Between Code and Custom: Middlemen as Agents of Legal Transformation in Early Anglo-Egyptian Colonial Sudan[1]

Melike Batgiray Abbot
Max Planck Institute for Legal History and Legal Theory
Oxford Centre for Islamic Studies

Abstract

Departing from narratives that simplify colonial law as a top-down imposition, this work reveals how middle-ranking British officials were pivotal in shaping a hybrid and strategically manipulative legal system within Sudan's Anglo-Egyptian Condominium. Focusing on inspectors lacking formal legal training, the analysis highlights their crucial role in exercising wide legal discretion to selectively blend elements of British Penal Codes, customary law, and a distorted interpretation of Islamic law. This pragmatic approach, driven by the interests of colonial control, allowed for the selective application of certain Islamic legal principles, even within British criminal courts, by subsuming them under the vague term "Mohammedan Law." The case of Sir Harold MacMichael offers insights into this broader trajectory, illustrating how these middlemen, themselves shaped by the colonial system, wielded

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agency to transform legal frameworks. Ultimately, this article demonstrates how colonial legal systems were dynamic and contested sites where hybridity was a tool of control, shaped by the selective use of Islamic elements, extensive legal discretion, and a pragmatic focus on maintaining power.

Keywords: Colonial law, Anglo-Egyptian Sudan, "Mohammedan Law," Legal discretion, Middle-ranking British officials

Introduction

In the heart of Sudan, in 1935, a seemingly unremarkable incident sparked a legal battleground that would reverberate through the corridors of colonial governance. An intertribal affray between the Kabbabish and Aulad Agoi of Dar Hamid erupted, fueled by accusations of theft and insults.[2] In the ensuing chaos, a member of the Dar Hamid tribe died. Ahmed Sanad of the Kabbabish was accused of murder and sent for trial in the major court, thrust under the unfamiliar lens of British criminal law. District Commissioner G.C. Scott presided, wielding the tenets of a penal code far removed from the customary practices swirling in the dust outside the courtroom.

Scott found Sanad guilty of murder, sentencing him to a twelve year imprisonment. But the story did not end in this major court. Ahmed Sanad's case was taken to the Court of Appeal, where C.J. Owen, a figure steeped in the complexities of colonial rule, scrutinized the proceedings. Owen saw a fundamental misalignment in the judgment. He argued that isolating Sanad ignored the collective nature of tribal conflict and the customary role of *diya*[3]—rooted in the Islamic tradition as compensation for bloodshed, a concept absent from the British criminal code—as a potential path to reconciliation. In his eyes, *diya* and

2 Sudan Government v. Ahmed Sanad & Others, KDN. MAJ—Ct. -41. C. 37-35; AC-CP-169-1935, September 10, 1935, Sudan Judiciary Archive, Khartoum, Sudan, 115–19.

3 A practice which existed before Islam and in which families of victims received compensation (*diya*) in cases of accidental or intentional killings. This system was later incorporated into Islamic law.

imprisonment could each serve a purpose—the former appeasing tribal tensions, the latter asserting the state's authority.

Owen detected a fundamental incompatibility, one exacerbated by the distance between the codified Penal Code of Sudan and the on-the-ground realities interpreted and navigated by middle-ranking[4] British officials who acted as both administrative and judicial agents in Sudan's remote provinces. His intervention wrestled with more than this single case. It laid bare a central question: how could a legal framework like the 1899 Sudan Penal Code, rooted in British and Indian models, function within the unique Sudanese context? This tension highlights the need for flexibility and adaptation within colonial governance, a process often driven by middle-ranking officials who were agents of a discretionary legal system that bore resemblance to how some Islamic legal frameworks emphasize ruler-based pragmatic decision making. Figures like Owen, stationed far from the centers of power, grappled with interpreting laws while navigating the nuances of Islamic custom, tribal conflict, and the very notion of justice in a land they sought to govern.

Middle-ranking officials, such as Owen, played a crucial role that transcended simply being cogs in a colonial machine. Operating in remote Sudanese districts, they functioned as interpreters, negotiators, and conduits for imperial rule. They bridged the gap between the lofty ambitions of the British empire and the daily realities of the Sudanese people. These on-the-ground experiences, like Ahmed Sanad's case, shaped their understanding and potential misinterpretations of Islamic legal principles. Their actions unintentionally mirrored aspects of flexible legal interpretation found within certain Islamic legal frameworks focused on achieving just outcomes, even when it necessitated departing

4 In this article, I use the term "middlemen" or "middle-ranking men" to refer to British officers who served in positions between high level administrators and local populations. These were not policy-makers, but their actions fundamentally influenced law on the ground. Tasked with implementing British directives and understanding local realities, their reports, judgments, and interactions became a crucible where the rigidity of codified law encountered the demands of governance characterized by adaptability and a focus on achieving stability and control. See Anthony Clayton and David Killingray, Khaki and Blue: Military and Police in British Colonial Africa 4 (1989); James S. E. Opolot, Police Administration in Africa: Toward Theory and Practice in the English-Speaking Countries 81–82 (2008).

from strict legal codes. While lacking the nuanced understanding of Islamic jurisprudence associated with *siyāsa*, their actions bent and adapted the law as they navigated the complex interplay between local customs and Islamic legal principles.

Colonial interventions in established legal systems often stemmed from a lack of understanding and a misguided sense of superiority. This is exemplified in the British administration of Sudan and its impact on Islamic legal traditions. While British officials might have invoked pragmatism or expediency, their actions often reflected a fundamental misunderstanding of the flexible and nuanced nature of Islamic legal concepts. This resulted in unintended distortions of practices like *diya* as they attempted to codify and integrate them into the colonial legal system. Importantly, this article analyzes how British colonial administrators' application of discretion and political expediency in law bears similarities to the flexibility found within some Islamic legal frameworks, despite their lack of familiarity with Islamic jurisprudence. This comparison highlights the interplay between these approaches and Islamic legal principles. Throughout this work, terms such as "legal discretion" and "pragmatism" will be employed to describe the British approach. Ultimately, despite their differing intentions, these British actions offer a powerful case study of how legal principles, when removed from their original context, can be manipulated for the purposes of control.

The Anglo-Egyptian Condominium in Sudan provides a revealing case study of how British colonial actions unintentionally created a system marked by discretionary decision-making and a pragmatic approach to legal administration. While rooted in vastly different philosophies compared to Islamic governance concepts, the British approach in Sudan bore certain resemblances to the adaptability often associated with *siyāsa*.[5] This flexibility in legal interpretation, coupled with the integration of

5 For a deeper understanding of *siyāsa* and its role in Islamic jurisprudence, see Bernard Lewis, *Siyasa*, *in* In Quest of an Islamic Humanism: Arabic and Islamic Studies in Memory of Mohamed al-Nowaihi 3–14 (Arnold H. Green ed., 1986); Knut Vikør, Between God and the Sultan: A History of Islamic Law 193–95 (2005); Rabiat Akande, *Governing Sharia*, *in* Entangled Domains: Empire, Law and Religion in Northern Nigeria 70–104 (2023).

local customs, aimed to achieve a workable system of adjudication within the colonial context. It is important to emphasize that this approach lacked the grounding in Islamic governance and jurisprudence that characterizes traditional *siyāsa*. However, this adaptation reveals a key aspect of colonial legal systems: their capacity to distort and reshape preexisting legal practices to serve the interests of the colonizers. At times, these adaptations might have offered unintended benefits to the colonized, but this did not negate their fundamentally exploitative nature. Analyzing this evolution offers valuable insights into the complex interplay between imported law, traditional Islamic practices, and the pragmatic necessities of maintaining control in a colonial setting.

This article challenges narratives that paint colonial criminal law as a monolithic, top-down imposition. It reveals the dynamism, the negotiations, and the agency of those who stood at the intersection of empire and customary practices. Through the lens of overlooked cases and the documented experiences of middle-ranking officials in the provinces, it offers a more nuanced understanding of how colonial power was exerted alongside an evolving respect for and adaptation of Islamic legal principles—a dynamic that not only shaped Sudan but reflects broader processes of legal change and legal pluralism within colonial empires.

This analysis delves into the evolving application of colonial criminal law in Sudan, examining how British middle-ranking officials, through their misunderstandings and pragmatic adaptations, influenced the integration of Islamic jurisprudence and customary practices. These actions created a blended legal system characterized by discretion and flexibility. The realities of colonial governance necessitated flexibility and adaptation. The example of Sir Harold MacMichael's career offers insights into broader trends where officials acted as intermediaries: reporting on local customs, adjudicating cases flexibly, and ultimately shaping the on-the-ground application of law in ways that diverged from formal codification.

The case of Ahmed Sanad exemplifies this tension between codified law and implemented practice. While *diya*

payments were recognized in principle, Sanad's case reveals how they were often applied in ways that contradicted the intent of the penal code. This disconnect reflects the unintended consequences of the British colonial approach in Sudan. Their attempts to implement a codified legal system, while lacking a deep understanding of existing practices like *diya*, created a space where middle-ranking officials wielded considerable discretion. This system, characterized by flexibility and pragmatic adaptation, often resulted in the distortion of traditional practices to fit colonial aims. To fully understand this complex adaptation of a British-inspired legal code to Sudan, we must briefly trace the history of legislation from the establishment of the Anglo-Egyptian Condominium in 1899 and see how this set the stage for the unique legal landscape encountered by C. J. Owen and his contemporaries.

I The Disconnect: Idealized Colonial Law vs. Sudanese Realities

On 4 September 1898, as British and Egyptian flags were raised in Khartoum, Sudan's legal landscape reflected a complex confluence of influences. Traces of both the recent Mahdist state and the legacy of Ottoman rule in Sudan remained potent, embedded in cultural and legal practices.[6] Examining the Mahdist legal framework illuminates the fundamental disjunctures between preexisting Sudanese legal traditions and the colonial system imposed by the British. This contrast underscores the inherent challenges and distortions resulting from colonial legal adaptation.

The Mahdist state, established by Muhammad Ahmad in 1881 as a revolt against harsh Ottoman rule and exploitation, left a distinct mark on Sudan's legal landscape.[7] Muhammad Ah-

6 M. W. Daly, Empire on the Nile: The Anglo-Egyptian Sudan, 1898–1934 1 (1986).

7 Yusuf Fadl Hassan, *History of the Ottoman Empire: Some Aspects of the Sudanese-Turkish Relations*, *in* Rising Africa and Turkey 297–316 (Turkish Studies Unit, Institute of African and Asian Studies, 2004). Available at: https://tasam.org/Files/Icerik/File/some_aspects_of_turco-african_relations_with_special_reference_to_the_sudan_197491b8-0820-40a6-9b57-d1ed77206a08.pdf.

mad, proclaiming himself the *Mahdī*,[8] the guided one, sought to establish a new order based on his interpretation of Islamic principles. Despite its relatively short lifespan until 1898, the Mahdist emphasis on Islamic law and centralized leadership significantly influenced Sudanese legal practices.

While Islamic law served as the foundational source, Muhammad Ahmad placed his own interpretations of the Qurʾān and the Sunna at the center of legal authority.[9] This shift, characteristic of the self-proclaimed Mahdī's claim of divinely guided leadership and his vision for a state adhering to his understanding of Islamic principles, resulted in frequent deviations from established Sunni schools of Islamic jurisprudence.[10] In contrast to the Ottoman legal system he challenged, the Mahdī's vision aimed for a stricter interpretation, one he believed reflected a return to the purer principles of early Islam.[11] This challenge provoked intense political and theological debate within Islamic discourse, as the legitimacy of rebelling against another Muslim power based on religious grounds became a central question.[12]

The Mahdist legal system implemented a centralized structure with the Mahdī at the apex as the ultimate judicial authority.[13] He delegated legal decision-making to a network of appointed *qāḍī*s, judges who preside according to Islamic principles, across the state.[14] The *qāḍī 'l-Islām* held the highest position within this hierarchy, overseeing the *qāḍī*s and ensuring adherence to Mahdist doctrine.[15]

The Mahdist legal system emphasized a strict, sometimes idiosyncratic, interpretation of Islamic law as outlined

8 This title, derived from the Arabic verb *hadā* meaning "to guide," signifies his belief in receiving divine guidance; Ahmed Uthman Ibrahim, *Some Aspects of the Ideology of the Mahdiya*, 60 Sudan Notes and Records 28 (1979).

9 Olaf Köndgen, The Codification of Islamic Criminal Law in the Sudan: Penal Codes and Supreme Court Case Law under Numayri and Bashir 34 (2018).

10 *Id.* at 35.

11 Rudolph Peters, Sharia Law, Justice and Legal Order: Egyptian and Islamic Law: Selected Essays 441 (2020).

12 *Id.*

13 P. M. Holt, The Mahdist State in the Sudan, 1881–1898: A Study of Its Origins Development and Overthrow 128 (1958).

14 Köndgen, *supra* note 9, at 35.

15 *Id.*

by the Mahdī.[16] This included the reintroduction of *ḥudūd* punishments, such as amputation for theft and stoning for adultery, and abolishment of *diya*.[17] The system also aimed to enforce a rigid social and moral code, prohibiting activities deemed as vices, such as smoking, drinking alcohol, and dancing.[18] These harsh punishments and social regulations reflected the Mahdī's vision for a reformed society based on his understanding of Islamic principles. While the Mahdī's emphasis on Islamic law and centralized legal structures left a lasting mark, the legacy of Ottoman legal concepts persisted in Sudan. This persistence stemmed from the fact that the Khedivate of Egypt,[19] technically an Ottoman province, governed alongside the British during the colonial period after the downfall of Mahdist State in Sudan. This created a system of legal pluralism, where Ottoman, Egyptian, British, and Sudanese legal traditions coexisted. This complex environment set the stage for the ongoing adaptation of law, shaping the evolution of both customary and British-authored criminal codes.

Despite the stipulations of the Condominium Agreement signed in January 1899 between the British Empire and Egypt, customary elements inevitably influenced the application of British law in practice.[20] The agreement was clear evidence of

16 *Id.* at 34.

17 *Id.* at 34–35.

18 *Id.* at 34.

19 The Ottoman Empire granted Egypt a new status in 1866, elevating it from an eyalet (province) to a khedivate (viceroyalty). This change gave the khedive, or viceroy, of Egypt a number of new powers, including the right to confer titles, increase the size of the army, change the law of succession, raise loans, and conclude treaties with other states. The title of khedive also signified that the viceroy of Egypt had a status above that of other viceroys in the Ottoman Empire. This change in status reflected the growing importance of Egypt in the Ottoman Empire, as well as the ambitions of the khedive, Ismail Pasha.

20 "Laws, as also Orders and Regulations with the full force of law, for the good government of the Soudan [Sudan], and for regulating the holding, disposal and devolution of property of every kind therein situate, may from time to time be made, altered, or abrogated by Proclamation of the Governor General. Such Laws, Orders, and Regulations may apply to the whole or any named part of the Soudan, and may, either explicitly or by necessary implication, alter or abrogate any existing Law or regulation," SAD 57/1/372, article 4 of the condominium agreement done in Cairo, the 19th of January, 1899. "No Egyptian Law, Decree, Ministerial Arrete, or other enactment here after to be made or promulgated shall apply to the Soudan or

the British intention of monopolizing the law-making process in Sudan through the British governor-general,[21] who, as the highest-ranked administrator in Sudan, held the right to change and abolish law. This policy excluded Egyptian and local authorities from the rule of Sudan and vested the supreme civil and military command in the British-nominated governor-general.[22] Even though Egypt gained the right to jointly rule Sudan under the British flag, in practice, the governor-general and many of the high-level government officials employed by Britain's Sudan Political Service (SPS) controlled Anglo-Egyptian Sudan,[23] while Egyptian and Sudanese people were mostly used as local administrators under the British policy of indirect rule.[24]

In the domain of customary law, the British administration recognized the existence of Islamic law with the Mohammedan Law Courts Ordinance of 1902. Other customary traditions allowed them to continue to operate alongside the newly British-made colonial law introduced by the British administration.[25] A dual court system that consisted of the Native Courts

any part thereof, save in so far as the same shall be applied by Proclamation of the Governor General in manner hereinbefore provided," SAD 57/1/372, article 5 of the condominium agreement done in Cairo, the 19th of January, 1899. "The jurisdiction of the Mixed Tribunals shall not extend, nor be recognized for any purpose whatsoever, in any part of the Soudan except in the town of Suakin," SAD 57/1/373, article 8 of the condominium agreement done in Cairo, the 19th of January, 1899. See 91 British and Foreign State Papers 19 (H.M.S.O. 1898–1899).

21 On the same day that the condominium agreement was signed, Lord Kitchener of Khartoum was appointed as the first *Sirdar* and governor-general of Anglo-Egyptian Sudan and stayed on duty for a short time until he was relocated. On December 23, 1899, Sir Francis Reginald Wingate was appointed governor-general of the Sudan and *Sirdar* of the Egyptian army and held his position until 1916. From 1917 until his assassination in 1924, Sir Lee Stack stayed in duty as governor-general of Sudan. For more information see, Gabriel Warburg, The Sudan Under Wingate: Administration in the Anglo-Egyptian Sudan, 1899–1916 (2018); London Gazette, March 6, 1900: "Colonel Sir F.R. Wingate, K.C.M.G., C.B., D.S.O., Aide-de-Camp to the Queen, having been appointed Sirdar of the Egyptian Army, is granted the local rank of Major-General whilst so employed. Dated 22nd December, 1899."

22 Warburg, *supra* note 21, at 2.

23 91 British and Foreign State Papers 54 (H.M.S.O. 1898–1899).

24 Carolyn Fluehr-Lobban, Islamic Law and Society in the Sudan 35 (2008).

25 "Mohammedan Law," *sharīʿa*, was also given a place in the judicial system under the condominium rule for the issues regarding marriage, divorce, guardianship of minors or family relationships, waqf, gift, succession, wills, and interdiction guardianship of an interdicted or lost person, provided that the parties were

and the Mixed Courts was established. The Native Courts were responsible for administering Islamic law and customary law while the Mixed Courts were responsible for administering the new laws introduced by the British administration.[26] Islamic law was relegated to a narrow domain within specialized Mohammedan Courts, whose jurisdiction extended only to specific areas—primarily wills, inheritance, marriage, divorce, gifts, and *waqf*.[27] Even within this restricted sphere, the grand *qāḍī*'s authority was subject to oversight and potential intervention by British legal secretaries.[28]

The term "Mohammedan Law," employed in the Mohammedan Law Courts Ordinance of 1902, offered a limited and external perspective on Islamic legal traditions. This categorization failed to capture the rich complexities and diverse schools of thought within *sharīʿa*. This limited understanding likely influenced the narrow scope of the Mohammedan Courts and the ongoing British oversight.

Unlike other colonies, where customary figures sometimes played a role in criminal law, the British Empire initially sought to impose a uniform legal model on Sudan. This rigid approach disregarded the need for a flexible and adaptable approach system of governance, a system that could accommodate

all Muslims. This court was the only place that an Egyptian could have been in a high level position in the Sudanese government as the chief justice of the Islamic or Sharīʿa Division of the Legal Department. The grand qāḍī was an Egyptian officer. See D. Gwyther Moore, *Notes on the Legislation of the Anglo-Egyptian Sudan*, 6 Journal of Comparative Legislation and International Law 131–34 (1924); Faisal Abdel Rahman Ali Taha, *Some Legal Aspects of the Anglo-Egyptian Condominium Over the Sudan: 1899–1954*, 76 British Yearbook of International Law 337–82 (2006).

26 For more information, see, Mohamed A. Babikerin, *Customary Law and Courts in the Context of Sudan's Legal Pluralism: Marginalized or Empowered under English Common Law and Islamic Law? in* Anthropology of Law in Muslim Sudan: Land, Courts and the Plurality of Practices 236–60 (Barbara Casciarri and Mohamed A. Babiker eds., 2018); and Akolda M. Tier, *Conflict of Laws and Legal Pluralism in the Sudan*, 39 International & Comparative Law Quarterly 611–40 (1990).

27 "Report on the Egyptian Sudan in Relation to Northern Nigeria by H. R. Palmer," May 1912, Oxford, Bodleian Libraries, Sudan, 1898–1940, MSS. Lugard 91/1, 12; "Notes of an interview with Paul Howell on administration in the Sudan", December 6, 1932.

28 Warburg, *supra* note 21, at 125.

the unique customary and legal landscape of Sudan. This stands in stark contrast to the Islamic concept of *siyāsa*, which grants rulers discretionary power to achieve outcomes even if it falls outside of strict legal codes. Drafted by Sir William Edwin Brunyate, the first Sudan Penal Code and Code of Criminal Procedure were heavily based on Indian legal precedents.[29] This approach, common in British colonialism, disregarded the importance of tailoring legal frameworks to specific cultural and legal contexts. In Sudan, the result was a code ill suited to the realities of the societies it aimed to govern, necessitating adaptation from its very inception.[30]

Gathering accurate information about indigenous legal systems and traditions was crucial for making informed decisions regarding criminal law in Sudan. It is well documented that Rudolf Carl von Slatin, the high-ranked inspector-general of Sudan, who was responsible for the Native Affairs administration, had a network of informers among the middle-ranked officials throughout the country, upon whom he relied for intelligence.[31] These informers served as an extra layer in the colonial law-making process in Sudan, gathering information that shaped the law, at least at the local level, if not in formal codification. However, what has been overlooked is that these middlemen interpreted the information according to their own views and biases before reporting it to their superiors who then believed it to be accurate and used it to make colonial laws in practice.

29 *Id.* at 124; Moore, *supra* note 25, at 132. The reason for using the Indian Penal code was that British administrators in India had already learned to use law to legitimate imperial goals. The codification of law was seen as a way to bring order to confusing legal systems that existed in these colonies. The East India Company managed a variety of legal sources, such as regional regulations, Acts of Parliament, Hindu and Muslim personal law, Islamic criminal law, and the Roman principle of "justice, equity, and good conscience," which was open to broad interpretation. This variety made the Indian Penal Code of 1860 a suitable model for the other British colonies to avoid confusion. Elizabeth Kolsky, *Codification and the Rule of Colonial Difference: Criminal Procedure in British India*, 23 Law and History Review 631–83 (2005).

30 The report of the Earl of Cromer, a high-ranked British colonial administrator in Sudan, confirms that the 1899 Penal Code was actually accepted as open to inspection in accordance with the need. See "Viscount Cromer to the Marquess of Salisbury," October 6, 1899, FO 403/284.

31 Harold Alfred MacMichael, The Anglo-Egyptian Sudan 109 (1934).

While the role of middlemen within British colonial contexts has been explored, this article offers a fresh perspective by highlighting their agency in shaping legal realities. Specifically, it examines how these middlemen actively integrated Islamic and customary legal elements into Sudanese criminal courts. This on-the-ground adaptation, characterized by flexibility and responsiveness to local needs, fundamentally diverged from the written directives of the penal code. Their discretionary decision-making arguably mirrored unintentionally, aspects of how some Islamic legal systems demonstrate flexibility in achieving practical solutions. A concept this article analyzes is the unintended consequences of colonial legal policies. This analysis offers a novel contribution to the literature, demonstrating how middle-ranking officials were not mere conduits of information but pivotal figures who shaped the very application of colonial law in ways often overlooked by traditional legal histories.

Although these middle-ranked men did not explicitly record their aims and actions for legal reform in their diaries, their impact on the law-making process can be discerned by reading their diaries against the grain and correlating their accounts of observations, meetings, and reports to the development of laws.[32] These officials were observing, meeting, and reporting: their diaries routinely detail the court hearings that they attended and the reports they drafted.

This work challenges top-down legal narratives of Sudan by examining how legal practice diverged from formal directives. Through a careful interpretive approach, analyzing diaries as non-legal sources reveals how colonial legal history was shaped not solely by statutes, but by the adaptive actions of those implementing them. Reading the diaries of middle-ranking officials against the grain, alongside Sudanese and British archival sources, uncovers patterns connecting day-to-day experiences to shifts in legal policy and practice. Unlike formal reports or court records, these diaries offer unfiltered perspectives of newly appointed, non-legal trained officials. This provides unique

32 A similar, but more general statement about inspectors of the British Empire in colonies is in P.W.J. Bartrip, *British Government Inspection, 1832–1875: Some Observations*, 25 The Historical Journal 602–26 (1982).

insights into the complexities of colonial legal adaptation—a process often characterized by discretionary decision-making and a focus on workable solutions, driven by the realities of colonial governance.

This study draws upon a rich array of primary sources, including those located in both the United Kingdom and Sudan. The Durham University Sudan Archive offers an extensive collection of administrative papers, personal diaries, correspondences, reports, photographs, and other materials related to the Anglo-Egyptian Condominium period. These sources, readily accessible and predominantly in English, were crucial in understanding the administrative and legal structures of the early Condominium. Of particular relevance was the Catalogue of the Papers of General Sir (Francis) Reginald Wingate, which provided insights into high level policy and decision-making.

Importantly, the personal diaries and correspondences of junior inspectors within the Durham collections were analyzed to discern the perspectives and experiences of these middle-ranking officials, revealing their influence on the ground. The National Archives of the United Kingdom in London provided valuable correspondence data, which this research interpreted as reporting. Furthermore, the Bodleian Library's unique Sudan, 1898–1940 manuscript collection offered a distinctive window into the personal experiences of British officers, providing insights into the evolving legal structures of the period. These varied sources collectively reveal the communication networks and information flow that drove the adaptation of legal practices within Sudan, often through processes embodied by discretionary decision-making and a pragmatic focus on on-the-ground realities.

This research also delves deeply into primary sources located within Sudan, offering crucial perspectives that complement and at times challenge the records found in the United Kingdom. The National Records Office of Sudan provides unparalleled access to documents tracing MacMichael's legislative and administrative roles, particularly within the civil secretary (CIVSEC), legal department, and the legal files classified as El-Mecmua. These records illuminate the on-the-ground

developments and transformations of the Condominium's administrative and legal apparatus. Importantly, they contain unique court cases and reports unavailable in the U.K., highlighting discrepancies between written law and its practical application and revealing the complexities and nuances of Sudan's colonial legal landscape. Without these sources, a crucial piece of the puzzle would be missing, hindering a complete understanding of the Sudanese legal experience.

Furthermore, the Judiciary Archives within the Judiciary building offer a wealth of early court cases within the Sudan Law Reports: Civil and Criminal Cases. The Faculty of Law Library at Khartoum University provides access to printed materials authored by Sudanese scholars, along with crucial compilations such as the Court of Appeal of the Sudan, Sudan Law Reports, and the Laws of Sudan series. Finally, the Sudan Library holds primary sources including issues of the Sudan Gazette and additional unique court records from the early Condominium period.

While U.K. based sources illuminate policy and high level decision-making, the Sudanese archives and legal collections bring to life the messy, often contradictory realities of legal application on the ground. This contrast underscores the need to examine the role of middle-ranking officials, who stood at the intersection of colonial directives, local customs, and Islamic legal principles. These officials acted as interpreters and mediators, their daily actions and experiences—marked by discretionary decision-making and practical necessity—shaping the lived reality of Sudanese law far more than any statute alone could.

II Middle-Ranking Officials: Agency and Influence in Colonial Law Enforcement

Although the role of middle-ranked British officials in shaping the Sudanese legal system has not been examined in detail, a number of researchers have sought to understand the middle-ranked officials' position as an extra layer in law-making in the colonies. In the context of vernacular law, Lauren Benton and Lisa Ford have discussed the theory of "middlemen" as

imperial agents of the British Empire in their colonies.[33] These middlemen served as the local eyes of the empire for the social order of people, places, and transactions through a sort of international law.[34] According to this theory, the British Empire made a serious attempt after 1780 to establish imperial law against so-called "tyrannical despots" through elite and non-elite dissidents of the British administration, including legal officers, prisoners, captives, and sailors.[35]

While the literature on vernacular law has helped to illuminate the role of middlemen in the colonies, it has not yet explored their involvement in shaping criminal law. A great deal of research has been published on the nature of colonial criminal law, and most of these studies have focused on the intentions of the colonizers in creating this body of law. A common argument, with which I agree, is that the goal of colonial criminal law was to control and repress local populations in the colonies, often through the use of violence.[36]

Another argument which is also widely accepted is that colonial criminal law often ignored local customary law and was largely based on English law, even when it incorporated some customary elements that colonial officers were not familiar with.[37] Although most colonial criminal laws in the British col-

33 See Lauren Benton and Lisa Ford, Rage for Order: The British Empire and the Origins of International Law, 1800–1850 (2016).

34 *Id.*

35 *Id.* at 1.

36 For more information see Elizabeth Hopkins, *The Politics of Crime: Aggression and Control in a Colonial Context*, 75 American Anthropologist 731–42 (1973); Simon Coldham, *Criminal Justice Policies in Commonwealth Africa: Trends and Prospects*, 44 Journal of African Law 218–38 (2000); H. F. Morris, *A History of the Adoption of Codes of Criminal Law and Procedure in British Colonial Africa*, 1876–1935, 18 Journal of African Law 6–23 (1974); G. H. Boehringer, *Aspects of Penal Policy in Africa, with Special Reference to Tanzania*, 15 Journal of African Law 182–212 (1971); Rhoda E. Howard, *Legitimacy and Class Rule in Commonwealth Africa: Constitutionalism and the Rule of Law*, 7 Third World Quarterly 323–47 (1985); Elizabeth Kolsky, Colonial Justice in British India: White Violence and the Rule of Law (2010); H. F. Morris, *How Nigeria Got Its Criminal Code*, 14 Journal of African Law 137–54 (1970); Richard Roberts, *Law, Crime, and Punishment in Colonial Africa*, *in* The Oxford Handbook of Modern African History 171–88 (John Parker and Richard Reid eds., 2013).

37 David Anderson and David Killingray, Policing the Colonies of Settlement: Government, Authority, and Control, 1830–1940, 5 (1991).

onies were based on the Indian Penal Code, which was drafted by a British parliamentary commission and was not suitable for any of the colonies' customs, a neglected group of actors in the secondary literature on colonial criminal law-making processes unintentionally modified existing penal codes to incorporate more customary elements in the colonies: British middle-position holder officials. Middle-position holders, which I will refer to as "middlemen," or "middle-ranking men" played a key role in the creation of a blended criminal law in British colonies that incorporated local customs while basing itself on British criminal law as a product of British colonialism themselves.

These middlemen did not merely gather information; they interpreted local realities, shaping the arguments and priorities of high-level policymakers. Inspectors, particularly crucial in this process, were often overlooked historical figures. Yet, their on-the-ground experiences fundamentally molded Sudanese criminal law. They navigated the complexities of colonial directives, local customs, and Islamic legal principles, reconciling these often competing systems within the daily operations of colonial courts. This ongoing process of adaptation contributed to the evolution of legal codes in Sudan.

Inspectors as Middlemen: On-the-Ground Agents

In the early years of the Anglo-Egyptian Condominium, Sudan's administrative and legal structure reflected a blend of military heritage and emerging civilian control.[38] The governor-general held significant authority, supported by four key advisors: the inspector general, civil secretary, legal secretary, and financial secretary.[39] The colony was divided into thirteen provinces, each governed by a British *mudīr*.[40] Under the *mudīrs* were Egyptian *maʾmūrs*, responsible for smaller administrative districts.[41]

38 MSS. Lugard 91/2. 6; "Notes of an interview with Paul Howell on administration in the Sudan," Oxford, Bodleian Libraries, Sudan, 1898–1940, MSS. Lugard 91/2, 6.

39 *Id.*

40 *Id.* Initially it was divided into six provinces as Dongola, Berber, Kassala, Sennar, Fashoda, and Khartoum.

41 *Id.*

British inspectors, initially numbering twelve, supervised the *maʾmūr*s and handled most general administrative and judicial duties.[42] In some cases, "judicial" inspectors were appointed by the legal secretary to assist *mudīr*s with their court workloads, though remaining under the *mudir*'s broader authority.[43]

In 1901, the legal secretary, Bonham Carter, initiated a shift from military rule in Sudan toward a civilian administration staffed by young British graduates.[44] This process accelerated in subsequent years, with waves of Oxford and Cambridge graduates recruited and appointed as "inspectors" across Sudanese provinces.[45] Following brief training in Khartoum, these inspectors faced a two year probationary period.[46] To secure their positions, they had to demonstrate proficiency in Arabic and law, along with general suitability for the role, which included restrictions on marriage and social engagements.[47] Those who successfully completed this probationary period could look forward to a promising career within the Sudan Civil Service, later known as the Sudan Political Service, including generous salaries, leave, and an early retirement guarantee.[48] Young, inexperienced inspectors wielded significant authority at the local level, finding themselves responsible for vast territories.[49] The diverse responsibilities of these inspectors encompassed both administrative and judicial duties, making them pivotal figures in the evolving structure of colonial law in Sudan.

Sudan's early legal system, established in 1899 under Egyptian martial law, placed significant authority in the hands of

42 *Id.*

43 *Id.*

44 Harold Alfred MacMichael, Sudan Political Service (1958).

45 Harold Alfred MacMichael, The Sudan 105 (1954).

46 Michael S. Coray, In the Beginning, *in* The British in the Sudan, 1898–1956: The Sweetness and the Sorrow 34 (Robert O. Collins and Francis M. Deng eds, 1984); information retrieved from interview with Sir Harold MacMichael by Robert O. Collins, Nov 14, 1962.

47 MacMichael, The Sudan, *supra* note 45, at 105; Coray, *supra* note 46, at 34.

48 A beginning third inspector was paid £E 420 per year, rising to £E 480 after two years. After fourteen years' duty he would have been earning £E 900 as a first inspector. John W. Frost, *Memories of the Sudan Civil Service*, *in* The British, *supra* note 46, at 65.

49 MacMichael, The Sudan, *supra* note 45, at 105.

the governor-general and the legal secretary. However, a shift towards civilian administration brought modifications, and on-the-ground adjudication largely fell to provincial officials. *Mudīr*s' courts, composed of the *mudīr* and two other magistrates, held broad jurisdiction within the provinces.[50] Sentences passed by these courts required confirmation by the governor-general.[51] Lesser offenses were handled by subordinate courts, where decisions were subject to either the *mudīr*'s confirmation or the right of appeal before him.[52] Inspectors, along with other administrative staff, served as magistrates in these lower courts, handling both civil disputes and criminal offenses, demonstrating the decentralized nature of colonial justice.[53] The system allowed for appeals to be made to the *mudīr*, or in cases of greater complexity, directly to the judicial commissioner.[54]

While the governor-general touted the system's potential for efficiency and order, a stark reality confronted those tasked with its implementation.[55] Inspectors, the system's local executors, faced a fragmented legal landscape with no single handbook. This necessitated a flexible approach, often leading them to bridge the gap between codified law and practical governance. In some instances, these adaptations even conformed to existing local customs and Islamic law, highlighting the unintentional consequences of colonial policy. With only a short training period upon arrival in Khartoum—and often lacking any prior legal background—inspectors faced the immense challenge of navigating a fragmented and inconsistent legal landscape.[56] The early colonial system was marked by inconsistency. Some provinces were governed by centralized codes, while others remained under tribal law or were even subject to martial law.[57] As late as 1906, the enforcement of standardized

50 Report on the Finances, Administration, and Condition of the Sudan 1903, 17. Sudan Archive, Durham University.

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.* at 16.

56 *Id.* at 42.

57 Warburg, *supra* note 21, at 125.

legal codes remained incomplete.[58] Inspectors, particularly those in remote regions, were granted significant discretion, having to decide when to apply colonial law, uphold local customs, or make ad hoc rulings based on vague notions of "justice, equity, and good conscience."[59] This principle, central to British legal thought, ostensibly aimed to ensure fairness in the adjudication of cases. However, in the context of colonial rule, it granted widespread latitude to administrators operating in unfamiliar legal landscapes. While this flexibility might have addressed local specificities to some extent, it also opened the door for potential misinterpretations and inconsistencies.

It is also known that inspectors were sometimes tasked with adjudicating matters of Muslim personal status, filling a judicial gap in the absence of *qāḍī*s. or *sharīʿa* courts.[60] This placed immense responsibility on young, inexperienced officials, forcing them to become on-the-ground interpreters of both Islamic and customary law. Their rulings were likely shaped by a mix of limited legal knowledge, practical considerations, and their understanding of colonial aims—highlighting the potential for misalignments between legal ideals and local realities. This decentralized system, while administratively complex, paradoxically increased inspectors' autonomy.

The governor of Upper Nile's 1906 report highlights the inspectors' crucial role in documenting and interpreting local customs.[61] Their lack of formal legal background forced them to become first-hand researchers, as evidenced by the inspector who compiled a Dinka customary law guide.[62] While the governor acknowledged potential errors due to inexperience, he stressed the importance of respecting tribal law.[63] The success of British inspectors in resolving thousands of intertribal disputes demonstrates their active engagement in understanding local legal practices.

58 *Id.*

59 *Id.* at 124.

60 *Id.* at 128.

61 Report on the Finances, Administration and Condition of the Sudan 1906, 742.

62 *Id.* at 742–43.

63 *Id.* at 743.

This report illustrates how inspectors were not merely enforcers of colonial law but also contributors to its evolution, influencing the unique blending of British legal concepts with local customary practices within the context of criminal law. Their observations and interpretations, documented in reports to higher authorities, likely informed the development of handbooks and codes that reflected a nuanced understanding of Sudanese legal traditions. Their seemingly routine tasks of inspection, reporting, and adjudication held surprising power, subtly transforming the legal practice on the ground.

The written laws of the Anglo-Egyptian administration were an abstraction until applied in the context of Sudanese realities. Inspectors in Anglo-Egyptian colonial Sudan documented a wide range of experiences in their reports to *mudīr*s and other superiors. These reports covered their judicial duties, including case details, rulings, and petitions submitted by local residents. Additionally, the inspector was tasked with investigating complaints, supervising revenue collection, and overseeing the performance of the police in carrying out their duties.[64] They became pivotal in bridging the gap between the written legal code and the complexities of Sudanese society. The governor-general sought to maintain good relations with local leaders for the sake of colonial control, encouraging the application of local customs and Islamic law whenever possible.[65] This directive created a complex landscape for inspectors. Their observations shaped the understanding of where and how the code needed adaptation, not just for workable implementation, but to solidify colonial control. This process was driven by a discretionary approach focused on maintaining order and upholding colonial authority. This imperative at times conflicted with the governor-general's own directive to incorporate local customs and Islamic law where possible, revealing the inherent tensions within the colonial legal project. To navigate these complexities, local level

64 Gail S. Schoettler, *The Genial Barons*, *in* The British in the Sudan, 1898–1956: The Sweetness and the Sorrow 110 (Robert O. Collins and Francis M. Deng eds., 1984).

65 J. N. D. Anderson, *The Modernization of Islamic Law in the Sudan*, 60 Sudan Law Journal and Reports 292–312 (1960).

research into Islamic and tribal customs and legal practices became a necessity for inspectors.

Inspectors faced the complex task of interpreting how Sudanese societies applied law, both customary and Islamic, at the local level. This interpretation went beyond mere observation. Shaped by their own biases, understandings of the penal code, and perceptions of colonial priorities, they filtered the information they gathered through the local leaders and influential figures, as the governor-general directed and emphasized the importance of building relationships with local leaders.[66] These connections were considered essential for inspectors to gain a nuanced understanding of local customs, beliefs, and power dynamics. Through these interactions, inspectors could gather information that would help them shape legal implementation in ways that were both aligned with colonial aims and respectful of local traditions.

However, these efforts to understand local legal practices were inherently limited. Inspectors' reliance on local leaders and influential figures, who were predominantly older males, created a significant blind spot. These leaders' own social positions and biases likely influenced the information they passed on, potentially reinforcing existing power structures and overlooking the perspectives of marginalized groups, like women, younger generations, or ethnic minorities. This dynamic could lead inspectors to misunderstand the complexities of customary law and its application within different communities.

Furthermore, inspectors' interpretations were shaped not just by their background but also by the broader colonial context. Their understanding of the penal code and colonial priorities often overshadowed the nuances of Islamic jurisprudence and customary practices. This could result in the selective application of *diya*, as will be discussed in later sections, or the misinterpretation of local rituals as potential threats to colonial control.

Inspectors' subsequent reports were not neutral reflections of reality but carefully constructed narratives. Emphasis on what they considered "important" played a significant role

66 MacMichael, Anglo-Egyptian, *supra* note 31, at 73–74; Report on the Finances, Administration and Condition of the Sudan 1899, 55.

in shaping how higher-ranking officials perceived Sudanese legal realities. A key example is the delayed implementation of legal reforms. Although the British had identified areas in need of reform before 1924, the revolution ultimately served as the catalyst for the changes they then enacted.[67] This move reflects a calculated use of legal change as a control mechanism, a pattern that will be discussed in further detail later.

Over time, these filtered, and at times distorted, perspectives subtly influenced the evolution of legal practice in Sudan. Inspectors, perhaps unwittingly, molded the understanding of Islamic and customary law held by the colonial administration. Their reports document how they actively interpreted local customs and how these interpretations influenced, or even led to, the incorporation or modification of those customs to fit within the colonial legal framework. This pragmatic approach, characterized by prioritizing functionality within the colonial context, mirrored aspects of how some legal systems emphasize practical solutions. Their actions, however unintentional, shaped the evolution of colonial governance in Sudan.

Beyond inspection and reporting, inspectors wielded significant power through their judicial duties in district courts. Lacking a comprehensive legal handbook to guide their decisions, they navigated a complex legal landscape where the penal code, Islamic law, and local customs intertwined. Their discretion in how and when to apply specific legal principles was immense. As part of their duties, inspectors meticulously recorded the details of each case, their interpretations, and the sentences given. This information found its way into both provincial annual reports and the governor-general's annual reports, which were sent to the consul-general of Egypt and eventually to the British foreign secretary, Sir Edward Grey.[68] In addition, inspectors directly informed their superior, Inspector-General Slatin Pasha,

67 Correspondence from Wingate's Sudan career; Parker re the need for reinforcements at Talodi in Kordofan, the need for a separate penal code for the Sudan, June 1906, SAD.278/6/6–8.

68 Duties of Inspector General drafted by R. von Slatin, the Inspector-General of Sudan in the years 1900–1914; and amended by Sir Reginald Wingate, April 1902, arts. III, IV, VII, VIII, SAD.403/6/16–19.

about the development of political and legal systems in Sudan.[69] Although Slatin Pasha was responsible for providing legal opinions on cases involving local and political matters, he relied on the reports of middle-ranked inspectors to inform his decisions. These reports also provided valuable information to the governor-general about the local situation in Sudan.

While not standard practice across British colonies in Africa, the use of inspectors for legal guidance in Sudan highlights a peculiar dynamic. Despite their rulings not being formally binding, the cases they tried and reported on likely created a body of informal precedents that influenced other officials. These decisions, shaped by individual understandings of justice, necessity, and colonial aims, subtly molded the application of law in Sudan. This reliance on personal interpretation resulted in a system that, while aiming to be responsive to local realities, was inherently unpredictable. This discretionary power, driven by a focus on finding workable solutions and maintaining stability, resembled aspects of how flexible legal systems seek practical outcomes. Ironically, this seemingly adaptive approach could also be seen as a manifestation of disregard for Sudanese legal traditions. By sidestepping established legal scholars or relying on formalized customary procedures, the British system prioritized colonial expediency over the nuanced and consistent application of local legal principles.

To maintain control, colonial administrators relied on middlemen. Necessity dictated a pragmatic approach, balancing British directives with local realities. This dynamic is exemplified in cases like Ahmed Sanad's, where traditional notions of *diya* were likely reshaped to align with a punitive approach. This reliance on personal discretion highlights how pragmatism often trumped adherence to written law, and ironically, turned these middlemen into influential interpreters of Islamic law in Sudan. Figures like Sir Harold MacMichael offer a multifaceted lens into this process, where officials selectively codified customary practices and adapted legal concepts to serve the aims of colonial control.

69 MacMichael, The Sudan, *supra* note 45, at 105.

Case Study: Sir Harold MacMichael

The Judiciary of Sudan building still stands in Gamma Avenue in Khartoum, a towering yellow edifice that dominates the skyline. Its facade, adorned with white pillars and green roof tiles, achieves a distinctively Sudanese appearance through a harmonious blend of colonial stylistic elements. Constructed during British rule, the building now functions as a symbol of independent Sudanese legal sovereignty. However, this symbolism is inherently complicated, reflecting the tensions between aspirations for justice and the enduring influence of past colonial structures. This tension is mirrored within the building's interior. The absence of portraits commemorating precolonial Sudanese legal figures, contrasted with the prominence of British officials, suggests a selective representation of historical authority within the institution. While postindependence portraits of Sudanese judges signify a shift, the continued presence of Sir Harold MacMichael's portrait underscores the complex and contested narrative of legal evolution in Sudan. This contested visual representation necessitates critical examination—an examination that this work undertakes by analyzing the influence of colonial figures on Sudan's legal development. Without formal legal training, MacMichael initiated a unique approach to criminal law that blended English law, Islamic law, and Sudanese customary law—which is a process that has not been fully documented in the literature.

Sir Harold MacMichael serves as a compelling case study for understanding how middle-ranking officials shaped colonial legal adaptation. A product of the colonial system himself, his career trajectory, from district inspector to civil secretary, offers a unique lens into how Sudanese law evolved. Driven by realities of governing Sudan, MacMichael embraced a pragmatic approach that blended elements of English law, Islamic principles, and Sudanese customs. This is evident even in his early inspector years, where his reports and writings showcase flexibility in adapting legal frameworks to local needs. These actions influenced the perspectives of high ranking British officials, highlighting the impact of middle-level figures on broader

legal policy Additionally, MacMichael's prolific documentation, including extensive diaries, offers invaluable insights into the process of legal adaptation for historical research.

Sir Harold MacMichael's prolific research and extensive fieldwork contributed significantly to his understanding of Sudanese customs, law, and society. His publications reveal the vast scope of his investigations. Numerous articles including in *Sudan Notes and Records*, such as "The Kababish,"[70] "Notes on the Zaghawa,"[71] or "The Tungur-Fur of Dar Furnung,"[72] demonstrate his ethnographic interests across diverse regions of Sudan. Additionally, his books, including *A History of the Arabs in the Sudan*[73] and *The Tribes of Northern and Central Kordofan*,[74] showcase his focus on tracing both historical lineages and contemporary tribal structures. This comprehensive body of work likely shaped MacMichael's interpretations of customary laws and his perception of which practices might be adaptable within the colonial legal system.

MacMichael's work highlights the tension between in-depth study of Sudanese society and the practical need to maintain colonial control. This tension, common in colonial contexts, was often reflected in the works of district officers and magistrates, who published ethnographic writings that influenced evolving legal knowledge within British colonial Africa. In Sudan, this pragmatic approach often led to a selective and distorted interpretation of local legal practices, revealing a conflict at the heart of colonial governance. This process, while distinct from the direct application of Islamic law, reflects a similar pragmatism and distortion of traditional legal systems that characterized

70 Harold Alfred MacMichael, *The Kababish: Some Remarks on the Ethnology of a Sudan Arab Tribe*, 40 The Journal of the Royal Anthropological Institute of Great Britain and Ireland 215–31 (1910).

71 Harold Alfred MacMichael, *Notes on the Zaghawa and the People of Gebel Midob, Anglo-Egyptian Sudan*, 42 The Journal of the Royal Anthropological Institute of Great Britain and Ireland 288–344 (1912).

72 Harold Alfred MacMichael, *The Tungur-Fur of Dar Furnung*, 3 Sudan Notes and Records 24–32 (1920).

73 Harold Alfred MacMichael, A History of the Arabs in the Sudan and Some Account of the People who Preceded them and of the Tribes Inhabiting Darfur (1922).

74 Harold Alfred MacMichael, The Tribes of Northern and Central Kordofan (1912).

colonial rule. Analyzing MacMichael's actions highlights the agency of middlemen in shaping the evolution of colonial law, even when their actions were not explicitly framed in terms of Islamic jurisprudence.

He was one of the Cambridge graduates recruited into the Sudan Political Service. MacMichael's interest in the Sudan Political Service was initiated by his professor during his undergraduate degree at Cambridge. Professor E. G. Browne had been asked to suggest some brilliant young students for the service in Sudan by Lord Cromer himself.[75] MacMichael was Professor Browne's suggestion and was summoned to a selection board in London.[76] He stayed and studied Arabic in London after he passed the board, which was presided over by Reginald Wingate.[77]

His being "a product of colonization in Sudan" starts with his first assignment in Anglo-Egyptian Sudan as a deputy inspector in 1905; he was promoted to junior Inspector in 1910, in the Kordofan Province.[78] In 1912, he was appointed as junior inspector to the Blue Nile Province, where he stayed until he was ranked as senior inspector to Khartoum in 1913.[79] That means, in Anglo-Egyptian Sudan, he held a middle-ranked position which was not a colonial minister but had some influence on colonial law-making. As the definition of the British middle-ranked officer in this context, he was responsible for implementing policies and maintaining order in the colonies and for training local officials and maintaining good relations with local leaders.[80] As will be explained in light of his diaries, correspondences, newspaper cuttings, and other archival documents, he played a significant role in developing criminal law which blended with Islamic and local traditions in Sudan through his official duty and which gave him the responsibility of administering justice.[81]

MacMichael's inspections and reports had a profound impact on his understanding of Sudanese society and indirectly

75 MacMichael, Sudan Political, *supra* note 44, at 3.
76 *Id.*
77 *Id.*
78 SAD 532/15, 18.
79 SAD 532/15, 18.
80 Benton and Ford, *supra* note 33, at 8–11.
81 *Id.* at 13.

influenced colonial law-making while he forged relationships with local leaders. This gave him insights beyond codified law, influencing his later legal reforms. His publications in journals like *Sudan Notes and Records* disseminated his insights into local customs and values. Diaries and correspondences reveal extensive communication with figures such as the Kabbabish Sheikh and Ali al-Tum (a powerful Sudanese political and religious figure),[82] and high-ranking British officials including Slatin Pasha and Bonham Carter.[83] This demonstrates MacMichael's crucial role as a cultural intermediary, bridging the gap between British officials and Sudanese leaders from his early career as a middle-ranking officer.

The establishment of relations and inspection of rural customs were aimed at gathering information, but MacMichael's reports often reveal him searching for solutions beyond strict British codes, prioritizing workable approaches within the specific context of Sudan. This focus on practicality echoes aspects of legal systems that emphasize achieving solutions that fit local needs.

MacMichael's insights, reflected in his correspondences and reports, were valued by his superiors, particularly Slatin Pasha, due to his deep understanding of Sudanese society.[84] His inspections and local connections significantly influenced his published and unpublished works, shaping his advocacy for a balance between local customs and flexible legal principles within Sudan. Crucially, his understanding and interpretation of customary practices helped shape his vision for applying and

82 SAD.585/5/27; SAD.585/9/23; SAD.585/9/1791911; SAD.585/10/23; SAD.585/10/29.

83 SAD.578/4/43–45; SAD.578/4/52–54; SAD.585/4/332; SAD.585/8/176; SAD.585/9/59; SAD.585/10/186; SAD.585/11/12; SAD.585/12/10; SAD.585/12/19; SAD.585/12/27; SAD.585/12/30; SAD.585/12/32; SAD.585/12/41; SAD.585/12/46; SAD.585/12/47; SAD.403/6/1–13; SAD.585/2/33;, SAD.585/6/176; SAD.585/6/180; SAD.585/7/130; SAD.585/8/65; SAD.585/8/93; SAD.585/8/147; SAD.585/8/155; SAD.585/9/42; SAD.585/9/46; SAD.585/10/38; SAD.585/11/52; SAD.578/4/66–68; SAD.578/4/73, SAD.585/7/50; SAD.585/8/155; SAD.585/9/125; SAD.585/11/11; SAD.585/11/82; SAD.585/12/7; SAD.585/12/19; SAD.585/12/24; SAD.585/12/46.

84 "Letter from R. von Slatin to MacMichael regarding thoughts on Ali al-Tum, 1909 Mar 26–1914 May 5," SAD.403/6/4.

incorporating elements of these legal traditions within the context of British criminal law in Sudan. His writings provide valuable sources for understanding this process of legal adaptation, drawing heavily from his on-the-ground experiences, especially his early work in Kordofan, from 1905 to 1912.[85]

To understand the evolution of MacMichael's thought and its impact on colonial policy, it is essential to examine his formative years in Kordofan. Starting in 1905, his daily routines, interactions, and reports from the region offer a granular view of how he navigated the complexities of Sudanese society and shaped his vision for legal reform.

MacMichael's interest in court cases can be traced back to his first tour of duty as deputy inspector in Khartoum, to which he was appointed on September 19, 1905.[86] His main activities in Khartoum consisted of attending courts, which he described as "only mean[ing] that he sits in a room with the governor or civil judge",[87] office work, inspections in the town, receiving complaints,[88] socializing at the club, and playing games such as cricket and squash.[89]

One of the most striking aspects of his correspondence, even privately with his relatives, is his keen interest in observing the judicial proceedings. As he describes, the most common cases were assault and house breaks for which the accused were acquitted. He was observing the cases mostly about land ownership and disputes in the court of civil justice, and helping the civil judge.[90] He visited places near Khartoum, such as Omdurman, to observe both the courts and everyday life of Sudanese people.[91]

After spending two months in Khartoum, he was appointed deputy inspector to Kordofan Province upon his request

85 MacMichael, Sudan Political, *supra* note 44, at 15.

86 The Sudan Gazette, October 1, 1905, SAD 586/5/34.

87 MacMichael to his parents, October 25, 1905, SAD 578/4/35.

88 SAD 585/4/1–383, January 14, 1906.

89 SAD 578/4/36, MacMichael to his parents, October 25, 1905.

90 SAD 578/4/46–48, the arrival of the wives of British officials, King's Day celebrations and listening to cases at the Court of Civil Justice, November 10, 1905.

91 SAD 678/4/43, MacMichael to his parents on different dates in 1905.

in December 1905.[92] MacMichael's interest in court cases continued during his time as deputy inspector in Kordofan. Upon his arrival in El-Obeid on January 10, 1906, MacMichael commenced his duties at the *mudīriyya* in the inspector's office.[93] In El-Obeid he was taking plaints in the court, [94] working on civil and criminal cases,[95] such as theft, kidnapping, rape, slavery, embezzlement, tax evasion, assisting in concealment, malicious prosecution, and bribery.[96]

The cases that MacMichael tried and attended were the subject of his annual reports to his superior which contained observations not only about courts and cases but also about local customs and traditions. His annual reports were then incorporated into the provincial reports which were sent first to *mudīr*s, then to the governor-general. Therefore, middle-ranking British inspectors, who seemed to have no effect on colonial law, indirectly had a say over the new vernacular law emerging in Sudan.

MacMichael's original reports have not been found in either the British or Sudanese National Archives; however, their content can be located in published and unpublished work, especially his writings in the *Sudan Notes and Records*. These reports are the sources used to analyze MacMichael's position and influence on Sudanese criminal law making.

The 1906 governor-general's report notes that Sudan's judiciary system in 1906 was in its infancy and needed to be developed.[97] On the other hand, in J. R. O'Connell's report as governor of Kordofan where MacMichael was inspector, it is stated that the crimes of violence were restricted to a comparatively small proportion of the population.[98] O'Connell mentions only a few cases

92 SAD.586/5/33.

93 SAD.585/4/10–11, MacMichael's personal diary, January 10–11, 1906.

94 SAD.585/4/14, MacMichael's personal diary, January 14, 1906.

95 SAD.585/4/15, MacMichael's personal diary, January 15, 1906.

96 SAD 585/4/66; SAD 585/4/84; SAD 585/4/115; SAD 585/4/123; SAD 585/4/130; SAD 585/4/137; SAD 585/4/140; SAD 585/4/148; SAD 585/4/188; SAD 585/4/189; SAD 585/4/191; SAD 585/4/192; SAD 585/4/193; SAD 585/4/210; SAD 585/4/245; SAD 585/4/287; SAD 585/4/311.

97 FO 407/170, "Further Correspondence Respecting Affairs in Soudan and Africa, January to June 1907."

98 *J.R. O'Connell's Annual Report of Kordofan Province, 1906*, *in* Reports on the Finances, Administration and Condition of the Sudan 1906, 700.

in the report and confirms that in 1906, the law was efficient and sufficient in Kordofan.[99] This detailed report includes a wealth of information about Kordofan, including the condition of the people, education, finance, hospitals, prisons, labor, and loans. It also provides an overview of the judiciary situation in the region.[100] The report includes minor local news about the subdistricts, thanks to reports prepared by the inspectors in the provinces. This report provides a more comprehensive view of the situation not only in Kordofan but in all of Sudan. It can deepen our understanding of the incorporation of vernacular law and Islamic law in the British criminal administration in Sudan.

In 1907, after passing his Arabic and law exams with distinction,[101] MacMichael was granted the powers of a first class magistrate under the Code of Criminal Procedure.[102] He continued to preside over cases in Court Kordofan, including those related to disobedience, unlawful assembly, theft, bodily injury, false charges, abetting, embezzlement, murder, malicious prosecution, and brawling.[103]

Within his 1907 annual report of Kordofan, MacMichael registered all the cases he tried. The governor-general's report sent from Eldon Gorst, the consul-general of Egypt to the British foreign secretary, Sir Edward Grey, mentioned the need for a more satisfactory Court of Appeal in Sudan and proposed constituting a High Court in Khartoum comprising two judges.[104] The report of 1907, like that of 1906, contains precise information about the number of cases tried in Sudan during the entire year.[105]

99 *Id.*

100 *Id.*

101 SAD 586/5/34, "C. S. C. R.R./161," Sudan Government Order, [n.d.] 1907, 471–72.

102 Sudan Times, March 18, 1907; SAD 586/5/34;

103 SAD 585/5/16; SAD 585/5/17; SAD 585/5/25; SAD 585/5/27; SAD 585/5/31; SAD 585/5/40; SAD 585/5/41; SAD 585/5/42; 117; SAD 585/5/123; SAD 585/5/139; SAD 585/5/183.

104 *From Sir Reginald Wingate to Sir Eldon Gorst*, *in* Report on the Finances, Administration and Condition of the Sudan 1907, 23.

105 "From the interesting report supplied by the legal Secretary, Mr. Bonham Carter, it appears that 310 orders were made in civil executions during 1907 for a total amount of £E 3,555, and that the sum recovered was £E 2,112, or about 59 per cent., which is considered satisfactory. The crime statistics show that there were 912

Unlike the former report, the governor-general's report of 1907 has the subtitle "Remarks on British Civilian Inspectors." It explains that there were twenty-seven officials in Sudan who were assigned to provinces to write detailed reports, and engage in certain judiciary duties and land registrations in addition to ordinary provincial duties.[106] The report explicitly states that:

> The Governors of Provinces continue to render satisfactory reports on these gentlemen, who are steadily rendering themselves more and more useful, and who by keen interest in and devotion to their work amply justify the system under which they were selected for service in this country…
>
> A considerable knowledge of Law is required for the constant criminal and judicial work which is so essential [for the Deputy Inspectors that] every official should personally carry out himself. Such work provides the best means of gaining that understanding and appreciation of the social problems of the country which to some extent underlie all successful administration.[107]

This emphasis on understanding local law suggests the need for flexibility that mirrors a pragmatic and adaptive approach in legal application. Inspectors like MacMichael, through their reports, became advisors on how to adapt British codes to Sudanese realities. Although not mentioned in the text, this requirement affected their reports and helped the legal secretary of Sudan to develop existing law in some areas. Based on the annual report of Kordofan for 1907, MacMichael's knowledge of Sudanese law was notable.[108] The governor of Kordofan's report to the center reflected that MacMichael's trials on slavery cases—with

convictions before non-summary courts in 1907 . . ."; "The death sentence was carried out in then cases." See Report on the Finances, Administration and Condition of the Sudan 1907, 23.

106 Report on the Finances, Administration and Condition of the Sudan 1907, 137.

107 *From Sir Reginald*, *supra* note 104, at 138–39.

108 *W. Lloyd's Annual Report of Kordofan Province, 1907*, in Report on the Finances, Administration and Condition of the Sudan 1907, 326–27.

the other inspectors—were an issue to be solved promptly.[109] In addition to annual province reports, the legal secretary's annual report provides even more detailed information about the exact number of cases tried in each province.[110] This implies that inspectors were most likely sending reports to the Legal Secretary Department as well.

The governor-general's emphasis on building relationships with local leaders and his directive to document and interpret local customs were directly served by the meticulous collection of case details and the requirement that inspectors gain a deep understanding of customary and Islamic legal elements.[111] This strategy aimed to create a legal system that, although rooted in British principles, incorporated elements that would appear "acceptable" to the Sudanese population. The governor-general's 1910 report demonstrates his belief that, at least to some degree, this goal had been achieved.[112]

During 1908 and 1909, MacMichael presided over a wide range of cases, from theft and bribery to murder and slave trading.[113] His case records contributed to annual reports, offering insights that directly informed policy shifts, such as the 1908 ordinances addressing "vernacular law."[114] MacMichael's own experiences, reflected in Kordofan's 1909 report, highlighted

109 *Id.* at 331.

110 *Annual Report of Legal Department, 1907*, *in* Report on the Finances, Administration and Condition of the Sudan 1907, 627–50.

111 MacMichael, Anglo-Egyptian, *supra* note 31, at 73–74; Report on the Finances, Administration and Condition of the Sudan 1899, 55; Report on the Finances, Administration and Condition of the Sudan 1906, 742.

112 Wingate to Mitchell Innes re the judicial system developed in the Sudan, August 1–31, 1910, SAD.297/2/37–39.

113 SAD 585/6/6; SAD 585/6/7; SAD 585/6/19; SAD 585/6/24; SAD 585/6/42; SAD 585/6/118; SAD 585/6/121; SAD 585/6/122; SAD 585/6/126; SAD 585/6/132; SAD 585/6/136; SAD 585/6/137; SAD 585/6/178; SAD 585/7/14; SAD 585/7/17; SAD 585/7/20; SAD 585/7/22; SAD 585/7/23; SAD 585/7/24; SAD 585/7/25; SAD 585/7/29; SAD 585/7/33; SAD 585/7/40; SAD 585/7/163; SAD 585/7/165; SAD 585/7/171; SAD 585/7/172; SAD 585/7/173; SAD 585/7/180; SAD 585/7/184.

114 *From Sir Eldon Gorst to Sir Edward Grey*, *in* Report on the Finances, Administration and Condition of the Sudan 1907, 26–27; *From Sir Eldon Gorst to Sir Edward Grey*, *in* Report on the Finances, Administration and Condition of the Sudan 1908, 23–24.

legal complexities surrounding trade and contracts—difficulties that these ordinances likely sought to address.[115]

The importance of inspectors' reports in shaping Sudanese law was further solidified in 1910 with the enactment of the governor-general's council ordinance. This ordinance reserved the inspector-general's presence in the council to assist the governor-general in the discharge legislative and executive powers.[116] This shift increased the inspectors' influence, demonstrating that men like MacMichael did not just enforce law but influenced its evolution through their insights into the clash between customs and colonial law. Their on-the-ground experience became a crucial source for adapting British codes. This process highlights the practical, outcome-focused approach that characterized colonial legal adaptation within Sudan.

The Annual Report of Kordofan for 1911 declares the establishment of a Slavery Repression Department in the province.[117] This is consistent with the reports and journals of MacMichael, who had consistently emphasized that slavery was a critical problem that he frequently addressed in court.[118] There is no doubt that this department was established in response to the need identified by inspectors in the subprovinces. This development underscores the influence of middlemen, not only on the practice of law but also, at times, on the shaping of formal legislation. The establishment of the Slavery Repression Department in Kordofan in 1911 was a significant event in the province's history. It marked the culmination of years of efforts by British officials to suppress the slave trade, which had been a major problem in the region for centuries. The department was tasked with investigating reports of slavery, rescuing enslaved people, and bringing slave traders to justice. The middlemen played a key role in opening this department. They were the ones who

115 *From R. V. Seville, Governor of Kordofan Province, to Sir Reginald Wingate, in Annual Report of Kordofan, 1909*, in Report on the Finances, Administration and Condition of the Sudan 1909, 745.

116 *Memorandum from Sir Reginald Wingate to Sir Eldon Gorst*, *in* Report on the Finances, Administration and Condition of the Sudan 1910, 130.

117 *Annual Report of Kordofan, 1911*, in Report on the Finances, Administration and Condition of the Sudan 1911, 171.

118 See SAD 585/9/1–191 for the slavery cases MacMichael tried and commented on in 1911.

informed British officials about the slave trade and helped them to track down slave traders.

When MacMichael was relocated to Khartoum as senior inspector in 1913, his correspondence with high-ranking British officials and influential locals gave way to face-to-face interactions, a pattern that continued in 1914.[119] MacMichael maintained close contact with high-ranking British officers from the beginning of his assignment in Sudan to submit reports, confer about cases, and exchange information when needed. This close contact with British officials gave MacMichael a great deal of influence over the making of laws in Sudan, as he was able to shape these officials' opinions and influence their decisions.

For instance, Slatin Pasha, the inspector-general of Sudan, had a great impact on law-making for the sake of his duty. As stipulated in his job description, he was supposed to "acquaint himself fully with the Laws, Ordinances, and Orders of the Sudan Government and to make any remarks on them to the Governor General that he considers advisable."[120] This gave him a great deal of influence over the making of laws in Sudan, as he was able to identify potential problems with existing laws and suggest changes. In a letter to MacMichael, Slatin Pasha writes, "I always appreciate your views and take them into consideration."[121] In all of their correspondence from 1909 to 1914, it can be observed that Slatin is either asking for advice on a local administrative matter or a court case on which MacMichael would have information or authority.[122] This suggests that Slatin Pasha relied heavily on MacMichael's expertise and experience, and that he valued MacMichael's opinion on a wide range of matters.

119 SAD 585/11/11; SAD 585/11/12; SAD 585/11/13; SAD 585/11/47; SAD 585/11/77; SAD 585/12/7; SAD 585/12/10; SAD 585/12/19; SAD 585/12/24; SAD 585/12/27; SAD 585/12/30; SAD 585/12/32; SAD 585/12/41; SAD 585/12/46; SAD 585/12/47; SAD 585/12/60.

120 MacMichael, The Sudan, *supra* note 45, at 78.

121 SAD 403/6/4

122 SAD.403/6/1–13.

III Colonial Control Through Adaptive Law

The surge in *diya* cases adjudicated by British judges during the "period of reaction"[123] following the 1924 revolution, from 1925 to 1936, raises questions about the timing of this legal shift. Marked by Sudanese resistance, which reached a violent climax in the revolution, this period led the British to adopt a more cautious approach to governance.[124] Their response was designed to solidify control—isolating the Sudanese from Egyptian influence, replacing Egyptian staff with Northern Sudanese personnel, and reemphasizing "traditional" power structures through indirect rule and expanded authority for tribal leaders.[125] The appearance of *diya* in British criminal courts within this context is unlikely to be coincidental. Instead, it strongly suggests a calculated strategy by the colonial administration. *Diya*, with its roots in Islamic jurisprudence, likely became a tool to appease local leaders, maintain social order, and solidify British control amidst rising tensions. This use of *diya* highlights the inherent complexities of colonial rule, often forcing a clash between legal ideals and realities on the ground. The incorporation of *diya* into Sudanese courts reveals a fundamental tension: the dissonance between the intended function of a codified British penal system and the realities encountered in practice.

This section concerns specific cases where British judges applied *diya* despite its legal ambiguity. This practice exemplifies a necessary deviation from rigid legalism, driven largely by the middle-ranking officials' on-the-ground actions. Faced with the inadequacy of codified law in addressing the nuances

123 The concept of a "period of reaction" to describe the political climate in Sudan after the 1924 revolution is borrowed from the work of M. W. Daly and P. M. Holt. See M. W. Daly and P. M. Holt, A History of the Sudan: From the Coming of Islam to the Present Day 136–42 (1979).

124 For more information about the 1924 revolution, see Mohammed Nuri El-Amin, *Britain, The 1924 Sudanese Uprising, and the Impact of Egypt on the Sudan*, 19 The International Journal of African Historical Studies 235–60 (1986); Elena Vezzadini, Lost Nationalism: Revolution, Memory and Anti-Colonial Resistance in Sudan (2015); Mark Fathi Massoud, Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan 49 (2013).

125 Heather J. J. Sharkey, Living with Colonialism: Nationalism and Culture in the Anglo-Egyptian Sudan 49, 71, 81 (2003).

of Sudanese society, inspectors and judges became agents of adaptation. Their reports, case records, and interactions with local leaders reveal how they navigated the conflict between British directives and deeply rooted customary practices, including the use of *diya*. This section explores their role in upholding colonial authority while finding solutions that, though not always in strict adherence to the code, demonstrated a pragmatic and adaptable approach characteristic of effective colonial legal administration.

A revealing glimpse into the potential manipulation of *diya* for colonial control emerges in a letter the British official Thomas Richard Hornby Owen penned between 1928 and 1930.[126] He describes a violent brawl erupting during a traditional game, resulting in a death. Owen's dismissive account reveals his colonial disdain but, more importantly, it suggests a pragmatic approach to justice. His primary concern seems to lie in avoiding a "major court" inquiry. He advocates for swift resolution through *diya*, regardless of the intent behind the killing. This prioritization of expediency over careful consideration of traditional legal customs foreshadows a pattern where the colonial administration could selectively use *diya*, a concept rooted in Islamic jurisprudence, as a tool of social control, rather than a means of achieving true justice. This signals a broader shift away from respecting the nuances of customary practices toward their manipulation to serve colonial interests.

The 1934 report issued by Chief Justice Howell Owen, a provincial inspector (a role later known as assistant district commissioner), illuminates the calculated transformation of *diya* by the British colonial administration.[127] While acknowledging *diya* as a traditional practice, the report strictly delineates the circumstances under which it would be permissible.[128] This selective application, notably its exclusion from "detribalized communities or towns" and cases of clear murder, contradicts

126 Letters home from Owen as A.D.C. Geteina and Ed Dueim, White Nile Province, July 1–19, 1928, SAD.414/2/19–21.

127 "Note on the trial of witchcraft cases," issued by Howell Owen Chief Justice, with accompanying note on the payment of "blood money" (*diya*) in the Sudan May 5, 1934, SAD.624/2/3–5.

128 SAD.624/2/5.

the broader principles of *diya* within Islamic jurisprudence. This reveals a calculated approach to manipulating customary law, a pattern consistent with the broader colonial tendency to reinvent traditions. The British focus on control, rather than the restorative aims of *diya*, demonstrates how Islamic legal concepts were molded to align with colonial interests. This undermined *diya*'s traditional role in achieving restorative justice.

The 1936 letter from James Gordon Stewart Macphail, the district commissioner of Malakal, Upper Nile Province to the district commissioner of Zeraf Island sheds light on the complex interplay between traditional custom, colonial authority, and the distortion of *diya* for maintaining control.[129] While framed as the resolution of a "blood-money" case, the document unveils a process of negotiation and manipulation heavily influenced by colonial officials. The acceptance by the Shilluk (a Nilotic ethnic group inhabiting the White Nile region of South Sudan) of fewer cattle, [130] the debate over the size of a bull, and Macphail's role as the ultimate arbiter underscore how *diya* became less a strict application of Islamic law and more a bargaining tool. This case suggests that *diya* was co-opted into the colonial system, primarily serving their vested interest in fostering intertribal relations and preventing conflict.

Furthermore, the exchange between Macphail and the Zeraf Island district commissioner reveals a network of inter-reporting and influence among middlemen. This collaborative process of negotiation and adjustment further demonstrates how *diya* became less a strict application of Islamic law and more a malleable tool within the broader framework of colonial control.

The transformation of *diya* is evident in a note by another assistant district commissioner, Paul Philip Howell, titled "Notes on Dinka Social Structure and Laws from Tonj File

129 Macphail to D.C. Zeraf Island on the payment of cattle to the Shilluk as blood money, November 7, 1936,

SAD.762/3/34.

130 SAD.68/10/1–230; Papers, notes and correspondence on the Shilluk collected by Howell for research purposes (many originate from the Sudan Political Service and some from the Jonglei Investigation Team). Most of the papers seem to relate to Shilluk law and custom though other subjects are also dealt with.

66A."[131] It outlines attempts to standardize blood-money payments, with modifications based on the weapon used and other factors.[132] This formalization contradicts *diya*'s traditional adaptability in Islamic law, where specific amounts would not be predetermined. Crucially, the note acknowledges the "elasticity" of the payment rules. This malleability in the hands of colonial officials transformed *diya* from a means of restorative justice rooted in Islamic principles into a potential instrument for controlling disputes and maintaining colonial order.

The 1941 Darfur case starkly reveals the challenges middlemen might face when navigating the intersection of formal and customary legal systems regarding *diya*.[133] The British colonial court's acquittal of the Beni Helba man directly clashes with the Fellata tribe's traditional right to demand compensation.[134] The central tension stems from the power imbalance inherent in the colonial situation. The British inspector's initial dismissal of customary law and subsequent threats to the chief highlight this dynamic and likely fueled the tribe's defiance. This case underscores the need for middlemen to possess not only exceptional negotiation skills and a deep understanding of both legal systems, but also a keen awareness of how power dynamics stemming from colonialism might shape responses and complicate the process of reaching a resolution.

In his "Notes on the Baqqarah," Howell explores the complex relationship between homicide and *diya* within the Baqqarah tribe.[135] While blood feuds were historically part of their culture, he notes that incidents of homicide were less frequent in modern times, and did not typically escalate into prolonged conflict. Traditional agreements to assist in *diya* payments

131 *Notes on Dinka Social Structure and Laws* from Tonj file 66A, *in* Dinka, General Information File, vol 1, Compiled by Howell during Service among the Ngok Dinka, Kordofan and Comprising Copies and Extracts from District Files, Bahr al-Ghazal/Equatoria and Upper Nile Provinces, SAD.767/8/5–45

132 "Blood Money," SAD.767/8/14.

133 Jacqueline H. Wilson, Blood Money in Sudan And Beyond: Restorative Justice or Face-Saving Measure? 94 (Ph.D. dissertation, Georgetown University, 2014).

134 *Id.*

135 "Notes on the Baqqarah for Western Kordofan District Handbook, by Howell: Vol 2: Messiriyyah." October 30, 1948, SAD.768/7/1–84.

provided insights into tribal social structures, but these alliances were fluid and ever-changing. The duty to avenge a death was separate from the obligation to pay *diya*, and even close family groups could temporarily break agreements depending on the political situation. Howell illustrates this dynamic using a 1947 incident where an assassination sparked a temporary feud between groups. The case illustrates the intricate social and political factors involved in *diya* agreements. Middlemen likely need a deep grasp of these dynamics to successfully mediate *diya* settlements. They needed to be aware of shifting alliances, the potential for temporary breaks in agreements, and the separation between avenging and paying compensation.

These complexities highlight the profound challenges faced by middlemen in navigating the conflicting demands of colonial control and the realities of Sudanese legal practices. While the colonial administration sought centralized control, on-the-ground realities necessitated a pragmatic, often contradictory, approach.

The case studies examined here reveal how *diya*, a concept rooted in Islamic jurisprudence, was selectively adapted and manipulated by the British colonial administration. This distortion of customary law highlights the inherent contradictions of colonial governance. While attempting to impose a codified and centralized legal system, British officials ultimately relied on the pragmatic intervention of middlemen to bridge the gap between theory and practice. This reliance, while born out of necessity, created a system where customary practices were malleable, often bent to serve colonial interests.

IV Conclusion

Inspectors as British middle-ranking men were pivotal in implementing policies from Khartoum. Their roles as observers and meticulous note-takers fed information back to the central government, facilitating further standardization attempts. Yet, paradoxically, inspectors themselves were forced to deviate from those central directives, revealing the limits of colonial power and the need for adaptability in diverse regions.

While directly linking MacMichael to the specific inclusion of *diya* in the courts is difficult, his experiences shaped the broader legal landscape. His engagement with customary practices and interpretations of local law contributed to a deeper, albeit flawed, understanding among British officials. This shift made the adaptation of elements like *diya* not only possible but seemingly necessary for navigating the complexities of Sudanese society.

A key pitfall was the tendency of British officials to codify customary laws, including those of the Dinka. This attempt at rigid control undermined the flexibility inherent in traditional systems and often led to misinterpretations or distortions, perpetuating misunderstandings.

The British legal system in Sudan, while designed to be a codified and centralized one, unintentionally created space for a pragmatic approach that bore certain resemblances to how flexible legal concepts could be applied within certain Islamic legal frameworks. Middlemen, operating within this system, played a pivotal role in bridging the gap between British law and local realities. Their actions, however, were ultimately driven by the exigencies of colonial control, not by the principles of justice which are inseparable from Islamic legal concepts.

This invocation of flexible legal approaches highlights a fundamental misunderstanding and manipulation of how legal systems can be adapted responsibly to promote equitable outcomes. While flexibility is possible within Islamic jurisprudence, it remains grounded in broader principles. In contrast, the British use of *diya* was often less about justice and more about expediency. Their selective application of *diya* to appease certain groups, its codification that undermined its inherent flexibility, and the prioritization of colonial order over traditional understandings of justice all illustrate how their pragmatic approach ultimately distorted legal practices for self-serving purposes.

The use of Islamic elements, even with its distortion through this pragmatic colonial approach, underscores the complex evolution of law under colonialism. Notably, these practices, despite their influence, did not become codified. This

highlights the limits of British power and the ultimate resilience of traditional legal systems that continued to exist, albeit in modified forms, alongside the imposed colonial structure. The long term consequences of this distortion on Sudanese legal development would be a valuable direction for future studies.