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Recognized Legal Disorder: French Colonial Rule in Algeria, c. 1840-1900

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Introduction

Until recently, France's colonial (or imperial) past has rarely been at the forefront of its historiography. The discussions on French imperialism in comparative perspective often fell into an overwhelmingly simplistic model of "direct rule" as opposed to the British "indirect rule." A widespread assumption interlinked with this was that each country's internal political structure was strongly reflected in its colonial system, and the colonial system eventually influenced the immigration policy of the post-colonial period.[1] French particularity was often found in its ambition to "assimilate" the colonial territories and subjects. The presumed key factor here was the idea of a civilizing mission, which reconciled the apparent contradiction between colonial domination and French republican principle.[2] The narrative that largely dominated the scene was that it was the Jacobin centralizing tradition of France which was extended to its colonies, and in conjunction with the rationalizing idea of a civilizing mission, the policies of direct rule and assimilation were continuously enforced there.

[1] cf. Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, MA: Harvard University Press, 1992).

[2] Raymond Betts, *Assimilation and Association in French Colonial Theory, 1890-1914* (1961, re-ed., Lincoln, Neb.: University of Nebraska Press, 2005), pp. 28-30. See also: Alice Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895-1930* (Stanford, CA: Stanford University Press, 1997), pp. 248-251.

This view has been increasingly challenged by recent scholarship.[3] In particular, the connection between law and colonialism, or the discourse of legalities, has emerged as a new field of study.[4] In the light of these developments, the first section of this article focuses on the political and legal structure of the French colonies, and assesses how the Constitution of France integrated and formalized the pluralistic legal order in colonial possessions. The second section examines the connection between law and colonialism with reference to Algeria, which has generally been taken as a typical example of assimilation policy. Special attention will be given to how the colonial authority treated Islamic law and how the French practitioners sought to handle the inherent contradictions of a new legal system.

French Colonial Rule and Legal System

France and Britain: Contrasting Models?

In their endeavors to rule ethnically diverse and geographically distant colonies, European countries adopted various approaches in different times and places. The distinction between French and British colonial policies is a classic one, and the two models were often considered to be on the opposite sides of the spectrum. In this view, Britain allegedly projected its decentralized state structure to its colonies and preferred indirect rule, while France tried to expand its centralized state model to the colonies, and adopted direct rule and a policy of "assimilation."

These assumptions have been challenged in various ways. The most significant criticism emerges from the reassessment of their historical origin. Recent studies reveal that the juxtaposition of Britain and France has its roots in the debates of the interwar period, during which both countries' theorists and practitioners were actively involved in the

[3] Eric Bleich, "The Legacies of History? Colonization and Immigrant Integration in Britain and France," *Theory and Society* 34 (2005).

[4] *La justice en Algérie 1830-1962* (Paris: La Documentation française, 2005); Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002).

construction of their own colonial science.[5] The debates were inevitably linked to each nation's self image. On the British side, they emphasized the fundamental difference between the British decentralized "indirect rule" and the French tradition of "direct rule." On the contrary, French specialists, seeing only subtle nuances between the two, argued that their policy did not differ much from the British counterpart. This mutually prejudiced view was not to be entirely removed in the subsequent turmoil of decolonization, and it seems to have left its traces even in historians' perception in the late twentieth century.

Although there is yet no clear agreement on the demarcation between direct and indirect rule, one can employ certain basic criteria, such as the extent of reliance upon "native" local elite, and the use of a transplanted administrative system. However, each country simultaneously adopted multiple styles of rule within their respective colonial empires. British rule in India and South Africa certainly contained the elements of direct rule, and French rule in Morocco was inclined to indirect rule. On the other hand, there is considerable evidence to support the view that assimilationist France had a tendency to employ direct rule, namely in the Caribbean "vieilles colonies" and in Algeria. However, a careful reassessment is needed to explain how the republican tradition was coherently fit into the idea of colonial assimilation.

Republic and Colony: A Case of Juridical and Administrative Pluralism

The concept of assimilation covers various aspects of techniques of ruling, from administration to culture and education. Among these themes, law has attracted only sporadic interest until recently. The importance of law in this field can not be overlooked, because all colonial projects, from military conquest to agricultural settlement, were consistently framed by appeals to legality. As has been noted above, historians argue that the apparent contradiction between republicanism and colonialism required the bridging idea of a civilizing mission. The question was also brought into the sphere of law.

[5] Véronique Dimier, *Le gouvernement des colonies, regards croisés franco-britanniques* (Bruxelles: Editions de l'Université de Bruxelles, 2004), p. 273.

The most remarkable example is Article 109 of the Constitution of 1848.[6] It declared Algeria and its colonies "to be French territory," and simultaneously added that these territories would be ruled by "particular laws until a special act should bring them under the regime of the present Constitution." Under this condition, French laws used in the metropolitan territory would not be enforced in the colonies without promulgation of a special decree. The significant implication here is that under the fundamental statute of the Second Republic, two different politico-judicial systems could coexist with perfect legality. The discriminatory nature of colonial law can be thus understood not as a superficial transgression against the republican principle, but as a feature deeply and systematically embedded in the foundation of the regime.

In the colonies, the universal principle of "abstract citizen" faded away, and the inhabitants were classified according to their particular cultural and racial backgrounds. To designate its national but non-citizen indigenous population, the French administration used an ambiguous term "*sujet* (subject)."[7] A popular analogy described their status as serfs under feudalism and, using the same logic, French citizens as nobles.[8] Making parallels between the feudalistic past and the contemporary colonial situation was significant. The underlying justification for the exceptional treatment was that it was designed to be transitional, and a proper solution would arise in the future: in reality, however, this provisional regime survived into the mid-twentieth century.[9]

For one century, this system laid the legal foundation employed in the French colonies. Coincidently, it was also in 1848 that Algeria became the first colony to be incorporated into three *départements*, the term used in France as an administrative unit. This decision made it a unique colony, under the control of the Ministry of Interior, as opposed to other colonies, which remained under the jurisdiction of the Ministry

[6] Olivier Le Cour Grandmaison, "L'exception et la règle: sur le droit colonial français," *Diogène* 212 (2005), p. 52.

[7] Laure Blévis, "La citoyenneté française au miroir de la colonisation: Étude des demandes de naturalisation des 'sujet français'," *Genèses* 53 (2003), pp. 25-47. With regard to the specific treatment of the Algerian Jewish population, see: Michel Ansky, *Les juifs d'Algérie: du décret Crémieux à la Libération* (Paris: Editions du Centre, 1950), pp. 27-44.

[8] Le Cour Grandmaison, "L'exception et la règle," p. 57.

[9] Ibid., pp. 49-50.

of Marine (succeeded by the Ministry of Colonies in 1894) or the Ministry of Foreign Affairs. The establishment of departments in Algeria was certainly a symbolic act of assimilation, and the French contemporaries repeatedly asserted that from a legal and administrative point of view, "Algeria is not, strictly speaking, a colony."[10]

Despite this affirmation, multi-layer contradictions characterized Algeria's administrative structure.[11] In 1848, each department had, in principle, the same organization and function as its metropolitan counterparts, but the department system was confined to the coastal area for the first decades. While the area of departments was considerably extended after 1870, civilian-administered territory under the departments continued to coexist with the military-administered territory, and this combination continuously raised the question of administrative competence.[12] In addition, in the guise of civil control, much of the territory was subjected to a special regime called *commune-mixte*. Although this administrative structure was run by civil officers, its repressive nature was no less obvious than the former military system. The recruitment pattern of indigenous assistant officers also indicates certain continuity between the military and the *commune-mixte* regimes.

Furthermore, a plural legal order accompanied this administrative complexity. Immediately after the conquest, in 1830, French public law formally replaced Islamic law. For the fields corresponding to private law, France recognized the competence of the Muslim court, according to the first treaty between the French army and the Algerian ruler signed in 1830, which stipulated the preservation of local customs. Although this promise was to be betrayed shortly, French authority intervened in the sphere of Islamic law only slowly. From the 1840s and 1850s onward, a series of legislative measures covering criminal law and property law began to encroach on the sphere of Islamic law. Nevertheless, the area of personal status — legal qualities pertaining to the person and the law applicable to these issues, namely, family relationships and inheritance —

[10] "Rapport de M. Emile Larcher, " in *Compte rendu des travaux du congrès colonial de Marseille* (Paris: Challamel, 1908), p. 378.

[11] Pierre Guillaume, *Le monde colonial* (Paris: PUF, 1994), pp. 170-171.

[12] As a caricature of this complicated situation, see the episode of lion hunting in Alphonse Daudet's novel. Alphonse Daudet, *Tartarin de Tarascon*, 2e éd. (Paris: Dentu, 1873), pp. 237-238.

remained under the control of the Muslim court. This apparent respect for the Muslims' personal status, which was assumedly incompatible with the French Civil Code, in exchange, justified the exclusion of Muslims from French citizenship.[13] In other words, the legal principle of territoriality was intersected by the retention of personal status for Muslims.[14] In addition, the Western concept of personal status was based on the legal tradition that distinguishes personal legal rights and proprietary legal rights. This produced serious conflicts, particularly in the field of land rights, where the Islamic concept of personal status played a crucial role.

Colonial Law in Algeria and Its Recognized Contradiction

Creation of droit musulman algérien

The debate concerning land properties in Algeria illuminates how the French policymakers and specialists tried to rationalize a legal transition from Islamic law to French law. This was a complicated question, and it constituted one of the most important parts of Algerian legal literature.[15] French policymakers expected from the very first stage of the colonization that Algeria would become a settler colony, based on agricultural exploitation. Therefore, the question of land property emerged as a principal issue, and a variety of policies were applied to open up the space for European settlement.

[13] By contrast, in the four communes of Senegal, the *originaires* were granted the rights of French citizen independent of their personal status. Catherine Coquery-Vidrovitch, "Nationalité et citoyenneté en Afrique occidentale française: Originaires et citoyens dans le Sénégal colonial," *The Journal of African History* 42: 2 (2001), pp. 285-305.

[14] The usage of the concept of personal status in French colonies influenced the debates over Japanese colonial policy in Taiwan. See Asano Toyomi, *Teikoku nihon no shokuminchi hosei* [Colonial Legal System in Imperial Japan] (Nagoya: University of Nagoya Press, 2008), pp. 71-72.

[15] François Leimdorfer, *Discours académique et colonisation: Thèmes de recherches sur l'Algérie pendant la période coloniale* (Paris: Publisud, 1992), p. 222.

It is commonly accepted that the first two decades of colonization were characterized by a series of military and compulsory land spoliation. Especially in the coastal cities and the surrounding areas, the French administration carried out expropriations by means of the demolition of *waqf* (religious endowments commonly known as *habous* in North Africa), or as measures of punishment against rebel tribes.[16] The forced cantonment of tribes was also intensively used especially after the 1850s.

At the same time, there was a serious legislative attempt aimed at a certain coexistence of French rule and local tradition. Clearly, after the suppression of the Algerian resistance led by Abd-el-Kader, the French administration needed a framework of legalities to consolidate the occupation and to authorize the colonizing ventures. A series of legislative decrees, based on the works of emerging French specialists of Algerian affairs, tried to clarify the intricate legal situation. There were two objectives. First, it was necessary to delimit the public domain, which was reserved for government organized colonization projects; second, it was also vital to create the conditions under which Europeans could purchase the land under the protection of French legal scheme.

This was certainly an attempt to diminish the influence of the traditional legal system, but the point that deserves special mention is that this political move was accompanied by a certain knowledge production. A significant number of writings on Islamic law were published both in Algeria and France throughout the nineteenth and twentieth centuries. This production of colonial knowledge took a particular form in Algeria. Within French Orientalist scholarships, Algeria emerged as a largely autonomous field, supported by its own personnel and institutions.

The first characteristic of this literature is the importance of practitioners' works compared to those of academic theorists. In the first decades, the key writings were often published by military officers turned translators/ethnographers, who were then replaced by jurists, lawyers and administrators working in Algeria in the following period. The second is the minor role played by Algerian intellectuals. Few Algerians were actively involved, with some exceptions such as Mohammed Ben Sheneb, who became professor of Arabic language and literature at

[16] For the details of *waqf* in Algeria, see: Miriam Hoexter, *Endowments, Rulers and Community: Waqf al-Haramayn in Ottoman Algiers* (Leiden: Brill, 1998).

the University of Algiers. Third is its locality. Most writers were either lived in Algeria or had been trained there before going to France. In the early years, their works owed much to the French Orientalist tradition. However, toward the end of the nineteenth century, the control from the Parisian academic circle considerably slackened as did the link with the Orientalists studying the Middle East.[17]

This literature of legal doctrine, together with legal enactments, created a new system of law, known as the *droit musulman algérien*. This system was a result of the imposition of French legal concepts, but it also derived from the studies of and, to a certain degree, the invention of local "Islamic" tradition. The new legal order, by its nature, was an attempt to turn the social conflicts inherent in a colonial situation into technical questions. In this sense, the hegemonic implications of these intellectual discourses are evident. Nevertheless, it does not exclude a certain critique, however distorted, from the inside, and it is worth noting that it came from the interplay between Maghrebi and French cultures.

Interplay and critique

While direct rule and assimilation remained as the underlying principles of French colonial rule, they did affect Algerian society in multiple ways. In the first phase of the occupation, the French government overthrew the previous state, the Turkish military-dominated government. It then profoundly dismantled the tribal social structure in the hinterland. However, the removal of a state system based on urban centers and the fragmentation of tribal rural society did not automatically create a vacuum between the French authority and the local society. The colonial administration encountered the traditional legal system which is an integral part of the Islamic faith, and it could not simply replace this institution without running grave risks.

To cope with the situation, a series of reforms established a unified Muslim court system. Instead of a complete elimination of the local tradition, accommodation was used as a means of negotiating with

[17] Jean-Robert Henry et François Balique, *La doctrine coloniale du droit musulman algérien* (Paris: Éditions du CNRS, 1979), pp. 12-13; David S. Powers, "Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algerian and India," *Comparative Studies in Society and History* 31: 3 (1989), p. 542.

the colonized society. Traditionally, the Muslim law courts enjoyed an autonomous status under the pre-colonial state. Under the French regime, especially in the eastern part of country, a large number of Muslim leaders chose to work within the French system, hoping to retain their autonomy.[18]

The reorganized law court was not simply a unified French system in a traditional guise. Certainly, the presence of French judges among the *qadi* (judges) considerably reduced the real competence of the latter. The recruitment of *qadi* from Islamic schools was controlled by the establishment of officially recognized *médresa* (schools attached to mosque), though the recruitment from independent *zawiya* (lodges linked to sufism) was also admitted after the reform in the 1860s. In the late 1870s and in the 1880s, the entire Islamic establishment came under attack from the politicians and judicial officials representing the settlers' interests, and the outcome was the official consecration of these establishments within the colonial administration. This led to a certain bureaucratization and desacralization of the Muslim law court.[19] In the interwar period, there was a decline in the popular influence of Muslim notables, who were integrated into the official system. However, independent individuals retained their power, and both religious and intellectual leaders constituted a nebulous collectivity, which would foster the platform for nascent Algerian nationalism.

How did this complex interplay between colonial intervention and local reactions influence the French side? It is well known that Edward Said extensively referred to the French Oriental scholarship, when he defined the concept of *Orientalism* not as a distorted vision of the Orient but as an entirely Western construct about the Orient.[20] In his view, Orientalist knowledge was crucial for imperialism, because it consolidated the dichotomy between Western power and Oriental weakness and passivity, rather than providing accurate and practical information on the colonized society.

[18] Allan Christelow, *Muslim Law Courts and the French Colonial State in Algeria* (Princeton: Princeton University Press, 1985), p. 16.

[19] Ibid., p. 25.

[20] Edward Said, *Orientalism* (New York: Pantheon, 1978).

The example of François Cadoz may shed new light on this theoretical assumption. Cadoz was a French administrator/translator who wrote several books on the Arabic language and Islamic law in the mid-nineteenth century. He published two works, *Initiation à la science du droit musulman* (1868) and *Droit musulman malékite* (1870), while working as a humble bailiff in the city of Mascara.[21] According to his own introduction, he had studied the Arabic language and Islamic law for decades through his personal contact with Algerian teachers and jurists. The theme of the books was a critique of the work of a renowned Orientalist Nicolas Perron, who enjoyed almost universal respect during that period. Perron's translation of *Mukhtasar* by Khalil ibn Ishaq al-Jundi (*Précis de jurisprudence musulmane*, published in 1848-1854) was considered a milestone in Islamic law studies, regarded by many as a unique and authoritative source for the study of Islamic jurisprudence.

Cadoz, however, argued that Perron's translation was only partial and endeavored to point out Perron's errors. While most contemporaries, including Perron, did not forbear using the Christian and Roman terms to explain Islam, Cadoz started the book with a sensible description of the basic structure of *usul al-fiqh* (sources of law or principles of jurisprudence), relying on the central concepts such as four sources of *fiqh*, namely *Qur'an*, s*unnah* of the Prophet as embodied in the *hadīth*, *ijma* (consensus of jurists), and *qiyas* (analogical deduction). Cadoz's work, though succinct, was based on various Arabic classic commentaries and on the oral opinions of Algerian intellectuals. It was, as he himself claimed, pioneering for this period. He did not treat Islamic jurisprudence as decadent and immobile, as most French Orientalists did, and he insisted rather on the consistency and activity of juristic interpretations. In a sense, his emphasis on the flexibility of Islam is remarkably similar to the position of scholars at the present time. However, it must also be noted that Cadoz did not speak in defense of Islam. The plasticity of Islam was the key to his argument. After a long presentation of technical and esoteric issues for French readers, he abruptly concluded the book

[21] François Cadoz, *Initiation à la science du droit musulman* (Oran: Perrier, 1868); id. *Droit musulman malékite: Examen critique de la traduction officielle qu'a faite M. Perron du livre de Khalil* (Bar-sur-Aube: Monniot, 1870).

by stating that nearly all the French civil institutions, if they were not foreseen by *Qur'an* and *sunnah*, could be *legally* applied to Muslims.[22]

Debates on Land Rights and Awareness of Legal Anomaly

Cadoz's attitude could be characterized as an ideological leap, but it was nonetheless founded on a high degree of recognition. Such ambivalence was not unique to Cadoz: the debates on land ownership in the nineteenth century point to the same question. In Algeria, the growing presence of European settlers gave rise to an inevitable conflict between the two groups over the control of land. The pressing need for the French government was to create a new system of property law, so that the settlers could safely purchase the land from Muslims. The land category that posed the most problems for the French was *waqf* (or *habous*) and *'arch* (collective tribal land).

Religious endowment is a common practice in Muslim countries. It is used either to provide public benefits, such as the maintenance of mosques, schools, hospitals, roads and water fountains, or to preserve the property for the founder's family and descendants. Basically, in public endowment (*waqf khayri*), family endowment (*waqf ahli*), and in the case of a combination of the two elements (*waqf mushtarak*), once the property is endowed it becomes inalienable and is thus withdrawn from any commercial transaction in perpetuity. In Algeria, the European settlers, ignorant of its inalienability, bought a considerable amount of *waqf* property in the first decades of colonization. This resulted in a flood of claims to the property by Muslims, probably the endowment beneficiaries, and this litigation caused considerable unrest for those involved in the colonial endeavor.[23]

After the period of turmoil, a series of legislative means was devised to subdue the confusion. For the first time, with the introduction of the Ordinance of October 1, 1844 land transactions between Europeans and Muslims could not be contested on the grounds of inalienability, and this provision was extended to all transactions by the Decree of October 30,

[22] Cadoz, *Initiation à la science du droit musulman*, p. 96.

[23] E. Pellissier de Reynaud, *Annales algériennes* (nouvelle éd., Alger: Bastide, 1854), pp. 267-ff.

1858. Then, the most decisive law came into effect: the Law of July 26, 1873, known as *loi Warnier*, proclaimed that the principle of French law would henceforth be applied to the entire field concerning immovable property and that relevant parts of Islamic law conflicting with French law should be abolished (Article 1). Yet, *loi Warnier* simultaneously stated that the Muslim population remained subject to their own laws regarding their personal status and inheritance (Article 7).

These contradictory statements gave rise to further complex debates, partly because French legal concepts were utterly incompatible with Islamic law, and also because there was considerable disagreements among French specialists. Their debates mainly dealt with the family endowment, which should be categorized either as property right or as a case of inheritance. Some jurists argued that family endowment belonged to inheritance, on the grounds that it effectively permitted the transmission of property from one generation to the next generation. It thus fell into the question of Muslims' personal status, which should remain under the regime of Islamic jurisdiction, not *loi Warnier*.[24] Others argued that family endowments should be treated as a property right and eliminated according to the Article 1 of *loi Warnier*.

In these debates, both camps claimed that their views were in accordance with Islamic tradition. In particular, those who argued for the elimination of endowments founded their theory upon what they considered to be the historical origin of endowments. According to them, family endowment derived from the precedent of public endowment. While the latter's pious nature was accepted, the endowment as a means to protect family property was seen as an aberration from Islamic principle. One of the prominent advocates of this opinion, Ernest Mercier, called family endowment a "flagrant violation of the Quranic law," and he ostentatiously criticized contemporary Muslim jurists who approved of its legality.[25]

This kind of arbitrary usage of history, accompanied by an idealization of the past, was commonplace in Orientalist writings. The

[24] Powers, "Orientalism, Colonialism, and Legal History," p. 545. The validity of this interpretation was repeatedly asserted by the Court of Algiers and it remained its official position.

[25] Ernest Mercier, *Le code de habous ou ouakf selon la législation muslmane* (Constantine: Braham, 1899), p. 131, cited in Powers, "Orientalism, Colonialism, and Legal History," p. 547.

disputes about the *'arch* land category, which was also central to the *loi Warnier* of 1873, is another good example of this complexity. The question of *'arch* land suddenly emerged in the 1850s when the French authorities were trying to generalize private land ownership in accordance with European tradition. In this period, they somewhat *discovered* that there were two principal modes of land possession: *melk* (private ownership as understood in European tradition) and *'arch*. Widely divergent views about *'arch* were published and writers argued about whether it was a kind of tenure as opposed to ownership, or whether it was a collective tribal possession as opposed to a private one, or whether it was the combination of both. Another line of argument was based on local reports relating the ignorance of Muslims about *'arch* land; some writers simply denied the existence of *'arch*, considering it an invention of the French administration.[26]

In fact, historians now largely agree that the concept of '*arch* is more likely to be a colonial creation rather than a historically-rooted reality.[27] It is interesting that contemporary French specialists, at least towards the end of the nineteenth century, *were* aware of the situation.[28] For example, L.-A. Eyssautier, a jurist working at the Appeals Court of Algiers, pointed out that those who took *'arch* as reality made a huge error: they applied the theory of the first centuries of Islam to nineteenth century Algeria "despite the distance of time and political changes."[29] Here Eyssautier regarded Islamic jurisprudence as a historical process, and he admitted that there had been some crucial misunderstandings during the initial stage of French legal enactments. His proposition, however, was not the amendment of these legislations but their complete application, which was for him the only possible way to consolidate French rule. Eyssautier was not the only one to develop this kind of argument. Rather, a unique

[26] Charles-Robert Ageron, *Les Algériens musulmans et la France* (Paris: PUF, 1968), tome 1, pp. 70-71.

[27] Byron Cannon, "Perceptions of the Algerian Douar-commune and Reactions to 'arch Land Law 1863-1881, " in: Jean-Claude Vatin et al., *Connaissances du Maghreb: Sciences sociales et colonisation* (Paris: Editions du CNRS, 1984), p. 371.

[28] Maurice-Alexandre Pouyanne, *La Propriété foncière en Algérie* (Paris: Duchemin, 1895)

[29] L.-A. Eyssautier, "Terre arch: Quel en est, quel doit en être le juge?, " *Revue algérienne et tunisienne de législation et de jurisprudence* 11 (1895), 1e partie, p. 81.

conjunction of awareness and approval of legal disorder was widely shared by his contemporaries.[30]

Conclusion

Two central points emerge. First, contrary to a widespread assumption, France constitutionally integrated a colonial pluralism and diversity, notwithstanding its tendency toward universality and assimilation. Second, this led to a complex interplay between French and non-French legal systems, and it resulted not in a simple justification or rationalization, but in a certain recognition of contradictions.

It is arguable how deeply the French state really assumed an "imperial" dimension. At least its colonial rule was not as diametrically opposed to the British model as is often claimed. There was no single strategy employed, and this resulted in a composite, fractured, and certainly pluralized polity. French administration made conscious efforts to absorb certain elements of existing legal tradition, and the colonized people reacted to them in various ways, oscillating between accommodation and resistance. The creation of *droit musulman algerién* is an illustration of these intricate cultural encounters. The distinct development of colonial science should also be understood in its local context: strong political and human ties between France and Algeria, growth of settler societies, and relative autonomy of knowledge production within the colony.

French practitioners like Eyssautier were fairly perceptive on the essential contradiction of this colonial legal institution. They cast doubt on the basic logic of the new legal system and nonetheless approved of it. At the transitional stage of *droit musulman algérien*, there certainly was a curious mixture of insight and disregard. In the following period, their analysis was to be challenged, and the dominant theory of the interwar period came to emphasize the overall consistency of the mixed legal

[30] Eugène Robe, *Origine, formation et état actuel de la propriété en Algérie*, (Paris, Challamel, 1885), chap. V et VI ; Alfred Dain, "La réforme de la législation foncière en Algérie, " *Revue algérienne et tunisienne de législation et de jurisprudence* 7 (1891), pp. 142-144.

system.[31] Still, the awareness of legal anomaly remained an undercurrent. This reflexive critique was quietly embraced in this colonial regime, and it continued to underpin the law as a technique of legitimation.

[31] Emile Larcher et Georges Rectenwald, *Traité élémentaire de législation algérienne* (3e éd., Paris: Rousseau, 1923), tome 3, pp. 22-24.