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Anthropology in the Archives: History in Gendered Testimony and Text

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Abstract: For the ethnographer of the Maghreb interested in studying history so as to better understand the present, a foray into the archives has become almost a rite of passage. Whereas collecting oral histories from elderly interlocutors in the field used to provide the desired testimony to change over time, anthropological critiques of narrative and memory as inherently shaped by present concerns have turned anthropologists towards paper texts produced in the past. Critiques from within anthropology as to the ethics of participant observation have fueled skepticism towards the field research endeavor, with archives appearing to provide a field "site" that avoids the problems of researcher positionality. Yet, once immersed in the archives, the ethnographer finds that the seeming certainty of historical texts is an illusion. I argue that Amazigh (Berber) women figure centrally in both Protectorate and tribal preoccupations only when the scribe worked in a format that required him to document women's testimonies in verbatim or summarized *procès-verbal* from direct contact with women, as in customary court daybooks. In contrast, women's participation in legal and political life is largely absent in Protectorate policy correspondence and tribal reports. Court daybooks provide a glimpse into the ways Anti-Atlas Mountain women, as well as men, navigated legal pluralism between local forms of Berber custom and Islamic *fiqh* (jurisprudence). I demonstrate how the researcher's understanding of women's lives and their roles in political (tribal, central state) and legal affairs differs radically depending on the sources consulted.

Keywords: Gender, archive, Berber customary law, Islamic law, French Native Affairs.

For the anthropologist interested in studying history so as to better understand change over time, a foray into the archives has become a rite of passage. Collecting oral histories from elderly interlocutors in the field used to provide the desired testimony to enhance the participant observation field method, and approximated approaches of oral historians. Yet scholarly observations of narrative and memory as inherently shaped by present concerns have turned many anthropologists towards text artifacts produced in the past as complement to or replacement for oral histories. Critiques from within anthropology as to the power disparities between ethnographer and subject have fueled sometimes incapacitating skepticism of data collection from field encounters. With increased interdisciplinarity in anthropological work as well, the archive has emerged as an anthropological field "site," meaning a "location" of interpretation, ostensibly sidestepping the problematic field researcher's positionality. Once immersed in the archives, the ethnographer frequently finds that the seeming impartiality of

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what Zeitlyn calls "traces left by people in paper records"[1] is an illusion. Central to the question of gender and archive is the analysis of administrative court traces in which women *acted,* were *acted upon,* or are absent altogether. Since the "historic turn" in anthropology over the last thirty years[2] built off questions raised about archives and authority in the social sciences and humanities by Bourdieu and Foucault,[3] we might productively consider who created these "graphic artifacts,"[4] who comprised the intended audience, and what the effect was of these court proceedings on the populations they concerned. Most importantly, however, we may also ask what rural women were doing when they sought court resolution to their problems.

In the official archives for the Protectorate of Morocco Native Affairs (the CADN in Nantes) and military policy (the SHAT in Vincennes), women's actions, legal claims, desires, and needs mostly escaped officials' attention – unless women's actions foiled Protectorate designs. For instance, Anti-Atlas women's widespread pleas for divorce in the late 1940s and early 1950s caused French consternation because unwilling men compelled to pay for divorces risked turning against Protectorate authority. In such instances, women constituted a category to be managed rather than individuals to be listened to, as when Colonel Marc Méraud instructed Native Affairs officer trainees that in law and politics, among Berbers, "what matters" is women and land.[5] Clearly, "the Berbers" Méraud references were men, despite women's lynchpin role in the household, labor economy, physical reproduction, and socialization processes central to Anti-Atlas mountain communities and tribes.[6] The French silence around Berber women is significant because Protectorate-era reports composed by administrators and officer-scholars were explicitly intended to inform policies to decrease the appeal of Islamic law and Arabic language among rural Berber tribes.[7] These reports supported a vision of a primeval Berber society grounded in a mythical demography in which the Protectorate's Berber subject was male,

1. David Zeitlyn, "Anthropology in and of the Archives: Possible Futures and Contingent Pasts. Archives as Anthropological Surrogates," in *Annual Review of Anthropology* (2012): 41; 461-80.

2. Cf among others Nicholas B. Dirks, Geoff Eley, and Sherry B. Ortner (eds.), *Culture, Power, History: A Reader in Contemporary Social Theory* (Princeton: Princeton University Press, [1983] 1994); Ann Stoler, *Along the Archival Grain* (Princeton, NJ: Princeton University Press, 2009); and Jean Comaroff and John Comaroff, *Ethnography and the Historical Imagination* (Oxford: Westview,1992).

3. See especially the towering influence of Pierre Bourdieu, *Outline of a Theory of Practice,* (Cambridge: Cambridge University Press, 1977) and Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977).

4. The phrase is from Matthew Hull, *Government of Paper* (Berkeley: University of California Press, 2012).

5. Marc Méraud, *Histoire des A.I.: Le Service des affaires indigènes au Maroc. Histoire des goums marocains*, vol. 3 (Paris: La Koumia Bulletin de l'Association, 1990).

6. Katherine E. Hoffman, *We Share Walls: Language, Land, and Gender in Berber Morocco* (Malden, MA: Blackwell Wiley, 2008a).

7. Katherine E. Hoffman, "Purity and Contamination: Language Ideologies in French Colonial Native Policy in Morocco," *Contemporary Studies in Society and History* 50 (3) (2008b), 724-52.

rural dwelling, fiercely attached to the land, and disdainful of (and unskilled in) agricultural labor.

In contrast to the official Protectorate archive are sets of unofficial – arguably accidental – archives that allow glimpses into women's claims to rights granted them in local Berber custom or in Maliki *fiqh* as incorporated into local custom. This article draws on accounts of justice-seeking women in the daybooks (Fr. *registres brouillards*, an odd phrasing but roughly glossable as "draft registers") created *in situ* between 1930 and 1956 by scribes tracking everyday judicial and administrative work in the Anti-Atlas Mountain customary courts (*tribunaux coutumiers*) in the administrative base of Igherm and the military base of Ait Abdallah. These daybooks offer insight into the lives of women who made demands on husbands, family members, neighbors, and authorities, and they document the Protectorate reorganization of legal conflict resolution in the final decades before Independence.[8] The sketched reports of proceedings (*procès-verbaux*) contained in these daybooks form "unconscious maps of the mundane"[9] with – in the bigger picture – ample evidence of women's claims to property, personal status and compensation after divorce, and inheritance. Given women's heavy use of these courts, we can ask why histories of the Protectorate period have neglected women's agency in shaping customary and Protectorate legal principles and applications.

From an extended examination over the last two decades of official and unofficial archives on the Souss Valley and Anti-Atlas Mountain regions, and on Protectorate Berber policy, I suggest here that women's voices and claims were unequally distributed across Protectorate records. Official French Protectorate archives were the graphic artifacts of meticulous scribes and officers of empire. Yet the customary court daybooks recorded complaints, defenses, and evidence (oral and textual) collected by local judicial council members drawing on shared knowledge of local custom. Final case rulings appeared in separate, neatly penned registers and in deeds (for divorce, inheritance, etc.). These official registers excluded the debate, contradiction, reasoning, and mention of abandoned or dismissed claims available in the daybooks. They contain direct and indirect quotations from plaintiffs and defendants and references to local legal practices and institutions, most importantly collective oaths.[10]

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8. See Hoffman, "Purity and Contamination" and "Berber Law by French Means: Customary Courts in the Moroccan Hinterlands, 1930-1956," *Contemporary Studies in Society and History,* 52 (4) (2010): 724-52 for discussion of Protectorate policy and principles underlying the 1914 and 1930 so-called "Berber decrees" (*dahir*s) that comprised the backbone of French Berber policy, and the role of locating and administering customary law in this broader policy.

9. Jean Comaroff and John Comaroff, *Ethnography and the Historical Imagination* (Boulder, CO: Westview, 1992), 36.

10. On the collective oath in the Anti-Atlas Mountains, see Katherine E. Hoffman, "Le serment, les marabouts et la mosquée dans le droit coutumier berbère au Maroc," in *Les justices de l'invisible,* eds. Raymond Verdier, Nathalie Kalnoky and Soazick Kerneis (Paris: L'Harmattan, 2013), 373-90.

In demanding their rights, women inadvertently forced the courts to adjudicate the application of customary provisions or *fiqh* when the two came into conflict (as in divorce compensation and inheritance cases). The end result was a practice of "mixed" law in the Anti-Atlas Mountains and Souss Valley, a region that practiced "sharia-infused" customs prior to the Protectorate. Arguably, this mix had more substantial consequences given the heightened attention to ethnolinguistic and legal distinctions among the Moroccan population under French rule. More importantly, courts ensured Berber women's firm imprint on the emergence of a system of adjudication that defied the widespread precept that law was a man's domain.

We have only hints of how Protectorate officers interacted with rural women, as when legal scholar and Native Affairs officer training instructor Georges Surdon complained that the Berbers were "quibblers" and that a woman would walk a day to court to argue over a stolen egg. When I encountered this claim in the Native Affairs archives in Nantes, I wondered about those quibbling, audacious Berber women and their court encounters. How were their complaints documented? And who possessed those archives, since no one I consulted in Morocco or France had any idea where they might be? I was determined to find the original court records to learn not only how the archive had been generated and learn about colonial power, as has most interested critical anthropologists, but also to see whether there was more than the absences around women found in much of the official Protectorate archive. More specifically, I asked of these accidental archives, how did the sum of women's many small quibbles and large complaints shape Moroccan legal history, Berber customary law, and French Protectorate policy? In tacking between official and unofficial archival sources, I wish to demonstrate how scholars' understandings of women's lives and their roles in political (tribal, central state) and legal affairs differ radically depending on the sources these scholars consult. I suggest that Amazigh (Berber) women figure centrally in both Protectorate and tribal preoccupations only when the scribe worked in a format that required him to document women's testimonies in a verbatim or summarized *procès-verbal* resulting from interaction with women or their male representatives, as was the case with customary court proceedings. What emerges from the texts is a clear sense that often only one legal tradition or the other allowed an individual to achieve his or her access to gendered rights and resources, whereas at other moments, a fiqh-tinged custom prevailed. The key court complaints in which we see this tension were divorce (with women's requests for divorce and related compensation, especially *tighrad,* 'shoulders' meaning compensation for labor),[11] land use rights and transfers, and inheritance.

11. More quantitatively significant were the instances of compensation to women at divorce called *tighrad* ('shoulders') for 'effort' (Arabic *al qad wa saa'ya*). See K.E. Hoffman (forthcoming), "Le divorce et la *tighrad* (compensation) en droit coutumier amazigh : Requêtes genrées dans l'Anti-Atlas marocain sous le Protectorat français (1930-1956)," *L'Année du Maghreb.*

We can only understand the community-internal push and pull of legal shifts during the Protectorate if we consider women's claims. To do this, we need to look to the accidental archive of mundane court encounters.

1. Women's Voices in the Legal Archive

Scholars working with other court archives across the MENA region have documented women's voices in the Ottoman and Mamluk courts, for example.[12] Yet in Morocco, even historical accounts that finely detail the use of Berber institutions during the Protectorate rarely mention women. Few historical texts treat the customary courts in any detail at all, with the important exception of Bidwell underappreciated 1972 opus.[13] For all the minutiae documented in Bidwell's tome – at times word for word (yet uncited) from the official Native Affairs archive – there is no mention of women, but ample mention of men. Bidwell's compressed account of the Native Affairs archives reproduces the Protectorate's preoccupation with male political figures, primarily *pashas* and *qadis*, but also tribal leaders who either supported or challenged Protectorate rule. Its section on customary justice mentions women and girls by gender only once, noting that a Berber man might wish to follow custom or instead *fiqh* depending on "whether he wanted to control his wife or his daughter." Missing from Bidwell's account, and clear in the daybooks I examined, is the fact that a Berber woman might wish to follow custom or instead *fiqh* depending on which granted her more favorable resolution, meaning for instance Berber law for divorce compensation, and *fiqh* for inheritance (since Berber law disinherited women). In Bidwell's volume, the most detailed account we have of the archival record of this period, men act upon women to further their own interests. Yet glaringly present in the unofficial daybooks are *actual* wives and daughters filing complaints for land, inheritance, divorce, and compensation – that is, pursuing their own interests. The bird's eye historical accounts of the period presuppose men's centrality in legal and economic affairs. Yet in the Souss Valley and Anti-Atlas Mountains, men followed the new roads to the cities, took up new work, and often married additional wives, creating new households. First wives remained in the countryside, unsupported yet married, fending for themselves – and increasingly looking to the courts for relief.

When the French established the customary courts by decree in 1930, rendering legible an alternative to the dispute resolution between men overseen by respected male elders that preceded them, few women registered complaints. Yet within a few years, women brought cases in significant numbers, at first concerning land leases and by the mid-1940s, petitioning for divorce. Women

12. Isabelle Grangaud, "Le *qâdhî*, la femme et son prétendant (Constantine, XVIII^{e} siècle)," *Clio. Histoire, femmes et sociétés,* [En ligne], 9 (1999), mis en ligne le 22 mai 2006. URL: http://journals.openedition.org/clio/283; DOI: 10.4000/clio.283

13. Robin Bidwell, *Morocco Under Colonial Rule: French Administration of Tribal Areas 1912-1956* (London: Frank Cass, 1973).

demanded divorce and compensation from deserting, abusive, and occasionally simply unattractive or overbearing husbands. They demanded food stipends from estranged husbands when they were pregnant and, after being repudiated, they demanded food allowances for their young children for custom's minimum two years until weaning. A few women demanded custody of their children after divorce, going against custom and Islamic law both, even when it meant renouncing their rights to child support; only a few received custody and the rest were required to relinquish their children to their ex-husbands. If the women remarried, they invariably were supposed to turn over their children to their ex-husbands. Some women fought this, too.

Rural women looked outside the family as well. They accused neighbors of plowing and harvesting, thus benefiting from lands they owned as well as lands they worked but that their husbands owned. They shamed other adults whose children beat their own children. They demanded restoration for goods damaged during loans, including animals who were overused or mistreated and who died while in the borrower's hands. Women accused burglars of break-ins and held them responsible for replacing stolen items. They accused intruders of rape and attempted rape. They released, sold, and traded land with men. They demanded the restoration of use and ownership rights over ancestral lands and inherited property in the form of homes and household goods. They insisted on the acknowledgment and official recording of their shares in estates when divided, even if their shares consisted only of ephemeral cash and household goods rather than more permanent land holdings. In sum, they were full participants in these courts, and they used them to better their lives and those of their children. This fact alone counters the common scholarly claim that the Berber customary courts were tools of the colonizer and widely opposed by the populations they served. At least in the Anti-Atlas region, the only objections to these courts' existence as an affront to the budding nationalist movement in the 1930s came from urban resident migrant men who opposed what their urban Arab compatriots feared were tools for ethnic division. Regardless of official Protectorate intentions, the Berber customary courts quickly integrated the communities using them as a practical solution to resolving matters that were impossible to first resolve through more informal means such as arbitration. The customary courts also allowed women to present cases themselves rather than be represented by a male relative.

2. Customary Laws Concerning Women (and Disconcerting the French)

While the French were keen to promote Berber custom over Islamic law, they reviled certain practices that they found counter to the spirit of fairness and French civilization.[14] Two in particular seem to have attracted their attention in

14. Protectorate-era authors often commented on disinheriting women as a staple of Berber customary law; "It goes without saying that since the woman does not inherit she has no right to [her father's] property." See Mohammed Abès, "Monographie d'une tribu Berbère: Les Aith Ndhir (Beni M'Tir) (suite)," *Archives Berbères* (3-4) (1918): 353. On the institution of personal *ḥabous* practiced in Berber

the Atlas mountains: a common one, the disinheritance of women, and a less common one, ex-husbands' restrictions on their former wives' marriage prospects.

2.1 The Disinheritance of Women

Some French officials and legal scholars grudgingly noted the relatively progressive Islamic legal provision whereby daughters inherited half of what sons inherited, and wives an eighth of their husbands' estates. In Berber customary law, in contrast, women inherited no land or real estate at all.[15] This created a policy dilemma, for the last thing the French wanted was to introduce Islamic law where it was not already anchored, or to privilege it over Berber custom where the situation was one of legal pluralism. Native Affairs officers were asked to use this distinction as a litmus test to assess the relative Islamization and Arabization of each Berber tribe.[16] In 1931, early in the development of customary courts after the 1930 dahir, General Catroux, Commander of the Region of Marrakesh remarked in response to an order from the Residence General that

> "There is no doubt that the region's Berbers who have been taken over by the *shari'a* (Fr. chraa) in terms of inheritance statutes found a way in using this formula to continue to disown women from the family estate following old principles of customary law."[17]

There were at least two ways in which women were excluded from inheritance, or permitted subsistence goods as inheritance rather than land.[18]

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customary law and incipient in Maliki fiqh, see also Henri Bruno's unpublished 1916 manuscript, "Cours de Droit Coutumier Berbère," (Bibliothèque Nationale Royale du Maroc, C930, lesson 12), and Jule Griguer, *Des différents régimes de successions au Maroc* (Paris: Libraire de la Société du Recueil Sirey and Tanger et Fez: Editions Internationales, 1935), 39-40 and 139 note 1. See also Griguer, 56, note 1 regarding the influence of Islamic law leading to women inheriting. For female non-inheritance of family land in Kabylia, Algeria, see Louis-Joseph-Adolphe-Charles Hanoteau and Aristide-Horace Letourneux, *La Kabylie et les coutumes kabyles* (Paris: Challamel, 1893), Vol. II: 296-304. Mustafa Bentahar remarks that "custom is not the prerogative of Berber tribes," and that Arab tribes of the Moroccan East practiced the disinheritance of women as well. See Bentahar, "La coutume au Maroc, simple phénomène social ou véritable source normative?," in *Droit et Société au Maroc*, ed. Elhoussine Ouaazzi (Rabat: IRCAM, 2005), 22.

15. The Dean of Law in Algiers, Marcel Morand, was troubled by the more progressive Islamic law relative to Berber law in the Aurès area of Algeria. See his "L'islamisation des populations de l'Aurès," *Etudes de Droit Musulman Algérien* (Algiers: Jourdan, 1910), also found in CADN Maroc DAI 31 since it appears to have circulated among Native Affairs officers in Morocco.

16. See Hoffman, "Purity and Contamination," 731-4 for discussion of French assessments of the Islamization and Arabization of Berber tribes.

17. See the Catroux report, General Georges Catroux, "Le fonctionnement de la justice berbère," p.9; responding to the "Exécution des prescriptions de la circulaire résidentielle" no. 328 DAI/6 du 9 nov 1931; in CADN DI 733, Région de Marrakech, Service des Affaires Indigènes, no. 690 RM/4.

18. French legal scholars as well as Protectorate administrators sometimes weighed in on customs like women's inheritance. For instance, Marcy argued vehemently that allowing Berber women to inherit property would "disturb public order" because only men could carry arms and defend their lands. Neither Quranic law nor French law could change this immutable facet of Berber customary law, he insisted. See Georges Marcy, 1954 [1939], "Le Problème du Droit Coutumier Berbère" *Revue Algérienne, Tunisienne et Marocaine de législation et de jurisprudenc*e, p. 12 and 28-32.

Skipping a Generation: aukerda/ḥabous

The first way in which women were disinherited was through the Berber institution of *aukerda*. Some fathers, but also mothers, used *aukerda* that allowed them to skip a generation so as to give an inheritance share otherwise due to daughters directly to the daughters' sons. These and other maneuvers allegedly encouraged the indivisibility of ancestral land by passing it to male relatives rather than to women whose husbands might try to claim ownership. The underlying justification for the land exclusion was that a woman lived off of her husband's wealth rather than her own, and that a married woman's land in effect passed into her husband's hands for management. Yet many women could not rely on husbands and brothers to care for them as the cultural norms underlying these legal customs proscribed; some of these women petitioned for the application of Islamic legal norms rather than custom. To this end, women sought the aid of religiously trained, literate men to draw up family trees, land titles, and deeds of lease they could then take to court.

This temporary *ḥabous*, as it was locally called (distinct from the better-known institution of *ḥabous* that is also called *waqf*, an inalienable and untaxed religious endowment) allowed a person to put lands into the hands of male descendants only until these descendants died; the governing principle was to prevent lands from confiscation and dilapidation. Jean Lafond, the Secrétaire-General des Juridictions Chérifiennes, noted that this was obviously "just a way to render licit the temporary exclusion of women."[19] *Ḥabous* ended when those male heirs died. Female relatives could also receive land in *ḥabous* title, but only so long as they did not marry; if they married, the land reverted to male successors in theory and, on the whole, in practice. In some of the Anti-Atlas cases in the daybooks, land was assigned to women alone regardless of their eventual personal status, so there was some variation.[20] Under Maliki Islamic law, sequestering land in this way is allowed but neither halal (Islamically permissible) nor haram (forbidden by God). And yet, a husband could also assign land to his wife. This was precisely what an Ait Abdallah man did in 1945, writing a deed for his wife for one-third of his total estate; this wife becomes the defendant after her husband's death when plaintiffs looked to claim lands for their own wives. The settlement allowed the plaintiffs to assume certain of the lands.[21]

Two examples of disinheritance follow and are illustrative of the cases found in the daybooks across the five courts administered in the region.

In a 1943 example from the Ait Abdallah TC (tribunal coutumier), Daybook 5, case 467/43, deed 5217, the daybook notes that a plaintiff attempted to will

19. Jean Lafond, "Les sources du droit coutumier dans le Souss: le statut personnel et successoral," (Unpublished 1947 report in SHAT 3H, 2017), Chapter XI: 1.

20. For instance, see TC 2, Registre brouillard 8, case 93/54.

21. TC Ait Abdallah, Registre brouillard 7, case 1329/45.

all of his land to his two sons in equal parts, disowning his daughters. The court refused the request to divide the plaintiff's estate in two, noting that custom allowed only for *aukerda* [*ḥabous*] that was restricted to a third of an estate to benefit male descendants. The docket notes, "There are also two daughters Khadija and Aicha that the plaintiff probably wants to disinherit. Division in half refused. Custom only allows for *aukerda*. *Ḥabous* restricted to 1/3 to benefit male descendants. Plaintiff declares his desire to swear *aukerda* according to custom. Deed authorized 5217."[22]

In a second example from 1942 and the same court, Daybook 4, case 338/42, the plaintiff wished to take possession of lands he claimed were due to him in inheritance from his mother, who was still alive, in her father's estate. The defendant noted that the lands were occupied by another man through a *rahn* issued by the defendant's father. The court council asked the parties to present various deeds, *mirath*s (genealogies), and *toufrit*s (inventories of possessions including land). Regarding the *toufrit*s presented, the court clerk noted that there existed "one by Brahim ou Mohammed in which he only gives his daughters 150 metqals [in currency] and gives the rest to his sons Youssef and Salah. The TC declares it invalid [double underlined in the original]." The defendant claimed that some deeds requested of him were lost, and thus the court condemned the defendant to swear an oath with three co-witnesses. Those witnesses said they could not swear because they saw the *aukerda* with their own eyes.[23] Here and elsewhere, we can see that whereas the term "custom" remained, its content could shift towards aspects of Islamic law when there was conflict.

Despite many male family members' efforts to keep land out of women's hands, the daybooks indicate clearly that women actively engaged in real estate transfers either through *rahn*s (land leases, which the daybooks misleadingly called *ventes*, 'sales') or the more lucrative "final sales" to which many women resorted but that went counter to the land tenure principle in Berber custom that land was only sold under extreme conditions. Additionally, women often came to court to "buy back" ancestral lands, equipped with the requisite documentation – usually deeds of sale and a family genealogy linking them to the deceased – and they often left having restored either use rights or partial ownership.

In sum, despite the widespread tendency towards disinheriting women, some Anti-Atlas women managed to control access, sales, and purchases of at least some property. These observations raise further questions. What rights did the women's children have to land after the male heirs' death? How could it depend on other negotiations? In some instances, such as the Anti-Atlas case of Rquia against her three brothers who ended up with an annual food allowance instead of land since the land was ḥaboused, and there was nothing in writing saying she

22. TC Ait Abdallah, Registre brouillard 5, case 467/43, deed 5217.
23. TC Ait Abdallah, Registre brouillard 4, case 338/42.

definitively renounced her right to the land. There was no ruling or agreement written up for this case; there was only an (allegedly) amicable settlement. We have no information as to what happened with the land or her descendants.

Exceeding the one-third limit, in some instances in Igherm TC 3 and TC 4, litigants had put one-half or three-quarters of an estate into *ḥabous* for a grandson and the court did not challenge older agreements when they reappeared in newer cases. This meant that effectively the jury condoned this disowning of daughters. In contrast, there were cases in which the court invalidated earlier agreements to the sequestering of more than one-third of an estate to one person. The only part of a person's estate that was divisible was the *irth* that remained aside from the sequestered parts. In a 1954 case in TC 2, there was little left after two *waṣia*s (wills) and a *ḥabous* were removed from the potentially divisible estate.[24]

Renouncing Land Inheritance (tayisi)

The second way by which a woman was disinherited entirely was by not taking possession of her share of the estate from her parents and other deceased ancestors. Various Native Affairs chiefs, including Captain Ropars who headed both the Igherm and Ait Abdallah posts, corresponded in 1948 about the legality of disinheriting women, a discussion spurred by an egregious case in which a man took the entire inheritance of his parent to the exclusion of his sister(s).[25] Yet some women pronounced in court that they renounced their rights to family lands or to all inheritance in a practice called *tayisi* by drawing up an *acte de désistement*. Usually, the renouncement was less formal, as in a 1943 estate division in which Meryem, the co-defendant, "want[ed] to abandon her part to her brothers without discussion," and the court clerk editorialized: "*Affaire peu claire*." Other times women relegated responsibility to their brothers or uncles. Anti-Atlas residents I spoke to about this practice in the early twentieth century explained to me that this behavior displayed the modesty (*ḥashma*) expected of women. In such situations, a male plaintiff asked for his mother's share of the estate of her father or mother. Husbands also appeared in court to request their deceased spouse's share in an estate of their parents, indicating that the spouse did not ask to come into possession of it during her lifetime.

In one instance, a plaintiff stated to the customary court of Ait Abdallah in 1945, "My wife Fadma bent Iazza, sister of the defendant, died. I request the part due to her in the inheritance of her father Iazza ou Ahmed." The defendant agreed to give the plaintiff his share. Fadma, we can see, did not request her share in this inheritance during her lifetime.[26] Neither did another woman, whose surviving husband in the same year called his late wife's sister as defendant in a case in order to request the inheritance due to his late wife in the estate of her father. But

24. TC 2, Registre brouillard 8, case 79/54 and *partage* 97/54.
25. CADN Maroc Region Agadir 10.
26. TC Ait Abdallah, Registre brouillard 7, case 1000/45.

in this case, the defendant Fatima remarked that the deceased was survived by four children in Casablanca where their mother had lived, and three other sisters. Thus, the estate division could not take place until the absent parties presented themselves.[27] This was a common occurrence, and common practice required that the case be publicized in the local market three times; successors immediately came forward and were counted when eventually the estate was divided.[28]

It is nearly impossible to confirm a woman's motivation for refusing her share of land in inheritance, but we can take educated guesses. She may have been unaware of the relative's death; she may have known but not wanted to occupy the land (because it was located in a distant region, it yielded poorly, there were other family members occupying it she did not want to disturb or offend); or, most likely, she may have been overtly or covertly discouraged from pursuing her share in the estate. The outcome was the same: when she died, her sons, brothers, and nephews (and less commonly her daughters and nieces) went to court to claim their share of the estate that should rightly have gone to the deceased woman from her ancestor.

Wrangling over estates was common in the customary courts, and it entailed the creation of often elaborate genealogies to determine ancestry. The process often dragged out for many months or even a few years before being resolved or withdrawn by one of the parties. Court records indicate that in addition to creating and verifying genealogies, court members verified the existence of land deeds and their authenticity which in both cases, like genealogies, were sometimes forged. Jury members were sometimes accused of bribery; more common were accusations that certain *foqahā* were modifying genealogies or land inventories to favor their solicitors and especially so that female descendants and sisters of the deceased would be omitted altogether. Sometimes the court found deeds of final sale in particular to be irregular for one reason or the other, usually that they were proven falsified or concerned land the seller did not have the right to sell outside the family or without their permission. A deed declared invalid could then not serve as the basis of any future land transfer, provisional or final.[29]

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27. TC Ait Abdallah, Registre brouillard 7, case 1035/45.

28. See for example TC 2 Registre brouillard 8, case 24, 50/54 where the plaintiff requested his mother's share of her father's estate, and this led to the broader process of assessing the division of the estate and resulted in *partage* 91/54.

29. The following documents that served as evidence in court cases were forged, among others:

• A *moulkiya* (property deed): The plaintiff accused the defendants of occupying his argan trees and presented a *moulkiya* of 1254 hijri signed by the *fqih* and witnessed by three men. The docket contains a diagram of how this forgery was determined and a note from the clerk, "The deed presented by the plaintiff is a forged deed comprised of two different deeds arranged side by side and of which the verso was camouflaged with a piece of glued-on paper; the 2 deeds are of different papers, writing, and ink. On the front the two deeds were put side by side in such a way that the one on top talks about the fqih and the witnesses (unlisted) and the bottom deed about the plot in dispute. The plaintiff is dismissed." ("La moulkia presenté par le demandeur est un acte truqué qui comprend en fait 2 actes mis bout à bout et dont le verso a été camouflé avec un papier collé; les 2 actes sont de papiers et d'écriture différents,

Court members also were tasked with assessing the relative boundaries of plots and buildings (both homes and animal shelters) by noting names of the owners of neighboring parcels and the plot's typical crop yield. There was no practice of measuring either absolute size or cardinal direction. Each parcel was bordered on the east by Neighbor X, on the west by a named path, a named field, etc. The parcel size was three or nine '*abra*s (measure) of barley, for instance. These indigenous means of identifying the location and value of a parcel were faithfully recorded in the customary court registers. There appears to be no attempt to introduce post-revolutionary French units of measure such as the meter, hectare, or kilo into Berber internal administrative and juridical affairs.

The cases above are just a few of the many in which the parties negotiated a settlement that avoided the question of due rights, with the end result that the court granted the woman something (such as a food allowance), but not what she claimed she was due (such as land inheritance which she would have used for subsistence needs). Most commonly, when women inherited, they inherited consumables. Parties either pursued this arrangement from the outset or women conceded to cash or in-kind payment of their estate share. Commonly, one surviving relative or group of relatives presented a case in court to divide an estate. Judiciary members delivered the relevant genealogies, land deeds, and sometimes testimony for the legitimacy of particular documents. The court and usually a *fqih* (literate Islamic scholar) working for the court or Native Affairs officer drew up an inventory of lands and other property, including cash; household

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d'encres différents. Au recto, les 2 actes ont été mis bout à bout de telle façon que celui en haut parle du fqih et des témoins (non énumérés) et l'acte du bas du terrain litigieux. Le demandeur est débouté de ses prétentions," in TC 2, Registre brouillard 8, case 87/54, J 44/54.

• Deed of "sale" (*acte de vente*): "The signature on the deed of sale presented is entirely different. Moreover, this deed does not contain property boundaries even though the two confirm not having bought but a part of the property without boundaries. Finally, the date is incomplete (133…). Moreover the 4 tolbas of the TC declare unanimously that they know the writing of Smaïl ou Yahia [the *fqih*] and that it is what is on the back of the deed of sale." Attached to this remark is a note from the Chef de Bataillon Aubert, chef du bureau de cercle Taroudant to the chef de l'annexe Igherm noting that the Pacha Tiouti was told to invite the legal scribe (*adul* or *fqih*) Si Abdallah to the Igherm bureau as soon as possible. Attached is a handwritten note from this fqih and in French at the note's bottom was penned in, "recognized by the TC to be forged." This was then attached to a small piece of paper noting "Si Abdullah, douar Aglagal, Gettioua, fqih who forges (*qui fait des faux*)," TC 1 Registre brouillard 11, case 66/54.

• An *istirkab* (deed of substitution): the plaintiff requested the repurchase of property he claimed was due him through *istirkab* (substitution) of his late paternal grandmother Zahra Mohammed, mother of the first of two defendants (this deed would allow him to inherit in the place of another relative.) The defendants declare that the deed of substitution is forged. With the parties in attendance, the court clerk noted, "The *fqih* of the deed of 1334 is not known to the literate members of the TC. Thus, the plaintiff is invited to present other written deeds by Si Abdullah ou Muh nt Hussayn of Assa to identify his *istirkab* by comparison." At a later date, "Case withdrawn. The plaintiff will introduce a case when he will be able to present deeds from the *fqih* who wrote the *istirkab* that he presented," TC 1 Registre brouillard 12, case 162/54.

• An *oukala* (deed of guardianship) validated by the qayd was potentially forged. TC 4, Registre 2, case 19/42 acte 21/42.

goods such as cooking implements, furnishings, clothes and jewelry; and reserve bulk foods stored in a locked room in the common storage building (*agadir*), especially bags of barley and dried items such as sweet or bitter almonds, prickly pears (*takanarit*), herbs, lentils, corn, fava beans, and carrots. The *fqih* assessed the identities of all successors and their relative shares in terms of the fraction of the deceased's estate due them as per custom (which typically followed *fiqh*). But then, instead of allocating particular plots to female successors, the relative value of these plots was assessed and that amount given to them in cash, material foodstuffs, or the woman's marriage trousseau if the deceased was the woman's father. This also meant the trousseau was not so much a gift from the bride's father to the bride and her husband, but rather an advance on her inheritance. Contents of the trousseau were perishable and typically included slippers, a wool wrap (*tamlḥaft*), blankets, cooking utensils, foodstuffs, and sheep, goats or cows. Depreciation was not factored in to trousseau's value.

In a 1944 penal case, a plaintiff accused another Rquia of theft; the record lists the entire inventory of what turned out to be her trousseau in Tashelhit terms, untranslated into French. Of interest to the present discussion however is a note attached to this case from Captain Ropars remarking that the defendant was the daughter of the plaintiff's wife who had died. Remarking on the plaintiff's step daughter's inheritance and her rights to the estate, Ropars notes that "The parties agreed to a settlement on only *les biens meublés*" – possessions but not real estate.[30] Clearly in this case, the defendant Rquia had been disinherited and as a consequence tried to hold onto some possessions from her trousseau – money, clothes, silver jewelry, and cooking utensils – the objects the plaintiff accused her of stealing. In a 1949 case, another plaintiff who also went by the then very popular name Rquia asked for her share of her father's estate. The defendants, her brothers, claimed that all land was in a state of *ḥabous* and thus already willed to them. The brothers did not provide evidence in the form of deeds, but they still were permitted to propose giving her an annual food allowance in the place of taking possession of the lands.[31] In a similar case heard by the same court in 1953, the deceased's female descendants all were given barley and *douros* (one of three forms of currency in use) as their share of the estate. The land remained undivided and in the hands of male relatives.[32]

Thus, we see here both enforcement of non-Islamic customary codes (disinheriting women heirs) and an overturning of customary law in favor of *fiqh* that stipulated women's inheritance. Whereas in some cases the court made a point of restating Islamic law as the governing principle, in other cases they turned a blind eye to disinheriting and proceeded as the (male) parties wished.

30. TC Ait Abdallah, penal case 588/44.

31. TC 2, Registre brouillard 5, case 81/49.

32. TC 2, Registre brouillard 8, case 66/53, ruling 80 of 2 Dec. 1953 and *partage mobilier* 241 of 4 Dec. 1953.

Yet even when inheritance for women was upheld, the value of the deceased's estate tended to be calculated in such a way so as to reduce the likelihood that women would come into possession of family lands.

Whereas male litigants in the customary courts often attempted to follow custom and prevent women from inheriting land, customary courts did not consistently uphold that practice. This appears to have been particularly true in the customary court of the Ait Abdallah, where court members were *foqahā* (religious scholars; sing. *fqih*) rather than the local elders or a mix of religious and lay elders more common in the Igherm-area customary courts. A review of the daybooks suggests that religious members of the judicial councils were most interested in *shari'a*-compatible custom, and in regards to inheritance, this also happened to be more progressive for women. Arguably, this settled the French dilemma of whether to support *shari'a* or custom when *shari'a* was more palatable, but here it was still under the guise of custom as far as the judicial council was concerned. The judicial council deliberated cases, but the way these deliberations were rendered into verdict was through French officials; the council did not announce the verdict that was instead announced by the *commissaire du gouvernement* (French government commissioner). In this and other ways, we see that what the French considered "customary law" was actually an amalgam of indigenous and colonial laws.[33]

While male family members often kept family land away from their female relatives' husbands, they also favored their sisters inheriting from an exogamous spouse. This brought new property into the family. It seems that a woman was more likely to inherit the *fiqh* – stipulated one-eighth of her husband's estate after the husband's death and that the woman's male relatives made sure this land was reassigned in her name. Why would this be the case given the strength of a woman's affective link to her parents and siblings and in the general absence and suspicion of the husband and his motives? That is, given the extent to which parents cared for their daughters, and brothers for their sisters, why wouldn't they pass on land to their daughters? To understand this, we might consider that each time a woman is disinherited of land, her male kin inherit more. This may potentially be of use to support a sister or niece if she finds herself divorced or destitute. Otherwise, of course, it is up to the male members' discretion how they use their assets. On the other hand, male family members arguably have an interest in sisters and other female relatives inheriting as much as possible from husbands. A wife's male family members tended to ensure she received her inheritance from these outside males, which helped support her, even if the

33. Given the omnipresence of the threat of jail time liberally declared by various *qobtan*s (captains) in Igherm that prevented most cases of perjury and deceit (Lhussain Outaig, personal communication, July 2010), the customary courts were further shaped by the French presence and omnipresent reprisals against local residents.

same men impeded her inheriting inside her immediate family. In that sense, the woman has use value for her biological family, for she potentially brings in more wealth and capital. Her family ensured that she did not go hungry, and could have argued she did not need more than that, since wealth stayed in the family and was simply redistributed differently. Yet wealth went out of the family when these same brothers and fathers had to give to their own wives and ex-wives. So, men claiming to be concerned about keeping wealth in the family also depleted family resources by marrying, bringing in outside women who would eventually inherit and take away part of the land. Arguably the desire (and Islamic injunction) to marry and have children to inherit the bulk of the land and work it outweighed the need to keep land in the existing family.

We know that women were landowners; their names appeared as sellers (much less commonly as buyers) on deeds of sale and lease. Without being able to quantify yet the proportion of "final sales" of land in which women were sellers, I have noticed that in the Anti-Atlas daybooks, not uncommonly it was women who leased lands that they and their relatives could not then reoccupy back despite the many attempts to do so. In contrast to the Anti-Atlas, the custom of some regions, such as among the Ait Atta of the Dades Valley in 1951, held that a woman's lease of land was only valid if approved by her male guardian (*'acib*). This held regardless of the woman's age and even when she had the status of "free" woman, such as after her husband's death.[34]

We might ask, why not just disinherit female relatives outright as was commonly done in Kabylia and the Aurès mountains of neighboring Algeria, for instance?[35] I would suggest that one of the consequences of the legal pluralism in the Souss region was that there was a strong moral consciousness and understanding that religion afforded women inheritance. Moreover, disinheriting women altogether would have deprived women of resources they potentially needed if their husbands divorced or deserted them and their fathers could not or would not provide for them. Marriage was crucial to a woman's economic well-being as well as her ability to fulfil what is commonly characterized as a religious obligation. Parents expected to feed, clothe and house their daughters only until marriage, and to benefit from their contributions to the household in terms of manual, social, and emotional work. Once married, however, women became

34. No author, "Coutume Ait Atta de Boulmane du Dadès," arrêt no. 116, 30 mai 1951, TC appeals Igherm Amazdar, in *Revue de la Justice Coutumière* 7 (1955) found in CADN Maroc DI 735.

35. In Kabylia, *habous* was used to reserve part of a person's inheritance for women given that otherwise women were entirely disowned; upon the women's death, however, the part inherited reverted to male heirs. See Jean Paul Charnay, *La vie musulmane en Algérie, d'après la jurisprudence de la première moitié du XXe siècle* (Paris: PUF, 1991), 170; Mohamedi Hédi Cherif, "Les statuts et les formes de propriété," in *Maghreb: Peuples et civilisations*, eds. Camille and Yves Lacoste (Paris: Editions La Découverte, 1995), 108; and Alain Mahé, "Histoire de la Grande Kabylie: Anthropologie historique du lien social dans les communautés villageoises," (Thèse en Sciences Sociales, Ecole des Hautes Etudes, Paris, 1994), also published as *Histoire de la grande Kabylie XIXe et XXe* (Alger: Editions Bouchène, 2001), 68-73.

economic dependents of their husbands. If repudiated, they once again became their fathers' responsibility or found themselves destitute.

2.2. Bitter Husbands' Revenge: "Finger Pointing" (*tamaqant*, *taguni*)

In the custom of some Berber groups, particularly in the Middle Atlas but also in the Anti-Atlas mountains, divorcing men could designate between two and ten men with whom their ex-spouse could not contract marriage. This was called "finger pointing" (Tam. *tamaqant* or *taguni*; Fr. *designation du doigt*). Although the practice of *tamaqant* appears to have been infrequent in the Eastern Anti-Atlas mountains – there were only two such recorded cases in three entries from five courts over a period of more than twenty years – its repercussions were more damaging than provisions in Berber regions where a man could pay off an ex-husband or his family to marry a woman otherwise forbidden to him. This practice was not remembered by residents of the Souss region when I inquired there in 2008-2012; the only person I found who had heard of this practice was a retired court clerk living in Agadir who saw frequent cases of *tamqant* in the Imilchil post of the Eastern High Atlas Mountains. Even when I described the two cases I had found from the daybooks to current and former employees in the judicial system, people responded that this provision surely was not custom, or as one former civil servant dismissively told me, "That's just an exception, and if the court allowed it, that meant the husband was right and he knew who was distracting her attention from him." Although I explained to this civil servant that there was no record of witnesses swearing to support such accusations. His vehement support of this measure as punishment for the wife's fault in a divorce did not align with any of the Islamic laws that he insisted governed marriage and divorce even during the Protectorate period. Still, in retrospect he told me, this was a reasonable response to a wife's (presumed) indiscretion.

This legal practice merited a 1955 article in the *Revue de la Justice Coutumière*. It is not mentioned in either Protectorate correspondence on the region or in compendia of Berber customary law. The functionalist explanation advanced by Protectorate officers was that the practice discouraged women from committing adultery. An older practice held that a man could "finger-point" up to three months after divorce when the legal '*idda* period ended for the wife, at which point the divorced woman was shown not to be pregnant and could remarry. *Tamaqant* led to problems, not the least of which was bribery. In addition, a well-intentioned man seeking marriage with a divorced woman could be named and thus become ineligible to marry her, even if they had not been involved with her during her previous marriage. Repudiated women thus had to be particularly careful not to invoke the ire of their ex-husbands lest they have difficulty remarrying, a requirement for women's economic well-being as much as companionship. At some point among the Aït Daoud ou Ali, the timing shifted to what existed during the Protectorate period, where men were allowed

to designate three men at the time of divorce, but were prevented from doing so three months afterwards.[36]

Detailed studies of customary law among the Moroccan Atlas tribes of the Ait Souab, Tafraout and Ida ou Tanan indicate that among those populations, the ex-husband had no say in future spouses for his ex-wife and the wife could marry a lover even if her ex-husband accused her of adultery.[37] There clearly were regional or tribal differences in this vindictive practice and in what were considered desirable outcomes for divorced women.

Former TC scribe (*greffier*) Omar Alawi, who worked in the Imilchil court, introduced this topic himself when I asked about divorce under customary law in the Eastern Anti-Atlas during an interview in Agadir in 2010. He said he personally witnessed the designation two or three times while working as a scribe in a customary court. I asked him whether they called this *tamaqant* in the Eastern High Atlas region. He responded,

> "The scribe, the day of divorce, he declares, he mentions it in the divorce. So and so divorced so and so and gave her her due, moreover he "closes her" to so and so… Divorce, you come to divorce, a man comes to divorce his wife and says that it's the man who led her astray. Why are they divorcing? He has the right to take the option of blocking [the other man's] plans. They don't marry. It's accepted in the custom of the shari`a of the region. He closed [marriage] to her. That's all."[38]

In both cases of *tamaqant* in 1953-54 from the Igherm region daybooks, it is clear that the divorcing husband exercised this right out of vengeance and in direct response to the wife's request for divorce. Notably, these were also the only two divorce cases I found in the daybooks in which women complained that they did not like their husbands. These women did not complain of poor treatment or desertion or any of the common women's explanations for a marriage's failure. They neither acknowledged nor denied having had adulterous affairs, so it is impossible to ascertain whether the men named by the husband for marriage prohibition desired to marry the woman subsequent to divorce. Among the Zayān people of the Eastern High Atlas, adulterous partners once divorced could marry their lovers so long as they were not specifically prohibited from doing so by

36. See the report by Captain Chaunac-Lanzac, Chef de poste de Taguelft, "Tamaqant ou interdiction de mariage chez les Aït Daoud ou Ali," *Revue de la Justice Coutumière* 12 (1 nov 1953): 9-11 in CADN DI 735.

37. See the Native Affairs reports on customary law in CADN Maroc Region Agadir 10.

38. Alami's original explanation was as follows, in French (italicized) and code-switching into Darija (no emphasis, Moroccan Arabic) and a few Tashelhit phrases (underlined): "*Le greffier au jour du divorce. Le jour de divorce il déclare, donc ça fait une mention sur le divorce.* Fulan *a divorcé telle il lui a donné ses droits, en plus* iqun as *à …. Le divorce tu viens divorcer, un homme vient divorcer sa femme et il dit c'est le monsieur qui l'a détourné. Pour qu'ils se divorcent. Il a le droit de faire option de lui barrer la route.* ma ijuwjash*. C'est accepté dans les coutumes dans la charia dans la région.* iqun as. Safi!"

the divorcing husband.[39] The two cases from the Anti-Atlas, both from 1953, are worth closer examination.

The first finger-pointing incident took place in Ida ou Nadif. Zahra of the village of Tiklilt of the Ait Ouaoukerda fraction is quoted in the daybook as claiming, "I have been married to the defendant for over three years. Now I have no taste whatsoever for him. Thus I am requesting a divorce."[40] The husband and defendant named Tayeb of the same location is quoted as having responded, "I leave it up to local custom (*Je me remets à la coutume locale*)." The customary court pronounced divorce and prohibited the plaintiff from what was recorded as her *sayate* that "will remain the defendant's property." The rest of the trousseau (*jihāz*) was to be returned to the plaintiff. The court further noted, "The prohibition against marrying the plaintiff is put on the following: 1. Lhanaifi x (the moqadem of y village), 2. M'Bark x (Tizeglit). The rest of the jihaz given to the plaintiff includes 6730 douros and a sadaq of 180 douros."[41]

The second case of *tamqant* in the daybooks is from Ida ou Kensous near Igherm. Zaina 'Abd of the Ait Malāl fraction stated to the court, "I ask that my husband who mistreats me repudiate me. I left the conjugal home two years ago; I am living at my parents' home and he has never thought about me. I ask for my rights, that is, my tirhrrād [*tighrād*, compensation for labor]." The defendant, her husband, responded,

> "My wife left the conjugal home to follow the advice of certain people who wish that she be divorced in order to marry her. I am ready to repudiate her on condition that she renounce her rights and that she be forbidden to marry 'Ali ou Bihi nait Mahlin who I accuse of having prejudiced my wife."

The court clerk noted,

> "The customary court pronounces divorce at the wife's fault. Forbids 'Ali ou Bihi of the village x to marry the plaintiff, the defendant having accused him of influencing her."

In this second case, as in the first, the wife was plaintiff. She claimed that after she left the conjugal home, referring to her husband, "He has never thought about me (*Il n'a jamais pensé à moi*)." As in the first case, here we have a wife's public criticism of her husband. In response, the husband is again vengeful. Custom tolerated his vindication. It is notable that in neither case did court members send out a committee to investigate the allegations as they so often did

39. Interprète-Lieutenant Robert Aspinion, *Contribution à l'étude du droit coutumier berbère Marocain (Etude sur les coutumes des tribus zayanes)* (Casablanca: Editions A. Moynier, 1937), 110.

40. "Je me suis mariée avec le défendant depuis plus de trois ans. Actuellement je n'ai plus aucun goût pour lui. Je demande en conséquence un divorce."

41. "D'autre part, le défendeur désigne du droit les nommés: ..," TC 2, Registre brouillard 7, case 16/53; ruling (Fr. *jugement*) 36/53; divorce 158/53.

with cases of marital disagreement. No one was required, either, to swear an oath either alone or with co-witnesses, even though the oath was commonly practiced in the region as a way of establishing litigants' truthfulness. The husband did not need to prove his claims, swear a collective oath, or support his suspicions of adultery; his word was enough for the court.[42]

A year later, the accused man in this second case came to court and made the following statement:

> "The defendant in repudiating his wife [name] 'pointed at me' as not being able to marry her without his express consent. Now, I would like to take this woman in marriage."

The defendant from the Ida ou Oukensous tribe stated that he "uphold[s] the declaration that I made at the time of the divorce." The court docket notes:

> "Instruction: Decision: The members of the customary court unanimously declared that in accordance with custom (Chraa) the plaintiff may not marry in any respect the divorced woman [named] above, even if the defendant went back on his declarations and [approved] this marriage."[43]

The court record added this Arabic transliteration to the case, noting what appears to be the French name for this practice: "*wa min aḥna çla rajali zawjatihi faqad ḥarumat 'alayhi al risāla* (Commentaire de Charnoby)."

Lest it appear from this last case that divorce terms were universally firm at this time and place, the daybooks indicate that there was some creative flexibility in divorce provisions. For example, custom followed Maliki *fiqh* whereby a man was allowed twice to take back a woman whom he had divorced. The first two times there was no penalty, but after the third time, both partners had to have married and divorced others in the interim, after which point the ex-couple could reunite. This is called "third" (final) divorce, colloquially called *ṭalāq athalāt*. And yet there was one 1950 case in which a man had divorced his wife with the final *ṭalāq athalāt*. but wanted to remarry her. The plaintiff declared to the court, "The defendant is my ex-wife. I repudiated her but I ask today to take her back." The defendant Rquia Moh responded, "I accept." The plaintiff presented the divorce deed 99/50 November 30, 1950. Afterwards in discussion it came out that this was a case of *ṭalāq athalāt.* The clerk noted in the docket,

> "The present deed thus permits the repudiator the possibility of taking back his wife and establishing a new marriage deed. As a condition, the repudiator, before instigating a new marriage contract, must swear by himself seven times, saying that the repudiation that he last pronounced was not definitive. The customary court postpones resolution on this case

42. TC 1, Registre brouillard 11, case 38/53; ruling 131/53; divorce 355/53.
43. TC 1, Registre brouillard 13, case 215/54, ruling 77/54.

until the following session in order to give the plaintiff time to complete the formality of the oath."[44]

After the next session, the clerk noted, "Oath sworn. The plaintiff takes back his wife and must complete another marriage contract."[45] Of note here is that both the plaintiff and the customary court council worked around the *fiqh* provision that normally would have kept the couple from reconciling until both partners married then divorced other spouses – a process that might take years or never happen given that the woman's ability to divorce would be contingent on her new husband's wishes. Clearly this resolution, essentially swearing that he did not intend to do what he in fact did do –pronounce his divorce from his wife definitive – was an instance of modifying *fiqh* to suit custom in a particular circumstance. It was a way of undoing the finality of an otherwise strict provision in *fiqh*. There is no way to know whether the court members did this of their own volition, if the plaintiff bribed them, or if there was some precedent for this practice that simply was not recorded in the written record.

Conclusion

In these family law cases, Islamic *fiqh* and Berber custom guided customary court council members, the French and North African clerks recording the proceedings, and the French Native Affairs officers overseeing and administering justice in the countryside. Yet these remained sources for the sometimes flexible, other times rigid legal codes that governed personal statute and other aspects of social and family life in Berber communities. Custom had long been influenced by *fiqh*, and this was the case throughout the empire, although custom in the Anti-Atlas region had more elements of *fiqh* in it than did custom in the Eastern High Atlas and Middle Atlas Mountains, for instance. The process of legal Islamization was longstanding and ongoing; in principle, elements of Berber customary law that clashed with Islamic law were replaced by *fiqh*. Yet, clearly there was much in Berber customary law – as in any customary law in a Muslim jurisdiction – that did not contradict Islamic legal codes or practices because it fell outside the purview of them. Particularly matters concerning rural life are absent from *fiqh* and thus fall to customary law wherever Muslims live. It is worth mentioning that this historical fact is wildly unpopular in contemporary Morocco where a more common view is that Islamic law, like the Quran, is so complete that any addition or modification must be *shirk* – un-Islamic practice or innovation.

44. In the original docket, the plaintiff is reported in French to have said, "La défendante est mon ancienne épouse. Je l'ai répudiée mais je demande aujourd'hui à la reprendre." The court clerk then noted, "Cet acte confère donc au répudiant la faculté de reprendre son épouse en établissant un nouvel acte de mariage. Seulement le répudiant doit avant l'établissement du nouvel acte jurer sept fois seul pour que la répudiation qu'il a prononcée n'a pas été définitive. Le tribunal coutumier renvoie cette affaire à la prochaine audience pour accomplissement de cette formalité de serment."

45. TC 4, Registre brouillard 6, case 15/52 and jugement 15/52.

By 1955, one French official remarked in an article in the *Revue de la Justice Coutumière* that the most important developments taking place in Berber customary law concerned women and property, and women and marriage.[46] Arguably these were related issues. The unnamed author did not elaborate, but we can infer that this means that the law being upheld more strictly followed *shari'a* than custom, since those were the two codes in operation in the countryside (rather than French codes, for instance). "L'évolution," as it was called in French – in the sense of a shift towards modernity as people were locally conceiving of it – had an increasingly Islamic, Arab, and urban orientation that just happened to be more generous to women than was Berber custom in the area of inheritance, for instance. We can only discern the contours of these legal transformations by looking outside the official archives that focus on men and into the messy workaday daybooks by scribe-witnesses that documented rural women's concern. Women in the countryside did not enter the archive in a uniform manner. Excavating their place in Moroccan legal history requires us to locate sources that document their words and actions as they claimed their rights.

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العنوان: الأنثروبولوجيا من زوايا الأرشيف: التاريخ عبر النصوص والشهادات النوعية

الملخص: بالنسبة لأيّ باحث اثنوغرافي يشتغل في قضايا البلدان المغاربية ويرغب في فهم الحاضر من خلال الماضي، أصبح اللجوء إلى استخدام الأرشيف بطريقة مكثفة بمثابة طقس مرور إلزامي. فقد استعملت ولمدة طويلة، طريقة تجميع الروايات الشفوية من أفواه المسنين المستجوبين في الميدان كأداة في دراسة التغييرات الاجتماعية على المدى الطويل. غير أنّ الانتقادات الأنثروبولوجية التي أظهرت أنّ السرد والذاكرة الشفوية يظلان مرتبطان بهموم الحاضر، وجذبت علماء الأنثروبولوجيا إلى استعمال السجلاّت المكتوبة في الماضي. وفضلا عن هذا، أثار انتقاد علماء الأنثروبولوجية لأخلاقيات الملاحظة التشاركية، بعض الشكوك تجاه البحث الميداني وجعل الرجوع الى الأرشيف يظهر وكأنه "موقع" بحثي يسمح للباحث بتفادي المشاكل المرتبطة بوضعه. غير أنه بمجرد الانغماس في الأرشيف، يدرك الاثنوغرافي بسرعة أن اليقين الظاهر للنصوص التاريخية مجرد وهم. وأعتبر في هذه المقالة، أن المرأة الأمازيغية (البربرية) لا تحتلّ مكانة مركزية في اهتمامات سلطات الحماية الفرنسية وكذا القبائل إلاّ في الحالات التي كان على الموثقين أن يدونوا شهادات المدَّعين ويحرروا ملخصّات للمحاضر بعد اتصال مباشر مع هذه النساء. ويظهر هذا كذلك في سجلات المحاضر الخاصة بالمحاكم العرفية في المغرب. وعلى النقيض من ذلك، تظل مشاركة المرأة في الحياة القانونية والسياسية غائبة إلى حدّ كبير في المراسلات السياسية وتقارير ضباط شؤون السكان المحليين. وتوفر سجلات التقارير نظرة حول طريقة تكيف النساء والرجال في مناطق الأطلس الصغير مع تعددية القانون التي كانت تجمع بين الأشكال المحلية للقانون العرفي الأمازيغي والفقه الإسلامي. وبالتالي فإن فهم الباحثين لحياة المرأة القروية وأدوارها في الشؤون القانونية خلال زمن الحماية يختلف بشكل جذري حسب المصادر المستعملة.

الكلمات المفتاحية: النوع، الأرشيف، القانون العرفي البربري، الشريعة الإسلامية، شؤون السكان المحليين الفرنسية.

Titre: L'anthropologie dans les archives: l'histoire dans des textes et témoignages genrés

Pour tout ethnographe du Maghreb voulant comprendre le présent à travers l'étude de l'histoire, une incursion dans les archives est devenue presque un rite de passage. La collecte d'histoires orales auprès d'interlocuteurs âgés sur le terrain a longtemps servi d'instrument à l'étude du changement social dans la durée. Mais les critiques anthropologiques qui ont montré que récits et mémoire étaient intrinsèquement façonnés par les préoccupations du présent ont orienté les anthropologues vers des annales écrites dans le passé. De plus, les critiques formulées par des anthropologues sur l'éthique de l'observation participante ont alimenté le scepticisme vis-à-vis des recherches de terrain et ont fait apparaître les archives comme un "site" de recherche qui permet au chercheur d'éviter les problèmes liés à sa positionnalité. Or, une fois plongé dans les archives, l'ethnographe se rend vite compte que l'apparente certitude des textes historiques est une illusion. Dans cet article, j'argumente que les femmes amazighes (berbères) n'apparaissent au centre des préoccupations du Protectorat et des tribus que dans les cas où le greffier devait documenter les témoignages des plaignantes et fournir les résumés des procès-verbaux après avoir été en contact direct avec ces femmes; comme l'illustrent les registres brouillards des tribunaux coutumiers au Maroc. En revanche, la participation des femmes à la vie juridique et politique est largement absente de la correspondance politique et des rapports des officiers des Affaires Indigènes. Les registres brouillards donnent un aperçu de la manière dont les femmes, ainsi que les hommes, de l'Anti-Atlas s'adaptaient au pluralisme juridique réunissant des formes locales

du droit coutumier berbère et du *fiqh* islamique (jurisprudence). Ainsi, la compréhension des chercheurs de la vie des femmes rurales et de leurs rôles dans les affaires juridiques sous le Protectorat diffère radicalement selon les sources consultées.

Mots-clés: Genre, archive, droit coutumier berbère, droit islamique, Affaires indigènes françaises.