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Source: *French Politics, Culture & Society*, Vol. 20, No. 2, Special Issue: Regards croisés: Transatlantic Perspectives on the Colonial Situation (Summer 2002), pp. 98-120

Published by: Berghahn Books

Stable URL: <http://www.jstor.org/stable/42843234>

Accessed: 14-04-2018 20:00 UTC

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THE EMPIRE OF LAW

Dignity, Prestige, and Domination in the “Colonial Situation”

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My contribution is an attempt to resolve one of those enigmas that the French colonial archives hold for assiduous readers. In the course of comparative research on the juridical status of *métis* children in the French Empire,¹ I was struck by the frequency with which the terms “dignity” and “prestige” figured in a wide range of colonial preoccupations—whether on the part of local or central administrations, private individuals or institutions. These were not merely personal or social qualities, but terms that had precise legal meanings and that played a central role in colonial jurisprudence. In this context, the terms were predominantly used in the negative—referring to threats to prestige (*atteintes au prestige*) or to the obligation to maintain one’s dignity (*garder sa dignité*). This runs counter to the conventional image of a self-confident colonial society, persuaded of its superiority and of the legitimacy of its “mission civilisatrice.” It is also difficult to reconcile with one of the most common representations of colonial domination as founded solely or overwhelmingly on the use of force. In fact, these documents often present the politics of prestige and the unrestrained exercise of force as a contradiction.²

The insistence on the triad of “dignity,” “prestige,” and “domination” by colonial administrators and by some members of the indigenous elite obliges us to reconsider—at least in some respects—the view of the colonial state presented in much recent historiography.³ This paper does not aim to propose yet another theory of the colonial state, but rather offers an analysis of some important and overlooked features of colonial practice—especially regarding the legal dimension of imperial rule. It focuses on those French colonial societies in which the division between subjects and citizens played a fundamental role and looks specifically at the period of consolidation of colonial rule

between the early 1890s and the late 1930s. This notably excludes the “old colonies”—Martinique, Guadeloupe, Réunion and Guyane—where citizenship was universally accorded in 1848.

I want to distinguish this perspective from a very old model of imperial history, which was concerned mostly with analyzing the extension of the metropolitan state beyond its national territory and which conflated administration and politics.⁴ Post-independence historiography has done much to show the limitations of such work. But if acknowledging the complexities and contradictions of colonial rule (especially the constraints placed on it by the colonized populations) keeps us from assuming the efficacy of the rule of law, it should not prevent us from trying to understand why law was so central to the imperial project. In many respects, Georges Balandier’s work from the early 1950s points the way.

The effort to understand the relationship between dignity, prestige, and domination offers one more suggestive angle on the colonial situation. Although most historians have identified colonialism as a quintessentially modern project (either as a byproduct of “modernity” or as its laboratory), the dignity-prestige-domination triad has much older roots and finds its meaning in the legal categories of the ancien régime. As I will suggest, the penetration of the Third Republic’s colonial projects by the *longue durée* of legal categories calls into question the “modernity” of not just the colonial state, but also of the metropolitan state that created it.

The preoccupation with dignity and prestige surfaced especially in the context of intimate contact between colonizers and *indigènes*. On numerous occasions, colonial administrators felt compelled to warn civil servants against *concubinage*. At the turn of the century, the Procureur Général of Indochina, in one of the first statements of this kind, explained to magistrates “the dire consequences of these irregular cohabitations, which degrade the magistrate and which compromise his authority, his prestige, and sometimes—still worse—his honor.” He reminded them of “the high price [he] placed on the dignity of the private life of the magistrates” and threatened disciplinary measures for those who did not conform to “conduct and private life that were equally dignified and respectable.”⁵ Although similar regulations were on the books in metropolitan France, they remained largely invisible because they were in no respect as strategically central to the maintenance of rule. These norms implied a highly personal conception of power in both metropole and colony—a conception that historians more readily associate with the ancien régime and pre-bureaucratic rule. In the colonies, this form of power was made salient by the stark social cleavage between rulers and subjects.

Métis children were another much remarked-upon threat to colonial prestige. The spectacle of these half-breeds “going native” (*retournant à l’indigène*) was an anguished subject of literature, the press, and administrative reports. Their image recurs frequently in philanthropic appeals to the colonial administration. One of these, for example, affirms:

You know that our solicitude is addressed only to those children known as *métis*, born of French fathers and Asian mothers. They are abandoned and are more unfortunate than the *indigènes*. Beyond the question of charity, their distress also raises questions about sound politics and French dignity.⁶

This rhetoric was also adopted by the *indigènes* in their relations with the administration. Voong, the Chinese owner of a gaming room, expresses his indignation in much the same terms:

We are very worried about the question of children of unknown fathers because, since they have no identity papers, no one will employ them. Many among them are vagabonds. It is for this reason that we Chinese employ them for pennies a day to fan our clients or to work as croupiers in our gambling halls. But our clients perpetually insult them. They have no identity papers but they have European faces, which is a source of shame for France. Why do I, a person of the yellow race, show them compassion, while you, who are of the same race, abandon them?⁷

The connection between the imperative of maintaining one's dignity and the policing of racial boundaries is also made repeatedly in documents produced by colonial administrators—testimony to the fact that colonial coercion and control through law were exercised not only on *indigènes* but also on the colonizers.

The question of prestige and dignity is not limited to the description of sexual intimacy and its consequences. It is also ubiquitous—and here I cite only those archives I know well—in discussions about according citizenship to *indigènes*, whether at the level of legislative action or in dossiers related to individual requests.

The significance of prestige and dignity as complements of power seems self-evident. Both notions, moreover, were implicated in the concept of the “white man's burden” which, while more developed in British colonial literature than in French, nonetheless became a commonplace in European culture by the end of the nineteenth century. Certain historians of empire later took this ubiquity at face value, seeing the white man's burden—and the forms of behavior it implied—as motives of the imperial projects. This intuitive self-evidence, however, has arguably obscured as much as it has revealed—especially in relation to how the concepts of dignity and prestige functioned and were understood. In many respects, they appear doubly displaced in the French imperial context at the turn of the twentieth century. First is their anachronistic character, suggestive of court society where the logic of honor and the importance accorded to “dignities” were central.⁸ These norms of aristocratic, pre-bureaucratic provenance survived, much diminished, in nineteenth-century bourgeois society because of their residual role in the long struggle for state power between the bourgeoisie and the aristocracy. In general, the bourgeoisie preferred the language of “respectability” to that of “prestige.”⁹

Second is the tension between these concepts and the two main (and partly contradictory) images of colonial rule: violence and bureaucracy. If the

interiorization of norms of civility and the diverse practices of individual dignity are a consequence of the centralization of the state and of the “multiplication of the chains of interdependence”—to borrow language from Norbert Elias¹⁰—then how can these notions be reconciled with the violence of the colonial conquest and the repressive system that succeeded it? By the same token, how does the preoccupation with dignity challenge the now common representation of the colonies as laboratories of governmental modernity and the goal of rational, bureaucratic administration?¹¹ Finally, how can the analysis of the colonial situation lead us to a reconsideration of these very categories of rule?

This essay will try to illuminate the peculiar structure that made dignity and prestige privileged instruments of colonial domination. Since dignity is an old legal category, dating back to the *ancien régime* but later revived in French nationality law at the end of the nineteenth century, this investigation requires a detour through an analysis of the role of law in the colonial situation.

The relationship between dignity, prestige and domination was overtly inscribed in the colonial legal order. Prestige played a significant and highly institutionalized role in the repressive apparatus: the different “*codes de l’indigénat*”—specific repressive regimes that governed the *indigènes*—all contained articles that specified the punishment of crimes against the prestige of colonial officials. Thus an 1881 decree establishing the “*code de l’indigénat*” in Indochina prohibited the following behaviors: “irreverence or lack of respect toward the administration and civil servants”; and “irreverent comments in the villages directed at the administration, the administrator, and civil servants.”¹² These were not exceptional measures taken in the uncertain context of conquest. On the contrary, repressive regimes became progressively more elaborate and detailed in the interwar years, and they included increasingly precise descriptions of affronts to colonial prestige. Crystallized in the legal discourse, prestige belonged to the basic conceptual horizon of colonial functionaries. At the same time, the field of “colonial science” in metropolitan France accorded the question of prestige and other forms of charismatic legitimacy a central place in its inquiries into the form of government proper to the colonies. This question was not restricted to the realm of political doctrine but was at the heart of instructions at the *École coloniale* in the 1920s and 30s.¹³

The question of dignity, however, has a slightly different resonance, and it is the triadic relationship between dignity, prestige, and domination that I think warrants more attention here. To begin with, this relationship needs to be understood as part of the central question of late nineteenth-century political theory: what is domination?¹⁴ Perhaps most prominently explored in descriptive and empirical terms by Max Weber,¹⁵ it was also a key political question posed by French republicans who found themselves managing the social and political consequences of democratization and universal suffrage.¹⁶ Thus, if the means of domination were developed in a highly specific manner

in the colonial situation, the problems that they raised were intertwined with more general reflections on the role of the state.

One of the merits of Georges Balandier's 1951 text was to approach the colonial question from this analytical angle. Noting that the colonial situation was about "controlling the country, and holding it,"¹⁷ he rejected the naïve explanation of colonial domination as purely a matter of force and more broadly the reductive reading of it as a "military and administrative machine." Although Balandier was explicitly addressing the American sociologist Louis Wirth, and through him British and American social science of the 1930s and 40s, this deterministic vision is visible in certain French anti-colonial analyses of the same period. In short, he insisted that domination is not a machine. Rather, it needs to be analyzed in a dynamic context that differentiates between the different means employed. On several occasions, Balandier posits the centrality of law to this process.

Balandier never pursued the point. I hope to do so here, and thereby to show more precisely how the colonial projects mobilized and relied upon legal discourse and procedures. In particular, the legal sphere is where the relationship between dignity, prestige, and domination was most closely articulated. This analytical perspective draws on a broad tradition of historical and anthropological accounts of the development of the legal system in the European colonies. Much of this work focuses on the process through which home-country legal categories and juridical processes were expressly imposed on the local systems of law. Much of it also portrays the diverse strategies and forms of manipulation of this new legal order in the context of local power struggles.¹⁸ Nearly all of it is Anglo-American in origin—a sign of the lack of interest in post-war French social science for juridical questions (despite the continued influence of the Durkheimian paradigm) as well as of the weakness of colonial history, which had difficulty escaping the pattern of denunciations and apologies for colonialism. While applicable in some respects, this corpus of work neglects three crucial aspects of the legal dimension of the colonial situation. First, domination by law concerned not only the colonized but also—and perhaps above all—the colonizers: the exported legal systems were applicable in full only to French citizens. Second is the resulting phenomenon of co-existing juridical systems—the French system and one or more local systems—which reciprocally affected each other. In this respect, the colonial situation is the first major example of juridical pluralism—a phenomenon that has since proven to be of intense interest to jurists.¹⁹ Third is the project of creating a certain uniformity of laws across the French Empire.²⁰ Before exploring these three questions further, I want to return briefly to the status of law in Balandier's text. While it does delineate important directions of research, its very ambiguity suggests ways of understanding, as a matter of intellectual history, the long French scholarly neglect of the legal dimension of the colonial situation.

The Place of Law in the Colonial Situation, circa 1951

Balandier's conception of law is ambiguous. First of all, he suggests that—as a scientific field—the law does not contribute to understanding the totality of the colonial situation. Whereas the perspectives of the “historian, economist, politician, administrator, sociologist, and psychologist” all contribute to such an analysis, the perspective of the jurist does not. This is due in large part to what Balandier perceives as the deep implication of the law in the colonial situation: law is an ideology that justifies the colonial system. In this context, Balandier cites Jules Harmand's *Domination and Colonization* (1910)—a text whose reasoning and categories of thought are eminently juridical and which was one of the most frequently cited manifestos of the doctrine of association. As a discipline, the law participates in the “inauthentic character” of the colonial situation, insofar as it furnishes “pseudo-reasons for its justification.”²¹ This characterization clearly reflects Balandier's interest in Marxism and also suggests in part why French colonial historians evinced so little interest in juridical phenomena. Nonetheless, Balandier argues that although the law is discredited as a scientific *perspective*, it remains an important *object* of analysis.

This is an unexploited but, in my view, crucial point. Law, in colonial science, was absolutely central to the production of French doctrines on how to manage the colonies and maintain colonial domination. It also figured centrally in international exchanges on these questions and above all in the training of colonial administrators.²² If other disciplines such as ethnography gained a prominent place in the period—especially during the interwar years—they maintained a close relationship with law, to the point of sharing problematics and concepts. Until the end of the 1940s, law was the central discipline in the training of colonial administrators. This was visible in the evolution of the curriculum at the *École coloniale*, which consisted mostly of adding aspects of customary law to the core curriculum of coursework in French law, taken at the *Faculté de Droit de Paris*. In spite of this prominence in the colonial production of knowledge, the contribution of juridical science to colonial science remains largely unexplored to this day—especially in comparison to anthropology. This imbalance is the result of a certain “ethnocentrism of disciplines”: social scientists in the past thirty years have shown almost inexhaustible interest in the role of anthropology and ethnography in the colonial situation. In part, this can be attributed to the strong tendency of those disciplines to reflect on the practice and status of their inquiries—a quality found only rarely in the study of law. In part, it follows from the tendency within these disciplines to overestimate the social and political significance of their enterprise. Finally, one can point to the institutional divide between the social sciences and law, and more specifically to the marginal status of legal history—particularly in France.

Despite the ideological function that Balandier accords the science of law in the colonial situation, he recognizes the crucial role the legal order played

in defining it. Consequently, he suggests two ways of studying legal institutions. First, he describes the rule of law (*l'État de droit*) "established for the advantage of the colonial society" as a privileged mode of domination. Placed between two other modes—material superiority and racial justification—the concept of the rule of law allows him to escape the opposition between base and superstructure. Today a commonplace in liberal political discourse, the French concept of *État de droit* has its origins in late nineteenth-century German jurisprudence, where it designated either the state as the ensemble of laws that define it or, on the contrary, as a juridical reality distinct from, superior to, and often a constraint on the state.²³ This second signification gained acceptance in western democratic regimes and in international relations after World War II. French legal thought at the turn of the twentieth century, however, was concerned almost wholly with the first as a means of assessing new democratic challenges to the state.²⁴ In the writing of French legal scholars, the rule of law appears as a hierarchical ensemble of norms that serves as the privileged instrument of state power against the tyranny of the majority and parliamentary omnipotence. As Balandier argues, it is this first modality—the rule of law as an instrument of state domination—that was exported to the colonies.

The second function of the law as a social institution in Balandier's text is to guarantee that the society of the colonizers remained segregated from that of the colonized. Law was a privileged means by which "the group [of colonizers] renders itself untouchable by keeping contacts to a bare minimum."²⁵ This closure and distance, he argued further, were the conditions of the "politics of domination and prestige"—notions whose relationship Balandier takes as self-evident. Segregation is also based on a "system whose fundamental justification is basically racial," and whose importance, Balandier suggests, has been substantively neglected by colonial anthropologists. Racial phenomena, like juridical matters, operate on two levels: they profoundly structure the colonial order and then play a part in the *a posteriori* ideological justification of that order.

In his analysis, Balandier has frequent recourse to the work of René Maunier—one of the most often-cited writers in the article. Maunier is somewhat forgotten today. A specialist of Islamic law, he was also trained as a sociologist and attended classes taught by Durkheim and Mauss. Between 1926 and World War II, Maunier held the chair in colonial law at the Faculté de Droit de Paris. Because students at the École coloniale had to pursue a degree in law at this school as part of their training, most of them were probably exposed to his teaching. Maunier's interest in the transformations of Islamic law in Algeria in the course of colonization²⁶ led him to conceptualize a broader imperial legal structure that would encompass the laws of metropolitan France, indigenous legal systems, and the new norms produced by the need to regulate the colonial encounter. In the enormous, three-volume synthesis of his coursework and research, *Colonial Sociology* (published between 1932 and 1942), he

insists—as Balandier notes—that the “contact between the races” is the constitutive element of the colonial experience. But Balandier does not specify that, for Maunier, this contact between the races is above all contact between the laws (“contact de droit”). Fundamentally, in Maunier’s analyses, colonization is the exportation of a system of law. Without this element, the colonizers would have the status of immigrants subject to local norms—constituting a *colonie* or settlement, in the older meaning of the word in French. *De facto* domination, in other words, requires *de jure* domination.²⁷ Only then, Maunier suggests, can it be described as the exercise of sovereignty by a central state over a colony. Only through law can domination be extended over time.

In other words, it seems that the governmentality/sovereignty couplet offers little help in explaining the colonial legal apparatus—despite its centrality to much of the recent work on the colonial state. The distinction between the two is most often borrowed from Michel Foucault: in this context, “sovereignty” refers to an older means of exercising power exemplified by the promulgation of “law” from a single source; “governmentality,” in contrast, is a more supple regime of regulation of the behavior of a population via disciplines and “standards,” which displace the rule of law. The latter mode of domination is produced from multiple sources and is no longer the singular exercise of power.²⁸ In the Empire, the legal order combined the imperative of governing the indigènes with an ever-present preoccupation with maintaining the sovereignty of the metropolitan state over the colonizers. It is the latter that illuminates the relationship between “dignity,” “prestige,” and colonial domination.

Law As the Instrument of a Two-Fold Colonial Domination

The process of colonization was continually traversed by law and legal structures. Far from being a pure exercise of force, colonization involved diverse levels of codification and, at the same time, was necessarily responsive to diverse juridical contingencies. Because colonization was also a Europe-wide project, international law played an increasing role in settling disputes between imperial nations. International law, in this context, drew initially on studies of sovereignty—in particular those of Hugo Grotius, Samuel Pufendorf, and John Locke in the seventeenth century.²⁹ By the end of the nineteenth century, of course, the question had less to do with justifying possession and domination to the populations of newly acquired territories than with justifying it to European partners who were engaged in a competition for colonies. This competition required rules—a need ultimately met by the League of Nations (1919), which asserted the “sacred mission of civilization” that defined the duties of “greater peoples” to “lesser peoples.”³⁰

But the colonial question was also posed within the national legal frame. The state’s control over its citizens living in the colonies remained a central

concern of the colonial project. Such control raised questions about the operation of sovereignty at a distance that date back to the ancien régime. Emilien Petit's *Droit public ou gouvernement des colonies français* (1771) was one of the earliest French attempts to theorize the implications of "one's distance from the sovereign."³¹ This question would reemerge at the turn of the century as jurists sought a language for the new problems of colonial society. Among other signs, Petit's work was reissued in 1911 with a long preface by Arthur Girault—the principal theoretician of colonial law in the period. He, too, characterized the nature of the link between metropole and colony as the essential legal problem posed by the colonial situation.

To colonize, we have seen, is to found a new civilized society. The question of knowing which political and economic relations to establish between the colony and the mother country is the fundamental problem that dominates colonial legislation.³²

If the question of sovereignty was perceived as solved in the metropole by the late nineteenth century (through the construction of a juridical apparatus that imposed uniform rules), it was far from settled in the colonies, where territorial discontinuity and the difficulty of "control at a distance" of the inhabitants made sovereignty a constant and very actively discussed challenge.³³ The related question of the *nationalization* of French society—the forging of a homogeneous national identity—was at the same moment a subject of sustained inquiry and intense political attention from the republican regime.³⁴ The newly conquered territories gave a much enlarged frame to this question, as was noted by Albert Duchênes in one of the first books to explore the legal organization of the territories newly conquered by the Third Republic:

The Sovereignty that manifests itself in the colonies is the general sovereignty of the French State. It is the same in our possessions as in continental France; it can be more or less visible in the case of second-degree administrative units, such as departments or colonies, when it grants more or less autonomy to those units. But it is never transformed into a special sovereignty of the mother country over her possessions. The truth is that, with regard to the sovereignty that concerns us here, the means of characterizing the legal bond that attaches the Metropole to its colonies is clear; one can only denature it through fiction. This bond exists, but—because it is the same as that with the departments of continental France—it is confused with the principle of national unity that prevents the disaggregation of the different parts of French territory—both in and outside Europe. If it is sometimes necessary to accentuate this legal bond for the colonies, it is because these—already separated in fact from the rest of France—may feel the temptation to separate themselves in law. It is then that one can manifest and safeguard the feeling of shared nationhood.³⁵

Such preoccupations with "control at a distance" need to be understood in the context of another problem: the social trajectories of the colonizers of the new societies. The settling of Algeria and New Caledonia was explicitly organized by the French government as a solution to the "question sociale" in the

metropole: those sent there were thus not particularly amenable to the project of social control.³⁶ Although there have been no major studies of the question, it seems that peripheral regions—those whose status in the French nation was still an open question at the end of the nineteenth century—furnished a large portion of the migrants to the colonies. This was particularly true of Corsica, which contributed heavily to the colonial populations of Algeria and Indochina.³⁷

As late as 1936, a basic textbook of colonial law claimed that sovereignty was the fundamental colonial question—to the point of pushing the “question indigène” to the margins of colonial law. An introductory chapter on “general notions about modern colonization” in Rolland and Lampué’s *Précis de législation coloniale* (the basic textbook for the *license* in law) specifies that modern colonialism—unlike colonial experiences from antiquity to the seventeenth century—is characterized by three essential traits:

1. It is a state undertaking;
2. It implies the existence of a new society, European in origin, in an overseas territory;
3. It creates an extension of the colonizing country [an *établissement*] placed in a special situation with regard to the colonizing country; the latter then takes on the quality of a metropole.³⁸

From the authors’ perspective, the indigenous population is of only residual interest: “Next to the local society of European origin, an indigenous society often *subsists* with its own special civilization and a more or less developed sentiment of its own particular existence. Thus it goes in Algeria, in Indochina, and in the majority of French colonies.”³⁹

These examples underline the two main preoccupations of colonial theorists: the organization of the state beyond the metropolitan frontiers, and the effective domination of the colonists themselves by this state. In this context, the domination of the indigènes is a secondary concern. The question of how to dominate the colonists was not, moreover, limited to abstract debates over juridical doctrine. The colonial administrations went to considerable lengths to address this concern in their practices and policies.⁴⁰ This perspective can illuminate the innumerable conflicts between colonial administrators and colonists—a subject well known to colonial historians and mentioned by Balandier. The larger issue of “control at a distance” became the immediate problem of local representatives of the state, whose efforts were often not well received by the colonists themselves. The local administration’s systematic practice of maintaining dossiers on colonists was one of these practices.⁴¹

Despite the efforts of some writers, it would be absurd to limit discussion of colonial legal doctrine to the question of sovereignty over the colonizers—a question with deep roots in the *ancien régime*. In the nineteenth century, the *question indigène* assumed a progressively larger place in colonial thought

and administrative practices. The question of how to govern indigenous populations was first posed in the Algerian case, which served as a laboratory for colonial law. Not surprisingly, it was connected to the question of sovereignty.

According to Balandier, the law had a second function in the colonial situation: to contribute to segregation. This aspect is better known because it is in more obvious contradiction with the universalist and egalitarian rhetoric of French republicanism. In this context, the law was not merely an ideological justification of such segregation after the fact; it was an important means of achieving and sustaining segregation. This role follows from one of the fundamental operations of the legal sphere: the translation of concrete individuals (and other phenomena) into legal categories, known in French as *qualification*. In the French case, the Civil Code is the major source of these categories; it regulates and defines the positions of individuals with respect to the family, the property regime and in relation with the state. These coordinates of personal identity—name, date and place of birth, sex, familial status—are recorded in the *État civil*, which provides the link between individual and state.⁴²

Legal status is not merely a juridical fiction—an imaginary chart of possible positions. Rather—and this is why law is crucial for any analysis of the production of social categories—legal status is constitutive of lived communities, insofar as it organizes access to institutions. In the colonies, the fundamental segregation of Europeans and indigènes was built on the civil distinction between *citizen* and *subject*. This cleavage was not merely an internal legal distinction, but one that organized many of the spheres of colonial society. The very institutions that were fundamental to late nineteenth century thought on the nature of the social bond in the metropole, as well as to the rhetoric and practice of nationalization (quintessentially, schools and the army), clearly discriminated on this basis in the colonies. Individuals of different status attended different schools and constituted different units in the military; they were thus prevented from interacting to any large degree—a practice that undermined the sense of shared position and interests. This segregation penetrated even to the level of personal data collection: the *état civil* maintained separate registers for citizens and subjects and contained different categories of information. Tellingly, in most of the territories, births and deaths were recorded but not marriages.

In practice, legal statuses were translated into social statuses mostly through the mediation of the set of norms attached to each. Whereas French citizens enjoyed approximately the same rights and privileges as in the metropole, French subjects were governed by different rules. Political rights were often limited to a right of consultation, and only on local matters. Subjects were subjected to the various “codes de l’indigénat”—specific repressive regimes imposed by the administration. These varied according to territory and were in obvious and often brutal contradiction to liberal and democratic ideals.⁴³ Finally, subjects were governed—especially in their private interactions—by forms of local customary law that were more or less consistent with

precolonial norms. The significance of these separate legal structures for the project of segregation is clear if we think of the central role that the uniform “Code civil” played in the unification of French provinces after the Revolution.⁴⁴ It would be a mistake to think that this maintenance of customary law represented a space of freedom left to the *indigènes*, or that it signified respect for their norms, as certain colonial jurists suggested at the time. Quite the contrary, customary laws were largely defined and applied by French administrators and magistrates.⁴⁵

The social distance that colonial law produced and reinforced was constantly undermined by contact between the segregated groups. Interactions between colonizer and colonized guaranteed that personal status and juridical systems operated in a dynamic setting. Personal contacts between colonizers and colonized produced not only *métis* but also converts to Christianity and all those individuals who mediated between the colonizer’s and colonized societies—a layer known as the “evolved” (*évolués*).⁴⁶ Economic and affective relations also implied communication and exchange between the juridical systems—though this involved far more changes to customary law than to French law. In addition, legal statuses and systems of norms were in no way fixed at the outset of colonization, nor were they static. No clearly predetermined project existed at the legal level. Rather, legal statuses were the result of a collective work of boundary production—above all locally, taking into account the specificity of each colonial situation—and continually renewed and reinvented. Nonetheless, between the late nineteenth century and World War II, there was a tendency to solidify legal statuses and juridical systems. This can be attributed to the increasingly menacing contestation of the colonial order—especially visible in Indochina but perceptible elsewhere—and to a juridical sphere that had progressively armed itself with categories and procedures for thinking about the legal classification of individuals in the colonial setting. For example, it was only in the late 1920s that the legal status of the *métis* began to be clarified—resulting in a series of decrees (1928-1944) that fixed their status vis-à-vis French citizenship. At the same time, the Conseil Supérieur des Colonies (the colonial supreme court) began considering a special civil status for *indigènes d’élite*, halfway between subject and citizen. This project made little headway but was repeatedly taken up—most notably in the preparation of the Brazzaville conference in 1944. This was also the period when the status of Catholic converts began to be seen as a problem—especially in Algeria where the status of subject depended in large part on provisions of Islamic law.⁴⁷ Finally, the transcription and codification of indigenous customs, the object of timid initiatives since the early part of the century, got underway in earnest and on a large scale in the 1930s. This resulted in numerous changes to the system of indigenous legal norms and helped solidify the barrier between “the Empire of custom”⁴⁸ and the Civil Code.

This dynamism implied not only a continuous effort to maintain the integrity of categories and legal systems, but also the need to define and reassert

forms of reciprocity between the legal statuses and the different juridical systems. This relationship had both a pragmatic and a historical dimension. From a pragmatic perspective, an individual's legal status determined the norms to which he was subjected.⁴⁹ From a historical perspective, it is clear that the juridical reflection on the status of persons was closely linked to the question of which rights and legal norms should be articulated in the colonies. The distinction between citizen and subject was not initially a central element of the colonial project—it was rather the consequence of a very practical question: knowing to whom the different available legal regimes should be applied.⁵⁰

In the colonies subsequently acquired by the Third Republic, colonial administrators drew on the Algerian experience in deciding that the Civil Code could not simply be applied *as such* to indigènes. By the turn of the twentieth century, the ideal of juridical assimilation of the colonies—the cornerstone of the liberal colonial project in the first half of the nineteenth century—had been, if not quite abandoned, at least indefinitely postponed, subject to the long-term evolution of conquered populations. But this shift away from legal assimilation did not entail a clear definition of colonial statuses. Quite the contrary, the constitutive elements of citizenship in the colonial situation were the subject of considerable juridical debate at the time—a debate never settled during the colonial period. Between the end of the Second Empire and the end of the 1910s, there were numerous attempts to implement a “naturalisation dans le statut”—a dissociation of the exercise of political rights from subjection to the Civil Code. The juridical and political debates that followed and the repeated failures of these measures suggest the degree to which French citizenship was perceived and constructed as inseparable from the exercise of the ensemble of private norms of behavior—inseparable from everything that concerned civility, in the broad sense. Inversely, the *subject* was defined as a person who does not participate in the national political community because—following from his civil status—he did not enter into the rules that governed private relations between citizens. In this respect, the 1916 law that granted citizenship *and* maintained Koranic-law civil status for inhabitants of the Four Communes in Sénégal was the exception that proved the rule: the law was immediately controversial with jurists who viewed it as an opportunistic measure hastily adopted during wartime.

The relationship between legal statuses and juridical systems, between norms of civility and definitions of citizenship, needs to be understood within the framework of the deeply circular connection between the colonial legal order and racial thinking: essentially summarizable as “to each race its law and to each law its race.” This equation needs to be unpacked in order to better understand the legal dimension of colonial domination, the content of the notion of race, and ultimately, the relationship between dignity, prestige, and domination.

Thus in Indochina, the “great divide” between Europeans and Asians derived from an 1864 decree that applied the Civil Code to “the French and

the assimilated [*assimilés*]” and reserved Annamite law for “conventions and civil and commercial claims among indigenous and Asians.” To make this text practicable for local administrators, an 1871 executive order had to be issued in Paris to specify the meaning of “Asian”:

In the terms of the July 25, 1864 decree, the Asians subject to Annamite law are: the Chinese, the Cambodians, the Minh-Huongs, the Siamese, the Moïs, the Chams, the Stiengs, the half-breeds (Malays from Chaudoc). All other individuals of all races are subject to French law.⁵¹

As this passage shows—in one of the very rare occurrences in French law of the word “race” to designate human groups previous to the Vichy regime—both legal statuses and the juridical systems themselves are translations of racial divisions that were essential to the “colonial situation.” The legal statuses of “citizen” and “subject” are almost exactly superimposed on the social categories of French and indigène, defined in terms of place of birth and racial identity. The extremely rare examples of indigènes acquiring citizenship status—less than 40 a year in the interwar period for the whole empire⁵²—were token gestures of republican ideology and should not confuse the fact that certain legal trajectories were strictly impossible: a Frenchman could not become a subject. It is on this basis that we can understand Maunier’s description of the contact between the races as a contact between laws. As a German administrator observed with regard to law in French West Africa: “legal status is the law proper to each person as a function of their race.”⁵³

If the equivalence between race and law exists, it is because the category of race never functioned as a pure biological fact. This is not the place to undertake a history of the uses of race in colonial settings. However, it is clear that these were strongly marked by republican scientism, itself inspired by physical anthropology. Late nineteenth-century republican thought, in this context, revolved not around “technical” or “scientific” notions of race, but around the idea of “historical races.”⁵⁴ One of the major vectors of influence was Hippolyte Taine, whose extensive use of the terms “race,” “milieu,” and “moment” in his analyses of national literatures figured centrally in the heavily literary education of most jurists. Taine’s work—itself strongly rooted in evolutionism—envisaged cultural production as dependent on the combined influences of race and milieu. Social Darwinism was another venue for the evolutionist paradigm in legal theory. Although I will not take the time here to map out this genealogy, the way forward to a notion of “one race, one law,” is clear: each race evolves at its own speed in a given physical milieu. Each produces a civilization, and, as part of it, a legal system. At any given time, race strongly conditions individuals and determines the legal norms that they can “naturally” adopt.

This multifaceted linkage between race and law explains, in part, why assimilation receded beyond a distant historical horizon. It is also the rationale for the inflexibility of statuses: juridical systems impose themselves on indi-

viduals. Thus, in the colonies, the French were prevented from opting for customary law over the Civil Code, even when, for example, they converted to Islam.⁵⁵ By the same token, the passage from subject to citizen was treated as an exceptional favor, granted only to exceptional individuals who showed themselves capable of escaping the hold of their civilization and thus their law. This conception of law as an ensemble of norms—produced in the *longue durée* by each civilization (i.e., by each race) and imposing itself on individuals—is at odds with the revolutionary ideal of the social contract. But it was entirely consistent with the notion of sovereignty elaborated under the ancien régime, which understood law as the institution by which the state exercises its sovereignty over its subjects.⁵⁶ This static, sovereign conception of law was reinvigorated by the colonial jurists who had to administer both civil and customary law. From this perspective, Frenchmen and indigènes were equally subject to the sovereignty of their own law. In the colonies, the Civil Code became nothing more than the customary law of the French race. Governing the indigènes through their traditional customs and maintaining control of the colonizers' society at a distance through the application of the Civil Code were two sides of the same coin.

Governing Oneself to Dominate the Indigènes and Governing the Indigènes to Dominate Oneself

To come full circle, this set of static relationships between race, civilization and law, on the one hand, and between personal status and sovereignty, on the other, unlocks the logic of the relationship between dignity, prestige, and domination. Maintaining sovereignty and control at a distance over the French population implied a thorough application of the Civil Code. In the colonies, the Civil Code entailed a complex notion of French civility, civilization and ultimately race. The colonial legal order, consequently, had to prevent deviance from certain codes of behavior that were thought central to French identity. This was a way of keeping the French French, and of maintaining the common front that was crucial to colonial domination. Because the notion of dignity referred to the full observance of this code of behavior, and because prestige was seen as the public performance of this observance by individuals, the implementation of the Code was the privileged site for the articulation of the two dimensions of the colonial state: the exercise of sovereignty over the French population and the governance of the indigènes.

Given the extremely small ratio of colonizers to indigènes, as well as the constraints of national and international public opinion, colonial domination, once achieved, could never be maintained purely by force, even though the colonial state was far more militarized than its metropolitan homologue. The sustained extraction of wealth from the colonized societies and the transformation of the indigènes into workers required that colonial domination be,

in some measure, accepted.⁵⁷ Thus other means of domination were sought out, including charismatic and paternalistic strategies of legitimation. These required mastery, on the part of the colonizers, of their own public behavior. In short, it required self-control. One had to govern oneself in order to govern. In this schema, dignity, in the sense of self-control, was a condition of prestige. Prestige, in turn, was an instrument of domination of the indigènes, which Delavignette understood fully :

What needs to be dominated isn't the other, it's the self. One always needs to work at cultivating oneself. The commander rises to the level of his command only through the force of his interior life. It is in him, in his person, that the *inabdicable dignity* and the indivisible responsibility of the chief resides. And it is by way of a certain solitude that he develops his interior life and his cultivation. He is obeyed not because of his rank but through the action of his personality.⁵⁸

We have here Norbert Elias's schema writ large: the centralization of power was accompanied by the monopolization of physical violence by the state, and with it a process of interiorization of aggressivity and moral interdictions—beginning with the dominators. And in fact we also find in colonial society, as Balandier noted, “the notion of heroic superiority”⁵⁹ and of aristocratic values. In the French imaginary, these values were incarnated by the ideal of the English gentleman, who dominates with natural ease thanks to his mastery of the codes of civility. As Maunier put it:

These juridical sources of imperialism are to be sought in the old Anglo-Saxon spirit [*état d'âme*], in the ideal of the gentleman, which defined the rules and canons of politeness and civility. The gentleman is not only the polite or policed man [*l'homme policé*]. He is above all the man who knows how to command—imperial man, in a sense, who, having power, uses it to erect laws in the common interest. The idea of an authority-power, the idea of an authority-duty, are the heritage of an aristocratic tradition.⁶⁰

The importance of prestige in dominating the indigènes is thus entirely contiguous with the question of maintaining French sovereignty over its overseas colonists. It is by no means clear, moreover, that the question of governing the indigènes comes first. Some colonial theorists reversed the notion: not only must one dominate oneself in order to dominate others, one must govern others in order to govern the self. As Maunier argues:

One must govern in order to govern oneself: one must master in order to master oneself. It is in this sense that de Vogüé and Lyautey argued that the chief virtue of expansion was that it hardened [*retremper*] men, reforging the bastardized character of today's Frenchmen through danger.⁶¹

In this sense, colonization implies a work on the self. Just as the civilizing process described by Norbert Elias implied first the transformation of the dominators, the “mission civilisatrice” implied the relentless civilizing of the

French themselves. The negative form of this imperative is the figure of the “décivilisé”—the French citizen who goes native, which colonial literature warned against ad infinitum. We find it in a novel by a high-level education official in Madagascar⁶²; in Maunier’s classes at the law school, which describe how the “demoralization of whites” results in the “high” imitating the “low”⁶³; and in the official objectives of the director of the École coloniale, who made his first priority that of arming future administrators against this danger.⁶⁴

In this context, law—and especially the private law that governs individual behavior—appears as one of the privileged instruments of “control at a distance.” The rationale for integrally applying the Civil Code to the colonists becomes clearer, as does the seemingly disproportionate effort of the colonial administration to extend metropolitan law to govern what was often a very small colonial population.⁶⁵

Finally, this framework allows us to understand the deeper significance of dignity and its connection to prestige. Dignity is an old juridical category, defined by the “inalienable” nature of certain political and administrative institutions: thus one spoke in the ancien régime of the “dignity of an office” or the “dignity of the crown” to signify that the individuals who performed these functions were only temporary holders of the post, and that they could not freely alter its qualities or powers. Dignity, in this context, was what escaped individual liberty. It was the set of roles associated with a particular status that the bearer had to perform. In French law, *ordre public* describes those rules that individuals cannot suspend even in their private relations and interactions; these are the most fundamental rules of the political order.⁶⁶

Colonial juridical doctrine developed its own notion of public order composed of the norms thought essential to maintaining the dominance of the colonial state.⁶⁷ Thus while customary law was left largely intact, a certain number of local practices were considered inimical to public order. In order to assure “respect for personality and human dignity,”⁶⁸ colonial administrators banned human sacrifice, the chief’s right over the life and death of his subjects, forms of anthropophagy and sorcery linked to assassination, and slavery and the slave trade.⁶⁹ Public order also constrained the colonizers: because French prestige was considered one of the crucial elements of colonial domination, any behavior that diminished that prestige was contrary to it. In this sense, dignity in the colonies can be understood as an extension of the concept of the dignity of an office developed during the ancien régime—a hypothesis that rests on the *longue durée* of legal categories even across major political and social transformations.⁷⁰ For this reason, certain forms of behavior that belonged to zones of the private sphere left to individual liberty in the metropole became matters of public order in the colonies. The French could no longer freely dispose of certain formerly personal capacities or choices—whence Delavignette’s notion of “inabdicable dignity.”⁷¹ For example, the fraudulent recognition of children—a practice that metropolitan justice studiously ignored in the name of the “family peace and repose”—was unaccept-

able in the colonies. It was said to call into question the “dignity of French status,” because through such recognition the self-proclaimed father granted citizenship to a colonial subject—a prerogative of the state. This quandary resulted in modifications to the Civil Code in certain colonies and to the open possibility of the prosecution of fraudulent recognition by the Ministère de la justice, a practice explicitly forbidden in metropolitan law.⁷² French status thus functioned as an abstract juridical person whose diverse qualities were imposed on the concrete individuals who benefited from that status and which implied the performance of a certain role. It is worth recalling the Latin origin of the word *person*, which designates both a theatrical role and a mask: it is in this sense, I would argue, that one could understand the title of Fanon’s work, *Black Skin, White Masks*.

Conclusion

The goal of these remarks has been to understand why the concepts of dignity and prestige carried such weight in the colonial situation. I have tried to show how they were deeply implicated in a dialectic that related the sovereignty over the colonists to the governance of the indigènes. This conceptual order was framed by old legal categories—in many instances dating back to the ancien régime. Among them, the notions of dignity and prestige suggest that the debate about the “modernity” of the imperial age is somewhat misplaced: it matters very little to know whether colonies have been the laboratory for modern forms of government or the evil by-product of modernity. In the end, it is the idea of “modern rule” that perhaps needs to be problematized.

Moreover, the “dignity-prestige-domination” triad suggests ways of thinking about the continuities between colonial dominance and the metropolitan state. To take up the question of individual status in the French case, it is clear that, beyond the republican rhetoric of the civic pact and the “daily plebiscite,”⁷³ national identity equally implied an “inalienable” aspect. The concept of dignity played an important (and to this day largely overlooked) role in metropolitan discourse on national identity—including in the nationality law of 1889, which became the legal framework for national identity for more than a century. In this sense, the colonial situation, far from being an aberration from the French civic model of national identity (as many French social scientists would have it even today), allows us to understand more deeply the multiple forms of subjection at work in the “metropolitan situation.”

Notes

1. I would like to thank Frederick Cooper, Herrick Chapman and Joe Karaganis for their helpful comments and suggestions on this article. My comparative research has two related objects: (1) the ways in which the “social question of the *métis*” was translated into the juridical sphere—specifically the elaboration of a specific juridical status for the *métis*; and (2) how the colonial situation (and the *métis* as the paradigmatic marginal case) served as the crucial site for framing and reworking French citizenship. Although this research intersects the larger context of juridical norms at the level of the French Empire, it bears primarily on the example of Indochina, which served as a laboratory for colonial policies in these matters. See Emmanuelle Saada, “La ‘question des métis’ dans les colonies françaises: socio-histoire d’une catégorie juridique (Indochine et autres territoires de l’Empire français, années 1890, années 1950)” (Thèse de doctorat, École des Hautes Études en Sciences Sociales, 2001). Though the focus on the legal dimension of the “*métis* question” stakes out different sociological issues and historical trajectories, my project is indebted to the work of Ann Laura Stoler; see, in particular, “Rethinking Colonial Categories: European Communities and the Boundaries of Rule,” *Comparative Studies in Society and History* 31, 1 (1989): 134-61; “Carnal Knowledge and Imperial Power: Gender, Race and Morality in Colonial Asia” in *Gender at the Crossroads of Knowledge: Feminist Anthropology in the Postmodern Era*, ed. Micaela di Leonardo (Berkeley: University of California Press, 1991), pp. 155-201; “Sexual Affronts and Racial Frontiers: European Identities and the Cultural Politics of Exclusion in Colonial Southeast Asia,” *Comparative Studies in Society and History* 34, 3 (1992): 514-51.
2. In this context, the representative of a *métis* association could make the following argument in favor of integrating colonial-born individuals (and especially *métis*) into the colonial administration: “The government has had to recall certain of its functionaries for public intemperance or scandalous brutality. We should think of the effect that these men have on French prestige—isolated in posts where they are difficult to monitor and completely unrestrained.” (Henri Bonvicini, *Enfants de la colonie* [Saigon: Imprimerie coloniale, 1938], p. 45. Unless noted otherwise, this and all other translations are my own.)
3. Perhaps most notably, Ranajit Guha’s assertion that the colonial state functioned through dominance without hegemony—i.e., it did not seek to persuade its subjects of its legitimacy. See Ranajit Guha, “Dominance Without Hegemony and Its Historiography,” *Subaltern Studies VI: Writings on South Asian History and Society* (Delhi: Oxford University Press, 1992), pp. 210-309. For a discussion of this view, see Frederick Cooper, “Conflict and Connection: Rethinking Colonial African History,” *The American Historical Review* 99, 5 (December 1994): 1516-45.
4. See Guha, “Dominance Without Hegemony,” p. 294.
5. Centre des Archives d’Outremer. Dossier GGI 7770. Circular related to the difficulties resulting from the cohabitation of French functionaries with indigenous women. 1897-1901.
6. Centre des Archives d’Outremer. Dossier GGI 16769. Request for a subsidy for the society for the protection of childhood in Cambodia. Letter of 19 March 1910.
7. Archives Nationales du Viet Nam, center # 1, Dossier RST 71191. Translated from the Vietnamese with the help of E. Poisson.
8. See Norbert Elias, *La Civilisation des moeurs*, trans. Pierre Kamnitzer (Paris: Calmann-Lévy, 1973) and *La Dynamique de l’Occident*, trans. Pierre Kamnitzer (Paris: Calmann-Lévy, 1976).

9. On this, see Robert A. Nye, *Masculinity and Male Codes of Honor in Modern France* (New York: Oxford University Press, 1993).
10. I cannot expand here on Elias's many references to nineteenth-century colonial conquest. He viewed modern colonial expansion as the logical continuation of the civilizing process. See in particular, *La Dynamique de l'Occident*, pp. 207-208 and p. 284.
11. For an application of the Foucauldian notion of governmentality to the colonial situation, see David Scott, "Colonial Governmentality," *Social Text* 43 (1995): 191-220. On the colonies as laboratories for the modern state, see Gwendolyn Wright, *The Politics of Design in French Colonial Urbanism* (Chicago: University of Chicago Press, 1991) and Paul Rabinow, *French Modern: Norms and Forms of the Social Environment* (Cambridge: MIT Press, 1989).
12. René Pommier, *Le Régime de l'indigénat en Indochine* (Paris: Michallon, 1907), p. 58.
13. The most often-cited work from these debates is Robert Delavignette, *Les Vrais Chefs de L'Empire* (Paris: Gallimard, 1939), derived from his classes at the École coloniale, which he directed from 1937 to 1946.
14. Of course, this question is also at the heart of much recent historiography of the colonial situation, and especially of works by some of the authors from the Subaltern Studies group. See again Guha, "Dominance without Hegemony."
15. Although Weber's work became known in France only much later.
16. From the enormous literature on this subject, see especially Claude Nicolet, *L'Idée républicaine en France* (Paris: Gallimard, 1982) and Pierre Rosanvallon, *Le Sacre du citoyen* (Paris: Gallimard, 1992) and *La Démocratie inachevée* (Paris: Gallimard, 2000).
17. Georges Balandier, *Sociologie actuelle de l'Afrique Noire: Dynamique des changements sociaux en Afrique* (Paris: PUF, 1955), p. 11. The two first chapters of this work reproduce his article, "The Colonial Situation," in all but a few details.
18. See in particular Bernard Cohn, "Law and the Colonial State in India" in *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), pp. 57-75; Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985). Richard Roberts and Kristin Mann provide a bibliography of this body of work in *Law in Colonial Africa* (Portsmouth and London: Heinemann and James Currey, 1991); see also Sally Engle Merry, "Law and Colonialism," *Law and Society* 25, 4 (1991): 879-922.
19. The colonial origins of juridical pluralism in the colonies is noted by M.B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975).
20. Thus despite the great sociological diversity of the empire, the specific legal status of the *métis*—elaborated in Indochina in 1928—was exported to West and Equatorial Africa, Madagascar and New Caledonia, and then Togo and Cameroon.
21. Georges Balandier, *Sociologie actuelle de l'Afrique Noire*, p. 50.
22. For example, jurists dominated the diverse international colonial congresses that were organized by the Institut colonial international in Brussels between 1900 and the 1930s.
23. See Jacques Chevallier, "Les doctrines de l'État de droit," in *Le Droit dans la société*, ed. Philippe Tronquoy, (Paris: Les Cahiers français/La Documentation française, 1998), pp. 3-8.
24. In particular Carré de Malberg. See Chevallier, "Les doctrines de l'État de droit," p. 4.
25. Balandier, *Sociologie actuelle de l'Afrique Noire*, p. 65. One of the examples emphasized by Balandier is the status of the *métis*.

26. Maunier's work and teaching were exemplary of the ethnographical orientation of colonial law in the period. Maunier was, among other things, the creator of the program in juridical ethnography at the Paris law school.
27. René Maunier, *Sociologie coloniale: Introduction à l'étude du contact des races* (Paris: Montchrestien, 1932). See in particular Chapter 2.
28. On this point, see in particular, "La Gouvernamentalité," in Michel Foucault, *Dits et écrits*, vol. 3 (Paris: Gallimard 1994), pp. 635-57.
29. In particular, international law recognized only three modes of appropriation: conquest, cession, and occupation. On these notions, see Isabelle Merle, "La construction d'un droit foncier colonial," *Enquête* 7, 2nd semester (1998): 97-126, esp. pp. 101-102.
30. The intense competition between European powers at the end of the nineteenth century in Asia and Africa (especially in the Congo basin) was the object of diverse international conventions that specified the obligations of colonizing states (the General Act of Berlin, 1885; the General Act of Brussels, 1890; and the Convention of Saint-Germain en Laye, 1919).
31. That is, "l'éloignement où l'on est du souverain."
32. Arthur Girault, *Principes de colonisation et de législation coloniale* (Paris: Larose, 1895), p. 45.
33. This question of the "control at a distance" of populations is central to Max Weber's theory of domination (developed especially in *Economy and Society*). The process of construction of modern states and—in parallel—the nationalization of societies implies means of domination that no longer operate by direct contact between persons. Although Weber did not discuss the question of modern imperialism, his work in this area is pertinent for analyzing a situation that extends the problem of both geographical and social distance.
34. Despite the need for certain revisions to Eugen Weber's analysis of the process of nationalization in *Peasants Into Frenchmen* (Berkeley: University of California Press, 1976), and despite the fact that the nationalization of French society was indisputably a long-term process, it is clear that nationalization and national unity were analyzed with unequalled acuity in the last third of the nineteenth century by intellectuals of all republican stripes (notably Renan and Durkheim) as well as by the institutions that undertook to produce that unity (education, the army, and also the legal system, especially the new laws pertaining to nationality).
35. Albert Duchènes, *Du régime législatif des colonies* (Paris: Rousseau, 1893), pp. 109-10.
36. On the New Caledonian context, see the work of Isabelle Merle, *Expériences coloniales: la Nouvelle-Calédonie (1853-1920)* (Paris: Belin, 1995).
37. On this point, see Jean-Louis Fabiani, "Tragédiens et Comédiens, Les Corses et l'État français," *French Politics, Culture & Society* 18, 2 (Summer 2000): 1-20, esp. pp. 6-7.
38. Louis Rolland and Pierre Lampué, *Précis de législation coloniale (Colonies, Algérie, Protectorats, Pays sous mandat)* (Paris: Librairie Dalloz, "Petit Précis Dalloz" collection, 1936), p. 2.
39. *Ibid.*, p. 3. My italics.
40. In his 1897 *Principes de colonisation*, Jean-Louis de Lanessan, governor general of Indochina between 1891 and 1894, affirms: "The colony acts on the colonizer, just as the colonizer acts on the colony. The colony transforms the colonizer and makes him into a new human type—strongly attached both to the country where he was raised and to the country where his ancestors came from. The local spirit that animates these men is always sharpened and transformed into revolutionary tendencies by the missteps and abuses of power of the metropole."
41. See for example Constant Morice, *Nouvelles Lettres d'un colon: Études de la vie tonkinoise* (Hanoi: Imprimerie du journal l'Avenir du Tonkin, 1907).

42. Gérard Noiriel, "L'identification des citoyens: naissance de l'état civil républicain," *Genèses* 13 (Autumn 1993): 3-28.
43. Here one runs up against a limitation of the rule of law—conceived in its substantial sense—which presupposes the existence of a certain number of fundamental individual rights that could be exercised, at the limit, against the state. This "liberal" definition would predominate in France after World War II. See Chevallier, "Les doctrines de l'État de droit."
44. On the role of the "Code civil" in the nationalization of French society, see François Ewald, ed., *Naissance du Code civil: la raison du législateur* (Paris: Flammarion, 1989). On its role as a national "place of memory," see Jean Carbonnier, "Le Code civil," in *La Nation*, vol. 2 of *Les Lieux de Mémoire*, ed. Pierre Nora (Paris: Gallimard, 1986), pp. 293-315.
45. On this point, see Mahmood Mamdani, *Citizen and Subject* (Princeton: Princeton University Press, 1996).
46. These contacts were located first in the cities, which were the main "locus of colonization." On this point, see Catherine Coquery-Vidrovitch, "Villes coloniales et histoire des Africains," *Vingtième Siècle* 20 (1988): 49-73.
47. See André Bonnichon, *La Conversion au christianisme de l'indigène algérien et ses effets juridiques: Un cas de conflit colonial* (Paris: Librairie du Recueil Sirey, 1931).
48. I borrow this expression from Jean-Loup Amselle, *Vers un Multiculturalisme français: L'empire de la coutume* (Paris: Aubier, 1996).
49. Beyond ideological considerations, the plurality of statuses and of juridical systems in the colonies continually posed practical questions of jurisdiction: in the case of *métis* children, for example, the basic question that monopolized debates was whether their status should be resolved by French or indigenous tribunals—a problem jurists referred to as a "vicious circle."
50. See Emmanuelle Saada, "La République des indigènes," in *Dictionnaire de la République*, eds. Christophe Prochasson and Vincent Duclert (Paris: Flammarion, forthcoming).
51. Note sous arrêt, "Jurisprudence," part 3 of *Recueil de législation, de doctrine et de jurisprudence coloniales*, ed. Pierre Daresté, 1900, p. 80.
52. In the colonies, the acquisition of citizenship was extremely rare before World War I and still very infrequent in the interwar years. In 1925, for example, there were 36 such cases in all of the Empire—at that time comprising roughly 60 million inhabitants. In comparison, there were 11,107 naturalizations of foreigners residing in metropolitan France in the same year. On these figures, see Henri Solus, *Traité de la condition des indigènes en droit privé* (Paris: Recueil Sirey, 1927), p. 118.
53. Dr. Asmis, "La condition juridique des indigènes dans l'Afrique Occidentale française," in Part 2 of the *Recueil Daresté* (1910), pp. 17-48, p. 23.
54. On this notion, see Gérard Noiriel, *Population, immigration et identité nationale* (Paris: Hachette, 1992), p. 30.
55. René Maunier emphasizes this impossibility: "The first colonizers are often adventurers—buccaneers and rogues. In their opinion, they are free from the orders of the King by the simple fact of having endured the 'baptism of the Tropics,' which opened new horizons before them. They have no shame and are capable of anything. To date, explorers and pathfinders have always been tempted and inclined to abandon their laws in order to follow those of the poor natives. And we have had to ask ourselves whether, legally, an émigré could switch from one law to the other, giving up French law for local law. This situation has arisen principally in North Africa, where conversion to Islam implies obedience to Islamic law. Certain Frenchmen believe that it suffices to adopt Islam and follow the Koran (whose traditions have the force of law) to be no longer bound by French status. In Algeria, our tribunals have had to declare on several occasions that one cannot voluntarily aban-

- don French law and that a Frenchman in the colonies stays French, subject to French law. French law is clear that it does not suffice to adopt the religion of the inhabitants, abandoning one's own religion—and in particular becoming a Muslim in order to be liberated from them. In the colonies, he who is born French stays French." *Le Progrès du droit*, vol. 3 of *Sociologie coloniale* (Paris: Montchrestien, 1932), p. 197.
56. This notion of "loy" was central to Jean Bodin's theory of sovereignty, which provided the basis for the juridical conception of the state in France. On this point, see Olivier Beaud, *La Puissance de l'État* (Paris: PUF, 1994).
 57. See Bruce Berman, "Structure and Process in the Bureaucratic States of Colonial Africa," *Development and Change* 15, 2 (April 1984): 161-202.
 58. Delavignette, *Les Vrais Chefs de l'Empire*, p. 18. My emphasis.
 59. Balandier, p. 64.
 60. Maunier, *Sociologie coloniale*, p. 52.
 61. *Ibid.* p. 114. I note here the racial undercurrent of this imperative, in which colonization serves to "harden the French race" (*retremper la race française*)—a common argument in end-of-the-century writing haunted by the specter of degeneration.
 62. Charles Renel, *Le Décivilisé* (Paris: Flammarion, 1923).
 63. René Maunier, *Le Problème du contact des races*. From a (192?) class on "Legislation et économie coloniale," photocopied from the Faculté de Droit, Paris. The class can be found in the bibliothèque Marcel Mauss, now part of the bibliothèque du Musée de l'Homme.
 64. Georges Hardy, "La préparation sociale des jeunes gens qui se destinent à la colonisation: fonctionnaires et colons," in *Le Problème social aux colonies*, the complete minutes of classes and conferences of *Semaines sociales de France*, Marseille, 22nd session, 28 July – 3 August 1930 (Lyon: Chronique sociale de France, 1931), p. 471.
 65. Only a few rules related to the formalities of marriage and to the control of immigration were loosened in the colonies, to take into account the difficulties created by distance from the metropole.
 66. Thus Article 6 of the current code states: "One can not suspend, through special contracts between individuals, rules that concern public order and morality."
 67. Solus was the first to theorize this notion. See Solus, *Traité de la condition des indigènes en droit privé*.
 68. Girault, *Principes de colonisation et de législation coloniale*, vol. 2, p. 408.
 69. See Solus, *Traité de la condition des indigènes en droit privé*, p. 314.
 70. This is a major feature of recent French legal history, especially that written by Yan Thomas, who shows how juridical modernity continues to work within categories established by Roman law. On the specific temporality of legal categories, see also the work of Reinhart Koselleck and in particular "Geschichte, Recht und Gerechtigkeit," in *Akten des 26. Deutschen Rechtshistorikertages, Frankfurt am Main, 22 bis 26, September 1986*, ed. D. Simon (Frankfurt: Vittorio Klostermann, 1987), pp. 129-49.
 71. See earlier citation.
 72. This question is developed in one of the chapters of my dissertation. See Emmanuelle Saada, "La 'question des métis' dans les colonies françaises," chapter 5.
 73. Ernest Renan, *Qu'est-ce qu'une Nation?* in *Oeuvres complètes* (Paris: Calmann-Lévy, 1947).