

## **The invention of the Moroccan "*Terres collectives*," or the retardation of a rural society**

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### **1. Introduction**

In his book "Les limites de la planète"<sup>1</sup> the well-known French demographer Hervé Le Bras asks the following question *"For what reason is Africa, the continent the least populated, stagnating and even regressing in terms of its capacity to feed itself? Why do certain soils lose their fertility?"* (p.155). Among the answers he proposed, one can read: *"the land tenure is collective. **Every year**, a land chief tenant ("*chef de terre*") or a group of householders meets and distributes the plots to be sown among the different family units, according to their social importance."* Later he writes: *"the collective distribution is not favourable to high land productivity: the individual, the peasant is not directly concerned in investment in his field as the following year, the community **will allocate him another one**"*(p. 156 - emphases added).

These quotes illustrate an interesting common-thinking about what should be - or should have been - the practice of so-called "local communities" supposed to be ruled by a collective land tenure system. The periodic (frequently on an annual basis) reallocation of the fields among shareholders seems to be for many social scientists one of the main characteristics of what we call, by convention, the common property regimes (CPR). Sometimes this point is highlighted - as above - to "explain" African behaviour about investment and the ability to (non-) accumulate. From another point of view (less conclusive), this is an indication of the preoccupation within traditional societies for equality as a guarantee of the collective cohesion of the group. In line with some anthropologist assumptions, the reallocation of land on an annual basis would be the means of a strategy - conscious or not - aiming to prevent the development of accumulation, mother of stratification, in societies seen as deeply egalitarian.

Behind all these interpretations to which we shall refer, one can see a certain idea of what ought to be the effective land tenure practices of CPR. An unconscious model does exist in the mind of numerous scientists and experts, built with a patchwork of facts, preferably exotic ones. The more exotic it sounds, the more realistic it looks for a European social scientist. This seems to hold true today as much as it did at the turn of the century when some jurists believed to find this model embodied among the Moroccan rural communities who lived in

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<sup>1</sup> Flammarion, Paris, 1994.

the Gharb plain, in the northwest of the country. This subject is exemplary since it has not been limited to the scientific field but has also found its way into governmental policy, leading to important social transformations in the life of a great number of rural populations.

## 2. The making up of the "pattern"

At the beginning of the French protectorate in Morocco, jurist Louis Milliot was informed of odd land tenure practices in some communities in the Gharb region. Milliot himself never went to the field but he formulated his view of collective land tenure after he read an article written in 1904 by an officer named Salmon<sup>2</sup>. The latter provided information he had collected in a *jmaâ* (the local name for a rural community) called Nejgara, where cultivated lands were redistributed each year among shareholders by drawing lots.

After having read this text, Milliot convinced himself, along with many of his contemporaries, that these communities were the embodiment of "collective property", a historical stage within a linear and universal evolution scheme, beginning with "primitive communism" and resulting in "private ownership". "Collective property" would have been the intermediate stage in this promising way. In some aspects, the "*terres collectives*" were not unknown to the jurist interested in long-term history, since they had their reserved step in the ladder of social evolutionist theory.

Initialized by Milliot, and within this intellectual background, a pattern of organization of the "*terres collectives*" arose through both scientific and administrative papers, although in the scholarly literature no one has ever presented a comprehensive description of the common principles ruling "*terres collectives*". A "socialization" process, through semi-academic conferences, administrative meetings, technical reports, and vulgarization papers took place at the beginning of the colonization period. The notion got, in some respects, its own life despite the skepticism of some scientists, such as Jacques Berque, a civil officer assigned in the Gharb region.

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<sup>2</sup> SALMON, "Quelques particularités de la propriété marocaine dans le Rharb", in *Archives Marocaines*, T. II, Rabat, 1904.

Milliot<sup>3</sup> provided the main characteristics of which became for several generations of rural social scientists and administrative officers the "common knowledge" about the "*terres collectives*". These characteristics can be summarized as follows:

- land redistribution is periodical, by drawing lots, and it only concerned cultivated land, whereas grazing areas remained for common (joint) use.
- the community has a common ancestor, at least formally, and consequently strangers are denied any rights upon the land.
- the most important characteristic of the "collective property" is the potential equality for all the community members to have land access.
- The land is not inheritable; the community may only provide to its descendants (males only), a general access right, not a land quota or a specific plot.
- Men (householders) only hold access rights on the land; women can never become shareholders.

Obviously, this kind of scholarly exercise in social science may lead to a bias called "juridism" by Pierre Bourdieu<sup>4</sup>: the risk is to confuse the pattern (or model), built to give an understanding of the practices, and the practices themselves. In other words, one risks confusing norms and *habitus*, leading to the belief that peasant practices have for principles the pattern itself, only built to clarify these practices. To illustrate this point, it is interesting to see the debate which took place between Milliot and Michaux-Bellaire, another well-known jurist of the Protectorate. Both wanted to explain the practices using their own juridical pattern.

For Michaux-Bellaire, in the Gharb, the property had been built up according to the strength of each group: "*the householders shared the land assembling around them parents and servants*"<sup>5</sup>. They settled and cultivated this land as if it were their own, and their heirs were supposed to share it after householders died. But frequently, the heirs shared only movable goods and left the land under jointly-held property. However, Michaux-Bellaire concludes: "*it is not necessary to demonstrate how, after some generations (...), it will be practically impossible to find out the precise shares of each member of a family on a particular plot. The only positive statement possible consists of knowing that a given area is owned as a unit by*

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<sup>3</sup> L. MILLIOT, *Les Terres collectives (Bled J'maâ)*, Leroux, 1922, Paris.

<sup>4</sup> Cf. *Le sens pratique*, Minuit, Paris 1980.

*the descendants of an eponymous ancestor. That does not mean absence of private property with normal inheritance until today.*" In summary, if the initial situation goes towards "collective property" it is caused by the inability of the group to overcome the difficulties of the full enforcement of Islamic law about heritage!

Milliot rejected this interpretation arguing, with some justification, that Michaux-Bellaire overestimated notably the effectiveness of Islamic rules related to land transmission within the rural area. But his main argument against the thesis of jointly held property is the fact that the "community" cannot be reduced to the aggregation of the individuals as its components. This holistic reference is supported by the juridical concept of the "moral person", embodied in the whole community, which becomes the principle of peasant practices in Milliot's mind!

### **2.1. Elusive collective property**

When one studies administrative reports by civil officers (*contrôleurs civils*) who were in charge of the guardianship (*tutelle*) of rural collectivities, it is very difficult to find any proof that such a pattern prevailed.

Salmon, who inspired Milliot through the relation of the organization of the Nejjaras' collectivity, wrote unambiguously that the redistribution custom seems to be exceptional in the Gharb, except when the *jmaâ* land was located along important rivers. In this case, redistribution was linked to flood recession with two consequences on cultivable land:

- first, the obliteration of the field boundaries by the flood was a simple and practical reason for redistribution since it was difficult, even impossible, to recognize which householders were the tenant of the plots.
- secondly, the quality of fertilization provided by the flood was variable; even if Salmon is not explicit on this point, one can suppose that redistribution by drawing lots was more equitable from a community point of view and especially if the former field boundaries had been erased. One can analyze random redistribution through an indigenous "equity obligation" or, complementarily, as a way to avoid competition and conflicts among the householders for the better location.

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<sup>5</sup> E. MICHAUX-BELLAIRE "Le Gharb", *Archives Marocaines*, T. XX, Rabat, 1913.

Despite Salmon's concerns, Milliot considered one should rectify the point he mentioned about the exceptionality of periodical land redistribution. This "correction" allowed the "*terres collectives*" to fit the "universal theory of the evolution of societies".

Furthermore, considering agropastoral activities of almost all the Gharbs' collectivities and consequently their seasonal mobility in the past, it seems obvious that, connected with each new temporary settlement, it was necessary to undertake land distribution for the food crops to be done during the grazing cycle.

In 1947, Piersuis<sup>6</sup> revisited the Nejgara case and confirmed Salmon's statement against Milliot's opinion. His study of the Beni Ahsen tribe (which included the Nejgara *jmaâ*) states that the periodic redistribution had never been a rule throughout these collectivities. The drawing of lots took place once new lands had been settled. After that, the location of the plots remained more or less fixed, with marginal variations in relation with the number of shares within the family unit.

In 1953, a civil officer was requested to make a statement on land sharing on what had become the so-called "collectifs" in the region of Had-Kourt, a little town of the Gharb. The report stated that "*The periodic redistribution seems to have disappeared a long time ago, before the Protectorate was enforced. People do not even remember if the jmaâ once had an 'orf' [set of customs characterizing the tribal organization in the past]. Land transmission is done as if the land was under 'melk' (the traditional rural property) rules. In some cases women are even **allowed to get their share of heritage.***"<sup>7</sup>. He continued: "*Some villages, nevertheless, carry out periodical sharing. These redistributions are not the consequence of a greater custom vivacity (except in the East Sefiane tribe), **but have been produced by the more or less old intervention of the controlling authority who, in order to solve land conflicts, provoked redistributions, either on a sporadic or a periodical basis, of so-called collective land***".

Many other similar statements have been made by civil officers through the Gharb plain. Let us quote a last statement about the inheritance question. In principle, said an officer in a letter

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<sup>6</sup> PIERSUIS, *Études sur les communautés rurales en Beni-Ahsen*, F. Moncho, Rabat, 1947.

<sup>7</sup> R. BUCCOT-RIBOULAT, official correspondence dated 5/12/1953, Records of the "Direction des Affaires rurales", Ministère de l'Intérieur, Rabat.

he wrote in 1947<sup>8</sup>, land transmission through inheritance is incompatible with "collective status", but in fact, in some regions where "*collectifs*" have moved toward *melk* situation, it is frequent to see heirs receive their deceased father's collective share. Furthermore, women are not invariably evicted.

During field studies<sup>9</sup>, I got the opportunity to reconstruct the process of the field constitution in a rural collectivity under the "collective status" which we shall refer below. The "Ouled Siah" *jmaâ* is one part of a broader group which, in the past, used a wide portion of territory (*finage*) including different and complementary soils, in connection with their agropastoral activities and their seasonal moving. Gradually, long-range migration declined. The temporary camp settled on lands close to the Atlantic Ocean, which were devoted initially for grazing. It later became a village with its own *jmaâ*. The sandy *terroir* was progressively sown and land-sharing rules were set. An area was reserved and designated for sowing and sharing among the householders owning oxen.

A few years later, after the population had increased, the *jmaâ* decided to reserve a new area for sharing. The new householders (men who got married after the first sharing) participated in this distribution as did the earlier ones. And the cycle continues until the present time which resulted in eight sharing areas in 1986. The result, in terms of land distribution, can be shaped into a pyramid. The older shareholders cumulated a great number of plots. On the other hand, many young householders received only one plot, and the newest married (except those who inherited father's heritage) were still waiting for a *jmaâ* decision for the opening of a new area to be farmed. Thus the pasture land becomes scarcer under this process.

Sharing and inequality are combinative. Land inheritance does exist, but is adapted and, in a way, submitted to the sharing process. Thus, the prevalent rule was to give priority in inheritance to the older married son, or at marrying age, who has not yet received any plot from the sharing process. It is difficult to say whether this rule was systematically enforced or not. But even if this rule were "official custom" then it appears that neither the CPRs'

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<sup>8</sup> BONJEAN, Records of the "Direction des Affaires rurales", Ministère de l'Intérieur, Rabat

<sup>9</sup> Cf. A. KARSENTY, "Les '*Terres collectives*' du Gharb et la Protectorat. Modèle et réalités", in *Annuaire de l'Afrique du Nord* 1988, CNRS, Aix-en-Provence 1990

definition, nor "private property", is adequate for a sharp characterization of the prevailing land tenure<sup>10</sup>.

### **3. The invention of the collective property through the institutionalization of "*terres collectives*"**

The Protectorate policy in Morocco tried to avoid most of the radical and patently unfair aspects of colonial land tenure policy previously enforced in Algeria. A certain number of officers, within the "Bureau des Affaires Indigènes", in line with Lyautey's views, tried to put into practice the "Arab policy" of the Protectorate. It is interesting to know what was written, in 1923, by the Director of the famous Bureau:

*"Imagine what happens when an individual, educated in a milieu which has not prepared him for individual property, is granted a good coveted by brokers or speculators who offer to exchange the good against a strong and good money. The lure of money will prevail under any other consideration, and as the native is basically improvident, he will quickly sell his good with what he had been able to feed himself, his family and his heirs. And when, as a prodigal son, he will have spent all his money, he will not have any other choice but to live the tragic life of uprooted people and end up having deep hatred against society. This is the way of creating a desperate working class prompts to follow any troublemakers or agitators. Our well-understood interest is to keep the native on his land (...). This done, we must take the appropriate means to keep his heritage with him and endorse the defense of his own interest against his own improvidence<sup>11</sup>."* One cannot be more clear.

On the other hand, the Protectorate had to manage the interests of the colonial power and set aside land available for European farmers. A powerful lobby put constant pressure in this manner through the "*Chambres d'agriculture*". Consequently, legislation and its evolution reflected permanent opposition between the two wings. By granting "*terres collectives*" with a legal status, the Protectorate would protect most peasant lands against private colonization and many buyers. Nevertheless, by undertaking to define precise boundaries for each collectivity, whatever their need was for moving and further extension, the authorities, simultaneously, got other available lands for private settlement.

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<sup>10</sup> One of the characteristics of the private property is the autonomy of the landowner in inheritance rules and land alienation. It would be easy to show, in this case, that these two conditions are not filled.

The 1919 basic law, granted "tribes and other groups" the property of the land they used, but this right could only be used under the guardianship (*tutelle*) of the government. Collective property was legally inalienable but the government is authorized to acquire the ownership of it, only for creating settlement perimeters for public colonization. Lands to become "*terres collectives*" had to be demarcated. The *jmaâ* obtains the juridical personality as a "moral person" and would be able to claim in a law court through its guardianship who would be its representative.

At the beginning, the demarcation of the *jmaâ* met with some difficulties. In 1922 the Director of the *Bureau des Affaires Indigènes* noticed that convincing the *jmaâ* that this operation was done in their interest was difficult. For the peasants, the demarcation was synonymous of amputation of their *finages*. However, the *jmaâ*'s attitude would change as long as the huge operations of public settlement for European farmers became rare. Inversely, the rise of private colonization became the main threat for the *jmaâ*'s land and peasants utilized the legal status of "*terres collectives*" to put themselves under the protection of the European buyers who coveted their lands. This fact may explain why collectivities with such different land tenure arrangements were applied, more or less spontaneously, to become "*terres collectives*."

### **3.1. The embodiment of the pattern by the guardianship authority**

The 1919 basic law had not defined any rules for sharing "*terres collectives*", and merely suggested that they should be ruled according to "old customs." The officers of the *Bureau des Affaires Indigènes* in charge of the guardianship of "*terres collectives*" were solicited for the resolution of local conflicts by the *jmaâ* themselves. Without any comprehensive regulation, they were forced to arbitrate, according to the idea they had on what should be equity under a common property regime! They created a "custom jurisprudence" which gradually contributed to harmonize local practices with the intellectual pattern build up by Milliot and others.

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<sup>11</sup> Colonel HUOT, "Les *terres collectives* du Maroc", in *Afrique Française, Renseignements Coloniaux*, August 1923.



In this way, the "Conseil de Tutelle" was requested to produce a definition of the "outsider." In a decision taken in 1929, this authority stated that a non-native, who was freely welcomed into a community, who participated in all the land sharing and who supported all the duties for at least 10 years, should become a shareholder, and cannot be considered any longer an outsider. Yet progressively, civil officers came to realize that such a decision perpetuated internal exclusion of individuals or groups (slave descendants, *khammés*, shepherds, etc.) who were normally excluded from land sharing! Discovering this hierarchy they did not even imagine, the authority was obliged to state that all the men of the same village had to be given a land share although they had been excluded before... Thus, principles from egalitarian - individualist societies were transposed upon communitarian - hierarchical rural collectivities.

### **3.2. Women's eviction**

More amazing still was the attitude of the guardianship authority with the women's problem. Many officers were very surprised when they discovered women with land shares in some collectivities. The case where a widow might temporarily keep the share of the dead husband until her children got married, had been witnessed, and guarantees were granted, but other situations also occurred.

In 1952, delegates from a *jmaâ* asked the authority about the possibility for women to get shares on their "*terres collectives*." Maybe perceiving the skepticism of the officers, they explained that, as far as they knew, the women had been allowed to get their land heritage, as said by the *Chraâ* (Islamic law)<sup>12</sup>.

Less anecdotal was the situation when the authority decided to modify the land distribution system, through the generalization of an egalitarian system based upon the householders and no longer the oxen owned. During this process, some female shareholders were evicted. Indeed, before this reform and in many collectivities, the distribution was "capital-based": the land was given to anyone who could work on it. This rule was fully coherent, in a context where capital was scarcer than land. Collective rules did also take into account social redistribution within the group, between capital holders and others, through farming contracts. As the capital was fully owned and transmissible to heirs, the land share tended to be

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<sup>12</sup> Cf A. KARSENTY, "Les '*Terres collectives*' ..., *op. cit.*

permanent, and followed mobile capital. Through this process, women who inherited the capital were *de facto* holders of the land.

With the egalitarian system promoted by the guardianship authority, capital and land shares became disconnected, as shares were given by family units without considering the number of oxen. Within this new regulation, the women owning oxen (by heritage) became strictly excluded from the new redistribution system which took place after the promulgation in 1957 of the "Sharing regulation for *terres collectives*."

Even before this reform, the guardianship authority had to decide on how to arbitrate conflicts on women's access to land through the ownership of oxen. The position adopted was coherent with the idea the civil officers had on collective custom. In 1954, the guardianship authority estimated that the few women who were *de facto* land holders had to be evicted, as this situation was against "*the collective custom generally enforced within the Gharb.*" Consequently, "*it is maybe adequate to evict the few women (...) who have kept rights from a melk situation [traditional private property] that is no longer valid.*"<sup>13</sup>

#### **4. Some conclusions**

##### **4.1. About the use of models in social sciences**

Models are generally built for giving an understanding of social realities. Within positivist thinking, a proposition cannot be simultaneously true and false and most of the models are built upon this idea. Such models have coherent characteristics which are supposed to be a guarantee of their scientific basis. But, the social coherence and the model coherence itself are of different natures. Basically, I would say that one characteristic of a "rule", within a customary society, is its plasticity, which depends on the context.

In the case discussed, the proposition concerning the communities' rules was binary: they were ruled by the *Chraâ* (Islamic law) or by the *Orf* (custom). In the first case, heritage was the only means to have access to land; in the second case, heritage was incompatible with collective tenure, and communities enforced rules as the periodical redistribution to avoid the creation of individual rights through labour investment on a piece of land.

Unfortunately, the peasant's behaviour does fit into this binary logic. The actors made use of rules which are most adequate with their practical needs in singular contexts, and may use various legitimacy registers. Furthermore, the rules themselves were stakes within the communities and various balances, (always temporary) could have been found throughout the *jmaâ*, as they were stated through the reports of field officers assigned in the Gharb.

Are new social scientists, often excessively fond of social modeling, more prudent than the old jurists?

#### **4.2. About land redistribution in CPR**

The debate about periodical land redistribution is far from being closed, even in Morocco. I do not rule out the possibility of great concern about annual sharing within communities. But each time the possibility is given to verify the effectiveness of such a practice, one can remark some particular conditions involved, as for instance the importance of periodic floods. T. Park, who analyzed land tenure practices along the Senegal river on the Mauritanian border<sup>14</sup>, is very convincing when he emphasizes the importance of such a phenomenon for land redistribution and hierarchization. In his interpretation, land redistribution is a way to manage any risk for the common wealth, within some peasant societies. Since hierarchization also existed in these Moroccan collectivities, but to a lesser extent than societies quoted by Park, I would insist on practical needs for redistribution (frequent mobility in an agropastoral context, competition on the fertilized lands after flood recession) more than a global response to risk management, in an unpredictable context.

#### **4.3. About creating "new-old" commons**

The intervention of the Protectorate authority was somehow paradoxical. As people in Morocco entered a new historical period with the expansion of the economic market, French officers in uniforms propagated mythical egalitarian rules throughout the rural collectivities. As individual opportunities arose, allowing the possibility of slackening collective constraints, the evolution of land tenure organization of a broad part of the Gharb's

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<sup>13</sup> A. GUILLAUME, official correspondence, 24/02/1955, Records of the "Direction des Affaires rurales", Ministère de l'Intérieur, Rabat

<sup>14</sup> T.K. PARK, Early trends toward Class Stratification: Chaos, Common Property, and Flood Recession Agriculture, in *American Anthropologist*, vol. 94, n°1, 1992, 90:117.

collectivities was blocked and sometimes forced to revert to a stage often regarded as archaic. However, these rural collectivities had been able to adapt throughout Moroccan history. They "customized" Islamic law, especially concerning land heritage. They managed to integrate individual dynamics and the necessary group solidarities.

As for "*terres collectives*", they have been fossilized. The egalitarian rule allowing each new householder to get a share, led to the distribution of micro-plots as the population increased, and obliged individuals to look beyond the limited area to get other minimum incomes. As a result, today's farmers from the former "*terres collectives*" are the more individualist one can find throughout the Gharb's region. In fact, some attempts to set up cooperatives within these collectivities have been disastrous.

To be fair, external intervention has not been totally irrelevant. The survival of a numerous and dynamic small peasantry in Morocco (unlike in Algeria), as an asset for rural development, is partly a consequence of the legal status of the "*terres collectives*" due to the civil officers' (*contrôleurs civils*) "activism". The "*terres collectives*" were, for the most part, protected against private colonization attempts to appropriate many of them. Unfortunately, external intervention also destroyed local capacities for adapting, because conservation was confused with retardation.

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