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Anthropological Perspectives on Law and Property in Algeria

Introduction

Yazid Ben Hounet & Baudouin Dupret

With a surface area of 2.5 million km², Algeria is the largest country in Africa - the tenth largest in the world - and one of the continent's leading economic powers. Its economy is still highly dependent on oil and gas exports. It has the highest GDP per inhabitant in North Africa (US\$ 7,534 in comparative purchasing power figures from 1 January 2014). and the fourth highest GDP on the African continent (US\$ 206.1 billion in 2013). With close to 40 million inhabitants (38.7 million on 1 January 2014), of which 98% are Muslims, Algeria takes ninth place in the countries of the Muslim world.

However, in spite of this privileged place on the African continent, in the Muslim world and in the MENA region (Middle East and North Africa), Algeria remains poorly known, and the works relating to contemporary Algerian society published outside of Algeria are rare. The colonisation of Algeria by the French, and the Algerian War of Independence, are the object of many publications in the French-speaking and English-speaking world alike¹; but publications in the social sciences on Algeria today are still limited in number, compared with those on Morocco and Egypt for example. This observation is valid in particular for social and cultural anthropology, a discipline which up to the early 1990s was somewhat despised by the authorities. They considered it to be a colonial science², and suspected it of promoting the theses of, and giving a university base to, Berber movements (Moussaoui, 2005). It was only in the 1990s, as the country began to embrace a multiparty system, that departments specialised in anthropology started to develop in Algeria³. However, the violence and insecurity of the "black decade" (*décennie noire*)⁵ of violence (from the early 1990s to the early 2000s) made thorough field research almost impossible. Consequently, ethnographically documented anthropological works based on data collected directly in the field have been limited in number⁶.

This book, which focuses on law and property in Algeria from an anthropological perspective thus seeks to contribute, however modestly, to our understanding of Algerian society today, through its relationships to property and to law. Beyond this, the objective of this book is to propose, in a comparative perspective proper to anthropology, new theoretical and

¹ As regards the French-speaking world, let us mention the works of Charles-Robert Ageron, Mohamed Harbi, Benjamin Stora, Daho Djerbal, Gilbert Meynier, Sylvie Thénault, Malika Rahal; as regards the English-speaking world, the works of James McDougall, Todd Shepard.

² Ahmed Ben Naoum speaks of this frustration, linked with « the guilty conscience of belonging to an 'ethnographied' society » (1993: 29).

³ Anthropology (social and cultural), the daughter (offspring) of colonialism, in Claude Lévi-Strauss's words, had a singular fate in the Algerian academy. Criticised and rejected in the first decades following Independence, the discipline is today advocated by numerous scholars. Courses (masters, doctorate, etc.) in anthropology are also being developed in Algerian universities and research centres. Some works exist on criticism of anthropology as colonial knowledge (notably Lucas and Vatin, 1975); and a few on the analysis of the institutional development of anthropology in Algeria since Independence (notably Moussaoui, 2005; and publications by the CRASC on the social sciences in Algeria). These academic publications address a number of debates on the modes and types of knowledge produced on Algeria, as do the scholars in anthropology and the related university courses.

⁵ Cf. on this issue Luis Martinez (1998) and Abderrahmane Moussaoui (2006). Abderrahmane Moussaoui (2006:13) refutes the term « Civil war » used by Luis Martinez as it "is not quite appropriate when this violence remains 'localised' in certain regions and limited to certain categories". We shall use the word used locally to define this decade of violence.

⁶ Among the rare anthropologists to carry out field research during the 1990s and the early 2000s, we can mention Abderrahmane Moussaoui, Susan Slyomovics, Judith Scheele and Tassadit Yacine.

methodological perspectives by which to apprehend the anthropology of law in a Muslim context. Algeria, as a post-colonial and post-Socialist State, whose population is overwhelmingly Muslim, proves to be a particularly interesting case to study. To focus on property law in practice, on the conflicts inherent to it, and on the strategies deployed to circumvent the law, is a particularly fruitful perspective from which to view the effects of a rapidly changing society.

In this Introduction, we shall first explain the theoretical framework of our book - property law from an anthropological perspective - and our aim - to substitute the anthropology of Muslim law for a legal anthropology in a Muslim context. Secondly, we shall discuss certain specificities of property law in the post-colonial and post-Socialist State which is Algeria. We shall, lastly, present the various chapters of this book.

Law, anthropology and property

In their introduction to the book *Changing Properties of Property*, Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Melanie G. Wiber (2006: 2) emphasise that: "Property is always multifunctional (...). It is a major factor in constituting the identity of individuals and groups. Through inheritance, it also structures the continuity of such groups. It can have important religious connotations. And it is a vital element in the political organisation of society, the legitimate command over wealth being an important source of political power over people and their labour, no matter whether we think of domestic or kinship modes of production, capitalism or communism. Property regimes, in short, cannot easily be captured in a one-dimensional political, economic or legal model".

In addition to the multifunctional aspect of property, these authors remind us that the property models in force, which claim universality, are in fact largely based on Western legal categories. The most important of these is the notion of private and individual possession, "often regarded as the apex of legal and economic evolution as well as a precondition for efficient market economies" (von Benda-Beckmann, von Benda-Beckmann and Wiber, 2006 : 3).

The issue of property and its transmission is at the very heart of any socio-anthropological investigation. It founds the economic and political relations of a society, and these relations constitute the central object of legal regulation. Social changes are also reflected in the evolution of property relations, as has been emphasised in anthropology, as well as in other disciplines of the human and social sciences.

Durkheim (1950: 152), for example, considers the protection of a "human person's property" as the second rule of human morality. He regards contract law as an extension of this situation, in the form of the acquisition and transfer of property, of which inheritance is one particular mode. Contrary to classic conceptions, for which property is linked to work and is a kind of natural law - John Stuart Mill asserts that property does not imply anything other than the right to one's personal talents, hence to what can be produced by applying these -, Durkheim remarks that property, and consequently its transfer as well as the kinship links justifying it, is a social fact. But a social fact may eventually assert itself as the "nature of things" by its sole existence, when "a certain arrangement of facts and circumstances appears unavoidable once its existence has been acknowledged" (Foliers, 1982).

Kant considers property as an intellectual link since it associates a person and a thing independently from any necessity of a physical link. This relation implies reciprocity, since for other people to admit that you have a right on something they do not possess, the ego itself must admit the equivalent right of other people on certain goods. And for this reciprocity to be established, the things must be possessed originally by a collectivity. Durkheim, starting from the Kantian conception, seeks a definition of the right to property which is abstracted from the particular modalities that it may have taken in different times and places. The first

element he identifies is the existence of an appropriable thing, whose definition obviously varies from one population to another, just as does the definition of who is entitled to possess. The second element is the relation between the owning subject and the owned thing, which Durkheim specifies as the exclusive enjoyment of the good, even if the effective enjoyment is postponed, as in the case with usufruct. This prevents other people from taking advantage of it. The question of this relation is also at the heart of the definition of property suggested by Levi-Strauss. It is no longer an objective relation between the subject and the object, but a relation between people, a relation with other people and the social structure (2002: 100), which can be described as "mediatised" by the good owned. We should also mention the materialist approach, represented by Godelier, for example, who considers that forms of property express relations of production. Law is considered here as a superstructure concealing the actual content of these relations of production, sometimes even out of step with them (law as only a fiction).

The study of property obviously cannot be reduced to Kant, Durkheim, Lévi-Strauss and Godelier. The aim here is to emphasise that all these authors engaged in a quest for an ontology of property, that is, a search for the essential properties which provide the "essence" of property. In certain respects, however, this ontology is reduced to a metaphysical approach, inasmuch as the essential nature of this « essence » worries these thinkers more than the conditions of its deployment. We shall suggest, from the Algerian context, that one should hold on to this issue of the essence of proprietary right in order to explore its praxeology, in other words, to describe ethnographically the related practices. This involves identifying the modes of appropriation of a good, the ways of certifying a right to property and exercising this right, the reasoning employed to establish causes, effects or relations, the role played by the spoken or written word, and the way important notions such as the person-good, movable-immovable, property-ownership, property-possession distinctions, etc., play out in the real.

From an anthropology of Muslim law to an anthropology of the law in a Muslim context

This book seeks, moreover, to break with the postulate of cultural exceptionality evident in legal interpretations concerning totally or partially « Muslim » societies. The works on law in these societies seem to focus on looking for the Islamic portion of the law, and to stop there – the multiplication of works on property, *waqf*, *habus*, on Islamic finance, and more generally on « Islamic law » is a perfect example. Determining to what extent such and such a portion of law, orthodoxically or heterodoxically, is Islamic, and to what extent such and such a portion of law should be explained or not by the historical development of Islamic law, tends to impose its structure on the legal phenomena and activities, instead of seeking to discover how they operate. In so doing, research fails to describe the phenomena it should be documenting and, in particular, the ways people understand, and express their understanding of, any given situation, take their bearings with respect to a context and its constraints, and behave and act in more or less orderly fashion within a similar context delineated spatially and temporarily. Even in situations where an Islamic genealogy can be identified (such as in many countries' family law), *a priori* characterisation of « Islamic law » fails to depict what people actually do in a particular legal context, when they address issues related to family. These are things which can only be investigated by describing people's practices without imposing any pre-established interpretative framework. What, then, of the domains where the relation to Islam cannot even be established genealogically!

Although this book builds on material derived from legal practices observed on the Algerian territory, it should be clear by now that its purpose is not to lay bare the secrets of some « exotic » legal universe. On the contrary, it attempts to describe these practices without prejudging what, from a legal viewpoint, may differentiate these societies from other contexts.

It does not even postulate the existence of such differences. In other words, this book relates to legal practices in an overwhelmingly Muslim environment, not to Islamic culture observed through the prism of the law. Islamic culture is but one of the many components of the context, which is always unique, never uniform, in which legal practices are deployed. To assume that this particular cultural component is fundamental incurs the risk of not paying sufficient attention to other possible components, the things on which the members of the judiciary and legal environment of these societies focus. It also risks overestimating the impact of culture. The corollary of culturalism is non-translatability; a concept formulated in Arabic could not be adequately perceived in French because its essence would only be accessible in its original formulation. We consider, on the contrary, that every phenomenon, regardless of the language of its expression, remains translatable into another language and accessible to observation and to description. This implies, however, « rather than supposedly reading over the shoulder of an imaginary native a text completed in a culturally standardised form [to read] line after line the continuous production of a real autochthonous speech. » (Moerman, 1987: 5).

It remains for us to justify the use of legal data derived from totally or partially Muslim contexts, while refusing to substantiate cultural differences. First, there are no grounds to consider a given context as more relevant, appropriate or worthy of interest in itself than any other. As this context has been largely overdetermined until now by a reference to Islam, it is not uninteresting either to show when this reference is empirically documented and when it appears as postulated and not demonstrated.

If this book succeeds in demonstrating that similarities or difference between contexts lie in many factors other than that of religion, it will have proved worthwhile, in a general atmosphere where human beings' « common humanity » seems to be denied in the name of conflicts between cultures and ineffably distinct civilisations (and, conversely, where humanity often stops at the frontiers of a « common religion »). At the end of the day, certain specificities might well be attributed to the existence of an Islamic referent, but they cannot be considered to be untranslatable. On the contrary, « their significations can be known and are naturally known: they are governed by grammatical conventions which can be determined and are part of the conceptual equipment of the human species, in spite of the differentiated empirical distribution of their effective usage and of the different types of language games observed in different cultures » (Coulter, 1989: 101).

Law and property in post-colonial and post-Socialist States

In these States, policies on property law can be explained partially by the country's particular historico-political conditions. However, these cannot account for the bulk of local practices (far from it, as we shall see later). In this Introduction we shall nevertheless depict the major features of Algerian policies in this domain, but only briefly, because the first chapter of this book inventorises and analyses the laws passed since Independence.

A recent volume on colonial law (Bras, 2015) can serve as our starting point. Through a close examination of the themes of property, legal literature, judicial personnel and attorneys, this work provides the building-blocks for an anthropology of law in Algeria. We can see how profoundly law is a historically situated phenomenon. In the case of colonial law, it is encapsulated in a specific time frame, with a precolonial “before”, made of major discontinuities, and the “after” of independence, with important effects of continuity. We can see how greatly colonial law disrupted the local, indigenous understanding of normativity: under the pretence of systematising the pre-existing law, colonial (Muslim) law actually constructed something new. Land law is a very good example of this, since it was based on incompatible tendencies: it founded law on universal principles, while at the same time

permitting colonial annexation of land. Colonial doctrine presented Islamic norms as the law of an imperfect civilisation in need of a civilising process of systematisation. After independence, we can observe how little the political break was accompanied by a legal one, but rather by the refurbishment of the colonial legacy in national terms.

As explained by Robert Young (2001 :57): « The postcolonial is a dialectical concept that marks the broad historical facts of decolonisation and the determined achievement of sovereignty – but also the realities of nations and peoples emerging into a new imperialistic context of economic and sometimes political domination. The experience of that new sovereignty typically encouraged the development of a postcolonial culture which radically revised ethos and ideologies of the colonial state and, at the same time, reoriented the goals of the independence movement towards the very different conditions of national autonomy ». We cannot understand Algerian society today if we ignore its colonial past. Colonisation and the War of Independence profoundly affected the imaginary and the representations of Algerian society, as well as the policies implemented by the newly independent Algerian State, but also by the POLISARIO Front (the Western Saharan liberation movement) and the Sahrawi Arab Democratic Republic (SADR) (see Alice Wilson's contribution in this volume). Several studies in this book account for the transformations of the ideologies and representations surrounding the issue of property and its legitimacy in post-colonial Algeria, as well as in the specific case of the Sahrawi refugee camps, under the authority of the SADR, in the region of Tinduf.

Since property is closely linked to the processes of constitution of individual and collective identity, it has a singular place in the development of States and their societies. The issues surrounding home-ownership reflect the transformations of such ideologies and of the economies proper to every State and every society. For example, the Socialist policies, in particular concerning agricultural land, the establishment of collective agricultural concerns, agrarian reform, etc., implemented by the newly independent State in the 60s and 70s, were meant to be a radical departure from those imposed by the colonial State, and thereby to restore the sovereignty of the Algerian people on its land⁷.

Do we need to go over this again? During the colonial period, Algerian society was profoundly affected by two major policies introduced by the French authorities: the Code of Indigenous Status and an unprecedented Dispossession of indigenous land rights. The indigenous regime, a regime of exception applied to the natives, was implemented by the Arab offices in the first days of the conquest (1830), then formalised as from the 1870s and confirmed by the act of June 28 1881. The Code of Indigenous Status legally enshrined the separation between the Muslim populations and the French citizens. The Crémieux decree, promulgated in 1870, granted French citizenship to the Jews of Algeria. The Muslims of Algeria were submitted to the justice of the *qadi* (Muslim judges) in matters of personal status, but also to the French laws and to specific, individual and collective measures (*finances*, *cantonement*, receivership) (Ageron, 1979). In the Southern territories, the native populations were administered by the military – unlike the department of the North (Valet, 1927; Ben Hounet, 2007).

To this exceptional legislation was added large-scale dispossession of indigenous land rights. Jean Claude Vatin [1983: 125] notes, echoing the overview made by Charles Robert Ageron, that « between 1871 and 1919 close to one million hectares (897,000) were handed over to the

⁷ « 'Postcolonialism' commemorates not the colonial but the triumph over it. The 'post' marks the many remarkable victories that should not be allowed to fade into the amnesia of history. The postcolonial era in its name pays tribute to the great historical achievements of resistance against colonial power, while, paradoxically, it also describes the conditions of existence that have followed in which many basic power structures have yet to change in any substantive way » (Young, 2001, 60).

settlers. [...] The Muslims had lost, in 1919, 7 and a half million hectares, which the State and individuals, the major capitalist societies, shared out. » More than 2,700,000 hectares, in 1940, representing 35-40% of the arable land in Algeria, were then appropriated by the settlers and the major European companies (Lapidus 2002: 589).

Both these historical realities, together with the post-colonial and post-Socialist developments experienced by Algeria, help to explain, at least partially, the importance of two issues addressed in the chapters of this book: 1) a certain mistrust of the rule of law and the authorities supposed to enforce it, along with practices for circumventing it; 2) the importance of conflicts related to land rights, whereas the latter only represents today a small proportion of the general economy of property law, as Ammar Belhimer reminds us in the first chapter.

After a period of Socialism and Collectivism, Algeria engaged in privatisation policies and, especially from the 1990s, introduced a market economy. The role played by the Algerian State in the regulation of this market economy is still substantial and a closer look shows us that switching from a Socialist-style planned economy to a market economy has been, and still is, an ambiguous move, and a challenge, which affect property law. In this no man's land between Socialism and the market economy, the use of law is problematic. Circumventing Strategies to circumvent and abuse the law have developed. Corruption is on the increase (Hachemaoui, 2013). Have we switched, then, in Algeria - to repeat the question David Stark and Laszlo Bruszt asked concerning Central Europe (1998) – « from plan to market or from plan to clan ? ».

Presentation of the Chapters

The relations between law and property should not be explained solely through the weight of culture, of the socio-political system and/or of history. The fact that Algeria, but also the Sahrawi Arab Democratic Republic (SADR), are post-colonial and post-Socialist States, does not in itself account for all the practices observable *in situ*. The general context and the singular socio-historical conditions are part of the specificity of the Algerian State and its society, but have not asserted themselves everywhere, nor in the same way. Our aim was hence to shed light on the general context and the global issues at play in Algeria, in terms of property law, without presenting them necessarily as justification of the practices reported in the different chapters of this book. We hoped simply to provide the uninformed reader with an overview of some general issues pertaining to property law in this country.

The ethnographic approach we espouse involves specific case studies aimed at emphasising practices, interpretations and justifications in their own contexts, without presupposing the weight of history, of culture, or of the socio-political system. This approach is in line with our criticisms of certain major works relating to legal anthropology and property, as well as of the anthropology of Muslim law, as explained above. The research presented here covers many aspects of the subject of Property and Law, using different types of fieldwork from many Algerian regions, including the Sahrawi refugee camps near Tinduf. It foregrounds, through the use of cases studies, the ethnographical, praxeological, and contextual dimensions of property and law. As such, this research provides a more realistic view of practices of law and property in Algeria today. It deals with the issue of legitimate claims in property, which can be invoked in different ways.

Ammar Belhimer (chapter 1) explains that the legal corpus of independent Algeria has shown a recent and precarious rehabilitation of private property law. This rehabilitation is still embryonic and not straightforward and goes against the long praised pre-eminence of public ownership, as the foundation of justice and social equality. The first constitution of the Algerian State, promulgated on 10 September 1963, did not address the issue of property, whether private or public. Subsequently, the National Charter, then the Constitution of 22

November 1976, mentioned State property, to which were ascribed quasi-mythical qualities such as absolute title and inalienability, which were deemed to constitute the highest form of social property. Recent developments betray a two-fold evolution: the maintenance of State property on the agricultural lands abandoned by the settlers in the aftermath of Independence; and the privatisation of all the other immovable goods or economic activities.

Land dispossession processes during French colonisation and legal land policies after Independence led, at least in Northern Algeria, to the existence of two distinct agricultural sectors with different modes of appropriation of land resources. The first sector includes the most fertile lands of Algeria, the plains, which were seized by the French colonisers, and were nationalised after independence. The other sector comprises the peripheral lands of the piedmont and mountain areas on which most of the Algerian peasantry were relegated. Whereas the historic forms of land appropriation were perpetuated on these peripheral lands, they were prohibited on most of the lands in the plains, first by the French colonisers and then by the Algerian State due to its collectivisation policy after Independence.

On the basis of a survey of land dynamics conducted in Algeria's Lower Cheliff plain, Hichem Amichi, Marcel Kuper, Sami Bouarfa (chapter 2) show that the old modes of appropriation of resources have returned in force regarding public land, after the process of decollectivisation started in 1987. These old forms, previously restricted to the piedmont areas, have become, despite prohibition by the State, the main regulators for access to productive resources on the most fertile lands in Algeria. These authors analyse the specificities of land appropriation in a post-Socialist context through two main social categories of Algerian farmers: 1) the beneficiaries of rights to public land use, former workers on State farms and colonial domains, on the one hand, and 2) tenants or sharecroppers, on the other hand, often Algerian peasants dispossessed of their land by French colonisation. They discuss the opposition between the right to use the land and the legitimacy gained by working the land. Their analyses are based on their observations on the proliferation of informal arrangements between the two categories of stakeholders who work the public lands at present.

The contribution of Tarik Dahou (chapter 3) illustrates the ambiguities of how the law is appealed to, but also circumvented, in the framework of the exploitation of maritime resources (corals) in Eastern Algeria. The impact of market economy penetration and of the Algerian State's alignment with international standards for natural resources management is also addressed. One of the issues is the legal mechanisms used regarding concessions of maritime resources in Eastern Algeria. Use of natural resources in the Mediterranean is governed by multiple norms, operating at global and local levels. Yet the academic literature on nature conservation does not sufficiently explore the national and local impacts of conservation processes. Since Algeria's ratification of international conventions on biodiversity (CBD, RAMSAR, CITES), the country has been engaged in re-formulating its national conservation policies. It has also been putting considerable effort into fulfilling its international commitments. Changes in legislation regarding coastal areas and new projects extending the maritime border of coastal national parks, illustrate this. The National Park of El Kala (PNEK), one of the most emblematic Mediterranean terrestrial and marine biodiversity sites, is a good illustration of how Algerian protagonists appropriate nature conservation policies at local and national levels. The example of PNEK shows how international nature conservation objectives can become blurred at the local level, as attempts to apply international conservation norms produce inequalities and pose threats to biodiversity. Although State legislation permits concessions regarding natural resources within the PNEK, in practice, the exploitation of marine resources is shaped by interactions between public and private networks. The contradictions between State-regulated access rights and exclusions are further exacerbated by the ambiguous relations between the State bureaucracy and local protagonists. In contrast to world nature conservation recommendations, the nexus of local

powers operating in the PNEK has led to intensified commodification of nature, as well as social conflicts over the appropriation of natural resources. Tarik Dahou's analysis focuses on the normative mechanisms and the disciplinary techniques used by the Algerian State to govern nature. The comparative study of two marine concessions reveals two dimensions of biopolitics: whereas, in the first concession, governed by national legislation, the enforcement of the law is obstructed by the multiplicity of norms and incomplete monitoring, in the second, an 'illicit concession', conservation norms are enforced through disciplinary methods that go beyond the law.

Judith Scheele (Chapter 4) addresses struggles over land and legitimacy in the Soummam Valley. In Algeria, property rights, as experienced on a daily basis, are notoriously slippery. Rights to real estate in particular, even where they are legally defined, always also draw on notions of history, merit and political influence, and are hence not easily contained in the law. With the frequent and often violent changes in legal regime, moreover, clear definitions of property are only rarely achieved, even in contemporary transactions. This is particularly visible in cities, but it remains equally true in the country, especially where valuable agricultural land is concerned. Land rights remain deeply political and contextual, as they do not only define rights of access and ownership, but also make statements about social and political legitimacy and 'sound' definitions of history: in other words, conflicts over property rights are both intensely local and fought out with reference to larger moral frameworks, more often than not that of the Algerian nation. This is perhaps why concrete case studies of these tensions are few and far between. Judith Scheele's paper proposes one such case study. It describes longstanding conflicts over property rights in one small part of the Soummam Valley in Kabylia, which, while they have their roots in pre-colonial times, have recently led to renewed social protest. After tracing the intricate history of these conflicts, the chapter analyses the terms in which they are fought out locally, before relating them to broader debates within the country as a whole.

Beyond this idea of legitimacy, there emerges the question of how people refer to the law and the local norms. Yazid Ben Hounet's paper (chapter 5) focuses on land-tenure in steppe-land environments (Naâma Province). He argues that the issue of land-tenure in Algeria has been and remains a problematic and a major challenge because of the policies of dispossession, nationalisation and socialisation conducted during the colonial period (1830-1962), and after the country's independence (1962). The paper deals with the application of property law concerning land-tenure in Algeria, focusing on the enforcement of the law giving access to agricultural land (1983) in a steppe-like province in Western Algeria (Naâma). It presents and analyses conflicts that have emerged from the enforcement of this law. It discusses the issue of agricultural land-tenure and raises the question of law by analysing the way people refer to the law in land-tenure disputes. These analyses enable us to understand the operative norms and rules governing agricultural land-tenure; the ways different protagonists refer to the law – that is, the uses of the law and the role of law enforcement institutions (judicial and / or administrative institutions) –, as well as the interpretations of the law by these protagonists.

To gain insight into how individuals are affected by and also utilise multiple legal and normative systems on the everyday level, Nejmi Benessaïah focuses, in chapter 6, on inheritance disputes regarding land tenure in the Beni Isguen oasis (M'zab). Historically, the Mozabites of Ghardaïa, Algeria, were governed by the *'azzaba* (priesthood), who effectively ruled as a theocracy, punishing unsanctioned behaviour through *tebria* (excommunication). Local disputes were resolved according to *'urf*, often translated as customary law, consisting of encoded verbal rules or agreements. Resources such as land tended to be managed in common, presided over by the family patriarch. A key to successful colonial rule was allowing Muslim communities to continue practicing the Islamic faith undisturbed, including the Sharia. Later, State law became a further complicating factor in power relations between

regulatory systems. The multiplicity of legal regimes has even afforded a kind of ‘forum shopping’ by litigants, based on opportunistic self-interest, as the author found in the M’zab. While formal modes of local governance were denigrated by the State, informal normative order has also been slowly eroded by conflict with the new ideas arriving through the global mass media. This chapter investigates how the presence of multiple systems of law influences the decision-making process of disputants in Beni Isguen, Ghardaia.

In the very specific context of Sahrawi refugee camps, Alice Wilson addresses the issue of compensation when property has been lost (chapter 7). Refugees may, if they do not return home, be eligible for compensation for property lost upon going into exile. Her paper considers the question of refugees being eligible for, and receiving, material compensation from other refugees in internal disputes taking place in exile. Sahrawi refugees from Western Sahara have been in exile in Algeria since 1976, following the still-unsettled conflict over these territories previously colonized by Spain. Sahrawi exiles live in refugee camps in Algeria run as a “state within a state” by an administrative fusion between the POLISARIO Front and the partially recognised authority it founded, the Sahrawi Arab Democratic Republic (SADR). Drawing on ethnographic fieldwork conducted in the refugee camps from 2006 to 2012, this chapter examines how pre-exile practices of compensation payments in internal disputes virtually disappeared in the early period of exile. This shift reflected practical and ideological reasons: in practical terms, refugees were dispossessed and thus divested of property with which to make payments, and ideologically POLISARIO focused on popular justice, which encouraged questions of compensation to be deferred until after national liberation, and discouraged questions of tribes, the social context in which compensation payments had previously occurred. Nevertheless, after the ceasefire in 1991, the judicial administration in the refugee camps was professionalized and this, together with a rise in living standards in the camps, had the paradoxical consequence that compensation payments in internal disputes reappeared to a limited degree, and in the context of tribes.

In this volume, the reference to Islamic law only becomes clear in the last chapter, which focuses on family law and inheritance; more specifically, the chapter concerns the practices of transmission of property in situations of *kafala* (legal fostering). Emilie Barraud explains that, since 1984, Algerian legislation has provided that « adoption (*tabanni*) is prohibited by the *shari’a* and the law » (art. 46). By using a doubly imperative tone and referring to the authority of Islamic law, the Algerian lawmakers intend to underscore the firmness of this official position, and to place it beyond discussion. The external observer will confirm that « adoption does not exist in Algeria since Islam forbids it ». However, ethnologies of elective parenting lead one to nuance this assertion. Adoption as defined in French law has no equivalent in Algerian law, but this does not prevent certain forms of institutionalised social parenthood (such as legal fostering, *kafala*), as well as illegal adoptions. The Family Code forbids adoption, but has substituted it since with another mode of family integration, the legal fostering, or *kafala*, of a minor, which is the commitment to maintenance and protection of a minor, but without the latter being endowed with the status of a legitimate child. Thus, under the authority of Islam, the norm would be the absence of adoption. If we admit that the *kafala* is a form of adoption, the norm would be that the « adopted » child is concerned neither by the transmission of the name, which is one of the effects of legitimate filiation, nor by the rules of inheritance attached to that legitimacy. Yet in many cases, « conservatory » provisions are taken by the parents of adopted children, in the form of legacies, donations or sales, to « protect » the fostered child. All of these are focused on circumventing the Islamic prohibition on adoption, and present new strategies of action.

Throughout the book, legal practices can be explained more by other criteria than by Islamic norms (in particular switching from a Socialist system to a market economy; the administrative constraints and difficulties encountered by a State in the making, dominated by

the annuity economy; and the experience of exile, as regards the Sahrawi refugee camps). Even in the last chapter, the practices of transmission of goods to fostered children (*makful*), although strongly influenced by Islamic law, cannot be explained solely by it, far from it. Family law is often examined in legal studies of Muslim societies, because it was long considered to be the last bastion of a declining Islamic law. Although the rule of unequally shared inheritance according to the sex of the heir has been written about extensively, the specific domain of succession has remained largely unexplored. Additionally, the a-historical assertion of a casuistic theory has attracted more research than has the ethnographic study of the practices surrounding transmission of goods.

The texts assembled in this volume offer an overview of legal practices regarding property on the Algerian territory today. They can enable us to establish comparisons with other contexts in the Muslim world. What are the prevailing practices? What place do Islamic norms concretely occupy nowadays regarding property law? On what registers and foundations do these practices rest? Rather than giving ready-made answers to these questions, we propose to go back each time to the ethnography of legal practices, to remind us that these practices can become totally meaningful only in their own contexts.

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