

INSTITUTE OF CURRENT WORLD AFFAIRS

LCB-6

Colonization - A Second Look

Tunis, Tunisia  
23 May 1961

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Dear Mr. Nolte,

A few weeks ago I called on an official of the French Embassy in Tunis to get some information on the French official position concerning the staged hand-over of French colon lands to the Tunisian Government. It was no real surprise to learn that the French Government poses no objection to the principle that all land should return to the Tunisian government, and then eventually to Tunisians. The only subject for negotiations is the complicated problem of procedure and just compensation.

In fact, this official's reaction approached weary indifference. Would some colons like to remain? Would they be willing to stay on as farm managers if the Tunisian government presented an attractive offer? No, having once owned their land they probably would not be interested in working as employees. In any case, he insisted, Tunisian farm land is not all that good, and the seasonal variations are so great that farm profits are always precarious. The prevailing tone of the discussion was that the game was no longer worth the candle -- perhaps never had been.

Suddenly I sensed how much we all resemble that field mouse in Robert Burns' famous poem. The dream of Jules Ferry envisaging a greater France extending beyond the Metropole, the early broad proselyting ambitions of Cardinal Lavigerie and the White Fathers, the belief, in short, that in "colonizing" one was accomplishing a noble mission of extending the borders of his civilization (or in those days "civilization" with a capital C, for was there any other?) -- all had vanished. Where now was that world-view epitomized in the boast of French Resident General Rene Millet upon unveiling the statue of Jules Ferry in Tunis, "Consider, gentlemen, that this is the first statue to be raised here since the fall of the Roman Empire."

It is almost as if the French came, administered, worked and dreamed. Then they woke up and left. Yet another inning in the long game between the Western and Arabic-Islamic worlds ends with the same score: no hits, no runs and the usual two or three errors.

Perhaps, but in this case of Tunisia perhaps not; for this small country of four million people continues to show signs, five years after independence, of remaining strongly attached culturally to the Western World. There is, in fact, the possibility of the evolution of a new culture which I would suggest calling Afro-Mediterranean -- something which by genuinely integrating much of both cultures would

tend to stand between the present sharp line dividing the Arab World from Europe.

If such a new culture does evolve, what factors will have made it possible? Was it that the French came in sufficient numbers to create an impact in depth, but not so great as to cause an overly violent reaction -- that is, a nationalist movement rejecting all French innovation and digging deeper into its own traditions as a sort of protective shell? Was timing important? Did the French as rulers stay just long enough but not too long? Did the Tunisian mentality of moderation and its acceptance of basically bourgeois values -- born of long generations of settled life along the coasts from Bizerte to Sfax -- play a decisive role? Or is this one of those cases where the hero in history makes the difference, and is it essentially the strong personality of Habib Bourguiba pushing Tunisia in this direction?

The "why" and "how" behind Tunisia's present orientation can be answered only after exploring all areas of this broad question. In an earlier newsletter the role of education was considered. Another subject of almost equal importance was that of French colonization and French-induced changes in Tunisian law and administration concerning land tenure and agriculture -- changes which often went hand-in-glove with the policy of colonization. Let us then reexamine this problem, no longer with the aim of attacking or defending the colonization as such for that question is now moot, but rather as a means of asking to what extent it was a bearer of cultural change.

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By the time of the French occupation of Tunisia in 1881 what had once been the thriving Roman colony of "Africa" had fallen on hard times agriculturally. In the interior of the country ruins of impressive Roman settlements with temples, forums and oil presses now looked out on empty steppes barely able to support a few nomadic bedouin.

How this decline took place poses no problem in historical analysis. In the middle of the Eleventh Century the Fatimid ruler of Egypt had released upon his newly proclaimed rival in Tunisia the bedouin tribes of Beni Hilal and Beni Sulaym. This was both an invasion and a migration, and the next two centuries were marked by the continuous influx of Arab nomads and a corresponding withdrawal of peasants and villagers to the coasts and the defensible cities. Probably only the sahel, that section of the eastern coast between Sousse and Sfax, and isolated pockets along the Northern coast remained in continuous cultivation during this period.

Although Tunisia was to experience relatively strong regimes after this bedouin invasion, it was never able even as late as the mid-Nineteenth Century to restore to settled agricultural life the large interior mass of the country given over to nomadism since the



Roman ruins -- and empty steppes

Twelfth Century. It has been estimated that when the Protectorate was established, just over one-half of the population or possibly about 600,000 persons were sedentary.<sup>1</sup> Even this low figure would tend to fall off from time to time, for as tax demands of the government got too pressing those peasants living on the fringes of settled life would simply revert to semi-nomadism.

Within this restricted agricultural area there were, of course, certain regional and cultural variations, but no great extremes. Probably the most settled conditions were found in the sahel, whose estimated 60,000 to 90,000 population regularly provided about one-sixth of the government's revenue; and in the Cap Bon region where well-kept farms of Andalusian refugees from the Christian reconquest of Spain still set a high standard. (On visiting a farm which has remained in the hands of Andalusians from the early 17th Century to this day I was impressed by the excellent workmanship of two wide and deep wells constructed over 300 years ago. The contrast between this type of farm and that managed by a Tunisian whose father or grandfather was a bedouin is striking.)

In the Northwest, including the valley of the Medjerda river, cereals were grown by sharecroppers. For each mechia (10 to 12 hectares) an owner or often renter would seek out a tenant or khammas (a derivative of the Arabic word for five, the tenant receiving 1/5th of the net profit) and provide him with a team of oxen, seed and a small advance for living expenses. Like most such systems of sharecropping the tenant seldom accumulated enough capital to be able to buy and work his own land. Much more likely was the prospect that in a bad crop year or as a result of too much pressure from the owner the khammas would simply flee the land.

The question of just who owned the land was in many cases far from clear during this period just before the Protectorate. Much was state domain obtained either as the result of confiscations from rebellious tribes whom the central government had managed to put down or from high officials who had fallen out of favor (in a manner reminiscent of the Abbasid Empire in the 9th Century).

Also a great proportion of the arable land -- possibly as high as 40% of the total -- was given over to habous (or waqf as it is called in the Arab East). This was an Islamic form of mortmain by which land or other real property could be put in trust for specified pious purposes. Two general types existed: The founder could designate private persons as heirs (usually his immediate family) with the stipulation that the revenue would revert to a named pious purpose only after the line designated as heir had died out. This would be a "private habous."

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1. cf. Jean Ganiage, Les Origines du Protectorat Francais en Tunisie, Paris, 1959, pp. 130-191. Estimates for the Tunisian population at this period vary from 800,000 to about two million. In the absence of reliable data probably the best guess would be between one million and 1,300,000.

Or the revenue could go immediately to a pious purpose such as building a mosque, maintaining a zawiya (headquarters of a Sufi religious brotherhood) or founding a kuttab (Quranic primary school) in which case it would be a public habous. A third type common in Tunisia was the mixed habous in which the property belonged to a zawiya and the revenues were first devoted to certain specified purposes pertaining to the zawiya. If there should be any excess it was then distributed to the founder's heirs.

In addition to providing a certain security by being inalienable in principle, the habous property served as a good means of income for its administrators (wakil for the public habous, muqaddam for the private). It was customary for the administrator to receive 6% or 7% of the annual revenue for his services, and for private habous the muqaddam was often selected from the family of the founder.

Finally, there was an indeterminate amount of land in private property -- mulk. Property limits were poorly defined, and deeds were not registered. Rather than legal in the Western sense, ownership was more nearly customary -- the combination of prescriptive right and village acceptance. Another problem intruded into this sector of private property. Islamic law of inheritance rejects primogeniture and stipulates an extensive and complicated division among specified heirs. As a result after a few generations a piece of land could well have been divided into as many as 50 small segments -- unless the original owner had managed to circumvent the law of inheritance by setting up a private habous.

Even these major categories of state domain, habous and mulk were not always distinguishable. It was not at all rare for a wary landowner claiming to hold a certain property as mulk to have hidden in reserve a habous title to the same property -- a title offering more security against government confiscation.<sup>1</sup>

This entire agricultural system was static if not regressive. The absence of assured public order -- especially vis-a-vis the bedouin -- limited the area of available land. The fluctuations of taxation inhibited any ambitions of getting rich off the land. Finally, the widespread areas of domain and habous lands encouraged a psychology of limiting exploitation of the land to what could be secured without incurring capital expenditure.

The establishment of the French Protectorate in 1881 brought almost immediately that sine qua non for any development of agriculture -- public security. It also ushered in a capitalistic approach to the

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1. This probably smells of chicanery to most Westerners who have always been able to take for granted public security and orderly tax collection, but when neither of these factors exists it can be seen as no more immoral than taking out an insurance policy. For the same reasons the much maligned "Levantines" of Tunisia and the Levant states managed during this period to have more than one passport cached in the family lockbox.

Tunisian economy, and there were soon Frenchmen -- or more often Algerian Frenchmen -- on the scene to make the most of it. In fact, the first twelve years of the Protectorate was the heyday of rampant, unchecked land speculation. Like much of the history of the opening up of our own West and the building of the railroads, it is often not a very pretty story; and the several incidences of sharp dealing or outright dishonesty are made even more unpalatable by the fact that it was a case of Frenchmen exploiting the citizens of a "protected" state. This aspect of the story need not detain us, for we are interested in tracing the course of new influences rather than in passing judgments on individuals or groups.

During this period of speculation the first major land legislation was passed -- the Land Registration Act of 1885. This act, providing for exact registration of land and the issuance of clear titles, was obviously in the interest of the French speculator, for he needed to know just what he had purchased. However, it would be quite inaccurate to suggest that even in this early period -- only four years after the establishment of the Protectorate -- this act was merely the result of a speculators' lobby. The motivation was much less specific. It was a natural reaction of administrators coming from a dynamic Western culture when faced with a form of Islamic traditionalism, and the Frenchman could no more appreciate a system which did not give clear titles to land for purposes of tax and trade than could the Tunisian Muslim understand a policy based on the assumptions of a cash economy, fluctuating prices and land as a commodity.

The 1885 act was patterned on the Australian Torrens Act.<sup>1</sup> The act provided that a man could present a claim which if not successfully challenged after due publicity and the lapse of a specified time period would be registered and a title deed issued. The original fees for registration were just high enough to inhibit many a small holder, but this injustice was partially rectified later. Land registration was carried out by a special court created by this act -- the Tribune Mixte which, to render judgments, had to be composed of three French and two native magistrates.

This essentially Western concept was embraced at once by virtually all Europeans dealing in Tunisian real property, but a surprising number of Tunisians also registered their properties. By 1907 the Tribune Mixte had received requests for registration from:

3,331 Frenchmen  
2,824 foreigners  
3,985 Tunisians

and a generation later in 1936 the total number of requests stood at:

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1. It has been suggested that Tunisia owes her Land Registration Act to the fact that Resident General Paul Cambon just happened to have read and been impressed a few years earlier by two newspaper articles on the Torrens Act. cf. Etienne Buthaud, "Introduction a l'Etude des Problemes Humains de l'Immatriculation fonciere en Tunisie," Les Cahiers de Tunisie 3rd & 4th trimester 1953.

6,363 Frenchmen  
 5,000 foreigners  
 11,230 Tunisians 1

The immediate effects of this land registration were striking enough. Interest rates on mortgaged properties which had previously run as high as 18% dropped to between 4% and 6% for registered properties.<sup>2</sup> Tunisia, exposed admittedly to the perils of speculation, was also now made attractive to bona fide capital investment. More important, however, for our purposes were the long-range effects on Tunisian mentality. Every Tunisian coming before the Tribune Mixte received a first-hand lesson in the workings of Western law. At the same time in registering his land with the Tribune Mixte he implicitly rejected the jurisdiction of the Islamic shari'a courts. (All litigation involving registered property went before the French courts in Tunisia.) Thus, it can be seen that this prosaic matter of land registration actually involved a process of learning Western techniques and of denigrating the value of traditional Islamic courts — all without any suggestion of a direct attack on the latter.

Even habous lands were offered for registration and the Tribune Mixte decided, in the absence of specific legal authorization in the 1885 Act, to extend the benefits of land registration to habous petitioners as well.

Also, with the increased commercial value of registered land Tunisians could begin to view sales and mortgages not as something undertaken only under the impulse of bleak necessity but as profitable transactions. Admittedly, many a Tunisian was to squander his family inheritance by understanding only half the workings of this new commercial world, and as will be seen later only the existence of the habous system plus the sympathetic policy of French administrators on the spot kept even larger areas of land from falling into European hands. However, the important thing was this revolution in ideas. For better or worse much of Tunisia was on the move from status to contract, from the idea of an immutable society to the idea of progress.

By 1892 this first wave of Frenchmen into Tunisia had managed to gain control of 443,000 hectares. Since estimates for the total area in cultivation at the beginning of the Protectorate in 1881 dip as low as 600,000 hectares, the impact of this "invasion" was obviously felt at all levels. In fact, European landownership in Tunisia at its peak just barely doubled this figure, but in later years the

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1. By independence in 1956 just under 2,000,000 hectares had been registered.
2. This was brought out by a M. Martinier during one of the many debates between French colons and Tunisians at the historic Congres de l'Afrique du Nord held at Paris in 1908. The proceedings of this congress, and especially the exchanges between colons and Tunisians, are invaluable for recapturing the spirit of the times. Many of the earliest Tunisian nationalists such as Bechir Sfar, Abdeljelil Zaouche, and Khairallah ben Mustafa won their spurs at this Congress.



increased total area under cultivation served to soften the contrast. (In 1951, for example, Europeans owned 770,500 hectares of a total cultivated area of 3,866,000 hectares. This meant that Europeans owned roughly 20% of the total cultivated area and just over 8% of the total "productive" area -- or area capable of being put to productive use which was estimated at about 9,000,000 hectares.)

At the same time, however, this early move brought very little actual French colonization. Of the total 443,000 hectares a full 416,000 were in the hands of only 16 proprietors, including several joint-stock companies. The early growth of foreign holdings can be seen in the following breakdown:

- a. Before the Protectorate French holdings were slightly over 100,000 hectares
- b. In 1885, 136 French proprietors owned 212,811 hectares
- c. In 1890, 505 French proprietors owned 359,000 hectares <sup>1</sup>

A brief digression to explain the pre-Protectorate French holdings might be of interest. Almost the entire total is accounted for by the 100,000 hectare Enfidaville estate bought in 1877 by the Société Marseillaise. Ironically, this estate was bought from Khayr al Din Pasha, sometime Tunisian prime minister and leader of the reformist movement who had tried in vain to modernize the Tunisian state in time to avoid Western interference. Having fallen from favor in 1877 Khayr al Din Pasha was on his way to Constantinople to assume later even more important duties. One could hardly ask for a more symbolic act to close one era in Tunisian history and announce the approach of another.

By the 1890's the French authorities had become disturbed by this situation of large holdings by only a handful of French citizens, many of whom were in any case absent. They were concerned less with the possible native reactions than by the continued slow growth of Italian colonization in Tunisia. (One must jar himself out of the present 1961 terms of reference for "imperialism" and remember that most of the big problems at that time did not even touch the native populations -- Briton v. Boer in South Africa, Britain v. France in Egypt, France v. Italy in Tunisia, etc.)

To meet this problem a series of steps were taken to encourage and facilitate the settlement of French colons on the land. A colonization fund was set up in 1897 to purchase land which would be made available for French colonization; certain state lands were made available; cautious changes were made in the habous system to make their exploitation easier; a homestead system was evolved which granted the prospective colon cheap land and easy credit provided he stayed and

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1. Abdeljelil Zaouche, "L'Etat de l'Agriculture indigène en Tunisie," Congrès de l'Afrique du Nord, Paris, 1908, vol. II, p. 480.



developed his plot for a certain period of time; even an École Coloniale d'Agriculture was established by the government in 1898 with the intention of training the French colons to be installed in Tunisia. By the end of the Protectorate period almost half of the total area of European cultivation and well over half of the total number of proprietors traced their origin to official colonization.

With official colonization came a new mentality. From the immediate problem of counterbalancing the large number of Italians with French settlers in order to remove from doubt any question about which European power should "protect" Tunisia, it was but a short step to the more general idea of a mission civilisatrice. Whether it was a question of eradicating native "indolence and apathy," rationalizing outmoded administrative or legal systems, or simply insuring French dominance, the solution was found in effective French colonization.

This policy -- or perhaps it would be more accurate to stick to the word "mentality" -- served as the point of reference for most of the major laws and activities in the coming decades -- the dualism (European and indigène) of the various consultative bodies, the naturalization policy which eventually brought French citizenship to large numbers of Tunisian Jews, Italians and Maltese, the later refinements of legislation covering details of colonization and settlement, the system of tariff preference for various Tunisian products such as wine, and the manner in which governmental services even down to the policeman directing traffic and the minor employee in the Post Office were staffed with Frenchmen.

Here we need only catalogue the general results of this colonization policy before returning to an examination of the effects on the native Tunisian Muslims. By the end of the Protectorate there were some 255,000 Europeans living in Tunisia (total population just under four million at that time), and 15% of the European work force<sup>1</sup> was engaged directly in agriculture. As has been seen the Europeans owned roughly 1/5 of the cultivated land. These holdings were concentrated in Cap Bon (where there was an especially large number of Italians, mainly Sicilians, cultivating rather small holdings), and in the North and Northwest of the country. Most of these farms, being large enough to make mechanization practical, maintained the equipment and operated on the lines normal for Western Europe. As a result of these better methods (and, admittedly, often better land) European yields tended to be just better than double those of the

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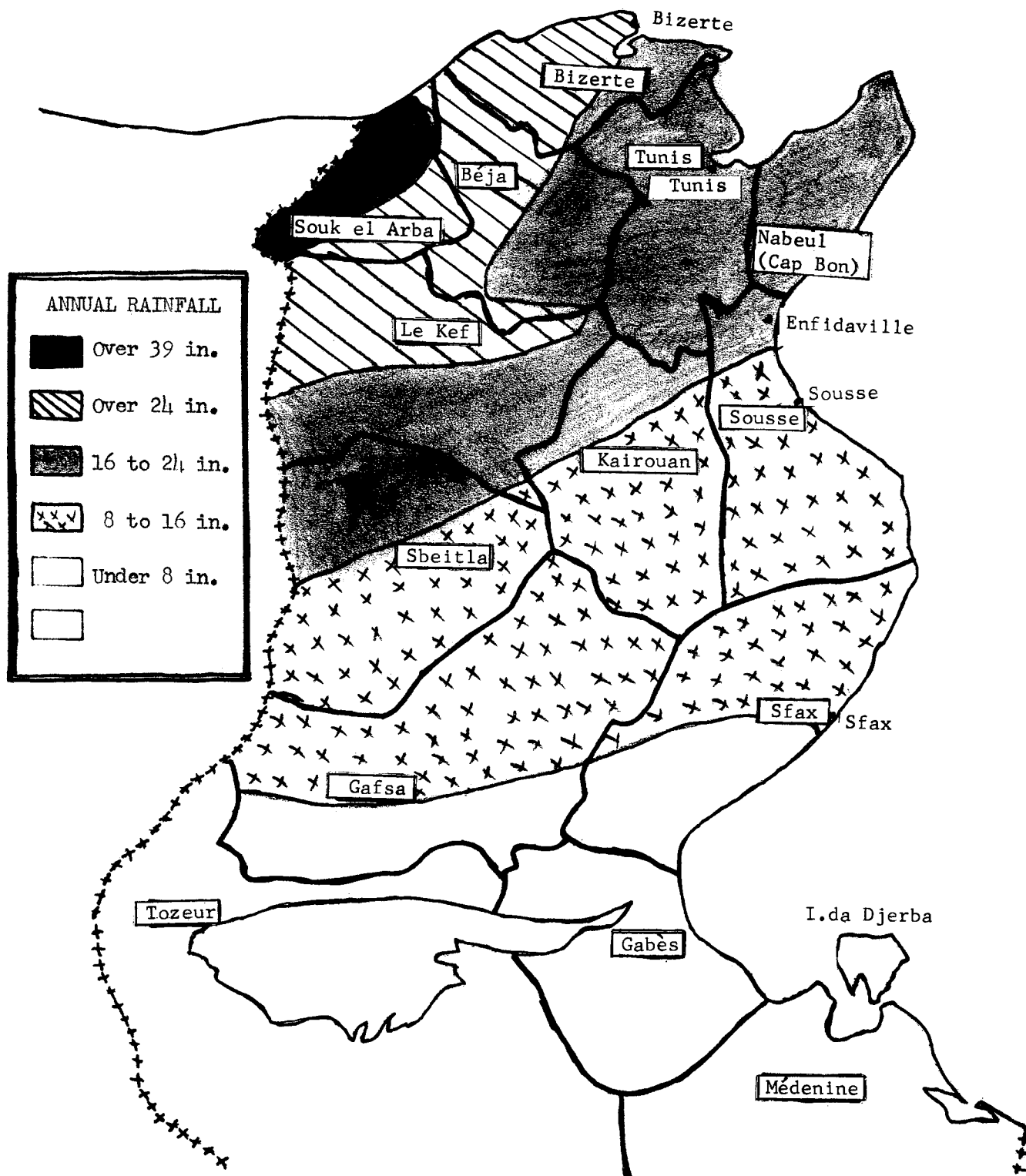
1. One author, relying on official statistics, has estimated 60,000 rural Europeans out of a total population of 255,000. Pierre Marthelot, "Les Tunisiens. Reflexions sur quelques Disparités Géographiques et Sociologiques, Les Cahiers de Tunisie #25, 1959. He has apparently derived this figure from the table on page 49 of the 1957-58 Annuaire Statistique which lists 23% of the total European work force as engaged in the Primary Sector of the economy (Agriculture). This, however, does not measure with accuracy those directly engaged in cultivation. I have relied on the table (page 53) listing Agriculteurs exploitants and Salariés Agricoles to arrive at the figure of 15%.

The following chart and map show the extent and location of European colonization in Tunisia. Information in the chart is based on a survey made by the Service des Statistiques in 1953.

The information in Column One (Area in Modern Cultivation) includes all European cultivation and the following Tunisian cultivation: in cereal lands all farms of 50 hectares and over; all other farms of over 25 hectares; and truck farms, vineyards and citrus groves of over 3 to 5 hectares.

Totals for areas may not add up because of rounding.

	AREA IN MODERN CULTIVATION (HECTARES)	NUMBER EUROPEAN CULTIVATORS	TOTAL EUROPEAN HOLDINGS (HECTARES)	NUMBER FRENCH CULTIVATORS	TOTAL FRENCH HOLDINGS (HECTARES)
BEJA	212,850	364	136,000	346	132,450
BIZERTE	83,840	285	46,850	134	32,750
CAP BON	79,600	612	43,570	309	35,570
GABES	5,750	5	1,560	4	860
GAFSA	46,180	30	41,000	28	40,250
KAIROUAN	96,700	22	36,980	21	36,840
LE KEF	177,150	121	54,790	96	50,780
MEDENINE	23,000	53	4,600	1	140
SBEITLA	31,550	29	24,870	29	24,870
SFAX	137,500	61	73,960	53	68,350
SOUK EL ARBA	77,450	81	45,090	77	44,700
SOUSSE	74,980	36	54,310	18	53,660
TUNIS	232,900	1,409	182,790	887	175,050
TOTAL	1,279,500	3,108	746,470	2,003	696,333



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Tunisians. Representative figures for the year 1957 were:

		Quintaux (220.46 lbs.) per hectare			
		Soft Wheat	Hard Wheat	Barley	Oats
Northern Region:	Tunisians	4.8	3.5	3.0	2.3
	Europeans	8.9	8.6	7.8	3.4
Central and Southern Region:	Tunisians	1.8	1.7	1.7	1.7
	Europeans	5.4	4.2	2.7	1.1

So much for the European colonization as such. The detailed consideration of its organization, plans and prospects, discussed in scores of books and French degree theses now gathering dust in the Tunisian Bibliothèque Nationale, is no longer pertinent. The colons have gone or are leaving. Whether much or even any of their ideas and work remains in existence depends now upon the sons and grandsons of those early obscure and ignored indigènes. Let us now try to pick up the story from their point of view.

We mentioned earlier how the Land Registration Act of 1885 had started the process of change toward the idea of a dynamic economy in which land is a commodity instead of a way of life. However, this new concept offered too much freedom at one stroke, and the more common Tunisian reaction at the turn of the century was that of deep concern as before something powerful and not quite understood. It is not that Tunisians were being pauperized or driven off the land. On the contrary, more land was coming into cultivation and more Tunisian labor was wanted. However, this birds-eye view was denied to the small-holder who had improvidently sold his land, or to the tenant who faced the novel experience of leaving the land worked by his family for generations to find work elsewhere.

Further, the Tunisians acted both naturally and with justification in feeling that by losing title to their lands they would remain well off only at the sufferance of their masters, the French owners.

In short, the Tunisian was both attracted and repelled. He admired the new system, its greater efficiency, its higher cash values; but he dreaded the jump into the dark, and he was shrewd enough to know that he could not beat the European at his own game. Not yet, anyway.

The attraction was revealed in the acceptance of land registration, the admiration of public order and the appreciation of a system of regular taxation. Also well received was the development of olive plantations around Sfax, one of those happy combinations of events where everybody wins. Here an energetic director of agriculture, one Paul Bourde, advanced the theory that this region, cultivated in Roman and Byzantine days, had not irretrievably changed as a result

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of the intervening centuries of deforestation. It could, in short, support the cultivation of olives, provided the trees were properly spaced to suit the relative aridity of the area. The land was there to be exploited for in 1892 the Protectorate Government had released over 100,000 hectares of state lands in this area for sale at ten francs per hectare with the stipulation that they be planted in four years. However, the olive tree does not give a good yield until 12 to 15 years after being planted. Tunisians willing and capable of cultivating the area lacked the capital for such a long-term investment, and prospective French colons were not so interested in this marginal land. French capital filled the gap, bought the land and installed tenants by a contract of mughārāsa (Arabic - derived from the root meaning to plant a tree). The tenant or mughārasi would agree to care for the trees while providing for his own sustenance by growing cereals and pulses on the same land. When the trees matured the mughārasi received full property rights to 50% of the orchard. As a result of this policy the olive orchards in the gouvernorat of Sfax, amounting to 18,000 hectares in 1881, had reached the total of 200,000 hectares as early as 1907. In addition, several thousand bedouin nomads of the Metellits tribe who used to range over the formerly uncultivated area became settled cultivators. This was undoubtedly the most dramatic victory of settled culture over nomadism since the bedouin invasions of the 11th Century.

Resistance to the new way of life found its most natural focus in the habous system. It served as a logical watershed separating the two cultures in conflict. To the modern European the habous meant inefficiency, lack of exact definition, obscurantism and mismanagement. To the traditional Tunisian Muslim the habous was part and parcel of Islamic law, and at the same time it served as his best refuge in the unequal battle against European capitalists and State-assisted colons. As a result of this conjuncture the Protectorate was always circumspect in attacking the habous system, and even quite Westernized Tunisians were disinclined to expatiate on its obvious inefficiency in practice.

Still, even within this limited set of ground rules the Protectorate was able to keep nibbling away at the fact and the principle of habous to such extent that the newly independent Tunisian government was eager to deliver the coup de grace, and able to do so (in 1956 and 1957) with almost no public reaction. Let us try to trace the main steps of this evolution.

The problem confronting the would-be colon was to get use of the habous lands which were in principle inalienable. A means existed in the Maliki<sup>1</sup> rite. This was the concept of enzel (or inzāl) which

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1. The Maliki rite, one of the four accepted rites or schools of law in Sunni Islam, was followed by the overwhelming majority of Tunisians. The only other rite in use in Tunisia, the Hanifi, was practiced only by the Beylical family and families of Turkish origin.

provided that the use of habous land could be assigned against an annual rental. The terms of the enzel could not be changed, and the contract lasted forever (use of land by a contract of enzel was inheritable) provided the annual payment did not lapse for more than three years. The enzel was incorporated into public law by a decree of 1886.

Later there were fears that the absence of sure possession of the land inhibited proper development, and in 1905 a law was passed making it permissible to discharge the permanent obligation of annual payments by making a lump sum payment of 20 annuities, which sum was used to purchase another habous property. (Colons who were less skittish and stuck to the old annual enzel came out very well with the growing inflation.)

Another important means of circumventing the principle of inalienability was adopted in 1898. Relying this time on a ruling accepted by the Hanifi rite the Protectorate passed a law providing for the exchange of a habous property for another property or for money. If the exchange was for money it had to be by a public auction. (Of course, the money had to be used to buy another habous.) In this way the private colon or the official colonization fund could get good farm land out of the habous restrictions while the beneficiaries of the habous were compensated by other properties, often urban buildings. (It has been estimated that at least one-fourth of the buildings in the old medina of Tunis were habous property.)<sup>1</sup>

Provisions for short and long-term rental of habous property were also established, but these were less wide-spread.

Probably the most serious attack on the habous system made by the French administration was an 1898 law requiring the Djemia al Habous to place at the disposition of the Protectorate Government for purposes of colonization a maximum of 2,000 hectares of farm land per year. The lands to be offered were chosen by experts of the Department of Agriculture, and compensation was fixed by a committee representing the Djemia and the Department of Agriculture. This law represented not only the closest thing to an outright violation of shari'a law (it was a rather broad extension of the Hanifi idea of exchange of habous properties), it was also the most flagrantly unjust. In other legislation the colon often had an advantage in fact due to his stronger economic position, but at least appearances were saved. However, this law had the effect of reserving the best farm lands for colonization. Beshir Sfar, head of the Djemia el Habous in 1908 and (significantly) one of the early nationalist

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1. Henri de Montety, "Adaptation de jurisme occidental aux realites sociales Tunisiennes en matiere fonciere," Institut des Belles Lettres Arabes (IBLA), April 1942.

leaders, charged, "Suppose an indigène should ask the acquisition, either by enfel or exchange, of a habous land exceeding 20 hectares in area. The Djemia must first obtain the consent of the Direction of Agriculture, a consent given only if the land is mediocre or if its area is insufficient for European exploitation." <sup>1</sup>

As a result of all these acts most of the public habous lands suitable for European colonization had been taken by the end of the Protectorate.

The private habous posed a more difficult problem. Such habous had almost invariably a large number of beneficiaries, and Islamic law insisted on the consent of all beneficiaries before any change in the habous status could be effected. Groups of colons made numerous attempts to get this ruling changed, directly or indirectly, but in vain. <sup>2</sup> By this time a nationalist movement was in existence, and one of their most telling arguments was that native Tunisians were to be deprived of their rights to land through manipulation of the habous. In effect, the habous was a rallying cry of the early nationalist movement. It remained an argument, though more muted, right down to independence.

Since this was the case why then did the independent Tunisian government move so quickly to abolish the habous system entirely? The obvious fact that the habous were almost invariably less well managed did, of course, have its effect, and the idea of habous as a protection against the colon lost meaning after independence; but the real reason probably lies in the social difference between the ruling Neo-Destour and the Old-Destour party which it defeated. The habous system was linked not only with inefficiency, but with social privilege, religious obscurantism -- and at the same time, the Neo-Destour's political opposition.

This is not to say that the habous was simply a legal device used by people of means. Not at all, and in fact it is certain that the number of private habous created by small property holders increased considerably during the Protectorate years in order to save the family inheritance from loss through improvidence, a loss which

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1. Bechir Sfar, "Les Habous en Tunisie," Congrès de l'Afrique du Nord, Paris, 1908, vol. II, p. 394.
2. As early as 1908 the nationalists were insisting on the inviolability of the private habous. After the First World War a group of colons urged the Protectorate to adopt laws providing, in effect, that arable lands not put into cultivation be expropriated. The bourgeoisie, beneficiaries of habous, and the Old Destour party immediately recognized this as a device to get at private habous lands. The resulting nationalist campaign forced abandonment of the idea. cf. Henri de Montety, Une Loi Agraire en Tunisie, Tunis, 1927, p. 79.



had become much more likely with the new commercial spirit brought by colonization. Still, it was the upper bourgeoisie and the old religious families, both as beneficiaries and as directors of habous, who had the great vested interest -- an interest which increased automatically in value as colonization and modernization pushed up the price of land. These gentlemen who had for generations controlled vast lands giving them not much more than prestige and status now suddenly found they had properties which could make them rich.

There was only one problem. Many of these lands were occupied, had often been occupied for generations, by squatters -- cultivators or often simply semi-nomads. In the old days their presence had been mutually advantageous, for even if inefficient they made a modest contribution toward maintenance and development of lands which otherwise would have been left untended. Now they were only a nuisance, an obstacle to be removed from the land in order that it be profitably exchanged or rented in enzel to a colon, or even occasionally to a rich Tunisian.

The French administration had anticipated this problem, and as early as 1913 had passed a decree authorizing in some cases the contract of enzel without public auction. This was designed to help the man already on the land get the enzel. For administrative and personnel reasons not so much was accomplished as had been hoped, and in any case many of the larger habous refused to submit to this voluntary plan.

An attempt to achieve a more workable system was the Right of Occupation law of 1926 establishing an elaborate process by which these squatters could obtain a legal right to remain on that land (paying, of course, a rental to the lawful owner). Even this did not work as hoped. During the ten year period the law was in effect claims covering some 60,000 hectares were settled. Of this total 40,000 hectares went to the occupants and 20,000 were settled in favor of the original owners. In sum, even this legislation obviously designed to help the tenant with no clear legal right proved in one-third of the cases to be of real value to the habous directors and beneficiaries.

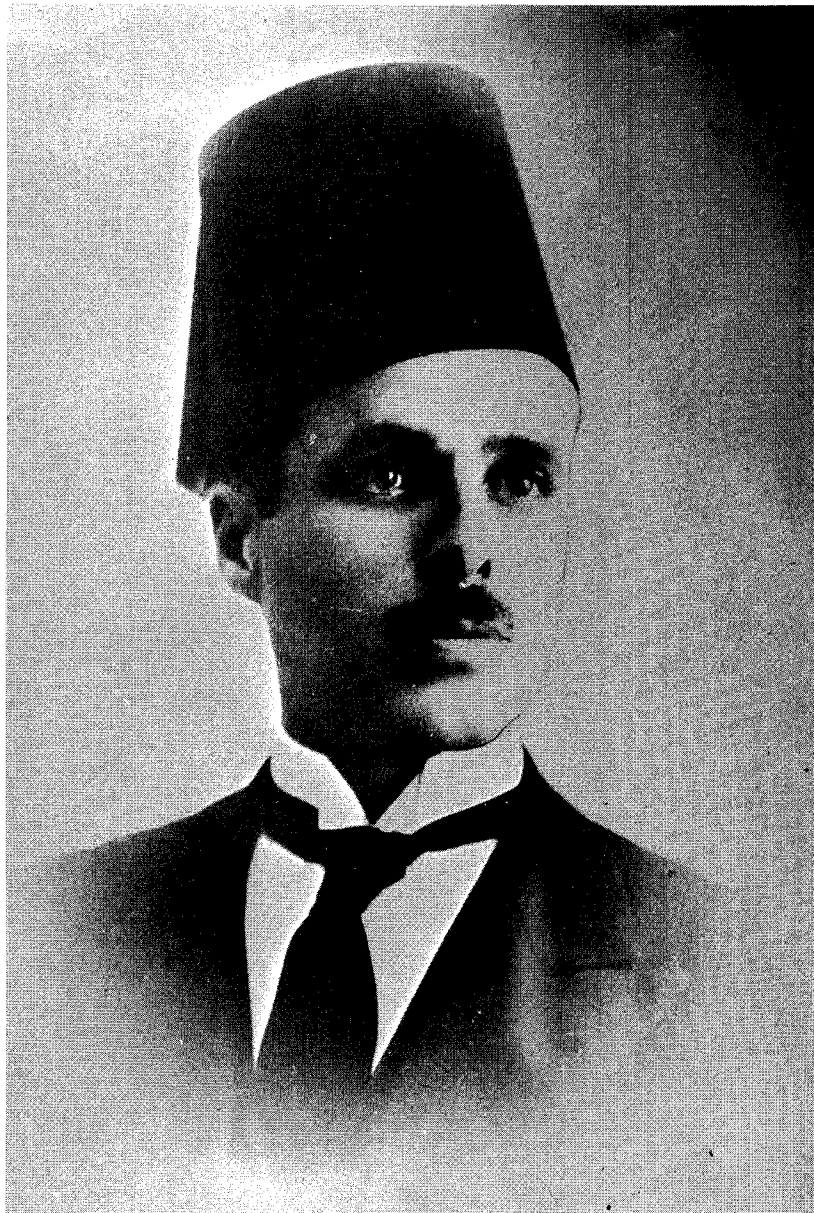
During this period a young lawyer with a striking resemblance to Charles Chaplin appeared often before the courts representing these occupants trying to maintain themselves on the only land they had ever known. This was Habib Bourguiba.

Still, the law stood as a threat to the interests of the large habous beneficiaries. When Resident General Peyrouton, pressed by nationalist agitation (the Neo-Destour had been organized in 1934), looked around for some local support he was quietly told by Tahar bin Ammar that the price of the "Old Turbans" was abrogation of the 1925 Right of Occupation law. In 1935 the price was paid.

Bourguiba's Neo-Destour never made an issue of the habous lands during the fight for independence. To attack the habous system

would, like an attack on the excessively traditional approach of Zitouna University (see LCB-1) have confused matters and given the Old Destour opposition a chance to label the Neo-Destour as irreligious. However, the Neo-Destour could plan. They could see that the habous system, like Zitouna, had played a not inconsiderable role in resisting the Protectorate — the former by saving certain lands from colonization, the latter by maintaining a certain feeling of nationhood and by preserving the use of the Arabic language.

Still, they were not blind to the fact that both were strongholds of their own domestic opposition. Nor did they fail to see the parallel drawn by their French Socialist friends between the ancien régime in France and those "obsolete" elements in their own society.



Young Habib Bourguiba

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In sum, the French impact on Tunisia in this question of land tenure and agriculture can be viewed as a two-pronged attack. One stressed efficiency and economic development. The other advanced a Western idea of social justice within the framework of a dynamic society. It was the colons who, for all their unendearing qualities which in the worst cases approached a racial bias, spearheaded the



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first movement. The latter came, as was natural, from a combination of liberal Frenchmen ( often members of the French Socialist Party) in the Service Foncier of the Service d'Agriculture, in the Tribune Mixte, in the provincial administration and in the classrooms. In a sense the first wing brought Tunisia the tractor, but the second brought the operations manual.

That an independent Tunisia could implement ideas brought by this French impact without afterthought and without breaking stride goes back, it would seem, to the simple fact that the Neo-Destour had fought and won a socio-economic battle at the same time it was struggling for independence. As a result, unlike the Egyptian Wafd of the interway period or the Moroccan Istiqlal, the Neo-Destour was not a loose coalition of divergent interests but rather a party with a prepared program: a program which was in many based on French experience, thought out in the French language, derived from French ideals, but now administered by Tunisians. Now it becomes somewhat more understandable why the newly independent Tunisian government

abolished the habous in the name of both efficiency and social justice, why they insisted on the necessity of complete land registration, why the plans to settle the bedouin go forward with even greater intensity, why an agricultural bank to establish cheap credit was created, and why the concept that a man should have a property right to land only if he will develop it is so current in governmental circles.

The statue to Jules Ferry which Resident General Millet inaugurated in 1899 has been taken down, but M. Millet might be pleased to know that if this was the first statue since the fall of the Roman Empire it will not be the last. Busts of Habib Bourguiba, Ferhat Hached and other Muslim notables of the Tunisian nationalist movement now adorn various community squares. Here in Tunisia the Western and Arab worlds met and intermingled. Something new, and hopefully better, seems destined to grow out of the experience.

Sincerely,



Leon Carl Brown

Received New York June 14, 1961