GLOBAL PERSPECTIVES
ON LEGAL HISTORY 21

PETER COLLIN
AGUSTÍN CASAGRANDE (EDS.)

Law and Diversity: European and Latin American Experiences from a Legal Historical Perspective

Vol. 1: Fundamental Questions

MAX PLANCK INSTITUTE
FOR LEGAL HISTORY AND LEGAL THEORY

Jean-Louis Halpérin

A French Perspective about the Limits of Equality in 19th–20th Centuries Law

French law after the 1789 revolution can be considered as an ideal type of 'monism'. It retained a considerable legacy from the *Ancien Régime* concerning the political unification of the realm and the construction of a modern, relatively centralized state. However, the *Ancien Régime* had been based on a 'corporate State' which respected numerous privileges and a plurality of rules in the field of private law (customary laws, Roman law, canon law). The 1789 revolution dismantled this legal architecture and the French Assemblies built a new system based on the primacy of a unified statutory law. They were no more privileges and private law was secularized, the constitution of 1791 recognizing marriage as a purely civil contract. Between 1804 and 1810 the Napoleonic five codes achieved their scheme for a single law unifying civil, criminal and procedural matters. The law of March 21st 1804 introducing the *Code civil des Français* abrogated all rules of Roman law, customs or royal ordinances that were inconsistent with the Code. From the Napoleonic regime onwards, French law also developed the model of a very centralized and unified State, rejecting any idea of provincial or regional laws.

Later, the 1905 Law of Separation between churches (the already recognised Catholic, Protestant and Jewish faiths) and state suppressed any legal contact between the state and religions. In French *laïcité*, religious laws do not exist as binding norms within French territory. Since 1946, the French constitution has also adopted the monist model as far as relationships between domestic and international laws are concerned. The rules of treaties that the French Republic has ratified are automatically integrated in the French legal order and since 1975 case law has permitted French judges to set aside a French statutory law if deemed inconsistent with international law according to the so-called *contrôle de conventionnalité*. Since the 1958 constitution, the system of judicial review through the Constitutional Council has completely assimilated Kelsen's hierarchy of norms within French case law and legal science.

However, the French legal system is not absolutely resistant to diversity. Since 1918, there has been a special local regime in Alsace-Moselle which maintains some German laws inside the territories that were annexed to the *Reich* between 1871 and 1918.[1] In French overseas territories, there are special configurations admitting derogatory laws: Wallis and Futuna has its own customary law, especially regarding land law; on the island of Mayotte in the Comoros archipelago, the observance of personal status based on Muslim law was replaced in 2010 by a local law based on the French civil code containing a fifth book with derogatory rules dating to 2002;[2] New Caledonia has its own citizenship for two groups of inhabitants, one of which is subject to a civil law inspired by French law, although it has not adopted new French statutes automatically since 2012, the other to customary laws *(kanak law)*.[3]

Today, a great amount of French legal rules is codified (more than 62 % of statutory laws and administrative regulations) in 73 codes. The question arises of whether this diversity of codes poses a threat for an inclusive law, such as the five Napoleonic codes, and for a multiplicity of special regimes, for example, workers, consumers, writers and inventors, and foreigners. For this reason, the historical question of the relationship between codification, equality and the inclusion or exclusion of minorities is not so easy to resolve in French law and the schema proposed by Massimo Meccarelli[4] can be used to consider four areas: 1) the historical roots of the principle of equality, 2) the development of special laws, 3) the unequal regimes of colonial law and Vichy law, and 4) the recent evolution with the anti-discrimination vs. discrimination debate.

1 The principle of equality, its historical roots and meaning in French law

The 'passion' for equality may be argued to have very ancient roots in France, especially in inheritance law: during the *Ancien Régime*, many customs in Western and Central France were based on strict equality between

1 Woehling / Sander (2019).
2 Blanchy / Moatty (2012).
3 Demmer / Trépied (2017).
4 See his contribution in this volume.

children in the sharing of their parents' assets.[5] However, the *Ancien Régime* was based on the division of society into three 'orders': two privileged ones (church and nobility) and the non-privileged Third Estate *(tiers-état)*. Some peasants remained in a modern kind of serfdom. The Protestant and Jewish minorities were for a large part outlawed and their marriages went without recognition. The 1789 Revolution commenced with the transformation of the General Estates, in which each order had traditionally had one vote, into a National Constituent Assembly ignoring the division into orders. After the so-called "Night of the 4th of August", during which the National Constituent Assembly abolished all privileges, the Declaration of the Right of Man and Citizen was voted on the 26th of August 1789. This famous text, considered as a binding norm during the French Revolution, was clearly a manifesto against privileges. The political situation explains the peremptory character of articles 1 and 6: "men are born and remain free and equal in rights" (art. 1), "the law must be the same for all, whether protecting or punishing. All citizens, being equal in its eyes, shall be equally eligible for all offices, positions and public employments, according to their ability and without other distinction than that of their qualities and talents" (art. 6). The legal consequences of these articles were confirmed by successive legislation concerning religious minorities (law of 24th December, 1789 for Protestants, laws of 28th January, 1790 and 27th September, 1791 for Jews).

The 1804 Civil code reaffirmed this equality of rights among French people. Its article 8 said that every Frenchman would be endowed with civil rights. The Napoleonic Code is the first Code where God is absent and where there is no discrimination according to the religion of the spouses in marriage law, unlike the Prussian ALR and the Austrian ABGB. French law only recognised civil marriages. Religious marriages were removed from the law to a private sphere and it was forbidden to hold a religious marriage before the civil one. For the Protestant and the Jewish minorities, the French law of marriage was completely neutral, and therefore absolutely egalitarian: the door was open for those who wanted to make inter-religious marriages and even for the small minority who did not want any religious ceremony at all. Other parts of the civil codification were based on equality: the regime of ownership was unified after the suppression of all feudal duties, inheritance gave the same rights to male and female heirs, and it was forbidden to

5 Todd (1990) 56–57.

disinherit a child. In criminal law the principle of equality meant the same penalties for all offenders (the adoption of the *guillotine* brought to an end the aristocrats' privilege to be beheaded) according to the legality of all offences and penalties. Even if an imperial nobility was created in 1806–1808, the new nobles (like those former nobles whose titles were restored after 1814) enjoyed no privileges.

As Massimo Meccarelli has observed, the judges' respect of the principle of equality was guaranteed by the procedure of cassation and the 1790 institution of the Tribunal of Cassation, renamed Court of Cassation in 1804. Huge numbers of plaintiffs turned to the Court of Cassation, especially in criminal matters, and it had to deal with all petitions without distinguishing those that were important for case law and those that only required the routine control of the judgements. The Court of Cassation thus developed a binding case law, modelled on statutory laws with general rulings that were equally observed in the whole of France. This was an efficient means to break any attempts to establish regional case law.

Of course, it would be naïve to believe that there were no fissures in this principle of equality, as conceived first in the Declaration of Rights of Man and Citizen, then in the Napoleonic codification. In French colonies, as the 1789 Declaration ignored slavery, it continued until a law of 1794. Nor did it change anything in the statute of married women, despite the private initiative of Olympe de Gouges. When the Napoleonic Code was adopted, slavery had already been reintroduced in the colonies in 1802. In the Caribbean, once introduced the Civil Code coexisted with slavery until 1848. Even personal relationships (marriage, adoption, gifts) between white and coloured free persons were prohibited by regulations, thereby creating a civil regime of apartheid.[6]

The Napoleonic Code maintained the civil incapacity of married women, which had not been suppressed during the Revolution. According to the "marital power" *(puissance maritale)*, married women needed special authorization in any act of civil life, for example, for contracting or suing. Civil and criminal rules concerning adultery were clearly treating husbands and wives unequally. Article 1124 lumped women together with other "unable persons", like minors or lunatics. Widows' inheritance rights were extremely

6 Niort (2002).

limited, being considered only as irregular heirs and coming behind all the husband's relatives. That said, it was the same for widowers, but generally speaking men had larger patrimonies than women. Not until 1938 was this marital power suppressed, while the property rights of married women were first reformed in 1942, full equality in the management of matrimonial assets was legislated in 1965 and 1985, and complete parity in parental authority over children in 1970 and 1997. Despite their civil capacity, not even unmarried women could be witness in civil acts until 1897.

The Napoleonic Code was also hard on foreigners and workers. Based on the nationality principle, until 1819 the rules of the Civil Code excluded foreigners from French successions (by the so-called *droit d'aubaine*), except where there was a special treaty with a foreign country. According to the 1810 Penal Code, foreign vagrants could be deported. The recognition of the civil rights of all foreigners living in France was ruled by the principle of reciprocity (art. 11 of the Civil Code). As for workmen and servants, there were only two relevant articles in the Napoleonic Code: article 1780 prohibiting perpetual commitments and article 1781, which gave primacy to the word of employers in case of wage conflict. This discriminatory article was not abolished until 1868. Napoleonic legislation prohibited all coalitions with unequal penalties for employers and employees: strikes were illegal in France until 1864 and trade unions could only be created legally after 1884.

One has to distinguish between these inequalities that were contained in the codification and some special laws of the Napoleonic period that were adopted later, such as the 1806–1808 decrees against Jewish creditors suspected of usury that remained in force until 1818, or the regime of *majorats*, which provided for inheritance in favour of the eldest son for certain assets of members of the nobility until 1849. The Napoleonic Code was a bourgeois code written for French husbands and fathers who were well-off and could pay the fees associated with civil proceedings. However, the inclusive character of the Code's general terms opened the rules to a process of democratization: every owner could be protected by article 544, every victim of a tort could sue the responsible party, who was liable according to article 1382. After a law of 1851 provided for legal aid, separation and later divorce (re-established in 1884 after its suppression in 1816) was available for relatively poor people.

2 Special legislation: against or in favour of equality?

Like other countries with codified or consolidated laws, during the 19th and 20th centuries France saw how the number of 'special laws' grew and how there were even some processes of de-codification in matters like company law. Did these special laws create diverse regimes characterized by new forms of inequality or did the legislator's predilection for certain categories or persons issue in norms for an inclusive re-balancing of relationships between the powerful and the weak? In this section I will consider those two of the three cases studied by Massimo Meccarelli which concern social law and criminal law, before discussing a specific development in French administrative law. Colonial will be discussed in a section to itself.

In a sense, what we call 'social law' got off to an early start in France with the Napoleonic creation of *prud'hommes* councils in 1806 (the first for the silk industry in Lyon). These 'industrial tribunals' were conceived to settle the conflicts between silk merchants and shop stewards *(chefs d'atelier)* within the old structure of the textile industry. Not only was the composition of these tribunals unfair on workers (who were initially absent or present only in a very small proportion), but the goal was to control the proletariat to the advantage of the employers. However, the spread of these tribunals, whose composition became more equative after 1848, favoured the development of a case law that tried to regulate oral employment contracts, in regard, for example, of the customary delays in redundancy payment. Paradoxically, this concern for equity was questioned by the Court of Cassation in favour of the employers from the 1860s onwards.[7]

The cautious, slow development in France of "working legislation" (*législation ouvrière* as it was called until the end of the 19th century) was also a consequence of the idea to include workers as parties in genuine contractual bargaining. Despite the fact that most employment contracts remained oral and tacitly included working rules that enhanced employers' disciplinary powers, statutory laws limiting working hours (first for children and women, later for all workers) and then recognizing the notion of abusive redundancy (law of 27th December, 1890) reduced asymmetries in employer-employee relations. At the start of the 20th century, Maxime Leroy defended

7 Cottereau (2006).

the idea of *droit ouvrier* based on customs,[8] while some jurists called for the development of a social law to counterbalance the bourgeois character of the Civil Code. In 1910, France was the first country in the world to plan an Labour Code, which would come into existence decades later.

As for criminal law, in comparison with many other legal systems, it is not so easy to plot its evolution in France during the 19th and 20th centuries or to define the specific character of French law. French criminal law, as codified in the 1810 Penal Code (which superseded the first Penal Code of 1791) and in the 1808 Code of criminal procedure, was based on the principle of legality of offences and punishments. Three categories of penalties – contraventions, delicts and crimes – were judged by three different courts: police tribunals, tribunals of first instance and courts of assizes. To judge crimes, courts of assizes were constituted on the British model and consisting of three professional judges and twelve laymen acting as jurors. These general rules can be considered as inclusive and even based on the principle of equality since criminals were judged by their "peers". However, as in civil matters, equality was restricted to male owners of property: jurors could only be men and were selected by prefects according to bourgeois criteria. At different times, some special procedures were in place which may be regarded as attacks on equality. Special criminal courts, without jurors and mixing military and civil judges, were set up to judge felons in the 1808 Code. These special courts, used as *Cours prévôtales* against political opponents between 1815 and 1818, were in operation until 1818 and finally suppressed in 1830. The Court of Peers (the French House of Lords during the constitutional monarchies from 1815 to 1848) judged crimes committed by peers (a privilege) and plots against the State (a means of political repression). After the 1851 *coup d'état* Louis-Napoléon Bonaparte used mixed commissions with prefects, military officers and general prosecutors to "judge", albeit only on files, republican opponents. Political crimes, recognized as special categories of offences since 1830–1832, were subject to a special regime of detention. Military courts were also employed during the 1871 repression of the Paris Commune.

With the third Republic, special courts were suppressed except the *Haute Cour* composed of members of the Senate to try plots against the Republic

8 Leroy (1913).

and courts-martial for military cases, as in the Dreyfus *affaire*. France was part of the general movement associated with Italian criminology, the Liszt school and the Anglo-American experiments with juvenile courts to distinguish between first-time and habitual offenders through the "individualisation of punishments". Despite their reluctance regarding the radical solutions of Lombroso or Garofalo, French jurists like Garraud or Saleilles supported the idea of giving judges more power to lessen or increase penalties according to the profile of the offender. The statutory outcomes were a very severe 1885 law against habitual "small offenders", who were punished by "relegation" comparable to the transportation of criminals to penal colonies,[9] and milder laws for first-time offenders, with suspended sentences in the 1891 law for "sursis" or minors (1912 law regarding special judges for juvenile offenders). In view of the sterilization procedures for habitual or drunk criminals approved in the United States, French law seems not to have been the most exclusive in this field. There was no general plan for a dualist criminal law which would exclude certain criminals from the common rules of the Code. But the 1893–1894 law against anarchists, branded by the left as infamous "evil laws", created a new crime of conspiracy *(association de malfaiteurs)* that continues to be used today against terrorists and restricted extremist propaganda. Nonetheless, it was not generally used against socialists, unlike Bismarck's similar laws.

Another idiosyncrasy of French law, from 1800 until today, is its dualism, the result of its encompassing two systems of justice, the traditional judiciary (called in French *justice judiciaire*) responsible for civil and criminal matters and the administrative judiciary *(justice administrative)* for matters concerning the relationships between administrators and citizens. Since 1800 the two branches of the judiciary have had their own supreme court, the Court of Cassation and the Council of State, respectively. Each of these supreme courts developed a very strong case law *(jurisprudence* in French), the Court of Cassation's based on codified laws, the Council of State's on uncodified laws and precedents. Private law appeared as "common law" *(droit commun)* and administrative law as derogatory law *(exorbitant du droit commun)*. Administrative law corresponded to competences acquired by administrative courts over administrative acts (control of legality), administrative contracts

9 Allinne (2003) 205.

and liability (what were called "full contentious matters"). Like equity in English law, it was built as a complete branch of law, outside the codes, to protect administrators against the action of ordinary courts. On this view, it was unfair in its privileging of the administration. But it became less and less arbitrary (contrary to Dicey's initial opinion),[10] as administrative courts admitted more and more citizens' petitions against administrative acts and acquired genuine independence vis-à-vis the Government, especially after a law of 1872 concerning the Council of State. The fact that citizens could obtain the annulment of general regulations in cases of illegality or obtain compensation for disregard of vested rights meant that administrative law could be also inclusive.

At the turn of the 20th century, the Council of State's case law built on liberal and republican ideologies to blossom into two fields involving relationships between equality, inclusion and codification. The first dealt with the liability of public persons. Not only did the Council of State admit state liability (subsequently, of local administrators, too) for damages caused to citizens by public services, but the supreme administrative court *(Cames* case, 1895) recognized the strict liability of the state (there was no need to prove negligence on the part of the employer) for accidents at work in state manufactures. Three years later *(Teffaine* case in 1898), the Court of Cassation began to create its own case law about what was called "liability because of the things", a highly original system of strict liability based on a bold interpretation of article 1384 of the Napoleonic Code. Both case laws may be said to have been inclusive in supporting workers or victims of accidents who required help to file for compensation.

The second field was supervision of the legality of administrative acts. In order to subject these acts to a single, unified regime, the Council of State began to declare that a principle of equality (in vague reference to the 1789 Declaration) before the law existed which had to be respected by local administrations. Of course, case law did not question the validity of special statutes, but that was the origin of the idea that similar situations had to be subjected to the same rules. Derogations to equality could be decided by parliament alone (in the absence of any constitutional judicial review until 1958), not by administrators.

10 Cassese (2000).

3 Unequal regimes in French law: Colonial domination and Vichy discriminations

In two different contexts, the *longue durée* of the French colonial empire on the one hand, the five-years period (1940–1944) of the Vichy Regime on the other, French law was plainly unequal and exclusive. In both cases, neither the codified structure of the law nor the professional cultures of justice were any obstacle to the admission of these derogatory rules which should have been deemed inconsistent with 'ordinary' French law.

As far as colonial law is concerned, France is just one example (the most flagrant after the British empire) of a colonial domination that was intrinsically unfair on indigenous peoples. In no colonial empire did the annexation of overseas territories mean the integration of their populations under the common rules of the colonizers' legal system. As the British Government did not see any contradiction between the rejection of authoritarian codification for British citizens and its deployment as a useful means of governing Indians or Africans peoples (through penal codes), so the French Government considered that the colonized became 'French' and were submitted to French laws but, except in some limited cases, did not enjoy the rights of French citizens. This distinction between French 'subjects' and French citizens, although not expressed in statutory rules, was the basis of French colonial law in its entirety. Without their consent, colonized subjects were submitted to the French laws that the colonizers decided to introduce in each colony on a case by case basis, especially in criminal matters, land or contract law; but they were not entitled to benefit from the equal rights of the Civil Code. They kept their personal status, based on Muslim or customary law, and did not obtain political rights, except for the inhabitants of four towns in Senegal and of the French settlements in India, who could elect their representatives in the French Parliament. The consequence of such a system was that an Algerian man who wanted to acquire political rights had to be 'naturalized', despite the fact he was already 'French', and to abandon his personal status until 1919, which meant that such naturalizations were very rare before 1919.

Sometimes the French colonial order got caught up in its own contradictions. The first Algerian subjects, indigenous Jews (French nationality was not extended to all Algerian Jews until 1870), saw their attempts to become barristers rejected by the colonial Bar but admitted by the French courts in

the 1860s, as the relevant law made no discrimination between different kinds of Frenchmen.

In each colonial territory, French laws were introduced by special decrees, which made a patchwork of rules that differed from one colony to another.[11] Inequality reached a peak with the rules of "*indigénat*", for long known erroneously as the "*Code de l'indigénat*". Beginning in Algeria with a temporary law of 1881, which would last for seven years, this was a derogatory regime giving administrators the power to inflict extraordinary penalties on disobedient natives: collective fines, collective seizures or restrictions to circulation, including administrative detention. This regime was extended by specific decrees to Cochinchine, Senegal and New Caledonia, then to West French Africa and East French Africa, the rest of Indochina, Madagascar, and even to the League of Nations mandates (Togo, Cameroon) during the interwar period.[12] In fact, there never was a *Code de l'indigénat*, a title invented by anti-colonialist activists, but it is clear that until the regime's general abrogation in 1946, there was a deliberate policy that discriminated violently between colonizers and indigenous peoples and was inconsistent with the principle of separation between the administrative and the judicial authorities that was the rule in the metropole. If legal historians did not confuse this regime with all the arbitrary rules, or unlawful practices, of colonization, it is a cruel example of French jurists' failure to react against so blatant a denial of the 'principle' of French law.

Despite the great differences between the two situations, there were various overlaps between Vichy legislation, especially its anti-Semitic law, and the discriminations of colonial law. In Algeria, the Vichy regime withdrew French nationality from the Jewish families that had acquired it in 1870 and went back to being considered colonial subjects without political rights and with their own laws, which were impossible to apply in practice. This reactionary measure, demanded by many colonists, combined with the introduction of the two 'statuses' of Jews (laws of October 1940 and June 1941) to create public law incapacities on racial lines, one being to have at least two un-baptised Jewish grand-parents. The two anti-Semitic acts overlapped but in some cases did not concern the same persons, because there were Jewish people in Algeria who had not descended from those naturalized in 1870. By

11 Durand (2015).
12 Merle/Muckle (2019).

the same token, the Vichy regime 'denaturalized' many Jews who had become French during the 1930s[13] but did not deprive all French Jews of their nationality because anti-Semitic policy was based on the distinction between Jewish foreigners, who from October 1940 could be held under administrative arrest, and Jewish citizens, who were excluded from many professions.

Vichy legislation in its entirety – over 16,780 laws and decrees in four years – was anti-republican and contained many inequalities toward Jews (for one reason or another, more than 1,700 texts dealt with them), women (legislation on divorce and abortion), homosexual males (relationships between consenting minors and adults were punished for the first time in France under a 1942 law) and freemasons (excluded from public service). These laws were of course repressive, establishing special courts and implementing many derogations to ordinary criminal procedure. Most of the reforms were enacted by bespoke laws and not therefore integrated in the codes. A significant difference with respect to Germany and Italy was that Vichy anti-Semitic legislation did not prohibit marriages between Jews and Aryans and had no direct bearing on private law. Its racialist focus was on excluding Jews from the civil service, with a few exceptions permitted by the otherwise stringent Council of State; from the liberal professions, where limited quotas were enforced for barristers or doctors; and from business activities, by means of "*aryanisation*" – the confiscation and administration of purportedly 'Jewish' assets as if they were the assets of bankrupts. All these exclusions debilitated Jewish people by depriving them of their means of support at a time when the French authorities and police force were backing the German policy of genocide, which they continued to do until 1942. Whereas the Civil Code did not deal with the Jews, many law professors introduced these public incapacities in their courses about the civil status of persons. Without protesting against these provisions, they felt that they amounted to an evident derogation of the principle of equality that had to be justified, as for criminals, by "public necessity". Again, as for colonial law, there was no room in the so-called culture of codified law for any reaction that might considering these laws as 'monstrous'.

Even after the 1942 Allied landing in North Africa, one part of the French authorities, led by General Giraud, was reluctant to abandon the anti-Semit-

13 Zalc (2016).

ic legislation. It was not until the ordinance of 9th August, 1944 "re-establishing the Republican legality" that it was decided to abrogate all "discriminations" based on "the quality of Jew". This text was written by René Cassin, a Jewish law professor who had joined General de Gaulle in 1940, serving as Minister of Justice for the Free French. This was the first use in a French statute of the word 'discrimination', which has previously appeared in the 1919 Treaty of Versailles, in connection with the city of Danzig. The words "quality of Jew" were also a clear riposte to Vichy racism.

4 New trends, new risks?

The vocabulary of discrimination and diversity was little used in France until the 1970s. While the idea of fighting against discrimination was present in employment legislation prohibiting employers to differentiate between members and non-members of trade unions (a 1956 law laid down penal sanctions), the word discrimination was not employed. The first step was the anti-racist law of 1st July, 1972, which established the new offences of racial defamation by the press, refusal to contract on grounds of race, and dismissal on grounds of race. These provisions were inserted in the old Penal Code, then developed in the new 1992–1994 Penal Code's special section on discriminations. In line with European legislation, since 2001 various laws have prohibited discrimination on eighteen grounds on the principle of recognition of diversity in respect of sexual orientation, health, physical appearance or age. A special authority (called HALDE) was set up in 2004 and then integrated in the *Défenseur des droits*, created by a constitutional amendment in 2008. French law is in line with European standards regarding illegal discriminations and many of these prohibitive rules have been introduced into the French penal, labour and health codes.

As for affirmative action, French law is more reluctant to identify minorities: it is, for example, forbidden to include details of race or origin in the census or to grant them privileged rights or quotas, while in 2015, the French Senate archived ratification of the European charter for regional or minority languages. In fact, there are many rules in favour of disabled persons or inhabitants of depressed areas, especially in matters of education. In some cases, such as the notorious student-selection scheme at Sciences-Po Paris, a special law has condoned the institution's practice of recruiting a quota of students from the suburbs, who are presumed to belong to lower

classes.[14] The structure of codified law is irrelevant to the development, or otherwise, of policies like these which respond to a new conception of 'equal opportunities'. The 1992 Consumer Code is inclusive in encompassing the whole population. The 2004 Code regulating the entry and permanence of foreigners is exclusive because it contains restrictions on circulation and provisions for deportation that are not applicable to French citizens. The 2002 Code of internal security risks becoming increasingly exclusive as it incorporates measures taken in 2015–2017, when emergency powers were enacted against terrorism and violent protesters. The use of general clauses in the French codes tends towards an inclusive law and some lack of recognition for diversity. It has been reinforced by the constitutional status of the principle of equality as guaranteed by judicial review. However, French legal history shows that neither a long tradition of equality nor professional cultures of codification are obstacles to exclusive provisions approved in parliament.

Bibliography

Allinne, Jean-Pierre (2003), Gouverner le crime. L'ordre des notables, vol. I, Paris

Blanchy, Sophie, Ives Moatty (2012), Le statut civil de droit local à Mayotte: une imposture?, in: Droit et Société 2012/1, 117–139

Cassese, Sabino (2000), La Construction du droit administratif. France et Royaume-Uni, Paris

Cottereau, Alain (2006). Sens du juste et usages du droit de travail: une évolution contrastée entre la France et la Grande-Bretagne au XIX^{e} siècle, in: Revue d'histoire du XIX^{e} siècle 33, 101–120

Demmer, Christine, Benoît Trépied (eds.) (2017), La coutume kanak dans l'État. Perspectives coloniales et post-coloniales sur la Nouvelle-Calédonie, Paris

Durand, Bernard (2015), Introduction historique au droit colonial, Paris

Fassin, Éric, Jean-Louis Halpérin (eds.) (2009), Discriminations, pratiques, pouvoirs, politiques, Paris

Leroy, Maxime (1913), La Coutume ouvrière, Paris, Giard et Brière

Merle, Isabelle, Adrian Muckle (2019), L'indigénat. Genèses dans l'empire français. Pratiques en Nouvelle-Calédonie, Paris

14 Fassin / Halpérin (2009), 30.

Niort, Jean-François (2002), La condition des libres de couleur aux îles du Vent (XVII^{e}–XIX^{e} siècles): ressources et limites d'un système ségrégationniste, in: Bulletin de la société d'histoire de la Guadeloupe, no. 131
Todd, Emmanuel (1990), L'invention de l'Europe, Paris
Woehling, Jean-Marie, Eric Sander (eds.) (2019), Code de droit alsacien mosellan, Paris
Zalc, Claire (2016), Dénaturalisés. Les retraits de nationalité sous Vichy, Paris