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Chapter 7

'Bigamy', 'Marriage Fraud' and Colonial Patriarchy in Kayes, French Sudan (1905-1925)

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This study is based on detailed analysis of marriage cases handled by native courts and colonial correspondence about the administration of indigenous law in the region of Kayes between 1905 and 1925. Under the heading 'marriage cases', I include not only divorce cases, but also cases related to bridewealth repayments, abandonment of the marital home and cases of 'bigamy' and 'marriage fraud', which I will focus on in this chapter. The region of Kayes is to the west of the colony of French Sudan (modern-day Mali), on the border with Senegal. Kayes was the first colonial capital of French Sudan, before this status was transferred to Bamako in 1908. First, I examine marriage cases which were tried as civil matters. However, from the 1920s onwards, marriages cases in the legal archives that include the terms 'bigamy' and 'marriage fraud' begin to be handled systematically as criminal trials. In this chapter, I will therefore attempt to trace the case law which moved marriage cases from the civil to the criminal courts, and which led 'bigamy' and 'marriage fraud' to appear as offenses in the registers of judgements at Kayes' first-degree courts from 1905 to 1925. These cases are an important source of information on gender relations and disputes between men and women in French Sudan in the colonial period. They reveal complex interactions between men, women, colonial administration and 'traditional' authorities. They also reveal that, contrary to what is often supposed, women did not hesitate to take cases to the courts and the administration in order to defend their marital rights and express themselves about marriage consent and love in a context of colonial legal pluralism.[1]

The interaction between colonial administration and local populations played out on two levels. On one hand, the administration used indigenous law to its own ends, in order to

better control populations by involving local authorities, often with differing effects for men and women. On the other hand, in the period under examination, populations increasingly turned to colonial courts to resolve their disagreements; men and women thus both tried to take advantage of the system, which sometimes reinforced the customary system but sometimes compensated for its limitations.

The decree of 1903 obliged the newly-established courts to enforce indigenous customs (where these were not contrary to the principles of French civilization) for colonial subjects in civil cases, and therefore in marriage cases.[2] This obligation was partly reinforced by the decree of 16 August 1912, which officially recognized the 'personal status' of colonial subjects.[3] 'Respect for customs', a pillar of colonial legal policy, was a way for the colonial government to avoid alienating populations and local authorities upon which the administration, understaffed and stretched across a vast territory, must necessarily rely to control populations, particularly through indigenous law.

However, it was the colonial administration which formalized and even unified the content of what they considered 'customary law'. This was based on case law from native courts and on administrative enquiries, which led to the formulation of a series of customary laws intended to help European government officers to handle legal cases, particularly following the 1924 reform which determined that a government officer routinely presided over first-degree civil and criminal courts. In reality, as has been shown elsewhere, the ultimate judge of how customary law should be interpreted was the colonial government, and not the native court.[4] The process by which the colonial government controlled indigenous law, from the *cercle* (colonial district) up to the attorney general, in practice promoted a continuous and cumulative process of 'invention of customs'.[5]

In fact, until 1912, the registers of judgement did not specify which law had been used to try any given case. In criminal law, corporal punishments prescribed by 'custom' or

'Muslim law' were systematically commuted to imprisonment following the decree of 1903. The decree of 1912 does not actually require that the personal status of the parties ('Muslim' or 'Non-Muslim/Fetishist') be specified.[6] However, once the 1912 reforms came into force, court rulings began to include formulations like 'given that Muslim/Koranic customary law governs the land' or 'according to custom X'. With the decree of 22 March 1924, which reorganized the native court system, the designations 'Muslim' and 'non-Muslim' disappeared.[7] Instead, court rulings were required simply to specify the exact law which had been used to try the case, using ethno-religious formulations such as 'Koranic Toucouleur law', a process of 'ethnicization' of indigenous law.[8]

The judicial reform of 1924 is important to note. Not only did it change the designations of the subdivision and *cercle* courts (which now became first and second-degree courts) and reformulate applicable law; it also represented an increased appropriation of these sources of power by colonial authorities, particularly concerning criminal matters. Following this decree, only a European government officer could preside over first-degree criminal courts. Throughout the 1930s, the colonial authorities continually limited the place of custom in criminal matters, reflecting the division of powers between the colonial administration which had responsibility for maintaining public order, and the customary authorities who were limited to governing private relations between Africans.[9]

Numerous studies on law, gender and colonialism in Africa have been published over the last fifteen years, shedding light on the central role played by colonial authorities in restricting the fluidity of matrimonial practices through their attempts to codify customary law.[10] More recent studies have historicized the question of consent and forced marriage in Africa.[11] But there has not been direct study of the importance of mothers, and of female family networks more broadly, for supporting or thwarting young women's sentimental inclination and matrimonial strategies. Even less attention has been given to the way in which

these networks appear and disappear in legal sources and what it can tell us about how women negotiated love. Most of the literature on intimacy in Africa has focused on sex, rather than on expressions of emotions and love as "embedded in historically situated words, cultural practices, and material conditions that constitute certain kinds of subject and enable particular kind of conditions."[12] The ambition of this chapter, through the analysis of female networks' role in marriage cases in legal records, is to demonstrate the impact of colonialism on cultural practices and material conditions of love expressions in the first quarter of the twentieth century in the Kayes region.

Although matrilineality often says more about the power of brothers and sons than women's power and status, studies on matrilineality in West Africa have highlighted women's political role in sustaining lineages, making marriage alliances and promoting the stability of the home, notably through the link between mother and son.[13] Yet, the importance of the mother-son link also allows for a re-exploration of the question of consent and the mother's role in matrimonial strategies, because children (both sons and daughters) could not go against the wishes of their mother to whom they owed everything; this is reflected in the Bambara saying 'Bee bi ba bolo', which can be translated as 'everyone is in their mum's hands'.[14] Children could not marry against their mother's wishes, nor could they refuse her choice of spouse for them. Hence the importance of mothers in marital trajectories and, by extension, the role of aunts as marital 'godmothers', helping to maintain the marriage and counsel the young couple, a female power which can counterbalance the power of the head of the family.[15] These female networks have hardly been studied, as the idea that fathers were preeminent in marital decisions has not really been disputed, beyond the observation that in matrilineal societies questions of marriage are most often decided by the maternal uncle rather than the father.

This lack of attention to the role of female networks in marriage alliances is doubtless also connected to the sources available. In the case of colonial legal sources, male voices increasingly lay claim to rights for men, to the detriment of women.[16] However, a majority of the civil cases heard before the provincial court (1st degree court) in Kayes in the first twenty years of the twentieth century concerned women. Even if women were not always parties to the proceedings, they were very often at their origin, as is shown in cases of 'bridewealth repayment' where a rejected suitor demanded the portion of the bridewealth he had already paid to his fiancée's relatives.[17] Women were civil parties in almost 26 percent of civil and commercial cases heard by the provincial court in the *cercle* of Kayes for the period 1907-1912, but they were actually at the origin of over 58 percent of the cases.[18]
Furthermore, a careful examination of these marriage cases reveals traces of female matrimonial networks, and the ways in which the courts' decisions tended to limit them by affirming the sole authority of fathers in matters of marriage, and by sentencing women for 'bigamy' and intermediaries for 'marriage fraud'. Those cases materialise how much colonial disciplinary regimes were ruled by ideologies of affect.[19]

We will first examine the formalization of the offences of 'bigamy' and 'marriage fraud' against a backdrop of the reinforcement of patriarchal power in the region of Kayes in the first quarter of the twentieth century. We will then study elements of female matrimonial networks which survived, and what this tells us about women's power and influence in marital trajectories, how they negotiated love and emotions in a constrained colonial landscape which increasingly eroded those 'emotional communities'.[20]

The formalization of the offences of 'bigamy' and 'marriage fraud'

In 1903, a new colonial legal system was established in the colonies of French West Africa (FWA), unifying the different attempts at legal organization which were already occurring in some colonies.[21] This legal reorganization separated 'French law' and 'indigenous law' and created three levels of 'indigenous law' for colonial subjects in each colony: the village court, the provincial court and the *cercle* court. In practice, these courts only began to function from 1905. The village court was presided over by the village chief and was concerned primarily with mediation, whereas the provincial court heard any cases which had not been resolved at the level of the village court. Rulings given by the provincial court could be appealed through the *cercle* court. Criminal cases were heard directly by the *cercle* court, without going before the provincial court. The reform of 1912 maintained these prerogatives for criminal matters. The *cercle* court was presided over by the colonial administrator of the *cercle*, whereas the provincial court (which became the subdivision court in 1912) was presided over by a local notable until the decree of 22 May 1924, which reinforced the colonial administration's control of the courts by stipulating that first and second-degree courts would thereafter be presided over by a European government officer for both civil and criminal matters. A local notable could still be appointed to preside over a first-degree court, but only in civil matters. These legal cases therefore did not escape the 'colonial gaze'. The validity of the rulings was checked by a European government officer at every level. All reports and sentences, not only those given in criminal cases, were routinely conveyed to the Lieutenant-Governor and then to the Governor-General of FWA; the same was true for all requests for directions or information regarding the administration of indigenous justice. The Governor gave his view, and then forwarded the files to the political department responsible for justice which, if necessary, would transmit them to the attorney general.[22]

The 1924 decree served not only to reinforce the administration's direct control over rulings, by ensuring that courts were systematically presided over by European government

officers, but also to provide a much clearer formalization of offences. The offences of 'bigamy' and 'marriage fraud' had already begun to appear around the turn of the 1910s/1920s, and thus before the 1924 reforms; however, these terms were systematically used to designate certain marriage cases after 1924. At the same time, we can note a general shift from civil to criminal courts for a number of marriage cases relating to abandonment of the marital home. This shift occurred much more easily because offences, unlike crimes, were not defined in the decrees of 1903, 1912 and 1924.[23] Definitions were not specified because they were to be determined by compiling legal customs and case law from native courts; but once determined, these definitions had to be approved by the colonial authorities. The ultimate judge of the erroneous application of local customs was therefore the colonial government, not the native court.[24] A native penal code for French West Africa was not established until 1941.[25] This transition from civil to criminal law is less obvious in the rulings found in the national archives at Bamako, which are less complete and detailed than those in the original registers of judgement located in the *cercle* archives in Kayes. Furthermore, the presence of a colonial officer as judge of the criminal court seems to have accelerated the formalization of various categories of offences.

Between 1908 and 1920, the majority of applications for divorce were made either by women who had been abandoned by their husband several years earlier and now wanted a divorce in order to remarry, or by husbands applying for divorce (and therefore reimbursement of the bridewealth) because their wife had left the marital home and refused to return.[26] However, in many of these cases, women did not wait until they were officially divorced in order to remarry or live with another man. It was when the first husband laid claim to the bridewealth and/or custody of the children that it was revealed that the divorce had not yet been made official. In most instances, until the beginning of this period, the court recognized the end of cohabitation as a *de facto* divorce, and proceeded directly to settling

the divorce by considering questions of bridewealth repayment and/or the guardianship of any children from the first marriage. We can also find some cases of adultery, but it seems that these are mostly cases where the wife has not yet officially ended cohabitation with her husband, or where a child is born when the wife had just left her husband and was living with her 'lover'. It is from the 1920s onwards that these cases seem to be recategorized as 'bigamy' or 'marriage fraud' depending on the circumstances, and thus that they begin to be systematically tried as criminal cases.

We will now examine some specific cases. These will not show the entire development of case law for the period, as this would necessitate a systematic assessment of all cases of this type – and in any case the registers are not complete. Nevertheless, this snapshot already gives a good insight into the issues associated with these cases in terms of kinship, decisions about marriage, and the consent of those concerned.

Until the beginning of the 1920s, some cases show women cohabiting with another man without being officially remarried, since a divorce had not been pronounced in their husbands' absence. In these instances, the women were not punished for adultery, and in general they were simply ordered to reimburse the bridewealth as a retrospective divorce settlement. In an appellate ruling from the Kayes court in June 1924, Suleyman stated that he had married Yaye for a bridewealth of six bullocks and 145.50 francs.[27] After a journey to Senegal, he returned to Kayes to find his wife with a lover. He asked her to come back to him, but she refused. He therefore demanded the reimbursement of the 145.50 francs, as he already had the bullocks. Yaye acknowledged that she had indeed received 120.50 francs, but claimed 50 francs and the return of five pagnes[28] that she had given her husband's relatives. The Kayes court upheld the first instance ruling, which Suleyman had appealed and which had sentenced Yaye to return 120.50 francs of her bridewealth to her husband, who in turn had to pay 50 francs to his wife together with the equivalent value of five pagnes.

Likewise, there are many cases where a woman had received part of the bridewealth in promise of marriage but eventually married another suitor, and where the rejected suitor took the case to court. Until 1924, these were usually handled as civil cases of 'bridewealth repayment'. In April 1924, Sadio took Coumba to the subdivision court in Kayes, because she had promised to marry him on payment of 130 francs, to repay the bridewealth given by her first husband.[29] Coumba had ultimately remarried another man, so Sadio sought to reclaim the bridewealth paid. Coumba acknowledged that she had indeed received this sum from Sadio; however, she told the court that she had never promised she would marry him, explaining that they were simply cohabiting. A witness was heard who declared that Coumba had indeed promised Sadio she would marry him. Ultimately, the court sentenced Coumba to repay the 130 francs within a month, in accordance with Koranic law. In a letter of June 1924, the Political Bureau of the Government of French Sudan demanded that the ruling be withdrawn, not so that the case could be retried as a case of 'marriage fraud' at a time when this offence was beginning to appear in the registers of judgement, but because the case had been judged by a Muslim court and Sadio had the status of non-Muslim.[30]

From 1919, a parallel case law seems to have developed where some marriage cases were tried as criminal cases of 'marriage fraud', punishable by imprisonment and fines. Between 1919 and 1925, there were several years of trial and error in the case law, during which some cases continued to be considered civil cases of 'bridewealth repayment' while others were tried as criminal cases of 'marriage fraud'. In this period, the documentary sources do not allow us to determine what exactly about these cases might cause them to be classified differently. The reasons for each successive change in the case law are no clearer. Of course, as mentioned above, the colonial state wished to reinforce its control over indigenous jurisdictions, notably through by appointing colonial officers as criminal court

judges in the 1924 decree. But the offence of 'marriage fraud' appears in the registers of judgement before 1924.

Correspondence from 1919 confirms that the Special Chamber of the Court of Appeal for French West Africa in Dakar (Senegal) overturned a ruling issued on 28 December 1918 by the court in Bafoulabé (Kayes); unfortunately the details of the first ruling do not survive, but the Court of Appeal issued a new ruling stating that the defendants were guilty of marriage fraud, and sentencing them to imprisonment and a fine.[31] We do not know why this case was reclassified as a criminal case, and do not have the verdict of the court of appeal. As to this decision's subsequent importance as case law, the information we currently have available on these 'marriage fraud' cases does not allow us to confirm or disprove any particular hypothesis.

But once again, it is interesting to note the parallel with the case law on abandoning the marital home, which was officially recognized as a 'customary offence' by the attorney general of FWA in 1914.[32] The fact that these cases began to systematically move from civil to criminal courts around the same time seems to indicate a general development in the case law towards voluntary restriction in questions of marriage and divorce. This development has already been observed by Richard Roberts with respect to divorce cases handled by native courts in Bamako from 1912; but for our subject here, the development was clearly endorsed by the highest level of colonial decision-makers.[33] Did the establishment of indigenous law in the colonies of West Africa, with its declared intention to formalize indigenous offences and customs, make it inevitable that the authorities would display a conservative fixation with customs and their 'invention'?

This seems to be confirmed by the acceleration in the development of case law and the formalization of certain colonial offences such as 'bigamy' and 'marriage fraud', particularly following the decree of 1924 which reinforced colonial control over indigenous

law; and by the subsequent, systematic use of ethno-religious designations to specify the law being applied.[34] However, these ethno-religious designations must not mask the tendency towards the homogenization of marriage case law, irrespective of the personal status of the parties, from the moment that the criminal cases of 'marriage fraud' or 'bigamy' began to be tried. 'Muslim law' or 'fetishist customs' are invoked in rulings, in formulations such as, 'In accordance with Muslim law, this offence is punishable by shackling and 1-100 strokes with a rope', or 'In accordance with fetishist custom, this offence is punishable by a set number of lashings for the accused'. However, these corporal punishments were considered contrary to 'French civilization' and the sentences were systematically commuted to prison sentences of three months to a year, and a fine of 50 to 100 francs, depending on the degree of 'implication' and complicity in the case.[35]

It was also between 1920 and 1924 that the offence of 'bigamy' appeared in the registers of judgement; it seems that it first appeared in Nioro in 1922, and in Kayes in 1923. In April 1922, Mahamadou appealed to the second-degree court in Nioro; he had gone to gather the bridewealth agreed when he had married Youma, but she did not expect him to return and she entered into a second union.[36] On Mahamadou's return, Youma refused to resume marital life; she did not recognize him as her husband because he had not paid the bridewealth. The court sentenced Youma's second husband to six months in prison, and ordered Youma to pay a fine of 100 francs for 'bigamy'. This was heard as a civil case, yet the protagonists were sentenced to imprisonment and fines. It is possible that the ruling was revised later because of this procedural error, but I have not been able to confirm this. Once again, we might venture the hypothesis that, before 1924, there was a period of trial and error in the case law – as we have already seen with the cases of bridewealth repayment/marriage fraud – as judges continued to handle these as civil cases in the face of growing pressure to hand down stronger sentences and criminal convictions.

The other interesting thing to note about this case is that the 'new husband', who was ultimately sentenced to imprisonment, was actually the intermediary who initially helped Mahamadou secure the marriage, but then profited from his absence to marry Youma himself. In parallel with the criminalization of this type of marriage case, we can also observe increasingly systematic sentencing of the intermediaries involved in these cases, who were tried with marriage fraud or abetting adultery. Those closest to newly-married women were therefore the people most affected by these sentences – while female networks were being increasingly invisibilized – as the colonial courts tended towards recognizing the father's sole right to choose his daughter's husband.

The criminalization of intermediaries and the marginalization of female networks

Although there do not seem to have been many adultery cases brought before colonial courts, from 1925 they appear more frequently and are systematically accompanied by a charge of collusion in adultery. This allowed courts to sentence the 'intermediaries', although the details of these cases actually seem very close to cases which until then had been handled as civil cases of 'bridewealth repayment' or 'divorce'. In 1928, Nankoma went before the Kayes court with a claim that he had given his wife M'Bamoussa permission to visit her ill younger brother, but her brother Madi had then kept her back in order to remarry her to Moussa, who had impregnated her.[37] Madi was sentenced to six months imprisonment for collusion in adultery, while M'Bamoussa and Moussa were each sentenced to three months in prison, and M'Bamoussa was obliged to return to the marital home after her sentence had been served. It is not clear how the nature of the case distinguishes the offence as adultery, rather than bigamy or marriage fraud. It seems that these categories may be used differently by different courts and judges. However, it does seem that, from 1925 onwards, the rulings tended to

reaffirm the fathers' power to choose their daughters' husbands by condemning any other, 'irregular' intermediaries who helped to arrange marriages (mostly brothers and uncles, but also mothers and aunts): 'The father alone has the right to choose his daughter's spouse during his lifetime, if he is not to be deprived of his paternal power'.[38]

We certainly must not overestimate the information contained in these documents, because they doubtless depict only a tiny fraction of what really happened in terms of the administration of justice in the region.[39] However, they nevertheless offer a window onto the use of 'customary law' by colonial authorities to impose their own patriarchal framework, and the more direct ways in which they did so following the implementation of the 1924 decree. In general, although women are 'over-represented' in these sources compared to most colonial documentary sources, it is predominantly the voices of men which come through, and the law is interpreted for men.

These sources offer us only very incomplete information on who acted as intermediaries, who arranged marriages, how marital strategies were implemented, and who had a say in these matters. In the context of colonial justice, the law was clearly made by men for men. Given the centrality of the 'colonial male gaze' on these questions, the voices of other people involved in marital strategies (notably mothers and aunts) tend to get lost in this essentially male legal system. However, some of these cases allow us to rethink how we understand the role of 'emotional communities' in marital practices. In particular, they reveal something about women's roles in the complex question of consent, despite the fact these roles were being rapidly eroded through the imposition of colonial patriarchy.

In June 1907, Aissata told the Kayes provincial court that Ladio, wishing to marry her, and had given her sister several gifts which he was now demanding be returned.[40] Following deliberation, the court concluded that Aissata did not need to return these gifts.

In August 1910, Dafa told the Kayes provincial court that Bambo had not given her the gifts he had received on the marriage of Dafa's two daughters.[41] The court sentenced Bambo to give the gifts to Dafa. Here, the mother's role in choosing her daughter's suitor is not clearly stated, but the fact that she had a say over the gifts seems to indicate that she could forbid or delay an alliance if she felt that she had not received enough gifts from her future son-in-law. These gifts were not the bridewealth, which was paid to the father or the maternal uncle (or sometimes directly to the daughter in the case of Muslim marriages). These two different cases show that, in the first decade of the twentieth century in Kayes, it was not only the male members of the family who were recognized as stakeholders in marital negotiations; the women were too, since within this framework they could receive a certain number of gifts.

Another case from 1907 shows the role which could be played by aunts. In June 1907, Fatimata asked the Nioro court for a divorce from her husband Amadou because, she stated, he had given her neither food nor clothing in the eighteen months they had been married.[42] He responded that his wife had asked him for permission to go and see her aunt, but after she had been gone for three months, he had had to go and fetch her, because she refused to return. Moreover, it would seem that the aunt was an 'agent' who had prostituted Fatimata. But it is also possible that the aunt had simply tried to remarry Fatimata in order to receive a bridewealth, or that the young woman had used a visit to her aunt as an opportunity to move away from her husband and seek a new suitor who could ultimately repay her bridewealth. In the end, the court ordered Fatimata to return to her husband immediately. Although aunts are systematically disqualified as marriage 'arrangers', they nevertheless implicitly appear in negotiations.

Until the 1920s, we therefore observe a variety of 'intermediaries' and different individuals involved in marital negotiations. This is suppressed somewhat by the growing sanctions against intermediaries in cases where negotiations come to an abrupt end.

One case which is symptomatic of this pattern occurred in Nioro in 1925. A ruling from Nioro's first-degree court ordered Yaouro to return to the marital home, and she appealed against the sentence.[43] During the appellate trial, her husband Nouhou stated that he had received Yaouro's hand in marriage in Kayes, from her aunt Goundo.[44] He had paid a bridewealth of 200 francs and given Goundo a gift of 900 francs. His wife went to stay with her family following her father's death, and then refused to return to her husband's home. Yaouro told the court: 'I am seeking a divorce because I do not love my husband. I was forcibly married by my aunt without my father's knowledge, and when he learned about the marriage, he wanted me to get divorced. He died too soon'. Her mother Dialaha supported her daughter's statements and also requested a divorce, adding that she was prepared to repay the 200-franc bridewealth. The court annulled the marriage, declaring that 'The father alone has the right to choose his daughter's spouse during his lifetime'.

The court did not consider the daughter's emotion to explain her choice and rule in her favour but justified the annulation through the primacy of paternal power in questions of marriage. This is one of few rulings which includes such a clear articulation, Once again, this case is from 1925, which is not insignificant given that the 1924 decree confirmed that colonial judges were the ultimate interpreters of the law, even customary law; here, the colonial judge imposed his own patriarchal view of what marriage should be and what role the father should have in marriage.[45] The colonial view appears in clear opposition with local marital and matrilineal law which seemed to have subsisted despite the spread of Islam and the related growing importance of patrilineality over matrilineality. Without giving specific rights to mothers in marriage negotiations, matrilineal law normally appoints primary the maternal uncle as the person authorised to arrange his niece's marriage, as we can see in the following case from 1921.

In August 1921, the subdivision court in Kayes sentenced Banou to 6 months' imprisonment and ordered him to repay a sum of 150 francs for marriage fraud. Banou had given his adopted daughter Kandé's hand in marriage to a man named Tounko, even though the girl's maternal uncle Biré had already promised her to another man, from whom he had already received money.[46] Banou appealed, but the subdivision court's ruling was upheld, sentencing Banou to 6 months' imprisonment and repayment of 150 francs.[47] Awa, Kandé's mother, stated that she was not responsible for her daughter's marriage to Tounko and that she was unaware that her brother had given the girl's hand to Moussa; however, a witness stated that Awa had received sixty francs on the occasion of Kandé's marriage to Tounko, and had used the sum to repay a long-standing debt. Awa denied this before the court. As for the young woman, she stated: 'When I divorced my first husband, it was Moussa who repaid my bridewealth. However, Banou gave my hand to Tounko, because I did not love Moussa'. She was unaware that her uncle had married her to Moussa, because the marriage had not been conducted in her presence.

The rulings of 1921 and 1925 also clearly demonstrate that young women are more than capable of expressing their rejection of a husband, particularly with their mother's support. However, this is not considered by the court, either in the 1921 case (where the young woman making the appeal is sent back to her first husband, who she does not love) or in the 1925 case (where the case is decided based not on the young woman's consent, but on her father's wishes, even if this ultimately works in the young woman's favour).

There are therefore only few indicators of female networks in marital strategies within colonial legal sources, which is ultimately unsurprising given the very nature of these sources. Nevertheless, we can find implicit traces of the role of mothers or aunts; however, this is increasingly marginalized, as shown in the 1925 case which clearly affirms paternal power by clearly disqualifying the role of mothers and aunts in marital strategies.

Conclusion

Although colonial legal sources are rich in information about gender conflicts, they nevertheless remain limited or even frustrating to use, as they rarely reveal the full circumstances of the cases handled by the colonial courts. Instead, they simply allow us to observe the end results of negotiations and exchanges, and the full range of emotions associated with them, which are hardly themselves represented in these archives. Obviously, this is not a question of finding things which are not there. Rather, it is a matter of changing the way that we look at some of these cases: because of the context in which they were transcribed, the documents intrinsically privilege male actors, and the case law increasingly reinforces the status of men as fathers and husbands, in order to control women and prevent them leaving their husbands and remarrying, re-shaping 'emotional communities' according to patriarchal values. Cases of 'bigamy' or 'marriage fraud' thus become divorce cases gone wrong for the women involved; the fluidity of marital alliances, and women's roles in promoting this fluidity and making space for the young bride's consent and feelings, are now seen as legally reprehensible practices. Women are condemned for bigamy, and the intermediaries who might have intervened or supported their choice to remarry are condemned for 'marriage fraud' or 'collusion in adultery'.

From 1925 onwards, the law becomes increasingly clear in stating that the father alone has power to make decisions in questions of marriage. As a result, we see a growing marginalization of the networks which previously introduced greater fluidity in the management of consent, weakening women's emotional support systems and their position in marital affairs.

[1] Marie Rodet 'Genre, coutumes et droit colonial au Soudan français (1918-1939),' *Cahiers d'Études Africaines* 187-88 (2007): Femmes, droit et justice, 583-602; Marie Rodet '"Le délit d'abandon de domicile conjugal" ou l'invasion du pénal colonial dans les jugements des 'tribunaux indigènes' au Soudan Français (1900-1945),' *French Colonial History* 10 (2009): 149-67.

[2] The decree of 10 November 1903 reorganized legal administration in the colonies and territory under the jurisdiction of the government of French West Africa (*JO RF*, 24 November 1903, 7094-97).

[3] See section 7 of the decree, *Journal officiel d'Afrique Occidentale Française* (Official Bulletin of French West Africa), 5 October 1912, no 408: 623-30.

[4] Rodet, 'Le délit d'abandon de domicile conjugal', 149-67.

[5] Eric J. Hobsbawm and Terence Ranger, 'Introduction: Inventing Traditions,' in *The Invention of Tradition*, ed. Eric J. Hobsbawm and Terence Ranger (Cambridge: Cambridge University Press, 1993), 1–14; Terence Ranger, 'The Invention of Tradition in Africa,' in Hobsbawm and Ranger, *Invention of Tradition*, 211-62; Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Portsmouth, N.H.: Heinemann, 1998).

[6] However, customary and Islamic law could not always be easily disentangled: Islamic law had been influencing customary law in some parts of the region of Kayes, especially in the North, for several centuries. Moreover, the recognition of different 'personal statuses' within the same legal system led regularly to legal and political contention: different litigants tried to play on different legal traditions simultaneously to win their case, whereas the colonial power attempted to act upon the case law and influence indigenous judgments in order to pursue their own policy agenda towards the Muslim and non-Muslim powers.

[7] France. Ministère des colonies. 'Décret du 22 mars 1924 réorganisant la Justice indigène en Afrique occidentale française,' *Bulletin officiel du Ministère des colonies* (Paris: L. Baudoin, 1924), 554-77.

[8] Bénédicte Brunet-La Ruche, '"Crime et châtiment aux colonies": poursuivre, juger et sanctionner au Dahomey de 1894 à 1945,' (PhD dissertation, Université Toulouse le Mirail - Toulouse II, 2013), 235.

[9] Brunet, 'Crime et châtiment,' 235-36.

[10] Among others: Emily S. Burrill, *States of Marriage: Gender, Justice, and Rights in Colonial Mali* (Athens, OH: Ohio University Press, 2015); Richard L. Roberts, *Litigants and Households. African Disputes and Colonial Courts in the French Soudan, 1895-1912* (Portsmouth, NH: Heinemann, 2005); Marie Rodet, *Les migrantes ignorées du Haut-Sénégal (1900-1946)* (Paris: Karthala, 2007).

[11] Annie Bunting, Benjamin N. Lawrance, and Richard L. Roberts, eds, *Marriage by Force? Contestation over Consent and Coercion in Africa* (Athens, OH: Ohio University Press, 2016), including chapters by Richard L. Roberts, 'Constrained Consent: Women, Marriage, and Household Instability in Colonial French West Africa, 1905-60,' 43-64; Olatunji Ojo, 'Forced Marriage, Gender, and Consent in Igboland, 1900-1936,' 65-88; Brett L. Shadle, 'Debating "Early Marriage" in Colonial Kenya, 1920-50,' 89-108; Francesca Declich, 'Italian Weddings and Memory of Trauma. Colonial Domestic Policy in Southern Somalia, 1910-41,' 109-134.

[12] Lynn M. Thomas and Jennifer Cole, 'Thinking through Love in Africa', in Love in Africa, ed. J. Cole and L. M. Thomas (Chicago: The University of Chicago Press, 2009), 3.

[13] Emily Lynn Osborn, *Our New Husbands Are Here: Households, Gender, and Politics in a West African State from the Slave Trade to Colonial Rule* (Athens, OH: Ohio University Press, 2011); Jan Jansen, 'When Marrying a Muslim: The Social Code of Political Elites in the Western Sudan, c. 1600–c. 1850,' *Journal of African History* 57, no. 1 (2016): 25-45; Jan

Jansen and Clemens Zobel, 'The Younger Brother and the Stranger in Mande Status Discourse,' in *The Younger Brother in Mande*, ed. J. Jansen and C. Zobel (Leiden: CNWS, 1996), 8-34.

[14] Jansen and Zobel, 'The Younger Brother,' 2-3.

[15] Burrill, *States of Marriage*, 28-29.

[16] Rodet, 'Genre, Coutumes,' 583-602; Rodet, 'Le délit d'abandon de domicile conjugal'.

[17] In societies like those in the region of Kayes, payment of a bridewealth to a woman's family is agreed before marriage following a series of negotiations between the two families; the bridewealth allows the husband and his family to acquire a certain number of rights over the wife (e.g. the right to link the child to the husband's lineage, or the right to the women's labour). Before the marriage, these rights belong to the young woman's father, so this represents a transfer of rights from the father to the husband.

[18] Archives nationales du Mali (ANM) fonds anciens (FA) 2 M 123: Registers of judgements and detention, *cercle* of Kayes, 1901-1920.

[19] Thomas and Cole, 'Thinking through Love', 5.

[20] Barbara H. Rosenwein, *Emotional Communities in the Early Middle Ages* (Cornell: Cornell University Press, 2006).

[21] 'Décret du 10 novembre 1903 portant réorganisation du service de la justice dans les colonies et territoire relevant du gouvernement de l'Afrique occidentale française,' *Journal officiel de la République française* (24 November 1903): 7094-97.

[22] Dominique Sarr, 'La chambre spéciale d'homologation de la cour d'appel de l'A.O.F. et les coutumes pénales de 1903 à 1920,' *Annales Africaines* 1 (1974): 101-15.

[23] Marie Rodet, 'Continuum of Gendered Violence: The Colonial Invention of Female Desertion as a Customary Criminal Offense, French Soudan, 1900-1949,' in *Domestic Violence and the Law in Africa. Historical and Contemporary Perspectives*, ed. Emily Burrill, Richard Roberts, and Elizabeth Thornburry (Athens, OH: Ohio University Press,

2010), 74-93; Laurent Manière, 'Justice indigène et transformations des règles pénales en Afrique occidentale française (1903 -1946),' in *L'Afrique des savoirs au sud du Sahara (XVI°-XXI° siècle) – Acteurs, supports, pratiques*, ed. Daouda Gary-Tounkara and Didier Nativel (Paris: Karthala, 2012), 65-89.

[24] Rodet, 'Le délit d'abandon de domicile conjugal'.

[25] Hamady Hamidou Mbodj, 'L'organisation de la justice pénale en Afrique occidentale française : le cas du Sénégal de 1887 à l'aube des indépendances (1887-1960),' (PhD dissertation, Université Côte d'Azur, 2017), 245.

[26] Rodet, 'Le délit d'abandon de domicile conjugal'.

[27] ANM fonds récents (FR) 1 M 2283: Register of civil judgements given on appeal, court of Kayes, June 1924.

[28] A 'pagne' is a length of fabric made in West Africa. It was historically used as exchange currency for trade.

[29] ANM 2 M 64 (FR): Register of civil judgements of the subdivision court of Kayes for the month of April 1924.

[30] ANM 2 M 64 (FR): Government of French Sudan, Political Bureau, letter no. A.516, 10 June 1924. Summary of observations following the inspection of rulings on civil matters handed down by the Kayes subdivision court in the month of April 1924.

[31] ANM 2 M 3: General Government of French West Africa, Civil Affairs Branch, letter no. 433, 13 June 1919. Subject: Indigenous law: the case of Sadio Guimba Diallo and others. From the Governor General of French West Africa to the Lieutenant-Governor of Haut-Sénégal-Niger Koulouba.

[32] Rodet, 'Le délit d'abandon de domicile conjugal'.

[33] Roberts, *Litigants and Households*.

[34] On attempts to make customary law more uniform before 1924, see Rodet, 'Le délit d'abandon de domicile conjugal'.

[35] 2 M 64 (FR): Criminal judgements of the subdivision court of Kayes for the month of September 1921; Register of civil judgements of the subdivision court of Kayes for the month of April 1922; 2 M 5 (FR): Register of criminal judgements of the subdivision court of Nioro for the month of January 1924.

[36] 2 M 5 (FR): Register of judgements given over the month of August by the second-degree court of Nioro for civil and criminal appeals for the month of April 1922.

[37] 2 M 64 (FR): Criminal judgements given over the month of February 1928 by the first-degree court of Kayes.

[38] 2 M 5 (FR): Register of judgements given over the month of August by the second-degree court of Nioro for civil and criminal appeals for the month of April 1922.

[39] Barbara Cooper, *Marriage in Maradi. Gender and Culture in a Hausa Society in Niger, 1900-1989* (Portsmouth, NH: Heinemann / Oxford: James Currey, 1997); Marie Rodet, 'Islam, pluralisme juridique et relations de genre dans les 'tribunaux indigènes' du Soudan français, 1900-1925,' *Outre-Mers. Revue d'histoire*, 99, no. 370-71 (2011): 173-83.

[40] ANM 2 M 123 (FA): Registers of judgements and detention, *cercle* of Kayes, 1907.

[41] Archives of the *cercle* of Kayes, Box 1M/7-10: Register of all judgements handed down in all matters, Kayes provincial court, January-August 1910.

[42] ANM 2 M 135 (FA): Rulings on civil and commercial matters by the Nioro provincial court, 2nd trimester 1907.

[43] 2 M 5 (FR): Civil and commercial judgements given over the month of August 1925 by the first-degree court of Nioro.

[44] 2 M 5 (FR): Civil and commercial judgements given on appeal over the month of August 1925 by the second-degree court of Nioro.

[45] The 1804 French code civil, also known as the Napoleon Code, has a chapter entitled 'De la puissance paternelle' (Livre I, Titre IX, pp. 92-95).

[46] 2 M 64 (FR): Criminal judgements given over the month of August 1921 by the subdivision court of Kayes.

[47] 2 M 64 (FR): Criminal judgements given on appeal over the month of August 1921 by the *cercle* court of Kayes.