

AMERICAN UNIVERSITY OF BEIRUT

THE CIVIL MARRIAGE DEBATE IN LEBANON: POWER
POLITICS AND COMMUNICATIVE RATIONALITY

by

AZZAM TOMEH

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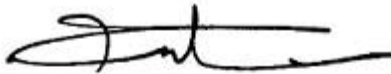
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AN ABSTRACT OF THE THESIS OF

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Beginning of 2019, the civil marriage debate emerged in Lebanon through a media statement by Minister of Interior Rayya al-Hassan. This thesis looks into the civil marriage debate that occurred then, analyzing the argumentation and the political power-play surrounding the issue. I took 300 randomly sampled arguments for and against civil marriage from various media sources and analyzed them using the Lebanese socio-political reality within the framework of the Habermasian public sphere. Patterns of conspiratorial thinking and doubt of CSOs emerged, with interpretations of religion being at the center of the debate, and little arguments for hardline secularization. Power-politics dominated over the healthy debate and led to its eventual elimination, with no institutional follow-up on the public demand. The debate highlights serious risks to Lebanese democracy such as the erosion of institutions and of public inter-communal trust.

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CHAPTER I

INTRODUCTION

The role of religion in the public sphere, especially in a de-secularized setting, is a highly controversial topic, especially with binaries of ‘the religious’ and ‘the secular’ being enforced and made synonymous with being ‘backwards’ and ‘progressive’. This binary has echoed itself across the Arab world across the past decades, with the secular elite attempting to suppress the religious as being a primary cause for the backwardness of their countries, and the religious elite seeing secular actors as being drivers of godlessness or/and immorality. While those binaries have shaped the social science and humanities research as well the media in Arab countries to a great extent, they are not strictly exclusive.

It has been stated that citizens are rational actors in the public sphere, who attempt to formulate their thought in an understandable manner to those who share the public sphere with them, and this means that a common language has to evolve. In a previous research I conducted with Dr. Sari Hanafi, we explored how Tunisian actors who might identify as religious and secular tend to formulate their arguments in a shared manner, offering sociological, legal, and religious support for their points. The specific debate of equal inheritance was examined, and results demonstrated the absence of a thought-binary were concluded.

In March 2019, Lebanon faced the resurgence of an almost century-old debate of legalizing civil marriage in the civil courts of Lebanon, and different actors in the political and social spheres emerged and posited their arguments. In addition, a power-grappling push-and-pull emerged between Dar El Fatwa, the Minister of Interior, and several other political and civil actors, which demonstrated a layer of interest-based political mediation, rather than a purely

argumentative aspect. The thesis will attempt to outline how this debate is unfolding in the Lebanese public sphere, on the level of argumentation and power-interplay, to identify the nature of the Lebanese public sphere, and what insights could be extracted from a sectarian heterogeneous society such as Lebanon, compared to the more homogenous society of Tunisia.

The research questions posited in this debate are:

- 1- How are actors in the Lebanese public sphere arguing for their positions regarding civil marriage?
- 2- How is the Lebanese public sphere shaped?
- 3- What is the relation between the public sphere and the political elite in Lebanon?

For the purpose of inquiring on these questions, I gathered 300 arguments for and against civil marriage from 44 various media sources and examined how the debate developed and seemingly ended by March 2019. The thesis will begin with an examination of the Lebanese political system, the positioning of sects and court regulations within that system, and how gender is formed within Lebanon in specific and Arab world in general. Then I will examine the theories surrounding the public sphere, specifically Jurgen Habermas and his interlocutors, and then examine the role of religion in the public sphere according to Habermas, Maeve Cooke, and Charles Taylor; followed by examining legislative procedures according to Ronald Dworkin. Then, I will discuss the religious, sociological, and legal arguments for and against civil marriage, and compare the debate in Lebanon to that over gender-equal inheritance in Tunisia.

CHAPTER II

LITERATURE REVIEW

In this chapter, I will take an overview of the Lebanese political and court system, the construction of gender within that system, the positioning of the media, and the debate over the public sphere and legislation. The overview of the Lebanese System aims at understanding the confessional context in which the debate over civil marriage will take place, and which will formatively and dialectically reproduce the debate and arguments used. An examination of the legislation in the Lebanese religious courts is necessary, both to understand the arguments for civil marriage, and the points of conflict which are defended by the advocates of religious marriage. Those marital regulations will hence be examined more closely, with the legislation of the main courts dissected and analysed. These regulations directly relate to the condition of gender rights in Lebanon, as to examine whether what is considered as the backwards situation of courts reflects the whole of the Lebanese system, or is an anomaly within a more progressive system. Then, the thesis will look into the history of the civil marriage debate, as to be able to extract patterns in the debate, and whether the recurring cycle of the debate is moving the case of civil marriage forward or not. This will lead to an explanation of the main activists in the context of the civil marriage debate, civil society organizations; hence, the Lebanese civic space, specifically as it relates to service-providing and advocacy organizations will be examined. In addition, the main medium of the societal debate, the media, will be analysed in light of legal, economic, and political relations in the country, while shedding light on the historical deterioration of the civic space over time. Finally, the larger Arab context will be looked into, examining how other countries

have changed or maintained their marital legislation in accordance with changing socio-economic and gendered realities.

A. Lebanese System

This section will attempt to delineate the nature of the Lebanese political system, as it directly relates to the production of the individual, and the reasoning of that individual with the political realities which will be central for the debate over civil marriage. Lebanon, being a consociational confessional system, is highly rooted in the intermingling of confessional belonging with the power-sharing formula forming everyday politics. While this power-sharing formula has been subject to critique as being both unstable and unsustainable, (Nelson, 2013) it is up till now dependent on the primacy of the confession (*ta'ifa*) as the central point of identity. Lebanon hence falls under what Arend Lijphart would term “consociational democracy”, a system which he views as a necessary arrangement for plural societies, defined by “a government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy”. (Lijphart, 1969, p. 216) Such a system is defined by: (1) proportional inclusion, where every group is proportionally represented in the government; (2) mutual vetoes, where major political decisions require a near consensus from political actors; and (3) segmental autonomy, where each community runs its own affairs on its own.

However, Lebanon’s consociationalism has developed into what Lijphart would call “corporate consociationalism”, in which power-positions are pre-determined by ethnic and sectarian lines all across the government’s institutions. (Hanf, 1981; Lijphart, 1995) In such a system, efforts are not made to create a unified national identity and hence transcend ethnic and sectarian lines; on the contrary, those lines are enforced by the system itself. Horowitz (2008, p. 1216) points out that such a model never leads to the transcending of the ethnic conflict, as it is not on its agenda. In addition, it assumes that a powerful political majority

will be willing to give in some of its power for the frustrating bureaucracy of consociationalism. Another problem is that proportional representation in a consociational democracy has a polarizing effect, as it creates an ever-growing rift between already polarized voting blocs. This creates the grounds for permanent domestic struggle, especially in a turbulent region like the one surrounding Lebanon.

However, Lijphart's theory has been criticized by Azmi Bechara (2018) as not fully accounting for the nature of Lebanon. To begin with, Bechara does not see Lebanon as being a democracy. For Bechara, the consociational nature of the Lebanese system has led it to devolve into a form of consensual power-sharing by the elites, in which citizens are not treated based on the value of citizenry, but based on them belonging to sects. In addition, the pre-determined division of the president and members of parliament, not based on election, nor on proportional representation, means that the sectarian division of the parliament is not designed in a representative manner. The system also has sects which have their own schools, courts, and institutions. In this context, Bechara quotes Suleiman Taqi al-Din in stating that "confessionalism is not a husk over the national structure limited to political representation, but it is a comprehensive system consolidating underlying social relations as well, in that it organizes a hierarchy of links from top to bottom that citizens confront in their daily lives." Hence, Bechara states that Lijphart's theory is problematic in that it does not sufficiently distinguish between consociationalism and consociational democracy. Bechara (2019) has also stated that Lijphart's theory is not a theory, but a model, which he constantly updates whenever a new occurrence reveals new dynamics in Lebanon; and therefore dismisses the description of Lebanon as a consociational democracy.

Barakat (1973) states that the problems with Lebanon are further exacerbated by several other variables which include: (1) lack of consensus on fundamentals, (2) absence of open dialogue, (3) lack of loyalty to the country, (4) geographical representation of the different

religious communities¹, (5) a strong link between religion and the state, (6) conflicting reference groups, and (7) an educational system that reinforces the stratified social mosaic. For Salamey (2009), Lebanon cannot resolve its sectarian conundrum without resorting to integrative consociationalism, which comes as a result of bicameralism, a duality of administrative and local national governance, mixed electoral system, and cross-cutting electoral districting. The first two were already stated in the 1989 Ta'if Agreement but were never implemented. Haddad (2009) adds that if no structural reforms are made, all resolution attempts for political turbulence in Lebanon are bound to remain short termed. Pacts are not effective in mediating disputes and decreasing tensions in a pluralistic multicommunal society.

However, Lebanon is further complicated by its non-state power-sharing formula. Not all parties seek power solely through elections. The power of political actors also stems from their ability to mobilize non-electoral tools in their politics, which can vary from civil protests and demonstrations to military warfare. However, those modes of operation vary between political parties. Some solely focus on the electoral process, others do more grassroots based initiatives, and for others, militia competition is paramount. (Cammett & Issar, 2010) This means that the decision-making process in Lebanon is on many occasions made outside of the government. One needs only look at some of the most powerful political actors in Lebanon, like Walid Joumblatt and Hassan Nasrallah, who are not members of the parliament, but control much of the political reality of the country. Most recently, Hezbollah decided to make one of its members, MP Nawwaf al-Mousawi, resign from the Lebanese

¹ These lines of division are echoed spatially across Lebanon; with the northern part of Mount Lebanon being predominantly Christian, the southern part being predominantly Druze, Southern Lebanon predominantly Shi'a, and the major cities (except for Zahle) as well as Northern Lebanon being predominantly Sunni. With the internal migration of many Shi'a families to Beirut from Southern Lebanon, especially in light of the rise of Hezbollah, tensions arose between Sunnis and Shi'as. Along with varying political tensions, the Shi'a aligning themselves with Syria and Iran, and the Sunnis with Saudi Arabia and the United States, the Sunni/Shia rift came to replace the Muslim/Christian rift which defined Lebanon for two thirds of its existence.

parliament due to disobeying the party's guidelines. (The Daily Star, 2019) This demonstrates how party leaders, though not officially involved in the parliament, actually control parliament members. Nonelectoral non-state action is largely under-emphasized in studies of consociational democracies and clientelism. Parties also utilize services such as medical centers and personal favors in their quest for more power and control; however, this mode of operation has been shown to increase reliance on political parties as an alternative to the state as a service provider, hence leading to an increase in polarization. (Wickham, 2004)

Civil society organizations (hereafter: CSOs), which tend to be cross-sectarian, arose in this context as an attempt to counterbalance the monopoly on power which political sectarian elites have. The rise of civil society was witnessed in the aftermath of the Hariri assassination, after which a weakening government had to be supported by a strong civil society. However, political elites still tried to influence and even to co-opt civil society and CSOs, undermining their capability from orchestrating meaningful change, but allowing them to cover for the dereliction of the state. Yet CSOs are still playing a role in changing the political consciousness of the country, even though in very slow and long-term pace. (Clark & Salloukh, 2013)

The Lebanese system is hence a highly complex system in which the sect, the party, and other non-state actors interact to produce a highly turbulent network. The consociational nature of the government, party-ownership of weaponry and dependence on non-state services have led to an increasing disintegration of the Lebanese state, making decision making of a highly complex nature, of which almost every single party must approve before anything happens. This naturally leads to the country being in a constant stage of inescapable stagnation and gridlock. Governments take months to form, and budgets take over 40 meetings of the established governments to be set. The aforementioned information frames the context in

which the debate for instating civil marriage will take place, and the highly intermingled and complex nature the debate will have in said context.

B. Lebanese Court System and Marital Legislation

This section will delineate the nature of the Lebanese court system, as it will largely relate to the form of legislation opposed by those arguing for civil marriage, and the value system embedded in the legislation which those who argue for civil marriage believe in, and see that civil marriage threatens.

The Lebanese legal system is a multifaceted legal system with a variety of courts. Those include: (1) the constitutional court, which is mandated to ensure that laws conform to the constitution, and look into laws and claims related to presidential or parliamentary elections, (2) the administrative court, which assist in writing laws for the legislature and to review decisions of the lower first degree administrative courts, (3) the civil courts, which are divided into (a) first degree courts, (b) courts of appeal, and (c) courts of cassation, (4) the commercial courts, (5) the criminal courts, and (6) the personal status courts; which are formed of members of the religious clergy who rule over personal status cases relevant to their own sects. (El Samad, 2008)

The centrality of the sect as a unit of analysis and policy setting is largely based on the Ottoman millet system, which framed the legal system of the Ottomans up until the Tanzimat.

The millet system separates legal courts relating to personal law so that each religious minority can cater for its own affairs within its own courts. (Sugar, 1983, pp. 5–7) However, in the case of Lebanon, rule based on sect was foundational since the days of the Emirates in Mount Lebanon, through the Mutasarrifiyaa and up until the French mandate over Lebanon.

The millet system persists in Lebanon to this day in the form of separating the courts which deal with matters of personal status from civil laws. The modern manifestation of the

Lebanese version of this is in the 1926 version of the Lebanese constitution, which included articles relating to sects and sectarian representation. In the ninth article of said constitution, it is stated that the government grants its right to manage personal status laws to sectarian courts (marriage, divorce, custody, inheritance, etc.) The article states:

“There shall be absolute freedom of conscience. The state in rendering homage to the God Almighty shall respect all religions and creeds and shall guarantee, under its protection the free exercise of all religious rites provided that public order is not disturbed. It shall also guarantee that the **personal status** and religious interests of the population, to whatever religious sect they belong, shall be respected.”

This article set the foundation for the Lebanese personal status law on the one hand, and the creation of sectarian identity in Lebanon on the other.² (F. Traboulsi, 2007, pp. 90; 265)

Each religious court is given a set of matters in which it can arbitrate. Courts which fall under the name Muslim courts (the Sunni, Jaafari, and Druze courts) are considered part of the state. Non-Muslim courts fall under the rule of the church but are recognized by the government. This stems from the Ottoman separation of Islamic and non-Islamic courts, and considering the Islamic courts part of the state, and the Christian courts following the church. In 1930, legislative decree#6 was issued, stating that Christian courts can provide ruling on Christian engagements, marriages, divorce, separation, enforced separation, custody, lineage, and alimony between couples; as well as determining guardians for orphans, and managing Christian *awqaf*. The same decree transferred matters of inheritance of non-Muslims from Muslim courts, as they previously followed Islamic inheritance laws, to civil courts. In the

² Similarly, Article 10 in the same constitution states: “Education shall be free insofar as it is not contrary to public order and morals and does not affect the dignity of any of the religions or sects. There shall be no violation of the right of religious communities to have their own schools provided they follow the general rules issued by the state regulating public instruction.”

year 1959, the inheritance of members of the clergy was transferred from civil courts to the church, which manages their properties and assets after their deaths. (Taqiuddin, 1996, pp. 405–407)

According to article 17 of the law 16 issued on July 1962, Sunni and Shi'a courts are allocated the following matters to rule in: engagements, marital contracts, separation and divorce, dowry and trousseau, custody and alimony, lineage, becoming overage, rulings for missing persons, a deceased person's will, proving death and dealing with inheritance, *awqaf*, and allocating guardians and lawyers in internal matters of religious courts. On the 4th of December 1930, a decree was issued stating that Druze courts have the same powers as Sunni and Shi'a courts. (Taqiuddin, 1996, pp. 422–427) Sunni courts apply the Hanafi law, together with imperial edicts issued at the time of the Ottomans.

Each religious court has its own rulings, yet they all share in common the need to follow public order and not go against the established rulings of the constitution. Cross-court rulings, such as the case were a murder occurred in the family, and which affects inheritance, has to be resolved by the criminal civil courts before the religious court can provide its rulings and proceeding actions. On the other hand, civil courts are not allowed to infringe on what was allocated to the religious courts, as referenced by the Court of Dispute Resolution in decree #12 issued on the 25th of February 1931. (Taqiuddin, 1996, p. 427) In case a conflict arose between courts, the Court of Cassation attempts to resolve that dispute. This demonstrates that while religious courts may have jurisdiction over personal status laws, they still operate within the realm of the civil state, and hence are ruled by its constitution, laws, and regulation. In cases of mixed marriages between sects, the sect of the husband is the one in which the marriage is registered. In case the marital contract is conducted abroad, the civil court is the one which settles disputes as per the laws of the country in which the marriage

was conducted. (Clarke, 2016) This will be central for the discussion of civil marriage, which mainly argues for civil courts to handle matters allocated to religious courts.

The conditions for marriage, divorce, and family management differ between the religious courts in Lebanon. The main courts which I will detail the laws of in this section are: the Sunni courts, the Twelver Shi'a courts, the Christian courts.

For Muslim courts, the 1962 Law of Shari'a courts, in section 242, stated:

“The Sunni judge issues his ruling according to the preponderant statements of the school of Abu Hanifa, except in those cases where the [Ottoman] Law of Family Rights of 8 Muharram 1336/25 October 1917 speaks, whereupon the Sunni judge applies the rulings of that law; and the Ja'fari judge issues his ruling according to the Ja'fari madhhab and, where it is in harmony with this school, from among the rulings of the Law of the Family.” (Zayn, 2018, p. 75)

In 2011, the law was modified to instruct the Sunni judges to follow the rulings of the Supreme Islamic Shari'a Council, then the Ottoman Law of Family Rights (hereafter: OLFRR) as well as the Hanafi Madhhab. The Ja'fari courts on the other are to follow their own madhhab, which largely depends on Shaykh Abdallah Nima's *Dalil al-Qada' al-Ja'fari*, and the works of Ayatollah Abu-l-Qasim al-Khu'i. (Clarke, 2016, p. 35)

According to the OLFRR, the minimum age of marriage for males is 18, and for females is 17, however, marriage can be conducted at younger ages if permission is given by the courts. For the bride, the judge has to consult her guardian (*wali*), and while a woman may marry herself off without him, the guardian may apply to have her marriage annulled. The registration of marriage requires the supervision of a judge, the name and domicile of the couple, their sect, date of birth, name of the guardian, whether the bride is a virgin or not, the names of the witnesses, the amount of the bride's dower (*mahr*), as well as a medical certificate which

tests for STDs and genetically transmitted diseases/conditions. A marriage may be conducted outside of the court, but the court would only register it in case the wife is pregnant or has given birth to a child. The dower can be split into the prompt portion, which is paid on marriage, and the deferred portion, paid throughout the marriage, at the time of divorce, or in the case of death (from the inheritance of the husband). (Clarke, 2016)

As for the Ja'fari courts, they allow for lower ages of marriage and marriage of minors without their consent, though these cases have never been recorded. The Ja'fari courts also are more lenient on registering marriages conducted outside of the court. Temporary marriage, in which the date of the divorce is specified, is allowed by the court, but it is rarely admitted to. Polygamy is allowed by both Ja'fari and Sunni courts. In case of a marital dispute, and for both Ja'fari and Sunni courts, both husband and wife take recourse to a judge in the court, who conducts a hearing in an attempt to reconcile between the couple. This is a laborious process that sometimes takes months, and into which the family of both sides are brought in. (Clarke, 2016)

As for divorce, Sunni courts declare that a divorce annuls a marriage once a man tells a woman that he divorces her ('*anti taliq*' is the divorce formula). The divorce then has occurred, but only needs to be registered in the court to be official and document. In Ja'fari courts, there are more restrictions on divorce. The couple must not have had sexual intercourse during the woman's past menstrual cycle, the wife must not have been menstruating, the husband must use the exact words of the aforementioned divorce formula, and the divorce requires two trustworthy witnesses. In case of a divorce, the deferred portion of the *mahr* has to be paid head-on. In case the husband did not consent to divorce, but it was necessary, both courts have what is called a judicial divorce (*tafriq*), which the OLFAR stated could occur in cases of impotence and apostasy, and while the latter is hard to prove, judicial divorce is a possibility in current courts. The 1962 Law allowed for judicial divorce in case of

harm (*darar*), discord (*shiqaq*), ill-treatment which includes physical and verbal abuse (*al-darb wa al-sab*), and coercion to engage in that which is prohibited (such as anal sex). In addition, a wife may perform a *khul'*, in which she divorces her husband, but on the condition of renouncing the remainder of her dowry, maintenance in the post-divorce period, and the approval of the judge who looks into the case. (Clarke, 2016)

As for child custody, according to the OLF, the father has custody over the boy at 7, and over the girl at 9. However, as a result of lobbying by feminist organizations, the age limit was bolstered to 12 for both sexes. As for Jaafari courts, they state that the father has custody over the boy at the age of 2, and over girls at the age of 7. (Clarke, 2016)

In Christian courts, marriage is not a social secular contract, but is one of the seven sacraments of the church.³ Hence, even if the couple had a civil contract, it is not considered valid until a priest prays for the couple. This is also reflected in divorce, which can only occur if the priest approves to annul the marriage. In the Roman Orthodox church marriage is only valid if: (1) both adults are consenting, (2) that the male be 18 of age or above, and the female 15 of age or above, however, marriage can be conducted earlier out of necessity if both are physically adept for it, (3) the absence of any legally-relevant deterrent, and (4) the marriage occurring in a church in front of an Orthodox priest, given the permission by the Church to conduct such a marriage. Polygamy is strictly forbidden, as well as marriage between direct relatives (mother, father, aunts, uncles, grandparents, etc...); and adoption is permitted and legally recognized, both by the Church and by the laws in Lebanon. Divorce is strictly not allowed in Maronite and Roman Catholic courts. However, it is present in other Christian courts. The marriage is absolutely nulled in case the couple turned out to be close

³ The Catechism of the Catholic Church states: "The whole liturgical life of the Church revolves around the Eucharistic sacrifice and the sacraments. There are seven sacraments in the Church: Baptism, Confirmation or Chrismation, Eucharist, Penance, Anointing of the Sick, Holy Orders, and Matrimony." (Pope John Paul II, 1992)

relatives, or in case of adultery, or in case the husband or wife has had three previous marriages which ended with death. The marriage can also be nulled if one of the spouses was forced into it, if they were cheated into it, if the guardians didn't agree to it and the couple were underage, if the couple didn't reach puberty. Divorce can only occur with the agreement of the church, and its reasons are listed in articles 186⁴ and 188⁵ of the Church's family rights law. (Sneij, 1993, pp. 106–131)

Given this division of courts, civil marriage proposes a marriage documented and registered in a civil court that applies the constitution and the law between two persons registered in the civil records of the state. It is unlike religious marriage which is defined as marriage that is held according to the religious laws stipulated in scripture, which is according to each religion and is held in the presence of the clergy. More details on the proposition of civil marriage will be discussed in later sections.

C. Gender Rights in Lebanon

In order to analyze the debate over civil marriage, it is necessary to understand the set gender norms in Lebanese society, and how the suggested civil marriage legislation may confirm or challenge those set norms. Lebanese society has witnessed drastic changes in the role of women throughout the past century. The increasing migration of males in search of better learning and job opportunities meant that women had to take a more active role in public life and the country's development. In addition, worsening economic conditions within the

⁴ A man may divorce his wife if: (1) she was not a virgin, (2) she destroyed his crops, (3) she attended a ceremony which he told her not to attend, (4) if she slept outside of his house against his will, (5) if she went to a horse race, the theatre, gambling houses, and hunting locations behind his back, (6) if she committed proven adultery, (7) if she disobeyed the court's order to return to her husband's house for over three years, and (8) if her husband told her not to attend certain places or be around certain people and she didn't obey him.

⁵ A woman may divorce her husband if: (1) if he could not engage in coitus for over three years since his marriage, (2) if he ordered her to or led her to committing adultery, (3) if he neglected his wife for over three years, such as being absent or being careless, and (4) if he tried to commit sodomy with her, or had an affair with another woman and insisted on his behaviour.

country meant that women had to enter the work force in order to support their families. This necessitated an influx of women into new sectors. However, this influx did not translate into a higher status of women in families and in political and economic positions. Men are still considered the primary breadwinners and decision-makers within the family, and female representatives in the Parliament have never exceeded 10%. While education and career development are usually expected to be structurally stronger than tradition and culture, this was not the case in Lebanon. Women themselves were demonstrated in several studies to choose and defend traditional cultural expectations, notions, and roles. They hence derive satisfaction from playing the role of the traditional daughter/wife/mother; while maintaining that those roles should never stand in the way of educational and career development. A syncretization of the traditional roles of women and its simultaneous negation (through women having their own career paths) is hence created in Lebanese lived reality, with the maintenance of the former preventing women from seeing themselves as equal to men. (Jamali et al., 2005)

Lebanese society highly emphasizes kinship (Joseph, 2004), which has led to certain readings of Lebanese society viewing the family as a microcosm for the grander patrilineal political system. (Zuhur, 2002) However, this society has been largely in flux. A massive fifteen-year civil war affected the gender roles in the country, bringing women to the forefront due to men being indulged in fighting, and subsequently, a higher rate of male deaths. This was bound to bring about a more effective movement for women's rights in Lebanon; and to affect gender identity.

The Lebanese marital law, as demonstrated in the previous section, puts women at a weaker position when compared to men, especially when compared to international agreements (CEDAW as a primary reference in this case). While Lebanon is a signatory of CEDAW, it has certain reservations when it comes to articles 9.2 (the right of women to grant citizenship

to their children), 16.1 (granting women equal rights when it comes to marriage, maternity, regency, marital authority, custody of children, adoption, and the right to choose the family name), and 29.1 (the right of all nations to present any disagreement regarding the interpretation of CEDAW and its enforcement to the International Court of Justice). The articles with reservations hence all relate to personal status laws and nationality rights of female citizens. Said reservations are meant to preserve the current personal status laws which are controlled by the religious courts rather than the civil courts.

Marriage in the Lebanese law is defined as a bilateral contract concluded in public and constituting the agreement of the couple to live together for the sake of procreation and cooperation. At the moment, several instances of lack of application of strict gender equality can be identified in the Lebanese marriage laws, especially when it comes to the notion of dowry (*mahr*), the age upon marriage, consent to marriage, breaking off engagements, the man having the upper hand in marriage and declaration of divorce (*qiwamah*), the property of the husband, the waiting period after death (*'iddah*), and several other issues. (Shehadeh, 2010) These problems apply to both Muslim and Christian courts. Thus, it is seen that to arrive at gender equality in marital laws, the secularization of personal status laws is necessary. (Shehadeh, 2004)

Given the empowerment of women caused by the war, efforts to change the legal conditions of women took traction. Several changes took place where it comes to revoking the law prohibiting the use of contraception in the year 1987, extending the female age of retirement from 54 to 64 in equity with men in 1993, enacting a law attesting to female competence when it comes to testifying in real estate in 1994, allowing female diplomats to get married to male peers without losing their jobs in 1995, allowing women to work at night in certain domains and enforcing employers to treat both sexes equally in matters relating to the nature of assigned work tasks in 2000. (Shehadeh, 2010)

However, given the interaction of the Lebanese state with CEDAW, and the need for civil society organizations to push for legal change on every bit of legislation; the intermingling of confessionalism and the status of women is evident. Concerns from some about Palestinians and Syrians getting citizenship, and hence destabilizing an already destabilized confessional balance within Lebanon is provided as grounds for women not being allowed to grant their citizenship to their children.⁶ In addition, the issue of the subversion of religion and of gender equality are all at stake in this issue. However, a study done by Fahima Charafeddine (2009) estimates that two thirds of marriages to non-Lebanese men are among Muslims, and one third among Christians (191,483 cases for Muslim women; 108,932 cases for Christian women), echoing the confessional distribution of the country. She notes that Christian women tend to marry into European families more than Muslim women, and that Sunnis, Shiites, and Maronites tend to each equally have their share of foreign marriages. Hence, according to Charafeddine, the claim that women giving nationality to their children will destabilize the sectarian balance is false, and it prevents women from having their right of granting nationality to their children.

The confessional balance in Lebanon was set with the Ta'if agreement after the civil war, making Lebanon's House of Representatives split 50/50 between Muslims and Christians. Given high migration movements and low birth rates within the Christian population, and high birth rates among the Shi'a population, the demographics of Lebanon have changed since the civil war to become closer to a population of: 30.6% Christian and 69.4%.

(Ramadan, 2019) However, speaking of adjusting Ta'if is speaking of changing the current formula which maintains Lebanon's negative peace. In addition, Lebanon is demographically mostly Sunni, with a population of 30% Sunnis, Lebanon has an additional 900 thousand

⁶ Lebanon already has a Palestinian population of 172,000, as well as a Syrian population of a million, and intermarriages with the region (which is predominantly Sunni Muslim) tend to be numerous.

Syrian refugees (mostly Sunni) at the time of the writing of this thesis (UNHCR, 2019), as well as the Palestinian refugees (also mostly Sunni). Talk of laws which alter granting the Lebanese nationality, and of civil marriage which decreases the relevance of the sect when it comes to personal status, raises all those concerns which maintain Lebanon as it is today. Hence, while civil marriage may seem like the right of a secular minority in Lebanon to be able to marry as it wishes, it is seen, partially rightly, as a gateway to many issues and questions which undermine the formula of Ta'if-agreement Lebanon.

D. History of Civil Marriage Debate

The issue of civil marriage is one which has been the subject of contention in the Lebanese public sphere since the inception of Lebanon in 1949. While civil marriage has been recognized officially by the state since 1928, as per the decree 60 issued by French high commissioner Damien de Martien during the French mandate in Lebanon, (Joseph, 2000, pp. 130–131) Lebanon does not have a civil marriage law which allows citizens to be married as per civil laws (outside religious courts) on Lebanese soil.

The struggle to institute a Lebanese civil marriage law has taken place since the year 1951, when the leader of the National Bloc Raymond Edde proposed legalized optional civil marriage. At the time, it caused an internal rift between those who saw the law as promoting the right of individuals to practice their beliefs, and those who saw the law as an attempt to exclude the law from the public sphere as a whole. (El-Hage, 2019)

In the year 1996, president Elias El Hrawi attempted to lobby for a civil marriage law in Lebanon. This was the closest a civil marriage law ever came to being passed in the Lebanese context. It passed the approval of the house of representatives, and only had the head of the council of ministers to sign it still. It received mixed reactions from different entities in the Lebanese populace. The Sunnis led politically by Rafic Hariri, religiously by the Mufti of the

Republic Mohammad Rashid Qabbani, and on a regional level by Saudi Arabia, all announced their rejection of the project. Dar al-Ifta in Saudi Arabia issued a fatwa stating that civil marriage is forbidden in Islam and does not make the consummation of marriage permissible. It is adultery and the children it produces are unlawful children; and the spouse does not inherit if the husband or wife dies. Mufti Qabbani stated at the time that he would rather die a martyr fighting this law than see it passed. The Bishop of Jounieh Shukrallah Hareb stated that those who marry in a civil court are in a form of public adultery. Mufti Mohammad Hussein Fadlallah stated that they are opposing the Shari'ah and are in a state of adultery. Mufti Mohammad Mahdi Shamseddin stated while civil marriage may be accepted as a matter of fact in a civil state, it will never be given religious legitimacy. This was later escalated by the Grand Mufti Mohammad Rashid Qabbani, who stated that whoever accepts civil marriage as valid is an apostate. Redwan El-Sayyed at the time had an article in which he argued against civil marriage on legal grounds, but left room for its legislation if the laws were changed; a remarkably lenient position for someone close to both Dar El-Fatwa and Prime Minister Hariri at the time. The Head Sheikh of the Unitarian Druze Community stated that he saw the whole proposition as a cause of the country's disorder, and that it doesn't solve any of the country's problems, and as such should be abandoned. However, Sheikh Suleiman Ghanem from the Druze community stated that he was supportive of the creation of a single law based on both Islamic and Christian jurisprudence, for all members of the Lebanese community. (Baydoun, 1999)

On the supporting side, Father George Khodor issued a statement declaring his support of people practising their beliefs, and therefore should not be forced to follow religious law in form if they do not inwardly believe in those laws. Jesuit Father Gabriel Malek supported Khodor in his statement. Sayyed Mohammad Hassan El-Amine also declared his support of the law, stating that he ascribes to a form of diluted secularism, and that Islamic marriage is

to begin with a civil marriage. However, El-Amine linked his support to his endeavour to remove sectarian politics as a whole from the Lebanese state. The bishop of Serba Gee Boulos stressed that he supports civil marriage and does not think people should be forced to follow church laws if they do not believe in them. Analysts at the time stated that the law lacked proper support, not because of the lack of numbers, but because those who lobbied had neither a political bloc nor an organized electoral weight which they could utilize to lobby for the law. (Baydoun, 1999)

Contention came over several elements within the proposed law of civil marriage. Articles were written on how civil marriage allows for adoption, which, according to Nabil Jamal Houssami would lead to the extinction of the human race. In addition, the issue of equal inheritance was raised a point of contention in the law of civil marriage, especially that the law allowed for inter-religious inheritance. In addition, the issue of banning polygamy in civil marriage was raised, with Talal Atrissi addressing it as a central problem in civil marriage, considering that man has a more active libido than women. Dalal Barazi responded to Atrissi stating that women also have a very active libido, and hence the justification for polygamy falls apart. Mohammad Ali Kenaan, the Jaafari Mufti of Beirut, considered any marriage which prohibits polygamy not permissible, and therefore should not be legalized. (Baydoun, 1999)

The Maronite Church stated that it rejected civil marriage in support of Muslim courts. This led the head of the Jaafari Courts to issue a statement declaring that if the Christian churches are only taking their position due to political alliance, and not as a principled rejection of the civil marriage, then Muslim courts do not need such an ally. The church then withdrew their statement and issued another statement declaring that they reject civil marriage since it opposed Christian jurisprudence, which led the Grand Mufti to issue a statement celebrating the restored unity of religious courts in Lebanon. (Baydoun, 1999)

In 2013, the debate over civil marriage resurged, albeit to a lesser extent. At the time, religious authorities unanimously rejected the proposition in solidarity, and social network websites were on fire. The former Mufti of the Republic in 2013, Sheikh Muhammad Rashid Qabbani, issued a fatwa that “any Muslim official in the legislative and executive branch who agrees to legislate and legalize civil marriage, even if it is optional, is an apostate and outside the religion of Islam and is not washed, shrouded, prayed for after his death or buried in Muslim cemeteries.” Soon after this rejection, the debate died out. (Fayyad, 2019)

In 2019, Responding to a question about civil marriage, the new Interior Minister Raya al-Hassan said "she personally favors that there be a framework for civil marriage" and that she will seek "to open the door for serious and deep dialogue on this issue with all religious and other authorities.", stating that there is a weighty bloc in Lebanon demanding the legislation of civil marriage. This led for the debate to resurge once more.

The media office in Dar Al-Fatwa, headed by the current Mufti Sheikh Abdul Latif Darian, issued a statement declaring "absolute rejection of the civil marriage project in Lebanon and its opposition to it, because it violates the provisions of the Islamic Sharia law in full and in detail." Personal status applicable in the religious courts belonging to the Lebanese in Article IX, and therefore cannot be approved in the House of Representatives without taking the opinion and position of Dar al-Fatwa and other religious authorities in Lebanon. The statement issued by Dar El Fatwa called for preventing the mere circulation of the subject: "not to engage in gossip in the subject of civil marriage, which is the prerogative of Dar al-Fatwa in the Lebanese Republic entrusted to the religion of Islam and the interest of Muslims." (Fayyad, 2019) Soon after, The Mufti Abdullatif Daryan, received the Minister of Interior in Dar Al-Fatwa. Mufti Darian explained to Minister Al-Hassan the firm position of Dar Al-Fatwa on the subject of civil marriage, which ‘contravenes the Islamic religion in spirit and letter and threatens the cohesion of the family, which is maintained by Islamic law

based on religious standards that honor human beings, and preserve the family which is the first building block of a healthy society and a good homeland.’(Lubnan al-Jadid, 2019) The debate once again received extensive social engagement, as shall be examined in this thesis. However, soon after, the debate died out as well.

E. Civic Space in Lebanon

Non-governmental organizations were a central part in the debate over civil marriage, especially as supporters of said legislation. In this section, I will examine the development of these organizations in the Lebanese context. The scope of NGOs here will not include unions and syndicates, which were not actively present in the debate. While lawyers partook actively in the debate, they did so within their capacity as individuals, and not through any official body.

Civil society may be defined as “the realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the state, and bound by a legal order or set of shared rules”. (Jay Diamond, 2008) Two forms of state interaction tend to make CSOs thrive; the first is heterogeneity theory, which assumes that the thriving of CSOs comes from market and government failure, the second is interdependence theory, which sees CSOs as covering for voluntary failure. Heterogeneity theory states that since the market has limitations in its pursuit for the public good, and since the state is not capable of fulfilling the demands of all social actors on the ground, CSOs tend to fill the gap created by both entities. (Lester M. Salamon & Anheier, 1998) This forms a criticism to economic theories which assume that free markets will always cater for the public good. (L.M. Salamon et al., 2000, p. 15) Interdependence theory on the other hand, states that while CSOs in themselves are not capable of owning the necessary funds to cover for the government, the government itself may recognize where it falls short and delegate service provision in certain areas to CSOs. (Lester M. Salamon, 1987) However, such a theory seems to presume that as the state

expands and becomes stronger, the role of civil society decreases. (Huber et al., 1993)

However, it would seem that the validity of those theories largely depends on the context within which they operate; i.e. in contexts in which a failed state exists, heterogeneity theory seems to apply; and CSOs tend to be minimally, if at all, sponsored by the government. On the other hand, in cases where the government is thriving, CSOs tend to depend on governments in order to thrive. This civil society/government relationship is governed by: (1) CSOs having varying levels of legitimacy in society and autonomy from the state, (2) the line separating the civil and political sphere being blurred, and sometimes even impossible to detect, and (3) CSOs being formed of formal organizations and informal networks. (Härdig, 2015)

The civic scene in Lebanon is one of liveliest, most diverse, and most active in the region. (Hawthorne, 2005, p. 90) It is delineated by several types of organizations. For the purpose of this examination, associations will be split into family and religious associations, which form 80% of the CSO sector, and advocacy associations, which focus on social or political issues, and tend to have a more confrontational relationship with the state and dominant parties. (Haddad, 2017) In a post-colonial context, the development of civic space is inextricably linked to that of the state, as both need one another, and therefore “interest groups and other civic associations allow citizens to monitor government actions, articulate and aggregate interests, and exert political influence... [while] norms of governance have not been well established and power can be easily abused.” (Tessler & Gao, 2011, p. 169) Haddad (2017) outlined in Table 1 a fluctuation of the type of CSOs dominant in the Lebanese civic space over the course of the past century as follows:

Table 1. The Development of Associations in Lebanon From 1900 to the Present

Years	Political background	Type of associations	Relationship to state
1900– 1958	Ottoman empire/French Mandate/Independence/1958 Civil War	Religious family and village associations (administrative) based on sectarian lines	Administrative associations working with minimal interference from the state
1950– 1975	Shehabism/IRFED recommendations	Developmental organizations/voluntary- type associations	Partnership between the 2 sectors
1970– 1990	Civil War/total destruction of government institutions	Revival of the family and sectarian association	Administrative type of associations working without any interference from the state
1990– 2000	Taef Agreement/Syrian tutelage/closed political system	Charitable and community-based associations Voluntary-type associations	Voluntary and advocacy associations co- opted by the state; administrative association

			growing in importance
2000–2005	Changes in International agenda/Syrian withdrawal	Voluntary-type associations	Success of advocacy campaigns
2005–present	Assassination of Prime Minister Hariri/2006 war/Syrian Crisis	Development of administrative associations/advocacy associations working ad hoc project	Patron–client relationship ⁷

Source: (Haddad 2017)

What is of concern for us is the last period, which followed the assassination of prime minister Hariri. This period was marked by extreme turmoil following a set of assassinations, the 2006 war, feuds between the March 8 and March 14 alliances⁸, and the Syrian civil war which produced the Syrian refugee crisis. This period hence marked an increased failing of the state to provide services, and an increasingly stagnant political situation, as well as the absence of any productive economic policies. (Haugbolle, 2019) While CSOs have attempted to cover for the government’s shortcomings through service provision and advocacy efforts, especially in the aftermath of the 2006 war and the Syrian crisis, a great percentage of needs was still unmet.

⁷ I would add that there is also a significant number of CSOs which have a state-independent donor-dependent relationship, with the majority of funding coming from Western countries and the United Nations; which actually poses a problem for those CSOs; as shall be demonstrated later.

⁸ Lebanon’s political scene was split during two demonstrations which occurred in 2005, the first on March 8, with a political alliance in support of the Syrian Regime, led by Hezbollah; and the second on March 14, with a political alliance against Hezbollah having militant units and against the Syrian regime, led by the Future Movement.

Civil society organizations have also witnessed a surge in political action over the past few years. This manifested itself during the 2015 garbage crisis, which was largely led by CSOs and their staff (acting independently in some instances) against the political elite. However, within a month of the protests, the CSOs differed over priorities, and splintered into many subgroups which subsequently were incapable of organizing. (Lebanon Support, 2016) Civil society witnessed another resurgence in political action during the municipal elections of 2016, with Beirut Madinati, a campaign led by civil society activists, taking the lead in the process. The campaign came second to the list of candidates provided by the political elite. Another attempt at grappling with the political elite came during the parliamentary elections in 2018, in which several lists of candidates were provided by civil society candidates across Lebanon; however, those lists lost except for one candidate, Paula Yacoubian. (El Kak, 2019) While civil society is hence attempting to increase its political activism, it is only in the starting phases at the time of the writing of this thesis.

The context of civil society in Lebanon is largely affected by (1) the absence of the state, (2) the marginalization of advocacy CSOs which focus on human, legal, political, and cultural rights, (3) the socio-economic non-development of the state, leading to the emergence of non-voluntary associations based on religion, family, tribe, and ethnicity, and (4) the interests of international donors, largely affecting the direction and type of services/advocacy issues provided by secular and religious CSOs. (AbiYaghi et al., 2019; T. Haddad, 2017) According to Karam (2006), the marginalization of advocacy CSOs was caused by (1) the closed Lebanese political system, (2) the Syrian tutelage over Lebanon prior to 2005-no longer applicable post-2005, (3) religious and communitarian solidarity leading to refusing policies calling for civil marriage and civil personal status, and (4) lack of political support. The third reason is specifically interesting in that it highlights a rift between the will and interests of advocacy CSOs and the communities which they serve. This is further emphasized by the

observation that state NGOs tend to focus on the micro- or individual level, rather than the communal level. (Amer et al., 2015, p. 54) However, where advocacy NGOs have focused on communal issues, they have been accused of being agents of Western imperialism, and of not working according to a Lebanese agenda. This has been evident in the case of work on refugee rights (Syrian Observatory for Human Rights, 2019), women's rights, education, livelihood, the environment, and civic rights in general. (al-Amine, 2019) This scepticism of NGO agendas will be echoed in the arguments for civil marriage, as shall be demonstrated later.

F. Media in Lebanon

The thesis will mainly focus on the debate as it was echoed through media portal. A prior analysis of the media landscape in Lebanon is essential, and will demonstrate a lot of the tensions present in visual, audio, and written media in Lebanon. Lebanon has had a significantly liberal and free media space compared to its Arab counterparts since its inception. Article 13 in the constitution stated that “the freedom to express one’s opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association shall be guaranteed within the limits established by law.” (“The Lebanese Constitution,” 1997) While Lebanon has had relatively high freedom, the laws of 14/09/1962 set limitations on that freedom, prohibiting attacks on the President and the publication of news that ‘endanger national security’. (Abu-Laban, 1966) In addition, journalism has always been affected by local, and more importantly, regional players; more specifically: the Lebanese government, local business interest, foreign embassies, and international corporations. (Hallin & Mancini, 2011, p. 185) This attribute has tainted the freedom within Lebanese press. Dajani (1975) reports that a major Lebanese publishers in the 70’s stated that: “the present situation of the Lebanese press is such that the publisher who does not take

bribes is an ass”. This has led to an argument being made that there was no Lebanese press, but only press in Lebanon. (Kraidy, 1999)

During the civil war, between 1975 and 1999, many political parties and warring factions began to develop their own unlicensed television stations, which were used to function as mouthpieces for the parties. In 1989, the “Document of National Understanding” was signed in Ta’if, Saudi Arabia to mark the end of the civil war, and included a call for the establishment of a ‘modern’ regulatory framework for Lebanese media. Hence, the 1994 Audio-Visual media Law was instated, the first in the Arab world; however, its application largely favoured TV stations supported by leading politicians. Subsequently, it cut the number of television stations to five. Those were divided by sect, hence, the Maronites had LBC, the Sunnis Future TV, the Shia NBN, the Greek Orthodox and Druze MTV, and Tele-Liban was considered the official state television. (Kraidy, 1998) Tele-Liban, however, was always symptomatic of the weak Lebanese state. It is a half-private half-state-owned entity, which was outperformed by other TV stations during the civil war and fell into decline after the recognition of other TV stations post-1994. Additional licenses were given later to Hezbollah’s al-Manar, the communist party’s New TV (now owned by pro-Syrian Tahsin Khayyat, a Lebanese businessman), and the Maronite clergy got Télé-Lumière. (Kraidy, 2007)

More recently, Dajani (2013) notes that Lebanese media has been largely transformed into clients for Lebanese parties, and as such, the media domain can rarely be penetrated by those who are rendered voiceless. According to Lebanon’s Media Ownership Monitor, 43% of media outlets in Lebanon have a minimum of one member of 12 families in their ownership, board, or both. Those include the families of Hariri, Murr, Mikati, Tuani, Salam, Jumblat, and Aoun. (RSF, 2018) Hence, reporters have to tailor their news reporting to the agenda of the TV station, and certain shows have been cancelled when not abiding by the station’s

restrictive policies. (An-Nahar, 2016) Following the assassination of Hariri, TV stations who were anti-Syria portrayed the assassination as an attempt to bring down Harirism in Lebanon and led the cedar revolution and publicized it as much as possible. On the other hand, Manar TV and New TV offered a narrative of conspiracy, accusing Israel of assassinating Hariri and wanting to create a rift between the Lebanese and the Syrian regime. (Kraidy, 2007) This is merely an example of how party-owned media frames its news coverage and opinions per the agenda of the political line it ascribes to. However, those lines can be employed by activists and demonstrators as it suits their own agendas. Hence, media freedom does allow for some agency on the part of the people. Bolter and Grusin (2000, p. 78) state that “media do have agency, but that agency... is constrained and hybrid... the agency of cultural change is located on the interaction of formal, material, and economic logics that slip into and out of the grasp of individuals and social groups.” Certain attempts to create content outside the realm of traditional television have taken place, such as The Lebanese Politics Podcast by journalists Nizar Hassan and Benjamin Redd; however, those attempts remain shy, and limited to English speaking populations in the Lebanese scene.

An argument has been made for a shrinking freedom for the Lebanese press. Between 2018 and 2019, Lebanon dropped one spot in the Reporters Without Borders’ Press Freedom Index, which described the Lebanese media as being ‘extremely politicized and polarized’. It noted that 2018 ‘saw an increase in cases of bloggers and online journalists receiving subpoenas from the “bureau for combatting cyber-crimes” because a social network post had elicited a complaint from a private party, often a prominent person linked to the government.’ (RSF, 2019) In addition, cybercrime and intellectual property have been given increased attention by Internal Security Forces. A division originally tasked to fight sextortion, online money laundering, and hacking, has been tasked by the Public court to summon and interrogate individuals alleged to have committed slander and defamation against public

officials. (Chehayeb, 2019) In addition, on 18/10/2018, the Lebanese parliament passed Law 81, which allows the prosecution and shutting down of social media accounts of anyone who is seen to threaten internal or external security. This means that alternative media now also lies under the mercy on the Lebanese prosecutor. (*Law No. 81 Relating to Electronic Transactions and Personal Data*, 2018) Attacks have also been documented against foreign (Chehayeb, 2019) and local (Skeyes Media, 2015) journalists over the past years. All these incidents point to a turbulent media landscape, which could threaten the operation of the Lebanese public sphere. So long as the media in Lebanon functions on business models which attempt to produce money and appease for political leaders, their usefulness as vehicles of public deliberation remains at best suspicious, and at worse counterproductive. The views and preferences of the political leaders owning media will influence the framing of public debates, and will attempt to reach a pre-determined conclusion, rather than allow for honest public debate between individuals. The situation, as described, is hence alarming, and to be observed in the unfolding of the debate of civil marriage.

G. Marriage in the Arab World

The larger context of the Arab world was used in the civil marriage debate for arguing for or against civil marriage. The initial presence of religious marital legislation, which was either removed, reformed, or maintained was cited to express the aspirations of both parties in the debate. Islam has historically been central to shaping the nature of the marital contracts in the Arab world. Due to the contractual nature of the marital contract, the marital obligations of the man and woman are mostly clearly stated in the Qur'an and Sunnah, extrapolated and explained by the jurists across the centuries. This entails that religious courts mostly handle marital contracts and personal status affairs in the Arab world. (Joseph, 2000; Olmsted, 2001) However, this does not mean that marital laws, or the sociological reality of marriage, is in any way stagnant and/or purely patriarchal in the whole of the Arab world. Challenges and

changing social reality mean that family law is constantly changing, be it on a policy level, dealt with through legal change, or on an individual level, dealt with by individual judges in a case by case manner. (Barakat, 1985) The structure of the family is largely connected to social structures, values, and norms of society, and with those changing, the structure of the family is bound to change. (Kagiticbasi, 2017) Egypt, Morocco, Jordan, and Tunisia have all witnessed public debates on marital law, focusing on the rights of women, inheritance laws, and mechanisms of divorce. (Brown, 2017)

Marriage in the Arab world is largely affected by the dire economic situation youth have to pass through; and it generally takes young men several years of saving in order to get married. (Fargues, 2005) The groom and his family have been historically responsible for most of the marital expenses: dowry, housing, bridal gifts, wedding, etc... This means that there is an increase in the average age of marriage, as men have to delay their marriage to fulfil their expected economic responsibilities. (Rashad et al., 2005) In addition, the age and form of marriage has been largely affected by rapid modernization, the entrance of women into the labour force, decreasing fertility rates, and increasing literacy. (Olmsted, 2005) Early marriage specifically has been on the decline in the past three decades, with an average of 1 to 5% of marriages in Arab countries. (Rashad et al., 2005)

As a way to deal with this situation, and not commit adultery, several forms of 'Islamic' marriages were devised. Those include the *'urfi* marriage, in which the bride and groom do not register their marriage with the governmental courts. However, this means that women are put at a disadvantage in the case of divorce, with the husband generally denying the marriage ever happened; and with no official documents to prove it, a woman's right for alimony and financial compensation is not realized. (Rashad et al., 2005) This has led to objections to this form of marriage from the official religious establishment in Egypt for example. Another type of marriage, more common in the gulf, is the *messyar* marriage, in

which men don't have financial or housing obligations towards the wife. This is more common when marrying a second wife. Social complications ensue from these marriages, especially when it comes to issues such as raising children.

The cases of Tunisia and Morocco are interesting in this regard. Tunisia had two major family law reforms in 1956 and 1993. In 1956, the Tunisian government, through Habib Bourguiba, outlawed polygamy, repudiated the husband's right to divorce his wife, and allowed women to file for divorce. Women were given the same rights and obligations as men, both in initiating divorce and in paying costs to the other party. Alimony and women's right to child custody were also instated then, but men maintained the advantage of guardianship. In 1993, women were allowed to grant their children citizenship. (Charrad, 2007) The Moroccan government adopted a new family law in January 2004, within the framework of Islamic jurisprudence. It allowed adult women to be their own guardians, and to exercise the right to marry themselves. The new law also raised the age of marriage from 15 to 18 years, making them equal to men, and allowed partners to negotiate their own marriage contract, stating in it things like financial rights and compensations in case of divorce. This is but a spec of the amount of *ijtihad* being conducted in the Arab world to reform marital laws to grants women more rights and achieve gender equality. (Rashad et al., 2005) Similarly, Egypt instated a new law in the year 2000 which allows women to perform a *khul'*, i.e. the right for a woman to divorce herself from her husband if she gives up financial benefits. Egypt also granted women the right to grant their children Egyptian citizenship. (Singerman, 2004)

CHAPTER III

THEORETICAL FRAMEWORK

In this chapter, I will attempt to elaborate on the Habermasian framing of the public sphere. The chapter will begin with an examination of how Habermas establishes communicative reasoning as the foundation for the public sphere; and discuss much of the criticism faced by this framework, whether on the grounds of group-dynamics or of social psychology. Then I will move forward by explaining the place of religion within that public sphere according to Habermas, as well as his student Maeve Cooke, and several other philosophers including John Rawls and Charles Taylor, each of whom has a specific perspective on the place of religion in modern liberal states. These framings will be important in demonstrating how the place of religion may vary while not affecting the non-authoritarianism of public discourse, and will hence help assess the condition of the public sphere in Lebanon as examined in the civil marriage debate. Finally, I will examine Dworkin's theorization of the principles of legislation, which allow for law interpretation not according to a literalist perspective, but through the lens of public liberties and justice which the law is the meant to maintain. This will be useful in examining how the interpretation of the law is to be framed in the civil marriage debate.

A. Jurgen Habermas and Communicative Reasoning

The thesis will largely depend on the Habermasian conception of the public sphere, and how religion is to be situated within that public sphere. It will examine the dynamics within the Lebanese public sphere, and whether communicative rationality is active or compromised given the power-dynamics in the Lebanese political landscape. The foundational drive of Marxist theory in general is social transformation; the Frankfurt school in particular was concerned with fact that people may not know the reasons leading to their subjugation.

Hence, Theodor Adorno and Max Horkheimer, in their canonical book “Dialectic of the Enlightenment”, attempted to invert the Hegelian and Marxist dialectic, which had a teleology of emancipation and realization of the spirit, by stating that reason which was glorified by the enlightenment will lead to the subjugation of man through institutions attempting to optimize the materially productive elements of society. The only potential for emancipation, for Adorno and Horkheimer, is as such to reject the institutions and spaces created by the enlightenment. Habermas takes the reverse position. Instead of asking how one can escape the rule of institutions, he asks how society can facilitate the emancipation of man and promote the freedom of the individual. He sees the public sphere as being the realization of that emancipatory space, as well as a practical tool for society to resolve and mediate its own internal conflict. (Finlayson, 2003)

Habermas (1985) attempted to reformulate the Marxist emancipatory project in 20th century institutionalized terms. To begin, he defined man as having two foundational dimensions: (1) labour, which is instrumental and monological, and (2) communication, which is dialogical. For Habermas, the university is split in that labor has the sciences and communication has the humanities. In this sense, communication is a formative element of the individual and collective notion of self for human beings. In this regard, Habermas rejects Hume’s and Skinner’s empiricist approaches for the formation of the self. Habermas also adds (3) the critical emancipatory dimension of man, which aims at the realization his own interest. Habermas, thus, like Marcuse (Marcuse & Kellner, 1991), is fundamentally interested in human liberation.

Habermas (1985) thus focuses on communication as a way for society to realize itself. An ideal speech situation presupposes that three validity claims are realized; and thus that speech is: (1) true, (2) right, (3) and sincere. Yet, like in Marxism there are the notion of false consciousness, in the domain of communication, communication can be ‘distorted’, through

which people in power, and, for Cooke (2006) individuals using authoritarian reasoning, make communication highly ineffective, if not counter-effective.

This communicative rationality, for Habermas, is necessary as an alternative to barbaric action; and is as such the solution to evade the horrors of the 20th century. It inculcates within it both the communicative and the critical. Communicative rationality, as such, is fundamental for democracy, allowing all individuals in society, at least, in principle, to participate in equal fashion to the crystallization of public opinion, and its development towards a more stable consensus, or at least, a variety of negotiable positions. Based on this, Habermas constructed a theory of communicative action. Communicative action comes along with three sociological concepts of action: teleological, normatively regulated, and dramaturgical action. Communicative action is the interaction of two subjects capable of action and speech in order to establish an interpersonal relationship, and to reach a certain common understanding or plan of action by agreement or consensus. Teleological action occurs when a certain actor attempts to realize a certain end or bring about an occurrence of a desired state. Normatively regulated action occurs when certain members of a certain social group define their actions according to certain pre-conceived societal notions and common values, hence complying with the norms of the group. Dramaturgical action occurs when an individual attempt to present a certain image of themselves to an audience.

These actions, as they take place within the guise of communicative action, either attempt to distort it, or to realize it. Once realized, communicative action leads to the development of communicative planning, characterized by: (1) being set within an ideal political system, (2) aiming at redefining rationality in a new communicative way, (3) attempting to develop a new unified planning theory, (4) being post-modernist, and (5) centrally locating the policy analyst or planner. (Richardson, 1996)

However, Habermas's communicative rationality, action, and planning was critiqued as being a life-view, rather than a descriptive theory, based on the participatory element of democracy and a dislike of free-market economies. It embeds within it a certain set of values, including undistorted communication, openness, and lack of oppression. However, in holding these values, communicative rationality has been claimed to be itself exclusionary of other values and other worldviews, as it defines, and hence limits, the tools by which consensus is to be reached. (P Healey, 1993; Tewdwr-Jones & Allmendinger, 1998) While this critique claims not to deny the universality of those values embedded within communicative rationality, it claims it is nonetheless exclusionary. However, this seems to be an impossible standard to meet, as any theory which confirms certain values or attempts to explain how a decision is best made, by definition will exclude other forms of decision-making or other values. By definition, any affirmative positive statement is a negative statement; and the very attempt to suggest a theory inclusive of values and ways of communication itself excludes all theories which dismiss any value or form of communication.

Another theoretical concern about communicative rationality is that it assumes that consensus can be reached in a non-coercive manner. (Tewdwr-Jones & Allmendinger, 1998) Habermas does suggest courts as a resort in case consensus could not be reached, however, Tewdwr-Jones and Allmendinger state that this is hardly non-coercive. However, this is not strictly accurate. Courts are an agreed upon mean in arbitrating conflict; and in a democratic state, when the conflict is taken to a judge, both parties implicitly agree to follow the judge's ruling once it is issued. This means that the judge's ruling, while seemingly coercive, is the result of consent by all the parties involved, and therefore stating it is "coercive", rather than "binding", is a mis-statement, which portrays resorting to courts as a form of oppression.

Another objection raised to communicative rationality is the presumption that actors are actually striving for consensus, rather than self-interest and the cancellation of others. Actors

may be striving for spreading their own values at the expense of others, rather than for common values and ethics. In addition, it has been noted that communicative planning itself holds within it power and values. Healey (1997, p. 86) states that: “Spatial and environmental planning practices are embedded in specific contexts, through the institutional histories of particular places and the understandings that are brought forward by the various participating groups, and the processes through which issues are discussed. Through this double activity of embedded framing, spatial and environmental planning practices thus both reflect the context of power relations and carry power themselves.” However, this objection is itself addressed by Healey in the same book, where she calls for vigorous pluralistic politics; in which the forms of governance and politics are transformed, and more checks and balances are added to prevent power concentration with the bureaucratic and administrative elites. (Tewdwr-Jones & Allmendinger, 1998) This goes to demonstrate how Habermas’s communicative rationality is in fact an ideal rather than a current state of being; or what James Johnson (1991, p. 181) calls Habermas’s “theoretical commitments and aspirations”. Habermas himself speaks of this communicative ideal by stating that:

“Only a dynamic understanding of any of our established liberal constitutions can sharpen our awareness of the fact that the democratic process is also a learning process, one often blocked by a deficient sense of what is lacking and what is still possible... Any democratic constitution is and remains a project: Within the framework of the nation-state, it is oriented to the ever more thorough exhaustion of the normative substance of constitutional principles under changing historic conditions. And, at the global level, the universalistic meaning of human rights reminds us of the need to develop a constitutional frame for an emerging multicultural world society.” (Habermas, 2011, p. 28)

One important objection to Habermas's theory of communicative rationality, which presumes that agents are deliberative, comes from social psychology. Gutman and Thompson (2004, p. 50) state that groups "intent on challenging the status-quo" tend not to indulge in the 'cool reason-giving'" required by deliberative democracy. This means that the Habermasian conception is endangered with the possibility of being dismissed as utopian, rather than being a realizable project.⁹ The psychological inequality between agents is also central to this critique. Informed agents are not universally available, and not everyone is interested in being informed; the central values which inform a human being's life are difficult to engineer or change, some agents learn faster or more than others, the whole of society is not smarter than the sum of its parts, and unanimity in no way entails accuracy. (Rienstra & Hook, 2006)

These critiques are important in giving a more realist perspective to the Habermasian ideal; however, it should be noted that what Habermas aims for is not impeded by the presence of these factors. Specifically, the discrepancy between agents does not mean that all are not able to fully provide their input into the discussion, and then that input is filtered through rational communication. It is the populist tendencies highlighted by social psychology which endanger the Habermasian project, and Habermas is not blind to that. The very goal of the Habermasian rationalist discourse is to subvert the irrational tendencies through increased education, increased checks and balances, and an attempt to reduce the irrational input put into political rhetoric. Whether this is realizable is a matter of contention, as shown above. Populism and a rational collective are not a strict binary, but a spectrum, and Habermas strives to push society towards the rational end and reduce populism as much as possible.

⁹ More on this can be found in the article by Rienstra and Hook (2006), "Weakening Habermas: the Undoing of Communicative Rationality", in which they discuss the interaction between the social psychology of political agents, and the conception of the deliberative agent as expanded on by Habermas.

B. Habermas and the Public Sphere

The public sphere, where the debate over civil marriage occurred, has been developed historically by Habermas throughout much of his work. In addition, Habermas set his aspirations for an ideal public sphere following certain standards, which have been subject to contention. However, the presence of those standards, or their lack thereof, highly change the nature of the public sphere which is dealt with in the community. Habermas operationalized his theory of communicative rationality within what he called the public sphere. He defines it as “a realm of our social life in which something approaching public opinion can be formed. Access is guaranteed to all citizens.” (Habermas, 1974, p. 49) This public sphere is built on the freedom of assembly and speech and the usage of media such as newspapers, magazines, radio, and television as portals for the delivery of thought. Habermas draws a distinction between the state and the political public sphere, stating that the state is the executive power within that sphere, and deals with issues which emanate from the public sphere, but it is not part of it. It is the sphere of non-governmental opinion making.

Habermas (1974) states that Europe in the middle ages did not have a significant public sphere in any way, shape, or form. However, with the development of the representation of the bourgeois public, a parallel for the state began to emerge. The bourgeois, as an opposition to state power and feudal authorities slowly emerged to become the public, opposed to the state, and highly distinct from it. Habermas states that the literary sphere became the mode of communication of the state, whereas the public sphere became the mode of communication of the public. With the rise of democracy, this public became representative of itself, with “private individuals” excluded from public authority working in the realm of the public sphere. He sees that change as a step towards the emergence of society as opposed to the state, as a set of private individuals who organize themselves into a public body. This private

body attempted to use newspapers and media in heated public debates over the rules, norms, and occurrences of society.

Journalism is hence central in this context. Habermas speaks of the eighteenth century as the age of the crystallization of the concept of the public sphere, in which the private autonomy of society, and the restriction of public authority took place, hence, constitutions guaranteeing the right of individuals to assemble and transform the political into the rational through public deliberation in the public sphere. considering journalism so important that he cites Karl Bucher stating that: “Newspapers changed from mere institutions for the publication of news into bearers and leaders of public opinion-weapons of party politics. This transformed the newspaper business. A new element emerged between the gathering and the publication of news: the editorial staff. But for the newspaper publisher it meant that he changed from a vendor of recent news to a dealer in public opinion”. This only increased with the emergence of mass media, in which journalism of conviction thrives. Habermas also states that the demand for information to be accessible for society within the modern social welfare state mass democracy means that the public sphere is further strengthened in those states, thus leading to the situation of many European countries in the world today. This is a foundational aspect as to why journalism was the main form of media examined in the civil marriage debate, along with public lectures.

The Habermasian focus on the development of the public sphere with the increase of democratization is linked to his focus on political participation as being the core of democracy, and a central element in individual self-development. Hence, Habermas (1991) is centrally concerned with any distortion of communication in the public sphere by elites, or by market forces, based on the Frankfurt School model of the transformation of liberal democracy and market capitalism into state and monopoly capitalism in the 20th century with the rise of Nazism and Fascism in Europe. Habermas utilizes that era to argue that the public

sphere, after undergoing a phase of being centrally “bourgeois”, was re-feudalized, giving private interests political functions, and allowing corporations to manipulate the media for their own ends. With the decline of the public sphere and the corruption of the media, citizens transformed into passive consumers, leading to a decline in political participation, and hence the erosion of democracy. Based on the aforementioned historical sequence, Habermas sees that the public sphere underwent two stages, starting with the Enlightenment and the American and French Revolution, and followed by the emergence of a media-dominated welfare state capitalism and mass democracy. He marks that one of the dangers of the media, as evident in the case of fascism, and in the cultural industry as we have it today, is that it does not function as a facilitator of rational discourse and debate between private individuals, but attempts to shape, construct, and limit public discourse within the bounds and themes accepted by the elites. Edward S. Herman and Noam Chomsky (2002) demonstrate how the limits of what is questionable and what is not, and elite control over the media, largely affects how the public discourse is shaped and manipulated. Simple actions, like moving a story from the first page to the fifth page of a newspaper, or from the beginning of a news broadcast to the end, can affect what the reader and listener focus on and give importance, and hence what they care about and give their attention. Habermas sees this as transforming active citizenship into spectatorship, saying that: “In as much as the mass media today strip away the literary husks from the kind of bourgeois self-interpretation and utilize them as marketable forms for the public services provided in a culture of consumers, the original meaning is reversed.” (Habermas, 1991, p. 171) Habermas attempted to resolve this erosion of the public sphere by setting “in motion a critical process of public communication through the very organizations that mediatize it”, hence increasing democratization through “a critical publicity brought to life within the intraorganizational public sphere.” (Habermas, 1991, p. 232)

Critiques of the Habermasian public sphere are numerous and vary from structural critiques to economic critiques to psychological ones. It has been argued for example that Habermas idealizes the bourgeois public sphere of the eighteenth century, specifically when speaking of salon and café culture, not taking into account the fact that the poor, women, and slaves were excluded from that sphere, and therefore it was not in any way open for all. Oskar Negt and Alexander Kluge (1993) criticized Habermas for neglecting any investigation into the proletarian and plebian public spheres. However, Habermas does concede to that, and states that he speaks of the public sphere in order to establish a certain ideal, not idealizing what was in the 18th century in its historical form, and that he had underestimated the power of the proletarian public sphere, and how elemental it was to the development of the bourgeois public sphere as well. This means that rather than admitting the existence of a single public sphere in society, Habermas further developed his theory to inculcate a multiplicity of public spheres, which sometimes collide and sometimes are separate, including and excluding groups, technologies, and means of communication. However, he does state that the ideal case is to have one public sphere for everyone to communicate in. (Kellner, 2000)

In addition, Habermas relies on language as the most rational means of communication. This highlights how his theory of the public sphere led to his development of the theory of communicative rationality. This means that Habermas moved from a structural description and critique of the state of communication to a universalistic, ahistorical, moralizing framework. However, if language itself is a historical product, along with its conventions, history, and rules, then meanings shift over time, and so do forms of language and communication. This is the structuralist critique of the Habermasian public sphere as offered by Kellner (2000), who states that the linguistic turn in Habermas's philosophy led to its weakening. He criticizes how Habermas based his distinction between the structural critique

and universalistic solution on the distinction between the lifeworld and the system, wherein the lifeworld is governed by norms of communicative interaction, and the system is governed by the “steering imperatives” of money and power. Kellner states that this presumptuous division is too dualistic and Manichean; he does not concede to the Habermasian notion that it is impossible to democratically transform the way money and power operate. This point is a contention on the imaginative limitation of the Habermasian project, coined as being liberal and pro-Western-status-quo. In his separation, Habermas just wants to protect the communicative realm from the influence of money and power, whereas Kellner wants to transform money and power to be democratic. One other critique Kellner has against Habermas is that Habermas fostered his notion of the public sphere in an age of print media, where rationality had to manifest itself in clear, consistent, and linear reasoning. As for the age of television, and subsequently, the internet, this is not the case. This largely undermines the Habermasian analysis due to conceptual limitations on the operation of television and the internet, and therefore the communicative sphere, which fosters irrationality. To quote Marshall McLuhan (2009), ‘the medium is the message’, and where the medium is not taken into account, the impact of the message cannot be properly understood. Habermas hence seems to fail in explaining the precise institutional and normative functions of the media and the public sphere in modern societies.

Nancy Fraser, additionally, argues that in practice, the public sphere did not even constitute an accessible sphere free of personal contention. Based on the work of John Landes, Mary Ryan, and Geoff Eley, she states the Habermasian public sphere was in fact ‘a masculinist ideological notion that functioned to legitimate an emergent form of class rule’. (Fraser, 1990, p. 62) She notes that the accessibility of the public sphere was restricted per gender and class, and that the absence of private interests from debates within the public sphere was only momentary, soon overcome by the rise of social issues with the crystallization and maturing

of the bourgeois and the proletarian class. Social issues meant the private interests of bourgeois men led to the evolution of more exclusionary clubs set upon lines of interests, and therefore the rise of the 'age of societies.' She also goes on to negate the four premises of the Habermasian public sphere: (1) that interlocutors in the public sphere can speak 'as if' they were social equals, (2) that greater democracy means less public spheres rather than more, (3) that the public good should be paramount in public sphere discussions, and that private interests and private issues should be kept to a minimum, (4) that a separation between civil society and state is necessary for a functioning democratic public sphere.

On the first assumption of interlocutors in the public sphere speaking 'as if' they were social equals, Fraser argues that marginalized groups tend to develop a marginalized culture, and therefore, even if that group is included in public discussion, its means of communication will be largely affected by the culture from which it comes, and will highly affect how that group is perceived and how its points are delivered. Fraser exemplifies this by speaking of how men tend to talk more than and over women. The public sphere cannot be devoid of the influence of various cultures, and therefore, in the public sphere equality cannot be actualized until equality between groups is. However, this could be argued against by stating that the very participation within the public sphere, over time, is bound to let those who are marginalized raise their voice. Those who engage in the public sphere, over time, learn how to make their voices heard, their points acknowledged, and their concerns recognized. While a new entry into the public sphere might mean being at an inferior status; over time, this would be resolved through acquiring the means necessary to deliver the points across. Means of communication are not essential to groups, but the result of the social structure within which they operate, and where a certain means of communication does not work, groups are expected to assemble and change those means to better suit their purposes. The rise of the

very feminist concerns by Fraser and the rise of activism in the public sphere both demonstrate the effectiveness of the public sphere in revitalizing means of communication.

The second assumption criticized by Fraser is Habermas's idea that greater democracy means less public spheres rather than more. Fraser states that a multiplicity of public spheres, especially for intergroup dialogue, allows for groups to create grounds 'for withdrawal and regroupment', and creates the space for groups 'as bases and training grounds for agitational activities directed towards the wider public'. (Fraser, 1990, p. 68) This point further serves to address my concerns about the objection raised by Fraser on the first assumption, and yet, while there is space for intergroup discussion, the maintenance of the overarching public sphere in which all members of society participate is still essential for a properly functioning multi-cultural society; at the end of the day, all of those multiple cultures are bound to interact in order to set laws and policies within the government, and vote on societal affairs as a result of public communicative deliberation. Intergroup public spheres are to be maintained, and their multiplicity, as Fraser argues, is necessary, but as Habermas argues, the overarching unifying public sphere is the end goal for the resolution of societal conflict, not intergroup echo-chambers which only increase societal polarization and hence foster conflict. Here I am forced to disagree with both Habermas and Fraser, stating that it is not the use of one public sphere versus the use of a multiplicity of group-specific public spheres, but whether society is increasingly fragmented in creating their own public spheres and decreasing communication in the larger public sphere or vice versa. Gravitation towards the Habermasian ideal necessitates the latter, with greater focus on the larger public sphere rather than seeing it as a battle where each group has to regroup and fight again. Where citizens are comfortable to interact more in the public sphere as rational agents, society is communicating better as a whole.

The third assumption criticized by Fraser is Habermas's idea that the public good should be paramount in public sphere discussions, and that private interests and private issues should be

kept to a minimum. On this point, Fraser states that there is no a priori definition of what is public and what is private, what relates to all and what does not. She gives an example of domestic violence, which was for long seen as a private matter between heterosexual couples, but through feminist activism, this became a matter of public concern. She also notes that even in societies where the stratification is minimal, there is no a priori reason to assume that there is no grounds for conflict, and that in most societies, to state that there is a shared common good between the exploiter and the exploited is at best a mystification of the reality. Fraser here assumes that what is 'public' must be a priori in nature, and that any fluctuation in what is deemed public concern means that what is public is not clearly defined. While Habermas does fall into an exclusionary view of private groups and their concerns, language, and reasoning (as will be clarified when speaking of Habermas and religion in the public sphere); issues of public concern are those issues which are conceded upon to be paramount at the moment. What is discussed in the public sphere is what becomes subject of public interest due to economic, societal, or philosophical reasons. These cases change over time, however, that does not mean that their 'public' persona is not evident in the moment of their discussion. Putting the public/private distinction under scrutiny is rightly done by Fraser, but Habermas himself addresses this concern in his book 'The Structural Transformation of the Public Sphere'. In speaking of how Marx conceived of the public sphere as a realm of contention between the bourgeois and the proletariat, Habermas states that private people must assemble to make social reproduction and the public sphere promote equality, and to promote their own interests, in order to create a more egalitarian rational public sphere. He states that "the public sphere with which Marx saw himself confronted contradicted its own principle of universal accessibility-the public could no longer claim to be identical with the nation, civil society with all of society". (Habermas, 1991, p. 124) This meant that the proletariat had to organize to promote their own rights and interests in order to actually be in

an egalitarian public sphere. In fact, Habermas sees this as a necessary precondition for the creation of his ideal public sphere. He states that “the view on which private people, assembled to form a public, reached agreement through discourse and counter-discourse must not therefore be confused with what was right and just (...) As long as power relationships were not effectively neutralized in the reproduction of social life and as long as civil society itself still rested on force, no juridical condition which replaced political authority with rational authority could be erected on its basis.” (Habermas, 1991, p. 125) Hence, for Habermas, “the separation of the private from the public realm obstructed at this stage of capitalism what the idea of the bourgeois public sphere promised”. (Habermas, 1991, p. 125) Based on this, it seems Habermas would argue that private interests are not directly separate from the common good, but might be necessary for it on certain issues, especially those which promote equality and the protection of groups oppressed by the public.

On the fourth assumption, that a separation between civil society and state is necessary for a functioning democratic public sphere, Fraser has two concerns here. The first relates to stating that the economy and political sphere should in no way be controlled, but she dismisses this as an uninteresting concern that is easily negatable. Her second concern relates to the inter-mixing of the political and the public; how separating the public sphere from the political arena renders the public weak, and how parliamentary democracy, where the parliament itself is a room for discussion on societal affairs, becomes part of the public sphere; as well as the concern that a total separation between the political sphere and the public sphere renders the political unaccountable to the public. The concern raised by Fraser offers a valid point, however, one should note that parliamentary discussion only gain value in as much as they reflect the debate happening outside the parliament, within the public sphere. In that domain, argument does not stem from the authority of the politician, but from the power of the argument offered by whatever individual, politician or otherwise. Fraser

herself states then in saying that Habermas sees a politician's contribution to the public debate 'not undertaken in any official capacity'. (Fraser, 1990, p. 74) While this may be ideal, especially where populism arises, the point which Habermas states remains valid, political authority's influence within the public debate should be kept to a minimum; arguments should not be considered valid by virtue of a person's political position. The debate which occurs in the public sphere is reflected electorally, and then politically. This also takes place in cases of re-election, wherein officials are held accountable for their ability to reflect interest in the public sphere. This does not however mean that the public sphere is interfered in by the state, or that the public is attempting to take the position of the state; but that the state, as an extension of public will, does not taint the public sphere with power-play.

Engagement with Kellner and Fraser highlights key concerns about the Habermasian theory of the public sphere, how rational argumentation in the public sphere may be tainted by collective psychological feats and inter-societal struggles, and how those can be inculcated, or transcended, according to what a specific reality dictate. The concerns raised by Kellner and Fraser are to be watched out for in any discussion occurring within the public sphere, and highlight key problems which may render the public sphere a space of sensationalism and group-think; and therefore, render it at best useless, and at worst counter-productive.

C. Habermas and Religion in the Public Sphere

The civil marriage debate was heavily loaded with religious terminology and contention over the place of religion in the public sphere. In this section, I shall examine Habermas's conception of the place of religion in the public sphere, especially when compared to that of John Rawls; as both are considered among the prime theorists of the liberal modern state. Given the criteria of the public sphere mentioned in the previous section, which most importantly include accessibility for all, and the ability to deliver rational arguments in a manner which everyone can understand and contest, the role of religion within the public

sphere has been subject to much debate, and in some cases, scrutiny, by theorists. The most prominent of those who call for the exclusion of religion from the public sphere is John Rawls, who has argued that since the state is a secular entity, distant from the personal religious affiliations of its subjects, the manner in which those subjects have to reason about the state has to be secular. This stems from the Rawlsian concept of the public use of reason, which necessarily means that reasoning about political and public issues must solely depend on reason all the way to its roots, with no reference to scripture at any point. Rawls (1997) sees that as necessary for democracy, which depends on (1) the equal participation of all citizens, and (2) the epistemic dimension of all acceptable outcomes being rooted in rationality. This means, in practice, that no religious justification for any position is allowed in the public sphere. Robert Audi (2005) hence terms the Rawlsian postulate ‘a principle of secular justifications’, which should be independent from any form of religious motivation, and sufficient to direct the moral actions of individuals. This postulation by Audi and Rawls has several problems, summarized by Melissa Yates (2007) as (1) the split identity objection and (2) the asymmetry objection.

The split identity objection rests on the premise that Rawls expects religious individuals to split their reasoning between public and private issues, and that all public reasoning needs to be devoid of religious influence. This means that religious individuals must develop a two-sided defence of their views, independent from one another. This has been highlighted to deny religious people the centrality religion is bound to play in their positions. (Carter, 1994; Murphy, 1998; Perry, 1988) Rawls responds to this by stating that reasonable religious people do not expect those who do not ascribe to their doctrine to follow it, and therefore, his separation still stands. However, if those reasonable religious people reject this premise, and assume that their moral position stands regardless of what anyone believes, and that some things are immoral based on religion but immoral nonetheless, then Rawls’s defence fails.

Habermas (2006) states that the principle of *institutional separation* of church and state must not put an undue *psychological* and *mental* burden on citizens who follows a faith, asking them to create an internal separation which can never be fully realized, especially considering the moral power of religion as a fountain which feeds into the decisions and positions of people's lives.¹⁰ Habermas allows for religious people to reason religiously in the non-public sphere, however, within the public sphere, they have to give secular reasons as well.

Habermas does not expect people to split their reason but expects religion itself to modernize and be able to develop universally standing reasonable positions. Habermas states that while religion may play a role in the private deliberation of individuals between themselves, or within their own religious circles, once they go into the public sphere, they should be able to use a common language, rather than the language of religious jurisprudence confined to the group in specific. (Habermas, 2006a) However, Yates rightly states that Habermas's distinction between non-public and public reasoning also forces a split-identity problem on religious people, wherein they have to act one way in the non-public sphere, and another way in the public sphere. Habermas, for Yates, fails to overcome the split identity problem.

As for the asymmetry objection, Yates states that Rawls puts a burden on religious people that he does not put on atheists, namely, to put aside part of their reasoning. This implies that political liberalism implicitly supports atheism. Religious individuals will experience constraints on their reasoning which atheists will not. Kent Greenawalt (1994, p. 688) states that:

“When someone urges that the value of autonomy be respected, it may be virtually impossible for him and others to tell whether he is relying on a particular

¹⁰ Habermas (2006b, p. 10) states that: “Religious traditions have a special power to articulate moral intuitions, especially with regard to vulnerable forms of communal life. In the event of the corresponding political debates, this potential makes religious speech a serious candidate to transporting possible truth contents, which can then be translated from the vocabulary of a particular religious community into a generally accessible language.”

comprehensive perspective or the widely shared value of autonomy in our culture. Liberal non-religious comprehensive perspectives are bound to ‘suffer less’ from a principle of self-restraint than both religious views and non-religious, non-liberal views. This difference may reasonably be thought to involve a kind of inequity.”

Rawls responds to this by appealing again to the reasonableness of religious individuals, who by taking on a religious doctrine, reasonably take on with it the duty to be able to reformulate their thought in a secular manner. However, this does not in any way negate the objection to his postulate. Habermas on the other hand argues that the burden is on both religious individuals and atheist, in that religious people are given the burden of explaining their stances to atheists in a secular manner, and atheists are requested to take seriously the possibility that deeper universal moral intuitions may stem from religious traditions. He states that:

“The other side of religious freedom is in fact a pacification of the pluralism of world-views that distribute burdens unequally. To date, only citizens committed to religious beliefs are required to split their identities, as it were, into their public and private elements . . . But only if the secular side, too, remains sensitive to the force of articulation inherent in religious languages will the search for reasons that aim at universal acceptability not lead to an unfair exclusion of religions from the public sphere, nor sever secular society from important resources of meaning.” (Habermas, 2003, p. 109)

However, in essence, this may be set to require a split-identity from both religious and secular individuals, and not allow them to echo their thoughts in their original language. While this may be necessary for cross-cultural deliberation, it seems that Habermas’s

response to Rawls is not compelling and does not resolve all the problems posited by the Rawlsian conception of public reason and public deliberation.

In discussing the Habermasian understanding of religion, Matt Sheedy (2009) states that Habermas tends to have several pitfalls. Habermas assumes, according to Sheedy, that the only important part of religion is the list of do's and don'ts, and not the theological claims which the religion makes. He sees that as problematic in that it isolates the religious claims posited by religion from public criticism; and hence from being subject to any public deliberative process. Whether Jesus is the son of God or not is not subject to debate from the Habermasian perspective, as it does not directly relate to any policy, at least in the way Habermas understands policy-production as based on textual evidence plus moral values derived from those texts and culture. Sheedy notes that this misses the point of how identity and religion tend to be intertwined in cultural production. Sheedy states that in order to resolve this, all the claims upon which religion is based must be subject to public scrutiny and debate, as well as the claims of the atheists; in order to be able to deliberate on the roots of the religious/secular argumentation, not only on its by-products. Hence, the sort of cognitive dissonance which Habermas enforces on both religious and secular citizens is problematized by Sheedy, who views it as merely attempting to cast away a fundamental point of contention which has to be addressed in a public manner. However, it could be argued that theological debates tend to be irresolvable in the public sphere, and that thousands of years of attempting to argue away religious diversity have obviously failed. Not only that, but since the theological debate is one which does not directly address the policy-contention; and since debate over certain policies and laws tend to be more urgent in nature, it would make more sense to invest societal time and energy in that which is visibly productive, rather than that which is visibly unproductive.

In addition, Sheedy criticizes Habermas for having a Euro-centric approach to religion, where the Judeo-Christian tradition is seen as a central point of engagement as holding universal principles, and other religions are cast away as being ‘Arab’, ‘Semitic’ and/or culture specific. Sheedy highlights how Habermas mostly engaged with European Christian figures and did not engage as much with religions from other areas of the world. However, this might be explained away as a result of the historical accident of Habermas being born in a certain European context, and therefore having a certain special relationship to that tradition and focusing on it as his own starting point in approaching world religions. This cultural specificity is hence not necessarily a result of philosophical exclusivity, but a result of a natural connection between a philosopher and his habitat. Sheedy attempts to state that this specificity has tainted the Habermasian approach, in that he does not seem to realize that culture and religion are intertwined, and that religion is heavily connected to identity in many contexts. Hence, assuming that Christian values specifically have a universal identity is problematized. However, this is not strictly true, in that scholars from many traditions have argued from a cross-religious value structure, which emphasizes on issues such as liberty, equality, and freedom, even if in different guises and with different approaches as per each tradition. Such a characterization of the Habermasian approach, like many characterizations of Euro-centrism, tend to miss the common parallels between civilizations and cultures, and to not give the scholar the benefit of the doubt, understanding how one’s background and engagement with his own tradition is somewhat to be expected and understood, not cast away as a form of cultural-centrism per se.

However, it is important to note that Habermas does emphasize the element of rationalizing religion in the public sphere, which might exclude traditions which call for a more rigid commitment to the texts. Hence, Austin Harrington (2007) states that in Habermas’s attempt to include ‘the Other’, he might in fact exclude him. He says that:

One might say that in its will to 'include the other', Habermas's thinking about religion has a paradoxical tendency to perform the thing it most seeks to avoid, namely, to exclude the 'Other' or to exclude otherness. Its problem is that precisely in its will to universal accommodation, it may only end by immunizing itself against a challenge from something more profoundly outside of itself. Only when his thinking regains a commitment to expose itself to something more one-sided, to something more dangerously particularistic, decisive or excessive - perhaps with the consequence of failing, disappointing or even antagonizing certain people or parties - only then, one might suggest, will it have a chance of acceding to the universality it so passionately desires. (Harrington, 2007, p. 56)

Maeve Cooke has attempted to engage critically with the Habermasian proposition of the public sphere and noted that Habermas distinguishes “critical engagement” with the cognitive substance of religious statements from “critical assessments” of the validity of religious statements. Habermas hence seeks to create a post-metaphysical thinking within social debate and social philosophy, while maintaining the interdependence of secular and religious identity within the confines of a modernization of religion through semantic renewal. (Cooke, 2006b) She notes that Habermas fails to distinguish between authoritarian and non-authoritarian reasoning within religion, with the former making statements without appealing to reason through language and disregarding the key elements of history and context from their argumentation. She also notes that while the modernization process of religious expression is necessary, it might impair the political participation of religious individuals in the public sphere. This means that even non-authoritarian believers would be stopped from participating in the public debates and the decision-making process somewhat unnecessarily. She states that:

Jettisoning the elitist, absolutist, and a-historical elements of traditional modes of metaphysical thinking, we can endeavour to develop non-authoritarian modes; metaphysical thinking of this kind acknowledges that its guiding assumptions are mediated by language, history, and context and understands them not as indisputable claims about the structure of the mind or the world, but as arguments that raise claims to validity that can be subjected to critical interrogation in open-ended, inclusive, and fair processes of public argumentation. (Cooke, 2006c, p. 205)

Hence Cooke attempted to crystallize how one should reason within the public sphere in order to minimize the distortion of communicative rationality. She speaks of the binary of authoritarian vs. non-authoritarian practical reasoning. She stated several premises which underlie the public sphere, allowing for communicative rationality to execute itself, which include the assumption that:

“historical time is progressive as opposed to cyclical; that political authority is neither divinely ordained, nor naturally given nor historically determined but a matter of co-operation among human beings for their mutual benefit; that there are no authoritative standards independent of history and socio-cultural context that could adjudicate rival claims to validity, especially in the areas of science, law, politics, morality and art; that human knowledge is contestable, in the sense of open to revision on the basis of good reasons; and that human beings are essentially equal by virtue of capacities such as reason or moral judgement, and are entitled to respect on grounds of such capacities.” (highlighted by us) (Cooke, 2005, p. 380)

Those assumptions are contended in that they largely correspond with modernist ideology and principles. However, Jeffrey Alexander (2006) has argued, quite against Cooke (and Habermas), that the public sphere is not modernist, as per her aforementioned assumptions,

but is the product of democracy. He states that ancient Greece had its own civil sphere in which citizens could participate in public deliberation. However, it is quite evident that in that civil sphere political authority was viewed as “divinely ordained” or “naturally given” or “historically determined”, and human beings were not viewed as being “essentially equal by virtue of capacities such as reason or moral judgement”. It is hence necessary to differentiate between the ideal public sphere in modernist terms, and whether the public sphere exists in one way or another as an institution which, to use Alexander’s terms, could be refined.

Once those assumptions are laid out, Cooke states that considerations of “context” and “history” are what fundamentally distinguish authoritarian claims from non-authoritarian claims. Later on Cooke (2007) provides more specification to what would be authoritarian practical reasoning, highlighting two interrelated components about knowledge and justification: first, when knowledge is restricted, its access to a privileged group of people or its standpoint is removed from the influences of history and context; second, when conceptions of justification split off the validity of propositions and norms from the reasoning of the human subjects for whom they are proclaimed to be valid.

For that reasoning not to remain in an authoritarian vacuum, Cooke speaks of the necessity of maintaining a linkage between theorization and experience. This requires radical reflexivity, which is centred around openness to (1) everybody’s contributions, and to (2) all kinds of contributions. In this sense, Cooke rejects the notion that experience is purely constructed socially, and states that it is in fact mediated socially. Experience is affective, but we also reflect on our experiences in the production of thought and new experience. In addition to experience, Cooke sees imagination as a way of countering epistemic rigidity as well. However, she does take into account the danger of unbridled openness to all new experiences and to imagination risking all sense of stability.

In light of the aforementioned considerations, Cooke (2016) sees that epistemic authoritarianism is facilitated by any all-encompassing ideology, which lacks self-reflectiveness, and is therefore both limited and rigid. Such dogmatic theorizing is naïve and leaves no room for other ideologies and forms of reasoning, distorting communication and leading to the production of false consciousness. Thus, for Cooke, helpful truth claims in the public sphere aim at (1) actualizing a higher end and (2) creating a system which is helpful to each inhabitant. False consciousness cannot realize that higher end and prevents anyone from attempting to do so. Not only that; Cooke also further claims that since dogmatic ideologies are not context-dependent, they serve no one, not even those promoting that ideology, as their own actions could be deemed ill within the ideology's framework. Therefore, dogmatic ideology is harmful to everyone, and prevents the realization of a system which realizes the higher ends of humanity (justice, equality, etc.). One notable example of this is Adorno and Horkheimer's *Dialectic of the Enlightenment*, which unveils how reason itself could become a vehicle for the production of false consciousness. Cooke sees the salvation of theory from dogmatism through a feedback loop of theorizing, which takes into account (1) the goal of social change, and (2) depends on the insights of acting theorists through argumentation, which prevents both dogmatism and echo chambers, where theorists are just affirming the assumptions of one another without any external feedback or serious doubt. This brings us back to the aforementioned centrality of experience as being epistemically significant but not epistemically reliable; hence the necessity of integrating it into the argumentation process, but it not being the final arbitrator. (Cooke, 2015)

D. Taylor on Religion in the Public Sphere

Charles Taylor (2007) sees the place of religion different from Rawls, Habermas, and Cooke. For Taylor, religion is central to the construction of identity and sect in a neo-Durkheimian fashion; especially in a post-secular age in which there is a reaction to individualism,

instrumental rationalist, and the political reality which they produced. The absence of religion is seen by Taylor as leading to nihilism and loss of meaning, and that was reacted to by the revival of religion in the public consciousness, and by extension, the public sphere. Hence, Taylor disagrees heavily with the propositions of Rawls and Habermas, noting that the Rawlsian proposition is of a tyrannical nature, restricting everyone to secular reason. He criticizes the epistemic distinction which Rawls posits between secular reason and religious reason, stating that if religious reason is forced to come to the conclusions of the secular reason, then it is secondary if not superfluous to superior secular reason. He also states that while Habermas offers more room for religion in deliberation, he still maintains the distinction between religion and secular reasoning. Taylor, like Cooke, takes the position that religion should not be excluded from citizen deliberation; and that the secularity of the state means that the language of legislation, administrative decrees, and court judgements should remain areligious. He provides the example of justifying a clause with “Whereas the Bible tells us that...”; and states that this is of course to be rejected. However, similarly, he states that framing legal edicts with phrases like “Whereas Marx has shown that religion is the opium of the people...” is also to be rejected. His rejection of the former is hence not due to its religious nature, but due to its exclusive nature to a certain group in a more diverse society. Both phrases violate the pre-supposed neutrality of the state, which is to be maintained in a democratic society. Hence, the state for Taylor (2011, p. 50) ‘can be neither Christian nor Muslim nor Jewish, but, by the same token, it should also be neither Marxist, nor Kantian, nor utilitarian.’ However, this does mean that religious language cannot be utilized in the public debate. Taylor states that people may come to the same conclusion, such as the right to life and freedom, but for different reasons. Utilitarians would justify it by stating it maximizes joy and reduces suffering, a Kantian would point to the dignity of rational agents, and a Christian would speak of humans being made in the image of God.

While they would all reach the same conclusion, they largely differ on the deeper reasons for holding that conclusion. This tends to concur with Fraser's idea of the existence of multiple public spheres, but not negating the larger unifying public sphere of which Habermas speaks. In addition, it somewhat coincides with what Habermas spoke of in that religious people are allowed to deliberate using religious language in their own circles, i.e. non-public deliberation; however, Taylor provides more emphasis on the inescapability of that form of rhetoric, and the inability to escape the use of that language, and hence having to view secularism not as aiming at separating religion from public decisions, but attempting to reach consensual public decisions regardless of the background of the speakers.

This is all based on Taylor's definition of secularism, and the inherent tensions he sees within secularism as it is demonstrated today, especially in the French and German contexts. Taylor defines secularism as being based in the French revolutionary trinity of liberty, equality, and fraternity, manifested in three principles: (1) that no one should be forced in the domain of religion or basic belief (religious liberty is guaranteed, and the freedom not to believe), (2) that there must equality between people of different faiths and beliefs, with no religious perspective gaining a privileged status in the eyes of state, and (3) that all spiritual families must be heard in the ongoing process of figuring out the identity of a society and its goals. Taylor himself adds a fourth goal of secularism, that being maintaining a sense of harmony and trust between followers of different religions and Weltanschauungen. However, Taylor points out that the manifestation of these goals and principles socially is not pre-determined, and itself is subject to societal debate. In addition, he states that there is a problem in identifying secularism as being an institutional arrangement in which religion is fully separated from the state apparatus and institutions. Mistaken secularism, of which Taylor takes examples in Ataturk, and some French and German regulations, deals with the secular ethic as being a simple wall of separation, rather than being a set of goals that are to be

actualized. Hence, for example, in the debate over the hijab in France, it has been argued that religion should be kept out of state institutions, even if that interferes with freedom of conscience, and does not allow people to practice their religion, or provide equality for people to demonstrate their religious affiliation. He rejects arguments which claim that the hijab is a statement against secularism and against the republic, or that it is a tool of attention grabbing, stating that many women in fact protested stating that “le foulard n’est pas un signe” (the headscarf is not a sign). He sees those attempts of subverting the problem hijab posits to the changing identity of the French nation as being a form of fetishization to hide the real problem, which is that pluralistic societies have to undergo a change in ethics and be inclusive of norms which tend to come in with migrating minorities. The way out of this dilemma, for Taylor, is the establishment of a form of trust between different groups, which is necessary so that social dynamics are not based on the subversion of one group by another, but on the actualization of real equality between different members of the state. He states that:

“From another angle, again, because these societies require strong commitment to do the common work, and because a situation in which some carried the burdens of participation and others just enjoyed the benefits would be intolerable, free societies require a high level of mutual trust. In other words, they are extremely vulnerable to mistrust on the part of some citizens in relation to others, that the latter are not really assuming their commitments—e.g., that others are not paying their taxes or are cheating on welfare or, as employers, are benefiting from a good labor market without assuming any of the social costs. This kind of mistrust creates extreme tension and threatens to unravel the whole skein of the mores of commitment that democratic societies need to operate. A continuing and constantly renewed mutual commitment is

an essential basis for taking the measures needed to renew this trust.” (Taylor, 2011, p. 45)

Taylor’s position is demonstrably much more religion friendly and aims to resolve the tension between secularism and religion by disintegrating the religion/secularism dichotomy. Taylor sees that religion is not a problem for secular societies that needs to be integrated and have a special resolution but is part and parcel of what that society is, and to expect societies to exclude religion is itself a mistaken view of the goals of secular society. He attempts to provide the main challenges which face such a resolution, and the necessary mechanisms to resolve it.

In a dialogue between the two Habermas has attempted to respond to Taylor by stating that:

“Our difference is that ... there is a call for a “deeper grounding” of constitutional essentials, deeper than that in the secular terms of popular sovereignty and human rights or in “reason alone.” This is our difference. There, I think, I cannot follow you because the neutral character of the “official language” you demand for formal political procedures, too, is based on a previous background consensus among citizens, however abstract and vague it may be. Without the presumption of such a consensus on constitutional essentials, citizens of a pluralist society couldn’t go to the courts and appeal to specific rights or make arguments by reference to constitutional clauses in the expectation of getting a fair decision.” (Habermas, Taylor, & Calhoun, 2011, p. 65)

This means that what Habermas calls ‘secular language’, which present in governmental documents and edicts, and what Taylor would call ‘neutral language’, is something which, after public deliberation, has to be reached, regardless of whether one is Rawlsian, Habermasian, or a Taylorist. Taylor expands this neutrality to include a lack of reference to

Kantianism, Marxism, or any other philosophical doctrine as well, in an attempt to state that religion is not special, but that all philosophical and theological commitments are equal in a secular scenario.

E. Dworkin on Legalism

In this section, I will examine Dworkin's theory of legislation, which differentiates between literalist readings of legislation and principle based readings in an attempt to create a justice-based theory of the law. In a more legal context, Ronald Dworkin's view of the law as a narrative structure underlined by a form of hidden logic is useful in understanding how religion can play a role in legislation in a modern state, and hence his theory is elemental in framing the legal grounding for the acceptance or rejection of a civil marriage legislation in Lebanon. Contrary to legal positivists, Dworkin states that if a judge is faced with a case in which no statute or previous decision has been issued, he is to attempt to interpret what is already part of the legal corpus, comprehend the underlying principles which governs that material, and gives voice to the values which the legal system is based on. Dworkin demonstrates this through two cases, the first is the decision of *Riggs v. Palmer* in the New York court in 1899. The case dealt with a person who committed murder in order to inherit; and since he legally has the right to inherit, the case posited a legal dilemma. However, the court resorted to the principle that 'no person should profit from his own wrong' and therefore the decision was made for the murderer not to inherit. Later in his writings, Dworkin stated that law is essentially an interpretive phenomenon. This view is based on two premises: (1) that determining which law applies to which case requires an interpretation, and (2) that interpretation always requires a form of evaluation. In cases where the law is not clear, the judge interprets the principles upon which the laws rest, and uses those principles to make the best possible decision.

Ronald Dworkin's concept of law within a liberal democratic state is useful in thinking of authoritarian versus non-authoritarian reasoning. (Dworkin, 1985) Dworkin states that there are two ways of conceptualizing law in a civic state: the rule book conception and the rights conception. The rule book conception takes rules to be goals in and off themselves, and the spirit of the rule book as a determiner of new rules. Historical readings of the constitution, he states, are an example of that, where the intentions of the writers of the constitution in the U.S. are taken to determine what the constitution means. Hence, statements like 'All men are created equal' mean all white adult land-owning males. The second conception of law according to Dworkin is the right conception, which frames rights in terms of the universalizable liberal values of individual freedom and equality. Under such a conceptualization, rules are read as an enforcer of those rights, and new rules are to be created only if they align with said rights. Under such a conceptualization, statements like 'All men are created equal' is understood to mean all human beings.

Dworkin then devises a useful tool of understanding law, which is the distinction between legal principles and legal rules. Legal principles are the underlying factors and variables which control the production of law, and take into account history, context, social conceptualizations of justice, individual rights (as a moral entitlement), and many other variables. Legal rules are specific verdicts which judge a certain action in a certain context, generally applied in an all-or-non manner. Dworkin states that legal principles should always be kept in mind when rules are being created and should cater for the preservation of those principles. With those two variables, Dworkin creates a two-fold protection of the individual, centering the production and reading of laws as revolving around rights. (Dworkin, 1978) Dworkin in fact invites us not only to contextualize the law but to have moral principles on the legal reasoning and this is in line with Cooke's claim.

CHAPTER IV

CIVIL MARRIAGE DEBATE ARGUMENTS

The civil marriage debate was highly diverse and contentious, and featured the ordinary and extremely bizarre forms of argumentation. In this chapter, I will outline the methodology followed by the study, which attempted to survey 300 arguments for and against civil marriage. I will present the data quantitatively and qualitatively, going through the religious, sociological, and legal arguments gathered. This will be followed by an analysis of the said data.

A. Methodology

The data collection process followed a random sampling of 44 diverse media outlets and led to the gathering of 300 arguments for and against civil marriage. The data was divided as follows:

Table 2. Sources and Number of Arguments

Source Type	Number of Sources	Number of Arguments
Television Shows	12	104
Newspaper Articles	16	85
Lectures	5	53
Radio Shows	5	30
Friday Sermons	3	23
Written Reports	1	3
Personal Video Recording	1	1

Tweets	1	1
Total	44	300

Table 3. Number of Professional Per Media Format

Media Format	Profession	Number of Professionals
Written Reports	Ministers	1
Television Shows	Lawyers	4
	Sunni Sheikhs	4
	Former/Current Ministers	3
	Secular Activists	3
	Shi'i Sheikhs	2
	Christian Priests	2
	Civil Judges	1
	Government Representatives	1
	Religious Activists	1
Radio Shows	Sunni Sheikhs	2
	Christian Priests	1
	Shi'i Sheikhs	1
	Former/Current Ministers	1
Lectures	Sunni Sheikhs	3
	Shi'i Sheikhs	2
	Christian Priests	1

	Religious Activists	1
Newspaper Articles	Media Persons	6
	Politicians	4
	Sunni Sheikhs	4
	Christian Priests	3
	Lawyers	2
	Psychologists	2
	Secular Activists	2
	Engineers	1
	Druze Sheikhs	1
	Organizations	1
	Political Parties	1
	Shi'i Sheikhs	1
Friday Sermons	Sunni Sheikhs	3
Tweets	Singers	1
Video Recording	Shi'i Sheikhs	1

Table 4. Distribution of Positions Regarding Civil Marriage Per Profession

Profession	For Civil Marriage	Against Civil Marriage
Christian Priest	2	3
Civil Judge	0	1
Druze Sheikh	0	1

Engineer	1	0
Former/Current Minister	4	0
Government Representative	0	1
Lawyer	7	2
Media Person	8	1
Organization	1	0
Political Party	0	1
Politician	2	1
Psychologist	1	1
Religious Activist	0	1
Religious Activist	0	1
Secular Activist	5	0
Shi'i Sheikh	1	5
Singer	1	0
Sunni Sheikh	0	13

Arguments were analyzed in light of the Habermasian notion of non-distorted communication through the public sphere, namely as described by Cooke on non-authoritarian public reasoning; and the relationship between the Lebanese confessional system and the nature of the media as it influences the debate on civil marriage. In addition, a comparison was conducted between the debate on equal inheritance in Tunisia and the debate over civil marriage in Lebanon.

The current study is limited as it is conducted in light of an economic crisis which Lebanon is passing through, and as such, the issue of civil marriage, while timely and spoken about in the public sphere, is not the number one debate in the country. This means that a larger timeframe will have to be covered (from the beginning of 2019, after the formation of the new government) in order to take into account a larger number of arguments in order to be able to paint the picture more accurately.

B. Type of arguments

In this section, I will outline the arguments surveyed in the debate. The arguments will be split into three sections, the religious arguments, the sociological arguments, and the legal arguments. Religious arguments are those which are based on textual evidence, mostly from scripture; be it in the literalist sense or one which attempts to extract the principles stated in revelation and then projected and applied into particulars relevant to civil marriage.

Sociological arguments are meant in the broad sense; i.e. all the arguments which attempt to comment on the lived social realities. Those hence will include social, economic, and political dimensions; as well as conspiracy theories relevant to arguing for or against civil marriage. The legal arguments are those which are based on the Lebanese constitution and laws, as well as arguments which cite international agreements and treaties. The three types of arguments were extensively present in the debate, as demonstrated above.

1. Religious Arguments

Religious arguments formed 97 arguments out of the 300 selected arguments in the study. The arguments differed in nature, from citing religious texts to indicating the values of which religion is comprised and how civil marriage either supports or negates those values. The basic concern of those opposing civil marriage was that civil marriage negates the nature of religious marriage; on the Christian side this was summarized by marriage being one of the seven secrets of Christianity, and were the marriage is not conducted at the Church and

blessed by the preach, it is not considered a valid Christian marriage. On the Muslim side, and while a civil authority over marriage is accepted by religious figures, the opposition was based on many of the sub-articles of civil marriage, which include equal inheritance, not recognizing milk kinship, and negating the necessity of dowry. Hence, opposition to civil marriage from religious authorities seems to be complimentary; Christian religious authority opposes civil authorities doing the contract, and Islamic religious authorities reject the elements of the contract.

The notion that civil marriage does not align with the Islamic standards for a valid marriage was one of the most cited arguments. (Abu al-Quta', 2019; Ad-Diyar, 2019; Jradeh, 2019; Khodra, n.d.; Qanat 9, 2019; RT Arabic, 2019; Shartouni, 2019; Tutanji, 2019) These include the Mufti of Tripoli, the Mufti of Hasbayya, prominent religious scholars and political activists from both the Sunni and Shi'a sides, and was echoed in lectures, Friday sermons, and interviews in visual and written media. On the Christian side, this was echoed as well by stating that civil marriage fails to qualify as a marriage per Christian standards. (Ad-Diyar, 2019; al-Rahi, 2019, 2019) The individuals which voiced that statement include the Grand Patriarch of the Maronite Church, and several other prominent priests in Sunday Sermons, televised interviews, and written articles. Hence, it was noted that civil marriage does not go against one religion but attempts to strip the Lebanese people as a whole from their religion (Itani, 2019; Khoury, 2019), and removes the rights which religion currently has over people in social settings. (Ad-Diyar, 2019; Jradeh, 2019; Lana TV, 2019) However, it should be noted that this form of argumentation is somewhat tautological, as civil marriage in itself doesn't claim to be religious, and may even be argued to be an attempt to liberate individuals from the restrictions which religions may impose and yet are not desired by individuals who do not wish to follow a specific religious doctrine. (Orient Bells, 2019)

The way in which civil marriage may go against specific religious restrictions or regulations has been elaborated by both Muslim and Christian religious scholars. On the Muslim side, the main problems included: (1) the permission to adopt children (Jradeh, 2019; Tutanji, 2019), (2) negating the necessity of dowry (Abu al-Quta', 2019; Sbaity, 2019), (3) permitting Muslim women to marry non-Muslim men (Abu al-Quta', 2019; Fadlallah, 2019; Saad, 2019; Tutanji, 2019), (4) negating the revocable divorce¹¹ (Tutanji, 2019), (5) allowing marriage between individuals with milk kinship (al-Qasas, 2019; Tutanji, 2019), (6) negating Islamic inheritance laws (Fadlallah, 2019; Tutanji, 2019), (7) civil marriage changes the post-divorce and post-mortem waiting period for the wife to 300 days (al-Qasas, 2019; Tutanji, 2019), (8) allowing marriage without a guardian for the female (Abu al-Quta', 2019; Haddad, 2019), (9) allowing for the contract to be enacted and nulled with non-Muslim lawyers and judges (Abu al-Quta', 2019; Shaar, 2019b), (10) allowing marriage from adopted children (al-Qasas, 2019), negating the husband's obligation to spend on his wife (al-Qasas, 2019; Itani, 2019), (11) prohibiting consensual divorce unless the judge agrees to divorce the couple (al-Qasas, 2019; Fadlallah, 2019; Haddad, 2019; Jradeh, 2019), and (12) prohibiting polygamy (al-Qasas, 2019; Saad, 2019).

This was further elaborated on by Sheikh Humam Shaar (2019b), who stated that if the marriage contract was missing only one of the aforementioned regulations, it is not considered a valid contract. This invalid contract implies that the relationship is not to be considered a marriage, but an adulterous relationship. (Itani, 2019) Belief in the validity of an invalid contract which justifies adultery means a disbelief in clearly stated matters of the religion, and hence it was considered by many scholars and activists that the belief that a civil is valid pushes one outside the fold of Islam, making them a non-Muslim. (al-Qasas, 2019;

¹¹ In Islamic jurisprudence, a revocable divorce is a divorce which can be negated after the pronouncement of the divorce formula so long as the waiting period after the divorce has not expired.

Itani, 2019; Qabbani, 2019; Shaar, 2019b) However, Shi'I scholar Shafiq Jradeh (2019) was more lenient on the details of the contract, stating that if some of the regulations set by Islam were proven to be harmful, and since this is a matter of worldly religious regulations rather than ritualistic religious regulations, specific changes can be made within certain jurisprudential restrictions; hence what Jradeh did was open the door for discussion on what might be seen as problematic elements of the Islamic marriage contract, but at the same time state that civil marriage is invalid since it attempts to throw out the baby with the bathwater. On the other hand, Sunni Sheikh Ahmad Ayoubi, among others, stated that these matters are clear in the religion, and that there is no room for *ijtihad* if the scripture is clear in what it states. (RT Arabic, 2019)

On the Christian side, the main objection was that civil marriage allows for divorce (Alwan, 2019; Tahaddiyat, 2019). In addition, it was stated that civil marriage, being enacted in front of a judge and not a priest, implies that marriage is no longer one of the seven secrets of the church, shared with its followers, and therefore it is considered invalid in the eyes of the church. (al-Rahi, 2019; Tahaddiyat, 2019) A historical critique of necessitating marriage in front of a priest came from civil marriage supporter Orthodox Priest Edgar Traboulsi, who stated that marriage for most of the history of Christianity was conducted externally without the Church until the Church decided to regulate the marital institution in 1563, stating that the validity of a marriage is dependent upon it taking place in front of a priest and two witnesses. Here, Traboulsi argues, Christians are faced with two choices, either to consider all marriages prior to 1563 to be adulterous, or to state that marriage conducted outside the confines of the Church are themselves valid as well. Traboulsi himself goes for the second choice, and therefore argues that civil marriage is in itself a valid Christian marriage. (Alloush, 2019; E. Traboulsi, 2019)

The very nature of diverse societies was tackled by certain individuals from a religious perspective. Maya Ja'ara (2019), a Lebanese lawyer, stated that 'true' civil marriage is not in contradiction with religious and cultural diversity, and hence religious values can exist and flourish in a civil setting without the presence of religious institutional authority. She added that both the Bible and Quran have numerous verses which support freedom of belief and expression. Similarly, Talal Zaidan, a social activist, stated that religion not only endorses freedom of belief, but also prevents the coercion of people to certain actions, and therefore, the very actions of religious authorities contradict the texts which they claim to endorse and adopt. (Youssef, 2019) Religion was hence argued to aim at serving society and its flourishing, not the other way around (Charbel, 2019), and aims at avoiding harm rather than enforcing it. (Orient Bells, 2019)

In addition, the nature of faith was a matter of discussion itself. Some argued that faith and marriage are two separate matters, and that one can maintain their faith while marrying outside the religious establishment, as faith is a personal matter between a person and God. (RT Arabic, 2019) On the other hand, it was argued that faith was to be verified by actions; and that any commitment to religion has practical implications which are to be adopted if that commitment is to be socially recognized. (al-Qasas, 2019; Lana TV, 2019; RT Arabic, 2019; Shaar, 2019a) This was explained in two ways, the first being that the very commitment to religion means a commitment to a set of principles and jurisprudential regulations stated in the sacred texts; to claim that regulations which negate the religious texts should have priority is to negate that the sacred texts should be followed in their totality, and hence their sacred nature. Here, the person wanting to maintain their faith but abandon the scripture falls into a contradiction, wherein they believe that the texts are divine and should be committed to on the one hand, and believes that the texts should be abandoned for man-made regulations on the other, and hence, their actions practically negate their faith according to certain scholars.

(al-Qasas, 2019) The second way this was explained is through the historical lens of the Islamic tradition, wherein there was a huge debate historically between Orthodox Muslims (namely the Ash'arites) and a group called the *Murji'a*, who believed that faith is purely a matter of the heart, whereas Ash'arites believed that faith is both verbal and practical submission to the religious doctrine. Hence, those who currently state they can opt for civil marriage while maintaining their faith, as faith is a private matter, were categorized by Sheikh Humam Shaar (2019b) as being absolute *Murji'a*, stating that the texts have no practical relevance in day-to-day life.

One of the main arguments provided by supporters of civil marriage is that marriage in Islam is by nature a civil marriage, i.e. it does not require the existence of a clerical religious establishment for the marriage to be valid and the relationship to not be deemed adulterous. Specifically, from an Islamic standpoint, Sheikh Muhammad Ali al-Haj, a Shi'i cleric, stated that since civil marriage the elements of an offer, an acceptance, and two witnesses, it is in itself a valid Islamic marriage. (Charbel, 2019) However, the civil nature of Islamic marriage was also cited by the defenders of that marriage (O. Haddad, 2019; Jradeh, 2019; Qanat 9, 2019; Taleb, 2019), stating that it is not necessary that religious figures enact the marriage contract, so long as the one who does is Muslim. A more nuanced description of this was given by Ahmad al-Qasas (2019), the president of Hizb ut-Tahrir in Lebanon, who stated that the Islamic marriage is neither completely religious nor completely civil, and that the religious/civil binary is false in itself. He goes on to state that the Islamic marriage has its own formula wherein the religious and the civil are one together; as society is religious and religious is socialized, and hence the separation in this case is no longer valid. It is specifically this intermingling of the religious and the social which al-Qasas describes which those who support civil marriage want to negate, as people are not as socialized religiously as before, and therefore the religious element of the Islamic civil marriage is in contradiction

with the beliefs of a significant minority in Lebanon. Hence, Sheikh Shafiq Jradeh (2019) states that civil marriage should be described as a secular marriage rather than being purely civil. This will be further discussed when viewing sociological arguments.

Concerns over Christian-Muslim marriages was part of the Islamic concern over the marriage, especially that in orthodox Islamic jurisprudence, Muslim women are not allowed to marry non-Muslim men. In opposition to this view, one supporter of civil marriage, Mona Fayyad (2019), a professor of social psychology in LU, stated that Sheikh Abdullah al-Alayli (1992) saw that marriage in Islam is a civil contract, and that Muslim women are allowed to marry Muslim men. Given this jurisprudential opinion, she stated that one of the basic tenants of the opposition of civil marriage was not valid in the eyes of some recognized Muslim jurists. As for the Christian side, Catholic priest Abdo Abu Kasam stated that the Catholic church has no restrictions on the religion of the husband or wife if one of them is Christian and the other is not, and that the marriage is valid both ways. (Tahaddiyat, 2019)

The marriage of Muslims in non-Muslim countries was also a matter of debate, given that they enact their marriages in a civil manner. This was justified by necessity only, given that no other option is available for Muslims in non-Muslim countries (Haddad, 2019), and that if they come to live in Lebanon they have to enact another contract in a Muslim court for the contract to be valid as per Islamic rulings. (al-Qasas, 2019; Tutanji, 2019)

The religious arguments were characterized, for opposers more than supporters, by a form of strict literalism in the interpretation of texts, and a lack of a principled explanation of why those texts have their value, and what the regulations provided by the religion have to offer socially. Hence, the question became not one of reasoning, but one of belief, and those who were to delve into the argumentation were offered a take-it-or-leave-it configuration. This is what is addressed by Habermas (2006b) where he calls for a modernization of religion,

wherein the tenants of the religion are to be rational as well as being based on pure belief.

While appeal to history and context was minimal in the religious arguments, in the sociological and legal arguments, it will be more evident.

2. Sociological Arguments

Sociological arguments formed 123 arguments out of the collected 300. These arguments took on major socio-political issues in the country, including the composition of the country, the situation of the courts, civil marriage in the Islamic world, and the political reasons why a civil marriage would be instated or rejected.

The sectarian nature of Lebanese society, and how that intermingles with the issue of personal status laws, was heavily a point of discussion in the debates. One of the major points proposed by supporters of civil marriage is that it is bound to cause a decline in sectarianism in society, and that the maintenance of the status quo aimed at maintaining the sectarian divisions within Lebanese society. This was echoed by the politician Walid Joumblatt, the head of the Druze Progressive Socialist Party (hereafter: PSP), former Minister of Interior Marwan Charbel. (Ad-Diyar, 2019; Charbel, 2019; Fawz & Qazzi, 2019; RT Arabic, 2019; Skaff, 2019) In this context, Civil marriage was stated to be a necessary step to build a civil state. (J. Bechara, 2019) However, this was responded to by stating that the problem with the sectarian nature of the Lebanese political system is political consociational sectarianism, and not the fact that sects are allowed to follow their religious doctrines in the way they marry; and hence, that activists are attempting to fix a problem where it does not exist and are not addressing the root cause and problem itself. (Sbaity, 2019) In addition, it was stated that Lebanon's cultural sectarian diversity is not itself an ailment from which Lebanese society suffers but is an asset which enriches this society. On the other, political sectarianism is a main reason why this society is debilitated, and hence should be addressed and changed. (Lana TV, 2019) Jinane Mneimneh, a social activist, stated that Lebanon is a 'House of

Covenant' between Muslims and Christians, ruled by a split of legislation on the level of personal status, and that this state was reached consensually by all sects, and should be maintained as such. (Shababeek, 2019) This goes in line with Jradeh's (2019) argument that religion is at the heart of the Lebanese system, and cannot and should not be excluded from it or the consequences will be severe. The specific claims of Walid Jounblatt, the head of the Druze PSP party fell under scrutiny, as it was thought to go against the Druze society's norms, which were stated to be conservative and favouring in-group marriages. In specific, a case was cited in which a Druze family cut off the private parts of a man from another sect when he ran away with their daughter. (RT Arabic, 2019)

The nature of the courts was tackled by several individuals. On the one hand, it was argued that the religious courts are highly corrupt, and that this was one of the major reasons why people would want to resort to civil courts to enact their marriages. (Fayyad, 2019) It was also argued that religious courts reduce the power of the government within its own jurisdiction, and that hence it is transgressing where it has a monopoly over the enactment of marriages. (Orient Bells, 2019) Hence, it was argued that religious scholars fear losing their last bit of influence over the government if they lose religious courts in the country. (Lana TV, 2019) These arguments were responded to in several ways. First it was stated that civil courts are themselves as corrupt, if not more corrupt, and bureaucratic, as religious courts, and therefore, to assume that resorting to civil courts will allow for the evasion of corruption barriers is not applicable in the case of Lebanon. All corruption hence has to be uprooted, be it in religious courts or in civil courts. (al-Qasas, 2019; Jradeh, 2019; Shaar, 2019c) Second, it was argued that the deletion of religious courts mean that many citizens would not be allowed to practice their beliefs, and that hence, this cancellation excludes and does not consider the wish of many Lebanese individuals to follow their own beliefs. (Jradeh, 2019) Third, on the Christian side, it was stated that courts have a rigorous system of accountability, and that the

Christian courts do not suffer from any form of corruption which goes unchecked. (Alwan, 2019)

The nature of freedom was also discussed in the debate; as many people stated that civil marriage is a matter of exercising personal freedom, and that banning it is a form of oppression. (M. Barakat, 2019; Shartouni, 2019; Youssef, 2019) A civil state is expected to treat people as individuals rather than groups. (Fayyad, 2019) In addition, an optional civil marriage law will not ban religious marriage, and therefore does not restrict freedom in any way. (Shartouni, 2019; Youssef, 2019) Lawyer Joseph Bechara also stated that an optional civil marriage would not stop any Lebanese person from being able to marry according to their religious doctrine if they choose to, and that hence, civil marriage expands public freedom and does not restrict it. (LBC, 2019) However, public rejection of civil marriage was cited as proof that this legislation goes against the Lebanese public order (RT Arabic, 2019), and is against Lebanese traditions and social customs. (Tutanji, 2019) In addition, it was stated that allowing for civil marriage legislation means that it will be easier for Muslims to do something considered forbidden by the religion, and is therefore a step in the wrong way. (Haddad, 2019) Sheikh Shafiq Jradeh (2019) stated that an obligatory civil marriage means that Lebanon will move from a state of partial secularism to a state of total secularism, hence cancelling the last influence which religions have on the government and public institutions, and hence exclude religion from the government and put in place a form of totalitarianism. He also stated that some of the elements within civil marriage, such as preventing consensual divorce except by the approval of the judge, impinges on the personal freedom of a married couple who should be able to choose when to dissolve the marriage whenever they wish.

The issue of people calling for or against civil marriage was also called into the debate, as it was stated that legislation has to be in line with social norms in a given society. (Tahaddiyat, 2019) Former Minister Ghassan Mokhaiber (2019) stated that sixty thousand individuals are

not registered currently as belonging to any sect, and deserve to be granted the right to a civil marriage; in another interview he stated there are seventy thousand. (Orient Bells, 2019)

Marwan Charbel (2019) stated that half of the Lebanese population wants civil marriage, though he did not cite the source of this claim. However, he did state that during his time in office as Minister of Interior, he recorded that every year between one thousand and fifteen hundred marriages were enacted outside of Lebanon as civil marriages, at a cost exceeding two million dollars which the government of Lebanon is losing due to the absence of civil marital legislation. Jinane Mneimneh stated that only a minority of the Lebanese population demands civil marriage, but also did not cite any sources for her claim. (Shababeek, 2019)

Shiekh Ahmad Sami Itani stated that Muslims demand that civil marriage not be allowed in this country. (Itani, 2019) Lawyer Maya Ja'ara (2019) noted that the cultured class in Lebanon is ready for civil marriage, but that the masses are not. This was linked to a note on societal change, where it was stated that while the social views within Lebanese society has changed, the religious views have not. (RT Arabic, 2019)

A comparison with other countries was done multiple times, where Tunisia and Turkey were cited as Muslim majority countries in which civil marriage is considered valid, and with little opposition from the communal religious leaders. (Charbel, 2019; Fayyad, 2019; RT Arabic, 2019; Shababeek, 2019); However, this was responded to by stating that it was dictatorship which changed the personal status laws in Turkey and Tunisia from religious laws of secular laws; and that upon the advent of Erdogan with popular vote to the scene in Turkey, religious marriages (known as 'mufti marriages') were restored in Turkey. (RT Arabic, 2019; Saad, 2019) In addition, it was stated that Muslims and Christians live comfortably under civil marriage legislation in the West. (Charbel, 2019; Tahaddiyat, 2019)

Many individuals cited civil marriage as an entry point for the legislation of gay marriage in Lebanon, and saw that as a huge danger posed by such legislation. (Abu al-Quta', 2019; al-

Qasas, 2019; Fadlallah, 2019; O. Haddad, 2019; Tutanji, 2019) A more nuanced analysis of this argument was given by Sheikh Shafiq Jradeh (2019) who stated that the underlying logic for the legislation of civil marriage is the same as the underlying logic for the legislation of gay marriage, given that it is an issue of personal freedoms demanded by a significant minority of the Lebanese population as a personal right for them to exercise. However, Lawyer Joseph Bechara stated that the legal process for civil marriage largely differs from that of gay marriage (especially considering that Lebanon has specific anti-homosexual legislation), and therefore, he stated, to think the two are one and the same is an inaccurate claim. (LBC, 2019)

In addition, it was argued that religious courts gave religious scholars a leverage over people, and that they had financial interests in the maintenance of the system of religious courts. (BBC Arabic, 2019; Helwe, 2019; Shartouni, 2019) Hence, it was stated that religious scholars want to maintain control through the maintenance of civil marriage. (Fawz & Qazzi, 2019) This led to the conclusion that the whole affair on civil marriage is political rather than religious. It was even stated that religious figures are more powerful than political ones in the Lebanese state. (Tahaddiyat, 2019) In this context, it was argued that civil marriage will enhance a separation of religion and state, and protect religious scholars from political influence, as they are no longer part of the state apparatus. (Charbel, 2019)

The repercussions of civil marriage were also heavily argued. It was argued for example that civil marriage disentangles the patriarchy present in Lebanese society (Helwe, 2019), and actualizes gender equality. (Bourji, 2019) In addition, it was stated that civil marriage will lead to familial stability (Ja'ara, 2019). However, on the other hand, it was stated that civil marriage will increase divorce (Khoury, 2019), and threatens social stability as a whole (Ad-Diyar, 2019; Jradeh, 2019; Qabbani, 2019; Tutanji, 2019), leading to the very destruction of the family. (Haddad, 2019) It was also stated that civil marriage goes against human nature

and ethical codes (Tutanji, 2019), and threatens people in their worldly lives and the hereafter. (Jradeh, 2019) This was responded to by stating that civil marriage, like any marriage, is based on love (Orient Bells, 2019), and that divorce or its lack thereof is dependant on the nature of the marital relationship, not the nature of the contract. (Efram, 2019) It was also stated that civil marriage will prevent any form of hypocrisy, where people marry religiously not because they have to, but because they believe in a religious marriage. (Traboulsi, 2019)

The political debate was prominent in the argumentation over civil marriage. Several individuals stated that civil marriage is not a priority at the moment in Lebanon, especially given that corruption is thriving in state institutions. (Ad-Diyar, 2019; Tutanji, 2019) Nabih Berri, the Head of Parliament, stated that civil marriage is not up for debate at the moment, and is not something Lebanon can tolerate at the moment. Walid Joumblatt, head of the Druze PSP party, announced his support for civil marriage. (Ad-Diyar, 2019) Prime Minister Hariri stated he is against civil marriage, and countered the proposition of Minister of Interior, Rayya al-Hasan, who belongs to his bloc. Following these positions taken by political figures, much of the debate over civil marriage was shut down instantly. An important note was highlighted in this context, which is that civil marriage is treated by ministers and parliament members not as a complex legislation, but as one bulk, either accepted or rejected as a whole, and not to be discussed in details. (Shaar, 2019a) In addition, it was stated that the proposition of creating a 19th civil sect was rejected because it would make more complex the sectarian political system in Lebanon, where the 19th sect will have to be allocated positions in the parliament, the first and second classes in the government employment system, and will mess up the 50/50 division currently present. (Shaar, 2019b)

A conspiratorial edge was also present in the resistance to civil marriage, as it was stated that civil marriage is a conspiracy against the Sunnis, who are the biggest resistors in the media to

civil marriage. (Qanat 9, 2019) In addition, it was stated that civil marriage targets Dar al-Fatwa and its authority in Lebanon. (Qanat 9, 2019) It was also argued that civil marriage targets religion as a whole, that it is supported by Western powers to do so (al-Qasas, 2019), and that it led to the emptying of churches of Europe, which are now being sold to become nightclubs. (Saad, 2019) It was also stated that civil marriage is a remnant of psychological colonialism, that it is similar to the Saturday/Sunday holidays and legalizing weed -in negating Islamic rituals-, and that it was promoted by the Jews in Europe and was now being promoted in Muslim societies. (Abu al-Quta', 2019) One sheikh stated that civil marriage is promoted for by those who believe in no religion, and are materialists and communists (Itani, 2019).

3. Legal Arguments

Legal arguments formed 80 of the 300 arguments surveyed. It was argued that civil marriage was approved and stated in Lebanese laws on multiple occasions in Lebanese history. The first of which was the Law 60RL, issued in 1936, allowing for a civil sect which can enact civil marriage within its personal status laws. (Alwan, 2019; BBC Arabic, 2019; J. Bechara, 2019; Mokhaiber, 2019) In addition, civil marriage was approved by the Parliament in the year 1998 and was sent to the House of Representatives for final approval, but was never discussed since then. (Fayyad, 2019) Hence, it was demanded that the approved law be directed to the House of Representatives for final approval. (Ad-Diyar, 2019; Charbel, 2019)

It was stated that civil marriage is recognized by the Lebanese legal system as a valid marriage, since civil marriages enacted outside of Lebanese are recognized as valid. (M. Barakat, 2019; Elissa, 2019; Fawz & Qazzi, 2019; Mokhaiber, 2019) Several individuals, for and against civil marriage, stated that the legal recognition of civil marriage enacted outside

of Lebanon forms an internal contradiction in the Lebanese legal system, as it is prohibited on the one hand and permitted on the other. (Ja'ara, 2019; Orient Bells, 2019; RT Arabic, 2019; Shababeek, 2019; Tahaddiyat, 2019)

Furthermore, it was argued whether law can be optional or not, hence discussing the very notion of legal pluralism. Several individuals, mostly against civil marriage, argued that law cannot be 'optional', and that hence an optional civil marriage law negates the very idea of what a law is. (al-Qasas, 2019; RT Arabic, 2019; Sbaity, 2019; Shababeek, 2019; Tahaddiyat, 2019) However, it was also stated that a civil marriage law should be obligatory and unified for all Lebanese citizens (Tahaddiyat, 2019), as this has to do with the authority of the state over its people. (E. Traboulsi, 2019) This point specifically was responded to by stating that the religious courts are recognized by the state as official courts. (Jradeh, 2019) However, the rejection of optional law was responded to by stating that marriage laws in Lebanon are already optional, as there are multiple courts operating with different marriage laws in Lebanon. (Tahaddiyat, 2019) However, this was responded to by stating that the optional matter here is the sect, and not the marriage law. Once the sect is chosen, the marriage laws follow. (al-Qasas, 2019; Lana TV, 2019) This brought up the notion of a 19th civil sect which is to be created for those who want to get a civil marriage. Those who ascribed for an optional civil marriage, be they for civil marriage or against an obligatory unified civil marriage, argued that if such a sect is created and legally recognized, the whole issue of civil marriage would be resolved. (Charbel, 2019; RT Arabic, 2019; Tahaddiyat, 2019) In this context, it was stated that the freedom to marry was guaranteed by law for the civil sect, in reference to law 60RL. (Fawz & Qazzi, 2019; Qabbani, 2019; Shaar, 2019c) On the other hand, it was stated that law should never be optional, as marriage laws relate to civic organization, and therefore is a matter of collective organization, rather than personal choice. (Qabbani, 2019)

The constitution was also called into the debate on several points. It was stated that the Lebanese constitution recognizes the International Charter for Human Rights, which states that people are allowed to marry in the way they see fit, given that consent is granted. (Ad-Diyar, 2019; Bechara, 2019; Bourji, 2019; Helwe, 2019; Shababeek, 2019; Traboulsi, 2019) It was also stated that the constitution allows people to practice their beliefs, and grants equality among Lebanese citizens. (J. Bechara, 2019; Lana TV, 2019; LBC, 2019; Shababeek, 2019) On the other hand, it was stated that the ninth article of the constitution¹² stated that religion should be respected (Itani, 2019; Jradeh, 2019), and that sects have the right to organize civil marriage in the country. (Lana TV, 2019; Qanat 9, 2019; RT Arabic, 2019) Hence, it was stated that an obligatory civil marriage necessitates the amendment of the constitution. (Ad-Diyar, 2019; Tahaddiyat, 2019) However, it was argued that the ninth article of the constitution, while granting sects the right to enact their marriages, does not make that right exclusive. (Fawz & Qazzi, 2019; Orient Bells, 2019) Hence, it was stated that the absence of a civil marriage law is what goes against the constitution. (Helo, 2019)

It was pointed out that civil marriage in its current format lacks detailed rulings on personal status issues such as custody, alimony, and inheritance. (Jradeh, 2019; Lana TV, 2019; Shababeek, 2019)

¹² The article, previously mentioned in the section on Lebanese Courts, states: “There shall be absolute freedom of conscience. The state in rendering homage to the God Almighty shall respect all religions and creeds and shall guarantees, under its protection the free exercise of all religious rites provided that public order is not disturbed. It shall also guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected.”

CHAPTER V

ANALYSIS OF ARGUMENTS

The argumentation over civil marriage demonstrated the situation of Lebanese public sphere. First of all, contrary to Adorno and Horkheimer, there only evident tendency among Lebanese actors seemed to be of acting within the institutions of the government, as opposed to undermining those institutions and seeing them as oppressive and unworthy of working with. Even in the most extreme of cases, like that of Ahmad al-Qasas from Hizb al-Tahrir, which believes that the Lebanese state is an illegitimate state and should be replaced by a proper Islamic caliphate, there was a citation of the Lebanese legal system in an attempt to argue against civil marriage. Hence, while the lack of recognition is theoretical for the party, on a practical level, it recognized that the law is binding and used it in an attempt to argue against another legal proposition. The Habermasian tendency to work within institutions in order to improve the state was hence cross-cutting across all Lebanese actors. This may be explained due to the very nature of the proposition, and its history, which has always been an institutional in nature. In addition, the appeal to legalism and the Lebanese state provides actors with legitimacy among other actors, hence leading to the development of a common language which can be used across the political spectrum. Hence, while Lebanon has lots of pitfalls at the level of institution building, the domination of institutions on the discourse of parties seems to be present.

One further observation in the debate is the weakening of institutional constitutional mechanisms to resolve the debate on civil marriage. While elections and courts were cited by Habermas as being mechanisms to resolve irresolvable conflict in a democracy, the Lebanese state did not utilize these mechanisms to resolve the recurring debate on civil

marriage. The one time this occurred was with the Hrawi proposition of the law in 1998, and this was never to see the light due to political pressure. This demonstrates how the complex Lebanese democracy can sometimes function as an oligarchic system, where the interests of the ruling class takes precedence over constitutional mechanisms for resolving conflict. In addition, with all the contention about explaining the ninth article of the constitution, the Lebanese state is supposed to resort to the constitutional council to determine what this specific article of the constitution means, utilizing the Dworkinian method of understanding the general narrative of the constitution to determine what the article means. This was not observed to occur in any official capacity. However, Legal Agenda (2019), an NGO located in Lebanon, organized a workshop in which the meaning of the ninth article was discussed. It was determined by one of the experts that since the tenth article of the constitution preserved the right of sects to create schools, but did not stop the Lebanese state from forming its own schools which are completely civic in nature and are not affiliated to any religion, that the ninth article of the constitution should allow religions to enact their own marriages but not prevent the government from forming a civil marriage, especially given that the constitution allows for freedom of conscience. Such a contribution to the debate is valuable in its utilization of the Dworkinian principle-extracting narrative-aware production of law, however, it should be restated that this was not conducted in any official capacity. The civil marriage debate, as observed in the Lebanese context, had interesting dynamics which relate and separate it from its Arab context. One of the most important variations in the debate is the way in which religion was dealt with. It was noticed, throughout the debate, that religion was barely put under scrutiny, and that the teachings and marital regulations of religion were dealt with in a very respectable manner. Even those for civil marriage attempted to utilize scripture as a way of validating their arguments, and responded to those who accused them of going against religious teachings by discussing those teachings and referencing arguments for and

against those teachings. In addition, priests and sheikhs were split on both side of the debate, though unequally, and both sides attempted to validate their arguments from a religious perspective. Out of the 300 arguments, only one argument was actually cited against religion itself, stating that religious marriage goes against human rights. (Orient Bells, 2019)

However, the very person who used that argument also used the arguments of Sheikh Abdullah al-Alayli to discuss whether a Muslim woman is allowed per Islamic jurisprudence to marry a non-Muslim man. Hence, in the Lebanese context, it seems that religion did not stand in the way of the debate, but actually enriched the debate with more material to have argument about. In addition, religion did not need to modernize, as per Habermas's (2006b) demand and offer purely rational arguments, nor did critics have to criticize the very essence of religion as being claims to worship an imaginary non-binding entity, as argued by Matt Sheedy (2009), who saw debates on creed as necessary in social discussions. The debate on civil marriage in Lebanon was capable of transcending those limitations, while at the same time allowing for a variety of opinions which can contend the public mind in the public sphere. In this regard, on the spectrum of Rawls to Taylor, through Habermas, it seems Taylor's notion of religion functioning as a thought structure within which varying opinions can contend and argue was actualized, with little to no limitation of expression and public deliberation in this regard.

However, it should be noted that the language, which was used in the Lebanese public sphere, which is rich in religion, in this regard excludes atheists and people who do not believe in religions. While Lebanon's public sphere hence avoids the Rawlsian split-identity problem, it seems that this exclusion of atheists is not fully accidental. While civil marriage is associated with those who do not belong to any sect, or what was termed the nineteenth sect, those arguing for civil marriage continuously wanted to ensure that those who conduct a civil marriage are not atheists. This is evident of the taboo present around atheism in the Arab

world in general and in Lebanon in specific. The group is known to exist but is rarely validated on official and unofficial platforms, and many people choose to ignore that atheism exists. In addition, to this date, there are no official statistics about the number of atheists in Lebanon. This exclusion has allowed the religious debate to be central to the discussion, but at the same time allowed religious-exclusive arguments to remain powerful, and hence prevented a transfer from religion-specific argument to socio-political universal arguments. Taylor's notion of religion as mode of thought hence did not thrive within its price, the exclusion of atheists from the deliberation on decision-making, and the need to create arguments which appeal to that group in specific. This is not to say that religions need to abandon their specific goals, nor to negate Taylor's statement that people may reach the same conclusion, for or against civil marriage, for different reasons, but to address a major concern. Where there is contention over a certain point, with one side stating "the text says so", and the other side stating "It is my freedom to do so", a common ground for discussion is necessary. Where both groups stick to their own languages, and do not attempt to speak to one another in a common discourse, this will only lead to further social strife. Hence, the resolution of Cooke of accounting for history and context is necessary, though rarely realized in some aspects of the debate in Lebanon. Since text-based argument was thriving, this allowed for decontextualized approaches which are problematic and exclusionary.

One distinct feature of the religious debate was the use of hyperbolic language and conspiratorial claims in describing the need or the dangers of civil marriage. One sheikh for example stated that civil marriage will lead Muslim women to marry devil worshippers, cow worshippers, other women, and even dogs. (Saad, 2019) Another stated that civil marriage is backed by the United Nations, with the Free Masons standing behind the whole plan and controlling the UN's agenda. (Shaar, 2019a), and a third stated that Civil Marriage is a Jewish production which was spread in Europe and now has found its way into Lebanon society.

(Abu al-Quta', 2019) This conspiratorial edge highlights an absence of critical thinking on the side of religious scholars in Friday sermons; as they lack (1) the use of research methods to forecast or produce societal patterns, (2) a theoretical foundation for their analogical modelling, (3) evaluating diverse opinions through comparison and categorization, and (4) a statistical analysis of regularities within samples to produce calculated present and future explanatory models. (Hanafi, 2019) In addition, this form of argumentation indicates not only the absence of necessary Habermasian communication in the public sphere, but a form of ill-will which prevents any productive conversation between the sides which support civil marriage and those which oppose it. This proposes doubt among actors to one of the free fundamentals of communicative speech for Habermas (truth, rightness, and sincerity), as the sincerity of the actors was highly doubted by several speakers. This proposes the lack of trust present between multiple Lebanese actors, which is to be elaborate on later, specifically when speaking of non-governmental organizations.

The sphere within which the debate took place was interesting, in that it echoed much of the biases which were apparent in the media channels. It was notable for example that print media, and online newspapers, almost all were for civil marriage, with only one article written that was against civil marriage, and mostly cited religious reasons in its opposition. This echoes the note made that it seems like the upper class, which reads more, is more for civil marriage than the middle and lower classes are. (Ja'ara, 2019) In this regard, the notion of Fraser (1990) that groups need to regroup and upgrade their mode of operation in addressing problems is central, as there is misrepresentation of the realities on the ground in print media. In addition, this seems to reproduce the Habermasian explanation of the need for the proletariat to re-organize to make the public sphere accessible for them. News stations like al-Manar, which is controlled by Hezbollah, for example, simply hosted a sheikh explaining why civil marriage is bad, and with no opposing views. In addition, radio stations

like al-Fajr, controlled by al-Jama'a al-Islamiyya (the Lebanese branch of the Muslim Brotherhood), also hosted a sheikh explaining why civil marriage is not acceptable. Hence, it seems like many news stations function as echo chambers for their own constituency, rather than engage in the larger public debate with those who oppose their views. This is dangerous in that it allows from straw-manning the argument of the opposing side, proposing simple answers to complex questions, and not engaging with the other side in any way. This whole observation seems to prove the point made by Dajani (2013) that much of the media in Lebanon merely functions as a propaganda machine for the party which controls it, rather than being a portal for social discussion and awareness. This state of the media leads to increased group-politics and polarization, where the other is demonized and not engaged, and their claims are not taken as serious propositions which should be addressed, and even considered, by the person with a different perspective on the matter. Hence, Habermas's observation that media drastically changed the dynamics of the public sphere, and not always for the better. However, it should be noted that contrary to what was expected in the age of visual media, there was minimal to no sensationalism on Lebanese television shows. Almost all televised shows brought well-balanced representatives of both sides in order to present their opinions, avoiding making any of the perspectives seem extensively silly.

It was observable, however, that the group-specific public sphere was accessible to those from outside that sphere. One example of this was the lecture given by Shafiq Jradeh, which was given in the Southern Suburb of Beirut, an area nominated by Shi'a constituency, with the lecture being sponsored by a Hezbollah-funded center. However, the event was attended by a Maronite attendee, who engaged with Jradeh during the Q&A session after the lecture, and argued that her brother wants to marry the love of his life, who happens to be Muslim, and is unable to do so due to marital laws. While Jradeh appealed to religion in his response to the question, and how the Lebanese system currently functions, the lack of restriction on

access to internal group debates is necessary to demonstrate how groups interact in the Lebanese context. Private spheres exist but are not strictly private. Intergroup communication is present through the private spheres as well as in the public sphere.

In addition, it was noticed, especially on the side of the opposition, that there was no distinction between an optional civil marriage and an obligatory civil marriage, and hence, the fear from allowing civil marriage was equal even if Muslims and Christians would be allowed to practice what they believe. This lack of nuance in the argument was problematic and was coupled with a lack of recognition for religious pluralism. While Marwan Charbel, the former minister of interior, argued that an optional civil marriage would allow those who choose it to follow it, and that the obligatory nature of the law is active only upon signing the contract by those who choose to sign it, and will hence not affect those who wish to marry religiously; the argument that all laws should be binding to all citizens was repeated several times by opposition figures.

Charbel pointed out that Lebanon itself has legal pluralism, and that individuals are allowed to choose the courts in which they marry. When this was responded to by stating that they choose their religion/sect, and that the choice of marriage follows the choice of religion, Charbel stated that individuals who do not belong to any sect should be allowed to marry in a civil manner. This was not approved to, but it was demanded that a 19th civic sect be created for those individuals. The development of this debate hence allows for individuals who want to marry in a civil manner to do so; however, it should be noted that individuals who want to maintain their faith categorization but get a civil marriage will still face objections from religious scholars. Hence, watching out for this nuance, and highlighting it, might both reduce the tension between the two groups and allow for a constructive dialogue to find a solution where both groups can co-exist and get what they want. However, given current polarizing rhetoric, it does not seem this will happen.

It is evident that civil marriage comes as response to the changing social dynamics in Lebanese society. As previously cited, whereas women have joined the workforce to a huge degree, the main financial responsibilities of marriage still fall upon the man. (Jamali et al., 2005) Hence, while the argument for civil marriage was largely based on the notion of gender equality, there was little response to this structural opposition from those who argued against civil marriage. Hence, it seems that the defence for traditional social rules was not based on a social examination of the roles of men and women in society, but on the religious foundations of that division. In the religious arguments, this was echoed time and again, that men have to pay the dowry, as well as post-divorce alimony, and maintain their provider roles, yet with no reference to why this should be the case. In this context, it seems that religion failed to modernize, as per the Habermasian notion. However, it should be noted that the general socio-political argumentation in the civil marriage debate was lacking statistics or any social scientific examination. This seems to further prove the notion demonstrated by Hanafi and Arvanitis (2015) that social scientific research in the Arab world, and in this case in Lebanon, is largely limited to universities and research centers, and rarely transgresses that to enter the public sphere and enrich social debates. As demonstrated in the literature review, there is no shortage of studies examining marital social dynamics in Lebanon; which are both qualitative and quantitative in nature, however, those were never utilized in the arguments by both the proponents and opponents of civil marriage. It was also noticeable that the strict argument for gender equality did not appear as often as was expected prior to surveying the arguments. The notions of freedom of choice and the preservation of religion and the family were cross-cutting in the debate, but equality between the sexes rarely appeared. This seems to be further evidence of how well-entrenched the notion of traditional gender roles is into society. In could be stated in response to this that talk about the corruption of the religious courts points to the decreased rights of women in those courts, however, this was rarely explicitly stated,

and in response to it, an allusion was made to the corruption in the civil courts, which sparked no clear response on the side arguing for civil marriage, making it clearer that corruption in this context alludes to bribery, dysfunctional appeal systems, and other more prevalent forms of corruption that those relating to gender-unequal legislation.

In addition, it is noticeable, given the disintegration of Lebanese public institutions, that the debate which was not in any way official, was also wrapped up in a very political manner. After the rejection of Prime Minister Saad Hariri and Head of Parliament Nabih Berri of the debate on civil marriage, the Minister of Interior Rayya al-Hassan had to visit Dar El-Fatwa, listen to the Mufti explain the nature of religious marriage, and wrap up the whole issue. The absence of institutional mechanisms and the domination of oligarchic power politics in Lebanon is hence most evident in how the debate took place; and while people were allowed to publicly deliberate on the matter, this debate was not translated into policy. In addition, the fear of other sects dominated the discussion as religious clerics noted that the aim of civil marriage was to reduce the privileges which each sect has in the political system, mostly targeted by the other sect. This reflects how the consociational system, analysed in the section on the Lebanese political system, devolved the reasoning from thinking about the right of citizens to a debate over the privileges which each sect has. The psychology of fear dominating the debate validates the notion of Bechara that Luphart's model of consociational democracy does not apply to Lebanon, where there is great resistance to treat citizens based on their citizenry, and a domination of treating citizens as being sect-affiliates, and other citizens as being those who wish to dominate over the other sects. However, the debate also reveals a present propensity amongst a significant part of the Lebanese people to begin treating Lebanese individuals based on their quality as citizens, even if members of that group themselves do not believe a civil marriage is the best choice. Hence, prospects for a more democratic Lebanon lies within the Lebanese people, but the actualization of those

prospects needs to develop at the national level and reflected in the legislative system. The argument of several individuals for the cancellation of sectarian politics on both sides of the spectrum allows for further growth of this perspective, however, at the time of the writing of this thesis, political will is still lacking, hence debilitating the transition to a democratic treatment of citizens in Lebanon.

Based on this, it is possible to outline two major rifts in the debate on civil marriage. The first is the rift between social science production in the universities and the public sphere, and the second is the rift between the public sphere and the political sphere. These rifts lead to a dysfunctional democratic system wherein freedom of speech is emptied from its meaning, and the freedom to conduct research in itself becomes useless and lacks social impact. Based on this, it could be argued that communicative rationality was highly active with social activists in the public sphere, highly inactive with political figures, and almost non-present in the power-grappling political game.

Scepticism in CSOs was also evident in the debate. As mentioned in a previous section, the foreign funding of CSOs was used as an argument to claim those organizations work according to foreign agendas. In this context, it is implicitly meant that those organizations do not have the best interest of the community in mind, but in fact want to hurt the community in order to appease a certain front for which they work. This accusation does not come in a vacuum, but is symptomatic of a rhetoric largely spread by the March 8 alliance, in which the sovereignty of the community takes precedence over the arguments for human rights; and in engaging in whether what is proposed is actually for the better of the community or not. This accusation can be really dangerous and has manifested itself horribly across the Arab world. The vision of a multipolar polar, as propagated by the works of Russian philosopher Alexander Dugin (2018), and which frames Vladimir Putin's foreign policy, assumes that the spread of democracy and civil rights is not symptomatic of bettering the community, but of

Western influence and the growth of a Western camp. In order to fight this, Putin has attempted to support the regimes which are opposed to democratic and civil values in Syria, Ukraine, Georgia, Belarus, and other countries across the world. Any attempt to further human rights in this context is viewed as being a foreign intervention with an attempt to enforce a Western agenda. What is questionable in this context, according to this Russian framework, supported by Iran, Syria, and Hezbollah in Lebanon, is that all other cultures are opposed to human rights and freedom; and that it is only the West which has these values. Hence, national sovereignty is all that matters; and NGO advocacy work to further a human rights agenda can hence be dismissed as a matter of foreign interference in national matters. After this contextualization, the danger of this form of reasoning can be further grasped, in that it does not assume that the betterment of the community is a negotiable matter between two equal parties, but that one is a foreign agent which is not to be heard from, and the other is national loyalist seeking to maintain the status quo. This makes for a highly problematic public sphere. It should be noted that while the claims which portray NGOs as being foreign agents were minimal, they indicate the presence of a highly problematic tendency in the debate in Lebanon, which has been resurging when dealing with NGOs. However, given that the state in Lebanon is not capable of providing services, that much of the legal system remains problematic on a human rights level, and that sufficient internal funding for dealing with these ailments is not present, it can only be expected that the current contradiction in the social dynamics produced around NGOs will continue, and with them the accusations of treason and the will to harm the community.

In addition, there seemed to be an absence of any contribution in the debate on behalf of organizations which are either state-sponsored or locally-funded organizations. Two organizations can be mentioned in this context, the first is the one which hosted Shafiq Jradeh, a Hezbollah-supported organization, and the second is Farj-Radio, a radio sponsored

by the Jamaa al-Islamiyya in Lebanon, in a show sponsored by Irshad and Islah, an off-shoot of the Brotherhood, which hosted Sheikh Humam al-Shaar to discuss the topic. However, on the side of secular CSOs, Legal Agenda issued a report dealing with civil marriage, and hosted a discussion session in which it brought legal experts to discuss Article Nine of the constitution. In addition, Kafa association issued a report dealing with the topic, and has been engaging in advocacy for the past years for civil marriage; and gender-equality and women's rights in general. An alliance of organizations also issued a petition in support of civil marriage. Hence, in the lobbying for civil marriage, NGOs are heavily engaged; whereas in lobbying against it, there is a larger dependence on government representatives, political parties, and official governmental bodies. In this context, there is a governmental upper hand for those against civil marriage, creating a need for those lobbying for it to resort to NGOs, further entrenching the tensions and the divide between advocacy NGOs and the government.

The arguments over civil marriage have aimed at changing a personal status that has governed Lebanon since Ottoman times, for over 200 years. Hence, the argumentation over civil marriage are not only about civil marriage, as was evident, but about the logic which governs the familial and marital relationships within Lebanese society. Civil marriage elicits within it a rift between the religious nature which has governed marriage, with spiritual and communal repercussions, and a more secular form. While this was argued for from the perspective of personal freedoms, it seems evident that the transfer to civil marriage, in its causing of public fear, highlights a permission and recognition of the transfer of internal Lebanese marital regulations from religiosity to secularism. The marriage systems across the sects, with their focus on the role of family members for marital dispute arbitration, the necessity of parental presence in the enactment of marriage contracts, the obligations of family in post-mortem situations, and the necessity of acting in a conservative manner under the threat of divorce, all highlighted in the section explaining the Lebanese court system and

marital regulations within it, are abandoned in the case of civil marriage for a more individualistic secular form of civil marriage, in which religion may be present in a non-binding manner, and family interference is kept to a minimum. This highlights the clash between individualist ethics and communal ethics; with tensions which are irresolvable if made binding, and which are written into the law in the case of Lebanese personal status. The two forms of legislation hence do not only differ in their moral grounds, or the binding of religion, but in the values which underlie those two propositions. Hence, the talk over values was central to many of the arguments, with many individuals mentioning that civil marriage opposes family values; and other arguing that civil marriage instates that values of personal freedom and freedom of conscience as written into the constitution.

CHAPTER VI

CONCLUSION

The debate over civil marriage in Lebanon is symptomatic of both the Lebanese confessional system and the role of religion in Lebanese society. Religion was properly integrated in the public debate, and in no way prevented public deliberation; however, to the exclusion of atheists in most cases. This is resonant of the case in many Arab countries, where religion plays a definitive role in the formation of public identity. The cases of Tunisia and Turkey, which were seen as exemplary of secularism, for some, is indeed also cases of dictatorship enforcing a silent form of secularism, contrary to democratic public deliberation is bound to allow prevalent identities to express themselves through public discourse. It is hence safe to say that any form of democratic expression in the Arab world is bound to be imbued with religious values and citation of scripture in attempt to prove and refute points. Of course, this is not specific to the Arab world. All across the world, debates over issues like immigration and abortion are rife with citation of religion and religious values as a reason for both inclusion and exclusion. Religion, as a source of values, is hence elemental to any form of public expression in a culture which wishes to be connected with its traditions. It was noticeable hence in the debate in Lebanon that there was an overarching agreement for an optional civil marriage, rather than the exclusion of religious expression through legislation in the public sphere. Lebanon hence stands as exemplary of intertwining religion with communicative action in a non-exclusionary manner, and hence as an actual model of co-existence at the level of communication. This is of course not to ignore how that sectarian co-presence was to the deterioration of that communication at the level of doubting the intentions of speakers and many seeing themselves as targeted by the civil marriage

legislation. This resonates with the work of Azmi Bishara (2018), who stated that the creation of sects in sectarian politics necessitates defining the sect as being in opposition of other sects, and leads to a form of public discourse rife with fear of the other, leading to the further entrenchment of sectarian boundaries which are the tool for the recreation of the sectarian power elite. It was the sectarian leaders who saw that civil marriage was a threat to their traditional leadership, and therefore not only stood against it, but actively led to shutting down the debate as a whole. The recreation of the sect as it is faced with practical challenges is hence evident throughout the debate, and further demonstrates how the sect is constantly set in place by the power elite to protect the network of interests built around it.

The group-politics of Lebanon was evident in the debate, much to its disadvantage, especially given the weary attitudes and lack of trust between groups. Despite the general positive nature of the debate, the lack of institutional power and will to make this debate relevant in policy making greatly threatens the effectiveness of the Lebanese democracy. Tunisia, seen as an ideal by many Lebanese individuals, had a debate in which professionals and academics were far more engaged, whereas the Lebanese debate over civil marriage was dominated by religious scholars, political figures, and lawyers. Hence, social theorizing at the level of the country was not effective, and the debate is expected to recur in the future as well.

There was a clear void at the level of intellectual engagement with the debate occurring in Lebanon. Most of those who participated were lawyers, politicians, or religious officials; which entails two major problems. The first is the clear separation between universities and the research which they conduct from policy-making, making the knowledge produced useless socially; and the second is the absence, or lack of recognition, of organic intellectuals who are both effective and engaging with the lived social realities of the people. This was further studied by Hanafi and Arvantis (2015b), where they stated that the reason for this lack of engagement on the side of academics is due to (1) the risk of burn-out due to engagement

with the public, (2) the commodification of the university with competition for funding and awards without giving promotional value for public engagement, and (3) the Lebanese media lacking the seriousness required to rationalize public debates over social issues. This produced void in theorizing means that the debate will remain technical, dealing with lived instances and direct applications of texts, rather than analysing the nature of the Lebanese identity and system and attempting to find workable resolutions for the problems which face those two. The intellectuals of Lebanon are hence either stuck within the university system or are writing books which are not read and do not feed to any ongoing social issues. This is in great distinction to debate which Sari Hanafi and I studied in Tunisia, in which professors and intellectuals conducted public lectures, drafted laws, and surveyed the population to recognize dominant societal trends, their underlying causes, and how to address them. (Hanafi & Tomeh, 2019) Furthermore, those intellectuals were debated with by other intellectuals who had opposing views. Hence, a spectrum may be drawn, wherein Tunisia's intellectual landscape is organic and thriving. Then there is the cases of Egypt and Syria, where those in power have their intellectual elites which attempt to propagate an intellectual propaganda which serves the interests of the ruling class (e.g. Yusuf Zaidan, Adonis).¹³ The third case is that of Lebanon, in which there is no effective intellectual class to educate citizens and enrich the debate with content on a theoretical level.

It is noticeable, in both contexts, that both sides of the debate attempted to appeal to religious arguments to justify their own positioning. However, this appeal was not similar. In the case of Tunisia, the appeal was more nuanced, and took into account the *Maqasid al-Shari'iah*¹⁴

¹³ For more on the state of intellectuals in Syria, see the work of Yassin al-Haj Saleh (2016) on the role of Syrian intellectuals in justifying the Syrian authoritarian system as a necessity and ignoring the structural production of culture in this regards.

¹⁴ *Maqasid al-Shari'iah*, meaning the objectives of Islamic legislation, is an end-based *fiqhi* approach to Islamic law, in which laws are set based on whether they cater for welfare and public interest of the community, as well as the preservation of the five essentials: religion, life, intellect, lineage, and property.

approach, and what falls under it and what doesn't. Some sides argued that maqasid necessitated equal inheritance due to changing social conditions, whereas others stated that equal inheritance does not fall within the scope of Maqasid, as it is among the fixed clear issues in the religion, and therefore that the appeal is invalid. In Lebanon on the other hand, the debate was limited to a discussion of fiqh rulings, and argumentation stemmed from Hadith, Qur'an, and the rulings of jurists across Islamic history and into the modern age. This is a reflection of the form of religious education dominant in each society, where the classical school taught in Lebanon, largely affected by the Syrian school dominated by Wihbi al-Zuhaili and Muhammad Sa'id Ramadan al-Buti is a traditionalist fiqh-school focused hadith where the scope for *ijtihad* is limited, as compared to the case of Tunisia, where the *Maqasidi* school is dominant, and hence was central to all discussions of religious matters. This allowed for more back and forth in the case of Tunisia, and gave more stability to the religious debate in Lebanon, where the side arguing for civil marriage did not have many religious tools (especially in the realm of '*usul al-fiqh*') in which they could argue for their position. Hence, the religious debate was weak in nature in the Lebanese context, and did not have a philosophical element but was mostly a debate of citation. The debate of citation is in itself more authoritarian in nature, and is in essence an appeal to the authority of the text and the previous jurists as opposed to arguing from context and history, and herein falls one of the main shortcomings of the Lebanese debate. However, this was not only in the religious debate, but also permeated the legal debate, where both sides of the argument in Lebanon focused on the text of Article 9 of the constitution; however, the legal aspect had more emphasis on freedom of choice, and several values which underlied the strict letter of the text. This indicates that laws are understood to be directly related to values which underly them, whereas religion is more understood as being a matter of strictly obeying the text. However, this attitude towards the text can be understood as a defence mechanism in a highly

contentious social context in which opening up the text for interpretation at a philosophical level may allow for other readings which threaten the cohesion created through a unified reading. The Tunisian context is highly homogenous, and therefore at best heterogeneity is created internally within the framework of Sunni Islam, not threatened by the presence of other sects and the need to have a unified front. The Lebanese context is much more diverse, and within this diversity, and the creation of the sect in opposition to other sects, shutting down the religious debate serves the socio-political game for dominance, and therefore makes matter easier. This can be seen in the huge backlash to any event which might threaten the united religious front; which includes the celebration of Christmas, New Year, and Halloween, taking off hijab, and Friday being a recognized holiday along with Saturday and Sunday. The well-entrenched sectarian dynamics lead to a form of emergency-state within the sect which finds epistemic mechanisms to keep the debates to a minimum; and is hence evident in the form of religious arguments followed by religious scholars.

In addition, the confessional nature of the Lebanese system made political sectarianism a central element of the debate, and the nature of every sect and its demands, and hence the power politics within and for each sect, gained primacy over the debate of civil marriage. In comparison, Tunisia had a party-politics-oriented contention in the political section of the debate, which mostly argued for representation and the priorities within the Lebanese context. However, the citation of politics was minimal in the Tunisian context but was thriving in the Lebanese context, indicating how the structural nature of the Lebanese system tends to influence the public reasoning of individuals within that system. This leads to a decline of communicative rationality and a rise of contentious rationality which attempts to protect the privileges of the group against any incoming threat which might reduce those privileges.

One interesting element of the debate in Lebanon was the citation of Tunisia as an example of civil marriage, while ignoring the nuances of the personal status regulations, such as the context in which those regulations were put, the popular response to those regulations, the will of some Tunisian social groups, and other more contextual elements. It was even stated that Tunisia has equal inheritance laws, which is false at the time of the writing of this thesis. This appeal to the other in a non-nuanced manner shows a form of sloppiness on the side of those arguing for civil marriage in the Lebanese context. However, this form of argumentation did not stop there. The lack of citation of any studies or statistics was evident in Lebanon, but not in the Tunisian context, indicating how the role of public intellectuals was more evident in Tunisia than in Lebanon. Most of the individuals speaking in Lebanon were religious scholars, political officials, and lawyers, and little role was found for public intellectuals in the debate. On the other hand, in the Tunisian context, university professors and public intellectuals were among the leaders of the discussion, having themselves written the report on personal freedoms and equality which assessed the situation of gender equality and freedom in Tunisia. This engagement of the epistemic elite led to a more informed discussion in Tunisia, and since it was not present in Lebanon, the argumentation was simpler and less accurate.

The debate in Lebanon is hence indicative of much of the ailments which are present in the Levant at the moment, producing themselves in political turmoil, economic problems, and hence a stricter form of reasoning. The prospects of this debate largely depend on the ongoing structural change in the region and is not expected to change until those dynamics themselves change.

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