Judicial Colonialism Today

THE FRENCH OVERSEAS COURTS

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ABSTRACT

France maintains a court system outside of the European continent in so-called overseas regions such as Martinique and New Caledonia. Held as colonies until the 1940s, these territories became part of the French state with varying degrees of autonomy. Drawing on original qualitative and archival research, this article argues that through these overseas courts, France continues to legally assume the traditional role of a colonial power despite its declared commitment to the nation-state, republican model. Subordinating discourses and elements of colonial structure have outlived the transition to nonempire, continuing to exert strong influences on the courts' operations, especially the way in which judges and prosecutors are appointed and promoted. This study should also be read as a contribution to the scholarship on how court systems around the globe grapple with the legacy of colonialism in shaping their organizational structure and practices.

France developed a colonial empire starting in the 16th century, which at its peak between the two world wars counted about 65 million subjects spread over several continents. Law was central to the imperial project—the establishment of colonial courts in particular marked the ultimate appropriation of a territory, expanding control over the colonized (Fabre 2005, 649). After World War II, some colonies gained independence, while others remained under French control under a variety of legal statuses and degrees of autonomy. To this day France maintains administrative, political, military, and economic control over a set of "overseas" (*outre-mer*) regions outside of Europe such as Guadeloupe, French

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Guiana, Martinique, Réunion, and New Caledonia. Taken together, these territories comprised 2.6 million inhabitants as of 2016, 4% of the French population (INSEE 2016). There, the court system remains one of the most salient continuities between the colonial and postcolonial eras, carrying the imposition of French laws, language, and culture thousands of miles away.

Anchored in qualitative empirical and archival research, this article analyzes the discourses that accompany, structure, and legitimize the current functioning of overseas courts. The main claim is that through these courts, France continues to legally assume the traditional role of a colonial power, especially through the persistence of racial hierarchies, despite its declared commitment to the nation-state, republican model (Wilder 2001). Subordinating discourses and elements of colonial structure have outlived the transition to nonempire, continuing to exert strong influences on the courts' operations, especially the way in which judges and prosecutors are appointed and promoted. In particular, the national policy according to which *magistrats* must rotate from court to court and therefore cannot linger at any given post more than a few years has a disparate impact on native overseas citizens for whom a transfer could mean moving thousands of miles away from home.[1] By "native overseas citizens," I mean the racially, ethnically, and culturally diverse group of people whose families have lived in overseas regions for generations—be it because they are indigenous to the territory, because they were kidnapped and brought there to be enslaved, because they came as indentured servants or laborers, or because they arrived as colonists—in contrast to the principally white metropolitan citizens who move overseas from mainland France for a period of years. The postcolonial republic's declared goal of equal and uniform treatment across the center and the periphery has thus resulted in maintaining, and perhaps even reinforcing, the domination of white metropolitan *magistrats* on the overseas bench.

This analysis of the French overseas judicial system contributes to nuancing imperial histories (Barkey 2008; Burbank and Cooper 2010), according to which empires ruled by generating differences, as opposed to nation-states, which pursue uniform laws for citizens thought of as a single political community. In the French case, if the move away from empire called for a politics of integration, assimilation, and egalitarianism, the functioning of overseas courts reveals that it is integration that produces segmentation, assimilation that hardens difference, and egalitarianism that has disparate effects on overseas citizens. Although after shedding most of its colonies France put national unity and political equality at the center of its political imagination, the endurance of colonial policies and practices in the court system reveals some of the "main internal tensions" of French republicanism (Saada 2014, 35).

1. The word *magistrat* designates both judges and prosecutors, who are interchangeable civil servants, having the option of transitioning back and forth between positions as judges and as prosecutors (Cohen 2017).

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So far there has been little concerted public or academic debate on the legitimacy of the overseas judiciary and the need for reform. This article is the first to take on an empirical analysis of these courts with a special focus on *magistrats'* perspectives. Bridging the gap between the literature on the institutional design of judicial management and selection (Malleson and Russell 2006; Ginsburg and Garoupa 2009; Delaney 2016), postcolonial studies (Said 1979; Aravamudan 1999; Harrison 1999), and critical race theory (Gotanda 1991; Allen 2005). I argue that the judiciary's imagery of "tropicalization," combined with its transfer and promotion policies and other subordinating discourses, contribute to internally excluding overseas natives. In exploring the French case, the article also raises the issue whether the nation-state ideal is compatible with rule over multiple, distant territories, contributing to the study of the more general phenomenon of overseas territories grappling with how to structure their court systems when legal relationships are maintained with the metropole after decolonization.

The article proceeds in four sections. Section I frames the study within the broader literature on the impact of colonialism on courts, in particular in overseas territories, before presenting the methodology and empirical data that inform the argument. Section II describes the history and institutional design of the French overseas judiciary. Section III shows that the current overseas judiciary continues to subordinate native overseas citizens through a number of discourses and policies. Section IV complicates the story by arguing that in some respects the overseas judiciary's colonial antecedent was more responsive to the peoples it served than its current incarnation.

I. RESEARCH DESIGN

Judicial Colonialism: The Case of Overseas Courts

This article builds on the literature on the role of law in the colonial process (Merry 1991; Benton 2002) and the persistence of colonialism in postcolonial legal systems. As a number of scholars have shown, formal decolonization is only the end of a specific form of imperial domination, enabling structural continuities between the colony and the postcolony (Weeramantry and Berman 1999, 1531; Burra 2016). This French case study should be read as a contribution to the broader scholarship on how court systems grapple with the legacy of colonialism in shaping their organizational structure and practices (Sharafi 2008; Kolsky 2010; Bonny 2013). Within this scholarship, there is a burgeoning interest in the specific situation of overseas territories in which a political, legal, and judicial relationship is maintained between the metropole and the periphery.

Overseas territories have been described as the "last colonies" (Aldrich and Connell 1998), subject to "colonial governance" via a structural continuity from the imperial era (Yusuf and Chowdhury 2019). Spread around the world, these "odd political entities" (Adler-Nissen and Gad 2013, 1) vary in size, location, and population. They exhibit diverse constitutional statuses vis-à-vis their former colonizer but are comparable in that they often lack full formal and judicial sovereignty because of the way their judiciary is funded, designed, and staffed or because appellate and final appeals run to courts located in

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metropoles. The French version of judicial colonialism described in this article, characterized by a unitary judiciary overwhelmingly staffed by white metropolitan judges, is not unique, although it may be a particularly extreme version of what can be observed in the British, Dutch, and American overseas courts, among others.

The Dutch Caribbean islands' judiciary presents the most similarities to the French overseas judiciary. Known as the Gemeenschappelijk Hof van Justitie (Joint Court of Justice), it is common to the six Dutch islands, ruling both in the first instance and on appeal, with final appeals running to the Supreme Court in The Hague. Judges are appointed by royal decree, typically after serving in the mainland for a term of years. Contrary to the French judiciary's antitropicalization discourse analyzed in this article, however, the Dutch court prides itself on making an effort to "Caribbeanize" by increasingly recruiting judges locally (Gemeenschappelijk Hof van Justitie 2016, 9).

Each of the 14 overseas territories of the former British Empire (which include Anguilla, Bermuda, Cyprus, and Gibraltar, among others) retains its legal system with its own judiciary independent of the United Kingdom and other overseas territories, even if in some cases lower courts are shared (Hendry and Dickson 2011, 11). Yet colonial ties are maintained with the United Kingdom through the circulation of judges from the metropole and the role of the Judicial Committee of the Privy Council in London as the court of final appeals for all territories, contributing to the persistence of a court system characterized by "imperial whiteness" (Adler-Nissen and Gad 2013, 239). The Judicial Committee of the Privy Council has served as the supreme appellate court of the British Empire since 1833 and has itself been dubbed the "quintessential imperial court" (Bonny 2013, 6).

In Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands of the United States, more commonly known as the United States' "insular" or "unincorporated territories" (Saito 2002, 455), federal courts have been tied to the endurance of colonialism. In Puerto Rico, a "constant source of controversy has been the presence . . . of a U.S. federal court with judges appointed by the president of the United States. Originally all justices were Americans. But currently the court is integrated entirely by Puerto Rican lawyers. . . . Proceedings of the court are conducted in English. In practice it operates like any other court in the American federal judiciary" (Rivera Ramos 2001, 70).

By taking a deep dive into the French overseas court system, this article contributes to comparative scholarship on the broader phenomenon of judicial colonialism and overseas courts around the globe, raising questions about the legitimacy of these courts.

At the Margin

To say that the French overseas judiciary and its colonial forebear are understudied would be a euphemism. Overseas regions remain on the fringes of the French national narrative and research initiatives. According to Vergès (2005, 70–71), this suppression is due in part to the fact that unlike former colonies that acquired their independence in the 1950s–1960s, overseas regions offer "no heroic stories, no possibility for the French to identify

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with a posture of moral and political resistance (in contrast to Algeria)." Overseas regions have been relegated, she continues, "to the margin of the colonial history, absent from national history, absent from postcolonial thinking (because the latter is only associated, mistakenly, with the countries that freed themselves from the colonial rule)." In this collective repression, the judiciary is particularly neglected when other aspects of the "overseas state" are brought to the fore.[2]

The first group of scholarly articles dedicated to contemporary overseas courts was published in 2018 as a special issue of an ethnology journal concentrating on civil litigation in five particular territories (Gagné, Guyon, and Trépied 2018). Until now, scholarship has been haphazard, with little overarching or comparative analysis, as studies typically focus on specific geographic areas (Blanchy and Moatty 2012; Trépied 2016). As for the defunct colonial judiciary—that is, the overseas courts as they existed before independence—Bernard Durand (2003, 58), one of the handful of scholars to make a career writing on the subject, deplores the "abandoning of a part of our judicial history." A literature exists on colonial *magistrats*, including excellent work by legal historian Florence Renucci (2016). Yet some of the scholarship maintains overtones of celebratory colonialism, most notably the nine-volume series *The Judge and the Overseas* (*Le juge et l'outre-mer*) published from 2004 to 2013. Too often, colonial courts and their present overseas offshoots are depicted as an "adventure" led by brave white metropolitan *magistrats* who are compared to "mythological heroes" departing on a civilizing "mission" to apply "French law, eminent symbol of our culture" in strange lands (Allott, Royer, and Lamy 1988, 177; Fabre 2004, 71; Humbert 2016, 129). As Mbembe (2011) and Bennington (2016) have pointed out, colonial history and postcolonial studies in general have only recently established themselves as serious disciplines in France, as they long suffered from a lack of funds, prestige, and legitimacy.

Data

This research relies on empirical qualitative methods and a close reading of the judiciary's publications (brochures, catalogs, newsletters, guidebooks, and press releases). The heart of the data consists of observations and semistructured interviews collected from September 2015 to June 2017. I observed a weeklong continuing education program offered once a year by the National School for the Judiciary (École nationale de la magistrature). Titled "Being a *Magistrat* Overseas," the orientation is described by the school catalog as a "presentation dispensed to *magistrats* appointed or eager to be appointed overseas of the specificities of the judicial office overseas and the multiple implications (human, psychological, material) of such a departure" (École nationale de la magistrature 2017a). I also conducted 26 interviews with *magistrats* and 9 with other legal professionals working in law enforcement or as attorneys or teachers or applying to the judiciary. The understanding is that I

2. A well-respected and progressive political science review of the "overseas state" did not include any contribution on the judiciary (*Politix* 2016).

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may quote directly from the participants but without attribution to any individual.[3] Owing to the difficulty of reaching the private and elite world of the *magistrats*, I did not select a sample that is representative of the judiciary in terms of demography, assignment, or position in the hierarchy. From a couple of initial acquaintances, I used the snowballing method to recruit more subjects, interviewing those judges, prosecutors, and other legal actors who were referred to me and willing to talk (Berg 2006). My initial contacts were senior white metropolitan males who tended to refer me to colleagues of similar backgrounds and experiences. After a few months, I oriented my sampling strategies, actively seeking to meet with individuals who had an overseas connection or experience. It has been particularly difficult to meet with native overseas *magistrats*, in part because there are so few of them and in part because my first set of interviewees were often unwilling to connect me on the basis that they would be uncomfortable approaching a colleague with a request framed in terms of "origin."

The resulting group of 35 participants is a small, unrepresentative sample that allows no claim to generality. The article does not claim to speak for native overseas legal professionals and litigants, though my hope is that it will contribute to a conversation in which their voices will be more widely heard. This is a study of the overseas from the overseas. The perspective is twice removed, as it examines (mostly) white metropolitan *magistrats'* views of the overseas courts. This limitation does not diminish the study's contribution, however, as the goal is not to provide an objective and comprehensive account of the overseas judiciary, past and present, but rather to offer a first analysis and critique of its structure, operations, and discourses. Among the 26 *magistrats* interviewed, 17 never served overseas, and 9 had served or were serving on an overseas court. Among the latter, 7 were metropolitan whites, and 2 were native overseas citizens—one identified as a white Creole whose ancestry runs back to 17th-century peasant colonists, and the other as a mixed-race Creole.

II. BACKGROUND

The Overseas Territories

In popular and public discourse, overseas regions are often combined into a single category, "overseas France," obscuring their vast geographic and cultural diversity (Célestine and Roger 2014). They are spread across the globe, from the Americas to the Caribbean, the Pacific, the Indian Ocean, and Antarctica. Historically, the word "overseas" simply replaced the word "colonial" in French parlance (Sheppard 2011, 254) in an effort to repress these regions' colonial history and the metropole's continuing hegemony. Although this article often lumps them together, my goal is not to perpetuate the idea of a homogeneous "other" France. I recognize the diverse histories, legal statuses, geographies, cultures, and

3. To protect participants' confidentiality, I removed details that might identify them, such as their exact current and past judicial assignments, court location, or the dates when the interviews and observations took place. Whenever relevant, I indicate demographic characteristics such as race and metropolitan versus overseas origin, using terms participants approved.

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languages of the distinct territories at stake, but I also intend to highlight their common subjection to a centralized and arguably colonial judicial system.

The French state maintains courts in 10 overseas areas: Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint Barthélemy, Saint Martin, Saint-Pierre and Miquelon, the Wallis and Futuna Islands, and French Polynesia. Some of these regions (Guadeloupe, French Guiana, Martinique, and Réunion) were colonized in the 17th century during the first era of colonization. They have known slavery, the plantation system, and forced labor. Others belong to the second era of colonization, which began in the 1830s, and are mainly located in Oceania, such as French Polynesia and New Caledonia. Five are home to indigenous peoples who predated colonization (French Guiana, Mayotte, New Caledonia, French Polynesia, and the Wallis and Futuna Islands), while the others were uninhabited at the time of colonization or, more commonly, the indigenous populations were exterminated by the colonizers and replaced by racially mixed communities (Trépied and Guyon 2013).

Overseas regions are governed under one of three legal regimes: regions, collectivities, and territories. The five "overseas departments and regions" (*départements et régions d'Outre-Mer*)—Guadeloupe, Guiana, Martinique, Mayotte, and Réunion—fall under the first category, following the principle of assimilation. They are considered *départements*, that is, territorial divisions of France (similarly to Hawaii, which is a US state), sharing in the unitary legal and political regime of the metropole and lacking the right to secede. The exact same laws and regulations are supposed to apply in Basse-Terre and Saint-Denis as in Lyon or Marseille, even if the constitution authorizes "adaptations based on the particular characteristic and constraints of these collectivities" (Constitution of France 1958, Art. 73).

The second category—the "overseas collectivities" (*collectivités d'Outre-Mer*) of French Polynesia, Saint Barthélemy, Saint Martin, Saint-Pierre and Miquelon, and the Wallis and Futuna Islands—follow the so-called regime of legislative specialty, comparable to Puerto Rico's in the United States. They retain their own independent laws, with metropolitan law applying only where expressly mentioned by legislators.

The third legal regime was devised specifically for New Caledonia. Following years of political violence and tensions between pro- and anti-independence groups (the antis are overwhelmingly of white European descent, while the pros tend to be indigenous, in particular Kanaks), New Caledonia achieved a sui generis status (Nouméa Accord of 1998). A New Caledonian citizenship was established in parallel with French citizenship, and New Caledonians now have their own legislative assembly, local government, provincial assemblies, and a customary council and senate.

While presenting overseas regions' cultural specificities in any level of detail would take me too far afield, it is crucial to say a few words about language, race, and ethnicity. Collectively, French overseas regions count several dozen languages (Cerquiglini 1999). The Kanaks of New Caledonia alone speak 28 different languages. Widely different races, ethnicities, cultures, customary laws, and religious affiliations are represented. At one pole, there is a territory like Réunion, which has no indigenous people, as it was originally

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deserted. The island witnessed successive waves of immigration in the hands of its white settlers and now includes people of African, Indian, European, Malagasy, and Chinese descent. There, interviewees liked to speak of a "melting pot" (*métissage*) given the relatively high proportion of mixed-race citizens and the fairly serene political climate, at least until the social tensions that emerged in 2012.[4] By contrast, according to the 2014 census (INSEE 2014), in New Caledonia 39% of the population identifies as Kanaks, 27% as European, 8% as Wallisians and Futunians, and 6% as other groups, including Tahitians, Indonesians, Ni-Vanuatu, and Vietnamese. The Kanaks have preserved a strong cultural and legal identity, including custom, which survived colonization through secrecy and orality (Le Meur 2015, 236). Thanks to its persistent resistance, the Kanak movement for independence launched in the early 1980s proved successful in bringing about a progressive path to self-government, including the recognition by the judiciary of customary law.

The Overseas Judiciary

A Unitary Judiciary?

France is a unitary nation-state that does not formally recognize distinct regional, cultural, racial, ethnic, or linguistic minorities, although the constitution (Constitution of France 1958, Art. 72.3) broadly acknowledges the existence of "overseas populations." The Jacobin tradition inherited from the revolutionary period values a highly centralized form of governance in which policy decisions and personnel assignments are made from the capital with limited regional autonomy. The judiciary is centralized administratively with strong control from the top. Wherever they are located, the courts are staffed by judges, prosecutors, and other personnel appointed, rewarded, and disciplined by national authorities headquartered in Paris. Collectively, overseas courts rely on a staff of 343 *magistrats* and 925 support personnel directly managed from Paris (Ministère de la justice 2017). The overseas judiciary aspires to be strictly identical to its metropolitan counterpart, regardless of the territory's legal regime and degree of autonomy. With a few exceptions, the exact same judicial organization found in the metropole is replicated overseas. The court of last resort for all courts, be they overseas or in the metropole, is the *Cour de cassation* in Paris.

The French judiciary is a career judiciary in which judges and prosecutors typically begin and end their professional employment as *magistrats* (Lasser 2004). Until 1958, when the current constitution was enacted, the corps was bifurcated between a colonial and a metropolitan track, which reported to different ministries. Two distinct cadres of *magistrats* were trained, recruited, and managed separately. The status of colonial *magistrats* was inferior in many respects. They lacked independence and tenure protection, living under constant threat at the discretion of the local colonial governor, who could legislate on certain issues; create new courts; appoint, transfer, demote, and remove

4. Violent protests erupted in response to the rising cost of living, unemployment, and other inequalities. A unit of the special riot police was sent from the metropole to subdue demonstrators.

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magistrats at will; withdraw cases from a court or a judge and reassign them to another; and give individual instructions to prosecutors (Durand 2004a, 244). They were also subject to various forms of discipline in the hands of the appellate court and the ministers of justice and the colonies (Jouhaud 1958, 33). It was not until the postwar Constitution of France 1946 (Art. 84) that all judges, whether serving in the metropole or not, were granted tenure.

The dichotomy between a metropolitan and an overseas judiciary no longer exists. With the 1958 merger of the two corps, a unitary organization emerged. Entry-level recruitment into the judiciary now proceeds through a single postgraduate school, the National School for the Judiciary. There is no specialized track for those wishing to serve overseas. The vast majority of *magistrats* are selected straight out of law school through a series of written and oral tests. From the beginning of their 31-month-long training, students are inculcated into the norm according to which the career of a magistrat, like that of military personnel, is characterized by professional mobility, which may include mainland and overseas service.

Despite the enduring pull of the unitary and centralized judiciary model, some measure of legal pluralism exists in certain overseas regions (Uimonen 2014). To some extent, this pluralism is a legacy of the empire, given that the colonial state recognized a special personal law applicable to colonized subjects alongside the French common civil law applicable to citizens and colonists. In New Caledonia, the Wallis and Futuna Islands, and Mayotte, the constitution still consecrates the existence of a separate personal status. Unless they opt in, indigenous islanders are not subject to the Civil Code (Trépied 2012). In New Caledonia, legal pluralism has found a new, decolonial dimension, reflecting years of political struggle by the Kanaks (Uimonen 2014). The 1998 Nouméa Accord, calling for progressive decolonization, instituted an official acknowledgment of "Kanak identity" and "custom." The government had recognized the existence of a parallel customary law system since the early 20th century and made unsuccessful attempts to codify it. In 1982 native "customary assessors" were called for to help judges to apply customary law on matters of personal status and land law, but they began to officiate only after the accord.[5] These are Kanak representatives in charge of identifying and explaining the relevant customary law to predominantly white metropolitan judges adjudicating civil matters according to custom (Trépied 2016). As a white judge who served in New Caledonia during the first years of implementation of this dualist legal regime declared, "I had the impression of leading an episode of judicial decolonization."[6]

By contrast, Mayotte's legal status change to a *département* in 2011 could be described as an episode of judicial recolonization. Following a highly critical Senate report (Sénat 2008), the system of Qadi courts that had functioned since France first occupied the island

5. Ordonnance no. 82-877 du 15 octobre 1982 instituant des assesseurs coutumiers dans le territoire de la Nouvelle-Calédonie au tribunal civil de première instance et à la cour d'appel.

6. Interview with participant 19, a court of appeals judge (2016).

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in 1841 was abrogated.[7] Until then, the Mahori community had retained the right to use these community courts of Islamic law, which had jurisdiction for civil disputes involving separate personal status. The proceedings were conducted in both French and Arabic, presided over by 18 Qadi judges. Since the abolishment of the Qadi courts, questions of personal law are decided by the mostly white metropolitan judges sitting on the regular bench, based on a perfunctory knowledge of Islamic law and local customs. Citizens who previously used the Qadi courts must now travel longer distances to solve their disputes, at a greater cost, and using a language, French, that many have not mastered (Carayol 2011).

As Sharafi (2008) has pointed out, the shift toward nonstate law and legal pluralism should not be "romanticized," and the New Caledonian example could be seen as a return to the colonial practice of recognizing and appropriating the practices and customs of colonial subjects. But it is also clear that the disappearance of Qadi justice in Mayotte resulted in eliminating any meaningful application of Islamic and customary personal law (Blanchy and Moatty 2012).

A Second-Class Judiciary?

Since the colonial era, overseas judicial posts have persistently been depicted as unattractive, be it because of their remoteness and "isolation," a supposedly insalubrious climate, the difficult family-life decisions and organization that relocating requires, the perceived low status of overseas courts, or the antagonistic relations with the local staff, bar, and litigants. Throughout the 20th century, the ministries successively in charge of managing overseas courts routinely lamented the shortage of candidates for judgeships and other positions—prosecutors, attorneys, clerks, and bailiffs (Durand 2003, 67). These days, the dearth of applicants affects certain regions, while others are in very high demand. The Antilles, French Guiana, and Mayotte are considered "particularly difficult" (Union Syndicale des Magistrats 2017, 181) because they are economically depressed and have a high crime rate and because visible tensions exist between white metropolitans and racially diverse locals. It is there that a few metropolitan *magistrats* reported having been attacked while on the bench for carrying on a "classist justice, or a colonialist justice."[8] By contrast, Réunion was depicted by research subjects as a widely popular destination for which competition for posts was tight, raising the question whether the lack of indigenous peoples makes it more attractive to white metropolitans.

Because overseas assignments have historically been unpopular, the judiciary built in an incentive structure in terms of promotions, compensation, and other benefits to encourage applications. A stint overseas provides a significant career boost for metropolitans, who often take on greater responsibilities overseas than in the metropole in part because there are fewer competitors for high-level posts. Overseas service accelerates seniority in

7. Ordonnance no. 2010-590 du 3 juin 2010 portant dispositions relatives au statut civil de droit local applicable à Mayotte et aux juridictions compétentes pour en connaître.

8. Interview with participant 6, an appellate court chief judge (2015).

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the corps and eligibility for promotions and retirement benefits as the time spent there is weighed more heavily. Those who serve overseas for at least 3 years gain priority for certain posts upon their return to the metropole. By contrast, native overseas *magistrats* who wish to serve in their homelands do not benefit from any form of precedence. Overseas rotations are also lucrative as *magistrats* enjoy significant salary raises, a remoteness allowance in some regions, lower income taxes, more vacation time, and subsidized vacations (Union Syndicale des Magistrats 2017, chap. 5). As a guidebook compiled by one of the leading unions of *magistrats* notes, "Historically, the 'colonial' administrator enjoyed the right to be provided an accommodation by the state. This right persists in overseas collectivities and the *département* of Mayotte under the form of a conditional contribution to rental costs" (Union Syndicale des Magistrats 2017, 189). This is one of the rare instances in which the judiciary explicitly and publicly recognizes its colonial lineage. Strikingly, it is not to denounce it but to frame it as a historical incident justifying a continued housing benefit. In other words, when the memory of colonialism surfaces, it is from the perspective of the colonizer and to reinforce privileges.

III. THE PERPETUATION OF A COLONIAL JUDICIARY

This section argues that features of institutional design, internal organization, and workplace discourses contribute to maintaining the overseas courts under colonial mechanisms of control.

The Overseas Bench

White Metropolitan Magistrats *on the Bench*

A replication of the racialized colonial rule is at work within the contemporary overseas court system, in which the professional hierarchy reproduces the continuing racial hierarchy (Allen 2005). Despite variations among different territories, overall, white metropolitan judges, prosecutors, and senior registry members preside over courts predominantly staffed by employees who reflect the racial and ethnic makeup of the local population (Farcy 2011). The bar is more or less diverse depending on the region but by all accounts far more diverse than the bench. A retired white metropolitan chief judge reported that among the 100 *magistrats* working for one of the overseas courts he sat on, perhaps "four or five" were native to the island, while the support staff "was overwhelmingly native."[9] Likewise, a native overseas judge lamented that at her overseas court, "out of a total of 103 *magistrats*, there are two natives."[10] The other 101 *magistrats* are not only metropolitan but also white, leading her to exclaim, "Can you imagine the picture it gives to a very mixed-race, Black, Creole-speaking population that feels misunderstood because my colleagues don't understand them?" According to her, the disparity leads to "a colonial judiciary. . . . People tell me all the time: it's a white justice rendered by whites." In addition to the striking racial imbalance, the high turnover of the *magistrats*, who typically serve

9. Interview with participant 5, a retired chief judge (2015).

10. Interview with participant 23, a judge (2016).

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for 3–5 years, compared to the staff, which tends to be permanent, contributes to the perpetuation of a justice performed by transient metropolitan emissaries, much like during the heyday of the empire.

This depiction is supported by the government's own data. In the late 2000s, the Ministry of Justice set out to calculate the number of *magistrats* native to the overseas areas (Karam 2010, 7). Two data points were used: *magistrats'* places of birth and requests for extended vacations in overseas regions. On the basis of this information, 73 *magistrats* were identified as possible native overseas citizens out of a total of 7,900. This figure suggests that less than 1% of the *magistrats* are overseas natives when overseas citizens represent 4% of the French population and the majority of those residing overseas. In 2010 Guadeloupean businessman Patrick Karam, a champion of the overseas regions, prepared a report on the fate of native overseas citizens in the judiciary, decrying that in 2010, out of the 73 native overseas *magistrats*, only 20 served overseas and only one chief judge was a native of the overseas territory where he officiated (Karam 2010, 7).

An Anglo-American reader may wonder why the judiciary did not conduct a more fine-grained survey of its personnel, asking directly whether they identify as native overseas citizens. This type of investigation is fraught in France, where the law prohibits the collection and analysis of "sensitive data," defined as including race and ethnicity (Penal Code, Art. 226-19). The judiciary does not gather racial or ethnic information about its employees (Cohen 2018). Even the census does not collect such information, with the consequence that the precise demographic composition of the population as a whole remains unknown (Simon 2008). As an exception mirroring the exceptionalism of colonial law and overseas France, in 1983 the data protection agency (Commission nationale de l'informatique et des libertés) authorized the census to collect data on "ethnic origin" in those overseas regions governed under the principle of legislative specialty on the ground that such data would be "useful" given the "socio-demographic characteristics of overseas territories."[11] So far New Caledonia is the only territory where the deviation has been implemented—it is also the only overseas territory officially embarked on a decolonization process.

In short, while official quantitative data on the racial and ethnic makeup of both the overseas population as a whole and the judicial personnel are missing, the Karam report and my qualitative research suggest that a massive disparity exists between *magistrats'* races and ethnicities and the populations they serve. Access to the judiciary is laden with obstacles for overseas natives, as the recently founded Association of overseas *magistrats* (Association des Magistrats Ultramarins) seeks to make known. Created in 2015, it is the first minority organization to emerge from the judiciary. Its main goal is to point out the multiple difficulties overseas citizens experience in becoming *magistrats*, which are examined in the next section.

11. Commission nationale de l'informatique et des libertés, Délibération no. 83-12 du 18 janvier 1983, Délibération portant avis sur la mise en œuvre du recensement général de la population dans les Territoires d'Outre-Mer.

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Overseas Natives off the Bench

Two interrelated phenomena conspire to keep native overseas *magistrats* off the bench. First, the initial hurdles to access to the judiciary are such that overseas citizens may be deterred from even considering a judicial or prosecutorial career. Second, the few who become *magistrats* are actively discouraged—and sometimes even prevented—from serving in their homelands.

Native overseas citizens have scarce options for a quality legal education on their own soil. This reflects the fraught history of law schools in the colonies as metropolitan universities sought to maintain their monopoly over legal education (Tabuteau 1987, 159–62). The first overseas law school opened in Réunion in 1825, only to shut down a few years later owing to harsh regulations and metropolitan hostility that made its functioning close to impossible. Students were required to complete a course of study in the metropole, some 5,800 miles away, to become eligible for the bar, which dissuaded them from beginning their studies back home. Today, five overseas regions have a law school, but none offers a preparatory course for the Judiciary School's entrance exam. Given the minuscule chances of admission without adequate preparation, applicants must travel thousands of miles to the metropole to attend one of the prep courses, often at great financial and personal cost. To make matters worse, overseas law faculties, predominantly comprising white metropolitans, are not supportive of students' interest in a judicial career (Karam 2010, 8). A native overseas judge thus confided that as an undergraduate she approached a white metropolitan professor about her plan to become a judge, only to be told, "My poor dear, don't even think about it, you'll never succeed."[12]

Despite these obstacles, every year several dozen overseas citizens sit for the entrance exam. They have the choice of traveling to the mainland at their expense or taking the test at home. The latter option is not without pitfalls. A rule mandates that all candidates sitting for the written portion of the exam complete their assignment contemporaneously. Applicants who live in time zones distant from Paris must therefore take the test at night. The oral portion of the exam is conducted via videoconferencing, which is perceived as unfavorable for candidates interviewing remotely. Yet more hurdles lie ahead for those who are admitted. After 31 months of schooling in Bordeaux, they are required to complete their initial internship in the metropole, while metropolitan graduates have the opportunity of interning close to their home base.

Further, once native overseas *magistrats* receive tenure, they are not assured an appointment in their homeland. Should they obtain one, they are expected to hold it for a term of years before requesting their next assignment in the mainland. As several research subjects observed, the High Council of the Judiciary (Conseil supérieur de la magistrature), an independent body in charge of judicial discipline, transfers, and promotions, has an antilocal recruitment policy for overseas courts, summed up in the adage, "Overseas after overseas does not hold" (*Outre-mer sur outre-mer ne vaut*). The phrase means that *magistrats* may

12. Interview with participant 23, a judge (2016).

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not obtain two or more overseas assignments one after the other. Instead, they need to return to metropolitan France for a few years before being allowed back overseas (even if the practice seems to have relaxed in recent years). For instance, a trial judge in Réunion who becomes eligible for promotion may not seek an appointment on the Réunion appellate court but must apply for appellate judgeships in the metropole.

The use of rotation systems is not uncommon in career judiciaries in which judges enter the judiciary at a young age, spending their career in a series of 3- to 5-year rotations around the country (Ginsburg and Garoupa 2009, 250). Three main rationales are usually at play. First, preventing judges from being identified with any particular court location is supposed to foster independence and prevent corruption. Second, periodic movement is thought to ensure loyalty to the central bureaucracy rather than to the local community. Finally, rotations are presented as a measure of equalization among judges given that some regions are more desirable than others.

In France, not only is the practice of lingering more than 5 years at any given post frowned on, but it also precludes any career advancement given that mobility is one of the single most important factors in promotions (Conseil supérieur de la magistrature 2014). The more willing the *magistrats* are to move, the higher and faster they rise in the judiciary's ranks. This norm leads ambitious *magistrats* to strategically request transfers from court to court every 2–3 years early on in their careers. But it penalizes two categories of *magistrats* in particular: (1) those who are primary caregivers, the majority of whom are female, and therefore lack the ability to easily move to a different region and (2) native overseas citizens for whom mobility could mean settling thousands of miles away from home, rather than 10, 50, or 300 miles as for metropolitans.

The combination of the rotation system with the "Overseas after overseas does not hold" maxim results in massive disparities between metropolitan and overseas *magistrats*. In practice, true geographic rotations (which one could call "diffuse mobility") have decreased in the metropole in favor of sham geographic rotations (or "concentrated mobility") within a single region. An example of true diffuse mobility would be for a Parisian to transfer to courts located in different regions of the country, say, from Paris to Marseille to Lille to Strasbourg. Concentrated mobility, by contrast, consists in spending one's career commuting to different courts within or in close proximity to Paris (e.g., Bobigny, Créteil, or Versailles). A judge could claim a high degree of mobility, allowing him or her to progress in the hierarchy, without having ever moved.

Concentrated mobility is not an option overseas. This is due in part to geography, as overseas territories are so spread out that one cannot commute from one to another, and in part to institutional reasons, as the High Council for the Judiciary commends alternating metropolitan and overseas appointments. As one of the native overseas judges I talked to commented, "If you wish to have a normal career, you cannot advance in rank from overseas to overseas. You are obliged to do a stint in the metropole."[13] The same High Council

13. Interview with participant 19, a court of appeals judge (2016).

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for the Judiciary that allows *magistrats* to transfer from court to court within a small radius in the mainland refuses to do the same overseas, making it hard to justify their policy in noncolonial, nonracial ways.

The other native overseas judge I interviewed, outraged by this discrepancy, examined the career paths of the *magistrats* who graduated with her in the 1990s. She found that out of a class of about 150, "80% of my colleagues stayed and got promoted to their regional appellate court. 80%! Can you imagine? It means that in the mainland, careers are regional."[14] By contrast, native overseas *magistrats* are held to stricter standards, which often conflict with their personal lives and aspirations. For instance, I was told the story of a native overseas prosecutor who found himself unable to take a post in the mainland because his wife was a business owner who could not relocate. He resigned from the judiciary and joined the bar. "He could have stayed," explained his friend, "but he would have remained a line prosecutor all of his life. . . . He told himself, 'Since I won't have a normal career, I'd rather join the bar.' He was able to become a prominent member of the bar."[15]

During my fieldwork, I wondered about the origins of the "Overseas after overseas does not hold" policy. Could it be a remnant of the colonial regime, during which *magistrats* native to the colonies were denied tenure on equal terms with white metropolitans? When I asked white metropolitan research subjects, not a single one pointed to colonialism or at least not explicitly. Instead, my question elicited some of the most stunning responses I encountered in this research project. Over and over, I was told that the rule is justified by the need to guard against the danger of "tropicalization." The next section explores the meaning of this expression.

The Fear of "Tropicalization"

Far from being used in an affirmative postcolonial studies vein (Aravamudan 1999), "tropicalization" has a very negative connotation in the French judiciary. A sitting member of the High Council of the Judiciary presented the rotation system as a "token of impartiality," emphasizing that *magistrats* "cannot live as hermits."[16] In her view, *magistrats* posted overseas particularly benefit from moving around because there "you live in a closed circuit and you forget professional ethics, there is a form of tropicalization." Her illustrations included "alcoholism, excessive proximity on an island, *magistrats* who lose their points of reference, the risk of staying too long, of hopping from island to island," before concluding, "Recharging your batteries in the metropole is necessary." Other metropolitan interviewees offered similar parades of horribles to expound on the concept of tropicalization: insularity, loss of one's ethical compass, enmeshment in kinship relationships, illicit sexual encounters, substance abuse, and mental illness.

14. Interview with participant 23, a judge (2016).
15. Interview with participant 19, a court of appeals judge (2016).
16. Interview with participant 3, an appellate court chief judge (2015).

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Unsurprisingly, the two native overseas judges I interviewed loathed the notion of tropicalization. According to one of them, it is used to signal "a risk of conflict of interests. . . . They [the High Council of the Judiciary] explain to you that these [the overseas regions] are very small territories, and if you don't leave, you'll get stuck in relationship networks that prevent you from doing your work properly."[17] When I broached the topic, the other native overseas judge exclaimed, "It's an expression that makes my blood boil because I'm already tropical! I don't know how I could be further tropicalized. . . . It [tropicalization] means engaging in behaviors one would not engage in in the metropole, because as soon as you arrive in a remote city, you'll hang out with [pause], I don't know, [pause], with company directors, you'll go to cocktail parties, make friends. So there will be the risk that you will close your eyes to certain things. I suppose that in their metropolitan imaginary, this is what tropicalization means."[18]

In sum, the expression "tropicalization" functions as a catchall phrase encapsulating the metropolitan anxieties associated with the overseas. It exalts the temperate metropole over its tropical counterpart (Bowd and Clayton 2005) as if Montesquieu's climate theory were alive and well. It reinforces the representation of the overseas regions—which, incidentally, are far from confined to the tropics—as a homogeneous, negative "other" (Said 1979). Colonial hegemony has long relied on fears of physical and moral contamination as white bodies moved into foreign lands and interacted with unfamiliar peoples. Colonial historians (Harrison 1999) have shown that over the course of the 19th century, the related notions of Creolization and acclimatization increasingly carried a negative meaning. Any kind of alteration in response to colonial circumstances came to be seen as a form of deviation from European norms and, by implication, degeneration.

The trope of the moral contamination of the overseas as a threat to judicial integrity is not new (Royer 1987). Colonial judges' lack of judgment, complacency toward the government, and corruption, as well as their "irregular" lives and "even more shameful vices," have been denounced since the earliest days of colonization (Durand 2004a, 246). These fears served to justify colonial judges' lack of tenure protections—tenure would prevent the periodic "purification" of the colonial judiciary of its undesirables (Durand 2004a, 248). Reminiscent of these ideas, present-day discourses present overseas posts as compromised and compromising, either because they attract objectionable metropolitans to begin with or because the overseas sojourn has the power to pervert virtuous *magistrats*. Metropolitan applicants to overseas posts are still suspected of seeking expatriation for shameful motives: loose morals, greed, the thrill of adventure, or the desire to walk away from "personal or professional problems in the metropole."[19] As a member of the High Council for the Judiciary declared, "To go there, one must be very stable in one's personal life."[20]

17. Interview with participant 19, a court of appeals judge (2016).
18. Interview with participant 23, a judge (2016).
19. Interview with participant 3, an appellate court chief judge (2015).
20. Interview with participant 3, an appellate court chief judge (2015).

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The charge of tropicalization is all the more perplexing as a justification to prevent native overseas *magistrats* from remaining in office overseas given that it seems to apply mostly to metropolitans. The High Council of the Judiciary has taken advantage of a principle designed to "protect" metropolitan *magistrats* to keep native overseas *magistrats* off their homelands' benches. Tellingly, the overwhelming majority of disciplinary problems that have occurred overseas in the past decades involved metropolitan rather than native overseas *magistrats*. As a native overseas judge noted, these "colleagues got out of control largely because they allowed themselves behaviors they would perhaps not have allowed themselves at home."[21] The fact that the High Council of the Judiciary entertains such different policies overseas and in the mainland under the guise of applying the same exact rotation system is further evidence of the pretextual nature of the "Overseas after overseas does not hold" standard. If it is true that 80% of the colleagues of the judge quoted earlier were promoted to their regional appellate court without ever moving to a different region, as the latest judicial reports suggest, why is there not a rule according to which "Normandy after Normandy does not hold" or "Provence after Provence does not hold"? Why does the High Council of the Judiciary not worry about the "Normandization" or "Parisianization" of metropolitan *magistrats*?

These rhetorical questions are meant to expose the bias inherent in the notion of tropicalization. Native overseas *magistrats'* forced mobility is not the only example of problematic exclusion, however. As the next section argues, the judiciary sustains a number of other subordinating discourses and policies.

Other Subordinating Discourses and Policies

Three forms of subordinating discourses and policies remain salient in the judiciary: (1) the rationales offered for employing few overseas citizens, (2) the metropolitan *magistrats'* vision of overseas appointments as a form of mission, and (3) the courts' language policy.[22]

Antilocalism

Among the white metropolitan *magistrats* I met who had overseas experience, several offered a description of native professionals that evoked the colonial disparagement of native cadres and administrators. Asked about *magistrat*-staff interactions at the Caribbean court where she had officiated, a judge observed, "The support staffers were all locals, and the *magistrats* were predominantly metropolitan."[23] She noted that those staffers trained in the mainland were "qualified," while the others were "perfectly incompetent. . . . Because it was an island, they were recruited internally in . . . [name of the island]. We recruited people who had hardly graduated from high school." To rationalize the dearth of native

21. Interview with participant 19, a court of appeals judge (2016).
22. This list is not exclusive but merely reflective of the themes I encountered during fieldwork.
23. Interview with participant 6, an appellate court chief judge (2015).

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overseas *magistrats*, another judge who served in two overseas regions reiterated this account of local incompetence: "It's a bit like for doctors; there aren't many local doctors either. So do we look for people based on their competence, or do we look for people based on their origin? That's the dilemma."[24] These statements echo 19th-century colonial tenets such as that against recruiting judges among native Creoles because of their supposed poor knowledge of French law and insufficient emancipation from former masters or planters in general (Farcy 2011, 12). They also resonate with the policy adopted following the 1848 abolition of slavery in the colonies, according to which indigenous peoples were to be integrated in the colonial administration but only in subaltern tasks, while whites monopolized management positions (Hélenon 2005, 232–33). Beyond the judicial context, these sentiments more generally reflect the biases against overseas citizens that still pervade French society (Aldrich and Connell 1992).

Centralism and unity were also offered as justifications for the underrepresentation of overseas natives on the bench. A white metropolitan judge thus declared, "We don't ask ourselves the question whether a *magistrat* in [overseas region *x*] is from [overseas region *x*] just like in Normandy we would not ask whether a *magistrat* is Norman. France is a unitary state. Americans govern by community, but there's no communitarianism in France. It would be as if someone asked me whether a *magistrat* is tall, blond, dark-haired, or Jewish. That's not the issue."[25] As the quote suggests, particularly the remark about blond versus dark-haired *magistrats*, this judge could not fathom the pertinence of my research question. In his French republicanist worldview, *magistrats* are disembodied and interchangeable cogs in a judicial machine (Lasser 2004, 37). They have no relevant racial, ethnic, linguistic, religious, or regional forms of identity. The very act of inquiring about these forms of identity was offensive to him as it implied that *magistrats* are not infallibly neutral and impartial "mouthpiece[s] of the law," to use Montesquieu's famous characterization of judges as logical creatures. Another white metropolitan judge sitting overseas expounded on this vision:

> We are in the republic, and the republic makes it so that the *département* here is by law a *département* like any other, so it's normal that the judiciary is not composed of locals, even if some attorneys wish that judges were people of color. . . . As for me, I am absolutely opposed; it's not a question of color but a question of professional ethics, of all sorts of social risks, of *magistrats* who may get in trouble because they know too many people, or of influences, so it's very, very important for the judge to maintain a certain independence and distance from the overall population without being far up in an ivory tower.[26]

24. Interview with participant 10, a senior judge (2015).
25. Interview with participant 10, a senior judge (2015).
26. Interview with participant 16, a district court chief judge (2015).

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Here again, the exclusion of overseas natives is vindicated using a color-blind, universalist ideology (Gotanda 1991; Cohen 2018). The argument has come full circle: on this view, native citizens' absence from the bench is not due to bias. To the contrary, it is the judiciary's very impartiality that explains their rejection. The argument's fallacy is obvious: if race, ethnicity, and other markers of identity really do not matter, why would a bench entirely composed of locals and "people of color" raise "a question of professional ethics, of all sorts of social risks"? Conversely, why would a bench composed of 99% white metropolitans in the mainland not raise similar problems? The inconsistency in the way in which native overseas and metropolitan *magistrats* are treated betrays the persistence of color-blind discourses as mechanisms of racial and colonial subjugation.

Metropolitan Magistrats *on a Mission*

A second subordinating ideology transpires in some metropolitan *magistrats'* representation of their role overseas. A few see themselves akin to travelers departing on a stimulating voyage to an exotic destination. To the question why he requested a post in one of the most unpopular overseas regions, a white metropolitan judge responded, "I find this country beautiful. I love the beauty of this land. I love the forest, the rivers."[27] Later in the conversation, when he reflected on how he would inspire younger generations of *magistrats* to follow suit, he commented, "The Judiciary School must explain that it is beautiful." Another white metropolitan judge's departure from the mainland was motivated by the thrill of novelty: "Initially, I left because I thought that [overseas] we could exercise exciting functions in very different locations."[28] This fascination with unfamiliar lands and the promise of adventure mirrors the colonial enthusiasm for missions to conquer and tame the uncivilized.

The judicial institution has inculcated the idea that *magistrats* posted overseas bear the duty to behave as exemplary representatives of the state, which is understood to mean that they should not "go native," that is, put down roots or become enmeshed in local communities (Burbank and Cooper 2010, 12). Before leaving the mainland, they must attend a few days of orientation at the continuing education branch of the Judiciary School in Paris. According to a white metropolitan judge's recollection, corroborated by my own observations, the training "draws attention to a number of specificities common to the overseas, in particular the weight of the media overseas, insularity . . . given that we no longer have our points of reference, we are really on an island, with the populations' very strong attachment to their island, and also a few pieces of advice and admonitions relative to remoteness, the promiscuity that may exist between people."[29]

The orientation is taught quasi-exclusively by white metropolitans—of the couple dozen speakers I observed, only one identified as a native Black overseas judge. The main

27. Interview with participant 10, a senior judge (2015).
28. Interview with participant 5, a retired chief judge (2015).
29. Interview with participant 18, a court of appeals judge (2015).

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content of the instruction is common to all territories, with a few hours devoted to the specificities of each region. This lumping together may be a way of defining an alien world, environmentally and culturally distinct from Europe. The resulting imaginative geography assumes that overseas territories have a high degree of unity, constituting a homogeneous other. As a native overseas judge summarized, "It is metropolitans who explain to metropolitans how to live overseas."[30] Karam's (2010, 20) report criticized the program for promulgating "coarse visions and clichés identical to those which were already inculcated thirty years ago." Perhaps in response to this critique, in 2017 the Judiciary School in Bordeaux instituted a dedicated training for graduating *magistrats* nominated overseas for their first post (École nationale de la magistrature 2017b).

"The Language of the Republic Is French"

Overseas courts are a major vector of linguistic imperialism, by which I mean not only the cultural hierarchization of French over native overseas languages but also its frequent mandatory use in court proceedings, even when litigants' mother tongue is not French. All French citizens, whether metropolitan or overseas natives, are in principle required to use French in court documents and hearings. The constitution does not recognize minority languages. In 1992, it was even amended to include the sentence "The language of the Republic is French."[31] The constitutional court interpreted the amendment to mandate the use of French by public institutions and by citizens "in their relationships with administrations and public services."[32]

Overseas, the requirement that citizens use French in all judicial proceedings is applied differently depending on the legal status of the region. In territories that enjoy some autonomy, being administered under the principle of legislative specialty, a relatively tolerant regime allows the use of local languages in certain circumstances. Article 6 of the French Polynesian Code of Civil Procedure (2001), for example, states that any litigant may "seek the assistance of a sworn interpreter at no cost if she does not have perfect command of the French language." By contrast, in the five *départements d'outre-mer* governed under assimilationist principles, citizens are expected to speak French in court, despite the fact that large swaths of the population are neither native nor fluent French speakers. One of the native overseas judges I interviewed, herself a native Creole speaker, thus commented:

> To be sure, French is the language of the republic, but you can't ignore the Creolophones. In [name of overseas territory], there are over 100,000 illiterate people, so all these people, when they have access to justice, are terrorized, and they aren't always understood. . . . There are people who can't speak French, but my

30. Interview with participant 23, a judge (2016).

31. Constitution of France 1958, Art. 2, as amended by the constitutional statute of June 25, 1992.

32. Conseil constitutionnel, Décision no. 96-373 DC du 9 avril 1996, Loi organique portant statut d'autonomie de la Polynésie française, c. 90.

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> colleagues don't want to hear that. . . . In expedited criminal proceedings, defendants risk between 1- and 4-year prison sentences. A misunderstanding can lead the judge to lose her temper and become obstinate when it was not at all what the defendant meant to say. . . . The stakes are enormous. Instead of spending 6 months in prison, he [the defendant] will spend 3 years because the judge didn't understand anything of what he said.[33]

This account is startling given Article 407 of the Code of Criminal Procedure, which instructs a court to appoint an interpreter "whenever the defendant, the victim, or the witness does not speak the French language sufficiently or if it is necessary to translate a piece of evidence." Based on my fieldwork, however, it appears that in overseas *départements*, the recourse to interpretation is at the discretion of the presiding judge. The paradox is that an American or Chinese citizen in a tribunal in Guadeloupe or Réunion who does not speak French would be entitled as a matter of right to an interpreter in a criminal case when a Creolophone French citizen would not. As the judge quoted earlier intimated, many overseas citizens speak Creole or other languages at home. A few minority groups hardly speak French at all, for instance, the Haitians and the Hmongs in Guiana (Hazaël-Massieux 2006, 295). Literacy rates are considerably lower overseas than in the mainland, making it all the more difficult for some litigants to communicate with the courts. In 2011, while 7% of metropolitan citizens age 18–65 were considered illiterate, the figure averaged 20% in Guadeloupe and Guiana and 23% in Réunion and Martinique (Damgé and Jublin 2014).

The metropolitan *magistrats* I talked to, however, tended to minimize the impact of these linguistic policies. They prided themselves on following the laws and principles of the republic by requiring that litigants use French in their courtrooms except in the most limited circumstances. A white metropolitan judge thus recalled, "When I presided over criminal trials, there were people expressing themselves in Creole. There was an interpreter. I agreed to the presence of an interpreter. The interpreter translated their answers into French but not the questions because they had a level of comprehension of French that allowed them to understand very well what I was saying. . . . In those situations, we let them express themselves in Creole. I want to make it clear that these were people who had been educated in French schools."[34] Note the judge's insistence that he agreed to the presence of an interpreter and that the litigants had been educated in French schools. The subtext here is that native people can speak French but refuse to. The assistance of an interpreter is presented as an act of grace rather than a right or a measure to ensure a fair trial.

Given their assumption that French proficiency is universal, some metropolitan *magistrats* experience litigants' requests to speak in their native tongue as political separatist

33. Interview with participant 23, a judge (2016).
34. Interview with participant 10, a senior judge (2015).

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challenges. As a judge posted overseas declared, "Nowadays all small children in [name of territory] learn French, and, besides, everyone speaks French here so the demand for Creole is a separatist claim. We are in a French country, a French *département*, so it's normal that people speak French, all the more since everyone speaks it. Those who demand to speak in Creole in court, these are separatist claims, which in my view have no place in our French history. I myself am Breton, so I'm very attached to regional languages, but I don't confuse everything. Before a French court I must speak French."[35] Ironically, Brittany has a long history of resisting the use of French in courts. The French government's war against regional languages peaked from the end of the 19th century until the 1950s, but in Brittany the issue of court language was alive well into the 1980s. During that decade, some courts still allowed interpreters for Breton speakers, while others refused on the principle that "the language of procedure before French tribunals is the French language" (Abalain 2000, 86–87). The split came to a halt only when the Ministry of Justice intervened to admonish that French is the sole authorized court language.

In the overseas *départements*, I understand the insistence that French be the sole court language as a symptom of the more diffuse refusal in French society to see them as neocolonies. Everyone is expected to speak French because of the fiction that these regions are an integral part of the nation-state. Allowing linguistic pluralism would be an acknowledgment that, in fact, they are populated by diverse citizens, many of whom are not native French speakers and do not recognize the legitimacy of a metropolitan-led court system on their land. Tellingly, during the colonial period, when it was clear to everyone that the colonies were not France, the judiciary entertained a more generous language policy. Colonial *magistrats* not only were accompanied everywhere by interpreters but also studied languages commonly spoken in the colonies so as to better communicate with local colleagues and litigants.

Metropolitan *magistrats* may be correct that some requests for interpretation are acts of defiance against what is perceived as a colonial justice system. Yet when I inquired about the political dimension of language, metropolitans tended to minimize local resistance or to assert that if it existed, it was circumscribed to a couple "problematic" territories. For instance, a judge assured me that while "identity conflicts" are common in the Antilles and French Guiana, they are rare in Réunion, presented as a harmonious "melting pot, which functions quite well"—a surprising statement given the island's recent history of rioting.[36] The issue of political protests against overseas courts elicited awkward interactions with research subjects. A white metropolitan judge with long experience in the overseas judiciary became irritated when I inquired about the local resistance to the judiciary. He affirmed that he had witnessed "rejection attitudes" in only one Caribbean Island, immediately adding, "Most importantly, it was rare. You may want to write a striking article

35. Interview with participant 16, a district court chief judge (2015).
36. Interview with participant 10, a senior judge (2015).

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saying that the French justice system is beset by this type of difficulties, but be watchful of what I'm telling you, don't be selective in my account, these remained isolated events."[37]

* * *

To some extent, this reaction exemplifies the reluctance of white metropolitan *magistrats* to face the colonial history of the judiciary and its continued subordinating effects. They are disposed to discuss cultural differences and occasionally to denounce overseas courts' underrepresentation of native overseas citizens, but taking seriously instances of opposition to the justice system crosses the line. This is taboo, I surmise, because an open debate would implicate the judiciary, among other public institutions, as a contributor to continued racial and colonial subordination. The ethos of French *magistrats* is one of self-sacrifice and service. Trained to see themselves as color-blind agents of the republic (Lasser 2004), fighting in the trenches for the public good, the cognitive dissonance involved in this realization would be massive.

Thus far, the argument has focused on the contemporary overseas judiciary. The next section goes back in time to suggest that the colonial-era judiciary may have been in some respects more attuned to its users and their cultural environment than its present-day embodiment.

IV. THE FORGOTTEN COLONIAL POLICIES

Apart from the two native overseas judges I interviewed, none of my research subjects seemed interested in—or much aware of—the colonial history of the overseas judiciary. This avoidance was to be expected. As Stoler (2011) has argued, "colonial aphasia" is a common, if not a defining, feature of French public and academic discourses. The systemic racially targeted violence that animated colonialism—which arguably still permeates the postcolonial state—is at odds with the dominant self-representation of France as a color-blind, universalist republic and of *magistrats* as impartial, disembodied public servants (Cohen 2018). Like other public officials, *magistrats* are reluctant to confront these past and present injustices. At the same time, the colonial judiciary cultivated policies that appear oddly progressive in retrospect. *Magistrats* may thus have two conflicting reasons for abstaining from discussing their colonial history: because it would reveal systematic violence and because it would expose, by comparison, the inadequacies of the postcolonial judiciary.

A caveat is in order here. My goal is emphatically not to paint a rosy picture of the colonial judiciary. Nor is it to claim that the colonial state had the best interests of its subordinated groups at heart. Quite the opposite, it experimented with the initiatives described in what follows in order to protect and consolidate its power.

37. Interview with participant 10, a senior judge (2015).

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Diversifying the Bench

Although precise figures are lacking, it seems that during the colonial period, more *magistrats* native to the colonies served on the bench than the 1% of *magistrats* today. During 1830–1950, close to 38% of the *magistrats* in what are now the overseas *départements* were recruited among overseas natives (Farcy 2011, 15–16). Of course, the majority of these "native-born" *magistrats* were whites of European descent. These were regions of settler colonialism, peopled by slaves, free people of color, and non-European immigrants but also, from the 17th century on, by "white Creoles," that is, white descendants of European colonists who ranged from the prosperous slave-owning planters to poor farm laborers. However, from the early 19th century, a few *magistrats* of color were allowed to sit on the bench. In 1847 the abolitionist Maximilien Just wrote about the Antilles, "The Navy Minister, yielding to public conscience, brought into the colonial judiciary a few men of color, but with such difficulties!" (Just 1847, 54).

A couple of decades later, more sustained efforts were made to integrate native *magistrats* and more generally to recruit colonial administrators among colonial subjects, as manifested by the creation of a specialized school to train colonial cadres. In 1885 the explorer Auguste Pavie brought to Paris 13 young Cambodians with the aim to "instruct them and involve them in the administration of their country" (Enders 1993, 272). The École coloniale, later known as the École nationale de la France d'outre mer, was born. Until 1934, it trained so-called autochthonous administrators and *magistrats* together with white metropolitans (Mus 1948, 17). During the decolonization period, the school endeavored to "Africanize" colonial administrators and admit greater numbers of formerly colonial subjects who had recently been granted citizenship rights. A 1957 decree provided that 70% of the new administrators ought to be native overseas citizens (Enders 1993, 278).

These last-minute efforts to secure native populations' buy-in when the empire was crumbling found a striking manifestation in the judiciary. In 1959, in the midst of the Algerian War, the parliament decided to set aside 10% of the newly minted Judiciary School's seats for "Muslim French citizens"—a then-standard expression to distinguish French citizens indigenous to Algeria from those of European descent.[38] The statute also created a lateral hiring process for indigenous sharia judges to access the French bench directly, bypassing the entrance exam and years of schooling. Legislators' motivation was "to increase the number of Muslim French citizens native to Algeria participating in the exercise of public responsibilities," with the draft preamble noting that "the number of Muslim judges is utterly insufficient."[39] These reforms were opportunistic eleventh-hour

38. Loi organique no. 60-87 du 26 janvier 1960 portant promotion exceptionnelle des Français musulmans dans la magistrature et modifiant l'ordonnance no. 58-1270 du 22 décembre 1958.

39. Projet de loi organique no. 119 portant promotion exceptionnelle des Français musulmans dans la magistrature et modifiant l'ordonnance no. 58-1270 du 22 décembre 1958, déposé le 4 juin 1959.

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attempts to secure the indigenous Algerian elite's support for the regime. Algeria's independence in 1962 marked the end of the short-lived experiment.

Today, the idea of using quotas to ensure the representation of racial and ethnic minorities and native overseas citizens on the bench is rejected as unconstitutional. Although France uses mandatory gender quotas in a number of private and public organizations, there is a strong legal, social, and political reluctance to take into account race and ethnicity in hiring decisions, let alone develop affirmative action programs (Suk 2013).

Legal Pluralism

While the French judiciary is a centralized, unitary organization, it concedes some degree of legal pluralism in a few overseas regions, as evidenced by the recent recognition of customary law in New Caledonia, discussed earlier. The colonial state was arguably more disposed to maintaining and supporting the indigenous justice systems it found in place than today's. In part, this was due to necessity. Building an entirely new judicial organization from scratch would have been not only extremely resource intensive but also ineffective in securing legitimacy in the eyes of local populations (Tamanaha 2008).

In many colonies, the courts established by the French instituted connections between colonial laws and the laws and customs of indigenous peoples. The judiciary itself was split into two tracks, the so-called French law tribunals created by the colonists and the indigenous law tribunals typically relying on preexisting judicial institutions. The former were predominantly staffed by professional *magistrats* dispatched from the metropole, and the latter by indigenous notables "assisted"—that is, under the control of—colonial administrators (Fabre 2004). Indigenous courts were in charge of indigenous affairs, but the colonial power retained a right of review: the chief judges were colonists, colonial tribunals were tasked with homologating indigenous courts' decisions, and appeals ran to French law tribunals. The arrangement was far from a panacea as it depended on the appropriation of indigenous legal institutions to consolidate the colonial power all the while maintaining indigenous law's subordination to French law (Christelow 1985, 9–10). Yet it provided colonial subjects access to a form of justice dispensed, to some extent, by their fellow citizens, in their own languages, and using their laws and customs, an opportunity most contemporary overseas citizens lack.

Judicial Education

In 1905 the École nationale de la France d'outre-mer created a special program to train colonial *magistrats*. It was deemed so successful by the technocrats who took over the design of public institutions after World War II that it served as the model for the National School for the Judiciary established in 1958. But unlike today's Judiciary School, which does not employ any full-time native overseas faculty, in the 1940s the École nationale de la France d'outre-mer included a few professors indigenous to the colonies, such as the classical Arabic teacher Mohamed Abd El Jalil from Morocco (Enders 1993, 281). Aspiring *magistrats* learned about the laws, cultures, and languages of the territories where they

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were destined to serve. There was a chair for "negro-African civilizations" and for "Indochinese civilization." This attention to colonized societies was pragmatic given the need for *magistrats* to communicate with and oversee indigenous law tribunals. It was also linked to imperial hegemony and the inextricable relationship between knowledge and power that sustained it (Cohn 1996). Despite these sinister premises, colonial judicial education did exhibit a curiosity toward the "other" that is absent today.

The Judiciary School does not offer any initial or continuing education in the three indigenous legal regimes in force in New Caledonia, the Wallis and Futuna Islands, and Mayotte. No courses in the languages commonly spoken overseas, such as Amerindian, Creole, Melanesian, Tahitian, and other Polynesian languages, are provided. In the entry-level exam, the only mandatory foreign-language test is for English. Candidates may also choose to take an optional language test in German, Spanish, Italian, or written Arabic (*arabe littéral*). This narrow list means that overseas candidates cannot benefit from their multilingualism to garner extra points by demonstrating their proficiency in languages such as Creole, Arawak, Jawe, Tahitian, or Shimaore. Applicants of North African ancestry fluent in vernacular forms of Arabic are similarly deprived given that the school tests only for the modern Standard Arabic used in writing, which no one actually speaks. French *magistrats* are thus neither trained nor tested in the languages other than French most likely to be spoken by litigants in the mainland or overseas.

When Mobility Was the Problem

As discussed earlier, geographic mobility is a highly praised trait for *magistrats*, essential for promotion to high-level positions. Rotations (in the form of back-and-forth transfers between overseas and metropolitan courts) are de facto required of *magistrats* serving overseas as a prophylactic remedy for the dreaded tropicalization. By contrast, during the colonial era, *magistrats'* frequent mobility was thought to be the problem, not the solution. Lacking tenure protections, they were continually transferred from colony to colony—or from region to region within a single colony—because the courts were understaffed (Farcy 2011, 3). Reinforcements and substitutions were needed to make up for absent judges or vacant judgeships. In addition to the difficulty in recruiting colonial *magistrats*, the judiciary was plagued with absenteeism (Durand 2004b, 62–65). Apparently, metropolitan *magistrats* took long and frequent vacations as well as extended sick leaves, which they blamed on the much-maligned climate and insalubriousness of the colonies. It is ironic that today mobility is heralded as a guarantee of professional ethics when in colonial times it used to be an institutional design stopgap to resolve an endemic human resource shortage.

V. CONCLUSION

This article claimed that through a variety of subordinating discourses and policies, French overseas courts remain subject to colonial mechanisms of control. The present supposedly decolonized, unitary nation-state endeavors to keep native peoples off the bench—or at

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least off the courts located in their homelands—and does not question the legitimacy of maintaining a metropole-administered court system overseas.

In line with the prevailing theories of empire's move away from unidirectional flows from center to periphery, some of my conclusions are not confined to the overseas regions. Far from being a one-way street, colonialism is a process of interdependent relationships and mutual transformations that takes place in the metropole and overseas. As I have argued elsewhere (Cohen 2018), colonial forms of justice are also at work in metropolitan courts, particularly those located in the disenfranchised, segregated neighborhoods often referred to as *banlieues*. In these impoverished urban areas, courts appear surprisingly similar to their overseas counterparts. Litigants and the support staff are racially diverse, multilingual, and predominantly local residents. By contrast, the *magistrats*, who rarely linger more than a few years in posts considered "tough," are overwhelmingly white and monolingual, especially those in high-level positions. They typically commute from the affluent city centers or suburban neighborhoods where they reside. Much like their colleagues posted overseas, these *magistrats* are transient presences often at odds with the populations they are supposed to serve. In this sense, the overseas and (a subset of) metropolitan courts are mirror images of one another, calling for a joint examination to uncover the common subordinating practices found here and there.

REFERENCES

Abalain, Hervé. 2000. *Histoire de la langue bretonne*. Quintin: Gisserot.

Adler-Nissen, Rebecca, and Ulrik Pram Gad. 2013. *European Integration and Postcolonial Sovereignty Games: The EU Overseas Countries and Territories*. New York: Routledge.

Aldrich, Robert, and John Connell. 1992. *France's Overseas Frontier: Départements et territoires d'outre-mer*. Cambridge: Cambridge University Press.

———. 1998. *The Last Colonies*. Cambridge: Cambridge University Press.

Allen, Robert L. 2005. "Reassessing the Internal (Neo) Colonialism Theory." *Black Scholar* 35:2–11.

Allott, Antony N., Jean-Pierre Royer, and Emile Lamy. 1988. *Magistrat au temps des colonies*. Lille: L'espace juridique.

Aravamudan, Srinivas. 1999. *Tropicopolitans: Colonialism and Agency, 1688–1804*. Durham, NC: Duke University Press.

Barkey, Karen. 2008. *Empire of Difference: The Ottomans in Comparative Perspective*. Cambridge: Cambridge University Press.

Bennington, Alice. 2016. "(Re)writing Empire? The Reception of Post-colonial Studies in France." *Historical Journal* 59:1157–86.

Benton, Lauren. 2002. *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900*. Cambridge: Cambridge University Press.

Berg, Sven. 2006. "Snowball Sampling—I." In *Encyclopaedia of Statistical Sciences*, ed. Samuel Kotz et al., 1:7817–21. Hoboken, NJ: Wiley.

Blanchy, Sophie, and Yves Moatty. 2012. "Le statut civil de droit local à Mayotte: Une imposture?" *Droit et société* 80:117–39.

Bonny, Ibhawoh. 2013. *Imperial Justice: Africans in Empire's Court*. New York: Oxford University Press.

https://doi.org/10.1086/709910 Published online by Cambridge University Press

Bowd, Gavin, and Daniel Clayton. 2005. "Tropicality, Orientalism and French Colonialism in Indochina: The Work of Pierre Gourou, 1927–1982." *French Historical Studies* 28:297–327.

Burbank, Jane, and Frederick Cooper. 2010. *Empires in World History: Power and the Politics of Difference*. Princeton, NJ: Princeton University Press.

Burra, Arudra. 2016. "What Is 'Colonial' about Colonial Laws?" *American University International Law Review* 31:137–69.

Carayol, Rémi. 2011. "Mayotte: Les cadis rendent la justice." *Libération*, March 30. http://www.liberation.fr/societe/2011/03/30/mayotte-les-cadis-rendent-la-justice_725471.

Célestine, Audrey, and Aurélie Roger. 2014. "L'outre-mer' à la croisée du national et du local: Construction, évolution et appropriation d'une catégorie sur trois terrains ultramarins." *Terrains et travaux* 24:121–42.

Cerquiglini, Bernard. 1999. *Les langues de France*. Paris: Ministère de l'éducation nationale.

Christelow, Allan. 1985. *Muslim Law Courts and the French Colonial State in Algeria*. Princeton, NJ: Princeton University Press.

Cohen, Mathilde. 2017. "The French Prosecutor as Judge: The Carpenter's Mistake?" In *Prosecutors and Democracy: A Cross-National Study*, ed. Maximo Langer and David Alan Sklansky, 109–37. Cambridge: Cambridge University Press.

———. 2018. "Judicial Diversity in France: The Unspoken and the Unspeakable." *Law and Social Inquiry* 43:1542–73.

Cohn, Bernard. 1996. *Colonialism and Its Forms of Knowledge: The British in India*. Princeton, NJ: Princeton University Press.

Conseil supérieur de la magistrature. 2014. *Rapport d'activité*. Paris: Conseil supérieur de la magistrature.

Damgé, Mathilde, and Matthieu Jublin. 2014. "Qui sont les illettrés en France?" *Le Monde*, September 9. http://www.lemonde.fr/les-decodeurs/article/2014/09/18/qui-sont-les-illettres-en-france_4490014_4355770.html.

Delaney, Erin. 2016. "Searching for Constitutional Meaning in Institutional Design: The Debate over Judicial Appointments in the United Kingdom." *International Journal of Constitutional Law* 14:752–68.

Durand, Bernard. 2003. "Observer la justice coloniale sous la IIIème République." In *La justice d'un siècle à l'autre: Ultimes regards, premières projections*, ed. Jean-Pierre Royer, 55–81. Paris: PUF.

———. 2004a. "Un dogme soumis 'à la force des choses': L'inamovibilité des magistrats Outre-mer." *Revue d'histoire du droit* 82:241–62.

———. 2004b. "Les magistrats coloniaux entre absence et errance." In *Le juge et l'outre-mer: Les roches bleues de l'Empire colonial*, ed. Bernard Durand and Martine Fabre, 47–70. Lille: Centre d'histoire judiciaire.

École nationale de la magistrature. 2017a. "Catalogue de formation continue." http://www.enm.justice.fr/sites/default/files/publications/Catalogue_FC_2017.pdf.

———. 2017b. "Des enseignements spécifiques aux prises de fonctions en outre mer." May 15. http://www.enm.justice.fr/?q=actu-15mai2017_Des-enseignements-specifiques-aux-prises-de-fonctions-en-outre-mer.

Enders, Armelle. 1993. "L'École Nationale de la France d'Outre-Mer et la formation des administrateurs coloniaux." *Revue d'histoire moderne et contemporaine* 40:272–88.

Fabre, Martine. 2004. "Le magistrat d'Outre-mer: L'aventure de la justice." In *Le juge et l'Outre-mer: Les roches bleues de l'Empire colonial*, ed. Bernard Durand and Martine Fabre, 71–93. Lille: Centre d'histoire judiciaire.

———. 2005. "Les justices coloniales: Clones imparfaits du système judiciaire métropolitain." *Quaderni Fiorentini* 33/34:641–73.

https://doi.org/10.1086/709910 Published online by Cambridge University Press

Farcy, Jean-Claude. 2011. "Quelques données statistiques sur la magistrature coloniale." *Clio Themis* 4. http://www.cliothemis.com/Quelques-donnees-statistiques-sur.

Gagné, Natacha, Stéphanie Guyon, and Benoît Trépied. 2018. "Justices Ultramarines." Special issue, *Ethnologie française* 48.

Gemeenschappelijk Hof van Justitie. 2016. *Jaarverslag*.

Ginsburg, Tom, and Nino Garoupa. 2009. "Reputation, Information and the Organization of the Judiciary." *Journal of Comparative Law* 4:228–56.

Gotanda, Neil. 1991. "A Critique of 'Our Constitution Is Color-Blind.'" *Stanford Law Review* 44:1–68.

Harrison, Mark. 1999. *Climates and Constitutions: Health, Race, Environment and British Imperialism in India, 1600–1850*. New Delhi: Oxford University Press.

Hazaël-Massieux, Marie-Christine. 2006. "Et si l'on parlait des créoles dans les territoires créolophones?" *Ela: Études de linguistique appliquée* 143:281–96.

Hélenon, Véronique. 2005. "Races statut juridique et colonisation: Antillais et Africains dans les cadres administratifs des colonies françaises d'Afrique." In *L'esclavage, la colonisation, et après: France, États-Unis, Grande Bretagne*, ed. Patrick Weil and Stéphane Dufoix, 229–93. Paris: PUF.

Hendry, Ian, and Susan Dickson. 2011. *British Overseas Territories Law*. Oxford: Hart.

Humbert, Sylvie. 2016. "Les magistrats et la Cour d'appel de Cayenne au xixe siècle." *Histoire de la justice* 26:125–34.

INSEE (Institut national de la statistique et des études économiques). 2014. "Recensement de la population en Nouvelle-Calédonie en 2014." https://www.insee.fr/fr/statistiques/1560282#figure8.

———. 2016. "Bilan démographique 2016." https://www.insee.fr/fr/statistiques/2554860.

Jouhaud, Yves. 1958. "À propos du statut de la magistrature d'Outre-Mer." *Extrait du Recueil Penant* 68:33–160.

Just, Maximilien. 1847. *Les magistrats des colonies depuis l'Ordonnance du 18 Juillet 1841*. Paris: Daguerre.

Karam, Patrick. 2010. *Voies et moyens et proposés permettant de favoriser le nombre de magistrats originaires d'Outre-mer*. Paris: Délégation interministérielle.

Kolsky, Elizabeth. 2010. *Colonial Justice in British India: White Violence and the Rule of Law*. Cambridge: Cambridge University Press.

Lasser, Mitchel. 2004. *Judicial Deliberations: A Comparative Analysis of Transparency and Legitimacy*. New York: Oxford University Press.

Le Meur, Oona. 2015. "Customary Law and Custom in New-Caledonia: Legal Pluralism, Citizenship and the External/Internal Sovereignty." *SOAS Law Journal* 2:230–59.

Malleson, Kate, and Peter H. Russell, eds. 2006. *Appointing Judges in an Age of Judicial Power: Critical Perspectives from Around the World*. Toronto: University of Toronto Press.

Mbembe, Achille. 2011. "Provincializing France." *Public Culture* 23:85–119.

Merry, Sally Engle. 1991. "Review: Law and Colonialism." *Law and Society Review* 25:889–922.

Ministère de la justice. 2017. "Juridictions judiciaires d'outre-mer." January 17. http://www.justice.gouv.fr/organisation-de-la-justice-10031/lordre-judiciaire-10033/juridictions-judiciaires-doutre-mer-24277.html.

Mus, Paul. 1948. "La formation des cadres administratifs d'Outre-Mer E.N.F.O.M. ou E.N.A.?" *La revue administrative* 1:16–23.

Politix. 2016. "L'État outre-mer." Special issue, *Politix* 116.

Renucci, Florence. 2016. "Les magistrats dans les colonies: Un autre apprentissage des normes juridiques?" *Cahiers de la Justice* 493–501.

https://doi.org/10.1086/709910 Published online by Cambridge University Press

Rivera Ramos, Efrén. 2001. *The Legal Construction of Identity: The Judicial and Social Legacy of American Colonialism in Puerto Rico*. Washington, DC: American Psychological Association.

Royer, Jean-Pierre. 1987. "Portrait du juriste colonial: Magistrats et administrateurs dans l'Afrique du XIXe siècle." *Revue française d'administration publique* 42:91–101.

Saada, Emmanuelle. 2014. "More than a Turn? The 'Colonial' in French Studies." *French Politics, Culture and Society* 32:34–39.

Said, Edward. 1979. *Orientalism*. New York: Vintage.

Saito, Natsu Taylor. 2002. "Asserting Plenary Power over the 'Other': Indians, Immigrants, Colonial Subjects, and Why U.S. Jurisprudence Needs to Incorporate International Law." *Yale Law and Policy Review* 20:427–80.

Sénat. 2008. "Départementalisation de Mayotte: Sortir de l'ambiguïté, faire face aux responsabilités." https://www.senat.fr/rap/r08-115/r08-11510.html.

Sharafi, Mitra. 2008. "Justice in Many Rooms since Galanter: De-romanticizing Legal Pluralism through the Cultural Defense." *Law and Contemporary Problems* 71:139–46.

Sheppard, Todd. 2011. "Decolonization and the Republic." In *The French Republic: History, Values, Debates*, ed. Edward Berenson et al., 252–61. Ithaca, NY: Cornell University Press.

Simon, Patrick. 2008. "The Choice of Ignorance: The Debate on Ethnic and Racial Statistics in France." *French Politics, Culture and Society* 26:7–31.

Stoler, Ann Laura. 2011. "Colonial Aphasia: Race and Disabled Histories in France." *Public Culture* 23:121–56.

Suk, Julie. 2013. "Quotas and Consequences: A Transnational Re-evaluation." In *Philosophical Foundations of Discrimination Law*, ed. Deborah Hellman and Sophia Moreau, 228–49. Oxford: Oxford University Press.

Tabuteau, Jacques. 1987. *La balance et le capricorne: Histoire de la justice dans les Mascareignes*. Saint-André, Réunion: Océan.

Tamanaha, Brian. 2008. "Understanding Legal Pluralism: Past to Present, Local to Global." *Sydney Law Review* 30:375–411.

Trépied, Benoît. 2012. "A New Indigenous Question in France's Overseas Territories?" Books and Ideas.net, June 13. http://www.booksandideas.net/A-New-Indigenous-Question-in.html.

———. 2016. "Urban Kanak Parents on Customary Trial: An Ethnography of the Customary Family Court of Nouméa, New Caledonia." *City and Society* 28:99–112.

Trépied, Benoît, and Stéphanie Guyon. 2013. "Outre-mers indigènes." *Genèses* 91:2–6.

Uimonen, Jari. 2014. "The Personal Status in French Law: With Special Focus on Overseas Territories." *International Journal on Minority and Group Rights* 21:451–68.

Union Syndicale des Magistrats. 2017. *Guide "Magistrats: Vos droits."* Paris: Union Syndicale des Magistrats.

Vergès, Françoise. 2005. "L'Outre-Mer, une survivance de l'utopie coloniale républicaine?" In *La fracture coloniale*, ed. Nicolas Bancel et al., 67–74. Paris: La Découverte.

Weeramantry, Christopher, and Nathaniel Berman. 1999. "Conference: The Grotius Lecture Series." *American University International Law Review* 14:1515–69.

Wilder, Gary. 2001. "Framing Greater France between the Wars." *Journal of Historical Sociology* 14:198–225.

Yusuf, Hakeem O., and Tanzil Chowdhury. 2019. "The Persistence of Colonial Constitutionalism in British Overseas Territories." *Global Constitutionalism* 8:157–90.

https://doi.org/10.1086/709910 Published online by Cambridge University Press