The Algerian Historical Journal
ISSN: 2572-0023 / EISSN: 2716-9065
https://www.asjp.cerist.dz/en/PresentationRevue/664
Volume: 09, N°: 02 (2025), p62-77

French Voices Against Colonial Legal Abuses in Algeria: Émile Larcher (1869–1918) Between Reformist Aspirations and the Perpetuation of Colonial Domination

✍Guebaili Abdelhafid
University Setif 02 (Algeria)
a.guebaili@univ-setif2.dz

Abstract:

This article explores the views of the French jurist Émile Larcher (1869–1918) on the legal abuses that characterized French colonial rule in nineteenth-century Algeria, focusing on his critique of the exceptional penal system imposed on Muslim subjects. It argues that colonial law functioned less as a framework of justice and more as a mechanism of domination, legitimized by the rhetoric of reform and civilization. Within this context, Larcher emerged as a rare legal voice denouncing the arbitrary powers of the Governor-General, military commanders, and administrative officers, and criticizing institutions such as the War Councils and Disciplinary Commissions for violating the principles of justice. The study concludes that Larcher's thought reveals the deep contradiction between France's reformist discourse and its colonial practices. His call for the equal application of justice represented a bold intellectual effort to restore the legitimacy of law in a colonial order built on exception, defending the very legal values that colonialism had distorted in its own name.

Article info

Received: 15/10/2025
Accepted: 01/11/2025

Key words:

- ✓ Colonial law
- ✓ Émile Larcher
- ✓ Legal abuses
- ✓ French Algeria

Introduction

The French colonial experience in Algeria stands as one of the most complex and paradoxical in modern history—an encounter shaped by the duality of "civilization and liberation" on one hand, and mechanisms of domination and subjugation on the other. The legal sphere was among the most revealing arenas of this contradiction. From the earliest years of occupation, the French administration sought to construct an exceptional legal system designed to justify the subjection of the indigenous population, cloaking domination in legal and moral legitimacy. This system represented a structural embodiment of the colonial logic of differentiation between the "French citizen" and the "Muslim native," establishing a dual justice: one civil and reserved for Europeans, the other administrative and military, imposed on the colonized. Such a framework produced a set of arbitrary practices known in French legal and political literature as "the legal abuses in Algeria", which were not mere deviations or temporary excesses but a constitutive feature of the colonial project itself.

Within this context emerged a number of French voices seeking to question this exceptional penal order and to mitigate its effects on the Algerian population—whether from humanitarian, legal, or internal reformist perspectives. Among these figures, Émile Larcher (1869–1918) stands out as a prominent jurist who dedicated much of his early twentieth-century writing to criticizing the penal and administrative policies applied in Algeria. Larcher's intellectual endeavor was shaped by an attempt to reconcile his republican convictions—rooted in justice and equality before the law—with a reformist vision that remained ultimately confined within the colonial framework. His thought thus exemplifies the ambivalent duality of the French reformist discourse: a discourse calling for the "humanization" of colonial rule while never questioning its legitimacy or the supposed superiority of French civilization over the indigenous peoples.

The significance of examining Larcher's thought lies in the opportunity it provides to revisit the relationship between law and colonialism from an internal critical perspective—from within the French intellectual tradition itself rather than from outside it. Instead of viewing colonial legality solely as a repressive apparatus imposed upon the colonized, analyzing the positions of French jurists such as Larcher exposes the limits of French legal consciousness, and its struggle to reconcile the ideals of the Republic with the imperatives of Empire. This approach sheds light on how notions such as order, civilization, and security were transformed into instruments that legitimized legal inequality.

This article thus poses a central question: To what extent can Émile Larcher's critique of colonial legal abuses in Algeria be regarded as a genuine reformist effort to ensure justice for the colonized, or rather as a rearticulation of colonial domination in a more humane legal language?
From this central question arise several sub-questions: What were the institutions and punitive mechanisms that defined the colonial penal system? How did Larcher interpret and critique them through the lens of French law? And what were the real boundaries of his reformist project—did he call for abolishing legal discrimination or merely for rationalizing it?

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

The importance of this study lies in its contribution to filling a notable gap in Arabic-language scholarship on French legal thought in colonial Algeria. While most studies have focused on legislative texts and administrative structures, little attention has been given to French intellectuals who criticized these institutions from within the same system. Furthermore, the study illuminates the broader evolution of French legal thought between the nineteenth and early twentieth centuries, tracing its shift from a civilizing mission to a reformist humanitarian rhetoric that nonetheless preserved an implicit sense of cultural superiority.

Methodologically, the article employs a historical, analytical, and comparative approach**,** tracing the development of Algeria's colonial legal system throughout the nineteenth century, and juxtaposing official legal texts with the perspectives of French jurists—chief among them Émile Larcher, whose writings between 1901 and 1908 constitute the main corpus of this study. The research also draws upon archival materials and contemporary legal references to reconstruct a nuanced understanding of the law–empire nexus from a critical standpoint.

The article is structured around three main sections: The first explores the legal abuses of French colonialism in Algeria and their historical contexts; the second examines Émile Larcher's intellectual position within the French legal elite that sought to reconcile reform with colonial loyalty; and the third analyzes his critique of exceptional punitive institutions—such as the War Councils and Disciplinary Commissions—as well as his views on the punitive powers granted to the Governor-General, administrative officers, and military commanders, assessing the consistency of his reformist discourse with universal principles of justice.

Through this framework, the study seeks to enrich the historical and intellectual debate surrounding the limits of legal reform within colonial systems, and to interrogate the enduring paradox of French colonial thought in Algeria: How could a civilization that prided itself on liberty justify domination? How could a Republic founded on equality sustain a system built on legal discrimination? Questions whose resonance still echoes in contemporary reflections on law, empire, and justice.

1. French Legal Abuses Against Muslim Algerians: Concept and Contexts

The French colonial experience in Algeria stands as a striking illustration of the contradiction between the declared legal discourse and the actual practices on the ground. Following its military conquest of Algeria in 1830, France did not merely impose territorial control; it undertook the establishment of an integrated political, administrative, and legal system aimed at reshaping Algerian society according to the French colonial vision. Within this framework, the law functioned as a central instrument of what was termed the "civilizing mission" (*mission civilisatrice*). Officially presented as a tool for justice and order, the law in reality became a mechanism of domination and subjugation. From the earliest years of occupation, a dual legal system was established, distinguishing between two categories of inhabitants: Europeans, governed by a modern civil law, and

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

Muslim "natives" (*indigènes musulmans*)[1], subjected to a special administrative and military regime that had no basis in the general French legal order. This structural division was not incidental but rather a deliberate expression of the policy of "legal discrimination" (*discrimination juridique*), deemed essential for the survival and stability of the colonial system**(**Bontems, 1976, p. 403**)**..

Under this regime, exceptional institutions emerged, such as War Councils (*Conseils de guerre*) and Disciplinary Commissions (*Commissions disciplinaires*), along with unprecedented penalties in the history of French law, including internment (*l'internement*), through which thousands of Algerians were deprived of their liberty without trial or formal charge. Over time, these measures evolved into a parallel legal structure, deriving its legitimacy from the authority of the Governor General (*Gouverneur général*) and from the broad powers granted to administrative and military officials. Thus, justice in Algeria assumed an administrative rather than judicial character. The absence of parliamentary oversight in France, coupled with the expansion of executive power in the colonies, entrenched this system until it became a form of "colonial law within French law," grounded in a logic of permanent exception and presumed legitimacy **(**Bontems, 1976, p. 403**).**

This situation gave rise to what may be described as systemic legal abuses, that is, institutionalized deviations from France's constitutional and legal norms, justified under the pretexts of "colonial necessity" (*nécessité coloniale*) or "administrative expediency" (*opportunité administrative*). The essence of these abuses lay in the exemption of Algeria from the general French legal framework, subjecting it instead to a special system of decrees and ordinances issued by the executive rather than the legislature. This exceptional regime was first established by the royal ordinance of 22 July 1834, issued by King Louis-Philippe, which stipulated that Algeria would be governed by governmental decrees adapted to "local circumstances."[2] The Constitution of the Second Republic (1848) later reaffirmed this status in its Article 109, declaring that "the territory of Algeria and the colonies shall be subject to exceptional laws until a special statute brings them under the

[1] - The term "Muslim natives" (*les indigènes musulmans*) referred exclusively to Algeria's indigenous Muslim population, excluding European settlers, Jewish natives, and foreign Muslims. This term is preferred here because *"Algerians"* includes all inhabitants, *"natives"* (*les indigènes*) covers both Muslims and Jews, and *"Muslim Algerians"* was never used by the French administration. Until 1865**,** Muslims in Algeria had no defined legal status. The Sénatus-consulte of July 14, 1865 granted them the status of *"French subjects"* (*sujets français*), stating that "the Muslim native is French; however, he remains subject to Muslim law." This ambiguous status made them neither French citizens nor Algerian nationals. The French authorities deliberately used the term *"Muslim natives"* (*les indigènes musulmans*) to exclude them from citizenship rights and to justify subjecting them to a special exceptional penal system (*régime pénal exceptionnel*).

[2] - France considered that "Ancient Algeria was French property in North Africa." On this basis, Algerian territory was annexed to France and declared French soil. However, its inhabitants — Muslim Algerians — were not recognized as French citizens; instead, they were marginalized and subjected to exceptional treatment. (O.R, du 22 juillet 1834, in : R.A.G.G.A (1830–1854), Imprimerie du Gouvernement, Alger, 1856, pp. 52–53).

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

Constitution."[1] Yet no such statute was ever enacted, and for more than a century Algeria was effectively governed by decree rather than by law, under a state of legislative exception that persisted until the 1947 Administrative Reform Act.

This legislative exception was not a temporary measure but a deliberate colonial policy, justified by the claim that Algerian society was "not yet ready" to be governed under French law, and that full rights should be granted only gradually. In practice, this reasoning led to the marginalization of parliamentary authority in favor of the executive, with the Governor General, administrative officers, and military commanders becoming the true arbiters of legal and disciplinary measures. Consequently, the locus of law shifted from the realm of justice to that of administration, and from a principle of rights to a logic of power (Girault, 1906, p. 18).

Although this system achieved, from the colonial administration's perspective, a form of administrative stability, it simultaneously provoked considerable intellectual and legal debate in France(Girault, 1904, p.541). Many jurists and human rights advocates viewed what was happening in Algeria as a distortion of the spirit of French law and a betrayal of republican principles. While colonial proponents justified exceptional measures as necessary for "security" and the defense of "civilization," a few voices—most notably that of Émile Larcher—emerged to challenge these justifications(Le Cour Grandmaison, 2015, p. 6). Larcher, as a reformist jurist, sought to deconstruct the colonial penal system from within, denouncing practices that transformed justice into an instrument of repression and asserting that respect for law is the first condition of any genuine civilizing project.

Hence, the study of French legal abuses in colonial Algeria constitutes a crucial analytical entry point for understanding the limits of the French reformist project in its colonies—and for revealing how, at a decisive historical moment, law itself was transformed from a symbol of justice into a mechanism for reproducing colonial domination.

2. Émile Larcher: Academic Trajectory and Intellectual Foundations

Émile Larcher (1869–1918) stands as one of the most influential French jurists to have engaged critically with the study of Algerian law during the colonial period. Born in Nancy, he was raised in a legal and disciplined environment—his father, a lawyer from Lorraine, instilled in him an early respect for legality and institutional order. Larcher earned his doctorate in law from the Faculty of Law in Nancy in 1894 and, two years later, was appointed lecturer at the École de Droit d'Alger (School of Law of Algiers), marking the beginning of a career that would combine rigorous legal scholarship with a growing critical engagement with the colonial legal system (Blévis, 2012, pp. 565–566).

From the moment of his arrival in Algeria, Larcher displayed a keen interest in the contradictions between the proclaimed French legal ideals and their colonial implementation. In 1899, together with his colleague Jean Olier, he published *Les*

[1] - Constitution de la république française, art.109, imprimerie Bonaventure et Ducessois,55, quai des grands-Augustins, paris, sans date, p.17.

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

institutions pénitentiaires de l'Algérie ("The Penal Institutions of Algeria"), a foundational study that examined the penal system applied to Algerian Muslims. The book combined empirical analysis with early signs of reformist concern: while recognizing the coercive realities of colonial rule, Larcher and Olier insisted that punishment must remain bound by the principle of legality (principe de légalité) and respect a minimum threshold of individual rights (Renucci, 2011, pp. 461–478). This delicate balance between legal formalism and colonial pragmatism would later define much of Larcher's intellectual evolution.

Appointed professor of criminal law in 1902, Larcher gradually shifted from a cautious academic stance to a more assertive and independent critique of the colonial legal order. His repeated failure to obtain the agrégation (the prestigious higher professorial qualification) paradoxically granted him greater intellectual freedom, freeing him from the institutional rigidity of the Parisian academy and allowing him to engage more boldly with the Algerian legal reality. Over time, his style became sharper and more incisive, moving from descriptive commentary to open denunciation of what he saw as violations of the French legal conscience. This transformation in Larcher's thought cannot be understood without reference to the intellectual and legal foundations that shaped his method and discourse. Trained in the conceptual universe of French common law (droit commun), Larcher regarded it as the ultimate standard against which colonial practice should be measured. He was not an emotional critic but a technical reader of the law, combining the precision of a jurist with the moral conviction of a republican. His academic and journalistic engagement—through journals such as the *Revue algérienne* and the *Revue politique et parlementaire*—provided him with the analytical tools to expose the legal distortions that underpinned the colonial administration's exceptionalism(Renucci, 2011, pp. 461–478).

In his later works, particularly *Traité élémentaire de législation algérienne* (1903), Larcher expanded his critique to include the separation of powers (séparation des pouvoirs) and the legitimacy of executive decrees governing Algeria, such as the Lambrecht Decree (décret Lambrecht) and the Crémieux Decree (décret Crémieux). His writing blended precise legal reasoning with rhetorical force, describing certain colonial texts as a "stain on France" or even a "musée des horreurs" ("museum of horrors")—expressions that captured both his moral outrage and his legal sophistication(Renucci, 2011, pp. 461–478). His intellectual formation rested on three intertwined pillars: the spirit of French law, which he viewed as the institutional embodiment of justice and equality; the comparative method, which revealed the widening gap between metropolitan principles and colonial realities; and a human-rights republicanism nurtured by his involvement in the Ligue des Droits de l'Homme et du Citoyen (League of the Rights of Man and Citizen). These elements converged to shape a jurist who was at once a product and a critic of French legal modernity—a reformer seeking to restore legality within the very framework that had enabled its distortion(Renucci, 2011, pp. 461–478).

Larcher was thus neither a political anti-colonialist nor a complacent servant of empire, but rather a defender of law as an autonomous moral order. His insistence that the rule of law should apply equally to citizens and subjects illuminated the structural

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

contradiction at the heart of French colonialism, revealing how the colonial project, while invoking legality, was built upon its systematic suspension. Through this tension, Larcher's legacy continues to stand as a rare voice of juridical conscience within the intellectual history of colonial legality(Renucci, 2011, pp. 461–478).

3. The Delegation of Punitive Power in the Colonial Administration of Algeria: Between the Logic of Repression and Émile Larcher's Critique

The extensive punitive authority granted by the French colonial administration in Algeria to civil and military officials represented one of the most striking manifestations of structural legal deviation within the French imperial system. Under the pretext of "security imperatives" and "local particularities," the colonial regime effectively suspended the principle of the separation of powers, subjecting Muslim Algerians to an exceptional disciplinary regime operating outside the bounds of the judiciary. This policy of delegating punishment to administrative and military actors sparked significant debate among French jurists in the late nineteenth century and found one of its most incisive critics in Émile Larcher , who maintained that law should never serve as an instrument of domination but rather as an expression of justice and equality before the text(Guebaïli, 2024, pp. 282–295).

The Governor-General of Algeria (*Gouverneur general de l'algérie*) embodied the apex of this delegated authority. Concentrating legislative, regulatory, judicial, and executive powers in his hands, he became, as Arthur Girault aptly observed, a "viceroy" (*vice-roi*) ruling over his own kingdom without accountability(Girault, 1906, p. 18). Robert Doucet went even further, describing him as "a political and legal monster born of the imperial republic," for it was the Republic itself that had created him to govern "backward peoples" through decrees that transcended ordinary law(Girault, 1906, p. 18)..

Larcher argued that this unprecedented concentration of power in one office undermined the very principle of legality, transforming law from a safeguard of rights into a mechanism of domination. The Governor-General could define offenses, determine penalties, and oversee their enforcement, all without judicial or parliamentary oversight—an arrangement alien to the French constitutional tradition(Larcher & Rectenwald, 1923, pp. 474–475).

This logic of delegated punishment extended to the lower levels of colonial administration through the administrators of the mixed communes (*les administrateurs des communes mixtes*), who constituted the "daily face" of colonial rule in rural Algeria.[1] These local officials were empowered to impose fines, detentions, and even corporal punishments on Muslim Indigenous population without recourse to the courts or the right of appeal, under the pretense of maintaining public order. The French writer Fontin-

[1] - Administrative officers of the mixed communes (*administrateurs des communes mixtes*) were granted punitive powers under the ''Law of June 28, 1881'', known as the Native Code (*Code de l'indigénat*). Article 1 of this law stipulated that:"The repression of disciplinary offenses committed by the ''indigenous population'' (*indigènes*) in the mixed communes shall be entrusted to the administrative officers of these communes." (Loi du 28 juin 1881, art. 1, in B.O.G.G.A., 1881, p. 266).

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

Clauzel famously described them as "little despots who represent France" (un petit satrape qui représente la France) (Larcher & Rectenwald, 1923, p. 101). Larcher regarded this practice as an even greater perversion of justice than that of the Governor-General himself, since it directly affected the daily lives of indigenous subjects and shifted the exercise of punishment from the domain of law to the discretion of the administrator, making the same person both judge and party(Larcher & Rectenwald, 1923, p. 101).

The military hierarchy was not exempt from this dynamic. Army commanders and officers[1] were likewise granted extensive disciplinary powers over Muslim Algerians, particularly in regions deemed "restive." Colonial theorists such as Émilien Chatrieux and Louis Rinn justified this arrangement as a matter of security necessity, with Chatrieux even claiming that the army's immediate punitive measures suited the "Eastern temperament" of the natives, who "understand justice only in its harshest form." (Chatrieux, 1893, pp. 160–166; Rinn, 1885, p. 63) Larcher firmly rejected such arguments, contending that the militarization of punishment transformed justice into an instrument of coercion. The penalties imposed by officers, he argued, rested not on legal texts but on the arbitrary discretion of military authority, rendering them susceptible to personal caprice and vengeance. In this sense, "the colonial penal system erased the boundary between law and violence," replacing the logic of right with that of deterrence and domination(Larcher & Rectenwald, 1923, p. 249).

The delegation of punitive power within both the civil administration and the military was thus not a temporary expedient but a fundamental pillar of the colonial legal order. It institutionalized a framework of abuses that turned Algeria into a laboratory for the legalization of coercion beyond the scope of French common law. Within this reality, Émile Larcher's voice emerged as a courageous intellectual attempt to restore the legitimacy of law in a colonial space founded on exceptionality—his critique standing less as an indictment of colonialism per se than as a defense of the legal values that colonialism itself had corrupted in its own name.

4. Dual Justice and Legal Discrimination: Émile Larcher's Reformist Dilemma

Among the most striking manifestations of France's legal abuses in colonial Algeria was the establishment of a dual system of justice, one that separated "citizens" from "subjects."

[1] - These powers were entrusted to senior officers in the French army who oversaw military administrative units organized according to the following hierarchy:

- The generals commanding the divisions (les généraux commandants les divisions), who headed the three main military divisions of Algeria — Algiers, Oran, and Constantine.
- The commanders of subdivisions (les commandants de subdivisions), who directed large military units within each division.
- The commanders of districts (les commandants des cercles), which constituted smaller military units within the subdivisions.
- The commanders of military annexes (les commandants des annexes), attached to the subdivisions and districts, in addition to other officers who exercised various military and administrative responsibilities (Duvernois, 1865, p. 105).

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

Under this regime, European settlers and Jewish Algerians, particularly after the Crémieux Decree of 1870, were governed by the principles of common law (droit commun), while Muslim Algerians were subjected to an exceptional legal order—an administrative regime of exception (régime d'exception)—that effectively stripped them of judicial equality. This legal bifurcation was not a mere administrative convenience; it was the cornerstone of the colonial project, a juridical mechanism that institutionalized domination through law. To French reformist jurist Émile Larcher, it represented the very negation of France's republican ideal of equality before the law.

Within this framework, the War Councils (Conseils de guerre) emerged as one of the earliest and most powerful instruments of colonial repression. Created by order of the army's supreme commander on October 15, 1830[1], these councils were granted sweeping authority to try and punish Algerian Muslims for crimes ranging from rebellion to petty infractions. Over time, and particularly after the Decree of March 15, 1860[2], their jurisdiction was restricted exclusively to Muslim "natives," while Europeans and Jews were placed under civilian courts—a move that codified racial and religious segregation within the justice system. What had once been an emergency wartime tribunal thus became a permanent feature of colonial administration, transforming the military court into the ordinary court for the colonized population. The official justification for this duality was "public order," yet for Larcher it epitomized the transformation of justice into an instrument of domination cloaked in legality (Fremeux, 2005, p. 36).

Larcher's criticism of the War Councils unfolded on several levels. First, he denounced the very principle of military justice (justice militaire) applied to civilians, calling it a "grotesque distortion of legal rationality." In France, such tribunals were designed exclusively for military personnel and offenses of a military nature. In Algeria, however, they had become the ordinary judiciary (juridiction ordinaire) for Muslims. This, Larcher argued, violated the foundational republican doctrine of the separation of powers (séparation des pouvoirs), since military officers—combining the functions of commander, prosecutor, and judge—were empowered to decide the fate of civilians under their control (Larcher & Rectenwald, 1923, pp. 245–247).

Second, he emphasized the legal vagueness surrounding the councils' jurisdiction. The founding decrees of October 15, 1830, September 26, 1842, and August 1, 1854 never precisely defined the acts that constituted punishable offenses. This ambiguity gave the army free rein to interpret "crime" as any act of disobedience or dissent. In practice, most

[1] - Arreté du 15 octobre1830, art.1, in : R.A.G.A(1830-1854), imprimerie du gouvernement, Alger, 1856, pp.2-3.

[2] - Decret impérial , du 15 mars 1860, art.1, in : M.P. de Menerville, dictionnaire de la législation algérienne, code annoté et manuel résonné des lois, ordonnances, décrets, décisions et arrêtés, première volume (1830-1860), deuxième édition, Alger ,1887, p.410.

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

cases before the War Councils were not grave crimes but minor disputes, land conflicts, or expressions of defiance. Such arbitrariness, Larcher noted, turned the very concept of legality on its head, producing "law without justice." Moreover, he exposed the mechanism of double punishment (double peine), whereby an Algerian could be sentenced by a military tribunal and then face additional administrative sanctions such as collective fines, confiscation of property, or internment. Justice thus became a disciplinary apparatus—a means of governing through fear rather than through right (Larcher & Rectenwald, 1923, pp. 245–247).

In this sense, Larcher regarded the War Councils as the legal foundation of a racialized hierarchy of rights, in which one's access to justice depended not on the offense committed but on one's ethnic and religious identity. To him, they were "a political machine disguised as a court," one that reduced the law to an instrument of conquest. His critique was not limited to the severity of their rulings but extended to their very existence in a territory supposedly governed by the principles of the French Republic(Larcher & Rectenwald, 1923, pp. 245–247)..

If the War Councils represented the militarization of justice, the Disciplinary Commissions (*Commissions disciplinaires*) embodied its bureaucratic degeneration. Established by decree on September 21, 1858, these commissions were initially justified as a means to handle minor infractions by Muslim Algerians in military zones (zones militaires). Yet in practice they became a parallel judiciary—one entirely outside the normal legal order—where administrative officers and army commanders exercised punitive power (pouvoir répressif) without any procedural safeguards. Composed primarily of military officers under the authority of the local commander, these commissions operated in closed sessions, without defense counsel, appeals, or judicial oversight. Their decisions were merely submitted for confirmation to the Governor-General, who possessed absolute discretion to uphold, amend, or annul the sentence. What emerged was not justice, but a façade of legality masking arbitrary coercion (Rinn, 1885, p. 74).

Larcher, observing these developments from within the French legal establishment, launched one of the most incisive critiques of colonial law in the early twentieth century. In a 1908 article, he condemned the Disciplinary Commissions as a "legal monstrosity," arguing that they punished acts not defined by any statute and imposed sanctions unknown to the French Penal Code (Code pénal français). Citing Articles 114, 115, and 258 of the Penal Code, he asserted that members of such commissions were themselves guilty of abuse of power (abus d'autorité) under French law. More provocatively, he urged officers and administrators to refuse participation in these proceedings, declaring that any French official who lent his authority to such institutions "betrayed the conscience of the Republic." For Larcher, the commissions represented not merely a colonial aberration but a moral contradiction: France, the proclaimed land of rights, had created a system of

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

justice that recognized neither the principle of legality nor the right to defense (Larcher, 1909, p.240).

His critique revealed a profound awareness of the ethical collapse at the heart of the colonial project. The Disciplinary Commissions, he argued, were not simply tools of control but the embodiment of a justice without law (justice sans droit)—a practice that emptied legal language of meaning and turned the judiciary into a mere extension of administrative will. (Larcher, 1909, p.240). Yet, despite the radical tone of his denunciation, Larcher's reformism remained constrained by its own premises: he did not call for the abolition of the colonial judiciary, only for its regulation within the framework of French legality. His goal was not to dismantle colonial domination but to render it "lawful."

This ambivalence defines the paradox of Larcher's thought. He exposed, with remarkable lucidity, the structural duplicity (duplicité structurelle) of French justice in Algeria—the coexistence of republican ideals and colonial practices—but he sought to resolve the contradiction not through decolonization, but through codification. In doing so, he personified the inner conflict of the French legal conscience: the tension between a genuine commitment to the rule of law and an unexamined belief in the civilizing mission.

Ultimately, Larcher's writings demonstrate that colonial law was not an aberration of the French legal order but one of its most revealing mirrors. In Algeria, justice itself became a site of domination—a weaponized legality (légalité armée) that spoke the language of rights while enforcing the logic of empire. Through his critique, Larcher illuminated how the French Republic, in seeking to civilize, ended up legislating inequality, and how, beneath the rhetoric of reform, the law itself became the most enduring expression of colonial power.

5. Émile Larcher and the Discourse on Exceptional Punishments in Colonial Algeria

The punishment of internment (*l'internement*) represented one of the most emblematic features of the exceptional penal policy enforced by the French colonial administration in Algeria against Muslim natives. Although this practice dated back to the early years of the conquest, the term l'internement did not formally appear in French legal texts until 1858, when the Minister of Algeria and the Colonies, Jérôme Napoléon, used it in his instructions to the military command in Algeria. Linguistically, the word derives from the Latin verb interner, rooted in inter ("to put inside"), a neutral expression that originally carried no punitive meaning **(**Bescherelle, 1856**).** Its new legal connotation emerged under the Second Empire (1852–1870), when Napoléon III turned it into a means of disciplining his political opponents through a form of forced residence (assignation à résidence forcée) **(**Thénault, 2015,pp.1-11**).** As its use expanded, the term gradually acquired an overtly repressive meaning, becoming by the late nineteenth century synonymous with administrative detention or political internment. The Grand Dictionnaire Universel du XIXe siècle defined it as "sending someone to a place of residence with the

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

prohibition to leave it" (envoyer dans une résidence, avec défense d'en sortir)—a definition that marks its shift from a spatial description to a legal expression of coercion depriving individuals of liberty outside any judicial process(Larousse, 1866-1870).

In Algeria, however, *l'internement* acquired a meaning entirely distinct from its metropolitan counterpart. It became an instrument of colonial control targeting Muslim natives without the slightest judicial oversight. The French jurist Gilbert Massonie defined it as "a punitive measure secretly decreed by the Governor General against natives for an indefinite period, intended to suppress non-codified acts deemed to threaten public order or French sovereignty"(Massonie, 1909, p.4). Similarly, Claude Bontems described it as a form of administrative restriction on freedom of movement, encompassing various practices such as punitive detention (détention punitive), forced residence (assignation à résidence), and military disciplinary punishment (peine disciplinaire militaire). These definitions converge on one essential point: internment in Algeria was not a judicial sentence in the strict sense but a politico-administrative instrument of domination(Bontems, 1976, p.4).

In practice, the punishment took multiple forms. Some detainees were confined outside Algeria—on the Île Sainte-Marguerite near Cannes, in the Calvi depot in Corsica (Corse), or in military fortresses such as Fort de Brégançon, Fort Saint-Louis, and Fort Saint-Pierre in Sète. Others served their confinement within Algeria, in local prisons or under forced residence far from their native regions. This diversity of applications reflected the absence of any legal framework defining the nature or limits of the measure. It thus overlapped partially with some penalties found in the French Penal Code (Code pénal français)—such as deportation (déportation), imprisonment (emprisonnement), and special police surveillance (surveillance spéciale de la haute police)—yet remained, in essence, an exceptional punishment devoid of legal foundation or judicial safeguards(Larcher & Olier, 1899, pp. 79–80).

Within this context, Émile Larcher addressed *l'internement* in his critique of the colonial penal regime, describing it as "a measure outside the classical classification of punishments and incompatible with the principles of French law." He argued that the illegitimacy of the measure lay not only in the punishment itself but also in the authority that imposed it—since the Governor General (Gouverneur général) exercised punitive powers without any legal text granting such competence. As Larcher wrote, "While it is possible to find texts authorizing the Governor General to impose collective fines or seizures, it is far more difficult to find one that allows him to intern natives in Corsica or Algeria." According to him, internment procedures were carried out in absolute secrecy, based on unpublished administrative reports, so that natives were condemned without being informed of the charges or allowed to defend themselves. He compared these practices to "the Inquisition," noting their opacity, secrecy, and absence of procedural guarantees. Larcher further denounced the indeterminate duration of the punishment—

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

beginning with an administrative decree and ending only with another—rendering it illegitimate in substance, duration, and procedure alike (Larcher, 1900, pp. 448–662).

Yet the greatest paradox in Larcher's thought emerges from his practical stance on the matter. After condemning *l'internement* as a "crime against the principle of separation of powers," he nonetheless justified its continuation under the pretext of "Algerian particularity (particularité algérienne)"(Larcher, 1900, pp. 448–662). In his co-authored book with Jean Ollier, *Les institutions pénitentiaires de l'Algérie*, he openly affirmed that he saw no harm in maintaining the measure, as it "served a political purpose." "Algerians respect only strength," he wrote, "and punishment must therefore be swift and decisive." He went so far as to claim that "the principle of separation of powers is excellent in a civilized society, but unnecessary among Muslim tribes whose conceptions of justice and law are entirely different." Here the duality of his reformist discourse becomes apparent: while denouncing the violation of French legality, he simultaneously legitimized it through colonial rationales of "political expediency" and "administrative efficiency." Thus, despite his rhetoric of justice and reform, Larcher's critique reveals an underlying colonial paternalism that sought not to abolish the exceptional regime but to civilize and codify it (Larcher & Olier, 1899, pp. 63–81).

This same contradiction is evident in his treatment of the collective fine (l'amende collective)—the financial counterpart of the exceptional punishment. Imposed on entire tribes or villages (douars), it violated the principle of individual responsibility (personnalité de la peine) by punishing both the guilty and the innocent alike. Though justified by the administration in the name of "public security," it functioned as a tool of economic coercion and dispossession (Larcher & Rectenwald, 1923, pp. 536–537). In his 1901 essay Le problème de la sécurité en Algérie, Larcher condemned the measure as a "wound in the body of Algeria," arguing that it multiplied violence instead of restoring order. Yet again, he stopped short of a radical rejection, conceding that such measures might be "legally justifiable exceptions" in particular circumstances—an admission that betrayed his tendency to reform colonial injustice without questioning its foundational inequality (Larcher, 1901, pp. 1194–1199).

Ultimately, Larcher stands as a revealing figure at the threshold between French reformist thought and colonial authoritarianism. While he denounced the abuses of colonial justice, he remained confined within its civilizing logic, legitimizing the "state of exception (état d'exception)" as an inherent feature of colonial governance. His critique of l'internement and l'amende collective exposes how, in colonial Algeria, law became not a guarantee of justice but an instrument for legalizing illegality and legitimizing domination. The paradox he embodies underscores the unsettling truth that French legal modernity could coexist with colonial despotism, turning exception into norm and punishment into the language of power.

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

CONCLUSION

The analysis of the exceptional penal system imposed upon the Muslim population in colonial Algeria reveals, at its core, a structural paradox that defined the French colonial project from its inception—the paradox of "civilizing through punishment" and "imposing order by violating law." The colonial system in Algeria was built upon a legal separation between two categories of inhabitants: one enjoying full French citizenship and legal protection, and the other subjected to a disciplinary administration that criminalized acts, judged cases, and executed sentences all at once. In this configuration, justice ceased to be a moral and legal ideal; it became an instrument of power whose legitimacy stemmed from the logic of security rather than from the rule of law itself.

Within this framework, the Governor-General embodied the figure of absolute authority, concentrating legislative, executive, and judicial powers in his hands. Benefiting from the absence of parliamentary oversight and from the military character of the colonial administration, this office turned the law into a flexible tool of domination. As executive authority expanded, punitive powers devolved to lower levels of the military and administrative hierarchy: army officers and local administrators in *communes mixtes* exercised coercive powers with little to no legal or institutional restraint. Law in Algeria, as several French scholars themselves acknowledged, functioned less as a mechanism of regulation than as a justification for control, systematically undermining one of the pillars of French justice—the principle of the individuality of punishment.

Against this backdrop, the writings of Émile Larcher (1869–1918) stand out as a rare critical testimony from within the colonial legal framework itself. Larcher was not an advocate of decolonization, but he was a defender of applying French civil law in its true spirit to all subjects without discrimination or exception. His critique was marked by exceptional courage: he denounced the *War Councils*, calling them "a stain upon France"; condemned the *Disciplinary Commissions* as unlawful and arbitrary bodies; and attacked the practice of collective fines as a flagrant violation of justice. Through his analysis of these abuses, Larcher sought to restore the integrity of what he called "the spirit of French law," emptied of its meaning in colonial Algeria.

The intellectual significance of Larcher's critique lies in the way it exposed, from within colonial legal thought, the limits of the imperial project itself. He revealed that "the state of exception" was not an administrative anomaly but the very foundation of colonial rule, and that the persistence of exceptional punitive measures was not a security necessity, as claimed, but a deliberate political choice to sustain structural inequality between colonizer and colonized. Although his reformist proposals found little resonance in practice, they represented one of the earliest intellectual efforts to undermine the legitimacy of colonial exceptionalism from within the French legal conscience.

Ultimately, the Algerian experience can be seen as a true laboratory for violating law in the name of law. Examining Larcher's stance on this system provides a deeper understanding of how French legal modernity coexisted with colonial despotism—how the rhetoric of justice could be mobilized to justify domination. The law, in this colonial context, did not always serve as a guardian of justice; at times, it became an instrument for

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

codifying illegality and legitimizing coercion. In this sense, the scholarly value of this study lies in rereading French legal thought in Algeria not merely as an administrative discourse but as one of the most profound manifestations of colonial symbolic and institutional violence, and in showing how Émile Larcher transformed the defense of French justice itself into an act of intellectual resistance against a system built precisely on its negation.

Bibliography List:

1. French Laws and Official Publications of the General Government of Algeria

- Assemblée Constituante. (1789). *Déclaration des Droits de l'Homme et du Citoyen*. Paris : Assemblée nationale.
- *Bulletin officiel du Gouvernement général de l'Algérie (B.O.G.G.A.)*. (1858, 1870, 1874, 1881). Alger : Gouvernement général de l'Algérie.
- *Code de la justice militaire pour l'armée de terre* (6e éd.). (1908). Paris : Henry Charles-Lavauzelle, éditeur militaire.
- *Code pénal de l'Empire français*. (1810). Paris : Imprimerie impériale.

2. Books

- Chatrieux, É. (1893). *Études algériennes : Contribution à l'enquête sénatoriale de 1892*. Paris : Augustin Challamel, Librairie algérienne et coloniale.
- De Ménerville, M. P. (1867). *Dictionnaire de la législation algérienne : Code annoté et manuel raisonné des lois, ordonnances, décrets, décisions et arrêtés (Vol. 1 : 1830–1860, 2e éd.)*. Alger : Bastide Libraire.
- Duvernois, A. (1865). *Le régime civil en Algérie : Urgence et possibilité de son application immédiate*. Alger : Tissier Libraire.
- Girault, A. (1904). *Principes de colonisation et de législation coloniale* (Tome 2, 2e éd.). Paris : Librairie de la Société du Recueil général des lois et des arrêts.
- Girault, A. (1906). *Les lois organiques des colonies : Documents officiels, Congrès colonial international* (Tome 2). Bruxelles : s.n.
- Larcher, É. (1893). *Études algériennes : Contribution à l'enquête sénatoriale de 1892*. Paris : Librairie algérienne et coloniale.
- Larcher, É. (1902). *Trois années d'études algériennes : Législatives, sociales, pénitentiaires et pénales (1899–1901)*. Alger : Adolphe Jourdan.
- Larcher, É., & Olier, J. (1899). *Questions criminelles et sociales : Les institutions pénitentiaires de l'Algérie*. Paris : Art. Rousseau ; Alger : Ad. Jourdan.
- Larcher, É., & Rectenwald, G. (1923). *Traité élémentaire de législation algérienne* (Tomes 1–2, 3e éd.). Paris : Arthur Rousseau, Libraire.
- Leroy-Beaulieu, P. (1878). *L'Algérie et la Tunisie*. Paris : s.n.
- Massonie, G. (1909). *La question indigène en Algérie : L'internement des indigènes, son illégalité*. Paris : Ligue française pour la défense des droits de l'homme et du citoyen.
- Sabatier, C. (1882). *La question de la sécurité : Insurrections, criminalité, les difficultés algériennes*. Alger : Adolphe Jourdan.
- Sautayra, É. (1883). *Législation de l'Algérie : Lois, ordonnances, décrets et arrêtés* (2e éd.). Paris : Maisonneuve et Cie, Libraires-éditeurs.

3. Theses

- Aumont-Thiéville, J. (1906). *Du régime de l'indigénat en Algérie* (Thèse de doctorat en droit). Université de Paris, Faculté de droit. Paris : Arthur Rousseau.

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023

- Battais, B. (2015). *La justice en temps de paix : L'activité judiciaire du conseil de guerre de Tours (1850–1913)* (Thèse de doctorat en histoire contemporaine, Université de Nantes–Angers–Le Mans, France).

4. Journal Articles

- Aprile, S. (1999). « La prison agrandie : La pratique de l'internement aux lendemains du coup d'État du 2 décembre 1851 ». *Revue d'histoire moderne et contemporaine*, 46(4), 633–656.
- Blévis, L. (2012). « Émile Larcher ». In F. Pouillon (Éd.), *Dictionnaire des orientalistes de langue française* (2e éd.). Paris : IISMM–Karthala.
- Bontems, C. (1976). *Manuel des institutions algériennes de la domination turque à l'indépendance (Tome 1 : La domination turque et le régime militaire 1518–1870)*. Paris : Cujas.
- Doucet, R. (1926). *Commentaires sur la colonisation*. Paris : La Rose.
- Frémeaux, J. (2005). « Justice civile, justice pénale et pouvoirs répressifs en territoire militaire (1830–1870) ». *Histoire de la justice*, (16), 31–44.
- Guebaili, A. (2024). « Stratégies de répression : La justice militaire et l'administration françaises face aux résistances algériennes au XIXe siècle ». *Revue d'Histoire Méditerranéenne*, 6(2), 282–295.
- Larcher, É. (1900). « L'internement des indigènes en Algérie ». *Revue pénitentiaire de l'Algérie : Bulletin de la Société générale des prisons*, 4, avril 1900.
- Larcher, É. (1901). « Le problème de la sécurité en Algérie (2e article) ». *Revue pénitentiaire de l'Algérie : Bulletin de la Société générale des prisons*, 7, juillet 1901.
- Larcher, É. (1909). « Les commissions disciplinaires des territoires de commandement et les délits forestiers à propos d'un arrêté du 19 mai 1908 ». *Revue algérienne et tunisienne*, Tome XXIV. Alger : Adolphe Jourdan.
- Renucci, F. (2011). « La doctrine coloniale en République : L'exemple de deux jurisconsultes algériens, Marcel Morand et Émile Larcher ». In A. Stora-Lamarre, J.-L. Halpérin & F. Audren (Dirs.), *La République et son droit : 1870–1930*. Besançon : Presses universitaires de Franche-Comté, 461–478.
- Rinn, L. (1885). « Régime pénal de l'indigénat en Algérie : Les commissions disciplinaires ». *Revue algérienne et tunisienne de législation et de jurisprudence*, 1, 1–15.
- Rinn, L. (1889). « Régime pénal de l'indigénat en Algérie : Le séquestre et la responsabilité collective ». *Revue algérienne et tunisienne de législation et de jurisprudence*, 5, 45–68.
- Rinn, L. (1890). « Régime pénal de l'indigénat en Algérie : Le séquestre et la responsabilité collective ». *Revue algérienne et tunisienne de législation et de jurisprudence*, 6, 33–56.
- Thénault, S. (2012). *Violence ordinaire dans l'Algérie coloniale : Camps, internements, assignations à résidence*. Paris : Odile Jacob.
- Thénault, S. (2015). « Une circulation transméditerranéenne forcée : L'internement d'Algériens en France au XIXe siècle ». *Criminocorpus : Justice et détention politique*, en ligne, 6 février 2015.

5. Conference and Seminar Papers

- Durand, B. (2005). « Originalité et exemplarité de la justice en Algérie (de la conquête à la Seconde Guerre mondiale) ». *Histoire de la justice*, (16), 45–74.
- Frémeaux, J. (2005). « Justice civile, justice pénale et pouvoirs répressifs en territoire militaire (1830–1870) ». *Histoire de la justice*, (16), 31–44.
- Ruyssen, R. (1908). *Le code de l'indigénat en Algérie*. *Congrès de l'Afrique du Nord*, Paris, Imprimerie administrative Victor Heintz. (Microfiche : BnF MFICHE 8-F PIECE-4280).
- Thénault, S. (2012, 30 juin). « Le régime pénal de l'indigénat dans l'Algérie coloniale ». Paper presented at the *Colloque du Sénat*, Paris, France.

6. Dictionaries

Bescherelle, L.-N. (1856). *Dictionnaire universel de la langue française*. Paris : Garnier Frères.

AHJ المجلة التاريخية الجزائرية
The Algerian Historical Journal
EISSN: 2716-9065 / ISSN: 2572-0023