

Abstract

In discussing the political struggles around attempts to introduce regressive reform of the Family Code in Senegal, this paper examines the relationship between the state and religion, modernity and democracy in an African country and the challenges this poses for freedom of speech and gender equality.

Why bring Africa into the debate?

Current reflections on Islam and democracy focus on the Middle East, Islam in Europe, or Islam in the West. Many often forget the experiences of African countries. As far as democratic conquests are concerned, how can a country belonging to the Islamic *Umma* also ask for citizenship rights? How is this debate perceived in African countries? One way to look into the issue of Islam and democracy is to use lived experiences such as that of Nigeria's Safiya Hussain,¹ women's struggle for their rights, the media revolution, and democracy. Another way is to scrutinize how Islam perceives human rights. It is in this context that Islamic groups tried to impose a Personal Code Status to replace the Family Code adopted in 1972, in Senegal.

But how should we respond to the vital necessity of strengthening the democratic system in African countries and promoting true citizenship? One of the essential debates going on Africa today is whether we should build a republic before constructing a democratic system. Some increasingly argue that the 'democratic' machine can undermine the foundation of a fragile republic. In this respect, it is important to understand the significance of the separation of religion and state. Is Islam a religion that is compatible with such a philosophy of separation? What is the understanding that African Muslims have of their own religion?

This paper will attempt to grasp the main points of this debate through the case of Senegal, and will explore the parallels between governance structures within the political and religious orders. It will examine the extent to which democratization within religious institutions and communities has the potential to foster good citizenship and lies at the foundation of a democratic culture.

The Senegalese model and its religious and political dimensions

The dichotomy between political Islam and a form of civil Islam promoting peace deserves to be analyzed in the case of Senegal. While political Islam aims at having the state under the control of religion, civil Islam tries to remove religious ideals and spirituality from the control of the state. There is a possibility to have a coexistence of these forms of Islam but one will necessary prevail over the other. The following factors are pertinent to analyze in the case of Senegal.

In Senegal, Islam was not propagated through jihad; local fighting involving Muslim figures such as Elhadj Omar and Ma Ba Diakhou could be understood as forms of resistance to colonization rather than a will to forcibly convert local people.

Senegal has a solid heritage in the field of citizenship, which must be preserved at all costs. For example, it will be extremely difficult to reverse the trend towards equality of rights between men and women. The incursion of religion in the field of politics would signify the failure of democratization and a will to instrumentalize religious leaders. In a period when the state and the Republic are in an unprecedented situation of weakness, it is highly tempting to turn religion into a source of power.

It is important to avoid having religious and political leaders exploit the despair of citizens who are victims of extreme material poverty and moral misery. However, religions have an essential role in the construction of nations through the inclusion of citizens. To date, Senegalese Islam has significantly contributed to homogenization of ethnic groups and sometimes of social categories, though it did not eliminate the caste system.

If Senegal wishes to remain a model of stability, political leaders must stop instrumentalizing religious leaders and religion must be confined to its role of being the conscience of politics. If one of the two leaves its field, in a precarious world where equilibrium is fragile, this may be fatal to the model. This is the reason why the separation of religion and state (which is not incompatible with Islam²) should be analyzed in relation to the history of countries and religions. Even though humans clearly need spirituality, this should not, in any case, prevent them from using reason to build a better world. It should be noted that '*kalam*' or reason has never been absent from the history of Islamic thought. Indeed the legacy of *ijtihad* demonstrates this, as well as the Mut'azalite thinking, which is mainly incarnated by Ibn Rushd after the Caliph al Ma'mum.

When observing daily realities, it becomes apparent that whoever wishes to destabilize Senegal could manipulate the local Muslim brotherhoods rather than religious differences.

Islam in Senegal is essentially based on brotherhoods and on the particular relationships each had with the administration even during the colonial era. Religious leaders have had a role in the education system, and have taken sometimes controversial political standpoints. The most notorious have been the difficult relationship between Cheikh Ahmed Tidjane Sy and the government of ex-President Senghor, the political *Ndigguel* (voting order) of the General Caliph of the Mourides, Abdou Lahad Mbacké in favour of the candidate Abdou Diouf during the 1998 presidential election, and the involvement of the Moustarchidines (religious group belonging to the Tidjanya sufi brotherhood) in the tragic events of February 1994.

In 1960 when Senegal became independent, it adopted the constitution of the Fifth French Republic, bureaucratic centralism, secularity, the freedom to create trade unions, and a legal system based on the Napoleonic Code with minor amendments. The first Article of the Constitution states that the Republic is secular, democratic and social. It guarantees equality for all citizens regardless of their origin, race, sex, and religion. It recognizes all religions.

The State's secular foundations are not fundamentally challenged, even if some interference between politics and religion does exist. It is not unusual to see politicians use, even manipulate, religion for election purposes or to defuse critical situations. As an example, Falilou Mbacké, then General Caliph of the Mourides played an important role in the resolution of the general strike in May 1968.

Senegal's religious authorities have a hold over their disciples. The requirements of a modern state and the need for some religious leaders to show and use their influence can create conflicts. That was the case when in 1996 the Supreme leader of the Mourides issued a decree ordering the closure of new many public schools in the area of Touba. Similar cases are the status of certain "holy" cities said to be free of any state control and the tax issue within these cities and the booming informal sector, etc. The state has to deal not only with prominent religious families but also with fundamentalist groups. The reformist movement in its discourse tried to challenge the secular foundations of the state. Accordingly, as soon as it was created, the Muslim Cultural Union (UCM) started talking about the establishment of the Islamic State or Shari'a, and criticizing the country's Islamic brotherhoods. From the

1970s onwards, the UCM ceased to be an independent Muslim reformist movement, but kept its reformist ideas.

In the past, some people tried to give a religious interpretation to the conflict of Casamance, southern Senegal. This was based on the fact that the leader of the Casamance rebellion, Father Diamacoune, is a Catholic priest, though he has been disapproved of by the Church hierarchy. Nevertheless, the question deserves to be examined whether Senegalese Catholics suffer from Islamic hegemony in the country. Senegalese Christians are among the elite and this historical legacy made it possible for a Senegalese Catholic, Leopold Sedar Senghor, to be elected the country's first president. The various heads of state after Senghor did not hesitate to 'exhibit' their non-Muslim spouses (especially President Diouf, whose wife, Elizabeth, was the link between the President and the Catholic community). In fact there has been a tendency for various political figures who wish to run for presidential office to marry Christian women or women who originally come from Christian families. To a certain extent, the Catholic Church acted as an electoral college and candidates who were labelled as tolerant reassured external partners.

However, the situation has changed significantly because of the pressures of the economic crisis affecting the country. The desire to win elections has also led some to conclude that only numbers are important, and Christians represent only a tiny percentage of the Senegalese population.

The growing influence of some of the Muslim religious brotherhoods questions the unwritten rule that took into account the influence of the Church and the Christian

community. There are several landmarks supporting this analysis:

- The interview of Archbishop Thiandoum of Dakar to *Jeune Afrique Magazine* in 1999, in which he invited a local political leader, Moustapha Niasse, to run as presidential candidate and the response of the ruling party that saw this as an interference. The involvement of the Church with calls for peaceful elections. Pre electoral periods have always been moments of Ecumenical dialogue in Senegal.
- The change of government in 2000 and the inclusion, of fewer - and less locally legitimate - Christians in the cabinet.
- The elimination of the separation of religion and state in the first draft of the Constitution in 2001.
- The exaggerated use of religious symbols by the Senegalese national team in the World soccer championship. This led to incidents and to the division of supporters.
- The close ties between the new political authorities and religious authorities in Touba that culminated in the nomination of the religious Caliph of Touba, a venerated figure, as party candidate for local elections in 2002. Though the nomination was cancelled after protests by disciples, the decision showed a will to identify the Muridiya brotherhood with the political party of the head of state. This was a major cause of concern for many Senegalese citizens.
- The lack of fairness in the media coverage of religious activities of the brotherhoods in the state-owned media.
- The greater visibility of religious activism in the media, especially in private radios, with the establishment of religious radio stations.

- The introduction of religious education in public schools - religious education that only covers Islam.
- Reference to the Holy Qur'an during the Prime Minister's policy statement at the National Assembly in 2003.

If Senegal is to grow prosperous and remain stable as a multi-religious country it is important to reinforce the fundamental principles of a republic and citizenship. The sensitive nature of religious issues commands caution and requires preserving the equilibrium in the relationships between the state and different religious communities.

This is why concepts such as the separation between state and religion, inherited from French history, and the idea of a republic, are fundamental. In this analysis, there is another axis that remains important: attempts to reform the Senegalese Family Code and the respect of public liberties.

The Family Code at the centre of secularity debates

Under President Senghor, the first initiatives intended to change political life were sporadic but the state's preference for secularism was plain, and was clearly reaffirmed when developing the Family Code. The codification of a new law for the family started under the former President of the Council, Mamadou Dia (decree of April 12, 1961). In 1965, Senghor appointed another Committee of Options for the family code. This committee was tasked with unifying the different forms of laws, and ensuring the harmonious co-existence of laws originating from different sources (traditional, Shari'a, Napoleonic). After six years of work, the Family Code was presented to the Senegalese public in 1972. The main characteristics of the Code include: the unification of the law; the strong statement

of a secular society; and the recognition of the principles of individual rights; and the principle that all citizens are equal.

The Islamic Supreme Council strongly criticized the code. While the Code is relatively broadly applied in urban areas, it has remained totally ignored in rural areas due to the influence of religious leaders. For example, the General Caliph of the Mourides, Abdoul Ahad Mbacké, said the Code was null and void on the whole territory of Touba, where “God’s law is the only reference.” Criticizing the family code seems to have been the favourite hobby of Muslim fundamentalists. Cheikh Abdoulaye Dièye, leader of the FSD-BJ (a denominational party) never missed a chance to demand that the code be discarded.

There is currently a strong coalition of Islamic associations – the Islamic Committee for the Reform of the Family Code in Senegal, (CIRCOFS) – which is trying to impose a family code “inspired by Islam” that will enforce Shari’a, establish Muslim tribunals, and legalize repudiation. What are their arguments?

According to CIRCOFs and their supporters, the 1972 Family Code is a failure, and it is high time to replace it with a new Family Law inspired by the Islamic and cultural values of Senegalese Muslims and which “respects the freedom of conscience inscribed in the Constitution.”

Lawyer Babacar Niang, President of CIRCOFS, noted that, “Contrary to what many have said, the Family Code has never been accepted by our eminent Islamic leaders who condemned it unequivocally and rejected its implementation before and even after its promulgation.” He further writes that

when invited to give their views and make observations on the Family Code in 1972, “our eminent religious leaders, members of the High Islamic Council of Senegal, met several times to study the text and make a systematic critique, in order to define a common position.” It is this document, synthesizing the views of the various participants, that is the basis of the arguments developed by CIRCOFS.

“We have examined carefully... and we have noted a clear will to adopt new legislation that would be applied to Muslims, Christians, animists, and other people living in Senegal and that would abrogate all previous legal provisions. For us Muslims, we must reiterate that Islam has been governed for over 13 centuries by the Qur’an, the ultimate Constitution that has considered all possible situations in life and has omitted nothing, in marriage, divorce, succession and other social issues. Its prescriptions that are meant for all times are respected and applied in many parts of the world, without any changes. We are surprised to see now in Senegal that there is a desire to bring changes or “innovations” not to say contradictions, and this despite the fact that even the French colonizers had accepted the principle of a Muslim Code applicable to people of Islamic faith in special courts they had established. By virtue of the powers conferred on us as religious leaders, we must give clearly our position and hereby affirm solemnly our determination to reject categorically all measures, be they official that would be in contradiction with the sacred principles of our religion.”

Although CIRCOFS quoted the general reaction of the committee, it also mentions the views of individual religious leaders in order to ensure members of the various Muslim brotherhoods follow their leaders in supporting change of the Code.

Seydina Issa Laye, General Capiph of the Layene brotherhood based mainly in the area of Dakar and known for its egalitarian propensity, said that "... Islam is our code; none of our disciples will go to official jurisdictions for marriage, divorce, or inheritance cases." Serigne A. Lahad Mbacké, General Caliph of the Mouride brotherhood, had a similar attitude when he declared: "Touba will not be part of the code because God's law is a set of commandments and cannot be regulated by humans, no matter who they are: God does not make mistakes, men do." As for Abdoul Aziz Sy, the most politically hallmarked of all religious leaders, and main supporter of President Abdou Diouf's regime, he insisted on the fact that: "...the Code has nothing to do with Senegal because the legislator should not impose on citizens, concepts and rules that are not theirs, regulations that frustrate them in their Muslim impulse."

Where do Christians come in the picture? The response of CIRCOFS members is that in all democracies, the rule of the majority should prevail. In addition they say: "Christians and other non-Muslims will be ruled by a so-called exception law (exception to common law...) which is more adapted to their religious and philosophical beliefs."

Moreover, CIRCOFS equates the Family Code with family conflicts: "Actually, the district and regional courts which use French are the only jurisdictions dealing with Family Code-related issues." In the eyes of reformers, this situation is due to the fact that, having been trained in French schools, the political, administrative and other elite are influenced by alien values, whose "aspirations are in contradiction with the aspirations of the majority of the population, which is deep-rooted in its Islamic religious beliefs." Warning of anarchy, the CIRCOFS publicity said, "A

law rejected by citizens and which authorities try to impose on people is very dangerous."

To those who try to separate religion and politics and push religion into the sphere of private life, CIRCOFS warns: "Let those who say religion is a private issue, in an effort to prevent people - who are sovereign after God - from having a personal status code attuned to their religious beliefs, be reminded that if in French, 'religion' simply refers to the relationships between the human being and God or, as the *Robert Dictionary* defines it: "relationships with a superior being revered and recognized as such," for us the Wolof word *dine* encompasses both relationships with God and with other human beings. *Dine* for us is not a mere "private" issue, but something that rules private and public matters. Imposing on people, especially introducing in their families, a law that defies the rules (which are superior to all other laws made by deputies or parliament) set by religion i.e. by God or revealed by the Prophet, is a violation of people's constitutional right to freedom of conscience."

Moreover, CIRCOFS notes, the Family Code is essentially the legacy of the colonial experience. "The term secularity, which does not exist in the majority of European constitutions was simply imported from France and replicated in our constitution. Religion plays a major role in most European countries more than we are made to understand. France is the only country in Europe where there is no religious teaching in public schools. In Germany, Greece, Italy, Spain Denmark Sweden and Belgium, religious instruction is organized in public schools, and in many cases, for Muslim minorities living in there. There are even European countries like Germany where the Church receives an important amount of

money from State taxes. It is therefore clear that in those countries, religious and cultural traditions were taken into consideration when adopting family rights.”

It is true that the Code reform is the work of a group of activists and members of Islamic associations. However, the initiators want to use religious leaders’ influence in Senegalese society to undermine the secular foundations of the state and move towards the slow but sure establishment of Shari’a. “As a conclusion, we are determined to achieve our personal status code project with God’s blessing and the support of our eminent religious leaders once they approve it. We already convene all Senegalese Islamic associations, all people interested in the construction of a new Senegal that respects the religious values of this profoundly religious country, to mobilize and get actively involved in our efforts to get the personal status code finally adopted by the new regime’s government and parliament.”

What is the real problem with the Family Code? What does it contain that is contrary to the good practice of Islam, especially when it enables coexistence with other religions? Is the whole campaign simply a matter of promoting political Islam in Senegal? The CIRCOFS thinks the following provisions of the Code should be reformulated: bring back the possibility of repudiating a wife; suppress the “natural child’s” (born out of wedlock) right to inherit; and restore the father’s authority in place of “parental authority.” The result of this set of actions would be the re-establishment of the foundations of patriarchal authority in Senegal, but the ultimate goal is to seize power and create an Islamic State.

Debating religion, modernity and democracy

In Senegal, it seems as if thinking, rigorous analysis and lucidity disturb certain people, especially those from prominent religious families who believe they are naturally vested with a monopoly of knowledge, including knowledge of Islam – to the extent that they do not need to use books. There is a difference between preaching and intellectual interpretation of the scriptures: religion is not simply theology; it is also history, anthropology, sociology, philosophy, etc. But strong oral traditions and the prevalence of radio magnifies the reach of preaching – rather than interpretation - in the country.

The following experiences would not be known without the revolution in the media that has occurred in countries like Senegal. This revolution however raises the issue of the proliferation of private FM radios. Are these radio stations instruments of liberation or a tool to indoctrinate the population and keep them subservient to ignorance? This question is justified by the reactions of many Senegalese listeners broadcast live on radio stations – as illustrated by a discussion on Islam.

For two weeks, Mr. Alioune Tine, Secretary General of the African Collective for Human Rights (RADDHO), Penda Mbow, a member of civil society, and Sidi Lamine Niasse, President of the board of directors of the Walfadjri media group, were subjected to scathing criticism for expressing their views during a radio program called *Diné ak Diamano* (Religion and Time) which was aired on 25 January 2002. What motivated those virulent attacks against them?

The story began with the creation by Niasse, as Director of Walfadjri FM Radio, of a

program called *Diné ak Diamano*. One of Niasse's ideas was for a dialogue between Senegalese scholars trained in western countries and those trained elsewhere. The purpose, as Ousmane Kane, Professor at the University of Saint Louis (now teaching at Columbia University), who use the expression of "Intellectuels non-europhones" was to find a space for mutual acceptance and appreciation between these two groups. This wish was however threatened by intolerant attitudes.

After the episode on "Islam and Human Rights", some listeners voiced their strong opposition to the views defended by scholars, and Sidi L. Niasse was accused of partiality in his handling of the debate. Critics said the program was only "good for hell because it was designed by the devil, the Fifth Column, etc.," and insults and threats were uttered. These were spiteful words indeed, but they could not question certainties based on intellectual rigour, especially the certainty that God does not delegate His power of judgment. If He had legatees, no human being would live on earth! Suffice it to remind that even the *Zindiq* (atheists) who lived under the Abbasids lived freely, yet historically those who suffered the greatest intolerance were the Hanbalites, the Sufis, and the Shiites. Was not Al Hallaj crucified in 922 and Ibn Arabi violently assaulted by Ibn Taymiyya after calling him names like *wali shaytan* (the devil's disciple)? It is understandable that sometimes people get excited by the various hardships of life but it should not mean going back to June 22, 1633, the day Galileo was condemned for stating that the world was round - as it indeed turned out to be.

To address the intersections of Islam, democracy and human rights in Senegal means going into the intricacy of the political

and religious debate with a particular focus on women. It also means raising the controversial issue of Islam and modernity, which is neither new nor specific to Senegal.

At the end of the 19th century, a reformist faction was born in certain Arab countries. Created in the aftermath of social and economic changes, and contacts with European civilization, that group allowed influential thinkers to rise up and try to adjust the teachings of Islam to the new demands of the era. The group then called for a return to the original Islam; a call later echoed by contemporary writers like Nawal el Saadawi who was well known for her progressive opinions. However, has 7th century Islam been able to find solutions to the multiple challenges facing modern Muslim societies in a world dominated by increasingly sophisticated technology? Even if a Muslim country like Pakistan has successfully jumped over many scientific hurdles, the problem of rights still remains a lingering issue in many Muslim-dominated countries. The issue of Islam and modernity revolves around a number of concerns such as: Islamic political philosophy through the debate on secularity and democracy; Islam versus liberalism and the problem of individual rights, particularly the status of women in a Muslim society; and, the need for a new exegesis of Holy Scriptures through *ijtihad* (personal interpretative effort).

The religious movement initiated by the Prophet Muhammad had no evident political substance. The Prophet's political activities, which were required by the growth of the Muslim community, started with the Hidjra (Hegira) in 622. The agreements signed with the clans of Medina were part of the construction of a political entity. But can the "Medina Constitution", defended by the advocates of political Islam like Muhammad

Abduh, and Rachid Ridda, address the issues and preoccupations facing modern Muslim communities?

The essence of the pact focuses on the place of the clan in the Umma, the relationships between members, and mostly their cohesiveness when they are faced with bloodshed crimes, etc. However, the ideas defended by thinkers like Mawdudi (1903-1979), Shariati (1933-1977), and Sayyid Qutb (1906-1966) revolve around the essential vision, *al-islam din wa dawla*: Islam is both religion and State administration, thus political. What then, is the relationship between Islam and democracy?

This boils down to the issue of secularity. For fundamentalists, democracy is based on *shura*, i.e. discussion within the community of believers. It also involves referring to those who have the power “to tie and untie” (*dhawu-l-hal’ wal’ aqqi*), i.e. those who, after the disappearance of the Caliphs, had the religious knowledge and wisdom to discern true from false. Naturally, advocates of democracy do not share this point of view. Thus, in a country like Senegal where religious brotherhoods play a prominent role, will their followers continue to be seen as followers rather than citizens in times of elections for example? This takes us back to the issue of the *Ndigguel*, a voting order always followed by the majority of the disciples of a *marabout* (religious leader).

Senegalese society like other societies in the world has been undergoing profound changes. The economic and moral crises have pushed women to the forefront. Women are at the centre of the debate regarding modernity in Senegal. They ask for more access to education, a greater role in the decision-making process, and the full

implementation of the democratic option in our country. This momentum is seen as a threat by conservatives who try to stop it by stirring up sacred scriptures. How can women fight this conspiracy? They need to learn Qur’anic exegesis in order to find the arguments that advocate equal rights for men and women. An exegesis of the scriptures based in evolution is therefore necessary.

Great Muslim thinkers of the 20th century have developed an Islamic vision of human rights. Among them are Si Hamza Boubakeur, Ihsan Hamid al-Mafregy, Muhammad Hamidullah, Sinaceur, Ali Merad, Chadine, etc and Senegalese researchers like El Hadj Rawane Mbaye. With this in mind, it would be mistaken to think that Islam has nothing to do with human rights theories. Studies on this issue focus on three aspects. The first discusses the founding values or the source of the Islamic philosophy; what thinkers say about man’s identity, his situation in a divine economy, the meaning of his commitment. The second, the slow conquest or what constitutes the historical dossier of stakes involved; the outstanding points of the debate on religion and human rights; And the third, examines the current struggles or the dimension in real life; the prospect of the commitments; the meaning of the religious framework for the defence and development of human rights. In this area other topics are covered: the definition of man, the respect of human dignity, freedom in general, political and individual freedom, individual rights (to life, education, property, etc.).

Conclusion

As this discussion has shown, Islam and modernity are not incompatible. Islam, with *ijtihad*, gives any Muslim the possibility to make a personal interpretation effort in order to grasp the changes taking place within

communities in time and space. Faith does not mean surrendering one's intelligence; on the contrary, Islam is a religion of learning. The evolution of the family, women's status, the relationships between Islam and politics, are all topics that need to be looked into.

In the debate on the Family Code reform, Senegalese Christians and women's associations are fighting for the same cause. They advocate for a stable state, for secularity and for the consolidation of citizenship. As we have seen, religion is a reality in democratic processes which can end up causing distortions in public life, in relationships between individuals, between religious communities and brotherhoods. Control of power relations are justified with reference to religion, which is also used to exclude women from this control of power.

In any attempt to search for a rebalancing of the statutes and positions in society, above all it is necessary to reinvent a new approach to Islam so as to define the scope of public space. Thus, human rights and secularism constitute 'spaces' for the liberation and emancipation of women. For them to achieve the ideals of peace and democracy, this presupposes that women have a good command of the evolution of the Islamic discourse, of how Shari'a has been elaborated and what Ijtihad is about.

Acknowledgements

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Endnotes

¹ A divorcee, aged 30 at the time of the events at the end of January 2004, was convicted of adultery for having conceived a child outside of marriage. Under the application of Shari'a in the northern Nigerian State of Kano, she was to have been publicly stoned to death. Ultimately, following widespread mobilisation, she was acquitted in March 2002.

² Ali Abderraziq: *Islam et les fondements du pouvoir*, La Découverte, 1994 (originally published in 1925).

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