CHAPTER 14

THE COLONIAL MODEL OF THE RULE OF LAW IN AFRICA: THE EXAMPLE OF GUINEA

Carlos Petit

Videant Consules, ut ne [!] quid detrimenti Respública capiat.
(Royal Order enacted in San Sebastian on 2 August 1912)

1 SALUS REGUM ET SALUS REI PUBLICAE

"His Majesty the King Don Alfonso XIII (may God protect him), Her Majesty the Queen Doña Victoria Eugenia, and Their Royal Highnesses Prince of the Asturias and the infants Don Jaime and Doña Beatriz, ... are still in good health". Yet, the white inhabitants of Santa Isabel were far more interested in the governor's decree, published in the central pages of the *Boletín Oficial de los Territorios Españoles del Golfo de Guinea* on 1 September 1911, than in the Premiership's "official" announcement concerning the Royal Family, which is the opening article of the magazine.[1] "Since the harvest of cocoa is about to start, and there is a shortage of labour, which might cause the loss of a great part of the harvest and severely affect the interests of both landowners and the Colony in general, if no adequate measures are taken to avoid this"; and considering, in the light of the recent insurrections in Balachá, that "it would not be proper for the *bubis*, the Bantu race inhabiting the main island of the colony, not to make an effort to work on the land, since such an inertia might be interpreted as the fear that what happened in the past might happen again and as a stimulus to the belief that one is set free of all boundaries imposed by our Sovereignty"; and considering, moreover, that "to make natives work civilizes them and makes them abandon their lazy habits, and that in the name of civilization they must be firmly compelled to work", the Most Excellent Mr. D. Angel Barrera y Luyando, navy lieutenant, Governor General of the Spanish Territories in the Guinea Gulf, stressed that other decrees issued in the past on this matter were still in force (30 August 1907 and 9 September 1909) and compelled the black *bubis* of Fernando Póo to draft labour agreements ("agreements to be signed with their masters") for the harvesting of cocoa.

P. Costa and D. Zolo (eds.), The Rule of Law: History, Theory and Criticism, 467–512.

A month later, Their Majesties were "still in good health" but cocoa was left to grow on trees. His Excellency Governor Barrera informed the public of some provisions executing the decree issued on 9 August by the Governor General, about the work of the *bubis* (11 September 1911, *Boletín* of 1 October). It is detailed, providing important new information which demands analysis.

The issue was about labour relationships between masters and farm labourers; however, the total lack of contractual rules turned the Military Authority into the immediate addressee of such provisions. Since it was clear, as from the decree issued in August, that the Colonial Guard was the last resource to ensure their application and effectively realize the mobilization of the *morenos*, the *Instructions* firstly dealt with the Governor's "Delegates" and the "Commanders of Postings" (instructions A and following), who are divided among districts to carry out "standard operations" (instr. F), and compelled to mutually assist each other and "to make daily reports on new opportunities and developments they become aware of" (instr. G). Within a context of conflicts and resistances, the reader of such draconian provisions is compelled to wonder what had happened "among the populations of Balachá in July last year", as reported in the decree of 9 August. Being cautious in foreseeing "the subversive behaviour of the *naturales*", which would be urgently communicated to the Government and would lead to the detention of "whoever appeared to be the main instigator" (instr. I), and firmly wishing to prevent ("with energy") any potential aggression which the Guard's commanders should not "provoke in any way" (instr. J), Governor Barrera's *Instructions* did not deal with the issues of harvesting, contracts, and farms and simply turned into harsh governmental provisions for guaranteeing public order.

The lack of freedom to work ultimately turned the opaque social question which caused the shortage of labour in Guinea into a purely military matter. According to the *Instructions*, the military authorities were entrusted with the task of distributing farm labourers among the many landowners of the territory according to their needs, and of successively checking their performances (instr. C), by controlling the lists of *negros* assigned to each property, their agreements with their masters and the ensuring that some working conditions which today might appear quite burdensome were respected: *bubis* (the inhabitants of the island of Fernando Póo) had to work 5 days a week, 10 hours a day (instr. L), "so that they may be free on Saturdays and Sundays and may work in their *besés*", for a minimum wage of one peseta a day "including lunch" (instr. D). The lists of labour agreements (instr. D) and any breach of norms and

negligent behaviour (instr. K), in particular the failure to respect one's duty to work, which called for "the penalty applied to whoever ignores the Governor General's provisions" (instr. Q), had to be communicated by the Commanders of the posting to a protective figure, the *curador colonial*, which we will deal with later on.

The Governor's guards were not the only subjects supposed to abide by his orders. In a more limited but not less firm manner, the *Instructions* compelled also the "*batukos* or chiefs of the *bubis* population" to collaborate, these being instructed as to the need to abide by the August decree and to pay special attention to the advantages of being paid by piecework, with a daily wage estimated in 1 peseta and 50 cents per person. "In this manner, an entire family may go harvesting and earn excellent wages, thus uniting all family members" (instr. B): such a "preference" for being paid by piecework, when carefully examined, illustrates how the official press was moulded to serve the needs of particular interests.[2] In any event, "Commanders of postings will be particularly careful, will take all peaceful measures and will rely on the country's leading figures" – reference is undoubtedly made to missionaries, Catholics, and Protestants, who, "with the aim of assisting the Government in its management, must urge their respective believers to contribute to the harvesting of cocoa" (instr. R) – "in order to persuade *naturales* to submit to the Governor General's orders" (instr. H). Failure to collaborate by the tribes' chiefs will be "exemplarily punished", in such a way as to be determined, in the light of precedents and circumstances, by the Governor "who paternally watches over *naturales*" (instr. N). Such instructions date back to 1 October 1911.

2 DE REGIMINE COLONIAE AB HISPANIS DEDUCTAE

This is what the 200 white inhabitants of Santa Isabel read on 1 October 1911, upon opening the *Boletín Oficial de los Territorios españoles del Golfo de Guinea*, an administrative magazine which had recently been issued (precisely on 1 March 1907) on Governor Luis Ramos-Izquierdo's initiative. The above magazine was not the only one available in the colony: apart from the pioneer *El Eco de Fernando Póo* (24 November 1901 to 10 March 1902), founded by Enrique López Perea, vessel tenant, former deputy governor of Elobey and expert writer on the colony's problems,[3] *La Guinea Española* was also published on the island at the beginning of Angel Barrera y Luyando's government (1911–1924): such a fortnightly magazine – as is the rule for such peculiar Hispanic-African journalism – was founded in 1903 by the *claretianos* (Missionaries Sons

of the Virgin Mary's Immaculate Heart), the Catalan Catholic congregation officially entrusted with the evangelization of the black population.[4] Moreover, there also existed *La Voz de Fernando Póo*, a lively graphic magazine produced in Barcelona, which was the main reading of Guinea's landowners. First published (on 15 June 1910) with too expressive a title (*Boletín del Comité de Defensa Agrícola de Fernando Póo*), it soon had to change it: "not being able to attract public attention as a result of the many professional and propagandistic magazines nowadays circulating everywhere, the title has been changed thus allowing for our modest publication to be placed side-by-side with widely popular press and to offer different opportunities to disseminate our work and therefore create a public opinion on Guinea".[5] The above magazines, which circulated in the colony in the period in question, are currently kept – in more or less complete collections – in Spanish newspaper libraries, thus providing a wealth of information from which we can draw the legal texts we are most interested in.[6]

The situation we are dealing with does not date back too much earlier than the beginning of the twentieth century. Being included within the Spanish domain as a result of its assignment by Portugal under the Treaty of Pardo (1778), and almost sold to England in the nineteenth century,[7] the "Spanish Territories in the Gulf of Guinea" (the official title used by metropolitan law) – which had been until then neither very important nor very well known[8] – first began to be attractive after the Spanish loss of the Antilles, the Philippines, and the Carolines or, in other words, after the settlement of Spain's international controversy with France (Treaty of Paris, 27 June 1900) which radically reduced Spain's claims to the African continent.[9] There does not appear to have been, before Primo de Rivera's dictatorship, a notable presence of Spanish people or at least any effective Spanish control on the non-insular part of the small colony.[10]

Until then, the official aim of exploiting Guinea and organizing its government had only resulted in mere experiments of different impact. Among them, the organic decree and statute on property, enacted in 1904 by the Minister of State Faustino Rodríguez Sampedro, stands out. In the light of its long validity (the decree was modified only under the Second Republic), prior governmental norms appear as mere fleeting signs of a period of trials.[11]

As a matter of fact, the Royal Decree of 1904, "a real colonial charter, though not matching the Portuguese Colonial Acts or the English Crown's colonial Constitutions of its autonomous colonies",[12] set up a long-lasting organization and contained the statute through which

Governor Barrera was able to exert his ample powers on the *bubis* of Fernando Póo. Since we wish to deal with this development, we should briefly pay attention to it.[13]

The disastrous 1898 war and the 1900 Treaty are the reasons behind a regulation which appears to reformulate previous provisions: the first event – the national disaster – brought about the extinction, for want of any object, of the Ministry of Overseas Affairs and the ensuing transfer of colonial matters to the portfolio of the Home Office, after an early attempt to delegate such matters to the Premiership; the second event – the unfavourable settlement of a typical expansionist conflict – led to the definition of Spain's borders in Africa; such a settlement, "by definitively leaving the continent's territories under our sovereignty, compelled us to take into account the special conditions of the tribes inhabiting the region and the resources offered thereby".[14]

It is within such a colonial environment, placed (not only metaphorically) at the edge of the Spanish state, that the political limitations of the liberal state characterized by the rule of law are overcome.[15] Failing a parliament, either local or metropolitan, competent in law-making, the law-making Central Administration referred to the proposals suggested by a mere "Advisory Committee", which was only legitimated to examining legal measures by its members' technical competence.[16] Such proposals were generally followed, with the exception of the tricky problem of popular representation: "to set up alongside the general Government of Fernando Póo, a Colonial Council which, representing the interests so far created, guarantees a greater respect and satisfaction thereof" was something that statistical data proved to be unattainable; for popular participation to become effective "there is not a sufficient number of Spanish family heads for whom there should be an election [...] and this calls for a limitation to the trend of setting up local Councils for the management of local matters".

Owing to local circumstances resulting in the lack of self-government (which led to the rise of interests groups and a militant periodical press), the colony's life hinged upon the Governor General, appointed by the King and freely nominated by the Cabinet upon the Ministry of State's proposal (Article 2). Being the sole "representative of the National Government", "entrusted with the colony's government and administration, he may dispose of the area's naval and land forces [...], all Authorities and employees are subject to the Governor, who is responsible for the safety and preservation of order in the territories entrusted to him and, as 'Deputy Real Patron', is endowed with all powers inherent in such a position". Article 4 of the Royal Decree of 1904, which

contains the expressions quoted above, carefully lists a large number of functions entrusted to the Governor. Some of them were connected with the hierarchical superiority of his status (to carry out inspections in the territory, to keep relationships with other authorities, to send reports to the Government, to suspend officers for justified reasons, to grant leaves, and to employ temporary personnel), whereas other exorbitant functions (to publish and execute any provision, including international agreements, to suspend capital punishment and propose pardons) were grounded on the Governor's delegated authority, belonging to the State's highest level of jurisdiction. Colonial internal peace and external safety were undoubtedly the supreme values of the colonial system planned in 1904 and, for this reason, the Royal Decree in question authorizes the Governor General – who, in practice, is a professional soldier – to take "all measures he deems necessary" to preserve order by "[...] duly informing the Ministry of State".[17] There was no rule of law in criminal matters (the Governor may "issue decrees to correct mistakes, preserve social peace, control and maintain good government; this within the limits, as far as punishment is concerned, established by the Ministry of State"); rather, the Governor's assessment of local conditions was upheld. It was up to the Governor General, after hearing the merely advisory opinion of the Authorities' Council (Article 12, 1st), the decision to "suspend (through acts) the enactment and execution of provisions communicated by the Ministry of State when, in the Governor's opinion, they might detrimentally affect the Nation's general interests or the particular ones of the territories he is in charge of; which he will promptly give account of to the above Ministry". Governmental powers in the metropolitan territory will never be so wide as in Guinea, not even in the harshest years of Moderatism.[18] We are now in full Restoration times, though it would appear that we are dealing with the old Laws of the Indies.

3 IUS PUBLICUM EUROPAEUM IN ORBE AFRICANO

It is not by chance that these highly praised laws were printed and circulated in Spain at the end of the century.[19] In the generous regulation of governmental powers made by Faustino Rodríguez Sampedro in 1904, there undoubtedly remained some principles (and some solutions) of previous norms enacted in Guinea;[20] above all, the important case of the Antilles had an impact on it. It could be easily said of the Antilles regulation, precisely when Leopoldo O'Donnell began enacting colonial African law (R.D. 13 December 1858), that

up until now, the main trait of Spanish colonial administration has been and continues to be that all its authorities carry out judicial and administrative functions together, whether they be Captain Generals or delegated Superintendents, governors or chief mayors. Territorial hearings give advisory votes on the most serious problems and on matters of good government; for this reason, there are some mixed courts [...] The Captain General's authority, who represents the Crown in Overseas provinces, is unlimited in all areas of public administration, justice or war.[21]

This inevitably entails, as far as individual freedom is concerned, "that there is a people for whom normal life almost coincides with the suspension of individual guarantees".[22] Some changes took place in the middle of the century and even a fleeting autonomous regime for the Antilles was set up; yet, this more tolerant side of the Spanish experience in the United States never reached Africa.[23]

What makes Guinea stand out in this period is the detailed description of the prerogatives of colonial authorities. It is not just a mere issue of administrative logorrhoea. The Governor's competences were so specifically regulated and the establishment of his exceptional powers seemed so natural, as if they were Guinea's common law, because the 1904 Royal Decree, i.e. a "Colonial Charter" which marked a new epoch, appears as a real provision of the *government*, i.e. created by the government without the legislative power's concurrence and meant to favour the very wide powers of colonial Spanish authorities. The political participation of the colonized was only possible through the "Council of Authorities", made up of administrative agencies only endowed with advisory powers (arts. 9–12);[24] no municipal life was guaranteed other than through "local Councils", which depended (in the very definition of their functions) on the Governor General's full discretion (Article 14–22); there was no provision for the institutional presence of the colonized[25] apart from what the Governor deemed to be legally relevant. No or little importance was attached to ordinary justice (Article 23): being in the hands of temporary personnel appointed by the Governor and compatible (still in 1904) with the judicial powers of the latter's delegates,[26] it was also affected by a lack of professional judges as a result of poor wages and the harshness of local life.[27]

It follows that the institutional groundings for individual freedom were rather weak. "In the territories of the Guinea Gulf, the rights granted to Spaniards by the Monarchy's Constitution are valid": such a document, dating back to 1876, is a doctrinarian text which, as it is known, systematically subordinates individual rights to statute law, for instance when there is a state of siege, which may be decided by the

Government independently of parliament.[28] It is not surprising that, in a colony "of exploitation", the general reference to the 1876 Charter was completed in 1904 with the explicit proclamation of individuals' free professional initiative, together with a general right of petition which, although not compensating for the lack of freedom, gave voice to the press manifesting landowners' interests: "all Spaniards, whether natural or not, living in the territories of the Guinea Gulf, are entitled to (1) begin their profession and exert it as they think best, in conformity with law and (2) make petitions, individual or collective, to the Authorities. Such a right cannot be exercised by the Armed Forces" (Article 29).

In a few words, the normative framework of constitutional freedom in the small colony of Guinea was more and more distant from metropolitan law and coincided with the 1904 organic Statute and with its future local regulatory developments.[29] The actual situation of such remote portions of national sovereignty affected freedom ab initio and enshrined the intrusion of the Governmental Authority, both directly through the Governor and indirectly, though not less effectively, through the Ministry of State.[30]

Individual freedom, together with the framework of regulations and material conditions allowing for its effective enjoyment, was thus in the hands of governmental power – of Power *tout court*. The normative framework was the *ius publicum europaeum* enacted by the European powers that met in Berlin in 1885 and commonly accepted as the basis for partitioning the African continent. With respect to the situation in Guinea, we can limit our analysis to the *colonial constitution* imposed by Europe on Africa.[31]

Firstly, the constitution unashamedly did without the representative rhetoric which had been traditionally used in metropolitan political laws.[32] After the fleeting Spanish democratic experience (1868–1874), there could emerge a *liberal system of colonial government* "whereby the executive power in the colony does not claim or exert greater functions than those of European representative governments", but a similar *system* – widespread, though not prevailing, in English colonies – was considered dangerous even in its original land. Elsewhere (in Spain and France), an *administrative system* prevails, this being characterized by the lack of participating institutions: "a system where governmental authority is limited only by advisory Councils or bodies or by the intervention of the judiciary, an example of which is represented by the *Real Acuerdo* of the Spanish law of the Indies".[33] Although the colonies' participation in metropolitan assemblies was desirable – and achieved for the Spanish Antilles – it seemed that "the principle of virtual representation ... for external provinces inhabited by semi-civilized races different from the European one and where settlers coming from the motherland represent

only a small minority"[34] was to be upheld. Things could not be clearer. Despite the rhetorical assimilation between the Spanish and Guinean systems, the African constitution leaves little room for positive freedom. With a great ostentation of coherence, the Spanish colonial literature between the nineteenth and twentieth centuries simply expressed a mere *administrative*[35] vocation.

The metropolitan "exploitation" of the colony shifted towards mere "administration", though it claimed to be directed at "harmonizing" the countries' respective legal systems; such an assimilation was presented as a characteristic of Latin populations though, in truth, it was deeply marked by contradictions: such a so-called *assimilation*, in fact, would have denied the colonial reality itself.[36] While the principle was generically upheld in Spain, it was always thwarted with respect to the particular law of Guinea: the Peninsula's legislation was not valid in the colony, unless otherwise decided by the Executive Power.[37] The situation was similar with respect to the Spanish purported penchant for racial fusion.[38] What is more, according to the Treaty of Congo (1885), in order to "administer" African lands, Latins and Anglo-Saxons were not even required to effectively occupy the territory.[39] If such a possibility was generically appealing and called for a new geographic outlay, this means that the polyvalent Executive power intervened by planning, under the guise of geography, what it did not wish to realize in politics.[40] Colonial law, hiding behind a geographical and scientific legitimacy, thus avoided legislative assemblies: jurists acknowledged that "even when the ordinary legislative power affirms its competence in these matters, in practice the provisions concerning colonies enacted by the executive are a greater number than those enacted by the legislative power".[41]

Geographical explorations require a commanding unit, rapid operations, and great effectiveness. Therefore, the second element of the colonial constitution in which, as we have seen, freedom had very little room, was the relinquishment of the separation of powers, i.e. of the old revolutionary idea which was supported – more or less convincingly – by European constitutions upholding the rule of law. Jurists were perfectly aware of such a situation: "the manifest inferior civilization of the colonized" was a universal public law principle and "almost necessarily calls for a somewhat despotic power, though a line must be drawn between legitimate and beneficial despotism on the one hand and unfair despotism on the other".[42] Not many differences are to be found among colonies, since many English Crown colonies fit such a description (from Gibraltar to Hong Kong, from Labuan to Gambia, from Sierra Leone

to Trinidad-Tobago).[43] When norms must be suited to facts, the African situation required a more practical approach, in that resort was made to the Executive Power: "the Governor has general competences, being himself the representative of both metropolitan and colonial interests; he has legislative competences as well as competences relating to the administration of justice; he has military powers; he is endowed with all rights that the first governmental agent must have for the purpose of preserving colonial order and public safety".[44] Therefore, the colonial Governor's solid standing always included the "right to enact regulating provisions having ... a substantial legislative value".[45]

Given that *laws* (in formal sense) were reduced to *administrative regulations*, the chance for parliament to take decisions affecting the colony was coherently and accordingly limited: even in Congo (where the *Charte coloniale* of 18 October 1908 – a formal law – had turned Leopold's feud into a Belgian national dominion), the intervention of the Brussels Chambers was an extraordinary occurrence.[46] Not to speak of the countries which had only recently been admitted to the "colonial feast", such as inflexible Germany[47] or adventurous Italy.[48] That was the age of representative governments and public opinion; yet, the colonial constitution seemed to exhibit a sort of political "ineffability", which certainly made up its third characteristic:

> it is widely acknowledged by all colonial peoples and by most public law doctrines concerned with colonial administration, that metropolitan parliaments are not competent in colonial law-making [...] in countries such as England, where the widest powers for decentralization have been granted and where self-government is best implemented, parliament is not forbidden to create colonial laws; indeed, it is entitled to do so, though it rarely exerts such a right, not being used to doing so and also being aware of its incompetence in this respect.[49]

In Spain, the *Cortes* dealt with Guinea only on an episodic and indirect basis; under the regime of the 1888 Royal Decree, the debate on a particular section of a financial law regarding overseas territories, lacking a specific reference to African colonies, allowed the representative Rafael María de Labra to express his suggestions for the

> colony's development [...] firstly, the autonomist extension of Councils; secondly, the enlargement of the number of councillors, thus including also members of the black race and in general all human classes; thirdly, the gradual replacement of government-appointed councillors with councillors elected by the people; fourthly and lastly, the full and real proclamation in Fernando Póo, and in all colonies of Guinea, of public freedom, of individual natural rights and of the constitutional immunities granted to Spanish citizens.[50]

Let us examine such suggestions. The reference to colonies within parliament inevitably brings about issues of power and freedom. Therefore, when parliaments do not talk about colonial matters, what is omitted is not a mere trifle. Labra's reasonable proposal to the Spanish *Cortes* was quite exceptional, if only for its constitutional commitment, and was not less reasonable than the financial law that was being discussed for overseas territories; yet, neither received a great deal of interest.[51]

Being separate from the parliamentary logic and lacking freedom and autonomous powers, the colonial constitution seemed to mirror the metropolitan constitution:

> it ought not to be forgotten that colonial law, by nature, cannot be created on the same grounds and with the same criteria as metropolitan law. It refers to populations which are less civilized than European ones, and for whom a kind of government similar to the one we had in ancient times is more suitable; vice versa, it cannot adopt the principles of modern constitutionalism.[52]

The view that Western law, the pride of our civilization and the enemy of old despotisms, proved to be the most effective means to subdue non-European cultures in the European interest, has been endorsed by the most authoritative historiography concerned with the American experience,[53] but its harsh judgements may be easily extended also to African territories. The metropolitan regime of freedom did not seem compatible with the more rigid colonial domination and, for this reason, old solutions – which our modern jurists, such as Santi Romano, confidently ascribe to the Ancient Regime – were adopted.

There undoubtedly were some exceptions. Adolfo González Posada, speaking in French to an international audience, said:

> It is impossible to ignore a matter which has obviously been overlooked by colonizers, conquerors and adventurers, which the moralist however – every historian, just like every critic, is or should also be a moralist – must take into account, just like the sociologist, though under different perspectives. The point is to know what right entitles a given people (deeming itself to be more civilized) to invade, through immigration or a political collective action, the territory of the people or peoples it wishes to colonize.

"Can a man and, above all, can a state exterminate a people at its own discretion?" At last, we find the underpinning question nobody is bold enough to ask; a decisive issue whose simple formulation is sufficient to question the partitioning of African land and peoples, which had been easily agreed upon *unter den Linden*. Unlike his European colleagues, who were more involved in the modern colonial adventure, Adolfo Posada's lucid freedom of mind resulted from his unique[54] capacity of both *krausista* and Spaniard:

I believe that a colony, even when it is originally nothing but a commercial enterprise or the expression of an adventurous spirit, necessarily ends up being either an action of extermination or of regeneration, or moral and legal elevation, of natives; I also believe that, not only for humanitarian but also for sociological and political reasons, colonization must satisfy the ethical needs humanity cannot neglect by being truly concerned with the fate of natives, attracting them thereto and elevating them, thus uniting the colonizing element and the dominating element in a sole ethnographic formation.[55]

Posada *dixit*. His thoughts (expressed at a seminar held in Oviedo for law students and shortly after published, in a magazine keen on examining the colonies' situation[56] when Spain lost the Antilles and Philippines), represent the soundest legal reasoning on colonial matters that an embittered late nineteenth-century Spain was able to produce.[57] The amalgamation of races, imposed by Europe and seriously threatening to extinguish different cultures, undoubtedly appears today as a despicable suggestion, though it would not be fair to apply our politically correct criteria to Posada. Posada, at least, was bold enough to turn the taken-for-granted, and generally not discussed, issue of colonial domination into a real problem.

Moreover, Posada rightly resorted to law to understand the relationship between the "civilized" and the "uncivilized": on a legal level, it is evident that "between this and that man there can *never* be such a huge difference so as to imply that one is a *mere means* for the other (which is why slavery is so absurd)". Let us continue examining Adolfo Posada's thoughts. By recognizing the dignity of people who are culturally different, his suggestions (collected in an overlooked essay which responded to a contemporary anticolonialist pamphlet[58] using legal means), also acknowledged the "European talent".[59] "The constitutive traits of civilization must be detected. These are peoples working in backward material conditions; undoubtedly ... they are meek, simple, amicable, sincere and welcoming. Civilization usually brings about the most disgraceful and shameful vices".[60] Quite an unquestionable remark. Yet, the law Posada grounded his reasoning on belongs to our European tradition; it is a law marked by cultural meanings and functional to a political project producing both winners and losers. "Isn't the uncivilized and wild people a real constituted state legally deserving respect? Isn't the isolated savage a subject of law, isn't he a human being? Do the declarations of human rights, even without the abstract value ascribed thereto by the French constituent assembly (according to Rousseau), expressly exclude the races we deem to be inferior?"[61]

Therefore, with respect to the *savages*, a given *political law* – i.e. that created by Europe for Africa through the Treaty of Congo – which protected, safeguarded, but ultimately subdued individuals, is questioned:

> the human being endowed with reason must, first of all, respect the rational aims of his fellow creatures. He *cannot*, or rather, he *must* not destroy them, they ought to be considered for what they are, as human beings deserving respect; secondly, in his relationship with the savage, the more civilized being is also the more legally obliged, since legal obligations are directly proportionate to the subject's rational capacity. In the light of this, savages' rights are preserved, and the civilized man is in such a position as to interact with them *even when the savages are in conflict therewith*.[62]

4 LOCATIO-CONDUCTIO ET IURA AETHIOPUM

Even when the savages are in conflict (italics by Posada). His words contain a cautious, though clearly new, reference to the laws of the Indies – to the old reasoning, by Vitoria, Suárez, and alike, which justified the American conquest in the name of an Aristotle-inspired sort of sociability which turned the protection of *commercium* among men into a more than sufficient reason to dominate savages. The reader will certainly recall the reasoning: everybody is entitled to go anywhere and cannot exclude from the land (which belongs to all) any peaceful stranger who does not disturb anyone and does not give rise to suspicions (*perigrinari cuivis quocumque fas est, nefas vero hospitem pacatum neque laedentem, neque suspectum communi solo excludere*[63]). Things change when the exercise of such a social interaction, which is so characteristically human, is rendered difficult: it is then lawful to invade the savages' territories (*licet ergo, licet sine ulla dubitatione barbarorum fines penetrare, idque si renuant nulla vel accepta vel merito expectata iniuria, iniqui sunt*[64]). It is not by any chance that, when the *ius publicum europaeum* started circulating along the boulevards of Berlin, the Spanish Dominican Francisco de Vitoria began his brilliant career as the founding father of international law.[65]

Going from Berlin to Vitoria (and always in the light of our analysis of Guinea), we have entered a world of virtual realities, i.e. of thoughts contaminated by the cultural filter.[66] Bypassing all sense of limitation, a new form of anthropology, which did even appeal to the shared idea of the superiority of the white race, was established as a scientific discipline.[67] A number of European writers, musicians, and painters dealt with exotic matters in their famous writings, works, or paintings, thus both spreading trivial images and relenting tensions endemic to the

metropolitan conscience through "cultural practices that distance and 'aesthetize' their object".[68] And these were neither forms of knowledge extraneous to law nor artistic passions which did not affect jurists. Therefore, a new *comparative law doctrine*, together with a modern Roman law discipline denying jurisprudence without being after interpolations, were now easily mixed with other social sciences, including anthropology.[69] All such disciplines shared the same hidden beliefs and prejudices. Even the guild of legal historians gave its embarrassing contribution to colonialism: given its recognized competence in primitive customs and its familiarity with the description of backward political regimes, "the study of law's comparative history offers colonization its most considerable services".[70]

Furthermore, there are a number of mouldy Latin texts which then began to be re-examined through new editions and studies after having been long neglected during the Enlightenment.[71] The "confessional" way of considering such texts left little doubt as to the legitimacy of European expansion, and thousands of venerable pages created and reproduced images of barbarism which were particularly vivid also in the colonial period. The Indians subdued by Hernán Cortés and whom Bartolomé de las Casas tried to save, the blacks of Albert Schweizer or of Governor Barrera all matched the same model, i.e. the cliché which pitilessly depicted non-European populations as being, *inter alia*, indolent, infantile, drunk, coward, mistrustful, superstitious, emotional, and so on.[72] Jurists were well aware of such factors:

> the African black race displays its typical traits in Central and Eastern Africa, in Sudan, in Senegambia and in Guinea: an elongated and compressed skull, narrow at the temples; flat nostrils, non vertical though leaning teeth, thus lifting the upper lip; short neck, wide and cylindrical chest; slightly curved feet; black, short and wool-like hair. Such anatomical traits are accompanied by given moral characteristics: an underdeveloped mind [...] and a great susceptibility. The black being, if left on his own, is hardly able to abandon tribal lifestyles through civilization.[73]

Under such a perspective, it mattered little whether the West was interested in exploring this or that side of the Atlantic and whether its domination was recent or centuries old: experts could always rely on historical accounts of colonization – these being a fundamental chapter of all writings on colonial law – which linked Stanley, Gallieni, or Cecil Rhodes with Columbus and even with ancient Romans.[74]

Such remarks ought not to be misunderstood. To stress the continuity of a given line of thought – the European racial and cultural superiority – is not to disown the multiple differences between the conquest of the United States and the exploitation of Africa. Suffice

it to recall one significant difference: towards the end of the nineteenth century, the Western mythical idea of progress – superior political structures, modern sciences and medicine, productive economies, technological innovations[75] – had (almost) completely replaced the missionary vocation of the past. Progress now moved together with a new *universal public law* consecrating "civilization" as a "modern political idea", which was just as fundamental as the old revolutionary key words of equality and freedom, and was capable, if necessary, of subverting them:

> progress must not be denied to anyone, whether he be white or black. All individuals must be allowed to compete with the most noble and intelligent, and must be allowed to rival in their efforts for the public good and for humanity. However, the limit of what is rational ought not to be overstepped. Politicians, blinded by false equality, have forgotten that real differences are nonetheless very important. The state official cannot disown psychological factors linked with the hereditary transmission of given qualities, good or bad, neither can he ignore the impact of race on individual aptitudes.[76]

The above ideas are indeed very different; yet, our textual history also detects *some* common traits: starting with Acosta, there emerged an empirical and compared – in other words, *modern* – ethnography which connects the late sixteenth century to the late nineteenth century.[77] The Western conception of labour – a biblical curse and a legitimate title for appropriation, but also a necessary concurrence of forces for the exploitation of African resources – also includes an unlimited trust in its civilizing function, which seems to remain unaltered throughout centuries, and which makes the Jesuit missionaries of the past seem not that different from modern colonial governors. And what may be said (in 1588) for the American Indians ("these savage nations, mainly the peoples of Ethiopia and of the Western Indies must be educated like the Jews [...] they will refrain from any idleness and excess of passion through a reasonable amount of work and must be compelled to abide by their duty by striking them with fear"[78]) may be valid also for Guinea in 1907: "much must be done on the island of Fernando Póo to submit the *bubis*, and one of the conditions required to dominate them, to make them work and to know the number of people living on the island is to set up police postings".[79]

Only 10 years had lapsed since the Treaty of Berlin; yet, the colonial *social question* was already a leading concern of the main European centre for colonial studies.[80] Quite obviously, the cultural filters of the anthropological adventure came into play: faced with the untamed idleness ascribed to the blacks and already manifested by the Indians, the

European strategy – regardless of whether it was devised by José de Acosta or Angel Barrera – consisted in imposing a working regime which civilized one group of people in order to enrich another, and did not hesitate to use pre-Enlightenment criminal law, a means to ensure productivity and discipline.[81] The culture of colonialism established a particular connection between Europe and Africa whereby the whites brought progress and the blacks paid for it by offering their labour forces: "civilized and learned cultures have the duty to bring civil life to human beings living in primitive and wild conditions, and to turn them into useful and productive men; they also have the duty to discover and exploit the richness of virgin territories inhabited by the latter, thus rendering a service to Humanity and Progress and conferring great part of such richness to the civilizing nation".[82] The lack of Africans' consent as to their progress and work did not appear to be a problem. In a similar context, the rigid defence of mandatory labour, often prescribed by law and always used in colonial regimes, ended up by claiming to indicate European esteem for traditional cultures: "colonizers have simply used a local customary formula corresponding to the local conception of work".[83] What was ignored, however, was that aversion to work or bad performance was the natives' natural mechanism of resistance against the foreign dominator.[84]

It was the early twentieth century in the Guinea Gulf; yet, the principles conceived for the Indies at the end of the sixteenth century still seemed to hold ground. At a time when there used to be a European "common" law with a universal vocation, the American Indians were seen, if not directly as animals, in any event as miserable, rough, and inferior people; they had a particular *status* in a world of privileges and were classified in the lowest and most defenceless ranks of the social system. Being victims of their infantile condition, they did not even enjoy the familiar autonomy which was granted to the poorest or the "rough" people.[85] Three centuries later, another "common" law, i.e. the colonial law of Berlin, was applied in the African continent. The archaic categories of "roughness" and misery were no longer used, and nobody viewed the Church as a civilizing and protecting institution. Yet, the idea of Africans' "under age" status was upheld by civil codes and used by the colonial legislators to subdue the blacks in the name of their wildness: "savages may be easily assimilated to minors or to individuals unable to make correct judgements"; they are all disabled and under guardianship.[86] In the name of protection, which no African had ever asked for, Europe expropriated individual wills: it compensated *more suo* Africans' declared incapacity by compelling them to work.

In such a perspective, which saw natives as metropolitan children or as mentally insane, public international law recycled private law concepts and extended the latter's protective measures – protectorate, mandate or trust – to all exotic populations lacking a defined public apparatus: peoples thus paid for their political infancy through their dependence on Western remote motherlands.

Colonial subjects were forced into their proper classification: "the intellectual faculties of our black Africans are on average limited, this rendering their autonomy difficult not only in the political world but also in the private domain"; the expression of their allegedly disturbed will had to be entrusted to special officials and patronages.[87] What mechanisms could guarantee greater submission? Blacks are like children, with the terrible difference that time does not lapse for them: once Africans were put indefinitely under guardianship, tropical medicine, grounded on statistical reasoning, and physical anthropology, conceiving of sexual development itself as the ultimate limit of intellectual maturity, were able to determine the mental age of Guinea's *bubis* as that of a 12-year-old child.[88]

The issue of "work" lies at "the very heart of the colonial problem".[89] There certainly were European workers in the African continent who were subject to special norms for the whites;[90] yet, after the Berlin conference, there arose a widespread opposition to their presence in Africa, for both hygienic reasons related to the harshness of tropical weather and for stronger reasons connected with the dignity of the white race: "Guinea is not a colony for the immigration of labour. The white worker cannot live with the daily wage given to the black, his working rate is not similar to the latter's, the dignity of his race does not allow him to bow before the blacks, and he cannot perform a hard job without his health being damaged".[91] The white workers' poor biological fitness to tropical weather was even welcomed as a potential safeguard for races deemed to be inferior; yet, virtual domination was what actually took place: as a matter of fact, immigration legislation of the time did not even contemplate the possibility of emigrating to Africa to work.[92]

Once again, not Spain alone was concerned with the above problems. When the International Institute of Brussels became aware of the changes taking place in the exotic dominions of old European powers (i.e. when the States which were once objects of colonial domination began entering the League of Nations), it began devoting its collective efforts to the *Régime et l'Organisation du Travail des Indigènes dans les Colonies Tropicales*.[93] Guinea, once again, allows us to examine a common principle of labour under colonial "common" law, whose enactment

varied according to the circumstances of each single country.[94] In Spain-dominated equatorial Africa the persistent "labour problem", i.e. the shortage of workers in the plantations of Fernando Póo, seriously jeopardized the fate of such a small territory, that had few capitals, sufficient foreign penetration, and very few resources; however, the colony's economic history – the discontinuous grants of land, the risks of cocoa's monocultivation, the duty barrier in the Peninsula, the difficult "importation" of workers from the Kru coast, from Sierra Leone or Biafra – ought not to conceal the fact that such difficulties were local manifestations of much wider phenomena endemic to the culture of imperialism itself.

5 DE THEOBROMATE COLLIGENDO MORE GUINEANO

Now we have come to 1906, Spain still lacked specific legislation on labour agreements, though the "Temporary Regulation on Native Labour in the Spanish territories of the Gulf of Guinea" was then implemented in Spain's tropical territories.[95] Being the key element of the exploitation plan carried out in accordance with the colonial government through the 1904 organic statute, such a Regulation was a low-profile metropolitan law with a strong local imprint, its content being entirely due to the Royal Commissioner Diego Saavedra, a Governor who was particularly sensitive to landowners' needs.[96] The Spanish Regulation drew inspiration from the Portuguese legislation which followed the Treaty of Berlin[97] and aimed at guaranteeing sufficient labour on the island; although it did not attain its immediate aim, it paved the way for a good number of minor legislations, made "of decrees, orders, bans and instructions, whose good intentions are frustrated by the congenital slackness of the people they are addressed to".[98]

The decrees issued by Barrera in 1911 are an example, *inter alia*, of such detailed governmental provisions driven by "good intentions". Ever since then, the African constitution was marked by a similar form of legislation, "since the legislator better understands the subjects of law and fully grasps the problems of colonial sociology";[99] yet, it is precisely through such a modest way of introducing local provisions that the common principle of hard labour was introduced in Guinea. Such a principle did not apply to the *bubis*; according to the 1906 Labour Regulation, "all residents of the island of Fernando Póo with no property, job, legal and acknowledged occupation, or not domiciled in the social Registries kept by local Councils for this purpose, will be subject to the guardianship of the *Curaduría* and will be obliged to work, both

under contract with private beings and for the state. This rule does not apply to the *bubis*, though agreements therewith are not forbidden as long as they are accepted by the former" (Article 24).

In order to account for such an exception, let us refer back to the general and straightforward principle: Africans "will be subject to guardianship and will be obliged to work". Such a precept entails much more than two mere propositions linked by a copulative conjunction. The blacks' *savage* nature, coupled with the whites' obligation to civilize savages, legitimated the former's submission to the latter. Ergo, in European legal terms, the subjection of colonial populations depended on a guardianship bond, which protected the savages by civilizing them and civilized them by imbuing them with a work-based productive culture: in other words, the obligation to work imposed on the Guineans is the result of their being minors under guardianship.

In the light of the above, the logic behind the Regulation is clear. The circumstance that such a norm refers to native labour, and that labour is the main theme of its provisions (Article 24–76), is due to the fact that the 1906 Regulation hinges upon a protective institution, the so-called colonial *curaduría* (Article 1–23; see also Article 77–79), which represents Spain itself in its capacity of guardian of the savage-disabled. Indian precedents – an example against nations suspicious of the moral stature of Spain – were not forgotten, yet the terminology and mechanisms used came now from "common" colonial law.[100] This led to the double aim of "protection" and "work" – "to protect" natives in order to subdue them to work – which was typical of Spanish guardians: "such officials' duties are to avoid and, where necessary, to punish violence committed by Europeans on natives, to control agreements between the former and the latter, in particular salaried labour agreement, which are the most open to abuse, as well as other similar agreements".[101] As was the rule in European constitutions for Africa, the line between assisted contractual wills and violent impositions of labour agreements simply did not exist: the armed forces of the protective institution were able to ensure the reasonable behaviour of its most recalcitrant protected individuals.[102]

Could the *bubis* still be legally exempt from work, even though in practice they were under guardianship? Did not the Spanish Authorities' detailed decrees re-establish the inexorable logic of the constitution, subverted for the time being by a non-subsequent norm? The presence in Fernando Póo of foreign labour, which was decisive at the beginning of the century and which was related to the conception of islanders as physically and morally weak beings and thus not very useful to landowners, certainly played a significant role in the original exception: "a rickety and

degenerated race ... quite a repulsive lot ... with an under-developed physical constitution",[103] "the disgraceful *bubis* of the coast are an inferior race, a race degenerated by alcohol abuse, supporting the whites with the only aim of gaining some benefits"[104] and coming up to a fast extinction.[105] Such remarks are undoubtedly terrible in themselves but a closer examination is required. Besides oppressive conditions and rough ethnographic evaluations, the issues of "protection" and "work" are fundamental in understanding the lack of legally established rights in the Black Continent.

Let us now leave for a while the legal profile of such non-existent rights. Let us examine the magazines which we briefly mentioned above in order to understand colonial legislation. Matters are so clear, and the network of representations rotating around the Guinean harvesting of cocoa is so obvious, that any example, just like the following one, may be used in this respect. It was in 1921, in the presence of the new District Delegate, D. Emilio G. Laygorri, the city of San Carlos was happily celebrating the King's name day. "Quite nicely, during the celebrations, nearly all the district *bubis* came to pay homage to their beloved King in the person of his friendly representative. All united by the same ideal, colonial people rivalled in expressing their patriotism ... then, as it happens in families sharing the same feeling, their interest aroused their honour".[106] We shall later deal with some picturesque aspects of such patriotic celebrations, but, for the time being, we wish to stress an ordinary word used by the reporter of such friendly events. Being whites and blacks united in their vivid love for the Spanish monarchy, the inhabitants of San Carlos are, in colonial eyes, a close family, indeed, a *family*.

The family rhetoric thus provides the framework within which colonial norms could be set. Let us now examine the situation in 1921. On 31 December, Governor Barrera docked at Santa Isabel. He was returning from Spain and was warmly welcomed by local people.[107] "The Local Council has erected a beautiful arabesque arch at the gates of the city with an inscription bearing the words: 'Most Excellent Mr. D. Angel Barrera: to his adopted Son, the grateful people'. The inscription underlines the intelligent contribution of the Public Works Officer D. Francisco Bermejo. In the arch erected by the Company *Daughters of Africa*, the simplicity and typical style of the country stand out, along with the following affectionate inscription: 'To father Barrera, the daughters of Africa': national colours were the main trait of the lively work".

Should we despise the repeated use of the above metaphor? All individuals' mother was the distant Spanish homeland, which the Governor

had just visited. He was born there in 1863, precisely in Burgos, *caput Castellae*, though he had now been adopted by Santa Isabel, a young colonial capital. The Governor, who was the lawful son of Fernando Póo, was himself a progenitor. The so-called *Daughters of Africa*, who saluted the arrival of the Governor, were also daughters of Barrera: they used the same appellation as for their fathers, i.e. *papá* (daddy). This was a common usage: during the same celebration, some *batukos*, tribal chiefs of the *bubis*, submissively kissed the Governor's hands and bent down at "the feet of their idol, *Papá Barrera*". Such pieces of news came from the colony, but they rapidly reached the homeland.[108]

The historian must take these repulsive anecdotes seriously and grasp their juridical meaning.[109] The family metaphor, which was so recurrent in colonial language, was not a mere rhetorical contrivance used by European consciences to underline both the West's racial superiority and its commitment to the political domination of Asia or Africa. Owing to a discourse which sublimated any kind of inequality, not only was any potential debate on the rights and freedoms of non-European races avoided; the family picture also eliminated the conceptual incoherence of jurists who were compelled to use principles for Africa that were completely opposite to the ones used for European countries. The proclamation of the so-called universal political principles, continuously thwarted on grounds of race, social organization, or development, effectively complemented, by resorting to the "family" image, the state's means of dominance, i.e. its protectorate on native peoples or the protection of its single members. It "ought not to be forgotten" – says Santi Romano – "that colonial law cannot, by nature, be set up on the same basis and with the same criteria as metropolitan law. It refers to peoples who are less civilized than the European ones, for whom a kind of government similar to the one we had in ancient times is more suitable; vice versa, it cannot adopt the principles of modern constitutionalism".

A precise content to the above Italian jurist's general consideration can now be ascribed. In more ancient times, even in Europe, the family was the leading structure of social life.[110] Within the domestic setting, which became the model for republics, there was a paternal power (precisely an *economic* one) with a discipline of its own, just as closed to justice as it was open to religion. Being exempted from any legal control, the family chief's decisions could not be questioned. The father's task was to educate, correct, and complete the reduced capacities of his children and wife. Biological links were not decisive in legitimating submission to paternal authority: familiar bonds compelled non-European men and women, like domestic servants, slaves, or sons in custody, to abide by

their white masters' authority. The family itself was the most important agency of criminal policy and was responsible if this first circuit of punishment failed. Through discipline, economy, and religion, the family embodied the paradigm of the despotic government, which had been harshly criticized by enlightened intellectuals with the aim of creating a different world. Let us just quote the following words by Marquis Beccaria:

> such ruinous and authorized injustices were approved even by the most learned men and carried out by the freest republics, which deemed society to be a union of families rather than a union of men. Let us imagine a hundred thousand men, [or] i.e. twenty thousand families, each of the latter being made of five members, including the chief representing it: if the association is created for families, there will be twenty thousand men and eighty thousand slaves; if the association is made of men, there will be a hundred thousand citizens and no slave [...] Such conflicts between family rules and the republic's fundamental rules give rise to another set of contradictions between domestic and public morals and also bring about a perpetual conflict in the soul of each individual. The former inspires submission and fear, the latter courage and freedom; one restricts charitable acts to a small number of people with no spontaneous choice, the other extends them to all human classes.

"This shows how limited most legislators' points of view were". Such words need not be further analyzed, since their mere quotation allows us to grasp the political (or antipolitical, if you like) spirit embedded in the old domestic setting.[111] Such considerations do not distract us from our main concern, i.e. colonial work. The family entails both working under submission and disciplinary powers not subject to law: hence, it is by examining the dogmatic meaning of familial metaphors that we can truly appreciate the central role of work in colonial constitutions.[112] At the time and place which were object of the Treaty of Congo, the above ideology legitimated the exertion of a very old patriarchal power, and familial bonds were used to submit equally (no matter whether labour was private or public) prudent domestic servants, efficient officials, and exploited workmen. We shall not deal either with the conceptual changes which affected labour agreements when Europe took hold of Africa,[113] or with the labour relationships effective in the colonizing countries.[114] What is important, and thus particularly illustrative on colonial work, is that our forefathers believed that work was to be technically conceived of not as a civil law obligation, but rather as a chance of collaborating with capital, which hence found its meaning within the institutions of family law.[115]

We can therefore understand the meaning of those "amorous" figures which occur from time to time in our texts. Suffice it to think about the

plural use, in any European language of the late nineteenth century, of the innocent word *colonia*: this Latin word, through its underlying meanings of abandonment and dependence, could equally be applied to industrial factories, forsaken pupils, or prisoners, all these being potentially redeemable through a good measure of work.[116] Being viewed both as a child before the law, as a being to be civilized, and as a worker, the African had both an infantile condition as well as a worker's status, which ultimately led to his double submission: even the most humble white man, exempt from any kind of protection, was always better than the most proud *bantu* labourer. The European governor was both the natives' father and master. Colonial policy turned into a labour issue and colonial law was but a set of instruments used to force the black to produce to the white's benefit.

6 SI VIS PACEM, PARA BELLUM

Behind the "disabled" beings' backs, Guinean whites devised a number of strategies arousing rivalry among tribes – *divide ut regnes*, as it was said[117] – and aimed at instilling the need for money in the blacks' minds through artificial consumption habits: the mark of civilization, which coincided with the adoption of clothes, had more to do with money and wages rather than with the development of delicate, moral, or decent feelings.[118]

> Quite recently, luckily, thanks to the Colonial Department [of the Ministry of State], which has fought off the suggestions coming from scrupulous souls and female hearts [...], a new direction has been given to colonial politics, this being called 'of attraction'; ever since the most illustrious Governor, Don Luis Ramos Izquierdo, implemented a plan of military action for the effective occupation of Fernando's island, thus establishing military postings, calling the *botucos* to its attention and obliging them through force to account for their failure to comply with orders, establishing the obligation to work, curbing the use of alcohol and using other means typical of governments [...] ever since then, the impact of our sovereignty on the colony has been sensibly increasing, and the rural situation has been notably improved since the number of labourers has been timely suited to the number of plantations.[119]

This was the kind of story told (with the greatest sang-froid) about Guinea. Thus: "si vis pacem, para bellum". Such an expression – first employed by E. d'Almonte when speaking to an audience of geographers about the "inhabitants of Spanish Guinea, viewed in their status of Spanish subjects"[120] – united the new Spanish approach towards natives with both the public expression of colonial interests and colonial military organization: despite their differences, these stances were all

connected – not only in terms of simultaneity – within the final aim of compelling such "Spanish subjects" to hard labour. In the Guinean press, however, the voice of the old but still forceful Labra, a Member of Parliament, occasionally resounded; speaking to the *Cortes*, to whomever was still interested in listening to him, he argued that

> a Colony is not an *estate*, a garrison, a place for arms, a religious *mission* or a monastery [...] A colony is a civil society, governed by normal laws, identical to the Metropolis in its basic features, in its unity of law and civil freedom, whose progress must be guaranteed by individual expansion and safety, by the readiness and competence of Administration, by the progressive consecration of the autonomist principle with respect to local culture and means, and by metropolitan Public Powers' attention to the Colony's needs and requirements and to the universal progresses of Political Economy and International Law.[121]

Such an ideal model, however, did not prevent Spain from losing its beloved Cuba and was contradicted, as never before, by Guinean institutions and facts. Moreover, without expressly mentioning the colonized and by implicitly referring to the different situation of the lost Antilles, Labra's references "to the Colony's needs" implied, when referred to Guinea and despite his likely intentions, the dangerous universal public law principle whereby all extraordinary actions by the state are legitimate: the state is thus seen as "such a particular subject that, if its preservation and existence require individual rights and existing laws to be breached, its extraordinary acts are justified in the light of the country's needs ... 'Salus populi suprema lex esto'".[122]

"Exceptional law is applied only when there is an exceptional situation, and it can never constitute a new kind of ordinary law."[123] Yet, in Africa, where every exception was the rule, such timid warnings were not followed. The Guinean *Boletìn* provides an example in this respect. Without paying much attention to the role of the trustee, who is a mediator in the contractual ambit, the new provisions on individual labour (1907) were completed in 1908 by setting up the Colonial Guard, this being arranged by the Governor responsible for the *bubis*' mobilization, i.e. Sir Don Luis Ramos-Izquierdo. Thanks to the Guard, Spanish domination could be extended to tropical peoples and territories, and labour could be imposed through violence: from the very beginning, the cult of work and love for the King and the Spanish Homeland – one along with the other – were the Guard's key concerns.[124]

Just when Barrera was about to commence his long governing experience, a bloody strife, i.e. the rebellion of the Balachá (often mentioned in decrees and provisions) was the reason for the enactment of harsh military measures to be applied to the recruitment of labourers.

Such violent events were stirred by the 1910 decree on individual labour, whose terms ("to attract *bubi* inhabitants to the hardship of labour and thus civilize them within the social order") were very similar to the ones we have already seen.[125] During the "facts of San Carlos", which took place in an area where the presence of *claretianos* was particularly strong, the *bubis* fought against hard labour; the press preferred to disguise such events as fights among natives to conquer power in local tribes, which supposedly led to the killing of an innocent (white) chief of the Guard; the death of the rebellious tribe chief, which supposedly happened as a result of fortuitous gun shots, and the destruction of his houses were described as a "weakness of Spain ... towards them [the black]". Quite luckily, the united forces of guards and colonizers (Anglo-Saxon and Catalan names abound in the expedition, for example "Dn. Maximiliano C. Jones, Dn. Juan Bravo, Dn. José Bronn y los Srs. Faura, Baide, Roig, Macmen, Ramón, Vila, Clark y Lues") were able to tame, after several days of confusion, the modest rebellion.[126]

"The mountain has given birth to a mouse", as will be said;[127] the *bubis'* war was extensively dealt with by the *Boletìn* in the following months. "The problem of labourers may be resolved through sheer willingness, patience and energy, ensuring by all possible means that the *bubis* work; I believe it necessary, for such a purpose, to set up police postings".[128] Given Governor Barrera's extensive intervention on the conditions of the territories, his determination in applying the colonial constitution was quite foreseeable, so much so that the 1911 decree on *bubis*, rather than being the continuation of the plan started by Luis Ramos-Izquierdo, became the legal expression of the Governor's personal belief: the colony could be governed only through patriotism, through an iron hand and by obliging the natives to work.[129]

In the absence of political rights and civil participation, only a number of spiritual values was in force in Guinea, namely those embodied by the King of Spain. In this respect, let us examine what was reported about Santa Isabel in 1921.

Echoes of the Celebrations for the King. In the previous issue, we did not have a chance to describe, for want of space, the fantastic Civil-Military Parade which took place on occasion of the celebrations held for our August Sovereign's name-day; we will now complete the description by providing our indulgent readers with a general illustration of the symbolism and allegories of the artistic carriages that, through two endless lines of natives carrying Venetian lanterns, paraded through the town's main streets. The first of these beautiful carriages, pulled by seven vampires and guided by a Cupid, represented our Homeland, tightly embracing our prestigious Army and our heroic War Navy, and

folding men's labour, which is a source of honesty and wellbeing, in its arms. The noble and beautiful figure of our August Sovereign which nicely stood out on a big drum, adorned with frills of the national flag, placed between the images of a castle and a lion, completed and topped the whole carriage, which was both fantastic and artistic. The second carriage was less allegoric, though equally artistic, and represented the Command of the Colonial Guard in such an artistic and accurate way that it was like filigree. On the 25th day, at half past four p.m., a lively, contended and interesting football match took place in the field near the telegraph. There was a team of European gentlemen and another of natives; the former, which was indeed very clever, won the match. Our most sincere congratulations.[130]

Such patriotic games among youngsters (i.e. among colonized African natives), illustrated by ineffable graphic evidence,[131] bring back our attention to the conceptions we have dealt with above and which may apply also with respect to the deployment of the Guard and the *bubis'* obligation to work. The happy Guinean tribes (of course native subjects, as demanded by the colonial constitution[132]) conferred liveliness on the celebrations whilst also guaranteeing safety to the European organizers. Yet, there were other reasons behind the black guards' escort of the royal carriage parade: a coach pulled by vampires [!] which united, under a rough image of Alfonso XIII, oil-painted on a drum [!!], the images of the Motherland, of the Army and Navy, which are undoubtedly Spanish images, embraced to the image of Labour (in truth only African labour). "Members of the Colonial Guard". For instance, the "authorized native chiefs" Cayetano Cien Duros, Antonio Asombra Cánovas y Manuel Mochila Morral, who received medals (though not a pension) thanks to their "merits in military operations carried out between August 5 and 12 to punish the Ysen tribe (District of Bata) for its rebellious behaviour against Colonial Authorities",[133] and all colonial guards "are entrusted with the task of defending such feelings of love for the Motherland, willingness to work and obedience among natives inhabiting the areas for which they are responsible".[134]

Love for Spain and work in Africa. Even without such an explicit textual support, it is not difficult to grasp the meanings of the rough Hispano-Guinean iconography. The hard labour imposed by the armed forces of a faraway motherland was the result of the same European culture, supposedly a "source of honesty and well-being", received willy-nilly by the *bubis* of Fernando Póo. Lacking rights and legal capacity, bound to work only on the grounds of being "Spanish subjects", all natives were sons of the King (represented in his walk around Guinea), and were also vicarious sons of the real representative, of the Rear Admiral and of the Governor.[135] Love, respect, and services were owed to their royal father Alfonso XIII. His illustrious proxy, *papá* Barrera,

instilled such precepts through a number of celebrations, paid by himself,[136] and at the same time demanded obedience to such precepts through orders and decrees, thus enriching colonial landowners.[137] Since Barrera's corrective powers were exerted with respect to "sons" deemed to be *minors*, such powers were unlimited: through the support of local canon law, such an exertion benefited ("I curtly do them justice, leaving sentences and allocutions aside ... I punish them ... with respect to the two things that they value the most: their money and body"[138]) local landowners. The reason behind Spain's presence in Guinea was a patriotic obligation to work. Under such an economic and not simply etymological perspective, governmental provisions on labourers went well beyond the harvesting of cocoa and thus made up the African constitution itself.

7 PRAESTANTIA LINGUAE LATINAE

The colonial constitution is the colonial occurrence itself. "Upon commencing the harvest of cocoa, it is customary for the Governor to publish a provision whereby all natives who are neither landowners nor have any means to live on or any acknowledged occupation, are compelled to register to work as farm labourers. Such a decree is an effective labour regulation, whereby the rights and obligations of masters and labourers are defined; the elderly and minors are exempt from such an obligation, just like women, although contracts may be made with the latter as long as they voluntarily offer their services". Given that, according to the temporary Regulation of 1906, the hard labour of *bubis* is prohibited, local circumstances require labour law to force the latter to make agreements with landowners. Although the organic Regulation of 1904 provides Governors with the instruments needed to suit law to the colony's local needs,[139] the measures enacted by Barrera and its immediate predecessors (such as the *Real Orden* ratifying them) need not even to appeal to such a regime to legally justify the denial of the blacks' contractual will.

Some antiliberal conceptions typical of the rule of law resounded in colonial provisions and were easily implemented in Africa: the 1906 Regulation and the 1904 organic statute consecrated freedom, which, however disappeared (thanks to the providential intervention of the "Government's authority") when peaceful citizens turned into "disturbing elements".[140] Such antiliberal arguments drew inspiration from the "legendary decree of the Roman Senate: Videant Cónsules, ut ne [!] quid detrimenti Respublica capiat".

The Latin maxim leads us to our conclusive remarks. It is 1912. A Royal Order for the Guinea Gulf was enacted in Madrid and signed in San Sebastián.[141] On such a historical occasion, at such geographical latitudes, it may be argued that the Roman Senate and People were only a dim recollection in a crumpled school book. The legal reasoning of the Spanish legislators, entrusted with the embarrassing task of suppressing those civil rights which they had recently granted, resorted to addressing the *bubis* in some mysterious words from a dead language.

Such a language, however, was actually not so "dead" in this case. Let us just recall what follows. "The Senate has established that the Consul Lucio Opimio shall take all required measures to ensure the republic does not suffer any damage".[142] "The Senatus Consultum has decided that Consuls C. Marius and L. Valerius shall summon the tribunes of the people and the praetors, whom they consider to be necessary, in order to preserve the power".[143] Further examples are not needed.[144]

Videant consules. Such two words were first pronounced in a precise moment in time, they were repeated throughout a long literary tradition, and were finally preserved in the libraries containing great texts by eminent learned men. Twenty centuries after having been first pronounced and written, these ancient words on the *extra ordinem* defence of the Roman Republic were exhumed to compel natives of Spanish Equatorial Guinea to work. Ancient expressions were used to support extraordinary powers; classical Latin expressions were incorporated in the "Royal Order" enacted for Guinea and justified the antijuridical measures enacted by the Governor. From Spain to Africa, it seems that some principles of the colonial constitution could be expressed only in Latin.

The Latin language is something more than a constitutive element of our deepest culture and is more than a solid support of law. It is a hypostasis of culture and an expression of dominance. Throughout the centuries, a Latin upbringing has drawn a line between the European male child's family life, under the dominance of the mother and of maternal languages, and the social life of the white adult who, together with other individuals in an exclusively male world, united the social category of the economically successful man with the Latin language. Different educational practices of body punishment hinged upon the teaching of some texts, which were learned through blood: physical pain was wanted, rather than a mere threat, which stimulated memory and tamed individual will; a school of vigorous behaviour and a doctrine of virility were upheld. Moreover, were not the Latin protagonists of violent battles – the destruction of Carthage, the bloody fight between Opimio, and Caio Gracco, Cicero's attacks at the traitor Catilina – (told over and over again

in texts teaching Latin), real heroes, demigods, or supermen? Being agonistic and male, being an instrument of initiation to the secrets of a long tradition reserved only to state representatives, Latin represented the *transition rite practised* by European cultures.[145]

This ideology was not perceived by its victims; nonetheless, the white warrior leaving Berlin to conquer Africa appealed to twenty centuries of Latin as if this were a very useful weapon. As a matter of fact, before the beginning of the African adventure, to speak Latin was tantamount to possess knowledge: it was necessary to the liturgy whereby God was worshipped, to gaining access to the dominant culture and to the beginning of any professional activity. When the African adventure was embarked upon, the ancient language was but a subject matter of *philology*, the Western world being dominated by vulgar idioms. The new turn of events, however, led Europeans to claim that "in a nation with a Latin race such as Spain, which possesses a rich and harmonious idiom, with an incredible number of words and sayings of Latin origin, in a nation proud of its classical traditions ... the weakened interest in Latin studies cannot be taken light-heartedly; not only is such a study the foundation and principle required to know and correctly use the Castilian language ... but it is also the only means to have access to the treasures of the Past".[146] But despite such thinking, a new culture, which was not grounded on the cult of martial virtues but rather on the proclamation of rights, started viewing Latin as a mere slang used by a decadent priestly class: "it is about time that public teaching satisfied the needs of modern life and had as its main aim the upbringing of Enlightened citizens rather than Latin rectors".[147]

With the Restoration, Latin in Spain once again began affecting education. Attention was paid to Cicero and to his first *Catilinaria*, to the solemn maxim which places the preservation of the *Respublica* above all other considerations: such a maxim was taught, *inter alia*, to a young citizen of Burgos, the future Governor of Guinea, and to other adolescents, who later became councillors of the Ministry of State.[148] Not surprisingly, however, other neo-Latin and neo-Germanic languages were taught in Africa. In Guinea, the state official subscribing labour mobilization was also responsible for subscribing the teaching programme to be applied to colonial public schools: "Castilian Grammar and Spelling Principles" were taught, attention was paid to "Notions on the harvesting of coffee, cocoa, cotton, vanilla and other products typical of such intertropical countries"; Latin was not mentioned at all.[149] Once again, the colonized's will was blatantly ignored: "we want to have more than what we have today. That is, our children want to be taught to read and

write, to carry out a job. In this manner, our children will be able to earn a living under the Spanish flag. Today, instead of learning what is needed, children are taught to climb up bamboos, to fish and do other things which we are not lacking in".[150] Any theoretical formation or any more elevated form of access to Western culture were kept at the margins of the colonial constitution: "teaching to natives must refrain from being too book-based, too 'intellectualistic' ... Teaching is aimed at both educating and instructing natives ... For this purpose, school programmes and timetables must devote ample room to the *leçons des choses* and to the manual and professional training of pupils".[151]

Leçons de choses, when *civilization* was at stake. Such an aim was attained, for many generations, by the Spanish Motherland in Guinea. "Are we Spanish?" – the teacher used to ask – "We are Spanish by the grace of God". "Why are we Spanish?" – he insisted – "We are Spanish" – answered the boys – "because we were lucky to be born in a country called Spain".[152] A "flourishing and peaceful future" was envisaged in tropical lands, whose richness and well-being were guaranteed by Spain and the Latin language.

8 CONCLUSIONS

Let us now conclude our study. The reading of some exotic texts, which are so eloquent on the fate of the liberal rule of law in the African continent, rather than illustrating the terribly weak foundations of the institutions brought about by the decolonizations of the 1960s and 1970s,[153] provide us with a very clear picture – pitiless in its clarity – of precisely that political form as it exists in Europe. After all, only a Western analysis from outside Europe, once its picturesque orientalisms have been spotted, can thoroughly study our local culture.

The first element of such an analysis brings us to the "age" of modernity. The history of the rule of law as a form of state, i.e. the history of modern legal and political culture in general, presents an aggregate of both old and new facts, ideas and projects, marked by deletions as well as continuities: lower chambers resulting from an ever-enlarging electoral body and coexisting with upper chambers where nobility maintains (hardly disguised) secular privileges; monarchies striving to share sovereignty with national subjects; the flaunted triumph of public transparency in the political and legal world together with the peculiar preservation of the *arcana imperii*: in other words, the persistence of the *ancien régime*, as in the well known title of Arno J. Mayer's work.[154] This persistence becomes overwhelming (as it is expressed, e.g., by Santi

Romano's honest contributions) whenever the European state turns into a colonial metropolis. The dramatic adventures of crowned heads in the African continent – such as the geographical curiosity and the economic interests of Leopold, King of Belgium[155] – is not only a terrible example of "persistence" but also a metaphor of a very old politics incompatible with pure rules of law.

The second thought that strikes the observer of the African reflection of the European state refers to space, this being simply meant as the element that affects – and circumscribes in legal terms – any legal system. Let us put it more simply: the recently underlined paradox between tradition and modernity is reflected in the tension within European law between universalism and localism. Under this perspective, the age of imperialism appears also as the age of a *science* of law, i.e. of the supposedly universal meaning of dogmas and categories which undoubtedly contrast (govern, coexist, fight) with *national* legal definitions. In some cases, the specificity of legislation is in line with the universality of law (and thus the aspirations surface that support modern comparative law); in any event, colonial law provides in my view a very interesting subject for the analysis of the circulation of different models and experiences within an institutional area created, strictly speaking, by the succession of *international* treaties.[156]

Thirdly, the latter adjective allows us to underline the existence of a very wide scope of action of the rule of law even where its legal reference, which is conceptually inevitable, does not appear at all. We owe the public law jurist Allegretti the historiographic merit of stressing how liberal foreign politics remained tied to the terrible logic of the "reason of state"; while the passage from the *ancien régime* to the new modern order deeply affected the distribution of political competences among constitutional organs, it left the goals and the spirit of the state's international action unaltered.[157] This door (it is up to the reader to say whether open or closed), which is the only way to the African experience, conceals either very ancient institutions (such as slavery or forced labour in colonies) or overwhelming "family" logics (such as the protectorate of peoples and the "condition of minority" of non-European races).

The history that follows is well-known. The old colonial powers, after the First World War (a colossal conflict which witnessed the fall of many crowned heads), conceived of a new kind of state, where new institutions – democracy and rights[158] – resolved (as best as they could) the dilemma of power. Such a state triumphed in Europe, for the time being, precisely when colonialism in Africa was coming to an end: it might be wondered, however, whether this laid the best foundations for political autonomy in

the African continent, the latter being wrapped up in the quasi-legal (or not legal at all) net of the old rule of law (as demonstrated by the example of Guinea, daughter of a Spanish motherland jealous of its "parental" *power*).

NOTES

1. The relative documents, including the *Boletín* issues, are to be found in *Archivo General de la Administratción* (Alcalá de Henares, Madrid), Sección Africa, leg. G-2.
2. See B. Roig, "El trabajo a destajo en Fernando Póo", *La Voz de Fernando Póo*, 27 (15 July 1911), pp. 7–8; 28 (1 August 1911), pp. 8–9; 29 (15 August 1911), pp. 6–8; 31 (15 September 1911), pp. 6–8; 33 (15 October 1911), pp. 9–11. Cf. S. Muguerza, "La cuestión obrera", *La Voz de Fernando Póo*, 46 (1 May 1912), pp. 4–5; 47 (15 May 1912), pp. 4–5; 48 (1 June 1912), pp. 5–7.
3. E. López Perea, *Las posesiones españolas del Golfo de Guinea y datos comerciales del Africa Occidental*, Madrid, 1906.
4. C. Fernández (C.M.F.), *Misiones y misioneros en la Guinea española. Historia documentada de sus primeros azarosos días* (*1883–1912*), Madrid: Editorial Co.Cul, 1962. See also (Misioneros Claretianos), *Cien años de evangelización en Guinea Ecuatorial* (*1883–1983*), Barcelona: Claret, 1983; T.L. Pujadas, *La iglesia en la Guinea Ecuatorial*, I–II, Barcelona: Claret, 1983.
5. Cf. "La prensa de Fernando Póo", in *La Voz de Fernando Póo*, 25 (15 June 1911), pp. 3–7, in particular p. 5. We must also add the *Boletín de la Cámara Oficial Agrícola de Fernando Póo* (1 March 1907 to 31 October 1910), as well as other publications concerned with Africa and dealing with Morocco and partly with Guinea. See *Africa. Revista política y comercial consagrada á la defensa de los intereses españoles en Marruecos, Costa del Sahara y Golfo de Guinea*, long-lived magazine of Barcelona (1906–1936).
6. A.M. Junco, *Leyes coloniales*, Madrid (RJvadeneyra), 1945; S. Llompart Aulet, *Legislación del trabajo de los Territorios españoles del Golfo de Guinea*, Madrid, 1946. See also F. Martos Avila, *Indice legislativo de Guinea*, Madrid: Instituto de Estudios Políticos, 1944, a useful way of access to the local *Boletín*.
7. See A. Carrasco González, "El proyecto de venta de Fernando Póo y Annobón a Gran Bretaña en 1841", *Estudios Africanos*, 10 (1996), pp. 47–63.
8. Judging by their early efforts: see J.B. González, "Expedición Argelejo: primer intento colonizador de España en Africa ecuatorial", *Revista de Historia Militar*, 32 (1988), pp. 73–109; Up and until the last ones: see M. Iradier, *Africa. Viajes y trabajos de la Asociación Eúskara La Exploradora* [1887], I: *Primer viaje. Exploración del país del Muni* [1875–1877], II: *Segundo viaje. Adquisición del país del Muni* [1884], Madrid: Miraguano-Polifemo (Biblioteca de Viajeros Hispánicos), 1994.
9. M. Liniger-Goumer, *La Guinée équatoriale. Un pays méconu*, Paris: Ed. l'Harmattan, 1979; by the same author, *Small Is Not Always Beautiful. The Story of Equatorial Guinea*, London: C. Hurst, 1989. See E. Borrajo Viñas, Chief State Captain, *Demarcación de la Guinea española. Conferencia dada en la Real Sociedad Geográfica*, Madrid: Talleres del depósito de la Guerra, 1903, for a wider picture.

10. Luis Ramos-Izquierdo y Vivar, former Deputy Governor of the District of Bata and former Governor General, *Descripción geográfica, y gobierno, administración y colonización de las Colonias españolas del Golfo de Guinea*, Madrid: Imprenta de Felipe Peña, 1912, published on Santa Isabel some significant data on the population of Fernando Póo: 190 whites (170 Spaniards) and 1,500 blacks (200 foreigners) (p. 26), with an estimated Muni population of (p. 43) 130 whites (90 Spaniards) and 89,320 blacks (350 coming from Senegal and Camerun); following the author's classification, there were primitive *natives* (81,000), with a medium degree of civilization (4,449) and civilized (3,521)). Great Elobey, inhabited by 230 blacks, has no white population (p. 57), whereas in Annobón there are seven Spaniards and 1,200 blacks (p. 60). According to the 1923 census of the white population in Fernando Póo there were 526 Spaniards (out of 650 men) and 261 foreigners (118 Portuguese and 66 Germans), and 61 in the continental part of the colony (with 26 foreigners); in Elobey, Corisco and Annobón only 39 (plus six foreigners). However, in 1942 in Muni there were only 955 white inhabitants, while on the main island they amounted to 1,579.
11. See J.M. Cordero Torres, *Tratado elemental de derecho colonial español*, Madrid: Editora Nacional, 1941, p. 40.
12. Ibid., pp. 80 ff.
13. Royal Decree of 11 July 1904, Estatuto orgánico. In the *Archivo General de la Administración*, Alcalá de Henares, Madrid, Africa, box G-560, there is an important collection of Portuguese colonial provisions (1901–1903), which are undoubtedly related to the decree.
14. Ibid.
15. See in general M. Fioravanti, "Lo Stato di diritto come forma di Stato. Notazioni preliminari sulla tradizione europeo-continentale", in R. Gherardi and G. Gozzi (eds), *Saperi della borghesia e storia dei concetti fra Otto e Novecento*, Bologna: il Mulino, 1995, pp. 161–77.
16. See R.D. of 30 July 1902, which created an Advisory Committee on the Spanish territories in Western Africa. Its members (art. 2) were mostly former ministers (Maura, Castellanos, García Sancho, Ugarte) and former undersecretaries (Alvarado), together with a few colonial managers of the time (the State Undersecretary Pérez-Caballero, the chief of the Colonial Department Bosch, and the Governor Ibarra). Parliament (Bergamín, Huelín, Labra), the Royal Geographic Society (Fernández Duro, Beltrán), and the similar Royal Commission for Western Africa (Ossorio, López Vilches) were quite represented.
17. By means of the R.O. of 25 November 1911, upon the Minister of War's proposal, the Governor of Guinea was awarded the honour of General of Brigade.
18. See Law 2 April 1845, ed. by T. Ramón Fernández and J.A. Santamaría, *Legislación administrativa española del siglo XIX*, Madrid: Instituto de Estudios Administrativos, 1977, ref. no. 120, pp. 574–5.
19. The issue of law in the Indies was a frequent matter in Hispano-Guinean legislation, especially with respect to natives' lands: see Real Decreto of 26 November 1880, art. 8, 1st; Real Decreto of 17 February 1888, art. 7. In the notable Real Decreto of 11 July 1904, which establishes the statute on lands in the colony, the 1680 "Recopilación" appears only in the law's list of reasons, as a sort of national glorious antecedent of the "universally accepted principle of modern law, in accordance with its most recent provisions and authorizations" whereby the land belongs to the

State, it is not granted to single beings, which means that the lands of natives – "an unquestionable right that cannot be denied thereto" – are subject to the limits imposed by the Governor (arts. 11–12).

20. See Real Decreto of 13 December 1858, art. 5 (award of discretionary powers to the Governor); Real Decreto of 12 November 1868 (art. 4, in similar terms). The Real Decreto of 26 November 1880, regulating the position of the Governor in art. 2, generically refers "to the functions, both ordinary and extraordinary, which the laws in force give to the high Authority of Overseas", literally repeated by the following Real Decreto of 17 February 1888 (art. 1).
21. L. de Arrazola (ed.), *Enciclopedia española de Derecho y Administración, ó Nuevo Teatro Universal de la Legislación de España é Indias*, X, Madrid: Imprenta de la Revista de Legislación y Jurisprudencia, 1858, see "colonia", pp. 5–26, in particular pp. 23–4.
22. R.M. de Labra, "La justicia en Ultramar", *La Escuela del Derecho*, 3 (1863), pp. 209–32, p. 217.
23. See J. Lalinde Abadía, *La administración en el siglo XIX puertorriqueño*. (*Pervivencia de la variante indiana del decisionismo castellano en Puerto Rico*), Sevilla, Escuela de Estudios Hispanoamericanos, 1980, in particular pp. 125 ff. on the "Administrative System".
24. See Freire, "Al Sr. Ministro de Estado", *La Voz de Fernando Póo*, 26, (1 July 1911.
25. Art. 14 of the Real Decreto establishes that "the local councils will be made up of a Government Delegate as a president and two assistants, whether or not native, appointed every three years by the Council of Authorities"; the same article seems to acknowledge the residual role of natives with respect to the "municipal functions (of the peoples) compatible with the cultural level of their members"; in any event, this was a temporary formulation, until "conditions similar to Santa Isabel" were created (art. 14). Such false expressions of municipal life clearly represent the imposition of cohabitation models in the sole interests of Spain: "governmental authorities will promote, by using the means that caution will dictate and in accordance with the directives of the Ministry of State, the grouping of natives in villages and the following setting up of local Councils" (art. 22).
26. The Real Orden of 27 July 1905 extended art. 23 of the 1904 Real Decreto to other authorities not mentioned here. Four years later (Real Orden of 8 October 1909) it was stressed that the judicial competences of governmental delegates had not to reduce those of the first hearing Court of Santa Isabel. As for the civil recording of religious marriages between natives, a decree by the Governor (4 October 1915) transferred the competence therefore from the municipal Judge to the military commanders of the garrison. See also "Una memoria", Cap. II, *La Voz de Fernando Póo*, 16 (1 February 1911), pp. 6–8.
27. J. Muñoz y Núñez de Prado, "Organización de la justicia en Guinea", *Revista de los tribunales y de legislación universal*, 65 (1931), pp. 123–4, as "El ministerio fiscal en Guinea", ibid., pp. 204–5; also, by the same author, "El régimen judicial de nuestras posesiones en Africa occidental. Contestación concisa a una pregunta del programa de oposiciones a la judicatura", ibid., 67 (1933), p. 571. It was an endemic problem: A. Frik, "Funcionarios coloniales en Fernando Póo", *Africa*, IV (2nd epoch), November–December 1910, pp. 13–14, in particular p. 14, "in some instances, the same person had both the functions of Secretary of Government, of first hearing Court, of Administrator of Rural Farms and of Notary";

L. Ramos-Izquierdo, *Descripción geográfica del Golfo de Guinea*, pp. 325–6: "sometimes an illiterate becomes a first hearing judge, while sometimes the same individual first is a secretary then a Prosecutor and even a Judge by means of internal appointments". E.V. Ynfante, *Cubanos en Fernando Póo; horrores de la dominación española*, Habana: El Figaro, 1898, pp. 53 ff., describes, at the end of the nineteenth century, a "justice of the *cadì*" entirely corrupted with respect to, e.g., the local administration of Post Offices.

28. For a legal analysis, see P. Cruz Villalón, *El estado de sitio y la Constitución. La constitucionalziación de la protección extraordinaria del Estado (1789–1878)*, Madrid: Centro de Estudios Constitucionales, 1980, especially pp. 429 ff. on the original art. 17 of the Constitution.
29. In fact: "In the territories of the Guinea Gulf, the rights granted to Spaniards by the Monarchy's Constitution will be valid, and their exercise will be in accordance with such a decree and with the complementary provisions needed to adapt its norms, as those of the general Codes, to the status of such territories" (art. 27).
30. See art. 7: "The General Governor's provisions may be revoked or reformed by the supreme Government, *ex officio* or through a separate instance, when the matter so allows, or when they are deemed to be contrary to the laws, regulations and provisions in force, or when they are unsuitable to the government or proper administration of the Spanish territories in the Guinea Gulf".
31. See the introduction by P. Guillaume, *Le monde colonial. XIXe–XXe siècle*, Paris: Armand Colin, 1974, in particular pp. 129 ff. on "colonial administration".
32. See G. Crotti de Costiglione, *Les représentants des colonies au Parlement*, Paris (Thèse droit), 1908; V. Dupuich, *Le régime législatif des colonies*, Paris (Thèse droit), 1912. A very useful work is *Les Lois Organiques des Colonies. Documents officiels précédés de notices historiques*, I–III, Bruxelles: Institut Colonial International, 1906.
33. J. Maldonado Macanaz, *Arte de la colonización*, Madrid: Impr. M. Tello, 1875, pp. 224–5. Above all, it refers to H. Merivale, *Lectures on Colonization and Colonies*, London: Longman, 1861.
34. J. Maldonado Macanaz, *Arte de la colonizacion*, pp. 257–8.
35. See G.R. España, "Tratado de derecho administrativo colonial. I. Organización administrativa", *Revista de Legislación*, Madrid, 1894, without specific information on Guinea other than the annexed Real Decreto of 17 February 1888 (pp. 319–29).
36. S. Romano, *Corso di diritto coloniale*. I *Parte generale*, Roma: Athenaeum, 1918, pp. 32 ff. See C. Grilli, "Gli esperimenti coloniali nell'Africa neolatina", *Rivista Internazionale di Scienze sociali e discipline ausiliare*, 62 (1913), pp. 433–62; 63 (1913), pp. 30–64, 145–73, 449–77; 64 (1914), pp. 29–42, 74–194, 309–32, and the following issues too.
37. The Royal Decree of 18 July 1913 was quite important, in that it granted the Ministry of State the competence which he had contended with the Navy, upon request by the Hispano-African Society of Credit and Development. It was argued (on the basis of art. 89 of the Constitution) that "the Spanish territories in Western Africa are a colony grounded on special provisions and laws for its government and administration in the hands of the Ministry of State ... the laws enacted, or to be enacted, by the Peninsula are not applicable, unless the Government provides for their application by making any changes it deems appropriate". Such a decision represented a precedent for the Royal Order of 2 June 1922. See in general Francisco Martos Avila, *Indice legislativo*, "Prólogo", pp. vii–xviii.

38. See J.M. Cordero Torres, *Tratado de derecho colonial*, p. 278: "Since Spain is not (and neither has it ever been) a racist colonial Power, it is difficult to deal with the problem of half-breeds. This, in fact, is practically unconceivable even without the need for an official ban, not on the grounds of racial prejudices, but rather for the natives' state of degeneration and backwardness". However, such a ban will be contained in the Decree of 30 September 1944 against mixed marriages: J.M. de la Torre, "La tragedia de Guinea", *Tiempo de Historia*, 36 (1977), pp. 120–1, in particular p. 120.
39. S. Romano, *Corso di diritto coloniale*, pp. 42 ff. See A. Delvaux, *Les Protectorats de la France en Afrique*, Dijon (Thèse droit, Paris), 1903.
40. Apart from the case of L. Ramos-Izquierdo, *Descripción geográfica del Golfo de Guinea*, we can add, without leaving Guinea, A. Barrera y Luyando, *Lo que son y lo que deben ser las posesiones españolas del Golfo de Guinea*, Madrid: Imprenta Eduardo Arias, 1907, conference at the Real Sociedad Geográfica (20 June 1907). See, in general, E. Hernández Sandoica, "La ciencia geográfica y el colonialismo español en torno a 1880", *Revista de la Universidad Complutense*, 28 (1979), pp. 183–99; J.M. Llorente Pinto, "Colonialismo y geografía en España en el último cuarto del siglo XIX. Auge y descrédito de la geografía colonial", *Eria*, 15 (1988), pp. 51–76; and, lastly, A. Gollewska and Neil Smith (eds), *Geography and Empire*, Oxford: Blackwell, 1994.
41. S. Romano, *Corso di diritto coloniale*, pp. 139 ff.
42. J.G. Bluntschli, *Derecho público universal*, I–II, Madrid: Góngora, 1917, II, p. 228.
43. See *Lois Organiques des Colonies*, I, pp. 11 ff. The authority is Ch.J. Tarring, *Law Relating to the Colonies*, London: Stevens and Haynes, 1913.
44. J. Gingast, *De l'oeuvre et du rôle des gouverneurs coloniaux*, Rennes: Impr. Rennaise (Thèse droit), 1902, pp. 124 ff. ("le gouverneur a des attributions générales comme représentant à la fois l'intérêt métropolitain et l'intérêt de la colonie; il a des attributions législatives et d'autres relatives à l'administration de la justice; il a des pouvoirs militaires; il est, en outre, dépositaire de tous les droits que doit avoir le premier mandataire du gouvernement pour le mantien de l'ordre et de la sécurité publique dans la colonie").
45. S. Romano, *Corso di diritto coloniale*, p. 159, on the issue of the French "senatus consultum" of 3 May 1854 under the constitutional laws of the Third Republic; cf. A. Bienvenu, "Le législateur colonial", *Revue du droit public et de la science politique en France et a l'etranger*, 36 (1929), pp. 224–42. See also A. Bonnefoy-Sibour, *Le Pouvoir législatif aux colonies. Essai historique sur le Droit de légiferer en matière coloniale*, Dijon: Imp. Régionale (Thèse droit, Montpellier), 1908, p. 296: "In the colonies of exploitation or, quite simply, in the new colonies the power to make laws must exclusively belong to the Governor".
46. The King enacted the law by decree, assisted by a *Conseil Colonial* with non-binding powers, which was, in its majority, extraneous to Parliament; the latter maintained a decisive role only in budget matters. The Governor of Congo might thus enact orders, subject to the *Conseil*'s ratification, for urgent reasons, although governmental authorities used to continuously intervene on a normative level through more or less abusive "executive decrees". See P. Dufrénoy, *Précis de Droit Colonial*, Bruxelles: E. Bruylant, 1946, pp. 25 ff.
47. See O. Köbner, "Les organes de législation pour les colonies allemandes", in *Lois Organiques des Colonies*, III, pp. 333–53. According to the *Schutzgebietsgesetz* of 25 July to 10 September 1900 (included in this work, pp. 355 ff.) the Emperor makes

laws through orders, whereas very few subjects are reserved to the Diet; with respect to natives, such a legislative imperial power has no limits, though it refers to the *Reich*'s wide regulating powers which, by proxy, Governors regularly exert. See R. Lobstein, *Essai sur la législation coloniale de l'Allemagne*, Paris (Thèse droit, Poitiers), 1902; A. Chéradame, *De la condition juridique des colonies allemandes*, Paris (Thèse droit), 1905. Nowadays, not only within the German context, it is acknowledged that this is "an unexplored juridical ambit"; cf. U. Wolter (in collaboration with P. Kaller), "Deutsches Kolonialrecht – ein wenig erforschtes Rechtsgebiet, dargestellt anhand des Arbeitsrechts der Eingeborenen", *Zeitschrift für Neuere Rechtsgeschichte*, 17 (1995), pp. 201–44, in particular pp. 214 ff. on colonial law.

48. The *Ordinamento della Colonia Eritrea*, Law of 24 May 1903 (through the following administrative regulation of 22 September 1905) is unquestionably one of the clearest expressions of what I mean by colonial constitution. Further texts in *Lois Organiques des Colonies*, III, pp. 399 ff. See also G. Marller, *Le Droit colonial italien*, Nancy (Thèse droit), 1909; T. Scovazzi, *Assab, Massaua, Uccialli, Adua. Gli strumenti giuridici del primo colonialismo italiano*, Torino: Giappichelli, 1996.
49. A. de Magalhâes, *Estudos coloniaes. I. Legislaçâo colonial. Seu espirito, sua formaçâo e seus defeitos*, Coimbra: F. França Amado, 1907, p. 107.
50. In R.M. de Labra, *Nuestras colonias de Africa. Fernando Póo y la Guinea española en 1898*, Madrid: Tipografía de Alfredo Alonso, 1898, p. 25; a parliamentary intervention of 8 June 1898 is quoted. However, in his opening speech of the Second Africanist Congress held in the Hall of the Chamber of Commerce, Industrial and Agricultural, of Saragoza, on 26–31 October 1908, upon initiative of the Agencies for the Hispano-Moroccan Trade (Barcelona: Imprenta "España en Africa", 1908, pp. 30–8, in particular pp. 30–1), Labra pronounced himself "against such an aberration, against such a constitutional breach", referring to the "many provisions" being enacted by governments "without any parliamentary intervention".
51. See *La Voz de Fernando Póo*, 14 (1 January 1911), p. 15.
52. S. Romano, *Corso di diritto coloniale*, p. 167.
53. R.A. Williams, Jr., *The American Indian in Western Legal Thought. The Discourses of Conquest*, New York/Oxford: Oxford University Press, 1990, p.6: "Law, regarded by the West as its most respected and cherished instrument of civilization, was also the West's most vital and effective instrument of empire during its genocidal conquest and colonization of non-Western peoples of the New World, the American Indians".
54. A. Posada, *Breve historia del krausismo español* [1925], Oviedo: Universidad-Servicio de Publicaciones, 1981. See F.J. Laporta, *Adolfo Posada: Política y Sociología en la crisis del liberalismo español*, Madrid: Edicusa, 1974.
55. A. Posada, "Le régimen colonial de l'Espagne. Les origines et le développement historique", *Revue de Droit Public*, 10 (1898), pp. 385–418; 11 (1899), pp. 33–71. The excerpt corresponds to the first part, pp. 389–91.
56. See A. Girault, "Chronique coloniale", *Revue de Droit Public*, 10 (1898), pp. 451–89, where reference is made to the resurgence of the "contrainte par corps" in French India "à l'égard des indigènes seulement", after it was abolished in the metropolitan territories in 1867 by means of provisions which would be extended to the colonies in 1891. It is said that, in relation to Madagascar, "l'œuvre de la pacification méthodique de l'île, habilement conduite par le général Gallieni, avance progressivement", even though there is an increasing shortage of labour: "le mal a deux causes,

le petit nombre des indigènes et leur hésitation à travailler pour les Français". This is exactly our problem.

57. See S. Romano, *Corso di diritto coloniale*, bibliography at pp. 16–18, with this sole reference to Spain.
58. E. Cimbali, *Popoli barbari e popoli civili. Osservazioni sulla politica coloniale*, Roma: Ferdinando Strambi, 1887. Posada's interlocutor was one of the few experts on international matters – perhaps he was one of those who arose greater controversial interest – and fought against colonialism, until he began supporting Fascism.
59. A. Posada, "Los salvajes y el Derecho político", *La Nueva Ciencia Jurídica. Antropología, sociología*, 1 (1892), pp. 193–9, in particular p. 197. The importance at the time of the "absurd" institution of slavery, despite Posada's contributions, cannot be dealt with here: J. Goudal, "La lutte international contre l'esclavage", *Revue générale de Droit International Publique*, 35 (1928), pp. 591–625.
60. A. Posada, "Los salvajes", p. 197.
61. Ibid., p. 195. See also A. Posada, "Animal Societies and Primitive Societies", in A. Kocourek and J.H. Wigmore (eds), *Evolution in Law*, III. *Formative Influences of Legal Development*, Boston: Little, Brown and Co., 1918, pp. 267–87.
62. A. Posada, "Los salvajes", pp. 197–98. See in general K. Braun, *Die Kolonisations-Bestrebungen der modernen europäischen Völker und Staaten*, Berlin, 1886; G. de Courcel, *L'influence de la Conférence de Berlin de 1885 sur le Droit Colonial International*, Paris: Les Éditions Internationales (Thèse droit), 1935.
63. J. de Acosta, *De procuranda Indorum salute* [1588], ed. by L. Pereña *et al*., Madrid: Consejo Superior de Investigaciones Científicas (*Corpus Hispanorum de Pace*, XXIII), 1984, II, XIII.1, pp. 340–43. On Acosta's activity and thoughts, see A. Pagden, *La caída del hombre natural* [1982], Madrid: Alianza, 1988, p. 216 for this grounding (the only acceptable one, according to Acosta) of sociability.
64. Ibid., II, XIII. 3, p. 344. It is an orthodox thought, later exhumed to be used by Fascist Abyssinia: A. Messineo, S.J., "L'annessione territoriale nella tradizione cattolica", *La Civiltà Cattolica*, 87 (1936), 1, pp. 190–202, 291–303.
65. R.A. Williams, Jr., *The American Indian in Western Legal Thought*, pp. 96 ff.
66. R. Preiswerk and D. Perrot, *Ethnocentrisme et Histoire*, Paris: Anthropos, 1975; P.A. Taguieff, *La force du préjugé. Essai sur le racisme et ses doubles*, Paris: La Découverte, 1988.
67. J. Copans, *Anthropologie et Impérialisme*, Paris: Maspéro, 1975; G.W. Stocking, Jr., *Victorian Anthropology*, New York: Free Press, 1987, in particular pp. 81 ff. on "The Benevolent Colonial Despot as Etnographer" (referring to Sir George Grey); H. Kuklick, *The Savage Within. The Social History of British Anthropology, 1885–1945*, Cambridge: Cambridge University Press, 1991, with a specific chapter on "The colonial exchange", pp. 182 ff.
68. E.S. Said, *Cultura e imperialismo*, Barcelona: Anagrama, 1996, p. 213, with a brilliant chapter on Verdi's *Aida* (on Egypt and its Canal).
69. L. Capogrossi Colognesi, *Modelli di Stato e di famiglia nella storiografia dell'800*, Roma: La Sapienza Editrice, 1994.
70. É. Jobbé-Duval, "L'histoire comparé du droit et l'expansion coloniale de la France" (contribution of July 27, 1900 at the "Congrès d'histoire comparée, section d'histoire du droit et des institutions"), *Annales internationales d'histoire*, Macon, 1902, (3)–32, p. 6 of the excerpt: ("la science de l'histoire comparée du droit peut d'ailleurs rendre à la colonisation les services les plus considérables").

71. See E. de Hinojosa, "Francisco de Vitoria y sus escritos jurídicos" [1889], in E. de Hinojosa, *Obras*, III. *Estudios de síntesis*, Madrid: Instituto Nacional de Estudios Jurídicos, 1974, pp. 375–425.
72. N. Thomas, *Colonialism's Culture. Anthropology, Travel and Government*, Cambridge: Polity Press, 1994, following the classical study by E.W. Said on orientalism. For the importance of the cliché with respect to Guinea, cf. C. Crespo Gil-Delgado, Conde de Castillo-Fiel, *Notas para un estudio antropológico y etnológico del bubi de Fernando Póo*, Madrid: Instituto de Estudios Africanos (CSIC), 1949, pp. 78 ff. on "psychological traits".
73. J. Maldonado Macanaz, *Arte de la colonización*, p. 104.
74. The main authority in this respect is, quite undoubtedly, P. Leroy-Beaulieu, *De la Colonisation chez les peuples modernes*, I–II [1874], Paris: Guillaumin, 1902. See also C. Sumner Lobingier, "Colonial Administration", in E.R.A. Saligman and A. Johnson (eds), *Encyclopaedia of the Social Sciences*, III (1930), New York: Macmillan, repr. 1963, pp. 641–6.
75. With respect to the most unfamiliar matters of such a complex process, see M. Adas, *Machines as the Measure of Men. Science, Technology and Ideologies of Western Dominance*, Ithaca (NY): Cornell University Press, 1989; M. Vaughan, *Curing their Ills. Colonial Power and African Illness*, Cambridge: Polity Press, 1991.
76. J.G. Bluntschli, *Derecho público universal*, II, pp. 141–2. See also J. Fisch, "Zivilisation, Kultur", in O. Brunner *et al*. (eds), *Geschichtliche Grundbegriffe*, VII, Stuttgart: Klett-Cotta, 1992, pp. 679–774 (p. 745 on Berlin).
77. A. Pagden, *La caída del hombre natural*, pp. 261 ff.
78. J. de Acosta, *De procuranda Indorum salute*, I, VII.4, trans. at p. 147. See also ibid., III, IX, pp. 442 ff. ("An propter revocandos ab otio barbaros tributa graviora imperanda sint"), III, XVII, pp. 506 ff. ("De servitio personali indorum").
79. A. Barrera, *Lo que son y lo que deben ser*, p. 17.
80. See *La Main-d'oeuvre aux Colonies. Documents officiels*, I–III, Bruxelles: Institut Colonial International, 1895–1898.
81. U. Wolter, "Deutsches Kolonialrecht", pp. 231 ff., supported by G. Walz, *Die Entwicklung der Strafrechtspflege in Kamerun unter deutscher Herrschaft* 1894–1914, Freiburh: Schvarz, 1981. Failures in performing one's job, generally punished by the whip, correspond to the following cliché: *Ungehorsam, Faulheit, fortgesetzte Faulheit, Trunkheit im Dienst, Widersetzlichkeit im Dienst, Zuspätkommen und Nachlässigkeit im Dienst, unbegründetes Verlassen der Arbeit*, etc.
82. L. Ramos-Izquierdo, *Descripción geográfica del Golfo de Guinea*, p. 69.
83. R. Mercier, *Le travail obligatoire dans les Colonies Africaines*, Paris: Émile Larose (Thèse droit), 1933, p. 235; it thus follows (ibid.): "Indolent, enserré dans les liens d'une vie collective, où une place infime est laissé à l'initiative individuelle, l'indigène ne travaillait, le plus souvent, que sur les injonctions précises du chef ou du marabout. Sous le régime du travail obligatoire, il continue de travailler dans les conditions où il avait l'habitude de travailler".
84. Cf. E.S. Said, *Cultura e imperialismo*, pp. 393 ff.; Said disputes S.H. Alatas, *The Mith of the Lazy Native*, London: Cass, 1977.
85. The main texts are in P. Castañeda Delgado, "La condición miserable del indio y sus privilegios", *Anuario de Estudios Americanos*, 28 (1971), pp. 245–335; the best interpretation is by B. Clavero, *Derecho indígena y cultura constitucional en América*, México: Siglo XXI, 1994, in particular pp. 11 ff. on the "*status* of ethnic groups".

86. J. Maldonado Macanaz, *Arte de la colonización*, p. 214.
87. Patronato de Indígenas de los Territorios españoles del Golfo de Guinea (Delegación de Asuntos indígenas del distrito insular), *Patronato de Indígenas. Datos para su historia. Antecedentes y memoria de 1954*, Madrid: Hijo de R. Oviedo, 1955, p. 7.
88. C. Crespo, *Estudio antropológico y etnológico del bubi*, pp. 79 ff. Even though the author seems to be sceptical about the studies in question (i.e. V.B. González *et al*., *Capacidad mental del negro. Los métodos de Binet-Botertag y de Yerkes, para determinar la edad y coeficiente mental aplicados al negro*, Madrid, 1944), by following tests realized by Europeans, Crespo argues that the mental development of the *bubi* does not go beyond puberty, since sex "absorbs all its faculties".
89. R. Mercier, *Le travail obligatoire*, p. 8. See also J. Ots Capdequí, W.C. MacLeod, and S.H. Roberts, "Native Policy", in *Encyclopaedia of the Social Sciences*, XI (1933), pp. 252–83.
90. See R. Pommier, *Les contrats coloniaux de louage de services*, Paris: Librairie Arthur Rousseau, 1932.
91. See F. del Río Joan, *Africa Occidental Española (Sahara y Guinea)*, Madrid: Imprenta de la "Revista Técnica de Infantería y Caballería", 1915, p. 179; see also A. Barrera, *Lo que son y lo que deben ser*, p. 45: "in exploitation territories as these ones [the territories of the Guinea Gulf] ... it is absurd to look for labour in the metropolis, since this, without an adequate and costly preparation is tantamount to leading whites to misery and death".
92. See law 21 December 1907 and the Real Decreto of 30 April 1908, "Reglamento provisional de la Ley de Emigración", art. 1, 5, ed. by A. Martín Valverde, y otros, *La legislación social en la historia de España. De la revolución liberal a 1936*, Madrid: Congreso de los Diputados, 1987, ref. 96, pp. 238–42; ref. 97, pp. 243–48.
93. Bruxelles: Établissements Généraux d'Imprimerie, 1929. In 1950, and maybe even before then, there was a significant change in the official name of the Belgian centre, which was turned into a brand new "Institut International des Sciences Politiques et Sociales Appliquées aux Pays de Civilisations différentes". *The status quo* agreed at the Conference of Congo was coming to an end.
94. G. Sanz Casas, "Los finqueros y el uso del trabajo forzado en la agricultura colonial de la isla de Fernando Poo", *Arxiu d'Etnografia de Cataluyna*, 3 (1984), pp. 121–36.
95. Royal Order 6 August 1906. The text with the following reforms is S. Llompart, *Legislación del trabajo*, pp. 23–38.
96. See A. Barrera, *Lo que son y lo que deben ser*, pp. 18–19; R. Beltrán y Rózpide, *La expansión europea en Africa* (*1907–1909*), Madrid: Imprenta del Patronato de Huérfanos de Administración Militar, 1910, pp. 76 ff. on the "problem of labourers".
97. "Os indígenas das províncias ultramarinas [tema] obrigaçâo, moral e legal, de procurar adquirir pelo trabalho os meios que lhes falten, de subsistir e de melhorar a própria condiçâo social": art. 1 of the *Regolamento* on labour of 1899 (D. November 9). See J.M. Silva Cunha, *O trabalho indígena*, Lisboa: Agência geral do Ultramar, 1955, pp. 151 ff. The "príncipio de coerçâo", which established a system of "trabalho compelido" under the threat of "trabalho correccional" (arts. 33–34), was a direct effect of the economic exploitation consecrated in 1885; the liberal postulate underpinning the previous *Regolamento* of 1878 was relinquished. The 1899 regime was altered, without changing its coercive basis, through the new decrees of 1911 and 1914. However its principles were derogated from by the enactment of the "Código de Trabalho dos Indígenas das Colónias Portuguesas de Africa" (Decreto 16.199, of 6 December 1928), i.e. with the ratification of the International Convention condemning slavery (25 September 1926).

98. S. Llompart, *Legislación del trabajo*, p. 10.
99. J.M. Cordero Torres, *Tratado de derecho colonial*, p. 176. See also p. 185: the law on native labour "stems from local fragmentary provisions first collected in 1907 [!] and from the fact that, through the aggregation of customary rules, a real Labour Code has been created".
100. On the Indies, C. Bayle, S.J., *El protector de indios*, Sevilla: Editorial Católica Española, 1945 ("Anuario de Estudios Americanos", 2 (1945), pp. 1 ff.); M. Norma Olivares, "Construcción jurídica del régimen tutelar del indio", *Revista del Instituto de Historia del Derecho Ricardo Levene*, 18 (1967), pp. 105–26; C.R. Cutter, *The 'Protector de Indios' in Colonial New Mexico, 1659–1821*, Albuquerque (N.M.): The University of New Mexico, 1992. On Portuguese colonial law, cf. J.M. da Silva Cunha, *O trabalho indígena*, and E. d'Almonte, "El régimen del trabajo indígena en las colonias portuguesas de Africa", *Revista de Geografía Colonial y Mercantil*, 7 (1910), pp. 484–8, doubting the extension of the described system to Spain. On Guinea, J.M. Cordero Torres, *Tratado de derecho colonial*, pp. 173 ff.
101. J. Maldonado Macanaz, *Arte de la colonización*, p. 214.
102. Decree of the Governor General of 16 July 1912, Reglamento de la policía de la Curaduría Colonial: the main tasks of the force, defined in art. 1, are: "(1) to find and detain labourers under contract who have escaped from farms; (2) to collect idlers and tramps without a legally recognized occupation or job".
103. L. Ramos-Izquierdo, *Descripción geográfica del Golfo de Guinea*, pp. 32–4 on "Usages, customs, political and social organization of the *búbi* race inhabiting the island of Fernando Póo". See also M. Góngora Echenique, *Angel Barrera y las posesiones españolas del Golfo de Guinea*, Madrid: Imprenta San Bernardo, 1923, p. 22, with the image of the dissolute, coward and drunk *bubi*.
104. See E.V. Ynfante, *Cubanos en Fernando Póo*, p. 61: "you can't expect ... hard work" of *bubees* (author's anglicism).
105. C. Crespo, *Estudio antropológico y etnológico del bubi*, pp. 35 ff.
106. C. Mangado (C.M.F.), "De San Carlos. Fiestas de S.M. el Rey", *La Guinea Española*, 491, 10 February 1921, pp. 46–7; the patroness of San Carlos, the main *claretianos*' missionary centre, was Moreneta: see ibid., 497, 10 May 1921, pp. 142–3.
107. "El Exmo. Sr. D. Angel Barrera", ibid., 512, 10 January 1922, pp. 10–11.
108. M. Góngora, *Angel Barrera*, p. 35, with the quotations from the Madrilenian "ABC" (February 1922).
109. Failing the headword "Kolonien" in the great collection of the *Geschichtliche Grundbegriffe*, we can only refer to W. Konze, "Rasse", ibid., V (1984), pp. 135–78. See also J. Fisch, D. Groh, and R. Walther, "Imperialismus", ibid., III (1982), pp. 171–236.
110. The conceptual history we are dealing with arose precisely from this context: O. Brunner, "La 'casa grande' y la 'Oeconomica' de la vieja Europa", in *Nuevos caminos de la historia social y constitucional* [1968], Buenos Aires: Alfa, 1976, pp. 87–123. The most developed history of institutions equally starts from such a setting, of which some examples are here given: A.M. Hespanha, "Justiça e administraçâo entre o Antico Regime e a Revoluçâo", in P. Grossi, y otros, *Hispania. Entre derechos propios y derechos nacionales*, Milano: Giuffrè, 1990, I, pp. 135–204; B. Clavero, "Beati dictum: derecho de linaje, economía de familia y cultura de orden", *Anuario de Historia del Derecho Español*, 63–64 (1993–1994), pp. 7–148;

L. Mannori, "Per una 'preistoria' della funzione amministrativa. Cultura giuridica e attività dei pubblici apparati nell'età del tardo diritto comune", *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 19 (1990), pp. 323–504.

111. C. Beccaria, *Dei delitti e delle pene* (1764), ed. by F. Venturi, Torino: Einaudi, 1965, p. xxvi: "Dello spirito di famiglia", pp. 56–9.
112. Reference must also be made to U. Wolter, "Deutsches Kolonialrecht", since the author, despite ignoring the above interrelations, examines the texts of colonial law precisely "anhand des Arbeitsrechts der Eingeborenen".
113. See U. Wolter, "Deutsches Kolonialrecht", pp. 237 ff. on "Das Recht der gewerblichen Arbeiter", with bibliography. See also J. Rückert, "Libero e sociale: concezioni del contratto di lavoro fra Otto e Novecento in Germania", in R. Gherardi and G. Gozzi (eds), *I concetti fondamentali delle scienze sociali e dello Stato in Italia e Germania tra Otto e Novecento*, Bologna: il Mulino, 1992, pp. 269–389.
114. See also U. Wolter, "Deutsches Kolonialrecht", pp. 239 ff. on "das Gesinderecht" of the old Prussian code where, it is rightly held when referring to the "Züchtigungsbefugnis der Dienstherrschaft", the German regulation should be placed. However, the master's wide corrective powers should have suggested Wolter to be more cautious in asserting the voluntary nature ("die Idee des freien Vertragsschlusses") of colonial work.
115. See J. Rückert, "Libero e sociale", p. 272, who refers to the Bluntschli of *Deutsches Privatrecht* to argue that labour law was going to be conceived "as 'special law' or as private law mixed with family law, i.e. as private law which was not pure rather mixed, 'morally heteronomous'".
116. L. Moutón y Ocampo (dir.), *Enciclopedia Jurídica Española*, VII, Barcelona: Francisco Seix, about 1914, headword "Colonia", pp. 129–60; "Colonias escolares", pp. 160–64; "Colonias penitenciarias" (P. Dorado), pp. 164–80; "Colonias industriales" and "Colonias obreras", p. 164.
117. E. d'Almonte, *Los naturales de la Guinea española considerados bajo el aspecto de su condición de súbditos españoles*, Madrid: Imprenta del Patronato de Huérfanos de la Administración Militar, 1910, p. 18.
118. So reports the text (without title) by Angel Traval y Roset ("Vicepresident of the Committe of the Rural Chamber of Fernando Póo in Barcelona and former president of the Local Council of Santa Isabel") at the *Segundo Congreso Africanista*, pp. lxxiv–lxxviii; A. Pérez ("of the Committe of the Rural Chamber of Fernando Póo in Barcelona"), "Problema obrero", ibid., pp. lvi–lxxiii. See also E. Borrajo Viñas, *Demarcación de la Guinea española*, p. 35.
119. A. Traval, "Un merecidísimo aplauso", *Africa*, 4 (1910), p. 11.
120. E. d'Almonte, *Los naturales*, p. 26.
121. Rafael María de Labra's speech at the Senate took place on occasion of the 1911 Plan for Guinea (session of 17 December), and was reported in "La Voz de Fernando Póo", 17 (15 February 1911), p. 3. The speech concerned the "despicable ban enacted by the temporary Governor ... on last 15 June, and the work of *bubis*". The quoted sentence is found in the autonomous edition of the speech, Madrid: Sindicato de la Publicidad, 1910, pp. 7–8.
122. J.G. Bluntschli, *Derecho público universal*, I, p. 311. These are, quite obviously, Cicero's words (Cicero, *De legibus*, 3, 8: "The good of the people is the supreme law").

123. J.G. Bluntschli, op. cit., I, p. 314.
124. See the General Order of 16 March 1908 on the Colonial Guard, art. 2: "In each garrison, where the flag is daily hoisted with the established honours, a portrait of our august King (may God protect him) will be hanged, and inscriptions bearing maxims such as the following ones will be hanged on other walls: *Spain is the Sovereign of our Territories, The mission of the Colonial Guard is always to defend our Motherland and our August Sovereign don Alfonso XIII, Work ennobles men, Agriculture is a source of wealth*, etc."; and art. 3: "If service so allows, the Commanders of the posting will devote two hours of their time to teach their troop to speak Spanish and will instil in its members feelings of love for the Motherland and the King, and will tell them about the advantages brought about by working, so that, when returning to their peoples and tribes and once the service is over, the latter will be the first to divulge the benefits received from the Spanish Motherland to their people, thus explaining what civilization entails". In L. Ramos-Izquierdo, *Descripción geográfica del Golfo de Guinea*, pp. 295 ff.
125. Decree of 15 June 1910, in S. Llompart, *Legislación del trabajo*, pp. 53–5.
126. See "Guinea española. I. El trabajo de los indígenas. II. Los sucesos de San Carlos", *Revista de Geografía Colonial y Mercantil*, 7 (1910), pp. 384–9; and the news published in *La Guinea Española* ("La Misión católica y los sucesos de Balachá", August 1910), as main source; see also "La rebelión de Balachá", *La Voz de Fernando Póo*, 10 (1 November 1910), p. 100; and "De Fernando Póo. Sobre la colisión de Julio", ibid., 15 (15 January 1911), pp. 1–2; see also A. Traval, "Un merecidísimo aplauso". Yet, the best version summing up (years later) all the previous ones, is by C. Crespo, *Estudio antropológico y etnológico del bubi*, pp. 182–4 on the "bubi war". The historian also examines documents taken from the "Archivo General de la Administración" (Alcalá de Henares, Madrid), Sección Africa, caja G-7, exp. 2 on the "Sucesos de Balachá (San Carlos), 1911".
127. E. d'Almonte, *Los naturales*, p. 39.
128. A. Barrera, *Lo que son y lo que deben ser*, pp. 38 ff.
129. Barrera's quotation is part of a conference dated 20 June 1907, i.e. before the first provision enacted on the *bubis* work (30 August 1907). Barrera and Ramos-Izquierdo expressed a common opinion, though it was the former who had the doubtful honour of certifying the non-application of the Labour Regulation of 1906.
130. See "La Guinea Española", 491, 10 February 1921, p. 47.
131. See "Fiestas que se acostumbra á celebrar en Sta. Isabel. Carroza presentada por una factoría española", *La Voz de Fernando Póo*, 49 (15 June 1912), p. 7; "Ultimos festejos en Sta. Isabel. Carroza presentada por la Guardia Colonial", ibid., p. 11. The cover picture dates back to a period which is closer to the quotation reported in the text, and it is by *La Guinea Española*, 545 (25 May 1923), where the carriage of the Rural Chamber of Fernando Póo is shown: its building and figure are represented within the same image, with the writing "Hurrah for the King" below and the official coat of arms on one side.
132. See in general G. Pasquier, *L'organisation des troupes indigènes en Afrique Occidentale*, Paris (Thèse Droit), 1912. More specifically, E. d'Almonte, *Los naturales*, pp. 29 ff. on "Los elementos de fuerza más adecuados á las condiciones de la Guinea española"; G. Granados, "Proyecto de Organización Militar para los territorios españoles del Golfo de Guinea", in Cuarto Congreso Africanista celebrado en el Salón de Actos del Ateneo Científico-Literario-Artístico de Madrid, en los

dìas 12, 14, 15, 16 y 17 de Diciembre de 1910, por iniciativa de los Centros Comerciales Hispano-Marroquíes, Barcelona: Imprenta. *España en Africa*, 1910, xix–xxviii, also collected in *La Voz de Fernando Póo*, 16, 1 February 1911, pp. 8–11.

133. Real Orden of 26 Juanuary 1914, "Boletín Oficial de los Territorios Españoles del Golfo de Guinea", 15 March 1914, p. 45. The following figures were also awarded with medals: the tenant of the Guardia Civil, assigned to the colonies, Joaquín Moreno Sáez, the "European sergent" Angel Vals Capilla and natives (without a pension, though at least they could keep their African names) Momo Limba Musa, Yemis Dongo Batarga, Kame, Somo y Dokoko.
134. See the General Order of 16 March 1908 on the Colonial Guard.
135. The long period of colonial government included, for promotional purposes, many years of embarking war ships, as told by the *Claretian* fathers: "Nuestra colonia", *La Guinea Española*, 495, 10 April 1921, pp. 107–8.
136. M. Góngora, *Angel Barrera*, p. 106.
137. For this reason Barrera, an energic repressor of dissents, was a highly celebrated figure by the harsh press of landowners. See "Nuevo gobernador", *Boletín del Comité de defensa Agrícola de Fernando Póo*, 7 (15 September 1910), p. 56; A. Traval, "Un merecidísimo aplauso". See also C.A., "Los pobrecitos indígenas. Una política atractiva"; e Mandín, "Sublevaciones en el Muni", *La Voz de Fernando Póo*, 22, 1 May 1911, pp. 7–9, articles taken from the Barcelona newspaper *El Noticiero Universal* (April 25) and *La Vanguardia* (April 23).
138. This will be the rule from the very start (V.B.A., "Cómo trataría V. al indígenea?", *Boletín de la Cámara Agrícola de Fernando Póo*, III, 5 (31 May 1909), 59–61 where the quotation is taken from) till the end of the period in question (Ruiaz, "Nuestra agricultura", *La Guinea Española*, 509 (25 November 1921), pp. 5–6). See Father Armengol Coll, *Segunda memoria de las Misiones de Fernando Póo y sus dependencias*, Madrid: Imprenta Ibérica, 1911, pp. 226 ff. on "Moral means" for colonization; by the same author, *El misionero en el Golfo de Guinea*, ibid., 1912, pp. 74 ff on "Trato con los indígenas que no han estado en los Colegios". See also *Polisinodiales o legislación supletoria del Vicariato Apostólico de Fernando Póo*, Barcelona: Casals, 1925, especially pp. 39 ff. It should be recalled that *Claretians* were not keen on going to Guinea ever since Father A. Puiggrós murdered a girl *bubi* in the mission of Cabo Sanjuán (1894): see an interesting version in C. Fernández, *Misiones y misioneros en la Guinea española*, pp. 695 ff.
139. They may suspend the metropolitan legislation, giving account thereof to the Ministry of State (art. 4, 2 of this Decree), or even adopt extraordinary measures to preserve internal peace (art. 3). The task of "assigning individual labour" (art. 4, 11) may be also recalled, this being subject to a hearing of the "Committee of the Authorities" in this case and in the former one (art. 12, 1, and 5).
140. Report of the Colonial Department of the Ministry of State, 6 July 1912, *infra* document no. 3: "this paragraph [the 2nd of art. 24 of the 1906 Regulation], just like the provision of art. 32 of the organic Royal Decree of the Colony, undoubtedly refer to the freedom of each individual to work or not to work, as he thinks proper. Yet, when he is asked to use such individual freedom to make *collective agreements* which, for their imposing character, disturb the peace, prosperity and life of a State, or part thereof, [the provisions in questions] do not allow the governmental authority to fold its arms or abide by the provisions for peaceful citizens; these, when

ceasing to be so and turning into disturbing elements, lose their rights and always justify the Authority's extreme and dictatorial decisions".

141. Real Orden of 2 August 1912.
142. "Decrevit quondam senatus, ut L. Opimius consul videret, ne quid res publica detrimenti caperet" (Cicero, *In Catilinam*, I, 4); "Senatus decrevit darent operam consules, ne quid res publica detrimenti caperet" (Sallustius, *De coniuratione Catilinae*, XXIX, 2) [The Senate established that the consuls shall act to ensure that the republic does not suffer any damage].
143. "Fit Senatus consultum, ut C. Marius L. Valerius consules adhiberent tribunos plebis et praetores quos eis videretur operamque darent, ut imperium populi Romani maiestasque conservaretur" (Cicero, *Pro Rabiro perduellionis reo*, XX).
144. See in general S. Mendner, "Videant consules", *Philologus. Zeitschrift für klassische Philologie*, 110 (1966), pp. 258–67.
145. W.J. Ong, "Latin Language Study as a Renaissance Puberty Rite" [1959], in Id., *Rhetoric, Romance, and Technology. Studies in the Interaction of Expression and Culture*, Ithaca/London: Cornell University Press, 1971, pp. 113–41. By the same author, *Fighting for Life. Contest, Sexuality and Consciousness* [1981], Amherst (MA): University of Massachusetts Press, 1989.
146. Preamble to the Educating Plan of 1866, in F. Sanz Franco, "Las lenguas clásicas y los planes de estudios españoles", *Estudios Clásicos*, 15 (1971), pp. 242–3.
147. Preamble to the Plan of 1868, ibid., pp. 244–5.
148. Ibid., education scheme at pp. 236–9, 245 ff on the Plan of 1894. On the presence of Cicero in schools see M. Marín Peña, "Sobre la elección de textos latinos en la enseñanza media", in *Didáctica de las lenguas clásicas*, 1. *Estudios monográficos*, Madrid: Dirección General de Enseñanza Media, 1966, pp. 77–86.
149. Ban of 28 February 1907, ibid., pp. 186–8. See art. 2: "The teaching programme in force in all schools of the territories is the following: Literature and writing. Castilian grammar and spelling principles. Christian doctrine. The four arithmetic operations. The system of weights, measures and coins. Outline of Spanish history and geography. Industrial and trade notions. Notions on the harvesting of coffee, cocoa, cotton, vanilla and other products typical of such intertropical countries". See in general O. Negrín Fajardo, *Historia de la educación en Guinea. El modelo educativo colonial español*, Madrid: UNED, 1993.
150. L. Ramos-Izquierdo, *Descripción geográfica del Golfo de Guinea*, p. 84. It is a complaint on education, advanced to the Governor of Uganda, Andrés Grigengi and Buando, chief of Corisco.
151. O. Louwers, "Rapport général", in Institut Colonial International, *L'enseignement aux Indigènes. Native Education*, Bruxelles: Etablissements généraux d'imprimerie, 1931, pp. 4–75, in particular p. 45.
152. J.M. de la Torre, "La tragedia de Guinea", p. 120.
153. See in particular C. Young, *The African Colonial State in Comparative Perspective*, New Haven/London: Yale University Press, 1994, pp. 244 ff. ("Imperial Legacy and State Traditions").
154. A.J. Mayer, *La persistencia del Antiguo Régimen. Europa hasta la Gran Guerra* [1981], Madrid: Alianza Editorial, 1984.
155. A. Hochschild, *King Leopolds's Ghost. A Story of Greed, Terror, and Heroism in Colonial Africa*, Boston/New York: Houghton Mifflin, 1998.

156. See in general A. Padoa-Schioppa (ed.), *La comparazione giuridica tra Ottocento e Novecento*, Milano: Istituto Lombardo, 2001; For doctrines of international law, see S. Mannoni, *Potenza e ragione. La scienza del diritto internazionale nella crisi dell'equilibrio europeo* (*1870–1914*), Milano: Giuffrè, 1999, pp. 103 ff. ("Colonialism and civilization").
157. Cf. U. Allegretti, *Profilo di storia costituzionale italiana*, with its illustrative subtitle: *Individualismo e assolutismo nello stato liberale*, Bologna: il Mulino, 1989, pp. 120 ff. on "the *non-legality* of liberal foreign policy".
158. See in this respect the notable contribution by G. Gozzi, *Democrazia e diritti. Germania: dallo Stato di diritto alla democrazia costituzionale*, Roma-Bari: Laterza, 1999.