

Law and Madness in Colonial Situations. Comparative Imperial Perspectives (19th and 20th centuries)*

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Calendar and submission guidelines:

Paper proposals (3500 characters, including spaces) must be sent to the following address: silviafalconieri@gmail.com by June 1st, 2021.

- Submission of paper: December 1st, 2021.
- First evaluation by the scientific committee: January/February, 2022.
- Submission of the final version of the paper: May 1st, 2022.
- Second evaluation by the scientific committee: June/July, 2022.
- Paper publication: November/December, 2022.

Argument

The legal history of madness in colonial situations remains a largely unexplored field of research within the panorama of French and even European legal historiography. Despite the fact that native concepts such as "illness of the soul" have long attracted the attention of anthropologists, and despite the increase in studies by historians of colonial psychiatry during the past decade, the legal aspects of the treatment of mental illness in overseas territories have only received residual and incidental attention from researchers.

The present issue of *Clio@themis* will be put together in the same vein as the ongoing AMIAF research project[†], which intends to lay the foundations for a historical and legal study of madness in the colonial settings of the 19th and the 20th centuries. Its purpose is to pave the way for a still widely unknown branch of the history of colonial law and justice. With that in mind, the multiple facets of the relationship between law and mental illness in the context of European colonization are to be analyzed from a comparative and a multidisciplinary perspective. Colonial law was characterized by the principle of the personality of laws and its corollary: legal pluralism. Furthermore, metropolitan laws were not always directly applicable in overseas territories, whereas decrees issued by local authorities were abundant. Administrative authorities played a central and unusual role in the production of regulations as well as in the administration of justice. Conflicts between courts and administrative entities

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[†] We are referring to the research project entitled « *Aliéné mental* » et « *indigène* ». *Histoire d'une double discrimination de statut en Afrique française* – AMIAF, funded by the ANR (2018-2022).

were frequent. The expression "law in colonial situations" therefore refers to this specific *modus operandi* and its particular articulation between justice and administration.

Given this backdrop, several questions warrant further investigation. Can one identify a specific legal approach to mental illness, especially in relation to colonized populations? At what point and under what conditions did colonial law deal with mental illness? What were the issues at stake? How did legislators, jurists and colonial administrators view insanity? Did the legal treatment of mental illness among "natives" differ from that of mental disorders among "Europeans"? Drawing from these questions, the dossier *Law and Madness in Colonial Situations* seeks to adopt a broad perspective, encompassing the many manifestations of mental illness in overseas legal discourses and practices, with the aim of highlighting the distinctive features linked with the context of colonization.

A broad comparative approach is intended to provide an inventory of the research on the subject within a historiographical framework. This will involve going beyond nation-based studies of the European powers that built a colonial empire in the second half of the 19th century. In analyzing the relationship between colonial law and madness, a comparative process also requires taking into account territorial specificities within the same empire, by considering differences in status (both territorial and personal). For this reason, it is of the utmost importance to compare overseas and metropolitan territories. In the same spirit, focusing on interactions between various European experiences of colonization would provide insight into the outreach of legal solutions, techniques and practices.

Contributions to this dossier will put three main themes under scrutiny. Given the seminal nature of the research, methodological questions may be addressed at the same time. These three guidelines are obviously not airtight and papers may deal with them in a transversal manner. A cross-disciplinary perspective is also welcome.

I. Sources for a Legal History of Madness in Colonial Situations

What are the sources for writing a legal history of madness in colonial situations? How can they be identified, exploited and analyzed? How should they be cross-referenced with sources from other disciplines? What tools best permit their filing and analysis? As is the case with all historical research, source related questions are of vital importance to the study of legal practices and discourses on insanity in colonial contexts. The exploitation of archival sources, for example, raises numerous problems, mostly stemming from the need to mobilize and interpret extremely heterogeneous documents (administrative, judicial, psychiatric hospital archives). In the case of the French colonial empire, for example, within the colonial administrative archives (ANOM, Aix-en-Provence), it is rare for entire boxes to be devoted to insanity. Unlike other medical related files, especially those dealing with infectious diseases, documents pertaining to insanity appear less systematically in the various inventories. Depending on the territory under scrutiny, further archival imbalances exist. For example, the depth and variety of sources is much greater for Algeria and Indochina. The material state of

these archival sources, and more broadly those relating to the legal treatment of madness, provide invaluable information on how insanity was dealt with in the context of colonization.

This first theme is therefore intended to welcome contributions dealing with the identification, cataloguing and analysis of sources - however heterogeneous (including oral sources) – which are necessary for writing a legal history of overseas madness. Differing perspectives of non-legal sources are an integral part of the process. Especially welcome are contributions concerning the implementation of digital tools, aimed at accompanying and facilitating the identification, cataloguing and analysis of sources.

II. Treating Madness and the boundaries between « normal » and « pathological »

The second theme of this dossier is devoted to identifying and analyzing the disparate contexts in which colonial law addresses mental illness. Contributors will thus be able to focus their attention on operations pertaining to guardianship and curatorship; criminal actions regarding judicial disability and the confinement of "lunatics", as well as cases of exclusion of criminal responsibility; procedures for internment in psychiatric hospitals and asylums; and police measures. Alongside these somewhat ordinary issues which have generally been well documented by broader-based works on the legal history of madness, others would seem more specifically related to the colonial context in which they occurred. Among these, trials and various proceedings directed against the practice of witchcraft; health measures relating to alcoholism and infectious diseases, which in the medical literature of the time were often deemed to be the initial cause of an altered mental status; procedures for the transfer of psychiatric patients from overseas territories to healthcare structures located in the Motherland; administrative detention procedures following rebellion or revolt, as laid out by the *Code de l'indigénat*.

Primarily concerned with native populations, these contexts illustrate how ambiguous "mental illness" or "insanity" proved throughout colonial legal practices and discourses. When dealing with notions such as the "native soul" and the "native mentality," so to speak, boundaries between what was "normal" and what was "pathological" were never impervious. Contributions that problematize the question of the "pathological" in colonial law will find their place here.

III. Legal practices and the use of psyche related science and knowledge

Legal knowledge about madness and mental health was enriched through its interactions, exchanges, collaborations and conflicts with other psyche related theories. Whether it was for the purpose of legal expertise, for the use of publications from other disciplinary fields, or as a

result of attending a variety of scientific meetings, colonial law specialists, administrators and legislators were reliant on existing understanding of the psyche and of so-called native mentality. What knowledge was mobilized in the legal treatment of insanity? What use did legal specialists make of it in their discourses and in their practices? Why did the actors of colonial law opt for certain precepts and discard others? What was at stake during this selection process? What kind of interactions did jurists foster with specialists of the psyche when it came to understanding madness? When and why did jurists portray themselves as specialists?

The 19th century saw the rise of psyche related sciences such as psychiatry, psychoanalysis and psychology, as well as variants of these disciplines which were closely related to colonial experiences. Notions such as "psychology of races", the study of mentalities, "colonial psychology" and "colonial psychiatry" emerged at the end of the 19th century, before reaching their peak in the 1920s and 1930s. Traditional native knowledge on madness, the origins of evil and disease complete this framework. Contributions covering aspects of this third theme will focus on the legal uses of science and the understanding of the psyche and of mental illness in the context of colonial rule. This list is in no way exhaustive, but papers may investigate the meeting places of jurists, scientists and mental health specialists; the influence of certain books or medical journals on colonial jurists and administrators; the time devoted to psyche related knowledge in the training of colonial jurists and administrators; as well as the task of picking-up local conceptions of madness in the field.

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