Intertribal Conflicts and Customary Law Regimes in North Africa: A Comparison of Haratine and Ait 'Atta Indigenous Legal Systems

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WRITING COMPETITION ENTRY

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Intertribal Conflicts and Customary Law Regimes in North Africa: A Comparison of Haratine and Ait 'Atta Indigenous Legal Systems
[A] study of cultural politics is a study of the politics of the production of cultural explanations that are used in the academy, outside the academy, in global politics, in metropolitan politics, in national politics of various kinds, migrant politics of various kinds, articulations of majority and minority, domination/ exploitation, a very wide field of managing various kinds of crises that are coming up in order to give people who act within these crises a certain way of describing what the position is.

Gayatri Chakravorty Spivak

The Haratin people of North Africa, are subjects in crisis, they are people whose origins are debated, and whose social status is scorned. As an indigenous population in the midst of regional turmoil, they have been subject to removal, forced labor, and economic deprivation. Their exploitation by both French colonial forces and other indigenous populations has displaced the Haratin way of life and has subsumed their legal culture. This paper explores the difficulties of identifying indigenous legal systems where a population has been deprived of their land base and has been subjected to the legal system of outsiders – who are also indigenous. In this marginal space, betwixt the layers of oppressors, colonizers, and simultaneously other colonized and oppressed, I attempt to shed light upon the emerging Haratin legal system. Rather than focusing on the most visible aspects of a legal system that traditionally privileges formal institutions and structures, this paper examines the Haratin legal system at a very local level, privileging instead, informality, and common customs or practices found in everyday living that dictates manners and ethics, the foundation of any legal system.

Although the Haratin live throughout North Africa, this paper focuses specifically upon the Haratin of the Tafilalt Oasis region of southern Morocco. Section one is devoted to the social history of the Haratin in order to ‘locate’ their position in modern Moroccan society. In particular, this section examines the multi-dimensional aspects of their identity, including the

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process of naming, and the exclusion of their indigenous identity by the majority of Moroccans. This section also scrutinizes the affect of race and class on the formation of Haratin identity. Section II discusses the Ait 'Atta Berber tribe’s customary law and their political relationship with the local Arab Shurfas. Particular attention is paid to land tenure laws of the Berber tribes from pre-French Protectorate, through occupation, to post-colonial state. An examination of 'Atta governance focuses on pre-protectorate through 1956, the seminal year in Moroccan history that ended the formal protectorate relationship with France. Section III focuses on the Haratin formation and expression of their internal customary law. I attempt to identify a space where Haratin people create their own laws and customs outside the reaches of the dominant Berber and Arab populations. Land regulation and production, labor management, and ecological knowledge are discussed. Section IV concludes with a reflection on theories and lenses of analysis presented and their meaning in writing as an outsider about internal law.

I. Haratin Identity

A. On Naming and Meaning

Haratin identity, forged largely by empowered outsiders, revolves primarily around stereotypes stemming from racial, ethnic, and class prejudices. Perhaps the most controversial of the many meanings and identities that the Haratin invoke is that of indigenous peoples. In a place where Berber tribes dominate the Moroccan image of tribal peoples, the Haratin history and sedentary way of life seems contradictory to an indigenous identity. While peeling away the layers of meaning that comprise Haratin identity, the core position of this paper firmly recognizes that they are indeed indigenous, and moves to examine then, the consequences of such labels for these members of rural Moroccan communities.

In the southern oasis region of Morocco, the Haratin are a distinct caste at the bottom of a social hierarchy composed of landowning Arab religious specialists known as Shurfa,
Transhumant indigenous populations, specifically the Ait 'Atta Berber tribe, and slave
descendants known as the Ismkhan. The Haratin people are subject to discrimination by these
other groups, in particular because of their perceived lack of clear origins and ambiguous racial
identity. This discrimination manifests itself for instance, in the name Haratin, the etymology of
which is debated by scholars. Some scholars have adopted the opinion that Haratin is an Arabic
term while others insist that the word is more than likely Berber in origin. Prof. Chouki El
Hamel notes that the Berber word ahardan, meaning 'dark color', is the earliest known use of the
term, dating back to the thirteenth century, and that its use in some regions of Morocco to
designate dark skinned persons is contrasted with the word for white skinned persons –
Amazigh, that is also the word one group of Berber people use to self-identify. He also found
instances of Arab-speaking persons using the term to mean 'enslaved blacks' and historically in
Mauritania to refer to freed black slaves.

The term Haratin is similarly used to designate a specific group of dark-skinned
agriculturalists and peasants. There are few and scanty references to the Haratin in the literature
of Morocco, and where they are mentioned, it is usually only in their relation as laborers for the
Ait 'Atta Berber tribe, a popular focus of ethnographers and anthropologists. The Haratin’s

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1 Remco Ensel, Saints and Servants in Southern Morocco 3 (1999). Ensel wrote this book as a revision to
his Ph.D. at the University of Amsterdam. His primary base of research was in the Draa River Valley of Morocco,
with special focus on the Haratine peoples, conducted from 1993-94.

2 Hsain Ilahiane, The Power of the Dagger, the Seeds of the Koran, and the Sweat of the Ploughman: Ethnic
Stratification and Agricultural Intensification in the Ziz Valley, Southeast Morocco 107 n.7 (1998) (unpublished
dissertation, University of Arizona) (on file with the University of New Mexico Law Library). Noting that the word
has roots in the Arabic verb haratha, to plant, and also hor thani, meaning free people. Ilahiane is currently
Teaching at the University of Iowa and is revising his Ph.D. for publication. Ilahiane is from Morocco and based his
research primarily in the state of Errachidia, which encompasses the Tafilalt oasis region. His acknowledgements
include 'Amid Chad who taught Ilahiane about local Moroccan and French history (of the oasis) from a Haratin
point of view.

3 Chouki El Hamel, 'Race'. Slavery and Islam in the Maghribi Mediterranean Thought: The Question of the Haratin
wrote this article during his tenure at the Schomburg Center for Research in Black Culture in New York City. He is
currently a professor of Islamic history at Arizona State University.

4 Id. at 39.

5 Ensel, supra note 2, at 3.
marginality is figuratively emphasized when they are mentioned in brief passages or footnotes.

For instance, in a book about Arabs and Berbers in Morocco, a collection of several authors, the Haratin are described as follows:

The origin of the haratin class is still a subject of debate, but they are generally believed to be the descendents of black, immigrant slaves who intermarried with the Berber population. Most had dark skin and negroid features . . . almost all of them worked as khammas laborers for the white Arabs or Berbers, receiving for their toil a fifth or less of the harvests."

In another work, an author notes in a parenthetical reference that "it is axiomatic that in Morocco before 1912 ‘rural’ and ‘tribal’ were one and the same, except for the negroid cultivators, known as Haratin, in the Saharan oases who are probably not tribally organized."8 The same author reconfirms the agriculture identity of the Haratin, de-emphasizing their indigenous quality: "The Haratin . . . are a very old, negroid and non-tribal population . . . [they] are sedentary agriculturalists, well-diggers and date cultivators, and they are perhaps the most numerous single element of the population in the Moroccan Deep South."9 Despite their majority, they remain marginalized in majoritarian politics and texts.

The reference of Haratin identity in connection with labor, in particular agriculture, is a product of both a colonial past, as well as one of subjugation of the Haratin and their lands by other indigenous groups. The obfuscation of the history of slavery practiced by indigenous tribes in Morocco simultaneously dis/locates the Haratin people in the popular national imagination. Dominant groups, who live among the Haratin, have succeeded in displacing the Haratin’s origins outside of Morocco based on race, thus ‘un-indigenizing’ them from the region. This

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8 Ross E. Dunn, Berber Imperialism: the Ait Atta Expansion in Southeast Morocco, in ARABS AND BERBERS, FROM TRIBE TO NATION IN NORTH AFRICA 95 (Ernest Gellner & Charles Micaud eds., 1972). The editors of the book compiled various works on North Africa to explore the "significance of ethnicity in the process of nationbuilding [sic] and modernization in North Africa," and was made possible with help from the Center for International Race Relations. Id. at I.

9 David Hart, The Tribe in Modern Morocco: two case studies, in ARABS AND BERBERS, supra note 7, at 53 [hereinafter Hart, Tribe in Modern Morocco].

Id.
prejudiced perception of the Haratin’s origins is passed on to European ethnographers and anthropologists, and later expressed in academic literature about Morocco.

The references to slavery further complicate an understanding of Haratin identity. The silence surrounding slavery practiced by Muslims throughout North Africa and Europe during the height of the Islamic conquest of the Mediterranean makes it more difficult to explore fully exactly why the Haratin are associated with descendants of freed Sudanese slaves. This silence – “the refusal to engage in discussions on slavery and racial attitudes” in Islam, “reflects an embarrassment felt collectively throughout the centuries.”

During the decline of the Islamic empire in northern Europe, the slave trade moved to sub-Saharan Africa. This was problematic as this region had long been conquered by Islam and the religious status of the people as Muslims was overlooked or ignored as a bar to their enslavement according to Islamic law.

Several thousands of these slaves poured out of the Sudan region from Morocco and were exported throughout North Africa. In Morocco, the patterns of slavery were varied according to the needs of purchasers in cities versus rural areas. In urban dwellings, slaves were predominately women who performed domestic services or were concubines to the wealthy, while rural slaves in the oasis were predominately male, and worked in agriculture. When these slaves were manumitted, their status altered the working relationship between the former slave owning family and the freed slave, often resulting in another type of client relationship.

There is an important distinction however, between the Haratin and freed slaves, for “the haratin

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10 El Hamel, supra note 4, at 29.
11 Id. at 37. El Hamel cites a letter from the people of Tuwat in present-day Algeria to a scholar in Timbuktu requesting his opinion about the enslavement of free black African Muslims, to which he responded was an unlawful act and the burden of proof to the contrary (that the person was ‘eligible’ for enslavement) rested with those who bought and sold the slaves.
13 Cynthia Becker. We are Real Slaves. Real Ismkhan: Memories of the Trans-Saharan Slave Trade in the Tafilalt of South-Eastern Morocco, JOURNAL OF NORTH AFRICAN STUDIES, Vol. 7, No. 4 at 97, 98 (Winter 2002).
were not freed slaves . . . rather, they were free from the beginning.” Prof. El Hamel supports the notion that the Haratin were indigenous to the Dra Valley since time immemorial, with evidence from oral traditions of the Tata region, and the history of invading Berber tribes from northern Morocco and eastern North Africa into the oasis where they dominated Haratin lands, assuming the role of landowner over the local Haratin. There remains some dispute about the historical status of Haratin as slaves, nonetheless, it is part of their identity.

An important difference between the Haratin laborers and descendants of freed slaves is that of social incorporation and mobility afforded to manumitted slaves. Whereas freed slaves were considered freed people with rights, the Haratin toiled as laborers and did not have the opportunity to mobilize their social status through manumission. The Haratin were subject to the Berber by conquest of their lands, thereafter they engaged in an economic relationship with the Berbers that amounted to indentured servitude and peonage. This unregulated, unilateral relationship, created through oppressive circumstances, and practically inescapable was the source of a new trajectory in Haratin history that led to the widespread dispossession of their land.

In modern times, it is generally undisputed that the word Haratin itself also remains a pejorative term. The Haratin use several alternative terms then to self-identify. For instance, in the Draa Valley, they prefer the term dar-i, (plural dar’awi) meaning natives of the Draa Valley. Other Haratin choose to take the name of the place they live, such as the Ait Dra, Ait Tidgha, and Ait Dads, adopting the Berber designator “Ait”, meaning ‘people of.’ Using the

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14 El Hamel, supra note 4, at 39.
15 Id.
16 ID.
17 Mohammed Ennaji, Serving the Master: Slavery and Society in Nineteenth-Century Morocco 62 (Seth Graebner, trans., St. Martin’s Press 1998) (1994). “They claim precedence as the valley’s first inhabitants and say that the whites, originally nomads, came later to abuse their hospitality and treat them as slaves.” Id.
18 Hart, Tribe in Modern Morocco, supra note 8, at 53.
Berber form of social identification serves as an act of resistance to the outside designation of what and who the Haratin are perceived to be: outsiders, non-tribal, and without origin.

**B. Conceptualizing Indigenous Identity**

The debate surrounding the origins of the Haratin and their status as indigenous peoples is clouded by their traditional occupation as agricultural laborers for Berber land owners whose traditional tribal way of life dominates the Moroccan imagination of who tribal or indigenous people are. Locating the Haratin peoples in an indigenous versus tribal context illuminates the difficulties of international and cross-cultural “indigenous/tribal literacy”.

Exploiting this aspect of Haratin identity interrogates traditional models of understanding tribes as independent, isolated communities thus, highlighting the interdependency of indigenous groups like the local Berber tribes upon the Haratin. I emphasize the term *indigenous* and privilege its use as “[i]t has also been an umbrella enabling communities and peoples to come together, transcending their own colonized contexts and experiences, in order to learn, share, plan, organize and struggle collectively for self-determination on the global and local stages.”

The Haratin fall squarely within the spectrum of the tribal – indigenous – ethnic minority debate. The labels are important because they each determine recognized individual and/or

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19 Ernest Gellner, *Saints of the Atlas* 36 (1969). “The affiliation of a Berber to a social group is generally expressed in terms of his alleged patrilineal descent . . . [s]ocial groups in Berber society generally have the name Ait X. X is usually, but not always, the name of a person, such as Brahim or Mhand . . . ‘Ait’ can however also be combined with a place name, to designate the inhabitants of the place: for instance, Ait Talmest, the people of Talmest.” Id. Gellner is considered an eminent Islamic scholar and Moroccan specialist based out of London. He was an anthropologist in Morocco and focused especially on the segmentary system of social organization among the Atlas Berbers. His work in this area however, has been disputed by other scholars. See Henry Munson Jr, *Segmentation: Reality or Myth?*, 1 Journal of the Royal Anthropological Institute 829 (1995).

20 Christine Zuni Cruz & Margaret E. Aland Montoya, *A Narrative Braid Examining Racial Literacy* 6 (Dec. 2003) (unpublished paper, on file with the authors at the U. of New Mexico SOL). I use the term ‘tribal literacy’ as an adaptation of Margaret Montoya’s theory of racial literacy to convey how we ‘read’ tribal and indigenous identity.

21 Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* 7 (5th ed., 2002). Tuhiwai Smith is an Associate Professor in Education and Director of the International Research Institute for Maori and Indigenous Education at the University of Auckland, New Zealand. She theorizes de-colonial strategies for research on indigenous peoples using her own background as a Maori and her educational background in European epistemology.
collective human rights. Moreover, considering the Haratin against these labels will interrogate and destabilize their traditional meanings.

Although a strong emphasis is made on historical chronology of human migration in order to differentiate between tribal and indigenous peoples, "it is a type of unjust social relationship . . . that creates the 'indigenousness' that many now seek to protect via an international regime."22 It is the condition of indigenous and tribal peoples as exploited, politically and culturally dominated and subjected that is at the heart of the term indigenous.23 This understanding of tribal/indigenous peoples was largely conceived at the international forum of the United Nations (U.N.). Although the U.N. created the Working Group on Indigenous Populations (WGIP), it has not formally defined the term indigenous.24 However, one useful and comprehensive definition was offered by Jose R. Martinez Cobo, a Special Rapporteur appointed in 1971 by the WGIP:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.25 (emphasis added)

Similarly, the U.N. has dealt with minorities, although in the context of European ethnic strife. The U.N. defines a minority group as one "dominated in fact as well as in numbers, and that exhibits a distinct identity, which it wishes to preserve, implicitly or otherwise."26 However, the U.N.'s Declaration on the Rights of Persons Belonging to a National or Ethnic, Religious

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23 Id. at 3 - 4.
24 Id. at 6.
25 Id. at 7.
26 Id. at 5-6.
and *Linguistic Minorities*, did not attempt to guarantee any rights to territory. Minority groups are distinguished from indigenous peoples on the basis of their attachment to a specific territory, and further, their insistence on the reproduction of their communities. Where minority groups tend to integrate or assimilate into a dominant society, reproduction of their culture tends not to be as marked as it is with indigenous peoples since their assurance of that reproduction is in their place of origin.

Fitting the Haratin into this classification scheme requires a reconsideration of these definitions. The U.N. and Cobo’s definition of indigenous peoples assumes a sense of autonomy or agency of the native group whose territory is under their control (or at least once was). Further, the definitions underscore a collective consciousness as distinct peoples with a clear historical or mythical origin that develops a cohesive group identity. The definition of minority groups has a similar underlying assumption, but places the origins of these groups in a recognizable ‘place’ that is under the control of that particular group, empowered to reproduce culture there as opposed to the site of their relocation.

The Haratin’s situation seems to collapse these definitions. While the Haratin origins are perceived to be ‘unclear’ they are connected to the Tafilalt oasis in southern Morocco through centuries of agricultural labor. And although the oasis region has traditionally not been under Haratin political control, it has been cultivated by them, making their connection to this area more real than mere political domination. Prejudice keeps the Haratin segregated and unassimilated unlike how other minority groups tend to assimilate and integrate. Because there is no assurance of reproduction in their place of origin, the Haratin must maintain their connection to their distinct culture. Ultimately, the Haratin retain many features of an

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27 *Lâm*, *supra* note 22, at 6.
28 *Id. at 6.*
29 *Id. at 9.*
30 *Id.*
indigenous population who display “significant historical attachment to territory,” specifically
the oasis region, maintain a “commitment to culture distinctiveness,” and are beginning to
preserve their “territory and culture as a means of reproducing a singular ethnic community.”

In an attempt to deploy a discourse of indigenism that incorporates the historical experiences of
the Haratin – an economically exploited class, racially discriminated against, and landless, the
terms used to label them must be modified to include a variety of experiences of subjugation and
differentiation.31

Without a doubt, the Haratin’s historical occupation of the oasis region in southern
Morocco, along with their social isolation in their respective communities, and their own
assertion of autonomy, all support the conclusion that the Haratin are an indigenous group.
Although not tribally organized like the local Berber tribes who maintain intricate kinship ties,
they do maintain a significant relationship with a specific territory, and even as urban minorities
in northern Moroccan cities, their connection to their homeland is reinforced by migration
patterns that usually end back at their homelands in southern Morocco.

C. Qsar Living and the Creation of Castes

Unlike their Berber counterparts, Haratin peoples are not tribally organized. Rather, they
form “small pockets of endogamous population groups, even isolated families or individuals . . . .”
and “[o]ut of necessity they live as dependants in the proximity of other population groups.”32

This social organization results from the history of oasis living in adobe walled settlements

30 Id.
31 Id. at 11. “In the final analysis, the categories “indigenous”, “tribal”, and “minority”, like their referents, are not
iron-clad but overlap, and sometimes even merge, when the conditions that their members experience converge.”
Id.
32 ENSEL, supra note 2, at 3.
called *qsar*-s. These village-type dwellings provided autonomous agricultural outposts dotting the oasis landscape and were dominated in the 17th and 18th centuries by the Arab Shurfa and Murabitin, and then in the 19th century by the encroaching Ait ‘Atta tribe. In this context of shifting political power, the fragmentation of the Haratin across the oases region is a natural consequence.

Since the invasion of their lands, the Haratin have been constrained to a low status as sharecroppers by the Arab and Berber nobility through their monopoly of land ownership and legal restrictions on alienation of such property, as well as their ethnic/racial discrimination against the Haratin. The Haratin’s incorporation into the *qsar* economy as laborers was exasperated when the Ait ‘Atta Berber tribe pushed into the Tafilalt oasis and the Draa Valley, competing with other tribes for valuable access to water and pasture lands. The Ait ‘Atta entered a *ra'aya* or protection relationship with the Haratin and Arabs, promising protection from other raiding tribes in exchange for a large portion of the harvest, water, and grazing lands. This relationship established terms of conquest, and the people of the *qsar* were not allowed to retain their property rights. In fact, the ‘Atta invaded many *qsar*-s and seized their palm groves, gardens, and grain fields, leaving the local population landless. The Haratin in many *qsar*-s were left to do the fieldwork for the new ‘Atta lords – as they abhorred sedentary activity, and in exchange the Haratin received a portion of the harvest rather than wages. Individual Haratin families often moved with their landowners and lived among them as workers. This semi-contractual relationship was formalized in a ritual called *dabiha*, where a Hartani would sacrifice

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33 Ilahiane, *supra* note 3, at 112.
34 *Id.* at 94.
35 Tuhlaw Smith, *supra* note 21, at 28.
37 Ilahiane, *supra* note 3, at 95.
38 Dunn, *supra* note 7, at 93.
39 *Id.* at 96.
a sheep to the landowning family. The Haratin became dependent on the land owning class for their survival and protection, constituting a large reserve of migrating marginal peasants in search of work, a substitution for land, which would ensure them security.

Similarly, the Shurfa and Mrabitin were also subject to ‘Atta rule and lost their political control of the oasis established during the 17th and 18th centuries. Different from the Haratin however, these Arab populations maintained a position of power. The Shurfa in the Tafilalt oasis region, are thought to be descendents of the Prophet Muhammad via the lineage of the founding Arab dynasties in Morocco. This lineage affords them many privileges but more important, it is the main reason for their revered social status. The Murabitin are self-proclaimed descendants of local saints or holy men and are responsible for the care and upkeep of the Zawiya or shrine of their ancestor, as well as the distribution of gifts of money or other goods donated by the saint’s followers. These two dominating sedentary populations of the Moroccan oasis are revered not only for their religiosity, but also for their possession of baraka, or divine blessing that enabled these groups to serve as intermediaries and arbitrators for local tribal disputes among the various sub-tribes of the Ait ‘Atta, a major Berber tribal confederation. Like the Haratine, they also established qsar-s, primarily began as religious sanctuaries and lodges that over time, became centers of stability and safety while tribes battled one another for control of grazing territory in the region.

The Berber tribe’s political dominance and military power enabled them to maintain a high status and position of dominance over the local populations of Shurfa, Murabitin and

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39 Id. at 96.
40 Ensel, supra note 2, at 148 and 81.
41 Ihiaiane, supra note 3, at 108.
42 Id.
43 Gellner, supra note 19, at 75.
Haratin.\textsuperscript{44} The Shurfa and the Murabit in meanwhile, maintained their elite status by continuing their relationship with the encroaching Berber tribes as peace-brokers\textsuperscript{45} — a position they held since the early seventeenth century.\textsuperscript{46} Without land or religious prestige, the Haratin were relegated to the bottom of the oasis social hierarchy and their role as laborers for alien landowners drove them deeper into debt, poverty, and ultimately political disempowerment.

**D. Indigenous and Tribal minorities in Conflict**

The subjection of the Haratin by another indigenous group unmasks the previously noted contentions between Haratin, Berbers, and Arabs, especially in terms of the dominant perception of Haratin as “outsiders” despite recognition of the fact that they are perhaps the oldest indigenous group in southern Morocco.\textsuperscript{47} The difficulty of understanding this practice of one colonized group subordinating another is however, a “pivot point”\textsuperscript{48} where identity and racial privilege come to the surface.\textsuperscript{49} Indeed this situation inverts the commonly noted shared experience of indigenous peoples as “peoples who have been subjected to the colonization of their lands and cultures, and the denial of their sovereignty, by a colonizing society that has come

\textsuperscript{44} Ilahiane, *Globalization*, supra note 36, at 109, 112.
\textsuperscript{45} Ilahiane, *supra* note 3, at 95.
\textsuperscript{46} Id. at 94.
\textsuperscript{47} Hart, *Tribe in Modern Morocco*, supra note 8, at 53.
\textsuperscript{48} Zuni Cruz & Montoya, *supra* note 20, at 3. Profs. Margaret Montoya & Christine Zuni-Cruz, presented their draft before students at Univ. of New Mexico SOL, November 4, 2003. The presentation by these two professors followed that of the New Mexico State Historian, Ernesto Rael-Galvez exploring indigenous slavery and peonage in New Mexico by the Spanish and Mestizo colonizers. Their presentation explored elements of race and inter-racial communication and literacy. Montoya’s research is based primarily in Critical Race Theory; Zuni-Cruz’ scholarship is focused on Federal Indian Law and internal tribal customary law.
\textsuperscript{49} The subordination of one indigenous group by another is not unique to the Berber of Morocco, but is documented by other indigenous groups such as the Inka of South America. *See* Nathan Wachtel, *The Mitimas of the Cochabamba Valley: The Colonization Policy of Huayana Capac*, THE INCA AND AZTEC STATES 1400-1800 (1982), and also John H. Rowe, *The Mitimas of the Cochabamba Valley: The Colonization Policy of Huayana Capac, THE INCA AND AZTEC STATES 1400-1800* (1980).
to dominate and determine the shape and quality of their lives, even after it has formally pulled out,” implying colonization by a Western colonial force.50

Besides political power, the racial privilege of the local Berber and Arab populations lent them prestige in both their eyes as well as the French during their occupation of Morocco in the early 1900’s. Their status as ‘white’ populations distinguished them from the Haratin whose skin color alone gave away the history of slavery, peonage, and ancient migration. This obscured past devoid of recognizable ancestors is contrasted with the Ait ‘Atta pride in their genealogical social organization based on their legendary ancestor Dadda ‘Atta. The combination of racial privilege and military dominance created agency among the Ait ‘Atta to choose and negotiate their own identity as well as dictate the identity of those they dominated, like the Haratin. The implications of choosing one’s identity are certainly not without its “resource consequences.”51 The Ait ‘Atta divided land and water among their lineages while displacing the rights of the sedentary groups they conquered, adhering to their organizational principle of excluding strangers or non-members from these benefits.52 The historical discrimination against the Haratin hindered their progress towards self-determination.53 Only recently due to market changes and rural-urban migrations, as well as changes in government have the Haratin been given access to property ownership, slowly commencing a process of self-determination.

The law in the southern oasis communities is a law in flux. The political dynamics of the region still dictate the contours of relationships along racial lines while the Moroccan state has

50 TUNIWI SMITH, supra note 21, at 7.
51 Montoya & Zuni-Cruz, supra note 20.
53 Montoya & Zuni-Cruz, supra note 20.
made strides in guaranteeing rights for all Moroccans. The fading customary traditions of the Ait ‘Atta in the qsar-s, and the shrinking eminence of the local Arab religious families are met with strategies of Haratin families and individuals, carving out a new direction for their futures by migrating to cities for work, sending their remittances home where family are now able to purchase property. Despite the lack of political power in their communities, the Haratin are not entirely powerless. They are able to negotiate and manipulate existing power structures—slowly subverting their historical hierarchical oppression.

II. Tribal Profile

A. Colonial Power and the Implementation of ‘Atta Rule

With the Ait ‘Atta retaining control of the qsar-s by the end of the 19th century, the implementation of their customary laws was inevitable. Facilitating ‘Atta political dominance was the judicial empowerment given to tribal governments by the French during their brief colonial occupation of Morocco from 1912-1956, known as the protectorate era. Morocco was already under colonial rule by the Spanish in the south, but the interior remained largely untouched. The Moroccan sultan “ruled over a society dominated by tribalism in which, ... powerful Arab or Berber chieftains successfully challenged the authority of the central government (the makhzzen).” The French along the Algerian border exploited the vulnerability of the central government. Louis-Hubert Lyautey, a French officer posted in Algeria, set up trading posts with tribesmen along the border and began an economic penetration of Morocco, a

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54 MICHEL FOUCAULT, THE HISTORY OF SEXUALITY AN INTRODUCTION, VOL. 1, 92-93 (Robert Hurley, trans., Vintage Books, 1990) (1978). “[P]ower must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization...[and] as the strategies in which they take effect whose general design or institutional crystallization is embodied in the state apparatus, in the formulation of law, in the various social hegemonies...[p]ower is everywhere; not because it embraces everything, but because it comes from everywhere.” Id.

55 WILLIAM A. HOISINGTON, JR., LYAUTEY AND THE FRENCH CONQUEST OF MOROCCO 22 (1995). Hoisington is currently a history professor at the University of Illinois and focuses on Moroccan history.

56 Id.
strategy to facilitate pacification of the tribal Moroccan interior through a governing system of indirect rule that privileged Berber authority.\textsuperscript{57}

Lyautey's ideas were soon implemented in order to deal with the 'native question' on the interior of Morocco.\textsuperscript{58} The strategy was to employ army ethnographers to study the Berber tribes and customs and use that information to facilitate 'pacification' of the tribes and incorporate their governing structures into the French protectorate.\textsuperscript{59} Lyautey described this system previous to entering Morocco, while he was posted in Hanoi:

\begin{quote}
Instead of abolishing traditional systems, make use of them: Rule with the mandarin and not against him. It follows that if we are – and are always destined to be – a very small minority here, we ought not aspire to substitute ourselves for the mandarins, but at best guide and oversee them. Therefore, offend no tradition, change no custom, remind ourselves that in all human society there is a ruling class, ... and a class to be ruled: Enlist the ruling class in our service. Once the mandarins are our friends, certain of us and needing us, they have only to say the word and the country will be pacified, and at far less cost and with greater certainty than by all the military expeditions we could send there.\textsuperscript{60}
\end{quote}

Lyautey's methodology demanded that officers not "upset Berber "customary law" by introducing either French or Muslim practices."\textsuperscript{61} One outcome of this policy was the exaltation of the Berber institution of the tribal village council (\textit{ajmu}), thought to be an authentic expression of their political life and eventually used as an instrument for facilitating French rule upon appointing representatives.\textsuperscript{62} This same institution was recognized by the French government and so gave rise to the political dominance of Berber tribes across rural Morocco at the expense of other local communities like the Haratin.

\begin{flushleft}
\textsuperscript{57} Id. at 29. \\
\textsuperscript{58} Id. at 36. \\
\textsuperscript{59} Id. at 64. \\
\textsuperscript{60} Id. at 6. \\
\textsuperscript{61} HOISINGTON, supra note 55, at 72. \\
\textsuperscript{62} Id.
\end{flushleft}
The French policy towards tribes emphasized differences between Arabs and Berbers, between urban and rural dwellers, and between shari’a (Muslim) and customary (tribal) law.\(^63\) This approach assumed that the two systems were incompatible and separate, overlooking the fact that although tribes maintained governing structures that were internal to their own customs, Berbers shared a common Islamic heritage with Arabs.\(^64\) Another problem was that the French treated tribes as isolated political units without considering co-existence and dependence upon their larger super-structures, and local sedentary populations.\(^65\) This misunderstanding produced by the ethnographer’s gaze and romantic vision of Lyautey was intensified with the passage of the Berber Dahir or the Berber Decree of 1930. The decree sought to implement a system of Berber justice, recognizing the Berber legal system.\(^66\) The reaction from Moroccans in the urban areas was riot and resistance. The French were accused of forcing the sultan to give up his authority over the Berber hinterland and the decree was received as a threat to the religious and political unity of the sultanate.\(^67\) The French claimed that the decree was to reinforce the Berber justice system in order to protect the rights of those engaged in property transactions and litigation.\(^68\) The Berber Decree reflected the French perspective that the tribes should be governed according to their own laws and customs (but administered by the French), ultimately pitting the urban Muslim governing authority against the rural tribal regimes.\(^69\) The French in effect, parceled out power among various local authorities, a system of divide and rule.

\(^64\) Id.
\(^65\) Id. at 32.
\(^67\) Id.
\(^68\) Id. at 30.
\(^69\) Id. The author emphasizes that the policy was aligned on the axis of urban versus rural because there were also Arab tribes that benefited from this decree.
Mahmood Mamdani proposes that this type of bifurcated power structure, or in the Moroccan case, a trinity of powers (French civil law, Shari'a or Muslim jurisprudence, and Customary Law) creates a racialized state power yielding a racialized civil society. According to Mamdani, the colonial authority's promotion of ethnic differentiation was part of their strategy to create allegiances to a native or tribal identity, and thereby empower native institutions of authority – using them to subject others. He asserts that

indirect rule aimed at nothing less than to shape the preferences of the mass through a more organic elite . . . indirect rule was a hegemonic enterprise . . . native subjects were incorporated into the arena of colonial power rather than . . . [being] excluded from it.

Native subjects in Morocco were incorporated into the colonial power via the Berber Dahir. The Haratin were now subjected under multiple systems of power. The institutionalization of customary law privileged certain native authorities, resulting in Haratin de jure oppression by the local Berber nobility and administratively appointed chiefs. A consequence of implementing a customary law system in Morocco was “to give “tradition” a markedly authoritarian context” that had negative implications for already powerless subjects like the Haratin.

B. Traditional Law: Ait 'Atta Customary Law

The Ait 'Atta are a Berber or Imazighen tribe in Morocco. Traditionally, they claim their origins are with their patrilineal ancestor, Dadda 'Atta or Grandfather 'Atta who lived in the

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71 Id. at 4.

72 Id. at 7.
sixteenth century and came to southeast-central Morocco. The genealogical relationship to the agnostic ancestor Dadda ‘Atta is what gave birth to the Ait ‘Atta Confederacy, the super-tribal organizational unit of this tribe who are then subdivided into five sub tribes, or kham khmas, the five fifths. These tribes are then subdivided further into clans and lineages who dispersed themselves throughout the oasis area, expanding the Ait ‘Atta tribal authority, usurping and destroying qsar-s, intimidating the Haratin residents, evicting various Shurfa families and gaining control of qsar life in the oasis. Their rapid expansion that privileged tribalism and their practice of marginalism has been described as a “striking example of ‘Berber Imperialism.”

For the Berbers, the area of land litigation and regulation is directly impacted by their conquest of the sedentary qsar populations. Land was either acquired during conquest, becoming common lands for the local ‘Atta clans and lineages, or acquired by inheritance. The ‘Atta legal system that centered on property ownership established economic equilibrium among tribal members and dis-equilibrium for non-members, thus, maintaining a system of privilege and social stratification.

The Ait ‘Atta customary law, referred to as azerf, was very different from the shari’a or Muslim jurisprudence in that it was flexible, and often carried out by expert laymen rather than educated and trained judges of law like the Muslim qaid. Another important difference is that

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72 Id. at 2. “[A]gnatic lineage’ or ‘patrilineage’ refers . . . to the largest and most widely embracing unilinear (and here, patrilineal) descent group in which descent from a common patrilineal or agnatic ancestor can actually be traced, genealogically and on a step-by-step basis, by its living members.” Id.
73 Hart, Dadda ‘Atta, supra note 52, at 31.
74 Id. at 15.
75 Id.
76 Id.
77 Id.
78 ibid., supra note 3, at 122. See also Ignaz Goldziher, Introduction to Islamic Theology and Law (Andras & Ruth Hamori, trans., 1981).
the *azerf* is completely secular in nature, dealing mainly with property rights and regulation. The majority of Berber peoples are illiterate, however the 'Atta law contains both written and oral elements. The oldest known written document of *azerf* is written in Arabic on camel skin, and is located in a religious repository with the lineage of Ait Mulay Abdallah bin Hsain, a Shurfa ancestor, (not an Ait 'Atta tribal member) at the old 'Atta capital of Igharm Amazdar in the Atlas mountains. It is this intimate relationship with the Shurfa, established during the time of Dadda 'Atta, that created the privileged status of Shurfa and Ait 'Atta over the Haratin. This alliance established a dual legal system in 'Atta territory where the Shurfa established control over the spiritual arm of rule while the Ait 'Atta retained temporal rule.

A major part of Berber customary law consisted of land and property. The fundamental tenant of 'Atta land tenure was the prohibition of fragmentation of land ownership or alienation to non-tribal members. Land and tree tenure were the cornerstones of 'Atta customary law, and determined ownership, production, membership, and rights. The exclusion of non-tribal members in this system operated to perpetuate a system of exclusive ownership and thus establish power in the community.

Various land tenure laws carefully regulated the *qsar* economies, restricting wealth to the arena of land ownership and activities that derive from its control. For example, the 'Atta supervised the meticulous division of property among Berber families along three major ecological zones in the delicate habitat of the oasis, maximizing the benefit of scarce water and fertile land for each household. Hoarding property of any kind, especially agricultural products

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79 HART, DADDA 'ATTA. *supra* note 52, at 157.
80 GELLNER, *supra* note 19, at 172.
81 Ilahi ane, *supra* note3, at 138.
82 *Id.* at 139.
83 *Id.* at 142.
like barley or dates was prohibited.\textsuperscript{84} Other laws regulated activities competing with land tenure and were forbidden. Examples of such activities were establishing a bakery, butcher shop, or similar business that would compete with the division of wealth according to land.\textsuperscript{85} These activities were done communally instead. This prohibition adversely effected the Haratin most of all as it disabled another avenue for the Haratin to gain social mobility and instead upheld the status quo.

\textit{[T]}he control of economic speculation, and the customary mechanisms employed to block the entrance of market forces into the social organization of the village aimed at isolating the middleman occupations which were the only options that could be mobilized by the landless Haratine to economically compete with the Berber landowners and undermine their hegemony.\textsuperscript{86}

The alienation of property pre-1956 barred non-members from inheriting or buying 'Atta lands. Specifically, in marriage, an Ait 'Atta woman who married outside the tribe could not bring her real property into the marriage and thereby leave it to a stranger husband and children, rather, she received a monetary equivalent for the property she inherited and the real property was remitted to her nearest male agnate.\textsuperscript{87} This prohibition prevented the possibility for alienation of property to non-tribal members, ensuring the stasis of property wealth. The institution of \textit{shfa'a} or "pre-emption" refers to the rights of the nearest male agnatic kinsmen to object to a sale of land by one of his relatives, or to an exogamously arranged marriage that would result in alienation of property.\textsuperscript{88} Should such an objection take place, the land sale or the marriage would be prohibited. These prohibitions and systems of dividing property all

\begin{footnotes}
\item[84] Id. at 144.
\item[85] Id. at 143.
\item[86] Hsain Ilhiane, \textit{The Break-up of the Ksar. Changing Settlement Patterns and Environmental Management in Southern Morocco}, 48 \textit{Africa Today} 21, 32 (2001) [hereinafter Ilhiane, \textit{Break-up of the Ksar}].
\item[87] DAVID M. HART, \textit{Comparative Land Tenure and Division of Irrigation Water in Two Moroccan Berber Societies: The Aith Waryaghar of the Rif and the Ait Atta of the Saghru and South-Central Atlas, in Tribe and Society, supra note 73, at 213.}
\item[88] Id.
\end{footnotes}
reinforced Berber hegemony in the *qsar* economy and concentrated land ownership in the hands of Ait 'Atta peoples. Although the post-colonial government attempted to abolish the operation of customary law, it nonetheless remains the local *de facto* rule of inheritance inhibiting the Haratin and other non-tribal peoples attempts at purchase.\(^8^9\)

Berber laws enforced against non-tribal members usually occurred in the area of the protection relationship, or *ra’aya*.\(^9^0\) The protection pact contained its own rules and stipulations of who would police the *tiggura* or strip of land belonging to a Hartani, usually negotiated in exchange for portions of agricultural products.\(^9^1\) The assignment of the protector to each piece of Hartani land took place in January and August of each year, following the transhumant migration patterns of the Ait ‘Atta.\(^9^2\) The protection pact ultimately served as a method of imposing ‘Atta economic control by promising vulnerable sedentary communities defense against raiding tribes.

This tense relationship required the supervision of the Haratin by the Ait ‘Atta in order to ensure that production was at its maximum. Theft from the palm groves or agricultural plots was common, and penalties were strictly enforced, especially against the Haratin. Farming sanctions were put into place to protect productivity of property. Sanctions were enforced for activities such as unauthorized taking of dates, olives, and other fruit, weeding along irrigation canals and rivers, collecting green palm fronds for fuel, and wandering in the palm grove.\(^9^3\) The palm groves always had a chief, the *amghar n’tamazirt*, who was always a Berber, and protected the groves from theft.\(^9^4\) The village council, controlled by the landed Berber nobility, appointed the

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\(^8^9\) Ilahiane, *supra* note 3, at 171.
\(^9^0\) HART, DADD’ATTA, *supra* note 52, at 110.
\(^9^1\) *Id.*
\(^9^2\) *Id.* at 111.
\(^9^3\) Ilahiane, *Break-up of the Ksar: supra* note 86, at 29.
\(^9^4\) *Id.*
chief who protected Berber interests in the property. During the Protectorate era, the grove chief’s tasks turned inward towards the sedentary community rather than their traditional post as guards against external thieves. They became hired rather than appointed positions and safeguarded the grove from the threat of thievery from inside the qsar making the Haratin a prime target of enforcement.

Should a person violate these farming codes or be found in the palm grove stealing, they were summoned to appear before the ajmu, or village council who met in front of the mosque in an open space. The ajmu convened and determined a punishment, usually levying a fine, or izmaz, of a large portion of grain or other agricultural product. For the Haratin, this fine could be especially devastating as they were already very poor and sometimes incurred debt in order to pay the fine.

In the modern context, customary land and tree tenure arrangements still survive since access to land is dominated by the system of inheritance that traditionally excluded the Haratin. The sharecropping system is also alive and well. However the payment method is no longer 1/5 of the harvest but is more commonly a one-half system where the landlord provides the land and one-half of the input towards seeds and equipment as does the sharecropper, and each divide the production 50/50.

While the traditional Ait ‘Atta laws center on land ownership and production, their criminal laws and economic regulations also relate to the protection of land as the single source of power and status. The secular nature of ‘Atta laws is also an important feature of its function

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95 Id.
96 Ensel, supra note 2, at 172.
97 Ilahiane, Break-up of the Ksar, supra note 86, at 29.
98 Id. at 30.
99 Id.
100 Ilahiane, supra note 3, at 176.
101 Id. at 218.
as a law to rule or govern the qsar. The religious aspect of law is handled entirely by a parallel institution of the shari’a, which is enforced by the religious scholars, and specialists of any given village, usually a faqih,¹⁰² belonging to the local shurfa community.¹⁰³ The shari’a emphasizes equality before God and the well-being of the umma, or community of believers. The ‘Atta laws, secular in nature, are separated from this religious ethos, and so permitts a legal system that promotes exclusivity and inequality.

C. Traditional Governance

Although the Haratin physically occupied the qsar and worked its fields, they were nonetheless excluded from participating in the legal structure that ran it. As quasi-contracted labor, they were under the conditions of the Berber customary legal tradition, occupying the Berber legal space, yet not given agency within it. The Ait ‘Atta tribe preferred to exclude outsiders in order to maintain their dominance of sedentary communities.

The quintessential form of rule in the qsar was the ajmu, or local village council. Traditionally, the ajmu consisted of Berber elders in the qsar and prohibited participation by Shurfa and Haratin alike. The Shurfa maintained a parallel power structure as gajids or religious leaders and arbitrators. They functioned solely in the areas where the shari’a ruled and so limited themselves to this type of authority. The village council originally retained the authority to parcel out property, manage it, regulate trade, arbitrate various land disputes, and punish thieves.¹⁰⁴ Their focus on the management of the village’s economic and cultural life advocated preservation of Atta people and their supremacy, leaving outsiders with violence and other forms

¹⁰² Ensel, supra note 2, at 250. He defines faqih as a leader of prayers and/or teacher of the Qur’an.
¹⁰³ Id. at 124.
¹⁰⁴ Ilahiene, supra note 3, at 126-27.
of resistance as the only outlet of their concerns due to their lack of representation in this
council.\textsuperscript{105}

The \textit{ajmu} also arbitrated land disputes, however, when a local village had a dispute that
could not be solved or resulted in a deadlock, the village council could refer the case to the \textquote{Atta
capital for resolution.}\textsuperscript{106} Before the French protectorate era, the Ait \textquote{Atta Supreme Court heard
such disputes and convened outdoors, however during the French occupation, it was re-located to
a small one room school house built at the site in 1938 called the \textit{Istinaf}.\textsuperscript{107} The local councils
also followed this traditional venue of hearing cases outdoors, in particular, in front of the local
mosque.\textsuperscript{108} The procedure consisted of summons and citation of offense, followed by
deliberation of the council.\textsuperscript{109}

At the highest level, the super-tribal or Confederate \textit{ajmu} convened at the traditional
\textquote{Atta capital of Igharm Amazdar.}\textsuperscript{110} Each sub tribe was represented at this council and they
elected the super-tribal chief of the Ait \textquote{Atta every year. The guiding principles of election were
that of rotation and complementarity. Rotation of the chief was annual and complementarity was
reflected in election eligibility, as the candidates for office did not have a vote in the election for
chief.}\textsuperscript{111} The rights and duties of this top chief, who presided over the entire Ait \textquote{Atta
Confederacy had preeminence in any decision. This included responsibility for defense of the
territory, regulation of relations with outsiders, and declaration of war.}\textsuperscript{112} The village \textit{ajmu}
followed this same model of election. In both cases, the chief was subject to disposal if he were
perceived as unsuccessful in terms of a plentiful harvest, or there were some great calamity that

\textsuperscript{105} \textit{Id.}
\textsuperscript{106} \textit{Hart, Dadda \textquote{Atta}, supra note 52, at 167.}
\textsuperscript{107} \textit{Id. at 29.}
\textsuperscript{108} \textit{Ilahiane, supra note 3, at 134.}
\textsuperscript{109} \textit{Id.}
\textsuperscript{110} \textit{Hart, Dadda \textquote{Atta}, supra note 52, at 20.}
\textsuperscript{111} \textit{Id. at 76-77.}
\textsuperscript{112} \textit{Id. at 79.}
marked his term. Despite the egalitarianism expressed in this form of leadership, it explicitly excluded non-tribal members, creating a deep fissure between the conquered and the ruling classes.

III. Haratin Resistance and Redefinition

Within this framework of Ait 'Atta laws controlling the economic relationship with the Haratin, a separate system of authentic Hartani jurisprudence is difficult to locate, especially if we rely on Eurocentric models of law. While no formal system of Haratin codes and laws exists, resistance to Ait 'Atta laws in the forms of breaking the laws, especially stealing, and circumventing laws, as well as seeking law in the form of indigenous knowledge, all provide spaces where it is possible to explore and identify expressions of Haratin law and order.

Resistance to the 'Atta imperial relationship is largely evident through the frequent Haratin citations for stealing from the palm grove. Criminal enforcement of non-tribal members focused primarily on theft. Confinement of the Haratin to sharecropping tasks and low compensation for their work fed into the frequency of theft. Under the pre-1956 system, the Haratin were excluded from the local councils altogether. Today, the Haratin are able to participate in the council due to their presence in the oasis as landowners, empowering them with the right to hold such offices. Instead of being subject to the mercy of an all-Berber ajmu, the Haratin are now able to protect their own from allegations of theft, and are able to intervene

113 Id.
114 Marie Battiste & James (Sa’ke’) Youngblood Henderson, Protecting Indigenous Knowledge and Heritage, A Global Challenge 22-23 (2000). “The core of Eurocentric thought is its claim to be universal... Eurocentric intellectuals have abandoned ancient truths, values, and ways of life, and have accepted Eurocentrism as their measure of progress.” Battiste is Mi’kmaq from Unama’kik in Canada, and is a professor in the Indian and Northern Education Program at the University of Saskatchewan. Her work focuses on the protection of indigenous heritage. Henderson, a Chickasaw from Oklahoma is a member of the University of Saskatchewan’s College of Law and performs scholarship around issues of Native peoples and American and Canadian jurisprudence.
115 Illahiane, supra note 3, at 332.
when fines are levied.\textsuperscript{117} This power has not gone unnoticed by the declining nobility who are quick to condemn the social mobility of the Haratin people as an erosion of law into complete chaos and anarchy.\textsuperscript{118}

The most obvious change in the oasis communities in terms of law and order is the presence of the Haratin as a land owning class. The colonial period in Morocco presented many people with unforeseen opportunities to migrate in search of seasonal work in the cities of Morocco, Algeria, and eventually Europe.\textsuperscript{119} The exploitative labor conditions that the Haratin were exposed to in the \textit{qsar} made work outside of it attractive. Obtaining work for wages rather than a share of crops empowered the Haratin with a method of circumventing the old traditional methods of exclusion and oppression. The Haratin employed the strategy of purchasing lands they had worked for many years with the monies earned in cities.\textsuperscript{120} The conversion of wages into land acquisition served as the primary mode of subversion of the traditional exclusionary system of 'Atta law and governance.

The impact of land acquisition for the Haratin has resulted in their election to village councils and the commencement of obtaining full membership in the community.\textsuperscript{121} Representation of the Haratin in these councils has altered the ethno-political structure of the oasis\textsuperscript{122} and has facilitated the visibility of the Haratin in their respective communities as empowered citizens rather than marginalized actors in a feudal economy. "In essence, these economic and political changes have prompted the mobilization of latent ethnic consciousness and the creation of tradition among the Haratin."\textsuperscript{123} This tradition is rooted in the ability to

\begin{flushleft}
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id. at 383.
\textsuperscript{120} Ilihiane, \textit{supra} note 3, at 264.
\textsuperscript{121} Id. at 318.
\textsuperscript{122} Id. at 319.
\textsuperscript{123} Id. at 320.
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purchase and own real property. The Haratin have taken this privilege and have fashioned their own institutions of land use and ownership, expressions of their emerging jurisprudence in this area of law.

Mutual aid among the Haratin is expressed in the institution of *nwiza*, a system of sharecropping that is completely run and operated by fellow Haratin, providing assistance to others who are unable to complete agricultural tasks on their own.\textsuperscript{124} Other aid efforts have been established in the form of a collective fund for burial ceremonies that are distributed to those in need who may not be able to afford the traditional expenses associated with burial rights such as the feast, grave digging, and religious ceremony.\textsuperscript{125} The Hartani mutual aid institutions of assisted labor and burial funds contrasts with the Ait 'Atta perception of land and wealth. While the Berbers aim at keeping land as exclusive as possible, the Hartani emphasize communal benefit of individually purchased plots. The Haratin ensure their survival as a community by financially supporting one another in this way.

Although the Haratin were excluded from owning land pre-1956, their unique connection with the land in the capacity of agricultural specialists and irrigation ditch diggers provided them an advantage in terms of their production of these lands, and in turn, their ability to maximize the production yield of these small plots testifying to their “intimate ecological knowledge” of the oasis, giving them an advantage over Arab and Berber landowners.\textsuperscript{126} The Haratin’s traditional knowledge about their environment and methods of farming have proved to be profitable as their high yields feed their communities and keep production at a maximum. The rules and traditions

\begin{footnotes}
\footnotetext{124}{Id. at 295.}
\footnotetext{125}{Id. at 320.}
\footnotetext{126}{Ilahiane, supra note 3. at 290.}
\end{footnotes}
employed in farming on Haratin owned plots reflects an aspect of their legal system\textsuperscript{127} similar to the way the Ait ‘Aitta regulations of farming reflected their values of land tenure. However, unlike the Berber, the Haratin actually worked these fields and cultivated them for centuries. While the Berber land tenure system focused on production and high yield in order to benefit the Berber landowners to the detriment of the workers, the Haratin use their extensive knowledge of farming in order to assist one another in the community.

Stories of Hartani oppression as field laborers indicate the consciousness of the biased and unfair system of sharecropping. One Haratin testimony indicates the harsh working conditions of his people and the reality of what it meant to be paid in kind.

\begin{quote}
I remember with vividness, just as if it happened yesterday . . . during one of the major floods of early fall and late winter . . . the guard of the irrigation system made us work almost naked, and the only thing we ate was a piece of bread tucked under or around our waists: your hands worked, your back was bent, and your forehead sweated as you labored in five-meter deep irrigation canals from the rising star to the evening star.\textsuperscript{128}
\end{quote}

The triple oppression of the Haratin under the Arab, Berber, and French – who are seen as conspirators of the nobility, are marked with bitterness and trauma of endless years of unfair and cruel labor conditions.\textsuperscript{129} The Haratin model of sharecropping for other Haratin, the twiza, flows from this experience and fashioned the labor relationship as one of mutual aid rather than exploitation. Labor policies, an aspect of Haratin customary law is based on a collective experience and history as sharecroppers and workers in other low-wage sectors. Memories and stories serve as the guiding policy of Haratin communities in their development of their own

\textsuperscript{127} Battiste & Youngblood Henderson, supra note 114, at 43-45. “The traditional ecological knowledge of Indigenous peoples is scientific, in the sense that it is empirical, experimental, and systematic. It differs in two important respects from Western science, however: traditional ecological knowledge is highly localized and it is social. Its focus is the web of relationships between humans, animals, plants, natural forces, spirits, and the land forms in a particular locality, as opposed to the discovery of universal "laws."” Id. at 44.

\textsuperscript{128} Ilahane, Social Mobility, supra note 116, at 389.

\textsuperscript{129} Id.
unique system of labor. While labor defined class and ethnic identification under the pre-1956 period, the Haratin are evolving away from these exploitative methods towards an equitable model that fosters mutual aid, assistance, and fair working conditions.

Despite the increased visibility and agency the Haratin have gained in their communities, they are still a part of small rural communities whose balance of power is tied to land ownership and labor, and can easily be manipulated by either majority. The interdependency of the different ethnic groups upon one another – the Haratin upon the Berber and Arab landowners for labor, and the landowners upon the laborers to plant, tend, and pick produce – remains a strong field of influence in times of rapid social change. For example, one town’s elections that resulted in a Hartani winning a seat to the rural parliamentary council and subsequent boasting by many Haratin in the street led to a boycott of Haratin labor, leaving many people without work and a means to survive. In response, the Haratin performed the dabiha ritual, sacrificing a sheep to the Berber elders, signifying their submittal to their authority. The stubborn survival of this formal ritual was employed in order to reconfigure the power structure of the village. Moreover, the actual boycott of Hartani labor indicates the types of modern economic coercion that the Haratin are subject too, disabling their advancement towards a more autonomous way of life.

IV. Conclusion

The suppression of Haratin people’s ability to (re)acquire land has severely inhibited the visibility of Haratin jurisprudence, identity and self-determination. Western notions of

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130 Id. at 390. After the election of a Haratine candidate to the provincial parliament, the local Berber men and women decided to boycott Hartani labor. “[T]he Haratine sharecroppers found themselves unemployed overnight, and their labor arrangements were eliminated. Furthermore, when the Haratine were encountered throughout the palm grove, they were questioned as to the reasons that brought them to that part of the grove, and they were reminded that the fields and trees that had been feeding them for generation were not the property of the Haratine candidate they supported.” Id.
indigenous self-determination are rooted in a tribe's physical occupation and control or dominion over a territory and its people. The relationship between land and self-determination is revealing in that it is the control of alienation and exploitation of land that can produce a visible legal structure for peoples tied to that land. Because of the landlessness of the Haratin people and their oppression by another indigenous group, the visibility of Haratin laws is minimal and difficult to assess in comparison with the formal structure provided by the Ait 'Atta.

Another cause of invisibility may be the operation and location of custom that is “presumed to be an expression of the people’s will, forged in the crucible of daily living . . .” Daily living may suppress the expression of legal traditions under a cloak of the mundane masking a community's ethics, standards, and expectations of behavioral conformity (manners). These customs describe a legal situation as demonstrated by Hartani institutions such as twiza, and communal funds. As an unwritten law, these customs form the legal tradition of the Haratin and maintain the potential for change, flexibility, and adjustment.

As an outsider examining the jurisprudence of a culture through the anthropological works of European authors, sociological and historical texts by Moroccans, and no literature by Haratin people themselves, I must recognize my limited abilities to fully understand or grasp Haratin laws and customs. Instead of presenting a complete picture of Hartani jurisprudence, I present a problem of understanding and recognizing indigenous legal systems where a group falls outside of the norm. Moreover, the Haratin provide an example of why de-centering studies of tribal jurisprudence from North America is imperative for some indigenous groups seeking to

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131 Leon Sheleff, The Future of Tradition, Customary Law, Common Law and Legal Pluralism 377 (2000). Sheleff, originally from South Africa and now at the University of Tel-Aviv, serves as a legal professor in the area of sociology of laws and legal systems.

132 Id.
assert their rights in their own lands, or to liberate themselves from other oppressive regimes who may at times be other tribal government actors.
Glossary

Ait 'Atta - A Berber tribe in southern Morocco

Ajmu - An 'Atta word for the local village council that is the most local form of 'Atta governance

Azerf - Ait 'Atta customary law

Baraka - an Islamic concept of divine blessing

Haratine - (singular Hartani), group of indigenous people to southern Morocco

Ismkhan - descendants of freed slaves

Izma - fine levied against a thief by the village council, or ajmu

Murabitin - descendants of local Arab saints

Qsar - an adobe walled settlement that encloses a village and its agricultural fields

Ra'aya - the protection pact entered into between the 'Atta and qsar residents

Shari'a - Islamic law

Shfa'a - the 'Atta concept of preemption that gives the right to the nearest male relative of a landowner who is selling property, to object to the sale

Shurfa - an elite class of landowning descendants of the Arab Moroccan dynasty, also related to the Prophet Muhammad.

Tigurra - a strip of arable land, usually belonging to a Hartani

Twiza - Haratine system of communal mutual aid
Outline of Governing Structures of the Oasis

Ait 'Atha azerf structure:

- Super-tribal Council (elected Chief)
  - Sub-tribe
    - Clans & Lineages
  - Sub-tribe
  - Sub-tribe
  - Sub-tribe

Ajmu
Local Village Council
 'Atha members only
Haratine excluded

Shari'a Structure:

- Religious Legal Issue (Divorce, Adultery, etc)
  - Shurfa religious judge
  - Secular Land Dispute

1 Note that these structures are the traditional structures found during the pre-Independence period of Morocco. The secular legal system of Morocco, that also has a shari'a component replaces much of the old azerf system, nonetheless, these traditional governing systems still operate primarily through the local village councils who are now elected. The council members still consist however, of land owners, thus marginalizing Haratine representation.

2 http://www.infoplease.com/atlas/country/morocco.html