AMERICAN UNIVERSITY OF BEIRUT

MATERIAL VIOLENCE & MATERIAL BODIES: LAW, PRECARITY, AND GENDERED FOUNDATIONS OF STATE BUILDING IN LEBANON

by
SARAH ELIZABETH LUDWICK

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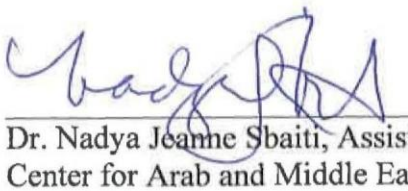

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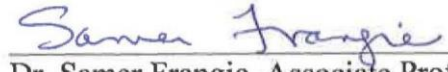

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This was not the thesis I intended on writing upon matriculation, but in many ways it could not have been a better culmination of the past two years I have spent in this program.

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AN ABSTRACT OF THE THESIS OF

Sarah Elizabeth Ludwick for Master of Arts
Major: Middle Eastern Studies

Title: Material Violence & Material Bodies: Law, Precarity, and Gendered Foundations of State Building in Lebanon

With the promulgation of the Lebanese Criminal Code in 1943, the newly independent Lebanese State designed and implemented its legal framework to control and regulate its citizens by intentionally exposing their bodies to material violence - whether merely permitted or directly committed by the State - for the purpose of serving the Lebanese State's efforts to implement a specific vision of what a legitimate State and the legitimate Lebanese citizen should be.

By means such as the categorization of bodies, State-implemented violence as a means of criminal punishment, regulation of sexuality and reproduction, and the legalization of violence and death as tools of governance, the State allowed legal, permissible, legitimate violence to seep and flow through the letter of the law. These processes both perpetuated and hinged upon gendered hierarchies of power and fostering differential precariousness among Lebanese citizens.

TRANSLATION & TRANSLITERATION NOTE

All Arabic-English translations are my own unless otherwise specified. Arabic words have been transliterated according to the IJMES transliteration system with full diacritics throughout, with the exception of names and places that have common English spellings. All Arabic words have been italicized with the exceptions of the names of persons and places. For longer texts, transliterated Arabic terms are provided in brackets directly following the translated word or phrase when central to the focus of discussion, as well as for words I have chosen to translate more contextually as opposed to literally. English words appear in brackets in cases where Arabic terms could possess multiple meanings, the English counterpart has an ambiguous meaning, or to mitigate grammatical inconsistencies between Arabic and English.

All translations from Ottoman Turkish were taken from published translations of the Imperial Ottoman Penal Code. Ottoman Turkish-English translations were taken from John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code: A Translation from the Turkish Text* (Nicosia, Cyprus: Oxford University Press, 1913). Ottoman Turkish-Arabic translations were taken from Salim bin Rustom Baz, *Qānūn al-Jazā' al-Humāyūnī* (Beirut: al-Maṭba'a al-Adabiya, 1916). The Arabic and English translations were cross referenced in order to mitigate translation biases and errors. Both the Arabic and English translation are given when they appear to be inconsistent.

I have opted to translate legal terms and phrases in a way that may not always reflect traditional legal terminology in English. This decision was largely due to the fact that English legal terminology is not reflective of the historical context of the Arabic terminology translated, nor the unique concoction of Ottoman, French, and Lebanese legal genealogies embodied by it, and is thus not an appropriate or accurate framework through which to discuss it.

CONTENTS

CHAPTER I
INTRODUCTION

With the promulgation of the Lebanese Criminal Code in 1943, the newly-independent Lebanese State designed and implemented its legal framework to control and regulate its citizens by intentionally exposing their bodies to material violence - whether merely permitted or directly committed by the State - for the purpose of serving the Lebanese State's efforts to implement a specific vision of what a legitimate State and the legitimate Lebanese citizen should be.

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Prior to 1943, the Imperial Ottoman Penal Code [*qānūn al-jazā' al-humāyūnī*] not only remained in effect in Lebanon after the fall of the Ottoman empire but was built upon and amended repeatedly throughout the French Mandate.[1] It was not until 1938 that Charles Ammon, head of the Administration and Justice Committee, called with notable urgency for the promulgation of a new criminal code, and it would still be another decade until the Imperial Ottoman Penal Code was repealed, five years after both independence and the promulgation of the Lebanese Criminal Code of 1943 [*qānūn al-'uqūbāt*].[2] The

[1] Years amended according to *al-Jarīda al-Rasmiyya*: 1918, 1922, 1929, 1930, 1932, 1935.

[2] Charles Ammon, Parliamentary Proceedings of the Fourth Legislative Council, First Regular Convening, Fifth Session (April 26, 1938). For repeal of Imperial Ottoman Penal Code, see: Government of Lebanon, "bi-Ta'dīl Ba'ḍ Mawādd min Qānūn il-'Uqūbāt," Law No. 0, *Al-Jarīda ar-Rasmiyya* 6 (February 11, 1948): 97-101, Article 772.

promulgation of a new criminal code inherently implied a shift emblematic and reflective of the relation between the State, its citizen bodies, and conceptions of criminality, to the same extent that it was actively responsible in producing and reproducing these notions.[3]

The establishment of legal frameworks and institutions was a key step in the Lebanese state-building process, one of many that marked the shift from "empire" and "mandate" to a fully independent "State." Framing law as both an archive of the State and a site of contestation over the State regulation of bodies, this thesis invokes gender and politics of the body as analytical tools in an attempt to provide an alternative, more corporeal understanding of the simultaneous and interwoven processes of state-building and the State's construction of legal frameworks of violence - one that reads the narrative of state-building instead through the scars and bruises the State leaves behind on the bodies of its citizens.

This thesis will first and foremost be a historical study, relying on both legal texts and parliamentary proceedings to construct these narratives. The decision to approach these questions from a historical perspective was due overwhelmingly to the unique vantage point that addressing written law as an archival source provides, and the subsequent sets of questions the discipline of history allows to be asked when analyzing such a document: to what degree is the legal archive an archive of State history? What do presences and absences in the archival landscape reveal? Finally, by example of Marisa Fuentes, what can we learn from the way violence is differentially distributed in the archive?[4]

[3] Richard Quinney *The Social Reality of Crime* (New York: Little, Brown, 1970).
[4] Marisa Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive*, (Philadelphia: University of Pennsylvania Press, 2016), 5.

This frame of law as an archive of the State does not come without its limitations, especially so when dealing with this period of Lebanese history. Despite the impressively extensive collection of parliamentary proceedings and the official gazette *al-Jarīda al-Rasmiyya* held by the American University of Beirut as well as the Lebanese University, there is a notable gap in the record of specifically the parliamentary proceedings during the four year period when parliament was disbanded (June 1939 - September 1943).[5] Despite the absence of parliamentary records for this period of the French mandate, the debates and discussions surrounding issues of criminal law, justice, and the body from the immediate years before and after illuminate the key points in the formulation of the new code.

The language shift between Ottoman law and Lebanese law also presented a unique challenge to constructing this archive as a truly in-depth textual analysis would also require an advanced understanding of Ottoman Turkish. However, the Imperial Ottoman Penal Code was too critical to leave unexplored in this project. The changes to the status of citizen bodies between the Ottoman and Lebanese codes is the earliest point at which the Lebanese State's efforts to construct, categorize, and regulate material violence and material bodies through law is visible. It is precisely the shift - the similarities and differences between the two codes, the active choices to decide how to write, organize, and structure the new code - that most reveals these intentions. For this reason, two texts of the Imperial Ottoman Penal Code translated by lawyers during the late Ottoman empire, one to English in 1913 and one to Arabic in 1916, were used to supplement the Turkish text.

[5] The Lebanese parliament was disbanded for this final period of the French Mandate following the start of WWII. Elizabeth Thompson, *Colonial Citizens: Republican Rights, Paternal Privilege, and Gender in French Syria and Lebanon* (New York: Columbia University Press, 2000), xvi.

This research aims in part to address the ways in which, through law, the State produces certain deaths as legal and legitimate and certain lives as sacred. It also aims to examine the question of how the State perceives itself and subsequently unravel the complexities of the State's self-identity. What is the role of the State according to its own conceptions? Its rights and responsibilities? Is the State a caretaker, protector of citizens, provider of safety and shelter from harm? How has this identity been negotiated since its foundation? What is the jurisdiction of the State, and how far should the State encroach into the "private?" Does it consider citizens to be active or passive bodies? How should the State address discontented bodies?

Moreover, this project places a special focus on the concept of legitimacy as a discursively, socially, and legally constructed binary as opposed to a definitive and objective absolute. Each chapter hopes to gather an understanding of what "legitimate" and "illegitimate" means to the State itself, and how the State attempts to construct the boundaries between what it deems legitimate/illegitimate behavior in law. More importantly, for what purpose, and what does this purpose reveal about the State's relation to the citizen body? Finally, how does the State then attempt to legislate itself and its citizens *into* this category of "legitimate?" When referring to the State's own legitimacy, this refers to the right and authority of the State to rule. When discussing the legitimacy of citizen bodies and their behaviors, this refers to the body's or action's accordance to a set of State-constructed boundaries dividing "good," legal, and acceptable behavior or existence from the "bad," illegal, and unacceptable.

A. Violence, Regulation, and the State

The approaches taken in this project are built on a body of theory prefaced by a particular understanding of the relationship between politics and the individual as one qualified by violence and sovereignty, no doubt tracing back to Hegel, in which politics is defined as "the work of death," sovereignty as the right to kill/maim, and the physical body as the site of politics.

Highlighting the different ways in which life and death are deployed as concepts is necessary in order to appropriately frame and tie together theories of precariousness. First and foremost, life and death exist in this body of theory as categories of analysis. The relationship between these two categories and the focus on a particular category for analysis is what differentiates certain theories from others. Most major theories within the literature invoke and deploy "life" as the mode of analysis when thinking through the state's exercise of sovereignty, including the landmark theories of Foucault's biopolitics/biopower, Agamben's homo sacer, and Arendt's *Origins of Totalitarianism*.[6]

In response to this set of literature, Achille Mbembe adopts a postcolonial lens in an attempt to address some of its gaps by instead using death as the category of analysis as opposed to life.[7] It is important to note that Mbembe does not reject theoretical frameworks based on the categorical analysis of life; on the contrary, he builds extensively on biopower and Agamben's ideas of sovereignty. Rather, Mbembe's project is aimed at revealing what the category of life cannot, i.e, what *can* be revealed by using

[6] Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, (Stanford: Stanford University Press, 1994); Hannah Arendt, *The Origins of Totalitarianism*, (San Diego, CA: Harcourt, Inc., 1951); Michel Foucault, *The History of Sexuality, Volume 1: An Introduction,* (London: Allen Lane, 1976). There is also Rosi Braidotti, who rather than invoking either life or death as a category attempts to link the two in an inseparable cycle through a Deluzian lens. Rosi Braidotti, "The Inhuman: Life Beyond Death," in *The Posthuman*, (Cambridge: Polity Press, 2013).

[7] Achille Mbembe, "Necropolitics," trans. by Libby Meintjes, *Public Culture* 15, no. 1 (2003): 11-40.

a framework prefaced on the categorical analysis of death: "death worlds," or forms of social existence in which the body is regulated, categorized, and controlled by a state in particular ways designed to expose it to frameworks of cruelty, violence, and death.[8] When addressing the context of Lebanese legal institutions, the term "frameworks of violence" will be used to refer to this effect throughout this thesis.

The distinction between biopolitics and necropolitics involves a shift in focus from the sovereign's exercise of the right to "make live or let die" (where "let die," in Foucault's context of 1970s France, was largely indicative of *abandonment* by the state) to its exercise and strategic deployment of the right to death, or right to "let live and make die," indicative of a context in which bodies are suspended between life and death within "death worlds" and only made to die when permitted by the sovereign.[9] This mode and understanding of sovereignty, according to Mbembe, is the current understanding under which all modern states now operate.

Particularly relevant to this thesis, Mbembe's inversion of the categories of analysis introduces the "slain body," the subject of state violence that is wounded, injured, maimed, but intentionally left alive.[10] For Mbembe, necropolitics and the technologies and institutional frameworks of violence that allowed for the atrocities of the holocaust and subsequent literature of Foucault, Agamben, and Arendt were invented, experimented, and refined in the colony and on the plantation before being brought to

[8] It should be noted that Mbembe was not the first to address systems of violence in these contexts. For example, Saidiya Hartman details regimes of violence and the infliction of violence as play both in and out of the plantation in 1800s America. Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America,* (Oxford: Oxford University Press, 1997).

[9] See Marina Grzinic's 2018 lecture at the Moderna Museet: Museet Moderna, "Lecture: Marina Gržinić From Biopolitics to Necropolitics," YouTube video, 1:06:24, posted November 16, 2018. https://www.youtube.com/watch?v=cE0aq_UE7JQ

[10] "What place is given to life, death, and the human body (in particular the wounded or slain body?) How are they inscribed in the order of power?" Achille Mbembe, "Necropolitics," 12.

Europe. It is within these contexts and experiences that the analytical category of death most reveals the slain body as a pivotal character separate from that of the dead and the living; however, more subtle "death worlds" exist in the everyday.

Ultimately, necropolitics, biopolitics, and other theories of political life and death are centered around questions of how and why the state regulates, categorizes, and prioritizes life and the bodies that possess it. Necropolitics challenges traditional notions of biopower in which sovereignty targets bodies in their capacity to live, as well as the subsequent modes of regulation that follow; rather than revealing institutional mechanisms and technologies for regulation of life (i.e. hospitals, prisons, etc), it instead places renewed focus on state regulation through strategic and measured exposure to violence.

Mbembe provides a theoretical genealogy, a set of questions derived from this genealogy, and a subsequent framework for thinking through the construction, manifestation, and implementation of regimes of violence enacted and envisioned by the state, imagined particularly for the non-Western postcolonial context. The life/death binary ruptured by Mbembe's introduction of the slain body has since been further complicated notably by Puar's distinctions between disability and debilitation and Butler's concept of differential precariousness, both born out of a particularly American sociopolitical and military context.[11]

The body, however, remains the site of the politics of death, irrespective of how the specifics of that politics is interpreted. The natural state of bodies is that they are "both finite and precarious, implying that the body is always given over to modes of sociality

[11] Judith Butler, *Precarious Life: The Powers of Mourning and Violence*, (New York: Verso, 2004); Jasbir Puar, *The Right to Maim: Debility, Capacity, Disability*, (Durham, NC: Duke University Press, 2017).

and environment that limit its individual autonomy."[12] Precariousness is an innate trait of every human body, yet simultaneously is structured by the sovereign power to exist for some bodies in greater degrees than others. Certain bodies are strategically deemed more human, more grievable, more valuable; other bodies are far more mortal, far more susceptible to violence, far more precarious.

This specific understanding is the one evoked by the term "body" as will be used throughout this thesis - the body in its most corporeal form, naturally and inevitably biologically mortal, and whose being is subject to law. In the words of Judith Butler, "bodies come into being and cease to be: as physically persistent organisms, they are subject to incursions and to illnesses that jeopardize the possibility of persisting at all."[13]

These theoretical conceptualizations of precarity, regimented physical violence, and the politics of sovereign power together constitute a 'necropolitical framework,' which ultimately allows for critical examination and analysis of the state's relation to and control of citizen bodies by thinking through regimes of violence and death - both in regards to violence committed by the State directly against citizen bodies as well as violence merely regulated by the state.

Thinking through the political regulation of life and death also reveals a natural and inescapable protection/violence dichotomy inherent to the relationship between State and citizen. As Butler phrases it, "to be protected from violence by the nation-state is to be exposed to the violence wielded by the nation-state, so to rely on the nation-state for protection from violence is precisely to exchange one potential violence for another."[14] As discussed in a theoretical context, the State in simple terms is the sovereign, the bearer

[12] Judith Butler, *Frames of War: When Is Life Grievable?* (New York: Verso, 2009), 31.
[13] Judith Butler, *Frames of War*, 30.
[14] Judith Butler, *Frames of War*, 26.

of the right to kill/maim. However, this is neither to say that "the State" is that simple to identify, as Skocpol and Mitchell remind us, nor to say that it is a static entity whose deployment, exercise, and conceptualizations of sovereignty do not change as the State changes and "builds" itself.[15]

Thus, more than just a sovereign power, the term "State" as used throughout this thesis adopts Skocpol's conceptualization of the State as simultaneously an institution and an autonomous organizational actor, comprised of not only government but also "continuous administrative, legal, bureaucratic, and coercive systems," with simultaneous recognition that the State "does not become everything," and that other actors, organizations, and social individuals are also at play in a political context.[16] As such, this project also proceeds on the assumption that the process of state-building is anything but a single point or origin event; rather, it operates on the premise that "states are never 'formed' once and for all. It is more fruitful to view state formation as an ongoing process of structural change and not a one-time event."[17]

It is also this particular understanding of violence and death utilized by Mbembe, Butler, and others that will be invoked throughout this project. The term "violence" will be used to refer specifically to physical, material violence and excludes notions of structural, economic, political, psychological, or other forms of violence not inflicted directly upon the body. This is not to say, however, that these forms of violence do not overlap. On the contrary, as will be seen throughout this project, material violence and

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[15] Theda Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research," in *Bringing the State Back In*, ed. by Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (New York: Cambridge University Press, 1985); Timothy Mitchell, "Society, Economy, and the State Effect," in *State/Culture: State Formation after the Cultural Turn*, ed. by George Steinmatz (Ithaca, NY: Cornell University Press, 1999).

[16] Theda Skocpol, "Bringing the State Back In," 7.

[17] George Steinmatz, ed., *State/Culture: State Formation after the Cultural Turn* (Ithaca, NY: Cornell University Press, 1999), 8-9.

structural violence, the systematic ways in which certain demographics are hindered from fulfilling basic human needs, is interdependent and inextricable. The decision to frame violence throughout this project as "material violence" is not an attempt to overshadow this interdependency or the importance of structural violence in these discussions. Rather, this decision was made in an effort to raise the stakes of structural violence, to keep the body at the forefront, and to serve as a constant reminder of the physical reality of the violence perpetuated by these frameworks and the very real toll endured by the body – a focus that too often becomes distanced in academic writing.[18]

B. The Gendered Body

Adopting a relatively "Skocpolian" idea of state, Afsaneh Najmabadi provides a particularly useful framework for historically reconstructing the State and specifically the state-building process by invoking gender and gendered bodies as a tool to address somewhat similar questions to Mbembe's questions of the importance of bodies and how these bodies are inscribed in the order of power.[19] Just as with the precariousness literature, Najmabadi confronts the State's simultaneous attempt at control and existence through the identification, categorization, and conceptualization of bodies. However, the state-building process within Najmabadi's proposed framework is an "on-going, fractious, and volatile process" that "continues to shape and reshape, fracture and refracture, order and reorder what we name 'the state'."[20] Constructing a narrative of the

[18] This approach was heavily influenced by Marisa Fuentes. Marisa Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive*, (Philadelphia: University of Pennsylvania Press, 2016).
[19] Achille Mbembe, "Necropolitics," 12. Afsaneh Najmabadi, *Women with Mustaches and Men without Beards: Gender and Sexual Anxieties of Iranian Modernity*, (Berkeley, CA: University of California Press), 2005.
[20] Afsaneh Najmabadi, *Professing Selves: Transsexuality and Same-Sex Desire in Contemporary Iran*, (Durham, NC: Duke University Press, 2014), 6.

State and, more importantly, dissecting and understanding how the State came to "be" as its present self thus, for her, requires a historical lens.

The most important divergence between Najmabadi's work and other literature surrounding state building, however, remains her choice to invoke gender as a category of analysis as opposed to life or death.[21] Najmabadi establishes that the regulation of gender/sex/sexuality is not only a necessary and vital component of state "becoming," but also that the legal and bureaucratic categorization of bodies as *gendered* bodies is in itself a tool of state power and state violence. Targeting, critiquing, and dismantling the very base of state categorizations and conceptualization of gender, a category often taken for granted yet arguably the one category that most informs the everyday corporeal existence of bodies, also forefronts how the state subsequently attempts to correct, manage, and regulate the outliers. More often than not, these outliers become (often academically overlooked) highly precarious populations. While certainly not the only category invoked by the state, Najmabadi demonstrates, in the context of Iranian history at least, that it is simply not possible to fully grasp what state-building looks like without addressing the state categorization and conceptualization of gender.

Anthropologist Maya Mikdashi has taken a similar approach to critical citizenship studies, demonstrating within the Lebanese context that the state-building process of never-ending configuration and reconfiguration can only be fully understood through the gendered bodies of citizens.[22] Through her dissertation and subsequent publications, Mikdashi shows that the Lebanese State, overwhelmingly viewed solely through a

[21] While *Women with Moustaches, Men without Beards* veers away from issues of life, death, and violence, it would not be difficult to make the case that *Professing Selves* is in fact a work largely centered around ideas of differential precariousness and state-exposed violence.
[22] Maya Mikdashi, "Religious Conversion and Da'wa Secularism: Two Practices of Citizenship in Lebanon," PhD Diss., Columbia University, 2014.

sectarian lens, can only be fully understood as a system of "*sex*tarianism," a framework that approaches state regulation of bodies "without separating or privileging sectarian difference from sexual difference, an analytic approach that is grounded in the ways that the State actually regulates and produces sexual and sectarian difference."[23] Complicating the gendered boundaries of the State's categorization and regulation of gender allows Mikdashi to trace the way the State negotiates different ideas of "the citizen" along lines of "sextarian" difference *with* the citizens themselves as one way to understand the State itself - what the State values, what its conceptualizations of self and identity are. Mikdashi's construction of the legal architecture of Lebanese citizenship and subsequent window into the Lebanese State's "identity" is one prefaced on tracing the way citizens themselves navigate and negotiate their sextarian identities through the laws, courts, and bureaucratic institutions designed to regulate them in specific, binarized ways often at odds with personal cognition of identity.

Ultimately, these studies point to the necessity of critically questioning the categorization and attempted regulation of specifically *gendered* citizen bodies in order to fully understand the State's relationship to and hierarchical construction of its citizens, as well as how this relationship has been historically negotiated by both the State and its citizens during the state-building process. Moreover, as Mikdashi demonstrates, this is an approach grounded in the reality of how the State actually operates and performs.

There is, however, a clear rupture between the body and the individual. An individual citizen as regulated by law, referred to throughout this project as a "legal individual," constitutes more than just a body. While the law's categorization as either

[23] Maya Mikdashi, "Sextarianism: Notes on Studying the Lebanese State," in *The Oxford Handbook of Contemporary Middle-Eastern and North African History*, ed. Amal Ghazal and Jens Hansson (Oxford: Oxford University Press, 2018), 1.

male or female is a material attribute of the body, other characteristics and designations that law inherently associates with or deems possessed by citizens break the border between material and immaterial, such as agency, consent, culpability, honor, and sect.

As Alain Pottage has posited, "humans are *neither* person *nor* thing, or simultaneously person and thing, so that law quite literally *makes* the difference."[24] Just as Judith Butler's body described in the previous section is the human quality of being material, personhood is the immaterial quality of the human - in the context of this work, the social being that is the human, and more importantly the ideal of what that being should look like as conveyed and, to borrow Pottage's terminology, "fabricated" by law. The human, collectively both person and body, that has been fabricated or constructed by law will be referred to in this project as the "legal individual."

C. Colonial Remnants

General discussions of law as pertains to the postcolonial world have long characterized law as a "colonial remnant," remaining in place throughout the processes of independence, decolonization, and institution building. In some cases, laws that were once "imported" by colonial powers while still under the colonial/mandate system were allowed to remain in place.[25] In other cases, laws were "adopted" and formulated within and by the postcolonial state based on templates found in those of their colonial rulers. Based primarily on textual comparison analysis, the Lebanese criminal code is often considered to be one example of the latter case, adopting and translating phrasing,

[24] Alain Pottage, "Introduction: The Fabrication of Persons and Things," in *Law, Anthropology, and the Constitution of the Social*, edited by Alain Pottage and Martha Mundy, 1-39 (Cambridge: Cambridge University Press, 2004), 5.
[25] Jorge E. Hardoy, "The Legal and Illegal City," in *Squatter Citizen: Life in the Urban Third World*, edited by Jorge E. Hardoy and David Satterthwaite, (London: Earthscan Publications, 1989), 35.

sentences, and entire articles from primarily two historical sources: the Ottoman criminal code, itself a modernizing campaign to appease Western powers, and the French criminal code of 1810.[26]

However, this approach overshadows the agency of elite politicians and the legislative arm of the State, in many ways writing out their active role in the subsequent construction and codification of frameworks of violence. The debates of the parliamentary proceedings also suggest this is an oversimplified reduction. In actuality, the width and depth of international legal influence on the promulgation of specifically the criminal code is much more complex than simply a copy-paste or colonially imposed process.

The drafting of the 1943 Criminal Code was a long and arduous process that took over a year and a half to complete from the time of its original commission in November 1941 to the time it was officially passed by legislative decree in March 1943. While the lack of parliamentary proceedings during this period leaves much of the details of this process unknown, we do know that a committee of three senior Lebanese judges was commissioned to help with its drafting.[27] However, outside of this small committee, there was "no public discussion" regarding the provisions of the new code, leading parliament to extend the date of implementation a year and a half following its ratification, so that the new code would take effect on October 1, 1944.[28] This decision was taken for the

[26] Mida R. Zantout, "Robbed of Citizenship: French Law Stripped Lebanese Women of Basic Rights They Freely Enjoyed Under Ottoman Rule," *The Daily Star*, August 7, 2008, http://dx.doi.org/10.2139/ssrn.1213098; Jean Limpens, "Territorial Expansion of the Code," *The Code Napoleon and the Common-Law World*, edited by Bernard Schwartz, 92-109 (New York: New York University Press, 1956), 103. See also: Lama Abu Odeh, "Honor Killings and the Construction of Gender in Arab Societies," *The American Journal of Comparative Law* 58 (2010): 914; Lynn Welchman and Sara Hossain, *Honour Crimes, Paradigms and Violence Against Women*, (London: Zed Books, 2005), 114-115.

[27] Government of Lebanon, Parliamentary Proceedings of the Sixth Legislative Council, Second Exceptional Convening, Third Session (January 19, 1948).

[28] Ibid.

purpose of "giving the lawmen, judges, and lawyers the opportunity to study its provisions and absorb them properly before starting its implementation."[29]

While the drafting process was closed off from those who would be interacting with the new code the most, the Ministry of Justice decided in 1946 to gather the opinions of Lebanese judges and lawyers on the effectiveness of the new code, issuing a circular to "the heads of courts and public prosecutions asking them to provide them with their notes on its rulings."[30] The amendments made in 1948, not even four years following the date the new code took effect, are the result of the opinions and notes collected from this circular - pending parliamentary review, of course. Most of the changes made were technical, i.e. clarifying broad phrasings, standardizing punishments between different provisions, and incorporating "judicial language."[31] While relatively small changes and amendments would continue for the next seventy years within the walls of parliament, the 1943 code still remains in effect today as the foundation of the Lebanese criminal legal system.

This is not to say the French Mandate government did not apply political pressure or make efforts to instill French criminal law into the Lebanese system. For example, during a discussion on whether to add further provisions to the imperial code to protect minors and children, the High Commissioner's office composed and sent a draft resolution to parliament proposing the adoption of Articles 349 and 352 from the French

[29] Ibid.
[30] Ibid.
[31] In total, this set of amendments contained alterations to forty seven provisions from the 1943 code, twenty six to the general provisions of the code (Articles 1-269) and another twenty-one to the stipulations of specific crimes and related punishments. Of the two sections pertaining to violence and violations of the body ("Crimes Against Individuals" and "Crimes Against Public Morality"), Articles 522, 523, and 560 were amended. Government of Lebanon, "bi-Ta'dīl Ba'ḍ Mawādd min Qānūn il-'Uqūbāt," Law No. 0, *Al-Jarīda ar-Rasmiyya* 6 (February 11, 1948): 97-101.

penal code.[32] Their efforts, however, were ultimately unsuccessful. Despite whatever political pressure surrounded these types of suggestions from the High Commissioner's office, they remained suggestions when it came to parliamentary discussion, debate, and most importantly vote.

Contrary to impositions, legislative decisions in Lebanon around the time of the code's promulgation were heavily weighed, thought-out, and debated, a process during which many different codes from all over the world were consulted, critiqued, and analyzed for their merits and applicability within the Lebanese context - not just the French. Parliamentarians had a commanding knowledge of not only transnational law but penal conferences including the Rome Conference of 1885 and St. Petersburg Conference of 1880, citing not only discussions but the outcomes these conferences led to and the ways in which they were implemented in other legal systems.[33] Moreover, parliamentarians referred to a plethora of different countries and codes when discussing alternative systems to the criminal legal system in place in Lebanon at the time, taking a wide survey of different approaches including Belgian, Italian, Turkish, Egyptian, and Palestinian.[34] Foreign laws were considered not only in context of general legal trends but also on a detailed, word-by-word basis.[35] Ultimately, the legislative decision making

[32] Leon Henry Charles Kayla, Office of the High Commissioner of Lebanon. Government of Lebanon, Parliamentary Proceedings of the First Legislative Council, Tenth Session (March 1, 1926). See also, Bechara el-Khury's commentary about implementing an edited version of one of the French provisions in 1935: Government of Lebanon, Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).

[33] See Bechara el-Khoury's references to penal conferences in the debate surrounding first-time offenders and Article 8 of the Imperial Ottoman Penal Code. Government of Lebanon, Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).

[34] For consideration of Italian and Turkish criminal law, see: Government of Lebanon, Parliamentary Proceedings of the Sixth Legislative Council, Second Regular Convening, Fourth Session (November 3, 1948). For consideration of Belgian, Egyptian, and Palestinian law, see: Government of Lebanon, Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).

[35] See MP Khabbaz's discussion of the minute differences between the phrase "[*īqāf al-tanfīdh*]" in the Egyptian penal code compared to the phrase "[*ta'jīl al-tanfīdh*]" in the translated Ottoman code.

process during and immediately following the French mandate was an active, critical, and carefully negotiated and detailed process in which a wide variety of foreign legal systems served as reference points.

Although there are definitely instances when law in the postcolonial world falls under the auspices of colonial impositions or colonial remnants, approaching law in the global south with the *assumption* that this is the case is incredibly problematic as this assumption not only reinforces a colonizer-colonized power hierarchy, but 1.) excludes and overlooks the agency and participation of the postcolonies in a larger, global constellation of legal intellectual exchange and 2.) absolves the postcolonial State of responsibility in perpetuating and implementing laws that foster inequality and violence. Clearly in the case of Lebanon, Lebanese lawmakers were not sitting on the sidelines.

Moreover, while postcolonial studies is eager to point out the role of law in colonial power dynamics and the legacies of these legal institutions after decolonization, and in most cases rightfully so, the influence and transference of law is not something that is solely passed from colonizer to colonized. Yes, French criminal law influenced Lebanese criminal law. It also heavily influenced the codes of Germany, the United States, Portugal, Spain, and Belgium - yet this is rarely ever part of the discussion.[36] Influence and colonial imposition are not necessarily one and the same. Especially in the case of the Lebanese Criminal Code of 1943, a paucity of evidence precludes us from approaching criminal law with such assumptions. This paper instead proceeds on the notion that while the Lebanese Criminal Code had antecedents and a multiplicity of influence sources, its promulgation was inherently a Lebanese project.

Government of Lebanon, Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).

[36] Jean Limpens, *The Code Napoleon and the Common-Law World*, 92-109.

D. Approaching Law & the Lebanese State

Ultimately, law is the intersection where violence and material bodies meet; it is the tool through which the sovereign state regulates and deregulates bodies, legalizes and criminalizes death, and enacts states of exception and emergency.

Law is not limited to legal documents - it is a compilation of what is written, what is ruled and interpreted, and what is enforced. This project's focus on the letter of the law rather than practice (i.e. rulings, interpretations, legal work, enforcement) is an effort to locate an origin point in the politics of death. While questions surrounding practice are important and would be well addressed in a study of their own, these questions and the selective answers they provide are not the concerns of this particular thesis. Rather, this thesis aims to trace backwards in the causal train to law as it is written, the physical text of the law, in an effort to answer an alternative set of questions: how does a State design deathscapes through nothing more than black ink on white paper? What specific words are written and omitted that allow for lethal frameworks of legality to be ruled, interpreted, and enforced in the first place? How does text produce death? This is the question at the heart of this project's inquiry.

Although this is not to say that the State always operates within the framework of the law. As will be demonstrated, the Lebanese State has gone out of its way to legalize and legitimize violent tactics of dealing with citizens; however, if the current times have demonstrated anything, it is that members of the State and particularly law enforcement do in fact act outside the box drawn around "legitimate" violence. Again, this thesis is not an exploration of what the State does, but rather what the State has granted itself the legal authority to do.

Ink on paper, however, also does not imply staticity. Critical to the Lebanese Criminal Code is its status as a living, malleable document - it can be amended, adjusted, and changed, implying the values written in the text have also been amended, adjusted, and changed in specific sociopolitical contexts throughout the 75-year history of the document, i.e. the history of the Lebanese state post-independence. Subsequently, the adaptive nature of the criminal code becomes also indicative of a dual "becoming": that of the Lebanese State and the Lebanese citizen body. In reality, the code is not static, and while this thesis attempts to provide an understanding of law and the body in 1943, a true understanding would require an interrogation of the document throughout its entire history. Despite these limitations, the dates which specific articles have been amended or repealed, if any, are noted in the footnotes beside the article's citation.

As much as possible, this work actively attempts to avoid some of the common missteps in area studies academia, while also recognizing that many of these shortcomings are ultimately inevitable.

Firstly, this thesis aims to keep in mind the lessons learned from the scores of colonial feminist scholarship produced about the region, especially as it pertains to gender and law. This subject is often oversaturated by a fetishized focus on honor crimes and inter/nongovernmental agency pushes for "women's rights" that often stigmatizes culture itself as the source of criminal violence.[37] Following the lead of scholars such as Maya Mikdashi and Lila Abu Lughod, this work hopes that bringing the State as well as sociopolitical context back into the equation works to provide a more nuanced, merited, and realistic idea of the relationship between gender and law in the Middle East, prefaced

[37] Lila Abu Lughod, "Seductions of the 'Honor Crime'," *Differences: A Journal of Feminist Cultural Studies* 22, no. 1 (2011): 19.

on the idea that gender inequality in law cannot be "reduced to a generic battle of the sexes spiced with a dose of Islam and culture."[38]

It is also important to note that this thesis does not support or assume periodization or exceptionalism. While this thesis looks at the changes made to the criminal code in 1943, no solid line can be drawn clearly dividing a "before" and "after." These changes did not happen in a single moment; while the code was changed, other facets of criminal law and the legal system more broadly remained in place - and vice versa. This overlap was even the case *within* criminal law, as the Imperial Ottoman Penal Code was not repealed until five years after the Lebanese Criminal Code was promulgated.

In fact, reading law as an archive of the State is also an effort to make several of these interjections in the literature on the Lebanese State in the post-independence period. The bulk of Lebanese historiography is clustered around the late-Ottoman, mandate, and civil war periods while leaving the body of historical literature pertaining to the decades immediately following independence scarce. Moreover, the literature that focuses on Lebanese law in this period is nearly non-existent.[39]

In many ways, the focus on the promulgation of the criminal code is an effort to push back against historical narratives of both staticity during the period of 1943-1975 as well as fragmented periodization that clearly divides the late Ottoman, mandate, and post-independence eras as teleological blocks. The continuous and overlapping threads of the Imperial Ottoman Penal Code and the 1943 Criminal Code show that the boundaries

[38] "It cannot be extracted from the political and economic threads that, together with patriarchy, produce the uneven terrain that men and women together navigate. It is these lessons that one would have to engage before meting out an indictment about the politics of sex, much less envisioning a future of these politics." Sherene Seikaly and Maya Mikdashi, "Let's Talk About Sex," *Jadaliyya*, April 25, 2012, https://www.jadaliyya.com/Details/25726

[39] One notable exception to this is Ziad Abu Rish's engagement with law throughout his dissertation on institution building in Lebanon between 1943 and 1955. Ziad Abu Rish, "Conflict and Institution Building in Lebanon, 1946-1955," PhD Diss., University of California Los Angeles, 2014.

between these eras are not entirely distinguishable and actually comprise a much more fluid landscape. As will be shown, escaping the rigidity of periodization and examining the continuity between these legal threads can reveal a very different historical narrative of the State.

Similarly, this is also an attempt to use law to complicate the somewhat generalized and static designations of the Lebanese State as either "strong" or "weak," often accompanied with the retrospective view of 1943-1975 as the "pre-war" period, a State destined for failure and collapse.[40] This project hopes to demonstrate that strong and weak, in the context of the Lebanese State but also more generally, are subjective and problematic descriptions that do not reflect the kaleidoscope of anxieties and agendas at play, while also highlighting the alternative narratives of the State that come into view when side-stepping the "pre-war" mentality.

Moreover, none of the phenomena described in the following chapters are necessarily uniquely characteristic to Lebanon, or even the Middle East. On the contrary, as will be discussed, the 1943 code was written with a larger global constellation and legal tradition in mind. Many of the analyses and critiques given here are equally applicable to other States - in this way, this project could be viewed as just one case study of how law explicitly and implicitly breeds violence against its citizens.

While this project attempts to get a glimpse of the legal construction of violence and the body, it recognizes that a complete understanding of these constructions would require a much larger scope, taking into consideration all areas of law and legal practice

[40] For example, although well received in its time, Michael Hudson deems the Lebanese State is doomed to collapse through an analysis founded in modernization theory and primarily Western sources. Michael Hudson, *The Precarious Republic: Political Modernization in Lebanon* (New York: Random House, 1968). Perhaps most notoriously for adopting the pre-war mentality: Kamal Salibi, *Crossroads to Civil War: Lebanon 1958-1976* (New York: Caravan Books, 1976).

from military law to personal status law - a scope that is, unfortunately, much too wide for a MA thesis. To *fully* understand this relationship would require a critical analysis of every Lebanese legal framework. That being said, it should not go overlooked that the 1943 code, while considered to be the only criminal code at present in Lebanon, is surprisingly not the only legal institution that claims jurisdiction over crimes of material violence. There are often instances where jurisdiction is foggy between the criminal code and personal status laws, especially when it pertains to material violence committed among familial/marital relations. Thus, a true understanding of violence and the body would thus also require an investigation of these overlapping jurisdictions - this was unfortunately once again much too wide a scope for a thesis of this size.

Perhaps the most impossible shortcoming to overcome with this project, I have done my best not to approach law, legality, and Lebanese history for that matter, from an American mindset. I recognize that while attempting to engage with this topic, my own biases, education, and ways of thinking are bound to influence my perspective. In an attempt to mitigate some of this effect, I tried to not take categories and terminology for granted. Rather, I attempted to construct categories of analysis and classification and their corresponding definitions based on the how they appeared in the text. This is especially important to note in regards to legal vocabulary. For this reason, I have used Arabic as often as possible, and have avoided using terms like "murder," "manslaughter," or "rape" as the current definitions of these English terms are clearly specified and very specific to a time, a place, and a language that would be anachronistic if used in the context of 1943 Lebanon.[41]

[41] For example, not all of what is deemed to be "rape" by today's Western academic language is criminalized within the Lebanese Criminal Code - the criminalization of what many would call rape is dependent on the victim's relation to the perpetrator. These distinctions will be critical in the following chapters.

Lastly, I must acknowledge my position as an Orientalist scholar. While not approaching the study of the Middle East with the same damaging assumptions critiqued by Edward Said, by nature of being a Western scholar in an area studies program I fall into the trap of producing work that merely attempts to explain the non-West to the West, without much of a productive capacity for the region itself. The conclusion of this thesis is an attempt to mitigate this point, even if by a little, and provide some beneficial use for the analyses provided here to the people they actually affect.

All said, this thesis will proceed as follows:

The first chapter of this thesis will use parliamentary proceedings to locate and characterize what will be referred to as a legislative mentality, in this context meaning the shared notions of gender, criminality, law, and justice that permeated the parliamentary landscape around the time of the code's promulgation. This section will explore the influence of the French as well as other members of the international legal community alongside more domestic ideas, attitudes, and agendas surrounding the legal protection of nationalism, dominant notions of justice and the "purpose" of criminalization, and gendered criminality and victimhood.

The second chapter of this thesis will attempt to extend these questions to the child body, in an effort to determine when in the lifeline of the body it becomes subject to the full force and effect of the frameworks of violence set forth in the law. It will examine the importance of childhood to the State's production of legitimate citizens, and the regulations and protections uniquely afforded to them as such. Ultimately, it will analyze the importance of childhood as when bodies legally *become* - men, women, individuals, citizens, and threats.

The third chapter will proceed to deep dive into the text of the Criminal Code of 1943, in an effort to locate how and where specifically violence flows through the letter of the law. This chapter will examine the body's exposure to violence as it naturally travels through many different legally defined conditions and spaces such as marriage, poverty, disability, sexuality, labor, and dissent. As the body moves from one categorical state to another, violence moves with it - as the body enters a condition or space that the State views as more threatening to its own survival, the body's survival in turn becomes strategically jeopardized as it becomes exposed to more precarity under the law.

This thesis will conclude by considering the broader implications of the central role corporeal violence plays in legitimizing the State, outlining what a corporeal lens brings to discussions of how to dismantle the legal frameworks of violence still currently in place, and provoking further questions surrounding the potential of legal work in Lebanon in facilitating this dismantlement.

CHAPTER II
LAW, JUSTICE, AND THE STATE

"wa idhā kān al-'adl huwwa asās al-mulk fa-huwwa ka-dhālika di'āma asāsīya min da'ā'im al-istiqlāl al-ṣaḥīḥ."

-- Riad al-Solh, 1943[42]

This chapter will establish what the driving forces, mentalities, and assumptions were behind the approach to regulation that was adopted with the 1943 Criminal Code, and for what purposes the State criminalizes. This chapter aims to profile what will be referred to in this project as a "legislative mentality" - the lens through which criminal law was legislated and the foundation upon which the new code was written. Very specific perceptions of criminality, law, and justice heavily influenced and undergirded the particularly violent mentality and methods the state adopted when approaching essential aspects of the state-building project - constructing legitimate citizens, in both body and personhood, and protecting the legitimacy of the State from those bodies deemed as threats.

A. Modernity, Civilization, and Positionality

The criminal legal framework introduced in 1943 was not a colonial imposition, but rather a tool actively manipulated by a newly independent State in an effort to negotiate its positionality and bolster its legitimacy within the international community. On one level, Lebanon needed a legitimate legal system to measure up to what it considered to be a legitimate State with a legitimate standing in the international

[42] Riad al-Solh, Government of Lebanon, Parliamentary Proceedings of the Fifth Legislative Council, First Exceptional Convening, Third Session (October 7, 1943).

constellation - its cultural and historic birthright. However, on another level as will soon be discovered, the State needed to also invoke criminal law to protect its legitimacy from threats within.

Contrary to narratives of colonial French imposition, it is important to recognize that legislative decisions were heavily weighed, thought-out, and debated, a process during which many different codes from all over the world were consulted, critiqued, and analyzed for their merits and applicability within the Lebanese context - not just the French. However, the merits upon which these foreign laws were considered and weighed often times had less to do with law and more to do with geopolitics and efforts to replicate a perceived international standard for "modern [*ḥadīthī*]," "civilized [*mutamaddin*]," "high-end [*rāqī*]" states, nations, and legal institutions, ultimately seen as synonymous by Lebanese parliamentarians to "legitimate [*shar'ī*]."

More than simply legal influence or reference, romanticized ideas of modernity and civilization also served as more indirect yet equally driving forces in legislative projects in the early 1940s. Within the parliamentary discourse, however, these qualities do not necessarily fall along the bifurcated colonial division of a modern, civilized West and traditional, uncivilized East. It is within this context that positionality comes into play as another driving force in the legislative agenda, that is the Lebanese State's overt efforts to define itself and its position as a legitimate state within the entire global constellation - not just in relation to the West, but also in relation to the rest of the region and the rest of the global south.

Looking to parliamentary discourse itself to parse the categories of states that comprised the global hierarchy of legitimacy as perceived by the Lebanese legislature in the 1930s and 1940s, the first group of countries that emerges is what was repeatedly

referred to collectively as the "high-end countries [*al-bilād ar-rāqiyya*]."[43]

While this group was composed overarchingly of countries of the global north, not all European states are discussed in this context. Rather, only five states are explicitly discussed as being part of this group, each seen as having a unique role in the global community and in relation to Lebanon: Britain, "the mighty and formidable, who lifts the nightmares of exhaustion, terrorism, and injustice [...*al-jabbāra wal-rahība, rāfiʿat kābūs al-irhāq wal-irhāb wal-maẓālim*];" the United States, "our second homeland [*waṭanunā al-thānī*];" Russia, who "made the greatest contribution to combatting tyranny [*lahā al-musāhama al-ʿuẓmā fī muḥārabat al-ṭugyān*];" France, whose relationship to Lebanon is more complexly layered; and Turkey.[44]

This cohort is constructed within the proceedings as a yardstick for measuring "modernity" - the civilized, high-end, and most importantly legitimate countries within the international constellation with whom the Lebanese State, in order to itself attain legitimacy, needed to situate itself.

Regional Middle Eastern states comprise a category of their own, separate from the rest of the global south, consisting of Egypt, Syria, Iraq, Palestine, and Jordan.[45] They are often referred to as "sister countries [*al-duwal al-shaqīqa*]," although it is worth noting that Egypt and Iraq are the only independent states of this group by 1943, whose amicable relation to Lebanon is referenced to be merely the product of what "duty

[43] During WWII (and specifically 1943), this language becomes more politically charged and predictably shifts to "the great allied countries [*al-duwal al-ḥalīfa al-kubrā*]." For example, see George Zuwayn's 1943 address in Government of Lebanon, Parliamentary Proceedings of the Fifth Legislative Council, First Exceptional Convening, First Session (September 21, 1943).

[44] Ibid., George Zuwayn and Bechara el-Khoury.

[45] It is worth acknowledging that out of all of these global relations, Lebanon's relationship to the rest of the Middle East is perhaps the most internally politicized, most notably in the debate of Lebanon's "Arabness" or "Arab face [*dhū wajh ʿarabī*]." What is represented here is shared rhetoric that seemingly transcends other political/sectarian affiliations.

imposes between neighbors [*hadhā mā yafraḍu al-wājib bain al-jār wal-jār*]."[46] "Neighbor [*al-jār*]" is in fact the term most often associated with this cohort, even when discussing Egypt who does not geographically border Lebanon.

However, despite their geographic proximity and shared colonial histories, the question of whether or not Lebanon belonged (or rather, whether or not the State *wanted* to belong) to this group in the eyes of parliament is debatable.

In some instances, there was a clear effort to keep up with *al-duwal al-shaqīqa*, notably Egypt. For example, during one debate regarding amendments to the Imperial Ottoman Penal Code in 1935, MP Michel Zakkour after learning a certain provision was present in Egyptian criminal law advocated for the same provision based on the reasoning that "our country is like other countries, and if we have not reached the level of Europe, we have reached at least the degree of Egypt."[47] This sentiment of inferiority towards the Egyptian State is quickly echoed by other members of parliament.

Moreover, the same discourse surrounding civilization and modernity that was used to discuss *al-bilād ar-rāqiyya* is used to discuss Lebanon, yet notably absent when discussing *al-duwal al-shaqīqa*. This was used specifically in the context of what Bechara el-Khoury refers to as Lebanon's "civilized past [*malī' bil-ḥaḍāra*]" and "pure culture [*al-thaqāfa al-khāliṣa*]," a nation that is "deep-rooted in its culture and civilization [*al-'arīq fī thaqāfatu wa madanīyatu*]." This discourse in turn highlights a perceived disjuncture between Lebanon and its neighboring countries.[48]

Lebanon's birthright to civilization and superiority to the rest of the Middle East

[46] Ibid.
[47] Michel Zakkour, Government of Lebanon, Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).
[48] Bechara el-Khoury, Government of Lebanon, Parliamentary Proceedings of the Fifth Legislative Council, First Exceptional Convening, First Session (September 21, 1943).

in the new world order is prefaced on the belief that it "was and remains the cornerstone of intellectual independence [*al-rukn al-ḥaṣīn lil-istiqlāl al-fikrī*] of the Arab world and the center of convergence and solidarity to curb colonial ambitions [*markaz al-talāqi al-taḍāmun li-kabḥ al-maṭāmi' al-isti'māriyya*]."[49]

The resulting mentality was that Lebanon was not at the time where it should be in the global hierarchy - a dissonance between, on the one hand, a right to legitimacy inherited from its civilized past that subsequently separates it from the rest of the region, and on the other hand, the recognition that the legal infrastructure, at this time primarily still Ottoman, was not quite there yet, thus resulting in its apparently obvious, relatively less legitimate position and grouping post-independence within this international constellation.

The desire to reconcile this dissonance heavily influenced the State's strive for legitimacy, thereby driving legal efforts to establish Lebanon's positionality as, if not on the level of *al-bilād ar-rāqiyya*, then "at the very least at the level of Egypt" and its other neighboring Arab countries.[50] MP Abdulghani al-Khateeb best expresses this right to civilization:

> Is there anyone more deserving than Lebanon of this civilization [*aḥaqq min lubnān bihādhahi al-ḥaḍāra*]?... the day will come when we return to our place [*na'ūd bihi ilā makānatnā*] and assume our position [*natabawwa' markaznā*].[51]

Despite the note of relative inferiority with which the *al-duwal al-shaqīqa* are discussed, however, in the eyes of the Lebanese State, even the Middle East was still not the antithetic opposite of the legitimate, civilized states. This most reveals itself in a proposal

[49] George Zuwayn, Government of Lebanon, Parliamentary Proceedings of the Sixth Legislative Council, Second Regular Convening, First Session (October 21, 1947).
[50] Michel Zakkour, Government of Lebanon, Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).
[51] Abdulghani al-Khateeb, Parliamentary Proceedings of the Fifth Legislative Council, First Exceptional Convening, Third Session (October 7, 1943).

presented by MP George Aql to restore Lebanese villages. To demonstrate the dire need and repercussions of the proposed project, Aql shares a dramatic retelling of his recent visit to a small village in the Chouf with his colleagues:

> One day I passed near the village of Wardaniyeh… and I saw a convoy consisting of fifty women, each carrying a pitcher or two of water on top of her head and shoulders. I stood before the scene of this convoy, wondering whether we are in Lebanon or in the African jungles [*al-majāhil al-afrīqiyya*]. Does the proud [state of] Lebanon [*lubnān al-abī*] of the Lebanese village accept this humiliation [*al-shaqā' al-aḥmar*], and indeed abominable slavery [*al-'ubūdīya al-shanī'a*] in the era of light, freedom, equality, and justice [*al-nūr wal-ḥurrīya wal-musāwāh wal-'adl*]? Where is equality… where is justice… where is freedom…
>
> In this way, I have strengthened in my resolve to struggle to revive the Lebanese village and to improve life in the village so that the people of Lebanon [*sukkān lubnān*] are not the children of servants and slave girls [*abnā' al-sitt wa abnā' al-jāriya*].[52]

The discourse used in this proposal highlights several key points, first and foremost Lebanon's perception of the rest of the global south as separate from the Middle East. The phrase *al-majāhil al-afrīqiyya* is particularly indicative of this, a term that literally translates to the unknown or unexplored regions of Africa yet that often carries with it clear derogatory and imperial connotations.[53] At its base, this is a phrase that evokes particular images of a savage, lawless, and stateless region. This lawlessness, statelessness, "slavery," and "humiliation" are put in diametric opposition to "equality," "freedom," "justice," and of course, *paternal* pride of the State.[54]

This proposal to revitalize the village is also a reminder of the multiple, often overlapping "buildings" happening during this period. The State's quest for legitimacy,

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[52] George Aql, "Mashrū' In'āsh al-Qarya al-Lubnāniyya," in Government of Lebanon, Parliamentary Proceedings of the Fifth Legislative Council, Second Ordinary Convening, Second Session (October 28, 1943).

[53] For example, see connotation of this phrase in literature, such as in Arabic translations of Joseph Conrad's seminal work *The Heart of Darkness* [*Qalb al-Ẓalām*].

[54] The use of the phrase "[*lubnān al-abī*]" is of particular note in the context of the father-state as discussed earlier. While *abī* literally means "of the father" or "paternal," I have chosen to translate it contextually, here implying a very particular kind of pride. This word is used twice in this same proposal - once here and again to describe the souls of the villagers: "any eye [can] see the misery of the Lebanese village and the misery of its inhabitants, their proud souls [*nufūsihim al-abiyya*] suffering from negligence [*ihmāl*], intentionally or unintentionally..."

partially determined by its positionality in the global constellation, calls for not just legal but also material infrastructure.[55] All of these projects work hand in hand to build the State.

Moreover, it hints at a phenomenon that will really begin to take shape when delving into the provisions of the 1943 Criminal Code - the body as a site of contestation where this opposition is taking place and the role of children and reproductive labor in the quest for legitimacy. If Lebanon is to reclaim its status rightly inherited from its civilized past, there must be another diametric opposition between "[*abnā' al-waṭan*]" and "[*abnā' al-sitt wa abnā' al-jāriya*]."[56]

The mentality exhibited here is one in which the material body is heavily connected to the State's status as "just" and "equal" - in other words, its access to a legitimacy with notably gendered foundations.[57] This is a connection that, as will be demonstrated in the coming chapters, runs throughout the very core of the criminal legal infrastructure.

Ultimately, law remains a tool actively manipulated with agendas of legitimizing the State. Though largely considered as an internal issue, State legitimacy is a concept whose meaning and definition is also greatly influenced by external factors and notions

[55] The topic of material infrastructure projects was brought before parliament several other times that year, including issues surrounding roads and running water in the Beqaa and setting up a special fund for construction projects. Government of Lebanon, Parliamentary Proceedings of the Fifth Legislative Council, First Extraordinary Convening, Fourth Session (October 15, 1943); Government of Lebanon, Parliamentary Proceedings of the Fifth Legislative Council, First Ordinary Convening, Second Session (March 21, 1944); Government of Lebanon, Parliamentary Proceedings of the Fifth Legislative Council, First Ordinary Convening, Third Session (March 29, 1944); Government of Lebanon, Parliamentary Proceedings of the Fifth Legislative Council, First Extraordinary Convening, Fourth Session (March 31, 1944).

[56] George Aql, "Mashrū' In'āsh al-Qarya al-Lubnāniyya," in Government of Lebanon, Parliamentary Proceedings of the Fifth Legislative Council, Second Ordinary Convening, Second Session (October 28, 1943).

[57] What is also notable in this discourse is the intersection of labor, gender, and state, as *laboring* female bodies are equated with slavery and comprise the greatest threat to legitimacy.

of statehood. The influences and models for the legislative frameworks of the newly independent Lebanese State were carefully chosen, not imposed, with this legitimacy agenda in mind, as the State continued to work through anxieties and dissonance surrounding what it meant on the international level to be a legitimate State with a legitimate legal infrastructure while attempting to recognize Lebanon's "birthright" to legitimacy with its positionality within the global constellation at this point in 1943. However, the legislative mentality that influenced criminal law in particular was also heavily shaped by societal notions, beliefs, and principles surrounding the role of law, criminality, and justice.

B. Notions of Law, Criminality, and Justice

The new criminal code was founded on three important beliefs and principles: the necessity of criminal law to ensure proper protection of the State, specifically gendered conceptualizations of criminality and victimhood, and dominant notions of retributive justice.

The mentality held by the State that one fundamental role and essential duty of the criminalization process as a legal institution was not only building a State and national "entity" but also preserving and protecting this entity served as the foundation of the criminal code from the project's very inception in 1938.

Despite the absence of documented proceedings from the time the code was being drafted, the project of instilling a distinctly Lebanese criminal code was first proposed, and met with some resistance, by Charles Ammon, head of the Administration and Justice Committee, in 1938 in response to the unusually high number of general amnesties passed by parliament. According to Ammon, a new criminal code was necessary for two essential

reasons: firstly, the failure of the Imperial Ottoman Penal Code, and secondly, the protection of the nation.

> The legislation in force in Lebanon does not protect the Lebanese entity [*lā yaḥmī al-kiyān al-libnānī*] in a way that we are comfortable with. In the present case, the only texts that can be relied on are still the Turkish texts in the Penal Code that protect the entity of the Ottoman Kingdom… the stricter penalties stipulated prevent them from being applied, and therefore they become neglected.
>
> We ask the council to propose to the government to repeal this text [Imperial Ottoman Penal Code], which severely prevents it from being applied, and actually turned in the interest of the aggressors and compels us to issue amnesty after amnesty, replacing it with explicit legal texts that specify penalties that are appropriate to the crime, and with legislation suppressing any aggression against the Lebanese entity [*kull i'tidā' 'alā al-kiyān al-libnānī*], regardless of the type of this assault and any authority or person issued[58]

Ammon's call for a new code is rather bluntly ignored in the immediate discussion following the announcement in favor of discussion of the amnesty at hand. It is not until Ammon reiterates his point by announcing that the council will only ratify the amnesty on the condition that draft law is presented "that protects the Lebanese entity [*yaḥmī al-kiyān al-libnānī*]" that the suggestion is taken seriously. Several members of parliament admit to sharing Ammon's concerns, but it is Iskandar al-Bustani who poses the most revealing question during the discussion: "is the government ready [*musta'idda*] to bring us legislation to protect Lebanese nationalism [*ḥimāyat al-qaumīya al-lubnāniyya*]?"[59]

Key to this question, alongside Ammon's insistent proposals, is that the obstacle at hand is whether or not legislation is prepared and ready, not whether or not such a law is necessary to protect nationalism and the nation. That is already a given and accepted premise. Aside from the implications of the accepted notion that the nation needs "protecting," it is crucial to note that it is through law, and specifically *criminal* law, that it achieves this protection. This reveals the perception held by the state that one fundamental role and essential duty of the criminalization process as a legal institution is

[58] Charles Ammon, Administration and Justice Committee, in Government of Lebanon, Parliamentary Proceedings of the Fourth Legislative Council, First Regular Convening, Fifth Session (April 26, 1938).
[59] Ibid., Iskandar al-Bustani.

not only building a state and national "entity" but also preserving and protecting this entity. It is this mentality and this purpose that serves as the foundation of the criminal code from the project's very inception in 1938. Ultimately, it would not be until 1941 that the code's drafting began.[60]

Within the rhetoric of the legislative decision making process, criminalization and punishment in and around 1943 was overwhelmingly centered around the principles of deterrence, retributive justice, and the conceptualization of the criminal as an illegitimate material body that should be purged for the greater good.

Concerns surrounding rights of the accused, situational details or exceptions, and criminal reform took a backseat to one particular legislative aim. Deterrence was the primary, and in some conversations even sole, concern for parliament when it came to enacting criminal law provisions. Debates on whether or not to grant amnesties centered around whether or not the act of granting amnesty "encouraged crime."[61] The effectiveness of provisions were judged first and foremost on their "sufficiency to prevent [criminals] from committing other crimes in the future."[62] This policy of deterrence was based on the logic of paternalistic discipline, aptly expressed by MP Ayoub Tabet, that "if we do not teach the people of this country to respect themselves, I do not know when we teach them this respect... if we support the liar in a lie, it might end up becoming torture."[63] The principle of protecting society through deterrence methods including fear,

[60] Government of Lebanon, Parliamentary Proceedings of the Sixth Legislative Council, Second Exceptional Convening, Third Session (January 19, 1948).
[61] See Ayoub Tabet's statements regarding "the principle of amnesty." Government of Lebanon, Parliamentary Proceedings of the Fourth Legislative Council, First Regular Convening, Fifth Session (April 26, 1938).
[62] See Hamid Frangie and Bechara el-Khoury in discussion of lessening penalties for first-time offenders. Government of Lebanon, Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).
[63] Ayoub Tabet, Parliamentary Proceedings of the Fourth Legislative Council, First Regular Convening, Fifth Session (April 26, 1938).

intimidation, and harsh punishments to preemptively prevent crime was a dominating principle that guided criminal law legislation.

The lengths parliament was willing to go to deter crime is highlighted by the reasoning given for a draft law presented in 1948 regarding capital punishment:

> The legislator envisages the death penalty [*'uqūbat al-i'dām*] for two purposes: the first, the removal of the corrupted organ [*al-'uḍw al-fāsid*] from the body of society [*jism al-mujtama'*]. The second, [terrorization, intimidation] [*al-irhāb*]… the second goal is sometimes to defame the criminal and carry out the punishment in a place that is open to the public's attention.[64]

This reasoning behind the death penalty and the provisions it inspired is indicative of a State that is willing to go so far as to purge, through death, the illegitimate members of society, sacrificing part in order to save the whole. Moreover, this is indicative of a State that is not only willing but *actively legislates* with the aim of terrorizing its citizens, frightening them into behaving in a legitimate way, by means of occupying public space with visuals of death and violence. Through this logic, the State exposure of ordinary law-abiding citizens to images of violence is a method of deterrence - a necessary cog in the wheel of justice. This is all done in the name of cleansing, purifying, and protecting the societal body - i.e., the State itself.[65]

Overall, this take on justice left little room for forgiveness, mercy, or the reform and reintegration of criminals into society - all in the name of protecting "society" (read, State) as opposed to individuals.[66] The process of the depersonification of criminals, the reduction of the criminal to a body, also reveals itself in the way members of parliament argue for the effectiveness of certain provisions through statistics. By nature a relatively dehumanizing process, statistics are not a measure of persons; rather, they are a measure

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[64] "Al-Asbāb al-Mūjiba - Ta'dīl Ba'ḍ Mawādd Qānūn al-'Uqūbāt," Parliamentary Proceedings of the Sixth Legislative Council, Second Exceptional Convening, Third Session (January 19, 1948).
[65] This linkage between the societal body and the State will be elaborated further in a later section.
[66] These policies drastically differ when dealing with juvenile offenders, as will be discussed in Chapter 2.

of things - in this case, of material, corporeal bodies.

Still, "statistics [*al-iḥṣā'āt*]" and "tests [*al-ikhtibār*]" are relied upon to measure the effectiveness of criminal provisions. For example, when considering the merits of one French law, Bechara el-Khoury notes that "the results were very good, as was proven from the yearly statistics [*iḥṣā'āt*] of the Ministry of Justice."[67] Similarly in a separate discussion, the Minister of Justice cites as part of his legal reasoning that "our test [*al-ikhtibār*] indicated that keeping these texts intact would lead to an increase in the crime."[68] This notion of reducing the body to numbers and easily divisible categories will remain a running theme throughout the 1943 Criminal Code and the remaining chapters of this thesis, appearing time and again everywhere from the arbitrary division of the stgaes of childhood to the incremental measurements of the severity of violent injuries.

The belief that criminality can be measured, quantified, and reduced to statistics and tests represents a depersonification of not just the criminal but all citizens, attributing to each of them only a material body that can, and in some cases must, be subjected, regulated, and exposed to material violence to ensure a particular interpretation of justice in the eyes of the State. This becomes an integral part of how the state considers and legislates criminal issues, one that ultimately became codified when the criminal code was rewritten.

Despite little concern for violence that may befall the body itself, there is one aspect of criminalization that causes legislators to hesitate in doling out punishment - the shame of having one's name in the criminal record. Even Camille Chamoun, head of the Administration and Justice Committee, shares this concern, emphasizing that "the stigma

[67] Bechara el-Khoury, Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).
[68] Ahmed al-Husseini, Parliamentary Proceedings of the Sixth Legislative Council, Second Regular Convening, Fourth Session (November 3, 1948).

remains with him throughout his life" and proposing measures to "save" first time offenders "from his disturbing, sad, and sinister stance, as remains before his eyes the image of his name on the pages of the criminal record."[69]

The notions of name and reputation as inextricable from the legal individual is not limited to discourse and is quite prevalent throughout the code. Crimes against an individual's reputation are punished as an infringement against any other aspect of the individual. Within the criminal code, individuals are granted both protections of their reputation from the harm of others as well as attenuating excuses if a crime is committed in defense of this reputation - just as in cases of crimes against the body.[70] The language used to discuss this phenomenon throughout the text is diverse, but usually invokes the rhetoric of *sharaf, 'ār, 'urḍ*, or "moral injury [*ḍarar ma'nawī*]."[71]

With regards to the shame of being legally designated the status of a criminal body, this leads to the mentality that the "threat [*al-tahdīd wal-tanbīh*]" of punishment is enough to satisfy the deterrence policies of the state without jeopardizing the name inherently connected to the body who committed such a crime.[72] The shame of the criminal, often gendered male, is a double edged sword for the State, one that contributes to making fear, intimidation, and exposure to violence the primary method of deterrence, reserving the punishment itself a last resort only for those truly "corrupted organs" whose presence jeopardizes the societal body.

This is a key point necessary to understanding the way violence flows through the

[69] Camille Chamoun, "Taqrīr Lajnat al-Idāra wal-'Adāla," in Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).
[70] For "honorable motive [*dāfi'an sharīfan*]" as attenuating reason: Art. 193. Government of Lebanon, "Qānūn al-'Uqūbāt," Legislative Decree No. 340, *al-Jarīda al-Rasmiyya* 4104 (March 1, 1943): 1-78
[71] For example, slander and defamation provisions categorized as crimes against *sharaf* (Art. 582-586); the criminalization of disclosing secrets that may result in "moral damage" (Art. 579-581).
[72] Camille Chamoun, "Taqrīr Lajnat al-Idāra wal-'Adāla," in Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).

1943 Criminal Code. Rather than explicit exercise of its right to kill, which it certainly has, the State designed a legal framework in which the threat of violence and killing, exposure to potential violence, and strategic lifting of State protections for specific demographics is the primary mode of regulation, control, and of course, forcing citizens to conform and live within the bounds of legitimacy set by the State.

C. Individual and Collective Victimhood

Just as essential as the conception and measurement of the criminal body within the law is the conception and measurement of a victim. Within the Lebanese parliamentary discourse, there are two types of victimhood that surface: individual victimhood and collective victimhood. While criminals are most often statistically measured as male bodies, victimhood does not necessitate a body in the new code. Moreover, the body against which a crime is committed is not always by default the victim of that crime. Rather, victimhood is conceptualized as either individual or collective, and distinctively gendered.

The new code that was promulgated in 1943 witnessed the State itself entering criminal law as a victim in need of protection, a phenomenon also documented in criminal codes of other previously Ottoman territories. Ruth Miller best expresses this sentiment in her work on the foundations of Turkish criminal law: "In nearly all modern criminal codes, the individual disappeared as the victim in need of protection and was replaced by an abstract collective concept such as "society," the "social body," or "the state."[73]

[73] Ruth A. Miller, "Sin, Scandal, and Disaster: Politics and Crime in Contemporary Turkey," in *Evil, Law and the State: Perspectives on State Power and Violence*, edited by John T. Parry, 47-58 (Amsterdam: Rodopi, 2006).

While the new Lebanese code did contain provisions such as *Crimes Against State Security*, this notion of collective/State victimhood also manifests itself through the concept of "public morality," an addition much easier to see when juxtaposing the structure of the 1943 Criminal Code with what came before it, the Imperial Ottoman Penal Code.

This came not solely with the criminalization of new acts, but rather the recategorization of *already* criminal acts, merely reconceptualized as crimes committed against the collective public - entities like "society" and "public morality." In the case of the Lebanese code, this change manifested itself in the bifurcation and recategorization of provisions dealing with crimes against individuals, primarily material violence, into two distinct categories.

Both the Imperial Ottoman Penal Code and the 1943 Lebanese Code are grouped into various categories and chapters defined by the nature of the crime, primarily defined by who/what the crime is committed against.[74] Within the Ottoman code, crimes of material violence were clustered together in one chapter titled "Junayets and Junhas Against Persons and the Punishments Provided Therefore."[75] Within the new Lebanese code, the crimes comprising this chapter were split: sexual violations of the body were recategorized as "Crimes Against Public Morals and Decency [*fī al-jarā'im al-mukhilla bil-akhlāq wal-ādāb al-'āmma*]," while non-sexual material violence remained under a similar heading to the Ottoman one, "Crimes Committed Against Individuals [*fī al-jināyāt*

[74] For example, see the chapter headings of the 1943 code: "Crimes Against State Security," "Crimes Against Public Peace," "Crimes Against Public Administration," etc. Government of Lebanon, "Qānūn al-'Uqūbāt."

[75] English translation: John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code: A Translation from the Turkish Text* (Nicosia, Cyprus: Oxford University Press, 1913), 124. Arabic translation of Turkish text: "*fī al-jināyāt wal-junaḥāt al-wāqi'a 'alā al-nās wa ma yatarattab 'alaiha min al-'uqūba*." Salim bin Rustom Baz, *Qānūn al-Jazā' al-Humāyūnī* (Beirut: al-Maṭba'a al-Adabiya, 1916), 110.

wal-junaḥ allatī taqa‘ ‘alā al-ashkhāṣ]."

This is not to say that the Ottoman code did not recognize sexual violence as a distinctive category of violent crime; however, sexual violence was categorized as one specific *type* of material violence committed against the individual. The founding of the 1943 Lebanese Criminal Code marks the first point where the category of sexual violence is entirely removed from the category of crimes committed against individuals and reconceptualized as an independent category of crime. Categorically severed from the individual, sexual crimes in the new code became metaphorically nationalized - a crime transferred from the individual to the public, the collective victim, the State.

This is not to say the legal presence of a "moral" victim in sexual crimes was novel with the advent of the State. Under the Ottoman code, sexual violence was contained under the title "Crimes Committed Against Honor [Ar. trans: *fī mujāzāh min yahtikūn al-‘urḍ*];"[76] the difference, however, being that under the Ottoman code crimes against honor were crimes that were naturally *also* committed against the individual victim possessing a material body.[77]

The new Lebanese code on the other hand constructed the moral and the individual as binary opposites of collective/societal and individual victimhood, conceptually separating the body from the violence being committed against it - specifically and exclusively when this violence is sexual. This restructuring can subsequently be read as

[76] John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code*, 149. Salim bin Rustom Baz, *Qānūn al-Jazā' al-Humāyūnī*, 144.

[77] Under the Ottoman code, these crimes only constituted six articles addressing (both sodomitical and vaginal) rape (four articles), adultery (one article), and harassment, cross dressing, and dancing (collectively one article). Come 1943, this grouping is enlarged to include forty three articles, ranging from abortion to abduction and kidnapping to contraception. Some of the crimes considered part of this grouping under the Lebanese code were not criminalized at all in the Ottoman code, but other articles such as the abortion and abduction articles are almost word for word copies of the provisions of the Ottoman code.

emblematic of the erasure of the individual victim, the material (female) body that holds the value of a life, in favor of the State.

Ultimately, a confluence of driving forces, mentalities, and assumptions interacted to form the legislative mentality that founded the new criminal legal framework in 1943. Very specific perceptions of what constituted a "legitimate" State's legal framework, largely a product of positionality in the global constellation and what parliamentarians considered a standard set by "civilized states," lay at the very foundation of what criminal law should look like and from where legal influence should be drawn. The notions of justice ultimately codified were heavily marked by policies of deterrence and retributive justice, while maintaining a notable difference between exercising the State's right to kill and exposing citizens to the threat of violence to ensure order. Moreover, the call for protection of the national "entity" in 1938 was later manifested, in line with other previously Ottoman territories, with the recategorization of crimes against individuals as crimes against a collective victim - the State's usurpation of victimhood in order to ensure the protection of its legitimacy. In the coming chapters, all of these themes and foundations of the code will be further examined in context of the text of the code itself, bringing the State's legitimacy in conversation with its new guidelines for legitimate citizens.

CHAPTER III
THE CHILD BODY

Almost one hundred of the 1943 Criminal Code's articles explicitly pertain to the child body. This means that approximately one eighth of the code's provisions differentially regulate the child, making it by far the most exceptionalized body in the text. Though scattered throughout, provisions pertaining to the child body are primarily clustered within the code's general provisions and two chapters of its criminal provisions, *Crimes Affecting Religion and Family* and *Crimes Against Public Morality and Decency*.[78]

In the context of this project, it is important to clarify the specific way in which the English word "child" is used. While "child" and "childhood" are incredibly subjective and contextual terms, this project invokes the word child specifically to refer to the body who is not yet under the full force and effect of the law due to age. As will be seen, childhood as a life phase gets legally demarcated, incredibly arbitrarily, for the purposes of legitimization, jurisdiction, and regulation. The text of the code itself uses many different Arabic terms to refer to specific yet sometimes overlapping stages of childhood; however, there is no Arabic term within the text that encompasses the meaning of child as one who is not yet under the full force and effect of the law due to age. The corresponding Arabic is used to refer to the child body, in accordance with its code-specific legal definition, as often as possible once it has been introduced in this chapter for the sake of specificity and detail. When referring to the concept of the child as detailed here for which there is no Arabic alternative, the English word child will be used instead.

[78] Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 473-483, 502-546. In fact, only eleven of the forty four provisions comprising *Crimes Against Public Morality and Decency* make no mention of the child body.

This chapter is loosely sectioned to flow with the body's legal chronology, beginning with conception and ending with the body's legal maturity, with a particular effort to highlight when the valuation of life and gendered foundations of State and civilian legitimacy start to emerge. This chapter will work to answer the larger question of *when* the body becomes legally susceptible to material violence and State regulation.

It will proceed first by delimiting the legal state of minority according to the text of the 1943 Criminal Code, addressing what constitutes a child, when differential value assignment begins, and at what point the child body becomes legally gendered. Secondly, the State's uncharacteristically reformative approach to pursuing criminal justice when it comes to children will be dissected. Thirdly, jurisdiction over the child body will be broken down and analyzed. Finally, this chapter will look into the legal processes by which the child body matures into "men," "women," and individual citizens.

Ultimately, this chapter will demonstrate that for the State, childhood is generally considered to be an incubation period during which legitimate citizens are forged - the child body can be reformed, molded as it is not yet fully agent, and legislated into the State-constructed boundaries dividing "good," legal, and acceptable behavior from the "bad," illegal, and unacceptable. As will be discussed, even the upbringing of a child is constructed through criminal law as either legitimate or illegitimate. Child bodies are uniquely regulated so they are groomed to become legitimate men, women, and citizens that serve to legitimize rather than pose a threat to the State. At its core, childhood is when bodies *become* - men, women, individuals, citizens, threats.

A. Delimitations of the Child Body

Before delving into the State regulation of the child body and the implications of

childhood for the future potential of violence, this section will work to establish the legal delimitations of the child body - when the body is first deemed to have differential value, which bodies in particular legally constitute a child within the Criminal Code, and at what point in childhood the body becomes differentially regulated according to gender.

1. *Origins of the "Legitimate" Body*

Within the framework of specifically criminal law, life begins at conception and the body begins at birth.[79] The valuation of this life as either legitimate or illegitimate begins before the body, at conception, and is accompanied by drastic differences in the legal protections from violence afforded to it by the State.

At several points throughout the text, the life of a child is explicitly qualified as "legitimate [*shar'ī*]" or "illegitimate [*ghair shar'ī*]."[80] Article 490 clarifies that incest between parents and offspring [*al-uṣūl wal-furū'*] is a criminal act, whether they are legitimate or illegitimate [*shar'iyīn kānū aw ghair shar'iyīn*]."[81] Article 493 similarly stipulates that concealing the personal status of a child whether he is recognized as legitimate or illegitimate [*waladan shar'iyan aw ghair shar'ī*] is punishable with imprisonment.[82] Furthermore, Article 501 criminalizes parental neglect and abuse of young children, whether "their legitimate, illegitimate, or adopted child [*waladahumā al-shar'ī aw ghair al-shar'ī aw waladan tabanniyāh*]."[83] The underlying assumption of the inclusion of the phrase "whether legitimate or illegitimate" in each of these Articles is

[79] Conception is not a clear idea, as it is itself a religious term, and the concept is surrounded by some ambiguity in the law. The phrase used by the code is "[*ḥabilat bihi*]." There is no indication within the Criminal Code as to *when* precisely this is. I have opted for the English word conception for lack of a better alternative.
[80] Ibid., Art. 490, 493, 500, 506.
[81] Ibid., Art. 490.
[82] Ibid., Art. 493. Amended by Leg. Dec. 112 of 1983.
[83] Ibid., Art. 501. Amended by Law 239 of 1993.

that on some level what would socially constitute a violation against the former does not always constitute a violation against the latter. Regardless, the value assignment of legitimate as opposed to illegitimate life is one that is legally recognized from the time the body is a *walad,* a category that will be further dissected in the next section of this chapter.

However, taking these three articles in conversation with the abortion, abuse, and infanticide provisions shed some light on, firstly, how these categories are merited, and secondly, at what point the body takes them on. Articles 498 to 500 criminalize the neglect and abuse of children under the age of seven and the disabled, a crime punishable at its base with imprisonment from three months to one year.[84] However, if this neglect or abuse leads to the victim's death, it shall be deemed as intentional if the perpetrator either anticipated the outcome and accepted the risk, or should have seen the possibility of such an outcome.[85] The offense is even further aggravated if committed by an ascendant or guardian of the victim - with one notable exception. According to Article 500, such aggravating excuses "shall not apply to the mother has instigated, acted, or interfered with the neglect of her [newborn, infant] or its abandonment to protect her honor [*sharafihā*]."[86] While another perpetrator could receive anywhere between three months and one and a half years imprisonment, or between fifteen and twenty years of hard labor if deemed intentional and the act results in death, the mother is only liable to three months to one year imprisonment.[87]

Article 551 more directly addresses infanticide. While the penalty for the premeditated killing of a child is the death penalty and the penalty for killing a child with

[84] Ibid., Art. 498.
[85] Ibid., Art. 189, 191, 499.
[86] Ibid., Art. 500. Amended by Law 224 of 1993.
[87] Ibid., Art. 500, amended by Law 224 of 1993; 547.

intent is a life sentence of hard labor, Article 551 offers significantly lighter penalties to one individual, and under one condition: "The mother who, in order to avoid shame [*al-'ār*], is guilty of the killing of her [newborn, infant] conceived out of wedlock [*ḥabilat bihi sifāḥan*] shall be punished with temporary imprisonment. In the case of premeditation, the sentence can not be less than five years."[88] While the sentence of temporary imprisonment is not defined in the first sentence of this article, Article 251 seems to indicate that it could be as low as one year.[89]

While the two harshest penalties afforded by the code are granted to the premeditated and intentional killing of children, in both Article 500 and 551 the State exposes the [infant, newborn] who brings *'ār* upon the mother - who is conceived out of wedlock, who is illegitimate - to death by revoking the same protections from the same violence that the State provides legitimate children. While the death of one child is weighted with death, the death of another is weighted with imprisonment for only one year, the sole difference between these two bodies being the status of their conception. For reference as to the relative severity of the punishment, imprisonment for one year is a penalty for wandering in Lebanese territory without an identification card.[90]

The notion that differential precariousness begins at conception is further suggested by Article 545, the *sharaf* provision for abortion. The base punishment for abortion committed by the woman is imprisonment for six months to three years.[91] If committed by a third party with the woman's consent, they are punished with forced labor

[88] Ibid., 551.
[89] Ibid., 251. Amended by Leg. Dec. 112 of 1983.
[90] Article 620: "Any individual of [*al-riḥal*] wandering in Lebanese territory for at least one month and does not carry his identity [card, book] containing his physical measurements and who has not proved his request from the authorities shall be punished with imprisonment from three months to one year and a fine from ten to one hundred lira. He may also be placed under supervised freedom." Amended by Law 239 of 1993.
[91] Ibid., 541.

from four to seven years, and no less than ten years if the means were more dangerous than necessary.[92] If they commit the abortion *without* the woman's consent, they are punished with at least five years of hard labor and no less than ten years if the woman dies in the process.[93] However, if the abortion was committed either by a woman or her relative up to the second degree for the purpose of protecting the woman's *sharaf*, all perpetrators are granted attenuating excuses, regardless of whether it was consented by the woman or not, and all sentences are reduced to imprisonment from six months to two years.[94]

The attenuated punishments despite established intent are particularly substantial when considering that even the case of *unintentional* abortion of a pregnant woman as a consequence of assault is punishable with hard labor for up to ten years.[95] The difference between these two cases, the delimitation between a legitimate child and an illegitimate child, and the distinction between the female individual's "*sharaf*" and "*'ār*" as invoked throughout these provisions all come down to whether this child was conceived by a married body, or *sifāḥan*.[96]

While the *sharaf* provision for abortion is generous, it is still worth noting that the attenuated punishments (each of the articles merits six months to two years imprisonment) are vastly different than the mitigated punishment stipulated in Article 562, pertaining specifically to killing a female relative caught in the act of "adultery or illegitimate sexual intercourse," in which the perpetrator receives no criminal penalty.[97] This decision seems

[92] Ibid., 542.
[93] Ibid., 543.
[94] Ibid., 251, amended by Leg. Dec. 112 of 1983; 545.
[95] Ibid., 558. Amended by Leg. Dec. 112 of 1983.
[96] Notions of legitimate/illegitimate marriage, sexuality, and fertility will be further dissected in Chapter 3.
[97] Ibid., Art. 562. Amended by Law 7 of 1999, repealed by Law 162 of 2011.

to imply that in the eyes of the State, aborting an illegitimate pregnancy is still a more reprehensible violation than killing a woman who is sexually active outside of marriage. In this way, the life of the child that would result from an illegitimate pregnancy is afforded more protection, and deemed more worthy of such protection, than the life of the sexually active, unmarried woman.

In all, these articles provide several crucial insights: firstly, the phrase "[*shar'ī kānū aw ghair shar'ī*]" indicates that the differential status of legitimate and illegitimate life is legally recognized from a very young age. Secondly, the language used by the abortion, infanticide, and neglect provisions suggest that children are born into this status that ultimately began with conception. Thirdly, the attenuating excuses for these provisions demonstrate that those born into the status of illegitimacy are less protected by the State than their legitimate counterbodies, even, and perhaps especially, as newborns. In other words, while certain actions and states of being alter a body's precarity throughout life, bodies are first and foremost born into differential precariousness.

Finally, comparing the *sharaf* provisions for abortion with Article 562 bring an additional level of the hierarchy to light in which legitimate children are more protected from violence than illegitimate children, who are in turn more protected from violence than sexually active, unmarried women. Consequently, the lives of sexually active, unmarried women are more precious than the lives of illegitimate children, which are in turn more precarious than the lives of legitimate children.

Before a body is even gendered or undergoes any other identification or categorization within society, it has already been born into different levels of precariousness, simultaneously illustrating both the centrality of legal precariousness as an organizational component of the Lebanese legal code and the importance of

specifically legitimate children - and the elimination of illegitimate children - to the Lebanese State.

2. *Ambiguous Constitutions of the Child*

The legal language used throughout the code leaves ambiguity and conflicting notions as to what constitutes a child and the legally recognized stages of minority. This ambiguity largely results from the plethora of words used to refer to the child body, often without clear definitions or distinctions between them. This results in the reduction of the maturity of the body into arbitrary legal blocks, often at odds with the way the body matures outside of law.

The code overwhelmingly uses *qāṣir* to refer nondescriptly to minors. While *qāṣir* and the stage of *al-qaṣr* [minority] is often conditionally specified by an age when used in a specific article, neither *qāṣir* nor *al-qaṣr* are used in reference to a body over the age of eighteen.

Article 240 then breaks down the category of *qāṣir* into three stages of legal existence: *walad*, *murāhiq*, and *fatā*.[98] These three stages have each been standardized according to age: *walad* is stated to exclusively refer to those from the age of seven up to the age of twelve, *murāhiq* to refer to those from the age of twelve up to the age of fifteen, and *fatā* to refer to those from the age of fifteen up to the age of eighteen.

However, ambiguity surfaces when considering the terms used to refer to child bodies in addition to the relatively delineated *qāṣir*, *walad*, *murāhiq*, and *fatā*, including *banāt*, *ḥadath*, *mawlūd*, and *walīd*.[99] Absolutely no indication is given as to what these

[98] Ibid., Art. 240.
[99] Ibid., Art. 500 (*mawlūd*); 548, 553, 618 (*ḥadath*); 551 (*walīd*); 627 (*banāt*).

four terms explicitly constitute, which is especially confusing when attempting to gauge the legal difference between terminology whose linguistic definitions overlap such as *mawlūd* and *walīd* [newborn, infant]. Taking into account the care and consideration with which parliamentarians debated other minute linguistic phrases, the ambiguity surrounding this hazy and overlapping plethora of terminology stands out as an inconsistency.[100]

To further complicate matters, the term *walad*, explicitly defined to refer solely to those from seven to twelve years of age, is used in several instances throughout the code that context would suggest in no way refers solely to those between seven and twelve years of age. One article explicitly refers to a "*walad*… who is under seven years of age" - clearly outside the confines of the term's legal definition.[101] Additionally, the two provisions criminalizing the distortion or concealment of personal status refer in the former article to a "*walad* under seven years of age," while in the latter to *walad* nondescriptly.[102] While cases could be made for *walad* constituting either those "under the age of seven" given the context of the preceding article or a child ages seven to twelve given the definition set out in Article 240, common sense would also suggest that a solid case could be made that the term *walad* would refer to all children regardless of age given the nature of the article.[103]

The protective and corrective measures uniquely and exclusively afforded to the

[100] See discussion of the minute differences between "[*īqāf al-tanfīdh*]" and "[*ta'jīl al-tanfīdh*]." Government of Lebanon, Parliamentary Proceedings of the Third Legislative Council, First Regular Convening, Fifth Session (April 5, 1935).
[101] Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 240, 613.
[102] Ibid., Art. 492, 493. Amended by Leg. Dec. 112 of 1983.
[103] Article 493: "Whoever entrusts a *walad* to a [hospice, shelter] and has concealed his identity already registered in the civil status registers as a legitimate or illegitimate *walad* shall be punished with imprisonment from two months to two years."

child body cease to be granted by the State past the age of eighteen.[104] Thus, the end of *al-qaṣr* marks the beginning of the body's susceptibility to criminal punishment. Still, several articles seem to call into question whether or not a body is still legally a child past the age of eighteen, as the usage of *qāṣir* would suggest, or whether a body is legally a child until the age of twenty-one. While once again undefined and subsequently left to interpretation, there appears to be a three year period between when *al-qaṣr* ends and the point in time when bodies become fully susceptible to the full force and regulation of the State. Most importantly, the code specifies that twenty-one marks the age of the body at which point in time the State grants itself the legal right to kill that body.[105]

Moreover, twenty-one is the age at which the State relinquishes its remaining obligations to protection, reformation, rehabilitation, and custodial guardianship of the child body. For the *qāṣir* held in asylum, reaching twenty-one means immediate release.[106] For the *qāṣir* charged with corrective measures, they can no longer be extended past this age.[107] Moreover, for the *qāṣir* previously held in a reform or disciplinary institute, reaching twenty-one means transportation to an adult prison.[108]

Unexpectedly, the age of twenty-one is only deemed a relevant age in three other instances aside from the State's protective, corrective, and custodial responsibilities for underage criminals - Articles 523 and 524, which both deal with inciting immorality and prostitution of those under twenty-one, and Article 627, which addresses the minimum age requirement for female employees in establishments that serve alcohol.[109] It is

[104] Ibid., Art. 118, amended by Leg. Dec. 119 of 1983; Art. 238, amended 1948, Leg Dec 119 of 1983.
[105] Ibid., Art. 239. Repealed 1948.
[106] Ibid., Art. 126. Repealed by Leg. Dec. 119 of 1983. Unless he poses a "danger to society," a designation further discussed in Chapter 3.
[107] Ibid., Art. 245. Repealed 1948.
[108] Ibid., Art. 248. Repealed 1948.
[109] Ibid., Art. 523, amended 1948, Law 239 of 1993, Law 293 of 2014; 524, amended by Law 239 of 1993, Law 164 of 2011; 627.

pertinent to note that in none of these instances is *qāṣir* used to refer to someone under the age of twenty-one: in Article 523 the individual is referred to as "[*shakhṣ*]," in Article 524 they are referred to as "[*imra'a aw fatāh*]," and in Article 627 they are referred to as "[*banāt aw nisā'*]." This suggests that eighteen to twenty-one is the cusp of adulthood, but a time period in which the body, though not completely devoid of the protections afforded to it during childhood, is definitively no longer a *qāṣir* but rather has reached the status of the *shakhṣ*, the legal individual.

Citizens in the law do not "grow up." One day the body is afforded the legal protections afforded by *al-qaṣr*, the next they are revoked. As the body hits the arbitrarily set ages of seven, twelve, fifteen, eighteen, and twenty-one, its legal status and protections abruptly change overnight, in a way remarkably out of step and in dissonance with the growth of the body outside the context of the law.

3. *Gendered Minority*

While the stages of *al-qaṣr* outlined in Article 240 are supposedly ungendered, other stipulations suggest that specifically the end of *al-qaṣr* is more conditional for female bodies than male bodies, marking the point in the lifeline of the body at which the gendered foundations of the legitimate citizen, and subsequently legitimate State, first emerge.

Article 242 specifically calls the notion of an ungendered minority into question. While every *qāṣir* is stated to qualify for protective measures in lieu of criminal penalties until the age of eighteen, the second paragraph of Article 242 additionally stipulates that "[the protective measures] shall end definitively when the *qāṣir* has completed his eighteenth year. It shall also end with the marriage of the *qāṣira* even if before the age of

eighteen."[110] This naturally raises the question of the *qāṣira*, the female child, and her categorical relation to the married woman.

Turning to Article 483, the provision criminalizing the marriage of a child under (a) legal age of marriage, provides some insight of the relationship between the *qāṣira* and the married woman.[111] Conflictions with personal status laws aside, it is a criminal act for any man of religion [*rajul al-dīn*] to marry a *qāṣir* under the age of eighteen without the consent of either their parent, guardian, or a judge.[112] This creates a dichotomy in which a *qāṣira*, despite not being afforded legal agency of her own, can be married at the discretion of either her family or the State, at which point the State subsequently revokes her status as a legal child and the legal protections that accompany it.

As this issue is not brought forth in any additional provisions of the code, it is unclear whether or not the *qāṣira* and the married woman are categorically exclusive outside the context of protective measures. What is clear, however, is that for the *qāṣir* (m.), marriage has no bearing on his ability to benefit from the privileges of *al-qaṣr*; his status as a legal child remains intact until eighteen years of age regardless of whether or not he is married at that point.

Among those bodies still considered legal children, gender is only recognized as a legal category when pertaining to children who are victims of *Crimes Against Public Morals and Decency* - specifically, prostitution, seduction, inciting immorality, and kidnapping.[113] In each instance, it is only ever the *fatāh* who makes an appearance - never the *murāhiqa*, and due to linguistic impossibility, never the female *walad*. In other words, the regulation of gendered bodies first appears at the age of fifteen, but before the age of

[110] Ibid., Art. 119, repealed by Leg. Dec. 119 of 1983; 242, repealed 1948.
[111] Ibid., Art. 483. Amended by Law 239 of 1993.
[112] Ibid.
[113] Ibid., "[*fī al-jarā'im al-mukhilla bil-akhlāq wal-ādāb al-'āmma*]," Art. 514, 518, 519, 524, 535, 536.

fifteen are they not regulated as such.[114]

While at first glance it may seem as though this might imply that bodies younger than fifteen years of age are not legally gendered, two additional articles imply there is a difference between when the body is legally *recognized* as gendered versus when gender serves as a qualifying reason to legally *regulate* bodies differently. Two articles in particular, also contained in *Crimes Against Public Morals and Decency*, legally recognize and acknowledge the gender of children without differentially regulating it.[115]

The first instance, criminalizing the indecent touching or flirting with a *qāṣir*, specifically invokes the phrase "a *qāṣir* under the age of fifteen, male or female [*dhakaran kān aw unthā*]."[116] Similarly, the provision criminalizing inciting others to [debauchery, immorality] defines the victim as "one or more persons [*shakhṣ*], male or female [*dhakaran kān aw unthā*], who have not reached twenty-one years of age."[117]

These provisions suggest that while gendered bodies are regulated differently from the age of fifteen onwards, all bodies are recognized as possessing a gender. The use of the nondescript *qāṣir* and *shakhṣ* in these two articles further emphasizes the overarching recognition of bodies as gendered, regardless of age. The linguistic impossibility of a feminine *walad* and thus a distinctively regulated female child between the ages of seven and twelve also supports this notion. Furthermore, these two articles demonstrate that while gendered bodies can be differentially regulated upon reaching the age of fifteen, they are not by necessity so.

Considering the types of provisions in which this gendered regulation occurs in

[114] The nondescript *qāṣira* appears in Articles 535 and 536, coincidentally also the only articles in which child criminals are gendered.
[115] Ibid., Art. 519, amended by Law 53 of 2017; 523, amended 1948, Law 239 of 1993, Law 293 of 2014..
[116] Ibid., Art. 519. Amended by Law 53 of 2017.
[117] Ibid., Art. 523. Amended 1948, Law 239 of 1993, Law 293 of 2014.

conjunction with the age at which it occurs, however, hints at the State's motive for such differential regulation. Of the five legally stipulated markers of age (seven, twelve, fifteen, eighteen, and twenty-one), fifteen marks the point at which the majority of female bodies have entered the state of fertility - a state of being legally marked, categorized, and regulated that all female bodies are biologically required to traverse, as will be elaborated further in the next chapter. Thus, it is no surprise that the provisions the *qāṣira* most frequents pertain to sexual crimes. The fertile body, the site of both legitimate and illegitimate reproduction, needs to be regulated in the eyes of the State to ensure the legitimacy of its citizens and by extension itself.

B. Justice and the Child Body

The State's established policies of intimidation, deterrence, and retributive justice are entirely absent when dealing with children who break the law. Instead, these policies are substituted for an approach more centered around reform efforts. Children are actually the *only* demographic liable to such reform measures.[118] Moreover, no child under the age of eighteen is liable to criminal penalties, including fines, imprisonment, hard labor, and the death penalty, without any option to be tried as adults regardless of the severity of the crime they commit.[119] Furthermore, no child under the age of seven is subject to criminal prosecution, period.[120]

The reform measures [*tadābīr al-iṣlāḥ*] provided by the State are quite extensive and detailed and are broken down into two types of measures: protective measures

[118] Ibid., Art. 118. Repealed by Leg. Dec. 119 of 1983.
[119] Ibid., Art. 238. Amended 1948, Leg. Dec. 112 of 1983.
[120] Ibid., Art. 237. Repealed by Leg. Dec. 119 of 1983.

[*tadābīr al-ḥimāya*] and corrective measures [*tadābīr al-ta'dīb*].[121] Protective measures determine the child's placement with either their parents, relatives, or an institution, while corrective measures determine the child's placement in either a reform institute [*iṣlāḥīya*] or disciplinary institute [*ma'had ta'dībī*].[122]

When the code was promulgated in 1943, the decision to implement protective or disciplinary measures differed according to age group - that is, the age of the *qāṣir* at the time the offense was committed. The *walad* received protective measures, regardless of whether the crime was a felony or misdemeanor.[123] These measures definitively ended when the *qāṣir* reached the age of eighteen, or in the case of the *qāṣira*, upon her marriage.[124] If the *qāṣir* rebelled against the protective measures, disciplinary measures would be implemented and they would be sent to the *iṣlāḥīya* until the age of eighteen.[125]

The *murāhiq* was also entitled to protective measures for criminal acts, but could also be liable to corrective measures in the case of a felony or misdemeanor at the discretion of the court.[126] The *qāṣir* sentenced as a *murāhiq* could be moved back and forth between the reform and disciplinary institutes at any point, but the corrective measures expired at the age of twenty-one.[127]

The *fatā*, the oldest of the *qāṣirīn*, faced the most aggressive incursions. Protective measures could only be assigned in cases of misdemeanors and contraventions, although the court could rule for the implementation of corrective measures instead in the case of misdemeanors.[128] If the *fatā* committed a felony, they were to be sentenced to corrective

[121] Ibid., Art. 118. Repealed by Leg. Dec. 119 of 1983.
[122] Ibid., Art. 119, 120. Repealed by Leg. Dec. 119 of 1983.
[123] Ibid., Art. 241. Repealed 1948.
[124] Ibid., Art. 242. Repealed 1948.
[125] Ibid., Art. 243. Repealed 1948.
[126] Ibid., Art. 244. Repealed 1948.
[127] Ibid., Art. 245. Repealed 1948.
[128] Ibid., Art. 246. Repealed 1948.

measures for at least three years.[129] If still in State custody by the time they reached twenty-one, the court could move them to an adult prison if deemed "not sufficiently reformed [*lam yiṣlaḥ ba'd ṣalāḥan kafīyan*]."[130]

However, these provisions caused "a hubbub [*ḍajja kabīra*] in the judicial and social circles" for their leniency towards specifically older children.[131] With the 1948 amendments they were deemed "incompatible [*ghair mu'talaf*]" with the reality on the ground, as many documented cases in Lebanese judicial records indicated that "the degree of [the child's] attainment and appreciation of criminal responsibility" warranted harsher penalties most notably for the *fatā* - "in the spirit of the Ottoman law that ruled our country for generations and has [already] been tested."[132]

As a result, these provisions were repealed in 1948, condensed, and rewritten into an amended Article 238. Under the new amendment, protective measures are imposed until the *qāṣir* reaches the age of twelve, at which point they can still be charged with corrective measures.[133] If they rebel against protective measures, they can be placed in an *iṣlāḥīya* until eighteen years of age at most. After the *qāṣir* reaches the age of eighteen, he can receive reduced criminal penalties: the death penalty and life sentences are reduced to imprisonment with work for five to ten years, temporary sentences are reduced to

[129] Ibid., Art. 247. Repealed 1948.
[130] Ibid., Art. 248. Repealed 1948.
[131] Government of Lebanon, Parliamentary Proceedings of the Sixth Legislative Council, Second Exceptional Convening, Third Session (January 19, 1948).
[132] Ibid. This is the same logic that resulted in the repeal of the Article 239, which stipulated that the State cannot sentence anyone under the age of twenty-one to the death penalty. However, interestingly enough, Ottoman criminal law was slightly more complex than alluded to here when dealing with the ages of childhood. According to a circular letter issued by the Ministry of Justice (7 Sefer, 1291/26 March 1874), Ottoman law also attributed culpability to children between the ages of thirteen to fifteen, conditional on whether or not there was proof the child had reached puberty. Without proof, this offender was regarded as "murahiq-i-mumeyyiz (one who has not attained puberty but is on the verge of puberty and has the capacity of discriminating between right and wrong)." John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code*.
[133] Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 238. Amended 1948, Leg. Dec. 112 of 1983.

imprisonment with work for three to five years, and all other felony penalties are reduced to simple imprisonment for one to three years.[134] The penalty for misdemeanors is reduced to one third of the stipulated sentence, and for crimes of shamefulness or punishable with a fine only, reduced to one half of the penalty.[135]

Even with the 1948 contestation over the *fatā*, the drastic difference in the State's approach to criminal justice and prosecution are enough to suggest that in the eyes of the State there is something drastically different about bodies over eighteen years of age versus bodies under eighteen years of age. Two important conclusions can be made from the way the State chooses to deal with children:

Firstly, the State is both heavily invested and involved in the upbringing of children. This is the case irrespective of whether or not the child has broken the law, as will be further discussed in the following section, but almost more so in the case of children who do. Unlike other criminal bodies, deemed "corrupted organs [*al-'uḍw al-fāsid*]" that need to be removed from *jism al-mujtama'*, the *qāṣir* can be reformed, legitimized.[136]

Secondly, these concerns are indicative of a larger anxiety over when the body becomes a threat to society and the State and how to proportionately regulate it as such. With the 1948 amendments, the body was deemed to pose a threat even before the end of *al-qaṣr*, but still not to the extent of a body over the age of eighteen. Notably, this difference comes down to the fact that the *qāṣir* who poses a threat is still legally capable of reform, in other words still possesses the potential to be legitimized by the State.

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[134] Ibid.
[135] Ibid.
[136] "Al-Asbāb al-Mūjiba - Ta'dīl Ba'ḍ Mawādd Qānūn al-'Uqūbāt," Parliamentary Proceedings of the Sixth Legislative Council, Second Exceptional Convening, Third Session (January 19, 1948).

C. Bodily Jurisdiction of the Child

Criminalization is also used by the State to ensure that at any point in time and under any circumstance, the child body is under the strict paternalistic supervision of either family, religion, or the State. Moreover, it has an incredibly wide reach and legal authority over determining which individuals qualify as legitimate and illegitimate parents.

1. *Economic Qualifications to Parenthood*

At first glance, it would seem the 1943 Criminal Code makes an active effort to ensure that children stay within their own family. However, a closer look at some of the stipulations of what could be referred to as legitimate parenthood reveal that the State does not intend to keep *all* families together. Namely, the State worked to actively restrict custody of children from poor families, simultaneously legally constructing the traditionally paternal role of "provider" as necessary for a legitimate upbringing and the production of legitimate citizens.

Firstly, it should be noted that the State reserved the right to revoke a parent's right to guardianship as part of what the code refers to as preventive measures [*tadābīr iḥtirāziyya*].[137] Forfeiture of guardianship can be ruled in three base situations: firstly, if the parent or guardian is sentenced to a criminal penalty and it is evident that they are "unfit [*ghair jadīrīn*]" to exercise authority of the child; secondly, if they are sentenced to a felony or misdemeanor in connection with an offense against the child; and thirdly, if a *qāṣir* in their care commits a felony or misdemeanor as a result of their "careless

[137] Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 70 - 117.

upbringing [*tahāwunihim fī tanfīdhihi*]" or "habitual neglect [*i'tiyādihim ihmāl*]."[138]

However, aside from these conditions, forfeiture of guardianship is only explicitly named as a required penalty in two cases: incest and alcoholism.[139] Moreover, other articles would suggest that criminals may retain custody as the criminal legal infrastructure actually makes accommodations for them to retain custody. Article 55, for example, stipulates that if a married couple is jointly sentenced to misdemeanor imprisonment, they shall serve consecutive rather than simultaneous sentences in the case they have a child under eighteen years of age.[140] There is one additional condition on the accommodations given in Article 55, however - proof that they have an established residence.[141] This condition, when taken in conjunction with a closer look at the protective and corrective measures of Articles 118 to 128, hints at the qualifications of legitimate parenthood.

When a *qāṣir* commits a felony or misdemeanor and is sentenced to the protective measures stipulated in Article 119, they are either placed with 1.) their parents or guardian, 2.) a relative or family member, or 3.) placement outside the family, prioritized in that order. In other words, the first recourse is always placement with the *qāṣir*'s parents. However, the *qāṣir*'s placement with the parents is conditional - they can only be handed over to the parents *if* the parents or guardian have presented a "morality guarantee [*ḍamāna ikhlāqiya*]" and raise him according to the directives of the delegate of the Protection of Juveniles, a state institution.[142] Moreover, they may be requested, at the discretion of the court, to provide a precautionary bond [*kafāla iḥtiyāṭīya*], and shall

[138] Ibid., Art. 91, 92.
[139] Ibid., Art. 490, 623.
[140] Ibid., Art. 55. Amended by Leg. Dec. 112 of 1983.
[141] The connection between property ownership and legitimacy is further elaborated in Chapter 3, under the section *Disability, Labor, & Poverty*.
[142] Ibid., Art. 121. Repealed by Leg. Dec. 119 of 1983.

be liable to pay a fine ranging from ten to fifty lira if the *qāṣir* commits another crime.

If the parents or guardian are unable to meet the morality guarantee, precautionary bond, fine, or directives of the delegate of the Protection of Juveniles, the *qāṣir* is handed off to a relative or family member who must be at least thirty years old subjected to the same legal conditions as the parents were in Article 121.[143] If neither the parents nor the extended family members are able to satisfy the conditions, the State determines where to place the *qāṣir*.[144]

Even if the protective measures reach the point of State custody, the parents or guardian are required to provide a stipend [*ma'āsh*] to support the child's living expenses, the amount of which is ruled by the court, for the duration of the term of the child's placement or until they reach the age of eighteen.[145] Some or all of the expenses can be deducted from the child's property or means of subsistence, if any exist, or deducted from their work product if placed in a correctional institute.[146] However, their work product is treated in the same way as any other convicted person, in that the proceeds are split between the child, the civil party harmed by the offense they committed, and the State - not just to cover the *ma'āsh*, but also for payment of any legal fees and institutional administration expenses.[147] It is unclear whether or not failure to pay the *ma'āsh* is subject to the same penalties as failure to pay fines; if so, failure to pay within thirty days of being ordered by the court can result in imprisonment without prior notice.[148]

While certain economic qualifications and requirements are not unexpected or

[143] Ibid., Art. 122. Repealed by Leg. Dec. 119 of 1983.
[144] Ibid., Art. 123. Repealed by Leg. Dec. 119 of 1983.
[145] Ibid., Art. 128. Repealed by Leg. Dec. 119 of 1983.
[146] Ibid.
[147] Ibid., Article 57. Amended 1948. As of 1948, the Public Prosecutor's office holds the responsibility of determining the breakdown of these expenses and their division between the various parties.
[148] Ibid., Art. 54. Amended 1948.

unwarranted when attempting to assess whether or not a child should be placed in a particular household, the ambiguity surrounding the amounts and the lack of a standardized method for determining what qualifies economic fitness raises some questions. Namely, these economic policies indicate that parental fitness is largely a function of economics and discriminates against poor families, allowing the State to usurp custody of poor children and place them instead with social and religious institutions more directly under their control, monitoring, and regulation. It is up to the State's discretion to decide what constitutes "poor" in these scenarios, and the lack of standardized measure allows the State freedom to treat each case with either leniency or force depending on what is in its interest at that time.

These policies additionally serve to further ensure specifically *paternal* oversight of children, as such economic policies would also discriminatorily target statistically poorer female-headed households and single mothers. Traditionally paternal familial roles - supervision, punishment, protection, and provider, are all central aspects of what the State deems a legitimate upbringing, necessary to produce legitimate citizens. The law is constructed to ensure that one way or another, each of these paternal roles will be fulfilled - if not by blood, then by sect or State.

2. *Within the Custody of the State*

Once solely under the jurisdiction of the State, the delegate of the Protection of Juveniles can choose to place the child with a "righteous person [*aḥad ahl al-birr*]" of at least thirty years old and of the child's sect, a trustworthy family of the child's sect, or a social institution of the child's sect. In each case, the State retains responsibility for

overseeing the child's upbringing.[149] It is also pertinent to note that in each case, no one outside the child's sect [*ahl dīn al-qāṣir*] is allowed legal custody as religious qualifications to custody are put in place, indicating that a religiously-unitary family is also part of what the State considers qualifications for a legitimate upbringing.[150]

In the case that corrective measures have been ruled, such as in cases where the *qāṣir* is over the age of twelve at the time the act was committed, neither the family nor the child's sectarian community receive the right to jurisdiction over the child. Instead, jurisdiction passes directly to the State, at which point the court can decide whether to place the *qāṣir* in an *iṣlāḥīya* or a disciplinary institute.[151]

Both institutes meet certain requirements that could be interpreted as the State's interpretation on what qualifies necessary to produce an effective childhood. Those sent to the *iṣlāḥīya* are enrolled in a special educational institute, where they are required to receive primary, moral, and religious lessons. They are also required to learn a trade and practice physical exercise.[152] Those sent to disciplinary institutions are also required to work in one of the trades offered by the institution, depending on their relative age and physical and mental condition, and are also required to receive civic and religious education.[153] These policies outline the State's perception of the necessary educational components and skills children need to receive in order to become and function as legitimate citizens: labor, civic and moral education, and religion.

Whether sentenced to protective or corrective measures, children are also entitled, or sentenced depending on perspective, to receive medical treatment for mental illness,

[149] Ibid.
[150] Ibid.
[151] Ibid., Art. 120. Repealed by Leg. Dec. 119 of 1983.
[152] Ibid., Art. 124. Repealed by Leg. Dec. 119 of 1983.
[153] Ibid., Art. 125. Repealed by Leg. Dec. 119 of 1983.

disability, possession, and addiction in an asylum until they reach twenty-one years of age.[154] The State retains the right to keep detaining them in the asylum past twenty-one years of age if it deems them to be a danger to public safety. Neither the original treatment nor the detainment past the age of twenty-one requires the consent or recognizes the agency of the child or the child's parent or previous legal guardian - the State retains full jurisdiction over the body.[155]

Examining the structure of what a child's upbringing looks like while in State custody is an indicator of at least some of the aspects the State deems necessary for a child body to become a legitimate citizen. Ultimately, five tenets stand out: economic status, religious/sectarian unity and involvement, labor, moral education, and physical/mental capacity.

3. *Blood, Sect, & State*

While the State seemingly goes out of its way to protect the child, in reality several provisions designed to criminalize the child leaving to a space unsupervised and unprotected by the family, sectarian community, or State expose the child body to an immense amount of precarity, exemplifying the protection-violence dichotomy inherent to the State-body relationship.

The provision with the most potential to expose the child body to violence is arguably Article 616:

> **(616)** Any *ḥadath* under eighteen years of age who has left, for at least a week and without a legitimate reason, the home of his parents or trustee or the places where he was placed by those whose authority he is subject to and [wanders, strays] without work shall be liable to the reform measures [*tadābīr al-iṣlāḥ*] specified in Articles 242

[154] Ibid., Art. 126. Repealed by Leg. Dec. 119 of 1983.

[155] In fact, all reform measures whether protective or corrective require the suspension of the parent or guardian's right to guardianship. In each case, this right passes to either the head of the new family, the institute director, or the director of the correctional institute where the minor is placed. Ibid., Art. 127. Repealed by Leg. Dec. 119 of 1983.

and 243.[156]

As previously discussed in the first section of this chapter, reform measures begin with protective measures [*tadābīr al-ḥimāya*], the first of which is handing over the child to his parents or guardian. This means that a child who has run away from his parents due to abuse, neglect, or any myriad of other domestic issues is returned by the State to the precarious position from which he fled.

The only way the child would not be returned to his family, provided they can meet the economic and morality conditions set forth in Article 122, is if the parents were convicted of a felony or misdemeanor or other crime pertaining to the care of the minor.[157] While it is true that many domestic issues, including abuse and neglect, are criminalized by the code and would subsequently result in the parent or guardian being deemed unfit to retain guardianship rights, a suit would first need to be brought against them and they would need to be sentenced before forfeiting guardianship. However, if a child has run away from home to escape such issues, it can reasonably be assumed that for whatever reason, beit fear or intimidation or the ineffectiveness or inability of the child to pursue the proper channels to bring charges against their parents, other options of escape are either exhausted, unavailable, or inaccessible to a child.

Moreover, it is unjustified to realistically expect all children of all ages to fully understand their legal rights and options for recourse. A child that runs away from a violent home because they do not understand their rights, the law, or how to navigate them within the State's legal framework would be deemed a criminal perpetrator under

[156] Ibid., Art. 616. Repealed by Leg. Dec. 119 of 1983. Articles 242 and 243 were repealed by the 1948 amendments, but Article 616 was never subsequently amended following the repeal of these two articles.
[157] Article 121: "A *qāṣir* may be handed over to his father, mother, or one of them, or to his guardian, if they have presented a morality guarantee and were able to raise him according to the directives of the delegate of the Protection of Juveniles. The judge may request them to provide a preventive bond for the duration of the measure sentenced, and they shall be liable to a fine ranging from ten to fifty lira if the minor commits another crime while he is in their custody."

this article, detained by the State, and subsequently returned to a violent situation. The option to turn to another relative or friend to get out of the situation is also criminalized by Article 495, which states that anyone who removes a *qāṣir* under eighteen from his parent or guardian, even with the consent of the *qāṣir*, shall be punished with imprisonment.[158]

Criminalizing leaving the home also ensures that the State monitors and has the final say in all issues of the domestic sphere - children do not have the agency to leave bad home situations themselves, they *must* do it under the legal framework and oversight of the State. Moreover, it also ensures that children are never at any point before either marriage or the age of eighteen without an approved form of paternal oversight, administered by either blood, sect, or the State itself. Thus, the State's unwavering quest for absolute control, regulation, and jurisdiction over the child body is ironically exactly what exposes the child to potential violence.

D. Becoming

The body's "becoming," its maturity into men, women, and citizens, is a critical juncture for the body to traverse. Its status as a liability or threat, always either one or the other throughout childhood, determines its exposure to State control, regulation, protection - all of which weigh on the child's exposure to violence. Ultimately, the value of the body once it matures into men, women, and citizens necessitates a specific upbringing, legally constructed as "legitimate," in order to simply be allowed to remain and exist in society after the age of eighteen.

[158] Ibid., Art. 495. Amended by Law 239 of 1993.

1. ***Agency, Consent, and Culpability***

The non-corporeal markers of the legal individual, namely agency, consent, and culpability, are attributed at least partially during *al-qaṣr*. These concepts, in addition to corporeal markers previously discussed such as gender, are critical in determining when the child body becomes simply the body, and thus becomes susceptible to the full force and effect of both law and the frameworks of violence it maintains.

Agency, consent, and culpability are three important legal conditions attributed to legitimate, adult citizens that simultaneously have repercussions for State regulation and control. Agency and consent are both legal capitulations that once afforded to individuals undermine State power and control over the body, and whose absence necessitates State "protection" and oversight. Culpability, on the other hand, provides the State the authority to discipline, and has been discussed previously in this chapter. Identifying at what age children are fully attributed agency, culpability, and consent sheds considerable light on when the body becomes a legal individual.

Indeed, one characteristic of *al-qaṣr* is that the consent of a child is not legally relevant and that the child is incapable of making such a decision on their own. Articles 515 and 516 dealing with abduction and immorality exemplify this.[159] While Article 515 stipulates that whoever abducts a person of either sex using [deception, deceit, treachery] with the purpose of committing immoral acts shall be punished with hard labor. However, Article 616 states that whoever does the same to a *qāṣir* under the age of fifteen *without* the use of [deception, deceit, treachery] is sentenced to the same penalties.[160] The notion

[159] Ibid., Art. 515-516. Amended by Law 53 of 2017.
[160] Ibid., Art. 516. Repealed by Law 53 of 2017.

that deception or deceit would not be necessary for such an act would have to imply that the victim consented; however, in the case of the *qāṣir* under the age of fifteen, this consent is not legally relevant to the act's criminal status. For the consenting *fatā*, however, the perpetrator could not be charged in such a case.

Others, however, may consent on their behalf. For example, the marriage of a *qāṣir* does not require the consent of the *qāṣir*, yet does require the consent of either a parent, guardian, or a judge.[161] It is precisely the child's inability that allows - and arguably in the eyes of the State, necessitates - either an adult family member or an agent of the State to take control of that decision, for the child's own protection.

Overarchingly, these articles suggest that the legal individual is afforded the ability to legally consent at the age of fifteen. There is one article that serves as an exception to this, however - Article 495, consenting to leave the home of one's parent or guardian. In this case, anyone who kidnaps a *qāṣir* under eighteen, even with his consent, for the purpose of removing him from his guardian is imprisoned. This suggests either one of two things: firstly, sexual consent could differ from other forms of consent, like the consent to leave the home; secondly, the age of legal consent is higher only when the consent belongs to the perpetrator of the act and such consent would thus jeopardize the sovereignty, jurisdiction, or control of the State, while the age of consent for victims is lower to allow for more aggressive prosecution when so desired by the State.

Consent, however, appears to also be to some degree gendered. Article 519, for example, which addresses the indecent touching of the *qāṣir* states that whoever has indecently touched a *qāṣir* under fifteen years of age, either male or female shall be

[161] Ibid., Art. 483. Amended by Law 239 of 1993.

punished.[162] However, whoever has indecently touched specifically a woman or girl *over* the age of fifteen "without [the woman or girl's] consent" shall also be punished in the same manner.[163] This provision would suggest that while the *qāṣir* under fifteen years of age, either male or female, is not able to legally consent, the *qāṣira* over the age of fifteen is.

As the lack of consent is necessary to prosecute in this case if the child is over fifteen and female, it leaves a surprising gap in the form of the *fatā* (m.) Consent is either irrelevant for the *fatā* (m.), i.e. the *fatā* (m.) cannot legally be "indecently touched," or simply dangerously overlooked as no recourse is left for the *fatā* (m.) to pursue a sexual abuser. As these are the only articles in the code dealing with the consent of the *qāṣir*, it is difficult to definitively say which is the case.[164] It is still interesting to note that consent arises at the same instance differential regulation of bodies arises - the age of fifteen, the age the female body becomes a potential site of legitimate and illegitimate reproduction.

Similar limitations exist regarding agency. Although less direct than consent which is explicitly mentioned in the text, agency can be read between the lines, defined to mean the capacity to decide and act of one's own will. Many of the articles pertaining to children previously surveyed in this chapter call into question whether the child is agent or object, but Article 498 perhaps gives one of the more obvious answers to this question. Pertaining to abuse and neglect of the child, the article states that anyone who has exposed

[162] Ibid., Art. 519. Amended by Law 53 of 2017.
[163] Ibid.
[164] An alternative explanation is that this gendered consent is a distant remnant of another child-like character, the "beardless youth." Although a different time and place, it may not be that childhood precludes the legal ability to sexually consent, but that gender does, and the *qāṣir* (m) who is under fifteen is only included in this category because he was an acknowledged object of sexual desire at an earlier point in history - that is until he has legally reached the end of puberty at fifteen, coincidentally the age male sexual consent disappears from the text all together. For context of the character of the "beardless youth," see: Khaled Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800* (Chicago: University of Chicago Press, 2005) and Afsaneh Najmabadi, *Women with Mustaches and Men without Beards*.

or abused "a *walad* under the age of seven, a disabled person, or anyone else unable to protect themselves because of physical or psychological condition" shall be punished.[165] While not giving clear indication of what specifically about a child under the age of seven renders them as such, the acknowledgment of the child's vulnerability and inability to protect itself can be read as at least a partial absence of agency, which in turn allows the State to step in to provide the protection the child cannot provide itself.

However, several articles describing adults inciting or prompting children to the perpetration of criminal acts suggests that agency, at least in full, is not attributed to the *qāṣir* at all and only awarded to the body at the age of twenty-one.[166] The capacity to be incited or prompted to commit criminal acts, one measure of agency over one's own actions and body, is never acknowledged within the code to apply to a body over the age of twenty-one.

Moreover, the very notion that the body can be reformed until the age of twenty-one, or rather that it can have reform measures acted upon it by the State, also supports this notion that agency is not fully awarded until twenty-one. The assumption that bodies over the age of twenty-one are beyond reform acknowledges a particular inability to control bodies over twenty-one and a particular confidence or ability to control bodies *under* twenty-one.

Thus, adulthood and individuality are achieved in stages. At the age of fifteen, the body is partially granted the ability to legally consent and is subject to differential regulation based on gender. At the age of eighteen, the body is fully awarded the ability to consent, partial culpability, and the right to exist outside the guardianship of his family,

[165] Ibid., Art. 498.
[166] Ibid., Art. 509, 510, 523. Articles 509 and 510 amended by Law 164 of 2011 and Law 53 of 2017; Article 523 amended 1948, Law 239 of 1993, and Law 293 of 2014.

although not necessarily outside the State. At the age of twenty-one, the body is granted full agency, as well as full culpability. Although *al-qaṣr* ends at the age of eighteen, bodies are not afforded the full benefits and risks of the legal individual until twenty-one.

2. *Liabilities & Threats*

The distinction between the body as a liability, a thing for which the State is responsible yet a thing that could simultaneously cause disadvantage if not dealt with properly, and the body as a threat, a thing that has the potential or likelihood to cause it damage or jeopardize its legitimacy, is in most cases the difference between the *qāṣir* (under eighteen years of age) and the *shakhṣ* (over eighteen years of age).

From the birth of the body until the age of eighteen, the child body is a liability to the State. This body, with the potential to become a threat or a legitimate citizen in the future, is regulated and protected while still a liability specifically to ensure that it does not become a threat later on. The potential threats the body poses are gendered along with the body itself: for the *qāṣir* (m.), the threat of concern is criminality and for the *qāṣira* the threat of concern is illegitimate reproduction.

There is one exception in which the child body is a threat rather than a liability to the State, and that is the illegitimate child, the body born into illegitimacy. However, for the child body valued as legitimate at birth, illegitimate and criminal behavior is not final. While under eighteen, the child body can still be reformed, still grow up to not necessarily constitute a threat.

As the body's potential for threat is tied to both criminality and reproduction, even the process of becoming a threat is gendered. Despite still being a *qāṣira*, this becoming occurs at fifteen, as she traverses into the state of the fertile body. For as long as she is

fertile, she will remain a threat to the State, a circumstance that will be elaborated in Chapter 3.

Even for the *qāṣir*, however, the process of becoming a threat begins earlier than eighteen, as evidenced by the discussions surrounding the 1948 amendments. This process is completed however at eighteen, at which point judgment is passed by the State and he is released into society. If a child has not fully reformed, they are not permitted to reenter society but rather moved to an adult prison.

3. *Men, Women, & Citizens*

The State ensures necessary components of legitimate upbringing either by blood, sect, or the State itself, even if without the consent of the parent or child. Children are raised to be productive men, women, and citizens who are engaging in productive labor, educated, moral, involved with their sectarian community, and "reformed" from any past illegitimate behavior.

The process of legitimizing citizens is a long and repeating cycle - legitimate parents raise legitimate children who, after a legitimate upbringing, go on to have legitimate children of their own. Any of the bodies who become illegitimate along the way, as will be discussed further in the next chapter, are removed from this cycle through removal from society - either through imprisonment, institutional confinement, or death.

While merely having legitimate citizen bodies reflects and bolsters the legitimacy of the State, at least by its own legal constructions of legitimacy, the State's role in molding and shaping not just legitimate children but legitimate parenthood reveals that this process is also about legitimate hierarchies of power.

By enforcing paternal protection, paternal oversight, ensuring a paternal provider,

and taking up these duties when cases of illegitimate parenthood arise, the State is simultaneously replicating and justifying the power dynamic of the State-citizen relationship itself. Moreover, by eliminating those who do not meet the standards of legitimacy, i.e. eliminating families who either do not or cannot fall into the power dynamic of paternalism, it is preventing any alternative form of power relations from entering society that may potentially challenge or threaten the current one, the incredibly gendered foundations from which it derives its legitimacy and right to rule.

CHAPTER IV
BODIES & VIOLENCE

The binarized categorization of the body within the 1943 Criminal Code, and law more generally, is arguably the largest facilitator of the flow of violence throughout the letter of the law. Through the construction of varying categories that often boil down to threat/not-threat (read: illegitimate/legitimate), the State in a way creates a stop-and-go mechanism for legitimized, legal, permissible violence. This chapter will focus on the details of *how* and *where* specifically violence flows through the letter of the 1943 Criminal Code, largely through the frame of these categorical states of being.

Simply put, the body's exposure to violence depends upon the state(s) of being the body legally occupies at any given point in time. These states are legally defined categories set forth within the text. As a body enters a state of being that the State views as more threatening to its own survival, the body's survival in turn becomes strategically jeopardized as it becomes exposed to more precarity under the law.

The body naturally traverses through many of these legally defined conditions and spaces, and as the body moves, violence moves with it. Some of these states are active, transient states. Others are biological states one must traverse to simply exist, such as *al-qaṣr* as discussed in the previous chapter.

Especially in the case of biologically required states, it is not always up to the individual whether or not to take the risk of exposure by entering into a certain state of being - a circumstance that, as will be shown throughout this chapter, is a gendered subjection that affects female bodies much more than male bodies and subsequently exposes them to more precarity as they traverse these categorical states.

Throughout this chapter, eight of these categorical states of being will be analyzed and broken down to address how specifically they result in differential precariousness and exposure to violence: dissent, marriage, sexuality, fertility, disability, labor, poverty, and culminating in criminality. As will be elaborated, marriage-sexuality-fertility and disability-labor-poverty both form triangular axes composed of states that are intimately connected, intertwined, and at times inextricable from one another, with in/exclusion in one category often facilitating the body's movement through another.

A. Dissent

As the most direct threat to the rule of the State, once a body enters into any state of public dissent, nonviolent or violent, active or passive, the body immediately becomes criminal. Meanwhile, ambiguous provisions create legal loopholes that allow the State to potentially enact violence and torture up to the point of death against dissenting bodies, even if not criminally charged with dissent.

Nearly every form of dissent is criminalized by the 1943 Criminal Code under a broad range of ambiguous provisions. As of 1943, the code explicitly accounted for and criminalized protest, sedition, riot, strike, crowding on public roads, crowding in public squares, publication of dissenting opinions in newspapers, and generally any "gathering that does not have the nature of a private gathering" in which people partake in any form of "seditious demonstration."[167]

No mode of dissent, even passive, deserves a punishment less than imprisonment in the code, although other punishments such as prohibition of rights are stipulated in

[167] Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 306-318, 321, 345-349, 379-380, 398-401. Some of these have since been amended by: Law 0 (1 Dec) of 1954; Leg. Dec. 239 of 1993; Law 67 of 2017.

addition to imprisonment.[168] Once the body enters into dissent, it is immediately deemed a "corrupted organ," relegated to a criminal status and removed from society at the earliest sign of dissent. By nature, public dissent is illegitimate behavior as there is no recognition within the 1943 Criminal Code of any acceptable or legitimate form at this point.

The delegation of the dissenting body as simultaneously a criminal body facilitates the body's exposure to violence, as the exposure to violence that befalls the dissenting body is not in the punishment for these crimes themselves, but rather the wide range of room permitted to agents of the State to quell dissent, even if by force.[169]

The State's right to use force to quell dissent is not explicitly given in the code, but it is acknowledged in Article 348, one of the protest and riot provisions. Referring to protestors, "if those assembled do not disperse except through force [*bi-ghair al-qūwa*], the punishment shall be imprisonment for two months to two years."[170] This indicates that force is an appropriate and seemingly necessary response from agents of the State, in certain circumstances that are never defined or legally laid out.[171]

Moreover, provisions criminalizing the violent treatment of detainees are conveniently obscure. Article 401 stipulates that anyone who has used "[hostility, severity, brutality] [*al-shidda*] outside of the law" in order to obtain either confession of a crime or information can be punished with three months to three years imprisonment.[172] Given the context, it seems as though this article is criminalizing acts of torture in

[168] Ibid., Art. 349. (Pertains to Art. 329-334, 345-349).
[169] Although it is notable that several of the aggravated provisions for sedition and terrorism are punishable with the death penalty. See: Art. 309-311.
[170] Ibid., Art. 348.
[171] This does not seem to appear in the Military Penal Code (1946) or the Code of Criminal Procedure (1932). There are currently guidelines in place, specifically for ISF, but I have been unable to find anything of the sort present in 1943.
[172] Ibid., Art. 401. Amended by Law 65 of 2017. Ironically, this is the same penalty as many of the dissent provisions. For example, see: Art. 348, 379.1.

interrogations; however, the ambiguity of the term and lack of specificity as to what exactly constitutes *al-shidda* leaves a lot of grey area in which agents of the State are free to work.

This is especially notable in light of the fact that the word torture [*al-ta'dhīb*] *is* explicitly used in other articles throughout the code, supporting the notion not just that the vagueness of *al-shidda* was intentional but that *al-ta'dhīb* was intentionally avoided.[173] One of these articles, Article 570, criminalizes the illegal deprivation of another individual's freedom, with special aggravating provisions for the use of torture in such a process.[174] However, the stipulations of Article 570 would not apply if such a deprivation of freedom were legitimate - like for instance, in the case of the interrogation of a dissenting body following a lawful arrest.

Articles 548 and 549 shed some further light on what this means for the valuation of a dissenting body exposed to legitimate torture under Article 401. The only other articles criminalizing torture in the code, Article 548, later amended to Article 549, states that the perpetrator of killing another individual shall be sentenced to the death penalty if the victim had been subjected to torture [*al-ta'dhīb*] prior to death.[175] This reveals a dichotomy in which the code has an absence of clear provisions criminalizing torture while simultaneously only recognizing torture against the body *after* that body has died.

[173] Ibid., Art. 336, 548, 570 (Amended by Leg. Dec. 112 of 1983). Torture provisions of Article 548 were moved to Article 549 in 1949, aggravating the penalty of killing by means of torture from a life sentence of hard labor to the death penalty.
[174] Ibid., Art. 570. Amended by Leg. Dec. 112 of 1983.
[175] Ibid., Art. 548, 549. Both Articles were amended in 1949. However, Law 0 (Feb 16) of 1959 temporarily aggravated Article 548 to carry the death penalty and forbid the application of mitigating circumstances to Article 549, which had already carried the death penalty. This action was repealed May 18, 1965, reinstated by Law 302 of 1994, and repealed again by Law 338 of 2001. Also amended by Law 110 of 1977 and Leg. Dec. 112 of 1983.

Material violence against the body is only legally criminalized posthumously - the killing is legally recognized, but not the violence sustained by the tortured body who is left alive.

The nature of Article 401 and the qualification of interrogation or extracting confession also creates a situation in which the crime of *al-shidda* is more likely be committed in an official investigation/interrogation setting than by others, in a way reserving this hazily-legitimized violence (or rather, protection from criminal prosecution for this violence) for the State.

If this were not enough leeway for agents of the State to quell dissent, Article 226 also stipulates that no agent of the State shall be criminally liable for any act committed while following orders from a superior.[176] Thus, agents of the State are afforded vast protections from otherwise criminal acts; however, these protections are more about the "exercise of duty," the exercise of the State through the body of the public servant, than the bodies of those public servants themselves. Protecting the body, in this case, is synonymous with protecting the State's interests.

The plethora of provisions criminalizing nearly all forms of dissent juxtaposed with the relative absence of provisions governing appropriate force by law enforcement leads to a situation where nearly every dissenting body is criminalized, to the degree of the "corrupted organ" that needs removal, while allowing legal space in which the State can react with unknown violence and force. This is all done while affording legal protections from prosecution to agents of the State, and all in the name of enforcement of the law - a euphemism that allows the State legal room to violently protect its own legitimacy by eliminating any contest to or disagreement with its right to rule, all within the bounds and without violation of its own procedural legitimacy.

[176] Ibid., Art. 226.

B. Sexuality, Marriage, & Fertility

At this point in 1943, the reproduction of legitimate citizens was a central pillar of the state-building and legitimization project. As discussed in Chapter 2, the valuation of the body as either legitimate or illegitimate first traces back to conception. In order for the State to ensure the reproduction of legitimate citizens within legitimate family structures, it first became necessary to control marriage, sexuality, and fertility - ensuring children were born under legitimate circumstances and to legitimate families that could meet the economic requirements for parental fitness and provide the level of paternal supervision the State deems necessary for a legitimate upbringing.

The 1943 Criminal Code attempted to construct the difference between "legitimate" and "illegitimate" in these cases. This was done by using criminalization and the strategic exposure of bodies to legitimized violence to draw a definitive, legal line between legitimate/illegitimate sex, legitimate/illegitimate marriage, and the end game of legitimate/illegitimate conception. This section will explore these three legal constructions, largely intertwined and inextricable from one another.

1. *The Sexual Body*

The bifurcation of sexual/non-sexual crimes against the individual, previously detailed in Chapter 1, was also accompanied by a massive expansion. The provisions in the new code increased from 38 Ottoman articles, only six of which pertained to sexual crimes, to 65 Lebanese provisions, 44 of which pertained to sexual crimes. Regulation of the body and regulation of violence both grew exponentially; however, this regulation was clearly not for the purpose of protection or for the sake of preserving the body itself as the reconceptualization of over half of the new articles can subsequently be read as

emblematic of the erasure of the individual victim, the material body that holds the value of a life, in favor of the State.

When two thirds of the violence provisions are not perceived as being committed against individuals, two thirds of bodies against which these violence and violations are committed became drastically more precarious. Linguistically ungendered yet statistically overwhelmingly female, these bodies were instantaneously relegated to a status of citizen exposed to violence on all sides - these bodies do not enjoy the protection of the State from the violence they face from others, despite increased regulation exposing them to the violence of the State itself.

One of the primary purposes of this massive expansion of provisions pertaining to sexual crimes was first and foremost to regulate sex itself, once again constructing the binary of legitimate and illegitimate. Legitimate sex was set forth in the code as strictly vaginal, married, unprotected sex that may or may not be consensual. Legitimate sex was sex that led to legitimate pregnancy, even if through violence - any sex outside of these boundaries was illegitimate, criminalized, and if resulting in a pregnancy, that pregnancy was by extension illegitimate as well.

While the regulation of sex and sexuality through criminal law was not novel in 1943, these particular legal limits of legitimate sex were specific to the new code. New provisions were added, old provisions were rewritten, and some actions were even *re*criminalized after being repealed from the Imperial Ottoman Penal Code much earlier to suit the State's need for new boundaries of legitimate sex.

Firstly, legitimate sex must involve vaginal, heterosexual penetration and nothing more. Article 534 stipulates that any "sexual intercourse against the order of nature

[*mujāmaʿa ʿalā khalāf al-ṭabīʿa*]" shall be punishable with imprisonment.[177] While the qualifications for "against nature" are ambiguous, and likely intentionally so, this phrasing seemingly criminalized both homosexual and sodomitical sexual intercourse - i.e. sex that could not result in pregnancy.

Notable about this article is that it not only criminalized homosexual and sodomitical intercourse but *re*criminalized it, as this provision had been removed from the Ottoman code nearly two centuries earlier in 1858. It is only in 1943, at the inception of the Lebanese State, that such a provision became necessary to delimitate, regulate, and legitimate certain conditions surrounding sex, sexuality, and reproduction.

Secondly, legitimate sex must occur between two individuals bound in a legal marriage. While sex between two unmarried bodies was not criminalized, violence against the unmarried female body was legitimized if she has engaged in sexual intercourse. Article 562 provides a complete mitigated excuse to those who react violently to discovering their spouse or relative in the act of adultery or "illegitimate sexual intercourse [*al-jimāʿ ghair al-mashrūʿ*]," and an attenuating excuse to those who do so after finding them in a "suspicious condition [*ḥala murība*]."[178] Thus, the threat of violence was used to deter unmarried sex, while those who killed or used material violence against the unmarried female body in question were excused from punishment - ultimately for protecting the Sate.

This mitigation was also extended to the married female body who was discovered in the violation of her marriage, clarifying that illegitimate sex was not only dependent

[177] Government of Lebanon, "Qānūn al-ʿUqūbāt," Art. 534.
[178] Ibid., Art. 562. Amended by Law 7 of 1999, repealed by Law 162 of 2011.

on the body being unmarried, but encompassed sexual intercourse between those bodies who may be married yet not to each other.[179]

Thirdly, legitimate sex must be unprotected. While simply criminalizing the use of contraception would undoubtedly pose issues with regards to enforcement, the 1943 Criminal Code strategically opted instead to criminalize the "describing and propagating" of contraception methods, punishable by imprisonment up to one year and a fine.[180] Moreover, the code additionally criminalized the sale or possession with the intent to sell any form of contraception method, with aggravating punishments for those in the medical profession.[181] The decision to criminalize propagation rather than use allowed the State to more effectively enforce, investigate, and prosecute, while simultaneously limiting access of all citizens to contraception and by extension their use.

Finally, legitimate sex did not have to be consensual. Despite the fact that all married bodies have been attributed the ability to legally consent, as even in the case of the *qāṣira* her minority has ended with her marriage, this consent simply did not matter in the case of marital intercourse as Article 503 effectively decriminalized nonconsensual marital intercourse in 1943.[182]

The Imperial Ottoman Penal Code contained four articles stipulating punishment for "whoever does the abominable act to a person by force," additionally addressing specific cases of assaults against children, assaults made by those in positions of authority, and assaults against unmarried women. Force in this context was interpreted to include

[179] Ibid.
[180] Ibid., Art. 537. Repealed by Leg. Dec. 112 of 1983.
[181] Ibid., Art. 538, repealed by Leg. Dec. 112 of 1983; 546.
[182] Ibid., Art. 503.

threats, coercion, or inducing great fear, and covered penetrative sexual assault that was both sodomitical and sexual in nature.[183]

Also consisting of four articles, the corresponding provisions in the new code further delimited forced sexual intercourse - not in terms of what qualified as forced sexual intercourse, but rather which instances of forced sexual intercourse were criminalized.[184] Specifically, the phrase "except one's spouse [*ghair zaujihi*]" was added to the provisions, legalizing sexual violence that takes place under the auspices of marriage.[185] This exceptionalism also applied to the spouse who was unable to resist as a result of physical or mental disability.[186]

It is important to note, however, that this article did not challenge whether or not sexual intercourse between a married couple could be nonconsensual or violently harm the body. It simply stipulated that this violence did not legally constitute a crime when the perpetrator and victim were bound in marriage.

The process of criminalizing what the state deemed illegitimate sex, largely a process that manifested itself in stricter regulation of female material bodies and greater exposure of these bodies to legitimized violence, once again contributed to the construction of gendered hierarchies of precariousness. Ultimately, criminalizing and deterring sex that did not lead to legitimate pregnancy, or more importantly that *could possibly* lead to *il*legitimate pregnancy helps to uncover the larger picture of what the State was hoping to eliminate with these policies - illegitimate conception.

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[183] Translator's footnote 2 on Article 197 and footnote 5 on Article 198. John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code*, 150.
[184] Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 503-507. Some articles amended by Leg. Dec. 112 of 1983 and Law 53 of 2017.
[185] Ibid., Art. 503.
[186] Ibid., Art. 504. Amended by Law 53 of 2017.

2. *The Married Body*

Once a body enters into marriage, or in other words once a body can reproduce legitimately, material violence and namely *sexual* material violence becomes relatively legitimated in the criminal code. The married body's exposure increased significantly due to Articles 503 and 504 exceptionalizing nonconsensual sex in the *ightisāb* provisions when the perpetrator is the spouse - the one person with whom even violent, nonconsensual sex can lead to legitimate conception. However, these are not the only dangers that befall the married body.

Ultimately, marriage itself is a tool of legitimization for the State. In some cases, this tool can be used to retroactively legitimize sex that was *il*legitimate, and violent, at the time it was committed. Article 522 effectively suspended punishment for sexually violent crimes if the perpetrator married his victim, a provision that once again had not been present in Lebanon prior to the 1943 code.[187] According to this new article, so long as the perpetrator married the victim in a "legitimate marriage" and *stayed* married, sexual violence against teh body would be retroactively legitimized and remain unpunished.[188] This provision also applied to the *qāṣira*, whose consent is legally irrelevant and can be married upon consent of her parents or a judge.[189]

In this way, marriage can serve not only as a tool that legitimizes nonconsensual sex for married bodies but also for unmarried bodies. Violence against the body is excused

[187] Ibid., Art. 522. Pertains to Art. 503-521, comprising *al-ightisāb, al-faḥshā',* [Abduction, Kidnapping], and Seduction, Immorality, & the Violation of the Sanctity of Women's Places. Amended 1948, repealed by Law 53 of 2017. The closest related provision in the Ottoman code was Article 206, which invoked marriage as a mitigating circumstance in determining punishment for abduction and kidnapping; however, there was no such mitigation in cases of sexual violence. John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code*, Art. 206.

[188] Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 522. If marriage dissolves after five to seven years, depending on the severity of the crime, prosecution may resume.

[189] When promulgated in 1943, the article qualified the victim as "at least fifteen years of age." However, in 1948, this phrase was removed by amendment.

in the name of the greater good, legitimacy. Furthermore, just like criminal law constructed the boundaries between legitimate/illegitimate sex, it also constructed the boundaries between legitimate/illegitimate marriage by criminalizing certain types of marriage and including loopholes to facilitate others.

Ironically enough, the criminal provisions governing legitimate, legal marriage and illegitimate, criminalized marriage consist of regulations on religious authorities, what the code refers to as "men of religion [*rijāl al-dīn*]," rather than married bodies themselves.

Article 476 clearly states that it is a criminal act for any man of religion to perform a marriage without first securing proof that the two parties are of the same sect, attempting to secure that all legitimate marriages are same-sect and all marriages between partners of different sectarian orientations are criminalized and legally illegitimate.[190] Rather than imprisonment, the penalty for a man of religion who performs such a ceremony is a fine accompanied by a deprivation of civil rights, among which is the right to hold any kind of position in or manage the civil affairs of his religious sect *and* any other organization pertaining to religious sect.[191] Essentially, a man of religion who facilitates illegitimate marriage is stripped by the State of his religious position.

Moreover, Articles 483-486 further clarify the bounds between legitimate and illegitimate marriage. As previously mentioned in Chapter 2, the marriage of a *qāṣir* could not take place, except in the case of the *qāṣira* with parental or judicial consent.[192] Furthermore, any marriage not in accordance with the stipulations of the relative personal status provisions was deemed criminal.[193] The men of religion were thus saddled with

[190] Ibid., Art. 476. Amended by Leg. Dec. 112 of 1983, Law 239 of 1993.
[191] Ibid., Art. 476, 65.
[192] Ibid., Art. 483. Amended by Law 239 of 1993.
[193] Ibid., Art. 484.

both the liability of the crimes and liability of enforcing these provisions pertaining to marriage.[194]

Whether the purpose of these delimitations between legitimate/illegitimate marriage was to keep sectarian demographics balanced or to ensure that children were raised by a religiously uniform family and thus would themselves fall into easily regulated sectarian categories once they come of age is difficult to say, but these provisions certainly work towards accomplishing both of these goals.

Ultimately, such strict regulation of married bodies invokes marriage itself as a legal tool to ensure, facilitate, and also legislate legitimate families into being - ones with paternal supervision, protection, and provision that conform to traditional familial power structures. With seemingly little concern for the violence that may befall the married body along the way, the State once again elevates this goal of the legitimate family, symbolic of the collective and of itself, above the material well being of female bodies.

3. *The Fertile Body*

Once the female body reached the age of fifteen and involuntary became the fertile body, she was reframed within the law as a "biological space," the physical, material site where the State is built via reproduction.[195] The State's attempt to bring this biological

[194] Ibid., Art. 486.

[195] The female body and specifically the womb as a "biological space" where the state exercises sovereign power is a concept developed by Ruth Miller, based on her legal and sociopolitical analysis of what she refers to as the collapse of reproduction and sexuality into a sole category of regulation in Ottoman and Turkish criminal law. First presented in Ruth A. Miller, "Rights, Reproduction, Sexuality, and Citizenship in the Ottoman Empire and Turkey," *Signs: Journal of Women in Culture and Society* 32, no. 2 (2007): 347-373; Elaborated upon in her book in comparative perspective to other European nations in: Ruth A. Miller, *The Limits of Bodily Integrity: Abortion, Adultery, and Rape Legislation in Comparative Perspective* (Aldershot: Ashgate, 2007).

space to the foreground of the criminal legal framework is evident, albeit subtly, in the differentially gendered regulations of the code's new adultery provisions.[196]

The adultery provisions were recategorized under the new code and the punishments for specifically male adulterers were reduced.[197] Previously categorized under "Crimes Against Persons," subsection "Crimes Against Honour," adultery became the only crime from this category that was not included under either categories of individual or moral crimes in the 1943 code. Instead, a new category of crime not previously recognized within the Ottoman code was codified in the new code under which adultery now fell: "Crimes Affecting the Family [*fī al-jarā'im allatī tamass al-'ā'ila*]."[198]

The provisions within both codes were gendered. While the female adulterer was considered to have committed a crime if she engaged in sexual relations with anyone who is not her spouse, the male adulterer is considered to have committed a crime only when engaging in sexual relations with a non-spouse "in the conjugal home [*al-bait al-zawjī*]."[199] It is important to note here that this gendered difference in adultery was specifically chosen by parliament to feature in the new code, despite changing other aspects of these provisions.

Namely, the relative punishments were redefined and in some ways re-gendered in the 1943 code. Gendered differences in punishments for male and female perpetrators were originally written into the Imperial Ottoman Penal Code at its promulgation but then

[196] Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 487, 488. Amended by Law 293 of 2014.
[197] See adultery provisions: John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code*, Article 201 (last amended June 1911); Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 487, 488.
[198] Government of Lebanon, "Qānūn al-'Uqūbāt," Articles 483-502. Also includes matters related to custody, care of disabled children, and marital and familial duties [*al-wājibāt al-'ā'iliyya*].
[199] Government of Lebanon, "Qānūn al-'Uqūbāt," Article 488. Phrasing in Ottoman code: "in a house wherein he is residing with his wife." John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code,* Art. 201.

amended in 1911 to reflect equal punishments for both male and female bodies. This was changed in 1943 with the promulgation of the Lebanese Criminal Code and the punishments reverted back to their previous sentences as stipulated in Ottoman law prior to the last round of amendments in 1911. In light of the parliamentary discussions surrounding the unnecessary severity of Ottoman punishments discussed in Chapter 1, it should not be overlooked that the result was that it was only the male adulterer whose punishment was lightened in 1943.[200]

The spatial difference between where the adultery provisions locate the male and female bodies is noteworthy and helps to make sense of the fertile body as a biological space. Within these articles, both the male and female spouse violate a familial space, constructed and carved out in law, even designated to a distinctive chapter within the code's structure. However, while the familial space the male spouse is violating is the conjugal home, the familial space the female spouse is violating is her own material body - a space the control over which the State has usurped with these articles for the sake of regulating reproduction.

In other words, the womb itself, conflated in regulation with the female body as a whole, biologically and semantically in relation to these articles, *is* the physical site of family as interlinked socially, legally, and materially with both marriage and sexuality. As such, adultery committed by a fertile female body is a violation of the legally protected material space of the family regardless of her geographic location.

Aside from the establishment and subsequent usurpation of the fertile body as a

[200] In the last thirty years of the Ottoman code, the punishment for female and male adulterers was three months to two years imprisonment. Under the new code, the female adulterer retains the punishment of three months to two years imprisonment, while the punishment for the male adulterer was reduced to one month to one year imprisonment. John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code*, Art. 201 (last amended June 1911); Government of Lebanon, "Qānūn al-'Uqūbāt," Articles 487-488.

biological site of state-building, the code contains an array of selectively pro-natal and anti-natal provisions, a seemingly nonsensical mix before taking into account the distinction between legitimate and illegitimate reproduction.

Contradictory policies such as the strict criminalization of contraception discussed earlier in this chapter and the attenuating excuses for the abortion of illegitimate pregnancy discussed in Chapter 2, when juxtaposed, further underscore the total lack of control and agency a fertile body possesses and is legally afforded over her own body, whether capable of conceiving legitimately or illegitimacy.

4. *Conclusion*

Once the female body reaches fifteen years of age, her body becomes almost entirely under State control and regulation as she traverses into the state of fertility. At this point more than ever in 1943, as the newly independent State grappled with legitimization, fertility immediately posed a threat to the State's right to rule as the female body was now the potential site of legitimate or illegitimate reproduction. Marriage and the strategic criminalization of all forms of "illegitimate" sex served as the State's way of regulating and ensuring solely legitimate conception and the raising of a child under paternal oversight.

Ultimately, what this comes down to is an active legislative movement to gain control over reproduction - control previously in the hands of the female individual. This control of reproduction was necessary to ensure a central pillar of the State's legitimacy project: the reproduction of specifically legitimate citizens, their raising in legitimate families, and under legitimate hierarchies of power.

This project to quite literally legislate families into being did not come without

material sacrifices, discriminatorily committed against the female body, to say little of the agency and consent that was legally ignored and irrelevant, that *needed* to be ignored and irrelevant, in order to effectively fulfill this agenda.

C. Disability, Labor, & Poverty

Similar to marriage, sexuality, and fertility, the states of disability, labor, and poverty are intricately intertwined, dependent, and gendered categorical states of being. Where a body falls within the disability-labor-poverty axis determines its relative exposure to violence, the limits of State protection, and whether the body is even allowed to remain in society or if it must be removed - either though confinement, imprisonment, or death.

1. *The Disabled Body*

Disability is by far the most ambiguously defined and regulated state, and intentionally so. Fifteen terms are used sporadically and without clear definition throughout the eighteen articles that expressly refer such a state, all in one way or another used to refer to what is typically collectively referred to in English as "disability," alike only in the code's recognition that these states comprise some form of physical, sensory, or mental impairment.[201] While the boundaries between these fifteen terms are extremely nebulous, the code's nondescript term that seemingly encompasses each of the rest of these terms is *ʻāha* [blain, blight, disease, taint, -- impairment].[202]

[201] Words with the same root used in different grammatical capacities have been considered one term for this tally. For example, *ʻatah* and *maʻtūh* are collectively considered one term of the fifteen.
[202] Government of Lebanon, "Qānūn al-ʻUqūbāt," Art. 253, 557, 623. Article 557 amended by Leg. Dec. 112 of 1983. The Arabic term *ʻāha* [pl. *ʻāhāt*] will be used to refer to nondescript disability throughout the rest of this section.

Some refer strictly to physical and sensory impairments, such as *ʻājiz* [physically disabled], *akhras* [mute], and *aṣamm* [deaf].[203] Both the *akhras* and the *aṣamm* are only explicitly mentioned once each, both as conditions subject to treatment and detention in a custodial facility [*al-maʼwā al-iḥtirāzī*].[204] The *ʻājiz*, however, is given slightly more definition. Specifically, the *ʻājiz* is legally defined as an individual "unable to protect himself due to his physical or psychological condition [*bi-sababi ḥāla jasadiya aw nafsiya*]." The *ʻājiz* also has a legal guardian [*qāʼid*], although it is unclear from the code how or by whom this guardian is appointed.[205] Relatively unique to the *ʻājiz*, they are one of the only bodies falling under the *ʻāhāt* provisions who is still liable to imprisonment, specifically in the case of begging or soliciting charity from anyone other than their guardian.[206]

Other terminology refers to mental impairment, including *majnūn* or *ḥālat al-junūn* [mad, insane], *fiqdān al-ʻaql* [one who has lost their mind], *maṣrūʻ* [epileptic, demented], *ʻatah* or *maʻtūh* [cognitive disability, idiocy], and *mamsūs* [lit. touched; possessed, mentally deranged, maniac].[207] *Al-junūn* and *al-ʻatah* are categorically distinct within the code, but aside from this differentiation it is unclear if or when these categories are overlapping, interchangeable, or mutually exclusive.[208] *Maṣrūʻ* and *mamsūs* are in no way delimited, but are both once again subject to treatment and confinement in a custodial facility.[209]

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[203] Ibid., Art. 126, 498-500, 612-613. Article 126 repealed by Leg. Dec. 119 of 1983; Article 500 amended by Law 224 of 1993.
[204] Ibid., Art. 126. Repealed by Leg. Dec. 119 of 1983.
[205] Ibid., Art. 500, 613. Article 500 amended by Law 224 of 1993.
[206] Ibid., Art. 612, 613.
[207] Ibid., Art. 126, 139, 231-234, 553. Articles 126 and 139 repealed by Leg. Dec. 119 of 1983.
[208] Ibid. *Al-ʻatah* and *al-junūn* are categorized as two distinct sections in the general provisions: [Consequence, Responsibility] → Impediments to [Punishing, Prosecution] → [Lack, Absence] of Liability and [Incomplete, Diminished] Liability → *al-junūn* (Art. 231-232); *al-ʻatah* (Art. 233-234).
[209] Ibid., Art, 126, 234. Article 126 repealed by Leg. Dec. 119 of 1983.

The differences between *al-junūn* and *al-ʿatah* are subtle and slightly blurry, but legally significant: a loss [*ifqād*] of awareness [*al-waʿī*], self control [*al-irāda*], and freedom of choice [*qūwat al-ikhtiyār*] in the case of *al-junūn*, versus a diminution [*inqāṣ*] of these senses in the case of *al-ʿatah*.[210] *Al-junūn* is clearly indicated as a condition one can recover from, but it is unclear if *al-ʿatah* is legally considered a permanent or temporary state of being, although the code characterizes it as being either genetic or acquired.[211] For the *majnūn*, deemed "an individual without [discernment, rationality] [*shakhṣ ghair mumayyiz*]," this results in complete exemption from prosecution, yet still liable to confinement.[212] For the *maʿtūh*, this results in a sentence in accordance with the code's stipulated attenuating provisions alongside custodial confinement.[213] All mental impairments are subject to being deemed a "danger to public safety," a ruling that will be dissected further at a later point in this section.

Addiction (*sikīr* [alcoholic] or *mudmin* [addict]) also often overlaps and conflates with mental impairment in the code, but it is unclear whether they are categorically considered as such.[214] Similarly to *al-junūn* and *al-ʿatah*, both alcoholism and drug addiction are legally considered states of either a loss or diminished sense of awareness and control, although these two things are punished differently. If a crime is committed due to a substance resulting in a *loss* of awareness and control, the perpetrator is completely exempt from prosecution.[215] If it results in diminished awareness and control,

[210] Ibid., Art. 232, 233.
[211] Ibid., Art. 232, 233.
[212] Ibid., Art. 139, 231. Article 139 repealed by Leg. Dec. 119 of 1983.
[213] Ibid., Art. 231-234. For attenuating provisions, see Art. 251.
[214] Ibid., Art. 126, 234-236, 622-624, 630. This notion is corroborated by the Asfourieh hospital records of the early 1940s, in which conditions termed "alcoholic psychoses" (Eng.) and "drug psychoses" (Eng.) were listed as the primary "mental disorder" of some of those committed to the institution in the early 1940s.
[215] Ibid., Art. 235.

the perpetrator is subject to the attenuating excuses of Article 251 - exactly the same as the relative punishments for *al-junūn* and *al-ʻatah*.[216] However, if the intoxication was the fault or choice of the perpetrator, they can be liable for a range of sentences culminating in the *aggravating* penalties of Article 257.[217] Ultimately, alcoholism and addiction are criminal states when a choice, but a state of *ʻāhāt* when they are not - an inherently vague and difficult distinction to make in the case of substance addiction.

Moreover, there are also general phrases, the vaguest of the vague, seemingly covering everything: *naqṣ jasadī aw nafsī* [physical or mental deficiency], *ʻilla fī jasadihi aw nafsihi* [physical or mental illness; deficiency], and *kull ṣaḥīḥ,* [sane, able-bodied person].[218] The first two phrases are used in the context of taking sexual advantage of someone impaired, allowing a relatively wide range of prosecution.[219] *Kull ṣaḥīḥ* is used as a requirement for the category of "vagrancy," allowing for equally broad application in the opposite direction.[220]

In each instance, however, once the body is designated with one of the *ʻāhāt*, it becomes subject to two legal processes: firstly, the mitigation or attenuation from either prosecution or punishment, and secondly, placement under some form of State "protection," typically in the form of confinement.

Clearly, the language used in the code - un- or ill-defined terminology, conflating categories, and all-encompassing phrases - indicate that bodies can be arbitrarily, selectively, and broadly sentenced to disability based on ambiguous definitions of *ʻāhāt*.

[216] Ibid., Art. 236.
[217] Ibid.
[218] Ibid., Art. 504, 508, 614. Article 504 amended by Law 53 of 2017; Article 508 amended by Law 164 of 2011 and Law 53 of 2017.
[219] Ibid., Art. 504, 508. It is worth noting, however, that the spouse is still excluded from this clause.
[220] Ibid., Art. 614.

This selectivity is also underscored when considering the "danger to public safety" designation and the qualifications for custodial sentencing.

Every *ʿāhāt* resulting in mental impairment results in custodial sentencing for a specific period of time where "he shall receive the care required by his condition."[221] After release from a custodial facility, the body labelled with an *ʿāha* may still then be subject to serve the sentence from any crime committed, if liable.[222] While the general custodial facility provisions state that the period of confinement may not exceed the term of sentence or precautionary measure ruled, the "danger to public safety" designation provides an exception and allows the State to retain the individual in the custodial facility indefinitely, until they are no longer "dangerous."[223] This is even a legal provision in the case of children who have been committed by the State, as this designation allows them to be kept past the age of twenty-one and into adulthood.[224]

Regardless of how or when one is labelled with one of the *ʿāhāt*, the result is ultimately the same: removal from society and placement in State custody, potentially indefinitely according to what the State deems fit.

In many ways, the designation of one of the *ʿāhāt* is a legal relegation and reversion to the status of the *qāṣir* - stripped of the attributes of the legal individual, namely agency, consent, and culpability, and legally reduced solely to a body in need of

[221] Ibid., Art. 74.
[222] Ibid., Art. 76.
[223] Ibid., Art. 76, 126, 232, 234. Article 126 repealed by Leg. Dec. 119 of 1983.
[224] Ibid., Art. 126. Repealed by Leg. Dec. 119 of 1983.

paternal (read: State) protection.[225] In fact, several articles in the code go as far as to regulate the child body and the disabled body collectively.[226]

Regarding obligation and responsibility for damages, Article 139 states that "the *majnūn* and the *qāṣir*" shall not be liable for damages, according to Article 122 in the Code of Obligations and Contracts which refers to those who are "without [discernment, rationality] [*ghair mumayyiz*]."[227] Articles 498 to 500 stipulate punishments for abandoning or abusing "the *walad* and the *'ājiz*," bound by their characteristic of being "unable to protect himself due to physical or psychological condition."[228] Similarly, Article 553 collectively stipulates aggravated punishments for those who coerce "a *ḥadath* under the age of fifteen or a *ma'tūh*" to commit suicide.[229]

Indeed, both the child body and the disabled body are stripped of agency, consent, and liability, the difference being that while the child is placed in custody of either family, sectarian community, or the State, the State immediately assumes *all* obligations of paternal supervision in the case of the disabled body. Moreover, the protections afforded to these pairs differ; for example in the case of "the *walad* and the *'ājiz*," the *walad* cannot be imprisoned, but the *'ājiz* can.[230] This creates a dichotomy where complete State control over the body is not sacrificed for complete State protection, only partial protection.

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[225] This is all the more interesting when considering that another definition of *qāṣir* is "incapable, unable, restricted." Moreover, the code acknowledges that the *qāṣir* can be mute, deaf, *maṣrū'*, drunk, addict, or *masmūs*, but it is unclear whether the rest of the *'āhāt* are impairments of the adult body only. There is no mention of the child *possessing* any of the *'āhāt* other than for these select terms.

[226] Ibid., Art. 139, 498-500, 553. Article 139 repealed by Leg. Dec. 119 of 1983; Article 500 amended by Law 224 of 1993.

[227] Ibid., Art. 139. Government of Lebanon, "Qānūn al-Mūjibāt wal-'Uqūd," Law No. 0, *al-Jarīda al-Rasmiyya* 2642 (April 11, 1932): 2-104, Art. 122.

[228] Government of Lebanon, "Qānūn al-'Uqūbāt," Art. 498-500. Article 500 amended by Law 224 of 1993.

[229] Ibid., Art. 553.

[230] Ibid., Art. 612, 613.

Exploring *ta'ṭīl* [incapacity, injury], the fifteenth and final categorical component of *'āha*, reveals important links between disability, incapacity, and the productivity of the body that ultimately offer explanation for the State's selectively ambiguous approach to the regulation of those labelled with *'āhāt* and their removal from society through indefinite confinement.

The difference between the way *ta'ṭīl* appears in the code and the way the previous impairments of *'āhāt* appear is subtle. Though both deemed impairments, the other *'āhāt* are treated as categorical states of being, while *ta'ṭīl* is merely treated as an incapacity or injury - endured by the body, but not categorically defining.

Furthermore, the usage of *ta'ṭīl* is a measure of severity, limited to the material incapacity or injury resulting from material violence and thus confined primarily to the killing and assault provisions.[231] It overarchingly occurs accompanied by the condition of work, phrased "[*ta'ṭīl 'an il-'amal*]." The more days a body is incapacitated from work, measured in increments of ten, the more severe the crime and penalty become.

The gendered nature of *ta'ṭīl* provided by the accompanying condition of work is implicitly acknowledged in Article 512. This article is one comprehensive provision dictating aggravated punishments for crimes of *ightisāb* and *faḥshā'* under certain circumstances, including a loss of virginity, multiple perpetrators, and resulting *ta'ṭīl* for more than ten days.[232] Notably, this is the only article where *ta'ṭīl* is not qualified by work, and simultaneously the only article that discusses *ta'ṭīl* in the context of sexual violence and the only other time *ta'ṭīl* comes into play as a result of violent abuse or injury.

[231] Ibid., Art. 133, 435, 512, 553, 554, 555, 556, 557, 565. Some of these articles were amended by Leg. Dec. 112 of 1983 and Law 239 of 1993.
[232] Ibid., Art. 512.

The recognition that *ta'ṭīl* would need to not be qualified by work to encompass a sufficient amount of female victims (moreover, anyone who does not work) to be effective consequently indicates the gendered nature of non-sexual material violence - as *ta'ṭīl* in these cases is qualified by work, violence against female victims is subsequently harder to prosecute and punish, and therefore relatively more legitimized and less criminalized when compared to male victim counterparts.

This reveals a hierarchy between not just a legally differentiated male and female incapacity, but foregrounds a legal difference in the value of a body that works and the value of a body that does not engage in productive labor. Ultimately, it is not just female bodies whose material injuries are less criminalized, but rather any body that does not labor. The reliance on ten-day increments as a measure of severity of an injury and thus the severity of the crime itself also highlights this point - the severity of violent crime is quite literally and proportionally measured by the loss of productive labor.

2. *The Laboring Body*

The State's preoccupation with productive labor is even clearer when considering the categorization and differential regulation of laboring and non-laboring bodies, ultimately resulting in a much more precarious existence for those bodies who do not engage in productive labor.

However, it is important to note that labor as a categorical state of being within the code is not strictly binary. There is the division between the laboring and non-laboring body; however, there is also a clear difference among laboring bodies between those who are merely employed and those who are State-employed, i.e. public servants and public officials.

Public servants and officials have greater protections afforded to them by the State, but also greater liabilities. For example, public servants who have stopped work in the same fashion as those laboring bodies who are punished by imprisonment are only liable to civil forfeiture, but not imprisonment.[233] Civil forfeiture is also the stipulated punishment in the case a public servant or public official has resigned in a way that would disrupt the operation of a public service, as well as in cases where a State employee has used the power of their position to influence the vote of a Lebanese citizen.[234] Prohibiting the holding of public employment positions, civil forfeiture is essentially a way for the State to knock the body one notch down in the hierarchy of precariousness.

However, certain crimes result in aggravated punishments for State-employed bodies. This occurs in the case a public employee impedes a criminal investigation, and in the case of a myriad of sexual crimes spanning fifteen different provisions in the Public Morality and Decency section of the code, each aggravated according to Article 257.[235]

Public servants and officials are the only laboring bodies whose body is explicitly protected while in a state of work, at least within criminal law. As agents of the State, the punishments for intentional killing are raised to hard labor for life if committed against a public employee in the exercise, or time or place of the exercise, of his duty.[236] This particular aggravated penalty also potentially warrants the death penalty if aggravated according to Article 257.[237] Moreover, the punishments for whoever has "deprived [*ḥarama*] another of their personal freedom [*ḥurrīyatihi al-shakhṣīya*] by any means," a

[233] Ibid., Art. 340. Compare to Articles 341-344. Article 343 amended by Law 239 of 1993.
[234] Ibid., Art. 332, 340.
[235] Ibid., Art. 399, 506, 510, 511 (pertaining to Articles 503-505, 507-509), 513, 529 (pertaining to Articles 523-528). Article 399 amended by Law 239 of 1993; Article 506 amended by Law 53 of 2017; Article 510 amended by Law 164 of 2011 and law 53 of 2017.
[236] Ibid., Art. 548. See footnote 170 for amendment history details.
[237] Ibid., Art. 257.

remarkably vague article that would appear to refer primarily to kidnapping among a plethora of other things, are aggravated from imprisonment to temporary hard labor if committed against a public employee in the exercise of his duty.[238]

To top it off, no public official, government agent, or public employee is criminally liable for any act committed while following orders from a superior.[239] Thus, agents of the State are afforded vast protections; however, these protections are more about the "exercise of duty," the exercise of the State *through* the body of the public servant, than the bodies of those public servants themselves. Protecting the body, in this case, is synonymous with protecting the State's interests. However, this is still the best, least precarious position a body can occupy in the categorical state of labor.

The value of labor and subsequently laboring bodies is illuminated by the code's emphasis on a legal responsibility to work, thinly masqueraded as "freedom to work [*ḥurrīyat al-'amal*]." While presented as a right, as in something every citizen is entitled to by law, it is in fact legislated as a responsibility, something citizens are *expected* to do. In many cases, not fulfilling this responsibility is implicitly and explicitly criminalized.

It is a criminal act to infringe upon not only others' but one's own "freedom to work." Anyone who stops working with the intent of pressuring public authorities or in protest of a decision made by them is liable to imprisonment or house arrest for at least three months.[240] Furthermore, in case of strike involving at least twenty people, if the stopping of work leads to disruptions in transportation, public services of water or electricity, or leads to crowding on public roads and squares or the occupation of places of work, the participants are also liable to imprisonment for at least six months.[241]

[238] Ibid., 569, 570. Amended by Leg. Dec. 112 of 1983.
[239] Ibid., Art. 226.
[240] Ibid., Art. 341.
[241] Ibid., Art. 342.

Thus, the freedom to work is not really a freedom, but a responsibility - work is expected, the luxury of stopping work is conditional, and if work is stopped for a reason the State does not agree with, criminalized. Once the body enters into the categorical state of the laboring body, it cannot leave on its own terms. Still, it is the very framing of work as a "freedom" that allows for the prosecution of its infringement. This is ultimately the same notion of infringement that also allows the severity of material violence to be measured by incapacity to work.

Despite the responsibility component of work, "freedom to work" is treated as a right within the code in that it can be stripped as a criminal penalty, just like the right to guardianship or the right to property.[242]

"Prohibition of employment [*man' min muzāwalat al-'amal*]" is a preventive measure stipulated in the code that prohibits the pursuit of "a specialized discipline [*fann*], a profession [*mihna*], trade [*ḥirfa*], or any other activity that depends on the acceptance of authority or the acquisition of a [certificate, license]."[243] The third paragraph of this provision makes a special exception to this qualification for the press, requiring both the prohibition of the publisher and the suspension of the newspaper itself. This prohibition may be ruled in the case of any felony or misdemeanor pertaining to an offense committed "in breach of professional obligations or duties." The prohibition can be ruled for one month to two years; however, for repeat offenders, it may be sentenced for life.[244]

Thus, the right to infringe on productive labor is solely the right of the State. Individual attempts to control their own labor are criminalized, while prohibition of labor is simultaneously wielded as a criminal punishment.

[242] Ibid., Art. 72.
[243] Ibid., Art. 94.
[244] Ibid., Art. 95. Amended by Law 239 of 1993.

3. *The Poor Body*

The poor body exists in the shadows of the Criminal Code, a body never explicitly named yet one that is constructed, perpetuated, and finally erased through law and criminalization. Economic requirements to rights and monetary punishments discriminatorily target the poor body, subsequently exposing it to violence, lifting State protections, and relegating it to a criminal status in order to effectively remove it from society.

One set of provisions in the code, "Crimes Committed By Those Dangerous Due to Lifestyle [*'ādāt ḥayātihim*]" is designed to facilitate the transition into poor bodies, starting with the body that stops laboring.[245] As previously discussed, once the body stops laboring it is no longer able to be legally injured by material violence - this violence has become legitimized by the work qualifications of *ta'ṭīl*.[246] Articles 610-621, however, reduce the non-laboring body even further to its material existence.

Once a body is unemployed, the law can easily and quickly designate it with the categorical assignment of vagrancy [*al-tasharrud*].[247] Once the body enters the legal categorical state of vagrancy, the State can now legally imprison it for the body's mere existence, relegate it to the status of convicted criminal, and place the body into a State work house where the State can directly profit from the poor body - while still ensuring it remains in a state of poverty. The facilitation of this transition starts with Article 614.

[245] Ibid., Art. 610-634. Some amended/repealed by Leg. Dec. 119 of 1983, Law 239 of 1993, and Law 293 of 2014.
[246] Ibid., Art. 133, 435, 512, 553, 554, 555, 556, 557, 565. Article 133 amended by Leg. Dec. 112 of 1983, Law 21 of 1985, and Law 87 of 2010.
[247] Ibid., Art. 614-615.

According to Article 614, whoever 1.) does not suffer from one of the *ʿāhāt* [*shakhṣ kull ṣaḥīḥ*], 2.) does not have a residence or means of subsistence, 3.) has not worked for at least one month, and 4.) cannot provide proof of trying to obtain work, is considered to be legally vagrant [*mutasharrid*].[248] Several things about this provision make it remarkably synonymous with the non-laboring body, aside from the third condition of unemployment. Firstly, the burden of proof required by the fourth condition would be incredibly difficult to produce, even in the case one has tried to obtain work. Secondly, the qualification of residence is also problematic, namely because if one is unable to find work, for whatever reason, there will inevitably come a point when not having a residence is a consequence of this condition.

Moreover, the qualification of residence, which is fixated on not only in this article but others as well, discriminatorily targets those who *choose* not to have a residence, such as *al-riḥal*, who also face disproportionate regulation within this section of the code. Article 619 delimits *al-riḥal* to be "[gypsies, vagabonds, tramps] [*al-nawar*] and Bedouins [*al-badū*], either Lebanese or foreigners, wandering through Lebanon without a fixed residence, even if they have resources and practice a trade."[249] The code stipulates that any individual from *al-riḥal* who is caught not carrying an identity card depicting their physical measurements and who cannot prove their permit to the authorities is liable to imprisonment up to one year and supervised freedom, a level regulation that citizens with a fixed residence are not subject to in any capacity.[250]

The fixation on fixed residency both in the case of *al-riḥal* and the case of *al-mutasharridīn* reflect the State's need to know exactly where each citizen is and how to

[248] Ibid., Art. 614.
[249] Ibid., Art. 619.
[250] Ibid., Art. 620. Amended by Law 239 of 1993.

find them - how to *regulate* them - at all times. Anything that hinders this, like lack of a permanent residence, becomes criminalized.

Article 614 allows the State to further construct the demographic of *al-riḥal*, at least in certain cases, as vagrants - but 614 it still goes further than that. The category of *al-mutasharrid* is itself, without any action, a criminalized state of being - an illegitimate, illegal existence for which the penalty is imprisonment and placement in a work house [*dār al-tashghīl*].[251] For those who are not *al-riḥal*, this means the criminalization of an involuntary circumstance, poverty.

The fact that it is ultimately the lack of property ownership that is criminalized allows poverty to assume other "dangerous" populations that can be criminalized as such. The true reason they pose a threat, however, remains their difficulty to be controlled and regulated by the State. Moreover, once these bodies become convicted criminals through Article 614, they lose rights, freedoms, and State protections long after their sentences have been served.

The criminal code also proceeds to criminalize acts necessary for survival in such conditions like soliciting charity and mere socializing. Soliciting public charity is punishable by imprisonment and placement in a work house.[252] Moreover, "laziness" is legally identified, alongside alcoholism and gambling, as one of the causes of such a condition and even the *'ājiz* can be imprisoned for soliciting charity.[253] Additionally, socializing with others who fall under the category of *al-mutasharridīn* leads to even more severe punishments, as Article 615 criminalizes any *mutasharrid* who has "[roamed, tramped about] [together, in a society] with two or more individuals."[254]

[251] Ibid., Art. 614.
[252] Ibid., Art. 610-613.
[253] Ibid., Art. 611, 612-613.
[254] Ibid., Art. 615.

While these categories criminalizing the body's existence in poverty are legally constructed around work and property ownership, the State also works to create and perpetuate circumstances of poverty through a variety of criminal punishments, pushing convicted criminals either towards or further into poverty.

The work house [*dār al-tashghīl*] is one of the primary institutional mechanisms through which the State ensures that poor bodies remain in poverty. Often a stipulated penalty in poverty-related crimes, this punishment is not ruled to reduce poverty but rather to support the State. Confinement to a work house is a preventive measure that can be sentenced for a period of three months to three years.[255] If anyone sentenced to confinement in a work house attempts to leave, the sentence is aggravated to imprisonment with work for three months to one year.[256]

The convicted body that labors in a work house does not benefit from all of the proceeds of their work.[257] Rather, the convicted body is only entitled to one third of the proceeds, a proportion that may be increased but only after the civil party has been compensated (nonexistent in cases of vagrancy) and then "gradually increased in proportion to his good behavior [*bi-qadri ṣalāḥihi*]."[258] The State is legally entitled to keep up to two thirds of these proceeds.[259] Thus, the State can actually profit in the form of discounted labor, in a totally legal and legitimate manner, by convicting citizens of poverty-related offenses.[260] The State has not only opportunity but incentive, as this is one avenue available to the State to legislate bodies into engaging in productive labor.

[255] Ibid., Art. 79.
[256] Ibid.
[257] Ibid., Art. 57. Amended 1948.
[258] Ibid.
[259] Ibid.
[260] Crimes in this chapter punishable with confinement in a work house: Art. 610, 611, 613-615.

Meanwhile, the poor body loses their right to work proceeds, simply for being poor in the first place.

The State also pushes people, previously not impoverished into poverty and criminal status through prohibitions of employment. As the body's status as non-laboring is one of the primary conditions upon which it can be legally constructed into poverty, legally prohibiting those in skilled professions from practicing said skill pushes them one step closer to the legal classifications of poverty and criminality - which, as previously discussed, can be used to punish dissenting bodies and those who speak out against the State.[261]

While all of the provisions discussed in this section allow the State the opportunity to relegate bodies into poverty, it is the subtle economic hindrances attached to criminal procedures and punishments in the form of fines, stipends, bails, and bonds that discriminatorily work to remove the poor body from society. Attached to the majority of misdemeanors, typically minor, nonviolent offenses, the inability to pay fines is itself a criminal act, this time punishable by imprisonment.

Fines for misdemeanors can range anywhere between ten and one thousand lira, the minimums and maximums typically expressed in each individual provision.[262] The inability to pay this fine results in imprisonment, with the understanding that "one day of such a penalty shall be equivalent to a fine ranging between one and five lira," with a one year cap.[263] This would mean in the case of the maximum fine, the one most difficult for citizens to pay, one could end up serving anywhere between 6 months and one year in

[261] Ibid., Art. 94-95. Article 95 amended by Law 239 of 1993.
[262] Ibid., Art. 53, 64. Article 53 amended by Law 0 (Dec. 10) of 1960 and Law 239 of 1993; Article 64 amended by Law 239 of 1993. For accessory penalties, this range changes to fifteen to three thousand lira.
[263] Ibid., Art. 54. Amended 1948 and Law 239 of 1993.

prison for a minor offense, a prison sentence greater than that of some materially violent sexual offenses.[264] Once again, these provisions discriminatorily work to remove the poor body from society.[265]

4. *Conclusion*

Disability, labor, and poverty are intricately intertwined, dependent, and gendered categorical states of being.

Both disability and incapacity are functions of productive labor. The subtle nuances of the incapacity provisions reveal productive labor to be gendered male, a finding that is not surprising when juxtaposed with the economic requirements to parental fitness examined in Chapter 2. The gendered nature of productive labor reveals that economics are not only a measurement of parental fitness but specifically *paternal* fitness - and establish the ability to "provide" as a paternal duty.

Male citizens thus have a civic responsibility to labor. Those who are unable to fulfill this responsibility, categorically separated as disabled bodies, are removed from society. Those who infringe upon this "freedom to work" by incapacitating the body of another are prosecuted for the infringement on productive labor, not the infringement against the body. Eventually, the criminal bodies that jeopardize productive labor by enacting violence against other laboring bodies are also removed from society, through imprisonment this time rather than custodial confinement. Imprisonment also awaits those who attempt to *stop* laboring, if under conditions the State deems illegitimate. Those

[264] See, for example, Article 519 which stipulates nonconsensual "touching" of a *qāṣir/a* or woman shall be punished with imprisonment not exceeding six months. Amended by Law 53 of 2017.
[265] Though out of the scope of this thesis, it should also be noted that the bail system laid out in the 1948 Code of Criminal Procedure creates economic incentives to plead guilty to offenses one may not have actually committed.

who do not or cannot fulfill this responsibility who do *not* fall under the category of the disabled lose the right to pursue injury from materially violent offenses.

Work and property ownership become two pillars of a legitimate "lifestyle." If not present, the very existence of the body becomes an illegitimate state, resulting in the criminalization of the involuntary condition of poverty, legitimized violence once again through the *ta'ṭīl* qualification for material injury, and erasure of the body from society through imprisonment.

Thus, through legitimization of violence and differential protections afforded to the body based on their categorization as disabled, laboring, or poor - all incredibly selectively ambiguous categories in their own rights - the State is able to define and purge illegitimate, non-productive bodies from society. These are the bodies suspended between life and death, only recognized as having contained a life after they die.[266]

D. Criminality

As demonstrated for each of the previous states of being, illegitimacy was established through criminality. As such the criminal body and the illegitimate body are one and the same, a sentiment not out of line with the legislative mentality held at the time of the code's promulgation.

Once the body passes into the state of the criminal body, it never returns. Even after serving a sentence, the criminal body can remain stripped of many rights, stripped of its individuality, demoted to solely a body, and face greater risk of harsher, more violent penalties in the case of future offenses.[267] Rather than killing those bodies the

[266] i.e., there are no qualifications of work for punishments in killing provisions as there are for other non-sexual material violence provisions.
[267] Ibid., Art. 258-267. Article 258 amended 1948.

State deems illegitimate, it suspends them in a legally constructed status not quite that of an individual but also not quite dead. In some cases, as has been noted throughout this chapter, the criminal body only receives acknowledgement of the life it once held posthumously.

Criminalization is a legal tool that allows the State to remove bodies that are illegitimate from society, often a violent, degrading, and in some cases even lethal process. In 1943, on the eve of independence and with the delicate legitimacy of the State a concern front and center, the 1943 Criminal Code and the violence that subsequently flowed throughout it was a necessary measure to protect the State and its right to rule.

Ultimately, the gendered foundation of State sovereignty is the family. "Family" structure is exactly what allows the State to retain control and its right to rule in the first place. The familial power dynamic permits the State to take on traditionally paternal roles - supervision, protection, punishment, sovereignty. It justifies regulation and protection, in the end very violent State oversights, on the basis that citizens need their father looking out for them.

The link between family and State legitimacy is also heavily connected to labor, infrastructure, and economic legitimacy. As expressed by parliamentarians in Chapter 1, this legitimacy is also about positionality - the notion of "civilized" families, children, and citizens.

The State's legitimacy is also hinged upon gendered notions of what it means to be a "legitimate" citizen. For female bodies, under the new code all but property of the State, this access to the categorical designation of legitimate is dependent on reproduction. For male bodies, this is prefaced on engagement in productive labor.

Those who do not, either due to will or ability, meet the legally constructed requirements for legitimacy are pushed to the margins of the law, and in some cases disappear in the letter of the law entirely (and from society). This includes the unemployed, poor, disabled, unmarried women over the age of eighteen, non-binary genders (non-reproductive), cross-sectarian married bodies, bedouins, and dissenting bodies, among many others.

All of these demographics, legally constructed as illegitimate and threats to the State/collective, are removed from society one way or another - whether through imprisonment, confinement, lifestyle incrimination, or exposure to legitimized death. Moreover, all of these categories of citizen bodies are hindered from reproducing and raising children through paternal fitness requirements, the legitimization of violence, or merely the delegation of a criminal status.

CHAPTER V
CONCLUSION

With the promulgation of the Lebanese Criminal Code in 1943, the newly independent Lebanese State designed and implemented its legal framework to control and regulate its citizens by strategically exposing their bodies to material violence - whether merely permitted or directly committed by the State itself - for the purpose of serving the Lebanese State's efforts to implement a specific vision of what a legitimate State and the legitimate Lebanese citizen should be.

By means such as the categorization of bodies, State-implemented violence as a means of criminal punishment, regulation of sexuality and reproduction, and the legalization of violence and death as tools of governance, the State allowed legal, permissible, *legitimate* violence to seep and flow through the letter of the law. These processes both perpetuated and hinged upon gendered hierarchies of power and fostering differential precariousness among Lebanese citizens.

The first chapter of this thesis investigated what the driving forces, mentalities, and assumptions were behind the State's approach to regulation in the 1943 Criminal Code, and for what intents and purposes they were adopted. This chapter characterized the legislative mentality, the lens through which criminal law was legislated and the foundation upon which the new code was written. Very specific perceptions of criminality, law, and justice heavily influenced and undergirded the particularly violent mentality and methods the state adopted when approaching essential aspects of this state building project. Specifically, this entailed the conceptualization of criminal law as a tool to ensure proper protection of the State, notions of deterrence and retributive justice, a

reliance on the sheer threat and exposure of violence as a means of control rather than an explicit exercise of the right to kill, and the codification of the State as a collective victim within the structure of the new criminal legal framework.

The second chapter explored the child body. Despite the arbitrary and anachronistic delimitations of the child body within the code, the child body was the most regulated and most exceptionalized body in the entire text. Childhood was when children first gained agency, consent, culpability, and when the body first became differentially regulated according to gender - the crack that first exposes the gendered foundations of the State itself. The valuation of life, however, began with conception. The end of childhood was the point at which the body had the potential to become a threat, and to be dealt with and punished accordingly. Ultimately, it was the State's unwavering quest for control, regulation, and supervision over the child body that exposed it to violence.

The third chapter examined the way the body moved through different categorical states of being delimited within the code, followed by violence that never seemed far behind. Ultimately, this chapter establishes that the body's exposure to violence and subsequent differential precariousness depended upon the state or states the body occupied at a given point in time, namely dissent, marriage, sexuality, fertility, labor, disability, poverty, and ultimately criminality. As a body entered a state that the State viewed as more threatening to its own survival, constructed within the text as an "illegitimate" state, the body's survival became strategically jeopardized as it became exposed to more precarity under the law.

A. Law as an Archive of the State

Framing law as an archive of the State allows several conclusions to be drawn about the Lebanese State in 1943. Firstly, it reveals the values, bargains, and anxieties the State was grappling with upon independence. As has been demonstrated in each chapter of this thesis, the State's legitimacy and right to rule needed to be protected at all costs, even from its own citizens and even at the material expense of their bodies. The State worked in every way possible to facilitate the *legal* removal of anyone that might jeopardize or reflect poorly on this legitimacy project.

The anxieties surrounding this legitimacy, although somewhat explored in Chapter 1 through parliamentary proceeding discourse, likely go much deeper than what parliamentary discourse or the text of the law can tell us, but the reclamation of a "birthright to civilization" and a reconciliation between Lebanon's past and present was a definitive factor in the State's own perception of what legitimate States and legitimate legal frameworks should look like. Ultimately, regardless of the intricacies of the kaleidoscope of anxieties through which this legitimacy was viewed, the State's legitimacy was in the period between the code's inception in 1938 and its entrance into full effect in 1948 considered by itself to be fragile.

Secondly, this particular archive reveals quite a bit about the power structure of the State and the way this informs how the State approaches its citizens. While different legal frameworks may reveal more pieces to this power dynamic, the 1943 criminal code at nearly every turn analyzed in Chapter 2 and Chapter 3 seems to enforce power dynamics modelled after the traditional, patriarchal, nuclear family. This is evident in the paternal role the State takes upon itself, but also in the legislation and in some cases

criminalization of the family - a social unit regulated in this new code in ways drastically different than it was regulated in the Imperial Ottoman Penal Code that came before it.

During this period of 1938 to 1948, the State's shining moment of independence, family, and specifically the gendered hierarchical power structure it can facilitate, becomes a central pillar of its legitimacy. Without reinforcing this power structure in society, without *legitimizing* this power structure, the very model by which the State approaches its own authority and rule and its very foundation come into question.

B. Looking Forward: Corporeal Insights to Law and the State

In many ways, the gendered hierarchies of power that were codified into criminal law in the 1940s, not to mention the frameworks of violence used to facilitate them, are still in place today. While the criminal legal framework intricately coalesces with a range of others to form the Lebanese legal infrastructure and no one framework can provide the entire picture, it should be noted that the criminal code in particular has not been rewritten since its inception. Its status as a living document, a legal text that can be built upon, amended, altered, and changed has enabled it to remain intact for over seventy years.

While the document may change and has changed over the years, the framework itself remains intact, bringing with it at the very least remnants of the anxieties, insecurities, and self-conceptualization of the Lebanese State of the 1940s. As Afsaneh Najmabadi has reminded us, state-building is a fractious and volatile process that is constantly ongoing, and while the early 1940s was certainly a critical juncture in the history of the State, a remarkable amount of building has happened since then. The notions and conceptualizations of justice upon which the code was founded do not exist in the same capacity anymore. What constitutes legitimate power structures and

legitimate citizens has been morphed by negotiations with citizens themselves. Moreover, both conceptions and perceptions of criminality have heavily evolved.

The code may not be entirely anachronistic now, but it is worth acknowledging that these legal frameworks have probably facilitated the resilience of what has remained of these distant yet not-so-distant power structures that were codified at the State's inception. Reminders of specifically the traditional patriarchal familial power structure exist in abundance as this power dynamic and the rhetoric that accompanies it is invoked constantly.[268] For instance, when confronted with the possibility of State collapse during a 2016 interview, Gebran Bassil replied, "It depends how you define collapse. We still have at least a family in Lebanon, we still have values."[269] Understanding the origins of this mentality and how it became ingrained in the fabric and infrastructure of the Lebanese State in the 1940s helps to historically ground and makes sense of the State's behavior today and the power structures it is still trying to reinforce in order to buttress its right to rule. More importantly, a corporeal lens exposes the materially violent and lethal underpinnings it necessitates.

Moreover, the subsequent valuations of bodies and the life those bodies hold are far from theoretical valuations. In the time this thesis was written, two critical events have unfolded that only serve to illuminate these frameworks of violence and differential precariousness even further, the first and most obvious being the October 17 revolution. However, the State's response to the coronavirus pandemic was also in many ways a decision to risk the lives of the poor of all ages over the lives of the elderly of all classes. Everyday, the State makes real decisions regarding who should live and who should die.

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[268] Maya El Helou, "Who's Your Daddy: Why a Feminist Lens and Praxis are Necessary for the Lebanese Revolution," *Jadaliyya*, December 12, 2019, https://www.jadaliyya.com/Details/40345

[269] DW News, "Hezbollah in Lebanon: Self-made demons? | Conflict Zone," YouTube, https://www.youtube.com/watch?v=5axMnYKodZ0

As this project has shown, this phenomenon has been around for as long as there has been an independent State. Seemingly so long as there will be a state, some lives will be more mortal, more precarious, less grievable than others.

However, this project hopes that a corporeal lens of both the State and the state-building project may help to identify the common threads throughout the Lebanese legal infrastructure that allows for these systems to exist and for legalized and legitimized violence to proliferate, places where legal work can possibly facilitate the dismantling of these systems.

Namely, the corporeal lens evoked throughout this project has revealed the binarized categorization of bodies to be an enormous contributing factor to differential precariousness. Before violence can be deployed, spaces need to be delimited and bodies need to be categorized to occupy those spaces. In many ways as shown in Chapter 3, the categorization of bodies in an "either/or" capacity is the signal and direct determinant of whether or not violence can flow freely. Moreover, the seemingly separate nature of these binarized categories can mask the legally imposed movement of the body through multiple categorical states of being, such as with the swift and subtle movement of the non-laboring body into the poor body.

However, bodies outside of law are rarely ever binarized. They do not easily fit into categorically defined states and spaces, however necessary this process may be for State regulation.[270] A framework such as the criminal code, prefaced on the statistical treatment of bodies as outlined in Chapter 1, causes a rupture and dissonance between the body in law and the biological organism. This rupture in turn leads to violence, at some

[270] Maya Mikdashi's work perfectly exemplifies this notion. For one example, see: Maya Mikdashi, "Sex and Sectarianism: The Legal Architecture of Lebanese Citizenship," *Comparative Studies of South Asia, Africa, and the Middle East* 34, 2 (2014): 279-293.

points intentional and at some points arbitrary. If the body is to ever stand a chance, this characteristic of law needs to be revisited.

Finally, the role of gendered regulation in facilitating the flow of violence cannot go unmentioned. Every category discussed in Chapter 3 with the exception of dissent not only enacted but *required* differential regulation of the body according to gender. And yet despite this, the letter of the law was almost entirely linguistically ungendered, having an effect similar to that of "colorblindness" in the US criminal justice context. One of the only few places where explicit gender difference appears in the code is when considering gendered minority. Instead, binarized male/female bodies are constructed within the code by means of subtext and inclusions and exclusions within legally constructed notions of citizen responsibility and legitimacy - namely the divide between productive and reproductive labor. Any hope for reforming the power dynamic of the State-citizen relationship needs to begin with reexamining the implicit gendered foundations of the citizen body in law.

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