Secular States, Muslim Law and Islamic Religious Culture: Gender Implications of Legal Struggles in Hybrid Legal Systems in Contemporary West Africa

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Legal systems in Africa are often multi-layered. Customary law in West Africa has absorbed, in a rather uneven and unpredictable fashion, elements of the Islamic juridical tradition as it touches on family, marriage, and inheritance. «Tradition» often blurs into religious law, a reality that is rarely acknowledged in avowedly secular societies. On the other hand, traditionalist interpretations of Islam, family life, gender relations, and property are regularly under attack by Muslims seeking to purify and reform the practice of Islam. Reformists regard traditional practices of Islam, whether «folk» Islam or Sufism, as heterodox deviations from the true path of Islam. Debates about what is and is not orthodox, who is and is not heretical, have been at the heart of the history of Islamic West Africa. Thus while all Muslims argue that their own practices are Islamic, they don't all agree about what constitutes proper Islamic practice.

The insistence upon a monolithic textual interpretation of Islam by some Muslims and scholars of Islam contributes to the perception that there is «real» (established, scholarly, and orthodox) Islam and some other ambiguously Islamic phenomenon referred to as «folk» Islam. As Louis Brenner observes, scholars and activists need an approach that frankly recognizes the heterogeneity and pluralism of both Islamic and indigenous practices. Debates about what constitutes normative Islam are at the heart of the history of religion in much of Africa, and therefore Brenner proposes that «the study of religious
history... be an analysis of conflictual, cooperative and complementary interactions among religious experts, among individuals and social groups acting in the religious field, as well as among religious concepts and practices» (Brenner 2000, 164). It is the sense of multiple players, of unresolved and ultimately unresolvable interactions across a broad temporal and spatial field, and of ongoing debate and conflict at the level of practice as well as text that makes this approach particularly fruitful (see also Launay 1992, Rosander and Westerlund 1997, Bivens 2007).

The hybridity and fluidity of the legal terrain in the West African region has historically offered both individuals and groups latitude for opportunistic legal maneuvering. In this paper I will explore tensions over authenticity in Islam and in «tradition» in West Africa today, with particular emphasis on the laws as it is practiced in Nigeria, Niger, and Senegal. Each of these countries has taken a different path with regard to the position of Islamic juridical tradition within the broader legal framework of the nation. In Niger traditional practice (coutume) in varying degrees of conformity with Maliki law governs family life. This reality is somewhat occluded by the regular insistence that Niger is an État laïc, a secular state. It has never really been possible in Niger to choose French civil law over local coutume, as has historically been the case in Senegal with its more visible population of assimilés, métis, and Catholics. Similarly in Nigeria the provision of a civil marriage option appealed to elite populations in southern Nigeria. In both Senegal and Nigeria the presence of significant and influential populations of non-Muslims has affected the political dynamics but in very different ways.

The appeal of civil law options for Christian populations and for those «assimilated» to Western culture does raise the question of whether secular law does not have embedded in it elements that are implicitly Christian in orientation. If Islam and tradition are somewhat blurred, detractors of civil law sometimes argue that secular law and Christian precepts are also blurred. In Niger, women’s groups regularly raise the prospect of a Family Code in an effort to create more options and protections for Nigerian women, and the project is just as regularly abandoned. Politicians quickly see that passing such a code would be politically impractical when under assault by religious leaders who see such reforms as un-Islamic Western intrusions in a country that is overwhelmingly Muslim with only a very modest minority of fairly marginalized Christians. Unlike Senegal, where despite the significance of Islam and of the Islamic brotherhoods, major political figures have been Catholic, Niger has long been implicitly or explicitly Islamic in its political culture.

Senegal adopted a Family Code in the early 1970s that to all appearances provided women protection from some of the elements of local marriage practices that are most often critiqued: the Family Code prohibits forced marriage and sets a minimum age for marriage; it offers the husband the option to agree to adhere to a monogamous marital framework; and in principle it suppresses the right of men to the unilateral rupture of marriage through repudiation. By contrast Nigeria, driven as always by the competitive identity politics its federal system seems to feed, has gone in the opposite direction-numerous states within northern Nigeria have chosen to expand the longstanding practice of Islamic law beyond the domain of personal family law and into the domain of criminal law with troubling implications for single women in particular. Obviously this move has attracted a great deal of international attention. Before discussing the implications of these cases in detail I will explore the problem of Hausa «custom» in Niger to shed light on the sizeable gap between rhetoric and practice in all three settings. An exploration of these cases will underscore the
dual problems facing West Africans in the realm of legal reform: first, the dangers entailed
in the lack of state capacity to enforce a coherent and consistent legal field and second, the
atmosphere of vigilantism that results when states enact laws they cannot fairly or properly
enforce.

An Overview of Legal Structures Governing Niger

6 On the surface Niger is a secular state and its 1999 constitution reiterates fundamental
liberal principles such as the protection of Human Rights (Articles 10 through 14), the
separation of state and religion (Article 4), freedom of expression (Article 23), freedom of
religion (Article 7, Article 14, Article 23) and universal suffrage for citizens over 18
(Article 7). Nigerian intellectuals are very proud of the fact that they live in a secular
state, and President Tandja has repeatedly emphasized his commitment to refuse efforts
to promote Islamic law in Niger (Ohia 2000). On the face of it there should not be much to
say about Islamic law in Niger.

7 In reality Niger has a more complex relationship to Islam signaled in its long membership
in the Organisation de la Conférence Islamique (OCI), a membership that resulted in the
emergence of the OCI funded Islamic University at Say. Niger has, since the 1970s,
sustained an international profile as a secular state that is committed to political alliance
with a very diverse array of Islamic states. The long association of Niger with the OCI
reinforces the sense that Nigériens and the state of Niger have a special relationship with
Islam, a sense that authorizes the emerging Islamist movement of Niger. An impressive
number of African states with membership in the conference have constitutions that, like
Niger’s, separate religion and state (Burkina Faso, Cameroun, Gambia, Guinee, Guinee
Bissau, Mali, Senegal, Chad). Niger’s profile as an unofficially Muslim state rests on two
realities: the sizable majority of Nigerians are Muslim (no less than 80% of the
population), and family life within Niger is de facto regulated by and large by Islamic
religious culture.

8 The secular Islamic state is of necessity contradictory. On the surface, as Abdelfattah
Amor indicates, states such as Niger have freed themselves of any outward reliance upon
Sharî’a (1999, 32). Certainly in the realm of criminal law one sees no hint of Islamic
practice. Nevertheless Islamic law enters into the judicial field in Niger in a variety of
ways as a result of the legacy of the French colonial legal structure: «To enforce law in
French West Africa, the French established a dual court system consisting of courts that
applied French law and courts that applied only customary law. The French not only
recognized the influence of Islamic law on customary law, but they also accepted the
integration of Islamic law into customary law and practice, and specified that the courts
were to apply customary law as it modified Islamic law» (Abd-el Kader Boye et al 1991,
344).

9 While the formal recognition of customary courts under customary political and religious
authorities in Niger was abolished early in the independence period, those courts were
simply replaced by formally trained judges at the tribunaux régionaux who would then
choose whether «modern» law or customary law should apply depending upon the matter
at hand (Abdourhamane, 3-4). In practice much of civil life continues to be adjudicated
according to customary law. Thus, even at the most formal level, the trained judges of
Niger draw upon local «custom» in regulating land, family, and marriage disputes:
«Customary courts, located only in large towns and cities, try cases involving divorce or
inheritance. They are headed by a legal practitioner with basic legal training who is advised by an assessor knowledgeable in the society’s traditions» (U.S. Dept. of State, 2001: 5). As is frequently the case, this description by the U.S. Commission on Human Rights occludes the significance of Muslim personal law in actual practice. For example, «Hausa custom» in the region of Maradi has come, with a few admittedly significant modifications, to mean Maliki juridical tradition.

At a less formal level, secular states in Africa have historically transferred the high cost of handling judicial matters to an array of «mediators» from within the customary elite at a variety of levels and scales, which is how the dual legal system emerged in the first place (Berry 1993). The role of such traditional figures is not explicitly mentioned in the present constitution and is no longer formally recognized. In principle customary authorities and local level administrators such as the sous-prefet don’t have either police or formal judicial powers – they are to mediate rather than adjudicate. However in practice they form a formidable element of the apparatus through which disputes are handled in Niger. As Thomas Kelley has recently pointed out, any attempt to revise the practice of law in Niger must come to terms with the reality that relatively little dispute mediation in Niger is actually «captured» by the Western inspired formal court system (Kelley 2007, Cooper 1997).

What this means is that particularly in the domains of land tenure, inheritance, divorce, child custody – the realm of family and personal law – Nigerian life is regulated by «custom» understood overwhelmingly as Islamic, despite the erasure of Islamic law within the constitution or formal legislation of Niger. Whereas formal Judges may apply Islamic legal principals in the domain of family life more or less disinterestedly, since they are often from another region and may not themselves have a stake in the matter, traditional authorities prevail in the context of land and other property disputes, where Islamic law has a much less consistent role and where the interests of the authorities adjudicating the litigation may come to play in the decisions they make. Furthermore, as Kelley notes, in the mediation of property disputes, which is handled overwhelmingly through informal adjudication mechanisms, there may be considerable use of oathing, oracles and ordeals that have relatively little to do with either Western or Islamic juridical practice. The distaste for the use of such supernatural tests to resolve disputes is shared by Islamic and secular reformists alike; nevertheless popular perception tends to regard such tests as essentially Islamic.

What constitutes authentic Islamic practice is subject to intense debate, as in a recent national discussion over whether all witnesses in court cases should be required to make an oath on the Qur’an. Traditionalists felt this would improve the quality of the law because perjurers would fear divine retribution for false oathing, but Islamic purists argued that this practice verges on an idolatry that reveres the Qur’an over Allah (for the historical precedent for this fear see Palmer 1967). It is in the context of such debates that the idea of a «traditional» Islam distinguishable from «orthodox» or reformist Islam comes to be articulated. As Louis Brenner notes in exploring the history of Islamic schooling in Mali, attempts by reformists to purify the practice of Islam have the effect of creating discursively a «traditional» against which orthodoxy is then defined. Colonial governments, post-colonial states, entrenched local religious figures, all in such moments generate the a counter-notion of «the fanatic» – alternately tagged as Wahhabi, fundamentalist, Islamist – as they struggle to retain control of religious discourse in the service of preserving the stability of «traditional» institutions perceived to be necessary.
to the operation of the state. Generally lost in such moments of debate about Islamic orthodoxy are the real needs of actually existing Muslim women, who hope to find a way to reconcile their real commitment to an Islamic way of life with the realities of a world in which men fail to live up to the Islamic ideal to support them and their children, in which wives manage farms they do not own, and in which girls are married off too young to the wrong men for the wrong reasons.

**Implications of Niger’s hybrid legal field for women**

What are some of the consequences of the uneasy conflation of «custom» with Islam in debates about legal practice in Niger? Islamic religious culture in Niger does not treat women as full adults on a par with men. A woman is always, in principle, under the authority of either her father or her husband. While the marriage age of 14 for girls and 16 for boys in Niger is regulated by the colonial era Mandel Decree, in practice that decree is completely ignored in areas outside the capital (Boye et al 1991, 343-49, 346). Since the Mandel Decree – always honored more on the breach than the observance – has not been replaced with any subsequent legislation with the more convincing authority of a post-colonial regime, there is in practice no precise age of consent in Niger either for marriage or for sexual activity. Statutory rape, then, does not exist in Niger (U.S. Dept. of State 2001, 12). Women are treated as jural minors throughout their lives, and are married off in their first marriages at will by senior members (both male and female) of their families. This occurs despite some indication within Maliki textual tradition that the age of majority of both women and men is roughly seventeen. Generally women are understood to be ready for marriage, however, with their first menses, which obviously may occur much earlier (Bakhtiar 1996, 403). Maliki juridical tradition requires the consent of the bride, but a young woman’s guardian has the right to enter into a marriage contract on her behalf. Although her consent is required, no witnesses to that consent are necessary and she does not have to be present in person to declare her consent at the moment of the contract. There is obviously a great deal of room for abuse in such instances, particularly as a girl’s silence on the subject of whether she approves to a proposed marriage is taken to be a sign of consent. Given the right fathers have to beat their children, one can readily see why many a girl-bride might keep silent. Once married her husband also has the right to discipline her physically. She does not have the right to refuse to engage in conjugal sex once the marriage payment has been paid. These circumstances are somewhat mitigated as women age and bear children—they often have a great deal more control over the circumstances of conjugal life in subsequent marriages (Cooper 1997).

Young women’s first sexual activity in Niger almost invariably coincides with marriage—the median age for both first marriage and first sexual activity is 15.5 (INS and Macro International 2007, 100). Given the near absence of contraceptive use in Niger, young women in Niger are engaging in unprotected sex extremely young. As a result young brides begin their childbearing while still physically immature, contributing to Niger’s appallingly high maternal mortality rate, 648 to 700 deaths per 100,000 births (INS and Macro International 2007, 219). Muslims in Niger anxious to prevent the sin of zinâ (fornication) that pre-marital pregnancy implies push for early marriage for girls. Those few who seek to reform local practices argue that the Qur’an does not encourage marriage prior to puberty and that therefore Islam requires parents to engage actively in
decisions about when marriage can appropriately be consummated (Issa 2004). Some also insist that husbands must be educated in the health consequences of early pregnancy, a position that would seem to open the way for a discussion of a minimum marriage age, a concept of statutory rape, the broader use of contraception, and potentially even for making a case for abortion to protect the health of very young women. Such reform-minded Muslims are often precisely the same activists who are labeled by the Western press as «fundamentalists» when they are assailing the accommodation of traditional leaders and the state. However, reformists can be less sympathetic to women’s issues when framed by feminists as a critique of Islamic paternalism. Such paternalism authorizes the undercutting of elements of the Islamic juridical tradition that would empower women.

15 Women’s jural minority in Niger has broad implications, not the least of which is a tendency among Muslim men, whether traditionalists or reformists, to dismiss women’s interpretations of Islam (Tchaouss and Lecompte 2002). In emphasizing some elements of the Maliki legal tradition (such as female jural minority) Niger’s Islamic religious culture tends to neglect others (notably female inheritance, child custody, and property rights). For example in women’s first marriages they almost never have any claim upon the marriage payment or mahr – it is given directly to her father or a male representative in her patriline and she generally never sees it again. In some other Islamic regions the mahr is understood to belong to the bride (Bakhtiar, 438-9). The only reason a guardian would retain it permanently would be if the woman in question was incapacitated in some way. The overwhelming majority of Muslims in the Hausa speaking region see paternal control over the marriage payment as Islamic and would reject the notion that the bride’s representatives are to turn it over to her. Implicitly, then, Hausa practice in Niger consistently treats the young bride as incapacitated.

16 Women are also disadvantaged as a result of the assumption that husbands provide for wives and that therefore women are never heads of household. Legally in Niger divorced and widowed women do not benefit from the same rights as male heads of households (U.S. Dept. of State 2001, 11; Mindadou 1996). Women’s and men’s rights to marriage and divorce are not symmetrical, since men can take four wives and repudiate their wives at will, while women can marry only one husband at a time and cannot remarry unless they obtain a divorce recognized by customary or state authorities. If a woman wants to initiate the rupture of her marriage through a divorce of this kind she has to return the marriage payment to her husband. Given that the mahr is not in her possession, but has been given to, and quite probably spent by, her father or paternal representative, young women sometimes face serious impediments to divorce.

17 Local interpretations of Islam are also selective about whether to institute Maliki juridical tradition in the context of physical custody of children. Divorced and widowed women have weak claims to custody of their children in Niger despite the unambiguous insistence in all the Islamic legal traditions that mothers and women in the matriline should have priority in physical custody of children when divorced or widowed (Women’s Aid Collective 2003, 1-5). It is generally regarded as «Islamic» to allow a woman to retain custody of boy children until they are weaned, and girl children until they are married. Nevertheless husbands and paternal kin – the legal guardians of such children – regularly «give» the children to women in their own patrilines who have not been successful in producing children. Girl children are particularly valued for their capacity to perform domestic labor and trade for women in seclusion; boy children are desired for their future
earning capacity, which will serve as social security for the women who raise them in old age. Such practices are regarded locally as part of the Islamic texture of family life, and to call them into question would be taken as an assault by «bra burning feminists» upon Muslim men’s rights as legal guardians.

In terms of the inheritance of moveable property, women, where eligible, receive half the share of an equivalently positioned male family member in Niger, as stipulated in Islamic law. This is in some ways quite progressive in the sense that custom among non-Muslims at the turn of the century would not have provided for the inclusion of women in the division of wealth of her father or husband. Yet even here, Maliki texts, if strictly observed would be far more favorable to women than other competing understandings of «custom» regarding property insofar as it touches on immovable property—land. Often in Niger the application of Maliki inheritance law is tempered by «customs» that depict women as unreliable and irresponsible, and therefore unsuited to responsibility for family property. Hence in the domain of land disputes, women, who generally have very little schooling in Islam and a poor grasp of Maliki law, generally fail to prevail because other «customary» practices are commonplace within local Islamic religious culture. Women rarely inherit land in Niger at the time of the division of inheritance. They tend, when they do receive land from their fathers, to receive it as a «gift» prior to his death, in a kind of pre-mortem inheritance from fathers who are particularly solicitous of the well-being of their daughters.

In other words Islamic religious culture varies in part depending upon which features of any Islamic textual tradition are emphasized – if women’s jural minority is prime then other precepts may be neglected. But a reformist or feminist well schooled in the textual resources of Islam might emphasize other elements within a broad Islamic repertoire, whether textual, embodied, or practiced. Maliki texts, for example, offer variant understandings of women’s protections and rights, and alternative practice in respected Islamic centers can be invoked to justify alternative practices. However because girls are married off at a much younger age than men, schooling for girls is not a priority for families and illiteracy rates are much higher for women and girls than for men and boys. Niger’s women are at a significant disadvantage in debates about how to interpret Islam and about what constitutes appropriate Islamic practice.

The nominal adherence to Maliki practice in the realm of personal law, then, has had the effect of regularly re-inscribing attitudes towards women that authorize a variety of purportedly «Islamic» practices and restrictions in domains well beyond family law, many of which would not be condoned within strict Maliki understandings of women’s position in Islam and are arguably inconsistent with the spirit of the Qur’an. Women’s diminished legal status has particularly pernicious effects on women’s political rights until quite recently it was common in Niger for husbands to vote their secluded wives’ ballots by proxy in major elections. Women’s suffrage, under such circumstances, is ambiguous at best. The pervasive lack of confidence in women’s ability to make major life decisions for themselves is implicit as well in Niger’s abortion laws, among the most restrictive in the world (Rahman et al, 1998, 58).²

As I hope this overview of contemporary Islamic religious culture in Niger shows, the relationship between custom and Islamic law in Africa can be quite complex. Islamic texts alone do not capture the realities of Islamic practice on the ground, because those texts are variously interpreted and unevenly applied. Faced with the realities of legal practice in Niger one can envision two rather different approaches to remedying the undeniably
difficult conditions of life for women in Niger. The first would simply be to enforce a more thoroughgoing application of the Maliki juridical tradition. The second would be to generate a set of legal rules for governing family life that would be clearly distinct from «tradition» – a secular Family Code – in effect turning over a new leaf entirely. While it might at first blush appear to be a relatively simple matter to strengthen the application of Maliki law, in reality it can be quite difficult to voice critiques of existing practice because the moral authority of local Islamic religious practice renders activists, whether feminists or Islamists, vulnerable to the charge of being anti-Islamic, insubordinate, and lacking in respect for «authentic» African practice. Furthermore in emphasizing a highly textual understanding of Islam one could run the risk of undercutting other modes of spiritual authority available to women in local religious practice grounded in oral virtuosity, pilgrimage traditions, spirit mediation, Sufi mysticism and the like (e.g. Sow 2003, 70-71; Cooper 1999). If Islamic reformists have often forwarded legal reforms with potential to empower women, they have at the same time created an environment that is hostile to local spiritual traditions that are less monolithic and often deeply meaningful to women (Cooper 2007; Miles 2003).

While some African states, notably Tunisia, have succeeded in taking something of a middle path by drawing upon a reinterpreted Islamic law to generate relatively liberal Family Codes, rhetorically and politically this is quite difficult to do and even more difficult to enforce. Any attempt by feminists to reform legal practice in Niger through a Family Code regularly provokes an immediate firestorm of outrage from traditionalist and reformist leaders alike. The popular base upon which such reforms can be built is quite difficult to mobilize. In fact, there is nothing that brings these ordinarily warring camps together faster than the prospect of a code that would, as they perceive it, undermine the default practice of Sharî'a in the realm of family law. Incidentally, Muslim women can be as active in opposing such reforms as men, and are increasingly drawing upon Islamic education and the media to forward alternative positions (Alidou 2005, 149-71; Djibo 2001, 379; Yusuf 1991, Masquelier 2009).

The Problem of State Capacity and Institutional Legitimacy: the Family Code in Senegal

By comparison with Nigeria and Niger, women in Senegal have had more success in foregrounding women’s concerns and effecting legal interventions on their behalf. On the surface at least, the existence of a Family Code enshrining a variety of protections for women is evidence of the relative advance of Senegalese women over their Nigérien and Nigerian sisters. But the Family Code in Senegal has been a source of contention from its earliest formulation in 1972 under the Catholic president Senghor, to more recent efforts to modify it. Senghor’s hope was to bring together the disparate legal traditions of French law, traditional courts, and Muslim law that were the legacy of French colonialism. Under the French, an individual’s affiliation to one or another ethnic group or religious group was used to determine which form of law would apply in any instance. Muslims in St. Louis might claim Muslim personal status and make use of a special Islamic court. Catholics in Dakar might draw upon French civil law. Rural women outside the urban communes would be bound to the «traditional law» of their ethnic community, generally imbued – as we have seen in the case of Hausa Niger – with an allure of being derived
from a higher religious law even when practice might be rather selective in its appropriation and application of Islamic juridical traditions.

24 The function of the Family Code, then, was to generate a more consistent set of features to regulate marriage, divorce and inheritance applicable to all citizens equally. All would, in principal, need to perform a marriage ceremony to be witnessed by the civil service. All brides would need to be at least sixteen and their consent would be required. Muslims would declare whether the marriage would be monogamous. Repudiation would be eliminated and divorce would be a matter for civil courts. Men would be required to pay alimony and child support.

25 However opposition to the Family Code among traditional Muslim leaders once it was adopted has been deep and openly confrontational (Sow 2003). The major religious leaders of each of the major Sufi orders rejected the code outright and were quite public in their pronouncements that they and their followers would not follow the new laws. Invoking the «sacred principles of our religion» they declared huge portions of the country to be outside the bounds of the law and reiterated those declarations regularly in the press (Callaway and Creevey 1994, 177). Opponents of the code recently argued that, unlike the French conception of religion as a private relationship with a supreme being: «For us the Wolof word dine [monotheistic religion] encompasses both relationship with God and with other human beings»; accordingly religion is a matter of importance to public order and family life must be regulated by divine rather than human laws (CIRCOFS, cited in Mbow 2004, 6). The juxtaposition balances the foreignness of French «religion» against the authenticity of Wolof «dine», as if the word «dine» were not itself of foreign (Arabic) origin. The Family Code is in this rhetorical move cast as foreign and French, while local Islamic religious culture is authentically Wolof. By extension, in a kind of linguistic sleight of hand, whatever is culturally Wolof is authentically Islamic.

26 Authority for generating precepts for governing family life, then, lies not with the legislature, but with those who can identify authentically Wolof religious culture. Through this type of conflation of cultural norms with Islam, each ethnicity may uphold as authentic a variety of cultural practices that are not enshrined in Islamic texts. For example genital cutting, performed among Toucouleurs and a number of other ethnic groups, is sanctified as an extension of the Islamic ideal of purity for women (Sow 2003, 73). Ironically some of the resistance to the Family Code may arise from some of the features that are closer to a literal textual application of Maliki law than is comfortable within some Sufi circles, in which ritual marriage to more than four women may occur (among Layennes), and in which matrilineal succession may play an important political role (among Mourrides) (Mbow 2001, 6; Gueye 2001).

27 Obviously the insubordination of religious leaders from the various Sufi brotherhoods is deeply threatening to the authority of the state. While the code has been applied in major urban centers – far easier to regulate and populated with relatively highly educated civil servants – in much of the country it has little or no relevance (Callaway and Creevey 1994, 178; Mbow 2001, 15-17). The reality that the Family Code cannot be enforced is deeply problematic for the state and ultimately damaging to non-elite women. Marriages that are not registered cannot be mediated, dissolved, or otherwise regulated by the state. Followers of the major religious leaders of Senegal have regularly been informed that they are not to follow the law and they accordingly perform their marriages, divorces, and division of inheritance outside of formal legal settings. Women in such marriages, in...
effect, have no legal protections enforceable by the state because the domain of family law is de facto subterranean and extra-legal.

28 In Senegal, as in Niger, a marriage performed by a traditional religious leader can be formally recognized later by the State with appropriate paperwork after the fact. Nevertheless because religious leaders condemn the intrusion of the State into family law, local attitudes prevent women from taking cases to be adjudicated in through the mediation of the State. If a woman in Niger does not like the position taken by the local religious authority she can turn to the judge in the tribunal for assistance in dissolving her marriage. If her claim to inheritance under Maliki law is not honored by men in her community, she can force a recognition of her rights through the more formal legal system. By contrast, because the two legal domains, governed by local religious leaders and governed by the state, are parallel rather than intersecting or nesting, a woman in Senegal may be quite reluctant to draw upon the leverage of the state.

29 For an even more extreme example of this problem, in Mali, extra-legal marriage is not even recognized by the state after the fact; in such a setting a woman can hardly complain to a judge if her extra-legal husband then illegally dissolves the non-existent union through repudiation, which technically doesn’t exist (Djourte 2001). The situation in Mali has led to tremendous tension over recent proposals to reform family law even further. Reasonably enough, Muslim associations in Mali want their religious ceremonies to be recognized by the state and have proposed alternative certification processes that might provide a useful middle ground (Soares, 2009). However these compromise positions don’t necessarily enshrine any of the protections for women that were the original intent of the early postcolonial national legislation: a guarantee of a woman’s consent to the union, the provision of a monogamous option with some prospect that it will actually be enforced, and checks on a woman’s legal age at the time of the marriage. Despite potential consensus over some issues, such as the need to adjust the marriage age of girls upward, for the moment debate in Mali over the Family Code is at an impasse, which leaves women unprotected should their marriages falter or their husbands die (IRIN 2008).

30 Despite the muddiness of the legal situation in Niger, then, the multiplicity of recognized dispute fora can be a useful resource for women. Women in Senegal and Mali are in many ways deprived of this resource by the popular rejection of the Family Code, which has cut them off from the unpredictable but nevertheless occasionally useful advocacy of the state in family and community struggles. The hybridism of the system in Niger makes it probable that a kind of flexible negotiation will occur. By contrast, in contexts where a Family Code with criminal penalties for failure to comply exists, should a woman for example attempt to pressure a husband into providing child support through the courts, she may inadvertently subject him to criminal penalties for failure to meet his obligations – an outcome rather out of keeping with her goal of securing resources for raising her children. Having forced family law underground because so few, whether men or women, care to actually make use of the legal mechanisms implied in the Family Code, the state in countries that pass unpopular Family Codes is in the odd position of having virtually no effective input into civil affairs outside of major urban centers.

31 Even in those settings in Senegal where the law is observed it is not entirely clear that the Family Code does not implicitly re-inscribe patriarchal patterns within the family in ways that are damaging to Senegalese women who in the past had a great deal of social independence and economic autonomy. Women’s groups in 2002 attempted to reopen the
question of the Family Code in hopes of improving a number of elements of the law urban women saw as problematic. The code as it stands envisions a male head of household, virilocal marriage in a setting chosen by the husband, and male authority over the children. The assertion in the code of male authority (la puissance paternelle) over the household was seen by women’s rights activists to be the primary source of friction and violence between men and women–husbands took their position as head of household to give them the authority to impose their wills upon their wives and children. Women are not legally designated as heads of households, with the unfortunate tax consequence that single women with children must pay higher taxes than married men with children, who benefit from a tax break (Arab 2002a, 2002b). The more celebrated dimensions of the code are honored only in the breach even among the urban populations that are more inclined to follow the law–repudiation continues to occur, and while in principle Muslim couples may choose to agree to monogamy, in practice a woman has no real recourse if her husband chooses to take a second wife. His second marriage is legal, and the assumption of the law – as of similar laws in other Muslim societies – is that the husband’s violation of the monogamy agreement simply earns the first wife the right to a divorce. This is rather cold comfort for the woman who wanted a monogamous marriage, not a divorce. In practice women by and large suffer the existence of co-wives in violation of the monogamy clause because the option to select monogamy has no real consequences. The burden of sustaining monogamy falls entirely upon women, who are expected to abandon the marriage – and risk losing custody of their children –, not upon the men who violate the agreement. In practice women rarely raise the issue of the monogamy option, which would mark them as «troublesome» women and undesirable wives.

The rather modest attempts of women’s groups to alter the resolutely patriarchal character of the code prompted a fiery backlash from Islamist groups in Senegal that had never followed the law in the first place. Muslim leaders launched their own project to alter the legal code, this time by replacing the Family Code with a Personal Status code. Interestingly this proposal would have returned the legal system to its colonial condition under which individuals were governed by laws depending upon the status they claimed (Muslim, civil, Christian etc.). Arguing that the post-colonial Family Code is «contrary to Islam», Muslim reform leaders waxed nostalgic for the colonial period when «freedom of religion» prevailed and purportedly Sharī’a law was the default regime of law for the majority Muslim population unless an individual elected to chose a different legal regime – implicitly a Christian one (Niang, n.d.). Rhetorically the move to push a Personal Status Code with Muslim Personal Law as the default Family Code for all citizens implied that to choose another regime is to self-designate as being non-Muslim. Not surprisingly this reading of history and law struck secularists, moderate Muslims with little interest in a «return» to Sharī’a, and Christians as a self-serving platform for the Islamists. They in turn launched a counter-offensive to protect the secular character of the Senegalese state.

At the moment all parties to the debate seem to have reached a stalemate – while the proposed reforms to the Family Code are stalled, the proposal to pass a Personal Status law has lost momentum as well (WLUM 2003). While there is a certain nostalgic appeal among Islamists to the notion of a return to the status quo ante of colonial rule in which citizen and subject alike get to «choose» their personal status before the law, what would such a regime look like in practice if not like the muddled situation we began with in Niger? What happens when political circumstances open the way for some individuals to
impose their personal vision of Muslim law upon others in a context in which accepted «traditional Muslim» practices may vary quite considerably from a textually grounded and historically informed Islamic juridical practice? What happens when very few have a deep mastery of Islamic legal traditions yet Sharî’a is promoted as the authentic index of orthodoxy?

From Civil Law to Vigilantism: Sharî’a in Nigeria

34 The significance of alternative models of family life embodied in the practices of urban elites with political influence in Senegal has meant that mobilizing a political case for a «return» to Sharî’a has not been successful there. Indeed Senegalese Muslims are divided over whether secular modernity is consistent with Islam, and over whether a strictly legalist interpretation of Islam adequately captures the richness of Islamic religious practice in the region. Those divisions do not fall neatly along ethnic or regional lines. Wolof speakers, for example, may be Sufi or anti-Sufi, they may be urban civil servants following civil law or rural disciples obedient to a marabout; they may be wealthy or poor; politically connected or disenfranchised. While reformists may cast the Family Code as «Christian» and «western», other Muslims feel that they can find Islamic justifications for some or all of the provisions of the Family Code. Secularism, in their view, is not synonymous with Christianity.

35 By contrast in Nigeria the congruence of regional, ethnic, and religious competition has meant that it has been quite tempting for political elites to mobilize support by invoking Islamic law as a marker of religious, regional, ethnic, and moral identity. A commitment to Sharî’a becomes one way a northerner, a Hausa speaker, a Muslim can stake a claim to moral and political legitimacy over against the interests of others. Religious identity is central to regional identity and political competition. As displeasure with the intrusions of the United States and other major financial/industrial powers mounts, forwarding Islamic identity can be a potent sign of social protest against «occidental values». Claiming greater Islamic purity through the promotion of Sharî’a law is one way politicians in northern states can imply that the values of others (political competitors, southerners, feminists) are tainted with the immorality, selfishness, individualism, and materialism of the West. Secularism, in this discursive field, is cast as implicitly Christian – an insistence upon secular family law then becomes a violation of the religious rights of non-Christians. Nigerians often point out that the word «secular» does not appear in the Nigerian Constitution; Nigeria is not secular, they insist, it is multi-religious.

36 Certainly Islamic law was more fully enshrined in the colonial legal system in Nigeria than in Niger, for indirect rule in northern Nigeria absorbed and co-opted the relatively developed legal apparatus of the Sokoto and Gwandu Caliphates and then replicated and expanded them throughout the north. Nevertheless many of the same differences between Hausa Islamic religious culture and a Malikî legal tradition are to be seen in Nigeria as in Niger, for many issues related to family life never come before judges trained in Islamic law but are instead handled by a familiar local religious scholar. As in Niger, the marriage payment is not always turned over the bride, women’s jural minority is the rule rather than the exception, custody of children does not go to mothers without dispute, and so on. Women in Nigeria are more likely than Hausa speaking women in Niger to have some familiarity with their rights under Islamic law, partly because women’s groups in Nigeria have worked hard to educate them (see e.g., Callaway and
Creevey 1994, 156-160; Yusuf 1991). Muslim family law, then, is an integral part of the legal system of northern Nigeria and has been from well prior to the colonial period.

What has happened recently is not so much the wholesale imposition of Sharī’a in Nigeria, as the expansion of Islamic juridical principals beyond family law into the domain of criminal law. Under British colonial rule the government had arrogated unto itself a monopoly upon the use of physical violence in the legal domain. One melancholy dynamic of the post-colonial period is that post-colonial actors regard the re-appropriation of the right to exact corporal punishment as evidence of their emancipation from Western domination and the colonial order. Politicians in states across northern Nigeria have deployed this logic to expand the practice of Islamic law into the realm of criminal law – commonly referred to as the «shar’ânization» of the North – arguing that harsh penalties for violations against the moral order would prove a deterrent to immorality.

The contemporary practice of Islamic law in the northern states of federal Nigeria presents a number of legal conundrums. Muslim law, as we have seen in the case of Senegal, is based upon the notion of personal status – whether and how the laws apply to any given individual depends upon whether he or she is Muslim. Applying the penal dimensions of Sharī’a within the boundaries of a territorial state transforms a system predicated upon personal status into a system at least partially dependent upon territorial jurisdiction. This didn’t seem a terribly problematic matter when the issues handled by Sharī’a law were relatively domestic issues and were handled by personal advisors who were religious mentors. Many disputes would have involved individuals in the same family, and while the material consequences of judicial decisions might be quite significant, the corporal consequences were not immediately severe.

But once the Sharī’a Acts expanded the purview of Islamic law into the criminal domain troubling issues began to arise that raise fundamental questions about the equitable application of the law to equal citizens within the state of Nigeria, given that available penalties for some newly criminalized activities could include death, whipping, or maiming. That is, it was not simply a matter of applying corporal punishment for crimes such as theft that had been penalized through incarceration (or more likely fines) in the past. Some of the behaviors that were to be punished had not been seen as crimes prior to the introduction of Islamic criminal law. The expansion of Islamic juridical principles might well have been in the service of social equity, criminalizing non-payment of the poor tax, or penalizing embezzlement, for example (Imam 2002). Instead, as Ayesha Imam has pointed out, Islamic law has been equated with the enforcement of the rigid penalties for «what are called the Hadd offenses which are adultery, sodomy, drunkenness and theft. They are offenses that are specified in the Qur’an. Everything else is continuing as it was before» (quoted in Cobb, 2003, 3). Women, the poor, homosexuals, those who partake of alcohol, all are disproportionately affected by these newly criminalized activities.

Should a Muslim who commits a theft in Lagos be subject to different penalties than a Muslim who commits the same crime in Zamfara? Does a Muslim have the right to claim non-Muslim status if he or she does not believe that Sharī’a as applied in his or her state is in fact just if he or she does not see homosexuality or sex outside of marriage as a «crime»? Will a Muslim in Kano try to claim to be Christian in order to evade harsh penalties for drinking? Will a Christian be subject to penalties that should only apply to individuals with Muslim status?

In practice the climate generated by the application of morally repressive laws in the states in which the expansion of Sharī’a has been passed does emphatically affect non-
Muslims, particularly women, who may find that they can no longer wear their preferred clothing, take public taxis, or sit at the front of a public buses without suffering censure or violence from individuals who enforce uninformed and idiosyncratic interpretations of Shari'a. There is no way, from outward appearance, to tell the difference between a Christian and a Muslim, yet women in Zamfara who engage in the «indecent» activity of riding a motorcycle taxi will may be assaulted by vigilantes regardless of their personal status. At the other end of the spectrum, wealthy Muslims who engage in white collar crime on a truly stunning scale will inevitably evade draconian penalties through effective legal representation, while poorer men and women are far more vulnerable to the corporal consequences of the new law for much more trivial offenses.

42 The problem produced by the passage of the Shari'a Acts has not simply been the acts themselves, which the existing Shari'a court system seems to have been able to moderate effectively through the appeals process. At the end of the day the consensus of Muslim jurists in Nigeria seems to be that pregnancy outside of marriage does not constitute a crime, a conclusion that is consistent with the longer history of Islamic jurisprudence. The bigger problem has been the vigilantism the laws seem to authorize. Some of the more notorious cases brought before the courts would never have surfaced had not zealous vigilante groups known as Hizba brought «immoral» behavior on the part of single women to the attention of the courts. Young women unsure of the nature of their offenses and unfamiliar with court procedures admitted to relatively unremarkable activities, such as sex outside of marriage, only to find that their admissions were treated as confessions to capital crimes. Prosecutors then found they were obligated to prosecute the cases and inexperienced judges felt pressured to impose the most draconian penalties available in a highly politicized climate. None of the sentences of death by stoning for adultery that have been so visible in the international press have actually been carried out, and it has been the appeals process within the Shari'a court system itself that has led to the overturning of inhumane sentences. Nevertheless vigilante groups continue to push for the criminalization of women's sexual activity outside of marriage, which generates a morally repressive atmosphere for women, particularly relatively poor unmarried women for whom sexual activity outside of marriage may be a matter of survival («Working with Nigeria's Shari'a Courts», 2000, 2).

43 In reflecting upon these notorious cases I have been very struck by the enormous gulf between the spirit of the Qur'an and of the Maliki juridical tradition and the enactment of what passes as «Shari'a» when initiated by contemporary vigilante groups. Unless one assumes that Muslims at the time of the elaboration of the various schools of law were incapable of noticing the average gestation period of a human embryo, I think one has to conclude that medieval jurists, far from being moralistic or prudish, went to tremendous lengths to guarantee that almost no child would be left without an identifiable – if occasionally implausible – patriline. By allowing for the possibility of a «sleeping embryo», jurists made it possible for women to bear children for several years after becoming divorced, abandoned, or widowed and to claim that those children had been fathered by their former husbands. Muslims living in an age closely attuned to the natural world can hardly have permitted this legal fiction to continue unless they found it useful to do so.

44 Furthermore the requirement in Maliki law that four witnesses to zinâ (fornication) be produced for an accusation to be made makes it virtually impossible to prove that adultery has occurred. Making a false or ungrounded accusation carries stiff penalties.
The legal doctrine known as *shubha* whereby there can be no conviction if there is an element of doubt means that traditional jurisprudence set an extremely high standard of evidence for conviction of such offenses. Finally, one needs only peruse the lengthy and occasionally mind boggling discourses on «fornication by mistake» - one can be forgiven for having sex with someone mistakenly believing that a valid marriage has been contracted, or for having sex while asleep or drunk, or for having sex with someone mistaking them for one’s wife or husband... - to arrive at the conclusion that while the threats of stoning for *zinā* and of disinheritance for illegitimate children were articulated as deterrents to undesirable behavior, in practice all of the major schools of law worked hard to guarantee that «Islam leaves no room for anyone to accuse others of fornication» (Bakhtiar 1996, 462; 457-463). In interpreting this textual foundation as a mandate for capital punishment for single pregnant women, vigilante groups and the moralists who support them have displaced global and national struggles over identity, nationalism, ethnicity, and independence from outside intrusion onto the bodies of the vulnerable women the Qur’an enjoins Muslims to protect.

**Conclusion**

I have explored three different settings in West Africa in which the problems of the relationship between tradition, Islamic law, and the secular state emerge in rather different ways. In Niger the state is avowedly secular, but in practice an adaptive Islamic religious culture has absorbed elements of religious law in a process that has gone on for centuries but that was considerably accelerated in the colonial period. Islamic judicial tradition is one available element within the play of Islamic religious culture, but the elements that are emphasized or neglected can vary and shift in different times and places. In Senegal long experience with a secular-style Family Code reveals that in the absence of a strong state and popular legitimacy, such codes can do as much harm as good. When family law is driven underground because religious leaders and local populations do not endorse the logic of the law, women and their children lose the leverage that access to the state legal apparatus can provide. The state’s credibility in other domains is diminished, and any attempt to improve upon the specifics of the Family Code dissolves into claims and counter-claims that the code is «un-Islamic» on the one hand or patriarchal on the other. Debates about the law in Muslim societies in Africa regularly devolve into pitched battles between feminists and Islamists, undermining the emergence of a more pragmatic middle ground.

The expansion of *Sharī'a* law into the criminal domain in Nigeria reveals quite starkly that identity grounded in a commitment to *Sharī'anization* authorizes a vigilantism that is inconsistent with both the spirit of the Qur’an and the letter of Maliki law. One can be relieved that the *Sharī'a* court system overturned the convictions and penalties of the women like Amina Lawal and nevertheless feel that this climate of moralism is in itself repressive and abusive. Once again the capacity of African states to contain conflict, define the law, mediate disputes, and protect the most vulnerable portions of the population is very much in question. If it is unclear that enacting a progressive Family Code without the capacity to enforce it has been unambiguously positive in the state of Senegal, it is equally unclear the expansion of *Sharī'a* has been uniformly beneficial to Nigerians given that it has occurred in a context in which the state has not always succeeded in suppressing the moralistic vigilantism that such expansion seems to
authorize. Given the politicization of law and religion in Nigeria it seems unlikely that this problem has receded permanently.

Struggles over the nature and rule of tradition and Sharî’a in all three legal systems have pitted «traditionalist» Muslims against «fundamentalist» Muslims – indeed Muslims’ senses of themselves as liberal or traditionalist, Sufi or reformist, secular or committed to religious law have crystallized in moments of debate such as these. It would be reductive to argue that cynical politicians merely manipulated and mobilized popular sentiment or that contemporary Muslim movements are merely reactions to the intrusions of western institutions. Islamic societies regularly engage in introspection and reform, and in the absence of real political debate and genuine party politics for much of the post-colonial period in West Africa, debates about identity, modernity, fairness, and tradition have centered in a domain that has been available and compelling to Africans under regimes of varying kinds.

As contemporary states struggle to make sense of how best to retool their legal systems to build more promising futures they draw upon a variety of available resources. However as Jean-Claude Maignan has recently pointed out in reflecting upon the extremely difficult transition Niger has had to democracy in the past several decades, western institutions promoting multi-party democracy have often been extremely naive about the importance of a strong state to the success of democratic institutions (2001, 169-70). It is unrealistic to eviscerate the state through neo-liberal structural adjustment in one moment and then expect rational debate through multi-party democracy to suddenly blossom in the void. In each of these cases the incapacity of the state to generate equitable, predictable, and fair solutions to regulating the most basic aspects of daily life contributes to tremendous social friction and instability.

Islamic law is often seen by disillusioned Muslims as the panacea that will remedy Africa of what ails it. But as we have seen here, even where it is clear that Islamic law can offer protections to women and children not realized in local practice, it is far more difficult to determine how to enforce such laws. The extraordinary politicization of the law has not rendered it a more effective tool for protecting women and children. Liberal Muslims for their part argue that until the «gates» of interpretation (ijtihâd) are «reopened» it will not be possible for Muslims to generate workable solutions to contemporary problems. It makes little sense, they argue, to be shackled to legal texts that were generated by fallible humans experiencing very different challenges and conditions hundreds of years ago (Mbow 2004).

Opening the gates of ijtihâd might make it possible to wrest rhetorical control of Islam from both the traditionalists and the literalists. Simply opening the way for individual Muslims, particularly feminists, to engage in reinterpretation of Islamic law may make it possible to make Islamic arguments in favor of human rights, women’s equality before the law, women’s access to political office, and so on. As a historian, however, I am very alert to the problems of legitimacy and capacity these three cases raise. We probably should heed the lessons learned by feminists in such countries as Tunisia who, benefitting from a Family Code law justified through Islamic arguments, still face the kinds of problems of vigilantism, enforcement and interpretation we have seen here: «The legislature has always taken great care to present reforms in the framework of a rereading of the Sharî’a. This allows jurisprudence to revert to a patriarchal and conservative view of the family, justified by the claim of respect for Islamic principles» (Collectif 95 Maghreb Égalité, «One Hundred Steps, One Hundred Provisions», 7).
International, national, and local legal codes should ideally be mutually reinforcing. But in the current moment, when international human rights are seen as a western imposition, secularism is argued to be essentially «Christian», the Western media see Sharî’a automatically as backwards, and feminists often have a tenuous grasp of the specific content of the various Islamic legal traditions, there seems to be little prospect for real dialogue and effective calibration of the differing registers of law. And in the end it is women and children – who are so regularly invoked as the beneficiaries of interventions of all kinds – who are left in the cold.

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NOTES

1. I am grateful to Signe Arnfred and Richard Roberts for inviting me to participate in conferences that shaped this piece. I have benefitted as well from the commentary of Liazzat Bonate, Dorothy Hodgson, Benjamin Soares, the late Mary Bivens, and an anonymous reader for the Nordic Africa Institute. Remaining flaws are to my credit alone.

2. See Christian Long’s excellent documentary film «Justice at Agadez» (Icarus Films 2006). A harried but humane qadi mediates between the police, the formal justice system, popular vigilante justice, and Maliki law. He must contend with the popular perception that ordeals and oathing will reveal guilt and innocence.

3. Early childbearing and the long labor it often entails can lead to damaging ruptures known as fistula that leave openings between the vagina and the anal or urinary tracts. A study 483 fistula cases recorded in the capital city of Niamey in 1994 showed that 159 cases concerned girls under the technical legal marriage age of 14, while another 151 cases concerned girls from 14 to 15 years old (PNA 2001). Nothing in the Maliki juridical tradition protects a young bride from this eventuality – indeed the existence of such a condition is legal grounds for a man to annul the marriage contract within the strictest textual reading of Islamic law. Furthermore text-based interpretations of husbands’ obligations towards wives do not include a requirement to cover the expense of the kind of medical treatment necessary to repair this condition (Bakhtiar 1996, 433).

4. Tremendous external pressure from what Thomas Kelley (2007) refers to as the «Washington Legal Consensus» has led to recent election reforms requiring a quota of female candidates in elections, which may eventually alter this picture somewhat. As a result of those reforms in the 2004 election the number of women in Parliament leapt from one to fourteen. However such external meddling, as we shall see in a moment, presents challenges in terms of building local perceptions of state legitimacy.

5. Consequently the Hausa speaking regions of Niger have experienced a massive influx of long-term «guests» from Nigeria escaping the application of the laws to prostitutes, homosexuals, bar owners, and musicians. This has complex implications for the Nigerien economy, for they bring with them a lively night life and leisure culture that stimulates the service economy while taxing the local infrastructure (Kirwin 2004).

RÉSUMÉS

Cet article expose les différentes approches de trois États ouest-africains que sont le Niger, le Sénégal et le Nigeria en vue de concilier les divers systèmes juridiques (islamique, occidental, militaire) dont ils ont hérité en tant qu’États ostensiblement laïques dans des régions majoritairement musulmanes. Si le Sénégal a adopté un Code de la famille qui paraît modifier et réglementer les dites injustices du droit musulman dans la vie de famille, un certain nombre d’États du Nigéria sont allés en sens inverse, en élargissant le droit islamique au-delà du droit de la famille en l’étendant au domaine pénal. Au Niger, d’autre part, plusieurs systèmes de droit coexistent de manière précaire, sans hiérarchie réelle et sans aboutir à la résolution définitive des conflits juridiques. Dans les trois cas, l’État n’a ni la capacité d’appliquer efficacement un système juridique unitaire et cohérent, ni ne réussit à contrôler la « justice » qui a lieu si souvent
dans des milieux extra-légaux. Partout en Afrique de l'Ouest, les partisans des réformes juridiques affrontent deux épreuves : la faible capacité de l'État à imposer un système juridique unitaire, et la coercition des groupes de pression qui maîtrisent mal la tradition juridique islamique dans une atmosphère chargée d'un discours sur le retour à une certaine « pureté islamique ».

This article sets out the differing approaches of three West African states (Niger, Senegal, and Nigeria) towards reconciling the multiple legal systems (Islamic, western, military) they have inherited as ostensibly secular states in regions with prominent Muslim populations. While Senegal has adopted a Family Code that appears to modify and regulate some of the perceived injustices of Islamic law in family life, a number of states within Nigeria have gone in the opposite direction, expanding Islamic law beyond family law into the criminal domain. In Niger, on the other hand, multiple systems of law co-exist uneasily, without any effective hierarchy or definitive conclusion to legal disputes carried into different legal domains. In all three cases the state does not have the capacity to effectively enforce a single coherent legal system, nor does it succeed in controlling the «justice» that so commonly occurs in extra-legal settings. Throughout West Africa legal reform must contend with the dual problems of weak state capacity to impose a unified legal system and of the vigilantism of pressure groups that may have limited mastery of the Islamic juridical tradition in an atmosphere that is nevertheless heavy with the rhetoric of a return to Islamic purity.

INDEX

**Keywords** : Gender, Islamic law, Legal Reform, Niger, Nigeria

**Mots-clés** : droit islamique, genre, réformes juridiques, Sénégal

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