

Egypt and Sudan, 1882–1887

Imperial officials showed a greater concern to follow due process the more they came under pressure from domestic public opinion guided by well-connected supporters of detainees, and the greater the opportunities were for the detainees to issue challenges through legal channels. This was all the more so where there were no countervailing pressures from settler communities, such as existed in South Africa. The more pressure was exerted by public opinion, the more ministers and officials felt the need to demonstrate Britain's fidelity to the common law tradition, and to avoid detention without trial. At the same time, not all detainees attracted the same level of attention and support, and, in the absence of political pressure to ensure that due process was followed, these same ministers and officials were content if the formal demands of law were met with the passage of *ad hominem* detention laws. These contrasting approaches can be traced in British policy in Egypt after Britain's occupation of the country in 1882, in the different treatment accorded to the Egyptian nationalist leader Ahmed Urabi Pasha and the Sudanese leader Al-Zubayr Rahma Mansur.

Though Egypt would not formally become a protectorate until 1914, Britain's military occupation of Egypt in 1882 has long been seen as a turning point in the history of imperial expansion in Africa.¹ It

¹ As Robinson and Gallagher put it, 'When the British entered Egypt on their own, the Scramble began': Ronald Robinson and John Gallagher, *Africa and the Victorians: The Official Mind of Imperialism*, 2nd ed. (London, MacMillan, 1981), p. 465. For discussions of this episode, see further Robert T. Harrison, *Gladstone's Imperialism in*

was triggered by an Arab nationalist revolt led by Urabi Pasha, which was perceived to threaten British financial and imperial interests. After the revolt had been crushed, Urabi was tried by an Egyptian court, and exiled to the British colony of Ceylon. In this case, with the eyes of domestic public opinion firmly on the case, the British government strove to ensure that Urabi would obtain a fair trial, which would satisfy the demands of British justice. Moreover, his exile to Ceylon would be a voluntary one, with no legislative restrictions imposed on him. Three years later, at a time when the British were attempting to suppress the Mahdist revolt in Sudan, Zubayr was detained in Alexandria, and removed to Gibraltar, suspected of being a supporter of the Mahdi. Unlike Urabi, Zubayr attracted little support in Britain, since he was regarded as a notorious slave trader. As a result, the military authorities were free to insist on his continued incarceration, even as both the Colonial Office and the Foreign Office found it increasingly embarrassing. With few public voices coming to Zubayr's support, the formality of *ad hominem* legislation was considered sufficient to validate his detention and deportation.

The Exile of Ahmed Urabi Pasha

The Nationalist Revolt and the British Invasion of Egypt

The nationalist movement headed by Ahmed Urabi arose in response to the efforts of Britain and France after 1876 to impose controls in Egypt, designed to protect the interests of European bondholders.² The

Egypt: Techniques of Domination (Westport, Greenwood Press, 1995); P. J. Cain and A. G. Hopkins, *British Imperialism, 1688–1914* (London, Longman 1993), pp. 362–368; A. G. Hopkins, 'The Victorians and Africa: A Reconsideration of the Occupation of Egypt, 1882', *Journal of African History*, vol. 27:2 (1986), pp. 363–391; A. Schölch, *Egypt for the Egyptians! The Socio-political Crisis in Egypt, 1878–1882* (London, Ithaca Press, 1981); John S. Galbraith and Afaf Lutfi al-Sayyid-Marsot, 'The British Occupation of Egypt: Another View', *International Journal of Middle East Studies*, vol. 9:4 (1978), pp. 471–488; D. M. Reid, 'The Urabi Revolution and the British Conquest, 1879–1882', in M. W. Daly (ed.), *The Cambridge History of Egypt* (Cambridge, Cambridge University Press, 1998), pp. 217–238; and William Mulligan, 'Decisions for Empire: Revisiting the 1882 Occupation of Egypt', *English Historical Review*, vol. 135 (2020), pp. 94–126.

² See Richard A. Atkins, 'The Origins of the Anglo-French Condominium in Egypt, 1875–1876', *The Historian*, vol. 36 (1974), pp. 264–282; Harrison, *Gladstone's Imperialism in Egypt*; Elizabeth F. Thompson, *Justice Interrupted: The Struggle for*

army became the focal point of nationalist aspirations, and in 1881, Urabi, the leader of the Young Officers Society, came to prominence in the bloodless ‘September Revolution’, in which he marched on the Khedival palace, demanding a return to the constitutionalist policies which Khedive Ismail had introduced in 1879 in response to popular pressure, before his deposition (at the behest of the Powers) and replacement by his son Tewfik.³ Three months of peace followed, during which the constitutionalist Sherif Pasha agreed to return to office and the Chamber of Notables was recalled.⁴ Although the British were anxious about the developments in Cairo, they did not want to intervene unless Egypt descended into anarchy.⁵ It was only when it became apparent that the developments in which Urabi played a central role might threaten British financial and strategic interests that the decision was taken to intervene, with the prime aim of removing this troublesome nationalist.

When the Chamber of Notables met at the end of December, it began to draft a constitution, which would make the government accountable to the assembly and give it control of revenues not set aside for the foreign debt.⁶ This development alarmed both the Financial Controllers appointed by Britain and France and the new hawkish French leader, Léon Gambetta. In a bid to strengthen Tewfik’s hand, a ‘joint note’ was issued by the French and British on 6 January 1882, in which they resolved to guard ‘against all cause of complication, internal or external, which might menace the order of things established in Egypt’.⁷ Instead of having a calming effect, however, it caused a sensation in Egypt, and strengthened the hands of the nationalists.⁸ On 5 February, the Khedive was compelled to appoint a nationalist ministry, which passed the Organic law. Urabi now became Minister for War. During the first half of 1882, tensions mounted between the ministry and the Khedive, with Urabi’s role being an increasing cause for concern for the foreign powers. The ministry’s

Constitutional Government in the Middle East (Cambridge, Harvard University Press, 2013).

³ PP 1882 (c. 3161) LXXXII. 9, enc. 1 in No. 2, p. 3. The Chamber of Notables, first set up in 1866, had been recalled by Khedive Ismail in 1879.

⁴ PP 1882 (c. 3161) No. 76, p. 49. ⁵ PP 1882 (c. 3161), No. 122, p. 72 at p. 73.

⁶ Galbraith and Marsot, ‘The British Occupation of Egypt’, pp. 473–474.

⁷ PP 1882 (c. 3230), No. 24, p. 21; PP 1882 (c. 3230), enc. 2 in No. 42, p. 34 at p. 35.

⁸ Galbraith and Marsot, ‘The British Occupation of Egypt’, p. 475.

prosecution of the ‘Circassian plotters’ against Urabi’s life in April and its convocation (without the Khedive’s assent) of the Chamber of Notables in May were taken as signs that the country was falling increasingly under the army’s control.⁹ In response, France and Britain decided to send a joint fleet, ostensibly for the protection of their subjects, but also to strengthen the Khedive. The British Consul-General Edward Malet was instructed to advise the Khedive to take advantage of the fleet’s arrival to form a new ministry. He also called for ‘the temporary retirement from Egypt’ of Urabi.¹⁰ However, Tewfik’s attempt, backed by the two Powers, to force the ministry’s resignation failed when it became clear that neither the army nor the people would accept their being replaced.¹¹ Rather than weakening Urabi, the arrival of the warships, without any backing in the form of troops, had only served to strengthen his position.

Increasingly concerned by these developments, the European Powers called a conference in June in Constantinople to settle ‘the conditions on which coercive measures should be adopted if such measures were to become indispensable’.¹² As Gladstone’s principal private secretary, Edward Hamilton, now saw it, Britain was ‘in rather a plight in Egypt’. Urabi, ‘whose banishment we demanded as a *sine qua non*’ not only remained in Egypt, but was ‘the de facto government’. To recognise his position ‘would be eating our own words’, while refusing to do so ‘means an Egyptian war while the points of difference in the terms we demand & the Egyptians profess are to all intents & purposes *nil*’.¹³ But by July, even Gladstone thought that Britain might have to intervene to ‘put Arabi down’ if ‘neither the Sultan, nor Conference, nor France will act – and if the Khedive, really or ostensibly, settles his affairs with Arabi’.¹⁴ A number of events accelerated British intervention.

⁹ See Galbraith and Marsot, ‘The British Occupation of Egypt’, p. 477; PP 1882 (c. 3249) LXXXII. 213, No. 161, p. 115; No. 126, p. 100; No. 138, p. 104; No. 143, p. 106; No. 145, p. 107; No. 163, p. 117; 11 May 1882, No. 167, p. 118; No. 173, p. 120. See also PP 1882 (c. 3249) LXXXII. 213, No. 162, p. 116.

¹⁰ PP 1882 (c. 3249), No. 211, p. 140; PP 1882 (c. 3251) LXXXII. 367, No. 30, p. 15; No. 76, p. 34.

¹¹ PP 1882 (c. 3251), No. 65, p. 28; No. 101, p. 43; No. 117, p. 49.

¹² PP 1882 (c. 3251), enc. in No. 139, p. 56; Mulligan, ‘Decisions for Empire’, p. 17.

¹³ Diary of E. W. Hamilton, 25 June 1882, BL Add. MS. 48632, f. 74v.

¹⁴ Gladstone to Granville, 1 July 1882, BL Add. MS 89317/7/347.

On 11 June 1882, riots erupted in Alexandria. They began with an altercation between an Arab donkey boy and his Maltese passenger, which soon developed into a fight between different communities, ending with more than fifty people dead.¹⁵ The authorities were slow to respond, for the military commanders in Alexandria, in particular Col. Suleiman Sami, refused to act without formal orders to do so, and Urabi – who had authority to give the order but was in Cairo – did not hear of the events until late in the afternoon.¹⁶ Once the command had been given, order was restored quickly. On the following day, Urabi guaranteed the maintenance of public order by the troops, and undertook implicitly to obey all orders given by the Khedive.¹⁷ In spite of this, these events further increased British suspicion of Urabi. Although the commander of the British fleet, Sir Beauchamp Seymour, initially described them as a ‘serious nonpolitical disturbance’,¹⁸ Malet soon reported that it was ‘generally believed’ that the riots ‘were got up by the military’.¹⁹ The riots also had a strong effect in changing the parliamentary mood in London towards intervention.²⁰

The construction of fortifications at Alexandria, which posed a potential threat to Seymour’s ships, was another cause of concern for the British. Work on these fortifications ceased after the British protested to the Sultan about them at the beginning of June.²¹ However, one month later, London learned of plans to resume work on the fortifications and sent instructions to Seymour to prevent this, by force if necessary.²² Work on the fortifications stopped after another protest from the British;²³ and on 6 July Seymour warned the military commandant of Alexandria that, if it resumed, the works in the course of construction would be fired on. Three days later, on

¹⁵ See M. E. Chamberlain, ‘The Alexandria Massacre of 11 June 1882 and the British Occupation of Egypt’, *Middle Eastern Studies*, vol. 13:1 (1977), pp. 14–39.

¹⁶ Chamberlain, ‘The Alexandria Massacre’, p. 24.

¹⁷ PP 1882 (c. 3295) LXXXII. 455, No. 114, p. 44.

¹⁸ FO 78/3470, quoted in Chamberlain, ‘The Alexandria Massacre’, p. 18.

¹⁹ Malet to Granville, 12 June 1882, BL Add. MS 89317/7/381, f. 110.

²⁰ Mulligan, ‘Decisions for Empire’, p. 15.

²¹ PP 1882 (c. 3295), enc. in No. 11, p. 4; No. 36, p. 13; No. 54, p. 22; No. 125, p. 49.

²² C. L. Seymour, ‘The Bombardment of Alexandria: A Note’, *English Historical Review*, vol. 87 (1972), p. 790; PP 1882 (c. 3391), No. 92, p. 69. The Khedive was to be informed of this: PP 1882 (c. 3391), No. 110, p. 76.

²³ PP 1882 (c. 3391), No. 122, p. 81; No. 151, p. 93.

seeing that guns were being mounted, he decided to give the Egyptian military twenty-four hours not simply to stop the work, but to surrender the forts.²⁴ Seymour's action in effect forced the British government's hand at a time when its ally France had decided not to take any military action unless fired on, and at a moment when London was aware that the earthworks in Alexandria posed no threat.²⁵

Seymour's ultimatum was rejected at a meeting of the Egyptian Cabinet presided over by the Khedive. He was told that the Egyptians would retaliate if he bombarded the forts. The Khedive himself was playing a double game, privately urging the British to bombard the city, while publicly holding that it would be dishonourable to remove defensive guns.²⁶ On 11 July, the bombardment began. When an Egyptian flag of truce was raised on the second day, Seymour regarded it simply as a ruse to buy time to evacuate Egyptian troops.²⁷ The Khedive now sought refuge on a British ship in Alexandria and summoned Urabi, intending to arrest him if he came, and declare him an outlaw if he did not.²⁸ On hearing of this, the Egyptian Council decided to ignore his orders, and gave Urabi power to defend the country. With Urabi defying the Khedive, the British pressed for him to be declared a rebel, both by the Khedive and by the Sultan.²⁹ If Seymour's show of force had been intended to induce Urabi to capitulate, it had failed; and with the Suez canal perceived to be in danger, an expeditionary force was sent under Sir Garnet Wolseley to suppress what was now regarded as a military revolt. As Sir Julian Pauncefote of the Foreign Office saw it, 'a military despotism' had ruled Egypt since May, which had 'sedulously fostered a fanatical feeling against foreigners', caused the 'catastrophe' of the Alexandria riots, and subverted the constitution and 'completely paralyzed' the Khedive's authority.³⁰

²⁴ Secretary to Admiralty to Tenterden, 9 July 1882, PP 1882 (c. 3391), No. 182, p. 105; Seymour, 'The Bombardment of Alexandria', p. 794.

²⁵ Galbraith and Marsot, 'The British Occupation of Egypt', p. 485.

²⁶ A. M. Broadley, *How We Defended Arabi and His Friends*, 2nd ed. (London, Chapman and Hall, 1884), pp. 124–125n; and Galbraith and Marsot, 'The British Occupation of Egypt', p. 486.

²⁷ PP 1882 (c. 3391), enc. in No. 400, p. 203; No. 255, p. 139.

²⁸ PP 1882 (c. 3391), No. 277, p. 147.

²⁹ PP 1882 (c. 3391), No. 535, p. 271; No. 409, p. 205; No. 521, p. 263.

³⁰ FO 881/4741, No. 1D, p. 6B (13 July 1882).

Britain's invasion of Egypt in August 1882 – which represented a radical *volte-face* for Gladstone's foreign policy – was ostensibly driven by the need to suppress a rebellion and restore the rule of the Khedive, whose authority had been defied. In reality, it was driven by the need to protect Britain's own strategic and financial interests, which would ensure that British involvement did not end with the defeat of Urabi on 13 September.³¹ Indeed, the very designation of Urabi as a rebel was contentious, since his main act of rebellion was to resist the military aggression of a foreign power, initially with the support of the Khedive. However, given the contentious nature of British intervention, it was vital to portray Urabi as a rebel who had to be punished by the authority against whom he had rebelled.

Urabi's Arrest and the Preparations for His Trial

The legal nature of Britain's role in assisting the Sultan in suppressing the 'rebellion' remained ambiguous. Although they wished to act under the authority of a proclamation from the Sultan, the British did not want to see any Turkish troops in Egypt.³² By the time the proclamation was issued, the British military action which it ostensibly authorised had already begun.³³ Moreover, a proposed military convention setting out the arrangements for the intervention remained unsigned – and Ottoman troops unsent – when Wolseley's victory at Tel-el-Kebir rendered it redundant.³⁴ The idea that British troops were assisting the Ottomans at their request was also belied by words in the

³¹ See Hopkins, 'The Victorians and Africa'.

³² As Hamilton noted in his diary, 'the Turk when once admitted into Egypt will be difficult to turn out, and we may find ourselves in the long run driven to fight the Egyptians plus Turks': Entry 7 July 1882, BL Add. MS 48632, f. 81v. Malet told Granville that the Egyptian government did not want to see Turkish troops in the country, 'because they are convinced that in reality Constantinople makes common cause with Araby'. BL Add. MS 89317/7/381, 12 September 1882, f. 183.

³³ For the Proclamation, see *The Times*, 7 September 1882, p. 5; PP 1882 (c. 3401) LXXXIII. 391, No. 150, p. 67; No. 122, p. 59; No. 132, p. 61, Gladstone to Granville, 10 August 1882, BL Add. MS 89317/7/347, f. 126. For the prior negotiations, see PP 1882 (c. 3391), No. 460, p. 228; No. 519, p. 262; No. 542, p. 277; No. 478, p. 240; No. 502, p. 255; No. 522, p. 265; No. 620, p. 312; No. 623, p. 315.

³⁴ PP 1882 (c. 3391), No. 523, p. 265; No. 549, p. 283; No. 583, p. 297; No. 608, p. 307; PP 1882 (c. 3401), No. 151, p. 69.

proclamation which spoke (to London's irritation) of Urabi's having 'provoked the armed intervention of foreign powers'.

Britain was keen, from the outset, to be seen to follow principles of legality in the actions it took. This was evident in the War Office's decision to treat the insurgents 'according to the recognised rules of civilized warfare, including the exchange of prisoners'.³⁵ It was also seen in the Foreign Office's insistence that they should be handed over only if the Khedive agreed that none would be executed without British consent,³⁶ and in Gladstone's view that the British should 'specify something about equitable trial according to civilized usage'.³⁷ The Foreign Office thought that only those who were implicated in the murder of Europeans or who had taken part in the burning of Alexandria or been guilty of abusing the flag of truce should be executed.³⁸ However, it remained a matter of debate whether the same rule should apply in the case of Urabi himself. Within a week of his capture, Gladstone expressed the view '*pure & simple* that (unless there is doubt about the facts) he should be hanged', on account of 'his most traitorous correspondence with the Sultan: traitorous not only against the Khedive but *against the liberties of Egypt*'.³⁹ Gladstone also reassured the hawkish Queen that the British would not 'interpose a negation' should the Khedive choose to execute him for rebellion.⁴⁰ By contrast, Lord Chancellor Selborne argued that Britain should prevent a capital sentence being passed on Urabi, 'unless he should be proved to have been guilty of any such atrocious offences as massacres or incendiarism, in addition to his political delinquency'.⁴¹ At the same time, much of the British press argued against sanguinary

³⁵ PP 1882 (c. 3391), No. 641, p. 322.

³⁶ PP 1882 (c. 3401), No. 73, p. 36. Tewfik's ministers protested that this would infringe his prerogative of mercy: see FO 407/23, No. 163, p. 68.

³⁷ Gladstone to Granville, 7 September 1882, BL Add. MS 89317/7/347.

³⁸ FO 407/23, No. 75, p. 34.

³⁹ Gladstone to Granville, 7, 22 September 1882, BL Add. MS 89317/7/347. See also the entry in Hamilton's diary, 23 September 1882, BL Add. MS 48632, f. 135v.

⁴⁰ Gladstone to Granville, 7 September 1882, BL Add. MS 89317/7/347. See also John S. Galbraith, 'The trial of Arabi Pasha', *The Journal of Imperial and Commonwealth History*, vol. 7:3 (1979), p. 276; and Agatha Ramm, *The Political Correspondence of Mr. Gladstone and Lord Granville, 1786–1886*, 2 vols. (Oxford, Clarendon Press, 1962), vol. I, p. 428.

⁴¹ Selborne to Granville, 25 September 1882, 12 October 1882, BL Add. MS 89317/7/362.

reprisals against Urabi, taking the view that Britain should agree to his execution only ‘if the massacres of July and the burning of Alexandria are clearly traced to him’.⁴²

When the Khedive’s government agreed to try the prisoners in a public court with proper defence counsel,⁴³ London – which remained keen to monitor the proceedings closely⁴⁴ – insisted that a British officer observe the proceedings, to ensure that they were conducted ‘in accordance with our views of established justice’.⁴⁵ Without an observer present, it would be impossible to determine whether any capital sentences should be vetoed.⁴⁶ Sir Charles Wilson, former military consul at Anatolia, was appointed to watch the proceedings.⁴⁷ The Foreign Office was particularly keen to ensure Urabi was seen to have a fair trial, since he had a number of supporters in Britain who were keeping his case before the press. They included the well-connected Wilfrid Scawen Blunt, who had attempted to act as an intermediary between the British authorities and Urabi in the months before the bombardment of Alexandria.⁴⁸ Alarmed by an article in *The Times* suggesting that Urabi might be shot after a court martial, Blunt hired two lawyers, A. Meyrick Broadley and Mark Napier, to defend him. Although British officials in Egypt did not welcome Blunt’s interference, one of the conditions on which they handed over prisoners was that no improper restrictions were to be put on their defence.⁴⁹ This proposal alarmed the Egyptians, who feared that if all the political prisoners – amounting to 120 – were allowed counsel, the trials would not only be protracted, but would also turn into a political show.⁵⁰ Indeed, the

⁴² *Pall Mall Gazette*, 25 September 1882, p. 12. See also *Pall Mall Gazette*, 21 September 1882, p. 12.

⁴³ FO 407/23, No. 153, p. 66.

⁴⁴ Papers seized on his arrest were also transmitted to London ‘for our inspection’, and returned in time for the trial: FO 407/23, No. 204, p. 84, 6 October 1882, FO 407/24, No. 43, p. 23. They proved of little interest: Memorandum by J. W. Redhouse, 4 October 1882, FO 78/3618; and Broadley, *How We Defended Arabi*, pp. 71ff.

⁴⁵ Ramm, *Political Correspondence*, vol. I, pp. 431–432 (the phrase of Selborne).

⁴⁶ FO 407/23, No. 299, p. 156; Note by Sir J. Pauncefote, FO 78/3618.

⁴⁷ FO 407/24, enc. 3 in No. 134, p. 66.

⁴⁸ For Blunt’s role, see Priyamvada Gopal, *Insurgent Empire: Anticolonial Resistance and British Dissent* (London, Verso, 2019), ch. 3.

⁴⁹ Note by J. Pauncefote, FO 78/3618; FO 407/24, No. 71, p. 36.

⁵⁰ British officials were more sympathetic to Egyptian concerns about the presence of foreign counsel: Malet to Granville, 16 October 1882, FO 407/24, No. 101, p. 40. Malet felt Britain’s insistence on allowing counsel would be misunderstood in Egypt,

Khedive was so concerned at his authority being undermined that he suggested that the main culprits should be tried by a British court martial, with the Egyptian government prosecuting.⁵¹

Selborne was asked his views on how to respond to these concerns. He ruled out the idea that Urabi should be tried by the British. As he explained, no ordinary British court could have jurisdiction in this case, while his execution by a British court martial not for any violation of the laws of war, but for rebellion, would be ‘an outrage upon any principle of humanity and civilization’. Although he acknowledged the theoretical possibility that Urabi could be exiled by the kind of legislation passed for Napoleon – and recently used against Cetshwayo – it was not an option he (or anyone else in government) took seriously.⁵² To assuage the Khedive’s fears, he suggested that counsel should conform to certain rules, avoiding ‘arguments or evidence, as to political motives or reasons, in justification of the offences imputed to the prisoners’.⁵³ Proposals based on Selborne’s views were relayed to the Khedive, and foreign counsel were admitted on these terms.⁵⁴

Rules of procedure for the hearings were drawn up between Broadley and the prosecutor, Octave Borelli, a Frenchman who was legal adviser to the ministry of the interior.⁵⁵ Under their arrangement, Broadley would play a major role in the preliminary proceedings – so that the construction of the case would not simply be in the hands of the prosecutor – while the court martial would then decide on the written case presented to it.⁵⁶ In the weeks that followed, there were many arguments over whether these rules were being followed, and whether the court could modify them.⁵⁷ British officials regarded these

where it would be ‘considered as a sign that we, in fact, befriend him and mistrust the Khedive’: Malet to Granville, 17 October 1882, Add. MS 89317/7/381, f. 227.

⁵¹ Malet to Granville, 16 October 1882, FO 407/24, No. 99, p. 47.

⁵² Comments by Selborne on Edward Hertslet’s Memorandum on ‘precedents for the disposal of Arabi Pasha’, 21 November 1882 21, BL Add. MS. 89317/7/362. See also Pauncefote’s Note: ‘Arabi Trial’, FO 78/3618.

⁵³ Selborne to Granville, 16 October 1882, FO 78/3618.

⁵⁴ FO 407/24, No. 124, p. 59; No. 95, p. 44.

⁵⁵ FO 407/24, No. 145, p. 74; No. 196, p. 100. They were published in *The Times*, 7 November 1882, p. 10.

⁵⁶ See Broadley, *How We Defended Arabi*, pp. 43–49.

⁵⁷ FO 407/25, p. 102, enc. 1 in No. 173; Broadley, *How We Defended Arabi*, pp. 197–199.

rules as merely a private agreement among the lawyers, and were untroubled by any alleged departure from them.⁵⁸ At the same time, they did not always remain entirely neutral, but could intervene if the fairness of the proceedings was called in question. For instance, when the Préfet de Police of Cairo told the court that it was no use searching the homes of the prisoners unless he could also put pressure on their servants and imprison them, Wilson ‘replied that no ill-treatment of servants for the purpose of extracting information from them could be allowed’.⁵⁹

Urabi's Trial

Urabi faced four charges: abusing the flag of truce on the day of the bombardment of Alexandria by withdrawing troops and looting the town while it was flying; inciting Egyptians to arm against the government; continuing the war after peace had been concluded; and inciting people to civil war, and committing acts of ‘destruction, massacre and pillage’.⁶⁰ Since the first charge had no basis under Ottoman law, while the others were a combination of offences under its military and ordinary codes,⁶¹ questions were raised in parliament as to their exact basis, to ensure that Urabi would be properly tried according to recognised rules.⁶² Political pressure at home would continue to focus the government’s attention on the need for due process. When MPs challenged the provision that no arguments ‘as to political motives’ were to be allowed, the undersecretary of state, Dilke, had to respond that ‘we inserted this Rule when we had in view ordinary crime’ and that it did not apply to political crime, where such evidence could be admitted.⁶³

At the end of October, Broadley proposed that an inquiry should be made to distinguish between purely political offenders – who in his

⁵⁸ FO 407/26, No. 7, p. 3; No. 69, p. 34. Pauncefote note: ‘Arabi Trial’, FO 78/3618. See also FO 407/25, No. 18, p. 5.

⁵⁹ FO 407/25, enc. in No. 122, p. 67; No. 141, p. 79. ⁶⁰ FO 407/24, No. 159, p. 77.

⁶¹ FO 407/25, No. 96, p. 41; and Broadley, *How We Defended Arabi*, p. 51. For the codes, see FO 78/3618.

⁶² *Parl. Debs.*, 3rd ser., vol. 274, cols. 1184 (10 November 1882), 1195–1196 (10 November 1882).

⁶³ PP 1882 (c. 3407) LXXXIII. 477, No. 2, p. 9 at p. 10; *Parl. Debs.*, 3rd ser., vol. 274, col. 1303 (13 November 1882).

view included Urabi – and those accused of ordinary crimes. In his view, the ordinary criminals should be put on trial, and the political ones exiled or pardoned. He declared that ‘Arabi’s only wish is to leave Egypt.’⁶⁴ He also made his case on a wider stage, telling *The Times* that there had not ‘been any rebellion in its legal sense’, since the Sultan had from first to last approved of Urabi’s action.⁶⁵ Pressure on the authorities was increased by the publication of a letter from Urabi, denying that he was a rebel, and claiming to have acted under the Sultan’s authority when fighting a Khedive who had given up the country to foreigners, in breach of Islamic law.⁶⁶ In the face of such pressure, by the middle of November, the British cabinet came round to the view that it would be best if Urabi were exiled. Gladstone was particularly exasperated when he received a telegram from Malet telling him that the original *acte d’accusation* against Urabi had been cancelled and that it was possible that new articles might be added to the final one. ‘Is it not in fact an infraction of all our ideas of justice?’, he asked. In his view, the time had come to urge the Egyptian Government to adopt a summary method ‘of getting quit of the whole proceedings for the trial of Arabi, as they are themselves apparently making them such that they will stink in the nostrils of all men’.⁶⁷

A meeting was convened in Westminster with ministers from the Foreign Office and military departments, where a decision was taken that the proceedings had to be brought to a close. It was resolved that the Marquess of Dufferin, who had been sent to Cairo at the end of October to deal with the aftermath of the invasion, should ‘try to get a solution out there’, which would take the form of the Khedive declaring that there was insufficient evidence to proceed against

⁶⁴ FO 407/24, No. 254, p. 122; enc. 1 in No. 255. See also *The Times*, 2 November 1882, p. 9. For British reactions, see Minute by Selborne, 3 November 1882, BL Add. MS 89317/7/362 and Malet to Granville, 7 November 1882, BL Add. MS 89317/7/381, f. 273.

⁶⁵ *The Times*, 21 November 1882, p. 8 (letter dated 10 November). See also the affidavit of John Ninet, in *The Times*, 20 November 1882, p. 4; and FO 407/25, No. 53, p. 18.

⁶⁶ *The Times*, 14 November 1882, p. 8, discussed in *Parl. Debs.*, 3rd ser., vol. 274, col. 1551 (16 November 1882).

⁶⁷ Gladstone to Granville, 15 November 1882, BL Add. MS 89317/7/347, FO 407/25, no. 105, p. 43. Selborne also thought any shifting of charges would ‘produce the worst possible impression’: Selborne to Granville, 14 November 1882, BL Add. MS 89317/7/362.

Urabi for his crimes, but that he would be handed over to the British 'for the undoubted fact of rebellion'.⁶⁸ Dilke later noted in his diary that 'If [Dufferin] decides (as he will be privately told to decide), that there is no proof of common crimes, then by arrangement between the Khedive & us we are to put him away safely in Burmah, Barbadoes, Bermuda, Ascension, – or some other place than St. Helena, wh wd be ridiculous.'⁶⁹ Dufferin agreed that the trial had 'got into a nasty mess', and that the best way forward would be for Urabi only to face charges of rebellion, and for any sentence to be commuted to banishment.⁷⁰ He discussed the matter with the Minister of the Interior, who wanted a few more days to see whether there might be sufficient evidence to connect Urabi with the Alexandra riots. The evidence he had in mind was that of Suleiman Sami, who had been arrested in Crete and returned to Egypt, and who claimed that he had been commissioned by Urabi to have the Khedive shot. Dufferin reported that if the evidence (which was tainted) was not sufficient, the Khedive would follow his recommendation for Urabi to be deported.⁷¹ This begged the question of how this was to be done. Dufferin disagreed with Gladstone's view that Urabi should simply be exiled by the Sultan,⁷² since that would allow him to come to London and be 'feted by his partizans'.⁷³ In his view, Urabi's exile would have to be penal. Since he could not be transported without a trial and sentence,⁷⁴ this could be best effected if he entered a guilty plea.

On 22 November, Dufferin received the five-volume case of the prosecution against Urabi and passed it on to Wilson, to advise whether the capital counts were sustained by the evidence. Three days later, Wilson reported that the evidence was not sufficient for an

⁶⁸ Granville to Gladstone, 15 November 1882, BL Add. MS 89317/7/347. See also FO 407/25, No. 127, p. 75.

⁶⁹ Diary of Sir Charles Dilke, BL Add. MS 43925, 15 November 1882.

⁷⁰ Dufferin to Granville, 13 November 1882, BL Add. MS 89317/7/387.

⁷¹ FO 407/25, No. 130, p. 75; No. 137, p. 77.

⁷² Gladstone doubted 'whether *we* can or ought to take the custody of him': Note by Gladstone, 15 November 1882, BL Add. MS 89317/7/347.

⁷³ FO 407/25, No. 130, p. 75.

⁷⁴ Dufferin had earlier argued in favour of sending Urabi, with his consent, to a place on British territory, since 'We should not then be responsible for his custody.' Among the places discussed by ministers were the Cape, Bermuda and Fiji: Dufferin to Granville, 21 November 1882, FO 407/332, No. 86, p. 69; Gladstone note, 22 November 1882, BL Add. MS 89317/7/347; FO 407/25, No. 177, p. 105.

English court martial to convict Urabi.⁷⁵ Wilson's brief initial report was measured, but in another despatch at the end of the year he spelled out in greater detail the weakness of the case against Urabi. In his view, the prosecution seemed to be based on the theory that the Alexandria riots could not have occurred unless Urabi had ordered them, and that this was sufficient evidence to prove that he did so. In fact, he concluded that the evidence for the prosecution could itself have provided a sound case for the defence. The only direct evidence against Urabi came from Suleiman Sami, who claimed that Urabi had ordered him to burn Alexandria and kill the Khedive; but Wilson was very suspicious of this evidence, which had first been presented to the commission at an extraordinary sitting which he had not been informed of. Suleiman Sami was himself so deeply implicated in the burning and looting of Alexandria that the British observer thought it natural that he would attempt to shift the blame.⁷⁶ Wilson also noted that there were some 'doubtful points about the legality of the court', which might have been raised by the defence. For instance, evidence had been given against Urabi both by a member of the commission and by the man selected to be president of the court martial (Mohammed Reouf Pasha).

Dufferin concluded that, with such a weak prosecution case, it would not be possible to establish Urabi's guilt 'in a way to satisfy the public conscience'.⁷⁷ It was clear that he could not be convicted of any ordinary crime, for which the British would permit an execution. Dufferin was also concerned that, were the trial to continue, it would become a *cause célèbre* in which Urabi would be portrayed as a patriotic martyr. Aware that Urabi's lawyers were keen to effect a compromise,⁷⁸ he now sought to persuade the Egyptian government that its chances of making out its case on the principal charges were 'very slight', and that any further prolongation of the trial would frustrate the very end they were seeking to achieve, that of Urabi's 'destruction'. After some hesitation, the Khedive's ministers agreed to accept a guilty plea from Urabi and his fellow accused to the charge of

⁷⁵ Wilson to Dufferin, 25 November 1882, FO 78/3618.

⁷⁶ Wilson to Dufferin, 30 December 1882, FO 78/3618.

⁷⁷ Dufferin to Granville, 4 December 1882, FO 78/3618.

⁷⁸ Broadley perceived that Urabi's slow response to the riots was a weak point in his defence: Dufferin to Granville, 27 November 1882, BL Add. MS 89317/7387.

rebellion. The death penalty for this offence would be commuted to perpetual exile, with the prisoners giving a solemn undertaking to 'repair of their own free will' to whatever place designated by the Egyptian and British governments.⁷⁹ If they returned to Egypt, the death sentence would be implemented without more ado. On 3 December, Urabi entered a guilty plea, and had his death sentence commuted on giving the solemn undertaking. Over the next days, the other six rebel leaders who had been charged were similarly disposed of by the court.⁸⁰

Through this manoeuvre, the authorities obtained an admission from Urabi that he had been a rebel, something which he had persistently denied. For the British, this was a charge which hardly required proof,⁸¹ but one which needed more lenient punishment. Shortly after the sentence had been passed, the cabinet agreed (against the advice of the Viceroy of India) to send Urabi to Ceylon.⁸² However, this was to be a voluntary exile. Consequently, when Dufferin told Broadley in December 'that the exile into which the capital penalty has been commuted was in its nature of a penal character',⁸³ he was mistaken. The limit of the penalty imposed on the rebel leaders was their exile from Egypt, degradation and loss of property. As Pauncefoot pointed out, the colonial authorities in Ceylon would have no greater legal power over them than over any other resident.⁸⁴ The Governor of Ceylon, Sir James Longden, was told that the exiles – who had given their word not to leave the island without the sanction of the crown – 'are not to be considered in the custody of your Government'.⁸⁵

Longden wanted to be given the power to exclude them from parts of the island from which they might intrigue with other Muslims in Ceylon or in India, and to deport them if they entered into any such intrigues.⁸⁶ Although some officials thought it might be 'prudent to announce' that anyone who broke his parole 'would probably be sent

⁷⁹ Dufferin to Granville, 4 December 1882, FO 78/3618. They would be executed if they returned to Egypt: FO 407/26, No. 1, p. 1.

⁸⁰ FO 407/26, Nos. 14–15, p. 5; Bland to Dufferin, 4 December 1882, FO 78/3618.

⁸¹ FO 407/26, No. 69, p. 34 at p. 35.

⁸² Dilke's Diary, BL Add. MS 43925, 5 December 1882, f. 38. For later discussions, see FO 407/26, No. 60, p. 32; No. 77, p. 40.

⁸³ Dufferin to Granville, 18 December 1882, FO 78/4267.

⁸⁴ Note dated 29 December 1882, FO 78/4267.

⁸⁵ Draft despatch, 21 December 1882, FO 78/4267.

⁸⁶ Longden to Derby, 21 January 1883, FO 78/4267.

to the Seychelles';⁸⁷ no legislation to permit this was drafted, and the men were simply told to inform the Inspector General of Police if they wished to reside outside Colombo. Legally, the men remained in Ceylon solely on the basis of their own solemn undertakings.⁸⁸ Although the men were put under surveillance, the Governor was given no instructions to prevent Urabi leaving Ceylon, beyond telegraphing the Colonial Office.⁸⁹

The question of whether to put his exile on a legal footing was raised again in November 1883, when news of the defeat of Hicks's troops by the Mahdi prompted Longden to suggest legislation to allow the authorities forcibly to detain Urabi in case he was tempted by the idea of 'giving us the slip'.⁹⁰ However, officials in London saw both political and legal difficulties in the way. Rather than pass legislation immediately, they asked the Ceylonese authorities to keep a close watch on the exiles and to report any signs that they intended not to observe the terms of their parole.⁹¹ If Urabi and the others attempted to leave the island, they were to be prevented by force, whereupon an ordinance should be passed retrospectively to legalise the proceedings.⁹² In the event, the exiles showed no signs of wishing to escape, and all settled in comfortable bungalows in Colombo. In December 1883, the Inspector General of Police could report that the exiles were mild-mannered and polite, and kept orderly households, though Urabi did complain about having to report all his movements.⁹³

The Aftermath of Urabi's Trial

In the aftermath of the conflict, over 1,600 people were held on criminal charges connected with the disturbances, in addition to those whose offences were regarded as political. After the sentences on Urabi and the five others charged with him had been pronounced, a Khedival decree was issued, which exiled thirty-nine others for

⁸⁷ R. G. W. Herbert to Foreign Office, 20 February 1883, FO 78/4267.

⁸⁸ *Parl. Debs.*, 3rd ser., vol. 276, cols. 305–306 (19 February 1883).

⁸⁹ *Parl. Debs.*, 3rd ser., vol. 276, col. 706 (23 February 1883).

⁹⁰ J. R. Longden to Meade, 23 November 1883, FO 78/4267.

⁹¹ Draft telegram from Pauncefote to the Colonial Office, 29 November 1883, FO 78/4267.

⁹² Colonial Office to Foreign Office, 4 December 1883, FO 78/4267.

⁹³ Mr G. W. R. Campbell to Sir John Douglas, 3 December 1883, FO 78/4268.

various periods, and put twelve under house arrest and thirty-two under surveillance.⁹⁴ At the beginning of 1883, an amnesty decree was issued by the Khedive for those suspected of political crimes,⁹⁵ though trials of those implicated in acts of violence, and of those against whom proceedings had commenced, continued.⁹⁶ These legal proceedings continued to be followed closely in Britain. Urabi's lawyers, who were now defending others (including Suleiman Sami and Said Khandeel, Alexandria's prefect of police), protested that the authorities were now departing from the model insisted on by the British for Urabi. They also claimed to have evidence which implicated both Omar Lufti Pasha, the civil commander of Alexandria at the time of the riots, and the Khedive himself in the massacres which ensued.⁹⁷ These explosive accusations – which would exonerate Urabi – were raised in parliament in May 1883 by Lord Randolph Churchill, and repeated in June, after Suleiman's hasty execution.⁹⁸ At the end of that month, Churchill submitted a lengthy dossier to the government setting out his accusations against the Khedive, which were widely reported in the press.⁹⁹

The matter was referred to Selborne. Having reviewed the material, he concluded that it was impossible 'to treat these papers as of the slightest importance', and that Churchill's aim had been simply 'to throw discredit upon the whole policy pursued by the British Government in Egypt, to insult and vilify the Khedive, and to vindicate Arabi and the (so-called) "national party"'.¹⁰⁰ Although Selborne felt that no public notice should be taken of the matter, this was hardly feasible, given the attention the affair had attracted. A despatch was drafted to be sent to Malet (enclosing the papers submitted by Churchill), containing the government's comments on the accusations.

⁹⁴ PP 1883 (c. 3528) LXXXIII. 489, No. 11, p. 33. ⁹⁵ PP 1883 (c. 3528), No. 34, p. 53.

⁹⁶ By the end of April, 1,595 cases had been examined, 1,139 were released or bailed for acts of minor pillaging, 26 were sentenced to death, and 124 to periods of imprisonment or penal servitude. PP 1883 (c. 3632) LXXXIV. 201, No. 5, p. 4 (with enclosures).

⁹⁷ Letters from Mark Napier and Richard Eve, *The Times*, 11 June 1883, pp. 5, 12.

⁹⁸ *Parl. Debs.*, 3rd ser., vol. 279, col. 561 (11 May 1883); vol. 280, cols. 35 (8 June 1883), 229 (11 June 1883). See the discussion of these events in Chamberlain, 'The Alexandria Massacre', pp. 27–31.

⁹⁹ PP 1884 (c. 3851) LXXXVIII. 263.

¹⁰⁰ Letter from Selborne, 5 July 1883, FO 78/3617.

‘The whole case’, the government proclaimed in this despatch, ‘rests on surmise, suspicion, and hearsay, on unsupported statements made by unnamed persons or by those whose hatred of the Khedive has been created or embittered by the measures taken against them during the rebellion’, and offered no *prima facie* evidence of any case to be answered.¹⁰¹ Churchill’s claims were dismissed, and would not help Urabi return to Egypt. Although a number of petitions were made from the exiles to return home, which were refused by the Egyptian authorities, it would not be until October 1901 that Urabi would return to Egypt.

In Ceylon, the once-powerful Egyptian nationalist leader in effect suffered the same fate that many other African leaders would in the era of Britain’s imperial expansion: exile from his homeland, stripped of all political power. Unlike them, however, he was not exiled as a result of an *ad hominem* statute, giving the formal stamp of legality to incarceration by the British. Instead, the British – who had invaded Urabi’s country, defeated him, and had long planned his removal from Egypt – ensured that a process would be used, which would allow them to be seen as champions of the rule of law, restraining a potentially arbitrary oriental government, while securing the outcome they wanted. In Urabi’s case, if the end was the same, the means were different: rather than using an exceptional measure of sovereign power to exile this leader, they used the language of the rule of law which was designed to present a narrative of Urabi as a rebel, which could justify the British occupation of Egypt, and to present the invading power as a disinterested ally committed to constitutional conduct. Their need to do this was in turn driven by politics. When it ordered the invasion of Egypt in 1882, the Liberal government appeared to engage in a policy at odds with the vision proclaimed so radically in Gladstone’s recent Midlothian campaign.¹⁰² With the eyes of Britons so closely following events in this new theatre of war, and at a time when the policy of coercion in Ireland needed justification, it was imperative for the government to be seen to observe the rule of law in its overseas engagements. Nor was this insignificant for Urabi: for

¹⁰¹ PP 1884 (c. 3851), p. 1.

¹⁰² W. E. Gladstone, ‘Aggression in Egypt and Freedom in the East’, *Nineteenth Century*, 2 (August 1877), 149–166.

while the British were able to secure their goal of removing Urabi, he was spared the much more bloodthirsty penalty his Egyptian enemies had initially wanted.

The Detention of Al-Zubayr Rahma Mansur

It soon appeared that one consequence of the invasion of Egypt was that Britain would be entangled in the Sudan, for the British intervention coincided with the Mahdist uprising in Sudan, which had been under Egyptian administration since 1819. Having publicly proclaimed himself to be the Mahdi, Mohammed Ahmad ordered his followers to join him in a holy war of liberation. During the Urabi crisis, it was left to the governors in the Sudanese provinces to deal with the revolt, but, by 1883, the Khedive's government was ready to take action to crush it. Col. William Hicks was given full powers as commander in chief, and set off in September with 8,000 troops to recapture El Obeid, which had been taken by the rebels. The expedition turned out to be a disaster: on 3–4 November, the Mahdist forces destroyed Hicks's army, and killed its commander, before expanding throughout Sudan and gaining control of the vital communication route between Berber on the Nile and Suakin on the coast.

Hicks's defeat made it apparent that Sudan could not be held without the kind of military intervention which Britain wanted to avoid. The British proconsul in Egypt, Sir Evelyn Baring, therefore advised that a British officer should be sent to withdraw the garrisons from all but the eastern provinces of Sudan.¹⁰³ The officer chosen to carry out this policy was that 'half-cracked fatalist'¹⁰⁴ Col. Charles Gordon,¹⁰⁵ whose famous exploits in the east had earned him the epithet of 'Chinese Gordon'. The mission would end with Gordon's decapitation by Mahdists after a 317-day siege of Khartoum at the end of January 1885. Six weeks later, Zubayr, whom Gordon had once regarded as an enemy, but had come to see as a potential ally, was detained in Alexandria, suspected of supporting the Mahdists. Unlike

¹⁰³ PP 1884 (c. 3844) LXXXVIII. 1, No. 170, p. 143.

¹⁰⁴ The expression is E. W. Hamilton's: diary entry (23 January 1884), quoted in Richard Shannon, *Gladstone: God and Politics* (London, Continuum, 2007), p. 351.

¹⁰⁵ Anthony Nutting, *Gordon: Martyr and Misfit* (London, Constable & Co., 1966), p. 223.

Urabi, he was not put on trial, but was whisked away to Gibraltar, to be kept under special legislation. Lacking the kind of political support enjoyed by the Egyptian leader, his appeals to be accorded British justice fell on deaf ears, thanks to his notoriety as a slave trader.

Zubayr, Gordon and British Intervention in Sudan

The name of Al-Zubayr Rahma Mansur had been familiar to Gordon since the late 1870s, when the Englishman had been the Khedive's Governor-General of Sudan. From the mid 1860s, Zubayr had built a slave-trading commercial empire in Bahr el-Ghazal, which he ran like an independent kingdom. After having fought and killed the Governor of Bahr el-Ghazal, Zubayr was appointed Governor of the province of the White Nile, since this was the only way for the Khedive to secure his claims to the area.¹⁰⁶ This did not satisfy Zubayr's ambitions, and, in November 1874, he routed the forces of the Sultan of Darfur, and seized his capital. Although he offered Darfur to the Khedive, the Egyptian authorities were alarmed at the prospect of his growing power, and he was ordered to return to Bahr el-Ghazal. In response, Zubayr went to Cairo in 1875 to present his grievances; but on his arrival he was put under house arrest by the Khedive, who regarded him as too powerful an adversary to be allowed to return to Sudan. In fact, he would not return to Sudan until 1900, despite numerous attempts to secure permission to do so by bribes and appeals to the government.

By the time Gordon was appointed Governor-General in May 1877, Zubayr's affairs were in the hands of his son Suleiman, who had ambitions to re-establish his family's power. Gordon sought to rein Suleiman in, and in September 1877 ordered him to return to Bahr el-Ghazal. He also began to suspect Zubayr of plotting a rebellion to be led by his son.¹⁰⁷ Gordon therefore insisted that Zubayr should continue to be detained in Cairo, just at the time when he was

¹⁰⁶ See R. S. O'Fahey, 'Al-Zubayr's Early Career', *Sudanica Africa*, vol. 16 (2005), pp. 53–68; and Fiona Shaw, 'The Story of Zebehr Pasha, as Told by Himself', *Contemporary Review*, vol. 52 (November 1887), pp. 658–662.

¹⁰⁷ 'Condensed Translation from a Lithographed Arabic Pamphlet' [by Charles Gordon], 6 December 1879, FO 78/4914. Zubayr denied this: Shaw, 'The Story of Zebehr Pasha', p. 675.

attempting to secure his liberation by offering the government an annual payment of £25,000.¹⁰⁸ To add insult to injury, Zubayr's property was also now confiscated. However, the threat posed by his family continued. After having launched an attack on a government station, killing its garrison of 200, Suleiman was captured early in 1879 by the Italian soldier-explorer Romolo Gessi, who had been sent by Gordon to deal with him. To prevent his escape, Suleiman was ordered to be shot, in defiance of Gordon's wishes; while Zubayr himself was condemned to death in Khartoum in absentia, for his alleged complicity in this revolt.¹⁰⁹ However, when Gordon quit his post in Sudan in December 1879, Zubayr remained in Cairo, still attempting to use his influence to secure his release.

Having previously considered Zubayr as dangerous, once the Mahdist revolt had broken out, the Egyptian government began to see the benefit of enlisting his support against the rebels. Reports began to circulate that he was to accompany Valentine Baker – Baker Pasha – in command of Bedouin forces against the Mahdi, with the promise of the reward of the government of Kordofan and Darfur.¹¹⁰ However, the idea that the largest slave trader in Sudan should be given such a role raised strong protests in Britain, particularly from the Anti-Slavery Society.¹¹¹ When Gordon was asked for his views on the matter, while en route from England to Egypt, he responded by asking for Zubayr to be moved to Cyprus, so as not to be able to interfere with his mission.¹¹² Gordon also sent a memorandum to Baring, stating his view that the best policy for Sudan was to restore the country to the 'different petty Sultans' who had ruled it at the time of its conquest by Mehemet Ali, adding that, if Zubayr was not kept away from Sudan, 'he would in no time eat up all the petty Sultans and consolidate a vast State, as his ambition is boundless'.¹¹³

Once he had arrived in Cairo, however, Gordon began to modify his views, and requested a meeting with Zubayr. The meeting was

¹⁰⁸ Nutting, *Gordon*, p. 169. ¹⁰⁹ Nutting, *Gordon*, p. 172.

¹¹⁰ *The Times*, 1 December 1883, p. 5; 6 December 1883, pp. 5, 7.

¹¹¹ FO 78/4194; *The Times*, 10 December 1883, p. 12.

¹¹² Gordon to Granville, 22 January 1884, FO 78/4194. Granville saw there were no legal powers to detain him at Cyprus: FO 407/60, No. 155, p. 75; No. 172, p. 88. Baring responded that it had now been decided not to send him to Sudan, and that it was not necessary to deport him: FO 407/60, No. 171, p. 88.

¹¹³ FO 407/60, No. 222, p. 117.

a difficult one, for there were old scores to be settled. At the end of it, British officials in Cairo concluded that, if Gordon and Zubayr went together to Sudan, they would not both return alive. They considered it best to keep Zubayr in Cairo, and to tell him that his future treatment would depend both on his conduct and on the fate of Gordon.¹¹⁴ At the same time, Gordon himself became increasingly convinced of Zubayr's usefulness. By the time he reached Khartoum, he had concluded that the only way to avoid anarchy after the British withdrawal was to appoint Zubayr ruler of the Sudan, on his undertaking not to enter Darfur, Bahr el-Ghazal or Equatoria. The arrangement he had in mind was analogous to that in Afghanistan, where the British gave moral support to the Emir: it would keep 'a large proportion of Arab-speaking lands nominally under our control' and strengthen 'our hold on Egypt'.¹¹⁵

Though Baring worried that Gordon's impulsiveness was threatening to draw Britain into intervention rather than evacuation, he agreed that some provision had to be made for Sudan's future stability. He also agreed that Zubayr's prolonged residence in Cairo had modified his character, and was content for him to be appointed ruler of Sudan, albeit without any promise of moral support from the British.¹¹⁶ By early March, both Gordon and Baring had become increasingly insistent on the need to send Zubayr to Sudan as a potential bulwark against the Mahdi.¹¹⁷ However, the Foreign Secretary, Granville, felt that British public opinion would not tolerate the appointment of a notorious slave trader to such a position, and was concerned that Zubayr might ally with the Mahdi.¹¹⁸ He pointed to the very objections which Gordon had articulated when on his way to

¹¹⁴ PP 1884 (c. 3969) LXXXVIII. 393, enc. in No. 33, p. 38; FO 407/60, enc. 1 in No. 454, p. 222; PP 1884 (c. 3969), No. 33, p. 38; FO 407/76, enc. in No. 387, p. 172.

¹¹⁵ FO 407/60, enc. 1 in No. 440, p. 198 (redacted in PP 1884 (c. 3969), enc. 1 in No. 114, p. 71).

¹¹⁶ FO 407/60, No. 442, p. 200 (redacted in PP 1884 (c. 3969), No. 115, p. 72); PP 1884 (c. 3969), No. 169, p. 114; and Earl of Cromer, *Modern Egypt*, 2 vols. (London, MacMillan & Co., 1908), pp. 488–493.

¹¹⁷ PP 1884 (c. 3969), enc. 4 in No. 202, p. 136; enc. 5 in No. 202, pp. 136–137; FO 407/60, No. 633, p. 308 (redacted in PP 1884 (c. 3969), No. 222, p. 146).

¹¹⁸ PP 1884 (c. 3969), No. 137, p. 95; No. 177, p. 120. However, he hinted in private that, if pushed, the cabinet would probably follow what Baring, Gordon and Egyptian Prime Minister Nubar Pasha thought. FO 633/7, No. 33, p. 20, in Cromer, *Modern Egypt*, vol. 1, p. 498.

Egypt, and asked how this policy would advance the British aims of ending the slave trade and evacuating Sudan.¹¹⁹ Baring despaired at the Foreign Secretary's response, and arranged for Gordon to send a telegram which would make things clear.¹²⁰ In this telegram, Gordon said that he saw no way to evacuation save with Zubayr's co-operation. He added that the Mahdi and Zubayr would never combine, since the former had the power of a Pope, the latter the power of a Sultan. He also dismissed concerns about the slave trade, indicating that the 1877 treaty outlawing it was a dead letter.¹²¹ Meanwhile, Zubayr – whose animosity towards Gordon was diminished by the general's support in his attempts to restore his finances – told the British that he was willing to go to Khartoum, on condition that they made good his financial losses.¹²²

In the meantime, Gordon's plans for Zubayr to be appointed Governor reached the British press,¹²³ eliciting further protests both from the Anti-Slavery Society and from Members of Parliament.¹²⁴ By the time the cabinet met, it was also clear that the Commons would not agree to Zubayr being used.¹²⁵ Granville duly telegraphed Baring that Zubayr could not be used and that troops which had been requested would not be sent to Berber.¹²⁶ On the same day, Baring forwarded a telegram to London which he had received from Gordon, saying that, if he heard no more, he would 'hold on to Khartoum and await Zebehr and British diversion at Berber'.¹²⁷ Shortly thereafter, the telegraph wire was cut, and Granville's message would never reach Gordon. The government's ultimate decision not to use Zubayr was based on its calculation that the Mahdi, if left to himself, lacked the organisational and military capacity to be a threat, but that he could pose a serious threat to Egypt with Zubayr's help.¹²⁸ This was a severe miscalculation.

¹¹⁹ PP 1884 (c. 3969), No. 210, p. 140. ¹²⁰ Cromer, *Modern Egypt*, vol. 1, p. 508.

¹²¹ PP 1884 (c. 3969), enc. in No. 221, p. 145.

¹²² FO 407/63, No. 124, p. 100; enc. in PP 1884 (c. 3969), No. 184, p. 122.

¹²³ *The Times*, 10 March 1894, p. 5.

¹²⁴ PP 1884 (c. 3969), No. 224, p. 147, in *The Times*, 12 March 1884, p. 4; *Parl. Debs.*, 3rd ser., vol. 285, cols. 668 (6 March 1884), 1061, 1069 (10 March 1884). The effect of this intervention, and the merits of not using Zubayr, continued to be a subject of disagreement long after: see Chas. H. Allen, 'Edmund Sturge and Zebehr Pasha', *The Anti-Slavery Reporter*, vol. 21:1 (1901), pp. 19–21.

¹²⁵ Cromer, *Modern Egypt*, vol. 1, p. 522. ¹²⁶ PP 1884 (c. 3969), No. 236, p. 158.

¹²⁷ PP 1884 (c. 3969), No. 234, p. 158. ¹²⁸ PP 1884 (c. 3970) LXXXIX. 1, No. 2, p. 1.

In May, the Mahdi captured Berber, and the siege of Khartoum began. This was to end in Gordon's death, when the British forces – misled by Gordon's reassurances that he had the ability to hold out for months – arrived too late to save him.

Gordon's Death and the Arrest of Zubayr

At the end of January, with the British forces still five days away, the Mahdi attacked Khartoum and Gordon got the martyrdom that he had so long craved. It was in the aftermath of this rout that the British decided to detain Zubayr. The trigger for this was his proposal to the Khedive that he should go on a mission with two officials and two *ulemas* to ascertain the Mahdi's intentions.¹²⁹ When Baring asked General Wolseley for his opinion on this, the commander responded that '[i]t would be madness to allow Zebehr to do as he proposes, as his tribe has done more than any other to bring about the present state of things in Soudan.'¹³⁰ Wolseley wanted Zubayr and other 'friends and correspondents of the Mahdi' to be detained 'in the interests of this army if the autumn campaign is to succeed'. Baring knew of no evidence to convict them ('although presumption of their guilt is strong'),¹³¹ and thought it unwise to commence legal proceedings. He outlined two options. The first was 'to act without legal warrant on the ground of military necessity'. This was potentially problematic since Cairo could not be said to be within the sphere of military operations. The second was to persuade the Egyptian government to pass a law after the arrest of Zubayr and others, retrospectively legalising their detention and deportation. In Baring's view, such a law should not be passed in advance, since that would alert them to the danger.¹³² Although Baring had previously urged Zubayr's employment, he now began to believe reports that Zubayr was in communication with the Mahdi, and feared that much harm could be done if Zubayr escaped and joined him. His view was that if Zubayr 'is

¹²⁹ FO 407/64, enc. in No. 350, p. 234. ¹³⁰ FO 407/64, No. 361, p. 244.

¹³¹ There had been some reports in the second half of 1884 of communications passing between Zubayr and the Mahdi, but little concrete evidence: see FO 407/62, No. 251, p. 155; No. 443, p. 269; FO 407/63, No. 229, p. 203 with encs.

¹³² Baring to Granville, 7 March 1885, FO 78/7194.

not for us he will be entirely against us', and that he should now be prevented from doing harm.¹³³

On 14 March, Zubayr was arrested on the streets of Alexandria and put on board the *Isis*. He asked to be allowed to go to his house and change clothes, but permission was refused. Twelve hours later, he was joined on board by his sons and agent, who had (he later claimed) been arrested 'bare footed and undressed'. The ship sailed out of Alexandria on the next day, initially for Malta.¹³⁴ While on board, Zubayr discussed the situation in Egypt with the ship's captain, Ernest Rice, professing his loyalty, and expressing the view that Egypt would never be safe if the British did not recapture Khartoum. He also complained about his arrest, and about the fact that, unlike Urabi, he was not put on trial. Rice reported to Lord John Hay (the commander-in-chief) that he had been 'careful not to allow Zebehr to consider himself a prisoner in the strict sense of the word, but as a person whom, for political reasons, it is better should be absent from Egypt, for the present'.¹³⁵ News of Zubayr's arrest was widely reported in the press, with some reports suggesting that he had been in close communication with the Mahdi, and had even plotted Gordon's killing, in revenge for his son's death.¹³⁶ However, Gladstone confirmed in parliament that the government had no intelligence to that effect; and no precise information about any communications between Zubayr and the Mahdi was ever to reach the Foreign Office or Colonial Office.¹³⁷

Arrangements for Zubayr's detention were hurriedly made. On 25 March, the Foreign Office requested the Colonial Office to make the necessary legal provisions for the detention in Gibraltar of Zubayr and his relatives, who were being held for 'reasons of State'.¹³⁸ The Governor of Gibraltar, Sir John Adye, was instructed to enact an ordinance 'to take effect at once without publishing Draft'.¹³⁹ The ordinance was passed on 27 March, and published on the arrival of

¹³³ Baring to Granville, 12 March 1885, FO 78/7194.

¹³⁴ *The Times*, 26 March 1885, p. 6. ¹³⁵ FO 407/65, enc. 1 in No. 108, pp. 66–67.

¹³⁶ *Manchester Guardian*, 1 April 1887, p. 7, *The Times*, 2 April 1885, p. 6. See also *The Observer*, 15 March 1885, p. 5, *New York Times*, 15 March 1885, p. 2.

¹³⁷ *Parl. Debs.*, 3rd ser., vol. 296, col. 1307 (10 April 1885).

¹³⁸ FO 407/64, No. 440, p. 307. The detainees were Zubayr, his sons Mahomed Fadl and Ali Faik, his foster son Tasin Kamel, and his agent Abdallah.

¹³⁹ Derby to Governor of Gibraltar, 25 March 1885, FO 78/4194.

the men in Gibraltar, three days later. Drafted in a hurry in Gibraltar, it was not modelled on any precedent. Its two clauses authorised the Governor to order the arrest and detention during Her Majesty's pleasure of the named 'Egyptian subjects'. It did not explicitly prevent any writ of habeas corpus being issued, though officials in London assumed that the ordinance would be an answer to any such application.¹⁴⁰ When sent to London for confirmation, officials were less concerned by the prospect of a challenge on Zubayr's behalf than by the possibility that the Sultan would be offended by its reference to 'Egyptian subjects'.¹⁴¹ Adye arranged for them to be lodged in his cottage, Europa House, which was isolated and at a distance from the town. Zubayr expressed himself content with the arrangements made for his comfort – though he complained of the cold – but asked if his secretary and stepson might be allowed to return to Egypt, to look after his family. Although the Governor had no objection, Wolsey thought that it would be seen as a sign of weakness to allow them back.¹⁴² At the end of May, Baring told the Colonial Office that it would still be some months before the effect of the evacuation policy on Sudan and Egypt would be clear, and that in the meantime Zubayr should be kept in Gibraltar.¹⁴³

Zubayr in Detention at Gibraltar

Unlike Urabi, who had led a military insurrection, there was no concrete evidence that Zubayr had committed any hostile acts against either Egypt or the British. It was therefore not possible either to try him in Egypt, or offer the apparently magnanimous sanctuary publicly offered to Urabi. At the same time, since he was an unpopular slave trader with little public or legal support, the British did not have to worry about the political consequences of keeping him in detention. Furthermore, whereas the arrest of Urabi had sealed the defeat of his

¹⁴⁰ The Colonial Office telegraphed Adye, 'If shown to be invalid, telegraph for instructions': 4 April 1885, FO 78/4194.

¹⁴¹ Draft reference, 6 April 1885, FO 78/4194. Although the Law Officers did not think the wording was perfect, they considered it inadvisable to amend an Ordinance which had already been published. The ordinance itself was published in PP 1884–1885 (156) LIII. 481; see also *The Times*, 30 April 1885, p. 6.

¹⁴² Baring to Granville, 18 April 1885, FO 78/4914.

¹⁴³ Baring to CO, 31 May 1885, FO 78/4194.

movement, the Sudanese border remained unsettled, with the Mahdi entrenched in power. Under these circumstances, the military felt that Zubayr had to be kept under their control.

Two days after his detention, *The Times's* correspondent in Cairo wrote '[i]t is at least singular that the English authorities, who refused to try Arabi, a prisoner of war, should arrest and deport Zebehr without formal inquiry.'¹⁴⁴ However, the government was not worried about such legal niceties. When questioned about the arrest in parliament, Granville told the Conservative peer Viscount Bury that the British had acted out of military necessity, while the Attorney General, Sir Henry James, told John Gorst that Zubayr was detained under a special ordinance which the Governor of Gibraltar had legal authority to issue.¹⁴⁵ The question was raised again in parliament in April 1886 by Thomas Lister, Lord Ribblesdale, who had been assigned to guard Zubayr for three months in Gibraltar and who had come to admire him as a result of their conversations there.¹⁴⁶ Ribblesdale condemned the arbitrary nature of Zubayr's detention, and challenged the Foreign Secretary to produce any precedent for the detention of the subject of a 'civilized nation' without any preliminary investigation, let alone a trial.¹⁴⁷ He was supported by Lord Fitzgerald, the Irish lord of appeal (and Liberal Unionist). Fitzgerald argued both that Zubayr's detention was unlawful unless justified by military necessity (which was not evident) and that the Gibraltarian authorities did not have the power to issue ordinances which were contrary to the law of England.¹⁴⁸ These points did not move the Foreign Secretary, Lord Rosebery. Admitting that there were no constitutional arguments which could be put for detaining Zubayr, he stated that the government was 'dealing with an extraordinary and

¹⁴⁴ *The Times*, 16 March 1885, p. 5. For further (mixed) press reactions, see *The Times*, 17 March 1885, p. 5; *Pall Mall Gazette*, 16 March 1885, p. 5; 17 March 1885, p. 4.

¹⁴⁵ *Parl. Debs.*, 3rd ser., vol. 295, col. 1429 (17 March 1885); vol. 296, col. 986 (30 March 1885). See further questions in *Parl. Debs.*, 3rd ser., vol. 296, col. 1100 (31 March 1885), col. 1629 (14 April 1885); vol. 297, col. 23 (17 April 1885). Both Bury and Gorst joined Salisbury's short-lived Conservative government in June, but did not take up Zubayr's case while in office.

¹⁴⁶ Thomas Lister Ribblesdale, *Impressions and Memories* (London, Cassell & Company, Ltd., 1927), 139; and Lord Ribblesdale, 'Conversations with Zobeir Pasha at Gibraltar', *The Nineteenth Century*, vol. LXIII (1908), pp. 936–948.

¹⁴⁷ *Parl. Debs.*, 3rd ser., vol. 304, col. 706 (5 April 1886).

¹⁴⁸ *Parl. Debs.*, 3rd ser., vol. 304, col. 714 (5 April 1886).

exceptional state of things'. His detention was a question of military necessity, arising out of Britain's occupation of a country which was neither a protectorate nor subject to British sovereignty.¹⁴⁹ Nor did Ribblesdale's intervention attract wide sympathy in the press. *The Times*, which thought that Ribblesdale 'has been captivated by his captive', thought it idle to consider too closely the constitutional and legal principles involved in the detention of this slave trader accused of communication with the tribes fighting British troops.¹⁵⁰

Although Fitzgerald's arguments might have formed the basis for a full legal challenge, no steps were taken to challenge Zubayr's detention in court. Instead, Zubayr wrote a number of letters to the Foreign Office, protesting against the injustice of his detention, and asking to be allowed to explain himself in London.¹⁵¹ Rather than taking a confrontational line, he wrote in the idiom of a loyal supplicant. When his letters went unanswered, he protested 'This is not the British justice I have known.'¹⁵² His case was taken up in London by an Indian Muslim, Abdul Rassool, who wrote a series of letters to the Colonial Office asking to be allowed to visit Zubayr in Gibraltar.¹⁵³ At the end of August 1885, the Foreign Office received a letter from a firm of solicitors, saying that they had been instructed by a 'friend and relation' of Zubayr to take up his defence, and requesting to know both whether he was being held in military or civilian custody at Gibraltar and how they could communicate with him.¹⁵⁴ The letter was passed on to the Law Officers, who advised that these lawyers were not entitled either to communicate with Zubayr or to receive any further information.¹⁵⁵ This stalling tactic had the desired effect of

¹⁴⁹ *Parl. Debs.*, 3rd ser., vol. 304, cols. 715–716 (5 April 1886). The *Pall Mall Gazette* reported Ribblesdale's speech, but not the reply: 6 April 1886, p. 11. See also the response to Henry Labouchere's later questioning the detention: *Parl. Debs.*, 3rd ser., vol. 312, col. 1782 (29 March 1887).

¹⁵⁰ *The Times*, 7 April 1886, p. 9. Contrast the positive tone of the *Pall Mall Gazette*, 6 April 1886, p. 3.

¹⁵¹ Letter from Zubayr, 30 March 1885, FO 78/4194.

¹⁵² Letter from Zubayr, 20 August 1885, FO 78/4195.

¹⁵³ British officials became so suspicious of this obscure individual that he was surreptitiously hired by the librarian of the India Office (without ministerial sanction) 'to keep an eye on him'; but they found nothing of any interest. Sir Owen Burne to Currie, September 1886, FO 78/4195.

¹⁵⁴ Gadsden and Treherne to Foreign Office, 31 August 1885, FO 78/4195.

¹⁵⁵ Foreign Office to Gadsden and Treherne, 25 September 1885, FO 78/4195.

stifling any further legal attempts to question Zubayr's detention. The Foreign Office continued to pass on Rassool's letters, considering them 'quite worth reading as giving the impression of an oriental on the present state of English policy'. Rassool himself became more strident in his criticism of the British, pointing to the injustice of the fact that Urabi, who had been tried and banished as a rebel, was allowed to move freely in Ceylon, whereas Zubayr was confined in one place, though he had never been convicted of the smallest crime;¹⁵⁶ but his criticisms had no effect on policy.

Zubayr also got to know two other Britons while in Gibraltar, who would argue his cause. One was the Governor, Sir John Adye, who came to regard him as a man of 'considerable ability', whose views about Sudan made much sense.¹⁵⁷ The other was the journalist Flora Shaw (later Lady Lugard), who visited Zubayr once a week over a four-month period during his detention. At the end of June 1887, she published a short article on 'Zebehr Pasha at Gibraltar' in the *Pall Mall Gazette*, in which he was quoted as saying 'your Government took me and made me a prisoner, and when I asked why, they would give me no reason'.¹⁵⁸ In spite of the support of such friendly figures, however, Zubayr continued to draw the hostility of such powerful groups as the Anti-Slavery Society, who kept in the public mind the image of a slave trader who was 'ruthless, with a heart of iron'.¹⁵⁹

The Long Road to Release

British policy towards both Egypt and Sudan would remain ambiguous for the next two years. Although Wolseley argued that it was 'almost imperative on us to destroy the Mahdi's power at Khartoum',¹⁶⁰ the Liberal government had no wish to hold Khartoum, and decided in

¹⁵⁶ Abdul Rassool to Zubayr, 15 September 1885, FO 78/4195.

¹⁵⁷ General Sir John Adye, *Recollections of a Military Life* (London, MacMillan and Co., 1895), p. 374.

¹⁵⁸ *Pall Mall Gazette*, 28 June 1887, pp. 1–2. Later in the year, she published a sympathetic account of his life in 'The Story of Zebehr Pasha, as Told by Himself', *Contemporary Review*, vol. 52 (1887), pp. 333–349, 568–585, 658–682.

¹⁵⁹ See e.g. the report of his release in *The Anti-Slavery Reporter*, vol. 7:4 (1887), pp. 140–141.

¹⁶⁰ PP 1885–1885 (c. 4392) LXXXIX. 201, No. 52, p. 35.

May 1885 that troops should be withdrawn from Sudan.¹⁶¹ Soon after, the government was replaced by Salisbury's seven-month Conservative ministry, which also wanted to 'withdraw with honour'. To effect this policy, Salisbury sent Sir Henry Drummond Wolff as an emissary to Constantinople, to negotiate an eventual evacuation by the British not only from Sudan, but from Egypt as well. At Constantinople, Wolff negotiated a preliminary convention under which two commissioners – Wolff himself and Muktar Pasha for the Porte – would report on how to create the conditions allowing the withdrawal of British troops to take place. One of the matters to be considered was what to do with Zubayr.

The civilian authorities had already turned their minds to this question. With Wolseley's military operations having concluded, Baring felt that Zubayr could be released, since the reason for his detention had been to prevent him from hampering these very operations.¹⁶² The acting Consul General in Cairo, Edwin Egerton, similarly favoured Zubayr's release, provided some place were found 'in which to employ him'. The Egyptian government – which did not consider Zubayr to have been imprisoned on their account – also wanted him to be released.¹⁶³ This prompted Salisbury on 23 September to consult the military on the conditions for his release.¹⁶⁴ However, the generals began to get cold feet, and raised objections to Zubayr's return, which had the support of the War Office. Hearing these views, Egerton rowed back, recommending delay and arguing that it would be better to keep Zubayr in Gibraltar either until the frontier had been settled or until some plan had been developed to send him cheaply to some part of Sudan where he might be left without harm.¹⁶⁵ The delay in liberating Zubayr exasperated Salisbury. 'The continued detention of Zebehr Pasha is a cause of expense and embarrassment', he told Wolff, 'and Her Majesty's Government would be glad both on grounds of humanity and policy

¹⁶¹ *Parl. Debs.*, 3rd ser., vol. 298, col. 152 (11 May 1885). See further M. P. Hornik, 'The Mission of Sir Henry Drummond-Wolff to Constantinople, 1885–1887', *English Historical Review*, vol. 55 (1940), pp. 598–623, at pp. 601–602.

¹⁶² Baring letter, 14 September 1885, FO 78/4195.

¹⁶³ FO 407/66, Nos. 211–212, p. 121. ¹⁶⁴ FO 407/66, No. 223, p. 128.

¹⁶⁵ FO 407/67, Nos. 2–3, p. 1.

if an arrangement could be devised which would admit of his liberation without danger to Egyptian or British interests.¹⁶⁶

By the middle of December 1885, Wolff had come to the view that Zubayr could be safely brought back, at least if he swore an oath on the Koran to remain peaceful.¹⁶⁷ At the beginning of January, General Stephenson also told Wolff that he would agree to Zubayr's release if he swore an oath of loyalty and retired 'to his tribe between Berber and Khartoum', leaving his wives and family in Cairo as hostages.¹⁶⁸ In their discussions as to how to pacify Sudan, Wolff and the Ottoman Commissioner Muktar Pasha also raised the possibility of employing Zubayr for this purpose.¹⁶⁹ In an intervention which did not please Zubayr, Abdul Rassool, who was now in Cairo, also went to see Baring to urge that Zubayr be sent to Sudan to restore order, with his sons (and Rassool himself) being kept hostages as security in Cairo.¹⁷⁰ However, when Salisbury asked Wolseley for his opinion on using Zubayr, the response was firm opposition.¹⁷¹ The military (and their political masters of both stripes) continued to oppose any proposal to use Zubayr in the pacification of Sudan.¹⁷²

Zubayr's release also depended on the agreement of a number of different government departments, which had different views of the problem. The matter was of interest to the Colonial Office, which was responsible for Gibraltar, whose Governor was concerned about the effect of detention on Zubayr's mental health.¹⁷³ It was also a matter of concern for the Treasury, which balked at the £1,800 spent annually

¹⁶⁶ Salisbury to Wolff, 4 November 1885, FO 78/4195.

¹⁶⁷ FO 407/76, No. 384, p. 166. Wolff had earlier thought it best to postpone the question of Zubayr's release until the Ottoman Commissioner, Muktar Pasha, had arrived in Cairo, so that he could obtain securities for good behaviour from Zubayr: FO 407/76, No. 329, p. 139.

¹⁶⁸ FO 407/68, No. 5, p. 2. Lt. Edward Stuart-Wortley had earlier told Wolff that 'no harm could result' from sending Zubayr back to Sudan and setting him up as a ruler in Khartoum, although, in his view, Zubayr should not be allowed to return to Cairo: FO 407/76, enc. 3 in No. 384, p. 168.

¹⁶⁹ FO 407/77, No. 34, p. 19; cf. No. 22, p. 9.

¹⁷⁰ Baring note, 8 January 1886, FO 78/4195; Zubayr to Abdul Rassool, 26 December 1886, FO 78/4196.

¹⁷¹ FO 407/77, No. 42, p. 22; FO 407/68, No. 30, p. 23.

¹⁷² FO 407/77, No. 98, p. 78; War Office to Foreign Office, 18 February 1886, FO 78/4195.

¹⁷³ Sir John Auye to Col. Stanley, 30 November 1885, FO 78/4195.

to maintain Zubayr,¹⁷⁴ and became increasingly insistent on the need either to transfer him to the custody of the Egyptian government, or to free him.¹⁷⁵ Despite this pressure, the Foreign Office – which was responsible for Egyptian policy – insisted that they could not go against the views of the military, who thought that Zubayr could not be freed until Sudan had been fully pacified.¹⁷⁶ The stalemate continued to the end of 1886, when the Foreign Office again sounded out the military on the matter of Zubayr's release. Again the answer was negative. As Stephenson saw it, Sudanese affairs had reached a critical moment – the 'dervish movement is thoroughly broken'. With negotiations about to commence regarding the frontier, it was considered too risky to allow him to return.¹⁷⁷ Once again, Zubayr was held hostage to events on the border.

In the following months, when Wolff was negotiating the date of a projected British withdrawal from Egypt, the question of what to do with Zubayr was regularly revisited. In March 1887, Sir John Adaye, now retired as Governor of Gibraltar, argued that Zubayr posed no threat and might well use his influence in favour of the British if released. He doubted whether there had been any serious reason for detaining him in the first place, and thought that, under the changed military circumstances in Sudan, there was no reason to keep him.¹⁷⁸ This intervention had the effect of nudging the Foreign Office to make yet another attempt to induce the military to give ground. On this occasion, they received promising news from Baring: with the military preparing to withdraw troops from Aswan, the generals were now of the view that Zubayr's influence over the black troops

¹⁷⁴ Treasury to Foreign Office, 27 November 1885, FO 78/4195. The War Office claimed that (like Cetshwayo), Zubayr should be regarded as a military prisoner only until the detention ordinance had been passed for his detention. However, the Foreign Office insisted the item remain in the army estimates, since neither Gibraltar nor Egypt should be expected to pay: Note from Financial Secretary's Department, War Office, 26 August 1885, FO 78/4195; see also Foreign Office to Treasury, 11 September 1885, FO 78/4195.

¹⁷⁵ FO 407/77, No. 128, p. 98. The Treasury again raised the question of Zubayr's release after the government agreed in June 1886 that his wife, a tutor for his children and three servants could be sent to Gibraltar, increasing the costs still further: see FO 407/68, No. 222, p. 163; FO 407/69, No. 155*, p. 111*; No. 165, p. 138.

¹⁷⁶ FO 407/68, No. 82, p. 45; FO 407/77, No. 145, p. 106.

¹⁷⁷ FO 407/69, No. 183, p. 145; No. 185, p. 146; FO 407/70, No. 7, p. 4.

¹⁷⁸ Adaye to Foreign Office, 10 March 1887, FO 78/4196.

had waned and that he would pose no further danger.¹⁷⁹ Although Wolseley, who had returned to England in 1885, again raised objections, the cabinet overruled them.¹⁸⁰ At the end of April, Salisbury requested Baring to inform the Egyptian government of the decision to release Zubayr, and to ascertain their wishes as to the date of his arrival.¹⁸¹ The Egyptian government was content for him to return, though it required him to make a formal pledge to observe certain conditions.¹⁸²

Although all seemed set for Zubayr's release, its timing proved problematic, for it coincided with a delicate moment in Wolff's negotiations with the Porte. By the middle of May 1887, a convention had been drafted which stipulated that the British would withdraw their troops from Egypt within three years of its signing, unless their continued presence proved to be necessary as a result of internal or external dangers.¹⁸³ However, rather than accelerating Zubayr's release, these negotiations only served to delay it further. British officials were concerned about potentially adverse political effects in Egypt if the announcement of Zubayr's release, or his arrival in Cairo, coincided with the announcement of the convention, and Britain's planned withdrawal under it.¹⁸⁴ Salisbury agreed that it was therefore best to delay his release until the convention had been ratified.¹⁸⁵ In the event, the convention was never ratified by the Powers, and Wolff left Constantinople in July, with the long anticipated withdrawal of British troops postponed *sine die*. Consequently, it was only the collapse of Wolff's project that finally opened the way for Zubayr's return, and Salisbury issued instructions to this effect on 19 July, the day his emissary left Constantinople.¹⁸⁶ Zubayr arrived in Cairo on 28 September 1887. He agreed to the conditions imposed, which included the abandonment of his financial

¹⁷⁹ Baring to Salisbury, 28 March 1887, FO 78/4196.

¹⁸⁰ Wolseley suggested that Zubayr be sent to Cyprus. War Office to Foreign Office, 20 April 1887, FO 78/4196.

¹⁸¹ Salisbury to Baring, 29 April 1887, FO 78/4196.

¹⁸² PP 1888 (c. 5316) CX. 325, No. 84, p. 56.

¹⁸³ PP 1887 (c. 5050) XCII. 481, enc. in No. 84, p. 48 at p. 49.

¹⁸⁴ FO 407/70, No. 180, p. 143; No. 181, p. 143.

¹⁸⁵ Foreign Office to War Office, 24 May 1887, FO 78/4196.

¹⁸⁶ FO 407/71, No. 10, p. 8.

claims against the Egyptian government in exchange for a monthly allowance.¹⁸⁷ The *Pall Mall Gazette* congratulated the government on its decision to release Zubayr, describing his detention as ‘high-handed and thoroughly un-English’.¹⁸⁸ His release raised the question of whether it would now be an appropriate time to release Urabi, but the government quickly put paid to any such hopes.¹⁸⁹ Discussing this issue, the *Pall Mall Gazette* published an article based on interviews with Zubayr – perhaps by Flora Shaw – which showed that, in 1882, he had rejected Urabi’s overtures to join the rebellion, and had backed the Khedive.¹⁹⁰

As observers in Britain realised, the treatment of Zubayr contrasted sharply with that given to Urabi. His detention in Gibraltar was rendered lawful by simple legislative fiat: an exercise of sheer power dressed up in legal garb. As officials in Cairo realised, there was no evidence that Zubayr had done anything wrong, which might justify any kind of legal proceedings against him. In any event, the British had no claim to jurisdiction over him: this was not even the kind of case – found elsewhere in Africa – of jurisdictional ambiguity, where a detention ordinance was resorted to in order to deal with an offender who fell between jurisdictional cracks. Nor did the Egyptian government show any interest in levelling the kinds of accusations against Zubayr which had been made against Urabi. Instead, having been seized in Cairo by an ‘act of state’ executed by the British military, Zubayr was detained to satisfy military demands to remove someone whose presence might disrupt their campaign to pacify Sudan. While this was in effect an act of imperial military power, it had to be given legal cover, with an ordinance designed to comply with the constitutional requirement that no one be held without legal authority. Such a measure was necessary, given both the questions raised by those like Lords Ribblesdale and Fitzgerald about the basis of his detention and the possibility that his detention might

¹⁸⁷ Despite the agreement at the time of his release, Zubayr continued to seek to recover his property in Cairo, hiring an English lawyer in 1893 to pursue his claims: *Morning Post*, 9 December 1893, p. 5. Although the matter was raised in parliament, the British government now considered that it had nothing to do with them. *Parl. Debs.*, 4th ser., vol. 11, col. 1632 (1 May 1893).

¹⁸⁸ ‘The Release of Zebehr Pasha’, *Pall Mall Gazette*, 19 August 1887.

¹⁸⁹ *Parl. Debs.*, 3rd ser., vol. 319, col. 1099 (19 August 1887).

¹⁹⁰ ‘Two Views of Arabi Pasha’, *Pall Mall Gazette*, 24 August 1887, p. 2.

be challenged by a habeas corpus application. However, given his reputation as a slave trader, few in Britain worried about Zubayr. In his case, the most formal kind of law served to satisfy most metropolitan consciences; and the legality of the ordinance under which he was held was never challenged in court.

The notion of the rule of law, which public intellectuals at home saw as permeating their constitutional culture, was, as has been seen, an ambiguous one, even in the hands of its most vocal legal champion, A. V. Dicey. As he had explained, the demands of the rule of law might be met even by legislation removing rights of due process: for anything permitted by valid legislation was by its nature lawful. Zubayr was detained on perhaps the weakest of legislative foundations – an ordinance issued by a colonial governor under crown powers.¹⁹¹ This form of legislation by-passed the constitutional guarantees Dicey found in a parliament, which he considered as a kind of national jury to evaluate the needs of an emergency. But these guarantees in turn depended on the moral pressure exerted by a wider political community, which expected ancient rights to be observed; and where that community was untroubled by such legislation, a purely formal rule of law could be used as cover for the exercise of sovereign power for political ends. To that degree, the nature of the ‘rule of law’ applied – whether it was more ‘substantive’ or more ‘formal’ – depended on how the problem was perceived in the wider political culture. The kind of rule of law which liberal nationalist leaders were expected to enjoy was not the same as that accorded to unappetising slave traders.

¹⁹¹ These powers would later be questioned by another detainee from Egypt, Zaghlul Pasha: see Chapter 8.