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EMPTY GESTURES: THE (IN)SIGNIFICANCE OF RECENT ATTEMPTS TO LIBERALIZE ALGERIAN FAMILY LAW

In April 1998, Algerian lawmakers made two noteworthy changes concerning family law legislation. On the surface, these changes seemed to signify important progress in the battle to reestablish rights for women in Algeria, a country with a strong feminist past¹ and a violent and undeniably anti-feminist present.²

Early in April 1998, the Algerian government approved a draft law on women's rights.³ This law, if passed, would replace a law inspired by Islamic *shari'a* law, which many feel keeps women subordinate to men.⁴ Essentially, the new law would make it more difficult for men to have multiple wives, requiring the consent of each woman involved in the marriage for the polygamous marriage to be legal.⁵ Additionally, this law would entitle a woman to own the family home in instances of divorce provided that she has won custody of her children in court.⁶ It is interesting that, in the months since April 1998, this law has been shrouded in mysterious

1. See, e.g., KHALIDA MESSAOUDI & ELISABETH SCHEMLA, UNBOWED: AN ALGERIAN WOMAN CONFRONTS ISLAMIC FUNDAMENTALISM 27-28 (Anne C. Vila trans., 1998) (discussing the following strong female figures in Algerian history: Lalla Yamina, an early 20th century woman who refused marriage and rebelled against her family and who has been recognized as a saint; Lalla Fadhma N'Soumeur, who—like other Algerian women—organized a resistance against French colonization in the 19th century; and la Kahina, a pre-Arab Algerian who led an army against Arab invaders during the 8th century); *id.* at 46-52 (discussing the feminist battle against the implementation of the anti-woman Family Code during the 1980s); Marnia Lazreg, *Feminism and Difference: The Perils of Writing as a Woman on Women in Algeria*, in CONFLICTS IN FEMINISM 326, 333-34 (Marianne Hirsch & Evelyn Fox Keller eds., 1990) (commenting on the continuous misunderstanding of Algerian women by French feminist theorists and noting the unrecognized strength of Algerian women in fighting for independence from France during the 1950s); Rod Skilbeck, *The Shroud over Algeria: Femicide, Islamism and the Hijab*, 2 J. ARABIC, ISLAMIC, & MIDDLE E. STUD. 43 (1995) (visited Oct. 28, 1998) <<http://www.netSPACE.net.au/~rod/alg/shroud.html>> ("In the 1960s Algeria was one of the leading Arab states in terms of female rights and advancement. Female empowerment . . . came to the fore within the [National Liberation Front] during liberation, where more than ten thousand women fought for independence . . .").

2. See generally MESSAOUDI & SCHEMLA, *supra* note 1 (discussing the life experiences of Messaoudi, a prominent Algerian feminist, during Algeria's independence from France).

3. See *Algeria Proposes Rights Law*, GLOBE & MAIL (Toronto), Apr. 7, 1998, at A15, available in WL 04/07/1998 GLOBEMAIL A15.

4. See *id.*; see also Joëlle Entelis, Note, *International Human Rights: Islam's Friend or Foe?*, 20 FORDHAM INT'L L.J. 1251, 1272 (1997) (noting conflicts between the Family Code of 1984 and the equal rights provided for women in the Algerian Constitution); Leila Danesh, *Algerian Women in Politics*, MIDDLE EAST TIMES, Aug. 3, 1997 (visited Jan. 18, 2000) <<http://metimes.com/issue31/reg/algwomen.htm>> ("[Algerian women] are hindered by strict interpretations of *shari'a* with regard to legislation, particularly the Family Code of 1984, which relegates women to the status of minors in society.").

5. See *Algeria Proposes Rights Law*, *supra* note 3.

6. See *id.*

silence—the only mention that has been made of its passage (or failure) in the press was in January 1999.⁷

Throughout the month of April 1998, Algerian lawmakers also considered the issue of abortion rights for rape victims.⁸ Estimates reveal that Islamist extremists have raped thousands of Algerian women since violence erupted in Algeria in 1992, after the army cancelled national elections that would have been won by an Islamic political party.⁹ Many of these women have become pregnant.¹⁰ These pregnancies have resulted in great shame and trauma for rape victims because so much of Algeria embraces conservative Islamic traditions which attach a tremendous stigma to extra- or pre-marital sex and to unchaste women.¹¹ Islam prohibits abortion unless the mother's life is endangered. Therefore, under Islamic law, all healthy, pregnant rape victims must carry their children.¹²

The April 1998 changes to abortion law for rape victims were important to all Algerians because both women's lives and religious

7. In January 1999, the Algerian Ambassador to the United Nations, Abdallah Baali, discussed the rights of Algerian women before the Committee on the Elimination of Discrimination Against Women (CEDAW). He noted that some provisions of the Family Code were "crumbling." See *Algerian Women Full Actors in Political, Economic Life*, AFR. NEWS SERVICE, Jan. 27, 1999, available in 1999 WL 7546086. At that time, Nadia Mohand Amer, Assistant Director for Women, Ministry of Solidarity and the Family, observed that women's status was based largely on *shari'a*. See *id.* Discussing child custody, however, she noted that women would no longer be given custody of their children only at the death of the children's father. Under a revision of Algerian law, a mother would be given custody of her children in the event that the children's father abandoned the family or disappeared. See *id.* Thus, it appears that the Algerian legislature may be close to passing the draft law that this Note discusses or a law of similar content and importance. See *id.* The proposed law, however, has not yet been made effective. See *id.*

8. See Cesar Chelala, *Mixed Signals on Abortions and Victims of Wartime Rape in Algeria*, EARTH TIMES, June 11, 1998 (visited Jan. 6, 1999) <http://www.earthtimes.org/jun/opinionmixedsignalsonabortionsjun11_1998.htm>.

9. Estimates of the number of women raped during terrorist uprisings vary. See, e.g., *Algerian Religious Body Issues Fatwa on Rape*, AGENCE FRANCE-PRESSE, Apr. 27, 1998, available in 1998 WL 2269670 (estimating between 1,000 and 3,000 rapes); Chelala, *supra* note 8 (estimating 1,600 known rape victims and suggesting that more than 2,000 unknown rape victims have been killed by their attackers); *Thousands of Women Raped in Algerian Conflict: Report*, AGENCE FRANCE-PRESSE, Aug. 5, 1998, available in 1998 WL 16572402 (estimating 2,000 rapes).

10. See Chelala, *supra* note 8 ("[M]any of those . . . were pregnant.").

11. See, e.g., *Algeria Renews Ban on Abortion for Rape Victims*, CNN INTERACTIVE: WORLD NEWS STORY PAGE, Apr. 11, 1998 <<http://www.cnn.com/WORLD/africa/9804/27/RB000718.reut.html>> ("Many rape victims have been ostracized by their families . . ."); Cesar Chelala, *Algerian Abortion Controversy Highlights Rape of War Victims*, LANCET, May 9, 1998, available in 1998 WL 14104825 ("Because of strong conservative traditions in Algerian society, many families of the victims will not allow them to return home.").

12. See Chelala, *supra* note 11.

tradition were at stake.¹³ Many were shocked when, on April 12, 1998, Algeria's Islamic High Council (HCI) issued a *fatwa*, or holy edict, concerning abortion.¹⁴ According to one Algerian newspaper, the *fatwa* would allow abortions for women raped during attacks by Islamic extremists.¹⁵ Yet the following day, two other Algerian newspapers reported that there could be no such *fatwa* because the president of Algeria, Liamine Zeroual, had not approved it.¹⁶ All the same, the controversy surrounding the issuance of the *fatwa* drew attention to the frequency of rape in Algeria and to the suffering of victims and their families.¹⁷ Finally, at the end of April, the HCI resolved the matter by decreeing that rape victims could have abortions in cases of "absolute necessity."¹⁸ The *fatwa* mandated that Algerians consider all rape victims to be "honorable and chaste."¹⁹ It also ordered that Algerians not "blame[] or punish[]" the victim.²⁰ The *fatwa* added that the State would care for children of rape.²¹

This Note will explore the strange, although brief, histories (or non-histories) of these two changes in Algerian family law. This Note will establish that the treatment of these new laws—particularly the disturbing vagueness, confusion, and controversy surrounding them—is emblematic of the current situation of women in Algeria. The first part of this Note provides necessary background concerning the history and politics of the turmoil in Algeria. The second part discusses the misapplication of Islamic *shari'a* law by Algerian fundamentalists and its effect on women. The third part addresses how the Algerian Family Code strips women of powers and rights. The fourth part considers the situation of women in Algeria, in view of recent history and current events. Parts five and six comment upon the surprising insignificance of the proposed marriage law and the abortion-rape *fatwa*, respectively, in terms of women's rights. Considering the

13. See *id.*

14. See *id.* ("[The] edict (*fatwa*) . . . sent shock waves through the Arab world . . . [because it] allow[ed] abortions for women raped by Islamic extremists.")

15. See *id.* (citing AL KHABAR, Apr. 12, 1998).

16. See *id.* (citing LE MATIN and LA TRIBUNE, Apr. 13, 1998).

17. See, e.g., *supra* note 9.

18. *Algerian Religious Body Issues Fatwa on Rape*, *supra* note 9.

19. *Id.* When the *fatwa* was announced, Algeria's National Solidarity Minister, Rabea Mechernene, praised the HCI for its idea that raped women would remain chaste. She announced a plan to open a center for helping victims of rape. See *id.*; *Hostel Opens for Rape Victims*, GLOBE & MAIL (Toronto), Oct. 19, 1998, at A13, available in WL 10/19/1998 GLOBEMAIL A13.

20. *Algerian Religious Body Issues Fatwa on Rape*, *supra* note 9.

21. See *id.*

lack of importance of these legal changes, this Note concludes that these two changes alone are not sufficient to improve the situation of women in Algeria.

ALGERIA'S POLITICAL HISTORY

Algeria: Perpetually Colonized, Perpetually at War

In 1962, Algeria won its independence from France after eight years at war.²² Yet strangely enough, many Algerians who have grown up in the post-independence era remain unaware of much of the nation's hundreds of years of colonial history. They know only of the Arab influence in Algeria.²³ The National Liberation Front (FLN), the political party that controlled the Algerian government from 1962 until 1991, ran Algerian schools and ensured that Algerian students remained ignorant of any pre-Arab colonizers in Algeria.²⁴ The FLN also promoted widespread ignorance of more recent controversies in Algerian history, which could confuse students' Arab loyalties.²⁵ Algerian leaders continue these efforts today, in hopes of "defin[ing] their country according to its Arab and Islamic roots only, blotting out the rest."²⁶

Despite attempts to bury Algeria's past, the country's long colonial history and rich cultural heritage remain important. The current dissension and bloodshed in Algeria grew out of that history.²⁷ Reporter Sarah Chayes discussed and summarized the colonial history of Algeria as follows:

Again and again, Algerians refer to . . . questions of history and language, to a sense that people vying for power keep trying to reduce their country's complex identi[t]y, to one single feature, with disastrous consequences. Algeria began with the Berbers [ethnic Algerians] and their language. The Phoenician and Roman empire left ruins on the land. In the 8th century, the Arabs brought their language and religion.

22. See MESSAOUDI & SCHEMLA, *supra* note 1, at xii.

23. See *id.* at 39.

24. See *id.*

25. See *id.* at 39-40; see also Sarah Chayes & Brooke Gladstone, *Algeria*, NPR WEEKEND SATURDAY, Aug. 1, 1998, available in LEXIS News Library, NPR File, Transcript #98080109-214 (discussing the omission of the "real story" of the war for independence from Algerian history books, quoting Uncle Radji, an Algerian demonstrator).

26. Chayes & Gladstone, *supra* note 25 (quoting Algerian poet and activist Les Hari Lubta).

27. See *id.*

Before 130 years of French colonialism beginning in the early 19th century, Algeria experienced Ottoman rule and an influx of Muslims expelled from Spain, who had lived side-by-side with Christians and Jews for centuries.²⁸

As the cultural composition of Algeria has changed over the centuries, there has been a constant battle over the nation's identity.²⁹ The recent controversy over Algeria's national language demonstrates that two of the country's oldest groups, the Berbers and the Arabs/Muslims, remain at the heart of its national identity crisis.³⁰

Extreme violence by Islamists characterizes Algeria's current crisis.³¹ They have directed this violence against Berbers,³² against the press,³³ against educated³⁴ and politically controversial women,³⁵ and against women who refuse to veil themselves.³⁶ Through bloodshed, occupation, and government control, the Arab-

28. See *id.*; see also MESSAOUDI & SCHEMLA, *supra* note 1, at 39 (discussing the government's work to distort, rather than to omit, some history from history books by presenting the Turks and the Ottoman Empire "as a 'Muslim presence'").

29. See Chayes & Gladstone, *supra* note 25.

30. See *Popular Algerian Singer's Death Prompts Fear and Anger Among Berber Population*, FIN. TIMES (London), Aug. 1, 1998, available in LEXIS, News Library, Fintme File [hereinafter *Singer's Death*] (discussing the connection between the death of a Berber singer-activist, the Algerian identity struggle, and the new law proclaiming Arabic the national language of Algeria).

31. See Chelala, *supra* note 11.

32. See *id.*; see also *Algerian Massacres*, ALL THINGS CONSIDERED (NPR Radio Broadcast, Aug. 29, 1997), available in 1997 WL 12833349 (printing an interview with Marnia Lazreg, a professor of women's studies in New York, who discussed the targeting of "innocent civilians").

33. See Nick Ryan, *Truth Under Siege*, THE MOJO WIRE [MOTHER JONES WEBSITE] (Aug. 11, 1998) <http://www.mojoindex.com/news_wire/algeria.html>; see also *Africa-at-Large: 1998 Survey: Fewer Journalists Killed but Still as Many in Jail*, AFR. NEWS SERVICE, Dec. 31, 1998, available in 1998 WL 21358822 (explaining that killings have declined because of "the changing nature of violence in Algeria").

34. See Karima Bennouna, *S.O.S. Algeria: Women's Human Rights Under Siege*, in FAITH & FREEDOM: WOMEN'S RIGHTS IN THE MUSLIM WORLD 184, 188 (Mahnaz Afkhami ed., 1995) (discussing violence against professional women and women in other untraditional roles); *id.* at 190-92 (noting that professional women who are not victimized by violence often find themselves harassed and threatened); *id.* at 198-99 (discussing women's daily battles to receive and professionally implement their education in public).

35. See *id.* at 197-98 (noting the Islamists' problems with "public women"). In 1993, the Islamic Salvation Front (FIS), an Islamic fundamentalist organization, issued an irreversible *fatwa* condemning prominent Algerian feminist and political activist Khalida Messaoudi to death. See MESSAOUDI & SCHEMLA, *supra* note 1, at 165-66. Several attempts have been made on Messaoudi's life. See *id.* at 1-8, 162-63, 165-66.

36. See Skilbeck, *supra* note 1; see also MESSAOUDI & SCHEMLA, *supra* note 1, at 108-16 (discussing the central role that sexuality and the veil play generally in the Islamic fundamentalist movement and, more specifically, in the violence in Algeria); Bennouna, *supra* note 34, at 187 (discussing particular instances of violence against women who go without the *hijab* (veil)).

Islam population appears to be winning most battles to define Algeria.³⁷ In fact, much to the detriment of national safety and the everyday lives of most Algerians, additional colonizers, including Iranian and Saudi Arabian Islamists, have come to the aid of Islamic Algerians.³⁸ These foreign Islamists have given financial and ideological assistance to Islamic extremists in their campaign for control of Algeria.³⁹ This fundamentalist influence has created a violent, dogmatic Islamist youth culture and has transformed Algeria into a land of terrorism.⁴⁰

The War over Algeria in the 1990s

The nominally socialist⁴¹ FLN governed Algeria after the country won its independence from France in 1962.⁴² The FLN,

37. See Chayes & Gladstone, *supra* note 25.

38. See MESSAOUDI & SCHEMLA, *supra* note 1, at 69-70.

39. Khalida Messaoudi notes, "it is undeniably true that Saudi Arabia and Iran, the leaders of the two Islamist Internationals, supported and financed the Algerian fundamentalist movements." *Id.* at 69. She believes that the overall poverty of Algerians and the economic failure of the Algerian government during the 1980s left the nation prey to Islamic extremism and to the influence of Saudi Arabia in particular. *See id.* at 69-70. Messaoudi also notes that Algeria's allowance of these fundamentalist influences has had dire consequences for Algerian women. *See id.* Geraldine Brooks comments that Saudi Arabian money gives the Saudi Arabian radical brand of Islam a great deal of clout throughout the Muslim World. *See New Book Details Paradoxes of Women in Islam*, ALL THINGS CONSIDERED, (NPR radio broadcast, Mar. 28, 1995), available in 1995 WL 2917755 [hereinafter *New Book*] (reporting an interview with Geraldine Brooks, author of *NINE PARTS OF DESIRE*, which explores the paradoxes that exist for Islamic women). Another important observation may be the possibility of the influence of Afghanistan in Algerian fundamentalism. A recent New York Times article notes that the Armed Islamic Group (GIA), the primary perpetrator of Algerian violence, is led by Islamists who "trained as volunteers against the Soviet occupation of Afghanistan." John F. Burns, *Unforeseen, Strife Eases for Algeria*, N.Y. TIMES, Mar. 7, 1999, at 1.

40. Messaoudi, a former teacher, discusses the changes in her students' ideals throughout the 1980s, as Algeria gradually descended into violence. *See MESSAOUDI & SCHEMLA, supra* note 1, at 71-81. She also discusses the pivotal role of the fundamentalist extremist FIS in bringing about the nation's current strife and bloodshed. *See id.* at 91-107, 117-27, 133-135.

41. *See id.* at 91.

42. Rod Skilbeck describes the war as follows:

The battle for independence—a bloody unnamed war from 1955-1962 touted by the National Liberation Front (FLN) as a socialist revolution—was more a battle by French-educated Algerians to remove the French echelons from above them in the power structure. Casualty estimates for this exercise are placed around 600000-1 million deaths, including the purging of over 100000 collaborators after Independence by the FLN.

Skilbeck, *supra* note 1 (citing Robert Fisk, *Scenes from an Unholy War*, THE INDEPENDENT, Apr. 16, 1995, at 4).

however, began to crumble, however, in the 1980s.⁴³ Rod Skilbeck explains the rise of the FLN's Islamist competitor:

From the late 1970s onwards Islamist groups had appeared across the nation calling for less secular and state control of society and the economy. . . . The bloody suppression of riots in October 1988 . . . caused a crisis of legitimacy in the FLN and led to the creation of a multi-party system and the almost immediate formation of the Islamic Salvation Front (FIS)[,] an umbrella party of neighbourhood committees.

....
The Islamist groups were the most mobili[z]ed, well-funded and readied of all political groups when elections were announced. The FIS won 55% of municipal seats in 1990.⁴⁴

Skilbeck goes on to explain the progress of Algerian politics throughout the early 1990s, a progress which ultimately led to the current civil war:

In the first round of polling on December 26th 1991, the FIS won 10 seats for every one the ruling FLN secured. [The President] was pressured to resign by the military, and, on January 11th 1992 the second round of elections—and certain FIS majority in parliament—were cancelled and a High Council of State established.

By April the FIS was banned, most of its leaders were in jail and an armed wing run by Afghan veterans had formed (the AIS—Army of Islamic Salvation). Nevermore [sic] than a collection of groups—the FIS began to splinter.⁴⁵

When the FIS fell apart, the young extremists who had composed its majority began to convey their message through violence.⁴⁶ Many of them formed the Armed Islamic Group (GIA),

43. See *id.* (noting the advent of perestroika in Eastern Europe and the Soviet Union, as well as party corruption and mass unemployment, as a cause for this decay).

44. *Id.*

45. *Id.*; see also Lahouari Addi, *Algeria's Army, Algeria's Agony*, FOREIGN AFFAIRS, July/Aug. 1998, at 44, 44 (suggesting that the lack of information about ongoing murders by Armed Islamic Group (GIA) members, and the lack of willingness of the Algerian government to permit international inquiry into the killings, might mean that the GIA was actually a product of the country's intelligence service, designed to place the Islamists in a negative light).

46. See Skilbeck, *supra* note 1.

which was bent on *jihad* as the means of determining Algeria's rulers.⁴⁷

Now, seven years later, the GIA's holy war continues. A recent newspaper article estimated that this "Muslim insurgency" has caused at least 75,000 deaths.⁴⁸ In the beginning, at least, the conflict seemed to be politics. A closer look, however, exposes the real issues in this holy war. Islamists are not merely at war with political opponents; they are, instead, engaging in a bloody war of ideals.⁴⁹ They seek to create an Islamic state. In doing so, they mean to root out secularism,⁵⁰ as well as any remaining Algerian folk tradition, including, for example, Berberism.⁵¹

It would be remiss to discuss the holy war in Algeria without recognizing the irony implicit in the means used by the warrior Islamists to accomplish their goal of establishing an Islamic state.⁵² In hopes of establishing this state, the Islamists have been committing genocide and alienating Algeria's civilian population.⁵³ Marnia Lazreg, an Algerian woman and a professor at Hunter College in New York City, has described the conflict between the Islamist means and ends as follows:

The [AIG] is engaged in a very nihilistic course of action. . . . [I]t has really engaged in random violence. . . . This is obviously not very productive, because if [it] were really serious about . . . establishing an Islamic republic, [it] would not be targeting

47. See *id.*; see also Burns, *supra* note 39 ("Western intelligence estimates have put [the GIA's] strength at about 3,000 men, but this is little more than a guess.").

48. See *Still Afflicted by Violence, Algeria Hopes Worst Is Over*, BOSTON GLOBE, Jan. 3, 1999, at A22, available in 1999 WL 6041752 [hereinafter *Still Afflicted by Violence*]. Even more recent Western estimates suggest that approximately 100,000 Algerians have been killed, whereas official reports from the Algerian government insist that only 30,000 have died during the war. See *Algerian Violence Claims Eight More Lives*, AGENCE FRANCE-PRESSE, Mar. 25, 1999, available in 1999 WL 2570848.

49. See MESSAOUDI & SCHEMLA, *supra* note 1, at 118 (noting that the FIS attacks democracy as "impious"); see also *Algeria Bomb Blast, Massacre Portend Another Bloody Ramadan*, AGENCE FRANCE-PRESSE, Dec. 3, 1998, available in 1998 WL 16652206 [hereinafter *Algeria Bomb Blast*] (citing the decree of the Armed Islamist Group that people who reject its doctrine, including children, must be killed).

50. See *Algeria Bomb Blast*, *supra* note 49 ("The Armed Islamic Group, the most radical [sic] of Algeria's armed Islamists, has decreed that the entire population of Algeria rejects its doctrine and is therefore guilty of apostasy and consequently must be put to death, women and children, even unborn children, included."); see also MESSAOUDI & SCHEMLA, *supra* note 1, at 118 (relating that a prominent member of the FIS frequently said that "there was no place for secularists, Berberists, communists, and so on in an Islamic society"); *id.* at 141-42 (discussing the issues involved in the battle between Islamism and secularism).

51. See Chayes & Gladstone, *supra* note 25; Singer's *Death*, *supra* note 30.

52. See *Algerian Massacres*, *supra* note 32 (noting that Islamic militants have turned to terrorism).

53. See *id.*

innocent civilians, men, women, children, babies . . . suckling their mothers' breasts.⁵⁴

In the war to establish an Islamic government, as opposed to a secular, military regime,⁵⁵ sex and sexuality stand out as highlighted issues.⁵⁶ Khalida Messaoudi has commented that the FIS has "a constant obsession, of the kind that is symptomatic of madness: an obsession with women."⁵⁷ Messaoudi believes that sexuality lies at the heart of this fixation:

The fundamentalists, like any totalitarian movement, want to exercise absolute control over society, and they fully realized that the place to start was by seizing control of women's sexuality, something Mediterranean-style patriarchy facilitates. In addition, like all purifiers, they hate and persecute difference, which inevitably accompanies democracy. Now, what women represent is desire, seduction, mystery, trouble, and also alterity, which is immediately visible on their bodies. That is why the Islamists are so anxious to hide the female body, to veil it The women who refuse to submit to this become perfect targets, because they embody the Other that the fundamentalists need to mobilize and rally people to their cause.⁵⁸

Islamists have targeted these unveiled, unconventional women for death, mutilation, decapitation, rape, and a frightening phenomenon—*zaouadjel moutaâ*, or temporary marriage—through which women are kidnapped and forced to "marry," essentially for sex, for a few hours or days.⁵⁹ Consequently, the war has had a devastating effect not only on educated, professional, and unveiled women, but also on the overall treatment of Algerian women and the very notion of "woman" in Algeria.⁶⁰

The more one learns about the outrageous disorder and human rights abuses in Algeria,⁶¹ the more she wonders how these horrors can keep occurring. It is difficult to combat what one cannot

54. *Id.*

55. See generally Addi, *supra* note 45 (discussing the interaction between the government and the army).

56. See MESSAoudi & SCHEMLA, *supra* note 1, at 108.

57. *Id.*

58. *Id.* at 109.

59. See *id.* at 114. Messaoudi notes that women who refuse to participate in these temporary marriages are routinely and horrifically raped and killed. See *id.*

60. See discussion *infra* notes 74-121 and accompanying text.

61. See AMNESTY INT'L USA, AMNESTY INTERNATIONAL REPORT 1998, ALGERIA 78-82 (1998) [hereinafter AMNESTY REPORT].

understand, and to access the truth behind the outrageous violence in Algeria is nearly impossible. This problem exists at both a national and an international level.⁶² Violence against journalists,⁶³ along with censorship of independent newspapers⁶⁴ and overall state control of the Algerian press,⁶⁵ has caused a severe shortage of information. Several factors exacerbate this shortage. Official doublespeak⁶⁶ and Algerian language barriers⁶⁷ create credibility and communication problems and make it difficult to trust information about events in Algeria.

The very subject of—and research for—this Note demonstrate the significance of this truth problem. As the discussion in Parts six and seven suggests, problems with dissemination and credibility undermine the overall importance, as well as the enforceability, of any new laws.

62. International newspapers have been unable to report fully or accurately on Algerian affairs. See Ben Macintyre, *When No News Means Bad News*, TIMES (London), Nov. 14, 1998, available in 1998 WL 4876139 ("Our understanding of what is happening in that suffering country is at best indistinct, but without the indigenous, privately owned Algerian newspapers, it would be virtually non-existent."). In addition, Islamist fundamentalists have slain journalists foreign to Algeria as a part of their campaign of violence against the press. See Ryan, *supra* note 33.

63. See generally Ryan, *supra* note 33 (discussing the dangerous conditions journalists encounter in Algeria).

64. See *id.*; see also Macintyre, *supra* note 62; Emily Walmsley, *Algeria: Newspaper Seized, Censorship Goes on as Normal*, INDEX ON CENSORSHIP (last modified Sept. 30, 1999) <http://www.oneworld.org/index_oc/news/algeria300197.html>.

65. See Ryan, *supra* note 33.

66. [T]he reality of events has been turned inside out by government-issued statements. Lara Marlowe, a journalist with *Time* magazine, has written that "when the Algerian government uses words, . . . the words mean exactly what the government chooses." On 4 January [1997] the prime minister, Ahmed Ouyahia, spoke on Algerian radio to announce the country's triumph over terrorism: "not a slogan," he said, "but a statement based on facts." When yet another village is massacred by armed groups, it befits such a statement that the press is kept silent.

Walmsley, *supra* note 64.

67. Algeria's different newspapers represent its different linguistic communities. Newspapers are in French, Arabic, and Algerian Arabic. For example, *Le Matin* is a French independent newspaper. See Ryan, *supra* note 33. Another French newspaper, *El Watan*, is the largest independent French paper, and *El Khabar* is the largest-selling Arabic newspaper. See *id.* These newspapers may "break" different stories; their readers do not necessarily receive the same news. See *id.*

POWERLESSNESS JUSTIFIED: *SHARI'A*, FUNDAMENTALISM, AND
THEIR EFFECTS ON WOMEN

What Is Shari'a?

Shari'a (or *charia*) is the canon law of Islam.⁶⁸ As Messaoudi and Schlemmla explain, the term, "*shari'a*," can be used in two ways.⁶⁹ Used generally, it may refer to the entire body of texts compiled in the Koran, the *hadiths* (words of Mohammed), and the writings and teachings of various religious authorities and *imams*.⁷⁰ Used specifically, it describes the application of holy law to an Islamic state.⁷¹ This Note uses both meanings of the term.⁷² Although Algeria is not an Islamic state, some of its constitution and all of its Family Code are based on canon law;⁷³ thus, it is necessary to discuss Islamic canon law as applied by Algeria as a state.

Fundamentalist Abuses of Shari'a

Shari'a provides the basis for much of Algeria's law.⁷⁴ The general promulgation of this canon law in Algeria presents problems for Algerian women,⁷⁵ much in the way that its overall dominion in wholly Islamic states subjugates and denigrates women.⁷⁶ As many Muslims and scholars of Islam are quick to note, however, the Islamic faith is not the source of the mistreatment of the women of Islam. Instead, they posit that the prophet

68. See MESSAOUDI & SCHEMLA, *supra* note 1, at 155.

69. See *id.*

70. See *id.*

71. See *id.* Messaoudi and Schemmla define the term "*shari'a*" in its more specific usage by referring to its application in the Islamic states of Saudi Arabia and Iran. See *id.*

72. See, e.g., *infra* notes 74-121 and accompanying text (referring to *shari'a* in its general meaning); *infra* notes 115-22 and accompanying text (referring to *shari'a* in its specific meaning).

73. See *Algeria Proposes Rights Law*, *supra* note 3; see also Entelis, *supra* note 4, at 1272 ("The [Algerian] Constitution contains a mix of both secular and Islamic references, while *shari'a* law is the only basis of the Family Code.").

74. See Entelis, *supra* note 4, at 1272.

75. See discussion *infra* notes 122-61 and accompanying text of the Algerian Family Code.

76. Traditional Islamic states have tended to relegate women to a "private" sphere, focusing on family and housework, whereas they have placed men in a "public sphere." See Entelis, *supra* note 4, at 1270. She explains that unequal rights are a fact of life for the women of Islam and that human rights violations against women are common in Islamic states because Islamists view those violations as being consistent with the holy law that binds them. See *id.* at 1270-72.

Mohammed improved women's lives, giving them freedom, dignity, and rights.⁷⁷

Journalist and author Geraldine Brooks believes that the anti-woman aspects of Islamic law and culture result from early misinterpretations and culture-specific additions to the faith.⁷⁸ Brooks explains that the original teachings and texts of Islam supported women and their sexuality.⁷⁹ She suggests that Islam's originally liberating message became tainted as it spread through and then out of Arabia during the seventh century.⁸⁰ According to Brooks, the association of Islam with societies that abused or ignored women created a religious culture that supported the mistreatment and subjugation of women.⁸¹

Brooks is not alone in her notion that Islam has grown away from its more egalitarian beginnings.⁸² A number of Muslim feminists believe that men have misinterpreted the Koran for their own gain.⁸³ Buthena Sihbahn, a Syrian professor, explains,

Women have a very fair share in the Islamic text, and . . . Muslim feminists [] have a very important task[:] . . . to try and point out that . . . the laws which govern Muslim women in the name of Islam are truly un-Islamic, and Islam gives women much better rights than what some men claim.⁸⁴

77. See *In Islamic Nations, the Veil is Lifting*, BOSTON GLOBE, Mar. 29, 1998, at A11, available in 1998 WL 9125305.

During the "Jahaliya," the time of ignorance that Muslims say preceded Islam, women were sold or stolen and infant girls sometimes buried alive—practices decried in the Koran.

Through the revelations, Mohammed also conferred some autonomy on women, from the right to inheritance, even if half that of a man, to the right to own property.

Id.

78. See *New Book*, *supra* note 39. Moroccan sociologist Fatima Mernissi is particularly emphatic on this issue. See *In Islamic Nations, the Veil is Lifting*, *supra* note 77 ("You cannot put the repression of women on the prophet. . . . That guy liberated women.").

79. See *New Book*, *supra* note 39. ("[I]n fact, Muhammad extolled women's sexuality. He saw sexuality of all kinds as a God-given natural impulse, and that God had given rules about how you satisfied that impulse but within those rules, which is within marriage, basically you're very free to explore all the dimensions of human sexuality.") Muhammed also encouraged women's ideas by supporting their involvement in politics. See *id.*

80. See *id.*

81. See *id.*

82. See *Muslim Women Gather to Discuss Responses to Militants*, MORNING EDITION (NPR radio broadcast, May 13, 1996), available in 1996 WL 2814717 [hereinafter *Muslim Women Gather*].

83. See *id.*; *In Islamic Nations, the Veil is Lifting*, *supra* note 77.

84. *Muslim Women Gather*, *supra* note 82. Women in some Islamic countries are working on new interpretations of the Koran, which they hope to work into revised family codes for their countries. See *In Islamic Nations, the Veil is Lifting*, *supra* note 77.

In essence, the trouble for Algerian women does not begin with the fact that their personal and family lives are under the control of Islamic canon law.⁸⁵ Rather, it begins with the fact that, for centuries, men have created this law by interpreting holy texts.⁸⁶

The ignorance of Algerians concerning their own culture seems to contribute to the woes of Algerian women under Islamic holy law. Algerians, in general, tend to be poorly-versed in Islamic texts and traditions.⁸⁷ Educational changes in the 1970s and 1980s left Algerians under the age of 30 to 35 poorly educated.⁸⁸ They received all-Arabic schooling and learned a revised history of their country.⁸⁹ As a result, Algerians tend to be ignorant concerning important aspects of their religion and culture.⁹⁰ Their ignorance seems to have left them prey to harsh applications or misapplications of *shari'a* law.⁹¹ A general ignorance and apathy on the part of Algerians allowed the FIS, the fundamentalists, to gain power in Algeria.⁹² Once frustrated by the cancellation of elections

85. See *In Islamic Nations, the Veil is Lifting*, *supra* note 77 (noting that the family codes based on Islamic law set rules for even the most intimate aspects of women's lives). This control of specific aspects of women's lives does cause problems. See discussion *infra* notes 122-61 and accompanying text (concerning the Algerian Family Code).

86. See *In Islamic Nations, the Veil is Lifting*, *supra* note 77; see also discussion *infra* notes 130-61 and accompanying text (concerning the specific product of these male interpretations of the Algerian Family Code).

87. See MESSAOUDI & SCHEMLA, *supra* note 1, at 32-45, 71-81 (discussing the evolution of Algerian education during the 1970s and 1980s into an all-Arabic, fundamentalist system).

88. See *id.*

89. See *id.*

90. See *id.*; see also *supra* text accompanying notes 23-26. Many Algerians, however, have received rather secular upbringings because their families identify as Berber, not Arab, or because they did not grow up in devout, or fundamentalist, families. Messaoudi is one such Algerian. See MESSAOUDI & SCHEMLA, *supra* note 1, at 9-17.

91. Messaoudi discusses Algerian support to Iran and Khomeini during the Iranian Revolution. She cites Algeria's turbulent history as a reason why Algeria would support any revolution, regardless of its horrific circumstances. She also notes that Algerians, herself included, were unwilling, and unable, to see similarities between themselves and Iranians, or to see that their women might receive poor treatment from Islamists. See MESSAOUDI & SCHEMLA, *supra* note 1, at 63-65. Messaoudi also confesses that Algerians are fully responsible for the fundamentalists' influence in Algeria. See *id.* at 69 ("We, the Algerians [allowed Saudi Arabia and Iran to support and finance Algerian fundamentalists]—either out of ideological complicity, pure and simple, or because we had set in place all the conditions that allowed them to interfere in our affairs, or because we underestimated the danger.").

92. See *id.* at 93 (implying that much initial support for the FIS was based in that group's apparent goal of fighting a "corrupt bourgeois government" and noting that such support ignored the group's fundamentalist basis, its violence, and its goal of establishing an Islamic state).

in 1991,⁹³ that power evolved into outrageous violence against Algerian women.⁹⁴

The fundamentalist presence in Algeria has heightened the distress that *shari'a* causes for women to horrific proportions.⁹⁵ The fundamentalist Islamists currently waging holy war against Algerian civilians use *shari'a* to justify their conservative, often oppressive rules,⁹⁶ which, Geraldine Brooks suggests, did not originate with Mohammed or the Koran.⁹⁷ Instead, they use *shari'a* to excuse their terrorism against women.⁹⁸

Algerian Islamists' behavior becomes all the more appalling when one considers that, like all Algerians schooled since Algerian independence, their knowledge has been restricted and manipulated.⁹⁹ Khalida Messaoudi provides a chilling example of the extent of fundamentalist ignorance when she tells of one of her experiences as a math professor in Algiers.¹⁰⁰ One of her students, arriving to class before her, would draw a swastika on the blackboard.¹⁰¹ Her students had not been educated about the holocaust, nor about genocide.¹⁰² Instead, a history teacher had simply told his students that they should admire Hitler for killing Jews and western nonbelievers.¹⁰³ Messaoudi herself had to explain to this student that they, Arabs, were Semites, and that the Nazis would have killed them along with the Jews.¹⁰⁴

93. See *supra* text accompanying note 45.

94. Messaoudi gives an Algerian's inside perspective on the events of 1991. See MESSAOU DI & SCHEMLA, *supra* note 1, at 117-32. She explains that fundamentalist violence did not begin until March 1993, months after the June 1992 assassination of Algerian President Mohamed Boudiaf, who had taken a no-nonsense approach toward the Islamists and had gone so far as to dissolve the FIS in March 1992. See *id.* at 126-31.

95. See Bennounne, *supra* note 34, at 187-92.

96. See, e.g., MESSAOU DI & SCHEMLA, *supra* note 1, at 109 ("The fundamentalists invoke Islam to justify a priori and legitimize all their words and deeds."). For instance, Messaoudi describes an incident in which a fundamentalist woman told uncovered women in a bathhouse that God did not like their nakedness. See *id.* at 112.

97. See *New Book*, *supra* note 39.

98. Although Messaoudi describes various instances of violence justified by the FIS in the name of religion, particularly against women, see MESSAOU DI & SCHEMLA, *supra* note 1, at 188, 190-92, both Messaoudi and Bennounne demonstrate fundamentalists' use of *shari'a*, particularly traditional rules requiring that women veil themselves, to justify acts of extreme violence against women. See *id.* at 108-16; Bennounne, *supra* note 34 at 187-90.

99. See MESSAOU DI & SCHEMLA, *supra* note 1, at 32-45, 71-81; *supra* text accompanying note 24.

100. See MESSAOU DI & SCHEMLA, *supra* note 1, at 71-81.

101. See *id.* at 76.

102. See *id.* at 77. Messaoudi notes that she had not learned about the holocaust during her youth in Algeria and was ignorant of the holocaust until she first visited France. See *id.* at 39, 76.

103. See *id.* at 77.

104. See *id.*

Like other Algerians, Algerian fundamentalists may not know a great deal about Islam or Islamist culture; fundamentalist notions of what Islamic tradition requires may have no relationship to the practice of the Islam religion by the typical Algerian. Fundamentalism has been imported to Algeria from Iran and Saudi Arabia.¹⁰⁵ Consequently, Algerian fundamentalists may not have experienced the conservative traditions they espouse at all. Instead, they may have familiarity only with an Islam which protected women but did not usually veil them, let alone injure or denigrate them.¹⁰⁶ Young, ignorant Islamists are therefore borrowing fundamentalist ideas that they do not wholly understand. These Islamists are acting in the tradition of the countless powerful Islamic men who have come before them.¹⁰⁷ They manipulate their religion and its holy laws to justify their ends¹⁰⁸—in this case, largely atrocities against women. They have been brainwashed, it seems, by visions of power and control.¹⁰⁹ A consideration of their actions, however, reveals that they are hardly innocent.

A survey of news articles concerning events in Algeria during the mid-1990s demonstrates the heartbreaking extent of the violence that the GIA has directed toward women.¹¹⁰ At their kindest, these Islamists have leveled death threats against female intellectuals, students, and journalists, as well as against women who refused to wear the *hijab*, or veil.¹¹¹ At their most brutal, these extremists have subjected women to rape,¹¹² to forced marriage,¹¹³

105. See *supra* notes 39, 91, and accompanying text.

106. See MESSAOUDI & SCHEMLA, *supra* note 1, at 10-11 (discussing the unique nature of Algerian Islam); *id.* at 18-28 (concerning the variations of Islamic tradition that Algerian women of different classes and regions experience).

107. See Ann Elizabeth Mayer, *Islam and the State*, 12 CARDOZO L. REV. 1015, 1018-19 (1991) (discussing Muslim rulers who derive religious authority and legitimacy not from possessing theoretical requisites for office but from their enforcement of the *shari'a*).

108. See *supra* text accompanying notes 86-90.

109. As a part of their campaign for power and control, fundamentalists seek to control women and sexuality. See *supra* text accompanying notes 56-58.

110. See Bennoune, *supra* note 34, at 203-08.

111. See *id.* It is important to note that the *hijab* is new to Algeria. Bennoune explains that the women there have covered their heads and faces with white silk drapes and lace kerchiefs for hundreds of years, but that the *hijab* of the fundamentalists was first brought to Algeria during the 1970s. See *id.* at 188. As Hillary Rodham Clinton noted in her 1999 visit to Tunisia, Islamists also harm those whose skirts they believe to be too short. See *First Lady Decries Algeria Violence*, CHI. TRIB., Mar. 26, 1999, at C1, available in 1999 WL 2857432 (relating the splashing of girls' legs with acid).

112. See *supra* note 9.

113. See Robert Fisk, *Hundreds Die in Algerian Slaughter*, INDEPENDENT, Aug. 30, 1997, at 9, available in WL INDEPENDNT database. Forced marriage is also called temporary marriage, or *zaouadj el moutad*. In such a "marriage," a woman is united with a man for

to domestic abuse,¹¹⁴ and to murder¹¹⁵—including murder performed with a signature slashing of the victim's throat.¹¹⁶ Fundamentalist violence has brought about tragic results, apart from bodily injuries or bloodshed. Some "tainted" or "unchaste" victims of rape have been exiled from their families.¹¹⁷ Others have become pregnant, without the option of abortion.¹¹⁸ Still other, comparatively fortunate women, live in fear. Feeling that they are forced to wear the *hijab*,¹¹⁹ they hide their identities and their sexuality from the world around them.¹²⁰ Every day, these women cannot help but recognize the inequality imposed upon them. They see it symbolically; the veils that cover them represent it. No matter how much the Islamists seek to justify their violence against Algerian women by invoking (and abusing) holy scripture and canon law, they cannot explain away these abuses, let alone make them right or consistent with the true teachings of Islam.¹²¹

only hours or days. According to Khalida Messaoudi, it is essentially a sort of forced prostitution, which Islamists impose while using religion as an excuse. Essentially, these marriages destroy women. If women comply with the Islamists' wishes, they lose their virtue and status in society; if they refuse, Islamists rape and kill them. See MESSAOU DI & SCHEMLA, *supra* note 1, at 114.

114. See MESSAOU DI & SCHEMLA, *supra* note 1, at 111.

115. See, e.g., *id.* at 114 (concerning the killing of women who refuse temporary marriage); Bennoune, *supra* note 34, at 203-08 (discussing numerous slayings); Skilbeck, *supra* note 1 (commenting on the "trend" of killing women); *Women Decapitated in Gruesome Prelude to Algerian Election*, AGENCE FRANCE-PRESSE, Mar. 21, 1999, available in 1999 WL 2567954.

116. See, e.g., *Bodies of Six Kidnapped Girls Found*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 18, 1998, available in LEXIS, News Library, Bbcmir File ("[T]he girls . . . had their throats cut."); Janine Di Giovanni, *Freedom Fighters*, TIMES (London), Dec. 5, 1998, at 16, available in 1998 WL 23398424 (describing throat-slitting as "a popular method of killing known as the 'Algerian smile'"); Lara Marlowe, *Spiral of Atrocity Brings More New Horrors Every Week to Algeria's Tortured People*, IRISH TIMES, Aug. 14, 1997, at 10, available in 1997 WL 12019976 ("Throat-slitting and decapitation had become routine . . ."); *Still Afflicted by Violence*, *supra* note 48 ("Algerian rebels slashed the throats of 22 people . . .").

117. See Chelala, *supra* note 8.

118. See Chelala, *supra* note 11.

119. See Bennoune, *supra* note 34, at 187 ("None of us want to wear the veil. But fear is stronger than our convictions or our will to be free."). Given the greater likelihood of death for women without a veil, it is reasonable to say that there is at least an implicit threat driving many of these women to don the *hijab*. See *id.*

120. See *id.*

121. See *supra* notes 74-109 and accompanying text.

THE FAMILY CODE AND FEMALE DENIGRATION

Shari'a as a Basis

Algeria's Family Code (1984) is based on *shari'a* law.¹²² As such, the Family Code originated in male, and generally misogynist, interpretations of Islamic holy texts.¹²³ As the previous part explained, *shari'a* has historically represented, and continues to represent, *misinterpretations* of Islamic tenets.¹²⁴ Yet *shari'a* remains authoritative in providing the law, either in whole or in part, in countries with substantial Muslim populations.¹²⁵

Despite the efforts of the GIA, Algeria is not an Islamic state. Only its Family Code reflects *shari'a*.¹²⁶ Consequently, centuries of Islamic misogyny and gynophobia control the one sector of Algerian law that most affects women.¹²⁷ Criticism after criticism has been launched at the Family Code since well before its adoption and implementation in 1984.¹²⁸ These criticisms, generally launched by women and, particularly by outspoken feminists such as Khalida Messaoudi, fault the Family Code for placing Algerian women in a weakened position and for being unconstitutional.¹²⁹

122. See *supra* note 73 and accompanying text.

123. See *supra* notes 78-86 and accompanying text.

124. See *supra* notes 74-109 and accompanying text.

125. Ann Elizabeth Mayer notes that, over the centuries, rulers in the Islam world who are not descended from Mohammed or his tribe have strictly enforced *shari'a* in part as a means of legitimizing their own authority. See Mayer, *supra* note 107, at 1018-19. Mayer demonstrates the great power of the Islamic holy law in largely Muslim countries, even over non-Muslims. See *id.* at 1022-24. She also points out that the modernization of many Islamic countries has led to some limitation of the application of *shari'a*; for example, many governments have dispensed with other aspects of holy law but, like Algeria, have retained its control over "personal status rules," or family law. See *id.* at 1026-28. Additionally, Mayer recognizes the tendency of *shari'a* law to conflict with countries' secular law. See *id.* at 1028-52.

126. See *id.* at 1034 (citing only the Family Code in a discussion regarding the status of *shari'a* law under the 1989 constitution of Algeria).

127. Journalist Geraldine Brooks discusses the impact of misogyny on Islam and on its laws. See *New Book*, *supra* note 39.

128. See MESSAOUDI & SCHEMLA, *supra* note 1, at 49-56 (explaining the Family Code, the problems that Messaoudi and other women have with it, and the protests they have made to it). Mayer also notes objections that women have raised to the Family Code. See Mayer, *supra* note 107, at 1034.

129. See MESSAOUDI & SCHEMLA, *supra* note 1, at 49; Mayer, *supra* note 107, at 1033-35. Mayer explains the specific problems with the Family Code, as it conflicts with the 1989 Algerian Constitution. First, the Code's "provisions seem to violate the rights provisions of the . . . constitution, which include a provision for equality before the law without discrimination on the basis of gender . . ." *Id.* at 1034. In addition, there is a legitimacy problem with the Family Code. The constitution is largely secular, referring only occasionally to Islam and never referring to *shari'a*. See *id.* at 1032. Its Preamble declares

Few Rights for Women Treated as Minors

Professor Ann Elizabeth Mayer comments, "The 1984 law [the Family Code] has many features that discriminate against Algerian women in ways they find highly objectionable."¹³⁰ Essentially, the Family Code infantilizes women, leaving them voiceless and without adult privileges or powers.¹³¹

Khalida Messaoudi gives a basic explanation of how the Family Code relegates women to the status of children:

In this Code, Algerian women exist henceforth only as "daughters of," "mothers of," or "wives of." They are not individuals in their own right. On five points—education, work, marriage, divorce, and inheritance—this text makes them eternal minors, who go from dependency on their father, brother, or closest male relative to dependency on their husband.¹³²

This system of dependency leaves Algerian women voiceless. All decisions are left to, or permitted to be left to, men.¹³³ Article 39 of the Family Code requires a woman "to obey her husband and

that it is the supreme law of Algeria. See *id.* at 1033. In addition, it seems to provide that secular legislation is superior to holy law in Article 7, which provides, "The people are the source of all power. National sovereignty belongs to the people." *Id.* at 1033 (quoting the Algerian Constitution). Mayer interprets these two provisions, the Preamble and Article 7, as suggesting that the constitution should "override" the conflicting *shari'a*-based Family Code. See *id.* at 1033. Despite her suggestion, ten years after the implementation of the constitution, the Family Code goes undisturbed. See *Algerian Govt Silent on Violence Against Women: Rights Watchdog*, AGENCE FRANCE-PRESSE, Jan. 21, 1999, available in 1999 WL 2532850 [hereinafter *Algerian Govt Silent*] (discussing the determination of the International Federation on Human Rights (FIDH) that the Family Code permits "organized subordination of women").

130. Mayer, *supra* note 107, at 1034. Mayer lists a number of examples of discrimination against women by the Family Code. See *id.* at 1034 n.64.

131. See MESSAOU DI & SCHEMLA, *supra* note 1, at 52. Official attempts to delegitimize the Family Code fall flat in view of its very oppression of women. When one considers the information available revealing the low status and poor treatment of women in Algeria, it is difficult to take seriously the attempts of Algeria's U.N. Ambassador to make Algeria's official position toward women seem positive. The Ambassador told the Committee on the Elimination of Discrimination Against Women that

In daily life, Algerian women were benefiting from rights and freedoms that went well beyond the boundaries of the Family Code. . . . Indeed, some of its provisions were crumbling, as real-life practices threatened to consign outdated ones to the trashbin of history. Even now, the women's Convention had absolute primacy over Algerian law, including the Family Code.

Algerian Women Full Actors in Political, Economic Life, *supra* note 7.

132. MESSAOU DI & SCHEMLA, *supra* note 1, at 52.

133. See *id.* at 52-54.

to accord him respect as the head of the household."¹³⁴ Under that article, "a man who wants his wife to stop working can force her to stop, because she owes him obedience."¹³⁵ In addition, "[t]he Family Code limits a woman's ability to leave the house without the permission of her husband."¹³⁶ Algerian men even have the ability to vote on behalf of their wives.¹³⁷ Moreover, men (as husbands) make all decisions concerning their children; women have no official say in these matters.¹³⁸ Messaoudi comments on the true tragedy of the silencing of women by the Family Code and by the men in their lives: "[N]o one knows what Algerian women would say if they were truly allowed to express themselves freely, without their father, or husband, or brother, or *imam* looking over their shoulder."¹³⁹

The Family Code does more than merely silence women. It forces them to surrender any control that they might wish to have over their personal lives.¹⁴⁰ For example, Article 9 of the Family Code requires that women "obtain the consent of a marriage guardian, normally the bride's father, in order to marry."¹⁴¹ At first consideration, Article 9 may seem rather harmless, as other cultures carry traditions of consent before marriage.¹⁴² Yet, whereas such consent is often little more than a formality, in Algeria, it is the law under all circumstances. Messaoudi explains, "whether a woman is single, divorced, a widow with or without children, illiterate, educated, a housewife, a magistrate, or a minister, she can never arrange a marriage herself."¹⁴³ In addition,

134. Mayer, *supra* note 107, at 1034 n.64.

135. MESSAOUDI & SCHEMLA, *supra* note 1, at 52.

136. Entelis, *supra* note 4, at 1278.

137. Should the fundamentalists succeed in creating an Islamic state, women will be denied the vote altogether. See Peter A. Samuelson, *Pluralism Betrayed: The Battle Between Secularism and Islam in Algeria's Quest for Democracy*, 20 YALE J. INT'L L. 309, 351 (1995). See generally MESSAOUDI & SCHEMLA, *supra* note 1 (discussing the political process in Algeria).

138. See MESSAOUDI & SCHEMLA, *supra* note 1, at 53-54. This fact becomes tragically significant in situations of divorce, in which women may gain custody of their children, but the custody is meaningless because they have no guardianship rights. See *id.*

139. *Id.* at 60.

140. See Mayer, *supra* note 107, at 1034 n.64.

141. *Id.*

142. See Entelis, *supra* note 4, at 1277 n.207.

143. MESSAOUDI & SCHEMLA, *supra* note 1, at 53. Messaoudi explains the nightmarish nature of this requirement by reviewing the situation of an Algerian woman named Leila Aslaoui:

Here is an important magistrate—a woman who had vitriol thrown on her by the fundamentalists during the 1980s, who was named minister in 1991-92 and again in 1994, and whose husband, a dentist, had his throat savagely cut in his office by the armed wing of the F.I.S. in November 1994—who, if she wanted to

a woman, if Muslim, is legally barred by Article 31 from marrying a non-Muslim.¹⁴⁴

Just as the Family Code subjects a woman to male approval when she wishes to marry, it restricts her freedom to divorce her husband. Whereas, under Article 48, a man has the freedom to divorce whenever he wishes, a woman does not.¹⁴⁵ As Mayer explains, "article 53 requires the wife to establish certain grounds in order to qualify for a divorce."¹⁴⁶ Messaoudi comments that these grounds are "in practice, impossible to prove."¹⁴⁷ According to Messaoudi, another type of divorce is open to women. Called *khol'a*, it is available provided that women seek no alimony.¹⁴⁸ Thus, the Family Code attempts to keep Algerian women from seeking their freedom, and it penalizes them when they persevere and attain it.¹⁴⁹

Overall, the Code prevents women from controlling the essential aspects of their own lives. Under the Family Code, just as they have no say concerning their marriage or work and only an economically self-defeating mechanism for attaining a divorce, any authority that women may exercise over their children is a mere formality.¹⁵⁰ Mothers' custody over children upon divorce is in name only, for men remain children's guardians.¹⁵¹

Another divorce-related problem in Algeria concerns housing. Messaoudi explains:

[A divorced woman] can never find housing, in reality. . . .
[W]hen there is only one residence for the two spouses, it always

remarry one day, would be obliged to go through the law of the matrimonial guardian.

Id. at 53.

144. See Mayer, *supra* note 107, at 1034 n.64.

145. See *id.* Messaoudi describes this type of divorce as "an abusive, unilateral divorce—a repudiation that dares not speak its name." MESSAOUDI & SCHLEMA, *supra* note 1, at 53.

146. Mayer, *supra* note 107, at 1034 n.64. Entelis explains that these grounds include insanity and abuse. See Entelis, *supra* note 4, at 1277.

147. MESSAOUDI & SCHEMLA, *supra* note 1, at 53.

148. See *id.* Messaoudi also discusses the dire conditions that divorced women and their children suffer. Without the benefits of alimony or a home, many find themselves "wandering" the streets. See *id.* at 53-54.

149. See *id.* at 53 ("*Khol'a* is the problematic ransom that women must pay for their freedom, just like slaves."). Entelis explains that *khol'a*, or *khul*, may involve a payment of monetary reparation by the wife to the husband. It originally involved the woman returning the dowry, but now, generally, the payment is more than the dowry. See Entelis, *supra* note 4, at 1277 & n.214.

150. See MESSAOUDI & SCHEMLA, *supra* note 1, at 53 (discussing the resulting powerlessness of women concerning their children's lives).

151. See *id.* at 53 ("The mother automatically has the right to custody, but not the right to be her children's guardian."); Entelis, *supra* note 4, at 1278 (noting that, under the Family Code, the father is the guardian of his minor children).

goes to the husband, without the possibility of any recourse (article 52, line 3). Then, supposing that the family owns several residences, the husband typically skirts the law by temporarily signing the other residences over to a third party, just for the duration of the divorce.¹⁵²

Given the extreme poverty¹⁵³ and the housing shortage¹⁵⁴ in Algeria, divorced women, along with their children, may wind up without homes.¹⁵⁵ Of course, the reality of this homelessness stands as a deterrent to divorce and another means of keeping women subject to male authority.

A final aspect of the Family Code that harms women is their inability to voice opinions concerning their husbands' decisions to take additional wives.¹⁵⁶ Article 8 of the Family Code addresses polygamy. It "allows men to marry up to four women at one time while women are required to be monogamous."¹⁵⁷ Women have no right to contract against polygamy when they marry.¹⁵⁸ Even worse, their husbands may force their various wives to live together under one roof.¹⁵⁹ The Draft Law of April 1998 attempted to amend the Family Code's polygamy provisions to benefit women.¹⁶⁰ April 1998's draft law, a proposed amendment to the Family Code, would require men to obtain their wife's or wives' and their prospective wife's consent before taking another wife.¹⁶¹ This Note will address the insignificance of this apparently progressive proposed legislation.

This section has demonstrated the oppressive force of the Family Code, which renders women as powerless as their children. It is this force that will render new legislation in Algeria ineffective in changing the daily realities of Algerian women.

152. MESSAOUDI & SCHEMLA, *supra* note 1, at 53. Regardless of marriage or divorce, women have another property problem in Algeria: their inheritance rights. Messaoudi explains that under *shari'a* and the Family Code, they are entitled to only half the property that men are. She suggests that this is a perfect example of the selective application of *shari'a* for the specific purpose of "oppress[ing] women." *See id.* at 54

153. *See id.* at 61.

154. *See id.* at 58.

155. *See id.* at 54.

156. *See id.* at 53.

157. Mayer, *supra* note 107, at 1034 n.64.

158. *See Entelis, supra* note 4, at 1277.

159. *See id.*

160. *See Algeria Proposes Rights Law, supra* note 3.

161. *See id.*

THE CURRENT REALITY: ALGERIAN WOMEN IN THE NEWS

Emblematic of the Situation in Algeria

There is a constant flow of news concerning the violence in Algeria, but this news is not always readily accessible, and the press cannot always tell the full story.¹⁶² Despite the questionable reliability of reports concerning events in Algeria, it is impossible to deny that the country is in crisis. Indeed, the Algerian identity crisis plays itself out clearly in reports revealing the treatment of Algerian women.¹⁶³ Violence against women in Algeria, along with attempts to restrict and control their freedoms and progress, speaks tomes about the desperate attempts of the rebels to establish an Islamist Algerian identity while the government seeks to institutionalize an all-Arabic culture.

The Forcing of the Veil

The recent insistence of Islamists that Algerian women wear the veil, or *hijab*, carries with it a particular irony. Although some Islamic and Arab history in Algeria is undeniable,¹⁶⁴ given the country's history of colonization,¹⁶⁵ particularly its rather recent rule by France,¹⁶⁶ it can hardly be defined by Islam alone. Indeed, one can safely say that Algerians practice (or would practice, if they were free to) their own special brand of Islam that has been influenced by the country's ethnically hybridized history.¹⁶⁷

As an example of the unique nature of Algerian Islam, unlike in many Islamic cultures, the *hijab* has played no traditional role in Algeria.¹⁶⁸ Consequently, when Islamic extremists threaten, rape, and kill women who do not wear the *hijab*, their wish to transform Algerian culture into an Islamist state makes itself

162. See *supra* notes 62-67 and accompanying text (discussing reporting problems).

163. See *supra* notes 55-60 and accompanying text.

164. See *supra* notes 22-40 and accompanying text.

165. See *id.*

166. See *id.*

167. Cf. MESSAOUDI & SCHEMLA, *supra* note 1, at 9-17 (discussing the Islamic upbringing of Messaoudi, a Berber who has become a secularist); Chayes & Gladstone, *supra* note 25 (noting that radical Islamists seek to make Algerians, particularly Berbers, practice an unfamiliar type of Islam).

168. See *supra* text accompanying notes 22-40. Bennoune comments that the focus on the veil reveals "the misuse of concepts such as 'traditional' in relation to events in Algeria." She also notes, "Algerian peasant women have never veiled, but have instead worn scarves tied only over part of their hair." Bennoune, *supra* note 34, at 188.

plain.¹⁶⁹ Both Karima Bennoune, an authority on Algeria, and Khalida Messaoudi point out that the forcing of the *hijab* and the associated violence have much to do with silencing women who challenge the conservative moral and behavioral standards that the government officially sanctions and that the Islamist extremists seek to strengthen.¹⁷⁰ The radicals' threats and violence extend to quieter women, even veil-wearing women, in their desperation to seek control and to silence any difference or disagreement within the society they hope to transform.¹⁷¹

The veil carries various symbolic meanings. Many of these meanings speak volumes about Islamist extremism and about the inability of outsiders to understand its radical conservatism.¹⁷² Yvonne Haddad, a scholar of Islam, has called the veil "the silk curtain . . . the divide between Islam and the West."¹⁷³ Professor Marnia Lazreg comments on the veil as a device of mystery and misunderstanding: "The persistence of the veil as a symbol that essentially stands for women illustrates the difficulty researchers have in dealing with a reality with which they are unfamiliar. It also reveals an attitude of mistrust. A veil is a hiding device; it arouses suspicion."¹⁷⁴ Thus, different views on the veil reveal a vast gulf between the Islamist world view that supports the *hijab* and the more liberal world view that mistrusts it.

Islamists seem to set great store in the different functions of the veil, as it hides women from view, covers their sexuality, and sets visual, physical, and moral boundaries.¹⁷⁵ Rod Skilbeck gives an example of the veil as a symbol of the fundamentalists' values: "All the veil stands for: modesty, obedience, sexual probity, conformity—are expressed publicly and overtly when [it is] worn."¹⁷⁶

169. See *supra* text accompanying notes 41-67 (discussing the goals of the GIA).

170. See MESSAOUDI & SCHEMLA, *supra* note 1, at 109-14; Bennoune, *supra* note 34, at 197-98.

171. See MESSAOUDI & SCHEMLA, *supra* note 1, at 109.

172. See Lazreg, *supra* note 1, at 328.

173. In *Islamic Nations, the Veil is Lifting*, *supra* note 77.

174. Lazreg, *supra* note 1, at 329.

175. See FATIMA MERNISSI, *THE VEIL AND THE MALE ELITE* 85-101 (Mary Jo Lakeland trans., Addison Wesley 1991) (discussing the mythology, history, functions, and value of the *hijab*).

176. Skilbeck, *supra* note 1. Mernissi provides an Islamic history that supports the veil's value in standing for these ideals. She notes, however, the ironic significance of the *hijab* to various Muslim sects throughout history. For example, it has been recognized as a sign of the damned, in that it hides people from God, and as a means of separating the private sphere (which traditionally has belonged to women) from the public. See MERNISSI, *supra* note 175, at 93-101.

In Algeria's holy war, the veil holds great significance to the extremists.¹⁷⁷ Fatima Mernissi observes that contemporary Muslims in search of identity "put the accent on the confinement of women as the solution for a pressing crisis."¹⁷⁸ She elaborates, "[p]rotecting women from change by veiling them and shutting them out of the world has echoes of closing the community to protect it from the West."¹⁷⁹ Mernissi acknowledges a "double perspective" unique to conservative Muslims: they see the "women's [sic] body as symbolic representation of community."¹⁸⁰ This split vision of women leads to threats and violence, as Islamists attempt to promote and contain their goal of an Islamic state and as they seek to prevent progressive (i.e., Western, or Western-seeming) "others" from thwarting their cause.¹⁸¹

Targeting of Working Women

Professional women have been among the targets of Islamist terrorism.¹⁸² These women stand as a legitimate, although small, threat to the fundamentalists in that they are very much "others." Few women assume professional roles in present-day Algeria.¹⁸³ Many women occupy traditional roles in the home.¹⁸⁴ In addition, in a country in dire economic trouble, many women are unemployed.¹⁸⁵ Despite the violence of the extremists against them, these women seek jobs.

Islamist extremists have addressed much of their violence toward female professionals in Algeria.¹⁸⁶ They have threatened and murdered numerous female teachers and professors,¹⁸⁷ as well as many women journalists.¹⁸⁸ Those whom they cannot kill, they try to scare.¹⁸⁹ For example, in 1993, the FIS issued a *fatwa* (in this

177. See generally MERNISSI, *supra* note 175 (describing the significance of the veil).

178. *Id.* at 99.

179. *Id.*

180. *Id.*

181. See MESSAOUDI & SCHEMLA, *supra* note 1, at 109 (discussing the relationship between sexuality, political upheaval, and the *hijab*).

182. See Bennoune, *supra* note 34, at 188, 190-92.

183. See *High Unemployment Rate Among Algerian Women*, PAN AFRICAN NEWS AGENCY, Mar. 8, 1998 (visited Jan. 18, 2000) <http://www.africanews.org/north/algeria/stories/19980308_feat1.html>.

184. See *id.*

185. See *id.*

186. See MESSAOUDI & SCHEMLA, *supra* note 1, *passim*; Bennoune, *supra* note 34, *passim*.

187. See Bennoune, *supra* note 34, at 188, 190-91.

188. See *id.* at 190-91.

189. See *id.* at 190-92.

case, a death edict) against prominent feminist Khalida Messaoudi, who opposes the Islamist mission and who remains active in Algerian politics despite the *fatwa*.¹⁹⁰

The War Against Women

The civil war in Algeria, recently condemned by Hillary Rodham Clinton as civil "in name only,"¹⁹¹ characterizes itself as a campaign concerning sexuality.¹⁹² Consequently, it hardly restricts its attacks to working women or to women without veils.¹⁹³ In attacks on Algerian towns and villages, violence is performed against all walks of life, including men as well as women.¹⁹⁴ Yet, the most hideous crimes are committed against women in the name of religion.¹⁹⁵ An astounding number of these acts are what Westerners think of as sex crimes: rapes and "forced," "temporary," or (ironically enough) "pleasure marriages."¹⁹⁶ Often, these sex crimes end in murder.¹⁹⁷ Along with the killings of those who go unveiled and those who work outside of the private realm, these rape-murders are characterized by sexuality and fear. These crimes can be classified as murders of the "other"—of woman, who stands for the community¹⁹⁸ and yet whom the Islamists see as foreign, as frightening.¹⁹⁹

190. See MESSAOUDI & SCHEMLA, *supra* note 1, at 1-8 (discussing the *fatwa* and life in hiding).

191. See *First Lady Decries Algeria Violence*, *supra* note 111.

192. See MESSAOUDI & SCHEMLA, *supra* note 1, at 110.

193. Most news articles about the war provide reports of gruesome killings of men, as well as of rapes and murders of women. See, e.g., *Group of Men Massacres 31 People in Algeria Village*, *Paper Reports*, CHI. TRIB., Feb. 3, 1997, at 8, available in 1997 WL 3516642 [hereinafter *Group of Men*].

194. See *id.*; *Algerian Civilians in Night Long Vigils To Prevent Massacres*, AFRICA NEWS ONLINE, Sept. 15, 1997 (visited Jan. 18, 2000) <http://www.africanews.org/north/algeria/stories/19970912_feat2.html>.

195. See, e.g., Charles Sennott, *Atrocities Targeted Young Women*, GLOBE & MAIL (Toronto), Nov. 3, 1997, at A10, available in WL 11/03/1997 GLOBEMAIL A10 ("[T]he attackers are believed to rape the women with a warped religious rationale that the women will be defiled in the eyes of Islam and therefore unable to enter heaven.").

196. See Chelala, *supra* note 8. The frighteningly large corrected numbers of victims of these crimes take into account underreporting of sex crimes, disappearances of shamed and traumatized victims, and deaths of unaccounted rape-murder victims. See *Crisis—First Center of Support for Raped Women Opened Last Month*, MIDDLE EAST TIMES, Nov. 19, 1998, available in LEXIS News Library, MOCLIP File; see also *supra* note 9.

197. See Chelala, *supra* note 11.

198. See MERNISSI, *supra* note 175, at 99.

199. See MESSAOUDI & SCHEMLA, *supra* note 1, at 109.

THE INSIGNIFICANCE OF THE APRIL 1998 DRAFT LAW FOR
ALGERIAN WOMEN

What Does It Give Women?

The April 1998 draft law on women's rights, which the Algerian government has approved²⁰⁰ but has not yet passed into law,²⁰¹ is meant to replace or amend some of the portions of the Family Code that severely oppress women.²⁰² The law seems to "make it harder for men to have more than one wife at a time."²⁰³ It requires men to obtain the consent of any existing wives, and the prospective wife, to a polygamous marriage in order for that marriage to be legal.²⁰⁴ Under the Family Code, men control a woman's marital destiny.²⁰⁵ The proposed requirement of female consent symbolizes a tremendous shift in the Algerian approach to marriage. It would give women some control over an aspect of their lives in which they previously had no say.

In addition, this new law would improve women's custody rights in the event of divorce.²⁰⁶ For example, it "would entitle a woman to own the family home"²⁰⁷ if a court grants her custody of her children.²⁰⁸ This proposed legislation takes an important step, considering the dire straits of many divorced women in Algeria who give up support rights, experience economic difficulties, and may even find themselves—and their children—homeless.²⁰⁹ It would solidify a woman's right to her children and her ability to support them. Economic instability or homelessness could not cause a court

200. See *Algeria Proposes Rights Law*, *supra* note 3.

201. See *supra* note 7 and accompanying text.

202. See *Algerian Women Full Actors in Political, Economic Life*, *supra* note 7.

[Nadia Benabdellah, Adviser to the Algerian Ministry of Justice, recently explained to the United Nations that 22 proposals to amend the Family Code had] been submitted to Parliament for consideration and adoption. The proposed amendments constituted major progress, in that, for example, they would guarantee housing to mothers with care of their children, and divorce would no longer be solely by the will of the husband, but could be requested by either spouse.

Id.; see also *Algeria Proposes Rights Law*, *supra* note 3; *supra* notes 122-61 and accompanying text.

203. *Algeria Proposes Rights Law*, *supra* note 3.

204. See *id.*

205. No Algerian woman can marry without consent of a male "marriage guardian." See *supra* text accompanying note 141.

206. See *Algeria Proposes Rights Law*, *supra* note 3.

207. *Id.*

208. Courts generally give custody to the mother in divorce-custody battles. See *supra* notes 150-51 and accompanying text.

209. See *supra* notes 151-55 and accompanying text.

to call her parental fitness into question, a terrible event that could reasonably occur under the present Family Code. In a country where custody does not equate with guardianship,²¹⁰ the entitlement of women to a home seems to give more meaning to a woman's status as a custodial parent.²¹¹ Like the draft law's provision concerning polygamy, this custody provision would send an important message to Algerians, particularly to Algerian men, regarding the need to view women differently and to arm them with increased rights.²¹² Only by improving the treatment of women can Algerians protect and ensure a future of any kind.²¹³

An Empty Gesture

Although the Algerian government undeniably has made a positive step in approving the April 1998 draft law, the proposed law is of dubious importance. Consider the everyday lives of Algerian women, who face Islamist abuses of *shari'a*,²¹⁴ victimization—even death—under “holy” war,²¹⁵ and numerous other injustices under the Family Code.²¹⁶ In view of these daily nightmares, as well as other aspects of Algerian life, this piece of legislation loses meaning and shows its true face.

The draft law's provision concerning polygamy will have little meaning for most Algerian women.²¹⁷ Few Algerians practice polygamy.²¹⁸ As Nadia Benabdellah, Adviser to the Algerian Ministry of Justice, recently explained to the United Nations, “[P]olygamy [is] marginal and exist[s] mainly in rural areas. In

210. See *supra* notes 150-51 and accompanying text.

211. Custody is meaningless without a home, especially when women are functionally powerless over their children's lives. See *supra* text accompanying notes 150-51. Divorced women's entitlement to the family home also seems progressive in its recognition of children's need for protection, especially given the violence and turmoil that are daily realities in Algeria.

212. See generally *Algeria Proposes Rights Law*, *supra* note 3 (describing the proposed changes and possible effects).

213. The fundamentalists' bloody campaign, particularly against women, in hopes of establishing an Islamic state, makes an absolute extermination of Algerians seem frighteningly imminent. See *supra* discussion notes 41-67 and accompanying text.

214. See *supra* notes 68-121 and accompanying text.

215. See *supra* notes 162-99 and accompanying text.

216. See *supra* notes 122-61 and accompanying text.

217. Nevertheless, it will make an important difference for the few women whose lives it affects. Messaoudi explains, “[w]ives in polygamous marriages are] haunted by [polygamy], and they're right to be. They attack the ‘asshole’ who does that for sex and to have a second wife who can act as a supplementary work force.” MESSAOUDI & SCHEMLA, *supra* note 1, at 111.

218. “[P]olygamy isn't widely practiced.” *Id.*

Algeria, the situation involve[s] bigamy more than polygamy, and it affect[s] less than 5 percent of the married population."²¹⁹ Without a doubt, consent would be meaningful for the few women implicated by this amendment of the Family Code. Yet one must wonder why Algeria would publicly announce its possible amendment of a law with so little real significance for women,²²⁰ when other aspects of the Family Code impact upon—and oppress—most, if not all, women.²²¹ Algeria, along with other countries in the Islamic world, has been “under the gun” for its human rights abuses, particularly those against women.²²² Is this proposed polygamy law merely a matter of the government paying lip service to the United Nations—and the world at large—concerning its need to remedy those abuses?

The proposed custody amendment to the Family Code appears as insignificant as the polygamy provision. As discussed above, under the everyday reality of the Family Code, women’s custody of their children is essentially meaningless.²²³ Men, the legal guardians, must sign all consent papers concerning children;²²⁴ men are the true decisionmakers within families. In truth, because Algerian personal status law (*shari’a*) treats women as minors, they have no real power over their children or their children’s lives.²²⁵ Because a mother’s custody means nothing, the mere “improvement” of her custody rights means very little. Short of eliminating *shari’a* as it concerns parental rights, it seems that Algeria could do little to “improve” women’s custody rights in any meaningful way.

The practical irrelevance of the provision for a custodial mother’s entitlement to the family home demonstrates that the draft law’s consideration of custody under the Family Code will do little or nothing to improve the situation of the single mother, or her children, in Algeria. First of all, there is seldom a family

219. *Algerian Women Full Actors in Political, Economic Life*, *supra* note 7.

220. In January 1999, speaking before the United Nations, Nadia Benabdellah alluded to a number of proposed amendments to the Family Code. *See id.* Yet it seems that the Algerian government has disseminated to the international press only information about the amendments concerning polygamy, custody, and property rights. *See, e.g., Algeria Proposes Rights Law*, *supra* note 3.

221. *See supra* notes 122-61 and accompanying text (concerning women’s voicelessness in their marriage choices and family lives and their difficulty in obtaining divorces from their husbands).

222. *See, e.g., AMNESTY REPORT*, *supra* note 61, at 79-82; *Algerian Govt Silent*, *supra* note 129; *First Lady Decries Algeria Violence*, *supra* note 111.

223. *See supra* notes 150-51 and accompanying text.

224. *See* MESSAOUDI & SCHEMLA, *supra* note 1, at 26.

225. *See id.*

property for a woman to have upon divorce.²²⁶ Algeria's economic crisis, and an influx of its people to cities,²²⁷ has created a dire housing shortage.²²⁸ Second, Algeria is a country at war. That war has been characterized in part by the looting, pillaging, and destruction of homes and villages throughout the country.²²⁹ Thus, many homes that might have been accessible to divorced custodial mothers under sunnier circumstances have been destroyed.²³⁰ Finally, some men, particularly wealthy men with multiple homes, go out of their way to deprive women of property while their divorces are pending.²³¹ Just as wealthy men with multiple homes find "loopholes" through which they can avoid giving homes to their

226. Under current law, a couple's home goes to the man upon divorce. See MESSAOUDI & SCHEMLA, *supra* note 1, at 54. However, for the reasons discussed below, there might not be a home to which a woman could be entitled, even if the law provided for it. See *infra* text accompanying notes 227-31.

227. Much of this influx results from civilians fleeing villages to escape repeated attacks from Islamic extremists. See, e.g., *19 Algerian Villagers, Including Five Girls, Murdered*, Jan. 13, 1997 (visited Jan. 18, 2000) <<http://www.alenafix.com/old-fbg/articles/algeria01.html>>. However, the city seems just as dangerous as the villages, only in different ways. See, e.g., *Group of Men*, *supra* note 193 (explaining efforts to prevent car bombings in Algiers); Marlowe, *supra* note 116 ("A man who recently returned to Algiers after a long absence was appalled by the changed mentality. 'The person I'd entrusted my house to sold it while I was away.'").

228. Messaoudi describes the extent of the housing shortage. See MESSAOUDI & SCHEMLA, *supra* note 1, at 58 ("I was very lucky because my future husband, being a teacher, already had a room and was soon to have an apartment. Do you realize what a privilege that is in an overpopulated country where available housing is painfully short?").

229. See, e.g., AMNESTY REPORT, *supra* note 61, at 79 ("[In 1997] [a]t least 2,000 civilians . . . were killed in large-scale massacres by armed groups in rural areas. The victims were slaughtered, decapitated, mutilated, shot, or burned alive in their homes."); Stefan Lovgren, *Algeria's State of Fear: "The Power" versus Islamic Radicals, with Villagers as Pawns*, U.S. NEWS & WORLD REP., June 2, 1997, at 41 ("In a farming commune outside Bougara, a small town less than 20 miles southeast of Algiers, a three-legged dog rummages through partly burnt-out dwellings, now deserted after more than 120 people were killed in an orgy of savagery the week before."); Lara Marlowe, *Disaster Area*, IRISH TIMES, Nov. 4, 1998, at 61, available in 1998 WL 13630866 ("In Algeria, bands of roving killers wipe out whole villages by night, burning or mutilating and beheading men and women, infants and old people.").

230. The destruction has not left cities, such as Algiers, the capital, unscathed. See, e.g., Lovgren, *supra* note 229 (discussing destruction caused in Algiers by car bombs). It is also important to note that an executive decree from the Algerian government has made it a legal requirement that the government allow financial assistance to families of individuals who are killed or wounded, or who disappear, during terrorist attacks. This decree also requires the state to reimburse victims for 100% of the property (including real estate) that they lose during attacks. The law, however, is complicated, and many victims have not received remuneration or justice because of a requirement of extensive proof of damage or victimization. See *Terrorism & Victims' Rights in Algeria: How Are the Victims Assisted*, N. AFR. J. & MAGHREB WKLY. MONITOR, May 9, 1998 (visited Oct. 28, 1998) <<http://www.north-africa.com/archives/docs/050998A.htm>>; Sarah Chayes & Bob Edwards, *Compensating Algerian Survivors*, NPR MORNING EDITION (NPR radio broadcast, Aug. 18, 1998), available in LEXIS News Library, NPR File, Transcript # 98081904-210.

231. See MESSAOUDI & SCHEMLA, *supra* note 1, at 53-54.

ex-wives, it seems likely that less wealthy men will find similar ways to avoid the mandates of this proposed housing-entitlement law.

Like the proposed polygamy amendment, the proposed custody amendment appears to be nothing more than an empty gesture, made to appease both Algerian women²³² and international groups pressuring Algeria.²³³ The tremendous force of the Family Code in effect now, along with the very strength of the patriarchy in Algeria—through law and religion—very likely may prevent the passage of the April 1998 draft law and similar laws. Should the Algerian parliament pass these laws, however, the power of *shari'a* and the power of patriarchy will still prevent them from making any great changes in Algerian society.

THE INSIGNIFICANCE OF THE ABORTION-RAPE *FATWA*

Nothing New

Despite the controversy,²³⁴ confusion,²³⁵ and delay²³⁶ surrounding the content of the HCI and Algerian government's ruling concerning abortion for rape victims, that ruling carries as little real impact and meaning as the proposed changes in the Family Code. The *fatwa* issued did nothing to change the abortion law originally effective in Algeria under *shari'a*.²³⁷

232. Secular feminists such as Messaoudi have been outspoken in their opposition to the Family Code and to human rights abuses against Algerian women. See, e.g., MESSAOUDI & SCHEMLA, *supra* note 1, at 150.

233. See *supra* note 222 and accompanying text.

234. See Chelala, *supra* note 8 (discussing the shock that resulted from the *fatwa* rumored to have been issued on April 12, 1998, allowing abortions for Algerian rape victims).

235. See *id.* (relating the contradictory news reports about the rumored *fatwa* of April 12, 1998).

236. See Rachid Khiari, *Algerian President Back to Official Business a Month After Surgery*, ASSOCIATED PRESS, Apr. 14, 1998, available in 1998 WL 6650741 (explaining that the actual ruling, following the controversy over the rumored *fatwa*, was being delayed until the president requested such a ruling).

237. See *Algerian Religious Body Issues Fatwa on Rape*, *supra* note 9. This article explained the contents of the decree, which, according to the chairman of the HCI, stated that abortion "remained prohibited except under conditions already stipulated in a 1985 'health law.'" *Id.* That law already "allows abortion for women who are the victims of rape or incest when 'the physiological or mental equilibrium of the mother is in danger.'" *Id.* This embodies the law of Islamic countries in general, which allow abortion in the instance of a life-threatening pregnancy. See *id.*

Dubious Effects of Formally Reinstating Chastity

In one regard, the *fatwa* went beyond allowing abortion in the already permissible instances of physiological or psychological danger.²³⁸ The innovation of the *fatwa* is its provision that the victim be considered chaste and that she not be "blamed or punished."²³⁹ This "new" aspect of the edict will not help Algerian women in a meaningful way. Instead, it fails them in that it does not solve the public or societal problems that cause Algeria's violence, let alone these rape-induced pregnancies. It cannot end the violence against women, just as it cannot put a stop to centuries of denigration of and hatred toward women by Muslim men—particularly conservative Muslim men.

Indeed, the mistake inherent in the abortion-rape *fatwa* is the HCI's apparent belief that it can mandate the thoughts and emotions of Algerian citizens. Just as an edict cannot change attitudes toward women in general, it cannot affect attitudes toward the victims of rape, the particular women who stand for all that is wrong in Algeria. It is likely, then, that family shame will continue to derive from these rapes.²⁴⁰ Although the government has agreed to raise the children of these rapes,²⁴¹ pregnant victims must spend nine months carrying these children and wear their rapes for all of Algeria to see. The image of these tragic, pregnant women, whose very lives seem to be punishments, demonstrates the irony of the HCI's supposed solution in declaring them chaste and stating that they cannot be punished.

238. *See id.*

Victims will be given documents identifying them "formally" as such on the basis of declarations by police and other witnesses.

After receiving psychiatric advice, adult rape victims may decide for themselves whether they want an abortion, while minors will need a parent's or guardian's permission.

Doctors may not invoke "the conscience clause" to avoid performing an abortion for a woman acknowledged by a psychologist to be in danger, as stipulated in the health law

Women determined to be "in a permanent state of depression and are [sic] in danger of committing suicide" should be allowed to have abortions.

Id.

Like the provisions for providing financial aid to victims and their families, this system under the *fatwa* will be only as good as the people who run it. Doubtless, its administrators will deny abortions to many utterly desolate victims of terrorist rape.

239. *Id.* In conjunction with this no-blame provision, the *fatwa* provides that children of rape will become wards of the state. *See supra* text accompanying note 21.

240. *See supra* note 11.

241. *See supra* text accompanying note 21.

Algerian women have praised the *fatwa* for the message it sends concerning women's virtue.²⁴² Unfortunately, however, its message is not truly helpful to the rape victims, or to any Algerian women. Instead of helping female victims in any practical fashion, this declaration of chastity and honor merely upholds a questionable patriarchal tradition.

For Algerians, and particularly for Algerian men, women hold the key to family respectability: "Men[s] . . . whole sense of honor is lodged in that little membrane, the hymen of their daughter or sister . . ."²⁴³ When Algerians perceive a woman as unchaste, they can do remarkable damage to her, both physically²⁴⁴ and psychologically,²⁴⁵ as well as to the very concept of woman.²⁴⁶

The chastity-retention portion of the *fatwa* feeds this bizarre and dangerous aspect of Algerian tradition and psychology by attempting to restore female purity as the basis of family pride and identity. In doing so, the edict does women in general no favors, as it could by instead sending a specific progressive message that a family's status and goodness exist independently of how its daughters conduct themselves, independently of what they do with

242. For example, in an interview with an Algerian newspaper, Rabea Mechernene, Algeria's National Solidarity Minister praised "the idea that raped women retain their chastity." *Algerian Religious Body Issues Fatwa on Rape*, *supra* note 9.

243. MESSAOUDI & SCHEMLA, *supra* note 1, at 22. Messaoudi suggests that many Islamo-Algerian social traditions derive from this notion of woman as a symbol of honor, including the veil and female isolation. *See id.* at 21-22. She also provides examples of traditions, rooted in shame, that are highly damaging to women and to the popular notion of women. Among these are the tradition of a woman's in-laws returning her to her parents after her wedding night if she is not a virgin. *See id.* at 22. Messaoudi explains how women in her family would subvert this practice to protect a bride and prevent the shaming of her people:

[O]ur old women always had a rooster or a chicken tucked under their arm for a marriage. If the bride wasn't a virgin any more, the women would kill the animal, spread its blood on the sheets, and exhibit it triumphantly. It was imperative to save appearances and honor—but, above all, to protect the clan and the alliances that had been arranged.

Id. at 22.

244. The violence against Algerian women by fundamentalists stands as a frightening example of what happens when this woman-as-a-moral-symbol mentality spins out of control. This violence, as well as the rapes leading to the *fatwa* under discussion, stems from extremists' vision of contemporary Algerian women as deviations from their moral ideals, as "others." *See id.* at 109.

245. For example, consider the trend of families exiling rape victims. *See Chelala, supra* note 11.

246. Messaoudi's explanation of her ancestors' subterfuge to shield non-virgins demonstrates the fact that, historically, women have failed to measure up to the high moral standards set for them. This failure leads to dangerous double-standards, in which women are prized as symbols of honor, and yet simultaneously stand for "desire, seduction, mystery, trouble, and also alterity." MESSAOUDI & SCHEMLA, *supra* note 1, at 109. Consequently, women are simultaneously revered and despised, protected and denigrated. In the (male) public imagination, they possess meaning as symbols or objects only—never as individuals.

their bodies or of what is done with their bodies. Such a message would free Algerian women of their roles as moral barometers for their families, rather than simply acting to reset rape victims' barometers to a formally pure level.²⁴⁷

CONCLUSION

At first glance, Algeria's draft law of April 1998 and the abortion-rape *fatwa* of April 1998 seem important as attempts to improve the desperate situation of Algerian women, who are currently victims of law, religion, and war. These pieces of legislation certainly mark positive steps for Algeria in that the government constructed them with women in mind. Unfortunately, however, these laws do not uplift Algerian women.

Yet, in a sense, these laws do more than merely affirm Algeria's status quo. Inasmuch as they rely on stereotypes of women, as the moral barometers of Algeria, they reinforce the country's status quo.

On a symbolic level, these laws do represent women. Relatively ignored²⁴⁸ and rendered insignificant, the laws are much like the women about and for whom they are made. In turn, those women, contradictory figures—pure, even faithful, but desirous, mysterious, bloody, unchaste—are emblematic of their country. Like those women, Algeria is at war with itself. A mass of contradictions, its identity is split, lost between Arab and Berber, Islam and Islamism. Its men seek to define its identity, as they seek to define its women's identities. In doing so, these men will destroy both the nation and its women in the process. As with the destruction of its women, the destruction of Algeria will go unnoticed.²⁴⁹

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247. The only truly constructive, pro-victim reaction to the numerous rapes during Algeria's holy war has been the development of a hostel/support center for rape victims. Information concerning the center is scarce, although reports indicate that the center provides victims with rape-specific treatment from physicians and psychologists. See *Crisis—First Center of Support for Raped Women Opened Last Month*, *supra* note 196; *Hostel Opens for Rape Victims*, *supra* note 19.

248. Despite daily reports concerning abuses toward women in Algeria, the plight of Algerian women—let alone all Algerians—receives little focus from the world-wide news media. See *supra* notes 62-67 and accompanying text. Similarly, since April of 1998, both the draft law on women's rights and the abortion-rape *fatwa* have received little media attention at all, let alone in-depth consideration. See *supra* note 7 and accompanying text.

249. Given the ability of the world-at-large to ignore the abuses and horrors occurring daily in Algeria, it will be no surprise if the nation's self-destruction goes unnoticed by the rest of the world.