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

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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.