CHAPTER THREE


Twice in less than twenty years presidential politics used the cultural and historical resources of the Manichaean Judiciary to its advantage. Ismail al-Azhari, the Chairman of the Supreme Council of State (SCS), surprised his audience on the Greater Bairam holiday in December 1968 by announcing that his administration would give qadis the upper hand over the civil judges by replacing the colonial laws in place by sharia. In siding with the qadis and their law, al-Azhari was obviously taking it out on the secular, unruly Civil Division of the Judiciary. He had not only been censured three years before by the Civil High Court for banning the Communist Party in 1965, but also had a case, as he spoke, pending before the same court for violating the Constitution by prematurely dissolving the Constituent Assembly in February 1968.1 The geopolitics of the time did not allow al-Azhari to deliver on his exact word of making Islam the law of the land, although he did a great deal during his term (1965–1969) to equalize the qadis with the civil judges as will become clear in this chapter.

In different and more favorable political circumstances, President Nimerie (1969–1985) succeeded in doing what al-Azhari had dreamt about: making the qadis’ law the law of the land. Just prior to the promulgation of his Islamic laws in September 1983, Nimerie was provoked and challenged by a judges’ strike that culminated in a drawn confrontation between him and the Judiciary, which was still then dominated by the civil judges. Not unlike al-Azhari, Nimerie wanted to take it out on the civil judges. In implementing sharia, he dumped their colonial law and sent them home to study and adjudicate according to a law they had always denigrated as too anachronistic to suit the times.

This chapter and the next will investigate the political, social, moral, and judicial currents that converged since the independence of Sudan in 1956 to make presidential politics seek to profit from the historical

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and cultural resources of the Manichaean Judiciary. It may sound politically correct to dismiss al-Azhari’s and Nimerie’s Islamism as a means of exploiting religion. But this position does not help us explore the socio-cultural landscapes that made religion amenable to exploitation at specific times. The question that imposes itself here is: Why did two presidents, in a row if you wish, find, of the plethora of ways to use religion for political gain that allying themselves to the Sharia Division of the Judiciary or its law was the effective way to politicize religion? What was there in the colonial, Manichaean organization of the Judiciary and the society at large that lent itself to this presidential ‘exploitation’ of religion? Why did secularists and modernists, who had their day in government, fail to dry up this source that presidents used to hurt them? What professional and cultural interests lay behind the perpetuation of the dual judiciary in which civil judges had the upper hand? Why was it commonly held among secularists that the colonial duality was the best thing that happened to them as a ready-made foundation for their future state in which religion would be separated from the state? Why has Islamizing the state by decolonizing the Judiciary, colonially structured to relegate sharia to personal matters away from the awesome concerns of the state, been an oppositional sentiment throughout the colonial and postcolonial period? Why did this sentiment assume urgency as the basis for the legitimacy and sovereignty of the independent state? Why did two presidents desire such legitimacy, irrespective of the political systems they had operated from within—al-Azhari working from within a plural democracy and Nimerie running his one-man show of the single party?

A Rage for Masculinity

In 1968, a certain moral ‘decadence,’ which was felt to jeopardize masculinity, the mainstay of Muslims to establish a moral order, fueled a belligerent religiousness. Two narratives of this moral laxity were circulating. One was about the man who applied for a license to run a brothel and the other was about the marriage of two men in el-Gedarif, the granary of the country whose agri-businessmen were in the habit of

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2 Sex is one of the instincts whose satisfaction was regulated at length by religious law. ‘The link in the Muslim mind between sexuality and the sharia has shaped the legal and ideological history of Muslim family structure’ (Mernissi 1987, 18).