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

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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 *daay-iras* (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; Séné 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, Vetter, 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 agentic 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.