

“It is Not in a Day That a Man Abandons His Morals and Habits”:

The Arab Bureau, Land Policy, and the Doineau Trial in French Algeria, 1830-1870

by

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Dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Department of History in the Graduate School of Duke University

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ABSTRACT:

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Abstract

This dissertation revises influential scholarship on nineteenth-century French colonial policy in Algeria. After French troops conquered Algeria in 1830, French civilian and military administrations competed for control. There were two major points of conflict between the civilian and military administrative branches: the extent to which the French should adopt or tolerate pre-existing political and social norms; and, most important, the process by which Europeans acquired and settled the land belonging to the indigenous population. In general, the military, especially the Arab Bureau, advocated a tolerance for and acceptance of local legal and social customs and supported a slow process of European colonization. The French settlers and their champions in the French civilian administration, in contrast, wanted local practices replaced immediately by French laws and values and promoted rapid European colonization. These issues were informed by post-Revolutionary French political thought and concepts of individual civil liberties. The military administration, particularly the Arab Bureau, offered an alternate approach to governing the new colony that failed, ultimately, because it failed to conform to French post-Revolution expectations of what constituted a just and liberal administration.

In the Algerian city of Oran in 1857, a French civil court convicted and condemned to death Captain Auguste-Édouard Doineau, officer of the Arab Bureau, for killing Si-Mohammed-Ben-Abdallah, the agha of the Beni-Snouss tribe. The trial generated tremendous public attention. The intensely negative publicity that the military and the Arab Bureau attracted as result of this trial set in motion significant changes in

the French colonial administration in Algeria. These changes culminated in 1870, when republicans of the Third Republic ended the military administration, the conclusion of decades of struggle by the civilian factions to end the “rule of the sword.” Uncritically echoing nineteenth-century republican ideology, influential historical narratives continue to treat this as a triumph for liberal republican values and to consider it a beneficial change for the colony and its inhabitants, both European and indigenous.

Using the Doineau Trial of 1857 as a prism, this dissertation recovers the Arab Bureau’s alternative colonial policies and illuminates the larger problems the French administration faced in establishing a successful colony in Algeria.

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Introduction

For three centuries the Arabs have been accustomed to being governed by foreigners. As long as we take over only the government, they are well enough disposed to let us do so. But the moment the laborer appears behind the soldier, they will conclude that we mean not only to conquer but to dispossess them [of their land.]” -- Alexis de Tocqueville, “Essay on Algeria” (October 1841)

In 1841 and again in 1846, Alexis de Tocqueville, elected deputy to the Legislative Assembly, traveled to Algeria. His purpose was to study the conditions in the colony and make recommendations to the government in Paris about whether, and how, to proceed with colonization. Tocqueville strongly supported colonization, and in his reports to the Legislative Assembly he recommended that France aggressively pursue the goal of total conquest.¹ Among the policies Tocqueville advocated in Algeria were the seizure of land for European colonization and the forcible expulsion of the indigenous population; this he did despite acknowledging that such actions would arouse anger and resistance among the Algerians who would lose their land in the process.² In his 1841 “Essay on Algeria,” Tocqueville observed, “Nothing irritates and alarms the natives more than the introduction of European farmers.”³

¹ Jennifer Pitts has analyzed Tocqueville’s pro-colonization stance in the context of other nineteenth-century liberals’ “turn to empire.” See Jennifer Pitts, *A Turn to Empire* (Princeton, NJ: Princeton University Press, 2005). Tocqueville offered suggestions about how he believed the French should proceed, and he later modified his position on total conquest, arguing against the conquest of the Kabylia and the Berbers.

² Alexis de Tocqueville, “Essay on Algeria, October 1841” in *Writings on Empire and Slavery*, edited and translated by Jennifer Pitts (Baltimore: The Johns Hopkins University Press, 2001), 83.

³ Alexis de Tocqueville, “Essay on Algeria,” Pitts, *Writings on Empire and Slavery*, 82.

Nonetheless, for Tocqueville, as for his contemporaries, in order for France to maintain its Algerian colony, it needed to find solutions to the essential problems of how to colonize the land and what to do about the indigenous population living on it. The success of the French colony in Algeria depended on the resolution of these conundrums. They dominated French administrative policies and, I argue, they underlay the bitter divide between the civilian and military powers in Algeria. This dissertation will draw on administrative, intellectual, and legal history to explore the ways that land policy, republican ideology, and administrative policy are inextricably intertwined, and their influences on the creation of the French colonial administration in Algeria in the middle of the nineteenth century.

The questions of whether the colony should be controlled through military rule or civilian government; direct or indirect administration; local government or remote governance from the métropole; the extent to which indigenous populations should participate in the governing process; the requirements and definitions of citizenship and property rights -- these represent only a few of the myriad questions the French struggled to answer in the first decades of their presence in Algeria. Despite capturing Algiers in 1830, the French achieved stability in their administrative policy only in 1871, with the Third Republic. For four decades, the administration of Algeria had remained in a state of flux. This inconstancy contributed to increasing tension, discord, and resentment among various segments of the population and administration. These conflicts point to the difficulties associated with establishing a viable and “just” colonial rule: the “tensions

of empire” that Ann Laura Stoler and Frederick Cooper probe.⁴ The French struggled with the form their colonial administration would assume, and they disagreed about the administrative principles that should be applied. In short, French imperial policy was deeply divided and frequently incoherent and chaotic.

The fault line in administrative philosophy lay most starkly between the civilian and the military powers in Algeria. The colony was divided between civilian administrative territories, which contained a majority of European residents and were governed by a civilian administration, and military administrative territories, which contained a majority of non-European residents and were governed directly by the military. The ultimate control of the colony lay in the hands of the military under the direction of a Governor-General, a fact which became increasingly a source of anger and resentment among the *colons*.⁵ Historians of French Algeria have noted the great divide between the military and civilian parties in Algeria, but they have left unexplored its causes and the broader significance of this divide as it relates to the establishment of a colonial regime and how the divide reflects alternate approaches to administration.

This dissertation proposes that the animosity between the civilians and the military derived from two fundamental differences: European access to tribal land and acceptance of local mores, including political, legal, and social practices. The officers of the Arab Bureau fought to slow or block *colons* from acquiring land from the indigenous

⁴ Ann Laura Stoler and Frederick Cooper, *Tensions of Empire: Colonial Cultures in a Bourgeois World* (Berkeley: University of California Press, 1997).

⁵ A brief change of government occurred between 1858 and 1860 when Napoleon III transferred control of the colony to a civilian administration. This and related issues will be discussed in greater detail later in the dissertation.

tribes, and for this they incurred the bitter and everlasting resentment of the civilian administration and colons in Algeria.⁶ Jules Duval (1813-1870), August Warnier (1810-1875), and Jules Favre (1809-1880), the best-known and most outspoken advocates for the colons in the mid-nineteenth century, criticized the Arab Bureau in florid terms.⁷ In an 1861 speech to the Legislative Assembly, Favre contended that the colony in Algeria had failed to flourish as promised because of the methods used in administering the colony. Specifically, he faulted the military administration, whose “absolute power” in its territories he characterized as “fatal” for the colony.⁸ Duval proclaimed that “we colons are life, and the military is death!”⁹ Duval wrote also that the Arab Bureau exalted the “merits and the rights of the *indigènes*” at the expense of those of the colon. This is because, Duval explained, the Arab Bureau “keeps for the indigènes

⁶ The colons of the mid-nineteenth century believed that the Arab Bureau was biased in favor of the Arab population. This perceived bias survived into the scholarship in the twentieth century. In 1850s, civilian writers represented the Arab Bureau as the “natural protectors” of the Arabs, asserting that the officers of the Arab Bureau “defend[ed] the lands where the Arabs establish[ed] themselves.” Moreover, these lands were the best lands, and that only the “scrub land” was saved for the colons. To add insult to injury, the Arab Bureau protected the Arabs “not only in their material goods, but also in their conscience, objecting to priests trying to convert them.” (Louis de Baudicour, a French writer and settler in Algeria, *La Guerre et le gouvernement de l’Algérie* [Paris: Sagnier et Bray, 1853], 459-460). More than 70 years later, twentieth-century historians perpetuated this image. The historian Julien Franc wrote of the Arab Bureau’s “customary partiality with regard to the indigènes.” (Julien Franc, *La colonisation de la Mitidja* [Paris: Librairie ancienne honoré champion, 1928], 342). M.M. Knight wrote that the Bureau “wholly sympathize[ed] with the natives” and maintained an “open feud with the colonial group in Algeria.” (M.M. Knight, “French Colonial Policy – the Decline of ‘Association,’” *The Journal of Modern History*, vol. 5, no. 2 [June 1933; 208-224], 210). What was characterized by nineteenth-century contemporaries as a “passionate antagonism” (Comte Horace de Viel Castel, *Mémoires de Comte Horace de viel Castel sur le règne de Napoleon III*, four volumes, 1851-1864 [Paris: L.Léouzon Le Duc, 1868] Volume I, 157) dividing the military and civil powers in Algeria later is represented by twentieth-century scholars as unilateral “hostility” that the Arab Bureau directed toward civilian colonization and, thus, toward the colons. (Julien Franc, *La colonisation de la Mitidja* [Paris: Librairie ancienne honoré champion, 1928], 406).

⁷ Jules Favre and Jules Duval will be discussed in greater depth below.

⁸ Jules Favre, *Discours parlementaires*, published by Mme V^{ve} Jules Favre, née Velten (Paris: E. Plon et C^{ie}, 1881), volume II: 48-50.

⁹ Jules Duval and. Auguste Warnier, *Bureaux arabes et colons réponse au constitutionnel pour faire suite aux lettres à M. Rouher* (Paris: Challamel Aîné, 1869), 128.

the best land and delivers over to the colons only the most mediocre.”¹⁰ Above all, the colony in Algeria needed to become profitable in order to justify the expense of its conquest and maintenance. In order to become profitable, Algeria needed European settlers -- and Algerian land.¹¹ The Arab Bureau’s obstructionist stance on the expansion of colonization into its territories meant to many among the civilian administration and colons that the colony would fail.

A second major point of difference arose between the civilian and military authorities over the question of how much the French should adopt or, at best, tolerate local practices and customs.¹² Although the military itself disagreed internally on the subject, on the whole it showed a willingness to work within pre-existing methods of administration and indulge the tribes’ traditional conventions.¹³ Annie Rey-Goldzeiguer described the officers of the Arab Bureau as “anti-assimilationist,” explaining that for

¹⁰ Jules Duval, *L’Algérie et les colonies françaises* (Paris: Librairie Guillaumin et C^{ie}, 1877), 110-111.

¹¹ Anti-colonialists had argued since the French seized Algiers in 1830 that Algeria would prove to be a financial liability; a drain on the national resources. To counter these objections, pro-colonialists needed to prove that Algeria would be profitable for France. (Annie Rey-Goldzeiguer, *Le Royaume Arabe: la politique algérienne de Napoleon III, 1861-1870* [Alger: Société Nationale d’Édition et de Diffusion], 23).

¹² Some among the civilian authorities supported a more gradual approach to changing local mores. Ismail Urbain is perhaps the best-known and most influential among them. Urbain was a translator for and advisor to Napoleon III and influenced Napoleon’s policies, particularly his vision of an “Arab Kingdom,” in Algeria in the 1860s. Urbain, however, was an ardent Saint-Simonian who believed in the ultimate necessity of “civilizing” the Arab race. Although initially he argued against dispossessing the indigenous population of its land, Urbain ultimately supported the policy of *cantonement*, or the process by which indigenous tribes lost full access to their traditional territories and forced onto smaller parcels of land. Thus, it is debatable to what extent Urbain represents a “pro-Arab” voice among the civilian administration.

¹³ The officers debated among themselves whether they should try to win the “hearts and minds” of the local population, or simply ensure its well-being. Kenneth J. Perkins quotes a soldier on this topic. “What pretensions can we possibly have to making the Muslims, who bend beneath our yoke, love us? But I do believe that devotion by interest can be a factor everywhere. The Arabs . . . need order and tranquility; we can surely provoke their gratitude by giving them a respite from their problems.” (Kenneth J. Perkins, “Pressure and Persuasion in the Policies of the French Military in Colonial North Africa,” *Military Affairs*, vol. 40, no. 2 [April 1976], 76).

them, security was more important than assimilating the local population into French civilization. The best way to achieve security, the officers believed, was not by destroying the tribes and their way of life but by gradually creating a new administrative system.¹⁴ This measured approach necessitated working within and borrowing from local conventions. The civilian authorities and colons deplored this tolerance, depicting it as incompatible with French mores and a hindrance to the spread of French civilization among the Algerian population. They accused the Arab Bureau of reinforcing precisely the backward and unenlightened systems that the French hoped to reform and “civilize.” For example, supporters of the civilian administration often depicted the tribal hierarchy as aristocratic and despotic. The tribal sheikhs were referred to as the “aristocracy” of the Arabs, from which, so it was assumed, the members of the tribes longed to be free. The Arab Bureau, for its role in upholding tribal leadership, was accused of joining the “Arab aristocracy” that perpetuated the archaic and despotic “Old Regime” form of state administration.¹⁵

The civilian administration and colons triumphed in 1871 with the birth of the Third Republic. In Algeria, the military administration was dismantled, and the new government in Paris placed the colony under civilian control. Thus also began the process by which the “victors” -- the civilian authorities and the colons -- forged the

¹⁴ Annie Rey-Goldzeiguer, *Le Royaume Arabe, la politique algérienne de Napoleon III, 1861-1870* (Alger: Société Nationale d'Édition et de Diffusion, 1977), 32.

¹⁵ Jules Duval and Auguste Warnier, *Un programme de politique algérienne* (Paris: Ch. Schiller, 1868), 51-52. Indicative of this position, Duval and Warnier wrote that, “It is tribal aristocracy that must reckon with us and not us with it, for on our side is right and force and science and progress.” (*Un programme de politique algérienne*, 109).

historical memory of the displaced and disgraced military administration. Part of this memory included the “black legend” of the Arab Bureau; a legend which continues to live on in many contemporary histories of French Algeria.¹⁶ But to accept this vilification at face value is to overlook an opportunity to evaluate more discerningly the role of the Arab Bureau in Algeria, its relationship with the colon population, and the development of the French administration as it struggled to create its Algerian colony and larger overseas empire. The negative images of the Arab Bureau gloss over the civilian authorities’ own self-interests and ideologies; they reflect civilian anti-military propaganda.¹⁷ The motivations and interests of the civilians influenced the development of the French administration, but in the 1840s and 1850s they were by no means assured of definitive implementation. To understand the character of French administration during these decades, it is necessary to reconsider the Arab Bureau as an administrative institution that offered a different approach to administering Algeria than the one that ultimately triumphed. Historians of French Algeria have left the conflict between the military and civilian authorities under-examined and have therefore underestimated the role of land policy and the influence of republican ideology on the development of the colony.

The 1857 trial of Captain Auguste-Édouard Doineau (1823-1914) illuminates many of the critical points of debate between the civilian and military authorities.

¹⁶ Jacques Frémeaux notes the “black legend” of the Arab Bureau in his history of the institution. See Jacques Frémeaux, *Les Bureaux Arabes dans l’Algérie de la Conquête* (Paris: Éditions Denoël, 1993), 14. This will be discussed in greater detail below.

¹⁷ Civilian attacks on the Arab Bureau and the military administration will be discussed more thoroughly in Chapter Five.

Historians of French Algeria have referenced the Doineau Trial, but none have examined it in detail in its historical context.¹⁸ The lack of attention devoted to the trial derives, once again, from an underestimation of the importance of the conflict between the civilian and the military administrations as well as the central role the Arab Bureau played in this conflict.¹⁹ In 1858, partly in response to the negative publicity the Doineau Trial generated for the military administration, Napoleon III removed all administrative power from the military and placed control of Algeria in the hands of the civilian authorities. He replaced the office of Governor-General with a civilian Minister of Algeria and the Colonies. Studies of Algerian history underplay this shift, perhaps because it lasted only two years. In 1860, Napoleon III dismantled the Ministry of Algeria and the Colonies and returned power in Algeria to the military. The startling administrative changes in 1858 and again in 1860 reveal, however, the depth of the problems between the military and the civilian authorities which, in turn, reflect also the larger problems that France faced in creating and implementing a viable colonial administration. The Doineau Trial marked the beginning of the end of the power of the Arab Bureau and, with it, the end to the policies it supported: no expansion of European settlement; and a flexible approach to adopting pre-existing customs and hierarchies.

A few brief words about the crime and trial: in 1857 in Oran, Algeria, a French court condemned to death Captain Auguste-Édouard Doineau, an officer of the Arab

¹⁸ Scholars who have mentioned the trial in their work include Charles-André Julien, Osama Abi-Mershed, Kenneth J. Perkins, Jacques Frémeaux, and Annie Rey-Goldzeiguer.

¹⁹ Limited sources also restrict research possibilities. Nearly everything we know about the trial comes from the published transcript. A few additional sources of information, such as contemporary newspaper coverage, archival documents, and references in memoirs, supply a few additional details.

Bureau. The trial generated tremendous public attention in both Algeria and France. Parisian publications such as *La Presse* and the *Journal des débats politiques et littéraires* published extensive excerpts from the August 1857 trial proceedings, and they printed updates throughout the appeals process.²⁰ The trial left such a lasting impression on the public imagination that in an 1882 *New York Times* obituary for Henri-Edme-Jean-Joseph-Jules Nogent-Saint-Laurens (1814-1882), Captain Doineau's defense attorney, the *Times* characterized the Doineau Trial as a "most scandalous affair" that demonstrated "how horribly corrupt was the French administration of the great African colony."²¹ During the trial, accusations of corruption and bribery; exploitation and excessive violence; personal vendettas and struggles for power were thrown around the courtroom.

The civilian authorities and colons believed that Doineau exemplified the evils of the military administration. The trial, therefore, proved the guilt not only of Doineau but also of the military administration as a whole. On its part, the military felt unjustly attacked, and the public's condemnation proved its lack of understanding of and appreciation for the military's struggles in administering a tribal population that held very different social, legal, and political views. The tensions between the civilians and military that had been building throughout the 1840s and 1850s came to a head in the Doineau Trial. More than one contemporary believed that the guilty verdict rendered for Captain Doineau resulted from the "passionate antagonism" that existed between the civil

²⁰ These updates occurred during the remaining months of 1857.

²¹ *The New York Times* (26 February 1882), 37. Clipping inserted into Armand B. Fouquier, *Cause célèbres de tous les peuples*, volume 1 (Paris: Lebrun et Cie, 1858 --).

and military powers in Algeria.²² In many ways, the trial became the expression of an irreconcilable conflict over how to administer the new colony; specifically, how to administer the indigenous population.

One of the most contentious issues was land policy. The problem of European access to land played no direct part in the legal arguments during the Doineau Trial, but it was a volatile background issue. The civilian authorities and colons hoped the trial would prove the “sins” of the military administration and result in the end of its administrative role. This in fact did occur briefly between 1858 and 1860 and definitively after 1870. This dissertation will argue that one reason, if not the primary reason, that the civilian authorities and colons wanted the end of military rule was that they believed, correctly, that the military opposed free access to indigenous land.

The relationship of land policy to the development of the French administration in Algeria deserves exploration. French-Algerian relations cannot be understood fully without such a consideration. In 1863, a *caïd* (leader) of the Ouled Rechaïch tribe reported his tribe’s grasp of the serious implications of French land legislation. A *sénatus consulte* of 1863 laid the foundation for the transformation of collective land to private property ownership. Upon learning of the *sénatus consulte*, an elder of the Ouled Rechaïch observed:

²² Comte Horace de Viel Castel, *Mémoires de Comte Horace de Viel Castel sur le règne de Napoleon III, 1851-1864*, four volumes (Paris: L. Léouzon Le Duc, 1868), I: 157. Général François Charles, comte du Barail also believed that Captain Doineau had been a victim of a prejudicial civilian court. See Général du Barail [François Charles, comte du], *Mes Souvenirs*, three volumes (Paris: E. Plon, Nourrit, et C^{ie}, 6th edition, 1894), II: 160-161.

The French have battled us on the plain of Sbikha; they have killed our young men; they imposed upon us war indemnities. All of this was nothing: one recovers from these wounds, but the constitution of individual property and the authorization given to each to sell his lands; [lands] that will be broken into pieces, it is the decree of the death of the tribe, and twenty years after the execution of these measures, the Ouled Rechaïch will have ceased to exist.²³

The tribesman of the Ouled Rechaïch drew the connection between the institution of private property among the tribes and the demise of their traditional ways of life, including the tribal structure. For centuries, the semi-nomadic tribes had survived by a combination of herding and seasonal cultivation. Underpinning these practices was the system of land ownership, particularly communal land ownership, among the tribes. The introduction of private property ownership would limit the tribes' access to the grazing land necessary to support their flocks and their method of agriculture. The social structure of the tribe was based upon the communal and social aspects of both. Moreover, if individuals within the tribe were permitted to sell off parts of the traditional tribal lands, then the tribe itself would lose the social and economic framework that nurtured and supported it. The tribe, therefore, would cease to exist.²⁴

The Arab Bureau was central to the conflict between the civilian and military authorities because it appeared to many civilians to pose a threat to the expansion of

²³ As quoted in A. Benachenhou, *Régimes des terres et structures agraires au maghreb* (édité aux éditions populaires de l'armée, 1970), 70. The full quote in French is, "Les Français nous ont battus dans la plaine de Sbikha; ils nous ont tué nos jeunes hommes; ils nous ont imposé des contributions de guerre. Tout cela n'était rien; on guérit de ses blessures, mais la constitution de la propriété individuelle et l'autorisation donnée à chacun de vendre les terres qui lui seront échues en partage, c'est l'arrêt de mort de la tribu, et vingt ans après l'exécution de ces mesures, les Ouled Rechaïch auront cessé d'exister."

²⁴ Population statistics for Algeria remain difficult to determine given the mobile nature of the population and difficulty surveying the population outside the major urban centers. The first official census was not conducted until 1856. (John Ruedy, *Modern Algeria* [Bloomington, IN: Indiana University Press, 1992], 93).

colonization as well as to the successful implantation of French “civilization” among the Algerian population. These positions threatened the colons’ agenda, and they became increasingly unacceptable to the government in Paris and to the European colonists throughout the 1840s, 1850s, and 1860s. To understand the development of the French administration in Algeria during this critical period, we must explore these intertwined issues.

The Arab Bureau: A Brief Historiography

Two recent books about French colonial actions in Africa reduce the military’s role to a single word: violence. Edward Berenson writes of the military in Algeria that its “military officials and even local commanders controlled the country’s imperial policy, often defying orders from Paris.” Berenson continues, “Their actions usually took the form of violent conquest and fierce repression of local opposition.” Presenting the Third Republic government as a favorable contrast, Berenson explains that “after 1870, republican leaders opposed further colonial expansion, partly in an effort to restrain these overly independent generals.”²⁵ Berenson offers neither sources nor explanation in support of these claims, but his interpretation would meet with no objection from Benjamin Claude Brower. The object of his study, Brower writes, is to measure and “explain the violence of Algeria’s past;” particularly, the violence the French military inflicted in the Sahara desert. Although Brower asserts that he wants to examine the “multiplicity” of violence and its perpetrators, as well as the various forms it took, he

²⁵ Edward Berenson, *Heroes of Empire* (Berkeley, University of California Press, 2011), 60.

nonetheless focuses almost exclusively on the French military and its conquest of the Sahara. He lingers on accounts of the atrocities and brutality the army committed among the indigenous populations.²⁶

These totalizing and unnuanced representations of the French military in Algeria are reflections of the so-called “black legend” of the Arab Bureau that Jacques Frémeaux passingly references in the introduction to his history of the institution.²⁷ Neither Berenson nor Brower, whose book centers on the French military, differentiate between the French military as a whole and the institution of the Arab Bureau, a subset of the military that, to a large extent, operated independently in its remote territories. Both groups are equally condemned. Berenson and Brower repeat the general interpretation of the French military established by two other leading historians of Algeria, Charles-André Julien and John Ruedy. Julien says nothing positive about the Arab Bureau, and he blames the failure of the French rule in Algeria on the brutal conduct of the military in general and the Arab Bureau in particular. Julien also uncritically accepts the guilt of Captain Doineau; he willingly believes that this officer committed the murders of which he was accused.²⁸ John Ruedy faintly praises the Arab Bureau, noting that some officers became spokesmen for the Arab rights, but that many “turned into overbearing tyrants guilty of arbitrary government, summary and often brutal justice, and scandalous

²⁶ Benjamin Claude Brower, *A Desert Named Peace* (New York: Columbia University Press, 2009), 5-6.

²⁷ Jacques Frémeaux, *Les Bureaux arabes dans l'Algérie de la conquête* (Paris: Denoël, 1993), 14. Frémeaux believes this “black legend” is unjust and inaccurate.

²⁸ Charles-André-Julien, *Histoire de l'Algérie Contemporaine*, Volume I: *La Conquête et les Debuts de la Colonisation (1827-1871)* (Paris: Presses Universitaires de France, 1964), 339-341.

venality.” Ruedy also attributes the “unanimous enmity of the colons and the nearly unanimous enmity of the Algerians” to the officers’ behavior.²⁹ Ruedy includes no references or specific examples to support these criticisms. It seems that, among many historians of Algeria, the overwhelmingly negative image -- a “black legend” -- of the French military and the Arab Bureau is recycled uncritically.

Certainly, the French military, no doubt including the officers of the Arab Bureau, committed violent and brutal acts in the course of its conquest of Algeria. This is neither surprising nor unusual: militaries engage in violence in order to achieve the goals they are ordered to accomplish, although some of the methods the French military employed during the conquest of Algeria shocked and appalled the civilian population in France.³⁰ What the above interpretations lack, however, is a careful or nuanced examination of the military and, in particular, of the Arab Bureau. No institution is monolithic, and the French administration in Algeria struggled for decades with internal conflicts over methodology, ideologies, and goals for the Algerian colony. In his recent book, Osama W. Abi-Mershed criticizes the lack of nuance in many studies devoted to colonial administrations. He explains that previous scholarship has represented the “colonial state as undifferentiated and uniform,” and he intends his study to illustrate some of the ways

²⁹ John Ruedy, *Modern Algeria: The Origins and Development of a Nation* (Bloomington, IN: Indiana University Press, 1992), 73.

³⁰ These methods most famously include the *razzias*, or raids, General Bugeaud implemented. The events that most horrified the French population, however, were the military’s asphyxiation of tribes, including women and children. These events will be discussed in more detail in a later chapter.

that the French Algerian administration was riddled with conflict and differences about how to administer the colony.³¹

This builds on the previous scholarship which, like that of Abi-Mershed, takes a closer look at the Arab Bureau. Only a handful of scholars have devoted comprehensive studies to it, and Abi-Mershed writes that one of his goals in his work is to expand upon the “extremely meager” historical literature on the Arab Bureau.³² It is noteworthy that the scholars who *have* devoted careful study to the institution have neither fostered nor offered meaningful support for the violent and cruel images perpetrated by scholars such as Berenson, Brower, Ruedy, and André-Julien. In 1953, Xavier Yacono conducted the first significant scholarly study of the Arab Bureau.³³ Yacono’s work covers the period between the 1840s and 1870s, and it focuses on the Bureau in the regions west of Algiers. He traces how the officers affected the lives of the indigènes in these regions, focusing on the officers’ activities in fields such as agriculture and health. Few scholars since Yacono have expanded on his work. Jacques Frémeaux has examined in detail the activities and bureaucratic development of the Arab Bureau in the province of Algiers

³¹ Osama W. Abi-Mershed, *Apostles of Modernity: Saint-Simonians and the Civilizing Mission in Algeria* (Stanford, CA: Stanford University Press, 2010), 6. Other scholars who have concentrated their studies on the Arab Bureau have not claimed its administration shared a common set of beliefs or specific practices. For example, Perkins points to divisions within the military about how to govern. (Kenneth J. Perkins, “Pressure and Persuasion in the Policies of the French Military in Colonial North Africa” *Military Affairs*, vol. 40, no. 2 [April 1976]: 75-76).

³² O.W. Abi-Mershed, “Domination by Consent: The Bureaux Arabes and Public Instruction in Colonial Algeria, 1831-1870,” (Georgetown University Ph.D. dissertation, 2002). Abi-Mershed notes also that another of the problems associated with the writing of French-Algerian history is the inclination of modern historians to deny the “military and colonial antecedents to the development of the civil political culture of France” as well as their inclination to “excoriate” the Second Empire and “valorize” the Third Republic. See Abi-Mershed, *Apostles of Modernity*, 7.

³³ Xavier Yacono, *Les bureaux arabes et l'évolution des genres de vie indigènes dans l'Ouest de Tell algérois Dahra, Chélif, Oursenis, Sersou* (Paris: Larose, 1953).

during roughly the same period covered by Yacono. Frémeaux emphasizes that since the Arab Bureau administered most of Algeria until 1870, we must not underestimate its importance.³⁴ To date, Yacono and Frémeux have produced the only careful examination of the Arab Bureau's general administrative activities.³⁵

Other scholars have expanded our understanding of the Arab Bureau by investigating how its activities fit into the larger picture of the French administration in North Africa. Kenneth J. Perkins analyzed the Arab Bureau in Algeria in the context of the development and effectiveness of the French military administration, from the French conquest of Algiers in 1830 to its later acquisition of Tunisia (made a protectorate in 1881) and Morocco (made a protectorate in 1912).³⁶ Perkins argues that Algeria was the training ground for the entire military, and that it learned from the mistakes it made there. According to Perkins, the Arab Bureau in Algeria committed its gravest mistake when it usurped too many of the powers belonging to the tribal elites. This resulted in anger and resentment of the French among the tribal leadership. The tribal leaders had expected to retain the autonomy they had enjoyed under the Ottoman rule, handling the direct administration of their own tribes. Instead, asserts Perkins, the Bureau officers assumed

³⁴ Jacques Frémeaux, *Les Bureaux arabes dans l'Algérie de la conquête* (Paris: Denoël, 1993), 14. Frémeaux also points to the trial of Captain Doineau as a significant event in the history of the Arab Bureau, although he discusses the trial only briefly.

³⁵ Both Yacono and Frémeux studied the same province -- Algiers -- in their work. Frémeaux admits that the lack of evidence from the province of Oran (the records were destroyed) restricts scholarship on the Arab Bureau in that region.

³⁶ See Kenneth J. Perkins, *Qaids, Captains, and Colons: French Military Administration in the Colonial Maghrib, 1844-1934* (New York and London: Africana Publishing Company, 1981); "The Bureaux Arabes and the Colons: Administrative Conflict In Algeria, 1844-1875," *Proceedings of the French Colonial Historical Society*, 1976 (96-107); "Pressure and Persuasion in the Policies of the French Military in Colonial North Africa" *Military Affairs*, vol. 40, no. 2 (April 1976): 74-78.

too much control and intervened too directly in the governing process, thereby “emasculating” the tribal leaders. This caused tribal leaders to react with anger and resentment at their loss of power; in the words of Perkins, they “frequently complained . . . about their deteriorating authority and the increasing insubordination of [their] tribesmen.” The end result of this was the “total collapse of [the] tribal hierarchy.”³⁷ Perkins argues that it was the Arab Bureau’s disempowerment of the Algerian elite that produced long-term bitterness and resentment among the tribes. This found ultimate expression in the violence of decolonization. Perkins goes on to suggest that the military reformed its methods in Tunisia and Morocco, limiting itself to acting as a police force and leaving responsibility for administering the tribes mostly to the existing indigenous leadership. The success of this method is proven by the relatively peaceful process decolonization followed in Tunisia and Morocco.

Annie Rey-Goldzeiguer concentrates her survey of Algerian history on the period after 1861, Napoleon III’s “Arab Kingdom.” Although her scholarship is not explicitly about the Arab Bureau, it features prominently in her work. Rey-Goldzeiguer includes some analyses of the role of the Arab Bureau in the development of the French administration and its relationship to indigenous power structures. She writes that her aim is to demonstrate how the social structures in Algeria responded to colonization and how new social forces and institutions developed. In this context, she argues, the Arab

³⁷ Kenneth J. Perkins, *Quids, Captains, and Colons: French Military Administration in the Colonial Maghrib, 1844-1934* (New York and London: Africana Publishing Company, 1981), 97. Perkins takes the expression from the reports of military administrators.

Bureau contributed substantially.³⁸ As did Yacono, Frémeaux, and Perkins, Rey-Goldzeiguer interprets the 1860s as a period of decline for the Arab Bureau; by this time, the era of “enthusiastic heroism” for the Bureau had died.

Yacono, Frémeaux, Rey-Goldzeiguer, and Perkins also all point to the 1857 Doineau trial as a turning point in the power of the Arab Bureau; after the trial, the Bureau never regained the authority and influence it lost as a result of the trial’s negative publicity and the subsequent dismantling of the military administration between 1858-1860. Yacono writes that the “negative fallout” from the Doineau Affair made it increasingly difficult for the Bureau to recruit capable and talented officers, and that this contributed to its loss of effectiveness throughout the subsequent years.³⁹ Perkins notes that despite the increasing number of Arab Bureau officers throughout the 1860s, the institution nonetheless suffered a decrease in effectiveness. The number of officers, Perkins suggests, was insufficient to carry out the growing responsibilities assigned to them. This, combined with the general decrease in the quality and talents of the officers joining the Bureau, contributed to the Bureau’s growing weakness.⁴⁰

Abi-Mershed, in his recent book, sets himself against these previous interpretations. He intends to reperiodize the decades of military rule in Algeria. Rather than seeing a decline in the Arab Bureau in the 1860s, Abi-Mershed refers to the dates

³⁸ See Annie Rey-Goldzeiguer, *Le Royaume Arabe: La politique algérienne de Napoleon III, 1861-1870* (Alger: Société Nationale d’Édition et de Diffusion, 1977), 10.

³⁹ Xavier Yacono, *Histoire de l’Algérie de la fin de la Régence turque à l’insurrection de 1954* (Éditions de l’Atlantique, 1993), 152.

⁴⁰ See Perkins, *Qaids, Captains, and Colons*.

between 1848 and 1870 as the “apogee of the technocratic administration and disciplinary powers” of the Arab Bureau and argues that the height of its influence was during the 1860s.⁴¹ Moreover, the influence of the leaders of military division responsible for Arab affairs was such that it was “akin to injecting the very body of colonial administrative theory and practice with the conceptual and methodological strains of the Saint-Simonian doctrine.”⁴² Abi-Mershed considers the 1860s the apogee of the Arab Bureau’s power because he equates Saint-Simonian thought with the officers of the Arab Bureau, and he interprets the Saint-Simonian influence in Napoleon III’s administration as equivalent to Arab Bureau influence. Leaving aside the question of how this extreme statement furthers his goal of correcting previous colonial scholarship depicting the colonial state as “undifferentiated and uniform,” Abi-Mershed makes this argument because he attributes to the officers of the Arab Bureau a “civilizing mission” inspired by the “novel sociological ideas of Saint-Simonianism.” Abi-Mershed defines the Arab Bureau by this

⁴¹ Abi-Mershed, *Apostles of Modernity*, 13-14. He admits, however, that the Bureau lost its best officers after 1857-58, but he does not connect this with any loss of power or influence. (*Apostles*, 182).

⁴² Abi-Mershed, *Apostles of Modernity*, 91.

civilizing mission he alleges motivated its actions.⁴³ Abi-Mershed's work, like that of the previous scholars who have studied the Arab Bureau, emphasizes the non-violent and generally well-intentioned activities of the Bureau in Algeria; nonetheless, Abi-Mershed is careful to note that he does not want to idealize the Bureau but to "illustrate the exploitive assumptions and repressive outcomes" of its "civilizing initiatives."⁴⁴

The focus of Abi-Mershed's study is the establishment of French-style schools among the indigenous tribes. He claims that the Arab Bureau's efforts to establish these schools must be interpreted in the context of their "civilizing mission," the motivating ideology of the officers of the Arab Bureau.⁴⁵ According to Abi-Mershed, the failure of

⁴³ Abi-Mershed, *Apostles of Modernity*, 14. It should be noted that Perkins holds a very different opinion on the role of the civilizing mission among the officers of the Arab Bureau. He writes that while some officers did believe in "civilizing" the Algerians, this goal was not the officers' "sole nor dominant motive." (Perkins, *Qaids, Captains and Colons*, 48). Moreover, of the civilizing activities in which the officers engaged, Perkins asserts that such activities as effecting improvements in local methods of sanitation and healthcare and innovations in agricultural techniques dominated the officers' efforts. The construction of schools, for example, played a much smaller role and represented the efforts of only a minority of the minority of officers that engaged in "civilizing" projects. (Perkins, "Pressure and Persuasion," 75-76).

Additionally, Rey-Goldzeiguer seems to anticipate Abi-Mershed's focus on a so-called "civilizing mission" as a dominant force among the officers, writing in *Le Royaume Arabe* that the arguments of "military necessity" carried little weight among the higher levels of the administration. To increase the changes that their suggestions would be heard, the officers therefore had to present their plans in terms of "humanitarian" (i.e., in the interest of improving indigenous civilization) reasons, which were the ones most likely to be supported by Napoleon III. (*Le Royaume Arabe*, 87). It appears clear that more studies on the military administration, particularly the Arab Bureau, in Algeria are needed.

⁴⁴ Abi-Mershed, *Apostles of Modernity*, 11.

⁴⁵ Abi-Mershed initiates this analysis in his dissertation and expands and refines the argument in the book derived from it. See: O.W. Abi-Mershed, "Domination by Consent: The Bureaux Arabes and Public Instruction in Colonial Algeria, 1831-1870," (Georgetown University Ph.D. Dissertation, 2002); and Osama W. Abi-Mershed, *Apostles of Modernity: Saint-Simonians and the Civilizing Mission in Algeria* (Stanford, CA: Stanford University Press, 2010). He bases his attribution of Saint-Simonian ideas to the Arab Bureau officers on Patricia Lorcin's analysis of the development of racial ideology in Algeria; specifically, the "Kabyle Myth." In her work, Lorcin draws a connection between the military graduates of the École polytechnique and Saint-Simonian thought. See Patricia Lorcin, *Imperial Identities* (London and New York: I.B. Tauris Publishers, 1995). Abi-Mershed, however, uses her argument to make assertions that Lorcin's careful argument does not support. In *Qaids, Captains, and Colons*, Kenneth J. Perkins provides statistics about the specific composition of the Arab Bureau; particularly, the schools the attended and branches of the military from which they came, that undermine the conclusions Abi-Mershed draws from Lorcin's argument.

the military administration stemmed not from its treatment of the indigenous power structures, as Perkins believes, but from the myopia of the “civilizing missions” he attributes to the officers of the Arab Bureau. The “inability or unwillingness of Bureau officers to comprehend Algeria independently of imperial intent,” writes Abi-Mershed, derived “largely from the assumptions and dictates of the civilizing mission.”⁴⁶ This resulted in the Bureau’s inability to see beyond the needs of colonization and was central to the cultural arrogance that so offended the indigenous population. Thus, Abi-Mershed faults the ideology of French colonialism for the errors of the French military administration in Algeria

Abi-Mershed sets himself a few other important tasks. In *Apostles of Modernity*, he disputes what he refers to as the conventional paradigm of the history of French Algeria; namely, that the policy of assimilation was the “dominant colonial practice and policy in Algeria in the nineteenth century, before the associationist approach dominated in the twentieth century.”⁴⁷ He claims to introduce the idea that the officers of the Arab Bureau challenged the assimilationist policies of the French government. Abi-Mershed attributes the Arab Bureau’s “associationist” stance to the influence of Saint-Simonian ideas, particular the idea that different societies at “different stages of historical development need to evolve within their own particular institutional structures and

⁴⁶ Abi-Mershed, “Domination by Consent,” 289.

⁴⁷ Abi-Mershed, *Apostles of Modernity*, 4-6. By “assimilationist,” Abi-Mershed means the governing of the colony with “uniform political institutions, legal codes, and commercial tariffs.” Culturally, this meant “making the natives culturally French” (2). Essentially, the subjugated population would be absorbed into and expected to adopt the culture and civilization of the conquering power; in this case, France. In contrast, “association” means that local cultural practices and norms could be retained, at least to some extent, and the subjugated population would associate with, but not necessarily assimilate to, the cultural standards and practices of the conquering power.

cultural traditions.”⁴⁸ Abi-Mershed, however, was not the first scholar to raise this issue. In 1977, Annie Rey-Goldzeiguer wrote that the officers of the Arab Bureau were “anti-assimilationist.” She offers no elaboration on this point and draws no connection between it and Saint-Simonian ideology.⁴⁹

What both scholars recognize is that the Arab Bureau supported a policy toward the tribal populations that provided for greater tolerance for and acceptance of local practices and traditions. As we will see in the following chapters, many officers argued for a practice of justice in accordance with local norms instead of forcibly imposing French justice among the tribes. Many Arab Bureau officers also supported maintaining local power structures and administering their territories through the assistance of local elites and pre-existing leaders. The extent to which Saint-Simonian ideas played a role as well remains open to debate, but the pragmatic reasons for these policies were raised often: if the French disrupted and offended local practices and sensibilities, then the local populations were more likely to revolt and resist French rule. The best way to achieve peace and stability, the Arab Bureau officers argued, was to disrupt the local population as little as possible. Eventually, they reasoned, this population would come to appreciate and embrace French civilization, but the best way to achieve this desirable goal was to introduce French systems and practices gradually. I argue that this “associationist” policy is reflected most significantly in the Arab Bureau’s approach to European seizure of settlement on tribal lands. The Arab Bureau opposed a rapid encroachment of European

⁴⁸ Abi-Mershed, *Apostles of Modernity*, 5.

⁴⁹ Rey-Goldzeiguer, *Le Royaume Arabe*, 32.

settlers because it desired to avoid a drastic alteration of local customs which threatened to incite the tribes to revolt.

Abi-Mershed recognizes that land policy is an important issue. However, his emphasis on the importance of Saint-Simonian ideas leads him to underestimate the significance of land policy as it related to the Arab Bureau. Abi-Mershed sees land policy only in terms of its relation to Saint-Simonianism, writing that land policies were important because they were “integral” to the “modernizing initiatives” held so dearly by the Saint-Simonians.⁵⁰ He also interprets the legislation that was passed in the 1860s under Napoleon III and which laid the legal groundwork for the creation of individual property among the tribes as a triumph of Saint-Simonian ideas of civilizational progress. Napoleon III and many of his advisors, like the Saint-Simonian Ismail Urbain, did view legislation such as the 1863 *Senatus consulte* as progress for the tribes of Algeria. Many among the Arab Bureau, however, resisted such legislation, arguing against expanding European colonization that ignored local legal practices.

My dissertation contributes to the scholarship on the Arab Bureau in several ways. First, I examine the previously unexplored relationship between the military administration -- specifically, the Arab Bureau -- and the civilian administration in Algeria. André-Julien and Ruedy both note the hostility that existed between the military and the colons, but they attribute this hostility to the alleged brutality of the military’s behavior. I offer a new interpretation: the colons and the civilian administration resented the military because it thwarted their desires to appropriate land from the indigenous

⁵⁰ Abi-Mershed, *Apostles of Modernity*, 156.

population. Second, I concur with previous scholars such as Yacono and Perkins who point to a decline in the power and influence of the Arab Bureau after 1857 and continuing throughout the 1860s. I suggest, however, that these scholars have given insufficient attention to the most significant change that took place after 1858: the radical changes in land policy and European colonization. I argue that the true decline of the Arab Bureau is closely related to the loss of its ability to slow or block European colonization on tribal territories. The policy changes initiated during the two years of civilian control, 1858-1860 accelerated a process that the Arab Bureau could not reverse, even though the military ostensibly regained control during the 1860s. The land policy legislation of the 1860s, even if well-intentioned, legalized the process by which tribal practices were dismantled and French civil norms were imposed on the tribes.

Finally, these scholars mention the Doineau Affair as an important event in the history of the Arab Bureau, but none have devoted more than a few paragraphs to discussing it. This dissertation, in contrast, elaborates on the significance of the Doineau Trial. As others have noted, the trial did render a serious blow to the prestige of the Bureau, and it likely contributed to later difficulties in attracting talented officers to serve in it. The true significance of the trial, overlooked by previous scholars even as they recognized the trial's influence, was that it handed to the colons and their advocates the "cause célèbre" it needed to publicize and popularize their attacks on the military administration. The Doineau Trial allowed republican and pro-colon advocates like Jules Favre to make arguments against the military eloquently and effectively. The trial was a lightning rod for the opposition, and the negative image of Captain Doineau propagated

during and after the trial provided the seed for the “black legend” of the Arab Bureau and its officers as corrupt, violent, and arbitrary. The arguments that Jules Favre made in his *plaidoirie* at the trial were repeated and echoed by other colon advocates in the 1860s. The trial provided a context for and a specific example of the sins of which the Arab Bureau and the military administration were accused. Beneath this animosity lay disputes over land policy and European access to land for settlement. Previous scholars have overlooked the wider significance of the trial specifically because they have failed to draw the connections linking the tension between the military and the civilian administrations and to recognize the central role that land policy played in these tensions.

My dissertation reconceptualizes French-Algerian history by recentering scholarship on previously unexplored relationships within the colonial administration. The administration suffered internal conflicts and a lack of consensus, and especially important is the divide between the two main groups, the military and the civilian administration. By placing the issue of land policy at the center of our investigation, we can better understand the divisions within the administration and the resentment the colons directed against the military. The approach also has the advantage of clarifying an important aspect of indigenous resistance to and resentment of French administration: how the central issues were loss of land and the destruction of traditional ways of life.

The Arab Bureau was integral to this narrative, because it directed the “Arab” or tribal territories, precisely the regions that became most desired for settlement during the 1850s and 1860s. We cannot understand the history of nineteenth-century Algeria

without a better understanding of the conflicts and controversies of these critical years, and at the center of these we find the Arab Bureau and land policy.

Chapter One

Most histories of French Algeria begin in 1830 with the arrival of French troops. Before the French arrived, however, the region, known as the Regency of Algiers, belonged to the Ottoman Empire. This past profoundly marked the society the French faced and influenced the way in which the French responded to and interacted with the local population. Many critical early debates among the French administration in Algeria revolved around how or whether to integrate existing practices and traditions. In order to understand these debates, it is necessary first to acquire an understanding of North African history before the French arrived; in particular, to examine Ottoman methods of administration. Chapter One, therefore, will provide a general overview of North African history. It also will include a brief discussion of the scholarship that focuses on the Ottoman Empire which traditionally has neglected the history of the Ottoman North Africa. Our surprising lack of detailed knowledge about the Regency of Algiers derives, in part, from its having been virtually ignored by scholars of both Europe and the Ottoman Empire. Finally, I will discuss some aspects of Ottoman administrative and judicial practices. A general sense of the local legal and administrative traditions provide insight to the great differences between Ottoman/Islamic practices and French expectations. This serves as context for the later debates within the French administration about land policy and for the growing hostility between the civilians and

the military, thus setting the stage for understanding the deeper issues surrounding the Doineau Trial.

Chapter Two

This dissertation focuses on the administrative branch of the French military known as the *Bureaux Arabes*, or the Arab Bureau, and this chapter will provide an overview of the structure and functions of the Bureau. It also will discuss the general structure of the French administration in Algeria as well as the tribal structure of the indigenous populations in the mid-nineteenth century. The Arab Bureau was created in 1844 and based its administrative structure on earlier models, such as the Directorate of Arab Affairs (1834-1841) and the Central Division for Arab Affairs (1841-1844). The Arab Bureau was charged with administering the indigenous nomadic and semi-nomadic tribes, and it acted as an intermediary between these tribes and the higher French administration. Because Captain Doineau was a member of the Arab Bureau, and the institution was at the forefront of conflicts over land policy in the tribal regions, it is necessary to understand the basic functions and purposes of this branch of the French military administration in Algeria.

Chapter Three

The defining issue for the French administration in Algeria was, above all, European access to indigenous land. This issue offers the best way to understand the division between the civilian and the military administration, because their differing

approach to land policy offers an explanation for the strained relationship between the military on the one side and the European colonists and the civilian administration on the other. This explanation moves past shrill rhetoric to review the pragmatic considerations underlying the policies. Characterizing the officers of the Arab Bureau either by the criticisms leveled at them by their civilian rivals or by the ideologies ascribed to them by some recent scholars leaves the Arab Bureau both inadequately and inaccurately defined.⁵¹ Such characterizations do not fully explain the administration itself or provide meaningful insight into the degeneration of French-Algerian relations. More pivotal were the specific policies that had direct and radical effects on the livelihood -- or even survival -- of the Algerian population, both European and indigenous. Entire tribes were pushed off their lands; social and cultural structures that had survived for centuries were under assault. European colonists arrived in Algeria expecting personal prosperity in a land of plenty, but instead they often confronted failure and poverty.⁵² Fundamental to all populations was the issue of land.

Chapter Three provides a summary of the French land policy during the first three decades of French rule. A discussion of tribal and Islamic notions of property ownership will provide context for the French policies. Far too little scholarship has been done on the complicated and complex history of land policy in colonial Algeria. The seminal

⁵¹ The criticisms are, as noted, that the officers were violent and despotic.

⁵² The reasons for the difficulties the colons faced were many, but they often blamed their struggles on lack of access to good land and the military that, they believed, hindered them from acquiring that land. Also, the colons fell victim to the French government's persuasive and not entirely truthful marketing of the colonial experience in Algeria. In her dissertation, Jennifer Sessions explores the "fertility myth" perpetuated by the French government in its efforts to attract colonists to Algeria. See Jennifer E. Sessions, "Making Colonial France: Culture, National Identity and the Colonization of Algeria, 1830-1851," (Ph.D. Dissertation, University of Pennsylvania, 2005).

published work remains John Ruedy's classic monograph, *Land Policy in Colonial Algeria*.⁵³ Ruedy conducted a detailed examination of French land policy until the late 1840s. Hollins McKim Steele, Jr. also has provided an examination of land policy in his unpublished dissertation, "European Settlement vs. Muslim Property: The Foundation of Colonial Algeria 1830-1880."⁵⁴ My intention is not to duplicate the excellent work of these scholars but to summarize the conclusions of their scholarship in a way that highlights the issues central to the administrative groups analyzed in Chapter Two.⁵⁵ My contribution in this chapter is to bring the problem land policy in Algeria into a discussion of the civil-military relations in Algeria and its significance to military-colon relations.

Chapter Four

Scholars have overlooked the significance of the trial of Captain Auguste-Édouard Doineau for the history of French Algeria. Only a single book, itself comprised mostly of

⁵³ John Ruedy, *Land Policy in Colonial Algeria* (Berkeley, CA: University of California Press, 1967).

⁵⁴ Hollins McKim Steele, Jr., "European Settlement vs. Muslim Property: the Foundation of Colonial Algeria 1830-1880" (Ph.D. Dissertation, Columbia University, 1965).

⁵⁵ A few other scholars have studied land policy, among their works are: Abd al-Hamid ibn Zayyan Benachenhou, *Régime des terres et structures agraires au Maghreb* (Alger, 1970); Michael Brett, "Legislating for Inequality in Algeria: The Senatus-Consulte of 14 July 1865" *Bulletin of the School of Oriental and African Studies, University of London*, vol. 51, no. 3. (1988): 440-461; Kjell H. Halvorsen, "Colonial Transformation in Agrarian Society in Algeria," *Journal of Peace Research*, vol. 15, no. 4 (1978): 323-343. In addition, there are some documents in CAOM relating to land policy. They include 1J 196/66 mi 145; 40J 6; F/80/1805; 1E 179/18 Miom/15; 1J 197/66 Miom/146.

Abi-Mershed devotes a large section of *Apostles of Modernity* to a discussion of land policy and European colonization, thus emphasizing their importance for the history of the development of the French administration in Algeria.

excerpts from the trial proceedings, has been published on the topic⁵⁶ I attribute this oversight to the lack of attention devoted to the military-civilian conflict as it unfolded in Algeria. When this conflict is referenced, its cause generally is attributed to the harsh measures the military took during its conquest. This behavior no doubt played a role in the tensions. The French population in Paris greeted with horror and outrage the news of the violence and atrocities the French military committed in Algeria during the 1840s. These acts, according to Douglas Porch, contributed to the hostility and distrust between the military and the civilian populations in France during the nineteenth century.⁵⁷ What we lack is an understanding of or explanation for the tensions between the military and the *colon* population living in Algeria. The trial provides a unique window into the divisions among the branches of the French administration and to the tension between military and civilian administrations. It also reveals the methods and complexities of French colonial rule in Algeria and the complexities of the relationship between the French military administrators and the indigenous Algerian population. The accusations leveled against Captain Doineau reflect complaints that the civilians commonly made against the military at the time. These complaints were echoed in the anti-military writings of civilian advocates. The trial of Captain Doineau enhanced the negative public image of the Arab Bureau officer upon which later arguments were based. It is necessary

⁵⁶ Gaston Delayen, *Les deux affaires du capitaine Doineau 1856-1874, l'attaque de la diligence de Tlemcen, l'évasion de Bazaine* (Paris: Éditions des Juris-classeurs, 1924).

⁵⁷ Douglas Porch, "Bugeaud, Galliéni, Lyautey: The Development of French Colonial Warfare," in *Makers of Modern Strategy from Machiavelli to the Modern Age*, ed. Peter Paret (Princeton, NJ: Princeton University Press, 1986), 376-407.

to understand the Doineau Trial and its context in order to understand the arguments made against the military administration.

Numerous historians of French history have turned to trials to illuminate larger historical forces and themes. Historians have used both less sensational trials, such as that of Martin Guerre, and “cause-célèbre” trials, such as that of Madame Henriette Caillaux, to provide insight into a diverse range of issues such as social relations, political forces, and the use of science in legal proceedings.⁵⁸ Allan Christelow has studied Muslim law courts in Algeria to explore “in detail how the colonial state intervened in the lives of the colonized.”⁵⁹ In similar fashion, I propose to combine legal with colonial history. While Christelow focused on Muslim law courts, my project will examine a French law court in a colonial setting. Scholars like Christelow have begun to explore criminal justice as applied in a colonial setting for what it reveals about the colonizers’ internal relationships. Moving beyond old paradigms of law as a tool for

⁵⁸ In *The Return of Martin Guerre*, Natalie Zemon Davis examines the trial of a common man, Martin Guerre, to access the dynamics of life in a small seventeenth century village in the south of France. Davis writes that because the trial of Martin Guerre was a “remarkable case,” it “serves [her] well, for a remarkable dispute can sometimes uncover motivations and values that are lost in the welter of everyday.” (Natalie Zemon Davis, *The Return of Martin Guerre* [Cambridge, MA: Harvard University Press, 1983], 4.

Ruth Harris, Benjamin F. Martin, and Edward Berenson all study the trial of Madame Henriette Caillaux to support quite different historical projects. Harris includes the Caillaux trial in a larger discussion of the changing use of science in French legal proceedings. (Ruth Harris, *Murders and Madness’ Medicine: Law, and Society in the Fin de Siècle* (Oxford: Clarendon Press, 1989). Martin considers the Caillaux trial, among others, to illustrate the five ways in which social and political forces -- “political interference in the judicial process, government corruption and inefficiency, the structure of the magistrature, nationalism as a hidden agenda, and the [stalemate nature] of the Republic’s society”-- contributed to the miscarriage of justice. (Benjamin F. Martin, *The Hypocrisy of Justice in the Belle Époque* [Baton Rouge: Louisiana State University Press, 1984], 228-229). Berenson devotes an entire book to the Caillaux trial, providing a gendered thick description of the Caillaux trial to illustrate his thesis that in late nineteenth-century France there existed a crisis of masculinity. (Edward Berenson, *The Trial of Madame Caillaux* (Berkeley: University of California Press, 1992).

⁵⁹ Allan Christelow, *Muslim Law Courts and the French Colonial State in Algeria* (Princeton: Princeton University Press, 1985), 4;11.

imperial control and domination, or as an expression of racial thought in practice, intercultural (European vs. indigenous) trials also provide insight to the process by which colonial powers practiced colonization.

Trials that took place in a colonial environment were, in the words of Martin Wiener, also “political trials, shaped by clashing interests and clashing ideologies of social order.” Thus, a “closer examination of such trials may advance our understanding of . . . the ‘tensions of empire’.”⁶⁰ It is striking that a French court of law in Algeria convicted and condemned to death a French officer for killing an indigenous Algerian. The circumstances surrounding this unusual outcome will provide us with entry into the intricate interrelationships of legal proceedings and colonial administrative contestation.

Chapter Five

Many of the arguments raised at the Doineau Trial, as we shall see, recur in the 1860s. Chapter Five will focus on the 1860s pro-civilian advocacy of activists such as Auguste Warnier, Jules Duval, and Jules Favre. All three men were influential in advancing the civilian/colon cause. Jules Favre was an outspoken member of the French Legislative Assembly, entering in 1858 as the elected deputy of Paris. Doctor Warnier and Jules Duval were active in the public sphere through the publication of articles and pamphlets. They also participated in the colonial government in Algeria. After 1870, their condemnations of the military dominated the discourse about the military

⁶⁰ Martin Wiener, “Criminal Law at a Fault Line of Imperial Authority, Interracial Homicide Trials in British India” in *Modern Histories of Crime and Punishment*, Markus D. Dubber and Lindsay Farmer, eds. (Stanford: Stanford University Press, 2007), 253.

administration and shaped its later image in the public imagination. This chapter will include an analysis of the crucial role of republican ideology in these anti-military writings. Republican ideas shaped colonial policy, particularly as it related to land. Existing scholarship has not explored in sufficient depth the relationship between land policy, military-civilian conflict, and republican ideology. I shall argue that it is important to consider this literature for a full understanding of French colonial administration in Algeria in the 1860s.

A Brief Discussion of Terminology

It is difficult to find terms to describe the population of living in Algeria prior to the arrival of the French. This is due to several factors, some of which include: the inherent bias and racism that formed the expressions in the first place; misunderstanding and ignorance on the part of the French who misidentified and failed to distinguish among the multiple groups of people they encountered in Algeria; and the great diversity of the population itself, which defies easy categorization. I have chosen to refer to the general pre-French population as the “indigenous” population, or to borrow the French term “indigènes.” Many sources use this imprecise term, and when I have paraphrased to borrowed from these sources, I have used the term as well. The French sources, in fact, often are quite vague when referring to the population they encountered in Algeria, using words such as “indigène,” “Arab,” “Berber,” “tribes,” “Bedouin,” or “Muslim,” often interchangeably and without any explanation. Benjamin Claude Brower provides an excellent summary of the history of the French terminology for the population in Algeria.

In short, the French started using the term “indigène” almost immediately after arriving in 1830. They also used terms that recognized the diversity of the population, such as “Juifs” and “Turks,” but Brower explains that “Algerian” was used only to refer to the population of Algiers, and that “indigène” referred to the outlying population. The word “indigène” also permitted the French to refer to the inhabitants “in the aggregate . . . as a population.”⁶¹ I employ it in a similar sense.

I refer to the rural population -- nomadic, semi-nomadic, and sedentary -- that inhabited the interior plateaus, deserts, oases, and mountainous regions of Algeria, as tribes. This follows the sources, because the French generally referred to these populations as “tribes” as well. Modern scholars of North Africa also employ the term. Scholarly predecessors include the foundational studies of Pierre Bourdieu and Jacques Berque. The structure of rural nomadic Algerian society before French conquest was highly decentralized, with support strongest at the family or communal level.⁶² The French termed the small communal units, of which there were hundreds, *tribus*, commonly translated as *tribes*.⁶³ The Arabic word (see note below) derives from a root that carries the meanings to accept, to receive (hospitality), to acquiesce, to consent, or to submit to (command). Thus, in Arabic the word implies a sense of mutual obligation and

⁶¹ Brower, *A Desert Named Peace*, 19-20.

⁶² Pierre Bourdieu wrote that the foundational units of Arab tribes were extended families, organized patriarchally. Several families made up a clan or “fraction” (*ferka*). Several “fractions,” or a “federation of fractions,” directed by a *sheikh*, made up a *tribu* (or tribe). Pierre Bourdieu, *Sociologie de l’Algérie* (Paris: PUF, 1958), 71-79.

⁶³ Jacques Berque, “Qu’est-ce qu’une ‘tribu’ nord-africaine?” *Eventail de l’histoire vivante (homage à Lucien Febvre)* (Paris: Armand Colin, 1953), 261-71. The Arabic word for tribe is “قبيلته” The root for this is “قبل” which carries the meanings to accept, to receive (hospitality), to acquiesce, to consent, or to submit to (command).

submission -- perhaps submission to the organizational hierarchy and to the interests of the group.

Arab tribal structure was hierarchical and patriarchal. A tribe consisted of a federation of clans and was led by a *sheikh* who usually was a leader of one of the more important clans. The clans were consanguineous (descending from a common ancestor) and form the true political unit of Algerian society. Occasionally during times of need or war, tribes came together to form larger, loose, and non-binding social units.⁶⁴ The French came to term these groups *confédérations*, *ashalik*, *caïdats*, or *sheikhats*, but the tendency was for small units to predominate – what Jacques Berque has referred to as “*un morcellement continu*.”⁶⁵ An alternate interpretation proposes a tribe as an ever-shifting “a community of interests.”⁶⁶ Regardless of its specific definition, I use the term “tribe” in this dissertation to refer to the populations to which the French sources, and subsequent scholarship, have applied the same word.

⁶⁴ Pierre Bourdieu, *The Algerians* trans. Alan C.M. Ross, pref. Raymond Aron (Boston: Beacon Press, 1962), 83. During his war against the French, ‘Abd el-Kader successfully cobbled together, through persuasion and force, a large confederation of tribes. One reason for ‘Abd el-Kader’s effective resistance to French rule was this ability to create such a confederation of tribes, which generally resisted submitting their own authority to that of another, often competing, tribe. Likewise, a significant factor in Abd el-Kader’s ultimate defeat by the French was his inability to hold his multi-tribe confederation together. As the tribes suffered under French attacks and raids, they ended their alliance with ‘Abd el-Kader and made peace with the French.

⁶⁵ Jacques Berque, “Qu’est-ce qu’une ‘tribu’ nord-africaine?” p. 268.

⁶⁶ As summarized by Benjamin Claude Brower, quoting the sociologist M’ammed Boukhobza, *A Desert Named Peace*, 97.

General Note on Sources

The Archives D'Outre Mer in Aix-en-Provence house most of the documents pertaining to the Arab Bureau and military administration in Algeria. These archives have supplied many of my sources, primary among them were administrative reports and correspondence, but including also military dossiers and records from meetings of committees or government bodies. Memoirs of military and Arab Bureau officers supplied a rich source of information about their roles as administrators. Newspapers published in France during the trial offered additional insight.⁶⁷ The parliamentary speeches and *plaidoire* of Jules Favre and the pamphlets of Warnier and Duval provided some of the views of the civilian/colons.⁶⁸

Conclusion

Alexis de Tocqueville believed that an essential problem with the colony in Algeria was its government. He wrote that it displayed “several contradictory flaws that are rarely found in the same power. It is violent, arbitrary, tyrannical, and . . . weak and impotent.” Tocqueville offered several recommendations for improving the circumstances in the colony, but he believed that the most essential step was to centralize the colony’s “real administration” in the hands of a single official.⁶⁹ He disliked the

⁶⁷ During the period of the trial, the press was still subject to censorship laws imposed by Napoleon III. It is difficult to know if the lack of editorial commentary on the trial resulted from censorship or other reasons, but the newspapers examined here published mostly just excerpts from the trial proceedings.

⁶⁸ Jules Favre served as the defense attorney for some of the Arabs accused, along with Doineau, of the murder of Ben-Abdallah.

⁶⁹ Tocqueville, “Essay on Algeria (October 1841),” in Pitts, 93-95.

military administration and preferred to see the colony in the hands of a civilian power, but he acknowledged that the *kind* (military or civilian) of administration mattered less than the *form* of the administration (unified). France's "great and guiding principal of administrative unity," concluded Tocqueville, "does not exist" in Algeria.⁷⁰ The early decades of the French presence in Algeria were marked by the struggle between the two forms of administration, the military and the civilian. This struggle had significant repercussions not only for the Europeans living in Algeria but also -- and most significantly -- for the indigenous population. The greatest source of the conflict and struggle for power, and the issue that held the most radical implications for the population, was land policy. In the colonial context in Algeria, land policy -- in particular, instituting individual property ownership within a society that depended on communal property ownership -- held serious implications for the survival of the tribal populations as coherent groups and the continuation of their customs. The struggle over land policy and other aspects of administration took place among groups who were influenced by the ideological context of the republican legacy dating from the French Revolution. My project reconceptualizes nineteenth-century French-Algerian history by integrating these previously underplayed historical elements and arguing for their central role in the development of the Algerian colony.

⁷⁰ Tocqueville, "First Report on Algeria (1847)," in Pitts, 153.

Chapter One: The Ottoman Background

Introduction

A succession of empires and foreign powers have ruled the region of North Africa that comprises modern Algeria. Although the governing powers changed, the general patterns of settlement and control retained consistent characteristics throughout many centuries. Significant settlements mostly were located along the coastline and were characterized by an urban mercantile culture. These coastal cities, dependent on Mediterranean trade for their survival, were particularly vulnerable to foreign attack and control. The direct control of the governing state remained limited to these coastal cities and their environs.¹ The tribes of the interior, however, evaded or minimized subjugation by capitalizing on such advantages as their ease of mobility, knowledge of the terrain, and ability to adapt to and function in the harsh climate. The sedentary Berber populations of the remote and largely inaccessible mountains constituted a sizable population, but their mountainous homesteads helped them to avoid foreign subjugation until 1857 when the French finally succeeded in subduing them.

The powers that, throughout the centuries, have controlled North Africa accepted their indirect control of the interior. Their primary goals were to maintain a general peace, ensure the safety of agriculture and trade, and collect taxes. This relative freedom from excessive control by the central state allowed the interior populations to maintain

¹ This pattern extends to antiquity. Phoenician and Roman settlements were located along the coastline. The Roman defensive frontier extended to its southernmost fort at Messaad, about 180 miles south of Algiers.

their own identities and enjoy a considerable degree of autonomy. This changed, however, with the French. Initially, they advocated a policy of restricted occupation, but by 1839, the French decided that restricted occupation of the coastline must be replaced with complete domination of the coast *and* the interior. The French, in short, sought to extend their control of Algeria into the interior desert to a degree not previously attempted.² Before the French, only the Ottomans during the last decades of their rule had made a determined effort to expand direct control over the interior by extending their military power and increasing taxation in the Algerian hinterland. The population reacted with a series of violent revolts.³ Despite sharing a common religion and many cultural traits with the interior populations, the Ottomans nonetheless faced a resolute resistance when they attempted to encroach upon the tribes' autonomy.⁴

In order to appreciate the long patterns of conquest and administration in North Africa, it is important to obtain a general overview of the history. The French administration marked a radical departure from practices of control and administration that had existed for centuries before their arrival. Most important, we need to develop a solid understanding of Ottoman administration in the Regency of Algiers. The Ottomans administered North Africa for the two centuries immediately preceding the arrival of the

² S. Baier "The Sahara in the Nineteenth Century" in *General History of Africa: VI*, ed. J.F. Ade Ajayi, (Paris: United Nations Educational, Scientific and Cultural Organization, 1989 and Berkeley: University of California Press, 1989), 522.

³ John Ruedy "Continuities and Discontinuities in the Algerian Confrontation with Europe" in *Islam and Secularism in North Africa*, ed. John Ruedy (New York: St. Martin's Press, 1994), 74.

⁴ It is worthwhile to consider the possible influence these revolts might have had on later resistance directed at the French. Unfortunately, the lack of scholarly attention to nineteenth-century North African history means this connection remains unexamined. We can hypothesize that the resistance mounted against the Ottomans left a legacy of military action and organization among the tribes, but more work needs to be done in this field.

French, and they did so successfully and with a minimum of military force: one estimate suggests that 15,000 was the greatest number of Ottoman troops posted in the Regency of Algiers.⁵ The Ottoman approach to administering the interior regions of the Regency presented an effective and efficient method to controlling a diverse and widely-disseminated population of predominantly nomadic and semi-nomadic populations. The dominant French approach, as we will see, broke significantly with Ottoman practices. The officers of the Arab Bureau, however, generally demonstrated a greater willingness to adopt and work within pre-existing traditions, many of which had been adopted and assimilated by the Ottomans, in keeping with their method of statecraft. The Arab Bureau represented a rather confused attempt by the post-revolutionary nation-state to resurrect this Ottoman adaptability in relation to locally various social and cultural formations. Thus, we begin with an general discussion of Ottoman administrative style.

The Ottoman Empire: Adaptable and Flexible

Scholars of Ottoman history mostly have neglected the history of Ottoman North Africa. This stems, in part, from two previous misconceptions about Ottoman history that recent scholarship has begun to dismantle. The first is the “Ottoman decline thesis” and the second is the “autonomy thesis.” The “decline thesis” interprets Ottoman history as a long, gradual decline that began after the Ottoman “Golden Age” of the seventeenth-century and ended, finally, in 1918 with the final break-up of the Empire. The “Ottoman decline” thesis holds the North African Regencies as among the first regions to break

⁵ Osama W. Abi-Mershed, *Apostles of Modernity* (Stanford, CA: Stanford University Press, 2010), 43.

from Ottoman control. The “autonomy thesis” assumes that the Ottoman Porte exerted “weak or insignificant authority” over North Africa because the administrative institutions there differed markedly from those in the rest of the Empire.⁶ Thus, these two paradigms worked together to marginalize the significance of North Africa for Ottoman history. Accordingly, Ottoman North Africa, viewed as peripheral and insignificant, has received little scholarly attention from Ottomanists.⁷

Current scholarship on the Ottoman Empire, however, is beginning to challenge these models. Scholars have reexamined both the relationship of North Africa to the central Ottoman government and the government’s relationship with its wider empire. As a result of this work, we have gained valuable insight into the administrative structures and customs in North Africa prior to the 1830 arrival of the French. Because this information holds significant implications for France’s relationship with the indigenous populations and its efforts to establish an effective administration, we will review in brief some of the reinterpretations of Ottoman history.

Scholars who challenge the Ottoman decline thesis propose that, instead of an empire in decline suffering from fragmentation, the Ottoman Empire was a flexible state that adapted successfully to changing external and internal circumstances. They argue

⁶ Asma Moalla *The Regency of Tunis and the Ottoman Porte, 1777-1814, Army and government of a North-African Ottoman eyālet at the end of the eighteenth century* (London and New York: Routledge Curzon, 2004), xiii. Although she fails to explain explicitly what allegedly made the North African administration unique, Moalla notes some examples: the power of the deys and beys over the Sultan-appointed pashas and the hereditary monarchy that the Husainids established in Tunisia in the early eighteenth century. This last difference faded however, as provincial administrators throughout the Empire gradually established hereditary or semi-hereditary rules -- most famously, Mehmet Ali in nineteenth-century Egypt.

⁷ Ottoman bureaucratic records were destroyed in 1830 in the aftermath of the French invasion. This presents additional challenges for the scholar interested in researching the Regency of Algiers.

that the Ottomans successfully managed a series of “crises and adaptations,” and they see, above all, evidence of powerful cohesive cultural and social ties working across the Empire to reinforce its unity.⁸ Scholars acknowledge that throughout the seventeenth and early eighteenth century, the personal power of the sultan declined as the power of bureaucrats and Ottoman political households increased. Also, power increasingly became concentrated in the hands of the Grand Vizier.⁹ Nonetheless, they argue that these changes merely demonstrate shifts in power, not a weakening of the Ottoman central government or a disintegration of the Empire. Scholars argue that provincial elites had “localized” the hegemony of the state and that they had become “Ottomanized” by the eighteenth century.¹⁰ What might appear to be independence disguises the deep ties between Istanbul and the rest of the Empire.

Karen Barkey stresses the “longevity and resilience” of the Ottomans, and she defines their strengths as their “adaptability and flexibility.”¹¹ These qualities, she

⁸ Jane Hathaway, *The Arab Lands Under Ottoman Rule, 1516-1800* (Harlow, Great Britain: Pearson Education Limited, 2008), 8. Examples of work refuting the decline thesis include Asma Moalla, *The Regency of Tunis and the Ottoman Porte, 1777-1814* (London and New York: Routledge Curzon, 2004); Khaled Fahmy, *All the Pasha's Men: Mehmed Ali, His Army, and the Making of Modern Egypt* (Cairo and New York: The American University Press, 1997); Jane Hathaway, *The Politics of Households in Ottoman Egypt: the Rise of the Qazdaglis* (Cambridge: Cambridge University Press, 2002); Suraiya Faroqhi, *The Ottoman Empire and the World Around It* (London and New York: I.B. Tauris, 2004); Şevket Pamuk “Institutional Change and the Longevity of the Ottoman Empire, 1500-1800” *Journal of Interdisciplinary History*, 35:2 (Autumn, 2004): 225-247; Karen Barkey, *Bandits and Bureaucrats: The Ottoman Route to State Centralization* (Ithaca and London: Cornell University Press, 1994) and idem., *Empire of Difference: The Ottomans in Comparative Perspective* (New York: Cambridge University Press, 2008).

⁹ Boğaç A. Ergene “On Ottoman Justice: Interpretations in Conflict (1600-1800)” *Islamic Law and Society*, vol. 8, no. 1, (2001): 79.

¹⁰ Dina Rizk Khoury, “The Ottoman Centre Versus Provincial Power Holders: An Analysis of the Historiography” in *The Cambridge History of Turkey, Vol. 3, The Later Ottoman Empire, 1603-1839*, ed. Suraiya Faroqhi (Cambridge: Cambridge University Press, 2006): 155. Khoury specifically notes the work of Jane Hathaway on these issues.

¹¹ Barkey, *Empire of Difference*, 4;7.

proposes, were the hallmarks of Ottoman administrative style and made possible the Ottomans' long-lived Empire.¹² Barkey employs the expression “institutional bricolage,” to convey the process empires follow when “reworking . . . institutional materials at hand” rather than creating completely new ones.¹³ The Ottomans accepted the governing practices and social structures of the territories they conquered rather than seeking to abolish and replace them with “Ottoman” equivalents. In its relations with its diverse subject populations, the Ottoman state exhibited a high degree of tolerance, choosing to deal with diversity not through forced conversion/assimilation or expulsion but with expansive, though not unlimited, acceptance and accommodation.¹⁴ The Ottomans even had a term for this: *istimalet* (the policy of accommodation).¹⁵

This policy of accommodation included the “patrimonial” style of Ottoman leadership and the “prebendal structure of state-society relations.”¹⁶ Barkey borrows this term from Max Weber, who defines a “praebends” system as one in which government administrators receive support from one of four non-hereditary sources: maintenance in the household of the “chief;” allowances from his “chief’s” goods or money, or allowances in kind; rights to the use of land in return for services; the appropriation of

¹² See Karen Barkey, *Empire of Difference: The Ottomans in Comparative Perspective* (New York: Cambridge University Press, 2008). Barkey compares the Ottomans to the Romans, the Russians, the Byzantines, and the Hapsburgs but most often notes similarities between the Romans and the Ottomans.

¹³ Karen Barkey *Empire of Difference*, 7.

¹⁴ There are, of course, exceptions, but the general state policy and practice was to protect and include ethnic and religious minorities, even if the standards of protection and inclusion fall short of our modern standards of the same.

¹⁵ The Ottomans used *istimalet* specifically to gain support from subject peoples. See Fikret Adanir “Semi-Autonomous Provincial Forces in the Balkans and Anatolia” in *Cambridge History*, ed. Faroqhi, 158.

¹⁶ Barkey, *Bandits and Bureaucrats*, 9.

property incomes, fees, or taxes.¹⁷ In the Ottoman Empire, the state, not individuals, owned most of the land, and the state carefully administered land use.¹⁸ It did this initially by awarding *timars* (land grants) to soldiers in return for their military service on behalf of the government.¹⁹ Specific timars, however, were not heritable. The timar-holder could pass the right to hold a timar to his son, but he could not pass his own timar to him. Rather, the Ottoman government would award the heir a different timar in another part of the Empire, thus rotating the elites and keeping them loyal to the state rather than to their particular timar or its region.²⁰ The status and livelihood of the elites therefore were tied to the beneficence of the state, and the Ottomans could manipulate the different classes of society to reinforce these ties.²¹ In regions which contained a predominantly nomadic population, the Ottomans bestowed upon some tribes the status of *makhzen* and maintained these tribes' loyalty through the privileges *makhzen* status conferred.²²

Barkey characterizes the Ottoman method of state centralization as an “old style divide-and-conquer [policy],” which is “oriented toward short-term crisis management.”

¹⁷ Max Weber, *The Theory of Social and Economic Organization, Being Part I of Wirtschaft und Gesellschaft*, trans. A.R. Henderson and rev. and ed. Talcott Parsons (London: William Hodge and Company Limited, 1947), 322.

¹⁸ Karen Barkey, “Rebellious Alliances: The State and Early Peasant Unrest in Early Seventeenth-Century France and the Ottoman Empire” *American Sociological Review*, vol. 56, no. 6 (Dec. 1991), 704.

¹⁹ The timar system was phased out in the seventeenth century. In its place, the government began awarding the right to life-time tax-farming.

²⁰ This explanation of the timar system came from Karen Barkey, *Bandits and Bureaucrats*, 62-65.

²¹ Barkey, *Bandits and Bureaucrats*, 56; 230.

²² *Makhzen* tribes are those tribes aligned with the government who agree to collect taxes, maintain peace and security in their territories, and provide military support as needed in return for tax exemptions and other government favors.

Under such a system, provincial groups remain loyal to the state, and they view alliances with the state as the most effective means for gaining access to resources and privileges.²³ The Ottoman government carefully cultivated the loyalty of its subjects, including those at the periphery of the empire, through maintaining a strictly hierarchical society built on a system of rewards and punishments and by offering the possibility of personal advancement and success, regardless of background or origins, based on exceptional service to the state. It was in the best interests of individuals, as well as of groups, to serve the interests of the state. Consequently, the Ottoman Empire lacked any significant “antifeudal or antistate revolts.”²⁴

The Ottomans’ ability to subsume local power structures and elites, harnessing them for the Empire’s purposes, was one way in which the Ottomans displayed adaptability and flexibility. The Empire’s network of “political households,” at the peak of which was the Sultan’s household, illustrates this administrative style. The Grand Viziers, second in control and power after the Sultan, usually hailed from the periphery of the empire and intermarried with powerful Istanbul families.²⁵ The Grand Vizier’s household therefore ranked as second in importance and became tied through marriage to powerful local families. Ottoman provincial households, including those in North Africa, often intermarried with their counterparts in Istanbul, establishing cross-empire alliances based on bonds of family and politics. The Ottoman households lacked the political and

²³ Barkey, “Rebellious Alliances,” 700.

²⁴ Barkey, *Bandits and Bureaucrats*, 8.

²⁵ Jens Hanssen, Thomas Philip, and Stefan Weber, eds., *The Empire in the City: Arab Provincial Capitals in the Later Ottoman Empire* (Beirut: Beirut Texts and Studies, 2002), 8.

legal status of Old Regime European aristocracy, but they formed an aristocratic or elite “class” within the Ottoman Empire. A significant difference between the aristocracy of Europe and the political households of the Ottoman Empire, however, was that the Ottoman households included and absorbed the local elites of newly-conquered territories. Additionally, it was possible, through the elaborate bureaucratic system, for individuals from humble origins to move up in the hierarchy and either marry into or establish themselves as an important household. This provided an avenue for upward mobility and for incorporating the local population -- both elite and non-elite from across the empire -- into the Ottoman power structure. The end result of this was a large and far-flung empire that nonetheless cultivated among its diverse populations both strong ties to and an investment in the perpetuation and success of the central state power.

This system explains, in part, the assertion made by scholars such as Jane Hathaway and Suraiya Faroqhi that the important political households, even if they enjoyed considerable autonomy from the Porte, remained unwaveringly loyal to the Ottoman state. Scholars such as Hathaway and Faroqhi emphasize that independence and self-determination among the Ottoman elite should be mistaken neither for a weak or ineffective central government nor for a lack of cohesion among the elites themselves. The households were capable of working together to achieve common goals, of which one remained the continued success of the Empire. Faroqhi writes that “it is an ‘orientalist’ assumption of the most outmoded variety to postulate an atomized Ottoman elite, unable to formulate even a loose consensual framework, within which its individual members might pursue the interests of the state, that alone could guarantee their positions

and -- as was true also of other polities -- their personal financial concerns as well.”²⁶ Instead, he asserts that Ottoman elites, which included both provincial and Anatolian populations, could and did work collectively to advance their own interests. Such cooperation among the elites further strengthened ties across the Empire, reinforcing allegiance to the Porte. In the North African Regencies, the Ottoman administrators relied on this hierarchical administrative structure of indirect leadership and social bonds to keep the Regencies loyal to the Ottoman state.

Some scholars, however, agree with more traditional interpretations of the North African Regencies. Suraiya Faroqui writes that “along the entire coast of North Africa, military forces . . . were able to subvert central rule within a few decades, and establish what might be called ‘dependent principalities’ of a novel type.”²⁷ As evidence of their autonomy, Faroqui points to the fact that in the seventeenth and eighteenth centuries, the ruling powers of Algiers, Tunis, and Tripoli concluded their own independent peace and trade treaties with European powers. M. Şükrü Haniöğlu singles out Tunisia, referring to it as a “virtually independent state with only loose ties to the imperial center.”²⁸ Such views of the North African Regencies help illustrate the reason that many Ottomanists have treated the Regencies as peripheral to and unimportant for the wider Ottoman world.

Asma Moalla, in contrast, directly challenges this interpretation of the weakness

²⁶ Suraiya Faroqui, *The Ottoman Empire and the World Around It* (London and New York: I.B. Tauris, 2004), 44.

²⁷ Faroqui, *The Ottoman Empire and the World Around It*, 70.

²⁸ M. Şükrü Haniöğlu, *A Brief History of the Late Ottoman Empire* (Princeton: Princeton University Press, 2008), 9.

of Ottoman rule in North Africa. She emphasizes precisely the factors that Karen Barkey points to as the strength, not the weakness, of the Ottoman bureaucracy, and she argues for their presence in North Africa. Moalla studies the strong personal, professional, and economic ties that connected the powerful political households of the Regency of Tunisia with the households in Anatolia, asserting that the North African governmental institutions did not, in fact, depart significantly from Ottoman administration elsewhere. Bound by the same political and social ties, the Regencies were as much a part of the Ottoman Empire as any other region. Moreover, she argues that the ties that bound the Regencies to the Empire were stronger than the administrative idiosyncrasies -- such as their practice of signing independent peace treaties with European states -- that might have set them apart.²⁹

The extent to which the North African territories did or did not operate independently from Ottoman control requires further study. Current research suggests, however, that the North African Regencies were tied more closely to the Ottoman government than previously believed. With the usual accommodations for local traditions and practice, or *istimalet*, the Ottomans ruled the Regencies much as they did the rest of their Empire. The population of the Regency of Algiers lived under

²⁹ See Asma Moalla, *The Regency of Tunis and the Ottoman Porte, 1777-1814, Army and government of a North-African Ottoman eyalet at the end of the eighteenth century* (London and New York: Routledge Curzon, 2004). Moreover, Moalla explains further that although the Regencies did make independent treaties with Europe, these treaties always conformed with the policies of the Porte. Independent treaties reflected not a lack of allegiance to the Porte but the financial interests of the Regencies, who juggled a complicated web of treaties in order to maximize financial gain from privateering, a critical component of the Regencies' economies. As evidence of the Regencies' essential loyalty, Moalla notes that in 1798 when Napoleon Bonaparte and his French troops invaded Egypt, the Regencies of Tunis and Algiers joined with the Porte in declaring war against France. The Regencies might sign independent treaties with European powers in matters of piracy and trade, but they remained committed to the Empire when it was challenged. (Moalla, *Regency of Tunis*, 16).

circumstances similar to those found in other Ottoman provinces throughout the Empire. In establishing its Algerian colony, France had to decide how it wanted to respond to the Ottomans' centuries-old and successful system of administration and state-subject relations. The questions the French had to answer were how would a post-revolutionary nation-state approach the problem of sovereignty in this context? How would it address conflicts in civil law, individual rights, contractual freedoms versus issues of ethnic difference, racial ideologies, the collective management of resources (lack of individual property rights) as they really existed and as they were perceived?

Ottoman Control and Administration

In 1492, the increasing strength of the Catholic Spanish kingdoms culminated in their successful 1492 conquest (the *Reconquista*) of the Iberian peninsula. This held two important consequences for North Africa: the first was a wave of immigration of Spanish Muslims and Jews that the Catholic powers expelled from the Iberian peninsula. These populations brought to their new North African homes their Moorish culture that influenced yet remained distinct from that of the local populations. Second, Catholic Spain became a serious new threat to Muslim North Africa, and the rival kingdoms engaged in a protracted political, economic, and religious conflict. North Africa became a focus of international diplomacy and conflict as European Christian kingdoms sought to conquer and control the Maghreb, fighting both among themselves and against North

African and Ottoman powers.³⁰ It was, in fact, the presence of Spanish troops and fortifications in North Africa that led to the Ottomans' arrival. Seeking to combat the piratical activities of the North African corsairs, as well as to prevent a much-feared invasion of Spain by North African Muslim armies, Spain established several forts (*presidios*) along the coast of Algeria and Tunisia. In 1505, Spain took control of Mers el-Kébir on the Algerian coastline, and in 1509 Spanish troops captured Oran. Spanish conquests continued: in 1510 they took Bougie and Tripoli. The ruler of Tlemcen, fearing a Spanish attack, decided to forestall it by volunteering to accept Spanish suzerainty. On Peñon, a tiny island located just off the coast of the small port of Algiers, the Spanish constructed fortifications and installed heavy cannon, trained them at the city, and demanded tribute. To defend themselves against the Spanish, the Hafsid rulers of Algiers invited the Barbarossa brothers to establish themselves in the city to assist in the fight against the Spanish.

Born on the Greek island of Mytilene (Lesbos), the Barbarossa brothers ('Aruj, Khair al-Din, Elias, and Ishaq) were successful privateers in the eastern Mediterranean. The Barbarossas' renown as skilled naval commanders and navigators prompted the Hafsid rulers to request their help against the Spanish.³¹ In 1516, rather than assist the Hafsid

³⁰ Occasionally, circumstances made for unusual allies: in the mid-sixteenth-century, Moroccan powers joined with their old enemies the Spanish, who at this time controlled Oran, to defeat the Ottomans and keep them out of North Africa. North African leaders also used intra-European rivalries to their own advantage, playing the English and Spanish against each other to maximize European assistance against Ottoman aggression. For more details about this period of European-North African relations, see Charles-André Julien, *History of North Africa: Tunisia, Algeria, Morocco from the Arab Conquest to 1830*, ed. and rev., R. LeTourneau, trans. John Petrie, ed. C.C. Steward (New York and Washington, D.C.: Praeger Publishers, 1970), 225-45.

³¹ Elias died during the journey to North Africa, and in 1518 Ishaq was killed after being taken captive in battle.

rulers, ‘Aruj overthrew them: he entered Algiers, murdered the emir, and seized control of the city. In 1518 at Tlemcen, ‘Aruj was killed in battle against the Spanish. Khair al-Din assumed his brother’s position as leader in Algiers and found himself fighting both the Spanish and the Hafids, who wanted to retake Algiers. Overwhelmed, Khair al-Din turned to the Ottoman sultan, Selim I, for assistance. In return for military supplies and troops from the Ottomans, Khair al-Din offered to accept the sultan’s rule and pay him tribute. Selim I accepted the bargain, awarded Khair al-Din the title of *pasha*, made him “emir of emirs,” or *beylerbey* (provincial governor), and sent him troops and artillery.³² The janissaries sent by Selim I helped Khair al-Din obtain his military victories against the Spanish and the Hafids in the 1520s and 1530s.

After many years of combat, marked by both setbacks and successes, Khair al-Din captured Tunis from the Hafids and decisively defeated the Spanish, expelling most of them from their North African strongholds.³³ Spain, however, quickly retook Carthage, LaGoulette, and Tunis, where they reinstalled the Hafsid sultan. In 1533, Suleiman I (Suleiman the Magnificent), recalled Khair al-Din to Constantinople to serve as *kapudan pasha* (high commander) of the Ottoman navy. Leaving his son Hasan Pasha in control of Algiers, Khair al-Din sailed away from North Africa, never to return. Until 1574 when the Ottomans captured Tunis, Ottoman power remained centered in Algiers and its

³² This version of events came from Daniel Panzac, *The Barbary Corsairs: The End of a Legend, 1800-1820*, trans. Victoria Hobson, completed by John E. Hawkes (Leiden: Brill, 2005), 10. (Originally published as *Les Corsaires barbaresques. La fin d’une épopée (1800-1820)*. Paris: CRNS éditions, 1999)

³³ Spain maintained control of Melilla, Mers el-Kébir, and Oran, but these small garrisons posed little threat to the Ottomans. In 1792, Spain evacuated Oran, having agreed to turn it over to Algiers the previous year.

environs. Morocco never fell under Ottoman control, maintaining its independence until 1912, when France made it a protectorate.

When the Hafsid ruler of Tunis, ‘Eulj ‘Ali died in 1587, the Sultan Murad III reorganized the North African Ottoman territories, aligning them with the Ottoman administrative framework found in the rest of the Empire. Murad III abolished the office of *beylerbey* and replaced it with that of a *pasha* whom the Porte would appoint for three-year terms.³⁴ These pashas would govern the new Regencies of Tunisia and Algeria that Murad III created.³⁵ Although Tunis and Algiers started out with a similar form of administration, their paths diverged in the course of the evolution of Regency administration due to economic and social conditions particular to each city. Both cities quickly relegated the pashas sent from Istanbul to figurehead status, but in 1659 the *Diwan* (council) of the *ojac* (literally, “hearth;” more on the ojac below) of Algiers, as a result of a tax dispute with Istanbul, abolished the *pashalik* and placed the leadership of the local government in the hands of the *aghas* (leaders) of the ojac.

Tensions between the ojac and Algiers’ corsairs resulted later in the replacement of the agha with a *dey* chosen by the corsairs. Ultimately, the Diwan came to elect (and

³⁴ William Spencer, *Algiers in the Age of the Corsairs* (University of Oklahoma Press: Norman, OK, 1976), 59.

³⁵ The official administrative title of the North African territories was *eyālet mümtāze* (privileged province). European diplomatic language translated that expression into “Regency.” (Asma Moalla, *The Regency of Tunis and the Ottoman Porte, 1777-1814* [London and New York: Routledge Curzon, 2004], 12).

dispose of) the dey, and the sultan confirmed the Diwan's selection after the fact.³⁶

Originally comprised only of members of the *ojac*, the Diwan gradually came to include corsair captains, and it therefore encompassed the military, naval, and commercial powers of the Regency.³⁷ The average length of a dey's reign was six years; deys very frequently met untimely deaths (usually assassination) while in power. Between 1671 and 1830, only two of the twenty-seven ruling deys outlived their reign.³⁸

The *ojac* were infantry soldiers of whom most were ethnic Turks recruited from impoverished regions of Anatolia.³⁹ They were sent to North Africa to serve their military terms and often lived out their lives there. The *ojac* were promoted based on seniority. Upon achieving the rank of captain-general, *ojac* officers became eligible for election as *agha* (leader) of the *ojac* corps. All of the corps participated in electing this leader. An elected *agha* held the post for two months, at which point he retired and became an "honorary *agha*," exempt from taxation. The government of Algiers supplied the *ojac* with modest rations and wages, but the *ojac* also shared in the piracy spoils and

³⁶ In Tunis, first the deys and then the beys seized control of the government. Asma Moalla explains the difference between deys and beys as the following: the infantry forces of the *ojac* were divided into two regiments: the *müstahfizan* and the 'azab. The two regiments fulfilled somewhat different responsibilities, but their main difference was in origin. The *müstahfizans* were comprised of men recruited from poor regions of interior Anatolia. Only leaders from the *müstahfizan* corp were permitted to receive the title "dey;" one source claims that this is because the dey must be a "pure-blooded Turk." The 'azabs were recruited from coastal areas, only some of which were Anatolian, and were often converts or descendants of converts to Islam. The beys from the 'azab corps often were appointed by the Sultan as commanders in newly-conquered territories. The bey was responsible for leading the *maḥalla*, or tax-collecting expeditions in the territory. (For this discussion, see Moalla, *The Regency of Tunis*, 14; 18-19).

³⁷ Because piracy supplied the Regency's the greatest source of revenue, the corsairs played a central role in the Regency's commercial activities.

³⁸ Spencer, *Algiers in the Age of the Corsairs*, 64.

³⁹ The cavalry, or *spahis*, generally were recruited from among the local population.

had exemption from normal jurisdiction.⁴⁰ The ojac were not permitted to marry local women, although many of the soldiers entered into relationships with them. The offspring born of the unions between Turkish men and local women were known as *kouloughlis*. Considered by the state to be illegitimate, the kouloughlis were unable to join the Ottoman military and were viewed by Ottoman society as in some ways superior to the local population but decidedly inferior to Ottoman Turks.⁴¹ To replenish the ranks of the ojac, therefore, fresh soldiers regularly arrived from Anatolia. This served the double purpose of providing the needed infantry and constantly renewing the army's cultural and personal ties to the heartland of the Empire.

Privateering provided the main source of the Regency's revenue and of its tribute to the Sultan.⁴² Although the sources often are "unreliable and incomplete," it is estimated that between 1798-99 corsair earnings provided 25.8% of the dey's revenues; between 1800--1802, 9.7%; 1804--1810, 4.8%; and from 1811--1815, 20%.⁴³ Additionally, the corsair fleets served as the Regency's naval power. When the Porte requested military assistance from the Regency, it was the corsair fleet that supplied it; for example, Algerine fleets participated in the Battle of Lepanto (1571) and in the

⁴⁰ Only commanding officers could punish ojac soldiers.

⁴¹ There were, however, some places -- Tlemcen the main example -- in which the kouloughlis comprised the majority of the population and exercised considerable power. (Xavier Yacono, *Histoire de l'Algérie de la fin de la Régence turque à la l'insurrection de 1954* [Paris: Éditions de l'Antlantique, 1993], 56).

⁴² Mahfoud Bennoune explains that the North African cities were dependent on trade because they had difficulty "extracting goods" from the interior regions. (Mahfoud Bennoune, *The Making of Contemporary Algeria, 1830--1937* [New York: Cambridge University Press, 1988], 26).

⁴³ Panzac, *Barbary Corsairs*, 131.

Ottoman attempt to drive Napoleon's army from Egypt (1798-1801).⁴⁴ The *raï's* (corsair captains), comprised the *taïfa* ("fellowship")⁴⁵ that ruled the corsairs and competed with the ojac for power in the city. Three principle groups served as sources for the corsair captains: Christian renegades from Europe, Muslims from elsewhere in the Empire (such as the Barbarossa brothers), and the non-Turk Regency population.⁴⁶

The beylerbey (later, the pasha and then the dey) ruled Algiers and the province of Algiers directly with the assistance of his *khalifas* (lieutenants) who were second in power to the dey. In addition to the dey, Algiers also had a mayor and a city council, of whom most were non-Turks, that served as a sort of advisory board but held little actual power. The rest of the Regency of Algiers was divided into three *beylicks* (provinces) -- the western beylick of Oran, with its capital at Mazouna; the central beylick of Titteri, with its capital at Médéa; and the eastern beylick of Constantine, with its capital at Constantine. The dey appointed a bey to govern each of these beylicks. The beys paid tribute to Algiers and were expected to provide military support for the Regency upon the dey's request.⁴⁷ Strategically-located *zmāla* (fortified garrisons or military colonies) helped the dey maintain his control over this broad region. The beylicks were further subdivided into districts administered by *qaïds* or *caïds* (commissioners or governors),

⁴⁴ Spencer, *Algiers in the Age of the Corsairs*, 146.

⁴⁵ This is the expression Daniel Panzac uses in *Barbary Corsairs*, 10.

⁴⁶ Spencer, *Algiers in the Age of the Corsairs*, 46.

⁴⁷ Algiers' requirement to send troops to the sultan complied with an Empire-wide practice and represented the Ottomans' expectation of subservience, obedience, and support from their dependencies. In the case of North African provinces, "troops" actually meant naval support. Corsair crews were comprised of a heterogeneous mix of North Africans and Europeans.

under whom served the local *shaikhs*, or *sheikhs* (tribal chiefs).⁴⁸ There were four *caïdats* -- Blida, Sebwa, Sudan, and Elkala.⁴⁹ Paul Rabinow observes that in Morocco, the caïd provided an important institutional link between the government and the tribes of the hinterland because of the caïds' responsibility for "collecting taxes, supplying soldiers, and insuring safe passage in his domain."⁵⁰ Although the Ottomans never controlled Morocco, the population of North Africa shared cultural and social similarities that transcended state borders, and caïds throughout North Africa likely served similar functions.

In the tribal regions outside the coastal urban centers and their environs, the Ottomans relied on pre-existing systems of tribal elites to assist them, preferring to rule indirectly. Rather than seeking direct territorial control over the subject tribes, the Ottoman state established a hegemonic control, underpinned by their military strength.⁵¹ The *makhzen* tribes (more below) supported the Ottoman state, often serving as government informants and extensions of Ottoman military power. Thus, state organization under the Ottomans could be classified in some ways as a "multiplicity of rural tribal . . . regional sub-systems" and "politically independent principalities and

⁴⁸ The title of caïd was used in North Africa and Moorish Spain to refer to a bureaucrat who performed the functions of a local governor or commissioner. The Ottomans appointed caïds during their rule and the French assumed this practice. The word "sheikh" derives from the Arabic word for "elder" and referred in an administrative sense to the leader of a tribe, although it also was used honorifically to refer to a wise man or an Islamic scholar.

⁴⁹ Spencer, *Age of the Corsairs*, 54-55.

⁵⁰ Paul Rabinow, *Symbolic Domination, Cultural Form and Historical Change in Morocco* (Chicago: The University of Chicago Press, 1975), 33. Tribal populations generally paid their taxes in kind. Tribal leaders collected taxes from the members of their tribes and passed them to the Ottoman tax collectors.

⁵¹ R. Brian Ferguson and Neal L. Whitehead, eds., *War in the Tribal Zone: Expanding States and Indigenous Warfare* (Santa Fe, NM: School of American Research Press, 1992), 7.

semi-independent chiefdoms.”⁵² Nonetheless, the society was less fragmented than it appeared, because complicated hierarchical and linear ties of economic and personal interest held the structure together and kept the diverse parts loyal to the Ottoman government. As we have seen above, the Ottomans’ patrimonial and prebendal administrative style tied the status and livelihood of the ruling local elites to the state.⁵³

The Ottomans governed their Empire with the general philosophy that it was best to interfere as little as possible with the lives and customs of their subjects. If the subject paid their taxes and left Ottoman troops unmolested, then the Ottomans allowed the subjects a considerable degree of self-determination.⁵⁴ Their method of taxation offers one example of the Ottomans’ preference for maintaining the status quo of established practice and entrenched custom. In newly-conquered territories, the Ottomans, rather than risk the upheaval and protest that reform might produce, relied on local traditions to shape state revenue collection. For this reason the Ottoman Empire never had a uniform method of taxation and collection.⁵⁵ The Ottomans followed this practice North Africa as well. Beginning in 1563, the Ottomans designated *makhzan* tribes to collect taxes and act as intermediary administrative authorities.⁵⁶ Makhzen tribes, accompanied by armed government troops, engaged in two annual tax collecting missions, known as *maḥallas*

⁵² Mahfoud Bennoune, *The Making of Contemporary Algeria, 1830--1937* (New York: Cambridge University Press, 1988), 17.

⁵³ Karen Barkey, *Bandits and Bureaucrats: The Ottoman Route to State Centralization* (Ithaca, NY: Cornell University Press, 1994), 9; 56.

⁵⁴ Julien, *History of North Africa*, 325.

⁵⁵ Mehmed Fuad Köprülü, *Some Observations on the Influence of Byzantine Institutions on Ottoman Institutions*, trans., ed., intro. and postscript, Gary Leiser (Ankara: Türk Tarih Kurumu Basımavı, 1999), 73.

⁵⁶ The Ottomans used a similar system in other tribal regions of their Empire.

(translated as “military column or camp”): a winter mahallah in December in the southern regions and a summer mahalla in July and August in the north.⁵⁷ Essentially, the mahallas were raids conducted throughout the countryside during which taxes were collected or forcibly seized. Similar mahallah-based methods of tax collection had been conducted in the North African past; the Ottomans merely appropriated the practice for their own benefit.⁵⁸

The *millet* system, however, provides the best example of the Ottomans’ adaptable administrative style. Under the millet system, the *dhimmi* (religious communities who had a sacred revealed scripture) were free to follow their civil law codes and administer justice within their own communities.⁵⁹ The millets nominated their own leaders and submitted them to the local Muslim qādī for approval.⁶⁰ These leaders often were religious leaders, such as priests or rabbis, who not only directed the millet’s religious affairs and organization but also conducted the practical administration of their communities.⁶¹ One of the millet leader’s most important responsibilities was to collect

⁵⁷ Moalla, *Regency of Tunis*, 129.

⁵⁸ Moalla, *Regency of Tunis*, 19. In the twelfth century the Almohads had initiated mahallas in North Africa. (Julien, *History of North Africa*, 114; 292-293).

⁵⁹ In practice, however, many Christians and Jews voluntarily turned to Islamic courts to settle legal disputes. The millet system established and legitimized a significant degree of legal and administrative independence among different religious communities, but it did not ghettoize them.

⁶⁰ The common meaning of qādī is defined in the *Concise Encyclopedia of Islam* as “a judge, appointed by a ruler or a government on the basis of his superior knowledge of Islamic law.” Cyril Glassé, *The Concise Encyclopedia of Islam*, intro., Huston Smith (New York: HarperCollins, 1991), 320. The term also refers to an administrative post within the Ottoman bureaucracy.

⁶¹ For these tasks, some of these religious millet leaders were assisted by another administrator, also approved by the qādī, who assumed responsibility for his community’s daily affairs. This position was referred to as the ra’is or sheikh and sometimes the *mutakallim*, or spokesman. (Amnon Cohen, “On the Realities of the Millet System: Jerusalem in the Sixteenth Century,” in *Christians and Jews in the Ottoman Empire: the Functioning of a Plural Society: volume II, The Arabic Speaking Lands*, eds. Benjamin Braude and Bernard Lewis [New York and London: Holmes & Meier Publishers, Inc., 1982], 12).

the *jizyat-i-gebran* (shortened to *jizya*), the “poll tax on the unbelievers.”⁶² The dhimmi had to recognize the superiority of Muslims and submit to some indignities; for example, dhimmi communities occasionally were required to wear distinguishing clothing. In return for accepting the Ottoman system that institutionalized their legal and religious inferiority, the dhimmi enjoyed a considerable degree of autonomy within that system and freedom to maintain their own customs.

This hierarchical administrative structure -- one that relied upon indigenous leaders and client tribes to assume a significant role in governing the territory -- proved quite effective. The longevity of the Ottoman Empire demonstrates its effectiveness. Until the reforming efforts of the Tanzimat period (1839--1876) during which the Ottomans sought to consolidate and strengthen the power of the central government, the administrative structure of the Empire remained predominantly local and decentralized. As noted above, this decentralization should not suggest, however, a lack of unity among the populations of the Ottoman empire or a lack of allegiance to the Porte. Recent research has emphasized the cohesiveness of the Empire and the strength of the bonds that held it together.

Justice in Ottoman Rule and in Islamic Law

A characteristic of the modern nation-state is a uniform legal code for citizens.

The populations living under Ottoman rule had been accustomed to following a diversity

⁶² Muhammad Adnan Bakhit, “The Christian Population of the Province of Damascus in the Sixteenth Century” in Benjamin Braude and Bernard Lewis, eds. *Christians and Jews in the Ottoman Empire, The Functioning of a Plural Society, Volume II, the Arabic-Speaking Lands* (New York and London: Holmes & Meier Publishers, Inc., 1982), 20.

of civil law codes based on religious and traditional law codes. The French administration in Algeria after the conquest confronted the problem of how to address the application of justice and law among both the indigenous population and the European citizens living in the territory. The two populations held very different views on the subject. In 1848, when Algeria became an official part of France, the French administration had to decide whether or not, and how, to apply French law in Algeria. The French residents of Algeria expected to retain the civil and political rights they had enjoyed in metropolitan France. The local population, on the other hand, expected to retain their religious and traditional law codes, the dhimmi system the Ottomans employed and the French initially had continued. The French administration would have to negotiate between these diverging expectations; it would have to decide if French laws were to replace traditional ways and, if so, how quickly this should happen. A brief review of Ottoman and Islamic judicial practices will illustrate local expectations and practices. It also will highlight some of the challenges the French faced as they worked to establish French control in Algeria and integrate the new colony into the nation.

In Ottoman state political philosophy, the relationship between justice and legitimate rule is intertwined. Kara Çelebizade, a seventeenth-century Ottoman intellectual, relates a Turkish proverb that summarizes this dynamic between ruler, the ruled, and justice:

You cannot have a king without subjects.
If you do not have subjects you do not have an army.
You cannot have an army if you do not have wealth.
You cannot have wealth unless you have territory.

There is no territory without subjects.
There are no subjects if there is no justice.⁶³

The concept articulated in this proverb is referred to as *din-ü-devlet*, the political-philosophical tradition of a “circle of justice.” The sultan and the ruling class provide justice for the *re’āyā* (“flock” or subjects), and in return, the *re’āyā* supplies the resources (taxes; soldiers) needed by the sultan and his government to rule -- and to provide justice.⁶⁴ This Ottoman philosophy of statecraft, which held that the ruler’s principle obligation was the administration of justice, originated from Sasanian concepts of state which emphasized the re-establishment of social harmony.⁶⁵ The system is interdependent and reciprocal. The Ottoman concept of “justice” legitimated and justified the Sultan’s rule.⁶⁶ This philosophy came to have greater significance after the seventeenth century when the Sultans ceased fighting on the battlefield and became sedentary administrators. The sultan no longer legitimized his rule through his military command and prowess but through his ability to establish and uphold justice.⁶⁷

“Justice” carried many different meanings in the Ottoman/Islamic context. The Ottoman Empire’s state religion was Sunni Islam, and the *devlet* (sultante; state; empire)

⁶³ As quoted by Marc David Baer in *Honored by the Glory of Islam: Conversion and Conquest in Ottoman Europe* (New York: Oxford University Press, 2008), 44.

⁶⁴ Carter Vaughn Findely “Political Culture and Great Households,” *Cambridge History*, Faroqhi, 65.

⁶⁵ Pál Fodor, “Sultan, Imperial Council, Grand Vizier: Changes in the Ottoman Ruling Elite and the Formation of the Grand Vizieral *Telhīs*,” *In Quest of the Golden Apple: Imperial Ideology, Politics, and Military Administration in the Ottoman Empire*, Pál Fodor (Istanbul: The Isis Press, 2000), 211.

⁶⁶ Boğac Ergene “On Ottoman Justice: Interpretations in Conflict (1600-1800),” *Islamic Law and Society*, vol. 8, no. 1 2001): 52-87; 52-53.

⁶⁷ Carter Vaughn Findley “Political Culture,” 67. Findley explains that the sultan legitimized his rule also through other “religiously-valued functions.”

was responsible for governing Islam, ⁶⁸ including the application of *sharī'ā* (Islamic law). Thus, the relationship between the sultan and the administration of justice as an essential aspect of this rule had both customary and religious underpinnings. Justice meant not only upholding religious values but also conserving the balance and harmony of society. In a political sense, it also meant the obligation of the ruler to protect his subjects from exploitation and abuse (particularly in terms of taxation and tax-collection) and to protect the weak from the strong.

This interpretation of political justice made the Ottoman/Islamic “justice” quite different from its European counterpart which claims to uphold abstract universal ideals. Boğac Ergene explains that the “Ottoman concept of political justice . . . enabled the social system to reproduce itself. In this sense, . . . justice is considered a way to preserve social harmony and the hierarchical cross-balance.” Justice in Ottoman political philosophy was “just” to the extent that it satisfied these requirements by maintaining social harmony and structures.⁶⁹ Because of the close association between the sultan’s right to rule and his ability to administer justice, the courts were the primary method by which the sultan legitimized his rule in far-flung regions of the Empire. Scholars have asserted that the lack of serious challenges to the Ottoman rule resulted from the Ottomans’ ability to administer justice successfully.⁷⁰

⁶⁸ Pál Fodor “State and Society, Crisis and Reform, in 15th-17th Century Ottoman Mirror for Princes,” *In Quest of the Golden Apple*, 41.

⁶⁹ Boğac Ergene, “On Ottoman Justice,” 57.

⁷⁰ Ergene generally agrees with this assessment, but he claims that further studies of Ottoman provincial law courts are necessary to provide adequate historical evidence.

In this Ottoman/Islamic context, the nature both of justice and of rule also are intrinsically personal. Justice is a critical part of the professed role of the Sultan as ruler, but it is not in and of itself an abstract, independent value or ideal to which the ruler must aspire or which he must uphold. In the Ottoman context, a just government dispensed justice, but what “justice” meant changed depending on the particular context or circumstances. A Sultan’s government therefore could be considered “just” by Ottoman standards if it upheld social balance, even if the same government displayed characteristics that failed to uphold qualities that, in a European context, would constitute justice.

This correlates with the Islamic concept of justice, which values above all compromise and conflict-resolution. Lawrence Rosen characterizes Islamic law as a “reciprocity-based” legal system in which “legal institutions do not assert a moral order separate from social practice.”⁷¹ In this system, justice is a relational process, and “because relationships are highly contextual, justice is to be grasped through its multifarious elements rather than as a single abstract principle.”⁷² Justice has been done when the guilty parties either have been rendered harmless to society or when the injured parties agree to accept the settlement brokered by the qādī, in accordance with the sharī’a or the *kānūn*, (Ottoman state laws).

The qādī fulfilled the role of combining the two systems of law and participating in the process of negotiating a just punishment. Generally, qādī’s rulings in sharī’a (or

⁷¹ Lawrence Rosen, *The Justice of Islam: Comparative Perspectives on Islamic Law and Society* (Oxford: Oxford University Press, 2000), 58.

⁷² Rosen, *The Justice of Islam*, 155.

şeriat in Turkish) courts upheld the rules and norms of Islam. Most crimes, however, that European law would classify as “criminal” (such as murder; more on this below) and prosecuted by the state were considered “private” under Islamic law and thus technically remained within the *qādīs*’ jurisdictions. In practice, this became problematic because the Koran omits discussion of many criminal matters. Fixed punishments for particular crimes are not specified either in the *shari’a* or the *kānūn*, leaving open the option for negotiation and discretion in the court or in the mediation process. The punishment of a defendant also might depend on his reputation in the community. *Hadd*, or fixed punishments, are prescribed in the Koran only for crimes committed against God; that is, violations of Islamic practice and belief. Other crimes fall outside the specifics of the *sharī’a* and are approached with a combination of customary and *kānūn* laws and considered in their social context.⁷³

To close the gap between religious law and the legal needs of a state bureaucracy, the Ottoman sultans formulated *kānūn* (regulations) of secular criminal laws and procedures and assembled them in *kānūnnāme* (codes).⁷⁴ The *kānūn* were intended to address only matters of public law and the interests of the state, but they sometimes extended also to criminal law.⁷⁵ Working in conjunction with the local police, market inspectors, or local governors, the *qādīs* upheld the *kānūn* in addition to religious law.

⁷³ Boğac A. Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire* (Leiden and Boston: Brill, 2003), 157.

⁷⁴ Uriel Heyd, *Studies in Old Ottoman Criminal Law*, ed. V.L. Ménage (Oxford: Oxford University Press, 1973), 2.

⁷⁵ Heyd, *Studies in Old Ottoman Criminal Law*, 180.

The qādī combined the two legal systems, the religious and the state, with the functions of a state official.⁷⁶ Qādīs were appointed by local governors and approved by the sultan, and in addition to performing their duties as judges in both sharī’a and kānūn disputes, they had responsibility for state functions such as the allocation of taxes and the mobilization of troops during war.⁷⁷ These important administrative roles combined with the judicial role to embed the qādī in local power structures.

The qādīs thus fulfilled a joint religious-secular judicial function. In Islam, state and customary laws that do not explicitly contradict Islamic teachings are accepted as belonging to Islamic law. The sultan’s kānūn co-existed with sharī’a law as well as with ‘urf (local customary law). In North Africa, there existed a strong tradition of customary criminal law external to the sharī’a. Among the Berbers of Algeria, customary law played a particularly important role.⁷⁸ The French viewed the Berbers’ alleged rejection of Islamic law and practice of their own of customary law as “evidence” that the Berbers were less Islamized and, therefore, more open to the civilizing influence of French culture.⁷⁹ Kabyle customary law, referred to as the *qanoun* (also the name for the village council), consisted of collections of each village’s particular customs. Here, also, public

⁷⁶ Eyal Ginio, “The Administration of Criminal Justice in Ottoman Selânik (Salonica) During the Eighteenth Century,” *Turcica*, vol. 30, (1998): 185-86.

⁷⁷ Dina Rizk Khoury, “The Ottoman Center Versus Provincial Power-Holders: An Analysis of the Historiography,” *Cambridge History*, Faroqi, 150.

⁷⁸ At the time of the French conquest, the Berbers of Algeria were Berberophone people living primarily in the mountainous interior regions. There also were nomadic and semi-nomadic Berberophone populations living in the interior plains and deserts. For more information, see Michael Brett and Elizabeth Fentress, *The Berbers* (Cambridge, MA: Blackwell Publishers Inc., 1996).

⁷⁹ This is part of the “Kabyle Myth” that Patricia Lorcin explores in *Imperial Identities*. See Patricia Lorcin, *Imperial Identities* (London and New York: I.B. Tauris Publishers, 1995).

opinion carried significant weight in administering justice.⁸⁰ Due to their generally isolated settlements, the Berbers were largely untouched by Ottoman judicial decrees. Nonetheless, despite their strong tradition of and adherence to local customary law, the Berbers remained firmly within the larger Islamic and North African social and cultural world. Islam's accommodation of customary law permitted this "duality" of justice to co-exist.

Qādīs also validated the compromises mediators arranged to resolve legal disputes.⁸¹ Such disputes often were settled outside the sharī'ā courts, without the qādī. The Koran specifies only a limited number of crimes and punishments, and the sharī'ā imposed strict rules of evidence (thus making it difficult to acquire a conviction). Criminal matters that the sharī'ā courts could not resolve were settled with a mediator through negotiation, and the merely qādī registered the compromise. Occasionally, the qādīs acted as the mediators to resolve legal disputes outside the sharī'ā courts, but more commonly, the mediator was an individual hired for the role. Lawrence Rosen explains that "since Islamic law and practice is a phenomenon in which the features Westerners think of as 'legal' may be worked out in the domain we think of as 'extra legal,' and vice versa, no picture of either domain makes full sense without considering how both are thoroughly united in theory and practice."⁸² This re-emphasizes Rosen's "reciprocity-

⁸⁰ Pierre Bourdieu, *The Algerians*. trans. Alan C.M. Ross; pref. Raymond Aron (Boston: Beacon Press, 1962), 20-21.

⁸¹ Eyal Ginio, "The Administration of Criminal Justice," 191.

⁸² Lawrence Rosen, "Law and Custom in the Popular Legal Culture of North Africa," *Islamic Law and Society*, vol. 2, no. 2 (1995): 201.

based” nature of the Islamic legal system, because what matters most is the settlement of disputes and a return to social harmony, not the upholding of legal principles. Justice is served if harmony within the community prevails, not if a strictly-defined crime is punished by pre-determined penalties. Thus, “justice is to be grasped through its multifarious enactments rather than as a single abstract principle.”⁸³ This necessarily involves social dimensions in legal proceedings to a degree uncharacteristic of European courts.

Murder offers an example of the significant difference between Ottoman/Islamic law and European legal systems. In Islamic law, murder falls under what we would call “private” law, which is to say that a murderer will not be prosecuted unless the heirs of the victim decide to press the matter in court; the state will neither seek nor punish a murderer for the sake of the crime itself. If a victim’s heir or heirs choose to take a murderer to court, and if the murder can be proven to be deliberate and wrongful⁸⁴ then the heirs may choose either *qişāş* (retaliation) or a settlement of *talion* (blood-money). If retaliation is chosen, the execution often would take place as close to the scene of the crime as possible and be carried out in the same fashion as the murder. If talion is chosen, then the amount of the blood-money would be negotiated and agreed upon by the parties involved. If a culprit could not be discovered, then the community in which the murder took place would be held collectively responsible for the murder. In such a case,

⁸³ Rosen, *The Justice of Islam*, 155.

⁸⁴ In this sense, wrongful means without just cause; there are times when murder could be considered justified and thus not eligible for the punishment of retaliation. For example, a husband may justly kill his wife and her lover if he should catch them engaged in illicit relations.

retaliation would not be an option; however, the entire community would be responsible for paying the blood-price. This might seem unfair when viewed from a European legal perspective: innocent people would suffer for a crime they did not commit. In the Ottoman system, however, it is more important that the victim's heirs receive compensation than that the guilty party suffer for his actions. Thus, the penalty is regarded as neither punishment nor deterrent but as a way to rebalance social relationships.⁸⁵ The payment of blood-money would restore harmony within the community.

The Ottomans' valued an effective administration of justice, but evidence suggests that the population "generally considered" court officials to be "corrupt." However, this alleged corruption detracted neither from the "legitimacy of the state" nor from the functionality of the courts.⁸⁶ Corruption within the judicial system was not, in principle, a source of dissatisfaction for the subjects of the Ottoman Empire. Because justice was considered part of social life within the Ottoman/Islamic tradition, not separate from it, the legal system ("corrupt" or not) would mirror the practices and mores of society. Lawrence Rosen explains that within the North African conception, "to be corrupt is to fail to share in whatever comes one's way with those with whom you have forged bonds of interdependence."⁸⁷ If judges take bribes, therefore, in the process of adjudicating a legal case, this is accepted as a normal, and perhaps even justifiable, practice. Rosen

⁸⁵ Rudolph Peters, "Murder on the Nile: Homicide Trials in Nineteenth Century Egyptian Shari'a Courts," *Die Welt des Islams*, New Series, Bd., 30, Nr. ¼ (1990): 108.

⁸⁶ Ergene, *Local Court*, 99.

⁸⁷ Rosen, *The Justice of Islam*, 163.

asserts that “qādī justice is embedded in local society and culture,” and that, furthermore, the legal system “can be no more expected to preserve individual rights than might be expected in life at large -- nor be any less corrupt or any more wise. . . . Courts are . . . part of life and not some extraordinarily refined version of it.”⁸⁸ The personal nature of the application of justice and the importance it holds for social relationships points to the intertwining of the legal system with its social context. Moreover, “where Westerners speak a language of rights and entitlements,” Rosen claims, “Arabs speak a language of context and relationships.”⁸⁹ Therefore, the notion of “justice” cannot be separated from its social context, and the resolution of justice necessitates the satisfactory resolution of inter-personal conflicts rather than the upholding of general principles.

The Ottoman Empire had no separate criminal courts,⁹⁰ and the practice of applying justice and adjudicating legal disputes blended the religious, secular, and political nature of the laws.⁹¹ As a result of this system, multiple legal traditions and methods of enforcing justice co-existed and often overlapped. The Ottoman Empire, though an Islamic state, was not a theocracy, and it tolerated multiple systems of law within its borders, including the dhimmi courts and the sharī’ā and kānūn codes.⁹² The

⁸⁸ Rosen, *The Justice of Islam*, 74-75.

⁸⁹ Rosen, *The Justice of Islam*, 173.

⁹⁰ Heyd, *Studies in Old Ottoman Criminal Law*, 179. It should be remembered, however, that the military had its own separate courts in which it tried its members.

⁹¹ This blended and imprecise nature of legal adjudication helps explain the presence of a qādī in the Arab Bureau posts. Although the qādī would adjudicate in local legal disputes, according to the Arab Bureau officers Ferdinand Hugonnet Charles Richard, the officers of the Arab Bureau also frequently dispensed justice to the indigenous population.

⁹² Within Islam, there also are four main legal traditions, Hanafī, Hanbalī, Malīkī, and Shafī’ī. Each of these traditions has its own law courts and interpretation and of Islamic law.

Islamic and Ottoman legal systems placed greatest value on reciprocity and social harmony. Applied law was a continuously negotiated process which could result in different results in different places and different circumstances. While French law also made allowance for circumstances, its foundational principle was based on a common law code underpinned by a belief in the universal rights of man. The French state possessed a single unified law code that should apply equally to all citizens of the state. Justice should be applied with the goal of upholding the law, not maintaining social balance. This difference between the Ottoman/Islamic and French understanding of the value and purpose of law suggests that it would be difficult to reconcile the two. Later we will see how, in the context of land ownership, Islamic conceptions of law and property ownership came into direct conflict with French understanding and expectations of the same.

Conclusion

When the French captured Algiers in 1830, they were stepping into a region that had been part of the Ottoman Empire since the sixteenth century, with deeply engrained cultural, administrative, and legal practices. Ottoman and Islamic influences were powerful, but the Regency nonetheless retained a degree of autonomy and a distinct cultural identity. This was particularly true in the interior desert and mountainous regions where Ottoman rule had been sporadic and less intrusive. The French sought to control the country and population in ways previous conquerors had not.

The Ottoman Empire employed a unique system of administration in its empire, one that embraced difference and incorporated it for the purposes of the state. The policy of *istimalet*, or accommodation, permitted the Ottomans to work within local practices and traditions instead of dismantling them. North Africa was physically distant from the center of the Ottoman administration in Istanbul; its population was diverse and scattered over a large geographic area. Nonetheless, as scholars such as Karen Barkey and Asma Moalla have demonstrated, the Regencies remained loyal to the Empire, maintaining political and social ties to the Porte through powerful networks based on family relations and patronage. There were periods of crisis, such as the military and economic troubles of the late eighteenth century, when there was a temporary decline of Ottoman influence. Nonetheless, the Empire endured and recovered throughout the nineteenth century. The flexibility and resiliency of the Ottoman administrative style helped the Empire respond and adapt to changing circumstances and setbacks such as the 1830 loss of Algeria to the French.

Chapter Two: The French Conquest and Administration

Introduction

This chapter will provide a general discussion of the administration the French created in Algeria during the first decades of its rule. Chapter One has provided an overview of the Ottoman systems and practices. Here, we will review the the administrative structures the French themselves established; in particular, the creation, structure, and functions of the Arab Bureau. We will look more closely at the society and culture of the tribes, the indigenous population for which the Arab Bureau was responsible. Particularly during the 1840s and 1860s when colonization and land policy was evolving, the tribes presented an administrative challenge for the French. How should the French govern the tribes, and how should they proceed with colonization on tribal lands?

To understand the functions of the Arab Bureau, it is necessary to gain some familiarity with the circumstances they encountered among the tribes. The perspective of the Arab Bureau officers is accessible in the memoirs and military reports that they wrote. Although in some cases the memoirs and military reports might offer self-serving

perspectives, these documents nonetheless are important because they provide an entry point to the thoughts and opinions of Bureau members.¹

Population of Algeria²

In the period immediately preceding the French conquest, the population of the Regency is estimated to have been between 400,000 and 10,000,000, although one scholar suggests that 3,000,000 is the most reasonable estimate. The city of Algiers had a population of about 50,000,³ down from an eighteenth-century population of about 100,000.⁴ The cities, then as now, had the most diverse mix of populations; the interior regions were inhabited almost entirely by Arab or Berber tribes, although there were small populations of Jews living in the interior.⁵ Including both urban and rural

¹ The military and the civilian officials hoped to influence the government in Paris to adopt their recommendations for administrative policies in Algeria. To a certain extent, much of the written material each side produced could be considered propaganda if it were intended to promulgate a particular perspective. In the case of memoirs, however, it is difficult to determine the precise intentions of the author without a careful case-by-case consideration. Nonetheless, the memoirs are useful because they give us the perspective and image that the writer intended to communicate, even if we cannot determine *why* he wanted to do so. Internal military reports -- usually unsigned -- produced for military consumption, present a difficult source to decipher in the absence of such essential information as the names of the author or the commanding officer who requested the report; what the request involved; and how (or even if) the report were read and used.

² The following summary about tribes draws heavily from the work of French anthropologists Pierre Bourdieu and Jacques Berque. See Pierre Bourdieu, *The Algerians* trans. Alan C.M. Ross, pref. Raymond Aron (Boston: Beacon Press, 1962); Pierre Bourdieu, *Sociologie de l'Algérie* (Paris: Presses Universitaires de France, 1958); Jacques Berque, "Qu'est-ce qu'une 'tribu' nord-africaine?" *Eventail de l'histoire vivante (homage à Lucien Febvre)* (Paris: Armand Colin, 1953).

³ This and previous figures from Lucette Valensi, *On the Eve of Colonialism: North Africa Before the French Conquest*, trans. Kenneth J. Perkins (English translation, New York: Africana Publishing Company, 1977), 11; 36.

⁴ The other significant urban centers, Constantine, Tlemcen, and Oran had estimated populations of 35,000, 20,000, and 10,000 respectively. (These figures from Mahfoud Bennoune, *The Making of Contemporary Algeria, 1830-1937* [New York: Cambridge University Press, 1988], 27).

⁵ These were mostly either the Judaized Berber tribes or small communities of Jews settled in the interior oases.

populations, it is estimated that about 13,000 Jews lived in the regions that fell to the French.⁶ This figure includes more ancient Jewish communities as well as later waves of immigration, particularly the Jews who emigrated from the Iberian Peninsula after the Reconquista. Other groups included Turks, kouloughlis (as mentioned in the previous chapter, these were the offspring of Turkish men and local women), blacks, and several European communities including Corsicans, Maltese, Italians, Greeks, and Spanish.⁷

During the Regency, 95% of the population -- comprised of hundreds of Arab and Berber tribes -- lived outside the Regency's urban centers.⁸ Most of these tribes were nomadic or semi-nomadic, and they depended for survival mostly on herding flocks.

Usually, sheep comprised the flocks, but they also could include cattle or goats. The rural tribes also engaged in some cultivation of grains,⁹ of which the principle were barley and

⁶ Joshua S. Schreier, "'They Swore Upon Tombs Never to Make Peace with Us.' Algerian Jews and French Colonialism, 1845-1848" in *Algeria and France: Identity, Memory, Nostalgia 1800 -- 2000*, ed. Patricia Lorcin (Syracuse, NY: Syracuse University Press, 2006), 105.

⁷ The term "Jews" here refers to the population that practiced Judaism. In the interior regions, the Jewish population included Judaized Berber tribes as well as the possible descendants of small Jewish populations that migrated across the southern desert from Egypt and the Middle East with the trade caravans. "Turk" was used to refer both to any members of the population originating from Anatolia or any Ottomanized individuals originating from other parts of the Empire or Europe. Although the sources and much modern scholarship use "Turk" in place of "Ottoman" to refer to the members associated with the Ottoman power and culture, I have refrained from referring to the Ottomans as "Turks," because the two were not synonymous. As noted previously, the ojac was comprised of men originating in Anatolia, or modern "Turkey" proper; however, many of the corsairs (such as the Barbarossa brothers) came from other parts of the Empire and Europe. There is no way to determine the precise ethnic origins of those referred to simply as "Turks," but regardless of their ethnicity, the Turks/Ottomans retained a culture distinct from the other populations of the Regency. I employ the term "Turk" to refer to any of the Ottomanized population still residing in Algeria after the French conquest.

⁸ Xavier Yacono *Histoire de l'Algérie de la fin de la Régence turque à l'insurrection de 1954* (Paris: éditions de l'Anthropologie, 1993), 19; 37.

⁹ Lucette Valensi *On the Eve of Colonialism: North Africa Before the French Conquest*. trans. Kenneth J. Perkins (English translation: New York: Africana Publishing Company, 1977; French: Paris: Flammarion, 1969), 26.

hard wheat.¹⁰ Physically and culturally, the nomadic Arab and Berber tribes resembled each other so closely it was difficult to differentiate the two groups, and many Berber tribes spoke Arabic rather than a dialect of the Berber language.¹¹ The French, mostly unable to differentiate between a tribe that was ethnically Arab versus one that was ethnically Berber, referred to all of these nomadic tribes of the plains as “Arabs.”¹² Despite the similarities outsiders perceived, the tribes themselves maintained distinct cultural identities.

The most pronounced differences were found between the semi-nomadic and nomadic tribes of the plains and plateaus and the sedentary tribes who inhabited the rugged mountainous regions of the interior. The majority of the mountains’ population consisted of a Berberophone population concentrated in the mountainous area known as “Kabylia.” For this reason, Berbers frequently have been referred to collectively as “Kabyles.” Patricia Lorcin describes the cultural differences of the Kabyles and how, in the nineteenth century, they created among the French a belief in a “Kabyle Myth.” This myth affected French policies toward the Berbers.¹³ The French initially considered the Kabyles as more likely to become “civilized” than the Arabs. The Kabyles were

¹⁰ Yacono, *Histoire de l’Algérie*, 26.

¹¹ Carrette, *Recherches sur l’origine*, 442. Individual tribes often did have distinct physical appearances or costumes. For example, the Tauregs wore striking blue robes that covered their entire faces and bodies.

¹² All documents I have seen that refer to these tribes use “Arabs” as a synonym for tribes. Ernest Carrette, French officer and member of the Scientific Commission that explored Algeria in the early 1840s, observed that it is very difficult to tell the “two races” (Arab and Berber) apart. He estimated that about a million of the tribal population in Algeria had Arab origins, and about two million had Berber origins. See E. Carrette, *Exploration scientifique de l’Algérie pendant les années 1840, 1841, 1842, publiée par ordre du gouvernement et avec le concours d’une commission académique; sciences historiques et géographiques*, three volumes (Paris: Imprimerie Impériale, 1853), III: 442-443.

¹³ See Patricia Lorcin, *Imperial Identities* (London and New York: I.B. Tauris Publishers, 1995).

sedentary agriculturalists; particularly, they were arboriculturalists whose primary crops were olives and figs.¹⁴ Of special interest to the French was that they believed that the Kabyles recognized “individual property” (a critical issue in the debates about colonization that will be discussed in a later chapter) and “democratic” forms of self-government. Remote and almost inaccessible in their mountain villages, the Berbers remained mostly free of French control until 1857 when the French subdued Kabylia and absorbed it into the colony. It was not until 1871 that the final major rebellion of the Kabylia was suppressed. Thus, during the years that the Arab Bureau had the greatest influence and power, they were administering and working predominantly among the tribes of the plains.

The French Conquest

In June 1830, French forces landed at Sidi Ferruch, located a few miles to the west of Algiers on the coast of North Africa. On 4 July, Turkish troops defending Algiers surrendered to the French, led by General Louis-Auguste-Victor, Count de Ghaisnes de Bourmont. It was not the first European attack on Algiers. In 1825, Britain had bombarded the city, inflicting serious damage. In 1827, the French blockaded Algiers in response to the “fly swatter incident” which contributed to the causes of the 1830 invasion. The “incident” refers to the allegation that Hussein Dey, the ruler of Algiers, struck the French consul, Pierre Deva, with a fly swatter during an argument. The

¹⁴ Bourdieu, *Sociologie de l'Algérie*, 9-11.

argument concerned a large debt that some French merchants owed the Regency.¹⁵ The two merchants claimed to be unable to repay the debt to the Dey until the French government had paid them for the cost of the grain shipments that lay behind the debt. The merchants' debts, however, had been incurred under the Directory, and the government of Charles X felt no obligation to repay the debts of its predecessor. The merchants, therefore, remained unpaid and so did Hussein Dey. This unpaid debt gave rise to the long-simmering tension between France and the Dey, and tempers flared on the day of the "fly swatter incident." An Arab version of the incident places the responsibility on the French consul: during a meeting with the Dey, the consul placed his hand on his sword. This grave insult angered the Dey who wanted to put the consul to death for the offense. It was, however, forbidden to put foreigners to death. Instead, the Dey settled for "beating" him -- with the fly swatter.¹⁶

Several other factors in addition to the "fly-swatter incident" influenced the French government's decision to attack Algiers: the desire for a Mediterranean port, compensation for colonies lost after the Seven Years' War, and the termination of the Barbary corsairs' piracy; and primarily, internal political considerations. After the last of Napoleon Bonaparte's troops were expelled from Egypt in 1802, France lost access to Egypt's valuable Mediterranean ports. It was hoped that the Algerian ports would

¹⁵ Mahfoud Bennoune writes that the Dey of Algiers had supplied assistance in the 1790s to the French government in the form of shipments of wheat and horses. Additionally in 1793 he gave France an interest-free loan of 250,000 francs and in 1793, he provided a second interest-free loan of a million francs. The Restoration monarchy refused to repay these loans or force French merchants to repay it. (Mahfoud Bennoune, *The Making of Contemporary Algeria, 1830--1937* [New York: Cambridge University Press, 1988], 31).

¹⁶ Alf Andrew Heggoy, ed., intro., trans., *The French Conquest of Algiers, 1830, An Algerian Oral Tradition* (Athens, OH: Monographs in International Studies Africa Series No. 48, 1986), 25

provide some compensation for this loss. Additionally, France wanted to rebuild its colonial empire. In the Treaty of Paris (1763), the treaty that concluded the Seven Years' War, France had ceded many of its overseas colonies to Britain. Some in the French governing elite, backed by a segment of public opinion, longed for new colonies to replace the ones they had lost.¹⁷ Finally, France wanted to eliminate the vexing problem of the Barbary pirates. A serious threat to European vessels and coastal populations alike, the North African pirates (or corsairs) based in Algiers long had hindered Mediterranean trade. In the early part of the nineteenth century, piratical activities in the Eastern Mediterranean actually had increased as a result of Napoleon Bonaparte's defeat and removal of the Knights of Malta in 1798. The Knights had provided the best defense for Europe against the North African corsairs. With the elimination of the Knights' effective naval power, the corsairs lost their most formidable enemies and took advantage of this new situation to increase attacks on European vessels.

Above all, however, France's domestic politics lay behind the decision to invade Algiers. Jules Armand, Prince de Polignac, the Minister of Foreign Affairs under King Charles X, hoped to distract the French people from the unpopularity of the government. Polignac dreamed of an Arab Empire supported by France, and he hoped that an impressive victory in Algiers would galvanize popular support for Charles X. Polignac first had asked Mehmet Ali of Egypt to invade North Africa. In return, France would permit Mehmet Ali to retain, under French guidance, control of the region. This

¹⁷ Jean Meyer, Jean Tarrade, Annie Rey-Goldzeiguer, and Jacques Thobie, eds., *Histoire de la France Coloniale des origines à 1914* (Paris: Armand Colin, 1991), 329.

arrangement would give France command of the Mediterranean coast.¹⁸ Mehmet Ali, however, refused. The French would have to do their own fighting in North Africa.

On their march from Sidi Farruch to Algiers, the French forces met a relatively feeble resistance. Hussein Dey, the ruler of Algiers, had raised troops to combat the French military, but the French held off the dey's forces until June 28 when France's siege weapons were in position outside the city walls. Algiers lacked the ability to withstand a siege, and so within just six days the city surrendered. Suffering from a recent series of natural disasters and local unrest, the population of Algiers had been weakened by many years of bad harvests, famines, and warfare in the surrounding regions. Additionally, the primary source of Algiers' military strength, its navy, had suffered heavy losses at the Battle of Navarino. Europe had taken the Greeks' side in their war for independence from the Ottoman Empire, and in October 1827 in the Bay of Navarino, off the Peloponnesian coast of modern Pylos, a coalition of British, French, and Russian naval forces had demolished the Ottoman fleet. Several corsair ships from Algiers had participated and been destroyed in the battle.¹⁹ By 1830, Algiers had not yet recovered from these serious losses and lacked adequate naval power to repel the French.

The Ottoman Sultan, Mehmed II, could offer no support to Algiers. The Battle of Navarino had left the Ottoman Porte virtually without any naval power. Moreover, the Ottomans had not yet recovered from several decades of military setbacks and nearly

¹⁸ Xavier Yacono, *Histoire de l'Algérie de la fin de la Régence turque à l'insurrection de 1954* (Paris: Éditions de l'Atlantique, 1993), 66.

¹⁹ In accordance with policy followed throughout the Empire, the Regencies of North Africa were expected to supply the Sultan with military support upon his request. For Algiers, this meant naval support.

constant warfare on multiple fronts.²⁰ Between 1768 and 1828, the Ottomans had fought and lost four wars with Russia, and each time they lost territory. The expense of these wars contributed to the Ottoman Empire's near bankruptcy by the end of the eighteenth century.²¹ Between 1804 and 1813, and then again in 1815, the Ottomans had to deal with uprisings in Serbia. Then, between 1821 and 1826, the Greeks rebelled against the Ottomans.²² As the French were invading and expanding their control in Algeria, the forces of Mehmet Ali of Egypt were occupying Syria (1831-1833).²³ In fact, at the 21 December 1832 Battle of Konya, Mehmed Ali's troops won a decisive victory over the Sultan's forces, leaving Constantinople vulnerable and open to attack by Mehmet Ali. Throughout all this, the Ottoman military was in a period of transition. Sultan Selim III (ruled 1789-1807), recognizing the need for the Ottoman military to innovate and reform, attempted to create his Nizam-ı Cedid, or "New Order" army. His efforts produced few results, and it was only after the ascension of Mahmud II (ruled 1808-1839) and his 1826 destruction of the Janissary Corps that the way was paved for significant military reform. It would take time, however, for Mahmud II's efforts to bear fruit, and the military

²⁰ This summary comes from Virginia Aksan, "War and Peace" in Suraiya N. Faroqhi, ed. *Cambridge History of Turkey, volume 3, The Later Ottoman Empire, 1603-1839* (New York: Cambridge University Press, 2006), 81-117. For a more in-depth discussion of the state of the late eighteenth and early nineteenth century Ottoman military, see her excellent article.

²¹ At the end of the eighteenth century, the Ottoman Empire was experiencing a period of "crisis," as Karen Barkey terms it, but military and fiscal reforms instituted by nineteenth-century Sultans reflected the "adaptations" (followed by recovery) that Barkey also identifies.

²² The 1830 Treaty of London recognized the Greeks' independence.

²³ This act instigated a protracted war between the Sultan's forces and those of Mehmet Ali. Hostilities drew to an end only in 1840, after Mehmet Ali announced his intention to declare independence from the Ottoman Empire. Mehmet Ali's independence threatened to upset the balance of power in the Near East, and so it provoked the armed response from Europe. A combined British and Austrian naval force had blockaded the Nile delta and attacked the cities of Sidon, Beirut, and Acre. The result was that Mehmed Ali surrendered his conquests in Syria and withdrew to Egypt.

challenges posed by Mehmet Ali and the French invasion came at a period of weakness for the Ottomans who were struggling to reform their military even as the institution suffered from depletion, disorganization, and over-extension. By 1832, an invasion of Istanbul appeared imminent. The Sultan could spare no troops for the Regencies. Algiers would have to fend for itself.

Hussein Dey and his troops fought the French throughout June 1830, but he recognized the futility of continued resistance when confronted with a French siege of Algiers. On July 5th, French soldiers under the command of General Bourmont entered Algiers to accept the Dey's official surrender. As part of the conditions for the surrender, General de Bourmont had promised that the French would leave the Muslims free to practice their religion, and that the "liberty of the inhabitants of all classes, their religion, their property, their business and their industry [would] remain inviolable" and that "their women [would] be respected."²⁴ This promise failed to last the day, however, as French troops quickly began rampaging through the streets looting, raping, and destroying property. A French officer witnessing the events described the rapid disintegration of order. He claimed that the chaos and destruction began even before the French troops arrived within the walls of Algiers. The soldier explained that no sooner had the Dey and his followers left the citadel of Algiers to return to his home and surrender to the French than Arabs and Jews began to pillage the Casbah (the old part of the city that surrounded

²⁴ John Ruedy, *Modern Algeria* (Bloomington, IN: Indiana University Press, 1992), 49.

the citadel). Unfortunately, added the soldier, this behavior was “contagious,” meaning that it spread to the French soldiers, and the day descended into disorder.²⁵ The devastation and violence Algiers suffered at the hands of the French military not surprisingly initiated lasting feelings of suspicion and animosity on the part of the indigenous population.

The atmosphere of general confusion that followed the French arrival in Algiers is illustrated vividly in a passage from Édmond de Pélissier de Raynaud, an officer who participated in the 1830 invasion:

No order was given to the native functionaries: no one told them either that they were being kept on or that they were being dismissed; people acted as though they did not exist. Thus, not knowing to whom to turn, they abandoned their services without effecting their transfer, carrying off or causing to disappear the most precious registers and documents. In the Casbah itself, under the eyes of M. Denniée [chairman of the Commission de Gouvernement], I saw soldiers light their pipes with government papers strewn here and there over the ground.²⁶

The implication is that the papers destroyed were the documents detailing the Ottomans’ administrative apparatus, including critical information about makhzen and enemy tribes and tax records.²⁷ When the French began to establish their own administration, they

²⁵ CAOM F/80/1670; letter dated 18 July 1830, signed “L’intendanton chef de l’armée d’afrique.” The Dey of Algiers had been headquartered in the citadel since 1817 when the previous Dey, Ali Khodja, had relocated the public treasury and his household there.

²⁶ As quoted in John Ruedy, *Land Policy in Colonial Algeria* (Berkeley, CA: University of California Press, 1967), 14.

²⁷ It is impossible to say if the French could have been more effective administrators had they not lost these Ottoman documents. With tax records and information about makhzen versus troublesome tribes, however, the French more easily could have perpetuated existing practices and, in theory, reduced or avoided resistance, rebellion, and general chaos. This almost certainly would have helped them establish a more stable and secure administration.

found that they lacked all such documents. They had to start from scratch to build a basic understanding of pre-existing fiscal arrangements, property ownership, and political alliances. In the absence of historical evidence, we cannot explain why the Ottoman bureaucrats destroyed or absconded with the documents -- if, indeed, Pélissier's description of events is accurate -- but the motivations could include revenge, malice, and even self-preservation if the documents revealed corruption or personal wrong-doing.

Another description of the disorder and its possible causes comes from the Reverend Joseph Williams Blakesley, who arrived in Algeria in 1857. Blakesley neglects to specify his sources of information, but he made efforts to speak with and meet many people during his travels. In accordance with other statements in his memoir, he probably is repeating knowledge he gathered in the course of his conversations. Blakesley explains that the French knew nothing about the previous system of administration and fiscal arrangements, and so General Bourmont, "heartbroken at the death of his son;" distracted by his grief and unable or unwilling to take charge of the situation, simply turned over the organizational tasks to others. One man who stepped into this power vacuum was a North African Moor by the name of Ahmed Bourderbah.²⁸ Bourderbah, in pursuit of business enterprises, had resided for some time in Marseilles. Because Bourderbah could speak both French and local dialects, the French turned to him for assistance during this chaotic period. Bourderbah opportunistically took advantage of his new position to dismantle the existing Ottoman bureaucratic framework and replace it

²⁸ The account of Bourderbah comes from Reverend Joseph Williams Blakesley, *Four Months in Algeria: with a Visit to Carthage* (Cambridge, England: MacMillan and Co., 1859), 432.

with systems that worked to his personal advantage. He abolished the monopolies and tax-collecting privileges long held by various groups in the city and replaced them with commissions headed by Moors and Jews.²⁹ Both of these represented minority groups in Algiers which previously had been excluded from the ranks of power and influence in the city. Included in the ranks of the excluded were the small populations of European Christians, the majority of whom came from Spain, Malta, and Italy, and black Africans, many of whom were freed domestic slaves.

These actions upset long-standing power hierarchies and social dynamics and resulted in great resentment among the groups displaced. Social unrest ensued. The result might have included the scenes Blakesley related. According to him, “violence and robberies [increased]; the property of the state vanished; public archives were destroyed. The countryside was pillaged; villas pulled down randomly for firewood; skippers helped themselves to stores in the arsenals; aqueducts by which Algiers was supplied with water were damaged; fountains failed in consequence.”³⁰ Blakesley provided no further details about the perpetrators of these actions, but he clearly drew a connection between the destruction of the old systems and the civil unrest and lawlessness that followed. With the Ottoman authorities and local elites stripped of their power and either removed from the country or fleeing from the chaos, the local population took advantage of the resulting

²⁹ The term “Moor” refers to the descendants of Muslims who fled Spain in the wake of the Inquisition and the Reconquista. The Moors, as well as the Spanish Jews that resettled in North Africa, remained a separate and distinct population from their co-religionists. The Andalusian refugees generally enjoyed a much higher level of wealth, education, and sophistication and looked down upon the indigenous population.

³⁰ Blakesley, *Four Months in Algeria*, 433.

turmoil. Moreover, as noted previously, the population already had suffered from several years of hardship and unrest, which likely contributed to the turmoil that followed the French conquest. The French authorities either could not or would not take action to establish order.

This disorder occurred despite some early efforts on the part of the French to learn about the pre-existing Ottoman systems. On 6 July 1830 a Government Commission, comprised of members of the military, was established in Algiers to study the system of organization of the city and its territory. In addition, several secondary commissions also were formed and charged with specific tasks. In its meeting minutes, the Government Commission expressed the urgent need to understand the administrative system in place prior to the arrival of the French, because this system would serve as a base for the creation of a new administration.³¹ On 16 October 1830, General Bertrand Clauzel created yet another *Comité du Gouvernement*, to replace the previous Government Commission. Apparently, some among the French military leadership recognized the importance of understanding the pre-existing Ottoman structures. Unfortunately, the Committees failed to uncover much about them and also offered some bad advice. For example, the 13 July meeting minutes of the Government Commission noted that the “goal” of the conquest was the complete and definitive expulsion of the Turks.³²

The French quickly set about achieving this goal. Five days after he surrendered, Hussein Dey and his household, along with several thousand Ottoman troops, were

³¹ CAOM, F/80/1670; meeting of 7 July 1830.

³² CAOM, F/80/1670 . “[L]e but de la conquête: l’expulsion totale et définitive des Turcs”

ejected from the Regency.³³ Any remaining troops were expelled within the week, and within the month, so were all remaining Ottoman bureaucrats. In his memoirs published in 1894, General François Charles du Barail, an officer who had grown up in and served for many years in Algeria, deplored this decision. He wrote that the French would come to regret their mistake in dismissing and repatriating the Ottoman officials. He believed that it would have been possible, even easy, to win these officials to the side of the French. Moreover, he observed, the French had destroyed the entire indigenous administration without putting anything in its place. Imperfect though the existing administration might have been, Barail believed it was preferable to the “anarchy that we carried with us.”³⁴ Unfortunately for the French, however, in 1830 they prioritized the destruction of the existing order rather than its preservation. Additional scholarship might shed some light on the French misjudgments, but for now we can speculate only. One probable reason that the French neglected to consider their long-term administrative needs was that they had not expected to occupy Algeria over the long term. Despite a desire among some in France for new colonies, there was no clear support for the military action and expense generally required to obtain them. As explained previously, Polignac, motivated by political goals, drove the decision to send an invading army to Algiers.

The uncertainty of France’s future in Algeria was reinforced by the lack of direction the military received from the government in Paris. The military, although it

³³ The French permitted the Dey to retain a small portion of his personal wealth. They seized the rest.

³⁴ Général [François Charles] du Barail, *Mes souvenirs*, three volumes, (6th edition. Paris: Librairie Plon, 1894), I: 50-51.

now had control of Algiers, lacked further orders. In a position of having to administer and protect a territory without any clear directives or objectives, the military leadership floundered in the alien environment. By defeating the Ottomans in Algiers, Polignac achieved the military victory for which he had hoped; however, the value of this new North African possession was uncertain. Reverend Blakesley felt that in France's conquest of Algiers, "Fortune gave the empire of the successors of Khair-eddin [Khair al-Din] over to the Polignac ministry, as one might put a necklace of pearls into the hands of a boor."³⁵ Polignac seemed not to know what to do next. The confusion in Algiers was compounded by the political upheavals in Paris. Between 27 and 29 July 1830 a Revolution overturned the monarchy of Charles X, replacing it with the constitutional monarchy of Louis-Philippe, the duc d'Orléans. Polignac, the architect of the invasion, fled Paris.

This change in government contributed to France's long equivocation about what to do in Algeria. The July Monarchy considered Algeria an "onerous legacy of the Restoration" and worried about the expenses involved in keeping it.³⁶ Louis-Philippe favored withdrawing the troops. Public opinion on the conquest was mixed. Many in France opposed the victory in Algeria, and their reasons included objections that keeping Algeria would result in "ruinous expenses" and that the number of French immigrants would remain insufficient for resisting indigenous opposition.³⁷ Those who supported

³⁵ Blakesley, *Four Months in Algeria*, 434.

³⁶ Charles-Robert Ageron, *Modern Algeria: A History from 1830 to the Present*, trans. from the French and ed., Michael Brett (Trenton, NJ: Africa World Press, Inc. reprint 1991), 9.

³⁷ CAOM, F/80/1670.

keeping Algeria pointed to the importance of ending piracy; also, they viewed it as an issue of national pride. Success in Algeria would return some prestige to the French army after its humiliating ejection from Egypt in 1801, not to mention the defeats of 1812 and Waterloo in 1815. Additionally, the French public wanted to defy English pressure to evacuate Algiers.³⁸ Consensus proved elusive, and intentions for and goals in Algeria differed within the French government and the public as well as among those already in Algeria: the military and the settlers (*colons*). Lacking clear directives and adequate troops and matériel for complete conquest, the French military in Algeria struggled to achieve a minimum level of security. Hoping to stabilize their presence in the country, French military leaders waged war against and signed treaties with local rulers, often acting independently of and without authorization from the government in Paris.

On 7 July 1833, a Royal Ordinance named the first *Commission d'Afrique* and charged it with the task of collecting all the facts about the current situation in Algeria in order to advise the government about what to do to secure its future. The Commission arrived on 2 September 1833.³⁹ The Commission reported on the many failures of the first three years of French occupation. Nonetheless, it reluctantly recommended maintaining the Algerian territories, citing public opinion and national prestige as reasons, and suggested economic and political reforms for Algeria.⁴⁰ On 12 December 1833, another Royal Ordinance created a second Commission. This Commission, too,

³⁸ Jean Meyer, et.al., *La France coloniale*, 330-335.

³⁹ CAOM, F/80/1670.

⁴⁰ Ruedy, *Modern Algeria*, 53ß.

recommended that France keep its fledgling Algerian colony and develop its economic infrastructure.⁴¹ The Chamber of Deputies deliberated over whether or not to accept these proposals. Finally, on 22 July 1834 Maréchal Jean-de-Dieu Soult, the Minister of War, took the initiative and drafted a Royal Ordinance for Louis-Philippe to sign, creating in Algeria a military colony: “*les possessions françaises dans le Nord de l’Afrique.*”⁴² Responsibility for administering the colony belonged to the Ministry of War, which was to appoint a Governor-General with oversight of both civil and military affairs to govern Algeria.

As early as August 1831, a report on the means of colonization had suggested a three-stage process: first, the French should subdue and settle the coast; then the plain of Mitidjah (located south of Algiers); and then, finally, the mountains. Above all, security must be a primary goal in order for colonization to proceed.⁴³ In 1835, however, the French government settled on a policy of restricted occupation, limiting French settlement to the coastal cities of Algiers, Oran, and Bône and their surrounding territories. Indigenous leaders, reporting to and taking direction from French authorities, would control the remaining regions. Early advice from the colony also suggested that it was important not to expect a prompt change in the customs or character of the indigenous populations; this necessarily would take time. The way to bring about desirable change within the indigenous population as well as to facilitate peace and

⁴¹ CAOM, F/80/1670.

⁴² In 1839, the Minister of War General Virgile Schneider, recommended using “Algérie” to refer to the colony. (Xavier Yacono, *Histoire de l’Algérie*, 9).

⁴³ CAOM, F/80/1670.

French settlement would be to establish ties of mutual interest between the two populations. Above all, it would not be wise to employ force constantly. The French should not habituate the populace to perpetual war, because this would produce contrary and damaging results for French interests in Algeria.⁴⁴

The Desmichels Treaty, signed in February 1834 by the French and the resistance leader ‘Abd el-Kader, made possible -- at least for a time -- this policy of restricted occupation. ‘Abd el-Kader agreed to recognize French authority in their coastal enclaves, and in return the French agreed to recognize ‘Abd el-Kader as the official ruler of the interior regions and populations. The peace allowed the French to consider more seriously its goals for colonization. ‘Abd el-Kader, who until then had been France’s most formidable foe in Algeria, used the break in fighting the French to direct his energies toward consolidating and expanding his power over the tribes within his territory. Part of his activities included efforts to modernize and forge his own *nizāmī* army; efforts which he continued until his eventual defeat in 1847.⁴⁵

‘Abd el-Kader was born in 1808 to a marabout family of the Hashim Gharab tribe in the region near the Western city of Mascara.⁴⁶ The tribe named him Emir in 1831, expecting ‘Abd el-Kader to lead the tribe in fighting the French. By the following year,

⁴⁴ CAOM, F/80/1670.

⁴⁵ For a discussion of ‘Abd al-Kader’s program of military modernization and its larger North African context, see Amira K. Bennison, “The ‘New Order’ and Islamic Order: The Introduction of the *Nizāmī* Army in the Western Maghrib and Its Legitimation, 1830-73 (*International Journal of Middle East Studies*, vol. 36, no. 4, [Nov. 2004]), 591-612.

⁴⁶ The term marabout carries several meanings, but this North African term generally referred to a holy man, usually a teacher or leader of Islam. Often, but not always, these men were Quranic scholars. In many tribes, such as the Hashim Gharab, the status or “office” of marabout was inherited.

he had become the pre-eminent leader of the indigenous resistance to the French occupation by winning the support and alliance of many tribes in the western regions. As a result of his conquests and alliances, ‘Abd el-Kader controlled large swathes of strategically significant territory, including the land routes between French-controlled coastal cities. This left the French forces in these locations isolated and vulnerable. Baron Louis-Alexis Desmichels, the Commanding General in Oran, hoped to remedy this situation by seeking terms with ‘Abd el-Kader, and the resulting Desmichels Treaty sealed the peace negotiations. The Desmichels Treaty benefitted the French, because they gained the safety and security along their coastal holdings, and it benefitted ‘Abd el-Kader because if he did not have to fight the French, then he could direct his energies toward consolidating his power over his territory. Because not all of the tribes in his territory recognized his leadership, ‘Abd el-Kader’s leadership had to fight to subdue them.

The peace afforded by the Desmichels Treaty proved short-lived, and in 1835 hostilities reignited between the French and the forces of ‘Abd el-Kader. In May 1837 another attempt at peace was made. France’s General Thomas-Robert Bugeaud and ‘Abd el-Kader signed the Treaty of Tafna. Included in the treaty was formal recognition of the rights of the French to maintain a limited occupation along the coast and the rights of ‘Abd el-Kader to control most of central Algeria. In fact, the Treaty of Tafna closely resembled the Desmichels Treaty which had preceded it. This new peace once again allowed the French to direct their attention to other problems. Their immediate objective was to subdue Ahmed Bey, the ruler of the eastern city of Constantine and its environs.

Ahmed Bey had refused to recognize French authority and continued to direct resistance to and launch attacks against French forces. In 1836 under General Bertrand Clauzel, French forces had suffered an embarrassing defeat at the hands of Ahmed Bey, who successfully thwarted their efforts to capture Constantine. With ‘Abd el-Kader eliminated as an immediate threat, the French were free to set their forces against another opponent. In October 1837 they launched a second, this time successful, attack against the city. Constantine and the eastern regions of the Algeria now fell under French control.

Yet again, peace between ‘Abd el-Kader and the French failed to endure. In 1839, misunderstandings about the terms of the Treaty of Tafna resulted in a new outbreak of warfare. By this time, however, the French had begun to question the policy of restricted occupation. They began to view the expansion of French control beyond the coastal strongholds as necessary to maintain security and ensure the French domination of Algeria. Opinion began to shift in favor of total, rather than partial, conquest. As long as ‘Abd el-Kader remained in control of his substantial territory, the French could not achieve total conquest. The capture of Constantine marked the first step toward total conquest of Algeria; the defeat and removal of ‘Abd el-Kader became the second.

This period also marks the point at which antagonism between the military and civilian population began to increase precipitously. The settlers accused the military of failing to offer them adequate protection against the attacks of ‘Abd el-Kader.⁴⁷ During

⁴⁷ Yacono, *Histoire de l'Algérie*, 94. A more in-depth discussion of the settler population will follow in Chapter Three.

the fighting that followed the end of the Treaty of Tafna, ‘Abd el-Kader’s forces had massacred settler populations and destroyed farms.⁴⁸ In 1840, to restore order and effect a total pacification of the tribes, now an explicit goal of the French, Minister of Foreign Affairs Adolphe Thiers appointed General Bugeaud as Governor-General.⁴⁹ At the conclusion of the Treaty of Tafna in 1837, Bugeaud had left Algeria to return to his estate outside Limoges. His new position recalled him to Algeria, and in February 1841 Bugeaud landed back on Algerian soil.

Now in a position to implement the ideas for which he long had advocated, Bugeaud formally instituted widespread reforms in the military’s conditions and strategies. Until this point, French troops had equipped and dressed themselves as they would have for war in Europe: they wore woolen uniforms, carried their own heavy packs of food and equipment, and transported heavy artillery across the desert. Bugeaud implemented basic improvements for the troops’ quality of life such as lightweight uniforms, the use of pack animals to transport equipment, better quality boots, adequate fresh drinking water, and improved bedding.⁵⁰ More radically, Bugeaud ordered the abandonment of heavy artillery, which he regarded as unnecessarily cumbersome and

⁴⁸ ‘Abd el-Kader also directed violence against French military prisoners: in March 1846, fleeing from French troops, ‘Abd el-Kader had the French prisoners he was guarding put to death because they hindered his escape. He spared only the officers and ransomed them back to the French government. (Pierre Guiral and Raoul Brunon, eds., *Aspects de la vie politique et militaire en France au milieu du XIXe siècle à travers la correspondance reçue par le Maréchal Pélissier (1828-1864)* [Aix-en-Provence: Centre d’histoire militaire de la Faculté des lettres et sciences humaines, 1968], 75).

⁴⁹ In 1847 Henri Eugène Philippe d’Orléans, the duc d’Aumale, replaced Bugeaud as Governor-General. (Jean Meyer et.al., *Histoire de la France*, 358).

⁵⁰ Anthony Thrall Sullivan, *Thomas-Robert Bugeaud: France and Algeria, 1784-1849: Politics, Power, and the Good Society* (Hamden, CT: Archon Books, 1983), 89-90.

impractical in North African conditions. French officers resisted the loss of heavy artillery, but Bugeaud responded, “Do you mean to tell me that you would be unable to fight Arabs who don’t have any heavy weapons when you already possess three enormous advantages over them: organization, tactics, and discipline?” Without heavy artillery, the French would be more mobile and, Bugeaud reasoned, more likely to engage directly with the enemy and win decisive battles.⁵¹

Bugeaud’s second major area of reform was in military strategy. Bugeaud successfully had fought guerilla forces in Spain during the Napoleonic wars, and he recognized that in Algeria as in Spain, traditional military tactics needed to be adapted to the circumstances. In his opinion, the French had made two major mistakes in Spain, and they were repeating them in Algeria. The first was relying on excessive fortifications. When the French troops extended their reach with a major victory, they fortified the location with a garrison. Bugeaud believed that this tied down troops needed elsewhere and made the military less effective; instead of the troops controlling the countryside, he declared, the countryside controlled them.⁵² The second major reform was the implementation of *razzia*, or raid, warfare.⁵³ Fighting the guerilla forces in Spain had taught Bugeaud that traditional rules of engagement were ineffective, and that to beat guerilla forces it was necessary to embrace their practices.

⁵¹ As quoted in Sullivan, *Thomas-Robert Bugeaud*, 86.

⁵² Sullivan, *Thomas-Robert Bugeaud*, 88.

⁵³ The *razzia* was a traditional form of warfare used in North Africa. It generally involved destroying and/or burning crops and homes, driving off or capturing livestock and flocks, and taking hostages from among the women and children of enemy combatants.

This led to the French adoption of the *razzia* which long had been a form of warfare in North Africa. A derivation of the Arabic word *ghaziya*, the *razzia* was used among pre-Islamic tribes. During the Arab conquest of North Africa, the Arab tribes used it against the Berbers, and it was a familiar form of combat for the nomadic tribes of Algeria.⁵⁴ During the 1830s when he was seeking to consolidate his power, ‘Abd el-Kader had made use of *razzia* warfare against recalcitrant tribes as well as against the French settlers.⁵⁵ Bugeaud ordered *razzias*, and the French troops obeyed with devastating results. They took hostages, burned villages, destroyed crops, chopped down fruit trees, and slaughtered, seized, or drove away livestock.⁵⁶ The Algerian tribes which had continued to resist French rule quickly succumbed to the suffering these *razzias* left in their wake, and by 1843 nearly all had submitted to French rule.

Bugeaud’s methods merit further discussion, because they contributed to the growing distaste and repugnance the French civilian population felt toward military authority in Algeria. Later, this critical attitude contributed to civilian arguments against the perpetuation of a military regime. In Paris, the French population reacted with horror to Bugeaud’s harsh *razzias*. In 1845, in defense of his strategies, Bugeaud made a speech in the Chamber of Deputies, stating that

⁵⁴ Thomas Rid, “Razzia: A Turning Point in Modern Strategy,” *Terrorism and Political Violence*, vol.21, issue 4, 2009: 618-19.

⁵⁵ In his account of the makhzen tribes of Oran, Colonel Jean Louis Marie Ladislas Walsin-Esterhazy criticized the French for failing to protect their Arab allies from the attacks of ‘Abd el-Kader. Walsin-Esterhazy describes several examples of ‘Abd el-Kader’s *razzias* against the makhzen tribes. He also noted occasions on which the makhzen tribes engaged in *razzias* against enemy tribes. See Colonel Walsin Esterhazy, *Notice historique sur Le Maghzen [sic] d’Oran* (Oran: Perrier, 1849).

⁵⁶ The interior tribes were predominantly semi-nomadic, which meant that they engaged in a combination of agriculture and herding. Scattered settlements existed as well.

As for the razzias, that have been so much objected to, I ask if there was any other means of concluding the war? In Europe there are other means of touching the enemy's interests. His capital can be taken, the main roads interrupted, and the river navigation; and when the vital parts of the country are thus held, it must capitulate. But in Africa there are no capitals, no towns, no villages, no farms, only agricultural interest. It is all over the face of the country, and must be hunted over every acre⁵⁷

Bugeaud also is remembered for a different form of brutality that the French military inflicted on the Algerian tribes during the 1840s. The infamous events at the caves of Dahra enflamed anti-military sentiments among the metropolitan and civilian populations and provided potent material for anti-military propaganda. In June 1845, Colonel Aimable Jean-Jacques Pélissier, after several days of pursuit, cornered the Oulad Riah tribe in the Dahra caves, located in the mountains north of Chélif. Pélissier repeatedly asked the Oulad Riah to leave the caves and surrender, but the tribe refused. Pélissier reasoned that starving the Oulad Riah into submission would be a long process; they had brought in ample supplies of food, and the cave provided access to fresh water. Due to join another regiment of the army for a different campaign, Pélissier believed that he could not afford the time to wait for the Oulad Riah to surrender, nor could he leave the Oulad Riah in the cave, thus exposing his troops to possible attacks from the rear and tacitly encouraging the tribes to use caves as refuges. Ordering his troops to barricade the cave's entrance with brush, Pélissier then ordered them to ignite the brush. About five

⁵⁷ Henry-Amédée Lelorgne, comte d'Ideville. *Memoirs of Marshal Bugeaud from his Private Correspondence and Original Documents, 1784-1849*, 2 volumes, ed. and trans. Charlotte M. Yonge (London: Hurst and Blackett, Publishers, 1884), II: 144.

hundred members of the Oulad Riah tribe, including women and children, suffocated to death in the smoke from the flames.⁵⁸

Pélissier and Bugeaud, his commanding officer, faced a barrage of public criticism as result of this harsh measure. Bugeaud nonetheless defended Pélissier's decision. He argued that tactical and pragmatic necessities drove Pélissier to act the way he had; moreover, Bugeaud wondered "whether besieging caverns is more cruel than the bombardment and starvation that we inflict upon the whole population of European cities in war."⁵⁹ The incident at the Dahra Caves proved not to be the last of its kind. In August of 1845, General Armand Jacques Leroy de Saint-Arnaud asphyxiated members of the Sbéah tribe. Over the next two years, Generals Louis-Eugène Cavaignac and François Certain Canrobert committed similar acts against other tribes.⁶⁰

Throughout the 1840s, fighting and violence committed against civilians -- Algerians and French colonists alike -- continued. Gradually, however, the French forces gained the upper hand and subdued the allies of 'Abd el-Kader. Rebellious tribes

⁵⁸ Ideville, *Memoirs of Marshal Bugeaud*, 165-166.

⁵⁹ Bugeaud wrote this and the following in a column in the *Moniteur Algérien* in July: "Was Colonel Pelissier to retire before this obstinancy, and give up his task? The consequences of this determination would have been fatal, and caused a great confidence in the caves. Was he to attack by main force? That was almost impossible, and in any case would have caused great loss. To resign himself to a simple blockade that might last a fortnight, was the loss of precious time for subduing the Dahra, and refusal of the combination with Colonel Saint-Arnaud. After consideration of all these circumstances, he determined to make use of the method that had been recommended him by the Governer-general, in case of extreme emergency." (Ideville, *Memoirs of Marshal Bugeaud*, 167.)

⁶⁰ The press of the métropole condemned the massacre in the Dahra caves, but Pélissier received many letters of support from the military. There were civilians who supported his actions, too: Léon Blondel, Directeur général des affaires civiles de l'Algérie, admitted that although Dahra was a misfortunate, it was too bad that the press did not explain the political and military events that made it inevitable. (Pierre Guiral and Raoul Brunon, eds, *Aspects de la vie politique et militaire en France, au milieu du XIX^e siècle à travers la correspondance reçue par le Maréchal Pelissier (1828-1864)* (Aix-en-Provence, France: Centre d'histoire militaire de la Faculté des lettres et sciences humaines d'Aix-en-Provence, 1968), 57.

accepted French rule. Algerian forces under ‘Abd el-Kader lost ground, losing their tribal allies and territory. Finally, in December 1847 ‘Abd el-Kader surrendered to General Christophe Léon Louis Juchault de Lamoricière. Although the mountainous regions of Kabylia remained unsubdued, the defeat and deportation of ‘Abd el-Kader removed the last major obstacle to total French domination in Algeria. Sporadic tribal revolts continued throughout the rest of the nineteenth century; however, no indigenous leader after ‘Abd el-Kader could match his military skills, personal charisma, or ability to unite and organize the tribes into a serious threat to French control. In 1857, even Kabylia fell to the French.⁶¹

French Administration

Soon after the French military took control of Algiers in 1830, General Bourmont lobbied for the creation of a civil administration. On 9 August 1830, he formed an administrative municipal council for Algiers. A Royal Ordinance of 22 July 1834 specified the municipal administration’s composition by stating that the council should be comprised of a mayor, a French adjunct, a Muslim adjunct, an adjunct from the locality, and a Jewish adjunct. The Ordinance continued to advise that similar councils should be formed for Oran and Bône. The size of these councils should be determined by the size

⁶¹ The Berber populations -- often referred to collectively as the “Kabyles” -- of mountainous Kabylia had thus far resisted French control. The French on their part had not concerned themselves much with the mountains and their isolated populations, concentrating instead on securing their control over the coastal plains and plateaus. Once ‘Abd el-Kader no longer posed a threat, however, the French turned their attention to the mountains and by 1857 had brought them under French control.

of the city and by a decree of the Governor-General.⁶² The Royal Ordinance of 1834 that established Algeria as a military colony under the direction of the Minister of War upheld the existence of these administrative councils, but it subordinated their power to the Governor-General. The Governor-General, appointed by the government in Paris, would be in control of the executive power in Algeria.⁶³ The military's executive control of Algeria would continue, aside from a brief period of exception between 1858 and 1860, until the beginning of the Third Republic in 1870.

In 1845, Algeria was divided into two official territories: a military territory under military authority in which *sharī'a* (Islamic law) was in effect and a civil territory under the authority of civil institutions in which the French system of justice prevailed.⁶⁴ By 1845, a third form of administration had been added: the mixed territories, although these would be abolished in 1848. The territories were delineated according to the number of European residents they contained. The civil territories, known as "*communes de plein exercises*," had the highest percentage of European residents, and a civilian-led government administered them.⁶⁵ A smaller European population lived in the "mixed" territories. The military controlled these territories but permitted the European communities some limited self-government in the form of councils elected by a limited electorate. Finally, there were the Arab territories in which were found few Europeans

⁶² CAOM, F/80/1670.

⁶³ CAOM, F/80/1676.

⁶⁴ *Sharī'ā* here referred mostly to civil law, and was employed only by Muslims. Criminal matters generally were referred to French courts.

⁶⁵ Nonetheless, power in the colony ultimately lay in the hands of the Governor-General, a military officer.

but significant indigenous populations. The military controlled these territories also.⁶⁶ This structure was revised after the Revolution of 1848 under the Second Republic. In 1848, the Republican government in Paris further divided the civil territories of Algeria into administrative units corresponding to those in France: *departements*, *arrondissements*, and *communes*. Paris eliminated the “mixed” territories and reclassified them into either military or civilian territories; most often, the “mixed” territory became a “civilian” territory. These civilian territories were placed under the direction of a civil governor who had the assistance of a counsel of prefecture and an elected general council.⁶⁷

The military territories were divided into administrative units: divisions, subdivisions, and *cercles* (circles). Each of the three important urban centers -- Oran, Algiers, and Constantine -- were the centers of the divisions, each of which had its own commanding general who reported to Algiers. In the case of Algiers, the commanding general was the Governor-General himself.⁶⁸ Colonels directed each subdivision and answered to the commanding general of their respective division. Finally, a lieutenant or captain headed the “second-class” officers of each *cercle* within the subdivision.⁶⁹ There were four military *cercles*: Bône, LaCalla, Guelma, and l’Edough.⁷⁰ After the 1844 creation of the Arab Bureau (more about this below), each of the three military Divisional

⁶⁶ It was these “Arab” or tribal territories that the Arab Bureau administered after its creation in 1844.

⁶⁷ Jules Favre, *Discourse Parlementaires*, vol. II, published by Mme V^{ve} Jules Favre, née Velten (Paris: E. Plon et C^{ie}, 1881), II: 47.

⁶⁸ Xavier Yacono, *Les Bureaux Arabes et l’évolution des genres de vie indigènes dans l’ouest de tell Algérois* (Dahra, Chéelif, Ouarsenis, Sersou), (Paris: Éditions Larose, 1953), 13.

⁶⁹ Summary from O.W. Abi-Mershed, “Domination by Consent: The *Bureaux Arabes* and Public Instruction in Colonial Algeria, 1831-1870,” (Ph.D. Dissertation, Georgetown University, 2002), 47.

⁷⁰ Yacono, *L’Histoire de l’Algérie*, 93.

Directorates -- Algiers, Oran, and Constantine -- also was assigned a Divisional Directorate for the Arab Bureau. These Directorates typically included the following personnel: a director and his adjunct; an officer of health; a payroll officer; two interpreters; a copiest; a qādī; one or two Arab secretaries; an “*oukil-el-diaf*”;⁷¹ and several *chaouchs*.⁷²

Beneath the Directorates were the Subdivisions, or Arab Bureaus of the first class. A colonel usually directed a Subdivision, and in addition to him, the Subdivision would include an interpreter, a copiest, and a chaouch. Also attached to the Subdivisions were about thirty to forty indigenous cavalry.⁷³ The Subdivisions, in turn, were divided further into second-class bureaus, or *cercles* (circles). Each typical cercle would have a *chef de bureau*, an adjunct, a qādī and his associates, a French secretary, an indigène secretary, a chaouch, and some horsemen.⁷⁴ The Arab Bureau officer Ferdinand Hugonnet referred to the cercle as the “administrative unit of the indigènes,” because it was here that the French administration came into direct contact with the tribes of the interior. Working

⁷¹ I have been unable to locate a translation or definition of this position.

⁷² A chaouch is defined in several ways: a secretary, usher, bailiff, or office boy. The local sheikhs seemed to have chaouchs as well. The functions of the position could encompass any of these tasks, plus others. The documents of the Doineau Trial give the impression that the chaouchs served as a sort of personal assistant, or right-hand man, for the the head of the Arab Bureau or the sheikh which they served. Traditionally, a qādī or cadi is a Muslim judge, but it also referred to an administrative position under the Ottomans. The term is ambiguous because it sometimes is used interchangeably or without explanation. The French continued the use the title qādī, and in the context of the French administration, a “qādī” also referred to a person who was an “officer of the town.” In this capacity, he fulfilled administrative more than judicial functions. (Explanation from Michael Brett, “Legislating for Inequality in Algeria: The Senatus-Consulte of 14 July 1865,” *Bulletin of the School of Oriental and African Studies, University of London*, vol. 51, no. 3 (1988): 440-461; 442).

⁷³ Kenneth J. Perkins, “Pressure and Persuasion in the Policies of the French Military in Colonial North Africa” *Military Affairs*, vol. 40, no. 2 (April 1976): 74.

⁷⁴ Ferdinand Hugonnet, *Souvenirs d’un Chef de Bureau Arabe* (Paris: Michel Lévy Frères, 1858), 12.

alone and far from the centers of European settlement, the officers of the cercles lived among and worked closely with the rural tribal populations with whom, Hugonnet observed, the residents of the cities had little in common.⁷⁵

Finally, within the cercles there also might be a number of smaller bureaux located in the small cities, towns, or villages of the region. As France expanded its territory and the size of its colony grew, some of the larger cercles added annexes which were intended to assist in the administration of the most remote and least populated regions.⁷⁶ The size and number of the Bureau reached a peak in 1867, when they (including associated annexes) numbered fifty and employed 198 officers.⁷⁷

The Arab Bureau

In 1844, Governor-General Bugeaud created the Arab Bureau to administer the tribal populations in Algeria and to act as intermediaries between the tribal leaders and the French administration. Bugeaud built the Arab Bureau on the foundations of its institutional predecessors: the Special Bureaux of Arab Affairs (1833-1834) and the Directorate of Arab Affairs (1837-1839). Neither of these institutions lasted very long,

⁷⁵ Hugonnet, *Souvenirs d'un Chef de Bureau Arabe* (Paris: Michel Lévy Frères, 1858), 8; 44.

⁷⁶ General outline of administrative structure from Abi-Mershed, "Domination by Consent," 46-47; details of personnel from Roger Germain, preface by Marcel Emerit, *La politique indigène de Bugeaud, Gouvernement Général de l'Algérie Collections de Documents Inédits et d'Etudes sur l'histoire de l'Algérie*. (Paris: Éditions Larose, 1955), 261.

⁷⁷ Abi-Mershed, "Domination by Consent," 49.

however, and they had little effect on the colony's administration.⁷⁸ One of Bugeaud's first acts as Governor-General when he arrived in 1841 was to reinstate the Directorate of Arab Affairs. He believed that it was essential to establish an institution specifically dedicated to supervising the tribes under French control. In 1844, the Directorate underwent its final transformation when Bugeaud reformed and expanded it, renaming his creation the Arab Bureau.

We have reviewed the general structure of the Arab Bureau, which mirrored the structure of the military administration. The Arab Bureau was, however, a separate administrative unit. All members of the Arab Bureau came from the military -- there were no civilian members of the Arab Bureau -- but not all military personnel were part of the Arab Bureau. Some military personnel were jealous of the special nature of the Arab Bureau and treated it with hostility.⁷⁹ The officers of the regular army considered the Arab Bureau officers inferior; mere "bookkeepers [and] diplomats" who were "negligent to the craft of arms."⁸⁰ Jealousy might have played a role in the occasional

⁷⁸ The fates of the Arab administrations were tied to the Governors-General in control of the colony. In 1833, Général Camille Alphonse Trézel formed the Special Bureaux of Arab Affairs to centralize the government's Arab administration. He placed at its head a young Captain of the Zoaves, Christophe de Lamoricière. When the new Governor-General Jean-Baptiste Drouet, Comte d'Erlon arrived in Algeria in 1834, he dissolved the Special Bureaux. Three years later, on 22 April 1837 a decree issued by the newly-appointed Governor-General Charles-Marie, comte Denys de Damrémont (General Damrémont) resurrected the Bureaux but renamed it the Directorate of Arab Affairs. General Damrémont appointed Captain Édmond Pellissier de Reynaud its leader. (Pellissier de Reynaud should not be confused with the Général Aimable Pellissier who asphyxiated the tribes at Dahra and who later became Governor-General of Algeria). Yet another Governor-General, Maréchal Sylvain-Charles, comte Valée arrived in Algeria and dissolved the Directorate of Arab Affairs. In 1839, the Directorate of Arab Affairs was dissolved.

⁷⁹ Gaston Delayen, *Les deux affaires du Capitaine Doineau, 1856-1874* (Paris: éditions des juris-classeurs, 1924), 45-48. The officers of the Arab Bureau, given the generally remote and isolated nature of their posts, enjoyed a high degree of autonomy and independence. This freed them from many of the constraints and oversight to which soldiers in general were subjected.

⁸⁰ Yacono, *Histoire de l'Algérie*, 135.

tension between the regular military and the Arab Bureau, but differences over the way to administer the colony also were possible causes. Although the military and the Arab Bureau often are depicted, particularly by their critics, as having been monolithic and synonymous, in fact the military, including the Arab Bureau, was divided internally about how best to govern in Algeria. Frequently, however, the Arab Bureau shared ideas found less frequently among the rest of the military. We now will take closer look at the backgrounds and responsibilities of these officers.

Between 1844 and 1870, 63% of the active Bureau officers had graduated from one of the four French military schools: St. Cyr, the École Polytechnique, Saumur, or Fontainebleau. Most of the Bureau officers, however, probably graduated from St. Cyr. General Cousin de Montauban, the commanding general of the Division of Oran (1855-1857) described the typical Arab Bureau officer as a graduate of St. Cyr.⁸¹ This observation corresponds with data reflecting the branches from which the Bureau officers came: 63% came from the infantry and an additional 21% came from the ranks of the cavalry, together comprising a full 84% of Arab Bureau officers.⁸² The graduates of the École Polytechnique, on the other hand, entered the engineering corps, the artillery corps, the civil engineering corps, or the mining corps.⁸³ These branches generally did not supply officers for the Arab Bureau. The average age of the officers was 28, and they

⁸¹ As noted in Kenneth J. Perkins, *Qaids, Captains, and Colons: French Military Administration in the Colonial Maghrib, 1844-1934* (New York and London: Africana Publishing Company, 1981), 42.

⁸² figures from Perkins, *Qaids, Captains, and Colons*, 46.

⁸³ Lorcin, *Imperial Identities*, 113.

spent an average of 5.9 years in the Arab Bureau, with an average of 1.9 years at each post.⁸⁴

The officers volunteered for temporary service in the Bureau, during which time they would be separated from their regular regiments.⁸⁵ The reasons for entering into Bureau service differed from individual to individual, but one obvious incentive was the hope for professional advancement. During the initial years of fighting in Algeria, officers in the French military frequently enjoyed rapid promotion. Battles provided opportunities to win honor and demonstrate military prowess. Many ambitious young men found service in Africa rich with opportunities. The formation of new fighting units, such as the *zouaves*,⁸⁶ *spahis* (light cavalry), and *tirailleurs* (light infantry) required French officers to lead them, and this resulted in a need for more officers.⁸⁷ At the time of its reform in 1844, the Arab Bureau appeared to offer another new pathway to professional success. In a meeting of the Legislative Assembly in 1849, General Fabrier criticized the soldiers' rampant ambition, stating that "unfortunately, [the army] is afflicted with a sickness unknown in other times; it is the fever of advancement."⁸⁸

⁸⁴ Kenneth J. Perkins *Qaids, Captains, and Colons*, 46; list of military schools, p. 42. Perkins also notes that the emphasis on youth among the officers was by design: authorities often rejected Bureau applicants who were older than approximately the mid-30s. See page 79.

⁸⁵ Kenneth J. Perkins, "Pressure and Persuasion," 74.

⁸⁶ The *zouaves* were an infantry branch of the French military, initially raised in 1831 after the conquest of Algiers. The first recruits came from the Berber tribe called Zouaoua, but after 1838 the corps became entirely French.

⁸⁷ Pierre Chalmin, *L'Officier français de 1815 à 1870* (Paris: Librairie Marcel Rivière et C^{ie}, 1957), 30; 133

⁸⁸ Chalmin, 38 (footnote). Time, however, dampened the officers' hopes for the Bureau as a fast track to success; service in the Bureaux turned out to be as likely to hinder advancement as to facilitate it. (Perkins, *Qaids, Captains, and Colons*, 49).

We can best gain insight to the work and daily tasks of the Arab Bureau officers through the memoirs and other writings that they produced. Unfortunately, these documents are few in number and their authors represent only a handful of the 632 Bureaux officers that served between 1844 and 1870.⁸⁹ They nonetheless provide our only comprehensive view on their world. The principle role of the Bureau, according to Lieutenant Ferdinand Hugonnet, was to give “good and prompt justice to all [indigenous peoples], in all places.”⁹⁰ Hugonnet served in the Arab Bureau during the 1850s and published a memoir about his experiences in 1858. In his writing, Hugonnet provides a detailed description of his varied work as an officer in the Arab Bureau. According to Hugonnet, the Arab Bureau was unlike any of its predecessors because the officers in it had greater power and more responsibility.⁹¹ Hugonnet included a partial list of the many duties he fulfilled. Among them were the following: nominating and directing indigenous leaders; monitoring the conduct of Muslim judges; maintaining active surveillance on the movements of the tribes; assuring the security of the roads and the peace of the country; commanding *goums* (irregular indigenous cavalry forces);⁹² investigating crimes; assessing and collecting taxes; deciding upon and managing public works projects; and publicizing and directing public events such as festivals and races.⁹³

⁸⁹ Perkins, *Qaids, Captain, and Colons*, 46

⁹⁰ Hugonnet, *Souvenirs*, 34-35.

⁹¹ Hugonnet, *Souvenirs*, 5.

⁹² Sheikhs, caïds, aghas, and French Arab Bureau officers each had their own *goums*. (Hugonnet, 187; 191).

⁹³ Hugonnet, *Souvenirs*, 9-12. It should be noted that Hugonnet says nothing about establishing schools or other activities often associated with a “civilizing mission.”

In Hugonnet's opinion, one of the main attractions of working for the Arab Bureau was this great diversity of responsibilities, and in particular the opportunity to command the goums.⁹⁴ Moreover, he claimed, the campaigns the officers conducted in the tribal regions provided them with unparalleled opportunities to put their courage and leadership qualities to the test. To command and live closely among the tribes -- to "sate one's eyes, one's ears, and one's heart" -- with all the challenges and experiences these duties entailed, this was an "irresistible temptation" for an ambitious and adventure-seeking young officer.⁹⁵

The military dossiers in the Archives d'Outre-Mer of Bureau officers provide some additional information. For example, Captain François Xavier Cousin, was an officer who served in Algeria in the 1850s (and who therefore was a contemporary of Captain Doineau).⁹⁶ Born in 1815, Cousin entered military service in 1833 as a soldier in the infantry of the line. He advanced steadily through the ranks, suffering some minor wounds along the way, and obtained the rank of Captain in 1854. Cousin's dossier makes no mention of his educational background, so it is likely that he was not a graduate of one of the French military schools. In 1847, he entered the Arab Bureau and became an adjunct at Guelma. After a tour at Philippeville, Cousin returned to Guelma in 1852 to assume his first post as a Bureau chief. The performance reviews (1857-60) in his file

⁹⁴ Most of the Bureau officers were lieutenants or captains, and officers of such ranks in the regular army would have lacked equivalent opportunities to exercise independent and largely unlimited command over other French soldiers.

⁹⁵ Hugonnet, *Souvenirs*, 188-189.

⁹⁶ All information on Cousin comes from his military dossier, CAOM, 18H/45.

describe Cousin in positive terms: he displayed good health, excellent military and horsemanship skills, and strong leadership. He could speak, read, and write Arabic with facility and also knew a little German. The reports claim that Cousin possessed an extensive knowledge of the history, geography, and mores of the country and its people, and that he enjoyed a good relationship with the indigènes, who respected him.

Between 1852 and 1859, Cousin served as chief for three separate Bureaux. This gave him slightly longer than the average 1.9 years at each post. In a letter recommending him for chief of the Bureau in Collo (to which he was assigned in 1859), Cousin's commanding officer explained to the Governor-General that Cousin had the necessary experience and qualifications for this challenging post. The region around Collo had only recently been subdued and was inhabited by the Kabyles, a people among whom "civilization had made little progress." In order to achieve, in the quickest and most effective way, France's goals for improvement and prosperity in this region, the Arab Bureau required an experienced and knowledgeable chief in Collo. Captain Cousin, with his advanced rank and extensive knowledge of the area and its population, would be a better candidate than the younger and less experienced officer currently in the position.⁹⁷

Another activity that Cousin's performance review praised was his work with grafting olive trees. Cousin expanded grafting by many thousands of trees. The report offers no explanation for Cousin's work, so it is impossible to determine the personal reasons behind his grafting project. The French, however, wanted to make the colony

⁹⁷ CAOM, 18H/45, letter dated 27 July 1859.

profitable and so were interested in developing cash crops. Cousin's work demonstrates that the military was involved in the *mis-en-valeur* process, even if we cannot assume to know why he chose to do this.⁹⁸

In the previous chapter, the meaning and importance of justice in Ottoman political thought were discussed briefly. The Arab Bureau officers who have left memoirs discussed the issue of justice and its importance to their administrative duties. It is worthwhile to consider the topic in greater depth, because of the importance it held within the indigenous society and as a part of the Arab Bureau officers' tasks. Moreover, it serves as a point of conflict between local and French customs. Later, we will see how this became important, in particular, for questions of property ownership.

When the French first arrived in Algeria, they possessed only a rough understanding of the pre-existing legal systems. In 1830, General Bourmont had promised Hussein Dey when he surrendered that the French would respect the religion and mores of the local population. Thus, in civil matters Muslims and Jews were permitted to retain their *sharī'ā* and rabbinical courts.⁹⁹ French courts, however, would prosecute "crimes and misdemeanors" that fell outside civil concerns.¹⁰⁰ Although the indigenous population had access to its own judicial systems, it retained the option of

⁹⁸ Some scholars, such as Osama W. Abi-Mershed, might argue that his grafting work demonstrates Cousin's "civilizing mission." The improvement of agricultural techniques was one way to demonstrate the superiority of French civilization and entice the local population to embrace it. On the other hand, perhaps Cousin hoped to enjoy personal profit from the olive trees, either through legal or illegal means.

⁹⁹ Xavier Yacono, *l'Histoire de l'Algérie*, 91

¹⁰⁰ Discussion of the transformation of the French law courts in Algeria from a document titled "Commissions disciplinaires" in CAOM, F//80/1722. Unless otherwise noted, most of the information in this section comes from this report. This was unsigned report came from the Algerian government documents purporting to relate to "justice." In the absence of other sources detailing this information, this report provides the best option at this point.

turning to the state to solve legal problems. Also, as under Ottoman rule, the distinction between private or civil legal matters (judged by the religious courts) and political or state crimes (judged by state courts) was not always clear-cut. Depending on the issue in dispute, it was not uncommon for the population to bring their civil disputes first to their qādī and then, if dissatisfied with the ruling, to bring the same complaint to the state officials in the hopes of obtaining a different result. Therefore, it was consistent with local practice and tradition that when the Arab Bureau was established, its officers, as representatives of the ruling power, often adjudicated legal matters that involved the indigenous population.

On 10 August 1834, the French government organized their nascent Algerian judicial system. King Louis-Philippe issued an ordinance confirmed the rights of the indigenous population to retain their jurisdictions for internal matters. Three tribunaux: Algiers, Bône, and Oran. Algiers had a *tribunal de commerce*¹⁰¹ A Superior Court of appeals to serve all religions was established in Algiers.¹⁰² Indigènes accused of crimes were tried by either the French civil authorities' *cours d'assises* or military courts (*couseils de guerre*), depending on the location in which the crime was committed. Neither the military nor the civilian courts, however, had jury trials. In both, the accused were tried by a panel of judges; however, the military and civilian courts' panels differed in number and procedure. According to an 1860 military report prepared by Captain

¹⁰¹ In contrast to English tradition, the French had separate commercial courts to settle disputes between merchants, bankruptcies, and other related issues. Commercial issues fall under the category of "civil" disputes, but generally Ottoman bureaucrats, and not the qādīs, had adjudicated commercial disputes. The French courts assumed the position previously held by the Ottomans.

¹⁰² CAOM, F//80/1670.

Bouisse¹⁰³ of the Bureau at Blidah, the indigènes preferred to be tried the military's courts over the civilian ones because the accused had a better chance of being acquitted.¹⁰⁴ The civilian *cours d'assises* had three judges, two votes were enough to convict. In the military courts, however, there were seven judges, and five votes were needed to obtain a conviction. In addition, the military judges, having lived among and studied the culture and mores of the indigenous population, were more qualified to determine indigène guilt or innocence than civilian judges. The French civil magistrates, on the other hand, were "profoundly ignorant of the character and mores of the conquered race."¹⁰⁵ Justice, therefore, would be served best if administered in the military courts, and good justice was deemed critical for a successful administration. Bouisse wrote that, "Among the acts that come from power none is of greater importance than Justice. . . . It is above all through a prompt and well administered justice that we can attract to us the sympathy of this foreign race."¹⁰⁶ Effective justice would help establish peace and order within the local society, and this peace and order would allow the positive effects of French civilization to take root and grow

In light of this, Hugonnet's emphasis on the significance of the officers' judicial functions is understandable, especially if we recall the cultural importance this society placed on just rulers. In his memoir published in 1858, the former Arab Bureau officer

¹⁰³ This signature was not very legible.

¹⁰⁴ CAOM F//80/1722, "De la justice rendue par les conseils de guerre aux indigenes de l'Algérie, pour les crimes et les delits commin en territoire militaire." The following information comes from this report.

¹⁰⁵ CAOM F//80/1722

¹⁰⁶ CAOM F//80/1722

Hugonnet claimed to be effective with and popular among the indigenous population, and he attributed his success specifically to his skill in rendering fair judgments. Hugonnet considered as proof of his popularity and reputation for just decisions the frequency with which the local population came to him to settle disputes and redress wrongdoing. To provide good justice, Hugonnet wrote, it was necessary above all to “demonstrate good sense, . . . patience, gentleness, energy, and great probity.”¹⁰⁷ He explained that he used his knowledge of the people and the land to reach verdicts, though he admitted that he also employed a littler trickery.¹⁰⁸ Hugonnet demonstrated a preference for working within the traditions and mores of the indigenous population which, as discussed in the previous chapter, would be more concerned with reaching an acceptable solution to maintain social harmony than in applying a legal principle in accordance with a strict code of law. Indeed, Hugonnet believed that any sudden application of French justice would produce disastrous results for the French administration. The population was accustomed to its own ways, and changes should not be forced upon them too quickly.¹⁰⁹

Another officer of the Arab Bureau, General François Charles du Barail, offered his opinions about the application of justice in his 1894 memoirs. He believed that the officers of the Arab Bureau would dispense justice best by adhering to local legal practices rather than imposing French values. For example, du Barail relates the story of

¹⁰⁷ Hugonnet, *Souvenirs*, 43.

¹⁰⁸ Hugonnet, *Souvenirs*, 21-23.

¹⁰⁹ Hugonnet, *Souvenirs*, 42.

a kouloughli man living in Oran who had committed a murder.¹¹⁰ For this crime, a French court condemned him to death but immediately commuted the sentence to hard labor for life.¹¹¹ Du Barail asserted, however, that it would have been “more just and more humane” for the court to impose the *talion*, or the blood price, on the man, as was local practice.¹¹² It was an absurdity and an injustice to apply to a “primitive people,” wrote du Barail, laws made by a nation that had reached the apogee of civilization.¹¹³ The scholar Michael Brett asserts that, generally, the officers of the Arab Bureau “wished to preserve native law and custom,” and believed that “native” justice should be administered by the natives themselves.¹¹⁴ Du Barail believed that French law was more advanced than the local law, but that nonetheless in the context, justice would be served better by relying on existing practices. This resembled the Ottomans’ practice of absorbing different legal codes into its judicial administration.

Captain Charles Richard emphasized the exercise of justice in his account of the “mores and character” of the “Arabs.” Richard portrayed the relationships between the chief of Arab Bureau and the indigenous population by describing a series of encounters

¹¹⁰ The kouloughli killed another man in a jealous rage, believing that something inappropriate had taken place between his mistress and the unfortunate victim.

¹¹¹ A few days later, the man was pardoned and set free; however, du Barail explained, the shame and stress associated with this conviction and punishment ruined the man, who turned to drink and drugs in his misery.

¹¹² The imposition of the blood price means the the family of the victims are permitted to choose either the death of the perpetrator or, if he is dead, then a substitute or a payment in compensation for the death of their family member. The process of negotiation between the two families so that both sides feel they have reached a just settlement is an integral aspect of the the resolution of justice.

¹¹³ Général [François Charles] du Barail, *Mes souvenirs*, three volumes, 6th edition (Paris: Librairie Plon, 1894), I: 267-269.

¹¹⁴ Michael Brett, “Legislating for Inequality in Algeria: The Senatus-Consulte of 14 July 1865,” *Bulletin of the School of Oriental and African Studies*, University of London 51, no. 3 (1988): 441.

between the chief and the inhabitants of his territory. In each meeting, the Arabs came to the French officer seeking legal judgments on matters ranging from theft and murder to divorce and marriage.¹¹⁵ These depictions were fictionalized, but Richards intended that they should provide the reader with insight into the activities of the Arab Bureau officers and to the behavior and character of the Arabs. Richards did not comment on the *form* of justice administered, but in the anecdotes he provided, the Arab Bureau officer dispenses justice based on common sense, logic, and local circumstances. In these examples, the French officer provides superior justice not because of the use of French legal codes but as a result of the more advanced reasoning and powers of discernment that the officer possessed.

Captain Bouisse provided another viewpoint in his 1860 report. He observed that the application of the French penal code was necessary in Algeria, and that this would be an improvement in existing practices because French law inflicted more lenient punishments than those issued under the Ottomans. Nonetheless, because the tribes had experienced little to no direct contact with French civilization and therefore knew nothing about it, the Captain believed that too much leniency in the application of justice would fail to stop criminal activities. The act of punishment should, however, occur as it had under the Ottomans, when punishments were inflicted immediately and as close as possible to the scene of the crime. Accordingly, the Captain called for the French administrators to provide “energetic and prompt punishment.” Otherwise, the indigenous

¹¹⁵ See Ch[arles] Richard, *Algérie scènes de mœurs arabes* (Paris: Librairie sociétaire, 1850). Technically, the Arabs would have gone to their qādī for such rulings, but as we have seen, under the French as under the Ottomans, the division between qādī and state justice, in practice, often was imprecise.

population would conclude that crimes would go unpunished, neither a just nor effective administrative practice.

In an 1847 letter to the Governor General of Algeria, Captain Gastu requested just such a local punishment for a crime that had recently occurred. Captain Gastu insisted that if the accused assassins of “the woman Lucat” were condemned to death, this measure should take place in Laghouat (the scene of the crime). He commented that the indigenous population of the city appeared to desire this and observed that the execution would “produce a great moral effect.”¹¹⁶ Typical French judicial procedure, methodical and slow under the best of circumstances, therefore failed to meet the administrative needs of the colony: crimes were committed without fear of punishment; social order and stability remained elusive. French civilization, therefore, would have no opportunity to implant itself within indigenous society; colonization would continue to face difficulties and delays. “Justice is the first method of civilizing,” wrote the Captain at the conclusion of his report.

As the French took control of increasing amounts of territory throughout the 1830s and 1840s, the limits of their judicial system in Algeria quickly became apparent. The logistical impossibilities of establishing regular French jurisdictions were daunting. The difficulties of collecting and assembling evidence, bringing together witnesses, and obtaining testimonies from a population “still animated by the most hostile passions” toward the French “constituted insurmountable obstacles.”¹¹⁷ Out of necessity,

¹¹⁶ CAOM 1H/32.

¹¹⁷ F//80/1722.

the French invested indigenous chiefs with judicial powers to handle the cases of crimes and misdemeanors that otherwise would have been resolved in the French civil courts. According to Captain Bouisse, indigenous leaders (sheikhs and the caïds) failed, however, to perform their judicial responsibilities with sufficient diligence. In another report on the investigation of the crimes and misdemeanors committed by the Arabs, the indigenous leaders are described as rarely “disturbing” themselves to travel to the site of the crime to conduct investigations, allegedly hating to “place themselves in the midst of sadness or tragic events,” and demonstrating “a deplorable negligence and indolence toward facilitating the action of justice.”¹¹⁸ Moreover, these leaders revealed a “revolting partiality” in the collection of evidence and the determination of guilt; if the accused parties had personal or familial ties to the leader, then the accused were found innocent. Captain Bouisse contrasted this conduct with that of the officers of the Arab Bureau, who hastened themselves, or sent a deputy, to the scene of the crime to conduct a thorough investigation and who (he implied) had no personal relationships with the local society and therefore could deliver impartial justice.

Some reforms to the French judicial structure in Algeria were undertaken: a decree of 21 September 1858 specified that the prosecution of crimes and misdemeanors committed by Arabs within the military territories that could not be handled in ordinary or military courts should be handled by special disciplinary commissions.¹¹⁹

¹¹⁸ CAOM, F//80/1722.

¹¹⁹ A copy of this decree is contained in CAOM F/80/1722. The specific occasions when neither civil nor military courts could prosecute these crimes and misdemeanors are not specified, but from other sections of the decree refer to political prisoners.

Nonetheless, a document from 1860 confirms earlier decrees that declared that Europeans and Jews who committed crimes and misdemeanors in the military territories should be referred to *cours d'assises* or *tribuneaux correctionnel*. Scholars have yet to produce a careful study of the development of the nineteenth-century French-Algerian legal system. Such work could help us understand the reasons behind the multiple and ever-changing approaches to the administration of justice in Algeria. The military recognized the close relationship between an effective system of justice and successful colonization, but a closer examination of the various military, civilian, and métropole positions on the colonial justice system would illuminate underlying assumptions about indigenous culture, mores, and civilization. The extent to which French legal codes and courts should or could be applied in Algeria to both colons and indigene populations remained under debate for decades.

From this brief look at the duties of Arab Bureau officers, it is apparent that they exercised considerable power and juggled a tremendous variety of responsibilities. In many ways, they worked more closely and had greater contact with the indigenous population than they did with their fellow French soldiers. Although this would vary from cercle to cercle, the structure of the military administration and the nature of the Arab Bureau meant that, more likely than not, the Arab Bureau officers had little to no direct contact with the European colons who arrived after 1830. The poorly-defined and wide-ranging nature of the tasks of the Arab Bureau undoubtedly provided opportunities for individuals to exploit the system for personal gain. Colons themselves, however, would have had few, if any, opportunities to witness such behavior first-hand, nor would

they have been likely to understand the social or cultural context in which the officers lived and worked. By the very nature of the position, the officers were isolated to a significant degree from the mass of the French settlers in Algeria. It is easy to understand how suspicion and misunderstanding could arise.

Administrative Policies of the Arab Bureau

Initially, when the French attempted to create an administration in the tribal regions, they adopted Ottoman administrative practices and built upon pre-existing tribal structures. The Ottomans had appointed caïds, chosen from among the tribal elites, and placed them at the top of the official administration of the tribes. When the French military first arrived in Algiers, the Government Commission advised that one of the highest priority administrative tasks the French should undertake was to appoint new caïds, removing those who had worked with the Ottomans and replacing them with caïds who would owe their positions -- and presumably their loyalty -- to the French.¹²⁰

With advice from the tribes themselves, the French chose the caïds from among the tribes' powerful and influential families.¹²¹ In these early years, the French accepted and worked with the existing "tribal aristocracy," relying on those families who already

¹²⁰ CAOM, F/80/1670, Government Commission meeting minutes from 12 July 1830 meeting.

¹²¹ Colette Establet explains that the French selected caïds from among the important tribal families. Lucette Valensi, however, notes that the caïds under the Ottomans were usually Turks. Without a more detailed explanation from either scholar, however, it is unclear whether the selection of caïds changed after the arrival of the French, which is likely in part because the French sought to eject all Ottoman bureaucrats from the country, or if the type of caïd selected differed based on his presence in an urban or a rural (tribal) region. See Collette Establet, *Etre caïd dan l'Algérie coloniale* (Paris: Éditions du Centre Nationale de la Recherche Scientifique, 1991) and Lucette Valensi, trans. Kenneth J. Perkins *On the Eve of Colonialism: North Africa Before the French Conquest* [New York: Africana Publishing Company, 1977], 75.

had power and wealth to work on behalf of the French administration. As we shall see, the practice of relying on the tribal elites became an increasing point of debate within the French administration. The caïds had responsibility for a particular territory. Second in power to the caïds were the *sheikhs*, who were in charge of their tribes. After the sheikhs came the *kebirs*, each of whom was responsible for a clan within the tribe.¹²² Pre-existing rivalries among powerful tribal families often were exacerbated when one family received favor -- for example, a caïd position -- from the French and another family did not. The result was an increase in intra-tribal violence.¹²³ This “divide and rule” policy, employed also by the Ottomans, was believed by some among the military to decrease the likelihood that powerful families could unite to overthrow French control.

The French, like the Ottomans, paid the caïds a stipend. In addition to this income, the caïds were permitted to keep a percentage of the taxes they were responsible for collecting in their territories.¹²⁴ This provided the caïds with opportunity to engage in what some among the French characterized as graft or corruption. Ferdinand Hugonet observed that when they collected the taxes from their tribesmen, the caïds often demanded a higher payment than what was needed to make required payments to the French. The caïds kept the difference for themselves, and so they received not only a percentage of the legitimate tax they collected but also the amount they collected in excess of the assessed tax. The caïd’s subject later would be rewarded for his

¹²² Colette Establet, *Etre caïd dan l’Algérie Coloniale* (Paris: Editions du Centre Nationale de la Recherche Scientifique, 1991), 135.

¹²³ Establet, *Etre caïd*, 39-48.

¹²⁴ Establet, *Etre caïd*, 260. The Ottomans initiated this practice, and the French imitated it.

“generosity” in paying his taxes, either through personal favors or other “gifts” bestowed upon the generous subject. When caïds later received land from the French and were made responsible for distributing it among their subjects, their favors came in the form of land.¹²⁵ Generally, caïds would give the best plots to those who had paid them the most “tax” collected on behalf of the French.¹²⁶

The caïds also continued the traditional practice of accepting “gifts” from the tribes under their control -- this gift-giving occupied an important place in the social relations of tribal society. As with the payment of excess “taxes,” gift-giving was another way for individuals to gain influence over or acquire benefits from the tribal leadership. Before the French conquest, gift-giving also had served as an accepted means for tribes to influence or to acquire benefits from the Ottoman administration. It continued under French rule, with some among the French who administered the tribal territories exchanging “gifts” with tribal leaders.¹²⁷ General du Barail commented on the tribes’ understanding of the relationship between power and wealth. “Among the Arabs,” he wrote, “the exercise of power was considered by everyone as the most practical and rapid

¹²⁵ Of course, the land that the French “awarded” to the caïds already belonged, technically, to the tribes who lived upon it. Property ownership and land policy will be discussed in greater detail in the next chapter.

¹²⁶ Hugonnet *Souvenirs*, 243

¹²⁷ This was an important source of problems for the officers of the Arab Bureau, the administrators responsible for the tribal regions. What was considered a “gift” among the tribes, and what they accepted and respected as a legitimate method of social interaction and power negotiations, was considered a bribe among the French; in particular, among the civilian leadership. As a consequence, the French civilian government tried, with little success, to eliminate this practice. It hoped to cultivate among the tribes an appreciation for a modern liberal state in which laws and proper procedures were followed, and bribes and favoritism played no part. Power and authority, in the French tradition, found legitimacy in the application of law. Within Algerian tribal society, personal relationships provided the foundation for authority. (See Establet’s discussion in *Etre caïd*, 247).

way to enrich oneself.”¹²⁸ From practices such as the overpayment of taxes and the giving of gifts, it is easy to see how those in power were able to build their personal fortunes while observing the unwritten rules of accepted social behavior.

During the early years of French intervention, the French also relied on the practice of using makhzen tribes to assist in controlling, policing, and collecting taxes from other subject tribes. Local authority was often granted to these makhzen tribes who promised to work with the French. Some of these groups had been powerful makhzen tribes under the Ottomans, although according to some scholars, others had had little or no power under the Ottomans.¹²⁹ The loss of the Ottomans’ bureaucratic records after the French conquest make it difficult to determine exactly which of the two interpretations is accurate. Not all the makhzen tribes served the Ottomans, however. Colonel Ladislas Walsin-Esterhazy explained in his book on the makhzen tribes of the west that, long before the French arrived, there had been factions among the makhzen tribes themselves, some of whom fought for the Ottomans, while others fought for the sultan of Morocco or offered their services to “Bey Bou-Chelagram,” the local ruler who had been established

¹²⁸ du Barail, *Souvenirs*, I: 398. Du Barail was drawing a connection between the French and the Arabs and their mutual desire for conquest and power. The statement was intended as an observation of fact that explained, in part, the interest among the Arabs for power.

¹²⁹ In the words of Hollins KcKim Steele, Jr.: “As a result of this policy a whole series of ‘native commands’ administered by Muslims loyal to France grew up which bore little or no relationship to the tribal groupings of the period immediately prior to 1830.” (Hollins McKim Steele, Jr., “European Settlement vs. Muslim Property: The Foundation of Colonial Algeria,” [Ph.D. Dissertation, Columbia University, 1965]. 16). He concludes that there was little administrative continuity over the divide of 1830. In contrast, in his writings about the makhzen tribes, Colonel Ladislas Walsin-Esterhazy described the tribes that joined with the French during the initial years of conquest as having been powerful long-term makhzen tribes under the Ottomans. ([Ladislas] Walsin-Esterhazy, *Coloney. Notice historique sur le maghzen d’Oran* [Oran: Typographie de Perrier, 1849]).

in Mascara.¹³⁰ As for the makhzen tribes that worked with the French, Walsin-Esterhazy wrote that they displayed a well-proven faithfulness and dedicated service to the French. Unfortunately, he added, the French had repaid this loyalty with broken promises, suspicion, and suffering.¹³¹

After the 1847 defeat of ‘Abd el-Kader, the French administration needed to revise significantly its approach to administering the territory ‘Abd el-Kader had controlled. Initially, the French had hoped to administer the interior tribal regions indirectly, through ‘Abd el-Kader, who had recognized French authority and agreed to govern his territory on their behalf. After the French defeated and deported ‘Abd el-Kader, however, his territory and its population fell under French rule. Because these regions were inhabited primarily by indigenous populations of which many were nomadic or semi-nomadic, they became military (rather than civilian) territories. The Arab Bureau, which had been created to administer and act as liaisons between the French and the indigenous tribes, was the obvious choice for directing these tribes and the extensive domains which ‘Abd el-Kader had controlled.

The first major administrative issue the French military had to resolve was to choose between indirect or direct rule. Initially, this choice was seen primarily as the choice between awarding a considerable degree of authority to local leaders and tribes to

¹³⁰ [Ladislas] Walsin-Esterhazy, *Notice historique se le maghzen d’Oran* (Oran: Typographie de Perrier, 1849), 12.

¹³¹ Walsin-Esterhazy, *Notice historique*, 35; 113-114. His *Notice historique* is a chastisement to the French for mistreating their Arab allies, the makhzen tribes. He advised including Arabs in the administration of their regions, to the point of giving them posts in the Arab Bureau; treating the tribes with gentleness and justice; and establishing the military administration throughout the colony.

administer on behalf of the French. Over time, however, and particularly after the defeat of ‘Abd el-Kader, changing circumstances caused some among the French to reevaluate this approach. With ‘Abd el-Kader in control of nearly all the interior regions, the French intended to rule this area indirectly through him. After ‘Abd el-Kader’s defeat, the French lacked a powerful and influential local leader upon which to depend.

Additionally, the issue of indirect versus direct rule increasingly became the choice between two different choices: maintaining pre-existing tribal elites, including important families, in their positions of power or appointing entirely new leaders, who were not already a part of the tribal elites. Correspondingly, the French debated if they should employ those tribes which previously had been makhzen, or confer makhzen status on weak tribes that lacked local influence.

From the time of their arrival in Algeria, the French had faced the problem of selecting makhzen tribes.¹³² As long as ‘Abd el-Kader had remained in control of the majority of the tribal regions, the French could defer reaching a final decision, because its resolution had fallen to ‘Abd el-Kader. This changed after 1847 when the Arab Bureau and the military needed to establish a viable administration among the tribes.¹³³ The first and most immediate problems that the Arab Bureau faced, therefore, were practical questions of administration. How could they govern these new subject populations with only limited personnel and resources? In what ways should they enlist the assistance of

¹³² As referenced previously, Colonel Walsin-Esterhazy addressed the issue in his writing about the makhzen tribes of Oran.

¹³³ As discussed previously, Kenneth J. Perkins suggests that the military administration in Algeria failed precisely because it erred in establishing its administrative relationship with the local tribal leaders. By usurping too much of the tribal leaders’ powers, the Arab Bureau sowed resentment and anger among them.

local leaders, and how should these leaders be selected? These practical matters preoccupied the military leadership and the officers of the Arab Bureau.

Opinions among the military were divided. General Bugeaud supported an indirect system of rule that relied upon the pre-existing system of tribal elites to administer the tribes. He believed that this approach was both practical and prudent. Bugeaud expected that over time, the French would intervene more directly in governing the tribes. In the meantime, however, while French control was being expanded and consolidated, Bugeaud maintained that two issues made direct rule impossible: the immediate demands of combat and an insufficient number of men with adequate knowledge to administer the tribes effectively.¹³⁴ Furthermore, Bugeaud believed that it would take time for the tribes to appreciate French civilization. Peace must be established first; following this, the gradual integration of mutual interest between French and Arab would develop. After all, Bugeaud argued, “it is not in a day that a man abandons his morals and habits.”¹³⁵ In his opinion, it would be both unrealistic and unwise for the French to impose too rashly their values and ways of life upon the tribes. Therefore, Bugeaud believed, granting authority to the existing tribal leaders and allowing for a gradual development of French-Algerian relations served both the immediate and long-term interests of the French. Bugeaud’s system of indirect rule resembled the Ottomans’ administrative approach, but Bugeaud expressed hostility to the

¹³⁴ Germain, *La politique indigène de Bugeaud*, 223.

¹³⁵ Germain, *La politique indigène de Bugeaud*, 258.

Ottoman system, referring to it as capricious and arbitrary.¹³⁶ Nonetheless, he, like the Ottomans before him, wanted to establish a system that left many of the existing social and power hierarchies intact.

Bugeaud also asserted that this approach would provide a better guarantee of safety for the French. It would be wiser to bring the powerful men among the tribes into the French administration rather than excluding them. To push the tribal leaders out of their positions of authority would be to risk their anger and resentment and so potentially to create influential enemies. If local elites were excluded from power, Bugeaud reasoned, they could become effective focal points of revolt, particularly revolt based on “patriotism” and “religious fundamentalism,” because they could attract followers through their refusal to submit to the Christian foreigner. If, on the other hand, the French could bring the tribal leaders into the fold of the French administration, the majority of the population would follow their example and submit peacefully to French rule. The “masses” would do so because they would follow their traditional leaders out of habit. The tribal leaders who allied themselves with the French would lose their ability to call upon religion to galvanize revolt, because religious fanatics would regard them as apostates for working with the Christians.¹³⁷ It was believed that employing powerful leaders the French cause would eliminate the threat of revolt and would tie the personal interests of tribal elites to the interests of the French administration.¹³⁸

¹³⁶ German, *La politique indigène de Bugeaud*, 203.

¹³⁷ Sullivan, *Thomas-Robert Bugeaud*, 102.

¹³⁸ Germain, *La politique indigène de Bugeaud* 208.

General du Barail, another officer who served in the Arab Bureau, agreed with Bugeaud's opinion. He claimed that "without doubt" the French should choose among the local chiefs to rule the tribes on behalf of the French.¹³⁹ Du Barail praised the loyalty and dedication of the makhzen tribes, and he defended the Arabs against the "harsh words" written about them by another Arab Bureau officer, Captain Charles Richard.¹⁴⁰ By defending the steadfastness of the makhzen tribes, du Barail intended to draw a parallel between them and the tribal elites throughout the colony, believing that as the makhzen tribes became reliable allies for the French, so would the tribal elites. As discussed above, Colonel Walsin-Esterhazy wrote passionately in defense of the makhzen tribes that had fought with the French during the early years of the French conquest. Walsin-Esterhazy also believed that these tribes had demonstrated their trustworthiness and that they should be treated as respected and honored allies.

Unfortunately, claimed du Barail, the French administrators who preferred to appoint new leaders -- men from "obscure birth" and "modest conditions" -- ultimately prevailed over those who supported maintaining the existing hierarchy. As evidence of the error of this decision, du Barail cited the "flight" of the Arab elites from French control. He explained that these families left French territory rather than take orders from

¹³⁹ du Barail, *Souvenirs*, I: 401.

¹⁴⁰ du Barail, *Souvenirs*, I: 17. Colonel Walsin-Esterhazy also defended the loyalty and service of the makhzen tribes.

Du Barail does not articulate what "harsh words" he had in mind, but Captain Richard, in his *Algérie scènes de mœurs arabes* (Paris: Librairie sociétaire, 1850), portrayed the Arabs as credulous, naïve in the extreme, irrational, illogical, and undisciplined -- essentially, like small children incapable of managing their own lives. Du Barail also might have had in mind Richard's *De gouvernement arabe et de de l'institution qui doit l'exercer* (Alger: Bastide, 1848), in which Richard wrote many disparaging things about the Arabs, including that they live in a moral anarchy; their religion is fanatical and superstitious; they lie and murder and practice theft for amusement and glory; and that they are the enemies of order. (See pages 13-19).

those [tribesmen] they considered inferior. Among the Arabs, du Barail wrote, to lose power was to be “ruined,” and tribal leaders saw their loss of power as an attack on their well-being. The threat to their personal welfare inspired the ousted elites to lead insurrections and revolts. During these conflicts, du Barail claimed, the tribesmen quickly defected from the “new leaders” appointed by the French and “flock[ed] to the banners of the old aristocracy,” who were directing the revolt.¹⁴¹ If accurate, Du Barail’s assessments of internal tribal power relations confirmed Bugeaud’s position: that it was of greater advantage to the French to retain the pre-existing tribal hierarchies and to work with the powerful families rather than seeking to destroy them.

In addition to opposing the removal of tribal elites, General du Barail also opposed imposing French mores on the indigenous tribes. He believed that there were many advantages for a conquering power to follow the customs of “vanquished races.” The French would have done better, he wrote, if they had done more to absorb local customs in their administration.¹⁴² The “democratic mania” of the French served them ill, contended du Barail, because “in his heart [the Arab] prefers aristocracy.” It therefore was a serious error to try to impose on the Arabs the “egalitarian institutions of the French.” Insurrections resulted from this policy of trying to “democratize the nation by blows of decrees,” which did “violence to its mores,” instead of trying to “adopt its

¹⁴¹ du Barail, *Souvenirs*, I: 401-404. These are the opinions du Barail expressed in his memoirs, published in 1894. These were published long after the events in question, and so perhaps du Barail was applying hindsight rather than accurately reporting what he had believed at the time. Nonetheless, his opinions agree with those Bugeaud expressed at the time, as represented in Anthony Thrall Sullivan’s biography and the documents reproduced in Roger Germain’s *La politique indigène de Bugeaud, Gouvernement Général de l’Algérie Collections de Documents Inédits et d’Etudes sur l’histoire de l’Algérie*. Bugeaud’s ideas became unpopular and discredited even before his death in 1849, and in 1894 they remained so.

¹⁴² du Barail, *Souvenirs*, I: 73.

mores” in ways that would advance French interests.¹⁴³ What he meant was that legislative fiats would fail both to effect cultural changes on the Arabs or to encourage them to embrace French civilization. The effect would be quite the opposite. The French instead should seek to use existing practices and customs to their own advantage; i.e., co-opt the existing tribal “aristocracy” to control the tribes. Bugeaud shared du Barail’s feelings on the subject; he asserted that it would be difficult to substitute an entirely French system of administration for one whose “habits, mores, and beliefs” had developed in Africa without profoundly agitating the population.¹⁴⁴ As previously noted, Bugeaud’s first goal in Algeria was to establish peace, and to do so he wished to avoid doing anything that risked “agitating” the population and inspiring rebellion.

Not everyone among the French agreed with this practice. As du Barail noted, the advocates of the indirect method of rule lost to those who desired direct rule. The majority of the civilian administration argued for the abolition of the “tribal aristocracy,” and many among the military supported this as well. Some examples of those who supported this form of administration were Prince Henri, Duc d’Aumale (Governor-General, 1848-1847); the Saint-Simonian advisor to Napoleon III, Ismail Urbain; Colonel Louis-Eugène Cavaignac (Governor-General, March-May 1848); and the Arab Bureau officer Charles Richard.¹⁴⁵ Advocates of direct rule wanted to replace the tribal elites with French appointees selected from among the common tribesmen. They based their

¹⁴³ du Barail, *Souvenirs*, I: 402; 404.

¹⁴⁴ Germain, *La politique indigène de Bugeaud*, 202.

¹⁴⁵ German, *La politique indigène de Bugeaud*, 206 (footnote).

position on two main issues: safety; and the danger of any perpetuation of undesirable social dynamics. To secure the safety of the French in Algeria, the advocates of this form of direct rule believed that it was necessary to remove the powerful tribal leaders and families from their positions of influence and authority. These men would never submit to or accept French rule, it was argued, and they therefore would pose a perpetual threat to French domination. The powerful local elites would remain a potential fifth column, ready and able at any time to call upon their ample resources and followers to revolt against French rule. In contrast, they argued, “low-born” men, selected and appointed to leadership by the French, would be beholden entirely and solely to France and, thus, would be loyal and dependable.

Secondly, allowing the tribes to perpetuate their “feudal aristocracy” touched upon a sensitive issue, particularly for the republican civilians in the administration. Traditionally, tribal leadership was hereditary, passed down from father to son. The wealthy and powerful families maintained their status throughout the generations.¹⁴⁶ This raised unsavory associations with the discredited Old Regime system of aristocratic privilege. Moreover, to leave intact the tribes’ undemocratic, anti-republican, “Old Regime”-like society would retard recognition of the superiority of French civilization and -- naturally -- the desire to assimilate to it. The assimilation of the local population to French civilization was, for this group, of utmost importance. In order for the Algerian

¹⁴⁶ Tribal leadership was passed from one generation to the next, and the ruling elites of the tribes came from the “great families” of the tribes. These families had exercised power and authority; their legitimacy derived from the inherited authority that came from being a part of the “great families.” ‘Abd el-Kader had come from a powerful maraboutic family and was able to win so many followers in part based on the authority his lineage granted him.

population to become proper and productive members of the colony, they needed to abandon their “backwardness.” This meant adopting French customs and ways of life, including French definitions of political rights and equality among citizens. The egalitarian and democratic values imparted by the French Revolution and held dearly by many among the French, particularly the republicans, could not accommodate the “prebendal” nature of indigenous Algerian society.

As discussed in the previous chapter, hallmarks of the Ottoman administration were the adaptable and flexible approach it took toward the political and cultural realities of its conquered peoples. As argued by Karen Barkey, this flexibility contributed significantly to the longevity of the Ottoman Empire. In Algeria, the French generally assumed a more interventionist administrative style. When the French conquered Algeria in 1830, they had promised to respect the religions and rights of the indigenous population. This promise proved difficult to keep. As discussed in Chapter One, the Ottomans permitted the dhimmi (followers of monotheistic religions with a revealed text) to retain their own religious and legal traditions. There also was a strong sentiment among many of the French that religion and politics should be carefully separated. This was at odds with traditional practice among, for example, the Muslim inhabitants whose cultural practices intertwined religion, law, and state administration in way antithetical to French republican principles.

This conflict revealed itself in the law of 1865 which awarded French citizenship to Algerians provided they agreed to abandon their rights to separate civil (religious) law courts, the right they had enjoyed under the dhimmi system. Michael

Brett had observed that France's initial perpetuation of the dhimmi system, or the practice of *personnalité* ("different justice for different categories of person") was quite unusual. This policy was foreign to contemporaneous French ideas about law.¹⁴⁷ The law of 1865 partially rectified this anomaly. To become a true French citizen, a recognized member of the French *polis*, the individual must accept that all citizens are equal under the law, which meant that one law must apply to all citizens.

Conclusion

The parties among the French that argued for incorporating and adopting local power structures eventually lost to those who wanted to dismantle them. This was due, in part, to the view that incorporating local hierarchies and traditions viewed as "feudal" and "aristocratic" would reinforce and reintroduce Old Regime practices that had been left behind. Adopting local power structures included more than just making use of an administrative apparatus: it meant, also, accepting local practices of leadership, including behavior that, to the French, might appear to be bribery and corruption. It also meant supporting a system that to the republicans, in particular, appeared hierarchical, elitist, and exploitative. Retaining local leaders and permitting traditional methods of administration implied also the perpetuation of local legal traditions.

The French had promised to respect the dhimmi system of separate law civil law courts, but as we have seen, this cut against the proper application of justice as interpreted within French concepts of law. Given the differences in the basic principles

¹⁴⁷ Michael Brett, "Legislating for Inequality," 441.

of law and justice between the French and the Algerian populations, it is difficult to imagine how justice and law could be upheld in a manner in which both traditions were respected. A necessary precondition to citizenship was the acceptance of French justice. French justice and political forms were the hallmarks of the “French civilization” that many of the French desired to implant in the indigenous population of Algeria as quickly as possible. Military officers such as Bugeaud and du Barail advocated indirect rule and a hands-off approach to the imposition of French cultural norms. Given the essential incompatibility of their beliefs with those who refused to tolerate any semblance of “inferior” indigenous cultural or social practices, it is easy to understand the division within the French administration. This division became distinctly evident on the front where colonization confronted land policy. The right to individual property ownership represented a fundamental part of the French conception of individual liberty. Under Islamic law and traditional tribal practices, property ownership was largely communal. In the next chapter, we shall consider land policy, European colonization, and the ways in which these clashed with pre-existing laws and customs in North Africa.

Chapter Three: Land Policy and Colonization

Introduction

Colonization entails taking control of land, and this means in almost all but the most exceptional cases that one is taking land from someone else. This was certainly the case in French Algeria, where the land had been inhabited and utilized for centuries. How to deal with the land question was a central issue for the French administration after 1830. How to do so in a manner that took into consideration the issues of security, the desires of the colonizing Europeans, and the conflicting needs of the indigenous populations proved to be one of the most controversial, and most intractable, problems the administration faced. As in many colonial situations, the land issue was at the heart of the conflict between colonizers and colonized; between those who wanted access to the land for settlement and those who wished to preserve their land and their traditional ways of life. In the case of French Algeria, it was also at the heart of conflicts among the colonizing French, because different groups had very different ideas about how colonization should proceed. How was land to be provided for the French settlers who wished to come to Algeria? How were the conflicting interests of the indigenous people to be handled? How would the resolution of the land issue affect the relations among the various populations? The French administration recognized that finding answers to these questions was essential for building a stable and prosperous colony in Algeria.

The land issue in French Algeria was complicated further because land use and tenure among the indigenous peoples were not uniform. Land use varied enormously—

some areas were occupied by sedentary farmers; other areas were utilized by nomads for grazing flocks. Moreover, land tenure in pre-1830 Algeria was informed by complex networks of tradition, Ottoman decrees, and customary and religious law. The French never fully understood these various networks, though they tried. The French also brought their own assumptions concerning proper ways of understanding possession, use, and ownership of property. The collision of customary forms of land tenure, imperfectly understood, with the interests of incoming settlers lay at the heart of the complex history of the land issue in French Algeria. How the intersecting issues of security, customary practices, settler interests, and legal norms of “ownership” were to be balanced underlay many of the tensions that existed among the various groups of French colonizers. Within the administration, this tension was most pronounced between the military and civilian administrations.

As we shall see, these tensions were exacerbated by divided views on how to address the problems of European colonization, the population of Algeria, and -- most importantly -- land policy and acquisition. There is no better issue with which to highlight the tensions within the French administration, demonstrate its divided nature, and illustrate an essential conflict between the French and the inhabitants of Algeria than land policy. The religious and customary practices the indigenous population followed relative to land ownership and use came into direct conflict with post-revolutionary French conceptions of property ownership and individual rights. Moreover, the French administration was divided along multiple lines about how to resolve the dilemmas posed by the increasing need for land upon which to settle European colonists. In its most basic

terms, the division lay between the civilian or colon faction and the military, which grossly is characterized as the difference between the colon position of rapid acquisition of and settlement upon indigenous lands. Accompanying this was the assumption that the indigenous population would assimilate to French civilization -- including its legal system-- and that it should do so as quickly as possible. On the other side, the military resisted rapid colon colonization on military territory, arguing instead for a gradual introduction of European settlement and implementation French civilization on the tribal lands of the interior that they administered. Of course, these positions are crudely drawn, and in reality, multiple voices from both side argued for these positions, as well as several alternatives. A careful scholarly examination of these debates has yet to be conducted, but in short, the administration was divided. Central here was the increasing resentment of and pressure from the colon advocates throughout the 1850s and 1860s which polarized the relationship between the civilian and military leadership.

The discussion of land policy and colonization in this chapter borrows from the excellent work of scholars such as John Ruedy, Hollins McKim Steele, Jr., Osama Abi-Mershed, Jennifer Sessions, and Claire Salinas. Archival records supply additional information. The land policy issue and the debates surrounding it provide insight into the conflict between the military and civilian administration; a conflict that accelerated during the 1850s and 1860s when access to land for colonization assumed new importance. The officers of the Arab Bureau, as the administrators responsible for the tribal regions which, during this period, became the object of colon desires, found themselves at the forefront of the conflict. The trial of Captain Doineau came at a critical

point in the French administration's deliberations about land policy, and its outcome contributed to the creation of the short-lived 1858-1860 civilian administration in Algeria. This suspension of the military's powers had a significant effect on the process of European land acquisition and dealt a serious blow to the influence of the military administration. The authoritarian Second Empire had favored the military and throttled back civilian control. To accuse an Arab Bureau officer of corruption and murder at this point was to challenge the anti-democratic forces in control of the government in France. More importantly, however, to accuse the officer of corruption and murder also discredited the integrity and value of the Arab Bureau and the military administration as a whole. The outcome of the trial held long-term implications for the form and policies of the French administration in Algeria and for European access to indigenous land.

Traditional Land Tenure in Algeria

Before 1830, the Regency of Algiers, ruled by an Ottoman dey, referred to an imprecise territory. The borders with Tunisia to the east and Morocco to the west were indefinite, and the administrative reach into the Sahara was fluctuating and intermittent. Estimates are that only about 20% of the current country of Algeria—comprising the territory along the Mediterranean coast—was under the control of the dey. In Algeria, the principal forms of land ownership were *melk*, *arch*, *waqf* (in North Africa this is referred

to as *habous*), and *beylical* (or *beylick*).¹ Habous lands were religious endowments, administered by mosques, non-transferable and uninheritable. The purpose of the habous was to produce income that could be used to benefit institutions or individuals specified by the creator of the habous. Examples of such beneficiaries included pious institutions or charities or even the endower's family or freed slaves. Roughly, melk translates to individual land ownership and arch to communal, but these terms are misleading

Field reports drawn up by French officials demonstrate that they made serious attempts to understand the complex reality of land tenure in Algeria, even if they did so imperfectly. These resulted in various classifications. The most common classifications distinguished seven types of land:²

1. *Beylick*. State lands.
2. Makhzen. Lands conceded by the state to individuals or groups in return for military service; i.e., service performed by the makhzen tribes.³

¹ The following discussion is based on the explanation provided by Kjell H. Halvorsen, "Colonial Transformation of Agrarian Society in Algeria," *Journal of Peace Research*, vol. 15, no. 4 (1978): 323-343.

² As Hollins McKim Steele, Jr. points out, French field reports await a detailed evaluation. (Hollins McKim Steele, Jr., "European Settlement vs. Muslim Property: The Foundation of Colonial Algeria" [Ph.D. Dissertation, Columbia University, 1965], 32-3). This summary relies on the secondary sources noted previously. The field teams that studied these topics seem to have been comprised primarily of French military officers and soldiers, with assistance from local troops.

³ The French did not include a category for *mīrī* land which existed in other parts of the Ottoman Empire. It is unclear whether or not it did not exist in North Africa or if the French failed to grasp its meaning, perhaps categorizing *mīrī* land as makhzen. *Mīrī* land developed from the old timar system, which admittedly never existed in the North African Regencies. The later formation of *mīrī* land derived from tax farming, the practice into which the timar system developed, and tax farming existed in North Africa more or less through the makhzen tribes. *Mīrī* land could not be sold or inherited, because the state owned it, but the rights to use the land could be transferred from generation to generation. If *mīrī* and makhzen land are equivalent, and it seems likely that they were, then this is how the makhzen land would have been treated under the Ottoman Regency of Algiers. (The explanation of *mīrī* land comes from Astrid Meier, "Waqf only in Name, Not in Essence: Early Tanzimat Waqf Reforms in the Province of Damascus" in eds. Jens Hanssen, Thomas Philip, Stefan Weber, *The Empire in the City, Arab Provincial Capitals in the Late Ottoman Empire* [Beirut: Beirut Texts and Studies, 2002], 202-205).

3. *Azel*. Lands whose revenues were conceded by Ottoman rulers to members of their families, important government functionaries, and/or religious notables.

4. *Habous*. Lands whose revenues were dedicated to some religious or charitable purpose; for example, the upkeep of a mosque. This is the North African equivalent of *waqf* property in other Islamic lands.

5. *Melk*. The approximate equivalent of private property as understood in French law but carrying with it the obligation to pay a tithe, the *achour*.

6. *Arch*. Lands on which the occupant has the right of usufruct, in return for payment of a levy, known as *hakr* in Constantine and *ghurama* in Oran. An occupant of arch land could not be dispossessed as long as he cultivated the land and paid taxes on it. The right to occupy arch land passed by inheritance in the direct male line. Most tribal territory of the plains and high plateaus was arch.

7. *Mawat*. Lands free of individual habitation; for example, forests, rock areas, mountainsides, etc. This does not mean the land was unused, however; often, it was treated as communal property which all the members of a community shared the right to use.⁴

⁴ These explanations of the land categories come from Steele, "European Settlement," 32.

Jacques Berque has convincingly argued that these did not accurately capture the complexity of pre-colonial land tenure, but they did become the framework for French administrative decisions concerning land use.⁵

In practice, neither melk nor arch correlated precisely to “individual” or “communal” land ownership. Both melk and arch land ownership derived from the same principle of Islamic law which held that all land belonged to God, but that with labor, humans could “give it life” and earn the right to enjoy its products. Thus, the more labor required to make the land “live,” i.e., productive, the greater the right individuals had to the land versus the community. (Already the distinctions between the two forms of land begin to blur). For this reason, in Kabylia where the difficult climate and infertile soil made agriculture difficult and labor-intensive, melk land dominated. In the tribal regions of the plains, however, land mostly -- though not exclusively -- was used for grazing. In general, the land was more fertile and easier to farm. Here, arch land dominated; however, arch territory designated as the territory of a particular tribes sometimes was subdivided into the arch land of various clans within the tribe. The borders of these

⁵ Jacques Berque, “Droit des terres et intégration sociale au Maghreb,” *Cahiers internationaux de sociologie*, XXV (1958), pp. 37-71. Berque refers to the change introduced after 1830 as “irruption de la civilisation machiniste, du capitalisme d’entreprise, et du discours français” (p. 38).

Berque has stressed the “complexity,” “multiplicity,” and “obscurity” of legal norms in Algeria. [Jacques Berque, “Problèmes de la sociologie juridique en Afrique du Nord,” *Studia Islamica*, no. 1 (1953), pp. 137-62.] “Dans les droits nord-africains, le débats de l’Orient et de l’Afrique n’est pas celui de deux lois. Il n’est pas non plus celui d’une loi orientale et d’un comportement local, d’une norme et d’une coutume. . . . Coutume arabe, système berbères, *fiqh* citadin, initiative des légistes locaux: la construction historique des droits du Maghreb s’est faite de ces quatre facteurs. Oui, certes, mais, observons-le: il n’en est pas un qui ne nous échappe, et par son contenu propre, et par son développement chronologique. Ce qu’il est pourtant permis d’affirmer, c’est que de leurs rapports constants, restés actifs même aujourd’hui [en 1953], s’est fait un ensemble riche et bâtarde. C’est justement sa complexité, sa multiplicité, et une sorte de déplacement de ses éléments internes, qui le caractérisent. D’où son obscurité. L’institution nord-africaine est le lieu même des ressemblances de l’hétérogène et des contrastes de l’homogène.” (141).

Steele refers to “the multiplicity of legal systems” in pre-1830 Algeria, and a “chaos of legal theory.” See page 35.

territories often fell into dispute, but the general expanse and locations of tribal arch land remained relatively constant.

It is important to understand, however, that even melk land was not the property of a single individual, but belonged equally to each member of an extended family. Islamic law specifies the method for transmitting property from one generation to the next. An individual therefore could not sell “his” melk property because Islamic law dictated how the land must be passed to the next generation; to sell it would risk violating Islamic inheritance laws. Nonetheless, in theory the head of the household *did* have the right to sell some or all of the household’s melk, but two additional restrictions made this difficult: the family had the right, known as *chefaa*, to purchase the land first. Next, since any melk property had originated as arch, the rest of the tribe also had a right to purchase the land before it could be sold to outsiders. Complicating all of this was that written deeds of property were not used to document or authenticate any transactions or rights to “ownership” of land.⁶

Individuals could not sell any parts of arch land, because this land belonged to the tribe as a collective. All members of the tribe had the right to use arch land, but “no single person was able to monopolize access to the land.”⁷ Islamic law and tribal custom permitted individuals to farm and/or graze their herds upon arch land, but they did not own and could not sell it. The intention behind both arch and melk land was to prevent the diminution or fragmentation of land held by an extended family or tribe. Melk and

⁶ Halvorsen, “Colonial Transformation,” 329-330.

⁷ Halvorsen, “Colonial Transformation,” 328-329.

arch land were equally inalienable and communally-owned. Such practices of communal land ownership conflicted with the highly individualized concept of property ownership held by the French.

The failure on the part of the French to understand fully the complexities of Ottoman administration was paralleled by a failure to understand the complexities of land tenure. As a result, the French created their own categories, which they believed accounted for the nature of land tenure among the indigenous peoples.⁸ Additionally, the French administration imposed new laws that they believed would clarify and reform traditional land tenure into legal land ownership. The fact that the French wished to establish a settler colony is, of course, a central issue here. As long as administration was confined to the limited goal of exacting tribute or taxes, as was the case under the Ottomans, there was little incentive to challenge or change traditional land tenure. The establishment of a settler colony meant that there would need to be a transformation of land usage and, necessarily accompanying this, a transformation of the understanding of land tenure and land ownership. Starkly put, European settlement required a transformation of property rights that entailed a break-up of the existing social order and its substitution by a post-revolutionary regime of contractual freedoms and market forces. Expropriation would follow -- either directly by law or indirectly by sale.

How this would upend indigenous life would depend on how *much* and how *quickly* change was introduced, and the degree to which the magnitude and pace of

⁸ The French attempted to sort out these categories through the creation of several commissions and smaller, less formal investigating parties. The practice seems to have been that these groups, comprised of soldiers and sometimes civilians, explored the land, collecting information about land use from interviews with the tribes and personal observations.

change would disrupt traditional ways and offend traditional beliefs. What were these traditional ways and beliefs? They were a combination of *kānūn* law (the secular law enacted by the Ottoman administration), *sharī'ā* (Islamic) law, and custom, which shaped the ways in which *kānūn* and *sharī'ā* law were put into practice in various regions of Algeria. Land tenure *in practice* was a combination of all of these and relied heavily on local consensus, not on written records such as deeds and wills.

The Early Years: Land Policy and Colonization, 1830--1847⁹

Agricultural production was a relatively small part of the Regency's economy. There was some commercial agriculture, mostly of wheat. Olives and dates also were produced, and additional crops included barley, fruit trees, tobacco, and almonds.¹⁰ On the whole, agricultural production was limited and served to meet local needs rather than commercial export.¹¹ The most fertile region was the Tell, a region running west to east

⁹ Much of the information in the following pages comes from John Ruedy *Land Policy in Colonial Algeria*. (Berkeley: University of California Press, 1967); from the Ph.D. dissertation of Hollins McKim Steele, Jr., "European Settlement vs. Muslim Property: The Foundation of Colonial Algeria 1830-1880" (PhD. Dissertation, Faculty of Political Science, Columbia University, 1965); from A. Benachenhou, *Régimes des terres et structures agraires au maghreb* (no place: Editions Populaires de l'Armée, 1970); from an archival report, CAOM F/80/1805; from Kjell H. Halvorsen, "Colonial Transformation of Agrarian Society in Algeria," *Journal of Peace Research*, vo. 15, no. 4 (1978): 323-343.

¹⁰ Julien Franc, *La colonisation de la Mitidja* (Paris: Librairie ancienne honoré champion, 1928), 174.

¹¹ In a letter dated February 1838, Léon Roches described to General Bugeaud the agricultural and economic circumstances he encountered among the tribes of the western regions. Roches wrote that the "Arab . . . lives upon corn that the earth produces for him abundantly, without requiring much labor; the flesh of his flocks costs him but little watchfulness. He drinks their milk, and his clothing is of their wool woven by his wives.

The fleeces of his flocks, sheep, goats, and camels, provide him with wool, from which the same women weave his tents.

He sells the surplus of his corn, and of his herds, and buys his weapons, his ammunition, and the few articles of luxury he allows himself and his family." (The Count d'Ideville, *Memoirs of Marshal Bugeaud, from his private correspondence and original documents, 1784-1849, in two volumes*, ed. Charlotte M. Yonge [London: Hurst and Blackett, Publishers, 1884], II: 5).

between the Atlas Mountains to the south and the Mediterranean coast. Here abundant rainfall and a moderate climate, combined with the fertility of the soil, contributed to the agricultural abundance of the region. The Sahel, the littoral band along the coastline, also possessed good agricultural land; however, the Sahel also contained extensive brackish marshland that nurtured disease-carrying mosquitos. Until the French developed quinine for combatting malaria and embarked on an aggressive project of draining the marshes, the coastal plains were inhospitable to widespread agriculture and colonization. The high plateaus, located beyond the Atlas and before the Sahara Desert, suffered from a harsh climate, little rainfall, and rocky, sparse soil. The resident Berber population of the mountains and high plateaus wrestled a meager agricultural output from this land. In the Sahara Desert, the oases offered some opportunity for cultivation: among the date palms, crops were planted and if was possible to obtain two and sometimes three harvests a year.¹²

The Ottomans never established a significant settler population in the Regency. The Ottoman soldiers and bureaucrats, relatively small in number, resided primarily in the urban centers. A few possessed large estates in the regions just outside Algiers. The large landowners rarely lived on their land or engaged in agriculture themselves; instead, they left its management to others. In large part, it was the Ottoman-held property in and around Algiers that provided the first land the French state seized for settlement.

Traditionally among the Ottomans, *âoua*, or property acquired by force through conquest,

¹² Abd al-Hamid ibn Abi Zayyan Benechenhou, *Régime des terres et structures agraires au maghreb* (Algiers: Editions populaires de l'Armée, 1970), 7-8; 25.

belonged to the state. Therefore, through the Ottoman right of conquest of North Africa, the Dey or Bey owned considerable property in urban centers as well as agricultural land outside them. This *âoua* property was referred to as “deylical,” “beylical” or “beylick” property.

Following the invasion of 1830, the French government began the process of overturning the traditional property arrangements of the indigenous Arab populations. The establishment of a new property *order* took much longer, arguably not concluding until the reforms of the early Third Republic. The framework for colonial land policy was provided by the French understanding of property in Algeria, and especially their division of property into *beylick*, *arch*, and *melk*. As we have seen above, only *melk* was considered equivalent to private property as understood by French law. The thrust of most French analyses of land in Algeria came to the conclusion that there was very little *melk* land in Algeria. Most land was *beylick*, state property, or *arch*, property that had been granted by the state to a tribe or a collectivity for use, as long as the appropriate tax was paid. Defining land in this manner implied that the Ottoman administration had had great authority over the property of the Muslim population before 1830. By definition, most land, even that occupied and utilized by others, was ultimately *state* land. The logic of this was that the new French administration enjoyed a similar authority over the land.

The earliest changes were strongly affected by concerns for military victory and security. As noted, among the Ottomans, *âoua*, or property acquired by force through conquest, belonged to the state. Following the conquest of 1830, the French quickly adopted the Ottoman practice of claiming *âoua* property, and so the French claimed

possession of all Algerian property designated beylick, though exactly which properties fell under the beylick category was somewhat fluid. A decree of September 8, 1830 specified that the French could sequester Ottoman government property—“all houses, stores, shops, gardens, lands, places, and establishments whatsoever formerly occupied by the Dey, the beys, and Turks who have left the territory of the Regency.”¹³

The French, however, soon took control of property beyond just the beylick. The “Convention of Capitulation,” signed on July 5, 1830 between the French and the Ottoman Dey, stated that: “The liberty of the inhabitants of all classes, their religion, their properties, their commerce, and their industry, will not be attacked.” In fact, extensive property confiscations began immediately. The 30,000 French soldiers who entered Algiers moved into buildings vacated by Ottoman officials and fleeing residents. Even after the soldiers were moved to permanent quarters, these properties remained under French control. The French occupied and “modernized” additional buildings and land for military and government installations. In addition to enlarging the port facilities at Algiers, the French also set about repairing and reconstructing buildings damaged during the conquest. They repaired, improved, and expanded the defensive wall around the city. Algiers’ narrow, twisting streets were widened and straightened in order to accommodate wheeled vehicles. These projects required the appropriation and destruction of the homes and properties of the city’s residents.¹⁴ On October 26, 1830,

¹³ The entire text of the September 8, 1830 decree, in English translation, is in John Ruedy, *Land Policy in Colonial Algeria*, 39-40.

¹⁴ Steele, “European Settlement vs. Muslim Property,” 55-6. Ruedy puts the figure of houses destroyed to build the *place du gouvernement* at 274. (Ruedy, *Land Policy in Colonial Algeria*, 80.)

the French government issued a decree that regularized the process by which properties could be condemned in order to facilitate their appropriation for public purposes, and it promised compensation for the owners of such property. Subsequent decrees refined the details of how expropriations were to be conducted and how claims for compensation were to be adjudicated; in fact, little compensation was paid. Immediately outside Algiers, the French seized the property and estates of the Ottoman officials they had deported after the conquest, as well as the estates of land owners, whether or not they were Ottoman, who had fled the region to escape from the French invasion. These steps marked the first phase of property “expropriation.”

Land speculators -- both local and French -- took advantage of the chaos. Preying on the fears of local landowners, these land speculators convinced them to sell their property, often at a reduced rate, arguing that it would better to sell the land for some compensation before the French army seized it. For their part, many of these local landowners also took advantage of the land speculators by selling the same plot of land to more than one buyer, or by selling land that they either never owned or did not exist in the first place. Thus, immediately following the 1830 conquest, a “land grab” took place in the former Regency.¹⁵ Understandably, this anarchic process later caused an administrative nightmare for the French administration when it sought to regularize and register property ownership.

¹⁵ David Prochaska, *Making Algeria French, Colonialism in Bône, 1870--1920* (New York: Cambridge University Press, 1990), 259.

Without Ottoman records to reference, and no doubt motivated by self-interest, the French administration employed considerable latitude in classifying the properties and land they now controlled. Through additional decrees, the French expanded the category of *âoua* to include other property not previously classified as *âoua*, claiming that the state had a right to assume control of this property, too. The decree of September 8, 1830, and an additional one dated December 7, 1830, specified that religious holdings—those that the French designated *habous*—were also to be taken over by the French administration. *Habous* land was usually located near cities or towns, less often in rural areas, and usually consisted of mosques, schools, and public gardens. Occasionally large farms just outside urban centers also were *habous*.¹⁶ In time, the French expanded the *âoua* category further still and claimed ownership of *mawat* land that they perceived to be “unused” or “vacant,” but which in fact had been part of indigenous agricultural and grazing territory.¹⁷

Shortly after arriving in Algeria in 1830, the French had created the Domain Administration¹⁸ to oversee the confiscation of property. The Domain Administration attempted to carry out investigations of pre-1830 property ownership, its investigations were at best inconclusive. In 1833, the French Chamber of Deputies sent a commission

¹⁶ See Peter R. Knauss, *The Persistence of Patriarchy: Class, Gender, and Ideology in Twentieth -Century Algeria* (Santa Barbara, CA: Greenwood Publishing Group, 1987), 9; and Ruedy, *Land Policy in Colonial Algeria*, 67-79.

¹⁷ John Ruedy, *Modern Algeria* (Bloomington, IN: Indiana University Press, 1992), 70.

¹⁸ Originally called the *Comité des Domaines*, its name was changed to *Comité des Domaines et Revenues Publics* in late-1830. In 1834, the Domain Administration lost its quasi-independent status and became part of the Direction of Finances. During the late-1830s, it grew in size to become, in the words of John Ruedy, “one of the largest and most important civil offices in the colony.” (Ruedy, *Land Policy in Colonial Algeria*, 28).

to restore lands inappropriately confiscated from Muslims in Algiers. These belated efforts produced no significant result, however, and the government continued to confiscate land and property while European speculators continued to purchase it. A late-nineteenth century scholar of the city of Algiers concluded that in 1842 “the greater part of the city of Algiers and its environs was in the hands of the state and the Europeans, when in only 1830 it had been almost exclusively in the hands of the Muslims.”¹⁹ The seizures -- particularly of *habous* -- of the 1830s, though deeply resented by the local population, also continued in subsequent decades. By 1851, the Domain Administration had claimed 26,000 hectares of *habous* land. Most of this (Reudy estimates 62%) was handed over to colons.²⁰

The experience of other urban centers, as they came under French control, was similar to that of Algiers. There were attempts by some French administrators to slow the process by insisting that only beylick properties that had been confirmed as such by the government could be confiscated. But these efforts were undermined by others who succeeded in having the burden of proving ownership passed to the Muslim occupants of property. Given that few Muslims had such written documents, they were at an obvious disadvantage against aggressive members of the Domain Administration. Marshal Sylvain Charles Valée formalized this procedure by the decree of September 20, 1840 which stated that all lands in the vicinity of Cherchel, Blida, and Kolea were forfeited to the state unless their owners claimed them within three months. When Marshal Bugeaud

¹⁹ J. F. Aumerat, *Le propriété urbaine à Alger* (Algiers: Adolphe Jourdan, 1898), 5; as cited by Steele, “European Settlement,” 63.

²⁰ Ruedy, *Land Policy in Colonial Algeria*, 79.

became Governor-General in 1841, he extended Valée's policy to the newly-occupied cities. As a consequence of its drive to claim beylick, habous, and "abandoned" property, the French administration had vastly extended its holdings in the urban centers by the mid-1840s.²¹ By the end of 1846, the French state had taken possession of 7,545 urban properties, comprising 1,071 hectares of land.²²

In these early years, European settlement remained largely restricted to the urban centers and their coastal environs, which coincided with the location of most beylick and many habous properties and some of the most fertile agricultural lands. The interior tribal regions remained largely beyond the reach and control of the French. As the countryside near the cities came under French control, the French at first attempted to apply the same framework they had used in urban centers: confiscating beylick and arch land that had belonged to the Ottomans. Again, the lack of written property records frustrated efforts to determine ownership, something that was especially true for the region in the plain of Mitidja close to Algiers. In the provinces of Constantine and Bône, which the French subdued between 1837 and 1840, the records were better, allowing the French authorities to document beylick lands (termed *azels* in this region). The result for all of these regions, however, was the same: widespread confiscation of Algerian land and property. John Ruedy estimates that these various policies led to 364,000 hectares of land being taken over for colonization by the early 1850s.²³

²¹ During the 1840s and 1850s, the process became subsumed by the policies of *refoulement*, *resserrement sur place*, and *contonnement* which will be discussed in more detail below.

²² The figure comes from Steele, "European Settlement," 68.

²³ John Ruedy, *Land Policy in Colonial Algeria*, 103.

Although there were no official population statistics taken during the first three years of the French presence, General Pierre Berthezène estimated that in March 1831, the European population in Algiers was 529. By September of the same year, that population had climbed to 2,912.²⁴ Because initial numbers of colonists remained small and many of those early colonists settled in the urban centers, for many years the French demand for Algerian land did not outstrip the land available. Those within the French government who advocated keeping the Algerian colony found the lack of colonists deeply troubling. They argued that Algeria never would be transformed into a valuable possession if it could not be made productive and prosperous. And for this to be possible, greater numbers of French settlers, capable of creating a thriving agricultural colony, were essential. Throughout the 1830s and 1840s, government officials in Paris complained about the “paucity” and “poor quality” of the colonists.²⁵

During the 1830s, the French government took no direct action to encourage French settlers. Prior to 1840, colonization remained a private enterprise. The French government did provide free passage to Algeria to those who could prove that they could support themselves, but that marked the extent of the government’s involvement.²⁶ Unfavorable conditions in Algeria itself did little to inspire colonization; for example, the French military lacked a secure hold on the region, and armed conflicts between French troops and the local population frequently erupted. Outside a few small coastal enclaves

²⁴ Jennifer E. Sessions, “Making Colonial France: Culture, National Identity and the Colonization of Algeria, 1830--1850” (Ph.D. Dissertation, University of Pennsylvania, 2005), 160.

²⁵ Sessions, “Making Colonial France,” 155.

²⁶ Sessions, “Making Colonial France,” 187.

which were, more or less, safely under French control, a great deal of the interior plains remained vulnerable to continued attacks. The military faced a formidable enemy in ‘Abd al-Kader who was mounting an effective resistance. The difficulties associated with establishing a successful farm were compounded by the destruction, violence, and uncertainty endemic to the state of nearly constant warfare of the 1830s.

The first significant change in these conditions came with the peace that followed the May 1837 signing of the Treaty of Tafna between ‘Abd el-Kader and General Bugeaud. The cessation of hostilities left the fertile plains outside Algiers and a few other coastal strongholds indisputably in the hands of the French. The peace freed these regions, for the time being, from the threat of continued violence. As noted in the previous chapter, the peace also permitted the French to turn their full attention to conquering the city of Constantine. In November 1837, they achieved this goal. With this victory, the French not only eliminated an important threat, the unsubdued ruler of Constantine Ahmed Bey, but they also added significantly to the supply of available land: the former beylick of Constantine. With the peace engendered by the Treaty of Tafna, Algeria began to appear to potential colonists like a safer and more secure place to live and farm.²⁷

Unfortunately, the peace of the Treaty of Tafna lasted only two years. 1839 brought renewed warfare between the French and ‘Abd el-Kader. This naturally brought with it dangerous and uncertain conditions for colons; conditions made worse after 1841 by General Bugeaud’s introduction of razzia warfare. The renewed fighting also

²⁷ Sessions, “Making Colonial France,” 190.

quicken the pace of land seizure during the 1840s. Bugeaud, the Governor-General of Algeria from 1841 to 1847, ordered the sequestration of lands of all those tribes who did not submit to French rule -- that is, all of those who joined Abd el-Kader in "rebellion" and those who followed him into exile in Morocco. This took years to carry out administratively, but the effect was to displace tribal populations from their lands, especially well-watered property close to European populations. The French government also seized control of the "abandoned" land belonging to tribes who had fled the region to avoid the violence. This land, too, was added to the public domain.²⁸ Thus, the fighting between 'Abd el-Kader and the French hurt the local population not only through the devastation and dislocations that follow warfare, but also through the legal (by French definitions) seizure and loss of their land.²⁹

Despite these adverse circumstances, colonization expanded throughout the 1840s, particularly between 1844-45. One reason behind this change was that the French government began active encouragement of and provided greater support for colonization. In April of 1841, the French government passed legislation that granted small plots of land to immigrants who possessed a predetermined minimum of capital and who agreed to cultivate and improve the land.³⁰ In the early 1840s, the French

²⁸ Ruedy, *Land Policy in Colonial Algeria*, 59-63. Ruedy notes that some of the local residents returned and challenged the seizures, and some of the land the French seized was returned to its previous owners (60).

²⁹ Abi-Mershed provides a statistic that illustrates the increase in land ownership by Europeans. He writes that in between 1843 and 1844, the European population in Algeria increased by 25%, but during the same period the European land ownership increased by 75%. (Osama Abi-Mershed, "Domination by Consent," 128).

³⁰ John Ruedy, *Modern Algeria: The Origins and Development of a Nation* (Bloomington, IN: Indiana University Press, 1992), 71.

government, in the hopes of attracting colonists, began to advertise in newspapers the colonization opportunities that Algeria offered.³¹ Jennifer Sessions has analyzed the “myth of fertility” that grew up as a result of such advertising. Algeria was extolled as a fertile land of abundance, an agricultural paradise waiting only for French colonists to arrive and to profit from its bounty.

In addition to this government sponsorship of individuals, private groups of French citizens sponsored and embarked upon colonization projects. The Saint-Simonians and their supporters advocated the creation of a capitalized, centrally-organized, corporate approach to colonization. In June 1848, the Saint-Simonian Pierre Leroux obtained a land concession in Algeria and created farming communities based on Saint-Simonian principles.³² Fouriérist also participated in establishing agricultural colonies, organized around their philosophical principles, and in 1846, a small group of Fouriérist received land grants in the region southeast of Oran to create “*l’Union agricole d’Afrique.*” Trappists received land near Staouéli, and more than eight hundred Germans were settled near Oran. In time, the French utopian communities failed, but the German community outside Staouéli flourished.

With the ever-increasing amount of land seized by the state, combined with increasing numbers of colonists, the need to regularize and classify the system of land ownership became imperative. The first general land law issued by the French for

³¹ Sessions, “Making Colonial France,” 80. For elaboration on the “fertility myth” and other issues influencing French colonization of Algeria, see her dissertation.

³² Within six months, LeRoux had left Algeria. Eugène de Mirecourt, *Pierre LeRoux* (Paris: Gustave Havard, 1858), 22.

Algeria was the royal decree of October 1, 1844. The decree was purportedly to clarify land ownership, and it ordered the Domain Administration to verify the validity of title deeds. If no proof was provided, then the state had the right to confiscate the land. Another article of the law specified that all future real estate transactions between Muslims and Europeans were to be carried out in conformance with French law. These provisions favored Europeans, who had more familiarity with French law and were more likely to hold written deeds.³³ Other articles were even more one-sided. The decree specified that all the purchases that Europeans had previously made, even if they were illegal under Muslim law, were to be declared valid *ex post facto*. Therefore, European colonists who had bought inalienable urban property (for example, habous property) were recognized as having legal title. Another article of the decree finally codified the government policy for handling so-called “vacant” lands; it allowed the administration to sell unclaimed property after three months’ notice in the official *Moniteur Algérien*.

The law of October 1844 was so severe that Europeans and Algerians alike protested it. In the face of the outcry, the French administration abandoned the law. Another replaced it on July 26, 1846. The new decree was similar to that of 1844, but it streamlined the procedure of validating land claims, taking the task away from civil courts and handing it over to a specially appointed administrative board called the *conseil*

³³ Not all French colonists possessed proper deeds, however, and those who lacked them suffered property confiscation as a result of this decree.

du contentieux. The predictable result of the application of the law was the loss of land, mostly by the indigenous population.³⁴

During the 1830s, General Bugeaud had argued against the keeping of Algeria as a colony, but by the early 1840s he had come to support colonization. Bugeaud had based his original objections to establishing a French colony in Algeria on the belief that Algeria was “uncultivable;” thus, it would be wiser for the French government to invest its resources in rural France (for example, in the rural region of the Dordogne in which his family estate was located) than in Algeria. Of greater concern to Bugeaud was his fear that the presence of so many French troops in Algeria would leave metropolitan France vulnerable to foreign invasion or domestic chaos. As he spent more time in Algeria, however, Bugeaud changed his mind on both points. He came to believe in the agrarian possibilities of its fertile regions, revising his previous gloomy predictions about the agricultural promise of the land. As for his concerns about France’s security, Bugeaud reasoned that successful civilian colonization in Algeria would help reduce the need for French troops to maintain the peace and to ensure security.³⁵ A significant population of settlers just outside the urban regions would provide a “buffer” between the

³⁴ Steele estimates that out of the 168,204 hectares examined by the Domain Administration in the province of Algiers between 1846 and 1848, 112,750 hectares was claimed by the state. Muslims lost more land than Europeans. Of the 380 claims to land made by *djemaas* (local village or tribal councils), the Service set aside 176. Most of the land taken from Muslims had not been beylick property. (Steele, “European Settlement,” 97).

³⁵ Bugeaud’s ideas on colonization changed, as we have seen, but relative to military and civilian colonization, he believed that civilian colonization should be restricted to the regions surrounding the coastal urban centers. Military colonization should take place in the tribal regions amongst the tribes. These areas were less secure and the military officers would be better able to confront any outbreaks of violence than their civilian counterparts; additionally, the military settlements would limit the incursion of Europeans onto tribal land.

coastal cities and the Arab tribes of the interior, and the settlers could serve as a militia as needed. This would reduce the need for a sizable standing army in Algeria, freeing the troops to return to the métropole.

Thus, when General Bugeaud became the new Governor-General in 1841, he supported the establishment of agricultural colonies in Algeria. Under Bugeaud's governorship, there was a notoriously harsh policy of repression of rebellious tribes, but the land issue was dealt with in a relatively moderate manner. Bugeaud authorized confiscation of indigenous land during the fighting with 'Abd el-Kader, and he intended to make some of this land available for colonization. However, he wanted this colonization to be established within strict limits, leaving the greater part of land for the indigenous population.³⁶ Bugeaud hoped that this policy for European settlement would limit indigenous opposition to French rule.

Bugeaud also actively promoted his own particular plan for colonization in Algeria: military colonization, in which active and retired soldiers would serve as colonists on communal farms. He wanted these military colonies established on the tribal lands, and their residents to live mingled among the indigenous population as a "veritable military colony in the midst of the tribes."³⁷ Bugeaud believed that this plan would solve the problem of inadequate civilian labor, because the military could supply the men

³⁶ Bugeaud believed that the French colonists should remain concentrated in the regions along the coast, just outside the urban centers. The interior regions, particularly the land taken from 'Abd el-Kader's tribes, had been settled sparsely by Europeans, and it was in these areas that Bugeaud advocated military colonization and limited European incursion.

³⁷ CAOM F//80/1722, as expressed by Jean Brunet, deputy to the Legislative Assembly (from *Journal Officiel de la République Française*, 20 December 1874).

necessary for agricultural work. These soldiers also would be an effective and formidable militia, should it be necessary. Finally, Bugeaud believed that the soldiers, accustomed to hard work, discipline, and self-sacrifice for the common good, were uniquely qualified to create successful communal agricultural colonies.³⁸

In 1842 outside Algiers, Bugeaud founded three villages in accordance with his model for military colonization. These communities were administered like a military regiment but directed with socialist principles, according to which the land was owned and worked communally. In 1843 during a visit to one of his communities, Bugeaud, displeased to see the crops sitting unharvested in the fields, asked a resident why the harvest had been neglected. The man explained that

because everybody relies on somebody else, nobody wants to do more than anyone else, and thus everyone ends up on the level of the laziest. Don't you think . . . that if each of us had owned a portion of this wheat, it would have been threshed long ago? We request that the collective system be ended.³⁹

Bugeaud recognized the failure of his collectivist ideas and disbanded the agricultural communes he had created.

The failures of these communitarian ventures aside, Bugeaud continued to advocate for military colonization. Neither the government in Paris nor the military administration demonstrated any interest in or offered any support for Bugeaud's plans. In 1847, Bugeaud resigned his position as Governor-General partly as a result of his

³⁸ Sullivan, *Bugeaud*, 66-75

³⁹ Sullivan, *Bugeaud*, 151.

disappointment over and frustration about the lack of support his ideas had received. In an 1847 letter to his friend Léon Roches, Bugeaud wrote,

I have sent my resignation of the office of Governor-General of Algeria, because I did not choose to make myself the responsible editor of, and the person to apply, a system of colonization that my reason disapproves I did not choose to become the destroyer of my own work, by lending myself to the illusions of dreamers or quacks.

. . . . The vote of three millions [francs] moved by the Government, for a trial of military colonization [he sought government funding to advance his project of colonization by the military], was my Cabinet question; the Chamber threw it out, and I have retired. . . .

Inasmuch as, being Governor-General, I had not power to stop the torrent, I am going to struggle against it as a simple deputy, and perhaps my words will have more weight than in the past, when it is seen that I am entirely disinterested in the question. . . .

My conviction as to the system that ought to be followed in colonization is quite as firm, as was my belief in the system of warfare to be employed against the Arabs. You have seen me struggling against all the world, even the Ministers, without ever being discouraged; I made a determine resistance, and I won. I should be equally sure of winning, if I could have a trial of military colonization, to give the country a pattern of what ought to be done for the only true solution of the problem, but the question of colonization is not like that of war. I was able to answer my opponents in war by the most peremptory of all arguments, success, but for success in colonization there must be money, and it is only the Chambers that can grant it.⁴⁰

The method of colonization that Bugeaud opposed, but which the French government preferred, was colonization by concessionary companies. Bugeaud's colleague, General Lamoricière, was an influential and active advocate for concessionary companies.⁴¹ The government officials tended to favor this system, mostly because it

⁴⁰ Count d'Ideville, *Memoirs of Marshall Bugeaud*, II: 263-264.

⁴¹ CAOM, F//80/1722.

was less expensive to grant concessions to private investors and companies rather than outlaying government funds to supply the money needed to settle and establish the colonists. If the French government granted large amounts of land to private enterprises, then these enterprises would invest in and manage the colonization of European families. Bugeaud objected to the speculative nature of these projects, but his objections were largely ignored.⁴² By the late 1840s, the French government heavily favored a system of corporate colonization in Algeria.

Throughout the 1840s, in spite of these various efforts, the majority of colons did not establish themselves successfully. The many changes during the 1840s -- the beginning of active government support for colonization projects; the gradual extension of French control and the defeat of powerful Algerian opponents; and the increase in immigration, especially after 1848 (more on this below) -- failed to result in the thriving agricultural colony many had envisioned. Most of the utopian farming communes dissolved, and the independent colonists -- many of them relocated urban workers from Paris -- struggled to survive, fighting both their ignorance of agriculture and the harsh and unfamiliar North African climate. According to the English reverend and scholar of classics Joseph William Blakesley who travelled to Algeria in the 1850s, the fault for the failure lay entirely with the settlers. Blakesley observed that a local liquor, known as the “absinthe d’Afrique,” had “killed more Europeans than ‘Abd al-Kader [sic] or malaria.”

⁴² See the discussion on these projects in Sessions, “Making Colonial France,” 245-56. Sessions also discusses the French administration’s seizure of privately-held land in Algeria for redistribution to concessionary companies. See pages 281-284. Some of this European-held land had been acquired during the period immediately following the French conquest, and many of the European landowners lacked sufficient documentation to prove ownership. In some cases, the government used this lack of documentation to justify seizure of the land.

Moreover, he observed that “agricultural labor seems absolutely intolerable to the French emigrant.”⁴³ In short, Blakesley considered the colons lazy drunkards.

To whatever extent Blakesley’s image of the colons is accurate, there were many factors outside their control that worked against successful colonization. The warfare between ‘Abd el-Kader and the French, particularly the introduction of the *razzia* in which civilians became legitimate objects of attack, made farming a dangerous venture. The late 1840s brought a series of natural disasters: around Constantine, grasshoppers ravaged the crops for three straight years from 1845 to 1847. Only government aid prevented widespread famine. The winter of 1847-48 was particularly harsh, and the bitter cold decimated the flocks of the indigenous tribes. An epidemic of smallpox in 1849-50 brought more suffering and death. Both the European and indigenous populations declined. Given the difficulty of the circumstances, it is easy to understand why a prosperous and populous colony in Algeria continued to elude the French.

A New Phase in Colonization and Land Policy: 1848 -- 1850s

The period after 1848 brought many changes, both to France and to its Algerian colony. In Algeria, the first significant event was the final defeat and deportation of ‘Abd el-Kader in 1847. The removal of ‘Abd el-Kader as a source of threat and instability to the interior made European settlement there safer and more secure. Additionally, all the land that ‘Abd el-Kader had controlled now fell under French rule, and therefore was,

⁴³ Rev. Joseph Blakesley, *Four Months in Algeria: with a visit to Carthage* (Cambridge, England: MacMillan and Co., 1859), 99; 105.

theoretically, available for French colonization. Just as the administration in Algeria felt it needed more land for settlement, the former territory of ‘Abd el-Kader beckoned as a potentially rich source of this land. Political events in France also had significant implications for policies in Algeria. In 1848, the July Monarchy of King Louis Philippe fell, and the Second Republic took its place. In December 1848, Louis Napoleon (later, Napoleon III) was elected President. The effects for Algeria came in three main forms: radical changes to the political conditions and rights of the colonists; a new influx of strongly republican colonists; and more government involvement in colonization.

In March of 1848, the French settlers in Algeria were permitted to elect four deputies to the National Assembly. In November of the same year, Algeria became an integral part of French national territory when it was named a *département*.⁴⁴ Perhaps even more importantly, local governments in the areas where European populations were concentrated passed from military officials to civil officials who more closely identified with the interests of the colonists. The Governor-General, a military officer, retained ultimate control over the colony, but his authority was curtailed in the new civil territories. Outside of these limited areas of civil authority, the military remained in direct control, with officials subordinate to the Governor-General governing within in a military chain of command. This partition of the country into civilian and military territories heightened awareness of the different orientations vis-à-vis the indigenous

⁴⁴ Claire Salinas, “Colonies without Colonists: Colonial Emigration, Algeria, and Liberal Politics in France, 1848-1870” (Ph.D. Dissertation, Stanford University, 2005), 94-95. It should be noted that non-French communities, such as other Europeans, Muslims, and Jews, also gained the right to vote in local elections in Algeria. These groups did not, however, acquire citizenship at this time.

peoples. And, here, the land issue was central, leading to new tensions and heightened political sensitivity.

Despite the Algerian colony's new status as an equal part of the French nation, the legal status of the French citizens residing in Algeria remained unequal to that of their continental compatriots. Since the 1840s, the colon population had been clamoring for greater civil and political rights. French residents in Algeria still lacked many of the civil institutions and procedures taken for granted in the métropole. For example, the colony and the métropole did not share a uniform legal code. Laws in Algeria were promulgated through ministerial decrees, and often the decrees differed from the laws of mainland France. Civilians accused of crimes in Algeria were not tried by a jury but by a panel of judges. Of greatest concern to the colons, however, was that they continued to live under the authority of the military (despite the localized civilian governments), because the colony remained under the control of the Ministry of War. Despite the new political order in France, the colons of Algeria felt excluded from it. The Second Republic had seemed to offer hope to the colons that they would enjoy greater political and civil rights and -- perhaps -- freedom from military rule. When the Second Republic delivered nothing more than the right to elect deputies to the National Assembly, the colons quickly grew disenchanted. They felt bitter about remaining subject to the "authoritarian" and "arbitrary" command of the military. The disappointment the colons suffered over this and their lack of equal civil rights led to a renewed and reinvigorated resentment of Algeria's military administration which they blamed for their circumstances.

The failed rebellion of the Parisian workers during the 1848 June Days brought fresh waves of immigrants to Algeria. In the wake of June Days, an influx of republican sympathizers and Parisian workers -- often but not always synonymous -- arrived in Algeria. Many republican and socialist leaders of the Revolution ended up either in jail or exile; many were sent to Algeria. Thousands of their followers ended up in Algeria as well. Emigration to Algeria was put forth as the solution to the problem of excess urban labor in metropolitan France.⁴⁵ Unemployed Parisian workers were resettled in agricultural communities in Algeria. In 1848 alone, 13,700 French citizens emigrated to Algeria. In the decade between 1841 and 1851, the European population in Algeria increased from 37,374 to 131,283, an increase of 351%.⁴⁶ This makes the total number of immigrants for this decade 93,909, and aside from the 13,700 of 1848, then an average number of 8,912 immigrants arrived each year throughout the decade.

These demographic changes further skewed the colonists' ideological leanings toward republicanism. Even before 1848, the colon population possessed strong republican sympathies, and the arrival of these new colons increased this trend. Demonstrations in support of the June Days (1848) produced civil disorder in the colony.⁴⁷ Moreover, the existing anti-military sentiments of the colons were reinforced by the survivors of the June Days barricades who had suffered during the ruthless

⁴⁵ For an analysis of the relationship between Algerian colonization and the plights of the Parisian workers in 1848, as well as arguments that supported using immigration as a way to solve the employment problems of Paris, see Claire Salinas' dissertation

⁴⁶ Ruedy, *Modern Algeria*, 69.

⁴⁷ Joshua S. Schreier, "They Swore Upon the Tombs Never to Make Peace with Us" in Patricia M.E. Lorcin, ed., *Algeria and France, 1800-2000: Identity, Memory, Nostalgia* (Syracuse, NY: Syracuse University Press, 2006), 107; 111.

suppression carried out under the command of such military officers and veterans of the Algerian conquest as General Louis Eugène Cavaignac and General Bugeaud. The newly-arriving French colonists increased the number and force of the voices calling for an end to the military administration. In addition to their ideological position against the military authorities, the colons also contended that with the 1847 defeat of ‘Abd el-Kader and the successful repression of a revolt among the tribes, the military had served its purpose.⁴⁸ They argued that the greatest threats to the colony’s peace and security had been eliminated and that, therefore, the colony no longer needed the military.⁴⁹

Finally, the new government in Paris assumed a more active role in colonization. Between 1848 and 1851, it increased the assistance offered to would-be colonists, supplying them with seeds, some livestock, tools, and food subsidies for three years and building them a home.⁵⁰ In return, the colonists were expected to become productive agriculturalists. If, after three years, a colonist had developed his plot sufficiently, the state would grant him title to the land. If not, then the state had the right to reclaim the property.⁵¹ In August 1848, the new Minister of War, General Lamoricière introduced a bill in the National Assembly that called for an outlay of fifty million francs for the establishment of one hundred new European villages in Algeria. His plan was accepted by the Assembly with little debate and was implemented by General Louis Eugène

⁴⁸ The Berber holy man, Bou Maza, had led revolts among the Kabyles in the mountainous regions between Algiers and Oran during the 1840s. In 1847 the French defeated Bou Maza.

⁴⁹ Yacono, *Histoire de l’Algérie de la fin de la Régence turque à l’insurrection de 1954* (Paris: Éditions de l’Atlantique, 1993), 113.

⁵⁰ Yacono, *Histoire de l’Algérie*, 102-105; 114.

⁵¹ Salinas, “Colonies without Colonists,” 139.

Cavaignac by an executive decree dated September 19, 1848. Forty-two new *colonies agricoles* were established in 1848, with 13,700 settlers arriving from metropolitan France, mostly from the Paris region. Another 1,000 settlers arrived early in 1849. The program, however, was suspended in late 1849 after a commission of enquiry reported that the costs were far in excess of initial estimates.

The land handed over to the *colonies agricoles* was poorly chosen and often inhabited by Algerians who needed to be removed before the settlers arrived. When the new governor-general appointed by the Second Republic, Général Viala Charon, arrived in Algeria on September 20, 1848 (the day following the decree), he discovered that no plan had been developed to receive the new settlers. Hasty improvisation became the order of the day, and the result was brutal application of the law of 1846 displacing individuals and tribes from land that the administration viewed important for colonial settlement. Tens of thousands of hectares was confiscated; compensation was rarely given.

The controversies that these confiscations generated—often over the categorization of the different lands seized—led to a new land law of June 1851. This law declared that property rights, whether Algerian or European, were inviolable, and that the rights of ownership and *usage* as they had existed at the time of conquest in 1830 were guaranteed. Land sales in the military territories were prohibited; tribal lands were declared inalienable. While on the surface this might appear to provide the indigenous peoples some new protection, it was limited. And, as always, the devil was in the details of how land was categorized. The law, while protecting tribal land, also legitimized the

government seizure of beylick lands as they had existed in 1830; the seizure of habous lands; the collection of taxes and rents which had formerly belonged to the Ottomans; and, legalized *ex post facto* all that had become state property since 1830, including all that had been sequestered during the years of conflict. As Hollins M. Steele, Jr., legitimately points out, such a wide definition of state lands in effect undermined the purported “inviolability” of indigenous holdings.⁵² And, ironically, by limiting the rights of individual colonists to purchase land, it put increased pressure on the government to provide land for settlement.

The year 1851 brought yet more changes for France and Algeria. In a coup in 1851, Louis Napoléon violated the terms of the Republic’s constitution and declared himself “president for life.” One year later, he ended the Second Republic and declared himself Emperor, taking the name Napoleon III.⁵³ The coup of 1851 led to popular uprisings in France and ushered in a new wave of deportations to the colonies, including Algeria. Many of those who opposed the rule of Napoléon III wound up in Algeria. Political freedoms both in France and Algeria were curtailed: on 17 February 1852, Napoleon III issued a decree that restricted freedom of the press. Only newspapers that supported the government were permitted to publish, and editors of opposition papers often wound up in jail or exiled. In many cases, these editors went to Algeria where they began their own republican-leaning periodicals. The colons in Algeria also lost the

⁵² Steele, “European Settlement,” 116-20.

⁵³ This was out of deference to Napoleon II, the son of Napoléon Bonaparte and his second wife Marie Louise of Austria. Napoleon II died in 1832 without having officially ruled as Emperor.

political rights the Second Republic had given them. The Constitution of 1852 did not allow for Algerian representation in the Legislative Assembly.⁵⁴

The administration of Napoléon III also adopted a new approach to colonization. In 1851, the government ended the Second Republic's 1848 program which had awarded colonists land, tools, seeds, and food subsidies. Instead, the government greatly expanded the practice of awarding large land grants to agricultural corporations such as the *Société générale algérienne* (precisely the policy against which Bugeaud had argued). These corporations were responsible for recruiting and settling European colonists. The increased emphasis on corporate colonization met with some resistance, and debate about the relative virtues of individual versus corporate colonization took place.⁵⁵ Still, the model of corporate colonization predominated. During the 1850s, despite the "colonialist mythology" that extolled the efforts of small European farmers taming the Algerian countryside, large agricultural corporations rather than individuals owned most of the agricultural land.⁵⁶

The ever-increasing number of French colonists and the government's emphasis on corporate landownership, combined with the long-standing problem of land speculation, often made it difficult for individuals arriving in Algeria to acquire land for themselves. In 1845, there was a total of 95,321 Europeans living in Algeria, of whom

⁵⁴ Yacono, *Histoire de l'Algérie*, 122. Given the heavily republican sentiments of the colons, Napoleon III likely viewed this as an effective method for silencing, or at least muffling, his opposition.

⁵⁵ For a discussion about some of these debates, see Sessions, "Making Colonial France," 245-257.

⁵⁶ Ruedy, *Modern Algeria*, 72.

48,982 were non-French Europeans and 46,339 were French civilians.⁵⁷ By 1856, the total settler population had grown to 167,670, of whom non-French Europeans numbered 74,920 and the French now accounted for 92,750.⁵⁸ During this period, therefore, the French population increased by an impressive 50%, and by 1856 the size of the French population in Algeria finally exceeded that of other Europeans. The French administration in Algeria faced increasing pressure to make more land available for colonization. The obvious source of this land was the tribal territories recently acquired from ‘Abd el-Kader. Unwilling or unable to seize land from the possession of French corporations or large landholders, the French authorities looked to the seemingly abundant land of the indigènes to satisfy the Europeans’ need for more land.

Accordingly, on 2 March 1851, Governor-General Alphonse-Henri d’Hautpoul created the *Commission de Transactions et Partages*. This Commission was to study existing circumstances of indigenous land-holding. The ultimate intention of the Commission’s work was to open new land to European colonization. The 1851 Commission set out to determine not just local land ownership but also -- and more importantly -- how much land currently claimed by the tribes was land the tribes could “do without.” The tribes’ “excess” land would be taken over by the state and redistributed to Europeans.⁵⁹ On 16 June 1851, Napoleon III issued a decree that made

⁵⁷ Some additional figures for the 1840s specifically: After a sharp increase in immigration in 1844 and 1845, a decline followed during the years between 1846 and 1848. Between 1848 and 1849, however, the European population increased by 10%, from 108,400 to 119,700. (Abi-Mershed, “Domination by Consent,” 129).

⁵⁸ Abi-Mershed, “Domination by Consent,” 220; 230; 256.

⁵⁹ Ruedy, *Land Policy*, 96.

all Algerian property, whether claimed by a French settler or an indigène, inviolable. This will be discussed in greater detail later, but in short, this decree essentially froze, for the time being, the sale and transfer of land. This moratorium on land transfers was intended, in part, to facilitate the Commission's work by giving them some time to understand and categorize indigenous property ownership. Many of the land purchases made by Europeans lacked sufficient legal grounding, because no formal system of documented ownership existed. The new decree would halt, at least temporarily, illegal or fraudulent sales of property.⁶⁰

Another intention behind the 1851 decree was, ostensibly, to protect indigenous property by keeping it safe from European land speculators. Moreover, the decree had the advantage of appearing to uphold local law in questions pertaining to land ownership. If the land in question were owned by a Frenchman, then French property law applied. If, however, an Arab "owned" the land, then Islamic property law applied.⁶¹ What this meant relative to the work of the Commission was that the tribal property not deemed "excess" was now officially declared the "property" of the Arabs, to which Islamic law would apply. The long-term effect of this decree, unintended at the time, was that it established a precedent by which the tribes, now declared legal "owners" of their land,

⁶⁰ For example, land speculators -- both buyers and sellers -- who had taken advantage of the disorder created by the 1830 conquest often unknowingly bought land from individuals who had no legal right to sell it; or they bought land that never existed in the first place. Sometimes, the same plot of land was sold to multiple people. The property situation in Algeria was, to say the least, a tangled nightmare.

⁶¹ Yacono, *Histoire de l'Algérie*, 123-124.

could sell this land to European settlers.⁶² What this highlighted, however, was French misunderstanding of indigenous tribal and Islamic concepts of land ownership.

As the most active military phase of conquest was brought to a close with the defeat of ‘Abd el-Kader in 1847, a regularization of the land issue was widely recognized as necessary. By the early 1850s, the issue of land ownership and European colonization assumed new importance. Growing numbers of colonists put pressure on the French administration in Algeria to find land for settlement. Growing disaffection among the French residents in Algeria with the military administration was exacerbated by their indignation over the loss of their political rights that came with the Second Empire. The divide grew wider between the colons and the civilian administrators who supported them, on the one hand, and portions of the military administration, on the other. The wedge that contributed the most to drive the sides apart was land policy.

‘Abd el-Kader’s former territory was now under French control, and the administration had to decide how to govern it. These rural areas were inhabited mostly by nomadic or semi-nomadic tribes, and the land that comprised it was predominantly communally-owned arch land. The French thus were confronted with traditional forms of land usage and customary structures of tribal land ownership. Prior to this time, the land the administration had seized had been predominantly beylick, or property reclassified as beylick. Now, if the French administration required more land for colonists to settle, then it needed to develop new methods or justifications for obtaining that land from the

⁶² Abi-Mershed, “Domination by Consent,” 228.

indigenous population.⁶³ Previous methods of doing so would be less effective in the tribal regions.

During the early decades of French rule the French administration relied mostly on the confiscation (not purchase) of land, though it is unknown how much additional land might have been acquired by Europeans, Jews, and wealthy Muslims by other means. Government policy was perhaps influenced by recognition of the inevitable complications of establishing a free land market, which would necessarily entail determining who “owned” land that could be sold, and therefore establishing the title to land of many indigenous peoples. This, as we shall see, would be the result of legislation passed in the early decades of the Third Republic. Before 1870, the favored method of French acquisition was seizure and confiscation.⁶⁴ Estimates are that 625,100 hectares were confiscated between 1841 and 1870, while 140,000 hectares were purchased. Between 1870 and 1900, the balance of confiscation versus purchase evened out: 521,000 hectares confiscated; 669,000 hectares purchased. We lack records for the total amount of land that the Regency comprised, as well as data on what percentage of the

⁶³ Ruedy explains that much of the desirable fertile land were held in common by the tribes and could not be transferred legally from individuals of the tribe to European colonists. Between 1840 and 1873, the French administration chipped away at the legal impediments posed by communal land ownership, and during this period, the state itself was the primary source of land for the incoming colonists. Ruedy, *Modern Algeria*, 70.

⁶⁴ Ruedy distinguishes the taking over of *beylik* lands, the “sequestration” of Turco-Moorish and Arab lands, the “colonization” of *habous* lands, and the “expropriation” of *mawat* and other lands. He recognizes, however, that these actions by the French were likely indistinguishable to the native peoples. See, for example, his comment about “expropriation,” in *Land Policy*, 81.

Benachenhou begins with the reasonable assumption that most peasants viewed themselves as “propriétaire légitime de son bien, paisiblement installé sur sa terre depuis un temps immémorial, en tirant sa subsistance et celle de sa famille,” and that the peasant would “ne saurait approuver un usurpateur venu s’emparer, les armes à la main, de son bien, et, après avoir opposé une forte résistance, il cède sous le poids d’une force supérieure.” (Benachenhou, “Regime des terres,” 4).

seized land was arable. Ruedy observes that in many cases, even the figures given for the sequestered and distributed land are uncertain. He cites an absence of reports from some areas, a lack of surveys conducted, vague property descriptions, and clerical errors as some of the reasons for the imprecise land figures.⁶⁵ It is nonetheless clear that after the turn of the century, purchase of land became the norm, with 1,047,400 hectares acquired between 1900 and 1935. The total amount of land that the French seized and purchased was over 3,000,000 hectares (3,002,500) in the first century of French rule.⁶⁶ As these figures indicate, the indigenous population was displaced from most of the fertile land in the northern part of the country.

French Land Policy: 1850s and Beyond

There no longer were any prominent voices that questioned the right of France to possess Algeria. The debates now centered on how to proceed with colonization and how quickly to do so. The French administration lacked consensus, but two general sides emerged: those who favored a limited and gradual expansion of French settlement into the newly-acquired tribal regions and those who pushed for rapid colonization and implantation of French civilization. Generally, the military -- in particular, the Arab Bureau -- held the former position, and the colons with their supporters among the civilian administration held the latter. These divisions were neither absolute nor all-encompassing; nonetheless, they represent the best generalizations possible in a complex

⁶⁵ Ruedy, *Land Policy*, 64-65. The same problems are likely to have been among the many that impeded efforts to obtain specific data about land not yet seized by the French state.

⁶⁶ These figures come from Steele, "European Settlement," 52.

situation. Members of the Arab Bureau generally favored a policy that avoided, to as great a degree as possible, friction with the indigenous peoples. They pushed for cooperation with local elites and a slow process of European land acquisition.⁶⁷ They believed that it would be most effective in the long term to give the local population sufficient time to learn about, adjust to, and realize the benefits of French civilization before being required to comply with its standards. In this, as we have seen in the previous chapter, they reflected the beliefs of General Bugeaud, the founder of the Arab Bureau. The Arab Bureau, responsible for administering 'Abd el-Kader's former territory, thus became a significant obstacle to those who wished to colonize the tribal regions.

The colons formed the most vocal opposition to the process the Arab Bureau supported; instead, the colons desired rapid seizure and settlement. The Domain Administration, charged with carrying out the acquisition and provision of land on behalf of the government, supported the colons' position. Some colons hoped that a free land market would be established, enabling Europeans to purchase land; however, the inalienable nature of arch land frustrated this hope. A free market of land sales also cut against inclination of the Domain Administration which preferred to speed up the process of land transfers by appropriating and redistributing the land. Other colons sided with the Domain Administration and wanted the government to seize land and provide it for French settlement. In particular, many *petits-blancs*, for obvious self-interested reasons,

⁶⁷ As noted previously, not all members of the Arab Bureau agreed on this policy. For example, Captain Charles Richard supported dismantling the tribal aristocracy, which the colons also supported. He represented a minority view among the other officers of the Arab Bureau examined here such as Bugeaud, du Barail, and Hugonnet.

avored this approach, because they had little wealth and could not afford to buy land on the open market. Regardless of how the land became available, these groups agreed that it should become available quickly. By the 1850s, with the growing pressure from immigration, the colons and their supporters grew increasingly impatient with the Arab Bureau's slow pace.

More extreme solutions existed as well. On one extreme were those who wished to move all Arabs off the arable land of Algeria so as to open all the conquered territory to European settlement. This was the so-called "American solution" to the problem of the relations between the colonists and the "natives." This was a position of the radical *colons* and of their supporters in Paris, such as Eugène Bodichon, who wished to drive Arab tribes into the Sahara. General Léon Juchault de Lamoricière took a similarly hardline position, pushing for the French administration to seize indigenous land and progressively remove all of the local population.⁶⁸ Between June and December, 1848, Lamoricière was Minister of War, and he arrived in Algeria at the beginning of the French occupation. In 1847 he wrote:

Colonization with its requirements will be the touchstone of real submission. It will place at last in their true respective positions the conquering people and the conquered. By an unparalleled aberration it is the interests of the latter which up to now have most concerned the majority of theoreticians of the question; this is a pusillanimous solicitude for which we have paid all the costs, a dangerous deception regarding an enemy who is sometimes peaceful out of exhaustion, but

⁶⁸ CAOM, F//80/1722. The radical differences of opinion between Bugeaud and Lamoricière illustrate that the military was divided about the approach the French should take to the indigenous population and its land. Bugeaud generally is remembered mostly for the brutal methods he employed during warfare against the tribes, but it is worthwhile to recall that his suggestions for peace time relations with them arguably were considerably more humane than those pushed by, for example, Lamoricière.

who retains an implacable hatred in his heart. Only by its mass can the colony reduce him to the point where agitation is impossible.⁶⁹

Many advocates of aggressive colonization, such as Alexis de Tocqueville, came very close to Lamoricière's position. The French needed the tribes' land, and to acquire it the tribes needed to be removed from it, either by resettling them onto smaller territories or, most extreme of all, pushing them into the Sahara Desert.

Others among the French recognized the extraordinary destruction such policies would wreak upon the tribes. They defended traditional Arab society and culture and argued against administrative and legal policies that threatened to destroy them. As late as 1873, for example, during the debate in the French Chamber of Deputies about the Warnier Law,⁷⁰ Alexandre Clapier, a deputy from the Bouches-du-Rhône, attacked all the legislation that would undermine Arab traditional ways. He referred to the Warnier Law as "a law of spoliation for all Arabs." Clapier argued that

Algerian society is based on a pastoral existence. The Arab essentially *is* a pastoralist. For a pastoral way of life you are going to substitute an agrarian one. That is the greatest change which can ever be brought about in the habits, character, and customs of a country. . . . But to be definite, have the Arabs asked for this constitution of property [as proposed by the Warnier Law] that you are going to bring about? Have the wishes of the tribes been brought to us by their *djemaas* [councils]? No. They are satisfied with their position and their laws. For them, their own customs are sufficient. It is speculators and money lenders

⁶⁹ Louis Léon Juchault de Lamoricière and Marie Alphonse Bedeau, *Projets de colonisation pour les Provinces d'Oran et de Constantine* (Paris: Imprimerie Royale, 1847), 79-80; as cited by Ruedy, *Land Policy in Colonial Algeria*, 88-9.

⁷⁰ This law mandated that all property be treated according to French property law, and it abolished all forms of communal property ownership, the predominant form of land ownership among the tribes.

who want this law. This law is supposed to ameliorate the condition of a conquered race, but you could say that it is designed to dispossess them.⁷¹

Clapier points out the critical issues at stake in the debates over land policy and European colonization in the 1850s: Algerian tribal society is based on pastoralism; it is satisfied with this way of life; to replace a pastoral existence with an agrarian one will result in a radical change to the existing society; and that the proposed land laws, even those designed to benefit the tribes, ultimately will dispossess them of their land and destroy the society that depends upon it. In 1874, Clapier continued to argue in the National Assembly against measures that would “despoil” the Arabs.⁷²

The coup d'état of 1851 had shifted power back to the military, which had helped Louis Napoleon seize power in Paris. The new Governor-General, Jacques-Louis Randon (December 1851 to June 1857), counted among the military leaders who wanted to remove the existing tribal elites from power. To that end, Randon implemented a policy that divided large “native commands” through which some tribal leaders had exerted considerable power. In place of these tribal leaders, the officers of the Arab Bureau now controlled the smaller units that Randon created. To reduce still further the power of local elites, Randon organized units of *spahis*, native cavalry units, which lived in *smala*, encampments large enough to permit the families of cavalrymen to farm plots

⁷¹ *Annales de l'Assemblée Nationale*, XVIII (1873), 637-44; session of June 30, 1873; cited by Steele, “European Settlement,” 270-71.

⁷² CAOM, F//80/1722

of land and maintain herds.⁷³ Randon's reorganization of the administrative structure contributed to the tribes' loss of land, because the creation of *smala* entailed the seizure of land from tribes, especially those which had made up the larger "native commands."

Randon also set up commissions to review the application of the various land laws, focusing on those cases that had not been definitively resolved. While he did not favor the "sequester" of lands in Kabylia during the military action to suppress the revolts there (as had Bugeaud in other areas during the 1840s), Randon did not slow down the expansion of state land. The largest state expansion during the 1850s while Randon was governor-general involved claiming forest lands, which led to unrest late in the decade and an uprising in the Collo peninsula in 1860. Equally important, however, was the appropriation of tribal land during the splitting up of the large "native commands," mentioned above. Again, the re-categorization of land was involved. This land was designated by the French as *makhzen*, that land which had been given to a tribe by the Ottomans in return for their faithful performance of government service, in this case military service. When the French discontinued their reliance on the "native commands," (*makhzen* tribes), they decided that this portion of *makhzen* land "reverted" to the state domain.⁷⁴

⁷³ Randon clearly disagreed with Bugeaud's position that the French should work *with* the existing tribal elites. His policies reflect the division within the military itself and differences between some parts of the military, like Randon, who opposed the policies advocated by the Arab Bureau and its creator, Bugeaud.

⁷⁴ As noted in Chapter Two, the French administration was divided about its reliance on the *makhzen* tribes. For example, officer such as Walsin-Esterhazy and du Barail defended the importance and value of the *makhzen* tribes. Those among the military administration, most often but not exclusively represented by the Arab Bureau officers, who supported the use of the traditional *makhzen* tribes eventually lost out to those who wished to dismantle the existing "tribal aristocracy" -- and existing practices of land use among the tribes.

It was during this period that the conflict between the civil and military branches of the French administration grew most pronounced. Members of the Domain Administration were aggressive about pursuing the “reversion” of land to the state and to French state’s larger claims to *beylick* and *makhzen* land. Members of the Arab Bureau did not publicly contest the theoretical claims of the state over the lands, but they were hostile to the methods used by the Domain Administration to locate these lands and to begin charging taxes. Hollins M. Steele, Jr., provides a detailed account of how this conflict unfolded in the region around Mostaganem, east of Oran. Here, the commanding general of the division of Oran, General Pélissier, had transferred control of beylick land from the Arab Bureau to the Domain Administration, which began to make new claims on land and to impose new fees on the indigenous population. In a January 13, 1853 letter to Pélissier, General de Luzy-Pélissac, the commanding general of the subdivision of Mostaganem, complained about the conduct of the Domain Service. General de Luzy-Pélissac wrote that the Domain Service “wanted to refuse the tribes part of the land which they occupy.” Moreover, the Service wanted to impose rent on the tribes for the land they were using, not just the beylick land (which had become state property) but also the land that previously had been treated as tribal property. To begin to tax this land, de Luzy-Pélissac believed, was a “short-sighted policy” that would create tribal unrest.⁷⁵

When Pélissier refused to halt the actions of the Domain Administration, de Luzy-Pélissac turned to Governor-General Randon. Randon waffled in late-1853, but he ultimately sided with Pélissier, and as a consequence the confiscations of land and the

⁷⁵ Steele, “European Settlement,” 135-137.

imposition of new fees continued. The Domain Administration confiscated 16,900 hectares in the valleys of the Chéelif, Mina, and Habra, and rented the remaining 34,823 hectares to six tribes.

There was a pause in the actions of the Domain Administration only when Pélissier left Algeria in 1855 for service in the Crimean War. De Luzy-Pélissac briefly became the interim commander of the Division of Oran before General Montauban assumed the post (January 1855 through November 1857). Both sided with the Arab Bureau, and as a consequence the aggressive activities of the Domain Administration were halted. But, as so often happened in Algerian administrative struggles, the advocates of confiscation had only to bide their time. After Napoleon III's dismantling of the military administration and creation of the civilian ministry of Algeria in 1858, the Domain Administration was given another opportunity. In 1865, Colonel Jacques Duchesne, who was the commander of the subdivision of Mostaganem, wrote to the new commanding general of the Oran region: "In my opinion, the makhzen tribes of Mostaganem were victims of the ambitions of European colonization. Their geographical position put them in the way of expansion which the domain must have at any price."⁷⁶

The refusal to control the confiscations carried out by the Domain Administration in Mostaganem was exemplary of the policy under Randon's years as governor-general. He wished to give the indigenous population unassailable title to its lands, but he also wished to secure land for colonization. The policy that resulted, generally referred to as

⁷⁶ Duchesne to Deligny, commander of the division of Oran (August 14, 1865); AN F80 524; cited by Steele, 140-41, note 95.

cantonnement, attempted to straddle these incompatible goals. The policy of *cantonnement* in fact involved two policies widely practiced by the French from the 1840s onward. One policy was generally referred to as “*refoulement*,” the pushing of natives off land that the French argued was not being efficiently used. This was the term used for removing tribes from a given region. The second policy was referred to as “*resserrement sur place*,” the reduction of the amount of land a native tribe inhabited and used, so that the remainder could be taken over by the state and ultimately handed on to colonists. Both “*refoulement*” and “*resserrement sur place*” were referred to “*cantonnement*.” For the local population, *cantonnement* meant the loss of vast stretches of land.⁷⁷

Under *cantonnement*, a commission was established in each of the three provinces which was to resolve conflicting claims between the state and the indigenous occupants of land.⁷⁸ These commissions would determine what land the state should apportion to the indigenous population and what land it would seize for itself. Once this was determined, the land left for the local population was to be divided into individual parcels, and each property owner was to receive a registered title deed. As discussed previously, such concepts of individual property ownership had no real precedents in local society. The contending groups of the French administration held out different hopes of how *cantonnement* would work. The Arab Bureau originally saw the policy as a way of ending the threat to wholesale expropriation of land by the state at the expense of

⁷⁷ There is an excellent discussion in Ruedy, *Land Policy in Colonial Algeria*, 87-97.

⁷⁸ These commissions were established on May 20, 1858

the tribes. The Domain Administration and other supporters of large-scale colonization saw the policy as a way of dramatically extending the extent of the state domain. Randon himself recognized the double nature of the policy.

The work of carrying out *cantonnement* is going to be influenced by two rival tendencies which can be summarized as “to retain” and “to take.” These two tendencies, one advanced in the name of the European element, the other in the name of the native, are equally important. Therefore, make sure that the members of the commission of *cantonnement* strike a balance between the two, all the while bearing in mind that we wish to allow the tribes sufficient land upon which to live and yet open up the country to development.⁷⁹

However much Randon hoped for some balance, he made it clear that he expected the program to net significant amounts of land for colonial settlement. As he himself put it, “the Arabs will be driven back.”⁸⁰ On August 8, 1858, Randon resigned as Governor-General on August 8, 1858, and the net result of this policy was that “to take” trumped “to retain.” Randon claimed to desire balance, but the policy itself was imbalanced. What Randon either misunderstood or chose to ignore was that the tribes’ traditional way of life necessitated the amount of land they already possessed. Any reduction of land rendered the remaining land insufficient for their needs.

According to official figures, the state domain grew from 431,690 hectares in 1852 to 695,026 hectares at the end of 1856. By the end of 1862, the state domain comprised 1,380,000 hectares. These summary figures do not account for the vast

⁷⁹ Circular letter of governor-general Randon to military generals of divisions in Algeria (April 22, 1858). AN F80 991; as cited by Steele, “European Settlement,” 146.

⁸⁰ Steele, “European Settlement,” 146.

amount of land that was subtracted from the state domain as it was handed over to colonists. Between 1850 and 1862, European-owned property in Algeria rose from approximately 125,000 hectares to 425,000 hectares. Most of the 300,000 hectares increase was made possible by government confiscation. Muslims lost around 1,000,000 hectares of land between 1850 and 1862.⁸¹

The Sénatus-Consulte of 1863 was designed to reverse some of the previous confiscations, returning to the tribes some of the makhzen and azel lands that had been sequestered. The law also was intended to prevent the future expansion of the state domain at the expense of the local population. It was also designed, however, to divide tribal holdings into individual parcels, thereby undermining the communal nature of land ownership practiced among the tribes. As so often was the case, the true effect of the law was dependent on how it was implemented. And, unfortunately for the members of the tribes, the result was incremental increase of colonization before 1869, and then a great acceleration of colonization after this date. When the Government of National Defense took over the government in Paris 1870 during the Franco-Prussian War, Léon Gambetta appointed Bouzet, a settler from Oran, as the head of the colonial administration. Bouzet suspended the application of those aspects of the Sénatus-Consulte that favored the natives, and he continued the privatization of property. Both aspects of his policy were celebrated by the colons. Moreover, Bouzet oversaw the elimination of the organization in whose ranks were located the principal critics of accelerated colonization: the Arab Bureau was officially abolished on December 24, 1870, though remnants of it continued

⁸¹ Steele, "European Settlement," 151-52

to operate until the 1880s. Not surprisingly, colonial expansion was the order of the day. Between 1871 and 1885, the Domain Administration sequestered 669,951 hectares. Some of this was given to tribes that were forced off their land, but most of it – ca. 446,000 hectares – was opened for colonization.

A Moderate Solution: the Military Administration and the Arab Bureau

As noted previously, the French administration, including the military, lacked consensus about how to proceed with colonization in Algeria. Officers such as Lamorcière and Pélissier represented a more aggressive approach. These views were not representative of the entire military, neither at the upper levels of the administration nor within the Arab Bureau. Secondary sources characterize the position of the Arab Bureau as opposed to policies that too quickly imposed French civilization on the local population or that rapidly dispossessed the tribes of their lands. From the previous chapter's review of the writing of Bugeaud, Hugonnet, du Barail, and Walsin-Esterhazy, we saw that these officers favored an approach to administration that borrowed from and tolerated local practices.⁸² They based their position on the belief that this approach would cause the least disruption to local society and, therefore, be less likely to produce revolts. Many officers argued for implementing justice as the locals did, respecting pre-existing power hierarchies, and minimizing European settlement on local land. Land policy touched upon all of these issues: respecting local laws and legal systems included

⁸² Captain Charles Richard, on the other hand, favored a rapid implementation of French civilization among the tribes.

respecting existing methods for defining property ownership. Maintaining existing elites in positions of power meant upholding their hereditary and traditional right to control the communally-owned tribal lands. Minimizing European settlement in tribal regions implied slowing the introduction of French civilization among the tribes and minimizing the disruption to traditional ways of life. As we will see, the colons and their civilian advocates portrayed the Arab Bureau's position on these issues as obstructionist and anti-colonization, and they claimed the Arab Bureau was motivated by greed and a desire for the absolute power they exercised in their cercles.

Archival documents offer some support that members of the military counseled a slow, careful, and conscientious approach to European settlement on tribal lands. Letters and reports addressed to superior officers lay out plans for and ideas about how to proceed with colonization with sensitivity to the disruptions this would cause for the local population.⁸³ The officers accepted that cantonnement and some transferral of property would occur, but they counsel moderation. In a letter to the "Général" (presumably the then-Minister of War, General Lamoricière), Governor-General Viala Charon wrote that, "We must find ways to keep the Arabs on their territories," and he suggested a "progressive introduction of European colonists" in such a way that was favorable to the property of the Arabs. He recommended that the French administration give "great thought" to the existing system of property ownership among the tribes, so that the French could proceed with colonization "without throwing into perturbation the native population." In another letter, Governor-General Charon asserted that in time the Arabs

⁸³ For example, reports and letters to this effect are found in 1J 196 (66 MI 145 and 146).

would “see the profit” in copying the European methods of cultivation, but that for now, they must be allotted sufficient land to continue their own way of life.⁸⁴ In November 1858, the commanding general of Oran division of the Arab Bureau, Édouard de Martimprey, wrote that the “principles of right and equity” must be applied both to the interests of the indigenous population and to colonization. Martimprey warned, however, that no two tribes had the same needs, resources, or conditions of existence, and he advised that the French must not rely upon a single uniform procedure for determining the land needs of specific tribes. To so do, he believed, would be unjust.⁸⁵ .

Conclusion

Any summary of how the French dealt with traditional land usage and customary land law must take into account the agenda of one set of interested parties within a larger, polarized administration. Settlers by and large favored a speedy removal of the local population from the land so that European settlers could move onto it. This issue held important political implications because it was a critical point of contention within the French administration which was deeply divided about how to effect the monumental changes that inevitably would accompany the transfer land from the possession of the local population to the incoming colonists. Members of the Domain Administration especially felt the pressure of those who insisted that this land be made available for colonization as quickly as possible. And, not surprisingly, the Domain Administration

⁸⁴ letters dated 27 October 1848 and 28 December 1848, 1J 196 (66 MI 145).

⁸⁵ 1J 196 (66 MI 145)

was less sensitive to traditional forms of land tenure. To the extent that the French upheld their promise to respect Islamic law, John Ruedy summarizes the French state's behavior in the following manner:

By and large it appears that when Muslim law could be used to further the aims of the state, it was upheld, but that when the contrary effect was implied, it was ignored or suppressed If Muslim law could be used to add to the public domain, it was upheld; if it detracted, it might well be struck down. The skillful manipulation of Muslim law is one of the salient features of the public domain's history.⁸⁶

This seems, on the whole, indisputable. But such a generalization masks the debate that went on within the ranks of the French administration. There were individuals who were sensitive to Muslim law and customary land usage and who favored an “associative” relationship with the natives – a policy that did not envisage rapid confiscation of land and immediate assimilation of the tribes to French ways.⁸⁷ This did not mean that they doubted the superiority of French “civilization.” What it did mean, however, is that they preferred a pragmatic policy of accommodation and gradual expansion of French laws and mores rather than a policy of repression. Many members of the Arab Bureau favored this approach, as the statements of Hugonnet, Bugeaud, and du Barail indicate. For these officers, security was the priority, and patience in acclimating the tribal population to French civilization was one way to achieve this. Many Arab Bureau officers supported

⁸⁶ Ruedy, *Land Policy in Colonial Algeria*, 103.

⁸⁷ One of Abi-Mershed's central arguments is that it has been a mistake of traditional historiography to view the colonial bureaucracy as a political monolith with a uniform vision. See Osama W. Abi-Mershed, *Apostles of Modernity: Saint-Simonians and the Civilizing Mission in Algeria* (Stanford, CA: Stanford University Press, 2010).

this policy that, as we will see in Chapter Five, colon advocates depicted as the primary obstacle to successful European colonization.

The trial of Captain Doineau marked, in many ways, the culmination of the conflict between the military and the civilian administration. Pressure to resolve the land issue had been building throughout the previous decade, though a clear resolution seemed elusive. Neither side seemed prepared to compromise. Napoleon III, to this point, had demonstrated little interest in the Algerian colony. The trial and the publicity it generated tipped the scales in favor of the colons and their advocates within the civilian administration. Captain Doineau provided the anti-military parties the publicity issue they needed to strike a blow against the military administration. The Arab Bureau and the military never fully recovered from the negative fall-out from the trial. Their loss of power is most marked than in subsequent land policy.

Chapter Four: The Doineau Trial

Introduction

In the early morning hours of Friday, 12 September 1856, a French public stage coach traveling from Tlemcen to Oran came under attack.¹ The coach contained four European passengers, the agha Si-Mohammed-ben-Abdallah, and his translator, Hamadi Ben Cheuch.² Agha Ben-Abdallah was the apparent target. After a highly publicized trial, the French Captain Auguste-Édouard Doineau, Chief of the Arab Bureau in Tlemcen, along with several indigenous co-conspirators, were found guilty of the murder of Ben-Abdallah.

The trial became more than simply the determination of guilt or innocence of the accused individuals. It became a widely-publicized exposé of the military administration in Algeria; in particular, of the Arab Bureau. Jules Favre, who defended two of the accused Arabs, proclaimed that “if all the *Bureaux Arabes* must be judged by the one in Tlemcen, then it is necessary to hasten to eliminate them or to reform them profoundly.”³ Doineau’s trial reveals the deep conflicts and divisions within the French administration about how to govern Algeria. The trial highlights many of the areas in which the civilian French administration and the military differed in their approaches to administration: the

¹ The attack took place about three kilometers outside Tlemcen and a mere 600 meters from the small town of Négrier. CAOM 18H/52.

² An agha is a tribal leader.

³ “Si tous les bureaux arabes doivent être jugés par celui de Tlemcen, il faut se hâter de les supprimer ou de les réformer profondément.” Gaston Delayen, *Les deux affaires du capitaine Doineau 1856-1874* (Paris: éditions des Juris classeurs, 1924), 267.

nature and extent of the relationships forged with indigenous leaders; the extent to which French moral and legal standards ought to be applied in the colony; the independence and freedom granted to the military leadership; the extent to which military officers, as a result, abused their power or exploited the indigenous population. A closer look at the trial will illustrate some of the challenges the French faced and the different attitudes they assumed in their efforts to establish a secure colony in Algeria.

The Setting

Tlemcen is located 140 kilometers to the southwest of the coastal city of Oran. With mountains rising behind it, the city sits at an elevation of 2,648 feet. Tlemcen began as a Roman military colony founded in the fourth century BC. In the twelfth century under the Almohads, Tlemcen became an important trading center. The city's location near the edge of the Sahara made its market a center for caravans arriving from sub-Saharan Africa.⁴ It also was at the crossing point of important trade routes: the route from the desert to the coast and the east-west route between Fez, Morocco and Oran.⁵ Tlemcen developed a reputation as an intellectual center; the city boasted fifty Koranic

⁴ Yacono, *Histoire de l'Algérie*, 33.

⁵ Pierre, Bourdieu, *The Algerians*, Alan C.M. Ross, trans. and pref. Raymond Aron (Boston: Beacon Press, 1962), 60.

schools and two madrassas.⁶ The “celebrated” *zaouia* of Aïn-el-Hout was located in the outskirts of the city, and thirty more *zaouia* were located on the surrounding plains.⁷

In the fifteenth century, Tlemcen was particularly welcoming to the refugees from the Spanish Inquisition; as a result, Jewish and Muslim Andalusians became a significant percentage of the population. In 1541, the Ottomans defeated the forces of Charles V and occupied Tlemcen. After a brief re-occupation by Spanish troops, in 1551 the Ottomans recaptured the city. They installed a permanent garrison, and the city remained in Ottoman control until the French arrived in the 1830s. During the period of Ottoman rule, the Turks comprised a minority of the population, numbering only about a hundred residents. The *kouloughli* population, however, numbered in the thousands, and they controlled the city for the Ottomans.⁸

General Bertrand Clauzel captured Tlemcen on 12 January 1836. He established a French garrison there and transferred the command of the city and control of the garrison to Captain Louis-Eugène Cavaignac.⁹ In 1837, the Treaty of Tafna ceded control of Tlemcen to ‘Abd el-Kader. Cavaignac and his French troops departed. ‘Abd el-Kader

⁶ Pierre Bourdieu and Marcel Emerit agree on the number of schools and madrassas (Bourdieu, *The Algerians*, 60, and Marcel Emerit, *L’Algérie à l’époque d’Abd-el-Kader* [Paris: Éditions Bouchene, 2002], 25), but Julien claims that there were five madrassas (Julien, *History of North Africa*, 169).

⁷ Emerit, *L’Algérie*, 26. *Zaouia* is a North African term, roughly corresponding to the more familiar *madrassa*, used to refer to Islamic schools, the main purposes of which were to teach basic literacy and provide religious instruction to the nearby population. The term also can refer to a Sufi lodge, and in North Africa Sufi lodges often had schools attached to them

⁸ Emerit, *L’Algérie à l’époque d’Abd-el-Kader*, 24. As explained previously, the *kouloughis* were the offspring of Turkish men and local women.

⁹ The Reverend Joseph Williams Blakesley reported that Captain Cavaignac was installed in Tlemcen with 273 volunteer soldiers. He added that of Cavaignac’s “almost desperate situation” in Tlemcen, it was rumored that the French government’s true intention was to “sacrifice” Cavaignac because of his “stern republican principles,” which the government found “odious.” (Reverend Joseph Williams Blakesley, *Four Months in Algeria: with a Visit to Carthage* [Cambridge, England: MacMillan and Co, 1859], 185).

made Tlemcen the capital of his territory, although the kouloughi population resisted his authority, viewing it with “repugnance.”¹⁰ In 1842 the French retook it Tlemcen in the fighting that followed the 1839 breach of the Treaty of Tafna. In 1857, the *Presse algérienne* reported that the total population of Tlemcen numbered 18,112, of whom only 3,622 were European and 14,490 were indigènes.¹¹ Tlemcen’s proximity to the border with Morocco -- only about ten miles distant -- where “a deadly hatred of the French prevail[ed],” made the city strategically important. Tribes from Morocco frequently crossed the border to raid and “commit brigandage” on the French territory, fleeing back to Morocco beyond the reach of the French military.¹²

Writing of his travels in North Africa in 1857 and 1858, Joseph William Blakesley noted that the road to Tlemcen was said to be the “very worst in Algeria,” although he does not elaborate. He characterized the nearby countryside as “dreary” and “all bush.” Other accounts, however, describe the same countryside’s richness; the “*exubérance remarquable*” of its vegetation; and enumerate the various fruit and nut crops, including figs, grapes, cherries, peaches, and almonds found there.¹³ The principle product of the city was olive oil, although cereals also were produced in abundance. Industry was limited, and small merchant shops, selling goods such as spices, pottery, and slippers, predominated.

¹⁰ Several sources refer to the population of Tlemcen’s resistance to Abd el-Kader’s authority, but the “repugnance” quote comes from a letter from Captain Cavaignac to the commanding general of Oran, dated 15 April 1836 and reprinted in Marcel Emerit, *L’Algerie*, 103.

¹¹ Figures cited in *La Presse*, 14 November 1857.

¹² Blakesley, *Four Months in Algeria*, 176.

¹³ Emerit, *l’Algérie*, 25; 80.

Blakesley wrote that Tlemcen itself was “pleasing to see” and “surrounded by a forest of enormous olive trees.”¹⁴ A journalist for *La Presse*, in Algeria to cover the Doineau Trial, visited Tlemcen and declared it a city the “most curious in the world for a Parisian to visit, because it is least like Paris.” The journalist described the olive trees and forest which encircled the city; a forest which the Europeans referred to as the “Bois de Bologne.” He claimed that this forest was the “only place in Africa” in which one can ride for three hours and remain in the shade the entire time.¹⁵ Located on a plateau, surrounded by distant mountains, the city escaped the worst of the summer heat, enjoying a more moderate climate than that of the coastal cities. Winter could, however, be quite cold, and snowfall was not uncommon.¹⁶ An outer wall constructed of clay and stones and punctuated by jutting towers surrounded the city. Many gates provided entrance and exit points. The narrow city streets often were lined with vine-covered trellises and revealed numerous fountains. The houses, constructed of brick and small stones, usually were only a single story, as houses were in Algiers. Gates, closed each night, separated the different neighborhoods. The population was diverse and often divided between two main “parties:” the first, made up of the kouloughlis who numbered about four thousand, and the Jews who numbered about two thousand; and the second, made up of the Moors

¹⁴ Blakesley, *Four Months in Algeria*, 170-174.

¹⁵ *La Presse*, 6 September 1857.

¹⁶ Emerit, *l'Algérie*, 69; and Jean Gaudens Bernard Tatareau, *Voyage dans la province d'Oran* (1835), excerpts reprinted in Emerit, *l'Algérie*, (53-94), 80. The following description of Tlemcen comes from Tatareau's account.

who numbered between six to seven thousand, and the Turks, of whom there were only about one hundred.¹⁷

Within the structure of the French administration, Tlemcen, located in the western part of Algeria, fell within the Division of Oran, a military territory. The city of Tlemcen, however, was classified as a civilian territory, as were other centers of population within military territories.¹⁸ Because the attack on the diligence took place within a few kilometers of Tlemcen, and thus fell within civilian territory, the civilian authorities were responsible for the prosecution of the crime. For this reason, the criminal trial of Captain Doineau and his Arab co-defendants took place in the civilian *Cour d'Assises* of Oran, the capital of the division.

In the Division of Oran at the time of Ben-Abdallah's assassination, similar attacks were not uncommon. A series of reports that General Montauban wrote in 1857 and entitled "Division d'Oran Rapport Politiques" detailed the crimes that occurred that year in the Division of Oran.¹⁹ There is no way to know if the report was comprehensive, but it contains entries for the entire calendar year. These crimes included fifteen violent attacks, of which eight included murder, as well as several miscellaneous and unspecified attacks. Indigènes and Europeans alike were victims. The General noted many skirmishes between the French and Moroccan tribes as well as fights among the tribes

¹⁷ As noted previously, the term Moor refers to the Muslims, usually of North African descent, who fled Spain in the wake of the 15th century Reconquista. They retained a separate and distinct cultural identity in the places in which they settled in Algeria.

¹⁸ The cities and a region ranging from ten to twenty-five kilometers (the specific number varied) outside were civilian territory. Anonymous, *Procès de Doineau et de ses coacusés devant la cour d'assises d'Oran (août 1857)* (Paris: Librairie Internationale de l'agriculture et de la colonisation, 1857), 107.

¹⁹ CAOM, 1H/14, "Division d'Oran Rapports Politiques."

living in French territory. In context, the 12 September 1856 attack on the French stagecoach appears fairly commonplace.

The Attack²⁰

The attack occurred during the early morning hours of 12 September 1856. The surviving witnesses -- Doctor Lenepveu, the *postillons* Joseph Aldegner and Vincent Marchal, the driver Damieu Mendès, the soldier Geoffreoy, and Dame Pietra Mercador, (referred to in the proceedings as the widow Ximenes) -- provided an account of the evening's unfortunate course of events. Later, during their trial, the accused perpetrators provided additional, if occasionally conflicting, versions. Those killed in the assault included Monsieur Vallette, a merchant from Algiers, Si-Mohammed-ben-Abdallah, the agha of the Beni-Snouss tribe, and the agha's interpreter and secretary, Hamadi-ben-Cheuch. Ben-Abdallah was on his way to Oran, many believed, to meet with the commanding general of the Division, General Charles-Cousin Montauban, to register a complaint about Captain Doineau's seizure and sale of some camels from a Moroccan tribe passing through French territory.

About fifteen minutes after the public coach had departed Tlemcen, twelve to fifteen horsemen wearing Arab clothing surrounded it. Some of these horsemen had

²⁰ The account of the events and the trial come from the only two available sources, the published official court transcript of the trial, Anonymous, *Procès de Capitaine Doineau et de ses coacusés devant la cour d'assises d'Oran (aout 1857)*. Paris: Librairie International de l'agriculture et de la colonisation, 1857, and a secondary source which draws most of its information from the same transcript: Gaston Delayen, *Les deux affaires du capitaine Doineau 1856-1874, l'attaque de la diligence de Tlemcen, l'évasion de Bazaine*. Paris: Editions des Juris-classeurs, 1924. Press coverage in Paris merely printed the same information found in the transcript.

followed the coach from the edges of the city, and others had emerged from the olive woods that bordered the road. Gunshots were fired, but the drivers Aldegner, Marchal, and Mendes felt no concern at this point because they believed the shots were in honor of their important passenger, the agha Ben-Abdallah. Their error quickly became apparent, however. In the road directly in front of the coach, two men, one dressed in a white burnous and the other in a black one, crouched on the ground. The drivers yelled at the men to move aside, but the men ignored them until the coach drew near, at which point the two men sprang up and attempted to seize control of the horses and stop the coach.

They failed to stop the horses, and the coach continued to move down the road. Then one of the horsemen rushed in front of the coach, firing shots at it and its *postillons*, including Vincent Marchal, who was riding his horse in front of the coach. He was unhurt, but in recoiling and flinching from the sound of the gunshots, he caused his horse to leap backwards. The horses pulling the coach then ran into Marchal's horse, resulting in a collision that brought the coach to a crashing stop. Aided by the darkness and the ensuing confusion, Vincent Marchal and Damieu Medès quickly hid themselves from the attackers. Later, they both safely reached the nearby village of Négrier. Although initially captured by the attackers, the other *postillon*, Joseph Aldegar, also managed to escape to safety. Two of the attackers then broke into the traveling compartment of the coach. One stabbed the interpreter Hamadi with a dagger, and the other fired a shot at the agha. Fearing for his own life and seeking to protect himself, Doctor Lenepveu then asked one of the attackers, in Arabic, if he dared to kill a doctor. The man responded that it was all the same to him. At that point, a third attacker rode up and said something to

his colleagues at the coach. The assailants then departed, leaving the remaining passengers unhurt. Taking advantage of this opportunity, the passengers Lenepveu, Madame Ximenes, and the soldier Geoffroy climbed out of the diligence and hid among the underbrush. Their fellow passenger, Vallette, had been struck in the chest by one of the bullets from the initial gunfire, and he could not move. Seeing that the attackers were fleeing and that no one took any notice of them, Lenepveu, Ximenes, and Geoffroy set off on foot to Négrier to get help.

An hour later, along with the mayor of Négrier and several villagers, Lenepveu, Geoffroy, Marchal, and Mendès returned to the scene of the crime. The attackers had fled, but the passengers' belongings and the coach's parcels remained untouched. Nothing indicated that theft had motivated the attack, because the only item missing was the agha Ben-Abdallah's cross of the Legion of Honor. The agha himself lay dead inside the coach. His interpreter Hamadi still breathed but was delirious; he had received multiple wounds. Vallette, suffering greatly from his chest wound, was alert but could provide no additional information about the attack. The mayor of Négrier instructed Lenepveu to go without delay to Captain Doineau, the chief of the Arab Bureau of Tlemcen, to inform him of the attack. The remnants of the coach, the body of Ben-Abdallah, and the two wounded men were transported back to Tlemcen. Neither Vallette nor Hamadi, however, survived for long; both were dead by the following afternoon.

When the survivors of the attack arrived back in Tlemcen in the early morning of Friday, 12 September, Lenepveu went to the quarters of Captain Doineau to report the assault. Lenepveu found Doineau asleep in his bed, and upon being informed of the

events, Doineau immediately arose and rode out to the scene of the crime. As the Chief of the Bureau Arabe, he was responsible for collecting information and evidence about criminal acts. There was little to be seen at the site of the attack, and Doineau attributed the attack to a tribe from Morocco, speculating that the perpetrators undoubtedly were long gone, returned to the deserts of Morocco, and beyond French reach.

News of the attack spread quickly through Tlemcen, and crowds began to form in the streets. Pushing through the crowd, only half-dressed and fierce in her grief, the widow of Ben-Abdallah screamed, “It is Bel-Hadj who killed my husband! No one else could have committed this murder!” Within days, as we shall see, this mounting suspicion led Bel-Hadj to flee to Morocco with four of his men-at-arms (referred to in the proceedings as his *chaouches*).

Initial Investigation

General Montauban testified that on 12 September, he received a telegram from General de Beaufort (Charles Marie Napoléon de Beaufort d’Hautpoul), the commander of the subdivision of Tlemcen, informing him of the attack. This telegram attributed the attack to a personal vengeance but did not elaborate. Montauban immediately sent a telegram to Doineau, requesting that he report to him in Oran, and Doineau, along with his *khodja* (personal secretary) Sidi Ahmed, departed Tlemcen. On the morning of 14 September, Captain Doineau met with General Montauban at his office in Oran. During this meeting, Doineau questioned the credibility of the widow of Ben-Abdallah and her accusations against Bel-Hadj. Doineau observed that Ben-Abdallah was the woman’s

fourth husband, and that all three of the previous husbands had died from inexplicable causes. As for Bel-Hadj, Doineau dismissed the possibility of his involvement, claiming that Bel-Hadj was in bed, sick and half dead, and so completely incapable of having participated in the attack. Doineau's opinion was that the attack on Ben-Abdallah had been perpetrated by individuals -- enemies of Ben-Abdallah -- from Morocco.²¹ The meeting between Montauban and Doineau concluded with Montauban's instructing Doineau to do his utmost to identify those guilty of the attack. Doineau assured Montauban that he would do so.

On 15 September, Doineau and Sidi-Ahmed returned to Tlemcen. While Doineau had been in Oran, another Arab Bureau officer, Captain Davoust, had been placed in charge of the Bureau in Tlemcen. Davoust heard rumors circulating in the city that named several local Arabs -- Bel-Hadj, Bel-Kheir, Ben-Ayad, and Mamar -- as participants in the crime. Upon Doineau's return on the 15th, Davoust informed him of these rumors. According to Davoust's later testimony, Doineau laughed and dismissed the idea that these men could have committed the crime.

For reasons unspecified, General Montauban apparently harbored suspicions about Doineau's version of events, because he decided to take steps to confirm Doineau's interpretation. On the same day that Doineau arrived back in Tlemcen, the doctor at the Tlemcen military hospital received a telegram from Montauban asking him to call upon

²¹ An 1857 report entitled "Division d'Oran Rapport Politiques" which summarized the crimes that occurred in the Division of Oran that year had attributed many of the crimes to Moroccan tribes. The proximity of the Moroccan border to Tlemcen made it relatively easy for tribes to enter French territory, commit crimes, and then flee to safety in Morocco. Therefore, Doineau's theory was consistent with the existing patterns of crime and the Arab Bureau's explanation for it. (See CAOM 1H/14).

Bel-Hadj to verify his illness. The doctor, accompanied by Commandant Bernard, a childhood friend of Montauban's, went to visit Bel Hadj at his home. The doctor conducted an examination and concluded that, aside from a minor skin ailment, Bel-Hadj was in perfect health. Moreover, witnesses claimed that they had seen him in Tlemcen both the day before and the day after the crime, apparently healthy and going about his usual business. On the 12 September, Bel-Hadj had obeyed Doineau's order to assist in the parties searching for the attackers, and he spent the day on horseback, riding throughout the countryside. By all accounts, therefore, Bel-Hadj's claims of incapacitating illness on the night of 11-12 September appeared to be a lie. Bel-Hadj's behavior grew more suspicious when, on 21 September, he and several of his followers fled to Morocco. On 23 September, Doineau sent the first of several pleas to Bel-Hadj, asking him to return and assuring him that he had nothing to fear. If he were innocent, Doineau wrote, then the French justice system would not condemn him. Bel-Hadj, however, continually refused to come back to French territory.

In the meantime, General Montauban had heard nothing from Captain Doineau about the progress of his investigation.²² Explaining in his testimony that he grew impatient with this lack of information and Doineau's inability to locate those responsible for the attack, General Montauban decided to take action. General Montauban's unusual

²² A decree of 15 March 1860 conferred upon the officers of the Arab Bureau the status of an officer of the judicial police. This meant that the results of the interrogation of witnesses conducted by the Arab Bureau officers now would be permitted as evidence during trials. The information gleaned during these interrogations could be used in place of the physical presence and testimony of the witnesses themselves. Intended to facilitate the administration of justice, many obstacles remained. For example, by 1860 the military had established six military courts throughout the territory, but these proved inadequate to the demands placed upon them. (CAOM, F//80/1722).

interest in the crime likely was motivated by his personal friendship with its victim, Ben-Abdallah. On 1 October, Montauban sent Abd el-Kader Ben-Daoud, the former agha of the Thiaret and a friend of the family of Ben-Abdallah, to Tlemcen to conduct his own investigation into the crime. On 3 October Ben Daoud sent a telegram to Montauban in which he identified the following authors or accomplices of the crime: Bel-Hadj and his *chaouchs*²³ Hamida Ould Djelloul, El-Yamani Ben-Drah, and Ayed Ould Treki (all of whom had fled with him to Morocco); Kaddour bou Medine, El-Miloud Ould Ahmed, and El-Miloud Ould Ben Amar, all of the Ouled Riah tribe; Bel-Kheïr, caïd of the Ben-Ournidi; Abd el-Kader Ould Bel-Hadj, Mamar Ould Moktar, and Ahmed Ben-Massoud, all of the Ben-Ournidi tribe; and two individuals connected with Captain Doineau: his trusted khodja Si-Mohammed Ould Si-Ahmed (Sidi-Ahmed), and “his negro,” Barka; and the qādī Ahmed Ben-Ayad. Ben-Daoud reached his conclusion based on personal research of an unspecified nature but which relied heavily upon the rumors swirling around Tlemcen. Ben-Daoud also added the detail that before the crime, a meeting took place among Ben-Ayad, Bel-Hadj, Bel-Kheïr, and Si-Mohammed during which they swore an oath on the Koran to kill the agha Ben Abdallah.

Montauban received Ben-Daoud’s telegram on the 4th of October, and he immediately sent Monsieur Cramer, the chief of police in Oran, to Tlemcen to assist in further investigation of the crime and assist in the arrests. On 6 October, the arrests of the

²³ The word *chaouch* derives from Turkish and conveys only an inexact notion of the functions associated with the title. The simplest explanation is that a *chaouch* is a sort of personal assistant of an administrative or bureaucratic nature. It is sometimes translated as an “usher” or “bailiff,” but in remote tribal regions it is unclear how these definitions would apply. In that context, another definition -- “man-at-arms” -- seems most appropriate.

accused men still in Algeria began. All of the men loudly protested their innocence, but they were brought to Oran and imprisoned. Doineau had left Tlemcen days earlier, on 2 October. He had been recalled to Oran and assigned to a new position there, and so he was absent from Tlemcen during the process of Ben-Daoud's investigations and the subsequent arrests. Si Mohammed, the khodja, and Abd el-Kader Boukra, the brigadier of the spahis, had accompanied Doineau to Oran. Montauban's professed intention in reassigning Doineau was to facilitate the criminal investigations in Tlemcen. Montauban believed that Doineau's presence in Tlemcen would be a hindrance, but he did not articulate whether he suspected Doineau would interfere directly or indirectly.

Despite initially denying all knowledge of or involvement in the attack, the prisoners soon began to confess to various degrees of participation. On 12 October, El Miloud Ould Ben-Amer (the messenger of Bel-Hadj) was the first to confess, admitting that he had witnessed the taking of an oath to kill Ben-Abdallah. El-Miloud Ould Ben Amer claimed that he did not participate in the crime himself, but that, several days after the assassination, he witnessed another meeting of his co-accused in which they discussed having committed the murder and at which Hamida and Kaddour Bou-Medine declared that they intended to leave French territory. They claimed at the time to fear the justice of General Montauban and so had decided to flee to escape from it. Additional confessions from the other prisoners followed quickly.

On 13 October, Mamar Ould-Moktar ("Mamar") became the next to confess to the crime. In the trial, it emerged that Mamar had a reputation as an "evil-doer by profession," and that he already had spent four years in a French prison on the island of

Ste-Marguerite. Among the Muslim population of Tlemcen, he was known as “the Jackal.”²⁴ Before his official confession, Mamar was said to have confessed to a fellow prisoner, Mohammed Ben-Arbi, that he had committed the murder. Mohammed Ben-Arbi had revealed this confession to the magistrate instructor on 12 October. Confronted with his own words as well as the confession of Miloud Ould Ben-Amer, Mamar himself confessed on 13 October. Two others confessed on the same day: Ben-Merzouk Ould Bou-Medine (“Ben-Merzouk;” chaouch of Bel-Kheïr), and Barka.

The following day, presented with the detailed confession of Mamar, the qādī Ben-Ayad also confessed, despite two previous interrogations in which he had vociferously denied any involvement. The several confessions varied in some details, but they all attributed the inspiration for the attack to an enmity that had existed between Captain Doineau and Ben-Abdallah. Several of the confessions stated that Doineau had suggested the idea of the murder. Not until the 15 October confession of Kaddour Bou-Medine, however, was Doineau accused of having ordered the attack or having been present at it. After this new twist in the confessions, the other accused came forward to change their confessions to conform with the latest version. Over the next several days, they all confirmed that Doineau had ordered the murder of Ben-Abdallah, had threatened them with reprisals if they did not obey him, and had been present, disguised in Arab clothing and with his face covered, at the attack itself. On 17 October, several more people confessed to the crime as well as to Doineau’s direct involvement: the qādī Ahmed Ben-Ayad, the caïd Bel-Kheïr, and, finally, Doineau’s khodja, Si-Mohammed.

²⁴ *Procès de Doineau*, 30.

This new information resulted in Doineau's arrest on 18 October. Also as a consequence of the new accusations, Abd el-Kader Boukra, brigadier of the spahis, was arrested on the same day. Shortly after these arrests, there came to light two important pieces of information which would prove critical in the trial and its legacy. The first was the discovery of a packet, put together by Doineau, that contained bank notes worth up to 21,200 francs. The second was a small box, also belonging to Doineau, which contained gold worth 17,000 francs. The packet, discovered on 21 October when authorities searched Boukra's home, was addressed to a "Monsieur Doineau, adjutant to the 41st line, division of Alger," who was Captain Doineau's brother. The existence of the box became known the following day when, during his interrogation, Si-Mohammed informed the justice of the peace and the police commissioner, Cramer, that Doineau had given him the chest on 13 September and asked him to hide it in his own home so that, in the event of an investigation, no one would be able to find it.

From this point onward, the judicial police collected evidence, conducted research and interrogations, and prepared their case against the accused, including Captain Doineau. Up to this point, only Bel-Hadj and his chaouchs had not confessed to the crime, but this was because they remained in hiding in Morocco. This changed in March when Bel-Hadj presented himself to the French consul in Tangiers, claiming that he intended to return to Algiers under the expectation of safety that he claimed that Doineau and Montauban had promised him. Bel-Hadj and his chaouchs Hamida Oul- Djelloul and El-Yamani Ben-Drah took a boat to Mers el-Kebir where the French authorities received them and took them into custody. In Bel-Hadj's possession were many letters sent to him

by the French while he was in hiding in Morocco. At first, Bel-Hadj and his companions protested their innocence. However, during an interrogation on 19 April, Bel-Hadj confessed to having participated in the oath to kill Ben-Abdallah, but he claimed that he did not participate in the attack itself. Rather, he said that he had sent his chaouchs in his place. Bel-Hadj did not accuse Doineau of having participated in the attack, but he claimed that Doineau had commanded it.

At the trial in August 1857, the conclusion of the French investigations identified the following individuals as having planned or executed the attack of 11-12 September 1856: Captain Doineau; his khodja Si-Mohammed Sidi-Ahmed; Barka, the domestic servant of Si-Mohammed; Bel-Hadj, the agha of the Ouled-Riah tribe; Bel-Hadj's chaouchs Hamida Ould-Djelloul, El-Yamani Ben-Drali, El-Miloud Ould-Ahmed, and Ayed Ould-Treki (who remained in Morocco); Kaddour Bou-Medine; the qādī Ahmed-ben-Daudi-Ben-Ayed; Bel-Kheïr, the caïd of the Beni-Ournidi; Bel Kheïr's chaouchs Abd el-Kader ould Bel-Hadj, Ben-Merzouk, and Mohammed Ould-Kaddour; Mamar Ould-Moktar; Bou Naoua Ben-Djebaa; and Slimann Ben-Aïssa.²⁵ In total, eighteen individuals were accused of having participated in the murder of the agha Ben-Abdallah.

In the trial proceedings, we will see that the relationship among the accused and between the French and the indigenous population was complicated. Neither side represented a uniform set of desires or interests. Power was shared and alliances cut across complex divisions among the French themselves and between the French and indigenous leadership. The French officer Doineau stood accused of Ben-Abdallah's

²⁵ See appendix at back for a list of these names.

murder alongside indigenous Arab tribesmen. There are many possible explanations of or reasons for the crime, but the trial yields many more questions than answers. Whatever his precise role in the assassination, Doineau appeared to have integrated himself with local power struggles and engaged in local practices. Such behavior earned Doineau the censure of Jules Favre, who criticized Doineau and the military administration for their departure from French expectations of justice and administrative integrity. This contributed to the the civilian court's conviction of Doineau for Ben-Abdallah's murder. General du Barail believed that the President of the Court of Oran exhibited a "revolting prejudice" by directing the witnesses' testimonies so as to emphasize their negative portrayal of Doineau. He claimed that the innocent Doineau was the victim of the discord between the military and the civilian administration.²⁶ Perhaps du Barail's interpretation was correct, and the civilian court was biased against Captain Doineau. Perhaps Favre's accusations of corruption and brutality provide the reason for the bias: Doineau's willingness to adopt local vices, as the French perceived them. The trial and its outcome expose the deeper tensions between these two branches of the French administration. Before discussing these tensions, we must turn to the trial itself.

The Trial

In August 1857, in the *cour d'assises* in Oran, the trial of Captain Doineau and his co-accused began. Coverage in metropolitan French papers also began at this time. In August 1857, *La Presse* published a brief explanation of the composition of the court.

²⁶ du Barail, *Mes souvenirs*, II: 160.

The newspaper explained that in an Algerian cour d'assis, there were three *counseilleurs*, one of whom was the president. Two magistrates were chosen from among the judges or presidents who composed the district tribunals of the region in which the cour d'assis was located. The provenance of the third magistrate was not specified. The functions of the public minister were fulfilled by the *procureur-général* of the imperial court (Algiers in this case) or by one of his substitutes. The cour d'assis ruled by majority on distinct issues; for example, the guilt or innocence of the defendants on each point of the crimes of which they were accused; the presence of aggravating or extenuating circumstances; and the application of punishment.²⁷ In the Doineau trial, the court was composed of the President, André Imberdis, and two additional members: Lefrançois and Allier. Monsieur Pierret fulfilled the position of the Minister of the Public, and *Monsieur le procureur imperiale* de Thevenard assisted him.²⁸

Throughout the trial, Doineau persistently proclaimed his innocence and denied having had any involvement in the attack or even any reason for desiring it. For each accusation leveled against him, or each piece of suspicious evidence, Doineau offered a flat denial or a plausible explanation. His Arab co-accused, however, provided several different versions of their involvement throughout the course of their interrogations and, then, the trial. Despite some discrepancies in the details, however, the accused eventually

²⁷ *La Presse*, 4 August 1857.

²⁸ *La Presse*, 11 August, 1857.

agreed on the same basic story.²⁹ The majority claimed that Captain Doineau, disguised in Arab clothing, had been present at the attack, directing the action but not taking part in it himself.

The witnesses stated that in the late afternoon on Monday, 8 September 1856, Captain Doineau called a meeting at his office in the Arab Bureau in Tlemcen. Testimonies differed as to the exact attendees, but the consensus held that Mamar, Bel-Hadj, Bel-Kheïr, Sidi-Ahmed, and Ahmed Ben-Ayad were present. It was at this meeting that Captain Doineau ordered the assassination of Ben-Abdallah. At first, Ben-Ayad refused to agree to the order, but Doineau slapped him across the face and taunted him, accusing him of being “a woman” if he would not kill the agha. Moreover, Doineau threatened Ben-Ayad with a loss of all his power; i.e., his position as qādī.³⁰ Ben-Ayad said that he submitted to Doineau, although it “repelled” him to do so, because Doineau was “as a sultan,” and no one among the tribes dared to disobey him. In his testimony, Ben-Ayad added that he had heard Doineau on several previous occasions express a desire to have Ben-Abdallah killed, proclaiming that he would hire a Spaniard to do it.³¹ Bel-Hadj also testified that a few days before the actual murder, he had heard Doineau express a desire to have Ben-Abdallah killed. Like Ben-Ayed, Bel-Hadj claimed that he

²⁹ Most individuals agreed on the basic story, but each sought to minimize his own involvement. The co-accused agreed that Mamar had fired the fatal shots, but Mamar himself denied having been the one to do so.

³⁰ In the context of the French administration, a qādī could be an “officer of the town,” fulfilling administrative more than the traditional judicial functions. (Explanation from Michael Brett, “Legislating for Inequality in Algeria: The Senatus-Consulte of 14 July 1865,” *Bulletin of the School of Oriental and African Studies, University of London*, Vol. 51, No. 3 (1988) 440-461; 442).

³¹ Delayen, 183-184.

initially refused to obey Doineau because he did not dare to participate in such an act. Bel-Hadj feared that suspicion would fall immediately upon him -- his enmity with Ben-Abdallah well-known in the region. Bel-Kheïr testified that he himself was not an enemy of Ben-Abdallah and that he would have had no reason to kill him if Doineau had not ordered him to do so.³² However, Bel-Kheïr explained, Captain Doineau was “like a sultan,” and so “he commanded and I obeyed.”³³ Whatever their reasons, the attendees agreed to commit the assassination.

When Captain Doineau later proved that he had been absent from Tlemcen on Monday the 8th of September, and that therefore the meeting could not have taken place as reported, his co-accused changed their testimony. They now recalled that the meeting had taken place on the day before a feast day of their religion, which had been Wednesday, 10 September. Thus, their new testimony was that the meeting at the Arab Bureau took place on Tuesday, 9 September.³⁴ (A different version, however, placed the meeting on Thursday, 11 September).³⁵ The inconsistency of the testimonies, explained Doineau in court, demonstrated that his co-accused had conspired among themselves to pin the blame on him but could not co-ordinate their lies.

³² This assertion contradicted the testimony of Bel-Hadj, who suggested that Bel-Kheïr had been motivated to participate in the attack by professional ambition -- a desire to be named an agha -- and fear of Ben-Abdallah's influence. As for that accusation, Bel-Kheïr (a caïd) claimed that he already had as much authority as an agha, and that he could “fight as well as an agha against the enemies of France. It is not in committing an assassination,” he continued, “that one becomes an agha.” (Delayen, 216).

³³ Delayen, 217.

³⁴ *Procès de Doineau*, 28-29.

³⁵ *Procès de Doineau*, 32.

According to the majority testimony, the next step in the planning of the crime occurred in the evening of Tuesday, 9 September at the café of Bel-Kheïr. Doineau had insisted that the conspirators swear an oath to kill Ben-Abdallah and to keep secret their roles in his death. The conspirators were to assemble at Bel-Kheïr's café to swear this oath on the Koran. Doineau himself did not attend the meeting, but he sent the spahi Boukra to witness the oath to ensure that it took place. Boukra claimed that he himself did not take the oath, and that he was there merely as an observer and a servant of Doineau. Bel-Hadj, Bel-Kheïr, Ben-Ayad, and Mamar all swore on the Koran that they would kill Ben Abdallah.

In his testimony, Bel-Kheïr provided the clearest and most detailed account of the attack itself. The following is Bel-Kheïr's version of the events:

On the 11th of September, Captain Doineau told me to bring Mamar to the door of my café and show him the coach when it passed. At three in the morning, I got on my horse [and waited]. I [then] saw the Captain mounted on his gray horse. Bel-Hadj was with him. A few moments later, Si-Mohammed [his khodja] and Barka arrived. Then, the coach passed and we followed it, leaving the city by the same gate. Upon exiting the gate, I recognized Yamani mounted upon a white horse, wearing a burnous of black and white. There also was with us Kaddour-Bou-Médine, upon a gray horse; Hamida, Mamar (who had a pistol); and El- Niloud, dressed in a white burnous. He had with him an armed spahi whom I did not know. We left the city in two groups, with Doineau at the head.

[Note: the guards at that gate claimed that they saw no such groups leaving the city on the night of 11-12 September].

At the edge of the olive woods, the Captain ordered Mamar, Hamida, and Si-Mohammed to ride in front of the coach. When I arrived there, the massacre had been accomplished. Mamar and Si-Mohammed fired the first

shots. Captain Doineau was a little behind us. He said, “Kill this dog and steal nothing. Anyone who does steal, I will beat, and everyone keep his mouth shut!”

When the President of the Court asked Bel-Kheïr why, during the investigation of the crime, he had not then accused Captain Doineau of having ordered the attack, Bel-Kheïr responded that after the other Arabs had given their confessions, he saw that it was necessary to reveal the truth. “Acquit me or condemn me to death,” pronounced Bel-Kheïr, “I would say the same thing. God will judge us.” After a final plea from the President to tell the truth, Bel-Kheïr, with hands raised, concluded, “I call for God to witness that I speak the truth. The Captain did all. God will judge us.”³⁶

The only testimony that differed significantly from this general account was that of Bel-Hadj. By many accounts a well-known enemy of Ben-Abdallah, Bel-Hadj told several different versions of the events and his role in them. Ben-Abdallah’s widow, as we have seen, immediately suspected him of the crime, and his subsequent flight to Morocco made him look guilty. His ever-changing testimony further undermined his credibility. In the first account he gave, Bel-Hadj claimed to have been too sick to move, much less join in the attack on the diligence. The military doctor and several witnesses discredited this claim: the doctor had discovered no signs of illness and many people had seen Bel-Hadj conducting his usual affairs at the period during which he had claimed to be bed-ridden. After returning to French Algeria from his hiding place in Morocco, Bel-Hadj first denied any involvement in the affair. During later interrogations, he admitted that he had sworn the oath to kill Ben-Abdallah and had done so on Doineau’s orders. He

³⁶ Delayen, 225-227.

denied, however, having participated in the attack itself. But at the trial, Bel-Hadj claimed that he could remember nothing of the evening in question; he could neither confirm nor deny his earlier statements. He complained that he was sick in mind and spirit and could remember nothing at all. After some pressing from the President of the Court, he changed his testimony again and admitted that he had sent his chacouchs to join Doineau, but that he did not go himself. He claimed to have been ignorant of what his chaouchs would be doing with Doineau. After yet more questioning, Bel-Hadj finally confessed that he had heard Captain Doineau threaten to prevent Ben-Abdallah from traveling to Oran, and he stated that Doineau had been present at the swearing of the oath to kill Ben-Abdallah.

Later in the trial, Bel-Hadj interrupted the testimony of Si-Mohammed (Doineau's khodja), to refute Si-Mohammed's statement that Doineau had been present at the oath. That is, Bel-Hadj altered his story yet again, saying that Captain Doineau had *not* been at the meeting to swear the oath. More surprising, however, was Bel-Hadj's new assertion that Doineau had played no part at all in the attack and had been completely ignorant of all the plans, and that he, Bel-Hadj, had been lying in all his previous testimonies. When the president of the court asked him why he had lied, Bel-Hadj responded that he and his co-accused had been afraid. They had hoped to pin the blame on Doineau and thereby protect themselves from punishment. When asked what motivated them to kill Ben-Abdallah, Bel-Hadj testified that they all knew that Ben-Abdallah had the power to have new caïds named. They feared that Bel-Kheïr, through Ben-Abdallah's influence, would be replaced. They had expressed this concern to Doineau, but he had told them not to

worry and to remain calm. This response had failed to provide them with adequate peace of mind, however, so they decided to take matters into their own hands. Thus, they alone had initiated and implemented the plot to kill Ben-Abdallah.³⁷

The Arabs' Case

Nearly all of the accused admitted that they had taken part in the attack.³⁸ Witnesses who testified that they had seen the oath-takers meeting together, or who claimed to have seen riders leave the city late on the night of the attack, provided corroborating reports for the details. Only one, Bel-Hadj, denied that Captain Doineau had commanded it, and only Bel-Hadj stated that the co-accused themselves had desired the death of Ben-Abdallah. The others testified that they had had no personal interest in killing Ben-Abdallah, and that they had participated in his assassination only because Doineau had ordered it. They all provided variations on the theme that they were merely following Doineau's orders, either out of fear or simple obedience. Ben-Ayad testified that initially he had refused to obey, but that Doineau had struck him across the face, insulted him, and threatened to have him removed from his position as qādī. Thus, although "repelled," Ben-Ayad reluctantly agreed to do it. Si-Mohammed, Doineau's trusted khodja who had followed him from post to post for ten years, testified that he had committed the attack because he was ordered to do it, and he was merely a simple khodja

³⁷ Delayen, 216.

³⁸ Bou Noua energetically denied his participation, and witness testimonies placing him there were weak. The court ultimately acquitted Bou Noua.

who did what he was told.³⁹ Bel-Kheïr testified that he would not have entered into any kind of agreement with the likes of Bel-Hadj, who was “nothing but a woman.” By this point, Bel-Kheïr intended to refute Bel-Hadj’s story that they had conspired together to commit the assassination, because Bel-Hadj was inferior and unworthy of working with as an equal. He, Bel-Kheïr, had participated not out of personal enmity -- he had no reason to wish Ben-Abdallah dead -- but because Doineau had ordered it. “[Doineau] commanded and I obeyed,” asserted Bel-Kheïr, and he was “not permitted to decline.”⁴⁰ Mamar never clearly expressed the reasons for his own involvement, but the remaining men were servants of or subordinate to the leaders: Doineau (if we assume he ordered the attack); Bel-Hadj; and Bel-Kheïr. Their defenses rested on their subordinate status, and the claim that they merely had followed the orders of their superiors.

There is no doubt that the accused Arabs participated in the attack. The point of debate is whether or not Doineau ordered it. The evidence remains insufficient to reach any conclusive decision about the guilt of Doineau himself, in part because we have for proof only the testimonies given at the trial and during the interrogations and some circumstantial evidence. Plausible explanations can be offered to support any of the three possibilities: that the Arabs planned and executed the attack on their own initiative, without Doineau’s knowledge, and then tried to pin the blame on him; that the Arabs

³⁹ Bel-Kheïr’s testimony offered a somewhat different impression of Si-Mohammed’s intentions, however. Bel-Kheïr said that Si-Mohammed “had a hate so profound against [Ben-Abdallah] that, if he could, he would have drunk his blood.” Bel-Kheïr explained this by noting that Si-Mohammed shared Doineau’s passions, and because Doineau hated Ben-Abdallah then Si-Mohammed did so, too. (*Process de Doineau*, 55).

⁴⁰ Delayen, 217.

planned and executed the attack on their own initiative without Doineau's prior knowledge, but after they had committed the deed, sought help and protection from him, perhaps offering payments or goods in return. Finally, the third possibility is that Doineau commanded the Arabs to kill Ben-Abdallah, and they obeyed. According to this explanation, they did so only after Doineau had threatened and coerced them. We will consider each possibility in turn.

Several possible motivations existed for Bel-Hadj and Bel-Kheïr to wish Ben-Abdallah dead. All three men were influential and powerful leaders of tribes in the region of Tlemcen. The French authorities maintained intelligence on indigenous tribal leaders, so we have some limited information about a few of the key figures involved in the Doineau Affair.⁴¹ Bel-Hadj belonged to the Ouled Riah tribe, which the report described as "perfectly devoted" to their cause. Bel Hadj's father had been a caïd (an administrative position) under the Ottomans. On 23 January 1848, Bel-Hadj was named agha (an Ottoman title that designated a military leader and, sometimes, a civil one)⁴² of the Ouled Riah, and on that date he also was named a Chevalier of the Legion of Honor. Bel-Hadj is described as brave and loyal, and the report added that he merited the goodwill of the French. Bel-Kheïr, a caïd of the Beni-Ournidi, came from one of the most influential families in the region around Tlemcen. Bel-Kheïr's family heritage gave

⁴¹ CAOM, 7H/1. The following information comes from the reports in this file. The reports are unsigned and undated.

⁴² In Algeria, the French adopted many of the Ottoman titles, and the administrative functions that accompanied them, for administering the indigenous population. The French appointed caïds and aghas who received salaries from the French government in return for their assistance in and co-operation with governing. An agha was considered one "rank" above a caïd.

him great personal influence, and in 1843 Bel Kheïr was named a caïd. The report noted that the tribes under his control feared and respected him.

Information about the murder victim, Si-Mohammed Ben-Abdallah, differs somewhat between the French intelligence report and the details provided in the court proceedings. The intelligence report referred to Ben-Abdallah as the agha of “Montagne du Sud,”⁴³ whereas in the court records he is referred to as the agha of the Beni-Snouss. The discrepancy might be reconciled by the fact, noted in both records, that he lived among the Beni-Snouss, but he was not, technically, a member of the tribe by birth. Ben-Abdallah obtained a Koranic education in Fez, and his learning combined with his family heritage and personal wisdom made him a popular and respected figure within in the region. On 1 September 1844, Ben-Abdallah was named agha, and in 1848 he became a Chevalier in the Legion of Honor. The assistance that Ben-Abdallah had provided General Bedeau during the French conflict with ‘Abd el-Kader was essential to his personal advancement among the French administration. In the 1840s when the French were planning their campaigns against ‘Abd el-Kader, Ben-Abdallah supplied General Bedeau with invaluable intelligence about the terrain and the tribal relations in his region. This information helped the French achieve their victories, and in thanks, General Bugeaud later awarded Ben-Abdallah with the position of agha and an annual salary of 3,000 francs. Since that time, the agha Ben-Abdallah consistently had demonstrated his friendship with and loyalty to the French

⁴³ CAOM 7H/1

The French military had the authority to appoint the aghas and the caïds. Ben-Abdallah, according to several accounts, enjoyed a personal relationship with General Montauban, the commanding general of the province of Oran, and the trial revealed that Ben-Abdallah had a reputation for being able to influence General Montauban into promoting or demoting indigenous leaders -- and even French officers. Ben-Abdallah was well-liked among the French and consequently enjoyed particular power. Thus, simple jealousy of Ben-Abdallah's position and influence could have supplied the necessary motivation. Furthermore, if Bel-Hadj or Bel-Kheïr had particular reasons to fear that Ben-Abdallah would use his influence to remove them from power, this more immediate concern also could supply the motivation. Bel-Hadj testified, though Bel-Kheïr denied, that it was fear (which he left unexplained) that Bel-Kheïr would lose his position as caïd that motivated the attack. Bel-Hadj himself had his own reason to fear that Ben-Abdallah might try to get him removed from power: the Affair of the Camels.

A few months before Ben-Abdallah's assassination, some spahis attached to the Arab Bureau of Sebdou had seized 104 camels belonging to the M'haja, a Moroccan tribe.⁴⁴ The M'haja caravan had been traveling through French Algerian territory, yet the tribe had not paid the proper customs taxes on the goods they were carrying. The tribe's property was seized in order to force payment of the taxes. Shortly after the seizure of the camels and goods, the tribe paid the proper taxes and the goods were returned. The camels, however, were taken to the area of Tlemcen and placed in the *agalick* (territory)

⁴⁴ Spahi were cavalry troops recruited from among indigenous populations in North Africa and commanded by a French officer. Although these spahi might have been acting under orders from a French officer, they might just as likely have been acting on their own initiative. The account provides no further information on the issue.

of Bel-Hadj. Later, the French authorities sold these camels to Bel-Hadj for 100 francs each, below market value, and Bel-Hadj then brought the camels to a market and resold them for 200 or 250 francs each. Ben-Abdallah worked tirelessly as a mediator between the French authorities and the M'haja to restore the camels to the tribe. When his efforts failed, he was angry and despondent. He felt that his prestige among the tribes and as a leader had been damaged seriously by his failure to return the camels. Although the exact reason for Ben-Abdallah's trip to Oran was unconfirmed, it was known that he planned to visit General Montauban. If Ben-Abdallah expressed his displeasure about the camels of the M'haja to his friend General Montauban, then Bel-Hadj might suffer punishment for his role in the affair. Perhaps Bel-Hadj wanted to eliminate the possibility that Montauban would learn of the camels and so decided to eliminate the person -- Ben-Abdallah -- most likely to reveal it.

Assuming that either Bel-Kheïr and Bel-Hadj wanted Ben-Abdallah's death enough to assassinate him without an order from Doineau, the next issue to consider is how they might have conspired to pin the blame on an innocent Doineau. The reason for lying about this is clear: they hoped to evade punishment if they could convince the court that Doineau had forced them to do it. During his own testimony, Doineau accused his co-accused of having conspired during their imprisonment in Oran to blame him for the attack. Doineau claimed that he had seen the prisoners congregating in the yard of the prison, speaking with each other about the affair, and he concluded that the men were "conversing to organize a plot" against him.⁴⁵ The prison officials denied that the

⁴⁵ *Procès de Doineau*, 96.

prisoners had had any opportunity to communicate with each other, asserting that the prisoners had been kept separated and isolated. Doineau insisted the officials were incorrect and that he had seen his co-accused speaking among themselves on more than one occasion. The many discrepancies among the testimonies, as well as their continuous evolution throughout the investigation process and trial, cast doubt upon the testimonies' veracity. Certainly, the co-accused lied at various points in their "confessions," despite swearing each time that they were telling the truth. It is difficult to determine at what point -- if any -- they actually did tell the truth.

Finally, it is possible that Doineau knew nothing about the attack until after it had been carried out, and that at this point the Arabs had brought him into their confidence and sought his protection. According to this reasoning, Doineau agreed to help them in return for bribes or other recompense. Indeed, that Doineau was discovered in possession of a large sum of money, the origins of which he either inadequately explained or refused to address altogether, looked suspect. (These funds will be discussed in greater detail below). In the course of the trial, it was suggested that Doineau habitually supplemented his military income with illegal or unsavory activities -- including the taking of bribes. If Doineau had taken bribes on this occasion, therefore, this would be consistent with past behavior. The behavior of the co-accused immediately after the attack also was raised during the trial. Bel-Hadj, Bel-Kheïr, and Ben-Ayad were seen openly moving throughout the city, engaged in their usual activities with apparent unconcern. Several of the accused obeyed Doineau's order to assist in the investigation of the crime scene and the search for possible suspects. Some witnesses testified that these men appeared to

enjoy the peace of mind and security that came from having a powerful and influential ally such as Doineau. The men ultimately admitted to being involved in the attack, but in the days after the crime, none of them had behaved like guilty men. This indicated to some that whether or not Doineau ordered the attack, he had promised to protect its perpetrators.

The exception was Bel-Hadj, who on 21 September had taken some of his men and fled to Morocco, abandoning all of his goods and his family in Algeria. Bel-Hadj initially claimed that he left French Algeria because he knew that he would be accused of the crime, given the accusations of Ben-Abdallah's widow. Perhaps by the 21 September, he had begun to doubt Doineau's ability to protect him from punishment.⁴⁶ When Bel-Hadj returned to the French authorities in April of 1857, he turned over several letters that Doineau had sent to him in Morocco. All of the letters implored him to return to Algeria.

The first letter was sent on 23 September, and in it Doineau promised Bel-Hadj that there was "nothing to fear" and that "nothing will happen to you. Do not preoccupy yourself with the nonsense that you have heard spoken," continued Doineau, "nonsense that has caused you to go and lose your head. . . . Have no fear. We have everything covered; we have demolished everything [nous avons démolì toutes choses]. . . . There will be no treachery between us."⁴⁷ Doineau ordered Bel Hadj to come to him the next

⁴⁶ As noted previously, one of Bel-Hadj's chaouchs testified that Bel-Hadj had fled Tlemcen to avoid the justice of General Montauban.

⁴⁷ *Process de Doineau*, 42.

morning.⁴⁸ Bel Hadj refused to return. A second letter was sent, asking him again to return to Algeria. On 26 September, Doineau sent a third letter, carried by his khodja Si-Mohammed. The letter reminded Bel-Hadj that French justice “punishes only evildoers” and that it “never condemns without proof and never listens to bad people.” Doineau’s reassurances failed to convince Bel-Hadj that he should leave the safety of Morocco. To Si-Mohammed, Bel-Hadj said, “We other Arabs, we are blind. The Captain tricked us; I will not come [so] that the evil [can] fall on me and my family, and my head will fall.”⁴⁹

Bel-Hadj eventually returned to Algeria and stood trial, but these letters cast suspicion on him (and on Captain Doineau). During the trial, another event came to light that tarnished the character of Bel-Hadj and, indirectly, Bel-Kheïr. A sheikh from the Beni Ournidi tribe testified that he had been the victim of an attempted murder. This man identified Bel-Hadj as one of his attackers, and the sheikh added that he believed that Bel-Hadj had been acting on behalf of Bel-Kheïr. It seems that the sheikh knew of some sensitive and potentially dangerous information about Bel-Kheïr, and he believed that, as a consequence, Bel-Kheïr wished to dispose of him.⁵⁰ If the testimony of this sheikh can be believed, then it establishes a history that Bel-Hadj and Bel-Kheïr were willing to assassinate those they deemed threatening.

⁴⁸ When Doineau was confronted with these words in court, he denied all responsibility. He claimed that his “rascal of a khodja [Si-Mohammed]” had inserted the phrases into the letter without his knowledge.

⁴⁹ *Process de Doineau*, 43.

⁵⁰ *Process de Doineau*, 57.

Doineau's Case

Born on 22 December 1823 in La Rochelle, Auguste-Édouard Doineau entered the military school at St. Cyr in 1842. In October 1843 he joined the 41st *Régiment d'Infanterie de Ligne* and in 1848 he joined the *Régiment de Zouaves*, achieving the rank of Captain in 1852. In July of that same year, he became a *Chevalier* of the *Légion d'Honneur*.⁵¹ By 1846, he had joined the military's division of *Affaires Arabes*, and in April 1847 he was named Chief of the Arab Bureau in Lalla-Maghrnia. In July 1852, Doineau became the Chief of the Arab Bureau in Bône, and in August 1854 he became the Chief of the Arab Bureau of Tlemcen. Doineau's 1855 *Inspection Générale* report noted that he spoke Arabic very well and wrote it a little. In his 1851 report, an added note commented on his remarkable fluency in Arabic: General Youssouf was quoted as having said that of all the officers he has known to speak Arabic, Doineau spoke it the best.⁵²

Doineau also knew a little English and German and occupied himself considerably with a study of the Algerian territory. His military skills and conduct received the highest praise; he had taken part in many "brilliant" campaigns as the head of a unit of *goums* (any troupe of irregular horsemen, either indigène or European). The author of the report considered him an "officer of the future." It was reported that Doineau also had good relations with the indigenous population in his area; he was their

⁵¹ The following biographical details, unless otherwise noted, come from Captain Doineau's military dossier. CAOM 18H/52.

⁵² CAOM 18H/52.

friend, and they respected and feared him.⁵³ His personnel reports dating back 1848 all offered the same general picture of a well-liked and highly-skilled officer whose intelligence and energy received frequent praise. In short, nothing in his extant military records indicate any problems with or complaints about his abilities or conduct, either military or personal. By all accounts, he was a very promising young officer who devoted himself to performing his job to the best of his abilities.

During his trial, Doineau claimed complete innocence. He denied knowing anything about the attack; he denied covering it up after the fact; he even denied nursing a hatred of Ben-Abdallah. For each suspicious piece of evidence raised against him, Doineau supplied a plausible, if occasionally weak or incomplete, explanation.

Nonetheless, Doineau told a consistent story and never changed his testimony throughout the investigation and the trial. His defense rested primarily upon his assertion that his co-accused were lying about his involvement in an effort to save themselves from punishment. Still, there were several suspicious and poorly-explained pieces of evidence presented at the trial that require consideration here. First, however, it is necessary to review the reasons that Doineau might have wanted Ben-Abdallah dead. Despite his claim that he was on friendly terms with Ben-Abdallah, evidence suggests that Doineau viewed him with hostility and anger.

Several individuals, including Bel-Hadj, Si-Mohammed, and Ben-Ayad testified that Doineau had nursed a violent resentment against Ben-Abdallah. Such was Doineau's hatred of the man that he spoke often of hiring someone -- "a Spaniard" -- to kill him.

⁵³ CAOM 18H/52.

The conflict between the two men traced back to Doineau's tenure as head of the Arab Bureau in Lalla-Maghrnia. Doineau had served there between April 1847 and June 1852, immediately before becoming the head the Arab Bureau at Bône (1852-1854).⁵⁴ It was at Lalla-Maghrnia that Doineau came to resent Ben-Abdallah. Doineau believed that Ben-Abdallah had deprived him of his rightful opportunity for success and glory. Ben-Abdallah, a French ally in the region, successfully had subdued some rebellious tribes before Doineau had been able to do it himself. The accolades heaped upon Ben-Abdallah as a result of his success should have belonged, Doineau believed, to himself instead.⁵⁵ Doineau's resentment of Ben-Abdallah was enflamed, according to others, when Doineau became head of the Bureau in Tlemcen (1854). Much of this was due to Ben-Abdallah's close relationship with Doineau's commanding officer, General Montauban, and his resulting ability to influence Montauban to instigate the reassignments of French officers among the Bureau offices.⁵⁶

On this issue, two members of the military, Captain Péan (then the superior commander at Lalla-Maghrnia) and Lieutenant Vérillon, head of the Arab Bureau of Sebdo, offered more details about the relationship between Doineau and Ben-Abdallah. Neither of these officers denied that Doineau disliked Ben-Abdallah, but they affirmed that Doineau claimed to have come to accept and accommodate himself to Ben-

⁵⁴ CAOM, 18H/52.

⁵⁵ Delayen, 174.

⁵⁶ Delayen, 174. In his own testimony, Montauban denied that Ben-Abdallah had particular influence over him, and he claimed that Ben-Abdallah had never complained to him about Doineau and he had been unaware of any hostility between the two men. (*Procès de Doineau*, 191).

Abdallah's influence. Captain Péan testified that self-interest had caused Doineau to decide to make peace with Ben-Abdallah: given his influence, Doineau calculated that it would be more beneficial to his own professional future to handle Ben-Abdallah with tact and amiability. Lieutenant Vérillon claimed that when he took his position as head of the Bureau in Sebdou, he sought advice from Captain Doineau about how to deal with the agha Ben-Abdallah. Doineau advised Vérillon that it is impossible to battle against Ben-Abdallah and that to do so would destroy his hopes of advancement. Instead, Doineau suggested, it would be best to agree to everything Ben-Abdallah said.⁵⁷

Both the Arab co-accused and the French officers might be misrepresenting the facts, because they arguably had motivations to do so: the co-accused because it reinforced their claims that Captain Doineau had ordered the assassination of the agha Ben-Abdallah, and the French officers because they hoped to see their colleague and friend acquitted. This third account from the General du Barail, therefore, offers a perspective from someone with less personal stake in the outcome of the trial. A French officer and a former member of the Arab Bureau, General du Barail was broken-hearted in May 1856 when he was recalled from Algeria to serve in France.⁵⁸ In 1855, before he left Algeria and a year before the crime took place, du Barail undertook an unusual task assigned to him by the Governor-General, Jacques Louis Randon. Already in Tlemcen himself, du Barail was expecting the arrival of the Governor-General. Before he reached Tlemcen, Randon wrote to du Barail with some special instructions

⁵⁷ *Process de Doineau*, 46.

⁵⁸ du Barail, *Souvenirs* II: 158.

I am going to charge you with an important mission concerning a tangled situation. We are going to find in Tlemcen two men between whom reigns a surprising animosity. With each letter, they fatigue me with recriminations and reciprocal complaints which are impossible to sort out. Visit these men; interrogate them closely. Try to get to the bottom of things and give me a report. One man is the agha Mohammed [Ben-Abdallah]; the other is the head of the *Bureau Arabe*, Captain Doineau.⁵⁹

At a formal dinner in Tlemcen, General du Barail met Captain Doineau. At the mention of the agha's name, du Barail reported, Doineau's face blackened, and Doineau exclaimed, "The agha is a thief! The agha is a traitor, and all his life he has sought to alienate [us from] the [local] population! Concerning him, there is only one choice to make: get rid of him! Against him, all means are good." The next day, General du Barail had the opportunity to meet the agha Ben-Abdallah, who the General described as aristocratic and distinguished. Du Barail added that Ben-Abdallah had been friends with the generals who had commanded Tlemcen, General [Patrice] Mac Mahon [duc de Magenta] and General Montauban, and that these men were witnesses to Ben-Abdallah's loyalty. When he brought up Doineau's name to Ben-Abdallah, du Barail wrote that the agha's face suddenly took on a strange expression of hatred mixed with fear. "Doineau," said Ben-Abdallah, "is my personal enemy." Doineau, Ben-Abdallah continued, accused him of responsibility for all the misdeeds that the neighboring Moroccan tribes committed so frequently. . . . Doineau was violent and capable of anything, and he wanted to force Ben-Abdallah to give his resignation and disappear from the region.

⁵⁹ du Barail, *Souvenirs*, II: 156. The following account comes from du Barail's memoirs, pages 157-159.

Ben-Abdallah concluded, however, by stating that he would resist doing so and would wait for better days.

Du Barail wrote that he “remained convinced that between these two men there was a ferocious personal hatred, about which neither the one nor the other wanted to reveal his secret motives” and that only an “inevitable catastrophe” would end the battle between the Frenchman, “violent and impassioned,” and the Arab, “subtle and clever.” When he finally had an opportunity to present his conclusions to Governor-General Randon, du Barail reported that Doineau and Ben-Abdallah were ferocious and irreconcilable enemies, and that he believed that not one more minute should pass with them in close proximity. General Randon responded by accusing du Barail of being pessimistic. Randon told him that he had received information from other sources as well, and these sources suggested that Doineau and the agha would learn to work together and would finish by becoming “good friends.” Needless to say, Randon failed to take du Barail’s advice seriously and did nothing to separate Doineau and Ben-Abdallah. In the year following du Barail’s report, Ben-Abdallah met his death in the coach outside Tlemcen. Du Barail’s account lends credence to the testimony of those who claimed that Doineau hated Ben-Abdallah and longed to rid himself of the agha.

Aside from any personal animosity Doineau might have felt toward Ben-Abdallah, Doineau’s involvement in the Affair of the Camels also gave him cause for concern about Ben-Abdallah’s influence with General Montauban. Doineau was directly involved, because it was to him that Ben-Abdallah had appealed on behalf of the M’haja. While the seized camels were in the possession of the French authorities, Ben-Abdallah

repeatedly visited Doineau to request either that the camels be returned to the tribe or that the tribe be compensated for their loss. At each visit from Ben-Abdallah, Doineau promised him that the camels would be returned, and he asked Ben-Abdallah to return the following day. Ben-Abdallah's many requests were ignored, however, and the camels were sold to Bel-Hadj at a price well below their market value. Bel-Hadj then resold the camels at the going rate and made a hefty profit in the process.⁶⁰ The M'haja received nothing.

Witnesses at the trial testified that when Ben-Abdallah learned about the sale of the camels, he fell into a deep depression. His failure to intervene successfully on behalf of the M'haja and to influence the Arab Bureau affirmed, he believed, his powerlessness in the region.⁶¹ Claiming that his situation in Algeria was intolerable, Ben-Abdallah professed that he would prefer to live in France or Mecca rather than to remain in Algeria where "these people have nothing but bad intentions for me."⁶² After three days of extreme distress, during which he refused to eat, he decided to travel to Oran to complain about Captain Doineau's conduct directly to General Montauban. The reason Ben-Abdallah gave publicly for his trip was that he was going to attend the races at Mostaganem, but it was widely believed that his real reason for traveling to Oran was to

⁶⁰ Bel Hadj testified that he handed this profit to the Arab Bureau; Doineau claimed to be astonished by this statement. (*Procès de Doineau*, 89).

⁶¹ In his testimony, Doineau said that the only regret Ben-Abdallah had was that the French had not sold him any of the camels, suggesting that any distress Ben-Abdallah suffered was caused by a missed opportunity for personal profit. Moreover, Doineau denied that Ben-Adallah had complained to him about the sale of the camels, because Ben-Abdallah knew such things were outside of Doineau's power. (*Procès de Doineau*, 87-88).

⁶² Delayen, 182.

meet with General Montauban. If Doineau feared that his role in the Affair of the Camels might result in punishment, and if he believed that Ben-Abdallah would inform Montauban about the incident, then Ben-Abdallah's untimely death appears convenient for Doineau. In his testimony, however, Doineau claimed to have been following Montauban's orders regarding the sale of the camels, and therefore he had nothing to fear from Ben-Abdallah's visit to the General who already knew about and authorized his actions.⁶³

Throughout the trial, Doineau presented himself as a victim of his lying co-accused, who sought only to save their own necks by pinning the blame on him. According to Doineau, the discrepancies among the testimonies, as well as the ever-changing contents these testimonies, gave proof of their falseness. He denied those who claimed that he wanted Ben-Abdallah dead, and he asserted that it would have been impossible for him to have conducted such an attack without any other witnesses. Indeed, outside the co-accused, no other witnesses offered testimony that established Doineau's involvement in the crime. On the night of the attack, Doineau testified that he had spent the evening with friends, among whom was Captain Péan, the superior commander of Lalla-Maghrnia. After a walk around the city with these friends, Doineau and Captain Péan returned to Doineau's home at 11:00 in the evening. Captain Péan spent the night there, staying in a room directly across from Doineau's bedroom. When Doctor Lenepveu arrived at Doineau's residence at 5:00 in the morning after the attack on

⁶³ *Procès de Doineau*, 89. In his testimony, Montauban admitted that he had authorized the seizure and sale of the camels belonging to the M'haja tribe as restitution for thefts and murders they had committed on the French. Montauban objected, however, to the process by which Doineau conducted the sale. (*Procès de Doineau*, 195).

the coach, Lenepveu found Doineau asleep in his bedroom. Captain Doineau swore that he had been there all night, and Captain Péan testified that he had not witnessed or heard Captain Doineau leaving after they both had retired for the evening and that, given the proximity of their rooms, it would not have been possible for him to be unaware of Doineau's departure.

No specific evidence or additional eyewitnesses tied Doineau to the crime, but several suspicious issues cast doubt on his innocence. One was the content of the letters Doineau had sent to Bel-Hadj while Bel-Hadj was in Morocco. Doineau's reassurances that he had taken care of everything and that Bel-Hadj had nothing to fear from returning to Algeria raised questions about what Doineau intended. Doineau's defense was that he had not written those phrases, and that his khodja Si-Mohammed had inserted them into the letter without his knowledge. Another questionable occurrence was the discovery in the coach of a letter from Doineau to General Montauban. As proof of his positive relations with Ben-Abdallah, Doineau testified that he had given Ben-Abdallah a personal letter to carry to Montauban, and that this was the letter. Immediately after the crime, the commissioner of police had searched the coach, but he had discovered no such letter. The next day, however, after the coach had resumed its usual business, the driver stopped at Aïn-Temouchen and conducted the search of the coach he customarily made at the conclusion of a journey. During this search, the driver found the letter behind the cushions in the place at which Ben-Abdallah had been sitting. The implication was that Doineau, during his own search of the coach, had planted the letter there after the

commissioner of police had left. Doineau denied this and maintained that the letter had been in the coach the entire time.

A more troubling act was Doineau's burning of the account books of his Bureau. During the trial, it was revealed that a few days before he left Tlemcen at the beginning of October to go to Oran and assume his new assignment there, Doineau had burned a collection of his office papers and registers. These records were supposed to indicate the amount and types of goods seized and fines extracted by the Arab Bureau from the local tribes. Doineau explained that the reason for this was "very simple:" when he was ordered to leave Tlemcen and report to Oran, he had to turn over important documents to the officer replacing him in Tlemcen. This occasioned him to sort out his papers, "throwing on the fire those that were not useful."⁶⁴ The President of the Court questioned Doineau closely about the amounts, sources, and records of the sums collected from the tribes, but Doineau was dismissive and vague in reply, suggesting that careful records were not maintained and receipts were not given, because such practices were not how "one proceeds among us."⁶⁵ Nothing was resolved in this discussion, but the interchange left the court with the impression that Doineau was hiding his fiscal misdeeds by destroying the evidence.

Further questions about Doineau's character arose regarding the practice of summary executions. The President of the Court questioned Doineau about an earlier event when two indigènes attacked a French sergeant in the region of Aïn Temouchen.

⁶⁴ *Process de Doineau*, 71.

⁶⁵ *Procès de Doineau*, 73.

The guilty men were caught and brought before Doineau, who ordered their immediate execution. Doineau claimed that he had followed the orders of his commanding officers to “*faire disparaître*” the two men, which Doineau explained meant shooting them, “as must be [done to] all those who assassinate our soldiers.”⁶⁶ This raised the question of military policy toward the indigenous population, and whether or not “executions” were standard military procedure. It also presented Doineau as habituated to murdering members of the local population. General Montauban testified that, sometimes, executions were “among the necessities of our craft,” and he gave the example of the need to kill important prisoners who attempted to escape. He denied, however, that the military conducted other executions of those under their power.⁶⁷ In his *plaidoirie*, the attorney Jules Favre explicitly drew connections among these events, declaring that prisoners were sacred, and that military officers should not have the power of life and death over them. “What do we conclude?” asked Favre. “That you [the military] authorized the assassination [of Ben-Abdallah].”⁶⁸

The most damning piece of evidence, however, was Doineau’s possession of about 38,000 francs, the precise origins of which he refused to explain. During his confession, Si-Mohammed informed investigators that Doineau had given him a box to hide. He later led the investigators to the hiding place under the tiles of his floor, where they found a box which contained about 17,000 francs in gold pieces. Si-Mohammed

⁶⁶ *Procès de Doineau*, 84-85.

⁶⁷ *Procès de Doineau*, 196.

⁶⁸ Delayen, 269.

explained that, shortly before his arrest, Doineau had given him this box and asked him to hide it until after the “affair” had “calmed down.”⁶⁹ Doineau denied that he had asked Si-Mohammed to hide it, saying that he simply had asked Si-Mohammed to hold it for him. On 18 October, in Oran, the spahi Boukra was arrested and his house was searched. In Boukra’s house the investigators found a packet addressed to Doineau’s brother. The packet contained francs and treasury notes which together valued about 21,000 francs. Doineau explained that he had asked Boukra to mail the packet, not hold onto it, and noted that the address on the outside of the packet was that of his brother, for whom the packet was intended.

The 38,000 francs well exceeded the means of an officer of Doineau’s rank. The military itself indicated concern about the origins of this large sum of money, and commanding officers asked subordinates to investigate the matter. In a letter to the commanding general of Oran dated 24 October 1856, the Procureur Impériale stated that he believed the money did not originate from Doineau’s salary and that, therefore, it was important to clarify the rules regarding the ability of the officers of the Arab Bureau to levy and collect fines from indigenous leaders.⁷⁰ Since it was thought impossible that Doineau could have accumulated this amount through honest measures, it was believed that he must have acquired it through corruption or extortion.

In his defense, Doineau explained that some of the money derived from the sale of some furniture, and some of the money he had won at the races. He denied that he

⁶⁹ *Procès de Doineau*, 79.

⁷⁰ CAOM, 18H/52.

required large sums of money for gambling debts and for jewelry for his mistress, as the court suggested during the trial.⁷¹ As for the source of most of the remaining funds, however, he refused to provide any further explanation and stated that it related to a private and intimate matter that he had promised not to discuss. Evidence arose at the trial that some of the money could have originated from an inheritance, but Doineau refused to elaborate on this. His honor, he claimed, prevented him from revealing anything more than that which he had already explained. Moreover, Doineau asserted that there did not appear to him to be a “relation between the crime that one imputes to [him] and the possession of this sum.”⁷² This stubborn refusal to provide an adequate explanation for the money hurt Doineau’s image; to the court audience, he appeared arrogant and disdainful.

The trial proceedings as well as local gossip proposed several theories about the source of the money. One held that Bel-Hadj and Bel-Kheïr had bribed him for protection. They had committed the murder on their own initiative but sought Doineau’s help afterwards. In return for his promise to shield them from punishment, Bel-Hadj and Bel-Kheïr paid him this money. Another explanation proposed that Doineau habitually raided, confiscated, and sold for his own profit the contents of the *silos sauvages*.⁷³ Finally, the money was seen as evidence of the routine corruption and exploitation Doineau exercised. How else would he have acquired this money if not through illegal

⁷¹ *Procéss de Doineau*, 76.

⁷² *Procés de Doineau*, 80.

⁷³ These *silos sauvages* were subterranean storage depots in which indigenous tribes hid their grains and goods.

and abusive acts? The mysterious origins of this money cast a shadow over Captain Doineau and his character.

In 1904, Doineau explained to Gaston Delayen, the author of a short book about the trial, his own interpretation of the events. Doineau told Delayen that he had been the “unknowing victim” of General Montauban, who he accused of having taken illegal gifts from Ben-Abdallah.⁷⁴ To disguise his own misdeeds lest a careful investigation of Ben-Abdallah reveal them, Montauban coerced the imprisoned Arabs to accuse Doineau of masterminding the plot to assassinate Ben-Abdallah. In his statements at the trial, Doineau noted that the confessions of his co-accused began only after General Montauban had visited them at the prison in Oran. A personal motivation for Montauban’s victimization of Doineau might also have originated from unexplained observations du Barail made in his memoir. General du Barail wrote that he believed that Doineau was innocent, a victim of “our civil discord” and, perhaps, of the mutual hatred that existed between the wives of the two commanding officers, “the one in Tlemcen, the other in Oran.”⁷⁵ What he meant by this enigmatic statement, du Barail did not explain. It is not even clear precisely which officers he means -- Doineau was unmarried at the time -- but a few of the officers in the Division had been shuffled around several times

⁷⁴ Delayen, 27. Delayen published his account of the Doineau trial in 1924, in accordance with Doineau’s request. A condition of Napoleon III’s pardon of Doineau was that Doineau never speak or write about the trial as long as he lived, and so Delayen’s book could not be published until after Doineau died. Delayen wrote that he met with Doineau several times in 1904. The 1924 book reflected the information Delayen gleaned from these interviews as well as some of his own, though limited, research. Most of the book contains excerpts from the published trial proceedings.

⁷⁵ du Barail, *Souvenirs*, II: 160-161.

among neighboring posts: Oran, Tlemcen, and Mostaganem.⁷⁶ The “mutual hatred” of the wives might have developed from personal relationships developed or damaged in this small, probably claustrophobic world of French officers and their families living on the frontier of the Algerian colony.

Doineau also informed Delayen that the trial’s outcome had been negatively influenced by the antagonistic relationship between the civil and the military powers in Algeria. Doineau explained that the civil powers viewed “with irritation” the monopoly on power that the military enjoyed in the new colony. The civil powers wanted to decrease the military’s power, but they believed it would be dangerous to attack without proof a commander of a province. The subordinates, however, were “fair game;” hence, his own victimization.⁷⁷

The Defense, the Verdict, and the Appeal

The Paris attorney Henri Nogent Saint-Laurens defended Captain Doineau in the trial. Nogent Saint-Laurens, among the most celebrated attorneys of his time, began his illustrious career with his successful 1846 defense of Doctor Henri Conneau, the friend and lifelong physician of Napoleon III. Conneau was charged with assisting Louis

⁷⁶ Du Barail does not name the commanders, but he most likely is referring to General Montauban and General Charles Marie Napoléon de Beaufort d’Hautpoul, the commanding general at the subdivision of Mostaganem. Aimable-Jean-Jacques Pélissier had served as the commanding general in the division of Oran for several years until 1855 when he was sent to the Crimea. Between 1849 and 1855 when Pélissier left Algeria, de Beaufort d’Hautpoul served as Pélissier’s chef d’état-major in Oran. With the departure of Pélissier, Montauban was promoted from the commanding general of the Mostaganem subdivision to assume Pélissier’s divisional command in Oran. Consequently, de Beaufort d’Hautpoul was promoted to commanding general at Mostaganem

⁷⁷ Delayen, 29.

Napoleon escape from prison in Ham.⁷⁸ Nogent Saint-Laurens won his case, and won for himself both public acclaim and Louis Napoleon's gratitude and respect. A letter to the *Revue de l'Empire* praised Nogent Saint-Laurens, observing that his talent was "incontestable" and that his "eloquence is powerful, because it is that of an honest man."⁷⁹ His reputation as a talented and persuasive lawyer earned him jobs defending many literary figures, including Prosper Mérimée and Alexandre Dumas. In 1867, Nogent Saint-Laurens' personal friend, the composer Hector Berlioz, wrote in a letter to a friend that the Emperor [Napoleon III] had "much affection [and] esteem" for the "celebrated" Nogent-Laurens.⁸⁰

Nogent Saint-Laurens brought his talents to Algeria for the trial of Captain Doineau. He based his defense on pointing out the weakness of the prosecution's case and the many reversals in and inconsistencies of the testimonies of his co-accused. After six months of investigations, the prosecution, Nogent Saint-Laurens observed, still had only hypotheses and no real evidence. Moreover, the investigation relied not on the testimonies of eye witnesses but on the "egoism, perfidy, and instincts of self-

⁷⁸ Louis Napoleon did escape from the prison due in no small part to Doctor Conneau's delaying of the guards' detection of Louis Napoleon's absence. Nogent Saint-Laurens was able to win the case by arguing that to be guilty of aiding in the escape, Doctor Conneau would have had to know about it and help prepare for it in advance. Instead, Doctor Conneau only tried to hide the escape after it had already happened. On this argument, the judges ruled that Doctor Conneau was guilty only of covering up the escape, not planning it, and he was sentenced to only three months' imprisonment. (Eugène de Mirecourt, *Nogent Saint-Laurens* [Paris: chez l'auteur, 1858], 64-65).

⁷⁹ Mirecourt, *Nogent Saint-Laurens*, 66.

⁸⁰ Letter dated Sunday, July 28, 1867 in *Private Letters to M. Humbert Ferrand*, pref. Charles Gounod, H., volume II of two volume *Life and Letters of Berlioz*, trans. Mainwaring Dunston (London: Remington and Co., 1882), II: 313. Digitized by Google books, accessed 1/5/2010.

preservation of his co-accused.”⁸¹ He declared the death of Ben-Abdallah a crime of “Arab morals.” In the frontier region, he explained, such assassinations were common. Ben-Abdallah already had suffered a previous attempted assassination. The most recent one, of which Doineau was accused, merely succeeded where the other had failed. The murder was a “crime of vengeance” [committed by the Arabs] against a feared and haughty man [Ben-Abdallah] of insatiable ambition.⁸²

To these arguments, Nogent Saint-Laurens added a defense of Doineau’s character and professional performance. Doineau, he said, was an officer of “courage and honor,” who possessed an excellent military record.⁸³ Moreover, if Doineau had been in the practice of inflicting unjust fines upon the local population, then during the six months since his arrest and removal from his post in Tlemcen, people would have come to the office of the Arab Bureau to seek amends for the fines. Nogent Saint-Laurens noted that not a single person had come forth, thus testifying to the honorable methods Doineau employed in his command.⁸⁴ As for the accusation of summary executions and brutality, Nogent Saint-Laurens pointed out that they were irrelevant to the case at hand and that to be able to render judgment on these issues, it would be necessary to have the full records and all the evidence surrounding the particular events. He did allow, however, that along the Moroccan border, the military often had to behave harshly. A perpetual state of war

⁸¹ *Process du Doineau*, 354; 365

⁸² *Process du Doineau*, 352. Records from Doineau’s dossier support this claim. See CAOM, 18H/52.

⁸³ *Process du Doineau*, 354; 365.

⁸⁴ *Process du Doineau*, 362.

existed in the border region, and the military, confronted with the harsh and brutal tactics of its adversaries, needed to respond with absolute strength.⁸⁵ Finally, Nogent Saint-Laurens emphasized the witness testimonies that had denied that Doineau and Ben-Abdallah shared a mutual enmity, suggesting that, in fact, Doineau enjoyed a positive relationship with him.⁸⁶ All in all, on each point of the prosecution's case, Nogent Saint-Laurens indicated inconsistency, inaccuracy, or irrelevancy.

Despite the skillful arguments of Nogent Saint-Laurens, Doineau was found guilty and condemned to death. Most of the others also were found guilty, and their sentences were as follows:

Si-Mohammed Sidi-Ahmed, Doineau's khodja, was condemned to forced labor for life.

Bel-Hadj, Bel-Kheïr, and Mamar were condemned to twenty years' forced labor. El-Yamani, Hamida, Bou Médine, El-Miloud ould Ahmed, Abd el-Kader Bel Hadj, and Ben-Merzouk were condemned to five years' forced labor.

Additionally, all of the condemned had to pay 15,000 francs to the widow of Hamadi, 50,000 francs to the widow of Vallette, 100 francs to the widow of Ben-Abdallah, and 1500 francs to the owner of the coach. Both Doineau and Bel-Hadj were stripped of their crosses of the Legion of Honor. The following defendants were acquitted and set free: the khalifa Bou Naoua, the qādī Ben-Ayad, the spahi Boukra, Sliman Ben-Aïssa, Barka, and El-Miloud Ben-Amer.

⁸⁵ *Process du Doineau*, 359-360. He specified the numerous assassinations and thefts the tribes committed in French territory.

⁸⁶ *Process du Doineau*, 367. Beyond the witnesses in the trial, the only source that addressed the issue of the alleged feud between Doineau and Ben-Abdallah was General du Barail. As we have seen, he concluded, based on his own observations, that the two men were powerful enemies.

In October 1857, the Superior Court in Algiers met to consider the appeals from the Doineau trial. After one day of deliberation, the Court rejected the appeals, but the sentences were reduced: Captain Doineau's death sentence was commuted to a lifetime of forced labor; Sidi-Ahmed's sentence was reduced from forced labor for life to twenty years; the sentences of Bel-Kheïr and Mamar were reduced to ten years of forced labor. All the rest were sentenced to imprisonment for three years.

Doineau, sent first to Toulon, was to be shipped to Guyana, but on the day of his scheduled departure, curiously, the key to his cell was lost. As a consequence, he missed the boat to Guyana. Doineau then was transferred to Bordeaux to await later transport to a prison near Algiers. Throughout this period, Doineau's friends were working to obtain an audience with the Emperor to plead for clemency on his behalf. Through the efforts of influential and well-placed people close to Napoleon III, Doineau's brother, Captain Louis Doineau, had a private meeting with the Emperor during which he explained that his brother had been the victim of an antagonism between the civil and military governments and of a coalition of indigenous chiefs. The Emperor expressed sympathy but stated that justice had been pronounced; still, he agreed to consider the request.

A few days later, Napoleon arranged another meeting with Louis Doineau. Napoleon III had made some inquiries of his own, and he agreed to grant clemency to Doineau on two conditions: first, that Doineau stay out of France for ten years, and second, that for the rest of his life, Doineau would say nothing about the crime and his conviction. Louis agreed on his brother's behalf, and Doineau was transported to the border of Spain and set free. .

Conclusion

As the proceedings of the trial revealed, the accused Arab leaders were not simply passive recipients of French justice. The testimonies reflect their efforts to negotiate the system of French justice and the French administrative structure to further their own self-interest. As participants in the murder of Ben Abdallah, they chose a path that they believed would advance or protect their own positions, either because they expected to benefit from the elimination of Ben Abdallah and his influence or because they wanted to satisfy Doineau's commands. They might have been motivated by both interests. Throughout the course of the investigation and trial, the testimonies metamorphosed several times. This suggests efforts to manipulate French justice, despite the possibility that it was the Arabs' first direct experience with the operation of French civil law.

If, as we have seen, the Arab Bureau officers employed judicial procedures that closely resembled existing traditions and customs, then the lengthy and formal civil proceedings of the Doineau trial, with numerous witness testimonies and a panel of judges, marked a significant departure from local practice. Despite this, as the testimonies shifted, the Arab co-accused came to fashion an explanation of the crime that conformed to the negative image the civilian authorities held of the Arab Bureau: Doineau as abusive, authoritarian, and corrupt. Doineau suggested in his testimony that General Montauban secretly ordered the Arabs to give this version of events and accuse him of ordering the crime, but we cannot determine the truth of this. What we do have is the final testimony of the co-accused, most of whom swore that Doineau had forced them to commit the murder. This line of argument was the one most likely to earn sympathy, if

not leniency, from the civilian judges. If the Arabs decided to give this account without having been told to do so, then their actions testify to a clever manipulation of the existing tensions within the French administration. Finally, each of the Arab leaders appeared to have had valid personal reasons for wanting Ben-Abdallah dead, and his murder demonstrates the continuing power struggles among the indigenous tribal leaders as they competed with each other to earn favors and power from the French administration.

The trial also suggests the complexity of the relationships among the groups in Algeria: the military, the civilian, and the indigenous. According to Doineau, Montauban encouraged the Arabs to accuse him of the assassination to avoid a careful investigation of it. Montauban, alleged Doineau, had his own misdeeds to keep secret and feared an investigation might bring them to light. We cannot know for sure if this were true, but it -- or other reasons -- might have motivated Montauban to pin the crime on Doineau. In the early stages of the investigation, Montauban appeared suspicious of Doineau, and he launched a personal investigation in Tlemcen to follow up on Doineau's efforts. Finally, the civilian court convicted him, which suggested to many within the military, including General du Barail, that the court was biased against Doineau, an officer of the Arab Bureau. The sentence was striking in its severity: Doineau was condemned to death, the only one of the accused given such a sentence. Finally, we see also how power and influence was shared between "conqueror" and "conquered." The tribal leader Ben-Abdallah enjoyed a close personal friendship with General Montauban, the commanding general of the Division of Oran. Doineau and his Arab co-accused confirmed the

influence that Ben-Abdallah had with General Montauban, and the power he had to affect Montauban's administrative decisions, such as the postings of French officers and the positions awarded to tribal leaders. Doineau, as a French officer, felt a particular sting at the indignity that the agha exercised more influence over the French military command than he did.

In his memoirs, General du Barail wrote that he believed that there were considerable advantages to knowing the language and following the customs of the "vanquished race," as the French did in Algeria and as the Romans and Russians did. This method was preferable, asserted du Barail, to the British method of rule which maintained an "abyss" between themselves and the locals.⁸⁷ Captain Doineau appears to have adopted local practices to the extent that he had integrated himself into the local power struggles and rivalries. Whether or not Doineau ordered the assassination of Ben-Abdallah, his Arab co-accused also had reasons to want Ben-Abdallah eliminated. Both sides stood to gain from the elimination of the influential and powerful Ben-Abdallah. The individuals who benefitted from the Affair of the Camels were local leaders on good terms with Doineau. The friendship between General Montauban and Ben-Abdallah is evidence of close personal ties between the French administration and the tribal elites.

The famous republican attorney Jules Favre traveled from Paris to Oran to participate in the Doineau trial. Favre defended Bel-Hadj, and his compelling *plaidoire* helped to create the Bureau's negative image.⁸⁸ Favre accused Doineau of corruption,

⁸⁷ du Barail, *Souvenirs*, I: 73.

⁸⁸ Favre also represented the qādī Ben-Ayad who was acquitted.

using as evidence the unexplained cache of money and the destruction of the account books. From another perspective, however, such “evidence” could indicate that Doineau simply had adopted local practices of gift-giving. As noted in previous chapters, local custom valued maintaining social harmony, and included in that was the bestowing of gifts and favors on friends and family. In addition, Favre asserted during the trial that the military exhibited brutal and tyrannical rule when it immediately executed Arab prisoners who attempted to escape from French custody. An alternative explanation is that the military officers were administering immediate on-the-spot punishment, according to local practice, for the crime of attempting to escape. Doineau’s conviction by the civilian court in Oran can be interpreted as the victory of French law over the legitimacy of local traditions and practices.

Favre focused entirely on the broader alleged crimes of the Arab Bureau and the military administration rather than on the actions of his clients. Their innocence or guilt, it would seem, mattered less to Favre than the guilt of the Arab Bureau. The publicity the trial received in the press ensured that the literate public would be informed about the trial’s events. By attacking the character and integrity of Captain Doineau, asserting that he was corrupt and violent, Favre used the trial as a platform for attacking the institution of the Arab Bureau and the very existence of the military administration in Algeria. The arguments Favre employed at the Doineau trial presaged the arguments he later would make in the Legislative Assembly in which he attacked the military’s control in Algeria. They also echoed the arguments made by other critics of the military administration. These attacks, combined with the negative image of the military that the Doineau Trial

publicized, influenced Napoleon III to eliminate the office of Governor-General in 1858. The military no longer directed the colony. In its place, Napoleon created the civilian-controlled Ministry of Algeria and the Colonies to govern Algeria. The short and long term implications of the anti-military arguments advocated by Favre and other civilian leaders will be explored in the next chapter.

Summary of individuals associated with the Doineau Trial

The Victims

Si-Mohammed-ben-Abdallah (“Ben-Abdallah”), the agha of the Beni-Snous tribe (or agha of the “Montagne du Dud”). Court records refer to him as the agha of the Beni-Snous. French intelligence reports refer to him as the agha of the Montagne du Sud.

Hamadi Ben Cheuk (“Hamadi”), the interpreter for Ben-Abdallah

Valette, a European businessman living in Algiers. Valette was a passenger in the coach at the time of the attack.

The Accused

1.) Captain Auguste-Édouard DOINEAU, French captain in the 3^e Zouaves; head of the Arab Bureau office in Tlemcen

VERDICT: guilty; condemned to death

The below individuals were associated with Captain Doineau:

1a.) SI-MOHAMMED ould Sidi Ahmed, khodja for Captain Doineau

Si-Mohammed had been in Doineau’s service for ten years, moving with him throughout Algeria as Doineau’s assignments changed. Sidi-Ahmed was not an official part of the Arab Bureau, but he was Doineau’s trusted intimate assistant and personal secretary, enjoying favors and benefits as a result.

VERDICT: guilty; condemned to hard labor for life

1b.) Barka, the domestic servant of Si-Mohammed. He often is referred to in the documents as his “Negro” or “the Negro.”

VERDICT: not guilty; set free

1c.) Abd el Kader BOUKRA Si-Mohammed, a spahi brigadier

VERDICT: not guilty; set free

2.) Mohammed-BEL-HADJ-Ould-Kadour-ould-M’rah, agha of the Ouled-Riah tribe

VERDICT: guilty; 20 years’ forced labor

The below individuals were residents of the agalik of Bel Hadj and were associated with him:

2a.) HAMIDA Ould Djelloul, chaouch of Bel Hadj
VERDICT: guilty; five years' forced labor

2b.) EL-YAMANI Ben Drali, chaouch of Bel Hadj
VERDICT: guilty; five years' forced labor

2c.) Ayed Ould-Treki, chaouch of Bel Hadj
Ayed Ould-Treki remained in Morocco after the crime and was not tried.

2d.) Kaddour BOU MÉDINE, in the service of Bel Hadj
VERDICT: guilty; 5 years' forced labor

2e.) El Miloud Ould-Ahmed, chaouch of Bel Hadj
VERDICT: guilty; 5 years' forced labor

2f.) El Miloud BEN-AMER, in the service of Bel Hadj
VERDICT: not guilty; set free

2g.) Ahmed-ben-Daudi-BEN-AYAD, a qadi of the Djebel of Tlemcen and associated with Bel Hadj.
VERDICT: not guilty; set free

3.) BEL-KHEÏR Ould-Ahmed Ben-Aïssa, caïd of the Beni-Ournidi
VERDICT: guilty; 20 years' forced labor

3a.) Abd el-Kader Ould-Ben-Hadj, chaouch of Bel-Kheïr
VERDICT: guilty; five years' forced labor

3b.) Ben-Merzouk, chaouch of Bel-Kheïr
VERDICT: guilty; five years' forced labor

4.) MAMAR Ould-Moktar, born among the Beni-Ournidi
VERDICT: guilty; 20 years' forced labor

5.) BOU NOUA Ben-Djebaa, khalifa of the agha of the Ghossels

VERDICT: not guilty; set free

5a.) Slimann Ben-Aïssa, the *porte-fusil* of Bou Noua

VERDICT: not guilty; set free

The Attorneys:

Henri-Edme-Jean-Joseph-Jules Nogent-Saint-Laurens (1814-1882)⁸⁹

Defense attorney for Captain Doineau; member of the Paris bar.

Jules Favre (1809-1880), defense attorney for Bel-Hadj and for another of the accused, Ahmed-Ben-Daudi-Ben-Ayad; member of the Paris bar.

Davet of Oran, defense attorney for Kaddour bou Medine; El-Miloud Ben-Amer

Bariat, of Oran, defense attorney for Hamida

Renaud le Bon of Oran, defense attorney for El-Yamani; El-Miloud Ould-Ahmed; Mamar

Dieuzaide of Oran, attorney for Bel-Kheïr; Abd el-Kader Ould-Ben-Hadj

Gechter of Algiers, attorney for Sidi-Ahmed and Barka.

Delagrance, attorney for Bou Noua, member of Oran bar.

Henri Didier, attorney for the family of Monsieur Valette

Jacques of Oran, attorney for the widow of Ben-Abdallah

Sauzede attorney for the family of Hamadi

Bilhard-Feurier, attorney for Abd-el-Kader Boukra

Grevy, attorney for Ahmed-ben-Daoudi-ben-Ayed

Additional:

Charles-Guillaume-Marie-Apollinaire-Antoine Cousin de Montauban, comte de Pelikao (1796-1878), Divisional Commander of Oran (January 1855 - November 1857).

Lenepveu, a civilian doctor living in Tlemcen and a passenger in the coach

Geoffroy, a soldier in the engineering corps and a passenger in the coach

⁸⁹ Dossiers de Proposition de Légion d'Honneur, 1852-1870: http://www.archivesnationales.culture.gouv.fr/chan/chan/fonds/edi/sm/sm_pdf/F70%20115-119.pdf, accessed 2/1/2008.

Pietra Mercader, the widow of Ximenez (referred to in the documents as the “widow Ximenez”), a resident of Tlemcen and a passenger in the coach.

Joseph Aldegeur, one of two “postilions” (horse-drivers) on the coach

Vincent Marchal, the second of the two postilions

Damieu Mendès, the driver of the coach

Chapter Five: Aftermath of the Doineau Affair

Introduction

By the end of the 1850s, the future of the Algerian colony appeared more secure as French control expanded and solidified. The submission of Kabylia in 1857 removed the last major obstacle to France's domination. Colonization rates had been increasing over the previous decade. The French government shifted its focus from conquest to the form and structure of the colony's administration. The trial of Captain Doineau occurred at an important point in the debates about the colony's government, and it became a flashpoint in the struggle between the civilians and the military for control of the colony. The negative publicity the military suffered as a result of the trial increased the pressure on Napoleon III to switch control of Algeria to a purely civilian administration. The trial had rallied the colons and the republicans to a common cause: the end of the military administration. On 24 June 1858, Napoleon III acquiesced to these demands and removed administrative power from the military authorities. He created the civilian Ministry of Algeria and the Colonies and appointed his cousin, Prince Napoléon Joseph Charles Paul Bonaparte, commonly referred to as Prince Napoléon or "Plon-Plon," as its Minister.¹ The military administration now had to report directly to Prince Napoléon and his new Ministry, and it lost the ability to make autonomous decisions. With a few

¹ Prince Napoléon was the son of Jérôme Bonaparte, who was the King of Westphalia, and the youngest brother of Napoléon I.

strokes of the Emperor's pen, the military lost control of Algeria, and the "*regime du sabre*" ended.

In 1860, after a short visit to Algeria, Napoleon III transferred control back to the military, undoing the administrative changes he had made only two years before. The two-year civilian control highlighted the difference in administrative policies between the military and civilian administrations, particularly on the issue of land ownership. This chapter will explore the issues highlighted by the Doineau Trial and taken up by the civilian advocates in their attacks on the military administration. The chapter also will consider briefly the legislative changes in land policy during the 1860s in Algeria. Although the military regained control of the colony in 1860 and retained it until 1871, its powers never equalled what they had been previously. The 1860s were a period of decline for the military administration, which was unable to reverse the changes the civilian government implemented between 1858-1860.

Jules Favre: the *Plaidoirie*

Born in 1809 in Lyon, France, Jules Favre became an outspoken advocate for republican ideals. During the revolution of 1830, he openly declared himself a republican, and after the Revolution of 1848 he was elected to the Constituent Assembly as a deputy for Lyon. After the coup of 2 December 1851 in which Napoléon declared himself president for life, Favre participated in efforts to organize an armed resistance to

the new government.² After these efforts failed, he left public life and concentrated on his legal career.

In this, Favre was not alone. Many republican lawyer-politicians also left politics in protest against what they perceived as Napoleon III's anti-republicanism. In its turn, the administration of Napoleon III viewed the Palais de Justice, with its reputation for liberalism, as a "viper's nest of republican dissidence."³ On 17 February 1852, Napoleon III issued a decree that restricted freedom of the press. The new emperor wanted to make the newspapers the mouthpiece of the government. Opposition papers were censored and terrorized into submission. Only newspapers that supported the government were permitted to publish, and the editors of opposition papers were jailed or exiled.⁴ Under this heavy censorship, those who opposed Napoleon III had few ways to express their position. Consequently, many lawyers used their *plaidoiries* to criticize him indirectly. In this context, it is easy to understand why Jules Favre, ardent republican and opponent of Napoleon III, would want to defend two Arabs in the distant Algerian colony. The opportunity to attack the French military and the Emperor seen as its champion probably appeared too tempting to forego.

² Favre continued to resist the government of Napoleon III. As an elected member of the Chamber of Deputies, he became part of the republican "Group of Five" that included Louis Hémon, Alfred Darimon, Emile Ollivier, and Ernest Picard. (Pierre Antoine Perrod, Jules Favre, avocat de la liberté [Lyon, France: La Manufacture, 1988], 210).

³ Philip Nord, *The Republican Moment* (Cambridge, MA: Harvard University Press, 1995), 116.

⁴ Some of these exiled editors went to Algeria, where they began their own pro-republican papers.

The French historian and attorney Pierre de la Gorce described Jules Favre's plaidoirie⁵ in the Doineau Trial as an un pitying indictment of the institution of the Arab Bureau.⁶ Favre proclaimed that

if all the *Bureaux Arabes* must be judged by that [of the Bureau] of Tlemcen, it is necessary to hasten to suppress or reform them profoundly. Because what does this [trial] reveal? It is that the darkness of command exercises itself without limit, without rule, without control. The system in Tlemcen was so vicious, carried to such abuse, that in the case of Captain Doineau, pillage was organized.⁷

The pillage Favre referred to was the improper confiscation of the population's goods, such as the camels Doineau had seized. The mysterious origins of the 38,000 francs appeared to provide evidence of Doineau's questionable behavior. Favre described Doineau as a "sultan" and a "master" before whom all trembled and who exercised an absolute sovereign authority -- including over the lives of the men in his power.⁸ As evidence of the casual way Doineau committed murder, Favre pointed to the treatment which the military -- including Doineau -- gave its prisoners. As the trial revealed, the military's policy was to kill on the spot any prisoners caught trying to escape. The spahis guarding these prisoners should not have the power of life and death over them, Favre argued, and for the military to authorize immediate capital punishment for attempted

⁵ As a reminder, Jules Favre defended two of the accused Arabs: Bel-Hadj (found guilty and sentenced to twenty years' forced labor) and Ben-Ayad (found not guilty & set free).

⁶ Pierre de la Gorce, as quoted in Pierre Jacomet, *Avocats républicaines du Second Empire* (Paris: Éditions Denoël et Steele, 1933), 47.

⁷ Gaston Delayen, *Les Deux Affaires du Capitaine Doineau* (Paris: Éditions des juristes-classeurs, 1924), 267.

⁸ *Procès de Doineau*, 422.

escapes was to “authorize assassination.”⁹ Favre concluded that Doineau simply was perpetuating the general disregard for the lives and rights of the indigenous population when he ordered the assassination of Ben-Abdallah.

Favre rested his defense of Bel-Hadj and Ben-Ayad on their powerlessness in the face of the absolute power of Doineau. These men had participated in the attack only because Captain Doineau had ordered them to do so. Given the unlimited authority and ability to exact punishment that the Captain enjoyed, Bel-Hadj and Ben-Ayad had no choice but to obey him.¹⁰ The Arab assassins, therefore, were themselves victims of a system that enabled corruption, authoritarianism, and violence. This system was the military administration. Favre used his plaidoirie as a platform from which to attack not only Doineau’s actions but also those of the entire military administration in Algeria. Doineau’s behavior was, Favre implied, representative of military practice. Favre appealed to the firmness and integrity of the judges in the cour d’assises in Oran, professing that if they found Doineau guilty, the colony and France would be grateful and would view their decree as a token of security and progress. He concluded by proclaiming that the “blood of the agha Ben-Abdallah will not have been spilled in vain. A new day is dawning. In this radiant dawn, I see coming into view the image of the law replacing arbitrary rule. The reign of written rules and justice will succeed the rule of force.”¹¹

⁹ Delayen, 269.

¹⁰ Pierre Antoine Perrod, *Jules Favre: avocat de la liberté* (Lyon, France: La Manufacture, 1988), 210.

¹¹ Delayen, 271.

Favre explicitly drew a contrast between the arbitrary rule of the military, exemplified by Captain Doineau, and the “new dawn” that would break for the colony under the rule of law that a civilian administration would implement. Above all, Favre believed, there must be a rule of law in Algeria.¹² For him, this meant only the French law of a republican government, not military rule or Islamic law. As we will see, throughout the 1860s, Favre recycled many of these arguments and points against the Arab Bureau and the military administration. The Doineau Trial created the first public opportunity for Favre to argue his views against Algeria’s military administration and, indirectly, the government of Napoleon III, which Favre strongly opposed. In his memoirs, General du Barail referred to Favre as the “eloquent and venomous adversary of the Empire,” and he observed that one was for or against Captain Doineau according to whether one was for or against the Empire.¹³ The relation between support for Captain Doineau and support for the military administration and the government of Napoleon III was apparent to the public.

The August 1857 trial of Captain Doineau generated a great deal of public attention and interest. Armand Fouquier included the Doineau Affair in his biweekly publication (printed in Paris between 1858 and 1867) *Cause célèbres de tous les peuples*. In the Doineau issue, printed shortly after the trial, Fouquier wrote that that the trial

¹² Maurice Recluse, *Jules Favre, 1809-1880 Essai de biographie historique et morale d’après des documents inédits* (Paris: Librairie Hachette et C^{ie}, 1912), 237.

¹³ Du Barail, *Souvenirs*, II: 211.

represented a “battle between civil and military forces.”¹⁴ The major publications in Algeria as well as Parisian papers such as *La Presse* and the *Journal des débats politiques et littéraires* published regular updates of excerpts from the trial proceedings throughout the course of the adjudication.¹⁵ They printed updates in October 1857 during the appeals process and afterward, and provided updates about Doineau’s alleged plans. For example, on 2 April 1858, *La Presse* reported that there were rumors that Doineau (presumably upon his release from prison) would go to Tehran to take a position as an instructional officer in the Persian army. *La Presse* advised, however, that these rumors were “entirely without foundation.” The 3 April 1858 printing of *Le journal des débats* repeated the rumor about Doineau’s plans to depart for Tehran. On 16 December 1859, *La Presse* reported that upon his release from prison (after his pardon from Napoleon III), it was believed that Doineau would go to China to “rehabilitate himself.” An update on 21 December of the same year reported that Doineau had been released and would likely go to China. After this date, there is no further mention of Doineau. It seemed that he had vanished from the face of the earth. In fact, he had entered the service of the King of Spain and returned to Morocco to fight for Spain.

Jules Favre’s fame was growing. After the much publicized trial of Doineau, Favre returned to Paris and, a few months later, participated in the sensational trial of Felice Orsini. In January 1858, the Italian nationalist Felice Orsini attempted to

¹⁴ Armand Fouquier, “Attentat de Tlemcen,” pages 1-48, in *Causes célèbres de tous les peuples*, volume I (Paris, Lebrun et C^{ie}), 2.

¹⁵ The newspapers did not contain any additional commentary about the trial, but large chunks of the proceedings were reproduced, in many issues taking up more space than did any other single issue.

assassinate Napoleon III with a bomb. The plot failed, and Orsini was caught and put on trial. Jules Favre served as his defense attorney. As in his plaidoirie at the Doineau trial, Favre used this opportunity to make political and ideological points. In his defense of Orsini, Favre argued that it was Orsini's Italian patriotism that drove him to attempt the assassination.¹⁶ Orsini was compelled by his extreme love for his country and his republican values and, Favre explained, these are understandable and respectable sentiments. Unfortunately, these otherwise admirable qualities drove Orsini to attempt premeditated murder. Favre condemned the result but not the motivations that led to it. The implication was that love of one's country is tied to republicanism, and that it is virtuous to be patriotic and, therefore, republican. At the conclusion of the plaidoirie, Favre appealed to the Emperor's support for Italian nationalism in an effort to gain sympathy and leniency for his client. Unfortunately for Orsini, Favre's efforts failed, and Orsini was executed in March 1858.

The Orsini trial marked the high point of Favre's legal career, however, and the additional acclaim he won for his eloquent defense catapulted his political career. In April 1858, Favre was elected to the Chamber of Deputies as a representative for Paris, marking the start of his role as legislator and politician that lasted until his death in 1880. The trials of Doineau and Orsini provided Favre with ample opportunity to espouse his political ideas and stake out his position in opposition to Napoleon III, his republican credentials, and, more broadly, his support of French republican values. His election to the Chamber of Deputies so quickly after these trials could be no mere coincidence.

¹⁶ Pierre Jacomet, *Avocats républicains du Second Empire* (Paris: Éditions Denoël et Steele, 1933), 47.

Changes 1858-1860

A few months later, on 24 June 1858, Napoleon III established a new governing institution for Algeria: the Ministry of Algeria and the Colonies. This entailed the dismantling of the military administration that had directed the colony since 1830. Prince Napoléon became the new Minister. Liberal factions in France approved the appointment of Prince Napoléon, an anti-clerical liberal, and they viewed his leadership as a good sign for the future of the colony. A Superior Council was formed to advise the new Minister. The position of the Governor-General of Algeria, then held by Maréchal Jacques Louis Randon, became subordinate to that of the Minister. The creation of the civilian Ministry of Algeria and the Colonies was intended to facilitate an alliance between the colons and the indigènes by encouraging the latter to assimilate to French civilization.¹⁷ The military, it was believed, had failed in this, because it had ruled “by the sword,” through force and violence. With the abusive military removed from power, it was hoped that the population of Algeria would more willingly assimilate to French culture. Napoleon III enacted these radical political changes in Algeria in the wake of the popular trials of Doineau and Orsini. Napoleon III’s new policy demonstrated the effect of Favre’s condemnation of the military administration in Algeria and was a response to changing political conditions in France, a sign of which was Orsini’s assassination attempt.

The Ministry of Algeria and the Colonies was part of a series of changes Napoleon III made in the military’s role in Algeria. In 1858, the military’s judicial powers were regularized and restricted. The military received official authorization, to

¹⁷ Meyer et al., *Histoire de la France Coloniale*, 428.

try “political” crimes -- crimes against the state or the public order -- in its territories.¹⁸ The military had been doing this already, but illegally. With the new authority, however, came guidelines. The military now was required to follow proper procedural rules during these trials, and the accused received certain “guarantees” and rights. These procedural requirements meant a significant departure from the Arab Bureau’s rather informal administration of justice, which resembled local custom. It was hoped that the implementation of French-style justice would result in the indigènes’ appreciation for the rights and “spirit of equality” that French citizens enjoyed.¹⁹ Arab Bureau officers like Doineau, therefore, were to be restrained from inflicting upon the Arabs the arbitrary justice of which the military was accused.

Another curtailment of military authority was the elimination of the military’s power to impose and collect fines on the tribes living within its territories. Previously, the officers had exercised this power without restriction. Under the new civilian administration, the military lost this prerogative. A critical issue during the Doineau Trial had been Doineau’s apparently unrestricted freedom to do this. Doineau’s possession, which he never fully explained, of nearly 38,000 francs proved to some that he was corrupt. The prosecution suggested that if Doineau had obtained this money through legitimate means then he would not have hesitated to explain its origins. If, however, he had obtained it through bribery, coercion, or robbery of the Arabs under his power, then he would wish conceal the source of the money, as in fact he did. Doineau became the

¹⁸ Under the Ottomans, Ottoman officials, not qādīs, would have tried crimes of this nature.

¹⁹ CAOM, F//80/1722, from a report titled “*Commissions disciplinaires*.”

example of the military's fiscal misconduct. He was accused of routinely collecting fines and neglecting to record them or pass the funds to his superior officers as military procedure dictated. The new legislation that removed this power from the hands of the military officers was hailed as an important step toward checking the military's unlimited powers and stopping its abuses.

Prince Napoléon served as Minister for only a short time before he resigned. In March of 1859 Count Justin Napoléon Samuel Prosper de Chasseloup-Laubet became the new Minister of Algeria and the Colonies. Count Chasseloup-Laubet believed that it was necessary to remove all the obstacles keeping the two races (indigène and French) apart; he wanted to encourage a complete assimilation of the Algerians to French civilization. He took measures to equalize administrative practices in Algeria with those in France. In 1860, Chasseloup-Laubet introduced free trade between Algeria and France to encourage economic development and exchange. He expanded the application of French law to Algeria by increasing the number of French law courts and restricting the application of Islamic law. The Chasseloup-Laubet augmented Prince Napoléon's efforts at judicial reform in Algeria. In 1858, Prince Napoléon had established a system of disciplinary commissions to try crimes and misdemeanors committed in military territories by the indigenous population. These disciplinary commissions had to follow very specific rules of procedure, and limits were imposed on fines and punishments.²⁰ As before, the expectation was that if the indigènes experienced French law and justice, they would

²⁰ CAOM, F//80/1722, decree dated 21 September 1858, signed by Prince Napoléon.

recognize its superiority over Islamic law and willingly embrace it, thus undermining their adherence to Islam.

Finally, Chasseloup-Laubet authorized new methods for selling property that facilitated the sale of Algerian property to Europeans.²¹ These steps purportedly were to increase the ties between the French and the Algerian populations, because it was believed that an increase in business and economic prosperity would improve the indigènes' financial circumstances. Such an improvement would provide them with commercial reasons to cleave to France. The ultimate goal of land legislation was to implement a system of private land ownership among the tribes. This, many believed, would encourage sedentarization and land cultivation and weaken the tribes' attachment to a communal way of life. Integral to French concepts of law and the state were individualism and property ownership. The changes to communal land ownership, as we have seen, struck at the heart of tribal and Islamic traditions. It also formed the core of the conflict between the land-hungry colons and the Arab Bureau. We will return to this issue later in the chapter.

Despite the 1857 submission of Kabylia to French rule, conditions in Algeria did not remain peaceful. In 1858, rebellions broke out in Kabylia, and these new revolts increased tensions between the military and civilian regimes in Algeria. The civilian authorities accused the military of provoking uprisings in order to demonstrate that its rule was necessary. The military denied that it caused the revolts but argued that they did

²¹ This will be explained in greater length later in the chapter. Meyer, et al., *Histoire de la France Coloniale*, 428-429.

prove that the colony still required a strong military presence. The military pointed instead to the change in administration as the underlying cause of the rebellion. One interpretation of the 1858 rebellion of Bou Renan in eastern Kabylia suggests that it resulted from the attempt of the French authorities to limit the powers previously granted to two powerful regional tribes.²² The relationship between French military leadership and tribal elites had in many cases been close and mutually-dependent. When the military leadership lost its power, so did the tribal elites who depended on the patronage of the military. Changes in the structure of the French administration resulted in corresponding changes to tribal hierarchies. The new civilian administration in Algeria sought to curb the influence of the “tribal aristocracy” that the military had encouraged by removing what power remained in the hands of the traditional tribal elites.²³ If the military resented its loss of power in Algeria, so too did the tribal leaders whose positions were secured by the military’s influence and support. Algeria’s still-precarious security could be threatened by external affairs as well. In a letter to his commanding officer dated 19 July 1859, a general wrote that the peace between France and Austria was a “happy occasion” for Algeria, because if the military had had to send the three thousand troops to Austria that it had been asked to send, then Algeria would have been left in a dangerous position, lacking adequate troops to ensure the colony’s security.²⁴

²² John Ruedy, *Modern Algeria*, 68. Although Bou Renan was defeated and exiled in 1860, the rebellions continued under different leadership (the Rahmaniyya Brotherhood) until 1865.

²³ By “traditional tribal elites” I mean the tribal leaders who held positions based on their families’ status and the privileges accordingly awarded to them as members of a powerful family. To end the importance of these elites, some French advocated awarding positions of power to men of “low birth” or insignificant and weak families.

²⁴ CAOM, F/80/1678. Letter dated 19 July 1859, signature illegible.

Reports of tribal rebellions and the increasing tensions between the civilians and the military distressed the Emperor. Napoleon III decided to see for himself the conditions in Algeria. The end of the Crimean War (1854-56) and the resolution of the fighting in Northern Italy with the Treaty of Zurich (November 1859), offered Napoleon III a short respite from preoccupation with other international concerns. In the autumn of 1860, the Emperor, along with the Empress Eugénie, arrived in Algeria.²⁵ The conditions of the native Algerians appalled him, and he began to question his previous decision to award power to the civilian government. Napoleon's advisor in Algeria, Ismail Urbain, encouraged this new skepticism, as did the Arabists among the military command such as the Colonel Ferdinand-Auguste Lapasset. These parties wanted to see the military administration reinstated. Urbain advised that the "interests of three million Arabs should no longer be sacrificed to those of 100,000 immigrants," and he encouraged Napoleon to end civilian rule.²⁶ The military, he pointed out, had done a better job of protecting the interests of the indigenous population. Napoleon III came to realize that he had overlooked the rights of the Arabs to claim a "nation," or "kingdom" of their own. Napoleon III feared that he had allowed the colonists and civilian functionaries to exploit and oppress this kingdom of "proud warriors" in Algeria. In this context, Napoleon

²⁵ Napoleon III and the Empress Eugénie arrived in September 1860 but were forced to return to France almost immediately. Upon arriving in Algiers, the Empress learned of her sister's death. (Annie Rey-Goldzeiguer, *Le Royaume Arabe, la politique algérienne de Napoleon III, 1861-1870* [Alger: Société Nationale d'Édition et Diffusion, 1977]. 29).

²⁶ J.P.T. Bury, *Napoleon III and the Second Empire* (New York: Harper & Rowe, Publishers, 1964), 124.
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proclaimed that, “Our African possession is not an ordinary colony, but an Arab Kingdom.”²⁷

Although brief, the visit to Algeria profoundly affected Napoleon III’s views of the colony. He ordered the dismantling of the Ministry of Algeria and the Colonies, and in November 1860, he reinstated the Ministry of War and the Government General of Algeria.²⁸ In December of the same year, Maréchal Aimable Pelissier became Governor-General with Maréchal Jacques Louis Randon as Minister of War. The military regained control of the colony, and the former military territories were returned to their previous status under direct military administration. General Pélissier, however, shared the views of many of the “Arabophobe” (those who opposed retaining or tolerating indigenous customs) colons, advocating the destruction of the indigenous tribal elites and encouraging the practice of *cantonnement*.

The conflicts in Algeria between the military and the civilian administration mirrored political struggles taking place in France between conservatives and liberals. These struggles increased after Napoleon III’s intrigues with Cavour and the war with Austria in the late 1850s. Liberals and conservatives vied for power and influence over Napoleon III and his government, and Algeria became another field in the battle.

Criticisms of the military’s despotic rule in Algeria contained an implicit criticism of the

²⁷ “Notre possession d’Afrique n’est pas une colonie ordinaire, mais un royaume arab,” as quoted in Meyer, et. al., *Histoire de la France Coloniale*, 430.

²⁸ The administration of the colony had been placed under civilian control between 1858 and 1860, but the military itself remained in Algeria and its officers, including those of the Arab Bureau, retained their roles in the military territories. The shift meant that the ultimate authority in Algeria lay in the hands of the civilian government, and its decisions were valid for the entire colony, including the military territories. Measures instituted by the Ministry of Algeria had to be obeyed by the military. Prior to 1858 and after Napoleon III’s changes in 1860, the Governor-General held that power.

authoritarianism of the Second Empire. In 1859, Napoleon's disastrous meddling in Italian politics had cost him the support of many Catholics in France. Scheming in secret with Cavour at Plombières, Napoleon III had promised to support Piedmont-Sardinia's claim to a large chunk of the Papal Territories, therefore severely restricting the Pope's temporal powers. When these details became public, Catholics were outraged.

After 1860, facing growing disenchantment from the conservative factions that previously had supported him, Napoleon III began a series of liberalizing measures. The changes Napoleon III initiated included the 1860 decree that permitted ministers to debate government bills in the legislature and permitted the publication of these debates. Measures to liberalize the press began in 1861. Napoleon's move toward liberalization is interpreted by some as self-serving efforts to gain political support from liberals and republicans, groups which hitherto had been vociferously opposed to his regime.²⁹ Nonetheless, Napoleon reinstated Algeria's military administration, so despised by the republicans, at the expense of the civilian one. He did this even though he ran the risk of alienating the republicans and liberals he now wanted to win to his side. Napoléon's own explanation was that he did it with the interests of the Algerians in mind, and that he hoped to improve their material conditions and to recognize their own right to an "Arab Kingdom." Convinced that without military control, the "greed of the settlers would run rampant,"³⁰ Napoleon did appear motivated by a sincere interest in the welfare of the

²⁹ An alternative interpretation suggests that Napoleon III always had intended to create a liberal empire, based upon humanitarian principles and Saint-Simonian ideas. The initial years of authoritarian control were necessary in order to establish the political stability and national infrastructure upon which liberal changes could be founded.

³⁰ John Reudy, *Modern Algeria*, 74.

indigenous Algerian population. The decision to return Algeria to military control moved at cross purposes with the Emperor's concurrent liberalization of domestic policies and his courting of republican and liberal factions.

Land Policy: Changes After 1858

As discussed previously, one solution to the problem of the indigenous population was the practice of "*cantonnement*," (from *cantonner*, to isolate or enclose). In Algeria, this process included the work of commissions such as the *Commission de Transactions et Partages*³¹ which sought to study and determine the existing practices of indigenous land-holding among the tribes and decide how much land the tribes actually needed and how much they could "do without."³² The intended result was to restrict -- isolate, enclose, or *cantonner* -- a tribe onto only the land the commissions determined it needed. The remaining land then would be opened for European settlement. The practice of *cantonnement* reached its apogee in the late 1850s and 1860s, due in large part to the two-year rule of the civilian Ministry of Algeria and the Colonies. Its roots, however, extended to policies dating from 1845. Also referred to as "*refoulement*" (the turning back or forcing away) or "*resserrement*" (the closing or tightening), the act of *cantonnement* meant, for the tribes in Algeria, the process by which they were deprived

³¹ This particular commission was created on 2 March 1851 by Governor-General Alphonse-Henri d'Hautpoul.

³² A scholarly study of these commissions remains to be done, but it seems the commissions were comprised mostly of French soldiers, often with the assistance of Arab Bureau officers but including non-Bureau officers as well. Civilians did participate, too, however. From documents in the archives, the officers of the commissions sent into the tribal regions relied upon their personal observations of land use as well as the oral testimony of the tribes to determine ownership and use of land. See CAOM, 1J 196, 66/mi 145 and 66 mi/146; 1J 197, 66 mi/146; 40 J 6; 40 J 5; F/80/1805.

of access to their traditional tribal lands and compressed into smaller regions, or different parcels, of land. This was achieved primarily through the passage of new legislation (more on this later) that provided the legal grounds by which the French administration could assume control of tribal land and for the tribes to sell previously inalienable communal tribal lands to European settlers. These legislative acts formed the basis by which control of Algerian land moved from the indigenous tribes to the Europeans. Between 1851 and 1861, the French took control of eighteen percent of tribal land -- 61,363 hectares out of 343,387 -- by using these methods.³³

Jules Duval, representative of the colon position, believed that the Arabs had more land than they could or even wanted to cultivate, and that they left so much uncultivated because of the “laziness” he believed characteristic of a nomadic or shepherding people.³⁴ Advocates of cantonnement equated it to the role of the state in monitoring public forests. In the case of the forests, the state ensured that the resources of the forest were protected and maximized. Similarly with the land in Algeria, the state would monitor and control access to agricultural land to ensure its maximum utility. To leave the land largely uncultivated, as the Arabs did, amounted to neglect of the land’s value and usefulness. Therefore, it was argued, the French administration in Algeria would “apply the [practice of] cantonnement like one applied the skills of a forest ranger.”³⁵ The French state would

³³ Charles-Robert Ageron, *Histoire de l’Algérie contemporaine*, vol. 2 (Paris: Press universitaires de France, 1979), 28.

³⁴ Jules Duval, *L’Algérie et les colonies françaises* (Paris: Librairie Guillaume et Cie, 1877), 49; 109.

³⁵ CAOM, F//80/1722, *Journal Officiel de la République Française*, 20 December 1874, p. 8432.

take control of this “wasted” land and redistribute it to European colonists or agricultural corporations who would make “proper” use of it by ensuring its productivity.

Cantonnement reflects a misunderstanding of two important issues. The first is that the majority of the Algerian tribes depended upon their flocks -- comprised of animals such as goats, sheep, and cattle -- for survival. These animals needed adequate grazing and pasture land, which meant that the tribes required more land than did the sedentary, high-intensity cultivation and agricultural practices of the European settlers.³⁶ The tribes were not sedentary, nor did they indicate a desire to become so. General du Barail related an anecdote about Captain Charles Richard’s efforts to sedentarize the Arab populations. Du Barail wrote that the Arabs viewed the stone houses constructed for them as “prisons,” and that those with the means to do so bribed their way out of having to live in them. Only those who had nothing with which to bribe the officials were forced to live in the houses.³⁷ The tribes did not want to settle and assume European-style agriculture; they wanted their traditional way of life. They needed the land that the French deemed “unused” or “excessive,” and inadequate land for grazing flocks would result in the destruction of the tribes’ lifestyle. The *cantonnement* of the tribes threatened to destroy their cultural and social traditions because without sufficient land, a nomadic

³⁶ Ruedy, *Land Policy in Colonial Algeria*, 87.

³⁷ du Barail, *Souvenirs*, I: 354-355. He added that General Édouard Martimprey gave the population permission to abandon the stone houses and return to their previous way of life.

or semi-nomadic herding existence would be impossible to maintain.³⁸ What often appeared to the French as superfluous or “vacant” land was, in fact, necessary to the tribes.³⁹

The second point of French misunderstanding related to the concept of property ownership among the tribes. As discussed previously, the tribal domain, or ‘arsh land, was held in common by the tribe. Thus, the French believed that the tribe did not have hereditary rights over the land, and that it therefore was available for seizure by the state. In actuality, however, the tribal ‘arsh lands fell neither within the French definition of “communal” property nor “individual” property and shared characteristics of both. Although ‘arsh land was communal tribal property, individual families possessed rights to farm particular parcels and to pass these parcels to their heirs. Provided a family continued to farm the land and pay taxes on it, it retained the right to use the land. A family could not sell its parcel, however, because the tribe as a collectivity “owned” the land and individual pieces could not be parceled off.⁴⁰ Thus, land was both inalienable

³⁸ A spokesman for the colon position, Docteur Cauquil, argued that instead of destroying the tribes’ flocks, cantonnement would produce an improvement in the welfare and productivity of the flocks. He pointed to the unprotected conditions under which the tribes lived and bred: unsheltered from harsh weather, left to forage on their own for sustenance, breeding without consideration of the health and size of the animals. These adverse conditions resulted in a high mortality rate for the animals and an inferior flock. If the animals were cared for properly and bred selectively, the tribes would lose fewer animals and their flocks would become more valuable. The underlying assumption is that the tribes would accept cantonnement by abandoning their nomadism in favor of permanent settlements and keeping their flocks in enclosures and barns. (Docteur Cauquil, *Études économiques sur l’Algérie, administration, colonisation, cantonnement des indigènes* [Oran: Adolphe Perrier, 1860], 64-65).

³⁹ Kjell H. Halvorsen, “Colonial Transformation of Agrarian Society in Algeria” *Journal of Peace Research*, Vol. 15, No. 4, (1978), 334-335.

⁴⁰ A useful brief summary of land tribal land ownership in Algeria can be found in Peter R. Knauss, *The Persistence of Patriarchy: Class, Gender, and Ideology in Twentieth Century Algeria* (Santa Barbara, CA: Greenwood Publishing Group, 1987), 8-10. For an in-depth discussion, see John Ruedy’s analysis of land ownership traditions in his *Land Policy in Colonial Algeria, The Origins of the Rural Public Domain* (Los Angeles: University of California Press, 1967).

and heritable; owned collectively but (in some places) claimed by individuals. Such a system had no corresponding practice in France which likely contributed to French misunderstanding or intolerance of it in Algeria.

What Napoleon's radical administrative change of 1858 brought with it was a radical change in the colony's application of cantonnement. Until 1859, cantonnement was limited to regions outside the military territories. Many members of the Arab Bureau fought the expansion of cantonnement into their cercles.⁴¹ Jules Duval claimed that one could not step foot in Algeria or engage in the least correspondence with anyone there without hearing of the Arab Bureau condemned as "obstacles to colonization"⁴² for their position on preventing cantonnement of the tribes and European colonization in the military territory. When the military administration was dismantled, however, it lost its power to control both activities. One of the first measures the new civilian administration enacted was the 16 February 1859 decree that expanded the practice of cantonnement into the military zones. The decree produced a staggering effect on land ownership among the colons. In 1858, colon ownership of agricultural lands was 175,000 hectares. In 1859 this figure had risen to 295,000 hectares.⁴³ In a single year, colon land ownership had increased 69%. Abi-Mershed explains that the 1858 administrative change

⁴¹ The military and the Arab Bureau, however, were divided on issues relating to the administration of Algeria. Charles Richard, an officer of the Arab Bureau, represented a group that supported the practice of cantonnement and the elimination of the indigenous tribal elites. Both practices would assist French colonization by replacing the tribes' traditional land ownership and power structures with those more aligned with French practices. General Pélissier was another important figure who shared Richard's views. In 1860 when the Ministry of Algeria was replaced, again, with a Governor-General, Pélissier became Governor-General.

⁴² Jules Duval, *L'Algérie et les colonies françaises* (Paris: Librairie Guillaumin et C^{ie}, 1877), 9.

⁴³ Abi-Mershed, "Domination by Consent: The *Bureaux Arabes* and Public Instruction in Colonial Algeria, 1831-1870" (Ph.D. Dissertation, 2002), 228-229.

“unleashed a new wave of colonial land seizures and violations of Muslim jurisdictions.”⁴⁴ The tribes suffered greatly under these new conditions. It was this suffering that Napoleon III witnessed when he arrived in 1860 and that helped to convince him that the colony should be returned to military control. Nonetheless, in 1860 when the military authority was reinstated, it could not undo the policies instigated by the civilian administration. It could not reverse the cantonnement and colonization that had taken place during the previous two years .

Annie Rey-Goldzeiguer, Xavier Yacono, and Kenneth J. Perkins characterize the decade of the 1860s as a period of decline for the Arab Bureau. They note the loss of prestige the division suffered in the wake of the Doineau Affair and the increased bureaucratization of the officers’ responsibilities and the difficulty this caused for recruiting talented and capable officers to join the Bureau, which resulted in an overall decline in the officers’ quality.⁴⁵ Perkins notes that the difficulty in recruiting officers led to a shortage of members of the Arab Bureau, which further hampered their ability to administer their territories.⁴⁶ These issues clearly were important; however, the major administrative change that occurred after 1858 and throughout the 1860s was the Arab Bureau’s inability to control the rate of European colonization onto tribal land. The changes that the civilian administration made during its two-year control could not be

⁴⁴ Abi-Mershed, *Apostles of Modernity: Saint-Simonians and the Civilizing Mission in Algeria* (Stanford, CA: Stanford University Press, 2010), 160.

⁴⁵ See Rey-Goldzeiguer, *Royaume Arabe*, 70 and Yacono, *Histoire de l’Algérie*, 152. Many experienced officers, including veterans of the Arab Bureau, left Algeria in 1862 to participate in the invasion of Mexico. This depleted the number of experienced and knowledgeable officers in Algeria.

⁴⁶ Kenneth J. Perkins, *Qaids, Captains, and Colons: French Military Administration in the Colonial Maghreb, 1844-1934* (New York and London: Africana Publishing Company, 1981), 50.

reversed. The legislative process by which the tribes were deprived of their land was gathering steam. The 1858-1860 civilian administration ensured that colonization in the tribal regions was well underway by 1860, and the Arab Bureau found itself unable to override the process.

After 1860, the Arab Bureau no longer exercised the virtually unlimited power it had previously. It also faced internal problems, such as those noted above, and external pressure in the form of increased criticism and attack from the civilians and the growing number of French colons.⁴⁷ The struggle between the military and the civilian parties for control of the colony was rekindled when the military regained control in 1860.

Legislative acts directed at land policy that the government in Paris passed in the 1860s facilitated the acquisition of tribal land by French colons. As colonization gained momentum, there was a corresponding pressure for land for the colonists to settle. The issue of land ownership and settlement continued to be highly contentious and the primary source of conflict between the military and the colons. Two important legislative acts passed in 1863 and 1865 made significant changes to existing land ownership policy.

The 1863 *Senatus consulte* sought to formalize the cantonnement system by clarifying the legal processes involved. Previous legislation had begun the process of changing the laws and policies pertaining to indigenous property. For example, a decree issued by Napoleon III on 16 June 1851 made all Algerian property, whether claimed by French or indigenous individuals, inviolable. Ostensibly, the decree protected indigenous

⁴⁷ Perkins, *Qaids, Captains, and Colons*, 51. Perkins references this pressure, but we will consider it in greater detail later in the chapter.

property by keeping it safe from European land speculators and had the added benefit of accommodating local law. The practical effect, however, was to lay the groundwork for tribal “ownership” of land, a concept which did not exist under Islamic law or in customary practice. The decree stipulated that if the land in question were owned by a Frenchman, then French property laws applied; however, if an Arab owned the land, then Islamic property law applied.⁴⁸ The recognition of the Arabs’ legal rights over their own land came as a by-product of the state’s appropriation of “vacant” (per French observations) ‘arsh land. To bolster its right to assume ownership of this “unused” territory, the French state affirmed the Arabs’ rights to the remaining land. Thus the law established the precedent by which Arabs, now declared the legal “owners” of land, could sell this land to European settlers.⁴⁹

The purported intention of this law was to slow the European acquisition of Arab land. This did occur. Another effect, however, was the institution of “legal” processes by which Europeans could purchase tribal land that previously had been inalienable under Islamic law. Although Islamic law still applied among indigenous Muslims, and the French state recognized Islamic law as valid, these new decrees provided a means by which rapacious land speculators could circumvent existing Islamic legal practices and tribal traditions of land use. Previously, ‘arsh land could not be sold under any circumstances, but now as the French administration designated certain land the

⁴⁸ Yacono, *Histoire de l’Algérie*, 123-124.

⁴⁹ Abi-Mershed, “Domination by Consent,” 228.

“property” of the tribe, it then could be sold (under French law) like any other item of property.

Islamic law continued not to recognize ownership of ‘arsh land, but the new decree provided a loophole through which some land speculators could circumvent Islamic law and tribal traditions. This practice was facilitated by the confusion of legal systems in place in Algeria. Traditional Islamic law, adjudicated by the *qādīs*, applied in land ownership disputes associated with the government appropriation of ‘arsh land. Newly introduced in Algeria, French laws, adjudicated by the *juge de paix*, also applied in some cases. Both systems co-existed with vague and imprecise jurisdictions. Unscrupulous spectators, whether French or Algerian, who were able and willing to exploit the confusion of systems for their own advantage, did so. The resulting land speculation occurred at the expense of the indigenous population.⁵⁰

Thus it is easy to see how in 1863, legal and social confusion over cantonnement persisted. The government in Paris formed committees to conduct more studies to determine the extent of the tribes’ ‘arsh land. By defining the boundaries of the ‘arsh land, the surveys purportedly were to protect the tribes’ right to the land, but in fact the tribes continued to lose tribal land as the French authorities determined that more and more territory lay outside ‘arsh boundaries. During the surveys of the 1860s, the French authorities included in the ‘arsh another category of land called *mawāt*. This land generally consisted of brush and grasslands that the tribes used for grazing their flocks -- in some regions, however, it also applied to forestland. *Mawāt*, more so than ‘arsh, most

⁵⁰ Halvorsen, “Colonial Transformation,” 335.

closely resembled “communal” land, because tribes could use it but individuals could not appropriate parcels of it, as could be done with ‘arsh land.⁵¹ To the French, however, mawāt land appeared “vacant” because it was not being cultivated and, therefore, it was eligible for state appropriation.

The 1863 Senatus Consulte contributed further to the destruction of traditional land use, despite its recognition of tribal rights to any land the French designated ‘arsh. In addition to reducing further the amount of land to which tribes could gain access, the 1863 Senatus Consulte also formalized the tribes’ legal “ownership” of its land. Steps down this path had been taken in previous legislation, such as the decrees of the 1850s. The 1863 Sénatus consulte went further, however, by formally declaring that the ‘arsh land was the legal “property” of a particular tribe. This legislative act was referred to by one contemporary French officer as the “most efficient mechanism that one could invent against the native social structures.”⁵² The existence of the tribes depended on the perpetuation of their traditional way of life, including land use.

Kjell Halvorsen described the process by which this was to take place in the following manner: “first the land was to be divided among the tribes; then among the villages within the territory of one tribe; and, last, among the heads of family within the village or tribe.”⁵³ John Ruedy has explained this in more detail. The *djama’a* (council)

⁵¹ John Ruedy, *Land Policy in Colonial Algeria*, 11-12.

⁵² As quoted in Mahfoud Bennoune, *The Making of Colonial Algeria, 1830-1937* (New York: Cambridge University Press, 1988), 45.

⁵³ Halvorsen, “Colonial Transformation,” 335.

of the *douar* (or “village”)⁵⁴ was to hold the title to the land, but the djama’a could then subdivide its land and award ownership to individual members.⁵⁵ What made this all the more confusing at the time was that the “douars” were, for the most part, not pre-existing indigenous social organizations but new administrative units known as “*douar-communes*” that the French government had created.⁵⁶ These new administrative divisions reflected only French administrative designs and lacked any “organic foundation.” The *douar-communes* had no social or familial bases, and as a consequence they further fragmented traditional social and family networks and systems of land tenure.⁵⁷

The conferral of power to these artificial constructions of the French bureaucracy contributed to the “disintegration of the tribe as the nucleus of social organization.”⁵⁸ With increasingly limited access to their traditional lands, and a loss of authority even to defend their rights to these lands, the tribes found themselves in an ever-weakening position. Unable to pursue traditional methods of grazing and agriculture, the tribes suffered food shortages which were exacerbated by the natural disasters of the 1860s.

⁵⁴ A *douar* is a small village, sometimes comprised of a collection of Arab tents. Ali Bey in his memoir of his travels in North Africa writes that douars are villages of small huts or very low houses, which give “striking proof” of the “extreme misery” of the residents. (Ali Bey, *The Travels of Ali Bey in Morocco, Tripoli, Cyprus, Egypt, Arabia, Syria, and Turkey Between the Years 1803 and 1807, written by himself and illustrated with maps and numerous plates*, two volumes [London: Longman, Hurst, Rees, Omre, and Brown, 1816; republished 1970 by Gregg International Publishers, Ltd], I: 229).

⁵⁵ Ruedy, *Modern Algeria*, 74-75.

⁵⁶ This situation is likely what Holvorsen intended when he wrote that the 1863 Sénatus Consulte resulted also in loss of authority by individual tribes relative to the douars. He did not specify that these are the French-created “*douar-communes*,” but in context we can assume that these are what he means.

⁵⁷ Abi-Mershed, “Domination by Consent,” 253-254.

⁵⁸ Halvorsen, 335.

For the indigenous population of Algeria, the 1860s were devastating. As cantonnement increased, the tribes were restricted to smaller and smaller territories, akin to “reservations” into which Native Americans in the United States were forced. The tribes’ loss of access to land traditionally used for seasonal agriculture or grazing and the resulting lack of resources necessary for survival, the nomadic tribes increasingly faced food shortages.⁵⁹ Tribal communities suffered, and inter- and intra- tribal relationships and hierarchies broke down in the new conditions. The destructive effects of tribal revolts, natural disasters, and disease compounded the misery of the tribal population. In 1864, the Ouled Sidi Cheikh revolted, which caused even peaceful tribes to panic, fearing the revolt would spread to their own land. In anticipation of this possible chaos, the tribes emptied their *silos sauvages* and sold the contents at reduced rates, depriving themselves both of their stores of food and future opportunities to sell any surplus and obtain income to purchase needed supplies.

Nature also wreaked havoc in Algeria: in 1865 a drought began and persisted for several years. In 1865 swarms of grasshoppers destroyed crops and polluted wells in Mitidja and the Sahel. The same year brought a cholera epidemic, from which the North

⁵⁹ Summary of the system of cantonnement is from Ruedy, *Modern Algeria*, 71. To date, John Ruedy has produced the most comprehensive and detailed scholarly work on land ownership in Algeria during the mid-nineteenth century. He remains the most authoritative scholar in the field.

Africans suffered particularly high death rates, whereas few among the Europeans died.⁶⁰ An earthquake in 1867 destroyed Mouzaïville, La Chiffa, and El Affoun. In the wake of these disasters, famine and more disease spread: in addition to cholera, the population suffered from typhus, dysentery, and scurvy. The flocks also suffered from illness, and vast numbers died. Estimates give the loss of sheep at about eight million; goats at 3.5 million; and about one million cattle.⁶¹ The adversity the indigenous population faced during this period is strikingly revealed in the following figures: between 1866 and 1872, the French population rose slightly from 122,000 to 129,000. The Spanish population increased from 58,000 to 71,000. The Muslim population, however, declined from 2,652,000 to 2,123,000, a loss of about 500,000 people. The French debated the causes

⁶⁰ The Europeans appeared to have a “relative immunity” to this cholera outbreak (Yacono, *Histoire de l’Algérie*). Some people had attributed this to the presumed superiority of European sanitary and dietary practices. For example, the historian Julien Franc wrote that the Arabs were “ignorant of the most elementary rules of hygiene,” and that this was the reason they suffered so greatly from this cholera epidemic. (Julien Franc, *La colonisation de la Mitidja* [Paris: Librairie ancienne honoré champion, 1928], 542.)

While there may or may not be truth to Franc’s harsh statement, modern research has supplied an alternate reason. A recent study has indicated a link between blood type and susceptibility to cholera. It has been determined that individuals with blood type-O are more susceptible to contracting severe cholera infections, and type-A blood has the highest rates of resistance. More than 50% of the North African Arab and Berber population has type-O blood, and a high percentage of Europeans have type A. There are different forms of the cholera bacteria, and some of the strains affect all blood types similarly. Other strains, however, behave as this research indicates: affecting most severely persons with type-O blood. Perhaps the strain that spread in Algeria in the 1860s was more deadly to the indigenous population because it was biologically more vulnerable to it. (For the discussion of the study, see Jason B. Harris, Ashraful Ikhan, Regina C. LaRocque, David J. Dorer, Fahima Chowdhury, Abu S.G. Faruque, David A. Sack, Edward T. Ryan, Firdausi Qadri, and Stephen B. Calderwood, “Blood Group, Immunity, and Risk of Infection with *Vibrio cholerae* in an Area of Endemicity” in *Infection and Immunity* [November 2005, 73: 7422-7427]). For a review of the dispersal of blood types across the globe, see the site Modern Human Variation: An Introduction to Contemporary Human Biological Diversity, by Dr. Dennis O’Neil, Behavioral Science Department at Palomar College, San Marcos, CA: (http://anthro.palomar.edu/vary/vary_3.htm).

⁶¹ Yacono, *Histoire de l’Algérie*, 169-173.

for this decline but reached no consensus.⁶² Already struggling with the diminution of their land, the tribes were particularly vulnerable to the added hardships of disease and natural disasters.

The unfortunate circumstances of the 1860s produced yet more tensions between the military and the civilian administrators. Each side accused the other of the incompetence and wrongdoing which resulted in the misery and suffering of the Arab tribes. The colons and republicans blamed the military regime for the suffering of the tribes, accusing it of inefficiency and callousness in providing aid. In a personal letter, Jules Favre, referred to the famines of the 1860s and claimed that conditions were so horrendous, [Arab] mothers had been driven to eat their own children. He placed responsibility for the miserable conditions on the military administration.⁶³ The civilians also accused the military of coldly observing all this adversity, offering neither help nor aid to the suffering tribes. The military argued that the colonists offered more assistance because they could: they possessed resources which the military lacked, stationed as the officers often were in remote tribal regions without easy access to goods or supplies. The military blamed the colonists for the plight of the tribes because of their expansion into and appropriation of tribal lands which deprived the tribes of the basic means to support

⁶² CAOM, F//80/1722, from the *Journal Officiel de la République Française*, 20 December 1874, 3431. Census figures might be inaccurate, particularly relative to nomadic tribal populations given the logistical difficulties associated with acquiring data from the tribes. Nonetheless, the figures here represent the numbers the French legislative body used for determining policy and legislation. Therefore, regardless of the degree to which these figures reflected reality, French politicians and those in positions of administrative power treated them as accurate and reliable statistics on the Algerian population.

⁶³ Pierre Antoine Perrod, *Jules Favre, avocat de la liberté* (Lyon, France: La Manufacture), 186.

themselves.⁶⁴ Both the civilian and military administration likely were correct to varying degrees, but for the tribes, the result -- whatever the causes -- was that they experienced tremendous loss of life and land throughout the 1860s.

In addition to these already considerable difficulties, the tribes increasingly suffered from changes in the fiscal and tax systems. The conditions of the 1860s exacerbated the financial problems that the tribes due to tax reformations enacted in the previous years. Under the Ottomans, the economic system had been based on barter, not money, and taxes were paid in kind. After 1845, the population had to pay their taxes in money. This, combined with the implementation of fining tribes for violations of the law, particularly for revolting against French rule, placed the tribes in a difficult financial position. Although some sale of crops, flocks, or goods occurred, the small proceeds from these commercial transactions were used to purchase essential tools and supplies necessary to support the tribe's basic needs. Little to no capital accumulation took place.⁶⁵ Tribal conflict and revolts, provoked by the circumstances of the 1860s, resulted in fines for breaking the peace; i.e., violating the law. With the sale of the *silos sauvages* noted previously, many tribes lost even the meager resources they had. Without access to money to pay fines and taxes, the tribes were forced to turn to usurers for capital. Unfortunately, these usurers often took advantage of the tribes and charged exorbitant interest on the loans. Unable to make their loan payments, suffering from starvation and disease, the tribes often were driven to sell their only asset, their land, in order to survive.

⁶⁴ Yacono, *Histoire de l'Algérie*, 169-173.

⁶⁵ Halvorsen, "Colonial Transformation," 337.

Legislation passed in the 1860s made such sales possible. The implementation of French economic policies long had made it difficult for the tribes to meet the monetary demands placed upon them, and the 1860s made things worse still.⁶⁶

The *Senatus Consulte* of 14 July 1865 further legislated the process of land ownership and extended the jurisdiction of French law and norms. The new *consulte* also was tied to the possibility of citizenship for indigenous Algerians by bringing the Algerian Muslims and Jews one step closer to becoming French, at least in name. The first two articles declared that the Muslims and the Jews, as residents of Algeria, were French; however, they were not necessarily citizens of France.⁶⁷ They were permitted to keep their own civil law if they were satisfied with accepting their status as non-citizens. If they desired citizenship, then they must agree to accept French civil law and give up their own civil law codes.⁶⁸ This meant, of course, abandoning the Islamic law that governed land ownership and served as a formidable obstacle to European acquisition of tribal land. Accepting French civil law meant accepting French definitions of property ownership. Unsurprisingly, few Algerian Muslims or Jews took advantage of this path to

⁶⁶ There also were local political changes afoot among the tribes during to the 1860s. With a loss of recognition of their traditional authority (in defining land use/ownership) and the social disruptions taking place, the tribes suffered from an inability to marshal traditional alliances and organize a defense of their tribal rights. In contrast, the French themselves had become an increasingly cohesive colonial community. Between 1846 and 1856, the population of French settlers had doubled and, for the first time, surpassed the number of non-French Europeans. (Abi-Mershed, "Domination by Consent," 256). This no doubt contributed to the sense that Algeria was a "French" colony not just politically but socially and culturally as well. As indigenous communities and identities were being dismantled and undermined, the Gallic nature of the Algerian colony was being strengthened.

⁶⁷ John Ruedy discusses the 1865 *Sénatus-Consulte* on pages 75-76 of *Modern Algeria*.

⁶⁸ Non-French European residents could apply to become French citizens if they had lived in the colony for three years and also agreed to live by French law.

citizenship, in part because it meant an abandonment of an essential part of their religious and cultural identities.⁶⁹

The type of civil law in effect in the colony had several implications. As discussed previously, under Ottoman rule, both secular and religious courts co-existed, often with overlapping jurisdictions.⁷⁰ The population could, and often did, turn to both systems for justice. Moreover, in some cases, what exactly constituted a “civil” versus a “criminal” charge in the minds of the indigènes differed from European notions. So, what these policies meant for the way justice was applied in Algeria, and to what extent it differed from previous practices, remains unclear. Indeed, a frequent complaint made by the the civilian factions was that military officers were allowed to assume too much discretionary power in their application of justice, failing to follow proper judicial procedures and acting as qadis among the indigenous tribes. The existence of a formal method for trying criminal cases in military territories did not necessarily mean a radical change from pre-French practices.

Nonetheless, as Michael Brett observes, the deprivation of the qadis’ jurisdiction over criminal matters served to reinforce their control over civil ones.⁷¹ The Décret of 1

⁶⁹ Under the Third Republic, Adolphe Crémieux, active since the 1840s in encouraging a complete assimilation of Algerian Jews, took matters into his own hands once he obtained the power to do so. On 24 October 1870, he secured the passage of an act that automatically naturalized all the Algerian Jews. Henceforth, the Sénatus consulte of 1865 applied only to the Muslims. It should be noted that a different set of laws and procedures regarding citizenship applied to the Kabylie region, which had not been conquered until 1857. Michael Brett offers a brief explanation of how the French dealt with Kabylia on this matter on page 458 of “Legislating for Inequality.”

⁷⁰ The following discussion of the changes in the justice system in Algeria in the 1850s and 60s comes from Michael Brett, “Legislating for Inequality in Algeria: The Senatus-Consulte of 14 July 1865” in *Bulletin of the School of Oriental and African Studies*, University of London (Vol. 51, No. 3, 1988) 440-461.

⁷¹ Brett, “Legislating for Inequality in Algeria,” 442.

October 1854 codified the application of Islamic law in civil matters, and it established a bureaucracy of Islamic judges and courts. The Arab Bureau supported these measures to maintain indigenous legal systems, believing that doing so would offer a means for the French to maintain an indirect control (through the qādīs) over the tribes. Additionally, maintaining sharīʿa law would avoid unnecessarily alienating the Muslim population. Civilian factions disliked this duality in justice; they resented the military's powerful role in overseeing it. Also, they believed that permitting a dual system of justice in Algeria undermined French values of a single law code for all.

Once in power, the civilian Ministry of Algeria and the Colonies quickly moved to undermine the dual legal system. In 1859, the civilian administration issued a new Décret of 31 December that ruled that appeals to civil judgments by qadīs should go not to higher qadī courts but to French ones. Moreover, Muslims now had the opportunity, denied in the 1854 Décret, of going directly to the French courts to settle civil disputes. This was yet another French effort to encourage the Muslims to turn to French justice instead of their own law courts. The 1859 Décret, formulated by the civilian administrators, sought to correct the earlier “mistake” of the 1854 Décret which had sanctified the dual law codes. The desired end goal was to have one law and one system of justice in the colony. By giving the Muslims greater access to what the French believed was the clearly superior French judicial procedures, the Ministry of Algeria and the Colonies believed that the Muslims would be more likely to abandon their own

religious customs and practices and embrace French civilization. The civilian parties desired the complete cultural assimilation of the indigenous population.⁷²

Although this law skirts the issue of land ownership, it nonetheless held implications for it. With two separate legal systems in place, prosecution of land disputes remained confused. Moreover, the specification of Muslims as French but not as citizens legitimized their “separate but un-equal” status. The colon population disapproved of the 1863 and 1865 decrees, viewing them as too pro-Arab. The acts protected the indigènes’ rights to keep their law codes, which many colons found unacceptable. More alarmingly in the eyes of the colons, however, the 1865 act provided a legal way for the indigènes to become citizens. Because the indigenous population outnumbered the colon population, and colons feared the voting power that the indigènes would hold if they became citizens. That few Muslims or Jews chose to become citizens under the stipulations of the 1865 decree did little to assuage the colons’ distress over what they perceived as the “pro-Arab” policies of Napoleon III and the military. The 1865 Sénatus consulte, upholding Muslims’ rights to follow their own religious law, provided the legal basis for excluding them from citizenship and its rights, including property rights.

Colon Criticisms of the Military Administration

In was in this context of natural disasters, disease, and famine, as well as important legislative changes to land and judicial policy, that conflict between the civilian and military powers escalated. The colons increasingly viewed the military as the

⁷² This did not necessarily include political rights.

primary obstacle to the establishment of a thriving and profitable colony in Algeria. In the eyes of the colons, the military represented an authoritarian and aristocratic tradition that encouraged the continuation of Algeria's own authoritarian and aristocratic traditions, as demonstrated by the social and political structure of the tribes. Moreover, the military failed to offer sufficient support for the settlement of European colonists on tribal land, a plan that the civilian administration considered the only way to ensure a rapid assimilation of the indigenous population and the establishment of successful agricultural projects. The unrest and devastation Algeria suffered in the 1860s served as fodder for the arguments of both sides against the policies of the other. Above all, however, was the colons' fervent desire for access to land. To satisfy that, the system of property ownership among the tribes needed to be changed so that Europeans could acquire the land. In 1853, Louis de Baudicour, a French writer and settler wrote that there was a "profound division" between the indigènes and the colons, which he attributed to the differences between the religion and law of the two populations. The difference manifested itself most vividly "as it pertains to the law of property."⁷³ The 1860s saw this difference battled out on several fronts.

In 1860, Émile Girardin, editor of *La Presse*, attacked the arabophobes, who he defined as those whose beliefs meant, for the indigènes, expulsion, oppression, or assimilation by France's right of conquest. Girardin pointed out the contradiction of France's national policy which, on one side of the Mediterranean, fought to defend the Italians' national rights but, on the other Mediterranean coast, battled to repress the

⁷³ Louis de Baudicour, *La guerre et le gouvernement de l'Algérie* (Paris: Sagnier et Bray, 1853), 461.

Algerians' national rights. He argued that in an Algerian administration, the colons should be subordinated to the indigènes. In contrast to this position, the republican anticlerical founder of *l'Algérie nouvelle*, Clément Duvernois, wanted the French state to have complete liberty to colonize Algeria. In 1858, he wrote that he could accept Arab civilization as represented by individuals, but not the Arab civilization as a people. He believed that Arab civilization was dead, and justly so. He claimed to believe in a "fusion" of the two races, French and Arab. "Fusion" in this case meant assimilation, or the absorption of Arab culture by French civilization and the destruction of existing tribal practices.⁷⁴ As we have considered in previous chapters, the debate over acceptance or rejection of tribal customs was not new. What changed in the 1860s, however, was the pressure for the French government to find land for the colonists to settle. The Muslim tribes' different customs and beliefs assumed a new significance when it provided an obstacle to the French in their efforts to obtain more land. Because the military and the Arab Bureau in particular long had been perceived as tolerating and defending tribal customs -- for example, in maintaining the pre-existing system of tribal elites and in slowing European colonization on tribal lands -- the colons increasingly viewed the Arab Bureau as an obstruction that needed to be destroyed. Colon objections to tribal customs reached a crescendo in the 1860s when pamphlets and speeches in the Legislative Assembly proclaimed their objections to the military and its perceived "Arabophile" -- or pro-Arab -- position.

⁷⁴ As quoted from the writings of Girardin and Duvernois in Jean Meyer, Jean Tarrade, Annie Rey-Goldzeiguer, and Jacques Thobie, *Histoire de la France Coloniale des origines à 1914* (Paris: Armand Colin, 1991) 450-452.

After the Doineau Trial, Jules Favre repeated and recycled many of the ideas he introduced in his plaidoirie, particularly the need to end the military control of Algeria. Favre used Doineau as an example of the military administration's corruption, and he suggested that it was time to eliminate the military's power in the colony. After he was elected to the National Assembly, Favre continued to fight for this cause. In a 20 March 1861 meeting of the Legislative Body, Favre addressed the legislators, presenting an amendment to them that would subordinate military to civilian rule. He praised the Arab Bureau as a "marvelous instrument of conquest and a powerful agent of pacification" that boasted many "illustrious generals." But he complained that its officers exercised unlimited authority in their territories and that the Bureau remained independent of civil powers. The military refused to allow the civil authorities even to share in their power.⁷⁵ The colony's failure to flourish, according to Favre, was due to the colony's military's administration which "cannot organize colonial society."⁷⁶ Because the conquest of Algeria was over and the country was pacified, he argued that the job of the Arab Bureau was complete; it should be dissolved. It would be dangerous to leave the Arabs under military rule -- which he depicted as arbitrary, unjust, violent, and aristocratic -- because such an administration would fail to reconcile the Arabs to the French. The Arabs, he believed, needed the example of French republican government to be convinced of the

⁷⁵ M^{me} V^{ve} Jules Favre, née Velten, *Jules Favre: Discours Parlementaires* (Paris: Plon E. Plon et C^{ie}, 1881), Four volumes, II: 48.

⁷⁶ M^{me} V^{ve} Jules Favre, *Discours Parlementaires*, II: 53.
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superiority of French civilization, and to embrace it. If the Arabs could not be brought to the “French side,” it would prove dangerous for the future of the colony.⁷⁷

In a 19 June 1866 meeting of the Legislative Body, Favre again argued that the army must be subordinated to French civilian authority. Favre added that he believed that the Arab race faced two main difficulties: that it was dominated by a military aristocracy and by the “communism” of the tribe.⁷⁸ Here we encounter two fundamental points of argument that Favre and other colon advocates used against the tribes and the military: the “aristocratic” nature of Arab tribal society and -- most important -- its refusal to recognize individual property rights. The communal nature of land use and ownership, and its implied lack of recognition of individual rights, were unacceptable to French republicans and incompatible with French notions of citizenship.

In the June 1866 meeting, Favre linked these tribal characteristics with the military administration by explaining that the French military either encouraged or ignored these “unfortunate” qualities of Arab tribal culture. In contrast, a civilian government and the imposition of French law were the means by which the Arabs could be brought to appreciate and assimilate to French civilization. After all, Favre continued, “is it not true that we have encountered a race that is not equal [to us] . . . less enlightened; less educated; less advanced in civilization?” He asked, “Should not [French] superiority bring them to us?”⁷⁹ Favre implied that the “civilization” of France

⁷⁷ Mme V^{ve} Jules Favre, *Discours Parlementaires*, II: 55-56.

⁷⁸ Mme V^{ve} Jules Favre, *Discours Parlementaires*, III: 129; 132.

⁷⁹ Mme V^{ve} Jules Favre, *Discours Parlementaires*, III: 134-135.

lay in its republicanism; its laws and political principles. That is, France's superiority is demonstrated in its commitment to individual rights, equality before the law, and participatory democracy. The military administration could not instruct the Arabs on French "superiority" because the military merely replicated Arab vices and could not demonstrate the political and civil values of the French republican tradition.

In addition to his criticism of the "communism" and aristocratic nature of the tribe, Favre focused his criticism of Algerian society on its Islamic justice.⁸⁰ To "overcome the ancient barbarism of Islam" and the "despotism" of the Arab chiefs, Favre declared, Muslim justice must be eliminated. He believed that it was necessary to treat the Arabs "justly" in order to rally them to the French side. The French should seek to bring the Arabs to them with "gentleness, justice, and good examples [of conduct and administration]." For Favre, this meant applying French law and justice to the local population. Islamic justice, in Favre's view, was the antithesis of French justice, because it was arbitrary, barbaric, and despotic. And, as he argued in the Doineau trial, the military practiced a similar kind of justice among the tribes, thus failing to provide the "good examples" he believed so important for winning the Arabs to the French. Favre repeated these criticisms in his speeches in the Legislative Body, accusing the Arab Bureau of exercising capricious and arbitrary justice.⁸¹ Leaving the Arabs under the control of the military, therefore, would perpetuate the negative systems under which the

⁸⁰ This is not a direct attack on property rights, but an attack on Islamic justice and law attacks indirectly its treatment of property ownership. If French law replaced Islamic law in civil matters, then property would be treated as it is under French law, becoming privately rather than collectively owned.

⁸¹ Mme Vve Jules Favre, *Discours Parlementaires*, III: 137-138.

Arabs suffered, because the Arab Bureau were no better than the Arabs themselves in these vices. What Favre failed to consider, of course, was that the tribes held a different view of justice and how it should be administered.⁸² Ottoman/Islamic concepts of justice differed significantly from French understanding of the same. The primary goal of Islamic justice in its North African context was the maintenance of social harmony, including strengthening the bonds of family and patronage.

As Jules Favre argued in the Legislative Assembly for the end of the military administration, several other advocates for the colon cause published pamphlets and books that argued for the same thing. Two of the most influential and prolific advocates were Jules Duval (1813-1870) and Auguste Warnier (1810-1875). Jules Duval, a Fourierist and long-term resident of the Algerian colony, was the cofounder and administrator of one of the largest agricultural establishments in Algeria (1847-1850), *l'Union agricole d'Afrique à Saint-Denis-du-Sig*. He also pursued a career in journalism as the chief editor of the newspaper *l'Echo d'Oran* (1852) and was founder and director of *l'Economiste français* (1861). General Eugène Daumas charged Duval with editing *Catalogue explicatif et raisonne' des produits algériennes* for the 1855 universal

⁸² Lawrence Rosen provides a modern anecdote from the twentieth century that reveals the alternate concept of justice and political mores held by the tribes of North Africa and the persistence with which this different concept has endured. During the last quarter of the twentieth century, Rosen traveled to Morocco to conduct research and took a trip to the Atlas Mountains to visit some friends. One afternoon in the course of a discussion about politics, one of this Moroccan friends asked if American politics was corrupt. Rosen admitted that they were. When his friend asked for an example, Rosen discussed the events of Watergate. "Ah no," replied Rosen's friend, "that's just politics (*sisaya*)." Rosen then explained a kick-back arrangement, and once again the friend interrupted to say, "No, no, that's just business (*biy'a ou shra*')." Finally, Rosen discussed nepotism, and his friend dismissed this, too, "Oh no, no, no, that's just family solidarity (*'a'ila*)." (Lawrence Rosen, *The Justice of Islam: Comparative Perspectives on Islamic Law and Society* [Oxford: Oxford University Press, 2000], 163).

exposition in Paris. Also a politician, Duval served as a member of and secretary for the general council of the province of Oran (1858-61).

The medical doctor and Saint-Simonian Auguste Warnier also had a long and distinguished career in Algeria. He arrived in the colony in 1834 to help fight a cholera epidemic, and from 1837 to 1839, he served as an adjunct to the government commissioner to ‘Abd el-Kader. Warnier also was a member of the *Commission Scientifique de l’Algérie* (1840-47), the Scientific Commission created by the French government to explore and study the Algerian land and population. Like Jules Duval, Warnier also served actively in the French government in Algeria: in 1848 and 1849, he was the Director of Civil Affairs of the province of Oran and a member of the council of the government of Algeria.⁸³ Under the Third Republic, in 1871, Warnier was elected to the National Assembly as deputy of Algiers. Together, Duval and Warnier assumed the role of the spokesmen and advocates of colon rights in Algeria.⁸⁴ As we have seen, the 1860s was a period of increased focus on European colonization resulting from several factors explored previously. In 1863, Napoleon III contributed to the escalating debate when his letter declaring a “Royaume Arabe,” or Arab Kingdom, in Algeria, was published in the *Moniteur universel*. This proclamation helped define the battle lines: those who supported a quasi-independent, subservient “Arab Kingdom” against those

⁸³ Jules Duval and Auguste Warnier, *Bureaux arabes et colons, réponse au constitutionnel pour faire suite aux lettres à M. Rouher* (Paris: Challemeil Ainé, 1869), 9-10.

⁸⁴ They represented the opposition to the “Arabophile” policies of Napoleon III and his advisor, Ismail Urbain who, as noted previously, also was a Saint-Simonian. Nonetheless, Urbain and Duval and Warnier found themselves on opposite sides in the struggle over policy in Algeria.

who advocated for an assimilated Algerian colony, subject to French laws and governmental administration.

Duval and Warnier published a series of pamphlets in the 1860s that advocated the position of those who opposed Napoleon III's "Arab Kingdom." They sought to convince the population of France that the colons' cause, which they equated with the expansion of French colonization, was that which the French government should support.⁸⁵ They focused their attacks on two main points: the lack of individualism, including property ownership, among the tribes and the "aristocratic" nature of tribal society. Both characteristics, they repeatedly stressed, were incompatible with French civilization and morals. The underlying issue, however, was that the communal and aristocratic nature of tribal society also was incompatible with property ownership, and therefore contrary to the interests of French colonization.

Duval and Warnier drew this connection explicitly, writing that "one of the greatest vices of the Arab society is that the individual does not exist within it, and that each member of the tribe is more concerned about the community than he is about himself." They considered this a communal outlook a "vice." It also hindered the development of a capitalist economic system that required private property ownership to function. "We must fight against this absorption of individuality in a collective entity," they advised, because it is "very difficult to direct, to administer, and to govern."⁸⁶ Such

⁸⁵ Yacono, *L'Histoire de l'Algérie*, 176.

⁸⁶ "Un des grands vices de la société arabe est que l'individu n'y existe pas, et que tout membre d'une tribu appartient plus à la communauté qu'il ne s'appartient à lui-même." (Jules Duval and Docteur [Auguste]Warnier, *Un programme de politique algérienne, lettres adressées à son exc. M. Rouher, ministre d'état par M.M. Jules Duval and Dr. Auguste Warner* [Paris: Ch. Schiller, 1868], 89).

a communal system not only was difficult to govern, but it also undermined the goal of establishing in Algeria the French political system that valued individual rights. In making property individual, Duval and Warnier argued, one creates the individual.⁸⁷ When the individual exists, then French citizens and a French republican government also may exist.

Duval and Warnier supported French colonization on several grounds. They asserted that the presence of French families -- “good and honest neighbors” -- among the Arabs would provide the proper examples of successful family farmers for the local population. The military was celibate, with no families, and it therefore failed to represent an identifiable and desirable model for the local population.⁸⁸ The Arabs, witnessing the success of their French neighbors, will agree to become sedentary agriculturalists which will, in turn, protect the Arabs from the devastation they suffered under the “droughts and grasshoppers.”⁸⁹ To advance the cause of colonization and to maximize the country’s resources, Duval and Warnier supported state appropriation of land. How could one ignore, they argued, that colonization has a capital interest to save the forests and the springs from the devastation, the negligence, and the ignorance of the Arabs?⁹⁰ They believed that it would be contrary to the best interests of colonization to

⁸⁷ Duval and Warnier, *Un programme de politique algérienne*, 89.

⁸⁸ Duval and Warnier, *Un programme de politique algérienne*, 47-50. The military was not celibate in the literal sense of the word. What they meant was that the military did have French wives and families living with it in Algeria.

⁸⁹ Duval and Warnier, *Un programme de politique algérienne*, 53.

⁹⁰ “Pourrait-on méconnaître que la colonization a un interest capital à ne pas livrer les forêts et les sources à la dévestation, à l’incurie, à l’ignorance des Arabes?” (Duval and Warnier, *Un programme Algérienne*, 46).

leave these valuable resources in the hands of the Arabs, who failed to cultivate and capitalize upon them. The best way to ensure progress and profitability, not just for the French colons and the French government but also for the Arab population, was to take the resources of the Algerian land and give it to French management and colonization.

Removing the land from the control of the local population had an additional “benefit” according to Duval and Warnier. Doing so would undermine the “aristocratic and feudal” base of Arab society that needed to be eliminated in order for French colonization to succeed. They criticized the “feudal” nature of Arab society on the grounds that it prevented individual property ownership; additionally, they argued that this aspect of tribal society disinherited the “peasants” (“*khammas*”) from their “right” to the land.⁹¹ For this reason, among many others, Duval and Warnier believed that the Arab tribesmen longed to be free from the oppression and tyranny of their sheikhs, with whom the officers of the Arab Bureau had forged a close relationship. Together, the tribal elites and the Arab Bureau formed “*l’aristocracie arabe*,”⁹² which is precisely what must be eliminated in order for Algeria to prosper and for French civilization to spread among the indigenous population. The Arab Kingdom envisioned by Napoleon III would perpetuate local practices and thus had an “aristocratic and feudal” foundation.⁹³

⁹¹ Duval and Warnier, *Bureaux arabes et colons*, 145-156. Moreover, giving ownership rights to the peasants meant that they could then sell the land. This would provide them with a way to solve their “debt problem” (created because they lacked the currency to pay their taxes and fines to the French administration) and thus “improve their lives.” (This last issue discussed on page 110 of *Bureaux arabes et colons*).

⁹² Duval and Warnier, *Un programme de politique Algérienne*, 51-52.

⁹³ Duval and Warnier, *Bureaux arabes et colons*, 145.

In upholding the traditional tribal structures and advising that only the tribal leaders should be given title to the land, the officers of the Arab Bureau refused access to the land to both the colons and the industrious members of the Arab tribes. This kept the land “in the hands of a lazy aristocracy [the tribal leaders] of the worst kind, who from morning to evening, do nothing but eat, drink, smoke, yawn and sleep, and who, when it is tired of the heavy burden of its idleness, knows no other distraction than revolt, raiding, and armed theft.” This is hardly surprising, Duval and Warnier explain, given the military administration in Algeria. They wrote that, “One arrives at such results when one entrusts the administration of a country to foreign officers who have no conception of work other than that of the profession of arms and who, foreigners themselves to all productive activities, save their sympathies for the destroyers and the idlers.”⁹⁴ The point is clear: the lazy, unproductive, aristocratic tribal leadership is supported and encouraged by the similarly unproductive and authoritarian Arab Bureau. Thus the existing state of affairs cannot be permitted to continue. After all, they wrote, “it is the [tribal aristocracy] that must reckon with us, and not us with it, because on our side is right and force, science and progress.”⁹⁵ The tribe must reform itself or disappear.”⁹⁶ The old “feudal” system of the “Arab aristocracy” and their French supporters in the Arab Bureau must be

⁹⁴ “[P]our conserver aux mains d’une aristocratie parasseuse de la pire esèce, qui, du matin au soir, ne fait manger, boire, fumer, bailler et dormir, et qui, lorsqu’elle est fatiguée de la lourde charge de son oisiveté, ne connaît d’autre distraction que la révolte, la razzia, le vol à main armée! On arrive à de tels résultats quand on confie l’administration d’un pays à des officiers étrangers eux-mêmes à toute activité productive, réservent leurs sympathies pour les destructeurs et les oisifs.” Duval and Warnier, *Bureaux arabes et colons*, 161.

⁹⁵ Duval and Warnier, *Un programme de politique algérienne*, 109.

⁹⁶ Jules Duval, *L’Algérie et les colonies françaises* (Paris: Librairie Guillaumin et Cie, 1877), 9.

overturned and replaced with an equitable system that supported honest and productive labor, property ownership, and individual rights; in short, a system that reflected French mores.⁹⁷

The historian William H. Sewell, Jr. has pointed to the centrality of property to the French Revolution which freed it from its “‘feudal’ constraints.” Sewell claims that more than simply being freed, property was created (in its bourgeois form) during the Revolution.⁹⁸ The National Assembly enacted legislation in the summer of 1789, in response to peasant revolts, that eliminated seigneurial dues and other remnants of feudalism. By so doing, the Assembly essentially redefined the nature of property. Sewell refers to this as a “holocaust of property of the old style.”⁹⁹ This radical change was enshrined in Article 2 of the 4 August 1789 Declaration of the Rights of Man and Citizen, which states the following: “The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.”¹⁰⁰ Borrowing from Enlightenment

⁹⁷ Duval did not call for the *elimination* of the Arab Bureau, because he believed the tribal population and the French administration needed intermediaries. He advocated that the Bureau should be radically reformed, however, and a significant part of that meant for Duval the dismantling of the class of “elites” embodied in the co-operation between the tribal leadership and the officers of the Arab Bureau, who themselves had become the “sultans of the Arabs.” (Duval, *L’Algérie et les colonies*, 99-100).

⁹⁸ William H. Sewell, Jr., *Work and Revolution in France* (New York: Cambridge University Press, 1980), 114.

⁹⁹ Sewell, *Work and Revolution*, 133-134.

¹⁰⁰ As reproduced in Dale Van Kley, ed. *The French Idea of Freedom, The Old Regime and the Declaration of Rights, 1789* (Stanford, California: Stanford University Press, 1994), 1.

ideas, the Revolutionaries “posed property as the bulwark of liberty against the tyranny of the king.”¹⁰¹

Thomas E. Kaiser has expanded Sewell’s examination of the Revolution’s influence on property rights by pushing back the origins of the conflicts over property to precedents in Old Regime jurisprudence.¹⁰² Kaiser emphasizes the significance of the peasants’ attacks on seigneurial rights, and he interprets the lawsuits filed by the peasants as attacks on inequalities among individuals that stemmed, in part, from the privileges feudalism had bestowed on the landlords. In the courts, the peasants fought the landlords’ rights to refuse the peasants’ desire to sell their own land if that land were part of the seigneurial domain. The peasants lived and farmed the land, and in many cases they owned title to it; however, the peasants needed permission from the landlord before they could sell any land. The landlords had the ability, based in feudal practices, to refuse the peasants permission to conduct the sale. The peasants deeply resented this.¹⁰³ In the changes to property ownership and jurisdiction that the Revolution brought, Kaiser sees the origins of the “modern liberal notion of property right as a more or less absolute entitlement to dispose of a thing.”¹⁰⁴

The actions of the Legislative Assembly in 1789 dismantled the nobility’s hereditary privileges, and it removed the barriers between the individual landowner and

¹⁰¹ Sewell, *Work and Revolution*, 123; 126.

¹⁰² Thomas E. Kaiser, “Property, Sovereignty, the Declaration of the Rights of Man, and the Tradition of French Jurisprudence” in Dale Van Kley, ed. *The French Idea of Freedom, The Old Regime and the Declaration of Rights of 1789* (Stanford, CA: Stanford University Press, 1994), pages 300-339.

¹⁰³ Kaiser, “Property,” 331.

¹⁰⁴ Kaiser, “Property,” 138.

his right to do what he wished with his land. Tocqueville asserted that the French hated feudalism more than any other people did; this originated in part from what Tocqueville referred to as the “enslavement of the land.”¹⁰⁵ That is, the restrictions the remnants of the French feudal system placed on the peasants’ use of their land. The Revolution’s attack on the aristocracy and its feudal privileges was related intimately to the relationship of the individual to his landed property. The emphasis on land as the critical form of property changed throughout the course of the nineteenth century, as William J. Sewell explains, and some socialist movements after the Revolution of 1848 even sought to eliminate private property itself.¹⁰⁶ Nonetheless, these changes serve only to reinforce rather than undermine the essential significance that the problem of *property* held for French political and social thought in the nineteenth century. In this light, we can understand better the reasons that pro-colonial activists such as Jules Duval and Auguste Warnier repeatedly made attacks specifically on the practice of communal of land ownership among the Algerian tribes and the “feudal” nature of their society.

Conclusion

The French republican tradition could not accommodate an economic and social system that appeared to perpetuate the “tyranny” and inequalities against which the Revolutionaries had fought. Thus, French colonists such as Duval and Warnier turned to

¹⁰⁵ Alexis De Tocqueville, *The Old Regime and the Revolution*, volume I, ed. intro., and critical apparatus by François Furet and Françoise Mélonio, trans. Alan S. Kahan (Chicago: University of Chicago Press, 1998), 116

¹⁰⁶ Sewell, *Work and Revolution*, 142.

language rooted in the Revolution to galvanize support for their position in favor of dismantling existing tribal hierarchies and the related system of land “ownership.” The power of the sheikhs to control the land and freedom of the members of the tribe was depicted as a “tyranny;” the hereditary privileges enjoyed by the tribal elites made them an “aristocracy.” The communal nature of land ownership meant that individuals were not free to dispose of their property as they wished. The connection between the circumstances the peasants suffered under the Old Regime and the existing situation among the tribes in Algeria would not have been lost on those who read the work of Duval and Warner. For his part, Favre focused his attacks on the “arbitrary” nature of Islamic justice and the need to impose an equitable and just system of laws -- specifically, French civil laws -- in Algeria among the local population. Because Islamic law provided the legal framework for property ownership among the tribes, any dismantling of Islamic civic law also would remove the legal justification for the tribes’ system of property. Although Duval, Warnier, and Favre made no arguments for extending citizenship to the Arab population in Algeria, they did believe in an eventual assimilation of the local population with French civilization.

Essential to this project was the need for the tribes to practice French ways. Most important of all, believed those like Duval and Warnier, the tribes needed to structure their social, civil, and legal systems in accordance with French models. The longer traditional practices were permitted to continue, the longer it would take for the Algerian population to adopt French civilization. If the tribes had no experience of French civilization, then they could not recognize its obvious superiority. Pro-colon activists

suggested that in order to make Algeria profitable, and therefore successful, the local population must become part of French civilization. This would render the tribes more peaceful toward and receptive of the French colonists because they would embrace the progress and improvements that the French brought with them. This would facilitate French colonization by making the colony safer for settlement. In the case of land ownership, the imposition of French legal institutions and mores would mean that land held by the tribes could be sold to French colonists.

The polemic against the military, and against the officers of the Arab Bureau in particular, should be considered in the context of the French republican tradition. Duval, Warnier, and Favre made explicit the relationship between the officers of the Arab Bureau and the aristocratic elite of the tribal hierarchy and, in turn, its resemblance to Old Regime practices and social structures. The Arab Bureau was populated with authoritarian, autocratic leaders who colluded with local leaders to enrich themselves and exploit the tribesmen. Jules Favre depicted Captain Doineau as the embodiment of the corruption, lawlessness, and tyranny of the military administration and of the tribal elite which it supported. The modern French post-Revolution state could not sanction the Arab Bureau which, together with the tribal elites, formed an administration that resembled the Old Regime of France. In the post-Revolutionary modern French state, this could not be tolerated. If the Arab Bureau permitted these conditions, or in the case of Doineau even participated in local practices, then the administration of the Arab Bureau must end.

The issue underlying these references to republican ideals was access to land. Whether or not Doineau and the Arab Bureau actually were corrupt and authoritarian, their attackers effectively painted them as such. Doineau's trial provided the additional "evidence" the anti-military advocates needed to further their agenda to make the Algerian administration a civilian one. Moreover, the attention the press devoted to the trial placed the issues and the problem of the Algerian administration at the forefront of the debates that took place in the 1860s about the colony's future. Intimately connected with these issues, however, was the question of access to land. The pro-colon forces saw the Arab Bureau and military, with its relatively tolerant attitude toward local power structures and practices, as obstructionist to, if not destructive of, French goals for a profitable colony in Algeria.

Many officers of the Arab Bureau wanted to slow European colonization onto military territory because, they argued, rapid colonization would anger the local population and risk destabilizing the peace and security of the colony. These officers also argued for a gradual implementation of French customs among the tribes to give them time to learn about and adjust to French ways. In effect, the officers advocated a policy of accommodation with local practice. This approach to administration closely resembled the Ottomans' policy of accommodation, *istimalet*. This was the administrative style to which the North African Regencies had been accustomed for over two hundred years.

Conclusion

In September 1857, the French civil court in Oran found Captain Doineau guilty of the murder of the agha Ben-Abdallah and condemned him to death. An appeals court in Algiers commuted the sentence to life in prison and later, Napoleon III reduced the sentence further to ten years' exile. After serving out his years abroad, the former Arab Bureau officer returned to France, and in 1914 in Lille, France, Auguste-Édouard Doineau died of natural causes at the home of his son. Whether or not Doineau actually had organized the murder of the Agha Ben-Abdallah was a point of debate during his lifetime and afterward. When Captain Doineau was arrested for the crime, General Montauban allegedly suggested to his colleague General Antoine Alfred Eugène Chanzy that "if [Doineau] is a friend of yours, send him a loaded pistol!" Of his client, Henri Nogent-Laurens is to have declared, "If talent could save a guilty man, Doineau would be safe from all danger!"¹ In contrast, General du Barail recounted an incident in which he defended Captain Doineau against an "enraged diatribe" that a fellow officer, General Morris, launched against Doineau. Du Barail believed Doineau innocent because, he explained, Doineau was "too intelligent" to have conducted "so inept an ambush."²

The following anecdote provides the only record we have of the Arabs' reaction: after the conclusion of the trial, General Chanzy related an encounter he had with an Arab sheikh that he met at the races in Oran. Chanzy claimed that the sheikh told him that the

¹ Armand B. Fouquier, *Causes célèbres de tous les peuples* (Paris: Lebrun et Ci^e, éditeurs), volume 1, 9.

² du Barail, *souvenirs*, II: 211-212.

Arabs do not understand how the French could have condemned one of their own, when all the Arabs knew that he was innocent. The sheikh expressed surprise that the French could have believed so easily the many lies told by the accused Arabs. Bou Noua, one of the acquitted Arabs, told Chanzy that he could not enjoy his freedom, knowing that the innocent Doineau had been condemned. In conclusion, Chanzy commented that the French could not say that they gave “the natives” clear proof of the impartiality of French justice when it convicted Doineau, because the trial was not an impartial process.³

The evidence given in the trial points to Doineau’s guilt, but considerable reasonable doubt remains. The strongest argument in favor of guilt comes, in fact, from events that unfolded many years later. In 1873, Maréchal François Achille Bazaine, for whom Doineau had been an aide-de-camp in Algeria, was accused and convicted of treason following his retreat from, and later surrender to, the Prussians in 1870. Imprisoned at the Île Sainte-Marguerite in 1873, Bazaine escaped in 1874 with the assistance of Captain Doineau and Lieutenant-Colonel Henry Willette. Doineau and Willette were put on trial for their roles in the escape plot. The evidence against the two men was strong, and the court found them guilty. Doineau fulfilled his punishment of two months’ imprisonment. Nonetheless, throughout the trial and despite being confronted with irrefutable evidence and multiple witness testimonies, Doineau continued to protest his innocence and claimed complete ignorance of the entire affair. He never admitted his participation in the plot. This steadfast refusal to admit his obvious guilt

³ Gaston Delayen, *Les deux affaires de Capitaine Doineau 1856-1874, l’attaque de la diligence de Tlemcen, l’évasion de Bazaine*, (Paris: Éditions des Juris-classeurs, 1924), 283-284.

recalls Doineau's behavior during his murder trial in 1857. Then, the circumstances and evidence were murky, which gave credence to his claims of innocence. But his protestations of 1857 ring hollow in light of his later perjury, when he undeniably had participated in the plot to free Bazaine yet swore otherwise.

Nonetheless, Doineau's guilt or innocence in the assassination of Ben-Abdallah is less significant than what the trial suggests about the relationship between the military and civilian administrations in Algeria, and what it reveals about differences in administrative philosophies toward administering the colony's indigenous population. Many contemporary observers attributed the trial's outcome as a result of the animosity that existed between the civilian and military powers: the civilian court found the military officer guilty because it wanted both to condemn and, ultimately, eliminate the entire military administration. The critics of the military administration believed that Captain Doineau embodied its sins and, more specifically, those of the Arab Bureau officers.

Doineau was believed to be corrupt, because he possessed a large sum of money which he apparently had come by through illegal and unsavory practices. Doineau was viewed as brutal, because he appeared to have ordered the assassination of an innocent Arab leader who challenged his authority and posed a threat. Critics claimed that such action aligned with the military's practice of shooting prisoners who attempted to escape, thus demonstrating its ruthlessness and violence; the unrestrained and brutal "rule of the sword." Doineau also appeared to have been exploitative of the indigenous population. He was portrayed as having threatened and bullied Arab leaders into obeying his orders; also of exploiting the local population by inflicting arbitrary fines on it and seizing its

property, using these goods to enrich himself and his friends. In sum, officers of the Arab Bureau like Doineau were accused of exercising unchecked arbitrary power. This negative image enjoyed a long life. In 1874, a republican propaganda pamphlet attributed the source of Doineau's money to "shameful acts" and labelled him a "thief and an assassin."⁴ Echoes of these opinions recur in the work of modern scholars who emphasize the "brutal justice" and "scandalous venality" of the Arab Bureau officers.⁵

Prevailing mid-nineteenth-century French concepts of government and citizenship could not tolerate these deviations from expected practice. The tribes' continued resistance to French rule was attributed to the officers un-French and therefore unacceptable behavior. Within the hierarchy of the French military and in the context of the post-Revolutionary French political state, the military officers were expected to uphold the standards and practices of France, which certainly included not stealing from the populace or assassinating personal enemies. For the defenders of French civilization and law such as Jules Favre, the Arab Bureau's behavior represented a departure from French mores and republican values, an unacceptable violation of individual rights and the rule of law.

For many others among the French, anything that resembled the "despotic" and "corrupt" practices of the Ottomans, or that reinforced the "faults" of tribal society, was incompatible with post-Revolution French republican beliefs. One French colonist referred to the members of the tribes as "flocks of serfs;" drawing a clear connection

⁴ Jules Girard, *Propaganda républicaine, Les Grands Traîtres* (Paris: Le Chevalier, 1874), 22-23.

⁵ John Ruedy, *Modern Algeria: The Origins and Development of a Nation* (Bloomington, IN: Indiana University Press, 1992), 73.

between current social conditions among the Algerian tribes and those of the peasants under the Old Regime.⁶ Jules Duval and Auguste Warnier equated the morals and laws of the indigenous population with “barbarity” and believed that France must not respect them; instead it should replace them with “civilization;” i.e., French morals and laws.⁷ Duval explained that the tribes must “transform [themselves];” i.e., adopt French civilization, or “disappear.”⁸ Such disappearance is exactly what some Arabs feared would happen if they *did* adopt French laws and culture. As recounted in the introduction of this work, an elder member of the Ouled Rechaïch concluded that the creation of private land ownership among the tribes would result in their demise.

For many who defended Doineau and the Arab Bureau, Doineau’s actions reflected the harsh necessities of life in a remote, understaffed, and under-equipped post in a harsh environment. The exigencies of these conditions required that the Arab Bureau officers administer their territories using alternate methods in order to administer them effectively. For the officers in the tribal regions, this meant conforming to the habits and practices of the indigenous population rather than forcing them to adopt and adhere to French laws and mores. The officers believed that it would be most effective to work within local networks of power and to adopt pre-existing administrative techniques and traditional customs. By doing so, they would cause as little disruption as possible to the tribes’ traditional way of life, and they then could better maintain peace and security in

⁶ Docteur Cauquil, *Études économiques sur l’Algérie* (Oran: Adolphe Perrier: 1860), 82.

⁷ Jules Duval and Auguste Warnier, *Un programme de politique algérienne* (Paris: Charles Schiller, 1868), 12.

⁸ Jules Duval, “*L’Algérie et les colonies françaises* (Paris: Librairie Guillaumin et Cie, 1877), 9.

the colony. Colonel Walsin-Esterhazy advised the French government against hastily eliminating the hierarchical structure of the tribe, thereby establishing an “absolute equality” among the Arabs. Only the passage of time, he believed, could engender this. The tribes should be allowed to adopt French ways of life of their own accord, which then would ensure that they remained “constantly faithful” to the French.⁹

If Captain Doineau committed all the crimes for which he was convicted and of which he was suspected -- ordering the assassination of the agha Ben Abdallah; imposing and collecting arbitrary fines for the enrichment of himself and his friends; raiding and confiscating the silos sauvages; accepting bribes and illicit gifts in return for political and economic favors -- then one could point to these as examples of the ways in which the officers found themselves negotiating between two very different administrative traditions. The officers were expected to operate like indigenous power brokers among the tribes, and to do so they of necessity employed methods in place long before the French arrived. With a foot in each “political culture,” such officers could find themselves acting in ways that their own government and even the military hierarchy rejected. When governing their territories, nineteenth-century Arab Bureau officers in Algeria frequently deviated from French legal norms.

As Annie Rey-Goldzeiguer and O.W. Abi-Mershed have noted, Arab Bureau officers suggested an “associationist” approach to working with the tribal populations, rather than the “assimilationist” approach then popular among civilian factions. The Arab

⁹ [Jean Louis Marie Ladislas] Walsin-Esterhazy, *Notice historique sur le maghzen d'Oran* (Oran: Perrier, 1849), 233;235.

Bureau ideas did not, in fact, die out with the elimination of the military administration in 1871. Their approach to colonization resurfaced in the *tache d'huile*, or “oil-stain,” approach favored by General Hubert Lyautey, the first Resident-General of Morocco after it became a French protectorate in 1912. Lyautey employed the “oil stain” analogy to illustrate his belief that French influence and culture should seep and spread gradually into the local population, through non-violent actions aimed at improving the lives of the indigenous population. In particular, he advocated military efforts to improve the commercial, medical, and agricultural conditions of the local society.¹⁰ Lyautey believed in the mutual benefits that the colonizer and the colonized would reap from this process of colonization. As did the Arab Bureau officers examined in this study, he supported a flexible approach to administration that incorporated local elites and avoided governing the colonial territory as if it were just another *département* of France.¹¹

Lyautey first published his ideas in a 1900 *Revue des deux mondes* article, but they bear close resemblance to the Arab Bureau proposals of the mid-nineteenth century. Lyautey graduated from Saint-Cyr in 1877, and three years later he served as a cavalry officer in Algeria. After service under Joseph Gallieni in Indochina and then Madagascar, Lyautey returned to Algeria in 1904 as a commanding general in the South Oranais region. Lyautey’s theories about the military’s role in colonial endeavors, particularly his “oil stain” approach, frequently are attributed to his time in Indochina and Madagascar and to Gallieni’s influence. It would be illuminating to explore the evolution of

¹⁰ Edward Berenson, *Heroes of Empire* (Berkeley, CA: University of California Press, 2011), 230.

¹¹ Peter Paret, ed. *Makers of Modern Strategy from Machiavelli to the Nuclear Age* (Princeton, NJ: Princeton University Press, 1986), 390.

Lyautey's views, with special attention given to the importance of his encounters with Arab Bureau officers during his service in Algeria. It is suggestive that it was after this contact that he came to support a "passive penetration" in Morocco; that is, a slow and gradual expansion of French civilization.

Differences in administration policies played out especially through the issue of land (property) ownership. The increasing demand for more land for colons to settle, which began in the late 1840s and accelerated through the 1850s, increased the pressure for the French to reach a decision about the land tenure of the indigenous population. The French settlers wanted more land. The French military, in general, wanted to restrict the settlers' access to land. Neither the military nor the colons agreed among themselves about how to resolve the problem of French access to tribal land, but two main camps emerged, with the military on one side and the colons on the other. Many -- in particular, members of the Arab Bureau -- resisted colon settlement in the tribal regions. This pitted the Arab Bureau and its sympathizers against those of the settlers who advocated the removal of the tribes to open up land for French settlement. The colons and their supporters in France accused the military of being the cause of all the problems France faced in colonizing Algeria and of the tribes' resistance to French rule.

The division in the military administration included some of its most well-known leaders. A member of the Legislative Assembly, Jean Brunet, recalled his participation in the late 1840s in meetings between General Bugeaud and General Lamoricière. The meetings were called to address the issue of colonial settlements and the "capital question" of the indigenous population. Brunet recalled that Bugeaud and Lamoricière

took opposing positions, and he expressed surprise at how radically these two “remarkable men” differed on the big problems France faced in Algeria. Brunet reported that Lamoricière wanted to remove all the local population, gradually pushing them off the French territories in Algeria. Land ownership would be awarded to large industrial corporations. Bugeaud, on the other hand, wanted to leave the indigenous population in place and establish agricultural colonies of soldiers in the midst of the tribes. He wanted French civilian settlement restricted to the coastal regions, thus leaving the bulk of the tribes more or less undisturbed.¹² Bugeaud opposed the confiscation of land from the Arabs because, he reasoned pragmatically, without their land, they would be unable to feed themselves and thus would remain in a permanent state of revolt.¹³

The military’s resistance to French land acquisition enflamed the republican and colon factions. They resented the military’s perceived bias in favor of the Arabs. The colon writer Louis de Baudicour complained that the Arab Bureau preserved for the Arabs the land they had cultivated already -- that is, “the best land,” -- and gave to the colons only the “scrub land.”¹⁴ Clearly, the colons themselves wanted, and felt they deserved, the “best land.” Furthermore, they argued that a slow and gradual colonization of tribal lands would lead to the failure not only of their own agricultural and commercial endeavors, but also to the Algerian colony itself. Because the military restricted European settlement on tribal lands, it was acting against the interests of the colons, who

¹² CAOM F/80/1722, *Journal Officiel de la République Française* (20 December 1874), 8433.

¹³ Roger Germain, *La politique indigène de Bugeaud*, tome II (Paris: Éditions Larose, 1955), viii.

¹⁴ Louis de Baudicour, *Le guerre at le gouvernement de l’Algérie* (Paris: Sagnier et Bray, 1853), 459.

needed the land. It also was acting against the interests of the indigènes, who “needed” French civilization, and of the French nation, which needed its colony in Algeria to succeed. Ismail Urbain wrote that in Algeria, the predominant interest was the prosperity of the colony. This would be achieved, he believed, by civilizing the indigènes through an imposition of French ways of life. Taking the land, therefore, was an “expropriation for the utility of humanity.”¹⁵

Unlike the government of the United States with its 1830 Indian Removal Act and subsequent forced relocation of vast Amerindian populations, the French administration passed no legislation that specifically addressed the resettlement of Algerian tribes. Also unlike the example of the United States, in which the military played an active role in forcibly removing the Amerindians from their land,¹⁶ the French military more often than not acted to preserve tribal society and its right to its land. Instead of a direct legal or physical assault on tribal land ownership, the French passed a series of laws, most notably the Sénatus Consulte of 1863 and the Warnier Law of 1873, that progressively dispossessed the tribes of their traditional land and undermined the tribes’ social, cultural, and religious foundations. The end result for the Algerian and the Amerindian tribes was

¹⁵ Ismayl Urbain, *L’Algérie française, indigènes et immigrants* (Paris: Challamel aîné, 1862), 10-11. On the issue of maintaining local leadership, however, Urbain sided with those among the military who supported maintaining “l’aristocratie indigène.” To remove it would be imprudent, he advised, and would not benefit peace and the public order. (*L’Algérie française*, 38).

¹⁶ Particularly in the case of the Cherokees and the 1838 Trail of Tears during which U.S. troops drove thousands of Cherokees from their lands and marched them to the West.

similar: the loss of much indigenous land to colonial settlers and a concomitant destabilization of indigenous ways of life.¹⁷

Some among the French acknowledged the negative consequences of such actions. Alexis de Tocqueville, for example, observed first-hand the misery that resulted among the Amerindians when the United States government forcibly removed them from their lands in the southeast. Of the removal of the Amerindians, Tocqueville wrote that it “is impossible to conceive the extent of the sufferings which attend these forced migrations. They are undertaken by a people already exhausted and reduced,” he continued, “and the countries to which the newcomers betake themselves are inhabited by other tribes which receive them with jealous hostility. . . . These are great evils; and it must be added that they appear to me irremediable.”¹⁸ Tocqueville recognized that the Algerian tribes suffered similarly. Nonetheless, he supported radical colonial efforts in Algeria, advocating a plan of partial colonization of the land and total domination of the population. Tocqueville recommended that the French apply methods to remove the Algerian tribes from their land similar to the methods the United States used against the Amerindians.¹⁹ “We must necessarily use not only violent measures,” wrote Tocqueville,

¹⁷ In Algeria, however, unlike the United States, the numbers of European settlers never exceeded that of the indigenous population. In 1954, the Muslim inhabitants of Algeria numbered 8,546,000, whereas the non-Muslim inhabitants numbered only 984,000. (Figures from John Ruedy, *Modern Algeria*, 94).

¹⁸ Alexis de Tocqueville, *Democracy in America*, complete and unabridged volumes I and II, intro. Joseph Epstein, trans. Henry Reeve (New York: Bantam Classic Books, 2000), 392; 395.

¹⁹ Jules Duval also uses the example of the Amerindians, but he does so to justify colonization. He wrote that colonization is the only remedy to an “evil” (presumably he meant the military administration) that will “make the Arabs of Algeria disappear like the Red Skins “(*les Poux Rouges*) of America.” Jules Duval and Auguste Warnier, *Un programme de politique algérienne* (Paris: Charles Schiller, 1868), 53.

“but visibly iniquitous ones. We [will] have to dispossess several tribes and transport them elsewhere, where they very likely [will] be less well off.”²⁰

Tocqueville later modified this position by writing that although Europeans may take the land they need for colonization, they must compensate the tribes from whom they take it.²¹ Tocqueville perceived the significance that land held for the tribes, noting that had the French restrained themselves merely to taking over the government of Algeria, as the Ottomans had done, and not sought to obtain and settle the land, the indigenous population likely would have offered little resistance. The French, however, pursued a different agenda than did the Ottomans, and this included the appropriation of Algerian property. Tocqueville attributed the tribes’ violent resistance to French rule to their attachment to their land -- and their powerful fear of being dispossessed of it. Thus, he wrote, the fight between the French and the indigenous population was a “quarrel no longer between governments, but between races.”²² Despite these astute observations, Tocqueville failed to grasp the full significance the land held for the tribes. Tocqueville claimed that because land in Algeria was “not actually owned,” then land in the “public domain,” including tribal land, could be taken and given to Europeans.²³ Because land that was “only” owned communally was much easier to take than land owned by individuals -- presumably because it was more difficult to separate an individual from his

²⁰ Alexis de Tocqueville, “Essay on Algeria, October 1841” in *Writings on Empire and Slavery*, ed. and trans. Jennifer Pitts (Baltimore: The Johns Hopkins University Press, 2001), 83.

²¹ Tocqueville, “First Report on Algeria, 1847” in *Writings on Empire and Slavery*, 143.

²² Tocqueville, “Essay on Algeria, October 1841,” in *Writings in Empire and Slavery*, 83.

²³ By public domain, Tocqueville probably was referring to the beylick lands the French government took over by right of conquest.

own property than a community from its communal property -- he reasoned that Europeans would face limited resistance from the tribes.²⁴ Tocqueville shared the view of land ownership articulated by supporters of rapid French colonization.

Eventually, and despite all of the crimes the colons attributed to it, the military -- “*regime du sabre*” -- did not drive the tribes from their land and deprive them of their civil rights. Instead, it was the French government’s gradual passage and implementation of prejudicial law codes. These acts accelerated when the Third Republic placed the republicans in control of the government. Legal scholars Ugo Mattei and Laura Nader argue that, in the colonial arena, the law itself is harnessed to the colonial mission, and that it serves simply as another tool for “plunder.” Mattei and Nader assert also that “law has been used to justify, administer, and sanction Western conquest and plunder,” and that “imperial uses -- past and present -- of the rule of law are behind the less-than-ideal practices of distributive justice. . . . [Law is used] as a mechanism for constructing and legitimizing plunder.”²⁵ Law, of course, is not *only* an instrument of exploitation. It can, and often does, have more benign and positive effects. But in French Algeria, it is difficult to deny that, as Mattei and Nader suggest, the law was a vehicle for French territorial plunder.

The Doineau Trial highlights the numerous issues that the French government, both in France and Algeria, struggled with in an effort to create a colony and administer a large indigenous population. Chief among these was the inability of the French to

²⁴ Tocqueville, “Second Report on Algeria, 1847” in *Writings in Empire and Slavery*, 175.

²⁵Ugo Mattei and Laura Nader, *Plunder: When the Rule of Law is Illegal* (Malden, MA: Blackwell Publishing, 2008), 1.

conceptualize an alternate approach to government than that embodied in the legacy of the legal and administrative reforms of the French Revolution. The issues of colonization, land ownership, and administration presented intertwined problems for the French government in Algeria. The inability of the French to accommodate alternate forms of governance, such as those followed by the Arab Bureau, contributed to the difficulties the French government confronted in establishing a stable colony in Algeria. Tocqueville believed that a good and just administration was essential for the creation of a successful colony, but such an administration meant to him and to many other republicans, simply, a French administration applying the political lessons of the French Revolution. Unfortunately for the indigenous population, these lessons provided no acceptable path for accommodating political, legal, or cultural plurality. The stroke of the pen, and not the blow of the sword, eliminated tribal land and, in the process, confirmed the ultimate destruction of tribal life.

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Biography

K.A. Bowler was born in upstate New York. She spent her childhood in the bucolic Hudson Valley with her parents, younger brother, and a dog before moving to Ithaca, New York to attend Cornell University. In 1993, she graduated from Cornell with a degree in Near Eastern Studies. After several working for several years in New York and North Carolina, K.A. began graduate school at North Carolina State University from which she earned a Master's degree in History, with a concentration in European Intellectual History and subfields in Middle East and Ancient History. She is grateful for the full academic scholarship she received from the History Department at North Carolina State University.

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