Internormativity, Law and Family.

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Introduction

Immigration has always been a significant sociological phenomenon for Quebec society. It contributed to its establishment and development, mostly due to Western Europe's numerous migratory flows until the 1970s. However, the past thirty years have seen immigration become a preponderant factor in Quebec's demographic growth (Piché 2005), thus transforming the society's social landscape. A distinct Quebec immigration policy was made possible by the redistribution of powers and responsibilities under the Gagnon-Tremblay/MacDougall Agreement (Pinsonneault 2005), establishing a unique Quebec immigration path. Indeed, Quebec is the only province in Canada which has the right to select economic immigrants and applies its own scoring grid based on education levels and knowledge of French. Therefore, in Quebec society, many immigrants come from countries and continents that differ significantly from the rest of Canada (Cousineau et Boudarbat 2009), which explains partially the increase of immigrants from Asia and Africa (MIFI 2019)[1].

Despite Quebec society's ethnocultural diversity, far too little attention has been paid to its interconnections between law, families, and the internormativity processes. However, this is not specific to Quebec alone. The study of law and globalization, along with the current high level of people's mobility, is relatively sparse in the field of legal social sciences, such as anthropology and sociology (von Benda-Beckmann, et al. 2017). Given that there is a small but growing body of literature on the subject, this talk will take the form of an essay. It will present questions and

[1] In 2018, 43.5% of immigrants were from Asia and 29.6% of immigrants from Africa. Most of them settle in Montreal, which welcomes nearly 75% of newcomers every year.

thoughts about normative phenomena at diverse societal levels concerning families, using Quebecer examples. To do so, we will follow the families' dispute resolution trajectories and see how the plurality and the pluralism of norms transcend and impact family dynamics.

First of all, we will look at recently arrived families to understand how migratory trajectories and settlement influence the transformation of norms and perceptions of justice. Secondly, we will examine the alternative dispute resolution processes occurring in some religious groups. Finally, we will turn to the state's legal institutions and explore how plural cultural norms enter the courtroom.

Legal pluralism theory

Before going any further, the studies presented here are part of the legal or normative pluralism paradigm. Therefore, they go against a centralist, monist and positivist view of the law (Macdonald 2002). The classic version of the theory supposes that internormative processes require a plurality of justice systems, of which positive state law is only one of the possible forms (Merry 1988; Rocher 1988). According to this conceptual lens, even under state governance, there is a coexistence of several modes of regulation that escape state control. Legal pluralism, in its simplest definition is seen "*as that state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs.*" (Griffiths 1986: 2). Vanderlinden (1972) goes further and introduces the internal dynamism to every legal order or system on a shared territory, where interconnections and system borders redefine themselves perpetually. As such, we can think of the example of religious groups or the army, which remain under state jurisdiction while having their own regulatory modality. Studies have shown that rules can coexist within the same space, compete, resist, or even be entirely independent. Hence, it reintroduces an individual perspective into the analysis; members of a society can combine their multiple legal identities and define beneficial personal strategies depending on the environment in which they find themselves (Benda-Beckmann 2002; Merry 2013a; Merry 2013b; Vanderlinden 1993) In this sense, we can reaffirm, following Sally Falk Moore (1978), that social agents create law. Moreover, if we apply, as some studies presented here do, Macdonald (2002) radical legal pluralism, we could consider that legal orders or laws in a society are the products of knowledge and experiences of people, regardless of their level of formalization. Thus, legal pluralism is a theory providing an understanding of how social agents and groups shape institutions through their interpretations and

experiences (Macdonald 2002). Finally, the legal or normative systems are thus studied through the interactions between individuals, between groups, for example, during an intercultural encounter, between distinct institutions or even between legal systems, such as in the case of transnational law.

Pluralism into immigrant families

We will now explore pluralism into immigrant families and analyze the dispute resolution trajectories, starting at the level of recently arrived immigrant families. With ethnocultural diversity comes a plurality of families' conceptions, values and practices. Despite the diversity of cultural manifestations, the human family is an institution that displays the intersection of personal, economic, political, legal and spiritual relations. Family is, therefore, one of the most important social institutions, providing essential daily needs. Given that immigration is frequently seen as a family project, recently arrived families are considered as an environment of support and resilience (Hynie 2018; Laaroussi 2016; Rachedi et Taibi 2019)). However, the settlement itself puts families under tremendous pressure. They have to handle several post-migration stressors such as discrimination, racism, economic segregation, language barriers, isolation and multiple obstacles accessing social services and state institutions (Bäärnhielm, et al. 2017; Li, et al. 2016; Porter et Haslam 2005). These stressors engender processes of reconstruction of identities and roles, including those related to gender and parenting (Guruge, et al. 2010) and increase significant conflicts and tensions, sometimes leading to marital breakdown and divorce. In addition, newly arrived families must combine and adapt to Quebecer and Canadian values and conceptions of the family through their settlement process. In this matter, the conflict observation and analysis, particularly the normative disputes, allow us to better understand the changing and layering of families' practices and representations on pre-existing ones.

Among the normative or legal disputes displayed in Quebec and Canada studies, two aspects hold our attention: the precedence of the nuclear family model and the gender relations representations. At first glance, we should note that disputes do not arise from a desire to consciously adopt the family model of the host society or a claim for gender rights equality. Arguments are usually the result of the immigration and resettlement structural constraints, which will create the need to change behaviours and daily practices. Eventually, these pragmatic adaptations may induce

normative transformations. Thereby, it is not necessarily a conscious decision-making process, but dynamic, agentic, socially and personally contextualized experiences (Merry 2013a).

According to several studies, including that of Shirpak, et al. (2011) among couples of Iranian origin, as well as that of Donkor (2012) with families of Ghanaian origin in Toronto, and Saint-Jacqueset Gherghel (2011) on immigrant single-parent mothers, economic struggling and the loss of a support network are catalyzing factors for marital disputes. For example, Canada's living standards constrain both parents to provide for the financial family needs, often causing an overload of work for the woman. Wives can no longer perform the domestic tasks alone,which goes against their normally expected gender roles. These gender roles task expectations are usually dependent on extended family contributions and kinship relations. However, in the absence of this significant solidarity network to compensate for the enhancement in responsibilities, we observe a family's nuclearization process. Couples are faced with renegotiating the division of labour due to economic circumstances and structures, precipitating a transformation in the dynamics of gender relations. To put it in the words of Okeke-Inejriika and Salami'study (2018) of African immigrant men, "man becomes a woman, and the woman becomes a man; or man becomes baby doll and woman becomes lion (p. 101).

In my own research, the men I met will say that Quebec is a society built for women. Men are no more than squirrels. Obviously, this metaphor is an exaggeration, but it should be understood that in their countries of origin, patriarchal power relations are also embodied in the state institutions, such as hospitals, police and courts. Therefore, the demand for change is sometimes drastic, which directly calls into question the position of the husband, for example, that of the head of the family, within the family and in society. Also, disputes arise because of its archetypes' confrontation, where one of the spouses might wish to maintain the previous gender relations, disputes arise. The conflicts participate in the confirmation or the modification of the norm (Nader 2002). They may transform the definitions and gender identities, and by extension, those related to the family's conceptions. Donkor (2012) also notes that through the normative conflicts that occur within the family, wives now see divorce as a means, an instrument to gain autonomy and parity, even though everyday life post-divorce contains its own set of contingencies and challenges.

As we have mentioned, the nuclear family model partially triggers these changes in gender relations dynamics. According to Rousseau (2008), Pentecostal immigrant families in Montreal perceive native families as being based on individualism, personal autonomy, equality and the lack of authority. Indeed, the more the immigrant family's functioning unlike what is conveyed here, the more we may observe conflicts and tensions between them (Beiser, et al. 2015; Bernier 2014; Guerraoui et Sturm 2012). This phenomenon is obvious among immigrants who value and have been socialized in an extended family model where economic subsistence depends on multiple family actors. It is not only a matter of exacerbating disputes however. The focus on the individual, to the detriment of social solidarity, is, in some cases, clearly criticized by some families saying that native families are not united and appear indifferent to the realities of others (Rousseau 2008). In Quebec, we no longer define the family according to the marital bond; it is now characterized by filiation relation, which allows a plurality of family schemes. The individual's primacy has ensured a deconstruction of kinship networks, transposing social support functions into the hands of public institutions (Côté, et al. 2012). For recently arrived families, this is a noteworthy change in their daily lives. They must rebuild social solidarities weakened by migration and, in contrast, embody an ideology based on self-empowerment and self-autonomy.

With this brief overview of normative disputes in immigrant families, we illustrate that the law creation process and the dynamics of legal pluralism result from everyday practices (Sarat et Kearns 1995), which evolve through social interactions. In this context, we should forge ahead as Deville-Stoetzel, et al. (2012) did, investigate how recurrent interactions stabilize expectations and social roles and how they contribute to the creation of a hybrid family model, combining both prior conceptions and practices to those in the host society. Furthermore, although we did not have the time to explore the impact of the diversity on Quebecer and Canadian families' visions, we should remark that transformations are dialectic. To my knowledge, no studies have examined this angle for instance. How are ordinary citizens, who do not consider themselves mobile, affected by the new family referents introduction in the social landscape? How do they react to a new set of norms and regulations, far from the ones which they have been socialized to (von Benda-Beckmann, et al. 2017)? Finally, should the family law in Quebec be adapted and be more flexible to heterogenous family models? For example, what would it mean to recognize the extended family as significant members as suggested in the Royet Dutrisac (2018) report on the law reform? These

research enquiries must be part of broader thinking to acknowledge the reality of the ethnocultural diversity in Quebec society.

Diversity and alternative dispute resolution strategies

What happens when conflicts culminate, and the couples decide to end their union? What are the ways to resolve the different aspects of the marital breakdown, such as alimony, childcare, and family patrimony? What is the role of state law in their resolution path? In light of these questions, we will now examine alternative dispute resolution strategies through the prism of ethnocultural relations. First, we must emphasize the representation of divorce in Quebec and Canada. Divorce is a highly emotional phenomenon, and any marital breakdown has severe consequences for families, such as the reorganization of roles and responsibilities, especially when there are children involved (Afonso 2007; Amato 2000).

Regardless of these repercussions, there is a social and cultural acceptance of divorce, making this option conceivable when ineluctable (Jacob 1998). In the country and culture of origin, perception may differ. Although social mechanisms may have existed to regulate conjugal breakdown proceedings, divorce may still lead to strong disapproval and social stigma (Laaroussi 2016; Taïbi 2015). As a result, the entourage and families tend to intervene in favor of maintening the union, sometimes even despite the spouses' wishes (Paré 2017; Vatz-Laaroussi, et al. 2013).) In other terms, the ways individuals handle issues, such as divorce, depends on how they conceive it in the first place and the resources available in a specific environment (Merry 2013a).

Yet, once an issue is perceived as legal, social actors may refer to one or multiple legal forums for resolution, which is defined as a forum shopping process. Anthropology sees forum shopping as a non-linear practice where social actors navigate between resolution strategies with the purpose of social optimization. It has the effect of allowing the avoidance of unfavourable prescriptions, minimizing social risks, such as isolation, or providing a temporary attenuation of the dynamics of statutory hierarchies (Benda-Beckmann 1981; Merry 1988; Merry 2013a). It is a mechanism of agency whose responses are delimited by the opportunities for action offered in a specific social context, and the differences between individual interpretations, such as the mobilization of a resolving strategy, to the detriment of another. It cannot be justified solely by economic factors, cost/ benefit reasoning or any other rational calculation (Ewick et Silbey 1991-1992; Silbey 2005).

The analysis of resolution strategies must logically lie in both personal trajectories and social conjectures. However, in Quebec society, forum shopping is not an institutionalized option in divorce matters. The state is the only forum that can legally recognize a divorce (Castelli 2005; Eid et Montminy 2006). Arbitration, and incidentally religious arbitration, is prohibited. Decisions other than those of state professionals, like judges, have no binding force within the meaning of the law.

Regardless, there are several de facto alternative dispute resolution forums to settle marital disputes related to divorce and its accessory measures. There are, mostly in Montreal, Jewish, Muslim and Christian communities, whose members may choose to resort to resolution methods, formal or informal, that manage disputes concordantly with their beliefs and values (Eid et Montminy 2006). In their study, Potvinet Saris (2009) examine the conflict resolution resources and strategies sought by Canadian Muslim women. They aim to better understand what motivates the choice of forum and the extent to which there is an interaction between the civil and religious actors in the process. In this regard, the women interviewed for this study grant the state's legal system the role of officially pronouncing divorce and its legal obligations. Still they reach out to a religious forum to negotiate an informal agreement beforehand. Thus, in spiritual mediation, women find that they have a more personalized approach to addressing issues of a private nature. They also feel more comfortable and secure in expressing themselves in their mother tongue and attach great importance to sharing common cultural values. Finally, they also mentioned the availability of religious representatives for counselling, the low cost of the services and confidentiality.

In another study by Diabone (2017), African immigrant families in Quebec City follow a hierarchical progression of conflicts and prefer to use solidarity networks, such as family and community. The state system and its resources are used as a last resort. Thus, the extended or transnational family may be called upon to mediate in matrimonial disputes when the spouses have not agreed on a consensus. It is important to note that the transnational family remains present in everyday life, and frequently intervenes during significant events such as births, illnesses or deaths (Le Gall 2005; Montgomery, et al. 2010). Aside from their involvement in life events, according to Diabone (2017), the transnational family tends to interpret dispute in terms of their own

standards and family conceptions, which are sometimes out of step with the reality experienced in the host society. Then, in case of failed attempt, families will turn to local community representatives, who are seen as valid intermediaries for their wisdom, eldership, or knowledge of religious values. Diabone (2017) observes that they justify their choices based on the perception (mistaken or real) that mediation outside the community resources is likely to generate discord and breach of trust within these groups. Finally, there is a partial mistrust of state resources, such as social workers, psychologists or the police. In this study, respondents found that professionals encourage divorce too quickly and that these interactions led to distinct understandings of marriage and family. It confronts the logic that guides the thinking and appreciating of the choices to be made in a marital crisis context. According to the respondents, in Quebec, Canada and the West in general, "marriage is not a desire in itself, it is a framework for fulfillment. While on the other side, [in Africa], it is a setting where you are told that the child must grow up in a family setting involving the presence of both parents". (Diabone 2017: 82).

We have just presented two examples of alternative forums as well as the motivations underlying their mobilization. The plurality of ethnocultural groups or various religious allegiances[2] (Meintel 2018) demonstrates the possibility of mobilizing different resources through several forums to settle marital conflicts. Admittedly, this phenomenon is more visible when appearing in these minority groups (otherwise heterogeneous) due to the functioning of intercultural relations (Juteau 2015), but they are nevertheless not the sole prerogative of these groups. Alternative dispute resolution in the context of legal pluralism emphasizes the very dynamics of law, namely how law tends to be created, transformed and appropriated in everyday life. This research field needs to be further explored. Research questions should focus on access to justice and potential obstacles in the context of ethnocultural diversity (Noreau, et al. 2003). For example, how do we explain the use of an alternative forum? Is it only the result of individual legal mobilization, or do belonging groups influence it? Are there structural factors that make state resources less attractive, such as the cost, the lack of legal literacy in the general population or even the bureaucratic complexity? We should also explore the impact of intercultural climate in our society. Taïbi (2015) and Bendriss

[2] There is an unsuspected religious diversity in Quebec, where already in 2002, it has been inventoried more than 800 places worship in Montreal, including churches, mosques and temples (Meintel 2018) .

(2005) state that the intercultural relations have deteriorated for Arab-Muslim communities since September 11, 2001. Their respective studies establish that Arab-Muslim women may be less inclined to use domestic violence services for fear that their families will be harassed or suffer further discrimination.

Lastly, in all previous examples, we have to acknowledge that it is not usually a question of legitimacy or rejection of the formal system that explains the use of alternative non-legally binding resources. Indeed, social agents have used it to enforce and validate agreements obtained informally. Likewise, Noreau's report (2003) on access to justice and ethnocultural diversity alleges that most ethnocultural minorities, including recent immigrants, generally perceive the legal system more positively than the native population. This is especially true with regards to the ideal of justice, such as the principle of equality treatment in eyes of the law[3]. As a result, it leads us to reflect on the place of alternative modes of resolution in Quebec society, in matters of family disputes, and whether there might be no reason to question their current political discrediting. Indeed, legal anthropology has suggested that informal resolution mechanisms are not necessarily problematic in a society of law. As stated by Rosen (2018), "That most effective contracts are relational, not transactional, and that good lawyering can encourage, just such informal mechanisms in place of the threat of a lawsuit." (p. 106). It could be understood as a part of trajectories and a way to simplify or increase access to justice. However, given the intricate relationship (past and present) of Quebec society to religion in the public and state sphere (Bosset 2006; Moore 2009), as well as the citizenship model which uses the sharing of a common right as a basis for integration (such as gender equality and the best interests of the child) (Eid et Montminy 2006: 23), we should engage in investigating these practices further, especially in relation with immigration and settlement policies.

[3]In this report, to the question on the equality of all before the law, 51% of immigrants answered in the affirmative, against 24.5% of Quebecers of origin.

Pluralism in the courtroom

We now turn to the courts, to explore the influence of pluralism and the plurality of cultural and normative referents. If there is a growing literature about immigrant families, ethnocultural groups and their interconnections with the law in everyday, there is, to my knowledge, little to no ethnography of family law courtrooms.

The ethnography of courts emerged from studies of disputes in the anthropology of law (Nader 2002; Starr et Goodale 2002) and consists in participant observing hearings and trials. Its aim is to document the practices of litigants and professionals, identify the strategies, the constructs of arguments, and the reactions to the precedent practices. The courts' ethnography also analyzes the court's theatricality by revealing the rituals (Branco et Dumoulin 2014; Garapon 1997), the architecture, the discursive practices, and the dogmas of law. Under this lens, the tribunal is then understood in the same way as any other cultural setting: carrying within itself its codes, rules and idealized representations. Indeed, the ideals of rationality and impartiality (Weber 2013 [1919]) are unreachable in reality, social influences interpenetrate this universe in the same as in any social field (Bourdieu 1986). As a result, when families from immigrant origin come to court, they may have to consider to distance themselves from their values system and proceed to a cultural and normative translation (Simon 2015). Thereby, these families must formalize their demands and arguments, with the help of a representative, according to the law's discursive structures (Conley et O'Barr 1990; Mertz 2007). However, this also implies that their own cultural referents enter as well the space of the courtroom.

This can be illustrated by Helly, et al. (2011)study examining Kafala cases in Quebec, Kafala being a delegation of parental authority that involves the permanent care of a minor, an orphan or an abandoned child. The study therefore aims to understand how family law judges consider exogenous cultural or legal norms and practices in litigation. This specific practice of “guardianship” does not interfere with biological filiation, as is the case with full adoptions in Quebec. Without going into the details of these complex litigation cases, these hearings' objective is to recognize the possibility of officially adopting the child in Quebec, even though full adoption is prohibited in the Muslim religion and in some countries of origin. According to Helly, et al. (2011)"When a party invokes a non-state norm or value, judges find themselves at the heart of the

tension between tolerance and intolerance. They can give way to the right to be different or see only the extraneity of the value or the norm and refuse it. But they must give reasons for their decisions. "(p. 1066). It follows that judges may be attempting to rely on fundamental values of public order, such as the child's best interests, security or gender equality. They may either use analogies to find a similar institution in the host society as a reference. For example, one could see repudiation as a divorce; a dowry reimbursement could be equivalent to alimony. In this case, the Kafala could be understood as a guardianship or adoption depending the definition used. Finally, judges could refer to their values in interpreting legal texts if the definition is missing or imprecise. Based on these processes, however, it is difficult to establish the predictability of interpretations and judgments. Despite the fact that legal pluralism is not always acknowledged or even seen as acceptable, its effects exist nonetheless. Thus, we can wonder what would happen if family law were to promote more flexible and open concepts, allowing the expression and recognition of different family practices and models. Does the very nature of family law in Quebec enable this change and the growing diversity of society? It would also be interesting to explore the permeability of cultural values on judgments and the perceptions of legitimacy by social actors of judges' decisions. Given that trust in judges is an essential component of the system's legitimacy and justice, it would then be interesting to investigate this aspect in Quebec society, like the Audetteet Weaver (2015) research on the perception of Christian communities on atheist judges in the United States.

Conclusion

The presentation's purpose was to look at the state of literature in Quebec related to ethnocultural diversity and legal pluralism about families. We proposed an overview of some finding by following the dispute resolution trajectories and thus exploring the impact of pluralism at various social levels. We also emphasized the making and the reproduction of law in everyday and displayed how diversity contributes to its process. This presentation was not intended to be extensive and was, above all, designed to raise enquiries and thoughts; much remains to be explored in this field of study. To conclude, with the upcoming family law reform, we can advocate for greater recognition of this diversity inherent in Quebec. In this matter, a broad field of research may soon open up. We could inquire as to how this reform will be taken into account by legal professionals and its impact on access to justice. Furthermore, this reform is an opportunity for

social innovation and addressing inequality of access and systemic discrimination. We have a chance here to duly represent the richness of our social and ethnocultural diversity

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