



ORGANIZATION, LAW AND INDIVIDUELS: THE PROBLEMATIC OF REGULATIONS AND LEGISLATION IN THE FACE OF CULTURE

Mouloud TEBIB

Ph.D., Associate Professor, University of Ain Temouchent – Belhadj Bouchaib, Algeria

ARTICLE INFO

Article History:

Received 22.06.2023
Accepted 02.07.2023
Published 30.09.2023

Keywords:

Law, Local society,
Organization Culture,
Individual

ABSTRACT

The purpose of this research paper is to present a study and analysis of the interaction and discourse between law, individuals, and culture within organizations. It aims to explore the social issues that arise because of this interplay, highlighting their impact on society. The paper investigates how legislation and organizational elements challenge societal norms, values, and the social structure of the community.

Our approach is based on the literature and empirical observations accumulated throughout our professional and research experiences. The data we have collected is of a qualitative and exploratory nature, enabling us to have flexibility in the presentation, analysis, and formulation of initial conclusions and observations.

INTRODUCTION

CONTEXT: The cognitive context of addressing such topics stimulates every attempt to write and discuss them. Historically, law and culture are influential concepts in the cognitive system of social sciences. The challenge and paradoxes that distinguish society remain as a third concept and its institutional manifestations, such as the state, organizations, and economic, social, and political institutions. It also includes the nature of the social structure of the society's components. Are we talking about a modern or traditional society, urban or local? Are we referring to a society governed by positive law and rationality, or a society shaped by customs, religion, and cultural values? This represents a prominent and important cognitive challenge.

In Algeria, the long history and events that the region has witnessed since ancient times make the spatial context another cornerstone for bringing together elements of history, social movements, identity, and social construction. The model of the modern state, the nature of development and organization, all these elements dominate any analysis and projection attempt. Hence, the significance of the endeavor to understand the subject within the context of the Algerian experience increases.

OBJECTIVE: This research paper aims to present a set of observations regarding the relationship formed by the interaction of elements within the formal organization and its components, including individuals, legislation, and regulations, to achieve specific goals. It also addresses the social issues that arise as a reflection of this interaction within the larger society. Furthermore, it lays the groundwork for understanding the legal relationship in confronting societal norms and values within the community, as manifested in formal organizations and institutions, which are assumed to be "miniature societies."

METHODS: We will rely on a network of readings and field observations developed throughout our professional and research journey in organizational sociology and political sociology, as well as our experience working as a **certified legal agent with customs**. The data we have gathered has a qualitative and exploratory nature, which makes our approach flexible in presenting and analyzing the

information and drawing initial conclusions and observations.

1. CULTURE AND LAW

The discourse of culture and law is enriched by literature and texts that address the relationship and the concepts involved. Here, the perspective of both Frankel and Braun¹ draws our attention. They argue that we often discuss law and culture as two systems that impose required behavior on individuals and organizations. However, they simultaneously argue that they are two interconnected yet distinct systems.

While the structures of law and culture may be similar, their differences significantly impact the application of rules issued under each system. Although individual behavior and patterns of living are subject to these rules, regardless of their cultural or legal sources, the law and culture differ in fundamental aspects, according to the researchers:

- "(a) The identity of those who establish the rules;*
- (b) The purposes and core values of the rules;*
- (c) How these rules are initiated (1), developed (2), expressed (3), and applied (4);*
- (d) The extent to which they are accepted by those to whom they apply."*²

This is an important contribution to understanding this dialectical relationship and an attempt to construct conceptual frameworks around them.

In his exploration of the relationship between culture and law, specifically corporate governance, researcher Licht, A. N.³ try in his study titled "Culture and law in corporate governance." To understand the role of culture in corporate governance is of great importance, and institutional analysis requires an understanding of the cultural environment in which these systems are integrated. The researcher provides a significant and insightful overview in his paper on how culture interacts with

1 Frankel, T., & Braun, T. (2021). Law and Culture. BUL Rev. <<https://www.bu.edu/bulawreview/2021/12/30/law-and-culture/>>

2 *Ibid.*

3 Licht, A. N. (2014). Culture and law in corporate governance. European Corporate Governance Institute (ECGI)-Law Working Paper, (247).

the law, especially corporate law, to shape corporate governance and how this can help explain the diversity within corporate governance.

Drawing on cultural analysis, theories of cultural dimensions, social networks, and social capital, the researcher relies on these tools and theories to understand how the interaction between culture and law, particularly corporate law, influences the formation of corporate governance systems and helps interpret the diversity observed within those systems.

2. THE RELATIONSHIP OF INDIVIDUALS TO LAW: FROM RATIONALITY TO SOCIAL AND CULTURAL CONTEXTS

When we examine the various theoretical frameworks that have addressed the topic of individuals and organizations, we find several different perspectives. These perspectives range from focusing on the individual and their rationality to exploring the relationship between power, justice, law, and interests. They also consider the influences of cultural and social contexts on how individuals interact with procedures and rules (laws).

2.1. Weberian-rational Perspective

The Weberian perspective, particularly in Michel Crozier's theory of the strategic actor, is an important framework for understanding the subject. The rational view (calculations) explains the so-called cost and benefit and how individuals deal with laws in organizations and society. Strategic analysis suggests that individuals do not respect rules due to their ability to perceive the benefits they gain through the process of non-compliance or circumvention of the law while at the same time realizing that their behaviors have non-serious or non-impactful effects compared to expected advantages/losses.

According to this perspective, individuals consider themselves strategic actors who try to achieve their goals and maximize personal benefit within the circumstances and challenges they face.

At times, they may make decisions that conflict with laws if the potential benefits of those decisions outweigh the potential risks.

The strategic actor perspective provides an understanding of individuals' motives and rational considerations in their dealings with laws. It sheds light on the complex relationship between respect and compliance with laws and strategic calculations and anticipated benefits.

2.2. Political-marxist Perspective

The relationship between power/law on the one hand, and individuals/justice on the other hand, refers to the "political" view of the subject. Individuals reject the law/power when they believe or are driven by a system that can be called "revolutionary," where the issue of rights and fairness is strongly raised. It is the political perspective that García Villegas⁴ explains, as the political exists generally among those who have a critical conception of power and law.

The Marxist tradition is considered one of the elements in understanding and analyzing this perspective. Its central idea revolves around "resistance" and "revolution" against any "unjust" power (law). Individuals/groups (class) possess the "legitimacy" to reject "legal frameworks, the system of justice," and "regulatory procedures and rules" because they are an "ideological system of the dominant class." The issue of justice, as well as laws and ethics, is related to "ideology" and, more specifically, the "ideology of the ruling class." According to Marx, ethical standards – the different contents attributed to concepts such as justice, freedom, equality, human rights, recognition, and so on – are ideological in nature.⁵

To add to this analysis, we can introduce Balbus's idea of "formal equality"⁶ in the trajectory of

4 García Villegas, M. (2015). Le non-respect du droit. Sur la désobéissance aux règles en Amérique latine. *Droit et société*, 91. <<https://doi.org/10.3917/drs.091.0593>>

5 Matthys, J. (2018). Marxisme, justice et normativité. Que faire de la philosophie après Marx?. *Cahiers du GRM*. publiés par le Groupe de Recherches Matérialistes–Association [En ligne], 13 |, mis en ligne le 02 décembre 2018. URL: <<http://journals.openedition.org/grm/1260>>; DOI: <<https://doi.org/10.4000/grm.1260>>

6 Balbus, I. D. (1977). Commodity Form and Legal Form: An Essay on the "Relative. *Law and Society Review*, Vol. 11,

“fair” trials, which he describes as a “stable network that appears neutral, upon which the interests of the bourgeois class in accumulating and maximizing profits can thrive.” This system, known as “procedural justice,” works to convince individuals who possess nothing that they have legal rights and, therefore, a real opportunity to rise to the ranks of the bourgeoisie. This Marxist perspective presents the contradictions of capitalism in the structure of justice, law, and individuals' relationship to them.

Conversely, On the other hand, it is possible to argue for the limitations of Marxist analysis. The relationship of traditional societies in their formation and institutionalization differs greatly from that of modern and capitalist societies (the West). For example, the state is typically associated with the law, as it is a historical product of the formation of market institutions, the state, and civil society, all interconnected with the law. Meanwhile, there are societies that have lived or continue to live, at least to some extent, in a pre-state condition or without a state, as argued by Clastres (1974) in his book “Society Against the State.”⁷

The advantage we see in these traditional societies is their resilience, which persisted for a long time, disregarding the idea of the state. Clastres also points out that these societies are not merely stateless societies, but much more than that, they are societies against the state.

2.3. Anthropological Perspective: The Cultural and the Historical Contexts

Anthropology, as a human and social science, has approached the legal phenomenon by examining social, cultural, symbolic, and historical contexts. It provides valuable scientific resources to explore the interaction of law with culture, including identity, history, social arrangements, power relations, and kinship.

In his commentary on the characteristics of “Legal Anthropology,” Le Roy pointed out the following feature:

No. 3, pp. 571-588. <<https://legalform.files.wordpress.com/2017/08/balbus-commodity-form-theory.pdf>>

7 Clastres, P. (1974). *La Société contre l'État : Recherches d'anthropologie politique*. Paris, Éditions de Minuit.

*“By reducing the anthropological process to Law, we do not believe that we are wrongly favoring law as “a category in itself” but evaluating the legal fact in its relationship with social facts, measuring its impact exactly and recognizing the areas in which it does not intervene, those where it fails or those in which it could intervene, depending on the requirements specific to social facts”.*⁸

Furthermore, the study of individuals' relationship with an organization and its legal structure has yielded significant contributions. In this regard, Geert Hofstede's research on cultural dimensions is pioneering and can provide an anthropological perspective on the diversity and variations in organizational, managerial, and legal structures in their interaction with individuals. It particularly sheds light on their impact on behavioral patterns within the organization, whether for employees or managers.

Cultural and social contexts explain the extent of individuals' differences in dealing with organizational and legal elements. For example, the hierarchical sequence within an enterprise (organization) is seen as a reflection of inherent inequality. Centralization is common, and subordinates are expected to know what they should do, while the ideal leader is seen as a benevolent autocrat.⁹

According to Geert Hofstede, the power distance is the extent to which individuals with less power accept that power is distributed unequally in companies and other organizations (distributed unequally but legally and according to clear procedures and rules). In other words, people in high power distance cultures are more accepting of status differences than people in low power distance cultures. For Hofstede, this dimension is primarily linked to the issue of “wealth”.¹⁰

For our analysis and observations, it is linked to “propriety” in traditional societies. This example refers to the influence of social and cultural context on the acceptance of a legal administrative ar-

8 Le Roy, É. (1978). Pour une anthropologie du droit. *Revue interdisciplinaire d'études juridiques*, 1. <<https://doi.org/10.3917/riej.001.0071>>

9 BADRAOUI, S., Lalaouna, D., & Belarouci, S. (2014). Culture et management: le model d'Hofstede en question. *Cross-Cultural Management Journal*, 16(2).

10 Hofstede, G. (2011). Dimensionalizing Cultures: The Hofstede Model in Context. *Online readings in psychology and culture*, 2(1), p08.

rangement and the ways of dealing and interacting with it, according to the type of culture. The social and historical structure usually determines or greatly influences individuals' relationships with different positional structures (organization and law). It is a relationship that revolves around "legitimacy", which is socially constructed.

The issue of cultural elements in the anthropological perspective differs to some extent from the Marxist – structuralist perspective, which discusses the elements of cultural and symbolic structures but does not treat cultural symbols as superstructural residues. Louis Althusser,¹¹ for example, considers these symbols, as well as ideologies, as relatively independent and material elements, making them more than mere reflections. The distinction between the base and superstructure is then overcome, and the cultural elements participate in the production of the self and social reality.¹²

In conclusion, through this humble presentation, we are discussing the interactions of "individuals, organization, and law" between compliance and non-compliance, the rationality of actors in capitalist and organizational contexts, the revolutionary or rebellious perspective, and the influences of collectivism or cultural, social, and historical contexts on traditional social structures.

3. ORGANIZATION AND ENTERPRISE, POWER AND RECOGNITION DEBATE: CULTURE OR LAW? PRELIMINARY NOTES – THE CASE OF ALGERIA

Through all the previous discussion of different, conflicting literature, and cognitive perspectives, the analysis that follows will be based on the Algerian case, the experience we are discussing through its own dedicated network of readers on one hand, and field or contextual observations on the other hand. The discussion we raise revolves

around how cultural and legal elements, within the framework of social action in institutions and organizations, such as in Algeria, focus on how actors, both individuals and groups, in different contexts of interaction and administrative and managerial relationships, and the communication system, engage in various forms of activities. Their perceptions and representations of themselves, others, and power relationships are highlighted. They may, when necessary, circumvent procedures and laws and resort to elements of culture and the environment, especially in the distinctive contexts of traditional and local communities. In the same context, there is also a resort to procedures and laws in various activities. A cycle of compliance and non-compliance calls for questioning these contradictions and discrepancies.

In addition, these contexts have shaped the experience of industrialization in the 1970s, and they continue to influence work practices and economic and service organizations alike. Delpeuch, Dumoulin, & de Galembert, have wondered:

"What awareness and knowledge do individuals and groups have of legal phenomena? What place does the reference to law occupy in the definitions and meanings that people attribute to the problems they encounter in everyday life? What grips on situations does the use of a framework of legal interpretation confer? What power in social relations does the possession of legal skills provide?"¹³

Within the philosophy of law, the interests of both moral and legal persons are determined through laws. It is the concept of "personal rights" that the legal system begins with through the duality of rights and legal protection. In other words, every right requires a legal subject, and every legal person, as an individual, is entitled to legal protection.

Institutions and organizations, in general, are legal entities where duties and rights, powers and authorities are determined based on an individual's position in the hierarchy. Contracts are designed to regulate these matters. In the Algerian experience, culture often serves as a resource for values, customs, and standards. It also serves as

11 Althusser, L., & Brewster, B. (2001). *Lenin and Philosophy and Other Essays*. NYU Press.

12 Ewick, P. & Silbey, S. (2004). *La construction sociale de la légalité* (traduction de Guilhem Cassan, Daniel Didier, Édouard Gardella, Liora Israël, Romain Lutaud, Carine Ollivier, Jérôme Péliasse, Matthieu Pujuguet, Julien Souloumiac, Marie Trespeuch, Gêrôme Truc, Be. Terrains & travaux, 6. <https://doi.org/10.3917/tt.006.0112>

13 Delpeuch, T., Dumoulin, L. & de Galembert, C. (2014). Chapitre 2 – Cultures et conscience du droit. Dans: T. Delpeuch, L. Dumoulin & C. de Galembert (Dir), *Sociologie du droit et de la justice*. Paris: Armand Colin. <https://doi.org/10.3917/arco.delpe.2014.01.0055>

a resource for contracts and legislation. However, the observed reality indicates a tendency to go beyond what is right and just towards “seeking values” and “culture,” in the employment and management of career paths, and the excessive incorporation of elements of “localism and loyalties” in the organization, drawing heavily from the social environment.

In Algeria, literature is rich with examples and important observations for field studies. It explores how non-organizational elements have influenced and continue to influence the dominance of “organization and enterprise”. Ali El-Kenz points to this conflictual relationship, or what he refers to as the historical misunderstanding, between social groups within the enterprise. The bureaucrats personify authority and, therefore, resort to informal loyalty and client networks in management rather than relying on the “formal” and thus procedures and rules (law and legislation). On the other hand, the technocrats, a social class that operates based on formality, as well as efficiency and improving performance (production).

It is a case of lacking a consensus on a single vision for the project. There are conflicting interests among different groups, especially those in the power hierarchy, including bureaucrats (who prioritize power and control) and technocrats (who prioritize quality, production, and progress). This situation is the result of historical, political, and economic contextual factors.¹⁴

The nature of society in Algeria strongly reflects the nature of the organization. The power relationships defined by legislation and laws in organizations and institutions face cultural resistance. Algerian individuals adhere to the traditional and old form of property (including property in all its forms, power, and position), which was based on tribal and undivided familial structures. This formed a point of resistance, even in the presence of external social entities such as Arab and Turkish control and later French colonization, which failed to break the “organization” built on blood relations, kinship, and any form of relationships.

We mentioned property as an important element in understanding the relationship of the Algerian individual with the law. Historically, the na-

ture of property, which was and still is prevalent in Algeria as well as in the Maghreb (Algeria, Tunisia, and Morocco), was determined by Bessaoud:

In his statement, “The Arab Maghreb provides a unique example of patterns of accessing property or land ownership in the pre-colonial period. A set of land rights derived from belonging to the community, and Islamic law, as well as local customs and practices, defined the methods of acquisition and enjoyment.”¹⁵

This historically shaped social system deeply influences Algerians’ relationship with organization and law. Furthermore, Jack Berque,¹⁶ observed in his anthropological analysis of Maghreb societies the invention of a “modern Algerian Islamic law” that plans to “incorporate ancient customs into new and solid molds” (the law).

It is the “Maghreb ecology” that embodies the cultural, social, and historical resilience to change, as well as the ability to adapt and reproduce traditional elements within modernity, as expressed by Mhammed Boukhobza.¹⁷

CONCLUSION

Life in society is a field of interaction and transition between conflict and resolution. This is a real example of the interplay between culture and law. The customs and values of historically formed communities, as well as the laws and regulations that extend beyond history and culture, contribute to establishing and enforcing boundaries and restricting or granting freedom.

The rule of law limits the freedom of individuals to prevent harm to others. However, the law is not only binding but also allows individuals to live in a safe environment, avoiding a “law of the jungle” situation.

When individuals do not respect legal rules because they adhere to other types of social, ethical, and symbolic standards, such as cases related to

14 El Kenz, A. (1993). Algérie, les deux paradigmes. *Revue des mondes musulmans et de la Méditerranée*, 68(1).

15 Bessaoud, O. (2013), La question foncière au Maghreb. La longue marche vers la privatisation, *Les Cahiers du CREAD*, n° 103, p17.

16 Berque, J. (1958). *Droit des terres et intégration sociale au Maghreb*. *Cahiers internationaux de sociologie*, 25.

17 Boukhobza, M. (1989). *Ruptures et transformations sociales en Algérie*. Office des Publications Universitaires. Algérie.

“honor” or “status and symbolic value of individuals or possessions,” it results in non-compliance based on the belief that it is righteous behavior.

This is what we wanted to conclude with because it is not easy to encompass a topic rooted in philosophy, history, and move between social,

anthropological, and psychological aspects. The magnitude of the debate and discussion is significant and ongoing, as it is indeed a complex issue. This was an attempt, albeit modest, to capture some theoretical ideas and combine them with field observations and personal readings.

BIBLIOGRAPHY:

1. Althusser, L., & Brewster, B. (2001). *Lenin and Philosophy and Other Essays*. NYU Press.
2. BADRAOUI, S., Lalaouna, D., & Belarouci, S. (2014). Culture et management: le model d'Hofstede en question. *Cross-Cultural Management Journal*, 16(2).
3. Balbus, I. D. (1977). Commodity Form and Legal Form: An Essay on the “Relative. *Law and Society Review*, Vol. 11, No. 3, pp. 571-588. <<https://legalform.files.wordpress.com/2017/08/balbus-commodity-form-theory.pdf>>
4. Berque, J. (1958). Droit des terres et intégration sociale au Maghreb. *Cahiers internationaux de sociologie*, 25.
5. Bessaoud, O. (2013), La question foncière au Maghreb. La longue marche vers la privatisation, *Les Cahiers du CREAD*, n° 103.
6. Boukhobza, M. (1989). *Ruptures et transformations sociales en Algérie*. Office des Publications Universitaires. Algérie.
7. Clastres, P. (1974). *La Société contre l'État: Recherches d'anthropologie politique*. Paris: Éditions de Minuit.
8. Delpeuch, T., Dumoulin, L. & de Galembert, C. (2014). Chapitre 2 – Cultures et conscience du droit. Dans : , T. Delpeuch, L. Dumoulin & C. de Galembert (Dir), *Sociologie du droit et de la justice*. Paris: Armand Colin. <https://doi.org/10.3917/arco.delpe.2014.01.0055>
9. Ewick, P. & Silbey, S. (2004). *La construction sociale de la légalité* (traduction de Guilhem Cassan, Daniel Didier, Édouard Gardella, Liora Israël, Romain Lutaud, Carine Ollivier, Jérôme Pélisse, Matthieu Pujuguet, Julien Souloumiac, Marie Trespeuch, Gêrôme Truc, Be. *Terrains & travaux*, 6. <https://doi.org/10.3917/tt.006.0112>
10. Frankel, T., & Braun, T. (2021). Law and Culture. *BUL Rev.* <<https://www.bu.edu/bulawreview/2021/12/30/law-and-culture/>>
11. García Villegas, M. (2015). Le non-respect du droit. Sur la désobéissance aux règles en Amérique latine. *Droit et société*, 91. <https://doi.org/10.3917/drs.091.0593>
12. Hofstede, G. (2011). Dimensionalizing Cultures: The Hofstede Model in Context. *Online readings in psychology and culture*, 2(1).
13. El Kenz, A. (1993). Algérie, les deux paradigmes. *Revue des mondes musulmans et de la Méditerranée*, 68(1).
14. Le Roy, É. (1978). Pour une anthropologie du droit. *Revue interdisciplinaire d'études juridiques*, 1. <https://doi.org/10.3917/riej.001.0071>
15. Licht, A. N. (2014). Culture and law in corporate governance. *European Corporate Governance Institute (ECGI)-Law Working Paper*, (247).
16. Matthys, J. (2018). *Marxisme, justice et normativité. Que faire de la philosophie après Marx?* *Cahiers du GRM*. publiés par le Groupe de Recherches Matérialistes–Association [En ligne], 13 |, mis en ligne le 02 décembre 2018. URL: <<http://journals.openedition.org/grm/1260>; DOI: <https://doi.org/10.4000/grm.1260>>