



Judging Divorce in Ben Ali's Tunisia

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During my fieldwork in Tunisia under Ben Ali's regime,¹ I spent time with Karima, a court clerk in the office dealing with personal status cases in a court in the suburbs of Tunis. One morning, a man in his 30s asked her for advice about changing the type of divorce he had filed for; his wife had left the marital home and refused to come back—a possible ground for divorce. She explained that the issue was finding proof. He had employed a notary to visit his in-laws' house to certify that she was living there, but at the time of the visit there was no one at home. The only convincing truth would be if his wife were to tell the judge that she would not return. "She knows the law", Karima said. "She will lie and say she does not want a divorce. It is a tactic. It is all about money." (If she does not agree, her husband will have to pay her compensation.)

"This", Karima concluded, "is the problem now with Tunisian women today. They have taken all their rights and the men suffer".

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4.1 INTRODUCTION

Karima had been working on divorce cases for years. Their exchange embodies some of the tensions that surrounded Tunisia's Personal Status Code (PSC) and, more specifically, its divorce law.

Tunisia is well known for its PSC that promotes the equality of women and men by banning polygamy and extending equal rights in divorce to women. Promulgated by the new president Bourguiba in 1956, shortly after the country gained independence from France, the PSC was seen as a progressive move to advance women's rights (Murphy, 1996) and has been used to inspire reforms elsewhere such as in Algeria and Morocco (Chedly, 2007). Although presented by Bourguiba as a modern interpretation of Islamic law, it entailed a radical reform of family law, in particular women's status in marriage and divorce, moving family matters from the jurisdiction of Islamic courts to that of the state.

Whether or not the laws on marriage and divorce were in harmony with Muslim values remained hotly contested during my fieldwork (2004–2008) and a matter of great concern as the Tunisian state sought to reinforce its legitimacy with the predominantly Muslim population. Bourguiba's successor, Ben Ali,² was accused of instrumentalising the country's image as a supporter of women's rights to bolster Tunisia's reputation abroad as "the most modernized and westernized country in the Maghrib" (Layachi, 2000, p. 32). Simultaneously, Tunisia was accused by human rights organisations of using this as a cover for human rights abuses (Labidi, 2010). Furthermore, the association of this law with "western" values accentuated the doubts within the country and the Middle East and North Africa (MENA) region about the PSC's religious and moral legitimacy.

Karima's reaction hints at the moral uncertainty that continued to shroud divorce and the changing status of women in marriage and at a tension inherent in the intention and purpose of the law. Although the PSC had granted women the right to file for divorce unilaterally on the same basis as men, the common sentiment remained that they should not. She immediately assumed that the wife would lie in court, questioning her moral character. If the wife is prone to conceal the truth, it is also because of a further tension inherent in the law. As we shall see, the difficulties of providing proof in the intimate domain of marriage meant that, in this personal status law, it was often the people and their perceived moral character that were being judged in ways that were highly gendered.

Based on an ethnographic study of a court house and lower middle-class neighbourhood in the urban suburbs of Tunisia's capital under Ben Ali's authoritarian regime, this chapter follows anthropological approaches that study the law in practice. It seeks to trace some of the tensions that were revealed as Tunisia's divorce law translated into practice, highlighting the importance of the legal processes. It focuses on the experiences of the actors (judges, lawyers, litigants, court clerks) who were instrumental in breathing life into the law. To do this, it draws on participation observation in the court, where I spent 19 months in the office which dealt with personal status cases, including divorce (2007–2008). I observed the confidential reconciliation sessions that litigants must attend, interviewed litigants, lawyers, judges, clerks and other court staff, and read divorce files. During this time, I also spent six months in total living with a lower middle-class family in the jurisdiction of the court and interviewed people in the neighbourhood about marriage and divorce.

After placing this research in the context of how anthropologists have approached studying the law and, more specifically, family law in the Middle East and North Africa, this chapter will begin by outlining some of the tensions that exist within the Tunisian legal framework and procedures that set the stage for the interactions between litigants and the judge. We shall then use the reconciliation sessions as a magnifying glass to reveal some of the tensions that must be resolved in these moments of judgement, as the litigants, evolving social norms and the law itself are placed under scrutiny in the court house.

4.2 TENSIONS IN THE LAW: (RE)DEFINING GENDERED PERSONS AND THINGS

Anthropologists studying the law have explored how the law interacts with society, culture or “normative orders” as it is translated into practice (Goodale, 2006; Riles, 2002). Through the specificities of its procedures, the law becomes a productive space where normative categories and forms of personhood and identity are constructed (Riles, 2006; Strathern, 2018; Pottage, 2004). Increased attention has been paid to the technicalities of the law that provide the framework in which knowledge and truth are produced (Riles, 2006), as well as the role of legal actors who interpret and implement the law within those frameworks, such as the judge (Bowen, 1998; Rosen, 2000). These technicalities set the stage,

delimiting the space in which individuals (litigants, lawyers and the judge) perform the continual work of interpreting these legal categories which contribute to the “fabrication of persons and things” (Pottage, 2004, p. 25). It is also through these processes that norms are able to enter the work of the law through shared criteria or assumptions (Bowen, 1998).

This chapter draws inspiration from anthropologists who have studied how international legal regimes have been translated in local contexts (Goodale, 2006; Riles, 2006), in particular Goodale’s approach to studying human rights through “ethical theory”: “the development of normative ideas through the dynamic interaction between ... many different sources” (Goodale, 2006, p. 29). Considering how international human rights are brought to life in Bolivia through the work of multiple actors, Goodale argues that human rights are never separate from “the swirl of other sources of normative inspiration” (2006, p. 29), which include community rules, national law and religious standards.

This articulation between the law and ethics has been emphasised in work on family law in Muslim contexts (Asad, 2001; Bowen, 2001; Joseph, 2000), in particular where this law is codified and brought under the auspices of the state, raising ethical questions about the respective roles of the state and religion in organising family life and maintaining public morality. This scholarship has stressed the need to examine the impact of family law reforms in the context of broader political, social and economic processes (Moors, 1998). The law is viewed as a productive site: “rather than taking the meaning of gender for granted, the focus is on the ways in which gender is constructed in particular local contexts” (Moors, 1998, p. 26). Increased focus has been placed on women’s agency, narratives and strategies as they navigate these laws in practice. Legal practice is understood within the context of broader political processes, in which gender and family law may be potent political symbols (Moors, 1998, p.26). The tensions between the ideals and the reality of contemporary marital life, such as the difficulty of maintaining the model of a sole male breadwinner when there is an economic necessity for both spouses to work, bleed into the operation of the law.

Consequently, legal practice is a site where actors are required to engage with existing tensions between sometimes competing normative frameworks as legal categories are “translated” (Merry, 2006) to make them meaningful in local settings and relevant to individual circumstances and cases. The construction of categories in this way is a political process, as actors make choices between alternatives (Merry & Coutin, 2014): “Legal

and technical knowledge systems thus make particular versions of social reality visible, even as they obscure others, rendering them unknowable" (Merry & Coutin, 2014, p. 3). In this way, the court becomes a forum where matters of public morality are debated (Murphy, 1997; Kelly, 2011; Goodale, 2006).

Anthropologists have also stressed the role played by various intermediaries as the law is "translated" (Merry, 2006; Messick, 1993). Elsewhere, I have described how divorce lawyers interpret the law as they craft petitions translating the facts into legal arguments to appeal to the judge; as they do this, they simultaneously lend legitimacy to particular gender norms that are expected to appeal to the judge and carry weight in court (Grosso, 2019). This interpretative labour is made necessary as the court is itself a decontextualised space (Murphy, 1997), despite an understanding of context being vital for the judgement process, not the least in personal status cases. Judges (and lawyers), therefore, play a key role in bringing some of the relevant context back into view. They engage in a process I call recontextualisation, as they are required to use their moral and social, as well as their legal, judgement to interpret and rule on divorce cases; this "ethical work" is vital to the process of judging divorce cases.

Anthropologists have highlighted the potential for uncertainty and anxiety, in particular in areas where the law offers the least certainty, based on open norms or legal categories that are poorly defined or in instances when it is particularly difficult to establish the truth. For instance, Kelly (2012, p.753), in his study of how claims of torture are handled in the British Asylum Process, discussed the "widespread suspicions about the genuineness of their claims". He argued that these suspicions were based on the recognition of mutual humanity and with it "the mutual capacity to dissimulate", rather than a "denial of suffering" and othering, as might be assumed (2012, p. 743). As such, Kelly foregrounds the significance of the roles of the legal actors who interpret the law, as well as their perceptions and emotions, as the law is implemented and legal categories are defined. Crucially, these reactions contribute to "institutional receptivity", an element of the "rights consciousness" of litigants that shapes their willingness to access the rights granted in the legal code and turn to the law in the event of marital discord (Merry, 2003, p. 344).

4.3 TENSIONS IN THE LAW: LEGITIMACY AND ORIGINS OF THE PSC

Tunisia's PSC enables us to observe the tensions that arise as a contested, morally dubious, national law is translated into practice. It is this national law that remains somewhat controversial and that creates a space where competing notions of gender and gender equality are debated.

It could be said that the PSC originated from an ideological and political clash. Promulgated rapidly after Independence in the wake of a violent period of civil war, Bourguiba—who had been trained as a lawyer in France—was able to pass this law that was considered a radical move in favour of women's rights after defeating his ideological opposition. The association of Bourguiba with the French did not help the acceptance of the new law locally, despite his attempt to position the PSC as a modern reading of Islamic law. Ben Youssef, Bourguiba's opponent during the civil war, questioned the PSC's compatibility with Islam from his exile in Egypt, claiming that it had “prohibited what God had authorized and authorized what God had forbidden” (Perkins, 2004, p. 137). This is a phrase that I heard often during fieldwork; supposedly, by preventing a man from taking a second wife (seen by many as permitted in Islam), the PSC made it more likely for men to commit adultery (forbidden in the religion). Through this reform, Bourguiba also enabled the state to intervene in intimate, family matters which had previously been the preserve of Islamic courts. Passing this radical legal reform top-down thanks to the power vacuum that emerged as he gained victory in the civil war, Bourguiba turned women and women's rights into a potent political symbol in the identity of the nascent, independent nation state.

The PSC also represented a departure from the way in which family law was organised prior to Independence. Polygamy had been allowed under the religious law, and men could take up to four wives, although the limited data available suggests that it was rarely practised (Micaud, 1964, p. 145). Men could repudiate their wives, whereas women had to appeal to a religious judge (*qadi*) for a divorce and could only do so in specific circumstances such as abuse or neglect (Anderson, 1976, p. 103). The PSC required both men and women to divorce through a court. Women, like men, could file for divorce unilaterally; the judge could not refuse the divorce, but could require the petitioner to pay their spouse compensation. In this respect, the PSC introduced greater gender equality, enabling either party to end the marriage.

4.3.1 *Clashes in Purpose*

What does it mean that a woman could now file for a divorce? The ethnographic study of the law in practice can help grasp its impact on those it purports to empower. Anthropologists who study the law are often interested in the lived experiences of the people who are affected by those laws (Osanloo, 2009; Mir-Hosseini, 1993; Merry, 2003), the extent to which such laws fulfil their (alleged) purpose (Goodale, 2006) and the extent to which laws, such as personal status laws, empower women or reinforce gender inequalities (Würth, 2003; Osanloo, 2009; Mir-Hosseini, 1993).

Paying attention to procedures and the formation of legal subjectivities may reveal potentially unexpected consequences of legal regimes. In her comparative study of divorce in Iran and Morocco, Mir-Hosseini argued that women may find empowerment in seemingly unlikely places (Mir-Hosseini, 1993, p. 121). In Iran, where only women and not men had to petition a court to be granted a divorce, the legal procedures that required women to engage with the court opened up spaces of resistance where women could exercise their agency. This led Mir-Hosseini to the counter-intuitive conclusion that this engagement with the law led Iranian women to feel empowered, despite the gender inequalities that remained in the legal system (Mir-Hosseini, 1998, p. XIV). In contrast, the Tunisian divorce law required both women and men to engage with the court system in order to divorce.

4.4 LEGAL CONTEXT

4.4.1 *To Reconcile, or Not to Reconcile?*

In Tunisia, all litigants must encounter a judge at least once for a compulsory reconciliation session before they are permitted to divorce. Judges could be male or female; my fieldwork took place under one female and one male family judge. As one of these family judges told me, “it is *personal* status law. You need to see the person.” If there are children, the couple must attend three reconciliation sessions, each spaced one month apart, to allow more time for reflection and for the couple to potentially reconcile, an indication of the sanctity of the family and public fears about moral breakdown if children grow up in a “broken” family. The ostensible purpose of these sessions is to attempt to prevent the divorce, “the most

hated by God of all permitted things”. The state, therefore, plays a role both in facilitating and in preventing divorce.

If this was a unique moment when the litigants and judge met in person, it was because divorce cases are judged based on the documents in the case file (petitions and documentary evidence). These petitions were usually written by lawyers, less frequently by notaries; in contrast, the legal regime before independence had been based on oral testimony. Three types of divorce were available to both men and women (Art 31, PSC). Couples could divorce by mutual consent with no compensation payments. One party could file for a divorce without grounds; the judge could not prevent the divorce, but would rule on compensation payments to be paid to the spouse who did not want to divorce. These compensation payments were gendered. Wives only had to pay “moral compensation” for harm done, whereas husbands also had to pay “material compensation” to compensate for the wife losing her breadwinner. Finally, one party could file for a divorce for harm. If able to produce legally valid evidence of the harm done, the injured party would be entitled to receive compensation payments. A great deal—including the financial settlement and possibly custody of any children—hinged on the ability to produce convincing, valid evidence to justify a claim of “harm”. In reality, in cases of divorce without grounds, litigants also strove to demonstrate to the court that they had suffered “harm” in order to mitigate the compensation they would owe to their spouse.

The reconciliation sessions played a vital role, not only due to the physical encounter between litigants and the judge, but also because they generated a written document that enters the divorce file and can be used as evidence. The judge or a clerk rapidly wrote out an account of what each litigant said during the session. This summary was signed by both parties. Given the difficulty of providing evidence for “harm” in such an intimate domain of life, these accounts could provide missing evidence to support a case of divorce for harm. This is why, although the judge may approach these sessions hoping to explore the “real reasons” that led to marital breakdown and reconcile the couple, litigants often approach them with the hope of producing evidence of their spouse’s failures that could help them secure a favourable divorce settlement. Consequently, the intended purpose of the sessions that relies on transparency and honesty clashes with their role in the legal procedure that incentivises each litigant to conceal any wrongdoing and present themselves favourably to the judge. These legal technicalities frame the space in which legal actors interact and

collectively interpret the meaning of the central categories that are relevant to divorce law (Riles, 2005) and in which their subjectivities are formed in interaction with the law and its officials (Merry, 2003).

4.4.2 *Judging “Harm”: Clarity v Ambiguity*

What constituted “harm” in divorce cases? The most definitive types of “harm” were those that could be backed up with legally valid evidence; only these would lead to a ruling on divorce for harm. Typically, these involved cases in which another legal judgement could be produced,³ such as for adultery or domestic violence, which were legislated against in the Penal Code.⁴ In cases of divorce without grounds, the judge had more discretion and could determine the divorce settlement based on their appreciation of who had suffered most due to the breakdown of the marriage.

In divorce cases, litigants typically attempted to establish that they had been fulfilling their marital duties, whilst their spouse had not. Couples were expected to treat each other with kindness and to “fulfil their marital duties according to custom and habit” (Art 23, PSC). A further form of “harm”, therefore, was a failure to fulfil these duties, which were highly gendered. Dispositions elsewhere in the legal code provided some clarity to help define “marital duties”. For instance, the PSC defines the husband as the head of the household and expects him to provide for his family (Art 23 and Arts 37-53bis, PSC). In return, since her duty of obedience was removed from the PSC in 1993, a wife is expected to “cohabit” with her husband in the marital home, the site of her marital duties as defined by social norms (Art 23); legal procedures provide for a husband to file a complaint for “*nushuz*”, a wife abandoning a marital home.

These categories remained nonetheless ambiguous, leaving considerable scope for interpretation and the judge’s discretion. For some legal professionals I interviewed, this was a deliberate move by the legislator to leave flexibility for the judge to adapt to changes in the institution of marriage and in the gender norms that define what makes a “good” husband or wife. It is in these ambiguous categories that the judge is required to carry out ethical work interpreting which social norms are relevant to the case; in this way, this ethical work is brought into the practice of the law.

4.5 RECONCILIATION SESSIONS

4.5.1 *Concealing v Revealing*

The judge who conducted the reconciliation sessions I observed, a young man in his 30s who was married and the father to a young baby, told me that his job was “not to judge them, but to make them get on”.⁵ The four judges I spoke to at the court all cared deeply about trying to reunite couples, especially those who had children.⁶ The cantonal judge found it difficult to rule on, in his words, “the breakdown of a family”. His strategies during the sessions aimed to encourage the litigants to reveal the “real” reasons for their divorce: “I must make them feel I am not judging them”, he told me. He did this by minimising his presence, even taking calls on his mobile phone, in the hope the couple would “forget” about him and open up. He was, however, all too conscious that they were more likely to tell me the truth than they were him. Speaking to the judge had potential repercussions for the divorce settlement; if a litigant were to admit they were at fault, this could be held in evidence against them. Ultimately, there was little he could do to make them forget his role as a judge and the power he had over them through the divorce settlement.

The couples who came to the court had a different perspective. Of the 61 reconciliation sessions⁷ I observed, only 1 husband had come to tell the judge that he and his wife had reconciled. Litigants approached these sessions strategically with the aim of persuading the judge that the divorce should be blamed on their spouse in order to win the judge’s sympathy and, hopefully, a favourable divorce settlement. Consequently, the reconciliation sessions created an emotionally charged stage where litigants could perform as “good” husbands or wives; through these performances, they also revealed their understanding of the kinds of arguments they believed would be legally authoritative and emotionally and morally persuasive to the judge. What did litigants reveal or conceal? And to what extent were these performances gendered?

4.5.2 *(Not) Wanting a Divorce*

Gearing these strategies to achieving a favourable settlement leads to the first contradiction inherent in these so-called reconciliation sessions. If one spouse files for divorce unilaterally, they will have to pay the other party compensation payments; the divorce could only proceed without such

compensation if the couple agree to divorce by mutual consent. Consequently, if one spouse is filing for divorce unilaterally, it is very unlikely that the husband or the wife will come to the court and tell the judge that they agree to divorce; doing so would entail losing this financial compensation and would place them in a much weaker position to negotiate the divorce settlement.

Fatima was a lawyer in her early 30s and used to working on divorce cases. She used this knowledge to her advantage when her own marriage started to break down. They both realised that they had become incompatible, despite the birth of their son, and their arguments had turned to violence. She knew that obtaining a final judgement for domestic violence could take time and did not want to wait for this to file for a divorce herself on the basis of harm. She was pleased when her husband finally decided to file for a divorce without grounds and remained firm in her refusal to divorce by mutual consent. After her suffering, she hoped the compensation payments he would be required to pay would give her some form of justice. To have a chance at this, however, she must attend the reconciliation sessions, hide her true feelings and say that she wanted the marriage to continue. She had to play the role of a patient wife and mother, willing to sacrifice herself and show forgiveness for the sake of the family; it is this position—in line with social norms and expectations—that would ultimately empower her to achieve the outcome she desired in the divorce case. Given that Fatima had started proceedings against her husband for violence, and that the judge may well have been aware of this, we can only speculate whether the judge would have truly been convinced by her performance.

The judge knew that that the legal proceedings were not conducive to revealing the truth. He may well have turned a blind eye, knowing that Fatima was pursuing a sensible course of action to end a violent marriage more rapidly. Consequently, the judge was performing both ethical and legal work as he presided over these sessions, judging the legal facts and also the moral character of the litigants who came before him. He too held “widespread suspicions about the genuineness of their claims” (Kelly, 2012, p. 753). These suspicions were also based on compassion: an ability to identify with her and her suffering and the recognition that, if pressed, perhaps he too would have done the same thing.

4.5.3 *Husband v Wife*

The performances of the litigants were articulated with the clearest legal definitions of “harm”. The arguments put forward by wives most frequently revolved around their husband’s failure to pay maintenance or domestic violence. As well as bearing legal weight, and being supported by social, moral and religious ideals of a husband’s role, if so many litigants chose to reveal economic issues, it could also be because they preferred to conceal other, perhaps more intimate, issues affecting their marriage. In this way, they remained in control of the extent to which the state, via these procedures, could intervene in their marital affairs.

Although, in the 1993 reform, the PSC had been modified to mention that a wife should also contribute to the household’s expenses “if she has the means”, it remained very unclear what this meant in practice, and the husband clearly remained the head of the household with a duty to maintain the family. This tension between the continued duty of the husband to be a sole provider for the family and the suggestion that the wife could or should also contribute financially was played out in the reconciliation sessions. Several wives underlined the failings of their husbands as providers by highlighting the role they played in contributing to the family with their own salaries. In some cases, wives brought bills with them that they had paid and their husband had not. On the other hand, husbands disputed the wife’s use of her salary or complained that their wives were too demanding materially. Such comments were (deliberately) wounding to husbands and their masculinity.

One warring couple demonstrated how maintenance becomes an authoritative language through which to express marital dissatisfaction. In their mid-30s, they came to the court dressed smartly. Both of them had moved back in with their respective parents. Although both had finished high school, only the husband was working, earning a modest wage as a civil servant, and told the judge that his parents also “helped them,” lamenting the high cost of the clinic where his daughter, still a baby, had been born prematurely. Their strained and angry exchange in the presence of the judge was peppered with the forms of “harm” that were mostly likely to hold weight legally. He accused her of hitting his mother and leaving the marital home. She accused him of lying: why was she not in prison, if she hit his mother? She also accused him of failing to pay any maintenance, not even money for milk for their daughter. Both claimed that they were the injured party. “I don’t want your mother to pay. I want you to take your

responsibility,” she lamented. “I am in front of you a man,” the husband simply replied. “Then why,” she shouted, “did I do a case for failure to pay maintenance?”

The judge did not react to this, visibly troubled by the tension in the room. The husband would be unable to argue with documentary evidence produced if the wife had indeed filed a case against him for failing to maintain her and the child. He would also find it difficult to argue with the material reality that would make it hard for him to afford to pay 200 dinars per month out of his (claimed) 330 dinar salary.

Only rarely did the judge seem to see a possibility to help a couple reconcile. Saida and Mehdi, both in their 30s and with a daughter, had also been arguing about money. The wife worked as an accountant and earned slightly more than her husband who sold cars. Saida mentioned this fact frequently: “Each month I pay the rent alone and provide for our family alone!” However, the key tensions in their marriage appeared to start when they had moved into an apartment above his parents’ house. Saida did not tolerate what she perceived as constant interference from her mother-in-law. The judge took the opportunity to empower Mehdi. He encouraged him to take charge and manage the relationship between his parents and his wife to make things go smoothly again. In this way, as the judge put it, “each man has power.”

The judge’s reaction to these cases implied that he was conscious of the economic strain on families and the need for two salaries to make ends meet; he seemed to acknowledge that it was not realistic for a husband to provide alone and sometimes even ignored these comments to focus on other ways of resolving marital stress that were more likely to be within the husband’s grasp. He was required to “re-contextualise” these performances using his social and moral knowledge. In the process, he contributed to the legal recognition of the slow shifts in marital roles that could be observed in families in the neighbourhoods around the court.

The judge also relied on his moral and social knowledge and lent his legal authority to shifting gender norms when responding to husbands’ complaints about their wives. Husbands most frequently complained about their wives’ absences from the marital home and subsequent neglect of other, traditional wifely duties. Mehdi had tried to use this idea against Saida in the case mentioned above, accusing her of leaving the house all day and leaving the baby with his mother. Presumably, this was to go to

work as an accountant for which, as we saw, she earned more money than him and her income was vital to the household. Furthermore, jurisprudence is clear that the law only sanctions wives who abandon the marital home without justification.

Therefore, these clashes between strongly gendered norms—in some cases backed up by the clearest definitions of marital duties in the legal code—also became clashes between the real and the ideal which, in turn, reveal how understandings of masculinity and femininity and gendered marital roles are changing in light of economic and social changes.

4.5.4 *Family v Freedom*

The reconciliation sessions also revealed changes in the meaning of kinship and the family in this urban setting in the suburbs of the capital city that was a melting pot of Tunisians, who originated from all over the country and had migrated in recent decades.

Another key source of tension in marriage was the relationship between the couple and their natal families. As I had observed in my interviews with people in the neighbourhood, recent decades of rapid urbanisation had led to more couples living neolocally, in contrast to the tradition of patrilocality after marriage. Female education and economic empowerment also encouraged a greater focus on the nuclear family; wives seemed less tolerant of interference from in-laws in light of their greater financial independence. The judge was conscious of class differences that led to some wives having greater expectations of living independently as a nuclear family, as well as the economic pressures that meant that this might not be possible, even when it was expected, as we saw with Saida and Mehdi above.

Also present in Saida and Mehdi's case and sometimes in the reconciliation sessions, tensions with the extended family seemed to be a greater driver of the divorce than issues between the couple themselves. As a working wife, Saida was caught up between the expectations her mother-in-law had of a "good wife" (who asked her if her husband's clothes had been washed) and her own expectations of being a well-educated, economically active woman expecting this to bring her more autonomy from her husband's family; he had reneged on his promise to live independently, and they moved into the flat above his parents when she was heavily pregnant.

As these issues were raised and debated in the privacy of the judge's office, the sessions become a litmus test of the potential for the law to

support different gender roles that may be deemed more or less empowering to women (and men).

4.6 CONCLUSION

These highly personal and often emotional experiences of the law suggest how legal practice is connected with ethics and ethics with gender, as different expectations are placed on husbands and wives by the legal code and by the judge who strives to reconcile them. Karima, who we met at the start of this chapter, was correct: divorce cases were marred by the difficulties of telling right from wrong and the deceptive strategies litigants used to achieve a favourable outcome. These strategies were shaped by the legal procedures and contributed to making ethical work central to divorce cases as the judge also sought to read the gendered, moral character of the litigants as they came to the court.

The reconciliation sessions are, therefore, productive of a high degree of uncertainty and anxiety. Like the judge, the litigants were also unsure who they would encounter in the court; would they be able to win the judge's sympathy? In this Personal Status Law, much also hinges on the *person* of the judge who, within the constraints of the areas where the law more clearly defines marital roles, adjudicates on which husbands and wives are best fulfilling their duties. Clashes that exist outside the court are brought into the court and into the legal realm, notably those relating to changing gender roles and expectations of marriage. This is the context in which judges are required to make ethical and legal judgements that are necessarily gendered and that may stimulate their compassion for certain litigants over others. Consequently, judges may decide to support a wife who is a victim of domestic violence when she insists she wants to remain in the marriage (whether they believe her or not) or they may offer alternative ways for a husband to demonstrate his masculinity if they know it is impossible for him to support his family alone. By exercising their agency and sympathy in this way, judges effectively give legal backing to these changing marital roles. An inherent uncertainty remains, however; another judge may use his or her scope for discretion differently.

The emotional support provided by the judge also contributes to the "rights consciousness" of litigants and whether they feel they receive satisfaction through the law; it is part of their experience of the legal system that contributes to litigants seeing themselves as "rights-bearing subjects" (Merry, 2003, p. 343). These intimate proceedings, however, also have

broader political implications; it is not only the litigants who are being judged. The morality and legitimacy of the divorce law are at stake as litigants come into contact with the law via its agents and through its procedures, whether the kindly judge, or the sometimes irate clerk, who had her own strong opinions on the morality of divorce and women's role in society. Behind the closed doors of the judge's office, the judge and litigants navigate the tensions between the impetuses to reveal and to conceal, between the ideal and reality of contemporary marriage and between the state's prerogative to enable whilst also prevent divorce. As they do so, the morality of the state, as well as of the litigants, is being judged.

NOTES

1. Fieldwork took place between 2004 and 2008 in a suburb of Ben Arous close to the capital city of Tunis, in a family home in a lower-middle-class neighbourhood and in the chamber of the Court of First Instance of Ben Arous that dealt with personal status cases (2007–2008).
2. Ben Ali ruled Tunisia through an authoritarian regime from 1987 until he was ousted in the revolution of January 2011.
3. This must be a final judgement that is no longer subject to Appeal.
4. Article 218 of the Penal Code introduced a stronger sentence if the violence had been perpetrated by the victim's spouse.
5. Judges in Tunisia rotated around different roles rather than specialising in one field of law.
6. These included both family judges, the cantonal judge and the judge who presided over the reconciliation sessions I observed. This judge usually ruled on commercial law, but all judges in the court could be called upon to help with the large number of reconciliation sessions that had to be processed each week.
7. Both spouses were present in 44 of these cases; in the rest, only one party attended.

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