



universität
wien

MASTERARBEIT / MASTER'S THESIS

Titel der Masterarbeit / Title of the Master's Thesis

French and Muslim Law in Colonial Senegal: The Establishment of the French and Muslim Judicial Systems and their Jurisdiction in the Quatre Communes

verfasst von / submitted by

Carolina Ripoll Schwendinger, BA

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of
Master of Arts (MA)

Wien, 2019 / Vienna, 2019

Studienkennzahl lt. Studienblatt /
degree programme code as it appears on
the student record sheet:

UA 066 897

Studienrichtung lt. Studienblatt /
degree programme as it appears on
the student record sheet:

Masterstudium Afrikawissenschaften

Betreut von / Supervisor:

Mag. Dr. Arno Sonderegger, Privatdoz.

To my father

Table of Contents

Preface	iii
1. Introduction	1
1.1. The Quatre Communes of Senegal	6
1.2. Trade Economies and Social Development	8
1.3. The French Colonial Policy	11
2. Law and Judicial Systems in the Quatre Communes	15
2.1. The Ancien Régime (15 th Century-1789) and the Monarchie Constitutionnelle (1791-1792)	16
2.2. The Première République (1792-1804) and 16 Pluviôse an II (4 th February 1794)	20
2.3. The Premier Empire (1804-1814) and the Civil Code	22
2.4. The First and Second Restoration Periods (1814-1830) and the Introduction of the French Judicial System in Senegal	25
2.5. The Monarchie de Juillet (1830-1848), the Application of the Civil Code in Senegal and the Extension of Civil and Political Rights to the People of the Colonies	27
2.6. The Deuxième République (1858-1851), Universal Male Suffrage and Senegal's Representation in the French <i>Assemblée Nationale</i>	33
2.7. The Second Empire (1852-1870) and the Establishment of the Muslim Tribunal in Saint-Louis	36
2.8. The Troisième République (1870-1940)	43
2.8.1. The Reestablishment of the Deputy for Senegal in the Chambre des Députés	45
2.8.2. The Establishment of the Quatre Communes	46
2.8.3. The Reestablishment of the Conseil Général	48
2.8.4. The Introduction of the Indigénat	50
2.8.5. The 1889 Reorganisation of the Judicial System	53
2.8.6. L'Afrique Occidentale Française	55
2.8.7. The 1903 Legal Code	58
2.8.8. The Naturalisation Law of 1912	65

2.8.9. The 1912 Reorganisation of the Judicial System	66
2.8.10. The Blaise Diagne Laws	69
2.8.11. The Conseil Colonial	73
2.8.12. The Cour d'Appel's Ruling Regarding the Jurisdiction of Muslim Originaires	77
2.9. The Régime de Vichy (1940-1944)	79
2.10. The Quatrième République (1946-1958)	80
2.11. The Cinquième République (1958-), the Mali Federation and the Republic of Senegal	85
3. Conclusion	87
4. Bibliography	92
Abstract	103

Preface

While in my Bachelor, I learned that there were a couple of small towns on the Atlantic coast of the African continent which, already prior to what is considered the colonial era in the history of Africa, had been placed under the jurisdiction of French law and treated as if they were an essential part of the metropole. These towns were later known as the *Quatre Communes du Sénégal*. Upon further reading, I discovered that not only were they French, but due to the large Muslim population in the towns, Muslim law had jurisdiction in civil matters. This made these towns unique and an anomaly in regard to other towns on the African continent.

Due to this uniqueness, and the fact that history and law are two subjects which have interested me as far back as I can remember, I delved deeper into the subject. As I did so, I quickly came to realise that literature on certain aspects of this topic which I have interested myself in, was not the easiest to come across. When it comes to French history, French colonialism and French law, the list of articles and books seems endless. There is also quite a bit on the history of Africa and historical and geographical descriptions of the continent and more specifically Senegal, but when it came to French and Muslim law in Senegal it was a different matter.

Reading, researching and writing about a historical aspect of law was challenging to say the least. Even though at times frustrating, tedious and confusing, I enjoyed every moment of it. My aim with this thesis was to create a body of text which chronologically sketches out the French and Muslim judicial systems which held jurisdiction in colonial Senegal, in a way that is comprehensible and easy to follow, which has definitely been a challenge, as it is filled with laws, decrees and *arrêtés*, and judicial terminology.

During the entire period of my researching and writing this Master thesis, a number of people have assisted me and I would like to take this time to thank them individually for having aided me in any way, shape or form: Dr. Arno Sonderegger, Katharina Wurzer, Curtis Pressman, Idalia Rivolta, David Diouf, Dr. Helga Schwendinger and Manuel Ripoll Billón.

“The question is to transform, to renovate, to reconvert the *matter* as well as the *spirit* of Justice... It is not to African people that one needs to speak to about Justice because there is not one African, not one coloured man who, since his coming of age, has not longed for real justice... because in the course of history... coloured people, through incomprehension, selfishness, wicked-ness, have been bullied, humiliated, discredited, disqualified... The qualitative change in our judicial practices and political behaviour of our magistrates are the two elements of a single problem: Justice - rapid, democratic and human.”

- Sekou Touré (Sekou Touré, Address to P.D.G. Congress, 14.9.1959, cited in Legum 1965, 126).

1. Introduction

Law¹, according to particular Western written understanding of what is right and wrong, was absolutely fundamental in the formation and management of the colonies and in the maintenance of colonial domination. The process of colonisation was therefore dominated by law, legal structures and judicial proceedings, which lay at the very foundation of the colonial identity. Alongside this, and also essential to colonial domination were colonial ideologies, which even though throughout time progressed, at the base, they were essentially all the same. “Ideologies are representations of aspects of the world which contribute to establishing and maintaining relations of power, domination and exploitation.” (Fairclough 2003, cited in Schicho 2014, 91). At their very core, ideologies embody inequality. Under colonialism, this inequality held a racial component, as it followed a Eurocentric view of the world. “[C]olonial Europe has entered modern abuse on ancient injustice; odious racism on old inequality.” (Césaire 1955, 27).

Imperialism is “the exercise of power by a state beyond its borders.” (Cooper 2008, 468). Colonialism, an aspect of imperialism, is “the erection by a state of an apparatus of administrative control over peoples who are defined as distinct.” (Ibid.). Colonial ideologies are therefore depictions of a world where certain people need to be dominated and subsequently administered following an Eurocentric ideal of life. “[T]he major component in European culture is precisely what made that culture hegemonic both in and outside Europe: the idea of European identity as a superior one in comparison with all the non-European peoples and cultures.” (Said 1978, 7).

Because France is a unitary state, one indivisible nation, in French constitutional law this indivisibility ensures the equality before law of all its citizens without the distinction of origin, race or religion. (Uimonen 2014, 452). Even though France has been under the reign of Kings and Emperors for much of its history², France has also had five Republics, the longest being the Third Republic (1870-1940). At its very core, the Third Republic believed in the principles of *liberté*, *égalité* and *fraternité* (liberty, equality and fraternity). The Third Republic, or rather,

¹ Legal terms are in French followed by the author C.R.S.’s respective English translations, as judicial terminology can often be complicated to translate.

² During the Monarchies and Empires of France, the rights of its people were not recognised or only done so in a small capacity.

every Republic of France, praised itself on its liberal perspectives and enduring belief in the equality of the people it governed. The laws that were promulgated throughout this time prove this.

During the second half of the 19th Century, and therefore under the governance of the Third Republic, France greatly expanded its empire via territorial conquests, especially on the African continent. It was also a time when colonialism really took control. Nevertheless, the very definitions of 'colonialism' and 'imperialism' completely destroy the fundamental principles that the Third Republic, or that a republic in general, stood for. The domination of 'distinct' people is as far away as possible from an egalitarian principle. Thus, how could a government of liberal and republican ideals undertake such massive forms of territorial conquests on the African continent and with it apply such a condescending and Eurocentric policy, that is, the policy of assimilation? How could this come about?

The French colonial policies emphasised a common identity. The colonial era therefore brought about new difficulties on how to foster a common legal system among millions of people who possessed different beliefs, customs, religions and languages. "We need to take seriously what it meant for a polity to *think like an empire*, to conjugate incorporation and differentiation, to confront problems of long-distance extension and recognise limits of control over large and diverse populations." (Cooper 2005, 200). As territorial conquests were undertaken, no one could imagine the consequences and struggles which would emerge when the French empire would have to attempt to find a balance between the incorporation and differentiation of the population they had colonised. It is for this reason that Senegal was a different and unique case.

For the longest time, when the term 'Senegal' was used, it only referred to the two islands of Gorée and Saint-Louis. With the addition of Rufisque and Dakar, and the subsequent formation of the *Quatre Communes*, 'Senegal' encompassed those four communes and nothing more. By the end of the 19th Century, Senegal had expanded to cover most of the territories that are within the current borders of the Republic of Senegal. In 1920, a decree joined together the *Quatre Communes* and the *pays du protectorat*, and formed the colony of Senegal. (Buell 1928, II, 102).

Particular terminology has been used throughout the centuries to describe certain people in this area. This terminology outlined the inequality inscribed in

colonialism, which was subsequently further depicted in the juridical sense. The following terminology was based on a hierarchy with Europeans, the colonisers, at the top, and Africans, the colonised, at the bottom. '*Blancs*' was used to refer to people of European, mainly French but also British and Portuguese ancestry who lived in the colony, whether they had been born there or in the metropole. '*Assimilés*' referred to Africans who had been assimilated to French culture and values, Catholicism and the French language. Sometimes this term could include '*métis*', a term derived from the Portuguese '*mestiço*', and refers to a person of African and European ancestry. They were often also referred to as Eurafricans, Afro-Europeans, creoles or '*mulâtres*', but several of these terms carried a negative connotation and prove to be controversial. Often, they would refer to themselves as '*enfants du pays*' (children of the land) or on the island of Saint-Louis '*doomu N'Dar*', which is Wolof and means child of Saint-Louis. Similarly, in areas such as Cabo Verde or the Petite Côte³, once occupied by the Portuguese, they call themselves '*filhos da terra*' (children of the land). '*Crioulo*' was initially also used for the *métis*, mainly by the Portuguese, but the term could also refer to any person of any ancestry who had been born in a colony. '*Évolués*' was used to define the Western-educated African population. '*Originaires*' were Africans who had been born in one of the communes. '*Habitant*' was a precolonial term for an individual who permanently resided in Gorée or Saint-Louis. '*Indigènes*' were Africans native to anywhere which was not the *Quatre Communes*. Finally, '*noirs*' was used for unassimilated Africans, and sometimes also for '*assimilés*'.

Towards the end of the 19th Century, the belief in racial inequality was firmly rooted in European consciousness. The creation and use of these terms is a clear demonstration of the Eurocentric view of the world, a view which has dominated the evolution of the sciences, as well as public opinion. It created a concept of 'duality', 'us' and 'them', and with it, specific categories which were shaped by different norms and governed by different laws. Distinct laws were established to cater to the Eurocentric view of the superiority of the Europeans and the inferiority of the 'different people', 'the Others'. Laws and regulations were established by the French in the colonies to give the possibility to 'the Others' to better themselves and be able

³ A stretch of coastal area that runs from the Cap Vert Peninsula to the Sine-Saloum delta.

to be governed in the same form as the 'superior Europeans'. This was evident with the ideologies which were formed under colonialism and the policy of assimilation.

In the case of Senegal, this duality was attempted to be clearly defined, especially when it came to the statuses of *citoyen* and *sujet*, whereby the inhabitants of the communes possessed French citizenship, but the rest of Senegal, the protectorate, held *sujet* status. But in reality, what defined these two statuses was ambiguous and the peripheries which were meant to shape this duality were rather blurry. This was clearly evident with two groups of people who inhabited the *Quatre Communes*, the *métis* and the *originaires*.

In an effort to accommodate the different citizenship statuses, three types of judicial systems were introduced in the colony of Senegal. In rural areas, or what was later known as the *pays du protectorat*, the African population fell under native law or *le code de l'indigène*. But in four towns along the Senegambian coast, known as the *Quatre Communes*, the inhabitants, who possessed French citizenship, were under the jurisdiction of French law in all cases. Due to the prominent Muslim population of the communes, Muslim tribunals were established to apply Muslim law in civil matters. As the *originaires* were considered to be French citizens, they had access to French laws and codes, and French courts for civil and criminal affairs. As Muslim *originaires* conserved their *statut personnel*, they were able to opt which civil law, French or Muslim, they wanted to apply in civil matters, as jurisdiction fell under both. Due to the possibility of Muslim *originaires* being able to retain their *statut personnel* and still being able to possess French citizenship, the extent of their citizenship status was contested for a long time. Many believed that they had been conveyed too many rights, being French citizens and maintaining their *statut personnel*, but also as their citizenship status had been granted to them because of where they were born and not because they had met a certain criteria as individuals.

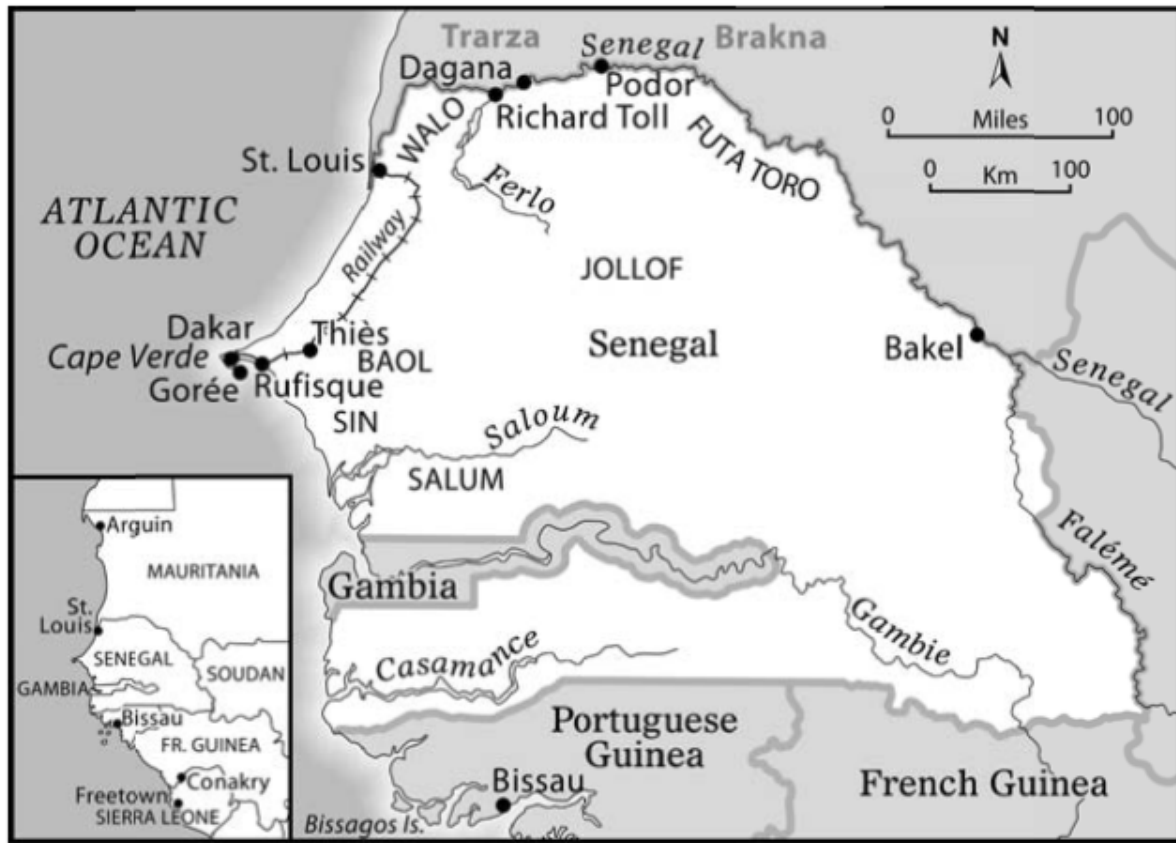
The application of French law and, as they go hand in hand, the extension of French citizenship in an area of the African continent was a rarity. Due to many factors, this anomaly was contested and attempted to be removed or greatly reduced since its inception. This thesis focuses on the French and Muslim judicial system which held jurisdiction in the *Quatre Communes* of Senegal, along with the emergence and development of these two parallel judicial systems, what matters fell

under each of their jurisdiction, what jurisdiction was applied where, when and how, and to whom did they apply.

When it comes to French and Muslim law in Senegal, information is not as easy to come by and sources are not abundant. Furthermore, there is not one place where all laws, decrees and local *arrêtés* have been written down and published. The sources used in the writing of this thesis are primarily books and articles from the University of Vienna's Libraries, the British Museum and my family's personal library. All of the French and Senegalese written Constitutions can be found online, along with a couple of useful pages of the *Bulletin des lois*, where French law regarding France is published. Any laws which concerned the colony of Senegal were published in the *Journal officiel du Sénégal*. The British Library is in possession of a handful of exemplars of this journal, which are on microfilm.

Following a short description of the *Quatre Communes* of Senegal, its trade economies and social development, and French colonial policy, the main part of this thesis is structured following a chronological timeline of the history of France, beginning during the *Ancien Régime* (15th Century) and ending with the Fifth Republic and Senegal's independence in 1960. The time period covered in this thesis spans from the arrival of the French on the Senegambian coast until the French judicial system no longer held jurisdiction in Senegal, with most of the focus being on what is considered to be 'the long 19th Century'. As one of the main aspects of this thesis is the citing, evaluating and interpreting of laws, decrees and local *arrêtés*, a chronological approach seemed the most practical and less confusing procedure to follow. The chapters are divided by the governments and the regimes of France, with the lengthy Third Republic being further divided into subchapters each time an important law or decree was promulgated. The emergence of these subchapters was due to the Third Republic being the longest form of government in France, aside from the *Ancien Régime*, and the subsequent greater quantity of information and sources regarding this time. Understandably, the further back in time one goes, due to one reason or another, the less amount of information is available. Additionally, and most significantly for this thesis, the Third Republic witnessed the largest scale colonisation on the African continent in the history of France.

1.1. The Quatre Communes of Senegal



Map of Senegal (1870-1920) (Jones 2013, 63).

The island of Gorée, which was locally known as Baazaguiche (Hargreaves 1969, 37), is one of volcanic origin, situated some two kilometres off of the coast of the Cap Vert peninsula. (Boilat 1853, 1). It was located, uninhabited, by a Portuguese explorer named Dinis Dias in 1444. (Klein 1968, 22). The Portuguese named the island *Ilha de Palma*. (Clark/Phillips 1994, 147). When the Dutch arrived on the island in 1588 (Delafosse 1931, 7), they renamed it *Goede Reede*, which then under French possession evolved into Gorée. (Seck 2012, 204).

Gorée mainly remained under Dutch possession, except for three brief occupations by the Portuguese in 1645, the French in 1659 and the British in 1664, until November 1677 when a French expedition permanently drove the Dutch out of the island. (Jore 1965, 20). The French then constructed two forts there, Saint-Michel and Saint-François. (Hardy 1921, 6). During the Seven Years' War (1756-1763), Britain came to occupy Gorée in December 1758, but returned the island to France with the Treaty of Paris in 1763. (Clark/Phillips 1994, 148). In 1779, Britain once

again captured Gorée (Hargreaves 1967, 69), but the island was ceded back to France four years later with the Treaty of Versailles of 1783. (Hardy 1921, 1). During the Napoleonic Wars (1803-1815), Gorée once again was under the possession of the British Crown. (Hargreaves 1967, 69). On 30th May 1814, the Treaty of Paris was signed, setting the borders of France and reinstating all territories between Cap Blanc and the Gambia River to France (Faidherbe 1889, 75), except for Tobago, Sainte-Lucie, Maurice, Rodrigue and Seychelles. (Guèye 1955, 24). Gorée then remained under French possession until Senegal's independence in 1960.

The Senegal River was located by Denis Fernandez in 1446. (Boilat 1853, 199). In 1638, the French built a fort on the island of Bocos. (Clark/Phillips 1994, 231). In 1659, the *Compagnie de Cap Vert et du Sénégal* transferred down their operations, settled themselves on the locally known island of Guet N'Dar, established a fort and gave the island the name Saint-Louis du Sénégal, in honour of King Louis XIV (1643-1715). (Delafosse 1931, 13). The *Compagnie's* aim was to control the trade along the entire Senegal River. The small settlement would later become the centre for French commercial activities for the following two centuries. (Vaillant 1990, 35).

Saint-Louis also changed hands several times before being ultimately placed under the firm control of the French. (Boilat 1853, 199). The British came to occupy the island twice, the first time from 1758 to 1778 and then again from 1809 to 1817. (Hargreaves 1967, 69). By the 18th Century, Saint-Louis already considered itself culturally, economically and socially a part of France, and in the mid 19th Century, the continually growing *métis* population on the island dramatically shifted in favour of France. (Vaillant 1990, 38f).

Gorée was initially the most advance port on the West African coast. (Hardy 1921, 6). It became the French base for trade with the *Petite Côte* (Hargreaves 1969, 34), while Saint-Louis thrived on the commerce of the Senegal River. Both trades were dominated by French and *métis* merchants. (Brooks 2010, 121). Saint-Louis rapidly became a centre of an expanding commercial empire, thus becoming one of the most important trading ports in West Africa, and provided an economic base for the imperial expansion which was to come. (Searing 1993, 165f).

1.2. Trade Economies and Social Development

During the 18th Century, the Senegambia region was the largest producer and supplier of gum Arabic (Curtin 1975, 215f), and Saint-Louis became the central trading post for it. (Klein 1968, 23). After the gum Arabic boom in the 1830s and 1840s came the crises in the 1850s, and gum Arabic was then replaced by peanut cultivations. (Searing 1993, 166f). Gorée's main trade also became peanuts, although it at first traded in gold, *guinées*, hides, ivory, salt, wax and slaves. (Klein 1998, 22).

Initially, Senegal was only a trading post with an active commerce, but with the ever growing settlement, it could not survive as solely a trading post for long. (Brunschwig 1942, 88). Between 1779 and 1789, the settlements of Saint-Louis, Gorée, Cap Vert and the Gambia were joined together administratively to form the colony of *Sénégal et dépendances*, headed by Armand-Louis de Gontaut Biron, Duke of Lauzun as the first Governor. (Delafosse 1931, 52). Until the mid 19th Century, *Sénégal et dépendances* was made up of practically only *escales* (ports of call) and military posts. (Idowu 1968, 262).

However, due to the territorial conquests which began during the governorship of Governor Faidherbe (1854-1861, 1863-1865) and gained much momentum during the 1880s and 1890s, the colony of Senegal changed from a commercial colony made up of trading posts, to a large colony which required an administration and a bureaucratic system. (Duke Bryant 2015, 15). Saint-Louis became administratively important as the general and central administration of Senegal held its seat on the island. (Olivier 1907, 132). Furthermore, the small island was the first commune, the most individual and the largest until it lost its place to Dakar during the early 20th Century. The population and importance of Gorée also decreased with the settlement of the Cap Vert peninsula and was therefore eventually joined to the commune of Dakar in 1929. (Johnson 1971, 35f).

In 1664, two great commercial companies were created, the *Compagnie française des Indes occidentales* and the *Compagnie française des Indes orientales*. These companies enjoyed commercial monopoly and the powers of the State within their jurisdiction. (Deschamps 1953, 35). Within the Atlantic, several other

commercial companies emerged, including the *Compagnie du Sénégal*⁴, which had its main trading posts in Gorée and Saint-Louis, and then along the Senegal River, several smaller establishments such as Podor and Galam. Due to the establishment of these trading posts and the commercial companies who ran them, a sort of colonial settlement was formed. Each trading post had to pay a type of custom to the local rulers in order to obtain its merchandise. (Ibid., 44ff). The rapid emergence and expansion of such *Compagnies* were brought about because of the commercial interests which drew Europeans to Senegal. (Gaffarel 1880, 48). Additionally, the climate along the Atlantic coast was greatly attractive to Europeans, due to the sub-Canarian climate and the gentle winds. These weather conditions could also explain why for several centuries they lingered along the coast rather than making their way into the mainland. (Johnson 1971, 6). Moreover, islands, including Gorée and Saint-Louis, offered some protection from the diseases of the mainland. (Vaillant 1990, 35). However, during *hivernage*, the rainy, humid, summer period which spans from June to October, Senegal was temporarily abandoned by many Europeans. (Johnson 1971, 5).

After the Napoleonic Wars, French merchants, mainly from Bordeaux who represented commercial firms, replaced these large trade monopolies and *Compagnies*. These merchants viewed Senegal in a different way, as they generally became permanent residents of the colony and therefore had a more profound and more long term commitment to it. (Searing 1993, 163). Furthermore, the Industrial Revolution in Europe also brought great changes to the Senegambia region. The established merchant communities differed from the newly arrived Europeans whose modernised military strategies were based on recently developed industrial technologies. Due to these modernisations, Europeans had gained a new confidence in their potentials regarding non-European civilisations. "They became more arrogant in their dealings with non-Europeans, and this attitude fitted their biological thought about race differences. As a result they adopted a cluster of ideas and attitudes, with pseudoscientific racism at the core, surrounded by multi-variant layers of cultural arrogance and ethnocentricity." (Curtin 1975, 56).

During the 18th Century, small but influential communities emerged on the islands of Gorée and Saint-Louis. (Hargreaves 1967, 65). These settlements were

⁴ Replaced the *Compagnie des Indes occidentales* in 1673. (Barry 1972, 162).

made up of a group of Europeans, a large *métis* community, a small group of Christian Africans known as *grumetes*⁵, and the predominant African population, which was mostly Muslim and Wolof or Lebou. The powerful *métis* aristocracy which developed on the islands possessed great commercial and political influence and power. They were the descendants of European men and African women, known as *signares*⁶. (Foster 2013, 14-24). *Signares* possessed much power, partook in commercial activities and owned much of Senegal's shipping and real estate. (Klein 1998, 22).

Throughout the 17th and 18th Centuries, the French, just as the Portuguese had done before them, entered into temporary unions with *signares* known as a *mariage à la mode du pays*. (Brooks 2003, 210). This was a legitimate marital union between an African woman and a European man which followed Wolof marriage and inheritance practices. This marriage would typically end upon the death or permanent departure of the husband from Senegal, and the wife would then be free to remarry without any prejudice or persecution. (Brooks 2010, 6). *Mariage à la mode du pays* was not legitimate under French civil law and was seen immoral in the eyes of the Catholic church. The French colonial administration did not permit this type of union, but they also did not prohibit it, as French colonial authorities saw it as a way in which Frenchmen would have to claim the children of these unions as their own. These unions slowly began to disappear during the 19th Century, especially after the application of the Civil Code in Senegal in 1830, as to wed through the Catholic church was the only legitimate form of union under French civil law and would therefore strengthen claims to French citizenship and equal rights.

During the 18th and 19th Century, the population on Gorée and Saint-Louis steadily grew, and the local *métis* and African community developed economically and politically, as they became more and more interested in local governmental affairs. (Johnson 1971, 25). As most of the *métis* families were devout Catholics, religion, was a central aspect of their political and social identities and therefore had a great influence on how they engaged in the *Conseil général* (General Council), the municipal councils and courts of law. (Foster 2013, 15). These prominent *métis* families tended to marry among their own circle, thereby creating an elite community

⁵ A term of Portuguese origin. The French spelling is *gourmets*.

⁶ *Signare* is a Senegambian term originating from the Portuguese word *senhora*, used to describe a wealthy woman trader from the Senegambian coast.

that progressively integrated itself into different aspects of European culture and civilisation. (Curtin 1975, 121).

1.3. The French Colonial Policy

“To colonise, we have seen, is to form a new civilised society. The question to know which political and economical relations are convenient to establish between it and the mother homeland constitute the fundamental problem that dominates all colonial legislation.”⁷ (Girault 1895, cited in Saada 2003/4, 11).

Assimilation, in its most basic terms, refers to the unconscious adoption of French civilisation. (Saada 2007, 124). The French assimilation policy followed an Enlightenment philosophy, and among other things, it advocated the belief that there were no cultural or racial differences that education could not eliminate. (Crowder 1968, 167). “I repeat that education is, to my mind, the most effective means to which we can resort to assure the rapid development, from all standpoints, of this land and of the influence that we wish to exercise here.” (Merlaud-Ponty 1909, cited in Gamble 2017, 29). Assimilation suggests that Africans were capable of absorbing French culture, thereby acquiring “*la mentalité française*” (French mentality) and “*le genie national*” (national spirit), as “through education and sympathy the native could enter into the cultural heritage of France and become a Frenchman himself” (Buell 1928, II, 77), meaning that ‘Frenchness’ was something which any individual could acquire, given the right circumstances and opportunities. It was also believed that the metropolitan political systems could be recreated in the colonies, to some extent. (Jones 2013, 157).

“From the day when the Senegalese population will understand our language and practice our religion, Senegal will really be a new France.” (Gaffarel 1880, 59). Colonialism was generally justified through the ideologies that maintained the superiority of the coloniser and the inferiority of the colonised. The French defended this through the belief in the particular ideology of *la mission civilisatrice* (the civilising mission). It was an ideology which had emerged in the early stages of French

⁷ Translated from French by the author C.R.S. All texts henceforth originally in a language which is not English have been translated by the author C.R.S.

colonial rule (Villalón 1995, 80), and became the official doctrine of the Third Republic. (Conklin 1997, 11). The French supported a hierarchy of evolutionary development which positioned themselves right at the very top and Africans at the bottom. In France, it was believed that Africans could be civilised or freed from their “savage nature” through an extended period of time and meaningful contact with French culture. (Hale 2008, 25). Thus, education was taught in French exclusively, as it was believed that by speaking in French, Africans would eventually end up thinking in French and, more importantly, feeling French. (Deschamps 1971, 552).

A full scale assimilation policy implied that those who were to be assimilated would receive equal rights as those by whom they were assimilated. (Crowder 1968, 169f). Due to the rapid expansion of French conquests on the African continent, the French soon realised that a full scale assimilation policy in their African territories would not be possible, as it would include the cultural, economical and political assimilation of 20 million Africans to equal standards as enjoyed by the French in the metropole. (Crowder 1967, 1). The *Quatre Communes* were therefore the only place where a full scale assimilation policy was implemented. They were administratively, culturally, judicially and politically assimilated to France. They became the exception of the French colonial empire. The *Quatre Communes* had its own *Conseil général*, municipal councils which were patterned after the ones in metropolitan France, and representatives who sat in the French *Assemblée nationale* (National Assembly) in Paris. (Gellar 1982, 9). African subjects on the other hand, had to prove themselves worthy of assimilation by illustrating that they had the qualities for the acquisition of French citizenship, qualities which had been determined by the colonial power. (Crowder 1968, 168). The distinction between citizens and subjects arose from the assimilation ideology which dominated French colonial policy. (Buell 1928, I, 946).

At the end of the 19th Century, the objective of the assimilation policy which sought to extend French juridical institutions in the colonies was abandoned by the colonial administration. (Saada 2003/4, 13). ‘Association’ and its emphasis on *la mise en valeur* replaced assimilation as the dominant ideology in French colonial policy. Africans had to evolve within their own culture rather than that of France. Association, or paternalism, conceived that “Africa should be developed for the mutual benefit of French rulers and African subjects in association with each other.” (Crowder 1977, 145). In 1907, a former *Ministre des Colonies* George Leygues (1906) commented on

the policy of assimilation. "Assimilation was a fateful error; it must be renounced forever." (cited in Sarraut 1923, 107). In theory, association was not intended to be authoritarian, but rather represents the ideologies of humanity, equality and fraternity. (Maunier 1932, 63). The new focus became an ideology where differences ought to be respected (Jones 2013, 157), but meant for the colonised population to continue to evolve under the colonisers guardianship. (Sarraut 1923, 104). "On the one hand, and as a priority, to satisfy the needs of the local population and create the best conditions for their social progress; on the other hand [...] to implement the programmes for the restoration and development of the economy of the French Union". (*Journal officiel de la République française*, 1946, cited in Schicho 2014, 67).

During the 1920s, the cultural, economical and political colonial policy of association was part of the Republican vision of a type of imperialism which was founded on the collaboration of the French with the African population to manage colonial affairs. (Thomas 2005, 919). Albert Sarraut, who formulated the concept of *la mise en valeur*, was convinced that the "improvement" of Africans could never eliminate the "inherent racial differences between Europeans and their dependent races." (Rosenberg 2002, cited in Thomas 2005, 923).

In a conference in Brussels in 1923, Sarraut spoke about the colonial policy:

"And our current conception of colonial policy is formulated in this premise, which is the foundation of French doctrine: colonisation is not simple, we are no longer a unilateral operation, for commercial or political purposes, solely conceived and carried out for the sole interest of the coloniser or conqueror, in exclusive search of a privileged market, a trading post or a support point. Colonisation is essentially a creation of humanity; if the coloniser has the obvious right to reap legitimate benefits of any kind, he must consider that it is not simply a national enrichment, but a universal enrichment, benefiting the entire worldly heritage, whose colonisation effect must develop and increase at the same time material and moral wealth; and this enrichment of humanity must be made and pursued in the assimilation and collaboration of the races that the coloniser governs and that it must enhance in human value." (cited in Runner 1926, 10f).

The transition from the doctrine of assimilation to the policy of association was criticised by many, as French colonial policy now denied the colonised population the advantages of French law. Even though exclusionary and Eurocentric, the policy of assimilation did aid a group of people, known as *assimilés*. Many of these *assimilés*, who depicted an “embodiment of French cultural improvement”, began resenting the colonial system, as it placed them right at the bottom of the bureaucratic system. (Thomas 2005, 924). It was during the 1920s that nationalism was firmly rooted among them and they henceforth became increasingly outspoken in their opposition to French colonial domination.

“*Assimiler sans être assimilé*”⁸ was one of the famous phrases of Léopold Sédar Senghor, who alongside Aimé Césaire and Léon Damas founded the *négritude* movement in Paris in the early 1930s. (Diagne 2018, 13). This movement was against the assimilation policy and encouraged Africans to assimilate to the best that France could offer them, but at the same time they should never lose themselves, and remain true to their own distinctive culture. (Vaillant 2006, 176). Senghor believed that Africans should use French techniques to serve their own interests and to further themselves. In an article for *L’Action Française* on 4th October 1937 he wrote:

“Europe must not assimilate Africa, but if Africa is to assimilate Europe, it must remain true to itself. [...] African elites must assimilate the elements of French education, but in the same way that a body assimilates to nourishment, that is, if the individual eats cabbage or yam, he does not become yam or cabbage, but appreciates that the principles of these vegetables may be useful.” (Senghor 1937, cited in Idowu 1969, 218).

The emergence of *négritude* had come as a result of two different aspects of assimilation; the *originaires*’ citizenship status and the advantages which were provided through the French education system to Africans. However, due to the change that occurred within the colonial policy, the ‘advantages’ which the policy of assimilation had brought to a handful of Africans, were now being removed and the

⁸ Assimilate without being assimilated.

same opportunities they had had within the colonial system would no longer be extended to other Africans. “This newfound French ‘respect’ for an ‘authentic’ African way of life was largely a political response designed to contain demands by young educated Africans for equal rights.” (Conklin 2013, ix).

“The period between the end of the First World War and the independence of African nations around 1960 was marked by the passage from a colonial Discourse based on ‘progress of civilisation’ [...] to a post-colonial Discourse based on ‘development’ in which the development of Africa [...] refers to the process undertaken by former African colonies to achieve a certain level of economic development and well-being. The term *développement* had already been in use in colonial discourses, as part of the more general notion of ‘civilisation’ [...] It definitively entered mainstream dialogue from the moment of independence onwards, but the term was not new. Already, at the beginning of the 1930s, it came to designate a shared, ideological notion.” (Dufour 2014, cited in Schicho 2014, 92f).

It was during this time that the foundation was laid down for the critique of the French colonial policy, as it unfolded until the end of colonial rule, and the inconsistencies in the ‘form’ as was understood and applied in the distinctive setting of colonial Senegal.

2. Law and the Judicial Systems in the Quatre Communes

Private law can be defined as “that area of the law in which the sole function of government was the recognition and enforcement of private rights.” Whereas, public law is “the effectuation of the public interest by state action.” It “consists of various statutes, supplemented liberally by judge-made norms, that regulate organization and function of public authorities and the relationship between public agencies and individual citizens.” Public law tends to fluctuate more than private law as it could change with the decisions of the political forces of the land. (Apple/Deyling 1995, 23f). Public law includes administrative law, constitutional law, criminal law,

international law, etc., while private law encompasses all civil matters, family law, inheritance law, property law, and in the case of France the *Code civil*.

France follows a system of civil law and not one of common law. Civil law systems have comprehensive codes which were often developed from a single event⁹. Codes cover many different topics, sometimes separately, as is the case in France. This system follows a “tradition of separate codes for separate areas of law, favor specialty court systems and specialty courts to deal with constitutional law, criminal law, administrative law, commercial law and civil or private law.” Common law systems on the other hand, have statutes in those sections of law which originated from an improvised process which spanned over many years. If there are codes in common law systems, then they more often than not disclose law which has been expressed in judicial findings. (Ibid., 36f).

2.1. The Ancien Régime (15th Century-1789) and the Monarchie Constitutionnelle (1791-1792)

During the *Ancien Régime*, the King possessed all of the executive power. Even though there was no written Constitution, it existed in a constant and recognised custom. (Hélie 1880, 3). Law was an institution in which the state exercised its sovereignty over the general populace. (Saada 2002, 112). In mid 18th Century France, there were an assortment of civil and criminal tribunals, church courts, military courts and commercial courts, each corporate institution had its own jurisdiction and representative courts, and each administered justice according to their customary practices. In other words, the defendants and the plaintiffs had in their disposition a legal system which was “complex, often venal and fraught by conflicting jurisdictions.” (Seligman 1901, cited in Roberts 2005, 37).

Letters patent dated on 19th April 1627 sent by King Louis XIII (1643-1715) to the *Compagnie des Cent-Associés*¹⁰ declared that *indigènes* who converted to Catholicism were considered French nationals and could reside in France if they so pleased without having to present a letter of declaration or naturalisation. (Borella

⁹ In the case of France, the promulgation of the Civil Code.

¹⁰ Also known as *Compagnie de la Nouvelle-France*.

1958, 175). This signified that the French naturalisation could occur through the profession of the Catholic faith.

When it came to law in the colonies of France, the earliest instructions which provided them with French law were two Royal edicts from 1664 and 1671, where it was reiterated that the colonies will “follow the rules of custom of Paris for the justice rendered to the inhabitants of the colonies.” (Demague 1902, cited in Roberts 2005, 37). This however proved to be difficult, as each colony developed practices that portrayed the local needs and therefore legal uniformity was difficult to achieve. A Royal edict of 1674 decreed the directors of the *Compagnies* to apply, as far as possible, the laws of metropolitan France. (Olivier 1907, 172).

Letters patent of 1728 presented to the director of the *Compagnie du Sénégal*, gave him the authority to judge all crimes and offences alongside with an assistant director and three clerks of his choosing. Half a century later, on 20th November 1778, the Instructions of Armand-Louis de Gontaut Biron, the Duke of Lauzun and Governor of Senegal, mentioned the absence of a court of justice in the colony, requested the implementation of some rules and specified that only criminal offences should fall under the jurisdiction of metropolitan courts. (Jore 1965, 294ff). Dominique Lamiral commented on the judicial situation in Saint-Louis sometime before the Revolution of 1789 stating that “[t]here is hardly any regular justice.” (cited in Roberts 2005, 37).

By the mid 1780s, justice was carried out by Governors in the name of the King. (Olivier 1907, 172). Laws were established from customs and the Governor of Gorée was the head of the civil, military and judicial administration. He was instructed to maintain “good order and tranquility” via paternal rough justice, and was to administer it when appropriate with the collaboration of Senior military officers. (Hargreaves 1965, 182).

In 1802, Jean-Baptiste-Léonard Durand wrote ‘*Voyage au Sénégal*’ and in it, he describes the process of administering justice at the time in the colony. When it came to capital charges, Africans who were found guilty were sold and sent to the Americas. If the indicted African was a slave, then the outcome of the sale was presented to the injured party as indemnification. If the African was a free person, a portion of the sale would go to the prosecutor and the rest would be placed into the King’s treasury.

A Frenchman would also be tried by the same tribunal and under the same forms, but, if charged, he would be arrested, banished from the colony and sent to France.

If the accused Frenchman was indicted on burglary or murder charges, or any capital offence, he would be sent to France and tried there, but according to instructions sent from Senegal.

In regard to commercial disputes, the cases were decided before the Governor who attempted to reconcile the parties. If the reconciliation was unsuccessful, three arbitrators were appointed who, together with the Governor, gave a final decision. In those cases where the parties were Europeans, the arbiters were too, and if the parties were Africans, then so were the arbiters. In those cases involving Africans and Europeans, the arbiters were a mix of both. (Hargreaves 1969, 67f). Furthermore, judgement was carried out publicly and rarely was anyone sentenced to death. (Jore 1965, 296). During this time, the civil rights of Africans in the colony were more clearly recognised as those of some Frenchmen in the metropole. (Hargreaves 1967, 71).

At the beginning of 1789, the title of Governor was suppressed, the personnel was reduced to a minimum, and the *Compagnie du Sénégal* was authorised to take part in the political direction of the colony. (Jore 1965, 125). After the Revolution of 1789 and the change in government, the new *Assemblée constituante* declared on 18th January 1791, trade to be free for all French men and that the French establishments on the African coast were to be governed as simple *comptoirs* (trading posts) and not as a colony. A simple administrator residing in Saint-Louis held the title of *directeur* (director) and was responsible for governing, in the name of France, all trading posts. (Jore 1965, 135). The administration of Senegal was done by naval officers who tended to be excessively harsh in their administration, and generally only tended to stay in the colony for brief periods of time. (Cohen 1971b, 492). In France, after the Revolution, administrative courts were established. They organised legislature as the leading source of law, and established that the judiciary was not competent enough to pass judgement on the legality of administrative undertakings. (Apple/Deyling 1995, 25).

The first written Constitution of France, the *Constitution française du 3 septembre 1791*, was created under the *Monarchie Constitutionnelle*. (Babot/

Boucaud-Maître/Delaigue 2002, 259f). The Constitution was represented by the King and the *Corps législatif* (Legislative Body), whereby legislative power was delegated to a *Assemblée nationale* and executive power lay in the hands of the King. (*Constitution de 1791, Titre III, Article 2-4*). It also gave, for the first time, the status of citizenship a political component. (Borella 1958, 175f). It was considered to be a liberal Constitution and therefore meant that, in theory, humankind was free. (Ellul 1969, 17). Written at the very beginning of this Constitution was the *Déclaration des Droits de l'Homme et du Citoyen*.

The *Déclaration des Droits de l'Homme et du Citoyen* was published on 26th August 1789. Article 1 states; "Mankind is born and remains free and equal in law. Social distinctions can only be based on the common good." (*Déclaration des Droits de l'Homme et du Citoyen*, 1789, Article 1). Article 9 states; "All mankind is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure this person must be severely suppressed by law." (*Déclaration des Droits de l'Homme et du Citoyen*, 1789, Article 9). The *Déclaration* critiqued the *Ancien Régime* and represented the universal principle of liberalism. (Dwyer/McPhee 2002, 26).

During the Revolution of 1789 and throughout the *Monarchie Constitutionnelle* the local rights of the inhabitants of the colonies continued to evolve. However, these rights were usually not recognised outside of the respective colonies. (Johnson 1971, 24). Nonetheless, with declaring the colonies as French, France claimed that its overseas possessions were to be treated equally to the metropole. (Duchêne 1928, 135).

On 15th April 1789, the inhabitants of Saint-Louis drew up a *cahier de doléances* and sent it to Paris. "Negros and mulattoes, we are all French, since it is the blood of the French that flows in our veins or those of our nephews. This origin gives us pride and elevates our souls." (cited in Vaillant 1990, 38). They considered themselves citizens of France and part of the French system and as such, wanted to be treated in the same way and possess the same rights. An instruction of 17th March 1790, which was annexed to the decree of 8th March 1790, accorded the right to vote to "all men of colour and free blacks, excluding slaves". (Guèye 1955, 21).

A petition sent to the *Assemblée nationale* by Dominique Lamiral on 14th March 1791, protested the reorganisation of the administration of the colony and

asked for the town of Saint-Louis to be recognised as a proper municipality with paid officials elected by the French, *métis* and African property owners of the town. He also petitioned for the establishment in Senegal of assemblies modelled by those in France, and for Senegal to have an official representative in Paris. The colonial committee examined the proposal and went on to draft a decree but the revolutionary government did not end up following through with it. (Jore 1965, 129-137).

In May 1791, “free blacks and owners, children of free father and mother” in France and its colonies, were declared active citizens. (Dubois/Terrier 1902, 29). Furthermore, on 24th March 1792, a decree stated; “The people of colour, *métis* or free blacks will enjoy, like the white colonisers, equality in political rights; they will be admitted to vote in the primary and electoral assemblies and will be eligible for all positions...” (cited in Guèye 1955, 23). Moreover, Article 3 of the *Constitution du 6 Messidor an I* (24th June 1793) declared that all men are equal by nature and before law, and Article 4 declared that all men born and residing in France, aged 21 and over were French citizens. (*Constitution du 24 juin 1793, Article 3-4*).

A decree promulgated by the *Assemblée législative* adopted on 20th September 1792, regulated the *état civil* of French citizens. (Noiriel 1993, 3). This decree came as a result of Article 7 of the *Constitution de 1791* which stated; “The law only considered marriage as a civil contract. The legislative power will establish for all the inhabitants, without distinction, the way by which births, marriages and deaths will be ascertained; and it will designate the public officials which will receive and conserve the acts.” (*Constitution de 1791, Titre II, Article 7*).

2.2. The Première République (1792-1804) and 16 Pluviôse an II (4th February 1794)

François Antoine Boissy d’Anglas, a deputy and writer of the *Constitution du 5 Fructidor an III* (22th August 1795), wrote in a report between 1792 and 1795; “[...] Attach the colonies to us by a government wise and firm, by the bonds of a common interest, by the powerful attraction of liberty; ... that they form a part of our indivisible Republic and that they are supervised and governed by the same laws and the same government; that their deputies, [...] be confused with those of the populace ...” (cited in Deschamps 1953, 89). Article 6 of *Constitution du 5 Fructidor an III* went

on to state; “the colonies are integral parts of the Republic and are submitted to the same constitutional laws.” (cited in Dubois/Terrier 1902, 29). This Constitution and the First Republic in general had an “assimilationist spirit” (Rosanvallon 1966, 425), however this more liberal ideal for the colonies did not last long, as four years later Article 91 of the *Constitution du 22 Frimaire an VIII* (13th December 1799) stated; “the government of French colonies is determined by special laws.” (*Constitution du 22 Frimaire an VIII, Article 91*).

The law of 16 *Pluviôse an II* (4th February 1794) abolished slavery. “The National Convention declares that the slavery of blacks in our colonies is abolished; in consequence, it decrees that all men, without distinction of colour, domiciled in our colonies, are French citizens and enjoy all the rights ensured by the Constitution.” “The dispositions will be confirmed by the Constitution of 5 Fructidor an III (22nd August 1795) [...] accord the status of free person and absolute equality of rights to all people of the French colonies.” (cited in Guèye 1955, 24). In theory, the population of the French colonies were placed equally with the French population of the metropole. (Niort/Richard 2014, 167). This also meant that all inhabitants of French overseas possessions, no matter their social status, were entitled to the same privileges as French citizens in the metropole. (Idowu 1969, 194f). The promulgation of the law of 16 *Pluviôse an II* (4th February 1794) posed the question for the first time, did the *originaires* of Gorée and Saint-Louis posses *statut civil français*.

Juridically speaking, slavery had been abolished but the trading of slaves was not explicitly prohibited. Therefore, due to the loophole in the terminology of the law, the reestablishment of slavery eight years later in 1802 was not so much the reestablishment of slavery, but more of the maintenance of an already existing practice, which preserved slavery in those colonies where it had never been abolished. Article 1 of the law of 30 *Floréal an X* (20th May 1802) stated; “In the colonies restituted to France in the execution of the Treaty of Amiens, slavery will be maintained conforming to the laws and regulations prior to 1789.” (cited in Delafosse 1931, 63). The result of this law was that slavery would be legal in Gorée but not in Saint-Louis, as it had not been one of the territories restored to France by said Treaty. Therefore, as Saint-Louis had not been taken, and subsequently also not returned, slavery could not be restored there. (Delafosse 1931, 64). This law consequently also suspended the law of 1794. (Johnson 1971, 79). The removal of

French citizenship of the people of the colony and the reestablishment of slavery were part of the First Empire's colonial policy. (Lentz/Brandt 2006, 103).

On 29th March 1815, Napoléon Bonaparte (1804-1814, 1815-1815)¹¹ issued a decree declaring the future abolition of the slave trade and the importation of slaves, but nothing changed. Four months later on 27th July, under Louis XVIII (1814-1815, 1815-1824), another decree was promulgated stating the same thing. (Guèye 1955, 25).

2.3. The Premier Empire (1804-1814) and the Civil Code

The Civil Code, also known as *Code Napoléon*¹² or *Code civil des Français*, was the first unification and codification of civil law and a symbol of the juridical work done by Napoléon Bonaparte's parliament. The Civil Code, along with the *Code de procédure civile* (1806), *Code de commerce* (1807), *Code d'instruction criminelle* (1808), and *Code pénal* (1810), were the five codes created by this parliament. (Babot/Boucaud-Maître/Delaigue 2002, 74). These five codes, along with *le droit administratif* (administrative law) and *la jurisprudence* (case law) made up French law. (Opoku 1974, 139). Consequently, those individuals who possessed *statut civil français* were under the jurisdiction of all these aspects of the French judicial system.

Even though the Civil Code and the *Code de procédure civile* are two separate codifications, published separately, two years apart, they are inseparable in practice. The *Code de procédure civile* deals with matters of legal jurisdiction and is dependant on the Articles of the Civil Code. French civil procedure is carried out in four stages.¹³ The first step is generally made up of two parts. The plaintiff sends the defendant a letter declaring his or her grievance. If this matter is not immediately resolved, the

¹¹ On 1st March 1815, Napoléon Bonaparte returned to France and, after a five day war, removed King Louis XVIII from the throne and retook the reign of France. On 22th June 1815, his four year old son Napoléon Bonaparte II replaced his father as Emperor of France. However, his reign was short lived as on 8th July 1815, King Louis XVIII once again became King. This time period in French history is known as *Cent-Jours*.

¹² During the Second Republic the name *Code Napoléon* was removed (Babot/Boucaud-Maître/Delaigue 2002, 75), but a decree on 27th March 1852 re-instated the name. (Carbonnier 1986, 296).

¹³ Just as Richard Roberts writes in his article 'Text and Testimony in the Tribunal de Première Instance, Dakar, during the Early Twentieth Century' from which the following text has been summarised, "no distinct manuals of civil procedure for Senegal have yet been located, so the following discussion is derived from metropolitan manuals." Roberts has based his description of civil law procedures from L. Crémieu, *Précis de théorique et pratique de procédure civile* (Paris 1924) and R. Japiot, *Traité élémentaire de procédure civile et commerciale* (Paris, 1929). (Roberts 1990, 454).

plaintiff seeks the aid of a *huissier* (bailiff) to draft a more formal *sommation* (notice of grievance). The notice should contain the date, the name of the *huissier* along with the name of the plaintiff and the name of the defendant, and a description of the grievance. This *sommation* constitutes the basis of the request for the *procureur* (prosecutor) to commence the case. The second step is where the formal legal procedure commences. A relevant tribunal is selected, and the defendant and the plaintiff make their first appearance. The third step is *l'instruction du procès* (the preliminary investigation). This takes place before the tribunal's *greffier* (clerk of the court) who inscribes the case in a special register. The fourth and final step is where the lawyers and litigants appear before the tribunal to present their arguments and defend their case, which are done in public. After the debates and the evaluation of the evidence, the tribunal reaches a decision in private, which is then made public by the president. The appeal of a case is possible. (Roberts 1990, 454).

In the French judicial system, the Civil Code secured a position like no other. (Carbonnier 1986, 308). It was the traditional embodiment of unifying diverse nations that composed *Ancien Régime* France to nurture a common homeland. (Ewald 2004, 36). It took the ideologies of what ought to be the natural rights of individuals and transferred the jurisdiction of law to the collective will of the nation as conveyed by the *Assemblée nationale* (Roberts 2005, 39), and became a symbol of unity throughout French territories. (Carbonnier 1986, 307). It was the first coherent system of private law concerned with property, family and individual rights of French citizens, and joined together canonic laws, regional customs and revolutionary statutes under one uniform legal code. (Jones 2013, 84). The Civil Code became one of the most enduring legacies of the First Empire, having survived the Restoration of 1815, the Revolution of 1830, the *Monarchie de Juillet*, the Revolution of 1848 and the Second Empire. Moreover, it became the basis for law of the Third Republic. (Pedersen 1998, 45). Since its establishment, it has been amended and supplemented but it has never been completely modified, and is still in effect to this day. (Apple/Deyling 1995, 15). Additionally, the Civil Code carried out the juridical function of a Constitution. (Bouineau/Roux 2004, 144).

The Civil Code is a very precise instrument of justice. (Delavignette 1946, 141). The language used throughout the Articles is simple and easily comprehensible. This was done in an effort so that any individual could thoroughly

understand the code. Nevertheless, due to the simplicity of some of the Articles of the Code, a substantial body of explanatory case law has emerged and it is used in the judgements of the courts. (Apple/Deyling 1995, 15).

The drafting and formation of the Civil Code was distinguished by two different periods. The first, *l'ancien droit* (old law), which was all law prior to the Revolution of 1789, and the second, *le droit intermédiaire* (intermediate law), the law of the Revolution, which referred to all law between *l'ancien droit* and the Civil Code. *L'ancien droit* was characterised by its extreme diversity. Civil law and the judicial system in general varied from territory to territory. Furthermore, at the time, civil law represented the Catholic monarchy which had ruled France for quite some time and was thus denominational, inegalitarian, and specific to a particular community or territory. The principles of *le droit intermédiaire* on the other hand included conscious liberty, equality among people and lands, and free commerce. (Carbonnier 2004, 120f). Moreover, the Civil Code separated civil law from the Church. (Ibid., 128).

Article 1 of the Civil Code decreed on 5th March 1803 and promulgated on 15th March of that same year states; "The laws are enforceable in all French territories, by virtue of the promulgation made by the Emperor. They will be executed in each part of the Empire, from the moment the promulgation will be known." (*Code Napoléon, Titre préliminaire, Article premier*, 1808, 3).

Article 7 of the Civil Code decreed on 8th March 1803 and promulgated on 18th March of that same year states; "The exercise of civil rights is independent of the quality of citizen, which can be acquired and conserved only in accordance with constitutional law." Article 8 goes on to state; "Every French person shall enjoy civil rights." (*Code Napoléon, Livre premier, Titre premier, Chapitre premier, Article 7-8*, 1808, 7).

Article 10 states; "Any infant born of a French [man] in a foreign country, is French." (*Code Napoléon, Livre premier, Titre premier, Chapitre premier, Article 10*, 1808, 7). Nationality during the First Empire continued with the tradition of the *Ancien Régime* of distinguishing between citizens and subjects, but it broke with the *Ancien Régime* by attributing 'Frenchness' not by place of birth but by the father's nationality. (Fahrmeir 2007, 190). *Jus soli* (law of territory) was introduced into the French judicial system on 23rd February 1515, by an *arrêt*¹⁴ of the parliament in Paris and remained

¹⁴ *Arrêt* is a judgement emanated from a higher court, not to be confused with *arrêté* which is an administrative decision.

the prominent principle up until the end of the *Ancien Régime*. (Weil 2005, 17f). The Civil Code, on the other hand, adopted the basic principle of *jus sanguinis* (law of blood), meaning that citizenship was transmitted by descent regardless of the person's place of birth. This change came as a result of the Revolution of 1789, which dramatically transformed the legal and political significance of citizenship. (Brubaker 1992, 86ff).

2.4. The First and Second Restoration Periods (1814-1830) and the Introduction of the French Judicial System in Senegal

Throughout the course of the First Empire, the French establishments in Africa were completely abandoned. (Tulard 1995, 1568). It was not until the Restoration Periods where the colonies were once again deemed important. The First Empire and its wars had left a financial burden on France and the new government sought to relieve some of that economical set back with plantations schemes through out their Atlantic colonies on the African continent. (Barry 1998, 130). However, as most of Senegal, except for the Casamance region and the Cap Vert peninsula, has a hot and dry climate (Johnson 1971, 4), these plantations proved to be unsuccessful. (Barry 1998, 130).

Furthermore, under the reign of Napoléon Bonaparte, the rights of the *habitants* of Senegal had been suppressed. With the change in regime came a change in civil rights, as under the reign of King Louis XVIII the population of Saint-Louis was "[...] composed in great part of free Negroes and Mulattoes who have enjoyed up till now equal rights with the Europeans and who have the same privilege of having mayors chosen from among them [...]" (Baron Roger s.a., cited in Crowder 1967, 12f). After the promulgation of the *Charte constitutionnelle du 4 juin 1814*, citizenship was no longer defined by the Constitutions of France, as had been the case since the first written *Constitution de 1791*. (Borella 1958, 176). Article 1 of the *Charte constitutionnelle* simply stated; "The French are equal before the law, regardless of their titles and their ranks." (*Charte constitutionnelle du 4 juin 1814, Article 1*). French citizens would henceforth be governed by French law and the Civil Code.

During the Restoration Periods, the process of transforming the colony of Senegal from one of commerce to one of active colonisation commenced. This involved the removal of administration through the *Compagnie*, the establishment of a more official colonial administration and the application of a judicial system. (Roberts 1990, 450). Senegal would henceforth be ruled as a colony by a Governor sent from Paris and backed up by a colonial budget. The new colonial government would assume the diplomatic and military responsibilities which had been managed, up until that point, by officials of the *Compagnie*. (Searing 1993, 164).

On 7th January 1822, a Royal ordinance organised a judicial system, which was based on a French model, in the colony of Senegal. Two *Tribunaux de première instance* (Courts of First Instance) were established, one in Gorée and the other in Saint-Louis, to regulate French law in civil and criminal cases, and a *Cour d'appel* (Appeals Court) was instituted in Saint-Louis to deal with severe penal cases. (*Bulletin des lois du Royaume de France*, 1822, cited in Diarra 1973, 41). The *Tribunal de première instance* in Gorée was to be composed of a *commandant particulier* (private commander), a *principal employé de la marine* (principal employee of the marine) and a notable. The tribunal in Saint-Louis was to be made up of a judge and four notables, of whom two were Africans and two were Europeans. The *Cour d'appel* was to be constituted of a *commandant* (commander), a *Président* (president), four *fonctionnaires* (government officials) and two *habitants*. (Olivier 1907, 172). A *chef de service judiciaire* (Head of the Judicial Department) presided over the *Cour d'appel*. He was appointed by the Minister and therefore did not fall under the authority of the Governor of Senegal. (Robinson 2000, 64). This Royal ordinance also established a *Conseil de gouvernement* (Government Council). However, this council did not last long, as eight years later it was replaced with a *Conseil privé* (Private Council) by a decree of 9th July 1830. Most of the members on these councils were administrative officials, in addition to one *habitant* and one notable. (Johnson 1971, 226, EN 50).

The *Tribunal de première instance* lies at the base of the French judicial system (Sarr/Roberts 1991, 133), and had unlimited jurisdiction in civil disputes which involved French citizens. Those cases which involved financial sums larger than 3000 francs could in turn be appealed by the *Cour d'appel*. (Buell 1928, I, 1002). A *Cour d'appel* judges civil law at second degree. (Carbonnier 2004, 172). The

establishment of these two courts in the colony were intended to deal with civil and criminal cases which implicated French citizens from the metropole (Sarr/Roberts 1991, 133), whereas in metropolitan France these judgements would have been passed by two separate courts at the same level, where the *Tribunaux de première instance* dealt with civil cases and the *Tribunaux de police* dealt with criminal cases. (Roberts 1990, 450, FN 9). It is important to note that even though the judgement of law was carried out by one tribunal in Senegal rather than two separate ones like in the metropole, French law in civil, commercial and criminal matters varied only slightly in Senegal from the legislation in metropolitan France. (Olivier 1907, 171).

2.5. The Monarchie de Juillet (1830-1848), the Application of the Civil Code in Senegal and the Extension of Civil and Political Rights to the People of the Colonies

The *Charte constitutionnelle du 14 août 1830* founded the *Monarchie de Juillet*. Article 1 stated; “The French are equal before the law, whatever their title or their rank.” Article 5 stated; “Each professes their religion with equal liberty, and obtains for their worship the same protection.” (*Charte constitutionnelle du 14 août 1830, Droit public des Français, Article 1-5*). Articles 12 to 19 declared the forms of government of the King, stating that the King was inviolable and sacred, he was the sole executive power, and he was the *chef suprême* (Commander-in-Chief) of the State. The legislative power was collectively divided between the King, the *Chambre des pairs* (Chamber of Peers) and the *Chambre des députés* (Chamber of Deputies). The propositioning of laws was permitted by all three parties, and all laws had to be discussed and freely voted by the majority of either of the two chambers, however solely the King was able to sanction and promulgate laws. (*Charte constitutionnelle du 14 août 1830, Formes du gouvernement du Roi, Article 12-19*). Article 64 established that “the colonies will be governed by particular laws.” (*Charte constitutionnelle du 14 août 1830, Droits particuliers garantis par l’État, Article 64*).

On 5th November 1830, Paris extended the application of the Civil Code to Senegal. (Guèye 1966, 24). “The territory of the colony is considered, through the application of the Civil Code, as an integral part of the Metropole.” (Anonymous, cited in Guèye 1955, 30). Its application meant that the colony fell under the jurisdiction of

the French judicial system, where all cases which fell under the Civil Code were heard by French administrators and assisted by local notables. (Sarr/Roberts 1991, 133). The implementation of the Civil Code in Senegal was initially done due to the large French population residing in the colony. The idea was that wherever they be, French citizens may be equal before the law and entitled to the same judicial protection as they would receive in metropolitan France. (Idowu 1969, 198). Furthermore, it was also done in an effort to help clarify voting rights in the colony. (Jones 2013, 137). The application of the Civil Code in the Senegalese colony was consistent with the concept of assimilation, as *indigènes* would be able to be assimilated to France via citizenship status and all French citizens should and would benefit from French civil law.

The decision to extend the Civil Code to the colonies also introduced new legal procedures for regulating the private lives of those individuals who sought French citizen status and equal rights, as the decree of 1830 stated; “All individuals born free and living in Senegal or its dependencies will enjoy, in the colony, the rights accorded by the Civil Code to French citizens.” (cited in Guèye 1955, 30). However, it also declared that these rights could solely be exercised in the colony. (Coquery-Vidrovitch 2001, 258). Senegal thus became “a territory of the colony which was considered, due to the application of the Civil Code, as an integral part of the Metropole.” (Guèye 1955, 30). The application of the Civil Code in Senegal extended the rights of citizenship once again to the colony, and therefore further served as the foundation for the *originaires*’ claims to citizenship, as being under the jurisdiction of French civil law means that one is regulated by it in their daily lives and one is thus subsequently also in possession of *statut civil français* which implies French citizenship.

Extending the Civil Code to the colony of Senegal meant that everyone residing in the colony would become subject to French civil law, even the majority of the population who were Muslims. This arose some complexities, as under no circumstances did Muslim *originaires* want to subject themselves to French civil law, as it is contrary to their religious laws. Muslim law has its source in the Quran, and is thus indispensable from faith. At its very foundation it is incompatible with French civil law, and consequently the Civil Code. With the application of the Civil Code in Senegal, all *originaires* fell under the jurisdiction of French civil law thus implicitly

making them French citizens. Muslim *originaires* welcomed the French legal system (and everything that came with it) but did not welcome the changes which would occur with their *statut personnel*, as the application of the Civil Code nullified their right to have civil matters, such as family, marriage and inheritance practices, judged under Muslim law and by a *qadi*. For example, Article 147 of the Civil Code states; “One cannot contract a second marriage before the dissolution of the first.” (*Code Napoléon, Livre premier, Titre V, Chapitre premier, Article 147, 1808, 71*). This prohibited polygamy, whereas under Muslim law having more than one wife was permitted.

“To force Muslims to bring their legal cases regarding their personal status before French magistrates or French military officials administering French civil law could be perceived as a step towards desacralization of Muslim law and towards forced conversion.” (Roberts 2005, 40).

In accordance with the decree of 5th November 1830, all *habitants* and all Africans outside of the *Quatre Communes* who were involved in cases against French citizens, or those who had voluntarily renounced their *statut personnel*, could in theory have their cases heard before the *Tribunal de première instance*. (Jones 2013, 130). Additionally, the Civil Code established an officer of the civil state in each commune who was responsible for keeping a registry of births, marriages and deaths, and to preside over legal ceremonies. (Jones 2005, 37f).

A law enacted by Louis Philippe I (1830-1848) and his parliament on 24th April 1833 regulated the legislative governance of the colonies. Article 24 declared; “Are repealed all provisions of laws, edicts, declarations of the King, royal ordinances and other acts currently in force in the said colonies, in so far as they are contrary to the present law.” Article 25 stated; “French settlements in the East Indies and Africa, and the Saint-Pierre and Miquelon fishing establishment, will continue to be governed by King's Orders.” (*Bulletin des lois, Titre IV, Article 24-25, 1833*).

Article 1 of that same law of 24th April 1833 declared; “all persons born free or having legally acquired his liberty enjoys in the French colonies; (1) civil rights, (2) political rights under conditions prescribed by law.” Article 2 stated; “Are revoked all dispositions of laws, edicts, declarations of the King, ordinances and other acts

contradicting this law and notably any restrictions or exclusions which have been pronounced, in regard to the exercise of civil rights and political rights, with regard to free men of colour and emancipated slaves.” (*Bulletin des lois, Titre IV, Article 1-2, 1833*). This law was also applicable in Gorée and Saint-Louis, as at the time the French colony of Senegal was only made up of these two islands. Therefore, its inhabitants, French, *métis* and Africans alike, if they had been born free or had obtained their freedom, possessed civil and political rights within that colony. *Originaires* would now, within Senegal, be able to participate in politics and electoral institutions, and would be able to hold political office. Nevertheless, did the extension of these rights automatically grant French citizenship even though it had not been explicitly stated? As it was implied, the *originaires* believed that it did.

The act of applying the law of 1833 in Gorée and Saint-Louis arose some complexities, as the political rights of the inhabitants of these two towns had been recognised by case law (Opoku 1974, 140), meaning that the law was established by the outcome of former or similar cases (i.e. the decree which extended the Civil Code to Senegal). Therefore, did the implementation of the law of 1833 confer civil and political rights to the inhabitants of the colonies and at the same time remove their *statut personnel*? Judicial evaluation of the law of 1833 concluded that “it did not abolish the ‘statut personnel’ nor did it impose the ‘statut civil français’”. (cited in Opoku 1974, 140). Therefore, the inhabitants of the colony were able to possess French citizenship and maintain their *statut personnel*.

The law of 24th April 1833 also “reserved to the legislative power of the kingdom the laws relating to the exercise of political rights, the civil and criminal laws concerning the free people and the penal laws determining for the non-free the crimes punishable by death, the laws regulating the powers of the Governors in matters of high police and general safety, the laws about the judicial organisation, the laws of commerce, the customs regime, the trade of blacks and the laws regulating the relations between the metropole and the colonies.” (Dubois/Terrier 1902, 202). At the time, political rights were often limited to right of consultation and only regarding local matters. (Saada 2002, 108).

This law of 1833 additionally established the *Conseil des Délégués des Colonies* (Council of Colonial Delegates) in the colonies. It was an advisory council which, by decrees proposed by the Governor, would regulate those matters which

were not reserved by laws of the State or Royal ordinances. This law was applied in Martinique, Guadeloupe, Bourbon and Guyana, however Senegal was not included. (Dubois/Terrier 1902, 202f). The *originaires* voiced their objections to the exclusion of Senegal from this council, as not only did they see themselves as French, but they had been declared French by the decree of 1830 and the law of 1833, and as French citizens and inhabitants of a French colony they had the right to be included in the council.

In 1837, the Governor of Senegal wrote to the *Ministre de la Marine*, as the French, *métis* and Africans of Senegal were asking once again for the possibility to have a deputy represent the colony in the *Chambre des députés* in Paris. (*Gouverneur du Sénégal a Ministre de la Marine*, 10.2.1837, cited in Johnson 1971, 48f). Once again the *originaires* protested, as yet again they felt deprived of their rights as they were not being represented in the way that other Frenchmen were. The complaint was voiced after a law of 24th April 1834 granted parliamentary representation to the colonies which the Treaty of Vienna (1815) had left to France. (Mille 1901, 64).

An ordinance of 7th September 1840, reorganised the colony of Senegal and laid down the fundamental administrative framework which would remain for the rest of the century. (Johnson 1971, 25). It was one of the fundamental organisation laws which was given to the French colonies, especially to Senegal. (Ibid., 49). This ordinance was modified from time to time to fit the new requirements of the colony, but the basis of it remained the same throughout the following century and was later applied to the entire federation of *l'Afrique Occidentale française*. (Idowu 1968, 262).

Up until the promulgation of the ordinance of 1840, the *Tribunaux de première instance* and the *Cour d'appel*¹⁵ were presided over by the French *commandants* of Gorée and Saint-Louis and assisted by another senior employee and a local notable. This ordinance replaced these presiding officials with professional magistrates. (Roberts 1990, 450). Furthermore, *qadis* were to form a part of the courts as advisors to the professional French magistrates. (Sarr/Roberts 1991, 133). This addition was done in an effort to satisfy the large demand by Muslim *originaires* to have their civil cases heard by a *qadi* in a Muslim tribunal, as they were discontent with their civil

¹⁵ A Royal ordinance of 27th March 1844, modified the composition of the *Cour d'appel* once again. It was to be henceforth composed of a president, a councillor, an official of the civil state of Saint-Louis and two notables. (Olivier 1907, 173).

matters being tried by French magistrates in French courts who knew nothing of Muslim law and customs.

The Governor of Senegal was give greater powers, as Article 1 stated; “The commandment and upper administration of the colony of Senegal and its dependencies are confined to a Governor residing in Saint-Louis.” (cited in Dubois/Terrier 1902, 216). Article 3 declared; “A colonial inspector ensures the regularity of the administrative service and requires, to this effect, the execution of laws, ordinances and regulations.” Article 4 stated; “An administrative council, placed close to the Governor, to enlighten the decisions and ruling, in certain case, like the council of administrative litigation.” (*Ordonnance royale concernant le gouvernement du Sénégal et dépendances*, 1840, cited in Saint-Martin 1989, 135).

Article 5 established two different councils in the colony. “A *Conseil général* seated in Saint-Louis and a *Conseil d’arrondissement* seated in Gorée, will annually give their opinion on the affairs which are communicated to them and will need to know the needs and the wishes of the colony.” (cited in Dubois/Terrier 1902, 216). Furthermore, Article 50 “provided that laws, ordinances and regulations of metropolitan France could be rendered executory in the colony by an order of the central government of France.” (*Bulletin des lois du Royaume de France*, 1840, cited in Salacuse 1969, 13).

The *Conseil général* was an elective institution of local government which was regulated by the urban inhabitants. (Johnson 1971, VIII). The council which was established in Senegal was equivalent to the ones granted to other colonies with the law of 24th April 1833¹⁶. The Governor of Senegal would have to draw up a list of 40 to 60 leading citizens of Saint-Louis, French, *métis* and Africans alike. Of these, ten would be elected as delegates for the council. They would serve five year terms and meet annually to advise the administration. (Ibid., 57). Four of the elected delegates would be European, four would be Africans, and the remaining two members had to be retail traders, but could be Africans or Europeans. (Hargreaves 1967, 86).

The idea of creating a *Conseil général* in Senegal initially surfaced in 1822. Both Paris and Saint-Louis thought it necessary to establish some sort of consultative committee in the colony, but many officials were uncertain about creating such an important council in Senegal, as at the time, Senegal was still considered to be a

¹⁶ Law of 24th April 1833 granting *Conseil des Délégués des Colonies* to the colonies, see p.30.

small commercial outpost, and not a grand colony. Therefore, on 9th July 1830, the *Ministre de la Marine* established a *Conseil privé* (Johnson 1971, 226, EN 50), due to Senegal just having the status of a commercial outpost. It was composed of seven French administrative officials, a *métis habitant* and a notable, all appointed by the Governor. They advised the administration on matters of regional importance and provided their input on relevant economic concerns. (Jones 2012, 333). This council however only lasted ten years. (Johnson 1971, 56).

Due to the position the *Conseil général* held in the colony and the men who sat on the council, it quickly became more significant than any of the *Conseils généraux* in the metropole. Between 1880 and 1910, it became the fundamental force in the local politics of the colony. The council was composed of a small group of *originaires*, a strong French presence, and the powerful *métis* who dominated the leadership of the council. (Ibid., 55).

In 1843, the first petition to establish a Muslim tribunal was made, where Muslim *originaires* cited the French Algerian policy as precedent. (Christelow 1982, 11). Four years later, in December 1847, Governor August Baudin (1847-1850) congregated a *Conseil consultatif* (Consultative Council) composed of Muslim notables and instructed them with advising French courts on matters of Muslim law. (Sarr/Roberts 1991, 133). This was the first time that an attempt had been made to establish a judicial framework which differed from the judicial system of the metropole. (Diouf 1998, 688). This *Conseil consultatif* was subsequently meant to be replaced with a Muslim tribunal by a decree promulgated by the *Ministre de la Marine* on 22nd April 1848. This decree was never enacted due to the revolutionary events of 1848, the fall of the *Monarchie de Juillet* and the rise of the Second Republic, however the consultative committee was then reestablished in 1854. (Sarr/Roberts 1991, 133f).

2.6. The Deuxième République (1848-1851), Universal Male Suffrage and Senegal's Representation in the French *Assemblée Nationale*

Article II of the provisional government's Instruction of 27th April 1848 decreed the abolition of slavery in its colonies and possessions. "The provisional government, considers that slavery is an attack against human dignity; it destroys the free will of

man, it suppresses the natural principle of law and of duty; it is a blatant violation of the Republican dogma, liberty, equality, fraternity..." Article 1 stated; "Slavery will be completely abolished in all the French colonies and possessions, two months after the promulgation of present decree in each of them. From the promulgation of present decree in the colonies, all corporal punishment, all sale of non free people, will be absolutely banned." Article 3 declared; "The Governors or General Commissioners of the Republic are charged with applying all the measures necessary to ensure the freedom of Martinique, Guadeloupe and dependencies, the island of Réunion, Guyana, Senegal and other French establishments of the West Africa Coast, the island of Mayotte and dependencies and Algeria." (cited in Hélie 1880, 1084). Article 6 of the *Constitution de 1848* (4th November 1848) stated; "Slavery cannot exist in any French ground." (*Constitution de 1848, Ile République, Chapitre II, Article 6*). The abolition of slavery meant that those people who had just received their freedom and who resided in Senegal were now active French citizens with full civil and political rights, and they fell under the jurisdiction of the Civil Code. The African population who up until this point had not been considered a free person and had had no political, let alone civil, rights whatsoever, now fell into the purview of French law and French citizenship.

Article 6 of the provisional government's Instruction of 27th April 1848 stated; "The colonies purified of servitude and the possessions of India will be represented in the National Assembly." (cited in Guèye 1955, 27). Senegal was thus granted representation in the *Assemblée nationale*. (Cowan 1958, 46). It also declared that any Senegalese who had resided in the colony for more than five years was regarded as a French citizen and excepted from giving proof of naturalisation, something which was legally required of all eligible voters. (Idowu 1969, 195). Additionally, Article 25 of the *Constitution de 1848* declared; "Are electors, without census conditions, all French[men] aged 21 years, and enjoy their civil and political rights." (*Constitution de 1848, Ile République, Chapitre IV, Article 25*). Therefore, for the first time, it was firmly stated and not possibly implied, that the *originaires* were French citizens and that they could exercise their voting rights, in both cases, without having to be naturalised as French citizens thereby without having to abide by the specifications of the Civil Code.

On 10th May 1848, the *Ministre de la Marine* sent Durand Valantin, Senegal's first deputy but at the time *Citoyen Commissaire de la République au Sénégal* (Commissioner of the Republic in Senegal), a letter informing him that the decree of 27th April of that year provided Senegal with one deputy to the new *Assemblée nationale*, and that any native who could "show residence of at least five years in 'French possessions' in Senegal eligible to vote." (*Ministre de la Marine à Commissioner de la République du Sénégal*, 10.5.1848, cited in Johnson 1971, 49). Even though Senegal already had a representative institution, the *Conseil général*, the elections for the position of deputy for the *Assemblée nationale* was the first time the general population was actively engaged in politics. (Johnson 1971, 26).

The *Assemblée nationale* is a representative organ of a sovereign nation. It was solely consecrated by the Revolution of 1789 and newly employed in 1848 and in 1871 during the Second and Third Republic respectively, to create the two new Constitutions. The Constitutions of 1814 and 1830 employ the term '*chambre*' instead of the term '*assemblée*', with the goal of emphasising that the legislation was in the hand of the King, as he was the holder of sovereignty. Furthermore, '*chambre*' was a connotation of the *Ancien Régime*, whereas '*assemblée*' held a revolutionary essence. (Babot/Boucaud-Maître/Delaigue 2002, 27f). In both cases, *Assemblée nationale* or *Chambre des députés*, this parliamentary institution provided the direct representation of the nation through universal suffrage. (Hutton 1986, 176).

The role of the deputy in the French *Assemblée nationale* had no official regulations which stipulated his duties or powers. (Idowu 1968, 272). Nonetheless, the position was of great importance, as the deputy represented the interests of the colony in Paris. The deputy outranked the Governor, and later on with the establishment of the federation of *l'Afrique Occidentale française*, the *Gouverneur général*, and he could directly approach the Ministers who dealt with the affairs of France's overseas possessions. The position of the deputy meant that political participation for the colonies was extended beyond just local government. As the deputy was elected through universal suffrage, it was really the people, more specifically eligible male voters, who held the power.

The *Constitution de 1848*, stated that the colonies were to be an integral part of the French territories. (Betts 1961, 18). Article 109 stated; "The territory of Algeria and of the colonies is declared French territory, and will be governed by particular

laws until a special law places them under the regime of the present Constitution.” (*Bulletin des lois de la République*, 1848, cited in Salacuse 1969, 14). However, no such law was ever promulgated.

Chapter IV of the *Constitution de 1848* provided the distribution of legislative power. The people of France delegated the legislative power in a unique assembly and the representation in this assembly would include representatives from the French colonies. Suffrage was to be direct and universal. (*Constitution de 1848, Ile République, Chapitre IV, Article 20-24*). Executive power belonged to the President of the Republic who would be elected for four years and would promulgate laws in the name of the people of France. (*Constitution de 1848, Ile République, Chapitre V, Article 43-45*).

The Revolution of 1848 had marked the turning point towards the assimilation of the ‘old colonies’. (Bouche 1991, 105). The Second Republic sought to outdo the First Republic by giving the colonies deputies who were to have a seat in the *Assemblée nationale* in Paris. (Johnson 1971, 26). Additionally, the Second Republic was determined to prove that their principles of liberty, equality and fraternity would also govern the inhabitants of their colonies without making any distinctions of civilisation or race. This therefore meant that all inhabitants of Senegal were granted full French citizenship and the privileges of electoral rights and civil status, and consequently, French law would also be applied to all. The Second Republic also praised itself on claiming that all French citizens were equal before law. However, with the definite abolition of slavery in 1848 and the therefore possible extension of French citizenship to a large number of Africans who were not culturally assimilated to the French ways, the concept of equality which was so highly glorified turned out to be very difficult to implement in the French colonies.

2.7. The Second Empire (1852-1870) and the Establishment of the Muslim Tribunal in Saint-Louis

The *Constitution de 1852* (14th January 1852) declared the ten year Presidential governance of Louis Napoléon Bonaparte. The President of the Republic was to govern through ministers the *Conseil d’État* (Council of State), the *Sénat* (Senate) and the *Corps législatif*. The legislative power was to be collectively

exercised by the President of the Republic, the *Sénat* and the *Corps législatif*. (*Constitution de 1852, Second Empire, Titre II, Article 2-4*). The President was the Head of the State, justice was served in his name, he had sole initiative of laws, and he sanctioned and promulgated the laws and the *Sénatus-consultes*. (*Constitution de 1852, Second Empire, Titre III, Article 6-10*). The *Sénat* was made up of cardinals, marshals, admirals and of French citizens who the President deemed worthy to be elevated to senators. (*Constitution de 1852, Second Empire, Titre IV, Article 20*). The deputies in the *Corps législatif* were elected by the population and were in charge of discussing and voting on projects concerning laws and taxes. (*Constitution de 1852, Second Empire, Titre V, Article 36-39*). The councillors on the *Conseil d'État* were elected by the President and were charged, under the direction of the President, to write up projects involving laws and public administration, and to resolve difficulties which would arise in administrative matters. (*Constitution de 1852, Second Empire, Titre VI, Article 48-50*).

Ten months later, the *Constitution de 1852* was replaced by a *Sénatus-consulte* of 7th November 1852, where the imperial dignity had been reestablished and Louis Napoléon Bonaparte would be Emperor of the French and named Napoléon III. In the *Sénatus-consulte* of the 25th December 1852, it stated that the Emperor would preside over the *Sénat* and the *Conseil d'État* whenever it was suitable. (*Sénatus-consulte du 7 novembre 1852, Article 1-5*).

Louis Napoléon had therefore concentrated all sovereignty upon himself. (Lepointe 1953, 127). He was the Emperor of France and all justice was henceforth to be exercised in his name. (Ellul 1969, 150). On 2nd December 1851, he dissolved the *Assemblée nationale* (Hélie 1880, 1151), and with a decree signed on 2nd April 1852 (Olivier 1907, 122), he dissolved the right of electing a deputy from all colonies except Martinique, Guadeloupe and Réunion. (Crowder 1967, 15). He additionally annulled the electoral rights of the *habitants* of Gorée and Saint-Louis, but did not remove their legal rights. (Sarr/Roberts 1991, 133). Louis Napoléon and his empire's dreams of glory and forceful expansion had replaced the short-lived republican ideals and everything the Second Republic had represented.

The *Sénatus-consulte* of 5th May 1854, regulated that the Head of State could make all colonial laws by decree, meaning that a 'basic constitution' regulated colonial law. This *Sénatus-consulte* continued to be in place also during the Third

Republic. (Johnson 1971, 64f). Additionally, the colonies were to be ruled by decrees. (Deschamps 1971, 545). The Governors of the colonies and their respective councils were the “true legislators of the colonies”. (Auby 1992, cited in Uimonen 2014, 453).

A decree of 9th August 1854 reorganised the judicial system in Senegal once again. The *Cour d'appel* was to continue to be located in Saint-Louis but its jurisdiction was to be extended to encompass all of France's possessions along the West African coast. It would henceforth have a *président*, a *chef de service judiciaire* (Head of the Judicial Department), and a *conseiller auditeur* (auditory councillor). Gorée and Saint-Louis would continue to possess a *Tribunal de première instance* each, which were to be made up of a *juge-président* (presiding judge), a *procureur de la République* (state prosecutor) and a *greffier* who would also carry out the functions of a *notaire* (notary). Moreover, criminal justice was to be administered by a *Cour d'assises* in Saint-Louis. (Olivier 1907, 173).

Just like under Napoléon Bonaparte, during the reign of Louis Napoléon, France largely ignored its African colonies, including its possessions in Senegal, but Governor Louis Léon César Faidherbe and his administration continued to convey the Senegalese colony with importance. (Johnson 1971, 51).

As a firm believer in *la mission civilisatrice*, the policies of Governor Faidherbe reflected the assimilation ideal. (Ibid., 29). He had a vision for Senegal to become a ‘modern colony’. (Diouf 1998, 689). He reorganised Saint-Louis's municipal government, by appointing a French mayor, two *métis* assistants and a Muslim assistant, who was a *qadi*. (Christelow 1982, 12). He also supported the authority of local rulers and *marabouts*. (Vaillant 1990, 41). Governor Faidherbe believed that “the first requisite is to administer the conquered populations well... Because of differences in race and religion, it is necessary to let them regulate their own affairs as much as possible.” (Faidherbe s.a., cited in Vaillant 1990, 42). It is important to note that with the assistance of the French, *marabouts* would become sources of law in the protectorate and were often made *chefs du canton* and situated in pagan areas. (Klein 1968, 228f). This, to an extent, explains the spread of Islam in Senegal, as a portion of the region was not Islamised until the 19th Century. (Gellar 1982, 8).

Governor Faidherbe also wanted the African population to also have access to French schools, which up until this point had only been accessible by *métis* children. He subsequently organised thirteen schools for Africans and employed them with

French teachers. (Johnson 1971, 28). This was a great advancement in the education system as, up until the establishment of these schools, Muslim *originaire* parents had been reluctant to send their children to Catholic schools, as they did not want their children to have Catholic religious studies or for them to attend mass. Fear of conversion was also a determining factor.

The French territorial conquests expanded dramatically, especially into the interior of the Senegambia region, during Governor Faidherbe's time in office. He envisioned the colony of Senegal as a large colony which would encompassed several traditional states, rather than just a small colony made up only of a couple of *escales*. (Ibid., 27). Throughout his governorship, about one-third of current Senegal was incorporated into French possession. (Crowder 1967, 15). During this time, French colonial rule began to extend itself over most of Senegal. The political sovereignty of traditional states was completely eradicated, some traditional rulers became chiefs in support of the French, while others no longer held any legal authority. (Johnson 1971, 63). In 1855, the Kingdom of Waalo was conquered by the French and in 1857, Umar Tall (ca. 1794-1864) was defeated in Medina. These two events symbolised the beginning of the partition of the Senegambia region between the French, the British and the Portuguese. (Barry 1998, 209).

In April 1856, Governor Faidherbe wrote to the *Ministre de la Marine* about the spread of Islam in Senegal.

“The Muslim element here is more and more numerous, more vocal and perhaps more useful... Since two years ago the number of Muslims in Senegambia has doubled, and that is true in St Louis itself. All of those who are indifferent are becoming Muslims, and even blacks raised in the Christian religion are abandoning it. That has happened several times already before my very eyes...” (*Gouverneur du Sénégal à Ministre de la Marine*, 11.4.1856, cited in Robinson 1988, 421f).

Five months later, he wrote another letter to the Minister this time defending his project to create a Muslim tribunal in Saint-Louis.

“It seems to me that it is hardly a good policy to refuse to the Muslims of Saint-Louis, who are sincerely devoted to us... what the French government has accorded with such good grace to the Muslims of Algeria, who are hostile to us deep in their hearts.” (*Gouverneur du Sénégal à Ministre de la Marine*, 13.9.1856, cited in O’Brien 1967, 306).

On 20th May 1857, a decree established a Muslim tribunal in Saint-Louis. With it, the authority of Muslim tribunals was strengthened as the decree recognised their jurisdiction in civil matters and family law. The tribunal was to be composed of a *qadi*, an *assesseur* and a *greffier*. (Quellien 1910, 224f). The colonial administration salaried the court’s personnel and also kept a *Tamsir*, who was recognised by French colonial authorities as the “head of the Muslim religion” but on their payroll. (Foster 2013, 14). He was also the Arabic language intermediary between the Governor and the heads of the remaining Senegambian states. (Curtin 1975, 116). Petitions had been regularly sent to Paris demanding the establishment of a Muslim tribunal in Saint-Louis since the implementation of the decree of 1830 which extended the Civil Code to Senegal. (Diouf 1998, 687). Until this moment, and since the application of the Civil Code in Senegal, many ambiguities about the jurisdiction of French and Muslim law had emerged, but this decree clarified them all, in theory.

Article 2 of the decree of 1857 stated; “[The muslim tribunal] deals exclusively with matters between Muslim natives and relatives with questions which interest the civil status, marriage, successions, donations and testaments. The causes will be instructed and judged according to the law and along with the forms of proceeding in use between Muslims. It knows the executions of its judgements.” (cited in Guèye 1922, 15). The decree explicitly limited the jurisdiction of Muslim tribunals to solely cover civil matters relating to the *statut personnel* of Muslim *originaires*. Consequently, all other matters were exclusively under the jurisdiction of French courts. In those matters which were covered by both the French and the Muslim judicial systems, each individual had the right to elect whether they wanted to apply the regulations of the Civil Code or follow the guidelines of Muslim law on a case by case basis. Additionally, those appeals which would be assessed in a Muslim tribunal under Muslim law would be judged by the Quran and would be presented before a council composed of the Governor, the *Président*, a *conseiller à la cour* (councillor to

the court), the *directeur des affaires indigènes* (director of native affairs) and a chief of the Muslim religion. (Olivier 1907, 173).

In Islam, civil law is not distinguished from religious law, and the Quran is regarded as the highest law. Marriage and the organisation of family are founded in religion and religiously sanctioned law. (Sarr/Roberts 1991, 133). Therefore, it was essential that these civil matters be judged in a Muslim tribunal rather than a French court of law, where the foundation of marital unions and family differed drastically, as they follow the Civil Code. In all fairness, the judging of civil matters, especially those pertaining to family law, among the members of the Muslim community should have in no way threatened the French community in the colony, as for any other matter, Muslim *originaires* were still to be judged in a French court of law, including all commercial matters and cases involving debts between French and Muslim traders.

A mufti is a legal expert of Islam, who is charged with interpreting the law, and it is then the *qadi's* duty to apply it. (Quellien 1910, 218). The *qadi* played an important role in the new Muslim tribunal. The Muslim *originaires* were adamant that the *qadi* would hold the position of a sort of Muslim mayor but Governor Faidherbe had a different idea for the role of the *qadi*. He would be a loyal, progressive minded judge, selected by the colonial administration from an influential family, who would attain a large salary and who would be closely supervised by the French. (Christelow 1982, 11). Furthermore, the *qadi's* connections with the central government would pass through the Mayor, and in turn he would be one of the mayor's most important links to the Muslim population. (Ibid., 22).

The establishment of the Muslim tribunal in Saint-Louis was part of the *politique musulmane française* which created many loyalties between Senegalese Muslims and France at a time of Islamic revolutions in West Africa. (Sarr/Roberts 1991, 134). The arrival of Islam gave Europeans the need of "controlling what seems to be a threat of some established view of things." (Said 1978, 59). Not all administrators in Senegal were as wholeheartedly dedicated to the *politique musulman française*, as it involved the conservation of the *statut personnel* of Muslim *originaires*. Alongside this, colonial magistrates were also against the use of *statut personnel* under the French Civil Code. (Sarr/Roberts 1991, 131f). Governor Faidherbe on the other hand, was a true advocate for the *politique musulmane*, encouraged Muslim collaboration and included several prominent Muslims in his

political affairs bureau. He also ordered the building of mosques and sponsored Arabic education for interpreters. (Ibid., 134). Governor Faidherbe and his administration saw Islam in Senegal as a progressive force. (Christelow 1982, 6). He believed that Islam was a useful presence between what he referred to as “fetichism” (i.e. African traditional religions (ATR)) and Christianity, that the laws of the Quran were held above the Civil Code, and that the justice imposed by the *qadis* invalidated that of French magistrates. (Beslier 1935, 151). The *politique musulmane* also included the establishment of Muslim tribunal in 1857, the distribution of grants to Muslim *originaires* to be able to undergo pilgrimage to Mecca (1860-1861) and the creation of *l'école des otages* (School of Chiefs' Sons) in 1855. (Diouf 2013, 184). The *école des otages* was set up to educate young Africans from the nobility of the interior as potential chiefs with western ideals, so they could subsequently aid the French colonial administration in the future. (Johnson 1971, 29).

With the formation of a Muslim tribunal, it was acknowledged that the Muslim inhabitants of Gorée and Saint-Louis were a distinguished community. (Christelow 1982, 10). Nonetheless, its establishment also created unexpected consequences concerning legal jurisdictions, and this therefore generated ever-growing tensions between the judicial officials, the colonial administrators and the Muslim *originaires*. The promulgation of the decree of 20th May 1857 additionally raised the question, had Muslim *originaires* lost their quality of French citizens, including the use of their civil and political rights, with the application of this decree? This question resurfaced time and time again and was not fully resolved until the promulgation of the second Blaise Diagne Law in 1916.¹⁷

Under the governorship of Governor Faidherbe, a local *arrêté* of 28th December 1861, divided the colony of Senegal into seven *arrondissements* (districts) (Saint-Louis, Richard-Toll, Dogana, Podor, Bakel, Gorée and Sédhiou). (Sabatié 1926, 349). Each was headed by a *commandant d'arrondissement* (District Commander), who were entrusted with maintaining safety and tranquility. The *arrondissements* were then further divided into *cercles*, each overseen by a traditional ruler who was made *chef du cercle*. Nevertheless, this system did not last long as two years later in 1863, the power of the *chefs du cercles* was diminished and the administrative, judicial and police powers were given to French officials who

¹⁷ Blaise Diagne law of 1916, see p.70.

became *commandants des cercles*, and were under the supervision of the *commandants d'arrondissements*. (Cohen 1971a, 11f). Another change occurred in the colonial administration during the 1860s, whereby the appointed administrators were civilians rather than military officials as had been the case thus far. Additionally, the administrators would be appointed by the local Governors. (Cohen 1971b, 492).

2.8. The Troisième République (1870-1940)

One of the basic principles of the colonial legislative system during the Third Republic was that a law or decree which had been made for or applicable to a colony/mandate could not be put into effect in the colony/mandate unless and until it had been promulgated by the local representatives of the French government and subsequently published in the local *Journal officiel*. This publication was the marking point for when a promulgated law or decree would be put into effect in said territory. (Salacuse 1969, 31ff).

The publishing of laws and decrees was also done in metropolitan France, by the *Bulletin des lois*, an official publication of the State of France. The *Article premier* of the law of 14 *Frimaire an II* (4th December 1793) stated; “The laws that concern the public interest, or that are of general execution, will be printed separately in a numbered bulletin, which will serve henceforth for their notification to the constituted authorities. This bulletin will be entitled: *Bulletin des lois de la République*.” (*Lois, et Actes du Gouvernement, Frimaire an II*, 1807, 100f). This bulletin was created by the First Republic and was discontinued during the Third Republic, with a decree of 31st March 1931. “The *Bulletin des lois* will cease to be published as of 1st April 1931.” (*Journal officiel de la République française*, 1.4.1931, 3690).¹⁸

Arrêtés were those enactments which came from local authorities, Governors of colonies, the *Gouverneur général* of *l'Afrique Occidentale française* or the commissioners of mandate territories. These local *arrêtés* were the lowest ranked in the legislative system and could be amended or revoked by a law or decree. In turn, *arrêtés* could not modify laws or decrees or regulate matters which fell under the jurisdiction of the metropolitan government. (Salacuse 1969, 37ff). Decrees were

¹⁸ The *Journal officiel de la République française* is the journal of the government of the Republic of France. It was founded in 1869 and publishes major legal official information from the Government and Parliament of France.

promulgated by the *Gouverneur général* of *l'Afrique Occidentale française* and the Governors of each colony, but the latter could only implement those which were not administered by superior authority. The highest law originated from decrees prepared by the *Ministre des Colonies* in Paris and signed by the President of the Republic. Even though few laws were enacted by the *Chambre des députés*, as they preferred the *Ministère des Colonies* handle all colonial administration, these laws were positioned above presidential decrees. (Johnson 1971, 63).

The Third Republic adopted three constitutional laws, which were constructed on three bases; democracy, universal suffrage and a parliamentary regime. (Babot/Boucaud-Maître/Delaigue 2002, 411f). The *Lois constitutionnelles de 1875*¹⁹ declared that the legislative power of the Republic was exercised by two assemblies in Parliament; the *Sénat* and the *Chambre des députés*. The *Chambre des députés* was elected through universal suffrage, within the conditions determined by electoral law. The President of the Republic was elected for a seven year term, by the absolute majority of votes by the *Sénat* and the *Chambre des députés* assembled in the *Assemblée nationale*. Laws were initiated by the President but promulgated only after they had been voted on by the two chambers. The *Conseil des ministres* (Council of Ministers) held the executive power. (*Constitution de 1875, IIIe République, Loi du 25 février 1875 relative à l'organisation des pouvoirs publics, Article 1-8*). The *Chambre des députés* and the *Sénat* replaced the *Assemblée nationale*, which had governed France from 8th February 1871 to 30th December 1875, while at the same time drafting the constitutional laws for the Third Republic. The *Assemblée nationale* held the sovereignty in all three branches of government; executive, judicial and legislative. (Hutton 1986, II, 674). Most importantly, the Parliament of the Third Republic gained full legislative power over the colonies, meaning that it could pass laws for the colonies regarding any matter. The President of the Republic could also pass laws and legislate via decrees concerning those matters that Parliament had not yet acted upon. (Salacuse 1969, 15).

During the Third Republic, political rights were associated with civil rights. (Rosanvallon 1966, 433f). This was demonstrated with Article 2 of the law of 9th March 1871 which stated; "All the French aged 21 years, will enjoy civil and political

¹⁹ As the *Constitution de 1875* was made up of three constitutional laws, *loi constitutionnelle de 24 février 1875 relative à l'organisation du Sénat*, *loi constitutionnelle du 25 février 1875 relative à l'organisation des pouvoirs publics* and *loi constitutionnelle du 16 juillet 1875 sur les rapports de pouvoirs publics*, it is more commonly referred to as *Lois constitutionnelles* rather than *Constitution*.

rights.” (cited in Guèye 1955, 31). Hereby, the *originaires* were regranted the political rights which had been suppressed under the reign of Louis Napoléon.

Additionally, the Third Republic took on a more liberal and democratic approach in regard to its colonial policy. “Colonial republican ideology imposes a causal dialectic: the nation [...] brings freedom and not oppression, development and not exploitation to the people it ‘liberates’.” (Bancel/Blanchard/Vergès 2003, 106f). Nonetheless, the very definitions of ‘colonialism’ and ‘imperialism’ completely destroy the fundamental principles of democracy and threaten the political foundation of a republic.

2.8.1. The Reestablishment of the Deputy for Senegal in the *Chambre des Députés*

A decree of 1st February 1871, regranted Senegal its seat in the French *Chambre des députés*.²⁰ (Olivier 1907, 125). This representation was regranted to all those French colonies which already been established by 1848. (Betts 1961, 20). The first deputy for Senegal during the Third Republic was Lafon de Fongaufer, a Frenchman and defender of Afro-French electoral rights and a single electoral list for Saint-Louis. French candidates dominated the deputyship position until 1902 when a *métis* lawyer, François Carpot, was elected. (Vaillant 1990, 45). The position of Senegal’s deputy represented an aspect of political assimilation which, for the French, was very important, as the policy of assimilation was the official ideology of the Third Republic. Representation in French Parliament was also significant to the *habitants* of Senegal, as this further proved that the colony was an integral part of France and its inhabitants were truly considered French citizens.

Since 1869, the inhabitants of Saint-Louis had begun campaigning for the restoration of the *Conseil général*. Several petitions were sent to the *Ministre de la Marine* over the course of a couple of years. The *Ministre de la Marine* replied that he believed it “premature to grant Senegal a *Conseil général*” (although Senegal had already possessed such a council during the Second Republic) but thought that the colony should be allowed to have municipal institutions and hold communal status under French law. (*Ministre de la Marine à de Fongaufer*, 12.3.1872, cited in

²⁰ The position of deputy was once again removed by a decree of 30th November 1875 (Idowu 1968, 269, FN 34) and reinstated in 1879. (Ibid., 269).

Johnson 1971, 43ff). Additionally, it “seemed logical to endow the colony with the local institutions necessary for managing internal affairs”, after the colony had regained a seat in the *Chambre des députés*. (*Décret* 10.8.1872, cited in Johnson 1971, 45).

2.8.2. The Establishment of the Quatre Communes

On 10th August 1872, a decree placed Gorée and Saint-Louis under the same municipal law as communes in France. (Conklin 1997, 76f). This meant that they were granted the status of *commune de plein exercice* (Fully Empowered Commune) (Diouf 1998, 673f), and represented a privileged location in which the establishment of citizenship could be assembled. (Hazareesingh 1998, 310). The towns were now municipalities under French law and its inhabitants enjoyed the same privileges as citizens in metropolitan communes. (Johnson 1971, 35). “The municipal organisation of the colonies was modelled on that of France, with the difference that we have given the Governors more extensive powers...” (*Note à l’attention du Ministre concernant le projet d’organisation municipale au Sénégal*, 14.4.1871, cited in Légier 1968, 430). On 12th June 1880, Rufisque became a commune, and was followed by Dakar, which was removed from the administrative jurisdiction of Gorée on 17th June 1887, thereby creating the so called *Quatre Commune*. (Crowder 1967, 18).

The intended objectives for the establishment of these municipal institutions was administrative decentralisation, more participation of the general populace for the organisation of local affairs and political assimilation to France. Additionally, these municipal institutions were a vital step towards administrative and political liberalism in Senegal. (Idowu 1968, 270).

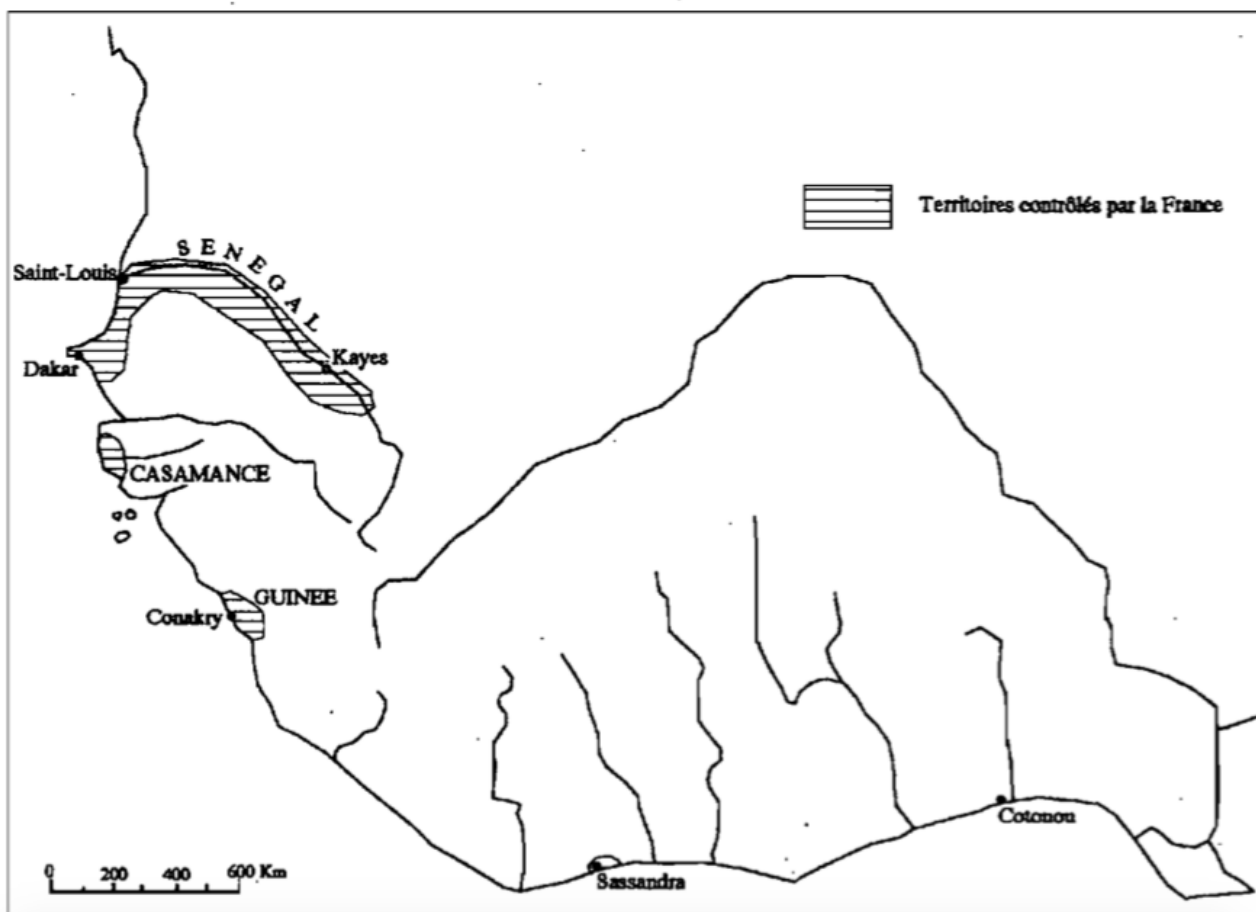
The municipal government in each commune consisted of a municipal council. (Johnson 1971, 38). The council possessed legislative powers on a number of matters. The Governor of Senegal was subsequently obliged to carry out the decisions of the municipal councils, either wise he would have conflicted with the laws and regulations in place in the colony. (Idowu 1968, 272). The members of the municipal councils were elected by the eligible citizen voters of each individual commune. The council itself elected the mayor, collected municipal taxes and governed matters relating to police, public health, utilities and streets. (Sarr/Roberts

1991, 142, EN 6). Furthermore, the municipal councils served as the voice of the population of each individual commune in managing local affairs and the structure of the colony's administrative system. (Jones 2012, 334).

The decree of 1872 specified the duties and authority of the municipal councillors and mayors who would be chosen in the two communes. Saint-Louis was allowed to elect a mayor, two adjoints and 15 councillors, and Gorée was permitted to elect a mayor, two adjoints and 11 councillors. Eligible for election were candidates who could read and write French. The mayor and his assistants would appoint most of the clerical staff. The mayor was responsible for announcing the decrees the colonial administration had formed that affected the businesses and the welfare of the citizens of the *Quatre Commune*. He also had the power to make independent executive decisions on various matters left to the *Quatre Communes*. He enjoyed all the advantages usually associated with the position of mayor in metropolitan France. A municipal term consisted of six years (Johnson 1971, 38-45), and the council would meet four times a year for ten day sessions. (Hesseling 1985, 131).

L'amiral Louis Pierre Alexis Pothnau, *Ministre de la Marine et des Colonies* (1871-1873), commented on the extension of municipal institutions in Senegal.

“Our colony of Senegal has been doted with the municipal institutions of full exercise. [...] This last disposition has been, in the mind of my Department, a sort of preparation for larger institutions and more conformed with the autonomy principles which have to prevail in our colonial legislation. The ‘proof which has been done’ leads me to believe that if the people of Senegal have not yet fully appreciated all the benefits of the commune, they have shown real aptitude in the management of local affairs. The moment it seems to me has therefore come to institute, in the colony, a General Council elected by universal suffrage and invested with the majority of the attributions that the Sénatus-consultes of 3rd May 1854 and 4th July 1866 have confirmed to the local assemblies of Antilles and Réunion.” (cited in Olivier 1907, 122f).



Territories controlled by France in Western Africa (1884) (Brasseur 1997, 48).

2.8.3. The Reestablishment of the Conseil Général

On 4th February 1879, a decree reestablished a *Conseil général* in Senegal. (Meyer et al. 1999, 708). This *Conseil général* was modelled after the *Conseils généraux* attached to each department in metropolitan France. (Johnson 1971, 55). It was “composed of 16 members to be elected by popular suffrage in the Four Communes from the same list that supplied candidates for deputyship and municipal offices”. (Mager 1889, cited in Johnson 1971, 57). Saint-Louis was able to elect ten councillors, whereas Gorée only six. This changed with the addition of Rufisque and Dakar. (Johnson 1971, 57). Eligible candidates had to be at least 25 years old, have lived in the colony for at least one year and had to be able to read, write and speak fluent French. Councillors would address complaints and formulate requests to the colonial ministry. The assembly met once a year, usually from November to December, after the conclusion of the trading season. (Jones 2012, 336). The

Governor had the power to dissolve or suspend the *Conseil général*. However, if it was dissolved, it had to be reconstituted through a new election in the September which followed the dissolution of the council. (Idowu 1968, 273). The reestablishment of the *Conseil général* followed republican ideals and the assimilation policy, as it gave the inhabitants of the *Quatre Commune* the same political rights as French citizens. (Jones 2013, 145).

At this point in time, the colony of Senegal had representative institutions at three different levels; in Parliament in Paris, in the municipal councils and in the *Conseil général*. These are the most important representative assemblies in France. In all three cases, the representatives were elected by eligible male French, *métis* and *originnaire* voters. In this aspect, these *métis* and *originnaire* men truly benefited from the quality of French citizenship, and gave them, through the right to vote, great power in the colony, as the establishment of these elective institutions in or for Senegal, permitted the colony to administrate a large part of its own affairs.

During the Third Republic, the municipal council was an assembly which served to provide for the needs of a commune, France's smallest administrative division. The *Conseil général* represented a province with its departmental assembly. Lastly, the Parliament, made up of the *Sénat* and the *Chambre des députés*, representing the upper house and the lower house of Parliament respectively, was where the nation was represented as a whole. As Senegal was a dependency of France and not a sovereign state, there was no local demand for Parliament. There was also little demand for municipal councils, as their power was only moderate and therefore would only be able to put a small fight against the colonial administration. At the time, the *Conseil général* was the highest institution which the French government could grant the colony, and in a way the *Conseil général* was seen as a sort of local parliamentary institution. Thus, the *Conseil général* became the elective institution which was held in highest regards and most greatly demanded. (Idowu 1968, 261-265).

The influence of the representative institutions in Senegal gradually grew. During the 1880s and the 1890s, the *métis* dominated the local politics of the communes. (Vaillant 1990, 44). It was not until the turn of the century that African voters began to assert themselves and take greater interest in the political sphere. (Johnson 1971, VII). Political assimilation essentially favoured the emergence of a

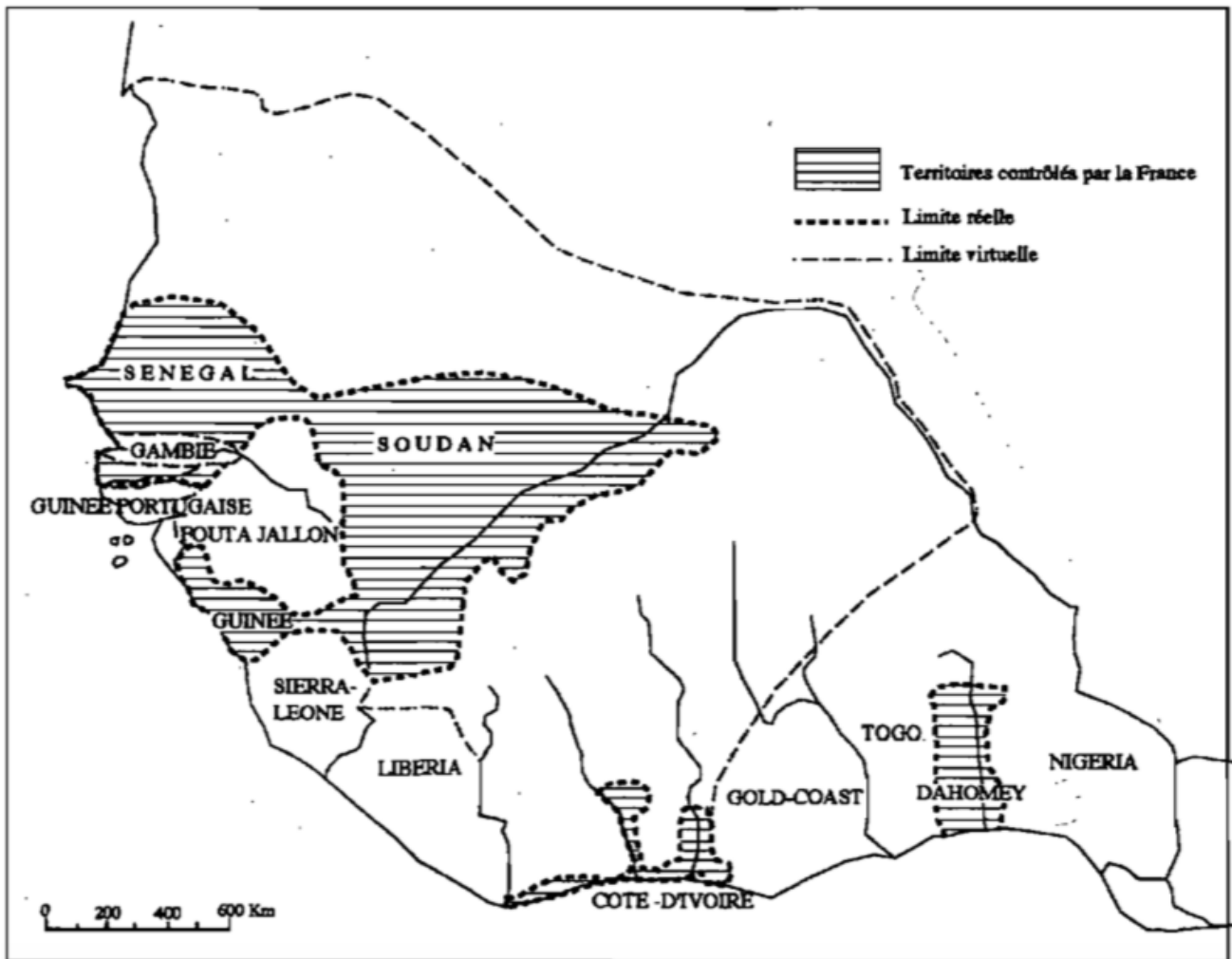
small African elite, where the majority of them worked in the colonial administration or in commerce, few were in politics, but all had great interests in maintaining their political rights. These political rights were of considerable importance as, at the time, *originaires* were a minority, and colonial subjects had no political or even human rights. These elective institutions which had been established in the colony provided the base where Senegalese nationalism emerged and developed.

A law passed on 5th April 1884, declared that any person of French nationality over the age of 21 was eligible to vote. (Buell 1928, I, 949). This law was applied in the *Quatre Commune* and since the Senegalese of the communes possessed French citizenship they were eligible to vote. Additionally, the law created an electoral list which established the same conditions as those in metropolitan France. (Olivier 1907, 121). Between 1848, when male suffrage was granted to the inhabitants of the colony of Senegal, until this point, the judicial system repeatedly sought to define who among the African population of the communes was eligible to vote for the municipal councils, the *Conseil général* and the position of deputy in the *Chambre des députés*.

2.8.4. The Introduction of the Indigénat

In 1882, an attempt was made to extend direct administration (i.e municipal law and commune status) throughout the whole of Senegal. However, this was unsuccessful and everything outside of the *Quatre Commune* was established under a protectorate territory known as the *pays du protectorat* (Sabatié 1926, 352), which was governed under indirect administration.

During the 1880s and 1890s, the French conquered many territories on the African continent. With the expansion of the French empire, the question emerged as to what to do with the population of these newly acquired territories, and whether or not the status accorded to the *originaires* of the old colonies should be extended to the newly conquered population. What was to be done with millions of people who spoke no common language, let alone French, who had no attachment whatsoever to France and were not assimilated to it in any shape or form?



Map of L'Afrique Occidentale française (AOF) (1895) (Brasseur 1997, 48).

Nationality is a legal bond between an individual and a state, and this type of 'alliance' was one which could be formed by birth, through *jus sanguinis* or *jus soli*, or it could occur when an individual was open to fulfil the conditions of residence and 'French morality'. (Saada 2007, 112f). Therefore, the answer to the question which had emerged, was to divide the population in two and with it create two different administrations and two different statuses. French citizenship was to be for the residents of the old colonies, and the newly integrated population would be given the status of *sujet* and be governed by the *code de l'indigénat*.

"It is a law of all colonisation, that civilised people have brought, to the exotic, the idea of nationality and the idea of freedom. They offered to the tribe, to the city, the idea of autonomy and the idea of a party, which

will henceforth assert itself against them. [...] If contact between people is a civilisation of the inferior people, it must be, for that same reason, a naturalisation of the inferior people. It is the principal effect of colonisation to give, to the subjugated people, a sense of their identity and their unity.” (Maunier 1932, 85).

French *sujets* were subject to the French State and were therefore ‘French nationals’ but did not possess French citizenship or any of the rights which were accorded to citizens of France. They did however have many of the obligations of citizenship. They were required to pay taxes and contribute free labour, and they were not governed by French law but rather *justice indigène* and the oppressive *code de l’indigénat*. (Conklin 1998a, 435).

Distinguishing people between *citoyen* and *sujet* was a way in which the State exercised its power. For example, in criminal law, the definition of crimes, the sentencing, the jurisdiction, the composition of the courts and the penitentiary regime all varied depending on whether the accused was a *citoyen* or a *sujet*. In matters of private law, French citizens were covered by the Civil Code, whereas *indigènes* who were not French citizens, were governed by customary or native law or the colonial jurists interpretation of customary law. (Saada 2007, 110). If the *indigène* was Muslim then Muslim law was applied instead of customary law. Furthermore, it was believed that *indigènes* could not be French citizens as in their daily lives they did not behave like Frenchmen nor did they abide by the Civil Code. (Ibid., 120). French citizenship required full submission to the Civil Code. Interestingly, when looking at the application of the Civil Code in Senegal from a colonial point of view, it was nothing more than the customary law of the French.

The denial of citizenship status was a harsh exclusionary action, as unlike citizens of independent countries, the people of the *pays du protectorat* and the rest of French speaking sub-Saharan Africa had no alternative citizenship status which they could identify with. This meant that those individuals who did not meet all the criteria and requirements imposed by France when applying for citizenship, could not belong to any other country, as the ground they lived in was not considered to be their own. Citizenship, belonging to a country, was and still is of vital importance to any individual. Without it, we are stateless, we belong no where, we have no human,

civil or political rights. The desire to become a French citizen was so sought after because it meant that an individual had rights and had protection, and most importantly, the individual was no longer treated as a lesser being, as a *sujet*.

A decree promulgated on 20th September 1887, introduced the *code de l'indigénat* (also known as native law) in Senegal (Hesseling 1985, 134), however it was only applied in the *pays du protectorat* and not in the *Quatre Communes*. The *indigénat* was a repressive regime imposed by the colonial administration, which was generally applied in matters of private law by forms of local customary law that were more or less in accordance with precolonial norms. It was largely applied by French administrators and magistrates, and thus, even though it was suggested at the time by colonial magistrates, it did not respect the customs and norms of the native population of the protectorate. (Saada 2002, 108f). The *code de l'indigénat* was neither part of the *indigènes'* customs or a code. (Mann 2009, 335). French law was used as a guide in native law, and the customs of the region and the disposition of the administrator were determining factors. (Johnson 1971, 67f). Native tribunals were presided over by an administrator and two native notables who would aid him and were entrusted with dictating what the local custom was. (Deschamps 1971, 549). Under native administration, one could be detained without being charged, tried without having a lawyer, sentenced to prison with little hope of an appeal, and was subjected to the *code de l'indigénat*. (Johnson 1971, 84). This form of judicial administration where different groups were judged by different laws was reminiscent of the judicial system and the legal complexities of *Ancien Régime* France.

2.8.5. The 1889 Reorganisation of the Judicial System

When it came to Muslim law, there was a continuous struggle between the inhabitants of the *Quatre Communes*, who sought to protect their *statut personnel*, officials of the colonial judiciary, who created the most pressure to restrict the *qadi's* authority and who attempted to reunite the jurisdictions of the courts in the colony to metropolitan customs, and the colonial administration, who wanted to avoid internal disputes, and further extend and strengthen their recently acquired territorial conquests. Between 1889 and 1932, colonial magistrates continuously attempted to restrict the jurisdiction of Muslim courts.

In the spring of 1889, leading Muslim notables of Saint-Louis submitted a petition to Governor Clément Thomas (1888-1890) signed by 1250 inhabitants regarding the recent restrictions placed on the jurisdiction of the *qadi* in matters pertaining to Muslim law of inheritance. The Governor of Senegal responded with summoning a commission to analyse the decree of 1857. (Sarr/Roberts 1991, 131f).

French magistrates sought to restrict Islam and further spread French ideals, as they considered the establishment of Muslim tribunals contradictory to the principles of assimilation. During the commission's analysis, they argued for the return to the 1847 system of a consultative committee which advised French courts in those matters concerning Muslim plaintiffs. All cases would be deferred to French civil law courts where officials would appeal to Muslim assessors if needed, and the *qadi* would be able to litigate over matters involving marriage, divorce and inheritance settlements valued at less than 500 francs. Essentially, the desire was to greatly restrict the jurisdiction of Muslim law and reduce Muslim legal authority to an advisory capacity. Moreover, colonial magistrates greatly emphasised that neither the decree of 1830 nor the law of 1833 made any distinction between Africans born within the colonial territory and Europeans, only the decree of 1857 had created such differentiations, thereby comprising generous exceptions and consenting to a considerable expansion of Muslim legal jurisdictions. This however was never enacted, as the colonial administration argued that Muslim justice was a specific type of justice which required specific magistrates. The administration reiterated its enduring support for the preservation of the *statut personnel* of Muslim *originaires* and "called for the scrupulous respect of Islam". (Ibid., 136). Additionally, they believed that "[the] main objective is to draw a very clear line of demarcation between French Justice and Muslim Justice. [...] Muslim Justice should operate completely independently, and remain politically under the supreme authority of the Head of the colony." (*Archive Nationale du Sénégal, Série M8 Justice musulmane au Sénégal*, 1889, cited in Diouf 1998, 688). Moreover, as at the time there was much political unrest and Islamic rebellions against the territorial conquests orchestrated by the French, colonial administrators were particularly interested in maintaining the loyalty of the Muslim inhabitants of Senegal. The persecution of Islam could lead to dangerous results.

On 15th May 1889, a decree reorganised the judicial system in Senegal and dependencies. Article 1 decreed that justice in Senegal would be rendered by a *Cour d'appel*, *Tribunaux de première instance*, *Justices de paix à compétence étendue*, and a *Cour d'assises*. Article 2 stated that the *Cour d'appel* held its seat in Saint-Louis and was to be constituted of a *président*, two *conseillers* (councillors), a *conseiller-auditeur*, a *greffier* and a *commis-greffier* (assistant of the clerk of the court). This court would deal with civil cases, commerce or donations, and correctional matters of simple police. Article 6 declared that the *Tribunaux de première instance* were seated in Saint-Louis and in Dakar²¹. The tribunal in Saint-Louis was to be composed of a *juge-président*, a *procureur de la République*, a *lieutenant de juge* (judge's lieutenant), a *substitut* (substitute) and a *commis-greffier*, and the tribunal in Dakar was to be comprised of a *juge-président*, a *procureur de la République*, a *lieutenant de juge* and a *commis-greffier*. Article 7 stated that the *Tribunaux de première instance* would deal with all civil and commercial cases. Article 18 stated that the seat of the *Cour d'assises* would be in Saint-Louis. (*Journal officiel du Sénégal*, 6.6.1889, 211ff).

A local *arrêté* of 19th October 1891, stated that the *Cour suprême* in Paris had decided that the Muslim *originaires* of Senegal held the quality of French citizens. (Guèye 1922, 18). "The natives born in the territories of the fully empowered communes are all French citizens. They are voters and eligible. They are subject to French tribunals in penal, civil and commercial matters, except in matters of succession, donation, marriage and testament." (*Annuaire du Sénégal* 1899, cited in Guèye 1922, 27). This meant that Muslim *originaires* were considered to be French citizens without having to renounce their *statut personnel* nor their beliefs or customs, nor did they have to abide by French civil law. This *arrêté* clarified the question which had remained unanswered since the promulgation of the decree which established a Muslim tribunal in Saint-Louis in 1857.

2.8.6. L'Afrique Occidentale Française

Until 1894, the colonies were not considered important enough for there to be a specific Ministry to exclusively occupy itself with colonial affairs. (Cohen 1971a, 18).

²¹ The *tribunal* in Gorée had been relocated to Dakar.

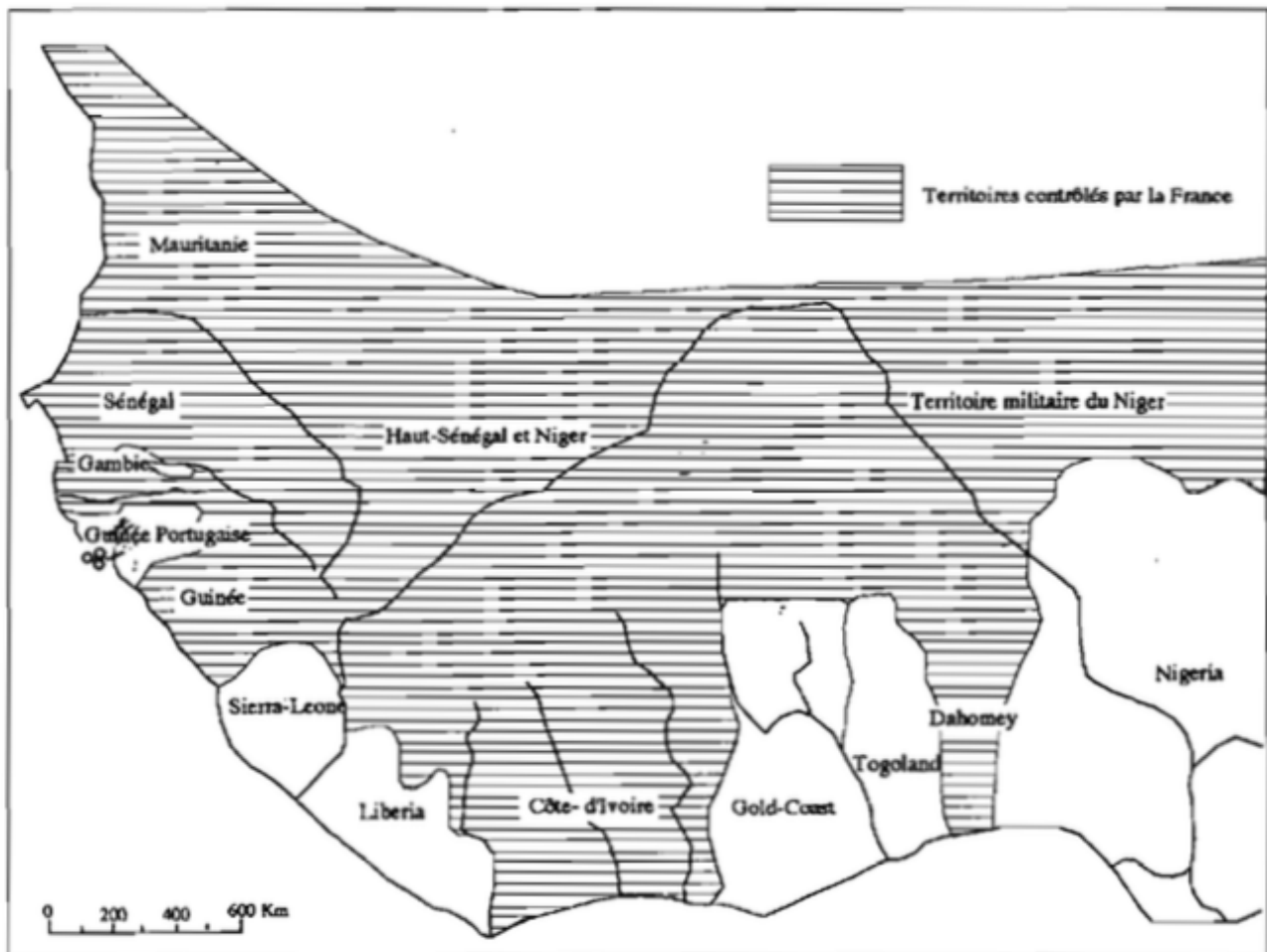
The matters of the colonies were simply divided amongst various Ministries depending on their nature. (Roberts 1929, 68). For a time, they were adjoined to the *Ministère de la Marine* which was then known as the *Ministère de la Marine et des Colonies*. In 1894, a *Ministère des Colonies* was created. (Newbury 1960, 111). It was a part of the *Ministère de la Marine* (Johnson 1971, 73), and was in charge of all the territories except for Northern Africa. Its primary function was to establish law and order along the river and trade routes from the coastal ports to the interior. (Newbury 1960, 111f).

On 16th June 1895, a decree issued by the *Ministère des Colonies* created a *Gouvernement général* in Dakar and with it the *Afrique Occidentale française* (AOF) federation. This government was meant to represent the government of the French Republic in Senegal, French Soudan, Guinée and Côte d'Ivoire. (Lyautey 1931, 107). The colonies in *l'Afrique Occidentale française* were divided into *cercles*, which were roughly equal in size or population. (Crowder 1968, 181). There were 110 *cercles* and each *cercle* was then further divided into subdivisions/cantons. (Cowan 1958, 211). Each subdivisions/canton was led by an African *chef du canton* who had been elected by the colonial administration and was directly integrated into the colonial bureaucracy. The *pays du protectorat* in Senegal had 15 *cercles*, each headed by a French *commandant*. (Gellar 1982, 10). After the creation of the federation in 1895, the colony of Senegal, more specifically Saint-Louis and later Dakar, became the administrative centre of the expanding French presence on the African continent.

Initially, the Governor of Senegal took on the responsibilities of *Gouverneur général*. The *Gouverneur général* was bestowed with the economical and political functions of the federation, and at the same time, was responsible for the administration of the colony of Senegal. (Conklin 1997, 36). Solely the *Gouverneur général* was permitted to publish *arrêtés* affecting the administration of the colonies. He alone corresponded with Paris and all administrative alterations required his permission. (Newbury 1960, 126).

By 1902 it was apparent that the administration of *l'Afrique Occidentale française* was a full time job and not something which the Governor of Senegal could handle doing in just his spare time, as had been the case for the past seven years. (Johnson 1971, 68). Thus the positions of Governor of Senegal and *Gouverneur général* of *l'Afrique Occidentale française* were separated, and the *Gouverneur*

général's seat was moved to Dakar. (Gellar 1982, 10). In turn, each colony retained their administrative and financial autonomy, and the inhabitants were subsequently placed under the administration of a *Lieutenant Gouverneur* (Lieutenant Governor). (Buell 1928, I, 925). All French colonial Governors, even the Governor of Senegal, were unable to correspond directly with the *Ministre des Colonies* in Paris, only the *Gouverneur général* of *l'Afrique Occidentale française* was able to do so. All letters, reports and proposed budgets from the Governors had to be sent to the *Gouverneur général* and would then receive orders from Dakar. (Johnson 1966, 239). In turn, the power of the *Gouverneur général* and the Governor was limited by the deputy in the *Chambre des députés*, the *Conseil général* and the municipal councils. (Hesseling 1985, 141).



Map of L'Afrique Occidentale française (AOF) (1904) (Brasseur 1997, 49).

In theory, the *Gouverneur général* governed and the Governor administered. The Governors of each colony, along with determining customs fees and drawing up budgets, were responsible for all policy making in their respective colony. (Conklin 1997, 35). The Governor of Senegal had the power to promulgate local decrees and orders, he could employ his own colonial administrators who would work at his service, and he was assisted by a *Conseil d'administration* (Administrative Council). (Hesseling 1985, 139ff). A couple of years later in 1907, there were two councils in place to advise the Governor of Senegal. In the protectorate was the *Conseil d'administration*, and in the communes the *Conseil privé*, which became the Governor's executive committee after the reorganisation of the administrative system in 1920.²² The Governor was also aided by a Secretary General who would fill in for him when he was on leave or travelling. (Johnson 1971, 65f). The Governor had the power to dissolve the municipal councils and suspend the mayors and his deputies. (Idowu 1968, 272).

2.8.7. The 1903 Legal Code

On 10th November 1903, a new legal code was promulgated. This legal code suppressed special jurisdictions and reorganised the service of justice in the colonies pertaining to the *Gouvernement général of l'Afrique Occidentale française*. The colonial administration found it absolutely necessary to unify the administration of justice, which had formerly been submitted to different systems in each colony of the federation, and they were also adamant about the necessity to ensure that "our nationals and all those who could be *assimilés*" would benefit from French jurisdiction and legislation, regardless of the location of their residence. However, it was also necessary to guarantee to the native under French control, "in everything that is not contrary to our essential principles of humanity and civilisation, the maintenance of their customs, based on private law appropriate to their mentality and their social state." (Quellien 1910, 226f). Additionally, the implementation of this legal code would also guarantee that the *indigènes* of the federation "would maintain their customs, appropriate to their social forms and their own decree of civilisation, except when it was contrary to the essential principles of humanity." (Maupoil 1939, 3).

²² Decree of 4th December 1920, see p.73.

A *Cour d'appel* was also established in Dakar by the new legal code. (Quellien 1910, 227). It also organised two different hierarchy of courts. The first was the urban hierarchy which operated in the communes and was made up of French courts, practiced French law and was presided over by professional magistrates. The second was the rural area hierarchy which practiced customary law in native tribunals, so long as the customary law did not conflict with the principles of French civilisation. Most of the native tribunals were presided over by French administrators or their African collaborators. Many of these French administrators had no legal training before the First World War (1914-1918). (Conklin 1998a, 435f).

Article 49 of the 1903 legal code set up a tribunal at canton/province level. This tribunal was composed of a chief of canton/province and assisted by two notables who had been appointed by the Lieutenant Governor in consultation with an attorney general. If the canton contained Muslims, one of the two notables would be a *qadi*. Article 56 set up a tribunal at district level. Here the tribunal was composed of a district officer and two notables who were nominated annually by the Lieutenant Governor of the colony. Similarly to the tribunal at canton/province level, if the district contained Muslims, one of the notables would be a *qadi*. Article 75 allocated the guidelines for the operation of native tribunals, which formed the base of the native legal system. (Sarr/Roberts 1991, 135).

The new legal code also eliminated the jurisdiction of Muslim tribunals in Saint-Louis and Dakar, as the only courts who would have jurisdiction in the *Quatre Communes* were to be the French ones. (Christelow 1982, 20). Muslim tribunals were now considered to hold the status of a '*tribunal indigène*' (native tribunal). (Lydon 2007, 292). Even though the code restricted the jurisdiction of Muslim tribunals, it continued to recognise the important position of the *qadi*, as he was able to maintain some sort of authority in the newly established tribunals. Consequently, the code recognised but did not favour Muslim law. This recognition was due to the fact that a large percentage of the population of the communes was Muslim and also because of the *politique musulmane* originally set up by Governor Faidherbe. (Sarr/Roberts 1991, 135f). The code "established an equivalence between the Muslim juridical and legal regime with the 'fetishistic' juridical customs, consequently putting the Muslims in the rank of the dominated populations, susceptible to be submitted to '*la mission civilisatrice*'." (Diouf 2000, 581).

Rather than clarifying the jurisdictions of French law, Muslim law and customary law, the 1903 legal code created many ambiguities. Africans living under the administration of the courts of Dakar and Saint-Louis were under the jurisdiction of French courts, but Africans outside of these towns fell under the domain of native tribunals. (Sarr/Roberts 1991, 137). However, those *originaires* who had not acquired citizenship status through individual naturalisation were automatically excluded from the jurisdiction of French courts (Conklin 1997, 152), even if they had been born or resided in the communes.

The *statut personnel* of *originaires* was also abolished by the new legal code. French citizens were to benefit from French civil law both in their public and private matters. Therefore, all French citizens including *originaires* would henceforth have their cases tried before the *Tribunal de première instance*. This tribunal allowed a *qadi* to evaluate all those cases which involved Muslims. (Sarr/Roberts 1991, 135f). This meant that Muslim *originaires* would no longer have the right to choose between Muslim law and French law in civil matters, and were subsequently judged by the Civil Code, which did not take into consideration their religious beliefs and practices. Nonetheless, even though the special *statut personnel* of the *originaires* of the *Quatre Communes* had been suppressed, due to ambiguities and imprecisions in this new legal code, the *Cour d'appel* in Dakar granted the jurisdiction over *originaires* to French courts, rather than placing *originaires* under native administration and the *indigénat*. French courts, as opposed to native tribunals, offered serious guarantees for the litigant to receive a fair trial.

The creation of the 1903 legal code came as an outcome of *Gouverneur général* Ernest Roume's (1902-1907) fixation with centralisation and uniformity. It was intended to create a hierarchy of courts, influenced at the highest level by the colonial administration, while at the same time providing legal diversity among the numerous ethnic groups in *l'Afrique Occidentale française*. (Christelow 1982, 20). The judicial officials who drafted the code operated within the scope of judicial assimilation. Another contributing factor to the creation of this code also stemmed from 1889, when colonial magistrates initially challenged the establishment of the Muslim tribunal of Saint-Louis in 1857. (Sarr/Roberts 1991, 136). The 1903 legal code brought about disputes once again between colonial magistrates and the colonial administration, as colonial magistrates continued to maintain their views on the

judicial assimilation of all French citizens, and their contestation of Muslim tribunals and *statut personnel*.

Half a year later, an *arrêté* promulgated on 9th July 1904 established the jurisdiction of the *Tribunaux de première instance* in Dakar and Saint-Louis. These tribunals were each composed of a *juge-président*, a *lieutenant de juge*, a *juge suppléant* (substitute judge), a *procureur de la République*, a *greffier* and a *commis-greffier*. (Olivier 1907, 179).

On 18th October 1904, a decree served as a Constitution for the federation of *l'Afrique Occidentale française*. It granted full legal and executive power for the Third Republic in West Africa to the *Gouverneur général*. This meant he was in charge of military actions in the colonies, he formulated the general policies and he carried out the will of Paris. (Johnson 1971, 69). The decree also gave him the authority to make decisions regarding Senegal's customs duties and Senegal's revenues, decisions which had up until that point been in the hands of the *Conseil général*. (Jones 2013, 172).

In 1905, *Gouverneur général* Ernest Roume sent the *Ministre de la Marine* a proposal to reorganise the *Conseil général*. He sought for an institution where only half of the members were elected by voters of the *Quatre Communes* and the other half were to be appointed by the Governor of Senegal, rather than the entire council being elected by the general populace. He viewed the establishment of the *Conseil général* in Senegal as “premature” and an “exaggeration”, and found it foolish to give such budgetary authority to metropolitan merchants who had no deeper link with the colony and to the *métis* who sought out to control the African population. He believed that by reforming the budget decree it would give ultimate authority to the Colonial Ministry in Paris. (*Gouverneur général à Ministre de la Marine*, s.a. [ca. 1905], cited in Jones 2012, 342).

On 7th April 1905, the *Cour d'appel* of *l'Afrique Occidentale française* ruled against the notion of the *qadi* of the *Quatre Communes* being nominated by chiefs, as they determined that the *qadi* of Dakar had no authority. (Christelow 1982, 20). Nevertheless, a month and a half later, on 22nd May 1905, against the desires of colonial magistrates, the administration promulgated a decree which reestablished the Muslim tribunals in Saint-Louis and Dakar (Sarr/Roberts 1991, 137), and two years later, a decree of 29th January 1907 established a Muslim tribunal in Rufisque.

(Quellien 1910, 241). The jurisdiction of the tribunals was to continue to solely cover matters regarding civil law. (Behrman 1970, 37). These tribunals were each composed of a *qadi*, an *assesseur* (assessor) who would substitute the *qadi* in cases of unforeseen difficulty, and a *greffier*, all of whom were appointed by the *Gouverneur général*. (Olivier 1907, 180). The *greffier* had to have two registers in Arabic, as it was the language the colonial administration used in the region to correspond with local chiefs. (Lydon 2007, 293). Literacy in Arabic was thus indispensable for the positions of interpreters and scribes, and after 1848, a small group of Muslims were employed by the government as interpreters or scribes. (Christelow 1982, 11). However in 1911, under the governorship of *Gouverneur général* William Merlaud-Ponty (1908-1915), the usage of the Arabic language in the colonial administration was eliminated, and consequently the language used in Muslim tribunals was changed from Arabic to French. (Lydon 2007, 294). This was done in an effort to ensure greater administrative control over the *qadis* and their rulings. (Roberts 1990, 453).

Furthermore, the Arabic language was associated with the Islamic religion, and at the beginning of the 20th Century, the policy regarding Islam was wary. *Gouverneur général* Merlaud-Ponty implemented the *politique de races* (racial policy), where an aim of this policy was to “preserve ethnic particularism by ensuring that each ethnic group had chiefs appointed from its own people: the territorial principle of administration was to be replaced by a racial principle”, which would thereby “safeguard non-Muslim peoples from being ruled by French-appointed Muslim chiefs from other groups.” (O’Brien 1967, 314). In a way, for the local population, this could be considered as something positive, as often the local rulers or chiefs which had been appointed by the French knew nothing of the local customs or traditions, some did not even speak the same language, but in reality the *politique de races* was more concerned about retaining the spread of Islam, or at least, slowing it down as much as possible. *Gouverneur général* Merlaud-Ponty however claimed; “I maintain... that we must not openly take sides for or against Islam, as a religion or as a moral and legal doctrine. Such an attitude would be unworthy of us and might cause disaffection among a number of our subjects.” (Merlaud-Ponty, *Rapport au sujet de la politique indigène en A.O.F.*, s.a., cited in O’Brien 1967, 314).

In May 1904, *Gouverneur général* Ernest Roume, *Gouverneur général* Merlaud-Ponty's predecessor, had written to the *Ministre de la Marine* about the growth of Islam in the federation:

"Islam continues to progress slowly, but continually. None of its manifestations can be interpreted as a sign of tendencies hostile to our domination. The religious leaders are on the contrary mostly devoted to us: they all know, besides, that we would not hesitate immediately to repress any hostile political agitation which might attempt to disguise itself as religious propaganda." (*Gouverneur général à Ministre de la Marine*, 10.5.1904, cited in O'Brien 1967, 314).

Nonetheless, the slow but steady growth of Islam in West Africa could not be denied. Towards the end of the first decade of the 20th Century, the French colonial administration had come to an agreement with Muslim religious leaders who were prepared to advocate for the acceptance of the authority of the French colonial administration in the protectorate. (Gellar 1982, 13). Furthermore, during the course of the 20th Century, Muslim tribunals also held political importance. Sufi leaders were essential as election intermediaries, as they provided the connection between religious orders and nationalist political parties. (Christelow 1982, 24). Additionally, whereas the political leaders of the *Quatre Communes* were Western-educated African intellectuals, in the protectorate this position was held by *marabouts*. (Gellar 1982, 10).

Not even three years after the promulgation of the 1903 legal code, on 22nd May 1906, the court reiterated that all *originaires* born in the *Quatre Communes* fell under the jurisdiction of the French judicial system. (Sarr/Roberts 1991, 137). Therefore, *originaires* were once again protected from the jurisdiction of native tribunals. Three years after this decision was made, the decree of 26th April 1909 by the *Cour de cassation* (Supreme Court of Cassation)²³ in Paris declared that *originaires* only held full political rights in the *Quatre Communes*, and that outside of the communes they were subject to their *statut personnel* unless they had been

²³ The highest court in the French judicial system.

individually naturalised as French citizens. (Runner 1926, 22). They additionally ruled that *originaires* had no legitimate claim to full French citizenship. (Gamble 2017, 53).

Since the beginning of the Third Republic up until the end of the 1910s, numerous attempts were made to implement '*nationalité dans le statut*', which involved the detachment of the exercise of political rights from citizenship status. (Saada 2002, 110). This meant that there would be three different nationals in France. Active French citizens, *sujets* and '*nationals dans le statut*' who would possess political rights but were not French citizens and did not possess any of the other rights that came along with said status.

Furthermore, unknown to the public, François Carpot, deputy for Senegal in the *Chambres des députés* (1902-1914), and *Gouverneur général* Merlaud-Ponty had attempted to extend the voting rights of French citizens to Frenchmen and *originaires* residing outside of the communes and also to some "qualified Africans" in the protectorate. (*Gouverneur général à Ministre des Colonies*, December 1909, cited in Johnson 1971, 165). This proposal resulted only in a decree drafted in 1910 whereby Frenchmen living outside of the *Quatre Communes* were eligible to vote in the electoral institutions of the communes. (Johnson 1971, 165). Another decree of 25th April of that same year, once more altered the jurisdiction of French law pertaining to the civil matters of *indigènes* and the functions of Muslim tribunals. (Runner 1926, 21).

On 15th May 1912, a decree gave the *Gouverneur général* of *l'Afrique Occidentale française* the ability to set up *communes mixtes* in towns which while "capable of supporting a municipal organisation, do not contain a large enough European or assimilated population to be created *communes de plein exercice*." (Crowder 1968, 434). Two decades earlier, a decree of 15th May 1891 had created the possibility for towns in the colony of Senegal to be promoted to *communes mixtes*. (Hesseling 1985, 146). These towns had an administrator for mayor with municipal councils which were partially appointed and partially elected (Johnson 1966, 241, FN 2), and were under a mixed municipal and colonial system. (Johnson 1971, 67). The inhabitants of these *communes mixtes* obtained a sort of second class citizenship with limited access to municipal institutions. (Ibid., 87).

2.8.8. The Naturalisation Law of 1912

The philosophy of the French colonial administration was that only those natives who had attained the 'European standard' or had served the French cause should qualify as French citizens. (Hargreaves 1969, 222). Therefore, on 25th May 1912, a naturalisation law was passed offering French citizenship to native subjects born in *l'Afrique Occidentale française* who "approach us in education, adopt our civilization and our customs, or distinguish themselves by their service." (White 1999, 127).

This decree did come with some requirements which had to be fulfilled in order to be granted French citizenship. Article 1 declared that the applicant had to be at least 21 years of age, demonstrate their devotion to French interests or have worked ten years for a public or private French business, they had to be able to read and write in French, and they had to provide evidence of '*bonne vie et moeurs*'. (Penant 1912, cited in Opoku 1974, 142). "A certificate of primary studies and proof of payment of taxes by property owners" also had to be submitted. (*Note sur l'opportunité d'un décret permettant aux indigènes de l'AOF d'accéder à la qualité de citoyen français*, 15.3.1911, cited in Conklin 1998a, 435). Article 3 announced that the individual had to attach to their request a birth certificate, a document proving a three year long residency in the commune or *cercle*, and a declaration where they formally renounced their *statut personnel*. If they were married under French civil law, they also had to attach a document that proved said marital union. Article 6 went on to declare; "The accession of French subjects of French West Africa to French citizenship is personal. Nevertheless a woman married according to French law takes the status of her husband. The issue of such a union also follow the status of the father and shall be included in the register for French citizens." (Penant 1912, cited in Opoku 1974, 142f).

It was not until 20 years later, with a decree of 8th August 1932 regulating the conditions to access citizenship in West Africa, that French citizenship was no longer solely achievable on an individual basis, but could now be applied to the applicant's extended family, "provided they were all culturally French, monogamous, avail of French civil status to register marriages and births, and provided French education for their children". (*Arrêté no.117 a.p. "promulgant en AOF le décret du 21 août 1932,*

relatif aux conditions d'accèsion des indigènes de l'AOF à la qualité de citoyens français", 19.1.1933, cited in Conklin 1998b, 74f).

The naturalisation law of 1912 was the outcome of a letter sent five years prior, on 20th May 1907, by *Gouverneur général* Ernest Roume to the *Ministre des Colonies*, petitioning for the approval of a naturalisation bill. The letter contained his requirements for acquiring French citizenship, which included "a West African place of birth and residence, proof of devotion to France or occupation of a position in the colonial administration, knowledge of French, and proof of good financial standing and moral rectitude, no criminal record, and no history of bankruptcy." (*Gouverneur général à Ministre des Colonies*, 30.5.1917, cited in Conklin 1998a, 434f).

2.8.9. The 1912 Reorganisation of the Judicial System

On 16th August 1912, a decree reorganised part of the 1903 legal code and the native judicial system, with Article 1 and 2 declaring that *originaires* were once again placed under the jurisdiction of native tribunals and that only naturalised *originaires* would continue to have access to French courts. Jurisdiction would no longer be determined by place of birth, as had been the case thus far regarding the *originaires* of the communes, but would henceforth be regulated by the individual's cultural and religious identity. (Conklin 1997, 119ff). This meant that when *originaires* ventured outside of the communes, they would not have access to French courts or Muslim tribunals, and would fall under native jurisdiction like all other African subjects in the protectorate, but their electoral rights would continue to be maintained. This decision was done in an effort to clear up the ambiguities regarding the special legal status of the *originaires*. (Sarr/Roberts 1991, 137).

As after the promulgation of the 1903 new legal code the *originaires* protested about their *statut personnel* being withdrawn and them being removed from the jurisdiction of French law, in this decree of 1912 they were now excluded from the jurisdiction of French courts and, alongside the rest of the African population, were placed under native tribunals, as it was assumed that they would want to maintain their *statut personnel*. After the implementation of this decree, unless one had *statut civil français*, one could not remain under French judicial jurisdiction.

As a result of a series of court cases which had commenced in 1908 (Johnson 1966, 245), this decree additionally declared that all Africans were considered *indigènes* unless they were able to provide proof that they had obtained their French citizenship through naturalisation (Duke Bryant 2015, 147), and *indigènes* were defined as all individuals born in the French parts of Africa who did not have “in their country of origin the status of European nationals.” (Merlaud-Ponty 1913, cited in Conklin 1997, 152). *Gouverneur général* William Merlaud-Ponty believed that French citizenship should only be possessed by Christian *métis* and *originaires* who accepted French civil law, and that Muslim *originaires* should have to renounce their *statut personnel* in order to qualify for naturalisation. (Conklin 1997, 151). He took judicial anomalies to ensure the discredit of the *originaires*’ claims to citizenship, particularly the fact that *originaires* had obtained their rights without having to renounce their *statut personnel* and comply with the regulations of the Civil Code. Muslim *originaires* would not be willing to exchange their *statut personnel* for naturalisation and ergo *statut civil français*, and *Gouverneur général* Merlaud-Ponty used this knowledge to his advantage when implementing his restrictions and drafting the decree.

The implementation of this decree of 1912 signified that *originaires* were no longer considered to possess the status of French citizenship, as they had acquired their citizen status from place of birth or a residency of at least five years in the communes²⁴, and not through naturalisation. This indicated that their status had changed from *citoyen* to *sujet*, and their rights, which they had acquired over the course of the past century had been greatly reduced. Additionally, they were now subject to the *code de l’indigénat* and native tribunals whenever they ventured outside of the *Quatre Communes*, meaning that they would be treated like a subject from the protectorate rather than a citizen from the communes and could subsequently be imprisoned by any administrator without having the right to have their case heard under French civil law. If and when they remained in the communes, they would still be covered by French courts as there were only French courts and Muslim tribunals in the communes and no native tribunals. Furthermore, those Muslim *originaires* who sought to become or remain French citizens would have to renounce their *statut personnel* and accept and abide by French civil law and with it

²⁴ Article 6 of the provisional government’s instruction of 27th April 1848 decree, see p.34.

the Civil Code. They, however, continued to maintain that they were and always had been French citizens regardless of whether they embrace the Civil Code. Furthermore, it is important to note that renouncing one's *statut personnel* by no means granted French citizenship. Nevertheless, in terms of private law, it did have the same effects, as due to the removal of one's *statut personnel*, one no longer fell under the jurisdiction of native law, and one therefore fell under the jurisdiction of French civil law.

Additionally, an *arrêté* from the *Cour d'appel* of l'AOF promulgated on 8th July 1913, cited the decree of 1830 and the law of 1833 and it concluded that *indigènes* possessed a *statut personnel* essentially incompatible with the exercise of rights accorded by the Civil Code and that they were governed, not by French law, but by Koranic law and the dispositions of local customs. Therefore these *indigènes* had no justifiable claim to the benefits which came with the decree of 1830 and the law of 1833. (Runner 1926, 21).

On 1st August 1913, *originaires* sent the *Ministre des Colonies* a petition demanding the revocation of the decree of 1912, citing their long-established special legal status granted to them by the decree of 1830 and the law of 1833, which had bestowed on them the right to French citizenship. Furthermore, the decree of 1912 was, to them, a "denial of justice and equality". (*Pétition* 1913, cited in Sarr/Roberts 1991, 137f). The *Conseil général* also expressed their opposition to this decree. On 8th November 1913, Councillor Georges Crespín wrote in the newspaper *L'A.O.F.*; "In the native justice there is no penalty scale, nor distinction between an offence and a crime; the sentences are arbitrary and excessive; the accused cannot call nor provide, he cannot be assisted by an advocate, not even a representative of his choice." (*L'A.O.F.*, 8.11.1913, cited in Idowu 1969, 202f, translation C.R.S.). Therefore, as a result of these numerous complaints, the *Gouverneur général* in Dakar and the *Ministre des Colonies* in Paris were led to withdraw the decree of 1912. (Sarr/Roberts 1991, 138). *Gouverneur général* Merlaud-Ponty went on to announce; "Natives registered on the electoral lists of Senegal fall, throughout that colony, under the jurisdiction of French courts. These same natives are not subject, in conformance with a long tradition, to the disciplinary powers of the administration." (Merlaud-Ponty 1913, cited in Conklin 1997, 153).

Gouverneur général Merlaud-Ponty's announcement was made official with the promulgation of a decree approved on 2nd March 1914, which stated that *originaires* born in the *Quatre Communes* would, once again, fall under the jurisdiction of French courts "throughout the colony and in certain other places" throughout *l'Afrique Occidentale française*. (*Journal Officiel du Sénégal*, 1914, cited in Buell 1928, I, 950). However, if *originaires* were found outside of the colony or said specified areas, and were not in possession of a document proving their place of birth, they would be placed under the jurisdiction of native law. (Sarr/Roberts 1991, 138). Nonetheless, even though this decree had clarified their special status, it still did not identify the *originaires* as French citizens. (Duke Bryant 2015, 159).

2.8.10. The Blaise Diagne Laws

In the spring of 1914, Blaise Diagne won the elections for the position of Senegal's deputy (1914-1934) in the French *Chambre des députés* in Paris. He was the first African to hold this position and had defeated the long-standing control of the French and *métis*, who had represented the Senegalese colony since the position of deputy was granted to them in 1848. His victory was a victory for all *originaires*. His success was the outcome of a couple of different reasons, including that he had become a voice for the *originaires* who demanded change and he fought for their rights, *statut personnel* and equality. The continuous rivalry between the *métis* and Bordeaux merchants, and the inevitable consequences which came along with the discord, was another factor which contributed to his victory. Diagne had successfully demonstrated that Africans were no longer content with just being voters, they wanted to be candidates too. Additionally, he had managed to stand apart from the other candidates as he was able to unify the support of the Wolof, Lebou and Toucouleur voters, Islamic *marabouts* and liberal Frenchmen²⁵. (Johnson 1971, 170). The Mourides, one of Senegal's three main Muslim brotherhoods along with Tijaniyya and Qadiriyya, financed much of Diagne's election campaign. (Gellar 1982, 13 & 88).

With his ability to inspire young Africans, Diagne was a prime example of an African who had accomplished equality and success within the French policy of assimilation. He considered himself a 'citizen of empire', as he was married to a

²⁵ These liberal Frenchmen were small businessmen and *petit colons*, who were in opposition with the Bordeaux merchants and the *métis*.

French woman, had been baptised a Catholic and had been a civil servant for almost 22 years. (Johnson 1971, 168). Diagne believed it was necessary “to fight for our rights as French citizens.” (*Réunion de jeunes sénégalais*, 20.3.1914, cited in Johnson 1971, 162). He assured Africans that they deserved full equality, and was capable of speaking out about his outrage towards the injustices without causing agitations. (Johnson 1971, 164). “They say you and I aren’t French. I tell you that we are, that we have the same rights!” (*Rassemblement en Saint-Louis*, 8.5.1914, cited in Johnson 1971, 168).

Blaise Diagne “had expressed his underlying faith in the French political system and devoted his career to realizing the promises of assimilationist policy and the ideals of the 1789 Revolution.” (Lambert 1993, 246). He argued that the *originaires* were French citizens and their customs, whether they be traditional or Muslim, ought to be respected. He therefore fought for the maintenance of their *statut personnel* and made it a cornerstone of his policy. (Johnson 1971, 218).

The outbreak of the First World War created a need for more troops, and this provided Diagne with an opportunity to negotiate for the legal recognition of *originaires* as French citizens. (Diouf 1998, 693). He was set on ensuring that the *originaires’* loyalty to the French empire would be equally compensated by their legislative rights as citizens of France. (Lambert 1993, 257). Diagne also demanded the extension of the political rights of the *Quatre Communes* throughout the rest of Senegal and that the *Gouverneur général* grant *originaires* the same opportunities to acquire the same jobs as metropolitan Frenchmen. *Originaires* had been restricted from gaining access to certain more lucrative jobs and upper-level positions in the colonial service, the *cadre supérieur* or *cadre métropolitain*, as they had been reserved for Frenchmen of metropolitan origin. (Conklin 1997, 154f).

The election of Blaise Diagne as deputy for Senegal in the *Chambre des députés* created many questions pertaining to the citizenship status of *originaires*. Were they French citizens with full rights and duties just as Diagne had claimed during his election campaign? *Originaires* claimed that they were citizens as they could vote and they resided within the jurisdiction of French law in the *Quatre Communes*. But French officials in Paris and Dakar did not share this belief, as they claimed that the rights of *originaires* were a historical accident, and that most

originaires were Muslims so they were governed by Muslim law in their personal lives and in civil matters.

During his time as deputy, Blaise Diagne also fought for the creation of two very important laws for the *originaires*, and they were therefore named after him. Article 1 of the first Blaise Diagne law was promulgated on 19th October 1915 and stated; “The *originaires* of the Fully Empowered Communes of Senegal owe military service within the conditions provided by the law of 21st March 1905, modified by the law of 4th August 1913. The paragraphs 1, 2, 3 and 5 of Article 90 and Article 91 of this law are not applicable to them. They are incorporated in the French troops and submitted to the same obligations and advantages. They may eventually be formed in special formations.” (cited in Guèye 1966, 33). This meant that the *originaires* of the *Quatre Communes* were liable to serve in the French army and not in separate colonial troops where the rest of African subjects were drafted to. However, once again, this law did not answer the question if *originaires* possessed French citizenship or not.

Originaires had attempted to be able to serve in the regular French army rather than in separate African troops since 1882. They refused to serve in the colonial troops, and as they were not French *sujets*, they could not be forced to serve in them. (Johnson 1971, 181ff). In 1902, the Governor of Senegal wrote to Paris; “[This is a country where] all of the towns have been endowed for many years with European organisation, inhabited by people subject to our laws and, up to a certain point, our customs, and they consider themselves so thoroughly French that their principal goal at present is to obtain the right, sanctioned by Paris, to accomplish their military service without restriction.” (*Colonie du Sénégal, Rapport général*, 1903, cited in Johnson 1971, 181).

The second Blaise Diagne law promulgated on 29th September 1916 stated; “The natives of the four Fully Empowered Communes of Senegal and their descendants are and remain French citizens submitted to the military obligations provided by the law of 19th October 1915.” (cited in Guèye 1966, 34). This 1916 law cleared up once and for all that the *originaires* of the *Quatre Communes* and their descendants held French citizenship. Nevertheless, it subsequently ended up creating many legal controversies as well, as now the provisions of the law of 1915 and French citizenship were extended to all the descendants of *originaires* who lived

outside of the communes as well. Now, for some African subjects, place of birth was a criteria for acquiring French citizenship. If this alone did not create enough legal ambiguities, Article 10 of the Civil Code expressively states that French citizenship is given through *jus sanguinis* and not through *jus soli*, and to become a French citizen one had to abide by the rules and regulations of the Civil Code. One thing was certain though, the law of 1916 confirmed once and for all that *originaires* could retain their *statut personnel* and still remain French citizens.

After the promulgation of this law of 1916, many expecting mothers from the protectorate temporarily relocated to the *Quatre Communes* so as to be able to give birth to their children there and then consequently receiving *originaire* status. In addition, hundreds of African *sujets* from the protectorate rushed to the courts to claim their French citizenship by proving they were descendants of *originaires*. (Johnson 1971, 196). The system of *état civil*, where it is mandatory to register births and deaths, existed in the communes just as it did in metropolitan France. Civil registries had been kept for at least a hundred years in the communes, but many Muslim *originaires* had been antipathetic to the idea of having to register births and deaths with French officials in the civil state. Not to mention, some records had been misplaced, and names had been altered, improperly recorded or recorded twice. Therefore, fraudulent and irresolute claims were not infrequent, and thus by 1922, petitioners had to swear on the Quran in the presence of a *qadi*. However, due to numerous complains, the *Conseil colonial* passed a motion in 1924 whereby swearing on the Quran for this matter would no longer be necessary on the grounds that an oath before a *qadi* for such a purpose was contrary to religion. (Buell 1928, I, 952f).

Due to the success of the 1918 military recruitment mission led by Blaise Diagne as *Commissioner de la République* (Commissioner of the Republic) (1918-1934), Governor Ernest Fernand Lévecque (1917-1919) agreed to give those Africans who had served in French troops certain privileges; exception from taxation and the *indigénat*, their families where to receive large allotments, certain jobs would be held open for returning soldiers, and provisions were made for some soldiers to be able to apply for French citizenship, thereby giving them the same status as *originaires*. (Johnson 1971, 194). Subsequently, a decree of 14th January 1918 granted French citizenship to all African's who had fought in the war. (Opoku 1974,

143). The regulations in this decree included having learned French, served in the French administration loyally and agreeing to abide by French law and the Civil Code. (Conklin 1997, 165f).

Through Blaise Diagne, Senegal had real influence over colonial affairs and policies. (Johnson 1971, 72). He also advocated for the communal privileges to be extended to the protectorate, thus with it, the extension of French citizenship to Africans *sujets*. (Vaillant 1990, 47). "It's not necessary to make the natives French citizens in order to give them basic rights. France has already agreed to respect their traditional customs and beliefs." (*Interview avec Georges Joutel, La Presse Coloniale*, 31.12.1924, cited in Johnson 1971, 210). He also requested that the French penal code be applied throughout *l'Afrique Occidentale française*. (Conklin 1997, 155). The extension of the French penal code would mean that African subjects would be subjected to the same punishments for felonies and misdemeanours as French citizens. These punishments were not as severe as those carried out under the *indigénat*. Nonetheless, neither the extension of communal privileges or the application of the French penal code in the protectorate occurred.

Additionally, Diagne advocated for there to be more African deputies in the *Chambres des députés*. He wanted a deputy for each colony or group of colonies in *l'Afrique Occidentale française*, a deputy for the federation of colonies in *l'Afrique Equatoriale française*, and a deputy for Madagascar. This did not occur in the early 1920s when Diagne proposed it, however it did become part of France's plan after the Second World War (1939-1945). (Johnson 1971, 210).

2.8.11. The Conseil Colonial

The decree of 28th September 1920, reorganised the *Conseil supérieur des colonies* (Supreme Council for Colonies), which was a consultative and elective council that advised the *Ministère des Colonies*. It was composed of three consultative bodies; the *haut Conseil colonial* (Upper Colonial Council), the *Conseil économique des colonies* (Economic Council of the Colonies) and the *Conseil de législation coloniale* (Council of Colonial Legislation).

The *haut Conseil colonial* was composed of previous Ministers of colonies and *Gouverneurs généraux*, and one representative from the *Ministères des affaires*

étrangères (Ministry of Foreign Affairs), the *Ministère de la guerre* (Ministry of War) and the *Ministère de la Marine* each. The council would advise on those problems concerning the general administration, the political and military organisation, the status of natives and the development of the colonies and the *pays du protectorat*.

The *Conseil économique des colonies* was comprised of deputies and senators of the colonies, delegates elected by the *Conseil supérieur des colonies*, members who were designated because of their personal experience with economical, financial, industrial, commercial, agricultural and maritime matters pertaining to the interests of the metropole and the colonies, the director of the general agency of the colonies and the directors of the economic agencies of the colonial government, representatives of each department of commerce, finance, agriculture, marching marine, public labour, labour and the public introduction designed by the minister when it was relevant. This council advised on questions and projects which pertained to the *mise en valeur* of the colonies and the protectorates, and on matters relating to the agricultural, commercial and industrial development of France in the colonies.

The *Conseil de législation coloniale* was made up of members who had been chosen from the metropole or the colonies, who were experienced and qualified in administrative and judicial matters, a delegate from the *Ministère de la justice* (Ministry of Justice) and one from the *Ministère des finances* (Ministry of Finance), a *Vice-Président du Conseil d'État* (Vice President of the Council of States) and a *premier Président de la Cour des comptes* (First President of the Court of Auditors). This council consulted on matters on the reforms which were to be introduced in the administrative and financial regime, and the legislation of the colonies and the *pays du protectorat*.

The councils were now to include delegates from all the colonies, which were elected by eligible voters of the colonies and the metropole. (Runner 1926, 54-58). The *Conseil supérieur des colonies* was purely advisory, inefficient and held little political significance. (Cowan 1958, 51). Blaise Diagne held the position of deputy for Senegal from 1914 to his death in 1934, and was succeeded by Galandou Diouf, who remained in that position until 1940. (Crowder 1968, 179).

Three months later, a decree joined together the *Quatre Communes* and the *pays du protectorat* of Senegal. Article 1 of the decree of 4th December 1920 stated;

“The Territories of Direct Administration and the Protectorate of Senegal, those which were defined by the decrees of 13th February and 18th October 1904²⁶, are reunited in one unique colony which takes the name of Colony of Senegal and where the administrative centre is in Saint-Louis.” (Buell 1928, II, 102, translation C.R.S.). The Governor of Senegal governed the Territory of Direct Administration, and the Territories of Protectorate he ruled alongside with administrators, and French-trained and traditional chiefs. (Johnson 1966, 240).



Map of L'Afrique Occidentale française (AOF) (1920) (Cooper 2005, 205).

The federation of *l'Afrique Occidentale française* was additionally reorganised by this decree of 1920. The federation would henceforth be composed of eight territories; Senegal, French Guinea, Côte d'Ivoire, Dahomey, Mauritania, French Soudan, Haute-Volta and Niger²⁷. (Lyautey 1931, 182f).

²⁶ The decree of 18th October 1904 defined the borders of the *Territoires d'administration directe* and the *Territoires d'administration indirecte*. (Ganiage 1968, 322).

²⁷ Togo was a territory mandate to France, not a colony. It was administrated on a different juridical basis but was in close political relation to l'AOF. (Cooper 2005, 205).

The decree also went on to declare the dissolution of the *Conseil général* and its subsequent replacement with a *Conseil colonial*. (Jones 2012, 342).

“The Territories of Direct Administration and the Protectorate of Senegal are henceforth united in one unique colony, administrated by a Lieutenant Governor, assisted by a private council, similar to the administrative councils of other colonies of the group and a new council which, substituting the General Council, takes the name of Colonial Council. [...] The Colonial Council, who’s jurisdiction extends over all of Senegal, will be composed, on the one side, of twenty members elected, not just by the inhabitants of the Fully Empowered Communes, as it is already happening for the legislative elections, but by all of the citizens residing in the colony and, on the other side, of twenty members elected by the ensemble of Chiefs of province and canton.” (Anonymous, cited in Guèye 1966, 44f).

The *Conseil colonial* was more representative than its predecessor the *Conseil général*. (Johnson 1971, 216). It was the only council in Africa where Africans and Europeans alike were elected by the population and sat side by side on the same council. (Hesseling 1985, 146). “The members of the Colonial Council of Senegal have more power than the unofficial members of any other consultative assembly in Africa, including the legislative councils found in British territory. They can block the imposition of taxes and withhold about half the expenditures of the government.” (Buell, 1928, I, 979). The council also had the power to approve the budget, give advise, and legislate and deliberate over certain topics. (Ibid., 970). It was composed of 44 members, 26 of those members were elected by French citizens of the colony and the remaining 18 were chiefs elected by a group of chiefs of canton and province. (Delafosse 1931, 352). This council however did not have the authority over the colony’s budget as the *Conseil général* had possessed. (Jones 2013, 179).

On 11th October 1921, Augustin Henri Louis Guillabert, the President of the *Conseil colonial* of Senegal (1921-1923), said;

“In this forum as before, mister minister, you will find men entirely devoted to the mother country having profound attachments in the colony. Some are of pure race of this country while others are their brothers in race, sons of the first Frenchmen who planted the venerable flag here... Several Europeans of democratic sentiments have come to join these men who think that freedom can even spread to West Africa and who generously defend without other motives and sometimes against their personal interests, the democracy of this country... How can one apply a policy of association and uplift if at each step that he takes the indigène finds himself lowered four ranks under the pretext that he is Senegalese?” (*Discours prononcé par M. A.H.L. Guillabert, Président du Conseil Colonial du Sénégal, à M. Albert Sarraut, Ministre des Colonies, 11.10.1921, cited in Jones 2013, 180*).

2.8.12. The Cour d’Appel’s Ruling Regarding the Jurisdiction of Muslim Originaires

The *Cour d’appel* was dedicated to the principle of judicial assimilation and thus regarded the granting of French legal and political rights incompatible with the Muslim *originaires’* attempts to maintain their *statut personnel*. Eventually this decision was altered, and Muslim *originaires* were given the choice to elect their preferred system of justice on a case by case basis. Furthermore, a ruling of the *Cour d’appel* on 1st April 1926, asserted that neither the decree of 5th November 1830²⁸ or the law of 24th April 1833²⁹ had the effect of imposing the *status civil français* on the inhabitants of Gorée and Saint-Louis, and that their *statut personnel* was not withdrawn by the law of 29th September 1916³⁰. It also ruled that French magistrates were not competent to manage those cases corresponding to *statut personnel*. Accordingly, the court ruled that those cases which involved *status personnel* were exclusively liable to Muslim law and therefore well within the authority of the Muslim tribunals.

²⁸ The application of Civil Code in Senegal, see p.27.

²⁹ Granting civil and political rights to all Frenchmen, see p.29.

³⁰ Granting French citizenship to *originaires* and their descendants, see p.70.

In addition, the *Cour d'appel* determined that Muslim *originaires* could bring their legal disputes to French courts. When they chose to, Muslim *originaires* could submit themselves to the regulations and procedures of French civil law for that particular case, and then for other cases still remain under Muslim law. The *Cour d'appel* drew on their decision of 17th June 1898, which stipulated that Muslims were free to bring their disputes before French courts. This decree was in turn based on Articles 2 and 4 of the decree of 20th May 1857, which established a Muslim tribunal in Senegal. Additionally, Article 4 of the decree of 20th May 1857 and Article 31 of the decree of 16th November 1924 declared that Muslims could bring their disputes before French courts. Furthermore, the *Cour d'appel* also determined that nothing prohibited *originaires* who preserved their *statut personnel* from relinquishing the benefits which were attached to having *statut civil français* in a particular judicial case. (Sarr/Roberts 1991, 138ff). "It is by exception, and by tolerance, that native French subjects remain under Muslim law in certain instances; to place them under French law is to return them to the rule." (*Cour d'appel*, cited in Sarr/Roberts 1991, 140). This was a clear victory for the *originaires* as, after 69 years, their special legal status was judicially acknowledged and clearly stated.

Nevertheless, even though the courts had changed their decisions on the jurisdiction of Muslim law and the ability for Muslim *originaires* to opt for their preferred judicial system in matters pertaining to civil law, they were not prepared to give *qadis* full power to adjudicate all civil affairs. Therefore, when it came to inheritance law, the courts recognised the *qadi's* authority to resolve disputes regarding the inheritance rights of the inhabitants of the *Quatre Communes*. However, the courts did limit the *qadi's* dominion when it came to dealing with civil litigations which might have a criminal component. (Sarr/Roberts 1991, 140). Essentially, the *Cour d'appel* in Dakar acknowledged the special *statut personnel* of the *originaires* but the jurisdiction of Muslim tribunals continued to be increasingly limited.

On 20th November 1932, a decree reinstated the jurisdiction of Muslim tribunals by declaring that Muslim tribunals had exclusive knowledge over civil matters between Muslim *originaires* and their descendants in regard to marriage, questions of inheritance, donations and testaments. Article 3 gave the *Gouverneur général* the authority to create and suspend Muslim tribunal according to the

requirements of the altering colonial situation. (Ibid., 140f). This decree successfully established two coexisting legal systems (French and Muslim) for the *originaires* and their descendants, where they could choose which judicial system they wanted to have applied on their civil affairs, and in those matters which were not covered by Muslim law, French civil law was applied.

2.9. The Régime de Vichy (1940-1944)

During the Vichy regime, all political institutions and representative assemblies in *l'Afrique Occidentale française*³¹ were suppressed, and *originaires* and Senegal's naturalised African citizens were denied their rights as French citizens. (Crowder 1977, 171). As *l'Afrique Occidentale française* at the time was under the governorship of *Gouverneur général* Pierre Boisson (1940-1943), who supported the Vichy government, the federation was neutralised. (Ibid., 175). During this time, the colonial administration further pressed for forced labour, and just as it had done during the First World War, France turned to its African territories to supply troops and materials for the war. (Gellar 1982, 17). In a way, this contributed to the economic life of the colony and aided Senegal out of the economical depression of the 1920s and 1930s. The commune of Dakar went through the largest changes and gained much significance during the war. It was the third largest port in all of France, therefore placing the Senegalese coastline in a position of strategical importance, and due to the economic development of the colony, the commune grew rapidly. (Crowder 1977, 175ff). However, this supply and demand of fighters and materials for the war was pretty much all the colonies were used for. Everything possible was being funnelled out, but nothing was being poured back in which would positively benefit Senegal.

“The empire in 1939 was an ill-assorted whole lacking common institutions and plans for the future. It had been built up by a minority and was of interest only to specialists many of whom thought more of their own profits than of the colonies [...] The Government, faithful to the idea of mercantilism, continued to regard the colonies as reservoirs of raw materials and foodstuffs and buyers of its manufactures. It was

³¹ The federation was only under Vichy control until 1942. (Crowder 1977, 177).

ungenerous with capital and the capital equipment of the colonies was incomplete and precarious.” (Julien 1950, cited in Schicho 2014, 51f).

Additionally, the political situation in Senegal did not improve until some time after the end of the war. (Gellar 1982, 17). During the Vichy regime, social and political reforms took place in Francophone Africa which strengthened African nationalism and paved the way towards independence. (Crowder 1977, 175). At the time, nationalism did not mean independence. Nationalism meant pride, equality and the bettering of oneself and one’s people. It was not until the subsequent suspension of African’s political rights with the rise of the Vichy regime that the debate regarding independence began to emerge as an issue in Senegalese politics and it was not until about 1958 that nationalism in Senegal equated independence from France.

2.10. The Quatrième République (1946-1958)

The years that followed the fall of the Vichy regime saw many important changes in the political structure of Francophone Africa. As of January 1946, the communes of Saint-Louis, Rufisque and Dakar (Gorée had been incorporated into the jurisdiction of Dakar) were once again granted full municipal status as enjoyed by municipalities in metropolitan France.

Under the *Constitution de 1946* (27th October 1946), *Conseils généraux* were established for each territory, a *Grand Conseil* (federal council) was established for the eight territories of *l’Afrique Occidentale française*, the French penal code was made generally applicable throughout Senegal, Senegal retained a single college electorate, as opposed to the rest of the territories which were prescribed a dual college electorate, and Senegal now had the right to have two representatives in the *Assemblée nationale*. (Crowder 1967, 47f). These two important Senegalese men were Lamine Guèye and Léopold Sédar Senghor, who not only represented Senegal in the *Assemblée nationale constituante* but took part in the writing of the *Constitution de 1946*. (Ibid., 42).

Article 72 of this Constitution specifically stipulated that only Parliament could legislate over the *Territoires d’Outre-mer* when it came to civil and criminal law, and the administrative and political organisation. (*Constitution de 1946, IVe République*,

Titre VIII, Section II, Article 72). The President of the Republic held the power to execute laws and to legislate by decree upon those matters which were not reserved to Parliament or had not already been governed by laws. (Salacuse 1969, 16).

A couple of months prior, a decree of 30th April 1946 had dissolved the *code de l'indigène* (Diarra 1966, 107-119), and declared the French penal code applicable throughout the French territories in Africa. Article 1 of the decree stated; "From 1st July 1946, in French West Africa, in French Equatorial Africa, in Madagascar and dependencies, in Cameroon, in Togo and in the French coast of Somalia, the French jurisdictions will only know, in penal matters, conforming to the legislation applicable before these jurisdictions and to the exclusion of all native jurisdiction, of all the committed infractions of the natives." (cited in Guèye 1966, 138).

On 7th May 1946, a law known as the Lamine Guèye Law was promulgated, declaring that the inhabitants of the *Territoires d'Outre-mer* possessed the same quality of citizens as French nationals in the metropole. (Guèye 1955, 110). The law sought to answer the question of citizenship for the inhabitants of the French territories in Africa, and "to secure for them the rights they claimed as a result of their contribution to France's liberation" in the Second World War. (*Proposition de loi tendant à proclamer citoyens tous les ressortissants de la métropole et des territoires d'Outre-mer*, 7.5.1946, cited in Genova 2004, 58). "All *ressortissants* of the overseas territories [...] have the quality of citizen in the same respect as French nationals of the metropole or the overseas territories. Specific laws will establish the conditions under which they will exercise their rights as citizens." (*Documents de l'Assemblée Nationale Constituante*, 25.4.1946, cited in Cooper 2014, 88).

Marius Moutet, the first *Ministre de la France d'Outre-mer*, wrote to the *Gouverneur général* of *l'Afrique Occidentale française*. "The law of 7th May 1946 proclaims above all the principle of equality: there are no more subjects, there is no colonial regime." (*Ministre de la France d'Outre-mer à Gouverneur général de l'AOF*, 14.6.1946, cited in Cooper 2014, 88). This meant that in the space of a week, the concept of 'French subject' and the *indigénat* had been eradicated.

Nevertheless, in June 1946, Moutet wrote another letter to the *Gouverneur général* of *l'AOF*. "The law does not expressly say that the new citizens are French citizens: they are citizens [with] the same title as a French citizen, which is to say they exercise the same rights as a French citizen. The future Constitution will,

therefore, accord to the population of the Overseas Territories the rights of French *citizens*, but it does not say that those citizens are *French* citizens.” (*Ministre de la France d’Outre-mer à Gouverneur général de l’AOF*, s.a. [late June 1946], cited in Genova 2004, 71). This meant that the *Ministre de la France d’Outre-mer* was willing to permit former French subjects to become French citizens with equal rights to those accorded to metropolitan French citizens, but he was not willing to recognise them as French by nationality. He took possible ambiguities in the Lamine Guèye Law to distinguish between citizenship and nationality. This distinction was nothing new, as during the time when individuals held the statuses of citizen and subject, subjects were still considered French nationals but without the rights of citizenship. Now with the Lamine Guèye Law, where the concept of citizens and subjects in theory no longer existed, former subjects were still differentiated from citizens, as they were now *just* citizens, and not citizens *and* nationals.

Furthermore, a distinction was still being made between those individuals who had acquired French citizenship prior to the Lamine Guèye Law of 1946 and the now ‘citizens of local status’. (White 1999, 147). Additionally, the law of 1946 also did not extend the right to vote to all Africans. (Crowder 1967, 45). Universal suffrage was not granted until a decade later.

The Lamine Guèye Law was implemented into the *Constitution de 1946*. (White 1999, 147). Article 80 of the Constitution accorded to all the inhabitants of the colonies the quality of ‘citizens of the French Union’. (Rosanvallon 1966, 434). “... [T]o form with the people of overseas a union founded on the equality of rights and of duties, without distinction of race, or of religion...” (cited in Guèye 1966, 171). Article 82 stated; “The citizens who do not have the *statut civil français* conserve their *statut personnel* as long as they do not renounce it. This status may under no circumstances constitute a motive for refusing or limiting the rights and liberties attached to the quality of French citizen” (*Constitution de 1946, IVe République, Titre VIII, Section III, Article 82*). Just as they had done until the *Constitution de 1946*, the inhabitants of France *d’Outre-mer* retained their personal status and also remained under the jurisdiction of customary law in civil cases, such as marriage and inheritance. (White 1999, 147). Furthermore, equality could be claimed by any individual without having to surrender their *statut personnel*, as this new citizenship

law was independent from the Civil Code under which private law and personal life was regulated.

The French Union was a political organisation established by the *Constitution de 1946*. (Cooper 2005, 176). It was composed of the French Republic, including metropolitan France, the overseas departments and territories, like French West African and French Equatorial Africa, and all associated states and territories, such as the mandate territories of Togo and Cameroon and the Protectorates of Morocco and Tunisia. (Crowder 1967, 46). During the course of the French Union, the colonies were referred to as *Territoires d'Outre-mer*. (Cooper 2014, 38).

On 8th July 1948, Paul Coste-Floret, a member of the *Assemblée nationale*, wrote a letter referencing the *Constitution de 1946*. "The citizenship conferred by Article 80 is 'French citizenship'. There is not, as certain people have pretended, a 'national citizenship' and 'a citizenship of the empire'. [There is] but one and the same citizenship [for all], 'French citizenship'." (cited in Genova 2004, 73). However, by the end of 1953, the assembly of the French Union passed a resolution stating that there were two citizenships, one for France and one for the French Union. Additionally, citizens of France were also citizens of the French Union, but citizens of the French Union were not citizens of France, and those inhabitants of *Territoires d'Outre-mer* whose rights "were not portable", could not vote in metropolitan France. (*Procès Verbal de Haute Conseil de la Union Français*, 26-27.11.1953, cited in Genova 2004, 76). Furthermore, an *arrêt* of the 8th November 1948, implemented by the *Cour de cassation* declared that naturalisation was the procedure of acquiring complete French citizenship, including *statut civil français*. (Borella 1958, 190). The process of naturalisation could thus only occur once one renounced ones *statut personnel*.

In March 1956, Pierre-Henri Teitgen, a Minister for *France d'Outre-mer*, spoke out during a session of the *Assemblée nationale*. "We are going to change totally the orientation, the spirit, the objectives of our overseas policy and renounce definitely and solemnly this so called policy of assimilation." (cited in Cooper 1996, 424).

The *loi cadre* (framework law), promulgated on 26th June 1956, attempted to implement these changes. (Cooper 2014, 214). This law created a framework where the French government was to publish decrees augmenting the authority of local institutions. (Salacuse 1969, 41). It did not intend to create nation-states (Cooper

2014, 214), and was initially designed to avoid the demands for independence from the colonies. (Crowder 1967, 66f). The *loi cadre* granted a single electoral college and territorial assemblies with real powers to all territories in French speaking sub-Saharan Africa, and universal suffrage to all its inhabitants. (Cooper 2014, 214). The *loi cadre* was to give each territory considerable power to operate its own affairs under the *Conseil de gouvernement*, where the majority of the members of this council were elected from the *Assemblée territoriale*. The Governor was the President of the council and would in turn elect a member for the position of vice President. (Cooper 1996, 425).

During the Fourth Republic, the privileges of political representation which Senegal had possessed were extended throughout the rest of the French territories in West Africa. Each territory would elect two or three deputies to represent them in the French *Assemblée nationale*. Additionally, each territory was granted a *Assemblées territoriales* (Territorial Assemblies), which had at its disposition the territories budget. The *Assemblées territoriales* would elect representatives for the *Conseil de la République* (Council of the Republic) and councillors to sit on the *Assemblée de l'Union Française* (Assembly of the French Union). This assembly barely had any power and could only debate matters which could then be formulated into suggestions for the *Assemblée nationale* in Paris, which they in turn did not have to follow through with. The *Assemblées territoriales* would also chose delegates for the *Grand Conseil de l'Afrique Occidentale française*. This council had legislative power over financial matters. The executive power however, continued to remain under the French administration and French Governors. (Foltz 1965, 23). Due to the unification of the first and second electoral colleges, the *Assemblées territoriales* grew and *Conseils exécutifs* (Executive Councils) were created to give Africans a voice in matters of territorial concerns. In 1958, these assemblies became Parliaments and the *Conseils exécutifs* were reorganised into territorial governments. (Le Vine 1968, 376).

Nevertheless, even after the creation of these councils and assemblies, the only true economical and political power was still in the hands of the *Assemblée nationale* in Paris, as the assembly had sovereign authority over each territory of the *Union Française*. (Padmore 1956, 194).

2.11. The Cinquième République (1958-), the Mali Federation and the Republic of Senegal

In 1958, Charles de Gaulle, later President of the Fifth Republic from 1959 to 1969, but at the time President of the *Conseil des ministres* (1958-1959), was aware that the independence of African territories from France was inevitable and fast approaching. Therefore, in an effort to retain them, he attempted to replace the *Union française* with a sort of French community known as the *Communauté française*, which would oversee and control the evolutions of each African territory on their way to becoming future nations. (Coquery-Vidrovitch 2016, 200f).

The *Préambule* of the *Constitution de 1958* (4th October 1958) states: “The French people solemnly proclaim their commitment to human rights and the principles of national sovereignty as defined by the 1789 Declaration, confirmed and supplemented by the preamble to the 1946 Constitution [...] In accordance with these principles and the principle of the free determination of people, the Republic offers to the Overseas Territories that manifest the will to join them new institutions based on the common ideal of freedom, equality and fraternity and conceived for their democratic evolution.” (*Constitution de 1958, Ve République, Préambule*).

Article 1 of the *Constitution de 1958* states; “France is an indivisible, secular, democratic and social Republic. It ensures the equality before the law of all citizens without distinction of origin, race or religion. It respects all beliefs. Its organisation is decentralised.” (*Constitution de 1958, Ve République, Préambule, Article premier*).

Article 75 states; “The citizens of the Republic who do not have common law civil status, referred to in Article 34, conserve their personal status as long as they have not renounced it.” (*Constitution de 1958, Ve République, Titre XII, Article 75*).

Nonetheless, these attempts to retain the French possessions *d’Outre-mer* were not enough, as in 1960, all French territories in Africa became independent, with the exception of Guinea which had done so two years prior in 1958. (Coquery-Vidrovitch 2016, 201).

With the separation of Senegal and Soudan from the French Republic and the subsequent formation of the short-lived Mali Federation in 1959, came the need for the creation of a new nationality. Some of the inhabitants who now found themselves in this federation made up of what were the colonies of Senegal and

French Soudan, were “firmly attached” to France especially “the most French part: *métis, originaires* of the *Quatre Communes*, civil servants in metropolitan administrations, soldiers, citizens who had given up their personal status.” The solution was to grant them double nationality so that they would be Malian nationals but would not lose their French nationality. (*Note relative à la nationalité*, 9.1.1960, cited in Cooper 2009, 110). This meant that France and the Mali Federation had different nationalities but would extend a common right in the other country.

After the dissolution of the Mali Federation and the succeeding establishment of the Republic of Senegal and the Republic of Mali, France permitted only the former colonial citizens who were, at the time, residing within the current boundaries of the Republic of France to claim their French citizenship. (Cooper 2009, 114).

One could consider that the constitutional and legal systems which were established with the independence from France and formation of the Republic of Senegal, had essentially been adapted from the French system. The Republic of Senegal contains a constitutional republican form of government, a civil code of law, and administrative, educational and judicial organisations all designed after the respective French models. (Villalón 1995, 82).

Nonetheless, other aspects prove the centuries lasting French influence and presence in Senegal had been altered or in some cases completely removed. For example, in an effort to centralise politics, the municipal privileges which uniquely shaped and defined yet isolated the *Quatre Communes* from the rest of Africa were revoked. The political centralisation of the now formally independent Senegal was justified by the pressing need to build a nation, to ensure economic and social development, and to awaken the people to meet the challenges of decolonisation and underdevelopment. (Diouf 1999, 22).

Continuities are still recognisable. Forty years later, and similarly to the Constitutions of France, the *Constitution de 2001*³² confirmed its adherence to the *Déclaration de Droits de l'Homme et du Citoyen de 1789* and that the basis of Senegalese society is the respect for the fundamental freedoms and rights of its citizens. The State and its citizens are subject to the same legal standards and under the supervision of an independent and impartial judicial system. (*Constitution de la République du Sénégal du 22 janvier 2001, Préambule*). Article 1 states: “The

³² The Republic of Senegal's fourth Constitution, the others being: *Constitution de 1959* (Mali Federation), *Constitution de 1960*, and *Constitution de 1963*.

Republic of Senegal is secular, democratic and social. It ensures the equality before the law of all citizens, without distinction of origin, race, sex or religion. It respects all beliefs.” (*Constitution de la République du Sénégal du 22 janvier 2001, Article premier*).

Article 3 states: “National sovereignty belongs to the Senegalese people [...] Voting may be direct or indirect. It is always universal, equal and secret. All Senegalese nationals of both sexes, aged 18 years and over, enjoy their civil and political rights, are voters under the conditions determined by law.” (*Constitution de la République du Sénégal du 22 janvier 2001, Article 3*).

Article 26 states: “The President of the Republic shall be elected by direct universal suffrage and by an absolute majority of the votes received.” (*Constitution de la République du Sénégal du 22 janvier 2001, Titre III, Article 26*).

Articles 53 to 57 declare the formation of the government, which is composed of the *Premier Ministre* (Prime Minister), the *chef du Gouvernement* (Head of Government) and the Ministers. (*Constitution de la République du Sénégal du 22 janvier 2001, Titre IV, Articles 53-57*).

Article 59 states the legislative power of the Republic, which is exercised by the *Assemblée nationale*. “It votes, alone, the law, controls the action of the Government and evaluates public politics. [...] The deputies are elected through direct universal suffrage. [...]” (*Constitution de la République du Sénégal du 22 janvier 2001, Titre VI, Article 59*).

Articles 88 to 94 distribute the judicial power, which is independent of executive and legislative power, and exercised by a *Conseil constitutionnel* (Constitutional Council), a *Cour suprême*, a *Cour des comptes* (Court of Auditors), and courts and tribunals. It is “the guardian of the rights and freedoms defined by the Constitution and the law.” (*Constitution de la République du Sénégal du 22 janvier 2001, Titre VIII, Articles 88 + 91*).

5. Conclusion

Law is a complicated matter. Laws and decrees are often worded in such a form where certain matters are explicitly stated and others are simply implied. But then if something is implied but not explicitly stated do the same regulations still

apply? The interpretation of the law is just as important as the law itself and this is what causes even more complexities, as everyone interprets and views the world in a different manner. Alongside this, the creation of laws in general can be problematic as well. The wording needs to be just right, and judicial terminology can sometimes be complex. This is clearly demonstrated with the *Quatre Communes* of Senegal and its inhabitants, the *originaires*.

Along with Guadeloupe, Martinique, la Réunion and French Guayana, Senegal was considered to be an 'old colony of the *Ancien Régime*'. The colonies of the *Ancien Régime* were completely, or almost completely, assimilated to France, and were therefore considered to be integral parts of the metropole. The *Quatre Communes* of Senegal were the only location in sub-Saharan Africa where a full-scale policy of assimilation was applied. Following this policy of assimilation, administrative, juridical and political institutions were established in Senegal, and their growth was influenced by the French colonial policy and French administrative needs.

The *Quatre Communes* were a rarity, as it was also the only location in the French territories on the African continent where citizenship was determined solely by geographical location. French citizenship in the communes was initially bestowed through the principle of *jus soli*, with the extension of the French Civil Code to Senegal in 1830. This however proved to be controversial since its application. Laws, decrees and local *arrêtés* continuously attempted to unquestionably define if the *originaires* were citizens of France or not, as the citizenship status of the French was never in question, and neither was that of the *métis*, as through the principle of *jus sanguinis* explicitly expressed in Article 10 of the Civil Code, the *métis* were French citizens by blood, as a child of a Frenchman is also French. After the promulgation of each of these laws, decrees and *arrêtés* pertaining to their citizenship status, ambiguities arose. Additionally, the definitions of 'citizenship' and 'nationality' are arbitrary and ever changing, therefore over time they were continually altered and attempting to define them with one exact definition of who is a citizen or national and what requirements each individual has to meet to become one, is complicated and almost not possible. "Citizenship is one of those juridical-political notions [...] whose definition is at the same time rare, delicate and approximative." (Gohin 2002, 69).

Furthermore, as the inhabitants of the *Quatre Communes* possessed French citizenship, they were under the jurisdiction of French law, including French civil law, and as such also possessed *statut civil français*. Africans, unless they had renounced it and become French citizens, possessed *statut personnel* and were under native jurisdiction. Nonetheless, Muslim *originaires* were French citizens and continued to retain their *statut personnel*. They were under the jurisdiction of French law, except in cases pertaining to civil law, where they had the option of choosing whether they wanted to apply French civil law or Muslim law on a case by case basis. As they refused to fully submit themselves to French civil law, i.e. the Civil Code, the cultural assimilation of this section of the population was somewhat complicated and objectionable.

Even though the French State separated civil law from the Church and therefore suppressed its power (1804), the French Civil Code follows more Christianised ideals. Therefore individuals with an alternate religious persuasion, or individuals who followed no religion at all, found the norms of French civil law complicated, unwarranted and unwelcoming to their own beliefs. “The Muslim element is hostile to the French naturalisation, not because of hate towards France, but because of attachment to a civilisation on which rests all native social structure and therefore the abandonment would be equivalent to undermine this structure by the base.” (*Gouverneur général à Ministre de la Marine*, 3.9.1916, cited in Idowu 1969, 211).

Accordingly, the cultural assimilation of the majority of the *originaires* of the communes did not occur. The *originaires* welcomed the status of French citizenship and the civil and political rights that came along with being citizens, but they did not welcome the changes which occurred, or rather ought to have occurred, with their *statut personnel*.

French citizenship for the *originaires* was already a unique anomaly, but being able to retain their *statut personnel* whilst holding French citizenship status was an even greater oddity and, one could say, a privilege. Subsequently, this special status represented a continuous challenge for the French and their colonial doctrines, and it was therefore attacked, critiqued and contested time and time again through ever changing, newly implemented laws and decrees.

Another issue regarding French citizenship status arose in the second half of the 19th Century, due to the territorial conquests undertaken by the French. A vast population was adjoined to the French empire and the question emerged, what to do with them? “[W]e should not get carried away with the power of empires [...] We should understand instead the limits of imperial power, and especially the limits that derived from the structure of empire itself.” (Cooper 2005, 200). It was therefore decided they would hold the status of *sujet français* and be governed in all matters under *justice indigène* or the *code de l’indigénat*. Due to the formation of this new ‘category of people’ and new system of administration and justice, something had to be done with the Muslim *originaires* of the communes, as being French citizens but retaining their *statut personnel*, they did not fit neatly into the category of French citizens in possession of *statut civil français*, but they were not *sujets* either.

Throughout the years, the special status of Muslim *originaires* was contested time and time again. Throughout a period of almost 90 years, colonial magistrates, the colonial administration and *originaires* themselves, argued over who should be permitted to obtain the status of French citizenship and on what terms. Some believed that it was preposterous that individuals of the Muslim persuasion could possess citizenship status when they clearly did not abide by the rules and regulations of the Civil Code, which after all, doing so was the duty of every proper and law-abiding French citizen. Others believed that what was done was done and therefore the citizenship status which was granted to the *originaires* was a lucky, but unfortunate mistake, could not be removed, but through the legal system they could remove some of their rights and omit them from certain privileges. Others believed that their religious views should have nothing to do with granting and receiving the status and rights of French citizens, and should accordingly be permitted to retain their *statut personnel*, be French and Muslim.

The fight for the reception and maintenance of French citizenship was so avidly undertaken by the *originaires*, as it included civil rights (the right to have their juridical matters resolved in a French court of law, and when it came to civil matters, be able to elect, depending on their preference and religious beliefs, if they wanted to apply French civil law or Muslim law), and political rights (the right to vote and to be elected in three major elective institutions; the municipal councils, the *Conseil*

général or *colonial*, and the French *Assemblée nationale*), something which at the time, under colonial domination, was highly unusual.

The vast majority of the inhabitants of the French colonised African continent were first labelled as *indigènes* and later on as *sujets*, but both times possessed no rights whatsoever and treated as lesser beings. Through the application of the French judicial system in the *Quatre Communes*, which followed the ideology of assimilation, its inhabitants, most specifically the *originaires*, were able to possess French citizenship and all the rights which were attached to it. Even more uniquely, after a continuous judicial battle, Muslim *originaires* were French citizens in possession of *statut personnel*. “The reliance of Islamic law to determine the extent of a French decree conferring citizenship on French subjects in a French colony was, to say the least, curious.” (Opoku 1974, 141).

6. Bibliography

- Apple**, James G.; **Deyling**, Robert P. (1995). *A Primer on the Civil-Law System*. s.l. Federal Judicial Center.
- Babot**, Agnès; **Boucaud-Maître**, Agnès; **Delaigue**, Philippe (2002). *Dictionnaire d'histoire du droit et des institutions publiques. (476-1875)*. Paris. Ellipses Éditions.
- Bancel**, Nicolas; **Blanchard**, Pascal; **Vergès**, Françoise (2003). *La République coloniale. Essai sur une utopie*. Paris. Michel.
- Barry**, Boubacar (1972). *Le Royaume du Waalo. Le Sénégal avant la conquête*. Paris. François Maspero.
- Barry**, Boubacar (1998). *Senegambia and the Atlantic Slave Trade*. Cambridge. Cambridge University Press.
- Behrman**, Lucy (1970). *Muslim Brotherhoods and Politics in Senegal*. Cambridge. Harvard University Press.
- Beslier**, Genevière G. (1935). *Le Sénégal*. Paris. Payot.
- Betts**, Raymond F. (1961). *Assimilation and Association in French Colonial Theory. 1890-1914*. New York. Columbia University Press.
- Boilat**, P. David (1853). *Esquisses Sénégalaise*. Reprint: Paris. Éditions Karthala, 1984.
- Borella**, François (1958). *L'Évolution politique et juridique de l'Union française depuis 1946*. Paris. Librairie générale de droit et de de jurisprudence.
- Bouche**, Denise (1991). *Histoire de la colonisation française. Tome second. Flux et reflux. (1815-1962)*. Paris. Librairie Arthème Fayard.
- Bouineau**, Jacques; **Roux**, Jérôme (2004). *200 ans de Code civil*. Paris. Association pour la Diffusion de la Pensée Française.
- Brasseur**, Gérard (1997). *Un regard géographique sur l'AOF de 1895*. In: Becker, Charles; Mbaye, Saliou; Thioub, Ibrahima (eds). *AOF: réalités et héritages. Sociétés ouest-africaines et ordre colonial, 1895-1960. Tome I*. Dakar. Direction des Archives du Sénégal. 36-49.
- Brooks**, George E. (2003). *Eurafricans in Western Africa. Commerce, Social Status, Gender, and Religious Observances from the Sixteenth to Eighteenth Century*. Athens. Ohio University Press.

Brooks, George E. (2010). *Western Africa and Cabo Verde. 1790s-1830s. Symbiosis of Slave and Legitimate Trades*. Bloomington. Author House.

Brubaker, Rogers (1992). *Citizenship and Nationhood in France and Germany*. Cambridge. Harvard University Press.

Brunschwig, Henri (1942). *La colonisation française: Du pacte colonial a l'Union française*. Paris. Calmann-Levy.

Buell, Raymond Leslie (1928). *The Native Problem in Africa. (Vols. I-II)*. New York. The Macmillan Company.

Bulletin des lois (1833). Gallica. <https://gallica.bnf.fr/ark:/12148/bpt6k486411b/f113.item> (28th May 2019).

Carbonnier, Jean (1986). *Le Code civil*. In: Nora, Pierre (ed.). *Les lieux de mémoire. II. La Nation. II. Le territoire, l'état, le patrimoine*. Paris. Gallimard. 293-315.

Carbonnier, Jean (2004). *Droit civil. 1. Introduction, les personnes, la famille, l'enfant, le couple*. Paris. Quadrige/puf.

Césaire, Aimé (1955). *Discours sur le colonialisme. Deuxième Edition Revue et Augmentée*. Paris. Présence Africaine.

Charte constitutionnelle du 4 juin 1814 (1814). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/charte-constitutionnelle-du-4-juin-1814> (8th May 1830).

Charte constitutionnelle du 14 août 1830 (1830). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/charte-constitutionnelle-du-14-aout-1830> (8th May 2019).

Christelow, Allan (1982). *The Muslim Judge and Municipal Politics in Colonial Algeria and Senegal*. *Comparative Studies in Society and History*, 24, 1. 3-24.

Clark, Andre F.; **Phillips**, Lucie Colvin (1994). *Historical Dictionary of Senegal*. Metuchen. The Scarecrow Press, Inc.

Code Napoléon (1808). *Code Napoléon*. Reprint: Leipzig. Stroemfeld Verlag. 2001.

Cohen, William Benjamin (1971a). *Rulers of Empire. The French Colonial Service in Africa*. Stanford. Hoover institution Press.

Cohen, William Benjamin (1971b). *The French Colonial Service in French West Africa*. In: Gifford, Prosser, Louis, Wm. Roger (eds.). *France and Britain in Africa. Imperial Rivalry and Colonial Rule*. New Haven/London. Yale University Press. 491-513.

Conklin, Alice L. (1997). A Mission to Civilize. The Republican Idea of Empire in France and West Africa, 1895-1930. Stanford. Stanford University Press.

Conklin, Alice L. (1998a). Colonialism and Human Rights, A Contradiction in Terms? The Case of France and West Africa, 1895-1914. *The American Historical Review*, 103, 2. 419-442.

Conklin, Alice L. (1998b). Redefining "Frenchness": Citizenship, Race Regeneration, and Imperial Motherhood in France and West Africa, 1914-40. In: Clancy-Smith, Julia; Gauda, Frances (eds.). *Domesticating the Empire. Race, Gender, and Family Life in French and Dutch Colonialism*. Charlottesville. University Press of Virginia. 5-83.

Conklin, Alice L. (2013). In the Museum of Man. Race, Anthropology, and Empire in France, 1850-1950. New York. Cornell University Press.

Constitution de 1791 (1791). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1791> (8th May 2019).

Constitution de la République du Sénégal du 22 janvier 2001 (2001). *Gouvernement. République du Sénégal*. <https://www.sec.gouv.sn/lois-et-reglements/constitution-du-senegal> (4th July 2019).

Constitution du 24 juin 1793 (1793). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-du-24-juin-1793> (8th May 2019).

Constitution du 22 Frimaire an VIII (1799). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-du-22-frimaire-an-viii> (8th May 2019).

Constitution de 1848, I^{le} République (1848). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1848-iie-republique> (8th May 2019).

Constitution de 1852, Second Empire (1852). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1852-second-empire> (8th May 2019).

Constitution de 1875, III^e République (1875). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1875-iiie-republique> (8th May 2019).

Constitution de 1946, IV^e République (1946). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1946-ive-republique> (8th May 2019).

Constitution de 1958, V^e République (1958). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur> (8th May 2019).

Cooper, Frederick (1996). *Decolonization and African Society. The Labor Question in French and British Africa*. Cambridge. Cambridge University Press.

Cooper, Frederick (2005). *Colonialism in Question. Theory, Knowledge, History*. Berkeley. University of California Press.

Cooper, Frederick (2008). Colonialism and Imperialism: Overview. In: Middleton, John; Miller, Joseph C. (eds). *New Encyclopedia of Africa*. Vol. 1. Detroit et al. Thomson Gale. 467-473.

Cooper, Frederick (2009). From Imperial Inclusion to Republican Exclusion? France's Ambiguous Postwar Trajectory. In: Tshimanga, Charles; Gondola, Didier; Bloom, Peter J. (eds.). *Frenchness and the African Diaspora. Identity and Uprising In Contemporary France*. Bloomington. Indiana University Press. 91-119.

Cooper, Frederick (2014). *Citizenship Between Empire and Nation. Remaking France and French Africa, 1945-1960*. Princeton. Princeton University Press.

Coquery-Vidrovitch, Catherine (2001). Nationalité et citoyenneté en Afrique Occidentale Française: originaires et citoyens dans le Sénégal colonial. *The Journal of African History*, 42, 2. 285-305.

Coquery-Vidrovitch, Catherine (2016). *Petite histoire de l'Afrique. L'Afrique au sud de Sahara de la préhistoire à nos jours. Édition revue et augmentée*. Paris. Éditions La Découverte.

Cowan, Laing Gray (1958). *Local Government in West Africa*. New York. Columbia University Press.

Crowder, Michael (1967). *Senegal. A Study of French Assimilation Policy*. Revised Edition. London. Methuen.

Crowder, Michael (1968). *West Africa Under Colonial Rule*. London. Hutchinson University.

Crowder, Michael (1977). *West Africa. An Introduction to its History*. London. Longman.

Curtin, Philip D. (1975). *Economic Change in Precolonial Africa. Senegambia in the Era of the Slave Trade*. Madison. The University of Wisconsin Press.

Déclaration des Droits de l'Homme et du Citoyen de 1789 (1789). *Conseil Constitutionnel*. <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789> (8th May 2019).

Delafosse, Maurice (1931). *Afrique occidentale française. (Histoire des colonies françaises et de l'expansion de la France dans le Monde. Tome IV.)*. Paris. Société de l'Histoire Nationale.

Delavignette, Robert (1946). *Les vrais chefs de l'empire*. Deuxième édition. Paris. [s.i.]

Deschamps, Hubert (1953). *Les méthodes et doctrines coloniales de la France. (Du XVI^e siècle à nos jours)*. Paris. Colin.

Deschamps, Hubert (1971). *French Colonial Policy in Tropical Africa Between the Two World Wars*. In: Gifford, Prosser, Louis, Wm. Roger (Eds). *France and Britain in Africa. Imperial Rivalry and Colonial Rule*. New Haven/London. Yale University Press. 543-569.

Diagne, Souleymane Bachir (2018). *Négritude as Existence. Journal of Contemporary African Art*, 42-43. 10-19.

Diarra, Mamadou (1973). *Justice et développement au Sénégal. Étude de rôle des institutions dans le développement*. Dakar. Nouvelles Éditions africaines.

Diouf, Mamadou (1998). *The French Colonial Policy of Assimilation and the Civility of the Originaires of the Four Communes (Senegal): A Nineteenth Century Globalization Project. Development and Change*, 29, 4. 671-696.

Diouf, Mamadou (1999). *L'idée municipale. Une idée neuve en Afrique. Politique africaine*, 74, 2. 13-23.

Diouf, Mamadou (2000). *Assimilation coloniale et identités religieuses de la civilité des originaires des Quatre Communes (Sénégal). Canadian Journal of African Studies / Revue Canadienne des Études Africaines*, 34, 3. 565-587.

Diouf, Mamadou (2013). *Tolerance, Democracy, and Sufis in Senegal*. New York. Columbia University Press.

Dubois, Marcel; **Terrier**, Auguste (1902). *Les colonies françaises. Un siècle d'expansion coloniale*. Paris. Challamel.

- Duchêne**, Albert (1928). La politique coloniale de la France. Le ministère des colonies depuis Richelieu. Paris. Payot.
- Duke Bryant**, Kelly (2015). Education as Politics. Colonial Schooling and Political Debate in Senegal, 1850s-1914. Madison. University of Wisconsin Press.
- Dwyer**, Philip G.; **McPhee**, Pierre (2002). The French Revolution and Napoleon. A Sourcebook. London. Routledge.
- Ellul**, Jacques (1969). Histoire des institutions. 5. Le XIXe siècle. Paris. Presses Université de France.
- Ewald**, François (2004). Naissance du code civil. La raison du législateur. Paris. Flammarion.
- Fahrmeir**, Andreas (2007). Defining the Citizen. In: Dwyer, Philip G., Forrest, Alan (eds.). Napoleon and his Empire. Europe, 1804-1814. Basingstoke. Palgrave Macmillan. 185-201.
- Faidherbe**, Louis Léon César (1889). Le Sénégal: la France dans l'Afrique occidentale. Paris. Hachette.
- Foltz**, William J. (1965). From French West Africa to the Mali Federation. New Haven/London. Yale University Press.
- Foster**, Elizabeth A. (2013). Faith in Empire. Religion, Politics, and Colonial Rule in French Senegal, 1880-1940. Stanford. Stanford University Press.
- Gaffarel**, Paul (1880). Les colonies française. Paris. Germer.
- Gamble**, Harry (2017). Contesting French West Africa. Battles over Schools and the Colonial Order, 1900-1950. Lincoln/London. University of Nebraska Press.
- Ganiage**, Jean (1968). L'expansion coloniale de la France sous la Troisième République. 1871-1914. Paris. Payot.
- Gellar**, Sheldon (1982). Senegal. An African Nation Between Islam and the West. Boulder. Westview Press.
- Genova**, James E. (2004). Constructing Identity in Post-War France: Citizenship, Nationality, and the Lamine Guèye Law, 1946-1953. *The International History Review*, 26, 1. 56-79.
- Gohin**, Oliver (2002). La citoyenneté dans l'Outre-mer Français. *Revue Française d'Administration Publique*, 101, 1. 69-82.
- Guèye**, Lamine (1922). De la Situation Politique des Sénégalais Originaires des Communes de plein exercice telle qu'elle résulte des Lois des 19 Octobre 1915, 29

Septembre 1916 et de la Jurisprudence antérieur. Conséquences au point de vue du conflit des lois françaises et musulmans en matière civile. Reprint: London. Forgotten Books. 2017.

Guèye, Lamine (1955). Etapes et perspectives de l'Union française. Paris. Éditorial de l'Union française.

Guèye, Lamine (1966). Itinéraire africain. Paris. Présence Africaine.

Hale, Dana S. (2008). Race on Display. French Representations of Colonized Peoples, 1886-1940. Bloomington. Indiana University Press.

Hardy, Georges (1921). La mise en valeur du Sénégal de 1817 à 1854. Paris. Éditions Larose.

Hargreaves, John D. (1965). Assimilation in Eighteenth-Century Senegal. *The Journal of African History*, 6, 2. 177-184.

Hargreaves, John D. (1967). West Africa. The Former French States. Englewood Cliffs. Prentice Hall.

Hargreaves, John D. (1969). France and West Africa. London. Macmillan.

Hazareesingh, Sudhir (1998). From Subject to Citizen. The Second Empire and the Emergence of Modern French Democracy. Princeton. Princeton University Press.

Hélie, Faustin-Adolphe (1880). Les constitutions de la France: ouvrage contenant outre les constitutions, les principales lois relatives au culte, à la magistrature, aux élections, à la liberté de la presse, de réunion et d'association, à l'organisation de départements et des communes. Paris. Marescq Ainé.

Hesseling, Gerti (1985). Histoire politique du Sénégal: institutions, droit et société. Paris. Éditions Karthala.

Hutton, Patrick H. (1986). Historical Dictionary of the Third French Republic. 1870-1940. (Vol. I-II). Westport. Greenwood Press.

Idowu, H. Oludare (1968). The Establishment of Elective Institutions in Senegal, 1869-1880. *The Journal of African History*, 9, 2. 261-277.

Idowu, H. Oludare (1969). Assimilation in 19th Century Senegal. *Cahiers d'Études Africaines*, 9, 34. 194-218.

Johnson, G. Wesley (1966). The Ascendency of Blaise Diagne and the Beginning of Africa Politics in Senegal. *Africa: Journal of the International African Institute*, 36, 3. 235-253.

- Johnson**, G. Wesley (1971). *The Emergence of Black Politics in Senegal. The Struggle for Power in the Four Communes, 1900-1920*. Stanford. Stanford University Press.
- Jones**, Hilary (2005). From Mariage à la Mode to Weddings at Town Hall: Marriage, Colonialism, and Mixed-Race Society in Nineteenth-Century Senegal. *The International Journal of African Historical Studies*, 38,1. 27-48.
- Jones**, Hilary (2012). Rethinking Politics in the Colony: The Métis of Senegal and Urban Politics in the Late Nineteenth and Early Twentieth Century. *Journal of African History*, 53. 325-344.
- Jones**, Hilary (2013). *The Métis of Senegal*. Bloomington. Indiana University Press.
- Jore**, Léonce (1965). *Les établissements Français sur la côte occidentale d'Afrique de 1758 a 1809*. Paris. Société Française d'histoire d'Outre mer et librairie G.P. Maisonneuve el Larose.
- Journal officiel de la République française** (1931). Gallica. <https://gallica.bnf.fr/ark:/12148/bpt6k6540106b/f7.image> (17th July 2019).
- Journal officiel du Sénégal** (1889). British Library.
- Klein**, Martin Allen (1968). *Islam and Imperialism in Senegal. Sine-Saloum, 1847-1914*. Stanford. Stanford University Press.
- Klein**, Martin Allen (1998). *Slavery and Colonial Rule in French West Africa*. Cambridge. Cambridge University Press.
- Lambert**, Michael C. (1993). From Citizenship to Négritude. "Making a Difference" in Elite Ideologies of Colonized Francophone West Africa. *Comparative Studies in Society and History*, 35, 2. 239-262.
- Légier**, Henri Jacques (1968). Institutions municipales et politique coloniale: les Communes du Sénégal. *Revue française d'histoire d'outre-mer*, 55, 201. 414-464.
- Legum**, Colin (1965). *Pan-Africanism. A Short Political Guide*. Revised Edition. New York. Praeger.
- Lentz**, Thierry; **Branda**, Pierre (2006). *Napoléon, l'esclavage et les colonies*. Paris. Fayard.
- Lepointe**, Gabriel (1953). *Histoire des institutions du droit public français au XIXe siècle 1789-1914*. Paris. Montchrestien.
- Le Vine**, Victor T. (1968). Political Elite Recruitment and Political Structure in French-Speaking Africa. *Cahier d'Études Africaines*, 8, 31. 369-389.

Lois, et Actes du Gouvernement (1807). Lois, et Actes du Gouvernement. Tome VIII. 1^{er} Brumaire au 18 Prairial an II. A Paris. De l'Imprimerie Impériale.

Lyautey, Pierre (1931). L'empire colonial français. Paris. Éditions de France.

Lydon, Ghislaine (2007). Droit islamique et droits de la femme d'après les registres du Tribunal Musulman de Ndar (Saint-Louis du Sénégal). *Canadian Journal of African Studies / Revue Canadienne des Études Africaines*, 41, 2. 289-307.

Mann, Gregory (2009). What was the "Indigénat"? The 'Empire of Law' in French West Africa. *The Journal of African History*, 50, 3. 331-353.

Maunier, René (1932). Sociologie coloniale. 1. Introduction a l'étude du contact des races. Paris. Les Éditions Domat-Montchrestien.

Maupoil, Bernard (1939). L'étude des coutumes juridiques de l'A.O.F. In: Comité d'Etudes historiques et Scientifiques de l'Afrique Occidentale Française (ed.). Coutumiers juridiques de l'Afrique occidentale française. 1. Sénégal. Paris. Éditions Larose. 1-41.

Meyer, Jean et al. (1999). Histoire de la France coloniale. 1. Des origines à 1914. Paris. Armand Colin Éditeur.

Mille, Pierre. (1901). The "Black-Vote" in Senegal. *Journal of the Royal African Society*, 1, 1. 64-79.

Newbury, C.W. (1960). The Formation of the Government General of French West Africa. *The Journal of African History*, 1, 1. 111-128.

Niort, Jean; **Richard**, Jérémy (2014). De la Constitution de l'an VIII au rétablissement de l'esclavage (1802) et à l'application du Code Civil dans les colonies française (1805): le retour d'un droit colonial réactionnaire sous le régime napoléonien. In: Régent, Frédéric; Niort, Jean-François; Serna, Pierre (eds.). Les colonies, la Révolution française, la loi. Rennes. Presses Université de Rennes. 165-177.

Noiriel, Gérald (1993). L'identification des citoyens. Naissance de l'état civil républicain. *Genèses*, 13. 3-28.

O'Brien, Donal Cruise (1967). Towards an 'Islamic Policy' in French West Africa, 1854-1914. *The Journal of African History*, 8, 2. 303-316.

Olivier, Marcel (1907). Le Sénégal. Paris. Éditions Larose.

Opoku, Kwame (1974). Traditional Law Under French Colonial Rule. *Verfassung in Recht und Übersee*, 7, 2. 139-153.

- Padmore**, George (1956). *Pan-Africanism or Communism? The Coming Struggle for Africa*. London. Dennis Dobson.
- Pedersen**, Jean Elisabeth (1998). "Special Customs": Paternity Suits and Citizenship in France and the Colonies, 1870-1912. In: Clancy-Smith, Julia; Gauda, Frances (eds.). *Domesticating the Empire. Race, Gender, and Family Life in French and Dutch Colonialism*. Charlottesville. University Press of Virginia. 43-64.
- Quellien**, Alain (1910). *La politique musulmane dans l'Afrique occidentale française*. Paris. Éditions Larose.
- Roberts**, Richard (1990). Text and Testimony in the Tribunal de Première Instance, Dakar, during the Early Twentieth Century. *The Journal of African History*, 31, 3. 447-463.
- Roberts**, Richard (2005). *Litigants and Households. African Disputes and Colonial Courts in the French Soudan. 1895-1912*. Portsmouth. Heinemann.
- Roberts**, Stephen Henry (1929). *History of French Colonial Policy. 1870-1925*. London. P.S. King & Son.
- Robinson**, David (1988). French 'Islamic' Policy and Practice in Late Nineteenth-Century Senegal. *The Journal of African History*, 29, 3. 415-435.
- Robinson**, David (2000). *Paths of Accommodation. Muslim Societies and French Colonial Authorities in Senegal and Mauritania. 1880-1920*. Athens. Ohio University Press.
- Rosanvallon**, Pierre (1966). *Le sacre du citoyen. Histoire du suffrage universel en France*. Paris. Gallimard.
- Runner**, Jean (1926). *Les Droits politiques des Indigènes des Colonies*. Paris. Librairie Émile Larose.
- Saada**, Emmanuelle (2002). The Empire of Law. Dignity, Prestige, and Domination in the Colonial Situation. *French Politics, Culture & Society*, 20, 2. 98-120.
- Saada**, Emmanuelle (2003/4). Citoyens et sujets de l'Empire français. Les usages du droit en situation coloniale. *Genèses*, 53. 4-24.
- Saada**, Emmanuelle (2007). *Les enfants de la colonie: les métis de l'Empire français entre sujétion et citoyenneté*. Paris. Éditions La Découverte.
- Sabatié**, Alexandre Camille (1926). *Le Sénégal. Sa conquête et son organisation. 1364-1925*. Saint-Louis. Imprimerie du Gouvernement.
- Said**, Edward (1978). *Orientalism*. Reprint: Reading. Penguin Books. 1985.

- Saint-Martin**, Yves-Jean (1989). *Le Sénégal sous le Second Empire: naissance d'un empire colonial. (1850-1871)*. Paris. Éditions Karthala.
- Salacuse**, Jeswald William (1969). *An Introduction to Law in French-Speaking Africa*. Vol. I. Charlottesville. Michie Co.
- Sarr**, Dominique; **Roberts**, Richard (1991). The Jurisdiction of Muslim Tribunal in Colonial Senegal. 1857-1932. In: Mann, Kristin, Roberts, Richard (eds.). *Law in Colonial Africa*. Portsmouth. Heinemann. 131-145.
- Sarraut**, Albert (1923). *La mise en valeur des colonies françaises*. Paris. Payot.
- Schicho**, Walter (2014). Wirtschaftliche Inwertsetzung - la mise en valeur - und soziale Entwicklung. Der Entwicklungsdiskurs der kolonialen Verwaltung von Französisch Westafrika (AOF) zwischen 1920 und 1960. *Stichproben. Wiener Zeitschrift für kritische Afrikastudien*, 26, 14. 49-105.
- Searing**, James F. (1993). *West African Slavery and Atlantic Commerce. The Senegal River Valley, 1700-1860*. Cambridge. Cambridge University Press.
- Seck**, Ibrahima (2012). The French Discovery of Senegal. Premises for a Policy of Selective Assimilation. In: Green, Toby (ed.). *Brokers of Change. Atlantic Commerce and Cultures in Precolonial Western Africa*. Oxford. Oxford University Press. 149-170.
- Thomas**, Martin (2005). Albert Sarraut, French Colonial Development, and the Communist Threat, 1919-1930. *The Journal of Modern History*, 77, 4. 917-955.
- Tulard**, Jean (1995 [1988]). *Dictionnaire Napoléon*. Nouvelle édition, révisé et augmenté. Paris. Fayard.
- Uimonen**, Jari (2014). The Personal Status in French Law: With Special Focus on Overseas Territories. *International Journal on Minority and Group Rights*, 21. 451-468.
- Vaillant**, Janet G. (1990). *Black, French, and African. A Life of Léopold Sédar Senghor*. Cambridge. Harvard University Press.
- Villalón**, Leonardo Alfonso (1995). *Islamic Society and State Power in Senegal. Discipline and Citizens in Fatick*. Cambridge. Cambridge University Press.
- Weil**, Patrick (2005). *Qu'est-ce qu'un Français? Histoire de la nationalité française depuis la Révolution*. Paris. Grasset.
- White**, Owen (1999). *Children of the French Empire. Miscegenation and Colonial Society in French West Africa. 1895-1960*. Oxford. Oxford University Press.

Abstract

The four towns on the Senegalese coast known as the *Quatre Communes* of Senegal were the outcome of a colonial project founded on the French policy of assimilation. The French desired to fully assimilate Senegal to France, but due to the rapid territorial expansion of the colony, such full scale assimilation would not be possible. This made the *Quatre Communes* a unique anomaly. They fell under two different judicial systems, French and Muslim, and the inhabitants, known as *originaires*, acquired French citizenship.

The acquisition of French citizenship comes with the endowment of *statut civil français*, meaning that each individual is regulated in their daily lives by French civil law, i.e. the Civil Code. The dominant Muslim population of the communes, even though grateful to be French citizens and not subjects, did not wish to abide to French civil law, and petitioned for the creation of a Muslim tribunal. They wanted to be French citizens but possess *status personnel*, thereby having the benefits and rights of French citizens but being regulated by Muslim law in civil matters. With the establishment of a Muslim tribunal in Saint-Louis in 1857, Muslim *originaires* were placed under the jurisdiction of Muslim law in civil cases, unless they would rather apply French civil law. Nevertheless, this special status was contested by many colonial magistrates and part of the colonial administration. Since the application of the Civil Code in Senegal in 1830, laws and decrees were promulgated time and time again in an effort to retain, remove or alter the citizenship status of the *originaires* and their special status, and the extent of the jurisdiction of French and Muslim law.

Following a chronological timeline of France's history commencing with the *Ancien Régime* and ending with Senegal's independence, this thesis focuses on the French and Muslim judicial system which held jurisdiction in the *Quatre Communes*, along with the emergence and development of these two parallel judicial systems, what matters fell under each of their jurisdiction, what jurisdiction was applied where, when and how, and to whom did they apply. The evaluating and interpreting of laws, decrees, local *arrêtés* and the Constitutions of France, led to the conclusion that these four towns were truly unique: two judicial systems upheld the civil and political rights, to an extent, of a small group of people at a time were, due to colonialism, the majority of the African continent was deprived of any rights whatsoever.

Abstract

Die vier Städte an der senegalesischen Küste, die als *Quatre Communes* von Senegal bekannt sind, waren das Ergebnis eines kolonialen Projekts, das in der französischen Assimilationspolitik gründete. Die Franzosen wollten den Senegal vollständig integrieren, aber aufgrund der raschen territorialen Expansion der Kolonie war eine solche vollständige Assimilation nicht möglich. Dies machte die *Quatre Communes* zu einer einzigartigen Anomalie. Sie gehörten zwei verschiedenen Rechtssystemen an, dem französischen und dem muslimischen, und die Bewohner, die als *originaires* bekannt sind, erhielten die französische Staatsbürgerschaft.

Der Erwerb der französischen Staatsbürgerschaft ist mit der Verleihung des *statut civil français* verbunden, was bedeutet, dass jeder Einzelne in seinem täglichen Leben dem französischen Zivilrecht, d.h. dem *Code civil*, untersteht. Die mehrheitlich muslimische Bevölkerung in den *communes*, wollte sich nicht an das französische Zivilrecht halten, auch wenn sie dankbar waren, französische Staatsbürger und keine *sujets* zu sein, und beantragte deshalb die Einrichtung eines muslimischen Tribunals. Sie wollten französische Staatsbürger sein, aber ihr *statut personnel* behalten, um die Vorteile und Rechte der französischen Staatsbürger zu genießen, aber in Zivilsachen durch das muslimische Recht geregelt zu sein. Mit der Einrichtung eines muslimischen Tribunals in Saint-Louis 1857 wurden muslimische *originaires* in Zivilsachen dem muslimischen Recht unterstellt; es sei denn, sie entschieden sich dafür, das französische Zivilrecht anzuwenden. Doch dieser Sonderstatus wurde von vielen Kolonialrichtern und einem Teil der Kolonialverwaltung angefochten. Seit der Anwendung des *Code civil* im Senegal 1830 wurden immer wieder Gesetze und Verordnungen erlassen, um den Staatsbürgerschaftsstatus der *originaires* und ihren Sonderstatus sowie den Umfang der Zuständigkeit des französischen und muslimischen Rechts entweder zu erhalten, zu entfernen oder zu ändern.

Nach einem chronologischen Überblick der Geschichte Frankreichs, der mit dem *Ancien Régime* beginnt und mit der Unabhängigkeit des Senegals endet, fokussiert sich diese Masterarbeit auf das französische und muslimische Justizsystem, das in den *Quatre Communes* herrschte, sowie auf die Entstehung und Entwicklung dieser beiden parallelen Justizsysteme. Betrachtet wird insbesondere,

bei welchen Angelegenheiten sie jeweils Jurisdiktion hatten, welche Rechtsprechung wo, wann und wie angewandt wurde, und auf wen sie anwendbar waren. Die Bewertung und Auslegung von Gesetzen, Verordnungen, lokalen *arrêts* und Verfassungen Frankreichs führte zu der Folgerung, dass diese vier Städte wirklich einzigartig waren: Zwei Justizsysteme, die, in gewissem Maße, die bürgerlichen und politischen Rechte einer kleinen Gruppe von Menschen wahrten, zu einer Zeit, als die Mehrheit der Bevölkerung am afrikanischen Kontinent aufgrund des Kolonialismus keinerlei Rechte hatte.