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978-1-107-02607-0 - Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan  
Mark Fathi Massoud  
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## LAW'S FRAGILE STATE

How do a legal order and the rule of law develop in a war-torn state? Using his field research in Sudan, the author uncovers how colonial administrators, postcolonial governments, and international aid agencies have used legal tools, practices, and resources to promote stability and their own visions of the rule of law amid political violence and war in Sudan. Tracing the dramatic development of three forms of legal politics – colonial, authoritarian, and humanitarian – this book contributes to a growing body of scholarship on law in authoritarian regimes and on human rights and legal empowerment programs in the global South. Refuting the conventional wisdom of a legal vacuum in failed states, Mark Fathi Massoud reveals how law matters deeply even in the most extreme cases of states still fighting for political stability.

Mark Fathi Massoud is Assistant Professor in the Politics Department and Legal Studies Program at the University of California, Santa Cruz. He received the Law and Society Association Dissertation Prize and the American Political Science Association Edward S. Corwin Award for the best dissertation in public law.

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**Mark Fathi Massoud**

University of California, Santa Cruz



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Sudan has seen colonialism. It's tried communism. It's tried [democracy]. The people of Sudan have seen it all.

*Senior judicial official in Sudan<sup>1</sup>*

The world should give me my full rights. Help.

*Displaced woman from Darfur, western Sudan<sup>2</sup>*

<sup>1</sup> Interview with Mukhtar, senior judicial official, in Khartoum, Sudan (April 2007). With the exception of historical figures and the most prominent public officials, all names in this book have been changed to preserve confidentiality.

<sup>2</sup> Interview with Nisreen, internally displaced person, near Khartoum, Sudan (June 2005).

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## PREFACE

July 9, 2005. Thousands of residents from the sweltering, dilapidated camps that surround Khartoum streamed into the city. So many poverty-stricken and war-weary Sudanese filled the streets that the city shut down. I remember seeing broad smiles and hopeful eyes. Beneath the smiles, one could still sense hunger and trepidation. But this was a day for rejoicing. After more than twenty-two years, southern Sudanese leaders were officially welcomed back to the capital city and into government. The civil war was finally over.

My family had fled Sudan when I was a boy in 1983, as war resumed after a decade of relative calm. I returned to Sudan for the first time in 2005 to spend the summer with the United Nations Development Programme (UNDP) as a graduate student from Berkeley. I hoped to learn more about my homeland and the people who had stayed behind. I also wanted to make better sense of the concept and functions of law – and lawlessness. I hoped that investigating the law in as little-studied and unstable a setting as Sudan would reveal insights into the basis of the law's instrumental and ideological malleability. I knew I was lucky to have been spared the devastation of war in the intervening decades until my return to Sudan. But I had no conception of the true price paid by the Sudanese people during periods of violence and repression.

In 2005, the government was putting the finishing touches on a historic peace accord and new national constitution. It seemed a time for celebration. During that summer and a year in 2006–7, when most of the research for this book took place, I attended fifteen “legal awareness workshops” conducted in the squatter camps by nongovernmental organization (NGO) employees and local consultants (described in Chapter 5). The international aid community, in coordination with Sudanese NGOs, funded and carried out these workshops to inform the nation's most destitute people of their legal and human rights. From the first meeting I attended at the United Nations offices in Khartoum and the first workshop I visited in the desert outside the city, it struck me how human rights law seemed to be promoted as a kind of carpet

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under which the dust and trauma of the war would be swept and left behind. “We are doing everything from scratch,” a senior UN human rights official would later explain to me.<sup>1</sup>

Foreign aid workers in Sudan saw the immediate postwar period as a critical moment of transformation that separated the nation’s violent past from what they hoped would be its peaceful future. Legal consultants arrived en masse to train new judges and build the strength of the judiciary. United Nations officers spoke publicly about the need for Sudan to adopt a constitution that respected human rights principles. The World Bank, UN agencies, and international NGOs sponsored major conferences in Sudan outlining the importance of the rule of law for political, economic, and social development. And foreign governments channeled millions of dollars to the United Nations and international and local aid groups to implement widespread education programs designed to empower war-displaced persons to learn about, and ultimately access, justice through these new laws. Though not always coordinated, these law-building efforts were extraordinary for their breadth and because they took place in Sudan, classified by Western think tanks as a failed, rogue state. Because hundreds of foreign organizations were involved in the rebuilding effort, aid workers privately labeled Sudan “NGOistan,” a designation they had earlier given to Iraq and Afghanistan in the aftermath of U.S.-led interventions.

The sweeping attempts to build up Sudan’s legal institutions and public trust in them beg some questions about the country’s legal history, which led me to write this book. How did the Anglo-Egyptian colonial administration and the Abboud, Nimeiri, and Bashir military regimes shape how the Sudanese people have experienced, confronted, or resisted legal expansion efforts? What did law actually look like from the perspective of the Sudanese poor before they attended legal awareness workshops? How does the process of teaching and learning about human rights influence activists and those whom they represent, or does the discourse of rights do neither harm nor good in conflict settings? And in what visions of law and development are survivors of war being asked to put their faith?

The aid efforts I witnessed in Sudan were not the first attempts by foreigners or Sudanese to build up the state’s legal capacity. The British colonial administration in Sudan drafted extensive legal codes, built

<sup>1</sup> Interview with Omera, United Nations official, in Juba, southern Sudan (June 2010).

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courthouses, and trained and recruited Sudanese people to work in them as clerks and judges. Later democratic and authoritarian governments in Sudan used similar strategies to indoctrinate citizens into the state's narrow vision of the rule of law. Under both the colonial and Bashir regimes, new courts provided spaces for nonviolent dispute resolution, and new law schools and informal legal-training programs educated people to advance the state's legal norms, institutions, and systems. The case of Sudan reveals how a multitude of legal spaces flourish in conflict settings, however weak the political apparatus remains.

We live in an age in which the rule of law and human rights are touted as twin catalysts for reforming weak institutions and building civil society in fragile states. But it is increasingly an age in which legal efforts are vilified for adopting one-size-fits-all solutions disconnected from the local political realities of war-torn settings. For these reasons I have sought to illuminate through this case study of Sudan the complex environment in which legal order is promoted, constructed, and destroyed in order to achieve social, economic, or political (including humanitarian) objectives. To accomplish this goal, this book adopts a longitudinal approach to the study of legal politics, analyzing how colonial, authoritarian, and humanitarian actors at different times seek to build a legal order to achieve their goals and, ultimately, how their efforts influence the lived experiences of the poor.

The targets of contemporary legal empowerment programs are among six million Sudanese forced to flee their homes during the north-south civil war and related atrocities in Darfur, Kordofan, and eastern Sudan. They formed encampments in the rural areas surrounding Khartoum. Because so much of the fighting took place in the South, Khartoum filled with survivors displaced from southern Sudan. They were the world's largest population of internally displaced persons.<sup>2</sup> During the war, they could watch the planes taking off from Khartoum's airport, flying south to bomb their home villages. In a grisly repetition of history, new squatter camps emerged in the desert in 2003, when millions more were displaced by the eruption of another war in Darfur. Violent clashes surfaced again in 2012 along a disputed border between Sudan

<sup>2</sup> The Internal Displacement Monitoring Centre estimated about five million displaced persons in Sudan just before the secession of South Sudan. "Estimates for the total number of IDPs for all of Sudan (as of January 2011)." Available: <http://www.internal-displacement.org/idmc/website/countries.nsf%28httpEnvelopes%29/0026B2F86813855FC1257570006185A0?OpenDocument> (accessed January 9, 2013).

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and South Sudan, as interethnic rivalries and natural resource disputes resurfaced.

Displaced persons in Sudan have endured war; extreme heat; lack of electricity, clean water, or formal education; and frequent *haboobs* (powerful dust storms) that send walls of sand a thousand feet tall crashing over their homes. They have also endured surveillance by police and security officers searching out and eradicating potential threats to the government's power. To earn money to buy food to feed their children, some displaced women brew alcohol and sell it to the vast population of shell-shocked unemployed men. The activity is illegal, and women are punished with prison sentences or whiplashes across their backs. I met fifteen-year-old mothers and thirty-five-year-old grandmothers. According to the World Health Organization, average "healthy" life expectancy in Sudan is among the lowest on earth – forty-seven years for men and fifty years for women – but it is even lower in the squatter areas and shantytowns for war-displaced persons.

The trip from NGO offices in central Khartoum to the desert encampments where legal awareness workshops are held takes more than an hour by bus. Temperatures soar above 120 degrees Fahrenheit outside and get considerably higher inside the bus. Driving along bumpy and sandy desert roads, the bus passes thousands of small tent-like homes fashioned out of sandy earth and animal dung, the only natural resources in these areas. The tents in these desolate camps usually house multiple families. Sometimes more than a dozen people can be found cramped inside, taking shelter from the desert sun. There are no trees. The world is brown and covered in dust. For most of the year, the combination of wind and sand means that it is impossible to walk, talk, move, or eat without becoming covered in sand. During the rainy season, mud makes driving or walking impossible, so these areas are completely cut off from the cities. The desert encampments were meant to provide temporary shelter until the war ended. But many displaced persons have lived there for twenty years or more.

The signing of the 2005 peace accord, witnessed by multiple foreign heads of state and the then-U.S. secretary of state Colin Powell, represented an opportunity for Sudan's leadership and people to think about their fragile nation's future, the first such opportunity in a generation. The end of the war also created opportunities for foreign researchers to visit Sudan in relative safety. I was able to travel in Khartoum as well as in southern and central Sudan in 2005, in 2006–7, and again in 2010. But the window of peace that allowed me to conduct the research for

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this book is threatening to shut. With an ongoing humanitarian crisis in Darfur, recurrent clashes in eastern Sudan and in the oil-rich regions along the border with South Sudan, and the continued targeting of Sudanese and foreign aid workers, Sudan teeters once again on the brink of chaos.

Working in a nation so well acquainted with tyranny and terror, one could easily be overcome with grief. I met one displaced woman from Darfur who had managed to escape to a squatter area near Khartoum but had lost the rest of her family. In a remarkable display of humility, forgiving her adversaries and acknowledging the universality of human suffering, she said to me, “We are all Sudanese.” This book does not presume to describe or comprehend the horrors experienced by the Sudanese people. My intention is to make sense of how the law operates in volatile, divided, and authoritarian states like Sudan and how it can be marshaled to promote peace rather than violence.

My legal training, intellectual endeavor, and Sudanese birth of mixed ancestry rather than a specific tribal background, I learned, helped me to transcend existing and deep political boundaries and build rapport among attorneys, judges, and local activists, who told me they were pleased to see a young man – whose family fled the country never to return – himself come home to the nation that delivered him into the world. This book forms part of my ongoing journey to make sense of Sudan and, more broadly, to discover what law does, and what it fails to do, in the world’s most desperate environments.

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Some parts of the Preface and Chapters 5 and 6 appear in or draw from two previously published articles, “Do Victims of War Need International Law? Human Rights Education Programs in Authoritarian Sudan” (*Law & Society Review*, 2011) and “Rights in a Failed State: Internally Displaced Women in Sudan and Their Lawyers” (*Berkeley Journal of Gender, Law & Justice*, 2006). Some elements in Chapters 3 and 4 expand upon material found in “Lawyers and the Disintegration of the Legal Complex in Sudan,” from *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* (Cambridge University Press, 2012). I am grateful to *Law & Society Review*, the *Berkeley Journal of Gender, Law and Justice*, and Cambridge University Press for permitting me to draw from these works.

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## NOTE ON TRANSLATION AND TRANSLITERATION

All translations and transliterations from Arabic-language documents and interviews are mine. I provide English translations alongside Arabic words that appear in this book; terms that appear several times are translated after their first usage in each chapter, such as *shari'a* (roughly translated as Islamic law). Simple apostrophes are used to represent diacritical marks are used for the Arabic 'ayn, as in *shari'a*, and for the Arabic *hamza*, as in *ara'id* (petitions). I maintain these diacritics for proper names and render nisba endings *-iyya*, as in *effendiyya*, per the *International Journal of Middle East Studies* transliteration system. I have strived to ensure that all Arabic transliterations into English would be accessible to those familiar with Modern Standard Arabic and non-Sudanese dialects, balanced with my intent to remain true to the Sudanese dialect in which much of the research was conducted. While standard transliterations do exist, some Arabic words, including names of persons, have several spellings when transliterated into foreign languages (for instance, Numairi/Numeyri, Omar/Umr, and Awadalla/Awad-Allah). I have aimed for clarity and consistency in the transliterations that I use. Any mistakes in translation or transliteration are my own.

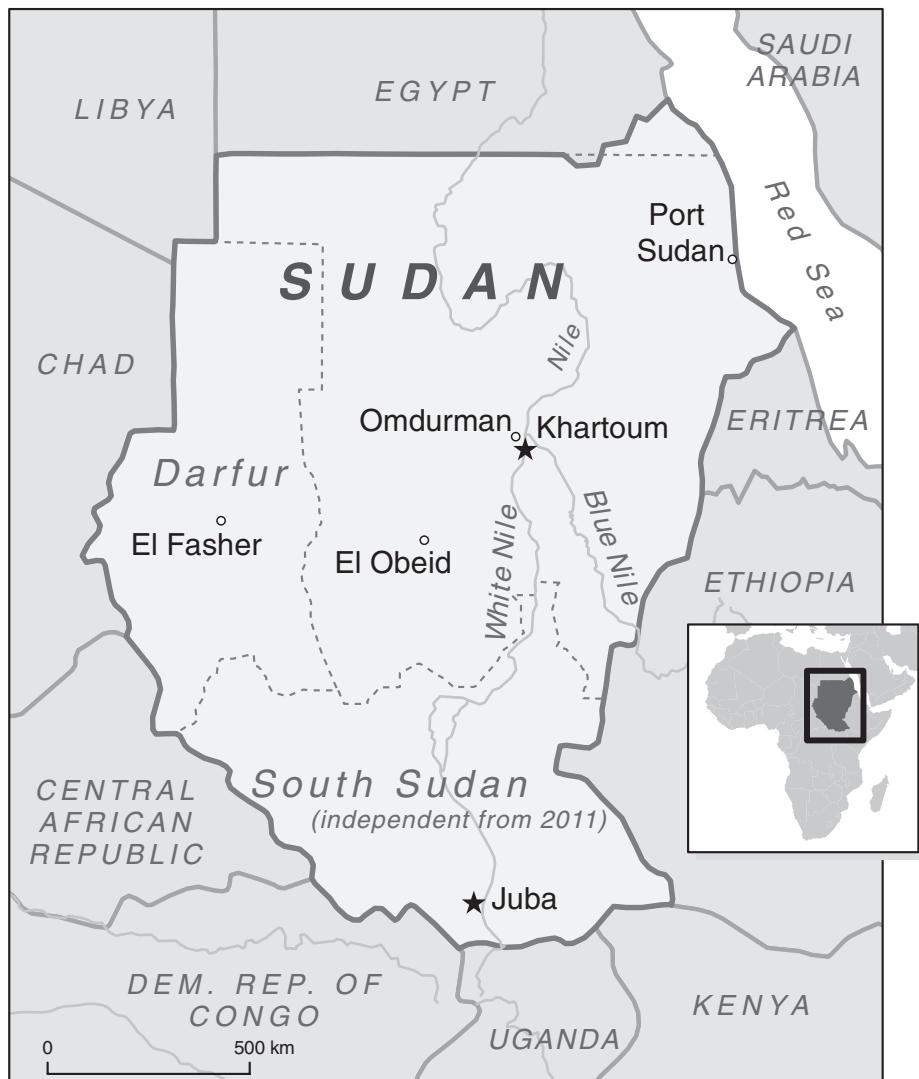
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Map 1. Contemporary map of Sudan until 2011 (Darfur annexed to Sudan in 1917).

Source: Author, derived from ESRI base data.