

## Public enterprise in Algeria: law as a bridge between ideology and reality

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### SUMMARY

In 1971, the Algerian government promulgated the *Charte de l'Organisation Socialiste des Entreprises*. By means of this *Charte* it ostensibly sought to reform Algerian public enterprise law and to correct increasingly disruptive problems in public enterprise management. It also sought to reduce the widening gap between workers and the technocratic elite managing the state-controlled economy. The *Charte* and its subsequent implementing legislation have been criticized as being, at best, ambiguous; at worst, insincere. Moreover, implementation of *la gestion socialiste*, as the reform came to be known, was uneven and slow.

This article discusses Algerian public enterprise law before and after the 1971 reform. It does so within the context of comparing the utility of applying a symbolic rather than an instrumental view of the role of law in development. On the basis of analysis of the Algerian experience, the article suggests that the symbolic view of law allows a much deeper understanding of the role of law in development, primarily because it allows, if not requires, consideration of the influence of economic, political and social factors on the role of law in developing countries.

'At most, legal institutions can only show the way: roads are built by men' (Miaille, 1972, p. 693). This statement captures the essence of the problem this article addresses: the role of law as a bridge between ideological goals and the realities of development in Algeria. The problem is explored by focusing on the role and legal organization of public enterprise in Algeria during the 1960s and 1970s. Particular emphasis is on changes introduced in 1971 with the promulgation of the *Charte de l'Organisation Socialiste des Entreprises*, known in its application as *la gestion socialiste* or socialist management.<sup>1</sup>

This article also affords the opportunity to assess the usefulness of analysing the role of law in development as either instrumental or symbolic. It suggests that, at least in the case of Algeria, the instrumental view is incomplete. The symbolic interpretation, on the other hand, allows a deeper understanding of the role and evolution of public enterprise law in Algeria. It may also enhance understanding of the role of law in development in general.

Robert Pozen has contrasted the instrumental and symbolic views of the role of

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<sup>1</sup> This article is derived from a longer unpublished paper written in partial fulfillment of the requirements for the degree of *juris doctorate* from the Harvard Law School. The original paper contains extensive comparative analysis of Algerian public enterprise law before and after 1971. It also explores in depth the political and economic context of *la gestion socialiste* and attempts an interpretation of the Algerian government's motives in promulgation and implementation of this reform. Some of the fruits of this research are presented in conclusory form in this article.

public enterprise law in developing countries as regards assessment of its connection to economic performance (Pozen, 1976, pp. 162-163). He suggests that instrumentalists measure the 'success' of law in terms of the degree to which the law is implemented and its goals achieved. Symbolists, however, measure success in terms of the degree to which the law is accepted by the parties to whom it is meant to apply. Pozen asserts, moreover, that 'the covert objectives and latent functions of many laws are symbolic despite the instrumental character of the stated official goals for these laws' (Pozen, 1976, p. 163).

As is described below, some observers have questioned the ideological commitment of the Algerian government to *la gestion socialiste* due to contradictions they profess to see in the laws related to it and due to delays in its implementation. Their disappointment may arise, however, from the fact that they want to ascribe a single-minded ideological goal to *la gestion socialiste* and then look to the implementing law as a means of achieving this goal. In this respect, they appear to be taking an instrumental view of law. They attribute 'failure' of the law to achieve the ideological goal they have superimposed upon it to lack of sincerity on the part of the government that promulgated it.

This article suggests that it may be more helpful to analyse *la gestion socialiste* as an illustration of the symbolic use of law, applying Pozen's schema in both the economic and ideological spheres. In the symbolic view, the law can be seen as a guide or facilitating agent promulgated for the purpose of encouraging the individual over whom it holds sway to work toward the goals it embodies. In this sense, *la gestion socialiste* can be seen as motivated by sincere ideological commitment tempered by the needs of Algerian reality.

## PUBLIC ENTERPRISE THEORY

The role of public enterprise in developing countries has been the subject of much commentary. This commentary has become increasingly sophisticated as the passage of time has allowed the study of substantial periods of operating experience by public enterprise in developing countries. Moreover, the role of law as it relates both to the internal functioning of public enterprise and to the relationship between public enterprise and its external environment has received increasing attention.

Generally, this literature contains four recurring themes. The first is discussion of the reasons why developing countries choose to resort to public enterprise as a vehicle for economic development. The second is the various legal forms public enterprise may take and whether, in fact, this makes any difference in the successful operation of a particular enterprise. The third is the complex question of goals assigned to public enterprise in developing countries. The fourth is the manner in which public enterprise is controlled by government administration.

For the purpose of exploring the role of law in development, investigation of the themes of legal form and methods of control is particularly useful. Moreover, the question of formal control is closely linked to the legal form a public enterprise takes. When investigating the existence and impact of informal controls, the question of legal form may become less significant, however. The problems of formal organization and formal and informal control are as variable as the political, social and legal environment of the countries in which public enterprises have been

established. Although particular types of public enterprise organizations may fall generally within 'universal' categories, these particular types often cannot be transferred successfully from one environment to another because their 'success' is so closely related to the particular environment in which they operate (Hanson, 1959, p. 336). Moreover, as is true of Algerian public enterprise in the 1960s, juridical form may be whimsical or haphazard, deriving largely from colonial experience.

Possible juridical forms of public enterprise can be categorized broadly as follows. The state, through a government ministry or other public authority, may itself undertake an industrial or commercial venture. These ventures do not have corporate personality and are not covered by a comprehensive code of law, such as a commercial code, because they are creatures of the state and benefit from its prerogatives.

An alternative is the establishment by the state of industrial or commercial public corporations. These are normally established directly by special statute. They have corporate personality and are normally regulated by commercial law. They are usually wholly owned by the state.

A third type of public enterprise is the state or national company. These are normally commercial or industrial companies constituted under ordinary company or corporation law and subject to it. The state is sole or majority shareholder, directly or through a state holding company.

The question of control of public enterprise is closely linked to the problem of juridical form. This is because formal methods of control of a particular public enterprise are normally embodied in the legal provisions constituting the enterprise. In the case of public corporations, this is the special statute establishing the corporation. In the case of national companies, it is through a combination of existing company or corporate law and the internal governing law of the particular national company.

Aside from control exercised directly through the constitutive law of a particular public enterprise, there are other types of formal control mechanisms which derive their powers of regulation or control from law as well. These are entities such as ministries, special financial control agencies, legislative bodies and other institutions of control established to meet particular needs (Hanson, 1959, p. 360). The efficacy of these external control mechanisms depends in large measure on the social, political and economic environment in which the enterprise operates. In addition, their effectiveness depends on the calibre of the individuals involved in control, the quality of the machinery the government has established for co-ordination and co-operation, and the demands on ministerial or other government agency time and energy.

Thus far, discussion of control has been primarily in terms of legal and bureaucratic controls. In developing countries and, perhaps, particularly in one-party states, the major problem may not be that of bureaucratic or legal control but of political control (Ghai, 1977, p. 25). Political control becomes an important form of informal control, exercised through political pressure. A simple example might be the use of formal powers of appointment of managers in public enterprise for political patronage purposes.

Political or economic influence, as a manifestation of informal control, moreover, may reduce formal control mechanisms to mere sham. A public

enterprise may become so powerful that it is able to flout existing law perhaps because it monopolizes the predominant economic sector. This may be tolerated by the government for political or economic reasons. Or, the relative political influence of the particular ministries involved in direct and indirect supervision of a public enterprise may undercut the operation of formal control mechanisms.

This brief discussion of control of public enterprise should suggest that this is a problem closely linked to the particular economic, social and political environment in which a public enterprise functions. Juridical forms, or more generally, laws are the source of formal control mechanisms and may sometimes contain as well the official statement of public enterprise policy and goals. As the sole embodiment of control mechanisms, however, and thus the means of *ensuring* implementation of announced public enterprise goals, law must be incomplete. Even in the most legalistic of societies informal political relationships profoundly affect the functioning of public enterprise.

Returning to the distinction made earlier between instrumental and symbolic views of the role of law in developing countries, it should be evident that the symbolic view accommodates much more easily the existence of informal control mechanisms. As suggested earlier, symbolists judge effectiveness of the law in terms of its acceptance or success in involving the population or parties to which it is addressed in working toward the goal or goals it represents. The success of the legal strategy or achievement of a particular goal is not alone, if at all, the correct measure of the effectiveness of the law. Rather, the law should be seen as an indicator of policy. The law's success depends upon the efficacy with which it encourages evolution within the actual environment upon which it operates.

The symbolic view of law thus allows and expects that the particular social, political and economic environment will be critical. In doing so, it accommodates the problem of the impact of informal control mechanisms. These mechanisms are part of the environment upon which the law operates. Since law is no longer simply an instrument for direct accomplishment of a policy but also or alternatively a facilitator or guide, the role and significance of non-legal or extra-legal controls on public enterprise activities becomes more comprehensible. These informal controls also become more legitimate as an object of study by those interested in the role of law in development. Finally, the distinction between instrumental and symbolic views of law may help in analysis of the motivation behind promulgation and implementation of particular laws and policies. This is true of Algerian public enterprise law in the 1970s.

## **THE ALGERIAN BACKGROUND 1962-1971**

In 1962, at the end of seven and a half years of war with the French and one hundred and thirty years of colonial rule, Algeria gained independence. The new state was confronted immediately with monumental problems. The war had torn violently the social and economic fabric of the country. Most of the managerial class, administrators and professionals disappeared with the departure of the European population.

The new government of Ahmed Ben Bella passed laws nationalizing properties,

farms and enterprises left vacant by the fleeing  *pied noir* . It instituted a system of worker management ( *autogestion* ) under which workers took control of abandoned businesses and factories. Abandoned farm lands were turned into collectives run by self-appointed management committees ( *comités de gestion* ).

A Constitution was approved by popular referendum in September 1963. It established a one-party presidential regime and institutionalized the already existing elected National Assembly. Ben Bella was subsequently elected president for a five-year term. In June 1965, with the country slipping into economic chaos as a result of Ben Bella's mismanagement, the army, led by the Defence Minister, Colonel Houari Boumediene, overthrew Ben Bella in a bloodless coup. Boumediene suspended the Constitution, dissolved the National Assembly and formed the twenty-six member Council of the Revolution of which he became president. The Council ruled Algeria collegially, as the supreme political body, although Boumediene emerged gradually as  *primus inter pares* . In late 1976, Boumediene was elected President of Algeria by popular referendum. He held that position until his death in late 1978 from a rare blood disease. He was succeeded in the Presidency, after a constitutionally prescribed popular referendum, by Colonel Chadli Bendjedid, a long-time confidant.

John Nellis has suggested that the period of Boumediene's government can be divided conveniently into two parts, with 1971 representing a type of turning point (Nellis, 1977, pp. 530-536); 1965-1971 was a period of consolidation of political power characterized particularly in the 1965-1967 period by elimination of political adversaries. It was also a period of economic retrenchment and retreat from the strident socialist orientation of the Ben Bella period, although the main socialist aims of Ben Bella's regime arguably were not repudiated (Hazard, 1970, p. 197; but see Chaliand and Minces, 1972, pp. 151-161). The  *autogestion*  sector was left to flounder, with emphasis placed on centralization and strengthened bureaucratic control and on economic development based on petroleum and heavy industry. Stress on technocratic efficiency replaced Ben Bella's stress on mass mobilization and participation (Nellis, 1977, p. 531).

During this same period, the Algerian government nationalized most foreign-owned business and industry. Successive nationalizations culminated in 1971 with nationalization of the remaining foreign petroleum interests, most of which were French. Management of these industries was placed in the hands of public enterprises, largely in the form of national companies.

At the time of independence there were few public enterprises in Algeria. Those that existed had been established by the French colonial authorities. These were transferred to the Algerian government at independence. Particularly from 1965 after the overthrow of Ben Bella, the Algerian government began to establish new public enterprises as it took over key sectors of the economy. Commentators differ in their assessment of the relative weight of the factors influencing the Algerian government to rely heavily on public enterprise. There is general agreement that resource mobilization and allocation was an important aspect of this choice (Sbih, 1973, p. 68; Remili, 1977, p. 160; Vlachos, 1972, p. 471). The government stepped in where private capital was insufficient or unprepared to take on the task or where the government was determined to control the development of an important sector such as petroleum. It has been suggested that ideological motivation also played a part in this choice (Remili, 1977, p. 160; Nelson, 1979, p. 133). Nevertheless, even those

who identify socialist ideology as the root of the government's activism recognize that economic necessity was also a strong impetus (Remili, 1973, p. 24).

There was considerable lack of co-ordination during the initial period of public enterprise establishment in Algeria. The result was lack of precision in juridical form and in provision for management and control (Sbih, 1973, pp. 68-69; Remili, 1977, p. 164). Before 1971, Algerian public enterprise law drew heavily on French law. There was, however, no overarching legal framework for public enterprise organization. Thus, as the public sector grew rapidly, there was no clear means of co-ordination of public enterprises with each other or with the central administration. Some enterprises were established by legislation, others by administrative decree. There was little distinction made between enterprises involved in public service activities and those whose primary function was commercial (Sbih, 1973, pp. 68-69; Vlachos, 1972, p. 472).

Prior to 1971, there were two main types of public enterprise in Algeria. These were public corporations (*établissements publics à caractère industriel et commercial*) and national companies (*sociétés nationales*) (Vlachos, 1972, pp. 473-482; Remili, 1977, pp. 164-170). The public corporation was the predominant public enterprise type before independence. After independence the form continued but was soon found to be inappropriate to the new Algerian context (Vlachos, 1972, p. 473; Remili, 1977, p. 167). The result was the emergence of a category of public corporation differing widely in its specific application.

Whereas the pre-independence public corporation was controlled by a board of directors, this form soon proved unworkable in independent Algeria. This was due primarily to the lack of sufficient trained personnel and to the fact that board governance was ponderous and inflexible. The trend became to replace the board of directors with an advisory committee and to concentrate management functions in the hands of a director general (Vlachos, 1972, p. 473). The membership of the advisory committee (or board of directors where that form was retained) was normally composed of representatives of interested government ministries or other state officials (Vlachos, 1972, pp. 474-475).

Public corporations were subject to both public and private law and also possessed certain public law privileges including expropriation rights and exemption from private law executory measures (Remili, 1977, pp. 167-168; Vlachos, 1972, pp. 477-478). They enjoyed financial and budgetary autonomy. Normally, the budget was subject to prior approval by the supervising ministry as well as by the ministry of finance. The level of prior financial and technical control varied widely, however, depending on the statute of the particular public corporation and on the sector to which it was related (Remili, 1977, pp. 164-166, 168).

Whereas the legal and organizational form of public corporations varied widely, the national company form was more homogeneous. National companies were commercial corporations governed by private (commercial) law. They did not have public law prerogatives similar to those of public corporations. They were normally involved in the productive sector of the economy. In theory, national companies were joint stock companies (*société anonyme*) with the state the only shareholder, or the majority shareholder in the case of mixed companies (Remili, 1977, pp. 168-169; Vlachos, 1972, pp. 479-480).

Within the general national company category there appear to have been three distinct legal forms. The first was similar to that of a public corporation, with

control largely in the hands of the supervising technical ministry. The second form was a legal structure somewhat similar to the American corporation, with ownership represented by shares in the capital of the enterprise and management carried out through a board of directors. The third form has been compared to Soviet public enterprise organizations. The management structure was highly centralized with a supervisory council attached either to the supervising ministry or to the executive rather than with a board of directors superimposed between management and the supervising ministry (Remili, 1977, p. 169).

Although the above description of legal forms is important in setting the context for the evolution of the formal structure of Algerian public enterprise in the 1960s and 1970s, it should be emphasized that the existence and use of these forms was haphazard. They resulted from carrying over or superimposing colonial legal forms. Or, in the case of the Soviet model, they were borrowed from an only superficially similar economic environment. It is likely that in the early stage of Algerian public enterprise development the particular form chosen had little real significance.

Analysis of the formal organization of SONATRACH (*Société Nationale pour la recherche, la production, le transport, la transformation et la commercialisation des hydrocarbures*), the government owned hydrocarbon monopoly, and SONACOME (*Société Nationale de construction mécanique*), the monopoly for production and importation of mechanical equipment, is useful to illustrate the diversity of structure of Algerian public enterprise prior to 1971.<sup>2</sup> Both were described in their constitutive statutes as national companies. However, SONATRACH's initial formal structure, dating from 1963, was that of a joint stock company with a board of directors as the primary organ of administration and management. This structure reflected some of the same attributes and resultant potential weaknesses of the early structure of Algerian public corporations. These included lack of sufficiently experienced personnel to serve as board members and the general inflexibility and slowness of management by committee. This structure also served to interfere with direct supervision of the company by the supervising ministry. Although the minister as presiding officer at the annual general meeting could veto decisions of that group, he appears to have had no direct statutory authority over the activities of SONATRACH. His power of nomination of board members and of the president-director general obviously provided a means of indirect control, however.

The formal structure of SONACOME, established in 1966, reflected, on the other hand, an attempt at centralization of authority in the hands of a director general with direct responsibility to the supervising ministry. A board of directors to whom the director general was responsible as in the case of SONATRACH had been replaced by a supervisory committee whose function was clearly advisory. The committee might have suffered from some of the same weaknesses ascribed to boards of directors due to insufficiency and overextension of personnel. Nevertheless, it was removed from the chain of authority and thus did not impede directly efficient management. The control of the supervising ministry was also

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<sup>2</sup> The discussion that follows is based on conclusions drawn from detailed analysis of the constitutive statutes of SONATRACH and SONACOME. This analysis is set forth in the paper referred to in footnote 1. Statutes drawn upon are: (a) Statute of SONATRACH (1964); (b) Décret du 4 avril (1966), this decree abolished SONATRACH's board of directors; (c) Décret No. 66-296, 22 Sept (1966), this decree amended SONATRACH's statutes; (d) Statute of SONACOME (1967).



more direct. Not only did the minister, in effect, appoint the director general. He also had broad formal powers of approval over SONACOME's activities.

In practice, it appears that during the 1960s formal control mechanisms functioned relatively poorly. This can be attributed to a number of factors. There was a dearth of adequately trained personnel to staff the management and control organs within the various public enterprises and their supervising ministries. Diversity of formal juridical organization of public enterprises led to confusion in their management and supervision (Sbih, 1973, p. 69). Often the same ministry was responsible for supervising enterprises whose formal control structures differed greatly. SONATRACH and SONACOME were, in fact, under supervision of the same ministry until the mid 1970s. This could easily have led to confusion within the supervising ministries regarding both particular control functions to be exercised in each case and co-ordination of activities among public enterprises supervised by that ministry.

It appears, moreover, that participation of representatives of different ministries on boards of directors and supervisory committees led in some cases to interjection of interministerial disputes and competition into the management of an enterprise. In addition, individual representatives had difficulty separating the interests of their ministries from those of the enterprise on whose board they sat. Loyalty to the ministry tended to be stronger. Also, the tendency for the supervising minister, himself, or his representative to become president of the board increased over time, probably with the object of strengthening ministerial control. This combination of functions worked to weaken the concept of ministerial supervision as a source of independent control (Sbih, 1973, p. 69).

It is interesting to note that in the case of SONATRACH this pattern has continued into the 1980s. The position of president-director general was held until 1977 by Sid Ahmed Ghozali, a protégé of Belaid Abdesselam, Minister of Industry and Energy. Subsequently, Ghozali became Minister of Energy and Petrochemical Industries while retaining his position as president-director general of SONATRACH. This same pattern has been followed by Belkacem Nabi, the current minister and president-director general of SONATRACH.

Finally, boards of directors also failed in their functions because they often met irregularly. This led sometimes to their formal replacement by supervisory committees of the types established by SONACOME's statute. Much of the time, however, it led to devolution of management functions to the director general or to the supervising ministry (Sbih, 1973, p. 70; Remili, 1973, pp. 166-167). SONATRACH's board was abolished formally in 1966 with all management powers placed in the hands of the president-director general. As a result of any of these changes, the originally conceived control mechanism was clearly weakened.

The question of informal or political control has been submerged in the foregoing discussion of the efficacy of formal control mechanisms. In the case of Algeria, it is difficult to separate the two. Often there was formal provision for joint ministerial action. SONACOME's statute required prior approval of its annual budget by both its supervising minister and the minister of finance. This arrangement clearly provided opportunity for political rivalries among various ministries to influence public enterprise activities.

It has been suggested that the most powerful means of control available to the supervising minister was the power of nomination and removal of the director



general of the enterprise subject to government approval (Vlachos, 1973, p. 317). This function has attributes of both formal and informal control, particularly if political motivation enters into either nomination by the minister or approval by the government. It suggests that formal control functions predicated on the concept of providing effective management and supervision might well be susceptible to subversion for political reasons.

In summary, it appears that by the end of the 1960s most Algerian public enterprises were subjected to highly developed formal systems of internal and external control as reflected in constitutive statutes and in general laws such as those governing financial activities. These formal mechanisms were weakened in practice, however, by social, economic and political factors. These included lack of sufficient personnel, confusion due to a plethora of legal structures, and interjection of ministry-level political and economic rivalries. This left actual control of public enterprises by the government incomplete and uneven. It fostered in some cases, as with SONATRACH, the growth of an overly independent technocratic elite. In other cases, it forced supervising ministries to become more and more involved in the daily management of particular enterprises. Overall, it produced overcentralization and stagnation in administration, with workers largely isolated from an increasingly distinct and distant technocratic management.

This state of affairs suggests that an instrumentalist interpretation of Algerian public enterprise law during this period would be deficient on two levels. The haphazard nature of public enterprise law and legal structure indicates that any argument that law was being used purposefully by the government to accomplish particular economic or ideological goals is tenuous at best. Nor is it useful to suggest that no matter how haphazard or passive its origin, law was working as an independent or discrete force in the economic or political sphere. It is clear that the economic, political and social environment was influencing greatly the manner in which the law's impact was felt by society at large and by the particular enterprises to which it applied. The question remains whether in the 1970s when the Algerian government became more active in its use of law as a means for correcting problems in public enterprise administration and in the Algerian society and economy at large the instrumentalist view becomes any more useful in interpreting motivation and result.

### ***LA GESTION SOCIALISTE***

By the late 1960s, it was evident that over-centralization was becoming a threat to economic performance. In 1971, approximately ninety per cent of Algerian industry was centralized in state-owned public enterprise. Productivity was suffering, while at the same time growth of a technocratic elite at the helm of the public enterprise sector was interfering with government control of the economy. Both overbureaucratization and emergence of a privileged technocratic class were also alienating the mass of the population (Chaliand and Mincez, 1972, pp. 151-161; Nellis, 1980, pp. 481-507; Viratelle, 1973, pp. 299-302).

In 1971, in an effort to revitalize the economy and to increase popular participation and enthusiasm, the Boumediene government introduced two major economic programmes. One was the agrarian revolution, focused on arresting the disastrous decline in agricultural production due at least partially to government

neglect. The other was *la gestion socialiste*, a programme of worker participation in the management of public enterprise. *La gestion socialiste* was aimed at alleviating overcentralization and bureaucratization of the industrial sector. It also sought to address the underlying problem of declining productivity. Finally, it introduced a new form of public enterprise to Algeria. In promulgation of *la gestion socialiste*, the Algerian government appeared to be using law actively to effect economic and social change.

*La gestion socialiste* was presented to the Algerian people in November 1971 by means of the *Charte de l'Organisation Socialiste des Entreprises*. This document elaborated the policy underlying *la gestion socialiste*. After castigating the Ben Bella regime for failures and mismanagement, the *Charte* states that since 1965 the Boumediene government had accomplished urgent tasks prerequisite to the building of socialism. These included establishment of a stable state administration, gaining control over natural resources, and accomplishment of a level of profitability in state-owned enterprises. Because of this, it had now become possible to begin transformation of economic management according to socialist methods following the 'grand principles' of deconcentration, decentralization and democratization (*Charte*, 1976, p. 116).

The principal focus of *la gestion socialiste* is to be the workers' assembly (*assemblée de travailleurs*). The assembly is to be elected and is to possess advisory and supervisory functions related to management of the enterprise (*Charte*, 1976, p. 120). A constant theme throughout the *Charte* is that of worker productivity and the worker's role as 'producer-manager'. Worker participation is described as a means by which the 'labouring masses' are to take in hand directly the protection of the national patrimony and fight against waste, fraud, corruption and other misuse of resources (*Charte*, 1976, p. 121).

Finally, the *Charte* discusses the role of the new form of public enterprise, the socialist enterprise. As property of the 'national collective' socialist enterprise has as its role the 'maximum augmentation of productivity' with constant improvement in quality and reduction of costs (*Charte*, 1976, p. 124). The *Charte* emphasizes in closing that the socialist enterprise must function in a milieu of both centralized direction of the economy and 'freedom of initiative' exercised jointly and harmoniously by the workers' assembly and the management (*Charte*, 1976, pp. 124-125).

It has been suggested that the Algerian government had two objectives in promulgating *la gestion socialiste*. One was to afford a means of worker participation in the management of public enterprise (Remili, 1973, p. 167; Sbih, 1973, p. 70). This objective is explored below in discussion of control under *la gestion socialiste*.

The second objective was to provide a uniform and homogeneous legal framework for public enterprise organization (Remili, 1973, p. 167) and thus, perhaps, resolve some of the problems of management and control under the various existing legal structures. Unfortunately, the implementing legislation of *la gestion socialiste* does not appear to require abrogation of existing constitutive statutes and their replacement by the model statute subsequently promulgated.<sup>3</sup>

<sup>3</sup> Article 3 of the ordinance containing the model statute simply provides for abrogation of all earlier statutes governing 'any enterprise' from the date of publication of a statute applying the model statute to that enterprise (Ord. 75-23, 1976).

Thus, the existing and widely variable pre-1971 constitutive statutes remained valid (Miaille, 1972, pp. 657-659) until specifically replaced by the new model statute.

In addition to these two overarching objectives, *la gestion socialiste* worked a change, at least theoretically, in the manner in which public enterprise goals were to be established. Statutes of both pre- and post-1971 public enterprise contain specific enumeration of economic and commercial tasks of the particular public enterprise they govern. However, the model socialist enterprise statute also contains direct reference to the broader stated political, economic and social purposes contained in the *Charte* and to external government 'programmes and plans' which might be assumed to be subject to change over time. It is likely that pre-1971 Algerian public enterprise was subject to influence from general government policies that might have led to confusion or conflict with operating goals. This influence, however, was not institutionalized in the sense that it became so after 1971 when it was made part of the legal framework of the socialist enterprises themselves.

For the purpose of comparing instrumental and symbolic uses of law in development, the most interesting aspect of *la gestion socialiste* is the issue of control. *La gestion socialiste* introduced a new internal structure and form of governance to Algerian public enterprise. An analysis of the model statute proposed by *la gestion socialiste* for socialist enterprises shows a management structure similar to that of pre-1971 SONACOME with the addition, however, of the workers' assembly. There is a director general clearly and directly responsible to the supervising ministry for the activities of the enterprise. He is assisted by a management council similar in function to SONACOME's supervisory committee. One significant change, however, is that the membership of the management council is made up solely of individuals employed within the enterprise. The supervisory committee membership comprised outsiders as well, including representatives from interested ministries. Although, under the new organization the director general is obliged to consult with and receive recommendations from the workers' assembly, his management discretion seems hardly limited and he clearly remains formally responsible for the functioning of the enterprise.

Prior to 1971, the question of control centred largely around the effectiveness of control of public enterprise by the supervising ministry. Simply on the basis of changes in the law following introduction of *la gestion socialiste*, it is possible to speculate that control by the supervising ministry of the socialist enterprise actually has been weakened. It is not apparent that the problem of interjection of ministerial rivalries has been solved under the new scheme. Representatives of ministries other than the supervising ministry have been removed from formal participation in internal organs of the enterprise. This has been done by replacement of boards of directors and supervisory committees by the management council whose membership is entirely internal. Nevertheless, several ministries now are formally involved in financial control and the entire government (presumably the Council of Ministers) is required to approve the investment plan of each enterprise.

So far as specific powers of control by the supervising ministry are concerned, the ministry retains its pre-1971 power to nominate the director general and thus retains leverage associated with the power to appoint and remove. However, the specific language used to express general powers of the ministry over the enterprise suggests weakening in other areas. For example, SONACOME's statute stated that the

ministry had the power of approval (*approuver*) over various specific areas (Statute of SONACOME, 1966, Title V, art. 15). The legislation implementing *la gestion socialiste* refers instead to powers of 'orientation' and supervision (*orientation et contrôle*) (Ord. 71-74, 1976, Chapter VII, art. 80).

Arguably, the change in the supervising ministry's formal role from one of approval to one of supervision, largely on an after the fact basis, weakens ministerial control. The actual effect of these formal changes depends, of course, on many issues of informal control, not the least of which is the relative quality of the personnel involved in the supervisory process before and after the change.

*La gestion socialiste* ostensibly also introduced a new mechanism for control of public enterprise operation. This was to be workers' participation in management through the vehicle of the workers' assembly. The *Charte* refers to the powers devolving upon workers' assemblies as 'vast prerogatives' (*Charte*, 1976, p. 120). Observers have differed in their interpretation of how vast these prerogatives were intended to be. The issue appears to turn on whether the Boumediene government actually intended the workers' assembly to control management of the enterprise or simply to participate in supervision of the enterprise operations.

Some of the problems of interpretation may arise from difficulty in understanding the use of the word *contrôle* in the implementing legislation (Ord. 71-74, 1976, Chapter III, sec. 2, art. 28) particularly as it appears to conflict with other specific provisions of the same legislation. If the word *contrôle* is understood in the English sense of 'control', then a conflict seems clear and the government's intention questionable. On the other hand, the more usual understanding of the French *contrôle* is expressed in English as 'supervision' or 'checking'. These concepts clearly conflict less with the other pertinent provisions (Ord. 71-74, 1976, Chapter III, Sec. 2, art. 29, 30, 36, 37, 39). Miaille has discussed this same problem of understanding the meaning of the word *contrôle* in the context of the French language without introducing further problems that arise from translation (Miaille, 1972, pp. 672-677).

Even if the Boumediene government never intended the workers' assemblies to become formal control mechanisms limiting management's authority, it is arguable that workers' assemblies might become an effective informal limit on management's discretion. If the formal provisions of *la gestion socialiste* regarding functioning of workers' assemblies are followed, the director general of the enterprise will be obliged to communicate with workers' representatives and respond in some fashion to enquiries from them. This may lead to less of a gap between workers and members of the technocratic elite, typically managing Algerian public enterprise. An Algerian observer of the functioning of *la gestion socialiste* has suggested that the workers' assembly should be seen as a mechanism for internal control, given its ability to comment on management and draw attention to the problems within the enterprise. On the other hand, he notes that there are numerous possibilities for management to obstruct operation of the workers' assembly (Said-Amer, 1978, pp. 62-63).

Thus, over the short term *la gestion socialiste* may have weakened control over public enterprise. At least as regards formal control by the supervising ministry, former powers of approval of public enterprise activity have been diluted to those of primarily after the fact supervision. Moreover, a number of the informal problems of control noted in discussion of pre-1971 Algerian public enterprise appear largely

unremedied. This is true even though in some cases, as with the composition of internal management committees, the locus of problems, such as interministerial rivalry, may have been shifted. The effectiveness of the formal control mechanism apparently embodied in the workers' assembly also appears questionable up to the present time. As noted, there is room for debate as well over the scope of its intended control functions.

There have also been problems with implementation of *la gestion socialiste*. The reform was applied for the first time in October 1972 to S.N. Metal, the government-owned mining monopoly. In early 1973, a seminar was held to discuss the S.N. Metal experience. The 'experiment' was then extended into industrial commercial and banking organizations with the first elections to workers' assemblies held in early 1974 (Cubertafond, 1979, p. 130). By 1976, the reform had been applied to forty enterprises, employing 150,000 workers (Nellis, 1980, p. 486). Up until 1980, SONATRACH appears to have escaped formal application. In 1980, however, three new enterprises were spun off from SONATRACH's existing operations. These new enterprises were all constituted on the basis of the model statutes of *la gestion socialiste*.<sup>4</sup> Thus, by mid 1980, at least indirectly *la gestion socialiste* was being applied formally to a large part of SONATRACH's operations. Effectively then, even if the workers' assembly was intended to serve as a check on the powers of the director general, fulfillment of this role has been delayed by the slow pace of implementation.

Over the longer term, questions of the efficacy of formal control structures under *la gestion socialiste* may be submerged, as they were under the pre-1971 public enterprise regime, by issues of informal control. Workers' assemblies may blossom into potent weapons of control in cases where workers are astute in the exercise of their supervisory and reporting functions. Alliances between factions within workers' assemblies and supervising ministries may become a factor by which the director general's power is restricted. It is problematic, however, whether an evolution such as this will serve to improve the functioning of Algerian public enterprise in the economic development of Algeria.

## CONCLUSION

As the 1960s closed, the social and political tensions as well as the economic problems created by a relatively haphazard approach to public enterprise organization and management awakened the Algerian government to the need to restructure and redefine the role of public enterprise in Algeria. This was undertaken arguably within the context of a real commitment to the socialist character of Algeria. In order to accomplish this restructuring, the government resorted to public enterprise law as a tool, with the substance of this restructuring embodied in *la gestion socialiste*.

The overall effectiveness of this restructuring is still unclear, at least to one who

<sup>4</sup> These new enterprises are: (a) Entreprise nationale de raffinage et de distribution de produits pétroliers, Décret No. 80-101, 6 April (1980); (b) Entreprise nationale des plastiques et caoutchoucs, Décret No. 80-102, 6 April (1980); (c) Entreprise nationale de grands travaux pétroliers, Décret No. 80-103, 6 April (1980).

has not been able to enquire first hand into the status of implementation. There are, however, suggestions of problems from the formal structure of the reform. To summarize, they include failure to carry through the urge to uniformity in public enterprise organization by immediate revision of all public enterprise statutes to conform to the new model. There is ambiguity and perhaps weakening in the control of public enterprises by their supervising ministries. Ambiguity is also evident in the intended effect of worker participation in public enterprise management. If worker control was intended, the legal framework fails to provide the mechanism. If simply worker participation was the goal, even there the structure seems to provide ample latitude for circumvention by management, at least until workers' 'management consciousness' is raised sufficiently. Finally, the government has been very slow in its implementation of *la gestion socialiste* causing some to argue that its promulgation was insincere from the start.

With the introduction of *la gestion socialiste* the Algerian government might appear to have been taking a strongly instrumentalist approach to law. Law was to restructure public enterprise and the relationship of workers to management within public enterprise. On the strength of these accomplishments, law was to revitalize and develop the Algerian economy in a socialist model and correct emerging class antagonism within Algerian society. This is no small task and seems bound to fail even if the law were drafted 'perfectly'.

On the other hand, if *la gestion socialiste* is analysed as an example of the symbolic role of law in development, the task and goals become more comprehensible and more realistic. The law is a guide or policy statement, promulgated for the purpose of involving the population, particularly in this case workers and managers within public enterprise, in working toward a goal. Success will depend upon the behaviour of these actors and upon the environment within which the law is to operate.

On the basis of this analysis, success of *la gestion socialiste* will involve gradual evolution of the workers' participation in management and gradual closing of the gap between workers and the technocratic élite. This gradualism will enable economic goals of increased productivity and the continued predominant role of Algerian public enterprise in economic development to be met in a stable environment and in one that increasingly reflects the government's socialist ideology. It will avoid crippling the operation of these enterprises so necessary to Algeria's development plans by rushing pell-mell into a new form of public enterprise management that simply would not have worked at the time. Moreover, the government must rely on the continued co-operation of the technocratic élite that manages these enterprises. It could not have afforded to alienate them by abrupt imposition of a new form of worker management.

For these reasons, the government opted for gradual introduction of worker participation with accompanying rhetoric heavily emphasizing the importance to the Algerian economy of increased productivity and worker responsibility for public enterprise performance. Thus, *la gestion socialiste* recognized the reality of existing social and economic tensions and sought, and continues to seek, to work within this reality rather than to superimpose a solution upon it. This seems a striking example of the symbolic role of law in development.

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