

Pluralism Betrayed: The Battle Between Secularism and Islam in Algeria's Quest for Democracy

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I. INTRODUCTION

In late 1991, Algeria was moving rapidly to discard its socialist past and embrace a democratic future. Tragically, however, hopes for the first free parliamentary elections in the Arab world fell prey to a military coup d'état

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resulting in an oppressive, authoritarian regime and ever-increasing social instability.¹ Although one can only speculate about what would have happened if the election had not been overturned,

[T]here is no need to speculate about what's happened since Algeria's coup. Elections remain suspended; elected local councils have been disbanded. Human rights have been trampled; thousands of Islamic militants spent weeks in desert prison camps. The army's strong-arm tactics have embarrassed, even discredited, Islamic moderates. And the Salvation Front has been radicalized. . . . *In sum, the coup has accomplished almost everything the West did not want to see happen. . . .* Algeria's Islamic majority won't go away, nor will it become more democracy-minded when its electoral majorities are treated with contempt.²

When it scheduled free elections, Algeria became a test case for the challenge of combining democratic pluralism³ with fundamentalist Islam.⁴ On June 12, 1990, the Islamic Salvation Front ("FIS") swept local elections in Algeria, marking the first time a fundamentalist Islamic movement gained significant political power through peaceful, democratic means. In the first round of parliamentary elections held eighteen months later, the FIS won 188 of the 430 seats while the long-ruling National Liberation Front ("FLN") won only 16. The FIS was thus poised to win an absolute parliamentary majority as the second round of parliamentary elections approached. Fearing that an authoritarian Islamic state might replace the then-existing authoritarian secular state, a military junta staged a nonviolent coup d'état on January 11, 1992, and installed a new government, which quickly canceled the elections and outlawed the FIS. With the elimination of peaceful methods of political participation, extremists within the FIS silenced the moderates and, predictably, began a

1. John P. Entelis, *Preface* to STATE AND SOCIETY IN ALGERIA at xi (John P. Entelis & Phillip C. Naylor eds., 1992) [hereinafter STATE AND SOCIETY].

2. *Algeria: Keeping Islamists Out of Power - Western and Arab World Reacts to Cancellation of Elections*, MIDDLE E. ECON. DIG., Jan. 24, 1992, at 5, 5 (emphasis added) [hereinafter *Islamists Out of Power*].

3. Pluralism as a *fact* describes the existence in one community of individuals or sub-communities with differing beliefs. Pluralism as an *ideal* expresses both the hope and moral sentiment that despite such differences, these differing communities can and ought to accommodate other beliefs and live in peace. Democracy, a political system incorporating majority rule and minority rights, is increasingly seen as the best method of dealing with the fact of pluralism while also achieving its ideals. See generally DEMOCRACY: THE UNFINISHED JOURNEY (John Dunn ed., 1992) (discussing democracy's increasingly successful claim to be legitimate form of government).

4. The term "fundamentalist" defies precise definition. One useful definition focuses on "the reaffirmation of foundational principles and the effort to reshape society in terms of those reaffirmed fundamentals. This involves . . . 'the reliance on Islamic fundamental principles to meet the needs and challenges of contemporary times.'" John O. Voll, *Fundamentalism in the Sunni Arab World: Egypt and the Sudan*, in THE FUNDAMENTALISM PROJECT: FUNDAMENTALISMS OBSERVED 345, 347 (Martin E. Marty & R. Scott Appleby eds., 1991) [hereinafter FUNDAMENTALISM] (quoting KARM B. AKHTAR & AHMAD H. SAKR, ISLAMIC FUNDAMENTALISM 61 (1982)). Other frequently used terms with similar or overlapping meanings include "Islamist," "revivalist Islam" (as distinguished from pietistic Islam), and "political Islam." Michael C. Dunn, *Revivalist Islam and Democracy: Thinking About the Algerian Quandary*, 1 MIDDLE E. POL'Y 16, 17 (1992).

According to one commentator, most Islamic groups are not fundamentalist in the Western sense of the word, in that they do not advocate passive, literalist reading of scripture. Rather, like the Catholic Liberation theologians, they urge use of the dynamic strength of religious doctrine to influence and to improve social and political conditions for the individual and family. Although they may use language that recalls a glorious Islamic past, they are forward-looking, seeking creative new solutions, and committed to making a place for Islam within the modern world. Robin Wright, *Islam, Democracy, and the West*, FOREIGN AFF., Summer 1992, at 131 n.1.

campaign of terror.

This crisis in Algeria revolves around the recurring problem of apportioning power between competing interest groups. In this case, two groups have fundamentally different views of reality, one based on Islamic and the other on secular beliefs. Each seeks to order society according to its fundamental tenets. Elements within both groups fear defeat and the exclusion of their viewpoint from public life and thus have demonstrated a willingness to resort to violence in order to gain control of government institutions.

Because the primary criticism leveled at the FIS was that it was anti-democratic, this Article will analyze the legitimacy of the coup by exploring whether FIS control of the parliament would have been more or less likely than the junta's leadership to lead to the development of democratic structures and pluralistic ideals. Part II reviews the historical events leading up to the aborted elections, and Part III examines the proper standards for evaluating the FIS and the junta. Part IV then argues that the FIS was not as incompatible with democracy as its opponents claimed, and that proponents of the coup underestimated the constraints the FIS would have faced in any attempt to implement anti-democratic policies. Part V builds on Part IV to argue that, *ex ante* (as viewed in January 1992), an evaluation of the two alternatives leads to the conclusion that acceptance of the FIS electoral victory, even with the significant risks of anti-democratic developments within the FIS, presented more hope for the development of democratic structures and pluralistic ideals than did acceptance of the junta. Finally, exploring why Western nations, which purport to seek the spread of democracy, supported the junta against the FIS, Part VI concludes that despite their stated pluralist ideals, Western decisionmakers preferred a familiar secular authoritarianism over an unknown Islamic pluralism.

II. BACKGROUND TO THE ELECTIONS AND THE COUP

A. *Algeria's Economic Crisis*

An inquiry into the historical factors that set the stage for the rise of the FIS and the resulting coup d'état reveals that poverty and military power have been driving forces in Algerian society throughout the twentieth century. Algeria gained independence from France in 1962 after waging one of the longest and bloodiest colonial wars of independence in history.⁵ As in many post-colonial societies, the military officers who played prominent roles in the revolutionary victory continued to control the fiercely socialist government for the next thirty years.

Chadli Benjedid became president in 1979 with the military's blessing. By the mid-1980s, in a radical departure from the government's fiercely militaristic socialist days and in an attempt to combat serious economic problems, President Benjedid instituted the process of economic and

5. Official reports stated that the war claimed approximately one million Algerians lives. MAHFOUD BENNOUNE, *THE MAKING OF CONTEMPORARY ALGERIA, 1830-1987*, at 89 (1988).

democratic reform that ultimately led to the aborted elections.⁶ In the early stages of reform, the government's "simple" plan to change from state socialism to private enterprise and a free market elicited great optimism in Algeria and in the international community.⁷ One commentator observed that this "Middle Eastern version of glasnost and perestroika seemed to take place almost overnight" from 1989 to 1990, in a country that had proudly "flaunted its revolutionary credentials" for years.⁸

In 1991, as part of the reform process, Prime Minister Ghazali sought to ready the public for a cutback in government subsidies that would result in higher prices. He also prepared the citizenry to accept the sale of part of the nation's long-prized and fiercely guarded hydrocarbon wealth to foreigners (whom the public had been trained to regard as "colonialists") in order to raise the funds needed to "break out of this infernal cycle of borrowing, paying debts, and investing less and less in our economy."⁹ Further economic reforms included ending the import and distribution monopolies that had made the Algerian market unattractive to foreign trade.¹⁰

Undertaking these extensive reforms was risky. The reforms promised long-term benefits but still required painful sacrifices from a population in which almost 60% lived below the poverty line¹¹ and the average income was only \$2,600.¹² High unemployment accompanied by a lack of prospects for change generated distrust of government programs and left hundreds of thousands of discontented citizens, many of whom were young and radical, with nothing better to do than roam the streets and feed on each other's desperation and anger.¹³

Despite the initial optimism for successful economic reform, the economy

6. The government created the nation's economic crisis. See Entelis, *supra* note 1, at xii ("Although an impressive state-dominated, technologically advanced infrastructure was created, it was achieved at enormous social, economic, and political cost").

7. Bradford Dillman, *Transition to Democracy in Algeria*, in STATE AND SOCIETY, *supra* note 1, at 31, 38 (articulating new conception of state as regulator rather than as producer); Robert Pollin & Alexander Cockburn, *The World, The Free Market, and the Left: Capitalism and Its Specters*, THE NATION, Feb. 25, 1991, at 224, 225 (citing Economics Minister Ghazi Hidouci).

8. William B. Quandt, *The Middle East in 1990*, FOREIGN AFF., Winter 1991, at 49, 61. Algeria's leaders prior to the election were aware of the challenges they faced. Early in 1991, Prime Minister Mouloud Hamrouche also expressed a desire for controlled change:

The Arab world has no answers to contemporary problems . . . It is at an impasse. There's no democracy, no freedom of expression. Regimes can maintain order, yes. But what is the basis of these regimes? Today we want to build real power on the basis of the popular will.

Louise Lief, *Battling for the Arab Mind*, U.S. NEWS & WORLD REP., Jan. 21, 1991, at 22, 23-24. In July of the same year, as the first round of elections was being scheduled, Prime Minister Ghazali expressed his concerns about the challenge of building democracy "with empty banks," and the associated problem of convincing restless and idealistic youth that painful "economic reforms are not incompatible with social justice." Youssef M. Ibrahim, *In Algeria, Hope for Democracy But Not Economy*, N.Y. TIMES, July 26, 1991, at A1, A6 [hereinafter Ibrahim, *Hope for Democracy*].

9. Ibrahim, *Hope for Democracy*, *supra* note 8, at A6 (quoting Prime Minister Ghazali).

10. Cherie Loustaunau, *Near East and South Asia Offers Good Prospects If You Know Where to Look*, BUS. AM., Apr. 22, 1991, at 20, 20.

11. Wright, *supra* note 4, at 134.

12. *Id.*

13. Ibrahim, *Hope for Democracy*, *supra* note 8, at A1, A6. In addition, the workforce comprised only 20% of the population due to the high number of youth and low number of women participating in the paid labor force. FOREIGN AREA STUDIES, THE AMERICAN UNIVERSITY, ALGERIA: A COUNTRY STUDY 172-73 (Harold D. Nelson ed., 1985) [hereinafter FOREIGN AREA STUDIES].

worsened. Annual inflation in 1991 approached 100%, and the nation experienced negative economic growth in 1990 and 1991 as the Gross Domestic Product declined by more than two percent each year.¹⁴ At the time of the elections, Algeria's foreign debt totaled more than \$26 billion.¹⁵ Such high debt led to insufficient funds to purchase needed food, medicine, raw materials, and equipment, or to address housing, education, and social services needs.¹⁶ In addition, the population grew faster than the economy, resulting in a further reduction in per capita income.¹⁷

High unemployment and widespread poverty, along with a general feeling of disenfranchisement from political power and resentment of government corruption, contributed to the emergent FIS's growing popularity just as similar problems a few decades earlier had contributed to popular discontent with French rule.¹⁸ Where the Algerian government offered only ineptness and corruption, the FIS offered hope, explanations for the meaning of life, material assistance, and freedom from corruption.¹⁹

B. Algeria's First Multiparty Elections in 1990 for Local Offices

The failed economic reforms and resulting economic crisis led in 1988 to an outburst of popular discontent, now known as "the events of October 8," in which demonstrators protested the sudden price increases and cutbacks in public expenditures caused by the free-market adjustment programs.²⁰ After initial hesitation, the Army crushed the demonstrations.²¹

President Benjedid remained committed to reform despite these setbacks and instituted a process of democratization resulting in the adoption of a new Constitution on February 23, 1989, that permitted the formation of opposition parties.²² Algeria's first multiparty municipal elections were scheduled for

14. *Algeria: No Growth in the Shadow of the Gun*, MIDDLE E. ECON. DIG., Dec. 25, 1992, at 21, 21; *Algeria: Another Year of Living Dangerously*, MIDDLE E. ECON. DIG., Dec. 27, 1991, at 8, 8 [hereinafter *Living Dangerously*]; Jon Marks, *Algeria: Reforming the Reforms*, MIDDLE E. ECON. DIG., Aug. 2, 1991, at 10; see also JOHN RUEDY, *MODERN ALGERIA: THE ORIGINS AND DEVELOPMENT OF A NATION* 247 (1992) (noting negative growth of GDP in 1987 and 1988).

15. Ibrahim, *Hope for Democracy*, *supra* note 8, at A6. An exceedingly burdensome 71.2% debt service ratio in 1991 was scheduled to fall to less than 40% in 1994 if a debt restructuring plan had proceeded as scheduled. *Living Dangerously*, *supra* note 14, at 8.

16. See generally *Capitalism Comes to the Casbah*, BUS. WEEK, Aug. 21, 1989, at 16 (describing shortages caused by debt).

17. In 1990, Algeria had a 2.7% population growth but only a 0.7% real GNP growth. In contrast, the population of Turkey, which has had success with democracy, grew only 2.2% while its real GNP grew 5.3%. *Turkey: Star of Islam*, THE ECONOMIST, Dec. 14, 1991, at 3, 3.

18. Robert Mortimer, *Islam and Multiparty Politics in Algeria*, 45 MIDDLE E. J. 575, 585 (1991).

19. See *infra* part V.A.2.

20. Rapid social change in Algeria only worsened under Benjedid. The government's failure to deliver a "better life" and Algeria's failure to reach consensus on the foundation of its culture — Islam or secularism — combined to fuel discontent. RUEDY, *supra* note 14, at 239.

21. Torture was used extensively in crushing the riots and dealing with those arrested. However, President Benjedid publicly condemned such actions and attempted to punish those responsible, with the result that torture was effectively non-existent in Algeria immediately preceding the coup. AMNESTY INTERNATIONAL, *ALGERIA: DETERIORATING HUMAN RIGHTS UNDER THE STATE OF EMERGENCY* 8 (AI Index: MDE 28/04/93, Mar. 1993) [hereinafter AMNESTY INT'L].

22. RUEDY, *supra* note 14, at 250-52 (discussing new constitution). The constitution, ALG. CONST., reprinted in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz eds., 1990), received a 73% favorable vote in the referendum adopting it. *Chronology 1989*, FOREIGN AFF.,

June 12, 1990. At this time, many Algerians and foreign diplomats expressed hope that the new openness evident in Benjedid's response would lead to the first truly democratic elections in an Arab state. Such elections would contrast sharply with the "benign feudal governments and dictatorships" that theretofore had dominated the region.²³

For many people, both in Algeria and around the world, this openness soon took a disturbing path as the fundamentalists demonstrated their power. The FIS organized quickly and attracted widespread support. Thousands of FIS supporters marched in April of 1990, demanding national parliamentary elections and an Islamic state. In response, members of four secular opposition parties staged a march the following month to denounce fundamentalism and call for democracy.²⁴ The most significant of these secular parties was the Front for Socialist Forces ("FFS"), which was to finish second in the 1991 parliamentary elections.²⁵

The FIS sweep of the municipal elections in June represented the first time a fundamentalist Islamic movement had won considerable power in a government by nonviolent, democratic means.²⁶ The FIS received 54% of the vote, gaining control of thirty-two of the forty-eight provincial (*wilyat*) councils and 850 of the 1540 municipal councils.²⁷ Ironically, a boycott of the elections by the other opposition parties gave the anti-government opposition vote wholly to the FIS and thus contributed significantly to its victory.²⁸

C. *The FIS Victory in the 1991 Parliamentary Elections*

The FIS's victory in the municipal elections forced President Bendjedid to call national parliamentary elections, which he originally set for June 27, 1991.²⁹ The election announcement created a three-way split within the

Fall 1990, at 213, 253.

23. Ibrahim, *Hope for Democracy*, *supra* note 8, at A1.

24. RUEDY, *supra* note 14, at 244.

25. Another party, the Rally for Culture and Diversity ("RCD"), opposed both the discredited National Liberation Front and the Fundamentalists and thereby demonstrated the deep divisions in Algerian society. Led by a charismatic psychiatrist, Dr. Saeed Saadi, the RCD reminded Algeria of its "Berber problem." It draws strength from the 20%-30% of Algerians who consider themselves Berber rather than Arab, oppose the view held by the government and by the Fundamentalists that Algeria is an Arab nation, want to retain their Mediterranean and especially their French heritage, and support secularism and multi-culturalism as the only hope for the preservation and growth of their culture and of the nation. Ibrahim, *Hope for Democracy*, *supra* note 8, at A1, A6.

26. Dunn, *supra* note 4, at 18. Nevertheless, at least some in the Algerian government who believed the Islamists would fail thought at the time that the preferable course was to "open the abscess now and clean it up rather than to sit on millions of people who believe, rightly or wrongly, that Islam is the answer to everything." Youssef M. Ibrahim, *Militant Muslims Grow Stronger as Algeria's Economy Weakens*, N.Y. TIMES, June 25, 1990, at A1, A8 [hereinafter Ibrahim, *Militant Muslims*]. Even at that time, however, some feared an army coup if the government failed to contain the success of the FIS. *Id.*

27. RUEDY, *supra* note 14, at 253. The FIS won control in the four largest cities, Algiers, Oran, Constantine, and Annaba. The voting was generally considered fair, as each party was allowed to position observers at every polling place. Dillman, *supra* note 7, at 35.

28. See RUEDY, *supra* note 14, at 253; John P. Entelis & Lisa J. Arone, *Algeria in Turmoil: Islam, Democracy and the State*, MIDDLE E. POL'Y 23, 30 (1992). Ironically, the other opposition parties claimed the election rules unfairly favored the FLN and boycotted these elections.

29. Benjedid avoided pressure to call them immediately after the fundamentalists swept the local elections because he feared their popularity at that point. When their popularity apparently waned, he called the elections for June 27. However, he could have waited one more year, as his term did not expire until

fundamentalist ranks. Hamas, which presented the strongest challenge to the FIS, advocated the “co-existence of fundamentalist Muslims with other secular parties in a democratic political structure.”³⁰ At the other extreme, more radical factions began to call for the immediate creation of an Islamic state and denounced the idea of elections altogether. The FIS, holding a middle position, continued to express its desire to participate in the elections but did not go as far as Hamas in committing to a democratic political structure.

To ensure the FLN’s success in the upcoming parliamentary elections, the FLN parliament passed blatantly biased election laws that increased the size of parliament by adding extra seats in areas where the FLN performed well in the municipal elections.³¹ To “polarize the options” by leaving “a choice between a police state and a fundamentalist state,” the new elections used a two-round procedure.³² In the first round, any number of candidates could run; if no one received a majority, a run-off election would be held between the top two candidates from the previous round.³³

The non-FLN parties were almost unanimous in opposing these measures, largely because the procedures effectively eliminated all small parties from the election.³⁴ The FIS, for its part, demonstrated against the measures by encouraging hundreds of thousands of followers to begin a general strike on May 25, 1991, and by instigating public demonstrations in an attempt to overthrow the government.³⁵ In early June, President Benjedid dismissed the government of Prime Minister Hamrouche, fueling speculation that the FLN would form a coalition government with other new parties in an attempt to oppose the FIS.³⁶ The coalition never formed, however, and Foreign Minister Sid Ahmed Ghazali became Prime Minister.

The tension continued nevertheless. On June 4, Interior Minister Mohammedit ordered police to clear sleeping protesters from two public

1993. Some also hoped that the participation of 39 parties in these next elections would significantly weaken FIS support. Alan Riding, *Military Restores Order in Algiers*, N.Y. TIMES, June 6, 1991, at A10.

30. Ibrahim, *Hope for Democracy*, *supra* note 8, at A1.

31. RUEDY, *supra* note 14, at 253; Entelis & Arone, *supra* note 28, at 30.

32. RUEDY, *supra* note 14, at 253; Mortimer, *supra* note 18, at 589.

33. Entelis & Arone, *supra* note 28, at 30.

34. *Id.* In addition, the FLN’s declining legitimacy had led many members of the government to begin to distance themselves from the FLN as early as July 1990, further weakening the party and leaving them without an organized political base. Dillman, *supra* note 7, at 36. President Benjedid attempted to reinvigorate the FLN, but his effort failed. Mortimer, *supra* note 18, at 582-83.

35. The strike called before the violence erupted was little heeded, indicating that the middle class did not fully support the FIS and that its support remained primarily among disillusioned and unemployed youth. Middle-class Algerians may have begun to be disillusioned by the FIS’s governance of the cities it won in 1990. See Entelis & Arone, *supra* note 28, at 30. However, many of the FIS’s difficulties in governing stemmed from clashes with FLN governors concerning budgets and priorities. The FLN had every motivation to make the FIS look bad, especially since the FLN controlled most of the mass media and could craft its message. The neighborhood charitable associations nevertheless let the people know that the FIS officials had been deprived of the city budget. Rabia Bekkar, *Taking Up Space in Tlemcen: The Islamist Occupation of Urban Algeria*, MIDDLE E. REP., Nov.-Dec. 1992, at 11, 14. Despite these obstacles, the FIS succeeded in providing services to some districts that had not received them for years. The FIS also delivered food, prodded the bureaucracy, and set up literacy classes. Boutheina Cheriet, *The Resilience of Algerian Populism*, MIDDLE E. REP., Jan.-Feb. 1992, at 9-10.

36. Benjedid probably took this action under pressure from the military. Military elites disapproved of Hamrouche’s “conciliatory” attitude toward the FIS. Entelis & Arone, *supra* note 28, at 32.

squares in Algiers.³⁷ Tens of thousands returned to protest the next day, sparking a battle of tear gas, rocks, and bullets.³⁸ The violence resulted in approximately 300 deaths, 8000 arrests, including arrests of the top FIS leaders, the imposition of martial law, and the postponement of the elections.³⁹ Following this upheaval, the army announced that it would enforce state-of-siege laws, thereby making political gatherings in the streets illegal and allowing the FIS's two top leaders, Madani and Belhadj, to be tried in front of a military tribunal.⁴⁰

Notwithstanding these developments, the popular feeling in Algeria remained optimistic and euphoric due to a sense of "expanding horizons of freedom."⁴¹ After the riots and the postponement of elections, the editor of *Al Watan* (The Fatherland), the largest independent newspaper, predicted that "it will be impossible for anyone to go back on democratization, free expression, economic reforms, and free elections."⁴² Indeed, Prime Minister Ghazali's cabinet selections, which included mostly non-FLN members, two women, and a Human Rights Minister, demonstrated that reform was still on the agenda.⁴³ The transitional government's promises that the elections would be rescheduled as soon as possible and the army's promises not to stop democratization reinforced the optimism.⁴⁴

The first round of elections was rescheduled for December 26, 1991. Western observers hoped that the approaching elections would lead to moderation among the fundamentalists.⁴⁵ They predicated this hope on the widespread belief that the FIS would not win a majority in the upcoming elections.⁴⁶ Many, blaming the FIS's success in the municipal elections of 1990 on the parties that boycotted those elections, predicted that voters would not choose the FIS in December if given a choice of other non-FLN parties.⁴⁷ The government itself expected the FIS to win only 30% of the vote because it believed that the FIS's appeal had waned as a result of allegedly poor administration of the towns in which it had won municipal election victories

37. Mortimer, *supra* note 18, at 589; *Algeria: Another State of Siege*, TIME, June 17, 1991, at 47 [hereinafter *Siege*]; John Hooper, *Algeria: Several Die as Police Clash with Algerian Militants*, GUARDIAN (London), June 5, 1991, at 10.

38. *Siege*, *supra* note 37, at 47. Violence has unfortunately accompanied elections in many African nations. See, e.g., *Chronology 1991: Africa*, FOREIGN AFF., Fall 1992, at 222-24.

39. *Algeria: Ghazali Struggles to Keep the Lid On*, AFR. ECON. DIG., July 15, 1991, available in LEXIS, World Library, Allwld File. The two top leaders of the FIS, Abassi Madani and Ali Belhadj, were jailed following the June riots along with six other senior leaders and more than 5000 adherents. Madani and Belhadj and others remained in prison throughout the subsequent events and into the next year. The state of siege was lifted on September 29, 1991, one week before its expiration. AMNESTY INT'L, *supra* note 21, at 1.

40. Entelis & Arone, *supra* note 28, at 31-32.

41. Ibrahim, *Hope for Democracy*, *supra* note 8, at A6.

42. *Id.*

43. Youssef M. Ibrahim, *Algerian Leader Fills Cabinet Mostly With Party Outsiders*, N.Y. TIMES, June 19, 1991, at A10.

44. *Id.*

45. Quandt, *supra* note 8, at 61.

46. See, e.g., *Algeria: Security Tightened Ahead of Elections*, MIDDLE E. ECON. DIG., Dec. 20, 1991 at 9, 10 (reporting expectations of "most local analysts" that FLN would mobilize its influence and prevent absolute FIS majority).

47. Youssef M. Ibrahim, *Islamic Party in Algeria Defeats Ruling Group in Local Elections*, N.Y. TIMES, June 14, 1990, at A1, A20.

two years earlier.⁴⁸

The FIS, for its part, threatened to boycott the elections because of its imprisoned leadership and the biased election laws.⁴⁹ The FIS only declared it would participate on December 14, a few days before the election. This announcement apparently indicated a victory by the moderate faction in the FIS over the hardliners who had opposed participation so long as the FIS's two senior leaders remained jailed.⁵⁰

In the first round of parliamentary elections, 5800 candidates competed for 430 seats.⁵¹ The FIS won 188 seats, finishing first, while the long-ruling FLN finished a distant third with only 16.⁵² The Front for Socialist Forces ("FFS") finished second with 25 seats, while Hamas placed fourth.⁵³ The FIS needed only 28 more seats to win an absolute majority in the second round of elections, which had been scheduled for January 16, 1992.

In response to his party's stunning victory, acting FIS leader Abdelkader Hachani proclaimed at the El-Sunna mosque that "[t]he party of God heralds the victory of God," and that the FIS would "not swerve from [their] goal, to build an Islamic state."⁵⁴ Such proclamations may or may not have indicated a move away from the pre-election moderate stance: Hachani balanced his statements with calls for restraint,⁵⁵ while other FIS leaders were more strident in proclaiming that "Islam is light Darkness is in democracy."⁵⁶ Many secularist Algerians feared that once the FIS gained power, it would prohibit future elections, institute a repressive Islamic state, and disrupt economic reforms.⁵⁷ Acting on these fears, over 100,000 anti-fundamentalists marched in downtown Algiers, and mainstream newspapers called for an army coup d'état.⁵⁸

48. *Algeria: Islamists Take to the Electoral Trail*, MIDDLE E. ECON. DIG., Dec. 27, 1991, at 23, 24 [hereinafter *Electoral Trail*] (reporting that various estimates predicted FIS would win 20%-40%, with one official poll predicting 30% for both FIS and FLN); Youssef M. Ibrahim, *Algerian Election Tests Government*, N.Y. TIMES, Dec. 26, 1991, at A3 (citing unofficial polls by government and other organizations that found FIS had dropped from 55% to 30%). The government also took further precautions, including more revisions to the election laws. Entelis & Arone, *supra* note 28, at 33. Moreover, the government suggested that the FIS's top two leaders might be released if they and the FIS promised good behavior. *Id.*

49. *Algeria: Front Islamique du Salut May Boycott General Election to Be Held on 26 December*, MIDDLE E. ECON. DIG., Nov. 19, 1991, at 21, 21.

50. See RUEDY, *supra* note 14, at 254.

51. *Algeria: In Brief*, MIDDLE E. ECON. DIG., Dec. 6, 1991, at 12. Interestingly, only the FIS possessed the organizational capacity to field 430 candidates, one in each district. The FLN only managed to field 429 candidates. *Electoral Trail*, *supra* note 48, at 24. Some FLN members who were denied nominations decided to run as candidates for other parties, and some even ran on the FIS lists. Mortimer, *supra* note 18, at 584.

52. Entelis & Arone, *supra* note 28, at 33.

53. Wright, *supra* note 4, at 135.

54. Ruth Marshall & Scott Sullivan, *In Algeria, 'The Victory of God.'* NEWSWEEK, Jan. 13, 1992, at 37, 37.

55. David Hirst, *Algiers Bans Party Politics in Mosques*, GUARDIAN (London), Jan. 23, 1992, at 20.

56. Marshall & Sullivan, *supra* note 54, at 37.

57. For example, a new pipeline from Algeria to Spain via Morocco sponsored by the Maghreb Arab Union (Algeria, Tunisia, and Morocco) had attracted interest from major consumers in Germany, France, and Portugal. The election results and violence threatened to destroy this interest. Thomas Land, *Desperately Seeking to Reassure World, Algeria's Natural Gas Industry*, PETROLEUM ECONOMIST LTD., July 1992, at 20, available in LEXIS, News Library, Txtnws File.

58. Marshall & Sullivan, *supra* note 54, at 37.

President Benjedid, on the other hand, apparently was more optimistic about the probable consequences of the next election. Perhaps he had confidence that the constitutional checks and balances would contain the FIS in the event it came to power.⁵⁹ He may have relied on the fact that the FIS would not have an opportunity to win the presidency until late 1995. Maybe he believed that an FIS controlled parliament could not have forced amendments to the constitution because amendments had to be not only approved by the Parliament, but also proposed by the President and approved by a popular referendum.⁶⁰ In addition, if the FIS had gained control of Parliament, the army would still have stood as a bastion of power ready to oppose illegitimate moves by the FIS.⁶¹ For whatever reason, Benjedid's willingness to hold the second round of elections indicated his beliefs that he and the FIS could work together and that acceptance of the FIS victory would not have doomed reform efforts.⁶² The second-place finisher in the first round of elections, the FFS, also supported the planned elections, further indicating domestic support for continuing the democratic process.⁶³ The consensus seemed to be that free elections, even if won by the FIS, represented the best hope for a brighter future.

D. *The Coup d'État*

Although some Algerians were confident that democracy would continue despite an FIS victory, the military leadership viewed that possibility as a threat to the security of the state.⁶⁴ On January 11, a self-appointed and self-proclaimed High Security Council announced its assumption of power. In the first days of this coup d'état, the junta attempted to maintain some constitutional niceties and even permitted prime minister Sid Ahmed Ghazali to head the High Security Council. The High Security Council nevertheless forced Benjedid to resign on January 11 and usurped the role of the seven-person Constitutional Council that, under Algeria's constitution, should have acted as head of state until a new president could be elected.⁶⁵ On January 12, the High Security Council canceled the second round of elections, which had been scheduled for January 16, "until necessary conditions [were] achieved

59. Under then-existing Algerian law, the President had the power to dissolve Parliament and declare a state of emergency or a state of siege. ALG. CONST. arts. 78, 86, 120.

60. *Id.* art. 163. The President had considerable additional control over the executive functions of government through his ability to appoint and dismiss the head of government and all government ministers. *Id.* arts. 74, 83.

61. *Algeria: Can Tanks Ever Protect Freedom?*, GUARDIAN (London), Jan. 14, 1992, at 18. The coup leaders may have believed they would lose the ability to intervene as time passed because the lower levels of the army might increasingly side with the FIS. If that possibility was real, then the army did not have the option of waiting. Also, secular opposition to the existing regime was strong, particularly in the army. *Algeria: Editorial - Killing in a Corner*, GUARDIAN (London), Jan. 9, 1992, at 22.

62. RUEDY, *supra* note 14, at 255.

63. See David Butter, *Algeria Stares into the Abyss*, MIDDLE E. BUS. WKLY., Jan. 24, 1994, at 4.

64. Youssef M. Ibrahim, *Rulers Taking Power in Algeria Halt Elections to Parliament*, N.Y. TIMES, Jan. 13, 1992, at A1 [hereinafter Ibrahim, *Rulers Taking Power*].

65. *Id.*; Entelis, *supra* note 1, at xi. Although Article 84 of the constitution mandated that elections be called within 45 days to replace Benjedid, ALG. CONST. art. 84, the new rulers found this rule of law, like many others, easier to ignore than to follow.

for the normal functioning of [state] institutions."⁶⁶

Although its leaders did call for confrontation immediately after the cancellation of the elections, the FIS did not immediately adopt a campaign of violence.⁶⁷ These same leaders urged their followers to remain calm when government troops were deployed on January 17 to prevent FIS supporters from entering the capital. For example, at the Bab el-Qoed mosque, Hachani urged his followers to exercise restraint to avoid giving the army any excuse to crack down: "The army has a scenario for us, but it is a role we will not play. We will not respond to provocation."⁶⁸ The FIS denounced violence and called upon "veterans, religious leaders, thinkers, preachers, army officers, soldiers . . . and all who love wounded and struggling Algeria to close ranks against this quisling ruling clique."⁶⁹ Rather than calling for jihad, the FIS merely requested a release of prisoners, inter-party dialogue and alliance, and resumption of the elections.⁷⁰ Thus, the FIS still appeared committed to a democratic process at this point.

Despite this calm initial response, the junta quickly adopted a very hardline anti-democratic program. It abandoned all semblance of following constitutional processes, announcing the creation of a collective presidency under the label of the High State Council. This Council was officially headed by war veteran Mohammed Boudiaf who had been brought back from thirty years of exile in Morocco for this purpose. Defense Minister General Khaled Nezzar held the real power, however.⁷¹ The military also created the National Consultative Council, comprised of sixty respected Algerians, to advise the High State Council in place of the national parliament, which had been disabled.⁷²

In addition, the junta soon arrested more FIS leaders, including acting President Hachani.⁷³ They banned public gatherings in and around mosques, replaced the leaders in 40% of Algeria's 9,000 mosques, and arrested scores of clerics.⁷⁴ They even jailed Algerian journalists who reported favorably about the FIS.⁷⁵ Within the first week alone, more than 500 FIS supporters were arrested.⁷⁶

66. Ibrahim, *Rulers Taking Power*, *supra* note 64, at A1.

67. Youssef M. Ibrahim, *Fundamentalists in Algeria Ask Followers To Stay Calm*, N.Y. TIMES, Jan. 18, 1992, at A5 [hereinafter Ibrahim, *Ask Followers*]. After almost making a call to arms, FIS leaders sought to avoid bloodshed and used language carefully chosen to appeal to Western nations. Andrew Bilski et al., *Islam's Broadening Sweep*, MACLEAN'S, Jan. 27, 1992, at 20, 20.

68. Wright, *supra* note 4, at 137.

69. *Algeria, The Soldiers Cut In*, ECONOMIST, Jan. 18, 1992, at 42, 42.

70. Wright, *supra* note 4, at 136.

71. Interestingly, although General Nezzar became the FIS's primary opponent, his appointment as Minister of Defense in July 1990 was perceived then as a gesture to the Islamists, who considered him a neutral figure in their political struggle with the FLN. Mortimer, *supra* note 18, at 590.

72. Jon Marks, *Algeria: President Mohamed Boudiaf's Government Suppresses Political and Religious Opposition*, MIDDLE E. ECON. DIG., June 5, 1992, at 8, 8 (noting that Boudiaf originally asked FFS leader Ait Ahmed to head Council, but that Ahmed refused).

73. *Police in Algiers Fire at Crowd of Angry Muslims*, N.Y. TIMES, Jan. 30, 1992, at A5.

74. *Algeria: Political Situations*, LLOYDS INFO. CASUALTY REP. LLOYDS LIST, Feb. 11, 1992, available in LEXIS, News Library, Ttxtnews file (reporting that over 40 imams had been arrested).

75. AMNESTY INT'L, *supra* note 21, at 14 (reporting arrest of at least 30 journalists and suspension or closure of at least 15 newspapers since coup).

76. Ibrahim, *Ask Followers*, *supra* note 67, at A5.

On February 9, 1992, following disturbances in most major cities, the army declared a twelve-month state of emergency and banned the FIS.⁷⁷ An administrative court ordered the dissolution of the FIS on March 4, 1992. The government shut down newspapers published by the FIS, and universities, which had become a focal point for protest.⁷⁸ Dissolution of municipal councils and regional assemblies controlled by the FIS followed on March 30, along with the arrests of the FIS representatives.⁷⁹ Between 8800 and 30,000 FIS followers were sent to detention camps in the southern Sahara during the month of March.⁸⁰

Once the FIS was officially banned, a pattern of violent confrontation between the junta and the fundamentalists quickly emerged. The FIS was openly calling for armed resistance by the end of April.⁸¹ Thus, only a few short months after the elections had generated such great hopes for establishing democratic processes, both sides resorted to the use of violence to resolve questions of power allocation.

Nevertheless, FIS leaders Madani and Belhadj received comparatively lenient twelve-year jail sentences from a military tribunal in Blida on July 15. This leniency may have signalled a government desire to de-escalate the confrontations.⁸² If that de-escalation was indeed the government's intention, its signal was overshadowed by sparse evidence and unfair trial proceedings, which prompted the defendants and their lawyers to boycott the proceedings.⁸³ Fundamentalist protests of the tribunal's sentences led to more clashes and arrests in the next few days.⁸⁴

On August 26, 1992, a bomb killed nine people and wounded more than one hundred in the Algiers airport terminal. Another bomb exploded near the Air France office downtown, and a third was defused near the Swissair office.⁸⁵ In response, a new Legislative Decree introduced tougher sentences and other means of combating "terrorism" — and led to dramatic increases in

77. On February 7, 1993, the High State Council renewed the state of emergency indefinitely. AMNESTY INT'L, *supra* note 21, at 2.

78. *Algeria Suspends 3 Newspapers in Capital*, N.Y. TIMES, Aug. 10, 1992, at A5; *Algeria: FIS Banned as Authorities Turn the Screw*, MIDDLE E. ECON. DIG., Mar. 13, 1992, at 11, 11 [hereinafter *FIS Banned*].

79. Youssef M. Ibrahim, *Algeria Tightening Rein on Fundamentalists*, N.Y. TIMES, Mar. 31, 1992, at A8. In April, Interior Minister Belkheir discussed dissolving 430 councils run by the FIS. *Algeria: Political Consensus Blocked as Authorities Take Hard Line*, MIDDLE E. ECON. DIG., Apr. 3, 1992, at 18, 18.

80. Wright, *supra* note 4, at 135. Many have been arrested and detained in camps in the Sahara without notice of the charge against them and without notice to their families, sometimes merely for reading FIS materials (before the FIS was banned), even though they themselves have never advocated violence. Torture has become widespread. AMNESTY INT'L, *supra* note 21, at 3-5.

81. *Algeria's Muslims Urged to Move 'to Rifles'*, N.Y. TIMES, Apr. 23, 1992, at A9.

82. Youssef M. Ibrahim, *2 Fundamentalists in Algeria Get Relatively Light Sentences*, N.Y. TIMES, July 16, 1992, at A5.

83. AMNESTY INT'L, *supra* note 21, at 9.

84. *Algeria Arrests Muslims Protesting Jail Sentences*, N.Y. TIMES, July 19, 1992, at A3 (reporting three dead, 15 wounded, and estimated 36 arrested in two days).

85. *Blast at Algiers Airport Kills 9 and Wounds 100*, N.Y. TIMES, Aug. 27, 1992, at A5 (noting that 130 police and soldiers had been killed in attacks by armed Muslim bands and that FIS leaders had been sentenced in July to up to 12 years in jail for sedition and advocating holy war against Algerian government).

reports of torture and other forms of government mistreatment of prisoners.⁸⁶

On the economic front, tensions between President Boudiaf and Prime Minister Ghazali prevented the formation of a comprehensive plan to deal with Algeria's debt, inflation, and shortages.⁸⁷ When Ghazali was forced to resign on July 9, 1992, he blamed both corrupt officials and the fundamentalists for the economic crisis and accused the government of plotting against political and economic reform.⁸⁸

As the preceding recital indicates, the decision to annul the elections and use force to exclude the fundamentalists from their democratically earned right to govern has had extensive destabilizing effects in Algeria. Only nonfundamentalist Algerians have retained their cultural freedoms. The junta has retained its power. Economic reform and development have been paralyzed. The nation has been subject to unrelenting violence between the police and fundamentalists. The military government, moving increasingly away from the rule of law, has created secret courts with the authority to retroactively increase sentences. Tens of thousands of Algerians have died, and tens of thousands more have lost their civil liberties as the government has institutionalized human rights violations.

The most striking example of the breakdown in stability in Algeria was the assassination of President Boudiaf on June 29, 1992. During his first speech outside the capital, President Mohammed Boudiaf was shot by a member of his own security guard. No clear account of the attack emerged. Although the fundamentalists had sufficient incentive, the Algerian leadership also had reason to dispose of a man who had begun to act independently, rather than as a mere figurehead. Boudiaf apparently wanted to crack down not only on the FIS, but also on the corrupt old guard of the FLN.⁸⁹

The government added to the confusion surrounding the slaying by releasing only an edited film of the assassination more than a week after the incident and by declining to make specific statements about the number or identity of the attackers. As different factions in the leadership tried to distance themselves from the killing, the newspapers under their respective control reported different accounts of the murder.⁹⁰ Interestingly, the Associated Press revealed that doctors at Ain Naadja military hospital reported President Boudiaf's time of death as 4:00 p.m. even though official radio had announced his death three hours earlier.⁹¹

The confusion of accounts and the government's lack of candor led many Algerians to hold the Army responsible for the assassination, a belief that

86. AMNESTY INT'L, *supra* note 21, at 5, 9 (Legislative Decree 92-03). In addition, courts began to pass death sentences. *Id.* at 9.

87. Cheriet, *supra* note 35, at 9, 14.

88. *Id.*; Jackie Rowland, *Algeria Picks New PM After Resignation*, GUARDIAN (Manchester), July 9, 1992, at 11.

89. The month before, in May, Boudiaf began his anti-corruption campaign by bringing high-ranking general Mustapha Benloucif to trial. See Alfred Hermida, *Algeria: Algiers Unnerved by "Mafia" Links of Boudiaf Killers*, OBSERVER, July 5, 1992, at 19.

90. *Top Fundamentalists Said Targeted in Jail Carnage*, AGENCE FRANCE, Feb. 23, 1995, available in LEXIS, World Library, Allwld File.

91. Youssef M. Ibrahim, *Algerian President Fatally Shot at Rally*, N.Y. TIMES, June 30, 1992, at A8 [hereinafter Ibrahim, *President Fatally Shot*].

weakened popular support for suppression of the FIS. Algeria's largest independent daily, *Al Watan*, boldly editorialized that "Boudiaf has been a victim of the system. The death of Boudiaf, who fought a solitary battle for a total break with the rotted system that has governed Algeria, has demonstrated that 'conspiracies of the shadows' remain, unfortunately, very influential and very powerful."⁹²

Boudiaf's successor, President Ali Kafi, did nothing to dispel the suspicions. Although he quickly appointed a panel of six lawyers to conduct an investigation, the government released only part of the panel's report. The report drew no conclusions as to the organizers of the assassination. Instead, it merely commented that the key question to ask was who benefited from Boudiaf's death. The panel did not recommend taking action against the security forces that it had earlier accused of "criminal and sinful" lapses;⁹³ and it failed to explain how a lone gunman could kill dozens of people and escape unharmed. Nor could the report account for other irregularities in the security arrangements, such as why the gunman was added to the security team at the last minute over an officer's objections that he had Islamic tendencies.⁹⁴

E. *Western Response to the Coup*

Many Western scholars and journalists condemned the coup and questioned the lack of international response. *The Economist* said that "non-democrats alone should cheer" at this serious interruption of the "drift towards democracy, which is catching in all corners of the globe."⁹⁵ It went on to note that Jordan, Turkey, Malaysia, and Pakistan have all had much more success in fighting militants by drawing them into a political system, at least in a small way.⁹⁶ Responding to the situation in Algeria, Reuters proclaimed that "it is not clear what path a freely chosen Islamic government would have followed in Algeria. What is clear is that by ending their democratic experiment, Algerian authorities have opened the way to potentially greater instability and violence."⁹⁷ *The New York Times* editorialized that "[w]hen Algeria's army staged a coup in January, heading off an anticipated Islamic electoral triumph, Washington, like other Western governments, winked."⁹⁸ *The Times* noted that apologists dismissed the FIS's official line promising conciliation and economic reform and believed instead that radicals would soon have replaced

92. Youssef M. Ibrahim, *Hope, Too, Is Gunned Down in Algeria*, N.Y. TIMES, July 5, 1992, at 3.

93. Alfred Hermida, *Assassination Cover-Up?*, MIDDLE E. INT'L, Dec. 18, 1992, at 11.

94. *Id.* at 12; *Boudiaf Inquiry Submits First Findings*, MIDDLE E. ECON. DIG., Aug. 7, 1992, at 7, 7.

95. *Algeria Retreats*, ECONOMIST, Jan. 18, 1992, at 16, 16.

96. *Id.*

97. Reuters, *Algeria: Frustration and Fundamentalism*, THE AGE (Melbourne), July 6, 1992, available in LEXIS, World Library, Allwld File. *Newsweek* stated that "[w]hat is clear is that to call off an election because it's turning out badly for your side is very undemocratic indeed." Kenneth Auchincloss, *Limits of Democracy*, NEWSWEEK, Jan. 27, 1992, at 28, 30.

98. *Democracy Denied in Algeria*, N.Y. TIMES, July 24, 1992, at A24. *The New York Times* also editorialized that President Bush and his administration were "shamefully reluctant" to criticize the coup. *Algeria: Democracy Betrayed*, N.Y. TIMES, Jan. 14, 1992, at A22.

the moderates.⁹⁹ Other Western leaders expressed the opinion that civil war would have been inevitable if the election results had not been overturned.¹⁰⁰

However, while the media questioned the wisdom and legitimacy of the coup, “[m]ost western governments made little secret of their relief.” This response indicated that even “mature” democracies will support elections only as long as the wrong guys do not win, “especially if the wrong guys are Islamists.”¹⁰¹

The U.S. government did not condemn the coup. Rather, the United States at first called the junta’s actions constitutional but expressed “regret” about the coup and the suspension of democratization.¹⁰² Then-presidential candidate Bill Clinton supported the coup, commenting that “we know that ballot boxes alone do not solve every world problem.”¹⁰³ In closed-door sessions, the U.S. government did express concern about human rights abuses and reiterated its desire to see elections resume. However, the United States reportedly received assurances that the Algerian government, in private meetings and otherwise, proclaimed a commitment to democratization.¹⁰⁴

The European Community initially made only a few weak statements, expressing “strong hope” that the Algerian authorities would take efforts to return the country to normal life.¹⁰⁵ French President Francois Mitterand weakly criticized the army’s actions and called for the resumption of free elections.¹⁰⁶ The chief spokesman of the French Foreign Ministry, Daniel Bernard, completely avoided criticizing the coup by noting that “it [was] not up to France to judge these events.”¹⁰⁷ Italy and Spain were

99. *Id.*

100. *Keeping Islamists Out of Power*, MIDDLE E. ECON. DIG., Jan. 24, 1992, at 5, 5.

101. *Elections All Round*, ECONOMIST, Oct. 10, 1992, at 18, 18 (drawing sharp distinction between governments who are democratic “shammers” — who should be stopped — and “toddlers” — who should be encouraged even if they do not do everything properly); see also Andrew Bilski et al., *Islam’s Broadening Sweep*, MACLEAN’S, Jan. 27, 1992, at 20, 20 (describing Western leaders as “conspicuously silent”); Francis Ghiles, *Algeria’s Nomenclatura Clings to Power*, MIDDLE E. INT’L, Dec. 18, 1992, at 19, 19 (“an audible sigh of relief went up from European capitals”).

102. Wright, *supra* note 4, at 137. This message, along with the message in the central Asian republics, which seemed to be as much anti-Islam as pro-democracy, will not be missed by Islamists seeking help and trying to assess their realistic options for support.

103. Thomas L. Friedman, *Clinton Asserts Bush Is Too Eager To Befriend the World’s Dictators*, N.Y. TIMES, Oct. 2, 1992, at A1, A21.

104. *Background on Algeria*, U.S. Dep’t of State (Dec. 1992) (on file with author).

105. *EC Governments Urge Peaceful Dialogue in Algeria*, Reuters, Jan. 23, 1992, available in LEXIS, News Library, Wires File.

106. Ibrahim, *Hope for Democracy*, *supra* note 8, at A5.

107. Alan Riding, *France Voices Concern on Algerian Situation*, N.Y. TIMES, Jan. 14, 1992, at A7. Gerard Longuet of the small Republican Party said, “[b]etween the Islamic Salvation Front and the freezing of democracy under the army’s control, I prefer the latter.” *Id.* A spokesman for Recours-France, an association of French nationals who have lived in Algeria, observed that “in reality it constitutes Algeria’s last chance of saving democracy and avoiding the fatality of fundamentalist totalitarianism.” *Id.* The conservative newspaper *Le Figaro* wrote a front page editorial stating that Algeria was not ready for democracy. While these groups are not in power, their strong support of the coup let the French government know that it would not face domestic pressures for failing to oppose the coup; indeed, it would face strong pressure if it was perceived as supporting the FIS. *Id.*

Le Monde and the left-of-center *Liberation*, however, both criticized the coup. *Le Monde* noted that army intervention would be warranted *when and if* the FIS established fundamentalist totalitarianism, asking “Isn’t the cure worse than the malady?” *Id.* An Islamic leader in northern France, Amar Lasfar, complained that the West considers democracy to be the best system for everyone “except for Arabs and Muslims.” *Id.*

"noncommittal."¹⁰⁸ Other Western governments allowed the junta to send their representatives on official visits to explain their actions and plans.¹⁰⁹

Western denunciation of the coup would have lent welcome support to the many "Arab lawyers, professors, journalists, and feminists who once looked to leftist ideologies [but who] have gravitated to a creed of human rights as the best way to bring democracy, development, and social justice to the region."¹¹⁰ Unfortunately, concerns about maintaining access to oil and containing Iran's Islamic revolution have often led the United States and Western powers to maintain relations with established regimes and thus to ignore human rights abuses. Such policies marginalize many former leftists who might now be effective advocates for democracy.¹¹¹

In fact, rather than isolating the Algerian military government, Western powers initially decided to help it. Italy bought thirty-six percent of Algeria's natural gas exports, and France, Belgium, and Spain were also large customers at the time of the election.¹¹² While the assassination of President Boudiaf caused concerns about Algeria's stability sufficient to call into question \$460 million in expected aid from the European Community,¹¹³ European and American banks still decided to loan a total of \$1.45 billion to assist the junta in addressing economic problems and servicing Algeria's debt.¹¹⁴ Within a few months, the new government soon signed agreements with more than 100 private banks (mostly U.S. and Japanese) to refinance its debt.¹¹⁵ In addition to the financial arena, Algeria has remained welcome in other international forums. For example, barely six months after the coup, the United States supported Algeria's candidate, Dr. Mohammed Abdelmoumene, for the position of Director General in the World Health Organization.¹¹⁶

While Western democracies were generally silent, Algerian civil society almost uniformly opposed the military's actions. This broad opposition arose despite the anxieties many held concerning how the FIS would behave if it were allowed to exercise parliamentary control. Elements of the FLN and other parties that had won parliamentary seats joined the FIS in denouncing the suspension of the constitution and demanding that the second round of voting take place as planned.¹¹⁷ The Secretary-General of the FLN accused those who had taken over the government — many of whom had been his former colleagues in the FLN — of violating the constitution and seizing power

108. Bilski et al., *supra* note 101, at 20.

109. Wright, *supra* note 4, at 137.

110. Lief, *supra* note 8, at 24. These activists and the fundamentalists are fighting against the traditional Arab state system, although the fundamentalists reject those human rights claims that contradict Islamic law. *Id.*

111. *Id.*

112. Land, *supra* note 57.

113. Ibrahim, *President Fatally Shot*, *supra* note 91, at A8.

114. Wright, *supra* note 4, at 137.

115. *Murder in Annaba*, THE ECONOMIST, July 4, 1992, at 37, 37.

116. Lawrence K. Altman, *Head of U.N. Health Agency Is Embroiled in Battle for Re-election*, N.Y. TIMES, Aug. 10, 1992, at A3.

117. Elements of the FLN and the FIS found themselves linked by mutual interests for the first time. Eventually, in October 1991, a faction of the FLN formed the Committee in Support of Political Prisoners to support Madani, Belhadji, and other political prisoners. This collaboration marked the first formal link of support between the FIS and the FLN. Entelis & Arone, *supra* note 28, at 34.

illegally.¹¹⁸ Even the women's associations, workers' unions, and professional groups that had called for intervention against the FIS, as well as a number of government officials, initially refrained from giving the junta their support.¹¹⁹ Former Algerian President Ben Bella criticized the military coup, telling President Boudiaf that "the FIS is a political problem and the solution must be political."¹²⁰ The FFS leader, Hocine Ait-Ahmed, argued that the coup would "only worsen the problems."¹²¹ The president of the independent, nongovernmental Human Rights Association also denounced the junta's actions, stating that "[a]rmy rule is not in the interest of the country."¹²² Similarly, the League for the Defense of Human Rights deplored the "brutal and unjustified interruption of the democratic process,"¹²³ and announced that Algeria had "plunged into a level of repression never reached before."¹²⁴ Even the FLN split into two wings: those who supported the coup remained in the government, and those who opposed the coup entered the opposition.¹²⁵

III. EVALUATING THE LEGITIMACY OF THE COUP

As the preceding Part demonstrates, the junta defended the coup as a necessary response to the actions and plans of the FIS. In order to properly evaluate the legitimacy of those actions and plans, this Part will examine the proper role of Islamic belief within a society that aspires to democratic, pluralistic ideals.

Of course, comparing the coup to the impossible ideal of a perfect democracy, or even to the ideal of a relatively mature democracy like the United States, is a misleading and harmful comparison. Algeria is an Arab state, a non-Western society, and a developing nation. Thus, Algeria and other Arab nations adopting democracy will develop a form of democratic governance that is unique and that incorporates their Arab and Islamic cultural history and background, just as Western democracy reflects our Greco-Roman and Judeo-Christian secular heritage. In fact, a powerful cultural force throughout the Arab world during the past several centuries has been precisely the desire to discover how to borrow demonstrably effective Western ideas and institutions without surrendering or losing the Islamic and Arab culture and heritage that provide a sense of identity, self-worth, and connection to the past and future.

To help determine whether governance by the FIS would, in fact, have been incompatible with democracy, this Part will explore the relationship

118. *Id.*

119. Youssef M. Ibrahim, *3 Algerian Parties Demand Elections Be Restored*, N.Y. TIMES, Jan. 16, 1992, at A5.

120. *FIS Banned*, *supra* note 78, at 11.

121. Ibrahim, *Rulers Taking Power*, *supra* note 64, at A10.

122. Youssef M. Ibrahim, *Algerian Leaders Form New Council*, N.Y. TIMES, Jan. 15, 1992, at A5.

123. Lofti Belhadi, *West Must Help Democracy in Algeria*, N.Y. TIMES, Feb. 3, 1992, at A14 (letter to editor by President of North African Students for Freedom).

124. *Algeria: Concern Rises About Human Rights*, MIDDLE E. ECON. DIG., Mar. 6, 1992, at 10, 10.

125. See Juan Goytisolo, *Algeria in the Eye of the Storm*, NEW STATESMAN AND SOC'Y, Aug. 19, 1994, at 22, 22.

between fundamentalism and democracy. Section A will discuss the problem of defining government goals in a pluralistic society. Majority and minority rights will be the focus of Section B. Section C will discuss the role of religious belief in society, and Section D will briefly examine Islamic jurisprudence in light of pluralistic goals.

A. *Problems Presented by Pluralism*

The determination of societal goals is difficult even in a highly homogeneous society. The difficulty increases with the degree of pluralism because different social groups often have incompatible visions of a good society.¹²⁶ Significant policy choices will be made on the basis of such visions. Persons living in a pluralistic society therefore care deeply about the choice of their political leaders and the goals the government strives to achieve.¹²⁷

Fundamentalists¹²⁸ and secularists often seek the same goals, such as enhanced security, deterrence of aggression, economic security, social justice, and the promotion of certain values.¹²⁹ Because these groups view the underlying realities of the world differently, however, they often differ about the best path to follow to attain their common goals. For instance, both believe that many human ills are attributable to the misuse of power. Secular democrats seek a solution to this problem in a system of effective checks and balances on governmental leaders. Some influential Islamic scholars, on the other hand, have argued that the source of injustice is the power of humans over other humans, and therefore that society must rely on the sovereignty of Allah rather than on the democratic sovereignty of the people.¹³⁰

Religion arouses strong passions precisely because it addresses fundamental questions of life. At the same time, a pluralistic society cannot exist in peace unless its members agree on certain basic rules. Foremost among these rules are those concerning the allocation and the limitation of power. Not surprisingly, some elements within the Islamic fundamentalist movement challenge Western democratic views on these issues of power.¹³¹

The elites in Algeria kept the FIS from assuming power and excluded it

126. Nevertheless, such agreement is essential. "Without general agreement on the shape of the cultural system and its values, national integration at all levels is in jeopardy." RUEDY, *supra* note 14, at 224 (discussing conflict of values between European-educated revolutionary leaders and Islamic masses and mentioning governmental efforts to control dissident Muslim voices).

127. For a discussion of the constitutive process of authoritative decisionmaking and the process of specifying and choosing alternatives, see generally HAROLD D. LASSWELL & MYRES S. MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY: STUDIES IN LAW, SCIENCE AND POLICY* 728 (1992).

128. The term "fundamentalism" usually carries a negative connotation, especially for Westerners discussing Islam. This negative connotation is directed at political views that often include a preference for an authoritarian structure of government. Similarly, the term "secularist" often carries a positive connotation that implies full compatibility with democracy. However, as the junta has amply demonstrated, a secular government can be as repressive and authoritarian as a government based on any other belief system. See *infra* parts II.D, V.

129. Edward P. Djerejian, Assistant Secretary for Near Eastern Affairs, The U.S., Islam, and the Middle East in a Changing World, Speech delivered at the Meridian House, Washington, D.C. (June 2, 1992) (listing these goals as "broad policy goals of the United States") (transcript on file with author).

130. Dunn, *supra* note 4, at 20 (discussing teachings of Sayyid Qutb).

131. See Entelis & Arone, *supra* note 28, at 28.

from the political process. The impetus for this exclusion was a fear that FIS governance would do to them what they have done to the fundamentalists: exclude them from power, impoverish them, and impose on them a value system they find abhorrent. Unless a ruling group accepts that other groups built around different belief systems can legitimately participate in government, the basic ideal of peaceful coexistence in a pluralistic society may be impossible to attain. Because no group will accept exclusion, a functioning pluralistic democracy must provide theoretical justifications for and practical protection of basic minority rights.

B. *Balancing Majority Rights Against Minority Rights*

Modern democratic theory rests on two principles that are constantly in tension: the right of the majority to have its voice obeyed, and the right of the minority to have certain fundamental rights protected from majority oppression.¹³² Western governments generally have interpreted the events of the coup as a choice between supporting majority rights (democracy and the winners of an election) and supporting minority rights (including, purportedly, the certainty of future elections and individual autonomy). As discussed in Part IV, this second choice did not in reality exist because the junta has demonstrated no commitment to holding future elections or protecting basic civil rights. Moreover, the hesitant international response reveals the tension inherent in defining that core set of minority rights that are not open to political debate.¹³³

Each minority right limits the sovereignty of the majority, that right to not be restricted or controlled by a minority, which is exactly what a democratic revolution is all about. When the population — the majority and the minority — share the same world view, the same epistemology, the same values, such limits cause only minor irritation at the margins. In that case, the scope of those minority rights is generally agreed to, both because most everyone has an essentially identical analytical approach and because all acknowledge that *ex ante*, before the conflict, they would have regarded such rights as protecting their own best interests in a future in which they could not be certain beforehand whether they would be in the majority or the minority.

In the face of true moral pluralism, however, when there exists within a society two or more fundamentally different conceptions of ultimate reality, of what is right, and of how to determine what is right, these conflicts cease occurring only at the margin and begin to occur in critical areas, such as women's suffrage and the legitimacy of using violence to overcome defeat at the polls. Adopting an *ex ante* view is difficult for two reasons: First, basing analysis on different fundamental views may well lead to different *ex ante* conclusions about the proper ground rules. Second, the division is often along ethnic or religious lines, which change slowly, so that those who in the future

132. Mortimer, *supra* note 18, at 576. Besides majority rule, democracy requires "values of tolerance, civil rights for minorities, and the protection of basic freedoms which are still relatively untested in Algeria." *Id.*

133. See *infra* part II.E.

will be the majority and the minority are already identified to themselves and others, thus prompting the majority to seek more restrictions on the minority than it would if it truly feared becoming the minority, and prompting the minority to seek more rights than it would want to grant a minority if it were someday to become the majority.

Balancing minority and majority rights requires a clear vision of the right of minorities to veto certain majoritarian instincts. Although establishing a clear definition of minority rights is extremely difficult, the need for one has become more urgent as the peoples of the world have increasingly come together into a common community.¹³⁴ No longer is the world composed of distinct, isolated, self-sufficient, and autonomous sovereign states beyond the reach of international interference.¹³⁵ Instead, it is increasingly viewed as one community in which the human rights of each citizen ought to be protected regardless of international boundaries.¹³⁶ The convergence of these two trends — the increasing linkages between nations and the new focus on individual rights — has increased the need to define those core minority rights. By increasing the level of interaction between people with different moral belief systems, this convergence has also increased the difficulty of agreeing on any definition of minority rights.¹³⁷

A brief examination of the conflicts between the fundamentalists and the secularists in Algeria thus serves as a useful preliminary to an evaluation of the coup. The Islamists claimed that the combination of religious freedom and majority rule allowed them to legislate in accordance with their beliefs even though their beliefs may have conflicted with the rights of others. The secularists, on the other hand, claimed that the mere threat of such impositions justified the practices that restricted the freedom of the Islamists by restricting their rights to worship, assemble, and speak.

134. See, e.g., Wilfred Cantwell Smith, *Comparative Religion: Whither — and Why?*, in THE HISTORY OF RELIGIONS 31, 33 (Mircea Eliade & Joseph M. Kitagawa eds., 1959). Balancing minority and majority rights also creates a clash between an emerging "world culture" and individual "national cultures." John P. Entelis, *Introduction to STATE AND SOCIETY*, *supra* note 1, at 6.

135. This was the statist view of sovereignty. See W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866, 869 (1990). Professor Reisman defines the proper view of sovereignty as "the continuing capacity of a population freely to express and effect choices about the identities and policies of its governors." *Id.* at 872.

136. *Id.*

137. The problem of religious pluralism has always existed. The world historically has handled religious differences through force, as demonstrated by the persecution which led the Pilgrims to America, the forceful imposition of Catholicism in South America, the Crusades, and the bitter fighting in India between Hindus and Muslims. Until recently, it was more or less possible to divide the world geographically so that each geographic unit was more or less homogenous — or at least subject to the control of one religious group. In that world, only elites needed to encounter and deal with religious pluralism. In the modern world, however, with the conception of individual autonomy and with increasing international travel, migration, and commerce, encounters with religious pluralism have become much more common in everyday life. Moreover, these encounters occur *within* a society, not *between* societies. These factors, especially concern for individual autonomy, have given religious minorities the social power necessary to demand accommodation rather than expulsion or repression.

C. *The Role of Religion in Society*

Any discussion of Islamic fundamentalism requires consideration of the role of religion in society. This discussion is difficult, first, because the term "religion" is inherently ambiguous.¹³⁸ Defining religion and religious beliefs is an especially difficult task for the West, where social sciences have generally ignored or been hostile to the dynamic vitality of religion in the lives of countless individuals.¹³⁹ Consequently, theories addressing democracy and social problems have failed to provide an integrated understanding of how religion affects social interactions and shapes political views.¹⁴⁰

Second, examining the proper role of Islamic fundamentalism within a pluralist society is difficult because many people in modern secular societies claim to live without religion.¹⁴¹ As they do not view their belief system with traditional religious labels, discussing such people is difficult because of a curious absence of appropriate vocabulary. For lack of a more well defined term, this paper uses the term "secularist" to broadly refer to this whole range of modern belief systems.

The lack of definitional precision regarding religion and the difficulty in determining the proper hierarchy of rights would be of less concern if international law had established an institutional mechanism with a specific mandate to protect religious liberty. Such an institution would be able to define the relevant terms and respond to extraordinary situations, like those that give rise to coups. Although the issue of religious freedom does come within the jurisdiction of general human rights committees, it is often overshadowed by

138. Although no widely accepted definition exists, the *travaux préparatoires* of the Declaration on the Elimination of Intolerance and All Discrimination Based on Religion and Belief indicate the drafters' understanding that "religion" includes "theistic, non-theistic and atheistic beliefs." Donna J. Sullivan, *Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination*, 82 AM. J. INT'L L. 487, 491 & n.17 (1988) (quoting UN Doc. E/3925, Annex, at 1, 3-4 (1964); 1978 UN ESCOR Supp. No. 4, at 62, UN Doc. E/1978/34).

139. For an example of recent discussion of this historical trend, see Ellen K. Coughlin, *Social Scientists Again Turn Attention to Religion's Place in the World*, CHRON. HIGHER EDUC., Apr. 1, 1992, at A6, A6 (noting that behaviorism and positivism wrongly assumed that religion would disappear in modern science-based civilization); Martin E. Marty, *Explaining the Rise of Fundamentalism*, CHRON. HIGHER EDUC., Oct. 28, 1992, at A56, A56. Marty claims that three biases inhibit understanding of fundamentalists: first, a bias against studying religion that causes most modern scholars to spend their career fighting or ignoring religion; second, a belief that movements are outmoded and dying out and thus are not relevant to addressing problems of today and tomorrow, even though empirical evidence demonstrates that movements are growing; and third, a disapproval or abhorance of fundamentalist goals that blinds scholars to the "fearful, law-abiding, well-intending citizens . . . whose own cries of pain and shouts of resentment deserve a hearing." *Id.*

140. Coughlin, *supra* note 139, at A8 (discussing how academics such as Stephen Warner at University of Illinois at Chicago and Robert Wuthnow at Princeton are studying how to measure religion's influence in society and to devise theory of modernization that accounts for religion).

141. Algeria is not alone in facing this conflict. A similar competition for power has repeatedly occurred in the United States. For scores of years, the United States was in effect a Protestant democracy, i.e., a democracy in which public discourse was more or less limited to views based on the philosophical, religious, and economic assumptions of the prevailing Protestant belief system. Sometime in the twentieth century, probably in the 1960s, the United States became a secular democracy, as adherents to secular belief systems became the cultural elites and public discourse came to exclude traditional religious viewpoints. The recent rise of the religious right has renewed discussion of the need for American democracy to accommodate both belief systems. Unlike the situation in Algeria, however, the competition in the United States has taken place in a setting where both groups generally accept the system of democracy and reject the idea of adopting an authoritarian form of government or of using violence to attain political change.

violations against free speech, personal security, torture, etc. Indeed, commentators generally assert, without explanation, that religious rights must give way to other human rights.¹⁴²

Some, including some members of the FLN, blame religion for many world conflicts and thus seek to banish religion to a merely private role so that it does not claim a place in political affairs.¹⁴³ Yet, these exclusionary attempts are based on a false view of the danger of the interaction of religion with political life. In fact, studies have shown that formal relationships between religious and governmental organizations do not bear any apparent causal connection to government violations of human rights. Indeed, these studies also demonstrate that much of the tension in the world today can be traced to the fact that followers of traditional religions perceive themselves to be deprived of "recognition, full dignity, and equality — three values that many modern political and legal systems do not readily concede to religious forces."¹⁴⁴

This exclusionary view seeks to adopt a very restrictive role for religion, a role that effectively belittles the sincerely held views of other people concerning fundamental conceptions of causality, cosmic order, and human purpose. Moreover, it defines terms in a way that protects the speaker's views on those same subjects from exclusion.¹⁴⁵

In keeping with their belief that they have divorced themselves from all "religious" beliefs, many such secularists argue that public policy discussions should include their own fundamental views of life but exclude the

142. While these other human rights are all-important, the tendency to always choose other values over religious freedom provides religious believers with little reason to expect protections such as that contained in Article 29 of the Universal Declaration. See, e.g., THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS 155 (1986) (expressing his opinion that goal of obtaining women's equality may well require encroachment on religious freedom); Arcot Krishnaswami, Study of Discrimination in the Matter of Religious Rights and Practices, U.N. Doc. E/CN.4/Sub.2/200/Rev.1 (1960), U.N. Pub. No. 60.XIV.2, reprinted in 11 N.Y.U. J. INT'L L. & POL. 227, 234 (1978). But see Roger S. Clark, *The United Nations and Religious Freedom*, 11 N.Y.U. J. INT'L L. & POL. 197, 210 (1978) (expressing opinion that society should not rely on law to suppress all religious intolerance because such laws "may conflict with other legitimate human rights objectives"); Abner S. Greene, *The Political Balance of the Religious Clauses*, 102 YALE L.J. 1611 (1993) (arguing that religious arguments ought to be excluded from policy discussions, but that this restriction must be balanced with religious exemptions from otherwise generally applicable laws).

143. This Article at times draws a distinction between religious freedom, viewed primarily as an individual right, and the relationship between government and religious organizations, both of which are means by which individuals, exercising their rights, relate to other individuals and to other groups of individuals. In a large, complex society, many individual interests are expressed and protected only through groups. The National Rifle Association and other PACs and special interest groups are naturally formed to focus on a select issue (or issues) shared by many members of society and to bring these interests before the body politic. In the same way, individuals form religious organizations (and even political parties in a society with numerous small special interest parties) to bring their specific interests before the body politic.

144. James A.R. Nafziger, *The Functions of Religion in the International Legal System*, in THE INFLUENCE OF RELIGION IN THE DEVELOPMENT OF INTERNATIONAL LAW 152 (Mark W. Janis ed., 1991); Sullivan, *supra* note 138, at 487.

145. Islam has encountered other ideas that sought to limit it to "private" life. Islamic philosopher Mohammed Iqbal concluded that nationalism "comes into conflict with Islam only when it begins to . . . demand[] that Islam should recede to the background of a more private opinion and cease[] to be a living factor in national life." Zeenath Kausar, *Dynamics of Islamic Polity*, 36 ISLAMIC Q. 100, 111 (1992). Democracy, capitalism, and other Western concepts encounter the same form of resistance when they seek to supersede Islam as the most fundamental principle of some area of public life.

fundamental views of their religious opponents.¹⁴⁶ Some secularists, including members of the FLN, thus seek to constrict religion to a private sphere¹⁴⁷ so that it does not claim a place in political affairs.¹⁴⁸ Such an exclusionary view seeks to limit the “acceptable” definition of “religion” to one that is pietistic; i.e., focused exclusively on the individual’s personal relationship with God, and therefore completely private.¹⁴⁹ Also, by merely focusing on labels, this approach overlooks the fact that traditional “religious” views and modern “secular” views often serve the same functional purpose¹⁵⁰ in people’s lives and refuses to accept that the political system should thus treat them the same way.¹⁵¹ Ultimately, a nation must commit to some pattern of justification in order to choose its goals and act on them. To allow “nonreligious” arguments but forbid “religious” arguments is to make a

146. Having no empirical proof of the existence of a god or of revealed truths, many people in modern societies have chosen — explicitly or implicitly — to guide their actions on the basis of belief systems that do not derive ethics from divine commands and that are thus effectively agnostic. This world view unsurprisingly leads to different ethical conclusions than one which incorporates belief in various divine revelations regarding ethics. Because of this conflict in basic world views, some observers have concluded that, whereas much of the twentieth century was focused on the conflict with socialism, “[f]or the future it is not implausible to predict that . . . the tension between tentative versus dogmatic attitudes will become one of the most polarizing forces within the world community.” MCDUGAL ET AL., *HUMAN RIGHTS AND THE WORLD PUBLIC ORDER* 688 (1980).

147. For one such proposal, see Lahouari Addi, *Algeria’s Democracy Between the Islamists and the Elite*, MIDDLE E. REP., Mar.-Apr. 1992, at 36, 36. Addi, a sociology professor at the University of Oran, argues that human rights are “premised on the ‘private’ character of religion.” A U.N. special rapporteur appointed for further study expressed concern that “the intransigence of extremist elements and their demand for a literal interpretation, without consideration of the context of certain religious precepts, is at the root of many of the current manifestations of religious conflicts in the world . . . [and has] become a destabilizing factor in the international system . . .” *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, Commission on Human Rights, 46th Sess. paras. 103-04, U.N. Doc. E/CN.4/1990/46 [hereinafter *Elimination*] (report by Special Rapporteur Angelo Vidal d’Almeida Ribero). The representative of the International Association for the Defense of Religious Liberty has also expressed concern over “the serious threat posed by the rise of secular and religious fanaticism.” *Summary Record of the 46th Meeting*, Commission on Human Rights, 47th Sess. para. 190, U.N. Doc. E/CN.4/1991/SR.46.

148. This secular fear of being governed by a different value system is functionally equivalent to the FIS’s belief that rule by an infidel is blasphemous, and indeed to every religious argument that advocates a theocracy on the basis that those particular religious values are necessary to achieve a good society. Both the religious and the secular arguments essentially reject moral pluralism within politics as untenable.

149. For a discussion of a contrary view, see Sullivan, *supra* note 138, at 500. Sullivan states that: [m]any religious doctrines or beliefs dictate standards of social conduct and responsibility, and require believers to act accordingly. For those adherents who follow such precepts of social responsibility, the distinction between religious and political activities may be artificial.

Id.

150. Although nonbelievers of a particular religion or world view may regard many traditional beliefs as simply “wrong” (whether they are beliefs about religion or communism), a democracy adopts policy not because it is right, but because it has majority assent. In addition, lack of empirical proof of a religious proposition or assumption is not the same as empirical disproof for that proposition or assumption. It is a logical error to assert that a policy choice should not be made because it is based on an unproven (but not disproven) religious assumption, only to replace it with a policy choice founded upon an equally unproven (but not disproven) agnostic or secularist assumption.

151. See generally STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF* (1993) (arguing that religion should never be restricted qua religion, but only because of conflict with secular purpose in which state has compelling interest). This view accords with one interpretation of one prong of the *Lemon* test, which requires that all government action be capable of justification by reference to secular principles. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

distinction where no difference exists.¹⁵²

In addition to these conceptual difficulties of defining religion and acknowledging its role in a pluralistic society, the presence of Islamic fundamentalism in Algerian society also leads to more practical concerns. One such problem involves balancing religious rights with other individual rights. Restrictions on the ability to engage in religiously motivated actions often result in restrictions on religious freedom¹⁵³ or other human rights, such as the rights to freedom of speech, assembly, and association.¹⁵⁴ Of course, religious norms themselves often conflict with norms of freedom espoused by competing groups. For example, an edict against pornography is contrary to some people's notion of free speech. Only a balancing of the factors that produce competing norms can resolve such conflicts.¹⁵⁵

In Algeria, however, the actions of the junta clearly and impermissibly restricted the power of religious institutions. Outlawing a religious party, imprisoning its religious leaders, prohibiting activities at religious centers, and stationing armed patrols around them all have chilling effects on religious freedom.¹⁵⁶ Even before the arrival of the junta, President Boudiaf had already attempted to control the FIS through restrictions that target religious practice by declaring that "using the mosques and using religion for political purposes is unacceptable because the mosques are for worship."¹⁵⁷ This statement, echoed in sentiment by others in Algeria and in the West, implies that religious justifications are *per se* illegitimate in politics and that therefore religious institutions ought to distance themselves from the political arena. The FIS properly challenges this intolerant and incoherent notion.

A second observation on the role of religion in society is the powerful impact religious institutions have as advocates for, and instruments of, political and social change. Limits on the right of religious institutions to enact such changes are difficult to define. Of course, discussing the issue merely in terms of "rights" obscures a vital point. Religion is not simply a harm that is practiced by a minority, with no benefit to society. Rather, religion has proven throughout history to be one of the most effective means of inculcating a sense

152. *But see* Abner S. Greene, *The Political Balance of the Religion Clauses*, 102 YALE L.J. 1611 (1992).

153. Sullivan, *supra* note 138, at 499. Sullivan states that although governments often try to justify such actions by portraying those claiming religious rights as insincere believers, "governmental violations of religious freedoms and persecution of religious leaders and groups under the pretense of restraining impermissible political activity are far more prevalent than is the use of a religious identity to camouflage actions motivated by purely partisan political concerns." *Id.*

154. *Elimination*, *supra* note 147, at para. 106 ("[T]he infringement of the rights and freedoms embodied in the Declaration usually results in the infringement of other human rights . . .").

155. Sullivan, *supra* note 138, at 510-11. For a general discussion of the "difficult and delicate question" of determining which practices unreasonably intrude upon the rights of others, see MCDUGAL ET AL., *supra* note 146, at 662.

156. The ideal of the rule of law, which has been denied in Algeria, seeks to avoid this damage. *See* Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., pmb., para. 3 ("Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.").

157. Tony Walker, *Algeria Bans Mosque Politics*, THE AGE (Melbourne), Feb. 5, 1992, available in LEXIS, World Library, Allwld File.

of rectitude.¹⁵⁸ Without rectitude, without occasional self-sacrifice for the common good, communities cannot hold together, trust each other, or provide the quality of life that all seek. Religious freedom is thus vital not only to the religious believers, but also to the community as a whole.

Third, one's view of the proper role of Islamic fundamentalism in Algeria depends on one's view of the proper role of government. One perspective holds that the ultimate goal and duty of the government is to promote individual security.¹⁵⁹ Individuals need security from external aggressors, from their own government, and from intolerant individuals within their communities. A second perspective views the primary goal of government to be the creation of a strong economy. Implicit in the "good" seen in this goal is the assumption that economic satisfaction is a necessary prerequisite to peace and security. A third perspective, that of the FIS and other fundamentalists, views the purpose and duty of government as encouraging, creating, and maintaining a proper relationship between the community and God.¹⁶⁰ Inherent in this vision of the "good" is the belief that people who have a proper vertical relationship with God will have proper horizontal relationships with their fellow humans.¹⁶¹

The first two perspectives tend toward considering law and government as the creators of rights that can be asserted against the state, other individuals, and interest groups. In contrast, the third perspective tends toward considering government as the enforcer of discipline, defined as a normative vision of what is proper.¹⁶² This latter vision, common to communist regimes and theocracies, raises the pertinent question of whether a government can enforce a normative vision and remain democratic.

For paradigmatic adherents to traditional theistic religions ("theists"),

158. Consider, for example, the many people throughout the centuries who have been motivated by their religious beliefs to fight against, inter alia, poverty, disease, war, and slavery. For a discussion of the concept of "rectitude" in the functioning of society, see HAROLD D. LASSWELL & MYRES S. MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY: STUDIES IN LAW, SCIENCE AND POLICY* 864 (1992) (defining rectitude as "a sense of responsibility for bringing the conduct of society and of the individual into conformity with the ideal of human dignity"). In an earlier work, Lasswell defined rectitude as "the cultivation of a sense of individual responsibility for evaluating all personal or collective policies in terms of their compatibility with the goal of human dignity." ARNOLD A. ROGOW & HAROLD D. LASSWELL, *POWER, CORRUPTION, AND RECTITUDE* 122 (1963).

159. See generally HAROLD D. LASSWELL, *WORLD POLITICS AND PERSONAL INSECURITY* (1935).

160. Madani and others reject the Western episteme that has created a "faithless individual" who is unaware of the omnipotence of the Creator and who is lost in the "multiplicity of interpretations of the nature of the universe." Bouthenia Cheriet, *Islamism and Feminism: Algeria's "Rites of Passage" to Democracy*, in *STATE & SOCIETY*, supra note 1, at 171, 178. Because of this, Western society suffers from moral deviance and psychological disturbances. *Id.* They do not view the Qur'an as merely filling in gaps of knowledge that science cannot provide, but rather as giving to mankind a necessary and otherwise unavailable systematized and generalized ordering of human knowledge that provides guidelines for human action and social order. *Id.* at 179.

161. A variant of this perspective is to view the primary obligation of government as creating a sense of community in order to increase the peace between individuals. See, e.g., M. SCOTT PECK, *THE DIFFERENT DRUM: COMMUNITY MAKING AND PEACE* (1987).

162. See ABDUR RAHMAN I. DOI, *SHARI'AH: THE ISLAMIC LAW* 4, 430 (1990). The book's summary states the author's viewpoint in the Tribute, "the Shari'ah [is] the sine-qua-non towards man's peaceful attachment to his creator . . . [and therefore we must have] the totalitarian adoption of the Shari'ah in our body politic. That is the triumph of education over ignorance." *Id.* (unpaginated tribute); see also Stanley B. Lubman, *Emerging Functions of Formal Legal Institutions in China's Modernization*, 2 *CHINA L. REP.* 195, 255 (1983).

belief in God is the cornerstone of their world view and their understanding of life and policy. By contrast, paradigmatic secularists orient their lives by rejecting (and feeling morally compelled to reject) any hypothesis that is unproven or that seems unnecessary to explain a given phenomenon.¹⁶³ Having no direct evidence of a god, they do not include in their policy decisions any inputs based on revelation or conceptions about God's character and its implication for policy. As a result, although these agnostics seek "neutrality," they generally arrive at the same policy conclusions as would the atheist. From the perspective of the theist, therefore, the atheist and agnostic viewpoints are functional equivalents. Thus, although the agnostic does not consider any specific decision to have a religious character, the theist may feel very strongly that the agnostic's viewpoint, especially on moral issues, is very "religious" (i.e., based upon the person's core beliefs).

A belief that man is, in general, good usually accompanies the secularist's reliance on empirical data.¹⁶⁴ This belief is often accompanied by the notion that not all impulses are evil, and that society should therefore allow their expression unless they interfere with the rights of others. This view contradicts that of most religions that "there is something wrong about us as we naturally stand," which requires us to repent of our sins and suppress sinful impulses.¹⁶⁵ Because of our imperfect nature and moral weakness, however, we require external controls to assist us in defeating these bad impulses.

This idea underlies the FIS's belief that society, through government policy and law, should "assist" individuals in making right choices.¹⁶⁶ This belief is not incompatible with democratic secularist societies; in fact, it underlies our twelve-step groups and educational and legal campaigns against the use of drugs. It also accords with our belief that children, who do not yet perceive their own best interest, need a family or other structure to help them learn to internalize the restraints necessary for their own enjoyment of life and for their orderly adaptation and contribution to society. In short, the gap between the theist's and the secularist's perspectives on the proper role of government is not as large or unbridgeable as many assume.

People in both camps, secularists and theists, agree that a society making policy decisions that are incomprehensible to them threatens their personal

163. See JAMES TURNER, *WITHOUT GOD, WITHOUT CREED* 203-25 (1985) (discussing argument that belief is immoral).

164. The believer, in contrast, believes "there is more than meets the eye." This belief is especially characteristic of fundamentalists, who "reject the notion that we know and believe and have our being within time and space as the sole arena of human agency; that belief and practice is therefore historically conditioned and contingent; and that, accordingly, as all belief systems and religions are thus bound, no one of them holds an a priori advantage over any other in terms of cognitive truth claims." Martin E. Marty & R. Scott Appleby, *Conclusion: An Interim Report on a Hypothetical Family*, in *FUNDAMENTALISM*, *supra* note 4, at 814, 818.

165. WILLIAM JAMES, *THE VARIETIES OF RELIGIOUS EXPERIENCE* 400 (1985).

166. Two radically different conceptions of "good" are in conflict here. The secularist believes that the best life is the life in which an individual freely chooses what makes him happy from among the widest possible array of choices. The wide array is essential because each individual is unique. If a choice conceivably exists, then it must be because that choice will make someone happier in some way. Therefore, society should do all it can to give each individual the widest array of possible choices. The believer, on the other hand, feels that what is best for every individual is to live in conformity with God's will. Therefore, society should, to the best of its ability, help individuals avoid temptations and steer them into the path of conformity with God.

security. Although the citizen in a democratic society who believes in the legalization of drugs may adamantly believe that society's prohibition policy is foolish, he can take comfort from his belief that society has simply misinterpreted the available factual data and hence can retain hope that a better-educated society will act in its own self-interest and change its policy. Unfortunately, this hope is not available when an individual confronts a decision made by someone utilizing a different epistemology. The secularist woman deprived of her vote by a fundamentalist regime knows that even if she and the FIS agree on all of the facts, they will nevertheless always reach different conclusions unless the FIS's belief in the content of revelation from Allah changes. Of course, another woman who fully accepts a set of religious beliefs and bases her life on them is likely to have the same reaction when a secularist acts in ways that contradict the clear implications of her beliefs. Thus, both the secularist woman and the religious one can easily lose all hope of succeeding in rational persuasion. Those left without hope are placed in a desperate situation and may choose violence as the only and last resort.

In general, electorates hesitate to elect people whose central world view contradicts theirs, especially when they know the implications of that world view will deprive them of things they value as inherent rights. The secularist therefore fears the FIS because the conflict between their respective world views has practical effects like the abrogation of women's suffrage. She finds the FIS unacceptable because it would "base its policy on its religious views," falsely implying that the secularist's choices are not equally tied to her own religious beliefs, i.e., her core belief system.

The largely secular Western world has adopted a tentative world view that it views both as essential to liberal democracy and as incompatible with religious belief.¹⁶⁷ Yet, because democracy can exist in the absence of this world view, much of the conflict is unnecessary. Even those who believe in transcendent truth may believe that liberal democracy provides the best means for society to understand and implement that truth. C.S. Lewis explained, "Aristotle said that some people were only fit to be slaves. I do not contradict him. But I reject slavery because I see no men fit to be masters."¹⁶⁸ In the same way, even those who believe strongly in submitting to the will of God may choose democracy over authoritarianism because of a conviction that no one is worthy of exercising authoritarian rule. In sum, both theists and secularists might be led by their beliefs to choose democracy over any other form of government.

167. This secular conclusion follows in part from an interpretation of religious conflicts. However, the religious conflicts from which the conclusions are drawn were based on more than religious belief. Arguably, Calvin's Geneva and Stalin's imposition of atheism led to mass human rights abuses because of their authoritarian structure, which lacked adequate checks against such excesses, rather than their religious commitments. Little evidence exists of the likely outcomes of religious "establishment" constrained by the framework of liberal democracy (unless one accepts the first century of American democracy as an experiment in Protestant democracy which successfully and relatively peacefully gave way to secular/agnostic democracy as the beliefs of the population changed).

Moreover, ideologies not associated with the traditional religions may have killed far more people than religious ones. Stalin, Hitler, Mao, the American Civil War, drug and gang related murders, and numerous other conflicts have exacted a higher cost in human life than conflicts based on traditional religious belief systems.

168. THE QUOTABLE LEWIS 153 (W. Martindale & J. Roots eds., 1989).

D. *Islamic Jurisprudence*

Recent developments in Islamic jurisprudence illuminate probable developments in FIS policy. One significant trend has been an assertion of independence from "international law." Western legal, political, and social cultures have always heavily influenced international law. As a result, international law has not been universally accepted by people from other cultures, especially Islamic ones that wish to draw upon their own extensive legal heritage. Some Islamic elites criticize current international law as being little more than "Western, Christian house law" and claim that it does not incorporate the interests of all legal cultures.¹⁶⁹

Unfortunately, the actions of Western nations often lend credence to these views. As Western nations seek to promote pluralism and democracy around the world, they often insist on exporting nonfundamental features of democracy that are only idiosyncratic reflections of Western culture. This misdirected missionary zeal creates needless conflict and unnecessarily endangers the growth of democracy.¹⁷⁰ To the extent that the spread of democracy requires non-Western cultures to adopt new principles, these nonfundamental democratic principles should be developed from within the non-Western culture. Advocating the adaption of both fundamental and derivative democratic principles in one fell swoop risks overloading the non-Western culture with more new ideas than it can assimilate at once.¹⁷¹

At the same time, modern Islamic jurisprudence certainly includes some groups whose teachings regarding democracy and the rights of non-Muslims justifiably cause concern among non-Muslim communities. However, evaluations of the probability of moderation within the FIS must take into account the breadth of traditions within the Islamic community regarding democracy and human rights and the depth of support for these rights.¹⁷² Rich traditions within Islam speak to the legitimacy of the values encompassed in mature democracies and provide assurances that Islam itself is not necessarily incompatible with those values, even if some interpretations of Islam are.

Different schools of thought have developed with differing interpretations of the sources of authority within Islam. Some members of the Islamic community want to reduce the complexity of these various interpretations by

169. See M.H.A. Reisman, *Islamic Fundamentalism and Its Impact on International Law and Politics*, in *THE INFLUENCE OF RELIGION ON THE DEVELOPMENT OF INTERNATIONAL LAW* 122 (Mark W. Janis ed., 1991); Matthew M. Ricciardi, *Title to the Aouzou Strip: A Legal and Historical Analysis*, 17 *YALE J. INT'L L.* 301, 417 (1992).

170. Even the advocacy of democracy can be viewed as inseparable from Western culture. For example, the "neutral" principles of Western liberal democracy are often interpreted to require the establishment of an agnostic viewpoint holding that no one can know which religion is correct. Therefore, Western liberal democracy is seen to conclude that individual freedom of choice must be valued over the tenets of any religious system. Many Muslims reject this view and call for the complete replacement of Western law by the Shari'ah. See DOI, *supra* note 162, at 453-54.

171. For a discussion of the need to find authentically Islamic justifications for many areas of international law, see, e.g., Reisman, *supra* note 169, at 122.

172. For example, McDougal notes that the world's great religions have increasingly supported freedom of choice about religion and have become less exclusive and more tolerant. MCDUGAL ET AL., *supra* note 146, at 685.

promoting interchange, encouraging flexibility, and closing the gaps between the various schools of thought.¹⁷³ One expression of this desire to make the workings of the body of Islamic Law, the Shari'ah, accessible to the layperson has been the recent upsurge in fundamentalism, which in Algeria led to the FIS. This change represents a retrenchment and a search for clarity and simplicity that makes the Shari'ah accessible to the nonscholar, but it unfortunately also can lead to a loss of flexibility, diversity, strength, and depth of understanding.

1. *Islamic Views of Democracy and Pluralism*

Recent advocates of an Islamic state envision rule by Muslims. This approach is due to the strong sense of nationalism that has pervaded the Arab world during this century and to the traditional belief that peace and prosperity will return only when non-Muslim communities convert to Islam or submit to Islamic authorities.¹⁷⁴ While this approach is obviously incompatible with the prospect of a democratic society composed of both Muslims and non-Muslims, the Muslim community no longer universally holds this traditional point of view. In fact, at least three primary approaches to the question of religious-governmental relations now exist.

Building on Ali-Abdel-Raziq's 1925 work *Islam and the Foundation of Government (al-Islam wa naul al-hukm)*, modernists and realists argue in favor of separating the institutions of state and religion.¹⁷⁵ Traditionalists, on the other hand, look to Orthodox historical concepts and argue that precedents from the time of the prophet do not permit aggressive *jihad* and that Islam is compatible with contemporary international law.¹⁷⁶ Third, fundamentalists tend to focus on "the universalism of Islam, the importance and permanence of *jihad*, and the return to the initial concept of *umma*" in their search for the true Islamic system.¹⁷⁷ Depending on the definition of *jihad*, this fundamentalist view could conflict with democratic ideals that renounce the use of force as a means of persuasion or as a means of obtaining political power.

The question of the separation of the institutions of church and state relates to the central belief of Islam, *Tawheed*, which is the belief in the oneness of Allah. *Tawheed* is often interpreted to require an integrated unity in all areas of life.¹⁷⁸ Consequently, some Muslims argue that any exercise

173. DOI, *supra* note 162, at 470-71 (1990). DOI mentions efforts to encourage *Qadi* (judges) to draw upon all four schools in order to begin to close the gaps between them and to allow individual Muslims to choose which school shall govern them (*Takhayyur*, "choice"), rather than strictly applying the rule of *Taqlid*, which requires Muslims to live according to the rules of the school that governed the home into which they were born. *Takhayyur* indicates both a greater range of individual autonomy and a focus more on applying principles than on a strict application of a rigid code. Both of these developments are compatible with Western ideals.

174. Ahmed S. El-Kosheri, *History of the Law of Nations, Regional Developments: Islam*, in 7 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 221, 224 (1984).

175. *Id.* at 228.

176. *Id.*

177. *Id.*

178. Kausar, *supra* note 145, at 101-02 (claiming Islamic polity is "totally antithetical" to Western polity originating in "the hostile controversies between the Papacy and Kingship, which ultimately led to bifurcation between religion and politics"); Reisman, *supra* note 169, at 110-11.

of power that does not seek to fulfill divine commandments is illegitimate.¹⁷⁹ If accepted, this viewpoint would seem to prevent Muslims from accepting a pluralistic political structure in which democracy, rather than Islam, serves as the fundamental constitutive principle.¹⁸⁰ Yet, the experience of Turkey during this century demonstrates that democracy can exist within an Islamic state although it may differ markedly from the form of democracy familiar to those in the West.

In considering whether Islamic thought could co-exist with the idea of allowing non-Muslims to participate in elections, one must note that Islamic thought has traditionally divided the world into two camps, *dar al-Islam* (the world of believers) and *dar al-harb* (the world of unbelief, against whom *jihad* is to be waged). Some, however, would add a third category, *dar al-sulh* (territory of peace), comprising those states that have entered into peaceful relations with Islamic states.¹⁸¹ This third category, coupled with the strong tradition that all covenants must be upheld, even unfavorable ones with non-Muslims,¹⁸² could provide hope for Muslim participation in a pluralistic democracy.¹⁸³ Covenants have traditionally been allowed when the non-Muslims are too strong to be defeated. This would require a redefinition of the concept of "the Muslim community" from one of statehood to one of a group within a state. Such an interpretation could consider a covenant relation to exist between the Islamic community (perhaps represented by one or more Islamic political parties) and the non-Muslim community within a state. Theoretically, the parties could not abrogate such a covenant, and the Islamic party could therefore participate in elections without violating Islamic law.

Over time, Islamic thought has developed to recognize that multiple states could exist with the *dar al-Islam*, religious affairs could be separated from the external affairs of each state, non-Muslim sovereigns could be dealt with on a basis of equality, and non-Muslims within a Muslim state could be exempted from Muslim law and the poll tax.¹⁸⁴ Algeria seemed like an excellent place to foster dialogue within the ranks of modern Islamic fundamentalists about the principle of rotating power. Because Algeria has few non-Muslims, most candidates, including secular candidates, were likely to be Muslims. FIS acceptance of the victory of non-fundamentalist candidates could have created a useful precedent. Perhaps the FIS would not have willingly handed over

179. This argument arises because politics is viewed as being wholly derived from Islam rather than as an adjunct and separate institution within society. Dillman, *supra* note 7, at 38, 40; Reisman, *supra* note 169, at 111. This argument also influenced the development of Islamic political thought in another way: all political opposition had to justify itself with religious claims because to oppose divinely supported government was to oppose Allah himself. *Id.* at 111.

180. This viewpoint therefore creates a significant question of allegiance. The Muslim gives her primary allegiance to Islam. The secularist, on the other hand, argues that an individual owes his primary allegiance to the state, Cheriet, *supra* note 160, at 181, and that all other values, including religious ones, must give way to the needs of the state. *See id.*

181. *See* El-Kosheri, *supra* note 174, at 224.

182. *See* DOI, *supra* note 162, at 423-25; *see also* THE ISLAMIC LAW OF NATIONS: SHAYBANI'S SIYAR 154 (Majid Khadduri trans. & ed., 1966) [hereinafter SHAYBANI'S SIYAR].

183. Initially, all such covenants between the *dar al-Islam* and the *dar al-harb* could only be temporary; as Islam evolved, however, the covenants became indefinite in length. SHAYBANI'S SIYAR, *supra* note 182, at 18-19.

184. *Id.* at 60-65.

power to secular Muslim winners, but as it is, they were allowed to avoid a public decision about this issue. Given these circumstances, an assumption that the FIS would be unwilling to govern in a democracy is arguably unjustified.

2. *Islam and Human Rights*

Observers have questioned whether an Islamic state is compatible with modern human rights norms. In fact, many fundamentalists do refuse to recognize universal human rights norms that violate Islamic law. While several interpretations of Islam provide three distinct levels of religious freedom, distinguishing among Muslims, Christians and Jews, and everyone else, some argue that Mohammed himself took care to treat all people equally.¹⁸⁵ These Muslims cite as evidence one instance in which Mohammed reportedly sided with a Jew against a Muslim, according to "the strict principle of justice."¹⁸⁶ Furthermore, prevailing cultural values are forcing those who still argue for distinctions based on religion and gender to demonstrate that those distinctions do not violate norms of equality rather than merely assert that norms of equality must yield to certain Islamic values.¹⁸⁷

Within the context of an Islamic state, conservative Muslim scholars claim that non-Muslims are guaranteed the protection of their "life, property, and honor exactly like that of a Muslim" and "enjoy all their human rights which are enshrined in the Shari'ah."¹⁸⁸ Westerners want more than equal protection, however. Having seen how Islamic governments treat their own people, Westerners call for a higher minimum standard of human rights for all people within an Islamic state.

Specifically, the Shari'ah's incorporation of the death penalty for those guilty of apostasy is especially troublesome to the concept of democracy.¹⁸⁹ Modern Islamic human rights documents have failed to challenge this provision even though traditional sources of authority in Islam do not mandate it.¹⁹⁰ The Qur'an, for example, proclaims the principle of "no compulsion in religion,"¹⁹¹ and some modern Muslim scholars argue that twentieth century Muslims have moved decisively towards accepting religious freedom. To support this new liberality, they cite incidents such as a Malaysian court's dismissal of the charge that conversion by a Muslim to Christianity is a punishable offense.¹⁹² Western observers, while encouraged by the dismissal,

185. DOI, *supra* note 162, at 428.

186. *See id.* at 4, 430; *see also* ANN E. MAYER, ISLAM AND HUMAN RIGHTS 93-94 (1991) (pointing out that de jure discrimination on basis of gender and religion is norm in modern Muslim societies although they have repudiated pre-modern Shari'ah law on slavery).

187. MAYER, *supra* note 186, at 94. Christianity also underwent such a change during the Enlightenment. At one point, notions like equality were evaluated according to Christian scripture. As time passed, however, interpretations of scripture came to be evaluated according to the conclusions of reason. This change had far-reaching implications for the development of Western liberal democracy. *See generally* TURNER, *supra* note 163.

188. DOI, *supra* note 162, at 426.

189. SHAYBANI'S SIYAR, *supra* note 182, at 195.

190. MAYER, *supra* note 186, at 186-87.

191. QUR'AN 2:256.

192. Minister of Home Affairs v. Jamaluddin bin Othman, 1 MALAYAN L.J. 368-70, 418-20 (1989), *discussed in* Mohammed Hashim Kamali, *Freedom of Religion in Islamic Law*, 21 CAPITAL UNIV. L. REV.

are disturbed that such charges would even be brought in the first place.¹⁹³

Concededly, traditional Islam allows for and even requires many practices that advocates of democracy abhor, like the death sentence for apostasy. Evidence also demonstrates, however, that modern Islamic scholars are attempting to draw upon the rich traditions of Islam in order to encourage the development of traditions that respect the dignity and rights of the individual while remaining true to the teachings of Muhammed. A fair evaluation of the probable record of an FIS government must therefore weigh the potential that the FIS might implement a version of Islamic political theory that represses human rights and democracy against the real potential for the development of an Islamic political theory that supports human rights and pluralism.

IV. PROBABLE ACTIONS OF AN FIS PARLIAMENTARY MAJORITY

This Part will examine the past, and potential future, record of the FIS in order to evaluate this particular fundamentalist group's compatibility with the ideals of pluralism and the structures of democracy. The picture that emerges is not of a party wholeheartedly championing the modern Western vision of a democratic society. Nevertheless, Section A will demonstrate that many purported shortcomings of the FIS are not relevant, and Section B will show that significant restraints existed to prevent the FIS from engaging in anti-democratic action.

Millions of disenfranchised and disenfranchised citizens in the Muslim world have turned against their oppressive secular regimes, become suspicious of Western ideas of democracy, and chosen instead to believe the promises of a resurgent Islam. Throughout the Arab region, these movements identified as Islamic fundamentalism possess natural advantages in the competition to provide answers and hope after the failure of the authoritarian Westernized post-independence regimes.¹⁹⁴ Islamic fundamentalism is readily comprehensible by educated and uneducated alike and can draw upon a vast array of profoundly familiar themes, symbols, and slogans. Because authoritarian regimes, including the FLN, have attempted to thwart the creation of alternative power structures like political parties, Islam has often been the only widespread social institution exempt from the prohibitions and controls placed on other institutions of civil society. Mosques, then, have been the only organization capable of mobilizing the population and providing a meaningful political alternative.¹⁹⁵ In addition, widespread poverty and unemployment

63, 68 (1992) (arguing that Islam has long tradition of religious freedom).

193. Westerners have grown accustomed to a religion (Christianity) that has its own penal code, and that, since the demise of the Roman Catholic Church's temporal power, no longer seeks to punish people with any sentence more severe than excommunication.

194. For much of the Islamic world, modernity is identified with colonialism, a system that dominated and suppressed Islamic civilization for more than 200 years. A rejection of colonialism has extended, therefore, to a rejection of modernity. BRUCE LAWRENCE, *DEFENDERS OF GOD: THE FUNDAMENTALIST REVOLT AGAINST THE MODERN AGE* 100-01 (1989); Dillman, *supra* note 7, at 31, 43 (describing capitalism itself as linked in popular mind to colonialism and its evils).

195. See RUEDY, *supra* note 14, at 241. Colonial rule effectively eliminated Algerian civil society, which has still not fully recovered. Dillman, *supra* note 7, at 50. Most Algerians have little interest in nonfamily groups; thus, religion is one of the few forces capable of generating sufficient mass appeal to sustain a national party. Although more than 30 other smaller parties developed, they were generally

in the Arab world have created a populace ripe for radical change.¹⁹⁶ Poverty, injustice, and corruption are so well known that sloganeers need not even name them and can evoke support with the simple slogan, "Islam is the solution."¹⁹⁷ From a practical standpoint, fundamentalist movements also benefit from foreign Arab patrons whose oil wealth provides financial, technical, and educational assistance.¹⁹⁸

More importantly, fundamentalists have actively addressed social problems that the corrupt and inept governments they challenge chose to ignore.¹⁹⁹ Fundamentalists in Algeria have created a network of social services that includes neighborhood charitable associations in neighborhoods with chronic problems.²⁰⁰ These associations build or repair local mosques, which then serve as community centers,²⁰¹ provide literacy programs, plant gardens, establish garbage services, teach the Qur'an, tutor students, and provide activities for unemployed young people.²⁰² Because they had earned the respect and trust of the neighborhood population, these associations were quite influential in promoting the FIS.²⁰³

This active social outlook on the part of the FIS stood in sharp contrast to the loss of vision within the FLN. Even Yousfi Abdelbaqu, who led the FLN from 1954 to 1962, admitted that his party was ideologically bankrupt and that "[t]he Islamic movement is the true heir of the [FLN]."²⁰⁴ The FIS's community work clearly generated broad support for the movement among the population.

Many people in the West fear Islamic movements. Yet, just as nineteenth-century American political philosophy — which we now view as sexist, racist, and lacking in concern for environmental issues or human rights — led to more positive developments, so some observers hope for similar developments

dominated by a single personality, had limited geographic appeal, and lacked a national party infrastructure or viewpoint. RUEDY, *supra* note 14, at 252.

196. Dillman, *supra* note 7, at 46-48 (noting that social malaise creates conditions in which people seek vision and charisma, thereby making demagogic and extremist movements attractive). In addition, some view FIS candidates as simply more legitimate. Algerian youth favor political leaders who are young, have professional experience, and speak classical Arabic (of which Madani is an eloquent master), whereas the FLN has only utilized those with revolutionary credentials and has not developed new, young leadership capable of appealing to the new, nonrevolutionary generation. *Id.* at 36-37.

197. Quandt, *supra* note 8, at 49.

198. Saudi Arabia and Iran provide millions of dollars to various fundamentalist movements. This financial support obviously attracts ambitious followers, allows the movement to meet many human needs in poverty-stricken areas, and finances a host of activities directed at achieving power and weakening the authoritarian government.

199. For a discussion of such efforts in Egypt, see John O. Voll, *Fundamentalism in the Sunni Arab World: Egypt and the Sudan*, in FUNDAMENTALISM, *supra* note 4, at 345, 350 n.11, 388.

200. Bekkar, *supra* note 35, at 13. The FIS has also supported the *trabendos*, or black markets, which are often the only source of most staples of daily life. Ibrahim, *Militant Muslims*, *supra* note 26, at A1.

201. *Id.* A shortage of mosques and imams made this work possible. Reuters, *Algeria: Mosque Goes Underground Following Government's Banning of Islamic Salvation Front*, MIDDLE E. MAG., Apr. 1, 1992. Although these free mosques may technically have violated the 1971 law requiring official permission to establish any association, Benjedid's government chose not to crack down on them and instead accommodated the fundamentalist movement, hoping to co-opt it. Mortimer, *supra* note 18, at 578.

202. Bekkar, *supra* note 35, at 13-15.

203. *Id.*

204. Ibrahim, *Militant Muslims*, *supra* note 26, at A8.

within the Islamic movements as they mature.²⁰⁵

Several circumstances suggest that these movements will continue to develop and mature rapidly in the near future. For example, Bernard Lewis believes that the Arab experience during the last forty years of freedom from colonial rule has taught the leading Islamic intellectuals and political figures that freedom has a deeper meaning than mere political independence, that it encompasses democracy and economic freedom, and that the lack of this kind of freedom is the root of the problems in the Islamic world. Additionally, with the collapse of communism and the end of the Cold War, Algeria and other Arab states are free for the first time in centuries to direct their own future.

Viewing Islamic movements as developing entities raises the question of what criteria are appropriate to critique their current conformity with democratic and pluralistic ideals. Rather than expecting Islamic movements to conform to the highly developed understanding of democracy present in mature Western democracies, Western observers should arguably expect developing democracies to adhere only to the fundamental essentials — popular vote and rotation of power — and look to the future for the introduction of further refinements.

A. *The FIS Agenda*

Because the FIS's vision of society has been advanced as a justification for the coup, an analysis of the legitimacy of the coup must examine the agenda of the FIS and its commitment to democracy.²⁰⁶ This examination must consider not only the position of the current leaders, but also the probability of leadership changes in the near future.

1. *Trends Within the FIS*

The potential threat posed by the emergence of an FIS-dominated Islamic state depends upon how the FIS views the state and its relationship to the population. Unfortunately, analysis of FIS views is difficult because FIS

205. Bernard Lewis, *Rethinking the Middle East*, FOREIGN AFF., Fall 1992, at 99, 119. Nevertheless, Lewis notes with some concern that democracy has succeeded in only one Islamic state, Turkey, which differs from the Arab world in three respects. First, Turkey is not an Arab state. Second, Turkey is relatively economically developed. Lewis concludes from this fact that democracy may only be successful in a state with a minimum level of social and economic development. Thus, until Arab states attain that level, the West must not expect democracy to work in those states. Third, Lewis sees in Turkey the lesson that some degree of separation of religious organizations from political organizations is necessary as well. *Id.*

206. Some analysts view this question as irrelevant. Even though Professor Entelis believes that the FIS's "ideology is linked to a religious agenda that is ultimately incompatible with democracy," he argues that the West's sigh of relief when the FLN forcibly nullified the electoral victory of the FIS was unacceptable. Rather, the outcome was a tragedy for the Algerian people and for Arab society from which the West will suffer. The United States strongly condemned the suppression of Haiti's electoral result. Had the U.S. government taken a similar stance in Algeria, it would have sent a strong message of belief in the democratic prospects of the Arab world. By acquiescing to the suppression of the FIS, on the other hand, the United States and other Western countries further their radicalization, a self-fulfilling prophecy that would surely be best to avoid. John P. Entelis, *Remarks in Session III, Islam and Democracy: A Dilemma for U.S. Policy*, in THE SOREF SYMPOSIUM, ISLAM AND THE U.S.: CHALLENGES FOR THE NINETIES 42, 43 (The Washington Institute for Near East Policy, Apr. 27, 1992) [hereinafter SOREF].

spokesmen used one vocabulary to incite the faithful and another to calm outside observers. For example, after the FIS's parliamentary victory, its leaders began to change their message to de-emphasize democracy and re-emphasize the slogan, "No law. No constitution. Only the laws of God and the Qur'an."²⁰⁷ Tunisian leader Rached Ghannouchi, whose views are very close to those of the FIS, said in an interview with Western journalists that "[t]he state is not something from God but from the people." He later told his followers that they "must call into question the credibility of Western democracy. . . . Ideas imported from the West concerning public liberties, the rights of man, international law . . . are nothing but myths and nonsense destined to put us to sleep."²⁰⁸ Whether the speech or the interview represents his real views is difficult to ascertain.

Divisions within its leadership also complicate a determination of the current position and future path of the FIS. As often occurs in new movements that represent a coalition of interests sharing a common enemy, the FIS leadership delivered both "hard-sell" and "soft-sell" messages.²⁰⁹ The two leading figures in the party at that time, Abassi Madani and Ali Belhadj, sent conflicting messages about Islam's compatibility with democracy. Abassi Madani, an older, Western-educated philosophy professor, stressed the belief that Islam taught toleration and could co-exist with democratic traditions.²¹⁰ Ali Belhadj, on the other hand, is a fiery, more radical, younger *iman* known for his repeated invocation of the theme of democracy's incompatibility with Islam.²¹¹ The contradictory messages created doubt about which faction would prevail if the FIS were elected, and the doubt prompted most secularists to fear the worst.²¹² Yet, Abdelkader Hachani, who was elected acting FIS leader upon the arrests of Madani and Belhadj, was a moderate who pledged to respect the constitution and to avoid clashes with the army.²¹³ His moderate beliefs indicate that the FIS might have developed in a democratic direction. Unfortunately, as the violence escalated over the next few years, moderate elements within the FIS generally lost whatever influence they once had.

Probably the best way to predict future developments within the FIS leadership and decipher the mixed messages emanating from the FIS's pre-election leadership is to examine the behavior of the FIS candidates elected as

207. Judith Miller, *The Islamic Wave*, N.Y. TIMES, May 31, 1992, at F38.

208. Dunn, *supra* note 4, at 17.

209. Mortimer, *supra* note 18, at 579.

210. Dillman, *supra* note 7, at 39; Mortimer, *supra* note 18, at 579; *see also* Cheriet, *supra* note 160, at 171, 178.

211. Entelis & Arone, *supra* note 28, at 28; Mortimer, *supra* note 18, at 579.

212. FIS spokesmen not infrequently made statements expressing the sentiment that "[t]he Algerian people have given victory to Islam and have defeated democracy, which is nothing but apostasy." Dunn, *supra* note 4, at 16 (quoting sermon delivered on January 3, 1992 by Sheikh Abdelkader Moghni of FIS). In contrast, Hamas, another party that seeks the establishment of an Islamic state, renounced force and gave assurances that it would assume leadership only through democratic procedures. Youssef M. Ibrahim, *Algerian Militants in Big Election Rally*, N.Y. TIMES, Dec. 26, 1991, at A3. The FIS's decision to give no such assurances despite the statements by Hamas thus increased concerns about its commitment to democracy.

213. *Algeria: Islamic Salvation Front Wins First Round of the Elections*, AGENCE EUR., Jan. 3, 1992, available in LEXIS, World Library, Allwld File.

municipal officials two years before the national elections. Such an examination should consider, however, that the FLN-controlled national government and the need of FIS candidates to cultivate popular support for the upcoming national elections restrained these municipal officials' behavior. These restraints would of course be absent in an FIS government.

In various places, the newly elected FIS municipal officials enforced Islamic dress codes for women, prohibited the wearing of shorts, ended coeducational classrooms in elementary schools, allowed only Arabic correspondence, and prohibited alcohol. Moreover, in cities under their control, the FIS failed to control informal patrols (gangs) that committed acts such as tearing down satellite dishes that receive Italian strip-tease shows.²¹⁴ These actions are distasteful to a person conditioned to expect the broad individual freedoms allowed in modern Western democracies. However, as Subsection Three argues below, with the exception of the apparent toleration of informal patrols, none of these issues is fundamentally incompatible with essential principles of pluralism. With regard to the informal patrols, moreover, violence is unfortunately still used, and used effectively, as a policy tool in Algeria. Outsiders hence should favor force that works to uphold an imperfect democratic process over force linked to an authoritarian coup.

Of course, if the FIS had assumed their elected role, they would have confronted many more policy issues on a national level. Although the FIS's exact actions had the coup not taken place cannot be predicted, they had already presented some proposals for governance. The party repeatedly promised to respect individual freedoms. Madani, for example, declared that the FIS would "guarantee the freedom of all who have ideas on Algeria's future."²¹⁵ Critics note that the Ayatollah Khomeini made similar promises before he assumed power in Iran in 1979.²¹⁶ Still, rejecting Madani's promise presumes that he lacked either the will, the power, or both, to abide by his word. Madani's promise is no less trustworthy than the promise of future democracy proffered by a junta in the midst of a military coup d'état supported only by the widespread use of force. If the two promises are equally untrustworthy, they offer no justification to either side, and the evaluation of the FIS and of the coup must turn on other issues.

Consideration of the FIS's place in the larger schema of resurgent Islam is also useful in determining the probable future direction of the party. One prominent scholar, Robin Wright, distinguishes between two modern waves of Islamic resurgence.²¹⁷ Calling itself "Islamic Jihad" and "Holy War," the first wave announced its war against the "other" as it sparked both the Iranian Revolution in 1979 and the conflict in Lebanon in 1982.²¹⁸ Wright suggests that the second wave of modern Islamic resurgence in the late 1980s is a much

214. *Foreigners Flee as Killers from God Pursue the 'Corrupters of the Earth,'* SUNDAY TIMES, Mar. 27, 1994, available in LEXIS, World Library, Allwld File.

215. Jill Smolowe, *Islam: Ballots for Allah*, TIME, June 25, 1990, at 26.

216. *Id.*

217. Wright, *supra* note 4, at 131-32.

218. Even radical Shi'ite Iran is now forced to focus on internal economic problems and to seek reentry into the international economic order, thus leaving it with much less time and ability to export its radical revolution. *Id.* at 143-44.

less serious threat by contrast. This second wave appears to be compatible with democratic concepts and committed to a system of free elections rather than to a forceful and immediate establishment of a theocracy ruled by clerics.²¹⁹ This difference is discernible in the second wave's choice of names, such as the "Islamic Renaissance Party," which implies a focus on rebirth from inner change rather than from purifying and purging all foreign, unclean elements.

The leaders of these second-wave movements of Islamic resurgence are conversant with Western culture; many have earned graduate degrees from Western universities. Madani, for example, studied English literature for three years in London.²²⁰ Yet, although they admire Western technology, they abhor the West's lack of compassion, seen in its senior citizen nursing homes, and the West's moral decay, seen in its pornography, alcoholism, and drug abuse.²²¹ In response to this perceived threat of Western decay, Islamists seek to re-Islamize the culture, believing that their policies are ordained by God for the proper functioning of society.²²²

The FIS, however, does not seem to fit clearly into either the first or second wave, but seems instead to reflect a blend of the "holy war" and "renaissance" approaches. For example, its name, the "Salvation Front," is less than a declaration of holy war, but not quite an emphasis on renaissance. The rhetoric of its leaders has often been radical and, like the first wave, concerned with purifying Algeria from foreign culture. Before the coup, however, the FIS demonstrated a commitment to working within the system and thus seemed to be part of the second wave.

2. *The Process of Democracy: The Allocation of Power*

FIS opponents questioned whether the movement would have respected the fundamental democratic principle of the rotation of power. Democracy is meaningless if the winners refuse to give up power after an initial victory. Without rotation of power, a society will never gain the full benefits of democracy.

The argument against the FIS generally assumes that "a party which presumes that it alone speaks for God will not willingly hand over power, therefore it must be stopped."²²³ Determining the future intent of a single person is difficult enough; determining the future intent of a party drawing its support from millions of marginalized, unemployed, and disillusioned citizens is infinitely more so. Different leaders within the FIS, and sometimes the same leaders at different times, made widely varying statements concerning the FIS's intent. The radical statements may have been merely campaign flourishes to appeal to idealistic youth, or they may have reflected the real intent of the

219. *Id.* at 131-33. Wright notes that Islamists have learned the high economic cost of exclusion from the community of nations through Iran, and that they have seen the dangers of totalitarianism and of direct confrontation with the West through the collapse of communism. *Id.* at 132.

220. Lief, *supra* note 8, at 23.

221. Bob Hepburn, *Islamic Zeal Gaining Force in Gaza Strip*, TORONTO STAR, Dec. 5, 1991, at A2.

222. *The Islamic-Confucian Connection: Civilizations at Odds*, NEW PERSPECTIVES Q., June 22, 1993, available in LEXIS, News Library.

223. Dunn, *supra* note 4, at 16.

party leadership.²²⁴ Similarly, statements that appear moderate and sensible to Westerners might have been designed simply to appease the Algerian secularists and the West, or they might have reflected the pragmatic and principled views of a democratic, minority leadership. In the most likely scenario, however, both sets of statements represented views of competing FIS factions and evidenced the fact that the FIS itself had not fully resolved the issue.²²⁵

a. *Indications of Democratic Potential*

Perhaps the most convincing indicator of democratic potential within the leadership of the FIS was its behavior around the time of the coup.²²⁶ Tensions had escalated to dangerous levels many times in the previous three years, but both the government and the FIS always backed away from the brink of civil war.²²⁷ The FIS chose civil disobedience and nonviolence rather than revolution. Moreover, when violence eventually did break out, it came in response to the manifestly unfair, gerrymandered, and undemocratic voting laws that made a mockery of the principle of "one man, one vote." The FIS maintained a united refusal to react violently in the face of repeated provocation by the junta leadership for a significant period after the coup. Furthermore, unlike the potential threat that the FIS might refuse to rotate power, this actual, demonstrated example of undemocratic behavior and the junta's refusal to allow the rotation of power went uncondemned by Western governments.

A second indicator of the FIS movement's democratic potential was its emphasis on the needs of the Algerian people. Long before the FIS became a political party, its members were active in organizing socio-economic projects. They set up medical clinics, fed the hungry, taught literacy, and provided mosques.²²⁸ Although cynics accuse them of doing these things only to win

224. See Reisman, *supra* note 169, at 119. Reisman cautions that "one should not limit one's attention to the readily available elite speeches to common people at Friday prayers The elites of Islamic fundamentalism, like their counterparts in secular politics, carefully tailor their speeches so as to fit their audience." *Id.*

225. Some commentators suggest that the mere existence of a radical minority will cause secular parties to ignore even a significant majority that intends to work within the democratic process. See Entelis & Arone, *supra* note 28, at 28-29; see also Dunn, *supra* note 4, at 20.

226. Entelis & Arone, *supra* note 28, at 29. "[O]nly time will tell" whether current Islamic movements have truly embraced democracy. *Id.* (citing John L. Esposito & James P. Piscatori, *Democratization and Islam*, 45 MIDDLE E. J. 438 (1991)).

227. Telephone interview with Kathleen Riley, Algerian Desk Officer, U.S. Dep't of State, (Dec. 10, 1992). Before the coup, moderates in both camps made statements that attempted to appeal to the other side. The fundamentalists referred to the need for democracy, while democrats "acknowledged the importance of Islamic cultural concerns." Dillman, *supra* note 7, at 50. This development in the thirty-year "struggle for a definition of the sociocultural basis of society," *id.* at 49, represents considerable progress in Algeria's potential evolution. However, progress could only occur with moderates in control of both the government and the opposition.

228. Cheriet, *supra* note 35, at 9-10. Professor Cheriet, who teaches sociology at the University of Algiers, draws a comparison between the FIS's recent use of the mosques and social organizations and the similar network created decades earlier by the national movement when it sought independence. *Id.*

votes,²²⁹ this social concern reflects one driving force of fundamentalism: it not only seeks to purify the religion and morals of society, but also addresses very real social and economic woes. The needs are connected; they believe that economic and social failures are divine punishment for apostasy, and therefore, that the best way to improve the standard of living is to restore the right relationship with Allah.

Finally, some commentators have argued that the FIS's lack of detailed economic and other plans indicated a lack of commitment to the democratic process. This lack of preparation more likely indicated, however, a lack of experience resulting from thirty years of authoritarian rule. Parties cannot organize for national elections and create detailed economic and other plans at the same time, especially when they do not have access to important economic information held only by the government.

b. *Indications of Undemocratic Potential*

Perhaps the best indicator of undemocratic potential was the increase in undemocratic rhetoric immediately after the FIS victory in the first round of elections. Although this increase in rhetoric may have reflected no more than struggles within the FIS over the direction of the party, the renewed vigor and public visibility of anti-democratic factions of the FIS were worrisome. The long-used slogan, "No constitution. No law. Only Allah and the Qur'an," boded ill for future elections.

The unceasing terrorist violence in Algeria since the coup, which evidences the ascendancy of the FIS extremists, is a second indicator. The current ascendancy of these extremists does not provide much guidance in deciding whether to condone the coup, however, because they may never have obtained such influence if the coup had not occurred.

The action of the FIS-run municipal councils provided a third possibly negative indicator. The FIS passed many local laws that Westerners would oppose.²³⁰ Nevertheless, the FIS controlled the municipal councils for almost two years, more than enough time for the population to become disenchanted with their leadership, and the people still supported the FIS overwhelmingly in the parliamentary elections.²³¹

In conclusion, while a significant faction within the FIS has demonstrated its undemocratic views, it is very difficult to determine whether, without the impetus of the coup, this faction would have succeeded in displacing the moderate factions that controlled the FIS prior to the coup.

229. See Bekkar, *supra* note 35, at 13 (implicitly criticizing FIS's use of grassroots power of charitable organizations and FIS's attempts to find activities for unemployed young people). A distinction should be drawn between undemocratic intent and practices, and the use of religion for political ends. Because advocates of radical social change are often motivated by deeply held religious beliefs, religious rhetoric is not only very effective, but also accurately reflects the underlying motivation. Opponents of religious speech, however, often mistakenly argue that this religious rhetoric is merely a ruse that does not reflect actual motivations. See CARTER, *supra* note 151 (discussing failure of some critics to take seriously religious rhetoric used in abolition and civil rights movements).

230. But see *infra* part V.A.3. for a discussion that concludes that many of the laws at issue do not by themselves make the FIS incompatible with democracy.

231. Dunn, *supra* note 4, at 21.

3. *The Substance of Democracy: Limits on the Exercise of Power*

Democracy requires more than just the possibility of the rotation of power. It also requires recognition of certain substantive concerns, especially the protection of minority rights.²³² In protecting minorities from oppression, however, the difficult question is the definition of "oppression," distinguishing it from mere inconvenience and even from repugnance. This Section will consider several individual parts of the FIS's policy agenda and evaluate them in light of the demands of democracy.

Secularists believed that the FIS would establish policies derived from its fundamental religious beliefs and feared that these policies would be inimical to the policies the secularists derive from *their* fundamental beliefs. Not every Islamic policy is incompatible with democracy, however. For example, American society insists that even pacifists who abhor war must support the nation's war policy through paying taxes and, if they oppose only a certain war and not all wars, by being subjected to the draft. Thus, at least in some issues, democracy seems compatible with coercing individuals to accept the view that the existence of policies with which they disagree, and even their financial support of the government holding those policies, does not indicate their support of those policies.

Secularists demand the same thing from religious believers, including the FIS, when they tell them to be good citizens even though they abhor abortion or even though they abhor the availability of pornography. The secularists argue that the mere fact that the government permits and/or supports such activities does not mean that the theist has supported or participated in such activities, and the theist should therefore feel no responsibility for the policy or for attempting to change it. Nonetheless, even the secularists are not consistent in this regard, as they then argue that if the government permits, for example, the display of a crèche on public property, that it has supported the religious beliefs of those who believe in what the crèche represents in a way that is antithetical to the beliefs of the secularist and is therefore irreconcilable with neutrality between religions.

232. Democracy seeks to harness the fact that each individual will find herself in the majority at some times and in the minority at others, depending on the issue. Over time, everyone will experience the frustration of minority status, and thereby may develop sympathy for, and learn to respect the views of, other minorities. This requires multiple factions, however.

Democratic governance depends on the give and take of compromise, on finding ways to obscure differences, and on seeking coalitions. When only two alternatives exist, forming coalitions is not possible or necessary. The conflict is obvious and cannot be hidden, thus making it more arduous to achieve compromise because neither side can afford to be seen as "backing down." Algeria is not completely polarized into two and only two groups. For example, the FFS, which won more seats than the FLN in the aborted elections, is ideologically perhaps more compatible with the FLN than the FIS but nevertheless supported the FIS in protesting the cancellation of the December 1991 elections. Even so, little common ground existed between the FIS and the FLN, and the FLN did everything it could to increase the polarization and attempt to capitalize on it.

As a result of this polarized choice between two ostensibly irreconcilable sets of values, the majority and minority are seemingly more fixed. Islam leads to one set of choices for a broad range of contested issues, while secularism also logically leads to a conflicting set of choices on those same issues. Instead of finding the membership of the majority and minority constantly in flux (and perhaps in Algeria it would be better to speak of two large minorities), membership in the two groups is fixed, and only a sub-critical number of "swing voters" shift back and forth.

Some individual FIS policies, like the U.S. one requiring pacifists to finance war efforts, are not inimical to the creation or maintenance of democracy. While these policies may be criticized as unwise or as falling short of the optimum ideals of pluralism, they should be tolerated. Other proposed FIS rules, however, are incompatible with democracy; these latter provisions should be challenged.

a. *Alcohol*

One concern is whether the FIS's proposed ban on alcohol is compatible with democracy. "Allah forbids" is not persuasive to the agnostic. On the other hand, the idea of individual autonomy is not persuasive to the fundamentalist. Just as secularists argue that fundamentalists do not need to drink alcohol if they do not wish to do so but should nevertheless tolerate the right of others to have access to it, so the fundamentalists can argue that the secularists do not need to credit the argument "Allah forbids," but should tolerate the fundamentalists' right to invoke this formulation in public policy debates.²³³ Both sides justify their policies by claiming that the other side will lead individuals to make wrong decisions (to support wrong policy alternatives or to consume alcohol), and by arguing that society must therefore protect truth by restricting individual choice.

While unpopular, America's experiment with the prohibition of alcohol is not generally viewed as having been anti-democratic. It thus supports the conclusion that the FIS's policy proposal regarding alcohol is not relevant to the analysis of whether an FIS regime could have been compatible with democracy.

Hence, fear expressed with respect to this proposed FIS policy must arise not from the content of the policy, but from its epistemological foundation. Secularists fear that their own epistemological views will never receive a proper hearing in public policy discussion under an FIS government. Of course, the FIS has precisely the same objection to policy discussions controlled by secular epistemological assumptions. Rather than adopting a *per se* exclusion of one or the other view, democracy is intended to provide a means of allowing popular will to address these very issues through the democratic process of elections and representative government.

b. *The Veil*

Alcohol is a reasonably simple issue; the practice of veiling women is not. In one sense, the practice of veiling is merely about defining the requirements of modesty. Such standards have changed significantly and frequently throughout history. In themselves, these standards do not affect the ability to

233. The contents of law and religion often coincide, Nafziger, *supra* note 144, at 151, so that depriving someone of his right to refer to his religious beliefs also deprives him of his reference to the "way in which [he] accept[s] and organize[s] the world around [him]." *Id.* (footnote omitted). To deny religion a place in public discourse is to turn our backs on the fact that much of international (and domestic) law is derived from religion. L. OPPENHEIM, 1 INTERNATIONAL LAW 6 (H. Lauterpacht ed., 8th ed. 1955) (describing international law as "in its origin essentially a product of Christian civilization").

vote or influence political opinion. Consequently, as with alcohol, a wide range of standards should be compatible with democratic society.

Yet, the question of the veil involves much more than merely a standard of modesty. The veil²³⁴ has great symbolic significance in the current struggle to define Islamic culture. Women wear the veil for a number of different reasons.²³⁵ Some women wear the veil because of personal religious conviction. For them, it is a necessary part of their relationship with Allah and therefore a necessary part of their own self-conception and self-respect. These women almost certainly value traditional conceptions of womanhood.²³⁶ For Islamic feminists, on the other hand, a return to the veil is symbolic of the loss of hard-won gains toward sexual equality. Some women wear the *chador* because they are poor and cannot afford Western clothes. Others wear it for pragmatic reasons: to avoid pressure from their family or husband, sexual harassment, or harassment by religious zealots, or to obtain social services provided by Islamic groups. Also, for those who have only recently migrated to the city, the veil provides a way of maintaining tradition and meaning in a rapidly changing world, and of gaining membership in a supportive community.²³⁷

In general, if the wearing of the veil is viewed as symbolic of the way that Islamic society has traditionally subjugated women to men, the argument for unveiling is compelling. If, however, the wearing of the veil is seen as an Arab-Islamic response to the threat of Western culture, its use becomes much less objectionable.²³⁸ Thus, considering the many reasons for wearing the veil, its advocates may not be acting in a manner incompatible with democracy.²³⁹

Furthermore, even if unveiling is a necessary prerequisite to gaining legal and social equality for women, it still may not be an essential element of democracy. The veil is highly symbolic, both for the equality of women and for independence from the West. Because these two symbolic uses lead to conflicting conclusions about the veil, removing the question of the veil from the realm of public debate may not be possible or desirable — at least, not without risking the alienation of groups whose participation in the political

234. Although this Section discusses the veil, the veil is not as objectionable as two related practices that restrict a woman's ability to move about freely, thus restricting her freedom to participate in political debate. These practices are the cloistering of women in the home (*purdah*) and the requirement that a woman travelling in public be accompanied by a male relative.

235. See Cheriet, *supra* note 160, at 205.

236. For example, "[a] recent survey indicated a majority of veiled female Egyptian university students oppose women's work, believe men are superior to women, and accept the idea that a woman's natural place is in the home." Bob Hepburn, *Women's Role in Islam Shrouded in Controversy*, TORONTO STAR, Apr. 18, 1993, at F2.

237. *Id.*

238. Afsaneh Najmabadi, *Hazards of Modernity and Morality: Women, State and Ideology in Contemporary Iran*, in *WOMEN, ISLAM, AND THE STATE* 48, 68 (Deniz Kandiyoti ed., 1991) (referring to unveiling as Western conspiracy and source of all corruption, including immorality and triviality, so that veil is necessary for protection from corruptions).

239. In addition, some women wear the veil in order to allow them to work for political liberation from within the established Islamic system. Indeed, the willingness to wear the veil for tactical reasons, while seeking to gain other types of equality and liberation first, is more popular among female feminists than among male feminists, who tend to view unveiling as an important symbol that is necessary to promote changes in social attitudes.

process is a necessary pre-condition for minimum political stability. The question then becomes whether the fight for women's equality can be fought before the establishment of inviolable elections, rotation of power, and representative government. If, as appears probable, Algerians cannot gain all components of mature, modern democracy in one fell swoop, then they must develop the more fundamental components first, and issues that are less essential must wait their turn.²⁴⁰

c. *Women's Suffrage*

Islamic fundamentalism denies women the right to vote. An FIS-controlled government would be unlikely to change this policy and bring it more in line with Western democratic principles. Yet, the junta went to the other extreme, depriving *everyone* of the right to vote and dissolving hundreds of local councils, and thereby depriving all citizens of democratic participation even in local affairs.

An emerging democracy cannot be expected to utilize an enfranchisement as broad as that currently used in Western democracies. While such an enfranchisement would be preferable, a developing democracy might give the vote to a more limited class just as early in the twentieth century the franchise in many Western democracies extended only to property-owning, white, Christian males. A comparison with economic development is perhaps constructive: although full conformity with current international standards is the goal, few financial analysts express disappointment with the emerging markets so long as continuous reform is made in the right direction. Many people seem, however, to expect that, while economic reform will take years of incremental change, political reform should occur instantaneously.

The right of women to vote has become part of our image of democracy. Women's suffrage, however, has only recently become an indispensable part of the Western conception of democracy. Therefore, perhaps a society that evinces encouraging trends toward democratization in all other areas but denies women the right to vote should not be labeled undemocratic. The development of democracies in the West in fact seems to indicate that once society is committed to the principle of democracy for some, the yeast of equal

240. Entelis has provided a fine developmental definition of democratization expressing all of the hopes that one could have for the future development of the FIS:

[Democratization is] a process through which the exercise of political power by regime and state becomes less arbitrary, exclusive, and authoritarian; bargaining, as opposed to command, takes on increasing importance in power relationships; alternative centers of power, or influence, begin to appear; public political debate, and the expression of criticism and opposing views, becomes increasingly evident; powerholders increasingly recognize the costs of governance by coercion and threat as opposed to persuasion and reward; political leaders increasingly realize that policy goals such as economic growth and even political stability may be enhanced by allowing, or acquiescing in, greater autonomy for societal elements in politics; powerholders may come to feel that increased participation enhances their and the system's political legitimacy; and political legitimacy comes to be seen not as an abstract (and perhaps dispensable) value but as an important political commodity or resource; and, for their part, aspirants to power or incipient elites begin to perceive the realistic possibility of achieving power, or sharing it, through conventional, legal procedures rather than by irregular and violent means.

Entelis, *supra* note 1, at 12-13.

protection works throughout society, however slowly, and makes it rise toward universal freedom. Thus, although denial of women's suffrage does not conform to Western notions of democracy, it is not necessarily undemocratic.

d. *Other Select Issues*

While the FIS received widespread support from Algerian businesses disillusioned with the corruption and ineffectiveness of the FLN, it failed to present a comprehensive plan for the economy.²⁴¹ The few details it did release evinced a desire to review relations with foreign creditors regarding Algeria's burdensome debt as well as a desire to ban "usury." Foreign investors feared these policies could have severely hampered economic development in Algeria,²⁴² but they can be fairly compared only to those of the pre-election and post-election secularized governments of Algeria, which all failed miserably.

One part of the FIS's economic agenda that would have had serious social and cultural implications was its plan to segregate the sexes to "protect the family." In practice, this policy would have prevented women from working outside the home. One proposal would have paid women to stay home in the hope of combating unemployment by keeping females out of the job market.²⁴³ In addition, fundamentalists had already succeeded in forcing the government to adopt a "Family Code" that contained many more concessions to them than to feminist movements.²⁴⁴ Again, however, an FIS regime would probably have faced the same incremental pressures to accept the equality of women that Western governments have faced. The fact that the FIS presently does not embrace such mature democratic ideals does not make it fundamentally incompatible with democracy.

The desire of the FIS to protect Islamic culture also led it to advocate Arabic as the only official language. This policy accompanied an attempt to eliminate foreign, especially French, cultural influences from Algeria, and an attempt to tie Algeria culturally and economically to eastern Arab nations such as Saudi Arabia, Syria, Lebanon, and the Persian Gulf.²⁴⁵ Realistically, however, the FIS's move to adopt Arabic as the exclusive official language of Algeria would be no different from a group advocating the exclusive use of English as the official language of the United States. At any rate, intervention to prevent such groups from voicing their views would be inappropriate in either the United States or Algeria.

241. *Algeria*, INT'L REP., Jan. 10, 1992, available in LEXIS, World Library, Allwld File.

242. Land, *supra* note 57. For example, notwithstanding the fundamentalists' reassurances to Western European nations that the flow of gas exports through the trans-Mediterranean pipeline would continue uninterrupted, they nevertheless "vehemently opposed" a hydrocarbons law, passed just before the canceled elections, that allows foreign corporations to own up to a 49% interest in exploration and development operations and that attracted great interest from about twenty major Western corporations and the European Community. *Id.* Although the secular governments in Algeria had not warmly embraced Israel or democratic rights, they had at least demonstrated their desire and ability to provide oil to the West.

243. Peter R. Knauss, *Algerian Women Since Independence*, in STATE AND SOCIETY, *supra* note 1, at 151, 161.

244. *Id.* at 163.

245. Ibrahim, *Hope for Democracy*, *supra* note 8, at A1.

Many other aspects of the FIS's national vision have far-reaching implications for the social and cultural structure of the nation. For example, the FIS reportedly proposed the death penalty for those convicted of homosexuality or adultery as well as a total ban on abortions.²⁴⁶ Again, analogous situations exist in the United States; nevertheless, few people would argue that these situations justify anti-democratic intervention against the groups advocating such proposals. Rather, opponents would use democratic rather than anti-democratic measures to oppose legislative or executive efforts to enforce laws against homosexuality and adultery, to extend the death penalty, or to eliminate access to abortion.

Secularists feared and opposed precisely these proposals, and the fundamentalists object to the secularists' efforts to impose opposite results. To abandon democratic competition in favor of violent confrontation would be to conclude, erroneously, that co-existence is impossible merely because of this lack of consensus.

B. *Existing Constraints on Anti-Democratic Actions by an FIS Parliament*

Had the FIS succeeded in taking control of the Algerian parliament, the ability of the fundamentalist majority to engage in anti-democratic behavior would have depended upon the formal legal framework within which it operated and the division of political power among the Algerian elites. The FIS would have had to operate under a system of separation of powers. Power would have been shared between the army, acting as a guardian of liberty, legitimizer of the use of power, and arbitrator of disputes; the presidency, wielding significant power through the administrative apparatus; and the FIS, controlling the parliament; as well as the other opposition parties, the rapidly maturing free press, and the FLN. This arrangement would clearly have been preferable to the current one, in which the junta has absolute power and acts as its own guardian, appointing and deposing the executive at will, imposing martial law, censoring the press, banning opposition, and imprisoning political opponents. In short, the junta, which is not subject to the countervailing power of any other social institution, does not seem to be moving towards democracy.²⁴⁷

Drastic measures like the military coup should have waited until all existing constraints failed to prevent the FIS from engaging in anti-democratic activities. Many factors suggest that had the FIS been allowed to gain control of the parliament, sufficient countervailing powers existed to constrain it.

First, the FIS was not monolithic; it contained both moderates who favored or were willing to tolerate democratic participation and radicals who argued in favor of an authoritarian government that would preserve fidelity to Islamic tenets. Even if the authoritarian elements had gained ascendancy, the elements that tolerated democracy would have remained a powerful force and would

246. Marshall & Sullivan, *supra* note 54, at 37.

247. Mortimer, *supra* note 18, at 575 (noting Algeria previously benefitted from "sturdy triple alliance of army, state, and a single party"). This three-fold power base now has been reduced to a single (and thus unrestrained) locus of power.

have served to restrain the authoritarians. In addition, the realities of governing, the necessity of foreign approval, and the necessity of compromise with opposition both inside and outside the party would have forced some moderation, if not in ultimate goals, at least in short-term tactics.

Second, the army would have retained significant power under an FIS-controlled government. If, after being allowed into the parliament, the FIS had attempted to eliminate future elections or to implement policies or laws incompatible with democracy, the army could have intervened to prevent anti-democratic laws or constitutional amendments.²⁴⁸ The counterbalancing concern here, which must have indeed been great if it was the concern that prompted the coup, was that the senior leadership of the army would have been purged by radical junior officers who sympathized with the FIS.²⁴⁹

Third, President Benjedid would have retained his powers as president for at least two more years. These powers were substantial. At one time, President Benjedid enjoyed strong support and leadership in the army, the FLN, and the government — the three traditional power centers in Algeria. As president, he had demonstrated his commitment to reform: for example, President Benjedid was the one who initiated the economic reforms of 1988. After the 1988 riots occurred, he not only acted to eliminate torture, which officers had used to quell the riots, but also punished those responsible.²⁵⁰ He also continued his reform programs and held municipal elections. Although he could have chosen to exclude religious parties from the political process, as Tunisia and Turkey, among others, have done, President Benjedid revised the constitution and opened the process to *all* opposition parties.²⁵¹ He continued the plans for parliamentary elections after the riots of 1990 despite the FIS support of Hussein and in spite of their nondemocratic rhetoric. Most importantly, he wanted to continue with the second round of parliamentary elections even after the FIS's overwhelming victory in round one. President Benjedid's actions demonstrate that he believed that a FIS parliament would not irreversibly disrupt his plans for democratization, and that he and others would continue to wield sufficient power to contain the FIS.²⁵²

Fourth, the FIS's primary political rival, the Front for Socialist Forces, opposed the coup from the beginning.²⁵³ It too believed that the system could

248. In a similar way, Jordan's King Hussein stepped in and removed the Muslim Brotherhood cabinet members he had appointed after they offended secular forces by their changes in the Ministry of Education. He thus gave them power and let them fail rather than excluding them *ex ante*. Dunn, *supra* note 4, at 21. See generally Musa Keilani, *Islam, Democracy and Politics in Jordan*, in SOREF, *supra* note 206, at 25 (noting Jordan's success in co-opting Islamists, in contrast to Egyptian policies of suppression and imprisonment, which resulted in militants' view that violence was only alternative and led to Sadat's assassination).

249. Many enlisted men and junior officers were sympathetic to the FIS. Eventually, the generals would have lost control of the army to younger officers. The generals may have believed this would occur sooner rather than later and that they therefore had to act before they lost control.

250. See AMNESTY INT'L, *supra* note 21, at 9.

251. RUEDY, *supra* note 14, at 250-51. Benjedid could have rejected the FIS's party application on the basis of a 1989 law that bans political parties organized "on an exclusively confessional basis." Mortimer, *supra* note 18, at 580.

252. Entelis & Arone, *supra* note 28, at 35. He had been meeting with the FIS leadership, and rumors surfaced that he had agreed to give them the ministries of defense and the interior. However, he stood firm in his refusal to hold presidential elections early.

253. Dunn, *supra* note 4, at 18.

work and that free elections would have best served its own interests. Therefore, either the Front for Socialist Forces believed the FIS would not attempt to eliminate elections, or that the FIS would fail if it tried, or it expected the FIS to evolve towards regular free elections more quickly than the junta.

In sum, the factors that could have constrained the FIS had the military allowed it to assume power in parliament were considerable. The poor democratic record of the junta after their intervention, their obvious self-interest in retaining power, and the corruption of the government all provide additional reasons to doubt the veracity and sincerity of the military's expressed reasons for intervening.

V. A COMPARISON OF THE FIS TO THE JUNTA

The preceding Part explained why the stereotype of fundamentalist political agendas, and in particular the FIS agenda, presents fewer reasons for concern than some analysts suggest. Nevertheless, the picture of the FIS that emerges is not that of a party wholeheartedly championing a tolerant, pluralistic society. A significant risk undoubtedly existed that, once in power, the FIS would have implemented policies that exceed Western ideas of the duties, powers, and role of the state. The question of the FIS's compatibility with democracy is distinct, however, from the question of the legitimacy of the coup.²⁵⁴

The comparison between the FIS and an ideal democracy is not particularly helpful. The question is not whether the FIS deviated from the ideals of pluralism and democracy — clearly, it did so. So did the junta. Therefore, the better focus for inquiry is which authoritarian alternative would provide the greatest room for democratization in the future.²⁵⁵

The primary motivations for Algerians to support the FIS were apparently a desire for egalitarianism and equal economic opportunity, and a belief that the corrupt and self-interested government had betrayed its sacred trust to work for the general welfare.²⁵⁶ Democracy, as a good in itself, seemed

254. The question of the FIS's compatibility with democracy is also distinct from the question of whether Islam itself is compatible with democracy. This Article assumes that Islam, as one of mankind's great religions with a long history of concern for humanity's welfare and the individual, contains streams of thought within it that could accommodate democracy. The policy of the U.S. government concurs with this view. Djerejian, *supra* note 129.

255. Other nations around the world are pursuing or have pursued second-best solutions, either with U.S. approval or with little serious U.S. objection. For example, President Salinas in Mexico introduced a free economy much faster than free elections. President Fujimori of Peru dissolved the Congress, fired half of the Supreme Court, and began to rule by decree in order to attain the economic growth he viewed as imperative — and he did all this with popular support, despite the questionable legality and clearly anti-democratic nature of his actions. President Carlos Menem of Argentina acted in a similar fashion. Singapore, Taiwan, and South Korea also placed economic growth ahead of democratic reforms, preferring to build a strong economic base before trying to build stable democracies, and instituting democratic reforms only when the middle class was strong enough to insist on them. See John D. Sullivan, *Democracy and Global Economic Growth*, WASH. Q., Spring 1992, at 175, 183 (arguing that participatory institutions may need to be built before nations can profitably hold elections; and that "well-trained and experienced legislators, political operatives, and elected officials at all levels, especially local government, are indispensable").

256. Cheriet, *supra* note 35, at 9.

secondary.²⁵⁷

The fundamentalists claim that “[t]he people of Algeria want an Islamic state” and that “[t]hey should be allowed to choose this freely.”²⁵⁸ Even if some commentators are right in doubting “whether a country in which a majority inclines towards a theocratic view of the state can be democratic,”²⁵⁹ the principle of popular sovereignty should allow a society to choose a theocracy favored by the majority rather than a secular authoritarianism favored only by a minority.

A secular authoritarian government is likely to be interested merely in maintaining power and wealth. So long as individuals did not cause trouble, this type of government would probably ignore them, allowing them some freedom to structure their own life. A religious authoritarian government, on the other hand, would almost certainly be more concerned with conformity because every part of life has religious implications, and because the theocracy would self-consciously attempt to shape society to conform with religious dictates.²⁶⁰ Thus, religious authoritarianism is much more likely than secular authoritarianism to tend towards totalitarianism, and this difference might justify favoring the secular alternative over the religious alternative.

Another argument offered for supporting the junta is that the government had shown signs of democratization. However, while the junta’s installation of reform-minded President Boudiaf seemed to support democratic change, the questions surrounding his assassination and the junta’s subsequent record all but extinguished hope for future reforms. The forced resignation of Benjedid and other reformers demonstrated precisely the trait feared in the FIS — the ouster of moderates by radicals.²⁶¹

Some also argued that the junta would be more sensitive to the demands of human dignity, human rights, and “representation” of the public. The actual results of the coup are nevertheless strikingly similar to the fears that the junta claimed justified its intervention. By failing to avoid these feared outcomes, the junta’s actions are illegitimate even when judged by its own standards.

Although some justify the coup as an undemocratic step necessary to prevent fundamentalists from eliminating democracy, statements by the military leadership have been as disturbing as statements made by the most extreme fundamentalists. For example, one military officer reportedly responded to the death and violence by noting that “one million Algerians died in the long fight

257. For example, and perhaps surprisingly, the FIS enjoys considerable support from militant women, especially in its neighborhood charitable associations. Many of them even voluntarily wear the *hijab*, which clothes them with respectability and allows them freedom of movement. The FLN’s adoption of undemocratic means to suppress the FIS has given the FIS “the ideological and moral claim to say, ‘The FLN just doesn’t want to let go of its power, its privilege.’” Bekkar, *supra* note 35, at 15.

258. Lara Marlowe, *Algeria: Searching for Salvation*, TIME, Aug. 26, 1991, at 32. At the least, “Islam is increasingly a defining force in evolving political agendas.” Wright, *supra* note 4, at 131.

259. Ghiles, *supra* note 101, at 20.

260. This concern for control and conformity makes totalitarianism a threat to the value of human dignity, which seeks to increase the civil order of private choice and to decrease the public order of control. Some commentators believe this problem exists with fundamentalisms in general. See, e.g., LASSWELL & MCDUGAL, *FREE SOCIETY*, *supra* note 158, at 745, 864 (“The spreading ‘fundamentalisms’ of many different kinds represent of course trends against the norms of human dignity.”).

261. Within a relatively short period of time, reform appeared to have stopped, and trade was again subject to nationalistic controls. Ghiles, *supra* note 101, at 19.

for independence from France,” indicating his belief that no price was too great to avoid fundamentalist rule.²⁶² Similarly, while the fundamentalists’ commitment to democracy may be questionable, so is that of the leadership installed by the coup. For example, Ali Haroun, a member of the State Council, rationalized the coup by saying that the FIS did not receive “majority” endorsement.²⁶³ According to this logic, President Clinton would have no right to govern the United States, since he too received less than an absolute majority of the vote. Indeed, very few leaders in any democratic country receive an absolute majority because large numbers of people commonly do not vote.

Although the High State Council initially gave itself a December 1993 deadline to hold new elections, it soon began speaking instead in terms of a preliminary referendum on constitutional reform, of the need to avoid frequent changes in leadership, and of the need to give policies three to five years to take effect.²⁶⁴ The elimination of the principle of rotation of power is precisely what people feared from the FIS.

Perhaps the FIS would have been less democratic than the junta, but many factors seem to indicate otherwise. First, the administrative and bureaucratic establishment is indispensable to operation of the nation. The FIS and the establishment came from the same families, and thus “[t]he historical and subjective conditions for a systematic physical repression of the elite” were absent.²⁶⁵ Second, in Algeria, unlike Iran, the fundamentalists had not taken power by revolution. Despite obvious widespread support, the FIS waited patiently for more than two years for an opportunity to come to power through democratic means. Some of its policies might have violated norms held sacred in the West; nonetheless, its record could hardly have been worse than the demonstrated record of the junta. Are democratic norms violated more by depriving all women of their vote, or by completely excluding fundamentalists from the political process and subjecting tens of thousands of citizens to arbitrary detention and torture? One injury is relatively mild but broad-based, whereas the other injury affects far fewer individuals but seems much more fundamental and severe. Moreover, the military coup d’état has also deprived everyone, men and women, of their vote.

The military’s action demonstrated from the very beginning an intention to exclude the FIS and its supporters from political participation. The experiences of South Africa, Gaza, and Northern Ireland illustrate that when a large proportion of society has been excluded from political participation, progress toward conflict resolution has occurred only when that fundamental policy of exclusion has been reversed, and political participation, with its

262. Ernie Meyer, *Look at Lebanon — That’s the Future of War*, THE JERUSALEM POST, Apr. 16, 1989, available in LEXIS, World Library, Allwld File.

263. *Algeria: Democracy Has Its Drawbacks*, THE AGE (Melbourne), Jan. 15, 1992, available in LEXIS, World Library, Allwld File (noting that of 13 million eligible voters, 5.4 million did not vote while FIS received 3.26 million votes).

264. *Algeria: Kafi Calls for More Time*, MIDDLE E. ECON. DIG., Jan. 29, 1993, at 16, 16. In addition, Abdesselam did not calm potential investors with his defense of the nationalist economic policies he introduced in the 1970s. *Algeria: No Growth in the Shadow of the Gun*, MIDDLE E. ECON. DIG., Dec. 25, 1992, at 6, 6.

265. Addi, *supra* note 147, at 37.

implications for policy changes, has occurred.

Considering the FIS's uncertain future motives, the near certainty of future constraints upon their exercise of power, and the indefinite conclusion regarding which authoritarian alternative is better for the nation both in terms of current protection of human rights and in terms of future democratization, the junta's decision to interrupt the elections was not justified.

VI. CONCLUSION

The West's support for the repression instituted by the army rests on the assumption that the junta will, someday, succeed in establishing democracy. Unfortunately, the repression has so far only served to further radicalize the opposition, thereby almost guaranteeing that the backlash, eventual failure of the coup, and transition to legitimate power will be much more violent and difficult.

This Article has examined the question of the legitimacy of the coup d'état when evaluated against the ideals of a developing democracy. Some FIS policies would be repulsive to a Westerner who is accustomed to greater levels of personal autonomy, but these policies are nonetheless compatible with the essential components of democracy. While other FIS policies are probably incompatible, doubt remains as to whether the FIS would have been able to implement its agenda and whether it would have moderated its position. The FIS's agenda clearly falls short of the ultimate ideals of democracy. However, even if the FIS was successful in implementing its proposed policies, it is unlikely to have been worse than the government now in place, especially when measured by standards of respect for human dignity and prospects for future democratization.

The West has not accepted the fact that an Islamic pluralist democracy will differ considerably from the modern Western Judeo-Christian secular democracy. Developments in the mainstream of resurgent Islam may tend towards greater acceptance of the ideals of human rights and pluralism. Hence, Western proponents of democracy need to distinguish between the necessary fundamentals of democracy and the non-essential enhancements, which emerging democracies should be allowed to develop internally or assimilate at their own pace.

Algeria presented an excellent opportunity to nurture an Islamic fundamentalism compatible with democracy and pluralism. That opportunity, however, has apparently been lost. The past few years have allowed the extremist elements within both the government and the FIS to eliminate their moderate rivals. Unhappily, in their responses to these events, Western democracies have demonstrated that, despite their professed commitment to the spread of democracy and pluralism, they are more attached to the maintenance of secularism and thus prefer a brutal authoritarian regime over a potentially democratic Islamic government.

