Law in Colonial Africa* (Portsmouth NH, 1991), 3–48, at 22–3, 32; B. Shadle, 'Bridewealth and female consent: marriage disputes in African courts, Gusiiland, Kenya', *Journal of African History*, 44 (2003), 241–62.

¹⁰ A useful eye-witness account of Dar Kababish is offered in P. Hogg, 'Memoir of Soderi', Sudan Archive Durham (SAD) 815/11/7–32.

employment: '*Fi shughli el hakuma, ma fi taab*' ('There's no tiredness/difficulty in doing the work of the government').¹¹

Ali Salim's visit, then, was routine. An extra-legal routine, as it happened, for he would have followed established practice in extracting from the people considerably more than the tax which was formally due, or was recorded. The handful of European administrators with intimate knowledge of Dar Kababish all knew that its people paid an additional tax, of grain from cultivators and livestock from pastoralists, which was used by Ali el Tom to build up his own wealth, to reward his followers and to bestow largesse upon the many people who sought personal assistance from him.¹² But (with one brief and soon-abandoned exception) no administrator had ever tried to prevent this – and they had suppressed the findings of zealous Sudanese subordinates who had collected information on such malpractice.¹³

But on this occasion Ali Salim went away with more than some additional tax. His eye was caught by a beautiful woman. Accounts of what happened next differed markedly. Ali Salim was to argue, later on, that he had enquired as to whether the woman was available for marriage, and had been told that she was; he had therefore hastened to pay the requested brideprice and had summoned a *feki*, a medical practitioner-cum-Islamic scholar, to witness the marriage. Khadija, the woman herself, told a different story; she insisted that she had made it very clear that she was already married, but that Ali Salim had bullied or bribed her family into saying, untruthfully, that she had been divorced by her first husband, and into accepting the bride price of £E10 and eleven cloths:

There came to me Hamid Ali and Mohamed Ahmed el Neam who is my [maternal] uncle, *khal*, and told me that Ali Salim wished to marry me. I told them that I am already the wife of Abbadi Ali, but they said this man is an influential man and we cannot refuse his request.¹⁴

It seems curious that Ali Salim's suspicions were not aroused when his bride fled, but he claimed that he was quite unaware of her protests, and of any question over her status; although, according to one account, when Khadija's mother publicly insisted that her daughter was married 'she was beaten with whips and insulted'.¹⁵ Khadija's actual husband, Abbadi Ali, was in Omdurman on business; learning of his wife's remarriage when he found Ali Salim in his home on his return, he set off at once for the camp of the Kababish *nazir* to protest. Again, accounts of what happened next

¹¹ Kordofan Province Monthly Diary, June 1938, NRO 1CIVSEC 57/8/32; 'The regularisation of the Kababish tribal administration', attached to Charles de Bunsen, Assistant District Commissioner (ADC) Soderi to Governor Kordofan, 1 Jan. 1934, NRO 1CIVSEC 1/36/97; T. Asad, *The Kababish Arabs: Power, Authority and Consent in a Nomadic Tribe* (London, 1970), 157–79; Lea, *On Trek in Kordofan*, 70, 185.

¹² 'The regularisation of the Kababish tribal administration', with de Bunsen, ADC Soderi to Governor Kordofan, 1 Jan. 1934, NRO CIVSEC 1/36/97; Hogg, 'Memoir of Soderi', SAD 815/11/7–32, 17; Lea, *On Trek in Kordofan*, 25, 28.

¹³ The exception, and the retreat from it, is recorded in R. Davies, 'Policy in Dar Kababish', 9 June 1915, SAD 627/1/1–21.

¹⁴ Statement, Khadija bti Hamid, June 1936, NRO 1CIVSEC 41/1/9; this can be compared with Ali Salim's account, expressed in de Bunsen, ADC Soderi to Governor Kordofan, 21 Nov. 1936, NRO 1CIVSEC 41/1/9.

¹⁵ Statement, Abbadi Ali (in Arabic), 29 May 1936, NRO 1CIVSEC 41/1/9.

differed considerably. Abbadi Ali claimed that he had presented family witnesses who testified that he and Khadija were still married. According to him, Ali el Tom told him he would not get his wife back, and dismissively offered him one pound in compensation; one of his statements also alleged that his brother-in-law had been 'threatened' in the court for insisting that Khadija was already married. Interestingly, this detail was omitted from his second statement, which was translated into English.¹⁶ Ali el Tom, on the other hand, claimed that he had convened a formal meeting of the Kababish court (of which there seems to have been no record) which investigated Abbadi Ali's complaint and found that there was no evidence that he was still married to Khadija.¹⁷

Abbadi Ali, enraged, left Ali el Tom's camp (in the west of Dar Kababish) and travelled back east, picking up Khadija on the way. He went on, out of Dar Kababish, to Omdurman, where he went to see the Muslim judge, the *qadi*, at the Muhammedan Law Court, or MLC. The *qadi* was in a quandary; he had no authority to deal with this case (for reasons which will be discussed below) but Abbadi's story alarmed him, and he wrote to the office of the Legal Secretary, under whose supervision the MLCs operated, asking for advice. Ali el Tom, meanwhile, had heard news of Abbadi Ali's flight. He reported to the police that Abbadi Ali had abducted Khadija, and asked that he be arrested; and he locked up various members of Khadija's family and made it known that they would not be released until Abbadi Ali and Khadija returned to Dar Kababish.¹⁸ But it was too late; the Acting Legal Secretary refused to order Abbadi Ali's forcible return to Dar Kababish.¹⁹ He also authorized the *qadi* to investigate the case, and sent enquiring letters to the Governor of Kordofan.²⁰

This immediately inflamed the chronically sensitive relationship between the Legal Secretary, as head of the judiciary, and the Civil Secretary, who was head of the Sudan Political Service (SPS), the cadre of administrators. As Martin Daly has shown, the policy of devolution had allowed the civil secretaryship to accrue power up to the mid-1930s at the expense of the legal secretaryship, and the Civil Secretary responded to what seemed in effect to be a challenge to this.²¹ He protested that the investigation represented interference; and after a few weeks the Legal Secretary returned from leave, and ordered the *qadi* to drop the case – which had anyway been frustrated because it was not possible for the *qadi* to get evidence from any party except Abbadi Ali and Khadija.²² Abbadi was ordered to return to Dar Kababish, where his appeal would be heard by the Assistant District Commissioner

¹⁶ Statements, Abbadi Ali, 29 May 1936 (in Arabic) and 3 June 1936 (translated into English), NRO 1CIVSEC 41/1/9.

¹⁷ De Bunsen, ADC Soderi to Governor Kordofan, 21 Nov. 1936, NRO 1CIVSEC 41/1/9.

¹⁸ Petition, Abbadi Ali, 1 Nov. 1936; de Bunsen, ADC Soderi to Governor Kordofan, 21 Nov. 1936, NRO 1CIVSEC 41/1/9.

¹⁹ Acting CS to Governor Kordofan, 5 Aug. 1936, 1CIVSEC 41/1/9.

²⁰ Acting Legal Secretary (LS) to Governor Kordofan, 6 June 1936, NRO 1CIVSEC 41/1/9.

²¹ M. W. Daly, *Empire on the Nile: The Anglo-Egyptian Sudan, 1898–1934* (Cambridge, 1986), 273–4, 349–50.

²² LS to CS, 29 July 1936, NRO 1CIVSEC 41/1/9.

(ADC), acting on the advice of the *qadi* from the district headquarters at Bara (there being no *qadi* in Dar Kababish).²³ Abbadi Ali duly returned, and was promptly ordered to enter a bond of £E50 not to leave Dar Kababish again. The ADC, Charles de Bunsen, then left on trek, without setting any date for hearing the appeal. De Bunsen himself later claimed that he had misunderstood his instructions, and had thought he had been ordered *not* to hear the appeal. After three months languishing, with Khadija in hiding with relatives and various members of her family still detained, Abbadi Ali broke bond and returned to Omdurman to petition the Legal Secretary.²⁴ This produced more rapid progress; de Bunsen announced that he had re-read the instructions, understood them and was now setting about hearing the appeal – while complaining bitterly that Abbadi Ali had broken bond.

The accounts of the appeal are also a little contradictory. De Bunsen described convening a council, or *meqlis*, of local notables who decided that Abbadi Ali and Khadija were married, and that Ali Salim had been the victim of duplicity by Khadija's family, who had sought to make money by marrying her off to this unsuspecting, wealthy, man. The *qadi*, according to de Bunsen, had been unable to give advice and was 'sent back to Bara at once, at his own request'.²⁵ De Bunsen's replacement, Philip Hogg, who had just arrived to take over the sub-district, wrote a retrospective account in which the decision was actually the result of investigation by a police inspector, whose findings were merely confirmed by the *meqlis*. The police inspector, however, suggested that it was Ali Salim who had bribed Khadija's family to lie, because he wished to marry her.²⁶ This opinion did not make its way into de Bunsen's official account, or into the written account of the *meqlis* decision. Both of these laid the blame entirely on Khadija's family, and recommended that not only should they refund the bridewealth – now alleged to have been £E31 and 24 sheep – but that they should also be punished for lying.²⁷ De Bunsen insisted that this punishment should be set not by himself but by the court of Ali el Tom. He wrote: '[Ali el Tom] is anxious that those who misled his relations should be punished, in his court. He says that he does not wish to give them heavy sentences, but that the tribe should see and realize that he had "hukmed" them'. De Bunsen emphasized the point, and repeated the use of the key word: 'all of them deserve to be "hukmed" for their lying and misleading Ali Salim'.²⁸

De Bunsen's desire to allow the further punishment of Khadija's family was gratified – though the provincial governor did not pursue the wistful hope, expressed in the same letter, that Abbadi Ali himself might be punished for not having followed the proper procedures for complaint. And there the story ended despite a brief flurry of interest, and an evident awareness among officials in Khartoum, including the Deputy Civil Secretary, that 'a grave miscarriage of justice has taken place'.²⁹ Abbadi Ali

²³ Acting CS to Governor Kordofan, 5 Aug. 1936, NRO 1CIVSEC 41/1/9.

²⁴ Petitions, Abbadi Ali, 1, 4 and 5 Nov. 1936, NRO 1CIVSEC 41/1/9.

²⁵ De Bunsen, ADC Dar Kababish to Governor Kordofan, 21 Nov. 1936, NRO 1CIVSEC 41/1/9.

²⁶ Hogg, 'Memoir of Soderi', SAD 815/11/7-33.

²⁷ 'Translation of meqlis decision', Nov. 1936, NRO 1CIVSEC 41/1/9.

²⁸ De Bunsen, ADC Dar Kababish to Governor Kordofan, 21 Nov. 1936, 1CIVSEC 41/1/9.

²⁹ Minute, Deputy CS, 10 Dec. 1936, NRO 1CIVSEC 41/1/9.

and Khadija were reunited – but at substantial cost to Khadija's family, and with the uncomfortable knowledge that they had earned the enmity of the rulers of Dar Kababish. Local administrators quickly set about minimizing the impact of these events – reminding their superiors, on every possible occasion, that this was the first time that any complaint had ever been made by a Kababish against the rule of Ali el Tom, and insisting that the affair had received far more attention than it deserved.³⁰

The exceptionality of the case *is* striking. There really were no other recorded complaints from Kababish, though plenty of people from neighbouring groups had complained of Ali el Tom's behaviour.³¹ But it might be argued that the case was more significant than de Bunsen and his colleagues allowed, for it offers a unique window on to the processes which made Dar Kababish such an apparently tranquil domain. Multiple questions are raised by the story of Abbadi Ali: about the willingness of administrators to condone evident injustice, and the ultimate willingness of senior officials to accept this; about Ali el Tom's apparent willingness to flout both Muslim law and Kababish custom. In essence, all these recur to the apparent uniqueness of the case: can the story of Khadija and Abbadi Ali help us to understand why no one else ever complained to the government about Ali el Tom? It is a reformulation of the question which Talal Asad addressed in his work on the Kababish, which Chanock has identified as a wider issue, and to which Thomas Spear has recently returned in his essay on the 'limits of invention': why was an exploitative and actually innovatory 'customary' rule accepted by those upon whom it was imposed?³²

There is one obvious answer. These events certainly suggest the extent to which British support for Ali el Tom made resistance to his rule both difficult and foolhardy, offering a clear example of what some have seen as the invention of despotic neo-traditional rule in colonial Africa – indeed, an unusually clear example.³³ This paper will suggest that this example enhances our understanding of that process, by illustrating the way in which it was morally and intellectually possible for this to happen, for Sudanese and British involved in the processes of rule. But it also illustrates the bounds of that process.

Asad has offered two lines of explanation for Kababish acceptance of Ali el Tom's rule. He argued that there was no 'consent' involved; it was rather that Kababish men accepted Ali el Tom's rule as legitimate, in so far as it served their principal interest, which was the maintenance of a domestic sphere, in which the male-headed household was an autonomous economic unit.³⁴ But he also laid much stress on the Kababish idea of *sulta*, the power

³⁰ De Bunsen, ADC Dar Kababish to Governor Kordofan, 21 Nov. 1936, 1CIVSEC 41/1/9; de Bunsen, handing-over notes, 1936, SAD G/S 1204 file 6.

³¹ The absence of any complaint from Dar Kababish was noted in 1915, and reaffirmed by later observers: Davies, 'Report on Dar Kababish', SAD 627/1/1-21. For complaints from non-Kababish, see Mukhabarat to Mudir, Kordofan, 21 Apr. 1907; note on 'Lahawiin tribe and Sh. Ali Tom', n.d., in NRO INTEL 2/34/87.

³² Asad, *The Kababish*, xiii-xvi; Chanock, *Law, Custom and Social Order*, ix; T. Spear, 'Neo-traditionalism and the limits of invention in British colonial Africa', *Journal of African History*, 44 (2003), 3-27.

³³ For the 'decentralized despotism' of the colonial state, see Mamdani, *Citizen and Subject*, 37-61.

³⁴ Asad, *The Kababish*, 1, 157, 230-46.

to rule; he argued that in Kababish eyes the Awlad Fadlallah were set apart by the possession of *sulta*, and that this in turn entitled them to possess it. This, of course, has echoes of arguments about the 'premise of inequality' in interlacustrine Africa, though Asad did not offer the comparison to Maquet.³⁵ There is some danger of tautology in that argument (as Asad himself noted),³⁶ and the concern in this paper is rather with the particular processes of colonial rule which created a novel kind of authority, yet made it acceptable – that is, with the creation of Kababish identity as, in Asad's memorable phrase 'an experience of structured inequality'.³⁷ This article will suggest that Khadija and Abbadi's case revealed one stage in the processes through which a novel power of 'hukm' was defined and exercised.

There are two aspects to this story. One concerns the interaction between British officials and the ambitions of Ali el Tom and his family. It was this which was to produce the formal structures which embodied the Kababish *hukm*, and which led British officials to exclude this *hukm* from their moral judgement – in effect suspending the 'repugnancy' criteria which supposedly constrained customary law.³⁸ The second concerns wider Kababish ideas about disputes and their resolution, and the location of justice, which allowed the creeping advance of *hukm* but could also define the terms in which this could be exercised.

ALI EL TOM: 'THE PARFAIT GENTIL KNIGHT'³⁹

Ali el Tom – 'AT', as he was routinely abbreviated by administrators – was by 1936 a legendary figure. Descended from a line of hereditary rulers, his father and uncle had been killed by the Mahdists in the 1880s; his uncle had the unusual distinction of having inspired a character in a G. A. Henty novel.⁴⁰ Ali el Tom was recognized as ruler of the Kababish by the British as soon as they took control of Kordofan in 1900: a recognition that was seen by the British as a restoration, just as the occupation of the Sudan was a 'reconquest'. Since that time – after a brief period of uncertainty – Ali el Tom had grown in authority and reputation, particularly among the Britons of the administrative branch of the Sudan government – the SPS. Early allegations that he abused his power were deflected by sympathetic provincial governors: 'Ali Tom is one of the best Arab sheikhs I know, keeps his people in great order and pays his tribute always to the day and very [sic] obedient to any orders I give him'.⁴¹ In 1919 he was a member of the Loyalty Delegation which travelled to congratulate King George on the British victory; he was honoured first as a Member of the Victoria Order, then with the King's Medal for African Chiefs, and then finally as a Knight of the Order of the British Empire. His abbreviation thenceforth took the more reverential form,

³⁵ *Ibid.* 241–2; R. Maquet, *The Premise of Inequality in Ruanda: A Study of Political Relations in a Central African Kingdom* (London, 1961).

³⁶ T. Asad, 'Political inequality in the Kababish tribe', in I. Cunnison and W. James (eds.), *Essays in Sudan Ethnography* (London, 1972), 126–48.

³⁷ Asad, 'Political inequality', 128.

³⁸ Roberts and Mann, 'Law in colonial Africa', 13.

³⁹ A description from Hogg, 'Memoir of Soderi', SAD 815/11/7–32.

⁴⁰ G. A. Henty, *The Dash for Khartoum: A Tale of the Nile Expedition* (London, 1892), 297–8.

⁴¹ Governor Kordofan to CS, 24 June 1903, NRO INTEL 2/34/87.

'Sir AT',⁴² and by the 1930s, young British officials struggled to straighten their ties and uniforms when he approached; older and more senior Britons treated him as a confidant, and arranged to send a private teacher to establish a 'nomad school' for his children so that they should not be spoiled by urban education.⁴³ Daly's edited version of one young administrator's journals gives ample evidence of how all these officials routinely conspired to conceal various of Ali el Tom's activities which contravened the law more or less seriously: his systematized levying of extra-legal taxes, his use of convicted prisoners as a personal labour force and his dogged resistance to government efforts to punish Kababish possession of, and traffic in, slaves.⁴⁴

That traditional rulers could wield judicial authority had been assumed from the start of British rule, and it was in Kordofan that official recognition had first been granted to such authority.⁴⁵ But from the start, officials had agreed that in the case of Ali el Tom such recognition should not be granted – because this would 'set limits to his punitive powers', in itself undesirable.⁴⁶ With the elevation of 'indirect rule' to dogma in the 1920s, Ali el Tom had become the epitome of the 'uneducated but loyal and influential nomad sheikhs' who were to be the basis of authority, and policy had focused on courts as the first area in which extensive 'decentralization' or 'devolution' (the vogue terms of the period) could be effectively pursued.⁴⁷ This led to a steady elaboration and codification of 'native administration', which began with the Powers of Nomad Sheikhs Ordinance in 1922 and culminated in the Native Courts Ordinance of 1932. The explicit intention of all this legislation was both to preserve and 'revive': 'to give the existing Tribal Custom a yet surer form of recognition', but also to extend and reform the power of 'traditional' rulers.⁴⁸ Enamoured as they were of 'tradition', British administrators were quite open about their intention to invent where necessary, and to push for a steady growth in scale. 'Traditional' units which were too small were not viable, they argued – they could not operate economically (and economy was a constant theme, with all suggestions for 'devolution' supported by complicated tables detailing the savings in costs which would result); nor could they survive in the face of wider social change. Courts must embody tradition – but they had also to assist in the remaking of tradition, and in the creation of larger 'tribes'.⁴⁹

⁴² For a potted biography, see the obituary, evidently written by Douglas Newbold, in *Kordofan Monthly Diary*, Feb. 1938, NRO 1CIVSEC 57/8/32.

⁴³ Lea, *On Trek in Kordofan*, 31; R. Davies, *The Camel's Back* (London, 1957), 188–9; 'Education of Sh. Ali el Tom's sons', 3 Feb. 1931, NRO 1CIVSEC 17/6/28.

⁴⁴ Lea, *On Trek in Kordofan*, for example 282–6.

⁴⁵ Sagar, Governor Kordofan to CS, 26 May 1920, NRO 1CIVSEC 1/9/30.

⁴⁶ Davies, 'Report on Dar Kababish', 9 June 1915, SAD 627/1/1–21.

⁴⁷ For the idealization of the nomad, see Annual Report, Intelligence Department, 1924, in Public Record Office (PRO) WO 33/999; Davies to all governors, 12 Dec. 1928, NRO 1CIVSEC 1/33/90.

⁴⁸ Acting Governor Kordofan to CS, 1 Nov. 1928, NRO 1CIVSEC 1/33/90.

⁴⁹ Governor Kordofan to CS, 13 Oct. 1927; NRO 1CIVSEC 1/33/89; Davies, 'Further steps in devolution', 20 Jan. 1930, NRO Kordofan 1/1/1. For the emphasis on economy, see Acting Governor Kordofan to CS, 4 Sept. 1928; CS to Financial Secretary, 15 Oct. 1928, NRO 1CIVSEC 1/33/90.

Yet at the same time, and in spite of their insistence that judicial authority had lain always in the hands of the 'patriarchal' head of 'tribe', British administrators suspected the courts, for they feared that they would introduce a culture of authority which might subvert 'tradition'. Strikingly, faced with the possibility that the elimination of injustice and corruption might endanger tradition, administrators were explicit in their insistence that a degree of corruption and injustice was tolerable: 'it can hardly be doubted that there will be a great deal of favouritism, bias and corruption when Native Administration has become normal routine'.⁵⁰ The feeling against 'over-formalization' was most evident in northern Kordofan. Here, local administrators repeated the argument made some years earlier, that formal recognition would compromise Ali el Tom's judicial authority, for recognition required definition, and definition implied limitation: 'to regularise with warrants and rules what is now naturally there might wreck it', opined one District Commissioner.⁵¹ Laws required the issue of warrants for courts, explicitly stating what cases might be heard in them (routinely excluding slavery and homicide cases from their jurisdiction). They laid down the permissible limits of punishment. Most worryingly of all, they came to require that all judgements be recorded in writing, and fines taken as punishment be recorded and accounted for.⁵² And so neither the 1922 ordinance, nor any of the legislation which followed it, was immediately applied to Dar Kababish.

Administrators in Kordofan found all these provisions difficult because they ran directly counter to their understanding of how Ali el Tom's authority worked. As they repeatedly argued – on occasion, quoting from Doughty's *Arabia Deserta* as authoritative evidence on the subject – Ali el Tom was the embodiment of a social order which despised regulation and functioned solely on honour.⁵³ This was the untouched world of the desert nomad, where wise and just judgements sprang from an inherited sense of right and a commitment to shared values which was maintained by the purity of nomad life. As the provincial governor who penned Ali el Tom's obituary wrote, 'AT' was 'simple in his habits, direct in speech, tireless in the saddle and expert in camels and grazing and on nomad Arab customs and rights'.⁵⁴ In some cases, administrators knew, Ali el Tom gave judgements, or inflicted punishments, which would exceed any legally acceptable definition of the bounds of his authority. If he were to become a 'table Sultan' – constrained by warrants, hemmed in by the recording and scrutiny of decisions – his freedom of action would be lost and this system of

⁵⁰ MacMichael, CS, to Governor Kordofan, 23 Mar. 1929, NRO 1CIVSEC 1/33/92.

⁵¹ 'Notes on native court for Soderi District', Hamilton, DC Bara, 7 Jan. 1929, NRO 1CIVSEC 1/33/92. 'Over-formalization' was explicitly identified as a danger in Gillan, Governor Kordofan to CS, 27 Aug. 1930, NRO 1CIVSEC 1/35/94.

⁵² Craig, for CS to all governors, 8 Nov. 1928; see draft warrants with Acting Governor Kordofan to CS, 3 Sept. 1928, NRO 1CIVSEC 1/33/90.

⁵³ C. M. Doughty, *Travels in Arabia Deserta* (2 vols.) (London, 1881); this was, as T. E. Lawrence's foreword to the 1921 reissue by Jonathan Cape explained, 'the first and indispensable work upon the Arabs of the desert'.

⁵⁴ Kordofan Province Monthly Diary, Feb. 1938, NRO 1CIVSEC 57/8/32.

unquestioned, honourable, justice would be imperilled.⁵⁵ Reginald Davies, one of Ali el Tom's most enthusiastic supporters, wrote that 'the powers actually wielded by certain sheikhs, notably the *nazir* of the Kababish tribe, were so much greater than anything which could be sanctioned under the Ordinance that there was no alternative to ignoring them'.⁵⁶

British administrators, then, were genuinely spellbound by Ali el Tom, and by their belief in the code of honour which they believed him to represent. Yet they were also convinced of the fragility of this code, and were haunted by the fear – which steadily hardened into a conviction – that it could not survive the passing of Ali el Tom himself. By the 1930s, administrators in the provincial capital at El Obeid, as well as those in northern Kordofan itself, were fretting over what the future might bring: challenges to AT from tribesmen spoiled by contact with the town; a successor to AT who commanded less respect, and had a less sure grasp of the sense of honour? And so, with a gloomy sense that nothing they might do would ever equal the simplicity and fairness of the system they were replacing, they began to introduce the formal structure of courts to the Kababish.⁵⁷

Ali el Tom had clearly expressed his distaste for formal courts; and his fear of supervision was so great that he had suspected that the teacher supplied for his children by the government might be some sort of spy.⁵⁸ But he did not resist the push to 'regularize' his rule. Indeed, towards the end of the negotiations he actually offered to bear personally any additional costs associated with the introduction of formal courts.⁵⁹ He did so for two reasons. On the one hand, he was well aware of the ways in which the colonial state had provided means for him to extend his wealth and influence, notably through the manipulation of the taxation system – he did not wish to lose his favoured position. On the other hand, there really was an issue of honour at stake. Both Ali el Tom and his subjects had become uncomfortably aware that elsewhere in Kordofan status was increasingly judged through reference to the formal structure of the courts. The details of sentencing powers, and the subordination of one court to another, were keenly observed.⁶⁰ When members of other tribes stole from, offended or injured Kababish; or when Kababish were accused of offences against others, Ali el Tom was confronted with other *nazirs* whose formally recognized powers were much greater than his own.⁶¹ This compounded the affront which had long been offered to Ali el Tom by non-Kababish who lived in and around the area which he regarded as Dar Kababish. He had no formal power over such people. In particular, he

⁵⁵ Extract from Kordofan Monthly Intelligence Report, Apr. 1930, NRO 1CIVSEC 1/35/94.

⁵⁶ Davies, 'Further steps in devolution', 20 Jan. 1930, NRO Kordofan 1/1/1.

⁵⁷ 'The regularization of the Kababish Tribal Administration', attached, de Bunsen to Governor Kordofan, 1 Jan. 1934, NRO 1CIVSEC 1/36/97.

⁵⁸ As noted by the teacher involved: Hasan Nagila, *Dhikrayati fi'l Badiyya* (Beirut, 1964), 23–33: I am much indebted to Dr Fadwa Taha, who translated the whole of this account into English.

⁵⁹ De Bunsen, ADC Soderi to Governor, 1 Jan. 1934, NRO 1CIVSEC 1/36/97.

⁶⁰ Gillan, Governor to CS, 25 July 1929, NRO 1CIVSEC 1/34/93; Newbold, Governor to DC Western Kordofan, 23 July 1933, and Acting Governor to CS, 5 Oct. 1933, NRO 1CIVSEC 1/36/96.

⁶¹ 'Report of a meeting with Sh. Sir Ali el Tom', n.d., 1932, NRO 1CIVSEC 1/35/95.

was concerned by the Kawahla, who had until the Mahdiyya been considered a section of the Kababish but had in those turbulent years established a separate identity and authority, which had been maintained by a series of stubborn Kawahla *nazirs* since the Reconquest. AT had, generally speaking, run rings around the Kawahla *nazirs*, consistently outdoing them in securing the favour of British administrators.⁶² Yet the Kawahla as a group remained independent, to Ali el Tom's annoyance.⁶³

In prolonged negotiations, pursued over some three years between 1931 and 1934, Ali el Tom adroitly turned British concerns to his advantage, securing an arrangement which brought him formally into the structures of indirect rule in return for some extraordinary concessions.⁶⁴ He was to become, like other *nazirs*, a salaried official – but on a salary, £E1,450, which substantially exceeded that paid to any other *nazir*. He had the right to appoint a series of other salaried deputies, or *wakils*, as well as retainers, and he would sit as the president of a Kababish court which would have three subordinate courts; and it was in effect promised to him that in the near future the Kawahla court would be added to these subordinate courts – a promise that was made good within a year, with British administrators also making clear that they intended to bring other minor groups under his court in the near future: 'in the course of time, Dar el Kababish should comprise only one unit, under Sir AT'.⁶⁵ The Kababish *nazir* was given the largest powers of sentencing possible. And, discreetly, administrators – evidently acting with the approval of their superiors – indicated that they would not expect of his court the kind of detailed record-keeping which was required of others.

Sh. Ali asked whether, under the proposed Native Administration, he would have to write down and treat as 'cases' all the various small offences which he at present deals with merely by imposing some 'slavish' task on the guilty party, such as drawing water or hewing wood. Mr Lea replied that the Government wanted nothing better than to leave the Kababish to be dealt with according to their customary justice so long as crime was kept down and the tribe remained contented.⁶⁶

Thus was created Ali el Tom's *hukm*, a power to judge which was not 'traditional' – but was also not subject to the rule of the law. This was 'regularization' without regularity.

The practice of these courts, and their physical nature, were to follow a pattern already suggested for other Arab nomad courts in Kordofan. This

⁶² Sarsfield-Hall, 'Diary of trip in Northern Kordofan, 1923', SAD 680/8/1-15, compare entries for 27 Feb. and 2 Mar.

⁶³ Intelligence Department, *Kordofan and the Region to the West of the White Nile* (London, 1912), 30, 42; H. MacMichael, *The Tribes of Northern and Central Kordofan* (Cambridge, 1912), 201; Sarsfield-Hall to MacMichael, 13 Jan. 1927, NRO CIVSEC 41/1/7; Lea, *On Trek in Kordofan*, 124-5.

⁶⁴ For the negotiations, see for example Lea, *On Trek in Kordofan*, 275-7.

⁶⁵ Sudan Monthly Record, nos. 74 and 75, Feb.-Mar. and Mar.-Apr. 1935 (in Durham University Library); De Bunsen, handing-over notes, 1936, SAD G//S1204 file 6.

⁶⁶ 'The regularisation of the Kababish Tribal Administration', attached to de Bunsen to governor, 1 Jan. 1934, NRO 1CIVSEC 1/36/97. This possibility had already been raised by higher officials: Gillan, Governor Kordofan to CS, 18 Apr. 1930, NRO Kordofan 1/1/1.

was intended to avoid the 'imitation of a Government office'; spurning tables and chairs and officious men in uniform, and embodying a culture of collective decision-taking; some administrators had tried their best to discourage use of the term *mehakim* for these 'courts', and to insist – in correspondence, and in articles for *Sudan Notes and Records*, the compendium of official 'knowledge' about the governed – that they should be called *meqlis*.⁶⁷ In practice, in Dar Kababish at least, this ideal of the collective wisdom of elders yielded to a reality in which the court president exercised an individual power to punish and judge. The teacher who travelled with Ali el Tom had described Ali el Tom's settling of cases before the 'regularization' – AT sat alone on a rope bed, the focus of activity, while all others sat on the ground before him.⁶⁸ There seems to have been no immediate change to this practice after 1934, and administrators were repeatedly to stress how Ali el Tom himself bore personally a vast burden of judicial work: 'Sir Ali el Tom had an almost continuous 30 hours session of settling unimportant disputes at Um Badr'.⁶⁹ But in material appearance, and rhetoric, the native administration courts were intended to stand in clear contrast to another kind of court recognized by the Condominium, which was regarded by the administrators of Kordofan as the embodiment of all the most baleful aspects of formal bureaucracy – the MLC.

Accepted, and even encouraged, by British administrators in the first two decades of the Condominium (when they saw formally trained Muslim scholars as the essential antidote to populist holy men on the model of the Mahdi), the MLCs had fallen into severe disfavour with the formalization of indirect rule in the 1920s.⁷⁰ As the SPS set about the creation of a local administration rooted in the power of 'traditional' justice, the existence of an alternative legal system became extremely problematic, even though the operations of the MLC were largely confined to 'matters of personal status'. Would the power of *shaykhs* and *nazirs* not be undermined if their subjects could turn from their courts and seek instead the judgement of the MLC in disputes over marriage and inheritance?⁷¹ That the judges of the MLCs were often graduates of the *qadi* school at Gordon College only served to intensify this concern: they were representatives of the formally educated *effendiyya* class whose loyalty had been shown to be suspect in the turbulent years of the Egyptian revolution and the White Flag revolt; 'young and half-educated lawyers' of the kind whom many British administrators despised.⁷²

The SPS, supported by the office of the Civil Secretary, fought a determined campaign to oust the MLCs, at least from rural areas, and preferably

⁶⁷ Report, Hamilton, attached to Gillan, Governor to all DCs, 5 Nov. 1930, and Hamilton, 'Native administration courts', May 1931, NRO 1CIVSEC 1/35/94; J. Reid and J. Maclaren, 'Arab court procedure and customary law', *Sudan Notes and Records*, 19 (1936), 158–61.

⁶⁸ Nagila, *Dhikrayati*, 23–33.

⁶⁹ Kordofan Province Monthly Diary, June 1937, NRO 1CVSEC 57/5/21.

⁷⁰ G. Warburg, *Islam, Sectarianism and Politics in Sudan since the Mahdiyya* (London, 2003), 64–8.

⁷¹ Acting Governor Kordofan to CS, 12 May 1930, NRO 1CIVSEC 1/35/94.

⁷² The 'young and half-educated' jibe comes from Governor Kordofan to CS, 26 May 1920, NRO 1CIVSEC 1/9/30.

from small towns too.⁷³ *Qadis* were accused of making tours through rural areas to 'tout for business', in competition with traditional rulers' courts; and they were accused too of using the Muslim recorders, or *maazuns*, as agents to extend their influence. Most revealingly, it was said that MLCs had an advantage over native administration courts because they possessed 'Government prestige and atmosphere'.⁷⁴ The chief *qadi*, and the office of the Legal Secretary, resisted this administrative campaign; the chief *qadi* based his argument on the simple principle that Muslims should, if they wish, have the right to have marriage and inheritance cases heard according to *sharia* law; the Legal Secretary argued that abolishing the MLCs would offend the *effendiyya* too greatly to be worth trying.⁷⁵ The SPS nonetheless succeeded in restricting the physical movement of the *qadis*, specifically excluding Dar Kababish from their operations. They were also successful in incorporating in many court warrants a general proviso that the courts of *nazirs* and *shaykhs* could hear cases which were subject to *sharia* law as long as they convened a panel which contained a member 'learned in sharia', and as long as the parties to the case consented – which, in practice, came to mean as long as they did not make very clear and obvious objection.⁷⁶ Once they had 'consented', the case could never go before an MLC – the appeal from *shaykhs* and *nazirs* courts were to the District Commissioner, not to the *qadi*, whatever the nature of the case.

The Kababish courts created in 1934 contained such provisos in their warrants, and it was clear that administrators understood them to be the antithesis of the MLCs, and intended that there should be no overlap or contact of any kind between the systems.⁷⁷ That was why Abbadi Ali's attempt to secure the help of the *qadi* at Omdurman was ultimately unsuccessful – he had no jurisdiction in this case. And it was also why de Bunsen seems to have been so reluctant to hear the appeal with the *qadi* from Bara present, even though he had been instructed to seek his advice. To involve the *qadi* in this way would have been to accept the possibility that another system of justice might challenge that of Ali el Tom. Hence the rapid dismissal of the *qadi* and the summoning of the *meqlis* (whose four members, incidentally, included Ali el Tom's son and Ali bin Salim's father).⁷⁸ De Bunsen and his immediate superiors harked back repeatedly to their argument that Abbadi Ali himself had caused much of the problem by not

⁷³ Gillan, Governor Kordofan to LS, via CS, 24 Feb. 1929, NRO 1CIVSEC 1/33/92; Davies, 'Further steps in devolution', 20 Jan. 1930, and Kordofan response to questionnaire on devolution, n.d. 1931, NRO Kordofan 1/1/1.

⁷⁴ Mayall, DC En Nahud to Governor Kordofan, 21 Dec. 1928, NRO 1CIVSEC 1/33/92; Gillan, Governor Kordofan to CS, 10 Apr. 1930, NRO 1CIVSEC 1/34/93.

⁷⁵ LS to CS, 30 Apr. 1930; 'Note by Grand Kadi', 17 May 1931 NRO 1CIVSEC 1/35/94; minutes of meeting at the Palace, 10 Nov. 1929; CS to all governors, 17 Nov. 1929, NRO 1CIVSEC 1/34/93.

⁷⁶ See for example Rules, with Gillan, Governor Kordofan to CS, 29 June 1929, NRO 1CIVSEC 1/34/93. For Dar Kababish, see 'Minutes of a meeting of certain governors at Khartoum', 2–5 Dec. 1930, NRO Kordofan 1/1/1.

⁷⁷ Specimen warrant in NRO CIVSEC 1/36/97; note by Hamilton, DC Bara, 7 Feb. 1934, NRO 1CIVSEC 1/36/97.

⁷⁸ 'Translation of meqlis decision', 13 Nov. 1936, NRO 1CIVSEC 41/1/9. De Bunsen omitted Salim Bilal's name from the membership of the *meqlis* in his report to the Governor.

following the proper procedures for appeal, and by going to the MLC.⁷⁹ The final act of the story, with Khadija's family being handed over to AT's court to be 'hukmed' for having resisted bullying by AT's relatives, was an absolute assertion of administrators' beliefs about the nature and location of *hukm*. Ali el Tom possessed the power to *hukm*; his people were absolutely subject to that power, and his power to *hukm* was to be supported, rather than qualified, by the police inspector, the DC and the government as a whole. As de Bunsen cheerfully observed, in notes written just after the Abbadi Ali case:

Sir AT's own main court should be left without undue interference except in improving the entering of cases and the paying-in of fines (as long as justice is dispensed the first is not an intrinsically important matter ...).⁸⁰

JUSTICE, HONOUR AND IDENTITY IN NORTHERN KORDOFAN

From the early years of the Condominium, British administrators had asserted the 'traditional' basis of the judicial system operated by their chosen agents. But as Asad's work has shown, the process which administrators had seen as one of 'regularization', and even of reduction of his powers, might be better understood as the creation, consolidation and expansion of a judicial identity for the Kababish which had never previously existed.⁸¹

No evidence has ever really been offered to show that there was any kind of central dispensation of justice for the Kababish in the nineteenth century. Despite the orotund certainty of the assertion (embedded in the 1922 Powers of Nomad Sheikhs Ordinance) that Arab nomad sheikhs had wielded judicial power 'since time immemorial', at least some colonial administrators were actually well aware that Kababish identity was a relatively recent construct, and that individuals and whole sections (or 'clans', as some would call them) moved in and out of this identity. Harold MacMichael, who produced some of the most fulsome prose on the subject of the enduring patriarchy of nomad Arabism, also went to some lengths to insist that the Kababish were a 'highly complex conglomeration of component parts'.⁸² As Daly drily notes, some of the enthusiasts of native administration who cited MacMichael's work either 'had not read it or hoped that their readers had not'.⁸³

The very limited sources for the nineteenth and early twentieth centuries all suggest, in fact, that the system of justice and the resolution of disputes in northern Kordofan were both layered and decentralized.⁸⁴ Under

⁷⁹ Newbold, Governor Kordofan to CS, 16 Nov. 1936, NRO 1CIVSEC 41/1/9.

⁸⁰ De Bunsen, handing-over notes, 1936, SAD G//S1204 file 6.

⁸¹ Asad, *The Kababish*, 157–79.

⁸² MacMichael, *The Tribes of Northern and Central Kordofan*, 172–99. MacMichael devoted an entire article to demonstrating the complexity of Kababish origins: 'The Kababish: some remarks on the ethnology of a Sudan Arab tribe', *Journal of the Anthropological Institute*, 40 (1910), 215–31.

⁸³ M. Daly, 'Great white chief: H. A. MacMichael and the tribes of Kordofan', in E. Stiansen and M. Kevane (eds.), *Kordofan Invaded! Peripheral Incorporation and Social Transformation in Islamic Africa* (Leiden, 1998), 99–119, at 106.

⁸⁴ Asad, 'Political inequality', 128.

Turco-Egyptian rule, several of Ali el-Tom's family had been recognized as *shaykh al-mashaykh* of 'the Kababish' – an entirely novel position and title, as Bjorkelo points out – but this recognition seems to have involved principally the responsibility to negotiate with the representative of the government based at Bara, who collected tax and organized contracts for the transport of gum arabic on Kababish-owned camels. It was the relationship that gave the *shaykh al-mashaykh* his power: 'The great chief alone oppresses them, but this he is enabled to do from his influence with the Turks'.⁸⁵ There is no evidence that the crucial areas of potential dispute – over access to grazing and water, over the location and return of strayed or stolen livestock, over marriage or inheritance disputes, over the control of slaves – were dealt with by the *shaykh al-mashaykh*, or involved any reference to the idea of Kababish identity. In 1911, the Seligmans found that it was heads of sections who played the crucial role in most dispute settlements – not the *nazirs*, and this presumably had also been true in the nineteenth century. This was a society for which the idea of a collective identity served principally as a means to regulate relations with the happily distant Turks, or occasionally to organize resistance to grand acts of hostility by other 'tribes', notably the Beni Jerar.⁸⁶

The role of Islam in settling disputes in the nineteenth century is even more uncertain. The *feki*, with a limited degree of Islamic knowledge and some mastery of writing and geomancy, was not a common feature of Kababish society, but by the early twentieth century some of these individuals were involved in the magical detection of thieves; there were however no mosques and no resident learned scholarly community. There were certain people and places in the region possessed of a degree of significance, which could be used to administer oaths to help settle disputes: a shrine at Bara and a pilgrimage site on the Nile. By 1918 *fekis* had become more common; Ali el Tom himself had developed a particular relationship with a lineage of *fekis* belonging to the Tijaniyya order, but it is not clear how recent this development was.⁸⁷

The creation, from this unpromising start, of a *hukm* which covered a defined area evidently owed much to British enthusiasm for the Kababish, and Ali el Tom in particular. This gave Ali el Tom a new control over resources, backed by the known, if erratic, ability of the British to use their police to enforce decisions relating to water and grazing access – an ability demonstrated most dramatically in the forcible expulsion of the Hawawir from Dar Kababish in 1913–14, and shown again in 1926 when the Gumuiya were forced to acknowledge Ali el Tom's rights over the grazing land which

⁸⁵ M. Parkyns, 'The Kubbabish Arabs between Dongola and Kordofan', *Journal of the Royal Geographical Society*, 20 (1851), 254–75, at 264; J. Petherick, *Egypt, the Soudan and Central Africa* (Edinburgh, 1861), 284; I. Pallme, *Travels in Kordofan* (London, 1844), 135–8; A. Bjorkelo, *Prelude to the Mahdiyya: Peasants and Traders in the Shendi Region, 1821–85* (Cambridge, 1989), 46.

⁸⁶ C. Seligman and B. Seligman, 'The Kababish: a Sudan Arab tribe', *Harvard African Studies*, 2 (1918), 105–86; Parkyns, 'The Kubbabish Arabs', 259.

⁸⁷ These rather bare details of religious life are all drawn from Seligman and Seligman, 'The Kababish', 105–86; see also Appendix A, SIR 189, Apr. 1910, PRO WO 106/234; Report from sub-Mamur Khalafalla Effendi Khalid, with Inspector Dar Kababish to Governor, 24 Mar. 1918, NRO INTEL 2/46/393.

they used. Those Hawawir or Gumuiya who accepted Ali el Tom's authority were allowed access to the resources of Dar Kababish – others were excluded.⁸⁸ The tone of negotiations in 1927 between Ali el Tom and the *nazir* of the Kawahla suggested that Ali el Tom's *hukm* was steadily extending over all the nomads who occupied the area – now defined by boundaries on the map – known as Dar Kababish.⁸⁹ Just as *hukm* became expressive of the expected relationship between *nazir* and subject, *dar* – again, a word long in use, but acquiring new significance – came to assert a unique claim to the resources of a territory, associated with the power of *hukm*. In 1915, the brief experiment of collecting tax directly, instead of through Ali el Tom, was immediately abandoned when it seemed that this might call into question Ali el Tom's position as the sole intermediary between Kababish and government: at least some officials were apparently aware of the extent to which both the Kababish and their leader were innovations, based on this intermediacy.⁹⁰ Douglas Newbold (who himself enjoyed a substantial change in circumstance, rising from Assistant District Commissioner Dar Kababish to Civil Secretary in the course of 16 years) remarked posthumously of his old friend AT that 'He made the tribe. He was the tribe'.⁹¹ Ali el Tom acquired an immediate following of clients whom he supported; more widely those who accepted his power to judge enjoyed access to the resources he controlled, and to his support in disputes with others.⁹² Those household or section heads who defied or evaded this authority would lose his support – and could also find the tax lists changed to punish them and encourage the defection of their followers to Ali el Tom's own, ever-growing, section.⁹³ The layered world of justice and dispute resolution was steadily flattened into the singular process of *hukm*: as de Bunsen had observed in 1934, 'The "Government" is entirely in the hands of Sir Ali himself'.⁹⁴ Davies had commented in 1915 on the way that Ali el Tom's authority combined fear with reward: 'The Nazir inspires a very real fear in all his people, but at the same time it is always with obvious pride that a Kabbashi [the singular] announces himself as belonging to "Sheikh Ali"'.⁹⁵

⁸⁸ Governor Kordofan to Assistant Director of Intelligence, 17 Feb. 1914, NRO INTEL 2/46/393; Governor Kordofan to Assistant Director of Intelligence, 3 Apr. 1914, and sub-mamur Kababish to Inspector, 19 May 1914, NRO INTEL 2/35/294; Governor Kordofan to Governor Khartoum, 10 July 1926, and Acting CS to Governor Khartoum, 4 Feb. 1926, NRO 1 CIVSEC 66/4/30.

⁸⁹ The Kawahla *nazir* was particularly anxious to secure Ali el Tom's assurance that he would cease to *hukm* Kawahla; the assurance was given, but probably not fulfilled: see the *Shurut* (binding agreement) attached with ADC Soderi, 4 July 1927, NRO 1 CIVSEC 41/1/7.

⁹⁰ Davies, 'Report on Dar Kababish', 9 June 1915, SAD 627/1/1-21 (especially the section on 'Future policy' with marginalia by Wingate).

⁹¹ Notes of talk with Douglas Newbold, Margery Perham, 1938: Rhodes House, MSS Perham 131, f. 122.

⁹² Seligman and Seligman, 'The Kababish', 115, describes the growing body of clients who settled around Ali el Tom; see also Lea, *On Trek in Kordofan*, 31-2, 65; petition from Gummoeia, n.d. 1926, NRO 1 CIVSEC 66/4/30.

⁹³ Asad, *The Kababish*, 171-7; Lea, *On Trek in Kordofan*, 80, 119.

⁹⁴ 'The regularisation of the Kababish administration', de Bunsen, ADC Dar Kababish to Governor, 1 Jan. 1934, NRO 1 CIVSEC 1/36/97.

⁹⁵ Davies, 'Report on Dar Kababish', SAD 627/1/1-21.

In 1931, there were still section heads who tried to maintain their right to settle cases, and who were punished by Ali el Tom (and threatened by British administrators) for doing so.⁹⁶ But the move away from this was inexorable. There is very little evidence of the kind of cases which came to the *nazir*, or of the identity of the plaintiffs – such was Ali el Tom's success in deflecting scrutiny. A set of scribbled notes from Margery Perham suggest that 'Arab courts' in northern Kordofan dealt very largely in theft cases, with violence and adultery as substantial minor themes, but it is not clear how she derived these statistics.⁹⁷ Anecdotal comments on the sheer volume of business conducted by Ali el Tom's court suggest that Chanock's argument – that such courts dealt largely with cases of disobedience to authority, while domestic disputes were settled in other ways – does not apply in this case.

This was a period of new strains and challenges in nomad society in northern Kordofan. There was no significant growth in wage employment or labour migrancy, but there were economic changes. The provision of transport camels, a principal source of income in the nineteenth century, saw one last glorious boom in the years up to 1915 (delivering particular wealth to Ali el Tom, who acted as intermediary in supplying camels to government and took most or all of the proceeds). But the completion of the railway to El Obeid in 1912 undermined this business, and from the 1920s it was the sale of camels, for meat or other use, and the sale of sheep, which provided the bulk of the cash which came into nomad society for paying tax and buying cloth, sugar and other luxuries.⁹⁸ Kababish men devoted considerable energy to building up flocks and herds for this trade – as well as for the sheer pleasure of owning camels. They were able to build ever larger herds because Ali el Tom secured them not only preferential access – indeed, a near monopoly – of most of northern Kordofan, but also access to the grazing which sprang up to the west and north after the rains.⁹⁹

The increasing range of movement which this involved raised new challenges. The household, the stock-owning unit, was only occasionally physically united, and its members were routinely hundreds of miles apart for long periods. The perennial problems over labour, fidelity and resource use within households were magnified by this. So too were the equally perennial conflicts between households, over strayed livestock and accusations of theft. These new challenges coincided with the growth of Ali el Tom's power of patronage; that many sought to meet these challenges by affirming their status as 'Sheikh Ali's people' and accepting his *hukm* seems unsurprising. It is possible that most of those who sought this *hukm* were household heads. With the exception of slave cases – mentioned below – the few details which are recorded suggest that it was men who brought cases, and it is presumably significant that it was Abbadi Ali, not Khadija or her mother, who complained to the *nazir*.

⁹⁶ Lea, *On Trek in Kordofan*, 83–7; Asad, *The Kababish*, 130.

⁹⁷ Notes, by Margery Perham: Rhodes House, MSS Perham 131, f. 39.

⁹⁸ For the nineteenth-century transport work, see MacMichael, *The Tribes of Northern and Central Kordofan*, 189; for Ali el Tom's role in this up to 1915, Davies, 'Policy in Dar Kababish', SAD 627/1/1–21; for the camel and sheep trade see notes by Margery Perham: Rhodes House, MSS Perham 131, f. 123. ⁹⁹ Nagila, *Dhikrayati*, 160–7.

But why, in these circumstances, had no dissatisfied women or men preceded Abbadi Ali in seeking alternative judgement, from the government or from the *qadi*? Davies himself had recorded the vivid language of a complainant elsewhere in Kordofan who sought to appeal to a British official: 'The turban will not ease me! The tarbush will not ease me! I want the helmet!'.¹⁰⁰ The Kababish reluctance to seek the assistance of 'the helmet' was not a result of ignorance: however officials might romanticize the isolation of the nomads, there was actually constant movement from northern Kordofan to the towns, for the livestock trade required this. And many men of Ali el Tom's generation, including the *nazir* himself, had actually been brought up in or around Omdurman, under Mahdist rule, were literate and must have been entirely familiar with the existence of *sharia* courts.¹⁰¹ So why did they spurn *tarbush* and helmet, and accept Ali el Tom's rulings?

For all Kababish, men and women, Ali el Tom's *hukm* had one profound advantage. British officials' idea of 'honour' as a sort of birthright of pure Arabs may have been grossly essentializing, and the implication that a shared sense of honour would lead to the consensual resolution of all disputes is clearly unsound. Honour could drive conflict along, rather than resolving it. But for the people of northern Kordofan, their incessant struggles with one another to control resources – water, grazing and labour – were routinely perceived as matters of honour. Disputes between men over access to wells, or over grazing rights, or strayed animals; disputes between men over women; disputes between men and women over sex and children, or over household resources and residence – all were matters of honour, for women, as well as men. It was honourable to assert rights – a woman's right to be clothed, or not to have to move endlessly with the animals; a man's right to water his stock; a husband's exclusive rights over his wife's sexuality. A sense of honour impugned, or humiliation suffered, could and very often did lead to violence. When attempts were made to regulate the judicial powers of other nomad *nazirs* before 1922, a carefully graded list of physical retaliations were the most clearly defined 'offences': *shetima* ('abuse'), *kaff* ('striking with hand'), *sowt* ('striking with whip'), *asaia* ('striking with whip'), *ta'an* ('injury with knife') and others.¹⁰² These gradations revealed a culture of resource conflict, with constant challenges to honour and physical responses – which might be carefully gauged but might also spin out of control. There was a profound reluctance to accept the involvement either of *sharia* law or of an intrusive state, which would treat as murder the killing of a man found in another man's tent, and would regard the vigorous assertion of a claim to water as a criminal assault. This alien law presented those who felt that their honour had been challenged with an unpalatable choice: to act according to the dictates of honour, and face the consequences; or to obey the law and act dishonourably.

In contrast, Ali el Tom's *hukm* offered clear advantages. It might in itself be innovatory, and it might be exercised in ways which consistently favoured the Awlad Fadlallah and other Nurab, and extracted additional fees and costs

¹⁰⁰ Davies, *The Camel's Back*, 86.

¹⁰¹ As Ali el Tom's teacher noted, with some wonder: Nagila, *Dhikrayati*, 29.

¹⁰² Specimen powers, with Governor Kordofan to CS, 26 May 1920, NRO 1CIVSEC 1/9/30.

from ordinary Kababish. But it avoided any involvement by the government, the *hakumat*; and it seems clear that officials were right when they noted that most Kababish perceived the government law as absolutely alien and hostile, and shared Ali el Tom's contempt for 'the Sudan Penal Code, and its failure to coincide at most points with Arab law and custom'.¹⁰³ It was this which made it easier for Ali el Tom to discourage those who wished to complain directly to the ADC – a task to which he occasionally applied himself with some determination, as Lea noted after watching him 'weed' a group of would-be plaintiffs: 'Ali el Tom does not allow unimportant matters to go to the DC, but sifts the complainants'.¹⁰⁴ This desire to exclude the government, to keep some aspects of life away from the *hakumat*, is suggested by the almost complete absence in written sources – notably Lea's comprehensive trek diaries – of any mention of domestic disputes. Occasional cases did come from Ali el Tom's *hukm* to the ADC: murders, which were in theory beyond Ali el Tom's powers (though in practice he was allowed to deal with those occurring within the tribe), and major thefts or affrays.¹⁰⁵ But the only domestic cases which seem to have reached the ADC concerned slaves – and these were handled in a way which confirmed the utility, for Kababish men, of accepting Ali el Tom's creole authority.

Slavery was not recognized in the Condominium, and dealing in slaves was illegal. But many Kababish owned slaves, and relied on them particularly for drawing water and for cultivation. The British policy was rigorously to suppress slave-trading and to give any existing slave who demanded freedom a document stating that they were free.¹⁰⁶ But Kababish continued to obtain a trickle of slaves, by purchase and kidnap, and Ali el Tom was resolutely uncooperative in the suppression of this practice (unsurprisingly, since members of his family – including Ali Salim's father – were allegedly among those involved). Those who accepted his *hukm* thereby gained also a degree of protection.¹⁰⁷ In Dar Kababish British officials routinely dissuaded slaves from seeking freedom papers, by pointing out to those who applied that they would be without any means of subsistence, and by threatening to deport them from the district.¹⁰⁸ Ali el Tom could not hear slave cases – his warrant forbade this. But he or one of his family was almost always around when slaves sought freedom papers, or complained of ill-treatment, dispossession or denial of rights; slaves were routinely flogged off by the ADC and denied any proper hearing. In none of the cases which Lea mentioned in his journal did slave complainants receive any redress.¹⁰⁹ Again, the implication was clear – Ali el Tom's *hukm* might be novel and intrusive, but it offered protection from an even more alien and intrusive system. For free Kababish, it

¹⁰³ Lea, *On Trek in Kordofan*, 233; Reid, Inspector Dar Kababish to Governor, 24 Mar. 1918, NRO INTEL 2/46/393; Asad noted that the view of 'the government' as alien was still very clear in the 1960s: 'Political inequality', 143.

¹⁰⁴ Lea, *On Trek in Kordofan*, 251.

¹⁰⁵ *Ibid.* 38, 80, 230.

¹⁰⁶ Lea, 'Explanatory note', 15, in Lea, *On Trek in Kordofan*.

¹⁰⁷ Inspector Bara to Governor, 6 Dec. 1913, INTEL 2/46/393; ? to Assistant Director of Intelligence, 25 Mar. 1914, NRO INTEL 2/35/294; Lea, *On Trek in Kordofan*, 231; extract from July 1934 Monthly, in NRO 1CIVSEC 60/7/24. For the allegations against Salim Bilal, see Kordofan Province Monthly Diary, Oct. 1937, NRO 1CIVSEC 57/52/21.

¹⁰⁸ Lea, *On Trek in Kordofan*, 33, 35, 117.

¹⁰⁹ *Ibid.* 43, 241; also Hogg, 'Memoir of Soderi', 20, SAD 815/11/7-32.

was compatible with the basic principles of accumulation and domestic authority which Asad has emphasized as their key concerns.

But in the case of Abbadi Ali, Ali el Tom revealed his judgement to be a little too far from Kababish ideas of propriety; the basic principles of household accumulation, and of men's and women's honour, had been challenged by Ali Salim, and Ali el Tom had refused to act in their defence. At precisely this point Ali el Tom's *hukm* showed how innovative it could be, and forfeited, for a time, the acquiescence which had allowed its steady spread. Faced with this kind of innovation Abbadi Ali was willing to turn instead to the unfamiliar world of the MLC, even though many nomad Arabs allegedly shared the British suspicion of these alien courts. And he was willing to go further, and petition the *hakumat* itself, when this became necessary: he was not simply a disgruntled troublemaker, as de Bunsen implied, but neither was his action the tip of an iceberg of suppressed discontent. Rather, it represented a moment in the prolonged argument over the nature and bounds of the power of *hukm*: with Abbadi Ali turning to an alternative which had been made less terrifying, and perhaps less alien, by the encounter with the 'regularized' court of Ali el Tom.

CONCLUSION

The Abbadi Ali affair was soon forgotten. Ali el Tom continued to use the courts to spread his authority, as administrators approvingly noted: 'A new branch of the Kababish court was opened at Safia, with the object of increasing Sh. Ali el Tom's authority in this area'. Ali el Tom himself bore the initial costs of establishing this court, so keen had he become on these institutions.¹¹⁰ The erasure of Abbadi Ali's story (and it was perceived as this, not as Khadija's story) was so complete that when Ali el Tom died, in February 1938, British eulogists recurred, without exception, to the theme of the *nazir* as the epitome of all that was best about traditional authority, a man against whom no complaint had ever been heard: 'in 37 years never a petition'.¹¹¹ Abbadi Ali had succeeded in establishing that Ali el Tom's *hukm* must respect the claims of matrimony; but not in calling the *nazir*'s authority into question, or in encouraging any reform in the practice of his courts.¹¹²

Historical analysis of the development of a culture of governance in Condominium Sudan has tended to concentrate on a perceived long-term conflict between the urban, bureaucratic culture of the *effendiyya* on the one hand and the neo-traditional world of the *nazirs* on the other. But the story of Khadija and Abbadi Ali suggests that this impression of polarity may mislead, for in Dar Kababish – just as Olufemi Vaughan has recently argued of roughly contemporaneous processes in Nigeria – colonial subjects were finding themselves increasingly subject to a new kind of authority which rolled multiple forms of power over resources together and delivered them

¹¹⁰ Kordofan Province Monthly Diary, Jan. 1938; and Governor Kordofan to CS, 2 Oct. 1938, NRO 1CIVSEC 1/38/100.

¹¹¹ 'Notes on talk with Douglas Newbold', Margery Perham, 1938: Rhodes House MSS Perham 131 f. 122.

¹¹² Asad commented on the continuing dominance of the courts by a small clique: *The Kababish*, 68.

into the hands of men whose position relied on the state.¹¹³ The power of these men was located in institutions and practices which served their ambitions, and provided Kababish house heads with a degree of continuity and familiarity in resource control, so that Ali el Tom, like the chiefs described by Vaughan, could project himself as 'a custodian of cherished local values amidst rapid social change'.¹¹⁴ But this custodianship drew the Kababish ever further into acceptance of a new kind of governance defined by words extracted from Arabic, yet not quite translated into English, which hung uncertainly between languages and worlds. Both subjects and rulers might see in this governance patterns of morality and behaviour which were familiar; yet its morality was actually uncertain. The institutions and practices of this governance were not part of the written system of the Sudan government, nor part of the world of *sharia* law; nor did they fit into the moral economy of pastoral nomadism. This governance was not the product of 'colonial mimesis' – indeed, it was often driven by precisely contrary forces, as both colonizer and colonized struggled to maintain distance. Rather, Kababish acceptance of the intrusive and sometimes extractive operations of Ali el Tom's authority rested on its partial compatibility with an established moral economy of hierarchy and accumulation. Yet this familiarity could be illusory. On occasion, this creole governance could reveal itself as profoundly innovative, alien and unfamiliar. Khadija's story (as we may call it) suggests how, in practice, the 'limits of invention' were constantly being tested.

¹¹³ O. Vaughan, 'Chieftaincy politics and communal identity in western Nigeria, 1893–1951', *Journal of African History*, 44 (2003), 283–302.

¹¹⁴ Vaughan, 'Chieftaincy politics', 302.