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## Secularity and Freedom of Religion in Senegal: Between a Constitutional Rock and a Hard Reality

*Fatou Kiné Camara, PhD\* & Abdourahmane Seck, PhD\*\**

### I. INTRODUCTION

The metaphor of the contrast between text and practice contained in the subtitle of this Article is first approached in our study from a strictly formal and legal angle—especially around “critical cases.” That task was undertaken by the jurist, Dr. Camara. Yet at a second level of study, historian-anthropologist Dr. Seck rekindles the discussion by starting with a simple but nonetheless difficult-to-interpret observation; it is a fact that in many respects, in Senegal, a great number of virtues as well as their opposites are attributed to Islam. It is argued on one hand that Islam strikes only superficially at a socio-cultural reality and even less on a significant endogenous religious reality, and on the other hand that Islam is said to influence the law to such an extent that it determines its content and prevents it being reformed in all sovereignty.

However, in his dialogue with the law expert (and hereby feminist), the anthropologist-historian is forced to recognize an element of “empirical truth” to this obvious contradiction.

The problem is also of a historiographical nature and refers in this regard to the various ways of thinking and writing the history of Islam in Senegal.<sup>1</sup> Culturalist or philosophical approaches have developed two major themes—“Black Islam” and “Islamist

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1. MAMADOU DIOUF, *LA CONSTRUCTION DE L'ÉTAT AU SENEGAL* (2002); Jean Copans, *Les Noms du Gérer: Essai de Sociologie de la Connaissance du Sénégal par Lui-même (1950–2001)*, in *LE SENEGAL CONTEMPORAIN* 155 (Momar Coumba Diop ed., 2002); Momar-Coumba Diop, *Savoirs et Sociétés au Sénégal*, in *LE SENEGAL CONTEMPORAIN* 37 (Momar Coumba Diop ed., 2002); Ibrahima Thioub, *L'Ecole de Dakar et la Production d'une Ecriture Académique de l'Histoire*, in *LE SENEGAL CONTEMPORAIN* 109 (Momar Coumba Diop ed., 2002).

threat”<sup>2</sup>—that the colonial state and its mechanism of production of imperial knowledge have largely helped, if not to generate, at least to crystallize. These two themes have been the object of voluntary or unconscious instrumentalization, critical appropriation, and utilitarian amplification, and thus have fed a long series of political, cultural, and religious arguments used to position specific reinterpretations of the history of Senegal.

A large number of critical cases or arguments depicting Senegalese politics under an Islamic thumb (*mise sous tutelle islamique*) result from these arguments. The various positions and commitments that determine them do not only contribute to a paradox of “Islam in Senegal,” but also clarify the issues and trends that characterize and demonstrate the difference between the letter of the law and the “hard reality.” Basically, the approach of the anthropologist-historian is just that, as it confronts the most common or critical cases highlighting this shift, with the need to discern what is played, softly, under the immediacy of things and their loudness.

## II. RELIGIONS OF SENEGAL

### A. *Contemporary Senegal*

Modern Senegal is overwhelmingly Muslim. Official statistics characterize the population as ninety-four percent Muslim, five percent Christian—largely Roman Catholic—and one percent animist. The official statistics,<sup>3</sup> however, do not accurately convey the reality of religious life in Senegal. Islam and Christianity are infused with indigenous religious beliefs and traditions. Senegal’s first president, famed poet L.S. Senghor, who was a Catholic raised by missionaries, testified about the continued existence of indigenous faith in both Christian and Muslim African men and women:

As today a Moslem Head of state will consult the “sacred wood”,  
and offer in sacrifice an ox or a bull, I have seen a Christian woman,

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2. MAR FALL, SENEGAL, L’ETAT ABDOU DIOUF OU LE TEMPS DES INCERTITUDES 51–57 (1986); MORIBA MAGASSOUBA, L’ISLAM AU SENEGAL: DEMAIN LES MOLLAHS? LA QUESTION MUSULMANE ET LES PARTIS POLITIQUES AU SENEGAL DE 1946 A NOS JOURS (1985).

3. SENEGAL, CENTRAL INTELLIGENCE AGENCY, WORLD FACT BOOK (2010), <https://www.cia.gov/library/publications/the-world-factbook/geos/sg.html>.

a practicing medical doctor, consult the sereer “Pangol”<sup>4</sup> (the snakes of the sacred wood). In truth, everywhere in Black Africa, the “revealed religions” are rooted in the animism which still inspires poets and artists, I am well placed to know it and to say it . . . .<sup>5</sup>

Babacar Sédikh Diouf, a researcher, author of articles on the culture and religion of the Sereer (a socio-linguistic community of Senegal) rejects the term animism to describe this religion. He does it in these terms: “Animism! Even Senghor, who restored the dignity of the Black man, with the concept of “Negritude”, accepts it whereas he should have proclaimed an actual religion.”<sup>6</sup> To make his point, Diouf cites Gravrand:

African religion, seen through the Sereer religion, has most of the traits of a religious trend: it has a theory, latent, but coherent, oriented toward sacred transcendence as source of life, communication and participation. An ethics proposed by the old tradition, with a sense of right and wrong. A popular cult. Places of worship. A corpus of prayers. A mystical life, reserved for initiates. A well-prepared staff, from Pangool [ancestors’ spirits] priests, seers, healers and leaders of religious worship, the Saltigi, not to mention a multitude of celebrants dedicated to family and local cults. A whole life based on the religious experience. It is a true religious path, whose central theme could be formulated as follows: the divine in man.<sup>7</sup>

Recent research has documented the continued existence of rituals rooted in indigenous beliefs. In 2003, Knut Graw conducted anthropological field research in Senegal focusing on the socio-cultural and existential significance of ritual and hermeneutical practices, such as divination and dream interpretation.<sup>8</sup> He exposes the following facts:

4. Actually the “pangool” is the dead ancestor’s spirit. GRAVRAND, *LA CIVILISATION SEREER: PANGOOL, LE GENIE RELIGIEUX SEREER* (1990).

5. Léopold Sédar Senghor, *Préface: Un Regard Neuf pour l’Afrique Noire [Preface: A New Look at Black Africa]*, in PIERRE ALEXANDRE, *LES AFRICAINS [THE AFRICANS]* 6 (1981).

6. Babacar Sédikh Diouf, *Le Serere, Paganism Polythéiste ou Religion Monothéiste*, in FATOU KINE CAMARA, *POUVOIR ET JUSTICE DANS LA TRADITION DES PEUPLES NOIRS* 205 (2004).

7. Henry Gravrand, *La Civilisation Sereer–Pangool* 142 (1990).

8. Knut Graw, *Culture of Hope in West Africa*, 16 *ISIM Rev.* 28, 28 (2005).

In many (Middle Eastern) Islamic societies, the activities of healers and diviners are looked upon with suspicion by the representatives of their respective religious orthodoxies. Sometimes they are even banned by the state. In Senegal and Gambia, however, divinatory and therapeutic rituals unfold in the centre rather than at the margins of Islamic practice.<sup>9</sup>

Graw bases an important part of the divinatory ritual on the Islamic practice of *saddaka* (giving charity to individuals in need). First, he rightly observes that: “[B]oth in Senegal and Gambia, being a specialist in divination or healing is practically synonymous to being a religiously learned person and vice versa.”<sup>10</sup> Second, he states: “Furthermore, it is interesting to note that even those divination techniques that are historically not associated with the Islamic esoteric sciences, such as the widespread technique of cowrie-shell divination, refer to the Islamic charitable practice of sadaqa as their most important ritual remedy.”<sup>11</sup> Cowrie-shell divination is indeed widespread and it has nothing to do with Islam, but its “most important ritual remedy” is also totally rooted in the indigenous religion rituals.<sup>12</sup> “The strong link between West African Islam and the arts of divination and healing” is in conformity with the indigenous religion and its belief that learned<sup>13</sup> men and women have the power to decipher the messages sent from the invisible world.<sup>14</sup> Hence followers of the African religion do not care whether the spirit you are calling upon for help and guidance goes by the name of Allah, Jesus, or any other. It is not a blasphemy in their religion. The famed tolerant nature of West African Islam cannot be understood if one overlooks its indigenous beliefs’ source. Indeed, it is of the essence of the traditional African faith to accept healing and divinatory practices in all forms and shapes. It is a religion that by essence embraces plurality of beliefs as it embraces a plurality of sacred spirits. There are no “infidels” in its dogma, only individuals

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9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. The learned individual (“*boroom xam-xam*,” literally “the one with knowledge,” in Wolof, the most widely spoken language in Senegal) is the individual who demonstrates esoteric knowledge and magic skills.

14. Graw, *supra* note 8, at 28.

who are or will be in physical, material, or mental trouble, because they have aggravated a spirit, ignored a powerful one, or are being stalked by another. The role of the healer is to use divinatory art to find out which spirit needs offerings, and what kind of offerings it wants to help you heal or watch protectively over you and your loved ones. Belief in shape-shifters is also widespread (“*dëmm*” in Wolof) and serious enough to lead to the murder of the shape-shifter. Such a case was analyzed by a team of French and Senegalese psychiatrists who related the following facts pertaining to a man convicted for killing a man he accused of being a shape-shifter, responsible for his daughter’s fatal illness; the only cure was for the shape-shifter to die:

S. C., worker honorably known in the city, has killed a man, his cool determination and the reasons he advances evokes to the judges, mental illness, he was thus sent to us. S. C. is aged 50 years. His past is spotless. His presentation, his demeanor, his speech are those of a normal man. His body is free of chronic or progressive disease, additional habitual examinations (BW, electroencephalogram) are also normal. The words of the murderer are, however, surprising . . . .<sup>15</sup>

Not only did that man murder another man because he was convinced to be dealing with a shape-shifter, but also, being arrested, convicted, and sent to jail for homicide did not cure him of that belief. His doctors report that:

The murderer is in prison, happy to have saved his daughter from death by killing the person he sees as a witch. In his cell, S. C. thinks day and night of these events. The witch is dead, but the sorcerer’s wife, who is also a witch, comes every night in his prison cell. She leaves her human form and takes the form of birds or lions to attack him. S. C. is always on his guard, his eyes closed, he can guess her approach and she utters spells against him. He alone can thwart attacks by saying in turn appropriate formulas.<sup>16</sup>

As his doctors finally concluded, their patient was not demented; he just went the extra mile to save his daughter. As a matter of fact, it is

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15. Henri Collomb, Paul Martino & Moussa Diop, *Les Difficulties du Psychiatre à propos du Meurtre d’un Sorcier*, 9 BULLETIN DE LA SOCIÉTÉ MÉDICALE D’AFRIQUE NOIRE DE LANGUE FRANÇAISE 4:415–17 (1964).

16. *Id.*

believed that it is enough to publicly expose a shape-shifter to make them let go of their prey. The belief that we are living alongside inhabitants of an invisible world is still widespread. Very recently, various newspapers reported an event that took place in the capital city, at one of its oldest high schools located in a residential area, Lycée Lamine Gueye. To briefly summarize, the article read as follows:

Mysterious Crisis at Lamine Gueye high school: Psychosis? A mysterious attack of hysteria has hit 88 girls and 2 boys, some have fainted while others raved. Given the scale of the phenomenon, physicians (emergency physicians, and psychologists) associated an exorcist to the therapy. With the help of exorcist Seynabou Mbaye (a woman) residing in Ouakam, who came equipped with cans of holy water and a cow's tail, the situation had returned to normal.<sup>17</sup>

The Lebou, an important ethnic group of the region of Dakar, are mainly Muslims but they still very much adhere to their pre-Islamic beliefs as is shown in the following news article excerpt:

Showing his disagreement with the rapid advance of some buildings on the coast, he [Sheikh Saliou Diop, customary head of the Lebou community] denounced the construction of the tunnel Soumbédioune "without the consent of the master of the place" (the tutelary guardian spirit of the place, Leuk Daour). A sentiment that was expressed yesterday during the traditional Lebou ceremony of sacrifice the "saraxu Ndakaaru." A day that saw Lebous go in turn on the beaches Begni, Terrou Baye Sogui and Soumbédioune. During the ceremony, cows, cola nuts and milk curds were given as offerings to Leuk Daour, guardian spirit of Dakar, to implore his grace so that peace prevails throughout the country.<sup>18</sup>

It is interesting to note that at the end of the article, the reporter writes as a conclusion: "It must be remembered that this mystical

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17. Mamadou Amadou Diop, *Mysterious Crisis at Lamine Guiye High School*, SUD QUOTIDIEN, No. 4497, Apr. 19–20, 2008, at 2.

18. Pop, No.2274, Feb. 24, 2009, at 5.

ceremony was preceded by a reading of the Koran and prayers, the day before yesterday, at the Mosque in Medina rue 17 angle 22.”<sup>19</sup>

Although indigenous beliefs are widespread, people are slow to admit that they are anything other than Muslims or Christians. The reason lies in the fact that in most of the former territories under French rule (*Afrique Occidentale Française*, “AOF”), ever since the military defeat of the “pagan”<sup>20</sup> aristocracy and their troops (the *ceddo* warriors), followed by the destruction of the indigenous social, political, and economical structures due to colonial conquest, the indigenous religion has been consistently labeled by Muslim leaders, Christian missionaries, and colonial authorities alike as satanic and primitive. Nothing was done to enforce respect for the indigenous faith, its sacred places, and its followers. For instance, with the exception of Ziguinchor (in Southern Senegal), all over the country, dating back from colonial times, land has been earmarked for Christian cemeteries and graveyards for Muslims, but not one piece of land has been reserved for the indigenous faith followers. This has forced many Senegalese men and women to convert to one of these two religions in order to have a decent burial at their death. Such convenient conversions to Islam or the Christian faith paved the way to the syncretism that makes it possible to say that, in Senegal, a Christian or a Muslim is also almost always a follower of the indigenous faith whether or not he/she openly admits it.<sup>21</sup>

It is not only this symbiotic relationship among the religions in Senegal that has its roots in ancient history—history also illuminates the relationship between religion and the state in modern Senegal.

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19. *Id.*

20. Pagan was the term used by the French and by the Muslim warriors who declared holy wars on the territories they wanted to conquer. Actually some of the kings and people they declared pagans were Muslims, only they were Muslims who did not care for Sharia and kept on animist practices and beliefs.

21. For the anthropologist-historian, the status of traditional religions in contemporary Senegal can not be solely referred to a systematized destructuring process. It should also be linked with the long process of popular appropriation of Islam, which can be reduced neither to forms of religious violence exerted from outside on the country's people, nor to adhesions which were made without discursive reconstructions. On the superficial nature of scripture of Islam in Africa, Vincent Monteil puts the argument the following way: “What people, embracing a new faith, had repudiated their herbs and lights on St. John?” VINCENT-MANSOUR MONTIEL, *L'ISLAM NOIR* 67 (1986).



*B. Religion and the State in Senegal's History*

Historically, official state ceremonies exhibited religious influence, but did not prescribe them any defined official role. Rather, West African rulers were tolerant toward traditional religions, Islam, and Christianity. A central characteristic of African religion(s) is the belief in spirits and deities associated with local villages, clans, and natural objects. These beliefs would appear to be antithetical to the monotheism of Islam, which condemns “associating” (i.e., the practice of worshipping one’s ancestors’, land’s, or community’s guardian spirits), yet the people and rulers of West Africa were tolerant toward Islam since the time it was introduced into the area and often blended beliefs and practices from the two religions.<sup>22</sup>

Islam appears to have been introduced into the area as early as the eleventh century.<sup>23</sup> “Historically, in most West African societies Islam first spread through scholars who were schooled in the Islamic esoteric sciences (*‘ulum al-asrar*) and who offered their services to the leading members of local non-Islamic aristocracies.”<sup>24</sup> Around the time of the 13th century, many rulers also began to convert to Islam.<sup>25</sup> The majority of people, however, maintained their traditional religious beliefs and practices.<sup>26</sup> Perhaps because of the divided religious nature of society, Muslim rulers maintained several rituals and customs rooted in traditional culture and religion.<sup>27</sup>

The famous Moroccan traveler Ibn Battuta noticed this religious tension during his visit to the great West African Empire of Mali in the fourteenth century. At its height in the thirteenth century, the

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22. See generally LAMIN SANNEH, *THE CROWN AND THE TURBAN: MUSLIMS AND WEST AFRICAN PLURALISM* (1997).

23. See SÉKÉNÉ MODY CISSOKO, *HISTOIRE DE L’AFRIQUE OCCIDENTALE: MOYEN-ÂGE ET TEMPS MODERNES, VIIÈ SIÈCLE-1850*, 26 (1966); NEHEMIA LEVTZION, *ANCIENT GHANA AND MALI 187* (Africana Publishing ed., Methuen & Co. Ltd. 1980) (1973); Lucy Creevey, *Islam, Women and the Role of the State in Senegal*, 26 *J. RELIGION AFR.* 268, 274 (1996).

24. Graw, *supra* note 8, at 28.

25. LEVTZION, *supra* note 23, at 190.

26. ROSS E. DUNN, *THE ADVENTURES OF IBN BATTUTA, MUSLIM TRAVELER OF THE FOURTEENTH CENTURY* 303 (2005 ed.) (1986); LEVTZION, *supra* note 23, at 190.

27. Depending on the specific region, time, and ethnic group, some rulers were more devout toward one religious tradition or another and incorporated that religion into official state actions. Generally, however, rulers adopted a middle-of-the-road approach to religion. See LEVTZION, *supra* note 23, at 183–84, 190; Creevey, *supra* note 23, at 270–71 (noting the stronger presence of Islamic lineal hierarchies among the Tukulor compared with the Wolof and Serer peoples).

Mali Empire covered most of West Africa.<sup>28</sup> Ibn Battuta wrote about the fact that although the *mansa* (emperor) and the people of the towns he stayed in were Muslim, *shari'a* was often disregarded.<sup>29</sup> During his stay in the province of Walata,<sup>30</sup> Battuta made the following observations:

The condition of these people is astonishing, and its manners are odd. As for the men, they are by no means jealous of their wives; none of them is named after his father; but each one attaches its genealogy to his maternal uncle. The heritage is collected by the sons of the sister of the deceased, to the exclusion of the deceased's own children.<sup>31</sup>

He then goes on to describe rules that are entirely foreign to Muslim laws of inheritance and genealogy. He firmly states that these people with their strange customs are nonetheless Muslims who “make with exactitude the prayers prescribed by the religious law, study jurisprudence, theology, and learn the Qurân by heart.”<sup>32</sup> Battuta also noted: “The women of Messoûfites do not show any feeling of prudishness in the presence of men and they do not veil their face; in spite of that, they do not fail to perform punctually their prayers.”<sup>33</sup> Ibn Battuta also took exception with other local practices and customs that he felt went “against the model of the rightly guided Islamic state.”<sup>34</sup> He testifies disapprovingly to the following, again a clear proof of separation of Sharia Law and the law of the land:

All women who enter the sovereign's palace are naked, and they do not veil their faces, his daughters also go naked. The twenty-seventh night of Ramadan, I saw about a hundred women slaves who came from the sultan's palace, and they were naked. Two

28. It included Guinea and Mali (the heart of the empire), Senegal and the Gambia, part of Mauritania, Cote d'Ivoire, Burkina Faso, Guinea Bissau, and Sierra Leone.

29. See LEVTZION, *supra* note 23, at 196 (“The Islamic law, on the other hand, was but loosely practiced in the Islamized court of Mali, and clearly had less appeal [than praying and studying the Quran].”).

30. Walata was situated in the south-eastern part of present day Mauritania, and it marked the northern boundary of the empire of Mali.

31. IBN BATTUTA, VOYAGES, III. INDE, EXTREME-ORIENT, ESPAGNE ET SOUDAN 403–04 (La Découverte Poche ed.1997).

32. *Id.*

33. *Id.*

34. DUNN, *supra* note 26, at 303.

daughters of the sovereign well endowed in the upper part of their bodies, accompanied them, and they were also without any veil.<sup>35</sup>

Other objectionable practices included subjects groveling before the sultan while throwing dust and ashes over their heads and beating the ground with their elbows, and royal poets who performed in feathers and bird masks.<sup>36</sup> Battuta's indignation could only be heightened by the fact that all these goings-on took place during the Muslim holy month of fasting.

The Charter of Kurukan Fuga, commonly known as the Constitution of the Empire of Mali, was a contemporary document at the time of Battuta's visit. The Charter reflected a tradition of secularity and also respect toward both Islam and traditional religion. It was originally established as a group of decisions and principles designed by the founder of the empire, Sundjata, and his allies in 1236 A.D.<sup>37</sup> Subsequent generations transmitted it orally one to another until it was written down.<sup>38</sup>

The secular nature of the state is indicated by the fact that the Charter is largely silent when it comes to religion. Yet it recognizes that Muslim *marabouts*, or *sufis*, make up an essential part of society.<sup>39</sup> The one provision relating directly to religion is Article 3: "The five clans of *marabouts* are our teachers and our educators in Islam. Everyone has to hold them in respect and consideration."<sup>40</sup> It is significant, however, that the Muslim leaders' role is limited to teaching religion and has nothing to do with state affairs. Furthermore, scattered throughout the Charter is the requirement that all people are entitled to respect, including women, foreigners, slaves, and enemies.<sup>41</sup> Because most foreigners were Muslim, and most commoners were not, this suggests that religious beliefs should not be a factor to decide whether a person was entitled to respect.

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35. BATTUTA, *supra* note 31, at 428. *See also* 4 THE HAKLUYT SOCIETY, THE TRAVELS OF IBN BATTUTA 951–52, 965–66 (H. A. R. Gibb et al. trans. 1994).

36. BATTUTA, *supra* note 31, at 428.

37. *See* Chérif Elvalide Sèye, *Africa Drafted Its Declaration on the Rights of Man in 1236: An Interview with Historian Djibril Tamsir Niane*, LES AFRIQUES (Jul. 24, 2008), available at <http://www.lesafriques.com/en/mali/afrika-drafted-its-declaration-on-the-rights-of-man-in-1236.html?Itemid=35?articleid=0158>.

38. A translation of the Charter is available at <http://www.oecd.org/dataoecd/56/56/38874847.pdf>.

39. *Id.* art. 1.

40. *Id.* art. 3.

41. *See id.* at arts. 3, 5, 13, 14, 20, 24, 41.

Though the prevalence of Islam in Senegal grew as time progressed, the people of Senegal reacted to the introduction of Christianity by European colonizers the same way they had to the introduction of Islam. Many who accepted Catholicism also maintained Muslim *and* indigenous traditions.<sup>42</sup> Furthermore, Christians, Muslims, and followers of the indigenous faith freely associated with each other.<sup>43</sup> In his memoirs, Ousmane Camara, former head of the Senegalese Supreme Court, gives a testimony of the close and amicable coexistence of the Islamic and indigenous faiths in his own family:

While my father is a devout Muslim, a friend and close collaborator of the *Imam Ratib* (Muslim cleric in charge of directing prayers at the mosque), Thierno Kandji, muezzin and treasurer of the mosque, my mother is a priestess of the African traditional religion. She keeps in the backyard of our house an altar—to my young eyes a “magic square”—where coexist in a carefully organized chaos jugs, pestles half buried in the earth, gourds with strange multicolored designs, cowries tinted red from chewed kola nuts. . . . At dawn, as soon as my father leaves the house for the mosque, my mother rushes into her backyard where, with a gourd filled with curd milk, she proceeds to libations in honor of her family’s guardian spirits. From time to time, unbeknownst to my father, she gives to my sister and I ritual baths.<sup>44</sup>

During the colonial period, however, religion began to play a more prominent—though unofficial—role in the administration of the state. The French colonial government relied heavily upon the *marabouts* to govern the rural areas of Senegal.<sup>45</sup>

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42. JOHN D. HARGREAVES, *WEST AFRICA: THE FORMER FRENCH STATES* 69–70 (1967).

43. *Id.*

44. Ousmane Camara, *Memoires d’un Juge Africain: Itineraire d’un Homme Libre* 20 (2010).

45. *See* Creevey, *supra* note 23, at 275.

### III. LEGAL PROTECTIONS FOR FREEDOM OF RELIGION IN MODERN SENEGAL

#### *A. Constitutional Principle*

The current Constitution of Senegal has a rich history. Adopted in 2001, the current iteration is actually the fourth Senegalese Constitution since 1958. A brief constitutional history of Senegal will give some context to the provisions of the 2001 Constitution that touch religion, discussed below.<sup>46</sup>

A French colony since the late nineteenth century, Senegal began a dramatic move toward independence during the mid- to late 1950s. In 1958, a referendum gave France's overseas colonies three choices: integration with the French Republic, immediate independence, or self-government under the umbrella of a French Commonwealth perpetuated by France. After considerable debate, the leaders of the newly dominant Union Progressiste Senegalaise ("UPS") opted for self-government.<sup>47</sup> This decision quickly led to the formation of the Mali Federation, which sought to form a strong federal government among former French colonial territories in the region. Shortly after joining the Mali federation, the Senegalese assembly adopted Senegal's first national constitution in January 1959. The 1959 constitution was patterned closely after the constitution of the French Fifth Republic.<sup>48</sup> Although it provided for a unicameral legislature and a prime minister to head the government, it did not provide for a chief of state—an unnecessary feature under continued French administration. However, the termination of colonial rule in June 1960 suddenly forced this important issue to the surface. Controversy between members of the Mali Federation over the presidential position led to its eventual dissolution, with Senegal proclaiming its individual, national independence in August 1960.

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46. For a more detailed discussion of Senegal's early constitutional history, see SHELDON GELLAR, *DEMOCRACY IN SENEGAL* 40–47 (2005) [hereinafter GELLAR, *DEMOCRACY*]; EDWARD J. SCHUMACHER, *POLITICS, BUREAUCRACY AND RURAL DEVELOPMENT IN SENEGAL* 59–83 (1975).

47. GELLAR, *DEMOCRACY*, *supra* note 46, at 43.

48. See LUCY C. BEHRMAN, *MUSLIM BROTHERHOODS AND POLITICS IN SENEGAL* 5 (1970) ("The Senegalese government is modeled on the Fifth Republic."). France's constitution of the Fifth Republic was adopted in 1958 under the leadership of Charles DeGaulle. See SCHUMACHER, *supra* note 46, at 62–63.

However, the Constitution of 1960 was short-lived as well. This version provided for a dual executive, with Mamadou Dia as head of government and Leopold Senghor as the president of the Republic. Political tensions between these leaders strained the arrangement and ultimately precipitated the constitutional crisis of December 1962 and Dia's arrest under accusation that he had attempted a coup.<sup>49</sup>

Shortly thereafter, Senghor announced the preparation of a new constitution and the inauguration of the Second Senegalese Republic. This new constitution, adopted in May 1963, featured executive powers vested in a unitary executive: the president. Although the office of the prime minister was re-established by amendment in 1970, most executive power remained in the hands of this chief executive. Moreover, executive power continued to grow between 1963 and 2001, being formally enlarged through the adoption of the 2001 Constitution.

Senegal is one of the few predominantly Muslim states that include secularism in its constitutional text.<sup>50</sup> This secularity was an important feature of each of the four constitutions discussed above. This is not to say that Islamic leaders were politically inactive during the early days of Senegalese independence. Although Islamic leaders had already formed the Superior Council of Religious Leaders of

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49. This crisis divided the UPS into two camps; those that supported President Senghor, and those behind Prime Minister Dia. In December 1962, a majority of UPS deputies in the National Assembly voted to censure Dia, who responded by arresting four members. The army ultimately ended the crisis by supporting Senghor and Dia was arrested. He was tried for attempting a coup, found guilty, and sentenced to life in prison. However, in 1974, Dia was released "to demonstrate the regime's desire for national reconciliation." SHELDON GELLAR, *SENEGAL: AN AFRICAN NATION BETWEEN ISLAM AND THE WEST* 23–25 (1982). For an accurate and detailed account of the events leading to the trial and of the trial itself see CAMARA, *supra* note 44, at 8–144. Camara was the state prosecutor in the trial.

50. Apart from Senegal, Turkey is the most commonly used example of a constitutionally secular state with a majority Muslim population. See, e.g., Martha Minow, *Tolerance in an Age of Terror*, 16 S. CAL. INTERDISC. L.J. 453, 459 (2007) (citing Christopher D. Bebelieu, Comment, *The Headscarf as a Symbolic Enemy of the European Court of Human Rights' Democratic Jurisprudents: Viewing Islam Through a European Legal Prism in Light of the Sabiri Judgment*, 12 COLUM. J. EUR. L. 573, 577 (2006)) ("Turkey, alone with Senegal among all Islamic nations, elevates secularism as part of its constitution."); Niyazi Oktem, *Religion in Turkey*, 2002 BYU L. REV. 371, 371 ("Among Muslim countries, only Turkey and Senegal prescribe secularism in their constitutions."); see also T.S. Twibell, *Implementation of the United Nations Convention on Contracts for the International Sale of Goods (CISG) Under Shari'a (Islamic Law): Will Article 78 of the CISG Be Enforced when the Forum Is in an Islamic State?*, 9 INT'L LEGAL PERSP. 25, 82 n.259 (1997) (including Gambia, along with Turkey and Senegal, among the few states with majority Muslim populations whose constitutions are "avowedly secular").

Senegal, the Council did not openly oppose the adoption of the secular constitution in the early 1960s.<sup>51</sup> Each successive constitution, based on the French Constitution of 1958 and deeply rooted in *laïcité*, has perpetuated this ostensible commitment to secularism. Hence, the 2001 Constitution of Senegal provides: “The Republic of Senegal is secular, democratic and social. It ensures equality before the law for all citizens, without distinction of origin, race, sex, religion. It respects all beliefs.”<sup>52</sup>

The current constitution also contains provisions to promote political equality and to prevent discrimination. For example, Article 7 reads: “Political parties and coalitions of political parties contribute to the exercise of suffrage. They are obliged to respect the Constitution and the principles of national sovereignty and democracy. They may not identify with one race, ethnic group, sex, religion, sect, language or region.”<sup>53</sup> Furthermore, the constitution provides that “any act of racial, ethnic or religious discrimination, as well as regionalist propaganda that may affect the internal safety of the state or the territorial integrity of the Republic shall be punished by law.”<sup>54</sup>

The constitution also upholds the rights of religious communities to worship and to educate their adherents. Under the constitution, institutions and communities, both religious and non-religious, are equally recognized as means of education.<sup>55</sup> Freedom of conscience, religious and cultural liberties and practices, and the profession of religious education are guaranteed to all, subject to the public order.<sup>56</sup> Finally, the 2001 Constitution makes it clear that religious institutions and communities “have the right to develop without hindrance. They are free from tutelage of the State. They

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51. ABDULLAHI AHMED AN-NA’IM, *AFRICAN CONSTITUTIONALISM AND THE ROLE OF ISLAM* 149–50 (2006). Although the council did not oppose the early constitutions, its successor, the Conseil Supérieur Islamique du Sénégal, was the main opponent of the Family Code, discussed in greater detail below. *See also* Roman Loimeier, *Dialectics of Religion and Politics in Senegal*, in *NEW PERSPECTIVES ON ISLAM IN SENEGAL: CONVERSION, MIGRATION, WEALTH, POWER, AND FEMININITY* 237, 241 (Mamadou Diouf & Mara Leichtman eds., 2009) (“When Senegal became semi-independent in 1958, Muslim reformers quickly changed their oppositional position and started to support the reformist policies of the Mamadou Dia government . . .”).

52. CONSTITUTION DE LA RÉPUBLIQUE DU SÉNÉGAL tit. 1, art. 1.

53. *Id.* tit. 1, art. 4.

54. *Id.* tit. 1, art. 5.

55. *Id.* tit. 2, art. 22.

56. *Id.* tit. 2, art. 24.

regulate and manage their affairs in an autonomous manner.” In a similar vein, religious adherents in Senegal enjoy the rights guaranteed by the Universal Declaration of Human Rights.<sup>57</sup> This Declaration is expressly incorporated into the Constitution of Senegal.<sup>58</sup>

### *B. The Economic Community of West African States*

The Economic Community of West African States (“ECOWAS”) is a regional organization of fifteen African countries, founded with the signing of the Treaty of Lagos on May 28, 1975. ECOWAS was “to promote economic integration in all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters.”<sup>59</sup> As such, the ultimate goal of ECOWAS is a West African economic union that improves the living standard of the people and bolsters relations among its member states.<sup>60</sup> Additionally, in order to facilitate this unification of West Africa, ECOWAS from time to time signs protocols that lay out new, mutually agreed-upon actions to be taken by member states, ranging from the ability of people to move and reside freely<sup>61</sup> to mutual defense assistance.<sup>62</sup> The ECOWAS treaty itself was also revised to create the Community Court of Justice—whose

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57. Article 18 provides: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

58. CONSTITUTION DE LA REPUBLIQUE DU SENEGAL pmbl.

59. ECOWAS Commission, ECOWAS in Brief (internal quotations omitted), [http://www.comm.ecowas.int/sec/index.php?id=about\\_a&lang=en](http://www.comm.ecowas.int/sec/index.php?id=about_a&lang=en) (last visited Sept. 14, 2010).

60. ECOWAS Commission, Welcome Message, [http://www.comm.ecowas.int/sec/index.php?id=about\\_f2&lang=en](http://www.comm.ecowas.int/sec/index.php?id=about_f2&lang=en) (last visited Sept. 14, 2010).

61. ECOWAS Protocol A/P.1/5/79, *Relating to Free Movement of Persons, Residence and Establishment*, May 29, 1979, available at <http://www.comm.ecowas.int/sec/index.php?id=ap010579&lang=en>.

62. ECOWAS, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security*, Dec. 10, 1999, available at <http://www.sec.ecowas.int/sitecedeo/english/ap101299.htm>.



jurisdiction began narrowly but has since expanded to include even human rights—as a judicial body over the member states.<sup>63</sup>

### *1. Member states of ECOWAS*

West Africa is composed of fifteen individual countries: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Of these fifteen, all but Mauritania are members of ECOWAS.<sup>64</sup> Moreover, these fifteen member states are also secular states that recognize freedom of religion. It is this shared belief in religion free from the burden and influence of the State that has led to a specific protocol signed by ECOWAS members addressing religious tolerance.

### *2. Protocol on democracy and good governance*

On December 21, 2001, the Heads of State and Government of the member states of ECOWAS signed into effect Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.<sup>65</sup> Essentially, this protocol was an expansion of a 1999 protocol that laid much of the foundation for harmonic relations between the member states, such as mutual defense assistance.<sup>66</sup> Spurred by the increasing wave of international terrorism, the members of ECOWAS felt a supplemental protocol addressing issues of democracy, human rights, and religion was needed to not only

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63. African International Courts and Tribunals, Court of Justice of the Economic Community of West African States, [http://www.aict-ctia.org/courts\\_subreg/ecowas/ecowas\\_home.html](http://www.aict-ctia.org/courts_subreg/ecowas/ecowas_home.html) (last visited Sept. 25, 2010).

64. Niger has had its membership suspended as a result of tainted elections in late 2009. The elections were part of a constitutional crisis spurred by former President Mamadou Tandja's attempt to remain in power after his maximum two terms had expired. He has since been deposed by a military coup. See *Niger Coup Leaders Name Transitional Government*, BBC, Mar. 2, 2010, <http://news.bbc.co.uk/2/hi/africa/8544647.stm>; *West Africa's ECOWAS Suspends Niger over Elections*, REUTERS, Oct. 20, 2009, <http://www.reuters.com/article/idUSLK563508>.

65. ECOWAS Protocol A/SP1/12/01, *On Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, Economic Communities of West African States*, Dec. 21, 2001 [hereinafter Protocol on Democracy], available at <http://www.comm.ecowas.int/sec/en/protocoles/Protocol%20on%20good-governance-and-democracy-rev-5EN.pdf>.

66. *Id.* at 5.

enhance the prior peacekeeping and security protocol, but also for ECOWAS to “become really effective.”<sup>67</sup> The Protocol on Democracy and Good Governance fulfilled this need.

The Protocol on Democracy and Good Governance was motivated in part by increasing incidences of religious intolerance. In addition to recognizing constitutional principles such as separation of powers and transparent elections, the Protocol on Democracy and Good Governance declares that all member states affirm:

Secularism and neutrality of the State in all matters relating to religion; freedom for each individual to practise, within the limits of existing laws, the religion of his/her choice everywhere on the national territory. The secularism shall extend to all parts of the State, but shall not deprive the State of the right to regulate, with due respect to human rights, the different religions practised on the national territory or to intervene when law and order break down as a result of any religious activity.<sup>68</sup>

The Protocol is clear in pronouncing not only the protection of the freedom to practice religion, but also the freedom from government intervention or meddling that does not respect human rights or is not necessary to maintain law and order. Such a broad view of the need for secularity affirmed by all members of ECOWAS, including Senegal, suggests the primacy of secularism at the foundation of each member state.

Furthermore, the Protocol on Democracy and Good Governance forbids religious discrimination by State institutions and gives organizations and individuals the promise of recourse to the courts, including the ECOWAS Community Court of Justice. Article 39 of the Protocol on Democracy and Good Governance also called for the review of Protocol A/P.1/7/91 to give the Community Court of Justice jurisdiction over cases involving human rights violations.<sup>69</sup> As a consequence, the court’s jurisdiction was provisionally expanded in 2005.<sup>70</sup> This both affirmed the court’s power and importance to West Africa as well as the importance of human rights protection.<sup>71</sup>

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67. *Id.* at 3.

68. *Id.* at 6.

69. *Id.* at 20.

70. See *Draft Revised Protocol of the Community Court of Justice*, Supplemental Protocol A/SP.1/01/05, available at [http://www.aict-ctia.org/courts\\_subreg/ecowas/ecowas\\_docs.html](http://www.aict-ctia.org/courts_subreg/ecowas/ecowas_docs.html).

71. ECOWAS Protocol, *supra* note 65, at 20.

By opening up the Community Court of Justice to hear human-rights cases of member states, the people in West Africa were given a place to find redress for civil rights violations. The Court held that the exhaustion of domestic remedies is not mandatory.<sup>72</sup>

A recent example of such redress can be found in the case of *Hadijatou Mani Koraou v. Republic of Niger*.<sup>73</sup> In *Hadijatou*, a young woman, Hadijatou Mani Koraou, filed a complaint against the Republic of Niger in the ECOWAS Community Court of Justice. Hadijatou's claim was that the Republic of Niger had not protected her against a form of slavery in Niger, based on Islamic customary law, where a young girl is sold to a tribal chief to become his "*saddaqa*" or "*wahiva*" (fifth wife or slave concubine). She asked the court to condemn the Republic of Niger's actions, requested that Niger authorities adopt legislation that protects women against discriminating practices, such as "slave wives," and to grant her reparations for her nine years in wrongful captivity.<sup>74</sup> The Community Court of Justice found the Republic of Niger guilty of not protecting Hadijatou Mani Koraou from slavery and awarded her ten million CFA francs.<sup>75</sup> As this case illustrates, West Africa now has protocols that guarantee religious freedom and human rights and a designated judicial system to hear and enforce those rights.

#### IV. SECULARITY & FREEDOM OF RELIGION: THE REALITY

Although Senegal's constitution clearly delineates it as a secular, democratic state, from its beginnings, Muslim brotherhood leaders, or *marabouts*, have exercised considerable influence in Senegal and have played a pivotal role in the political process.

##### *A. The Dual Nature of the Family Code*

By 1958, the most important *marabouts* had joined together to form the Conseil Supérieur des Chefs Religieux du Senegal in defense of their ideological interests. The mission of their organization centered on protecting and maintaining the dogmas of

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72. *Id.*

73. *Hadijatou Mani Koraou v. Republic of Niger*, Judgment No. ECW/CCJ/JUD/06/08, (ECOWAS CCJ, Oct. 27, 2008), *available at* [http://www.unhcr.org/refworld/publisher,ECOWAS\\_CCJ,,,496b41fa2,0.html](http://www.unhcr.org/refworld/publisher,ECOWAS_CCJ,,,496b41fa2,0.html).

74. *Id.* at 2–4.

75. *Id.* at 15–16.

Islam and in rejecting any constitution that could injure, however slightly, the practice and expansion of Islam.<sup>76</sup> They also identified their roles as peacekeepers and mediators between religious leaders with the goal of “reconciliation,” “cordial understanding,” and “common peace.”<sup>77</sup> While the group effectively ceased to function after full independence, it would reemerge later in the passage of the Family Code.<sup>78</sup> After the country became a sovereign state in April of 1960, the judicial system was harmonized on a simplified French model. The colonial customary courts were also abolished. The Muslim judge, or Cadi, retained an advisory role in inheritance matters because of the Muslim inheritance law in the Family Code. While the Code is a secular statutory law, it contains a section for “Muslim inheritance law” with no counterpart for any other religious tradition or customary law.<sup>79</sup> There are general provisions for succession with a more equitable distribution, regardless of sex.

The Drafting Comity, created by decree in 1965, also reflected Islamic preferentialism as the only religious members included in the group were six Muslim judges, or cadis. In the directives given to members of that comity, the Muslim faith is the only religious tradition singled out for consideration and respect in the creation of the law. According to Youssoupha Ndiaye, a former president of the Conseil Constitutionnel in Senegal, the Minister of Justice gave the Comity the following directives:

Elaborate one Code for one Nation. Admit rare exceptions to the uniform rule in cases where such uniformity is not possible. Take into account and modernize the rules common to all customs. Find a compromise while making sure to distinguish what is of a truly religious rule in cases of opposition between the traditional status

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76. LEONARDO A. VILLALÓN, *ISLAMIC SOCIETY AND STATE POWER IN SENEGAL: DISCIPLES AND CITIZENS IN FATICK* 208 (1995). The Conseil Supérieur des Chefs Religieux du Senegal’s specific mandate was:

to protect, watch over, and maintain the dogmas of Islam in their true sense; ensure that the new constitution would provide freedom for Islam; ensure that the constitution would conform to the interests of Islam and practicing Muslims and reject the constitution if it included any means of harming Islam, its practices, or the possibility of its expansion . . . .

AN-NA’IM, *supra* note 51, at 149 (citing VILLALÓN, *supra* note 76, at 201).

77. VILLALÓN, *supra* note 76, at 207–08.

78. *Id.* at 208.

79. Code de la famille Sénégalais, Titre III des Successions de Droit Musulman.

and the modern one. As for the Muslim Law, only what is imperatively prescribed by the Quran will be applied.<sup>80</sup>

The Senegalese Family Code was enacted after a long and arduous codification process in 1973. Subsequent revisions have largely failed to correct the religious biases that undermine its secularity. When the government first announced the proposed Family Code, the “united *maraboutic* front” quickly resurfaced under the Conseil Supérieur Islamique du Sénégal to express its opposition.<sup>81</sup> The extent of the Council’s organized opposition against the law was arguably unprecedented as the group launched direct challenges to the law both before and after its eventual adoption.<sup>82</sup> The *Marabouts* felt that the action was an incursion by the state into their domain and demonstrated a departure from colonial practice in accordance with a more modern vision for the country.<sup>83</sup> The Council set up three commissions to study the proposed laws, who produced separate reviews with varying levels of acceptance and criticism. Ultimately, the third version was sent, which criticized the document and suggested the addition of a special advisory chamber on religious matters to the National Assembly while documenting more than eighty articles that contradicted Muslim law. This version was presented to the Council in January of 1971 by the *Marabouts* with the presumption that their voice would be heard before any further action.<sup>84</sup> When the government proceeded, the Council sent another letter with a polite but unwavering tone.<sup>85</sup> However, the Code was finally adopted in

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80. Ndiaye made this statement in his book without citing his sources. YOUSSEPH NDIAYE, *Le Divorce et la Séparation de Corps*, LES NOUVELLES EDITIONS AFRICAINES 14–15 (1979).

81. VILLALÓN, *supra* note 76, at 227.

82. *Id.*

83. *Id.* (citing Christian Coulon, *Les Marabouts sénégalais et l’Etat*, in REVUE FRANÇAISE D’ETUDES POLITIQUES AFRICAINES 158 (1979)). Coulon’s cited piece includes a Conseil letter that reads: “We are astonished to see that now, in Senegal, one wishes to introduce innovations, not to say deformations, while the colonizers had accepted the Muslim Code and created special jurisdictions for Muslims.”

84. *Id.* at 228 (citing Mbaye, *infra* note 85, at 568–69).

85. Ravane Mbaye, *L’islam au Sénégal 570–72* (1976) (unpublished doctoral thesis, Université de Dakar) (“We insist on specifying that it is absolutely not and will not be our intention to insinuate ourselves [nous inféoder] into the management of the nation’s affairs, which falls on you by the sovereign will of the people. But by virtue of the obligations that result from the roles assigned to us by our religious positions, we must necessarily remove any ambiguity to *categorically reject any measure, even an official one, which does not respect the*

1972 without *maraboutic* input, largely because of the “extreme importance” attached to the Code by the state and, particularly, by Senghor himself.<sup>86</sup> From the perspective of the state, led by a Catholic President, the Code was an effort to “unify the law, strengthen the secular nature of society, acknowledge individual rights and insure the equality of all citizens, notably women.”<sup>87</sup> Yet, the state victory was more apparent than real because of the “isolation” threats made by many *marabouts*. In fact, several *marabouts* publicly proclaimed that they would simply isolate their disciples from the Code’s impact. Some scholars have also pointed out how often the Code is largely ignored by the people, in addition to its secular shortcomings.<sup>88</sup> One study showed the large concessions the state made to de facto inheritance law—with less than ten percent of 4,607 cases in Dakar decided in accordance with “modern” law and more than ninety percent of the cases were decided under the “exceptional” Muslim law.<sup>89</sup> Thus, since neither the government nor the brotherhoods would back down, the law was more or less enforced in the large urban areas and ignored in the rural areas—avoiding a “direct confrontation” between the state and the brotherhoods.<sup>90</sup>

The Code itself is a mixture of French and Muslim customary law. However, generally the Code is not as disadvantageous for women as prescribed by some Islamic laws. Additionally, the Code does not endorse all the extra-judicial forms of divorce that are permitted under Islamic law, e.g., *talaq*. However, as mentioned previously, in some areas *talaq* is still a common form of divorce because it is simple, quick, and final.

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*sacred principles of our religion*. It is true that Islam includes recommendations that can be accommodated to local circumstances, but it also incorporates *obligatory and immutable prescriptions that nothing can change for whatever reason*. Under the circumstances it seemed to us appropriate to be clear on this matter so that your decision might be made in full knowledge of the facts.” (emphasis in the original).

86. VILLALÓN, *supra* note 76, at 228.

87. GELLAR, DEMOCRACY, *supra* note 46, at 117.

88. Gretchen LeVan, *The Codification of Marriage & Polygamy in Senegal: Progression or Oppression?*, 1 PANGEA 1 (1999).

89. VILLALÓN, *supra* note 76, at 229 (citing Amsatou Sow Sidibé, *Le Code Sénégalais de la Famille et son Application* 19, Paper delivered to the conference *Etat et Société au Sénégal: Crisis et Dynamiques Sociales* (1991)).

90. GELLAR, DEMOCRACY, *supra* note 46, at 118.

Islamic associations have also been able to successfully fend off any legal reforms that they consider contrary to Muslim Law—e.g., abolition of the criminalization of homosexuality and abortion, equality of rights for women in family law, abolition of the prohibition of paternity suit.

Quranic teachers who exploit their pupils by having them beg in the streets, which is illegal under trafficking laws passed in 2005,<sup>91</sup> have also been able to avoid the application of these laws, or evade prosecution. In 2009, the U.S. Department of State's Trafficking in Persons Report stated the following about Senegal:

Trafficking within the country is more prevalent than trans-border trafficking and the majority of victims are children. Within Senegal, religious teachers traffic boys, called *talibe*, by promising to educate them, but subjecting them instead to forced begging and physical abuse. A 2007 study done by UNICEF, the ILO, and the World Bank found that 6,480 *talibe* were forced to beg in Dakar alone.<sup>92</sup>

During the 2000 presidential elections, one candidate campaigned on answering the demands of Islamists and supported removing the word "secular" from the constitution and revising the Family Code to conform to Islamic law.<sup>93</sup> While the term secular was eventually retained, Senegalese Islamists have attacked the kind of secularism present in Western countries as anti-religious and linked with the social ills of poverty, drugs, corruption, sexual promiscuity, crime, etc.<sup>94</sup>

Despite the harsh reality depicted above, a more nuanced point of view can be introduced through an anthropological perspective.

### *B. The "Long March" Toward a Secular Republic*

From the start in 1959, the Republic of Senegal was declared a secular state. Since then, there has been an ongoing quarrel with one side pointing to the misleading nature of this secularism in name only, and focused on the second side on the issue of its political and religious legitimacy.

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91. *Marabouts* forcing children to beg has been a problem for decades and was outlawed by decree in 1942. LUCY C. BERHMAN, MUSLIM BROTHERHOODS AND POLITICS IN SENEGAL 55 (1970).

92. This Report and subsequent updates are available at [www.state.gov/g/tip](http://www.state.gov/g/tip).

93. GELLAR, DEMOCRACY, *supra* note 46, at 122.

94. *Id.*

Without going too deep into the debates about either the deficiencies of the secularity process or its permanently anchored nature and without questioning the reversible or irreversible nature of this process, it is nevertheless possible to highlight some particular traits relating to the controversy about secularism in Senegal, during the last fifty years.

One can roughly separate two periods in the issues of secularism, state, church and civil society relationships. The first period runs from 1959 to the mid-80s and the second from the turn of the 90s to today.

In the first phase, political and cultural discourse emanated from the ranks of the dominant Muslim brotherhoods. This discourse reformulated the public debate over the issue of religious symbolism and “fighting for Islam” as a struggle against secularism. Family law, including the decision of the state to legislate in this area, was included in this phase, the culmination of the feud between the state and part of the Muslim representation. One should point out that the state has benefited from a benevolent neutrality of the brotherhoods’ leaders over the major controversies of the time. Nonetheless, during this phase, a resurgence of tension began anew, especially in the late 70s. This time the quarrel against secularism was carried by young activists, mostly trained in Arabic, and reformists, even if some of the leaders in their midst were not only from the Muslim brotherhoods but also claimed this dual heritage.<sup>95</sup> These young reformers benefited from a supportive environment at both the local and international levels.

Locally, the tightly locked legal political system put in place by former president Leopold Senghor and the 1963 to 1974 Constitution and the partial failure of Islamic movements to popularize their cause had helped to reduce the controversy around the Family Code, without extinguishing it. Faced with the persistence of the state to legislate, the Muslim leaders who were engaged in the fight against the Family Code chose to simply ask their co-religionists not to trust the code of the state and remain faithful to the Code of God. But in the late 70s, the arrival of Abdou Diouf as the new head of the country in 1981, with his policy of openness and democratic accountability, and at the international

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95. Senegalese Islam is generally divided into Muslim brotherhoods, the very large majority and the minority composed of reformist Islam.



level, the events that took place in Iran two years earlier, gave the struggle against secularism new troops and renewed breath.

The political transition led by Abdou Diouf was truly a “time of uncertainty” as it was called by the political scientist, Mar Fall. The country was in an interrogative phase, the school system stakeholders sounded the alarm bell, and the state, until then a provider state, was seeking to acquire new virtues in the media debates over the theme of tradition vs. modernity.

The debate on secularism has essentially grown from the dual issue of civic freedoms as extended by Abdou Diouf on one hand and on the other hand, from a nation which is rethinking itself and seeking, among other things, to discuss its relationship with the West.

These new Islamic militants are also “modernists” who master the French language, follow international news, have sometimes been active in the Marxist underground political parties, and are convinced they bear a credible Islamic alternative to the economic collapse of the state. Their efforts consist primarily of propaganda activities through the creation of newspapers, the organization of public lectures and the setting up of youth-mentoring-youth programs presented as “moral rearmament” in the face of the danger of “de-Islamization,” “drugs,” and “Westernization.” Even if these initiatives mobilize discourse and symbols that are powerful, they rarely go beyond the mere activist’s expression. Their calls did not result in any “revolt of the Muslim masses,” but they have created a breakthrough in the Senegalese public debate, through the press in particular.

The second phase following this first major movement took place in the late 80s. As soon as the first turn of the 90s, those activists who dominated the scene between the late 70s and the mid-80s appeared to undergo a significant reflux.

The classical conflict between Islamic forces and the secular state mobilized only marginally. The focus was on the phenomenon of “the young *marabouts*.” The latter, descendants of the founders of the brotherhoods in Senegal, riding the wave of the economic crisis and the subsequent failure of the Grand Redistributor State, organized into powerful socio-religious movements and engaged in political debate. These movements dominated the 90s but did not develop a specific discourse on secularism—they even seemed to do away with it altogether. However, they are the objects of harsh

criticism from many of their fellow citizens who considered that public space (policy) must be held at a distance, or completely separate, from particular identities, including ethnic and religious confessionals.

The popular criticism of the *marabouts'* intervention in the political game culminated with what is seen as the rejection of their instructions to vote for the later defeated incumbent president in the 2000 elections.

Many analyze this defeat as the turning point in the political culture of Senegal, with the severance of the umbilical cord between the political and the religious. However in the wake of the birth of the new Republic, a spectacular closeness took place with the same religious forces that had seemed to be disavowed in the recent elections.

The arrival of Abdoulaye Wade to power has seemed to revive the issue of secularity in Senegal around a number of controversial issues. These controversial issues take on, under the new regime, a dimension that seems more important than was the case in the past. As a matter of fact, they fit broadly in the debate over moral depravity in which the matter of the "*goorjigeen*" (homosexuals, in Wolof language) features as its extreme manifestation.<sup>96</sup> On another issue the Islamist threat to secular institutions was again a front-page issue with the updated debate over the Family Code and the support of popular consumerist claims by an association of imams. However, these events have to be put on par with other events that tend to reaffirm the principles of a secularism that is more vigilant and more open to societal demands.

Indeed, beyond the controversial personality of President Abdoulaye Wade, the 2000 change in political power in Senegal was accompanied by the emergence of several, often competitive, initiatives directly issuing from the civil society and aiming to redefine new requirements for public life. The end of the Socialist regime is immediately seen as the end of a historical cycle; the historian Abdoulaye Bathil calls it a "new sovereignty."<sup>97</sup>

This historical situation has impacted on the ways of thinking and formulating secularity. It exposes specific and combined

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96. Abdoulaye Diéye, *La Laïcité à l'Épreuve des Faits au Sénégal*, in DROIT SENEGALAIS: DROIT, POLITIQUE ET RELIGION 51 (Nov. 2009).

97. Id.

transformation dynamics emanating both from the state and from the Senegalese society—in a movement of mutual redefinition of their nature and prerogatives, but also of their specific relation to modernity.

One issue that seems more indicative of this turn of renegotiation of codes, standards, consensus, and conflict areas that govern political life in Senegal since 2000 is the invitation extended by the RADHO (Rencontre Africaine des Droits de l'Homme), one of the most emblematic associations of secular civil society, in recommending to the Head of State the appointment of a minister in charge of religious matters to better mark the separation between state and religion. In the spirit of the RADHO, what is at stake in this vision is a “privatization” of religious affiliations of state authorities, especially the president's.<sup>98</sup> This form of practical rationality seems to be the most obvious sign of the change that has occurred in the issues and terms of the debate over secularity in Senegal.

The changes in stakeholders and ideas relating to the issue of secularity over the past fifty years should make clear that the debate over secularism cannot be reduced to an issue of confrontation between political and Islamic rationality. In contemporary Senegal, the secular debate is part of a wider debate, in many respects secular, that the Senegalese people are conducting, even in this study, trying to substitute, thereby, a borrowed modernity another of their own making and for their own use.

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98. “So the ministers, the president or cabinet members may privately, go see a marabout,” said Soro Diop. Soro Diop, *La Société Civile et l’Evasion de Khadim Bousso: L’Etat Affiche ses Faiblesses et son Discrédit*, LE QUOTIDIEN, at 5 (May 8, 2003, n°69).