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THE PRECARIOUS LIFE AND SLOW DEATH OF THE MIXED COURTS OF EGYPT

Over the past century, most states of the Middle East have attempted to strengthen and centralize their legal systems, often following European models. Egypt undertook one of the first steps in that direction with its mixed-court system. These courts, which had jurisdiction in civil and commercial cases that involved a foreigner, however remotely, operated from 1876 until 1949. That this system could survive the political turmoil of those years, far outliving the circumstances which brought it into being, is remarkable.

ORDER OUT OF CHAOS, OR A CRIME AGAINST HUMANITY?

In 1930, seven years before an international agreement to abolish them, Jasper Yeates Brinton, an American judge who sat on the courts, wrote that the mixed-courts' "existence is altogether independent of the existing political regime. . . . Changes in the political relations of the country, so far from seeking to restrict their authority, invariably contemplate an extension of their powers."[1] Supporters of the courts had no difficulty explaining their resilience and longevity. The system, Brinton observed in 1949, "had brought order out of chaos and, by endowing the country with a judicial system second to none on the continent of Europe, had laid the basis of that commercial credit without which foreign investment and the prosperity which followed in its wake would have been impossible."[2]

Not everyone has agreed that the mixed courts gave Egyptians a valuable lesson in justice. They were closely associated with the capitulations—a set of privileges granted to nationals of certain countries that effectively exempted them from Egyptian law and judicial institutions—and had been established by agreement between Egypt and the capitulatory powers to adjudicate cases involving such persons. Thus, the courts could appear to some as an island of stability amid political and judicial chaos, but they could appear to others as a product of foreign influence in Egypt and a limitation on Egyptian sovereignty. The mixed courts have been denounced as a means of foreign domination that Egypt was able to eliminate only as it gained independence by degrees after the 1920s. In 1936, the weekly *al-Muṣawwar* even described the courts as "a crime against humanity."[3]

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Such nationalist denunciations are highly anachronistic, however, because the mixed courts were established not to promote foreign domination but to limit it. Far from attacking the mixed courts, most Egyptian nationalists defended them for most of their existence. Yet those who praised the system displayed no better sense of history. To view the mixed courts as stabilizing the Egyptian judicial system is ironic indeed, for they were constantly threatened with abolition and lived precariously throughout their history. They survived only through the support of a strange and shifting coalition of Egyptians and foreigners that collapsed in the 1930s. The system that seemed so secure to Brinton at the start of the decade was dismantled in stages beginning in 1937 with little opposition. The courts were done in by a coalition of the British government, the Egyptian nationalist movement, and the increasingly powerful Egyptian bourgeoisie.

THE CONSTRUCTION OF THE COURTS

The complex pattern involved in the construction and operation of the mixed courts is illustrated in their founding. They were created by a coalition assembled by Nubar Pasha, an ambitious and creative politician who served the Egyptian government in a variety of capacities (including three terms as prime minister) under both the Khedive Isma^{c}il and the British occupation. The various parties to the coalition had a complex and even divergent set of goals. Constructing a system that gained the assent of this diverse coalition took great diplomatic effort and considerable time. Nubar began pursuing the idea of mixed courts in 1867; they did not begin operation until 1876.[4] Nubar and Isma^{c}il were both anxious to overcome the shortcomings of the capitulations, which, by the mid-19th century, had been interpreted as giving foreigners extraterritorial status. Disputes between Egyptians and foreigners were resolved not in Egyptian courts, but through the pressure of diplomacy (where Egypt was weak) or in consular courts (where few Egyptians expected a sympathetic hearing). Egypt's growing debt made the situation especially worrisome. The increased foreign claims against the Egyptian government and the mounting fiscal crisis made foreigners less trusting of the Egyptian government and Egyptian judicial institutions. Egypt's leaders badly needed a system that would protect the country's financial interests, without alienating foreign bondholders who could cause the country's fiscal collapse.

Nubar proposed a unified judicial system for civil and criminal cases in Egypt, having jurisdiction over cases involving foreigners and later even over cases involving only Egyptians.[5] The courts, to be staffed with a large European contingent, would follow a European style law. The judicial and administrative functions of the state were to be separated. In the course of negotiations with the capitulatory powers, Nubar was forced to make many concessions before he achieved his objective. France in particular jealously protected its privileges. Egypt had to accept a foreign majority on the bench and a fairly faithful adoption of the *Code Napoléon*. The scope of the courts narrowed: consular courts would retain criminal jurisdiction in cases involving foreigners; the mixed courts dealt only with civil and commercial cases. Various measures ensured not only the independence of the mixed judiciary but also, in some ways, its predominance.

Two specific concessions merit mention. First, an article added to the mixed codes (and borrowed neither from the *Code Napoléon* nor from English law) required the government to enforce judgments against itself; that is, if a foreigner brought suit against the government and won, the government was obligated to carry out the ruling. Second, Egypt agreed to adopt the French *parquet* system, which designated officers of the court to investigate and prosecute crimes, advise the court on legal matters, and represent the general interests of the state. The mixed-court *parquet* was to be headed by a foreigner and staffed by both foreigners and Egyptians.[6] The construction of the *parquet* and its removal from Egyptian control limited the degree to which Egypt's rulers could influence the courts. Not all these changes represented concessions for Nubar. His aim in working to establish the courts was not only to secure some relief from the problems engendered by the capitulations; he also sought to restrict the power of the khedive.[7] The mixed courts thus had much to recommend them. On the one hand, the system appeared to offer Egyptian interests greater protection than the system of consular courts. On the other, the operation of the system was safe from—and even circumscribed—the power of the khedive.

The system was not simply Nubar's personal creation. It needed the assent of two separate and generally antagonistic parties: the khedive and foreign bondholders and investors (generally backed by their governments). What could have induced them to agree to a system that could harm both their interests? For Isma^{c}il, the mixed courts offered the prospect of rulings more favorable than those issued by foreign consuls. Isma^{c}il grasped at an opportunity to obtain some relief from Egypt's fiscal plight, even if it required him to sacrifice some of his own authority. Perhaps he hoped to repair the damage when his—and Egypt's—financial position had improved.[8] The foreign powers surrendered some of their capitulatory privileges to the courts with considerable reluctance. It took nearly a decade for Nubar to gain the assent of all the countries involved. Most capitulatory powers were interested in protecting loans and investments in Egypt; the system of consular courts offered favorable judgments but not necessarily effective protection. Isma^{c}il himself constituted the main threat. So long as he controlled the country's finances, European governments had cause to worry. Thus, the opportunity to circumscribe Isma^{c}il's authority recommended the mixed courts. And the negotiations over the courts dragged on precisely because the capitulatory powers (especially France) insisted on protecting the courts from Isma^{c}il's interference and on guaranteeing that in the event of a conflict with Isma^{c}il the courts would prevail.

Founded to meet the needs of antagonistic parties, in operation the mixed courts were certain to offend some of their creators. Deliberate ambiguities had been built into their structure. The Egyptian government regarded the mixed code as its creation; the capitulatory powers claimed the code could not be amended without their consent. Judges were appointed by the khedive but only after consultation with the capitulatory powers—and the powers quickly asserted claims to specific seats on the bench.[9] The coalition that had constructed the courts broke apart as soon as they began issuing judgments, especially in light of the growing fiscal crisis that intensified the conflict between Isma^{c}il and his creditors.

The mixed courts were inaugurated in 1876 for a five-year trial that they barely survived. By the time the courts began operation, Egypt was bankrupt, forcing Ismaʿil to agree to European oversight of his finances. The mixed courts began to rule favorably on many claims against the khedive and the Egyptian government, aggravating the fiscal crisis. Although Ismaʿil did not openly challenge the authority of the courts, he claimed that implementation of the rulings would have to be delayed until Egypt's finances improved. The British, concerned that excessive claims would drive Egypt to fiscal and political crisis, agreed that Ismaʿil could not comply with the rulings of the mixed courts. The French government adopted a similar attitude, not because it had abandoned the French creditors of Egypt but out of concern that fiscal and political upheaval in Egypt would benefit nobody. When Ismaʿil attempted to evade foreign financial control as well as the mixed courts, he was deposed.[10]

Thus, the coalition that had created the mixed courts quickly turned against its own creation. Ismaʿil and the two most important European actors, Britain and France, were content to ignore the courts almost from the beginning. They did not attempt to abolish the courts outright but did propose reforms. However, after Ismaʿil's fall in 1879, threats to the courts came from different sources. Powers such as France came to appreciate the mixed courts as a check on Egyptian autonomy and khedival authority and encouraged Tawfiq, Ismaʿil's successor, to obey their rulings. By the early 1880s, the courts seemed to aid rather than limit foreign penetration. It was in this context that the courts drew the ire of the leaders of the nationalist uprising of 1881–82. The defeat of the uprising and the British occupation protected the courts from a fatal attack by the nationalists. Yet the controversy over the courts had just begun.

THE BRITISH OCCUPATION

The complex game over the mixed courts continued under the British occupation. A shifting coalition continued to sustain their precarious existence, but for many members of this coalition, the courts' most attractive feature was merely the temporary absence of an acceptable alternative. In the first decade or so after the occupation, the British presence in Egypt seemed tentative and the part that the courts would play was consequently uncertain. Later, it became clear that the British were in no hurry to leave the country, and the positions of various parties on the courts accordingly became more fixed. Throughout the occupation, however, all parties realized that the structure that had been built to limit both the privileges of foreigners and the authority of the khedive instead had come to protect foreign privileges and limit British power.

In the early years of the occupation, the British seemed uncertain as to their purpose in Egypt. They had two contradictory commitments: to reform the country and to leave it. The capitulations blocked both paths. On the one hand, if the British left Egypt with the capitulations intact, the sort of fiscal and political crisis that had led to the occupation might recur. On the other hand, were the British to remain in Egypt, capitulatory privileges would obstruct their control of Egyptian affairs. They sought changes in the state budget, taxation, justice, and a whole host

of administrative matters, changes that inevitably affected the capitulatory privileges of foreigners. Britain would then either have to gain the consent of the capitulatory powers or risk alienating them, and consent proved difficult to obtain. Some powers, notably France, wished to obstruct the occupation; consenting to restrictions on capitulatory privileges would only strengthen the British position. Paradoxically, British protestations that they intended to leave Egypt as soon as possible made matters no easier: many Europeans argued that capitulatory privileges had to remain if no outside power was to oversee Egyptian affairs.[11]

Given Britain's awkward position, no clear policy towards the mixed courts emerged. The British felt no particular fondness for them since they owed their genesis to the capitulations, had contributed to the fiscal crisis from which Egypt had yet to recover, and remained a pocket of influence for other capitulatory powers. Yet the courts still could be useful to the British in the struggle against the capitulations. Their existence might make foreign powers less jealous of their capitulatory rights; strengthening the courts might even lead to cancellation of the capitulations. Implicit threats against the courts might help extract concessions on capitulatory reform. Thus, the role the British assigned to the mixed courts in the battle against the capitulations varied in the first decade of the occupation. In general, Cromer, the British consul general in Egypt, was more resentful of the courts than Drummond Wolff, who negotiated Britain's status in Egypt with the Ottomans. Drummond Wolff saw strengthening the courts as the price of capitulatory reform; Cromer saw the courts as a significant obstacle in themselves, albeit a lesser one than the capitulations.[12]

Egyptian leaders, too, were ambivalent about the mixed courts in the early years of the occupation. At the time they worked to build a strong state, partly autonomous (though not necessarily completely independent) of foreign control.[13] On the face of it, a system that limited Egyptian autonomy, especially in important areas such as public finances and the judicial system, would have little to recommend it. The mixed courts seemed to some to have little place in a society that was adopting widespread legal reform. Shortly after the British occupation, national courts were established. These courts, with jurisdiction in civil and criminal cases involving Egyptians, were structured similarly to the mixed courts and operated on the basis of a law code modeled after the mixed code. Amalgamation of the mixed and the national courts became an early issue. The mixed courts could also treat Egyptian lawyers and judges in ways that seemed calculated to insult them.[14]

Yet, like the British, most Egyptian leaders found some attractive features in the courts. Some hoped that they would serve as the basis for an integrated Egyptian judicial system. They might be a useful bargaining chip as well: threatening them or offering to strengthen them might induce the British or other European powers to make concessions to Egyptian efforts to build a state autonomous of foreign control. And the courts remained far more attractive than the alternative of reverting to the system of consular courts under which, in Egyptian eyes, capitulatory privileges had run amok.[15]

Foreign interests—including foreigners resident in Egypt, bondholders, and European governments—displayed little of this ambivalence towards the mixed courts during the British occupation. Although the establishment of the courts had

seemed initially to be a concession by the Europeans (in that foreigners could no longer go to their consuls to obtain favorable resolution of civil and commercial disputes), the mixed courts proved their worth to foreigners by eagerly protecting the capitulations, transforming foreign attitudes. The courts came to represent not a diminution in capitulatory privileges but their firmest guarantee. If foreign interests were to maintain their position in Egypt, the mixed courts were a necessity.

Thus, the mixed courts survived. The Egyptian government extended the mixed-court charter for one year in 1883 and for five years in both 1884 and 1889. As the occupation wore on, however, it became clear that the British were in no hurry to leave the country. This led the various parties involved to reconsider their position towards the courts. The British became more resentful of the mixed courts; most Egyptians became more protective. For the British, the increasingly permanent appearance of the occupation transformed the capitulations from inconveniences into major obstacles. Wherever the British turned, it seemed, they met the objections of capitulatory powers seeking either to check British influence or to protect the interests of their own nationals. The occupiers therefore eyed the mixed courts, which happily enforced the capitulations, with increasing suspicion—on the ironic grounds that they undermined the sovereignty of the country the British had occupied. Milner wrote in 1892: "The tribunals were a new stronghold of foreign influence, a new surrender of the sovereign rights of the Native Government."[16]

One major British complaint against the capitulations concerned legislation. The mixed courts would only enforce laws that had gained the consent of the capitulatory powers. Therefore, on matters in which the codes of the courts were vague, the British had only two choices: accept the broad interpretations of the courts or change the codes through a protracted process of "legislation by diplomacy."[17] This became a clear obstacle during the 1890s, when the British directed the reconquest of the Sudan from Egypt. The occupiers paid for the expedition with Egyptian government funds, dipping heavily into reserve funds set aside to pay the country's creditors. Since the Egyptian budget was still subject to European oversight (through the Commission on the Public Debt), the British sought and obtained the consent of a majority of the commission. Foreign bondholders and the dissenting members of the commission sued for return of the funds; the mixed courts ruled in their favor.[18] Even if the courts did not act, as long as the capitulations remained in effect and the courts were prepared to enforce them, the British felt they lacked a free hand in Egypt. The records and writings left behind by British officials indicate that the capitulations and the courts provoked more British frustration and drew greater attention than did Egyptian resentment of the occupation. Only in the 1919 uprising did the British come to realize that Egyptian opinion stood as a larger hindrance to their control than French jealousy.

Egyptian attitudes became more favorable to the capitulations and the courts for the same reasons the British resented them. Even Egyptian officials who found their own authority circumscribed by the capitulations and the courts often identified the British occupation as the more significant threat to their power and the country's autonomy.[19] Many British officials felt that such an attitude was unhelpful and obstructionist, and that was exactly the point. Few Egyptians had any desire to see Britain annex the country. The capitulations and the courts seemed to

be obstacles to such a step. Such an attitude can be traced as far back as 1883 when the Egyptian prime minister, Muhammad Sharif Pasha (hardly a nationalist firebrand), surprised the British by proposing to extend the life of the mixed courts for five years. Cannon speculates that Sharif did so to curry favor with powers anxious to hamstring the British occupation.[20] Moves to augment the capitulations and the courts were fairly rare and subtle until after the turn of the century when some Egyptians (including the khedive) began to learn how to operate the system for their own benefit. The most notable example of this strategy occurred in the press when Egyptian newspapers that were hostile to the British attempted (once at the urging of the khedive) to obtain foreign sponsorship, which could be done if one of the owners was foreign or was granted foreign citizenship. They hoped this would exempt them from the 1881 press law and give them the protection of the capitulations and the mixed courts.[21]

As for the foreign powers, their support of the capitulations and the courts continued, though its strength diminished. As Britain's occupation of Egypt took on a more permanent coloration, the prospect of forcing an immediate evacuation receded. France, Britain's staunchest adversary in Egypt, finally signaled its acceptance of the occupation in the Anglo–French Entente of 1904. However, this did not lead the French to abandon their capitulatory privileges. Their strategic interests in Egypt diminished, but this only freed them to stand by the commercial interests of their nationals even more resolutely. It was clear that if the British wished to abandon or even reform the regime of the mixed courts and the capitulations, the European powers would object, no longer to obstruct the occupation but to promote the interests of their nationals in Egypt. The courts, dominated by foreigners, continued to protect foreign privileges by interpreting the capitulations broadly, so foreign communities in Egypt regarded any suggested change in the courts with suspicion.[22]

Although some British officials favored an outright assault on the capitulations, a less direct strategy prevailed. Abolition of the capitulations might be desirable, but it would precipitate a diplomatic crisis. A long-planned attack on the entire system was repeatedly postponed as the British sought to circumvent the obstacles. As long as the British aimed at undermining the capitulations rather than abolishing them, the mixed courts were safe.

Indeed, the British sometimes worked to strengthen the courts as a way of convincing foreign communities and governments to accept a diminution in their capitulatory privileges. This strategy recommended itself particularly in the area of legislation affecting foreigners. Initially, the Egyptian government claimed a unilateral right to amend the codes of the mixed courts. The Mixed Court of Appeals rejected this argument in 1887. The British then launched a successful effort to grant the mixed courts a degree of legislative authority. The move was not made lightly, as the change would increase the powers of the courts by mixing legislative and judicial powers in the same institution. The alternative, however, was to gain the consent of every capitulatory power each time a change was desired in a law affecting foreigners. In 1889, the British obtained the consent of the powers to constitute the Mixed Court of Appeals as a "general assembly" with the power to approve "police regulations"—occasionally interpreted quite broadly. Cromer then

unsuccessfully attempted to establish a legislative council for Egypt, with British, Egyptian, and foreign members (including some from the mixed courts). In 1911, the capitulatory powers agreed to a lesser measure that expanded the legislative powers of the courts. A legislative assembly, consisting of all appeals-courts judges and lower-court judges from those capitulatory powers not represented on the appeals court, was granted the authority to approve legislation and even propose legislation to the government. The assembly had no authority to amend the mixed-court charter, and the capitulatory powers retained the right of veto over legislation affecting foreigners.[23]

The British regarded such measures as improvements but realized that irritants and restrictions on their power would continue unless they mounted a direct assault on the capitulations. Shortly before the World War I, such an assault was finally planned. Lord Cromer's successors, Eldon Gorst and Lord Kitchener, began work on the assault on the capitulations even as the new legislative assembly of the courts began operation. Kitchener proposed that the capitulatory powers cede to Britain the right to protect foreigners and that the mixed courts assume jurisdiction in criminal as well as civil cases. Since many British officials had hoped for some time not to strengthen the mixed courts but to fold them into the national courts, Kitchener encountered some strong objections, and the secretary of state rejected the proposal. Kitchener therefore submitted a modified plan that gutted but did not abolish the capitulations by transferring criminal jurisdiction to the national courts and integrated the mixed courts into the national court system. This proposal was rejected by the French, who complained that the concessions far outweighed the value of the guarantees offered foreigners. The British therefore set to work drawing up even more radical plans (or reviving some that had been shelved for decades), not simply to weaken the capitulations but to do away with them altogether.[24]

Before a new proposal could be mooted, the World War I brought the British face to face with the anomalies of their position in Egypt. Egypt had remained formally an Ottoman province, even if the Ottomans had not exercised effective control there for over a century. Now Britain was at war with the Ottomans. The British took the opportunity in December 1914 to declare Egypt a protectorate. The alternative, annexing the country outright, was considered both at the outset and during the course of the war,[25] but the British decided to postpone a final decision on Egypt's status until the war ended. The declaration of the protectorate was coupled with a strong verbal attack on the capitulations, but the British did not abolish them. Such an act would have antagonized their allies unnecessarily, and under martial law the British could in any case suspend capitulatory privileges when they desired. British officials in Egypt rejoiced at—and took advantage of—their ability to override the capitulations.[26] While various long-range proposals were considered, the Egyptian government (under British direction) renewed the mixed-court charter, which was to expire in January 1915, for short, provisional periods—first, for one-year periods through 1919, and then in 1919 for only eight months. The British considered annexation of Egypt, abolition of the capitulations, abolition of the mixed courts or their subordination to the national courts system, and transformation of the Egyptian judicial system to operate on the basis of British rather than French law. While British officials deliberated, the Egyptian government appointed

a commission to examine capitulatory and mixed-court reform. The commission outlined its proposals in March 1918, suggesting a unification of the national, mixed, and consular courts along with what William Brunyate (a leading member of the commission) later termed "a more or less openly avowed Anglicization of the law and legal institutions of Egypt." These proposals agitated and even angered foreigners in Egypt and judges on the mixed courts.[27] The British seemed determined to pursue the ideas until a far more formidable obstacle arose.

THE MIXED COURTS AFTER 1919

The sudden eruption of nationalist violence throughout Egypt in March and April of 1919 forced the British to reconsider their plans. Annexation had ceased to be an option; instead the British sought to retain their influence and their strategic position in the country while diminishing their administrative presence. They finally decided to abandon the protectorate and to negotiate a treaty that would grant Egypt independence, while safeguarding British interests. The new approach necessitated a dramatic reversal in British attitudes towards the capitulations and the courts. The British sought to transform them from an instrument of foreign influence into an instrument of British oversight by reviving elements of Kitchener's proposal for the capitulatory powers to surrender their privileges to Britain, which would assume responsibility for protecting foreign interests in Egypt. The British high commissioner would help select mixed-court judges and could prevent Egyptian legislation from being applied to foreigners. On several occasions, the British approached the capitulatory powers to obtain their consent to the changes.[28]

Unable, however, to obtain Egyptian or foreign agreement to their proposals, the British finally acted unilaterally. In February 1922, Great Britain declared that Egypt was an independent, sovereign state although certain matters were "absolutely reserved to the discretion of His Majesty's Government until such time as it may be possible by free discussion and friendly accommodation on both sides to conclude agreements in regard thereto between His Majesty's Government and the Government of Egypt." Among these reserved matters was "the protection of foreign interests in Egypt and the protection of minorities."[29] Neither Egypt nor the capitulatory powers ever accepted this reservation. The capitulations and the mixed courts survived: the British had neither eliminated them nor assumed control of them. Instead, the British held out the issue as a bargaining chip: the limitations on sovereignty implied in the unilateral declaration of independence and the capitulatory system would continue until Egypt and Great Britain negotiated a more suitable arrangement. Thus, while Egyptian independence might seem to have placed the mixed courts in an especially precarious position, the British acted to protect both the courts and the capitulations until a suitable treaty was negotiated.[30] By 1927, British and Egyptian draft treaties agreed that Britain would help Egypt reform the capitulatory regime, making it conform "with the spirit of the times and with the present state of Egypt."[31] In spite of this agreement in principle, the British refused to go further until a treaty was signed.

The British found another attractive feature of the capitulations and the courts. When much of the day-to-day administration of the country and control over its

finances was in British hands, the demands of the foreign communities seemed like a petty hindrance to efficiency and solvency. Now that Egyptians were responsible for administering the country, balancing its budget, and paying its debts, the British discovered that they had the luxury of lobbying on behalf of British economic interests. To be sure, these interests had never been ignored but neither had the British felt that British creditors ought to be paid if it meant Egypt's bankruptcy. Now, however, fiscal complications caused by the system were Egypt's problem. In 1924, Sa^{c}d Zaghlul's Wafdist government refused to make payments on some loans contracted by the Ottoman Empire and guaranteed by Egyptian tribute payments. The bondholders in Europe and Britain sued in the mixed courts and won, aided by British officials still employed by the Egyptian government and by a British refusal to release the Egyptian share of Germany's reparations payments.[32] Britain's defense of the capitulations on the basis of its economic interests probably reached its height in 1931, when Britain protested a new tariff and excise tax as violating its rights in Egypt.[33] And when the Egyptian government attempted to achieve full fiscal autonomy, Sir Percy Loraine, the British high commissioner in Egypt, influenced by British commercial interests, told an American diplomat that "it would be wise for the capitulatory powers to retain for the time being the right given them by the capitulations of the exercise of a veto over new direct taxes."[34] The irony of the British position in 1931 was that Cromer had earlier claimed that this right was entirely imaginary.

Although the courts and the capitulations had converted an old adversary into a new ally, they were in an exposed position in other ways. The foreign powers that had supported them during the British occupation were now less significant players in Egyptian affairs. Their influence had depended on the poor state of Egyptian finances and British reluctance to alienate them. Change in both these areas eliminated much of their leverage. Yet even if their position in Egypt was weaker, most powers guarded the capitulations jealously during the first decade of Egyptian independence. The powers even attempted to renew privileges that had fallen into desuetude. During World War I, martial law had been used to extend the ghafir tax (to pay for village patrols) to foreigners resident in Egyptian cities (who had been exempted on capitulatory grounds). When Egypt became independent, some capitulatory powers challenged the tax. Most powers reacted with suspicion when the Egyptian government suggested reform of the capitulations. For instance, American diplomats, by no means the most stubborn on capitulatory issues, regularly consulted with American business interests, American missionaries, and American mixed-courts judges (Brinton in particular) in formulating a position on matters related to the capitulations. Not surprisingly, they greeted Egyptian proposals for reform or for new taxes with hostility. Foreign powers stood as vigilantly in defense of the mixed courts and the capitulations as well.[35]

Yet even though the capitulatory powers resisted any changes in the system, sometimes with British support, they evinced a growing fear that protecting their privileges would provoke a backlash. As early as 1923, an American official wrote of the inevitability of "agitation for the abolition of the capitulatory rights in Egypt."[36] By the early 1930s, foreign economic interests and diplomats began to show more flexibility out of the fear that defending the system too vigorously

would provoke unilateral Egyptian action. This was especially true in the area of taxation, where American business interests displayed "a distinctly liberal approach to the question."[37] Accordingly, some concessions were in order.

Even though the imminence of capitulatory reform was apparent, it remained unclear how any changes would affect the mixed courts. Many still anticipated that an attack on the capitulations would necessitate strengthening the mixed courts. Yet some Egyptians were getting other ideas. Opposition to both the capitulations and the courts grew markedly in independent Egypt, as those in power often found their plans and objectives blocked by them.[38] Some Egyptian governments began to make limited forays in the direction of reform. In 1926 the Egyptian ambassador in Washington tried but failed to convince the secretary of state that the United States should take the lead by unilaterally renouncing its capitulatory privileges.[39] The following year the Egyptian cabinet approved a proposal to amend the mixed courts. The effect of these proposals would have been to strengthen Egyptian participation in the courts and to transfer jurisdiction on selected criminal matters from the consular courts to the mixed courts. The proposals attracted the attention of Egyptian newspapers, many of which called for modifying or abolishing the capitulations. The Egyptian government even issued invitations for an international congress to discuss capitulatory reform, but eventually dropped the idea. In 1927 the government also submitted a draft treaty to the British calling for "the suppression of consular courts and the attribution of full jurisdiction to the Egyptian courts over the subjects of the capitulatory Powers."[40]

Yet all of these efforts proved futile; few even drew the sustained attention of the Egyptian government. It was not simply foreign opposition that blocked these attempts to reform the system; Egyptians themselves did not stand united behind the efforts. In particular the Wafd, representing the majority of Egyptian nationalists, viewed the question as premature. The Wafd ruled for only twenty months during Egypt's first decade of independence, but the pressure it could bring to bear (and the instability caused by attempts to deny it political power) robbed the Egyptian government of the political strength to push for reform during most of the period. The Wafd consistently called for complete independence for Egypt; certainly it found noxious any restrictions on Egyptian sovereignty. However, abolition of the capitulations and the courts generally remained a long term objective. Two other battles had to be fought first.

One was to obtain complete independence from Britain. Here the Wafd followed the same reasoning as had prewar Egyptian nationalists. Britain was the immediate adversary; moving prematurely against the capitulations and the courts might actually undermine Egyptian independence. As long as Britain still claimed a role in protecting foreigners and minorities, any move affecting them might strengthen the British rather than the Egyptian government.[41] The British had always sought capitulatory reform by convincing other governments to entrust Britain with protecting their nationals. Thus, a premature move against the system might deepen British penetration of the country. In reply to a question on his views on the capitulations in a 1923 interview with the *Journal du Caire*, Sa^{c}d Zaghlul stated: "It would be premature to reply to that question. . . . I have the hope, if not the certainty, once independence has been obtained, that it will be

easy to discover a basis of agreement between the capitulatory Powers and ourselves."[42] In 1931 Mustafa al-Nahhas (Zaghlul's successor as leader of the Wafd) denounced the Egyptian national courts and claimed that pending their reform the capitulations (and implicitly the mixed courts) must continue. An American diplomat explained this anomalous position by observing that Zaghlul and al-Nahhas shared a "broad conception of the importance of the role of the Capitulations in modifying and circumscribing the complete freedom of action of Great Britain in Egypt."[43] Even in 1933, when the Egyptian government lost a major case related to payment of the public debt in the Cairo Mixed Court of First Instance, the Wafd (then in opposition) refused to attack the courts.[44] In late 1935, only months prior to the Wafd's return to power and its negotiation of an Anglo–Egyptian treaty, al-Nahhas announced that he opposed abolition of the capitulations "so long as the British retained the privileged situation which they had acquired without right in the country."[45] Thus, the Wafd's opposition to British influence led it to adopt the British position: capitulatory and mixed-court reform should follow negotiation of an Anglo–Egyptian treaty.

The Wafd also gave precedence to its battle against domestic opponents over the struggle against the capitulations and the mixed courts. This was especially true when the Wafd's opponents formed the government. In such circumstances, restrictions on the sovereignty of Egypt were restrictions on the opponents of the Wafd. Isma^{c}il Sidqi's use of the national courts prompted al-Nahhas's 1931 claim that Egypt could not guarantee justice to foreigners and thus was not yet ready to abolish the capitulations.[46] The following year, the Wafd itself benefited from protection of the capitulations and the courts. The governor of Sharqiyya attempted to pressure ^{c}Abd al-^{c}Aziz Radwan, a member of the Wafd, to join Sidqi's People's party. When Radwan refused, the governor ordered the closure of his ginning factory. However, Radwan had a French partner, which meant that the ensuing legal case would go to the mixed courts. The governor backed down.[47] In 1931, the Cairo Mixed Court of First Instance dealt a blow against Sidqi's restrictive press law, ruling that it could not be applied to foreign-owned newspapers so long as the general assembly of the mixed courts had not approved the law.[48] Leaders of the Wafd, feeling that their party was excluded from power only by an illegitimate electoral system, had few objections to a system that restrained the autocratic impulses of their opponents.

THE END OF THE MIXED COURTS

Despite Brinton's claim in 1930 that political changes would only strengthen the mixed courts, by that time the precariousness of the system should have been clear. The courts' strongest supporters—foreign communities and capitulatory powers—could do little to defend them against an assault. The British and the Wafd each had some short-term uses for the courts as long as they failed to come to an agreement with each other. The best hope for supporters of the courts was that Egypt would be forced to agree to reaffirm the role of the courts in order to gain the assent of foreign governments to the abolition of the capitulations. This hope seemed quite real at the beginning of the decade, but it depended on the Egyptians calcu-

lating that they needed to make such concessions. Before the decade was over, all domestic political forces in Egypt had turned against not solely the capitulations but also the courts, and the Wafd managed to provoke rivalry among the capitulatory powers over which could be most helpful in dismantling them. Two changes help explain this quick reversal: the growing political power of the Egyptian bourgeoisie and the successful negotiation of an Anglo–Egyptian treaty in 1936.

By the 1930s the Egyptian bourgeoisie had become a powerful (if often divided) political force. This newly influential group viewed the capitulations and the mixed courts as an obstacle to Egyptian economic development. Even the exclusively Egyptian group that founded Bank Misr in 1920 (outside the jurisdiction of the mixed courts), had neither the ability nor the desire to avoid foreign investment, technology, and business dealings.[49] If they were to deal with foreigners in any way, their Egyptian nationality provided no escape from the capitulations and the courts. They thus found the system a problem for two reasons. First, Egyptian business leaders who did not have foreign nationality felt that the system of the capitulations and the courts placed foreigners in an advantageous position.[50] More precisely, their complaint was that the capitulations barred discrimination against foreigners and that the mixed courts tended to interpret "discrimination" fairly broadly. The courts and the capitulations thus prevented the Egyptian government from implementing the policies that business interests wanted, such as tariffs and preferential employment. The tariff issue was resolved by negotiation prior to the abolition of the capitulations, but Egyptian business had learned that their growing political influence with the Egyptian government was an insufficient guarantee of sympathetic policies so long as the capitulations stood intact.[51]

The second reason Egyptian business groups and probusiness politicians resented the capitulations and the courts was that they required the powers' consent before foreigners could be taxed directly. So long as the capitulations remained in force, and so long as the courts enforced them, Egypt could not raise the tax revenue necessary to fund many of the programs probusiness politicians desired. An income tax was out of the question; a protective tariff was enacted only with difficulty; even a tax on matches provoked a diplomatic dispute between Egypt and the capitulatory powers.[52] Any attempt to launch projects to develop infrastructure or to subsidize Egyptian industrialization would founder without Egyptian fiscal autonomy. Isma^{c}il Sidqi, the political leader most publicly identified with business interests, argued this as early as 1926 in a speech to the Bar Association of the Mixed Courts. Perhaps with unintended irony, Sidqi was able to quote three British imperialists of the era when Britain resented the capitulations—Lord Cromer, Sir William Brunyate, and Viscount Milner—in support of his position.[53]

In 1930 Sidqi became prime minister and brought with him several officials who felt even more strongly than he did about the capitulations and the courts. Hafiz ^{c}Afifi, former foreign minister and future president of Bank Misr, became the Egyptian ambassador to Great Britain. He denounced the capitulations strongly and in public—in a 1931 speech he referred to them as a "pernicious and archaic system."[54] Sidqi's under-secretary of finance was Ahmad ^{c}Abd al-Wahhab, a financial and commercial expert who quickly made himself known as an implacable foe of the capitulations. In 1933, during a trip to London, he called for abolition and

denounced the capitulations as "a constant obstacle in the way of economic and social progress" and "a form of slavery and reaction from whose evils the Egyptians from the Pasha to the fellah suffer."[55] Sidqi generally avoided such strong language, but he left no doubts, in public and in private, that he too saw the capitulations as an obstacle to the economic progress of Egypt. Although probusiness politicians took primary aim at the capitulations rather than the mixed courts, abolishing the capitulations would rob the courts of any justification for their existence. (Efforts to strengthen the courts in order to gain foreign assent to abolition of the capitulations would necessarily be a half-measure in the eyes of Egyptian business leaders because the special status of foreigners would continue.)

However, Sidqi's government was fairly cautious and avoided an outright assault on the capitulations. Instead, the government attempted to chip away at them by negotiating measures like the protective tariff and new taxes. The capitulatory powers objected to such moves, but they began to yield, particularly in the face of Egyptian hints that they might abolish the capitulations unilaterally. Although the capitulations and the courts survived Sidqi's government, the comments of officials like Hafiz ʿAfifi and Ahmad ʿAbd al-Wahhab amounted to a threat of unilateral action that foreigners could not ignore. ʿAbd al-Wahhab made the threat privately to an American diplomat as early as 1931.[56] Other Egyptian leaders began to move this threat into public view. When Egypt left the gold standard in 1931, foreign bondholders sued, demanding to be paid in gold. Sidqi argued that if Egypt were compelled to pay the debt in gold it would also have to be freed of the fiscal restrictions imposed by the capitulations. When the Mixed Court of First Instance ruled in favor of the bondholders in 1933, the Egyptian press began a campaign calling for unilateral denunciation of the capitulations.[57]

ʿAziz Khanki, a prominent lawyer who had helped found the Bar Association of the National Courts, extended the battle beyond the capitulations to the mixed courts themselves—indeed, he suggested that battling the capitulations while leaving the courts untouched would accomplish little. He began to write regularly in support of Egypt's right to abolish the courts unilaterally, and he suggested that Egypt exercise that right if it did not obtain suitable concessions. After the 1933 ruling in favor of the foreign bondholders, ʿUthman Pasha Murtada, a former mixed-court judge, called for legislation that would forbid the national and mixed courts from dealing with such financial matters. Khanki responded that this would violate Egypt's constitution and treaty obligations; instead, Egypt should "use its right, acknowledged by the Powers, of non-renewal of the Mixed Courts."[58] Khanki hardly stood alone in his denunciations of the courts. Legal practitioners grew increasingly strident and far-reaching in their call for Egyptianization of the legal system in everything from criminal matters to language. Indeed, Egypt's political leadership, increasingly dominated by lawyers, was offended by the patronizing attitude of the mixed courts towards Egyptians as well as their infringement on Egyptian sovereignty.[59]

In such an atmosphere, foreigners active in Egypt realized they could rely on neither the capitulations nor the courts; they began to plan accordingly. As early as 1931, an American diplomat noted that foreign business communities had begun "to consider the problem in a less dogmatic manner."[60] In 1936 the American

ambassador to Egypt surveyed local American businessmen and concluded that "American interests in Egypt generally, I find, appear reconciled to the inevitable adjustments" necessitated by abolition of the capitulations.[61] Afraid of alienating foreign capital, Sidqi withstood pressures for unilateral action, but foreign businesses had noticed the pressure and drawn the appropriate conclusions.

The second development that contributed to the death of the mixed courts was the concluding of an Anglo–Egyptian treaty. The Wafd formed a government after its overwhelming victory in the elections of May 1936, which rapidly negotiated a treaty with Great Britain. The Wafd's primary rationale until then for maintaining the capitulations and the courts—that they circumscribed the British more than they did the Egyptians—had disappeared. Leaders of the Wafd had always claimed that they would deal with the capitulations and the courts as infringements on Egyptian sovereignty, but only after relations with Britain were settled. They were as good as their word. Egypt secured Britain's pledge in the treaty to work "to bring about speedily the abolition of the capitulations in Egypt" and to have the mixed courts take over the work of the consular courts for a transitional period at the end of which "the Egyptian Government will be free to dispense with the Mixed Tribunals." An international conference would be called to negotiate an end to the capitulations and the courts. An annex to the treaty also implied conditional British endorsement of the Egyptian threat of unilateral action.[62] Britain supported abolition not only to live up to its bargain, but also because it recognized that abolition of the capitulations was needed if Egypt were to live up to its treaty obligations. The Egyptian government had pledged to construct some military facilities for the British and to improve its own military to make a suitable British ally. These promises required money, and money would be hard to obtain unless the Egyptian government had obtained fiscal autonomy. The capitulatory limits on taxation, enforced by the mixed courts, would have to go.

In 1936, therefore, a powerful coalition had developed that was determined to lay the entire capitulatory system to rest. The coalition was led by the Wafd and had British support. Other political forces in Egypt either backed the Wafdists in their new determination to rid Egypt of the capitulations and the courts or criticized them for not going far enough.[63] As delegates were summoned to an international conference on the capitulations in Montreux, Switzerland, only a few foreign voices spoke up for the capitulations. Those voices were quickly silenced.

MONTREUX: THE DEATH OF THE COURTS

Before the conference met, the Egyptian government drew up a proposal to eliminate the capitulations, transfer jurisdiction over criminal cases involving foreigners from consular courts to the mixed courts, and then, after a short transitional period, transfer all the work of the mixed courts to the Egyptian national courts. The Egyptian government obtained nearly everything it wanted at Montreux. Its only concessions were to accept a somewhat longer transitional period (twelve years) than it would have wished and a pledge not to enact legislation that would discriminate against foreigners.[64]

None of the conferees defended the capitulations or the courts vigorously. A report to the French Chamber of Deputies on the conference claimed that for a different result, "it would have been necessary for the capitulatory Powers, or at least those which had important interests in Egypt, to unite beforehand and to present themselves with a common front and a program established in advance. The thing was not done."[65] Contrary to the report, a common front would certainly not have changed the results. In fact, there is evidence that some of the powers did coordinate their actions at the conference—though in a way that furthered the cause of abolition.

A united front would not have rescued the courts because most of the capitulatory powers realized that Egypt could act unilaterally if dissatisfied with the results of the conference. Less than a decade earlier the powers had stood resolutely in defense of their privileges; at Montreux they attempted only to wrest vague assurances from the Egyptians. The conferees realized that the Egyptian negotiators were under heavy domestic pressure not to yield and that Egypt could count on British support for unilateral abrogation.[66] Some powers, notably Italy and the United States, made a virtue out of necessity by supporting the Egyptian position. Greece, the country with the largest number of nationals in Egypt, had perhaps the most to lose but felt compelled to follow the British lead.[67]

There is also strong evidence that the British endeavored to build a coalition of powers that would offer little opposition to the Egyptian proposals. The British made certain that the threat of unilateral denunciation had not escaped the attention of diplomats, letting them know that, therefore, "more will be achieved by a sympathetic reception of the Egyptian proposals than by an attitude of obstruction."[68] More subtly, the Egyptians notified the British of what concessions they would be willing to make. The British passed this information on to the Americans. This information allowed the Americans to play the role of conciliators, particularly on the issue of the length of the transition period. When France requested an eighteen-year transition, the American delegation forcefully argued for a compromise twelve-year period, knowing that the Egyptians would accept the proposal. The isolated French caved in. The British later thanked the Americans for their "collaboration."[69]

CONCLUSION

In the six decades between the agreement to establish the mixed courts and the agreement to abolish them, the positions of the various parties had changed, sometimes several times. Foreign residents of Egypt and their home governments agreed to the courts reluctantly but soon became their firmest supporters. The British resented the courts until finding a use for them after the formal end of the occupation. Then the British helped bury the courts at Montreux. The Egyptian leadership also repeatedly shifted its position on the courts. The Egyptian government, led by Nubar, had worked to establish the courts, but Isma^{c}il soon turned his back on them and Egyptian resentment of the courts mounted. In the wake of the British occupation, Egyptians grew to see the courts as useful; but the growth of the Egyptian bourgeoisie and the negotiation of an Anglo–Egyptian treaty turned

the Egyptian government into their leading enemy. That the courts managed to stay alive during this turbulence is testimony not to their efficiency or fairness but to the complexity of diplomacy surrounding the question of sovereignty over Egypt. When that question was resolved and when the shifting coalition supporting them finally dissolved, the mixed courts quickly faded away, leaving few traces.[70]

NOTES

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[1]Jasper Yeates Brinton, *The Mixed Courts of Egypt*, revised edition (New Haven, Conn.: Yale University Press, 1968), ix–x.

[2]Ibid., 210.

[3]*Al-Muṣawwar*, 29 June 1936, included in Fish to secretary of state, 29 June 1936, Department of State General Records, Record Group 59, 783.003/116 National Archives, Washington, D.C.

[4]See Byron Cannon, *Politics of Law and the Courts in Nineteenth-Century Egypt* (Salt Lake City: University of Utah Press, 1988); F. Robert Hunter, *Egypt Under the Khedives 1805–1879* (Pittsburgh, Pa.: University of Pittsburgh Press, 1984).

[5]Nubar's initial proposal of 1867 was slightly less ambitious; the proposal was expanded in 1869. See Brinton, *Mixed Courts*, chaps. 1, 2; Cannon, *Politics of Law*, chap. 3.

[6]Najib Makhluf, *Nūbār Bāshā wa mā Tamma ᶜalā Yadihi* (Cairo: al-Maṭbaᶜat al-ᶜUmūmiyya, 1903), 96; Cannon, *Politics of Law*, 50.

[7]See F. Robert Hunter, "Self-Image and Historical Truth: Nubar Pasha and the Making of Modern Egypt," *Middle Eastern Studies* 23, 3 (1987): 370; Earl of Cromer, *Modern Egypt* (London: Macmillan, 1909), 2:316–17.

[8]Ismaᶜil may not have realized the full impact the courts would have. See Najib Makhluf, *Nūbār Bāshā*, 96–97.

[9]See Latifa Muhammad Salim, *al-Niẓām al-Qaḍā'ī al-Miṣrī al-Ḥadīth, 1875–1914* (Cairo: Ahram Center for Political and Strategic Studies, 1984), 58–66.

[10]Ibid., 75–79; Cannon, *Politics of Law*, chaps. 4, 5. According to Cannon, Egyptian landowners shared Ismaᶜil's resentment of European control, but also feared that unlimited khedival power would threaten their own economic position and therefore were sometimes protective of the mixed courts.

[11]In this regard see Cromer, *Modern Egypt*, 2:430–31.

[12]For the positions of the two men, see Confidential Prints 5531/1(i), 4, and 7 and 9238(i) in *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print*, pt. 1, ser. B, vol. 15 (University Publications of America, 1985). See also *al-Muqaṭṭam*, 27 April 1889. For a comprehensive account of this complex period, see Cannon, *Politics of Law*, pt. 3.

[13]For an analysis of how Egyptian leaders used another area of the judicial system in their effort to promote autonomous state building, see Nathan Brown, "Brigands and State Builders: The Invention of Banditry in Modern Egypt," *Comparative Studies in Society and History* 32 (April 1990): 258.

[14]See, for example, *al-Muqaṭṭam*, 2 May 1889.

[15]*Al-Muqaṭṭam*, 2 October 1889.

[16]Viscount [Alfred] Milner, *England in Egypt* (London: Edward Arnold, 1904), 48.

[17]See Cromer, *Modern Egypt*, 2:318–19.

[18]Brinton, *Mixed Courts*, 126–27.

[19]The British were quite aware of this Egyptian attitude. See, for instance, Lord Lloyd, *Egypt Since Cromer*, 1 (1933): 143–44.

[20]Cannon, *Politics of Law*, 150–51.

[21]See Afaf Lutfi Al-Sayyid, *Egypt and Cromer: A Study in Anglo–Egyptian Relations* (New York: Praeger, 1968), 186; Lloyd, *Egypt Since Cromer*, 1:94–95, 102–4.

[22]For instance, a proposal to reduce the size of the judicial panels in the district courts from five to three was successfully blocked by foreign powers until 1915 (Brinton, *Mixed Courts*, 72) as was an Anglo–Egyptian proposal to transfer registration of deeds from the mixed courts to an Egyptian office (Lloyd, *Egypt Since Cromer*, 30–32).

[23]See Brinton, *Mixed Courts*, 169–75.

[24]See Milner, *England in Egypt*, 284–87; Lloyd, *Egypt Since Cromer*, 1:132–38. Also see Arnold to Secretary of State, 12 May 1914, SD, 883.05/68 and the article on the subject in the *Egyptian Mail*, 24 April 1914, contained in the dispatch.

[25]Annexation was considered as a serious option at least in 1917 (see Lloyd, *Egypt Since Cromer*, 1:17).

[26]See, for example, the letter written by the chief of the secret police, Joseph McPherson, in *The Man Who Loved Egypt: Bimbashi McPherson*, ed. Barry Carman and John McPherson (London: Ariel Books, 1985), 190. Martial law also allowed the British to make foreigners subject to taxes, such as the ghafir (guard) tax, from which they had been exempt. This caused a dispute after the war when foreigners and some capitulatory powers demanded that the tax be removed. Papers related to the dispute are included in SD 883.512.

[27]The renewals of the mixed courts are mentioned in SD 883.05/74, 89, 92, 97, 104, 108, and 131. The quotation from Brunyate is from a lecture at Cambridge in 1924; see Brinton, *Mixed Courts*, 186–87. On foreign reaction, see the correspondence on the subject in SD 883.00 and 883.05.

[28]ᶜAbd al-ᶜAzim Ramadan, *Taṭawwur al-Ḥaraka al-Waṭaniyya fi Miṣr min Sanat 1918 ilā Sanat 1936*, 2nd ed. (Cairo: Maktabat Madbūlī, 1983), 279–81, 328, n. 19; Great Britain, Foreign Office, *Egypt No. 1 (1921). Report of the Special Mission to Egypt*, 20; Brinton, *Mixed Courts*, 189–90; SD 883.00/339, 783.001/1; Alexander Kitroeff, *The Greeks in Egypt 1917–1937: Ethnicity and Class* (London: Ithaca Press, 1989), chap. 2.

[29]The text of the declaration is in Michael H. Davies, *Business Law in Egypt* (Antwerp: Kluwer Law and Taxation Publishers, 1984), 8–9.

[30]See, for example, Jardine to secretary of state, 28 December 1931, SD 783.003/44. Alexander Kitroeff, *The Greeks in Egypt 1917–1937* (London: Ithaca Press, 1989), p. 56 cites a 1935 "Foreign Office minute by a member of the Egyptian Department": "Ever since 1922 our attitude towards the Capitulations has been to treat them as a bargaining asset when negotiating a treaty with Egypt" (FO Minutes, 5 March 1935 J852/507/16 FO 371 19090).

[31]The text of the drafts is included in Great Britain, Foreign Office, *Egypt No. 1 (1928). Papers Regarding Negotiations for a Treaty of Alliance with Egypt.*

[32]Robert Tignor, *State, Private Enterprise, and Economic Change in Egypt, 1918–1952* (Princeton, N.J.: Princeton University Press, 1984), 84–86.

[33]1931, SD 683.003/39.

[34]Jardine to secretary of state, 28 December 1931, SD 783.003/44.

[35]On foreign opinion, see the assessment by North Winthrop in 1927, SD 783.003/7; and Jardine to secretary of state, 4 October 1932, SD 783.003/59. For taxation and capitulatory reform, see the correspondence on the business license tax, 1931–32 SD 783.512/47, or the motor vehicles tax, 1932 SD 783.003/44, 53, 54; 883.512.

[36]Andrews to secretary of state, 1 September 1923, SD 783.003/2.

[37]Jardine to secretary of state, 14 November 1931, SD 783.003/43.

[38]See, for example, Husayn ᶜAmir, *al-Ahrām*, 9 August 1923.

[39]Memorandum of conversation between Secretary of State Kellogg and Egyptian Minister Samy Pasha, 23 September 1926, SD 783.003/4.

[40]Howell to secretary of state, 7, 27 April 1927, and Winthrop to secretary of state, 23 December 1927, SD 783.003/5; Brinton, *Mixed Courts*, 191–92. The draft treaty text is in Great Britain, Foreign Office, *Egypt No. 1 (1928). Papers Regarding Negotiations for a Treaty of Alliance with Egypt.*

[41]Mahmud ᶜAzmi, *al-Ahrām*, 24 April 1923. For a non-Wafdist version of this view, see the reply of ᶜAdlī's delegation to British proposals in 1921, printed in Great Britain, Foreign Office, *Egypt No. 4 (1921) Papers Respecting Negotiations with the Egyptian Delegation*, 9. See also Sprigg to secretary of state, 31 March 1921, SD 883.00/339.

[42]The interview was printed by the *Egyptian Gazette* on 26 September 1923. It is included in Howell to secretary of state, 27 September 1923, SD 883.00/470.

[43]Jardine to secretary of state, 20 May 1931, SD 783.003/36.

[44]Jardine to secretary of state, 8 February 1933, SD 883.51/161.

[45]Fish to secretary of state, 20 November 1935, SD 783.003/109.

[46]Jardine to secretary of state, 20 May 1931, SD 783.003/36. On one occasion the Wafd criticized their opponents from the other direction, arguing in 1927 that the Egyptian government's proposals to reform the capitulations did not go far enough. Winthrop to secretary of state, 23 December 1927, SD 783.003/7.

[47]See the article in the *Egyptian Gazette*, 21 October 1932, enclosed in Jardine to secretary of state, 26 October 1932, SD 783.003/60.

[48]Jardine to secretary of state, 31 January 1933, SD 783.003/65.

[49]For the rise of the Egyptian bourgeoisie, see Tignor, *State, Public Enterprise*; Eric Davis, *Challenging Colonialism: Bank Misr and Egyptian Industrialization, 1920–1941* (Princeton, N.J.: Princeton University Press, 1983); Robert Vitalis, "On the Theory and Practice of Compradors: The Role of ᶜAbbud Pasha in the Egyptian Political Economy," *International Journal of Middle East Studies* 22 (1990); "Building Capitalism in Egypt: The ᶜAbbud Pasha Group and the Politics of Construction" (Ph.D. diss., Massachusetts Institute of Technology, 1988).

[50]See, for example, Muhammad Asᶜad, *al-Ahrām*, 15 January 1937.

[51]The Egyptians claimed that tariffs were limited not by the capitulations but by the 1906 Customs Convention with Italy (and with other countries under most-favored-nation treaties). When the convention expired in 1930, therefore, the Egyptian government resolved to enact a more protective tariff. The capitulatory powers complained, and a compromise was negotiated. The compromise helped establish a precedent for Egyptian autonomy in the matter of tariffs. See "Memorandum Regarding the Egyptian Customs Tariff and Customs Regulations (*Reglement Douanier*)," 12 December 1936, SD 783.003/140.

[52]See the memorandum by Charles W. Yost, then American vice consul in Cairo, "The Taxation of Foreigners in Egypt," 6 June 1931, SD 783.003/37.

[53]*Egyptian Gazette*, 30 March 1926, contained in Howell to secretary of state, 3 April 1926, SD 783.003/3.

[54]*Egyptian Mail*, 25 June 1931, included in Childs to secretary of state, 11 July 1931, SD 783.003/38.

[55]*Egyptian Gazette*, 26 July 1933, contained in Jardine to secretary of state, 11 August 1933, SD 783.00/80.

[56]Jardine to secretary of state, 14 November 1931, SD 783.003/43.

[57]Jardine to secretary of state, 10 November 1931, SD 883.515/11; Childs to secretary of state, 29 November 1933, SD 883.51/195; Tignor, *State, Public Enterprise*, 140–41. The mixed courts ruled in favor of the Egyptian on appeal in 1936, on the eve of the Montreux conference.

[58]ᶜAziz Khanki, *al-Maḥākim al-Mukhtaliṭa wa-l-Maḥākim al-Ahliyya* (Cairo: al-Maṭābiᶜ al-ᶜAsriyya, 1939), 258. The author's numerous other articles denouncing the mixed courts are contained in this collection.

[59]See Jibra'il Kahil Bey, "al-Qaḍā' Qaḍīman wa Ḥadīthan," and Zaki ᶜUraybi, "Lughat al-Aḥkām wa-l-Murāfaᶜāt," in *al-Kitāb al-Dhahabī li-l-Maḥākim al-Ahliyya* (Cairo: al-Maṭbaᶜ al-Amīriyya, 1938). For details on the political involvement and attitudes of Egyptian lawyers, see Farhat Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt* (Stanford, Calif.: Stanford University Press, 1968); Donald Reid, *Lawyers and Politics in the Arab World, 1880–1960* (Minneapolis: Biblioteca Islamica, 1968).

[60]Jardine to secretary of state, 14 November 1931, SD 783.003/43.

[61]Fish to secretary of state, 12 December 1936, SD 783.003/140.

[62]Brinton, *Mixed Courts*, 194. The annex read, "It is understood that in the event of its being found impossible to bring into effect the arrangements referred to in Article 2, the Egyptian Government retains its full rights unimpaired with regard to the capitulatory regime, including the Mixed Tribunals," SD 783.003/217.

[63]Egyptian press articles on the subject are contained in Morris to secretary of state, 17 April 1937, SD 783.003/246.

[64]The agreement and negotiating record are contained in SD 783.003—Montreux.

[65]Jasper Y. Brinton, "Egypt: The Transition Period," *American Journal of International Law* 34 (April 1940): 211–12. Brinton includes the same passages in his chapter on Montreux in *Mixed Courts*.

[66]Childs to secretary of state, 17 November 1936, SD 783.003/135.

[67]See Kitroeff, *Greeks in Egypt*, chap. 3.

[68]Aide memoire from the British Embassy in Washington, 20 February 1937, SD 783.003/234.

[69]Fish to secretary of state, 12 May 1937, SD 783.003/252; R. C. Lindsey, British ambassador to the United States to Cordell Hull, secretary of state, 4 June 1937, SD 783.003/261.

[70]It is true, of course, that the codes on which the national courts were founded—and continue to operate—were often based on the codes of the mixed courts. But Brinton demonstrates that after their abolition, the mixed courts had little or no influence on the subsequent jurisprudence of the national courts (see *Mixed Courts*, 211). While the capitulations were eliminated at Montreux, however, Egypt experienced great difficulty in making use of its new fiscal autonomy (see Tignor, *State, Public Enterprise*, 151–54, 235–36).