French courts in Tahiti and its dependencies: 1842-1927

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This paper traces the development of the French courts in Tahiti. It is a companion piece to the article on Tahitian courts in Tahiti which was published in 18 VUWLR 367.

I. INTRODUCTION

Tahitian courts in Tahiti were subject to a gradual erosion which began relatively soon after the arrival of the French. French courts, on the other hand, were strengthened, after an initial period of establishment, so that they might resemble metropolitan courts.

During the second half of the 19th century, two opposite attitudes existed in France with regard to the organization of colonial courts. In some cases and in the context of the small number of cases brought before the colonial courts, employee numbers were reduced or limited, and this risked jeopardizing the regular operation of the service and of adversely affecting persons awaiting trial. In other cases the number of courts and the number of judges were increased so as to accord priority to the rights of those awaiting trial and to provide the latter with the same guarantees as existed in France.

The former of these two attitudes often predominated, and with mixed success. As a consequence, both the Oceanic and other French colonial courts lost some ground.

From 1843 to 1868, justice was organized[1] "with the means at hand, with magistrates appointed locally by the military commander or by the Governor". In this way, the magistrates, although hierarchically dependent on the executive powers, were found in numbers which were quite adequate.

From 1868 onwards, tribunals of the French Oceanic Establishments were to experience the same vicissitudes as tribunals in other colonies. It appears that the main means used to ensure a sparing engagement of personnel was the "appointment of a sole first instance Judge"[2], but also there was a procedure by which a single judge was

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1 Calinaud, Bulletin judiciaire de la Polynésie Française, 6 September 1982, 1.

2 Girault *Traite de législation coloniale* (1907) Vol II p8.

obliged to fulfil several functions and to leave to other civil servants or eminent persons the task of dealing with judicial attributions. The "eminent persons" of the colony, for their part, had both the wit and means to maintain, even if only partially, their positions both within the law courts convened in Papeete, and in the system of justices of peace.

II. THE FIRST FRENCH COURTS

A. The Joint Proclamation of 9 September 1842

The Government Council, comprising three members (the French Consul, the Military Governor of Papeete and the Captain of the Port of Papeete), which was set up in accordance with the Joint Proclamation of 9 September 1842 constitutes the first French court in the states of the protectorate.[3] In addition to his executive and administrative role, the Consul also fulfilled some judicial functions, specifically, in cases on appeal.

It is pertinent to note that first instance courts, in appointing "white jurors", recognized the fact that beyond the principle of the specificity of those courts which dealt with litigation between "whites" (as distinct from cases between Tahitians only), there existed also and more particularly the total authority of Tahitian courts - a corollary to the recognition by France of the Tahitian Kingdom.

1. *First instance courts*

According to the terms of the proclamation of 9 September 1842, civil justice was maintained at first instance -

(a) by Tahitian tribunals, for cases involving only "the native people",
(b) by these same tribunals augmented, in the event of mixed cases, by a number of "white jurors" equal to the number of Tahitian judges. In the event of litigation between "whites" only, the tribunal was entirely composed of "white jurors".

The appointment of jurors by the Government Council, took place after reference to lists of candidates proposed by each of the foreign consuls accredited to Tahiti.

2. *Special courts for non-French foreigners*

In strict accordance with the principle of the sovereignty of the Tahitian State, total competence in litigation dealing with foreigners, other than Frenchmen, should have been left exclusively to native tribunals. However, this jurisdiction was excluded and a special procedure was set up in it's place.

The reasons which led to this choice appear to centre around the desire on the part of the French Government to effect a separation between the French and the foreign communities. But they also convey an idea of the general lack of confidence which the

3 See Sage "Tahitian Courts in Tahiti and its Dependencies" (1988) 18 VUWLR 367.

local courts inspired in the newcomers.[4] In any case, foreign consuls maintained jurisdiction over their own nationals[5] by way of a special departure and as a temporary measure. In this manner, an initial recourse to "persuasion" and arbitration was available to foreigners when they did not want their case brought before local courts. These arbitral decisions could then be referred to appeal in 3 ways:[6]

- either before a court composed entirely of jurors of the same nationality as those concerned; with the number of jurors depending on the relative importance of the representation enjoyed by their country of origin in Tahiti;
- or by lodging an appeal before the Government Council, with the consul of the relevant nationality being obliged to act as an assessor;
- or finally, by lodging an appeal directly before "the Government of the King of France".

The laws used to resolve litigation between foreigners were Tahitian laws. Although consuls had jurisdiction over their own nationals, the laws of the host country were deemed to be those which were legally binding in any such cases.[7]

3. *Appeals*

Although jurisdiction at first instance was left under the control of the Tahitian courts, the proclamation of 9 September 1842 specified that appeals both in mixed cases and those dealing solely with "whites" should automatically come under the competence

4 The mistrust of the French towards Tahitian jurisdictions can be seen from "The Report to the King containing various propositions regarding the way in which justice is administered in the Marquesas Islands and some special attributions which might be conferred upon the Governor". This document emanated, on 28 April 1843, from Admiral Roussin, Minister and Secretary of State to the Navy and Colonial Department, and it noted that "one of the first duties that the Governor of the Marquesas Islands will have to attend to is that of ensuring a good and efficient administration of justice in the colony". Bulletin Officiel 1843-1847, p241 onwards. Similarly, in 1845, when orders Nos 49 and 50 were promulgated, thereby making enforceable in the Society Islands the Royal Ordinance of 28 April 1843, the major concern of France was "that it was urgently necessary for the administration of justice to be regularized in the Society Islands..." Bulletin Officiel 1843-1847 pp38-40.

5 The judicial attributions of consuls, both in civil and criminal affairs, were recognized in international law: "As a general rule, and notwithstanding special exceptions, consuls have the right to judge all disputes of any nature whatsoever between French businessmen, seamen and others in the exercise of their consular duties". *Dictionary of Commercial Actions* de Villeneuve & Massé - cited Bulletin Officiel 1843-1847 p242.

6 The Agreement of 9 September 1842.

7 "All judgments will be made according to already existing laws of the land." Although the principle seems clear, its application raises some difficulties. Indeed, with regard to "persuasion" methods, nothing obliged the consul to make his choice in accordance with Tahitian laws. The same can be said for arbitration which, when it did not lead to an arbitral sentence equating with a judgment, disposed the consul to make reference to the laws of the country he represented.

of the Government Council. The Government Council could similarly consider appeals in "native" cases, when requested to do so by Queen Pomare. The Government Council, acting as an Appeals Chamber and giving rulings according to already existing laws of the land, had jurisdiction -

> in cases between Frenchmen, using only its own members (ie three members);
>
> in cases between Frenchmen and "natives", using its own members and the District Governor on whom the native depended (ie four members);
>
> in cases between foreigners and "natives", using its own members, the District Governor responsible for the native and the consul from the foreigner's country (ie five members).

Only in these last two cases could the decision be made by a majority vote. In cases between Frenchmen, any decisions made by the Government Council would be declared invalid if they were not arrived at by a "unanimity of votes".

The Government Council could similarly rule in cases of appeal involving litigation between foreigners only, but only when specifically asked to do so by the foreigner. In such cases, the foreign consul was automatically chosen as an assessor, and decisions were made by the majority vote.

The only possible redress against decisions made by the Appeals Chamber occurred in affairs of a criminal nature. Then, appeal was made to the King's Government. Where a case could lead to a decision involving the death sentence it was automatically referred to the King's Government.

B. Order No 3 of 1 December 1843[8]

As of 1 December 1843, Governor Bruat, by his Order No 3, instituted both civil tribunals and councils of war. This he did with the object of assuring the administration of justice in the newly annexed Society Islands. Apart from a few minor alterations, the organization thus effected survived the period of annexation.

So as to regularize this situation, which ran contrary to international law, the Order of 1843 which emanated solely from the French side, was replaced by two joint orders signed on 13 April 1845 by both the Regent of the Tahitian Kingdom and by the Commissioner of the King of the French. In this way, the first of these texts confirmed that the French Order of 1843, which dealt with the administration of justice in the Marquesas Islands and with the Governor's powers, should be enforced in the Tahitian Kingdom. The second confirmed that modifications, necessitated by the special situation in the Society Islands, should be made to the judicial organization envisaged for the Marquesas Islands. According to the terms of these decrees, French judicial organization in the States of the Protectorate was defined thus:

8 Bulletin Official 1842-1847 pp 4,5.

1. *Councils of war*

The councils of war had the competence to make rulings on crimes committed by Frenchmen or foreigners, on crimes committed by Tahitians against the security of the territory or against persons or property belonging to Frenchmen or foreigners, and also on all offences within the jurisdiction of the Assize Courts in France.

2. *First instance courts*

(a) Justice of the Peace

Provision for Justices of the Peace was made in Order No 51 of 13 April 1845.[9]

A single Justice of the Peace dealt with petty offences and personal, property or commercial cases where the figure in litigation was less than 400 francs. In all cases dealing simultaneously with a "native" and a Frenchman or foreigner, the Justice was obliged to call in the Tahitian judge from Papeete.

(b) First instance tribunal

Criminal and civil proceedings that were beyond the competence of the Justice of the Peace were brought before a first instance tribunal comprising a president, two judges and two deputy judges appointed by the Governor of the French Oceanic Establishments, and a clerk. In mixed cases, the court had additionally two district judges appointed by the Regent and acceptable to the Governor.[10]

The functions of State Prosecutor were performed on a rotating basis by one of the tribunal's members other than the President.

3. *Appeals*

The Appeals Court, the most powerful court of all, was presided over by the Governor and comprised heads of the health service and the administrative service assisted by a clerk. It gave rulings on decisions appealed from the first instance level.

9 This order was made because of the considerable increase in the amount of litigation brought before the existing jurisdictions. The Governor believed moreover "that it was important to establish in a stable, comprehensive way the competence of this (Peace) Tribunal and to adjust the attributions of the Justice of the Peace so that they came into line with both French and local laws".

10 Order no 50 of 13 April 1845 Bulletin Officiel 1843-1847, pp39-41, article 2 clause 3 - "The following is set up: (1) A first instance tribunal, the composition of which will be decided by the Governor and which, according to circumstances, will, in accordance with prescriptions of the Metropolitan Code, come together as either the Civil Tribunal or the Police Court Tribunal". Order no 52 of 13 April 1845 effected "a sorting out of the State administration whereby the composition of the Appeal Court, the First Instance and Peace Tribunals of the Society Islands were all fixed" (Bulletin Officiel 1843-1847 pp14, 15) and also named the first titular judges who all belonged to the Navy.

The Council could only give valid rulings when three judges were present. The functions of the State Prosecutor were taken in rotation by a judge who was not presiding. In mixed cases the Appeals Court included the Regent and the President of the Toohitu Court.

4. *Commercial cases*

In addition to the organization described above, the essentials of a consular commercial jurisdiction were laid down on 27 May 1848:

> Bearing in mind that the carrying out of justice with regard to commercial matters should be facilitated and accelerated as much as practically possible, and that such a course of action necessitates some modification to the order which set the composition and the competence of the courts in the French Oceanic Establishments... .

The Commissioner of the Republic Lavaud ordered that every time the tribunals were obliged to sit "as commercial tribunals, two eminent local merchants will be added to these tribunals and given consultative status".[11]

5. *Applicable law*

The Royal Ordinance of 28 April 1843 provided that "first instance tribunals and the Appeal Court will apply French civil laws, amended either by Royal ordinances, by local orders, or by local customs". Once established the principle, whereby French law was applied and local customs had only a supplementary role, was reinforced by Orders Nos 50 and 51 of 13 April 1845.

Although litigation between "native" inhabitants continued to be judged according to local custom, cases involving Frenchmen and foreigners, when brought before either the first instance tribunal, or the Justice of the Peace, were resolved according to French laws. This principle was also applied to mixed cases (Frenchmen/natives or foreigners/natives) brought before the first instance tribunal but the Justice of the Peace had total freedom to decide whether it was desirable to apply French laws, "local orders or native laws".[12]

III. THE PROCEDURE CODE OF 1850

In 1850, the Orders of 20 and 22 April 1850, were regrouped under the single title of "Procedural Code of the Protectorate in Tahiti" and the previous judicial organization

11 Order no 137 of 27 May 1848 Bulletin Officiel 1848 p44 article 1. The first consular judges had to be of French nationality, lawfully established as first-class merchants, able to exercise their civil rights and be at least 25 years old (art 2).

12 Since criteria regarding the choice available to the Justice of the Peace were not expressly set out in the dispositions of the order, it can be assumed that he would have been disposed towards favouring French law.

was changed. Civil, commercial, and criminal justice were thereafter administered along the same general lines as were current at that time in metropolitan France.

A. Civil and commercial cases

1. *The Justice of the Peace*

The Justice of the Peace was a civil servant appointed by the local executive. He considered all disputes which might "arise in the personal and property field", and which concerned, at the outside limit, sums of up to 200 francs or, in the case of an appeal, up to 3000 francs. Judgment made in the "civil disputes" area could be referred on appeal before the first instance tribunal whenever the amount in dispute exceeded 300 francs.

The Justice of the Peace could make decisions without reference to anyone else when the dispute came within his competence and involved French or foreign residents. But, in the case of litigation involving a resident and a native, the Justice of the Peace, called in as a possible assessor the native judge from the district where the case was to be heard. In such a case, a split vote meant that the case would automatically be brought before a first instance tribunal.

Itinerant justice made its first appearance in the Order of 22 April 1850. Once every quarter, or more frequently if "the necessities of the service require it", the Justice of the Peace would go out to the various districts. In exceptional cases, the litigants living in the districts, whether they be residents, foreigners or natives, could, if their case was mixed and on special request, have their litigation heard by "the jurisdiction of the native judge from the district where the dispute had arisen".

2. *The tribunal for first instance hearings and commercial matters*

(a) Rules regarding jurisdiction

"Bearing in mind particularly that it was both the right and the obligation of the protective power in Tahiti to regulate the nature of the procedure to be followed in commercial and private disputes, be they between residents or any other foreigners to the Society Islands, or between these foreigners and the natives", Order No 8 of 20 April 1850 made provision for the setting up of a First Instance and Commercial Tribunal which would deal with civil and commercial matters.

Presided over by "the administrative head", and further comprising a vice-president, two titular judges and their deputy judges, the First Instance and Commercial Tribunal had jurisdiction, with regard to civil cases only, to hear in both the first and "the last instances, personal and property cases with a value of no more than 3000 francs, and real estate cases where the income was no more than 120 francs". For all cases where the amount under litigation was higher than this, the verdict given carried the weight of a first instance decision only. In addition, this tribunal made second instance rulings on appeals from judgments made by the Justice of the Peace. Moreover, it was possible, if

the parties expressly requested it, for the First Instance and Commercial Tribunal to give rulings regardless of the total amount under litigation.

When giving rulings in its capacity as a Commercial Tribunal, the court had jurisdiction to hear all matters relating to "undertakings and transactions between merchants and salespeople" and to "commercial acts between all persons".[13]

(b) Nomination of assessors

The judicial system set up by the French included not only the President, the head of the administrative services, and the Vice-President and two titular judges, but also eminent persons from the local community. There were five local persons all told. Only three were required to sit at any one time, and they had to fulfil criteria concerning age (at least 25 years of age for ordinary assessors; 30 years for the Vice-President) and practical experience in running a business (one year). These persons were elected by an assembly of eminent persons from Tahiti, Moorea and other places subject to the Protectorate, from a short-list which had been compiled by the head of the administrative services and approved by the Commissioner of the Republic. "Foreigners" could become assessors and be elected with the same facility as French nationals.[14]

After each election, the result had to be approved by the Commissioner of the Republic who held the power to demand fresh elections if he deemed such an action to be expedient. In this way, he could ensure that all those appointed were loyal to the regime of the day. Similarly, the control exercised by the Commissioner of the Republic extended over the re-election of consular judges. The latter depended entirely on his approval.

In mixed cases, the First Instance and Commercial Tribunal was expanded by the inclusion of two judges, one titular and the other a deputy, who were both members of the Toohitu Court. The Tribunal could only sit with three members, so it was necessary in such cases for one of the European judges, selected at random, to withdraw before the case started.

13 Article 17 of Order no 8 of 20 April 1850 stated that "commercial acts will be deemed to be all those defined as such by the French Commerce Code".

14 Article 6 of Order no 8 of 20 April 1850 no longer imposed an obligation with regard to nationality, for it stated: "Any eminent merchant will be able to be nominated as a judge, provided that he is over 25 years of age, and that he has been in business in Tahiti for one year, and that he demonstrates integrity". While they were merely assessors in 1848, eminent persons made advances in 1850: their numbers increased on the Commercial Tribunal, and their power similarly was augmented; they were able to hold the position of vice-president. However, the candidate elected by the Assembly of Eminent Persons still had to be approved of by the Commissioner of the Republic.

B. The Court of Appeal

The Court of Appeal held four sessions a year. It comprised members of the Government Council, other than the head of the administrative services (who presided over the First Instance and Commercial Tribunal), as well as two resident assessors and, in mixed cases, one native assessor and an additional resident assessor. This court gave rulings on decisions referred to it from the First Instance and Commercial Tribunal.

C. Applicable Law

The principle derived from the Royal Ordinance of 18 April 1843 was totally abandoned. Therefore, the law was necessarily French metropolitan law, with Tahitian laws and local customs being applicable only in a supplementary way and for cases not covered by Order No 8 of 20 April 1850. The same thing happened with regard to rules of procedure, which became those described by the Code of Civil and Commercial Procedure in force at the time in metropolitan France.

D. Final Appeal

A final appeal became available for civil and commercial cases where the amount under litigation was 25,000 francs or more.

E. Criminal Courts

When calm returned to Tahiti after the troubles of the period 1843-1846, it was no longer necessary to maintain the extensive jurisdiction of the councils of war:

> Bearing in mind that while the councils of war were temporarily obliged, during the time of the troubles and in the absence of any other legislature, to deal with all manner of criminal cases, the situation today, now that order has returned, no longer requires such measures.
>
> These councils should return to their original function, which was to judge crimes against army personnel and crimes or plots posing a threat to the authority accorded to France by the Protectorate Treaty.

From 1850 appropriate criminal courts were put in place:

(1) *The Justice of the Peace*

The same Justice of the Peace that exercised the civil and commercial jurisdiction was also responsible for criminal offences. His powers, though based on those of his French counterpart, were more extensive in some areas: notably, in the fixing of a prison sentence of up to 15 days maximum, in the upper limit for fines (50 francs), and in his rights and powers regarding the confiscation of dutiable goods.

The Justice of the Peace gave both first and final instance rulings whenever the fines and costs came to less than 50 francs, and was obliged in mixed cases to call upon the

native judge from the district where the case was to be heard. This native judge would then act as assessor. In all other circumstances, the Justice of the Peace made rulings alone.

Similarly, the principle of going round the districts applied also in the penal area. The rules were similar to those applicable in civil and commercial cases.

The Commissioner of Police from Papeete performed the functions of the State Prosecutor.

(2) *The Police Court*

Consisting of the Justice of the Peace, the President and three assessor judges, one of whom was a native, this tribunal could make a valid ruling only when three of its members, including the President, were present. One of the assessors, the native judge, was chosen from among the Tahitian district judges, on the nomination of the President, by the Commissioner of the Republic. In cases concerning residents only, the rule stipulating a minimum of three judges was used to exclude the Tahitian assessor, whose presence was only required for mixed cases. The functions of State Prosecutor were performed by the person appointed by the Commissioner of the Republic.

The competence of the Police Court extended:

- to all Penal Code infractions which were beyond the competence of the Justice of the Peace;
- to appeals arising from certain decisions given in a lower court.

The level of fines and the length of the prison sentences which could be imposed by the Police Court were governed by either the penal laws of metropolitan France, or by local orders.

The question of understanding had to be raised when "Indians" were involved, otherwise, the judgment would be declared invalid. The tribunal could adapt the sentence being handed out "on the basis of the understanding attributed to the accused". One cannot help but wonder as to the real weight of such a measure though, since a analysis of the decisions given under these circumstances seems to indicate that the "understanding" was a mere procedural formality rather than a way of lessening the guilt, and consequently the sentence, of the "Indian" on trial.

(3) *The Criminal Court*

The principle according to which crimes that jeopardised the safety of the colony should be brought before the council of war, did not prevent a certain number of other crimes from being covered by a common law jurisdiction. It was the Criminal Court which filled this function and also gave rulings on appeals against decisions made by the Police Court where the sentences of imprisonment exceeded 15 days or where the fines exceeded 500 francs.

The Criminal Court was made up of seven members:

- a president chosen from among the presidents of the councils of war,
- the head of the administrative services (also the president of the First Instance and Commercial Tribunal),
- the Comptroller, and
- four assessor judges.

The assessors for the Criminal Court, who could not belong simultaneously to the Police Court, were appointed for one year and could be dismissed only on a decision of the Government Council. The presence of native assessors was required in mixed cases and the question of understanding had to be raised.

The functions of State Prosecutor were conferred on one of the rapporteurs from either of the two councils of war then operating in the French Oceanic Establishments.

The Criminal Court gave rulings on appeal cases arising from judgments made by the Police Court, but its assessors did not have any jurisdiction in such matters. Therefore such decisions were given only by the President, the head of the administrative services and the Comptroller. It is obvious that, in such circumstances, the principle whereby one or more native assessors were to be included in mixed cases was omitted by the drafters of the Order of 22 April 1850. Decisions made by the Criminal Court in such instances confirm that native assessors were never included in the composition of this particular court.

For a decision made by the Criminal Court to be valid, it had to be supported by a majority of five of its seven members. When guilt was established, sentences given were either those which the Metropolitan Assize Court was competent to give in criminal cases, or those detailed in the Penal Code or in local orders under the penalties section. There was no recourse to a higher court. The only avenue open to a convict was that of the "appeal for clemency with prior suspension of sentence".

(4) *The indicting chamber*

Before being submitted to the Criminal Court, all cases had to have been presented to the indicting chamber. This chamber, comprising three members appointed by the Commissioner of the Republic, gave judgments which were subsequently passed on to the "person who fulfilled the role of State Prosecutor on the Police Court". The case file was then given to the Justice of the Peace who acted as examining magistrate and was consequently excluded from taking part in deliberations the indictment chamber. A judgment would be given and communicated, along with supporting documents, to the rapporteur of one of the two councils of war - the same person who performed the function of State Prosecutor. The latter then had the possibility of reconsidering either a part or the whole of the previous proceedings before being obliged to consider the questions of "attenuating circumstances and understanding". Finally, the entire file would be brought back before the president of the Criminal Court who would immediately convene the court.

IV. ORDER No 16 OF 30 AUGUST 1860

The Order of 30 August 1860 is notable for its affirmation of the principle whereby justice rendered by the tribunals of the Protectorate was an affair for members of the French Administration and for eminent persons, and only incidentally for native judges and high judges. This reinforcement of the powers of the eminent persons is demonstrated by the fact that one of their number was now able to be appointed to the position of president of the Civil Court. Moreover, the Commerce Tribunal, transformed into a truly consular jurisdiction, henceforth had its president and its members chosen from a list of 12 eminent persons by the Imperial Commissioner of the Society Islands.

As of October 1860, the rules of procedure before the Criminal Court (the Assize Court of the Society Islands) became those of "Book III of the Code of Military Justice for the Navy, dated 4 June 1858".

V. ORDER OF 27 DECEMBER 1865

The Ordinance of Queen Pomare on 14 December 1865 authorised Imperial Commissioner de la Roncière, to make an Order on 27 December 1865 whereby a new organization of the judiciary would be instituted. According to the terms of the Queen's Ordinance, a transfer took place whereby all jurisdiction ratione personae accorded to "Tahitian Courts", with the sole exception of litigation between Tahitians "on the subject of land ownership", was made over to the French tribunals.

In a general sense, this Order attempted simultaneously to be innovative and to conform with the new needs of the French colony, now solidly settled in Oceania.[15]

The Order did not show a great amount of reforming zeal: Magistrates were still appointed by the Imperial Commissioner and provision was still not made for a final Court of Appeal. Civil and criminal justice and the rules of procedure relative to them were all created in the haphazard fashion. However, it does appear that the colonial power sought to style itself after the metropolitan model by instituting a judicial system based on French laws and set up on almost exactly the same lines as those then used in metropolitan France. The jurisdiction of the councils of war reverted to its intended one, though extended competence did still exist in a limited way for crimes which compromised the security of the colony.

The judicial system was maintained "in the name of the Emperor and the Government of the Protectorate", and included a High Court, a First Instance Tribunal and Tribunals of the Peace.

15 "It appears that the current composition of the tribunals in the Protectorate States is causing a range of problems, evident to the experienced observer, which ought to be remedied by an organizational procedure which takes greater note of the new needs of these states and the development of their agricultural and commercial interests". Bulletin Officiel 1865 Preamble pp125-134.

A. Tribunals of the Peace

The Justices of the Peace were appointed by the Imperial Commissioner from among the eminent civil servants or military personnel stationed in Tahiti. There were three and they sat in Papeete, Taravao and Anaa. They sat without assessors, except in cases involving a "native", where a Tahitian assessor with a consultative role was obliged to be present. An analysis of the judgments made under such circumstances does not allow the true importance accorded to the status of the Tahitian assessor to be gauged, nor the extent to which he influenced the Justice of the Peace.

The jurisdiction of the Justice of the Peace in civil matters was limited to matters of 200 francs value or less. In criminal matters the jurisdiction extended beyond "situations detailed in Book IV of the French Penal Code ... to offences against local orders which entailed a penalty not exceeding ten days imprisonment or a one hundred franc fine".

B. The First Instance Tribunal

This tribunal considered civil, penal and commercial cases. It consisted of a single judge and a clerk, and gave both first and final instance rulings on all requests not exceeding a total value of three thousand francs, or an annual return of one hundred and twenty francs.

With regard to penal matters, the First Instance Tribunal gave rulings:

- in appeal cases, on decisions made by the Justice of the Peace on ordinary law and order matters, or on all offences which exceeded the competence of the Justice of the Peace;
- at first instance, for all criminal offences.

Where the Justices of the Peace performed the supplementary role of Registrar, as in Taravao and Anaa, the first instance judge also acted as examining magistrate.

The Commerce Tribunal was disbanded, and the First Instance Tribunal took over the jurisdiction to hear commercial litigation. In such circumstances the judge could, if he deemed it necessary, be assisted by "two junior judges" chosen from among the merchants who were listed as assessors. For all that, it was considered as a purely optional procedure to seek a ruling on commercial matter because the parties could refer their dispute to arbitration.[16] The First Instance judge would only be called upon if a difference of opinion arose concerning either the nomination of experts, or the approval of the arbitral award.

16 Article 18, clause 7 of the Order: "In a commercial case, when the parties have not agreed to bring their dispute before the First Instance Tribunal, the dispute will be judged by arbiters chosen by the parties themselves from among any inhabitants, regardless of their origins or nationality". Notably, it is only in the absence of any agreement on bringing litigation before the Tribunal that arbitration proceedings are held over, and not the other way around.

Decisions on commercial matters were made in the final instance when the amount under litigation did not exceed three thousand francs.

C. The High Court

The High Court sat as a Court of Appeal and comprised the head of the judicial service, a civil servant from metropolitan France as President, and also two members from the Administrative Council. Primarily, it considered appeals against decisions made by the First Instance Tribunal on matters of civil or criminal law. It also came within the jurisdiction of this court to consider cases where the overturning of a judgment was sought on the grounds of incompetence, exceeding stipulated powers or violation of the law. In addition, the High Court performed the functions of an Assize Court. In such a case, the Court expanded to take on four assessors randomly chosen from a list of thirty eminent persons. As in all other cases, the inclusion of a native assessor was necessary whenever a Tahitian was involved in the trial, be it as the accused or as one of the civil parties.

It is notable that from among the questions to be asked of an accused native, the one concerning understanding, introduced in the Orders of 20 and 22 April 1850, had been eliminated.

D. Basic rules

The Napoleonic Code, the Code of Commerce and French penal law were all fully enforceable. Similarly, rules of procedure followed those in use in metropolitan France, apart from a few minor modifications necessitated by distance. The Official Bulletin of the French Oceanic Establishments lists (1865 no 12) in its appendices the various sections and articles of the metropolitan codes which are cited in the Order of 27 December 1865.[17]

17 *For the Tribunals of the Peace* - Article 14: "The Tribunals of Peace will function in accordance with the measures laid down in Book I of the Code for Civil Procedure, and with the laws which, in France, set the competence of justice of the peace systems".

For First and Second Instance tribunals - Article 41: "The procedural form before tribunals of the Protectorate, in all civil and commercial cases, will be the same as that followed in France by the Commerce tribunals".

In law and order cases - Article 46, clause 3: "Procedure in law and order cases will be governed by sections 1 and 3 of the 1st chapter of Book II of the metropolitan Code of Criminal Investigation".

In petty offence cases - Article 46, clause 2: "... by the measures set out in the metropolitan Code of Criminal Investigation pertaining to procedure before the correctional tribunals...".

In serious criminal cases - Article 46, clause 1: "As determined by articles 267-379 of the colonial Code of Criminal Investigation of 12 October 1828".

VI. DECREE OF 18 AUGUST 1868

The judicial functions created by earlier decrees were conferred upon officers, civil servants or eminent persons residing in the French Oceanic Establishments, On numerous occasions, both Europeans and natives subject to court action had expressed the wish that the organization of justice, hitherto a largely provisional affair, might be replaced by a permanent organization and that the judges might be magistrates appointed by the Emperor. In other words, they wanted a professional legal system to replace one run by amateurs.

More importantly there was the decision by the Court of Cassation of 2 June 1869, that the setting up of tribunals, such as resulted from the local Orders of 1850 and 1865, was illegal and that French tribunals could only be set up by decree of the Head of State.[18]

The decree of 18 August 1868 therefore instituted a regular legal system.

The first and fundamental reform was that magistrates of the French Oceanic Establishments tribunals had to fulfil the same criteria for age and aptitude as did their metropolitan colleagues. The eminent persons, who had their powers curtailed, did however remain for commercial matter and in connection with the Justices of the Peace.

A. Judicial Personnel

1. Personnel appointed by the Emperor

(a) The Imperial Prosecutor

Since he fulfilled the dual functions of People's Representative and Head of the Judiciary, this individual was really much more than the person in charge of the tribunals of the French Oceanic Establishments. Indeed, in his capacity as representative of the Public Prosecutor's department, he carried out the functions of State Prosecutor both in the First Instance Tribunal and in the High Court. Also, he saw to it that French laws were correctly applied; he took part in the execution of legal decisions and "in the interests of the law, he pointed out to the Imperial Commanding Commissioner any orders or final instance judgments which seemed to him likely to be challenged at the level of the final Court of Appeal".

Members of the criminal investigation department and members of the legal profession all came under his control.

18 Civil Chamber, 2 June 1869 - s 69 - 1-385; P 1969-945; D 69-1-249. It had been decided that "in all colonies other than Guadaloupe, Metropolitan France and Reunion, only the Emperor himself, by way of a decree, will hold the power necessary to change the judicial organization (Decree of 14 January 1860, art6; Ordinance of 28 April 1843, art4; Senate cons 3 May 1854, art18) and consequently, any tribunals set up in the colonies by a mere order from the Commanding Superior are illegally constituted, and any judgments they may give are absolutely invalid".

His position as Head of the Judiciary gave him control over the tribunals of the French Oceanic Establishment because "he made sure that discipline was maintained in the various tribunals, and prompted the Imperial Commanding Commissioner to take action in any instance where such discipline was not maintained".

(b) The senior High Court judge

This individual, formally at one ranking lower than the Imperial Prosecutor, was in charge of the High Court and presided over the Criminal Tribunal.

(c) The imperial judge

Appointed by the Emperor and with jurisdiction in both civil and penal cases, he also performed the functions attributed by French law to the Justices of the Peace in Papeete; he was a member of the Criminal Tribunal (Assize Court).

(d) The deputy imperial judge

As a professional magistrate, this judge stood in for the Imperial Judge whenever it was necessary to do so and, in addition, performed the functions of examining magistrate.

(e) The clerk of the First Instance Tribunal and of the High Court

The decree of 18 August 1868 made provision for only one clerk to be employed at both the High Court and the First Instance Tribunal.

(f) The clerk of the Commerce Tribunal

This clerk was appointed by the Emperor and was attached only to the Commerce Tribunal and received remuneration only for his clerical duties.

2. *Members appointed by the Imperial Commanding Commissioner*

(a) The President and the assessors of the Commerce Tribunal

The Commerce Tribunal comprised five persons chosen from among the eminent businessmen of French or foreign origin who had been resident for at least one year in the French Oceanic Establishments. The purely honorary nature of this appointment meant that appointees received no renumeration for their services.

(b) The Justices of the Peace for Taravao and Anaa

The functions were performed by a civil servant or an officer appointed by the Imperial Commissioner. Indeed, it was felt that no harm would come from such persons temporarily taking charge of the Tribunals of the Peace, since judgments of any real importance that they might give as Justices of the Peace could always be appealed to the First Instance Tribunal of the regional capital.

(c) Clerks of the Tribunals of the Peace

The local administrative authority of Papeete appointed two clerks to serve the Tribunals of the Peace in Taravao and Anaa, and to simultaneously perform the functions of avoué.

(d) Assessors of the Criminal Tribunal

Every year, the Imperial Commissioner drew up a list of ten eminent persons from which he randomly chose two assessors for every criminal case. Since they had voting rights only on the question of guilt, their role was modest.[19]

(e) Members of the council of war

The council of war retained its traditional competence. However, in criminal cases, one of its members, as designated by the Imperial Commanding Commissioner, gained the right to preside as judge of the Criminal Tribunal.

(f) Tahitian assessors

The preamble to the organic decree of the 18 August 1868 noted that each time a native was involved in a case, be it as plaintiff or defendant, "the judges took on a Tahitian assessor appointed by the President of the Tribunal". Although he had only consultative powers, his contribution had to be mentioned in the summing-up of the judgment, otherwise the judgment would be declared invalid.

(g) Assistants

The duties of bailiff were performed by agents of the authorities charged with public order. They too were appointed by the Imperial Commanding Commissioner.

The duties of notary, other than for the Papeete area where charge had already been designated on 9 September 1848, were performed by the clerks of the Tribunals of the Peace of Taravao and Anaa.

(h) Defence counsel before the tribunals

Lawyers, as such, did not exist. However, the organic decree of 18 August 1868 allowed that "by order of the Commander of the tribunals of the French Oceanic Establishments and Protectorate States, defence counsel", charged with the task of making pleas and giving representation, might be called in". However, the use of

19 "Assessors have voting rights only on the question of guilt". It was decided that, relative to the Decree of 18 August 1868, the list of eminent persons, from which assessors able to vote on the question of guilt were randomly chosen, had to be made available to the accused at least one hour before selection. The accused had the right to make up to two peremptory challenges. Appeals, 11 November 1875 - Bull crim 1875, p 587.

"defence counsel" was a purely optional measure, since the parties concerned retained the possibility of "acting on their own behalf and defending themselves".

Yet, one exception did exist regarding this freedom of choice of the parties concerned; in the case of "serious crime", the defendant was required to seek outside assistance. But even in such a case professional defence counsel could still be replaced by an officer or resident considered by the Imperial Commissioner to be able to provide defence for the accused.

It was not until 16 June 1870, and then again on 17 May 1886, that orders specifically set out conditions concerning admission and duties of defence counsellors.

B. Courts under the decree of 18 August 1868

1. Tribunals of the Peace

Of the Tribunals of the Peace instituted in 1865, only those in Taravao and Anaa were left remaining.

These tribunals now comprise only a single judge and their jurisdiction was brought into line with that spelled out in the metropolitan texts of 25 May 1855. The latter were now legally enforceable in the French Oceanic Establishments.

In this manner, the Justice of the Peace could, with regard to civil cases, give final judgments whenever the amount under dispute was no more than 500 francs. And he could give first instance judgments when no more than 1,000 francs was involved. Also, upon the request of the parties concerned, and irrespective of whether their cases were first or final instance ones, he was permitted to make rulings whatever the amount under dispute might be.

A special procedure was set in place for the conciliation of disputes totaling more than 1,000 francs, that is to say, those which exceeded the jurisdiction of the Justice of the Peace.

In criminal cases, with the role of State Prosecutor being held by either a chief of police or, failing that, an agent appointed by the Imperial Commanding Commissioner, the Tribunals of the Peace, gave either first or final instance rulings.

2. The First Instance Tribunal

The First Instance Tribunal which sat in Papeete comprised an Imperial Judge, an assistant judge and a clerk.

The competence of this tribunal extended to both civil and penal cases and could it give rulings either in first or last instance, or in first and last instance (depending on the amount under litigation), or whenever decisions were referred to it from the Tribunals of the Peace in Taravao and Anaa. It took on the functions of the Justice of the Peace for

Papeete, and in addition performed the duties traditionally assigned by law to Justices of the Peace in metropolitan France.

3. The Commerce Tribunal

Comprising no one other than eminent businessmen, five all told, chosen by the Imperial Commissioner, this tribunal could function only when three of its members were present. The attributions of this Commerce Tribunal were exactly the same as those for metropolitan tribunals.

4. The High Court

This court, which possessed the greatest power in the entire judicial organization, sat in Papeete. It comprised a President, a clerk and the Imperial Prosecutor acting as official representative of the Public Prosecutor's Department. As Appeals Tribunal it heard appeals against decisions made by the First Instance Tribunal in civil as well as penal matters, and similarly it heard appeals against decisions of the Commerce Tribunal. Also, when a case was referred to it by the parties concerned or by the State Prosecution, it could overrule certain decisions made by the Tribunals of the Peace.

The High Court could also sit as the criminal tribunal. Just like metropolitan Assize Courts, the criminal tribunal was able to hear cases involving crimes committed in the French Oceanic Establishments. However, any crimes or infractions of a political nature could be passed over the council of war. When making rulings on criminal cases, the High Court comprised the President, the Imperial Judge and a member of the council of war, assisted by two assessors randomly selected from a list of ten eminent persons and, where necessary (whenever a native was taking part in the proceedings), a Tahitian assessor.

5. Applicable law

(a) Basic rules

The preamble to the decree of 18 August 1868 confirms the earlier principle whereby, since 1845, "the tribunals of the French Oceanic Establishments apply French law to all civil and commercial cases, to all law and order cases, to all police court cases and all criminal cases".

(b) Procedural rules

(i) In civil cases

Before the Tribunals of the Peace of Taravao and Anaa, the clauses of the metropolitan Code of Civil Procedure were fully enforceable. However, before the First Instance Tribunal, the Commerce Tribunal and the High Court, the relevant procedural rules were those clauses of articles 23 to 84 of the decree of 28 November 1866, pertaining to law in New Caledonia and its dependencies.

(ii) In criminal cases

Articles 85 to 88 of the decree of 28 November 1866 were followed in all cases, whether heard by the Tribunals of the Peace, the First Instance Tribunal or the criminal tribunal.

6. The final court of appeal possibility

This option, which had until this time been either unavailable or strictly limited in availability, became legally available without any hindrance for all civil cases. However, for criminal cases, recourse to the final court of appeal was only available, as the Court of Cassation itself had so often confirmed, in cases where it was in the interests of the law to do so.

VII. LAWS SUBSEQUENT TO THE DECREE OF 18 AUGUST 1868

Although the decree of 18 August 1868 "created a structure which would last, with a few minor modifications, up until 1933", it is worth mentioning that the Order of 16 November 1869 and the Decree of 2 June 1871 did away with the commercial jurisdiction, that the decree of 13 February 1872 allowed for an alternative use to be made by the French tribunals in Papeete of the Prosecutor of the Republic, and that the decree of 1 July 1880 made the most significant impact.

The declaration of 29 June 1880, concerning the abdication of King Pomare V in favour of France, caused the abandonment of all attributes to the sovereignty of the Tahitian State and particularly to its judicial power.

However, the move to transfer to French courts power previously held by Tahitian courts began after 1865 and had already reached its culmination before 1880. The Tahitian tribunals only retained the right to hear property litigation between "natives", the one area of competence which was maintained after Tahiti became annexed to France.

So, the decree of 1 July 1880 and those which followed did not bring any radical changes to the judicial organization in force before the date; only a few adjustments and final improvements were made.

A. Decrees of 1 July 1880

1. The organization of justice

(a) Tribunal of the Peace

The Tribunals of the Peace for the French Oceanic Establishments and Protectorate States had a composition and competence which were in line with those stipulated by the decree of 18 August 1868. They heard at first instance level all civil cases for which the value of the main claim did not exceed 1,000 francs.

(b) The First Instance Tribunal

Some powers previously accorded to Justices of the Peace, notably, those for civil cases in which the amount under litigation did not exceed 250 francs, were transferred to the First Instance Tribunal which then gave first and final rulings. Other clauses of the decree of 1868 were barely changed. However, it is worth noting that the assistant judge who, according to the decree of 1868, was allocated the functions of examining magistrate, now also had the functions of Justice of the Peace and Judge of the Maritime Commerce Tribunal.

(c) The Commerce Tribunal

The Commerce Tribunal which was done away with by the decree of 25 November 1870 was re-established with the same functions and attributions as defined in the decree of 1868.

(d) The High Court

This court, comprising a president and two judges appointed by the President of the Republic, sat in Papeete and its attributions were those specified by the decree of 1868.

When giving rulings as the criminal tribunal, the court followed articles of the 1880 decree, which were almost exactly the same as those of the 1868 decree.

2. *Rules of procedure*

(a) For civil cases

Clauses of the Code of Civil Procedure regarding Justices of the Peace were also applicable to the Tribunals of the Peace and to the Civil Court of Papeete, whenever it sat as the Tribunal of the Peace. In the case of the First Instance Tribunal, the clauses deemed to be applicable were those of the decree of 28 November 1866 - the one which organized the legal system in New Caledonia.

(b) For criminal cases

Procedure before the Police Tribunal and before the First Instance Tribunal in all cases requiring rulings on law and order matters, was governed by articles 85 to 88 of the decree of 28 November 1866, as envisaged for New Caledonia, but subject to the modifications already effected by the decree of 1868, and confirmed by the decree of 1880.

Where the High Court sat as the criminal tribunal, if followed the clauses stipulated in the 1868 decree.

(c) The freeing up of conditions for use of the final court of appeal

The 1880 decree brought no changes from the 1868 decree for civil cases.

As far as criminal cases were concerned, prior to 1880, a final court of appeal proceeding was only available in the French Oceanic Establishments when such a course of action was seen to be legally expedient, Indeed, the Court of Cassation had itself often reminded people of this principle.[20] After 1880 access to the final court of appeal was freely available to the State Prosecution, to persons convicted as a result of civil proceedings (partie civile), and whenever people wished to challenge orders of the High Court concerning criminal sentences.

The decree of 27 March 1879, concerning the availability of a cassation procedure and access to a final court of appeal for decisions in New Caledonia, was extensively used to regulate forms and procedure relating to appeals.

(d) Native assessors

As a consequence of the decree of 18 August 1868, judges were obliged to take on a Tahitian assessor whenever a case arose involving either a Tahitian plaintiff or a Tahitian defendant. This assessor was appointed by the President of the Tribunal, and took part in the hearing and deliberation in a purely consultative capacity.

Frequently, and despite the fact that the annexation decree of 30 December 1880 conferred French nationality upon all Tahitians, this clause was deemed by the Court of Cassation to be still valid. The decree, it reasoned, could not take away their intrinsic nativeness nor could it consequently be used to deprive them of the presence of a native assessor.[21]

3. The creation of two positions as judge

Also on 1 July 1880, a decree was passed concerning the creation of two positions as Judge for the High Court in Papeete. The object of this measure was to increase staff numbers at the High Court and in so doing to respect the principle of collegiality then in vogue in Metropolitan France.

20 App crim 8 December 1870 - Nepvens - Bull crim p310; App crim 1 November 1875 - Teharetua - Bull crim; p587. However the Court of Cassation had no control over decisions where judges applied local custom within a Protectorate nation, local custom being upheld by French law. In app 20 January 1896 - Pomare S&P 97-1-33, the Court applied a well established doctrine whereby the violation of foreign legislation does not give access to a final appeal, unless the enforcement of the foreign law is specifically required by French law. So, the Court of Cassation was not allowed to alter the ruling which upheld the legality of a divorce granted by a Tahitian court before the annexation and which went on to allow that one of the partners was indeed able to remarry. After annexation, the advantage allowed by this ruling was still recognized.

21 However, it was decided that the presence on the Tribunal of a native assessor with consultative powers was not compulsory when the individual had a French father and a Tahitian mother, and this, even when the individual had subsequently married a Tahitian. It was deemed that the individual's French origins could not be lost as the result of marriage - App crim 14 February 1889 - Bull crim 1889 p89.

B. Other amendments to the decree of 18 August 1868

1. The decree of 6 October 1882

Legislators were anxious to see a judicial organization in the colonies which closely resembled that found in France itself, and this particularly in the case of the First Instance Tribunals which were beset with problems concerning both the recruitment of magistrates and other practical difficulties. So, in an effort to make up for these shortcomings, other judges and civil servants were given the same powers as were accorded to First Instance Tribunals.

One example of this attempt can be seen in the promotion of Justices of the Peace with extended competence. While the object of the exercise was to effect a total assimilation of jurisdiction between First Instance Tribunals and Justices of the Peace with extended powers,[22] such measures afforded absolutely no benefit to the Tribunals of the Peace in Oceania. It appears that they constituted a special category somewhere in between ordinary Justices of the Peace and those with extended competence. It is in this spirit that the decree of 6 October 1882 created three Justices of the Peace with extended competence.

2. The decree of 9 July 1890

On the whole, this decree altered the allocations of the Justices of the Peace, permitted hearings to be held by an itinerant court, accorded to Justices of the Peace the functions of examining magistrate, changed from two to four the number of assessors on the Criminal Tribunal and regulated the replacement of judges who were absent or unavailable.

It can also be observed that the functions of notary, accorded by virtue of article 40 of the decree of 18 August 1868, to the clerk of the First Instance Tribunal, were performed in Papeete, after 9 July 1890, "by a public office holder appointed by the Minister of Commerce, Industries and the Colonies".

The number of votes required to validate convictions given by the Criminal Tribunal was raised to four, although it was not considered necessary that this majority be mentioned in the judgment.

On this point, it was considered that while the decree of 9 July 1890 stated that four votes were necessary for the validation of a conviction given by the Criminal Tribunal, it did not stipulate that a failure to mention this majority would invalidate the decision.

22 Justices of the Peace with extended competence were first established in Yanaon and in Mahe in the French Indian Establishments - this by the decree of 1 March 1879. They had the same competence, and even a greater one, than that of First Instance Tribunals. Indeed, just like the "royal judges" they replaced, they heard criminal cases other than those involving appeals, which went to the Appeals Court of Pondichery. Gradually set up in all French colonies and protectorate nations, the number of justices of the peace with extended powers was fixed in successive decrees - Dareste *Treatise on colonial law* Vol I (Paris 1931) 429.

3. The decree of 17 February 1891

This decree fixed the jurisdiction of the First Instance Tribunal of Papeete and of various Tribunals of the Peace.

4. The decree of 23 January 1892

The Commerce Tribunal was suspended in 1892 after electors absented themselves from voting and the Civil Court of Papeete was consequently required to hear litigation normally falling within the jurisdiction of the Commerce Tribunal.

5. The decree of 17 September 1877

The treaty concluded between England and France on 19 June 1847 recognized the independence of the islands of Huahine, Raiatea and Bora-Bora, as well as that of the smaller islands adjacent to and dependent upon them. Both colonial powers agreed never to take possession of any of these territories.

After the abrogation of this treaty on 26 October 1887, the Leeward Islands were placed under the "complete and total sovereignty of France". This measure took effect with regard to Huahine as of 16 March 1888, with regard to Raiatea as of 17 March 1888, and with regard to Bora-Bora as of 19 March 1888.

While waiting for intervention from the metropolitan power in the form of an act which would normalize the administrative and judicial situation in the Leeward Islands, it was absolutely necessary that temporary measures be used to control the operating conditions of their internal administration, so to establish a basis for the administration of justice a resident was accorded the functions of Justice of the Peace.

The order of 20 April 1888 stated that until such time as a metropolitan decision arrived, the Leeward Islands should come under the jurisdiction of the Papeete tribunals for Frenchmen and foreigners, while litigation between natives should remain under the exclusive competence of the native tribunals of the islands concerned.

The decree of 28 July 1897 created a special establishment distinct from the other Oceanic Establishments, but equally placed under the authority of the Governor of Tahiti. At this point, it was appropriate to organize a legal system for this new establishment. So, by the decree of 17 September 1897, a justice of the peace system with full competence was set up on Raiatea for the use of all the Leeward Islands. The court comprised a Judge, a clerk and an officer from the State Prosecution office, all of whom were chosen by the Governor from among the officers, civil servants and policemen on duty in the colony.

For civil and commercial matters, the Raiatea Peace Tribunal had jurisdiction to give both first and final instance rulings on all litigation for which the amount under dispute was less than or equal to 1,000 francs. For all litigation involving a higher amount it could only give first instance rulings, which could be appealed against before the High Court in Papeete.

For criminal cases, the jurisdiction thus established gave rulings either in the first and final instance for all petty offences or in the first instance for ordinary offences. The most serious offences were dealt with by the Criminal Tribunal of Papeete.[23]

6. Decrees of 14 November 1922 and 18 March 1927

This decree resulted in the associate-judge, whose position was created on 18 August 1868, being replaced by two deputy judges, who were themselves replaced by two full judges after 18 March 1927. The native assessors, whose opinion had to be mentioned in judgments in cases involving natives, were also done away with. So from 1922 onwards, French courts in the French Oceanic Establishments were presided over by metropolitan magistrates, by eminent local persons, or else by civil servants.

From 18 March 1927 the assessors who made up the Criminal Tribunal had to be chosen from among persons who were at least 25 years of age, who knew how to read and write French, and who were neither domestics nor wage servants.

VIII. CONCLUSION

Although the French courts established until 1868 by orders from military commanders and governors alike were indeed of questionable legality, and frequently organized with "the means at hand", the judicial organization which they effected did, on the whole, fulfil the requirements for which it was intended.

The declaration made by Queen Pomare which aimed at having her own subjects judged by French tribunals from 1865 onwards, tends to confirm just how efficient the latter were.

However, all things considered, and specifically, the annexation of the Leeward Islands to the original colonized group in 1888, and the subsequent annexation of the islands of Rapa, Rurutu and Rimatara in 1899, in conjunction with the geographic isolation of each archipelago from its neighbours, and the inherent difficulties in communicating with Metropolitan France, and finally the considerable increase in the numbers of Frenchmen, natives and foreigners seeking to have cases heard, it was hardly surprising that the system came to lack the means, both in terms of personnel and infrastructure, to hold itself together. So, the judicial organization in Tahiti and its dependencies, and subsequently in the French Oceanic Establishments, came to feel the same vicissitudes as were experienced in all other colonial jurisdictions.

23 Native laws were codified and approved by the order of 27 October 1898 (Bulletin Officiel 1898, p241). A distinction was made between litigation solely between natives who, following on from the competence of the native tribunals, were still subject to native laws and codes recognized by the Government, and litigation involving only Europeans who were judged by the regularly constituted tribunals according to "current laws, ordinances and decrees" (art3). However, it was in the best interests of native parties to submit themselves "to French law" (art11).

Until 1928, the eminent persons who held positions as either presidents, judges or assessors managed, with varying degrees of success, to retain their prerogatives. This achievement came at the expense of the indigenous people who saw an irreversible whittling away of both their judicial powers and their right to self-representation.

The appearance in 1868 of a professional magistracy which accorded pre-eminent status to the Imperial Prosecutor, an individual who headed the judicial services and played a key part in the running of the colony, a man whose ranking was surpassed only by that of the Governor, goes to prove that, where necessary, the legal system not only fulfilled its original function, but also took part in the colonizing mission which governments assigned to their colonial civil servants, and even to their magistrates.[24]

The enforcement of the French Civil Code, passed in stages (the Tahitian law of 28 March 1866, the decree of 18 August 1868, and the order of 17 March 1874), served primarily to protect the property interests of colonizers, Frenchmen and foreigners alike. It did so at the expense of native property interests which were organized according to concepts which differed greatly from those underlying the Western legalistic conception.

While there was little or no difference in the relative legal standing of Frenchmen and natives, the two groups were still clearly separated by material and social differences which carried with them widely variant sets of rights.

Given this, it is not surprising that the decree of 22 August 1928, common to all colonies or territories coming under the control of the Minister of Colonies who was responsible for resetting the status of the colonial magistracy, succeeded in formalizing the principles established in the field of judicial organization since 1865 - the decisive step in the movement towards the "assimilation" of Polynesians to the metropolitan model.

24 *Tahiti Colonial - 1860-1914* (Sorbonne Publications, 1984) 212; Sage *Polynesian Land Law from the 18th century to June 1934* (Thesis, 1981, University of Grenoble) 138.