

## Chapter Five

### *Using the Shaikhs*

#### THE RATIONAL IMPOSITION OF A ROMANTIC FIGURE

In trying to impose policy through the authority of the shaikh — an authority conceived of as consensual — the British inadvertently but radically changed the nature of the shaikh's actual relation to the rest of Iraqi society.<sup>1</sup> The irony was that the dominant, conservative British discourse of ruralism transformed Iraqi society in strikingly radical and "modern" ways. A romantically conceived "premodern" figure was used as the conduit for rational administrative methods, "successfully" imposed, finally, as we shall see, through the modern coercive technology of air power.

Sir Henry Dobbs clearly understood tribal structures in instrumental terms. When the main institutions of government were being built and state-society relations were being institutionalized, Dobbs had thought the state too weak to deal directly with rural individuals. The state apparatus, he said, could not go through Iraqi society with a "tooth comb."<sup>2</sup> Instead its relations with Iraq's population had to be mediated through a series of tribal shaikhs. But, crucially, Dobbs saw Iraqi state power as being necessarily limited by the very structures the shaikh ruled through. The approach he viewed as "common sense" was organized by the idea that Iraq was pre-modern and "rural," untainted by the negative and destabilizing effects of capitalism. The Shaikh and his tribe were therefore "naturally" the dominant institutions through which British policy aims were to be realized.

The tensions involved in being guided by this romantic discourse can be seen in the mechanics set up for recognition of tribal shaikhs and in the administration's efforts to secure their dominant position. Tribal shaikhs were divided by colonial officials into "nominal" and "recognized." Both categories were seen to possess the degree of social authority needed to control a given area. However, official recognition was conditional upon the suitability of the individual to rule in a manner that

conformed with British notions of administration and upon a willingness to deliver guarantees of order on British terms.

For a shaikh, government recognition brought with it responsibility, reward and prestige. By guaranteeing the good behavior of the tribe or that of a particular section, he would receive a monthly subsidy and occasionally the right to regulate the movement of any bedouin from his designated area to markets and urban centers. Fahad Beg ibn Hadhdhal, for example, received a subsidy of Rs. 12,000 a month and

In addition to this very large sum, he has the substantial privilege that no tribesmen of the Amarat or other nomads dependent on them can purchase supplies in Iraq without a pass signed by himself or his agents. It is hoped that the conditions now imposed may enable the Iraq Government to reap some advantage from its heavy expenditure on his barak.<sup>3</sup>

Official recognition of the shaikh clarified and strengthened his position. Nearest rivals would be ordered to submit to his authority under threat of state intervention. These rivals would gain recognition themselves and a place within this hierarchy only if they agreed to his authority:

Jaid ibn Mijland of the Dahamshah . . . has been informed in the presence of Fahad Beg and his son Mahrut that Fahad has been recognized paramount Shaikh of the Amarat, of which the Dahamshah are part, and has the right to grant passes for the purchase of supplies, Jaid is expected to be loyal to the king, to recognize the paramountcy of Fahad, to have no dealings with Ibn Sa'ud and to help Fahad in carrying out his obligations to Government. Though he is to be treated as Shaikh of Dahamshah, he is not to be given official recognition until it is seen whether the reconciliation with Fahad is genuine.<sup>4</sup>

The state in Iraq, although ruling through what were perceived as indigenous institutions, had by that act, changed them. What had previously been "fuzzy" communities now became rigidly defined.<sup>5</sup> By imposing precisely defined requirements on the role of the shaikh, and by demanding an instrumental relationship between him and members of his tribe,

the British decisively transformed the shaikh's place in Iraqi society and the character of his political role.

Where those individuals who had been identified as shaikhs became unruly or troublesome, they were replaced by more suitable candidates. Replacements had to come from the same social stratum given British understanding of authentic Arab authority. When Hamudah of the al Hasan became an outlaw, his nephew was placed on his land. A problem then arose when Hamudah wanted to make peace with the government:

His character and record forbid his reinstatement in his old position, while to leave him at large, nursing a bitter grievance and dispossessed of his lands, would be to sow the seeds of certain trouble in the future. The same problem presents itself in the case of Faisal al Yasir, who is still at large.<sup>6</sup>

When, despite government recognition, shaikhs who proved unable to restrain the population under their control ran the risk of having their tribe de-recognized and its lands allotted to others.<sup>7</sup> In these circumstances, the British assumed that it was not the system of tribal organization or the use of shaikh's power that was at fault but individual personalities or the defective nature of the tribe. In fact, a radically new social order was being created. When populations identified as "tribal" failed to have an identifiable shaikh, trouble was sure to arise. For the Iraqis, it meant that they did not fit the government's understanding of rural Iraq and therefore lacked access to state mechanisms that distributed largesse. For the British, "tribal" groups without shaikhs appeared sinister, uncontrollable and a source of instability. One officer wrote in an intelligence report, : "Early in May a large band of miscellaneous tribesmen from the Muntafiq numbering about 5,000 tents crossed into the Sirah Nahiyah of the Kut Division. Trouble was anticipated as the tribesmen were armed and had no recognized headman."<sup>8</sup>

The fact that the groups concerned had no "recognized" leaders placed them beyond the British categories of order and so beyond their control. That no headman had been identified meant that they had not been documented, nor registered on the tribal lists. They had not been fixed in the rural order of things. An explanation of the state of affairs in

this instructive case lies in the origin of these tribesmen, the Muntafiq. The Muntafiq, in British understanding, personified the instability of an area where categories could not be universally and unambiguously applied. The unrest that had plagued the British in Muntafiq was blamed on the Ottoman use of divide and rule. By introducing city-based landlords into the rural status quo, the Turks, so the British believed, had deliberately fragmented the “traditional” tribal structures that had preserved order. The result was a constant state of unrest, a “French Revolution in miniature.” Any tribe that failed to have a shaikh of recognisable stature had slipped below British standards of acceptability. Any such population was too deficient to be treated as autonomous, and its capacity for collective action had to be a product of malignant outside forces.<sup>9</sup>

As the Iraqi state became more established and monetary pressure became greater, subsidies to recognized shaikhs were replaced by grants of land. The designated shaikhs themselves learned quickly what was required of them and how to manipulate the key concerns of the British. Ali Sulaiman, upon learning that his subsidy was under threat, argued that it was not the monetary reward that concerned him, but “he valued it for the prestige that it brought him in that he appeared to his tribes as a valued servant of Government:”

Taking a broader view he then went on to explain that the tribes judged by what they saw and that the fact that he ceased to draw an allowance without receiving any recognition for his past services would be taken to mean that he no longer retained the confidence of Government although of course he was satisfied that this was not the case. His prestige would suffer accordingly and his advice would not be listened to so readily. He presumed that Government was aware that many of the tribes were far from satisfied and that there was a considerable amount of talk abroad that a return of Turkish officials would be an improvement on the existing regime. The last thing in the world he wanted was *thaurah* and all his influence would be thrown into the scales to prevent this. He could not help feeling however that the Government forces in this area were small to cope with any disturbances which might arise and consequently anything which led

to a reduction of his own influence he viewed with a certain amount of misgiving.<sup>10</sup>

The shallow foundations of the shaikh's authority became increasingly apparent after the chaos of the 1920 revolt subsided. The case of Ali Sulaiman not only highlighted a wider problem in Iraq but also the divisions within the Mandatory administration on perceptions of tribal cohesion. In 1922, Yetts, a divisional adviser, had seen Sulaiman as a potential pillar of government control, "if a place can be found in the body politic for the type which Shaikh Ali Sulaiman represents with their rights clearly defined the whole-hearted support of this class can be counted on."<sup>11</sup> But by 1924 it had become apparent that the ability of Ali Sulaiman to wield the type of influence amongst his fellow Dulaim tribesmen that the British needed was doubtful. After the 1920 uprising, several sectional leaders had recognized Sulaiman as their paramount shaikh in an attempt to avoid British retribution for their part in the disturbances. But four years later, he was personally unable to collect revenue from *sarkals*, requiring government support to do so. The Administrative Inspector in Dulaim saw Sulaiman as a hindrance to state control. He had little or no influence, it turned out.

Aly Sulaiman may be regarded in Baghdad as paramount shaikh of the Dulaim but to the Liwa authorities it is painfully obvious he relies more and more on Government support to keep up his position. One issue seems clear that with gradual disintegration of the tribal system it will be increasingly difficult to find room in the numerous constituencies of the Dulaim Confederacy for both the Shaikh and Sarkal. The Sarkal has long regarded the Shaikh as an incubus which he will sooner or later throw off. At present he is waiting for a sign from Government.<sup>12</sup>

Cornwallis, the adviser to the Ministry of the Interior, lent partial support to this view. Arguing against the position of the High Commissioner, Henry Dobbs, that Sulaiman was necessary for the preservation of order near the Syrian border, he stated that the main force for law and order in Dulaim had long since been the *Liwa* police.<sup>13</sup>

The High Commissioner responded to this interpretation of policy with great vigor:

The position which I take up is that it is essential to preserve the authority of Ali Sulaiman over the Badu portion of his tribe for the purpose of making the desert routes safe and that it is almost impossible to do so if his authority over the more settled portion of his tribe is undermined. He can't well become a mere "rentier" with regards to the settled portion, without losing his hold over the Badu portion also; for there is no very clear dividing line between them. Another reason for not lessening his authority over the settled portion is that we have no adequate machinery except the Shaikhship for controlling the Dulaim in their relations with the Aqaidat which are so important from the point of view of our relations with Syria. I gather Ali Sulaiman himself would be only too glad to become a "rentier" if Government would collect the profits due on his capital expended on the "Ali Sulaiman Canal" and also his dues on the *Karads* at Felujah and elsewhere. He would then practically abandon his position as Shaikh of the Badu portion of the tribe, which now brings him no profit and honor and a great deal of worry. But this would make him quite useless to the Government.<sup>14</sup>

For Dobbs Ali Sulaiman's power was a natural outcome of his position within his tribe. Any reduction in Sulaiman's power was, therefore, caused by external influences. In this case Dobbs saw it as a direct consequence of state interference. Therefore, he argued, the police should be kept out of Dulaim affairs in all cases but those of murder. Everything else should be referred to Sulaiman for resolution. His power as a tribal shaikh could then return to its natural level, unencumbered by the negative incursions of modernity in the shape of employees of the state.

The policy of subsidizing shaikhs came under repeated attack from the Iraqi cabinet. As Britain placed strict budgetary restraints on the Iraqi government, the money being spent on underwriting the shaikhs became a contentious issue.<sup>15</sup> Cornwallis was aware of this and the ramifications it had for policy:

The main point . . . is to maintain the authority of all the shaikhs and to use it to reinforce the Police. This is the policy which

Administrative Inspectors and I have always adopted. It is not a policy of which any Arab townsman approves and though it has been outwardly accepted as a necessity, one must always be on the lookout for attempts to run counter to it.<sup>16</sup>

The clash in perspectives between British advisers and urban politicians was in this and many other cases put down to the townspeople's ignorance and fear of anything outside their metropolitan domain. This itself sprung from a British collectivist social vision which had exaggerated the urban-rural divide. It allowed Cornwallis and Dobbs to override cabinet concerns about budgets or the power of sub-state actors.

The liberal international zeitgeist that had resulted in the award of Mandatory responsibility to Great Britain in 1920 enforced the notion that democratic accountability was to be included in the project of state building in Iraq. Yet, the "complete and necessarily rapid transformation of the facade of the existing administration from British to Arab" forced the creation of democratic institutions that were ill-conceived.<sup>17</sup> In the debates of 1920 on how to elect representatives, we can see the effect of these competing perceptions of Iraqi society. The central question was how best to structure state-society relations. The conscious instrumental use of the perceived authority of the shaikh is not apparent in the initial phase of building democratic structures. The original flurry of consultation around this subject produced four broad conceptions of how Iraqi representative institutions would be shaped. Those involved in the discussion were concerned with two sometimes mutually opposing questions: What was the largest degree of representation possible in a society like Iraq? How do we create the most efficient legislature, one immune from corruption? None of the four positions taken on building Iraqi democratic structures could resolve the tensions among democracy, efficiency and corruption.

The main forum for the discussion of these matters was the committee chaired in 1920 by the Judicial Secretary Edgar Bonham-Carter.<sup>18</sup> An appendix to the committee's concluding report details possible ways of electing a Legislative Assembly. In the country, where the population were thought to be tribal, the headmen of the smaller tribal units would elect representatives for the assembly. This was an idea

based on a perception that tribal life was fully democratic: "They [the headmen] are themselves elected by the tribesmen under them, and they elect the Shaikh of the Tribe subject to confirmation by the authorities."<sup>19</sup>

This proposal brought an impassioned rejection from Sir Henry Dobbs, who argued that tribal representatives would use the assembly to question the actions and undermine the power of their shaikhs.<sup>20</sup> For Dobbs the elevation of headmen to an elected assembly (an urban-based one at that) would disturb the natural order of things. Also, for Dobbs the paramount shaikhs were the point of contact between a naturally well-ordered society and a rapidly changing world. So, he argued that the High Commissioner should instead grant the right for all important shaikhs to sit in the legislative assembly. Dobbs also argued that any law passed by a future assembly that affected rural areas and did not meet with the approval of tribal delegates should be automatically referred via the Council of Ministers to the High Commissioner. In this short telegram, sent from India in 1920, are to be found the themes that would come to dominate Dobbs's time as High Commissioner: the fear that corrupt and corrupting urban politicians would dominate the noble tribes of rural Iraq and the fear that the authority of the shaikh would be destroyed by rapid changes brought about by statehood.

E. L. Norton, the Secretary to the Committee of ex-Turkish Deputies, also discussing a possible electoral law under the auspices of the High Commissioner, advanced another view. For him, the right to vote carried corresponding responsibilities: the voter must make a rational, independent decision about what was best for himself. Tribesmen, being part of a collective, were easily manipulated by their shaikhs and could be sent to the ballot box in large numbers. This could allow "unscrupulous persons . . . to engineer the elections for their own ends." So, although the

enormous majority of the population is tribal . . . it would clearly be impossible to have a tribal majority of electors, since nine-tenths of the questions which a national assembly has to determine do not concern the tribes, nor will the tribes willingly pay taxes or be liable to military service. I suggest that the tribes should be given no representation on the Assembly.<sup>21</sup>



For Norton, the tribesman (not an individual in the modern sense) could never act in a way that would sustain democracy. As an undistinguishable part of a collective, he could be marched to the ballot box to vote in any way the shaikh or his urban manipulator saw fit. It was because of this, he argued, that tribesmen should be excluded from voting altogether.

Finally, it was left up to a Political Officer, R. Marrs, in a rejoinder to Norton, to champion the unfashionable cause of the individual rights of the tribal *fallah*: “For while all other classes may be represented, it is improbable that the tribesmen, as opposed to his Shaikh, will be represented.”<sup>22</sup> Marrs gently tried to debunk the notion of the tribe and that of collective responsibility that came with it. The *fallahs*, as fully formed individuals, were bound to have different and even conflicting interests to those of the shaikhs. If this was not recognized, the British Political Officer would have to act as their protector.

In the event, following interventions from the High Commissioner, the Council of Ministers decided to adopt both methods of election. The first Iraqi Assembly was based on direct elections by all those tribesmen who could write their name and were willing to register, with 20 per cent of the seats reserved for indirectly elected shaikhs.<sup>23</sup> The result was a Constitutional Assembly that had 34 shaikhs and *aghas* out of a total of 99 members.<sup>24</sup>

Explanations of the events surrounding the run up to and opening of the 1924 Constitutional Assembly became representative of British views of how Iraqi politics functioned. The conceptual division between the rural shaikhs—honorable, moderate and representative of the Iraqi populace—and the passionate, irrational, and often violent, urban “lawyer-politicians” was understood as the crucial dynamic.<sup>25</sup> As early as 1922 the tribal shaikhs were seen as the rallying point for moderate opinion. Their visits to Baghdad gave “more backbone” to the moderate element.<sup>26</sup> Again, the Dulaim Shaikh, Ali Sulaiman, was the personification of all that was right about tribal politics. He became the driving force behind the creation of a moderate party, registering 12,000 tribesmen as primary electors in his area. This, according to Bell, resulted in a jealous and threatened king forming a rival organization. Bell complained that

I know perfectly well that if the king’s party (for before it has come into existence it is known by that name) is started by a group of

Young Arabs whom the country distrusts profoundly and rightly, not a single man of the Ali Sulaiman type will join it.<sup>27</sup>

The moderate party faltered because of the shaikhs' inactivity, but this, compared with the frenzied self-seeking activity of the Nationalist politicians, was taken as sign of moderation in itself.

The role of the Tribal Criminal and Civil Disputes Regulations (TCCDR) in Iraq created a divided polity in a similar way to the electoral system.<sup>28</sup> First drawn up by Henry Dobbs in February 1916, the TCCDR was officially sanctioned by British occupying forces in July 1918 and introduced into Iraqi law by Royal *Iradah* in 1924.<sup>29</sup> The regulations explicitly divided the Iraqi population into two sections. Those dwelling in the towns were subject to Iraqi civic law, originally based on Ottoman codes. These legal codes were progressively reformed and tailored to match the changing nature of Iraqi urban life as the state expanded its presence and power over cities and towns. But those deemed "tribal," those external to the cities, were subject to a radically different legal code. This code changed little over the eighteen years of the Mandate, as the society it purported to regulate was conceived of as pre-modern and static.

In its drafting and implementation, the TCCDR encapsulated the dominance of the romance of supposedly premodern collectivism through which many colonial officials saw Iraq. The structure of the TCCDR was taken almost unchanged from the colonial code used on the Indian North West Frontier. The basic organizing principle underlying jurisprudence in post-1916 Iraq was the dramatic and unbridgeable chasm between the corrupt cities with their tainted officials and lawyers and the rural areas with their noble tribesmen. These regulations were given coherence and their application made possible by the central role of the shaikh, used to understand Iraqi society, and to frame and organize the imposition of the regulations. Debates surrounding the application of the TCCDR also highlighted clashing conceptions of Iraqi society and the modern state. It was left up to successive Iraqi cabinets, lawyers and journalists (all labeled corrupt and self-seeking by the British) to challenge the validity of the regulations and criticize the effect they were having on the development of the Iraqi state.

The seemingly solid foundation of the TCCDR—that which anchored it to rural society—was its conformity to and compatibility with ancient custom.<sup>30</sup> For A.T. Wilson,

It [the TCCDR] helped us all to a better understanding of the principles underlying tribal custom: these principles varied little from district to district, though in detail there were many differences; they were all based not on Islamic law, but on something much older, human nature, and on local conventions, some of which, it would not be difficult to show, were probably codified by Khammurabi in 2000 BC or earlier.<sup>31</sup>

For juridical purposes, the rural population of Iraq—geographically, economically and religiously diverse as it was—was homogenized into one bloc, with all its people assumed to react to “custom and law” in the same way. All were subject to the application of the TCCDR because the regulations successfully reflected the premodern tribesman’s eternal and unchanging nature. For Bell, the need for extended police work and detailed litigation was “largely abrogated by the almost disconcerting sincerity with which the accused will own up to his offence.”<sup>32</sup> For Glubb, “bedouin arbitrators are usually absolutely honest . . . Cases of bribing the judges are well-nigh unknown . . . an oath is accepted as a final settlement of a case, and perjury is very rare.”<sup>33</sup>

Tribal crime was considered to have a different character, one motivated by deeper, more passionate and “honorable” forces than mere greed or politics. For example, in 1923 Dobbs defended the use of the TCCDR by citing tribal “feeling and custom” in a case of adultery. Not only would the tribesman not accept the ruling of a judicial court, but of “all cases sexual cases are those which can be least considered offences against the State or against the majesty of the law.”<sup>34</sup> Dobbs further developed this theme when testifying before the Permanent Mandates Commission of the League of Nations. Running counter to many explanations of the 1920 Revolt, he told Lord Lugard that “Tribesmen considered crimes not as offences against the state, but as “torts.” To hang a tribesman for murder would be to miss the point; this was not a crime in the ordinary sense, but an act carried out to avenge tribal honor; blood feuds would lead to anarchy across Iraq if they were not dealt with on terms that met the needs of timeless custom.”<sup>35</sup>

This construction of an honest, but simple tribesman driven by unchained passions was based on the belief that modernity, with all its associated complexities and corruptions, had not penetrated rural Iraq.

These men were “entirely ignorant of a world that lay outside their swamps and pasturages, and entirely indifferent to its interests, and to the opportunities it offers.”<sup>36</sup> This, then, helps to explain the conundrum posed by the use of an apparently far removed example (experiences of the North West Frontier) as the basis of the TCCDR. At first glance those advocating the use of the TCCDR did so because the majority of the population they had identified as tribal was distinctive and separated by its customs and laws. Yet Dobbs, when he tried to explain the basis of the tribal disputes law to Drower, the Adviser to the Ministry of Justice, had to refer to a totally different geographical area. He sent Drower the

Baluchistan circular of 1907 on which I was largely brought up and which was originally circulated in 1916 to all Political officers here. It will explain to you my point of view (from the point of view of public security) better than reams of notes from me.<sup>37</sup>

The reason for the Indian example becomes clearer when Dobbs quotes his then boss, the Agent-General, Sir A.H. McMahon, for whom he worked as a Revenue and Judicial Commissioner in Baluchistan from 1909–1911. Customary and tribal law was

based on the character, idiosyncrasies and prejudices of the people among whom it has originated and by whom it has been evolved during long periods of time to meet their own requirements and remedy their failings.<sup>38</sup>

So, the Baluchistan and Iraqi tribes were conceptually homogenised into one undifferentiated group. This was done within the “official mind” of colonialism because they were both perceived as unsullied by modernity, and they had both originated under a pre-modern system, with a different time-scale from that of these officials’ own society. The tribesman, wherever British imperialism found him, could therefore be regulated under a much simpler code of law: his innate honesty and straightforward life would make this by far the best approach. For the TCCDR this lack of “development” meant that the rural population of Iraq had not been subjected to the selfish individualizing drives of modern life. They could be treated under its regulations as if both criminal

motivation and the punishment for it were collective. Tribal criminal regulations operated “under the strict enforcement of tribal responsibility,” and so the whole tribe should be punished for the acts of its members, with the strength of collective identity then acting on the recalcitrants to bring them into line.<sup>39</sup>

The TCCDR gained its coherence and its enforcement mechanism through the offices of the shaikh. The British knew relatively little about the internal functioning of the tribe, and, although the archives refer frequently to the unchanging nature of tribal custom and law, the vast amount of material on matters tribal is concerned with the actions, character and agency of the shaikh. The crucial issue of over whom the TCCDR had jurisdiction was left to the personal decisions of Political Officers and the High Commissioner and then to *Mutasarrifs* and *Qa'immaqams*.<sup>40</sup> The importance of the shaikh in underwriting the legitimacy of the divided legal jurisdiction can be judged by the TCCDR's official, if circular, definition of a tribesman:

“Tribesman” means a member of a generally recognized tribe or tribal section which has been accustomed to settle its disputes by recourse to the arbitration of elders or shaikhs and not by recourse to the Courts of the land as ordinarily constituted.<sup>41</sup>

The tribal disputes regulations worked by the assembling of an ad hoc *Majlis*, brought together for each separate dispute, that acted as judge and jury. It was staffed with neutral tribal arbitrators who could claim the respect of both parties involved in a dispute. These arbitrators were in effect the nearest shaikhs, paramount, or other senior personages.<sup>42</sup> The terms of law enforcement in rural Iraq, then, had the effect of giving to shaikhs judicial authority over the vast majority of the population. That this represented a large accrual of power to specific individuals was recognized by the likes of Bell and Dobbs, but it was seen both as a natural outcome of their prestige and a way of preserving the existing and favored tribal system.<sup>43</sup>

Opposition to the terms of the TCCDR and the effective division of the nascent Iraqi society into two distinct social formations came from several sources. First, Sir Edgar Bonham-Carter, the Judicial Secretary to the Iraqi government until 1921, and E.M. Drower, Adviser to the Ministry of Jus-

tice in 1923, both voiced deep concern with the terms of the regulations as they stood. Bonham-Carter's critique attacked the core logic at the heart of the TCCDR, the notion of tribal custom, collective responsibility and punishment. In cases of murder, he argued, the practice of extracting blood money would be an adequate deterrent when levied on the individual but when the punishment was extracted from the whole tribe it was no deterrent to the individual.<sup>44</sup> He went on to argue that, far from being the application of tribal custom, the disputes regulations were in fact an unsatisfactory combination of both tribal and civic law—a combination that omitted their most powerful sanctions, the levying of fines on the individual and the death penalty.<sup>45</sup> Finally, he argued, the application of the regulations to settled tribesmen was wrong: "one finds that when tribes whether Arabs or others settled down to agricultural conditions they tend to give up their tribal customs, and this is a necessary step on the road of progress." That is, settled tribesmen would break away from their shaikhs, a process that Bonham-Carter thought should be encouraged.<sup>46</sup>

E. M. Drower, acting as adviser to the Minister of Justice, revisited these themes when he clashed with Henry Dobbs over a proposal to redraft the TCCDR. Like Bonham-Carter he was unhappy that Iraqi society had been judicially divided in two. Empirically, he saw this division as "difficult to define."<sup>47</sup> Juridicially, he was concerned that, by having given the *Mutasarrif* the power to judge who and who was not tribal, the division between the executive and judiciary had been in effect dissolved. This would undermine the credibility of the legal system and weaken the power of the state. The responsibility for the punishment of crime should, argued Drower, be solely that of government. It should not be delegated to tribal shaikhs. If the TCCDR had a role, it was to temper the central application of justice to the circumstances of the tribes. Tribal settlement should alleviate punishment when the crimes were "purely personal wrongs, for example, the last act in a feud." But the full force of the law should be applied in an equal and regulated fashion when crime disturbed "public tranquillity."<sup>48</sup>

Both Bonham-Carter and Drower implicitly challenged the alleged underlying dominance of collective premodern social cohesion that gave the TCCDR its rationality. They both saw Iraqi society as relatively unexceptional. Like other countries heading down the road of modernization, the Iraqi polity had to be tied to the state with rights and responsibilities

clearly and unambiguously set out in the legal codes of the land. These two legal experts saw the TCCDR as an unjustifiable anomaly. The law should apply equally to all rational individuals. To argue that some sections of society were fundamentally different was illogical and dangerous. To have two sets of legal codes, two starkly different conceptions of how society was meant to work, struck at the very heart of their training and their perception of how the law functioned in regulating a civilized society.

Debates about the strengths and weaknesses of the TCCDR dominated Iraqi political circles. The newspaper *Al Sha'ab* championed the guaranteeing of a separate legal code for the tribal population. It argued that, as the tribal population formed the majority in Iraq, their interests should be protected in the Organic Law passing through Parliament.<sup>49</sup> This brought a series of criticisms along lines similar to those of Bonham-Carter and Drower. *Al Iraq* argued that the demand to be tried according to tribal custom was

contrary to the fundamental principles of democracy and conflicts with the principles of the sovereignty of the State. Indeed it is disgraceful such a matter should be even discussed in a country which is demanding liberty and independence and which hopes to base its government on the practices of democratic nations.<sup>50</sup>

The best constitutions, *Al Iraq* argued, those of progressive nations, did their utmost to give no special rights to any person or class. To go along with such anti-progressive measures, it concluded, would be to invite both internal and external political interference.

This theme was taken up later in the year by the avowedly nationalist and anti-British newspaper *Al Istiqlal*. For Ali Mahmud Al Mahami, who wrote the detailed article, the continued use of the TCCDR was a stain on Iraq's claim to be a modern and progressive state. The TCCDR was "fit to be deposited in a museum so that the world may see in what era Iraq is living; in the twentieth century or in the dark ages; and may know how far the intelligence of her sons has advanced."<sup>51</sup> Al Mahami argued that the law was divisive because all Iraqis were not equal before it. It had also increased crime because it offered no deterrent to murder. Tribesmen were merely fined a small sum of money for any murders they committed. Most worryingly of all, though, it gave excessive powers to

the *Mutasarrifs*, who had become both judge and administrator in the tribal areas. Al Mahami concluded that the continuation of such a law could lead to absolutism.

This debate was driven by politicians both in cabinet and in Parliament. As early as 1921, King Faisal expressed the desire to institutionalize the execution of tribal law by establishing standing tribal courts.<sup>52</sup> In 1923, Naji al Suwaydi, the Justice Minister, and in 1926, Abdullah al Muhsin al-Sa'dun, the Prime Minister, tried to have the TCCDR reformed to bring the administration of justice to tribes further under the control of central government. Both sets of proposals aimed to bring the system for trying and punishing "tribal" crimes more fully into the mainstream legal system. Under their proposals, the only dispensation for crimes considered tribal would be the length of sentencing.<sup>53</sup>

So, the clamor for the reform or abolition of the TCCDR came from British legal professionals appointed to advise Iraqi politicians, from the politicians themselves and from the wider political circles represented by the nationalist journalists writing in the Arabic newspapers in Baghdad. Iraqi and British critics alike, most often lawyers, had a clear vision of the role a unified and coherent legal system would play in binding Iraqi society together and to the state.

Sir Henry Dobbs (and by implication the other British staff overseeing the Mandate administration), on the other hand, could not possibly accept this analysis of either the shortcomings of the TCCDR or, implicitly, the nature of Iraqi society. To do so would have been profoundly threatening. They would have had to discard the way they understood not only Iraq but all non-Western societies with which they came in contact. Instead, Sir Henry fought tenaciously (and ultimately successfully) to defend the TCCDR. The tropes he deployed to win the debate were the now-familiar ones, organized around the urban-rural divide. The personification of urban modern degeneration now became the Iraqi lawyer. Dobbs portrayed a Baghdad that was full of self-seeking, young, semi-educated solicitors. As with the majority of the Arab town dwellers, their motivations were suspect and their influence pernicious.

[T]he whole campaign against the tribal system is a plot of the lawyers, who have been cheaply manufactured by the Law School in excessive numbers and now find themselves starving for want of



work. They cannot bear to see important disputes, which might be comfortably aggravated and afford pickings for hordes of pleaders, if brought to the regular courts, settled by tribal arbitration. The result of such arbitration is that both the number of judicial appointments (which are filled by lawyers) is kept low and also the employment of pleaders is less than it would otherwise be. There is no genuine dislike of tribal law and customs as a barbarous system. It is merely a pounds, shillings and pence dislike of an arbitration system which deprives the lawyers of bread. The lawyers would like to force all tribesmen to settle their disputes or have their offences tried in regular courts, to see tribal rising result and tribal outlaws filling the mountains, to suppress these by help of the British power and then to indulge in extra-legal assassination of troublesome tribal leaders, such as the lawyers party attempted during the anti-treaty agitation. For it is a paradox of the East that the lawyer can never bear legalized strengthening of the executive authority, such as is to be found in the Tribal Disputes Regulations, but is quite indifferent to, and in fact applauds, extra-legal violence and administrative tyranny against his opponents outside the sphere of law.<sup>54</sup>

As with the Iraqi electoral system, the TCCDR was the outcome of the dominant frame for understanding Iraqi society. Urban Iraq, already transformed by the forces of modernity, was now subject to a civic law that dealt directly with individuals and evolved to meet the challenges of continued change. The TCCDR was, however, structured to meet the perceived needs of rural Iraq, which, being predominantly tribal in nature, needed protection from the urban minority. The honest and simple tribespeople of rural Iraq had to be protected from the corruption of modernity.

Once the Mandated state had been established, it became obvious to the British officials that the onward march of modernity was unstoppable. Their very presence, the order and stability which they brought, would eventually change Iraqi society. Although there was a broad agreement that this was bound to happen, attitudes towards the process and estimates of how long it would take were far from uniform. As he traveled through Iraq compiling his report on land tenure regimes, Sir Ernest

Dowson identified a general process of increased tribal sedentariness and decreased tribal cohesion and authority. He linked this to the spread of government authority. "[E]verywhere I was advised tribal disintegration was accelerating, everywhere the tribesman was becoming an individualist and wanting his individual holding."<sup>55</sup> For Dowson this was a positive process: the rational individual, liberated from the constraints of the tribal system, could now pursue his life with all the freedom that a modern state and civilization allowed him. All that had happened was that the restraints of the pre-modern world had been lifted from the shoulders of the individual, leaving him to flourish.<sup>56</sup>

The opposition to Dowson was represented by John Glubb, who, although recognizing a tribal system in decline, considered the cause of its terminal ill health to be the arrival of technology. It was the car and the airplane that had killed the tribal system.<sup>57</sup> But far from seeing this as the welcome effect of "progress," Glubb lamented the passing of what he labeled the "patriarchal system." Although patriarchy was referred to with "contempt" by Europeans, "it had many advantages. Basically it was founded on the mutual love of the governor and the governed."<sup>58</sup>

Glubb, like many of his colleagues, was deeply uneasy about the disruption he was causing. In a diary entry in April 1923, he rails against Woodrow Wilson, the British press and politicians, who "continue to demand that the nations of Asia and Africa should make a clean cut with their past, and at one fell stroke, adopt the mentality and traditions of the Western democracies." He concludes: "Would it not be more practical, as well as more polite, if we left these nations to govern themselves in their own way?"<sup>59</sup>