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Abstract

Recent scholarship on Africa recognizes the relevance of looking at the connection between Africa and the Indian Ocean realm. Focusing on one of the well-known diaspora in this region, the Yemenis, this study examines the interaction/interface between Yemeni diaspora property management (inheritance) and the colonial social order in Djibouti. It argues that the property management of this diasporic group has been important not only for the Yemeni diaspora, but also in shaping and reshaping the colonial social order, which envisioned a hierarchical social order that neatly separated natives from the colonialist. Diasporic dilemmas that emanate from Yemeni attempts to manage their property in different legal systems have resulted in the dilution of the colonial categories and inserted the minority diaspora in the colonial state. This article primarily focuses on Yemeni diaspora who existed as a minority group, with keen emphasis on the role of minorities in the colonial social order. In so doing, it shows how diasporas, rather than being docile subjects, played an important role in blurring the colonial social order and hence in the dismantling of, not only the colonizer/colonized divide, but also the Islamic domain, often regarded as unified and as the last defense point of Muslims who experienced defeat at the hands of the colonialists.

On 25 January 1930, Hamoudi Ahmed, the richest Yemeni merchant in colonial Djibouti died of natural causes. Following his death, his two wives, then resident in Djibouti, Fatima Gayed and Hamda, and his daughter Sultana Bint Hamoudi went to Shamsan Ismail, the then Qadi of Djibouti, who was also of Yemeni origin, to gain access to their inheritance. Shortly afterwards, however, the three women withdrew their case from the Qadi court, which at that time was part of the native court established by the French. Represented by a certain Said Hassen Safi, the three women accused the Qadi of Djibouti and some of the richest Yemeni traders in the town of attempting to divert part of their inheritance. They took their case to the European section of the justice system. In the colonial Djibouti of the 1930s their action took the colony by storm and led to riots and the total collapse of the colonial judiciary. By shaking up the established order, their action revealed the working logic of the social order that had been established by the colonial state.

Beyond documenting the dynamics raised by the action of Yemeni women, this article shows how Yemeni property management (inheritance) has been important in the reshaping of the colonial social order, which, from the vantage point of colonial ideology, was based on natural hierarchical relations that placed Europeans at the top and the natives at its bottom. Using law as an entry point, and by looking at how Yemeni diaspora managed their property, the article sheds light on how the colonial social order in Djibouti was configured, despite having a vision that compartmentalized and hierarchized the social order that it governed.

To elucidate the empirical material this article draws from works that look at law through an interactive framework, such as that of Kristin Mann and Richard Roberts.¹ Looking at law as a resource and the various legal spheres formed by colonial power as interacting with each other, Mann and Roberts urge us to examine debates, contestation and arguments that are raised within the colonial setting as a result of the introduction of colonial law as well as the jurisdictional jockeying that emerged with the introduction of law in colonial Africa. Basing on their work the present article tries to see the different interactive dynamics that are generated in colonial Djibouti. It also draws on the work of Izza Hussin, who urges us to look at law as an arena or a theatrical stage where negotia-

¹ K. Mann and R. Richard, *Law in Colonial Africa* (Heinemann, Currey, 1991).

tion occurs² as well as that of Lauren Benton,³ who argues that the colonial states was a site where jurisdictional jockeying was prevalent, ‘odd coalitions’ between colonizers and colonized were formed and cultural intermediaries played a significant role in the negotiations and definition of jurisdictional boundaries.

By focusing on the coalition that the Yemenis formed this article illuminates how the dilemma that the Yemenis faced have become central to the state itself. In fact, diasporic level dilemmas were exported to the colonial social order in a manner that opened up possibilities for rupture, conflict and chaos. By demonstrating how the dilemmas were grafted beyond the diasporic community onto the colonial social order, this article further demonstrates that the hierarchically organized colonial categories that rested on different legal spheres were not only interacting, but were also arenas used by various actors (native, colonialist, etc.) for their actions. This use of colonial categories as a resource produced odd coalitions that dismantled the accepted and existing categories, such as the Muslim community, colonizers, and colonized.

I will start by outlining how the French colonial system used law to create a compartmentalized social order in colonial Djibouti. In doing so, I will specifically discuss the place of the Yemeni diaspora in this social order. The following section focuses on the central narrative of this article and shows how diasporic level inheritance dilemmas were grafted onto the colonial social order and, ultimately leading to the fracture of this social order. The remainder of the article demonstrates the consequence of this fracture by relating to the reader how it eventually led to riots and the total collapse of the judiciary – two factors that necessitated the sending of an inspection mission and the eventual intervention of the court of cassation, based in Paris.

French Colonial Law, Islam and Yemeni Diaspora

Law and justice were at the heart of the colonial system established by France and French magistrates who were either trained as professionals or were in administrative functions played a key role.⁴ These magistrates were distributed throughout the colony and functioned within a

² I.R. Hussin, *The Politics of Islamic Law*. [Publisher + year]

³ L. Benton, *Law and Colonial Cultures: Legal Regimes in World Histories, 1400-1900* (Cambridge University Press, 2001).

⁴ M. Fabre, ‘Le Magistrats d’outre mer: L’aventure de la justice’ in B. Durand and M. Fabre (eds) *Le Juge et L’outre-mer: Les roches beleues de l’empire colonial* (Centre d’histoire judiciaire, 2004).

juridical system that was divided into justice des droit Française and la justice des droit local.⁵ The latter consisted of the native court, while the justice des droit Française was the European sphere with a tribunal for Europeans at its centre.⁶ Despite this formal division, the justice des droit Française had the right to intervene in the native court if the customs of the native were unable to solve a specific problem or if the judgement was incompatible with French public order.⁷ Indeed, this important exception to the described system provided ‘legal’ avenues for the governor of a colony to intervene he believed that the issues being dealt with by the judiciary could lead to a disruption of the colonial social order.

In the specific case of Djibouti, the general practice of compartmentalizing the colonial social order into natives and Europeans was applied to the colony’s native Muslim population. In and around Djibouti, Islam has been propagated at least since the 9th century through trade, population movement and the travel of religious scholars. The Yemenis, whose homeland is situated across the Gulf of Aden, played their own role in the spread of Islam throughout the region as they were active in trade and in religious teaching. Immediately before the colonization of the area, Yemenis featured as chief merchants of the Red Sea.⁸ In Zeyla, the major port hub before the creation of Djibouti, they even acted as governor and mercenaries.⁹

Yemenis were also an important element right after the colonization of the area. In fact, they became a dominant actor as France favoured their presence because they were considered more hardworking than the natives.¹⁰ The way the colony of Djibouti was managed also created a lacuna for Yemenis as the French powers that controlled the area, despite having signed treaties, had little interest in suppressing slavery and controlling contraband, specifically the sale of arms and armaments, two major activ-

5 A. Baccard ‘La Justice en Afrique noire et Djibouti’, in J. Clauzel (ed.) *La France d’outre-mer (1930-1960): Témoignages d’administrateurs et de magistrats*, (Karthala, 2003).

6 Baccard, ‘La Justice’.

7 *Ibid.*

8 J. Ewald and W. G. Clarence-Smith, ‘The Economic Role of the Hadrami Diaspora in the Red Sea and the Gulf of Aden,’ in U. Freitag and W. G. Clarence-Smith (eds.), *Hadrami Traders, Scholars and Statesmen in the Indian Ocean, 1750s–1960* (Brill, 1997).

9 Benton, *First Footsteps in East Africa*, (Longman, Brown, Green and Longman, 1856).

10 For french attitudes to Yemenis, see T. Killion, ‘Workers, Capital and the State in the Ethiopian region 1914-1974’ PhD Dissertation Stanford University 1985.

ities that the Yemenis were engaged in.¹¹

The favouritism that the French showed combined with the grey zone that the colony provided and allowed Yemenis to persist in both legal and illegal activities. Hamoudi Ahmed was among one of the wealthiest – if not the wealthiest – Arabs to prosper from the trafficking of slaves and arms. Apart from oral tradition, few documents exist regarding the activities of Hamoudi Ahmed, but the construction that he undertook in Djibouti, including the Hamoudi mosque, which is a landmark of the city of Djibouti, as well as the colonial documents that deal with the inheritance related controversies that emerged following his death, inform us about his wealth: a staggering figure of more than 2,000, 000 Francs – a huge sum of money in 1930s Djibouti.

Despite the wealth of the community, and their favoured status and opportunities under French rule, Yemenis were classified under the native jurisdiction with the rest of the Muslim population. Although this classification is attested by various colonial legal provisions starting from the establishment of the colony the decree that reorganized the territory justice system in April 1927, three years before the death of Hamoudi, unequivocally categorized the Yemenis as native.¹²

This categorization of natives, including Yemenis, created a compartmentalized social order that was divided between a European sphere and a native/Muslim domain marked by Islam and the Qadi court. Thus, the law marginalized both Islam and Muslims in the social order of colonial Djibouti. This is not unique. Indeed, similar policies were adopted in other French colonies and throughout the British Empire.¹³ As the work of Ghislaine Lydon,¹⁴ Rebecca Shereikis,¹⁵ and Izza Hussin¹⁶ has shown

11 The colonial government in Djibouti ignored most of the international agreements signed on the arms trade and failed to enforce the movement of people., On this point, see US Department of State, "Aden American Consulate to the Secretary of State, Present Interest and Relations of Great Britain, France, and Italy In Abyssinia, 22 April, 1919", in *Record of the Department of State Relating to Internal Affairs of Ethiopia (Abyssinia)*, Vol. I, Washington, D.C.: National Archive and Record Service; US Department of State.

12 *Journal Officiel de la Cote Française des Somalis*, 'Décret sur l'organisation de la justice indigène en Cote Française des Somalis', April 1927, 43-48.

13 See for example A. A. Ibrahim. *Manichaean Delirium: Decolonizing the judiciary and Islamic renewal in the Sudan, 1889-1985* (Brill, 2008).

14 See G.Lydon, 'Obtaining Freedom at the Muslims' Tribunal : Colonial Kadijustiz and women's divorce litigation in Ndar (Senegal)' in S. Jeppie, E. Moosa and R. Roberts (eds.) *Muslim Family Law in Sub Saharan Africa: Colonial Legacies and post-colonial challenges* (Amsterdam University Press, 2010).

15 R. Shereikis, 'From Law to custom: The shifting legal status of muslim orginaires in Kayes and Medine, 1903-13' *The Journal of African History*, 42: 2 (2001): 261-283.

16 Hussin, *The politics of Islamic Law*.

in relation to the wider colonial world, the marginalization of Muslims was crucial for interfering and acting in the colonial state. The Islamic/native domain became the last bastion for Muslims (and others) in terms of stemming further losses caused by the colonial power taking control of their land. These marginal Islamic domains also become important, as we see from the work of Richard Roberts,¹⁷ Gislaine Lydon as well as that of Deeqa Mohamed,¹⁸ for minority groups, such as women, as they became domains of hope, offering freedom and liberation from patriarchal domination.

As we will see below, the story of 1930s Djibouti, however, was much more complex. The Muslims who found themselves compartmentalized and marginalized in the colonial social order of Djibouti not only defended the Islamic domain granted by the colonial power, but they also attempted to dismantle it. In this the Yemeni diasporas, were essential in undoing the colonial social order by pursuing their inheritances, not in the Qadi court where they belonged and where they are supposed to have obtained freedom, but in the French court that was officially detached from them by colonial social engineering.

Beyond Colonial Categories: Inheritance Dilemmas, Fractured Social Order

The two wives of Hamoudi and his daughter, sultana, took their case from the Qadi court to the European court five months after his death in the first week of May 1930. They accused the Qadi, along with some of the richest Yemeni merchants of Djibouti, of appropriating part of their inheritance. Disillusioned by their experiences, the three women were looking for ways they could gain access to their full share of the substantial amount of money that Hamoudi left. The dilemma faced by these women would also become the dilemma of colonial officials almost as soon as their case entered the European jurisdiction. And this dilemma would be responsible for tensions and, ultimately, fractures within the colonial social order.

At the time that the women brought the case into the European system the judiciary was lacking a tenured prosecutor but it had three

¹⁷ R. Roberts, 'Representing structure and Agency: Divorce in the French Soudan during the early twentieth century', *Journal of African History*, 40 (1999): 389-410.

¹⁸ D. Mohamed, 'Gender, Islam and the 19th – century Brava: A Brief Note', *Bildhaan*, 12 (2012): 106-119.

tenured magistrates and two of them shifted their original positions in order to fill the absence of a tenured prosecutor: Paul Farines, who was president of the appeal court was at that point (time) the Republic's acting prosecutor; Joseph Bargone, who was president of the court of first instance but was acting as an interim president of the appeal court and M. Saintol who was substitute judge in the first instance court.¹⁹ Initially, in the first week of May 1930, Farines rejected the case and sent it to M. Barthelemy commander of the cercle, the smallest administrative unit in the colony, who at the time was not only the cercle commander, but also administrator and head of the native jurisdiction.²⁰ Farines rejected the case, based on the fact that all interested parties were Arabs and the issue related to the succession of Arab property, which was something that the native jurisdiction through the decree of 1927 was mandated.²¹

The cercle commander, Barthelemy, opened an administrative enquiry regarding the case, but no judicial enquiry was forthcoming. Simultaneously, the Qadi tribunal failed to reclaim the case.²² It was in this situation that the two Hamoudi wives, his daughter and their representative took the case for a second time to the European court on 28 June 1930. This time, their case was viewed by a European justice system which internally was composed differently as Farines and Saintol went for vacation starting from 13 May 1930.²⁴ On 15 May through arête no 336 M. Bargone was made interim prosecutor of the Republic replacing Farines who, as we saw in the beginning of this section held this position.²⁵ His original position of president of the first instance court of Djibouti was given to Jean Louis Lanfranchi, an officer in the colonial civil service, who became interim president of the first instant court.²⁶ While M. Gabriel Lucciadri, also an officer in the colonial service was given the position of assistant judge of the first instance court replacing M. Saintol.

19 Archine National d'outre-mer, Aix-en-Provence (henceforth ANOM), 1AFF-POL 697, Pierre Ravailier a monsieur le Ministre des colonies, File : Dossier de M.Bargone Magistrat 23 Juillet 1930

20 ANOM 1AFF-POL 694 Mémoire produit devant le tribunal supérieure d'appelle, File: Dossier de M.Bargone Magistrat 30 octobre 1930

21 ANOM 1AFF-POL 694, Mémoire produit devant le tribunal supérieure d'appelle, File: Dossier de M.Bargone Magistrat 30 octobre 1930

22 ANOM 1AFF-POL 694, Mémoire produit devant le tribunal supérieure d'appelle, File: Dossier de M.Bargone Magistrat 30 octobre 1930

23 ANOM 1AFF-POL 694, Mémoire produit devant le tribunal supérieure d'appelle, 30 octobre 1930

24 ANOM 1AFF-POL 694, Mémoire produit devant le tribunal supérieure d'appelle, 30 octobre 1930

25 ANOM 1AFF-POL 697, Arrêté no334, File : Dossier de M.Bargone Magistrat, 15 May 1930.

26 ANOM 1AFF-POL 697 Arrêté no 336, File : Dossier de M . Bargone Magistrat, 15 May 1930.

However, the relatives of Hamoudi brought their case in front of Bargone just as his role of being the acting prosecutor was about to end. On 26 June 1930, through arête no 416, Bargone was relieved from his position of being an interim prosecutor and made to occupy the position of president of the court of appeal while the same decree gave the position of prosecutor of the republic to M. Pierre Ravallier, a tenured prosecutor, who was going to arrive in the colony on 29 June 1930 a day after Hamoudi wife took her case to European court.²⁷

Although the tenured prosecutor was to arrive a day after and despite the fact that technically speaking, Bargone was, relieved from his duties starting from the 26 June 1930, he nevertheless seized the opportunity and accepted the demand made by the relatives of Hamoudi as legitimate.²⁸ And he instructed M. Jean Louis Lanfranchi, to look at the case and act as the examining magistrate (*judge d'instruction*). Afforded the right to enquire into the matter, Lanfranchi arrested those suspected of being involved in appropriating the inheritance of Fatima bin Gayed, Hamda and Sultana Bint Hamoudi.²⁹ The arrestees were Ibrahim Tayeb, a trader, Bilal Oumar an employee of Hamoudi and the Qadi of Djibouti Shamsan Ismail. The Qadi, was then temporarily freed on bail. On 28 June 1930, M. Bargone, reinforced and accepted the decision made by the examining judge.

Almost immediately, on 30 June 1930, the biggest Yemeni merchants in Djibouti, who controlled the newly formed Islamic association of the town (*Association Islamique de Bienfaisance*)³⁰, and who are also implicated in the mismanagement of the inheritance of the Hamoudi, reacted against the arrest of the Qadi. These merchants, who had the money and the capability as well as the necessary linkages, wrote a letter on 30 June 1930 to the governor of the territory Pierre-Amable Chapon-Baissac. The letter, which was signed by Ahmed bin Ahmed as president of the association and notables such as Hassan Dorani and Sheikh Omar Ahmed Ba Zara, vehemently

27 ANOM 1AFF-POL 697 Arrêté no 416, File: Dossier de M. Bargone Magistrat 26 June 1930.

28 ANOM 1AFF-POL 694, Mémoire produit devant le tribunal supérieure d'appelle, 30 october 1930.

29 ANOM 1AFF-POL 694, Mémoire produit devant le tribunal supérieure d'appelle, 30 october 1930

30 The association was formed on 10 February 1930. Its founders were Ahmed Ben Ahmed, Hassan Dorani, Nadj Mohamed, Salem Abdellah Mouti, Abdourakhman Dorani, Sheikh Omar Ba Zara, Rached Dallab Hay, Mohamed Delleitah and Hadj Hussin Nour. For the foundation of the association see: ANOM 4E 8-9, Approbation de Statu, Le Président du Comité, 10 December 1930, File: Association de Bienfaisance Islamique; ANOM 4E 8-9 Règlement de L'Association Islamique de Bienfaisance à Djibouti. File: Association de Bienfaisance Islamique.

opposed the Lanfranchi's arrest of the Qadi.³¹ In this letter, the Islamic association accused Hamoudi's wife of turning to the wrong court as a result of the advice of certain Europeans. They characterized the action of Lanfranchi as interference in the indigenous court system. They accused him not only of arbitrary detention, but also of violating of the law and custom of Islam. They requested that the governor get involved in the matter and put an end to the 'slave-like' treatment that they were receiving from the European juridical authority. They also threatened to write directly to the Minister of the colony if this treatment and interference continued.

M. Lanfranchi considered this Yemeni elite protest as a manipulation and as an attempt to protect their own interests.³² To prove this, he produced a letter that these notable Yemenis had written to the procurer general well before the Hamoudi case had become an issue. The letter, written on 8 December 1927, detailed the maltreatment experienced by the Yemeni diaspora in Djibouti, but above all it demanded that the procurer general, in no uncertain terms, stop considering Yemenis as natives.³³ The demands of the notable Yemenis were related to their concerns about the colonial judicial system, which classified the Yemenis within the native judicial system and not in the European judicial system. According to the Arabs, this classification views them as subjects of France, which they were not. Reiterating that they are Yemenis who belong to the independent state of Yemen, led by Imam Yahya, they demanded to be removed from the native system and be treated like other foreigners in the country. They resented the continued classification as native people in the judicial system, along with the Afar and Somalis, who they considered to be less civilized and primitive. They stated that this classification was injurious to their pride and status. In view of this earlier assertion by notable Yemenis, their later demand to send the Hamoudi case back to the native court system was seen by Lanfranchi as an attempt to save the Qadi and, ultimately, to accomplish their goal of appropriating Hamoudi's money.

31 ANOM 1AFF-POL 697 Le Comité de l'association islamique de bienfaisance et les principaux notables délégués par la population indigène de Djibouti a son excellence le gouverneur de la Cote française des somali et dépendance, File : Rapport Bargon, Affaire Justice, 30 June 1930.

32 ANOM 1AFF-POL 697 'Le Président par intérim du tribunal de première instance Lanfranchi Jean a Monsieur le Président du tribunal supérieure d'appel, File: Rapport Bargon, Affaire Justice, 21 Juillet 1930.

33 ANOM 1AFF-POL 697 Arabe notable a Monsieur le procureure de la république. File: Rapport Bargon, Affaire Justice, Djibouti 8 décembre 1927.

Simultaneous to these developments, some within the administration structure started to confront the magistrates. Following his conditional release, the Qadi was intensively investigated by the magistrate. In the documents relating to this investigation, we see that the Qadi sought the assistance of the administrative authority in vain. On 8 July 1930, the Qadi was asked to come to the office of the examining magistrates at 9.30 am. He did not arrive, however until 5pm later that day.³⁴ When pressed to explain his late arrival, the Qadi confirmed that he had been to the office of Barthelemy in order to organize the French national day festival. He further stated that he was not able to come on time because when he showed the summons letter to Barthelemy the latter insisted that he stayed, saying, “we will do our work and you will go to the tribunal afterward.”³⁵ The Qadi, did more than invoke the administrative authority to explain his late arrival. The Qadi has filed a written complaint stating that he had been arbitrarily and illegally detained. When questioned about this action, the Qadi asserted that he had been instructed by Barthelemy to do so, following a visit that he made to the office of Barthelemy to inform him about the situation in relation to the Hamoudi case.³⁶ These answers infuriated the presiding examining judge, Lanfranchi. He warned the Qadi that he should remember that he was on bail and that he would send him to prison if he committed the same mistake again. The judge also warned the Qadi to stop seeking the help of the administrative authorities in the ongoing juridical proceedings. He particularly noted the fact that the Qadi had made a complaint.

On 20 July 1930, the prosecutor of the Republic and now head of the judicial service Ravailier, who had arrived a day after Bargone had taken the fatal decision to deal with the case brought by Hamoudi’s wife in the European court, wrote to the governor of Djibouti regarding the Hamoudi situation. Marked as personal and urgent, Ravailier’s letter objected to the procedure followed in judging the Hamoudi case and the order given by Lanfranchi to detain and arrest Ibrahim Tayeb and Bilal Omar.³⁷ As per the decree of 10 June 1929, he said he intended to write to the appeal court

34 ANOM 1AFF-POL 697, Tribunal de Première Instance de Djibouti Procès verbal D’interrogation, Inculpé: Shamsan Ismail, File: Rapport Bargon, Affaire Justice, 8 July 1930.

35 ANOM 1AFF-POL 697, Tribunal de Première Instance de Djibouti Procès verbal D’interrogation, Inculpé: Shamsan Ismail, File: Rapport Bargon, Affaire Justice, 8 July 1930.

36 ANOM 1AFF-POL 697 Tribunal de Première Instance de Djibouti Procès verbal D’interrogation, Inculpé: Chamsam Ismail, File: Rapport Bargon, Affaire Justice, 8 July 1930.

37 ANOM 1AFF-POL 697, Le procureure de la république, Chef du Service Judiciaire a Monsieur le Gouverneur de la Cote Française des Somalis, File: Rapport Bargon, Affaire Justice, 20 July 1930.]

complaining about the current procedure and demanding the return of the case to the native system. To be able to do so, however, he stated that it was necessary to remove Bargone and nominate an ad hoc president of the court of appeal.³⁸

Following the suggestion, the governor of Djibouti, Champon Basic, issued an order that effectively shuffled the magistrates in the judicial system. On 19 July 1930, the governor of Djibouti issued a decree relating to Lanfranchi, who, prior to being nominated as acting president to the court of first instance and examining magistrate in the case of Hamoudi, was an officer in the colonial civil service.³⁹ The decree made Lanfranchi available to the governor of Djibouti. It also returned M. Bargone to his role of acting president of the first instance court.⁴⁰

On the following day, 20 July 1930, the governor, again following the proposition made by Ravailier, issued another decree aimed at repositioning a number of magistrates within the judicial system. In this decree, Bodin, who held a senior assistant position in the civil service (*adjoind principal des services civil*) was given temporary control of the appeal court and told to meet in order to discuss the case of Hamoudi and other pertinent issues.⁴¹ The order issued by the governor noted that such an appointment required Bodin to swear an oath before taking office. It also prescribed that, as governor, he would administer this oath himself, as the appeal court is now controlled by Bargone.

Through these moves, the governor and the commander de cercle, in conjunction with the new prosecutor of the Republic, attempted to influence the magistrates and make them drop the Hamoudi case, in a bid to return it to the native section of the judiciary. In this particular affair, we have seen that the governor took the initiative, including the passing of an order.

Perhaps unsurprisingly, the measures taken by the governor were strongly opposed by those effected by the reshuffle. In this regard, Lan-

38 1AFF-POL 697, Le procureure de la république, Chef du Service Judiciaire a Monsieur le Gouverneur de la Cote Française des Somalis, File: Rapport Bargon, Affaire Justice, 20 July 1930.]

39 Archives National d'outre-mer, Aix-en-Provence, (ANOM), 1AFF-POL 697, Arrêté no 457, File: Dossier de M.Bargone Magistrat 19 July 1930.

40 ANOM, 1AFF-POL 697, Arrêté no 457, File: Dossier de M.Bargone Magistrat 19 July 1930.

41 Archives National d'Outre-mer, Aix-en-Provence (ANOM), 1AFF-POL 697, Arrêté no 461, Arrête désignant M Bodin pour présider ad hoc le tribunal Superior d'Apple, File: Dossier de M.Bargone Magistrat 20 July, 1930.

franchi wrote a detailed letter to Bargone on 21 July.⁴² In this letter, he expressed his astonishment that the new procurer of the Republic, Ravailier, had asked him to obey the order passed by the governor. As a judge nominated to this position by the court of appeal and not by the governor, who has no official role whatsoever in this nomination process, Lanfranchi saw the comments by the procurer as bizarre; indeed, he characterized them as an outright illegal act. In this letter, he also wrote that the procurer had informed him that he would be forcibly removed from office if he did not follow the law. An assertion that Lanfranchi clearly found amazing and illegal in equal measure.⁴³

In the colonial judicial system, the governor was supposed to intervene in the indigenous system if he perceived that something was wrong. He has no power, however, to interfere in the separate European jurisdiction. Lanfranchi's accusations and his resentment also referred to the capacities of the governor. He accused the governor of turning a blind eye and, moreover, of collaborating with the Qadi rather than removing him from office.⁴⁴ In these accusations, Lanfranchi not only refers to the current case, but also to previous, similar cases in which the Qadi was allegedly diverting money, this time in collaboration with two major Yemeni merchants, Salem Mouti and Abdurahman Dorani, whom he characterizes respectively as a slave merchant and a convict who escaped from the prison at Zeyla.⁴⁵ He referred specifically to the inheritance of a certain Faid Abdellah, whose case was decided by the Qadi on 30 September 1926. This judgement left his immediate successor with almost nothing as most of the money was diverted to his brother who was willing to donate a substantial amount of money to the Qadi and a number of Yemeni merchants in Djibouti.⁴⁶

42 Archives Nationales d'outre-mer, Aix-en-Provence (ANOM) 1 AFF-POL 697 le président par intérim du tribunal de première instance Jean Lanfranchi a monsieur le président du tribunal supérieur d'appelle, File: Raport Bargone, Affair Justice, 21 juillet 1930.

43 ANOM 1 AFF-POL 697 le président par intérim du tribunal de première instance Jean Lanfranchi a monsieur le président du tribunal supérieur d'appelle, File: Raport Bargone, Affair Justice, 21 juillet 1930.

44 (ANOM) 1 AFF-POL 697 le président par intérim du tribunal de première instance Jean Lanfranchi a monsieur le président du tribunal supérieur d'appelle, File: Raport Bargone, Affair Justice, 21 juillet 1930.

45 (ANOM) 1 AFF-POL 697 le président par intérim du tribunal de première instance Jean Lanfranchi a monsieur le président du tribunal supérieur d'appelle, File: Raport Bargone, Affair Justice, 21 juillet 1930.

46 (ANOM) 1 AFF-POL 697 le président par intérim du tribunal de première instance Jean Lanfranchi a monsieur le président du tribunal supérieur d'appelle, File: Raport Bargone, Affair Justice, 21 juillet 1930.

Beyond these accusations, Lanfranchi also accused the governor of deceit.-

Despite the fact that the governor had declared in writing that he did not want to interfere in the judicial system, Lanfranchi claimed that the governor had repeatedly asked him, verbally, to free those who had been arrested, specifically in telephone conversations on 8 July and on Friday, 17 July. Lanfranchi claimed, further, that he had been pressurized by the procurer to release on bail the two people he had jailed.⁴⁷

From the start, Lanfranchi claimed that he had been faced with a politics of “delay and silence” in which the Qadi of Djibouti played a key role by delaying the procedure and by pretending to be sick.⁴⁸

Moreover, Lanfranchi accused the Qadi and his supporters, i.e. the administrative authority and the rich merchants, of forcefully persuading people to sign a petition for the transfer of the case. According to Lanfranchi, people were systematically intimidated into giving testimony that would not incriminate the Qadi, even though many people knew of the crime. Throughout the process, Lanfranchi lamented that “the power of the accused was solidified and rendered my mission impossible.”⁴⁹

Following Lanfranchi’s accusations and refusal, an attempt was made to get hold of the case material concerning Hamoudi and to hear the case under the newly appointed magistrate of the appeal court, who was on the side of the procurer and the governor of the territory. In this regard, the procurer of the territory, Ravailier attempted to take the file from Bargone, but he refused to hand it over.⁵⁰ In fact, the assessors of the appeal court, Georges Laplaiché and Henri Oliver, siding with the Bargone refused to cooperate, leaving Ravailier stymied.⁵¹

In light of the magistrate’s defiance and the serious accusations that they had made, the governor wrote to the Ministry of the Colony justifying

47 ANOM) 1 AFF-POL 697 le président par intérim du tribunal de première instance Jean Lanfranchi a monsieur le président du tribunal supérieur d’appelle, File: Raport Bargone, Affair Justice, 21 juillet 1930.

48 ANOM) 1 AFF-POL 697 le président par intérim du tribunal de première instance Jean Lanfranchi a monsieur le président du tribunal supérieur d’appelle, File: Raport Bargone, Affair Justice, 21 juillet 1930.

49 ANOM) 1 AFF-POL 697 le président par intérim du tribunal de première instance Jean Lanfranchi a monsieur le président du tribunal supérieur d’appelle, File: Raport Bargone, Affair Justice, 21 juillet 1930.

50 ANOM 1AFF-POL 697, Le procureur de la republique, chef des service judiciaires a Monsieur le gouverneur de la cote française des Somalis, File: Raport Bargone, Affair Justice, 22 Juillet 1930.

51 ANOM 1AFF-POL 697, Le procureur de la république, chef des service judiciaires a Monsieur le gouverneur de la cote Française des Somalis, File: Raport Bargone, Affair Justice, 22 Juillet 1930.

his action. In a letter dated 23 July 1930, the governor wrote, expressing how he and his administration had been purposefully kept in the dark in order to benefit the smugglers who wanted to exploit the country's position as a sort of no man's land.⁵² He characterized the political atmosphere inside the country not as one of silence and delay as Lanfranchi had done, but as one of constant fighting between the administration and the contrabandists. In this dualistic policy, he placed Bargone within the contrabandist camp. Not only was Bargone implicitly portrayed as contrabandist backer, like Hamoudi, but also as being in league with contrabandists such as Henrey de Monfreid, to whom he was apparently introduced by a certain M. Repici. He accused the latter of being an agent of fascist Italy and working to effect the takeover of Djibouti by Italy. Bargone, according to the governor, was assisting this covert Italian policy, which relied on the non-interference of the governor to be effective, who was traditionally locked into complicated circles of friends who shielded the interests of the contrabandists in Djibouti. The moral of the governor's argument was the need for an active interventionist strategy, like the one that he had taken against Bargone and Lanfranchi, who he characterized as young incompetents with no knowledge of Islamic law and as subservient to the interests of the contrabandist and the Italians, who as mentioned, were keen to take over Djibouti. He also expressed his fear that the arrests would cause riots and other problems.

From the above discussion, it is clear that Yemenis had to strategize in order to inherit the wealth that had been gathered within the diaspora community and this entailed a dilemma that was expressed through jurisdictional jockeying. These concerns engaged the state and its different actors in different forms. The dilemmas also translated into a fracture of the neatly divided colonial social order. The actions of the Yemeni women and the dynamic they sparked within the colonial state, in which the diaspora existed, were marked by the existence of what Benton terms "odd coalitions."⁵³ The Yemeni dilemmas were grafted onto the state social order, also giving Yemeni women who were not from the elite the possibility to shape and act in the colonial social order. Yemeni women became involved with a group of magistrates who, as representatives of colonizers, were expected to cooperate with their fellow colonizers in the administrative

52 ANOM 1AFF-POL 697 Le gouverneur de la cote française des somalis a Monsieur le Ministère des Colonies, File: Raport Bargone, Affair Justice, 23 Juillet 1930.

53 L.Benton, *Law and Colonial Cultures*.

wing of the colonial government. These administrators backed the Qadi and the Arab merchants. On the other hand, Yemeni merchants acted as cultural brokers and used the native domain, marked by Islam and the Qadi court, as a resource with which to engage in a game of defining and redefining their jurisdictional space. In short, the colonial categories that formed the base of the social order was criss-crossed in such a manner that undid expected positionalities.

The odd coalitions that surfaced in colonial Djibouti once Hamoudi's relatives engaged in the described jurisdictional jockeying were not easy to break. Each camp followed its own interests with zeal. Thus, on 24 July, despite the actions of the governor, Lanfranchi presided as president of the court of first instance and Bargone summoned the court of appeal on 25 July.⁵⁴ On 6 August, the indictment chamber of the appeal court which was composed of Bargone, who presided as its president, George Laplaiché and Henri Oliver who were assessors, in the presence of the substitute judge Gabriel Lucciardi and assisted by the registrar Perhando Léo gathered to deliberate for the last time on the case of the Qadi.⁵⁵ Based on these deliberation on the 9th of August the Qadi of Djibouti was finally ordered that he be incarcerated. As we will see, this decision would lead to the total collapse of the judiciary and public social order.

Total Collapse: Riots and Dysfunctional Judiciary

After nearly three months, on 11 August 1930, a dilemma that had started among the Yemeni diaspora and that centred on how to gain access to an inheritance and that led to fracture within the administration and even among Yemenis themselves fully transformed itself into a public problem. Following the arrest of the Qadi on 10 August, rumours spread throughout the colony that protests were an inevitability and the Barthelemy notified to the governor that meetings marked by inflammatory speeches were held in mosques.⁵⁶ Indeed, the following day, at 7 am, the Yemeni elite who were pushing for the Qadi to be freed and who were also implicated in the case assembled in front of Barthelemy office who noti-

54 ANOM 1AFF-POL 697 Extrait du Plumitif des Audiences de la chambre des mises en accusation du Tribunal Supérieur d'appel de Djibouti, File: Dossier de M. Bargone Magistrat ,25 July, 1930

55 ANOM 1AFF-POL 697 Chambre du Conseil des mises en Accusation, M.P.C/Chamsan Consort, File : Dossier de M. Bargone Magistrat, 8 August 1930.

56 ANOM 1AFF-POL 697 ANOM 1AFF-POL 697 Le Gouverneure de la Cote Française des Somalis a Monsieur le Ministère de la Colonie, File: Dossier de M. Bargone Magistrat ,15 August 1930.

fied the governor of their presence.⁵⁷ Upon the instruction of the governor by 8.30 am Barthelemy took the Yemeni notables on foot to the residence of the governor, which was situated one kilometre away from his office.⁵⁸

According to the account given by Barthelemy, the governor as well as Bargone himself, as they walked to the governor's house the Yemeni notables were joined by hundred of people who, according to the governor included the undesirable characters of the slums of Bender-Djedid and Bender-Salam.⁵⁹ The demonstrators reached the residence of the governor at 9.30 pm and demanded that he secure the release of the Qadi.⁶⁰ The governor was willing to release the Qadi, and as we saw, was keen for the case to be transferred to the native court. He summoned Ravailier as well as Bargone to the residence.⁶¹ On his way to see the governor, Bargone was booed and the demonstrators threw rocks at him.⁶² Bargone's eventual arrival at the residence was of little consequence. The governor demanded that Bargone release the Qadi on the grounds that his continued detainment could lead to further unrest. Bargone, however, refused to be put under pressure in such a manner.⁶³ When he attempted to leave the governor's house following his disagreement he was however unable to do so as a barrage of rocks were thrown at him when he repeatedly tried to open the door.⁶⁴ Finally Bargone had to be escorted out by the Yemeni notable, Ravailier and Barthelemy.⁶⁵ Ravailier drove Bargone to his home but on the way they were met by rock throwing angry protestors at Boulevard Bonheure who, according to the account of Barthelemy, were only willing to stop when one of the Yemeni elite told them the Qadi has been freed.⁶⁶

57 ANOM 1AFF-POL 697 Le Président par intérim au tribunal supérieur d'appelé Joseph Bargone a Monsieur le Ministère de la Colonie, File: Dossier de M.Bargone Magistrat 18 August 1930.

58 ANOM 1AFF-POL 697 Le Président par intérim au tribunal supérieur d'appelé Joseph Bargone a Monsieur le Ministère de la Colonie, File: Dossier de M.Bargone Magistrat 18 August 1930.

59 ANOM 1AFF-POL 697 Le Gouverneur de la Cote Française des Somalis a Monsieur le Ministère de la Colny, File : Dossier de M.Bargone Magistrat ,15 August 1930.

60 ANOM 1AFF-POL 697 Le Président par intérim au tribunal supérieur d'appelé Joseph Bargone a Monsieur le Ministère de la Colonie, File : Dossier de M.Bargone Magistrat ,18 August 1930.

61 ANOM 1AFF-POL 697 BargoneCote Française des Somalis Cabinet du Gouvernement Notice no 362, File : Dossier de M.Bargone Magistrat ,11, August 1932

62 ANOM 1AFF-POL 697 Le Président par intérim au tribunal supérieur d'appelé Joseph Bargone a Monsieur le Ministère de la Colonie, File : Dossier de M.Bargone Magistrat ,18 August 1930.

63 ANOM 1AFF-POL 697 Le Président par intérim au tribunal supérieur d'appelé Joseph Bargone a Monsieur le Ministère de la Colonie, File : Dossier de M.Bargone Magistrat ,18 August 1930.

64 ANOM 1AFF-POL 697 Le Gouverneur de la Cote Française des Somalis a Monsieur le Ministère de la Colonie, File : Dossier de M.Bargone Magistrat ,15 August 1930.

65 ANOM 1AFF-POL 697 Arrivée no 2900 L'Administrateur des Colonies Commandant de Cercle a Monsieur Le gouverneur de la CFC, File : Dossier de M.Bargone Magistrat ,12 August 1930.

66 ANOM 1AFF-POL 697 Arrivée no 2900 L'Administrateur des Colnies Commandant de Cercle a Monsieur Le gouverneur de la CFC, File : Dossier de M.Bargone Magistrat ,12 August 1930.

Shortly after Bargone was taken to his home the Qadi of Djibouti was set free. According to Bargone's account, the demonstrators, led by Ravailier and Barthelemy, marched towards the prison where the Qadi was incarcerated. Upon arrival, Ravailier instructed the prison guards to free the Qadi, which they did without hesitation.⁶⁷ The account given by the governor and Barthelemy however give another picture. The governor acknowledged that an agreement was reached between the Yemeni notables and the administrative body not to free the Qadi but to transfer him to the hospital (as he was allegedly sick), and find a permanent solution within 48 hours.⁶⁸ This agreement however was inconsequential owing to the subsequent events, as the Qadi was already freed and seating on the veranda of the prison when Ravailier and Barthelemy reached the prison.⁶⁹ In this account before they were able to interfere the rioting mass took him to the Mosque that Hamoudi has sponsored, the Hamoudi Mosque and later on to his home. The governor informed the minister of the colony that the order for the police to stop the mass riots was not given because the Yemeni notable assured them that he would be taken to the hospital at midnight once the protestors return to their house.⁷⁰

As the Yemeni notables promised the Qadi was taken to the hospital. The violent demonstration and the freeing of the Qadi, however, brought the confrontation and uneasy relations between the administrators and the magistrates to a point of no return. Tension also rained in the colony as it was rumoured that Ahmed ben Ahmed, the head of Islamic association (*Association Islamique de Bienfaisance*) who along with other Yemeni elites was implicated in the affair was mobilizing two hundred Yemeni coolies for violent act by giving them pistols and knives.⁷¹ The tension necessitated the deployment of Askaris in sensitive places as well as in front of the house of Bargone and Fatima.⁷²

67 ANOM 1AFF-POL 697 Le Président par intérim au tribunal supérieur d'appelé Joseph Bargone a Monsieur le Ministère de la Colonie, File : Dossier de M.Bargone Magistrat 18 August 1930.

68 ANOM 1AFF-POL 697 Le gouverneure de la Cote Française des somalis a monsieur le ministère des colonies, File: Dossier de M.Bargone Magistrat ,15 August 1930.

69 ANOM 1AFF-POL 697, Arrivée no 2900 L'administrateur des colnies comandant de cercle a monsieur le gouverneure de la C:FS, File: Dossier de M.Bargone Magistrat ,12 August 1930.

70 ANOM 1AFF-POL 697Le gouverneure de la Cote Française des somalis a monsieur le ministère des colonies, File: Dossier de M.Bargone Magistrat ,15 August 1930.

71 ANOM 1AFF-POL 697 Joseph Bargonee a Monsieur le ministère de la Colonie, File: Dossier de M.Bargone Magistrat ,18 August 1930.

72 ANOM 1AFF-POL 697, Arrivée no 2900 L'administrateur des colonies comandant de cercle a monsieur le gouverneure de la C:FS, File: Dossier de M.Bargone Magistrat ,12 August 1930.

The governor wrote once again to the Minister of the Colony proposing that Bargone return to France in order to explain himself to the relevant officials at the Ministry.⁷³ The Minister, however, refrained from removing Bargone and instead instructed the governor to wait for the arrival of an enquiry mission.⁷⁴

The governor was not alone in writing to the Minister. Bargone also wrote to him directly, this time announcing his resignation. He also accused the governor of Djibouti, together with the Yemeni elite in the territory of actually organizing the manifestation: "This demonstration if it was not order by the governor Chapon-Baissac was at least undertaken with his approval. It however went beyond its intended goal because it didn't take into account crowd psychology. I can without any difficult show to the inspectors who will be coming that this has been the case."⁷⁵ He wrote to the Minister that the demonstrators were mostly hired hands (mercenary agents) and that they knew only too well that the Qadi of Djibouti was a thief who was engaged in the diverting of inheritances. He asserted that they had only nominal religious sentiments and that the riot and the resentment could have been taken care of if the governor had agreed to replace the unscrupulous Qadi with another, more honest one when the affair started. Bargone reiterated that the governor's failure to do this was because he, along with other Yemeni elite in the territory were involved in stealing and redistributing Hamoudi's inheritance, which amounted to more than 2,000,000 francs: "It is talked everywhere that he has shared with the Qadi, and the corrupt Arabs, who are always gravitating around inheritance money, a number of inheritances who have been mismanaged,.. Inheritances who are meant to be for those who are inheriting do not go to the appropriate persons"⁷⁶

In a bid to understand and resolve this situation, which came to be referred to as 'the Qadi case', the Ministry of the Colony in Paris sent an investigation team to Djibouti. Following the riots, the country was at a standstill, to the point that major companies were not able to conduct

73 Archives Nationales d'outre-mer, Aix-en-Provence (ANOM) 1AFF-POL 697 Gouverneure au Ministère des colonies, dépêche télégraphique chiffrée, 10 August 1930.

74 ANOM 1AFF-POL 697 Gouverneure au Ministère des colonies, dépêche télégraphique chiffrée, File: Affaire Bargone, Farines, Magistrats 10 August 1930.

75 ANOM 1AFF-POL 697 Le Président par intérim au tribunal supérieur d'appelé Joseph Bargone a Monsieur le Ministère de la Colonie, File: Affaire Bargone, Farines, Magistrats, 18 August 1930.

76 ANOM 1AFF-POL 697 Le Président par intérim au tribunal supérieur d'appelé Joseph Bargone a Monsieur le Ministère de la Colonie, File: Affaire Bargone, Farines, Magistrats, 18 August 1930.

their normal operations.⁷⁷ The investigation mission was composed of M. Bagot, a second grade inspector of the colonies (*inspecteur de 2em class des colonies*) and M. Rouvin, who was the prosecutor of Madagascar. Both men were instructed on 26 August 1930 to go to Djibouti to study in situ the incident.⁷⁸

The team set off towards Djibouti from Marseille on 28 August 1930 on the vessel *Porthos*. The resolve of the Minister of the Colony and prospect of a team of investigators heading to Djibouti did not stop the dangerous state of affairs from developing, however. Indeed, despite the forceful removal of the Qadi from prison, Bargone persisted with his investigations and went on to arrest a certain Mohamed Dileita. The man, an Afar, who was chief of the village of Bender-Djedid, was accused of taking part of Hamoudi's money.⁷⁹ He was, however, released on bail by Bargone. Once free, he went to the Barthelemy acting as representative of a third wife of Hamoudi who was residing outside the colony in Aden.⁸⁰ On her behalf, he accused the first wife of Hamoudi of misappropriating the deceased man's inheritance. This accusation was filed with to the Barthelemy, who had been against Bargone from the outset. The request to hear the case in the European court received a favourable hearing and actually led to the arrest and imprisonment of Fatima Gayed on the very day that the inspecting mission was heading out to the colony.

The Inspecting Mission in the Theatre of Law: Argument and Contestations

The inspection Mission that was set from Paris arrived in Djibouti on 7 September 1930⁸¹ and immediately faced a barrage of opinions, such as the one mentioned above. They quickly found that the 'affaire du Qadi', as they characterized the situation was complex and confusing. They were confronted with the presence of two factions, both of which had put var-

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⁷⁸ l'inspecteur de L'inspection de 2em class des colonies Bagot chef de la Mission d'inspection de la cote française des somalis a monsieur le ministère des colonies: Incidents survenues entre le Gouverneure et la magistrature File: Affaire Bargone, Farines, Magistrats, 16 September 1930.

⁷⁹ ANOM 1AFF-POL 697 Le Président du tribunal supérieur d'appelle Joseph Bargone a Monsieur L'inspecteur des colonies Bagot, Demande de mise en liberté formulée devant le tribunal indigène par le veuve de Hamoudi Ahmed, File: Affaire Bargone, Farines, Magistrats, 17 September 1930.

⁸⁰ ANOM 1AFF-POL 697 Le Président du tribunal supérieur d'appelle Joseph Bargone a Monsieur L'inspecteur des colonies Bagot, Demande de mise en liberté formulée devant le tribunal indigène par le veuve de Hamoudi Ahmed, File: Affaire Bargone, Farines, Magistrats, 17 September 1930.

⁸¹ l'inspecteur de 2em class des colonies Bagot chef de la Mission d'inspection de la cote française des somalis a monsieur le ministère des colonies: Incidents survenues entre le Gouverneure et la magistrature, File: Affaire Bargone, Farines, Magistrats, 16 September 1930.

ious people in jail. They were also faced with various complains. Some of these complains were enlightening, however, as they put the fractured nature of the colonial social order in a clear light for them. For example, the police commissioner wrote to the investigating team stating that the problems in the territory emanated from the presence of two clans, which he aptly called “the Bargone clan” and “the party of the governor”.⁸²

One of the main complain that they received centred on the arrest of Hamoudi’s wife Fatima. Her arrest induced a series of debates and arguments in the colony. Both those actors who were pro Fatima and those who were against her used legal categories as resources to advance their causes. One of these actors was her mother Mariam Bint Cassim Ahmed.⁸³ Mariam wrote about the strangeness and inappropriateness of the situation, which had seen her daughter put in jail based on the accusations of a man who himself was a suspect in the European court. She further argued that her daughter should not be judged in the native court, presided over by Barthelemy, not only because she was a Yemeni on her mother’s side, but also because she was a Turkish subject because her father was of Turkish origin. She further pointed out that one of her daughter’s co-accused, Bilal Omar, was an Ethiopian. Since neither of the two were native and that the law stated that if a litigant is non-native then the case should be heard in a European court she argued that the case should be seen under European jurisdiction. This was not the only case that Mariam raised. She also stated that her daughter Fatima could not be accused of misappropriating the inheritance of her husband as she was the legal wife of Hamoudi. Fatima herself made similar arguments in a letter that she wrote, ultimately in vain, to the Barthelemy.⁸⁴

This latest claim of the accused being of Turkish and Ethiopian origin, respectively, led to a new discussion and contestation that rested on the issue of nationality. No such debate had taken place in May and June 1930 when the case was originally brought to the European court. At that point, all of the accused were regarded as Yemeni Arabs and, indeed, presented themselves as such. The new game of nationality that Mariam and

82 L’inspecteur de 2e class des colonies Bagot chef de la mission d’inspection a la Cote Française des somalis. Monsieur le ministère des colonies: Au sujet des incidents entre le gouverneur et la magistrature, File: Affaire Bargone, Farines, Magistrats, 2 September 1930.

83 Mariam bint Casim Ahmed a Monsieur L’inspecteur des colonies chef de mission , File : Affaire Bargone, Farines, Magistrats 18 september 1930.

84 Fatima bint Gayed a Monsieur l’administrateur des colonies chef des district comandant de cercle, File : Affaire Bargone, Farines, Magistrats ,17 September 1930.

Fatima introduced quickly became a bone of contention. Bargone argued that it proved that the European court was the right sphere in which to examine the case as Turks and Ethiopians are not native people.⁸⁵ This time, however, he also stated that Yemenis should also be judged in the European court as Yemen was not a subjugated country.

By contrast, Ravailier, who had consistently opposed Bargone, argued that these claims to a non-native nationality had not been filed or documented.⁸⁶ In the absence of documentation, he argued that the people concerned should be tried in the native court. Furthermore, he asserted that even if it was accepted that Fatima was of Turkish origin, she had become a Yemeni Arab by marrying Hamoudi. According to the 1927 law, this clearly put her into the native category. Moreover, Ravailier argued that the European court could not hear this matter because of the principle of *una via electa* and because of the principle of the indivisibility of the judiciary.

Result and Judgement

The investigators began by hearing the various statements, then conducted a series of interviews and examined various reports. They finally reached a conclusion regarding what went wrong. The commission found that it was wrong that the governor of Djibouti upon the proposition of Ravailier passed decrees that aimed at displacing the magistrates. In their judgement this has led to complication of the matter.⁸⁷ The inspection mission also reproached the governor of engaging in jurisdictional interpretation. The inspectors affirmed that the governor has no right in interpreting the law and in clarifying the position of any magistrate as wrong or right as the appeal court was the only legal body vested with the right of interpreting the law and imposing decisions that they reached. In addition they also criticised of the governor claim that Bargone and Repeci were fascist collaborator. They pointed out that Repeci was a decent citizen and that he do not have any fascist linkage. They however agree with

85 Le Président du tribunal supérieure d'appelle Joseph Bargone a Monsieur L'inspecteur des colonies: Nationalité de la plaignante Fatma bint Gayed et du nome Bilal Oumar, File: Affaire Bargone, Farines, Magistrats, 19 September 1930.

86 Mémoire produit devant le tribunal supérieure d'appel siégeant come chambre de mise en accusation, a l'appui des réquisitions au parquet tendant a l'annulation partiel de la procédure, File : Affaire Bargone, Farines, Magistrats ,30 September 1930.

87 ANOM 1AFF-POL 697, Bagot Chefe de la Mission d'inspection a Monsiere le ministere des Colonies, Incident Survenue entre le Gouverneure et la Magistrature, File: Mission d'Inspection, 16 September 1930.

the governor that Bargone should have at least warned the governor of the action that he is going to take against the Qadi as he has an important political role among the Muslims which they characterised as rigid and fanatic.

The inspection mission also criticized Bargone of involving himself in different hierarch of the prosecution.⁸⁸ They particularly pointed out the fact that Bargone first involved himself as prosecutor of the case as he was holding the post in absence of a tenured prosecutor. In the course of time he however also acted as part of the appeal court that is concerned with appeal and the over seeing of the proper execution of justice and the legality of judicial proceeding. By involving himself in the appeal court Bargone, the inspecting mission pointed out, was in fact looking and deciding on the legality of the proceeding that he was following while being prosecutor. His role of both acting and deciding was regarded by the inspecting mission as a serious flaw, particularly the assertion that Bargone should not have involved himself in the appeal court. In addition, to this he was also criticised for accusing the governor of taking part in the mismanagement of the inheritance of Hamoudi without having any evidence. The fact that he wrote directly to the Minister of colony without following the chain of command the strong language and accusations that he made in these letter were regarded as something that is not expected from a magistrate.

However, the various criticisms that the inspection forwarded failed to resolve the situation. Although the Barthelemy eventually freed Fatima on bail, he continued his criminal investigation.⁸⁹ Similarly, Bargone and his associates continued their own investigations and also refused to free those already in jail. Going to the appeal court was, of course, impossible as Bargone was in charge and he refused to give the files to the other faction.

This situation ultimately led the matter to be sent to the court of cassation in Paris on 27 November 1930. The court was asked to determine precisely the boundary between the European and native jurisdictional sphere and also determine in which jurisdiction the case of Fatima and

88 ANOM 1AFF-POL 697, Bagot Chef de la Mission d'inspection a Monsieur le ministre des Colonies, Incident Survenue entre le Gouverneur et la Magistrature, File: Mission d'Inspection, 16 September 1930.

89 L'inspecteur de 2em class des colonies Bagot a Monsieur le ministre de la colonies, Compte rendue d'envoi des dernier rapport d'inspection sur l'affaire du Cadi et question connexes, File : Affaire Bargone, Farines, Magistrats, 28 November 1930.

her associate should be seen.⁹⁰ On 17 January 1931, the Paris court of cassation communicated its final decisions. Its verdict was to send the case to the native court.⁹¹

Sadly, as a result of their selective nature, the colonial archives do not tell us what happened to the case and to the two wives of Hamoudi and their daughters after it was sent to the native court. Despite this, we have seen from the available materials how inheritance dilemmas among the diaspora inserted themselves into the colonial social order.

Conclusion

This article has shown how the dilemmas of the Yemenis brought in state actors and how the state in and of itself became marred by dilemmas that jolted the colonial social order. The action of the diaspora in the legal field spilled over into the wider social order of the colonial state. Through discussion of this transfiguration of the diasporic level dilemma, this article has shown the place occupied by the diasporic community in the colonial setting. The Yemeni diaspora were not set apart from the state, they were part of the state. It formed a coalition and acted in conjunction with or against the actor of the colonial state. The colonial state engaged in defining the natives. There was, therefore, a real attempt, to use the brilliant phrase of Mahmood Mamdani, to “define and rule.”⁹² This attempt to define the native into specific categories that are simultaneously manageable and marginalized was even present in the final judgement by the Paris court of cassation, which decided to return the case to the native court.

In practice, the colonial law that the colonial power used to define, marginalize and create a specific domain, became a resource (in the language of Benton) or an arena (in the Language of Hussin) that different actors used for different ends. In this legal arena, negotiation and contestation became important to the diaspora, who emerged from it as a diversified category. Instead of defending the Muslim domain, some opposed it and, in doing so, undid the supposed unity between Muslims or acted against the colonizer/colonized divides. The Islamic domain was

90 Parquet de la république chef du service judiciaire a monsieur le président et conseillers composent le chambre criminel de la cassation, File: Affaire Bargone, Farines, Magistrats, 27 septembre 1930.

91 L ‘instructure de zem class Bargonee a Monsieur le Président du conseil Ministères des colonies: Service Judiciaire de Djibouti Nouveaux Incidence, File : Affaire Bargone, Farines, Magistrats ,19 Janvier 1931.

92 M. Mamdani, *Define and Rule: Native as a Political identity* (Makerere Institute of Social Research, 2013).

not therefore a cherished domain to be defended by the entire Muslim population. When it was defended, as in the case of the Yemeni elite, the defence was a strategic action reminiscent of what Benton calls “cultural intermediaries”⁹³.

93 L.Benton, *Law and Colonial Culture*.

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