Please give me my divorce: an ethnography of Muslim women and the law in Senegal

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Table of Contents

Glossary of Selected Terms

Bayale (Wol.):	mandatary, person who stands in for the father of the groom or the bride and asks and offers the bride in marriage and act as witness.
Céyt (Wol.):	ceremony that marks the moment the wife moves into her husband's household.
Chef de quartier (Fr.):	neighbourhood chief, most prominent neighbourhood notable. A *chef de quartier* is selected by the population and is subsequently, formally appointed by the municipality.
Cheikh (Wol./Fr.):	religious Sufi authority capable of officially initiating people into a Sufi order, from *shaykh* (Ar.). Within the Tijāniyya order the term *muqaddam* is used.
Convocation (Fr.):	court summons, or mediation request (House of Justice).
Core territories:	see: *Quatres communes*.
Daayira (Wol.):	groups of worship, linked to a Sufi order (may be dedicated to a specific marabout and/or specific city or neighbourhood), from *dā'ira* (Ar.).
Fay / fayle (Wol.):	a wife's return to her parental home.
Gàmmu (Wol.):	Mawlid (Ar.), the Prophet's birthday.
Khalife Général (Fr.):	head of one of the Sufi orders.
Kilifa (Wol.)	moral authority of family and household (person who is morally responsible for others), from *khalīfa* (Ar.).
Korite (Wol.):	Eid al-Fitr (Ar.), marks the end of Ramadan.
Marabout (Wol./Fr.):	religious notable of any stature (also: *sëriñ*).
Muñ (Wol.):	patient, uncomplaining, and collected (also used as verb: to be patient and to persevere).
Muqaddam (Ar.):	see *Cheikh*.
Protectorate:	Territory controlled by the French beyond the *quatres communes* during the colonial period. Inhabitants were French subjects.
Quatres communes (Fr.):	the four municipalities (St. Louis, Gorée, Dakar, Rufisque) that acquired equal rights to their French metropolitan counterparts during the colonial period. Residents acquired French citizenship.

Sufi order:	Social organization formed around families or lineages with a saintly reputation, referred to as *tarixa* in Wolof and *tariqa* in Arabic. The three main Sufi orders in Senegal are the Tijāniyya, Qadiriyya and Muridiyya. Followers pledge allegiance in a number of ways, but primarily express belonging through self-identification.
Sutura (Wol.):	privacy, modesty, discretion.
Tabaski Wol.):	Eid al-Adha, feast of the sacrifice.
Takk (Wol.):	contracting of a marriage. Marriage is generally referred to with *sey (Wol.),* which also denotes sexual intercourse.
Tas (Wol.):	divorce.
Zawiya (Ar.):	Sufi lodge or branch, linked to an order (e.g. Sy *zawiya* of Tivaouane).

Note on transliteration and spelling
In this dissertation Wolof words are transliterated according to the system set by the *Centre de linguistique appliquée de Dakar* (CLAD). I write names (including pseudonyms) and place names according to French conventions: this is how people tend to write them and how they would appear in official documents. Arabic terms are transliterated according to a simplified version of the system used in Hans Wehr's *Dictionary of Modern Written Arabic*. This means that I indicate the Arabic hamza (') and ayn (‘), but that I do not use other diacritical marks and do not extend vowels. For Arabic terms that have been adopted into English, I adhere to English spelling.

Note on Chapter 4 and Chapter 7
Parts of Chapter 4 and Chapter 7 have been published as articles; see Bouland 2021 (Chapter 4) and Bouland 2020 (Chapter 7).

Note on the title
From the formula '*may ma sama baat' (*Wol.), used by women to request release from marriage. Literally, the formula means give me my voice.

1 Muslim Women, Law, and Plurality

Prelude

'Marriage has nothing to offer', Ami said as we sat together in her room. At a previous visit she had told me that she had been to the court, but she avoided my question as to why she went there. Now she conceded she wanted to divorce her husband. Ami explained that a year prior she had asked her husband to be released from marriage but that he had refused; at that point they had not had contact for over two years, and he had been neglecting her financially for over a year. On top of this, Ami suspected he was having an affair.

When I visited Ami again a week later, she described how, in response to her request to be released from marriage, her husband had taken her to see an important imam in a nearby city, whom Ami called her 'grandfather'. He was a friend of Ami's now deceased grandfather and had celebrated the marriage between Ami and her husband. They went to meet him, accompanied both by Ami's husband's brother and his friend. During the meeting, Ami affirmed that she had asked her husband for a divorce. The imam reacted by saying that 'if a woman asks for a divorce, there's something she isn't content with'. He asked them to try again. Shortly after, he politely requested them to leave. For Ami the meeting was a failure. She narrated how on the way back she had reiterated her request to her husband for a divorce. He simply responded, Ami reported, 'I will give you an answer.' Yet she did not hear back from him: 'He did not answer, he did not call, he did not give anything.'

Not knowing what to do next, Ami started to ask for help. 'I contacted my uncle and the imam many times.' She recalled that the imam tried to call her husband but could not reach him. During this period she also sought the advice of a religious scholar. 'I told him I wanted to know what Islam stipulates in my situation.' As she related, the scholar said: 'Because he does not respond, you have to go to court; there they will be able to contact him.' 'When you suffer, neither your uncle nor your grandfather [the imam] knows what you are enduring.' The court in Senegal provides women with equal access to divorce. Yet when Ami went there the judge advised her to settle the dispute in the family. He stated, as Ami told me, 'If the family cannot settle the dispute, find a marriage certificate and come back.'

A number of months later, a second mediation was arranged: '[the Imam] called a meeting with me, my uncle, my husband, his brother, and his friend. The son of the imam and a friend of the imam who knew my uncle were there too.' When Ami spoke about the attempt at reconciliation between herself and her husband, she expressed with satisfaction that everyone seemed to agree with her that he had neglected her and that he should change his behaviour. 'Of all the faults my uncle pointed out, my husband responded that my uncle was right.'

Yet Ami's situation improved only little. During subsequent visits and as we became closer, I witnessed how Ami struggled. Ami, who is in her forties and without children, is known as a strong woman: she has finished high school, has her own business, and is a 'straight talker'. Yet when we discussed her situation, it was clear that she was hurting and was unsure as to what to do. Ami's husband, who travels the country to inspect government services and lives in a nearby city, reached out to her only sporadically. While he did send money, he would not help her with the additional expenses for the medication she was on, nor did he send money for the holidays, an important marital obligation. In our conversations, Ami kept insisting to me that she had had enough and wanted to divorce. She explained that she called her uncle regularly to update him, and related that she went to see *another* imam, someone who lived closer to her home and to whom she later introduced me, as she had previously done with the religious scholar. When I asked why she requested the help of all these different people Ami said: 'You cannot do things and turn things on their head. […] People will say that it's my fault. I want to follow the rules.'

Family Law 'From Below'

The story of Ami captures the sometimes complex manoeuvring of Senegalese women that I explore in this dissertation. Through an ethnography of women and their marital disputes and divorces, the dissertation analyses how women perceive, draw on, and interact with family, Islam, and state in such situations. I show how women attempt to reconfigure or end their marriages and with what outcomes. The fieldwork on which the dissertation is based was conducted over a total of twelve months between April 2016 and December 2017 in the secondary city of Tivaouane. During this period, I spoke to women who were, or had recently been, going through marital dispute or divorce and I followed them to the various places where these processes take place: from households to the House of Justice, and from the rooms of imams and *chefs de quartier* to the court.

Senegalese family law and the rights it grants women are the subject of recurring political debates. In Senegal, where 94 per cent of the population is Muslim, the majority identifying as Sufi, relations between state and

religious authorities are generally tolerant. Still, family law has long been a topic of contestation between the state and religious leaders. For the state, the creation of a Family Code was a crucial tool in state making. Yet when the Family Code was first announced in 1970, it quickly became the subject of opposition from religious authorities, who denounced it as un-Islamic. The government ignored their protests and introduced the Family Code in 1972; in response, religious authorities stated that they would isolate their followers from its impact.

Today, in mosques, during religious conferences, and on the many religious TV and radio shows, imams, Islamic scholars, and marabouts tend to promote norms on marriage and the family that contradict the Family Code on a number of counts. Moreover, throughout Senegal the Family Code appears to have limited relevance in practice. One indicator is that, while out-of-court divorce is officially illegal, few people go to the courts to divorce. In practice, as we shall see, the court of Tivaouane has no monopoly on the dissolution of marriage, and to go to court in cases of marital trouble is disapproved of by society, especially for women. Divorce, instead, tends to be pronounced by the husband, either at his initiative or at the request of his wife. At national level, the calls of women's organizations to bring the code into line with the 1979 international Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) led to some minor reforms in 1986; however, their efforts to promote equal rights for women have not led to further reform. It seems that, given the strong Islamic and patriarchal opposition to the current Family Code, the government refrains from introducing reforms; to do so would open a Pandora's box.

Of course, political struggle over family law is not unique to Senegal. In Muslim countries around the world – as well as in many other contexts – family law gives rise to heated political, social, and religious discussion (Burrill 2015; Buskens 2010; Soares 2009; Sonneveld 2012; Villalón 1996 2010). Generally, participants in these debates draw on global registers of Islam and human rights, but also on a variety of more local normative repertoires. Women tend to be at the symbolic centre of these contestations. Often, their position and behaviour are perceived to lie at the heart of religious and cultural identity. Family law matters are thus contentious and touch on fundamental questions of identity. Often, they involve religious and other social actors as much as they involve the state. These issues are more than a matter of identity and symbolic power alone; governments, religious leaders, and other social leaders seek to regulate the family and marriage as one way to govern society (Burrill and Boyd 2020; Basu 2015).

Because of these recurrent contestations, the Senegalese family law debate constitutes an important backdrop to this dissertation. However, my aim is not to provide once more an analysis of political debate about family law and of broader state-Islam relations; my goal instead is to provide an

ethnography of the practice of marital dispute and divorce, through the eyes of women. This dissertation asks *how women perceive, draw on, and interact with family, Islam, and state in marital dispute and divorce*. I examine how women navigate the contested space of family law, how they contend with rival authorities, and how these authorities relate to one another. Do women go to court? Do they solicit the adjacent state institution of the House of Justice and with what result? What is the role of sharia norms? This way, I also aim to contribute to broad public and scholarly debates on family law and Muslim women beyond Senegal.

The following sections introduce the central thematic and theoretical orientations of this dissertation: Islamic law and normative plurality; state law and the use of courts; and women's agency in legally and normatively plural contexts. This introduction further presents the different normative repertoires that are distinguished throughout the different chapters of the dissertation, sets out the main methodological underpinnings of the research, and describes the fieldwork. Finally, I set out the organization of the subsequent chapters.

Muslim Women, Islamic Family Law, and Plurality

While gender and marriage in sub-Saharan Africa have received ample scholarly attention, ethnographies focusing on African women, law, and Islam are few and far between. The study of Muslim women and Islamic law focuses predominantly on Middle Eastern, North African, and South Asian societies, and hence comparative works on Muslim women and Islamic law tend to exclude scholarship on Muslim contexts in sub-Saharan Africa – as if to suggest, perhaps, that the experiences of Muslim women in these contexts are marginal and not 'truly' Islamic (Masquelier 2009, 26). In Senegal specifically, the lack of work on women, Islam, and law also relates to a strong scholarly occupation with Islam and politics (Villalón 1995; Coulon 1979; Gomez-Perez 2005a).[1] Authors have considered political debate about family law an important domain for the study of Islam-state relations, but rarely studied family law 'from below'. What secular state law means to people and how Islam is 'lived' in the handling of marital dispute and divorce have not been explored. This also means that the thoughts and actions of Senegalese women in the domain of family law are underrepresented.

1 Over recent years there has been a small but growing interest in women and Islam in Senegal. A number of authors have focused on Senegalese women particularly or visibly engaged in Islam. They have studied female religious authorities (Ba 2014; Hill 2018; Séne 2017) and reformist women (Augis 2013, 2014; Cantone 2012). Other studies have documented the presence and role of Islam in the lives of women who are not especially pious, and relate to women's economic roles as providers and consumers (Buggenhagen 2011; Moya 2015, 2017).

This dissertation aims to fill this gap. Much like the emergent body of broader scholarship focused on Islam and women in sub-Saharan Africa generally (Masquelier 2009; Alidou 2005; Buggenhagen 2012; Augis 2014; Hill 2018), this work takes seriously women's engagement with Islam as well as, notably, with law and state, and it is interested in how women negotiate their position in relation to Islamic norms, among others. In this way it gives voice to some of the women who for long have been the object of debate about family law in Senegal. Accordingly, the following chapters provide an ethnography of Senegalese women and their experiences in marital disputes and divorces and build on and contribute to broad scholarly debates on Islam, women, and (Islamic) family law – often in relation to contexts beyond sub-Saharan Africa.

In Senegal, women, like men, take part in the religious life associated with the Sufi orders so central to Islam in Senegalese society. Whereas a small minority adheres to a more reformist Islam, most women identify with one of the different Sufi orders and may occasionally visit imams or marabouts for advice or guidance, as well as partake in the important annual events organized by the orders. Notably, women take up important and visible roles in the orders' local-level religious organizations, the so-called *daayiras* (Creevey 1996; Evers-Rosander 1997; Bop 2005; Mbow 2001). Whereas religious leaders and scholars are overwhelmingly male, not all are, and increasingly women also function as religious teachers and leaders (Ba 2014; Séne 2017; Hill 2018). Most girls in Senegal receive some religious education, although not as much as boys do (Mbow 2012; Goensch 2016); and while men tend to pray more visibly, many women pray a number of the daily prayers. Islam is moreover an important reference point in the daily lives of women and an important source of moral guidance. As the story of Ami – with which I started this dissertation – indicates, Islam is also an important point of orientation in marital disputes and divorces. Women and their relatives may consult an imam, or religious scholar – and norms that derive from Islam play an important role in the way these processes unfold.

The notion of Islam as monolithic and homogenous and the image of the 'oppressed' Muslim woman have proved pervasive in the West, building on a long tradition of both popular representation and academic study of Muslim women as objects of a universal Islam (Ahmed 1992; Abu-Lughod 2013; Farris 2017). Yet over the past decades, a number of scholars have also actively challenged this legacy, generally in relation to the Middle East and South Asia. Their studies examine in depth how Islam actually functions and what this means for the 'particular' (Abu-Lughod 1991) lives of Muslim women. Various works in these regions also consider women's interactions with sharia family law, in sharia courts in particular; and while I do not study sharia courts, these studies form an important inspiration for this dissertation (Mir-Hosseini 2000; Sonneveld 2012; Tucker 2008). One central and early work is Mir-Hosseini's study of Islamic family law in Iran and

Morocco (Mir-Hosseini 2000). Similar to the approach adopted here, Mir-Hosseini examines sharia from the litigant's perspective and shows that, in practice, Islamic law is far from an immutable and homogenous force of oppression (Mir-Hosseini 2000). Other studies also offer nuanced accounts of sharia and Islamic courts. Sonneveld's (2012) work on divorce reform in Egypt tells of the lives and experiences of women in Cairo who draw on the reformed law to free themselves from unhappy marriages in court. Her work shows how judges readily grant divorce, but also how, in some cases, they may require these women to pay their husbands considerable sums in compensation. In Hirsch's study, a rare example of work on women and Islamic family law in sub-Saharan Africa, Kenyan Islamic courts on the Swahili coast appear as 'critical arenas' where women make claims to either end or change the terms of their marriage – and often with success (Hirsch 1998).[2]

While the image of Islam as immutable and homogenous has left little room for discussions of plurality, these works would suggest that sharia family norms invariably operate among multiple normative repertoires from different sources. As Hirsch notes: '[these] can include customary practices, customary law, European-modelled civil and criminal law, and other religious legal systems' (Hirsch 2006, 172-173; Buskens 2000). Such plural contexts are shaped by their various political, religious, and cultural histories. Hence, analyses of women's position in society and interactions with sharia family law need to consider closely these histories (Kandiyoti 1991, 2). Plurality manifests itself in different ways. In some Muslim contexts people engaged in family law disputes explicitly reason between sharia, custom, and state law, which they speak of as 'fight[ing] among themselves' (Bowen 2003, 30); in other contexts, family law reform has meant that gaps have appeared between state-codified sharia, more conservative interpretations of sharia, and social norms (Sonneveld 2020; Nassar 1999). In yet other societies, processes of bureaucratization have meant that sharia is increasingly controlled by the state (Müller 2017). As we shall see in Senegal, the specific history of Islam, the trajectory of colonial state formation, and the concern after independence with promoting modern family forms for the creation of a stable nation all inform the way sharia family norms in Senegal operate among other norms and influence the position of women in marriage and the family.

Thus, whereas Islam is a focus of this dissertation, it is not its central subject. Tivaouane Muslim women draw on multiple and often overlapping sets of norms in marriage and divorce, sharia family law norms being one of

2 Broader scholarship on Islamic family law in sub-Saharan Africa includes: Hashim (2005; 2021), Stiles (2009), Rautenbach (2013), Bonate (2021). Issaka-Touré (2017) examines the mediation of marital disputes among Muslims in Accra, Ghana and pays particular attention to female disputants.

them. Sometimes they moreover engage the state and state law, which is largely based on the French Civil Code but also synthesizes sharia norms and what is referred to as custom. More importantly, the ambitions, goals, and moralities of the women I followed are informed by a multitude of ideals and virtues, of which Islam is an important but not the only source. Hence, while this dissertation explicitly challenges the idea that Senegalese women are in some ways not real Muslims, I do not argue that their being Muslim is their only and central feature. Inspired by a number of works that have extended the anthropological focus on Islam as a discursive tradition 'that includes and relates itself to the founding texts of the Quran and the hadith [sayings of the Prophet]' (Asad 1986, 14) to focus on how Islam is lived (Schielke 2010; Marsden 2005; Soares and Osella 2010; Pontzen 2021; Sobczyk and Soriano 2015), I do not assume that Islam is the 'master key' to understand the approaches to marital disputes and divorces of the Tivaouane women I follow.

Going to Court

The introduction of the Senegalese Family Code by the newly independent – secular – government meant that previous family laws were unified and radically reformed. One central goal of the government was to abolish repudiation and restrict divorce to the state. What does this mean for family law practices today? In subsequent chapters I examine how women, in their marital disputes and divorces, understand and use state law – among other, often Islamic, normative repertoires. Ami's story would indicate that the different normative repertoires and authorities women avail of interact, and my enquiry will pay close attention to such interactions. Yet in this dissertation, law also appears as 'separate' from other repertoires of norms, as I explain below. In addition, because of my focus on women's *use* of the state legal system, courts and their adjacent institutions are conceptualized both as a form of state power and as a state service.

Of course, law 'encompass[es] shifting and contradictory areas of life'; law is at once custom, morality, rule, a political outcome, and a form of conflict resolution (Basu 2015, 5). Unsurprisingly, law has been variously defined by law and society scholars. Some have theorized law in the most expansive of ways: as 'binding obligations' (Malinowski 1926) or as social regulation (Griffiths 1986) – meaning that law is not reserved to the state and that there are many 'legal orders in a society, including the family, corporations, factories, sports leagues' (Tamanaha 2008, 393). Local norms, custom, religion, and tradition are thus also understood as forms of law that exist in addition to state law. Others, however, critique these definitions as 'counterintuitive' and have argued they 'confound [..] analysis' (Engle Merry 1988, 878) or ignore the 'legalistic' character of law (Pirie 2013). More politically attuned – or perhaps, pragmatic – definitions describe law as the product of a 'specific

political moment' (Demian 2003, 99) or as what groups have 'come to see and label as law' (Tamanaha 2008, 396). My use of the term 'law' in reference only to state law stems in part from these considerations; in Senegal, people tend to reserve the term to the state law and do not understand state law and the other sets of norms that frame marital disputes and divorce as comparable in form or character.

Yet even if law is defined restrictively as state law, its social, political, and cultural aspects mean that it is not always easy to demarcate law as 'a separate object of study' (Basu 2015, 5). Hence, scholars of a Durkheimian bent posit law to be an expression of society's moral and normative core (Clarke 1976), and – influenced by Gramsci and Foucault – prevalent 'constitutive' understandings of law emphasize how social relations and meaning are formed by law (Cotterrell 2015; Ewick and Silbey 1998). Such studies focus, for instance, on the way law shapes everyday social interaction (Silbey 2010) and structures people's self-understandings and narratives (Engel and Munger 2003), and studies on law and space emphasize how law helps constitute spatiality (e.g. Braverman et al. 2014). In this dissertation, in line with Basu's work on domestic violence and courts, social organization and cultural meaning do shape law – and in turn, law is understood to have the potential to contribute to shaping family, marriage, community, governance, and space (Basu 2015, 5). Yet in asking why people turn to law, the courts and their adjacent institutions, I likewise define the legal system as 'separate'. One of my goals here is to trace women's perceptions and use of, as well as interactions with, the state legal system: both the court and the House of Justice, the latter being an institution that offers legal aid and mediation and functions alongside the courts.[3]

My approach to the question of women's 'use' of the state and state law relies on the work of law and society scholars, but it is also made possible by ethnographic analyses of state services, bureaucracies, and state agents 'at work' (e.g. Bierschenk and de Sardan 2014a; Thelen, Vetters, and von Benda-Beckmann 2014; Blundo and Le Meur 2009; Sharma and Gupta 2006).[4] After all, the court and the House of Justice provide a state service. Such analyses suggest that states are necessarily incomplete, disaggregated, and heterogenous, and they draw attention to practices of state bureaucrats and the 'practical norms' that arise from these practices (Olivier De Sardan 2010). These are neither the formal norms designed to regulate state services, nor the social norms of 'society'; rather, they emerge in interaction

3 Mediation, with its focus on reconciliation over arbitration, can be understood as 'alternative' to law. Yet mediation procedures and institutions may also aim to extend the reach of law and state; and in Senegal, Houses of Justice are state institutions that function adjacent to courts.

4 Cf. Basu 2015; Andreetta 2018.

with users, as bureaucrats pragmatically bridge gaps between 'law' and 'society' and navigate the practical constraints placed upon them. Nevertheless, ethnographies of the state reveal how people encounter the state both as local, distinct, and personal, and as a unitary and separate space – a power situated 'above society' (Ferguson and Gupta 2002, 981) (see also Basu 2015, 7). As citizens engage with the localized institutions of the state and the street-level bureaucrats (Lipsky 1983) who constitute them, they also encounter the state in its symbolic dimensions – both in these interactions and through the (mediatized) images of the state that are part of their everyday lives (Gupta 1995; Gupta and Sharma 2006). Moreover, lest the bureaucratic, rational, and legalistic forms of state government lead one to presume that bureaucracies are void of affect, feeling, and emotion (Navaro-Yashin 2006, 292), both the symbolic aspects of the state as well as people's interactions with street-level bureaucrats trigger various spectra of affect and feeling (Navaro-Yashin 2007, 2006; Laszczkowski and Reeves 2018). This colours people's experience of, and interaction with, the state.

Clearly, people caught up in the process of disputing may or may not engage the state legal system. In some contexts, people avoid going to court to claim legal rights, even if, on the face of it, they would benefit from such claims. Basu, for instance, shows that women in Delhi, India generally do not go to court to claim inheritance rights, because in doing so they would put their kin relations at risk (Basu 1999). In other situations, people readily turn to court with family problems, not only because they feel entitled to but because they see the court and law as potent weapons (Engle Merry 1990). Yet even if people turn to the legal system, the salience of law cannot be assumed (see also Hertogh 2018). Formal legal avenues may be 'manipulated' to pursue informal goals beyond the state legal system (Engel 1978; Basu 2015, 7). One way people may do so is to start proceedings to put pressure on the other party, and subsequently drop the proceedings (Hornberger 2009; Engle Merry 2003). Conversely, out-of-court negotiations may be shaped by the rights and benefits that parties can claim in court. Law may provide a framework for bargaining, where the different legal rules function as bargaining chips (Mnookin and Kornhauser 1979; Jacob 1992, 585-586).

Of course, '[d]ifferent social classes, genders and kinds of people interact with the legal system in different ways' (Engle Merry 1990, 4). Moreover, given that different groups of people are differently positioned in society, their choices to invoke the court or adjacent institutions or to refrain from doing so obtain varying results. Still, the advantages that turning to the legal system offers cannot easily be read from the claims that these institutions may enable; rather, they depend on a multitude of considerations that are not just strategic but are also informed by moral worth and cultural meaning.

Agency, Law, and Plurality

How do women select between different norms and authorities in the processes of marital dispute and divorce, and with what results? State courts, a number of scholars argue, are crucial spaces for women to pursue their goals in matters of marriage and the family and to resist oppression, despite patriarchal law (Lazarus-Black and Hirsch 1994). In the ethnographic essay 'My Daughter Belongs to the Government Now', Hodgson shows palpably how one Maasai girl negotiates the complex relations between family, community and the nation; she successfully thwarts her father's plan to marry her off by taking him to court (Hodgson 1996). The girl sought out a space in which she could confront her father and other older male members of her family as an equal; as Hodgson notes, '[w]ithin the structure of the Tanzanian state she was not a daughter but a citizen' (Hodgson 1996, 109). As a number of authors show, in turning to courts women both successfully 'demand the rights, privileges and protections associated with their legal status' and attempt to claim alternative forms of justice and reform of their legal status (Hirsch and Lazarus-Black 1994, 12).

As the following chapters will show, the women I follow also – and in fact overwhelmingly – successfully pursue solutions to their problems out-of-court, in the spaces of the household and the neighbourhood. In so doing they deal with and work on different family members and neighbourhood authorities and may draw on different sets of, often Muslim, norms. Their marital disputes and divorces are often long processes that evolve through different phases and transformations (Lynn and Yngvesson 1980). These processes are shaped by the disputants and other actors and institutions involved, as well as by the different norms each draws on. Women's actions are informed and circumscribed by the different norms and moralities available and the relations these women are part of. Yet their acts are often particular and not always easily understood: in similar circumstances others may act quite differently (Hirsch 1998, 94). The different norms people draw on also do not neatly map onto the different spaces and third parties they seek out; instead, justifications in different spaces and with different people may well build on similar and multiple sets of norms (e.g. Griffiths 2004).

Studies of women, law, and disputing have often focused on how women may use law and alternative forms of normative ordering to subvert or resist oppression and how this may ultimately transform gender relations. Whereas these works have yielded important insights, one risk of focusing on resistance and subversion is to fail to account for the multiple forms of subordination women may find themselves in. As Abu-Lughod warns, 'resisting on one level may catch people up on other levels' (Abu-Lughod 1990, 53). More crucially, perhaps, many of these studies have tended to presume understandings of agency that sit comfortably with more progressive political agendas and to exclude the possibility of forms of agency that do not.

Mahmood's study on a women's mosque movement in Cairo offers sustained critiques in this direction (Mahmood 2005). She warns against the feminist tendency to locate agency in the resistance to patriarchal norms only, and she makes the important contribution that agency may well be located in inhabiting norms. Mahmood's work is also instructive in another respect: focusing on a movement that emphasizes the importance of piety, she pays explicit attention to, and takes seriously, women's concern with morality and virtue (Mahmood 2005, 16). However, Mahmood's use of the idea that agency and subjectivity are produced by the same processes and conditions that ensure a subject's subordination may suggest that women form a durable relation to one discursive construct, which would offer little theoretical purpose for the present study (Dorn Lamoureux 2016, 58). As I set out above, in their marital disputes and divorce processes Tivaouane women relate to multiple sets of norms and values made available by their social and cultural context and the historical trajectories of their society. The story of Ami, with which I opened this dissertation, shows her to draw on different sets of norms and moralities, some more dominant and more central to her than others. These have meaning for her, but at the same time she is not absolutely attached to them; instead, she tries to creatively draw on them to pursue and justify her goals.[5] Rather than looking for resistance, it is this process that I here focus on, and through which I also attempt to provide insight into women like Ami's agentive capacity.

Studying Family, Islam, and State

The subsequent chapters analyse how women perceive, draw on, and interact with family, Islam, and state in marital dispute and divorce. This means that I am attentive not only to women's actions and to the normative repertoires they invoke, but also to the broader question of how women give meaning to family, Islam, and state in marital dispute and divorce.

Notably, while family, Islam, and state may all loosely be approached as social institutions, here they primarily figure as different spheres and represent the different sets of norms and authorities women may draw on and

5 This relies in part on the 'sociology of justification', a strand of social theory that both presumes normative plurality and reconciles an emphasis on individual strategy with moral worth and cultural meaning (Blokker 2011; Boltanski and Thévenot 1999, 2006; cf. Dorn Lamoureux 2016; Bowen 2003). People may draw on different sets of norms, with an eye on the desired outcome of a dispute or disagreement, yet the analysis of their actions and statements should also take seriously 'the moral exigencies that these people give themselves' (Boltanski 2005, cited and translated in Blokker 2011, 251). Of course, different situations and spaces may be more or less inviting of strategic behaviour: success in court is often strongly dependent on one's ability to conform to and correctly invoke legal rules.

solicit. Thus, to understand the role of family, Islam, and state for women in marital dispute and divorce, I analyse the different and overlapping spaces, sets of norms, and authorities women invoke and turn to. Authorities include both actors and the institutions of the court and House of Justice. As we shall see, other important authorities for marital disputes and divorce in Tivaouane are family members, neighbourhood chiefs, imams, and religious scholars. Finally, social space will appear as critical to the unfolding of marital disputes and to women's preferences for particular authorities over others.

Given Senegal's heritage of indigenous African, Islamic, and colonial influences, scholarship on Senegal has sometimes worked with a threefold distinction of law, custom, and Islamic law. Although this distinction might be mapped onto my distinction between family, Islam, and state, I do not find these categories precise enough. In Tivaouane, custom (Wolof *aada* and *cosaan*) is referred to and used in relation to marriage ceremonies (see Buggenhagen 2011). In more rural areas, custom plays an important role in inheritance practices, as Evans shows (2016). On the whole, however, I did not find that custom is used in any jural sense in relation to marriage and divorce. More important, custom is not a category that sits well with the qualifications and categories my respondents and interlocutors use. This does not mean that local or indigenous norms or customary practices have no relevance; rather, it means that custom cannot be distinguished as a separate normative repertoire that people refer to and use in marital dispute and divorce.

Inspired by Hirsch (1998) and building on the language and categories used by my respondents and interlocutors, in this dissertation I distinguish four sets of norms: (1) law, (2) *diine* (Wol.: religion), (3) Wolof conjugal ethics, and (4) harmony. Of course, these sets of norms overlap and relate to one another. Notably, some are more dominant than others; their use is also strongly gendered.

(1) Law: As noted above, Senegalese family law synthesizes different normative sources. In their parlance, interlocutors and respondents often referred to law with French terms, indicating either the authority behind these norms, or the place where they were applied – that is, court (*tribunal*), the justice system (*la justice*), government, or state.

(2) *Diine*: Wolof for religion, the word derives from the Arabic *din* and may be used to signal opposition with 'law'. Other terms used for this set of norms are Islam and sharia. The latter tends to be used by religious authorities in particular – who may also actively distinguish between what is 'true' sharia, and what is not and can be designated as custom (*aada*). The category of *diine*, as it is used here, refers to what people understand as their Islamic reciprocal rights and duties in marriage, as well as to divorce procedure.

Statements about what a husband or wife is obliged to do, or how a marital union is dissolved, are invested with authority by the assertion that this is *diine* or Islam. Of course, the term *diine* is vastly more comprehensive.[6]

(3) Wolof conjugal ethics: Different from law and *diine*, this set of norms does not pertain to rights and duties but rather to how one *should* behave in marriage and as part of a family – that is, spouses should treat each other with kindness and fairness; they should be patient, calm, discrete, and modest. Although I refer to this ethic as 'Wolof', the set of norms is informed both by socio-cultural values – notably that of honour – and by Islamic law. These norms, moreover, are not unique to Wolof people but overlap with and influence socio-cultural ethics of other ethnic groups (Ly 2016, 2015).[7] Key values of Wolof ethics are the strongly gendered notions of *sutura* (modesty, discretion; Chapter 5) and *muñ* (perseverance; Chapter 4), both articulated to the domestic sphere.

(4) Harmony: *jàmm* (Wol.: peace), in some exceptional circumstances also referred as *maslaa* (Ar. *maslaha*) designates negotiation, accommodation, and tact. The ethic of social harmony is broad and overarching and informs the way people handle disputes, which are to be solved amicably so as to ensure harmony and maintain the social tissue of the family and the immediate social context.

Fieldwork and Methods

Moving to Tivaouane

To examine how women understand, draw on, and interact with different set of norms and authorities in cases of marital dispute and divorce, I conducted ethnographic fieldwork in the secondary city of Tivaouane between May 2016 and December 2017. In total, I spent twelve months there, and the research was carried out over two periods, one between May 2016 and October 2016 and one between April 2017 and December 2017. Before these periods, I made two shorter visits to Senegal during which I discussed my research topic with activists, lawyers, sociologists, and anthropologists, conducted some preliminary fieldwork, and explored potential field sites. I did not at first set out to focus on women only. However, during these visits it became clear that it was difficult for me to talk to men about

6 Likewise, sharia, although commonly translated as Islamic law, comprises a broader array of norms than what may readily be understood to be 'law'. The legal tradition regulates both different aspects of social life (including marriage and divorce) and one's relationship to God.

7 Particularly of the Haalpulaar. Many of these values moreover overlap with broader West African conceptions of honour, shame, and discretion (Cooper 2019; Hernann 2017).

their personal marital disputes and divorces. As I would later understand, this related to the shame men may feel about these events and their experience of them as a form of personal failure. In addition, it quickly became apparent that the intimacy that these conversations required was difficult for me to achieve. At other moments, it encouraged men to flirt and try to initiate a romantic relationship, which derailed conversations and often made me uncomfortable. Inspired by many female scholars before me, I thus chose to primarily tell the stories of women and detail the way women make claims and try to reconfigure their marital lives.[8] I did talk to many men, at times also about their personal marriage troubles and divorces. This provided important insights and also helped understand women's experiences. However, men were not my focus.

In my exploration of potential fieldsites, Tivaouane soon appeared as an interesting location for my ethnography; it is a secondary city, with a small population (an estimated 75,000) and a historically strong state and religious presence. Tivaouane, moreover, houses a court of first instance and has a House of Justice.

During my fieldwork I lived in the house of a middle-class – in Tivaouane terms – family, who not only provided me with a true home but also greatly facilitated my research. I moved in with them when I first settled in Tivaouane in the spring of 2016, and soon decided that I wanted to stay. Their house was centrally located, in a new neighbourhood of the city, and was a work in progress. For a long time, the couple and their four children had lived as part of the household of the husband's deceased father, his mother, a co-wife, children, and grandchildren, but his job as a welder at the nearby mine had allowed him to start constructing a house for their own family. His wife, who had a small business selling crockery items (among others) to neighbours and friends, also had family in the city. 'Being there' (Borneman and Hammoudi 2009) as part of this family of six allowed me to experience everyday family life and the texture of their wider family in a way that would have been impossible had I lived on my own. In addition, living with them was also a great source in terms of making contacts. Some of the most valuable respondents and interlocutors I met through them. Other relations deepened in the knowledge I lived as part of a family they were acquainted with. The longer I stayed in Tivaouane, the more some relations with respondents and interlocutors developed; and in addition to the wider family of the couple I lived with, there were a handful of people I visited regularly in their own households to drink tea in the afternoons and evenings or for meals. Invariably, through them I also became acquainted with the other members of their households and their family dynamics.

8 I find particular inspiration in feminist anthropology and its aim to make women's lives an explicit topic of study (Lewin and Silverstein 2016).

Cases

The ethnography I conducted relies in large part on case studies, some 'extended' (Burawoy 2003) and some less so. Now a well-established method in the social sciences, the 'extended-case method' was first pioneered by legal anthropologists (Gluckman 1958; Van Velsen 2012; Canfield 2018). As opposed to a focus on legal rules and institutions, these scholars approached law through the study of disputes, which were studied in the social context they played out in, were developed, and were sometimes resolved. The method conceptualizes disputes as a process and focuses on the different individual actors, their networks, and their actions and choices; for these also reveal the normative repertoires, possible third parties, and the forms of power at play, which are primarily understood from the vantage point of the actors involved in these processes (Canfield 2018, 1005). Important insights from this strand of legal anthropology relate to how a dispute originates – naming the problem, blaming someone for it, and, finally, making a claim (Felstiner, Abel, and Sarat 1980) – and to the way disputes develop and transform over time (Lynn and Yngvesson 1980; von Benda-Beckmann 1981).[9] Other work has pointed to the importance, for the way disputes evolve, of time and the different motivations and choices of the individual disputants, as well as their social relations (see for instance Nader and Todd 1978). In sum, this body of scholarship makes clear the subjective and processual characters of disputes.

Whereas I do not build on all the insights of this scholarly work, in my research I have drawn on this approach to studying disputes. Some of the cases I collected I observed myself, witnessing the dispute unfold through the actions and justifications of the disputing parties and others involved, as well as merely because of the passage of time. Other disputes were recounted to me after they had come to be resolved – or had simply dissipated, either because people had given up or because the situation had changed. Most of the disputes were ones I 'fell' into the middle of.

Sites of Research

Part of my fieldwork took place in spaces belonging to the state justice system: the court and the House of Justice. There, my access was facilitated by an authorization from the Ministry of Justice. The document also made it possible to attend the hearings, conciliation sessions and mediation sessions, which are not public but take place behind closed doors. Ultimately, however, I was dependent on the willingness, as well as time, of

9 Bedner and Vel (2011) successfully adopted the insights generated by the study of disputes to develop a model of access to justice.

the people working at these places and on the relations I formed there. The fact that particular people went out of their way to share their experiences and answer my questions has shaped my research. For instance, while I attended the hearings of various judges, there was one judge, whom I will call judge Ba, whose hearings I attended more frequently and with whom I spent many hours discussing cases and any questions I had.

I based my case selection at the court primarily on four months (May-August 2016) of observation of the weekly hearings that took place each Tuesday. Of all marriage and divorce cases that were scheduled in this period I studied the files and followed how they progressed through the court. In addition, I chatted to the clerks of court and judges to gather their perceptions of the disputes. From these cases, and on the basis of the different characteristics I identified to be salient, I selected a number of the parties concerned to interview after the judgment was pronounced. However, few people wanted to talk to me about these matters so quickly after going to court, and only in a relatively small number of cases was I able to do so. In addition, when a new judge came to work at the court in 2017, my research assistant followed his hearings during a three-month period (October-December). Finally, I conducted an analysis of all judgments relevant to marriage and divorce rendered in the year 2016, focusing on the basic characteristics of the disputes as well as the final judgments. All of my work on judgments and case files took place in the offices of the two clerks of court, and spending time with them offered an invaluable insight into how women (and men) brought cases to court. In addition, it allowed me to gather the clerks' perceptions of their work and of marital dispute and divorce generally.

At the House of Justice, I generally planned my stays around the two days a week they organized mediation sessions. However, there were not always marital cases among the scheduled mediations, and frequently disputants would fail to show up (chapter 6). Therefore, these days were used not only to observe mediation sessions, but also to study files, observe intakes, and discuss cases and questions with the House of Justice personnel and volunteers. Later – as the House of Justice was located not far from where I lived – I regularly walked past to enquire about cases. I followed up on most of the marital disputes received by the House of Justice between June and September 2016 and interviewed the people who brought these cases, often months afterward. In addition, and on the basis of their unique nature, I selected a few other cases. I followed these because I believe such 'deviant' cases provide unique ways for further developing one's analysis (Small 2009). One example of such a case is that of a husband who solicited the House of Justice in a dispute with his two wives; another concerned a woman who lived in a village a long distance from Tivaouane. On the basis of their documentation, I also counted the total number of people who

visited the House of Justice in 2016 to request help in a marital dispute.[10] I sought out the basic characteristics of these people and examined how the personnel responded, focusing in particular on whether or not a mediation was scheduled, whether the parties showed up, and, if so, what the outcome was.

Meanwhile, I conducted research with women and men in different neighbourhoods of Tivaouane. There, I often relied on my various contacts to put me in touch with relevant respondents. I interviewed women – some on multiple occasions – who had been or were in the process of divorce. In selecting these women, I tried to strike a balance in terms of age, level of education, and socio-economic status, characteristics I identified as possibly relevant to how marriage disputes and divorce unfold. The objective with these interviews was to find saturation; each interview built on preceding interviews (see Small 2009). Were similar mechanisms in play in what I expected to be similar cases, and different in what I thought of as different cases? And what did this say about how cases were different and alike, and, more important, about how women perceive, draw on, and interact with family, Islam, and state in marital disputes and divorce? To complement these cases, I conducted interviews with women about marriage and divorce generally. With these women I talked about their perceptions, norms, and ideas on the topics of marriage and divorce, but with many I also touched on their personal experiences or their involvement in the marriages and marital disputes of adult children. In addition, I staged a number of conversations around the topics of marriage and divorce with different friend groups of people I knew, and this facilitated talking to men and elderly women in particular. I conducted more formal interviews with notables, such as imams, marabouts, religious scholars, neighbourhood chiefs, and different types of female organizers. The latter included politicians, female representatives on the *conseil de quartier*, so-called neighbourhood aunts who provide advice about reproductive health, and women who were or had been involved in development projects. Where respondents agreed I often recorded interviews. These were subsequently transcribed and translated to French by my research assistant, and once I returned from the field, I used qualitative data analysis software to code them. Nevertheless, of course, the initial analyses of my interviews preceded this stage. Analysis takes place throughout ethnographic research, which is processual and iterative in nature (Cerwonka and Malkki 2007).

10 The House of Justice presents its own statistics. These are problematic, however; the numbers reflect the total number of visits and categorize these according to the characteristics of the people and cases involved, though many of these visits concern the *same* visitors and cases.

Together, the different case studies and interviews provided the necessary material for this dissertation. Many of my most useful insights, however, resulted from casual interactions and spontaneous exchanges or arose from the handful of marital disputes and divorces I witnessed unfold closely around me. The data generated through these experiences helped shape the dissertation and the analysis I present in it, even if in some cases – out of a concern for the anonymity of the people involved – I am unable to share the stories here.

In the Field

The topic of marital dispute and divorce is a sensitive one in Senegal (Dial 2008; Thoré 1964), and this sensitivity – as well as my status as a relatively wealthy, white outsider in her early thirties and without her own children – shaped my fieldwork. To talk to women about their personal experiences with marital dispute and divorce in particular was to penetrate into their most intimate experiences, even if I never made the *causes* of the divorce an explicit topic of conversation. Accordingly, these interviews took place in the spaces of the household that guaranteed the largest degree of privacy: their personal bedrooms. Not everyone wanted to talk to me; and some women who did expressed emotions of deep sadness, anger, or desperation about their situation during these interviews. Yet many women also told me how glad they were to be able to talk about their experiences and unburden themselves to an outsider. In these situations, my status as an outsider may at times have facilitated my research. After the interview or interviews, I tried to make a follow-up visit as much as possible. I often used a period out of the field as an excuse to come by to greet these women, often bringing along a small gift – a bottle of juice or soda or a small item of make-up. My aim was to show that I cared; sometimes, however, these visits also generated useful data. The delicacy of the topic of marital dispute and divorce meant that it was difficult – if not near impossible – to obtain information on the same dispute from different parties who were engaged in it and from their family members (Chapter 4). Moreover, few people involved in the cases I encountered at court wanted to talk about their experiences there (Chapter 5). While these experiences were instructive and taught me valuable lessons on family dynamics, *sutura*, and people's perceptions and use of the court, they also posed limitations for the research I could do and for the analysis I present here.

As with many other ethnographers, I was confronted with the fact that the role of ethnographer is an unfamiliar one and is often difficult to explain. Sometimes I was mistaken for a development worker, and multiple women shared with me their business plans in the hope that I could provide access to micro-credits. On one occasion, I was understood to be part of the 'justice system'. While I did everything I could to explain that I came to learn because I did not know and that I was essentially unable to offer anything

of use, the way people perceived me was in some ways beyond my control. It is clear that I have received far more from my respondents and interlocutors than I can ever give in return, and this inequality was often jarring. On occasion, on the other hand, my presence may have been of use in ways I was not and will never be fully aware of. This relates to what being associated with a white outsider may communicate to others, but also to what my interest in a particular woman's divorce or marital dispute signals to her intimate surroundings (cf. Lund 2014).

Much of the research was conducted with a research assistant, Fatou Coly, a 34-year-old law student from Dakar, who helped translate as well as proved an invaluable guide on how to approach talking to women about their marital disputes and divorces. She also transcribed all of the recorded interviews. My own Wolof was of intermediate level, and I depended on Fatou Coly's assistance with translation in interviews, even if, toward a later period of my fieldwork, I was able to understand most of what was said by my interlocutors and respondents myself. She also accompanied me when attending mediation sessions at the House of Justice and helped to set up a number of appointments. It was I who had taken her to Tivaouane; but there she was able to move in with family and developed a network of her own. Visiting people and driving through Tivaouane on the back of *Jakartas* (motorcycle taxis) and later on my own motorcycle, Fatou and I developed a close friendship, and our conversations contributed significantly to the insights I gathered from the interviews we conducted together. Her marital experiences and her personal interest in religion were moreover highly enlightening. Mansour Ndiaye assisted with a number of tasks, including the setting up of interviews as well as accompanying me on a number of interviews on marriage and divorce with men. His knowledge of Tivaouane and his contacts were indispensable.

Overview of the Chapters

The next chapter sets the stage both for the discussion of the history of family law in Senegal and for the ethnographic chapters that follow. The chapter describes the major features of state and Islam in Senegal and Tivaouane, and their interrelations. Chapter 3 builds on this broad history to consider more specifically the development of family law in Senegal. The history of state family law dates back to the French colonial administration, and hence the chapter first describes how the French created and imposed a dual legal system and what this meant for family law. Subsequently, the chapter sets out how, after independence, the Senegalese government introduced a uniform Family Code, which it saw as an important instrument for modernization and nation-building. It describes the process of the code's creation as well as the code's continued contestation by religious authorities.

After these two background chapters, Chapter 4 is the first of four ethnographic chapters and squarely redirects our perspective to the women who are the subject of this dissertation. The chapter focuses on women-initiated (informal) divorces. Whereas the opposition to the Family Code and the threats made by national religious authorities that they would isolate their followers from its impact would suggest a central role for such authorities in divorce processes, these divorces tend to primarily play out between the wife, the husband, and their family members. Imams, religious scholars, and *chef de quartier* may at times be solicited as the next step. Divorce practices in the family are rather fluid, and while Islamic norms are important points of reference in divorce, these coexist with other, overlapping, sets of norms. Hence, the role of Islam is multiplex.

Chapter 5 analyses women's perceptions and use of the court. Women prefer to avoid going to court because to do so is difficult to justify: it is not in line with the morals of *muñ* and *sutura* . It is to wash your dirty laundry in public. Nevertheless, some women do go to there, and the marital disputes and divorces that end up in court are largely brought by women. An analysis of women's use of the court reveals two common pathways: 'the court as last resort' and 'the court as documentation'. Together, these pathways show how women draw the state into their dispute and divorce processes. For these women, out-of-court and court-divorce are not separate and parallel – one extra-legal, the other legal; rather, they are closely linked.

Chapter 6 centres on women's use of the House of Justice, a relatively new state justice institution. Among other goals, it was created to extend the state's reach and increase access to justice for women, particularly in family disputes. Like the use of the court in cases of divorce, the use of this institution is gendered. Most cases of marital dispute, domestic violence, and divorce are brought by women. However, while women make appointments for mediations, few mediations actually take place. Husbands do not always show up, and in many other cases neither spouse shows up. Still, women who do not return for mediation at the House of Justice sometimes successfully use the institution to achieve solutions in the domestic sphere. This relates to the reputation of the House of Justice and the state justice system more broadly. Going to the House of Justice may spur husbands and family members into action. The dispute is staged elsewhere, but the domestic sphere remains the primary space for the resolution of marital dispute and for divorce.

The seventh – and final ethnographic – chapter zooms out from the perspective of women *per se* to take a more contextual view and examine the interrelations of the semi-state, Islamic, and state authorities beyond the domestic sphere that women may encounter and engage with in situations of marital dispute and divorce: *chef de quartier*, judge, and imam. These different authorities acknowledge each other's roles in the management of

marital disputes and divorce. At times, they also refer cases to each other or collaborate, even if they work from competing claims to authority. In spite of contention over family law at the national level, the relations between these authorities are thus tolerant, and their arrangement is best described as a 'pragmatic pluralism' (Hill 2013) of negotiated co-existence and, sometimes, cooperation. This configuration relates to the central concern of these authorities with harmony and social peace, as well as to the overlapping and shared attachments of local authorities and their constituents. Building on previous chapters, this chapter also makes clear that none of these different authorities has a complete hold over their constituents. This means that authorities who can negotiate different norms are attractive options to women and men in the midst of divorce processes.

Finally, the concluding chapter considers some of the contrasts between the controversy around the Family Code and the way marital disputes and divorces are handled by Tivaouane women and their immediate social surroundings. It suggests that to understand women's position in Senegal it is crucial to move beyond political debates on family law and to look at what happens in practice, at what different norms and authorities mean for these women and how they avail of them. The conclusion furthermore reflects on the centrality of the domestic sphere in Tivaouane women's marital disputes and divorces, and on the importance – for the study of marital dispute and divorce – of focusing on what happens beyond formal or informal (legal) institutions. On the whole, the dissertation joins a number of works from other regions to argue that family law in Muslim contexts can be comprehended only by paying attention to the plurality of interacting and overlapping legal and normative spheres – often strongly gendered. The Senegalese case suggests that, depending on historical trajectories of state and Islam, cultural context, and legal arrangements, the domestic sphere may be a key arena to understand how Muslim women reconfigure or end their marriages.

2 Situating State and Islam in Senegal and Tivaouane

Introduction

'Today one can tie a marriage in the mosque and dissolve it in court […]
tie it in the mosque and dissolve in the city square'
(interview with a member of the maraboutic Sy family of Tivaouane, September 2016)

When walking the sandy streets and squares of the small city of Tivaouane, one feels deeply the presence of both the state and Islam. The city hosts a large number of state services and is an important Sufi capital of the Tijāniyya order. Like other Sufi 'capitals' of the country, Tivaouane carries important symbolic significance for Islam in Senegal. The buildings of the Sy branch (*zawiya*) of the Tijāniyya order are concentrated in the city's small centre: two large mosques (*jumaa*), a number of Quranic schools linked to the order, the residences of its leadership – the Sy family – and the mausoleums of their predecessors. During the yearly celebration of the birthday of the Prophet Mohammed (*gàmmu*), the city's population of 75,000 grows to over two million. Hordes of followers of the *zawiya* flock together at the Tijāniyya complex in the city centre and on a nearby field to renew their allegiance to the order. The Tijāniyya *zawiya* of Tivaouane strongly marks the city; however, they do not have a complete monopoly over Islam there. Different orders coexist, as in other places in Senegal, and many of the numerous, predominantly smaller, mosques (*jakka*) of Tivaouane operate independently from the Tijāniyya *zawiya*.

Sufism does not mark only Tivaouane; it is central to Islamic life in Senegal, and in Senegalese cities, towns, and villages, portraits of the main marabouts (religious leaders) of the different orders are found wherever one goes.[1] Walking the streets, one picks up fragments of Quran recitations emanating from a Quranic school or playing from a cassette tape. The headscarf – a politicized marker of Islam globally – is rarely visible on the

1 Sufi religious leaders are called marabout or *sëriñ* in Wolof, and these terms overlap with the English word saint. However, marabout or the Wolof equivalent *sëriñ* is also broader in meaning. As Villalón (1995, 280) explains, the terms can refer to 'any religious notable of any stature'. The more specific term *cheikh* is used by the Qadiriyya and Muridiyya to refer to a religious Sufi authority capable of officially initiating people into a Sufi order; the Tijāniyya use the word *muqaddam* to refer to these people. *Cheikhs* and *muqaddams* can also be called marabouts or *sëriñ*. In line with the academic literature and practice in Senegal, I use the term marabout to refer to Sufi religious authorities (see Seck 2010, 47).

Senegalese streets; nonetheless, the garment has been gaining popularity in urban areas (also in Tivaouane) among young women, who often combine it with Western dress. It seems that, while in the 1990s in Senegal the wearing of a veil expressed attachment to reformist Islam, the women who wear a headscarf today primarily see it as an item of fashion (Rabine 2013, 85).

The three main Sufi orders in Senegal are the Tijāniyya, Qadiriyya, and Muridiyya, social organizations formed around families or lineages with a saintly reputation. Followers pledge allegiance to these orders in a number of ways, but primarily express their belonging through self-identification. Not all Senegalese Muslims are Sufi; however, these orders – the Muridiyya and Tijāniyya in particular – together incorporate the vast majority of Senegalese Muslim population.[2] Numerically, the Tijāniyya – which has two principal branches, the Niasse *zawiya* in Kaolack and the Sy *zawiya* in Tivaouane – is the most important order; however, the Muridiyya order, with its strong organizational structure, economic success, and high visibility, also deeply marks society.

While Tivaouane derives its allure from its Islamic Sufi history and the presence of the Sy *zawiya*, the city also has a long history of administrative significance. Indeed, whereas Sy *zawiya* marks the character of its centre, the state's presence is felt throughout the city. The national transport infrastructure of roads and railway that run straight through the middle of the small city determine the way you can move around, and state buildings are spread out across the different neighbourhoods. They include a police station, a *gendarmerie*, schools (including one high school), a departmental hospital, a health centre, the offices of the municipal and departmental administration, a fire brigade, a court, and a House of Justice.

In Senegal, the extent of state presence and visibility depends largely on the degree of urbanization (see also ANSD 2011). Because of a restricted capacity, state services are limited in rural areas.[3] The spread of courts and Houses of Justice is a case in point. There are 45 courts of first instance in the country, yet many of them are located in the cities on or relatively near the coast, such as Tivaouane (Senegal 2017). For populations in the Senegalese rural hinterland, courts are few and far between (see also

2 The Layène are often called a Sufi order, and indeed in their organizational structure they have largely come to resemble them in form. However, their belief system is distinct from that of the other orders in that they believe that their founder is an incarnation of the Prophet Mohammed and that his son is an incarnation of Jesus. Their following is concentrated among the ethnic Lébou who live in Dakar (Seck 2010, 46).

3 The Senegalese state has undergone several processes of decentralization (Kaag and Venema 2002); in practice, however, rural communities have few resources and are strongly dependent both on the central state and on international donors (Williams 2010, 142).

Senegal n.d.); the 19 Houses of Justice do little to remedy this, as they are almost all located in cities where a court was already present (Senegal 2018). Even if Senegal does not rank among the very poorest of countries and is able to attract significant international donor support, the country fails to deliver a number of basic services to its population. In addition to state justice, primary education, as well as potable water, is not delivered countrywide (ANSD 2011). More generally, despite a number of recent periods of economic growth, living conditions remain difficult for many Senegalese.[4]

The remainder of this chapter situates state and Islam in Senegal and Tivaouane and describes their character and relation, as well as providing the necessary background for subsequent ethnographic chapters. In the region that now constitutes Senegal, states and state structures as well as the presence of Islam long pre-date the establishment of a French colonial administration; nonetheless, the colonial period proved to be crucial to the development of the modern nation-state, the spread of Islam, and the institutionalization of Sufi Islam. Historically, the development of a modern state and Islam in what today constitutes Senegal largely coincided; as a result, in many ways, the colonial administration and the Sufi orders were co-produced.

The following sections describe the emergence and institutionalization of the different Sufi orders, the development of a colonial 'state', and the growing interdependence between the colonial 'state' and Sufi orders, a relation that persisted after independence. Subsequent sections delineate how, at the end of the 1970s and as a result of the combined effect of changes in the political and religious sphere, the relation between Islam and the Senegalese state changed. Since then, the religious and political spheres have become progressively interconnected, making it increasingly difficult to establish a clear-cut model of how the two relate.

The Coproduction of State and Islam: Colonial Rule and Sufi Orders

In the early 20th century, Sufi orders and the colonial government had become important and dominant actors in Senegalese society and politics, largely replacing the traditional political structures of monarchy (Guèye and Seck 2015, 21). The different orders, in the persons of their founders,

4 The economic crisis in the 1990s and the subsequent devaluation of the CFA in 1994 meant that living conditions worsened considerably compared with before. Since then, the country has witnessed several periods of economic growth; however, in combination with a growing population and growing inequality, this did not have a large effect on the population's well-being. Senegal ranks 168 on the Human Development Index; 60% of Senegalese people with a job belong to the working poor, and 38% of the population lives below the international poverty line of $1.90 a day (UNDP 2021).

successfully mobilized the population around new social, religious, and economic activities. French colonial administration drew on these leaders, offering them financial and political favours in return. The marabouts' control over their followers guaranteed them a certain influence over the political game, a situation that continued after the advent of the Senegalese state. How did this configuration come about and why did it persist?

In the region that now constitutes Senegal and Gambia, Islam has long been present, the first manifestations of which may go all the way back to the 8th century; it is known with certainty that the presence of Islam dates back to at least the 11th century (M. Diouf 2001, 107). However, the religion was received in an uneven manner, and Islamic leaders had little political influence at first (ibid.). For a long time Senegambia was a space governed by regional empires as well as by kingdoms. These came to an end with the establishment of the French colony, although their decline had already started before colonial conquest, spanning the almost two-century period from the end of the 1600s until 1887 and slowly giving way to a more important role for Islamic leaders in the Senegambian space. The latter often gained influence by waging holy war against the aristocratic leadership of kingdoms and empires, and several smaller theocracies were established (M. Diouf 2001).

Whereas Islam and its leaders had thus been gaining in (political) importance in Senegambia over a long period of time, the 19th and 20th centuries would turn out to be a crucial period for the reception of Islam and the institutionalization of the Sufi orders. Traditional aristocratic political structures had disappeared, and both the Atlantic slave trade, and the colonial expansion that followed shortly after the decline of this trade, had brought on serious societal instability. Villalón notes:

> [It is] remarkable, and certainly not coincidental that the founders of the three most significant maraboutic dynasties of current-day Senegal were almost exact contemporaries, and that the period in which their religious movements knew their greatest expansion coincided largely with the establishment of colonial control. (Villalón 1995, 202)

Abdoulaye Niasse, founder of the Niassene branch of the Tijāniyya order; Amadu Bamba Mbacke, founder of the Muridiyya order; and Malik Sy, founder of the Tivaouane branch of the Tijāniyya order – all were born in the middle of the 19th century, around the time that the French in 1854, under the military leadership of Faidherbe (Chapter 3) started expanding the colony from the core territories on the Atlantic coast into the interior of Senegal.

Colonial Administration and the Tijāniyya Sufi Order in Tivaouane at the Turn of the 20th Century

Although the existence of Tivaouane precedes the colonial period, the town became a place of administrative and religious significance toward the end of the 19th century, likely for the first time. Strategically located on the way from Dakar to St. Louis, and between the coast and the inland, Tivaouane, which had been part of the kingdom of Kajoor,[5] became a centre of both the colonial administration and one of the maraboutic dynasties of Senegal.

Crucial to this development was the establishment of a railway linking St. Louis and Dakar in 1885 (M. Diouf 1990, Chapter 14). The railroad track was to facilitate transport of groundnuts – the cash crop of the new colony[6] – from the stations located in the hinterland, including Tivaouane, to the coastal cities of St. Louis and Dakar, from which they would be shipped to Europe. Opposition to the railroad had been serious and violent but was effectively quelled with the French annexation of the kingdom of Kajoor in 1886 and the assassination of Samba Laobé Fall, *Damel* or king of Kajoor.[7]

Tivaouane was made the capital (*chef lieu de cercle*) of what was now the Confederation of Kajoor and benefited from the groundnut boom (Robinson 2000a). This position in the new politico-economic context of the colony attracted a large group of indigenous newcomers to Tivaouane, mainly from St. Louis, capital of French West Africa until 1902, and ethnic Lébou areas along the Atlantic coast.[8] In 1886, the French appointed Demba War Sall, member of the Kajoor elite who sided with the French, as president of the Confederation, who 'in many ways reigned over Kajoor, with a salary superior to a French head administrator, for sixteen years' (Robinson 2000a, 211). At his death in 1902, the French broke with this policy of indirect rule; Senegalese were limited to the position of *chef de canton*, thus signalling the further waning of the power of traditional chiefs. This created space for another elite, inspired by religion.

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5 Kajoor was one of the kingdoms of the region that now constitutes Senegal, occupying the Atlantic coast from the mouth of the Senegal River to the Cape Verde peninsula and stretching inland. It was established in the 16th century (see M. Diouf 1990).

6 The development of trade in groundnuts, from 1850 onward, made the control of a large territory profitable for the French and spurred colonial expansion (M. Diouf 2001; Sarr and Roberts 1991, 132; Jeppie, Moosa and Roberts 2010).

7 Shortly afterward, in 1890, when they dealt a final blow to the Islamic theocratic state of Futa Tuuro and to the Jolof kingdom – annexed by Islamic leader Amadu Cheikhu – the French established the definitive borders of Senegal (M. Diouf 2001, 226).

8 Tivaouane accommodated a large indigenous population (French subjects – see Chapter 3) as well as a small class of foreign tradesmen and French colonial administrators. Economic development in the city was mainly to the advantage of European and Libano-Syrian traders, who owned trading houses in the vicinity of the Tivaouane railway station and exported via the ports of Rufisque and Dakar (E. H. S. A. Diallo 2010, 42). Tivaouane's indigenous populations profited only marginally (Sow 2007, 155).

El Hadj Malik Sy, founder of the Tivaouane branch of the Tijāniyya order, established himself in the city in the same year, a moment at which the city had thus already developed as an area of prominence. Sy had a strong network of Tijāniyya disciples, having travelled extensively through Senegal and (current-day) Mauritania, and seems to have chosen to relocate to Tivaouane because of its position in the heartland of the new colonial administration and economy (Robinson 2000a).[9] He would remain there until his death in 1922, probably at age 68.

Malik Sy's settlement in a thriving city and under colonial surveillance allowed him to expand the number of disciples and to develop a successful education plan for his *zawiya*. A measure of this success and indicator of the way Sy expanded his power are that he was able to recruit disciples among civil servants employed by the colonial administration in the *quatres communes* of Gorée, Dakar, Rufisque, and St. Louis. Initially, the activities of Sy and his *zawiya* were hardly on the radar of the colonial authorities in Tivaouane (E. H. S. A. Diallo 2010, 42). Later, in the second decade of the 20th century, the order and the colonial administration developed close and cooperative relations. Malik Sy never truly sacrificed anything for this relation; instead, he 'benefited from the conditions of stability which the colonial regime enforced' (Robinson 2000a, 217-18).

The Development of a 'Senegalese Social Contract'

El Hadj Malik Sy died in 1922. Abdoulaye Niasse died in the same year, and Amadou Bamba Mbacke passed away five years afterward. By that time, the Sufi orders that had formed around Sy and his contemporaries Niasse and Bamba had been sufficiently consolidated 'to survive the transition to a second generation of maraboutic leadership' (Villalón 1995, 202), and Malik Sy's successors retained 'correct if not always warm' relations with the colonial administration and later the independent Senegalese state (Villalón 2000, 480).

The Sufi orders of today thus came about together with the colonial state. In part they were constructed in opposition to the colonial state; but as orders and state increasingly accommodated each other, an equilibrium between the two developed (Robinson 2000b, 1). Moreover, particularly in the interwar period, the French began to actively encourage and support the leadership of the Sufi orders – for instance, through providing help in the construction of mosques (Villalón 1995, 205).

9 Before Malik Sy moved to Tivaouane, he had lived in the village of Ndiarnde, located in the heart of the former Kajoor kingdom, where he settled shortly after returning from pilgrimage to Mecca (Robinson 2000a).

A crucial factor in this relationship between the colonial state and Sufi orders was the wish of the colonial administration to cooperate with religious authorities that represented what they regarded as 'tolerant Islam' – that is, with leaders who, unlike other religious figures, opposed the building of Islamic states and military action against the French, a serious threat to colonial administration in the 19th century (Cruise O'Brien 1967; Robinson 1988, 2000b).[10] Another important factor was the ability of Sy, Niasse, and particularly Bamba, as well as their successors, to organize the agricultural activities of their followers (Villalón 1995, 119).[11] These leaders, along with the lower-level marabouts who represented them, contributed to the mobilization for new economic activities that aimed to ensure the colony's profitability to the metropole, and they came to play key roles in the colonial groundnut economy. The marabouts, in turn, profited from their control of the land and the expansion of their economic activity, as well as from the order imposed by the colonial administration and the freedom they were given to perform their religious roles (Robinson 2000b, 233). 'Marabouts became essential intermediaries in the daily exercise of colonial power' (M. Diouf 2013a, 9), and as such a 'social contract' developed, linking the population to religious leaders and these leaders, in turn, to the colonial administration (Guèye and Seck 2015, 21-22). The reorganization of Senegalese society along the lines of the production for export to the world market was accompanied by a strong emphasis on the Sufi notion of submission between a marabout and his follower, which both facilitated and justified the particular forms of this new structure.

When Senegal became independent in 1960, unlike many other Muslim-majority countries it defined itself constitutionally as a secular state after the French model. Nonetheless, marabouts remained central authorities; the state had only limited reach, especially in rural areas, and the manoeuvring of politicians and marabouts in the tumultuous time around independence for the most part consolidated the role of the leaders of the Sufi orders as intermediaries between state and society.[12] The orders thus continued to be central social institutions, whose leaders remained capable of mobilizing large parts of the population, and cooperative and mutually beneficial

10 Islamic actors who waged jihad, established theocratic states, and opposed the colonial administration include Ma Ba, Ahmedou Cheikhou, Mamadu Lamin, Samba Diadana, and Al Hajj Umar. The latter constituted the most notable threat to the French expansion and rule (see Cruise O'Brien 1967; Robinson 1988, 2000b).

11 This principally concerned the cultivation of peanuts. Such organization took different forms; most notable is a form of temporary serfdom: the colonial administration gave marabouts land, equipment, and credit, and disciples cultivated on the estates of their marabouts unremunerated but in return for housing and board for a number of years, after which they obtained a plot of land (see Villalón 1995; Boone 1992, 40–47).

12 For a description of the key events surrounding independence, including the referendum organized by the French President De Gaulle in 1958, see F. Cooper 2014; Villalón 1995, 205–207; M. Diouf 2013a, 15–17.

relations between marabouts and political leaders persisted. Neither had complete hold over society, and this interdependence strengthened their positions vis-à-vis each other (M. Diouf 2013a).

Democratization, Pluralization, and the Decline of the Senegalese Social Contract

From end of the 1970s until today, a series of important changes altered the shape of the state, of Islam, and of their interrelation (Gomez-Perez 2017; Guèye and Seck 2015; Samson 2005; Seck 2010; Villalón 2004). Structural adjustment and economic crisis set in motion a process of democratization, continuing into the early 2000s. The electoral process was reformed, grass roots movements came to play an increasingly important role in political processes, and the media was gradually liberalized.[13] Combined with a pluralization of authority in the Islamic domain, this resulted in an increasing blurring of the religious and political spheres and a decline of the 'Senegalese social contract'.

By the end of the 1980s, it had become clear that the promises of structural adjustment had failed to lift Senegal out of economic crises, and dissatisfaction with the dire economic situation grew. President Diouf's popularity waned – particularly in the urban areas of the country – and at his re-election in 1988 large-scale violent demonstrations erupted over allegations of election fraud. The pressure to democratize – including from donors and lending agencies – mounted. In reaction, Diouf implemented considerable reforms of the electoral process and also liberalized the printing press and the radio sector (Wittmann 2008, 480-481). (Liberalization of the audiovisual sector would follow in the early 2000s.) The same period saw a growing civil society; the youth and student movements that had emerged in the late 1980s gave way to a number of citizen movements with considerable impact on the political process (Gellar 2013). In 2000, the opposition first truly capitalized on the democratic gains made. Forty years of rule by the *Parti Socialiste* (PS) came to an end, and Wade and his *Parti Démocratique Sénégalais* (PDS) were elected to power. Since then, citizen movements have continued to be of influence, and when Wade attempted in 2012 to run for a third term as president, civil society groups put up serious and successful opposition (cf. M. Diouf 2013b, 20).

13 Because of its *relative* political stability and non-repressive stance vis-à-vis political opposition and journalists, Senegal constituted a democratic exception in the region of West Africa already in the first decades after independence. Nevertheless, until 1974 the country was under de facto single-party rule; moreover, the reauthorization of opposition parties in that year happened within carefully circumscribed rules (Galvan 2001; Villalón 2013).

Political democratization coincided with important changes in the domain of Islam. From the late 1970s there was a pluralization of authority within the Islamic sphere, caused first by the re-emergence of a reformist movement and produced in part by the global revival of political Islam at the time.[14] The flourishing of the reformist movement, however, was short-lived, and by the 1990s their popularity had waned considerably (Loimeier 2000, 169). Still, their presence contributed to a heterogenization of the Islamic sphere, which was also facilitated because the themes of political Islam were absorbed by actors within Sufi orders, thus leading to pluralization within these organizations (Kane and Triaud 1998, 17). Second, the tradition of hereditary succession, established upon the passing away of the founders of the Sufi orders, meant that in the 1980s and 1990s, at the passing of the generation of the sons of the founders, and as a consequence of a simple matter of numbers, fragmentation ensued within the Sufi orders.[15] In the different orders, the new, large generation of the grandsons of the founders began to actively compete for followers and authority. Individual marabouts increasingly spoke out, developed new initiatives, and even launched political careers.

Fragmentation has encouraged entrepreneurialism and has stimulated competition between different members of the maraboutic families for followers and economic and political resources traditionally available to them. The process of political and economic liberalization, and the linked processes of pluralization and popularization of the mass media, have facilitated and driven this competition. Marabouts can increasingly be seen to hold press conferences and make appearances in newspapers and on radio and television (Guèye and Seck 2015). More generally, these processes have given way to a greater presence of religious themes and actors in the media, such as the Tivaouane-based mediagenic television preacher Iran Ndao, and have also increasingly provided space to religious actors who are not necessarily linked to a particular *zawiwya*. The logics of a liberal media finally fanned contestation over sensitive issues, such as those of sexuality, gender, and the family – topics that religious actors use to mobilize a following. The democratic opening also meant that issues touching on the relation between the state and religion were reopened, including that of family law (as we shall see in Chapter 3).

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14 The Senegalese reformist movement of the 1970s has its roots in a first generation of Islamic reformism of the Islamic Cultural Union (*L'Union Culturelle Musulmane*, UCM) that dates back to the early 1950s. UCM opposed the marabouts' accommodating stance vis-à-vis the colonial administration, as well as promoted new forms of Islamic education, but became co-opted in state and politics in the 1960s and lost its radical edge (Gomez-Perez 2005a).

15 The position of *Khalife-Général* passed to the successive male siblings of the founders before passing on to the generation of the grandsons (see for instance E. H. S. A. Diallo 2010).

Local State Governance and the Tijāniyya Sufi Order in Contemporary Tivaouane

Today in Tivaouane there is a continued strong role for state and religious actors and institutions.[16] Capital of a county (*département*) of the same name, the secondary city's population is largely Wolof and all Wolof-speaking (ANSD 2015).[17] Once the fifth-largest city of Senegal, Tivaouane is now one of the country's smaller cities in terms of population, and, were it not for its long urban history, it would best be labelled a town (Rouhana et al. 2015). Yet the city's population is growing (ANSD 2015). This can be seen on the edges of the city where a flurry of construction work is taking place and where the city is slowly encroaching on its rural surroundings (Yague-N'diaye 2012). Already in 2009 this led to the enlargement of the surface area of the municipality of Tivaouane by 7,000 hectares (Niang 2019; Décret N° 2009-126).

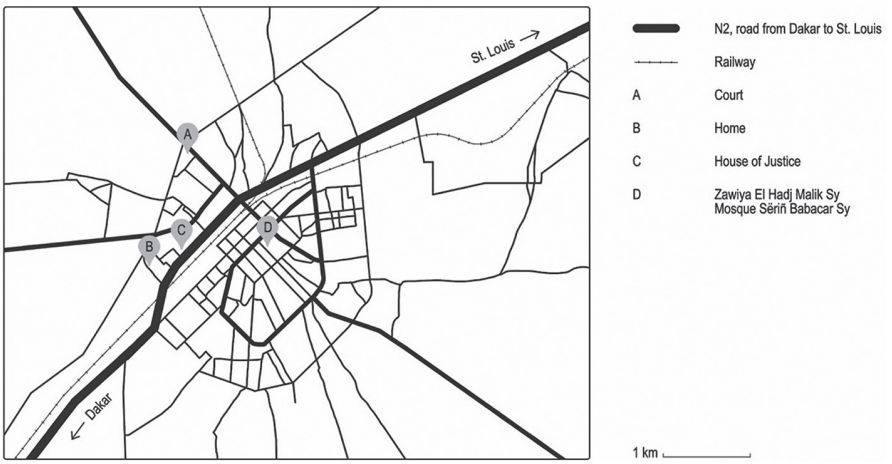

Figure 1: Map of central Tivaouane

16 The character of Tivaouane as urban area is best captured with the term 'secondary city'. A set definition of secondary cities is lacking (Donaldson, Marais, and Nel 2020, 122), but descriptions tend to centre on these cities' position in national urban hierarchy as well as their supplementary role in terms of functions. In general terms, a secondary city is smaller than a primary city and larger than the typical small town. However vague these definitions are, Tivaouane clearly fits them. As a centre of local government, with a long urban history and an economy that relies primarily on trade and artisanry, Tivaoaune is undoubtedly urban; yet it is also small in size compared with other urban centres of the country.

17 Ethnically, Tivaouane has always been diverse but predominantly Wolof (E. H. S. A. Diallo 2010, 40; M. Diouf 1990). Presently, the Wolof represent 80%, Peuls 9%, and Serers 8% of the population (Tivaouane 2017). Like other urban areas in Senegal, Wolof has moreover become the lingua franca; many who are not ethnically identified as Wolof nonetheless speak it as their first language (Mc Laughlin 1995, 153).

The Sy *zawiya* has significant political influence in Tivaouane, and its marabouts impact local political decision making, even if it is not always easy to pinpoint the precise extent of this influence. Perhaps most revealing of the *zawiya*'s political role is that the different mayors who have served the city are all followers of the Tivaouane branch of the Tijāniyya, as well as the fact that it is customary for new local state officials, including judges, to begin their tenure in Tivaouane with a courtesy visit to the *Khalife-Général*. Throughout the years, moreover, the successive *Khalife-Généra*ls, as well as other prominent Sy marabouts, have used their influence to attract resources from the central state to the city, particularly during the annual *gàmmu*, which is attended by the country's main political leaders and is entirely and directly broadcast on the different Senegalese television channels.

The marabouts own a large number of plots in the city, as well as exert power over the character of public spaces. Out of respect, the local administration refrains from licensing local businesses to sell alcohol. In 1987, a newly constructed Catholic church (the first in the city), which was to service the small minority of Catholics in Tivaouane as well as Catholics living in nearby villages, was shut down.[18] The *Khalife-Général* Abdou Aziz Sy requested its closure, at which the central government expropriated the building. Today it houses a public school. What is more, Ouallet suggests there exists a growing propensity among Sy marabouts to territorialize – that is to say, the latter increasingly attempt to mark and organize the city of Tivaouane as an Islamic, Tijāniyya capital (Ouallet 2019). They do so, for instance, by calling upon their followers to invest in property in the city and to contribute to a landmark mosque.

For the relatively large Tijāniyya population of the city, the presence of the Sy family is of spiritual significance. For some it has even been a decisive factor in their, or their ancestors', settlement in the city. Nevertheless, despite their proximity, it is not easy for disciples to have direct access to the central marabouts of the *zawiya*. On the whole, the maraboutic family in Tivaouane has limited direct impact on the lives of Tijāniyya followers in Tivaouane (except on students) that sets them apart from other Senegalese followers, and as we shall see in subsequent chapters, this also means that they do not have a particular role in people's familial and marital lives. Historically, Tivaouane also houses a considerable group of Muridiyya followers. Originally, they settled near the Muridiyya dignitaries Cheikh Awa Balla Mbacke and Cheikh Marouba Guèye, who were based in the city (Sow 2007), and, up to today, they are concentrated in neighbourhoods

18 Islam has a long presence in the area, though by 1910 the city still counted a significant number of animists, and Islamization continued into the 20th century (E. H. S. A. Diallo 2010, 40–41).

considered 'Muridiyya' – such as *quartier Tivaouane Mouride* – even if these neighbourhoods also house a large number of Tijāniyya (Gercop in Sow 2007, 164).[19] The proximity of a phosphate mine, opened in 1960, and of a chemical plant (where phosphate rock is transformed into phosphoric acid), opened in 1983 – both of which are important employers for the Tivaouane population – also means that the city attracted a variety of people, irrespective of religious affiliations (M. L. Diallo 2017; Sow 2007).

Economic activity in the city of Tivaouane is centred around commerce, services, mining, and local administration. The yearly *gàmmu* also constitutes and important pillar of the local economy. Agricultural activity is only of limited significance, even if – given the agricultural activity (groundnut, manioc, and fruit trees) the inhabitants of these areas engage in – Tivaouane at its fringes may be said to be peri-urban in character (Tivaouane 2017).

As a result of principally male emigration, the female population of Tivaouane outnumbers the male population – 92 men for 100 women (Tivaouane 2017, 3). Demographic statistics collected for the wider administrative region of which Tivaouane is part show the female median age of first marriage to be 20.9; for men this is almost ten years higher (ANSD 2012, 64).[20] Prolonged celibacy is rare. In the age brackets 35-44-year-old and 45-year-old and over, only 4% and 3% respectively of the women remain unmarried.[21] Marriage is an important obligation and aspiration for many, one that balances purposes of affective, reproductive, and material nature (Dial 2008; Hannaford and Foley 2015, 208). Throughout Senegal the rate of marriages between family members remains significant; still, the norm of preferential marriage within the family does not carry much importance (Moya 2017, 176-177) (see also Dial 2008, 74-79). As in other regions of Senegal, in the wider administrative region in which Tivaouane is situated, polygyny, sanctioned by the Family Code to a maximum of four wives (FC art. 133), is prevalent: 29% of married women are in a polygnynous marriage (ANSD 2012, 59).[22] The fertility rate is slightly below five children. Whereas the level of education is rising among younger generations, the overall level of education is low: 47.3% of men have not received any formal education; for women the figure is 56% (ibid. 25-26).[23]

19 Conversely, quintessential Tijāniyya neighbourhoods such as the *quartier El Hadji Malik Sy* in the centre of the city are in majority Tijāniyya but also accommodate a number of Muridiyya (Sow 2007).

20 This is slightly higher than the countrywide median of 19.6 (ANSD 2012, 63).

21 These are countrywide statistics.

22 Polygyny refers to a situation in which a husband has multiple wives. Polygamy may refer both to a man having multiple wives and a woman having multiple husbands. Nonetheless, in Senegal, as in other Francophone countries, the word polygamy is used as equivalent to polygyny.

23 These figures do not seem to take into account people who, through study of the Quran, have learned to write Wolof using Arabic characters.

Conclusion

In Senegal, the growing influence of Islam and Islamic authorities coincided with the development of the colonial state. These processes impacted each other, and, around the turn of the 20th century, a constellation had developed in which a small number of Sufi leaders played key roles as intermediaries between the population and the colonial state. Tivaouane emerged as a hub for colonial administration and economic activity, and, with the move of Malik Sy to the city in 1902, it became an important religious location for the Tijāniyya Sufi order. Today, while now being one of the smaller cities of the country, it retains a strong state presence. The so-called 'Senegalese social contract' persisted after independence, yet its strength has declined since the end of the 1970s, as a result of both processes of political democratization and of pluralization within the Islamic sphere.

In the following chapter, we will see that the state and Islam have historically played an important role in shaping the avenues available to women and the different normative repertoires they may draw on in cases of marital dispute and divorce. Over time the colonial and, later, independent, state increasingly used law to impose a certain vision of marriage and the family, but Islamic authorities have contested these efforts. In addition, a gap developed between the law and the actual practice of Senegalese men and women and their families. The co-constitution of the Sufi orders and the colonial administration ensured cooperative and cordial relations between Islamic authorities, on one hand, and the colonial administration and, later, the Senegalese state, on the other. Nonetheless, family law has long constituted a point of contention.

3 A Family Code: Contestations over State, Islam and Women

Introduction

In the period shortly after independence (1960), the Senegalese government deemed the creation of a uniform Family Code of central importance to the forging and modernization of the new nation. Religious leaders, on the other hand, regarded the eventual code – which entered into force in 1973, and, among other changes, abolished unilateral divorce (repudiation) – as an incursion into their sphere of influence, and they mounted serious opposition. Threatening to isolate their followers from the code's impact, they stated that Islamic law should retain the centrality it had had in the Muslim courts (*tribunaux musulmans*) and native courts of the colonial legal system, and they expressed their intention to continue their role as intermediaries in the Senegalese hinterland. The issue was never truly resolved. With the democratic openings in Senegal, Sufi religious authorities and reformist actors saw a chance in the early 2000s to renegotiate the topic of family law. They drafted and proposed an alternative Islamic Code – yet without success. Since then, the situation is perhaps best described as a stalemate: religious actors do not actively push for reform, yet their critiques persist.

This chapter discusses the introduction of the Family Code and its contestation since independence. It focuses on the two major episodes of opposition but also discusses other moments of resistance. Because the history of state family law in Senegal dates back to colonial times, this chapter also analyses how the French colonial power created and imposed a dual legal system and how, from the 1930s onward, family matters, and marriage and divorce in particular, came to be regulated from above – meaning that law was no longer primarily to reflect actual practices but rather to change these, a process that continued after independence with the creation of a Family Code.

In delineating this history, I initially zoom in on two matters of particular importance: First, I will consider the fate of Muslim courts (*tribunaux musulmans*) in the French core territories – that is, in what would eventually be the *quatre communes* (four communities) (Chapter 2). While the French attempted to bring all inhabitants of these core territories under the French (Napoleonic) Civil Code and abolish Muslim courts, this effort was successfully resisted by the Muslim population of these communities, who consequently carved out a space for a 'Muslim civility'. Hence, family

law has long been an issue of contention in Senegal. Second, I will consider what the custom was that was to be applied in family law cases brought to the 'native courts' the French established in 1903 in the French-controlled territories *beyond* the core territories – that is, in the protectorate, an area that had increased dramatically in the late 19th century and that by 1890 covered the region of current-day Senegal beyond the cities of the core territories (Chapter 2, footnote 17). It is likely that only a small share of conflicts over marriage and divorce made their way to these 'native courts' of the protectorate; however, these type of disputes made up the majority of their caseloads, thus raising questions about the law that was applied in these native courts. Despite the central French policy of promoting custom, it seems that in practice in many of the native courts in the protectorate a particular interpretation of Islamic law predominated.

Figure 2: Map showing the core territories (quatres communes) of St. Louis, Gorée, Rufisque, and Dakar[1]

1 Map adapted from Bigon 2012.

The Development of a Colonial Legal System and the Struggle for Muslim Family Law in the Core Territories (Quatre Communes)

Whereas there is little detailed information on the law and dispute resolution in precolonial Senegal, it is known that disputes were handled by chiefs, who arbitrated on the basis tradition, and, because of the spread of Islam, increasingly frequently also by qadis (Lam 2019, 24-27). As a consequence, from the time of 'their first sustained contact in the sixteenth century the French operated within a plural legal environment' (Roberts 2010, 85). In the coastal communities of St. Louis and Gorée[2] – where more and more French began to settle – conflicts among and between the different populations were adjudicated on an ad hoc basis and on the basis of different sets of norms. This changed in 1830. In that year, the Napoleonic Civil Code of 1804 was introduced in the areas under control of the French and French citizenship was extended to all inhabitants of Gorée and St. Louis born free.[3] Yet, while the expansion of political rights was welcomed by the original inhabitants (*originaires*) of these communities, the reception of the Napoleonic Civil Code also meant that the inhabitants of these communities were forced to submit to French civil law. No longer were Muslims originating from these communities permitted to resort to their own – Islamic – courts to regulate matters of the family, even if the Islamic laws were informally preserved (M. Diouf 1998, 686).

Twenty-five years of opposition from Muslim *originaires* followed. Prominent Muslims sent regular petitions to the French colonial administration demanding the establishment of a Muslim court in the colony. A central argument relied on comparison with Algeria: there, Muslims were not subject to French civil law in matters of marriage, divorce, and inheritance (M. Diouf 1998, 687). In response, in 1847 the French annexed an advisory council to their civil court for cases involving Muslims; under further pressure from Muslim *originaires*, this Council became authorized in 1854 to 'give its advice on questions of Muslim law, problems that are submitted to it by the courts' (M. Diouf 1998, 89). Yet pressure persisted. The Muslim Petition of 1856 enumerated the differences between French civil law and Islamic law, emphasizing topics of polygyny, 'bastards', paternity, divorce, inheritance, gifts, and wills. In 1857, the Governor-General put an end to the discussions and opened a court for dispensing Islamic law in Saint Louis in 1857. Shortly afterward, Muslim courts opened in Dakar and Rufisque.[4]

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2 In the course of the 18th century, the first local assemblies appeared in St. Louis and Gorée, which would serve as the basis for the later municipal institutions; see glossary entry on 'quatres communes'.

3 This code had put a definitive end to the diversity of laws in the French metropole.

4 By 1903 there were Muslim courts in St. Louis, Dakar, Kayes (Mali), Rufisque, and Kaolack. The Kaolack court was definitively closed in 1913 (Lydon 2010).

However, the establishment of the three Muslim courts would not resolve the issue for long. By the end of the 19th century, the French had greatly expanded their territory. Beyond the coastal communities, the Napoleonic Civil Code was not in force, and clarification of the legal situation in the colony through the development of a comprehensive legal system became more and more pressing.

On 10 November 1903, the Governor-General issued the Ordinance on Judicial Organisation, which introduced such a system. It continued to rely on a duality in jurisdiction that was primarily territorial: there were two jurisdictions, each with three different courts. French civil law was to apply to 'citizens' (i.e. French nationals) and people originating (*originaires)* from the – by now – four core territories controlled by the French.[5] In contrast, local custom was to apply to all others, who were considered 'subjects' – notably, the 'non-European' inhabitants of the hinterland, which had the legal status of 'protectorate'.[6] At the top, both jurisdictions were conjoined, as appeals from both jurisdictions would move to one and the same superior court. In the four core territories, the new legal system thus brought an end to what French jurists regarded as the 'anomaly' of Muslim courts. Muslim *originaires* would have to choose between having their family conflicts adjudicated by the French civil law court in town, or by a native court outside in the protectorate.

However, the abolition of the Muslim courts did not withstand new outbursts from the Muslim community for long. The latter found support in more pragmatic administrators, who wished to 'maintain the loyalty of Muslims at a time of considerable political disorder and religiously inspired rebellion' (Sarr and Roberts 1991, 136) – a consideration that also informed their cooperation with marabouts who presented what the French regarded to be a tolerant Islam (Chapter 2). Thus, bowing to the pressure from the Muslim *originaires*, the colonial administration decided to reopen the courts

5 Key dates for the establishment of the *quatres communes* are the following: in 1840 a General Council for the Colony was established; it 1848 Senegal was granted a seat in the Chamber of Deputees in Paris; in 1872 the communes of Senegal were officially established (St. Louis and Gorée); in 1880 and 1887, respectively, Rufisque and Dakar would follow and accede to the status of a *commune de plein exercise* (M. Diouf 2000, 568); and in 1929, Gorée and Dakar were merged into a single commune.

6 The legal distinction between the core territories and the protectorate dated from earlier, when the French abolished slavery in 1848. Because it was felt that applying the decree on abolition across all French-controlled regions would undercut support for French rule from indigenous authorities, the French applied the decree selectively. They introduced a distinction between the 'core territories' and the 'protectorate'. While slaves were freed in three French-controlled territories along the coast, slaves in other regions were not (Roberts 2010, 88). This distinction became central to the 1903 legal system, yet the same 1903 ended the legal recognition of slave status throughout French West Africa.

in 1905.[7] However, there was to be increased surveillance of the activities of the court (M. Diouf 1998, 692). 'Legal cases were to be systematically numbered, translated and communicated to the French *tribunal de première instance* within forty-eight hours of being sentenced' (Lydon 2010, 137). As Lydon (2010) shows, this led to the routinization of the Islamic legal practice of the Islamic judges who served as civil servants of the colonial administration.

Later, in 1946, citizenship was extended to all inhabitants of French colonies, and the sharp distinction between the core territories and the rest of Senegal came to an end. The link between citizenship and personal status, moreover, was definitively broken. Nevertheless, in family matters a dual legal system, with two types of courts and applying different norms, remained, and citizens retained the right to choose and maintain their own family law.[8]

'Local Customs', Islamic Law and the Imposition of Uniform Marriage Law

The 1903 legal system relied on the distinction between core territories and protectorate, but also on a corresponding second distinction: between citizens and 'subjects'. Citizens included French nationals and the *originaires*. With the exception of French nationals who had settled there, inhabitants of the protectorate, by contrast, were all subjects. From 1903, these subjects could bring their family law cases to French-created native courts, where they were adjudicated on the basis of local custom. This raises questions about what this custom was.

7 While the Ordinance was issued in 1903, its implementation began in 1905.

8 The extension of citizenship was the result of the work of the African deputies in the French Parliament. The interwar period had seen a rise in political activism, culminating in the period after the Second World War. The results were momentous: all inhabitants of Senegal now had to be treated equally with their counterparts in the metropole. Senegalese inhabitants obtained equal access to the civil service, with the same pay and benefits. The right to vote was extended to a significant number of categories of people, but suffrage was not immediately universal (this would take place only in 1956). With the extension of citizenship, Senegalese workers were to be granted the same rights and protections as workers in the metropole; there could be only one labour code. This was an important gain: labour rights were a central point of contention in the Senegalese colony at the time (F. Cooper 2014). Moreover, the same year saw the abolition of the *indigénat* (see below in this chapter), codified in the Houphouët-Bougny law.

The three different native courts (village, provincial, and appeals courts) dealt with both civil and criminal matters. They were run by French colonial administrators and French-appointed chiefs and assessors.[9] In practice, the large majority of the cases the native courts handled were family cases. These cases were brought by litigants – often women (Yade 2007) – who drew on the court to make claims about marriage, divorce, and inheritance (Geismar 1933; Robinson 1992).[10] Next to the courts, a central institution of the 'native' legal system was the *indigénat*, introduced in Senegal in 1887 and extended to the rest of French West Africa in 1904, regulating the French system of forced labour and administrative punishment.[11]

But what was the 'local custom' that was to be applied in the family law cases brought to the native courts, and how was this to be ascertained? Article 75 of the 1903 ordinance stated: 'native justice applies in all matters of *local customs*, insofar as they are not contrary to the principles of French civilization'.[12] What were the effects of the stipulation that all customs contrary to French civilization were to be brushed aside (repugnancy clause)?[13] And, given that a number of subjects were Muslim, was there a role for Islamic law?

9 The village court was to seek reconciliation of the parties and was presided over by the village chief. If without success, parties could go to the provincial court, headed by the provincial chief, 'the historic or invented ruler of the region' (Roberts 2005, 74). He was assisted by two assessors, appointed by the French district officer and chosen for their knowledge of community custom. If litigants were Muslim, at least one of the assessors had to be a Muslim judge, a qadi (Roberts 2005; Robinson 1992). Judgments in this court had to be recorded either in French or in Arabic, and the French district officer was often closely involved in the operation of the court: its sessions often took place right next to their headquarters, and, since they were sometimes the only ones capable of recording judgments, they often attended sessions (Roberts 2005, 75). Litigants who were not satisfied with the judgment of the provincial court could appeal to the appeals court (*tribunal de cercle*), headed by the district officer, who often had no legal training (Conklin 1998, 436). He was assisted by two 'indigenous notables' (Ponty in Roberts 2005, 75). An important function of the appeals court was to create jurisprudence that provincial chiefs would feel obliged to conform to. Note that in criminal matters all native courts had serious punitive powers, far greater than those of the civil courts where citizens went (see Conklin 1998).

10 For the adjacent French Soudan, see Roberts (2005, 10).

11 The *indigénat* allowed French commanders to regulate 'offenses' – often loosely defined – thus giving them the power to 'jail, fine or bind people' (Mann 2009, 333) without appeal. The *indigénat* underwent reforms from the 1920s onward and was abolished in 1945–1946 (F. Cooper 2014, 67–68).

12 Rapport au Président de la République, suivi de décret portant réorganisation du service de la justice dans les colonies relevant du gouvernement général de l'Afrique occidentale (10 novembre 1903), *Journal officiel de la République française* (24 novembre 1903), 7094-7097.

13 The instruction of AOF Governor General Roume (1902–1907) to local administrators to codify custom and his successors Ponty's call to map and collect custom, in order to contain the – in his opinion – 'corrupting influences' of Islam (*politique des races)* raise similar questions.

The colonial legal archives are yet to be fully exploited by historians, and any definitive answers to these questions are lacking so far; nonetheless, there are indications that, in their handling of the cases justice seekers chose to bring to the native courts, the colonial administrators' use of the repugnancy clause altered the customs applied. Their push to render custom acceptable in accordance with their own conceptual categories, and on the basis of information provided by local elites, likewise seems to have altered custom. Snyder's study demonstrated how, in the early 1950s among the Banjal Diola in the south of Senegal, the imposition of French legal categories had created new and persistent customary conceptions of land ownership (Snyder 1981).[14] In the adjacent French Sudan, beyond colonial Senegal, provincial tribunals in Sikasso, as Burrill shows, tried to eradicate marriage practices that ran counter to French civilization (Burrill 2015, 63). These studies suggest that French legal categories, bureaucratic standards, and ideas about what did and did not run contrary to French civilization distorted custom in Senegal as it was applied in the family law cases litigants brought to the native courts.

Yet other authors highlight how, in the early 20th century, despite a continued policy by the central leadership of the colony to minimize the influence of Islam and promote custom over Islamic law, 'the experience with indigenous tribunals themselves […] was very different from the original intention' (Robinson 1992, 234). In practice, a particular version of Islamic law predominated in the native tribunals headed by the village and provincial chiefs, and 'no meaningful representation was given to […] custom' (Robinson 1992, 234) (see also Burrill 2015; Jeppie, Moosa, and Roberts 2010; Marty 1917, 288; Roberts 2005). In part, this was also the result of a conscientious reliance on French translations of Maliki jurisprudential handbooks in the courts of appeal, books that were falsely understood as similar to a legal code.[15] Moreover, as Robinson points out, 'Muslim assessors familiar with Islamic law constantly came forward, while fetishist notables hung back' (Robinson 1992, 235). This suggests that the many cases concerning marriage, divorce, and inheritance that litigants brought to the native courts were largely dealt with according to Islamic law.

14 Yade (2007) does not address this in her article. I am aware of her 2011 PhD thesis *Approche ethno-historique du mariage et du divorce judiciaire au Sénégal de 1903 à 1959* (Université Cheikh Anta Diop), but I have been unable to access it.

15 The French colonial administrators largely relied on the French translation by Seignette (published by Challamel in 1878) of an influential Maliki jurisprudential commentary by Ibn-Khalil (Seignette 1878). The earlier Perron translation of the *Mukhtassar* by Ibn-Khalil appeared in 1854 (Extrait du Journal des Savants 1982). Note, however, that contrary to what Roberts (2010) and Robinson (1992) state, the Seignette translation does not include the volume of the *Mukhtassar* dealing with religious prescriptions on marriage and divorce.

Indeed, the studies on custom conducted in the 1930s by Geismar and in the 1950s by Chabas and Gamble, which detail custom as applied in the native courts, often refer to Islamic norms, both explicitly and implicitly (Chabas 1952; Gamble 1957).[16] This is also shown in the 'innovations' that the native courts in Sine Saloum, introduced in 1905, brought about in marriage and divorce, as described by Yade (2007, 7). Taken together, it seems that the subsuming of Islamic law under the category of local customs of the 1903 legal system and the promotion of custom did not mean that Islamic family law was marginalized; quite the contrary. It also seems that Islamic law and custom pertaining to family were distorted in the native courts.

Of course, not all disputes made their way to the colonial courts; in fact, it is likely that very few did. In 1933 Geismar noted: 'to judge by the statistics the native of the countryside has not yet found the path to our courts', and he explained how the litigants of these courts came almost exclusively from the rail towns (such as Tivaouane) and European centres (Geismar 1933, 8-9). Instead, the majority of disputes were probably handled within families or with the involvement of authorities beyond the colonial state. Because this happened largely outside of the purview of the colonial authorities, the latter likely had little impact on the norms applied in dispute resolution and adjudication. Nonetheless, the possibility to resort to a colonial court alone may have had an impact on how families and informal authorities handled disputes.[17] As we shall see in the subsequent chapters, together, this would suggest a reality that is possibly not so different from that of today.

From the late 1930s onward, the legal policy, particularly pertaining to family law, changed significantly. The 1939 Mandel decree and the 1951 Jacquinot decree marked important turning points. They introduced reforms 'from above' in the whole of French West Africa, expressing an explicit concern with the position of women in marriage and with women's rights. The Mandel decree mandated marriage reform across French West Africa and Equatorial Africa. From 1939 onward, consent was to be the basis of any marriage; moreover, an age of consent was set at 14 for girls and 16 for boys (Burrill 2015, 133). The Jacquinot decree mandated that divorcees, and unmarried women of 21 years or older, had the right to freely choose their own partner without consent from parents and family members (Burrill 2015, 153). However, these measures had little impact on the ground. As Burrill noted:

16 Geismar's 1933 study on the 'civil customs' of different ethnic groups in Senegal (1933) was commissioned by the Governor-General in 1931. Geismar gives a highly detailed account of the custom applied in different regions and by different ethnic groups and notes a strong influence of Islam. The studies of Gamble and Chabas are less detailed; moreover, the latter concentrates on the urban centres of Senegal in particular.

17 While it is clear that native courts received a high number of marriage and divorce cases, often introduced by women, it is not known whether women also experienced particular restrictions in going to court.

> the more and more fixed African marriage became through legal decree and code, the less these definitions of marriage reflected the contours of marriages that were actually forged by African men and women. (Burrill 2015, 133)

Together, the decrees thus also heralded a new vision and use of the law in relation to the family. The law was no longer to reflect local practices and beliefs, however (mis)understood, but became a tool of the state to 'civilize' the population and protect the rights of individual women.

A Uniform Family Code for a New Nation

At independence in 1960, the new Senegalese state, in addition to a dual jurisdiction, inherited multiple family laws: French civil law and a plurality of customs. With the extension of French citizenship in 1946, family law had become a matter of choice for all of the population. Everyone was a citizen, and people either opted for French civil law or for their own custom. At the same time, the Mandel and Jacquinot decrees required that this custom be in line with the stipulations about marriage set out in them.

Upon independence, the country adopted a republican and secular constitution that made mention neither of Islam nor of custom. The government swiftly unified jurisdictions and closed native courts and Muslim courts.[18] It also created a single civil registry. Substantively, the unification of family law was another central priority of the government. For President Léopold Sédar Senghor, a uniform Family Code was essential for the development of the nation-state (Villalón 1995, 228). As the then Minister of Justice M'bengue stated: 'a strong state requires that the Nation is endowed with one and the same personal status law' (Options Committee Tome I);[19] in many other newly independent states of Africa and beyond, there was the same strong belief in the urgency of nation-building as well as in the central

18 The judicial system of 1960 included 11 justices of the peace (*juges de paix*) situated throughout the country, including one in Tivaouane (Lam 2019, 69). Because of limited resources and a limited number of qualified judges, the newly created judicial system was premised on general jurisdiction – meaning that judges are competent to judge in various fields of law (Lam 2019, 27). In 1984 and 2014, the judicial system was reformed. The justices of the peace changed names to departmental tribunal (*tribunal départemental*) in 1984, and these were renamed to *tribunal d'instance* in 2014. This did not have consequences for family law procedure. Over the years, the number of courts has grown: in 1984 there were 25 departmental courts (Lam 2019, 100), and in 2019 there were 35 courts of first instance (45 were created but 10 were not yet installed) (Lam 2019, 117). For more on the structure of the judicial system in Senegal, see also AfriMAP and OSIWA (2014, 19–26), and Samb (2004; 2013).

19 ['*Il n'existe pas d'État qui ne recouvre une Nation dotée d'un seul et même statut.*'] Travaux du comité des options pour le code de la famille; Tome 1; Allocution prononcée le 26 Mars 1966 lors de l'installation du Comité des Options par M. Alioune M'bengue Garde des Sceaux, Ministre de la Justice, p. 4.

role of law for this project (Allott 1980; M. Diouf 2001, 206; Otto 2010b, 2).[20] Hence, Senghor commissioned the creation of the Family Code promptly after independence. It would take another 12 years, however, before the code was finally drafted and adopted.

In the meantime, the Senegalese state maintained different personal statuses; accordingly, while everyone was a citizen, there were those who opted for civil law and those who opted for their own custom in matters of the family and personal status (Y. N'diaye 1978). This also meant that Senegal maintained a duality in terms of marriage: civil marriage, and customary marriage. In 1961, the different marriage customs were fixed at a total of 68 (Guinchard 1978, 817) and categorized on the basis of ethnicity and religion, often labelling fusions of ethnic custom and religious law (see Arrêté no 2591 du 23 Février 1961), such as '*Ouoloff islamisée*'. This was also likely the most common custom in Tivaouane.

This plurality in family law was mirrored in the organization of the legal system. The unification of jurisdictions and the suppression of the indigenous and Muslim courts in 1960 did not lead to the abrogation of the pluralist system, at least not initially (M. N'Diaye 2012, 142). Until the implementation of the Family Code on 1 January 1973, *justices de paix* (justices of peace), who constituted the first rung of the legal system, were given special jurisdiction to adjudicate on matters of Senegalese citizens who did not want to be judged on the basis of the French civil code and retained their '*statut particulier*'. The justices of peace were to judge questions pertaining to the intimate sphere, among others, of marriage, divorce, and inheritance, and they had to do so on the basis of the custom of both parties involved (Touré 1975, 54). To this end, they were joined by two assessors, who informed the judge about the relevant customs (ibid.).

All the while, preparations were underway to draft and introduce a single code for all Senegalese citizens. Just over a year after independence, on 12 April 1961, the government established the Commission for the Codification of Personal Status Law and Law of Obligations (Commission for the Codification),[21] the first of a total of three commissions that would subsequently work on the code. '[T]he Senegalese authorities were careful in their elaboration of the Family Code and [..] codification [thus] took place in several stages' (Guinchard 1980, 36).

20 Note that the French West African Muslim-majority countries of Niger and Burkina Faso maintained a dual system; Mali enacted The Law on Marriage and Guardianship, but it did not codify inheritance law. In 1995, Burkina Faso enacted the Code of Persons and Family *(Code des Personnes et de la Famille*) (see Paré 2017). So far (September 2021), Niger does not have a Family Code (see Barbara Cooper 2010 and Villalón 1996).

21 *Commission de Codification du Droit des personnes et du Droit des obligations*

The Commission for the Codification worked on the Family Code for about four years. As a first step in the drafting processes, they devised a lengthy questionnaire to collect information on the different customs in use. The answers collected, however, would remain incomplete. To continue the task, the government appointed the Options Committee (*Comité des Options*) in December 1965. The total of 32 members included lawyers, members of parliament, former qadis, and religious and customary authorities. Members prepared reviews on different topics, which were subsequently discussed by the full committee in sittings over a number of weeks in April 1966 (Camara 2007, 788).[22] Afterward, the government as well as the leadership of the ruling party, *l'Union Progressiste Sénégalaise* (UPS, which would turn into the *Parti Socialiste*, PS, in 1976) reviewed their work and by a decree of 22 July 1966 the Senegalese government assigned the drafting of the Family Code to a special committee, a task completed by 1967.[23] However, the political crisis of 1968-1969 led Senghor to delay discussion of the Bill in Parliament until 1972: on 1 July of that year the code was unanimously adopted.[24] Shortly afterward, on 1 January 1973, the law entered into force. From then on, civil registrars, justices of the peace, and the different appeal judges were to apply 'Senegalese' family law.

Character of the Family Code: Modernity, 'Islamic Law', and 'Custom'

The Family Code that entered into force in 1973, and is still valid today, comprises 854 articles and synthesizes French civil law, Islamic norms, and customary norms. It is the only Senegalese legislation that codifies norms deriving from Islam and 'custom'. Overall, the code favours the French sources, evidence of a strong wish to 'modernize' Senegalese society.[25] Thus, the nationalist impetus behind the abrogation of plurality in personal status and the elaboration of a uniform code went hand in hand with ideologies of modernization; unification was to contribute both to nation-building and to social and economic progress. This is also evident from the terms of

22 The total of 32 members included lawyers, deputies, qadis, and religious and customary authorities and worked from 8 to 26 April 1966 (Camara 2007, 788).

23 The committee was called the 'Drafting Committee of the Family Code' (*Comité de Rédaction du Code de la Famille*). Their 1967 draft was examined by both a Parliamentary Commission and the Supreme Court. This led to ten amendments.

24 The crisis weakened Senghor's power, and he preferred to wait until the situation had calmed down (M. N'Diaye 2012, 280). The draft was under consideration of Parliament between 30 May and 1 July 1972. How many of the Members of Parliament were present when the law was voted is unknown (Brossier 2004a, 35).

25 The character of the Family Code has been analysed by many scholars, not in the least because of the ambitious nature of the code. Commentators address the modernizing nature of the code, as well as the duality evident in the law; even so, their evaluations differ (Brossier 2004a; M. N'Diaye 2012; Sow Sidibé 1987; Y. N'diaye 1978; I. Y. N'diaye 1996).

reference provided to the Options Committee. In the words of the Minister of Justice, customs could stand in the way of progress, evolution, and socio-economic development; and if they did, they had to be abolished (Options Committee, Tome 1, 4-5). Custom was to be an important source of law, but the minister cautioned: 'The Code should be an instrument of evolution and emancipation, not a collection that chronicles a dead or dying African society'. More generally, references to progress, modernity, and advancement pervaded the discussions held during the long elaboration of the Family Code.

Whereas French civil law accorded few rights to married women, in the period in which the Senegalese Family Code was elaborated French family law underwent significant reform: the financial independence of the wife in marriage was enhanced (1965), and the institution of paternal power was abolished (1970) (see Greenwald 2018). In Senegal, modernization clearly included the amelioration of the position of women (Options Committee).[26] The abolition of unilateral divorce by the husband (i.e. repudiation) was central to this endeavour. It was one of the expressed aims of Senegalese President Senghor to ban this practice from Senegalese society (Camara 2007, endnote 7) and to restrict divorce to the court; and whereas there was no complete unanimity on the matter in the Options Committee, the great majority of members were in favour (Options Committee).[27] Nevertheless, an analysis of the deliberations of the Options Committee shows that there was little explicit consideration of women.[28] Drafters were measured in their insistence on emancipation; instead, the position of women was framed as both a matter of protection, and a matter of progress and modernity. Hence, women appear both as the objects of state protection and as symbols of a modern nation-state. During the elaboration of the Family Code, women were conspicuously absent; they were not part of the Parliamentary Commission or the Options Committee, even if there were female members of Parliament and women working in the legal professions (M. N'Diaye 2012, 300).

In content, the Family Code provides for near equal rights in divorce. It distinguishes between two types of divorce (art. 157): consensual divorce (*divorce par consentement mutuel*) and contentious divorce (*divorce contentieux*) – which are respectively established and pronounced by a judge.[29]

26 Travaux du Comité des options pour le code de la famille, Tome I-III.

27 Travaux du comité des options pour le code de la famille; Tome II; Séance du Lundi 18 Avril 1966, p. 39–67

28 Members of the Options Committee only rarely referred to equality, and no mentions of international human rights were made, even if their discussions occurred at a time when the idea of universal human rights had gained some purchase.

29 Note that the French Civil Code recognized consensual divorce only in 1975.

Consensual divorce:

The spouses together introduce the request for consensual divorce, either in writing or in person. Before the divorce can be established (*constater*), the judge needs to verify the consent of the parties and check whether or not it has been freely arrived at. If he deems that true consent is lacking, he rejects the request. The judge also ensures that the agreement of the spouses is not contrary to the law, public order, and morality. If all conditions are met, the judge renders judgment establishing the divorce. (Article 159 and Article 161)

Contentious divorce:

Grounds for contentious divorce: Contentious divorce may be introduced by either of the spouses, in writing or in person. The code lists ten grounds for divorce. 'Divorce may be pronounced: (1) For declared absence of either spouse; (2) For adultery by either spouse; (3) For the sentencing of either spouse with a penalty involving the loss of civil rights; (4) For neglect of the wife by the husband; (5) For failure by either spouse to honour commitments made when entering into marriage; (6) For desertion of the family or marital home; (7) For serious ill-treatment, excesses, abuse, or insults rendering continued marriage intolerable; (8) For permanent and medically proven infertility; (9) For the serious and incurable illness of either spouse, discovered during the marriage; (10) For mutual incompatibility rendering continued marriage intolerable.' (Article 166)[30]

Conciliation hearing:The contentious divorce procedure is mandatorily preceded by a conciliation hearing, which may last a maximum of a year. (Article 169)

Contentious procedure: If conciliation is without success the judge opens the 'contentious procedure'. (Article 171)

Temporary measures: Throughout the different phases, the judge can order temporary measures. If the couple has children, the judge may request a survey detailing the social and financial situation of the family. (Articles 168 and Article 170)

In addition to near equal divorce rights, the Family Code includes a number of what are framed as safeguards for women, but these are combined with the codification of a number of manifest inequalities between husband and wife. On the one hand, for instance, in line with the Jacquinot and Mandel decrees, for a marriage to be valid the consent of both spouses is required. On the other hand, the husband is legally appointed head of the family (Art. 152) and has the exclusive right to choose the marital home (Art. 153) and

30 [*Le divorce peut être prononcé: Pour absence declarée de l'un des époux; Pour adultère de l'un des époux; Pour condamnation de l'un des époux à une peine infamante; Pour défaut d'entretien par le mari; Pour refus de l'un des époux d'exécuter les engagements pris en vue de la conclusion du marriage; Pour abandon de la famille ou du domicile conjugal; Pour mauvais traitements, excès, sévices ou injures graves rendant l'existence en commun impossible; Pour stérilité définitive médicalement établié; Pour maladie grave et incurable de l'un des époux découverte pendant le mariage; Pour incompatibilité d'humeur rendant intolérable le maintien du lien conjugal*]

exercise parental authority (Art. 277, §2). Polygyny is possible up to four wives (Art 133). If the couple decides on a marital regime that limits the number of wives the husband can marry, this can be revised only 'in the direction of a reduction in the number of wives' (Article 134, see Sow Sidibé 1993, 426). The default regime is four wives – meaning that if no choice is made, the marriage is placed under the regime of four wives (Art 133). The provision on polygyny thus includes a safeguard for women, as well as for men.

In marriage and inheritance, the Family Code provides a duality of options. Whereas the aim of the Senegalese government was to create a uniform Family Code, they recognized that complete uniformity would be impossible. The terms of reference for the Option Committee reflect this: the document stipulates that, overall, older interpretations of Islamic rules, traditions, and practices that were not directly in line with the Quran were not to stand in the way of 'reforms necessitated by modern life' (Options Committee, Tome I).[31] When the Committee did record an Islamic rule in their draft and this rule was 'manifestly inadmissible to non-Muslims', the Committee had to propose exceptions (ibid.).[32] Thus, the code recognizes both civil and customary marriage (art. 144). Civil marriage is concluded by a registrar; customary marriage, on the other hand, is performed in accordance with (a recognized) custom and subsequently recorded. In addition, a marriage concluded informally but on the basis of a recognized custom may be recorded retroactively (art. 147 and 87). The Family Code also provides two inheritance laws: *droit commun* and Islamic law – where *droit commun* is the default option (Sow Sidibé 1987; N'diaye 2012, 353). As Article 571 of the Family Code provides, only if the deceased has – explicitly or through their comportment – indisputably manifested the will to have his/her succession divided on the basis of Islamic law, is Islamic law as set out in a separate title of the Family Code applied. By introducing this duality, the Senegalese government demonstrates a certain pragmatism: it is clear that civil marriage and inheritance were favoured by the government, yet it is also clear that the government knew that to restrict marriage and inheritance to these forms only would not be feasible.

Hence, the Family Code distinguishes on the one hand between *customary* marriage and *civil* marriage, and on the other between *common* law and *Islamic* law. Somewhat similarly, academic commentaries on the Family Code contain references that are not based on French law, using terms such as 'tradition', 'custom', and 'Islam' – although these terms remain ill-

31 ['*ne doivent pas nous arrêter sur la voie des reformes lorsque celles-ci sont commandées par les nécessités de la vie moderne.*'] Travaux du comité des options pour le code de la famille; Tome 1; Allocution prononcée le 26 Mars 1966 lors de l'installation du Comité des Options par M. Alioune M'bengue Garde des Sceaux, Ministre de la Justice, p. 5.

32 ['*sera manifestement inadmissible pour les non islamisés*']

defined. How were the categories of custom and Islamic law approached by the Senegalese legislator?

It is first notable that – with the exception of customary marriage, which may be Islamic or not – norms laid down in the Family Code that do not have French civil law as their source of inspiration can all be said to be in line with conventional Maliki interpretations of sharia. This is echoed in Camara's evaluation, who argues that the Senegalese Family Code is 'hostile' to customary law and favours Islam (Camara 2007).[33] However, during the drafting process of the Family Code, custom and Islamic law are often used interchangeably. While the Options Committee's terms of reference at some points distinguished between 'Islam' and 'customary law', at other points they conflated these categories. Possible conflicts between customary law and Islam, moreover, were not really accounted for in this document. The discussions of the Options Committee also demonstrate how, for the majority of its members, custom and Islamic law were understood as being one and the same in principle; only when a custom was not also an Islamic rule or vice versa would the categories of custom and Islamic law be distinguished.[34] It is clear that the Options Committee understood custom as largely informed by Islamic norms. The statements of the Minister of Justice, when commenting on the title 'Muslim inheritance law' (*successions de droit musulman*) during the Parliamentary discussion of the Family Code, convey a similar position:

> [I]n practice, what we call Muslim law is an amalgam of Quranic law and customary law. It would be appropriate to speak rather of customary law, but it's [Muslim law] an established term and we don't want to change it (Les débats parlementaires 1972, 324 cited in M. N'Diaye 2012, 149).[35]

Together, the way that categories of custom and Islamic law have been employed in the final text of the Family Code, as well as during its elaboration, thus reveal a certain continuity of colonial lines of thought. Just as before, the category of custom lumped together a variety of normative and legal sources, and people's beliefs, norms, and practices were characterized as inauthentic but acceptable forms of Islam.

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33 Camara's argument is useful in that it lays bare a distinction that commentaries on the Code have often overlooked (see footnote 57), yet what I am interested in here is how these categories were used in the elaboration of the Family Code.

34 Two of the qadis who were members of the *Comité des Options* and that spoke up with some regularity routinely referred to the Quran and God. They also referred to Islamic law. In rare cases, references were made to Islamic jurisprudence. These refer to 'Khalil' and the 'Risâla', respectively a Maliki work of jurisprudence by Khalil ibn Ishaq al-Jundi (14th century, Egypt) and a Maliki work of jurisprudence by Ibn Abi Zayd al-Qayrawani (10th century, Tunisia).

35 [*'dans la pratique, ce qu'on appelle droit musulman est un amalgame de droit coranique et de droit coutumier. Il conviendrait de parler davantage de droit coutumier, mais le terme est consacré par l'usage et nous n'avons pas voulu y revenir.'*]

Opposition to the Family Code

The Senegalese government attached great importance to the creation of a Family Code. From the outset, however, Sufi leaders regarded the initiative to introduce uniform legislation as an attack on Islam and their position. Timing also played an important role. As we saw in Chapter 2, the 'Senegalese social contract' would prove to hold. Yet during the run-up to independence and after politicians and religious leaders were confronted with uncertainty about their relative positions and their interrelations. At this crucial moment in the negotiation of their relationship with the state, Sufi leaders saw the initiative to introduce a Family Code as an incursion into their sphere of influence (Villalón 1995). Hence, their opposition was vehement.

In the absence of competitive elections, Parliament was exclusively composed of Members of Parliament of President Senghor's UPS, and when the code was adopted in 1972, Parliament unanimously voted in favour of the law. Beyond Parliament, the code had already become the subject of critique in 1970 when the Bill was first announced, and the major marabouts of the country spoke out against it. The *Conseil Supérieur Islamique du Sénégal* (Villalón 2013, 253), a council they had created during the period leading up to independence, was revived for the occasion. Under its umbrella the leaders of the different orders asserted their opposition against the law in a letter:

> For us Muslims, we have to stress that the Quran, the supreme Constitution, which has foreseen everything and omitted nothing with regards to marriage, divorce, inheritance and other acts that touch society has governed Islam for over thirteen centuries already. Its immutable and irrefutable precepts are respected and applied across the world, without the slightest modification, by all scholars and all governments which have been instituted. We are astonished to see that now, in Senegal, *while the colonizers had accepted the Muslim code and created special jurisdictions for Muslims* [italics mine], one wants to introduce innovations, not to say infringements. (cited in Coulon 1979, 32-33)[36]

To study and analyse the Bill, the council established three commissions, and each produced its own report: one (1) rejected the Bill categorically and in its entirety; the second (2) pointed out each article that contradicted the sharia, noting for each the position of Islamic law on the subject; the third

36 ['*Pour nous Musulmans, peut-on lire, nous nous devons de souligner que l'islam est régi depuis plus de 13 siècles par le Coran, constitution suprême, qui a tout prévu et n'a rien omis en matière de mariage, divorce, succession et autres actes touchant à la société. Ses prescriptions immuables et irréfragables sont respectées et appliquées à travers le monde – sans moindre modification – pas tous les érudits et des gouvernements qui ont été institués. Nous nous étonnons de voir que, maintenant au Sénégal, on veuille y apporter des « innovations » pour ne pas dire des entorses, alors que le colonisateur avait admis le Code Musulman et crée des juridictions spéciales pour les islamisés.*']

(3) critiqued the document and suggested the creation of a special advisory chamber on religious matters to Parliament, as well as listed over 80 articles that contradicted Islamic law, without making further comments (Villalón 1995, 227-228). In January 1971, the council presented the last document to the government.[37] When it appeared that the government ignored their opposition and failed to heed their advice, the council followed with another letter stating that they regretted that the revised Bill had not been submitted to them for inspection, though they 'had the right to expect it'. While the letter remained polite, the council made it abundantly clear that they opposed the law, going as far as threatening to disobey.

> [B]y virtue of the obligations that result from the roles assigned to us by our religious positions, we must necessarily remove any ambiguity about our positions by solemnly reaffirming our unshakeable conviction *to categorically reject any measure, even an official one, which does not respect the sacred principles of our religion*. (cited in Villalón 1995, 228; emphasis in the original)

This vehement opposition to the state was 'unprecedented' (Camara and Seck 2010, 878) and stemmed from the different marabouts' convictions that the adoption of a uniform Family Code not only contradicted a large number of religious norms, but also constituted a departure from the established practice of the 'social contract' (Chapter 2) (see Villalón 2013).

While the council had presumed that their suggestions would be taken up by the government, the latter adopted the code without their approval, even after the second council letter. As Villalón argues, this was largely due to the 'extreme importance' that the state, and particularly its President Léopold Sédar Senghor, attached to the code (Villalón 1995, 228). The marabouts, on their side, maintained their opposition, largely by isolating their followers from the code's impact. As Coulon reports, in the electoral period of late 1977 / early 1978, the *Khalife Général* of the Muridiyya, Serigne Abdoul Mbacke, declared to the press that the Family Code would not reach Touba. The *Khalife* of the Layennes, Seydina Issa Laye, stated that none of his followers would go to an official court for marriage, divorce, or inheritance. And Aboul Aziz Sy, *Khalife Général* of the Tivaouane branch of the Tijāniyya, asserted that the code had no place in Senegal (Coulon 1979, 34). Ibrahim Niasse, *Shaykh* of the Koalack *zawiya* of the Tijāniyya, adopted a more conciliatory tone. In his speech on the Family Code he at once recognized the right of the state to legislate and the right of Muslims to follow the stipulations of their religion in their family practices.[38] Notably, reformist actors did not put up (vocal) opposition to the code. The private archives

37 As Villalón (1995, 307 note 59) explains, it is unclear from the discussion of Mbaye why the Council chose this third report.

38 https://www.youtube.com/watch?v=Qc9Ziptklsg, accessed on 8 April 2022

of the reformist organization, the Muslim Cultural Union (*Union Culturelle Musulmane*, UCM), instead revealed their 'conciliatory attitude' regarding the Family Code (Gomez-Perez 2005a, 212 note 49). Likely this was due to the relative marginalization of reformist actors in the 1960s; moreover, while the 1970s had seen a renewal of the Islamic activism of the 1950s (see Chapter 2), no charismatic figure emerged from within this movement (Gomez-Perez 2005b, 2005a; Loimeier 1998; M. N'Diaye 2012).

Since the 1970s, critiques against the Family Code have resurfaced, not only from Sufi religious authorities but now also from reformist actors. By contrast, human rights and women's organizations as well as secular feminist scholars started criticizing the Code because it discriminated against women. During the multiple events organized on the occasion of the ten-year anniversary of the Code in January 1983 (Brossier 2004b, 82), for instance, several points of criticism were raised: disapproval concerned, among other points, the absence of the possibility for a paternity action; others demanded the reinstauration of Muslim courts (Brossier 2004b, 82). In 1986, Cheikh Touré, a key figure in the UCM and founder of the reformist organization *Jamaatou Ibadou Rahmane* (JIR) in 1978, published an alternative Muslim family code (Loimeier 1998).

In 1989 significant reforms of the Family Code were passed.[39] They can be attributed both to a growing women's movement, as well as the Senegalese government's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985.[40] The changes had been prepared during a research seminar in 1987 that was to generate a reflection on the compatibility of the Family Code with the constitutional values of equality, secularity, respect of religion, and protection of the family, and that was initiated by the Ministry of Justice (see Brossier 2004a, 43). The reforms reinforced the position of women, and addressed – among other issues – the age of (marital) consent, women's professional activities, and partner maintenance (Sow Sidibé 1993). Men could no longer oppose the choice of their wives' professions, and girls who were married under the age of consent could have their marriage nullified, even if a child had been conceived during the marriage (Scales-Trent 2010, 132). Men who were found at fault for '*incompatiblité d'humeur*', as well as men who wanted to

39 Previously, two minor procedural reforms to the Code were introduced: in 1974, a reform was passed to facilitate the re-establishment of the civil record; in 1977, 'the burden of proof of the unregistered customary marriage' was lowered (Sow Sidibé 1993, 423).

40 CEDAW was adopted by the United Nations General Assembly in 1979; it entered into force in 1981.

divorce their wives because they had a serious and incurable illness, would have to pay maintenance (Sow Sidibé 1993).[41]

Whereas the 1989 reforms did not elicit targeted critique, reformist groups in the 1990s voiced their disapproval of the government's regulation of the family on multiple accounts. In 1993 JIR again condemned the government for adopting a Family Code of Judeo-Christian essence; and, in 1997, an umbrella organization of 15 prominent reformist organizations wrote an open letter to the President that criticized him for stating to foreign journalists that 'the balanced family is a monogamous family', and that Senegalese society 'should come prudently to monogamy' (Augis 2013, 85). While the late 1990s also saw an increased activism on the part of women's organizations to abolish the Code's appointment of the father as the head of the family, their actions were without success.[42] They faced opposition, and with the change of government in 2000 the process of the drafting of a new Bill was dropped (Brossier 2004a, 43). Instead, the initiative in proposing reform of family law came to lie with Islamic actors.

Democratic Openings: New Contestation over Family Law

The polemics culminated in 2002. In that year the Islamic Committee for the Reform of the Family Law Code in Senegal (CIRCOFS), a newly established committee uniting reformist Islamic actors and the main maraboutic families of the country,[43] presented a fully fledged Islamic draft code, which had been in the making for six years. The committee wanted to replace the current family code with a dual system: their draft code for Muslims, which

41 The other reforms were the following: (1) The wife's place of residence was no longer deemed to be that of her husband; instead, it was decided on the basis of where she actually resided and where she conducted her professional activities. (2) Women whose husband had disappeared were no longer dependent on a curator but could administer their husband's assets themselves. (3) Divorced women were given the option to keep their husband's surname after divorce, to prevent a 'setback in [a woman's] professional career by having to change her surname' (Sow Sidibé 1993, 424). (4) Because husbands were often reluctant to surrender the official family document, a copy of the document was now given to the wife upon registering the marriage (ibid.).

42 Up to today, the article has not been taken out of the Code. In the 2000s, some of its financial consequences were nonetheless remedied: in 2006, the government reformed the law concerning health benefits, in order for working women to be able to obtain health benefits for their husband and children; in 2008, the government passed a law on fiscal equity. Married women with children now receive the same tax deductions as married men with children (see Scales-Trent 2010).

43 The initiative for the creation of CIRCOFS came from the collective of Islamic organization of Senegal (*Collectif des associations islamiques du Sénégal*), a collective that regroups, among others, the following reformist organizations: JIR; the association of students of Senegal (*Association des élèves et étudiants musulman du Sénégal*); Al Falah; and the organization of Islamic Action (*Organisation de l'action islamique*) (see Gomez-Perez 2005a).

would thus effectively apply to 94 per cent of the population, and another code for non-Muslims (Mbow 2010, 339). The document was presented at a conference in Dakar, which was attended by 29 delegates of the main maraboutic capitals of Senegal,[44] including the Sy family of Tivaouane, evidencing support among the key religious authorities in the country.

The draft code consisted of 278 articles detailed in seven different books,[45] notably stipulating the return of repudiation. Other articles, for instance, prescribed the wife's obligation to obey her husband and the prohibition of adoption. The Bill was accompanied by a call to reopen the Muslim courts of the colonial period, where the code would be applied in the adjudication of family cases (Brossier 2004a, 68); qadis were to apply an Islamic code, rather than rule on the basis of the body of Maliki jurisprudence.[46]

CIRCOFS argued that replacement of the current uniform Family Code with a dual system would conform to the wishes of the overwhelming Muslim majority of the country (CIRCOFS in Mbow 2010, 4), that '[t]he Family Code […] contains numerous provisions totally contrary to Muslim law' (Me B. Niang in Brossier 2004a, 64),[47] and that 'the rules decreed by God, or revealed by the Prophet (Peace and Salvation on Him), represent the supreme authority [for Muslims] and not the rules decreed by deputies or Parliament' (Le Quotidien, 28 March 2003, quoted in Mbow 2010, 5).[48] Their argumentation largely relied on the fact that the majority of the Senegalese population is Muslim and that the Family Code contradicts Islamic law. In addition, CIRCOFS defended the draft code on the basis of its legal quality and the benefits it would bring to the family (Brossier 2004a, 53-54). In a newspaper article, the lawyer Bacar Niang, leader of CIRCOFS, whose person as a former left-wing politician exemplifies the blurring of political and religious spheres (Chapter 2),[49] stated that the reintroduction of repudiation protected women and freed them from the uncertainty of long and unfamiliar legal proceedings (Niang 2003 in Brossier 2004a, 53). Finally, and in parallel, CIRCOFS attacked the Family Code for being a product of the colonial imposition of – French – *laicité* (Brossier 2004a, 80-81).

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44 These are the cities of residence of the main maraboutic families: Touba (Mbacke), Tivaouane (Sy), Kaolack (Niasse), and Ndiassane (Kounta) (see also Chapter 2).

45 The code was written in French. Book 1: the conclusion of marriage; Book 2: the dissolution of marriage; Book 3: adoption, filiation and foster parenting; Book 4: guardianship; Book 5: will; Book 6: inheritance; Book 7: endowment (*waqf*) (Brossier 2004a, 53)

46 This mirrors a longstanding trend in Islamic countries to codify and incorporate sharia in national legislation (Otto 2010a).

47 ['*il détient de nombreuses dispositions totalement contraires à la loi musulmane*']

48 ['*les règles décrétées par Dieu, ou révélées par le Prophète (Paix et Salut sur Lui), représentent l'autorité suprême comparée aux règles décrétées par les députés ou le parlement.*']

49 Another prominent figure of CIRCOFS likewise blurs these boundaries: the reformist imam Mbaye Niang turned to politics in 2000, with the founding of his party *Mouvement pour la Réforme et le Développement Sociale* (MRDS).

The denunciation of the Family Code and the formulation of an Islamic alternative by CIRCOFS should be understood against the political background of democratization described in Chapter 2 (Brossier 2004b; Villalón 2013). At this moment of electoral empowerment and with President Wade's government 'clearly opening the door to discussions of previously unchallengeable issues religious groups saw an opening and attempted to seize it' (Villalón 2013, 254). In addition, as we saw in Chapter 2, relations between the political and the religious had become increasingly interconnected, thus giving way to a rethinking of the role of Islam, President Wade himself also demonstrating an identification with his affiliation to the Muridiyya order, a behaviour previously unseen in Senegalese presidents. Hence, the CIRCOFS attack on the Family Code was an attempt to renegotiate the role of Islam in public life after the democratic opening of the 1990s – at least on the key issue of family law.

As its name suggests, CIRCOFS – the Islamic Committee for the Reform of the Family Code in Senegal – was a one-issue interest group. The committee rallied reformist associations and the different Sufi orders around the topic of family law, one issue the different religious actors appeared to agree upon (M. N'Diaye 2012, 250).[50] The draft code was created in close collaboration with these different actors, and their representatives – including some of the central leaders of the Sufi orders – attended the presentation of the alternative project code in Dakar.[51] The heads of all Sufi orders signed a subsequent request for a meeting with President Wade. However, as Brossier cautions, the central leadership of the Sufi orders was often involved only indirectly, and none of the central leaders of the orders personally spoke out on the matter.

To this day, the reforms proposed by CIRCOFS have not taken place. In response to the meeting request, Wade tried to forcefully end the discussion in May 2003, stating that the Family Code is law and that as President he has to respect the law. He added that the government he led did not have the intention to present a new Bill to parliament (Brossier 2004b, 84). In the summer of 2003, CIRCOFS continued to push for the draft code, putting a programme in place for the popularization of its contents, relying on imams to disseminate the message (Brossier 2004a, 52). Wade later promised to study the project code, but he continued to refrain from publicly speaking out on the matter.

50 Brossier points out that this was the first time these different actors converged (Brossier 2004a, 125).

51 Notably, Seriñ Abdoul Aziz Sy Junior (Tijāniyya order), Seriñ Mourtada Mbacké (Murid order), Seriñ Sidy Moctar Kounta (Qadiriyya order), and Seriñ Moussa Guèye Laye (Layenne order). In total, 29 delegates of the Sufi orders were present (Brossier 2004b, 84).

The issue has now been shelved for almost two decades and has not figured prominently in the public debate. However, the underlying conflict seems far from over. The Family Code is a frequent topic of discussion in the preaching and media performances of a range of Islamic actors. The increased religious presence on radio and television facilitated by the liberalization of the media (Chapter 2) means that there, questions of marriage, polygyny, married life, the rights and duties of the wife, divorce, and the Family Code are a frequent topic of discussion. Topics around sexuality and the family are discussed on religious channels as well as on the religious television and radio programmes of other channels, both by religious actors associated with the Sufi orders and by more reformist actors. Almost without exception the stance vis-à-vis the Family Code is critical (Sow 2005, 292-293). Likewise, issues of sexuality and the family are discussed in the many religious conferences and meetings that are organized by religious associations – both Sufi *daayiras* and reformist associations – that take place in mosques, institutions of Arabic and Islamic teaching, and on neighbourhood squares. As Sow explains, women and the family remain a central topic of debate, and it is particularly on this issue that the relative roles of state and Islam are contested. Through their criticisms, religious actors carve out a political role and legitimize their importance (Sow 2005). Indeed, religious actors – including Sufi marabouts – draw on these topics to position themselves and mobilize a following, which in turn also contributes to the further multiplication of authority within the religious sphere (see Chapter 2).

Conclusion

This chapter considered the history of state family law in Senegal. It showed how contestation over family law predates the Family Code. The chapter also noted a continuity between colonial lines of thought and the assumptions that would inform codification of a number of customary and Islamic norms in the Family Code. In both cases, the category of custom lumps together a variety of normative and legal sources, while Islam is characterized as local and inauthentic yet acceptable.

Primarily, however, the chapter set out to show the nationalist and modernizing intentions behind the creation of a Family Code that, among other changes, abolished repudiation, as well as the code's continued contestation by religious authorities, both reformist associations and the leadership of Sufi orders. As we saw in Chapter 2, from around 1900 a 'social contract' came into existence that connected the population to the heads of the different Sufi orders, and these leaders in turn to the colonial administration. This arrangement continued with the advent of the independent Senegalese state in 1960. Yet while the relationship between state and religious authorities was generally tolerant, the state's introduction of a

uniform Family Code proved a point of serious disagreement. The heads of the Sufi orders condemned the code for being un-Islamic and for regulating what they considered was theirs to oversee. Hence, the period after independence, marked by state modernization and nationalism, on one hand, and by a religious elite trying to protect their sphere of influence, on the other, would prove to be crucial in shaping the terms of the 'woman's question' in Senegal (Kandiyoti 1991, 4). Over the past few decades, relations between Sufi religious leaders (marabouts) and the Senegalese state have undergone significant changes (Chapter 2). Attempting to further seize upon these developments, religious authorities in 2002 tried to re-introduce a dual system and presented a draft Islamic family code; they were unsuccessful in their attempt, but critique of the Family Code remains.

Finally, in delineating the history of the creation of state family law and state legal institutions from the 19th century until today, this chapter showed how family law increasingly came to be seen as a tool for modernization – and how the more this happened, the less family law reflected the actual practices of people.

4 Centrality of Kin, Multiplexity of Islam: Women's Divorce in the Domestic Sphere

Introduction

> Sokhna: I went with my family to ask for a divorce – with my older brother, my sister-in-law, and a driver so that we could take my stuff back, and an older man, who is a local notable, who lives there. My dad told us to go find him; luckily, he was there. He and my husband's father were friends, and he is the uncle of my father. […] In the presence of these men and another elder, my older brother told my husband that we were there to ask for a divorce. My husband accepted, but he took my things.
> …
> They [father and brother] married me, and they wanted to divorce this way, religiously. So, it's OK. (interview with Sokhna, November 2017)

This chapter is the first of four ethnographic chapters and focuses on out-of-court divorces initiated by women in particular. Being the social standard, out-of-court divorces are not usually referred to as 'religious' (*diine*); however, people sometimes use the qualifier to signal a distinction with court-divorce, as in the interview excerpt above. In this dissertation, although I often distinguish court-divorce and out-of-court divorce, the term divorce describes both the legal, or state-mandated dissolution of marriage, and the non-legal dissolution of marriage.

Divorce is fairly common in Senegal; however, because the majority of divorces take place outside of the purview of the Senegalese state, it has proven difficult to provide a reliable account of the divorce rate. In 1964, Thoré published the results of his survey of marriage and divorce practices in the Dakar suburb Pikine.[1] He showed that there 44.5 per cent of the marriages ended in a divorce. He also considered the duration of marriage, showing that a third of the marriages concluded lasted no more than five years (Thoré 1964, 479-551). More recently, Dial's study of marriage and divorce in Dakar revealed similar data (Dial 2008). Her research also showed that the majority of divorces take place out-of-court; more than 80 per cent of the divorced women she surveyed had not resorted to a court (Dial 2008, 104). Diop (1985) studied divorce across a number of Wolof-

1 Population-based survey (n674).

dominated areas in the Senegalese hinterland, including Tivaouane.[2] He argued that, while marital instability is more significant in the capital, divorce is also common in the more rural settings he studied. His data revealed that one in three men (who may have up to four wives at once) will have known a divorce (Diop 1985, 213). The regularity of divorce is also echoed in the Senegalese press, which frequently publishes stories about celebrities caught up in divorce.

Although I did not survey the frequency of marriage and divorce in Tivaouane, divorce – primarily out-of-court divorce – is clearly a common feature of social life. Divorce was a frequent topic of conversation when detailing one's own, or another's, life story – both for younger and older generations. Divorce was also a frequent subject of gossip. Nevertheless, as noted in the first chapter, people are hesitant to share the details of their personal experiences with divorce and do not like to divulge the particulars of the divorces of kin and close friends.

Divorce is moreover criticized (Dial 2008). Some express such criticism by citing a hadith that recounts the Prophet Muhammad describing divorce as the most despised of licit things. Divorce is disapproved of, even if it is sometimes unavoidable. Related to these criticisms is a more general condemnation of a perceived growth in the number of women willing to leave their unsatisfactory marriages. Respondents – men and older women in particular – would often comment that, nowadays, women divorce easily and for the wrong reasons. They perceived a growth in the number of divorces, particularly on the initiative of women, a perception that is also voiced by the Senegalese press. Young women are said to prioritize financial interest, which weakens their marital unions. And indeed, Foley and Hannaford have shown that in a context of 'economic challenges and a growing gap between expectations and opportunities', women increasingly prioritize short-term material gain through transnational marriage and non-marital sexual relationships over long-term projects of social reproduction (Hannaford and Foley 2015, 209). However, at this point there are no data to substantiate a growing divorce rate; in fact, the research I discussed above would suggest that the divorce rate has remained relatively stable over time. Nonetheless, the remarks signal an important point: despite its relative frequency, there exists moral anxiety over divorce, particularly if a woman takes the first steps toward dissolving the union.

In this chapter I detail the experiences of Tivaouane women who divorce and the multiplicity inherent in their divorce processes. Together, the chapter advances three interrelated points: First, it shows that the principal

2 Diop's research was carried out in the administrative regions of Dagana, Louga, Thies, and Diourbel (Diop 1985, 6 note 3).

agents in divorce processes initiated by women are kin. Local religious authorities are only sometimes solicited by women or their family members. While the state as well as religious authorities have tried to reserve marriage and divorce as a domain of regulation to themselves, divorce is very much a matter for the family. Second, it is shown that Islamic norms play an important role in divorce practices but that this role is multiplex. Third, I show that the involvement of kin has importance for understanding the agency of women; to obtain divorce, women primarily navigate through and work with their family.

Divorce in the Muslim World

Globally, contemporary Muslim divorce practices and codifications tend to combine out-of-court options with the annulment of a marriage by a judge;[3] the type of procedure depends on whether the husband or wife is the initiator of divorce. While contemporary practice varies widely between different contexts, it is clear that interpretations of sharia remain relevant.

In classical Islamic jurisprudence (7th-11th century), four forms of divorce are common: *talaq* (repudiation), *faskh* (annulment of a marriage by a judge), *tatliq* (judicial divorce), and *khul'* (woman-initiated divorce) (Vikør 2006). Respectively, they involve the unilateral pronouncement of divorce by the husband; the annulment (*faskh*) or dissolution (*tatliq*) of the marriage by a judge in cases where valid grounds to do so exist; and the wife's request for release by her husband in return for compensation. The latter type of divorce is particularly relevant to my analysis, given that women are the initiators of this type of divorce and that, in classical jurisprudence, no judge is involved. It is notable, as Sonneveld and Stiles (Sonneveld and Stiles 2016) report, that

> [...] there is a remarkable amount of diversity in how *khul'* is understood and used as a form of Islamic divorce. In some countries, such as Egypt and Pakistan, *khul'* is a woman-initiated judicial divorce that does not require the husband's consent; elsewhere, such as in India and Indonesia, *khul'* is primarily a divorce of mutual consent negotiated outside of the courts. Still elsewhere, as in Zanzibar, *khul'* is rarely initiated by women or men in court but is used as a judicial measure. (Sonneveld and Stiles 2016, 19)

To this global variety of *khul'*, Fortier (Fortier 2012) adds the Sahelian case of Moorish women in Senegal's northern neighbour Mauritania. There, as Fortier shows, women-initiated out-of-court divorce is referred to with 'she gave back her bridewealth' or 'she gave back her livestock'. However, the

3 Even if there is a tendency to juridify divorce.

phrases are more symbolic than real. Women do not actually give back their bridewealth, but '[i]n contrast to all other types of divorce where a wife has the right to take back all her possessions', she 'leaves the furnishings she brought when she moved in, the livestock given by her family, and the goods given to her by her husband' (Fortier 2012, 162-163). This, as will become clear, is much like the women-initiated out-of-court divorces I examined in Tivaouane.

The Divorce of Khady

When I visit Khady, on a morning in June 2017, I am not alone. Fatou, my research assistant, is there with me, and so is our mutual friend Awa, whose house Fatou and I regularly visit to chat and watch television and whom Fatou and I have both grown fond of for her warmth and humour. Awa does not usually join for interviews, but it had been her who introduced me to Khady. Like Awa, Khady was divorced and is now single, and Awa had called Khady to ask whether she would be able to share the details of her divorce with me.

Khady receives the three of us in her small and bright bedroom in her family home, a large house of multiple buildings and a great many bedrooms – simple, but well maintained and spotless. The three of us sit on Khady's mattress, together with Khady and her daughter. The television is on and shows a foreign soap opera.

Without much hesitation Khady explains she divorced about six months ago because she did not love her husband of nine years, with whom she has two children but with whom she never lived. She tells us she runs a small business from her home and is 37 years old – meaning she is a little older than Awa, Fatou, and I, all whom are in our early thirties. Earlier she was married for five years to another man whom she did love and with whom she also had children, but, as she explains, her family did not approve of the marriage and they eventually divorced.

While Khady, Fatou, and I talk, Awa plays with Khady's daughter, throwing her voluptuous body on the child, pretending she will smother her and bursting out into laughter. Every so often, she interjects in the conversation. 'You can get married without love and regret it after, and you cannot do anything about it,' Khady explains.

> Every day, we had problems. But my family did not want me to divorce him, particularly my grandmother, who was ill and old. Every time I would ask him for a divorce, he would go and complain to my family, and they would cause trouble, criticizing me for wanting to break up a marriage. They said I just wanted to fool around.

Khady turns to Awa:

> You are a witness. It was just a lack of love. Marriage is too complicated when you do not love someone. It is difficult to share a life with someone you do not love. There was no love, and on top of that he was old.

Finally, Khady was able to divorce when she was ill and had to stay in the capital Dakar for a few weeks.

> I was ill and I lived in Dakar, and he did not come when they called him, even though I had fallen seriously ill. They had let him know that I had been prescribed medication but that there was no pharmacy where we were. But still he refused to come. [...] My husband responded that he could not come, because he was working. And he did not visit me.

Shortly afterward, Khady called her older brother and told him that she wanted to be set free by her husband. She also called her father, asking him to tell her husband to grant a divorce.

> I told my father that I want my husband to release me, because I am tired of him. He should release me, because if I die he would be responsible. I am ill and he did not take care of me, and, on top of that, I never loved him and I am still married to him. After nine years there is not any love between us, even though I have two children with him.

Now Khady directs her speech to me:

> I wanted them to tell him to divorce me, to release me. It was me who revolted ... I did what is called a revolt, and they understood I was right to do so. That is how he released me, and the marriage ended.

The full story is that Khady's older brother convinced their father that Khady was ill because she was unhappy, and that if her husband granted her a divorce, they would all live in harmony. The brother contacted Khady's husband and asked him to give her a divorce, but he refused, saying it had not been the brother who had given Khady in marriage. Khady's brother then asked their father to make the call, which he did. But shortly afterward, Khady's husband had to be in town and used the opportunity to visit her father. He then said he wanted to reconcile and made excuses for not having been able to visit Khady in Dakar. Khady's father informed her of her husband's visit and his intention to reconcile, she recounts. But in response Khady said that she had had enough, which Awa confirms. Khady continues:

> I told him I had had enough; he should release me. Enough is enough. When I fell ill he did not come. He leaves me there in Dakar and goes to Tivaouane for *gàmmu* and spends money and is being hypocritical, because he did not care for me.

After this, Khady called her brother and asked him to convince their father to insist on a divorce. Her husband, however, did not respond to Khady's father's request for a divorce, she explains. 'My father asked him, but he did not do it.' When her father visited Khady in Dakar not long afterward, she therefore called her husband herself and asked for a divorce, using her father as a witness. On the phone, Khady's husband asked her to pass the phone to her father and asked him if he had heard what his daughter had said. Khady's father responded that he had and that, because he – the father – would not take such a heavy responsibility such as to dissolve the marriage between Khady and her husband, the husband had better agree on the divorce with Khady himself. Finally, Khady's husband gave in.

> It was me who took my own decision, but to get them [her family members] to break the marriage was difficult; it is for that reason that it took nine years. Because they did not want to take their responsibility to terminate the marriage.

The Domestic Sphere

Whenever I talked to women about divorce, it quickly became clear that their family members played important roles in their divorce process, and women often took great time and care to detail the family's involvement.[4] The longer I lived in Tivaouane, the more men and women also shared how they were involved in the marriages and divorces of others, such as family members or close friends. Local religious authorities are sometimes involved in out-of-court divorces and in mediation or marital dispute, but much more frequently these matters are resolved without their involvement. Instead, family members, and at times close friends or neighbours, are involved.

While local divorce (*tas*) practice is fluid, the broad contours of women-initiated out-of-court divorces are clear. Women ask to be released, but men do not necessarily comply – at least not immediately – and the process may take years. Sometimes a husband's refusal is guided by a true wish to retain his wife; at other times, it primarily seems to serve to frustrate or humiliate her. The requirement of the husband's consent is widely identified and

4 The analysis presented is largely based on the accounts of the women involved only (see Chapter 1). While I tried to talk to the family members of my female respondents, the women I spoke to preferred I did not talk to their kin. Their divorce was a confidential matter – meaning that sometimes they did not want their family members to know that they had talked to me and that, in other situations, they did not want me to ask their kin to go over the events again. Nonetheless, I was able to contextualize the stories women had shared. I did so through a number of interviews with elder men and women, whom I asked to reflect on their role in the marriages of their younger kin. The relations I developed in Tivaouane also gave me an insight into the roles respondents and their family play in the marriages and divorces of their kin and close friends.

justified as religious (*diine*).[5] Multiple formulas are used to request release. Common is to say, '*may ma sama baat*' (please give me my voice). Women, or someone else on their behalf, thus ask the husband to 'return' her voice or autonomy. '*Yewi ma*' is also used and is similar in meaning. Alternatively, the request is formulated more implicitly. For instance, a woman might say, 'Let us pray for another' – that is, let us pray that each will find another partner. Divorce may be asked in person, but the phone is also a regular medium. Because a husband may potentially revoke the divorce, witnesses often play a crucial role in divorce processes. They lend social validity to the dissolution of a marriage; when women recounted their divorces to me, they often enumerated the people who were present when the divorce was agreed upon. It is rare for women or their kin to compensate for marriage gifts they received before, and as part of, the Islamic marriage (*takk* in Wolof, lit. 'to attach').[6] However, women who take the initiative to divorce are often required to leave behind much or all of the bedroom furniture, clothing, and kitchen utensils gifted to her by her husband before or during the *céyt*, the ceremony that marks the moment the wife moves into her husband's household (Dial 2008; Lagoutte and Fall 2014). If the husband initiates divorce, these are still considered the woman's property. Yet compensation of other marriage gifts is highly occasional (Bouland 2021). Children may stay with the husband or the wife, but tend to stay with the latter, particularly when they are young.

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5 Diop (1985) argues that divorce was traditionally an affair of the couple's family members – that is, that it was they who dissolved marriages. This does not currently seem to be the case in urban Senegal; rather, it is the husband who decides on divorce. Even so, the notion that a wife's father or his mandatary may dissolve the marriage is regularly drawn upon and may, as in Khady's case, be (strategically) used to exert pressure on the husband.

6 Several authors (Chabas 1952; Gamble 1957; Yade 2007) have argued that in the middle of the 20th century, marriage gifts received by the wife from the husband upon marriage were reimbursed if a wife requested divorce. Thus, if a husband agreed to divorce, the wife and her family had to reimburse him. Thoré's research in Pikine constitutes an important exception to other research in the same period. He states that Wolof men specifically do not always ask to be reimbursed and that such requests for reimbursement of the marriage payments are often merely used as a threat (Thoré 1964, 525–526). More recently, Buggenhagen (2012, 61) notes that in cases when a divorce is initiated by the wife, 'bride-wealth payments' ought to be returned. Lagoutte and Fall (2014, 65) state that 'when repudiation is the result of an explicit request by the wife, the man *may* [emphasis added] demand the restitution of the dowry and any gifts offered when the marriage was formed'. Dial (2008) makes no mention of compensation when an out-of-court divorce is granted at the wife's request. I encountered only two cases of compensation of marriage gifts. One was exceptional in that the husband had refused for over a year to agree to a divorce and, in the meantime, the wife, who had moved back to her parents (*fay*), had become pregnant through another man. In the other case, the request for compensation was merely a threat used by the husband to try and dissuade the women and her family from requesting divorce. He did grant the divorce but did not, in the end, accept the money. When prompted, many respondents argued that marriage gifts are to be reimbursed only when the marriage has not yet been consummated.

The family members involved in divorce processes often had had a role in tying the marriage knot in the first place, which is one way in which the divorce process mirrors that of the marriage. The Islamic marriage (*takk*) constitutes and sanctions the relation between spouses, both religiously and socially. Afterward, the wife is expected to move in with the husband (*céyt*), sometimes several months or even years later. The people present at the *takk*, a ceremony attended by men only, are felt to have a special responsibility for its success. In cases of marital dispute, spouses may thus directly consult the mandataries (*bayale*), the persons who stand in for the father of the groom and the bride and ask for and offer the bride in marriage and act as witnesses. Spouses may also be re-directed to the mandatary by their father. The father himself, acting as the responsible (*kilifa*) or moral authority of the family and household, may likewise play a role. Thus, male kin often have an important part to play in women-initiated divorce. Older women may play a similar role; indeed, as scholars working across African contexts have noted, it is often inadequate to analyse patterns of authority only in terms of gender (see B. M. Cooper 1997, xxix). Aby, 32 years old, whose husband had taken a second wife and proceeded to neglect her financially as well as to stop sleeping with her, tells me that she divorced in the following manner: 'I talked to my *kilifa*, as I had returned to the house of my mother. My mother and older brother called my husband. My husband thought it was to reconcile, but it was to ask for a divorce.'

It is common for kin to be involved in marital mediation; as a consequence, their involvement in divorce often flows from their involvement in earlier attempts to 'save' the marriage and reconcile the spouses. A woman who is unable to resolve a conflict with her husband may try and talk to one of his family members or friends about a grievance she has regarding her husband. As such, she literally brings the dispute out from the conjugal bedroom, an emotionally and sexually charged space where the couple can escape from family members, enjoy intimacy, and negotiate their problems (Buggenhagen 2012; Hannaford and Foley 2015), to the more semi-private spaces of the wider household of her husband's family. His family members may also become involved on their own initiative, either because they are at the source of the conflict or have become aware of it. Marriage does not bring about a relationship only between spouses but also between their respective family members. This means that these too can be at the origin of conflicts or can quickly become embroiled in them.

Khady never lived with her husband; but in many instances the engagement of the wife's kin is preceded by her return to her parental home – as was the case for Aby, who had returned to the house of her mother and older brother. Cooper notes that in Maradi this is a common way for women to provoke a divorce, and the practice is also described in Dial's study of marriage and divorce in Dakar (B. M. Cooper 1997; Dial 2008). I found the same practice, called *fay* or *fayle* in Wolof, in Tivaouane. *Fay* does not necessarily lead to

divorce, but it often precedes it. In other instances, it serves to prod the husband into making concessions in a marital dispute. A woman I interviewed about her marriage of 27 years told me she had left the house twice. The last time was two years earlier, to stay with her family in one of Dakar's suburbs. She stayed a month. 'Afterward, it was he who came to find me and told me he would not do it again. He stopped hitting me.' Things improved, even if her husband still barely contributed to the household finances, because he could not hold a job. The fact that divorce often takes place after the wife has left her marital home suggests that divorce is processual. The wife generally moves in with her husband within several months of having contracted their marriage, a move that is accompanied by its own ceremony: the *céyt* (see Moya 2017, chapter 7). The two-stepped process of *fay* and divorce (*tas*) may be read as its mirror image. However, ultimately, the moment of divorce is the moment the divorce is granted, and women who have returned home but not yet divorced are still tied to their husband.

As we shall see in Chapter 7, religious scholars and imams are sometimes involved in marital disputes, as well as in divorces. Like the family members who were involved in tying the marriage knot, the imam who officiated at the marriage is also seen to carry a special responsibility for the union. Notably, when these authorities become involved they are frequently likened to kin; in referring to this involvement, both male and female respondents regularly referred to them as 'father' or 'uncle'. Other local notables such as the neighbourhood chief may also become involved. Often, they are solicited as a 'next step', when the interventions of family members are without success. Whether or not they intervene depends very much on how active they are and whether personal ties between them and the spouses or their family members exist.

Justifying Divorce and Drawing on Islam

Khady's divorce account reveals that she drew on multiple repertoires of values and rights. For Khady, it was central that she did not love her husband, as well as that he failed to maintain her. That she had the right to be maintained by her husband was a point she underscored most dramatically to her father: should she die, it would be the fault of her husband. With her father, she also shared that she had had enough, thus implying she had been patient and had tried to persevere, but that it had not helped and she still did not love her husband. If indirectly, Khady thus responded to the disapproving comments of her grandmother, who, as Khady reported, said she was not serious about marriage and just wanted to fool around. The argument of Khady's brother centred around the value of harmony and the importance of living in peace. While a divorce meant that the family would have to live through a short period of discord, it would ultimately bring harmony to the family.

I draw out these different statements and behaviours as well as the values and norms they convey to indicate that Khady, like her family members, referred to a variety of socially embedded repertoires relevant to marriage and divorce. As I will show in the next chapter, these repertoires play an important role in women's preferences not to go to court. Here, I consider the way women avail of these repertoires in out-of-court divorce and what this tells us about the way women understand and draw on Islam broadly in out-of-court divorce. I show that while Islamic norms play an important role for women in out-of-court divorce, this role is multiplex and often implicit and unspoken.

Hirsch (1998) considers the gendered behaviour and gendered narratives of male and female litigants bringing marital disputes to the *kadhi* [qadi] courts on the Kenyan coast. Her analysis shows that while husbands engage in Islamic legal debate, wives do not have access to this discourse and instead share narratives of perseverance, detailing their patience in the face of an unpleasant marriage.

In Tivaouane, women do frequently invoke the juristic repertoire of *diine.* In part, their claims revolve around the husband's failure to meet his obligation to provide. Moreover, when I asked women about compensation in divorce, some drew on the distinction between custom (*aada*) and Islam to argue that they were not necessarily obliged to leave behind their furniture and kitchen utensils. Yet beyond this topic, women rarely make statements about rights and duties pertaining to divorce procedure. And when I asked them why their divorce unfolded in a particular way, they tended to state that this was just how things are done; that their family member told them to do so; or that they did not want to create problems. Husbands and male kin, by contrast, more freely draw on the juristic repertoire of *diine*. This likely relates to the relatively little religious education that Senegalese women receive compared with men (see Chapter 1), as well as to the central roles male kin play in divorce processes.

Women's stories and behaviours thus tend to highlight the husband's failure to provide. Yet at the heart of their statements are references to Wolof conjugal ethics, the values of *muñ* and *sutura* in particular. As we shall see in Chapter 5, in this repertoire the value of people, especially of women, is based in part on their discretion – meaning that marital problems can be shared only with certain people and in certain places. Here I emphasize another virtue of this worth, *muñ*, which is also strongly gendered.[7] Married women need to 'remain patient, stoic, self-composed and uncomplaining in the face of challenges' (Hannaford and Foley 2015, 209). To *muñ* is both

7 Although it is important to note that husbands are also expected to *muñ,* the virtue is of particular importance to wives.

to maintain appearances vis-à-vis the outside world and to maintain composure despite indignities such as infidelity or financial inadequacy (Hannaford and Foley 2015, 209). Like Khady's account, the statements of a 35-year-old woman who divorced her husband five months previously underscore perseverance in the face of hardship: 'The lack of financial support lasted for too long; I endured it all that time for my father. [...] It lasted a very long time; I endured it, I really endured it, until I could not do it anymore.'

In contrast to the decidedly Islamic repertoire of *diine*, which includes marital duties and marital obligations as well as notions about what behaviour is and is not recommended, the repertoire of Wolof conjugal ethics is strongly rooted in the Wolof socio-cultural repository that centres around honour (Ly 2015; Sylla 1978). Yet this is also inscribed in the Islamic juristic provision that a woman is to obey her husband, and Senegalese women see *muñ* as a central aspect to being a good Muslim. A respondent in her sixties related the following when asked what she would advise her daughter to do if her husband spent his money on a girlfriend:

> Because she has children, she has to endure [*muñ*]; she has to endure if she is a good woman. It is death that will make her leave there [implying that only her death will end her marriage and her membership of her husband's household]; you have to endure because of God [...]

The success of a child is believed to depend on its mother's behaviour in marriage – her submission toward her husband and ability to *muñ*. The salience of this belief is linked to the legendary status followers accord to the mothers of the founders of the different Sufi orders and *zawiya*.[8] A child is the labour of the mother (*liggeey u ndey añu doom*, lit. a mother's labour is the child's lunch), and good, patient wives receive divine recompense in the form of successful children. Children of women who do not persevere in the face of hardship are not blessed. Moreover, they suffer the social consequences of having a mother who is seen to have behaved frivolously; people will talk negatively about them or treat them disrespectfully; furthermore, their daughters may be regarded as defective marriage partners.

References to romantic love were not part of the accounts about their divorce of many of the women I interviewed, though for Khady and some other women they were. It was clear that Khady had mentioned but not insisted on her lack of love for her husband with her father; yet, in the story she shared with me, this factor played a central role, much like love or its absence did in the tele-novellas playing on her television. While mediatized

8 Much like the mothers of other legendary personalities (see Mbow 2001).

representations of love no doubt help shape its contemporary meanings, historically, in Wolof society, considerations of love and expectations of emotional and sexual attachment have co-existed with material concerns and the wish to strengthen kinship ties (Hannaford and Foley 2015).

It is clear that for the women of Tivaouane Islam informs the way they get divorced, as well as the steps they take to initiate and secure an out-of-court divorce. They draw on the juristic repertoire of marital duties and rights to underscore their right to be financially taken care of, and they demonstrate their worth by stressing their perseverance in the face of marital difficulty. Thus, the way Islam informs these divorces, I suggest, is both strongly gendered and multiplex. Because religion plays an integral role in the lives of these women, it therefore also does not constitute a sphere that is separate from the socio-cultural domain. *Muñ* comprises a multitude of linked values and norms that are both central to Islamic life *and* to Wolof morality and ethics.

Fay, a practice that is decidedly customary, exist alongside of these norms; it is neither understood as Islamic nor denounced as un-Islamic. Considerations such as harmony (*jàmm*) and romantic love also sit easily alongside women's multiple links with Islam.

'Kinwork'

As set out in Chapter 1, over the past decades a number of scholars on women and family law in Muslim contexts have tried to correct depictions of Muslim women as merely objects of an oppressive legal tradition (Hirsch 1998; Mir-Hosseini 2000; Tucker 2008). Their studies showed how women are active agents who use the law and Islamic courts to make claims and shape their marital lives. Doing so, these authors foreground the individual female litigant – in part because of their focus on sharia courts, where litigants tend to appear before the judge without their kin. However, in analysing the divorce accounts of Tivaouane women, it is clear that the central role of kin in these processes requires an understanding of women's agency in relation to Islamic family law and other normative repertoires, an understanding that is more attuned to the way this agency is refracted, magnified, or diminished by family members.

For many women it is difficult to divorce without the support of family members. Men regularly refuse to release their wife at her request and will let her go only after being pressured to do so by her family members. Moreover, some men insist on speaking to the wife's male kin directly. This also means, as we shall see later in this dissertation (Conclusion), that women without strong family bonds may encounter greater difficulties when trying to obtain a divorce.

Kin also plays an important role in women-initiated divorce simply because the family plays a central role in people's lives in Senegal. People's being is interwoven with that of their family members, and in marital dispute it is therefore not only the value of the husband and wife that is at stake. As we shall see in the next chapter, this is linked to *sutura* and shame. Although marriage is an important marker of social adulthood, to a certain extent people remain the responsibility of their older kin. Ndeye, a mother and grandmother in her early seventies, explains: 'If a woman's husband has hurt her, she should go to his kin and say he did something that really hurt me; I want you to intervene.'[9] Likewise, the woman is expected to turn to her own kin if the dispute escalates further.

Women have reason to seek and heed the advice of their kin when they divorce their husbands; in going against the wishes of their family, they risk losing their affective and financial support. This is regrettable, because it is often through them she will find housing and financial security for herself and her children.

Lack of affective support from family members may also come at great loss for women. The women who shared their stories with me – like many others – experience the bonds and obligations of kinship both as constraining and as protective. For them, kin is an important source of social well-being (Jackson 2011). More practically speaking, to alienate or to anger one's kin is also to put oneself at risk in a subsequent marriage (B. M. Cooper 1997, 35).

All of this means that much of what is involved for women who seek to divorce their husband centres around her kin, not around him. Women need to convince their family members, build their support, and get them on their sides. They will need to make strategic choices about which family members to involve. Sometimes, for instance, it is easier to get one's siblings to convince an elder family member than for a woman to convince this person herself.[10]

Thus, kin also constitute a central audience of the narratives and acts of *muñ* for women who seek divorce, as we saw in Khady's narrative above. In their stories, women tell of enduring difficult situations because their family wanted them to.

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9 The obligation of spouses to involve family members in their problems is paralleled by an obligation to offer assistance. Family members see it as their responsibility to help out in cases of conflict. Marriage is commonly understood to be difficult (see also Dial 2008; Hannaford and Foley 2015, 209). Children need to be educated and guided in their marriages; if not, they may run into problems and divorce may follow.

10 Sometimes a woman will also attempt to garner support from her in-laws; in one case, a woman explained to me how she strategically prepared the terrain by acting as the ideal daughter-in-law, before she started asking her husband for a divorce.

In the different context of mediation centres in India, Katherine Lemons uses the notion of kinwork: 'the physical and emotional labour to pursue aims within the bounds of kin relations' to build on feminist critiques (Butler 2002; Ramberg 2013, 2014) that have foregrounded the 'reiterative labor' involved in kinship (Lemons 2016, 245; see also di Leornardo 1987). Here the term 'kinwork' seems especially apt for its insistence on the setting where women's work takes place and on the fact that solutions are sought *in* kinship, as well as for how it helps reveal the agency of women and their kin.

A woman can often obtain support for a divorce only if she can show that her husband seriously maltreats her or does not provide for her materially. Of course, this also means that women wanting to find resonance with their family members may frame their motive for divorce in those terms. Whether or not a woman can easily find support for her wish to divorce also depends on the relations between her family and her spouse. In cases where family members disapprove of the marriage, they often more easily endorse her wish to divorce. In situations where a women's family members oppose a divorce, women may also choose to inform them only after having asked their husband to release them; women follow this route only exceptionally, because it makes them vulnerable, both morally and socially.

Conclusion

This chapter focused on women-initiated out-of-court divorce. Whereas the strong reactions of national religious authorities to the state's incursion into their sphere of influence may suggest an important role for religious authorities in out-of-court divorces, this chapter shows that in Tivaouane out-of-court divorces at the initiative of women tend to play out between the wife, the husband, and their respective family members. While the husband's consent is central, the mandataries (*bayale*) and responsible family authority (*kilifa*) in particular play a prominent role. Still, this is not to say that these processes are completely or always dominated by male kin; elder women frequently have an important part to play.

As a consequence, Islamic norms are activated and take shape primarily in the interactions between women, their husbands, and their families. In this chapter I have shown that these norms exist alongside other repertoires; also, Islam does not always constitute a self-contained sphere. From their accounts, it was evident that women base their narratives and actions largely within Wolof conjugal ethics, as well as insist on their right to be provided for – thus drawing on *diine*. The way they draw on and use *diine* is gendered; women do not engage explicitly in juristic discussion about divorce procedure, which seems to be the prerogative of men.

The important role for family members – revealed by a close scrutiny of women-initiated out-of-court divorce – prompts a reconsideration of women's agency in these processes. It appears that women primarily navigate divorce via their family. Their narratives and performances of *muñ* in the face of hardship are often directed at kin, not at their partner. The notion of kinwork underscores that it is from within the relations of kin that women act, as well as that obtaining a divorce requires work – and, at times, a great deal of stamina. Here, it should be mentioned that, with some regularity, people in Tivaouane commented on the differences they perceived in how marital dispute is managed in Dakar. Their statements conveyed concern about the diminishing role of elder kin in people's marriages in the nearby capital of Senegal, where couples 'live in apartments' and the support of kin is either difficult to secure or simply rejected.

People's worries about a perceived rise in divorces at the initiative of women and women's prioritization of financial goals echo both women's right to be provided for and the value of *muñ*. These worries communicate concern about a perceived lack of perseverance by women in the face of financial hardship. Increasingly rarely were women able to really *muñ*. Indeed, while the women and men I spoke to – both those who had divorced and those who had not – consistently insisted on the centrality of *muñ* to successful marriage, they all differed in their opinions when it came to the degree of perseverance expected of women – or, more bluntly put, at what point of hardship women could leave a marriage. If *muñ* continues to remain a central value, it is clear that it is at the centre of societal debates about marriage and divorce.

5 'Dragging your Husband to Court'

Introduction

> It is the last week of my stay in Tivaouane. I want to make some last copies to complete the files of the divorce cases I have been following at the court, but the Xerox machine there has broken down. I carefully put the files in my big backpack to take them across the road and make copies in the copy shop opposite the court.
>
> While the lady working in the shop is doing my photocopies, she talks to her female colleague about court-divorce. This does not surprise me; I had just seen her colleague in the office of the clerk of court, but, to be sure, I politely remind the one who handles my work not to read the documents. She responds that she does not even look to see what she's photocopying. 'Either way, the whole of Tivaouane is divorcing', she adds. (fieldnotes, December 2017)

Divorce is a common feature of life in Tivaouane, but contrary to the shop attendant's remark, court-divorce is infrequent. It was an important ambition of President Senghor to end repudiation, and the Family Code therefore restricts divorce to the courts (Chapter 3); however, as I set out before, these legal rules are largely disregarded. Nevertheless, some Tivaouane women do bring divorce cases to court, and in this chapter I tell of their experiences. How do these women relate to the state through their use of court and law? And how do judges – situated at the interface between these women and the state – respond? As I will show, the out-of-court divorce practices described in the previous chapter influence the way female court users approach the court.

The goal of this chapter is twofold. First, I provide an analysis of the disjuncture between the ways the Family Code regulates marriage and divorce, as well as an ethnographic description of divorce procedures at the Tivaouane court. Following this, I examine the main reasons women prefer not to go to court. Next, I analyse how and why female users avail of the Tivaouane court of first instance for their divorce, and I conclude that there are two main pathways to court taken by women. In the final section, I shift to the perspective of the judge, to further examine the interaction of court users and judges.

Presenting Court-Divorce and the Tivaouane Court

As set out in Chapter 3, the Senegalese Family Code provides for (1) divorce by mutual consent, *established* by the judge; and (2) contentious divorce, *pronounced* by the judge (art. 157 FC). The code recognizes only these two types of divorce, thus rendering out-of-court practices unlawful and invalid. In contrast, marriage contracted *without* the involvement of the Senegalese state remains lawful. Together, this makes for a rather complex legal situation, one that – as we shall see in subsequent sections – tends to be somewhat ignored by court users, for whom out-of-court divorce remains the standard.

The Complex Legal Nexus of Marriage and Divorce

The code distinguishes civil marriage, concluded by a state registrar, and 'customary' marriages recorded by a registrar.[1] Marriages in Tivaouane, as we saw in Chapter 1, generally take place under the authority of an imam and involve a number of material exchanges both before, during, and after the marriage is contracted, as well as the supposed relocation of the wife from her parental household to that of her husband. The Family Code stipulates that the registrar is to be present at the celebration of such a 'customary' marriage to establish ('*constater*') the marriage (art. 125-131 FC). In legal practice, this does not occur. The procedure for late declaration of marriage provides that 'customary' marriages may still be recorded within six months after their taking place, both spouses needing to present themselves with witnesses before the registrar (art. 147 FC); in practice, however, one of the spouses presents a slip from the mosque detailing the names and the date of the marriage (art. 147 FC).[2] Failing this, spouses can call on the court to authorize a late recording of their marriage by a registrar (art. 87 FC). They will need to submit proof that their marriage has not previously been registered and bring along two witnesses who are to give testimony in a family law hearing (see also N. Diouf 2011). However, my fieldwork made clear that a large number of marriages are never known to the state at all, and many 'customary' marriages are never recorded. Research conducted in Dakar also shows that the majority of 'customary' marriages are not

1 The civil registry is located at the level of the municipality. Civil registries are regulated by Chapter 4 Book 1 of the Family Code. It appears that 'customary' marriages are recognized only insofar as they are in line with a local tradition or one of the Abrahamic religions (Islam, Christianity, Judaism) and/or with one of the customs listed in the Arrêté no. 2591 du 23 février 1961 établissant la liste des coutumes applicables au Sénégal (N. Diouf 2011, 34 footnotes 9 and 10). See also the note following art. 125 Family Code. Note that I never observed a judge demanding proof as to how a customary marriage had been celebrated.

2 Instead, in line with the procedure for the late registration of marriage (art. 147 FC), the marriage is celebrated and registered at the registry within six months after conclusion (see also N. Diouf 2011).

recorded and suggests that the rate of recorded 'customary' marriages is declining (Dial 2008). Moreover, among the marriages in Dakar known to the state, very few are civil marriages (N'Diaye 2016).[3].

Notably, according to Senegalese law, 'customary' marriages that are not recorded still have *some* validity. Next to the recorded customary marriages and civil marriages, Senegalese family law thus appears to recognize a third type of marriage. Should spouses fail to have their 'customary' marriage recorded, it still exists, and spousal rights and duties apply. This also means that if one of the spouses in such a marriage contracts another marriage beyond the permitted maximum number of spouses, the state can prosecute this person for bigamy, impose a fine – 20,000-300,000 CFA – or a prison sentence for a maximum of 12 months (art. 333 Penal Code).[4] This is particularly consequential because it means that people who marry without having their marriage recorded and divorce out-of-court can be prosecuted for bigamy. As explained above, a couple who divorces without going to court remains legally married. For the state, an out-of-court divorce can never dissolve a marriage – even if that marriage was never recorded in the first place and the state was thus unaware of the marriage. This particularly affects women; men may have a maximum of up to four wives at one time. In practice, however, the police or prosecutor is only rarely made aware of cases of bigamy; exceptions are situations in which a vengeful (former) husband introduces a complaint against his (former) wife.[5]

In other dealings with the state this 'third type of marriage' is invalid (FC art. 146). This may engender trouble for people who have something to expect of the state. Fiscally, for instance, the couple cannot benefit from the advantages granted in regard to income tax (see art. 174 Taxation Code). If the couple solicits the court for divorce, they will also need to present a copy of the registration of their marriage; and at the Tivaouane court, procedures for authorizing the late registration of a marriage thus often immediately precede divorce proceedings.

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3 Dial shows how between the generational cohorts 1942–1956, 1957–1966, 1966–1976 the tendency to record one's customary marriage declines. For the last cohort that has been surveyed (born 1967–1976) she shows that 29% of men registered their first marriage. Women of the same age group registered their first marriage in 36% of the cases. In both cases the registration rate is lower for subsequent marriages (Dial 2008, 59). On the basis of quantitative research in the main civil registry of Dakar, N'diaye (2016, 202) shows that among the marriages included in the registry, at the expense of civil marriage rates, the rate of recorded customary marriages has grown from 40% for the generation born 1942–1956 to 70% for the generation born 1967–1976.

4 1 CFA equals 0.0015 Euro.

5 In cases when a woman divorces out-of-court and contracts a new marriage, the fact that the woman is still (formally) married to someone else both renders the remarriage invalid and renders her punishable for bigamy.

Two Types of Divorce Proceedings

Women who bring their divorces to the Tivaouane court – like men – go through either a contentious divorce procedure or a procedure for divorce by mutual consent. The procedures are different in character as well as in length, and different procedural rules apply.

Divorces by mutual consent tend to be established within one hearing. Contentious divorce procedures are generally lengthier and are preceded by a mandatory attempt at conciliation. At the Tivaouane court contentious divorces take from one to eight months between the first conciliation hearing and judgment. During the conciliation hearing the judge can make any remarks that he finds purposive to conciliation (CF art. 169); the Family Code thus explicitly opens up to normative registers beyond the code. Should the judge find that there is a chance at conciliation, the hearing can be adjourned to a later date to give spouses time to reconsider their positions. This period cannot exceed six months, but it can be renewed; in total, the conciliation phase may last at maximum 12 months. However, at the court of Tivaouane, this phase is rarely extended for such a long period of time; in fact, on occasion the judge ruled out conciliation within one hearing. Once conciliation is unsuccessful, the contentious phase of the procedure is opened, which can ultimately lead to the judge's dissolution of the union on the basis of at least one recognized ground for divorce (see Chapter 3). In practice, the ground of 'incompatibility' enables the court to grant any spouse the divorce he or she wants and to dissolve the marriage (art. 166 FC).

Divorce proceedings at the Tivaouane court are always introduced with a written request, often composed by scribes paid to put a request on paper.[6] This applies to both contentious divorce and divorce by mutual consent. On the whole, the rest of the procedure is carried out orally. Only in exceptional cases of contentious divorce do parties submit a defence, reply, or rejoinder in writing. Although evidence might seem crucial to a contentious divorce, witnesses do not play a role in these procedures at the court of Tivaouane. Proof plays only a limited role. In the rare cases that evidence is presented in contentious divorce cases, it concerns, for example, certified medical reports of physical injury suffered, or reports drawn up by a bailiff to prove the wife's desertion of the marital home. In cases where litigants dispute custody over children, judges at times order a social investigation (CF art. 170).

Because the default marital regime in law and in practice is that of separation of property (FC art. 368), the dissolution of the matrimonial regime has little impact on the level of property. Other material consequences are

6 One scribe who is frequently consulted in Tivaouane asks 1000 CFA for a divorce request.

more significant and are linked to the damages that may be claimed by both spouses and, in some cases, to the maintenance women may claim. In cases where the husband is found at fault for incompatibility, the wife may claim maintenance for six to 12 months. Should she herself be found 'at fault' on account of serious and incurable illness, she can claim maintenance for up to three years (CF art. 178 jo. art. 262). If the wife obtains child custody – allocated on the basis of 'the best interest of the child' (CF art. 278) – she is also entitled to receive child maintenance.

There are no lawyers based in Tivaouane, and only in exceptional cases do parties bring in lawyers, either from the capital Dakar where the majority of Senegal's small number of lawyers is based (Samb 2014), or from the city of Thies, 30 minutes away by car. During my observation, the parties who hired lawyers to represent them all belonged to the upper middle-class. Cases sometimes dragged on because both or one of the litigants would miss hearings; particularly at the first hearing of a case, defendants frequently do not show up, as a summons may not always reach them (see also N. Diouf 2011). Divorce cases are heard during the family law hearing that, in Tivaouane, is scheduled either weekly or bi-weekly. Litigants are called case by case into the judge's room, where the hearing takes place behind closed doors. Judgments are pronounced in public hearing (CF art. 171).

Covered up or Going 'Public': Why Do Women Prefer to Avoid the Court?

Be it for a divorce by mutual consent or a contentious divorce, the Tivaouane women who end up in court, in many cases, would have preferred to avoid going there and to divorce without involving court and the law.

One central reason why women – and men for that matter – prefer to divorce out-of-court is the simplicity of out-of-court procedure. Court proceedings, on the other hand, require several back and forths and oblige people to familiarize themselves with a new institutional structure (Tidjani Alou 2005). The different court visits may also be costly, particularly in terms of time. The monetary costs of a court procedure were never mentioned as reasons people did not go to court; the costs are fairly modest: 2,500 CFA to introduce the procedure, with an additional sum of 5,000-10,000 CFA if the other party needs to be summoned.[7]

A second central motive behind the preference for out-of-court divorces relates to women's apprehension of the state and of the state legal system.

7 The procedure for the late registration of marriage costs 1,500 CFA plus an additional total of 1,200 CFA at the registrar for the certificate of non-inscription and subsequently the marriage certificate.

> It is August 2016. I am working in the office of the clerk of court when I meet Aida, who has come in because she is in the process of filing a request for divorce by mutual consent. Not long before, at the advice of the House of Justice personnel, she had obtained a judgment to allow for the late registration of her marriage, making it possible to now introduce the request for divorce. In contrast to some of the shyer women who come into the court's office, Aida appears to be brimming with confidence, taking the time to catch up with the clerk of court, as well as talking to the foreigner (me) she finds sitting at the other end of the clerk's desk. (fieldnotes, August 2016)

In June 2017 Aida and I meet again. She has long finished the court procedure and tells Fatou and me that her husband is currently making a serious effort to contribute to their children's expenses, surely because he wants her back. Aida seems ambivalent about the situation, insisting on his infidelities and his failure to maintain her financially, but admitting, 'It's not easy to forget him.' At the end of our conversation, she asks me how the clerk of court and the judge are doing. 'Ever since, I haven't been back; I'm afraid of the court', Aida says. Given her behaviour at the court, I am a little surprised and ask why. 'The police and the court – you'll never see my name there', she says, adding, 'I do not like men in uniform.

Women – like men – are often frightened of the court: state justice and the law are imagined as being strong and powerful, even if – at least in matters of the family – the law seems to have limited regulatory hold on people's practices. This is linked to a fear of adjudication. Once a conflict reaches the court, the flexibility and the voluntary nature that so characterize out-of-court settlements are largely lost, and it may be undesirable or even risky to let the conflict slip out of one's control (cf. Merry 1990). Going to court is making oneself *visible* to a state justice system that is imagined as being powerful and perceived as being difficult to control. The central importance of harmony and social peace further adds to this apprehension (Chapter 1).

Finally, and in relation to the foregoing, going to court is difficult to justify morally, particularly for women. This relates to the centrality of Wolof conjugal ethics, which, as we saw before, are strongly rooted in the Wolof socio-cultural repository that centres around honour (Chapter 1; Chapter 4). A woman who disputes her husband in court and invokes the judgment of the court does not persevere (*muñ*). More important, she exposes herself and her husband by bringing the case beyond the domestic sphere. To bring a case to court is not only to make yourself and the other visible to the state, but also to make things public – even if, on the face of it, few people become aware of divorce cases at the court (Lagoutte and Fall 2014, 67; cf. Paré 2017, 59). Accordingly, going to court is often described as washing one's dirty linen in public (Dial 2008, 108). This invites fear and shame, on the part of both the woman and her husband. Central to this shame is the Wolof norm of *sutura* and relates to the ethic that 'a bad deed that is not visible to others does not incur dishonour until it is exposed' (Mills 2011, 3). *Sutura* indexes

the states and virtues of privacy, modesty, protection, and cover (Mills 2011; Sylla 1978);[8] it functions both as an individual and a social principle (Sylla 1978, 89). Being held up as the cornerstone of *female* honour in particular, *sutura* extends to feminine modesty generally and is articulated to *diine*, especially the norm of wifely submission to the husband (Mills 2011, 3). A wife is to be modest but is also to protect her husband's *sutura* – to cover his flaws and faults, which are deemed 'domestic, private information'. She is to keep this knowledge to herself, even if she suffers from the behaviour (Macchia-Samba 2018; Mills 2011; Sylla 1978, 89). For women, as I set out above, this worth is linked not only to their own social reputation but also to the success of their children, and women regularly conveyed to me that the children of women who 'dragged their husbands to court' would not be blessed.

Invoking the Court

An Introduction

While women prefer to avoid the court, some women do end up there and, in fact, women do so more frequently than men. My observations at the Tivaouane court made it clear that the number of women who initiate divorce proceedings is far greater than that of men. An analysis of judgments rendered in 2016 shows that the large majority of these divorces were introduced by women. While divorces by mutual consent are, in principle, introduced on behalf of both parties, most of these requests were signed and filed by women.[9] More important, of the contentious divorces more than two-thirds were introduced by women (Table 1). These findings are in line with studies conducted in other Senegalese courts. Lagoutte and Fall, who studied the courts in six different administrative regions, found that the divorce petitions of women constitute 75% of the total number of petitions;[10] Dial, who conducted research in Dakar, reported that women initiate the majority of court cases (Dial 2008, 104; Lagoutte and Fall 2014, 68). Why do these women draw on the court, despite their preference for out-of-court solutions?

8 Hernann (2017) writes about *sutura* in the context of Mali.

9 Women signed and filed 45 out of 60.

10 They studied courts in the regions of Dakar, Thiès, Saint Louis, Diourbel, Kaolack, and Louga.

	Introduced by wife	Introduced by husband
Contentious divorce 2016	22	8
	30	
Divorce by mutual consent 2016	60[11]	
Total number of divorces processed in 2016	90	

Table 1: Divorces processed by the tribunal d'instance de Tivaouane *2016*

As I discussed in the introduction to this dissertation, people resort to court for different reasons, not necessarily or always directly related to legal claims the court enables them to make. Few scholars have studied the use of state courts in contexts where such courts have only limited impact, such as in Africa (see also Cooper-Knock and Macdonald 2020). Still, a number of authors working on state courts in sub-Saharan Africa have considered the reasons people draw on the state and state justice when they could instead turn to non-state justice providers. Together, these studies show that one important reason people do go to court in contexts where law and courts are often ignored by the population is that in the eyes of these users the state may offer solutions that non-state justice providers cannot (Andreetta 2018; Crook 2004; Rubbers and Gallez 2012), even if justice users also have doubts about the functioning of state courts (Jacobs 2018). State courts are seen to have 'superior authority' (Rubbers and Gallez 2012) and to offer definite 'authoritative settlement' (Crook 2004). Court cases, moreover, may be used as a weapon to punish an opponent (Rubbers and Gallez 2012).[12]

Subsequent sections will situate people's perceptions and use of law in context and show that also for part of the Tivaouane women who solicit the court, this institution offers solutions that they cannot obtain out-of-court. Yet this is not necessarily because the judgments are thought to have superior authority.

Ending up Soliciting the Court: The Case of Awa and Mor

'I have the honour to request a divorce from my husband Mor'. Awa is 21 years old and lives with her mother in a town about 25 km from Tivaouane.[13] In her divorce application letter of May 2016, Awa explains that

11 These findings are very different from those of Lagoutte and Fall, who state that over the more than 500 proceedings they studied, 'divorce by mutual consent represents barely 10% of the total' (Lagoutte and Fall 2014, 67).

12 Development organizations tend to ask whether the population has access to (state) justice; see Samb (2014) and the 2014 report by the Africa Governance Monitoring and Advocacy Project (AfriMAP) and the Open Society Initiative for West Africa (OSIWA). Both note an unequal geographical coverage of the courts, financial barriers related to the costs of legal representation, the length of procedures, and a lack of information and education.

13 The town has an estimated 30,000 inhabitants.

she got married to the 53-year-old Mor eight years ago and had joined their marital home five years ago, at age 16. Six months afterward, Mor stopped providing for her. She fell ill and left to re-join her parental home, where she discovered she was pregnant. 'I would like to point out that during the full length of my pregnancy, he never looked after me […] till this day, he never sent me a penny, neither for his child nor for me.' The letter goes on to state that, in 2013, Awa visited Mor to request a divorce, which he refused. When she returned with her sister two months afterward, he refused again. 'I ended up by addressing the court to obtain an official divorce for bad maintenance and neglect.' Attached to the letter is documentation indicating that Awa obtained authorization for the late registration of the marriage, which enables her to now request divorce.

Three weeks after the court has received Awa's request, Awa and Mor's first hearing takes place in the rather luxurious office of the judge. The couple are seated on chairs that are positioned in front of the judge's desk; the clerk of court and I sit on comfortable chairs along the side of the wall. The judge is in his early thirties; he wears formal attire but no gown. He asks Awa to elaborate on her request. She repeats that she fell ill and that Mor did not take care of her. Mor, in response, states that some months into her pregnancy Awa left for her parental home and that shortly after the child was born Awa's mother asked him whether Awa could stay home a little bit longer, which was okay with him. However, soon after, Awa left for another town to work as a maid. She did not ask his permission.

Next, the judge asks Awa to reconsider, asking whether they cannot stay together. Awa repeats she wants a divorce. Mor states that he does not; he wants Awa to return to his home. The judge adjourns the conciliation session for four weeks, instructing Mor and Awa to try to resolve their conflict.

June 2016. Awa and Mor have returned to the court and the judge enquires about the efforts they have made. Mor explains that he went to see Awa's uncle but that he was away. He asks the judge to adjourn the session for another month; he wants to bring the families together and get Awa's uncle to mediate. Awa responds she does not want to wait that long – a week should be enough. Explaining that he holds hearings every two weeks, the judge decides that the couple is to come back in two weeks and sends them out.

July 2016. Awa and Mor are back at the court. Mor explains that he sent a delegation of his family members to Awa's household to try and save their marriage but without success, Awa's mother wants the marriage to end. With an air of nonchalance, Awa maintains that no one came to visit her. She repeats that she wants to divorce and says that she wants to have custody over their child. Again, Mor's statements amount to a refusal; he is visibly

angry, says he does not want to divorce, and adds that his marriage to Awa had cost him a lot. The judge responds that Awa is an adult and is free to ask for divorce. She will be judged after, he says, implying that the final judgment lies with God. Moreover, any maintenance Mor would have to pay is for their child, not for Awa. He will render his judgment in nine days, the judge concludes, but Awa and Mor are not obliged to attend the hearing.

Both Awa and Mor start to leave the room, but at the door Mor hesitates, reiterating his opposition to the divorce. The judge explains that Mor has to leave now, because both parties should leave the room together, but Mor continues talking, saying his wife tries to force him to divorce – the court cannot coerce him, he spent a lot on his wife. The judge responds that the court does not force him to do anything and that everything Mor has said has been duly recorded, and he explains that he is only there to apply the law.

July 2016. The judge pronounces divorce between Awa and Mor, finding fault with Awa for leaving the marital home without prior authorization of the judge.[14] In the judgment, he reasons that Awa did not compellingly corroborate her claim of maintenance failure and thus did not provide justification for her departure. He states that Awa solicited custody over the child and that, given the child has always been with his mother as well as his young age of four, it is in the best interest of the child to grant custody to Awa and to give the father the most wide-ranging visiting rights. He takes cognizance of the fact that Awa did not ask for child maintenance and stipulates that the period of waiting (*iddah*) during which she may not marry another man should be fixed at three months. Although Mor complained about all the money he spent on marrying Awa, he did not ask for damages; therefore, none were awarded.

A First Common Pathway to the Court: Court-Divorce as Last Resort

Whether Mor indeed failed to maintain his wife or, given the large age difference, Awa simply never loved him – as the clerk of court suggested when he and I discussed the case – has never become clear. But it is not disputed that three years earlier Awa had asked for a divorce on two occasions and that Mor had refused, nor is it disputed that her mother supports Awa in her wish to dissolve their marriage.

The fieldwork at the court made it clear that a large number of women who turn to the Tivaouane court have been unable to obtain a divorce by other means. They use the court as a last resort; and, while the judge may some-

14 The husband chooses the family's place of residence. A judge may in certain cases authorize a woman to have a different home for her and their children (art. 153 FC).

times convince their husbands to agree to a divorce by mutual consent, as a rule, these women end up obtaining a 'contentious divorce' (Table 1). This is illustrated by Awa's divorce request.

The remarks of a father who accompanied his daughter to court for a divorce from a husband who she alleged was impotent are also a good example. When Fatou and I visit the father a year after the divorce, he takes a break from his work at the market to explain that they tried to avoid the court – because 'it is ugly to go there' – and that, since his daughter and her husband belong to the same family, they tried to arrange things within the family. But, he recounts, whatever he tried, the husband would not let his daughter go. An imam had also been involved, who told the husband to give his daughter a divorce, but he still refused to dissolve the marriage – and in the end the father saw no other option but for his daughter to go to court.

That the court is used as a last resort indicates that court and out-of-court are equated in their effects. As Aida, a student of 31 whose husband refused to agree to a divorce, explained:

> Aida: [I would have preferred a religious divorce]
> AB: Why?
> Aida: I am a Muslim, but if I cannot obtain it … at the court, now … here in Senegal, the divorce given by the court is valid.

The women who turned to the Tivaouane court as a last resort hailed from all social classes, not merely from the higher classes, as one might have expected and as Dial has also suggested for Dakar (Dial 2008). In fact, Awa and Mor, as well as the father, his daughter, and her allegedly impotent husband all seemed to belong to the lower classes. None had formal employment and they spoke little to no French; their clothing was made from simple fabrics. Often, the women preceded their request with a procedure to authorize the late registration of marriage. Their marriage had never been registered; and had they secured an out-of-court divorce, it never would have been.

It is notable that men only rarely called on the court as a last resort. The reason for this can be found, I suggest, in their out-of-court options; much as it can be difficult for women to obtain out-of-court divorce, it is easy for men. Out-of-court, men may unilaterally repudiate their wives.

Hence, for the many female users of the Tivaouane court who draw on the court when there are no other options left, court-divorce and out-of-court divorce are links in a chain. As opposed to the central role accorded to courts in the Family Code, for these women, out-of-court divorce remains the norm.

A Second Common Pathway to the Court: Court-Divorce as Documentation

Women may also come to court *after* an out-of-court divorce. The second pathway of female users my fieldwork at the court identified is the regularization of an out-of-court divorce. These women have already dissolved their union but want to obtain official paperwork certifying the divorce. From my interviews it appeared that these women as well as their partners regard this step as a mere formality and that they were also careful to justify to family members that they did not go to court to make claims – or, they simply kept the court procedure a secret from them. In contrast to the first pathway, this use of the court is not particular to women. Both men and women solicit the court to obtain documentation recording the dissolution of their marriage. Because the partners – in principle – agree on their separation, the signature under the divorce request also does not necessarily point to the person who took the initiative to come to court.

As a rule, the women who were in court to regularize their out-of-court divorce were in possession of a marriage certificate indicating that their partner or they themselves had registered their marriage upon contracting it.[15] The commentaries of these women, moreover, reveal that they link marriage registration to court-divorce: *because* they had registered their marriage with the state, they needed to divorce in the eyes of the state – to make it official. Ndeye, a local politician in her late forties and running a small business, related: 'When there is a marriage certificate, you need a divorce certificate to dissolve the union.' Had she not had a marriage certificate, she would have divorced 'as recommended by religion', she added. A marriage certificate needs to be *undone* by a court-divorce, and the court petitions of these men and women regularly stated that their union had already been dissolved – sometimes with the qualifier 'religiously' – and that they want to obtain a 'divorce judgment' or a 'divorce certificate' (see also Lagoutte and Fall 2014, 67).

Maram, a 36-year-old divorcee, wrote to the court that she wanted a divorce, only to add a little further in her letter that her husband had accorded her a divorce two months previously. In an interview she explained that, initially, her husband had refused to agree to the divorce, but that, subsequently, her uncle had contacted him and that a month later he finally consented. Her uncle had told the husband that he had tried to convince Maram to return and reconcile, but that she insisted on a divorce. On the day Maram's husband released her, Maram visited his home to pick up her clothes, a sewing machine, and a stove to mount on a gas bottle. She had expected her

15 In rare cases, women and/or their new husbands may try to obtain a false divorce certificate at the administration, without going to court.

husband to go to court to make things official, but when he did not do so, she petitioned the court. In these cases, the court invariably formalizes the out-of-court divorce.[16] It is likely that, for a large number of couples, these court-divorces by mutual consent are not truly consensual, either because the husband had felt pressured to grant the out-of-court divorce, or because the wife was repudiated by the husband.

Because the women who came to regularize their out-of-court divorce so commonly had had their union documented with the state upon contracting it, the question arises as to what kind of women have a registered marriage. Dial, who conducted research in Dakar, reported that 'the higher the level of schooling, the higher the frequency of marriage registration', as well as that women with secondary education or higher are more likely to end up in court than women who have not been to school (2008, 105). By contrast, from my interviews it seems that while the registration of marriage may be correlated to a woman's level of education, it is her husband's form of employment, or her own, that tends to be determinative. Both women and men said that they had registered their marriage because they needed the paperwork for their or their spouse's job, or that the employer demanded that they do so. In formal employment, one may obtain tax income advantages, social security, and pension, as well as fringe benefits from one's employers. A substantial number of the Tivaouane women who came to court had a husband employed by the mining company situated at some 20 km from the city. This company offers healthcare to employers, their spouses, and their children. Contrary to the women who solicit the court as 'last resort', these women hailed from the middle and higher middle classes only.

16 Article 157 states that a divorce may result from the mutual consent between the spouses ascertained by the judge, and Article 159 explains how the spouses may have their divorce recognized. Yet it is clear that while the mutual consent is constitutive of the divorce, so is the judge's recognition. It was the clear intention of the legislator that a marriage can be dissolved only with the intervention of the judge (Lagoutte and Fall 2014, 65-66; see also art. 333 Penal Code, which severely penalizes bigamy). Note that in the cases at hand, it is often irrelevant whether the judge pronounces or merely recognizes a divorce. While spouses should continue to fulfil their marital duties until the moment of divorce, neither spouse will complain about the other's failure to do so when they understand their marriage to have been dissolved. Furthermore, in such cases spouses have often already reached agreements about where the children will live and what the material consequences of the separation will be.

Materialistic Women?

The two pathways of female court users I identified show that out-of-court and court-divorce are not parallel practices, but rather that they are closely linked. These women go to court because it offers something that they have been unable to obtain out-of-court: either the divorce itself or documentation. The law gives women also the right to go to court to claim financial support and compensation. The question arises whether women actually do so.

While damages can be claimed by both men and women, as stated above – depending on the grounds for the divorce – a woman can also obtain maintenance for a number of months. Moreover, if she gets custody she has the right to secure child maintenance; and in cases when her husband is formally employed, the sum is taken directly from his salary. By comparison, among the out-of-court divorced women I surveyed, few ex-husbands contributed toward the care of children that lived with them; and even when women regretted this situation, they felt they could do very little about it. Whether or not men have a religious or moral obligation to provide for children living with their ex-wife is also disputed, especially after she remarries.

It is clear that women stand to gain by going to court, and indeed many people in Tivaouane, men in particular, shared with me their opinion that women who go to court are materialistic. Moreover, on the basis of her research in Dakar, Dial suggests that child maintenance plays a determinative role in women's choice for the court. However, I found that the female users of the Tivaouane court are not necessarily motivated by financial incentives. Among other factors, this is indicated by the fact that in more than a third of the divorces processed in 2016 women did get custody (Table 2),[17] but waived child maintenance (Table 3). Dial also notes the phenomenon (Dial 2008, 106) but does not quantify it and reports that women predominantly solicit the court to claim maintenance. Yet the prevalence with which women waived maintenance over the year 2016 in Tivaouane is notable (Table 2) – all the more so since it is disputable whether child maintenance is a right that belongs to the woman, not to the child, and could thus be renounced by her – and this warrants reconsideration of Dial's conclusion. In many cases the amount of maintenance is moreover left 'at the discretion of the father' (Table 3 – meaning that it will be near impossible for the mother to have this part of the judgment enforced. As the prosecutor at the Tivaouane court, who may prosecute a parent for failing to pay child maintenance, explained: 'she effectively renounces it [child maintenance]'.

17 This is in line with what Dial finds for Dakar (Dial 2008, 105).

	Total	Custody over all children granted to wife	Custody over all children granted to husband	Children divided between husband and wife
Divorce by mutual consent involving children	37	26	7	4
Contentious divorce involving children	20	17	0	3

Table 2: Custody: divorces involving children processed by the tribunal d'instance de Tivaouane *2016*

Type of divorce	Number of cases where mother obtained child maintenance		Not obtained
	Amount left at discretion husband	Amount stipulated	
Divorce by mutual consent where mother obtained (partial) custody	11	11	8
Contentious divorce where mother obtained (partial) custody	10	0	10

Table 3: Child maintenance: child maintenance accorded in divorce cases by the tribunal d'instance de Tivaouane *2016*

Moreover, awards for damages appear to be rather rare at the Tivaouane court. Spousal maintenance was not accorded in any of the cases in 2016, nor was it requested or granted in the cases I followed in 2017; however, this is likely to be explained by the fact that women did not often have the right to claim this support. Husbands rarely claim that their wife has a serious or incurable illness and are rarely found at fault for incompatibility – at least not when the wife is not also found at fault for it. Women did frequently claim that their husband ill-treated them or neglected them, and they could thus claim damages; however, they did so in only four cases, in three of which damages were awarded.[18]

Overall, it appears that while financial concerns may be part of women's motivation in soliciting the court for divorce, the role of this incentive should not be overstated. I argue that this likely relates to a preference

18 Notably, in 2016 the Tivaouane court found women at fault considerably more frequently than men, in particular for 'incompatibility'; in line with Lagoutte and Fall, my analysis of court judgments revealed 'that when one of the spouses […] is unable to prove the invoked grounds', the judge raised the ground of incompatibility *ex officio* as the fault of the spouse who initiated the divorce (Lagoutte and Fall 2014, 77). These women generally failed to substantiate their claims that their husband neglected them or that the latter were at fault for 'ill-treatment, excesses, abuse or serious insults rendering continued marriage intolerable' (see art. 165 FC).

on the part of female users not to exacerbate the conflict and to (moral) ambivalence over whether or not a father has the obligation to contribute financially toward children that stay with his ex-wife. When I asked women why they waived child support, it appeared that in some cases women simply did not want to have anything to do with their ex-husband; in other cases they simply did not expect him to pay. One woman related: 'I didn't want to exhaust him; he doesn't have much'. However, it also appeared that women did not always feel entitled to child support; and, indeed, if the level of income of an ex-spouse were to be determinant, one would expect to find that these women request a low sum rather than nothing at all.

Hence, in analysing the way women draw on the Tivaouane court as well as their motivations for doing so it becomes clear that while damages and child maintenance play a role, women primarily go to court as a last resort to obtain a divorce, or to obtain documentation of a previous out-of-court divorce.

Interaction at the Court: The Judge's Perspective

The way women invoke the court and the reasons they are doing so raise questions about the ways in which judges respond. How do judges react, for instance, to the fact that many of the couples they encounter have already divorced out-of-court? The fact that the law restricts divorce to the court does not automatically imply that judges respond negatively to the couples presenting their case. Much depends on how the judges perceive their role.

When I interviewed judges in Tivaouane about their work, it became clear that they did not see it as their task only to apply the law. While they placed primary importance on the application of the law, it was also important for them to adjust – to adapt to the social realities of the court users. N'diaye, who interviewed judges in Dakar and Mbacke on their role in inheritance cases, similarly reports that judges explained that they accommodate to court users' convictions and understandings of the law in inheritance cases (N'Diaye 2016, 186-187).

First, the comments of the Tivaouane judges revealed that – in their perception – the men they encounter in court do not always treat their wives well; they explained that it is their role to protect these women. The judges thus distinguish themselves from these men, and, in part these male judges are able to do so because, invariably, they position themselves at a social distance from many of the men who solicit the court. The judges at the Tivaouane court belong to an intellectual French-speaking class, and they have only a limited social embedding in Tivaouane, where they are based for work. Their perception of their role is also in line with the common understanding that the Family Code sought to enable greater protection of

women (Chapter 3).[19] Second, it emerged from the interviews that judges find it important to be flexible and accessible. While they state that it is their role to apply the law, they also explained that their function requires them to adapt to social reality.

The judgments I reviewed did not make mention of extra-legal norms, but during divorce hearings I observed this flexibility both in the conciliation phase and in divorces by mutual consent. The Family Code stipulates that in the conciliation phase, judges are to make any remarks that will help reconcile the couple; therefore, the adaptability of judges I witnessed in this phase does not run counter to the law. At the Tivaouane court the judges' comments often addressed the value of marriage and what the judge deemed normal marital behaviour (cf. London 1999). Judges related how another marriage would not necessarily be free of problems either, how a husband needs to maintain his wife, and how, if a wife wants to stay with her husband, she needs to be prepared to wash his clothes and cannot go out late at night to drink tea with friends. These sessions were often heated. Spouses would get angry, and both husband and wives frequently interrupted each other. Judges, in turn, tried to calm things down by sternly policing whose turn it was to speak. Whereas judges made some effort to reconcile the couple themselves, they primarily relied on the couple and their social embedding for the conciliation. It is through adjourning the hearing that they encouraged the couple to talk things through, urging them to involve their family members, and communicating that marriage is not merely a matter between two spouses but also of their respective families.[20]

Beyond the conciliation phase, I witnessed how judges accommodated couples that had divorced out-of-court. Although there were some differences between how judges accommodated these couples, these differences were not particularly pronounced. Judges did not question the ubiquity of out-of-court divorce, nor did they insist that divorce is their prerogative. In one hearing, a judge accommodated a husband who came to agree with his wife's request for a divorce, and who asked the judge to function as a witness to the divorce he pronounced there and then – thus relying on the norm that divorce is for the husband to pronounce. And, when a wife or husband stated that they had divorced out-of-court, judges did not object. I also observed how they ignored cases of bigamy. The following exchange is illustrative.

19 The two judges with children both had their families living in larger cities, because of the better quality of schooling there. A younger judge without children would leave with his wife for Dakar every Friday

20 Note that in cases when a judge orders a social services investigation, the latter in practice tend to try and mediate between the couple first, even if the judge does not instruct them to do so.

Judge (addresses the husband Cheikhouna): You want to divorce?
Cheikhouna: Yes, she is remarried, and I came here – like I have done with the other [ex-wife, AB] – to officialize it
Judge (addresses his wife Fatou): You have remarried?
Fatou: Yes
Judge: Has it been long?
Fatou: Yes, a little bit long
Judge: Did you have children [with Cheikhouna, AB]?
Fatou: Yes, one
Judge: Where is he?
Fatou: In [name of village], with his paternal grandmother
Judge: So [looking in the direction of the clerk], we establish divorce by mutual consent.

On another occasion, when a wife admitted to having remarried and having given birth to a child from her new husband, the judge stated he 'turned a blind eye' because the (ex)husband did not raise it and no one would be served by prosecution. While the judges accommodate to the ubiquity of out-of-court divorce, my observations made it clear that this accommodation is limited to divorces by mutual consent – for instance, when Mor resisted the judge's authority to pronounce a divorce between him and Aida, the judge objected.

It is clear that there is a disjuncture between the legal rule of the Family Code that divorce is restricted to court and the way women use the law and court. Divorce judgments reveal that this disjuncture persists at the level of legal reasoning; the documents do not make mention of extra-legal norms or out-of-court divorces. However, in hearings, judges bridge this disjuncture. Their behaviour shows that they accommodate to the ubiquity of out-of-court divorce and its legal consequences, such as punishable bigamy. In these instances, judges are indeed flexible and do indeed try to protect women. I find that this resonates with observations by Villalón (1995). He explains that the street-level bureaucrats (Lipsky 1983) he studied in Fatick, Senegal, make concessions to encourage users' willingness to play by the state's rules. The registrars who are to record births and issue birth certificates are well aware that the birth dates provided are largely fictional, but they do not pursue the matter (Villalón 1995, 112-113). Likewise, the judges I studied bridged the gap between social realities and laws on marriage and divorce: they do not necessarily adapt non-legal norms; rather, they accommodate them. In fact, they have no choice but to tolerate that the notion that divorce necessarily requires the intervention of the judge remains somewhat fictional too.

Conclusion

Few Tivaouane women bring their divorce cases to court – even if they do so much more frequently than men do. After exploring in some detail why

women prefer to avoid the court and what barriers they may encounter, this chapter identified two common pathways to the court for women: the court as a 'last resort' and the court as 'documentation'. The women who turn to the court as a last resort hail from all classes. By contrast, women who use the court to obtain documentation all belong to the middle and higher-middle classes only. In both cases, Tivaouane women tend to obtain what they set out to get from the court.

The different ways in which Tivaouane women engage with the state through recourse to court show that, while they see courts as 'removed' and preferably to be avoided, court-divorces and out-of-court divorces are not parallel and separate practices; rather, they lie on a continuum as different links in a chain. This also indicates that these women do not share in the norm that divorce is restricted to the court – a norm central to the Family Code. Hence, in invoking the court, women do not simply submit to the court's authority. They actively bring the state into their divorce processes. In doing so they negotiate the meaning of the terms of the Family Code, as well as contribute to shaping the court's function. At the same time, they bestow legitimacy on it and on state family law (cf. Cooper-Knock and MacDonald 2020).

While women are able to negotiate the meaning of law, this ability is not without limits and depends in part on the judge. Notably, the Family Code recognizes 'customary' marriage as well as provides a number of ways in which such marriages can be registered after their conclusion. The Senegalese state wanted to bring marriage under the purview of the state but did so in a pragmatic fashion. This same legislative pragmatism cannot be seen when it comes to divorce: lawful divorce mandatorily takes place in court. It is thus the judge – at the interface between law and the Senegalese citizen – that accommodates to the practice of out-of-court divorce. Processing divorce cases and rendering judgments, judges respond to women's use of the court and partake in the renegotiation of the law's meaning.

As I set out above, one key theoretical question guiding this chapter was how, in a context where state law has only limited impact, court users connect to and use state law. Although few studies have considered the use of state courts in these settings, the existing research on state courts in sub-Saharan Africa suggest that people primarily choose to turn to the courts when they offer something non-state justice providers cannot or something that cannot be obtained without their involvement (Andreetta 2018; Crook 2004; Rubbers and Gallez 2012).

Tivaouane women who solicit the court also hope to obtain something that they have not been able to obtain out-of-court. Nevertheless, this is not, contrary to what Rubbers and Gallez (2012) and Crook (2004) suggest,

because they understand a divorce obtained in court to be more 'real' or authoritative; the women who use the court as a last resort do so because they have no alternative way to secure divorce. For them the court offers an important avenue to obtain release from marriage; nonetheless, women who choose to invoke the court walk a thin line, especially when they lack the support of their kin. Similar to these women, women who engage the court to regularize an out-of-court divorce go there because the court provides something they need. They go because they want to receive the documentation they or their (ex)husbands require in their dealings with the state and employers.

Moreover, it is clear that it is not only the possibilities the court offers that determine how Tivaouane women use court. Women in particular may obtain financial benefit from a court-divorce: when they obtain custody of children they had with their ex-partner, the latter is to pay them child maintenance – and in some circumstances, they also have a right to spousal maintenance. Yet many women who invoke the Tivaouane court do not request child maintenance, in part because of a preference to endure and not to exacerbate the conflict. I suggest this reveals that, even in court, 'out-of-court norms' play an important role: gendered norms pertaining to modesty and perseverance, and about harmony and social peace, as well as norms about who is to provide for children after divorce.

6 To Bring Home a Mediation Request: the House of Justice and its Effects in the Domestic Sphere

Introduction

As the previous chapter made clear, while some women do go, women also experience various barriers to bringing their cases to court, and these tend to be largely social barriers. Adjudication disrupts harmony. In addition, to go to court is to expose yourself and your husband, thus contradicting the Wolof conjugal ethic of *sutura*. Here I look at the *Maison de Justice* (House of Justice), a state institution introduced with the help of foreign donors in 2004 to increase access to justice. These institutions aim to provide non-contentious forms of dispute settlement in more familiar settings, and they function adjacent to the state courts. Houses of Justice provide legal information and help in obtaining extracts of judicial records, as well as voluntary mediation and conciliation. They deal with a wide array of – 'justiciable' – issues (Genn and Beinart 1999, 12-13), from conflicts over debt to criminal record checks, and from the creation of a neighbourhood savings group to fights between siblings. Help in marital disputes, domestic violence, and divorce form one of the House of Justice's priorities. While the institution cannot pronounce or establish divorce, they are to mediate conflict and orient people toward the courts and police. In practice, these marital cases account for almost half of the cases brought to the House of Justice, the majority of them brought by women.[1]

Thus, women may relate to the state by engaging the court but may also turn to the House of Justice. In this chapter I ask how they use this institution and how the institution responds. Does the House of Justice facilitate women's 'access' to state family law? Why do women turn to the House of Justice and with what results?

A body of scholarly work documents how institutions, both state and non-state, premised on Alternative Dispute Resolution (ADR) and designed to address marital disputes, domestic violence, and divorce in other contexts, tend to prescribe reconciliation of the couple (Ashrafun and Säävälä 2014;

1 N'diaye (2015, 618) finds a similar figure for the House of Justice in Parcelles Assainies, Dakar.

Basu 2015; Grillo 1991; Lemons 2016; Vatuk 2013). These works echo Nader's concept of harmony ideology, and authors point out how the institutions examined are primarily concerned with harmony and healing (Lemons 2016, 245; Nader 1990). The institutions they study do not necessarily provide access to state legal justice; rather, they promote conciliation. Writing about a lower-level civil family court in Kolkata that employs conciliatory instead of adversarial practices, Basu shows that these are exceptional spaces, in that litigants frame their own issues and are encouraged to resolve marriage disputes through mediation instead of alien legal procedure. Yet Basu also sharply denounces them, stating they enable only 'limited legal agency' and prescribe the reconciled family as the optimal solution (Basu 2012, 469). Grillo shows how mandatory divorce mediation in California obscures inequalities between parties and discourages couples from claiming their respective rights (Grillo 1991). On the basis of studies of Indian non-state, women's arbitration centres (*Mahila panchayat*), both Lemons and Vatuk show that these do not help women leave unsatisfactory or violent marriages, but – given the financial and marital security marriage affords – rather aim to reconcile them with their partner (Lemons 2016; Vatuk 2013). Sonneveld, on the other hand, observes how mandatory mediation in divorce cases in Cairo family courts leads to 'mutually agreeable divorce settlements' that are less financially punitive for women than divorces pronounced by a judge (Sonneveld 2012, 132).

Together, these works form an inspiration to my enquiry. In this chapter I show how the mediator at the House of Justice primarily aims to reconcile the couple, sometimes to the detriment of a woman's goals. Mediations also do not necessarily provide women with access to state family law. Yet few mediations in fact take place, and one central goal of this chapter is to argue that the role of the House of Justice lies not necessarily in what the institution does or does not do, but in how it has the effects that it has. I show that evidence of having approached this institution *may* help women to successfully negotiate with their husband and other kin and achieve solutions in the domestic sphere. This can be explained by people's perceptions and ideas about the House of Justice and 'state justice' broadly. I rely on anthropological scholarship on 'affect' to unpack this claim further (Anderson 2014; Bens 2018; Clarke 2019; Navaro-Yashin 2006, 2007; Shouse 2005).

Before turning to this argument, however, in the first section of this chapter I will describe the genesis of the Senegalese Houses of Justice and the policy rationales behind their creation. I set out the legal framework, introduce the House of Justice's different staff roles, and indicate what their roles may be in marital disputes, domestic violence, and divorce. Next, I set out the way women use the House of Justice and how its staff responds. In relating the case of Mamie and of Marième and Ousmane, I subsequently analyse how the House of Justice *may* produce effects beyond the walls of this institution in the domestic sphere.

Foreign but Familiar: Alternative Dispute Resolution to Extend the State's Reach

The Senegalese House of Justice is a foreign invention: in regions of France, they have been a feature of the legal system since 1990, and in Belgium and Switzerland they were introduced in 1997 (Noreau and Pasca 2014, 309). I read these institutions – which at the same time facilitate people's access to and provide an alternative to the court system – as embedded in the global ADR movement (Nader 2002) and the trend in legal cooperation to complement a focus on courts with projects involving mediation and paralegals (Maru 2010, 2015).[2] Announced in 1999, the initial three Houses of Justice were introduced in 2004 in Senegal's capital Dakar and surrounding urban areas as part of a United Nations Office on Drugs and Crime project that was to combat urban delinquency and prevent the emergence of organized crime (M. Gueye 2015).[3] Immediately at their implementation, however, they were taken up by the Ministry of Justice's sectoral justice programme (2004-2013) with the different rationale of promoting access to justice (M. Gueye 2015, 8). The programme was supported financially by the French government (*La Cooperation française*) and was inscribed in a wider impetus to reinforce the rule of law by creating a modern justice system accessible to all (Coly 2016; M. Gueye 2015, 5).

Donor support for the Houses of Justice remains significant until this day. The French financed the installation of several Houses of Justice, training for personnel, and a nation-wide publicity campaign (M. Gueye 2015, 157). An additional partner is the privately funded Open Society Institute West Africa (OSIWA 2018) – and, more recently, the European Union (European Development Fund), which committed to building and equipping 12 new Houses of Justice between 2014 and 2020 (La Commission européenne 2016). These different donors fund the Houses of Justice as part of an effort to contribute to good governance, the rule of law, and a modern and effective justice system, and they see them as a particularly effective way to enhance access to justice.[4] The relief of court caseloads is another important goal.

2 More generally, the House of Justice can be taken as an example of a legal transplant or, more broadly, a travelling model, a standardized intervention developed by experts and introduced across different countries (Behrends, Park, and Rottenburg 2014; Olivier de Sardan, Diarra, and Moha 2017).

3 By 2017 there were a total of 18 Houses of Justice in Senegal (interview M. Gueye October 2017).

4 Some of these donors also promote the institution as an example for other countries (Frenk 2012; OSIWA 2018).

For the Senegalese Ministry of Justice, the Houses of Justice serve to bring the justice system closer to the people (*justice de proximité*) and solve access-to-justice problems (Décret N° 2007-1253).[5] As such, they also function to extend the reach of the Senegalese state – to ensure, as the Minister of Justice phrased it, 'that Law and Justice are sufficiently present' (Décret N° 99-1124).[6] Because the Houses of Justice are often situated in areas where courts are nearby, the proximity that the Ministry of Justice aims for is not primarily spatial but more temporal and affective (Wyvekens 1996, 366-67). Indeed, the voluntary mediation offered by the Houses of Justice resembles forms of conflict resolution existing in wider Senegalese society. As the Ministry of Justice states: 'these modes of settlement, which are in the western world considered as alternatives, constitute for us the normal or classic ways of conflict settlement' (M. Gueye 2015, 6).[7] Thus, while the ministry recognizes the foreign origin of the Houses of Justice, it questions its foreign character in the Senegalese context, stating that it is more in line with local realities than court procedures are. For this reason, they do not squarely situate the Houses of Justice with the state justice system, but as an extension of this system at the interface with society, aimed to enhance citizenship (Gueye 2015, 5).

This is reflected in the selection of mediators for the Houses of Justice. A mediator should be a retired judge, lawyer, prosecutor, or bailiff who is part of the community they are to serve. They need to be an older and respected member of the community where the House of Justice is situated, and, in practice, apart from one exception, they are all male (M. Gueye 2015, 11). The authority of the mediator thus draws both on his expertise and his local belonging and status as an elderly member of the community (Thelen, Vetters, and von Benda-Beckmann 2014); they are purposefully doubly embedded: within the state and the community.

Reflecting the crime-related origin of the institution, the House of Justice falls under the responsibility of the Public Prosecutor (Décret N° 2007-1253, art. 5).[8] He is also the one that presides over the institution's coordinating committee. According to law, this committee includes the President of the court, a representative of the local administration, the Mediator, the Police Commissioner, a representative of the social services,[9] and the Coordinator

5 Décret N° 2007-1253 du 23 octobre 2007 Modifiant Le Décret N° 99-1124 du 17 novembre 1999 Relatif Aux Maisons de Justice, à La Médiation et à La Conciliation.

6 ['*à ce que le Droit et la Justice soient suffisamment présents*'] Décret N° 99-1124 du 17 novembre 1999 Relatif Aux Maisons de Justice, à La Médiation et à La Conciliation.

7 ['*[c]es modes de régulation sont considérés comme alternatifs par le monde occidental constituent chez nous les modes normaux ou classiques de régulation des conflits*']

8 Décret N° 2007-1253 du 23 octobre 2007 Modifiant Le Décret N° 99-1124 du 17 novembre 1999 Relatif Aux Maisons de Justice, à La Médiation et à La Conciliation.

9 In Tivaouane this is the *Services d'Action Educative en Milieu Ouvert* (AEMO), the organization for child protection.

of the House of Justice (Décret N° 2007-1253, art. 7).[10] In practice, neighbourhood chiefs and leaders of women's groups also attend its meetings.[11] The Coordinator, a jurist tasked with the provision of legal information, is responsible for the daily management of the House of Justice (M. Gueye 2015, 11). This person is often assisted by a secretary, as well as by volunteers and interns.

As stated above, the House of Justice provides legal information, helps with the obtainment of legal acts – such as the documents required for a criminal record check – and offers mediation and conciliation. The legal framework refers to both mediation and conciliation, where 'mediation' means that parties are encouraged to resolve the conflict and 'conciliation' refers to a situation where a solution is proposed to them. Correspondingly, the person leading the session is referred to as mediator and conciliator. In practice, mediation and mediator are used in all cases; and like the House of Justice staff, I here therefore favour the words mediator and mediation.[12] Civil mediation may be at the initiative of the judge,[13] the prosecutor, or the parties themselves.[14] When the prosecutor or the judge instigates mediation, the mediator functions as their mandatary and is to report back to them. Mediation initiated by the parties themselves is always voluntary. At the end, the mediator draws up a record. Should the parties come to an agreement, then their signature validates this document as enforceable; but while judges may be presented with such agreements should the couple subsequently go to court to divorce, the agreements themselves are, to my knowledge, never in fact enforced through the court (Civil Procedure Code art 7).

As mentioned above, Houses of Justice can neither establish nor record a divorce. However, they may provide legal advice about divorce, and they may sit down with a couple to agree on a request for divorce by mutual consent. In other cases of marital dispute, as well as in situations of

10 Décret N° 2007-1253 du 23 octobre 2007 Modifiant Le Décret N° 99-1124 du 17 novembre 1999 Relatif Aux Maisons de Justice, à La Médiation et à La Conciliation.

11 Neighbourhood chiefs (see Chapter 7) are invited to the meetings of the coordinating committee. Naturally, not all attend these meetings; an average meeting may host 10 to 20 out of 71 neighbourhood chiefs.

12 Whether or not the mediator/conciliator ends up proposing a solution or not depends on the session. In practice, he often does.

13 Judges have the possibility to refer cases to the House of Justice but they do so sparingly. In the year 2016, seven of a total of 86 visitors to the House of Justice presenting a marital dispute were referred by the court. This low figure may be explained by the fact that the judge has ample possibilities to attempt to reconcile the couple himself. In addition, the judges in Tivaouane are of the opinion that people who apply for a divorce at court have generally already exhausted all options for reconciliation; referring the couple to the House of Justice would therefore only frustrate the parties.

14 The Houses of Justice are also competent to offer penal mediation in cases when there are a number of infractions. In Tivaouane these cases are extremely rare.

domestic violence, the institution offers mediation as well as information and assistance. Legal stipulations relevant to marital dispute are – as set out in Chapter 3 – related to paternal authority, household charges, residence, fidelity, and mutual respect and affection (art. 149-50; art 152-53; art 375 FC). Domestic violence is covered by the Penal Code.[15]

Non-Attendance and Conciliation

My documentary research makes clear that in 2016 the Tivaouane House of Justice received 86 cases of marital dispute, domestic violence, and divorce, most of which were brought by women.[16] The women who solicit the House of Justice commonly belong to the middle or lower classes and have often received little education.[17] Claims rely on broad references to state justice; these may or may not overlap with the normative repertoires of *diine* and Wolof conjugal ethics. Sometimes a woman's application is framed simply as a request for help. Other women ask for information about their legal rights. The secretary of the House of Justice or one of its volunteers – young men with some background in law – respond by providing an appointment for mediation and a formal mediation request to hand to the applicant's partner. If the person's situation requires specific legal advice, they are referred to the Coordinator of the House of Justice. She too tends to advise trying mediation first.

However, while mediation sessions are regularly scheduled, they do not always take place. In fact, only in a small number of the cases of marital dispute brought by women does a mediation take place. The House of Justice hands out mediation requests but has no means to force people to attend; and while in 2016 women, in all but one case, always showed up to marital dispute mediations brought by men,[18] in almost half of the marital disputes that were introduced by women their husband failed to turn up. In other instances, both husband and wife would fail to show up.

When mediation sessions *do* take place, women and their husbands are encouraged to reconcile, or – as it is often phrased in the written reports signed by both parties – to 'avoid future misunderstandings' or 'keep the peace'. Mediations primarily rely on Wolof conjugal ethics and *diine*, which

15 For example: 'UN Women Senegal names the House of Justice as asset in the Senegalese fight against gender-based violence' (http://africa.unwomen.org/en/where-we-are/west-and-central-africa/senegal)

16 A total of 51 of 85 cases were brought by women. By comparison, Tivaouane's court decided on 109 cases of marital dispute and divorce.

17 Their self-reported professions show that 22 out of 51 women were housewives, 13 had a business (often small and informal), 4 were third-level students, and 4 were school pupils.

18 In 2016 this happened only once.

together inform conceptions of a good marriage, but they also rely on attempts to render disputes into practical problems solvable through practical solutions. Although husbands who are accused of physically assaulting their wife will receive a stern warning that their behaviour is unlawful, in such situations of domestic violence couples are also encouraged to reconcile. However, if the wife insists she no longer wants to be married, the mediator – a retired bailiff – tends to react by saying that, sometimes, it is better to divorce, drawing on legal norms to explain the different divorce procedures. Nonetheless, this seems to depend on whether or not at least some of the woman's family members support her in her wish to dissolve the marriage. In cases where this is not evident, the mediator regularly organizes a second session to which he invites her father or an uncle. Women whose family members do not support her in her desire to divorce will thus have difficulty in finding an ally in the mediator.

Of course, women are at times also at the receiving end of a mediation summons. These sessions often function to discipline the wife and underwrite husband's authority in marriage. A case in point is that of the well-connected and highly educated Moustapha, who, during a subsequent interview, related that he came to the House of Justice because, upon returning home early from work, he found his two wives absent from his home. As it turned out, one was at her shop, while the other was buying necessary school materials for their son. This was against the instructions of Moustapha, and he requested mediation of their dispute. During the mediation, Moustapha stated his complaints, explaining that his house had been burgled two years earlier and that he wanted his wives to respect their marital residence and stay at home. Afterwards, the mediator commented: 'When you analyse the problem, it was a miscommunication. [...] The guy, he wants to be respected.' He continued and said: 'The fact that both left the house at the same moment, it's a little bit like not caring about what he says.' The mediator tried to mitigate the wives' guilt, stating that, if only the three of them had coordinated their activities, the house would not have been left empty, thus suggesting that the problem was merely a practical issue. However, he also confirmed Moustapha in his insistence that his wives should not both leave the house at the same time and that it would be disrespectful not to follow his wishes. Although the Family Code stipulates that the husband is the head of the household, husbands cannot force a wife to stay in the house at all times. Here the mediator relied on a stricter notion of obedience, inspired by interpretations of *diine*.

In summary, Tivaouane women who seek out the House of Justice in cases of marital dispute, domestic violence, and divorce make up a significant proportion of the cases brought there. These women solicit the institution because they have a problem with their husband or former husband and tend to frame their requests as broad claims to legal rights. In response, the personnel generally suggest they come back with their partner for a media-

tion session. Primarily, these are directed at keeping the couple together as well as maintaining harmony between a woman and her kin. Only secondarily does the mediator promote legal norms. Even though mediation at the House of Justice may enable women to claim the rights that the Family Code accords them, the principal focus is still on reconciliation. This means that while mediation allows women to address their problems without seriously disrupting their conjugal and kin relations, these sessions also do not always provide the solutions women seek. Most strikingly, mediations often do not take place at all; men simply fail to show up, or women are discouraged from returning, either by their partner or their family members, as in the case of Mamie I discuss below. In a social context where women are to obey their husbands' reasonable demands and where there exists a strong preference to avoid the justice system, the voluntary nature of mediation means that a woman's recourse to the House of Justice regularly remains without a follow-up.

The Case of Mamie

Mamie, a woman in her twenties, visits the House of Justice at the advice of her sister, who is a neighbour of the institution's coordinator.[19] Mamie's ex-husband – who had repudiated her a couple of years earlier – recently stopped paying maintenance for their daughter and wants custody. Her intake proceeds in a standardized manner. The coordinator fills out a form with questions about her personal details, her reason for visiting, and the response given by the House of Justice staff, thus transforming the dispute into a case (Felstiner, Abel, and Sarat 1980). When I interview Mamie a year and some months after her visit, she explains that she wanted to inform herself about what to do to safeguard custody and child maintenance. She says she talked to the coordinator and was advised to come back for mediation. This would be the opportunity to talk things through and to determine whether her husband had a marriage certificate.[20]

Mamie recounts that, upon returning home from the House of Justice with a mediation request, she called her uncle to inform him about her visit. 'Now, where is the summons?' he asked. […] 'He thought I had been to court,'

19 Interestingly, in 2016, cases of marital dispute users often came from neighbourhoods that surround the House of Justice. Cases of marital dispute that were brought to the House of Justice in 2016 came from 26 different neighbourhoods. In most of these, one or two people brought a marital dispute to the House of Justice. There are six neighbourhoods where inhabitants more frequently (3 or more people) solicited the House of Justice in cases of marital dispute. These include the neighbourhood where the House of Justice is situated and three neighbourhoods that border this neighbourhood (18 out of 86 cases).

20 The coordinator likely mentioned this because it is impossible to start divorce proceedings without a marriage certificate (see Chapter 5).

she recounts. '[A]nd he told me that is not worth it to give my husband the summons […] because he did not want there to be any hostility, that people say that I took my husband to court.' She answered that it was not a question of a summons[21] and told him: 'We did not go to court; they just invited him. They need him; they want to know whether there is a marriage certificate or not.' Her uncle responded that she should give the request to another uncle of hers, who would bring the document to her ex-husband. But when she transmitted the request to this other uncle, he said that they would go to her husband's home to discuss things first, Mamie explains. He wanted to reach an agreement without going to the justice system. Not long afterward, this uncle started to have health problems. He could not walk well and told Mamie that this was why he had not yet visited her ex-husband. Ten months later he had an accident and died. At the time of the interview, none of Mamie's family members had gone to visit her ex-husband, nor did Mamie return to the House of Justice. Her husband still does not pay child maintenance; she has not obtained a court-divorce, and she does not have legal custody over their daughter.

Effects beyond the House of Justice

The case of Mamie shows how one woman used the House of Justice and illustrates how this institution responded as well as why she did not return. Mamie sought the help of the House of Justice, but the voluntary nature of mediation and her decision to involve her uncle meant that no mediation took place. Echoing some of the conclusions of Chapter 4, Mamie's story thus also provides an example of the role of various kin relations in marital dispute and divorce. In a broader sense, Mamie's case shows that to understand Tivaouane women's *use* of this state justice institution, it is not sufficient to look merely at what happens *at* the institution; it is also important to look *beyond* the institution. I will draw on the following case of Marième and Ousmane, in which mediation did take place, to further unpack this point.

At the House of Justice

On a Monday in September 2016 Marième solicits the House of Justice. She is a woman in her mid-twenties, who has been married for four years and has a daughter. Marième tells the secretary that she is a high-school student. She has failed her school exams and is preparing for a retake from home. Once Marième has provided all of her personal details and the secretary of the House of Justice has noted them down, she explains that her husband

21 Note that in Senegal the French *convocation* is generally used, which can be translated as summons, request, or invitation.

does not provide secure housing and she asks for information about divorce by mutual consent. In response, the secretary proposes a mediation session, which I attend three days later.

As I am waiting for the start of Marième's mediation in the office of the female secretary, the latter points out that Marième – who has taken a seat in the waiting room – is particularly pretty. Ousmane, who is in his late thirties, and has by now also arrived, has little that makes him stand out from other men his age. Both wear non-traditional clothing.

Once it is their turn, the mediator calls Marième and Ousmane into his office. Marième, Ousmane, Fatou, and I all take a seat, and the mediator gives the floor to Marième; being the complainant, she gets to speak first. He asks her to provide her personal details, but as Marième reiterates the information she provided three days previously, we are interrupted: Marième's mother walks in and sits down to join us. Marième continues and the mediator notes down what she says. Once he finishes, he asks Marième what the matter is.

In a resigned and calm manner, she explains that she has been living at her parents' home for a year now and that her husband does not provide for her. The mediator asks whether she lived with her husband's family before, and Marième responds that she did, adding that she has returned home to her parents. Then the mediator probes further, and Marième explains that she had problems there and that her husband had tried to find her different accommodation. This puzzles the mediator. He asks whether it was not good where she was staying; Marième responds that the room she stayed in was not safe and that she was alone with their daughter. The mediator asks what Marième wants, and she responds she wants to divorce. He replies: 'But divorce is the last stage […] You told [us] what hurt you; we have to try and solve the problem.'

Now it becomes quiet; the mediator writes up Marième's statement by hand and this takes a considerable time, the silence serving as if to underline the formality of the moment. When the mediator is finished, Marième's husband Ousmane gets to speak. During his wife's account he was silent and avoided making eye contact. Now he seems irritated and his tone betrays anger. Ousmane explains that Marième lived with him, but that they had problems and that she moved back home. He had sent his cousin to fetch her, and Marième promised she would return but she did not. He explains that Marième would spend the days in his family home, but at night they would go to his uncle where they had a room.[22] He says that she was angry about this, and that one day she insulted his mother and said that, following the advice of her parents, she would get her luggage and

22 Clearly there was not enough space for them in the family home.

return home. Ousmane explains that he asked Marième's mother what the matter was and that she told him to find his daughter a room. 'Ever since we are no longer at peace,' he continues. 'Sometimes she calls or texts me to insult me. I cannot even see my own daughter, even if I do send her food.'

The mediator asks if Ousmane knows that his wife wants to divorce and he responds that he does, but that they should not have reached this point – implying that he is unhappy and ashamed about discussing his situation at the House of Justice. He tells the mediator that Marième's father called him one day to say that his daughter no longer wanted to be married and that he had to liberate her. He explains that he said that it is his parents' role to take care of such matters, to which Marième's father responded that he did not want to come over with his daughter to discuss the problems. Afterward, Ousmane's godfather had taken the initiative to contact Marième's father,[23] but the latter did not respond, Ousmane explains. All the while, Marième is silent. At several moments her face displays a derisive smile.

Once the mediator finishes recording Ousmane's statement, the nature of the session changes. He starts to attempt to reconcile the couple and brings the conversation back to the question of accommodation, saying: 'If you have a problem and you want to solve it, you have to look at the source of the problem.'

> She wants her own house; you respond that you do not have the money and that you only have your uncle's room. You have to try and find a middle ground. The problem of marriage of young people is on the news, on radio and television programmes. And sharia hates divorce. God allows divorce, but He hates it. […] So it's better for you to find a solution. What your wife said is not complicated. You do not have to find her an apartment, but you can make an effort to find her a safe room.

Now Marième and Ousmane start an exchange about their living conditions. Marième insists that it is not safe where she stays during the night; Ousmane, in turn, denies that there is a problem.

Shortly afterward, the mother of Marième interjects to say that she initially asked her daughter to return to her husband, but that later she started to understand her daughter. She leans forward and points a finger at Ousmane. Angrily, she explains that he came over to say that he would find her daughter another room, but that he has not fulfilled his promise. In

23 This may be the person after whom Ousmane is named or a mandatary (someone who stands in for the father in the process of tying the marriage knot) (see Chapter 4).

the meantime, his family came over to ask for her daughter's return to her marital home, but she refused. Although neither Marième, nor Ousmane, nor Marième's mother makes explicit reference to the norm that a husband has to provide for his wife, they all refer to it, centring their discussion on what is reasonable given material and financial constraints.

When Marième's mother has stopped speaking, the mediator begins explaining to Marième, her mother, and Ousmane what his role is. He has to ensure that the solution is equitable. He also cannot force the parties into an agreement. Then he tells Marième and Ousmane that they should try and resolve the problem together with their family members. Marième's mother responds saying they have made sufficient efforts already.

The mediator now seems to change strategy. He cites a 'wise person', as he calls it, who said, even before the Family Code was enacted, that if a couple no longer wants to be married, they cannot be forced. Only the wife and the husband know what they endure within their marriage, he continues. He explains the court procedure to obtain a divorce and concludes by telling Marième to ask her father to go and talk to Ousmane's family and return in two weeks to report the results of those discussions. When they leave the room, Ousmane is angry, the comments of his mother-in-law having visibly annoyed him.

Two weeks later the couple returns to the House of Justice and agrees on a divorce by mutual consent; Marième gets to keep their daughter and the *procès verbal* (record) mentions that the court will decide on the amount of child support.

She Had Taken Me to 'La Justice'

About a year later, I interview Ousmane. He meets Fatou and me during lunch hour in the shop he works at. The shop is closed, but we are not entirely alone; opposite the corner where we sit, a colleague is doing work. Ousmane seems not to be at ease; nonetheless, he willingly shares his story and tells us that, after the first mediation session at the House of Justice, he called Marième to ask her what she wanted, at which she responded she wanted a divorce. He then granted the divorce.

This puzzles me.

I ask him whether Marième had asked a divorce before. She had done so several times, Ousmane responds. He explains that at that point he no longer had a choice: that her going to the House of Justice had tipped the balance. 'She took me to *'la justice'* (justice),' he says indignantly, 'and I realized it was a waste of effort' – thus conflating the House of Justice with the wider justice system. When I ask Ousmane whether they have

now obtained a court-divorce, he tells me they have not.[24] They had gone to court once and sat there all day, but they were not called for their hearing and ever since they have not been back.

> '[W]e were doing well, and one day it all changed,' Ousmane states. 'Maybe it was my mother-in-law,' he goes on. '[O]ne day her father even visited me […] I joined him in his car and he said I should set his daughter free, because she no longer loved me.'

When I ask Ousmane whether other family members were also involved, he explains Marième's brother – who happens to be his friend and who had migrated to Europe – phoned him one day. He asked Ousmane to settle the problem and avoid conflict. Ousmane responded affirmatively, he recounts to us, asking his friend to tell Marième and their father to come visit him at his family home. 'That was a Wednesday, and on Thursday I got a call to say that there was a request for mediation at the House of Justice,' Ousmane explains. 'It shocked me immensely. I did not expect it. It shocked me. [...] My family was also shocked and agreed that things had gone too far.'

Before we leave, Ousmane says he will never say anything negative about his ex-wife. 'Marriage is intimate; it's a matter between myself, the girl [Marième], and God. One day God will decide and will reward the person who was right. I am not to be scorned. Whatever the circumstances, I will never underestimate myself. I put my fate in the hands of God.'

Marième

Marième has since moved to another city and remarried. When I call her, she explains she prefers not to meet me, telling me she does not want to revisit the past. Not long after that I learn that Marième's mother – well-dressed and president of a local *daayira* – has somewhat of a reputation for 'breaking up' her daughters' marriages; no man is good enough for her daughters. Another daughter of hers was married to a driver of a motorcycle taxi, but that marriage ended too. People in her neighbourhood criticize her for it.

The household of Marième's parents is one of relative ease. Marième's father has a salaried position at the mining company near Tivaouane, and her brother in Europe regularly sends remittances; they have a car and their house is large. It seems unlikely that Marième's mother was the main cause of Marième's and Ousmane's divorce. However, she certainly supported her daughter in her grievances, and I wonder whether she did anything to encourage her daughter to stay.

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24 Marième runs the risk of being prosecuted for bigamy (see Chapter 5).

Bringing Home a Mediation Request

Marième and Ousmane offer an example of a case where a woman's recourse to the House of Justice proved a relative success. When supported by family members, and provided the husband shows up, mediation can help women find solutions to their marital dispute or obtain release from their marriage. Even if mediation did not lead to an official divorce, Ousmane ended their marriage and Marième eventually contracted a new marital union. Notably, their case indicates that solutions are not necessarily produced *at* the House of Justice but can also materialize in the domestic sphere, *beyond* the House of Justice. In the many instances in which the House of Justice is petitioned by a woman and in which mediation does not take place, evidence of having approached the House of Justice may promote similar effects.

In response to a question about women whose families dissuade them from returning to the House of Justice, the mediator stated that, sometimes, this is not what she wants. Yet he also argued:

> Sometimes, too, she can find satisfaction with a husband who was rather brazen, who did not care. Sometimes it is the husband who returns to his senses, and who pushes her to withdraw, to accept, to return to him.

The volunteers and secretary at the House of Justice, too, explained that they suspected that the mediation request sparks family members, neighbours, and other close ones into action to try and resolve the problem themselves. They told me they interpret absences as a positive sign: the people involved must have restored the peace.

And indeed, tracing the women who had come to the House of Justice but had not returned, I learned that in some cases the mediation request itself had been enough to bring the other party to change their behaviour. In one case a woman came to complain about physical violence and insults she had suffered at the hands of her husband. When visiting her months later, she told me she never returned because her husband apologized and changed his behaviour upon receiving the mediation request. An interlocutor that I knew outside of the context of the House of Justice confided that she once needed to go to the hospital but that her husband refused. She then went to the House of Justice to complain and came home to her husband with a mediation request, at which he immediately sent her to a good hospital – all the way to Dakar, she recounted with a smile of satisfaction. In a case of a young mother who had had a baby outside of marriage and who wanted the House of Justice's help to safeguard custody rights when the father started to threaten her to take the child, her parents told her to let them try and intervene before going ahead with a mediation at the House of Justice. Coming home with a mediation request thus spurred her parents into action and resulted in a fruitful meeting between her family and that of her child's father.

The Reception and Reputation of the House of Justice

How are these effects produced? I suggest that the answer lies in the House of Justice's reputation and reception and draw out some of the details of the case of Marième and Ousmane to illustrate my point.

Perhaps most simply stated, going to the House of Justice may indicate that ultimately a woman is also ready to go to court, or, in situations of domestic violence, to the police. In Marième's case, as in that of a number of women who did not return, it was clear that in court they would have easily obtained what they were out to get, a fact their spouses and other kin were undoubtedly aware of. For husbands it was therefore easier to accommodate their wife's claim and avoid court procedures. Yet the case of Ousmane and Marième also allows us to get a glimpse of how women's use of the House of Justice may work on another level. Ousmane was angry and ashamed. This shame and anger was directed at his wife, his mother-in-law, and the mediator, but it was also deeply embodied, personal, and affective.[25]

While the legal and bureaucratic realm may not seem the most obvious places to look for feeling and affect, a number of anthropologists have asserted that also in these contexts affect merits close examination. Bens (2018) argues that court ethnographies should complement attention to writing and speech with descriptions of affect. Clarke's (2019) study of international criminal law in Africa suggests that the life of international criminal law is replete with affect and argues that this is an important source of its force. Working on the bureaucracy of the 'illegal' Turkish Republic of Northern Cyprus, Navaro-Yashin (2007) mobilizes affect theory to reveal how documents may provoke uncertainty, threat, irony, and cynicism. She shows that 'the material objects of law and governance, [are] capable of carrying, containing or inciting affective energies when transacted or put to use in specific webs of social relation' (Navaro-Yashin 2007, 81).

The ethnography I have presented in this dissertation so far indicates that affect and feeling are part of marital disputes, also in court and at the House of Justice. Here, I suggest that Ousmane's and Marième's case indicates that kin act upon the evidence of someone's having gone to the House of Justice because of the affects transposed onto them. Ousmane was moved

25 Emotion, feeling, and affect are terms that are closely related and sometimes confused. Anthropological literature foregrounds the most abstract term of the three: affect. Affect should be understood as a sensation or experience. The term refers both to the capacity of a body (including things and non-humans) to affect and its capacity to be affected. Thus, it is from relational configurations of bodies that affect emerges (Anderson 2014, 11). Broadly stated, feeling is affect that is interpreted by the individual who experiences it; emotion, in turn, is 'broadcasted feeling' and is thus deeply social (Shouse 2005).

to action in part because of the shame and anger he felt at Marième's decision to move their dispute into the sphere of state justice, and at what this action signified to him. His shame and anger related to having his failures exposed, to Marième's willingness to rely on the power of state justice to force him to do something against his will, and, finally, to her readiness to render their relationship into legal terms – to turn them from a private couple into public litigants with opposite claims. In addition, as set out in Chapter 5, women's explanations for why they prefer to avoid the court repeatedly referenced fear and shame. Men likewise related such feelings to me, even if they were also more adamant that they had the unique right to decide on divorce and that such matters were simply none of the court's business. While a number of men and women remarked that the House of Justice was a good institution because it relied on mediation – as one respondent put it: 'it is a true house' – many also denounced people who went there, saying that the justice system is shameful and should be avoided. This fear and shame is tied up with images of the state, as well as with Wolof notions about propriety, honour, and harmony. Donors and the Senegalese state deliberately tried to position the House of Justice at the interface between state and society, but this is not always how the institution is perceived.

Spaces to Manoeuvre

How does this contribute to an understanding of women's use of the House of Justice? In her ethnography on the use and practice of new South African domestic violence legislation, Hornberger (2009) notes the regularity with which women in Westbury Johannesburg went to the police to open domestic violence cases against their husbands and then withdrew them. She argues that for these women, having their husband arrested and then dropping the case seemed to open up new spaces of social manoeuvring, allowing them to renegotiate their violent relationships. Women 're-directed' (Hornberger 2009, 173) the new domestic violence legislation and achieved solutions in the domestic sphere.

This analysis helps us think about the way that some Tivaouane women use the House of Justice and create spaces to manoeuvre, which enable them reconfigure or end their marriage. For female users of the Tivaouane House of Justice, the mere evidence of having gone there *may* generate options in the domestic sphere. Clearly, this use contradicts the official policy goals of the House of Justice. It is, moreover, not always what these women wanted themselves; nonetheless, a number of women who bring home a mediation request but do not follow up with mediation are able to harness – or 're-direct' (Hornberger 2009) – some of the force of the state legal system. Their disputes continue to be a matter of the domestic sphere; at the same time, these disputes come to be addressed in close proximity to the state. It

must be emphasized that while it is tempting to read these women's actions as 'strategic', it is not clear that they plan to use a mediation request to exert pressure; rather, it seems they try out the House of Justice and see what this brings them. Ultimately, the social field in which the conflict originated also regularly stands in the way of a resolution, as we saw in the case of Mamie.

Why some women are able to realize their claims after having visited the House of Justice, and others not, is not easily accounted for. Class and educational differences may be expected to play a role, but my fieldwork does not indicate this; instead, an answer to the question may be sought in a woman's kin relations and in the norms prevalent in the domestic sphere. Mamie wanted her husband to continue to pay child maintenance; and while this norm carries some weight, few men pay child maintenance, especially once women start to be courted by other men or remarry. Marième, on the other hand, wanted to divorce her husband; and although divorce is a man's prerogative socially, a husband's failure to maintain his wife is – depending the severity – understood as a valid reason for divorce, both within the repertoire of *diine* and under the Family Code. More important perhaps, Marième's mother and father were clearly in favour of a divorce – as it appears, they felt she deserved a better and wealthier partner. The uncertainty about what will happen when a woman takes a marital dispute to the House of Justice is considerable. In the final analysis, the possibilities created by the House of Justice are both limited and rather unpredictable.

Conclusion

This chapter focused on the way Tivaouane women understand, draw on, and interact with the state institution of the House of Justice. I showed that women bring marital disputes, domestic violence, and divorces to the House of Justice with some regularity. These women come because they want their husband to change his behaviour, because they want to divorce, or because they want to secure custody or child maintenance. Their claims rely primarily on broad references to legal rights or to state justice.

When mediations take place, the mediator initially relies on *diine*, Wolof conjugal ethics, and 'practical problem solving' to reconcile the couple and ensure continuity of the marriage. Yet when a woman insists on her claims and when it is clear these are supported by her kin, he shifts to the legal repertoire and may refer a woman to court. In summary, mediations at the House of Justice allow women to retain a measure of harmony and *sutura*, but they do not always help them realize their claims.

However, few mediations do actually take place; because of the voluntary nature of mediation, men regularly do not show up; in other cases, neither of the spouses returns. Much like a number of ADR institutions aimed at

domestic violence, marital dispute, and divorce that have been studied in other contexts, the House of Justice's shift away from adjudication and force makes it difficult to help women claim legal rights, here primarily because mediations do *not* take place.

Yet I also showed that it is not sufficient to look at what happens at the House of Justice in response to the concerns of these women. In the second part of this chapter, I focused on the *effects* of the House of Justice, which are often produced beyond the institution, and which tend to bear little relation to what happens there. I showed that some women successfully use the institution to achieve solutions in the domestic sphere. This relates, I argued, to people's perception of the House of Justice. The House of Justice may spur people into action because of what going there communicates and because of the affect that the institution transposes onto the people involved in the dispute. This is mainly because of how the institution is associated with state justice. Taken together, this would suggest that the way in which institutions help women to create spaces to realize their marital claims cannot always be directly deduced from what the institutions they approach actually offer and do.

7 A Pragmatic Pluralism: Chef de Quartier, Imam and Judge

Introduction

In this chapter, I analyse the roles and relations of neighbourhood chiefs, imams, and judges, with a view to marital disputes and divorce. Zooming out from the perspective of women *per se*, this chapter takes a contextual approach and focuses on authorities. As preceding chapters have made clear, neighbourhood chiefs, imams, and judges are sometimes solicited in cases of marital dispute and divorce. To ask their help is an option people *may* avail of. What does it mean that these actors and institutions are situated in the same field, yet represent different social institutions and at times different sets of norms? What are their interrelations?

The legal anthropologists von Benda-Beckmann (1981) and Collier (1973) explore similar issues, although in radically different contexts. Von Benda-Beckmann speaks of customary leaders and local administrative authorities as 'shopping' for disputes: they select disputes they expect their involvement in will bring political advantage, and they fend off disputes they fear may compromise their interests (von Benda-Beckmann 1981, 117). Her work reveals the competition between different authorities involved in one and the same dispute, whom she portrays as voicing criticism of the other's ways of doing. In Zinacantan, Mexico, competition in dispute handling sets up indigenous authorities against the encroaching Mexican state. Collier suggests that indigenous authorities have taken on a number of state legal norms to maintain their popularity and authority vis-à-vis the nearest state court: 'the set of relevant norms at the local levels has shifted to include what Zinacantecos know of the Mexican law as litigants become more willing to appeal to San Cristobal [location of the state court]' (Collier 1973, 72).

Somewhat in contrast to Collier and von Benda-Beckmann, in this chapter I do not explain the configuration of 'competing' dispute handling authorities by highlighting their interests and strategies only, but also note a shared concern with harmony and the multiple and overlapping attachments of these authorities. This approach builds on the political work by Villalón and Hill. While they did not study the local involvement of religious and state authorities and their interrelations in matters of the family in Senegal, both studied the political relations between the local Senegalese state and religious authorities (Hill 2013; Villalón 1995). Villalón's monograph examines in detail the political relations between Sufi leadership and state officials

in the town of Fatick. He argues that Sufi orders are a source of stability and function as religiously-based civil society that transmits the voice of the people. Perhaps most crucial, his analysis insists on the rivalry *and* cooperation between the Senegalese state and Sufi orders. By contrast, Hill focuses squarely on religious governance. Yet he too shows that there is both competition and collaboration between Sufi leaders and the state. Taalibe Baay (followers of the Sufi leader Shaykh Ibrahim Niasse) communities in villages and towns near Kaolack are both sovereign, 'yet simultaneously participate in Senegal's formally secular nation-state', and the cases Hill presents reflect a 'pragmatic pluralism' – a negotiated co-existence where multiple and conflicting claims to authority are not subordinated to one another, but rather accommodated (Hill 2013, 116).

This chapter then considers how semi-state, religious, and state authorities at the local level position themselves vis-à-vis one another when they deal with marital dispute and divorce and how this may be explained.[1] I show that, despite contention at the national level, at the local level of Tivaouane, semi-state, religious, and state authorities acknowledge each other's roles in the management of marital disputes and divorce. At times, they also refer cases to each other or cooperate, even if they work on the basis of competing claims to authority. Consequently – building on the work of Hill – I suggest that their configuration is best described as a 'pragmatic pluralism' of negotiated co-existence and cooperation.[2] This arrangement results both from a principal concern for harmony and social peace and from the overlapping and shared attachments of local authorities and their constituents, who are all Muslims, Senegalese citizens, and inhabitants of Tivaouane. This also means that authorities who can negotiate different norms, or even cooperate with other authorities, are attractive options to women and men in the midst of divorce processes, as we shall see later in this chapter.

First, I introduce the *chef de quartier*, imam, religious scholar, and judge. Second, I discuss my ethnographic material on the attitudes these local authorities in Tivaouane hold vis-à-vis one another, as well as their practices. Following this, I reflect on the circumstances that explain their

1 The distinction between national and local has an important analytical function, but of course in practice these levels overlap. On the whole, the office of local-level authorities is best characterized by their frequent interaction with the Senegalese population. The messages and actions of national-level authorities usually have a countrywide reach and are often mediatized. They interact with each other but, as authorities, they do not usually stand in direct contact with the population (see Burrill 2015, 5; Villalón 1995, 5).

2 Hill (2013) uses the term to describe a situation where Taalibe Bay 'creatively draw on religious discourses' about the opposition between the visible (*ẓâhir*) and the hidden (*bâtîn*), 'to accommodate multiple imperatives, competing interests, and authoritative institutions and discourses' (116). He also draws on the term to argue that monistic assumptions that Muslims are either in the first place citizens (liberal pluralism) or 'engage in projects to Islamize the nation-state' are incorrect (116).

configuration. In the conclusion, I reflect on the differences between the social processes that take place at the local level and national contention on the topic of family law.

Local-Level Authorities in Tivaouane: A Sketch

In Tivaouane the resolution of marriage and divorce disputes takes place in a heterogeneous field. In Chapter 4 we saw how family members play a central role. In some disputes, neighbourhood notables, religious authorities, the House of Justice, and the court may also become involved.

In this chapter I focus mainly on three types of authorities: neighbourhood chiefs, as the most prominent neighbourhood notables; neighbourhood imams; and judges. Family members and the House of Justice also feature in the ethnographic material of this chapter, and I return to them in the conclusion. I concentrate primarily on neighbourhood chiefs, imams, religious scholars, and judges – and the way they understand and play their roles in marital dispute and divorce – for several reasons. First, this allows for an analysis of the role of different neighbourhood notables to whom so far I have paid only limited attention. Perhaps more important, this selection enables me to analyse local state-Islam relations. Arguably, neighbourhood chiefs, imams and religious scholars, and the court represent, respectively, the semi-state, religion, and the state in resolving marriage and divorce disputes locally. They all lay claim to competence in marital problem solving.

Neighbourhood chiefs may be characterized as semi-state or intermediary; this is how they see themselves and how they are seen by their constituents. The function of neighbourhood chief dates back to the colonial period and was originally created by the French to both short-circuit customary authorities and create a counterweight to them. Currently, a neighbourhood chief stands between the community or neighbourhood and the municipality, between society and the state, and between informal and formal – even if, officially, they are supposed to function as an auxiliary to the mayor. Neighbourhood chiefs are appointed by and – at least in theory – receive a regular salary from the municipality (Décret N° 1986-761; Fedior 2018),[3] but they also derive legitimacy and power in their neighbourhoods from their proximity to their constituents. Neighbourhood chiefs come from and are part of the community they serve. They present themselves as distinct from the state, which they portray as distant, removed, but in control, echoing observations by Lund on what he terms 'twilight institutions' (Lund 2006,

3 Décret N° 1986-761 du juin 1986 Fixant Le Statut Des Délégués De Quartier Dans Les Communes Du Sénégal.

688). At the same time, they are part of that very same state – although in Tivaouane there are also a large number of neighbourhood chiefs who have not (yet) been officially appointed because their neighbourhoods are not (yet) officially recognized.[4]

While appointed by the municipality, the neighbourhood chief, who tends to be male, is selected by the population. Neighbourhood notables in particular have an important role in this process (Tall 1998); the municipality may also push particular candidates. Voting is rare, and, if it does happen, votes are generally limited to the heads of households (Tall 1998, 6). Local standing and network are important criteria; lineage may also be a factor in the selection process. The tasks of the neighbourhood chief are wide-ranging and, in practice, include the administration of land sales, the issuance of certificates of residence, and the distribution of goods provided by state institutions and non-governmental organizations, such as seeds and mosquito nets. They are the principal point of contact for telephone companies, water companies, and the police; they ensure the sanitation of the neighbourhood; and they play an important role in dispute resolution (see also Fedior 2018).[5] Although their title was officially changed to neighbourhood delegate (*délégué de quartier*) in 1986 (Décret N° 1986-761; Tall 1998),[6] they are commonly referred to as neighbourhood chief (*chef de quartier*).

The neighbourhood imam leads the five daily prayers in the neighbourhood mosque and has a key ceremonial function during baptisms, marriages, and funerals. His spatial proximity, religious expertise, and involvement in key life events also means that he acts as an adviser and mediator when problems or conflicts arise, notably conflicts within the family. For marital disputes, the imam who officiated at the marriage is, moreover, felt to have a special responsibility. Religious scholars who head a religious school in the neighbourhood may play a similar role, and I here look both

4 Officially, Tivaouane counts 25 neighbourhoods; however, due to expansion of the municipality and the informal subdivision of neighbourhoods, there are another 46 unofficial neighbourhoods. Thus, there is a total of 71 neighbourhood chiefs. The number of imams is of the same order.

5 Article 21 of the Code of Civil Procedure permits village chiefs and neighbourhood delegates (*délégués de quartier*) to reconcile parties in matters concerning family, marriage, filiation, inheritance, donations, and wills. It also stipulates that the agreement has to be recorded by a judge. It is not stipulated which norms should guide such reconciliations. The requirement to record agreements seems to have no significance in practice.

6 The change in title accompanied a reform of their role that attempted to curb the chiefs' power and put an end to hereditary succession. It was this reform that stipulated for the first time that the neighbourhood chief was to represent the local administration and assist the mayor. In practice, the reform also politicized the position of the neighbourhood chief. Mayors gained in influence over the selection and supervision of chiefs and were able to use their power to try and promote political allies.

at imams and such scholars. There is no formal or standard procedure for the appointment of an imam. Generally, he is selected by notables of the neighbourhood. The desired qualities of an imam relate to his knowledge of religion as well as his character and social standing. Often, imams are retired professionals, workers, or merchants. They may receive some support from the population as well as from the leadership of Sufi orders or from the state (Seck 2013, 535). In contrast to the leadership of Sufi orders, whose lineage is key to their legitimacy, imams do not generally hold any historical legitimacy in the religious field (Seck 2013, 534). The neighbourhood imam's authority is based not only on his religious role but also on the role he plays in the organization and functioning of the neighbourhood. In many neighbourhoods, moreover, the imam holds a seat on the neighbourhood council (*conseil de quartier*), which advises the neighbourhood chief. A neighbourhood chief related: 'It's just that the imam has an important position in the neighbourhood that God gave him. That's why people solicit him. It has nothing to do with beliefs, which is why people who are not even Muslim can solicit him, because they are from the neighbourhood.'

The judge also has an important role in the local field of the resolution of marriage and divorce conflicts, but, in contrast to the neighbourhood chief and the imam, he generally does not have his origins in Tivaouane. Judges are rotated every few years, and while judges tend to live in Tivaouane most of the week, their families do not always join them (Chapter 5). The two judges on the Tivaouane court sit in a *tribunal d'instance*, which constitutes the lowest rung in the judicial system and, besides family law cases, handles a gamut of minor civil law cases as well as minor criminal infractions. Tivaouane's judges generally hold hearings in the mornings. In the afternoons, they receive visitors, whom they advise on the different legal procedures available and how to initiate them. If judges feel it to be appropriate, they also hold mediation sessions.

Links in a Chain

When it comes to marital dispute and divorce, local religious authorities and judges at the level of Tivaouane draw on different and, at important points, conflicting norms. These divergences echo divergences between, on the one hand, the sets of norms that women, husbands, and their family members draw on (Chapter 4) and, on the other hand, the legal norms we saw applied in court (Chapter 5). Nonetheless, imams and religious scholars tend to assume a degree of expertise in the juristic repertoire I refer to as *diine*. This sets them somewhat apart from the couple and their family members.

A first difference in norms relates to the role of the court. For the imams I interviewed, as for most people in Tivaouane (Chapter 4), the dissolution of

marriage is principally an out-of-court affair. The judges, on the other hand, recognize that spouses may agree on a divorce before coming to court, but the judges operate from the norm that out-of-court divorces are illegal. A second difference in norms relates to whether or not the decision to divorce is the prerogative of the husband only. For imams, the divorce is ultimately dependent on the husband: either he initiates divorce, or he agrees to a divorce request from his wife. If the husband initiates the divorce, he should follow a set procedure. They state that repudiation needs to take place in the presence of witnesses and only becomes final after three months, during which the husband should continue to feed, clothe, and house the woman – even if imams pointed out that many men do not respect this requirement, instantly ending the marriage instead. By contrast, in court, the request to divorce may be introduced by the husband, the wife, or both. Since a judge may pronounce a divorce, the refusal of a husband can never stand in the way of the dissolution of the marital union. A third difference in norms relates to the payment of child maintenance. Although interviewed religious scholars and judges agreed on the norm that women have a right to maintenance payments for the children, they strongly differed on the importance they accorded to this norm. In practice, imams and religious scholars do little to safeguard this right. In court, on the other hand, husbands can be obliged to pay child maintenance.

Whereas local Islamic and state authorities have some fundamentally different views, each accepts that the other has a role to play in divorce processes. One religious scholar stated: '[...] if a husband refuses to agree to a divorce, and the parents refuse to dissolve the union, she [the wife] will have little choice but to go to court'. An imam related that the court may play a role in divorce processes, yet took care to point out to me that '[...] all I can talk about [to me] are religious stipulations' and that people should consult an imam first.

It is clear that both the religious scholar and imam recognize the court's role as a last resort only. This holds true for all imams and religious scholars I spoke with. Disapproving of the adversarial nature of court procedure, they argue that it is better to avoid the court and dissolve the marriage in an amicable way. One imam expressed it as follows:

> We must choose the right formula: that it is God who has decided that the union must stop here, that it is God who has decided so. It is better when you divorce and can remain friends, because you shared good moments. It leaves fewer after-effects – unlike the court, where it is more contentious. Islam recommends to break the union in an amicable way. With the Muslim religion the parents intervene; they discuss about the union of their children, so if there is a problem they must intervene together with the imam. The marriage must not break up brutally, and the court is the last link of the chain. However, if there is no favourable outcome, the spouses will end up going to court.

For imams and religious scholars there is a certain order to follow in the management of marital disputes, which begins with the involvement of family members and is followed by the involvement of an imam, who is frequently likened to kin. People should solicit the court only if matters remain unresolved. In other words, in their statements, the role of the judge is accepted but also limited.

Vice versa, judges in the Tivaouane court recognize a role for local religious authorities while also restricting it. For them, imams and religious scholars can play a part in trying to reconcile the couple and prevent divorce – however, not in the divorce process, even if they do not challenge litigants' statements about out-of-court divorce (Chapter 5). One stated: 'Here in Senegal there is a system of mediation. The family will get involved, the neighbours – sometimes imams.' This role may also extend to the mandatory mediation that is part of the court-divorce procedure. The attempt at reconciliation can take place over the course of several court sessions, and judges in Tivaouane regularly ask spouses to try and find a solution with the involvement of others, adjourning the session for some weeks. Generally, they encourage couples to consult family members, but they may also encourage a couple to revisit local religious authorities who had been involved previously.

Imams, religious authorities, and judges accommodate the different norms each represents. Imams recognize court-divorces to be valid even if, in their opinion, court-divorces may be arrived at in ways that conflict with religious norms. Judges frequently accommodate references to Islamic norms that are not part of the Family Code. As we saw in Chapter 5, in their eyes the job demands a certain flexibility when it comes to parallel norms.

On the whole, relations between religious authorities and judges in Tivaouane are thus tolerant and manifest a certain pragmatism. They are pragmatic in the sense that these authorities know that they have to get along together even if they have competing claims for authority, and pragmatic in that they recognize that the court may offer something that imams are unable to offer – and vice versa. Such pragmatism can be perceived especially in the practices of a third actor, the neighbourhood chief, who occupies a position originally designed to be intermediate and who may easily switch between different repertoires of norms. Whereas neighbourhood chiefs formally are part of the municipality, they do not, in practice, bear the office of a particular institution, nor do they represent a single normative order. Here, as a case to further unpack this pragmatism, I draw on a detailed ethnography of one of these chiefs, and a marital dispute he dealt with.

Neighbourhood Chief, Divorce, and a Mother-in-Law

Oumar Ba is the neighbourhood chief of one of the older neighbourhoods of Tivaouane. His manner is calm and friendly. He has been the chief of his neighbourhood for more than ten years now and has been filling in for his father, who is old and bedridden. The first time I interviewed Oumar we met at the house of a family where he spends much of his time. They occupy a large compound, and Oumar received us in a luxuriously decorated room. His own home is more modest; he shares a simple compound with several bedrooms with his extended family, the Senegalese flag indicating that this is the home of the neighbourhood chief. He has written his name and mobile phone number on the wall of one of the buildings, for those who come to look for him but find him absent.

Islam is an important point of reference for Oumar. Like other older men in the neighbourhood, he prays his five prayers daily near his house in the local mosque, for which he has been asked to oversee major construction work. He and the builders wear a specially produced safety vest bearing the image of the mosque, under which the name of the neighbourhood is written. Oumar is a particularly active neighbourhood chief and feels far-reaching responsibility towards the inhabitants of his neighbourhood. In the resolution of family disputes, he does not wait to be solicited, but passes by the household to inquire about the problem. As he tells me, he wants his neighbourhood to be calm and peaceful.

Several other neighbourhood chiefs I spoke to were more hesitant to get involved; however, all frequently mediate in family conflicts and, in doing so, many cooperate with other authorities. The following case concerns a marital dispute Oumar referred to the House of Justice.[7]

Talk of Divorce and a Mother-in-Law

At the House of Justice, I meet Modou and Awa, who are married and have one child, a girl of six years. They have come for a mediation session because Awa wants a divorce, and they are accompanied by Oumar and an uncle of Awa who was involved in the negotiations and arrangements for the marriage. The mediation session is unsuccessful: Awa explains that Modou insulted her mother and claims that Modou does not provide for her; Modou, in turn, denies that he fails to ensure financial support.

When the mediator tries to negotiate a solution with Awa, asking her what she wants, she defers to the neighbourhood chief, saying that she will agree with everything he says. She mentions that it is Oumar who took them

7 Not all neighbourhood chiefs refer cases to the House of Justice.

to the House of Justice, to which the mediator responds that this is only normal. He explains that the failure to provide is one of the ten recognized grounds for divorce in court and fixes an appointment for a second mediation, telling them to come back a week later. A few days later, Awa's father stops by the House of Justice to cancel this follow-up meeting, explaining that both Awa and Modou are busy and that they will wait until after the holiday of Eid Al-Adha (*Tabaski*).

When discussing the case with the neighbourhood chief, I ask him why he took the couple to the House of Justice. He tells me that Awa asked Modou for a divorce, and Modou called him to be a witness to the repudiation – 'because I am neighbourhood chief,' Oumar adds. But he did not want to be a witness, he continues, and advised the couple to go to the House of Justice.

He explains that he will never be the witness to a divorce and that he felt it was very abnormal to want to dissolve a marriage of ten years. He says that even though in the Qur'an God allowed for divorce, God does not like it. His referral to the House of Justice should thus be understood as an attempt to prevent divorce. He approves of the House's work and mentions that they resolve conflicts in the traditional way.

The neighbourhood chief and the House of Justice are not the only (semi-) state authorities involved in this conflict; the police had been involved as well. Not long before Awa asked for a divorce, Modou had publicly insulted her mother, who was reportedly critical of Modou's modest financial means – which were, in her opinion, insufficient to maintain her daughter.

During a funeral ceremony in the neighbourhood, Modou accused his mother-in-law of trying to break up his marriage by preventing her daughter from returning to her marital home after a stay in Dakar to receive medical treatment, and he had made abusive and insulting remarks. The mother went to the police to report the incident. This prompted the involvement of different local authorities and other inhabitants of the neighbourhood, who all tried to persuade the mother to withdraw her complaint: the savings groups of which she was a member, the religious association (*daayira*) of which her husband was a member, the imam, and the neighbourhood chief. The neighbourhood chief recounts that people of the *daayira*, he himself, some other notables, and the imam went to visit the woman and that the imam preached to her. Eventually the mother withdrew her complaint. When I ask the neighbourhood chief how they convinced the mother, he says:

> She is a Muslim; she is a pious woman. We worked on her by appealing to her religious beliefs. Everyone put in their two cents. Everyone said what it is that is good and what it is that is bad. Afterwards we said: "It is up to you to decide."

At a later stage, different authorities again cooperated to resolve the conflict, this time at the initiative of Oumar. When, not long after the mediation session at the House of Justice, Awa changed her mind and called Modou to say she wanted to move back in with him, Modou, in turn, immediately called the neighbourhood chief. Oumar assembled the imam, neighbourhood notables who had been involved in concluding this marriage, and the families and asked Modou to publicly apologize to his mother-in-law once more, thus facilitating the return of Awa. It is important to highlight here that while the imam and the neighbourhood chief cooperate frequently in disputes, according to Oumar there are some differences in approach, also in cases of marriage and divorce conflicts: 'The imam will do his preaching: God said this and that. The chief says the law says this and that.'

When I ask him whether at times there are differences between what God says and what the law says, he tells me that it is almost the same thing. 'And even when they differ, they have the same goal.' He also tells me that the preaching of the imam is more effective. Yet, on a previous occasion, when I inquired how he resolves marital disputes, he had told me he reminds both husband and wife of their respective rights and duties in Islam. For Oumar, in matters of marriage and divorce, he and the imam situate themselves between the family, where people try to resolve the conflict first, and the justice system, of which the House of Justice is the first and the court the second rung.

Oumar prefers to avoid the police and the court in the resolution of conflicts. This illustrates a common perception among neighbourhood chiefs; they see it as their role to prevent marital dispute and to prevent people from going to court and the police. In cases when a divorce is unavoidable, many neighbourhood chiefs, including Oumar, still prefer to settle matters out of court. Only when the husband severely mistreats his wife or fails to agree to a divorce, even after being pressured to do so by third parties, do they consider it an option for women to resort to the court. Similar to religious authorities, for neighbourhood chiefs too, the judge is a last resort.

Pragmatic Pluralism

At the national level, despite overwhelmingly harmonious relations between religious authorities and the state, the regulation of marriage and family is a point of strong contention (Chapter 3). Religious authorities have repeatedly voiced criticism of the Family Code. Yet it is clear that when it comes to handling cases of marital dispute and divorce in Tivaouane, relations are rather tolerant among imams and religious scholars on the one hand, and neighbourhood chiefs and judges on the other.

Local neighbourhood chiefs, religious authorities, and judges all conceive of the field of the resolution of marriage and divorce conflicts as graduated. Rather than seeing each authority as a separate 'route', for them there appears to be a logical sequence as to whom parties should solicit in cases of conflict. The authorities are not 'alternatives to one another'; rather, they are 'tiered steps' in the management of marital disputes and divorce (cf. Stiles 2018, 297; see also Cooper 1997). In identifying this order, each authority thus acknowledges the role of the others. In some circumstances, this extends to an active referral to another authority. However, these authorities also frequently limit one another's roles. Imams and judges both recognize that there is an order for whom should be consulted, but the relative importance of the authorities in this 'chain' is perceived differently by each of them. For imams as well as local religious scholars, Islam and its office-bearers present the most important authority, though the state, in the form of the court, can pronounce divorce and *adjudicate* dispute and thus presents a site of resources (cf. Hill 2013, 105). Judges see this differently: in their view, they may be the last link in the chain, but they are the only competent authority when it comes to divorce.

Many neighbourhood chiefs, in particular, actively cooperate with and involve other authorities. Often, they also draw on multiple and competing normative repertoires (Griffiths 1998), and as intermediaries they are especially well placed to juggle this plurality. This becomes clear from the different comments by Oumar and the way he worked together with, and referred to, several other authorities. First, by involving family members in the resolution of marital disputes, he recognized their primary role as well as their importance to any durable solution. He also cooperated closely with the imam when he deemed this opportune, confirming that both play an important role in the neighbourhood and do not stand in opposition or in a hierarchical relation to one another. In referring the case to the House of Justice, he confirmed the institution's position as 'the next step', but he also drew on the state's authority to eventually settle the conflict within the neighbourhood. Oumar negotiated a plurality of norms and authorities because, as in other pluri-normative settings, spheres overlap.

Taken together, the relation among neighbourhood chiefs, imams, and judges is indeed well described as a 'pragmatic pluralism'. This is not a liberal pluralism, where the state tolerates differences and 'politically neutralizes them' (Hill 2013, 100); rather, it is a negotiated co-existence among different authorities operating on the basis of competing claims. The value of social harmony, and the practice of flexibility and pragmatism, are central to this configuration. Beyond the strongly politicized national debate, pragmatism reigns.

Harmony and the Power of Negotiation

The pragmatic co-existence of semi-state, religious, and state authorities at the local level can be explained by several circumstances. In contrast to the national political debate about the Family Code, which accentuates the opposition between Islam and the state and their respective office-bearers on matters of the family, at the local level of Tivaouane the overlapping attachments of these authorities are accentuated. They are all Muslims and Senegalese citizens, and all live in the same city. Here, the religious sphere readily blurs into that of the state and the law, and vice versa (cf. Villalón 1995). As a consequence, sets of norms are also not separate and operating in parallel opposition; rather, they overlap and interpenetrate (de Sousa Santos 2002, 519). Furthermore, each aims to maintain or restore harmony between spouses and among their wider social surroundings as far as possible. They all try, at least initially, to prevent the dissolution of marriage, an institution on which they place great value. The moral value of social peace means that they also try to limit harm to the wider family and community in the process. This can be seen, for example, from the genuine effort judges make at reconciliation and from the way imams try to minimize (further) conflict during the divorce process. It also extends to how each authority acts vis-à-vis the other – they do not voice sharp hostilities against each other – and to the active referrals to other authorities if this is in the interests of a couple and their surroundings. The flexibility in the way judges deal with situations where parties draw on norms that are in conflict with the Family Code is also an example of this moral value of social peace. All of this connects, it is worth stressing, to a broader appreciation of harmony in Wolof society (Kaag 2001, 122-123; Ly 2016; Sylla 1978) (Chapter 1), an appreciation that is also seen to be central to the coherence and continuity of many other communities (Beyer and Girke 2015).

As we saw in previous chapters, much like the authorities that serve them, the women and men that may solicit these authorities have multiple and overlapping attachments. They are all Muslims, Senegalese citizens, members of a neighbourhood, and part of a family. Women, men, and their family members share in multiple normative orders. When deciding to move beyond the domestic sphere *per se*, they choose whom to solicit and do so on the basis of strategic considerations (von Benda-Beckmann 1981), as well as by virtue of cultural preferences and ideas about moral worth (Blokker 2011; Boltanski and Thévenot 1999). Local imams voice criticisms about people who bring marital disputes to court immediately. And, vice versa, Tivaouane's judges express their annoyance with people who ignore the court. Indeed, people do sometimes go to court without having solicited an imam, while others solicit an imam but do not go to court. Sometimes the people of Tivaouane also solicit *multiple* authorities, as can be seen from Ami, who consulted family members, different religious authorities, and the court. Yet most often, disputes are settled without recourse to authorities beyond the family.

None of the different authorities thus has a complete hold over their constituents, and authorities who negotiate different norms may be attractive options to solicit in cases of marital dispute. As a consequence, the power of these authorities depends in part on their ability to find a way through the plurality of norms pertaining to marriage and divorce, in order to resolve people's problems – that is to say that, in part, their power lies in negotiation. At times, this may also involve cooperating with other authorities. Authorities such as the neighbourhood chief Oumar Ba, who can draw on the full range of solutions available to resolve problems, have a considerable appeal.

Conclusion

There exists a stark contrast between the national debate about the Family Code that accentuates opposition between Islam and the state (Chapter 3), and the relatively tolerant relations between authorities at the local level of Tivaouane. Courts, local religious authorities, and neighbourhood chiefs do not oppose each other, and the practices of religious authorities cannot simply be read as a form of political resistance; rather, a configuration of 'pragmatic pluralism' is observed, to which several factors contribute. One is an overriding socio-cultural concern for harmony and social peace. This configuration also results from the multiple attachments of the authorities that represent the state and Islam at the local level.

Finally, I suggested that the pragmatic pluralism of the different authorities relates to the multiple attachments of their constituents. They exercise a degree of choice in whom they solicit – as I showed throughout the previous chapters. Notably, many of them do not move beyond the restricted domestic sphere at all. This means that none of the different authorities I focused on in this chapter is able to 'isolate' the population from the other authorities, as marabouts have threatened to do (Chapter 3). The different authorities I encountered in Tivaouane are well aware of this reality. This means that for them power lies in negotiation. Authorities who switch between and align different sets of norms and even cooperate are attractive to people who seek the resolution of a marital dispute or dispute over divorce. At the local level, in their day-to-day practice, the co-existence of different authorities handling marital disputes and divorce is continuously being renegotiated.

These relations echo observations by Collier on how indigenous authorities maintain their popularity by incorporating the state legal norms their competitors apply in the handling of disputes (1973). Yet the actions of the authorities I encountered cannot be explained by strategy and self-interest only. It is clear that local authorities in Tivaouane are concerned with their position. However, they are also concerned with maintaining harmony

among themselves and finding a solution to people's marital troubles, preferably by doing everything to ensure the union is not dissolved; moreover, from their vantage point, the spheres they represent readily blend into one another.

As should be clear from previous chapters as well as from the ethnographic material presented here, chiefs, imams, religious scholars, and judges are of course far from alone in conciliating and adjudicating in marital disputes and divorces. Family members play a central role, and at times the House of Justice is also involved. The authorities I have described here may be solicited as an alternative to family members, but when they are asked for help it is often as a 'next step'. In many such cases, they are mobilized by family members themselves, after the latter's interventions have failed. While the mediator of the House of Justice was not central to the analysis presented in this chapter, he does figure in the case of Oumar Ba, Modou, Awa, and her mother. The mediator regularly refers cases to court but does not refer cases to or cooperate with neighbourhood chiefs and imams. Significantly, however, neighbourhood chiefs asked to distribute a mediation request often seize on the opportunity to resolve the conflict themselves, and this is tolerated and even appreciated by the House of Justice personnel.

Focusing on the handling of marital dispute, this chapter has opened a window unto local Islam-state relations. As such, the chapter offers a number of starting points to reconsider Senegalese contestations around family law – and around secularism more broadly. The relation between local realities and national political positions is complex, and it is evident that in the case of Senegal they are neither exact mirror images of one another nor complete opposites. Yet, it should be clear that to look beyond the national level helps us to understand the complexity of the relations among state, religion, and society, while also shedding light on how relations between the religious sphere and the state are handled away from the spotlight.

8 Conclusion

'Would He Say the Same if I Were His Own Daughter?'

Toward later stages of my fieldwork, I no longer saw Ami – whom I introduced in the beginning of this dissertation – very regularly, but I did continue to stop by now and then. We would discuss her marriage, as well as my own love life and my wish to find a long-term partner, which was not without its complications either.

Her husband visited Ami at times, she stated, but in her opinion this was only for show, 'to make others think he was a good husband'. He would not stay for long; sometimes his visits lasted for no more than two hours. 'You would be surprised if you heard how long ago it was that we slept together.' When I asked whether he still sent her money, Ami explained that he did, but that the amount was insufficient. One morning as I went to see Ami, I found her hastily preparing the afternoon meal. She informed me that late the night before her husband had called her to tell her he would come pay a visit, but that she had work in the afternoon, which was why the visit did not suit her and why she was rushed. Once her husband arrived, the tension was palpable.

When I returned to Tivaouane for a second leg of fieldwork about half a year later, Ami confessed she had not been in contact with her husband for over three months. The last time he visited was just before *Korite* (Eid al-Fitr). He asked her to come celebrate at his home, but she woke up that morning feeling ill. She did not go. Ever since, she did not hear from him, not even during *Tabaski* (Eid al-Adha). He still sent money, around 40,000 CFA per month, and given that Ami does not have children this should easily cover her expenses, yet Ami reiterated: 'It's nothing.' Perhaps she felt this way because he continued to fail to provide separate and extra money for medication and for the holidays. Perhaps it was because she felt neglected.

'He must think,' Ami asserted tongue in cheek, 'that his wife is *Wari*' – the local money transfer service. But, she proclaimed, because he treated her as a financial obligation only, she decided not to call when picking up the money. 'He thinks that the money will make me stay, but he is wrong.'

Ami no longer contacted her uncle in Dakar or her husband's brother with her complaints. 'People grow tired of people who complain.' She would wait until the end of the year. Then she would go to her family members and say: 'You told me to stay, but this is how my husband behaves.' Her uncle cares for her, Ami said. 'I respect him.' But she also asked rhetorically: 'Still, if I were his own daughter, would he behave the same way?'

Contrary to her (half-)sisters, Ami has only the family of her mother to rely on; her father and his family live in Mali. Although Ami is close to her maternal uncle, it is clear that she does not have warm relations with everyone in her household, and she told me once how some of the people closest to her are her 'biggest enemies'. Ami recounted that they discouraged her from going to school when she was young, saying that she studied too much and asking her what studying was good for. While she was in school, she said, they requested that she contribute to the electricity bill, and when she refused, they took away her lamp, forcing her to study with a candle, which ruined her eyes. She relies on God, she often repeated: 'He knows your good deeds. [...] God tests you, but you have to trust Him. I want to focus on my health; that is enough.'

Just before I left Tivaouane in December 2017, I went to say good bye to Ami. She told me that she had recently gone to see the imam, her 'grandfather' as she says, and spent almost the whole day in his mosque. They discussed her situation and he requested that she inform him before taking any decision. When I asked how the imam feels about it, she indicated that he too was discouraged. Earlier during *gàmmu*, she recounted, she had wanted to talk to her uncle, but when she tried to find him he had already left. I enquired whether she thought her uncle would agree to a divorce. Ami responded that he had said that if it were up to him, she should wait, persevere, and be patient. But she thinks it is up to her now. When she stays at her uncle's house in Dakar to follow medical treatments, he does not enquire after her when she does not return in the afternoon. 'If I were his own daughter, would he say the same?' she asked again. She has been very patient, she said.

The Crucial Role for Kin

The story of Ami's marital troubles with which I opened this dissertation and now close it points not only at the different avenues women may pursue to resolve such conflicts, but, more important perhaps, at the crucial role of kin. Ami wants them to support her wish to divorce and hesitates at the prospect of having to take on the weight of this decision by herself, which would no doubt force her to start divorce proceedings in court.

As is also clear from the accounts of marital dispute and divorce I shared in the preceding chapters, the distinction between marital dispute and divorce is a blurry one. Ami spoke of divorce but was met with an uncle and an imam who attempted to settle a marital dispute. Moreover, part of her seems to prefer her husband to change his behaviour, to show affection, instead of her being left without a husband, uncertain whether a new man would bring the fulfilment she seeks. Ami successfully secured her husband's financial maintenance; he did not, however, truly change his ways.

In a sense, then, the ethnography presented in this dissertation details women's search for well-being – at times in extremely difficult situations. The women I encountered wanted to make a better marital life, but the road towards it was often riddled with uncertainty. This relates to the reaction of the husband but also to whether or not their kin would be willing to help, or would be angry at their inability to persevere and be patient. It also touches on these women's moral and social worth – on how others perceive their actions, and how they judge these actions themselves. In cases of divorce, questions about whether they would be able to sustain themselves and what would happen to the children were often also on the table. Finally, it was often uncertain to them what new marital lives they would be able to forge.

Against the backdrop of debates over the Family Code and marriage and divorce broadly, in this dissertation I was interested in exploring how Tivaouane women perceive, draw on, and interact with a plurality of norms and authorities concerning marital dispute and divorce. I examined how particular Muslim women reconfigure their marital lives and paid close attention to repertoires used to make claims and justify actions, as well as the authorities solicited. In chapters 4-7, I focused on a number of regulatory spaces where women regularly attempt to resolve marital disputes or where their union may come to be dissolved. The fourth chapter dealt with women-initiated, out-of-court divorce specifically. The fifth chapter examined women's use of the court. Since the House of Justice expressly aims to extend the reach of, and access to, state justice for women in matters of the family, the sixth chapter was entirely focused on women's use of this relatively new institution. The final ethnographic chapter examined the local authorities of the neighbourhood chief, imam, and judge, and their interrelations. In terms of regulatory space, it paid particular interest to the neighbourhood.

Together, the chapters showed that while the national debate around the Family Code in Senegal presents a strong opposition between religious leaders and the state, notably on the topic of divorce, in practice the divorces of women are primarily handled in and by the family. Family members play a central role in marital disputes and divorce processes. Without their support, women often find themselves in difficulty trying to change the terms of their marriage or leave an unhappy union. To go to court is hard

to morally justify and may consequently come at a cost. Even so, by many it is regarded as a 'last resort' that in some cases may be unavoidable, and sometimes even appropriate.

Domestic Sphere and Beyond

The marital disputes and divorces of the women whose stories this thesis has told take place in a broad normative and moral landscape that is strongly gendered. Different sets of norms as well as different people and institutions make up this landscape. However, women's perception of it is structured by one central opposition: that between the domestic sphere and beyond.

Family plays a key role in marital dispute and divorce – as 'third party', but also because they may themselves be embroiled in the affair (Chapter 4). Even though couples may first confront marital troubles together in the privacy of the bedroom, family members quickly become involved, moving the conflict to the spaces of the wider household, the close social context and the wife's parents and family. In particular, male family members who helped to tie the marriage knot often play a key role in trying to resolve marital disputes. They also tend to have an important role in women's divorce processes. While imams or neighbourhood chiefs do not play as central a role in marital disputes and divorce as family members do, some women eventually consult them; to do so in many ways constitutes a 'next step'. Even then, they are often likened to kin; indeed, in people's comments, the neighbourhood was often contrasted to the state legal system in similar ways to how the household and the family are.

Because processes of marital dispute and divorce unfold in the domestic sphere first and foremost, Islam and the Islamic norms of *diine* take shape principally through the actions of individual women, their husbands, and family members. While divorce processes described in Chapter 4 resemble practices in other Muslim societies, one difference from a number of other Muslim contexts is the absence of an Islamic judge or other Islamic legal office holder; people also do not solicit written and formal Islamic opinions (*fatwa*). Nevertheless, women, their husbands, or family members may occasionally consult an imam or scholar for advice or involve him in the process. Although the native court and Muslim courts of the colonial administration may have resulted in a certain bureaucratization and routinization of Islamic law at the time, the present situation in Tivaouane concerning the religious settling of disputes and divorce is still predominantly one of informality. In court, on the other hand, litigants are not formally met as Muslims; nonetheless, some of the laws that apply in court – as well as some of the extra-legal norms that litigants invoke in court – stem from interpretations of Islamic law.

Analysing the processes of women-initiated divorce, I revealed the gendered sets of norms that frame these processes and the way women draw on these norms. Women who seek divorce invoke the right to be provided for, thus drawing on the juristic register of *diine*, a set of norms that encompasses marital rights and duties in divorce. Central to their statements and actions, however, is the repertoire of Wolof conjugal ethics. To justify their wish to divorce, women demonstrate worth by stressing their perseverance in the face of marital difficulty, particularly to members of their family. This repertoire – in contrast to the unquestionably Islamic 'rights-based' *diine* – is firmly rooted in the Wolof socio-cultural repository that centres around honour. However, women also see the values associated with it as central to being a good Muslim. Here, Islam thus does not constitute a domain that is always separate from the socio-cultural sphere; the role of Islam is moreover multiplex.

The gendered sets of norms that frame women's divorce processes are also at the basis of the opposition in marital dispute and divorce between the domestic sphere and 'beyond', and these norms shape women's perceptions of the court. Women overwhelmingly refrain from engaging the court in their marital disputes, at least initially. In part, to go to court can make things overly complicated, particularly because court procedure takes time. But what matters more, to turn to the court also cannot easily be aligned with the values of *sutura* and *muñ*. The court is perceived as a quintessentially public space, and to go there is to lose the protective cover of *sutura*. This reflects on oneself and on one's family members; when a woman airs her marital woes in court, she reveals what are her, but also what are considered to be her family's, problems. More important, by taking her husband to court a woman exposes *him*, thus making his faults and failings visible. To invoke the court also does not sit well with the value of *muñ*. A woman who readily turns to the court is not patient with the divorce process and may therefore also run into problems with her family members. In addition, going to court is, in many instances, seen as a hostile act – both for women and for men; it is to invoke the force of adjudication and state, which harm social relations and threaten broader social harmony. *Sutura* is an important condition for harmony, and so are the more amicable, flexible, and open-ended negotiations that take place within the domestic sphere and with the involvement of family members.

When women engage the state court – generally with success – , they do so in two ways: as a last resort when other solutions have failed, or to obtain documentation. In both cases, they thus turn to the court as the last 'link of the chain' – either as last option, or as last step, to formalize an out-of-court divorce process. Hence, in these instances of use, the state justice system does not appear as a parallel path that is to be avoided, but rather as part and parcel of one and the same legal landscape. This suggests, I argue, that while the order of Islamic *diine* establishes that it is the husband who pronounces

a divorce, this power is also circumscribed. When a husband does not live up to his marital duties and refuses to pronounce divorce, going to court can be seen as an appropriate action, neither completely in line, nor completely in conflict with the *diine* norms that pertain to divorce procedure (Chapter 7). As a result, in some instances the possibility to go to court can function as a threat – as a very rudimentary 'shadow of the law' (cf. Jacob 1992; Mnookin and Kornhauser 1979).

While there is much social apprehension about the financial claims women can make, few women actually ask child maintenance in court, where judges confer this benefit on request only. Tivaouane women who bring their husband to court are not the 'materialistic women' they are often portrayed to be. Given the prevalent norms about who is to provide for children after divorce and the centrality of *muñ* and *sutura* for women, to claim these benefits seems difficult to justify.

Notably, the women who turn to the court are not, as researchers in different contexts tend to suggest (e.g. Dial 2008), necessarily more educated, more elite, or more 'modern', or people for whom the state has more legitimacy (Chapter 7). They are not the 'modern women' whom, in some ways, the Family Code set out to create (Chapter 3). Those who engage the state as a last resort hail from all sorts of educational and socio-economic backgrounds. Women who go to court to obtain documentation generally come from the middle and higher classes, but it seems that the reasons to go to court relate more to fiscal regulations than to a strong identification with the norms of the Family Code. This would indicate that research on the Senegalese state and the governance of marriage and the family should not only examine family law but should also look at other domains of law and regulation.

Moving Away from Legal Institutions

Against the background of continuing political debate over the Senegalese Family Code, the primary aim of this dissertation has been to provide a study of family law 'from below' and from the perspective of women. Yet, while I emphasized the historical and cultural particularity of the Senegalese context, this dissertation should also be useful for scholarly work beyond Senegal. Marital disputes and divorce in Muslim societies have tended to be studied through a focus on Islamic legal institutions, courts in particular. Motivated by the wish to examine how sharia actually functions, scholars turned to a study of courts and the marriage and divorce cases they encountered in them. However, not everywhere will Muslims turn to such institutions, and, where they exist, not all dispute and divorce processes will take place with their involvement – also because prevalent interpretations of a number of Muslim forms of divorce (*talaq* and *khul'*) do not require the involvement of a judge. The present study showed how in Tivaouane the

support of family members is often crucial when a husband does not want to give a divorce. To obtain this support women make rights-based claims for maintenance and carry out kin work to build support. The secular state here functions as a last resort.

It is for various reasons that I have not set out here to deliver policy recommendations to improve 'access to justice for women' in Senegal, either to the Senegalese state or its different international donors. One important reason is that what justice is cannot easily be determined. However, an important implication of this study is that it offers the material for rethinking what access to justice for women may mean and how it may be studied. Too often policy work on access to justice is focused on justice providers, what they offer, and whether or not people can access them. Access is conceptualized as something people do or do not have – as if justice is located at the end of a path that is either blocked or clear. One perennial question that seems to have occupied the policy field of access to justice for women in the past decades is whether or not and how to work with non-state and customary actors in enhancing access to justice for women, instead of with state actors only (Chopra and Isser 2012). The dilemma tends to be framed in binary terms: these actors are accessible to women, yet the type of solutions they offer are not in line with international women's rights and are 'bad for women' (Okin 1999). The different chapters of this dissertation have suggested that it is important to pay attention to the fact that women seek solutions to their problems in a field with multiple options, framed by a plurality of norms and moralities. This means that people may try out different justice providers. It also means – as my analysis of women's use of the court and the House of Justice showed – that the roles of these justice providers cannot be understood upfront. Although institutions are undeniably important for women, a focus on them alone provides little insight into how political, religious, and moral forces shape the meaning and use of them for women, and hence also their functioning.

The dissertation finally opens to important questions about the domestic sphere as a space for marital dispute resolution. Various scholars argue that state courts may be essential spaces for women resisting oppression in marriage and the family (Chapter 1). And indeed, feminists long critique the idea that marital disputes are private matters. While arguments vary, central to this thesis is that political opposition of private and public naturalizes the oppression of women in the domestic sphere (e.g. Pateman 1988). The state needs to regulate family and provide rights and procedures to protect women from oppression by husbands and family members. Nevertheless, whereas the court plays a crucial role as last resort and the House of Justice may work to exert pressure to resolve a dispute, in different chapters family also showed itself to be an important source of support. Throughout the dissertation the domestic sphere has emerged as a complex site of assistance and oppression, of protection and of harm. For the women I studied, the

family is a space of shelter, well-being, and constraint. Women can claim and secure important rights from within family relations, but success often depends on the strength of these relations, on a woman's standing within the family, as well as on the personal goals of her family members. This invites further study in areas of Senegal where living arrangements differ from Tivaouane, but it also requires that broader questions be asked about the potential of the domestic sphere in the management of marital dispute and divorce. These questions should abandon the assumption that the family is always restrictive; rather, we should consider the family as a complex set of relations through which women seek to find protection, well-being, and cover.

Women's Voices

The Senegalese Family Code has been strongly criticized ever since its presentation (Chapter 3). Although the state sought to modernize the Senegalese family by creating a uniform code, synthesizing French civil law with a number of what it referred to as customary and Islamic norms, religious leaders have denounced the product as a 'women's code' that is contrary to Islam. Episodes of contention are recurring. The 2002 project code of the CIRCOFS has long been shelved, but critique continues to be voiced in various media outlets and during conferences and in speeches of religious leaders. Marriage and the position of women are key themes through which moral worlds are contested, and they provide fertile ground in which to try to negotiate state-Islam relations. At the same time, a number of women's and human rights organizations have endeavoured to reform the Family Code and guarantee equal rights in marriage and the family; and while their success has been very limited, they have achieved some changes.

The political contentions over family law further contribute to shaping the norms, moralities, and attendant expectations that frame Tivaouane women's marital disputes and divorce processes. The present dissertation makes clear, however, that these factors far from determine them. Behind the polarizing debate hides a social practice that is fluid and one in which people draw on multiple moralities and sets of norms – throughout the dissertation referred to as repertoires. Law and Islamic rights and duties in marriage and divorce are among these, but social harmony and Wolof conjugal ethics are also of crucial importance. In the way women and men draw on them, these multiple orders are both aligned and contrasted. There are important points of convergence and sometimes of conflict, but these are in turn open to debate and negotiable. Moreover, although the national debate gives the impression that religious leaders and the state vie to control marriage and divorce, in fact it is one's kin who play a central role in marital disputes and their solution. As I suggested in Chapter 7, this – among other factors – also impacts on the character of the relations between local-level authorities.

In telling the stories of women who try to change the terms of their marital lives, I have shown how they involve family and religious authorities and how they use the court. This involves manoeuvring and creativity. Whereas it may be tempting to read their acts primarily as the strategic dealings of constrained but calculating actors, it is crucial to also take seriously the moral and normative demands these women place on themselves. Of course, women like Ami want to be good because society expects them to be, and because they may lose crucial support if they fail to meet such expectations. However, for her, her sense of well-being also derives from doing right and being good – which, as we saw, may be grounded in multiple moralities. It is through this manoeuvring and creativity that women shape their lives, always within limits. Doing so, these women also assert their voices, however diffuse, in the local renegotiations of the multiple moralities and norms that pertain to marriage and divorce.

Summary

This dissertation examines questions of law, Islam, and gender in Senegal. On the basis of twelve months of fieldwork I conducted in Tivaouane, in this dissertation I follow the paths of women who try to change their marriages or obtain divorce. Family law is a contentious subject matter in Senegal. The uniform Family Code (1972) grants women extensive rights to obtain release from marriage without their husbands' approval and protects them against unilateral repudiation. At its introduction, however, the code quickly came denounced as 'the women's code'. Islamic authorities called the law un-Islamic and threatened to isolate their followers from its impact. Episodes of political contention have been recurring. Perhaps more important, in mosques, during religious conferences, on the radio, and on TV, imams, Islamic scholars, and marabouts tend to promote norms that run counter to the Family Code. All the while, women's and human rights organizations endeavour to reform the code and bring it more fully in line with international women's rights instruments. There is much talk *about* women in Senegal, but not always *with* them.

What does this tension mean for women, and more specific for their rights in marriages and their rights in divorce? To explore how women navigate the contested spaces of family law and contend with different authorities this dissertation asks: how do women perceive, draw on, and interact with family, Islam, and state in marital dispute and divorce? Starting from an examination of the history of family law and family law debates in Senegal, the dissertation then focuses on the marital disputes and divorces of women in Tivaouane, a secondary city where both state and Islam have long been strongly present. Here, the dissertation focusses on a number of regulatory spaces where women may attempt to resolve marital disputes or where their union may come to be dissolved.

While national debate around the Family Code in Senegal presents a strong opposition between religious leaders and the state, the ethnography presented throughout the dissertation reveals that in practice the marital problems of women are primarily handled in and by the family. Family members play a key role in marital dispute and divorce, as mediator and arbitrator, but also because they may themselves be embroiled in the affair. In particular, male kin present at the marriage ceremony play a central role in trying to resolve subsequent marital disputes. They are often also key figures in women's divorce processes. The first main argument I make in

this dissertation builds on this analysis. Without the support of kin, women tend to find themselves in difficulty trying to change the terms of their marriage or leave an unhappy union. As a consequence, they are often required to pursue a great deal of – largely emotional – labour to obtain their cooperation. This also means that their agency cannot be understood as entirely separate from that of their family members.

In the process of marital dispute, women of various socio-economic backgrounds invoke justifications for their claims and actions that are grounded in different but overlapping sets of norms. Four sets of norms are distinguished in this dissertation: law, *diine* – what people understand as Islamic reciprocal rights and duties in marriage and divorce –, Wolof conjugal ethics, and social harmony. Women who seek divorce generally invoke the right to be provided for, thus drawing on the register of *diine*. Central to their statements and actions, however, is the repertoire of Wolof conjugal ethics. To justify their wish to divorce, women demonstrate worth by stressing their discretion and perseverance in the face of marital difficulty, particularly to members of their family. This repertoire – in contrast to the unquestionably Islamic 'rights-based' *diine* – is firmly rooted in the Wolof socio-cultural repository that centres around honour. Still, women see the values associated with it also as central to being a good Muslim. Islam thus does not constitute a domain that is always separate from the socio-cultural sphere.

Despite the illegality of out-of-court divorce, women of all socio-economic background overwhelmingly prefer to refrain from engaging the court in their marital disputes and divorce, at least initially. To turn to the court cannot easily be aligned with Wolof conjugal ethics and the overlapping normative repertoire of social harmony. The women who go there walk a thin line. Still, many regard it as a last resort that in some cases may be unavoidable, and sometimes even appropriate.

In sum, this dissertation reveals the different avenues women pursue, the norms they draw on, their moralities and their attendant expectations. This way, it adds to a body of work on Islamic law and its interaction with state law and other normative spheres. The second main argument I make in this dissertation is that women of all socio-economic backgrounds draw on multiple and intersecting sets of norms to reconfigure their marriages and dissolve their unions. I show that – contrary to what has been suggested – Senegalese middle class and educated women do not necessarily gravitate toward modern institutions like the court, while poorer and less educated women supposedly tend to the more informal and so-called 'traditional' avenues of family and Islamic authorities. Women of all backgrounds prefer to make their claims in the spheres of the family and neighbourhood, only resorting to the state when they see no other option.

From this analysis emerges the third and final major argument I make in this dissertation. While the political contention over family law contributes to shaping the norms, moralities, and expectations that frame Tivaouane women's marital disputes and divorce processes, these do not determine them. Out of the spotlights of the polarised debate pitting Islamic authorities against the state, a social practice prevails that is fluid. Women draw on multiple normative repertoires. There are important points of convergence and sometimes of conflict between these repertoires, but these are in turn open to debate. This is reflected in the interrelations between local authorities in Tivaouane. Authorities recognize each other's roles and legitimacy, even if they stress their own values and references. Their arrangement is one of 'pragmatic pluralism' of negotiated co-existence and, sometimes, cooperation.

These three main arguments together provide a novel understanding of the workings of family law and related institutions in Senegal. They also offer insights that contribute to the broader study of law, Islam, and gender. This dissertation opens to important questions about the role of kin in marital dispute and about the relation between national family law debates and local realities; these questions have relevance for Senegal and for contexts beyond Senegal.

Chapter Overview

Chapter 1 provides an introduction to the topic and sets out the thematic and theoretical orientations of the dissertation. Chapter 2 describes the major features of state and Islam in Senegal, their histories, and their interrelations. Today, the Sufi orders that gained prominence at the end of the 19th century continue to be crucial to the structure and practice of Islam in Senegal. Still, political democratization and pluralization of the Islamic sphere have altered the relationships between state, Islamic authorities, and the Senegalese population.

Chapter 3 builds on this history to detail the development of family law in Senegal. It describes how the French colonial administration imposed a new legal system and explores how this affected custom, Islamic law, and their interrelation. In addition, the chapter reveals how political contestation over Islamic family law dates back to well before independence. Later, when Senegal turned into a sovereign nation (1960), the creation of a Family Code became an important priority. The government saw the uniform regulation of family relationships as crucial for modernization and nation-building. However, the resultant code quickly came under attack from Islamic leaders. This contention has been persistent as relations between Islamic authorities, the state, and the Senegalese population have evolved.

Chapter 4 examines women-initiated, out-of-court divorce. These divorces tend to primarily play out in the domestic sphere between the wife, the husband, and their family members. Imams, religious scholars, and *chefs de quartiers* may at times be solicited as the next step. Divorce practices in the family are fluid, and while Islamic norms are important points of reference in divorce, these coexist with other, overlapping, sets of norms, notably of Wolof ethics, social harmony, and law.

Chapter 5 explores Tivaouane women's perceptions and use of the court. As said, women have a strong preference for the domestic sphere and try to avoid going to court. Nevertheless, some women do go there, and the marital disputes and divorces that end up in court are largely brought by women. Their claims tend to be successful. An analysis of women's use of the court reveals two common pathways: 'the court as last resort' and 'the court as documentation'. Together, these pathways show how women *draw* the state into their dispute and divorce processes. For these women, out-of-court and court-divorce are not separate and parallel, rather, they are closely linked. Judges accommodate this use, even if they do not adapt the underlying – extra-legal – norms.

Chapter 6 focusses on women's use of the House of Justice, another state-based justice institution. Since the House of Justice expressly aims to extend the reach of, and access to, state justice for women in matters of the family, this chapter tries to understand how Tivaouane women draw on this institution. A number of women initially solicit the House of Justice with their cases of marital dispute, domestic violence, and divorce. However, the non-cooperation from husbands and kin regularly prevents them from returning for mediation. Instead, these women end up using the House of Justice to exert pressure. Evidence of having gone to the House of Justice can help women to either change the terms of their marriage or get a divorce in the domestic sphere.

Chapter 7, the final ethnographic chapter, investigates the interrelations between the different authorities of the *chef de quartier*, the imam, and the judge. In terms of regulatory space, it pays particular interest to the neighbourhood. The chapter shows that the *chef de quartier*, imam, and judge acknowledge each other's roles in the management of marital disputes and divorce. At times, they also refer cases to one another or collaborate, even if they work from competing claims to authority.

Finally, the concluding chapter 8 reflects on the centrality of the domestic sphere in marital disputes and divorces, and on the importance – for the study of marital dispute and divorce – of examining not only legislation and courts but also what happens beyond formal or informal institutions. Institutions are often crucial for women. Yet a focus on them alone fails to shed light on how political, religious, and moral forces shape the meaning

and use of them for women. This study shows that families in Senegal play an important role in the settlement of marital disputes and divorces. This role should not be dismissed as always restrictive and deserves our serious consideration.

Samenvatting (Dutch summary)

'Mijn Scheiding Alsjeblieft'
Een Etnografie over Moslimvrouwen en de Wet in Senegal

Dit proefschrift onderzoekt vragen op het snijvlak van recht, islam, en gender in Senegal. Op basis van twaalf maanden veldwerk in Tivaouane, volgt het proefschrift verschillende vrouwen in hun pogingen te scheiden of het gedrag van hun echtgenoot te veranderen. Familierecht is een omstreden onderwerp in Senegal. De uniforme familiewet (1972) kent vrouwen uitgebreide rechten toe om te scheiden en beschermt hen tegen eenzijdige verstoting. Al snel na invoering, echter, werd kritiek geuit en kwam de wet te boek te staan als 'vrouwenwet'. Islamitische autoriteiten stelden dat de wet in strijd was met islam en gaven aan hun volgelingen tegen de wet in bescherming te zullen nemen. De wet is onderwerp van een terugkerende politieke strijd. Misschien nog wel belangrijker, in moskeeën, op de radio, en op TV dragen islamitische autoriteiten normen uit die sterk van de wet verschillen. Vrouwen- en mensenrechtenorganisaties willen juist dat de familiewet verder in overeenstemming wordt gebracht met het internationale Vrouwenverdrag (1979). Er wordt veel *over* Senegalese vrouwen gesproken, maar niet altijd *met* hen.

Wat betekent deze politieke strijd voor vrouwen zelf, en specifiek voor hun huwelijken, hun recht om te scheiden, en hun rechten vis-à-vis ex-echtgenoten? Om te onderzoeken hoe vrouwen een weg vinden in dit speelveld en hoe zij omgaan met verschillende autoriteiten, stelt dit proefschrift de volgende vraag centraal: hoe begrijpen, gebruiken, en interacteren vrouwen met familie, islam, en staat in echtelijke geschillen en echtscheidingen? Het proefschrift begint met een onderzoek naar de geschiedenis van het Senegalees familierecht en het politieke debat hieromheen. Vervolgens richt het zich op de echtelijke geschillen en echtscheidingen van vrouwen in Tivaouane, een secundaire stad waar zowel de staat als de islam sterk geworteld zijn. Het proefschrift focust zich hier op de verschillende ruimten van regulering waar vrouwen proberen hun echtelijke geschillen op te lossen of te scheiden.

Hoewel het nationale debat over de familiewet in Senegal een sterke tegenstelling laat zien tussen religieuze leiders en de staat, blijkt uit dit etnografische proefschrift dat de huwelijksproblemen van vrouwen in de praktijk voornamelijk binnen de familie worden afgehandeld. Familieleden, en dan vooral mannen die bij de huwelijksvoltrekking aanwezig waren, spelen een centrale rol bij pogingen om echtelijke geschillen op te lossen. Zij zijn daarnaast vaak ook sleutelfiguren in het echtscheidingsproces. Het

eerste centrale argument van dit proefschrift komt voort uit deze analyse. Zonder de steun van familie is het voor vrouwen vaak moeilijk het gedrag van een echtgenoot te veranderen of van hem te scheiden. Om de steun en medewerking van familieleden te verkrijgen, verrichten vrouwen – veelal emotionele – arbeid. De *agency* van vrouwen staat daarom niet volledig los van hun familie, en moet in samenhang worden begrepen.

Verschillende sets normen worden in echtelijke geschilprocessen door vrouwen gebruikt om hun eisen en hun gedrag te rechtvaardigen. In dit proefschrift worden vier sets van normen onderscheiden: het recht, Wolof echtelijke ethiek, sociale harmonie, en *diine* – wat mensen begrijpen als de islamitische wederzijdse rechten en plichten in het huwelijk en bij echtscheiding. Vrouwen die willen scheiden beroepen zich over het algemeen op het recht om financieel onderhouden te worden, en mobiliseren daarmee het normatieve repertoire van *diine*. Centraal in hun verklaringen en handelingen staat echter het repertoire van de Wolof echtelijke ethiek. Om hun wens om te scheiden te rechtvaardigen, benadrukken vrouwen hun morele waarde. Ze onderstrepen hun huwelijkse doorzettingsvermogen en hun discretie, in het bijzonder ten opzichte van familie. Dit normatieve repertoire – in tegenstelling tot het onbetwistbaar islamitische, op rechten gebaseerde *diine* – is geworteld in het sociaal-cultureel archief van de Wolof waarin eer centraal staat. Tegelijkertijd beschouwen vrouwen de hiermee samenhangende waarden als van fundamenteel belang voor het zijn van een goede moslima. De islam vormt dus geen domein dat altijd apart staat van de sociaal-culturele sfeer.

Vrouwen van verschillende komaf verkiezen met echtelijke geschillen en echtscheidingen in eerste instantie geen gang naar de rechter; het buitenwettelijke karakter van informele scheidingen doet hier niet aan af. Een beroep op de rechtbank is maar moeilijk te verenigen met de Wolof echtelijke ethiek en het overlappende repertoire van sociale harmonie. Vrouwen die zich tot de rechtbank wenden begeven zich op glad ijs en riskeren zich te vervreemden van familie. Toch zien velen de gang naar de rechtbank als belangrijk laatste redmiddel. Als een echtgenoot ook na druk van familieleden blijft weigeren in te stemmen met een scheiding kan een beroep op de staat onvermijdelijk zijn.

Kortom, dit proefschrift beschrijft de verschillende wegen die vrouwen bewandelen, en brengt in kaart hoe zij zich rechtvaardigen, wat hun morele kaders zijn, en welke verwachtingen hieruit voortvloeien. Daarmee draagt dit proefschrift bij aan academisch onderzoek naar de verhouding en wisselwerking tussen islamitisch recht, staatsrecht, en andere normen. Het tweede centrale argument van dit proefschrift vloeit hieruit voort: vrouwen van verschillende komaf beroepen zich op verschillende en overlappende sets normen in huwelijksgeschillen en scheidingen. Vaak wordt gesuggereerd dat Senegalese vrouwen uit de middenklasse of met een hoog

opleidingsniveau kiezen voor moderne instellingen zoals de rechtbank, terwijl armere en lager opgeleide vrouwen zich wenden tot informele en zogenaamd 'traditionele' opties als de familie en islamitische autoriteiten. Ik toon aan dat dit niet klopt. Vrouwen van alle achtergronden zoeken eerst een oplossing binnen de familie of de buurt, en doen meestal pas in laatste instantie een beroep op de staat.

Uit deze analyse volgt het derde en laatste belangrijke argument van dit proefschrift. Hoewel de politieke strijd over familierecht bijdraagt aan de morele en normatieve kaders van de huwelijksgeschillen en echtscheidingsprocessen van vrouwen in Tivaouane, blijft de invloed hiervan beperkt. Uit het zicht van de schijnwerpers van een gepolariseerd debat tussen islamitische autoriteiten en de staat, leeft een sociale praktijk die fluïde is. Vrouwen mobiliseren meerdere normatieve repertoires. Deze repertoires spreken elkaar deels tegen maar overlappen ook op punten. Hun precieze verhouding is ook niet in beton gegoten maar wordt telkens onderhandeld. Dit wordt weerspiegeld in de onderlinge relaties tussen lokale autoriteiten in Tivaouane. Deze autoriteiten erkennen elkaars rol en legitimiteit. Tegelijkertijd benadrukken ze elk hun eigen waarden en referentiekaders. Hun verhouding wordt gekarakteriseerd door een pragmatisch pluralisme. Ze bestaan naast – en tolereren elkaar, en werken in sommige gevallen samen.

Tezamen bieden deze drie centrale argumenten nieuw inzicht in de werking van familierecht en verwante instituties in Senegal. Bovendien dragen ze bij aan de studie van recht, islam, en gender in andere landen en regio's. Het proefschrift werpt belangrijke vragen op over de rol van familie in huwelijksgeschillen en de relatie tussen nationale debatten over familierecht en lokale realiteiten; deze vragen zijn relevant voor Senegal, maar ook voor daarbuiten.

Hoofdstuk Overzicht

Hoofdstuk 1 geeft een inleiding van de centrale thema's en theorieën van het proefschrift. Hoofdstuk 2 beschrijft de belangrijkste kenmerken van staat en islam in Senegal, hun geschiedenis, en hun onderlinge relaties. De soefi-ordes die aan het eind van de 19e eeuw vorm kregen, zijn nog altijd bepalend voor de structuur en praktijk van de islam in Senegal. Tegelijkertijd leidden politieke democratisering en pluralisering van de islamitische sfeer tot nieuwe verhoudingen tussen staat, islamitische autoriteiten, en de Senegalese bevolking.

Hoofdstuk 3 bouwt voort op deze geschiedenis en schetst de ontwikkeling van het familierecht in Senegal. Het hoofdstuk beschrijft hoe het Franse koloniale bestuur een nieuw rechtssysteem creëerde in Senegal en wat dit betekende voor het gewoonterecht, het islamitische recht, en hun onderlinge relaties. Het hoofdstuk laat tevens zien dat de politieke strijd om het

islamitische familierecht teruggaat tot ver voor Senegalese onafhankelijkheid. Toen Senegal in 1960 onafhankelijk werd, vormde de vaststelling van een uniform familiewet een belangrijke prioriteit. De Senegalese regering zag het reguleren van familierelaties als een belangrijk instrument voor modernisering en natievorming. De uiteindelijke familiewet kwam echter al snel onder vuur te liggen van islamitische leiders. Dit conflict duurt voort, al betekenen de veranderende betrekkingen tussen de islamitische autoriteiten, de staat, en de Senegalese bevolking ook dat het debat nieuwe vormen aanneemt.

Hoofdstuk 4 gaat in op door vrouwen geïnitieerde buitengerechtelijke en buitenwettelijke echtscheidingen. Deze echtscheidingen spelen zich voornamelijk af in de familiesfeer. In tweede instantie beroepen vrouwen en hun familieleden zich soms op imams, islamitische geleerden en *chefs de quartier*. Echtscheidingspraktijken volgen geen vastomlijnd proces, en hoewel islamitische normen belangrijke referentiepunten zijn bij een echtscheiding, bestaan deze naast andere, deels overlappende normenstelsels, zoals de Wolof ethiek, sociale harmonie, en het recht.

Hoofdstuk 5 onderzoekt hoe vrouwen in Tivaouane de rechtbank zien en gebruiken. Vrouwen proberen doorgaans de gang naar de rechtbank te mijden; toch doen sommigen uiteindelijk een beroep op de rechtbank. De echtelijke geschillen en echtscheidingen die voor de rechtbank komen worden grotendeels door vrouwen aanhangig gemaakt. Zij zijn in het algemeen succesvol in hun claims. Een analyse van de manier waarop vrouwen de rechtbank gebruiken, toont twee gebruikelijke routes: 'de rechtbank als laatste redmiddel' en 'de rechtbank als documentatie'. Buitengerechtelijke en gerechtelijke scheidingen zijn voor veel vrouwen geen afzonderlijke processen, maar nauw met elkaar verbonden. Vrouwen in Tivaouane *betrekken* de staat in hun geschillen en scheidingsprocessen. Rechters komen hieraan tegemoet, al nemen ze de aan dit gebruik onderliggende buitenwettelijke normen niet over.

Hoofdstuk 6 concentreert zich op het gebruik dat vrouwen maken van het Huis van Justitie, een andere staatsinstelling. Het Huis van Justitie heeft tot doel de reikwijdte van en de toegang tot het staatsrecht voor vrouwen met huwelijks- en familieproblemen te vergroten, onder andere door middel van *mediation*. Dit hoofdstuk onderzoekt hoe vrouwen in Tivaouane deze instelling gebruiken. Vrouwen wenden zich wel tot het Huis van Justitie met hun echtelijke geschillen, huiselijk geweld, en echtscheidingen. Maar het gebrek aan medewerking van echtgenoten en familieleden weerhoudt hen er regelmatig van terug te keren voor *mediation*. Uiteindelijk gebruiken vrouwen het Huis van Justitie veelal om druk uit te oefenen in de familiesfeer – vaak met succes.

Hoofdstuk 7, het laatste etnografische hoofdstuk, onderzoekt de onderlinge relaties tussen verschillende autoriteiten: de *chef de quartier*, de imam, en de rechter. Daarbij besteedt het bijzondere aandacht aan de wijk als ruimte van regulering. De autoriteit van de *chef de quartier*, de imam, en de rechter is gestoeld op botsende aanspraken op gezag. Toch erkennen zij elkaars rol in het reguleren en oplossen van echtelijke geschillen en problemen rond echtscheidingen. Regelmatig verwijzen zij naar elkaar en werken zij samen.

Het concluderende hoofdstuk 8 reflecteert op de centrale rol van familie in echtelijke geschillen en echtscheidingen. Daarnaast onderstreept het dat onderzoek naar echtelijke geschillen en echtscheidingen idealiter zowel aandacht besteedt aan wetgeving en rechtbanken, als aan de wereld daarbuiten. Instellingen zijn van cruciaal belang voor vrouwen. Maar een focus op instellingen alleen biedt weinig inzicht in de wijze waarop vrouwen politiek, religie, en moraliteit gebruiken en waarderen. Dit onderzoek toont dat families in Senegal een belangrijke rol spelen in de beslechting van huwelijksgeschillen en echtscheidingen. Deze rol moet niet op voorhand afgewezen worden en verdient onze serieuze belangstelling.

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In Senegal, questions of gender, notably the regulation of marital relations, are hotly debated, and pit Islamic authorities against the government. While the Family Code of 1972 promotes women's rights to get a divorce in court, local social realities are different. This study explores the public debate about family law and provides an ethnography of family law practice. It shows how women navigate the contested spaces of family law as they try to change the terms their marriages or obtain divorce. The role of family is key. Women must work their kin to mobilize support. They may also interact with local authorities – the imam, the *chef de quartier*, the House of Justice, and the judge. This study shows that women draw on multiple and overlapping sets of norms and tend to invoke the state only as last resort. Behind the polarized debate hides a practice that is fluid. This is reflected in the relations between local authorities, who recognize and respect each other's roles, even if they work from competing claims to authority.

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