Beneath Sovereignty: Extraterritoriality and Imperial Internationalism in Nineteenth-Century Egypt

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At 11:00 a.m. on September 2, 1873, to enforce a decision from the Cairo *Majlis al-Tujjār* (commercial tribunal), a dozen Egyptian police officers affixed seals on a beerhouse in the city's Azbakeya gardens. For two years, the beerhouse's leaseholder, Joseph Escoffier, and, after his death in December 1871, his widow Delphine, née Golf, had refused to pay a rent of 3250 francs per quarter, on the mostly spurious grounds that the Egyptian administration of gardens and plantations had not abided by the terms of the lease. The Escoffier beerhouse was hardly a major commercial venture. Delphine Escoffier ran the shop with her daughter, Lisa Rosé, and one indigenous waiter. The beerhouse had at its disposal fifty tables and, in addition to beer, only sold "some ham, sauerkraut, salamis, sausages and various types of cheese." Yet French consular authorities took Delphine Escoffier's protests, against the court's "arbitrary decision" and the police's "act of savagery," very seriously. The French consul in Cairo denounced such "a flagrant violation of capitulations, treaties and confirmed customs" as evidence of the Egyptian government's "very obvious tendencies to try and equate foreigners with mere *rayas*" or Ottoman subjects, deprived of elementary rights in Western eyes. On September 3, he had the consulate's own seals affixed to the beerhouse, in order to

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manifest France's jurisdiction. In an allusion to the project of new Egyptian tribunals for foreign residents, France's consul general in Alexandria also interpreted the event as "a first attempt of the Egyptian government to obtain indirectly the anticipated reform it is hoping for" and he referred the case to the *comité du contentieux* (litigation department) of the ministry of foreign affairs.[1]

The Cairo consul's solicitude for the Escoffier beerhouse may have been related to the fact that Delphine Escoffier's son-in-law, Jules Rosé, a law graduate, was himself an *agent d'affaires* (business agent), who pleaded before French consular courts in Egypt and was employed by the Cairo consulate to witness acts of civil registration.[2] But the endorsement of the consul general and the elevation of the case to the *comité du contentieux* were symptomatic of the extreme sensitivity of the French diplomatic and consular services to possible infringements on France's extraterritorial jurisdiction throughout the Levant, and in Egypt in particular. The case's importance probably also lay in the beerhouse's highly visible and symbolic location: following the erection of new European quarters to the west of Cairo in the 1860s, the Azbakeya square, transformed into a fenced public garden, found itself at the very center of Egypt's capital. Next to the Azbakeya garden stood Cairo's opera house, inaugurated in 1869, where Verdi's *Aida* had its world première in 1871. Soon after Egypt's judicial reform was completed, although not quite on the terms desired by the Egyptian government, in 1876, the garden became flanked, on the opposite

1. "Cahier des charges. Causes et conditions spéciales à la concession du droit d'exploitation d'un établissement de brasserie," May 1, 1871; Delphine Golf, veuve Escoffier, to the French consul in Cairo, September 3, 1873; French consul in Cairo to Albert de Broglie, Minister of Foreign Affairs, October 13, 1873; Marquis de Cazaux, Consul General in Alexandria, to Albert de Broglie, October 16, 1873; La Courneuve, Archives Diplomatiques (hereafter AD), Contentieux, 254, folder "Escoffier." Joseph Elzéar Escoffier was born in Apt (Vaucluse) in 1824, the son of a farmer, and had been in Egypt for some time, as he was almost certainly the Joseph Escoffier who had been caught up in a suit and a countersuit after he rented out an ice cream making machine to a Russian subject; see "Décès de Joseph Elzéar Escoffier," AD, Etat civil des français de l'étranger, Le Caire, 4, December 9, 1873; birth certificate no. 245 dated December 1824, in birth register for the year 1824 at http://archives.vaucluse.fr/documents-numerises/ (August 11, 2016); and *Escoffier v. Swawinsky*, August 30, 1864, Nantes, Centre des Archives Diplomatiques de Nantes (hereafter CADN), PO/20/1.

2. For example, Jules Rosé was the lawyer of the milliner Olympe Clément in her suit for assault against Lucie Gervais, taylor, before the consular court of Cairo in 1868, Aix-en-Provence, Archives Départementales des Bouches-du-Rhône, 2 U1 1489, folder 7; on Rosé's witnessing of civil registration acts, see AD, Etat civil des français de l'étranger, Le Caire, 4, passim.

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side, by the new Cairo tribunal for foreign residents.[3] The site perhaps also held a special place in French memories, since it had hosted several public ceremonies during the country's occupation of 1798–1801, including the erection of a wooden obelisk to celebrate the sixth anniversary of the French Republic, in the presence of Bonaparte, on September 21, 1798.[4] The affixing of Egyptian seals on a shop that "flew the French flag" according to Delphine Escoffier could therefore be seen as a significant challenge to the extensive regime of extraterritoriality enjoyed by the French—and other Europeans and their *protégés*—in Egypt.[5]

The expansion of European extraterritoriality in the mid-nineteenth century has traditionally been interpreted as an informal variety of imperialism, enabling European powers and their nationals to obtain some of the benefits of imperial domination without having to bear the substantial costs of sovereignty. A greater awareness of the historical prevalence of legal pluralism outside Europe, combined with legitimate critiques of the analytical vagueness of informal empire as a concept, have tainted this view with Eurocentrism and undermined its force. Lauren Benton, in particular, has downgraded the imperial significance of extraterritoriality, by construing it as a brief and ambivalent form of interaction that in reality accelerated the adoption of state-centered legal regimes to prevent encroachment by would-be imperial powers. Her conclusion, mainly based on the example of Uruguay, that extraterritoriality paradoxically assisted "the construction of sovereignty," appears valid for Latin America after its independence, where Europeans failed to obtain formal extraterritorial rights. However, Benton's cautious suggestion that the same logic may be seen to operate in regions such as the Ottoman world and China, where Europeans consolidated or obtained formal extraterritorial rights, is open to dispute.[6] Diplomatic and military considerations, rather than internal legal reforms, determined the abolition of extraterritoriality, after 100 years, in Turkey in 1923 and China in 1943.[7]

3. Janet Abu-Lughod, "Tale of Two Cities: The Origins of Modern Cairo," *Comparative Studies in Society and History* 7 (1965): 429–57; Alix Wilkinson, "Gardens in Cairo Designed by Jean-Pierre Barillet-Deschamps," *Garden History* 38 (2010): 124–49.

4. André Raymond, *Egyptiens et Français au Caire, 1798–1801* (Cairo: Institut français d'archéologie orientale, 1998), 108–9.

5. Delphine Golf to the French consul in Cairo, September 3, 1873, AD, Contentieux, 254, folder "Escoffier."

6. Lauren Benton, "Constructing Sovereignty: Extraterritoriality in the Republic of Uruguay," in *Law and Colonial Culture: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002), 210–52; see also Richard S. Horowitz, "International Law and State Transformation in China, Siam and the Ottoman Empire during the Nineteenth Century," *Journal of World History* 15 (2004): 445–86.

7. Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and China* (Cambridge: Cambridge University Press, 2010).

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Focusing on the example of jurisdictional politics in the autonomous Ottoman province of Egypt, this article argues that extraterritoriality could also serve as a potent instrument for hollowing out, rather than constructing, sovereignty. After 1840, Egypt witnessed the development of a particularly extensive regime of extraterritoriality for its fast growing population of European residents. As predicted by Benton, the process elicited sustained efforts by the Egyptian government to enact legal reforms and reassert its jurisdictional authority.[8] In 1876, these efforts culminated with the creation of new mixed courts, which clawed back much of the civil jurisdiction assumed by European consulates. Because the new courts emanated from the authority of the Khedive (hereditary Vice-Roy), this judicial reform has sometimes been hailed as a reassertion of Egyptian sovereignty.[9] In practice, however, the new courts, dominated by a majority of Western magistrates appointed by their respective governments, successfully fended off the Egyptian (Anglo-Egyptian after 1882) government's attempts to regulate them. Popularly known as "international courts," they exercised their jurisdiction over most of Egypt's economic life under a mere veneer of Egyptian sovereignty until 1949.[10]

The internationalization of extraterritoriality proved the condition of its extensiveness and durability in Egypt. In her work on the British imperial constitution in the nineteenth century, Benton noted the tendency of British officials to borrow from international law, as they imagined Britain as the ultimate mediator of a global system of states deprived of some external attributes of sovereignty, or "quasi sovereigns" in the extreme case of Indian principalities.[11] Jurisdictional politics in Egypt suggest that European governments and lawyers conversely borrowed from imperial

8. Omar Cheta, "Rule of Merchants: the Practice of Commerce and Law in Late Ottoman Egypt, 1841–1876" (PhD diss., New York University, 2014).

9. This view in the scholarly literature originates with the account of a former American judge on the mixed court of appeal, Jasper Y. Brinton, *The Mixed Courts of Egypt*, 2nd ed. (New Haven: Yale University Press, 1968), 1–24; see also Mark S. W. Hoyle, *Mixed Courts of Egypt* (London: Graham & Trotman, 1991), 1–11; and Nathan Brown, "The Precarious Life and Slow Death of the Mixed Courts of Egypt," *International Journal of Middle East Studies* 25 (1993): 33–52.

10. Byron Cannon, *Politics of Law and the Courts of Nineteenth-Century Egypt* (Salt Lake City: University of Utah Press, 1988), 37–88; see also Benton, *Law and Colonial Cultures*, who noted that in Egypt "[t]he mixed-court system … made international legal influence 'quasi-permanent,'" 246.

11. Lauren Benton, "From International Law to Imperial Constitutions: the Problem of Quasi-Sovereignty, 1870–1900," *Law and History Review* 26 (2008), 595–619; see also Lauren Benton and Lisa Ford, *Rage for Order: the British Empire and the Origins of International Law, 1800–1850* (Cambridge, MA: Harvard University Press, 2016), esp. 18–24.

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practices such as extraterritoriality to create, outside Europe, international institutions independent of a single sovereign. The division or layering of sovereignty is now seen as an important feature of modern European imperialism; however, arrangements that limited sovereignty from within, by national or international means, have not received as much attention as external limitations.[12] Such imperial enclaves beneath sovereignty may have been less numerous and less visible on maps of empire than colonial possessions or protectorates. However, their prominence in strategic locations of the global economy, such as Egypt or China's coast, suggest that they played a nodal role in the world's legal regime at the end of the nineteenth century.

Although this article pays due attention to Britain's efforts at global legal ordering, it focuses on the role of another imperial formation, France, in order to highlight the significance of interaction between empires in the origins of Egypt's international regime of extraterritoriality. Before Britain's occupation in 1882, France was at least as intrusive an imperial power in Egypt as Britain.[13] Pointing to French legal interventionism, a British lawyer even claimed that France wielded "semi-sovereignty" in Egypt by the early 1870s.[14] For reasons both ideological and pragmatic, French officials upheld a much more assertive conception of extraterritoriality than did their British counterparts. Egyptian resistance and British reservations forced the French government to concede the necessity of judicial reform. However, French reluctance imposed a compromise that internationalized civil jurisdiction. Reform arguably transformed rather than curtailed French influence, because the new courts applied codes inspired by French legislation and drafted by a French lawyer. It therefore internationalized French law as well as civil jurisdiction in Egypt. This was an acceptable, if not the favored outcome from a French official perspective: in Delphine Escoffier's case, the *comité du contentieux* eventually deemed her protest groundless, after punctiliously ascertaining that the proceedings of the Cairo *Majlis al-Tujjār*'s and the substance of its decision conformed with French commercial law.[15]

12. An exception is Mary D. Lewis, *Divided Rule: Sovereignty and Empire in French Tunisia, 1881–1938* (Berkeley: University of California Press, 2013); on the layering of sovereignty, see Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton: Princeton University Press, 2010).

13. Daniel Panzac and André Raymond, eds. *La France et l'Egypte à l'époque des vice-rois, 1805–1882* (Cairo: Institut français d'archéologie orientale, 2002).

14. James Carlile MacCoan, *Consular Jurisdiction in Turkey and Egypt* (London: G. Norman, 1873), 42.

15. The decision was also grounded in a stipulation of the lease signed by Joseph Escoffier, which renounced consular jurisdiction, a self-denial of extraterritoriality which

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Such a focus on the French utilization of extraterritoriality and Anglo–French interactions risks minimizing the influence of the Egyptian government, its Ottoman suzerain, and other European imperial powers on the internationalization of extraterritoriality in Egypt. Despite these limitations, this approach may still help correct the prevalent Anglocentrism of scholarship on global legal regimes and empire in the nineteenth century. In addition, it offers a note of caution against the temptation to romanticize the sharing of sovereignty, by showing that such arrangements served to diminish as well as preserve the autonomy of polities confronted with European imperial ambitions.

The Rise of Imperial Extraterritoriality

Freely conceded by the Ottoman Sultan from the sixteenth century, the "Capitulations" did not initially manifest European dominance. Instead, they were mutually advantageous arrangements that conformed to the strong form of legal pluralism in force in the Ottoman Empire, where numerous non-Muslim subjects as well as foreign communities enjoyed a large measure of self-jurisdiction. Foreign merchants under the capitulatory regime were very few in numbers and lived in segregated quarters without the right to purchase property.[16] Yet from the mid-nineteenth century on, as domestic difficulties and military setbacks rendered the Ottoman Empire more sensitive to external pressures, extraterritoriality became a privileged status that benefited tens of thousands of Europeans. The term "Capitulations" remained widely used, but increasingly as "an appropriated idiom for the extension of imperial power."[17]

The legal transformation of the Capitulations into an instrument of Western domination may be connected with the rapidly increasing use of

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the French ministry's legal advisers did not wish to condone; see the minister of foreign affairs to the consul general in Alexandria, November 19, 1873, AD, Contentieux, 254, folder "Escoffier." On the adoption of French commercial legislation by the Ottoman Empire in the 1850s, see Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave MacMillan, 2011), 26.

16. Feroz Ahmad, "Ottoman Perceptions of the Capitulations, 1800–1914," *Journal of Islamic Studies* 11 (2000): 1–20; Maurits H. van der Boogert, *The Capitulations and the Ottoman Legal System: Qadis, Consuls, and Beratıcs in the Eighteenth Century* (Leiden: Brill, 2005); Karen Barkey, "Aspects of Legal Pluralism in the Ottoman Empire," in *Legal Pluralism and Empires, 1500–1850*, eds. Lauren Benton and Richard J. Ross (New York: New York University Press, 2013), 83–107.

17. Will Hanley, "Foreignness and Localness in Alexandria, 1880–1914" (PhD diss., Princeton University, 2007), 15.

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international treaties by European powers to manage both intra-European affairs and their relations with extra-European states, or what has recently been described as a "treaty-making revolution" between 1830 and 1860.[18] Historians of "free trade imperialism" have sometimes cited the Anglo–Ottoman treaty of Balta Liman in August 1838 as marking the advent of a new asymmetrical relationship between Western Europe and the Ottoman Empire, but perhaps for erroneous, narrowly commercial reasons, as it did not reduce already very low customs duties on exchanges of commodities with Europe.[19] The imperial significance of Balta Liman appears to lie instead in the subordination of some aspects of Ottoman municipal law to international agreements. In particular, it transformed the capitulatory regime from a free concession into an international obligation. Whereas the previous Anglo–Ottoman treaty, in 1809, had merely restored the Capitulations as they had been issued by the Sultan before the outbreak of war in 1807, article 1 of Balta Liman asserted that the "rights, privileges, and immunities" conferred upon Britons "by the existing Capitulations and Treaties" were "confirmed now and for ever."[20] Two months later, France secured a similar rewording of its own capitulatory rights.[21] Despite a vague promise to revisit extraterritorial arrangements, which would not be kept, the multilateral treaty of Paris that concluded the Crimean War (1853–56) confirmed the incorporation of the Capitulations into international law.[22]

18. Edward Keene, "The Treaty-Making Revolution in the Nineteenth Century," *International History Review* 34 (2012), 475–500.

19. See, for example, John Gallagher and Ronald Robinson, "The Imperialism of Free Trade," *Economic History Review*, 2nd series, 6 (1953): 11; and Reşat Kasaba, "Treaties and Friendships: British Imperialism, the Ottoman Empire, and China in the Nineteenth Century," *Journal of World History* 4 (1993): 215–41. On the limited tariff implications of Balta Liman, see Şevket Pamuk, *The Ottoman Empire and European Capitalism, 1820–1913* (Cambridge: Cambridge University Press, 1987), 28–31.

20. Lewis Hertslet, ed. *A Complete Collection of the Treaties and Conventions, and Reciprocal Regulations, at Present Subsisting between Great Britain & Foreign Powers*, 31 vols. (London: Butterworth, 1827–1940), V:506–10; compare with article 4 of the Treaty of 1809, in ibid., II:370–77.

21. Jules de Clercq, ed. *Recueil des traités de la France*, 23 vols. (Paris, 1864–1907), IV:439–43, article 1; compare with articles 2 and 3 of the Peace Treaty of 1802, in ibid., I:588–90.

22. On the status of the Ottoman Empire in international law, see Jennifer Pitts, "Boundaries of Victorian International Law," in *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century-Political Thought*, ed. Duncan Bell (Cambridge: Cambridge University Press, 2007), 72–73, and Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815–1914* (Princeton: Princeton University Press, 2012), 47–54.

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Together with a sustained boom in commercial exchanges, this legal transformation facilitated a sharp increase in European migration across the Mediterranean in the middle decades of the nineteenth century.[23] The growing numbers of European residents, in turn, rendered tangible the implications of the new legal regime and profoundly transformed extraterritorial consular justice. Looking back over the previous decades in 1876, the French consul in Tunis drew a stark contrast between the present situation and that prevailing in the 1830s. Then, only a few "honorable" French merchants resided in the Levant, and their disputes were mostly settled by conciliation, in or out of court. But from the 1850s, French "colonies" became dominated by "a floating population made up almost exclusively of small traders, sutlers etc. and from that moment our Consular courts have been flooded by a multitude of heretofore unheard of cases," such as "payment of rents" or "promissory notes for negligible amounts." Conciliation did not avail with these "wild people," most of whom were "tribunal regulars," and consular litigation experienced "a tremendous increase."[24] The number of appeals against civil and commercial decisions by French consular courts in the Levant, which were heard by the court of Aix-en-Provence (a prerogative it inherited from the Old Regime's *Parlement de Provence*), rose sevenfold in less than fifteen years, from approximately four cases annually in 1848–50 to twenty-eight in 1862–64.[25] In Alexandria, the number of decisions by the French consular court increased fivefold in just five years, from forty-two in 1858 to 210 in 1862.[26]

Imperial extraterritoriality expanded as a result of immigration rather than the jurisdictional protection European consulates could grant to Ottoman subjects and their families. If anything, the numerical incidence of this type of protection—not to be confused with the looser political protection that certain European powers enjoyed over some Christians or Jews—appears to have declined in the mid-nineteenth century.[27] Not only did

23. Julia Clancy–Smith, *Mediterraneans: North-Africa and Europe in an Age of Migration, c. 1800–1900* (Berkeley: University of California Press, 2011); and Paul Caruana Galizia, *Mediterranean Labor Markets in the First Age of Globalization: An Economic History of Real Wages and Market Integration* (New York: Palgrave MacMillan, 2015).

24. Théodore Roustan, Consul General in Tunis, to Louis Decazes, Minister of Foreign Affairs, July 18, 1876, AD, 752SUP/114.

25. Louis Féraud-Giraud, *De la juridiction française dans les échelles du Levant et de Barbarie*, 2nd ed., 2 vols. (Paris: A. Durand, 1866), I:iii–iv.

26. "Statistique des jugements rendus par les tribunaux consulaires de Constantinople et d'Alexandrie," [1863?], AD, 752SUP/113.

27. However, consulates with very few national residents, such as that for the United States, appear to have continued to grant jurisdictional protection on a more extensive scale; see Ziad Fahmy, "Jurisdictional Borderlands: Extraterritoriality and 'Legal

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the Ottoman government make sustained efforts to limit protection to indigenous employees of foreign consulates, but European immigrants also exercised considerable pressure against the conferring of consular jurisdiction upon Ottoman subjects so as to reduce economic competition.[28] The complaint of an anonymous "Anglo-Levantine" about the British consuls' "great eagerness to assist their *protégés*," to the point of giving preference to "a crafty Greek or a wily Armenian" in return for bribes over "their own countrymen," was typical.[29] In 1864, France's consular district of Beirut, larger than modern Lebanon, counted only ninety-nine French indigenous *protégés*, a very modest figure given the intensity of the region's commercial and cultural connections with France.[30]

Among immigrants under consular jurisdiction, a distinction needs to be drawn between metropolitan and imperial subjects. If consular authorities were usually keen to affirm their jurisdiction over the former, they frequently complained about what they perceived as the excessive litigiousness of the latter. The makeup of each consulate's subject population, therefore, induced different preferences in terms of jurisdictional politics. For example, Britain and France's subject populations throughout the Ottoman Empire were of comparable size, with estimates by consular authorities of 11,500 for Britain in 1863 and 14,300 for France in 1871.[31] However, the majority of British consular subjects hailed from

Chameleons' in Precolonial Alexandria, 1840–1870," *Comparative Studies in Society and History* 55 (2013), 305–29. On protection in general, see Salahi Sonyel, "The Protégé System in the Ottoman Empire," *Journal of Islamic Studies* 2 (1991): 56–66; on the distinction between political and jurisdictional protection, see Cihan Artunç, "The Price of Legal Institutions: The *Beratlı* Merchants in the Eighteenth-Century Ottoman Empire," *Journal of Economic History* 75 (2015): 727; and Rodogno, *Against Massacre*, 30.

28. See, for example, the Ottoman "Règlement relatif aux consulats étrangers," [August 8] 1863, which restricted jurisdictional protection to eight employees per consulate general, six per consulate, and four per vice-consulate, beyond which numbers a dispensation from the Ottoman ministry of justice was required, in CADN, 92PO/A/331.

29. Anonymous, *Our Consuls in the East: A Parliamentary Inquiry into their Proceedings Imperative* (London: Pigott, 1855), 19–20.

30. "Liste des protégés du Consulat général de Beyrout [sic] et des agences qui en relèvent," October 30, 1864, and comments by Marquis de Moustier, Ambassador in Constantinople to Eugène Poujade, Consul General in Beirut, November 29, 1864, CADN, 92PO/A/331; on French influence in Lebanon, see Andrew Arsan, "'There is, in the Heart of Asia … an Entirely French Population': France, Mount Lebanon, and the Workings of Affective Empire in the Mediterranean, 1830–1920," in *French Mediterraneans: Transnational and Imperial Histories*, eds. Patricia M. E. Lorcin and Todd Shepard (Lincoln: University of Nebraska Press, 2016), 76–100.

31. Edmund Hornby, Judge at the Supreme Consular Court of Constantinople, to Lord Russell, Foreign Secretary, September 15, 1863, in Kew, The National Archives (hereafter TNA), FO 780/334; "Statistique des Français résidant à l'étranger d'après les documents

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imperial possessions, especially Malta, Gibraltar, and the Ionian islands (until the latter were ceded to Greece in 1864), whereas the majority of French consular subjects were French citizens, despite a significant and rising proportion of imperial subjects from Algeria.[32] France, and most other European powers whose proportion of imperial subjects was probably even lower, would, therefore, have been more naturally inclined to promote extraterritoriality than Britain.

The expansion of imperial extraterritoriality also affected the Ottoman world unevenly, with Egypt—setting aside the case of Algeria, turned into a settlement colony after France's invasion in 1830—experiencing the largest influx of European migrants. Because of Egypt's lavish government spending on infrastructures and amenities, a boom in cotton cultivation during the American Civil War and the inauguration of the Suez Canal in 1869, the "Klondike on the Nile" saw its population of immigrants under foreign jurisdiction leap from 6,000 in 1840 to 100,000 in the 1880s.[33] France was the great power with the largest population of consular subjects: approximately 17,500 out of 80,000 foreign residents circa. 1870, against only 6,000 British consular subjects.[34] A large majority of French nationals in Egypt were of European descent, and enjoyed full citizenship. In the Cairo consular district in 1871, such citizens represented 76% of the French population, against 24% of Algerian subjects, according to the local French consulate. The proportion of French citizens in Alexandria and the Suez isthmus was almost certainly higher because the al-Azhar mosque attracted large numbers of Algerian students to Cairo.[35] By contrast, colonial subjects, especially from Malta, continued to form the bulk of the British population in Egypt: in Alexandria in 1888, only 26% of British residents hailed from the British Isles and 62% came from from Malta.[36] The Anglo–French demographic divergence

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transmis par les agents diplomatiques et consulaires," 1874, AD, 28ADP, 11. Both figures, based on undependable methods such as voluntary registration, almost certainly underestimated the number of permanent residents, and did not take into account large numbers of temporary residents; unlike the British figure, the French one excludes native *protégés*.

32. Allan Christelow, *Algerians without Borders: the Making of a Global Frontier Society* (Gainesville: University Press of Florida, 2012), 50–81.

33. Martin W. Daly, *The Cambridge History of Egypt*, 2 vols. (Cambridge: Cambridge University Press, 1998), II: 274; the Klondike metaphor was coined by David Landes, *Bankers and Pashas: International Finance and Economic Imperialism*, 2nd ed. (New York: Harper, 1958), 69.

34. The other largest European communities were the Greeks (35,000 residents) and the Italians (15,000); see Brinton, *Mixed Courts*, 18.

35. "Statistique des Français résidant à l'étranger," 1874, AD, 28/ADP/11; see also detailed figures per consulate in "Turquie," AD, 28/ADP/14.

36. Hanley, "Foreignness and Localness," 285.

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of jurisdictional incentives mentioned previously was particularly stark in Egypt.

The rapid expansion of foreign jurisdiction as a result of immigration in Egypt was compounded by the adoption of a more extensive regime of extraterritoriality than elsewhere in the Ottoman world. In the rest of the Empire, exclusive consular jurisdiction was confined to litigation between Europeans, whereas Ottoman courts retained jurisdiction over mixed Ottoman–European cases, but with the European party enjoying the assistance of a consular *dragoman* (interpreter) and a right of appeal to the Sublime Porte in Constantinople. From the 1850s in Egypt, by contrast, and in flagrant contravention of the text of the Capitulations, it only became possible to sue foreign residents before their own consular court, a practice justified by the maxim *actor sequitur forum rei* (the plaintiff must follow the forum of the thing in dispute).

Why the Egyptian government tolerated such a drastic divergence of jurisdictional rules from the rest of the Ottoman world is unclear. Following the imposition of the 1840 Convention of London that restored a modicum of Ottoman suzerainty over Egypt but conceded him hereditary rule, the Vice-Roy Muhammad Ali at first emulated Ottoman efforts to contain European jurisdiction, hence the creation of new mixed courts with a majority of indigenous judges (*Majālis al-Tujjār*) to settle all mixed European–indigenous commercial cases in the 1840s.[37] Contemporaries often attributed the court's failure to impose their jurisdiction on foreign defendants to the desire of Muhammad Ali's second successor, Sa'id (1854–63), to encourage the settlement of Europeans who would assist Egypt's economic development. One may also speculate that the Egyptian administration, keen to assert its autonomy from Constantinople, saw in the expansion of consular jurisdiction a lesser evil than the multiplication of appeals before the Sublime Porte. In any event, the French and most other European consular authorities eagerly seized the opportunity, securing full criminal and civil jurisdiction for their subjects as defendants by the mid-1850s. British consular justice expanded more reluctantly, only adopting the *actor sequitur forum rei* rule in imitation of other European consulates in 1860 in Alexandria and in 1861 in Cairo.[38] In less than thirty years, an exceptionally wide regime

37. Jan Goldberg, "On the Origins of Majālis al-Tujjār in Mid Nineteenth-Century Egypt," *Islamic Law and Society* 6 (1999): 193–223; and Cheta, "Rule of Merchants," 31–53.

38. Calvert to Hornby, June 8, 1861, and Calvert to Colquhoun, July 12, 1861, TNA, FO 141/44; MacCoan, *Consular Jurisdiction*, 21–22, also stated that British consulates were the last to embrace *actor sequitur forum rei*, "in 1860."

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of extraterritoriality, rooted in international rather than domestic law, had replaced the limited legal pluralism of the Capitulations in Egypt.

Two Conceptions of Extraterritorial Governance

European powers responded to the expansion of extraterritoriality in different ways. Such differences reflected divergent interests, such as the respective proportions of metropolitan and imperial subjects within each population under consular jurisdiction, but they were also determined by different ideas about the legal ordering of the world. In particular, it is possible to distinguish between a British conception of extraterritoriality, as a transitional instrument toward the incorporation of extra-European polities into a state system under British-led international supervision, and a French conception, more intent on using extraterritoriality to secure immediate political influence and economic advantages.

In Britain's case, the expansion of extraterritoriality in the Ottoman world—and in the Far East after the conclusion of unequal treaties with China, Siam, Korea, and Japan—resulted in an ambitious reorganization of consular justice, culminating in the creation of autonomous orders of jurisdiction, headed by supreme consular courts in Constantinople (1857) for the Middle East and in Shanghai (1865) for East Asia. Following the abolition of the Levant Company in 1825, the 1843 Foreign Jurisdiction Act clarified the judicial powers of British consuls in the Levant and authorized the Crown to issue further regulations by means of Orders in Council.[39] The 1843 Act has sometimes been described as foreshadowing the territorial imperialism of the late nineteenth century, but a recent review of the evidence has shown that it chiefly aimed at asserting control over unruly—especially Maltese and Ionian—subjects in Ottoman lands.[40] Far from aspiring to an indefinite expansion of British jurisdiction, James Hope-Scott, the main drafter of the legislation, already looked forward to "the formation of one system of jurisprudence for all the

39. Donald C. M. Platt, *Cinderella Service: British Consuls since 1825* (London: Longman, 1971), 125–79.

40. On extraterritoriality as laying the ground for territorial expansion, see John P. Spagnolo, "Portents of Empire in Britain's Ottoman Extraterritorial Jurisdiction," *Middle Eastern Studies* 27 (1991): 256–82; for a persuasive rebuttal, see Richard Pennell, "The Origins of the Foreign Jurisdiction Act and the Extension of British Sovereignty," *Historical Research*, 83 (2010): 465–85; on the control of nationals as a major goal of extraterritorial jurisdiction, see Eileen P. Scully, *Bargaining with the State from Afar: American Citizenship in Treaty Port China, 1844–1942* (New York: Columbia University Press, 2001).

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Europeans in the Levant, by which means the international questions would be reduced to a conflict between Turkish and Christian law," as a further transitional stage before legal reforms rendered possible territorial Ottoman jurisdiction.[41]

In the wake of the Crimean War, an Order in Council completed the reorganization of Levantine consular justice with the creation of two positions reserved for professionally trained lawyers, a supreme judgeship in Constantinople and a judgeship in Alexandria.[42] The lawyer Edmund Hornby, who drafted the Order in Council after a mission to supervise the disbursement of a British loan to the Ottoman Empire, went on to serve as the first supreme judge in Constantinople between 1857 and 1865. Hornby, a disciple of the legal thinker John Austin, and whose uncle had been a secretary of Jeremy Bentham, may be considered a minor figure of the utilitarian movement.[43] In line with the utilitarian model of reform through emulation, Hornby's instructions, drafted by the foreign secretary Lord Clarendon, another Benthamite sympathizer, expounded a conception of extraterritorial justice as the setting of an example that would gradually transform Ottoman institutions along liberal lines.[44] Insofar as was possible, decisions should be grounded in English law and procedure imitate that of England's "County Courts." Clarendon also encouraged Hornby to draft a new "Levant Code," which could guide indigenous magistrates as well as British consuls. Ottoman judicial institutions should be educated, not trampled upon: "you will never lose sight of the principle that the best mode of obtaining influence, is by good example, and that the surest method of inducing the Turkish Government to imitate more closely the legal as well as the commercial systems of Europe, is to demonstrate by evidence of actual every day experience, that those systems conduce more certainly than those of Turkey to the wealth, independence, and happiness of a nation."[45]

Hornby's correspondence with the foreign office contains countless instances of his personal contempt for the inefficiency and corruption of

41. "Mr Hope-Scot's memorandum on British Jurisdiction in Foreign States," in Henry Jenkyns, *British Rule and Jurisdiction Beyond the Seas* (Oxford: Clarendon Press, 1902), 260.

42. "Order of Her Majesty in Council for the Regulation of Consular Jurisdiction in the Dominions of the Sublime Ottoman Porte," August 27, 1857, in Hertslet, *A Complete Collection of the Treaties and Conventions*, X:1024–35.

43. Edmund Hornby (ed. David L. Murray), *An Autobiography*, (London: Constable, 1929), 6.

44. Samuel E. Finer, "The Transmission of Benthamite Ideas, 1820–1850," in *Studies in the Growth of Nineteenth-Century Government*, ed. Gillian Sutherland (London: Routledge, 1972), 11–32.

45. Clarendon to Hornby, September 18, 1857, TNA, FO 780/367.

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Ottoman institutions. His memoirs also upheld trenchant views on the hierarchy of races: "Nothing can or will alter the fact that the white man will and must *use* the black man for perhaps centuries to come, not as an equal but as an inferior."[46] Yet his correspondence suggests that he abided by his instructions and rarely sought to interfere with Ottoman institutions. When he wished to exercise the slightest pressure on the Ottoman ministry of the interior or an Ottoman court, he requested the foreign office's permission.[47] Hornby focused instead on improving British consular justice, going on repeated inspection tours of consulates, from Belgrade to Bagdad. Most consulates he visited, he later recollected, "had … absolutely no records or even notes of the cases they had tried, or in fact any evidence of their official or judicial action for any number of past years" before he reorganized them.[48] Even when in Constantinople, he reported to the foreign office, "[a] very great portion of [his] time [was] taken up in perusing desptaches with their enclosures from the Outlying Consulates & in writing instructions in answer."[49]

Perhaps most typical of Hornby's conception of extraterritoriality as a means of promoting Ottoman reforms, and further betraying the influence of Bentham's ideas given the latter's enthusiasm for a new panoptic style of incarceration, was the proposal he repeatedly put forward (in vain) for the creation of an "International Prison" for criminals convicted by consular courts in Alexandria. Not only would economies of scale reduce the running costs of all European consulates in Egypt, but "Independently also of all question of expense it would be difficult to estimate the importance which the example of a well conducted Prison might have upon the local authorities."[50] In 1865, Hornby's successful reorganization of consular justice in the Levant earned him the newly created position of supreme judge in Shanghai, in which capacity he oversaw British extraterritorial jurisdiction in the Far East until his retirement in 1876. Under his helm, the Ottoman world arguably served as the laboratory of what might be termed a British panoptic conception of imperial extraterritoriality, with consular judges watching over the reform efforts of indigenous officials.

Despite being faced with at least as significant an increase in extraterritorial litigation as Britain, France pursued much less ambitious reforms. In part this was because the French diplomatic and consular service,

46. Hornby, *Autobiography*, 183.
47. Hornby to Russell, September 2, 1862, TNA, FO 780/333.
48. Hornby, *Autobiography*, 97.
49. Hornby to Russell, July 7, 1862, TNA, FO 780/333.
50. Hornby to Russell, September 19, 1863, TNA, FO 780/333.

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especially in the Levant, had already been put on a more professional footing in the late eighteenth century. The ordinance of 1778, barely amended in 1836, remained seen as providing sufficient legal legitimacy and clear procedural guidelines for the consuls' judicial role. From the 1780s on, French consuls also received a training in law and languages, needed to sit examinations, were salaried, and had good prospects of career progression.[51] British consuls who were consulted on the desirable course of reform in the 1850s often hailed France's organization—"the French system is superior," the British consul in Tunis admitted—and confessed to relying themselves on the ordinance of 1778 for procedure and Napoleonic codes for the substance of their decisions.[52] British officials also praised the quality of France's *dragomans*, who played a crucial role in interactions with Ottoman officials: "much is necessarily left to their discretion and they have enormous power in the way of winning and marring a cause," Hornby explained in a report that lamented the "the difficulty of obtaining Englishmen, who have sufficient knowledge of the language, and of the Turkish character," and the need to recruit instead Levantines whose loyalty to British interests was dubious.[53] By contrast, most French *dragomans* continued to be native Frenchmen, often trained at the *Ecole des jeunes de langues*, based in Paris and Constantinople.[54]

Conversely, the efficacy of French consular judicial and other activities benefited from the growing proficiency in French of Ottoman and Egyptian officials in the mid-nineteenth century. A good command of French became a requirement in the upper echelons of Ottoman bureaucracy in the 1850s, and Khedivial Egypt began to use French as an administrative working language in the 1860s.[55] Cultural complicity between French agents and local high officials, who had often spent several years in in Paris during their youth, has only left faint traces in the archives, but its

51. Ferry de Goey, *Consuls and the Institutions of Global Capitalism, 1783–1914* (London: Routledge, 2015), 9; Virginie Martin, "Devenir diplomate en Révolution: naissance de la 'carrière diplomatique'?" *Revue d'histoire moderne et contemporaine*, 63 (2016): 110–35.

52. *Report of the Select Committee on Consular Service and Appointments* (House of Commons Parliamentary Papers, 1857–1858), VIII.1 617, 677.

53. Hornby to Russell, August 17, 1859, TNA, FO 780/333.

54. Frédéric Hitzel, "L'institution des Jeunes de langue de Constantinople au début du XIXe siècle," in *De Samarcande à Istanbul: étapes orientales*, ed. Véronique Schiltz (Paris: CNRS, 2015), 203–19.

55. Carter Vaughn Findley, *Ottoman Civil Officialdom: A Social History* (Princeton: Princeton University Press, 1989), 164–68, 170–72; F. Robert Hunter, *Egypt under the Khedives, 1805–1879: From Household Government to Modern Bureaucracy* (Pittsburgh: University of Pittsburgh Press, 1984), 80–122.

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role in fortifying French influence can be detected, in Egypt, in the contrast between the amiable and jocular tone of Franco–Egyptian exchanges of correspondence and the stilted or faulty French employed by British officials in their communications with the Egyptian administration. Famously, cultural complicity was a major ingredient of the prodigious success met by French adventurers in Egypt such as the director of the Suez Canal Company Ferdinand de Lesseps, a childhood friend of Sa'id, or the banker Edouard Dervieu, who had married the daughter of Sa'id's French tutor.[56] The meteoric ascent of François Bravay, the son of a saucepan seller in Languedoc who inspired Alphonse Daudet's novel *Le Nabab* (1877), also relied on "an intimacy" and "a familiarity" with Sa'id nurtured by Bravay's "*bons mots*, puns and racy jokes."[57]

Changes in the organization of French consular justice were incremental and designed to consolidate French informal predominance rather than transform local institutions. At the ministry of foreign affairs, the *comité du contentieux*, created in 1835, saw its composition and purview enlarged in 1853. Made up of law professors and prominent political figures, including former ministers, it became charged with interpreting "the provisions of treaties and international customs."[58] Its functions, therefore, included policing the boundaries of France's extraterritorial jurisdiction, as when it pronounced against Delphine Escoffier's request for consular protection in 1873. In 1862, a commission of the ministry of foreign affairs envisaged, but eventually decided against, emulating Britain's creation of a separate order of jurisdiction for the Levant. The costs, it argued, would be high, whereas the prestigious court of Aix-en-Provence was not so distant from the Eastern Mediterranean that it could not remain France's de facto supreme court for Levantine consular justice. In order to manage the increase in litigation, the ministerial commission opted instead to imitate the model of the newly constituted Italian consular justice—after the foundation of the Kingdom of Italy in 1860—and create consular judgeships in the busiest consulates.[59] French consular justice, therefore, remained an

56. On Dervieu, see Landes, *Bankers and Pashas*, 102–27.

57. Auriant [Alexandre Hadjivassiliou], *François Bravay, ou le nabab* (Paris: Mercure de France, 1943), 29–30.

58. "Rapport [sur le comité du contentieux] au directeur des affaires politiques," December 26, 1867, AD, 752SUP/118; Jean Baillou, Charles Lucet, and Jacques Vimont, *Les Affaires Etrangères et le Corps Diplomatique français*, 2 vols. (Paris: CNRS, 1984), I:584–85, 647, 716–22, and II:49–52, 104–6.

59. "Réorganisation des Tribunaux consulaires en Orient," n. d. [1862] and "Réorganisation des tribunaux consulaires dans le Levant," [1863?]], in AD, 752SUP/113.

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appendage of the metropolitan judiciary, a situation characteristic of the French penetrative rather than panoptic conception of extraterritoriality.

Creating a judicial model susceptible of encouraging legal reform does not seem to have been a significant concern in French debates about extraterritorial jurisdiction. Instead, attention focused on ensuring that French consular justice retained the material means of handling the increase in litigation and upholding the legal guarantees for expatriate Frenchmen that the local judiciary was allegedly unable to provide. The language of civilization and improvement was not absent from these discussions, but the work of civilizing was understood as being done by French immigrants rather than reformed Egyptians. If the British panoptic conception of extraterritoriality bore the stamp of utilitarian ideas, it is tempting to describe the French penetrative conception as Saint-Simonian, especially as numerous French adepts of Saint-Simonianism, a mystical exaltation of industrial capitalism, settled in Egypt after 1830.[60] Both the British panoptic and the French penetrative conceptions are open, in different ways, to the charge of Eurocentric hypocrisy: the British one was more arrogant, the French one more predatory. Limiting French economic predation would constitute a major goal of Egyptian efforts, aided and abetted by the British government, to overhaul extraterritorial jurisdiction.

The Economics of Judicial Reform

Most analyses of Egypt's judicial reform have stressed its long-term political significance, as having either laid the ground for colonial occupation in 1882, or sown the seeds of nationalist agitation, often led by Egyptian lawyers trained in the new mixed courts, after 1900.[61] However, very few of the actors involved in the decade-long controversy over judicial reform (1867–76) invoked a desire to defend or subdue Egypt's sovereignty. Instead, the immediate cause of the reform lay in economic abuses of extraterritoriality, especially by French residents, and its chief objective consisted in reorganizing, rather than curtailing or extending, extraterritorial rights beneath Egyptian sovereignty.

Accounts of Egypt's judicial reform often attribute its conception and eventual adoption to the tireless efforts of Nubar Pasha, a leading minister of Sa'id and his successor, Isma'il (1863–79). In 1867, Nubar submitted an

60. Philippe Régnier, *Les Saint-Simoniens en Egypte* (Cairo: Banque de l'Union Européenne, 1989).

61. See, for example, Fahrat Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt* (Stanford: Hoover Institution on War, Revolution, and Peace, 1968).

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eloquent memorandum to European governments that proposed the creation of new mixed tribunals that would take cognizance of all mixed civil, commercial, or criminal litigation. The new tribunals and an appeals court in Alexandria would be made up of an equal number of European professional magistrates and indigenous judges trained in Europe, with a casting vote for one of the latter acting as president. The memorandum employed a liberal language to denounce the extension of extraterritoriality beyond the text of the Capitulations, "a system which really leaves the administration without power, and the people without any regular justice in their intercourse with Europeans." However, it should not be confused with a cultural or even political nationalist manifesto, because it acknowledged that "progress cannot come except from Europe;" argued for further harmonization of Egyptian legislation with France's commercial, civil, and criminal codes; it even described "the organization proposed [as] traced upon the judicial organization of [French colonial] Algeria."[62]

The temptation to lionize Nubar as an early advocate of Egyptian independence ought, therefore, to be resisted. Born in Smyrna into a Christian Armenian family and educated in Geneva and at the Collège de Sorrèze near Toulouse, the secondary school favored by French West Indian planters for their male offspring, he served twice as Egyptian Premier during Britain's occupation before retiring to Paris. In his memoirs, written in French and only published in the 1980s, Nubar took great pride in the eventual adoption of the reform, after he toured European capitals to lobby foreign ministers and presided over two international conferences, one in Cairo in 1869–70 and the other in Constantinople in 1872–73. However, he described the reform as a "Magna Carta" destined to introduce "liberalism" into Egyptian life rather than assert national sovereignty. The memoirs repeatedly stressed his attachment to the land of Egypt, but somewhat in the manner of a colonial administrator, frequently sneering at Oriental ineptitude, as when he mocked an alleged attempt by Egyptian lawyers to draft a civil code: the text, Nubar claimed, contained only thirteen articles, one of which enjoined magistrates not to fall asleep during audiences.[63]

Nubar's memoirs also admitted that a paramount practical consideration behind the proposed reform was a desire to get rid of dubious claims against the Egyptian government, which had to be settled by costly

62. Nubar Pasha, "Note on the future regulation of the legal and judicial relations between the foreign and native population of Egypt," in *The Judicial Organization in Egypt and its Reform* (London: Spottiswoode and Co., 1868), 3, 12.

63. Nubar Pasha (ed. Mirrit Boutros Ghali), *Mémoires*, (Beirut: Librairie du Liban, 1983), 318, 374.

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indemnities after tortuous political negotiations with the consuls. Such claims, "most of them French" and often unfounded, amounted "to a fantastical number of millions [of francs]."[64] Nubar claimed to have first devised his scheme for a new order of jurisdiction spontaneously, while he accompanied Sa'id on an official visit in Britain in 1862: "How this idea came to me, I do not know."[65] In reality, he is likely to have been inspired by an early project of "regular Egyptian tribunals" with foreign judicial officers put forward by Robert Colquhoun, Britain's General Consul, to Sa'id and "the best educated of the natives" in the viceroy's entourage the previous year. Colquhoun's chief goal was already to eradicate "the claims against the government which would not for a moment bear being submitted to a proper tribunal" and had been "fertile sources of profits to persons unworthy of bearing the name of merchants." According to the British official, the five last large indemnities, one of them to the French adventurer Bravay (Daudet's *Nabab*) and none to a British subject, would have sufficed to "pay a fourth of the Vice Roy's debts."[66]

Judicial reform was not a solely British project. It chimed with the Egyptian government's sustained efforts since the 1850s to improve the efficiency of commercial tribunals, the *Majālis al-Tujjār*.[67] However, the latter remained unpopular, even with British officials who were keener than their European counterparts to bolster Egyptian jurisdiction. Colquhoun lamented that they could only deal with "simple matters of commerce." Henry Calvert, the British Consul in Cairo, complained that, in 1861, "many hundreds of Commercial suits [were] lying unsettled" before his city's *Majlis* and that their proceedings had "hitherto been characterized by abuses and irregularities flagrantly opposed to justice."[68] In his 1867 memorandum, Nubar admitted that the *Majālis al-Tujjār* had been "deserted" by Europeans.[69] The project of reform may therefore be construed as an Anglo–Egyptian collaborative effort, with both Colquhoun and Nubar placing an emphasis on the replacement of the

64. Ibid., 192; in his 1867 memorandum, Nubar also mentioned that indemnities paid to settle dubious foreign claims had cost the Egyptian Treasury "£2,880,000" (c. 72,000,000 francs) in four years, Nubar, "Note," 4.

65. Nubar Pasha, *Mémoires*, 197.

66. Colquhoun to Zulficar Pasha, Egyptian Foreign Secretary, August 8, 1861, enclosed in Colquhoun to Russell, August 12, 1861, TNA, FO78/1591; see also Colquhoun to Russell, February 24, 1865, TNA, F0 78/1871, on how Nubar's 1862 proposal "followed" from his 1861 project.

67. Cheta, "Rule of Merchants," 228–84.

68. Colquhoun to Russell, August 12, 1861, TNA, FO78/1591; Henry Calvert to Colquhoun, October 17, 1861, TNA, F0 141/44.

69. Nubar, "Note," 7.

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local merchants who sat as judges on the *Majālis al-Tujjār* by foreign and foreign-trained professional magistrates as the crucial aspect of the reform.

The archives of the French ministry of foreign affairs' *comité du contentieux*, to which claims for indemnity were often referred, offer a good insight into the system of predation that the reform sought to suppress. For example, in 1866, Barthélémy Carbonel lodged a claim for 1,500,000 francs, alleging that the governor of Alexandria had breached a contract by which he had undertaken, in 1865, to buy at a fixed price an unlimited amount of hay for five years (the contract was part of the Egyptian's government efforts to replace the country's livestock that had been decimated by an epizootic disease the previous year). Successive French consuls pressed the claim, until the *comité du contentieux*, pointing to the lack of supportive evidence and the poor character of Carbonel, a debt-ridden adventurer from Marseille, ruled against it in 1869.[70] The *comité*'s decision was perhaps influenced by Carbonel's politics, because his Parisian counsels were well-known members of the republican opposition to Napoleon III, including the future president Jules Grévy. Significantly, following the advent of a more liberal administration in 1870, the *comité* reviewed its decision, and the Egyptian government consented to an examination of the claim by a Paris tribunal. The tribunal dismissed it as baseless in 1872 and the Paris appeals court upheld the dismissal the following year.[71] Yet the intervention of French metropolitan courts in a claim by an Egyptian resident against the Egyptian government was revealing of the extraordinary reach of French judicial interference.

In the heated "*affaire du bazar*" between 1866 and 1869, the French government supported the claims of French trade more energetically. This case also illustrates another way in which French consular justice, by assuming the right to establish the Egyptian government's civil responsibility, eroded Egyptian sovereignty from within. In 1866, dozens of Muslim tradesmen in the Alexandria bazaar declared themselves insolvent. Their French creditors accused them of having dissimulated most of their assets prior to the liquidation, a maneuver described by the French and Ottoman Codes of commerce as "fraudulent bankruptcy." If these allegations were true, it suggests that indigenous merchants promptly learned to use French commercial law as cunningly as the characters of Honoré de Balzac's *Comédie Humaine*.[72] Confirming that

70. *Comité du Contentieux*, "Avis," May 111869, AD, 752 SUP/119.

71. R. Magnier, J. Grévy, G. Nogent-St-Laurent, and V. Lefranc, "Consultation pour M. Carbonnel" February 18, 1869, and cutting from the *Gazette des Tribunaux*, November 15, 1873, in AD, Contentieux, 252, folder "Affaire Carbonel".

72. As, for example, in *Histoire de la grandeur et de la décadence de César Birotteau* (1837) and *La Maison Nucingen* (1838), in Honoré de Balzac, *La Comédie Humaine*, 12 vols. (Paris: Gallimard, 1976–1981), VI.

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consular pressures to obtain indemnities were not reserved to a social elite, the affected French merchants were all at the head of "new businesses, which came to Egypt in order to extend the outlets of their country's factories."[73] Egyptian mixed commercial tribunals issued sentences favorable to French claims, but several influential Muslim merchants—including the son of the bazaar's sheik, and two Alexandrian landlords who rented out properties to Europeans—performed successful political and legal maneuvers to prevent their execution, leading the *comité du contentieux* to agree with the French consul that the Egyptian government should be held responsible for the fraudulent bankruptcies. The latter eventually paid an indemnity of £18,000 (c. 450,000 francs), representing one third of the claim initially supported by the French consul, to eighteen French merchants.[74]

Soon after he settled the "*affaire du bazar*," Eugène Poujade, the consul general and an old Levantine hand in the consular service who had served in Bucharest, Beirut, and Tunis, drew up a summary of the twenty-nine claims that he had successfully pressed on the local government since his arrival in Egypt eight months earlier. Twenty of these claims (including the bazaar's) resulted in indemnities amounting to 900,000 francs in total, another four resulted in the granting of pensions to former French employees of the Egyptian government together worth an annual 13,000 francs, and yet another five resulted in measures such as tax exemptions for which no monetary value was given.[75] These data suggest an order of magnitude of 1,500,000 francs per year, or approximately a far from negligible 100 francs (c. £4) per French resident; a little more if one discounts France's Algerian subjects, who never seem to have benefited from the claims system. Some of these claims may have been justified, but one understands that British and Egyptian officials were inclined to describe French consular activism as a racket.

Yet even as French consuls, the *comité du contentieux*, or Paris tribunals, arrogated to themselves the right to settle most French-indigenous litigation, there is scant evidence that such an extensive practice of imperial extraterritoriality elicited an aspiration to territorial rule. On the contrary, French consular officials tended to express their satisfaction with the status quo, which guaranteed French commerce and residents a privileged status without the costs of colonial administration. Opposition to reform, as well

73. *Mémoire à messieurs les consuls généraux pour le commerce européen d'importation,* Alexandria, 1866, 18, 22, copy in AD, Contentieux, 252, folder "affaire du bazar."

74. Eugène Poujade, Consul General in Alexandria, to Marquis de Moustier, Minister of Foreign Affairs, December 18, 1868, in AD, Contentieux, 252, folder "affaire du bazar."

75. "Tableau des réclamations contre le gouvernement égyptien, terminées au 21 décembre 1868," n.d., AD, Contentieux, 254, folder "Koenig."

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as support for it, was rooted in economic considerations, and in a desire to maintain French preponderance underneath Egyptian sovereignty.

Disentangling the Franco–Egyptian Legal Knot

Opinions about judicial reform were not, however, determined exclusively by nationality. A majority of European residents, including Britons, opposed the reform, because consular justice appeared more accessible and more likely to defend their privileges than a judicial order under the nominal authority of the Khedive.[76] Conversely, large capitalist concerns, including French banks, which owned most of Egypt's floating debt, and the French-dominated Suez Canal Company, favored a jurisdictional reorganization that would simplify their own legal affairs and improve Egypt's solvency. The web woven by decades of extensive extraterritoriality underneath national sovereignty was complex and multisided. It was particularly true of France and Egypt's legal entanglement, which determined numerous features of the international controversy over Egyptian judicial reform, and shaped many of the reform's final contours.

For instance, the chief assistant of Nubar's campaign for judicial reform was the French lawyer Paul Maunoury. In particular, it was Maunoury who persuaded Nubar to place an emphasis on the interlocking of jurisdictions—Egypt counted seventeen consular courts, in addition to indigenous courts, and appellate courts were inconveniently located in Ancona, Trieste, Aix-en-Provence, or Constantinople—over a single territory as a feature that would shock European opinion, even though it was not experienced as a major problem in a country accustomed to a plurality of legal regimes.[77] Maunoury's own pamphlet in favor of reform consisted of a study of four cases that reached a judicial dead end as a result of jurisdictional overlapping. All four cases—involving French, British, Belgian, Italian, Prussian, Egyptian, and Ottoman nationals or companies—were commercial, with three of them concerned with land property, and the fourth concerned with the purchase of shares in a financial company, which tends to confirm that the push for reform stemmed more from economic considerations than from an abstract concern with sovereignty.[78] Maunoury went on to serve as Nubar's secretary during the international conferences on Egypt's judicial reform, and was charged with drafting six new codes of Egyptian legislation.

76. "Memorial of British merchants in Alexandria," June 15, 1868, TNA, FO 407/4.

77. Nubar, *Mémoires*, 321–22.

78. Paul Maunoury, *Réforme de l'organisation judiciaire en Egypte* (Marseille: Vve M. Olive, 1868), 6–9.

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Maunoury's assistance to Nubar in opposing the French Bonapartist government may have had political motives, because he had resigned from the magistracy and left France to found a commercial law practice in Alexandria after Louis-Napoleon's coup in 1851, and he served as a republican MP in France after 1880. However, it is also known from a complaint that he lodged in 1881 with the *comité du contentieux* that he did not work for Nubar pro bono. His assistance earned him a considerable 550,000 francs, although he believed that the Egyptian government still owed him another 850,000 francs. Interestingly, in support of his claim, Maunoury emphasized that his work of codification was not a mere transposition of the French legal system, but instead owed a great deal to his frequent consultation of Egyptian legal or religious scholars such as Muhammad Qadrī, the author of an influential treatise on religious foundations (*waqfs*), and Mustafa al-'Arusi, a staunchly reforming rector of the al-Azhar Mosque until 1870: "it is easy to see when browsing the [Egyptian] Civil Code especially," he contended, "that I did not make a mere modification of the French code. I gave Muslim law a formulation in French law." The French ministry of foreign affairs refused to support Maunoury's claim, encouraging him instead, with a touch of irony, to pursue it before the new Egyptian tribunals that he had helped to create.[79]

Ferdinand de Lesseps and several other French leading figures of the Suez Canal Company also vocally demanded the end of the Egyptian "judiciary Babel."[80] The Suez company was itself a legal hybrid, under French law for internal litigation and Egyptian law for external matters, although in practice it remained under French consular jurisdiction until 1876. Suez's director may have sincerely believed in the advantages of reform, but it is likely that he also wished to cultivate the goodwill of the Egyptian and British governments. On the other hand, the staunchest adversaries of reform were also almost all French. The main source of opposition was the French ministry of foreign affairs, where Levantine hands were influential: both Léonel de Moustier, minister between 1866 and 1868, and Charles de La Valette, minister between 1868 and 1869,

79. Paul Maunoury, "Note," "Note supplémentaire," and "Annexe"; and Direction du Contentieux, "Note pour le sous-secrétaire d''Etat," in AD, Contentieux, 255, folder "Maunoury. Honoraires pour son concours dans l'œuvre de la réforme judiciaire égyptienne;" on al-'Arusi, see Indira Falk Gesink, *Islamic Reform and Conservatism: Al-Azhar and the Evolution of Modern Sunni Islam* (London: Tauris, 2010), 48–51.

80. Petition of Ferdinand de Lesseps, December 17, 1869, AD, 752SUP/114; Charles Lesseps [Ferdinand's son], *Les capitulations et la réforme judiciaire en Egypte. Sa nécessité. Son urgence* (Paris, 1867), 64–65; see also Charles Lavallée, "La réforme judiciaire en Egypte," *La Revue des Deux Mondes* 7 (1875): 657–77 ; and Henri Silvestre, *La réforme judiciaire d'Egypte devant l'assemblée nationale* (Marseille, 1875).

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were former ambassadors in Constantinople. Nubar saw Moustier as the main adversary of reform, because the minister realized that its adoption would result in "the end of [French officials'] pressure, their daily interference with the most ordinary affairs of Egypt."[81] Professional magistrates, led by the conservative Bonapartist Louis Féraud-Giraud, a judge at the court of Aix-en-Provence and the author of a reference work on French consular justice in the Levant, also resisted reform. As Nubar later reminisced with a dubious pun, "Mr Féraud-Giraud's book laid down the law [*faisait la loi*] on these matters at the Quai d'Orsay."[82]

In 1867, a ministerial committee made of diplomats and magistrates, including Féraud-Giraud, rejected Nubar's proposal or any attempt at jurisdictional unification, on the grounds that Egypt was "a country of still incomplete civilization, where the most diverse mixture of races, customs, habits, religious beliefs, social conditions would render the uniformity of legislation and justice unachievable."[83] Despite this and other dilatory maneuvers, the French government gradually bowed to international pressure—not only Egypt and Britain, but also most other European powers favored the proposal, with only Austria, Italy, and Greece sharing some of France's misgivings—until the Cairo conference overruled French objections and pronounced itself in favor of a comprehensive unification of civil and criminal jurisdiction in January 1870. French acquiescence was facilitated by the liberalization of the Bonapartist regime and the ascent as Premier of Emile Ollivier, himself a former legal counsel of the Khedive, who consented to a judicial reform limited to civil jurisdiction.[84] However, the Franco–Prussian War and the ensuing collapse of the Second Napoleonic Empire further delayed the reform's adoption. In a concrete illustration of the degree of Franco–Egyptian legal entanglement, the first version of the codes drafted by Maunoury, which had been printed in Paris, could not be sent to Egypt until the Prussian army lifted the siege of the city in January 1871.[85]

When negotiations resumed with a second international conference in Constantinople in 1872, military humiliations and domestic political turmoil

81. Nubar Pasha to Colonel Stanton, Consul General in Alexandria, August 23, 1867, TNA, FO 78/2742; see also Nubar, *Mémoires*, 277–79, 321.

82. Nubar, *Mémoires*, 326; the book in question was *De la juridiction française dans les échelles du Levant* (see note 25), first published in 1859 and re-edited in 1866.

83. *Rapport par la commission instituée à l'effet d'examiner les propositions faites par le gouvernement égyptien pour réformer l'administration de la justice en Egypte* (Paris, 1867), 14, copy in Pierrefitte-sur-Seine, Archives Nationales (hereafter AN), 20020495/21.

84. Lord Lyons, Ambassador in Paris, to Clarendon, Foreign Secretary, April 29, 1870, TNA, FO 407/5.

85. "Note," in AD, Contentieux, 255, folder "Maunoury."

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had stiffened French opposition. The supreme consular judge in Constantinople, who served as the British delegate at the conference, reported to his government that the French delegate remained "hostile to any genuine scheme of judicial reform: on more than one occasion, his intention to render the project of reform useless, and to neutralize the effectual working of the new Tribunals was plainly expressed."[86] Even after the conference, in March 1873, adopted a project broadly similar to the one approved three years earlier, the French government raised countless new difficulties; for example, by requesting exemptions for members of religious orders, a larger number of French magistrates in the new courts, and special provisions for the seizure of indigenous property concealed in harems.[87]

The ill-will of the French government reflected not only the continued opposition of officials, but also, increasingly, the pressure of French public opinion. French residents in Egypt petitioned profusely, with only major capitalists supporting the reform and the vast majority opposing it: "if one studies the name of each of those who petitioned for or against the project of reform, one will see on which side stand the principal merchants, bankers, etc.," a pamphlet in favor of the reform noted.[88] The discontent of French expatriates received a sympathetic hearing in a French public prone to interpret any modification of the status quo as a symptom of national decline after the disasters of 1870 and 1871. Reform, the British ambassador reported, was "distasteful to Frenchmen generally": in addition to "a very pertinacious opposition in the official Departments," the French government had "to contend with a strong national feeling in and out of the [National] Assembly."[89]

Metropolitan hostility to the reform was abetted by a French newspaper specifically founded to oppose it in 1870, *La France en Orient*, and numerous pamphlets. A common line of argument, perhaps inspired by the contemporary hardening of racialist views in colonial Algeria, underlined the impossibility of transposing European judicial institutions to a Muslim

86. Philip Francis, Supreme Consular Judge, to Henry Elliot, Ambassador in Constantinople, March 3, 1873, TNA, FO 407/5; see also "Procès-verbaux et rapports de la commission" in Constantinople, enclosed in Elliot to Lord Granville, Foreign Secretary, March 4, 1873, TNA, FO 407/5.

87. Vicomte de Vogüe, Ambassador in Constantinople, to Charles de Rémusat, Minister Of Foreign Affairs, March 11, 1873, in Ministère des affaires étrangères, *Négociations relatives à la réforme judiciaire en Égypte* (Paris: Imprimerie Nationale, 1875), 157–58; and Elliot to Granville, March 7, 1873, TNA, FO 407/5.

88. Anonymous, *Observations sur une brochure anonyme intitulée la Réforme judiciaire en Egypte* (Paris: Pogin, 1875), 11.

89. Lyons to Lord Derby, Foreign Secretary, May 22, 1874, TNA, FO 407/5; Lyons to Thomas Lister, Under-Secretary at the Foreign Office, October 5, 1874, TNA, FO 407/6.

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country.[90] Aristide Gavillot, an assessor at Cairo's French consular tribunal, inveighed against "the Koran with its ostracism and its insufficiency, its hateful prescriptions, its laws as barbaric as they are sensual." In his view, "only *force*," upon which rested extraterritorial privileges, could "safeguard European freedoms," and preserve one of France's "oldest and most glorious conquests."[91] Comte Maillard de Marafy, a lawyer specializing in international property rights and an Alexandria resident, rejected the reform on the grounds that under the veneer of modern technology, "fanaticism" still held sway over Egyptian minds: "the dividing line drawn by the Capitulations and treaties, between races with deeply opposed sentiments and institutions, must be maintained for many more years, and probably for ever."[92] If the initial protests had conservative undertones, with many paying homage to the efforts of the old monarchy to establish French pre-eminence in the Levant, a spate of republican pamphlets and articles in 1875 also considered the creation of an independent judiciary in the Muslim East as an impossibility: "Egyptian civilization," *La République française*, the mouthpiece of the republican leader Léon Gambetta asserted, was a "flimflam."[93]

On December 18, 1875, France became the last European country to ratify the international agreement on Egyptian judicial reform, after the French National Assembly disregarded a recommendation of its own legislative committee to reject it. This reluctant acceptance was brought about by the fear of diplomatic isolation, compounded by the purchase of the Khedive's Suez Canal shares by the British government only three weeks earlier.[94] However, the resistance of French officials and French opinion had yielded major concessions that profoundly altered the economy of the reform envisaged in 1867. Not only did the new mixed courts—three tribunals in Alexandria, Cairo, and Zagazig (Mansoura after 1878) and an appeals court in Alexandria—see their jurisdiction limited almost exclusively to commercial aspects of civil law, with consular tribunals and indigenous courts retaining theirs for criminal affairs and matters of personal status

90. On legal aspects of this hardening after 1870, see Allan Christelow, *Muslim Law Courts and the French Colonial State in Algeria* (Princeton: Princeton University Press, 1985), esp. chap. 7.

91. Aristide Gavillot, *Essai sur les droits des Européens en Turquie et en Egypte. Les capitulations et la réforme judiciaire* (Paris: Dentu, 1875), 180–82, 268–69, 380.

92. L. Maillard de Marafy, *La réforme judiciaire en Egypte devant l'Assemblée nationale*, 2nd ed. (Paris: Imprimerie nouvelle, 1875), 61; see also L. Maillard de Marafy, *De l'intérêt français dans la question de la réforme judiciaire en Egypte* (Paris: Guérin, 1873).

93. *La République française*, November 13, 1875, enclosed in Lyons to Derby, November 13, 1875, TNA, FO 407/6; see also the anonymous republican pamphlet *Mémoire, notes et documents contre le projet de réforme judiciaire* (Paris: Goupy, 1875).

94. Lyons to Derby, December 18, 1875, TNA, FO 407/6.

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(nationality, inheritance, marriage), but also, European magistrates appointed by their respective governments would form a majority of the courts' benches. The courts were governed by codes—especially in commercial matters, their principal field of competence—closely inspired by French legislation, and French, one of their working languages alongside Arabic and Italian, would rapidly become the exclusive one in practice. The terms of Egypt's legal entanglement with Europe and France in particular were altered, but its intensity did not diminish. Extraterritoriality was in reality consolidated under a new Franco-international guise.

Franco-International Law Within Anglo–Egyptian Sovereignty

To what extent the courts created by the judicial reform should be considered an Egyptian institution proved a moot point almost as soon as they were inaugurated in January 1876. The Egyptian and most foreign governments subscribed to their nominal description as emanating from national sovereignty. In scholarly and popular opinion, however, they were almost universally seen as an international body, whose authority emanated from the common will of European great powers. Hesitations about the courts' very name were revealing. "Mixed tribunals" was initially avoided because it created a confusion with the mixed courts of the Ottoman empire. Official documents therefore tended to use the awkward phrase "Tribunaux de la Réforme," rendered in English by "Reformed Tribunals." Yet in practice, "[t]he title by which they are generally known" was, as early as 1881, "International Tribunals."[95]

The new courts were not only international in the sense that they were the product of a diplomatic compromise between different national governments, European and Egyptian. They should also be seen as typical new kinds of institutions and legal norms autonomous of national sovereigns, which drew inspiration from the movement for international law associated with the *Institut du Droit International*, founded in 1873.[96] Tellingly, several leading lights of the movement applauded the creation of the new courts as an instrument for spreading civilized (Western) law in a spirit

95. Memorandum by Auckland Colvin, Comptroller General in Egypt, enclosed in Edward Malet, Consul General, to Lord Granville, Foreign Secretary, July 20, 1881, TNA, FO 407/29; see also "The International Court of Egypt," *Albany Law Journal*, 19 (1879): 290.

96. Martti Koskenniemi, *The Gentle Civilizer of Nation: The Rise and Fall of International Law, 1870–1960* (Cambridge: Cambridge University Press, 2004), 11–97.

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of "internationality."[97] Friedrich Martens, the Russian lawyer and diplomat, even hoped that these "in reality foreign tribunals with a very extended jurisdiction in Egypt" should form the kernel of "an *international administration*."[98] Consciously or not, Martens' suggestion nodded to the grander proposal of James Lorimer, another enthusiast of international law, for an international government in Constantinople, formulated the same year as the Egyptian courts' inauguration. In Lorimer's vision, this international government, staffed by Europeans and using French as its "organ of intercommunication," would have held responsibility for the administration of Ottoman provinces as well as the drafting and execution of global legislation.[99]

Egypt's new courts may be construed as a very partial implementation of this international-imperial scheme. European advocates of judicial reform in Egypt were as likely as their opponents to use the imperialist language of "legal Orientalism."[100] For example, a French lawyer and member of the *Association pour la réforme et la codification du droit des gens* defended the reform as a means of rolling back the influence of the Koran, "a stationary law, hostile to progress: The reform means Christian civilization penetrating the world of Islam under the actual robes of European magistracy."[101] The robes of the new magistrates proved an immediate object of controversy after the courts' inauguration, with the Egyptian government keen to imprint a visible stamp of its nominal sovereignty. Against their own wishes, the Western judges eventually consented to wear the *tarboosh* (fez) hat and a red scarf inspired by the *istanbulin* of Ottoman functionaries over European judges' robes. This concession, a Dutch judge on the Alexandria court feared, endangered the courts' "international character."[102]

97. See, for example, Louis Renault, *Etude sur le projet de réforme judiciaire en Egypte* (Paris: Cotillon, 1875); Arturo Carpi, *Della giurisdizione consolare in Levante e della riforma guidiziaria in Egitto* (Florence, 1875); Travers Twiss, *Our Consular Jurisdiction in the Levant* (London: William Clowes, 1880); and William Hall, *A Treatise on the Foreign Powers and Jurisdiction of the British Crown* (Oxford: Clarendon Press, 1894), 152–53.

98. Friedrich Martens, "La question égyptienne et le droit international," *Revue de droit international*, 14 (1882): 355–402.

99. James Lorimer, *Of the Denationalisation of Constantinople and its Devotion to International Purposes* (Edinburgh: Edmonston and Douglas, 1876); and *The Institutes of the Law of Nations*, 2 vols. (Edinburgh: Blackwood, 1883), II:264–69; on Lorimer's ardent imperialist and racialist views, see Martti Koskenniemi, "Race, Hierarchy and International Law: Lorimer's Legal Science," *European Journal of International Law*, 27 (2016): 415–29.

100. Teemu Ruskola, *Legal Orientalism: China, the United States and Modern Law* (Cambridge, MA: Harvard University Press, 2013).

101. Dominique Farjasse, *De la réforme judiciaire en Egypte* (Paris: Le Clère, 1875), 4, 9.

102. Jacobus A. Haakman, *Droit international. L'Egypte et les traités internationaux sur la réforme judiciaire* (Paris: Durand, 1877), 7.

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A French lawyer visiting Egypt soon after the new courts' inauguration noted these sartorial details, but thought them of little import. Instead, his overall impression was that when attending audiences, "one believed oneself to be in Europe and more particularly in France: Layout of the room, dress and functions of prosecuting and judging magistrates, clerks, bailiffs, advocates, reading of the roll of cases, court proceedings, closing speeches, submissions by the prosecutor, deliberations, decisions or judgements, everything recalls our Courts and tribunals."[103] The mixed courts, the new native courts modeled on them in 1884, training at the University of Cairo and at the prestigious *Ecole française de droit du Caire* by French professors (and at the former institution by British professors educated in France, or recruited in French Canada) consolidated the influence of French legal ideas, leading a recent study to speak of a system of "Franco–Egyptian" law in late nineteenth-century, British-occupied Egypt.[104]

Despite their role in spearheading the partial "Frenchification" of Egypt's legal system, the new mixed or international courts were no more an exclusive instrument of French than of Egyptian or British interests. They soon extended their commercial jurisdiction to most of Egyptian economic life by means of the doctrine of "mixed interest," whereby any degree of foreign involvement—for example, the ownership of a single share by a foreigner or a foreign company in an Egyptian company—gave them full competence.[105] Within a few months of their inauguration, they asserted their independence from the Khediviate, and to a lesser extent from Britain and France, by upholding the claims of individual bondholders against Egyptian decrees taken with the consent of the British and French governments to consolidate the national debt. Their intervention helped precipitate the country's disorderly bankruptcy and ensuing crisis, which concluded with British occupation in 1882.[106] As noted by contemporaries, it also amounted to an extension of jurisdiction beyond the practice of European judiciaries, which in Britain, France, and elsewhere held themselves incompetent in matters of sovereign debt as pertaining to

103. Paul Jozon, *Etude sur l'organisation des nouveaux tribunaux égyptiens* (Paris: Société de législation comparée, 1877), 473–74.

104. Leonard Wood, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875–1952* (Oxford: Oxford University Press, 2016), 153–99; see also Jan Goldberg, "Réception du droit français sous les Britanniques en Egypte: un paradoxe?" *Egypte. Monde arabe*, 34 (1998), 67–80.

105. Herbert J. Liebesny, *The Law of the Near and Middle East: Readings, Cases, and Material* (Albany: State University of New York Press, 1975), 71–76.

106. Isabelle Landrevie-Tournan, "The Development of Relations between the Mixed Courts and the Executive Authority in Egypt (1875–1904)," in *Judges and Political Reform in Egypt*, ed. Nathalie Bernard-Maugiron (Cairo: The American University in Cairo Press, 2008), 27–44.

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international law.[107] The mixed courts' original jurisprudence later led a French lawyer in Egypt to propose the creation of a new field of "*droit privé international interne*" (internal international private law).[108]

Internationalization eradicated the worst abuses arising out the extraterritorial regime without entirely depoliticizing extraterritoriality. Within the courts, European governments jockeyed for positions and influence. France, in particular, went to great lengths to maintain the allegiance of its judges; for example, by making years of service in the mixed courts count toward advancement and pension entitlement in France.[109] France's first appointees were elite magistrates, including Aristide Letourneux, an Orientalist scholar and "one of the most distinguished judges" on the Algiers Appeals Court, to the Alexandria Appeals Court, and the younger Alfred Vacher, a state prosecutor at Dignes deemed "one of the best magistrates within their circuit" by the Court of Aix-en-Provence, as deputy prosecutor of the same court. Vacher went on to serve as prosecutor of the Alexandria court between 1879 and 1888, during which years he kept up an abundant correspondence with the French ministry of justice about his efforts to promote French influence and interests, from the replacement of Italians by French Corsicans as clerks of the court to the indemnification of French nationals after the troubles of 1882.[110]

In addition to leaving consular jurisdiction intact for personal status and criminal matters, internationalization therefore regulated the modalities of civil-commercial extraterritoriality, but it did not curtail it. The new regime even consolidated extraterritoriality by placing it beyond the reach of any single sovereign power, Egyptian or European. After Britain occupied Egypt in 1882, British colonial officials found the mixed courts, especially as they acquired a near monopoly over legislation—including taxation—that affected European residents, a considerable obstacle to their efforts to govern and reform the country. This "international top-hamper," the British administrator Alfred Milner complained, restrained British power much more effectively than the remnants of extraterritorial privileges in Tunisia after France's occupation in 1881.[111] The "ultra-privileged" status

107. Law Officers of the Crown to Lord Derby, August 1876, TNA, F0 407/8; and Jozon, *Etude*, 479.

108. Wood, *Islamic Legal Revival*, 27.

109. "Projet de décret," May 1882, AN, 20020495/22.

110. "Fiche individuelle: Aristide Horace Letourneux"; Algiers state prosecutor to Adrien Tailhand, Minister of Justice, January 28, 1875; Tailhand to Louis Decazes, Minister of Foreign Affairs, February 4, 1875; and folder "Rapports de M. Vacher, 1876–1884," in AN, 20020495/22.

111. Alfred Milner, *England in Egypt*, 2nd ed. (London: Edward Arnold, 1894), 71–72; see also a more balanced assessment by the main judicial advisor of the British

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of Europeans guaranteed by the mixed courts also incensed Lord Cromer, Britain's proconsul in Egypt between 1882 and 1907, and led him to conclude that "in spite of its fair exterior … internationalism means but too often in practice political egotism [of Britain's imperial rivals], a disregard of the rights of subject races."[112] The imperial hollowing out of Egyptian sovereignty had turned into a limitation of imperial rule, but to the benefit of other European empires rather than Egyptian subjects.

Conclusion

Far from promoting the construction of sovereignty, legal reforms in Egypt had consecrated, in the words of the director of the French law school in Cairo, a regime of "sovereignty … divided" between the Anglo–Egyptian government and "international society."[113] This regime of international extraterritoriality proved remarkably stable. The *Livre d'or* published to celebrate the mixed courts' fiftieth anniversary in 1926 did not anticipate their demise. Instead, it included a series of essays on "the future" of the courts, which argued for further expansion of their jurisdiction.[114] Published in 1930, the first scholarly history of the courts also voiced the hope that "the near future will witness a material enlargement of their usefulness."[115] It appears to have been contingent political factors, especially fears of a rapprochement between the nationalist Wafd party and the Italo–German Axis, rather than the transformation of Egypt's legal landscape, which led Britain and France to acquiesce to the gradual dismantling of extraterritoriality in 1937, a process only completed with the abolition of the mixed courts in 1949.[116] From the 1840s until the aftermath of the Second World War, imperial extraterritoriality, partly internationalized in the 1876, lasted longer than formal colonial rule in most of Sub-Saharan Africa, making it difficult to view it as a mere transition toward the assertion of Egyptian sovereignty.

Instead, it may be analytically more productive to consider the expansion of imperial extraterritoriality in Egypt as an extreme but paradigmatic

administration, James H. Scott, *The Law Affecting Foreigners in Egypt*, 2nd ed. (Edinburgh: William Green, 1908). On extraterritoriality in Tunisia, see Clancy-Smith, *Mediterraneans*, 199–246 and Lewis, *Divided Rule*, 28–60.

112. Earl of Cromer, *Modern Egypt*, 2 vols. (London: Macmillan, 1908), II:428, 441–42.

113. Gérard Pélissié du Rausas, *Le régime des capitulations dans l'empire ottoman*, 2 vols. (Paris: A. Rousseau, 1902–1905), II:483–84.

114. Maxime Pupikofer, *Les juridictions mixtes d'Égypte 1876–1926: Livre d'or* (Alexandria: Journal des Tribunaux mixtes, 1926), 239–301.

115. Brinton, "Preface to the first edition," *The Mixed Courts*, x.

116. Brinton, *The Mixed Courts*, 193–99; Daly, *The Cambridge History of Egypt*, II:294–95.

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instance of a broader trend in the world's legal regime, toward the multiplication of jurisdictional enclaves underneath newly minted sovereignties in some parts of the extra-European world, from the early nineteenth century onwards. Such enclaves differed from those to be found in traditional plural legal orders because they were tightly controlled by external polities, almost always European imperial formations. They served different, although not mutually exclusive, purposes. As suggested by Benton and confirmed here by British policy in the Ottoman world, enclaves could be conceived of as having a transitory educational purpose, to encourage the emergence of European-style territorial sovereign jurisdictions, especially when the enclaves included few metropolitan Britons. Conversely, as shown by French practice in Egypt, enclaves could be designed to undermine without entirely sapping plenary sovereignty, in order to maintain an extra-European polity in a profitable state of partial subjection. Interestingly, the reorganization of extraterritorial jurisdiction in China at the turn of the 1870s mirrored, in an exacerbated fashion, Anglo–French disagreements over Egyptian judicial reform: while Britain sponsored the establishment of an "international mixed court" in Shanghai, incorporated into the Chinese legal order but dominated by British and American magistrates, France opted to maintain its own mixed consular court under the supervision of the French colonial judiciary in Indochina.[117] The French preference for a national and predatory style of extraterritoriality may have resulted from circumstantial factors, such as a larger proportion of emigrants outside formal colonial possessions or a more limited capacity to project military power overseas than Britain. Yet it should also be connected with the self-conscious pursuit of a French "empire of law and language," as opposed to Britain's mercantile empire of commodities, since the 1790s, and the popularity of schemes of imperial domination by informal means in French intellectual life, politics, and diplomatic services in the nineteenth century.[118]

117. Georges Soulié de Morant, *Exterritorialité et intérêts étrangers en Chine* (Paris: Greuthner, 1925), 126–227; Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford: Oxford University Press, 2012), 54, 63–84; and Pierre Singaravélou, *Tianjin Cosmopolis: une autre histoire de la mondialisation* (Paris: Le Seuil, 2017).

118. Emma Rothschild, "Language and Empire, c. 1800*,"* *Historical Research* 78 (2005): 208–29; James P. Daughton, "When Argentina was 'French': Rethinking Cultural Politics and European Imperialism in Belle-Epoque Buenos Aires," *Journal of Modern History* 80 (2008): 831–64; David Todd, "Transnational Projects of Empire, c. 1815–c. 1870," *Modern Intellectual History* 12 (2015), 265–93. Conversely, French legal theorists were particularly critical of justifications of formal conquest based on international law; see Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500–2000* (Cambridge: Cambridge University Press, 2014), 288–301.

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If the exceptional reach of extraterritoriality in Egypt owed a great deal to this expansive French conception, the internationalization of the resulting enclaves underneath Egyptian sovereignty conformed to British aspirations. Such international institutions complemented rather than contradicted the British preference for an "empire of states" when such states failed to emerge, with colonial occupation by Britain or another power too costly or dangerous alternatives.[119] Even after Egypt's occupation in 1882, the actual deference—despite their complaints and criticisms—of British administrators to Egypt's new judicial system and their acceptance of Egyptian law's partial "Frenchification" are revealing of a persistent commitment to the resolution of imperial problems by international legal means, an imperial internationalism that anticipated a common British conception of the League of Nations.[120] Ultimately, however, it is likely that the high degree of legal internationalization in Egypt reflected the country's significance as a major avenue for the global circulation of commodities, especially after the inauguration of the Suez Canal in 1869. Other concrete efforts to reconcile European imperial interests by international legal means also focused on locations deemed crucial for international trade, such as the Chinese seaboard or the Congo Basin, where the international "free state" of King Leopold accorded extensive extraterritorial rights to European residents.[121] It remains true that most of the globe passed under national or colonial territorial jurisdiction in the nineteenth century. Yet the parallel emergence of increasingly internationalized pockets of extraterritoriality, often encompassing the new hinges of the global economy outside Europe, should be considered a significant countervailing feature of the modern world's legal regime.

119. Benton and Ford, *Rage for Order*, esp. 148–79.

120. Mark Mazower, *No Enchanted Place: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009), esp. 28–65; and Susan Pedersen, *The Guardians: the League of Nations and the Crisis of Empire* (Oxford: Oxford University Press, 2015).

121. Koskenniemi, *The Gentle Civilizer*, 155–66.

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