

Women living under muslim laws
النساء في ظل قوانين المسلمين
Femmes sous lois musulmanes

DOSSIER 14-15

September 1996

Gender, Civil Society and Citizenship in Algeria

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Women in Algeria must negotiate their access to the public sphere in a society torn between the residual patriarchal reflexes of the modern state and Islamist revivalism. Feminists in Algeria, while critical of the patriarchal nature of the state, continue to call for its intervention to halt the Islamist upsurge and to implement social policies based on a model of universal citizenry.

In 1993, I attended a ceremony of trance dancing called "Benga", organized by the only group still performing in the town of Tebessa where I then lived.¹ The Tidjania group of Tebessa is a residual branch of the larger African Islamic sect that has practiced trance dancing for healing purposes, in particular as therapy in exorcising "bad spirits". The Benga dance relies on a highly organized drumming team, accompanying religious litanies celebrating the prophet Muhammad, which leads the dancer to fall into a "liberating faint".

Most striking about the Benga performance was that attendance was mixed: men and women, young and old together, faced the drummers, whose leaders included a veteran elderly woman reciter of the religious litanies. The men and women dancers performed in turn, falling into trances in front of the assembly. The position of their bodies expressed total abandonment (although women's and girl's thighs were promptly covered), unusual in such a predominantly patriarchal local society with strong Bedouin underpinnings.

Charmed by the intensity of drumming, I stood to dance, albeit prudishly, closely watched over by my husband and sisters-in-law whose glances discreetly reminded me that I bore the status and prestige of their name in the local community! A typical petty bourgeois family with small business and professional profiles acquired over four generations, they perceived themselves as the ideal family, combining traditional and modern value systems - typical of a neo-patriarchal micro-society.² I was welcomed on the basis of respecting this eclecticism - that is, watching the Benga as a folkloric manifestation but not participating. I was bound to display attitudes and behavior informed by the puritanism and self-discipline of both scripturalist Islamic education and modern rationalism.

The end of the Benga spectacle restored the prevailing order, with its gender separation, class boundaries and linkages. Today, this image of the Benga strikes me as a powerful reflection of gender debates in Algeria within a problematic of nation-building and New State legitimacy, hypothetically at

¹ I propose here a maverick use of anthropological observation, whereby the observer is thoroughly embedded in the processes as actor. I enjoyed seemingly ideal conditions of liberation, individualization and professionalism, guaranteed by my status as a public employee, a university professor. My marriage into an influential family of Tebessa, a small town (approximately 700 km southeast of Algiers) with residual tribal configurations, returned me to statuses, roles and behavior expressive more of kin constraints and allegiances than of a free and autonomous individual directly relating to state institutions and structures. My status as wife led me to play along two contrary registers: appear as a professional, efface as a wife.

² See Hisham Sharabi, *Neo-Patriarchy*, (New-York: Oxford University Press, 1988).

odds with traditional allegiances and local kin loyalties. Discussing the position of women in Algerian society today amounts to summoning the "demons" of patriarchy and neo-patriarchy. In this invocation, we will call upon the demons of kin, society and state in their gender "trances", so as to gauge the limits surrounding women's access in Algeria to individuality and citizenship in the process of nation state building in the form of *res publica*.

For more than a decade and a half, the state's populist measures co-opted various popular trends thanks to economic efficiency and social egalitarianism. The most notable co-optations were around the agrarian reforms; the trade union movement; women, who were integrated into education, health, and the national labor market, and religious conservatives, whose endorsement of socialist policies were offset by the promulgation of Islam as state religion. The establishment of religious colleges and institutes by the state would harbor the later more translucent fundamentalist movement of the 1980s.

The technocratic nature of state and nation-building during that period produced the notion of citizenship as a "commodity". Within a dynamic of rapid social change, from a pre-industrial to a dependent post-colonial formation, universal enfranchisement could not be incorporated as a gratuitous right. Rather, it was brandished as a "barter good" in exchange for carefully tailored allegiances. This is where universal access to the public sphere was negotiated against the preservation of ascriptive allegiances regarding women's limitations as individual decision-makers in the domestic space.

State and the Spectre of Kin vs. Women

I have previously referred to feminism and fundamentalism as comprising Algeria's rites of passage to democracy.³ The eclectic and populist official ideological discourse melds socialism and Islam (Article 2 of the Constitution stipulates that Islam is the state religion), as well as traditional communitarianism. As such it has provided a thriving source of legitimacy for later conservative claims against the modern ideal of citizenry.

The 1982-1984 National Popular Assembly (NPA) debates on a family code delineating the "ideal woman" in Muslim societies have helped to expose the demons of conservatism in civil society, long repressed by a technocratic neo-patriarchal state. The Algerian case demonstrates that state and kin are not necessarily at odds when it comes to limiting women's legal status as domestic decision-makers.

There is a widely held belief that Arab women, marginalized in the public arena, exercise authority in the domestic boundaries of the family.⁴ In fact, it is not in relation to women's limited access to the public realm that the hesitations of the state are most apparent, but rather in restrictions it places on them as individual decision-makers in the domestic realm of the family. In this cloistered space, the state has supported resurgent Islamist attempts to construct a handicapped citizenship for Algerian women. In the early 1980s, the Family Code bill relegated women to a "minority" status.⁵ In order to ensure that their access to citizenship did not affect the familial sphere, women were asked to sacrifice their full-fledged status within the family.

³ See Boutheina Cheriet, "Feminism and Fundamentalism: Algeria's Rites of Passage to Democracy", in J.P. Entelis and P.C. Naylor, eds., *State and Society in Algeria*, (Boulder, CO: Westview Press, 1992), pp. 171-215.

⁴ See Fatima Mernissi, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society*, (London: Al Saqi Books, 1985).

⁵ The official reference for personal status in Algeria is al-*Qanun al-Usrah* (the Family Code). The documents cited here include "Law no. 84-11", *The Official Journal of the Algerian Democratic and Popular Republic*, (Algiers, June 9, 1984); Parliamentary Debates no. 126, 1982; nos. 46, 47, 48, 52, 1984, *The Official Journal of the National Popular Assembly (JOAPN)*, (Algiers). These latter represent the minutes of the 1982 and 1984 debates on the family code. All documents are in French. Translations by the author.

The process of enacting the Family Code shows all too clearly that the male political elite perceive greater women's involvement in the management of family matters as a factor threatening domestic stability and social cohesion. Paradoxically, an active role for women in the domestic arena would entail a fuller citizenship for them but would undermine the ideal harmony of an Islamic universe on the one hand, and patriarchal potency, on the other.

Our story begins with the legislative session of 1982. This followed the so-called Berber Spring of 1980 and the detention of feminist and Islamist leaders alike, which marked the first expressions of civil disobedience and made visible the plurality of Algerian civil society.⁶ The NPA adopted a personal status bill regulating domestic relationships and delineating women's status as wives and mothers under the guardianship of husbands and fathers. The bill expressed the intent to preserve a dominant patrilineal familial structure and the subsidiary status of women within it. The bill also introduced limits on women's participation in the public arena by conditioning their right to work on husband's permission - a provision nowhere to be found in the *Shari* and its official schools of interpretation but abundantly manifest in Algerian customs of women's effacement and dependence on male kin.⁷

During the NPA debates, some ten delegates tried in vain to remind their peers of constitutional provisions on gender equality and the universalization of citizenry to both sexes. But they faced staunch conservatives who opposed the faintest idea of equal legal status for men and women. The Minister of Justice, in his introductory remarks, left no doubt as to the position of the modernizing state builders: to construct "the legislative reference, within the framework of Islamic principles, which ought to guarantee the rights of a woman, and her position as partner of man and mother in society". The chair of the Assembly's Administrative and Legislative Commission clarified the matter: "Marriage is based on equality between husband and wife, except in legal responsibility, and familial authority, a natural prerogative of the husband".

Some conservative delegates considered the bill to be "a counter-strike against those impregnated with secular views". Others affirmed that the bill represented an opportunity to "reject secularism because it has made women into merchandise".⁸ Fear of secularity eloquently encompasses a fear of individuality and the sexual and social empowerment of women. To counter this, conservatives stressed not only marriage but its polygamous form as the best guarantor of male control. "Polygamy is a humanitarian action which helps reduce the rate of divorce", said one, "and has a *raison d'être* in case the wife is either sterile, seriously ill, or the husband fears marital discord".

The bill, not enacted during the 1982 legislature, was discreetly withdrawn in the face of the onslaught of conservatives, marches organized by independent women from professional circles, and the protests of a few war veterans concerned about the promulgation of such retrograde provisions. These dissents were early highlights in the annals of "civil disobedience" in post-independence Algeria.

Ten years later, on the eve of the first multi-party legislative elections scheduled for January 1992, the Islamist parties headed by the Islamic Salvation Front (FIS) pronounced the end of secularism in Algeria and the establishment of the Islamic Republic.⁹ The organic ties binding the nostalgia of "specific socialism" to the puritanism of the Islamists was brought into the open. The process was

⁶ Between 1980 and 1983, various movements of civil disobedience characterized the Algerian political scene for the first time since independence in 1962. Three types of contestation manifested themselves almost simultaneously: the ethnic Berber demands for official recognition of the Berber Amazigh language and culture; the Islamists' demands for the total Islamisation of Algeria and feminist demands for full implementation of women's constitutional citizenship rights, threatened by the then Personal Status legislation. This diverse opposition to state monolithism heralded the October 1988 riots marking the delegitimation of the one-party system.

⁷ For an insightful account of Qur'anic verses pertaining to the religious, social and legal position of women, see Abdel Hamid al-Shawaribi, *Al-Huquq al-Siyassia lil-Mar'a fil-Islem* (Women's Political Rights in Islam), (Alexandria: Mansha'at al- Ma'arif, 1987).

⁸ *JOAPN* 126, p. 3. One might mistake this remark for a Weberian observation on secularism and the transformation of social relations.

⁹ *Ibid.*, pp. 10-11.

helped by the so-called representatives of civil society - the NPA delegates. The primary catalyst remained the issue of legislation and women's status, in a word: gender.

Although the 1982 Personal Status bill was withdrawn, pressure soon mounted from conservative quarters to issue family and personal status legislation in accordance with *Shari* injunctions and traditional mores, especially those pertaining to the predominance of kin over individual, in particular over individual females. On June 9, 1984, the *Qanun al-Ussrah* (Family Code) was enacted as Law no. 84-11. All its provisions, without exception, confine women to a relational model of dependence, be it in marriage or divorce, in legal representation, or in matters of succession.¹⁰ Of particular relevance to a discussion of women's marginalization from domestic decision-making was the desperate manoeuvring of conservative delegates during the 1984 debates on polygamy as an unconditional provision in the Code. Polygamy is far from widespread in Algeria. Both local customs and the growing atomization of family structures under the pressures of commercialization and urbanization have discouraged polygamous unions. In fact, advocates introduced polygamy in the Assembly in order to enforce social control by ensuring the durability of the extended family and the primary role and status of women as reproducers.

Family Code, Reproduction and Jihad

The 1984 Family Code merely reproduced provisions of the *Shari* as elaborated between the eighth and twelfth centuries by Muslim legal scholars. In one deviation, though, the government bill would have made polygamy conditional upon the consent of the first wife as well as the second. This was sufficient to provoke an uproar that turned the debates into a conference on polygamy. According to Article 8 of the proposed Code:

It is permitted to contract marriage with more than one wife within the limits of *Shari* if the motive is justified, the conditions and intentions of equity provided, and after the consultation of the preceding and future wife. Either wife may take judicial action against the husband, or request divorce should he ignore her refusal to consent.

This constituted a departure from the more permissive original Qur'anic verse, (chapter 4, verse 2):

If you fear that you cannot treat orphans with fairness, then you may marry other women who seem good to you: two, three or four of them. But if you fear that you cannot maintain equality among them, marry one only or any slave girl you may own. This will make it easier for you to avoid injustice.

Conservative delegates swiftly and violently denounced the Article as "heretic". The minutes of the official journal disclose no trace of interventions by secularist members. Out of 60 interventions reported in the minutes, 45 opposed placing conditions on polygamy. Some delegates thought it unrealistic to allow a judge to decide on conditions of equity, and that the matter should be left to the husband's conscience.¹¹ According to the Arabic version of the clause on divorce (Article 53), women can only "request to be made divorced" by husbands, through a judge (hence *tatleeq* and not *talaq*). For some delegates, even this ought not be granted to wives: "Polygamy cannot possibly be invoked as a reason for *tatleeq*, since it is legitimized by *Shari*".

Perhaps the most startling intervention held that:

Polygamy is not to be disputed, whatever the case, for a Muslim state is one based on *Jihad*, and this calls for the involvement of men alone. To whom will women be left in the case of Jihad, and how will society be protected from subsequent depravity, if widows cannot find parties to marry? Polygamy is therefore a must.¹²

¹⁰ See Boutheina Cheriet, "Specific Socialism and Illiteracy amongst Women: A Comparative Study of Algeria and Tanzania", (PhD dissertation, University of London Institute of Education, 1987), p. 195.

¹¹ The plenary sessions of 23-24 April, 1984 (*JOAPN*, nos. 46, 47 and 52).

¹² *JOAPN* 46, pp. 19-21.

The idiosyncratic logic of patriarchal conservatism, however, was not the last word. Despite the hysteria of intransigent conservatives over the adoption of conditional polygamy, representatives of the neo-patriarchal elite managed to outmanoeuvre them and include the government proposed article. The chair "scientifically" explained that "... since Algeria's population is comprised of 48 percent males and 52 percent females, four girls out of 52 would remain unmarried, and would fall prey to non-Muslim unions or even deprecation; therefore polygamy is justified in a statistical sense".¹³

This illustrates the state's recourse to science as a legitimating discourse. The state inserts itself as the "knower", relying on technocrats and experts whose competence cannot be easily disputed by lay people. The crux of neo-patriarchy in Algeria is that it relies both on transcendental worldviews to confront radical and secular opinion, and on technical, rational "proof" to dissuade conservatives. This typical manoeuvring of Algeria's political class - the military and bureaucratic elites - went unnoticed as long as the processes of state-building concerned the infrastructural public arena - industrialization, mechanization of agriculture and, above all, systematic socialization via extended schooling.

A Durkheimian model of "social cohesion", within a framework of seemingly "organic solidarity" was promoted as the dominant mechanism for coping with social change. The enchantment of change stopped on the doorstep of the domestic familial arena where mechanisms of "mechanical solidarities" stood firm against the state incursions. In Algeria, family confines are, by and large, designated as "horma" (sacred intimacy), a term that stems etymologically from "haram" (forbidden). "Horma" also refers to the wife or, invariably, all the women of the family. Where other spheres of social organizing remained docile and even welcoming, gender has stood up to the confusing eclecticism of the state's legitimation discourse.

Our understanding of social change has long been under the spell of conceptualizations born out of the positivist and evolutionist approaches of 19th century European thinkers who were themselves deeply influenced by changes which took place in the industrial and colonial stage of capitalism. Such social theorizing has all been done in the absence of gender analysis. Women are subsumed as "man", which not only occludes their particularity but subverts social thinking. How are we to address the mimetism of so-called developing societies, their docility concerning structural integration into an international capitalist system and their fierce opposition to "modern" normative conceptualizations of gender roles as well as secular knowledge? How can we explain the relapse of complex societies whenever women attempt to attain some kind of self-decision-making and individual empowerment?

At this point social theorizing needs to include a more subtle conceptualization of the various patterns of social reproduction, within what I call the "resilience of patriarchal reflexes". Although the scope and concern of this article does not allow for more detailed considerations of the analysis of "patriarchal reflexes", it is essential to point out that the occultation of women as makers of history, and as central actors in the dynamics of both reproduction and social reproduction, has certainly affected perceptions of social change thus far.

The fears of the Algerian delegates concerning the "dilution" of gender roles and status are comparable to the fears of their American conservative counterparts. Without elaborating, there are interesting similarities between the panic of Algerian MPs when confronted with the possibility that Algerian women might take control of the process of reproduction, and by extension social reproduction, and the forceful fight by conservative members of the US Congress to deny American women, as individual decision-makers, access to abortion. Such outcries principally express a protectionist reflex of women's reproductive role, and implicitly reject their sexual empowerment as a menace to reproductive statuses as wife and mother. Women's access to citizenship is jeopardized by the problematic of reproduction.

Albeit superficial, the comparison of Algeria and the US hints at the residual patriarchal reflexes of the

¹³ Abdel'aziz Sa'ad, "Nidham Ta'adud al-Zaujat fi-Qawa'id al-shari'a wal-Qawaneen al-Wadh'iyya" (Polygamy in the Rules of the *shari'a* and Positive Laws), *al-Thaqafa* (Ministry of Culture Review) 95, September-October 1986, pp. 197-211. Translation by the author.

modern state, be it in its advanced capitalistic phase or dependent formation. Its legitimation hinges on the preservation of the private familial arena, and its basic reliance on women's reproductive role and domestic status.

In Algeria, women's access to the public arena - that is, to citizenry - holds sway within a clientelist dynamic. Consider the generally favorable integration of women in public processes, such as education, health and services. The state offers these packaged as "constitutional rights", but uses them as "favors". The majority of women, facing a very reluctant if not hostile social context, perceive them as such. In exchange, women are expected to endorse a weak and inadequate status as citizens by accepting their effacement from major decision-making processes, especially those pertaining to personal status and family legislation.

Algeria's female citizens look upon the state as a liberator, despite the formidable regressions it has engendered in matters related to personal status. Today, feminists in Algeria continue to call upon the intervention of the state to halt the Islamist upsurge and implement a model of universal citizenry within the framework of a democratic republic. But state legitimation has been seriously undermined by the more universal appeal of the pan-Islamic revolution. One might expect that, in a last bid to hold political power, the dominant nationalistic elite together with the army will continue to manoeuvre within the clientelist relations it has established with feminists and democrats alike. Yet the de-legitimation process seems irreversible. The contention for power will, sooner or later, have to stem from civil society at large, discarding the state as the omnipotent decider/protector in Algeria. It is then that the bid for citizenry will be open for all to construct. For women, this means a long and painful process.

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Reproduced from:
Middle East Report, January-March 1996, pp. 22-26.
Middle East Report Information Project (MERIP)
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