

Prosecuting Child Sexual Assault in Nineteenth-Century French Algeria

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In 1856, the Constantine assize court tried Auguste Payan, a twenty-six-year-old watchmaker, for the indecent assault of an eleven-year-old girl in which she contracted a venereal disease. According to the president of the court, the evidence that Payan had sexual contact with the girl was clear, but an absence of proof of physical violence led to acquittal. In the mid-nineteenth century, French law criminalized all sexual activities with children under eleven, but cases involving the sexual abuse of children aged eleven and older did not qualify as crimes unless there was proof of physical violence. The court president suggested that not only the limitations of French penal law but also the behavior of the child influenced the judicial verdict. He claimed that if the girl had not actively provoked Payan, she was at the least a willing participant and not a victim. Furthermore, the court president criticized the child's "deplorable precocity" and accused her of "scandalizing the public by her effrontery."¹ Assessments of a child's innocence and behavior similarly influenced other trials that involved child sexual assault in French Algerian courts.

Beginning in the mid-nineteenth century, the French state prosecuted sexual crimes against children in French Algeria's assize courts presided over by professional judges. During the French conquest of Algeria, which began with the invasion of Ottoman Algiers in 1830, colonial officials established a plural legal system that incorporated French, Islamic, Berber customary, and Mosaic law.² After annexing Algeria, the French state later established assize courts in 1854 to deal with the most serious criminal offenses in each *arrondissement* of Algeria. While trials by jury for serious offenses had been established in metropolitan France since the Revolution, they were not introduced in Algerian assize courts until 1870.³ Most sexual crime cases tried in the French Algerian assize courts involved child victims. Building on Judith Surkis and Sarah Ghabrial's work, this essay examines the interplay of gender, sexuality, and colonial legal order in French

¹ Archives Nationales (AN) BB/20/184.

² Judith Surkis, *Sex, Law, and Sovereignty in French Algeria, 1830-1930* (Cornell University Press, 2019).

³ Bernard Durand, "Originalité et exemplarité de la justice en Algérie (de la conquête à la Seconde Guerre mondiale)," *Histoire de la justice* 1, no. 16 (2005): 45-74.

Algeria.⁴ It focuses on the assize courts as a key site where the colonial state sought to impose order and the sexualization of indigenous subjects and children influenced the course of justice.

Colonial authorities were especially committed to prosecuting Arab men accused of sexually assaulting the children of French settlers. Commentaries from colonists on trials involving child sexual assault often revealed their disdain for certain defendants, particularly Arab and Berber offenders. They also expressed skepticism towards certain victims, particularly children they perceived to be immoral or sexually mature for their age. In the French Algerian assize courts during the latter half of the nineteenth century, the intersection of race, class, age, gender, and sexuality significantly shaped efforts to protect children from sexual harm and bring offenders to justice.

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Prosecutions of sexual crimes in French Algerian assize courts often hinged on evidence of physical violence and the victims' age. For instance, proof of physical violence was essential in cases of rape, which at the time was exclusively defined as vaginal penetration. It was also required in cases of indecent assault with violence. Prosecutions for indecent assault without violence did not require proof of violence, but the crime only applied to victims under a specific age. The French state introduced this criminal offense in 1832, making all sexual contact with children under eleven a punishable act. In 1863, the age of legal protection was raised to thirteen.⁵ However, determining a victim's age posed challenges, particularly for Algerian children, as the French state did not impose a civil registry on indigenous Algerians until 1882.⁶ The absence of birth certificates complicated investigations and trials for sexual crimes against Algerian children.

Judges often lamented the lack of birth certificates, highlighting the difficulties in prosecuting such cases. In March 1855, the Constantine assize court tried an indigenous defendant for the rape of an indigenous girl under fifteen. The court president complained of the difficulty in proving the girl's age and the age of other Arab victims of sexual crimes;

⁴ Surkis, *Sex, Law, and Sovereignty in French Algeria*; Sarah Ghabrial, "The Traumas and Truths of the Body: Medical Evidence and Divorce in Colonial Algerian Courts, 1870–1930," *Journal of Middle East Women's Studies* 11, no. 3 (2015): 283–305; Sarah Ghabrial, "Illegible Allegations: Navigating the Meanings of Rape in Colonial Algeria," *French Politics, Culture & Society* 39, no. 1 (2021): 59–82.

⁵ On the prosecution of this crime in nineteenth-century metropolitan France, see Anne-Claude Ambroise-Rendu, "Attentats à la pudeur sur enfants : Le crime sans violence est-il un crime ? (1810-années 1930)," *Revue d'histoire moderne et contemporaine* 56, no. 4 (2009): 165–89; Claire Cage, "Child Sexual Abuse and Medical Expertise in Nineteenth-Century France," *French Historical Studies* 42, no. 3 (2019): 391–421; James Donovan, "Combatting the Sexual Abuse of Children in France, 1825–1913," *Criminal Justice History* 15 (1994): 59–93; Georges Vigarello, *Histoire du viol: XVIe–XXe siècle* (Éditions du Seuil, 1998).

⁶ The Law of 23 March 1882. "Loi qui constitue l'État civil des Indigènes musulmanes de l'Algérie," *Bulletin des lois de la République française* 663 (1882): 349–53.

he observed that Arab victims never had such documents.⁷ Since Article 332 of France's 1810 penal code prescribed greater punishment, namely forced labor, for perpetrators of rape or indecent assault with violence against victims under fifteen years old, proving age through documentation was relevant to such a rape trial. Establishing the victim's age was even more crucial in prosecutions of indecent assault without violence. In 1832, France's highest court, the *Cour de cassation*, declared that convictions for indecent assault without violence against a person under eleven required the victim's birth certificate.⁸ In instances where birth certificates were missing, judges could exercise discretion when convicting offenders, particularly juveniles. Birth certificates were usually requested for both the victims and the accused, especially when the accused was a minor. However, requests for such documents from indigenous Algerians typically proved unsuccessful, providing judges and juries with greater latitude in rendering their verdicts.⁹

French colonial jurists grappled with the question "what is a child," and sometimes justified leniency toward an offender when they considered the victim's physical or psychological development to be advanced beyond their years. In the 1855 trial of Léon Bensamon, for example, the president of the assize court of Bône claimed that the victim's physical development suggested she was older than her actual age, ten. He declared, "She looked to be thirteen or fourteen" due to her "vigorous and southern nature" as a Sardinian. Consequently, the jurist insisted that Bensamon's prison sentence be cut in half on account of these circumstances. The penal code recommended five to twenty years imprisonment for indecent assault without violence against a child under thirteen; the Bône court applied extenuating circumstances and sentenced Bensamon to two years. The jurist's note that Bensamon came from an honorable family also explained the reduced sentencing.¹⁰ Notions of physical maturity, ethnicity, and honor collectively shaped this trial's outcome.

French colonists debated whether certain children deserved legal protection from sexual contact and discussed the implications of early puberty. Colonial doctors, serving as medical experts in the courts, commonly argued for the precocity of Algerian girls, including those victimized by sexual crimes.¹¹ Many doctors maintained that precocious

⁷ AN BB/20/176.

⁸ *Gazette des tribunaux*, no. 2845, 2 October 1834.

⁹ See, for example, the trial of Miloud ben Barka ben Iba at the assize court of Oran on 30 March 1855. AN BB/20/176.

¹⁰ AN BB/20/176.

¹¹ On precocity, sexual abuse, and age of consent, see Courtney E. Thompson, "Child-Mothers and Invisible Fathers: The Paradox of 'Precocious Maternity' and the Pervasiveness of Child Sexual Abuse in Nineteenth-Century America," *Journal of Women's History* 34, no. 4 (2022): 125-146; Laura Lammasniemi, "'Precocious Girls': Age of Consent, Class and Family in Late Nineteenth-Century England," *Law and History Review* 38, no. 1 (2020): 241-66; Victoria Bates, *Sexual Forensics in Victorian and Edwardian England: Age, Crime and Consent in the Courts* (Palgrave Macmillan, 2016); Victoria Bates, "The Child as Risk: Precocious Girls and Sexual Consent in Late

physical development was natural for Algerian females due to the tropical climate. Such ideas about precocious indigenous puberty were rooted in racialized assumptions about Algerians, Arabs, and colonial subjects. Doctors also posited that beyond race, climate, and environmental factors caused precocious puberty in young Algerian children.¹² In 1855, Émile-Louis Bertherand, a colonial doctor and medico-legal expert in Algiers, claimed that Algeria's hot climate engendered precocious puberty. Bertherand observed, "The Arab woman is nubile from nine to ten years old."¹³ In 1860, Doctor Cauquil, former mayor of the Algerian city of Oran, questioned whether the physical signs of early puberty, resulting from "the fertile influence of hot climates," should be viewed as signs of adulthood. He disagreed, noting that, "The young girl finds herself in this strange position, which seems a contradiction of nature; she is a woman from ten to eleven years old in her capacity to be impregnated, while she is still a child in all other respects." Cauquil emphasized that even if she is nubile, "she is no less a child."¹⁴ While some doctors like Cauquil argued otherwise, many colonial doctors sexualized indigenous Algerian children, contending that their supposed precocious physical development led to precocious sexuality.

Colonial medical understandings of precocious sexuality often undermined the pursuit of justice in sexual assault cases. In his 1884 treatise on forensic medicine in Algeria, French physician Adolphe Kocher explicitly linked precocious sexuality to the question of consent. He suggested that victims he considered sexually precocious were less credible, stating that, "One of the most difficult points to clarify in the case of rape is to determine the degree of consent of the victim at the time of the attack. When the first signs of nubility appear in young Arab girls, they feel desires that they quite easily consent to letting be satisfied."¹⁵ Kocher's work shows how colonial authorities and doctors viewed indigenous victims' reports of sexual assault with skepticism, often dismissing allegations, particularly when victims were from Arab families whom he considered to be in a "state of revolting promiscuity." As Kocher further explained, "An accusation of rape brought under these conditions would obviously lose much of its gravity."¹⁶ Even certain European children faced similar scrutiny. In cases of indecent assault without violence

Victorian Britain," *Law, Crime and History* 7 (2017): 126-44; Ishita Pande, *Sex, Law, and the Politics of Age: Child Marriage in India, 1891-1937* (Cambridge University Press, 2020).

¹² Adolphe Kocher, *De la criminalité chez les Arabes au point de vue de la pratique médico-judiciaire en Algérie* (J.B. Baillièrè & fils, 1884), 45, 239; Paul Bernard, *Des attentats à la pudeur sur les petites filles* (Doin, 1886), 32; É.-L. Bertherand, *Médecine et hygiène des Arabes* (Baillièrè, 1855), 190; Adolphe Armand, *Médecine et hygiène des pays chauds et spécialement de l'Algérie et des colonies* (Challemel aîné, 1853), 446.

¹³ Bertherand, *Médecine et hygiène des Arabes*, 190.

¹⁴ Cauquil, *Études économiques sur l'Algérie, administration, colonisation, cantonnement des indigènes* (Adolphe Perrier, 1860), 77.

¹⁵ Kocher, *De la criminalité chez les Arabes*, 193.

¹⁶ Kocher, *De la criminalité chez les Arabes*, 194.

that involved underage children, the question of consent often arose, despite consent being categorically impossible under the law. Nonetheless, some judges and juries concluded that certain children were not truly innocent or sufficiently childlike to merit legal protection.

Assessments of the morality of the victims or their families appeared to play a decisive role in some verdicts. A judge's unfavorable opinion about a victim's mother's character often led to the dismissal of accusations. Similarly, judges also acquitted accused individuals when they deemed either the victim or their mother to be disreputable. The 1855 trial of François Césaire Casteau, a French-born businessman, provides a case in point. Accused of the indecent assault of a girl under six years old, Casteau had been living in the home of the girl's mother. The child reported that he had put his hands under her skirt and his mouth on her genitals. A medical exam found that the girl's hymen was intact, and the court president construed the doctor's finding to be proof that sexual assault had not occurred. He also dismissed the case due to lack of witnesses, the child's age, and the mother's reputation. The jurist considered the accused to be a man of good moral character—in contrast to the mother's "most scandalous reputation"—and acquitted Casteau.¹⁷ Similar dynamics played out in 1855 trial of Antoine Dunogué, a French-born tailor, accused of the indecent assault of an eleven-year-old boy. The boy's mother reported that the accused had stayed in her home and shared a bed with her son, who subsequently contracted a venereal disease. The president of the Algiers assize court, unconvinced, characterized the mother as neglectful and of living "in a state of debauchery." The jurist also found the child's testimony to lack credibility. Consequently, the court acquitted Dunogué. Remarkably, despite Dunogué's prior arrest for theft, his word carried greater weight in court than the testimony of the child and his mother.¹⁸

Acquittals were rarer in trials involving indigenous defendants, especially when the victims were French colonists. The assize court of Oran convicted an Arab man in 1855 for sexually assaulting a French boy despite a lack of proof of violence. The court president observed, "The case was all the more serious, as it was an attack committed on the child of a European settler."¹⁹ Judges applied evidentiary standards unevenly, often lowering them when they tried indigenous defendants. Judges' verdicts were harshest in cases where indigenous defendants were accused of assaulting colonists' children. In 1860, the president of the Philippeville assize court emphasized the need to protect settlers' children from sexual assault, declaring, "This heinous and too frequent crime...must be rigorously repressed in order to protect the children of settlers who are most often the victims of it."²⁰ The jurist's claims about the children of French settlers outnumbering indigenous children as victims of sexual crimes were unfounded, given that the Arab and Berber populations

¹⁷ AN BB/20/176.

¹⁸ AN BB/20/176.

¹⁹ AN BB/20/176.

²⁰ AN BB/20/176.

were significantly larger than the settler minority.²¹ However, his statement indicates how sexual crimes committed against settler children were more likely to result in prosecution and conviction.

Colonial authorities constructed narratives concerning the perils of the sexual exploitation of children living in both urban and rural areas. In 1856, the president of the assize court of Bône, situated in northeast Algeria, issued a grave warning about the daily threat of sexual assault perpetrated by Arab men. He declared, "It is excessively dangerous for...young girls to venture alone into the countryside in the vicinity of Arab tribes."²² Similarly, in 1860, the president of the Philippeville assize court maintained that the children of colonists faced a heightened vulnerability to sexual assault due to the nature of their parents' work in the countryside, which rendered constant supervision nearly impossible.²³ The president of the Bône assize court echoed this concern during the 1860 trial of a French colonist accused of sexually assaulting an eight-year-old girl. The child, the daughter of French settlers, revealed during the investigation that soldiers had also sexually assaulted her at the age of four. The court president noted that these previous assaults did not diminish the severity of the perpetrator's actions, and the court sentenced him to five years of hard labor. Both the victim and offender had worked together in the fields. The jurist observed that colonists working the land were unable to monitor their children constantly; consequently, the French state had a duty to protect these vulnerable children by vigorously prosecuting sexual crimes. He stated, "Public morals and, failing that, the force of the law protects them against such acts of debauchery and depravity."²⁴ Colonists also saw sexual danger lurking in cities, particularly densely populated districts in Algiers and other urban areas where they maintained that sexual assaults of children frequently occurred. In 1858, the president of the Algiers assize court stated that mothers feared for their young children every time that they left the house for this very reason.²⁵

Colonists also advanced narratives portraying pederasty and sodomy as pervasive forms of sexual danger in Algeria, attributing these practices to the supposed sexual proclivities of Arab men.²⁶ Prominent colonial doctors claimed that pederasty, rape, and same-sex sexual assault were common among Arabs.²⁷ Many jurists shared this view. In their 1899 treatise on Algerian penal institutions, the law professors Émile Larcher and Jean Olier declared, "Like all Orientals, the Arab is a sodomite, and his appetites are

²¹ AN BB/20/220/2.

²² AN BB/20/184.

²³ AN BB/20/220/2.

²⁴ AN BB/20/202.

²⁵ AN BB/20/202.

²⁶ On sexualized claims about Arab men in twentieth-century France, see Todd Shepard, *Sex, France, and Arab Men, 1962–1979* (The University of Chicago Press, 2017).

²⁷ Bertherand, *Médecine et hygiène des Arabes*, 6; Armand, *Médecine et hygiène des pays chauds*, 416.

bestial.”²⁸ Jurists expressed vitriol toward indigenous men accused of sexually assaulting boys, particularly the sons of French colonial settlers. The president of the Algiers assize court observed in 1855, “This crime, frequent in Algeria as a result of the shameful habits of *indigènes* [indigenous subjects], becomes even more frightening when young French people are victims of it.”²⁹ When discussing another 1855 trial, of an indigenous farmer for the sexual assault of a son of French settlers, the president of the Oran assize court claimed that “Muslims’ dissolute mores” gave rise to Arab men sexually assaulting boys. Referencing another trial involving a Muslim man’s assault of a Muslim boy that same month, the jurist railed against sodomy, which he claimed was “the customary vice of the natives.” He also condemned the depravity he saw in “these corrupt peoples.”³⁰ Nonetheless, he acknowledged a distinction between consensual sex among men and male sexual violence towards other men. He argued that Arabs accepted the former but rejected the latter.³¹ However, other French colonists often blurred the distinction, dismissing same-sex sexual assaults as consensual acts. In 1863, the military physician Camille Ricque declared, “As for indecent assaults on the same sex...Usually there is mutual consent. This infamous vice is so ingrained among the Arabs that one must almost despair of finding an effective means of repression.”³² Many French colonists viewed cases of same-sex sexual offense involving indigenous defendants to be part of the broader problem of Arab men’s so-called sexual perversion.

Additionally, some colonists linked indigenous offenders’ sexual assaults with superstitious beliefs, such as the “virgin cure” for venereal disease. The president of the Bône assize court articulated this view when discussing the 1860 trial of an Arab man for the sexual assault of a five-year-old European girl. The medical expert who examined both the accused and the child found that both had syphilis. The court convicted the defendant and sentenced him to seven years of hard labor. The court president deemed the punishment appropriate, particularly on account of the race of perpetrator and victim, as well as the transmission of venereal disease. He observed, “The natives suffering from this disease often have this superstition of believing that they can get rid of it by inoculating it into a virgin.” He continued, “It is therefore important in all respects to punish such errors with vigorous severity, especially when European children are the victims.”³³ Like many other colonists, he regarded sexual crimes to be more serious when French or other European children were involved.

²⁸ Émile Larcher and Jean Olier, *Les institutions pénitentiaires de l’Algérie* (Rousseau, 1899), 39.

²⁹ AN BB/20/176.

³⁰ AN BB/20/176.

³¹ AN BB/20/176.

³² Camille Ricque, “Études sur la médecine légale chez les Arabes,” *Gazette médicale de Paris*, no. 10, 7 March 1863.

³³ AN BB/20/220/2.

Indeed, French colonists prosecuted sexual crimes most vigorously and imposed the harshest penalties in cases in which Algerian men faced charges of sexually assaulting the children of European settlers. As a result, colonial sexual offenders likely operated with greater impunity. French legal and medical authorities framed cases of Algerian men sexually assaulting boys within broader narratives about Arab men's "sodomitical" nature and the pervasiveness of Algerian sexual deviance. However, some jurists questioned whether the courts should be lenient in cases of sodomy between Algerian adult men and young boys due to 'native mores.' The president of the Algiers assize court in 1857 declared, "This act, so justly odious in our eyes, is openly tolerated in native customs."³⁴ The president of the Tlemcen assize court in 1862 echoed these sentiments and observed, "The natives do not and cannot be fully aware of the criminality of the act they have committed."³⁵ Discussions of leniency typically occurred in trials involving Arab and Berber victims, rather than crimes involving European children.

Venereal diseases in both accused and victim often strengthened cases against offenders and resulted in harsher punishments. For example, in 1860, the Constantine assize court tried an Arab man for the sexual assault of a young boy originally from Malta. The medical expert summoned by the French state to examine the boy determined that he had contracted venereal disease and displayed visible signs, including sores on his face. The court convicted the defendant and sentenced him to six years of hard labor. The public prosecutor in Constantine viewed the punishment as appropriately harsh, given the severity of the offense and the harm inflicted on the child. The prosecutor lamented that this sexual assault had "put the unfortunate victim on the double path of moral depravity and of an illness that was perhaps without remedy."³⁶ Cases involving sodomy and venereal disease could compound the social stigma of sexual assault, particularly in the eyes of those who viewed not only the perpetrator but also the victim as consequently morally depraved.

Colonial authorities acknowledged the challenges of securing justice, particularly in cases involving indigenous complainants. Material evidence and testimonies were hard to collect, particularly when reported offenses occurred far from urban areas and judicial circuits. Colonial authorities struggled to establish indigenous people's identity. They often accused Arabs of duplicity and false testimonies, and acknowledged the uncertainty of oral proof, especially due to language barriers and imperfect translations.³⁷ They regarded physical evidence as more reliable. The absence of forensic or other physical evidence often led to acquittals when judges deemed victims' testimony ineffective.

³⁴ AN BB/20/192.

³⁵ AN BB/20/247/1.

³⁶ AN BB/20/220/2.

³⁷ *Tableau de la situation des établissements français dans l'Algérie en 1840* (Imprimerie Royale, 1841), 163; Ricque, "Études sur la médecine légale chez les Arabes"; AN BB/20/237.

Moreover, many victims remained silent altogether and never reported their sexual assaults to colonial authorities.

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In conclusion, bias against indigenous subjects and victim blaming often played significant roles in trial verdicts in the French Algerian assize courts during the nineteenth century. Colonial jurists commonly expressed contempt for indigenous offenders and sympathy for victims, particularly the children of colonists. In other cases, they expressed sympathy for the defendants, particularly bourgeois colonists they deemed “respectable,” as well as contempt for victims they perceived as immoral. Many colonists sexualized indigenous children and maintained that their precocious physical development fostered precocious sexuality. They questioned whether the law should protect supposedly sexually precocious children, as well as indigenous children who lacked birth certificates verifying their age. French colonists crafted narratives about sexual danger in Algeria, emphasizing sexual deviance among Algerian subjects, particularly pederasty and sodomy among Arab men. These medical and legal discourses on sexual violence, children, and indigenous people shaped the prosecution of sex crimes in nineteenth-century French Algeria. Colonial jurists exhibited varying attitudes towards defendants and victims, influenced by their notions of race, class, age, gender, and sexuality. These attitudes, in turn, shaped the uneven pursuit of justice and imposition of colonial order in cases involving child sexual assault.

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