

# The Colonial “Emancipation” of Algerian Women: the Marriage Law of 1959 and the Failure of Legislation on Women’s Rights in the Post-Independence Era

Neil MacMaster

## Abstract

The failure of the newly independent Algerian state, after a long war of decolonization in which women played a major role, to introduce progressive reform to women’s legal, and thus social, status is widely recognized. The article explores a neglected aspect of this problematic by showing that binary perceptions of a radical colonial/post-colonial hiatus can be misleading. Through a focus on the reform of marriage and family law, it is shown that both colonial and post-Independence states proved weak and ineffective in the face of the entrenched power of patriarchal family structures and ideology.

Algerian post-independence nationalist and feminist discourse tended to be structured in relation to the manichaeian opposition between the 130 year regime of colonial violence and repression and the post-colonial liberated order that, it was imagined, would sweep away all the structures of the *ancien régime*. This included the forms of domination that had affected women, from alienation of land rights and dislocation of family structures to endemic poverty and prostitution. However, French colonialism in its terminal phase was highly ambiguous and Janus-faced since it was simultaneously extremely violent and repressive towards Algerian women (destruction of villages, torture, rape...) and reformist, enunciating a significant body of liberal “emancipation” measures,<sup>1</sup> particularly in regard

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<sup>1</sup> “Emancipation,” which should be read throughout in “scare-quotes,” was the term utilized by the French government and military to refer to reforms that would ensure

to the reform of the *statut personnel*, the laws on marriage and the family governing Muslims, in 1959.<sup>2</sup> The purpose of this article is to “fracture the binarism” of the colonial/post-colonial categorisation by tracking the legal position of women through the crucial transition over the two decades spanning the period of French domination and the newly independent Algerian regime (c.1954-75). Far from being marked by a radical break in 1962, it is argued that there existed deep continuities between the colonial and post-colonial epochs in the social and ideological structures of Algerian patriarchy,<sup>3</sup> and it was this atavism that explains the secretive marginalization by post-Independence governments of a liberal code of rights “inherited” from an alien, secular and western regime, and the simultaneous inability to introduce a new family code until the reactionary law of 1984.

As Algeria moved towards independence in 1962 many commentators on the international socialist left were optimistic that the new Republic would liberate Algerian women simultaneously from the fetters of colonialism and “feudal” patriarchy. Frantz Fanon, for example, in *L’an V de la révolution algérienne*, optimistically forecast the birth of a “new society” and a “radical mutation” in the role of women, gender relations, and traditional family structures (Fanon, 2001[1959]: 10, 14). Although constituting a tiny minority, the women fighters (*moudjahidate*) who transmitted weapons and bombs in the urban networks or served as nurses in the maquis, had received enormous attention in FLN (*Front de Libération Nationale*, National Liberation Front) propaganda and the global media as

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equality of rights between Algerian Muslim women and women in metropolitan France in relation to voting, education, professional training, employment opportunities, health care and welfare rights. Frequently implicit within this was an assimilationist agenda that sought to transform Algerian women into westernized beings that would share all the cultural features of bourgeois French women, in relation to everything from dress style to consumerism and an idealized model of the couple bound by mutual affection.

<sup>2</sup> The legal reform of 1959 took place in two stages, first an Ordinance of 4 February provided a succinct summary of the legislation, followed by a decree of 17 September which elaborated how the ordinance was to be implemented. Since the legislation introduced a far-reaching and radical revision of existing law and a large degree of unification of differing customs and schools it approximated to a de facto new code.

<sup>3</sup> The term patriarchy is used here to refer to a family structure, reinforced by classic Muslim and customary law, that prioritized male kin-based solidarities and power and subordinated women to agnates and the reproduction of the male descent group.

heroines of the Revolution who challenged stereotypes of Muslim women as passive creatures confined under the severe thumb of Islamic patriarchy (Amrane, 1991, 1994; Whitfield, 1996).<sup>4</sup> Algerian women, it would seem, had through both their heroic sacrifice and the demonstration of an ability to act on a par with men, earned recognition of their moral right to full post-independence equality. However, this was not to be.

Much of the debate on the failure of the Algerian state in relation to women’s rights, although recognizing the need to examine a complex of factors, from economic change, urbanization and female employment, to access to education, housing, and health care, has centered on the various projects for a new code on marriage and the family (*statut personnel*). Some feminists have argued that to centre on legal reform and individual rights, is to impose a western model that may obscure, as “declension narratives” claim, the forms of traditional status and community-based power held by Algerian women (Bulbeck, 1998: 16; Lazreg, 1994). However, the modernization of family codes has been one of the key instruments by which independent Muslim nations, since Kemalist Turkey in the 1920s onwards, have through “top-down” intervention attempted to end the subjugation of women, and liberate the potential of half the population to play a full role in economic, social and political development (on the importance of codes of personal status see Anderson 1968, 1971; Moors, 1999). Algeria is no exception and reform of the family code has been the single most crucial issue around which both the Algerian women’s movement and international feminist organizations have, and continue, to campaign (Knauss, 1987; Lazreg, 1994; Bouatta, 1994; Cherifati-Merabtine, 1994; Gadant, 1995; on the international dimension see Shaheed, 1994 on Women Living Under Muslim Laws (WLUML)).

Mounira Charrad has, to date, provided the most cogent explanation for the post-independence failure of Algeria to elaborate a family code that would match the needs of a rapidly changing society and bring Muslim women fully into the *cit *. In a comparative study of state formation in the

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<sup>4</sup> Most research on Algerian women during the war of independence has tended to centre on the role of the most prominent and educated *moudjahidate*, but in many ways this numerically small group was atypical of the great majority of women, most of whom were peasants and illiterate. Space does not allow a fuller treatment of the complex differentiations of class and status of Algerian women, but in general I am concerned here with the basic legal rights that applied to all women without distinction.

three Maghrebi nations, she argues that the very different outcomes in family legislation between the progressive Tunisian code of 1956, the conservative Moroccan code of 1958, and the peculiar “stalled” situation in Algeria that lasted until 1984, can be explained by the relative ability of central governments to exert political domination over traditional kin or clan-like bases of power that defended the most conservative readings of Maliki law.<sup>5</sup> Charrad provides a useful macro-level hypothesis for an understanding of post-independence Algeria: the newly formed state showed deep contradictions in its drive to assert national integration over and against localized or regionalist interests, while simultaneously allowing space for kin or clan-based associations which paralyzed moves to legislate on family law and to assert control over the private domestic sphere (Charrad, 2001: 179-82; for similar analysis in relation to legal reform in Iraq and South Yemen see Hatem, 1999: 73-6). This article seeks to develop this model further, by looking first at how the French regime attempted to tackle the issue of a marriage law in 1959, but in a situation in which domination by a huge army of occupation might have enabled such an agenda to be forced through.

Between January 1957 and late 1959 the joint military-civilian regime in Algiers, as part of an “emancipation” strategy, instituted a range of initiatives that were intended to extend legal rights and to “liberate” Muslim women from ignorance and the crushing weight of patriarchal domination, measures that included unveiling campaigns, mobile female medical teams in the rural zones (EMSI), improved access to schooling, youth training, joint European-Muslim women’s circles, extension of the vote, and a new family law (Seferdjeli, 2004, 2005; Sambron, 2002, 2005; MacMaster, forthcoming). The concern here is only with the latter, which was by far the single most important and contentious aspect of reform since it appeared to many Algerians to interfere with the sacred “reserve” area of religion.

The Governor General, Robert Lacoste, first ordered the establishment of a legal commission to draft a new family code in April 1957, but it was

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<sup>5</sup> Marriage and family law in Algeria was based on an enormous regional and even individual variation from customary law among the Kabyle people, to the Ibadite code of the Mزاب, and the minority Hanafi school of law, but the Maliki variant of Sunni law was predominant and it was this which was largely applied in the move to create a unified system of law.

only after extensive consultation between Paris and Algiers and several working parties and redrafting processes that a final, brief Ordinance of 4 February 1959 was published by the new Gaullist government (on the 1959 legislation see Roussier, 1960; Borrmans, 1977: 481-93; Pruvost, 2002).<sup>6</sup> Space allows only a brief summary, but the crucial elements, which marked a distinct break with the dominant Maliki tradition of law, were as follows:

- The practice of child marriage, by which many girls aged as young as 11 or 12 became pregnant, was banned by setting a minimum age for women of 15 years, and for men of 18 years.
- The power of parents or guardians to enforce marriage with a partner of their choosing (*djebr*), by which young women were tied to men that they did not know and who were often much older, was replaced by the free consent of both spouses.
- To prevent abuse by kin, the contracting spouses had to appear in person before a state official who would validate birth certificates and other forms of identification or of previous dissolved marriage, assure the freedom of consent, register the marriage and issue a *livret de famille*.
- Repudiation by a simple unilateral decision and verbal pronouncement of the husband, a major cause of family instability and the abandonment of wives and children, was replaced by judicial divorce. Only a judge could dissolve a marriage on the request of either the husband or the wife, and both had to be present in person to curb the standard practice of male kin representing the “interests” of women in court.
- The judge adjudicated, in the best interests of the children, who was to have care of them, and decided on the level of family support that should be provided for them and their mother.

The Ordinance, for all its brevity, offered a radical change in Muslim family law that was fully on a par with the Tunisian Code of 1956, on which it was closely modeled. The provisions of the Tunisian legislation, almost

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<sup>6</sup> A first attempt at codification in June 1957 resulted in a complex draft of 143 pages. The Ordinance of 4 February, which was in part based on this, provided an extremely succinct statement of the new law. This brevity undoubtedly reflected the wish of the Gaullist government in Paris to force through a radical revision of the *statut personnel* as rapidly as possible, in order to impact on the volatile war scenario, and without becoming bogged down in the delay of detailed elaboration by legal experts, a process that took place in a parliamentary commission between February and the decree of 17 September.

universally accepted today as one of the most progressive of Islamic codes, was almost identical, except for the failure to ban polygamy which the Algerian government viewed as an almost redundant practice, confined to an aged minority of males, that would eventually disappear of its own accord.

The generals and administrators who jointly governed Algeria during this period (1957-9) decided to engage in an “emancipation” strategy for a number of, often contradictory, reasons. During 1956-7 the French army was surprised and alarmed by the evidence of the involvement of Algerian women *moudjahidate* in the nationalist struggle and, fearing that the FLN was about to accelerate this mobilization decided to offer a counter-strategy to win hearts and minds. Secondly, Tunisian President Bourguiba’s family code of 13 August 1956 was followed within days by the creation of a Moroccan legal commission on family law, and this immediately galvanized the French government to do likewise. France, whose position as a colonial power was under strong attack in the UN and before international opinion, could not be seen to be lagging behind its Muslim neighbors in the area of human rights. Moreover, since Muslim states had led the way in reform it was felt that France could now do likewise without being attacked by Algerian nationalists as imposing a western and secular model. Thirdly, the main French strategy for retaining *Algérie française*, symbolized by the huge economic investment of the 1958 Plan of Constantine, was intended to undercut the roots of rebellion through economic modernization and this developmental approach increasingly recognized the need to transform the position of women through education, political rights, and integration into the labor market. Finally, and most important of all, the psychological warfare bureaux that dominated military thinking between 1957 and 1959, saw emancipation as a means to penetrate the key bastion of Algerian national identity and culture, the private sphere of the Muslim family, and to gather intelligence.<sup>7</sup> “Emancipation” was also designed to place the FLN

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<sup>7</sup> Space does not allow detailed treatment of the primary logic of women’s “emancipation” as a military and counter-insurgency strategy (see MacMaster, forthcoming). Here we are concerned with the reverse side of the coin of such strategies, the liberal reformist measures which confronted the FLN with the dilemma of quite concrete and apparently “progressive” measures such as mass inoculation against disease, expansion of educational provision, and in this instance, for example, full enfranchisement and prevention of forced marriage of pre-pubescent girls.

in an uncomfortable dilemma: either it agreed with the advancement of women’s rights and so acknowledged the progressive role of its enemy, the colonial state, or it opposed reform and revealed reactionary colors.

However, despite such arguments, the drawn out discussions that took place within the colonial government over the preparation of the family law between early 1957 and late 1959 revealed major internal divisions inside the French government as well as strong opposition among conservative religious elites (imams, cadis, cheiks) who, as clients of the French, normally supported and benefited from colonial power. These tensions need to be placed within the context of a tacit political compromise that had existed for many decades between the European colonial and the pro-French Algerian elites. The *statut personnel* served as the key mechanism by which the French legitimated their continuing domination and denied Algerians, with a few exceptions, political rights as French citizens. Muslims, it was claimed, with their attachment to “un-Western”, “barbarian” practices such as polygamy, arranged marriage and repudiation, could not be integrated into French society: but, as a quid-pro-quo colonial government promised to protect Islamic law in the crucial area of marriage and family legislation, a “reserved” area that would be guarded from the incursion of western values and secular French models of society.

The European acceptance of Muslim family law as a “no-go-zone” meant that religious leaders, including those in the influential Ulema movement, were given space since the 1930s to elaborate a profoundly conservative position on women’s rights (Merad, 1967; McDougall, 2006: 90-6). During the 1950s a small minority of educated Algerian *évoluées* or feminists began to attack the alliance between colonial government and conservative Islamic notables as a “double imperialism,” or as Fadila Ahmed claimed, “we, the women of Algeria, have two gaolers: colonialism... and the apathetic creatures who cling on to customs and traditions inherited not from Islam but from their ignorant fathers. The second gaoler is worse than the first” (*Al Manar*, 24 July 1953, “Les deux geoliers de la femme”).<sup>8</sup> Until 1957 the Algerian government, advised by its own administrators and experts in Islamic law and customs, had hesitated to interfere with the sensitive issue of marriage or family legislation, particularly as there continued to exist, since the great anti-French revolts of

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<sup>8</sup> This, and subsequent quotations in French have been translated by the author.

the nineteenth and early twentieth century, a fear of stirring up insurrection guided by “fanatical” jihadists, religious confraternities or pan-Arabic militants.

During the Algiers army coup of 13 May 1958 psychological warfare officers secretly orchestrated mass demonstrations during which columns of Algerian women marched into the central Algiers Forum and “spontaneously” unveiled and joined hands with ecstatic European crowds in acts of inter-racial “fraternization.” So successful were the propaganda impacts in the international media that the generals immediately decided to accelerate the emancipation agenda. But when General Salan instructed Villeneuve, Deputy director of political affairs, on 16 June 1958 to revive the first attempt at a family law drafted in 1957 the latter warned this was too “radical,” a tampering with the religious status quo, and a “powerful attack on the Muslim *statut personnel*.” He noted that earlier reforms, such as the Kabyle law of 1930, had made little impact on behavior because of the backwardness of women. If a new law was to have any influence it needed to be preceded by “an exceptional campaign of female education” and a prior evolution of the family cell towards a modern conjugal unit.<sup>9</sup> Villeneuve had raised a fundamental question that went to the heart of any “emancipation” strategy “from above”: could radical legislation that was in advance of society transform custom and practice, or might it be so far ahead as to generate major opposition and even open revolt? Villeneuve, by emphasizing long-term gradualism, was pronouncing a classic conservative opposition to reform, and at the same time pointing to the real difficulties faced in trying to transform the inertia of embedded patriarchal values and the family structures of Algerian society.

De Gaulle, made aware by his advisors of the importance of bringing Muslim opinion on-side, ordered Salan on 15 November 1959 to re-launch the plan for a new code by consulting a commission of European experts in Muslim law, as well as Algerian judges (*cadis*) and religious leaders. However the commission rejected the government draft proposals in their entirety: in the words of one member, the Muslim dignitary Hamza Boubakeur, the project was based on the code of President Bourguiba, who he regarded as a secularizing despot, and “is absolutely revolutionary in relation to marriage, its consequences and inheritance... it entails a total

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<sup>9</sup> Centre des archives d’outre-mer (hereafter CAOM) 12CAB207, Note from Villeneuve, sous-directeur des affaires politiques et générales to his directeur, 5 July 1957.



upheaval of Muslim law,” an opinion shared by European legal experts on the panel who were “rather astonished by the brutality with which one overturns such highly venerable institutions.”<sup>10</sup> Boubakeur had penned an earlier violent, and misogynous diatribe against legal reform, noting the dangers of an “occidental contamination” of the Algerian family and by forms of secular liberalism that encouraged western women to lead a degenerate and hedonistic life-style, symbolized by the nudity of the beach and cinema screen.<sup>11</sup>

The resistance of the commission to significant reform was symptomatic of the long-term “pact” between conservative European administrators and Algerian clerics to maintain the status quo on women. Somewhat more unexpected was the opposition to the draft law by the Delegate-General Paul Delouvrier who, although appointed by de Gaulle in December 1958 to replace Salan and reassert the control of civil government and Paris over the generals, seems to have rapidly absorbed the traditional remit of the Algiers administration not to tamper with the volatile issue of Islam. The Delegates’ main concern, as it had been for several prefects when consulted on the initial 1957 draft, was that the new law threatened to generate strong resistance among an intensely religious population that viewed existing family laws as sacred. Reform would then, he claimed in a letter to the Prime Minister, serve as the “hobby-horse of FLN propaganda...the accusation of ‘de-islamization’ “ will be brought against France engaged in a “new Crusade against the crescent.”<sup>12</sup> The answer of the Gaullist government, bent on a rapid modernization of Algeria after the announcement of the Constantine Plan in October 1958, was simply to override the commission and to impose the Ordinance of 4 February 1959, drafted in Paris, on a rather angry Delouvrier.

The predictions of mass resistance proved to be well founded, but this did not take shape as a distinctive armed revolt, already a monopoly of the FLN, but a more silent passive resistance or refusal by Algerian society to abide by the new legislation. This is where it becomes important to move

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<sup>10</sup> Minutes of the Commission d’Étude de la situation de la Femme Musulmane, 5 December 1958.

<sup>11</sup> CAOM 14CAB233, Report of Professor Hamza Boubakeur, *Projet de Réforme du Statut Personnel de la Femme Musulmane et de la Femme Kabyle en Algérie*, 27.pp, nd.

<sup>12</sup> CAOM 14CAB9\* (under derogation), Delouvrier, Délégué Général, to Prime Minister, 18 July 1959.

beyond legislative texts, which some historians frequently and uncritically assume to achieve their objectives by the simple fact of promulgation, to assess the degree to which texts, mediated by policing agencies, courts and social practices, translated into a host of variable outcomes (see Moors, 1999: 142-3). The rural interior (*bled*), in which most of the Algerian population was located, had for over a century been what the colonial government euphemistically called “under-administered,” largely abandoned and without roads, electricity, schools, investment and basic infrastructure. Despite the attempts of the army to rectify this situation, local government during the war became even more tenuous as both European and Muslim municipal councilors fled FLN assassination. One sign that colonial Algeria constituted a “weak” or failing state in the *bled* was the failure since the law of 23 March 1882 to establish the *état-civil*, the allocation of an identifying patronymic to each individual, and a universal register of births, marriage, divorce and death. Populations in the mountain or desert areas had long avoided registration, viewed by them as a key bureaucratic mechanism by which the modern state imposed its authority, including taxation, conscription and other burdens. The chaos of the war, during which over two million peasants were uprooted while hundreds of thousands joined the FLN or engaged in labour migration to coastal cities and France, made administrative control even more difficult. The government estimated that the number of “lost” (*omis*), those who had never been registered and had no existence for the state, increased from 100,000 in 1913 to 230,000 in 1959.<sup>13</sup>

In late 1960 the Algiers government, investigating how the courts were implementing the new family legislation, was shocked to find the extent to which the population simply avoided the law, such as the requirement for young spouses to appear in person before an official to register marriage or for cases of repudiation to be referred to a court. But even when this was the case, the absence of an *état-civil* record often made it impossible to verify if couples were under-aged, or if a man was already married. The Prefect of Oran summarized the situation in late 1961:

The reform of the status of women is less and less talked about since it has become normal to avoid it. The decree of 17 September 1959 [which implemented the Ordinance of 4

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<sup>13</sup> CAOM 81F1223, A. Jacomet, Secrétaire Général du Gouvernement to Secrétariat Général pour les Affaires Algériennes, Paris, 11 April 1959.

February] is hardly applied in relation to agreement of the parties to marriage (the young girl in particular) nor in relation to divorce which is already being replaced by unilateral repudiation.<sup>14</sup>

Official statistics for marriage registration in the months immediately after the new law came into force (19 November 1959 to 1 March 1960) showed a tiny number and some large towns, including Bône, Constantine, Relizane and Guelma, recorded none at all (Fauque, 1961: 65). In classic Muslim law marriage constituted a purely private act and an estimated sixty percent of the population continued to practice the traditional *fatiha* marriage alone, a ceremony which involved simple recitation of the first sura of the Koran, without attending the officer of the *état-civil* to witness and register the act. This mass avoidance of the new law enabled what were now strictly illegal practices, such as under-age or forced marriage, to proliferate (Borrmans, 1977: 495-6, 519).

### **The transition to the newly independent state.**

By independence in July 1962 the new Algerian state was confronted with a society in which a widespread culture of non-compliance with marriage legislation was deeply entrenched. Unlike Tunisia and Morocco, which seized the opportune moment of independence to introduce new family codes, Algeria simply passed an act (31 December 1962) to leave French legislation on the statute books and the colonial code of 1959 was to remain in force until the law of 5 July 1975. But it was to take yet another decade before the family code of 1984 came to fill the vacuum. Algerian governments were prepared to leave the 1959 law in place, although barely mentioned, precisely to the extent that it was widely ignored, both by society and by the courts, and so did not arouse troublesome political opposition from the conservative forces in society.

This is not to say that the newly independent state failed to make some key statements on women’s rights. A sequence of “foundation” declarations of the new state, such as the Tripoli Program of 1962, the Constitution of 28 August 1963, and the Algiers Charter of April 1964, as well as key speeches by Ben Bella and Boumediene, Algeria’s first two

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<sup>14</sup> CAOM 81F1223. Extrait du rapport trimestriel du Prefet d’Oran, 3e trimestre 1961.

presidents, made bold statements on the full equality of women: article 12 of the 1963 constitution, for example, stated, "All citizens of both sexes share the same rights and duties" (Vandeveldt, 1980: 25). However, as most commentators have noted, there existed a fatal and contradictory gap between statements of high principle and the failure of the FLN single party state to develop a coherent program of reform that would translate basic rights into reality (Lazreg, 1994: 142-50; Boudefa, 1988; Addi, 1999: 78).

The paralysis of government became particularly evident in the long-drawn out, twenty-two year failure to legislate a family code to meet the needs of a rapidly changing, post-colonial society. During this period (1962-1984) there were no less than five failed attempts, mainly by secretive committees on which there was no female representation, to draw up draft legislation (1963-4, 1966, 1972, 1979, 1981). Those drafts which were leaked to the press showed a general trend through time towards a radical erosion of the 1959 law and the assertion of the core values of traditional Maliki law. The secrecy surrounding the various commissions was in itself an indication of the deep anxiety of the one-party state in relation to the potentially explosive and politically destabilizing nature of the issue. Space does not allow a close examination of the detail of the various drafts, but the overall direction of the conservative shift is indicated by the fact that the final 1984 law, in the words of Pruvost, codified "a family of a patriarchal type based on respect for agnatic solidarities and hierarchies under which women were treated as permanent minors" (Pruvost, 1999: 17). For example, the wife owed strict obedience to her husband as sovereign head of the family, as well as respect for his lineage (parents and kin); women no matter what their age could only marry through the authority of a male guardian (*wali*), which in the case of a widow might be her son; polygamy was retained, and repudiation was restored as a unilateral male prerogative (Pruvost, 1999:17-21 and 2002: 265-98).

The twenty-two year long vacuum created by the state and the failure to provide a clear legislative lead on a family code, meant that judges and the court system which adjudicated on the reality of marriage, divorce and family life were left adrift to follow their own devices. From 1962 until the abrogation of the code in July 1975, many judges, following their personal religious or ideological bias, simply ignored the 1959 code which was technically still in force, and based judgements on classic Islamic law (Vandeveldt, 1980: 387, 390; Lazreg, 1994: 150). The way the wind was

blowing was clearly reflected during a 1968 conference of jurists on the instability of the Algerian family, during which Mohand Issad of the Algiers faculty of law noted that the supreme court had shown preference for the position that "the husband held sovereign power to repudiate his wife at will," even if this was abusive, and Issad justified this on the casuistical grounds that the law of 31 December 1962 which retained French legislation, including that of 1959, as long as it was not "contrary to national sovereignty" or "of colonial inspiration and discriminatory" (Issad, 1968: 1082).

The right of husbands to unilaterally end a marriage, even without cause, was thus argued to be in the national interest, and Issad swept aside a liberal law that served to give greater protection to women as both discriminatory and a colonial evil. But Issad was expressing his individual opinion rather than statute law, and the freedom of judges to follow their own agendas created a mass of confusion and contradictory practices in legal process. In many ways this juridical anarchy reflected and, at the same time legitimated, the deep conservative currents in Algerian society that had frustrated or ignored the 1959 law from its inception. In 1968 even the official FLN newspaper *El Moudjahid* was able to offer a *fatwa* that condoned a strictly illegal disregard for the law. In reply to a question posed by a woman who had been married by a *fatih*a ceremony to a man who later turned out to be already married with two children, it suggested that she could contest this before a judge, but the *fatih*a marriage was "from the point of view of Muslim law pure," and if she went to law, "if you are pious you will always have something on your conscience... also in Muslim law polygamy is licit" (Borrmans, 1977: 537). Lahouari Addi has gone so far as to suggest that Algeria in failing to establish a culture of individual rights was not a *Rechtsstaat* and was prepared to surrender the monopoly of justice in relation to domestic space and women to the religious-moral order of the community and the man in the street. For example, the authorities regarded it as quite legitimate for men to use violence towards women who they felt had, by appearing alone or "improperly" dressed in the street, impugned the moral order (Addi 1999: 161-2, 204-7).

It should be noted that the conservative turn in marriage and family law after 1962 did not mean that Algerian women were lacking in agency and that they were the passive objects of repressive male agendas. Just as civil society had been able to escape the implementation of the 1959 law, so

that there was a large gap between the statute book and the social reality of marriage arrangements, so court documents of legal procedure also reveal the kinds of strategies that women deployed to defend their own interests in court. Although Jean-Paul Charnay (1965) has explored this issue for the colonial period, no such study has been carried out for the post-Independence era. Some of the court adjudications published in the *Revue algérienne des sciences juridiques, économiques et politiques* (Vol. 5, No. 4, December 1968, 1193-1244) provide a tantalizing glimpse of how women attempted to utilize the law and, rather significantly, did so by appealing to the French law of 1959. For example, Khedidja Ait Idir brought a court action against her husband Tahar Nabti in July 1965 because he had repudiated her, but acted illegally by failing to get the marriage registered by the *état civil*. However, the great majority of women were illiterate and too poor to be able to make use of legal process, and if they did so it was in most instances where, having returned to their parents home after repudiation, court action was brought by male relatives on their behalf. But ultimately, the overall direction which marriage law took after independence in 1962 severely narrowed the already restricted room for maneuver that women had to defend their interests before a judge.

Women's organizations such as the official *Union nationale des femmes algériennes* (UNFA), as well as individual feminists such as Fadela M'Rabet, voiced with growing concern the failure of the courts to implement current laws inherited from the French. This became particularly clear in the two key areas of enforced marriage and unilateral repudiation. A growing number of religious leaders and cadis openly expressed the right of *jibr* by which a marriage partner was chosen by the father or male guardian (*walî*), since, it was argued, women lacked the experience, information or inherent intelligence of men to make such an important decision. The consent of the woman, who should be absent from the marriage ceremony, should always be given by the *walî*. It was precisely this system that the 1959 law had tried to end by insisting that women must be present at the ceremony before a state official who would verify her assent, as well as her legal age.

From 1962 onwards however, a mass of evidence points to forced marriage, often of under-age minors, in spite of the Khemisti law of 1963 which extended the age of marriage for girls from 15 to 16 years (Borrmans, 1977: 515-19). In the Constantinois region even the official census of 1966 recorded five per cent of all girls aged 12 to 15 years as married (2,774

individuals), undoubtedly the tip of the iceberg since most illegal marriages would have escaped the *état civil* altogether. Vandeveldé's extensive survey of 1968-72 found that 42 per cent of husbands were imposed on women in urban society, and 65 per cent in rural zones (Vandeveldé, 1980: 68-9, 176). M'rabet after publicizing evidence of widespread and increasing psychiatric problems, including 175 attempted suicides in Algiers in 1964, among young women forced into marriage, had her weekly radio programme for women closed down (M'rabet, 1967: 144-161). In addition there was a growing wave of repudiation or divorce in which women and children were abandoned, frequently without any form of support: in 1963 there was an estimated 10,000 repudiations and abandoned families in greater Algiers alone (Borrmans, 1977: 517; M'rabet, 1967: 185).

### **The failure to engage in reform.**

Why did post-independence Algeria, riding on a wave of international acclaim as a revolutionary and socialist republic, shy away from grasping the nettle of reform and allow courts to drift into a fragmented and conservative procedure on marriage and family law? There is no simple answer to this complex issue, but the remaining part of this article centers in turn on three key elements, firstly the reactionary form of Algerian gendered nationalism, secondly the deep division between a minority political current dedicated to a secular and socialist model of society and its more powerful rival wedded to a religious Arabo-Islamic vision, and finally, and most crucial of all, the entrenched weight of extended family or kin groups that upheld the fundamental values or structures of agnatic affiliation and patriarchy.

From the 1930s onwards, emergent Algerian nationalist ideology, especially as formulated by the Ulema association of Ben Badis, made a strength of the "reserved" area of the *statut personnel* by formulating Algerian identity in terms of the one zone that colonialism had left intact, Islamic faith and culture. However, the defense of an Arabo-Islamic identity was in turn formulated most crucially in terms of women, as mothers and educators, and of the private sphere of the family viewed as a bastion in which core values were transmitted from one generation to the next. As Partha Chatterjee and others have shown, such an ideological framework, based on a dichotomy of the inner and outer, the home and the world, was

shared by many nationalist movements for which “the crucial need was to protect, preserve and strengthen the inner core of the national culture, its spiritual essence” (Chatterjee, 1989: 624; Rai, 2002: 28-29; Bulbeck, 1998: 29-30). French colonialism and Orientalism had for centuries deployed a discourse of “emancipation” that legitimated the *mission civilisatrice* through a catalogue of supposed barbarism, violence and oppression inflicted on Muslim women. In response to such an offensive, early Algerian nationalism created from at least the late 1920s the counter-myth of Muslim women as defenders of national identity, but this topos assumed a particular urgency for the FLN during the war since French psychological warfare officers, who shared this discourse, translated its implications from the level of mere literary text or theory, where for many decades it had tended to rest, into an aggressive “revolutionary” practice.

Internal FLN documents show that the nationalists were perfectly aware of the extent to which the package of emancipation measures, including the 1959 law, was driven by a counter-insurgency strategy to penetrate, gather intelligence and subvert the FLN base in domestic society (Harbi and Meynier, 2004: 609-12). However, in attacking the 1959 law the FLN fell back on, and reinforced, the conservative topos of the immutable family as a bastion of identity, a form of religious nationalism that bound women into the status quo. The official FLN newspaper *El Moudjahid* noted of the 1959 law:

Thus the French, who moreover are Christians or of the Jewish confession, as is, it seems, Mr Michel Debré, have dared to deliberately violate the Koran, immutable in its essence, and to impose by the sword on Algerian Muslims the secular laws of France, and this, in the most sacred of things, notably the statut personnel... a domain that belongs exclusively to the community of believers (No. 45, 6 July 1959 quoted by Gadant, 1995: 85).

Frantz Fanon glimpsed the dangers of such a reactive FLN agenda reinforcing traditional practices that might carry negative consequences for women (Fanon, 2001[1959]: 31). But while he viewed this as a temporary sacrifice of the war this proved not to be the case and the FLN helped to create a long-term, post-independence mental association between almost



any form of progressive agenda on women or "emancipation," and the idea of an alien, western invasion and subversion of Algerian culture and society. As the conservative ideologue Malek Bennabi remarked in 1968 feminism represented a foreign import: "Our feminism must not be 'made in somewhere'. It must be of our own brand"; while for the Minister of Justice, Benhamouda, the goal of any new Algerian code "is above all to purify the structure of the family of all its un-Islamic elements" (Borrmans, 1977: 538; Lazreg, 1994: 131-2, 150).

The second point follows on from this, the argument that the Algerian government delayed legislation on a post-Independence family code since its hold on power was precarious and it preferred to avoid politically destabilizing battles over such a sensitive issue between opposing camps that viewed themselves as socialist/secular modernizers or as Arabo-Islamist defenders of "tradition" (Marshall and Stokes, 1981: 629-30). Certainly Borrmans detected signs of such a split in the secretive workings of the drafting commissions of 1963-4 and 1966, and gives this as a reason why government shelved these projects (Borrmans, 1977: 521-29, 535-42). It is now evident, especially from the work of Gilbert Meynier, that such a split over the position of women had existed already among the higher echelons of the FLN during the war itself (Meynier, 2002: 223-37), but the weaker socialist or secularizing current eventually lost out to the colonels (Ben Bella, Boumediene) who seized political power at independence.

Although there were some initial signs of promise on the women's question from the Ben Bella government, particularly in the passing of the "Khemisti law" of 1963 which increased the minimum age of marriage for girls from 15 to 16 years, this quickly evaporated and in a deeply ambiguous speech on International women's day, 8 March 1965, the President noted there could never be socialism without the participation of women "within the framework of our Arabo-Islamic values" (Borrmans, 1977: 539). On the same occasion a year later, Boumediene, having seized power through an army coup, made an almost identical speech: progress, he said, "does not mean in any way imitation of western feminism. We say no to this kind of evolution since our society is an Islamic and socialist society...this evolution must not be the cause of the corruption of our society" (Vandeveldt, 1980: 374-5). Lazreg, an eyewitness to the event, reports that women who tried to leave in protest were sent back to their seats by armed guards (Lazreg, 1994: 151).

Although many commentators have dated the penetration of radical Islamist currents into the FLN apparatus from the 1970s onwards, this happened in *some* areas of policy-making from at least 1957-8. While the political elites felt comfortable in utilizing the language of “socialism” and secular law in the technocratic and economic sphere (of oil, planning, industrialization, land reform), the cultural-religious agenda was basically drawn from the Ulema tradition. The PPA (*Parti du Peuple Algérien*, Algerian People’s Party) of Messali Hadj (1937-1954), and its successor the FLN, both shared a populist and messianic religious nationalism that was shaped by the Ulema (McDougall, 2006:136), and its leading ideologue, Tawfiq al-Madani became minister of culture and religious affairs in the first provisional government and later under Ben Bella. In the post-1962 political struggle between socialism and Arabo-Islamic traditionalism, both Ben Bella and Boumediene discreetly sided with the latter on the question of women, particularly as in a search for political legitimacy they had most to gain from appealing to populist Islam and the austere *salafiyya* movement which sought a return to the purity of tradition and *sharia*. An authentic womanhood was to be located more in the *restoration* of an essence that had been immutably defined in the past than in any process of modernization. As Mohammed Harbi, a leading oppositional figure within the FLN has argued, the post-1962 governments showed an essential weakness of Algerian nationalism from its very beginning in the 1920s, a form of populism that based unity on a religious and mythical idealization of a past community that obscured elaboration of a clear ideology or political project, so acting to the detriment of universal and individual rights in which women were the greatest losers (Harbi, 1994: 22-33).

Finally, and most important of all, post-independence governments prevaricated over the reform of the family code because they recognized the enormous and almost immovable weight of patriarchy, of an embedded system of family structures, sentiment, and power that would be difficult to transform without creating dangerous political opposition. However, it was precisely because the “traditional” family structure was faced with crisis and dislocation that the male-dominated social and political system sought refuge and stability in a defensive reinforcement of patriarchy. The question that needs to be answered is how it was possible that socio-cultural patterns of male domination over women, particularly within the family group, managed to survive largely intact throughout the period from the early

1950s down to the 1970s and beyond, in spite of enormous changes in Algerian society and the family during and after the war of independence.

The French army program of "pacification" involved a massive uprooting of the peasantry from the mountainous interior, the destruction of thousands of hamlets, and relocation into militarized encampments. Between 2 and 3 million people, half of the rural population, were definitively torn away from the land and dumped in camps that, in many instances, formed the nucleus of post-war urban settlements (Cornaton, 1967; Bourdieu and Sayad, 1964; Rocard, 2003). In addition hundreds of thousands of refugees sought safety across the borders in Morocco and Tunisia, or fled the insecurity and hunger of the interior for the shantytowns of the northern littoral. Most of this refugee population did not regain their villages of origin on independence since the ties to the land had been definitively fractured, indeed the departure of close to a million *pieds-noirs* during 1962-3 further accelerated rural-urban migration as Algerians moved quickly to occupy empty European properties in the towns. The process of *déracinement* meant that family units were in many instances torn away from extended kin networks of the village in which endogamous marriage alliances were embedded, and forced into urban spaces in which neighbours were frequently strangers. Women who had traditionally not veiled in the village of origin in many instances now resorted to this, since the camp or urban environment now presented a new danger of exposure to outsiders and to family honour.

The war was also marked by the massive departure of younger, active males from rural society: either they joined the FLN in the *maquis* or abroad, or they migrated to the cities and metropolitan France to find employment and to escape violence and forced recruitment by the French army or warbands such as the MNA (*Mouvement National Algérien*, Algerian National Movement) ALN (*Armée de Libération Nationale*, National Liberation Army) or Bellounists (supporters of Mohamed Bellounis, a former member of the MNA who received French military support to fight against the ALN). This meant that in many villages, especially in Kabylia, populations were reduced to women, children and the elderly, a society of what Jansen has termed "women without men." Although some contemporary observers argued that Algerian women, in the absence of husbands, remained firmly under the power of older males (grandfathers, uncles...), most agreed that

women had to cope without men and gained experience of a new found autonomy (Jansen, 1987).

When the war ended in mid-1962 Algerian men returned "home," to what in reality must have been for many a quite different location, hoping to find family life as it was before the conflict, only to discover a radical dislocation of the domestic circle, in many instances geographically displaced into urban centers, reduced to smaller, nuclear units cut free from the framework of village clan networks, and run by women who had learned to cope without men. Returning men felt deeply anxious and insecure in relation to such change, and set about asserting their domination over women with a new energy and, far from accepting a transition towards a new style family based on the "modern" couple, a nuclear unit composed of husband, wife and children, the extended family and "clan" networks took on a new shape and lease of life.

As the anthropologist Camille Lacoste-Dujardin and the sociologists Claudine Chaulet and Lahouari Addi have shown, the peasant family, which was traditionally a unit of production, underwent a major transformation in which kin networks and marriage strategies were reconfigured so as to serve the basis for new forms of political and economic power (Lacoste-Dujardin, 1976 and 1996; Chaulet, 1984; Addi, 1999). The typical post-62 household constituted three generations in which, because of the desperate crisis in housing, parents shared the same space with married sons, their wives and children, or, if more wealthy, acquired adjacent flats. This extended family diversified a shared economic base through a mix of labour emigration to France or major cities, small enterprises (taxi firms, street trading), agriculture, factory work and so on. This adaptive, dynamic capacity of the "traditional" family provided it with great strength in times of massive economic and political change but went hand-in-hand with a vigorous reinforcement of the patrilineal ideology that maintained women in their "natural" role of mothers and daughters claustrated within the home. Lacoste-Dujardin says of this family as "refuge": "These new families, fragments of lineage groups dispossessed of so many of their privileges, still jealously guarded, according to the length of time passed since its disruption and the degree of links retained with the parental clan, a consciousness of family honour and still adhered to a patrilineal ideology" (Lacoste, 1996: 269-70; see also M'Rabet, 1965 : 52).

Some academics have tended to draw a picture in which the oppression of Algerian women has been ascribed to a battle of the sexes, an aggressive male subjugation. Certainly Vandeveldel has produced a considerable body of evidence, from her survey in 1968-71, to show that hundreds of women felt so isolated within the home that they had no means to escape from a life of resignation and ignorance, passive and depoliticized. Typical of the statements recorded is the following by a middle-aged woman, "No women take part in social life because of customs. Women are made for the house, which basically means they have no life. They rarely go out... Put in another way, Arab women are buried alive" (Vandeveldel, 1980: 30-1). So radical was female seclusion that a third of rural women had no contact with neighbors, while even their husbands did not speak with them and some did not even know how he was employed (Vandeveldel, 1980: 160-71, 181). However, as Lacoste-Dujardin has shown, older women as mothers and mothers-in-law could achieve a considerable degree of domestic power and status in so far as they brokered marriages and exercised a strict disciplinary control over their daughters and cohabiting daughters-in-law, thus reproducing the ideology of female submission and serving as "agents of masculine domination" (Lacoste-Dujardin, 1996: 81-83). Numerous reports by French army itinerant social and welfare teams (EMSI) seeking to westernize and "emancipate" Algerian women during the war noted that resistance came mainly from the dominant older women (*adjouzat*) who blocked any reforming intent and contact with girls and young women in their households. Patriarchy, far from being solely imposed by force on women by males, was a powerful system of belief and practice that was sustained by both men and women and this explains in part the ability of the ideology to survive post-war changes (Addi, 1999: 105-6, 115-16, 210-12).

A developmental theory of emancipation (see Chapter Two in Rai, 2002) argues that women more generally are likely to gain rights through the long-term effects of modernization, including economic change, urbanization, improved education and training, better health care, and increased access to employment. But in the Algerian case the potential for such progress was radically blocked by women's confinement. Firstly, although considerable advances were made in post-independence educational provision for girls, this was for the great majority restricted to primary schooling, and parents usually insisted on withdrawing daughters

at 12 or 14, isolating them in the home and preparing them for marriage. Secondly, patriarchal values of honor and seclusion prevented women from engaging in employment outside the household, and by 1975 only 3.2 per cent of women above 15 years was economically active, one of the lowest figures in the Arab world (Jansen, 2004: 4). The simultaneous explosion in the birth rate further locked women into the domestic role of mothers. Finally, the isolation and atomization of women made it difficult for them to gain any kind of political awareness and for many involvement in any kind of associational life or women's movement, such as the quite conservative UNFA (*Union Nationale des Femmes Algériennes*, National Union of Algerian Women), was simply out of the question.

The majority of women interviewed by Vandeveldde demonstrated a crushing demoralization and resignation, and an inability to conceptualize the political universe beyond the doorstep or to answer the most basic questions on the outside world which was viewed as the domain of men. One sign of the political marginalization of women was the tolerance by government in 1967-70 of husbands exercising the vote on behalf of their wives, a practice eventually legalized in 1990-2 (Vandeveldde, 1980: 290-4, 303; Shaheed, 1994: 1003). This is not to say that there was no active women's movement that challenged the regime during the 1960s and 1970s, but this was largely confined to a few hundred educated and professional women and even they, as the feminist Marie-Aimée Helie-Lucas notes personally, found it difficult to organize and to wake up to the extent of the betrayal (Helie-Lucas, 1990).

It can be noted how speedily at independence in 1962 many of the *moujahidate* who had experienced an unusual degree of independence during the war, returned to a domestic role and withdrew from political activism (Amrane, 1991, 1994; Vandeveldde, 1980: 89), as had occurred after so many other wars in which women had played a crucial role. The atmosphere of political demobilization and dejection at the reassertion of male domination and seclusion was expressed by Fatma Baichi,

After independence I no longer worked and I could not engage in activism. My husband prevented me from going out: I could not even go and see my sisters-in-combat.... And then even my brothers, even the youngest whom I had fought alongside during the war, encouraged my husband to stop me from going

out: “It’s finished now, she must not be allowed out, things are different now.”

For Baya Hocine too, “... we [Algerian women] broke through the barriers and it was very difficult for us to go back to how things were. In 1962 the barriers were rebuilt in a way that was terrible for us” (Amrane, 1994: 123, 146). Symbolic of this dramatic shift in the fortunes of women militants at independence was the fate of Djamila Boupacha, the most mediatized heroine, on her release from a French prison on 26 April 1962. Reluctant to return to Algeria where “the *brothers* [FLN – italics in original] are going to return me to my life as a woman down there,” she was forced by the FLN to leave the protection of her feminist lawyer Gisèle Halimi, and bundled under guard into a return flight to Algeria (Halimi, 1988: 354-7).

In conclusion, the late colonial state faced a considerable problem in enforcing the liberal family law of 1959 as well as the *état-civil* which helped underpin it. The law remained on the statute books of the newly independent republic until 1975, but was widely ignored by both the population and the courts. This avoidance of law suited the purposes of the FLN government since it helped guarantee political tranquility. Likewise the state constantly stalled on a new code, allowed courts to follow their own devices (mainly leaning to a traditional reliance on *sharia*), and abandoned civil society to an entrenched patriarchy. As Claudine Chautet notes, “The function of family solidarities changed: from a method of survival, they changed into a means of establishing an autonomous nucleus working within and against the multifaceted penetration of the State,” an interpretation that matches that of Charrad (quoted by Lacoste-Dujardin, 1996: 287; see Charrad, 2001). Ben Bella and Boumediene, in contrast to Bourguiba, abandoned the issue of reform for women because they recognized the weight of family structures and ideology that were simply too entrenched to transform radically without incurring the risk of a political earthquake. However, while any major legal change cannot move too far in advance of society without risking political opposition, governments do have a margin for maneuver. In the Algerian case the political elites made the costly mistake of burying the question of women’s reform and entrenching patriarchy, so setting the society on course for an eventual catastrophe, the resurrection of misogynous Islamic

fundamentalism and a bloody civil war marked by a generalized violence against women.

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