Evidently Married: Changing Ambiguities in Creating Family Ties in Morocco

Annerienke Fioole
Faculty of Social and Behavioral Sciences, University of Amsterdam, Amsterdam, The Netherlands
j.c.c.m.fioole@uva.nl

Abstract

What does it take for a couple to stand out as married to others? In Morocco, an ideal scenario to marry today involves families celebrating three stages: an engagement, a legal contract, and a wedding. Yet, as I will show, couples may also turn out to be married without such ceremonies. Other elements can make for evident marriages. Still, legal recognition has, over the past decades, become increasingly essential within people's own creations of conjugal bonds. Moreover, family and penal code revisions, together with the civil registry's expansion, have profoundly changed proceedings and possibilities to legally marry. These processes defy simple binaries of legal versus licit domains. Legal and licit understandings of marriage interlace both in people's own evaluations and in state officials' approaches. However, as I will argue, increased emphasis on legal registration also heightens state control over family ties and reduces people's opportunities to leave marital definitions open-ended as this suits them over time.

Keywords

marriage – family – Morocco – law – family code – penal code – civil registry – ambiguity – customary marriage – relationships

1 Introduction

"But how ..., I mean, how could they testify that you were married? If they did not, ... they did not attend your engagement or your wedding. They weren't
even around at all then! ... You said you did not have an engagement and you
did not have a wedding. So how, what, what did they testify?" I tried to grapple
with Ahmed’s story. He had been explaining how he and his wife obtained
their legal marriage contract in 1990s Morocco, years after their first children
were born. Ahmed1 made the whole legalisation process sound incredibly
unproblematic: twelve witnesses appeared at the family notary and testified
that Ahmed was married to his wife. Some time thereafter, he could pick up
his legal ‘recognition of marriage’ document, which acknowledged they had
been married all along.

Ahmed said these witnesses were just random people he knew. They had
not been men from his home town, where he and his wife first moved in
together. Thus, I kept probing to find out what these witnesses witnessed then.
“Ok, so ... if I asked you who my wife is,” Ahmed turned my own line of ques-
tioning back on me, “what would you say?” “Well ...,” I stumbled. “No, what
would you say? I am asking you now,” he insisted. “Ok, I would say your wife is,”
I replied, “... well, she is your wife, Ishraq.” “See!” he exclaimed, smiling victori-
ously, only to continue: “And how do you know that?” I frantically tried to find
memories on how Ahmed, Ishraq, and I had first met. Without an answer, I
filled the silence between us anyway: “I don’t know,” I told him. “I mean, I know
she is your wife, ... because that is how I know you. I do not know, I just know
from everybody.” “See!” Ahmed repeated, resting his case.

Ahmed and Ishraq today live as a married couple in the Moroccan region
of Skhirat-Témara, south-east of Rabat. In our multiple interviews, they eluci-
dated their marital story to me. Ahmed described how they had grown up in
the same village. Ishraq later told me that they had connected only because
Ahmed became her tutor as she attended high school. Sitting together with her
books outside on the village square, they had got to know each other and had
started meeting up outside of other people’s views as well. When their intima-
cies got her pregnant, Ishraq first turned to Ahmed not knowing what to do.

“So she moved in to live with us,” Ahmed continued his story. He lived with
his mother at the time, the household Ishraq suddenly joined. They both insist
Ahmed’s mother did not oppose her son’s pregnant partner moving in, since
Ishraq was there to be his wife. However, his mother did fear Ishraq’s rela-
tives might retaliate and send Ahmed to prison. As a precaution, Ishraq stayed
indoors until she gave birth. “Then we had more children,” Ahmed flashed
years forward, “and moved, that is when we needed the documents. Ishraq
wanted the children to go to school and all and we needed the documents. We

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1 All interlocutor names in this paper are pseudonyms.
wanted to get the [marriage] contract earlier, sure, but we could not. Her father would not sign.”

After Ishraq first gave birth, they threw a baby shower. Ahmed joyously remembered their house to have been crowded with people dancing and laughing, celebrating their newborn. He only mentioned this baby shower after I had repeatedly inquired whether they had put any of the usual marital ceremonies in practice. In people’s own explanations, the ideal scenario to marry in Skhirat-Témara today involves a three-stage process. Families first settle on an engagement, at which point they recite the Qur’anic verse of the Fātiḥa together. Thereafter, the couple signs a legal contract to marry before state officials. Finally, their wedding is to be celebrated. Ahmed and Ishraq’s marriage, however, began without any ceremony: no engagement, no contract, no wedding. Yet, they succeeded in having family members and neighbours as well as state officials accept their conjugal bond. As a couple, they thus found a way to turn questions on how their marriage started, including their unmarried encounters, into a matter beside the point. Today, they are evidently married.

Ishraq and Ahmed’s marital story is easily set apart as an exceptional case throughout, starting with their out-of-wedlock pregnancy. Yet, as I will show, in terms of legalising their marriage, Ahmed and Ishraq’s trajectory does not stand out. At the time, in the early 1990s, many other Moroccan couples facing no such pregnancy out of wedlock followed the very same route to legalise their marriages together with their children.

In the majority Muslim state of Morocco, the standard legal contract also stands for valid Islamic conjugality. Over the past decades, family and penal code revisions, as well as invigorating the civil registry, have changed proceedings and possibilities for contracting a legal marriage. However, for people themselves, the legality of a marriage is neither the only nor necessarily the most relevant element to consider when creating marital ties. Still, a nonregistered or a ‘customary’ marriage need not stand in opposition to a legal marriage either. To the contrary, as I will demonstrate, legal and licit definitions (Van Schendel and Abraham 2005) intertwine in both the state’s lawmakers and people’s own deliberations over how to adequately create a marriage. In this paper, I show how couples and their families play into these ambiguities and thereby manage to constitute their own marriages as valid.

2 Moroccan family law at the time stipulated that a woman needed her guardian to marry. In the revision of the family code in 2004, the minimum legal age for marriage was raised to 18 for men and women alike. The requirement that women marry through a guardian was scrapped, except for minors. Since Ishraq was under 18, her father was to sign their legal marital contract both under previous and current state law.
During four months of fieldwork in 2010 and a full year between 2015 and 2016, I researched people's own take on creating family and marital ties in Skhirat-Témara. Situated between Morocco's cities of Rabat and Casablanca, Skhirat-Témara is one of the most rural regions in this rapidly urbanising area. I stayed here with families on farms, villages, and provincial towns inland. My ethnographic research in 2015–16 focused on how people deal with cross-sex, out-of-wedlock relationships within their own networks of families, friends, and neighbours. Intimacies outside of marriages are marked by people themselves as shameful and also sinful. Moreover, Morocco's penal code lists out-of-wedlock sex as a criminal offence. In this context, I inquired how men and women together keep their own as well as other couples' out-of-wedlock intimacies covert. I also researched how people create and work through scandals when relationships outside of marriage become all too public.

Hereto, I interviewed a broad range of people on their own relationships and marriages. In total, these include 100 interlocutors, many of whom I interviewed multiple times. Furthermore, I participated in small-talk and group discussions on marriage and relationships arising in our everyday interactions. Additionally, I interviewed over a dozen local professionals who through their work deal with relationships, such as notaries contracting legal marriages.

I often did not know beforehand whether people had any experience with out-of-wedlock intimacies themselves or, if so, whether they would be willing to discuss those with me. Regarding Ahmed and Ishraq, for example, I did not anticipate they would relate any relationship before their marriage. However, I was keen to learn about relationships created exclusively within marriage too. To comprehend how out-of-wedlock relationships work out, I also needed to understand how people constitute and value marriages.

In the first part of this paper, I will elucidate the increased importance people attach to legal recognition by state officials within their own marital definitions. Second, I will highlight how people take a multitude of elements into consideration to evaluate and contest the validity of couples' marriages. Recognition of a marriage does not come about in one uniform way only,

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3 Research for this project is funded by the ERC advanced grant on “Problematizing ‘Muslim Marriages’: Ambiguities and Contestations” (grant number: 2013-AdG-324180).
4 My fieldwork in 2010 focused on adoption and the intricacies of creating parent-child relationships, all of which were highly impacted by parents' marital status.
5 I interviewed 33 men and 67 women; their ages range from 18 to over 80, and their class positionings varying from high-income, university graduated, civil servants to low-income, non-literate, day labourers on farms.
6 For example, I interviewed Ahmed once and Ishraq twice, each separately, in addition to one interview with them both as a couple.
but hinges on multiple aspects which people variously take into account. As I will argue throughout this paper, these evaluations and contestations defy simple binaries of legal versus licit domains. Legal and licit understandings of marriage interlace in people’s own evaluations, but also in state officials’ approaches to define family ties.

In the final two sections, I will discuss the increased efforts of Morocco’s state lawmakers and executives to register and control family ties. Government campaigns in recent years explicitly aim to put an end to customary, or fātiḥa, marriages and instead directly register all conjugal bonds within altered legal frameworks. Still, state measures do not simply exclude couples who marry without a legal licence. To the contrary, several procedures have been built in which provide various Moroccan couples with opportunities to join the state’s marital fold. Yet, the increased emphasis on immediate legal registration, as forwarded by state officials and taken on by couples themselves, also reduces opportunities to leave marital definitions open-ended and fluid as suits families over time. As I will highlight, this has profoundly changed the possibilities men and women like Ahmed and Ishraq have to transition from out-of-wedlock relationships into conjugal bonds.

2 Legal Insertions: The Expansion of State Contracts as Essential to Marriage

In Ahmed and Ishraq’s family booklet, issued through the state’s civil registry, there is no difference in terms of legal registration between their first child, conceived out of wedlock, and the children subsequently born to them, when they already lived together as spouses. All of their children are equally tied to them within the legal recognition of their marriage. In this regard, their trajectory is no different from many other couples who only legally registered a marriage and children born long after these events took place.

The family booklet of Fatima and her late husband, for example, looks the same as Ahmed and Ishraq’s with regard to their marriage with children. When she married in the 1970s, Fatima too moved in with her husband without signing a legal contract between them. They did, however, celebrate an engagement and a wedding at each of their parental homes beforehand. In Fatima’s account, getting the legal paperwork in order almost two decades later was merely a bureaucratic nuisance. Like Ishraq, she explained her children needed

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7 For an analysis of this process from the perspective of Moroccan lawmakers, see Miyase Yavuz Altuntaş’ article in this issue.
their identity papers to continue in school. However, by the time Fatima’s granddaughter was getting married in the 2010s, getting the legal paperwork in order was an essential part of their marital process. In Fatima’s opinion as well, her granddaughter could not get married without first obtaining the legal contract. They even postponed her wedding night to wait for this paperwork to come through.

Fatima lived together with her husband for over 15 years without any legal document. Her granddaughter waited for the legal documents to move in with her husband. Moroccan couples in my research who married in Skhirat-Témara in the 2010s similarly insisted on signing a legal contract before living together. Some couples legally married shortly after their engagement. Thereafter, many still waited for months, up to over a year, to celebrate their wedding and move in together as spouses. Other couples had equally long engagements but signed the legal contract in the week leading up to their wedding. None of them presented the legal paperwork as something trivial to manage after moving in together, though. In interviews and general discussions on this topic during my fieldwork in 2015–16, people generally concurred that a marriage without a contract was no longer conceivable in this region. They relegated such marital practices to times long gone and to other, more remote Moroccan regions.

Asked how long ago people would have married without a signed contract in Skhirat-Témara, 48-year-old Naima replied that this might have still happened when her grandfather or his father married. This places marriages without contracts in the 1930s. However, Naima’s own father explained that he had not signed any paperwork at the time of his marriage in the 1960s. He and his wife legally registered their conjugal bond long after it took place. Moreover, in a follow-up interview with Naima herself, we went over her own marital contract, drawn up in the late 1980s. In this document, she is presented as never having been married before and so is her husband. “But wait,” I said. “Didn’t you say your husband was married before?” Naima shrugged her shoulders, saying: “Sure he was…. They did not do the contract, so, well, then his marriage before also will not be on here, now will it?”

I do not think Naima was ‘covering up’ a gap in her father’s or husband’s marriages during our earlier discussions. To her, it was common sense that legal documents do not necessarily reflect life events as they happen. People’s birth dates on their identity papers, for example, can be months or even years apart from when they were born. When a family registers multiple children at once, the year they were born is a civil servant’s guess (Fioole 2017, 13–14). In interviews, many men and women first said that they did put the legal paperwork in order at the time of their marriage. Only when we went over the specific timelines did it turn out that many couples had obtained their marital
contract much later. Herein, I think they inserted into their pasts what it takes to conclude a valid marriage today. This is not to make up for their marriages at the time lacking validity, but to the contrary to indicate that their marriages were sound all along.

People themselves ‘project’ contemporary definitions of licit marriage, which includes a legal contract, onto their past conjugal bonds. Current definitions of legal marriage as well are easily projected onto marriages created in past times. But back then, different laws applied. To marry without a state contract in twentieth-century Morocco was not at direct odds with family law (cf. Personal Status Code 1993). Former French colonial and Morocco’s state governments did not effect precise registration of all Moroccans’ births, marriages, and deaths (Guerin 2011, Maher 1974, 21). Conjugal ties which were presumably legal just were not legalised straight away.

Over the past decades, though, government officials have significantly spread out the significance of the civil registry for Moroccan citizens. The family code of 2004 does stipulate that the only proof of marriage is a legal contract (Art. 16). A child is legitimately tied to its parents when born at least six months after the date of their legal marriage (Art. 154). Moreover, families are now required to register their children’s birth within weeks. Various government campaigns have aimed to install such registration as essential in people’s minds. In 2018, such a campaign had the catchphrase “I am registered, therefore I am.” The video clip accompanying this play on Descartes’ philosophical proof of human existence explains that, without legal registration, children will have trouble accessing formal education and forgo job opportunities.

Indeed, in Skhirat-Témara many men and women who initially married without a legal contract explained to me that they had later registered their marriage, foremost for their children’s sake. The range and reach of institutions demanding legal documents for Moroccans to use their services has greatly increased over the past decades. To take part in the educational system, formal job market, and social security plans, legal registration of family ties has become an increasingly essential precondition.

To most men and women in rural Skhirat-Témara, identity documents do not necessarily reveal, let alone define, whole truths about a person’s life. To them, civil registration mostly has been a practical necessity to deal with bureaucratic institutions. To Ahmed, it did not matter from where the people acting as witnesses to his legal marriage came. The witnesses needed to confirm only the established reality of this marriage, so that government officials

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8 *Le Matin*, 15 June 2018: “Plus de 23,151 enfants enregistrés à l’état civil au terme de la première campagne d’inscription” (accessed 7 July 2018).
could sign off on its legal recognition. However, for couples getting married in Skhirat-Témara today, to appear before the state’s notaries and sign the legal contract is no longer a trivial matter. To draw up the legal contract now entails more than merely registering the conjugality that people have already themselves established. Instead, the state’s legal contract has become an essential aspect for constituting their marriage.

3 Licit Contestations: Multiple Elements to Value in Establishing Conjugality

Couples who marry in Skhirat-Témara today generally do value the legal contract as an essential part to create their conjugal bond. Yet, this does not mean that every couple living as spouses in this region have legalised their marriage. As Ahmed’s inquiry elucidated, others assume people to be married because they know them as spouses. When a couple moves in together, especially after an engagement and wedding, few people would contest they are indeed married. However, marital claims may fall apart later on, particularly in times of crisis. After a death or in the middle of divorce, legal proof of marriage can suddenly become essential in asserting one’s rights.

During my fieldwork, two cases in which a couple turned out not to have a legal marital contract were evaluated very differently by the same neighbours reviewing events. In the first case, when an older woman’s husband died, she was cut out of his inheritance by the children of his first wife. They claimed she had been no more than a maid in their household. Because she had no marital contract to prove her claim, she was left destitute. In the second case, a couple in their forties tried to divorce while fighting over their ownership of a hair salon. As word spread, they apparently had no marital contract between them and could not simply settle their case in court.

A group of women I often spent time with discussed each of these cases separately. One of them, middle-aged homemaker Zohra, referred to the older woman as her close friend and neighbour. Zohra said this older woman had been “married, but just did not do the paperwork.” In contrast, discussing the divorcing couple, whom she did not know personally, Zohra named their bond “an empty marriage, without a contract!” I suggested both marriages were similar in just lacking a legal contract. “No, no, you are wrong! Do not say that!” Zohra fervently opposed. “My friend is married, she always worked in their household and took care of his children, his children. And now her husband died and they are kicking her out!” She continued: “Thát woman wants a divorce…. She wants to run the salon. Now it turns out she does not even have
a marital contract!” Zohra didn’t weigh how these couples initially got married. She valued the marital roles the women played, how their marriages ended, and, I think, her personal connection to each of them. The older woman was her friend, was widowed, and had taken up the role of a wife caring for the conjugal home. The other woman, Zohra did not know personally, was after a divorce, worked in a hair salon, and now wanted to own this business.

When a couple and their families celebrate an engagement, legal contract, and wedding, others will have little ground to dispute that the newlyweds are married. Each of these three events contains ceremonial moments in which people emphatically create a couple’s marital tie together. Starting a marriage within these ceremonies happens, for example, through certain speech acts. John Austin (1962) uses the example of uttering words to incite a couple’s marital union as a common sense demonstration of speech in action. At the engagement, Moroccan families pronounce the Fātiḥa together. Signing the legal contract, state notaries record the couple’s explicit mutual agreement (in ējāb and qabūl) to marry them. During the wedding, sequences of formulaic songs forward the bride and groom’s marriage.

Yet, others also extend evaluations of marriage into what happens long after these ceremonies. The reality of a marriage is also established by what it became. The length of a marriage, for example, matters. In case a woman divorces right after getting married, as many interlocutors in my research explained, a common comment would be that “she did not stay (mā-gelsāt-sh).” This, they concurred, amounts to never having been quite married at all. A marriage should last at least a couple of years.9

Another factor cementing Moroccan marriages is the birth of children. Having children is an explicit legal and popular goal of marriage. Yet, conversely, having children is also a factor in sealing a marital tie that others might question. For example, 25-year-old Mejda and her husband did not have children for many years into their marriage. At that point, so she recounted, her husband’s mother pressed them to divorce. Mejda says that her mother-in-law had never really embraced their match and that their childlessness gave her leverage to get rid of her daughter-in-law. Discussing their troubles outside of Mejda’s presence, her aunt mischievously laughed and stated: “Well, there you have it. She had to go and marry herself, and now she’ll have to beg her father to take her in. See? ... What kind of marriage is this?”

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9 The validity of establishing the length of a marriage, as temporary, beforehand is one point of contention between Sunni and Shi’i schools of Islamic law.
Mejda’s father had not approved of her spouse. She used the possibility to ‘marry herself’ first offered by the family code of 2004, which did away with the requirement that an adult woman’s guardian needs to sign off on a legal marriage. Mejda signed the legal contract and moved in with her husband, without their families’ outright approval. The increasing importance attached to legal recognition notwithstanding, merely having a marital contract does not make for general validation of conjugality per se either. Their families continued to question their conjugal status, with Mejda’s aunt and father continuously referring to her husband as ‘that man of hers.’ However, this changed when she finally gave birth. With them staying together and raising their child, over the years the comments marking their marriage as questionable faded. Her relatives finally gave in and called the man she had married “her husband.”

At first, I discounted Ahmed and Ishraq’s baby shower as a possible part of marital proceedings. However, a group discussion with others on the topic of weddings threw that assumption into question: “Many people can’t hold a wedding at first,” one of the middle-aged women brought to the fore, while the others nodded approvingly. “They do not have enough money or something, then they do it some years later anyway. They may have a grand party, a wedding, when their first child is born.” Ahmed and Ishraq did not refer to their baby shower as a wedding. It had been a marvellous party. Still, for family and neighbours to come over and dance and clap at Ahmed and his mother’s home in celebration of this child, conceived out of wedlock, highlights recognition of their newly constituted family unit. In general, for a couple to have a child born cements the persuasive permanence of their marriage. Yet, Ahmed and Ishraq’s case shows that celebrating the birth of their child can work the other way around as well. Rather than cementing a marriage already acknowledged, it will have generated acknowledgement not yet otherwise established.

One mode to get married this presents, is to act married. Orchestrating events in which ritual formalities, such as speech acts, propel two persons into marriage are common fare in Morocco as well. Yet, such ceremonies are not indispensable for a couple to create their marriage. Persistently acting married in everyday life can eventually hail the same result. Not everybody may be on board. Ishraq’s family did not attend their baby shower, and she never reconciled with her father. Still, over time their neighbours and other relatives, as well as state officials, have recognised their marriage. Acting married here turns into a recognition of the status quo.

I recorded several other cases in which couples said there had been no engagement, contract signing, party, or wedding prior to their moving in together. These couples, as far as they told me, did not deal with a premarital
pregnancy. Just as Ahmed and Ishraq, though, in these cases the couples moved in with the man’s family. This implicit approval of the man’s family members does grant their tie a certain marital recognition. Others may certainly discredit such a move; however, to have some family support already greatly improves a claim to marriage, even if no other ceremonial gestures are made.

Comparing Iranian and Moroccan marital proceedings in the 1970s, Ziba Mir-Hosseini stresses the significance of the wedding as an element of publicity to complete a marriage in Morocco (1993, 173). Couples in my research were not considered married before their wedding night either, but only if families already intended to throw a wedding. However, not all married couples celebrated a wedding, some deciding it too much of an expenditure. Moreover, with regards to second marriages or older women marrying, most people in my research considered organising a wedding ridiculous. In these cases, families establish recognition of their relatives’ marriage in other ways, for example through visiting them when they move in together as spouses.

All the interlocutors in my study self-identified as Muslim. When asked why people marry, most would bring in religion as explanation. Mejda explained that “marriage is the way given to us by God to live together.” Conversely, people marked relationships outside of marriage as straight-out sinful. The engagement, contract, and wedding ceremonies do create and reference a marriage’s Islamic validity, for example through the speech acts discussed. Still, in evaluating the validity of any marriage, religious considerations remain implicit. “A woman cannot marry two men,” Al-Mati, a farmer in his late sixties, elucidated Islamic conditions. “But you are not going to say: ‘She married two ...’, no, she only married the first.” For people to use the term marriage regarding an actual couple implies that their relationship is religiously sound enough. If it is not, then the term marriage does not apply.

A marital tie built through engagement, contract, and wedding starts off in solidly established conjugality. Completing these stages projects a couple’s valid conjugal life into their future. Yet, couples can do without any one or even all of these stages and still turn out married. Other elements can make for evident marriages. Family members’ support, living and staying together as spouses, the way partners take up their conjugal roles, as well as having and raising children together over time all work towards defining unions as actual marriages. In fact, as I will discuss in the next section, these elements also work towards establishing the legality of conjugal ties in hindsight. Moroccan state lawmakers and executives, too, take into account families’ viewpoints, conjugal life, and the birth of children in order to legally evidence couples’ marriages anyway.
Terms of Engagement: A Legal Place for Fāṭiḥa Marriages and Relationships

In various government and NGO campaigns, the aim to register the marriages of all Moroccans is explicitly forwarded. Herein, Fāṭiḥa marriages are highlighted as problematic for their lack of legal registration. Without legalisation, families can circumvent state law requirements, such as the minimum marital age. Interlocutors in my research also defined Fāṭiḥa marriages to indicate marriages without a legal contract. But they were not clear on what couples then actually do to marry. Some conjectured that since the Fāṭiḥa is pronounced at the engagement, a Fāṭiḥa marriage might refer to just that. Others claimed a Fāṭiḥa marriage must envelop both engagement and wedding. Nevertheless, people also placed marriages without engagement or wedding, like Ahmed and Ishraq’s bond, within this category. Still, couples in Skhirat-Témara who married without a legal contract certainly did not refer to their own bonds as Fāṭiḥa marriages. Moroccan family law for that matter also does not use further adjectives for marriages which are not legalised yet. Its articles do not speak of ‘Fāṭiḥa marriage’ or ‘customary marriage,’ but simply refer to “the conjugal tie” (Art. 16).

During our interview, 26-year-old Rashid eventually did say he had been in a Fāṭiḥa marriage himself, with his Italian girlfriend. To live together in Morocco, they married by Fāṭiḥa (“tzwwjna b-lFāṭiḥa”). Members of her family joined for the engagement, at which they recited the Fāṭiḥa and enjoyed a festive dinner. Thereafter, they had a party (ḥafla) and moved in together. Rashid specified they did not celebrate a wedding (ʿars), although he also granted that the pictures of their party look exactly like wedding celebrations. When their marriage fell apart, his ex moved back to Italy together with their child. Rashid thereafter dated for a while and then proposed to one of his Moroccan girlfriends. Members of his and her family negotiated their engagement, which also included reciting the Fāṭiḥa. They then first celebrated with close kin over a festive dinner. Thereafter, they organised a lavish engagement party, which, again, on tape does come across like a wedding.

Rashid agreed that the ceremonial acts constituting his Fāṭiḥa marriage, and later on his engagement, were identical. In both cases, an engagement with the recitation of the Fāṭiḥa between two families was followed by a festive dinner.

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10 Aujourd’hui le Maroc, 20 January 2018: “Mariage des mineures : Pourquoi le phénomène persiste” (accessed 4 February 2018); Telquel, 26 December 2015 : “La première Chambre adopte la loi sur la reconnaissance des mariages par fatiha” (accessed 22 March 2019).
and a splendid party. But to him, his girlfriends, and their families, these same events made for a marriage in one case and for no more than an engagement in the other.

Just as people in my research themselves had no clear definitions for *fātiḥa* marriages, this term also remains ambiguous in media accounts and studies. Whether a *fātiḥa* marriage is equal to an engagement, an engagement plus a wedding, or to customary marriages defined by whatever proceedings families agree to, remains hazy ground. Yet, this indistinctness also leaves families room to manoeuvre and sanction bonds in which conjugality once was debatable. This, not only in licit, but also in legal terms. In fact, the family resemblance between engagement and marriage has long been a topic of debate among Islamic scholars and state lawmakers in Morocco.

When wars ravaged Moroccan regions around 1600, the question arose of whether children born to the fiancées of fallen soldiers could be legitimately tied to them. Legal scholars argued that the engagement sufficed to pragmatically treat these couples as married. The elements they took into account match factors people in Skhirat-Témara value in marital claims. In their deliberations, these Islamic scholars highlighted that these engagements encompassed the expression of mutual agreement to marry, both families’ awareness, and setting up a conjugal home. In their view, the practical reality of concluding these engagements was so much alike to marriage that it outweighed the hypothetical requirements for contracting conjugality. Therefore, a child born within such a Moroccan engagement could be legally tied to the engaged couple as its parents (Sa’dūn 2012, 13–14).

This is also exactly what Morocco’s revised family code of 2004 allows for. In Articles 152, 155, and 156, Moroccan lawmakers have extended the Islamic legal concept of *shubha* (‘resemblance’) to a couple’s engagement period. *Shubha* exonerates someone who breaks the law unintentionally, because the act concerned was mistakenly considered legal (Kreutzberger 2008). Compared to the state’s previous personal status code, as well as to other Islamic schools of law, granting the engagement stands for marriage in terms of *shubha* is a rather peculiar point. However, within Moroccan, Maliki legal trajectories, these are no novel reflections, as the fatwas from the 1600s demonstrate.

Still, this extension of *shubha* to a couple’s engagement is and has been contested by Moroccan legal scholars as well. They straightforwardly argue that whatever resemblance there may be between engagement and marriage, the difference is still obvious. An engagement is “a promise to marriage, not a marriage” (in Sa’dūn 2012, 18). Men and women in Skhirat-Témara today agree. They unanimously concluded the *shubha* argument to be ridiculous. “How?
How do people not know whether they are engaged or married,” 28-year-old Khadija opened her rebuttal. “That is crazy! ... People themselves will know whether they are married, let me assure you.”

However, those drafting the 2004 family code actually have carefully stipulated as well that the engagement is not a marriage, but “a mutual promise towards marriage” (Art. 5). If anything, the family code’s provisions on the engagement comprise an exhortation in clarifying that an engaged couple is not married. The law specifies that an engagement can simply be broken off (Art. 6). Furthermore, ex-fiancées generally are not entitled to damages, and must return presents and dowry payments made (Arts. 7–9). This is in complete contrast to ending a marriage, which requires grounds for divorce, settlement of alimony payments, and a completion (not a return) of the bestowed dowry.

Moreover, neither does the 2004 family code’s extension of shubha result in recognition of a marital tie between an engaged couple. The provisions which make an engagement legally stand for a marriage belong to the law’s section on establishing paternity. A shubha claim regarding an engagement does not create a conjugal bond between two partners as spouses, but a bond of paternity between a man as legal father and a child born to his fiancée.

To establish such paternity based on a couple’s engagement, the family law actually sets a higher bar of proof for the existence of an engagement than stipulated in its legal chapter on the engagement itself. To legally tie a child to an engaged couple, Article 156 demands that both families knew of this engagement. The chapter on engagement features no such requirement. In this regard, the family law actually sets higher requirements on a couple’s engagement within a paternity claim than it does for a couple to legally marry. There is no explicit requirement that their families knew for couples to sign the legal contract of marriage.

Legally tying a child to fiancées is actually most pressing when the couple in question is not going to stay together in marriage. The 1600s fatwas concerned the children of women whose fiancés had died in war. The problem here was that these fathers were not coming back to be husbands. The 2004 innovation of claiming paternity through shubha as well especially concerns mothers without spouses. ‘Single mothers’ (mères célibataires) raise a child born to them out of wedlock. In these cases, the absence of a legal father on identity documents highlights the child’s illegitimate status. Moroccan NGOs have long fought to fill in this blank on children’s legal papers and induce birthfathers to acknowledge their child. Establishing paternity through shubha provides single mothers a new avenue to do so (Kreutzberger 2008). Though they have
since split up, they can place their child’s conception within the context of an engagement to the birthfather. Hence the higher bar of evidence to proof that such an engagement actually existed.

However, for couples who intend to stay together, there are much more straightforward ways to deal with an out-of-wedlock pregnancy. They might as well get married. Then, their child conceived out of wedlock is born within marriage. To legalise their marriage, couples dealing with a premarital pregnancy have the same options as others. They can marry through a party, wedding, or just by moving in together, and count on family members’ approval. In that scenario, they can legalise this conjugal bond by filing for a retroactive recognition thereof. Another option is to immediately conclude the legal marriage. In Skhirat-Témara, I indeed listed several cases in which couples did just that. Faced with a premarital pregnancy while they were dating, or engaged, or claiming to be already engaged, their solution was to marry. Of course, other people do notice for a birth to follow a marriage rather quickly. Still, staying together as spouses and raising their child does work towards exonerating them just the same.

As long as couples and their families agree on contracting a marriage, state laws and its officials in these cases generally allow for obtaining legal recognition. Moroccan officials have provided couples various ways to join the state’s marital fold. The 2004 family code installed a transition period of five years for couples who had not yet done so to legalise their marriages (Art. 16). After two subsequent extensions, 15 years later couples can still retroactively legalise their marriages. Article 16 explicitly stipulates that “the presence of children or of a pregnancy stemming from a conjugal relation” is a point of consideration for issuing a recognition of marriage act. Just as in *shubha* claims towards paternity, placing children within legitimate family ties is of vital concern to Moroccan lawmakers.

Moroccan NGO activists fought against the extension of retroactive legalisation of marriages. They argued that families thus evade legal requirements, such as the minimum marital age.11 The minimum legal age was raised from 16 to 18 in the 2004 family code (Art. 19). Yet, the legal contract for minors can also be obtained by having their marriage recognised later on, a possibility kept open by twice extending the five-year period for legalising marriages retroactively. Nonetheless, the family law already allows judges discretion to marry minors directly (Art. 20), without this retroactive detour. In practice, they do approve the majority of legal requests to have minors marry. Herein, judges

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11 *Aujourd’hui le Maroc*, 21 January 2015: “Délai de validation de l’acte de mariage: La société civile hausse le ton” (accessed 06 August 2015).
In Morocco’s penal code, sexual relations outside of marriage are punishable by up to a year of imprisonment (Art. 490). In this regard, it may seem peculiar that couples expecting a child before signing a marital contract do not face such penalties but instead quite seamlessly legalise their bond. With a child on the way, they clearly had sex without being legally married. However, in general, Moroccan state officials do not actively prosecute those who overstep the penal code’s prohibition on out-of-wedlock sexual relations. Concerning extramarital relations, the penal code actually specifies that prosecution will occur only on the offended spouse’s initiative (Art. 491). Moreover, former minister of justice Mustapha Ramid, who oversaw the latest penal code revision in 2015, explicitly stated that the government is not about to check up on couples living together. Only in case of a complaint, might the police step in.12 Criminal charges relating to out-of-wedlock relationships seem to be forwarded when other issues are also at play, such as when political activists are pursued.

The will towards legalising family ties, rather than criminalising relations, is also apparent in Moroccan family judges’ expressed views on paternity claims. When a single woman wanted to legitimate her child’s birth status, family judges in Nadia Sonneveld’s study preferred for the mother not to explicitly disclose her out-of-wedlock relations. They rather ‘closed their eyes’ and provided the child with the best legal position still possible. Moreover, they did not at all refer to the penal code to apply here (Sonneveld 2017).

In Skhirat-Témara as well, government officials I interviewed did not consider it their responsibility to pursue people who might be sexually intimate outside of marriage. People also did not call for such government involvement. Families thought it perfectly sensible for the police to step in only if they filed a complaint. In the 2000s, Rabia and her family tried to arrange a marriage to her boyfriend after finding out she was pregnant. When the marital negotiations fell through, they filed charges against the young man, who indeed was sentenced to prison. Calling in the police in these and other cases was a recourse after families themselves had ruled out other solutions, such as marriage.

In Ahmed and Ishraq’s case, his mother worried her son might be taken to jail. At the time, though, the since abrogated article of the penal code allowing a man to avoid prosecution by marrying the woman he had sexual relations with still applied (Bakass, Ferrand, and Depledge 2013, 46, Kreutzberger 2008, 2013).
Unlike Rabia’s boyfriend, Ahmed did want to marry his girlfriend, and they were already living together as spouses. Criminal charges against Ahmed therefore might not have stuck. The general impetus in Moroccan law, and its practical uptake today as well, is to favour turning relationships into marital agreements rather than pursuing criminal charges against those in out-of-wedlock relationships.

This is not to say that out-of-wedlock sexual relations are not problematic in Morocco and will simply be covered up in any case. To the contrary, the reality of single mothers and children born out of wedlock facing huge stigma (Ech-Chenna 1996, Naamane-Guessous and Guessous 2011), rallies family members as well as state officials to prevent a specific relative or citizen from ending up in that situation. Not everyone will go to the same lengths or will be ready to overlook any indiscretion. In the cases I researched, though, many people did stick with certain others whose sexual relationships did not exactly take place within a marriage. Besides working towards marriages, family, friends, and neighbours for example also created intricate adoption schemes to secretly place an illegitimate child within a legitimate family (Bargach 2002, Fioole 2015).

Moroccan state lawmakers and its executives have provided men and women with various avenues through which their out-of-wedlock sexual relationships do not need to become or remain most problematic. The way that both the penal code and the family code are brought to bear on out-of-wedlock relationships offers plenty of leeway for these intimacies to exist. Mostly, couples in out-of-wedlock relationships are not actively prosecuted. Moreover, the family code’s provisions and the application thereof grant these couples several ways of marrying legally anyway, and for their children to gain a legal birth status.

5 Joined Together as Citizens: A State’s Grasp on Defining Marriage

National and international activists put a great deal of effort into making Morocco’s 2004 family code revision happen to safeguard human, and especially women’s, rights (Sadiqi 2008, Weingartner 2004). Still, demanding state officials step in and regulate family ties also provides the state with a mandate to further its grip on people as citizens (Hasso 2011, 171–72). The increasing sway of the civil registry in recording citizens’ life events therefore needs to be analysed, not just in terms of human rights’ advances and setbacks, but also in terms of an increasing power on the part of state institutions to define, regulate, and control people’s intimate ties. When individual persons
and their bodies are continuously identifiable as one and the same across settings, the possibilities people have to reinvent themselves over time diminish (Goffman 1981).

First, when most marriages are legally registered immediately, it will be more difficult for people to claim they have never been married before or that they are actually divorced. For women in Skhirat-Témara who have been in an out-of-wedlock relationship before their first marriage, stating to be divorcées is a way to create chances towards future marriages. If they can place their sexual debut within a marriage that simply was not registered, then they do not need to cover for a ‘lack of virginity’ when marrying again. But if people are to generally believe that the civil registry is up to date, then forwarding a divorce which does not show up on paper will become an empty claim.

Furthermore, Moroccan activists took up the cause of single mothers and fought for children born out of wedlock to get legal identity papers. Yet, single mothers arose as a category of women in need also through the civil registry’s increasing hold over people lives. The rise of activism on behalf of single mothers in Morocco coincides with the rise of the civil registry’s expansion, both taking off in the 1970s. When nobody carries around identity cards, the absence of a father’s name thereon does not feature either.

Third, it will be more difficult for couples to fit the birth of their child within a legal marriage, when civil servants pin down birth dates immediately. The family code’s stipulation that at least six months pass between the legal marriage and a child’s birth, will be more difficult to circumvent. Then, claiming paternity through established engagements may become more important for couples who married anyway as well.

Moreover, over the course of a few decades, for people to sign the legal contract when marrying in Skhirat-Témara has transformed from being a mere administrative gesture into an essential element in concluding a marriage. To immediately pin down the legality of a relationship leaves less room for people themselves to define marriages according to how bonds turn out. The family code’s strict phrasings specifying that an engagement between a couple is not a marriage adds to this general movement towards diminishing room for ambiguity in defining relationship statuses.

I want to emphasise that the increasing hold of state institutions over people’s lives is neither intrinsically bad nor good. Yet, the connections recognised between persons also impact their life chances, in Moroccan bureaucracies as well. Knowledge of and control over family ties gives state officials leeway to extend and deny people access to formal education, health insurance, pension payments, and visa stamps, as well as tax avoidance. In order to understand how Morocco is transforming in various directions, it is vital to recognise that
state knowledge of who its citizens are to each other does turn into control over who they can be.

6 Conclusion

To grasp formations of conjugal bonds, it will not do to start with state law and pit this against customary law. Marriage in Morocco is not merely a matter of legal versus licit claims. On the one hand, a marriage indeed can very well be licit without state bureaucrats’ knowledge or acknowledgement of its legality. Conversely, just having a legal marriage certificate does not automatically mean a couple can licitly live together among their families, friends, and neighbours. A separation of legal and licit claims does occur in people’s own definitions, as well as in state regulations, which already grants the analytic use of these concepts some weight.

However, sticking with this binary can obscure that ‘customary marriages’ are not one singular category of conjugal bonds, all licit without further a due. As I have demonstrated through the ethnographic cases presented, there are multiple elements which various people weigh differently when valuing a certain relationship. This makes for ambiguity in recognising relationships as definite marriages. Couples and their families use this leeway to forward their own definition of the ties between them. How a couple acts together as spouses over time goes into other people’s recognition of their marriage. Setting up a lasting conjugal home, raising children together, the endorsement of some family members at least, as well as celebrating their union somehow, all go towards legitimising a marriage as it comes into being, even within others’ contestations.

Moroccan Islamic scholars took into account these same elements when granting couples’ engagements the status of marriage with regards to their children. Similarly, Moroccan state law today overall opens up ways to incorporate couples’ relationships into the legal regime. Couples and their families play into this legal room on offer. Moreover, state lawmakers and executives incorporate the way families in Morocco themselves define the ties between them. Both the family and the penal code work out not merely in prescriptive but also in descriptive fashion according to what people themselves make of a situation. Marriages which have lasted between people over time can be retroactively legalised. Out-of-wedlock sex remains a criminal offence but is generally not to be prosecuted unless people themselves call on the police to act.

At the same time, legal descriptions also go towards regulating and stipulating what marriage is to be. The family code’s minute description of the
engagement as a customary stage preceding marriage highlights the viewpoint that an engaged couple is definitely not married yet. Moreover, legal recognition of marriage on paper has gained significance to people creating conjugal bonds in the region of Skhirat-Témara. They need the civil registry’s documents to participate in Moroccan institutions for education, health care, migration, and employment. Yet, legal registration has also become an essential element for people themselves to create marriages. As signing a legal contract becomes more than a mere formality, state regulations gain defining power. The ambiguities people play on to transition from out-of-wedlock relationships into marriages then no longer hold equal sway.

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