

NORMS AND DEROGATION IN MOROCCO'S PUBLIC FINANCES

A Durkheimian Explanation

Noureddine Bensouda

Treasurer General of the Kingdom of Morocco

When a system is as complex as public finance, and it is viewed as a social fact according to Durkheim's definition, it is easy to demonstrate how much time and labour are required to undertake reforms that are resisted by what two major founding fathers of sociology, Émile Durkheim and Max Weber, have described as "habitus", a set of principles and mechanisms of socialization that reveals its influence after we believe we have changed the system.

I believe that through analysis of certain norms in Moroccan law, established for and by society and based on the educational system, it is possible to interact with Mohamed Cherkaoui to achieve a better understanding of the "rationality" behind decision-making in the field of public finance and its limits. My contribution to this subject will make use of Durkheimian theory as interpreted by Mohamed Cherkaoui (1998, 2005) especially when related to the modes for producing social facts.

I will start from a central Durkheimian proposition according to which humans possess both social and individual identities. First, individuals, despite their rationality, continue to be influenced by groups and norms to which they conform in order to strengthen the “cohesion and solidarity of the group” (Cherkaoui, 1998: 43). However, conformity does not mean that the individual has no real ability to deviate from the norm taking all inherent risks.

Second, as Cherkaoui has firmly stated in his interactionist interpretation of Durkheim’s theory, ‘social systems’ means essentially sets of complex interactions between social actors that are the real mechanisms that create norms and the explaining principles of “change, stability and balance, as well as crises”. He is therefore able rightly to deduce that “the central category, without which no understanding of reality is possible, is not consensus, but the struggle between social groups”.

My objective in this contribution is to show how this theory could be applied to public finance, when taking into account the will to change, resistance due to habits and the phenomenon of the social and individual duality of human nature.

1. PUBLIC FINANCE NORMS FACING RESISTANCE OR WILL TO CHANGE

In order to analyse the process of establishing norms for public finance in Morocco, one has to scrutinize the government’s political operating system, to know how and according to which political, economic, social, and symbolic logical processes these decisions have been designed, debated, shared, mediated and finalized.

Indeed, and far from being simple, one-sided, clear-cut, linear and neutral, the norm design process in Morocco and elsewhere is rather the result of a collective and social building system, which is often very complex, laborious (Cherkaoui, 1998)¹ and obscure, involving interactions among an array of social actors, a plurality of logical processes and a diversity of interests, that must be broken down, restored, reframed, and rebuilt so as to seek out a path leading to the emergence of the norm.

The aim is to make methods for creating norms in public finance and their process of creation more understandable, considering the

persistence of habit as inertia and resistance to be forces against change and the final decision-making power of parliament in norm creation; or, in other words, against the institutionalization of democracy, a hot topic in many countries now facing the question described as “the new Cambridge controversy” (Cohen, 2012)².

In this regard, Edward Glaeser, Professor at Harvard University and Daron Acemoglu, Professor at Massachusetts Institute of Technology (MIT) have engaged in a very relevant exchange on economic development and democracy. Glaeser argues that economic development leads to democracy. Acemoglu “however, is much more sceptical about the tendency of democracies to sustain economic growth” (Cohen, 2012)³.

Daniel Cohen refers to some studies “showing that democracy may reduce economic growth when it triggers populist struggles (political one-upmanship) between social actors, for example” (Cohen, 2012)⁴ notably when it comes to instituting laws in public finance.

In recent decades, Morocco has experienced major political and constitutional changes leading to the strengthening of parliament's power. Parliament is supposed to create norms. However, the power of government, and in particular that of the civil service, should be decreasing.

This trend has been reinforced mainly due to the vigilance of members of parliament, businessmen, civil society and judges as well as the professionalism shown by some government departments to ensure proper compliance with law and the separation of powers.

Indeed, the noticeable presence and greater professional participation of those concerned have become part of political, economic and social life. Compared to the first short-term⁵ parliaments that Morocco experienced, the parliaments of the past four decades⁶ since the 1980s have all fulfilled their legal mandate, except the most recent Parliament that ended eleven months before its mandate which was due to expire in September 2012, on account of protests in the Arab world claiming institutional reforms.

This longevity has encouraged the emergence of experienced parliamentarians especially in the complex field of public finance. On the other hand, business organizations and chambers of commerce and industry as well as civil society, despite being in an early stage of

development, have acted to make their voices heard and ensure the creation and application of laws to respect their rights. Judges have helped by influencing the work of public administrations and their actions by handing down decisions on cases relating to public finance, even though there have not been many.

Despite this vigilance, the rule of law and the separation of powers have not been sufficiently observed because the latter is subject to the application of “strict sanctions”, as Cherkaoui (2006) and other sociologists have argued.

This is one reason that could explain why the will to strengthen parliament and law covering public finance in particular has not been suitably institutionalized. This is probably in part, as Cherkaoui rightly said, because institutionalization of a rule or a “norm is sometimes possible only after a long period that can be measured in decades, or even centuries.”

But it is painfully clear that whenever the vigilance of one actor decreases, past practices reappear, and derogations from new norms that were once considered abolished have been resumed, due to the non-institutionalization of sanctions (Cherkaoui, 2006: 183).

Two examples can be offered to illustrate this situation. The first example concerns the tax incentive for social housing introduced by the Finance Act of 2010, and the second relates to the social solidarity contribution applied to profits and incomes established by the Finance Act of 2013.⁷

The benefit of tax exemption in social housing for primary residential use is subject to conditions that the General Tax Code has specified in detail and time scale.⁸ This code provides that a notary establishes the sales contract within a maximum of thirty (30) days starting from the date the government transfers the VAT (value added tax) to the notary.

The General Tax Administration (GTA) has eliminated this time scale and has allowed⁹ the notary to “conclude the contract prior to the transfer without including the contract part covering the VAT”, doing this simply by a letter to the President of the Moroccan Chamber of Notaries.

The argument behind this change, without prior authorization of parliament, as the GTA stated in its General Tax Code circular memo,¹⁰ is

“to accelerate the process of concluding social housing sales contracts”.¹¹ Nevertheless, this acceleration seems to benefit property developers by assuming they are a social group, since their cash burden is reduced even if sales contracts are not fully concluded. On the other hand, buyers, for whom the legislator theoretically granted all these incentives, will have to wait before actually becoming owners of their homes.

The second example concerns the tax basis of the social solidarity contribution on profits and incomes applied to companies and individuals which was deliberately extended¹² in order to increase its scope of implementation and therefore its revenues. Indeed, although the method of reckoning the social solidarity contribution applied to companies¹³ is very precise, the one applied to individuals is not.

The law does not define the notion of “individuals’ tax-paid Moroccan-sourced income”. This cannot be done through a mere administrative memo¹⁴ that taxes the “beneficiaries of incomes mentioned above ... even when exempted.” This same memo provides two definitions of net taxable income, firstly as income with the due amount of income tax (IT) deducted (in the case of professional¹⁵ income and property income¹⁶), and secondly as income reduced by the amount of IT and other selected deductions, as in the case of salaried income. It should be recalled that when parliament excluded some exempted items from the tax base or included them, this was done deliberately. This was similar to the case of the social solidarity contribution which applies to companies.¹⁷

However, when parliament wanted to incorporate an exempted element or an item to be deducted, these were specifically mentioned. This is the case of participation in national solidarity¹⁸ introduced by the Finance Act of 1980 that included incomes temporarily exempted either completely or in part; also included in its calculation base were function—or job-related expenses and family-related charges.

These two examples taken from tax practice in Morocco show that despite constitutional and political evolution, we sometimes experience a return to the culture of replacing the legislator by the public administration (see Bensouda 2009: 304 and following) in the field of law.¹⁹

The tax administration due to its ubiquity has over time been able to develop relative autonomy and manoeuvre its limits to interpret,

formalize and shape, according to its own manner, the application of tax decisions (Bensouda, 2009: 422). It is present continuously from the preparation of draft laws in consultation with economic operators, their submission to government councils and ministers' councils, their discussion in parliament, their interpretation by circular memos and their application to the public. In this regard, Tax Administration has acquired a legitimacy that competes with the power of parliament, to such a degree that we can speak of the "de-legalization" of tax rulings.

This has developed due to its theoretical and empirical expertise—actual or assumed—but also to the coercive power of the tax administration, constituting therefore a "status group".

It is clear that the internalized social culture, called "a certain collective attitude" (Durkheim, 2010: 108) that interested social actors believe in, is more powerful than political rules that are voluntarily defined and which are expected to represent a form of rationality.

The most striking feature of the two examples previously mentioned is that, in our society, there is an ubiquitous culture of deviation from norms. The first example of VAT exemption granted to social housing represents a positive derogation in favour of a social group despite the existence of a clear and accurate norm.

The second example of the social solidarity contribution on profits and incomes is a negative derogation for employees because it increases their amount of payable tax.

The social culture of deviation from norms raises the issue of whether it is an isolated phenomenon or a social fact as defined by Durkheim to resist the will of individuals and time. Does it fit into a tradition of protest and a negotiated acceptance of norms, expressing therefore a consistent wish to always benefit from permanent derogations? Is it also the impact of interactions from social actors whose interests are strongly defended?

Actually, what we notice in the matter of deviations from the norm is that it appears to be a phenomenon that is rising dramatically and is tending to move from an instrument for exceptional cases to a real public finance management style, marked by strong sectoral influence and a spirit of budgetary and tax corporatism that Mohamed Cherkaoui (1997) calls a "singular macro-phenomenon". The behaviour of an individual

depends on the number of those who have adopted it, hence constituting a "snowball" effect.

Moroccan financial law does not yet possess what Mohamed Cherkaoui (2006: 90) quotes Western law, saying that it "alone has completely eliminated personality from laws and the old maxim that the law of exception is above common law".

Indeed, despite regulatory efforts undertaken by the government, pressure groups continue to be a highly active social class in public finance, because as Mohamed Cherkaoui has explained: private operators know market workings in greater depth far better than bureaucrats. They also have the capacity to retaliate so that laws are voided or rendered ineffective and can even lead to results contrary to their objective if such legislation goes against their interests.

In short, referring to Durkheim "We move from a rigid social structure ... to an ideally isonomic society within which nothing is considered as regulated and fixed anymore and where everything is mobile and subject to open competition between individuals" (Durkheim, 2010: 179).

It is through human social and individual duality that we will explain this culture of deviation from the norm.

2. THE DUAL IDENTITY OF HUMANS: ACCEPTING NORMS AND ENCOURAGING DEROGATION

Public finance does not rely on a sequential linear and logical process (Cherkaoui, 1998)²⁰ based on successive and purely factual phases.

It starts rather, as Mohamed Cherkaoui (1998) explains through Durkheim's theory, from a system of interaction between actors to explain the emergence of a macroscopic fundamental fact which is the division of labour, so that "the ultimate value of the cultural system and any project of social actors is the affirmation of individuality" (*ibid.*: 121).

Indeed, norms that have been formalized, legitimized and published by policy makers who ultimately assume the ensuing responsibility actually conceal a whole array of social actors involved in a framework of relationships and intertwined interactions made up of alliances, associations, rivalry, power relationships and sometimes

disagreements, leading one to often marvel at the level of freedom and degree of autonomy the government enjoys.

For example, reform of public procurement regulations, due to its strong political, economic, financial and social issues, involves a multiplicity of actors with different interests, logical processes and values, to the point that there is "therefore a kind of natural situation dominated by an all-out war without armaments" (Cherkaoui, 2006: 91).

The government as the regulatory authority of the public procurement process should obviously reflect and reconcile all these conflicting interests, which sometimes clash. It must regulate a complex interplay of powers, confront corporatist particularities and ultimately mediate between multiple and sometimes conflicting aspirations, requirements and expectations.

However, Mohamed Cherkaoui (1997, 2005) draws our attention by referring to the example of a mechanical clock borrowed from Nagel: the mere juxtaposition of the components of a fact or a system keeps silent about their properties and cannot report on their behaviour.

Since each actor or group of actors is driven by a search for its own interest identified according to its specific rationality, goals and preferences, it is generally drawn into conflict with the interests of other actors.

Mohamed Cherkaoui (2006: 42), through Durkheim's theory of the dual nature of humans, which is both social and individual recalls that "we are pushed in a social direction and we tend to follow our natural inclinations".

Occasionally, even if social and economic players display a coalition of interest and shared objectives and strategic choices, they do not necessarily place them on the same level or give them the same priority. Furthermore, they seek to shape norms according to their own priorities and demand derogations that they are sometimes able to obtain.

Derogations are perceived where the norm (rule of law), which is, in principle, intended to govern a specific situation through fair and even application to everyone impersonally, finds itself in competition with 'parallel practice' that establishes other specific and personal rules that lessen, overcome or circumvent the conditions or constraints set by the norm.

Employment and public procurement figure in most of these cases.

As an example, and concerning administrative practices, there are some individual government actions when recruiting for official positions that deviate from fundamental conditions stipulated by laws or regulations.

Indeed, whenever the government responds to popular demands, or even sectoral or private interests, it willingly chooses to proceed by individual actions to overcome regulations of general scope governing the recruitment of government personnel. This arises in cases of exemptions to competition requirements, such as age or educational qualifications.

In fact, regarding the recruitment of young graduates, we have noticed in the recent past that whenever the authorities engage in social dialogue, enforcement of rules and regulations laid down by law for everyone sometimes tends to be weakened drastically by the pressing demands of society, so that there exists more a "natural condition" than "a legitimate social order".

This ambivalence in the administration's behaviour towards the legal norm is explained as Mohamed Cherkaoui has clearly stated by the imbalance between on the one hand the determination of private actors to defend their economic interests, and on the other hand the moderate resolve of government on the whole to promote compliance with the law.

In my view, financial public order cannot be sacrificed on the altar of social peace, because as Mohamed Cherkaoui (2006: 160) states: "Peace is a noble value, but seeking peace at any price leads to endangering other fundamental values such as freedom", and we could also add the fundamental value related to the stability of the state's finances.

The government's action tells us about the model of governance adopted. Contravening the rule of law or 'bypassing' it by public actions disturbs the image of the rule of law and damages the relationships of trust and predictability essential to public projects.

In public procurement, it is politics rather than the administration that damages the principles of equality, legality, general interest and the proper use of public funds.

The use of non-standard procedures in public procurement, namely, the use of direct negotiation processes and raising the ceilings of

purchase orders considered justified by the urgency of implementation, creates confusion and inconsistency at the expense of compliance with tendering standards and the conditions for issuing purchase orders.

But the most important effect linked to this type of behaviour is that it establishes the idea of derogation as a management method, which makes public governance inconsistent with its own management reference table; there is an “eviction effect” concept which operates in favour of non-standard procedures.

In this regard, it should be noted that the use of these practices, if it occurs, according to terms and conditions stipulated in the Decree of February 5, 2007 regarding government contracts, raises no legal or ethical concern. However, the use of direct negotiation procedure in cases not covered by regulations is challenging both on legal and management levels.

This culture of derogation in public procurement creates not only unjustified financial burdens on services requested by government but also breaches the principle of equal treatment of companies in public procurement. It intensifies the feeling of distrust that prevails regarding the law, its credibility and its applicability. It gives credence to the image of uncertainty in legal and institutional processes held by society.

Some believe that this is due to the general environment and survival of past practices. They therefore agree with Durkheim’s socio-historical theory which is certainly illustrated and highlighted by realities of the present, but which respects the specifics of former institutions and doctrines without which any understanding is impossible.

This culture of derogation from the norm is integrated into the behaviour of interested actors. When designing a legal rule (law), its formalization, interpretation and everyday shaping, these people often take into account the historic, cultural and religious environment (Hermet, 2001), which allows them to determine, in all their aspects, the burdens which consciously or unconsciously, visibly or invisibly, affect and determine choices; because, as Cherkaoui explains: any transformation coming into conflict with the acquired and organized past is difficult and laborious; it is then accomplished only through necessity

In conclusion, it seems that the method of norm creation in public finance and elsewhere, as we have shown, displays true positive

interaction between different groups and the actors involved, and that explaining this process would, as Cherkaoui has stated, disclose all necessary relationships between social phenomena, dependence on which may not be apparent at first glance.

This interaction and the logic in articulating the various rationalities involved, which means that each player loses a part of his independence in decision-making and selection, should not induce the political system to allow interested actors to undermine the vital functions of the system that ensure its survival.

In this regard, Durkheim stresses the logical and historical impossibility of a destructive conflict inherent in a social and cultural system.

Obviously, "expectations are rising much faster than they can be satisfied" (Cherkaoui, 1998: 81, 113, 121, 127; 2002, 2005), which can worsen conflicts.

Therefore, in-depth reforms should be carried out. They are often costly and time-consuming. Nevertheless, change cannot be forced in a complex society built around many players influenced by family, professional, political, religious (Willis, 2012: 28) and social networks.

These networks are "more or less restrictive and organized, through which individuals express their freedom. We do not really 'change' unless we trust people who are the only real innovators, and not trying to fix everything for them in every detail; otherwise impasses and inertia will be worsened, which will then lead to a reinforcement of the bureaucracy we are fighting against" (Crozier, 1979: 16) instead of strengthening democracy; this would be a significant example of the theory of the paradox of consequences.

NOTES

1. Indeed, as Mohamed Cherkaoui stated in a footnote, on p. 49 of the same book: "Apart from a few occasions when it is possible to study empirically the entire process of norm creation, most often the observer does not have enough time. This may explain the paucity of anthropological contributions to this question. The ethnographer's time in the field is generally too short to allow understanding of such phenomena."
2. In 2007, the *Wall Street Journal* devoted a great debate to the subject quoted by Daniel Cohen (2012: 126–129).
3. *Idem*, p. 127.

4. *Ibid.*, p. 127, Daniel Cohen cites Robert Barro, "Democracy and growth," National Bureau of Economic Research, working papers, No. 4909, 1994.
5. First Parliament from November 1963 to April 1965, the second from October 1970 to December 1971.
6. Third Parliament from October 1977 to July 1983, the fourth from October 1984 to August 1992, the fifth from October 1993 to August 1997, the sixth from December 1997 to April 2002, the seventh from October 2002 to September 2007 and the eighth from October 2007 to November 2011.
7. Initially created by the Finance Act of 2012 under the name of "contribution in support to social cohesion" applicable to companies.
8. Article 93 of the General Tax Code provides that government pays the purchaser the amount of VAT charged on acquiring the said housing. This amount "is paid by the tax administration officer to the notary as part of the price equal to the amount of VAT stated in the sales contract on the basis of the sales agreement".
9. Letter from General Tax Administration of March 8, 2011, subject: application of 2010 Finance Act's provisions on social housing.
10. This note added a paragraph on this question, which was not included in 2010 Finance Act's circular on tax provisions.
11. Note no. 717 on General Tax Code Book 1: rules of tax basis and collection, April 2011, p. 66.
12. Circular note no. 721 on tax provisions of Finance Act no. 115-12 for fiscal year 2013, p. 60.
13. This contribution is calculated for companies "based on net profit for the financial year ...". This profit is defined by Article 330 of the law no. 17-35 of August 30, 1996 on public companies as being "distributable income (which) consists of net income for the year reduced by prior losses and amounts that are subject to reserve ...", which the circular of the General Tax Code cites on p. 193. Circular note No. 717 on General Tax Code book 1, *op. cit.*
14. Circular note no. 721, pp. 59, 60..
15. "The amount of net profit or minimum benefit or the sum reduced by income tax due (Impôt sur le Revenu)", Circular note no. 721, *op. cit.*, p. 60.
16. "Contribution applies to gross income reduced by amount of compulsory social charges and contributions and amount of Income tax due. In this case, contribution is levied on the basis of salaried income actually received by taxpayer", *idem.*
17. As defined in Article 2 III "excluding corporations permanently exempt from corporate income tax referred to in Article 6-IA which concern "associations and organizations legally treated as nonprofit organizations ... etc.".
18. Official Journal no. 3504 bis of Safar 11, 1400 (31/12/1979).
19. Article 71 of the Moroccan Constitution of 2011 provides that "tax system and tax basis, rates and tax collection methods" are in the field of law.
20. As shown by Mohamed Cherkaoui (1998: 11), when he says referring to Schumpeter, "scientific analysis as Schumpeter pointed out (1954: 4) is not a simple logically coherent process that starts with some primitive notions and increases the stock of knowledge in a straight line".

REFERENCES

- Bensouda, N. (2008/2009), *Analyse de la Décision Fiscale au Maroc*. Paris: Édition la Croisée des Chemins.
- Cherkaoui, M. (1997) Le réel et ses niveaux: peut-on toujours fonder la macrologie sur la micrologie?, *Revue Française de Sociologie*, 38: 497-524.
- (1998) *Naissance d'une science sociale. La sociologie selon Durkheim*. Geneva: Librairie Droz; English translation, *Durkheim and the Puzzle of Social Complexity*. Oxford: The Bardwell Press, 2008.
- (2002) "Relative deprivation", in J. Smelser (ed.), *The International Encyclopaedia of Social and Behavioral Sciences*. Amsterdam: Elsevier.
- (2005) *Invisible Codes: Essays on Generative Mechanisms*. Oxford: The Bardwell Press.
- (2006) *Le paradoxe des conséquences, essai sur une théorie weberienne des effets inattendus et non voulus des actions*. Geneva: Librairie Droz; translation, *Good Intentions. Max Weber and the Paradox of Unintended Consequences*. Oxford: The Bardwell Press, 2007.
- (2009) *La confiance dans les institutions au Maroc*. Rabat: IRES.
- Cohen, D. (2012) *Homo Economicus, prophète (égaré) des temps nouveaux*. Paris: Editions Albin Michel.
- Crozier, Michel. (1979) *On ne change pas la société par décret*. Paris: Éditions Hachette Littératures.
- Emile Durkheim (2010) *Les règles de la méthode sociologique*, new edition. Paris: Éditions Flammarion.
- Hermet, G. (2001) *Les populismes dans le monde, une histoire sociologique XIXe-XXe siècle*, Paris: Fayard.
- Nagel, E. (1961), *The Structure of Science. Problems in the Logic of Scientific Explanation*. London: Routledge and Kegan Paul.
- Willis, M.J. (2012) *Politics and Power in the Maghreb, Algeria, Tunisia and Morocco from Independence to the Arab Spring*. London: Hurst and Company.