

Disregard

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1 For my part, I do not wish to criticize the chief justice's address from the political angle, as Tawfiq Diab criticized it, nor to defend it from the judicial angle, as Professor Marcus Fahmy defended it; I have no part in either of these.

2 And I may not be exaggerating if I say that I write today not as a critic but as one who asks a question; for the chief justice's address has left room for a question, and this question may prove long, or it may prove short, but a question it remains in any case.

3 I would have liked the chief justice's address to leave no occasion for comment or question to anyone, for what I know of him leads us to expect exactly that from him.

4 And it seems most likely that this question may resolve itself into an explanation, and it would not be strange for the chief justice's address to raise a question, which then resolves into an explanation, or something resembling one; for the eminent Abd al-Aziz Pasha Fahmy is a man of precision, scrupulous in his exactness, known for this even by those furthest from him, let alone those closest to him. And for all that, his aims reach far; with a brief, spare phrase he intends things that others could not reach with length and elaboration.

5 And he may well have alluded, in passing, to the very thing I am asking about, and gestured toward what I am questioning with one of those gestures not granted to other speakers and writers.

6 As for the question the professor's address raised in my own mind, and in the minds of a group of those who love him and whom he loves, and whom he esteems and who esteem him, it concerns the religious courts: why were they not mentioned in the professor's address? And why did they not win so much as a plain, clear word in this plain, clear address? For the address spoke of the civil judiciary — how need called for it, how it arose, how it progressed and developed until it had traveled a long way toward perfection, until it enabled the chief justice to ask His Majesty the King to graciously declare that this judiciary is henceforth fit to satisfy the need for justice of all who dwell in Egypt, to preserve their

rights, and to spare Egypt the need for the Mixed Courts.

7 All of this is good, and all of this is true beyond doubt; but the chief justice also mentioned the Mixed Courts, and explained how they came to be considered, how they arose, and how Egypt benefited from them.

8 And the chief justice was — as is ever his way — skillful and adroit when he praised the system of mixed justice at the start of his address, and called for its abolition at its close; and we think the religious judiciary deserved that the eminent speaker should pause over it for a moment — if not longer than his pause over mixed justice, then at least as long, or shorter.

9 But this pause, in our view, was unavoidable if the address was to be complete, comprehensive, general, and thorough, taking up the subject from every side, grasping it from every end; for the religious judicial system is the oldest judicial institution in Egypt, and this venerability of age gives it a historical claim upon those who undertake to speak of the judiciary, a claim they ought not, and cannot properly, set aside, whatever the circumstances and whatever the case may demand, as they say.

10 Nor ought it to be said that the religious judiciary had institutions and arrangements not free of fault, nor above criticism; for scarcely any human institution is free of fault, or rises above criticism, and all of man's works and all of man's institutions are a mixture of good and ill. Whoever wants precise history mentions both the merits and the faults; whoever wants pure condemnation mentions the faults alone, without the merits; whoever wants pure praise mentions the merits and passes over the faults; and whoever wants courtesy and fairness, without deep inquiry or exhaustive examination of detail, speaks well of it and alludes, in passing, to whatever points of shortcoming ought not to be forgotten.

11 And in this fair-minded courtesy there was ample room for the eminent speaker to satisfy this institution which, whatever is said of it, sustained Egypt for long centuries, and he might well have won, for it, one of those words of praise tinged with a measure of gentle, eloquent criticism — one of those gratifying, sufficient words the professor handles better than other writers and speakers.

12 But there is something in the matter that makes it deeply and keenly regrettable that the professor passed over the religious judiciary in that address of his; for it might seem to us that this religious judiciary

strove toward progress in this modern age just as other Egyptian institutions have striven, and if memory does not fail us, the thought of reforming the religious judiciary, organizing it, and renewing its arrangements was contemporary with the thought of introducing the civil judiciary into this country — that is, in the year 1880. From that time, the institutions of the religious judiciary began to live and undergo what living institutions undergo of good and ill, of trial and testing, shedding faults, accumulating merits, and advancing in order and continuity; and the institutions of the religious judiciary were altered, a little or a great deal, at various times during this modern age, which spans fifty years or a little more, and it seems to us that the efforts expended on this were neither few nor slight, nor fit to be passed over in silence.

13 And it seems to us that the revered teacher Sheikh Muhammad Abduh, may God have mercy on him, expended efforts in this regard that deserved to be mentioned, especially when we recall that the civil judiciary was itself adorned by the revered teacher's own gracious spirit, his sweet voice, his good character, and his handsome bearing. He was, may God have mercy on him, a fine link between these two kinds of judicial institution, having worked within one while laboring earnestly to reform the other.

14 And had the religious judiciary nothing more than the fact that a great colleague of the chief justice thought about it, concerned himself with it, and labored earnestly for its reform, that alone would have sufficed for the professor to give it a brief mention in his address.

15 But the matter does not stop there; for it may be said that Saad, may God have mercy on him, gave the religious judiciary a fruitful attention whose effect was not confined to the religious judiciary alone, but had far-reaching consequences for the whole life of Egyptian thought; for Saad, may God have mercy on him, founded the School of Judges intending thereby the reform of the judiciary, and so reformed it, and with it reformed branches of education and branches of thought and doors of intellectual life, not in Egypt alone but across the whole Arab East.

16 And it suffices to note that those who graduated from this School of Judges now teach at the university, and occupy positions of consequence in the state, and Egyptian life cannot free itself from them, or banish them from it, or free itself from the mark they have stamped upon it, without suffering no small measure of disturbance and

disruption.

17 And Saad, may God have mercy on him, was, like the revered teacher, a graduate of al-Azhar, and Saad, may God have mercy on him, was a civil judge, like the chief justice himself; so Saad, too, was a fine link between these two kinds of Egyptian judiciary, and Saad's involvement in the civil judiciary together with Saad's concern for the religious judiciary would have sufficed for the chief justice to give, in that address of his, a brief mention of this Egyptian institution we call the religious judiciary.

18 I will not conceal from the eminent professor that I was astonished, and a number of others were astonished with me, and I was grieved, and a number of others were grieved with me, at the professor's passing over any mention of the religious judiciary in his address. And we set about seeking the reasons for this, and searching for its causes; some of us supposed that the professor passed over the religious judiciary because the civil judiciary has taken its place in many respects, so that it is, then, a new institution contending with an old one, and the professor preferred not to stir up rivalry between the two institutions. But I think that the first duty of the new institution is to mention the old institution that preceded it with good, as a courtesy toward it and an acknowledgment of some part of its merit.

19 And some of us supposed that the men of the religious judiciary excused themselves from taking part in honoring the civil judiciary, and that this judiciary therefore passed over them in turn. But I think that the chief justice was speaking of the institution before he spoke of its men, so there was no harm in his mentioning the institution even if its men absented themselves from the celebration.

20 And some of us supposed that the rivalry between the two institutions has not yet been resolved, and that there remain in Egypt those who still think that the religious judicial system, in its present form, is not among the necessities of Egyptian life, and that natural progress requires that its development continue until it becomes part of the general Egyptian judicial system, until Egyptian courts have divisions for personal-status matters applying the rulings of the noble religious law, just as they have divisions for civil justice and others for criminal justice. But I think that this manner of thinking, too, does not hold up; for whether or not this development comes to pass, and whether or not the arrangements of the religious courts are abolished, the religious judiciary

is a fact of reality that has its place in history, and its effect on Egyptian life, old and modern alike, and its mention ought not to be omitted in an address delivered by the chief justice at one of the judiciary's celebrations, one that takes up the Mixed Courts in passing.

21 And suppose the chief justice held this view and went by this reasoning — what, then, kept him from mentioning the religious judiciary, just as he mentioned the Mixed Courts, praising it at the start of his address and alluding to its abolition or amendment at its close?

22 I remain asking the question, and I remain grieved, and I remain astonished that the religious judiciary was not mentioned in the chief justice's address last Sunday; for I would have liked this address to be marked by the courtesy and fairness by which I have come to know the eminent speaker.