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Undignified Jurispathy: Muslim Family Law at Ghanaian Courts

Yüksel Sezgin

Ghana has inherited colonial legislation that recognizes and regulates the consequences of Muslim family law (MFL). However, in practice, courts almost never recognize the normative existence of MFL and systematically dismiss the cases on procedural grounds without discussing their merits. What explains the judiciary's attitudes toward Islamic law? Why do Ghanaian courts refuse to engage with MFL in substantive terms? How does this judicial policy affect Ghana's pluri-legal system and its multireligious democracy? Drawing on Robert Cover's insights and concepts from "Nomos and Narrative," the present article suggests that Ghanaian courts engage in "undignified" jurispathy against Islamic law. Having inherited the colonial narrative that Islamic law is not a native law of the land, the judiciary destroys the legal meanings built around Islamic law without discussing what is at stake. This perpetuates normative tensions between the state and Muslim groups, undermines the rule of law, and erodes public trust in democratic institutions. Utilizing the theoretical and empirical insights drawn from the Ghanaian case, the article urges scholars to expand the scope of their inquiries to include instances of undignified jurispathy to better understand state-religion relations and constitutional debates in pluri-legal societies.

INTRODUCTION

Nearly one-third of the world lives under pluri-legal systems where religious and secular laws formally coexist (Sezgin 2013). In these jurisdictions, secular and religious laws are locked in a constant battle for control over the normative universe. Much of the literature documents these struggles and reports that civil courts function as bastions of secularism against the ever-expanding claims of religious laws (Lombardi and Brown 2006; Woods 2009; Hirschl 2010; Lerner 2013). Civil courts commit what Robert Cover (1983) calls "jurispathy" or "law-killing" against religious law–based claims. Expanding on Cover's concept, this article shows that there are two types of law-killing, with different consequences for state-religion relations and the development of multiethnic/religious democracies: *dignified* and *undignified*.

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The first type, thoroughly discussed in the literature, usually facilitates the harmonization of legal meanings of religious groups and the state and leads to the moderation of religious laws. Almost entirely ignored by the literature, the second type perpetuates normative tensions between the state and nomic communities, undermines the rule of law, and erodes public trust in democratic institutions. The present article will investigate the second type by closely examining the Ghanaian court's undignified killing of Muslim family law (MFL) claims. The arguments and theoretical implications developed in the article will be relevant to nearly all religion-based legal systems. Still, Ghana, with its long history of systematic undignified jurispathy, offers a uniquely suitable case to examine the phenomenon and its consequences.

Fifty-three countries formally integrate MFLs into their legal systems. Regarding how they integrate MFLs, we can speak of two ideal-typical models: *direct integration* and *indirect integration*. In the former model, state-appointed judges in state-operated civil or religious family courts apply written or uncodified religious family laws. In the latter model, the state does not directly incorporate religious laws or courts into the national system. Instead, it recognizes and regulates the consequences of MFLs applied by traditional/religious authorities.

We observe a prime example of indirect integration in Ghana. The Marriage of Mohammedans Ordinance (MMO), Cap 129,[1] enacted by the British colonial administration in 1907, established the legal framework for registering Muslim marriages and divorces and recognizing their legal consequences. The ordinance did not codify the applicable religious law or designate any authority to apply it. Instead, under British indirect rule, traditional authorities (chiefs, *sheiks*, *malams*) were left in charge of implementing the MFL. When officiating marriages or mediating divorces, these authorities would apply their interpretation of Islamic law (e.g., Maliki) following local customs. Courts would then recognize and regulate the consequences of these acts if they were legally registered after a licensed "Mohammedan priest" (imam) had confirmed their validity according to Islamic law. For instance, upon the death of a Muslim whose marriage was duly registered, succession to their property was regulated by "Mohammedan law," according to section 10 of the ordinance.

In national jurisdictions where MFLs are directly integrated, the authority to interpret and apply codified and unwritten sources of MFLs lies with state courts. However, in countries with indirect integration, the courts' role is primarily limited to ascertaining the validity of religious/traditional authorities' legal acts according to Islamic and civil laws and recognizing their consequences. Nevertheless, this "limited" role does not mean that courts in the latter countries play a lesser role in regulating MFLs than their counterparts in the former countries. As they ascertain the validity of legal acts in MFL cases, civil courts in indirect integration systems establish the criteria for "valid" marriages/divorces, deliberate on gender equality in succession cases, and review the constitutionality of instant divorces (i.e., *talaq*). In other words, in jurisdictions with indirect integration, the judiciary's "limited" supervisory role is broad enough for willing judges to intervene

1. The current literature refers to the MMO as Cap 129, in reference to Chapter 129 of *The Laws of the Gold Coast* (an official compilation of laws in force as of December 31, 1951) by McElwaine (1954). Prior to that, it was referred to as Cap 107, in reference to Chapter 107 of the 1936 edition of the same collection by McCarthy (1937). In 1985, the MMO was subsumed under Part II of the Marriages Act of 1884–1985 (Cap 127).

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in the MFLs to bring about legal reforms or engage in activism to "contain, tame, and mitigate the resurgence of sacred law in their respective polities" (Hirschl 2013, 312).

As Hirschl demonstrates in *Constitutional Theocracy* (2010), constitutional/supreme courts, even in the least likely settings, have stood against expansionist interpretations of religious laws and consistently tried to limit their reach. Considering the 1992 Constitution's emphasis on liberal rights, the strong tradition of secular government, and the legacy of MMO against this backdrop, Ghana seems an ideal setting to observe Hirschlian judicial secularism in action. However, the Ghanaian judiciary's track record suggests otherwise. Ghanaian courts have deliberately avoided substantive engagement with Islamic law. In most cases brought by Muslim litigants, courts have refused to recognize the nomic existence of Islamic law and dismissed MFL claims on procedural grounds. Despite frequent regime changes in Accra, the Ghanaian judiciary's dismissive attitude toward Islamic law has been surprisingly consistent since independence in 1957. What explains the judiciary's attitudes toward Islamic law? Why do Ghanaian courts refuse to engage with Islamic law in substantive terms? What does this judicial policy mean for Ghana's plural legal system and its multireligious democracy?

The present article will answer these questions utilizing insights and concepts drawn from Cover's classic works (1983, 1986). Cover's views on state courts as jurispathic actors capture the Ghanaian judiciary's interactions with MFL claims since colonial times. The fact that Ghanaian courts methodically destroy the legal meaning of what constitutes a Muslim marriage, for instance, cannot be explained simply by ideology or legal culture. Here we need Cover's concept of narrative to make sense of the judiciary's engagement (or lack thereof) with Islamic law. The narrative since colonial times has been that Islamic law was not the native law of the land. In Ghana, fitting Cover's model, courts and the bureaucracy have acted in unison to reproduce and maintain this narrative (Lovell, McCann, and Taylor 2016, 68). They have effectively utilized it to turn the MMO into a dead letter and systematically kill normative claims based on Islamic law.

The difference between a dignified jurispathic killing and one that is undignified is akin to the one between capital punishment and summary execution. Dignified killing allows the court to engage with religious law–based claims in substantive terms and provide nomic groups with feedback to harmonize their legal meanings with the state's. Harmonization is essential to jurisgenesis and de-escalation of normative tensions. In cases of undignified killing, the state courts reject the legal meanings of nomic communities on procedural grounds without discussing what is at stake or providing critical feedback. Ghanaian courts almost exclusively engage in undignified killing against Islamic law. In doing so, they miss a significant opportunity to influence the future development of legal meanings of nomic groups in the Muslim community, which, in turn, increases the risk of political marginalization and erosion of commitment to the rule of law among Ghanaian Muslims.

DATA AND METHODOLOGY

The article is based on interdisciplinary research methods utilizing primarily semi-structured interviews, archival documents, and textual analyses of relevant court rulings

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on Muslim marriage, divorce, and inheritance disputes. I collected most of the data during my fieldwork that I carried out in Ghana in May–July 2017. I obtained the court rulings from law reports, electronic databases (*Digital Attorney* and *Dennislaw*), and individual lawyers and litigants. Eighty-two semistructured interviews were conducted in Accra, Tamale, and Kumasi. I used snowball sampling to identify the subjects (forty-five women and thirty-seven men), including clerics, academics, teachers, taxi drivers, students, judges, lawyers, hawkers, and shopkeepers. The interviews, conducted in English or Hausa (with the help of a translator), typically lasted for forty-five minutes to an hour and a half. During the interviews, I took handwritten notes. Each interviewee was ensured of strict confidentiality and identified in the text only if they had explicitly consented.

As to my positionality, as a white male university professor in his forties who worked at an American institution, I was a total outsider to most of my informants. This had both advantages and disadvantages. They understood that I was not conducting research on behalf of the Ghanaian government and did not have motives to serve the interests of any domestic groups. But at the same time, some informants (especially Muslims) were initially hesitant to share their experiences with a white man from America—a country that I find to be often associated with negative connotations among Muslim subjects. However, when I explained to them that I was raised in Turkey, a Muslim-majority country, and studied Islamic law and courts in West Africa, the Middle East, and South Asia, I established a trusting rapport with most of my Muslim informants. It ensured that they openly shared their experiences in our conversations and made them more willing to participate in the study. Several of my informants expressed their pleasure that a foreigner took an interest in their problems, hoping that this could help solve them as the outside world learned more about their issues.

THE BRITISH COLONIAL POLICY TOWARD ISLAMIC LAW AND THE 1907 ORDINANCE (MMO)

Political Considerations that Gave Birth to the 1907 Ordinance

The area that makes up modern Ghana was divided into three regions[2] under British rule: the Gold Coast in the south, the Northern Territories in the north, and the Ashanti in the middle. British colonial administration began in 1821 in the coastal areas and gradually expanded into the hinterland.

According to the 2021 census, about 6.1 million Muslims—19.9 percent of the population—live in Ghana.[3] Although Muslim presence in the hinterland can be traced back to as early as the fifteenth century (Clarke 1982; Weiss 2008), their arrival in large numbers to the coastal regions (Accra and its vicinity) began in the ninteenth

2. The fourth region was British Togoland. It was incorporated in 1916 when German Togoland was split between the British and French after World War I.

3. Christians make up 71.3 percent, and adherents of traditional religions 3.2 percent, of the population (Ghana Statistical Service 2021). In comparison to the 2010 census, the Muslim population increased from 17.6 percent to 19.9 percent in 2021. Nearly half of the Muslim population is concentrated in the Greater Accra, Ashanti, and Northern regions.

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century. Under colonial rule, Muslims from West African colonies (Nigeria, etc.) immigrated to the Gold Coast and lived in settlements called "*zongos*." The British considered Muslims "more civilized" than indigenous pagan tribes (Weiss 2008, 230). As a result, they brought Muslims from nearby regions and enlisted them in the colonial military, police force, and bureaucracy. Regardless of their ethnic origins, these Muslim immigrants were widely referred to as "Hausa" by the colonial administration (Weiss 2008, 230). Even though, over the following decades, many local groups (Fanti, Ga, etc.) also converted to Islam, due to that religion's initial association with the Hausa and their separate settlements (*zongos*), the colonial administration continued to view all Ghanaian Muslims as "aliens"[4] and their customs (i.e., Islamic law) as imports (Josiah-Aryeh 2015, 5–15). From this point of view, Islamic law was not part of the legal fauna in the Gold Coast,[5] but a nonnative normative system brought in by aliens (Anderson 1954). These views greatly informed the judicial policy toward Islamic law, especially during the early days of the British colonial rule—colonial authorities systematically refused to recognize and apply Islamic law. However, in the absence of state recognition, Islamic precepts and norms, especially concerning marriage, divorce, and succession, were amalgamated into African customary law and applied by native authorities in Muslim communities. This state of affairs remained unchanged until the enactment of the MMO in 1907.

The British colonial policy toward Islamic law suddenly changed in 1906–1907. The colonial administration introduced a bill to the Legislative Council to formally recognize the MFL in October 1906. The bill, which came to be known as the MMO, was passed in the Legislative Assembly on December 9, 1907. It provided for the registration of Muslim marriages and divorces and the application of Islamic inheritance rules to spouses whose marriage was duly registered under the ordinance.[6]

Although the bill's stated objective was to provide a system of registration for Muslim marriages and divorces, it is worth probing to understand why this sudden shift in policy had occurred at this particular time. During the parliamentary debates, the Attorney General (AG) explained that the bill was the outcome of questions concerning "the status of Mohammedans in the West African colonies generally."[7] In other words, the political and geostrategic considerations had given rise to the bill. Some assembly members undoubtedly spelled out these considerations. For instance, Mensah Sarbah criticized the bill and warned the government against unnecessarily provoking the Muslim community and politicizing Muslim marriage by failing to obtain the community's consent to the bill in consideration. Mr. Sarbah quoted extracts from a white paper by the Colonial Office (1907, 26) that discussed the rising dangers of

4. The colonial policy that considered Muslims aliens also influenced the postcolonial state's policies toward its Muslim subjects. For instance, in 1969, the Ghanaian government passed the Aliens Compliance Order, which required all "aliens" without proper documentation to leave the country. About two hundred thousand people (mostly Nigerian Muslims—Yoruba and Hausa who had lived in the country since colonial times but could not document their status) were forced to leave within two weeks (Peil 1971; Eades 1994).

5. Many scholars report that although there were various Muslim dynasties in precolonial Ghana (especially in the north), Islamic law was never imposed in a top-down manner as the official law of the land in any part of the country (Anderson 1954; Hiskett 1976; Weiss 2008).

6. The ordinance was initially intended to cover only the Muslim population in the Gold Coast, but later extended to Ashanti (1919) and the Northern Territories (1931).

7. *Government Gazette*, January 11, 1908, 33.

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"Mohammedanism" in Central Africa. He cautioned that given regional troubles, the government should obtain "full information concerning the customs and usages of Mohammedans in West Africa … so that any law … passed to regulate Mohammedan marriages may not create similar difficulties."[8]

Weiss (2005, 74) argues that perceptions of the British administration in Accra toward local Muslims were shaped by developments in the broader West Africa region. In other words, policy toward Muslims in the Gold Coast was not independent of British experience (or that of other colonial powers) with Islam in the broader region of Bilad al-Sudan. During the first decade of the twentieth century, a revolutionary Islamist movement (Mahdism) swept through West Africa. In 1905–1907, Mahdist uprisings took place in French Niger and British Nigeria with overtly anticolonial tones. Mahdist agents also infiltrated the Northern Territories (Goody 1970). After the Indian mutiny in 1857 and the fall of Khartoum in 1885, British administrators considered Mahdism a severe problem (Weiss 2005, 78). Against this backdrop, the rising Mahdist threat in adjacent areas caused much anxiety among the colonial officials in Accra and led to the consolidation of colonial rule (Lovejoy and Hogendorn 1990, 219). As a result, British policy in the Gold Coast and surrounding areas began to change—leading to gradual securitization of the question of Islam and Muslims—especially those who originally came from Nigeria (i.e., Hausa), as they were considered more likely to fall under Mahdism's spell (Weiss 2005, 79).

As shown, while the legislative process that resulted in the enactment of the MMO was underway, the British policy toward Muslims in the colony transformed and was increasingly characterized by suspicion and security concerns. Against this background, the ordinance's enactment probably had less to do with what Hiskett (1976, 132) calls administrative tidying up than with the fight for the hearts and minds of law-abiding Muslim subjects. Put another way, perhaps it was a politically expedient move by some colonial officials who may have come to view the MMO as a valuable tool in the ideological battle against Mahdism. They may have viewed recognition of "shari'a" within the colony as a means of diminishing the appeal of Mahdism and rewarding the loyalty and acquiescence of, mainly, the Hausa Muslims on whom the colonial administration was overwhelmingly dependent for staffing the military and police force (Weiss 2008, 229–37).[9]

Lamenting the 1907 Ordinance: The Colonial Narrative and the Beginning of Jurispathy

Although the British colonial policy in the juridical field "was full of variations, inconsistencies and reversals of course" (Goldman 2016, 586), the approach toward Islamic law was relatively consistent. Throughout the colonial period, British officials subscribed to the view that local Muslim communities had never possessed an "ancient civilization or organized system … based on the Koranic law"

8. *Government Gazette*, January 11, 1908, 33.

9. Mahdists were not the only threat to the British rule in the colony and surrounding areas. As Agbodeka (1971) shows, there were other resistance movements challenging the British rule. Colonial authorities were highly dependent on Hausa troops to suppress these uprisings as well.

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(Weiss 2008, 200). As a "foreign law," it had no official standing anywhere in the colony (Weiss 2008, 215). As a result, they opposed the institutionalization of Islamic law and courts in any part of the Gold Coast. In the eyes of the colonial administrators, "shari'a" was the custom of an alien people who came to the Gold Coast from elsewhere. This view of Islamic law did not change much, even after the enactment of the MMO in 1907. For example, a 1928 communique, issued in response to an (ultimately rejected) application by Hausas for recognition of Islamic tribunals, bluntly stated: "They have voluntarily come into the territory of another people … [they should] be subject to the laws of that territory even if their own law differs materially … " (Hiskett 1976, 130).

Most colonial officials remained skeptical of Islamic law and often behaved as if the 1907 ordinance did not exist (Hiskett 1976). The colonial bureaucracy and judiciary essentially regarded the MMO as an administrative blunder and worked in tandem to let it lapse. Bureaucrats undermined the administrative machinery to register Muslim marriages/divorces, while the colonial judiciary denied the normative existence of Islamic law in a few cases that came before it.

The MMO required all "Mohammedan" marriages/divorces to be registered with the district commissioner's office for legal validity. To register a marriage, the bridegroom, the bride's *wali* (guardian), two witnesses, and the licensed "priest" (imam) had to report to the district commissioner's office in person within one week of its celebration.[10] Divorces were to be registered in the same manner within one month.

The ordinance authorized the governor to grant licenses to "Mohammedan priests" to officiate marriages/divorces. Colonial records are patchy, so it is impossible to say how many licenses were issued to imams in each locality. But the available evidence suggests that they were simply insufficient (Weiss 2008, 272). The MMO provided for the announcement of licensed imams in the *Government Gazette* (GG). My survey of the GG archives indicates that only forty-nine imams were licensed from 1907 to 1957—an average of less than one imam per year for the entire country.[11] Weiss (2008, 272) blames this on the fact that colonial authorities placed restrictions on who could apply for a license from the government.

Moreover, most imams were not eager to apply. To obtain a license, they had to pay a one-pound fee but, in turn, would collect only five pence per registered marriage/divorce. To recuperate his cost, an imam had to officiate a minimum of twenty marriages/divorces. This did not make much financial sense for many imams since very few registered marriages/divorces occurred in their localities.[12] As a result, many towns had no licensed imams.

10. The MMO allows for late registrations with the approval of a divisional court. But it is a complex process that must be initiated within a "reasonable" time after the expiration of the seven-day deadline. See *Ex parte Ali* (1980).

11. GG archives shows that all imams were appointed following the extension of the MMO to the Northern Territories in 1931. It is not clear if there were any licensed imams prior to 1931 anywhere in the Gold Coast—probably there were some, but no official record of them seems to exist.

12. For instance, in Tamale in 1931–1939, only one Muslim marriage was registered. During the same period, nine marriages were registered in Gushiegu, and 157 in Yendi. More than half of marriages in Yendi were officiated by three imams in 1932–1934; rates for other years varied significantly (two in 1931, ten in 1939) (Weiss 2008, 273).

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Even worse, local authorities were unaware of the ordinance's existence (Anderson 1954, 250). Most Muslims did not care about registering marriages under it, either. After all, a traditional marriage ceremony conducted by an ordinary imam or malam was already regarded as "valid" in the community's eyes (Weiss 2008, 273). They did not need the approval of the colonial authority for the validity of their unions. Moreover, those few Muslims who wanted to register their marriages faced several hurdles. First, they had to locate a licensed imam, which was challenging. Second, they needed to find authorities who were knowledgeable about the ordinance and possessed the required registration forms. Many commentators note that most offices did not carry them and instead asked people to register under the Marriage Ordinance (MO) of 1884 (Anderson 1954; Hiskett 1976; Weiss 2008). The biggest hurdle was logistical. As noted, to register a Muslim marriage, the groom, the bride's *wali*, two witnesses, and the licensed imam had to go together to the district commissioner's office within one week of celebrating the marriage. Given the cost and difficulty of getting all these people together and transporting them to the nearest town center in a very short time, the whole registration process was an ordeal. Acknowledging the logistical obstacles, the district commissioner of Bole noted in 1932 that "[t]he main Mohammedan centers … are respectively seventy, fifty and fifty-five miles from District Headquarters. The [imams] are in most cases far from young and to ask them after every marriage to proceed to headquarters within a week, for registration would … be considered a hardship and have the reverse effect to that intended by the ordinance" (Hiskett 1976, 133).

Besides subversive colonial practices that undermined the registration machinery, colonial judges also played a critical role in derailing the application of the MMO. Colonial judges, who were poorly trained and often appointed with nonmeritocratic considerations (Goldman 2016, 590), were not independent of the colonial bureaucracy but attached to it. Consequently, their preferences and worldviews were shaped by those of colonial administration. In this respect, the judiciary's negligence and ignorance[13] toward the MMO reflected the government's deliberate policy to let the MMO fall into disuse. My survey of existing court decisions from the colonial era shows that British courts almost never recognized MFL claims based on the MMO. I came across only one decision[14] in which an MMO-based divorce claim was brought to and eventually rejected by colonial courts. It seems that other scholars could not find much evidence of the application of the MMO by colonial courts, either. For instance, Ollennu (1966, 261), in his seminal study on succession law in Ghana, mentions only one (unreported) case[15] where the West African Court of Appeal applied Islamic succession

13. Anderson (1954, 276) reports that there was widespread confusion and ignorance about the status and contents of the ordinance among members of the colonial judiciary. According to him (Anderson 1954, 251), the MMO was defective from its inception. While it provided for recognition of Islamic marriages/divorces, it gave colonial justices no clear guidance as to what constituted a valid marriage or what types of divorce (*khul'*, talaq, *faskh*) were allowed—hence leading to confusion and ignorance in the ranks of the judiciary.

14. *Huzaifeh v. Saba* (1939).

15. *Blankson v. Hausa* (1953). In three other cases, "Mohammedan law" was cited without any reference to the ordinance: *Ali v. Hadiza* (1913), *Buzu v. Shardow* (1929), and *Ali v. Ali* (1939).

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rules to the estate of a Fanti man who had registered his marriage in compliance with the MMO.

In short, both the colonial bureaucracy and judiciary acted in unison to derail the application of the MMO, hence preventing the normative recognition of Islamic law in the Gold Coast. Authorities were well aware of the bureaucratic hurdles and shortcomings of the ordinance. Yet they refused to fix them. According to Hiskett (1976, 132–34), in the 1930s, the colonial administration deliberately turned down opportunities to resuscitate the ordinance and give more support to the administration of Islamic law in the colony. Perhaps colonial officials lacked a genuine understanding of the practical challenges of requiring registration at district headquarters (Hiskett 1976, 132–34). Or maybe some officials opposed the ordinance because they thought it undermined the powers of non-Muslim tribal authorities.[16] Both issues were probably factors in the weak implementation of the MMO. But the main reason was that both the colonial judiciary and bureaucracy viewed the ordinance as a mistake because it contradicted the long-held policy that Islamic law, being a foreign importation, had no official status in the colony or the surrounding areas. Hence, the British administration deliberately let it lapse and left the narrative of "alien" Islamic law for the modern Ghanaian state to inherit upon its independence in 1957.

THE POSTCOLONIAL STATE AND THE OFFICIAL POLICY TOWARD THE ISLAMIC LAW

Path-Dependent Bureaucratic Hurdles to Enforcement of the 1907 Ordinance

"In the area of religion-state relations," Lerner (2014, 391) writes, "political leaders of newly independent and still-fragile polities … [usually adopted] a conservative, rather than a revolutionary, approach to stabilize the political system and achieve other, more urgent … goals [of nation-building]." This was also the case in Ghana following the independence. The country's founding father, Kwame Nkrumah, wanted to create a centralized state with a strong national identity. The new government banned all political activities based on religious or ethnic affiliation to avoid divisive, inflammatory conflicts. It also maintained the colonial status quo in religious matters, which entailed preserving the 1907 ordinance (Austin 1966, 377).

To this day, the 1907 ordinance remains the law of the land. However, just like during the colonial period, in practice, the ordinance has again been let to lapse by the judiciary and derailed by bureaucratic hurdles that have effectively broken down the machinery to register Muslim marriages and divorces.

There are three types of valid marriage recognized by Ghanaian law: (1) customary marriage, (2) civil (or "Christian")[17] marriage under the MO of 1884, and (3) Islamic

16. Many Muslims lived under non-Muslim chiefs. The ordinance's requirement to register marriages with the government simply meant that Muslims had to bypass the jurisdiction of their local chiefs. This, some officials believed, was wrong, as it undermined the legitimacy of non-Muslim chiefs vis-à-vis their Muslim subjects—which, in their eyes, violated colonial policy (Hiskett 1976, 134).

17. Most people refer to civil marriage as "Christian marriage" due to its association with the British rule and Christian values (e.g., monogamy) informing the legislation.

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marriage under the MMO. According to the Legal Resources Centre (LRC) (Atuguba 2003), 95.9 percent of the Ghanaian Muslims surveyed said that the type of marriage they celebrated was Muslim marriage. 96.2 percent indicated that they had not registered their marriages. 80.2 percent were not familiar with registration requirements (Atuguba 2003). Likewise, a 2015 report by the Ghana Statistical Service (GSS) found that no registration records of Mohammedan marriages existed and attributed this primarily to widespread lack of knowledge among the public and the failure of the government to provide effective institutions to facilitate registrations. "The findings reveal that the Mohammedan marriage has never taken effect due to the very short time frame (seven days) … within which it is to be registered; otherwise, it becomes void. Muslims are therefore compelled to register under the Christian [or customary] marriage … in spite of its conflict with their religious practice" (Ghana Statistical Service 2015, 25).

Registration of marriages is conducted by officials at metropolitan, municipal, and district assemblies. The GSS study revealed that while officials at the assemblies had a fair understanding of customary and civil marriages, they generally had little or no knowledge of the procedures involved in Muslim marriages. This is precisely what I observed during my visits to metropolitan assemblies in Accra, Tamale, and Kumasi in May–July 2017. Surprisingly, my observations were almost identical to those of Anderson (1954), who visited district commissioners' offices in major cities in the early 1950s and found no official machinery to register Muslim marriages. When I inquired about registering Muslim marriages, all officials I encountered told me that Muslims could register only a civil or a customary marriage. They had no information about Muslim marriages. One official in Accra said to me that "there were practically no licensed imams in the country." She probably assumed that I was a foreigner who wanted to marry a Ghanaian Muslim woman. She continued, "even if we allow you to register a Mohammedan marriage here in the office, you cannot find a licensed imam to officiate it."[18]

I heard similar comments from many other informants in Ghana. They all told me that there were no licensed imams. I could not find one in Kumasi or Tamale, but one afternoon in May 2017, I met one in Nima, near Accra. His name was Sheikh Abubakar Shuaib. Sheikh Shuaib proudly told me that he had been licensed as imam by Nana Akufo-Addo, the sitting president of Ghana, then the Attorney General and Minister of Justice. Sheikh Shuaib gave me a copy of his letter from Mr. Akufo-Addo, dated December 24, 2002. The MMO requires the publication of licensed imams' names in the GG. Although I did not see Sheikh Shuaib's name in the GG, the issue of the *Gazette* dated December 20, 2002, listed the mosque Sheikh Shuaib founded as a place of worship licensed to celebrate marriages.[19]

Sheikh Shuaib also provided me with copies of some recent marriage certificates registered under the MMO. They carried the names and signatures of grooms, brides, the district commissioner, the licensed imam (Sheikh Shuaib himself), and witnesses.

18. Naomi Afidzitze (The Office of Registrar General), interview by Yüksel Sezgin, Accra, May 2017.

19. A quick review of available GG records between 1970 and 2021 shows that in the last fifty years the government had not appointed any licensed imams as marriage officers. For electronic copies of GG, see https://ghalii.org/gazettes.

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He also showed me official correspondence from courts and various ministries as evidence that the government officially recognized his certificates. He told me that he did not receive too many requests for "CAP 129 [MMO] marriages." He said people who sought to register their marriages under CAP 129 were "educated, or rich people who traveled or had business abroad."[20]

A few days later, I met with a Muslim official at the Ministry of Justice in Accra. When I told the official that I had met a licensed imam, she was amazed, as if I had discovered an extinct species. Unfortunately, Sheikh Shuaib passed away in March 2018. I am not sure if his species is now totally extinct or if a few others are still out there. But my experience confirms that the machinery for registering marriages under the MMO has long been broken. Like its colonial predecessor, the government is aware of this but does not repair it. The memorandum to the Intestate Succession Law in 1985 (PNDCL 111) was like an official confession by the government: "The MMO ... is hardly ever enforced. Its registration provisions are probably not known to many Muslims ... and even less common knowledge ... to the legal profession." PNDCL 111 repealed section 10 of the MMO, which authorized Islamic succession rules for people married under the ordinance and imposed a uniform succession law on all citizens regardless of religion or custom. Many commentators viewed this as the last nail in the coffin of the already dead ordinance. "This phenomenon appears to be deliberately but carefully planned to remove the [MMO] from the laws of Ghana ... " (Ammah and Alhassan 2013, 29).

The Exclusion of Nonnative Religions and the Judiciary's Refusal to Recognize Their Normative Claims

As in the colonial period, postcolonial Ghanaian courts have worked in tandem with bureaucracy and collectively derailed the application of the MMO. They frequently refused to acknowledge the nomic existence of Islamic law. They have done so not because they serve as Hirschlian bulwarks of secularism against the expansion of Islamic law but because they have inherited the British colonial narrative about the MMO and continue to view it as foreign import or nonnative law. They have refused to engage with Islamic law in substantive terms. They exclude it from their purview by exploiting procedural loopholes and the lack of licensing and registration machinery in most parts of the country. They systematically refuse to recognize Islamic marriages and divorces (thereby succession claims) because they are not duly registered under the 1907 ordinance.

Ghana was founded as a secular state. This characteristic of state was expressed in different wordings in the 1957, 1969, 1979, and current 1992 constitutions (Dovlo 2005, 634). The colonial administration distinguished between "traditional" and "modern" religions in Ghana (Meyer 2012, 90). The former category consisted of traditional African religions that the British derogatorily called "fetishism." The latter included Christianity and Islam (Kallinen 2014). These categories survived into the postcolonial era. In the early days of independence, however, thanks to rising

20. Sheikh Abubakar Shuaib, interview by Yüksel Sezgin, Accra, May 2017.

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nationalism and anticolonialism, political leaders "espoused a markedly critical attitude toward Christianity, which was dismissed as the 'white man's religion,' colonizing Africans' minds" (Meyer 2012, 90), while exalting native religions. Native religions were considered part of the national heritage and integrated into official ceremonies. Although not considered a native religion, Islam was viewed, due to its non-Western origins, as a diplomatic and cultural asset (Weiss 2008, 323; Dumbe 2013, 13–28). Against this backdrop, the Ghanaian secular state disassociated itself from Islam and Christianity. At the same time, traditional religions were elevated in political and judicial fields by incorporating customary laws and native institutions (i.e., chieftaincy) into the public administration. As shown below, the postcolonial state's differentiated approach to native vs. nonnative religions also extended into Ghanaian courtrooms.

The global secularist trends that Hirschl (2013) describes in relation to the jurisprudence of many national high courts never occurred in Ghana. Until recently, the Ghanaian Supreme Court did not even bother to define what secularism entailed in terms of the constitution. In *Bomfeh v. Attorney-General* (2019), the court observed that the government's support for constructing a national cathedral in Accra or setting up a Hajj Board did not amount to "excessive entanglement" of the state in religion. In contrast, justices interpreted the government's support for the projects as an innocent attempt to foster national unity. They unanimously stated that the constitution, while secular in nature, did not "prohibit the government from supporting, assisting or cooperating with religious groups." They declared that secularism in the context of the constitution "must be understood to allow, and even encourage state recognition and accommodation of religion and religious identity." From this point of view, Ghanaian secularism does not erect a wall of separation. Instead, like its Indian counterpart, it maintains a principled distance that allows a disconnection between religion and state at the institutional level while not making a "fetish" of it at the policy level (Bhargava 2013). Yet, at the level of the law, the Ghanaian judiciary distinguishes the traditional religion on the one hand and Christianity and Islam on the other.

Ghana has a dualistic legal system in which customary law is recognized as one of the primary sources of law under the constitution. Customary law contains practices and elements of traditional African religions. It means that when courts apply the customary law of native communities, they also recognize the nomic existence of traditional religions. For instance, in *Boampong v. Aboagye* (1980), the Supreme Court approved the application of native religious rituals and rules to a destoolment (removal of a chief) dispute between traditional authorities and invoked elements of native religion:

> The answer perhaps is to be found in the traditional concept of the chief as the father of his subjects … and a spiritual head … Through the chief's ritual acts … the ancestral spirits are invoked to protect the community from misfortunes … and to usher in a season of plenty, good fortune in national affairs … The slaughtering of the sheep is … to cleanse the abdicating chief; purify the stool, and propitiate the guardian ancestral spirits.[21]

21. For another case where elements of native religions are invoked, see *Hansen v. Ankrah* (1987–1988).

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In other words, the judiciary recognized the nomic claims of native religions, especially when their elements were linked to customary law.

However, in cases dealing with nonnative religions (Christianity, Islam), the courts have systematically refused to recognize claims based on religious law. For instance, in *Akyeampong v. Marshall* (1959), a widow applied to the court to succeed to her deceased husband's estate. She based her claim on the rules of the Presbyterian Church, to which both she and her late husband had belonged. These rules stipulated that a widow was entitled to one-third of her deceased husband's property. The Divisional Court rejected the application, stating that the church's rules were "not part of the law of the land" (Ollennu 1966, 95–97). Instead, it distributed the deceased's estate according to the husband's personal law (i.e., the customary law of his tribe), which did not allow a widow to succeed to her deceased husband's intestate property (Bankas 1992, 436). As said earlier, customary law is imbued with elements of traditional religion. In this respect, the court's rejection of the succession rules of the church was not a secular reflex. It simply privileged one form of religiously inspired law over another. At the time, intestate succession in Ghana was regulated by the deceased's personal law. As Kludze (1988, 278–79) argues, the court could have expanded the meaning of "personal law" and allowed the devolution of the property according to the church's rules, but the justices chose not to do so.

One can argue that the justices in *Akyeampong v. Marshall* were correct in dismissing the church rules, as there was no legislation authorizing their application by Ghanaian courts. In the case of Islamic law, however, such legislation exists: the MMO of 1907, allowing courts to recognize and regulate the consequences of MFL. Still, the Ghanaian judiciary has been equally dismissive of claims based on Islamic law. They have systematically refused to acknowledge the nomic existence of Islamic law or engage with it in substantive terms. As a result, most MFL claims have been rejected on procedural grounds due to failure to register Muslim marriages per the 1907 ordinance.

THE POSTCOLONIAL JUDICIARY, ISLAMIC LAW, AND THE MMO: AN UNDIGNIFIED JURISPATHIC SPREE

During my field research in Ghana, many informants said that Muslims did not use the formal legal system, especially for their family and property disputes. Instead, they resorted to traditional authorities and a growing number of ADR forums utilizing both Islamic law and local customs. However, this does not mean Muslims were utterly absent from the formal juridical field. Searching through two novel databases,[22] I identified twenty-five superior court (including the Supreme Court, the High Court, and the Court of Appeal) cases from 1961 to 2019 that dealt with "Mohammedan" marriage, divorce, and succession. My analysis of the case law suggests that many disputes were property-related. Who inherited what depended on the type and validity of the marriage in question. Before 1985, if the marriage in question was Islamic and registered under the MMO, the heirs were to receive their shares according to Islamic law.

22. *Digital Attorney* and *Dennislaw*.

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In those cases, relatives who would have inherited a greater share of the estate under customary (tribal) succession rules if the marriage in question had been customary (tribal) came to courts to challenge the validity of the Islamic marriages. In other cases, some litigants even alleged no valid marriage whatsoever (Islamic or otherwise) between the deceased and the surviving spouse to exclude the latter from inheritance. Similar dispute patterns were also observable after 1985, with slight variations.[23] Justices were presented with the same questions in all these cases: Was there a valid marriage? And what kind of marriage was it: Mohammedan, customary (tribal), or civil?

The first case where the postcolonial judiciary answered these questions was *Kwakye v. Tuba* (1961). This was a succession case in which the defendants argued that the deceased was a Muslim and that succession to his estate should be governed by Islamic law. Citing *Akyeampong v. Marshall*, Justice Nii Amaa Ollennu declared that as a general rule, succession in Ghana was not based on a person's religion. The only exception was section 10 of the MMO. It stated that succession to a deceased Muslim's estate would be governed by Islamic law if he had registered his marriage under the ordinance. If he died unmarried or without having registered his marriage, then his estate, Ollennu argued, would devolve according to his personal law (i.e., the customary law of his tribe). Ollennu also suggested that unregistered "Mohammedan" marriages should be treated as customary law marriages. In another Muslim succession case, *Brimah v. Asana* (1962), a year later, he reiterated the same position.

Justice Ollennu was a highly respected jurist, judge, and politician. He served on the High Court and the Supreme Court of Ghana. After retiring from the judiciary, he served as the speaker of the parliament and the acting president of Ghana. His rulings, articles, and books on customary and succession law are considered among the most authoritative sources and widely cited by the judiciary. Justice Ollennu was very critical of English courts' continued influence over the postcolonial Ghanaian judiciary, especially regarding native customary law. However, he seems to have more readily accepted the colonial judiciary's position on Islamic law and consistently called it a "foreign" legal system (Ollennu 1966, 262; 1971, 159). Given Justice Ollennu's influence, his views on Islamic law that he defended in his writings and the landmark decisions mentioned above have profoundly shaped the dominant narrative on Islamic law in the ranks of the modern judiciary.

Although some justices who came after Justice Ollennu occasionally issued rulings that declared unregistered Muslim marriages (and divorces[24]) null and void,[25] the general trend has been to consider them customary marriages. In some cases, Muslim couples celebrated their marriages under both customary (tribal) and Islamic law. If the marriage was not registered in compliance with the MMO, justices treated it

23. Evidence suggests that Muslim traditional/religious authorities often did not abide by PNDCL 111 and continued applying Islamic law in inheritance cases. Some heirs, however, challenged inheritance rulings by religious authorities and asked courts to redistribute the estates in question according to PNDCL 111; see *Agbeshie v. Amorkor* (2009); *Giwah v. Ladi* (2010); *Mohamadu v. Adamu* (2014); *Salley v. Brimah* (2016).

24. In several cases, the validity of Muslim divorces was contested on the grounds that the parties had failed to register their marriages in the first place. One cannot dissolve a marriage that does not legally exist. See *Esseku v. Inkoom* (2013); *Salifu v. Sofo* (2018); *Bawa v. Gariba* (2019).

25. For instance, see *Jebeille v. Ashkar* (1977).

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exclusively as a customary marriage because the parties had already contracted it according to their customs.[26] However, if parties contracted only an Islamic marriage and failed to register it, it was unclear what kind of a customary marriage this could be considered, as there was no readily available fallback option. Were they customary marriages, as per the tribal law of the parties, or customary Islamic marriages? The distinction matters because customary law is one of the primary sources of law according to the constitution. If the courts acknowledge the nomic existence of Islamic customary marriage, this would mean that at least some elements of Islamic law could be considered a primary source of law within the national legal system. But such recognition would forcefully challenge the long-established governmental policy and judicial narrative that Islamic law is not a native law of the land.

Many scholars argue that in some parts of Ghana, elements of Islamic family law have long been incorporated into customary law (Aziz 2004; Josiah-Aryeh 2015). According to this view, apart from Muslim marriages contracted under the 1907 ordinance, there are also unregistered Muslim marriages contracted according to Islamic customs. The High Court delivered the only decision that categorically recognized the existence of customary Muslim marriage in *Barake v. Barake* (1993–1994). Justice Brobbey ruled that there were two types of Muslim marriage: marriage registered under the 1907 ordinance and unregistered customary marriage. Justice Brobbey identified "essential requirements" of customary Muslim marriages as "offer, acceptance, the fact of the proposal and acceptance taking place at one meeting, two witnesses and the fact that they were Muslim witnesses." Although this was the boldest attempt to date by the courts to recognize customary Muslim marriages, my analysis suggests that the judiciary has completely disregarded Justice Brobbey's "essential requirements" test and continued to deny the nomic existence of customary Islamic marriages.[27] As evidenced in *Bawa v. Gariba* (2019), the prevailing trend still seems to be that when there is no proper registration under the MMO, justices, following Ollenu's formulation in *Kwakye v. Tuba*, consider the subsisting marriage a customary marriage under the parties' tribal law.[28]

26. For instance, see *Esseku v. Inkoom* (2013). Also see *Lamptey v. Lamptey* (2009) for a similar discussion.

27. In the case of *Mahama v. Awuni* (2004), the trial judge wrote "I accept the plaintiff's case that he properly and validly married ... the deceased in accordance with Islamic practice. Consequently, I declare that a valid Moslem [customary] marriage existed between the [parties]." In arriving at this decision, the trial judge did not apply Justice Brobbey's "essential requirements" test to establish the nomic existence of Muslim customary marriage. Instead, he considered the fact that the parties had cohabitated for more than forty-six years and that the husband had buried his wife according to Islamic customs to be sufficient evidence for the existence of a Muslim marriage. The Court of Appeal upheld the trial court's decision in a 2–1 split judgment. However, it was a shaky ruling. Justice Bondzie wrote in dissent that the trial judge had delivered his ruling on erroneous evidence. The evidence he considered only proved that the parties were Muslims and lived together, but the existence of Muslim marriage had to be "strictly" proven. Had the trial judge applied the "essential requirements" test, as suggested in *Barake v. Barake*, perhaps the case would have helped firmly establish a legal framework for Muslim customary marriages.

28. The position in this 2019 case was not very different from the position observed in *Hausa v. Haruna* (1963), in which, upon the plaintiff's failure to show evidence of registration of her Muslim marriage to her late husband, the court decided that it was a marriage under the Gonja tribal law. Although nearly sixty years separate the two cases, the judiciary has firmly maintained its unwavering stance on nonrecognition of Muslim customary marriages.

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Similar patterns of rejection are also observed concerning Islamic customary succession rules. As said, until PNDCL 111 repealed section 10 of the MMO in 1985, Islamic succession rules "technically" applied to the devolution of deceased Muslims' property if they had duly registered their marriages. In practice, however, the postindependence judiciary almost never allowed the application of Islamic succession rules. Nearly all cases were rejected due to the failure to comply with registration requirements (Kludze 1988, 234).[29] However, there are two scenarios under which deceased Muslims' estates may still be allowed to devolve according to Islamic law. First, according to the Wills Act of 1971, any Muslim can make a will to request that upon death, his estate will be distributed according to Islamic law (Aziz 2004). Second, although PNDCL 111 abolished customary intestate succession law, it still made an exception for residual property—a portion of family property that includes land—to devolve according to customary law[30] (Fenrich and Higgins 2001; Hammond 2016). In the case of Ghanaian Muslims whose customary succession rules are based on Islamic law, the courts may technically allow the residual property to devolve according to those rules. However, this almost never happens. Justice Ollennu (Ollennu 1966, 262–63), who viewed Islamic succession rules as foreign law, argued that the existence of native custom based on Islamic law must be proven to the court's satisfaction. Otherwise, the property must devolve according to the deceased's personal (tribal) law.[31] Having adopted this position, Ghanaian superior courts have been systematically rejecting Islamic succession claims.

In *Hausa v. Hausa* (1972), the Court of Appeal refused to recognize Islamic customary succession rules, even though, as Justice Bentsi-Enchill put it, "the applicable customary law [was] deeply modified by Mohammedan law." In the coming years, the superior courts continuously denied the nomic significance of Islamic customary succession rules. They staunchly struck down decisions[32] of lower courts that occasionally softened their rejectionist stance, ensuring that Islamic succession rules were not acknowledged as the law of the land. For instance, in the case *Yahaya v. Yakubu* (2012), it was claimed that Alhaji Yahaya, a devout Muslim, left an oral will for the distribution of his property according to Islamic law. Some of his relatives legally challenged the will. The trial judge upheld it and ordered devolution of the property according to Islamic rules that he directly cited from the Quran. The Court of Appeal reversed the decision, arguing that the trial judge erred in applying Islamic testamentary rules instead of the parties' customary law.

> [A]ll the parties to this case are Wala people … So obviously, it was Wala customary law that ought to have been used in deciding the

29. For instance, see *Kwakye v. Tuba* (1961); *Brimah v. Asana* (1962); *Hausa v. Haruna* (1963).

30. For instance, see *Agyekum v. Bio* (2016).

31. Kludze argues that this is an outdated position. He proposes a new interpretation following section 49(2) of the Courts Law of 1971, which states that "In the absence of intention to the contrary, the law applicable to … the devolution of a person's estate shall be the personal law" (1988, 233). A person's embrace of Islam, Kludze claims, constitutes a contrary intention within the meaning of section 49(2). That is to say, a Ghanaian Muslim's estate should devolve according to Islamic law, not the customary law of his tribe (1988, 233). However, Kludze's position has not yet gained support from the superior courts.

32. For example, see *Agbeshie v. Amorkor* (2009); *Hawa v. Agyarko* (2010).

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> issues ... [A]mong the Wala ... Islamic law and customary practice are so intertwined that it is difficult to separate the two. That is why there was no basis for the learned trial judge to say that Islamic, rather than Wala customary law, was the applicable law.

In brief, as with Islamic marriage, the Ghanaian judiciary has also refused to recognize and apply Islamic succession rules. Some Ghanaian judges[33] articulated two specific objections to using Islamic succession rules during my interviews. First, they said that Islamic law was not native law, and PNDCL 111 had removed the only valid ground for its application (by repealing section 10 of the MMO). Second, they also argued that Islamic law's underlying notion of property was markedly different from those of native communities in Ghana. The second objection that they raised closely echoed Justice Ollennu's main criticism of Islamic succession rules. He opposed applying Islamic law due to its individualistic approach to property. He believed that while the Ghanaian customary law made a provision for family property, the Islamic succession law ignored the family as a unit and allocated the deceased's property exclusively among individuals. The application of Islamic succession, a foreign system, at the expense of native law, Ollennu claimed, was "ignorance of the Ghanaian way of life" (1966, 267–68). This position seems to have profoundly influenced the Ghanaian judiciary's attitudes toward Islamic law.

CONTRASTING THE JUDICIARY'S ATTITUDES TOWARD ISLAMIC AND CUSTOMARY MARRIAGES

The judiciary has consistently denied the nomic existence of Islamic marriages, divorces, and succession claims due to the failure of individuals to register their marriages in compliance with the MMO. To date, there has been only one case in which the validity of Islamic marriage was recognized by the judiciary because it was duly registered under the MMO.[34] In some cases, people did not care about registration because unregistered marriages were still legitimate in the community's eyes.[35] However, in many other instances, people could not register because the legal infrastructure was lacking—just like during the colonial period. There were no licensed imams. The seven-day limit was too restrictive. The requirement that the imam, the witnesses, the groom, and the bride's guardian attend in person was too burdensome. The registration offices did not have knowledge of the MMO or simply were too far away from where most Muslims resided.

A male informant in Accra who tried to register his marriage but could not find an imam to do so told me that he felt "betrayed or tricked by the state" because "as a good citizen, [he] wanted to follow the law" yet was unable to do so.[36] As a result, if he or his wife ever goes to court, their Muslim marriage will be considered "nonexistent." In other

33. Informants declined to be identified, interview by Yüksel Sezgin, Accra, May 2017.

34. See *Ramia v. Ramia* (1981).

35. 99.2 percent of Muslims surveyed by LRC indicated that their "unregistered" marriages were recognized by chiefs and members of their communities (Atuguba 2003).

36. Informant declined to be identified, interview by Yüksel Sezgin, Accra, June 2017.

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words, they will be penalized by the judiciary because the government has failed to enable them to register their marriage. The judiciary has long been aware of the problems that prevent people from registering their marriages under the MMO. But it still has not taken corrective action.

There are two types of customary law in Ghana: the living customary law that people practice to regulate their everyday lives and the judicial customary law defined by the courts (Josiah-Aryeh 1996–1999). Until the enactment of Customary Marriage and Divorce (Registration) Law (PNDCL 112) in 1985, customary marriages were not required to be registered. In the absence of documentary evidence, however, the courts had to establish the validity of customary marriages. In an attempt to solve the problem, Justice Ollennu defined the essential elements of customary marriage in *Yaotey v. Quaye* (1961) as follows: (1) the agreement by the parties to live together as husband and wife; (2) consent of the man's family; (3) consent of the woman's family (indicated by their acceptance of drinks—rum, gin, whiskey, etc.—from the man); and (4) consummation. The essentials defined by Justice Ollennu have become a standard test for the judiciary to establish the validity of customary marriages. However, as Adinkrah (1980, 45–46) notes, some jurists have come to treat these elements (e.g., acceptance of drinks) as strict requirements, "a *sine qua non* to the conclusion of a customary marriage."[37] The judiciary's growing dependence on such standards for the validity of customary marriage has caused much resentment, as denials resulted in deprivation of property rights (Akamba and Tufuor 2011, 218).

PNDCL 112 added insult to this injury. It required the registration of customary marriages within three months and, in section 15, disqualified spouses of unregistered customary marriages from inheriting under the "gender egalitarian" PNDCL 111. Instead, it left them at the mercy of customary succession rules that traditionally discriminated against women and children (Woodman 1985, 120; Freeman 1988–1989). Despite PNDCL 112's draconian registration requirements, registration of customary marriages remained extremely low (Fenrich and Higgins 2001, 292). As a result, many women (and their children) in unregistered customary marriages were prevented from enjoying equal property rights promised by the new intestate succession law.

The judiciary was aware of the registration-related problems under customary marriage and succession. In several landmark decisions, superior courts intervened and took corrective action. In *Bentil v. Pratt* (1989–1990), it was ruled that registration was not essential to the validity of a customary law marriage. In *Adade v. Dade* (1989), it was decided that "it would be absurd to deprive a spouse of his or her rights under PNDCL 111 simply because such marriage has not been registered." In *Essilfie v. Quarcoo* (1991), Justice Lutterodt wrote "the strict, literal, grammatical approach cannot be right; it does not harmonize with the social consideration." She arrived at the same conclusion as the two earlier rulings regarding the validity of customary marriages and the extension of PNDCL 111 to spouses whose customary marriage was not registered.

37. In *Badu v. Boakye* (1975), due to rigid application of the essential requirements test, the judge refused to recognize the validity of customary marriage, calling it "concubinage" instead. Similarly, in an earlier case, *Asunah v. Khair* (1959), the existence of a customary marriage was denied because the man had not sent drinks to the woman's family.

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Furthermore, she challenged the prevailing essentials of customary marriage doctrine and offered a flexible alternative. After criticizing the requirement of acceptance of drinks, etc., as superfluous, she wrote, "once it has been proved … that the parties have agreed to and have lived together in the sight of the world as man and wife … the court should hold that the parties are married according to native custom." This new approach seems to have been accepted in many decisions as the new standard for recognizing customary marriages.[38] Moreover, the courts' position in the three abovementioned decisions on PNDCL 111 and 112 led the parliament to amend these two laws[39] in 1991 by making the registration of customary marriages optional and allowing customary spouses to inherit under PNDCL 111 regardless of registration status.

Ghanaian courts have taken the lead in fixing the registration-related problems of customary marriages. They have softened the criteria for establishing the validity of customary marriages and expanded the inheritance rights of widows and children (Woodman 1985, 120). The government has followed the courts' lead and amended the relevant legislation to provide a lasting solution. These legislative and judicial responses have helped ease marital and property-related injustices people experienced due to nonrecognition of their customary marriages (Fenrich and Higgins 2001). However, the judiciary has failed to take a similar interest in the predicament of Muslim Ghanaians or show any sensitivity to their registration- and succession-related troubles. On the contrary, they have consistently invalidated Muslim marriages, turned a blind eye to the broken machinery, and subjected widows and children to native succession laws, even when Islamic law would have better protected their property rights.[40]

Ghanaian Muslims are significantly underrepresented in the judiciary. Several of my informants[41] told me that as of 2017, of about 170 judges in superior courts, only six were Muslims. In comparison, as reported by a Muslim member of parliament, the Muslim caucus had forty-six members in the 275-seat national parliament.[42] That is to say, an overwhelming majority of judges who deal with Muslim cases historically have been non-Muslims. They were not trained in Islamic law or familiar with Muslim communities' cultural practices and customs. However, their attitudes toward Islamic law cannot be simply explained by a lack of familiarity with Muslim culture or traditions. As a former senior state attorney in Ghana told me, "Not a single Ghanaian judge or state attorney will ever consider 'shari'a' native law of the land … It is a foreign law.

38. See *Mahama v. Awuni* (2004); *Buckman v. Ankumayi* (2012); *Baidoo v. Baidoo* (2019).

39. The Customary Marriage and Divorce Registration (Amendment) Law (1991) (PNDCL 263), and the Intestate Succession (Amendment) Law (1991) (PNDCL 264).

40. Women's inheritance rights are severely limited under customary law. In some traditions, a widow cannot inherit from her husband who died intestate (Dankwa 1982–1985). In contrast, Islamic law gives the surviving wife a fixed share in her husband's estate. Against this background, it can be argued that prior to 1985, whenever courts refused to recognize validity of Muslim marriages and ordered devolution of property according to tribal law of the parties, they subjugated women to less preferable property regimes. For an example, see *Hausa v. Hausa* (1972).

41. Rahmata Issahaq-Pelpuo (The Federation of Muslim Women's Associations of Ghana-FOMWAG), interview by Yüksel Sezgin, Accra, June 2017, and Dr. Abdul Baasit Aziz Bamba, (The University of Ghana School of Law), interview by Yüksel Sezgin, Accra, May 2017.

42. The seventh parliament of the fourth republic (2016–2020).

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It was brought to Gold Coast by the colonial administration."[43] These views about Islamic law are so ingrained that almost every lawyer, judge, law professor, or student I met in Ghana reiterated them. Against this background, it can be argued that Ghanaian judges are dismissive of Islamic law not because they are unfamiliar with it but because they inherited and fully adopted the colonial narrative that Islamic law was not a native law of the land.

THE POLITICAL, SOCIAL, AND NORMATIVE COST OF REFUSING TO ENGAGE WITH ISLAMIC LAW IN SUBSTANTIVE TERMS

According to Cover, the main difficulty that judges encounter in everyday adjudication is not the lack of legal clarity or the lack of law, but the problem of "too much" law (1983, 41). Cover views the state as one of many legitimate sources of law and morality that coexists in the normative universe along with other nomic groups (e.g., tribal, religious). Each nomic group has its own unique narrative[44] and myths that give meaning to the surrounding world and establish paradigms of behavior for group members. Competing narratives give rise to divergent legal meanings or visions of "right" or "wrong" regarding almost every legal or moral question in society.[45] Nomic groups' alternative legal meanings constantly compete with, challenge, and undermine the state's legal meaning or the "official" law. In this respect, Cover argues that the raison d'être of state courts is to solve this very problem by engaging in jurispathic activity or killing the legal meanings of nonstate nomic groups (Cover 1983, 1986). In the jurispathic process, state courts pick one among many competing legal meanings, elevate it to the status of official interpretation, and back it with the state's violence while destroying all other meanings or visions of right and wrong (Cover 1983, 53).

Cover's theoretical framework and especially his jurispathic model are helpful to understand the postcolonial Ghanaian judiciary's engagement (or lack thereof) with Islamic law. However, Cover developed his insights at a relatively low level of theorization and focused exclusively on American formal legal texts and judicial opinions (Lovell, McCann, and Taylor 2016, 65). In this respect, his jurispathic model falls short of fully capturing how courts interact with alternative legal meanings, especially in pluri-legal societies, such as Ghana, where religious/customary laws are formally incorporated. To do that, one needs to acknowledge that there are different types of jurispathy. In fact, as mentioned earlier, we can speak of two main types.

In the first type, the court acknowledges the nomic existence of nonstate groups and their legal meanings. It engages them in substantive terms with lengthy, reasoned discussions and exchanges on normative (dis)similarities between the competing meanings (of constitutional and religious laws). It explains how divergent legal meanings fail to meet standards established by civil law. Then, it kills them. But it is a dignified killing. In the second type, the court does not recognize the nomic

43. David O. Asare, interview by Yüksel Sezgin, Accra, May 2017.

44. Narratives are cultural devices that unite people and shape how group members see the world (Snyder 1999, 1665).

45. Cover describes this as "jurisgenesis" or the process of creating legal meaning (1983, 11).

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existence of nonstate groups and their legal meanings. There is no sincere substantive engagement with what is at stake; no feedback is provided (Resnik 2005, 49). The claim is refused on procedural grounds because someone failed to follow formalities, filed the wrong form, or missed the deadline to register a legal act duly. This is undignified killing. Cover alludes to the existence of this second type but never fully develops it (1983, 55–56). This is the main type of jurispathy we observe in Ghanaian courts' interactions with Islamic law–based claims.

The distinction between the two types is consequential for the jurisgenerative process. Dignified killing allows for a possible harmonization of divergent legal meanings. In contrast, undignified killing undermines the courts' legitimacy in the eyes of members of nomic communities, reinforces their political exclusion, and potentially weakens their commitment to the rule of law.

The Lack of Harmonization: The Growing Divergence of Legal Meanings between State and Nomic Groups

If a court kills the divergent legal meanings of nomic communities after the substantive engagement, this could lead to two possible outcomes. In some instances, the dignified killing may create tensions and bring about further polarization of legal meanings of the state and nomic communities (as in the case of the Indian Supreme Court's Shah Bano ruling[46] or the Israeli High Court of Justice's rulings on the question of "who is a Jew"[47]). In most other cases, however, as experiences of many pluri-legal societies suggest, dignified jurispathy facilitates the harmonization of legal meanings of the state and nomic groups (Sezgin 2018).

Dignified jurispathy often creates favorable conditions for the emergence of internal actors who challenge the dominant legal meaning within their nomic groups and offer rival meanings. For example, reformist judges, clerics, and human/women's rights activists who want to avoid future confrontations with state law and bring about internal reform often engage in the creation of new legal meanings by directly drawing on the courts' judgments and integrating the legal principles therein into their communities' value systems (e.g., the Israeli Shari'a Court of Appeals' adaptation of the principle of the best interest of the child and relaxation of maintenance rules to increase payouts to wives—which occurred in response to Israeli civil courts' dignified killing of shari'a court decisions[48]). In other words, thanks to this feedback loop, when courts recognize the nomic existence of other laws (religious, customary, etc.) and engage with them in substantive terms, they tend to play a constructive role in the normative evolution of the nonstate groups' legal meanings. Over time, the legal meanings could harmonize and share enough common traits that the intensity of normative conflict between the state and nomic community may considerably decrease.

Put this way, if courts refuse to engage with nomic groups' legal meanings in substantive terms and habitually resort to procedural tools to destroy them

46. See Sezgin (2013, 180–84).
47. See Hirschl (2010, 145–51).
48. See Abou Ramadan (2006); Aburabia (2021).

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(i.e., undignified killing), they will fail to provide valuable feedback and miss an opportunity to influence the future development of nomic communities and their legal meanings. In many jurisdictions from Malaysia to Morocco, civil courts' substantive engagement with religious law–based claims has led to their moderation, as reform-minded groups have been able to harmonize their religious meanings with human/women's rights and associated norms and values (Shachar 2008; Hirschl 2010; Moustafa 2018; Sezgin 2018). In the absence of harmonization, legal meanings of the state and nomic groups will grow further apart. That is to say, undignified jurispathy has a high opportunity cost for the state and also for groups within the nomic community whose interest is directly threatened by the lack of harmonization (e.g., women, children, etc.). This is something we observe in the Ghanaian case. Over the last three decades, a divergence of opinions about human and women's rights seems to have occurred between the legal meaning of the state and various nomic groups within the Muslim community.

Since the restoration of democratic rule in 1992, the Ghanaian judiciary has become an active defender of human and women's rights and shown a growing willingness to hold domestic law and institutions to international standards[49] (Ben 2001; Buamah 2018). However, the judiciary has not been willing to extend its new human rights jurisprudence to the cases that dealt with Islamic law. In other words, courts have not been interested in harmonizing their legal meaning with those of Muslim groups. As a result, the state law and Muslim law grew further apart—most strikingly in their respective approaches to human and women's rights questions. During my field research, I observed this growing divergence in person, especially about domestic violence issues.

The Domestic Violence Act of 2007 provides a broad definition of domestic violence and calls for imprisonment of offenders for up to two years. However, several of my interviewees reported that some nomic groups did not view domestic violence as a criminal matter and advocated for resolution of the matter within the group without the involvement of police or state agencies. For instance, Asma, a Muslim woman who was a victim of domestic violence, had sought the help of a local imam to intervene to stop her husband from abusing her. The imam reportedly told her: "According to Quran, your husband has a right and duty to discipline you."[50] When Asma asked if she should have reported her husband to the police, the imam allegedly said: "You should avoid involving the police. This is an Islamic matter, not a matter for the state."[51] Asma was upset with how the imam handled her case but also disenchanted with the promise of equal rights and protection under the state law. "This is how Muslim women are treated in this country. I am trapped. Where is the equality or democracy that everybody speaks of?" A similar sense of frustration was shared by nearly half of the women who sought the assistance of traditional and religious authorities for domestic violence issues and

49. *Mensah* v. *Mensah* (2012); *New Patriotic Party v. Inspector General of Police* (1993–1994).

50. Asma Asante (pseudonym), interview by Yüksel Sezgin, Accra, June 2017.

51. Issaka-Toure (2017, 2020), who conducted an extensive study of dispute resolution forums operated by Tijaniyya- and ASWAJ-affiliated religious figures, reports that while some malams advised against involving the police, others helped their clients report their cases to the authorities. She notes that even among religious figures who affiliated with the same movement there were considerable personal differences in terms of how each malam handled domestic violence cases and how they approached the question of whether to involve the state.

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property disputes. Many reported that they felt betrayed by the state and its "empty promises of equality" and freedom. It looks like the burgeoning gap between legal meanings of the state and Muslim groups has weakened some Muslim citizens' trust in democratic institutions and the promise of equal citizenship and left them with a more profound sense of victimization.

As said, the postcolonial Ghanaian judiciary has been systematically brushing away Islamic law claims on procedural grounds. By doing so, it denies itself an opportunity to engage with Islamic law in a meaningful and respectful manner and give reform-minded elements in the Muslim community feedback to harmonize their legal meanings with those of the state. As shown below, when the courts try to engage with Islamic law claims in a dignified manner, nomic groups take note of it, and some actors even show a willingness to redefine their legal meanings accordingly. In other words, the limited evidence suggests that the feedback loop works.

To this date, there has been only one case in which the Ghanaian judiciary has come very close to recognizing the existence of Islamic law through substantive treatment of the normative claims at stake. In *Giwah v. Ladi* (2010), the plaintiff contested a ruling by the Islamic Judicial Committee (IJC) at the Office of Chief Imam, which distributed a deceased Muslim woman's estate according to Islamic law, explicitly citing verse 4:11[52] of the Quran. As the court of original jurisdiction, the High Court, without dodging the issue on procedural grounds, stated that the IJC should have applied PNDCL 111 instead of Islamic law to the distribution of the estate, thereby setting aside the Islamic ruling. But the High Court then did something entirely unexpected and examined at considerable length Islamic inheritance law as stated in the Quran. It judged that the ICJ ruling had misinterpreted verse 4:11. It also ruled that the ICJ's decision violated the 1992 Constitution's clauses concerning equality before the law (Article 17/1) and nondiscrimination (Article 17/2). The High Court's decision was later upheld by the Court of Appeal[53] and the Supreme Court.[54]

Giwah v. Ladi (2010) was unprecedented. For the first time, superior courts engaged with Islamic law in substantive terms and challenged its commitment to the constitutional principles of gender equality and nondiscrimination. Although some officials at the Office of Chief Imam resented the ruling that set aside their jurisdiction,[55] the official response was relatively positive: "The Chief Imam understands the democratic dispensation and believes that the law of the land (Constitution) overrides all other laws in the country."[56] When I asked the legal advisor at the Office of the Chief Imam about the case, he reiterated the supremacy of the constitution over his nomic group's legal meaning. He added that he did not see a

52. "Allah (thus) directs you as regards your children's (inheritance): to the male a portion equal to that of two females: if only daughters—two or more—their share is two-thirds of the inheritance, if only one her share is a half. For parents a sixth share of the inheritance to each if the deceased left children; if no children and the parents are the (only) heirs the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. (The distribution in all cases is) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God; and God is All-Knowing All-Wise" (Ali 1983, 181–82).

53. *Giwah v. Ladi* (2011).

54. *Giwah v. Ladi* (2013).

55. Seidu H. Nasigri (The Office of the Chief Imam), interview by Yüksel Sezgin, Accra, May 2017.

56. Quoted in the case file, *Giwah v. Ladi* (2010).

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contradiction between the two because human rights and "gender justice [were] the pillars of Islam."[57] Some Muslim women's rights activists that I interviewed[58] supported the court's ruling in *Giwah v. Ladi*. They told me that they had welcomed gender-sensitive reinterpretation of Islamic inheritance rules. This was a clear sign that some nomic groups within the Muslim community were willing to work with the state courts. They were willing to recognize the state's law as the supreme law and harmonize their legal meanings accordingly if/when courts acknowledge the nomic existence of Islamic law and engage with it substantively.

Procedural Injustice, Political Exclusion, and Silencing Moderate Voices within the Muslim Community

State courts' consistent denial of MFL claims on procedural grounds and the government's refusal to fix the broken machinery also contribute to the growing sense of procedural injustice among Ghanaian Muslims and undermine their commitment to the rule of law. Procedural justice theory suggests that courts' legitimacy depends on the perceived fairness and trustworthiness of their procedures and their ability to treat people with dignity and allow them to voice their grievances (Tyler 2003). In turn, the belief in legitimacy of legal institutions increases compliance with laws and cooperation with legal authorities (Tyler 1990). It is also reported that among socially excluded minorities, perceptions of procedural fairness lead to an increased sense of social inclusion and greater identification with the values and institutions of the political community (Murphy, Cherney, and Teston 2019). Put another way, when people believe that courts regularly use procedural excuses to deny their claims and suppress their voices because they are members of a particular cultural community, their trust in legal authorities weakens. They become less willing to comply with the law and risk becoming more marginalized politically.

There are no representative studies that survey Ghanaian Muslims' attitudes toward legal authorities or the state in general. However, nearly three-quarters of my interviewees said they did not trust the courts—especially regarding family and property matters. One taxi driver said: "Courts are not for Muslims. I am a Muslim. They do not represent us. They do not accept our law. My law is shari'a."[59] Likewise, a university student remarked: "We, Muslims in Ghana, do not have a state of our own. The Christian majority owns the state and courts … [which] have no respect for our culture … Why should we obey their law?"[60] Tyler (2003, 286) states that individuals' perception of legitimacy is "rooted in the judgment that … the courts are acting fairly." If courts are perceived to act unfairly, their legitimacy erodes, making individuals less willing to comply with the law. In this respect, one can claim that this is precisely what is happening among some of my Ghanaian informants. The perceived injustice seems to undermine their trust in the judiciary and erode their commitment to the rule of law.

57. Seidu H. Nasigri (The Office of the Chief Imam), interview by Yüksel Sezgin, Accra, May 2017.
58. Two FOMWAG members who declined to be identified, interview by Yüksel Sezgin, Accra, May 2017.
59. Informant declined to be identified, interview by Yüksel Sezgin, Accra, May 2017.
60. Informant declined to be identified, interview by Yüksel Sezgin, Accra, May 2017.

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Murphy, Cherney, and Teston (2019) report a positive correlation between procedural injustice and social exclusion among religious minorities. Similarly, Renström, Bäck, and Knapton (2020) found that socially excluded individuals were more prone to identify with extremist groups and resort to political violence. That is to say, the Ghanaian courts' systematic denial of Islamic law and the perceived procedural injustice could contribute to the sense of social exclusion and even radicalization among some Ghanaian Muslims. In recent years, pointing to the growing influence of Ahlu Sunnah Wal Jama'a (ASWAJ—a homegrown Salafi/Wahhabi movement with strong Saudi/Egyptian connections), some scholars have warned about the increasing danger of Islamic radicalization in Ghana (Aning and Abdallah 2013; Iddrisu 2013; Dumbe 2019). I cannot say whether Islamic radicalism is rising or whether radicalization directly correlates with procedural injustice. Still, during my field research, I encountered several enthusiastic supporters of ISIS (Daesh) who loudly criticized the Ghanaian court's handling of "shari'a" cases. One individual who helped arrange my meetings at a local shari'a court said: "I am proud of Daesh and Khalifa al-Baghdadi … I would like to see shari'a fully implemented in Ghana."[61] Another person who reportedly had friends who had traveled to Syria to join Daesh was very angry that Ghanaian courts did not recognize Islamic law. When I asked him about their dismissal of Islamic marriages, in particular, he said: "Shari'a is the law of the God … When courts [do not recognize it], they disrespect Muslims. A state that disrespects Islam is [a] state of *kufr* [disbelief]. It is OK to make *jihad* [against such a state]."[62]

Although radicalization may be an indirect outcome of perceived procedural injustice, most Muslims do not respond to the courts' undignified killing by adopting extremist views. Instead, they turn to religion-based ADR forums.[63] The Muslim community in Ghana is deeply divided along ethnic, tribal, and sectarian lines (Pellow 1985; Weiss 2008, 348). This plurality has given rise to several ADR forums with competing narratives and legal meanings. Some of these organizations include the aforementioned IJC at the Office of the National Chief Imam, the Islamic Research and Reformation Center (IRRC), the Ghana Muslim Mission (GMM), and the Arbitration and Complaints Section (ACS) at ASWAJ.[64]

There is considerable divergence of legal meanings across these forums. For instance, when I inquired about the minimum age for marriage for a woman, an imam in Accra who was affiliated with ASWAJ told me: "According to shari'a, as soon as a girl reaches puberty, she can marry. This could be nine, ten, eleven, or twelve."[65] I heard a similar comment also from a malam affiliated with the Tijaniyya movement—the predominant Sufi order to which the National Chief Imam also belongs.[66] A representative of the GMM, on the other hand, told me that they would

61. Informant declined to be identified, interview by Yüksel Sezgin, Tamale, June 2017.
62. Informant declined to be identified, interview by Yüksel Sezgin, Tamale, June 2017.
63. Dr. Yunus Dumbe (Kwame Nkrumah University), interview by Yüksel Sezgin, Accra, May 2017.
64. The ACS at ASWAJ is the only ADR forum that provides statistics about its activities. According to information that I obtained from their Accra office, between 2013 and 2015, they handled about 450 cases per year. About 70 percent of cases were marital disputes, and 15 percent were succession-related. About 80 percent of cases were filed by female clients. Each year they refer about thirty cases to family tribunals, which are state courts with jurisdiction over matters involving children (custody, etc.).
65. Al-Hajj Umar, interview by Yüksel Sezgin, Accra, June 2017.
66. Sheikh Yahaya Ibrahim, interview by Yüksel Sezgin, Tamale, June 2017.

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not allow anyone under eighteen to marry because a child would not have the mental and physical maturity required for a happy marital life.[67] I also observed a similar diversity of communal legal meanings regarding spousal duties and what it meant to be a "good" husband/wife or even a "good" Muslim. However, legal meanings that I would call "friendlier to women's or children's rights" were often a minority opinion.

A young women's rights activist, Rafatu Idris,[68] a volunteer at a local Muslim organization in Accra, told me "You cannot expect malams or imams to start treating women with respect or granting them equal rights. This is not going to happen overnight. Someone needs to push them … I think the state has a responsibility … [The state] has to set an example." I think this young women's rights activist was correct to point to the state's role—especially that of the courts—to pressure traditional authorities within the Muslim community to respect the constitutional rights and integrate them into their rulings. As scholars have shown, communal authorities are more likely to undertake self-reform or adjust their legal meanings when there is a direct competition between state and communal courts (Shachar 2001; Sezgin 2018; Hleihel, Shahar, and Yefet forthcoming). The environment of competition empowers proreform groups and helps them mobilize for bottom-up change. However, the unwillingness of the Ghanian courts to hold religious authorities to constitutional standards and their failure to create conditions for jurisdictional competition have allowed conservative voices to grow stronger and pushed groups with "moderate" or "women-friendly" meanings to margins of the Muslim normative community.

CONCLUSION

Ghanaian courts have repeatedly engaged in undignified jurispathy against Islamic law by refusing to recognize the validity of Muslim marriages, divorces, and inheritance claims. They have erected a procedural firewall between the MMO and the official nomos in doing so. They have destroyed the legal meanings built around Islamic law without discussing what was at stake. Authorities often have not cared whether there were feasible registration systems in place or licensed imams to officiate "Mohammedan" marriages. The judiciary and the rest of the government instinctively followed the colonial narrative that Islamic law was not the native law of the land. The rest was a mere detail.

The judiciary's consistent refusal to recognize Islamic law has deprived nomic groups of critical feedback for harmonizing their legal meanings with the state's. The Muslim community in Ghana is an integral part of the socioeconomic and political fabric of the country. They have a vested interest in democratic and peaceful coexistence with the political majority. *Giwah v. Ladi* has shown that some elements within the Muslim community may be open to internal reform and reinterpretation. In a democratic, multireligious society where religious and customary laws are formally integrated into the state legal system, the harmonization of divergent legal meanings is critical to the de-escalation of normative tensions, political inclusion of minorities, and the

67. Mahmoud Bill (Ghana Muslim Council), interview by Yüksel Sezgin, Accra, May 2017.
68. Rafatu Idris, interview by Yüksel Sezgin, Accra, May 2017.

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preservation of their commitment to the rule of law. In this respect, the Ghanaian judiciary makes a critical mistake by not facilitating the harmonization process. This could pose a long-term threat to the survival of Ghana's fragile democracy.

There is a need for new legislation to replace the MMO and fix the broken machinery.[69] But this will not be enough. In Cover's normative world, the legal reality is socially constructed through the agency of narrative. To change the world, and thereby the reality, the narrative must change too. To enact a new vision, one must break free from the old way of doing things (Hansen 2020). In other words, the Ghanaian judiciary and the government must replace the old colonial narrative about Islamic law. The new narrative must acknowledge the indigeneity of the Muslim community, recognize its internal nomic diversity, and emphasize constitutional equality and nondiscrimination. As Zion-Waldoks, Irshai, and Shoughry (2020) suggest, such changes in the official narrative could lead to corresponding shifts in narratives of nomic groups within the Ghanaian Muslim community that, in turn, could not only transform internal power and gender relations but also strengthen the minority's sense of political belonging and their commitment to the rule of law.

The theoretical and empirical insights drawn from the Ghanaian case are relevant to pluri-legal societies worldwide. The article has shown that there are different types of jurispathy with different consequences for state-religion relations and the development of multiethnic/religious democracies. Civil courts from Israel to India and from Greece to Kenya regularly commit undignified jurispathy against religious laws, but they are often ignored by current scholarship, which tends to emphasize landmark cases with substantive meat (i.e., dignified killings). In other words, undignified killings are not part of the existing empirical or theoretical models (Hirschl 2010). To remedy this, we need to move beyond the binaries of separation/entanglement and religious/secular and examine instances of undignified jurispathy and its implications on majority-minority relations and democratic institutions in pluri-legal societies.

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69. The Ghanaian government prepared a new Muslim Marriage and Divorce Bill in 2017. At the time of writing, it has not been yet submitted to the parliament. Some of my informants indicated that the bill's chances of success were slim. However, even if it is passed, the new law would be only a slight improvement over the existing MMO. The most important change would be in the number days (from seven to thirty) within which a marriage must be registered. It would also authorize a wider application of Islamic succession law.

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