

## **Boundaries of Solidarity: Territoriality and French Social Security for the Self-Employed During the Fourth Republic**

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The Fourth Republic acquired social security legislation full of promise. Although the Resistance had not set out a detailed plan for social security, the Liberation ordinances of October 1945 claimed to embody its spirit of social justice and solidarity.<sup>1</sup> Then, during the twelve months from their enactment to the adoption of the October 1946 constitution, an attempt to implement universal social security met with widespread, steadfast opposition. Resolving this impasse fell to the new legislature of the Fourth Republic, whose record on social security would remain modest. Indeed, for one observer writing a decade after the Liberation ordinances, French social security appeared, “frankly speaking, . . . partial and *grandement lacunaire*.” not only did the system fail to cover the whole population in France, but its extension to Algeria and to other overseas territories remained incomplete.<sup>2</sup>

In large measure, these shortcomings arose from arrangements for the self-employed on one hand and from a notion of territoriality as it applied to social security on the other. In the Liberation ordinances this notion of territoriality, which tied eligibility for social security to residence in the *métropole*, ensured the coverage of the immigrant workers on whom the reconstruction effort was to so heavily rely. Its often-unexpected implications came to a head, however, when applied to arrangements for the self-employed. Refusing citizens a pension on the grounds that they resided or had worked outside the metropole, whether across the Mediterranean or simply across the border in Belgium, had ramifications for the legitimacy of the Fourth Republic and the French Union.

### *Liberation Reforms and the Self-Employed*

The Liberation reforms were enacted in two ordinances. The first, dated October 4, 1945, served as a constitution for the *caisses* which, in the words of the *exposé des motifs*, were to

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<sup>1</sup> Valat, “Résistance et sécurité sociale.”

<sup>2</sup> Lyon-Caen, *Manuel de droit du travail et de la sécurité sociale*, 325. All translations are my own.

form the administrative structure in which a plan covering “the whole of the population against all factors of risk” could “progressively” unfold.<sup>3</sup> The second ordinance, dated October 19, reformed the interwar *assurances sociales* (social insurance) scheme, which had covered industrial and commercial wage and salary earners.

The notion of territoriality pervaded the Liberation reforms. The *caisses* established by the October 4 ordinance were to partition the metropole, so that “affiliation” with a particular *caisse* would be determined by place of residence rather than, say, membership of a mutual society or union. On a different scale, the October 19 ordinance stipulated that “foreign workers . . . and their dependents are entitled to social insurance benefits if their place of residence is in France.”<sup>4</sup> This represented a vital concession to immigrant workers, whom the government intended to recruit for the reconstruction of the country.<sup>5</sup>

French legal expositions refer to this principle of territoriality, which moreover arises in various legal domains, including taxation;<sup>6</sup> historical accounts of French social security have, by contrast, overlooked its significance. This reflects in part a blinkered focus on social security as it developed in the metropole, in part the lack of attention to migrants as its beneficiaries. When the Liberation reforms were enacted, however, France was not a compact nation-state, and immigrant laborers were not the only people who traversed borders for work.

If the vision underpinning the Liberation reforms had come to pass, the *régime général* enacted by the Liberation ordinances would have expanded to cover all residents of the country—and all residents would have paid contributions into this general scheme. Instead, from the outset, various sectors of the workforce secured the right to remain covered by and to contribute to existing occupational schemes known as *régimes spéciaux*. These included *fonctionnaires* or public servants in all tiers of government, as well as employees of public utilities and enterprises like water, electricity, gas and the railways. Special arrangements also applied to those in agriculture.<sup>7</sup>

Another sector of the workforce which refused to join the *régime général* were the self-employed.<sup>8</sup> At this time the sector accounted for no less than one-third of the entire metropolitan workforce.<sup>9</sup> An attempt to bring them into the fold in 1946 resulted in a fierce backlash, which saw many refuse to pay contributions.<sup>10</sup> The government capitulated, and on the basis of the recommendations of a committee comprising representatives of the various groups, the parliament passed a law, dated January 17, 1948, establishing autonomous *caisses* for three so-called sections: artisans, commerce and industry, and the liberal professions.<sup>11</sup>

<sup>3</sup> “Ordonnance n° 45-2250 du 4 octobre 1945 portant organisation de la sécurité sociale,” *Journal officiel de la République française: Ordonnances et décrets*, 6 October 1945, 6280–86. The October 4 ordinance was printed without its *exposé des motifs* due to controversy over the plan, but is nonetheless quoted in virtually every study of French social security. See, for example, Palier, *Gouverner la sécurité sociale*, 74.

<sup>4</sup> “Ordonnance n° 45-2454 du 19 octobre 1945 fixant le régime des assurances sociales applicable aux assurés des professions non agricoles,” *Journal officiel de la République française: Ordonnances et décrets*, 20 October 1945, 6721–31.

<sup>5</sup> Weil, *La France et ses étrangers*, 54.

<sup>6</sup> See, for example, Niboyet, *Traité de droit international privé français*, vol. 4.

<sup>7</sup> Palier, *Gouverner la sécurité sociale*, 111–12. A complete list of the initial *régimes spéciaux* is set out in “Décret n° 46-1378 du 8 juin 1946 portant règlement d’administration publique pour l’application de l’ordonnance du 4 octobre 1945 portant organisation de la sécurité sociale,” *Journal officiel de la République française: Lois et décrets* (hereafter abbreviated as *JO*), 9 June 1946, 5106.

<sup>8</sup> The so-called “*non-non*”: non-agricultural non-salaried workers. I have not found any suggestion in the literature that this designation reflected the refusal of these groups to join the *caisse unique*.

<sup>9</sup> Bordes and Guillemot, *Marché du travail*, tableaux 2.3A–C, 64–67.

<sup>10</sup> Galant, *Histoire politique de la sécurité sociale française*, 105–16.

<sup>11</sup> “Loi n° 48-101 du 17 janvier 1948 instituant une allocation de vieillesse pour les personnes non-salariés,” *JO*, 18 January 1948, 562–64.

Rather than provide a full suite of social insurance—income replacement in case of illness and maternity, the reimbursement of medical and funeral costs, and a pension following invalidity and retirement—these *caisses* or funds offered only a pension on retirement at age sixty-five, provided the person had carried out their occupation for a certain number of years, usually ten. The funds were also responsible for collecting compulsory contributions, from which two types of pension were to be financed: a non-contributory, basic *allocation* for those already retired, or who would retire before their contributions could amount to an adequate contributory pension; and a contributory pension.

By the time the legislation for the self-employed came into force, the notion of territoriality established by the Liberation ordinances had become a tacit principle of French social security. Its application with respect to the pension for the self-employed proved contentious, however, for a government whose European borders had expanded to encompass the Italian communes of Briga and Tenda, and which intended to retain a firm grip on what the constitution of the Fourth Republic called the French Union, including *départements*, old and new, in Algeria and the so-called *vieilles colonies* of Guadeloupe, Martinique, Guyane and Réunion.

### *Unintended Consequences*

The Ministry of Labor and Social Security began to receive enquiries relating to the territoriality of the pension soon after the legislation came into force. In December 1949 senator Marc Rucart wrote to the minister on behalf of a shopkeeper in Reims, who had been informed by a fund that although he was required by law to become a member and make contributions, only years of professional activity in the metropole could be taken into account when determining his eligibility for the pension.<sup>12</sup> Rucart, a former justice minister, asserted that “nothing in the Act . . . rules out taking account of years of activity in a territory of the French Union.”<sup>13</sup> The minister replied that “in its present state” the legislation should be understood as applying “neither to persons residing outside metropolitan territory nor to situations arising from this fact.” To be eligible for a pension those who had at some point in their working life set up shop outside the metropole might therefore need to keep working—and making contributions—after reaching the age at which their metropolitan counterparts could retire.

Those in similar situations who had already retired had no means of recourse. For one man who had worked in Morocco, this constituted “an act of ostracism.” His letter to the ministry, dated November 1950, describes the process involved in applying for a pension. His application, number 6897, comprised certificates of birth for himself and his wife, marriage, residence, taxation, matriculation on the register of a Chamber of Commerce, and a declaration by the Chamber of Commerce that he had carried out a commercial activity from 1909 to 1932. In his letter to the ministry he also included a curriculum vitae: “From March 1909 to 1932, resident of Casablanca, representative and agent of a food company; . . . 1915 to 1920, member of the Moroccan Committee of Economic Studies; 1920 to 1926, elected member of the Chamber of Commerce and Industry of Casablanca.” As a postscript he added: “From September 1914 to the end of 1918, President of the anti-German league, under the patronage of Marshall Lyautey. I was also called up from August 1914 to May 1915 in Morocco.” And he concluded:

The decision by the *caisse* has so taken me by surprise that I cannot believe, Monsieur le Ministre, that old French *commerçants* who, as in my case, worked in Morocco from 1909 to 1932, during a particularly

<sup>12</sup> For a biographical note on Marc Rucart see Jolly, *Dictionnaire des parlementaires français*.

<sup>13</sup> Marc Rucart to the Ministre du Travail, 20 December 1949, Archives Nationales de France, cote 19900547/8 (formerly DSS 3344, hereafter abbreviated as ANF:19900547/8).

troubled and very dangerous period, who tolerated enormous difficulties resulting from foreign competition, who popularized French products and propagated the influence of our country in the Protectorate, should be excluded from the right to a modest pension.<sup>14</sup>

The ministry nonetheless confirmed that his application could not be accepted: “You cannot claim the pension as you carried out your professional activity in NORTH AFRICA”—these words typed out in capital letters. A couple who had worked as justices of the peace in Tunisia before retiring to the metropole met with the same response, despite the support given to their application by the local prefect.

The territorial restriction also adversely affected people who retired to a location outside the metropole. In March 1950 a butcher who had worked in Paris before moving to what he described as “Belgian territory, a few hundred meters from the French border,” wished to make a lump-sum payment so as to qualify retrospectively for a contributory pension. The fund returned his check along with a letter in which the director did not fail to mention that while people of “foreign nationality” were eligible for the pension so long as they resided in the metropole, his application had to be rejected. “Allow me to express my surprise,” the butcher wrote to the ministry, “that a foreigner might obtain this pension and that an old Frenchman might be excluded (as well as from the allocation for the financially needy).”<sup>15</sup> The ministry dispatched a reply confirming that the fund had correctly applied the law.

Others still working faced the prospect of being required by law to make contributions, only to become ineligible for a pension by retiring abroad. Such was the case of a shopkeeper in a small town in south-west France, who upon retirement intended to live with his family in Spain. After searching “in vain” he wrote to the ministry asking to be directed to a fund which would honor his pension in these circumstances.<sup>16</sup> From the archival record it would appear that the usually diligent staff at the ministry left his letter unanswered.

These cases caught the Ministry of Labor and Social Security off guard. The legislation authorized the pension funds to collect compulsory contributions from all liable residents of the metropole—and only residents of the metropole. In contrast to the Liberation ordinances, however, the drafters of the January 1948 act would appear to have taken the notion of territoriality for granted. Deputy Director of Social Security Francis Netter spoke frankly of the shortcomings of the legislation in a presentation in March 1951:

We at the Ministry of Labor were troubled by a note in [a recent social security] bulletin concerning the rights of French people abroad. Let me state from the outset the embarrassment in which we find ourselves. As the question was not raised during the drafting of the 17 January 1948 act, the text does not cover the situation of foreigners in France or of French abroad. This leads us to construct a theory with a view to resolving the difficulties which could arise tomorrow in the absence of any legislation. I am going to give you some pointers, without claiming to completely resolve the question.<sup>17</sup>

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<sup>14</sup> T. M— to the Ministre du Travail, ‘Retraite des Vieux Commerçants ayant exercé au Maroc’, 6 November 1950, ANF:19900547/8.

<sup>15</sup> P. B— to the Directeur de la Sécurité Sociale, 2 May 1950, ANF:19900547/8.

<sup>16</sup> R. D— to the Ministre du Travail et de la Sécurité Sociale, 10 September 1950, ANF:19900547/8.

<sup>17</sup> Francis Netter, ‘Intervention à la séance du Comité National du 2 mars 1951 sur les droits des étrangers et des Français à l’étranger’, 29 March 1951, ANF:19900547/8. For a biographical sketch of Netter, who served as directeur-adjoint of the department from 1945 to 1964, see Valat, *Histoire de la Sécurité sociale*, 44.

The first principle, according to Netter, derived from the legislation itself: only years of activity carried out in the metropole could be considered when determining eligibility for the pension. This followed somewhat obliquely from a section of the act which required that a person be enrolled on an appropriate professional register.

Netter illustrated this principle by referring to a case involving a woman who had introduced herself as the “widow of Mr Joseph L—, director of a food produce company” based in Geneva. “All three directors [of the company] were French,” the woman had told the ministry, and “the employees all Savoyards. The products came from Lorient and Boulogne, the poultry from the Bresle valley was used to stock the hotels of the French region.” “Madame Veuve L—,” as the official response addressed her, added that her husband, at eighteen years of age, had volunteered for the “Tonkin expedition of 1891” and later, “like all good Frenchmen living abroad for the Great War!” Now living in Paris, where she was born, the woman had applied for a pension, and had seen her application refused. As Netter told the meeting, “a Frenchman who carries out business affairs in Switzerland for twenty years has no claim . . . because he was not enrolled on the French register of commerce during those twenty years.” By implication, his widow also had no claim.

The second principle followed from a ruling by the Conseil d’Etat, which confirmed the territoriality of the Liberation ordinances: the “silence” of the legislation, as Netter put it, must be taken to mean that citizens and foreigners stood on an equal footing before the law, so long as they lived and worked in the metropole.

Netter then considered the rights of people who left the metropole. In respect of claims for a non-contributory pension, Netter suggested that eligibility should depend on the age at which the person moved. If the person left before retirement, the claim should be rejected; otherwise, Netter suggested, funds could interpret the act “liberally” and continue to make payments: “This would be a generous gesture, one not expressed in the letter of the law but in its spirit.”

The question became clearer in the case of contributory pensions. Netter stated that the ministry had “always upheld the principle that . . . contributions secure an entitlement which must be satisfied regardless of where the interested party resides.” Nonetheless, more than two years would elapse before the government, following consultation with representatives of the three sections, decreed that contributory pensions should be paid regardless of place of residence.<sup>18</sup>

The same decree also stipulated that non-contributory pensions could only be paid to residents of the metropole. As a consequence a woman living in Algiers, who had successfully applied for such a pension some two years earlier, saw her payments cancelled. In a letter to the ministry dated January 1954, the Algerian governor general asked if the government might not instruct funds to deal flexibly with cases involving residents of the three Algerian *départements* who were already drawing a pension. The ministry replied that while the entitlement to a non-contributory pension could be reinstated if a person returned to live in the metropole, no payments could be made beyond its borders.

Under the terms of the Franco-Italian peace treaty, signed in Paris in February 1947, those borders now encompassed the former Italian communes of Briga and Tenda.<sup>19</sup> In March 1952 a fund wrote to the ministry asking what should be done in the case of a person who had worked in the region since 1911:

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<sup>18</sup> “Décret n° 53-930 du 25 septembre 1953 portant règlement d’administration publique, pour fixer, au regard de la loi du 17 janvier 1948, les droits des personnes résidant hors du territoire de la France métropolitaine,” *JO*, 30 September 1953, 8534–35.

<sup>19</sup> Rioux, *La France de la Quatrième République*, 1:19.

As the Tende region has been associated with our country for a few years only, the interested party cannot justify having carried out an artisanal activity on our territory for ten consecutive years . . . . Nonetheless, to us it seems that this affair requires, for various reasons, attentive consideration which could lead to the adoption of a solution different from that generally adopted. Political considerations aside, which could justify a decision leading to the attribution of the pension, factual reasons, including that the person has produced all the necessary documents justifying her activity, and that these documents can be easily verified, leads us to think that it would be desirable to respond favorably to her application.<sup>20</sup>

The ministry agreed, advising that “all professional activity carried out in the communes of Brigue and Tende prior to their annexation to France must be considered an activity carried out on metropolitan territory.”

### *Algeria and the French Union*

Meanwhile the government had taken no action to extend the pension legislation to the other parts of the French Union.<sup>21</sup> The penultimate article of the January 1948 act itself required that a bill to this effect be introduced into the parliament within six months of promulgation. In April 1951, more than three years later, senator Rucart asked what had become of the draft legislation. The minister replied that “the said extension cannot be envisaged until the different funds whose establishment is foreseen [by] the act have been put in place.”<sup>22</sup> Variations on this sort of circular logic served as a convenient excuse for inaction throughout the remaining years of the Fourth Republic.

This legislative inaction represented a penalty for firms which operated in French Union. In May 1951 the minister received a representation from the director of a company dealing in reinforced concrete. The company had recently relocated its headquarters from Paris to Brazzaville, and the move had caused the director to lose his affiliation with a pension fund. This struck him as “prejudicial,” and he wished to know how his “rights could be maintained.”<sup>23</sup> The minister replied with the now standard formula that until the January 1948 act had been extended to the territories of the French Union, nothing could be done.

In many of these territories, moreover, the small number of potential members made the establishment of professional funds financially unviable. With this in mind the French Order of Veterinary Surgeons wrote to the ministry in March 1952 asking if the twenty-five colleagues who were authorized to practice in Morocco, of whom only sixteen were active, could be allowed to join the metropolitan fund under exactly the same conditions as their metropolitan colleagues: “The practicing veterinary surgeons of Morocco, and particularly the younger ones among them, wish to be affiliated with a pension fund.”<sup>24</sup> From the perspective of the metropolitan fund, too, the enrolment of younger colleagues must have represented an attractive proposition. In this instance the response from the ministry presented a different order of difficulty: “A bill extending the pension for the self-employed to Morocco cannot be drafted

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<sup>20</sup> Caisse autonome nationale de l'Assurance vieillesse artisanale to the Ministère du Travail et de la Sécurité sociale, ‘Attribution de l'allocation à requérante ayant exercé activité dans région Tende’, 20 March 1952, ANF:19900547/8.

<sup>21</sup> Terral, “Soixante ans d’extension de la législation sociale dans les DOM,” 18.

<sup>22</sup> Marc Rucart to the Ministre de la Santé Publique et de la Population, 2 February 1951, ANF:19900547/8.

<sup>23</sup> L. B— to the Ministre du Travail, 26 May 1951, ANF:19900547/8.

<sup>24</sup> Président de l'Union Vétérinaire du Maroc to the Ministre du Travail, 1 March 1952, ANF:19900547/8.

by my department, and neither can it be discussed by the French Parliament, given that this territory benefits from legislative autonomy.”

Algeria also benefited from such legislative autonomy. The Algerian parliament had in 1949 established social security schemes mirroring those in the metropole: one for commercial and industrial wage and salary earners, one for *fonctionnaires* and one for the agricultural sector. Legislation to “coordinate” these schemes with their metropolitan equivalents also followed, allowing people to move between the metropole and Algeria without worrying about their pension. As in the metropole, however, legislation for the self-employed lagged well behind.

Calls to the ministry to address this shortcoming became more urgent as the Algerian war intensified. In February 1957 the president of the metropolitan fund for dental surgeons pointed out that while the January 1948 act had under its own terms required its extension to the French Union, no progress had been made. As the “events” in Algeria continued, the president requested that “a gesture of solidarity be made towards these French men and women, victims of a painful event and for which it would be the least one could do to put in place measures identical to those taken for Nansen Refugees”:

The events have turned their situation upside down, many of them have had to leave their practice and home in deplorable conditions, and those who have returned to France worryingly enquire as to what possibilities they may be able to benefit from. Some of them are of retirement age, and others have only a limited number of years of practice ahead of them.<sup>25</sup>

The Algerian governor-general finally established pension schemes for the self-employed at the end of 1957.<sup>26</sup> In the few years to Algerian independence, they enrolled some 50,000 members and paid out some 725 pensions.<sup>27</sup> But for those who had already returned to the metropole, such measures came too late.

### *Conclusion*

These letters offer a fresh perspective on the usual interpretation given to the refusal of the self-employed to join the *régime général*. For Peter Baldwin, for instance, that refusal, which symbolized “the failure of the solidaristic welfare state” in France, reflected middle-class self-interest.<sup>28</sup> In this he concurred with a view held by many who worked in the Ministry of Labor and Social Security at the time, and which has since percolated through the literature.<sup>29</sup> Indeed, the often shrill appeals to solidarity in these letters must be read with this in mind: Were not their authors the same people who had refused to make contributions to the *régime général* and, more generally, to pay taxes? The letters here do not, of course, touch on these issues; they do however recall the broader context in which French social security emerged, and in which appeals to solidarity took on a different aspect.

In demonstrating the often-unexpected consequences of territoriality, the letters also evoke a question which remained contested throughout the Fourth Republic: What social rights should citizenship entail? Tracing the elaboration of French postwar social security brings into

<sup>25</sup> Caisse autonome de retraite des chirurgiens-dentistes to Francis Netter, 8 February 1957, ANF:19900547/8.

<sup>26</sup> “Arrêté du 30 décembre 1957 concernant la création en Algérie d’un régime de vieillesse au profit des non salariés,” *Journal Officiel de l’Algérie*, 7 January 1958, 20–24.

<sup>27</sup> Lygrisse, *Histoire de la sécurité sociale en Algérie*, 126. I am very grateful to the French Comité d’histoire de la Sécurité sociale for providing me with a copy of this useful work.

<sup>28</sup> Baldwin, *Politics of Social Solidarity*, chap. 3.

<sup>29</sup> Palier, *Gouverner la sécurité sociale*, 112–13.

sharp focus what British sociologist T. H. Marshall called the social “part” or “element” of citizenship.<sup>30</sup> It moreover highlights ambiguities in the concept of citizenship itself. Frederick Cooper, for instance, in his study of *Citizenship between Empire and Nation*, noted that “social security was based on ‘solidarity,’ and hence the presumed unity and universality of French citizenry.”<sup>31</sup> This remark, while alluding to the potential for using social security to analyze citizenship during this period, nonetheless posits an inaccurate relationship between the two, for while the Liberation ordinances mention French nationality, eligibility for social security, as official records reveal, in practice depended on place of residence.

Social security provides an approach to this and related issues, and one which, in comparison to other areas of welfare-state activity, remains understudied. Since the second world war few people in France have remained unaffected by its prosaic rules. Those rules attempt to capture ideas of social justice, which may be perceived as unjust in other contexts and times. In the Liberation ordinances the most salient criterion of eligibility for social security, territoriality, served as a compromise between the rights of citizens and of immigrant laborers. As a principle underpinning subsequent developments in social security for the self-employed, that compromise circumscribed boundaries of solidarity whose repercussions continued to be felt well after the collapse of the Fourth Republic and the French Union; as a principle which allowed social security policies in Algeria to lag behind those of the metropole, it paradoxically contained the germ of discrimination which in the aftermath of Algerian independence allowed ethnicity to replace territory as the marker of social rights.<sup>32</sup>

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<sup>30</sup> Marshall, *Citizenship and Social Class*, 10.

<sup>31</sup> Cooper, *Citizenship between Empire and Nation*, 181.

<sup>32</sup> Shepard, *Invention of Decolonization*, 230.