



Introduction

In 1900, less than a decade after the French had conquered the vast interior of French West Africa, Faama Mademba Sèye, the king of the states of Sansanding and dependencies along the banks of the Niger River, found himself under house arrest in the colonial capital of Kayes. Mademba had been ordered to Kayes as the colonial administration conducted further investigations into the allegations that he had systematically abused his power, engaged in ritual murder, raped countless women, and extorted significant wealth from his subjects. While under house arrest, Mademba wrote to the governor-general of French West Africa demanding that he be given the opportunity to clear his name in front of a French court. Mademba's request went as far as the minister of colonies in Paris, who bluntly denied Mademba's request. "[I]n no case should Mademba be permitted to bring this [case] before French courts."¹ The governor-general argued further that "the Mademba affair . . . is at once more delicate and more serious than it would appear" in the official investigations into Mademba's alleged abuses.² Why was the minister of colonies so afraid of letting Mademba try to clear his name in a French court? What made this case so "delicate" and so "serious"? How could Mademba, an African born in the French colonial town of Saint Louis du Sénégal, attempt to bring such a case before French courts, whose jurisdiction was limited to those who had French or European citizenship? And what did this case against Mademba reveal about the intersection of colonialism and the rule of law?

This book is a history of the early phase of colonialism: from conquest and the scrapping together of a colonial administration under military supervision to the development of a civilian administration. It examines how the moving parts that constituted colonialism adhered and repelled each other periodically. This study of colonialism also reveals that plans developed in the

¹ Min. Col. confidential letter to Gouv.-Gen., Mar. 24, 1900, Paris, ANS-AOF 15 G 176.

² Gouv.-gen. Chaudié, Suite Donnée à la Vérification par l'Administration ou par la Division compétente, Kayes, Feb. 1, 1900, in Danel, Service du Fama de Sansanding, Segu, Jan. 14, 1900, ANS-AOF 15 G 176.

metropole, in the colonial headquarters in Africa, or even in the forward barracks of the military command were rarely implemented as designed. Few colonial administrators understood the complexities on the ground, which differed from region to region and group to group. Nonetheless, colonialism was not merely an exercise in improvisation. Out of the constant give and take between changing metropolitan policy agenda and local conditions, broad patterns of rule were eventually established. This study focuses on the period when colonialism was still a work in progress, even as muscular efforts were undertaken to create order and regularity.

One of the defining features of colonialism was that it required the active or passive collaboration of subjected peoples. Force alone was never enough. Colonial subjects and colonial powers entered into bargains of collaboration that changed over time as colonial states evolved. This book examines an individual, Mademba Sèye, as he traversed the early phases of colonial rule, during which he transformed himself with the help of his French patrons from a telegraph clerk into an African *faama* (Bambara: king, ruler). Just as colonialism was a series of moving parts that articulated differently at different times, Mademba survived these changes by transforming and adapting himself to changed circumstances. Despite changes to colonialism and despite serious challenges to Mademba's rule, Mademba remained *faama* until his death in 1918.

Tracing Mademba's experiences within the emerging and maturing colonial state illuminates the conflicts of different forms of colonialism and the deep ambiguities of the rule of law in colonial societies. Mademba's life was shaped by his embeddedness in these processes. As a student in the French colonial school for sons of chiefs and hostages and as an entry-level clerk in the nascent Post and Telegraph Department, Mademba spent almost all of his childhood and adulthood affiliated with the colonial state. As Mademba moved up the administrative ladder, he became even more enmeshed with the colonial state. This has implications for the nature of the sources I have. As research on biography makes clear, most of the evidence we have on subaltern lives is generated from "institutions of domination and regulation," forcing the researcher to be explicit about his or her methods, about how those institutions produced those records, and about the wider silences in the historical record.³ This is also the case with Mademba; most of the documentary

³ See, among others, Sue Peabody, "Microhistory, Biography, and Fiction: The Politics of Narrating the Lives of People under Slavery," *Transatlantica: Revue d'études américaines, American Studies Journal* 2 (2012), 1–19; Trevor R. Getz and Liz Clarke, *Abina and the Import Men: A Graphic History* (New York: Oxford University Press, second edition, 2016); Thomas V. Cohen, "The Macrohistory of Microhistory," *Journal of Medieval and Early Modern Studies* 47 (1) 2017, 55–73.

evidence that I have about him and written by him was produced through official correspondence, which shaped the nature of the evidence itself. I also have a handful of personal letters Mademba wrote to Louis Archinard, his long-time patron, which sometimes provide glimpses into the intimate worlds otherwise neglected in official correspondence. And I have oral histories collected in Sinsani and surroundings from elderly informants who at best were children when Mademba ruled his kingdom and whose interpretations of Mademba were shaped by their families' experiences and subsequent history. There is a lot I still do not know about Mademba's life.

Given the evidence I have, I share Alice Kessler-Harris's unease about how an individual life could speak to larger historical processes.⁴ In many ways, this project cleaves closest to the challenge laid out by Charles Tilly regarding the task of European social history: "reconstructing ordinary people's experiences of large structural changes." Tilly had in mind the rise of nation-states and rise of industrial capitalism.⁵ While neither the modern nation-state nor industrial capitalism emerged in late nineteenth-century French West Africa, the changes unleashed by colonial conquest were no less transformational. In addition, Tilly, who called for a collective biography of working people who lived these big transformations, would unlikely recognize this study in the terms he framed. However, this book is about how one individual lived these big transformations and how he used these transformations to transform himself. Circumstances provided the raw material for how Mademba transformed himself, but he was the actor who often recognized the changes underway and seized the opportunities available to him. My approach to Mademba and his life is much like the one proposed by Kessler-Harris:

Rather than offering history as a background, or introducing it in order to locate an individual in time, I want to ask how the individual life helps us make sense of a piece of historical process. I want to see through the life ... I think an individual life might help us to see not only into particular events but into the larger cultural and social and even political processes of a moment in time.⁶

This study of Mademba's life astride the transformations of colonialism provides texture to the processes of change unleashed by French conquest. In so doing, it illuminates three significant bodies of scholarship: the changing nature of colonialism; intermediaries and bargains of collaboration; and the rule of law.

⁴ Alice Kessler-Harris, "AHR Roundtable: Why Biography?" *American Historical Review* 114 (3) 2009, 625.

⁵ Charles Tilly, "Retrieving European Lives," in *Reliving the Past: The Worlds of Social History*, ed. Olivier Zunz (Chapel Hill: University of North Carolina Press, 1985), 15–16.

⁶ Kessler-Harris, "AHR Roundtable," 626.

Changing Nature of Colonialism

In a memorial lecture celebrating the life and work of Frederick Lugard given in 1963, former French colonial governor and scholar Hubert Deschamps reflected on the practices of French and British native policies and on their consequences for newly independent African states. Deschamps argued that while both British and French native policies failed to achieve their stated goals, they both nonetheless succeeded “belatedly and inadequately” in generating modern political institutions that promoted independence. In making his case, Deschamps argued in a retrospective justification of colonialism that despite periodic efforts to promote “assimilation” as native policy, the French relied on native authorities to manage colonial rule, as did the British. By assimilation, Deschamps meant the effort to normalize French metropolitan political forms in colonial Africa, which had been abandoned in the nineteenth century with colonial conquest only to be applied again in the 1930s, abandoned again during Vichy, and applied again in the period after 1945. In this mock conversation with the deceased Lugard, Deschamps argued that “In black Africa, everywhere where we found kings, except in extreme cases where we had fierce opposition or a lack of traditional institutions, we have inducted them, we made them our superior agents, just like the British and for the same reasons: convenience for the conquest, facilitating the administration [of conquered lands], and for economic stability.”⁷

Michael Crowder took issue with Deschamps’s comparison of French and British reliance on African chiefs and rulers. Admitting that both used African chiefs in their native administration, Crowder argued “What *is* important is the very different way in which these authorities were used” and how the use of chiefs fit into a coherent colonial policy.⁸ In his defense of British colonial policy of indirect rule, Crowder missed the significant challenge Deschamps raised: that despite their invocation of grand theories of colonial rule, both French and British colonialism were inherently pragmatic and improvisational. D. K. Fieldhouse better captured Deschamps’s insight.

Colonialism was not a rational or planned condition. It was rather the product of a unique set of circumstances before and during the later nineteenth century that resulted unpredictably in the formal partition of much of the world between the great powers. Few of these, it was argued, had a coherent preconceived idea of what they would do with these territories they claimed or of the problems these would create. Colonial rule was thus a complex improvisation and an ideology of empire was evolved to justify what it was found necessary to do.⁹

⁷ Hubert Deschamps, “Et Maintenant, Lord Lugard,” *Africa* 33 (4) 1963, 297–298.

⁸ Michael Crowder, “Indirect Rule: French and British Style,” *Africa* 34 (3) 1964, 197, emphasis in the original.

⁹ David Kenneth Fieldhouse, *Colonialism 1870–1945: An Introduction* (London: Weidenfeld and Nicolson, 1981), 41–42.

A. G. Hopkins distinguished between the two classic forms of colonial rule: direct, which had a strong military component; and indirect, which relied on local collaborators. Hopkins wrote that “direct rule was more likely to be oppressive, usually created a focus for resistance, and even terrorism. It was also costly. Indirect rule was less visible and far cheaper, but it obliged the colonial authorities to meddle in local society and to juggle endlessly with landlords, warriors, bureaucrats, merchants and peasants.”¹⁰ Philip Curtin went even further. He argued that “[t]heorists of administration constructed elaborate frameworks on paper in which they argued the advantages of ‘direct’ or ‘indirect’ rule.” In practice, however, “[t]he first stages of colonial rule, to about 1920, were marked by a great variety of administrative expediencies.”¹¹ Expediency, improvisation, and meddling had their own unintended consequences requiring periodic intervention and colonial reform.

With its elaborate bureaucracy and clearly identifiable hierarchy, the Sokoto Caliphate served as the ideal model for Lugard’s indirect rule policy that he first laid out in his 1906 *Political Memoranda* and then set to the level of imperial ideology in his *The Dual Mandate in Tropical Africa*, published in 1922.¹² Already by the time he published his *Dual Mandate*, it was clear that indirect rule along the caliphate model could not apply seamlessly throughout British colonial Africa. Where indigenous chiefs with robust institutions did not exist – or were not legible to colonial officials – British policy was to “invent” them. Such invention could take many forms, including the warrant chiefs of southeastern Nigeria and what Moses Ochonu has labeled as sub-colonialism – in which Africans drawn from regions with denser institutions of rule and higher levels of “civilization” were employed in regions with weaker institutions of rule. “The reality of colonial rule,” Ochonu writes, “is that colonial regimes sometimes broke the habit of ruling through indigenous elites in the interests of governing ease . . . In fact, flexible and improvised colonial practices were more common than one might discern from the colonial archive. For the African colonial state, the range of flexibility in colonial practices was nearly infinite.”¹³ To the British, as with other European colonial officials, the most significant attribute of colonial rule was

¹⁰ Antony Gerald Hopkins, “Lessons of ‘Civilizing Missions’ Are Mostly Unlearned,” *New York Times*, March 23, 2003, sec. 4, 5.

¹¹ Philip Curtin, “The Impact of Europe,” in *African History: From Earliest Times to Independence*, eds. Philip Curtin, Steven Feierman, Leonard Thompson, and Jan Vansina (New York and London: Longman, second edition, 1995), 425.

¹² Frederick John Dealtry Lugard, *Political Memoranda, Revision of Instructions to Political Officers on Subjects Chiefly, Political and Administrative 1913–1918* (original London: F. Cass, 1906; republished 1970); Baron Frederick John Dealtry Lugard, *The Dual Mandate in Tropical Africa* (Edinburgh and London: W. Blackwood and Sons, 1922).

¹³ Moses E. Ochonu, *Colonialism by Proxy: Hausa Imperial Agents and Middle Belt Consciousness in Nigeria* (Bloomington: Indiana University Press, 2014), 6. See also

whatever worked. “Functionality,” according to Ochonu, “sometimes trumped colonial doctrine no matter how elaborate or canonical such doctrine had become.”¹⁴

As Thomas Spear reminds us, there were limits to what could be invented in terms of African political institutions under colonial rule. Africans retained a robust sense of history and historical precedent that provided legitimacy to political institutions. Those institutions invented by colonial officials in collaboration with Africans that did not resonate with ongoing political discourse might well fail to be seen as legitimate and result in disputes and rebellions.¹⁵ Sara Berry remarked that such “hegemony on a shoestring” often gave rise not to stability but to a proliferation of disputes over customs and authority. By making so-called traditional systems of authority the cornerstones of their strategies for colonial rule, the colonial administrators built colonial rule on conflict and change rather than on age-old stability.¹⁶ Conflict and change necessitated further intervention in African societies, thus employing increasingly elaborate improvisation and experimentation of colonial rule.

All of these historians who have debated the flexibility of colonialism seem to have missed the importance of the legal underpinnings of empire, namely the protectorate. As I discuss more fully in Chapter 3, the protectorate emerged in the late eighteenth and early nineteenth centuries as the prominent instrument of international law that furthered imperial expansion. At its most basic, the protectorate was an arrangement “whereby one state, while retaining to some extent its separate identity as a state, is subject to a kind of guardianship by another state.”¹⁷ The protectorate usually came into being through military conquest or a treaty ceding a certain degree of sovereignty to the superior power. Alfred Kamanda, a Sierra Leonean scholar and one of the few students of the protectorate treaty, argues that “by reason of its very vagueness and nebulosity, [the protectorate] could be a cloak for many different, and even diametrically opposed, administrations in practice.”¹⁸ According to Steven Press, a protected polity established a “quasi-sovereign position,” or

Adiele Eberechukwu Afigbo, *The Warrant Chiefs: Indirect Rule in Southeastern Nigeria, 1891–1929* (London: Longman, 1972).

¹⁴ Ochonu, *Colonialism by Proxy*, 214.

¹⁵ Thomas Spear, “Neo-traditionalism and the Limits of Invention in British Colonial Africa,” *JAH* 44 (1) 2003, 3–27. See also Terence Ranger, “The Invention of Tradition in Africa,” in *The Invention of Tradition*, eds. Eric Hobsbawm and Terence O. Ranger (Cambridge: Cambridge University Press, 1983), 211–262.

¹⁶ Sara Berry, *No Condition Is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa* (Madison: University of Wisconsin Press, 1993), 29.

¹⁷ Robert Jennings and Arthur Watts (eds.), *Oppenheim’s International Law* (Harlow: Longman, ninth edition, 1992), vol. 1, 278.

¹⁸ Alfred M. Kamanda, *A Study of the Legal Status of Protectorates in Public International Law* (Ambilly: The Graduate Institute, Geneva, 1961), 97–98.

as Mary Lewis argues in the case of Tunisia, a “co-sovereign” in relationship to the colonizing power that permitted a variety of subterfuges regarding who or what the colonizing power was and permitted significant changes over time.¹⁹ At its base, however, the protectorate had its origins in the circumstances that obliged the second party to submit to the protection of the first, most often through force or the threat of force.²⁰ In his classic 1929 study of French colonial policy, Stephen Roberts compared French policy of association, which was in vogue at the time of his writing, to the protectorate. Roberts understood these different forms of colonial rule through the lens of British indirect rule. “Association stresses a compulsory advance suitable to native mentality and to the existing situation, but still imposed by Europeans; whereas a ‘protectorate’ implies development by the natives, with Europeans supervising to a lesser degree, and not interfering unless given practices are considered anti-social.”²¹ In the protectorate, Roberts argues, the “native authorities have been maintained . . . The natives govern themselves under French supervision, and this has done much to minimize the disruptive features of the changes in their moods of existence, especially because with the utilization of native officials went a large degree of toleration for native customs, even those directly opposed to European concepts.”²² Such a policy of colonial rule fits neatly the agenda of colonial military leaders, whose objectives were to conquer territories often preemptively and to protect conquered territories once acquired. During the active phase of conquest, few colonial military leaders wanted to invest time and resources in administering conquered territories at the expense of chasing further glory on the battlefield.²³ The protectorate, whether established with relatively minor chiefs or strong kingdoms, provided the means to acquire territory, quickly establish some semblance of rule drawing on real or imagined native authorities, and keep pursuing military victories. Stephen Roberts understood this when he noted that the “conquest of the Omars and the Ahmadous and the Samorys made the

¹⁹ Steven Press, *Rogue Empires: Contracts and Conmen in Europe’s Scramble for Africa* (Cambridge, MA: Harvard University Press, 2017), 33, 159–160, 238–251; Mary Dewhurst Lewis, *Divided Rule: Sovereignty and Empire in French Tunisia, 1881–1938* (Berkeley: University of California Press, 2014), 11–12, 96–97. Lewis describes the protectorate as a “wonderfully flexible legal instrument,” 42. See also Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (New York: Cambridge University Press, 2010), chapter 5.

²⁰ Frantz Despagnet, “Les protectorats” in *Les colonies françaises: Petite encyclopédie coloniale publiée sous la direction de M. Maxime Petit* (Paris: Larousse, 1902), vol. I, 53–54.

²¹ Stephen H. Roberts, *History of French Colonial Policy (1870–1925)* (London: P. S. King and Son, 1929), vol. 1, 121.

²² *Ibid.*, I, 316.

²³ Alexander Sydney Kanya-Forstner, *The Conquest of the Western Sudan: A Study in French Military Imperialism* (Cambridge: Cambridge University Press, 1969).

occupation of West Africa far and away the most difficult task of France. But there was a curious compensation that, to some extent, this pre-existing organization could be utilized for instance, when it came to reviving the economic life of the occupied areas” and, of course, to establish forms of native administration.²⁴

Improvisation clearly remained central to colonial rule, but it was improvisation within the context of changing ideas about colonialism. That was what Deschamps was trying to explain in his fictive debate with Lugard. Changing ideas about colonialism matter for our story of Mademba because he was caught up in the swirling tides of changing policies. Upon his appointment to direct a crew that was establishing the telegraph system in the Upper River region in 1879, Mademba joined the aggressive phase of colonial conquest of the Soudan. Building and maintaining the telegraph proved Mademba’s worth to the military leadership and he was increasingly drawn into the inner circle of advisors and counselors to the supreme military leader as the French planned and executed their military advance. Concerned more with the security of their troops and the advance of their mission to conquer, the French military leaders probably thought little about what the administration of conquered territories would be like. They were likely drawn to the protectorate, which had been applied in Egypt under Napoléon and in Algeria.²⁵ It had also been used in Senegal under Governor Louis Faidherbe’s expansion. As the French moved into the Soudan, they established protectorates with chiefs and rulers who sided with them and in polities that they conquered militarily. Colonel Louis Archinard, who oversaw the largest territorial conquests in the Soudan, raised the standard for the protectorate when in the course of the campaign against the Umarian state at Segu, he justified conquest by claiming to want to return the kingdom to its rightful Bambara rulers, who had themselves been conquered by the Umarians.

In Archinard’s hands, as I examine more fully in Chapters 3 and 4, French efforts to apply a variant of indirect rule through the reinstatement of legitimate African rulers in Segu failed miserably. Archinard’s model of indirect rule worked somewhat better in Bandiagara, where he placed Aguibu, one of al hajj Umar’s sons who has broken with Umar’s eldest son and successor and sided with the French.²⁶ Archinard’s policy of indirect rule attained its most improvisational form at Sinsani, where in 1891 Archinard made Mademba king in a region that had never had kings before and over which Mademba had no obvious claim on indigenous legitimacy. Between French conquest in 1890 and

²⁴ Roberts, *History of French Colonial Policy*, vol. 1, 304–306.

²⁵ See Jean-Loup Amselle, *Vers un multiculturalisme française: L’empire de la coutume* (Paris: Aubier, 1996).

²⁶ Yves Saint-Martin, “Un fils d’El Hadj Omar: Aguibu, roi du Dinguiray et du Macina (1843?–1907),” *Cahiers d’études africaines* 8 (29) 1968: 144–178.

1893, widespread rebellions convulsed the wider region around Segu and Sinsani that necessitated significant French military intervention. Archinard then suppressed his effort at indirect rule at Segu, but maintained Mademba and Aguibu in power.

Even if colonial conquest was popular among the public, French metropolitan parliamentarians resented the military leadership's independence, their disregard for ministerial orders, and the constant budget overruns.²⁷ After Archinard was recalled in 1893, the Minister of the Navy, who was charged with oversight over overseas colonies, appointed a civilian, Alfred Grodet, as governor of the Soudan. Grodet, who had served as governor in Martinique and French Guyana, saw his role in part to tame the French military and to establish civilian rule. As I shall discuss, Grodet sought to tame the military by promoting the rule of law. Two aspects of Grodet's efforts stand out: he ordered military officers to suppress the slave trade, which had been prohibited in French territories since 1848, and to suppress corporal punishment, which the French military considered necessary to control their African subjects. Grodet's policies to shape colonial rule in the Soudan through French metropolitan ideas of civilization and civilian rule of law bumped up against the French military's sense of its mission, its prerogatives, and its own rule of law. Most French military officers in the Soudan disregarded Grodet's orders and Grodet was recalled before his term had fully ended.²⁸

Grodet's concern with regularity and the rule of law foreshadowed the reforms underway in metropolitan France. In 1894, the Ministry of Colonies was formed out of the Ministry of the Navy with broad mandates to reform the much enlarged French empire. The year 1894 also marked the onset of the Dreyfus Affair, which tightly enveloped the French military leadership and led to sustained political instability in France and the colonies. As part of its reform of empire, the new Ministry of Colonies created the French West Africa Federation (*Afrique Occidentale française*) in 1895 under the authority of a governor-general based in Dakar. Jean-Baptist Chaudié, a former administrator of the Ministry of the Navy and a senior officer in that ministry's General Inspection Service, served as the first governor-general with a mandate to oversee the budget of the colonies of this far-flung federation, to establish order and uniformity among the disparate colonies, and to hold lieutenant-governors accountable.²⁹ With Grodet's recall in 1895, the minister of colonies appointed Colonel Louis Edgar de Trentinian as

²⁷ Kanya-Forstner, *The Conquest of the Western Sudan*, chapter 8.

²⁸ Richard Roberts, *Warriors, Merchants and Slaves: The State and the Economy in the Middle Niger Valley, 1700–1914* (Stanford, CA: Stanford University Press, 1987), 153.

²⁹ Colin Newbury, "The Formation of the French West Africa Federation," *JAH* 1 (1) 1960, 111–128; Alice L. Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895–1930* (Stanford, CA: Stanford University Press, 1997), 23–37.

lieutenant-governor of the French Soudan. Trentinian was an officer in the infantry of the Marines, and thus part of the military ensconced in administrative and leadership positions in the colony, whose formative colonial military experience was mostly in Indochina. Trentinian was thus simultaneously an outsider to the core of French military leaders in the Soudan whose careers were shaped by conquest but also deeply part of the ethos of the Marines.³⁰ As such, Trentinian treaded a delicate path through the mandates emanating from Dakar and Paris to regularize colonial practice, to promote economic development, to control budgetary expenses, and yet to assist his military colleagues eager to complete the conquest of the region. It was under Trentinian that Mademba received his first administrative sanction for his alleged abuse of power, which I explore more fully in Chapter 5. Under Trentinian's leadership, the military completed its conquest of the region by 1898. But also under Trentinian's leadership, the Voulet–Chanoine mission, which was charged with demarcating the vague boundaries between French and British territories, spun drastically out of control and resulted in a major scandal that further shook the French military and colonial establishment. As I explore in Chapter 6, in order to impose additional constraints on the leadership of the French Soudan and to punish the military for its persistent budgetary indiscipline, in 1899, the Ministry of Colonies reorganized the colony and allocated some of its parts to neighboring colonies. In the face of this decision, Trentinian resigned in protest.

Trentinian's resignation coincided both with the aftereffects of the Voulet–Chanoine scandal and with the emerging scandal surrounding the investigations into Mademba's alleged crimes and abuses of authority. The three nested investigations into these allegations form a central point of inflection in the history of French colonialism in the Soudan. These investigations pitted the colonialism of Archinard's indirect rule against the colonialism of regularity and the rule of law. These investigations also illuminated the practices of relying on African intermediaries whose position and authority were founded on loyalty to the French against the stated goals of the mission to civilize. I unpack these investigations in Chapter 7.

Amédée William Merlaud-Ponty, know more widely as William Ponty, who assumed the position of lieutenant-governor following Trentinian's resignation, oversaw the investigations into Mademba. Ponty, whose real title was delegate of the governor-general in the French Soudan, was a civilian with significant military and administrative experience in the Soudan. Ponty served as Archinard's private secretary and in the course of this role had firsthand

³⁰ G. Wesley Johnson, "William Ponty and Republican Paternalism in French West Africa (1866–1915)," in *African Proconsuls: European Governors in Africa*, eds. Lewis Henry Gann and Peter Duignan (New York: Free Press, 1978), 130–131; Kanya-Forstner, *The Conquest of the Western Sudan*, chapter 9.

experience of challenges facing the French in building a colonial empire. He also served together with Mademba in at least one military excursion.³¹ Upon assuming the role of lieutenant-governor, Ponty was obliged to deal with the results of the Mademba investigations, which raised significant challenges to his stated goals of promoting the rule of law.³² Faced with the prospects of yet another potential scandal regarding France's African empire, Ponty, Governor-general Chaudié, and the minister of colonies closed ranks around Mademba, made oblique noises about constraining his unlimited authority, sent Mademba back to his kingdom, and ordered a relatively low-level employee of the Native Affairs Department to serve as "resident," presumably to oversee Mademba's administration and to keep his inclinations in check.

Chastised but not exonerated, Mademba returned to his kingdom in the fall of 1900 eager to refurbish his image among the French administrators who had yet again saved him from himself. With conquest now complete, the French redoubled their efforts to promote economic development. Mademba, who had understood the colonial rhetoric of the civilizing mission, of progress, and the need to develop economically, immersed himself in promoting cotton production for export, and in the process remade himself into a colonial modernizer. Cotton became the means through which Mademba rehabilitated himself during a strategic visit to France in September and October 1906, as I examine in Chapter 8. At the Colonial Exposition in Marseilles and at the Parisian banquet of the Association of Colonial Cotton, Mademba was feted as the innovator and promoter of export-oriented cotton that would free France's industry from its dependence on cotton exported from the United States. Mademba used interviews with French journalists to plant the seeds of a revised narrative of his long and steadfast loyalty to France, his commitment to France's civilizing mission in Africa, and his progressive administration of his kingdom along the banks of the Niger River. Even as Mademba was promoting Soudanese cotton to French industrialists, his own cotton kingdom was collapsing in the face of the end of slavery and the rebellion of his army of prisoners of war, who along with slaves, were now demanding their freedom. Without these armies of forced labor, Mademba's ability to produce cotton waned. Mademba nonetheless managed to surf the changing economic and political conditions in the Soudan and retain his kingdom until his death in 1918.

Bargains of Collaboration, Bricolage, and African Intermediaries in Colonial French West Africa

Mademba benefitted from early colonial efforts to build colonial rule on improvisation and expediency. So did many thousands of other Africans.

³¹ Mamoudou Sy, "Capitaine Mamadou Racine Sy (1838–1902)," unpublished paper, Dakar, 2010.

³² Johnson, "William Ponty," 127–156.

Nearly fifty years ago, the Cambridge imperial historian Ronald Robinson argued that there could be no colonialism without the active or passive acceptance of colonialism by subject people. Colonial states were just too weak and metropolitan powers too parsimonious to invest in repressing subject people all of the time. Robinson challenged historians to examine the “bargains of collaboration” that lay at the heart of the engagement between subject people and the colonial state. By “bargains of collaboration” Robinson meant how subject people exploited new opportunities unleashed by colonialism to accumulate wealth, power, and prestige.³³ Such benefits depended upon the roles that Africans played within colonial administrations and they could include colonial support for “traditional” officeholders, steady income for employees, patronage from powerful officials, and access to cultural resources. Some became, in Henri Brunschwig’s terms, “black whites.”³⁴ Others, however, “straddled” the colonial and “traditional” worlds by using the resources of the colonial state to pursue customary goals within local communities.³⁵

In his important study of the “thin white line” of European district administrators in colonial Africa overseeing tens of thousands of Africans, Anthony Kirk-Greene argued that “Without the manpower and machinery of the native administration or similar local government bodies, all the way from paramount chiefs, district headman, and treasury staff to dispensers, foremen of works, and forestry agents . . . the colonial administrator could never have functioned or even survived in his job.”³⁶ Reflecting on the French colonial experience, Brunschwig wrote that “colonization brought forth an abundant gaggle of voluntary collaborators. The Whites, incapable of fending for themselves, have always and everywhere found agents: militia, police, boys, cooks, porters, etc, [who] constituted a proletariat recruited from among the less

³³ Ronald Robinson, “Non-European Foundations of European Imperialism: Sketch for a Theory of Collaboration,” in *Studies in the Theory of Imperialism*, eds. Roger Owen and Bob Sutcliffe (London: Longman, 1972), 117–142; Colin Newbury, *Patrons, Clients, and Empire: Chieftaincy and Over-rule in Asia, Africa, and the Pacific* (Oxford: Oxford University Press, 2003).

³⁴ Henri Brunschwig, *Noirs et Blancs dans l’Afrique noire française: Comment le colonisé deviant colonisateur, 1870–1914* (Paris: Flammarion, 1983).

³⁵ On straddling, see Andreas Eckert “Cultural Commuters: African Employees in Late Colonial Tanzania,” in *Intermediaries, Interpreters, and Clerks: African Employees in the Making of Colonial Africa*, eds. Benjamin Lawrance, Emily Osborn, and Richard Roberts (Madison: University of Wisconsin Press, 2006), 248–269; on pursuing local goals, see Jean-Hervé Jézéquel, “Collecting Customary Law’: Educated Africans, Ethnographic Writing, and Colonial Justice in French West Africa,” in *Intermediaries*, 139–158, and Jamie Monson, “Claims to History and the Politics of Memory in Southern Tanzania, 1940–1960,” *International Journal of African Historical Studies* 33 (3) 2000, 543–565.

³⁶ Anthony H. M. Kirk-Greene, “Thin White Line: The Size of the British Colonial Service in Africa,” *African Affairs* 79 1980, 26, 41.

privileged groups in traditional societies.”³⁷ In her study of Anglo-Egyptian Sudan, Heather Sharkey notes that “colonialism was a day-to-day performance of power in which petty employees took part by presenting the face of government to the general populace in their capacity as inspectors, collectors, law enforcers, teachers, and clerks.”³⁸

Colonial states often brought immense power to suppress revolts, but they could rarely sustain such expression of control.³⁹ Far from establishing an “iron rule,” colonial officials ruled with precarious authority. Emily Osborn has reversed this notion of an “iron rule”; instead, French colonial administrators in Upper Guinea were surrounded by a “circle of iron” formed by their complete dependency on interpreters and local chiefs.⁴⁰ During this period, as Robert Delavignette described, “the interpreters kept the [commandant] turning in a narrow circle of intrigues,” out of which he had no escape because he was dependent upon them for information, for translation, for mediation, and often also for the basic necessities for daily life, such as food, labor, and sexual services.⁴¹

Africans who learned European languages in order to translate Europeans’ commands to African subjects and to translate African words and concepts into European languages also learned to parse European concepts.⁴² Throughout the continent, African employees, teachers, and missionaries produced ethnographies and local histories, many of them having a distinctively self-interested character.⁴³ Many of these interpreters used their roles as cross-cultural brokers to bolster their own families’ claims to traditional power and access to economic resources, such as land and labor. A more careful focus on what intermediaries did and what they gained from working for the colonial authority offers new insights into the practice of colonialism. Such bargains of collaboration were unstable and needed to be periodically renegotiated as colonialism itself changed over time. Those formed during these

³⁷ Brunshwig, *Noirs et Blancs*, 213.

³⁸ Heather Sharkey, *Living with Colonialism: Nationalism and Culture in Anglo-Egyptian Sudan* (Berkeley: University of California Press, 2003), 138.

³⁹ Bruce Berman and John Lonsdale, *Unhappy Valley: Conflict in Kenya and Africa* (Athens: Ohio University Press, 1992).

⁴⁰ Emily Osborn, “‘Circle of Iron’: African Colonial Employees and the Interpretation of Colonial Rule in French West Africa,” *JAH* 44 (1) 2003: 29–50.

⁴¹ Robert L. Delavignette, *Freedom and Authority in French West Africa* (London: Cass, 1968), 41. See also Tamba Mbayo, *Muslim Interpreters in Colonial Senegal, 1850–1920: Mediations of Knowledge and Power in the Lower and Middle Senegal River Valley* (Lanham, MD: Lexington Books, 2016).

⁴² William Worger, “Parsing God: Conversations about the Meaning of Words and Metaphors in Nineteenth-Century Southern Africa,” *JAH* 42 (3) 2001, 417–447.

⁴³ See esp. Jézéquel, “Collecting Customary Law.”

moments differed from those formed two or three decades later as colonial rule gradually matured.

Despite the recognition of the importance of indigenous employees to the colonial state, we know very little about the Africans who worked for it.⁴⁴ African colonial employees were not simply lackeys of the colonial state. Instead, African colonial employees used the new opportunities created by colonial conquest and colonial rule to pursue their own agendas, even as they served their employers.⁴⁵ During the early phase of conquest and establishing colonial rule, many of these African intermediaries moved easily between still fragile colonial spaces and gradually transforming precolonial spaces. Jeffrey Herbst captured this process with his concept of the uneven ways in which colonial states broadcast their power.⁴⁶ Broadcasting power was a dynamic process and it waxed and waned over time. As it varied, the spaces African intermediaries inhabited changed, thus opening and foreclosing opportunities. Inhabiting these transitional spaces that would eventually lead toward fuller integration with a colonial system permitted precolonial practices to cohabit with colonial ones. These transitional spaces also gave rise to what Richard White termed “creative misunderstandings.”⁴⁷ Such creative misunderstandings were evident in Archinard’s policies of reviving African polities that had been defeated by subsequent African conquerors and by appointing new rulers, few of whom had local legitimacy. On the other side, Mademba, one of Archinard’s new kings, used the revised space to invent his own legitimacy and to remake himself periodically.

⁴⁴ Studies of African soldiers and African police provide exceptions to this general statement. See, for example, Myron Echenberg, *Colonial Conscripts: The Tirailleurs Sénégalais in French West Africa, 1857–1960* (Portsmouth, NH: Heinemann, 1991); Timothy Parsons, *The African Rank-and-File: Social Implications of Colonial Military Service in the King’s African Rifles, 1902–1964* (Portsmouth, NH: Heinemann, 1999); Gregory Mann, *Native Sons: West African Veterans and France in the Twentieth Century* (Durham, NC: Duke University Press, 2006); and Michelle Moyd, *Violent Intermediaries: African Soldiers, Conquest, and Everyday Colonialism in German East Africa* (Athens: Ohio University Press, 2014). On African police, see Joël Glasman, *Les corps habillés au Togo: Genèse coloniale des métiers de police* (Paris: Karthala, 2014). Babacar Fall and I are engaged in a collaboration with FASTEF of UCAD, the Senegal National Archives, and Stanford University in the study of colonial employees of the West African Federation using personnel files.

⁴⁵ For a wonderful example of this situation, see Amadou Hampaté Bâ’s brilliant autobiographical novel, *The Fortunes of Wangrin*, translated by Aina Pagolini Taylor (Bloomington: Indiana University Press, 1999).

⁴⁶ Jeffrey Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control* (Princeton, NJ: Princeton University Press, 2000).

⁴⁷ Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815*, twentieth anniversary edition (New York: Cambridge University Press, 2011), 50, 68.

In periodically remaking himself, Mademba drew on cultural symbols and practices from the multiple worlds that he inhabited in the transitional space that was early colonial Sudan. In drawing on such a diverse array of different symbols and practices, Mademba acted as a *bricoleur*, made famous by Claude Lévi-Strauss. Lévi-Strauss juxtaposes the *bricoleur*, who uses “whatever is at hand,” to the engineer, “who is always trying to make his way out of and go beyond the constraints imposed by a particular state of civilization.”⁴⁸ Building on Lévi-Strauss, Jack Goody defines the *bricoleur* as a “cultural handy-man,” who learns by doing and by improvisation rather than from recipes or book-knowledge.⁴⁹ Throughout his career, Mademba was an African *bricoleur* who navigated the profoundly unstable and changing worlds of late precolonial and early colonial French West Africa. The thing that Mademba made – his *bricolage* – was himself. As colonialism matured, Mademba periodically remade himself each time with a slightly different combination of elements at hand. Born into a Muslim family in the French colonial town of Saint Louis du Sénégal in 1852, Mademba attended the French school reinvented by Governor Faidherbe that was designed for sons of chiefs and interpreters. At a time of increasing Muslim militancy and anticolonial resistance, Mademba joined the young Senegalese Post and Telegraph Department. As he rose through the ranks of the department, Mademba added to his social stature by becoming a Freemason. His career took off as he was recruited to help build the telegraph for the decade-long military conquest of the vast interior of the Sudan and served in the process as interpreter and political agent for the French military command. To reflect his new stature, Mademba wanted a uniform, but as a civilian agent of the telegraph service, no such uniform was available. Nonetheless, as a reward for his loyal service, the military command agreed to provide Mademba with a special uniform. Armed with his new uniform, Mademba enhanced his authority and command over his telegraph crew and over Africans living along the expanding telegraph lines. As conquest accelerated, so did Mademba’s authority. The French military command increasingly placed Mademba at the head of ranks of African auxiliaries fighting for the French, but also themselves. Mademba proved again and again both his capacity to command and his loyalty to the French. In the aftermath of conquest, the French rewarded Mademba by making him king (*faama*) over the territories of Sinsani. This was a kingdom fashioned under French colonialism and France’s Third Republic, and thus Mademba was bound by the fluid meanings of the French civilizing mission.

⁴⁸ Claude Lévi-Strauss, *Savage Mind* (Chicago: University of Chicago Press, 1966), 13–16.

⁴⁹ Jack Goody, *The Domestication of the Savage Mind* (Cambridge: Cambridge University Press, 1977), 24, 140, 144.

In making himself king, Mademba drew on the available material and social elements around him. Félix Dubois, who visited Mademba in his kingdom in late 1894 or early 1895, remarked that Mademba attired himself as king in a manner of the *bricoleur*.

The king's wardrobe remains local. He has avoided dressing himself in European clothing, but he has adopted a red fez and a long cape in the form of a medieval shroud, green in color, and heavily decorated with gold embroidery and bedecked with diverse medals of which one is the medal of the Legion of Honor. I admit that he has, just a small resemblance, to a king of the theater who appears to have just left the storeroom of the accessories. At the very least, however, he avoids looking ridiculous in vest and jacket.⁵⁰

Following a near catastrophic fall from grace in 1899–1900, during which he was held under house arrest in the capital city of the French Soudan, Mademba remade himself yet again. Mademba did not hesitate to wear a vest and jacket during his visit to France in 1906 to promote himself as the economic modernizer of the Soudan and the promoter of colonial cotton for the metropolitan textile industry. In Paris, Mademba presented himself as a modest man rather than a king; a man who opened his own doors and allowed others to pass first. At the same time, the textile industry vetted him as a precious collaborator in making the Soudanese economy useful to French manufacturing. Mademba used his time in France to meet with journalists in order to narrate the story of his rise to become king and in the process to remake himself yet again. Mademba was an efficient *bricoleur* of his own image during a period of transition in the Soudan from a precolonial to colonial space. His capacity to remake himself diminished as the colonial state strengthened and as it asserted a rule of law.

Rules of Law

What was the significance of the minister of colonies' decision in March 1900 to deny Mademba's request to bring the evidence against him before a French court? Under what conditions of the law did Mademba even have the right to assume that he could request to have his case heard by a French court? What rules governed and empowered the minister to deny Mademba's request? And what did the investigation into Mademba's alleged abuses of power and crimes and the decisions surrounding these allegation tell us about the rule of law in early colonial French West Africa?

Let us begin with the "rights" Mademba had to request a trial by a French judge in order to clear his name. During the revolutionary zeal of 1848 that

⁵⁰ Félix Dubois, *Tombouctou la mystérieuse* (Paris: Flammarion, 1897), 91.

overthrew the constitutional monarchy of Louis Philippe and established the Second Republic, the republican advocates for the abolition of slavery prevailed. On April 27, 1848, the provisional government abolished slavery throughout the French empire and immediately granted former slaves who lived in the old French slaveholding colonies of Guadelupe, Martinique, Guiana, and Réunion rights of citizenship. The 1848 decree abolished slavery throughout the French empire, but did not uniformly extend citizenship to all of its inhabitants. Victor Schoelcher, ardent abolitionist, served as president of the commission charged with developing the abolition decree and with defining the status of the freed slaves. The commission recommended freedom and citizenship for the slaves of the old slaveholding colonies, but hesitated to grant citizenship to the indigenous subjects of the newest colony, Algeria. Slaves in the old French establishments of Gorée and Saint Louis were freed, but the freed slaves and the indigenous inhabitants of these towns did not gain full citizenship but “partial” citizenship. They gained the right to vote for representatives to the French national assembly and the municipal council and the right to bring their legal disputes before French courts – both of which were rights of citizenship – but because these inhabitants were largely Muslim, they retained their rights to bring disputes regarding family issues before qadis and eventually the Muslim Tribunal established in Saint Louis. Within the French empire, the right of these inhabitants to retain their personal status as Muslim and thus to bring their disputes before Muslim judicial authorities was exceptional and thus placed them in a situation of legal ambiguity: they were neither citizens nor subjects, although they exercised the rights of citizenship without being French citizens.⁵¹ Everywhere in the French empire, there existed a route to French citizenship, but only for those who as individuals convinced French officials that they had renounced their personal status, agreed to abide by the French civil code regarding family and inheritance issues, and demonstrated that they had lived by French norms. In contrast, the legally gray areas in which the inhabitants of Gorée and Saint Louis and their descendants (referred to as *originaires*) lived became a subject of significant struggles as French officials sought to clarify the limits on their rights and as these *originaires* demanded full recognition of their rights. Their legal situation was resolved only in 1916, largely in response to claims being made by the *originaires* to have their

⁵¹ According to Yerri Urban’s research into decrees and case law, French citizenship was “fragmented” by gender, nationality, and religious status, yielding a bewildering array of partial citizenships and incomplete rights. Yerri Urban, “La citoyennité dans l’Empire colonial français est-elle spécifique,” *Jus Politicum: Review de droit politique* 14 (2017), 151–187; Yerri Urban, *L’indigène dans le droit colonial français, 1865–1955* (Clement-Ferrand: Fondation Verenne, 2010). See also the distinction between citizenship and subjecthood in Emmanuelle Saada, *Empire’s Children: Race, Filiation, and Citizenship in the French Colonies*, translated by Arthur Goldhammer (Chicago: University of Chicago Press, 2012).

status clarified before being recruited to the French military to fight for the motherland.⁵² Mademba, who was born in Saint Louis in 1852, was subject to these legal ambiguities regarding his status. At times, the colonial administration labeled him an indigenous subject and at other times as a French citizen.⁵³ This gray area that Mademba inhabited provided both challenges and opportunities as he traversed different roles throughout his long career serving the French. But when he wrote to the governor-general requesting that he be permitted to clear his name before a French judge, Mademba was invoking the rights granted to him as an *originnaire* of Saint Louis and thus as someone who had French-like citizenship. Mademba was thus claiming the rule of law.

When the minister of colonies denied Mademba's right to bring his case before a French judge, he was acting within his authority as a head of the relevant government department charged with overseeing the conduct of employees. The minister's authority stemmed from the jurisdiction of administrative law (*doit administratif*), which in France served as separate body of law and courts dealing with government employees in the course of their formal activities. The separation of public from private disputes was formalized in the immediate aftermath of the French Revolution of 1789 and modified by successive constitutions, but legal principles of jurisdictional separation remained. In effect, private law regulates the relationships between citizens as individual actors; administrative law is concerned with "rules, procedures, and remedies applying to the relations of individuals via-à-vis public authorities."⁵⁴ The legal principle behind administrative law in France was that when acting as a public authority, the state and its official employees enjoy "a legal

⁵² See G. Wesley Johnson, *The Emergence of Black Politics in Senegal: The Struggle for Power in the Four Communes, 1900–1920* (Stanford, CA: Stanford University Press, 1971); Dominique Sarr and Richard Roberts, "The Jurisdiction of Muslim Tribunals in Colonial Senegal, 1857–1932," in *Law in Colonial Africa*, eds. Kristin Mann and Richard Roberts (Portsmouth, NH: Heinemann, 1991), 131–145; Conklin, *A Mission to Civilize*, 103–105; Catherine Coquery-Vidrovitch, "Nationalité et citoyenneté en Afrique occidentale française: Originaires et citoyens dans le Sénégal colonial," *JAH* 42 (2) (2001), 285–305; Larissa Kopytoff, "French Citizens and Muslim Law: The Tensions of Citizenship in Early Twentieth-Century Senegal," in *The Meaning of Citizenship*, eds. Richard Marback and Marc W. Kruman (Detroit: Wayne State University Press, 2011), 320–337; Emmanuelle Saada, "The Republic and the *Indigènes*," in *The French Republic: History, Values, Debates*, eds. Edward Berenson, Vincent Duclert, and Christophe Prochasson (Ithaca, NY: Cornell University Press, 2011), 224–225; Frederick Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960* (Princeton, NJ: Princeton University Press, 2014), 6.

⁵³ According to a census taken in 1904, Mademba was a "naturalized" citizen, one of four French citizens residing in Sinsani. État nominative des Européens présent à Sansanding, July 31, 1904, Correspondance Affaires administratives, Cercle de Segou, 1891–1917, ANM 2 D 102.

⁵⁴ Eva Steiner, *French Law: A Comparative Approach* (Oxford: Oxford University Press, 2018), 247.

personality so as to enable its representatives . . . to take and enforce unilateral administrative acts in the performance of their duties.”⁵⁵ Under French administrative law, its courts deal with ordinary citizen’s grievances with public authorities and with the conduct of government officials accused of misgovernment or misrule. Although administrative law shielded public employees from most legal suits when they acted in their official capacities, public officials were culpable when they acted in an unlawful or reprehensible manner in their official capacity. An 1873 decree opened the administrative courts to hear actions brought by individuals who were seeking damages from actions caused by “persons employed in the public service.” The 1873 decree and subsequent case law developed an important distinction between harm done through *faute de service* (wrongful actions due to the operation of regular administrative actions such as being run over by an official vehicle) and *voie de fait* (acts of flagrant irregularity), which occurred when an administrator took the law into his own hands and/or abused official powers. The distinction between *faute de service* and *voie de fait* is important for determining whether or not the state is liable for damages and which court is competent to hear the claim.⁵⁶ Thus, if the administrator’s actions amounts to a *faute personnelle* rather than an administrative act, then the public officer is considered personally liable and the case proceeds in civil courts. Especially in cases where alleged criminal conduct occurred, individual citizens harmed could seek a formal exception from the administrative court to pursue criminal cases.⁵⁷

Mademba’s alleged malfeasance and crimes that almost led to his downfall emerged out of reports collected from the Segu district administrator and most significantly from a formal review of Soudanese colonial administrators and administrative functions ordered by the minister of colonies in 1899. The charge fell to the office of the inspector-general within the Ministry of Colonies, who in turn charged Inspector-general Danel to lead the review. As I shall examine in Chapter 7, Danel collected testimony from Mademba’s

⁵⁵ Ibid., 255.

⁵⁶ Duncan Fairgrieve and Françoise Lichere, “The Liability of Public Authorities in France,” in *The Liability of Public Authorities in Comparative Perspective*, ed. Ken Oliphant (Cambridge: Intersentia, 2016), 156–175; Bernard Pacteau, *Contentieux administratif* (Paris: Presses Universitaires de France, 1985), 15–28; Bernard Schwartz, *French Administrative Law and the Common-Law World* (New York: New York University Press, 1954), 72–73; Steiner, *French Law*, 254–255, 264–272.

⁵⁷ Schwartz, *French Administrative Law*, 258–262; Eva Steiner, “Administrative Law,” in *French Law*, 260–272; George A. Bermann and Étienne Picard, “Administrative Law,” in *Introduction to French Law*, eds. George A. Bermann and Étienne Picard (Alphen aan den Rijn: Kluwer Law International, 2012), 57–102. Several forms of administrative courts were established, including the ones in French West Africa that heard disputes and grievances brought by citizens and even African subjects. Many of these can be found in the National Archives of Senegal in the files dealing with *affaires contentieuses*.

subjects regarding his administrative acts that fell within the scope of *voie de fait* and other actions that were criminal in nature. In forwarding his dossier on Mademba to the newly arrived delegate of the governor-general in the Soudan and to the governor-general himself, Danel concluded that Mademba's role as *faama* of Sansanding should be terminated and that he be subject to further punitive action. Acting in his official capacity, Danel also forwarded his dossier of alleged crimes to the attorney-general of the French West Africa Federation.⁵⁸

Gouverneur-general Chaudié, himself a former inspector-general, nonetheless rejected Danel's assessment and suggestions. Chaudié wrote to the minister of colonies that "The Mademba affair is at once more delicate and more serious than [Danel] describes. If this colony were a colony constituted in the normal way, nothing would be easier than to suppress the functions of a functionary. But is Mademba really a functionary when he exercises the authority of *faama* of Sansanding?"⁵⁹ The period 1899–1900 was a tumultuous time for the political organization of French West Africa, with a major reorganization of the Soudan underway. As the head of the administrative agency involved, the minister of colonies had the authority to decide the validity of the case brought against Mademba. In deciding as he did not to pursue either legal or administrative sanctions against Mademba, the minister was making a clear statement that the rule of law as it prevailed in metropolitan France was certainly not or not yet operative in French West African colonies. So what was the rule of law and what did its presumed absence mean within the context of the turn of the century in the French Soudan?

Gouverneur-general Chaudié's statement to the minister of colonies that the Soudan was not constituted as an "ordinary colony" underscores the transitional nature of colonialism that prevailed there and the fact that different ideas of colonialism overlapped. Within this transitional world, different rules of law also prevailed. Without venturing into the more complex plural legal world that provided opportunities for African disputants, I want to concentrate on the rules of law linked to the two competing models of colonialism: the rule of law for the French military that still dominated the administrative structures in the Soudan and the civilian rule of law being promoted by the reformists in France. Central to the French military command was the obligation to obey, which was the cornerstone of hierarchy and authority. Enshrined in the 1857 Code of Military Justice, the military's rule of law provided "legal containment" for the application of swift and terrible punishment for military-specific infractions that included disrespect for superiors, insubordination, laziness, and "bad will." French soldiers were also subject to ordinary penal

⁵⁸ Inspector-gen. Danel, Rapport: Inspection générale concernant la vérification du service de Mademba, Fama Sansanding, Jan. 14, 1900, ANS-AOF 15 G 176.

⁵⁹ Gouv.-gen. Chaudié, Notes attached to Danel, Rapport, Feb. 1, 1900, ANS-AOF 15 G 176.

law. Although the 1857 Code established a set of military tribunals, superiors were permitted to apply exemplary punishments to assure authority and obedience.⁶⁰ In many ways, Mademba's application of justice in his kingdom resembled the military rule of law in which any challenges to his authority demanded swift and terrible punishments. Competing with the military's rule of law in the Soudan was a civilian rule of law.

Since the French Revolution, one of the driving forces of republicanism has been the struggle against tyranny and judicial arbitrariness. Taming the monarch and controlling the magistrates in the quest of uniform application of the law lay behind the Napoléonic Code and many of the periodic reforms of the judiciary over successive French constitutions and republics. Ending arbitrariness is one of the hallmarks of the rule of law.⁶¹ In reflecting on the rule of law, Léon Duguit, one of France's most prominent jurists of the early twentieth century, drew on Rousseau's concept of social solidarities and social contract but argued that with the proliferation of government functions, rules – that is, positive law – must govern not only relations among men but also relations between men and the state. In Duguit's conception, the state is bound, just like individual, to the rule of law. "Rulers, who are individuals like the ruled . . . should act in conformity with objective law and can only act within the limits which it fixes."⁶² No one is above the law and the law must be applied equally.

Closely linked to the ideal of equality before the law was the principle of protection against arbitrariness in the application of the law. These two principles lie at the heart of the United Nations Rule of Law indicators.

It refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to the law that are publicly promulgated, equally enforced and

⁶⁰ See Jorg Gerkrath, "Military Law in France," in *European Military Law Systems*, ed. Georg Nolte (Berlin: De Gruyter Recht, 2003); Charles Herbert Hammond, Jr., "Neither Lenient nor Draconian: The Evolution of French Military Justice during the Early Third Republic," unpublished PhD dissertation (University of California, Davis, 2005); John Cerullo, *Minotaur: French Military Justice and the Aernoult-Rousset Affair* (DeKalb: Northern Illinois University Press, 2011). I thank Wallace Teska for prompting this issue.

⁶¹ Paul Jankowski, "The Republic and Justice," in *The French Republic*, 154–155. For a more detailed analysis of the various controversies and reforms regarding arbitrariness, see the magisterial study by Jean-Pierre Royer, Nicolas Derasse, Jean-Pierre Allinne, Bernard Durand, and Jean-Paul Jean, *Histoire de la justice in France du XVIIIe siècle à nos jours* (Paris: Presses Universitaires de France, 1995).

⁶² Léon Duguit, "The Rule of Law," in *Modern French Legal Philosophy*, eds. Alfred Jule Émile Fouillée, Joseph Charmont, René Demogue, and Léon Duguit, translated Franklin Scott and Joseph P. Chamberlain (Boston: The Boston Book Co., 1916), 324; Léon Duguit, "The State and the Law, as Concrete Facts Rather Than Abstract Considerations," in *Modern French Legal Philosophy*, 342.

independently adjudicated . . . [and] requires, as well, measures to ensure adherence to the principles of the supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁶³

Legal scholars and political scientists draw distinctions between the rule of law and rule by law.⁶⁴ In the Nazi regime in Germany and among many autocratic states, parliaments make laws often in the direct service of the state. As such, they rule by law, but not necessarily in the broader sense of rule of law. Building on this distinction, Martin Krygier further distinguishes between what he terms a “thin” or “formal” cluster of legal institutions from a “thick” or “substantive” cluster of traits that form a more expansive vision of the rule of law.⁶⁵ Krygier’s invocation of thick and thin helps explain the significance of Gouverneur-general Chaudié’s remark cited earlier: “If this colony were a colony constituted in the normal way, nothing would be easier than to suppress the functions of a functionary.” Chaudié’s remark, merely a decade after the French captured Segou from the Umarians and less than two years since the French captured the last major independent state-builder Samory Turé, came at a moment of significant transition in the nature of colonialism in French West Africa that pitted Archinard’s model of indirect rule against a more robust republican vision of colonialism. Chaudié’s remark links to this discussion of the rule of law in at least three ways. First, by suggesting that the French Soudan was not a colony constituted in the “normal” way, it presumes that there was an understanding of what a normal colony was. I do not know exactly what Chaudié was pointing to when he cited a normal colony. Perhaps he had in mind the “old colonies” of the Caribbean and the Indian Ocean where the Second Republic’s abolition of slavery and extension of metropolitan rights of citizenship prevailed. Perhaps he had in mind Algeria,

⁶³ United Nations Department of Peacekeeping Operations and Office of the High Commissioner for Human Rights, *The United Nations Rule of Law Indications: Implementation Guide and Project Tools* (New York: United Nations Publications, 2011), v–vi, 1. See also Tom Bingham, *The Rule of Law* (London: Penguin Books, 2010); Stephen Humphrys, *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice* (Cambridge: Cambridge University Press, 2010).

⁶⁴ Barry R. Weingast, “The Political Foundations of Democracy and the Rule of Law,” *American Political Science Review* 91 (2) 1997, 245–263; Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown, 2018); Larry Diamond, *Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency* (New York: Penguin, 2019).

⁶⁵ Martin Krygier, “The Rule of Law (and Rechtsstaat),” *International Encyclopedia of the Social and Behavioral Sciences* 20 (2015), 783, second edition. Krygier elaborates these issues in Martin Krygier, “Four Puzzles about the Rule of Law: Why, What, Where? And Who Cares?,” in *Getting to the Rule of Law*, ed. James E. Fleming (New York: New York University Press, 2011), 64–104.

which had integrated the northern districts into metropolitan government practices following the 1881 reorganization.⁶⁶ Second, the idea of a normal colony was linked to the idea of the civilizing mission, which formed at least an ideological justification for late nineteenth-century colonialism. And third, how could a civilian rule of law operate in the context of plural legal systems organized by the principles of the protectorate where the maintenance of difference was enshrined in customary law?

Robust debates in metropolitan France regarding colonization during the late nineteenth century reflected different interests and interest groups. There was little agreement among these groups and even less capacity to deliver metropolitan visions into diverse colonial contexts.⁶⁷ Enthusiasm for colonialism and empire waned in the face of the challenges of actually implementing them. France's parliamentarians balked in the face of the huge costs not only of colonial conquest but of the potential costs of implementing colonial rule itself. The reluctance of the metropolitan government to pay for the costs of establishing a system of metropolitan courts and staffing them with trained magistrates yielded only "modest achievements on the ground . . . and disappointment for republican ideals."⁶⁸ Despite changing ideals concerning colonialism, the lack of investment in courts and magistrates had a perverse feedback loop that limited the possibilities of the rule of law. Establishing colonial "hegemony on a shoestring" more often than not led not to the rule of law but to persistent conflicts about what the law was.⁶⁹ Moreover, harmonizing the metropolitan legal system with what prevailed in the colonies might be the magistrates' vision, but it did not necessarily accord to the prevailing practices of "the politics of difference" based on ideas of racial and civilizational distinctions.⁷⁰

⁶⁶ See Alice L. Conklin, Sarah Fishman, and Robert Zaretsky, *France and Its Empire since 1870* (New York: Oxford University Press, second edition, 2015), 70. Significantly, the 1881 reorganization and the extension of citizenship in Algeria to Jews in 1870 and to the Spanish, Maltese, and Italian immigrants in 1889 deepened the distinctions between citizens and subjects. For more detail, see Sophie B. Roberts, *Citizenship and Antisemitism in Colonial Algeria, 1870–1962* (Cambridge: Cambridge University Press, 2018) and Lewis, *Divided Rule*.

⁶⁷ See among others, Kanya-Forstner, *The Conquest of the Western Sudan*; Conklin, *A Mission to Civilize*; Christopher Maurice Andrew and Alexander Sydney Kanya-Forstner, "The French 'Colonial Party': Its Composition, Aims and Influence, 1885–1914," *Historical Journal* 14 (1) 1971, 99–128; Martin Evans, ed., *Empire and Culture: The French Experience, 1830–1940* (London: Palgrave, 2004); Martin Evans, ed., *The French Colonial Mind*, two vols. (Lincoln: University of Nebraska Press, 2011).

⁶⁸ Royer et al., *Histoire de la justice in France*, 753. For more detail on how budgetary constraints and limited personnel influenced colonial justice, see the larger section in this volume, 752–834.

⁶⁹ Berry, *No Condition Is Permanent*, 29.

⁷⁰ "Politics of difference" is a core concept in Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton, NJ: Princeton University Press, 2010).

Senior colonial officials including Governor Grodet, Lieutenant-governor Trentinian, and Lieutenant-governor Ponty issued persistent condemnations of corporal punishment, regular circulars admonishing administrators about the proportionality of crimes and punishments, and constant calls for regularity, which were ideological cornerstones of the civilian rule of law. These condemnations were also useful in the effort by civilian administrators to undermine the military's rule of law and their claims for continued dominance of the colonial state. In this sense, the call for the rule of law was a weapon in the struggle between competing models of colonialism rather than an achievable goal. Martin Chanock captured this situation well, not just for French West Africa but for all of colonial Africa. "Other myths have arisen from the legal colonization of Africa. There is that of the colonisers, perhaps their last surviving myth, that the legacy of legality, the rule of law, and equal and uncorrupt justice was an important benefit conferred by colonization."⁷¹

⁷¹ Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985), 5.