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FROM LAW TO CUSTOM: THE SHIFTING LEGAL STATUS OF MUSLIM *ORIGINAIRES* IN KAYES AND MEDINE, 1903–13*

BY REBECCA SHEREIKIS
Northwestern University

ABSTRACT: In the early colonial period the frontier towns of Kayes and Medine on the Upper Senegal River were home to a community of Muslim *originaires* of the four communes of Senegal. The article examines this group's efforts to establish and maintain a Muslim tribunal in Kayes, thus preserving a space for their privilege and identity within the French colonial system. But while their appeals to the colonial administration were successful in 1905, a 1912 revision of the legal system took away their privilege and made Muslim *originaires* constituents of native courts. The article provides context for understanding the Muslims' protests, as well as the administration's changing attitudes towards them. Whereas much of the literature on the *originaires* has focused on their status as assimilated Africans with voting rights, this article calls attention to their identity as Muslims.

KEY WORDS: French Islamic policy, colonial courts, legal status, assimilation, Senegal, French Soudan.

THE *originaires*[1] of the four communes of Senegal occupy a special place in French colonial history, for it was in the communes – St Louis, Gorée, Dakar and Rufisque – that the French most fully applied the assimilationist ideas for which they are so famous. Unlike most colonial Africans, *originaires* voted in local elections and were represented in the French National Assembly. As a result, this group has typically been studied in the context of

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[1] *Originaires* is the term used for the inhabitants of the four communes of Senegal. Communes are the smallest administrative unit in French political organization, typically governed by a municipal council and a mayor. In the late nineteenth and early twentieth centuries *originaires* were a diverse group, comprised of people of mixed African and European descent (known as *mulâtres*, *métis* or Creoles); Christian Africans (primarily Catholic, and sometimes referred to as *gourmets*); and Muslim Africans. An additional term, *habitants*, is used inconsistently by scholars – sometimes to describe only Euro-Africans, at other times synonymously with *originaires*. This essay is concerned exclusively with the Muslim population so I use the term *originaires* to mean Muslim *originaires* only. In addition, this essay focuses primarily upon *originaires* from St Louis. For a discussion of terminology, see G. Wesley Johnson, Jr., *The Emergence of Black Politics in Senegal : The Struggle for Power in the Four Communes, 1900–1920* (Stanford, 1971), 23; J. D. Hargreaves, 'Assimilation in eighteenth-century Senegal', *Journal of African History*, 6 (1965), 177–84; Michael Marcson, 'European-African interaction in the precolonial period: St Louis, Senegal, 1758–1854' (Ph.D. thesis, Princeton University, 1976).

communal politics, as examples of the Africans most affected by assimilation and the French *mission civilisatrice*.[2]

This essay examines *originaires* in a less familiar context, and, in contrast to much of the existing literature, focuses on their identity as Muslims. Its subject is a group of *originaires* who left the communes in the nineteenth century and relocated to the colonial frontier towns of Kayes and Medine (present-day Mali). In the early twentieth century this group became embroiled in conflict with the colonial administration over their legal status. Following a decree in 1903 that made them constituents of a French court, Muslim *originaires* in Kayes and Medine lobbied the colonial administration for the right to have their affairs heard by a Muslim judge, or *qadi*. The administration met their demands and established a Muslim tribunal for them in 1905. But this court soon became the site of conflict between members of the court's personnel and the object of repeated administrative interventions. In 1913, in the wake of reform of the federation-wide legal system, the administration closed the doors of the Muslim tribunal of Kayes and made Senegalese Muslims constituents of native courts.[3] Unwilling to accept this change in legal status, the expatriate *originaire* community once again petitioned the administration. They invoked their longstanding relationship with the French and expressed their abhorrence of non-Muslim, 'fetishist' customs to which they would be subjected in the native court. This time, however, the *originaires* could not persuade the administration to heed their demands.

While the battle in Kayes and Medine was fought over the question of legal status – which courts the *originaires* should use – there were larger issues at stake, both for Muslim *originaires* and for the colonial administration. As they defended their right to a Muslim tribunal, *originaires* in Kayes and Medine were also defending their historic status as a privileged group. Their petitions and letters of protest reveal how they sought to establish an autonomous space for their identity within the French colonial system, claiming to belong to a modern Islamic civilization that set them apart from the local community – many of whom also happened to be Muslim. But while their arguments resonated with the administration in 1905, eight years later the same arguments fell on deaf ears. By 1913 administrative consensus was that *originaires* in Kayes and Medine were not morally superior to the non-Muslims around them. Moreover, according to some officials, they did not possess a 'law' that required a special court, but only an ethnically defined custom, best served by a native court. This essay seeks to explain this change by placing the *originaires*' challenges to the administration in the

[2] See, for example, Johnson, *Emergence*; H. Oludare Idowu, 'Assimilation in nineteenth century Senegal', *Cahiers d'Études Africaines*, 9 (1969), 194–218; Michael Crowder, *Senegal: A Study of French Assimilation Policy* (London, 1967). For an overview of assimilation in French colonial theory, see Raymond F. Betts, *Assimilation and Association in French Colonial Theory, 1890–1914* (New York, 1961). On the *mission civilisatrice*, see Alice Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895–1930* (Stanford, 1997).

[3] French: *tribunaux indigènes*. Throughout this essay, the terms 'native court' and 'native justice' will be used to designate those colonial courts designed for African subjects, as distinct from those designed for French nationals and assimilated Africans. This distinction will be more fully discussed later in the essay.

context of local events in Kayes, as well as against the larger backdrop of French colonial policy. The administration's closure of the Muslim tribunal of Kayes in 1913 amounted to a denial of the universality of Islam as practiced by Medinois and Kayesien *originaires*, and reflected a larger turn towards emphasizing the customary, the particular and the tribal that took place in colonial regimes throughout Africa in the first half of the twentieth century.[4]

'CITIZENS', MUSLIMS AND TRADERS: THE COMPLEXITIES OF *ORIGINAIRE* IDENTITY

Although the *originaires* are sometimes referred to as 'citizens', they were never explicitly granted French citizenship in the nineteenth century. They did, however, possess electoral rights not extended to most colonial Africans. An 1833 law declared that all freeborn men or liberated slaves in the colonies would enjoy French political and civil rights. While the 1833 law fell short of granting citizenship, it was widely interpreted to mean that Senegalese were French citizens. The voting instructions issued in 1848 furthered this impression by declaring that five years residence in Gorée or St Louis was sufficient proof of French naturalization, and thus conferred voting privileges.[5] Beginning in the late nineteenth century, *originaires* could vote for representatives to municipal councils and the colony's General Council,[6] and elect a Deputy to the National Assembly in France, although until 1914 the Deputy was always a Frenchman or a Creole.[7]

The encounter with assimilation is a central theme in the two most comprehensive historical treatments of the *originaires*. Michael Crowder argues that assimilation policy had a potent effect, causing many Senegalese to abandon their African identity in their quest to adopt French culture.[8] Focusing on communal politics, Wesley Johnson argues that while *originaires* embraced political assimilation, they used their Islamic religion as a defense against cultural assimilation.[9] Although Crowder and Johnson reach different

[4] See Mahmood Mamdani, *Citizen and Subject : Contemporary Africa and the Legacy of Late Colonialism* (Princeton, 1996).

[5] In the 1860s, the inhabitants of the newer towns of Rufisque and Dakar were accorded similar rights as the inhabitants of St Louis and Gorée. Idowu, 'Assimilation', 195.

[6] The *Conseil-général* was a representative body similar to the councils found in each French department. It had considerable control over the colony's budget and taxes.

[7] The right to elect a Deputy had initially been granted in 1848, then revoked in 1852 under the Second Empire. It was reinstated under the Third Republic in 1870. On the history and significance of these elective institution, see H. Oludare Idowu, 'The establishment of elective institutions in Senegal, 1869–1880', *Journal of African History*, 9 (1968), 261–77.

[8] Crowder, *Senegal*, 53–54. Crowder suggests that the development of the *négritude* literary movement in the 1930s can be connected back to an assimilationist policy that wiped out African traditions. *Négritude*, in his view, was an attempt to recreate a lost African heritage.

[9] Johnson, *Emergence*, 124–5. Johnson argues that Islam filled the power vacuum created by the disruptions of French occupation, providing 'an effective defense for the African way of life'. Similarly, Idowu argues that Islam was 'one of the impediments to any large scale absorption by the Senegalese of French culture'. Idowu, 'Assimilation', 210.

conclusions about the degree to which *originaires* assimilated culturally, their work shares a similar conceptual framework. They imply that by granting Senegalese the right to participate in electoral politics, French assimilationist policy exposed *originaires* to political and cultural modernity.[10] Both Johnson and Crowder portray assimilation as a double-edged sword – it granted political rights to *originaires* and allowed them 'a stake in the French state',[11] but at the same time threatened their indigenous traditions. The central dilemma for the *originaires*, according to this interpretation, was whether or not to assimilate.[12]

Mamadou Diouf's work on the *originaires* challenges the emphasis most studies have placed on the loss of the *originaires*' African identity as a result of assimilation.[13] Instead, Diouf argues, the communes must be understood as an urban space created by colonialism that gave rise to a historically specific Muslim identity for the *originaires*. Rather than characterizing the *originaires*' Islam as a 'tradition' that they fell back upon when threatened with cultural assimilation, Diouf argues that this group had a distinctly modern and universalist outlook, allowing them to enter into relationships with the French colonial administration without becoming subordinates.[14] Diouf's work stresses the importance of understanding the historical dynamics that created a distinctive Muslim identity in the communes and the ways that this identity emerged in tandem with, rather than as a reaction to, colonial rule.

The emergence of an Islamic milieu in the communes was part of a wider pattern of increasing islamization in French West Africa during the second half of the nineteenth century.[15] St Louis, especially, began to emerge as an important Muslim center during this time, attracting visiting clerics from other parts of West Africa. The French colonial administration actively sought alliances with Muslims of the communes. With the arrival of Léon Faidherbe as Governor of Senegal in 1854, French expansion away from the

[10] Johnson, for example, describes the *originaires*' growing involvement in politics as their 'political awakening'. Johnson, *Emergence*.

[11] *Ibid*. viii.

[12] Both Johnson and Crowder conclude that inability to resolve this dilemma resulted in confusion and a dualistic outlook for Senegalese. See Crowder, *Senegal*, 116, 130–1; Johnson, *Emergence*, 124–5.

[13] Mamadou Diouf, 'Assimilation colonial et identités religieuses de la civilité des originaires des Quatre Communes du Sénégal', in Charles Becker, Saliou Mbaye and Ibrahima Thioub (eds.), *Afrique occidentale française : réalités et héritages, sociétés ouest-africaines et ordre colonial, 1895–1960*, (2 vols.) (Dakar, 1997), II, 836–50. Diouf cites Crowder and Johnson's work as examples of such studies. In my reading, Crowder insists upon the loss of African identity to a greater degree than does Johnson, who, as noted above, does not argue that *originaires* assimilated culturally.

[14] *Ibid*., 844–5. Particularly influential among the *originaires* was Tijani cleric al hajj Malik Sy. An erudite scholar with an exceptional command of literary Arabic, Sy epitomized *originaire* Islam – as Diouf terms it, 'Islam *lettré*' with a 'universalist vocation'. Diouf, 'Assimilation', 840, 844. On Sy's spiritual chain, which connected him, through Mauritanian, Algerian and Moroccan clerics, with the wider Islamic world, see Said Bousbina, 'Al-Hajj Malik Sy: sa châine spirituelle dans la Tijaniyya et sa position à l'égard de la présence française au Sénégal', in David Robinson and Jean-Louis Triaud (eds.), *Le temps des marabouts : itinéraires et stratégies islamiques en afrique occidentale française, V : 1880–1960* (Paris, 1997).

[15] David Robinson, 'An emerging pattern of cooperation between colonial authorities and Muslim societies in Senegal and Mauritania', in Robinson and Triaud (eds.), *Temps des marabouts*, 167–8.

coastal areas of Senegal began in earnest, bringing the French into conflict with Muslim leaders such as al hajj Umar and the Emir of Trarza. Faidherbe pursued a strategy of supporting Muslim leaders and clerics who did not advocate *jihad* or threaten French commercial or political interests. To secure the loyalty of the St Louisien population, Faidherbe subsidized mosques and pilgrimages, and created a number of Franco-Islamic institutions such as the Muslim tribunal in St Louis. These institutions, according to David Robinson, 'encouraged Senegalese Muslims to accept the compatibility of foreign rule and Islamic culture'.[16] In addition, the administration eventually began to make distinctions between the 'fanatical' Futanke branch of the Tijaniyya (associated with al hajj Umar) and the more moderate Wolof branch associated with cleric al hajj Malik Sy to which most *originaires* belonged.[17] Thus one of the effects of French Islamic policy in the late nineteenth century was the emergence of a Muslim elite in the communes with close ties to the colonial administration.

Another reason the administration was keen to secure the *originaires*' support – particularly those of St Louis – was their important role in the Senegal River trade that dominated Senegal's economic life throughout most of the nineteenth century. African, primarily Muslim, traders known as *traitants*[18] were heavily involved in the trade in gum arabic – Senegal's primary export from the late eighteenth century through the 1870s.[19] *Traitants* acted as intermediaries between French commercial houses and Muslim groups upriver who wanted cloth and firearms but did not wish to deal directly with the French. Although many *traitants* worked as employees of French houses, some were able to accumulate their own capital by diversifying merchandise and clientele.[20] The *traitants*' economic success,

[16] David Robinson, 'French "Islamic" policy and practice in late nineteenth-century Senegal', *Journal of African History*, 29 (1988), 415–35.

[17] This distinction, according to Robinson, emerged in the early twentieth century. Some *originaires* did claim affiliation with Umar Tall. Robinson notes the emergence of Tijaniyya cells in St Louis in the late 1860s (during the regime of Umar's son Amadu). Alarmed because some *traitants* had joined these communities, the governor banned Tijaniyya rituals in St Louis and made some arrests. Robinson, 'French "Islamic" policy', 424–5, 434. On the influence of Malik Sy in the communes, see Johnson, *Emergence*, 128–31; Paul Marty, *Etudes sur l'Islam au Sénégal*, (2 vols.) (Paris, 1917), I, 180–1, 203; and David Robinson, 'Malik Sy: un intellectuel dans l'ordre coloniale au Sénégal', *Islam et sociétés au sud du Sahara*, 7 (1993), 183–92. Robinson notes that Sy had his roots in the Umarian Tijani tradition, but that rather than adopting an Umarian model (holy war and creation of an Islamic state), he instead became an 'interpreter of the new colonial and Muslim order'.

[18] On Senegalese traders, see Boubacar Barry and Leonhard Harding (eds.), *Commerce et commerçants en Afrique de l'ouest: le Sénégal* (Paris, 1992); Roger Pasquier, 'Les traitants des comptoirs du Sénégal au milieu du dix-neuvième siècle', in Catherine Coquery-Vidrovitch (ed.), *Actes de colloque 'Entreprises* et *entrepreneurs en Afrique*, *XIX et XX siècles'*, (2 vols.) (Paris, 1983), I, 141–63; and Marcson, 'European–African interaction'. Sometimes this group is called *petits traitants*, to distinguish them from the *grands traitants*, who were primarily of Euro-African descent.

[19] On the importance of the gum trade, see James Webb, 'The trade in gum arabic: prelude to French conquest in Senegal', *Journal of African History*, 26 (1985), 149–168; and *Desert Frontier* (Wisconsin, 1995).

[20] Mamadou Diouf, 'Traitants ou négociants? Les commerçants Saint Louisiens (deuxième moitié du dix-neuvième siècle – début vingtième siècle), Hamet Gora Diop (1846–1910): étude de cas', in Barry and Harding (eds.), *Commerce et commerçants*, 130–2. *Traitants* also became the middlemen for Umarian colonists in Karta, who needed

then, occurred in the context of commercial expansion engendered by French conquest. As Muslims, they were beneficiaries of Faidherbe's Islamic policy. As Robinson notes, *traitants* played a key role, 'not only in the spread of Islam but also in demonstrating the compatibility of intelligent Muslim practice, economic success and European overrule'.[21]

As outposts of French expansion into the Soudan, the river towns of Kayes and Medine became home to many *originaire traitants* in the nineteenth century. Kayes and Medine lie about 15 kilometers apart in the heartland of the Upper Senegal valley. Medine, a center of regional trade in grain and gum and the site of a French fort, reached its peak in the 1880s with a population of about 4,000. In 1882, the administration moved its headquarters upriver to the village of Kayes – the last navigable point on the Senegal River. *Traitants* soon followed, finding trade opportunities provisioning the army and transporting materials for construction projects. Kayes grew rapidly from a village to a colonial town – by the 1880s its population had exceeded 6,000.[22] In 1899, Kayes was named capital of the colony of Haut-Sénégal Moyen Niger,[23] and remained its capital until 1908 when the administration moved its headquarters to Bamako. Muslim *originaires*, most of them Wolof *traitants* from St Louis, formed a sizable and prosperous community in these commercial towns.[24] In Kayes they inhabited their own neighborhood distinguished by its multi-storied stone houses.[25] In addition to their work as traders, many served the administration and military as interpreters, agents and clerks.

Removed from their urban space in the communes, *originaires* in Kayes and Medine nonetheless maintained a sense of separate identity. In their efforts to establish and maintain a Muslim tribunal in Kayes, they defined themselves in opposition to the local community – many of whom were also Muslim[26] – claiming that they deserved special legal institutions. Examining

markets for their surplus grain. See John H. Hanson, 'Generational conflict in the Umarian movement after the *Jihad*: perspectives from the Futanke grain trade at Medine', *Journal of African History*, 31 (1990), 199–215.

[21] Robinson, 'Emerging pattern', 179.

[22] Andrew Clark, *From Frontier to Backwater: Economy and Society in the Upper Senegal Valley* (*West Africa*), *1850–1920* (Maryland, 1999), 150. Clark provides a regional history of the Upper Senegal valley. On the history of Kayes, see Rokiatou N'Diaye Keita, *Kayes et le Haut-Sénégal* (3 vols.), II, *La ville de Kayes* (Bamako, 1972).

[23] The name of the colony changed several times in the late nineteenth and early twentieth centuries. In 1902, it changed to Sénégambie-Niger, and changed again in 1904 to Haut-Sénégal-Niger, finally becoming Soudan Français in 1920.

[24] According to a population survey conducted in 1904, Wolofs comprised 17 percent of the population of Kayes – 928 out of a population of 5,167 – and outnumbered Khassonkes, the people indigenous to the region. Renseignements historiques, géographiques, et économiques sur le cercle de Kayes par l'administrateur du cercle, 1903–4, Archives Nationales du Sénégal (hereafter ANS)1G 310: 1903–4.

[25] Keita, *Ville de Kayes*, 17.

[26] In the vicinity of Kayes and Medine lived a number of Muslim populations, including Soninke, Jahanke, Fulbe, and Moorish groups. In addition, there were long-existing networks of Islamic education and trade, even among primarily non-Muslim communities such as the Khassonke population in Kayes and Medine. On Islamic influence in Khasso, see Sékéné Mody Cissoko, *Contribution à l'histoire politique du Khasso dans le Haut-Sénégal des origines à 1854* (Paris, 1986), ch. 4; Charles Monteil, *Les Khassonkés: Monographie d'une peuplade du Soudan Français* (Paris, 1915), 353–404.

the arguments made by this community of *originaires* residing outside of the communes adds a new dimension to our understanding of the *originaires*' experience with colonial rule. In particular, it demonstrates the limitations of assimilation as a framework for explaining that experience. In Kayes and Medine, *originaires* did not base their appeals to the colonial administration upon claims to be assimilated Africans; nor were their protests simply a reactive assertion of Muslim tradition in the face of French cultural encroachment. Instead, they stressed their identity as Muslims, traders and partners with the French – none of which, in their view, were incompatible. It was this contextually specific Muslim identity that became central in their efforts to define their legal status, and, by extension, to maintain both their special privileges and their separate identity.

THE EXCEPTIONAL LEGAL STATUS OF MUSLIM *ORIGINAIRES* AND THE DECREE OF 1903

The eruption of conflict in Kayes at the turn of the century over the *originaires*' legal status was simply the latest episode in an ongoing process of determining the place of Islamic law in the French colonial system. Muslim *originaires* posed a dilemma for the French: to what degree could they be allowed to use Islamic law, while also being treated as assimilated Africans with electoral rights? Because of this dilemma, the *originaires*' legal status was a source of tension and ambiguity for the French colonial administration in the late nineteenth and early twentieth centuries.[27] The French applied the civil code to Senegal in 1830, with the implication that *originaires* would use French law courts and codes. But although they embraced French civil and electoral rights, Muslim *originaires* wished to bring their legal problems before an Islamic judge, or *qadi*. As a result of pressure from *originaires*, the administration accommodated Islam in the legal system throughout most of the nineteenth century. In 1857, Faidherbe established a Muslim tribunal in St Louis for *originaires*, while allowing them to keep the right to vote in communal elections.

Another group of colonials held a different view. Professional magistrates who had come to Senegal to practice French law were committed to the principle of judicial assimilation and applying the civil code to Africans without exception. The establishment of Faidherbe's Muslim tribunal in St Louis set off a three-way conflict between Muslims, administrators and magistrates that would continue through the 1930s and shape the legal system. In 1889, the magistrates challenged Faidherbe's Muslim tribunal, but the administration reiterated its support for respecting the special status of the *originaires* on the grounds that Muslim justice required special judges. Thus the administration and Muslims won the first round of the struggle. However, the magistrates' assimilationist agenda for the *originaires* would

[27] See Dominique Sarr and Richard Roberts, 'The jurisdiction of Muslim tribunals in colonial Senegal, 1857–1932', in Richard Roberts and Kristin Mann (eds.), *Law in Colonial Africa* (Portsmouth, 1991), 131–143; Bernard Schnapper, 'Les tribunaux musulmans et la politique coloniale au Sénégal, 1830–1914', *Revue historique de droit français et étranger*, 39 (1961), 90–128; and Alain Quellien, *La politique musulmane dans l'Afrique occidentale française* (Paris, 1910), 225.

triumph at the turn of the century when the 1903 decree created a new legal system for France's West African possessions.[28]

The Decree of 1903 was the administration's first attempt to create a unified legal system for the entire territory of French West Africa. Prior to 1903, as we have seen, *originaires* had access to French courts in the communes, but could also chose to use Islamic courts for their civil affairs. But in the vast interior of the newly acquired French territory, the administration had not yet attempted to construct a court system, and people continued to use a variety of methods for dispute resolution, such as village chiefs, *qadis* and family councils.[29] In 1902, the newly formed administration under Governor-general Roume began the task of creating a legal system and appointed a commission composed of both magistrates and administrators to draft a legal decree. The commission first had to confront the question of whether French law should be applied throughout the federation's interior. The magistrates, still committed to judicial assimilation, argued that French law should be applied everywhere. But by the end of the nineteenth century, as more Africans had been brought under French control, the doctrine of assimilation no longer seemed a practical possibility in administrative eyes. Instead, the administration firmly rejected the idea that French law was appropriate to most rural Africans and argued that they should remain under the rule of custom.[30] They conceded, however, that because of their longer contact with the French, urban Africans – notably the *originaires* – possessed a different mentality and should not come under the domain of customary law. Thus even as assimilationist policy came to be considered inappropriate for the majority of French West Africans at the turn of the century, *originaires* maintained their status as a special group in the eyes of the administration.

The decree that emerged from the commission's deliberations reflected the perceived distinction between urban and rural Africans. It created a dual-track legal system – one for urban Africans and the other for rural. The administration's point of view on the appropriateness of custom for rural Africans prevailed, as the decree ordained that in all rural areas Africans would attend native courts at three levels that paralleled the metropolitan legal system. These courts were to try cases according to local custom, except when those customs interfered with principles of French civilization.[31]

But for Muslim *originaires* it was the magistrates' assimilationist views that dominated in the 1903 decree. Magistrates argued that if Muslim *originaires* wanted to participate in electoral politics they should also have to submit to the French civil code. Accordingly, the decree established French courts in urban centers such as the communes to accommodate French nationals and Africans with French citizenship, and to judge according to French law. However, the authority of these courts was absolute over all people living in their jurisdiction, regardless of citizenship, religion or

[28] Sarr and Roberts, 'Jurisdiction', 135.

[29] Kristin Mann and Richard Roberts, 'Introduction: Law in colonial Africa', in Roberts and Mann, *Law*, 12.

[30] For a discussion of the 1902 commission, see Conklin, *Mission*, 89–90.

[31] 'Décret du 10 novembre 1903 portant réorganisation du service de la justice dans les colonies relevant du gouvernement général de l'Afrique occidentale française', in *Bulletin officiel du ministère des colonies*, 17, no. 11 (Paris, 1904).

nationality. This meant that all Africans living in urban areas, including the *originaires*, became constituents of French courts. Some concessions were made to local practices, for the decree specified that each court would have Muslim and non-Muslim assessors (advisors) present to instruct the French judge on custom or Islamic law. But the assessors' role was purely advisory. In sum, the 1903 decree eliminated the privilege enjoyed by Muslim *originaires* in the nineteenth century of attending an Islamic court.[32]

Like their counterparts in Senegal, transplanted *originaires* in Kayes and Medine had used a *qadi* to regulate their disputes during the nineteenth century. But as it did for Muslims in the communes, the 1903 decree significantly altered their legal status. Because of its considerable European population, Kayes had been home to a Justice of the Peace since 1899 – the only French court outside the communes. The 1903 decree renewed the existence of the Justice of the Peace in Kayes. More importantly, by specifying that French courts had jurisdiction over all Africans in their areas, the decree made all inhabitants of Kayes and Medine – Muslim and non-Muslim alike – constituents of the Justice of the Peace, and thus under the domain of French law. In 1903, a magistrate named Cressent presided at this court,[33] and, according to the specifications of the 1903 decree, received legal advice in affairs concerning Muslims from a *qadi*.[34] But the *qadi*'s presence at court did little to reassure Muslims in Kayes and Medine, who began to complain that the French judge's intervention in their private affairs was a violation of their religion. Thus the stage was set for their first appeals to the colonial administration.

MUSLIM REACTIONS TO THE DECREE OF 1903

Following the implementation of the 1903 code, Muslims in Kayes and Medine made a number of complaints to the administration against the Justice of the Peace's rulings.[35] The first incident occurred in December 1903 when ten Muslim *originaires*[36] sent a grievance letter to the delegate[37] of the Governor-general at Kayes. They claimed that when Muslims owed

[32] Sarr and Roberts, 'Jurisdiction', 135.

[33] Cressent was the first professional magistrate to head the Justice of the Peace at Kayes, which had previously been in the hands of the administrator.

[34] Ct. Roux: Rapport politique, Kayes, Mar. 1905, Archives Nationales du Mali (hereafter ANM) Fonds Ancien (hereafter FA) 1E 44.

[35] While the complaint letters analyzed in this section are valuable sources for understanding the argumentative strategies employed by *originaires* (and the response they got from the administration), they must be approached cautiously. It is important to take into account the narrative conventions that shape the content of complaint letters, particularly in situations where professional letter-writers were involved, as they may have been in some of the letters examined here. See Richard Roberts, 'Text and testimony in the Tribunal de Première Instance, Dakar, during the early twentieth century', *Journal of African History*, 31 (1990), 447–63.

[36] The legible names on the petition are primarily Wolof names. Among the signatories are Alioune Sarr and Birahim Guèye, both men of stature in the *originaire traitant* milieu.

[37] Between 1902 and 1904, Kayes and Medine were part of the colony of Sénégambie-Niger, administered by the Governor-general of French West Africa. The Governor was represented in Kayes by a '*Délégué permanent*' – William Ponty. In 1904 Kayes and Medine became part of the colony of Haut-Sénégal-Niger and Ponty became Lieutenant-governor of the colony.

money to French merchants, the Justice of the Peace would seize their property, sometimes taking cloth, jewelry or other valuable objects belonging to their wives. Such an act, they asserted, interfered with their 'personal status of Muslim'. They argued that in Muslim marriages, men's and women's property remained separate; thus for the judge to seize a wife's property to pay off a husband's debt was contrary to their religion. 'For Muslim merchants', the letter read, 'we have only one marriage contract, the separation of goods, which we cannot modify without violating one of the prescriptions of our religion'.[38] While one of the petitioners' goals was undoubtedly to safeguard their economic interests,[39] they did so by employing an argument about the sanctity of their religion and the inappropriateness of French intervention in the private realm of marriage.

Marriage proved to be a further source of tension between Muslims and the Justice of the Peace. In 1905, the *commandant de cercle* Roux informed Lieutenant-governor Ponty that a group of Muslim 'notables' from Kayes and one from Medine had initiated complaints against the Justice of the Peace's divorce rulings.[40] While the actual texts of the notables' letters could not be located, two individual complaint letters from Muslims against the Justice of the Peace survive in the archives. Because they too involve divorce rulings, they offer insight into the nature of the group complaints.

In March 1905 a Muslim named Koly Guiro sent a letter to the Lieutenant-governor, complaining that his wife, Rokhia, had abandoned him for her lover. Forced to return home once, Rokhia had fled again, this time going to Justice of the Peace Cressent. In Guiro's estimation, Cressent had pronounced a divorce 'contrary to Muslim law'. Guiro protested Cressent's verdict on several grounds. First, he argued that since he and Rokhia had been married according to Muslim law, the affair should have been judged by a *qadi*. Second, he claimed that his wife had never been mistreated and had no cause to flee. In Islamic law, he argued, if the woman precipitates the separation with no just cause, she must reimburse her bridewealth payment.[41]

[38] Letter from Muslim *traitants* to the Delegate, Kayes, 28 Dec. 1903, ANM FA 2M 16.

[39] It was common practice for polygamous Muslim *traitants* with multiple inheritors to put some of their goods in the name of family members, thus preventing their creditors from being able to repossess their goods. Another common practice was investing in jewelry offered as a gift to a spouse, on the understanding that she would resell it quickly in case of need. See Babacar Fall and Abdoul Sow, 'Les traitants saint-louisiens dans les villes-escales du Sénégal, 1850–1930', in Barry and Harding (eds.), *Commerce et commerçants*, 184–5.

[40] Ct. Roux to the Lt.-gov., Kayes, 21 Mar. 1905, ANM FA 2M 16. Although Roux does not specify that the complaint came from *originaires*, the fact that he used the term '*notables*' strongly suggests that the complainants were *originaires*. In administrative documents from this period, lists of '*notables*' usually consist primarily of Senegalese names. See, for example: Notes et fiches de renseignements sur les chefs, notables, et personnages influents, Cercle de Kayes, 1897–1908, ANM FA 2E-55.

[41] Maliki law recognizes multiple types of divorce. One of the most common is *talak*, or repudiation of the wife by the husband. But the woman can also initiate a divorce, an act called *khul'* (translated as 'release', 'removal' or 'separation'). One of the components of *khul'* is that the woman (or someone acting on her behalf) must pay a compensation ('*iwad*) to the husband in return for her release. Guiro's complaint indicates that he believed his divorce to have been *khul'*, thus requiring return of the bridewealth. On Islamic marriage law in a Senegalese context, see Lamine Guèye, *De la situation politique*

Thus Guiro implored the Lieutenant-governor to either reverse the decision, or, if the divorce had to be maintained, to order reimbursement for all that he had spent on Rokhia, which he argued constituted her bride-wealth.[42] Another abandoned husband, Aly Sô, also complained that Cressent had pronounced a divorce without ordering Sô's wife to repay the bridewealth. 'And yet she is the one', Sô's letter read, 'who did the divorce, not me, so I beg you Monsieur Administrator to hear my complaint and help me'.[43] Both Guiro and Sô criticized Cressent's application of Islamic law and challenged his interference in their marital affairs.

It is probably not coincidental that Sô's and Guiro's complaints, along with the group complaints, all occurred within the same month. In fact, it indicates a concerted effort on the part of Muslims to make their discontent with the Justice of the Peace known. Lieutenant-governor Ponty took the Muslims' complaints seriously enough to open an investigation. First Ponty asked Cressent, the Justice of the Peace whose judgments were at issue, to comment. Cressent responded that in his court he followed the 1903 decree to the letter. All judgments involving Muslims were done with the assistance of the *qadi*. The problem, according to Cressent, was not that Islamic law was being ignored, but that the Muslims of the area were accustomed to a corrupted version of it. He claimed that few Muslim notables in Kayes and Medine were literate in Arabic, and that they were 'ignorant of certain principles of Qur'anic law, which with time has become distorted and modified in this region'. Cressent stood by his decisions. Not only were they correctly executed according to French texts, he argued, but they also conformed strictly to Islamic law.[44]

Ponty also asked the *commandant de cercle* Roux to comment. Roux's conclusions, very different from Cressent's, reflect the general divergence of opinion between the magistrature and the administration on the place of Islamic law in the French system. While Roux did not doubt the veracity of Cressent's claim to be upholding the 1903 decree, he questioned the legitimacy of the decree itself, at least with regard to Muslims. His remarks reflected a belief that Muslims in Kayes and Medine enjoyed a special relationship with the French – one they had earned through their loyalty. In making Muslims attend a French court, he asserted, the French had not honored their historical promise to respect Muslim law. Treaties with the French in the nineteenth century had 'led Muslims of Medina [sic] and Kayes to believe that in exchange for their absolute devotion, we would not intervene at all in the questions that touch upon their religion and personal status'. The 1903 decree, Roux continued, was a far cry from that promise. Roux also argued that Islamic law was not simply a code that could be fitted into a French framework, but an integral part of the society's moral fabric. In making the *qadi* simply an advisor to a French judge, the French had

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des sénégalais, originaires des communes de plein excercice (Paris, 1921), 73. For a general discussion of Islamic marriage law, see Joseph Schacht, *An Introduction to Islamic Law* (Oxford, 1964).

[42] Letter from Koly Guiro to the Lt.-gov., Kayes, 20 Mar. 1905, ANM FA 2M 16.

[43] Letter from Aly Sô to the Administrator, Kayes, 21 Mar. 1905, ANM FA 2M 16.

[44] Justice of the Peace Cressent to the Lt.-gov., Kayes, 25 Mar. 1905, ANM FA 2M 16.

deprived him of his moral authority. 'He is no longer called to judge with his conscience', wrote Roux, 'but simply to indicate the sanction specified in the Book by Qur'anic law'. In Roux's opinion, the French had extracted the *qadi* from his context and distorted Islamic justice.[45]

Upon reading Roux's and Cressent's comments, Ponty made a recommendation in favor of restoring Muslim legal privileges, which he forwarded to Governor-general Roume in Dakar along with the Muslims' petitions.[46] Kayesien and Medinois Muslims were not alone in their disgruntlement – Muslims in the communes had also presented grievances following the 1903 decree. The administration responded favorably to Muslim demands, passing a decree in May 1905 that established special Muslim tribunals in St Louis, Dakar and Kayes. Presided over by a *qadi*, assisted by an assessor and a court clerk, these courts were to adjudicate according to Islamic law. Muslim *originaires* had successfully reasserted their right to have their private affairs heard by a *qadi*.[47]

As Sarr and Roberts have demonstrated, the decision to create Muslim tribunals in 1905 must be understood as the product of a decades-long, three-way struggle between the administration, magistrates and the *originaires* in Senegal. In particular, they argue that the 1905 decree represented an administrative 'counterattack' on the magistrates' assimilationist attitudes towards Muslim *originaires*, as manifested in the 1903 decree.[48] But the role played by Muslim *originaires* in Kayes and Medine also needs to be integrated into this story. While it is impossible to say exactly how much weight these grievances from Medine and Kayes carried, this group clearly possessed enough influence to make the administration listen. Besides the weight they pulled as *traitants* and auxiliaries to the administration, they had acquired the skills to make successful appeals to French authority. Literacy in French (for some) allowed them to produce petitions and written complaints, and they understood the importance of submitting appeals through the proper channels in the colonial bureaucracy. But just as importantly, they were able to frame their arguments in a manner that resonated with the administration. Their claims to possess an autonomous religious domain beyond the reach of public (French) authority were acceptable within the framework of administrative thinking at the time. This is exemplified by *commandant* Roux's comments that the French had extracted the *qadi* from his moral context, and his chagrin that they had not upheld their historical promise to 'not intervene at all in the questions that touch their religion and personal status'.[49] Yet by 1913, such arguments would no longer resonate with the administration. The change in administrative attitude towards Muslims in Kayes and Medine between 1905 and the 1913 closure of the court was at least partly a result of the administration's experience with the Muslim tribunal of Kayes in those years.

[45] Ct. Roux to the Lt.-gov., Kayes, 29 Mar. 1905, ANM FA 2M 16. [46] *Ibid.*
[47] Quellien, *Politique*, 231–4. [48] Sarr and Roberts, 'Jurisdiction', 137.
[49] Ct. Roux to the Lt.-gov., Kayes, 29 Mar. 1905, ANM FA 2M 16.

THE MUSLIM TRIBUNAL OF KAYES, 1905–1913

Throughout its existence, the Muslim tribunal of Kayes was staffed entirely by Muslim *originaires* of the communes.[50] Yet subtle differences in background and education among the staff members generated conflict. The reoccurring tensions between Muslims in this court were symptomatic of larger transformations in Islamic identities in the colonial period, as new and competing conceptions of what it meant to be a Muslim emerged.[51] But the ongoing conflicts undermined French claims that they were imposing law and order, making the court and its staff a thorn in the administration's side. From their specific experience with the Muslim tribunal of Kayes, administrators drew lessons about the character of Muslims more generally – lessons that in turn influenced policy-making on a larger scale. While a full history of the court is beyond the scope of this essay, an indication of the nature of the conflicts provides context for understanding the court's closure in 1913.

The hybrid, Franco-Islamic nature of the court posed a staffing challenge. In order to ensure that the tribunal would enjoy legitimacy with Muslims, the administration chose *qadis* from among Muslims known within the *originaire* community for their Islamic education and connections. The first *qadi*, Waly Bâ, was an *originaire* from St Louis who had come to Medine as a *traitant* in the 1870s and stayed on. In Kayes he headed a Qur'anic school and was known as a learned Muslim.[52] But Bâ was illiterate in French. For record-keeping and bureaucratic duties, the administration recruited *originaires* directly from the communes with French education. The court's first assessor – Souleyman Diop – had worked as a copyist and assessor in courts in St Louis and Dakar. Literate in French, Diop had many years of experience in Franco-Islamic institutions.[53] Thus the Muslim tribunal of Kayes brought together Bâ, who was embedded in the Upper Senegal valley network of Muslim *traitants*, and Diop, the recent arrival from the communes with French education and the training of a civil servant.

Soon after Diop's arrival in Kayes, Bâ accused him of undermining his authority.[54] Diop countered with claims of Bâ's illiteracy and incompetence

[50] While the court was established to satisfy the demands of Muslim *originaires*, it appears also to have served a wider Muslim population. The administration solicited the input of Soninke and Fulbe Muslims, for example, when choosing the first *qadi*. No court registers from the Muslim tribunal of Kayes could be located; as a result, only the cases that became the object of controversy or complaint survive in the archival record. Thus although we know much about the personnel conflicts that occurred in the court, we know little about its daily operations or procedures. Due to the lack of records, it is impossible to say what percentage of the court's clientele were not *originaires*.

[51] See Robinson and Triaud (eds.), *Temps des marabouts*.

[52] Paul Marty credits him with having helped to spread the Tijaniyya Sufi order in the area. According to Marty, Bâ had been conferred status of *muqaddam* by Sidi Mohammed Guennoun. Marty, *Etudes sur l'islam et les tribus du Soudan : la région de Kayes – le pays bambara – le sahel de Nioro* (4 vols.) (Paris, 1902), IV. As Mamadou Diouf has shown in his case study of Hamet Gora Diop, a Medinois *traitan*t of the same generation as Bâ, Islamic learning and trade were often a lucrative combination. Diouf, 'Traitants'.

[53] Souleyman Diop, 'Mémoire', 13 Sept. 1905, ANS M 245.

[54] The history of Waly Bâ's term as *qadi* has been reconstructed from the following series: Tribunal musulman: Personnel – Révocations, 1905–15, ANS M 245; Correspondance: Cercle Kayes, 1882–1920, ANM FA 2M 16.

as a *qadi*. After a disciplinary action was taken against Diop, a deluge of letters from local Muslims arrived at the administrator's office, all expressing grievances against Bâ. The administrator suspected Diop of having engineered the letter-writing campaign with the aim of deposing the *qadi* and taking his job. Diop vigorously defended himself in a lengthy '*Mémoire*' to the administration, in which he carefully documented his own history as a clerk and again stressed Bâ's illiteracy in French. Despite Diop's pleas, the administrator decided to dismiss him and put him on a boat for St Louis. But neither did the *qadi* escape sanction – he too was dismissed in 1906.

At this juncture, the administration attempted to solve the tribunal's problem simply by replacing Bâ and Diop with new men. But in restaffing the tribunal they again paired Muslims of different backgrounds, with similar results. The second *qadi*, Amadou N'Diaye Hane, came from a distinguished St Louisien Muslim family known for its tradition of Islamic legal learning and service in Franco-Islamic legal institutions.[55] But once again the administration recruited a French-educated Muslim from the Communes to serve as clerk. Conflict between the two men took much the same pattern it had during the previous *qadi's* term. The clerk accused the *qadi* of taking bribes and neglecting to follow proper procedure. The *qadi* defended his authority as a leader of the Muslim community and accused the clerk of insubordination.[56]

The crossfire of accusations between the two provoked a series of investigations – from the local administrator all the way to the *Procureur-général's* office in Dakar. These authorities concurred that the tribunal was 'in a state of anarchy'.[57] Unlike in 1906, however, when personnel conflicts had been resolved by replacing the staff, in 1912 the proposed solution was to abolish the tribunal altogether and replace it by adjoining Muslim assessors to the Justice of the Peace – in effect restoring the situation that had existed prior to 1905.[58] A number of factors explain the administrative consensus about closing the tribunal. By 1912, *originaires* from Senegal had lost some of the influence they had enjoyed in 1905. Kayes and Medine had declined economically in the early twentieth century as the colony's center of gravity shifted southeast to Bamako, which replaced Kayes as the capital in 1908. Similarly, gum, once a prime Senegal River commodity, was being replaced by groundnuts grown in the western Senegambia. The decline of the towns as trade centers led to the exodus of some of the Senegalese

[55] Hane's family was part of that Francophile Muslim elite that had benefited from Faidherbe's Islamic policy in the nineteenth century. His grandfather had been *qadi* of an 'arbitral tribunal' for Muslims in St Louis, while his father, Amat N'Diaye Hane, had been '*Qadi-Tamsir*' of the Muslim tribunal in St Louis from 1857 to 1880, and was one of the leading Muslim figures in the town. In the 1860s the administration had funded Amat Hane's pilgrimage to Mecca. See Ndiaye Seck, 'Les tribunaux musulmans du Sénégal de 1857 à 1914' (Master's thesis, University of Dakar, 1984); David Robinson, *Chiefs and Clerics : Abdul Bokar Kan and Futa Toro, 1853–1891* (Oxford, 1975), 106; and Robinson, 'French "Islamic" policy', 421.

[56] The history of Amadou N'Diaye Hane's term as *qadi* has been reconstructed from the following series: Justice indigène: Tribunal musulman de Kayes, 1910–13, ANM FA 2M 47. [57] Administrator, Kayes, to Lt. gov., 23 Nov. 1910, ANM FA 2M 47.

[58] These reports are found in ANM FA 2M 47: Administrator to the Lt. gov., 23 Nov. 1910; Justice of the Peace de Coston to the Procureur-général, 26 Nov. 1912; and Report from Justice of the Peace de Chelle to the Procureur-général, 9 Feb. 1913.

Muslims who had been so influential in the establishment of the court and the Muslim community. Those who remained may not have pulled the same weight with the administration, whose economic interests lay elsewhere in the colony. But in addition to these local factors, there were larger changes afoot. The first was a system-wide reform of the justice system in 1912, which was part of a general administrative trend since the turn of the century towards diminishing the privileged status of the *originaires*. While the 1912 reform made no specific mention of the Muslim tribunal of Kayes, it did call its status into question. The second was an administrative reevaluation of the nature of Islam in West Africa. We must now shift back to the broader context of Federation-wide policy to understand how local events in Kayes converged with larger policy changes to lead to the dissolution of the tribunal in 1913.

THE DECREE OF 1912 AND ITS CONSEQUENCES

August of 1912 marked the first wholesale reform of the justice system since 1903. The mind behind the reform was that of William Ponty, former Lieutenant-governor of Haut Sénégal-Niger, who had become Governor-general of French West Africa in 1908. Ponty's experience in the field had led him to believe that the upheavals of the nineteenth century (such as Islamic *jihads*) had destroyed an earlier tribe-based society, allowing tyrannical African chiefs (often Muslim) to rule over people of different ethnic groups. The French had inadvertently perpetuated this situation, he believed, by creating arbitrary administrative units and heading them with African chiefs who were strangers to their subjects. Ponty articulated a distinctive administrative philosophy – what he termed the '*politique des races*' – based on the idea that each race or ethnic group had a unique spirit. He called for the removal of chiefs who were strangers to their subjects and for a return to ethnic purity.[59]

The influence of the *politique des races* was manifest in the 1912 reform of the legal system, which restructured legal jurisdictions more rigorously to respect the ethnic and religious identities of the constituents. Whereas the 1903 decree had distinguished between urban areas under French law and rural areas under customary law, the 1912 reform brought all African subjects under the jurisdiction of native courts. Once again, however, an exception was made for the communes, where Africans remained under the jurisdiction of French courts.[60] To further encourage ethnic particularity the decree proposed a separate native court for each significant ethnic or religious group in any area – as a result, there would no longer be one native court in each jurisdiction, but as many courts as there were ethnic groups.[61]

But the 1912 decree did more than simply reshuffle legal jurisdictions. By implication, it also challenged the privileged status of the *originaires* as

[59] On William Ponty, see Conklin, *Mission*, 107–9.

[60] Article 1 of the decree reads: 'In the territories *not included* within the jurisdiction of the *Tribunaux de Première Instance* [French courts] of Senegal, native justice is administered with regard to individuals who are *not* constituents of French courts …' (emphases mine). Décret du 16 août 1912, portant réorganisation de la justice indigène en Afrique occidentale française, *Journal officiel de l'Afrique occidentale française* (Rufisque, 1912).

[61] Conklin, *Mission*, 119–20.

'citizens'. As we have seen, throughout the nineteenth century the *originaires* were considered citizens, even though the relevant legislation was somewhat ambiguous on the subject. But at the turn of the century as the African electorate in the communes grew more politically assertive, the administration reacted by trying to take away their voting rights – in fact profiting from the ambiguity of the nineteenth-century legislation to argue that *originaires* had never truly been citizens.[62] On these grounds, the Governor of Senegal attempted to strike African voters from the electoral roles in 1906 and 1907. While mass striking was avoided at that time because of the potential resentment it would provoke, the question of the *originaires*' 'citizenship' had been opened. A 1910 decision dealt a further blow by enfranchising French and Creoles anywhere in the Protectorate, but prohibiting *originaires* from voting outside the communes. The 1912 legal reform was the final nail in the coffin. It decreed that all African subjects were to attend native courts and it defined citizens exclusively as those who had gone through a naturalization process.[63] This of course excluded most *originaires* from citizenship, for their claims to be citizens had been based upon birth in one of the communes rather than upon a formal process of naturalization. The 1912 decree was politically explosive. It appeared during a period of growing frustration among the African electorate, who felt they were being systematically excluded from politics by French and Creole interests.[64]

Although the implications of the decree for their status as citizens provoked a bitter reaction on the part of *originaires*, in actual terms the decree had little effect upon which courts *originaires* within the communes would use. As in 1903, because they lived within the jurisdiction of the French courts in the communes, they were not subject to native justice. By contrast, the situation of *originaires* outside of the communes changed significantly in 1912. The decree eliminated the exception that had been made for urban Africans in towns like Kayes, who came under the jurisdiction of the Justice of the Peace.[65] In Kayes and Medine this meant that the *originaire* population that had previously been under the jurisdiction of the Justice of the Peace (and after 1905, the Muslim tribunal), now became constituents of native courts.[66]

[62] On the French reaction to the *originaires*' growing political assertiveness, see Crowder, *Senegal*, 21–34; Johnson, *Emergence*, 80–4; and Idowu, 'Assimilation'.

[63] Décret du 16 août 1912.

[64] Johnson, *Emergence*, 84, 123–5.

[65] In the initial draft of the decree, Africans in the jurisdiction of the Justice of the Peace in Kayes and Bamako were included, along with Africans in the communes, as being under the jurisdiction of French courts. However, upon reading the draft, Lieutenant-governor Clozel of Upper Senegal-Niger recommended that Africans in Kayes and Bamako be subject to indigenous justice. He called the exception that had brought them under the jurisdiction of French courts a 'last vestige of the theories of assimilation that no one today would dream of defending'. And he argued that it was unfair to non-Muslims, who did not enjoy the advantage of their own court in Kayes. The final version of the decree reflects his input. See comments from Lt. gov. Clozel to Gov. Ponty on draft of decree reorganizing indigenous justice, no date, ANM FA 2M 460.

[66] Removing *originaires* outside the communes from the jurisdiction of French courts also meant that whenever outside of the communes, *originaires* were subject to the rule of the *indigénat*, or summary administrative justice. This meant they could be punished for any infraction against colonial codes without recourse to a trial. *Originaires* greatly feared

The 1912 decree made no specific mention of the status of the Muslim tribunal in Kayes. Although under investigation because of the personnel conflicts, the court continued to function beyond the enactment of the decree in August 1912. But in November of that year Governor-general Ponty argued that the Muslim tribunal should be dissolved because the 1912 decree had made it an anachronism. Since Muslims outside the communes were no longer constituents of the French courts, he reasoned, there was no need for the special Muslim tribunals, which had been established as 'annexes' to the French courts simply to accommodate Muslims. Under the new decree, he argued, all Muslims outside the communes – urban or rural – should go to native courts.[67]

But although he used a legal technicality to justify the court's closure, Ponty's remarks reveal something more: the sentiment that Muslim *originaires* in Kayes and Medine did not deserve to be accorded special status. Recall that as Lieutenant-governor in Kayes in 1905, Ponty had been supportive of Muslim complaints against the Justice of the Peace, even endorsing their claim for their own court. By 1913, however, he saw their situation differently. First he argued that the number of Muslims in the Kayes area was declining, and he found it 'shocking' that they were allowed an exceptional jurisdiction. And his tone revealed a disdain for Muslim privilege: 'And you only need to know the mentality of the *marabouts* of this land to recognize that they exploit this situation in the eyes of the fetishists by flaunting their privileged situation'.[68] Ponty's changed attitude towards Muslims in Kayes and Medine was part of a larger transformation taking place around 1912 in administrative views on Islam.

In the years preceding the First World War an important shift brought about by local and global factors was occurring in French Islamic policy.[69] During the nineteenth century, administrators like Faidherbe had generally viewed Islam as a civilizing force – an intermediate step between fetishism and French civilization. As we have seen, certain Muslims had become valued allies of the French as traders, soldiers, agents and interpreters. But as civilian rule replaced conquest, administrators began to express increasing anxiety about the power that Muslims had acquired – both economically and politically – particularly in areas where they were strangers.[70] On the eve of the First World War with the security of the empire under threat, Muslims

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the *indigénat*. See Johnson, *Emergence*, 83–84; A. I. Asiwaju, 'Control through coercion: a study of the indigénat regime in French West African administration, 1887–1946', *Bulletin de l'institut fondamental d'Afrique noire, series B*, 41 (1979), 35–75.

[67] Comments from Governor Ponty, 5 Nov. 1912, ANM FA 2M 236. [68] *Ibid.*

[69] For a comprehensive treatment of French Islamic policy, see Christopher Harrison, *France and Islam in West Africa, 1860–1960* (Cambridge, 1988). See also Robinson, 'French "Islamic" policy'; Donal Cruise O'Brien, 'Towards an "Islamic policy" in French West Africa', *Journal of African History*, 8 (1967), 303–16; Jean-Louis Triaud, 'La question musulmane en Côte-d'Ivoire, 1839–1939', *Revue française d'histoire d'outre mer*, 61 (1974), 542–71; Triaud and Robinson (eds.), *Temps des marabouts*.

[70] What the administration perceived as an increase in Islamic activity and millenarianism throughout French West Africa during these years also fueled their unease about Muslims. For examples of administrative anxiety over Islam, see Harrison's case study of the Futa Jallon between 1909–11 in *France and Islam*, ch. 5; and Triaud, 'Question musulmane', 555.

became objects of suspicion because of administrative fears of pan-Islamic movements.[71] Around the same time, scholar administrators such as Maurice Delafosse were producing studies that suggested that Islam in West Africa was not pure Islam, and was profoundly influenced by the custom of different ethnic groups. This diluted, ethnically-defined perception of Islam in West Africa, known in administrative circles as *Islam noir*, would become the cornerstone of French Islamic policy in the interwar period.[72] In this changing climate, the Muslim tribunal of Kayes appeared to the administration as a holdover from an era in which Muslims had been singled out for favored treatment. The personnel conflicts raging within the Muslim tribunal of Kayes seemed to confirm that Muslims were undeserving of privilege, and that this institution had in fact been a mistake.

'WE ARE TO BE ASSIMILATED TO FETISHIST SAVAGES': MUSLIM PROTESTS AGAINST THE DECREE OF 1912

Although by March of 1913 no official decision had been made to close the Muslim tribunal of Kayes, Kayesien and Medinois *originaires*, like their counterparts in the communes, were aware that their status had changed with the 1912 decree. As in 1905, the experience of *originaires* residing outside the communes enriches the larger narrative. Most accounts of the 1912 decree and its aftermath have focused upon the affront to the *originaires*' citizenship, and upon their loss of access to French courts outside the communes.[73] As Lamine Guèye, who participated in the events, later recalled, 'we were threatened with losing, along with the right to vote, the right of being judged by French tribunals, the only ones we would have wanted, because they alone presented serious guarantees for the constituents'.[74] The *originaires*' resistance to the 1912 decree, then, is often seen as an attempt to maintain the institutions of assimilation that had granted them rights in the nineteenth century, and which the administration was now working hard to dismantle. The protests of *originaires* in Kayes and Medine shed a different light on the significance of the 1912 decree. They opposed the decree as vigorously as their counterparts in the communes, yet their arguments had little to do with citizenship, voting rights or the desire to use French courts. Instead, their arguments rested primarily upon their identity as Muslims.

In March of 1913, a group of Muslim *originaires* in Kayes and Medine submitted a petition to the Lieutenant-governor. In it, they reviewed the history of Muslim legal status under the decrees of 1903 and 1905. 'However', they continued, 'the new decree of 16 August 1912 reforms this [previous] jurisdiction by suppressing the decree of 1905 which had created a tribunal … In fact, according to the terms of the new decree it is the subdivisional tribunal alone that hears all affairs between natives – civil, commercial, correctional or marriage, divorce, succession, debt. Fetishists as well as Muslims, and whatever the origin of the plaintiffs'. The petitioners' language is worth quoting at length:

As a consequence [of the Decree of 1912], we Wolof Muslims, who came from Senegal to bring commercial and industrial knowledge to this new country, we who

[71] Harrison, *France and Islam*, 29–56; Triaud, 'Question musulmane', 558–562.
[72] Harrison, *France and Islam*, 94–117.
[73] See Johnson, *Emergence*, 83–4; Crowder, *Senegal*, 26. [74] Guèye, *Situation*, 30.

are for the most part literate, [who] exercise a profession or a trade and who for a long time have been used to a modern civilization, we find ourselves currently being treated following this new decree like the most backward natives of the Soudan. In effect these subdivisional tribunals are composed of natives of the Bambara and fetishist races, and because they apply fetishist customs, the population of Kayes and Medine, which is already used to the new morals of an enlightened civilizing justice, and ourselves … we find ourselves returned to the laws and customs of previous generations.[75]

The petitioners ended by urging the Lieutenant-governor to maintain the Muslim tribunal of Kayes.

This petition was part of a wider effort among *originaires* throughout French West Africa.[76] In the same month, Senegalese *originaires* residing in the Ivory Coast submitted a petition that made similar arguments, while being even less charitable towards non-Muslims:

We, the sons of the companions of the French conquerors of Senegal and the Soudan, we who have been called upon everywhere in French West Africa as the indispensable element of economic penetration and organization, we are to be assimilated to fetishist savages, to barbarians who, in the mystery of the great forest, still practice human sacrifice; in addition, it forces us to be judged by them, following *their customs*, and not at all following our own Qur'anic law, of which the high moral spirit is completely foreign to them … It is a profound assault to our conscience and dignity that our situation will be, more and more, [similar to] that of the thousands of workers recruited by Commerce, Industry, Public Works, and employed outside of their land of origin, of those thousands of merchants who, by railroads, by navigation lines, by roads soon to be opened, are crisscrossing all of French West Africa. Their social status is, in effect, profoundly different from that of the populations in the middle of whom they temporarily live, and who, under the aegis of French authority, arbitrarily apply to them customs contrary to their religious conceptions, and social and morally inferior to the written laws that govern them in their communities of origin.

The petitioners went on to characterize non-Muslim custom as unsystematic and subject to no controls. They vividly described the fetishist practice of trial by ordeal – 'such as it was practiced in the Middle Ages' – where they would be brought, hands and feet tied, with neither legal representation nor recourse to appeals. The indigenous judges, they claimed, possessed 'a mentality so inferior to ours' and 'take their inspiration from the crude practices and beliefs of sorcery'.[77]

These petitions reveal that the reactions of *originaires* throughout French West Africa to the 1912 legal reform were more complex than simply a quest for political assimilation. Both petitions are built around a rhetorical opposition between civilization and barbarism. Using tropes of barbarism such as human sacrifice and 'the mystery of the great forest', the petitioners contrasted themselves with the 'fetishist savages'. Their rhetoric resonated with French rhetoric of the *mission civilisatrice* – indeed they even used the language of assimilation to complain of being 'assimilated to fetishist

[75] Petition to the Lt.-gov., Koulouba, 12 Mar. 1913, ANM FA 2M 236.

[76] *Originaires* in Senegal petitioned the administration in Aug. 1913. See Sarr and Roberts, 'Jurisdiction', 138.

[77] Petition of *originaires* in Ivory Coast, 18 Mar. 1913, FM 1/AFFPOL/1851, Dossier 10, Archives Nationales, Section Outre-Mer (henceforth ANSOM).

savages'. But to read these petitions simply as by-products of the *originaires*' desire to be treated as assimilated Africans is to overlook ways in which the French rhetoric of civilization converged with precolonial distinctions between Islam and paganism.[78] The petitioners claimed to possess a written law with a 'high moral spirit', while non-Muslims possessed only arbitrary customs derived from 'the crude practices and beliefs of sorcery'. The vitriol aimed at 'the most backward natives of the Soudan' had roots that went deeper than French occupation.

Yet there is an additional layer of meaning to these petitions. In the context of Kayes and Medine, many of the so-called 'most backward natives of the Soudan' were also Muslims. Not only were *originaires* differentiating themselves from pagans; they were also asserting a distinctive Muslim *originaire* identity that linked them to progress and modernity.[79] They identified themselves as Senegalese Muslims – literate traders and professionals who had come to participate in the economic development of 'this new country'. Similarly, the Ivorian petitioners stressed their economic importance as 'the indispensable element of economic penetration and organization', part of 'those thousands of merchants who, by railroads, navigation lines, by roads soon to be opened, are crisscrossing all of French West Africa'.[80] The *originaires*' case to the administration was built, not upon claims to be assimilated Africans, but upon a contextually specific Muslim identity – one that had allowed them to preserve their privileges as well as an autonomous space for their religion.[81] An attack on the Muslim tribunal of Kayes was also an attack on this identity, and the symbolism of being sent to native courts was clear. But unlike in 1905, the administration did not prove receptive to their arguments.

CUSTOMIZING ISLAM: CLOSURE OF THE MUSLIM TRIBUNAL OF KAYES

The administrative change in attitude towards Muslims outside of the communes emerges clearly from testimony given by Lieutenant-governors in the General Council in 1911, prior to the passage of the 1912 decree. When asked to comment on whether *originaires* outside the communes should continue to attend separate courts, they replied with an emphatic 'no'. In

[78] Human sacrifice, for example, had long been 'an index of African barbarity' in European minds. See Robin Law, 'Human sacrifice in pre-colonial West Africa', *African Affairs*, 84 (1985), 53. But Muslims also condemned the practice, and it was not a uniquely European trope of barbarism. Law, 'Human sacrifice', 61.

[79] Both petitions insist that being subjected to fetishist customs would be a regression – 'a return to the laws and customs of previous generations'.

[80] Petition of *originaires* in Ivory Coast, 18 March 1913, FM 1/AFFPOL/1851, Dossier 10, ANSOM.

[81] The idea of the *originaires*' 'autonomous space' is central to Diouf's analysis of Muslim efforts to establish a Muslim tribunal in St Louis. 'The claims to institute a Muslim tribunal', he writes, 'must not be read as the struggle for a judicial regime inscribed in a religious tradition, but the circumscription of a space of production for an indigenous identity, shielded from the violence of the domination and the cultural arrogance of colonialism', Diouf, 'Assimilation', 847. In his work on *originaire traitants* he also argues for the existence of an autonomous commercial space. See '*Traitants*', 144–7.

their responses, they attacked the morality of *originaires* outside the communes, and by extension, questioned their claims to be more 'civilized' than non-Muslims.[82] Lieutenant-governor Angoulvant of the Ivory Coast noted:

> The Senegalese have a tendency to believe themselves superior and have manifested that pretension by the most absolute scorn of the customs and usages of the land where they come to do commerce. The fact that they take part in the election of the four communes does not confer upon them a more advanced civilization.

The Lieutenant-governor of Dahomey painted an unflattering portrait of Senegalese Muslims' behavior in his colony. A Senegalese of the communes was indistinguishable from a Bambara or Dahomean, except that, 'Maybe he has a more marked tendency to ignore laws and rules; maybe also, while always remaining a good Muslim, he's more often drunk, querulous and a gambler, but neither his sentiments, nor his intelligence places him above the blacks of local origin. Thus there would be no motive for Senegalese outside of their country to be given special tribunals'. Lieutenant-governor Clozel of Haut-Sénégal-Niger commented upon the dangers of 'raising Muslims to a special category of constituents intermediate between Europeans and fetishists'. In fact, he invoked the experience of the Muslim tribunal of Kayes as an example of the perils of granting legal privilege to Muslims: 'That is why I [have] demanded the suppression of the Muslim tribunal of Kayes, an institution that experience has today condemned, and the existence of which is the best proof of our weakness in resisting the solicitations of Muslims … It is time,' he asserted, 'to bring a stop to these anomalies and jurisdictions of exception'.[83]

And Governor-general Ponty was determined to do so by closing the tribunal in Kayes. He understood, however, that *originaires* in Kayes and Medine needed convincing that closure of the court was in their best interest. He suggested that Clozel emphasize to Senegalese Muslims that they would get an ethnic native court all of their own, which would better serve their needs than had the Muslim tribunal. What would make this court different from the Muslim tribunal, he argued, is that it would judge 'not following Qur'anic law, but [according to] Muslim customs of the land which form a general rule for these natives'.[84] The distinction is an important one, for it reveals the influence of the *politique des races* and *Islam noir*. Ponty's attitude had changed markedly from 1905, when he had looked favorably on Muslim claims to a separate religious law. Now, according to Ponty, Muslims in Kayes and Medine did not even possess a law – which conferred universality on their religion – but rather one more variation on local custom. In August of 1913 both the *qadi* and the clerk, whose fates had been hanging in the balance, were dismissed and the Muslim tribunal of Kayes was replaced with a new native court. While Muslims once again protested this change the

[82] Triaud notes the tendency after 1905 of administrators in the Ivory Coast to critique Muslims on moral grounds, characterizing Islam as 'decadent' or in decline. Triaud, 'Question musulmane', 552–5.

[83] The Lieutenant-governors' testimony was taken in June 1911, and invoked again in debates in 1914 following the *originaires*' outcry over the 1912 decree. Partial text of the testimony can be found in 'Note pour le ministère', 17 Feb. 1914, FM 1/AFFPOL/1851, Dossier 10, ANSOM.

[84] Gov. Ponty to Lt.-gov. Clozel, 13 June 1913, ANM FA 2M 236.

administration held firm. After the court's closure, one administrator expressed his satisfaction that the 1912 decree had finally ended 'the scandals of the Muslim tribunal of Kayes'.[85]

After 1912, the history of the legal status of *originaires* outside the communes diverges from that of their counterparts within the communes. In August of 1913 – the same month as the *qadi* and clerk's dismissal – *originaires* throughout French West Africa put even more pressure on the Minister of Colonies, requesting that the 1912 decree be repealed.[86] In the lead-up to the 1914 election of Senegal's Deputy to the National Assembly, the African electorate harshly critiqued the incumbent Carpot (a Creole) for his involvement in passage of the decree. In fact, repeal of the 1912 decree became the rallying cry for Blaise Diagne's historic and ultimately successful run for the Deputyship in 1914 as the first African candidate.[87] Under pressure, the administration agreed to modify Article 2 of the 1912 decree, by adding that those born in the communes would be under the jurisdiction of French tribunals while in the communes, as well as when within the jurisdiction of the French tribunals in seven major population centers, including Kayes. Although only a slight modification of the original, it carried the weight of a symbolic victory for *originaires* in the communes.[88] But for *originaires* in Kayes and Medine, whose goal had been to keep the Muslim tribunal, modification of the decree was no victory. Closure of the Muslim tribunal of Kayes powerfully symbolized their loss of status as a privileged group.

CONCLUSION

Located geographically on the colonial frontier, Muslim *originaires* in Kayes and Medine were also poised on a symbolic frontier between two models of colonial rule. In the nineteenth and early twentieth centuries they had benefited from the legacy of assimilation and the template of Franco-Islamic relations set in Faidherbe's era. The historic weight of that legacy stood behind them in 1905, as they made arguments to the administration that they possessed a private religious domain beyond the reach of French authority. They drew additional strength from their position as Muslim traders, whose economic success had occurred in the context of French conquest and expansion into the Soudan. By 1913, however, conquest had ended, and the administration of French West Africa had entered a new phase. With colonial rule firmly entrenched, the administration turned to making the colonies economically self-sufficient. In this changed context, the administration sought new allies in customary chiefs, whose cooperation was essential for labor recruitment and taxation. The dismantling of the institutions of assimilation, begun during Ponty's time, continued after the First

[85] Unsigned note, 1913, FA 2M 236. [86] Sarr and Roberts, 'Jurisdiction', 137–8.

[87] Johnson, *Emergence*, 159, 162. Diagne made good on his campaign promises, and with passage of the 'Blaise Diagne Laws' of 1915 and 1916, he finally obtained legislative clarification of the *originaires* status: they were French citizens.

[88] Guèye, *Situation*, 30. Sarr and Roberts note, however, that even for *originaires* in the communes it was a 'Pyrrhic victory' because whenever they were outside of the jurisdiction of the French tribunals the burden of proof of their birth in the communes was incumbent upon them, and this was not always easy to establish. See Sarr and Roberts, 'Jurisdiction', 138.

World War, when the policy of 'association' came to be accepted in French colonial circles.[89] Association was based on the idea that Africans could not assimilate, and that it was preferable to rule through existing African institutions. Its proponents claimed that association respected the integrity of custom and allowed Africans to develop along their own lines; association, however, also allowed the colonial power to utilize pre-colonial forms of coercion. As Mamdani has shown, a similar shift 'from a civilized to a tribal orientation' took place in colonial regimes throughout Africa after the First World War.[90] The trademark of association and its counterparts – British indirect rule and apartheid – was 'a shift from territorial to institutional segregation', accompanied by 'an expanded notion of the customary'.[91] The history of the Muslim tribunal of Kayes and its replacement with an ethnic native court illustrates the implications of this ideological change in a local context. While in 1905 Muslim *originaires* in Kayes and Medine had belonged to the domain of the universal and the civilized, by 1913 the definition of the customary had sufficiently expanded to include Muslim *originaires* residing on the colonial frontier.

[89] As Conklin points out, the concept of association was not new in the 1920s – it had been alive in colonial circles since the late nineteenth century. However, it only began to be implemented as an official colonial policy in French West Africa after the First World War: Conklin, *Mission*, 187–8. [90] Mamdani, *Citizen*, 77. [91] *Ibid*. 77, 286.