

## **The family Law Debate in the Secular State of Senegal: The Renegotiation of the Public/Private Divide**

In *The Human Condition* (1958), H. Arendt defines the private sphere as the place where all the social belongings can express themselves. This space is theoretically subordinate to the public sphere, which is the place where the human being is liberated from all social determinism, following his own Reason. This conception of the public and private divide is not useful if we first consider the neo patrimonial nature of the African State, (Bayart, 1989; Médard, 1990). In such a context, it appears difficult to apply the concept of public space in Africa: with a weak society facing a strong State or a « theological »<sup>1</sup> one (Mbembe, 1988), it seems more relevant to work on the question of the public good management rather than on the topic of political deliberation (Dahou, 2005). But since the democratization period starting in the 90s, we have seen the development or the enforcement of the « Civil Society » in many African countries, which implies to rephrase the question of the public space and to deal with its new outlines. But we have to be very careful: even if authoritarianism is weakened, liberalization and pluralism don't mean that a true democratization is happening (Diaw, 2004). Then, the Secular/Religious divide implied by the public/private one is also problematic if we consider the greatest number of African societies where religions are clearly part of the public sphere. Even if many former French colonies chose to uphold secularism in their Constitution, religious actors play an important role in both political field and civil society.

In Senegal, this confusing divide is conceptualized in the Senegalese « social contract ». Indeed, this contract is based on an arrangement between Islamic brotherhoods and political elites and defines a « two head State ». Because of its lack of legitimacy, the State of Senegal needs the brotherhoods support and in return gives them many material benefits and a symbolic recognition (Cruise O'Brien, 2000). Despite its evolutions, the social contract, based on « *a form of social division of authority, partly built on the traditional tutelage effectiveness* » (Seck, 2010: p.227) is still useful to define the organization of the social and political fields. Therefore, it seems difficult to deal with the idea of a public sphere based on a strict equality between all citizens. Regarding the religious/secular divide, we find the same confusion because of the ambiguous character of secularism in Senegal. Even if the Constitution defines the State as a Secular Republic (art.1), there isn't any official text to explain what this secularism exactly means. According to the former President Abdou Diouf, « *Secularism could not be against religion. Besides, it would not be true secularism, it would be a way to institute atheism as the State religion as alas we can see in some countries* » (1984). This quotation shows that the political authorities want to underline their difference with the French concept of secularism, which excludes religion from public sphere. In this context, talking about the secularization of the Senegalese society deserves real attention because of the existence of contradicting signs.

Since the crisis of the 80s, the youth social movement has appeared as disconnected from religion, based on claims for more democracy and a clear distinction between religious and political fields. A famous example of this secularization process is the end of the « electoral ndiguel », meaning the vote instructions given by the Saints to their followers. But this process seems to have been stopped with the changeover of political power in 2000. Indeed,

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<sup>1</sup> A. Mbembe defines it as a State that is not only trying to manage the society but which also wants to entirely control the way the individuals see and interpret themselves and the world.

the new President Abdoulaye Wade immediately swore allegiance to the Great Saint of Touba after his election. In 2001, he also proposed (but failed) to erase the concept of secularism from the Constitution. For more than ten years now, the literature about Senegal has shown that the importance of religion has increased in both political (with new political parties based on an Islamic identity) and social (with an Islamic orientation of the public debates) fields (Brossier, 2004; Andrain, 2004). Even if religion plays an important part in it, it would also be irrelevant to deny that there is a public debate in Senegal and, actually, our purpose is to define it and to analyze its impact on the secularization process.

Our analysis will focus on the example of the family law debate. Voted in 1972, this code was a symbol of the concept of Senegalese secularism: respect of the normative pluralism through legal pluralism - but a hegemonic one with the State secular Law in upper position. The State has always tried to contain this debate but both Islamic and feminist movements have contributed to its politicization and therefore to the public space enforcement (Brossier 2004, N'Diaye, 2007). Whereas the women's claims about gender equality are based on the principles of democracy and Human Rights, the opposition of religious movements is justified by a speech focused on the respect of the religious and cultural identity of the country. Thus, the family law debate is a good example of the tensions and conflicts that structure the debate about the secular/religious divide and helps to show how public sphere is based on « *a shifting geography of Politics, with a centre (the State), which has less control on his space and is always more moved off centre, and new margins that break in the public space* (Diaw, 2004: p.37). Even if there is a clear problem of law implementation, this debate is really meaningful regarding the symbolic struggle between secular and religious movements, each one trying to impose his own project of society. This debate started more than 30 years ago and took a greater importance in 2002 with the proposition of the Circofs (Senegalese committee for the reform of the family law) to repeal the current text in order to establish a new one based on Islamic law. The feminist movement strongly reacted against this proposal and the debate has been reactivated and has still to be concluded.

***In this paper, we will try to understand how this debate between religious movements and feminists participates to the redefinition of the divides and what role the State plays in it.***

After tracing a brief history of the Senegalese family law, we will see that if this debate could be an opportunity to strengthen the Civil Society and to build a true citizenship, it could also weaken the Constitutional principle of a Democratic and Secular Republic. The renegotiation of the divides remains uncertain and this debate about family law helps to put things into perspective. Islam could contribute to the politicization of the public sphere as it could challenge the principle of a theoretical rational public sphere.

## **A brief history of the Senegalese Family Law**

During the colonization, the French administration didn't intervene in family matters because it was considered as a sensitive question that could disrupt the public order. Therefore the colonizers had a pragmatic policy based on pluralism with French and Native courts of law. However, in the 20s, there was an evolution of the French colonial policy regarding family law. The trend called « Colonial Humanism » wanted the administration to improve the indigenous living conditions, in particular those of women (Griffiths, 2007). The Mandel decree (1939) was the legal result of this new approach. This text set a minimum age to get married and required the consent of both husband and wife to ratify the wedding. But this text was not respected by a large majority of the population so that it was a failure. With the Second World War, the French administration had new priorities and the question of family law came back in the political agenda only in the 40s but it was a new setback<sup>2</sup>. Thus, the independent State of Senegal inherited a legal system based on a legislative and a jurisdictional pluralism.

The transition was gradual in Senegal. Indeed, the family law which put an end to the legal pluralism was adopted twelve years after the independence. During the transition period, Senegalese people could still choose between customary and modern law. It was an exception in a legal system that was entirely secularized (Coulon, 1988). But, in 1972, the State repealed this pluralism and created a set of rules applicable to all citizens. However, through an option system, it let people choose between modern law or « Islamized Wolof custom » regarding wedding and inheritance. Therefore, we can consider that the family law is based on a hegemonic pluralism (modern law is the norm whereas Islamic rules are the exception). As Pr.A.Cissé said: « *this pluralism is real but not equal because all the rules that constitute the system haven't got the same importance* » (interview, Dakar, 2009).

This pluralism clearly appears regarding women's rights. Thus, as far as wedding matters are concerned, polygamy is considered as the common law except if the husband asks for a monogamy clause (art.116). People can also continue to celebrate their wedding following the religious or customary rules. Indeed, they can celebrate or just make their union certified by the registrar but a third form of wedding is allowed: it's the customary one which is only reputed legitimate between husband and wife but not in front of the State (Mbacké, 1973). Regarding inheritance rules, Muslims can choose the Islamic law (art.571) that creates an inequality between men and women. But if they don't make it known before their death, the common law has to be applied unless the heirs prove that it was the true will of the deceased. At last, in the family relationships, the father is considered as the chief (art.152) and has got the paternal power (art.277).

Apart from these rules, the code is based on the French law inheritance and some religious or customary rules were repealed. For example, we can list the most symbolic measures:

- The text puts an end to the forced wedding and requires the consent of both husband and wife (art.108);
- It lets women the choice to get married with a man even if he's not a Muslim;
- The text repeals repudiation and only admits legal divorce;
- It protects the natural child's rights;
- And at last, it recognizes adoption.

Through the text analysis, it appears clearly that the lawmaker wanted to create a consensus, a balanced law that could be legitimate through an incentive system of options.

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<sup>2</sup> The Jacquinot decree (1951) introduced a monogamy clause and regulated the dowry.

The political authorities justified this Policy at two levels. In one hand, the code was presented as a mean to build the Senegalese Nation and we can clearly see it when we read the parliamentary debates. The code was seen as a factor of unity, able to make the national feeling alive through the sharing of rules and institutions that everyone could experience in his daily life. In the other hand, the lawmaker insisted on the modernization and development process. The State wanted a law that would put an end to old practices which were considered as incompatible with both social and economic progress.

But behind this speech, there was clearly a political strategy: the State wanted to imprint his authority on society and to legitimate and extend his power that was clearly subordinate to the Saints authority. The code was a way to justify the will of the State to change the power balance. It was a mean for the State to become a “full” State and not anymore a weak one (Coulon, 1981). Through a legal pluralism that it entirely controlled, the State wanted to become the only one source of law. To sum up, family law was used by the State in its centralizing and hegemonic venture based on one idea: the national community had to go beyond the differences through citizenship, which was seen as the new allegiance frame.

But immediately after its adoption, the text was contested by religious movements. The Islamic Superior Council clearly expressed his opposition in a letter sent to all the Members of Parliament: *“For us, Muslims, we have to underline that Islam has been governed for more than 13 centuries by the Quran, supreme Constitution (...) Its prescriptions are unchanged and irrefragable (...) We are surprised to see that now in Senegal, some people want to carry some “innovations” not to say infringements to it (...) It’s not and it can’t be in our intentions to mingle with the Government about the Nation matters that are his duties, but we clearly reassert our unwavering will to reject any measure, even official, that would not respect the holy principles of our religion”* (ISC, 1972). However the political authorities didn’t give way to the pressure and considered that they had take into account as much as they could the religious claims. Thus, family law was the first and maybe the strongest matter of opposition between political and religious power. The religious actors accepted the authority of the elected government but confined in some limits, and all the stake of that struggle was to determine these limits and the authority qualified to determine its. But this opposition didn’t end into a casus belli that the reformist minority was expecting. The powerful Brotherhoods preferred to adopt a passive resistance, inviting their followers not to go in front of the State Courts for family matters. Considering the Brotherhoods attitude, The State didn’t try to impose the law and contented itself with its symbolic victory. Neither the political nor the religious powers had an interest in a break-up because they both took advantage of the social contract.

However, the great crisis of the 80s gave a new impetus to reformist movements that started to organize the first campaigns against the family law, which was considered responsible for the moral and social crisis the country went through. At the same time the women’s organizations claimed for a reform in order to have a text in accordance with social realities. Thus, through the years, the family law has become the object of a latent conflict that the State tried to avoid.

Nevertheless in 1987, the Minister of Justice organized a symposium in order to assess the impact of the code 15 years after its adoption. The political authorities wanted to make some changes that would have answered the feminist claims. But Renée Baro, the minister assistant, told us that the symposium was extremely tense because most of the participants contested the text of 1972 and wanted to backtrack or to repeal it (interview, Dakar, 2010). Thus, it was a complete disaster for the government which decided to close the file with a little reform (1989) really far from the initial ambitions. Indeed, this reform was mainly focussed on procedures matters and only two points of content were changed: the husband could not anymore prevent his wife from working and the family home had to be chosen by both

husband and wife. But no other project was voted as for example the reform of the inheritance law or the one about the introduction of monogamy as common law. After this reform, the political authorities chose the status quo regarding private law.

But in 2002, the Circofs proposed to repeal the text and to apply the Islamic law. For the first time, the religious movement appeared in an offensive position and not in reaction against women's claims. The Circofs was a Committee which gathered 17 Islamic associations and independent personalities. It asserted that it was supported by the main Brotherhoods. The leader of this group was Babacar Niang, a lawyer and politician coming from the extreme left who finally converted himself to political Islam. This very disparate committee was unified by a single aim the reform of the family law. There wasn't an organized political project behind this claim. Started in 1996, the text was presented in 2002 and proposed important changes regarding Women's Rights:

- It restores the repudiation (art.50)
- It allows the judge or the imam to give a special permission to a girl under age to get married, if it appears that the wedding is planned in "her interest" (art.20).
- It forbids a wedding between a Muslim woman and a man with a different religion (art.13)
- Both adoption and recognition of a natural child are prohibited (art.79).

In fact, in its content, this text didn't present anything new. Indeed, it has been totally inspired by the project written by Cheikh Touré, one of the famous leaders of the reformist movement in the 80s. The real changes came from the new extent and impact of the debate.

Indeed, behind the question of family law, it was the legitimacy of the secular principle which was discussed so that we can consider that this debate, which has yet to be concluded, has participated to the redefinition of both religious/secular and private/public divides.

### **A debate that contributed to a public space building in a legitimated secular State**

Even if it was launched by a religious movement, the debate about family law paradoxically encouraged both secularization and democratization processes. On the one hand, through this debate, the civil society has been strengthened. On the other hand, both women's organizations and the Circofs acted in a way which contributed to legitimate the political system.

#### **The reinforcement of the civil society**

One important factor is the evolution of the relationship between the State and the civil society in this renewed debate. In 2002, the family law policy combined top-down and bottom-up approaches and implied to analyze it as "*a series of arbitrations between very different systems of norms and representation*" (Warin, 1995).

Indeed, in 2002 the power elite didn't have the power to decide alone as it was the case in 1972. At this time, even if the drawing-up process took more than twelve years, it was totally controlled and dominated by the State apparatus which was founded on a single party system dominated by President Senghor. Of course the political authorities wanted to legitimate their text and presented it as a consensus. In fact, in 1961, the authorities published a questionnaire, which was used to observe and register all the family customs. Five years later, an Options Committee was created in order to draw up some definite propositions that were discussed and adopted by the SPU (Senegalese Progressive Union) National council (1966). The final text was voted only seven years later because of an important political crisis.

But 30 years after the Family Law was effective, there's a real problem of enforcement because of the drawing-up method. Despite what was announced, it was not based on the respect of pluralism. We saw that at the legal level it was more a hegemonic pluralism than a balanced one. The same remark can be done about the political level. According to Babacar Niang, leader of the Circofs, if Senghor heard many parties it didn't mean that he took into account their claims. Quite the opposite, he overrode the opposition of the Great Islamic Council. Regarding the women's rights movement, we can also point out that there was not a single woman included in the Options Committee what regretted the former Prime Minister Mame Madior Boye : "*I asked the committee's President how it could have been possible. He told me that their will was to show what man was able to give without being constrained. I was not satisfied by his answer*". Here we clearly see the scopes of a Single-party State that denied political pluralism (Gellar, 2002). The State was able to win the legislative battle but didn't have enough capacities to enforce the law. Thus, in the long term the law appeared as something external to a lot of people.

In 2002, the debate's configuration was really different. This time it was not the political authorities that decided to put the family law question on the agenda. They had to do it because of the social pressure relayed by the media. How can we explain these changes in the power balance?

We must say that the 90s were a period of democratization which helped the social movements intervene in the political field. In 2000, this civil society clearly played its part in the changeover of political power. Indeed, during the President Diouf mandate (1981-2000), if both cultural and political pluralism were accepted, the State was unable to satisfy the majority of the social claims because it had to deal with the structural adjustment policies in a context of social crisis (Campbell and Hoxley, 1989). Therefore the civil society took a great importance, encouraged by the international backers. Diaw considered that the changeover

put an end to the “*People of letters democracy*” and was a symbol of the beginning of a “*full democracy*”. The family law debate gives a good example of these evolutions of the civil society that doesn’t work anymore on the “*dogma ethic*” but on the “*discussion*” one (Diaw, 2004).

If we focus first on the Women’s Rights movement, we can notice a lot of associations have been created and have become more radical and also more independent from the State (Sarr, 2007; Cissé, 2000). Through the years, they started fighting for a reform by promoting secularism, democracy and Human’s Rights as the legitimate framework of the debate and by claiming for a connexion of the public and private spaces. This strategy shows that besides fighting for their rights, women want political authorities to recognize their full citizenship. Through their mobilization on the public sphere, women’s organizations have contributed to the politicization of the private one. In fact, they have experienced citizenship through their fight: they are no longer “*passive citizens*” that are just the target of a specific policy but “*middle citizens*” who were at the beginning the target but who have managed to become actors of a policy that creates “*spaces where individuals or groups can experience, in a fragmented way, a form of sectional citizenship*” (Duchene, Muller, 2003: p.48). In order to fight the Circofs and to convince the State to reform the code, the Women’s Rights movement has worked on its weaknesses. Indeed, our fieldwork has revealed that the women’s movement is really fragmented because of the gap between urban and intellectual associations, more focussed on the legal fight, and a more rural and mass movement that works on the first needs of women in their daily life. Our case study of the AJS (Association of Senegalese Women Lawyers) reveals that intellectual associations are aware of this problem and work to change it, for example through the creation of a law shop in a popular suburb of Dakar or also by organizing free consultations all over the country. The aim of these examples is to show that despite its weaknesses, the women’s movement is not an empty word, it refers to a more responsible group, that tries to model his action on his speech, which reveals a strengthening of the secular component of the civil society.

If we analyze the case of the Circofs, we can also see that it has become more organized and has proved the importance of the religious component of the civil society. Indeed, both reformist associations and brotherhoods always criticized the family code. But as we said before, it was above all a passive resistance that had two main expressions. In one hand people didn’t use the State courts and administration. It has been pretty effective if we consider the few data we have about family law. According to the official data, in 2000, only 22% of the 649 of the registry offices recorded weddings. Our own research in the main registry office of Dakar shows that during the last 30 years the number of weddings certified by the registrar have become much more important than the celebrated unions, which can be interpreted as a decline of the registry<sup>3</sup>. In the other hand, the religious movement always strongly reacted when the feminists claimed for new reforms and succeeded in preventing any changes despite of a context favourable to women who had always had the support of international organizations.

But with the Circofs, the reformist movement has shown its capacity to propose and to present himself as a key actor. Thanks to its leader Babacar Niang, the Committee wrote a text that followed the norms of a modern code in order to see it immediately adopted (Cissé, 2005). So with its text, the Circofs could directly address the State who had to answer regarding all the reactions that this proposal generated in the society. In addition, the Circofs also worked to fight against the weaknesses of the religious movement. Indeed, in Senegal, the relationships between the leading Brotherhoods and the reformist minority had always been very complicated, often tense (Coulon, 1981). And during a half century, the State always played

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<sup>3</sup> In 1975, 37,4% of the weddings were certified by the registrar. In 1985, they represented more than 75,8% of the weddings.

on these divides to get more powerful. But by its structure, the Circofs tried to put together the different trends of the Senegalese Islam as the Great Islamic Council did in 1972. And it is particularly interesting to see how much they insisted on their representativeness to become a key actor, denying the one of their feminist opponents. Thus, through a speech based on the democratic respect of the Senegalese identity, the Circofs also contributed to put the civil society, but in its religious component, at the centre of the debate.

What is really interesting is to see that despite their great differences, both secular women's organizations and the Circofs used the respect of the democratic principles as one of their main arguments. We are going to see what were the different uses of this concept they did both in speeches and practices and what the consequences were on both secularization and democratization processes.

### “Democracy”: a concept at the core of both speeches and practices

It's always really complicated to define the concept of democracy. Indeed, in 1997, Collier and Levitsky listed 550 varieties of « democracy with adjective ». It shows how flexible the concept is and how it is easy to make a political use of it.

But if we work on the genesis of the word, we see it covers a tension between liberty and equality. The first word deals with a conception of a political democracy whereas the second is linked to a vision of a social one. If we talk about a political democracy, we focus on democracy as a system of government. It means that the most important thing is to respect people sovereignty which generally expresses itself through a representative system dealing with the problem of the relationships between majority and minority. The social democracy, inspired by Alexis de Tocqueville is more recent. It refers less to democracy as a system of government than as a particular state of mind: *“Henceforth, democracy is not only an institutional set-up belonging to the political legal frame but also a social fact characterized by the active power of people in the public space”* (Goyard-Fabre, 1998: p.130). If we can separate them in the analysis, these two aspects of democracy have to be complementary. But it's complicated managing the respect of both liberty and equality even though they can be opposite: a total liberty can create inequalities and the search of equality can hamper the freedom of speech. This very theoretical presentation finds a concrete example in the debate about the Circofs proposal.

Indeed, in his argument, the Circofs presented itself as representative of the will of a Muslim society and described feminists as a westernized elite totally cut from the real life. In their speech, they denounced sex equality as a foreign principle, that a minority group wanted to impose without paying respect to the democratic right of people to choose their own destiny. This idea was summarized in the introduction of the code: *“The Muslim community forms the vast majority of the population and the more elementary rules of democracy required that the family Islamic law, which is the legitimate rule for more than 95% of Senegalese men and women, becomes, in this field, the common law of Senegal”*. The religious actors went as far as using the secular principle to justify their claim. Indeed, they generally presented secularism as a French concept which has nothing to do with the Senegalese political culture. But in this very specific debate, Babacar Niang revealed his perfect control of the triangulation principle: *“Nowadays, the world is cultural diversity. Religion, to speak secular, has to be considered as a culture and, in this case, every individual must be free to live his own culture and to respect the others beliefs”* (interview, Dakar, 2007). In fact, by assimilating religion and culture, the Circofs didn't contest the secular organization but adapted itself to it in order to avoid a rejection of its claim based on the idea of its unconstitutionality.



If the Circofs used democracy in its institutional meaning, the feminists focussed on its social definition. They insisted on the fact that without equality we couldn't speak of a true democracy. By claiming reforms of family law, feminists wanted to put an end to the male domination which is, according to Bourdieu, a symbolic one: "*soft, insensitive, invisible even for its victims*" (Bourdieu, 1998: p.12). In order to convince the political authorities, women completed their argument by strengthening the legal approach: the Constitution recognizes equality between all citizens without making any differences between men and women (art.5). In addition, Senegal ratified all the international conventions about Women's Rights so it had to respect his commitments. Feminists also used the fact that Senegal is a secular Republic as a support to deny the legitimacy of Islamic law.

But if democracy was central in the speeches, what can we say about the course of the debate?

Here it is really interesting to stress that the actors of the debate always respected the legal and democratic frame (Brossier, 2004). And our comparison with the same debate in Mali and Morocco helped us to confirm that in Senegal there's a development of a public space based on discussion ethic. Indeed, women could defend secularism as a legitimate argument. But in Morocco, the political system is based on an Islamic Monarchy so that secularism is the greatest taboo topic which really harmed women's organizations because there are rights they can't ask for. In Mali, during an official debate about family law we noticed that even if it was possible to talk about secularism, it was nevertheless really difficult for women to defend their point of view. In the assembly, an official representative of the Great Islamic Council refused to listen to a woman's activist speech whereas she previously had heard to all he had to say. Another one was verbally attacked when she tried to develop her ideas. So, even if newspapers titled about a "trench war" (Walfadjiri, 2002), these kinds of situations had never happened in the Senegalese debate. There was no use or threat of physical violence and all the subjects were debated through the media.

And, above all, both camps called for a State arbitration what proves that they both recognized its legitimacy. So, despite the tensions, the State was finally reinforced by this debate. But if the President Wade expressed himself, the political elite remained really silent and except the Islamic parties, the main groups didn't intervene.

So we have to question this silence which lets us think the debate can be read in a "double or quits" perspective. As a judge told us, opening this file again may help to reinforce the civil society and the public space but, in a really uncertain political context, it can also put in great danger the family code and the principles of secularism and democracy that justified its adoption (interview, 2009).

## **The Islamic rise on both political and legal levels**

At the political level, if the debate about family law has always been recurrent, it was the first time in 2002 that all the actors accepted to discuss within the Islamic framework. This evolution had consequences on the conceptions and practices of both Senegalese secularism and democracy. We also can shade the idea of a renegotiation of the divides which benefits the secularization process if we take a look on the legal field. Even if Women's organizations won some legal battles, it was always about rights in the public sphere, not in the private one. In addition, if the text doesn't change, its weak or faulty enforcement is giving more power to Islamic law in the daily practices.

### **At the political level: Islam, a winning political resource**

If the Circofs admitted the secular nature of the political institutions, its members totally denied the secularization of the society.

Here the distinction in French that doesn't exist in English is very useful: the Circofs could handle with the State "*laïcité*" as a "*process dealing with the political, legal and institutional regulation of the belief and the symbolic, with its transactions and explicit conflicts*" (Baubérot, 2005). But they didn't want a secularization at the societal level which would mean "*social and cultural changes implied by a social dynamics, the evolutions of knowledge and techniques and the instrumental rationality development. Indeed, it is most of the time latent, an unexpected effect of social dynamics that change the societal representations of the world and the behaviours in public life*" (Baubérot, 2005). In the debate about family law, the problem is not the State/Islamic institutions divide but the one between holy and secular spaces (Triaud, 2010). Indeed, freedom of mind, neutrality and respect of political secularism are shared values in Senegal. The brotherhoods, if they accepted to support the Circofs proposal, didn't want to fight against secularism, which help to maintain peace between Islam and Christianity but also between the different brotherhoods. Therefore, D.Cruise O'Brien considered that « *Perhaps the secular State is the Sufi's secret love* », (Cruise O'Brien, 2003: p.63). But the stakes of secularization on the societal level are different. They deal with: social control forms, political legitimacy (at the organizational level) and subjective relationship between the man of the street and the Church on an individual level (Monod, 2007). And in the debate, the Circofs accused the women's organizations to promote a societal secularization based on a materialistic and atheistic conception of human life.

As "*Law secularization is most certainly one of the most crucial points of the secularization process*", Law could only be at the core of the debate "(Monod, 2007) and the Circofs wanted to use it to stop the secularization process.

And almost 10 years after this debate, the Imam and MP Mbaye Niang restarted the Circofs proposal but this time with a speech much more offensive against political secularism. Contrary to Babacar Niang, who died in 2007, he is not clearly against an Islamic State. In fact, he just considered inappropriate, because, according to him, Senegalese people are ready to have an Islamic family law but not to rule their whole life in the respect of Islamic law because of a lack of education which needs time to be improved (interview, 2010). More than ever the Islamic movements considered Islam as the main character of the Senegalese individual. If the Circofs doesn't exist anymore, its heirs, as Imam Mbaye Niang and his

political party, have adopted a speech much closer to the reformist ideology so that they clearly contest the social contract.

The renegotiation of the divides could also be discussed if we pay attention to the main systems of reference during the debate. For the first time, most of the women's organizations accepted to debate within the religious frame. Through our study of the AJS, we have seen that this choice was not easy and created conflicts within the association. This approach was justified by their will to be more pragmatic and efficient. Therefore, they chose to list priorities and to give up, for a while, some questions as the reduction of polygamy, a fight which could only divided the women according to one activist. In the same perspective, they now defend the parental authority instead of the paternal power arguing that this reform is not against Islamic law. Because of their weaknesses in Islamic Law, these women work with religious personalities who defend a conception of an open and tolerant Islam. But for now the government has not accepted the reform yet. And, more important, the women let other people defend their claims. Of course, it could help to show that the fight for sexual equality doesn't only concern women. But it also means that they accept the fact that the religious people who support them are in the front line and put the debate on a religious level. So this new strategy appears as really risky and we have to wait to see if it will have some results.

This omnipresent religious speech generates some questions about democracy. Indeed, the social component of this regime seems to be forgotten as far as Muslims who are not believers, women and Christian rights could be put in danger. During our fieldwork, we noticed that the fact having no faith is still a real taboo topic. However, when we talked about that with members of the Circofs they said that it wasn't a real problem. One of them told me that he was doing a difference between what he called an *"adherence Muslim"* and a *"situation Muslim"*. The first knows his religion whereas the second was born Muslim but it doesn't matter for him or at least he doesn't really understand his religion. When I asked this man: *"If the Sharia Law was voted, all the Muslims would have to follow it or would they have the choice?"*. He was not really comfortable and said *"It would be logic that a Muslim follows the Islamic law. The logic clearly would want that and I am sure every adherence Muslim would do that (...)"*. So without clear answer, I repeated my question and he said: *"For me it would be possible. Sure it's not logic, it's a great contradiction that could only come from a situation Muslim. Because me, I won't hesitate, that's clear"*. Here he expressed a personal point of view but this problem is far from being solved in the Islamic movement. Thus, Babacar Niang had a real different answer to the same question during our interview: *"If God tells a Muslim to do something in a specific way, he can't invent another way to it. And if he does it, he has to be aware that he puts himself in great danger"* (interview, 2007). The Circofs is also not really clear about women. When we had precise questions about some Women's Rights, they always avoided to answer and adopted a very general speech about the respect of religion that implies some sacrifices, for example to admit Islamic law whatever it takes. One Islamic man considered that *"Faith helps to override the inconveniences"* and that *"It's not a good method to go into details to find little problems, it's not serious. The question has to be judged on a more general plan. And it's the question of the kind of society we want that we have to debate"*. If the Circofs clearly defended a legal pluralism to allow the Christians to leave their religion in peace, the Islamic parties that now defend the Circofs ideas are ambiguous about the question of an Islamic State as we saw before. That's why it can be a danger for the respect of the Christian minority.

The Presidential elections of 2012 will be a good test to see how popular this reformist speech is. For now, if they succeeded in taking a place they never had on the public space, the religious parties didn't get many votes. But the family law debate clearly gave them an entry into the political battle.

### At the legal level: The double or quits logic of a reform

If we consider the concrete results of this debate 10 years later on family law, we can say that none of the two camps got satisfaction. President Wade firmly rejected the Circofs proposal in the name of the respect of the secular, democratic but also cultural principles of Senegal, presented as a country of peace and interreligious dialogue. But if the Circofs lost this battle, they prevented the adoption of the parental authority, a project defended by the women's associations and which had to be discussed at the Parliament. From this point of view, we can consider that the feminists also failed: no Sharia but no additional rights within family. Of course, they got some legal victories. During the last 10 years, the State ratified important international Conventions about Women's Rights and, on the domestic level, the Parliament voted new important laws to improve Women's Rights: the law against MGF (1999), the social security law reform (2006), the parity law (2007) and the taxation law reform (2008).

But obviously, all these victories concern the public space. Nothing changed in family law which remains more than ever the impregnable stronghold. We can add that since the Circofs offensive, the women's associations have seemed to use the law more as "*a shield against the injustices*" than as "*a sword used to get substantial results*" (Israël, 2001). Therefore it creates an important gap between a public sphere where women are recognized as full citizens and a private one where they always have a minor status. In the secular State of Senegal, a woman can be a Minister, even a President but she's not allowed to pass on her nationality to her children or to have a civil authority on them. Thus, despite their claims the associations failed to change the State policy that increased the separation between public and private law instead of associating them. One female MP told us how shocked she was when she heard the speech of the Minister of Justice during the parity law presentation: "*He addressed a message to men, inviting them to vote the law because it was not a social parity and even less a familial one but just a political parity. It was his way to reassure them, telling them that nobody will touch to their advantages at the societal level. In the same perspective, the Minister of Family aimed at the female audience explaining that this law didn't mean they were going to get a full equality, that it was limited to the political field*" (interview, 2010). But more than the family law status quo, it may be the spread of Islamic law in both unofficial and official judicial practices that lets us think the renegotiation of the divides benefits more to the religious camp than to the secular movement.

As we said before, the Senegalese code works on an incentive logic. In fact, the lawmaker expected that through practice, the family law was going to be secularized. But it is pretty the contrary which happened. During our fieldwork, we were able to do observations in the Courts, interviews with judges and lawyers and also to work on an important corpus of judicial precedents. And all these different works showed the same result: the spirit of the text has been misrepresented by the judicial practice. The best example is certainly the art.571 enforcement about inheritance. Normally, Islamic law must be the exception but it has become the common law. For example, in 1998, 708/842 heredity judgements confirmed the use of Islamic law. It means 84,08% against only 13,08% for common law (the other 2,84% could be explained by the lack of judgement indication) (Chalak, 2001). As a lawyer told us: "*The main problem is that a Muslim judge jibs at applying the inheritance common law to a Muslim*" (interview, 2008). Even when it is linked to questions in which there is no option, the influence of Islamic law is perceptible. For example, regarding the children custody, we

had examples of decisions that withdraw the custody from the mother because the father was a religious man considered as a better choice to raise the children, even if the social inquiry concluded that it was better for their well being to let them their mother.

But the main problem is that many people still don't use the state administration or don't know it. Thus, many women are repudiated but can't prove it in a Court. More than 30 years after the law was adopted, many women, even in Dakar, ignored repudiation was forbidden. The members of the AJS told us that it was the main problem of the women coming in their law shop. On this point, the Minister of Justice seems to have given up. Indeed, for a few years, they have created justice houses which aimed at encouraging proximity justice. We worked in two of these houses and in both cases, family matters were the most usual, and particularly the problems of repudiation. But the voluntaries tried to find an agreement between husband and wife without advising them to go to the Court, even though it was the legal procedure and however a woman could get many more rights there. During our discussions, they told me that it was the better way to help them because the legal procedures were long and expensive. A young volunteer student told us that they often said to women who want to sue to see the women's lawyers of the AJS. So finally the State let the civil society handle these kinds of problems and accepted to legitimate some practices even if they went against his own law.

Therefore, if Islamic was marginalized in the code of 1972, it has become with time a central reference in the practices what has allowed the Circofs to take it as the battle horse of a political Islam in construction.

## **Conclusion**

The Family Law Debate is a good example to study the renegotiation of the secular/religious divide at work in Senegal. Confronting each other about the legitimate system of reference regarding Women's Rights within family law, both the Circofs and the women's organizations contributed to politicize the question and, thus, to strengthen the public space, even if it's still limited to some categories of people, generally from the elites. The debate was also based on a discussion ethic, which was confirmed by a member of the Circofs in these terms: *"we have to discuss, we are in Senegal here and it's like that, nobody can impose anything"*. Finally the State was accepted as the legitimate arbiter which reinforced its legitimacy as a secular and a democratic State. But since 2002, the debate has not been anymore focussed on Universal rights but on the Islamic system of reference so that it has come to challenge the traditional conceptions of secularism and democracy. Finally, in this context, the legal policy of the State has seemed to confirm the public/private divide regarding Women's Rights instead of abolishing it. Though it's still not closed, the renegotiation appears at the moment to benefit mainly to the religious movement given that at the legal level the status quo is maintained, and that in practice, Islamic law has a real importance in family matters. The political uncertainty about what is going to happen with the President Wade succession underlines a little more the "double or quits" character of the debate.

