

## The Exception and the Rule: On French Colonial Law

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The native cannot be compared to the European, . . . he shares neither the latter's moral qualities, nor his education, nor his religion . . . , nor his civilization. The mistake is a commendable one and is typically French; it was committed by those who first drew up the 'Declaration of the Rights of Man and the Citizen', instead of more modestly drawing up the 'Declaration of the Rights of the French Citizen'.

P. Azan (1925)<sup>1</sup>

The native has a style of behaviour, sets of laws and an attachment to his land that are not ours. We will not bring him happiness either by applying the principles of the French Revolution, which is our Revolution, nor by imposing upon him the Code Napoléon, which is our Code.

F. Eboué (1941)<sup>2</sup>

Drawn from writings of different periods by authors of distinct disciplinary and professional backgrounds, the above quotations bear witness to the remarkable durability of particular representations of other peoples and of the world beyond, and of the spirit of an era whose contemporaries – with rare exceptions – professed a radical political and juridical relativism. Grounded in considerations of race, culture and worship, this relativism gave rise to an anti-universalism that had long been theorized and asserted by many who affirmed that neither the principles of the Declaration of the Rights of Man and the Citizen, nor consequently those on which the Republic was founded, could be extended to the colonies. In those far-off lands of the empire where lived peoples deemed to be 'primitive', or far too different by reason of the specific characteristics of the civilizations to which they belonged, the fundamental rights and liberties underpinning the French state could not be established. Climate, habit, religion, ancestral custom and local mentalities stood in the way of this, according to the reports and repeated declarations of the jurists and politicians of the period, who found in the recent development of the so-called

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'colonial sciences'<sup>3</sup> essential and reputedly scientific features that could properly legitimize the policy orientations and measures that they were advocating.

### **1. Basic notions of colonial law**

Many were the ethnologists, sociologists and anthropologists keen to place their skills and expertise and, occasionally more broadly, their respective disciplines at the service of the empire. For their part, the administrators of the Third Republic, faced with new and intricate problems to solve due to the rapid expansion of the overseas territories and to the considerable size and diversity of the populations which were henceforth under the aegis of the home government, often sought out the leading personalities of these different sciences. The ambitions and desire for recognition of the one group combined with the pressing needs of the other, and the adherence of almost all of them to France's grand imperial design, thus stimulated the emergence of close links between the sciences and the State that were before then without precedent.<sup>4</sup> The overwhelming majority of those involved in French colonial policy, whether as advisers to the government, law professionals, legislators or ministers, considered therefore that particular arrangements had to be set up and applied in the territories of the empire to take account of the inferiority of the 'natives', of their particularities and of the regions in which they lived, without neglecting the higher interests of the French state and the imperative of maintaining public order in the colonies. A public order whose uncompromising defence when faced with populations said to consist of barbarians or savages was a major task before which 'judicial scruple and considerations born of sentiment must give way'.<sup>5</sup> Give way they most certainly would.

#### *Human rights and colonies*

At the heart of these presumptions, which had a dominant influence in that they structured the analysis, discourse and practice of the majority of those involved with the affairs of empire at the time, was enshrined a hierarchical and racial principle which undermined the very concept of humanity as a unitary whole, composed of individuals who, though different, were all equal and, as a consequence, all eligible to enjoy subjective and inalienable rights by the sole fact that they were all recognized as being alike; that beyond the historically observed boundaries of civilized societies there existed other peoples like them, *alter egos* whose differences were not fundamental. Which implied that these peoples too should universally benefit from an equal dignity upheld by prerogatives which none might put in jeopardy without incurring a grave penalty. But this was precisely the concept that those we are discussing refused to admit. When people of the period looked at the 'Arab', the majority saw in him merely a barbarian who was all the more of a threat in that he was often reputed to be non-assimilable. The 'Negro' remained a savage or at best a 'big child' who must be controlled by firm authority while awaiting the hypothetical moment, constantly deferred in reality, when he might finally emerge from his

minority. As for the 'Annamite', reputed to be mysterious and inscrutable, he belonged to a significant civilization, certainly, but one which was inferior in many regards. Whilst the overall unity of the human race was thus not put in doubt, there definitely existed races and peoples who were not equal, which rendered vain, and even deleterious, the application of common rights for all. For J. Harmand, for example, recent 'progress' in knowledge bore out in effect the essential and sometimes irreducible diversity of human beings and the impossibility, because of that, of extending universal principles and laws to them all. Considered part of a by then outdated heritage, these principles and laws were henceforth cast aside in the name of the development of the 'ethnological sciences' which, through the fortunate influence of 'positivism' and under the guidance of de Broca and Le Bon, had allowed a break to be made with the French 'habit' of 'universalism and uniform centralization' of which the concept of assimilation, as applied to the colonies, was one of the most injurious manifestations. This, at the time classic, condemnation of assimilation led on more fundamentally to a radical critique of 'revolutionary ideas' and their associated 'utopias', rated as dangerous because they were accused of having been the cause of the country's decline as an imperial power. As for the Rights of Man, they were reduced to the rank of 'wild flights of fancy dear to the evangelists of the French Revolution'<sup>6</sup> whose notions had by then been refuted by the progress of the aforementioned sciences.

Outside of the personalities with whom Harmand aligns himself – the scientific validity of whose work was never at the time fundamentally questioned even though their propositions might be disputed – and of the specific positions of that author, the main arguments employed were quite widespread during the period. Indeed, as soon as questions arose on the proper rules that should be applied in the colonies, the alleged characteristics of the 'natives' were cited in almost systematic fashion to justify the impossibility of extending them rights of the type deemed fundamental for 'civilized races'. Reflecting upon the virtues of the forced labour regime in place in West Africa and the Congo, R. Cuvillier-Fleury wrote, in a thesis in law, that there should be no hesitation in suppressing the 'right to choose one's own work' or in restricting it considerably when circumstance and the mentality of the Blacks required it. According to this author, there exist certain regions and peoples where such restrictions result in 'excellent outcomes . . . from the point of view of improving the moral and material well-being' of the 'native' who is thus drawn out of 'idleness' and away from 'warfare' and 'pillage' by the development in him of healthy 'habits of work'.<sup>7</sup> As for the immediate abolition of slavery in colonies recently acquired by France, this was judged to be premature for reason of its likely harmful consequences for the agriculture of the regions concerned, as well as for the emancipated themselves who, spurning the 'work of the field', would give themselves over to their principal and innate vice of 'sloth'. Consequently, he argued in favour of the establishment of 'a transitional state of limited liberty' which would supposedly allow the former slaves to 'prepare themselves for their new lives as free men'.<sup>8</sup> Drawn from various different sources, these few examples – which could well be multiplied – demonstrate that in the lands of the empire institutions and practices which had long been condemned in France were occasionally to persist, even when they were prejudicial to some essential principles. More generally, an indicative

lesson and line of conduct emerged, conceived of by many as truths whose validity had been established by the 'colonial sciences': the conclusion that inferior and superior races should be governed by juridical and political regimes that stood in complete opposition to each other.

Thus, the advanced peoples of Europe and North America were suited to the benefits of democracy, the rule of law and the lengthy procedures designed to safeguard the civil and civic prerogatives of their members. But on the 'backward' or 'inadequately' civilized peoples of Africa, Asia or Oceania, it behoved that other institutions be imposed, and a justice system which, stripped of the subtleties deriving from 'the separation of administrative and judicial authority', could thus promptly chastise the 'natives' by reminding them that the 'Europeans are . . . the masters'.<sup>9</sup>

The author of these remarks, greeted with applause by the delegates to the International Conference of Colonial Sociology, was none other than Girault. Rigorously hostile to the assimilation of colonies and of the colonized peoples – in 1900 this policy was officially set aside by the public authorities as a dangerous mirage for the stability and integrity of the empire – he believed as well that the 'supreme' authority must be entrusted to 'a personage who in some way incarnates within himself . . . the imperial state and who is able to break any resistance which happens to occur'. That is why the whole body of 'civil, judicial or military authority must equally derive from him', he declared three years later at the opening of the London session of the International Colonial Institute. He closed his speech on the following lapidary formula – subsequently widely adopted – which encapsulated both what was for him a positive balance-sheet for France's new imperial orientations as well as a sure and dependable line of conduct for the future: 'enlightened tyranny is the ideal government for colonies.'<sup>10</sup>

Such were the principal elements of the quasi-official credo of juridical science and of colonial policy under the Third Republic. In respect of those by whom its foundations were laid and who drew out its practical consequences, in so doing giving birth to a system of colonial law which was yesterday as significant, flourishing and discussed as today it is too often ignored or considered as secondary, they were perfectly well aware of how exorbitant and contrary to the most elementary democratic principles this system was. Moreover, they did not conceal or seek to camouflage the environment so created, which was common knowledge in view of the many published writings and treatises that existed which were devoted to colonial legal systems. This subject was notably taught at the *École libre des sciences politiques*, in law faculties and at the *Institut d'ethnologie* of the University of Paris headed by L. Lévy-Bruhl, established in 1925 with the active support of the public authorities.<sup>11</sup> Convinced of the legitimacy of and the imperious necessity for this specific type of law for the government of the empire, and supported by the 'colonial sciences' which provided them with sociological, anthropological, ethnological and psychological evidence sufficient to give a solid grounding to the policy directions that they were advocating, the jurists and political leaders of the period openly promoted these policies, making detailed commentaries on them without seeking to disguise them in any way, secure in the certainty of their rightness.<sup>12</sup> Be that as it may, many people of that period demonstrated a clear-sightedness which is often

missing in our contemporaries, who forget, or are unaware, that the France of the Third Republic was 'neither a unitary State, nor a federal State' but 'on the model of England, an imperial State', as J. Barthélemy and P. Duez correctly maintained.<sup>13</sup>

*Metropolitan laws in the colonies: the exception and the rule*

The consequences of this division, between a republican homeland and the territories of the empire which were subject to a permanent regime of exception, were huge on the political and juridical levels. In truth 'there is no branch of law which, transplanted to the colonies, does not undergo more or less profound transformation', wrote P. Matter, the Solicitor-General at the Cour de Cassation (Court of Final Appeal). Following many others, he observed that the 'decree-based regime' which prevailed in them accentuated the differences even more and encouraged the emergence of a 'special system of law, whose peculiarities are ever more numerous and salient'.<sup>14</sup> The source of this situation was to be found in Article 109 of the Constitution of the Second Republic which, while declaring the 'territory of Algeria and of the colonies' to be 'French' territory, added immediately that they would be administered by 'laws particular to them until such time as a Special Act should bring them under the regime of the present Constitution'. What in fact happened is obvious: the transitional regime intended by this measure became fixed in place and the adumbrated intention was subsequently interpreted as being little more than '*the expression of a principle*', an interpretation accepted without demur by generations of jurists and those with political responsibilities, whatever otherwise might be their convictions and partisan affiliations, over a period of nearly a century.<sup>15</sup> Of such importance by reason of the constitutional nature of the norm which underpinned it, and of its consequences for the 'native' populations, this principle was set out by P. Daresté in these terms: '*metropolitan law does not [extend] of its full accord to the colonies which [are] governed by legislation particular to each*'.<sup>16</sup>

Nothing could be more clear, sharp and concise: two radically different politico-juridical systems were thenceforth able to flourish perfectly legally under the ægis of the fundamental statute of the Republic of 4 November 1848, reputed to be such a generous measure. And to dispel any possible ambiguity and put a close ring around the essential procedural reality we have just laid out, let's add that the rule came down to this: the laws and ordinances of the metropolitan territory were inapplicable in the colonies *apart from exceptional cases* determined by the competent administrative or legislative authority.<sup>17</sup> This inapplicability of metropolitan legislation to the territories of the empire allows us to penetrate to the juridical heart of the colonial legal system and to discover this essential fact: that system was in contravention of the basic principles of the Republic and of the dispositions of the nation, not just in a marginal or superficial fashion, or in consequence of an exceptional conjuncture of circumstances whose effects would be limited in time and space and for the individuals concerned. *On the contrary, the colonial system of law was unprincipled and discriminatory in its very essence* in that it was systematically disassociated from all of the principles proclaimed in the metropolitan territory and from the statutes adopted there.

These principles and statutes ran henceforth up against two particular restrictions, of which one was territorial in nature and the other linked to the status of individuals; the combined effects of which were at the heart of the peculiar situation affecting the colonies and the populations they contained. Considered as French, insofar as it was a matter of asserting in them the sovereign power of the state that had acquired them by conquest, these colonies were nevertheless deprived of the benefit of a horizontal extension to them of legislative acts and decrees applying in France itself. This separate territoriality was, however, not absolute, because settlers from France, wherever they might reside in the empire, continued to enjoy the rights and liberties guaranteed in the motherland. But clearly this did not apply to the 'natives', concerning whom the jurists emphasized – for them it was an obvious and almost trivial truism – that they were simply '*French subjects*, or peoples under French protection or administration, and *not French citizens*'.<sup>18</sup> Understood and applied in this way, the laws based on assigned personhood allowed ways of circumventing the restrictive effects of the territoriality provisions for the exclusive benefit of individuals from metropolitan France, and of establishing two opposed forms of status: that of the indigenous people under French rule, whose status was acknowledged only as being that of subject peoples, and that of individuals of metropolitan French origin who alone enjoyed full and complete civil and political rights.

More generally, the interpretation of Article 109 of the Constitution of the Second Republic, and the examination of its principal consequences for the legal status of both settlers and colonized peoples, allows us to pinpoint that initial moment when *the exception became the rule* in the territories of the empire by reason of the proclamation of its permanence on the one hand and of its integration into a particular juridical system on the other. This particular juridical system henceforth gave authority to this exception which thus became legal and, for many, legitimate, while at the same time itself being engendered by this exception since it promoted the emergence of systems of law particular to the colonies, the extraordinary proliferation, complexity and variability of which was remarked on by contemporaries. 'No branch of French law is as obscure, as convoluted, as studded with contradictions as is the colonial legislation',<sup>19</sup> R. Doucet commented. The causes of this situation are to be found in the mechanisms that we have just been considering, and the very nature of the dispositions in force in diverse territories of the empire. Not subservient to any general principle, beyond the compass of the foundation Law, adopted either in the homeland or in the colonies, since governors had powers permitting them to promulgate administrative orders valid only in the territory over which their authority extended, subject ultimately to the regime of executive decrees which of course escaped the control of members of the French parliament, who occasionally would become aware of these only when they were published in the *Journal officiel* [*the Official Gazette*],<sup>20</sup> engendered from various sources in the juridical and geographical spheres, these dispositions were piled up one after the other and were ceaselessly changing across time and territories.

These different elements inform us on a major characteristic of the system of colonial law, revealing that it was 'distinctly particularist',<sup>21</sup> as noted by Vernier de Byans who saw this not as an incapacitating deficiency, but rather as an



indispensable quality for the peace and security of the appropriated territories. This was an essential delimitation which gave confirmation that the horizon of this jurisprudence was not the principle of universality, the abstract man or individual to whom universally guaranteed prerogatives must be accorded. In contradistinction to these principles, those of the permanence and relative uniformity of law, the colonial legal order conceived only of concrete individual 'natives', of particular personal circumstances and of specific conjunctures, which circumscribed its application within narrow jurisprudential horizons, and which also provided the reason for its conspicuous 'flexibility' and its constant variability. Many contemporary commentators indeed praised the adaptive capacity of colonial law, and the speed with which metropolitan authorities or those of the Office of the Governor, no longer bound by customary legislative procedure and checks, could modify it to meet new and unforeseen needs to which an urgent response was essential. Such were the principal advantages of the decree-based regime which allowed for measures to be put in place that were particular to each colony. If this regime was occasionally the subject of criticism, its specific existence was never put in doubt, as borne out by its remarkable longevity, since it was not abolished until the aftermath of the Second World War. Concerning colonial law, we can therefore write, *in fine*, that it was a law ungoverned by *general Principle*, as long as it be immediately added that it nevertheless conformed to a persistent underlying *individual principle* whose effects were everywhere visible: that of being in the service of a politics of subjection of the 'natives'.

#### *'Native' subjects and French citizens*

Out of this arose a singular situation whereby the reach of the law, traditionally defined by the geographical border which delimited a space within which all nationals enjoyed identical prerogatives, became ineffective for the colonized peoples by reason of the establishment of a second frontier drawn according to racial, cultural and religious criteria. This second frontier set up a discrimination between individuals living within the empire in relation to their origins and their religion, thereby creating two distinct 'classes' separated by a 'profound gap': one a class of 'subjects', legal minors subordinated furthermore to specific obligations and legislation, and the other a class of 'citizens'.<sup>22</sup> The differences which distinguished the conditions of the former from those of the latter were not merely marginal; to the contrary, we have here a fundamental difference of nature which structured two separate worlds regimented by measures intended both to maintain a subservient status for the 'natives', to guarantee the fullness of rights for the settlers, and in the final analysis to ensure the seamless dominance of the latter over the former as demanded by the requirements of public safety, considered indispensable for the stability and prosperity of the empire. As for the modern 'generic concept of the person',<sup>23</sup> this was clearly nullified by the colonial law which established an order at the heart of which there existed not a *single personhood*, in conformity with the declared principles of 1789 on the abolition of privilege, but *several* that were endowed by completely different attributes.

The issue was not in fact novel since de Tocqueville had already pleaded in favour of a similar structure. *'In reference to Europeans, nothing absolutely prevents their being treated as if they were alone in the territory, since the rules made for them should never apply except to them'*,<sup>24</sup> he declared in 1841 in his at that time celebrated pamphlet entitled *'Travail sur l'Algérie'* [*A Work on Algeria*]. Settlers who came from the European continent would come under the rule of French law; but for the 'Arabs' and the 'Kabyles', neither equality nor civil liberties nor the universality of the law should apply either then or later. De Tocqueville in fact set no limit to this situation, which was to be perpetuated by juridical measures exempt from the principle of the general applicability of the law without which there is no equality, even though this had been affirmed in the Declaration of the Rights of Man and the Citizen. In France, the law, deemed to be the expression of the general will, 'must be the same for all, whether in protecting or punishing'<sup>25</sup> according to the now enshrined formula. In such terms was couched the decision of the Constituent Assembly of 1789, very anxious to firmly record, in several articles of the document that it was their mission to draw up, the abolition of privileges proclaimed a few weeks previously, and to give sanction to the concept of a natural equality of which the members of the body social could not be deprived. That was why in the society of the new order, which now consisted only of individuals who were free and equal, the current law must be subject to this overriding principle. We may add that for this equality before the law to be effectively guaranteed over the whole of the national territory, an equal application of the latter principle is required. Let's briefly recall, in order better to emphasize what was obliterated in Algeria, that these essential concepts and dispositions effectively disappeared in favour of a situation where there coexisted, in one and the same territory, not only two different legal orders but also two regimes conceived for two distinct populations. The rule now in vigour, which was justified by de Tocqueville, may be summarized as: 'the law does not need to be the same for all'. Furthermore, as a consequence of this, it need not be applied uniformly within the colonial space. It is therefore not surprising that, in the place and stead of the equality and equal liberty proclaimed in France itself, the colonies saw the reign of inequalities, with their accompanying cortege of diverse discriminatory measures characteristic of a legal order aimed at maintaining the subjection of the 'natives'.

In his report presented to the National Assembly in 1842, Beaumont said the same thing. 'For a long time yet', he declared, adopting for himself an argument then generally accepted, 'a legislation of exception will be necessary [in Algeria]; and it is not just public safety which requires it thus; the differences in climate, the variety of peoples, different customs, different needs call for different laws.' These specific references are interesting. Though far from original, they are instructive of this: that even if the military situation happened to turn in favour of the French army in Africa, other, less circumstantial causes like the climate and the habits and customs of the 'natives' would compel the maintenance for an unlimited period of measures that stood beyond the ambit of common law. Further on, adopting almost word for word the terms of his friend de Tocqueville who, like him, was a member of the sub-commission in whose name he reported, Beaumont added: 'Thus, there are in Africa effectively two societies that are distinct from each other which are becoming progressively more separate and each of which has its own system and laws'.<sup>26</sup> The



unitary nature of the law was thus supplanted by radical diversity of juridical conditions, equality was replaced by hierarchy, and liberty for all by the close subjection of the 'natives' and the superiority of the settlers from France. Decades later, the jurists and politicians of the Third Republic continued to maintain a similar discourse, representing situations which still conformed, in the main, to the positions justified by de Tocqueville and Beaumont. The author of *Democracy in America* was still, at that period, recognized as a great specialist of colonization whose writings were quoted, commented on and praised by those who strongly opposed assimilation and agitated for the reinforcement of the powers of the governor-general. But to forestall any false debate, it should be made clear here that it is not intended to suggest that de Tocqueville directly inspired the imperial policies of the years after 1900, but rather to note that people of that time reactivated certain of his texts in which they located analytical schemas capable of legitimizing, in a different situation, the particular policy orientations they were promoting.<sup>27</sup> Though certainly not the inspiration of these, de Tocqueville assuredly was an important reference, allowing those who quoted his writings and speeches devoted to Algeria to inscribe their campaign within a long and prestigious pedigree.

In 1938, R. Maunier was still observing that 'in the colonies there is no equality between citizens and subjects but hierarchy . . . , distinction . . . , subordination, since those who are subjects certainly have French nationality, but are French without being citizens'. A resolute supporter of this situation, which he had always argued for since he judged it perfectly appropriate for the 'primitive' peoples of the empire or those 'lacking in development', as well as being necessary for guaranteeing the supremacy of the settlers and the authority of the metropolitan state, he added by way of conclusion: the 'natives' 'have fewer rights', 'they are inferiors and not equals. That is why the word "subject" that is applied in the colonies appropriately defines the condition of the local inhabitants'.<sup>28</sup> Likewise in Algeria where, despite the decree of 24 October 1870 proclaiming the unity of the Algerian territory, its assimilation into the French metropolitan state and the creation of territorial 'départements', the 'Muslim indigenous population' remained 'French subjects'. This 'ground rule' was 'characteristic of their juridical status',<sup>29</sup> also wrote E. Larcher and G. Rectenwald, who considered that France could retain only its occupancy of North Africa at the price of this policy. Hence, in every colony, and despite particular situations linked to their specific status, there arose a 'dual system of law', a 'dual government', a 'dual administration' and a dual justice system in which 'everyone' had 'his own judges' and 'everyone' had 'his own laws'.<sup>30</sup>

Proof, if any were still needed, that the republican character of the institutions of metropolitan France was of little consequence for the men of the Third Republic when it came to elaborating concepts of the colonial State and the legal systems of the empire in forms judged indispensable for the administration of far-flung territories and races that were 'primitive' or simply 'backward', as they were called at the time. The reality of the principles applied throughout the empire and a close examination of the juridical situation to which the colonized peoples were subject, and on whom were imposed the measures already mentioned, bear eloquent witness to this. As for assimilation, often projected as the distinctive mark of the French approach to colonization, reckoned as generous and concerned with raising the status of the

peoples for which the state was responsible, to use the conventional vocabulary of the time, it was vigorously condemned and abandoned by the majority of those involved with these policies at the turn of the century. Finally, the originality of many of the measures in place in the empire is merely a myth which does not stand up to examination once it is compared with certain arrangements adopted by other European colonial powers.

In the Dutch East Indies, for example, and by virtue of an organic law of 2 September 1854 relating to the organization of government and the justice system of that territory, the 'natives' and the assimilated peoples – meaning notably the 'Moors', the descendants of Muslims from Hindustan and the Chinese – were brought under a legal and justice system specific to them to which Europeans were obviously not subject. Likewise in the German colonies, where there applied a principle enunciated in unambiguous terms by the jurist Otto Köbner, who observed that 'the set of rules promulgated for private law, penal law and judicial procedure and organization are applicable . . . only to the white population'. In respect of the situation of the 'natives and of all other coloured peoples, the imperial right to hand down ordinances is . . . unlimited',<sup>31</sup> for which reason they were subject to the imposition of special measures that applied only to them. To what extent, then, did that differ in any fundamental way from certain core dispositions of the colonial legal systems of republican France? In no way at all, as we now know. As for the Belgian Congo, rules similar to those of the French 'Code de l'indigénat' (Code of Indigenous Status) were applied there, because the local populations were subject to particular constraints obliging them for example to acquire an internal passport and to seek the authorization of the territorial administrator to be able to leave their home district. It should be added that poll taxes and the obligatory provision of labour, also imposed in many French colonies, existed there as well.<sup>32</sup> One of these imperial powers was a republic, the others a constitutional monarchy or a Reich; but all had set up legal systems that failed to respect fundamental principles, that were discriminatory and racist, upheld by permanent states of exception imposed on the colonized peoples.

In the French empire, Algeria included, the abnormality of the situation did not escape the attention of numerous commentators of the period who considered that the colonial regime and the conditions of the 'natives' were not without analogy with the regime of the feudal era. Initially developed by Fr. Charvériat, a professor in the School of Law in Algiers, this analysis was taken up and popularized by E. Larcher in a standard work of reference. In this way it became a kind of gospel which found its way into many studies or lectures devoted to colonial legal systems. 'The French with the status of citizens may be compared to nobles and lords; they alone are judged by their peers; they alone, at least in principle, bear arms. And the natives, who are simply subjects, occupy a situation similar to that of commoners or serfs', wrote Larcher. Concerned to illustrate this general proposition with concrete examples, Larcher pointed out that 'Muslims' could not travel without an internal passport, that they were obliged to provide 'certain services' to the French authorities, such as the *diffa* or 'the manning of watch-posts which closely recall the feudal duties of former times', to which were added, as Charvériat brought out, requisitions for various types of labour – land clearance, fighting plagues of grasshoppers – which may be considered as specific forms of obligatory labour adapted to the

conditions of the country. Should one be surprised at this situation? Not at all, Larcher went on, for 'in Algeria we are experiencing conditions like those of the Franks in Gaul, a victorious race imposing its domination on a conquered race'.<sup>33</sup> In 1938, in his course on colonial law given at the Faculty of Law of Paris, R. Maunier drew from these works that were already dated but still in circulation to expound pedagogically the general condition of 'the native'. 'It is the notion of vassalage, in more than one sense, which still constitutes up to the present the relationship *stricto sensu* that binds the colonies to the motherland' declared this illustrious professor and academician who recalled that the natives were merely 'subjects' and that they had no other duties than those 'universally recognized as required of subjects'.<sup>34</sup> What this proposition gained in generality, it lost in demonstrable accuracy, but no matter. More important is the fact that eminent practitioners of the period, confronted by the very specific legal systems of the empire, had no other recourse but to turn to France's feudal past to find elements of comparison capable of satisfying their analytical and interpretative intentions.

Those just quoted did not protest against the situation that they observed; on the contrary, they approved it. The same cannot be said of certain opponents of the colonial policy who, seizing for their argument upon the points and conclusions of these propositions, made consequent use of them to denounce the 'aristocracy of race' which was rife in Algeria and to criticize the circumstances imposed upon the 'natives', condemned to remain locked in an 'eternal plebeian status in the name of the *raison d'État*'. Such were the remarks of Ch. Dumas, a socialist parliamentarian charged with leading an inquiry into the situation of the 'Muslims' of North Africa, who was also one of the few to agitate for the rigorous application of the Rights of Man in the colonies in order better to combat the oppression and exploitation of the local populace.<sup>35</sup> As for Benito Sylvain, a Doctor of Laws, a naval officer trained in France and an aide-de-camp of His Majesty the Emperor of Ethiopia, he compared the situation of the African 'native' to that of a serf, 'taxable and forced to provide obligatory labour at the whim of the *ancien régime*', because such a regime of forced labour was of course also implanted in the colonies, along with the multiple legally sanctioned discriminations imposed upon him. Therefore, to put an end to this situation, he argued in favour of the principle of civil equality in the colonies while observing that the Third Republic was not faithful to its principles except on the old continent. Everywhere else, it was shamelessly betraying them by denying, to an absolute degree, 'what represented, for high-born souls, the ideal of civilization'.<sup>36</sup>

Whatever the case, even though they drew obviously antithetical conclusions, the numerous apologists and rare stern critics of colonization were aware both of the extraordinary character of the propositions underpinning the colonial legal structures and the concrete measures adopted to administer the empire of which the Republicans were so proud. We will examine two such measures: administrative internment and the notion of collective responsibility, for they were dispositions essential for the maintenance of the colonial order imposed by France. These measures bear exemplary witness to the circumstances inflicted upon the persons and property of the 'natives' as well as allowing a very close observation of the radical and active denial of major democratic principles.<sup>37</sup>

## 2. Some exceptional measures

### *Administrative internment*

Motivated, according to those who defended it, by the 'imperatives' of the war of conquest being conducted in Algeria, administrative internment was defined by a ministerial ordinance of September 1834, and further refined into its final state on several occasions during the 1840s. Progressively evolving into an established form of punishment separate from the context of war under which it had originally been justified, internment survived almost every change of regime in mainland France, from its ratification, under the Third Republic by a ministerial decision of 27 December 1897. In the colony, the exception had thus become the rule, and internment became a useful measure which, in view of the swiftness by which it could be implemented and of the modalities of its execution, allowed the authorities to hold over the local populations the spectre of an extraordinary form of sanction, which was effective in keeping them in a permanent state of fear. The motives for which it was possible to have recourse to it were: the protection of public order, then, in 1902 and 1910, the theft of flocks or herds of animals and any unauthorized pilgrimage to Mecca.<sup>38</sup>

Since it was not possible to lodge an appeal against a decision taken solely by the governor-general, the latter could therefore instigate measures of internment implemented in the form of detention within the territory of the colony – in a 'native penitentiary', to use the standard expression, or in a native village (*douar*) without authorization to leave – or by deportation to Calvi in Corsica. Furthermore, one of the major characteristics of this measure was that *the term of detention was for the most part unspecified* given that neither the place nor the form of detention were established *a priori* since the governor-general had the final say in all these matters. Finally, and this is the second extraordinary aspect of internment, it could be inflicted either *as the sole and main penalty*, or *in addition to another sentence already delivered by a court*. In this latter case, it represented a major expansion of punishment over and beyond the common law provisions and which completely escaped judicial control because there existed no path of recourse, either for the convict – which goes without saying, given the spirit of the colonial institutions – or for the judges. Punishing acts which, for a long period, found no real definition in any document, the sentence of internment was conveyed to the accused person without his having to appear before a court and it concluded only on the order of the official who pronounced it. Contrary to all the principles relating to the separation of powers and to penalties involving the deprivation of liberty which properly belong, in conformity with the Declaration of the Rights of Man and the Citizen, to the domain of the law, an administrative official – for such was in effect the legal status of the governor-general – thus had the capability of interning individuals in the conditions mentioned.

An act of untrammelled sovereignty, administrative internment bore witness to the absolute power exercised against the 'natives' since it abstracted the individual so smitten from any process of judicial control by denying him by way of consequence any right of redress. More exactly, this juridical measure transformed the

person so sanctioned into someone *absolutely without rights* since he could invoke no established text for his defence. Resolutely *ex lege*, the internee could be thought of neither as an individual nor even as a man, in the legal sense of the term, for he enjoyed none of the rights flowing from that latter condition. The physical applications of internment and the juridical status of the internee were not at the time comparable to any other existing measure; this represented therefore a significant innovation which appears to have been without known precedent since the Revolution and the establishment of constitutional governments in France.<sup>39</sup> Indeed, any offender, criminal or ordinary prisoner of war who has committed an offence is in every case judged in accordance with precise dispositions which determine the procedure, nature and conditions of implementation of the sentence, its length and the opportunities for appeal against the judgment handed down where such exist. No such provisions applied in the case of the 'native' internee who could be classified neither as a prisoner serving a punishment pronounced by a court nor as an accused person, who, even if he is incarcerated, still retains rights allowing him to defend himself and to request his release. The internee did not correspond to either of these categories because he was placed in a situation where for him, by virtue of an administrative decision and of the necessities of public order, all law was suspended for such period of time as he had not been set free by the governor-general. Thus may be clearly seen *the singularities of the administrative internment regime whose effect was to deprive a man of his liberty and through the same process to radically abolish his status as a holder of rights*, in respect of which this measure may not be confused with other liberty-depriving penalties which, though they may restrict certain important prerogatives, never have the effect of completely rendering non-existent the legal personhood of the convicted person. Internment thus certainly constituted that exceptional measure which had the exorbitant power of reducing all law to nothing.

#### *Collective responsibility*

Beyond internment, the governor-general also had the possibility, by virtue of an official circular dating from 2 January 1844, of imposing a collective fine upon a tribe or native village (*douar*). In this field as well he was invested with a discretionary power and his freedom of action was total. He could then have recourse to the collective fine in whatever manner he wished and by virtue of considerations, especially political ones, of which he was the sole judge in that it was he alone who would assess the appropriateness, necessity for and amount of the fine. Initially used to punish tribes where certain members had been engaged in acts of hostility towards the colonial authorities, its representatives or Europeans in general, it was later extended to punish crimes and offences committed collectively, and also applied in cases where the presumed perpetrator had not been handed over to the French authorities by his tribe or his home village.

It was through application of this penalty which stood outside of the common law, and which had no equivalent in the set of laws which could be invoked against the settlers or against residents of metropolitan France, that the Kabyle tribes, which had risen in revolt in 1871, were subjected to the payment of a sum whose total

amounted to 63 million francs. Unable to meet their share of this, many were forced to sell their livestock and their lands, a fact which contributed directly to the long-term impoverishment of the people of that region. 'Contrary to the most indisputable principles of our penal law', E. Larcher noted, in particular the fundamental principle enshrining 'the individuality of penalties'<sup>40</sup> which had long been guaranteed and underpinned by codes of French law, the collective fine was nonetheless inscribed in the law of 17 July 1874, but limited by this law to cases of fire-setting and its prevention in Algeria. In relation to its application, the governor-general retained all his previous powers and a completely unrestricted freedom of action. All he had to do was conform to a summary procedure: deliver an ordinance in the Council of Government.

The Third Republic had thus retained this measure in this particular form. People not involved, whose sole wrong was to be part of the same tribe or same village as the alleged incendiary, could thus suffer sanction for acts in which they had absolutely no part. In the eyes of the colonizers, and by virtue of a complete reversal of the principles applicable to Europeans, the 'native' was, by definition if not by nature, presumed guilty; he must then pay for the faults of his fellows even where he might bring forth proof that he in no way could have committed the actions he stood accused of. Once again, these measures bear witness to the disappearance from colonial law of concepts of the individual and of the person in return for a sort of indistinct mass consisting of de-individualized colonial subjects, as a consequence absolutely interchangeable one for another, on whom bore down permanent measures of exception. Such measures targeted them not as individual persons in their own right, who would have to be identified so as to be certain that they had been involved in the offences committed, but inasmuch as they were members of a 'racial' community onto which they were constantly flung back so as to merge them one with the other, they were rendered, in the eyes of French legislators, perpetually guilty. The whole notion was supported by a novel juridical concept, one previously unheard of to our knowledge: that of guilt without fault or responsibility. In 1935, J. Melia summed up this situation in these terms: 'Never has any authority more than the forest service in Algeria provoked more complaints on the part of the indigenous people . . . A forest is found to be on fire. *A priori* the Muslim native of Algeria who lives in it or who lives in the district is suspected of arson. By this very fact he becomes guilty and, even were he truly so, this guilt is extended to his tribe. A penalty which is always excessive, in the form of a fine, falls then upon innocent people who, as a result, are driven into total poverty'.<sup>41</sup>

Administrative internment, collective responsibility and the sequestration of property – this latter process may be considered as a legalized form of seizure – were all measures which prove that the persons and property of the 'natives' could be seized through the application of summary procedures which contravened all the fundamental principles proclaimed since 1789. These confirmed that the status of the indigenous person and, by extension, his property, stood outside the ambit of those principles and were not protected by any inalienable and sacred rights, since they were all permanently at the mercy of the sovereign and unlimited power of the colonial State and of its principal agent: the governor-general. For the purposes of maintaining public order, he could freely dispose of the person and lands of the



colonized subject, whether by making the first an effective outlaw in the case of internment, or by depriving him, through sequestration of his property, of the enjoyment of the second. So it came about that liberty, property and safety, supposedly guaranteed 'for all men and for all time', according to the ringing formula of a French revolutionary of 1789, were nullified for the colonized population in favour of a situation where juridical and personal insecurity were constantly to the forefront because the indigenous people could be severely punished for general offences or, worse still, for acts which they did not even commit. A legal and personal insecurity is thus revealed to have been one of the major structural effects of the regime of decrees, and a particular consequence of the different measures studied which redoubled it, and institutionalized it to the extent that it became an inherent element of the 'native' condition.

The 'native' people were not only mere subjects, as jurists and politicians of the Third Republic never ceased to repeat; because of that, they were also condemned to live in a world where, by reason of a 'legislative anarchy'<sup>42</sup> arising from the rights of empire, no longer was anything assured or guaranteed for them. This singular condition confirms the strong remarks pronounced by Girault and Maunier<sup>43</sup> on the nature of the regime imposed in the French colonies, since the creation of a climate of personal and legal insecurity is, as we know since Aristotle, one of the characteristics of tyranny, and, in the current era, of dictatorship, and even more so of totalitarian domination, as H. Arendt has so expertly expounded.<sup>44</sup>

'Let's not pretend. Let's not try to deceive. Why mask the truth? Colonization, from the very start, has not been a work of civilization, a will to bring civilization. It is an act of force, of self-interested force. It is an episode in the struggle for life, of the great contest for life which, from individuals to groups, from groups to nations, has gone on propagating itself across the wide world. Colonization, traced back to its origins, is nothing but a self-interested exercise, unilateral and selfish, carried out by the stronger against the weaker. Such is the reality of history'.<sup>45</sup> Who wrote those remarks? A committed opponent of colonization whom his political opinions would discredit because of their partiality? No. It was Albert Sarraut, Minister for Colonies, in his thoroughly official speech delivered on 5 November 1923 at the opening of the sessions of the *École coloniale*. A salutary reminder to take a hard look at things when we saw that, on 23 February 2005, a majority of French parliamentarians passed, with the approval of the government and its Prime Minister, a law in which the supposedly 'positive' effect of 'the French presence overseas, notably in North Africa'<sup>46</sup> was officially proclaimed. A strange era we live in.

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## Notes

1. Azan (1925: 39). P. Azan (1874–1951) was a general and the director of the Historical Service of the Army. The author of numerous works on Algeria and on colonization, he received the ‘Grand Prix de l’empire français’ for his overall work.
2. Eboué (1941: 3). A graduate of the École coloniale, F. Eboué (1884–1944) was secretary-general of Martinique (1932–4), then governor of Guadeloupe in 1936. Joining General de Gaulle, he became governor of French Equatorial Africa in 1940. His ashes have been transferred to the Panthéon.
3. Arising around the turn of the century, these sciences were officially enshrined by the Third Republic in 1922 with the creation of the Academy of Colonial Sciences, intended, along with others, to constitute ‘a total repository of colonial thought’, as declared P. Mille on the 10th anniversary of the ‘Company’ (*Académie des sciences coloniales*, Paris, Société d’Éditions, 1933, p. 20). As for G. Hanotaux, a member of the Académie française and a renowned specialist in colonial matters, he enthusiastically exclaimed: ‘Colonial science has become a living and active reality. Colonial science! It is science in its entirety’ (p. 23).
4. ‘It is [ethnology] which must and will guide those who govern’, wrote J. Chailly (1854–1928) in the preface to the then celebrated work of J.-C. Van Eerde (1927). The first was, among others, a founder member of the International Colonial Institute created in 1894 and a professor at the École libre des sciences politiques when he taught ‘comparative colonization’. The second was a university professor in the Netherlands and director of the ethnological section of the Colonial Institute of Amsterdam. In relation to colonial sociology, one of its most eminent representatives was R. Maunier (1887–1951), author of an ambitious and voluminous treatise entitled *Colonial Sociology*, published in three volumes between 1932 and 1942. A jurist of equal renown, Maunier was a professor in the Paris Faculty of Law and a member of the Academy of Colonial Sciences.
5. Girault (1901: 66). A well-known professor in the Faculty of Law at Poitiers, Girault (1865–1931) played a leading role at this major Congress which was held in Paris in 1900 with the support of the French authorities. Girault was the author of the *Principes de législation coloniale* [*Principles of Colonial Legislation*], published by Larose in 1895. Becoming ‘the essential handbook of [law] students and people of education’, ‘this new gospel for the colonies’ went through six editions up until 1943 (Masson, 1906: 23).
6. Harmand (1910: 55, 18 and 248). A friend of G. Le Bon, J. Harmand (1845–1921) was a French ambassador. His book is a classic that is often quoted by specialists in colonial issues. ‘The prevailing superstition’, wrote Ch. Regismanset as well, ‘is *humanitarianism*, a strange disease arising from the false idealism of 1789, bolstered by literary Romanticism, stroked by the pseudo-liberalism of Lafitte, Royer-Collard and their like, and recently aggravated by the revival of the Huguenot spirit’. At the end of this philippic, he concluded: ‘Let’s get rid of these destructive theories. No more senseless abstractions. Have done with the policy of assimilation’ (Regismanset, 1912: 52). Regismanset is also the author, together with G. François and F. Rouget, of a successful book – it ran to at least four successive editions – entitled: *Ce que tout Français devait savoir sur nos colonies* [*What every Frenchman should know about our colonies*] published by Larose in 1924.
7. Cuvillier-Fleury (1907: 33). It should be noted that France refused to sign the Geneva Convention, drawn up by the International Labour Bureau in 1930, which urged the prohibition of forced labour in colonial territories. Finally ratified in 1937, it was suspended two years later. It was not until the passage of the law of 11 April 1946 that the abolition of forced labour in the empire finally became effective.
8. Cuvillier-Fleury (1907: 33). In an article published in the prestigious *Revue des Deux Mondes*, G. Bonet-Maury defended a similar position. ‘Thus, except in rare circumstances,’ he wrote, ‘the immediate *en masse* abolition [of slavery] would be more harmful than useful to the blacks themselves. They must be prepared for it through education and by protecting them from the inclination of their instincts’, Bonet-Maury (1900: 162).
9. Girault (1901: 71 and 253). For his part, and within the same circumscribed field, A. Billiard declared: ‘in barbarian lands, judicial formalities need to be simplified and the length of the judgement

- procedure restricted so as to achieve *a system of repression of crime that is energetic, often swift and if need be, summary*' (Billiard, 1901: 47, emphasis added). A. Billiard was the administrator of a mixed commune in Algeria and inspector of the 'service départemental' of indigenous affairs in Constantine.
10. Girault (1903: 36). 'Never, he added, have our colonies made such swift progress as in the period since the government of the Republic has turned to appointing over each one the enlightened tyrant of whom I spoke earlier' (pp. 37–8). Very well informed about the colonial policies applied by each of the great European powers, Girault took his inspiration especially from Holland on which he lavished particular praise, since, in conformity with his recommendations, the governor-general of Batavia was invested with 'extremely wide powers'.
  11. R. Maunier was the person in charge of the course of study entitled 'Colonial legislation and economics'.
  12. 'Under the present French colonial constitution, the work of legislation does not accord with our republican principles', observed D. Penant, who nevertheless in no way is condemnatory of this situation. On the contrary, in his eyes it is perfectly appropriate to meet the particular needs of the empire and of the diverse populations which it includes (*Congrès colonial français de 1905* [1905 French Colonial Conference], Paris, 1905 p. 86). Director of the *Recueil général de jurisprudence et de législation coloniale* [General Record of Jurisprudence and Colonial Legislation], Penant considered that one of the essential functions of jurists was to 'facilitate the task of the legislator in colonial affairs' (p. 86). In 1906, Clémentel, then Minister for Colonies, maintained that 'the principle of the separation of powers is unintelligible [for primitive peoples]', this being the reason why 'we could not imagine applying' in the Congo 'the great complexity of our laws and our procedural rules that are made for a perfected civilisation'. The text was published in *Les lois organiques* (1906: 446–7). Twenty-seven years later, in their celebrated *Traité de Droit constitutionnel* [Treatise of Constitutional Law], J. Barthélemy and P. Duez lucidly wrote: 'Metropolitan France is organized according to liberal mode; its dependencies according to authoritarian mode. Our system of law lays down the principle of the natural equality of men . . . , whereas our imperial system presupposes racial inequality' (Barthélemy and Duez, 1985: 289, emphasis added).
  13. Barthélemy and Duez (1985: 283).
  14. Matter (1931: v).
  15. Even in Algeria, where this situation and the decree regime were abolished only by the Order-in-Council of 7 March 1944, confirmed by the Law of 20 September 1947.
  16. Dareste (1931: 233, emphasis added). P. Dareste was an honorary attorney at the Council of State (Conseil d'État) and at the Cour de Cassation, director of the *Recueil de législation, de doctrine et de jurisprudence coloniales* [Record of Colonial Legislation, Doctrine and Jurisprudence] and President of the Committee of Legal Consultants of the Colonial Union.
  17. Sol and Haranger (1930: v). The authors were both inspectors of the colonies.
  18. Solus (1927: 15, emphasis added). Solus was at the time a highly regarded professor of law at the University of Poitiers.
  19. Doucet (1926: 57). Author of several works on colonization, Doucet was the chief editor of *Monde économique*. P. Dislère, a great specialist in colonial law, had already noted in 1886 that there 'were few' legal systems which 'manifest to a similar degree the double characteristics of diversity and variability; there are none moreover which extend over subjects as complex'. Further on he adds: 'It is easily recognizable besides that this legal structure . . . is obedient to no general idea or principle' (Dislère, 1914: x). A graduate of the École Polytechnique, P. Dislère (1840–1928) was Master of the Rolls in the Council of State in 1881, Secretary of State for the Colonies in 1882 and President of the Administrative Council of the École coloniale, founded in 1889.
  20. 'Regulations and decrees are adopted without our knowledge, almost in secret from us, and we learn of them only through their insertion in the *Journal officiel*', bitterly declared deputy Gasconi on the podium of the National Assembly on 9 February 1888 (*Débats parlementaires* [Parliamentary Hansard], Chamber of Deputies, 9 February 1888, ordinary session, p. 344).
  21. Vernier de Byans (1912: 8). 'The inherent uniformity of the measures adopted by the National Assembly would find little harmony with the distinctly protean character of colonial legislation . . .

- for still a long time to come it will need for its operation a more flexible and more easily actionable apparatus than that provided by the constituent power' (1912: 10).
22. Larcher and Rectenwald (1923: 364). Concerning Algeria they added: 'it would be illusory to believe that the fusion of the two classes . . . will happen soon: . . . the whole Algerian policy of these recent years is tending on the contrary towards their separation being maintained' (1923: 364). Larcher was a professor in the Faculty of Law at Algiers and a barrister at the court of appeal. Rectenwald was a Doctor of Laws, a justice at the court of appeal and vice-president of the joint land court of Tunis. This was a classic work and an authoritative reference book, well-known by academics and students of law of the period under the name of 'the Larcher'.
  23. Supiot (2005: 60).
  24. De Tocqueville (1991: 752, emphasis added).
  25. Article 6 of the Declaration of the Rights of Man and the Citizen, 26 August 1789.
  26. Beaumont (1843: 2 and 9).
  27. 'In 1847, declared O. Dupont, that is to say long before Jules Ferry, Burdeau, Jonnart, Jules Cambon and company, . . . who are today giving such encouragement to the study of Algerian questions, M. de Tocqueville declared in the Chamber of Deputies: "it is necessary to create for Africa a machinery of government that is simpler in its components and more prompt in its functioning than that which operates in France"' (Dupont, 1901: 64). Dupont was the administrator of a mixed commune and deputy-head of Indigenous Affairs in the Government-General of Algiers.
  28. Maunier (1938–9: 320–1).
  29. Larcher and Rectenwald (1923: 408, 409).
  30. Maunier (1938–9: 14, 206). To illustrate this general proposition, Maunier quotes Governor Pasquier in Indochina: 'To each his judges, to each his laws'. Perfectly aware of the significance of this characteristic for colonial law over all, Maunier added 'such is [his] principle'.
  31. *Les lois organiques des colonies* (1906: 227, 341–2, emphasis added).
  32. Strouvens and Diron (1945: 497 and 537).
  33. Larcher (1902: 200). The *diffa* involved the obligation, in return for a level of remuneration fixed by the French authorities, to provide local officials or duly authorized agents of the government with means of transport, food and water (see Charvériat, 1889).
  34. Maunier (1938–9: 253). For his part, A. Hampâté Bâ wrote: the Whites 'are the absolute masters of the country. It is not for nothing that they are called "the gods of the bush". *They have absolute rights over us and we have nothing but duties*' (Hampâté Bâ, 1994: 193, emphasis added).
  35. Dumas (1914: 5).
  36. Sylvain (1901: 398 and 523).
  37. It was not possible here to give consideration to the *Code de l'indigénat*, described by Girault as 'monstrous', though he did not esteem it any the less necessary (Girault, *Principes de législation coloniale* [*Principles of colonial legislation*], p. 305), a description taken up by Larcher and Rectenwald (1923: 477) when they wrote, a few years later: 'Some see the overall indigenous status regime as a juridical monstrosity, and they are not entirely wrong in that'. On this precise and important point, the reader is kindly referred to Lecour Grandmaison (2005) and likewise for the history of the importation, into France and Europe, of administrative internment and collective responsibility. On the Code of indigenous status, see also Merle (2002).
  38. Sautayra (1883: 328). Administrative internment was extended to other colonies, and practice showed that it could be determined for reasons such as the failure to salute the commandant or the French flag (see Hampâté Bâ, 1992: 502). Introduced into French West Africa in 1887 and into New Caledonia in 1897, a decree of 21 November 1904 limited internment to ten years in these the first territories to adopt it. A similar regime was established in French Equatorial Africa from 31 May 1910. As for Algeria, the law of 15 July 1914 replaced internment by administrative surveillance, – a type of house-arrest limited to two years. This new measure was, however, applicable only in the territories under civil jurisdiction; everywhere else the internment regime persisted (see Larcher and Rectenwald, 1923: 233).
  39. 'In our French law we have no penalty comparable to internment . . . It stands in contradiction to all

the principles', wrote Larcher, who added: internment 'is exorbitant, contrary to the most well-found principles of our public law' and 'prejudicial to the separation of powers . . . ' (Larcher, 1902: 87 and 90).

40. Larcher and Rectenwald (1923: 537).
41. Méliá (1935: 71). The collective fines, imposed upon entire villages suspected of having supported 'rebellion' or of having damaged forests, were applied in Indochina at the end of the 19th century (Decree of 9 January 1895). Similar measures were also applied in French West Africa through a decree of 4 July 1935 relating to the forest service and in New Caledonia. Such measures were also put in place in British India (see Nielly, 1898).
42. Doucet (1926: 64).
43. About colonial governors, Maunier (1938–9: 281) declared: 'They hold every function, they are dictators in more than one respect.'
44. See Arendt (2004).
45. Sarrault (1923: 8).
46. Article 4 of the law no. 2005–158 of 23 February 2005 'extending the recognition of the Nation and national contribution to repatriated French nationals'.

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