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The Church claims 8 hectares. Two contradictory conceptions of the relationship to the land (Kasena, Burkina Faso).

Danouta Liberski-Bagnoud, CNRS, IMAF/IEA de Nantes, ECAS, 10 th of July 2015.

My present remarks are part of a general reflection on the situation of the land in Burkina Faso (West Africa) and the change of symbolic regime it is experiencing since the introduction of the legal concept of private ownership of land. The aim of this long-term research is to analyse the consequences of the conceptual change for the populations of Burkina Faso as the legal fiction transforms the land into a commodity that can be exclusively acquired, rent, or sell. These new legal and economic data have deeply modified the mode in which village communities, in this part of Africa, produce the territory, i.e. institute potential places where to stay as a human, on the back drop of a religious prohibited that rigorously excludes the land of the sphere of what we called in French "l'Avoir".

In studies on land issues in Africa, the dominant paradigm is that of "land management" with its corollary, the "competition for natural resources." The issues of the relationship of humans to the Earth are thus only dealing with the economy. This approach claiming to be "objective and rational" or "neutral" is both shared by those who claim a pragmatic and historical approach, but also by the French school of legal anthropologists who emphasize the historical and therefore singular dimension of right of property, and the incompatibility of this one with the dimension of what they call "sacred Earth" in Africa. However, considering the Earth as a "resource" is no more a "neutral" approach than that envisaged as a commodity. Both are a way to bend the world to legal and economic categories, which started within the crucible of the Scottish enlightenment in the eighteenth century. The naive utilitarianism as well as the "naturalization" of the property is a form of ethnocentrism made even stronger that it is ignored. This permits to think that the North still holds the keys to the development of the South, and to avoid to take the measure of the failure of a western mode of existence which is precisely assured by the unbridled exploitation of natural resources and which is encountering under our eyes to its ecological limits.

But above all, it allows avoiding questioning the foundation of laws and norms, here and elsewhere. If African land tenure systems in their diversity often seem "obscure and irrational", may be it is because of the tools that are used to analyse them are not suitable. Whether one classifies as "sacred" all the facts that seem strange for the reason, *such as the Law in Western societies has instituted it*, or, conversely, that one seeks to reduce these facts to suit our legal categories, the result is the same. We miss the big picture, the overall architecture that makes societies stand.

Building the analysis of a land dispute in January 2007 between the villagers and the vicar of a newly built church in the kasena village of Kaya, southern Burkina Faso, I will show that this kind of conflict between villagers and religious authorities, like those caused by subdivision operations in the provincial cities, are based on two discordant conceptions of the relationship of humans to the earth.

I will start by giving some indications on the general context. The village of Kaya, relatively isolated until the opening of roads in 2005, overcame in its history several collective events. The latest one forced the village to enter suddenly into the twenty-first century and the globalization. In 1996, the murderous intrusion of Special Forces of the army after a trivial dispute between villagers and some police has done many deaths, hundreds of young people tortured and a collective trauma which has been registered into the collective memory as the "war of Kaya". In the years that followed, various gestures of appeasement were initiated by the State, particularly in the form of new roads and a dam. Moreover, the sons and daughters of the town living in the capital and abroad, struck by this event, has

gathered funds to build a church in the concern to bring new peace for the village. The Church was inaugurated in December 2012, just a month before the land dispute broke out.

In the same time, these tragic events have shown the strength of the traditional institution of the Custodians of the Earth and its delegates, the Custodians of sacred groves. With representatives of the modern state, and at their request, they have indeed made the sacrificial rites in several wooded sanctuaries of the village to restore the integrity of the territory undermined as it had been "struck by blood."

This institution of the Guardians of the Earth receives very similar forms throughout the voltaic area of Burkina Faso to the north of Ghana. Better known in the literature under the ambiguous name of "Land Lord", "Chef de Terre" or even, completely misinterpreted of "Land Owner", the Guardian of the Earth is the one who is invested with ritual authority for regulating all issues whose purpose is the relationship of the people to the soil, the land and the Earth. Without going into details, it must be said that the Guardian of the Earth is the "one who makes dwell": he is the only one with his delegates, the Guardians of wooded sanctuaries, have the requisite power to share and give the land, draw the boundaries, found a house, open a new field in the bush. By his rituals, he founds the territory of men and ensures that it remains a territory, beyond the ups and downs of a community. It is the ultimate guarantor of fundamental prohibitions of the group, those whose transgression is jeopardizing its territorialisation work. In the core of this set of prohibitions of land, two are particularly penalized: the demarcation and sale of land. The threat that strikes the transgressor is that of being "hit by the arrow of the earth". Some researchers could say that this is only a figure of speech, and that today people don't really believe that this could happen. For others, the "taboo of land sale" is only a manner to preserve a heritage. We will see in a moment that this speech still has some effectiveness, including among the elites.

The case is as follows. A villager, resident of the territorial section Kantiolo and shopkeeper, wanting to be closer to his shop, warned the guardian of the sanctuary he would build a new house on a plot of land near the market. He asked him to perform the rite called "ba ferri", which means literally "reseat" by which a piece of land is assigned to a lineage segment for ever. Hardly had he begun to lay the bricks, the vicar of the new built Church came to challenge such allocation, opposing to the shopkeeper a property right of the Church on the field in question. The vicar showed two documents as evidence. The first, written on separate paper, stated that the Church had received a donation of 8 hectares. At the bottom of the document, the three inch mark dipped in ink, attested legitimacy of the gift, since these footprints belonged, according to the vicar, to the administrative chief of the village, the chief of the territorial section and the Guardian of the wooded sanctuary. The second document was a photograph where one could see these three men together. None of the three being yet alive, the documents had to be authenticated by a little brother of the administrative chief.

The shopkeeper, with the sons of the Guardian of the Sanctuary and the new territorial section chief, have immediately challenged the validity of the 'evidences' made. The conflict escalated, and nearly caused a new "war" in Kaya, a decade after the other. The village Councillor, who was part of the new municipal team, invited the parties to take the case to the Mayor, which lies in the neighbouring village of Tiebele.

It was the Councillor who brought the dispute before the Mayor. Out of his lengthy speech, we will retain the following arguments.

First, in good casuistry, he invoked the precedent of land granted to the School of Kaya over 25 years ago. He recalled that, following the orders of the Mayor, they had changed the documents prepared at the time, because since the gift, several houses had been built on the vast land granted to the school. It was therefore necessary to define again the plot of land that belonged to the school. This was done by the Guardian of the Sanctuary that,

followed by the leader of the territorial section, showed by walking the new boundaries, the land granted to the school. The second argument aimed to highlight the enormity of the requirement of the priest: 8 hectares! Are there other churches in the province that could claim they have received a share of 8 hectares? The development is a good thing, he added, and the people of Kaya are agreeing with it. But what is this development that is solely that of the Church? Following him, the head of the district has taken the floor to invite the mayor to come to Kaya, to show the boundaries of the land granted to the Church, and then go home. We'll see, he added, if he will succeed in achieving his home safely. But it is the response of the Mayor that certainly commands attention. He began by recusing himself, arguing that he was not responsible for land deals. He added that, moreover, these questions about land frighten him. What followed is interesting. I quote: "People came here, they brought a piece of plastic and they said it is Jesus, then they pray. Okay. Here, other people make an earth mound and they say it is their father. Why the firsts say that the Earth is not true, and that the piece of plastic is true? How can one say that the earth is not true? ". He concluded by inviting everyone to go home. He would come and see. As skilled politician, the Mayor therefore declined to decide. To date, the villagers await his visit. The shopkeeper has now finished building his house, and he lives there.

The case is exemplary in many respects. First of all, it is exemplary of what anthropologists call "legal pluralism" but that Mbambi Vincent, Professor of Law at Kinshasa, more appropriately called the "war of norms". The documents produced by the priest may appear fanciful from the point of view of the written Law but they show a willingness to use an exogenous reference to the system of prohibitions and ritual norms. The claim for an exclusive and opposable property right, the evocation of a measured land, the pretention of a cadastral boundary, are all items which belong to the system of thought that penetrates the Napoleonic Code of 1804 on which is modelled the legal system of the former French colonies.

It is according to a completely different way of thinking that Elders have conceded the land to build the Church. Take the example of the delimitation of the given field. One of the postulates of the endogenous system is that one cannot refuse anyone "a place to sit" (farmer, foreigner, Church, State: all are entitled to receive land). However, as shown in the case of the School's plot mentioned by the Counsellor, this given land is not immediately circumscribed by fixed limits. As for a house, the first limits are those imposed by the presence of other houses in the neighbourhood. The logic underlying this practice is the concern to maintain intact the legitimate expansion project that any segment has when it built a new house. If you draw definitive boundaries early on, this can interrupt the expansion project. It is for the same reason as the first year of the construction of a house, the fence is not erected by earthen walls, but by straw walls. House is like a living thing. If you lock it in too narrow limits, you run the risk of causing a stillborn. However, the excess is no longer acceptable: and in the case of the priest, alone and childless, his requirement of eight hectares duly delimited, in the absence of any new extension, appears for what it is, senseless.

In few words, the mayor said the essential, namely that what differentiates the vicar's approach of that of the villagers lies in the difference in their improvable belief. This is a matter of dogmatic foundation, to quote here a proposal of the great historian of Law, Pierre Legendre. On one hand, God, which, according to Genesis, has given the earth to men in order for them to dominate it, and, on the other hand, the Earth, which, just as God in the Abrahamic religions, cannot be owned by anyone. In other words, what deeply distinguishes the system of land ownership from the system of "sharing the earth", is the nature of "fictions" that support them.

Karl Polanyi has shown that the establishment and operation of a market economy involved creating three legal fictions: those fictions have allowed considering the land, the labour and the money as if they were goods "products" by human activity. This has allowed introducing them like any commodities on the market, and submitting them to the laws of supply and demand, i.e. the law of scarcity.

In systems where the legal is inseparable from the religious, the land-sharing regime is sustained by the ritual fiction that builds the Earth as if it were the figure of the supreme authority that guarantees the nucleus of the fundamental prohibitions.

The ownership has changed the relation of man to things. The right to dispose (i.e. to sell, to use improperly, or to destroy) produces or presupposes the separation between man and things, man and earth (G. Madjarian, 1991). The property rights only arise when we could apply them on what presents before us as separate from us. We cannot have a property rights on our self or on what enclose something of us (Gilles Deleuze). The world of the owner is a world of objects, which wants to ignore the links of belonging between humans and the places where they live, between people and the things they own.

As Marcel Mauss recalled it is always a part of oneself in everything we own. We can well hear that in the French term "appartenance". That is what the ritual also shows. In a land tenure supported by the ritual fiction of a sovereign Earth, the possession of a territory, of a place or of a house goes through the marking of the space by body. The foundation ceremony of house¹, and, later, burying afterbirths of each child born in the house (in West Africa, the afterbirth is considered as the twin of the person, his double, his "more oneself than oneself") created between this place and the segment lineage that settles there an unbreakable bond. The house could be abandoned during several generations, no other lineage could settle in this place founded for another segment. That is why one can say that the land in this part of Africa is inalienable. Some transfers can take place, abandoned land can be cultivated by others, or used by the shopkeepers of the market, but never another lineage could live there.

The ritual process by which belonging is created between people and the places where they dwell is strictly opposite to the legal process that creates the property. As G. Madjarian already stressed it in 1991, everything happens as if the invention of property had permitted to transfer the "properties" of all things in the world (proprietas in its original meaning refers to the quality of things) to the only human custodian.

I have given to you, I hope, enough evidence to suggest that the introduction in Burkina Faso, during the French colonization, of a "private property rights" for the land in its individualistic and absolute formulation of the Civil Law, was first of all a symbolic violence. Experts and other specialists largely ignore this fact. Although this symbolic violence has opened the way to economic violence whose one can now measure the devastation in the phenomenon of land grabbing.

¹ The foundation ceremony of a house resides mainly in the ritual act of burying a chick to where will later erected the altar of the ancestors. This little chick represents the future of the members of the house. His body unopened by the knife offers the image of a group that, despite the losses caused by the death, will not be diminished.