Socialism and Law in Algeria

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Unlike some of the countries that have opted for "socialism", Algeria's Founding Fathers did not state their creed in the title of their newly independent state. Algeria is still called what it was when the French colonial-power was ousted, namely the "République Algérienne Démocratique et Populaire", but its socialist aim is prominently set forth in Article 1 of the Constitution of 22 November 1976 currently in force. Under its terms "L'Etat algérien est socialiste". The position is so firmly held that the constitution proceeds to forbid any amendment of this principle, for it is said to be irreversible. Not even the Constitution of the USSR is so defensive, although Stalin made clear on occasion that the right of secession proclaimed by the constitution could not be exercised by the constituent republics with communist party approval if it were to facilitate a step backward to capitalism.

As with all states where socialism is declared as the fundamental principle of constitutional law, there is the problem of definition. Boumedienne when ousting Ben Bella in 1965 marched under the slogan "Retour aux sources". His Council of the Revolution explained the meaning of the slogan as reestablishment of the conditions "necessary for the creation of a democratic serious state ruled by laws and based on a system of morals, a state which will be able to survive changes in governments and men". Clearly, this declaration represented reaction to Ben Bella's régime which was now castigated as disregarding legality. Boumedienne and his colleagues said they would resume the march toward a "humanistic, equitable, abundant, and democratic society that can justly be called socialist". In a sense this was their definition of socialism.

This definition is reaffirmed in the 1976 constitution. The commentary in Algeria's only law review sees the new constitution as creating a "new look" on constitutional rights. Socialism is not, in its view a repudiation of all that became revered in constitutional law of the pre-socialist period. It is seen as a transfer from the classic or liberal complex of general principles of law to a new socialist conception. The classic principles remain, but they receive "a new look". This phrase is fleshed out later in the commentary when attention is given to the matter of constitutional rights, and it will be discussed in this paper under that topic.
1. Differentiating Nationalism from Socialism

Socialist motivation has often been discounted by critics of programs issued by former colonies of European metropoles. It is argued that the programs are inspired not by socialist beliefs but by nationalist aspirations. It is true that in every new state in Africa, whether avowedly socialist or not, the initial programs following liberation have included similar features. Not only have former bonds linking the state to the former metropole been severed, but there has been a reversion to much of the pre-colonial culture associated with the liberated nation. This culture includes, of course, law, and notably so in those societies like Algeria where law and religion were traditionally inseparable.

Algeria, in its reversion to its ancient Islamic culture, has wiped French laws from the books as the carriers of an alien French culture. This repudiation was taken in two steps. First, the Supreme Court seized upon a law of 31 December 1962, which had continued in force all prior legislation in force until a new order might be introduced, “except when provisions contravene national sovereignty”, to restore principles of Islamic law to vigor in 1967. Secondly, the Minister of Justice on 4 July 1975 declared all French legislation pertaining to Algeria abrogated.

These two steps were acts of nationalism, not socialism, although the Algerian theorists now seek to relate the two forces for change by arguing that the National Charter of 1976 prepared the way for the step from one to the other. The National Charter was the work of years to define goals and set the stage for adoption of a second constitution for Algeria to replace that promulgated in 1963 soon after independence. In its terms the economic decolonization effected in the early years set in place the structures on which socialism is being built so that the nationalist and socialist motivations are intertwined, the first making possible the second and the second stimulating the first.

The reversion to Islamic culture has not, however, been an institutional reversion. There has been nothing in Algerian events like the developments in Khomeini’s Iran before the Presidential elections of 1980. There is no cleric as Head of State, no clerical Revolutionary Committee determining policy, and no Islamic court. The Cadi’s Courts, which were left in place under French rule to apply Islamic law to family and personal property relations, no longer function as such. They have been absorbed into the general court system of the State, along with the specialized French type courts (the labor, commercial, and conseil d’etat institutions). Consequently, when Islamic law is applied, it is the judges of the state who speak, not the mullahs, even though the Constitution of 1976 declares Algeria to have a state religion which is Islam.

This adoption of Islam as a state religion presents a marked contrast to the Marxian inspired socialist states of Eastern Europe, and it raises the question whether the declaration makes the Algerian revolution more nationalist than