Research Initiative on the Economics of the Middle East Fourth workshop
Panmure House, Edinburgh
14-15 November 2019

Islam and Property Rights, a Decolonial Approach
The Algerian Case

Fatiha Talahite[1]

Draft, do not quote

Introduction

The issue of property rights is central to contemporary development theories which emphasize the role and quality of institutions. The neo-institutional theory studies the effect of property rights on the behaviour of individual agents, to show that, under the assumption of free contractual relations between agents, the model of property right that tends to impose is the most efficient. Arguing the economic supremacy of the West, these theories consider the Western model of private individual ownership as the most efficient. With respect to developing countries, on the contrary, it is believed that if their economies fail to take off, it is because their property rights systems are inefficient.

In Muslim countries, property rights, historically based on Muslim law (Hiroyuki, 2004), showed great diversity across cultures and regions. They have undergone profound upheavals because of colonial and postcolonial policies, the latter of rather socialist or liberal inspiration according to the periods and the countries.

This paper is part of a decolonial approach to property rights. After an introduction on the importance of this issue in contemporary economic theory (1) and a brief presentation of the general principles governing property in Islam (2) it examines the question of the transformation of property rights in colonial (3) and post-colonial Algeria (4).

[1] Senior researcher CNRS, Cresppa-GTM Paris fatiha.talahite@cnrs.fr

1. Property Rights in Economic Theory

1.1 The Western Conception of Property Rights

Property rights define and organize the relationship of men to land, resources, objects, assets, but also the relationships between them. They have a dual character, marked both by the need for sustainability and the need to adapt to the transformations of society and economy. While rooted in long history, they are subject to continuous changes and adjustments which do not necessarily relate to their definition, but yet affect the institutional, legal and regulatory framework in which they are exercised. These changes can be very slow, leading to many property regimes coexisting or competing.

For lawyers, property is a legal entity that gives to an owner most known uses of an asset. But its definition still depends on the legal framework of reference. Two major legal systems of European origin, Common law and Civil law, became hegemonic in the world, first with colonial and imperial expansion, then with the building of the post-colonial State and finally with globalization. Although very different, both are mainly rooted in Roman law. In particular, the conception of individual property rights in both systems is based on a definition derived from Roman law. It is a right over a property allowing a natural or legal person to use it as he wishes (*usus*), to draw from it profit (*fructus*) and to part with it (*abusus*). A formal property right is materialized by a title deed.

1.2 Property Rights in Western Economic Theory

In the history of Western economic thought, property right has been at the centre of a controversy between the liberal and socialist currents. The former sees in individual private property the foundation of the individual self-fulfilment (John Locke). The latter was for a long time focused on criticising individual private property and searching for collective alternatives, ranging from the abolition of private property (collectivization, state control) to various forms of limitation of this right in the name of the collective interest. Karl Marx delegitimized bourgeois property through his thesis on the primitive accumulation of capital and advocated collective ownership of production means of by the working class (socialization). Socialist utopias have been hampered by the failed experiments of total or partial abolition of private property in the countries of “real socialism”, thus the recent period has consecrated the triumph of individual private property.

In Western liberal political philosophy (Thomas Hobbes, John Locke, David Hume), the subjective (only individuals can be vested with this sacred right) and exclusive (there can be no simultaneous ownership of the same object) character of the right of ownership thus defined refers to the axiom of the individual's autonomy. Based on this vision, economic theory has retained the principle of exclusion to define the right of ownership as the ability to control the use of a thing to the exclusion of others[2].

Property rights are fundamental in economic theory. "Most elementary economics texts make the point that a system of property rights 'forms the basis for all market exchange', and that the allocation of property rights in society affects the efficiency of resources use" (Cole and Grossman, 2002: 317). Moreover, "the assumptions of well-defined property rights underlie all theoretical and empirical research about functioning markets" and "the literature further assumes that when rights are not clearly defined, market failures result" (ibid.). Despite this importance and unlike what could be expected, there is no consensus in economic theory about what property rights are. On the contrary, according to the two former authors, property rights "are defined variously and inconsistently in the economics literature. Moreover, the definitions offered by economists sometimes are distinctly at odds with the conventional understandings of legal scholars and the legal profession.". This vagueness suggests that such emphasis on "property rights" refers to their sanctity for the liberal political philosophy, and is more of a belief than a rational scientific approach.

1.3 Property Right as an Economic Institution

As an institution[3], the right of ownership was first viewed as extrinsic to the economic sphere[4]. In the neoclassical model, the economic agent is defined as an individual who owns one or more factors of production - land or natural resource, capital, labour - but the initial allocation of these factors is considered given.

Whereas in the neoclassical paradigm, institutions were considered as an external fact, neo-institutionalism made them an endogenous factor whose emergence, characteristics and

---

[2] Therefore, to be susceptible to private appropriation, a good must be rival and excludable from the use by others. Otherwise, it is a public good (Olson; 1965; Oström, 2003).

[3] The word "institutions" is polysemous and its meaning differs according to disciplines and currents in the human sciences. In this article, we adopt an economic definition: set of rules, norms, conventions, which determine the relationships between agents (North, 1990).

[4] In contrast, heterodox schools, such as the American institutionalism and Marxism, have from the beginning integrated institutions in their theoretical apparatus.

transformation can be explained in economic terms. Defined as rules or constraints on individual behaviour, institutions can be formal or informal[5]. Transaction cost theory analyses the effect of institutional factors on transaction costs, uncertainty, and externalities, while property rights theory focuses on the effect of property rights on the behaviour of agents.

The Property rights theory elaborated from the 1960s (Demsetz 1967; Alchian, Demsetz, 1973) studies the effect of property rights on the behaviour of individual agents under the assumption of free contractual relations between agents. It asserts the economic superiority of individual private property over any other form of property (state or collective). This is considered to be the most complete property right, in the sense that, as it permits the owner to do whatever he wants with his property, it is an incentive to manage property optimally and to maximize the output. Thus, the attribution of property rights to persons in a clear distribution would be the condition for economic efficiency.

The formalization of property rights through legal state-sanctioned instruments (documentation, certification, clear definition of legal entitlements) does reflect one of the fundamental assumptions of law and economics. Well-defined property rights affect economic efficiency in limiting transaction costs, according to the Coase theorem.

Two main features of this conception are commonly assumed by law and economics literature: the neutrality and universality of property rights; the predominance of economic efficiency over justice. This led to reproach to this theory having forgotten that within the term ‘property right’, there is the word ‘right’ that means also ‘justice’. As Deakin & al. (2017: 193) said, “property rights are too important to be left to economists”. Towards the end of the 1960s, the theories of justice (whose main figures are John Rawls, Robert Nozick and Michael Walzer) question the dogma of individual private property in the light of the principle of justice. Economists draw arguments for this in order to give an ethical foundation to the economic theory of property rights.

The neo-institutional theory is based on the transaction costs theory as well as on the property rights theory. Transposed to the macroeconomic level, this approach amounts to studying the impact of these factors on growth and development. The success or failure of a development trajectory is analysed using the notions of "initial conditions" and "persistence of institutions". These, generalized in long history, led to the explanation of the economic development of the West by the superiority of its model of property rights (North, 2005). In

[5] A formal institution is a mandatory rule that is enforced by a third party (usually the state) while standards of behavior, conventions, codes of conduct are considered informal institutions.

fact, this is a simplified and streamlined version of this model, because, in the West as elsewhere, the reality of property rights is complex and heterogeneous, as a product of the local history, culture, institutions.

As developing countries are concerned, on the contrary, it is believed that if their economies fail to take off, it is because of their inefficient property rights. Thus, the Western model is "recommended" to them insistently, especially to attract foreign direct investment (Dabla-Norris, Freeman, 1999).

Today, there is a renewed interest in the concept of property right with the neo-institutionalist development theory that emphasizes the role and quality of institutions in the context of the generalization of the market economy and its rules. For De Soto (2000), the origin of underdevelopment outside the Western world can be traced back to the persistence of local and not formalized economic structures, which prevent people from entering the official market and transform their labour and belongings into capital. For him, the Third World countries will not eliminate poverty unless they embrace the juridical language and practices of the global economy. De Soto emphasizes in particular the need to formalize property rights, including for very small activities in the "informal" sector[6]. The questions that arise therefore are the following: is the Western conception of the property right compatible with the Islamic conception? Is there an Islamic conception of property rights, and what is it?

2. Islam and Property Rights

2.1 General Principles

Right and obligation: first, it should be noted that there is there is a bias due to the translation of the Arabic word *haqq* to "right" or "law" in English *(droit* in French). This hides the fact that the conception of the right in Islam differs fundamentally from that of the West. "while the Western legal-economic thought conceives the individual both as the source and beholder of any right, a 'right' which is, in the end, 'a power conferred to the person' (Chehata 1973), in the Islamic tradition, on the contrary, the *haqq* reflects a conception of the reality as being essentiality ethical, a product of God's Will in the unity of the creation"

[6] For a critic of de Soto's theory, see Kingwill & al. (2006) and Nyamu-Musembi Celestine (2006).

(Cattelan, 2017: 29). Thus, for this scholar, "the *haqq* is not conceived anymore as the 'right' of a single person in opposition to the 'right' of another person, but (both) the right and the obligation (Kamali, 1993) make sense 'only within the unity of the two 'elements'" (ibid.).

God property and human property: In absolute terms, in Islam, the property is that of God alone. According to the holy Qur'an people are considered to be Allah's trustees in his wealth. Thus, man receives his goods from God who is the owner and who places His trust in him. Man must then use it according to God's rules so that society as a whole can benefit from it. Human property is recognized and does not contradict its absolute divine dimension. The property of humans over material goods is either individual or collective. In the case of *indivis*, owners may request that what belongs to them in undivided ownership be shared between them (each one then receives his individual lot). Contrary to divine right, the human right of property is limited. Islam allows human beings to enrich themselves and does not advocate poverty. On the other hand, the behaviour of the one who has made a fortune must be virtuous. He must pay the religious tax and give alms to the poor. The accumulation of goods is possible without limit of quantity. But it is conditioned to the lawfulness of this accumulation which requires the legality of the sources of the enrichment. The two lawful methods of enrichment are labour and trade. The *waqf* or *habous* is a property that a person has rendered to God. It presupposes that this property was previously owned by the person who gave it in *waqf*. Thereafter, it does not belong to anybody, it has left the property of the person to be regarded as falling henceforth only of the property of God, but in such a way that those whom the person has designated can benefit from it.

The contractual nature of property: « The Coran and the Sunna direct Muslims to fulfil their contracts. Contracts are considered not only binding but sacred, and fulfilling them is considered part of the faith". Prophet Mohammed's hadith «Muslims are bound by their Stipulations » (Raslan, 2006). Sharia is very flexible with regard to contract law. The principle of contractual freedom prevails. As long as the prescriptions of the Sharia are respected, the parties are free as much on the substance as on the form of the contract which will has the force of law. They can develop their own law through contract without undue formalities. Custom and practice of the parties or the trade can also form a basis for enforceable contract rights. Once the parties have agreed on the content of the contract, the contract becomes mandatory on the sole basis of this meeting of the wills. This binding force is of prime importance in Sharia because contractual obligations are sacred in Islamic law. This sacredness of the contract is binding on both individuals and states. States must respect

the treaties they sign in the same way that individuals must respect the contracts they conclude. The parties are free to decide which obligations they want to submit to. However, some contracts are prohibited. These prohibitions may either refer to the objects of the contract or to the types of obligations that are provided for in the contract. Imprecision in contracts (*gharar*) is prohibited. This rule prohibits the parties to a contract that would be speculative or uncertain. « In order for a contract to be legally valid from a Sharia perspective, the parties must have sufficient knowledge of the contract's subject matter and its value and 'effective control' over it. Accordingly, sales that are prohibited under Sharia include: sales of unknown values, sales where the object is too uncertain to be realized, sales where the future benefit is unknowable, and sales with inexactitude" (Raslan, 2006). These contracts could be close to gambling where chance plays a big role. This rule thus comes to protect public morality by forbidding believers to enrich themselves by speculating.

Justice, not morality: For Chehata (1971), the way in which an act was judged morally good or bad in the religious realm of Islam was quite different from the way in which the same act was qualified as legally valid or invalid in the temporal domain of Islamic law. For this author, Islamic law was secular and not canonical, in the sense that it was concerned with civil sanctions for breach of duty, not with moral punishment for bad intention. This system was designed to ensure that a person receives justice, not that one be a good person.

2.2 The Renewed Interest for the Islamic Conception of Property Right

Several contemporary phenomena lead to renewed interest in property rights in Islam (Cattelan, 2017; Koehler, 2015; Makdissi , 2000). As these phenomena take place in the economic sphere, the need is felt for a modernization of the economic approach of property rights in Islam. In this paper, I will just list some of these phenomena without being able to address them each : The raise of modern Islamic banking and finance ; the rehabilitation and modernization of the *waqf*, a kind of property right particular to Islam (Çizakça, 2000); the contemporary debate on the rules of inheritance in Islam, questioning gender inequality ; the growing inequalities in the global world attributed to the hegemony of the western model of property right, and the debate on an alternative conception of ownership (Von Benda-Beckmann, 2006); the debate on bioethics (does the individual have a right over his own body that allows him to do anything with it?); the debate on environment and the limits to be made to individual private property; the new theory of the *Commons* and its definition of property right as a bundle of rights (Oström, 1990); legal pluralism in both Muslim and Western

countries (Cattelan, 2017); the WTO Agreement on Intellectual Property Rights (Trips) and the issue of intangible property; etc. In what follows, we briefly address the two last issues.

Legal pluralism: Discussing Islamic economics, Valentino Cattelan (2017**)** applies a legal plural approach to property rights: "Islamic economics embodies a property theory that is alternative to the conventional one". [..] This property theory gives rise to a paradigm of economic justice that is unique to Islam." He reviews the moral approach to Islamic economics, and "challenges through legal pluralism the neutrality and universality of conventional property rights" assumed by law and economics literature. For him, the distinctive conceptualization of legal, commutative and distributive justice that belongs to Islam makes Islamic property rights unique. He assumes that "the unique paradigm of Islamic economics can contribute to the promotion of a 'plural market' in the global economy."

Is intangible property possible in Islam? The majority of scholars accept intangibles as property (Raslan, 2006). However, Hanafi school considers 'physical possession' (*Heiaza*), as the only acceptable criterion for money or wealth *(Mal).* Hanafis contend that there is no precedent in the Holy Qur'an, in Sunna or in the juristic views of the Muslim jurists where an intangible object has been subjected to private ownership or to sale and purchase. They accept only tangibles as *Mal* and eventually property, and admit intangibles, or Manfa'a, as *Mal* only if they become the subject of a contract. The three other schools (Maliki, Shafie, Hanbali) all agree that the proper criterion should be usefulness, thus, they accept both tangibles and intangibles as property. They assume that everything that is useful to people will have value for them and become the object of their transactions and they refer to prevailing customs or *Urf* to determine what is considered useful and valuable in society. As we have seen, Shari'a is very flexible with regard to contract law. The principle of contractual freedom prevails, thus, the divisibility of intellectual property rights without limit is quite acceptable: « While the owner maintains his title to the property, he could authorize others to use or exploit the property for a return subject to the conditions and limitations put forth in their agreement. Accordingly, the practice of granting exclusive and nonexclusive licenses is consistent with Shari'a » (Raslan, 2006). However, intellectual property contracts have a characteristic that could be contradictory to the Shari'a. They are often marked by an important hazard (*gharar*), either because the intellectual property object of the contract is ill-defined or secret, or because the amount of the remuneration is unknown.

3. Colonization and Property Rights

3.1 A Decolonial Approach to Property Rights

Neo-institutionalists have studied the impact of colonial institutions on development trajectories. Douglass North (1990) contrasts the success of the American colonies - which he attributes to decentralized political institutions imported from England, including property rights that promote competition and economic development - with the failure of the former Spanish colonies, where centralized feudal institutions were established. Laporta & al. (1999) argue that countries that inherited the Common Law have benefited from institutions that are more protective of property rights than those of Civil Law[7].

These theories are open to many criticisms. The extension of economic theses - such as Coase's theorem - to politics and history has been challenged (Vahabi, 2011), while the argument has been put forward that the political choices of decision-makers, while dictated by self-interest, do not necessarily lead to the most efficient institutions (Acemoglu, 2003). Similarly, the transition from the microeconomic to the macro-economic level, and then the projection of this model over the long history, raise thorny methodological questions[8].

These theories, which envisage development as a competition between nations, even between peoples[9], are based on a tautological reasoning: the West has succeeded thanks to the superiority of its institutions[10]; the West's success is proof of the superiority of its institutions. Jeffrey Sachs (2003: 38) denounced the ethnocentric nature of this vision, which attributes "high levels of income in the United States, Europe, and Japan to supposedly superior social institutions"[11].

For Daron Acemoglu and James Robinson (2015), "inclusive" institutions (including

[7] Assessing the effect of institutions inherited by Western powers on the GDP of their former African colonies, a study ranked Great Britain first, followed by France, Belgium and then Portugal (Bertocchi and Canova 2002, cited by Zouache, 2014:133).

[8] For example, the question of measuring GDP for the distant past.

[9] The term “institution”, as in Douglass North (2015), then tends to take on the meaning of culture, religion or civilization.

[10] It would be enough to measure economic "success" in terms of criteria other than GDP (inequalities, environmental impact) to bring down this whole construction (Stanziani, 2015). Moreover, the insolent growth of the Chinese economy with institutions inherited from the communist system should encourage a review of this model.

[11] Quoted by Abdallah Zouache (2014:146), who underlines this drift, drawing parallels between former American institutionalists (Veblen and Commons), influenced by 19th century racist ideas, and neo-institutionalists, who, behind the classification of institutional systems, re-establish a hierarchy between peoples, which they attempt to justify "scientifically" by cultural differences.

private property rights) have a positive impact on economic growth, while "extractive" institutions, which aim to capture resources by self-serving political elites, have a negative impact on development. These authors examined the impact of colonization strategies, as initial conditions, on the economic development paths of colonized countries (Acemoglu et al., 2001). In the former (United States, Canada, New Zealand), strong European immigration would have favoured the import of institutions from the settlers' countries of origin, particularly property rights. While elsewhere (Africa, Latin America, South Asia, the Caribbean), the weakness of colonial settlement would have led the colonial power to favour a predatory political power that had no interest in adopting the "efficient" institutions of the metropolis.[12]

Actually, this approach only considers an explanation from the point of view of the colonizer's action and the dynamics he impels. It is he alone who writes history, who has the initiative, and it is his institutions that determine the trajectory, its success or failure. The colonized and his institutions are absent. Without taking the opposite of this approach by making the colonized the engine of history, our purpose is nevertheless to bring out a vision that restores his role, through his individual and collective action, and his institutions. To this end, it is important not to limit oneself to official institutions, but also to focus on so-called informal institutions, whose vitality is essential to economic activity.

Our approach is in line with the postcolonial current in economics (Pollard et al., 2011; Zein-Elabdin, Charusheela, 2004), which consists first of all in deconstructing colonial historical data in order to reposition them under another paradigm, a prerequisite for any new interpretation. Our hypothesis is that development-friendly institutions could be those that inspire the confidence of economic agents - and not just foreign investors - in the sense that they crystallize their shared values, ethos or beliefs. These institutions can also emerge and become sustainable outside the State (Geisler, 2009)[13].

[12] However, this approach says nothing about the fate forced on indigenous peoples' institutions and the ethnocide of the first nations through the destruction of their institutions.

[13] Exploring how individuals coordinate their behavior in the absence of a formal legal system and/or central law enforcement agencies, Robert Sugden (1986) modelled the emergence and evolution of property rights using evolutionary game theory, showing that self-enforcing property rules can arise spontaneously from interactions between individuals, which find an equilibrium (Schelling point) from which none has an interest in deviating.

3.2 Colonisation of Algeria and Property Rights

"The pre-colonial Maghreb offers a unique example of modes of accession to property land ownership; a bundle of land rights inhered to one's membership in the community, and Muslim law as well as custom, the *orf* and/or local customs determined the terms of appropriation and enjoyment" (Bessaoud, 2013: 17)[14]. The matrix of property rights in colonial Algeria is above all land, including urban areas, especially in Algiers (Dumasy, 2015, 2016; Weber, 2010).

We will not return to Algerian dispossession of land or property by colonization. These are extensively described and analysed in the literature (Ben Hounet, 2018; Dupret, Ben Hounet, 2015; Sari, 1978; Rey-Goldzeiguer, 1977; Ruedy, 1967). The brutality of the conquest, with its procession of expropriations, destructions and dispossessions, created a confusing situation in terms of property ownership, a situation that was conducive to speculation and corruption (Weber, 2010; Rey-Goldzeiguer, 1977; Robe, 1848). Historical accounts of the beginnings of colonization are full of descriptions of the administrative conflicts. The colonial state then undertook "to construe private property as it was established by French law, making a clean sweep of the systems in place" (Aït Amara, 1992:187). Two laws in particular, mark the land history of Algeria: The *Senatus Consulte* of 1863, which concerned property in territories designated as "tribal" for which the tribes were declared "beneficial owners" as permanent and traditional occupants (Guignard, 2010); and the Warnier law of 1873 which subjects to French law the establishment of real property, as well as its conservation and transmission. Further, it abolished Muslim and customary law (Ait Amara, 1992) and established a Muslim "personal status" (Surkis, 2010).

Appearing to comply with the commitment made at the beginning of the conquest to respect Muslim rights and custom, the colonial administration created new categories for the classification of land ownership: as State domains, the domains of local authorities (towns and departments) and private property (francization of the islamic *melk*) and collective property (*arch*), which would later[15] be subject to operations designed to establish individual property. By "forcefully introducing the French concept of private property – as registered

---

[14] Jacques Berque (1958) described in admirable pages these systems of property rights, their proximity to the soil, defining an "ecology".

[15] During this period of transition, the colonial power will settle in the continuity of the Turkish administration, in particular in its relations with the tribes and in management of the domain of the State. Similarly, some "informal" rules governing "native" ownership in areas not directly affected by francization will persist "informally" (Christellow, 1985).

ownership of inventoried (cadastral) property", the conquest would provoke “a radical realignment for the legal relationships of ownership" (Bessaoud, 2013: 17).

Finally, property rights “francized”, resulting, within the context of colonization (which is to say, given a balance of power favorable to the occupier), in the most unequal distribution of wealth imaginable, beginning with land. "The costly procedures for establishing property ownership had mainly benefited Europeans and those who were close to the colonial administration and able to pay the costs of investigation"; colonists in this way “appropriated some 2,700,000 hectares of the best land in the country, or 27% of arable lands. In 1950, farms larger than 600 hectares occupied 87.7% of the colonized land. One in two peasants (550,000) was not an owner.” (Aït Amara, 1992:187)[16]

3.3 The Personal Status as a Colonial Status

With Western hegemony, most dominated countries adopted the law of the dominant power, to which elements of their own law and customs were more or less integrated. Ownership rights, because of their crucial role in appropriating land and resources, were generally rewritten in the interest of the colonizer (Robertson, 2005; Bontems, 2014, 2015; Bras, 2015a & b).

So, in Most Muslim countries, the legal system has been westernized, whether under colonial rule or at the own initiative of independent states, as in Turkey. However, this must be qualified, because part of Muslim law has been maintained. Under French colonial domination, this took the form of “personal status”.

Where is this concept of “personal status” coming from? Not from the Muslim law corpus, where this notion is absent. According to Wood (2016), it came from the influence of European law particularly French civil law. Botiveau (1993: 217) showed that the term *el ahwāl al shakhsiyya* (personal status) appeared for the first time in Islam under the pen of the Egyptian Quadri Pacha who studied law in France and drafted a Civil code of the family in Islam (1875), which was never adopted but served as a reference for codification. However, Quadri Pacha could not have derived this notion from the Napoleonic Code, since, as we are going to see, it refers to personal rights, not personal status. Most likely, he would have been

[16] An indigenous possessing class, however, will emerge, despite the obstacles of the colonial system. Of the 593,249 native farm owners, nearly 400,000 did not have enough land for their livelihood (less than 10 ha). Large property (1.3%) accounted for 23% of "indigenous land". An average peasantry (10 to 100 ha) was formed on 58.3% of the areas (Ait Amara, 1992).

inspired by the Warnier law for Algeria.

French colonization introduced a particular status for Algeria, the “personal status”, for which was elaborated an exceptional legislation. While it submitted to the French law the establishment of real estate property, its conservation and transmission, the Warnier Law (1873) abolished both Muslim and customary property rules in Algeria. This lead to the “francization” of property (Bontems, 2015: 316). This submission to French law followed two different paths depending on whether it applied to "real rights" (*droits réels*), relating to tangible things, or to the "right of persons" (*droit des personnes*), relating to citizenship, as both defined by the Civil code. While real rights were hereafter subject to French law, the legislator decided that the right of persons would only apply to Europeans, and he created a special status for Muslims, the "personal status". In a report to the French Parliament (*Assemblée Nationale*), Eugène Warnier argues as follows to justify this legal imposture: «We distinguish between the real status and the personal status of Muslims in Algeria. - We respect the latter, which touches on freedom of conscience, religion and the intimate life of the family in various ways; but we consider it our duty to retain the real status, the one that affects real estate interests, to submit it to French law, to the fundamental principles of our public law wherever the national flag flies" (quoted by Surkis, 2010: 45).

In this way, Warnier surreptitiously introduced a new category in French civil law, that of "personal status". He replaced the distinction between two kinds of rights (real/personal) in a distinction between status, specific to Muslims. By this legal device, the legislator invented a couple of “soi-disant” real/personal status, that didn’t exist in the civil law. So he was able to create a personal status for the Muslims, opening the way for a return to a category of the Ancient regime abolished by the French revolution. For memory, the French revolution was supposed to have abolished the status that existed in the feudal France, between the serve and the landowner, the aristocracy and the people, and replaced them with supposedly equal rights for all citizens.

This innovation had two important consequences: on the one hand, for Muslims, the right of persons was changed to personal status, depriving them of their rights as citizens; under the pretext of respecting the religion of the colonized[17], in fact, Warnier placed them out of the

[17] At the time of the conquest of Algeria, the French had undertaken to respect the religion of Muslims, a commitment they subsequently failed to honor. Thus, the Treaty of Tafna (1837) stipulated in its article 5: Arabs residing on French territory shall enjoy the free exercise of their religion. They will be able to build mosques, and perform their religious duties in every respect, under the authority of their spiritual leaders.

citizenship[18]; on the other hand, this personal status gave rise to a rewriting of Muslim law, by its integration into the French legal system. This task of francization of Muslim law was carried out by colonial lawyers, through what is known as the Algiers Law School (*École de droit d'Alger*) (Henry & Balique, 1979; Bontems, 2014). "In parallel to the *senatus-consultum* of 1865, a set of new laws helped to create a Muslim 'personal status' supposed to be unalterable and distinct from the modifiable 'real status'" (Surkis, 2010: 28).

This distinction between personal/real status for Muslims led to the invention of an immutable status for Muslims, including with respect to the rules of inheritance. While 'real rights' may be modified and adapted over time, Muslim personal status would remain static. The rest of the law, especially economic law, was francized, first to serve the interests of the colonizers (Robertson, 2005; Bontems, 2014, 2015; Bras, 2015a & b). This legislation will for a long time freeze the Muslim family and relationships within an archaic legal framework, combining the French law patriarchal conception with elements, often the most retrograde, and drawn from both the Islamic corpus and local customs[19].

According to this historian, "in most countries, *waqf* as a way of managing property has been seriously eroded by two pervasive trends: an increase in direct state control of the *waqf* institution, and the related restriction or even elimination of the family waqf". In Algeria, while religious *habous* came under the control of the colonial administration, a large part of family *habous* endowments - a significant proportion of which were created, managed and/or whose output was for the benefit of women - has been expropriated and transformed into francized property.

It is therefore from an exceptional colonial legislation that the personal status codes still in force today in Muslim civil law countries have emerged. This French colonial personal status have been renewed and generalized by the postcolonial regimes in the Arab world. Postcolonial regimes, born of a paradoxical claim of equality within western law system and recognition of their religious and cultural (more than legal) specificity have generalized the westernization of law: Egyptian civil code of 1949, inspired by the French civil law, was taken over by Iraq in 1951, Libya in 1953, Qatar in 1971 and Algeria in 1975 (Grimaldi, 2003). These regimes have renewed the separation introduced by the colonizer between

[18] "While it promises to 'protect' this personal status, this law makes it a de facto institute. This right therefore symbolizes the insurmountable legal (and implicitly religious) difference of the "Muslim" - and therefore its non-assimilable character" (Surkis, 2010: 46). Being a Muslim becomes a status.

[19] Although referring to Islam, this legislation cannot be considered Islamic law. Islamic Law as a legal system - with its own modalities of functioning, its courts, its jurisprudence, its pluralism (Cattelan, 2017), its relation to local customs - was eradicated by colonization.

family law (personal status) which is to be a separate law, outside the general conception of the law in force, and the rest of the law. Because it does not belong to the same referent as the rest of the law, it cannot evolve in coherence with it and is condemned to remain archaic.

As Judith Tucker mention, "many countries including Syria, Egypt, Tunisia, Libya, the United Arab Emirates, Lebanon, Kuwait and Pakistan, have either abolished or greatly restricted the family *waqf* in way that limit the duration and/or the beneficiaries of the endowment". Finally, "the significance of family *waqf* for property management, for men and women alike, is now largely a thing of the past" (Tucker, 2008: 166).

3.4 What to remember from this period?

With the abolition of Muslim law and custom and the replacement of these by French property law – a process called the Francization of land[20] - it was an entire organization of social and economic life, elaborated and transmitted across the centuries, a way of inhabiting the territory, which was dismantled; It was the secular balance between man and his environment that was upset and destroyed. At independence, the question arose of how to (re) inhabit this territory once liberated from the colonial yoke. Returning to the previous organization was utopian, but was it necessary to renew the colonial system? This was the tragic dilemma of decolonization.

According to the typology of Acemoglu and al. (2001), can we say that Algeria was a settlement colony? While it is true that the colonization strategy was implemented, it is also clear that it did not succeed (Guignard, 2016). In terms of property rights, "in little more than a century, [the colonial administration] was unable to complete the land tenure it had envisaged to constitute private property. Three-fifths of the land could not be registered." (Aït Amara, 1992 : 187). This observation is important for the following period, knowing that two-fifths of land actually registered included those exploited by European settlers, mainly concentrated in the north which, abandoned at independence, would be placed in self-management (*autogestion*) – workers in large agricultural and industrial estates (Helie, 1969). simply assumed control of the means of production[21] – and then, finally, considered vacant

[20] "'A francized property' is a piece of real property, a building which, to be passed through European hands, has its property established or recognized by a French title and is now indelibly subject to French law." (Bontems, 2015: 316).

[21] For the Algerian lawyer Ahmed Mahiou (2012:79), " (..) after having renewed the old right of a liberal nature, the following year, in 1963, a new right appears with the introduction of self-management whose inspiration is of Yugoslav origin. Agricultural enterprises, as well as a part of industrial and commercial enterprises, now

property, were returned to the State and the public domain. This means that in Algeria from the beginning of independence, the majority or even almost all the lands escaped the formal right of private property as it had been set-up under French jurisdiction.

4. Brief history of Property Rights in Postcolonial Algeria

4.1 The Regime set up at Independence

Independent Algeria inherited colonial institutional constructions: French property law as a real right, dealing with tangible things; personal status, freezing Muslim identity; the state owner and redistributor of the land.

Independence created the immense hope of ending the injustice of the colonial system, in particular the exclusion of the natives from the life of the city, political, economic and social exclusion[22]. In terms of ownership, perhaps more than in any other area, it had been almost total. Now, how to repair the expropriation of Algerians from their lands and their property? A very strong expectation weighed on the new state. Symbolically, through the State, the people would collectively recover the territory and the wealth confiscated by the colonial regime. Beyond that however, what new property rights regime could have replaced the colonial system? The illusion of collective inclusion through State ownership was borne by the ideological context of the time, opposing socialism to capitalism and collective ownership to individual property.

The precipitous departure of the Europeans, massively abandoning their lands and their property, accelerated state appropriations of abandoned properties. If, on the one hand, the self-management movement led the State to nationalize these farms and companies, on the other hand, the spontaneous occupation of the empty dwellings, led inevitably to their collective transfer to the public domain. Management of vacant property therefore fell quite naturally to the institutional cadres of the legacy colonial regime.[23] This measure, initially envisaged as a temporary protection in order to "avoid looting or suspicious transactions on

---

escape the rules of the Civil Code and the Commercial Code to be subject to this new regime whose objective was to hand over directly to the workers the management of each enterprise."

[22] It has often been said that the socialist project in Algeria was not carried by a working-class vanguard, as the Marxist doctrine requires, nor even by a communist party allied to the peasantry as in the Chinese model. It was a radical movement of decolonization, which had set itself the goal of returning their country to the Algerians.

[23] "Decolonization (was) a challenge, a political issue more than a reality [because the French system is part of] geographically dominant administrative systems whose spheres of influence are impregnable for long periods." (Legendre, 1992: 185).

property abandoned by their European owners", was perpetuated by a "transfer of ownership for the benefit of the State" when it became clear the prior owners would not return (Mahiou, 2012:78).

The new state could neither pursue the colonial enterprise of formalizing the right of private property which had excluded the overwhelming majority of the natives, nor could they return to the previous modes of ownership. The equilibrium from before the conquest was gone. Even if the old modes persisted for family transactions, these had disappeared from the formal institutional landscape. There was, however, strong pressure on the state to include the excluded masses. Actually, nationalization consisted in re-appropriating to the administrative fold the national territory and its population. This was achieved by an unprecedented expansion of the state domains inherited from colonization. Beginning in 1972, the agrarian revolution began transferring to the State unregistered lands (through the Fund for Agrarian Revolution). This concerned primarily rangelands, legally transferred to the state by the pastoral code in 1975 (Daoudi, Colin, 2017), a process that would remain unfinished. The reforms also addressed the large estates mostly constituted under colonization and thus suspect; these were partially expropriated.[24]

Thus, although the Francization of the law was the instrument by which the colonists themselves appropriated from dispossessed Algerians, with independence, this right was not abolished. On the contrary, it was first renewed as is. A rule of legal continuity was adopted by the National Assembly (law of 31 December 1962). The law provided that for legislative domains in which the state had not yet legislated, French law previously in force would apply, provided the old laws did not conflict with the principles set forth in the Constitution (Henry & Balique, 1979; Mahiou, 2012 ; Khalfoune, 2004). Presented as provisional, this rule lasted until 1975, when a new civil code and a penal code were promulgated.

What were the implications of this measure for property rights? First, in terms of public property, the new State made extensive use of French law and legal administration to expropriate Europeans (but also Algerians). At first, this was done by a renewal of the domain of the State, that is to say of all the measures applied since 1851 to promote the colonial establishment, legislation that "was not that of the metropolis, but exceptional legislation imposed by the imperative of colonization." (Khalfoune, 2004:104). Another implication is that the vacant property regime is based on a provision in the French Civil Code (articles 539 and 713) providing that all vacant and unclaimed property is owned by the State. The

[24] With the promise of compensation in vouchers drawn on the Fund of the Agrarian Revolution.

nationalization measures that followed were also inspired by French law. First, they concerned the bulk of equipment and economic infrastructure that remained vacant. The expropriations then spread to a very large number of sectors, including foreign trade, and in 1971, hydrocarbons. The reference to private property was maintained in the Civil Code, but, while it was sanctified by the French Constitution, property disappeared from the Algerian Constitution of 1963. It was not however a legal vacuum, since French law continued to apply. Finally, the new State drew heavily on French law, whose "statute on commercial transactions provides the possibility of regulation by the State, with quotas, the creation of trade groups or professional orders, the establishment of monopolies for certain products or activities, the prohibition of others" (Mahiou, 2012:78) to establish State authority over trade and the economy.

4.2 Socialist Codification

In 1973, after more than ten years of extension of colonial legislation and jurisprudence, French law was repealed and, after two years of grace, a new civil code was enacted, which particularly concerned the property regime.

The 1975 Civil Code defines property ownership as a "right to enjoy and dispose of things provided that these are not used in a manner prohibited by law or regulation"[25], which is in fact, the definition used in the French code, amputated of the expression "in the most absolute way", which refers to the Roman *abusus* clause. The 1975 code, which remains in force to this day, largely reproduced the Egyptian civil code, itself derived from the Napoleonic Code (Bontems, 2015; Khalfoune, 2004; Grimaldi, 2003).

In the same way, "the majority of the texts and in particular, most of the central codes are a continuation of the abrogated codes. This kinship is reflected as much in the structure or form of the texts [as it is] in the approach and inspiration." (Mahiou, 2012: 83). It was as if the new State had extended colonial law while restricting, even disabling, entire sections of the law to accommodate national sovereignty and socialist ideology. It is significant that this was conceived as a restriction of an existing right rather than a deployment of new rights. So that under the guise of the socialist state, it is ultimately the logic of the colonial

[25] Although French legislation had not been invalidated in 1973, it "could not have continued to produce all its effects" because of "the absence of freedom of trade and industry, which underlies all the rules designed to conserve private property rights." Indeed, "the abundant case law relating to it cannot be invoked to oppose the economic intervention of the administration" (Mahiou, quoted by Khalfoune, 2004: 108-109).

administration that imposed itself, rather than that of a real project of transformation of the law[26], in particular the right of ownership.

In the context of the times, restrictions on property rights were more the result of socialist ideology than of Islam (Henry & Balique, 1979: 50). This remark is important: the socialist regime did not allow a redefinition of private property[27]. Rather, it restricted the scope of private property. In such a system, since the means of production are nationalized, only consumer goods can be appropriated privately (personal ownership). The result was that, stripped of access to the means of production, individuals postponed the acquisition of consumer goods, which may explain both the disaffection for industrial activity to the benefit of the small business trade and services, but also the diversion of consumer activity for profit, such as *trabendo*, favored by the economy of scarcity. Another important consequence of this restriction on private property was that of the many activities which ensured the survival of a large part of the population, the small trades already marginalized during the colonial period, would not be formally recognized in post-colonial Algeria. At independence, the President banned shoeshine boys, the very symbol of colonial humiliation. Henceforth, all children would go to school. Yet, if this profession, as well as many others inherent in colonial rule, disappeared, others would continue and new ones appear, which constituted what is called the informal, whose existence and expansion is largely the consequence of the non-recognition of private economic activity, that is, private ownership of even modest means of production. This meant that these unrecognized activities would not be valued. Nor would they benefit from an institutional environment that would have allowed them to evolve towards more sophisticated forms of production, both technically and organizationally. In particular, they will not have access to commercial or industrial land, bank credit and training. If this was not enough to prevent them from adapting and modernizing, they would manage outside the law and institutions. Being unregulated, they might drift into illicit or even criminal activities. They are considered illegal, repressed and persecuted by the law. Above all, these production activities are not counted in the national income figures and escape the tax.

One year after the promulgation of the Civil Code, the *Charte nationale* invented the notion of "non-exploitative private property"[28], subsequently incorporated in the Constitution

---

[26] "Socialist legality did not establish the rule of law, but, in its best period (after the disappearance of Stalin), rule by law" (Berman, 2003:19).

[27] In socialist Algeria, "the important thing was to decide the management and control of this management, and not property rights" (Miaille, 1972: 665).

[28] Which could be interpreted as a compromise between the socialist and Islamic conceptions prohibiting, one, exploitation (surplus value in the sense of Marx), the other usury or profit (riba). In fact, this formulation did not

of 22 November 1976, which enshrined the "full primacy" and the "irreversible character" of state ownership, "the highest form of social ownership" (Ghaouti, 2014). In the case of private property, only the "individual property of goods for personal or family use" were guaranteed (Article 16), particularly against expropriation (Article 17). Exceptionally tolerated in economic activity, the enigmatic so-called 'non-exploitative private property' "must contribute to the development of the country and have a social utility" (Belhimer, 2012)[29]. Poorly defined by law, this form of ownership will legitimize the fortunes that have been built since independence despite the socialist option, thanks to the privileges enjoyed by some in the administration, the party or the army. In the industry, it paved the way for the creation of a class of private entrepreneurs who have benefited from approvals and public contracts, granted by the administration on a discretionary basis, or even to take over companies abandoned by Europeans. Later, taking advantage of the opening of the late 1980s, including the dismantling of the state monopoly on foreign trade, some will form commercial and industrial empires, such as the Cevital group.

4.3 The 1988-91 Reform

The Constitution of 23 February 1989, approved by referendum in a context of serious political crisis, aimed to put an end to this system and to unleash private initiative. It marked the passage "from pure and hard statism, not to liberal reforms, as some authors hastily reported, but to a relaxation of the economic system", and an opening to private,[30] domestic, and foreign initiative (ibid.: 284). For the lawyer Ahmed Mahiou (2012: 86), it "formalizes the end of revolutionary legality and envisages the advent of the rule of law. The way is thus opened for a questioning of the socialist option and the 'achievements of the revolution'". In the face of such a break, one may wonder why a rule of legal continuity was not adopted, as in 1963, to avoid a legal vacuum. For the legal scholar, the question does not seem to arise. Such a scholar would admit that "for the major codes (notably, the Civil and Commercial Codes), it was not a question of redoing what had already been done, especially as these codes

---

encourage private capital to create jobs (labor exploitation), but rather to nestle in speculative activities that provide rents (Dillman, 2000).

[29] Delimited and redefined "as a social function and not as an absolute right" (Mahiou, 2012), it does not derive from the principle of freedom of commerce but constitutes a "simple faculty tolerated by governments, capable of being the object at any time of an administrative regulation "(Boussoumah, cited by Khalfoun, 2004).

[30] It guarantees private property as well as the right of inheritance. *Wakf* property and charitable foundations are recognized and their destination protected by law (art. 49).

had been affected only marginally by the socialist codification," but "simply a question of revising their provisions in order to loosen the State's hold on the economy, by facilitating private initiatives and promoting new types of contract"; actually, "it was practically a matter of undoing, in whole or in part, everything that had previously been codified, to engage in the market economy." Does this mean purely and simply a return to the previous situation of 1973 or even 1962? Three major problems arose.

First, the socialist codification could not be dismantled overnight, because a whole economic and social system had been built upon it, as evidenced by the resistance to privatization. We should not forget that from the beginning, the socialist option bore with it the promise to repair the spoliations, the exclusion and the inequalities of the colonial period. Secondly, the market economy option implies the adoption of adequate institutions, including for the preservation of property rights. In the countries experiencing transition to market economy, the abolition of the socialist system is conceived as a return to the previous legal system, upgraded in exchange for their entry into the European Union, in the case of the Central and Eastern Europe Countries.

In the case of Algeria, the return to the previous legal system was a "return" to the colonial legal order and to its dual status, "real status/Muslim status", inscribed in the colonial legacy (Christellow, 1985; Bontems, 2014). Thus resurfaces the substantive issue of the decolonization of the law, evaded at independence, and the question of what becomes of the reference to Islam in this perspective. If the legislator had not considered this dimension of the issue, the massive success of Islamists in the first pluralist elections would surely have reminded him[31]. At that time, the bottom-line of what terrified supporters of the status quo was actually the symptom of a deep malaise, linked to setting aside of the Islamic norm and rules for organizing property ownership. However, it would have been possible, when reshaping the property rights in the context of the transition, to integrate the design of Islamic law reread and interpreted in order to adapt to a modern market economy (Cattelan, 2017; Koehler, 2015). This could have led to the construction of an alternative to the colonial property right, in a process of decolonization of thought in Islam.

But this debate did not take place.[32] The reforming government (from September 1989 to June 1991) had just enough time to launch the reform process. One of the essential aspects

[31] Even in the program of the Islamic Salvation Front (FIS) there was no reference to an Islamic conception of property (Al-Ahnaf and al., 1991).

[32] If we had to characterize this reform project in a few words, we would say that it aimed to put the Algerian institutions at the level of those of France, that is to say at the same time put an end to the colonial heritage, by

was to unify the rules of applicable laws. The legal distinction between public and private companies has been removed. Natural and legal persons received unrestricted access to commercial activities and people were authorized to move freely from one activity to another, free market access and the free movement of capital within the country were ensured. The immediate task had been to reorganize state ownership, to free public companies from administrative supervision. It was anticipated that these would be privatized as joint-stock companies or private limited liability companies. After a financial audit of their production assets,[33] their share capital would be distributed in the form of shares to participating funds, and fiduciary agents of the state who would exercise shareholder ownership rights and strategic surveillance. The objective was to put an end to administrative interference from the party and from the security services in the management of public economic enterprises, with control now subject to financial criteria, by public holding companies directly interested in their results. The aim was to harmonize the rules of law between the private and the state sectors of the economy and to introduce competition between them, as well as between public enterprises, without, however, jeopardizing state ownership. At this point, there was no question of privatization. But the restoration of private property and the unification of property rights between the two sectors called for a prior redefinition of the private or public property rights, in order to adapt it to the new economic, political and social situation (Charvin, Guesmi, 2003).

Prematurely interrupted with the departure of the government and especially with the annulment of the legislative elections - which were supposed to have returned a majority to legislate in matters of property – the reforms were stopped dead in their tracks (Joffé, 2002). The putsch of January 1992 marked the suspension of the Constitution and the consolidation of political and constitutional powers in the armed forces. The state of emergency[34] which was lifted in 2011, introduced an exceptional regime: All elected bodies were dissolved and replaced by co-opted local assemblies.[35] In 1996, after presidential elections (1995), a new constitution was adopted, that strengthened the presidential power, established a bicameral legislature, and guaranteed freedom of trade and industry.

---

adopting, in particular, the parliamentary democracy model of the Fifth Republic, and integrating innovations resulting from adaptation to modern capitalism. Its interruption in 1992 concretely meant the abrupt return to the colonial legacy.

[33] Socialist property applied only to tangible goods; immaterial goods were not taken into account.

[34] French law dating from 1955, justified by the "insurrection in Algeria" (Thénault, 2007).

[35] Jacques Vergès (1993) shows the similarity of the system put in place with that of the Vichy government.

Since then, the government has continued to unravel the codification put in place during the socialist period. New texts have been drafted to "mark the liberalization of activities (investment code, code of public contracts, regulation of foreign trade, national or international commercial arbitration); there has been an end to "the system of the agrarian revolution, although the State continues to own the land that it grants to private persons to exploit it. The denationalization enterprise was launched, which is to say, "the privatization or even the liquidation of public enterprises, particularly those under local authorities" (Mahiou (2012: 86). Committed under the constraint of the IMF Structural Adjustment Program (1994-1998), in the absence of an adequate legal and institutional framework for their implementation, the privatizations were a failure (Werenfels, 2002). Above all, moreover, Algeria has entered the market economy without having adopted legislation and jurisdictions on property rights that would enable it to protect itself from both internal and external predation.

Références

Acemoglu Daron, Robinson James A. (2013). *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*, Currency Crown Editor, Books Collection, 544 pages.

Acemoglu Daron (2003). « Why not a Political Coase Theorem? Social Conflict, Commitment, and Politics". *Journal of Comparative Economics*, 31: 620-652.

Acemoglu, Daron, Simon Johnson, James A. Robinson (2001). "The Colonial Origins of Comparative Development: An empirical investigation." *American Economic Review*, 91, 5 : 1369-1401.

Aït Amara Hamid (1992). "La terre et ses enjeux en Algérie." *Revue du monde musulman et de la Méditerranée* 65.1 (1992): 186-196.

Al-Ahnaf, Mustafa, Botiveau Bernard, Frégosi Franck (1991). *L'Algérie par ses islamistes*. Paris, Karthala.

Alchian Armen A., Demsetz Harold (1973). “The Property Right Paradigm”. *The Journal of Economic History*, vol. 33, n° 1.

Dupret Baudouin, Ben Hounet Yazid (2015). « Pratique du droit et propriétés au Maghreb », *L'Année du Maghreb*, CNRS éditions, 13, novembre, 8p.

Belhimer Ammar (2012). "Le régime juridique de la propriété foncière en Algérie." *Les Programmes du Centre Jacques Berque* 1 : 1-16.

Ben Hounet Yazid (ed.) (2018). *Law and Property in Algeria: Anthropological Perspectives*, Boston, Brill, 190p.

Berman Harold (2003), *Law and Revolution*, Havard University Press, t.2.

Berque Jacques (1958). « Droit des terres et intégration sociale au Maghreb », *Cahiers Internationaux de Sociologie*, Nouvelle série, Vol. 25 (Juillet-Décembre1958), Presses Universitaires de France : 38-74.

Bessaoud Omar (2013). « La question foncière au Maghreb : la longue marche vers la privatisation », *Les cahiers du CREAD*, 103.

Bontems Claude (2015). « Quelques réflexions sur le droit colonial algérien », in Jean-Philippe Bras et Nada Auzary-Schmaltz. (dir.), *Faire l'histoire du droit colonial. Cinquante ans après l'indépendance de l'Algérie*, Paris, Karthala : 295-320.

Bontems Claude, (2014). *Le droit musulman algérien à l'époque coloniale. De l'invention à la codification*. Genève, Slatkine Érudition, 378 p.

Botiveau, Bernard (1993). *Loi islamique et droit dans les sociétés arabes: mutations des systèmes juridiques du Moyen-Orient*, Paris, Karthala.

Bras Jean-Philippe (2015a). « La charrue avant les bœufs. Sur l'intranquillité du droit foncier et de sa doctrine en Afrique du Nord », in Jean-Philippe Bras et Nada Auzary-

Schmaltz (dir.), *Faire l'histoire du droit colonial: Cinquante ans après l'indépendance de l'Algérie*, Paris, Karthala : 85-112.

Bras Jean-Philippe (2015b). « L'imperfection de la propriété indigène, lieu commun de la doctrine juridique coloniale en Afrique du Nord », in Sami Bargaoui, Simona Cerutti, Isabelle Grangaud, *Appartenance locale et propriété au nord et au sud de la Méditerranée*, IREMAM, Aix-en-Provence.

Cattelan Valentino (2017). "Legal Pluralism, Property Rights and the Paradigm of Islamic Economics", JKAU: *Islamic Economics*, Vol. 30, 1, January: 21-36

Charvin Robert & Guesmi Ammar (2003). *L'Algérie en mutation. Les instruments juridiques de passage à l'économie de marché*. Paris, L'Harmattan, 371p.

Chehata, Chafik T. (1973). *Études de Droit Musulman.* 2. La Notion de Responsabilité Contractuelle. Le Concept de Propriété. Paris, Presses Universitaires de France.

Chehata, Chafik T. (1971). *Études de droit musulman*. Vol. 1. Presses universitaires de France, 1971.

Christellow Allan (1985). *Muslim Law Courts and the French Colonial State in Algeria*. Princeton Legacy Library, 311p.

Çizakça Murat (2000). *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present*. Istanbul, Boğaziçi University Press.

Cole, D. H., & Grossman, P. Z. (2002). *The meaning of property rights: law versus economics?* Land Economics, 78(3).

Dabla-Norris, Ms Era & Mr Scott Freeman (1999). The enforcement of property rights and underdevelopment. No. 99-127. International Monetary Fund.

Daoudi Ali, Colin Jean-Philippe (2017). « Construction et transfert de la propriété foncière dans la nouvelle agriculture steppique et saharienne en Algérie », In Didier Guignard (dir.), *Propriété et société en Algérie contemporaine. Quelles approches?* Aix-en-Provence, Ireman.

Deakin, S., Gindis, D., Hodgson, G. M., Huang, K., & Pistor, K. (2017). "Legal institutionalism: Capitalism and the constitutive role of law". *Journal of Comparative Economics*, 45(1), 188-200.

Demsetz Harold (1967). "Toward a Theory of Property Rights". *The American Economic Review*, vol. 57, n° 2.

De Soto Hernando (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails everywhere else*. New York, Basic Books].

Dillman, Bradford L. (2000). *State and private sector in Algeria: the politics of rent-seeking and failed development*. Boulder, CO: Westview Press.

Dumasy François (2015). « À qui appartient Alger ? Normes d'appartenance et conflits d'appropriation à Alger au début de la présence française (1830-1833) », in Sami Bargaoui, Simona Cerutti, Isabelle Grangaud, *Appartenance locale et propriété au nord et au sud de la Méditerranée*. IREMAM, Aix-en-Provence.

Dumasy François (2016). « Propriété foncière, libéralisme économique et gouvernement colonial : Alger, 1830-1840) ». *Revue d'histoire moderne & contemporaine*, n° 63-2: 40-61.

Geisler Charles (2009). « Ownership in Stateless Places », in Von Benda-Beckmann, F., Von Benda-Beckmann, K., Wiber M.G. (2006). (eds.). *Changing Properties of Property*. New York and Oxford, Berghahn Book: 40-57.

Ghaouti S., (2014). « Le traitement de la propriété dans les textes fondamentaux algériens », *Revue algérienne des sciences juridiques, économiques et politiques*, numéro spécial, mars : 9-30.

Grimaldi Michel (2003). « L'exportation du code civil », *Pouvoirs*, Vol. 4, n° 107 : 80-96.

Guignard Didier (2016). « Terre promise mais pas prise : les déboires de la colonisation de Maraman en Algérie (1834-1854) », in Leyla Dakhli et Vincent Lemire, *Étudier en liberté les mondes méditerranéens.* Mélanges offerts à Robert Ilbert, Publications de la Sorbonne : 413-424.

Guignard, Didier (2010). "Conservatoire ou révolutionnaire? Le sénatus-consulte de 1863 appliqué au régime foncier d'Algérie." Revue d'histoire du XIXe siècle 2 (2010): 81-95.

Henry Jean-Robert & Balique François (1979). *La doctrine coloniale du droit musulman algérien*, Paris, Éditions du CNRS.

Joffé, George (2002). "The role of violence within the Algerian economy." *The Journal of North African Studies* 7.1: 29-52.

Khalfoune Tahar (2004). *Le domaine public en droit algérien : réalité ou fiction*, Paris, L'Harmattan, 601p.

Kingwill, R., Cousins, B., Cousins, T., Hornby, D., Royston, L., & Smit, W. (2006). Mysteries and myths: De Soto, property and poverty in South Africa. Gatekeeper Series-International Institute for Environment and Development Sustanable Agriculture and Rural Livehoods Programme, 124.

Koehler Benedikt (2015). "Muhammad's Conception of Property as a Bundle of Rights", *Economic Affairs*, Vol. 35, n° 1.

Laporta R. La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. (1999). The Quality of Government. *The Journal of Law, Economics, and Organization*, 15(1): 222-279.

Legendre Pierre (1992). *Trésor historique de l'État en France: l'Administration classique*, Paris, Fayard, 638p.

Mahiou Ahmed (2012). « Les séquences du changement juridique en Algérie. Cinquante ans de droit (1962-2012) », *Insaniyat* n°s 57-58, juillet-décembre 2012 :73-89.

Makdisi, John (2005). *Islamic property law: cases and materials for comparative analysis with the common law*. Carolina Academic Press, 615p.

Mezouaghi Mihoub, Talahite Fatiha (2009). « Les paradoxes de la souveraineté économique en Algérie », *Confluence Méditerranée* n°17: Souveraineté économique et réformes en Algérie : 9-26.

Miaille Michel (1972). « Contribution à une réflexion théorique sur l'entreprise socialiste algérienne ». *Revue Algérienne des Sciences Juridiques, Économiques et Politiques,* n°3, septembre 1972.

Nyamu-Musembi, Celestine (2006). Breathing life into dead theories about property rights: de Soto and land relations in rural Africa, Working paper 272, October, Institute of Development Studies, University of Sussex, Brighton, UK.

North Douglass (2005). *Le processus du développement économique,* Paris, Éditions d'organisation, 238 p.

North Douglass (1990). *Institutions, Institutional Change and Economic Performance*, N.Y., Cambridge University Press.

Olson, Mancur (1965). *The Logic of collective action: Public goods and the theory of groups*, MA., Harvard University Press.

Oström Elinor (2003). "How types of goods and property rights jointly affect collective action." *Journal of theoretical politics* 15.3 (2003): 239-270.

Oström Elinor (1990). Governing the Commons: The Evolution of Institutions for Collective Action. Cambridge, Cambridge University Press.

Pollard Jane, Mcewan Cheryl, Hugues Alex (2011). *Postcolonial Economies*, Londres, NY, Zed Books, 239p.

Raslan Heba A. (2006). "Shari'a and the Protection of Intellectual Property-the Example of Egypt." IDEA 47, 497p.

Rey-Goldzeiguer Annie (1977). *Le royaume arabe,* Alger, SNED, 813p.

Robe, Eugène (1848). *Essai sur l'histoire de la propriété en Algérie*. Collection XIX.

Robertson, Lindsay G. (2005). *Conquest by law: How the discovery of America dispossessed indigenous peoples of their lands*. Oxford University Press, 239p.

Ruedy, Kohn (1967). *Land Policy in Colonial Algeria. The origin of the Rural Public Domain*, Los Angeles, University of California Publications, Near Eastern Studies, 115p.

Sari Djillali (1978). *La dépossession des fellahs*. Alger, SNED.

Sachs Jeffrey D. (2003). "Institutions matter, but not for everything." Finance and Development 40.2 : 38-41.

Stanziani Alessandro (2015). « Comment mesurer l'efficacité des institutions ? », *Histoire & mesure,* XXX-1, 3-24.

Sugden Robert (1986). *The Economics of Rights. Cooperation and Welfare*. Oxford, Basil Blackwell.

Surkis Judith (2010). « Propriété, polygamie et statut personnel en Algérie coloniale, 1830-1873 », *Revue d'histoire du XIXe siècle*, 41 : 27-48.

Tucker Judith E. (2008). *Women, Family and Gender in Islamic Law*, Cambridge, Cambridge University Press, 255 p.

Thénault Sylvie (2007). "L'état d'urgence (1955-2005). De l'Algérie coloniale à la France contemporaine: destin d'une loi." *Le mouvement social* 1 : 63-78.

Vahabi, Mehrdad (2011). "Appropriation, Violent Enforcement, and Transaction Costs: a Critical Survey." *Public Choice* 147.1-2 : 227-253.

Von Benda-Beckmann, F., Von Benda-Beckmann, K., Wiber M.G. (2006). (eds.). *Changing Properties of Property*. New York and Oxford, Berghahn Book, 367p.

Vergès Jacques (1993). *Lettre ouverte à des amis algériens devenus tortionnaires*, Albin Michel, 134p.

Weber André-Paul (2010). *1830-1930. La France en Algérie: une malheureuse aventure*. Paris, Publibook, 387p.

Werenfels, Isabelle (2002). "Obstacles to privatisation of state-owned industries in Algeria: the political economy of a distributive conflict." *The Journal of North African Studies*, 7.1 : 1-28.

Yanagihashi Hiroyuki (2004). *A History of the Early Islamic Law of Property: Reconstructing the Legal Development, 7Th-9Th Centuries*, Brill. 336 pages

Zein-Elabdin, Eiman O., Charusheela S. eds. (2004). *Postcolonialism Meets Economics*. London-NY, Routledge.

Zouache Abdallah (2014). « De la question coloniale chez les anciens et néo–institutionnalistes », *Revue d'Économie Politique*, 124, n°1, jan-fév. : 129-149.