The Quality of Being French versus the Quality of Being Jewish: Defining the Israelite in French Courts in Algeria and the Metropole

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Modern citizenship is seen as a product of sovereignty transferring from the sovereign to the people who make up and participate in the nation, and, therefore, the period from the mid-eighteenth to the early nineteenth centuries, with its many popular revolutions on both sides of the Atlantic, is seen as a key time in the development of this idea.[1] Even so, France had been "naturalizing foreigners"—in other words turning foreigners French—since the mid-seventeenth century. Between the reign of Louis XIV (1643–1715) and the French Revolution of 1789, the French state naturalized thousands of people, and in doing so created the legal categories of foreigner, French national, and foreign-born citizen.[2] At the same time, eighteenth-century lawyers and others in the French Enlightenment "republic of letters" idealized the notion of the "citizen" because of its resonance of ancient Greece and Rome, and linked the citizen to membership in the

1. Rogers Brubaker argues that although the French Revolution did not create modern citizenship *ex nihilo*, the bourgeois, democratic, national, and bureaucratic revolutions it spurred articulated the political rights of citizens, legally rationalized the distinction between foreign and French, and tied citizenship to state sovereignty with a coherence that was a first for any state. See Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, MA: Harvard University Press, 1992), 35–49.

2. See Peter Sahlins, *Unnaturally French: Foreign Citizens in the Old Regime and After* (Ithaca, NY: Cornell University Press, 2004).

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French nation and the *patrie* (from the Latin *patria*, meaning native country, which stems from *pater*, meaning father).[3]

Though one can point to continuities in terminology before and after 1789, the categories and terms denoting membership in the body politic and shared sovereignty took on different meaning because of the French Revolution. That which under absolutism was a legal category that granted certain privileges, "citizenship" became for French revolutionaries a political category that expressed new ideas about membership in the nation and society. The National Assembly's repudiation of privilege by birth on August 4, 1789 thereby inverted the legal meaning of citizenship in France, tying it directly to the Enlightenment understanding of citizenship as equal membership in the nation and the source of its sovereignty.[4] That membership came to be expressed through participation in the nation via discrete political rights, such as voting, reserved only for active male citizens. Thus, in determining who should and should not be included as participants in governance and the exercise of sovereignty, post-revolutionary citizenship also changed the meaning of other political and legal categories.

Examining the enfranchisement of French Jews provides an interesting view into both the meaning of French citizenship and the evolution of the *qualité de Français* (the "quality of being [a] French [person]") after the Revolution, because the Jews of France were made French citizens by decree on multiple occasions. Most French Jews existed as a legal anomaly before the French Revolution, neither as foreigners (under the legal category "aliens") nor as "natural Frenchmen," but rather as distinct national communities (such as in Bordeaux, Provence, Metz, Alsace, or Lorraine).[5] The Revolution brought a dramatic change in Jewish rights because first, on January 28, 1790, all Spanish, Portuguese, and Avignonese Jews were granted full rights as active citizens, and then, on

3. David Avrom Bell, *The Cult of the Nation in France: Inventing Nationalism, 1680–1800* (Cambridge, MA: Harvard University Press, 2001), 51, 62. Sahlins argues that Denis Diderot's entry for "citizen" (*citoyen*) in the famed *Encyclopédie* he edited with Jean d'Alembert (published 1752–77) "broke dramatically with French legal culture" by identifying society itself, rather than the king, as conferring the rights and liberties of citizenship (with many categories excluded from that citizenship). Sahlins, *Unnaturally French*, 218.

4. According to Michael Fitzsimmons, the repudiation of privilege by the National Assembly not only transformed the meaning of citizenship but also "left a vacuum in governance that came to be filled by law." Michael P. Fitzsimmons, "The National Assembly and the Invention of Citizenship," in *The French Revolution and the Meaning of Citizenship*, eds. Renée Waldinger, Philip Dawson, and Isser Woloch (Westport, CT: Greenwood Press, 1993), 33.

5. Sahlins, *Unnaturally French*, 53.

September 3, 1791, the National Assembly annulled all restrictions to citizenship for Jews.[6] Despite the sweeping and universal intentions of the National Assembly in 1791, this emancipation, as it came to be called, was attenuated by Napoleon's "Infamous Decree" of 1808, which introduced certain economic and residential restrictions on the Jews as a group, and later, this emancipation did not apply at all to the Jews of North Africa after France conquered Algiers in 1830. Thus, Jews were made French in two separate contexts: on the first occasion, during the approximately three decades between the French Revolution and the end of the Napoleonic restrictions in 1818, and second, during the four decades between the French conquest of Algiers and the Crémieux Decree in 1870 that naturalized Algeria's Jews living in areas under French control as French citizens.[7]

Excepting a small number who applied for French citizenship before 1870, Algerian Jews became French citizens by decree, and, therefore, their absorption into the body politic resulted directly from the French imperial project (and was cemented definitively by their repatriation to France following Algerian independence).[8] In this respect, the Jews of Algeria were made French, in a legal sense, in a way that the Muslim inhabitants of France's North African departments, colonial possessions, and protectorates never were. Because the French state possessed a precedent for stripping the Jews of their collective religious privileges and jurisdiction in exchange for citizenship, France's encounter with the Jews of Algeria was not its first experience making Jews French. In contrast, the guarantees to accommodate Muslim personal status rights in Algeria and the mutual resistance to legal integration prevented the French from similarly following their imposition upon Muslims of an exchange of collective for individual rights through to completion. But an important factor in the French state's differentiated approach to the legal integration of Muslims and that of Jews in Algeria may also lie in the extent to which French society in the nineteenth century defined itself in opposition to Muslim and

6. See "Decree Recognizing the Sephardim as Citizens (January 28, 1790)" and "The Emancipation of the Jews of France (September 28, 1791)," in *The Jew in the Modern World: A Documentary History,* 3rd ed., eds. Paul Mendes-Flohr and Jehuda Reinharz (New York: Oxford University Press, 2011), 126–27; and Paula Hyman, *The Jews of Modern France* (Berkeley, CA: University of California Press, 1998), 22–35.

7. I am excluding here the Jews' disenfranchisement and re-enfranchisement during and after the World War II-German occupation and Vichy regime.

8. See Maud S. Mandel, *Muslims and Jews in France: History of a Conflict* (Princeton: Princeton University Press, 2016); and Ethan B. Katz, *The Burdens of Brotherhood: Jews and Muslims from North Africa to France* (Cambridge, MA: Harvard University Press, 2015).

Arab society, and understood the violence—through colonization—necessary to it.[9]

The role of law and race in the French legal regime in North Africa, and in particular the administrative and racial classification of people and groups, has increasingly become a subject of scholarship examining the mechanics of French colonial rule.[10] French imperialism was consistently justified as a right held by the French state based on the presumed superiority of French civilization over "barbarism." There is also no doubt that the emergence of scientific racism coincided with the French colonization of Algeria, which is evident in, among other things, the changing perceptions—from positive to negative—of intermarriage between 1830 and 1870.[11] By the end of the nineteenth century, the idea that Jews and Muslims were ineluctably racially inferior to Europeans had taken hold among many of the colonists (*colons*), as it had among many in France,

9. See William Gallois, *A History of Violence in the Early Algerian Colony* (Houndsmills: Palgrave Macmillan, 2013); Abdelmajid Hannoum, *Violent Modernity: France in Algeria* (Cambridge, MA: Harvard University Press, 2010); and Jennifer E. Sessions, *By Sword and Plow: France and the Conquest of Algeria* (Ithaca, NY: Cornell University Press, 2011).

10. See Richard C. Parks, *Medical Imperialism in French North Africa: Regenerating the Jewish Community of Colonial Tunis* (Lincoln, NE: University of Nebraska Press, 2017); Gavin Murray-Miller, *The Cult of the Modern: Trans-Mediterranean France and the Construction of French Modernity* (Lincoln, NE: University of Nebraska Press, 2017); Jessica M. Marglin, *Across Legal Lines: Jews and Muslims in Modern Morocco* (New Haven, CT: Yale University Press, 2016); Sarah Abrevaya Stein, *Saharan Jews and the Fate of French Algeria* (Chicago: University of Chicago Press, 2014); Mary Dewhurst Lewis, *Divided Rule: Sovereignty and Empire in French Tunisia, 1881–1938* (Berkeley, CA: University of California Press, 2014); Patricia M. E. Lorcin, *Imperial Identities: Stereotyping, Prejudice, and Race in Colonial Algeria*, 3rd ed. (Lincoln, NE: University of Nebraska Press, 2014); Emmanuelle Saada, *Empire's Children: Race, Filiation, and Citizenship in the French Colonies*, trans. Arthur Goldhammer (Chicago: University of Chicago Press, 2011); Joshua Schreier, *Arabs of the Jewish Faith: The Civilizing Mission in Colonial Algeria* (New Brunswick, NJ: Rutgers University Press, 2010); Hannoum, *Violent Modernity*; Raymond F. Betts, *Assimilation and Association in French Colonial Theory, 1890–1914* (Lincoln, NE: University of Nebraska Press, 2005); and Kamel Kateb, *Européens, "indigènes" et juifs en Algérie (1830–1962): représentations et réalités des populations* (Paris: Institut national d'études démographiques, 2001). Many of these works challenge a persistent positive historiographical understanding of France as an "empire of law." See Gregory Mann, "What was the *Indigénat*? The 'Empire of Law' in French West Africa," in *Journal of African History* 50 (2009): 331–53.

11. Alice L. Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895–1930* (Stanford, CA: Stanford University Press), 19–22. Conklin's approach, which is to recognize the racism behind France's civilizing mission while taking seriously administrators' universalizing republican rhetoric, has come under scrutiny as an "affirmative historiography" that seeks to insulate and protect French republicanism. See Gary Wilder, *The French Imperial Nation-State: Negritude and Colonial Humanism between the Two World Wars* (Chicago: Chicago University Press), 6–8.

but as Yerri Urban points out, in 1830, "race" described something very different—belonging to specified group of people—than it did in 1890, or 1940.[12] Even in 1865, when Napoleon III spoke about the "fusion of races" in Algeria, he meant political and judicial union between the groups living in Algeria under different laws.[13]

Similarly, although the term *indigène* was used to categorize people ethnically, and eventually to exclude them from full legal rights, it began as a context-specific imperial legal category used to differentiate between French and foreigners (from both Europe and other parts of the Empire) on the one hand, and the inhabitants of a given place on the other.[14] In other words, an *indigène* who moved from one part of the Empire to another ceased to be an *indigène*, as did an Algerian Muslim who moved to another non-French Muslim country, and could then claim French protection.[15] Even though European conceptions of race, and indeed racism, influenced the colonization and administration of Algeria and other French colonies, it is important to point out that from the perspective of French courts, "race" had no legal meaning until the Vichy regime. To courts, the relevant legal categories on questions of jurisdiction and the applicability of law were nationality, religion, and citizenship.

Although French military leaders in Algeria were initially quite hostile to the Jews, officials in Paris (both Christian and Jewish) saw an opportunity for Algeria's Jews to play a role in spreading French "civilization."[16]

12. Yerri Urban, *L'Indigène dans le droit colonial français 1865–1955* (Paris: Fondation Varenne, 2011), 26. See also Charles-André Julien, *L'Afrique du Nord en marche: Nationalismes musulmans et souveraineté française,* 3rd ed. (Paris: Juillard, 1972), 30–33.

13. Urban, *L'Indigène dans le droit colonial français*, 63.

14. Ibid., 48–63.

15. Laure Blévis is more inclined to see "indigène" as a tool of ethnopolitical exclusion—useful for differentiating between "us" and "them"—although she does not consider "race" to be a significant axis of differentiation until a series of anti-Jewish proposals in 1898. Laure Blévis, "Un procès colonial en metropole? Réflexions sur la forme 'procès' et ses effets en situation coloniale," *Droit et société* 1 (2015): 578–79.

16. See Lisa Moses Leff, *Sacred Bonds of Solidarity: The Rise of Internationalism in Nineteenth-Century France* (Stanford, CA: Stanford University Press, 2006); Schreier, *Arabs of the Jewish Faith*. Several unpublished dissertations have focused on the extent to which Jews became caught in the middle between French imperial designs and Muslim resistance: Rachel Schley, "The Tyranny of Tolerance: France, Religion, and the Conquest of Algeria, 1830–1870" (PhD diss., University of California, Los Angeles, 2015); Nathan Godley, "'Almost-Finished Frenchmen': The Jews of Algeria and the Question of French National Identity, 1830–1902" (PhD diss., University of Iowa, 2006); Rochdi Ali Younsi, "Caught in a Colonial Triangle: Competing Loyalties within the Jewish Community of Algeria, 1842–1943" (PhD diss., University of Chicago, 2003); and Michael Robert Shurkin, "French Nation Building, Liberalism, and the Jews of Alsace and Algeria, 1815–1870" (PhD diss., Yale University, 2000). Godley makes a

Politicians, administrators, military leaders, and Jewish reformers who came to Algeria from France with a civilizing missionary zeal all played an important part in reconstructing Algeria's Jewish communities and its Jews into French communities and French people. At least equally important in shaping Algerian Jewry, however, was the imposition of French courts, which occurred immediately with conquest, and the integration of those courts into the French legal system. As will be discussed, cases settled in French courts on a range of issues repeatedly highlighted the anomalous legal status of Algerian Jews, and acted as an impetus for French government officials at the highest level to seek to reform the Jewish community, and in particular to dispense with Jewish collective rights and rabbinic judicial authority. Furthermore, after a generation of Algerian Jews living under French rule, court cases forced the French state to give legal meaning to Jewish identity, and in doing so, these decisions explained how the *qualité de Français* applied to all of France's imperial possessions.

To "obtain the *qualité de Français*" was not a term reserved for Jews, but rather was also part of the language used to describe naturalization for non-French Europeans ("foreigners") who moved to Algeria to seek their fortune and reflected the state's desire and necessity to absorb as French those from different European nationalities.[17] These instances demonstrate Patrick Weil's point that French nationality—the *qualité de Français*—is not an enclosure, but "a boundary line that is constantly being renegotiated and crossed."[18] Sometimes it was a boundary line physically crossed as well: maintaining a colonial regime of legal pluralism as it applied to the Jews in Algeria became particularly problematic when Jews from North Africa and France could simply sail back and forth and find themselves with different nationality and different rights depending on which side of the Mediterranean they were standing. This article focuses on cases that each touch on how to define Algeria's Jews, drew attention to Algerian Jewry's legally anomalous position, and betrayed the French claim, made explicit constitutionally in 1848, to a unified France. In several instances, French bureaucrats reacted directly to court decisions in formulating the legal rights of Algerian Jews. As such, these cases spurred efforts to resolve these contradictions with new laws limiting Jewish collective

particularly strong argument that the driving force of French policy towards the Jews in Algeria was the French administrators who had to find a balance between effective colonial rule and French ideals about citizenship.

17. Ministry of War documents on naturalization of foreigners in Algeria, March 9, 1847. Archives Nationales d'Outre Mer, Aix-en-Provence, France (hereafter ANOM), F80 1675, documents 285 and 286.

18. Patrick Weil, *How to Be French: Nationality in the Making since 1789*, trans. Catherine Porter (Durham, NC: Duke University Press, 2008), 3.

rights, placing Jews under the jurisdiction of French courts, reorganizing the Jewish community, and, eventually, making Algeria's Jews French citizens by decree.

French Legal Pluralism in Algeria under Louis-Phillipe

The French conquest of Algeria began with a political calculation by the conservative King Charles X (r. 1824–1830) to help fortify his reign only a few weeks before France's July Revolution would install Louis-Phillipe as king, although one might say that the conquest was more successful than the effort to save the regime. As such, the so-called July Monarchy—a liberal reformist government that would last 18 years—inherited the new territories in North Africa, but, by choosing to expand France's military occupation rather than withdraw, took on the responsibility of governing them.[19] When the French sailed into Algiers and took the city on July 5, 1830, they did so on the pretense of a diplomatic dispute revolving around French debts owed to the Bacri family and the Ottoman *dey* (head) of the Regency of Algiers that had resulted in the *dey* hitting the French consul in the face, a 2-year French blockade of the Regency, a failed potential armistice, and, finally, the French invasion.[20]

The decision to invade Algiers stemmed less from diplomatic honor (or greed) than domestic politics, and in particular the opportunity for Charles X to present the French monarchy as the Christian defender of civilization against Muslim tyranny.[21] But, in an irony not lost on French monarchists, it was a Jewish merchant family that lay at the center of the staged dispute.

19. For an excellent assessment of the political context for the Algiers expedition in the struggle between crown and parliament, its "staging" in the French press, and its connection to the July Revolution of 1830, see Sessions, *By Sword and Plow*, 19–66.

20. The debt originated with grain supplied by Jacob Bacri and his partner Nephtali Busnach to the French revolutionary armies. When the French did not pay, Bacri and Busnach managed to convince the *dey* to treat the debt as his own in order to clear the debts Bacri and Busnach owed to the *dey*. In the course of an argument in 1827 over the matter between *Dey* Hussein Pacha and the French consul in Algiers, the *dey* hit the consul in the face several times with the handle of his fly-whisk (and hence the diplomatic spat came to be known as the "Fly-Whisk Affair"). See in particular Charles-André Julien, *Histoire de l'Algérie contemporaine. La conquête et les débuts de la colonisation (1827–1871)* (Paris: Presses universitaires de France, 1964), 20–63, and also Haim Z. Hirschberg, *A History of the Jews in North Africa*, 2nd rev. ed. (Leiden: Brill, 1981), II:30–48; Godley, "'Almost Finished Frenchmen,'" 14–18; and Benjamin Stora, *Histoire de l'Algérie Coloniale: 1830–1954* (Paris: La Découverte, 1991), 15–17.

21. Jennifer Sessions suggests that although supporters of Charles X "conflated the defense of Christian monarchy abroad with the defense of the Bourbon regime at home… the monarchy opened the expedition to an alternative interpretation as part of a revolutionary

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Jacob Bacri was the *muqqadam*—the head of the Jewish community—between 1816 and 1831, and part of a family whose firm negotiated many of the financial transactions between the French governments and the *dey* before the French conquest. In the eighteenth century, several families of Livornese Jews, including the Bacris, established a strong trade relationship between Algiers and Marseilles, and during the French Revolution and the Napoleonic wars they acted as agents of the *dey*, importing much needed grain to France. In addition to the Livornese Jews (mainly Sephardic Jews who settled in the Tuscan town of Livorno in the sixteenth century, and travelled back and forth between there and North Africa), the Jewish population of Algiers was made up of (other) Iberian Jews, Provencal Jews, Jews from different parts of North Africa (also known as "Berber Jews," whose presence extended back to the ancient Roman Empire), and Jews from Constantinople. Jews were primarily traders and artisans and spoke a range of languages such as Arabic, Italian, and Turkish.[22]

Algiers was just one Jewish center in what would become French Algeria, with Oran, Mostagnem, Tlemcen, Mascara, Constantine, and Ghardaia, as well as other smaller towns, similarly reflecting the diversity of North African Jewry.[23] The different groups of what would become Algerian Jews practiced different customs—many of which overlapped with those of North African Muslims—dressed in a range of fashions, and had varying residential privileges (for example the wealthier Livornese Jewish families lived outside of the Jewish quarter in Algiers). But like elsewhere in the Ottoman Empire, the Jews in Algiers were politically and legally united as a community, or *millet*, with a separate judicial system and responsibility for collective taxation.[24] In each city, the

confrontation between liberty and despotism" that could be turned against the king by his domestic opponents. *By Sword and Plow*, 28.

22. Hirschberg, *A History of the Jews in North Africa*, 7, 14–15, 25–26, 33, 45–47; and Schreier, *Arabs of the Jewish Faith*, 14–15.

23. See two excellent recent studies: Joshua Schreier, *The Merchants of Oran: A Jewish Port at the Dawn of Empire* (Stanford, CA: Stanford University Press, 2017) and Stein, *Saharan Jews and the Fate of French Algeria*. See also an assessment by Susan Slymovics and Sarah Abrevaya Stein of the historiographical shift away from elite-oriented scholarship on Algerian Jews shaped by colonial literature, toward scholarship that acknowledges the diversity of Jewish communities in Algeria, in "Jews and French Colonialism in Algeria: An Introduction," in *The Journal of North African Studies* 17 (2012): 749–55.

24. On the structure of Jewish communal organization generally in the Ottoman Empire (although focusing on the eastern Ottoman Empire in Anatolia and southeastern Europe), see Yosef R. Hacker, "Ha-irgun ha-kehilti ba-kehilot ha-imperiya ha-ot'manit (1453–1676)" and Yaron Ben-Na'eh, "Irgun ha-kahal ha-yehudi ve-hanhagto ba-imperiya ha-ot'manit ba-me'ot ha-17—ha-19," in *Kehal Yisrael: Ha-Shilton ha-'atsmi ha-Yehudi*

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communal leadership was vested with responsibility over the economic, religious, and social functions that sustained the community and provided for its continuity.[25] Outside of the city, but within the Regency, Jews also lived in small towns in the Sahara or plied the trade routes with caravans. When the French encountered Jews in North Africa, they had an interest in depicting them as persecuted and isolated; so much more that the French could see themselves as the Jews' liberators (not unlike during France's revolutionary and Napoleonic wars) endowing these Jews with the benefits of French civilization.[26] In fact, Jews were central to the economy of Algiers and Oran, and although their security seems to have declined following an outbreak of communal violence initiated by Ottoman Jannisary troops in 1805, this insecurity corresponded with the general weakening of the power of the Regency.[27]

One thing that the Jews of the Regency of Algiers were not, in 1830, was French. But the French conquest of what came to be Algeria quickly took on the aim of expanding the borders of France itself—not merely of French influence, power, or possession, but rather of the state and frontier—well into Africa. Although it would take several decades to consolidate its control militarily, France created by royal ordinance the "French possessions of North Africa" from "the old Regency of Algiers" on July 22, 1834, as a military colony with a governor general under the rule of the Ministry of War to be ruled by decree.[28] Although just 14 years later, in 1848, Algeria would be constitutionally declared part of France, beginning with colonization and lasting until the 1960s, French officials had steadfastly proclaimed Algeria to be French, and Algeria's peoples to be French subjects.[29] Whether such subjects were of French nationality, or could or should be French citizens,

le-dorotav, vol. 2, eds. Avraham Grossman and Yosef Kaplan (Jerusalem: Merkaz Zalman Shazar, 2004), 287–399, 341–67. On the communal structure of the Jews of Algiers before the French conquest, see Simon Schwarzfuchs, *Les Juifs d'Algérie et la France: 1830–1855* (Jerusalem: Institut Ben-Zvi, 1981), 13–20.

25. Ben-Na'eh, "Irgun ha-kahal ha-yehudi," 351.

26. Many of the documents discussed in this article are written from this perspective. See also Schreier, *Arabs of the Jewish Faith*, 11–12.

27. Hirschberg, *A History of the Jews in North Africa*, 35–41.

28. Julien, *Histoire de l'Algérie contemporaine*, 114–15. Charles-Robert Ageron, *Modern Algeria: A History from 1830 to the Present*, trans. Michael Brett (Trenton, NJ: Africa World Press, 1991), 9; and Hélène Blais, "Pourquoi la France a-t-elle conquis l'Algérie?" in *Histoire de l'Algérie à La Période Coloniale, 1830–1962*, eds. Abderrahmane Bouchène, Jean-Pierre Peyroulou, Ounassa Siari Tengour, and Sylvie Thénault (Paris; Alger: La Découverte; Barzakh, 2012), 55.

29. On the French conquest and the integration of Algeria into France, see Julien, *Histoire de l'Algérie contemporaine* and Sessions, *By Sword and Plow*, passim; Todd Shepard, *The Invention of Decolonization: The Algerian War and the Remaking of France* (Ithaca, NY:

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however, is a more complicated story. Despite the French attempt to push its state frontier across the Mediterranean and to integrate Algeria, as a place, into France, the state maintained multiple legal regimes for its subjects in Algeria until Algerian independence. In addition to the Muslims and Jews, both of whom the French called *indigènes*, European "foreigners" who moved to the newly acquired French territory as *colons*, and migrants from other parts of North Africa, all created challenges for determining, if Algeria was "French," what would be the legal status of the vast majority of the people who lived there.[30]

As France expanded its possessions beyond Algiers to Oran, Constantine (1837), and further, yet more Jews came under French rule and law. But what was French law vis-à-vis its Jewish population in the 1830s? Jews were granted full civil equality by the revolutionary French National Assembly in 1791 on the basis that they give up their collective rights. Unconvinced that they had fully done so, however, Napoleon Bonaparte forced a collection of Jewish notables to "harmonize" Jewish law with the *code civil*, especially with regard to questions of marriage and divorce, and to formally accept the state's authority over their domestic matters.[31] As Joshua Schreier notes, the Grand Sanhedrin, as this gathering in 1807 was called, exemplified how questions of citizenship and belonging became tied up with family law, but even more important, the very premise of gathering representatives of the Jews to speak for the collective violated the basis on which they had received equality, as individuals who had renounced their collective privileges.[32]

Cornell University Press, 2006), 20–39; and Benjamin Stora, *Algeria, 1830–2000: A Short History* (Ithaca, NY: Cornell University Press, 2001), 3–8.

30. See the applications for naturalization by migrants from other parts of North Africa and Muslim and Jewish interpreters for the French military in ANOM F80 125. In one interesting case, a Moroccan Jewish merchant named Abudarham, who was living in Nemours (today Ghazaouet in Algeria's Tlemcen Province), sought naturalization but was turned down because, as one official commented in 1857, "it is not the right time to submit this request to the government as the issue, now under study, of the nationality of the Muslim and Israelite *indigènes* has not been definitively resolved." Secrétariat-Général, Gouvernement-Général de l'Algérie to Général Commandant, Division d'Oran, October 24, 1857. ANOM F80 125. See also the "Anonymous note on naturalization relating to Joseph Amar's application for naturalization" that has been helpfully translated in Godley, "'Almost-Finished Frenchmen,'" 295–96.

31. See Jay R. Berkovitz, *The Shaping of Jewish Identity in Nineteenth Century France* (Detroit: Wayne State University Press, 1989), 39–84; Simon Schwarzfuchs, *Napoleon, the Jews and the Sanhedrin* (London: Routledge & Kegan Paul, 1979), 45–114; and Mendes-Flohr and Reinharz, eds., *The Jew in the Modern World*, 148–59.

32. Joshua Schreier, "Napoléon's Long Shadow: Morality, Civilization, and Jews in France and Algeria, 1808–1870," *French Historical Studies* 30 (2007): 81–82.

Even though the Napoleonic restrictions on the Jews expired in 1818, the moment the French attempted to apply the *code civil* in Algeria they faced the impossibility of reconciling the divergent legal status of French Jews and Algerian Jews (itself a category created by the French). The National Assembly's declaration of September 28, 1791, granting male Jews the right of citizenship, was phrased in terms of the restrictions on citizenship for Jews being lifted for all "who shall take the civic oath, which shall be considered as a *renunciation of all privileges in their favor*."[33] In contrast, stemming back to the terms of the *dey*'s capitulation in 1830, French law in Algeria preserved, and repeatedly reaffirmed, the validity of "local" religious laws for the *indigènes*. Thus, while seeking to dispense with all forms of legal pluralism in continental France, successive French governments maintained a system of legal pluralism in Algeria—with Jews, Muslims, French, and European "foreigners" each possessing different privileges and disabilities—even as they sought to erase the administrative difference between European and North African France.[34]

How to define the Jews in Algeria from a legal standpoint became a problem soon after the conquest, with implications affecting how Jews could use the new French courts, because citizens had different rights than did non-citizens. The new French courts' solution was to apply a French conception of nationality and citizenship, as separate and distinct from one another, to inform their historical understanding of how the Regency of Algiers had related to its Jewish subjects. For example, in a decision by the Algerian Court of Justice in December 1833 (just before the legal annexation) about whether Moïse Bacri needed to provide a security (*judicatum solvi*) in order to be a plaintiff, the court decided that "he, like the other Israelites, had no nationality as an Algerian; that he did not possess the rights of a citizen, that he enjoyed only the protection of the government [of the Regency of Algiers] and of domicile."[35] Because Bacri had moved to Livorno with his family (how long ago, the decision does not note), the court determined that he had broken ties with the Regency and was therefore

33. Emphasis added. "The Emancipation of the Jews of France (September 28, 1791)," 127.

34. The classic comparative study of legal pluralism in colonial settings, especially in Africa and Asia, is M. B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford; New York: Clarendon Press, 1975). It is worth noting that several major recent studies that highlight aspects of legal pluralism in French imperialism in Africa focus on a later period and territories that, unlike Algeria, were never directly incorporated into France. See, for example, Conklin, *Mission to Civilize*; Lewis, *Divided Rule*; and Marglin, *Across Legal Lines*.

35. *Bacri v. Directeur des Domaines,* 1 Jurisprudence algérienne de 1830 à 1876 8 (Cour de Justice d'Alger 1833).

"foreign" and subject to the *judicatum solvi* requirement.[36] The idea that "nationality as an Algerian" within the Regency of Algiers would create attending "rights of a citizen" was utterly incongruous with how the Regency, and the Ottoman Empire in general at that time, considered the Jews, or anyone else, living within its authority. But the court projected the idea of Algerian nationality and citizenship back on the Regency in order to demonstrate the Jews' absence of these rights.

In another *judicatum solvi* case involving yet more Bacris, this time the heirs of Jacob Bacri in a legal dispute with Jacob Nathan Bacri, the Court of Paris in 1839 described the former as "Algerian Israelites" and the latter as "also Algerian, but naturalized French."[37] Referring to Jacob Nathan Bacri as "naturalized French" indicates that he must have lived in France and applied for French citizenship there. It is important to note that the courts did not use terminology around nationality incidentally or without precision, as the questions of nationality and citizenship were at the heart of the legal obligations of the litigants. But it is clear that the courts also created new terminology to determine the nationality of Jews who moved between Europe and North Africa under multiple regimes. In the case of Moïse Bacri, the court ruled that leaving Algiers for Livorno constituted his ending any claim to Algerian nationality (a category created *ex post facto*), but in the case of Jacob Nathan Bacri, despite taking up French citizenship, he remained "also Algerian." The Bacri family in general were called by the courts "Algerian Israelites," a term that only first had any usage or meaning under French occupation. Thus in describing the Jews' relationship to Algerian nationality during the 1830s, French courts created Algerian nationality as a legal category that could be gained, retained, and lost, and extended that category back historically to predate their own conquest.

The key legal distinction between Jewish (or "Israelite") French citizens in the metropole and *indigènes* Israelites in Algeria lay in the collective or corporate rights and separate personal status laws that the Jews in Algeria possessed and those in the metropole did not. Therefore, the French government under Louis-Phillipe attempted a number of steps between 1832 and 1845 to harmonize the legal status of the two separate groups, in no small part because of the efforts of European Jews to combat the anti-Jewish proclivities of the French imperial administrators.[38] To French Jews and bureaucrats alike, the key to "civilizing" Algeria's Jews was to limit Jewish judicial autonomy in Algeria and integrate the Jews

36. Ibid.

37. *Nathan Bacri v. Bacri others*, 1 Jurisprudence algérienne de 1830 à 1876 3 (France Cour de Paris 3e Ch. 1839).

38. See Leff, *Sacred Bonds of Solidarity*, 127–37.

into the French legal system. This aim meshed well with French efforts to modernize Algeria's legal system, and resulted in greater French administrative involvement in Jewish affairs in Algeria than in other territories that came under French control.[39] In 1832, the superiority of French law was established by ruling that Jewish appeals to decisions made by rabbinical tribunals should be made to French appeals courts, and in 1834, as part of a general reorganization of the judicial system, the rabbinical courts were stripped of criminal jurisdiction (except for acts permitted by French law but forbidden by Jewish law). Decrees in 1841 and 1842 definitively limited the jurisdiction of rabbinical courts to matters of personal status and family law, which meant, in effect, matters of marriage and divorce.[40] In these early years of colonization, the goal of French judicial reform was to maintain the legal personality of the Muslim and Jewish jurisdictions, while restricting their areas of jurisdiction and establishing the superiority of French law. But whereas criminal jurisdiction was also stripped from Muslim courts in 1841, and theoretically French criminal law applied to all of the residents of Algeria, colonization necessitated a certain leeway to "freedom of religion" and deference to custom as it pertained to Muslim law.[41] This comparatively greater deference to Muslim law, which stemmed directly from the military's fears about security and stability, also led to greater legal autonomy for Muslims than for Jews.

Thomas-Robert Bugeaud, Algeria's governor general from 1841 to 1847, repeatedly and publicly stated his personal anti-Jewish sentiment and, based on a number of traditional anti-Jewish tropes about Jewish parasitism and cowardice, saw the Jews as an obstacle to better relations between the French and Arabs.[42] As he wrote to the minister of war in 1843, Bugeaud considered the Jews a "permanent danger" in Algeria, without precedent elsewhere in North Africa.[43] Yet Bugeaud's primary tasks were to defeat an ongoing insurrection and extend French control —tasks he undertook violently—and officials in the Ministry of War and

39. In Morocco in comparison, which became a French protectorate in 1912, Jewish and Islamic courts were left largely in place. Jessica M. Marglin, "Mediterranean Modernity through Jewish Eyes: The Transimperial Life of Abraham Ankawa," *Jewish Social Studies* 20 (2014): 43. In Morocco, Jews remained *dhimmi*—protected but in an inferior status—de facto until 1912 and de jure until independence in 1956. Marglin, *Across Legal Lines*, 6.

40. See Zosa Szajkowski, "The Struggle for Jewish Emancipation in Algeria after the French Occupation," *Historia Judaica* 18 (1956): 27–40.

41. Julien, *Histoire de l'Algérie contemporaine*, 118–19.

42. Godley, "'Almost-Finished Frenchmen,'" 90–91, 93–98, 114; and Szajkowski, "The Struggle for Jewish Emancipation in Algeria after the French Occupation," 35.

43. Extract of a confidential letter from October 28, 1843, from the governor general of Algeria to the minister of war. ANOM F80 1675, docs. 118 and 119.

the military's Arab Bureau had to consider practical issues such as how to do so.[44] As such, the Jewish communal structure was of interest to French officials, and the French state in the 1840s strengthened the legal distinctions between Jews and Muslims. In one meeting of the Oran administrative commission of the Ministry of War, discussion about whether Jews should serve in the National Guard repeatedly noted the need for the French administration to establish the same privileges and the same law among the different "corporations."[45] The administrators grappled with the problem of how all individuals in Algeria could live under French law without distinctions, while Jews could still exist in a corporation. Administrators seemed thereby to alternate among emancipationist rhetoric regarding the benefits of French civilization bestowed on Algerian Jews, patently anti-Jewish language, and the knowledge that the French state was treating Jews and Muslims very differently according to the law.[46]

In order to gain a stronger understanding of how to reform the Jewish population to best serve the French state, the Ministry of War appointed two French Jews with connections to Algeria to produce a study of Algerian Jewry. Joseph Cohen was a lawyer and journalist from Aix-en-Provence and Jacques-Isaac Altaras was a wealthy ship-builder originally from Aleppo, who was head of both Marseille's Jewish consistory (the official religious community) and its chamber of commerce. The so-called "Altaras Report" that they produced argued for the French state's need to take an active role in legally reforming the Jewish communal, civil, judicial, and educational structure if it hoped to bring French civilization to the Jews.[47] A key assumption of the report was that if the Jews were properly reformed as French Algerians, then they could play an important role in bolstering the French presence. Altaras and Cohen sought an active approach on the part of the state in curtailing Algerian Jewry's judicial autonomy and

44. See Hannoum, *Violent Modernity*, 18–31.

45. Ministry of War, Oran Division, Minutes Extract (February 12, 1844) Administrative Division of Oran. ANOM F80 1631.

46. All three of these ingredients are present in a report by the director of the interior in Algiers, April 2, 1844, in which, while considering how to replace the existing militia system with the National Guard, he also wonders how one can give arms to a "nation" (the Jews) "with no courage and no energy." ANOM F80 1631.

47. See Schwarzfuchs, *Les Juifs d'Algérie et la France*, 42–52. The full report (entitled "Rapport sur l'état moral et politique des Israélites de l'Algérie et des moyens de l'améliorer" ["Report on the moral and political state of the Jews in Algeria and the means for their amelioration"]) is reproduced in ibid., 67–201. On Altaras and Cohen see Valérie Assan, *Les consistoires israélites d'Algérie au XIXe siècle: l'alliance de la civilisation et de la religion* (Paris: Colin, 2012), 86–89; Maurice Samuels, *The Right to Difference: French Universalism and the Jews* (Chicago: University of Chicago Press, 2016), 77–82, 88, 92–94; Schreier, *Arabs of the Jewish Faith*, 51–54; and Leff, *Sacred Bonds of Solidarity*, 130–33.

dispensing with problematic family law and customs in order to fuse (and arguably subsume) Algerian Jews to French Jews.[48] In essence, Altaras and Cohen saw Algerian Jewry, despite the emancipationist rhetoric of the state, as living in the same feudal, corporate, and thereby unequal legal situation as French Jews prior to emancipation in 1791. Therefore, the pair constructed a philosophical justification for the forcible transformation of Algeria's Jews:

> There are two very different elements of religion; a purely spiritual one that embraces the fundamental principles, the dogmas, the psychological doctrines of any religious belief, the other more material that relates to the manifestation of these principles in society by means of positive institutions.
>
> A government which claims in principle the freedom of conscience cannot either create or regulate the first of these elements: the truth of religious beliefs belongs only to God, and can be modified by spiritual power alone.
>
> But the same does not apply for the second: when the thought becomes social, the administrative authority acts on it because everything done within society should be in the evident interest of order and organization. This is how the temporal power can intervene to monitor the exercise of worship and even repress the acts and abuses of religious power.[49]

Altaras and Cohen justified restricting and regulating the freedom of religious practice when it conflicted with particularly treasured elements of civil law and placed the "temporal power" as judge of what constitutes an abuse of religious power. Their solution to the problem of legal pluralism in Algeria as it related to the Jews was, unsurprisingly, to end it, and to place responsibility for the integration of the *indigènes* into French Jewry in the hands of French Jews. At the time of the Altaras Report, however, French administrative units such as the Ministry of War had already dramatically scaled back Jewish judicial autonomy, and sorting out the contradiction of the Jewish legal situation had been left to the Algerian courts, which progressively integrated the Jews into French law and therefore also put Muslims and Jews on divergent legal tracks.[50]

48. Joshua Schreier has pointed out the unity of mind between the Ministry of War and Altaras and Cohen on the need to end the practices of polygamy and divorce as a prerequisite for Jewish civil equality. As Schreier states, "personal-status laws represented a colonial manifestation of similar anxieties expressed in Napoléon's Jewish policy." Schreier, "Napoléon's Long Shadow," 91–92. See also Schreier, *Arabs of the Jewish Faith*, 156–63.

49. "Rapport sur l'état moral et politique des Israélites de l'Algérie," in Schwarzfuchs, *Les Juifs d'Algérie et la France*, 118–19.

50. For an assessment of French attitudes to Muslim legal pluralism in Algeria and a comparison of the French state's efforts to legally integrate Muslims with its efforts to legally

For example, at the same time that Altaras and Cohen sought to reorganize Algerian Jews under a consistory, the Court of Algiers heard a case on the validity of the *more judaico*, the Jewish oath used in much of Europe and the Mediterranean world until the nineteenth century.[51] The *more judaico* could take many forms, some more humiliating than others, but in Algeria (before and after the French arrival) Jews in civil proceedings were forced to swear the *more judaico* on a book of Jewish law in a synagogue and in the presence of a rabbi. This laborious process for swearing an oath, to Jewish reformers, marked the Jews out as untrustworthy and less qualified to participate in the judicial procedures of the state, but it also affirmed the legal authority of the communal rabbis. In September 1844, a dispute over the terms of a lease between two Jews ended up in court, and Altaras and Cohen latched onto the case in order to fight against the continued use of the oath *more judaico* (to be used in this case when the litigants gave testimony) as at odds with the French state's efforts to create equality before the law.[52] Initially this effort was successful, as a tribunal of the First Court of Algiers decided that Israelite Algerians could not be subjected against their will to a different oath than that imposed generally on justiciable persons.[53] Algerian rabbis, however, felt differently, seeing their authority (and finances, given that they charged a small fee for observing the oath) as eroded by the end of this practice.[54]

The tribunal's decision was fought on appeal and overturned by the First Court of Algiers in 1845. Although reformers like Altaras and Cohen wanted to end the practice of the oath *more judaico* and the *indigènes*

integrate Jews into French law, see Michael Brett, "Legislating for Inequality in Algeria: The Senatus-Consulte of 14 July 1865," *Bulletin of the School of Oriental and African Studies, University of London* 51 (1988): 440–61.

51. For an overview, see Assan, *Les consistoires israélites d'Algérie au XIXe siècle*, 79–86.

52. Altaras and Cohen were, in this regard, following the work of Adolphe Crémieux, who as a young man won a case at the Court of Appeals in Nîmes in 1827 that ended the coerced use of the oath *more judaico* in the south of France. Ibid., 80, 82. Jews in the north and east of France—Metz, Nancy, Strasbourg, and Alsace-Lorraine—continued to fight the oath until the late 1840s. Phyllis Albert points out that France never abolished the use of the *more judaico*, even though the Ministry of Justice could have done so easily, but rather the courts repeatedly ruled against individuals being coerced to take the oath (or rabbis to administer it). See Phyllis Cohen Albert, "The Jewish Oath in Nineteenth-Century France," *Spiegel Lectures in European Jewish History* 3 (Tel Aviv: Tel-Aviv University, 1982).

53. Notes from "Audience de 4 Septembre 1844" by the attorney general (Procureur Général), and letter from Procureur Général to Ministère de la Guerre, June 25, 1845. ANOM 1615 (*serment more judaico*).

54. Assan, *Les consistoires israélites d'Algérie au XIXe siècle*, 83–86.

rabbis wanted to keep it, all parties understood that the Jews' separate oath, and rabbinic oversight of it, was a barrier to ending the corporate status of Algeria's Jews. The court well understood this fact too, as in agreeing to the continued enforcement of the *more judaico* it decided that Algeria's Jews were legally distinct from those of France because they had not yet been made to accept the decisions of the Grand Sanhedrin, and that therefore the jurisdiction of Algeria's rabbis had been preserved in French law.[55] Furthermore, the court stated that to use an oath as evidence is essentially to invoke a religious act, and the fact that civil law does not prescribe any particular type of oath (only that it is made in the presence of the opposing party) is precisely a tribute to freedom of religion.[56] Consequently, the court preserved the oath *more judaico* and ordered one of the litigants to make a statement regarding the terms of their lease in the Grand Synagogue and in the presence of a rabbi, the other litigant, and an officer of the court (after which a decision in the case would be made).[57]

Exactly 1 week after the decision to preserve the oath *more judaico*, Algeria's attorney general wrote to the minister of war to explain the court's decision and to press, as a direct result of it, the project to reform and reorganize the Jewish religious community in Algiers. According to the attorney general, a declaration by the rabbis of Algiers in favor of preserving the oath made a determinative impression on the court. Nonetheless, the attorney general continued, the significance of the decision should not be exaggerated, as the rabbis had already been dispossessed of their authority over their coreligionists for some years and are now concerned primarily with the loss of income from administering the oaths. "So, do not worry," said the attorney general, "about the efforts they make to preserve the last debris of their ancient authority."[58] Yet even if he saw no cause for concern, the attorney general nonetheless urged the Ministry of War to issue and sign ordinances on the matter and clear away this "debris."

55. *Sadia Chich Pacifico v. Mezguich*, 1 Jurisprudence Algérienne de 1830 à 1876 9 (Cour d'Alger 1845), 10.

56. As stated, "justement un hommage rendu à la liberté du culte par le legislateur. . ." in *Sadia Chich Pacifico v. Mezguich*, 1 Jurisprudence Algérienne de 1830 à 1876 9 (Cour d'Alger 1845).

57. Ibid., 10

58. Letter from Procureur Général to Ministère de la Guerre, June 25, 1845. ANOM 1615 (*serment more judaico*). The attorney general was among the figures who commissioned Altaras and Cohen for the information mission to report on the Jews of Algeria that led them to recommend introducing the consistory. Schwarzfuchs, *Les Juifs d'Algérie et la France*, 43.

The Altaras Report and its recommendations, and in particular the question of how to place urban Algerian Jews under French law, were discussed at the highest level of the French government, and are generally considered by scholars to form the basis for Louis-Phillipe's twenty-five ordinances of November 9, 1845 reorganizing Algeria's Jewish community.[59] Although these ordinances generally followed the recommendations of Altaras and Cohen, in several regards the French government was more cautious in eliminating the Jews' judicial autonomy than was recommended by the two reformers. Louis-Phillipe explicitly forbade a change to the Jews' legal status in order to minimize the state's infringement on religious matters.[60] And it is possible to see in the stages of drafts of the ordinances that the most explicit declarations eliminating judicial autonomy were extricated before signing. In one example, in the ordinance on the power of the Grand Rabbi and the rabbis under him, a drafted article banning the use by the rabbis of financial or corporal punishment for infractions of religious laws that are legal according to civil law was eliminated before signing, thereby preserving this rabbinic privilege.[61] In another example, in the oath specified to be taken by the members of the consistory when inducted, a reference to knowing and obeying the decisions of the Grand Sanhedrin (and therefore its agreement on certain matters of family law such as polygamy and divorce) which appeared in a draft was also extricated in the eventual legislation.[62] Finally, although Altaras and Cohen sought to create a Jewish consistory in Algiers under the central Jewish consistory in Paris, the Ministry of War instead introduced an Algerian consistory (with a central consistory in Algiers and provincial consistories in Oran and Constantine) whose members and chief rabbi would be selected by the governor general and minister of war. Altaras and Cohen had considerable, but not absolute, influence in the de-corporation of Algeria's Jews, and, ultimately, it was the decision of the Court of Algiers to maintain the oath *more judaico* that forced the government of Louis-Phillipe to issue the ordinances of November 9, 1845, and in a more limited scope than originally envisioned.[63]

59. See the previously mentioned works by Leff, Schwarzfuchs, Assan, Schreier, and Godley.

60. Godley, "'Almost-Finished Frenchmen,'" 115.

61. Compare ANOM F80 1675 docs. 48–49 and 75 to "Ordonnance: Portant organization du culte israélite en Algérie. 9 novembre 1845," in Robert Estoublon and Adolphe Lefébure, eds., *Code de l'Algérie annoté* (Algiers: A. Jourdan, 1896), 83.

62. Compare as in note 61.

63. The final version focused mainly on the organizational structure of the new Jewish consistory and educational system. "Ordonnance: Portant organization du culte israélite en Algérie. 9 novembre 1845," in *Code de l'Algérie annoté*, 82–83.

A little more than a month later, in December 1845, the secretary of state for the Ministry of War in Paris wrote to Algeria's Governor General Bugeaud regarding how to implement the ordinances of November 9 and how in practice to reorganize the Jewish community and subject it to civil law. The secretary lamented that despite having lifted from Algeria's Jews the Turkish "tyrannical oppression," they still remained in a state of "moral degradation." According to the letter, "when France freed the Israelites of Africa from the place of bondage in which they were condemned, this sudden emancipation was not, it must be said, free of inconvenience."[64] The problem, or rather the inconvenience, lay in the exceptionality of the Jews within the law: unlike Muslims, whose separate legal jurisdictions disqualified them from naturalization for the foreseeable future, the state sought through the 1845 decree to begin to legally integrate Algerian Jews into French law, even though they remained something other than French.

To Jewish reformers from metropolitan France, the obvious answer to the anomaly of Jewish legal status was to implement as soon as possible a Jewish legal status in Algeria analogous to Jewish legal status in France. But it is clear that to the government officials responsible for administering the law in Algeria, the problem of Jewish legal anomaly was just one part of a bigger problem about the rights of everyone in Algeria who was not a French citizen: in other words the vast majority of the population. Following the November 9, 1845 decree and the questions it raised among government officials and representatives, the Ministry of War undertook an extensive study on naturalization, and reported to the king with its legislative recommendations. The ministry took as its starting point three questions: What is the best way to naturalize European colonists who are not French citizens? Is it politically possible to naturalize the *indigènes*? And would it be better to create a special process of naturalization for these two groups that would give all of Algeria's inhabitants "*le caractère de français*," or instead to create a new category, "a particular nationality, an Algerian nationality?"[65]

The ministry argued that although naturalizing non-French Europeans in Algeria presented a few difficulties, it was nonetheless in Algeria's interest to do so. This was not, in their assessment, the case for naturalizing the *indigènes*. Even though it would certainly be possible to legislate a single path to French naturalization for all of Algeria's inhabitants, the problem,

64. Letter from Ministre Secrétaire d'Etat de la Guerre to Maréchal Bugeaud, December 22, 1845. ANOM F80 1748.

65. Ministère de la Guerre, "Projet de Rapport au Roi," September 7, 1846. ANOM F80 1675 doc. 288.

as the ministry saw it, was the continued jurisdiction of religious law among both Muslims and Jews, especially as it related to family law. To apply French law universally, as would be necessary in a blanket declaration of citizenship, would be impossible politically, and with *jus sanguinis* (right of blood) being one of the principles governing citizenship in France, doing so would create the impossible problem of granting inherited political rights indefinitely to people who by preserving collective rights lived in contradiction to French law.

In contrast to naturalizing the *indigènes* or legally defining a new Algerian nationality, doing nothing presented few political costs. "The *indigènes*," the report suggested, "are not preoccupied with a new nationality: their religion alone gives them one."[66] Against the efforts of Jewish reformers, the courts, and the French state, the Ministry of War (which effectively ran Algeria at the time) argued that Muslims and Jews should continue to be treated as separate nationalities in and of themselves. But the ministry also had a further agenda—arguably its primary agenda—which was to halt the progress of Jewish integration into the French legal system. With the 1845 ordinances creating the Jewish consistory and a new communal and educational structure, Algerian Jews were clearly being moved in the direction of legal integration into the colonial legal system and communal integration with the Jews of France, whereas Muslims preserved far more of their separate legal jurisdiction. But as it was clear to the ministry that "political considerations of the highest gravity" required France to avoid the serious mistake of granting Jews rights and opportunities not open to Muslims, its report emphasized that Jews, like Muslims, continued to be governed by religious laws.[67] Therefore, despite considerable legal integration, Jewish legal distinction, and an absence of clarity over the nationality of all of Algeria's *indigènes*, remained throughout the July Monarchy. As will be discussed, the impetus to clarify both once again came from the courts.

The Enos Case and the Meaning of Nationality in the Second French Empire

The ordinances of November 1845 left in place elements of symbolic jurisdiction for Algeria's rabbis as well as the Jews' personal status law governing families. Furthermore, and perhaps not coincidentally, what remained

66. Ibid.

67. Ibid. And indeed, Jews did of course continue to submit themselves voluntarily to the jurisdiction of rabbis and of religious courts.

of this jurisdiction was enough for the Ministry of War to argue that greater Jewish legal rights were not possible. The de-corporation of Algeria's *indigènes israélites,* as envisioned by the French Jewish reformers and the attorney general, thereby remained incomplete. A few years later, the revolutions that struck France in 1848 brought with them the abdication of Louis-Philippe, a Second French Republic, and a new constitution that guaranteed universal male suffrage (article 24) and declared Algeria and the colonies to be "*territoire français*" (article 109). At the same time, however, the 1848 Constitution preserved these territories' particular laws until a special law could implement the freedoms and responsibilities of the new constitution there.[68] In such a way, the new liberal French regime simultaneously erased the legal distinction between metropolitan France and the three Algerian departments, while ensuring that the new mass enfranchisement and broadened guarantees of individual rights adopted in European France applied only to the Europeans in Algeria.[69] Thus 1848 marked the beginning of the fundamental incongruity between the liberal popular sovereignty (for men) espoused in France's constitutional documents and the denial of political inclusion among the vast majority of people living in the Algerian part of France. Louis-Napoleon Bonaparte's coup of 1851, and his installation as Emperor Napoleon III, did not initially alter France's contradictory claim to Algeria as part of France while depriving the majority of Algeria's inhabitants of the same rights as French citizens (in both Europe and Algeria). But in seeking to correct this contradiction, the emperor would eventually take significant steps to attempt to civilly integrate both Jews and Muslims in Algeria by opening the possibility of citizenship to them, and hence establish a new goal of turning Muslims as well as Jews into French citizens.

One court case in particular, which came to be known as the Enos Affair, would test the regime of legal pluralism in the French Empire, and whether such pluralism contradicted or reinforced France's commitment to the principle of equality before the law. By the time the Enos Affair came to a final conclusion in France's Court of Cassation, French courts in both Algiers and Paris had formalized the legal distinction between the quality of being French and French citizenship. The case

68. "Constitution de [4 novembre] 1848, Ile République." http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-constitutions-de-la-france/constitution-de-1848-iie-republique.5106.html (accessed October 10, 2018).

69. The February 1848 Revolution in France marked the beginning of Jews entering into the highest echelons of government, with Adolphe Crémieux becoming minister of justice and Michel Goudchaux becoming minister of finance in the first post-Revolution cabinet. See Salo W. Baron, "The Impact of the Revolution of 1848 on Jewish Emancipation," *Jewish Social Studies* 11 (1949): 212.

centered around Élie-Léon Enos, a lawyer who was born in Algiers on October 10, 1833, as an *israélite indigène* under the new French occupation. Enos moved to Europe as a young man to pursue legal training and received his diploma from the Faculty of Law in Paris, and his law license on June 9, 1858, and a month later took the relevant oath and was inscribed in the Bar Association (*l'ordre des avocats*) for the Imperial Court. As an Algerian Jew, Enos's inscription in the bar was a notable news item. After he took his oath in the First Chamber of the Court of Paris, several publications reported that Enos was born in Algiers to an "Arab Israelite *indigène* family" ("*d'une famille israélite arabe*"), and was "the first African who, since the conquest, has embraced a liberal profession."[70] Yet when Enos returned to Algiers in November 1861 to live and practice law he found himself barred from inscription to the Algerian Bar Association. The Council of the Bar Association for the Imperial Court of Algiers argued that Enos could not practice law because "the *qualité de Français* is one of the essential and indispensable conditions to be admitted to the practice of the profession of lawyer, as established and regulated in France and Algeria; that the rights, prerogatives, and duties of the lawyer require that he enjoy not only civil but also political rights."[71]

The Bar Association argued that because Enos was an *israélite indigène*, and because Jews in Algeria lacked political rights, he would not be able to exercise such necessary professional responsibilities such as acting as a substitute judge or officer of the public ministry when called upon: functions that "necessarily imply a political capacity."[72] To make clear that Enos and other Algerian Jews who may spend time in France do not acquire either the quality of being French or French citizenship in doing so, the bar stated in its decision to reject Enos's application that "the quality of French citizenship [*qualité de citoyen Français*] can only be acquired and preserved in accordance with constitutional law," and further, that "the *qualité de Français* can only result from the origin of the person, from the benefit of the law, or from naturalization."[73] The bar pointed out that Enos was an Israelite Algerian not born on "French soil" or to French parents

70. The short summary came from *Le Moniteur* (*Universel*) and was republished in *L'Univers israélites* 12 (1858): 560, and *Journal des débats politiques et littéraires*, July 25, 1858, 2.

71. Enos (audience solenelle [formal hearing]), 4 Journal de la jurisprudence de la Cour impériale d'Alger 86 (France Cour d'appel [Alger] 1862). See the text of the decision made by the Council of the Bar Association (*le conseil de l'ordre des avocats*) for the Imperial Court of Algiers, November 28, 1861, 87–90.

72. Enos (audience solenelle), 87.

73. Ibid.

and did not apply for naturalization, hence he was not French.[74] The bar made no distinction between the *qualité de Français* and the *qualité de citoyen Français* and it used these terms synonymously.[75]

The Bar Association did not rest its argument solely on the technical requirement of French citizenship. Their position waded into two questions of far-reaching significance that seem to indicate their intention to reserve not only the practice of French law for Christian French *colons*, but also control over defining the very category of who is and who is not French. First of all, what rights do the inhabitants of territory annexed to France possess naturally upon annexation, in other words, without the state explicitly conferring new rights upon them? And second, if such inhabitants, in this case Jews, possess collective rights previously relinquished by European French Jews (or dispensed with by the state), do such rights disqualify them from citizenship, or even from being French? These two questions related to one another because, the bar explained, if the sovereign of the country "reunited or annexed" is not prepared to assimilate the legal rights of its inhabitants politically and civilly into those of the "dominant nation," then the laws and rights incompatible with French laws that remain in force prevent French law from conferring the *qualité de Français* on the original inhabitants. Going back to the capitulation of 1830, according to the bar, "all of the judicial administration of Algeria's fundamental ordinances have reserved for these *indigènes* the enjoyment of their religious customs, their law, and their personal status."[76] The Bar Association concluded that rather than the rights of Israelite Algerians being naturally assumed and governed by civil law, in fact they are governed by the "law of nations" (*droit de gens*) and therefore stem from what is conferred upon them by the absolute sovereignty of France. The quality of being Jewish, therefore, with its collective rights as a nation, is incompatible with the quality of being French, and, consequently, also French citizenship. In contrast to the juridical and political situation of the French who

74. Ibid. France defined citizenship according to both *jus soli* (right according to place of birth or residence) and *jus sanguinis* (right according to descent), although foreign-born men seeking citizenship based on residency in France had to apply for naturalization. See Weil, *How to be French*, 30–53.

75. Bell argues (*Cult of the Nation*, 29, 272–73) that since 1789, the law presumed that French women, children, and passive citizens possessed the *qualité de Français*, which entitled them to basic civil rights and membership in the state, but not to participation as citizens, whereas Weil suggests (*How to be French*, 32) that the quality of being French and the quality of French citizenship were in fact synonymous in the nineteenth century.

76. Enos (audience solenelle), 88.

live in Algeria and France, Israelite *indigènes* are not "members of the united nation, but are, to be precise, subjects of the French nation."[77]

In response to the question of whether Algeria's Jews, and by extension Muslims, had the same rights as French citizens, the Court of Algiers agreed that the persistence of collective rights after annexation disqualified Algeria's Jews and Muslims from citizenship, because the rights in personal status conferred in the 1830 capitulation of Algiers and Constantine, and interpreted and reinterpreted thereafter, "cannot be reconciled with the obligations imposed on French citizens… That is the grand principle of equality before the law which the Revolution of 1789 inscribed at the head of its institutions and which can be infringed upon in no circumstances."[78] This legal pluralism did, the court acknowledged, make Algeria different from the European territories incorporated into France during the years of the Republic and First French Empire (1792–1814/15). Nonetheless, even without the rights of citizens, Muslims and Jews living throughout the world under the protection of the French flag were also by definition French, and in the case of Algerian Jews, being under the direct and immediate sovereignty of France, they had no recourse to another nationality. As such, the court determined the only question relevant to the case to be whether one must be a French citizen to practice law. On that question, the court decided the answer was no, it is sufficient to be French, thus ruling in Enos's favor and instructing the Algerian Bar to admit him.

The story did not end there, as Algeria's Bar Association appealed the decision to the Court of Cassation in Paris (the highest court of appeal in France), claiming that under constitutional law the lower court improperly declared Israelite Algerians to be French (in possession of the *qualité de Français*) and thereby entitled to practice law. According to the Algerian Bar's lawyer, M. Aubin, "the sole question is should Israelite Algerians be considered French?"[79] The answer is that the Jews' separate legal jurisdiction for marriage, divorce, and civil law (where it does not contradict French law) is exclusive of the *qualité de Français* and they must be ruled, therefore, as *indigènes*. Aubin provided as an example an ongoing dispute over the jurisdiction of personal status laws among Algerian Jews, known as the Courshiya Affair, which pitted a Jewish woman from Oran who sought the annulment of her marriage on the grounds of what was allowable under Jewish law (the man was impotent), against her husband, who, supported by the state, argued that because the

77. Ibid., 89.
78. Ibid., 93.
79. *President of the Bar Association of Algiers (Bâtonnier de l'ordre des avocats d'Alger) v. Enos*, 1864 Jurisprudence générale 67 (France Cour de Cassation [Paris] 1864).

couple had voluntarily married before a civil-state officer the marriage was therefore subject to Napoleonic civil law and could not be dissolved.[80] Aubin focused on the wording of the most recent decision, noting that the judges in the Courshiya case declared the Jews to be only French subjects, which is a relationship of dependence "by no means synonymous" with being French.[81]

Like Muslims, Aubin explained, Jews in Algeria under the *dey* existed "in a distinct national category, and continued to live, after the conquest, according to their customs." As such, the Jews must be treated administratively and legally as *indigènes*, which is a category that is by definition not French. Aubin asked why if according to the language of the law the Jews are treated as *indigènes*, then only Jews and not Muslims would be considered French by nationality?[82] To Aubin, Muslims and Jews are equally not French, and he argued that the Algerian court, in siding with Enos, had disconnected naturalization from the process of becoming French, which was the very purpose of naturalization. If the Algerian Israelites were French, argued Aubin, they would be citizens, and if, like their Muslim counterparts, their collective rights prevent them from being citizens, then they are not French.[83]

The lawyer defending the previous court's ruling, M. Larnac, pointed to established precedent that determined Algerian Jews did not require naturalization to serve in certain public offices (but did require naturalization to acquire citizenship). Larnac unsurprisingly saw the Courshiya case differently from Aubin, as one of the many examples of the French state placing the Jews under French law.[84] Because the 1848 constitution gave all adult males equal citizenship and at the same time declared Algeria French, both sides in the Enos dispute acknowledged that the category of *indigène,* and

80. *Dme. Courshiya v. Courshiya* made its way through the Civil Tribunal of Oran (1858, ruling against annulment), the Court of Algiers (1858, ruling in favor of the annulment and ordering a return of the dowry), the Civil Chamber of the Court of Cassation of Aix (1862, ruling against the annulment), and finally, the Imperial Court of Aix (1864—a few months after the conclusion of the Enos case—upholding the decision of the Court of Cassation not to annul the divorce). *Dme. Courshiya v. Courshiya*, Bulletin des arrêts de la Cour impériale d'Aix 252 (France Cour impériale [Aix] 1864). Joshua Schreir has uncovered a number of letters written in 1857 and 1858 by government officials who, because of the Courshiya Affair, sought legislative clarity on the matter from higher officials. Schreier, *Arabs of the Jewish Faith*, 160, n. 218. The attorney general of the Paris Court of Cassation and the governor general also corresponded about the appeal in January 1862. ANOM F80 1722 and discussed in the Conclusion section of this article.

81. *Bar Association v. Enos*, 68.

82. Ibid.

83. Ibid., 68.

84. Ibid., 69. Given the judgement of the case up to that point (and after), which privileged the authority of French civil law over Jewish religious law, Larnac's position is rather more convincing than that of Aubin.

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the "separate laws" accorded to Algerian Jews and Muslims, made the legal status of those two groups exceptional within the territory of France. Larnac, however, also delved into a remarkable discussion about the nature of Jewish nationality in France and Algeria that revolved around the evolution of legal pluralism there. As he explained, when the French conquered Algeria they found a heterogeneous population with different groups living in the same territory but according to different, and indeed incompatible, legal systems. Within the Ottoman legal system, Turkish Janissaries had the most privileges and *indigène* Muslims and Jews were governed by their own religiously based civil law. Although Christians and Jews in the Regency of Algiers existed in a subordinated position below Muslims, the difference between those two groups was that most Christians were subjects of another sovereign (notably Spain), whereas most Jews were subjects only of the *dey*. Furthermore, Larnac argued, although the capitulation agreement in 1830 affected both Muslims and Jews by preserving their distinct personal statuses, Jews subsequently had their separate legal privileges steadily stripped away in favor of French law, such that by the time of the case, rabbis had little power beyond giving benedictions at weddings (and did so as a function of the *French* civil state) and Jews rarely resorted to religious civil law over French courts. "The work of assimilation is therefore not decreed in a single day and to see the point where it has reached, one can affirm that there is very little remaining to be done."[85] Would now be the time, Larnac asked, to close their access to the liberal professions?[86]

The Court of Cassation ignored the arguments on both sides about the nature and extent of Jewish assimilation, whether Jews make up a separate "nation," the relevance of Jewish collective rights to being French, or whether such rights, as held in Algeria, disqualified the Jews there from French citizenship. The Court ruled quite simply that because the French conquest made Jews French subjects without access to another nationality, they must be considered to be French (to have the *qualité de Français*) in their civil and social condition. According to the judges, this fact was confirmed by much legislation giving Algerian Jews rights to public functions and services not possessed by foreigners (meaning those who are neither French citizens nor Algerian *indigènes*). Furthermore, to make perfectly clear the hierarchy of metropole over colony and that rights emanate from Paris, the Court declared that the Algerian Bar had no jurisdiction to deny membership to a lawyer inscribed by the Paris Bar, as the Paris Bar Association inscribes for all of the jurisdictions of France and the

85. Ibid., 69.
86. Ibid.

Empire.[87] The justices thereby stuck to the strictly technical legal matter in rendering their decision, and sidestepped the much bigger problem of the legally anomalous position of both Jews and Muslims in French Algeria. In doing so they affirmed the distinction between French nationality and French citizenship established by the tribunal at the Court of Algiers and left the existing legal regime in place. Algerian Jews were French because Algeria was France and they lacked another nationality, but the persistence of their collective rights—no matter how much the state eroded such rights—disqualified them for citizenship until such a time that citizenship was conferred upon them by the state declaratively.

By leaving the anomaly of legal pluralism in place in Algeria, the Enos case initiated a series of legislative efforts to cohere the legal status of Algeria's inhabitants. From the perspective of the metropole, finding a way to naturalize indigenous Algerians as French citizens was necessary to make Algeria French and to iron out the legal differences between the two Frances on either side of the Mediterranean. As the Enos case demonstrates, however, the French and other European *colons*—with some notable exceptions—had no desire to see legal equality between Jews and Christians in Algeria.[88] And most indigenous Muslims, for their part, desired neither to trade their collective rights for French citizenship nor to see their Jewish neighbors elevated in legal status above them. Yet the Enos case was of considerable interest to those engaged in France's civilizing mission in North Africa, because the status of Enos so starkly illustrated the differentiated rights between French subjects and French citizens. As argued by one Christian Algerian lawyer who called himself an "evangelist for France's civilizing mission and of Algeria's juridical and legislative progress," the Court of Cassation's decision effectively collectively naturalized all of Algeria's Jews and Muslims, but because the courts interpret rather than make laws, both groups were left betwixt and between, as French but not as citizens.[89] Courts could erode this "abnormal, uncertain, hybrid legal situation," but only the legislature could end it.[90]

87. Ibid., 70.

88. Non-French European *colons* in 1861 made up roughly 40% of the total European population (80,517 compared with 112,229 French citizens). See the population chart in Osama Abi-Mershed, *Apostles of Modernity: Saint-Simonians and the Civilizing Mission in Algeria* (Stanford, CA: Stanford University Press, 2010), 172.

89. Casimir Frégier, *Les Juifs algériens, leur passé, leur présent, leur avenir juridique, leur naturalisation collective* (Paris: Michel-Lévy frères, 1865), xlix, 43.

90. Ibid., 43. Frégier favored collectively naturalizing both Muslims and Jews, but argued that to do so required fully assimilating the groups into French law as individuals, as had been done with the Jews in metropolitan France. He believed as such that conditions were more favorable to collectively naturalizing Algeria's Jews first. See his introduction in ibid., in particular xii–xiv.

Finally, the Enos case influenced one key individual who in turn influenced French policy on Algeria in the Second Empire. Ismaÿl Urbain (born Thomas Urbain, lived 1812–1884) was a Saint-Simonian who had converted to Islam and worked both for the French government and as a tireless advocate for the rights, as he saw them, of Algerian Muslims. Urbain worked as Napoleon III's chief counselor in Algiers as well as in other roles for the French government in Algeria, and witnessed the growing economic and agricultural displacement of Algeria's Muslims at the hands of the *colons*.[91] As a dedicated Saint-Simonian, Urbain was committed both to bringing about a utopian society and using the French Empire to do so (beginning with Prosper Enfantin, Saint-Simonians had seen Algeria as a testing ground for their ideas).[92] And as a Muslim convert, he believed in the power of the French Empire to bring civilization and modernity to Muslims and thereby Islam's "regeneration."[93]

With the French military conquest of Algeria largely complete, in 1858, the state shifted to governing Algeria from Paris by creating the Ministry for Algeria and the Colonies. The expansion of land seizure by European colonists continued unabated, and the colonists resisted any attempt by the Paris-based ministry to limit their actions. At the same time, Napoleon III turned to policies favoring greater liberalization for the Empire, both economically and democratically, and increasingly gave his ear to avowed Saint-Simonians who called for state-directed modernization and greater associational rights for workers.[94] Napoleon III stated explicitly that demanding the French assimilation of the people of Algeria was inconsistent with the French Second Empire's championing of various national struggles in Europe (primarily against its rival the Austrian Empire).[95]

91. See the two major studies of Urbain and his work by Michel Levallois: *Ismaÿl Urbain (1812–1884): une autre conquête de l'Algérie* (Paris: Maisonneuve et Larose, 2001) and *Ismaÿl Urbain: royaume arabe ou Algérie franco-musulmane: 1848–1870* (Paris: Riveneuve, 2012), or, the synthesis of Urbain's biography and career in Abi-Mershed, *Apostles of Modernity*, 14–16.

92. Abi-Mershed, *Apostles of Modernity*, 32. The Saint-Simonians, or followers of the political philosopher Henri de Saint Simon (1760–1825), were early socialists who believed in the role of state bureaucracy in directing industry to bring about modernity, progress (especially in science), and the protection of workers from competition and the emerging capitalist economy. Murray-Miller, *Cult of the Modern*, 66–68.

93. Rachel Schley, "Tyranny of Tolerance," 255–88. I am grateful that Dr. Schley presented a paper entitled "The Abandoned Muslim Consistory: Religion, Rule, and Legal Identity in French Algeria" at a Boston University Jewish Studies Research Forum in April 2016, as it is through this paper that I first learned about the Enos trial.

94. Abi-Mershed, *Apostles of Modernity*, 161–62.

95. Murray-Miller, *Cult of the Modern*, 95–96. In his study of the political culture of the Second French Empire, Sudhir Hazareesingh argues that debates about the nature of French citizenship and the French polity during the 1860s established a political consensus that was

Napoleon III did not give up the idea of Algerians becoming French citizens or the mission of bringing "civilization" and "modernization" to Algeria, but under the influence of the Saint-Simonians, he came to believe that the *indigènes* would voluntarily associate themselves with this project.

It is in this context that Napoleon III shifted French policy toward an "Arab Kingdom" (*royaume arabe*) in Algeria, and it was in this context in which Urbain wrote two book-length essays (*L'Algérie pour les Algériens*, published in 1861, and *L'Algérie française: indigènes et immigrants*, published in 1862) about how France and Islam together could bring about the peaceful modernization of Algeria.[96] In fact, it was because of the Enos case that Urbain decided to write his second essay, *L'Algérie française*, in order to focus on the legal status of the *indigènes* vis-à-vis the immigrants and how to bring about a unity between the two.[97] Urbain embraced the legal pluralism established in the Enos case and sought to apply it to all of Algeria's *indigènes*, whom he saw as subjects (using the term *régnicoles*) with both the collective right to personal status laws and the potential for French citizenship.[98] Urbain also shared many of these views with another influential advisor to Napoleon III, his friend Frédéric Lacroix, who was the Director of Civil Affairs for Algeria (in one letter from Lacroix to Urbain from March 1862, Lacroix agreed that

later adopted during the Third Republic, and thereafter. A lively debate about centralization and self-government, combined with universal male suffrage and urbanization, led eventually to agreement on the need for a unified state with the commune as the primary site of political interaction. See Sudhir Hazareesingh, *From Subject to Citizen: The Second Empire and the Emergence of Modern French Democracy* (Princeton: Princeton University Press, 1998).

96. Georges Voisin [Ismaÿl Urbain], *L'Algérie pour les Algériens* (Paris: M. Lévy frères, 1861) and Anonymous [Ismaÿl Urbain], *L'Algérie française: indigènes et immigrants* (Paris: Jouaust et fils, 1862). Both are conveniently accessible through Gallica, the digital library of the Bibliothèque nationale de France (http://gallica.bnf.fr).

97. Urbain wrote to Frédéric Lacroix that the Enos case inspired him to pick up where he left off after completing his first work, *L'Algérie pour les Algériens*, as he saw that there were "so many things left to say about personal status! It is enough to read the ruling of the Court of Algiers in the Enos trial (the *Moniteur Universel* reproduced it) to see how incomplete my treatment of the subject was." Letter from Ismaÿl Urbain to Frédéric Lacroix, March 29, 1862. ANOM, 31 MI 2.

98. Urbain references the case directly, see *L'Algérie française*, 5. For the perspective of other scholars who have noted the significance of the Enos case in influencing Urbain or shaping Napoleon III's legislation see Schley, "Tyranny of Tolerance," 257–83; Urban, *L'Indigène dans le droit colonial français*, 75–86; Laure Blévis, "Naturalisation ou citoyenneté: les ambiguïtés du sénatus-consulte de 1865," in *Les saint-simoniens dans l'Algérie du XIXe siècle: le combat du Français musulman Ismaÿl Urbain*, eds. Michel Levallois and Philippe Régnier (Paris: Riveneuve éditions, 2016), 275–86; Levallois, *Ismaÿl Urbain*, 302–19; Brett, "Legislating for Inequality in Algeria."

not only is "the Court of Algiers's ruling in the Enos case very important. It is the confirmation of *your* idea").[99] Finally, Urbain saw a direct link between the Enos decision and the need, as he saw it, for Muslims to take a more active role in their integration into French society.[100]

In 1860, Napoleon III closed the Ministry for Algeria and the Colonies, which was seen as representing the interests of the *colons* at the expense of the *indigènes*, and reinstituted the governor generalship in Algeria, thereby shifting further toward the position of his "Arabophile" advisors such as Urbain and Lacroix.[101] Napoleon III, like Urbain and Lacroix, believed the *indigènes* could take the lead in bringing French civilization to Algeria if provided with the right guidance and incentive. Urbain's two essays formed the basis for Napoleon III's perspective and policies on Algeria in the 1860s—his embrace of an Arab Kingdom in Algeria with equal rights, theoretically, for *indigènes* and *colons*—and Urbain played a central role in the construction of the *sénatus-consulte* decrees of 1863 and 1865, which sought to impose a comprehensive program of reform onto Muslim and Jewish Algerians.[102] Thus, practically and directly, Urbain's views on Jewish and Muslim personal status law and collective rights influenced the policies that would determine the criteria for Jewish and Muslim "naturalization" as French citizens.

Although Urbain and Lacroix undoubtedly set out to impose French civilization on Algeria, their views on state modernization and French imperialism also reflected their resistance to the idea that civilization necessitates an end to collective rights or distinctions in personal status. The problem of imposing French civilization in North Africa, from a Saint-Simonian perspective, was that along with their civilization, the French also brought displacement, industry, and commerce, which all threatened the unique spirit of the *indigène*. Therefore, Urbain and

99. Letter from Frédéric Lacroix to Ismaÿl Urbain, March 1, 1862. ANOM, 31 MI 3. For a brief explanation of the context of Urbain and Lacroix's correspondence during this period see Lucile Rodriguez, "La correspondance Urbain-Lacroix (1861–1863)," in *Les saint-simoniens dans l'Algérie du XIXe siècle*, 103–7.

100. Urbain wrote Lacroix after the initial decision of the Court in Algiers, "I wish to now see a Muslim lawyer, but the Jews have an energy and *worldly* activity that Muslims lack." Urbain added, with a dose of Orientalism, that Muslims "are warriors, that is something, but it is not everything." Letter from Ismaÿl Urbain to Frédéric Lacroix, February 29, 1862. ANOM, 31 MI 1.

101. Patricia Lorcin provides a helpful overview of French policies and the administrative battle between the "arabophile" and "arabophobe" factions during the period of the *royaume arabe* in *Imperial Identities*, 76–96. Lorcin calls 1860–1870 "a paradoxical decade, in which policies instigated for the benefit of the indigenous population turned out in the end to be harmful to them." Ibid., 77.

102. Abi-Mershed, *Apostles of Modernity*, 16, 87, 167, 174.

Lacroix's Saint-Simonianism led them to envision group rights and group solidarity as a barrier against the dangers they perceived inherent in industrialization and the capitalist economy. As Lacroix said to Urbain of French civilization, flawed though it may be, "the fraternal and human feeling has lost none of its strength in us, and the ideas of mutual duties, solidarity, [and] devotion have not been stifled by the *invasions* of materialism. Such is the type of civilization that we ought to impose on the *indigène*, with the modifications made necessary by his religious beliefs, his traditions, and his special aptitudes."[103] Although the Saint-Simonians believed in imposing French civilization on the *indigènes* in Algeria, they acknowledged the necessity of accommodating it to local religious traditions.

The Enos case was another example, similar to those during the July Monarchy, of how the problem in determining the meaning of French, Muslim, and Jewish nationality was prompted not by legislation, but by the courts. As was the case under Louis-Philippe, legislative reform was only set in motion when courts highlighted the Jews' anomalous legal situation. Building on previous cases, the two Enos decisions created French nationality (the *qualité de Français*) as a legal category distinct from French citizenship. This distinction served as a useful foil to deflect the resistance of the *colons* to *indigène* citizenship, and the resistance of both Christians and Muslims to the Jews' Europeanization.[104] But the less meaningful Jewish collective rights in Algeria became over time, the more glaring became the difference in political rights between Jews in the European and African parts of what was supposed to be one France.

Government officials and Jewish reformers in the metropole remained unsatisfied with the preservation of legal pluralism in Algeria, less because of the jurisdictional problems it created (which, in the case of the Jews, had by the time of the Enos affair mostly been eliminated) than because it plainly contradicted assertions of the unity of African and European France. French administrators in Algeria, however, were, like the Algerian Bar Association, less conflicted by this anomaly. As a final illustration, in December 1861, the attorney general of the Paris Court of Cassation wrote to the minister of war for some information about Algerian Jews' legal and social status to assist in considering an appeal in the Courshiya case.[105] The attorney general needed such basic information as "How does the administration hear and execute the different acts

103. Letter from Frédéric Lacroix to Ismaÿl Urbain, January 9, 1862. ANOM, 31 MI 3.

104. Michael Brett suggests that arguments by *colon* jurists about the consistency or necessity of legal pluralism in Algeria, were always, however technical, ultimately made out of political expediency. Brett, "Legislating for Inequality in Algeria," 440.

105. The case was settled in 1864 by the Court of Cassation in Aix-en-Provence (see note 81). I do not know why the case moved between these two courts.

regarding the Algerian Jews in the manner of their civil status? Do the marriages contracted by the French civil status officer submit to French civil law?" And, most crucially, "Are Algerian Jews assimilated to French Jews?"[106]

The Ministry of War passed on the request to the governor general's office, where an official wrote back with detailed answers to all of the attorney general's questions. The official began quite inaccurately by claiming that the Jews' civil status had not been determined by any legislation or law and had been left largely in place since 1830, but he correctly stated that Jews could individually volunteer to contract a marriage in the presence of a civil officer.[107] Regarding the distinction between French and Algerian Jews, he responded that "Algerian Jews are not at all assimilated to the French Jews in regards to their rights." The official continued that "as the foreigner [non-French European] is closer to the French [citizen] in regards to the application of French law, the Israelite *indigènes* are in an intermediary situation between the foreigner and the Muslim. But none of these categories is in a position to demand, in general, the benefit of French law."[108] The official argued that administration of the laws was conducted on an *ad hoc* basis, with "the exception that they [Jews, like Muslims] are admitted for this or that privilege, or compelled to this or that duty," but without any presumption of right. Despite the fact that since 1841, French legislation had drastically reduced the judicial autonomy of Algeria's Jews and integrated them into the French legal system, the governor general's office intentionally downplayed Jewish rights and emphasized Jewish autonomy in order to stress, as it summed up, their intention for both Jews and Muslims to remain "in the status of *indigènes*" until such a time as a declaration will change this general principle.[109]

This exchange between two French officials, one in Paris and one in Algiers, hints at the reasons why Algerian Jews, but not Muslims, were made French citizens by decree in 1870. First of all, it is telling that the attorney general first reached out to the Ministry of War for answers, and that the ministry passed the inquiry on to the governor general's office. The Algerian departments may have been part of France after 1848, but these departments were very much France's frontier in a process of military expansion and colonization. As such the French were still inclined to view

106. Letter from le Procureur Général près la Cour de Cassation, Paris to the Ministère de la Guerre, December 1, 1862. ANOM F80 1722.

107. Letter from Gouvernement Général de l'Algérie, Algiers, le Général de Division (Sous-Gouverneur) to Ministère de la Guerre, January 23, 1862. ANOM F80 1722.

108. Ibid.

109. Ibid.

Muslims, and misinterpret Islam, through the lens of concerns about security and conquest.[110] Second, the official in the governor general's office indicated that French law was applicable to Muslims in fewer cases than Jews because of their comparatively greater legal autonomy. And finally, both officials could compare the legal status of Algerian Jews—for better or for worse—to that of the Jews in the metropole, in a way that was not possible for Muslims. Racial and religious prejudice may well have motivated a reluctance on the part of French officials to integrate legally and politically Algeria's Jews, and even more so its Muslims, but the justification for the anomalous rights of both rested on the continuation of separate personal status laws and legal jurisdiction. French officials were more effective at eroding Jewish legal autonomy, those who favored Jewish naturalization had willing allies—and indeed powerful advocates—among French Jews, and perhaps most importantly, as this article has demonstrated, the highest French courts in Algeria and the metropole were repeatedly forced to rule on questions of Jewish nationality and legal jurisdiction brought about by the contradiction between French law as it applied to Jews on each side of the Mediterranean.

The contradictions of French law in Algeria therefore came to a head because the courts were left to resolve the problems that ambiguities in the law created. The solution for the imperial government in Paris was a series of legislation that affirmed the distinction made in the Enos decision between French nationality and citizenship, clarified the rights of each, and opened the way to voluntary naturalization by Muslims and Jews. The *sénatus-consulte* decree of July 14, 1865 declared, 1. "The Muslim *indigène* is French; however he continues to be regulated by Muslim law," and 2. "The Israelite *indigène* is French; however he continues to be regulated according to his personal status."[111] Voluntarily placing oneself under the complete jurisdiction of French law was required for any Jew or Muslim who sought naturalization, but such a requirement (or barrier) had been in place in Algeria since annexation for the very small number who sought citizenship, and in France since 1791. What is clear in the *sénatus-consulte* decree is that the French state continued to carve out considerably greater legal autonomy for Muslims—who remained regulated by Muslim law—than for Jews, and thereby further reinforced the legal differences between the two groups. When the 1865 decree motivated extremely few Jews to trade their personal status rights for French citizenship, the

110. Lorcin, *Imperial Identities*, 61, 64–67.

111. "Sénatus-consulte. Sur l'état des personnes et la naturalisation en Algérie," July 14, 1865, in *Code de l'Algérie annoté*, 302–3.

next step was to repeat the precedent set in 1791 and complete the legal integration of the Jews by decree.[112]

Conclusion

Similar to when the National Assembly considered the question of Jewish civil equality and citizenship during the French Revolution, the question of Jewish rights in Algeria tested the consistency of the state's commitment to its constitutional principles. At stake in determining whether the nationality of Algerian Jews was Algerian, Israelite, or French, and whether being French entitles one to citizenship, lay the question (and answer) of who should be included not only in the French nation, but in the group of people—the citizens—from whom the state derived its sovereignty. The National Assembly introduced the Declaration of the Rights of Man and of the Citizen in August 1789, which in its very title alluded to the distinction between natural human rights (possessed by "Man") and the rights of French citizens, from whom the state drew its legitimacy. Thus the question of how legally to define the Jews in Algeria related to the general problem faced by the French government of how to distinguish between subjects and citizens in a territory the state proclaimed was integrally part of France, despite maintaining a regime of legal pluralism that was unthinkable on the other side of the Mediterranean. Because in European France Jews lived entirely within Napoleonic law, the question of their nationality, citizenship, and membership in the body politic had been resolved. The annexation of Algeria—and with it a Jewish population with different rights from those in the metropole—created a fluidity of nationality, and therefore legal rights, between Algeria and France. As Urbain joked about Enos, capturing the absurdity of his malleable status, "he was French there; here, he is not!"[113]

Many reformers in Algeria, both Jewish and non-Jewish, sought a decree to eliminate the difference in legal status between European and Algerian Jews. In October of 1869, the consistory in Algiers petitioned the emperor directly to enact the obligatory and complete emancipation of Algeria's

112. Between 1866 and 1870, only 137 Jews were naturalized as French citizens in Algeria. Laure Blévis, "En marge du décret Crémieux. Les Juifs naturalisés français en Algérie (1865–1919)," *Archives juives* 45 (2012): 51–53. This was despite a campaign by the consistories to encourage Jews to volunteer themselves for naturalization "by requesting the dignity of a citizen." As quoted in Younsi, "Caught in a Colonial Triangle," 61.

113. Letter from Ismaÿl Urbain to Frédéric Lacroix, January 21, 1862. ANOM, 31 MI 1.

Jews.[114] The consistory listed the many ways that Algerian Jews had adapted to French law and civilization and suggested the *sénatus-consulte* decree of 1865 made the naturalization of Algerian Jews an eventuality, but in the meantime, because most Jews remained French subjects and not citizens, created "confusion, equivocation, anomalies, and arbitrary abuse."[115] The only way "to end this chaos," according to the consistory, was to abolish all remaining exceptions to French laws that demarcate the Israelite *indigènes* from those of French origin. To bring about the "complete assimilation" of the Jews of Algeria into those of the metropole, it was time to dispense with personal status laws—the "irritants that unceasingly provoke deplorable questions over polygamy, repudiation [of marriage], divorce, levirate [marriage] etc."—that remain "the final barrier preventing the Israelite *indigènes* from fully engaging in the way of French civilization" and joining "la grande famille nationale."[116]

The hoped-for union would come in 1870 with the collective naturalization of all of Algeria's Jews by decree. The Crémieux Decree granting Algerian Jews citizenship and placing them under the full jurisdiction of French law resulted circumstantially from the Franco-Prussian War and the initiative that Adolphe Crémieux, as minister of justice in the so-called Government of National Defense immediately following the fall of the Second Empire, seized during a politically unstable time. Although the imperial government seemed about to issue a similar naturalization decree on the eve of the war, if not for the Crémieux Decree it is possible that Jews and Muslims in Algeria would have remained in the same legal status until decolonization.[117] Opposition to Jewish collective naturalization among French officials in Algeria became even more pronounced after it was implemented—producing periodic attempts to abrogate the decree—and hardened resistance to Muslim naturalization (as did the massive

114. Petition du Consistoire Israélite d'Alger à l'Effet de solliciter de l. M. l'Empereur l'émancipation compléte et obligatoire des Israélites Indigènes de l'Algérie, October 1869. Algeria Consistoire Records, The Library of the Jewish Theological Seminary, New York, Archive 8 (Box 1, folder 1).

115. Ibid.

116. Ibid. After a long discussion by the Constantine consistory considering the petition, the majority of its members chose to join the demand of the Algiers consistory for collective naturalization, although three members expressed concern that Jews would be forced to transgress their religious laws and traditions. Consistoire Israélite de la Province de Constántine, Séance Extraordinaire du 24 Octobre 1869. Algeria Consistoire Records, The Library of the Jewish Theological Seminary, New York, Archive 8 (Box 1, folder 16).

117. Minister of Justice Émile Ollivier had transmitted such a text for consideration by the Council of State. Benjamin Stora, "The Crémieux Decree," in *A History of Jewish-Muslim Relations*, eds. Benjamin Stora and Abdelwahab Meddeb (Princeton: Princeton University Press, 2013), 289.

Kabylia revolt of 1871).[118] In fact, because of the immigration of Jews to Algeria from other parts of Africa and the expansion of French colonial authority southward, the Crémieux Decree did not solve the matter of citizenship and personal status for all of Algeria's Jews. For Jews from Morocco and Tunisia, being an Israelite *indigène* from Algeria became a path to equal citizenship, and one worth, at times, falsifying records to achieve or taking legal action to defend.[119] After France annexed the Mzab region in 1882, a debate ensued about whether legally the Crémieux Decree should apply to the Jews living in what would become Algeria's Southern Territories.[120] In order to avoid the appearance of favoritism or intervening in local politics, the French chose not to extend citizenship to southern Jews (as they also chose not to extend the complete abolition of slavery), and hence the state preserved, or rather reinforced, the Jews' separate civil status there.[121]

Even so, the precedent of French Jewry's previous de-corporation and enfranchisement provided a model for the state, and the persistence of even symbolic Jewish collective rights in part of France, as the French claimed Algeria to be, created legal contradictions that French courts were bound to revisit. Once Jews on both sides of the Mediterranean were determined to bear the *qualité de Français*, separate legal regimes and separate rights were untenable in the long term, especially as differences in personal status law had already lost most of their meaning. Unlike the eighteenth-century National Assembly's decrees granting Jewish civil and political equality, which preceded the Jews becoming French, by the time the Crémieux decree declared Algeria's Jews French citizens, French courts had already made Algeria's Jews French.

118. Weil, *How to be French*, 209–12;

119. Marglin, "Mediterranean Modernity," 55; Schreier, *Merchants of Oran*, 142–43.

120. Stein, *Saharan Jews and the Fate of French Algeria*, 42–45.

121. Ibid., 46–47. The state did, however, extend the 1865 laws to the newly annexed territory, which placed southern Algerian Jews (itself a new category) after 1882 in approximately the same legal condition as northern Algerian Jews had been between 1865 and 1870.