

The Ambiguous State: Gender and Citizenship as Barter in Algeria

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Introduction

In order to illustrate the problematic of citizenship and gender in Algeria, the issue of personal status will be addressed in the following article with the aim of capturing the nature of the relationship linking the Algerian state with its society and citizenry. The intention is to go beyond positivist interpretations of the dynamic of the post-colonial nation-state which have hitherto been based on either Marxian or functionalist theorising. Indeed, both schools of thought have long adopted a dualistic paradigm both for the capitalist core and the colonial and post-colonial formations. Thereby, both have occluded the issue of gender, whether in terms of class struggle or within the idyllic 'rite of passage' from tradition to modernity traversed by such societies. Both have ended up reducing social change to a positive linear evolution, and societies to exclusively phallogocentric structures.

In this article, an 'accidental' gender-based reading of the processes that led to the adoption (1984), and later minor revision (2005) of the Algerian Family Code will show the limitations of the positivist tradition of reading social change as a linear process evolving from the traditional to the modern, particularly in post-colonial peripheral social formations. If anything, the promulgation of the Family Code in Algeria 22 years after independence in 1962 shows a regression rather than an evolution, and begs an alternate reading of social change away from an exclusively patriarchal notion of human history.

It will be contended here that the post-colonial state elites have displayed an ambiguous attitude towards women's access to full and complete citizenship within the promised republican model of universal and equal citizenship for all citizens expressed in the official rhetoric. This ambiguity is eloquently illustrated by the hesitations characterising the promulgation of progressive personal status and family legislation since the 1960s, a process finally superseded by the enactment in 1984 of

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an unprecedentedly conservative Personal Status Bill by the then National Popular Assembly, bearing the title of the Family Code Law, قانون الأسرة (Cheriet 1992).

Indeed, the main provisions of the Code constitute a confusing mix of unspecified Shari'a injunctions, customary mores, and positive measures. It should be noted that this mix expresses the normative ambiguities of a dependent modernity put forward by a neo-patriarchal polity. Despite embarking on bold infrastructural modernisation, the elite in power seemed to be in the thrall of the regressive reflexes of local traditional value-systems based on perceptions which favour the preservation of a dominant patrilinear family structure. This ambivalence has precluded women's access to a full and complete citizenship based on their purely individual relationship with the State.

It is worth noting that these ambiguities are those of the political class, which in Algeria is mainly represented by state technocrats, the group instrumental in laying down the normative and institutional bases of the structures of the State following independence in 1962. The characteristics and reflexes of this group correspond very accurately to Hisham Sharabi's concept of 'Arab-region neo-patriarchy' (Sharabi 1988). Hence our use of 'neo-patriarchy' in this argument, where we intend to demonstrate that the ambivalent attitude towards modernity, where this is taken as a 'technical' infrastructural device (Habermas 1977) rather than as a total phenomenon, has sown the seeds of a gendered notion of citizenship, instead of one of universal enfranchisement.

However, it is not in women's limited access to the public realm that the hesitations of the neo-patriarchal state are most apparent, but rather in the limitation of their empowerment as individual decision-makers in the domestic realm of the family, that is, to the reproductive space par excellence. The culmination was the promulgation in the early 1980s of a Family Code Bill, which confined women within a 'minority' status, a move reminiscent of the toll minority groups in ancient civilisations had to pay in exchange for their access to the city.

Similarly, in order to be admitted to the city as the space where public affairs are conducted, that is to the *res publica*, women in Algeria were required by this Code to sacrifice their full adult status within the family, so as to ensure that their accession to citizenship would not affect the conjugal and family constellation.

The Construction of a Post-Colonial Neo-patriarchy

The range of protagonists involved in the process of state and nation building in Algeria is by no means binary, and dealings involving trade-offs between revolutionary radicals, nationalist apparatchiks and technocrats and religious conservatives were easily discernible as early as 1962. But despite the unitarian façade outwardly maintained by these various forces, post-colonial rhetoric oblige, the early socio-political and ideological dispositions of the polity seemed to have been dominated by radicalist opinion, with the launching of populist measures such as agrarian self-management, free education and health care, and a broadly extended social security system. However, the 1965 coup d'état led by Colonel Boumediene, and the regime it installed (1965–78), brought to a sudden end the revolutionary euphoria of the radi-

cal reformists. Boumediene's intervention marked the first rupture with the ideological legitimacy of national unitarianism derived from the 1954–62 anti-colonial war, and erected in its stead a technocratic legitimacy based on an efficacious building of the State, sustained by a new discourse of 'specific socialism'.

In the decade following the coup, a broad consensus of approval apparently accompanied the vast populist measures undertaken by the state technocracy, whose *tour de force* was to succeed in co-opting support from among all trends of public opinion in the name of economic efficiency and social egalitarianism. The most notable groups to be won over were left-wing radicals (after an initial wave of repression in the mid and late 1960s) who were mobilised around the agrarian reforms and the trade union movement. Equally, the regime reached out to women, by offering them access to areas of mass service provision such as education and health, and by permitting them a token participation in the labour market. Finally, but also significantly, religious conservatives were largely compensated for their endorsement of socialist policies with the affirmation of Islam as the state religion, and the establishment of colleges and institutes dispensing religious education. Broadly speaking, many of these institutions subsequently became breeding-grounds for the later more transparently fundamentalist demands of the 1980s.

The technocratic nature of state and nation building during this period left a deep imprint on the later development of what I would characterise here as a 'barter commodity' notion of citizenship. Indeed, within a dynamic of rapid social change, from a pre-industrial environment to a dependent post-colonial one, universal enfranchisement could not be embodied as a 'free' fundamental right of a transcendent republic, but rather held out as a 'barter good' in exchange for the acceptance of a carefully tailored status. This was to be where universal access to the *res publica* was negotiated against the preservation of statuses of an ascriptive type, specifically with regard to women's empowerment as individual decision makers in the domestic space.

The eclecticism of the official ideological discourse embedded in both Socialism and Islamism (Articles 2 of the 1976, 1986 and 1989 Constitutions all stipulate that Islam is the state religion), as well as in local traditional communitarianism, has been a fertile bed for the legitimisation of later regressive conservative claims against the ideal model of modern citizenship and the growth of individualism that it may encourage.

Public Citizens, Private 'Houris'

In contrast to the widely held belief that the marginalisation of Arab women from decision-making processes in the public arena was due to the reservation of the private, domestic sphere of the family as the domain where women could take decisions, one has to marvel nevertheless that family and personal status legislation was equally monopolised by the exclusively male-dominated state executive and legislative structures.

However, the classic typology drawing a clear-cut line between the categorisations of 'public' and 'private' spaces needs to be handled with care where the role

and status of women in the Islamic discourse are concerned. The process of enactment of the Family Code in Algeria shows very clearly that any attempt at involving women in the management of family matters as full and equal decision-makers, according to the model of the individualised citizen owing primary allegiance to the State and the new national space, was perceived as the greatest endangering factor for domestic stability as well as social cohesion.

Whereas women's participation in certain areas of public activity had been internalised as an acceptable structural change, bestowing upon women equal decision-making powers in the family environment was perceived not only as sacrilegious, but also threatening for the traditional predominantly patriarchal order, whose best guarantor remained the relational dynamics of the family cell. As paradoxical as it may sound, an active role for women in this domestic arena would entail their attainment of decision-maker status, that is, a promotion of their individuality, a process seen as detrimental to the patriarchal order.

Debates on the personal status of women started as early as 1963. They were at first swept up in the revolutionary euphoria of Independence, well illustrated by the adoption on 25 July 1963 of a law on a minimum age for marriage. Law 63-224 was intended to curb the early marriage of young girls. However, the law was never applied as conservatives in the legislative and executive bodies quickly denied it any legitimacy, denouncing it as a move towards 'secularism'. Later attempts in 1966 and 1972 at bringing in progressive provisions in favour of an individualised decision-maker status for women also proved abortive in view of violent reactions from conservative quarters. The most significant feature of this contest was the systematic ambiguity of the elite in power towards the proposed reforms.

The 1963 law had unleashed the wrath of conservatives in the polity. As a consequence, administrative directives were immediately issued in order to invalidate the articles of the law which established civil registration of marriage contracts as the sole official recognition of the marriage bond. Other measures also forbade inter-religious marriages between Muslim Algerian women and non-Muslim men which had previously been permissible. Indeed, the recourse to positive civil legislation was denounced as an open door to the secularisation of matters of personal status.

The assault of conservatives upon the various administrative and political apparatuses was to be relentless for the next two decades, up until the enactment of the Family Code in 1984. An early instance of such tensions arose between 1963 and 1964, when national commissions were set up to elaborate a personal status law based on Islamic precepts. However, the recommendations emerging out of these commissions were not issued by religious authorities, but by the ministers in charge of justice who were either war veterans or technocrats. This scenario occulting theological debate, argumentation and opinion in favour of a non-specialist techno-religious 'directive' was to be frequently repeated during these early years. This stance was a natural corollary of the general authoritarian monolithism prevailing in the political arena at the time, whereby issues of public interest were tackled through technical and bureaucratic measures so as to avoid public dispute and argumentation.

Nevertheless, as controversy between various traditionalist, reformist and modernist factions within the National Popular Assembly began mounting, leading to

incessant disputes, albeit behind closed doors, the government eventually decided to put a halt to the project.

The 1965 coup d'état led by Colonel Boumediene established a Revolutionary Council whose priorities were the reinforcement of the state apparatuses and their hold on society, as well as the reorganisation of the economy along the lines of industrialisation and the expansion of public services. The consequent down-grading of legislative projects relating to personal status led to the abandonment of the attempt to bring in another family law in 1966. The National Assembly had by then been dissolved, and the Revolutionary Council was even less keen on dealing with controversial matters such as gender roles and status.

This initial attempt to establish the status of women within the Republic was thus definitively closed. A new policy was enunciated in the speeches of the now President Boumediene on the role of 'citizens' in a modern developmental process. However, he issued a caveat which delimited the 'proper' behaviour of the Algerian woman-citizen, but which placed no similar limitations on her male counterpart. The caveat clearly enunciated that the '... emancipation [of the Algerian woman] cannot in any case lead to the imitation of the Western woman. We say NO to such developments as our society is Islamic and socialist. . . . We are all for emancipation, but this emancipation should not cause the decay of our society.'

Boumediene intended this to be a preemptory warning putting a damper on all religious and legal discourses. Given the charisma of his leadership, it effectively achieved this suppression for a time. But this intervention also represented neo-patriarchal idiosyncrasy in its most pragmatic form, dividing modernisation into two schizophrenic components, welcoming modern techne, but retaining traditional episteme, inviting allegiance to the State for all males, but keeping females subservient to the primary male dominance over the domestic sphere.

The 1970s were marked by a further attempt to introduce family legislation along patrilinear and patriarchal lines, ignoring the changes in family structure which had occurred in Algerian society, as well as the more visible participation of women in the public arena. This time, strong opposition to the project was voiced by militants of the National Union of Women, the UNFA (Union Nationale des Femmes Algériennes) affiliated to the governing FLN party. Previous debates had never involved women, but the presence of women war veterans and other progressive professionals in the UNFA led to a change in the non-assertive and background role of that organisation. Invited to voice an opinion for the first time, its leadership rejected the proposed text, arguing that it dangerously treated women as lesser subjects, and ignored their citizenship rights as equal to those of all other citizens in the Socialist Republic (see Cheriet 1992: 188–192).

However, this bold move of the UNFA leadership cost them their positions, as they were immediately replaced by less outspoken individuals. This was also the last attempt by progressive voices to oppose programmes put forward by Boumediene's team of technocrats, who embarked on a vast process of co-opting all 'agitators' to the support of populist policies such as the agrarian revolution and the socialist management of enterprises, a process that continued until Boumediene's death in December 1978.

From Family Code to a Women's Code of Behaviour

Following the power struggle for Boumediene's succession, the political environment seemed more open to restructuring. However, the same techno-military elite maintained its grip on power, with a few minor liberalisation measures on the economic level. The propensity to crack down on dissenting opinion being still the main reflex of this group, repression of Berberists, Islamists and feminists took place systematically between 1980 and 1982. The Berberists for claiming national recognition for the Amazigh languages and culture, the Islamists and feminists as opponents of the ambiguities of the regime. The Islamists objected to what they perceived as a growing secularisation of Algerian society, while feminist groups were dismayed at the lack of a clear enunciation of equal citizenship for women, who were to be treated as persons of lesser status than men by the family legislation then in preparation. The proposed law-change, put forward in 1980–81 was to be presented to the National Popular Assembly. But women organised street protests for the first time since independence in 1962 against the retrograde measures of the project.

The idiosyncratic quest to delineate ideal womanhood versus ideal citizenship reached its point of culmination with the measure put before the legislature in 1982. The National Popular Assembly (APN) was to examine a personal status bill regulating domestic relationships and defining the contours of women's status as wives and mothers under the guardianship of husbands and fathers. The bill was a very obvious expression of the intent to preserve a dominant patrilinear family structure, which would be largely assured and protected by the relegation of women within it to a minor status. The bill introduced limits on women's movement as participants in the public arena by conditioning their right to work by the need to have the husband's permission. Rather than embodying a theological injunction, this last condition was tributary to the traditional local Algerian customs of women's effacement and dependence on male kin. It is significant that most provisions of the bill were an expression of a residual misogynist social order cobbled together as legislative principles. As a consequence, these seemed to generate a readier consensus than injunctions based on Shari'a law, which would have necessarily led to a debate following the more complex and 'fastidious' procedures of *Ijtihad* and *Taqleed* within the Islamic legal tradition. Neither the technocrats of the government who proposed the bill, nor the neo-patriarchs of the National Assembly were ready to open any public forum on the matter. Recourse to theological expertise was discreet and limited to ad hoc questions.

The debates of this legislature were rather confrontational, pitting a few delegates with progressive views who sought to promote the concept of universal citizenship and allegiance to the State on an individual basis against staunch conservatives opposed to the merest idea of an equal legal status between men and women.

The Justice Minister in his introductory speech to the bill clearly stated the position of the 'modernisers'. He summarised the bill's mission as providing '... the legislative reference, within the framework of Islamic principles, which should guarantee women their rights and social position as partners of men and as mothers'. Following on the Minister, the Chairman of the Assembly's Administrative and Legislative

Commission clarified women's status as being minor in respect of marriage, divorce and guardianship, stating that:

Marriage is based on equality between husband and wife, except in legal responsibility, and familial authority, which is a natural prerogative of the husband.

Divorce (read 'repudiation' in the Arabic text) is the exclusive faculty of the husband.

Guardianship (over women and children) is an imperative injunction of Islamic law to ensure the protection of those without full legal capacity (قاصر, in Arabic).

In the face of these limitations, some ten delegates tried, in vain, to remind their peers of the Constitutional provisions relating to gender equality and the universal extension of citizenship to both sexes (Constitution, Article 58). But the floor of the Assembly turned into a veritable court of inquisition inveighing against women's access to decision making in family matters and the ensuing dangers for social stability that this would create.

The addresses of the conservative deputies left no doubt as to the attitudinal stances informing their positions. Some excerpts from the record of the Assembly's debates for January 1982 are clearly indicative of these. Some saw in the bill:

a riposte against those imprinted with secular views;

while others clearly affirmed that the bill represented an opportunity for

rejecting secularism because it has made women objects of merchandise by prohibiting polygamy and encouraging the separation of bodies as well as adultery.

It is clear that the fear of secularism expressed in these views eloquently encapsulates a fear of individuality, and the sexual and social empowerment of women that could ensue from this, as clearly expressed in the notion of 'the separation of bodies'.

The bill, however, was not enacted during the 1982 Legislature, and was discreetly withdrawn in the face, on the one hand, of the conservative onslaught throughout its debate, and on the other, the protest marches organised by independent women from professional circles and a few war veterans, who had protested against the promulgation of such retrograde provisions. It is worth noting that these protests were a first in the annals of civil disobedience in post-Independence Algeria.

In the best traditions of neo-patriarchal manoeuvring, the then Chairman of the National Assembly issued the following warning to both progressive and conservative delegates within the Assembly:

The Algerian Revolution is at the fore-front of the Arab-Muslim nation. One of its most outstanding achievements is equality between man and woman in the acquisition of knowledge, and in access to work . . . but . . . Algeria firmly opposes secularism. [*Débats Parlementaires*, *Journal Officiel de l'Assemblée Populaire Nationale* (JOAPN), no. 126, 1982. Alger: Imprimerie Officielle.]

Ten years later, on the eve of the first multi-party legislative elections, (January 1992), following the overwhelming landslide victory of the Islamists in the 1990 local

municipal elections, the Islamist parties headed by the Islamic Salvation Front had gone a step further by announcing in their campaigns a doomsday for secularism in Algeria, and the promise of an Islamic Millennium. The organic ties linking the particularist nostalgia of the discourse of 'specific socialism', as dispensed in the sixties and seventies, to the more recently avowed puritanism of the Islamic fundamentalist claim had by now been brought into the open.

Citizenship as a Barter Commodity

After the withdrawal of the 1982 Personal Status Bill, pressure mounted from conservative quarters in the polity to enact family and personal status legislation which accorded with Shari'a injunctions, along with certain traditional mores, especially those pertaining to the predominance of kin over the individual, specifically the individual female. This was achieved on 9 June, 1984 when قانون الأسرة, the Family Code, was enacted.¹

All provisions of the Code, without exception, and effectively the Code itself, confined women within a relational model of citizenship by assigning them the status of persons without independent legal capacity, whether within marriage or with respect to its dissolution, or for legal representation, or in matters of succession. Of particular interest to this article's contention of the marginalisation of women from even domestic decision making was the urgent manoeuvring of conservative delegates during the 1984 National Assembly debates to impose polygamy as an unconditional provision in the Code. It is worth noting at this point that polygamy is far from a widespread practice in Algeria. Local custom, as well as a growing atomisation of the family structure post Independence under the pressures of commercialisation and urbanisation were not favourable to polygamous unions. In fact, polygamy was introduced as a Qur'anic disposition, and the passionate defence of the sacred text referring to this, (Qur'an, Women: verse 2) in the National Assembly, was essentially driven by feverish attempts to constrain the empowerment of women, and enforce social control around them. To such groups, the most effective way to achieve this control, it seemed, was to encourage polygamy so as to ensure the perennity of the extended family, and thereby the primary role and status of women as reproducers.

In most of its provisions pertaining to marriage, divorce, child custody and inheritance, the 1984 Family Code was a reactionary reproduction of Shari'a injunctions, without any reference to the Maliki tradition which has permeated the socio-legal organisation of the Maghrib at large. However, while leaving most Shari'a provisions intact, the government bill made polygamy conditional upon the consent of the first wife as well as the second. This was sufficient to provoke an uproar in the Assembly, to the extent that the debates were virtually turned into a conference on polygamy.

Nevertheless, representatives of the government managed to outmanoeuvre the intransigence of the conservatives and include the government-sponsored article. The Chairman of the Legislative Committee, for instance, put forward an argument in favour of the retention of conditional polygamy on the grounds of redressing the prevailing gender imbalance within Algerian society. He explained that '... given

that Algeria's population is constituted of 48% males and 52% females, four girls out of 52 would remain unmarried, and would fall prey to non Muslim unions or even depravity; therefore polygamy is justified in a statistical sense'.

This pseudoscientific rationalisation of polygamy is a simple illustration of the newly independent state having recourse to, in this case social, science as a legitimating discourse. This approach has consistently addressed itself in Algeria to radical and conservative opinion alike. The State elevates itself as the 'decider', because it claims to be the 'knower' through its teams of technocrats and experts, whose competence is not supposed to be easily disputed by lay people. The central core of neo-patriarchy in Algeria has in fact relied for its legitimacy on its dualistic appeal, on the one hand to transcendental worldviews cloaked in a sacred religious aura whenever radical secular opinion emerged, and on the other hand to technical, rational 'proof' as a means of resisting conservative opinion. However, this manoeuvring, typical of the Algerian post-Independence political class which was essentially identified with the military and bureaucratic elites, had stirred little reaction as long as the processes of nation and state building concerned the public infrastructural arena, the main features of which were industrialisation, urbanisation, mechanisation of agriculture, and above all, systematic socialisation via extensive education. Nonetheless, the enchantment stopped when the State sought to encroach upon the domestic family arena, where the mechanisms of traditional solidarities stood firm in the face of the State's attempted incursions.

Conclusion

The social and legislative environment described above essentially prevails to this day in Algeria. Despite a more 'sympathetic', albeit still paternalistic, interest in the higher ranks of the polity for a more 'equitable' status for women in some legislations (civil and nationality codes), the amendments to the Family Code of 2005 remained rather timid, avoiding any disturbance to the still well-entrenched male supremacist tendency. We therefore cannot help but note what may be construed as a panic amongst the polity relating to women's status, outwardly expressed as a protectionist reflex concerning the reproductive role of women, and the implicit rejection of their sexual empowerment as being a menace to their reproductive and relational status as wives and mothers. This clearly indicates that women's access to total citizenship is still heavily jeopardised by the problematic of reproduction.

In Algeria, the nation-state in making has by and large relied on an eclectic and to some extent mimetic adoption of universal liberal criteria for citizenship. Yet it seems that women's access to the public arena, that is, to the exercise of this citizenship, is conditional upon a clientelist dynamic. Certainly there has been a generally favourable integration of women within public processes, in particular education, health and services. But the State, which sells these packages as 'constitutional rights' uses them in fact as 'favours', and they are perceived as such by the majority of women who face a social environment which is very reluctant, if not hostile, towards conceding them these rights. In exchange, women are expected to endorse citizenship as a barter commodity and not as an inalienable right, by accepting their exclusion from

major decision-making processes, especially those pertaining to personal status and family legislation.

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Translated from the French by Colin Anderson

Notes

1. 'Loi no. 84-11 du 9 juin 1984 portant Code de la Famille,' Journal Officiel de la République Algérienne Démocratique et Populaire, no. 24, 12 juin 1984. Alger: Imprimerie Officielle.

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