

AMERICAN UNIVERSITY OF BEIRUT

ALTERNATIVES TO THE SECTARIAN PERSONAL
STATUS LAWS:
NEW LEBANESE CONCEPTUALIZATIONS OF
SECULARISM AND LEGAL PLURALISM IN THE ARAB
POST-UPRISING CONTEXT

by
MARLEN SOFIE RAU

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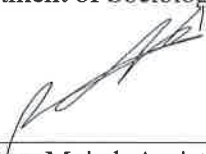
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ABSTRACT OF THE THESIS OF

Marlen Sofie Rau

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Title: Alternatives to the Sectarian Personal Status Laws: New Lebanese Conceptualizations of Secularism and Legal Pluralism in the Arab Post-Uprising Context

Lebanon is characterized by a pluralistic personal status law (PSL) system on the basis of religion. This means that the 18 religions officially recognized by the state do not follow one civil PSL, but instead 15 different PSL codes which regulate issues such as marriage, divorce and inheritance. Due to the plurality of legal systems in this domain, the Lebanese state law can be categorized as a a system of legal pluralism. Some scholars have hailed legal pluralism as a good power-sharing mechanism that mitigates conflict in multi-cultural societies; others have criticized it as an institution that impedes national cohesion and solidarity and institutionalizes structural discrimination against women and children. Civil society actors have thus demanded the replacement and reform of the Lebanese PSL system since decades, but the calls for change have become especially loud in the last 10 years, since the outbreak of the Arab uprisings. There is nevertheless no clear concept of what an alternative, civil PSL system for the Lebanese context should look like. This study thus explores the political imaginaries of Lebanese civil society regarding the reform and secularization of the current PSL system. The research suggests that the majority of civil society actors call for the introduction of an additional civil PSL code in combination with increased state interference in the religious courts, although the actors do not agree on where the jurisdictional boundaries of religious courts should be drawn. Some of the key issues regarding this issue are mapped in this thesis, including the realization of the principle of voluntariness, state oversight over the courts and the implementation of a transitional phase. This study contributes to the fields of sectarianism, the civil state in the Arab region, legal pluralism and secularism.

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ABBREVIATIONS

CSO = Civil Society Organisation
LCW = Lebanese Council of Women
LNM = Lebanese National Movement
PSL = Personal Status Laws

CHAPTER I

INTRODUCTION

Lebanon is characterized by a pluralistic personal status law (PSL) system on the basis of religion. This means the 18 officially religious groups recognized by the state do not follow one civil personal status law, but instead 15 different personal status laws. In other words, issues such as marriage, divorce and inheritance are not under the direct jurisdiction of the state but regulated by 15 different religious courts. This system has been in place since the creation of the Lebanese state as it is enshrined in the constitution as one of the protection rights granted to the different religious groups. Some scholars have hailed this system as a good power-sharing mechanism that mitigates conflict in multi-cultural societies, whereas others have criticized it as an institution that impedes national cohesion and solidarity while structurally discriminates against women. The system is of high political importance for the country, as it is the institution where religious-sectarian Lebanese citizens are produced. Lebanese political forces have thus contested the PSL system for decades, whereas some propagated for its consolidation and enshrinement; others called for its abolishment and large-scale reforms that would limit the influence of the religious institutions and demand the state to provide legislation in the domain of personal status law.

Even though this topic has always been of high salience in Lebanese public discourse, I would argue that it has been of especially high importance in the last decade. There are several reasons for that, the first one being the Arab uprisings of the last decade. They have not only raised questions and demands regarding the lack of liberty and social justice in the region but also evoked reflections on the civil state, *al-*

dawla al-madaniyya. The civil state is not a clearly defined concept and so far, has had different meanings in different contexts. Its main feature is that it treats its citizens in a civil – and not authoritarian – way, meaning that it puts human rights at its core and aims at serving the interests of its citizens. The demand for a civil state has also been voiced in the Lebanese context, where activists see it as the opposite of the sectarian state, the system that currently characterizes Lebanon. Thus, one has to ask oneself whether the meaning of a civil state is merely a “secular state”. According to some activists, it is the same, but according to others, it isn’t. The term “secularism” holds a negative connotation for many. Firstly, there are negative experiences with secularism in the region: Iraq (under Saddam Hussein), Libya (under Muammar al-Gaddafi) or Syria are all secular states, but still authoritarian and repressive and thus not “civil”. Moreover, the term is often understood as a European concept and thus perceived as foreign.

I would argue that the “civil state” demanded by civil society actors in Lebanon actually can be equated with a “secular state” as long as one understands “secular” as it is understood by most academics and not the way it is used in daily life. In daily life, “secularism” is simplified to the separation between religion and the state, but academia has acknowledged that a complete separation between the two is impossible. Instead “secularism” is understood as a legitimate relationship between the state and religion. This question will be discussed extensively in the methodological framework of the thesis. I will nevertheless continue using the word “civil” for two reasons. Firstly, I would like to signal my departure from the outdated, Western-centric definition of the word secularism. Secondly, I would like to reflect on the discourse that civil society organization (CSO) actors use themselves. Only when I talk about specific scientific

concepts (specifically the one of the minimally secular state by Cécile Laborde) I thus use the word “secular”.

Due to the high salience of the topic of the “civil state” in the Arab region, I contribute to this field through the case study that I perform in my thesis. I specifically explore how activists envision a civil PSL system for the Lebanese context. I am especially interested in the question of whether there is a call for legal pluralism. In other words, I am interested in the question whether activists demand a mandatory unified civil PSL or an additional civil PSL that completes or transforms the current religious PSL. Recent scholarship has proposed new non-Western-centric conceptions of secularism, highlighting the importance of individual as well as group rights. Such models of secularism could include a limited, state-controlled legal pluralism incorporating both religious and civil PSL codes. I will use a multimethod approach including, textual analysis of some of the major campaigns centred around the topic, as well as interviews with CSO actors who work on the topic and a quantitative survey with students. I chose to talk to CSO actors as they are the ones who shape the public discourse around the topic civil state and thus most valuable to my study. I am interested in the current debate and political imaginary and will thus limit the time frame to the last ten years, meaning starting from 2011, as this is the time which I consider to be the beginning of the large-scale Arab uprisings, bringing forth the question of the civil state in the region. This is why I refer to the context of the thesis as the post-uprising context, referring to the Arab uprisings in general and not the one Lebanon witnessed in 2019 in particular. All in all, this thesis offers a specific case study of the potentiality of a civil PSL in Lebanon which contributes to the more

general discourse on the civil state and secularism in the post-uprising context in the Arab world.

CHAPTER II

CONTEXT

A. The Lebanese Context

This first chapter offers a brief overview of the situation in Lebanon and its religious PSL system in particular. The chapter is divided into two parts. The first part introduces the political, social and economic structures in Lebanon and highlights the central role the religious PSL system plays within the broader political economy of the country. It aims to demonstrate why altering or replacing the PSL system is such a politicized issue and the challenges civil society faces in their attempts to do so. This part is mainly based on the growing body of literature on sectarianism¹. The second part of this chapter specifically discusses the role of the religious PSL system in Lebanon. By illustrating the gradual institutionalization of the religious PSL system in Lebanon, as well as the history of opposition to it, I argue that the question of religious PSL has always been a politicized issue in the history of the Lebanese nation-state for two reasons. Firstly, it lies at the core of the national identity question and secondly, it determines the structure of some of the most important political institutions. This part also introduces the points of references and frameworks that both proponents and opponents of the religious PSL refer to until today.

¹ There are different definitions of sectarianism, but most broadly it can be understood as the politicization of religious identities, which is manifested through symbols, behaviours, actions, attitudes, and other phenomena (F. Haddad, 2020, p. 126).

1. Political Sectarianism

The logic of the Lebanese political system is based on the idea of a consociational power-sharing system between different religious groups, or sects (Baumann, 2016; Lijphart, 2004). The underlying assumption of this political system is that all Lebanese people are members of religious minority groups that deserve a special status of protection and these groups are thus granted special rights of protection by the constitution. The aim of this power-sharing agreement is that the state does not oppress any of the minorities and conflict between the different religious groups can be avoided. This basic idea is reflected in the state's political institutions. Every Lebanese citizen is officially attributed a religious status at birth (it is inherited from the father), which is noted in Lebanese census registries and determinative for a citizen's access to their political and legal rights.

Positions within the state institutions are reserved and distributed among people of different sectarian statuses. There is a sectarian quota system for parliament, public administration and high-ranking military positions. Moreover, the three top offices of the state are designated to the three biggest religious communities; the president is always a Christian Maronite, the prime minister Sunni and the speaker of parliament Shia. Besides sectarian quota, the Lebanese state grants religious communities a large autonomy over education and the legislation of personal status affairs. In the field of education, there are both public and sectarian schools, whereas there is no alternative to civil legislation for personal status affairs; issues of marriage, divorce and inheritance are exclusively regulated by religious courts. The origins of this sectarian power-sharing system go back to the period of first Ottoman and later French colonization, the two founding texts for its institutionalization being the constitution of 1926 and the national

pact of 1943. The relative power balance and quotas between the different religious groups have nevertheless changed within the last century, the last time with the Taif accord at the end of the civil war in 1989. It redefined the ratio of parliamentary seats as fifty-fifty between Christians and Muslims (as opposed to two-thirds and one-third) and gave sectarian leaders a veto power regarding constitutional affairs. Even though the constitution installs and clearly defines a sectarian power-sharing system, it also states that this is only a temporary solution and calls for its eventual abolishment (Salloukh et al., 2015).

As political institutions and positions are divided amongst religious groups, politicians are in their positions representing their religious communities' interests instead of political ideologies or programs. As a consequence, an elite cartel is created, where the leaders of the religious communities share the political top positions amongst each other based on the claim that only they can maintain peace amongst the different religious groups. Moreover, it is not in their interest to abolish the sectarian quota which brought them into their positions in the first place. As a result of this power-sharing system, a sectarian elite-cartel is created (Baumann, 2016). The institutionalization of the religious courts means that Lebanese citizens' rights over some of the most personal aspects of their social life (including marriage, divorce and inheritance) are also not granted and regulated by the state directly, but by the religious communities. Furthermore, as a consequence of this institutional set up, it is not only impossible for Lebanese citizens to access their political and legal rights directly from the state, but it is also almost impossible for them to directly access any social rights from the state (Majed, 2017). The specific reasons for that are explained in the following.

2. The Economics of Sectarianism

One of the most important factors in the creation and perpetuation of the sectarian system is the political economy that upholds it (Baumann, 2016; Majed, 2017; Traboulsi, 2014). Political leaders deploy different tactics to stay in their positions of power through the systematic distribution of the state resources through sectarian networks, or as put by Hannes Baumann (2016): “The political economy of Lebanese sectarianism is one where a small politically connected elite appropriates the bulk of economic surplus and redistributes it through communal clientelism.” The Lebanese state only offers very weak welfare institutions, including healthcare, social support and educational and cultural services. Instead sectarian institutions offer para-state welfare and security services (Majed, 2017). Even though there are some public institutions, private sectarian welfare institutions surpass the ones offered by the Lebanese state. Paradoxically, the main sponsor of these private sectarian welfare institutions is also the Lebanese state, as the MOSA (the ministry of social affairs) attributes 70% of its budget to private sectarian associations, which then use these funds for the provision of social services (Salloukh et al., 2015, pp. 46–47). This highlights the Lebanese political elite’s interests; it is not in their interest to have strong services provided by the state to its citizens, but instead, they actively support and uphold sectarian clientelist networks which brought them into their positions in the first place. In other words, the direct and indirect consequences of the Lebanese consociational system are the reason for the fact that Lebanese citizens cannot access their political, legal and social rights directly from the state, but rather indirectly through their religious communities.

This tactic is so successful due to Lebanon’s long history of economic liberalism and neoliberalism, which created a highly unequal political economy. The unjust

distribution is one of the most important factors for the success of the political economy of Lebanon because it allows the elite to distribute resources to their constituencies (Majed, 2017; Traboulsi, 2014). In other words, access to resources is difficult as these resources are kept scarce and distributed through sectarian channels instead of public ones. Sectarian clientelism takes different forms, such as access to positions in government administration or public institutions, educational and health services or generally speaking *wāṣṭa* – having a connection to someone who can help access economic and social resources (Egan & Tabar, 2016; Mouawad & Baumann, 2017). Moreover, it has been shown that the state’s spending record of public funds does not respond to socioeconomic needs of the different regions. Instead, funds that tackle poverty, education and public health mirror the sectarian distribution of voter districts instead of socioeconomic objectives (Salti & Chaaban, 2010). The distribution of welfare as a political mobilization strategy is also confirmed by Cammett and Issar (Cammett & Issar, 2010), who found that the highest density of welfare institutions can be found in the most contested political districts. The Lebanese population thus does not follow their political and religious leaders “blindly” as has been suggested by some, but rather follow their perceived interests of access to social welfare, employment and education (Majed, 2017). Furthermore, it is important to keep in mind that the distribution of social services and jobs is not the only means of how the political elite of the country accesses and defends their position; they also use tactics of coercion, violence and co-optation of oppositional movements. Furthermore, there are also large parts of the population who oppose the system despite receiving economic benefits from it (Baumann, 2016; Geha, 2019).

3. Social Sectarianism

Sectarianism does not only operate on an institutional and political level in Lebanese society, as people also experience sectarianism on an everyday level. According to Majed (2016), it operates at the social level as a form of identity marker, that strongly shapes people's social lives. Haddad describes this in even more detail saying that sectarian identity is in practice "a variety of symbols, behaviors, actions, attitudes and other phenomena" (F. Haddad, 2020, p. 126). In most cases, the social sectarian status of a person is equal to the legal sectarian status the person was assigned at birth, but the two are not necessarily identical, as both are continually constructed and reproduced (and challenged at multiple levels) (Deeb, 2020, p. 219). In other words, one's personal status (*madhhab*) is not necessarily the same as one's social sect (*tā'ifa*) attributed by society and thus the erasure or change of one's personal status does not necessarily lead to the abolishment of one's social sect. One example is Walid Jumblatt, a well-known politician and PM for and leader of the "Druze" Progressive Socialist Party. Jumblatt himself has converted to Sunnism in order to be able to get married to his Sunni wife. Despite his personal status being Sunni, he is still considered to be a member of the social Druze sect and a legitimate political representative for the Druze community (Deeb 2020, 219).

4. The Political Economy of the religious PSL

The sectarian PSL courts are at the heart of the sectarian political system, as it is the institution where sectarian citizens are produced and reproduced (Mikdash, 2018; Salloukh et al., 2015). In Foucauldian terms, the sectarian PSLs are at the heart of Lebanese biopolitics, the place where life is administered and politically rationalized

and a population is created and regulated (Foucault, 1998, p. 138). As the political power and institutions are balanced between the different sectarian groups the sectarian demographic equilibrium is of high importance for the overall political order (Clark & Salloukh, 2013, p. 738). This is one reason why the religious PSLs are absolutely crucial to the logic of the state and the sectarian elite of the country. Secondly, the PSLs are highly relevant as they regulate the most intimate affairs of citizens' social affairs. This renders religious institutions great powers over their constituencies. Thirdly, most religious institutions generate income for their personnel through the provision of legal services, such as marriage licenses for example. In other words, some Lebanese clerics profit economically from the PSL's existence and thus depend on them for their livelihoods (Clark & Salloukh, 2013, p. 738). Lastly, in many cases, the religious PSL complicates inter-sectarian marriages and thus also function on a social level as they encourage marriage within the same religious community (Deeb, 2020). This engenders the reproduction of more sectarian citizens.

5. Civil Society

Within this consociational and sectarian political system in Lebanon, civil society plays an important role. Civil society is usually understood as the realm between the state and its citizens, consisting of various voluntary associations and firms and other corporate bodies (Calhoun 2002). Due to relatively large freedom of expression and association, Lebanon has one of the largest civil societies in the region (T. Haddad, 2017; Kingston, 2013). There are more than 8'000 civil society organizations registered with municipalities (in addition to many unregistered ones) according to the Ministry of Interior and several thousand of them are dedicated to issues of governance,

development, and democratization (Lteif, 2015, p. 7). Assuming that the Lebanese civil society unitedly works for political change and against the sectarian regime in Lebanon would nevertheless be a fallacy, as many associations are in close relationship with the government and even strengthen sectarian networks (Haddad 2017; Kingston 2013). It is thus often useful to categorize different kinds of organizations and associations that function within the realm between the state and its citizens. Scholars (for example Lteif 2015; Clark and Salloukh 2013) thus distinguish between *al-mujtama' al-ahlī* (communal or 'kinship' society) and *al-mujtama' al-madanī* (civil society). Whereas *al-mujtama' al-ahlī* is "based on historical family or sectarian ties" and often works to strengthen the regime, *al-mujtama' al-madanī* consist of interest-based organizations that are trying to move away from the traditional structures towards a more civic community. It includes class and social movements that are usually advocating for "intra-sectarian cooperation, civic participation, and inclusion in the governance and political order in Lebanon" (Lteif 2015, 47).

This thesis understands civil society as *al-mujtama' al-madanī*, because it has been the main oppositional force to the religious PSL system as it plays a key role in the political economy of the country's sectarian system. It is nevertheless important to note that resistance to the religious PSL system does not only come from *al-mujtama' al-madanī*. There are also religious authorities and political leaders, who are part of the official religious institutions who are a part of civil society and advocating against sectarian structures and institutions. In general, not all associations and civil society activists can be distinctively categorized into either of the two groups, but it nevertheless remains a useful distinction that allows us to understand the civil realm between the Lebanese state and its citizens.

Lebanon's *al-mujtama' al-madani* is not very strong in comparison to its *al- al-mujtama' al-ahli*, because during the civil war years many civil society organizations were rendered inoperative (Clark & Salloukh, 2013, p. 738). Moreover, it is very difficult for civil society to achieve actual change in policy due to the political structures of the sectarian system they find themselves in (Geha, 2019; Clark & Salloukh, 2013; Kingston, 2013). There are different reasons why this is the case. Firstly, the demands of civil society are often adopted and absorbed by other associations or an umbrella group of associations that are aligned with the regime. Sometimes the regime even incorporates them into the system, which leads to the paradox effect that associations that oppose the regime's policies eventually strengthen the regime. This is the case for the Lebanese women's movement, the environmental movement and the labor movement for example (Kingston, 2013). Secondly, some civil society actors use the sectarian system to their own advantage and cooperate with it in order to access its resources or to advance their organizational or personal interests. This allows the regime to then penetrate, besiege or co-opt the civil society associations (Clark & Salloukh, 2013).

One example is the Lebanese Council of Women (LCW) which is a woman's organization consisting of more than 150 member organizations. Most of these organizations are not interest-based and some even associated with the sectarian networks of the elite. The LCW is thus highly divided and does not formulate any political stance on controversial topics. It has even withdrawn its participation in the women's march for example, because some members were against the march's slogans (Clark & Salloukh, 2013, pp. 738–739). The organization thus does not have a great impact to bring about social and political change, whereas it enables the sectarian

regime to claim that they support women's rights and civil society participation, which further strengthens their access to resources to then support their own networks (Clark & Salloukh, 2013, p. 244). Thirdly, the regime does not only co-opt the demands by civil society, but also uses means such as counter-narratives, repression and violence within the media, military and public spheres to hinder reform in the country. The political elite was relatively easily able to co-opt the demands of the 2011 and 2015 mass protests without making any major concessions to their demands (Geha, 2019, p. 28). Following the electoral campaigns and general discourse for the 2022 parliamentary elections, I would also argue that many political parties have successfully adopted the discourse of the 2019 uprising.

B. History of the Institutionalization of the Religious Personal Status Law

This chapter introduces the historical milestones in the creation of the religious PSL system. Broadly speaking, the origins can be traced back to the Ottoman empire and the French mandate period, although the system was gradually institutionalized and only finalized and enshrined in the time of independent Lebanon. Some of the most important documents that lay the ground for the later process were the Lebanese constitution first promulgated in 1926 and last modified in 1989 and the decree 60 L.R. issued by the French High Commissioner de Martell in 1936. It was nevertheless not the text of these documents, but rather the way they were (partially) implemented that built the current PSL system. In other words, the institutions that were created do not reflect the ones that were foreseen by the founding texts but the interests of those who implemented them. The aim of this chapter is to show that the institutionalization of the

PSL was gradual, conflicting and the absence of a civil PSL was a deliberate choice by the elite.

1. The Ottoman Era

Many scholars cite either the 1926 Constitution or the Martell Decree of 1936 as the beginning of the religious personal status codes, but its origins date back to the Ottoman empire. The Ottoman's legal system incorporated many different local traditions and protected sectarian and communal rights. In other words, the different religious (monotheistic) communities had the right to manage their own legal affairs. During the 19th the Ottomans issued large reform policies, *the Tanzimat*, where the Ottoman empire introduced large structural reforms in order to reorganize the empire economically, militarily and politically (Anderson, 2016; Gelvin, 2016). The most important reforms regarding the issue of religious PSL happened in 1839 and 1856, when all Ottoman subjects were promised “perfect security for life, honor, and property” as well as religious liberty and equality for Muslims and non-Muslims. The aim was to introduce an Ottoman citizenship defined by specific rights and duties in order to redefine the relationship between the empire (and not only the Sultan) and its equal subjects, so that their primary allegiance would be with the state and not the religious community (Gelvin, 2016, p. 82). As a part of these reforms, clerics lost most of their powers in the field of jurisdiction, as century old local laws were replaced with this new Ottoman law code and the positions in the courts filled with newly trained state officials. The only domain that stayed under the rule of religious authorities were the PSLs (Anderson, 2016, p. 83).

Thus 1861, the year in which Lebanon was founded as a political unit, namely as the province of Mount Lebanon (*mutaṣariffiyyat jabal lubnān*) constitutes the beginning of religious PSL in Lebanon. The founding document is the so-called *Règlement Organique* which granted Mount Lebanon limited autonomy inside the Ottoman Empire, guaranteed by the big European powers (Traboulsi, 2007, p. 43). In the *Règlement Organique* Sunnism was defined as the state religion and the Hanafi school of law as the state law. Five other religious groups were also recognized – the Maronites, Druze, Shi’a, Greek Orthodox and Melkites, which all had the right to govern themselves (Farha 2015, 36). The document did nevertheless not specifically mention the establishment of religious PSL by all the communities, so the Shi’a community for example was still under Hanafi law (Farha, 2017, p. 113). It further introduced sectarian quota for the political system through the body of the Administrative Council, a political body which mainly had a consultative function, but also the right to veto the decisions by the governor. In the Administrative Council each sect (Maronite, Druze, Greek Orthodox, Greek Catholic, Sunni and Shi’a) was attributed two seats, making it half Christian and half Muslim (Traboulsi, 2007, p. 43).

2. The French Mandate Period

The French Mandate period de facto started in 1920, two years after the loss of the Ottoman empire in World War I and was formalized with the League of Nations in 1923. The French continued both Ottoman practices of sectarian quota in political positions² and the religious court system (Traboulsi, 2007, p. 88). The French mandate

² They nevertheless changed the balance of power from an equal division between Muslims and Christians to create a Christian majority.

officials used the religious PSL strategically, as a means to make concessions to the different religious groups in order to avert communal strife. They thus officially recognized the Ja'fari school of law in 1922 which allowed the Shia community of Lebanon for the first time to have their separate jurisdiction. The aim of this was to avoid them joining forces with the Druze which started a rebellion against the French in 1925 (Farha 2017, 113).

Another important milestone in the institutionalization of the religious PSL during the French mandate period was the adaptation of the Lebanese constitution on 23 May 1926. The constitution enshrined the principles of the earlier Ottoman constitution; all people, no matter their religion, were equal before the law and all religious communities had the right to regulate their family issues. This was expressed in article 7 and 9.

Article 7 of the constitution.

Article 7:

“All Lebanese shall be equal before the law. They shall equally enjoy civil and political rights and shall equally be bound by public obligations and duties without any distinction.”

Article 9:

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

There is tension between these two articles as citizens are on the one hand to be treated equally before the law, but also as subjects of religious courts which have different laws for people of different sexes and sects. The tension between this republican nationalist understanding of citizenship and the autonomy given to religious groups has been identified as one of the central tensions in Lebanese society (e.g.

Clarke 2018; Farha 2017), as well as activists who work on the topic (e.g. Kafa, 2019; Human Rights Watch, 2015). Moreover, the constitution enshrined more sectarian elements, such as article 10 which guarantees the right for religious schools or article 95, which proscribes (temporary) sectarian quota in all political offices except for parliamentary seats.

All in all, the constitution was relatively vague regarding religious PSL as it neither defined the religious communities nor the boundaries of their jurisdiction. This changed on March 13, 1936, when the French High Commissioner Damien de Martel issued Decree No. 60 L.R. entitled ‘The arrangement of the religious communities’ (*nizām al-tawā’if al-dīniyya*). It officially recognized 18 different communities and gave them the right to create and manage their own personal status and family laws (Clarke, 2018, p. 40). This decree thus constitutes the backbone of the religious PSL system, although the PSL system envisioned and defined by the decree differs in various points from the current PSL system. Firstly, not every citizen was envisioned to be a member of one of the 17 recognized sects. An additional “normal” sect was created for those individuals who are “not originally registered in a sect for a variety of reasons [...] or left the sect without affiliating with any other sect” and these individuals were supposed to follow a civil code. Moreover, sects could choose to follow the civil code instead of creating their own religious one (Younan, 2021, p. 42). This “normal” category for those not belonging to any sect was nevertheless never realized and no civil code was developed as no Lebanese citizen was actually considered to be without a community (Clarke 2018, 42). Even though civil marriages could not be performed on Lebanese soil, this law allowed the recognition of civil marriages performed abroad by the Lebanese state (Salloukh et al., 2015, p. 33).

Furthermore, the Martell Decree did not guarantee unlimited judicial autonomy to the different religious communities to the extent they enjoy it nowadays. Instead, articles 5 and 6 of the decree prescribed that a constitutional council would have to examine and approve the religious PSL first in order to make sure they would be concordant with Lebanon's constitutional principles, public ethics and safeguard public order. Article 14 strengthened this point, stating that there were limits to the religious PSL: "The sects following the ordinary law [have] to regulate their affairs and manage them freely within the limits of civil law." (Salloukh et al. 2015, 33–34). The Christian and Jewish PSL later underwent state examination before the ratification of their PSL, but the different Muslim courts never submitted their codes for review (Human Rights Watch, 2015, p. 22).

The decree was met by heavy resistance from all sides of the Lebanese elite, especially among the Muslims. The Shia leaders were outraged because they did not get their own PSL, whereas the Sunni leaders were unhappy that they were considered one religious group among many and their legal system no longer represented state law. Moreover, popular unrest broke out protesting this new decree (Clarke 2018, 41; Salloukh et al. 2015, 33). In 1939 the French thus promulgated another Decree under High Commissioner Gabriel Puaux, which excluded Muslims from Decree 60 L.R.. In the same year the French closed the civil status bureau, because the issue of citizenship became too sensitive due to the outbreak of World War II and the demise of the Mandate system (Farha, 2015, p. 37).

3. Post-Independence

Lebanon's independence in 1943 did not immediately affect the religious PSL, even though Prime Minister Riad Al Solh announced a secular, non-confessional Lebanon in his 1946 inauguration speech (Farha 2017, 118). The constitution of 1943 did not change any of the articles relevant to sectarianism from the 1926 constitution and most practices from the mandate period were continued (Traboulsi 2007, 109). In the 1950s and the 1960s the religious PSLs were refined and the competences of religious authorities more clearly defined. Examples include the ratification of the Christian and Jewish family law codes in 1951, or the introduction of the Mufti of the Lebanese Republic in 1959. The aim of institutionalizing a national Mufti position was to have a political representative of the Muslim community alongside the Maronite Patriarch, which would simplify state-religion relationships (Clarke 2018, 43–44). In 1962 the Druze and Shia codes were ratified which meant that all major religious groups had their space in the system (Clarke 2018, 47–49). During the 1970s and 1980s, the time of civil war in Lebanon no relevant changes to the PSL were made.

In the 1990s, religious leaders' powers regarding the jurisdiction of their constituency were further solidified through the peace agreement that ended the war in 1989 (Farha 2017, 121). One of the amendments to the constitution was article 19, which stipulates: "The officially recognized heads of religious communities have the right to refer to [the Constitutional Council's] laws relating to personal status, the freedom of belief and religious practice, and the freedom of religious education." In other words, religious leaders were given a veto power regarding constitutional changes of the PSL. In 1996, Lebanon also adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the most important UN

convention against the discrimination of women. This convention was nevertheless only partially adopted. Lebanon refused the adoption of articles granting equal rights in marriage, maternity, children and adoption, in other words, issues pertaining to PSL. This shows how important the protection of religious PSL is to the political elite of the country.

Today, the Lebanese PSL is still strongly characterized by its history. Due to the Ottoman past and its exemption of Decree 60 L.R. in 1936, the Hanafi courts enjoy a special relationship with the state for example. All Lebanese citizens can enter the Hanafi PSL system and the employees at the Hanafi courts are considered state employees and their wages paid by the state (Clarke 2018). The most important issue is that the contradiction between the different articles of the constitution has not been solved yet – on the one hand, Lebanese citizens are guaranteed equal rights and on the other hand, they are subject to religious courts which treat them differently depending on their sect and sex. Moreover, Lebanon's religious PSLs stand in contradiction with the UN declaration of human rights and the CEDAW, two documents the state has ratified and decree 60 L.R. remains only partially implemented. The laws and practices of religious courts are not under the scrutiny of a constitutional council, no civil code has been established and no Lebanese citizen is considered to be outside of a religious group and thus entitled to a civil PSL. This is so despite many activists campaigning against all of these issues almost since the existence of the Lebanese state. This will be highlighted in the next chapter, which presents the history of opposition to the religious PSL.

C. History of Opposition to the Religious Personal Status Law

The history of opposition and the call for reform of the religious PSL is almost as old as the Lebanese state itself. Activists and politicians developed at least 14 proposals for a civil marriage or a civil general PSL code and many uttered a civil PSL as a political demand much more often (Younan, 2021, p. 16), although the discourse around the topic and the demands and tactics of activists have changed over time. The aim of this chapter is to give an overview of these attempts in order to show that the topic has always been contested and politicized and the gradual institutionalization of the religious PSL was not inevitable. This shows that the religious PSLs were always a subject of debate and contestation, where different political players fought for their vision of Lebanese citizenship, identity and the state. It also underlines the importance of the religious PSL for the political economy of sectarianism, as the sectarian elite has thwarted all attempts of reform. Moreover, understanding the history is useful to contextualize the current debate on the topic and the references and framework both proponents and opponents refer to.

1. Post-Independence Period

The PSL as a whole was first overtly opposed in 1951 by the Bar Association, out of outrage over the further institutionalization of the religious PSL system when the Christian and Jewish codes were ratified. Instead they proposed an alternative civil PSL system – envisioned to be mandatory for all Lebanese citizens. The draft law was short, consisting only of three articles demanding the stop of the expansion of the religious PSL and the complete removal of the clerics' judicial powers. This was expressed in the first article: "The authority (*salāhiyya*) of the religious and sectarian courts is limited to

looking into the contract of engagement and its annulment, and the marriage contract and its annulment”. Around 300 members of the Bar Association even went on a two-month strike for their cause of a unified secular code united under the slogan “Yes to a civil law for personal status, yes to the sovereignty of the state and Lebanese law” (Younan, 2021, p. 17). The strike only ended once the parliament declared that it would take the topic of a civil PSL onto their agenda. In the following year, many parliamentarians, as well as ministers from the government made different proposals for a civil PSL and possible limitations to the power of the religious PSL constitutionally (Younan, 2021, p. 18).

One example is the proposal by the “Parliamentary Socialist Front”, including Kamal Jumblatt, Pierre Iddih, and Camille Shamoun amongst others. This draft stated “It is necessary to abolish sectarian personal status systems and enact civil legislation for all citizens alike. [... And it is necessary] to repeal the law of April 2, 1951 and to narrow the jurisdiction of sectarian and Sharia courts in general”. In 1952 three other parliamentarians made a proposal that foresaw the examination of personal status matters by the state and the subjection of religious courts to supervision by the minister of justice. Moreover, it demanded the replacement of the clerics through civil servants as court officials and the implementation of religious laws in civil courts. Even though this proposal gained a majority in the parliamentary committees of administration and justice, it was not implemented. In the same year, the government under Sami Al-Solh also proposed a bill for the supervision of the PSL courts, but it did not pass in the parliament (Younan, 2021, p. 18). The first proposal for the introduction of civil marriage law was made by MP Raymond Iddih from the Lebanese National Bloc in 1957 (Hyndman-Rizk 2019, 188). He made another attempt in 1962 with the aim to

rally Christians and Muslims around a common cause after the heightened social tensions in 1958 (Farha 2015, 38). None of the attempts of the 1950s led to an institutional or legal change of the PSL. Fouad Shihab, president from 1958-1964, decided to not correct the failures of the sectarian system and instead chose to inject the system with large doses of economic and social justice to establish some sort of a sectarian equilibrium (Traboulsi, 2007, p. 140).

After the failure of introducing a civil PSL in the 1950s, another campaign against the religious PSL followed in 1969. The lawyer Sami Al-Shaqifi filed to remove his sect from his identity card and the census registry. The ruling not only shocked the country and Al-Shaqifi became a well-known personality, appearing in newspapers, advertisements and on radio. His action was met by great popular support, and many citizens filed a request to also remove their religious status from their file. This option was nevertheless denied to all other citizens who made the same request and the judge, who permitted Al-Shaqifi to remove his sect from his registry, was removed from his position. The presidency and the court of cassation expressed that they were horrified by the verdict and tried to hide the case (Younan, 2021, pp. 20–21).

Following these intense debates on personal status, the Democratic Party proposed another unified civil code to parliament in 1972. It was the first comprehensive civil draft consisting of 263 articles dealing with all PSL issues (Younan, 2021, p. 19). It was used as a basis by subsequent civil laws (Megaphone News 2021). It proposed that religious laws should be upheld but dealt with in civil courts and by civil functionaries instead of clerics. It was discussed by the parliament repeatedly and many MPs seemed to be in favor of the bill, as long as the civil PSL would be optional instead of mandatory (Younan, 2021, pp. 19–20). The law proposed

by the Democratic party was slightly modified and brought back to the table by the Syrian Social Nationalist Party in 1977 (Megaphone News, 2021).

The 1970s were a time of great social and political tensions in the history of Lebanon and characterized by intense violence that was later to be known as the start of the Lebanese civil war. Conflicts centered around the true nature and meaning of Lebanese citizenship and especially leftist movements focused on the topic of secularization and thus also the religious PSL. One example is the movement ‘ecumenical renewal with an independent perspective’, which was founded in 1974 by the Greek Catholic bishop Gregoire Haddad, also known as “l’ évêque rouge” (the red priest).³ It advocated for more social justice, increased inter-religious dialogue and secularism in Lebanon. Besides the redistribution of resources, the movement called for the abolition of religious marriage (Traboulsi, 2007, p. 177). Moreover, the Lebanese National Movement (LNM), the leftist, pan-Arabist movement that formed around Kamal Jumblatt and included the Lebanese Communist Party, the Palestine Liberation Organization, and the Progressive Socialist Party (amongst others) also put religious PSL on their agenda (Traboulsi, 2007, p. 189). In August 1975, the LNM published the “transitional program for the democratic reform of the Lebanese system”, which demanded the abolition of sectarian quota in the government, as well as the introduction of a voluntary civil code for personal status, as well as the establishment of a Higher Court that would monitor the constitutionality of all laws (Rayess & Khashan, 2018, p. 35).

³ In 1975 he was stripped of his bishop title, due to political pressure from within the Greek Catholic church which opposed his political stances and reforms he demanded from the church. Due to his high popularity within the constituency he was nevertheless not excommunicated (Touma, 2012, p. 21).

In response to the positive response to the LNM's reform program, Pierre al-Jumayyil from the oppositional *Katā'ib* party also called for the secularization of the Lebanese state including the adoption of a civil PSL, but still using the sectarian quotas for the three top posts in the government (Traboulsi, 2007, p. 189). Moreover, Raymond Iddih from the National Bloc, who had already made proposals for civil PSL in the 1950s and 1960s made a renewed call for the adoption a civil PSL, suggesting it could serve as a transitional step towards abolishing political sectarianism. His proposal was heavily opposed by Muslim notables (who were his political allies) and no legal change was implemented (Traboulsi, 2007, p. 190). In the late 1970s and early 1980s an initiative was launched that propagated the introduction of a "secular sect", also known as "sect 18"⁴ which was supposed to follow a civil PSL (Younan, 2021, p. 42). In the 1980s the LNM (now under the leadership of Walid Jumblatt, the less radical son of Kamal Jumblatt) adopted a more defensive program, that was centered more around Arab nationalism and included sectarian elements. The LNM dropped its call for the introduction of a civil PSL in order to appease the "Muslim 'street' and notables" (Traboulsi, 2007, p. 215).

2. Post-War Period

In the aftermath of the civil war, President Elias Harawi brought the topic back to the table in 1996 when he formed a committee to draft a voluntary civil marriage law. The bill would have allowed civil marriage without prohibiting religious marriage or changing the PSL system as a whole, as inheritance would have still been regulated by

⁴ At the time only 17 religious sects and courts were recognized, because the copts were only admitted their own courts in 2012.

religious courts (Clarke, 2018, p. 64). Even though this law was in line with the Ta'if agreement which ended the civil war and foresaw the de-sectarianization of Lebanese institutions, it came as a surprise to many. The law was approved by the council of ministers but met by heavy resistance by prominent members of the religious and political elite. In opposition to this law the elite formed alliances, that would have been unimaginable during the civil war. All the religious leaders of the major political sects expressed their opposition to the law and connected it to “apostasy”, “adultery”, “zionism” and warned of the outbreak of another civil war.

There were nevertheless also clerics who voiced their support for their law, including the Greek Orthodox Bishop Gregoire Haddad and Archbishop George Khodr, the Druze Shaykh Salman al Masri, attorney Khidr al-Hamawi and Deacon Habib Badr of the Evangelical Church (Farha 2015, 38–41). Eventually, the bill was approved by the Council of Ministers, but never voted on by the parliament as Prime Minister Rafiq Hariri chose to “close the matter” in 1998 (Younan, 2021, p. 22). There was an extensive and intense public discourse on the topic and every political party took a stance on the issue. Activists who pushed for the bill learned an important lesson during this debate, as “the introduction of the optional civil law was understood by many, both opponents and supporters, as the first battle for the progressive dismantling of the confessional system, but the activists pushing for the civil marriage bill soon came to regret the association of the two issues” (El-Cheikh, 1998, p. 156). The framing of civil marriage as the end to a religious marriage made the bill so highly politicized and opposed by the religious and political elite.

The topic of religious PSL nevertheless remained highly present in Lebanese public discourse due to a large national campaign called "National Gathering for an

Optional Civil Code of Personal Status" (Arabic original name) announced in 1999. It was carried by 75 different civil society organizations (including parties, associations, unions, youth, student and women's organizations) (Younan, 2021, p. 23). It included a comprehensive text, consisting of 233 articles and reasons for the change and was prepared by different lawyers and researchers, including Sami Al-Shaqifi, the lawyer who had been able to remove his PSL from his civil record in 1969. In March 2002 the law was presented to Parliament with the signature of more than 60 deputies from a wide array of political parties, including the Progressive Socialist Party, Future Movement, Ba'ath party, and the Syrian Social Nationalist Party (Younan, 2021, p. 22). Nevertheless, no legislative change followed.

Another important campaign targeting the religious PSL was started in 2009 when it became possible for Lebanese citizens to 'strike out' (*shatb*) their confessional belonging from their government records (Clarke 2018, 65). At first, many activists saw it as an opportunity to become "non-sectarian" citizens and it was met by high enthusiasm and popularity. The campaign was nevertheless halted in early 2010 as it did not produce its desired effects. One reason was that the people who erased their confessional belonging lost access to any personal status law and could not access their inheritance or register their marriages or new-born children. Furthermore, the state's response to the campaign was not the introduction of an additional civil PSL (as the activists had hoped) but instead the state mandated for people to request a "certificate of belonging" from their religious establishments that enabled them to access their inheritance and register their marriages or new-born children. Thus, the individuals that removed their personal status did not become secular citizens independent from their

religious leaders, but instead even more dependent on the approval of their religious leaders (Mikdashi, 2014, pp. 289–290).

The focus of this thesis are the last ten years, the time after the outbreak of the Arab uprisings in 2011, where the relationship between the secular and religious (or sectarian in Lebanon) has become very prevalent in public discourse. In this context section, I will shortly present a short overview of the most important initiatives, which will be more closely discussed in the analysis section of this thesis. Generally speaking, NGOs working on feminist issues and citizenship have been most vocal about their demand for a civil PSL. They have campaigned for the issue online, creating various Facebook groups and pages attracting thousands of members and followers and bringing the topic closer to the younger generation (Younan, 2021, pp. 23–24). Moreover, they launched produced extensive publications about the faults of the religious PSL, drafted alternative civil laws and launched nation-wide campaigns to reform specific issues within the religious PSL, mainly related to the protection of children's rights.

One of the most important initiatives of the last decade is the civil draft law by Chamli association which was proposed to parliament in 2011. It covers all aspects of the PSL and was accepted by the parliament, although never discussed (Hyndman-Rizk, 2019, p. 188). Moreover the lawyer's syndicate drafted two proposals for a "voluntary civil marriage project" as well as a "civil code for personal status" in 2015 and 2017 respectively (Younan, 2021, p. 29). These proposals would have allowed couples to get married at any chosen notary and prescribed both members of the couple to be at least 18 years old (Megaphone News 2021). In the context of the largest popular uprising of Lebanon's history in 2019, the NGO Kafa proposed another detailed draft for a civil

PSL in November 2019, which also covers all aspects of the PSL. These initiatives will be discussed in the analysis section.

Activists have had some first success in changing legislation within religious PSL. In 2012 the “Family Rights Network” (*shabakat huqūq al-`usra*), a social movement led by the feminist lawyer Iqbal Doughan advocated for the reform within Sunni family courts. This movement was able to change the rules of the dowry payment for the bride (*mahr*), and the age of maternal custody from 7 for boys and 9 for girls to 12 for both sexes. This campaign was the only bottom-up campaign that resulted in change within religious PSL, meaning it was not initiated by the religious elite, but from the religious constituency. The movement specifically framed its demands within the sharia tradition (highlighting the plurality of rulings and interpretations within the Hanafi school of law) and addressed the Sunni authorities, deliberately avoiding state institutions or the issue of a general civil PSL. It was therefore criticized by other feminist organizations for indirectly legitimizing the religious PSL and reducing the complexity of the term “gender” to women. The movement pursued generally a very pragmatic tactic and sought allies within prominent religious and political figures, which eventually all allowed to pass the law in parliament (Ghamroun, 2020). Activists also tried to change for reform regarding the Shi’i maternal custody at the same time and organized large-scale demonstrations and rallied people around their cause (Landry, 2019). They were nevertheless not able to note the same success and the campaign dissolved, because even after six years of struggle, they did not record any success (Landry, 2019, p. 366). Moreover, a broad coalition of NGOs have campaigned for is the introduction of 18 years as the minimum age for marriage. These campaigns were not directed at religious courts or jurists. Instead, activists have tried to change Lebanese state law regarding

child's rights and introduced a draft law to change legislation on the issue (Ramadan, 2021). This tactic of circumventing the religious courts and demanding reform in civil law (in a domain overlapping with the religious laws) has nevertheless not proven any more successful, as parliament has not passed any legislation on the topic and protected the autonomy of religious courts to decide over the issue.

In 2013 the first and only civil marriage was conducted in Lebanon. Legal activists had argued that Lebanese law permitted civil marriage according to the Martell Decree of 1936. The two lawyers K. Sukkarieh und N. Darwish were thus able to conduct a civil marriage that was accepted by Marwan Charbel, the Minister of the Interior at the time (Egan & Tabar, 2016, p. 256). This marriage was met with great attention and fascination by the media and many believed the era where Lebanese would have to travel abroad to get married was over (Younan, 2021, p. 27). This nevertheless did not happen and although the marriage was symbolic it did not symbol a real advancement for a civil PSL system, as the couple has to follow their sectarian PSL in issues of 'inheritance, divorce and children' and it remained the only civil marriage accepted by the state (Egan & Tabar, 2016, p. 256). A campaign followed that demanded that all Lebanese citizens who had crossed out their religious status from the census registry should be able to marry at the Notary Public. It was nevertheless not successful, as it was rejected by the Ministry of Justice and no mechanism for civil marriage on Lebanese soil was introduced (Younan, 2021, p. 27).

Not only activists have worked on reforming the religious PSL, members of the Lebanese government and parliament also brought it to the forefront. In 2013 for example, the Minister of Justice, Ibrahim Najjar (from the Lebanese Forces), made a proposal for civil marriage that was nevertheless not brought before parliament. His

successor Shakib Qurtbawi also worked on the topic and proposed to introduce civil marriage to the public notary (Younan, 2021, p. 28). In 2015, the parliamentarian Serge Torsarkissian (from the Future Movement) passed another proposal for civil marriage. In 2020 the latest proposal for civil marriage was made by the parliamentarian “The Strong Lebanon Bloc” led by Gibran Bassil. The proposal for the law was announced in early 2021 and based on the argument that marriages conducted abroad should also be able to be conducted on Lebanese soil. The law was never discussed in parliament but the Free Patriotic Movement made several press conferences on the topic and even the president of the Republic, Michel Aoun voiced his support for the introduction of a civil marriage law (Younan, 2021, p. 2019). These attempts show that the political regime has understood the importance of the PSL within the Lebanese public. They nevertheless never prioritized the issue to the extent that they would have tried to form majority coalitions in parliament to pass legislation on the issue.

This overview has shown that opposition to the religious PSL has mainly come from political parties in the pre-civil war area and more so by NGOs and activists since the 2000s. There have also been some figures from the religious and political elite who were in favor of changing the PSL, but the opposition to the religious PSL was demanded for mainly by political challengers from outside the elite. Moreover, resistance to the religious PSL has taken different forms. Firstly, there has been a demand for the complete abolishment of the PSL and its replacement with a secular PSL. This demand was especially prevalent in the pre-civil war area when the vision for Lebanese identity and citizenship were less clear and the demands very radically divergent. Secondly, there has been a call for the introduction of an optional civil marriage law, which would not only facilitate inter-sectarian marriage but also redefine

the laws regarding divorce (but not necessarily inheritance). Up until the 1970s civil marriage was not the primary demand by political challengers, but more of a compromise offered by the regime as a response or appeasement strategy to the demands for the abolishment of the religious PSL and the introduction of a civil PSL. In the post-war period this demand was still mostly uttered by members of the regime, but also a demand that activists adopted. Moreover, the 2000s witnessed an increasing focus on singular issues and attempts to change the practice of the current religious PSL by expanding and reinterpreting the laws that are already in place. This includes the focus on other specific topics, such as a minimum age for marriage or the reform of the custody age in Sunni and Shia PSL. This shift in actors and demands can be explained in different ways. It could either reflect that activists are less radical in their demands because of pragmatic considerations; they learned that the system as a whole is almost impossible to change and thus focus on singular issues to achieve gradual change. It could also reflect an increased acceptance of religious associations as a part of Lebanon's social fabric and the religious PSL as a legitimate institution that doesn't need to be abolished, but rather reformed and complemented in order to meet the needs of the Lebanese population. This is one of the questions that will be addressed in the analysis section of this thesis.

CHAPTER III

LITERATURE REVIEW

A. Historiography of the Religious PSL

As highlighted in the last chapter, there is a large body of literature that examines the history of the religious PSL system in Lebanon (Clarke, 2018; Farha, 2015, 2017; e.g. Hyndman-Rizk, 2019). The reason for this might be that Lebanon has the flagship role in institutional sectarianism and scholars have become more critical about sectarian modes of power-sharing and focus more on *sectarianization* – the social and political processes that make sectarian societies sectarian. Thus, the struggle over the gradual institutionalization, as well as the resistance to it are of high interest. One of the main themes of the historical analyses is the tension and paradoxes of the constitution caused by articles 7 and 9 of the constitution. Article 7 states that all citizens should be treated equal before the law, whereas article 9 defines Lebanese citizens as subjects of religious courts and thus grants different rights to different citizens.

Farha (2015, 32) describes the paradox of the constitution as a combination of French republicanism, as expressed in article 7, as well as Ottoman communalism, as in article 9 or article 95, which attributed specific quotas in the administration for religious communities. This narrative is in line with other works on Lebanon that see the flaws in its institutional framework in the communal elements, which are considered leftovers of Ottoman times and hindering modernity (e.g. Salibi, 1990). This narrative is nevertheless rejected by other scholars who highlight that equal rights for every citizen were an idea already present during the Ottoman empire as a result of the Tanzimat (Anderson, 2016; Traboulsi, 2007). More importantly, historians have shown that the

French did not only not introduce a republican “modern” legal system, but even strengthened the religious courts and sectarian political structures because it served their own interests (Henley, 2016a, 2016b; Traboulsi, 2007):

“These separate personal-status systems are popularly assumed to be relics of a pre-modern era, vestiges left intact as the modern state was built up around them. Lebanese advocates of secularism thus lay the blame at the feet of religious leaders as prime culprits in the preservation of an essentially sectarian society, arguing that civil authorities need to take over from them. The truth, however, is quite different. It was, in fact, state recognition and the legislation of sects and their institutions in the twentieth century that led to the codification of personal- status law for legally binding courts in every community.” (Henley, 2016a, p. 17)

Even though there was resistance to the religious PSL from the beginning, this system was entrenched and institutionalized as the political and religious elite of the country strongly pushed for and vigorously defended it. Furthermore, the existing and contradictory laws were changed and reinterpreted in a sectarian spirit and most attempts at institutional or structural change were thwarted. Farha (2017, 126-127) concludes his analysis of the Lebanese constitution with “The essential spirit of the Lebanese constitution is one of inclusion. The concessions to communalism are footnotes. Contrary to their intent, however, they have proven impotent to defuse the destructive potential of communal egoisms thriving on exclusion, [...]” Farha’s work is not the only one that focuses on the elite and its appropriation of the PSL. Landry (2019) for example arrives at similar conclusions in his ethnographic study which compares the two campaigns that tried to change the Sunni and the Shia custody laws from 2012 – 2014. His analysis shows that even though the protestors’ demands were centered around religious courts and framed within an Islamic framework, the issue was

a political and not a religious one. Only in the case where the political elite was swayed, the new laws obtained approval by the parliament.

B. State-Citizen Relationship

The most prominent theme in the literature on the religious PSL is nevertheless not political elite, but rather how the religious PSL shape the state-citizen relationship (e.g. Farha 2015; Mikdashi 2014; Salloukh et al. 2015). There is a large consensus that the religious PSLs are key institutions in the production of sectarian citizens or as Salloukh et al. (2015, 33) put it: “Placing personal status under religious courts has created the institutional foundations for sectarian subjects. This law was inherited by the independent Lebanese state and pursued further without opening space for making of trans-sectarian national identities.” In other words, the religious PSLs hinder Lebanese people from being direct national subjects of the state. Instead, they are members of their religious groups which mediate their membership in the Lebanese state.

This narrative is also very prominent amongst civil society activists who have claimed that there can't be a united Lebanese nation as long as the PSLs are religious, as they are creating sectarian citizens instead of nationalist ones (Hyndman-Rizk 2019, Salloukh et al. 2015, Mikdashi 2014). Deeb (2020) and Mikdashi (2014) have nevertheless shown that the analogy of “the end of religious PSL equals the end of sectarianism” falls short. They show that “sect” is not only a legal category, but also a social construct and thus not only constructed by the religious PSL. In other words, one's personal status (*madhhab*) is not necessarily the same as one's social sect (*tā'ifa*) attributed by society and thus the abolishment of one's personal status does not necessarily lead to the abolishment of one's social sect. Another scholar who highlights

that not only the textual-legal component of religious PSL should be analysed is Clarke (2018). His ethnographic study of Sharia courts develops important insights regarding religious courts, as he highlights how certain individuals challenge and reform the Sharia courts and how the practices at courts have changed in recent years due to *'ijtihād*, even though the written texts haven't.

C. The Religious PSL as a Gender Issue

Mikdashi (2014, 2018) not only shares Deeb's (2020) critique that scholars and activists overlooked the divergence between the legal and social sect of Lebanese citizens, but also argues that the gendered structures of Lebanese citizenship have been overlooked. Citizens' rights are not only dependent on their sect, but also largely on their sex. Mikdashi therefore, argues that Lebanese citizenship is "sectarian" meaning defined by the legal sex and the sect attributed by the state (Mikdashi 2018). Her detailed analysis of these two categories in Lebanese law shows that it is not enough to talk about the differences between the different sects or sexes in Lebanese law and that only an intersectional approach lets us understand the biopolitical mechanisms of Lebanese citizenship and how it is reproduced in daily practices. Even though her concept of sectarianism is new, she is not the first one to have analysed the religious PSL from a gendered perspective. Many scholars using a gendered lens and feminist activists focused their efforts on analysing and criticizing the religious PSL. One example is Hyndman Rizk (2019), who performs a critical discourse analysis of civil marriage reform in the Lebanese women's rights movement. One of her main conclusions is that the issue of religious PSL brought the women's movement and the civil rights movement closer together. Another example is Shehadeh's (2010) historical

study of the institutionalization of the religious PSL and its effects on women. Similar to Farha, she highlights the contradictions in the constitution, but also other documents such as Lebanon's ratification of the Declaration of Human Rights and CEDAW (Committee on the Elimination of Discrimination against Women)⁵ and how their selective implementation has put women in a subordinate legal position to their husbands and fathers. Moreover, there has been a broader academic trend of looking at women's rights in the Middle East. They especially focus on the production and use of patriarchal structures, Sharia law in the context of the nation-state and often include Lebanon as a case study (Tucker, 2008; Joseph, 2000).

D. The Religious PSL as a Class Issue

Farha (2015) shows that different surveys conducted amongst Lebanese people since 2000 indicate that especially the upper middle class of the population is in favor of a unified PSL, whereas the pluralist religious PSL are popular with the majority of lower classes. If a unified PSL is implemented, it could thus be perceived as a top-down approach by a state without broad social support. It might not have the desired effect of producing a new national Lebanese citizenship. From a classist perspective, it is thus important to consider the continuation of legal pluralism under certain conditions. such as the introduction of an additional secular PSL as well as certain limits and controls on religious PSL set by the state.

⁵ The CEDAW was only partially ratified with some reservations, including laws on citizenship and family issues (Khalifeh 2006).

E. The Religious PSL and the Question of Secularism

Many scholars and activists (e.g. Hyndman-Rizk, 2019; Clarke, 2018; Shehadeh, 2010) criticize the Lebanese state for not being secular as it officially incorporates religious courts and is thus not clearly separated from religious institutions. This view is nevertheless not shared by Maya Mikdashi, because she argues that the Lebanese state is able to present itself as the secular actor as it is the body that manages the religious courts. The Lebanese state decides which religious institutions are officially recognized and allowed to regulate the citizens' affairs. Moreover, the Court of Cassation, which regulates the issues between different religious courts is a civil court by the state. She argues that many activists oversee "[...] that the Lebanese state already is secular, and that this secularism is articulated through, and dependent on, the management of both sexual and sectarian differences. The draft civil marriage and/or secular personal status laws written by activists also regulate sexual and gendered difference in similar ways to the fifteen other sectarian personal status laws already in place" Mikdashi (2014, 281).

The issue here is that these scholars take the concept of secularism and in extension the meaning of a secular/civil legal system for granted and don't ask the question of what secularism should look like in the Lebanese context. I argue that the consideration of the Lebanese context for a suitable PSL is important, as a large body of literature has shown that the concept of secularism is very strongly influenced by the European, Christian context it emerged from. In other contexts, it is thus less suitable (e.g. Asad, 1993; Mahmood, 2009). Furthermore, recent debates on *laïcité* in France have also shown that there are big differences in the understanding and institutionalization of secularism within the Western context. It is thus important to ask what role religion plays in Lebanese society and what role it could and should play in

the state and its institutions. In the legal context, it is important to ask what rights individuals and groups – especially religious groups – should be granted. These questions are especially important in the aftermath of the October 17 uprising, which questioned the sectarian structures and culture in the country. This thesis will thus contribute to the study of religious PSL by exploring different conceptualizations of secularism and what a civil PSL for the Lebanese context could look like.

CHAPTER IV

METHODOLOGY

A. Theoretical Framework

In this chapter, I elaborate on the concept of legal pluralism as developed by Griffiths (1968). The aim is to show that it is both a socio-legal concept used to describe post-colonial concepts, as well as an emerging ideology and form of politics of recognition in multi-cultural societies in contexts that have not necessarily undergone an experience of colonialism. Moreover, this concept is applied to the Lebanese concept. Secondly, this chapter introduces Laborde's (2017) conceptualization of the *minimally secular state*. Her concept offers a new and broader understanding of secularism that considers different state-religion relationships legitimate. These concepts will then be used for the analysis of the thesis.

1. Legal Pluralism

Due to the religious PSL system, the Lebanese legal system is not uniform, but instead plural and a system of *legal pluralism*. Legal pluralism was most completely described and defined by John Griffiths:

“[T]he situation in which not all law is state law nor administered by a single set of state legal institutions, and in which law is therefore neither systematic nor uniform – [it] can also refer, within the ideology of legal centralism, to a particular sub-type of the sort of phenomenon regarded as 'law'. In this ('weak') sense a legal system is 'pluralistic' when the sovereign (implicitly) commands (or the *grundnorm* validates, and so on) different bodies of law for different groups in the population. In general the groups concerned are defined in terms of features such as ethnicity, religion, nationality or geography, and legal pluralism is justified as a technique of governance on pragmatic grounds” (Griffiths, 1986, p. 5).

This form of weak legal pluralism is also referred to as internal state law pluralism (Griffiths, 1986, p. 40). There is a growing body of literature on the topic (e.g. Berman, 2009; Giordano, 2009; Melissaris, 2016; Tusseau, 2020) which uses legal pluralism to analyze the legal reality and framework in post-colonial contexts (Chevallier-Govers, 2010; e.g. Yilmaz, 2016) or as a proposed instrument of recognition and reconciliation in multi-cultural societies (Giordano, 2009; e.g. Yilmaz, 2016). I will discuss one example of each type (Malaysia for post-colonialism and the United Kingdom for multiculturalism) in order to illustrate the concept further.

This definition of legal pluralism as a pluralistic state legal system only reflects one understanding of the term and is mainly used by political scientists or practicing jurists. This use of the term differentiates from the more common use of the term, mainly used by sociologists. “In socio-legal studies, legal pluralism means a plurality of social fields, producers of norms which are in partial interaction with each other. It entails depriving the state of its capacity as social actor (as opposed to its multiple constituents), and, consequently, considering it merely as the monopolist of legal production, be it directly or indirectly” (Dupret et al., 1999, p. 5). This second understanding recognizes that there are multiple, intermingling normative systems that regulate the behavior of an individual, that go beyond the state. Other normative systems could be dictated by religious, tribal, or ethnic communities (Berman, 2009, p. 226). This understanding of legal pluralism is also a criticism of legal centralism, the ideology that there should only be one source of law – the state (Griffiths, 1986). Given that the majority of people live under competing legal systems anyway, scholars have argued that the state should recognize these as such and formalize these legal systems in order to officially recognize these communities. This recognition aims at making

minority populations not feel discriminated but respected instead and is thus supposed to increase the overall cohesion of a multi-cultural society.

The opinion that legal pluralism has a positive effect on multi-cultural societies is nevertheless not shared by all scholars. Manea (2016) for example criticizes the concept heavily. She argues that the concept is based on an understanding of society that treats “people as ‘homogenous groups’, essentialising their cultures and religions, calling for special laws and treatment for groups within a society, underestimating the human rights consequences [...], and discarding the voices of people from these very ‘cultures’ as ‘not authentic enough’” (Manea 2016, 2). She furthermore argues that it leads to increased discrimination of the weakest members of minority groups (especially women), as well as to more segregation within a society (Manea, 2016).

2. Legal Pluralism in the Post-Colonial Context – Malaysia

Legal pluralism is mostly found in colonial and post-colonial contexts, where the legal system of the colonial settlers is imposed, but the legal tradition of the indigenous population is also recognized to a certain degree to either provide some degree of self-determination (Dupret et al., 1999, p. 18) or to co-opt the local elite and facilitate colonialization (Hoffstaedter, 2015). This is the case for Malaysia for example, which mainly consists of three ethnicities: the Malays, Chinese and Indians. The Malay population, which is mainly Muslim, is the majority, making up around 60% of the total population. In family affairs, the Muslim population is governed according to Sharia law, as opposed to the other ethnic groups which follow civil law.

This parallel system was introduced by the British which used it to govern the local population with minimal resources when it was the colonial power of Malaysia

(Hoffstaedter, 2015, p. 134). After the independence of the country, this plural system was continued, and both sets of laws were recognized by the constitution. This system is strongly defended by the majority of all three of the major ethnic groups. There are both progressive and conservative forces, which defend the institution of the Sharia courts as they are trying to bring internal reform to either make the laws stricter or open. The Chinese and Indian population are also very defensive of maintaining a separate Sharia law from the civil law because they fear that a general civil law for everyone would include many Muslim principles, as they are the majority in the country (Chevallier-Govers, 2010).

3. Legal Pluralism as a Tool for Multiculturalism – United Kingdom

In recent years, scholars have increasingly proposed legal pluralism as a useful tool to for multi-cultural societies that so far have only had a uniform legal system (Yilmaz, 2016; Bowen, 2012; Giordano, 2009). One example is the United Kingdom, which has the institution of the Islamic Sharia Council (ISC) which was established in 1982 law and the Muslim Arbitration Tribunal (MAT) which was established in 2007. The aim of the two organizations is the same – solving issues of Islamic family law of the Muslim population in the UK (but the two organisations enjoy a different legal status). Even though there is high respect for these institutions amongst the Muslim community of the UK, only the MAT has an official legal status, although sharia law itself does not. The legal basis for this is the arbitration act which allows British people to seek arbitration outside of state courts. John Gardiner explained it in the following words: “The Muslim Arbitration Tribunal, established in 2007, provides an alternative route to resolve civil law disputes in accordance with Sharia principles. In both cases,

this is because the Arbitration Act 1996 allows parties to an arbitration to agree any system of law or rules, other than national laws, to be applied by the arbitral tribunal. Crucially, both parties must freely have agreed to arbitration and to the use of religious principles. Even where religious law considerations have been applied to arbitration, the resulting decisions are subject to review by the national courts on a number of grounds, including whether the agreement was freely concluded” (Torrance, 2019, p. 3).

The role of the ISC and the MAT are nevertheless disputed in British politics. Some British politicians see them as powerful tools because they offer numerous mediation and arbitration services (including Muslim divorce) and enjoy high popularity within their community (Torrance, 2019, p. 6). Others have also argued that they are a useful tool in the fight against Islamic extremists (Brown, 2006). Proponents of these institutions thus propose further institutionalization and higher degrees of recognition for these courts. Others strictly oppose further institutionalization because they consider being working in a “discriminatory and unacceptable way, seeking to legitimize forced marriage and issuing divorces that are unfair to women, contrary to the teachings of Islam” (Torrance, 2019, p. 8) and insist on legal uniformity.

4. Legal Pluralism in the Lebanese Context

Lebanon’s personal status system can clearly be described as being plural. It does not fit either of the two models described above perfectly, as its legal system is partially a result of its colonial encounters but was mainly created and enshrined once the country was independent. The aim of the system – minimizing communal strife due to official recognition and power-sharing and in extension the strengthening of social cohesion – has not been met. The country has witnessed several armed conflicts, in

which sectarian affiliations played a crucial role (Traboulsi, 2007). Instead, the system has mainly been used by the elite to manifest their power and authority over the population. It is thus questionable whether this system constitutes a good power-sharing solution. It is nevertheless also questionable whether dissolving the religious courts and replacing them with civil courts only would be a better alternative. The dissolution of the courts would not necessarily mean that the issue of sectarianism would be solved, as sectarianism is also reproduced on a social, economic and political level and not only on a legal one. Furthermore, it is important to keep in mind that the religious courts are popular with the majority of the population and thus their dissolution could be considered undemocratic.

5. *Secularism*

The discussion of legal pluralism in Lebanon is directly linked to the discussion of the relationship between the state and religious institutions, in other words, secularism. Even though there seems to be a consensus amongst scholars that religion should be protected by the state, there is an ongoing debate on how the state-religion relationship is handled best. Several questions come up regarding this issue. How is secularism defined? Where is the frontier between the autonomy of religious groups and where should the state draw boundaries and interfere? What is religion's role in the public life, politics and in the law? In this thesis, I will use the concept of the *minimally secular state* developed by Cécile Laborde (2017) to think through these questions regarding the reformation and secularization of religious PSL in Lebanon. Laborde's work is useful because it offers a new political theory about non-Western-centered understandings of secularism based on liberal philosophical theory.

I argue that the theory proposed by her is very useful for my analysis, as it offers different conceptualizations of secularism and state-religion relations, and in extension also different possibilities of secularizing the Lebanese PSL. At the heart of the philosophical theory of liberalism is the idea that a state should provide equality and liberty to its citizens. These two core principles enable “the good life” for individuals in a society, as well as society at large which in turn legitimizes the state. Regarding the issue of religion, liberal’s main concern is the simultaneous protection of religion from the state (“free exercise”) and protection of the state from religion (“nonestablishment”). In other words, a state should not discriminate against any religion, but at the same time, no religion should be above the state and dictate its policies or relationship to its citizens.

Laborde’s work is thus in line with liberal philosophers, such as John Rawls and Ronald Dworkin and mainly deals with the question of how states can be accommodating of religious groups and institutions according to these principles of liberal philosophy. Even though her work does not specifically focus on legal pluralism and religious courts, I find that her theory is very useful to think through the religious PSL system in Lebanon, because she addresses some of the most important issues in the relationship between religious associations and the state and it is very useful to discuss concepts addressed in the literature on religious PSL, as well as the interviews conducted as a part of this thesis. The analysis will thus be conducted in dialogue with her work.

a. Towards a universal definition of religion and secularism

Laborde argues that religion and religious associations play different roles in different societies and thus different conceptualizations and configurations of secularism are needed for the different contexts. This becomes clear when we think of French secularism for example, which focuses a lot on religious symbolism and banning religion from the public sphere, so that primary school teachers for example are not allowed to wear a veil. Such an understanding of secularism would not make sense in a majority Muslim country like Lebanon, where the veil is very present in the public sphere. I do not want to suggest that the French laws regarding this issue make any sense in the French context, as it is intensively debated and also criticized by many French citizens. What I am trying to say instead is that the understanding of secularism of a large part of the French population is unthinkable in other contexts, which illustrates the need for different forms of secularism for different contexts.

A general problem in the discourse on secularism, is that it is often simplified as a *wall of separation* between the state and religion. This notion entails two main problems. Firstly, secularism is concerned with the relationship (and its regulation) between the state and religion, instead of complete separation. Secondly, secularism is often understood as a universal concept that can be exported from Western countries to the world. Many people neglect that the form of secularism that is practiced in Europe has developed from the specific context of European nation-state history and the European experience with Christianity and Christian institutions. European secularism is thus a direct response to this specific history and not a universal concept (Laborde, 2017, p. 17). Laborde is not the first one to argue that secularism is a Western concept using Christianity for the definition of religion. Her argument builds on scholars of

critical secularism, such as Talal Asad and Saba Mahmood, who have shown how liberal secular states have arbitrarily produced the category of religion and marginalized religious minorities in the process of doing so. They thus argue that the concept needs to be redefined for the development of a universal theory of secularism that is adequate for pluralistic, free and equal societies (Laborde, 2017, p. 4). She argues that for a state to provide freedom, equality and a good life to all its citizens, there are different ways of how a state can accommodate religion, but that there are minimal conditions that need to be met. She thus proposes a theory of the *minimally secular state*. For this theory, the definition of religion (in political and legal terms) is central as it determines what role religious associations can play within societies.

Laborde states that “Religion is commonly seen as a culturally mediated yet universal feature of the human condition; a set of convictions, held by individuals, that constitute multiple paths to spiritual salvation or flourishing.” (Laborde, 2017, p. 19). The work of scholars of *critical secularism* has nevertheless shown that this is a modern and Western understanding of religion, that reduces religion to a private, voluntary, and personal belief (Laborde, 2017, p. 21). She argues that in other religions, such as Islam, Hinduism, aboriginal religions and specific forms of Christianity, belief and individuality are not the most important features to people’s religiosity. Instead practices and community are at the core of their religiosity. Liberal states that consider religion as a private and individual practice thus discriminate against these social, communal and public practices and religious groups (Laborde, 2017, p. 23). Opposing to the commonly held Western-centered definition, Laborde argues that there is “no specific set of features that all religions share” and that religions can’t clearly be distinguished from non-religious ideologies, such as nationalism (Laborde, 2017, p. 20).

Religions nevertheless are characterized by some sort of “family resemblance” (Laborde, 2017, p. 30).

Instead of focusing on finding a specific definition for religion, which is almost impossible and not helpful, she proposes to think about the features of religion which directly engage with the political order and for the state to then separate and regulate these features of religion only (Laborde, 2017, p. 3). One should therefore disaggregate religion into its different components and see which ones are worthy of protection by the state and which the state needs to protect itself from. Some of the characteristics of religion include “a feature of identity, a mode of human association, a vulnerability class, a totalizing institution, or an inaccessible doctrine”, which are all features that are also shared by non-religious associations and beliefs. On the basis of this model, one can think about different legitimate accommodations of religion in a democratic state that prioritizes the freedom and equality of its citizens. In extension she proposes a variety of models of how states can accommodate these characteristics of religious groups and thus develops a more flexible, non-Western centered understanding of secularism (Laborde, 2017, pp. 113–157).

b. The minimally secular state

The core idea of defining a universal minimal secularism is to systematically develop a concept of secularism that meets basic liberal democratic criteria without being limited to the Western context of secularization. Different models of secularism are permissive under this definition, including Western-style secularisms, but also other forms that regulate religion in a different way. Laborde thus defines the minimal features of religion that need to be separated or dismissed by the state and the ones it

can be permissive about or even endorse (Laborde, 2017, p. 115). According to Laborde, the state needs to be *justifiable*, *inclusive* and *limited* in order to be secular. Each of these three features responds to one of the disaggregated features of religion that need to be separated from the state. These three features include religion as *inaccessible*, religion as *vulnerable*, and religion as *comprehensive*. The other features of religion need not be regulated, but might even be established, recognized or endorsed by a democratic, liberal state (Laborde, 2017, p. 117).

The first point – justifiability – states that citizens should be given accessible reasons for state actions and policies. In other words, the state and specifically state officials need to give reasons for state interventions that need to be accessible to every citizen, meaning that the reasoning can't be solely based on religious grounds (Laborde, 2017, pp. 120–121). This obligation makes the state reasoning secular and facilitates democratic deliberation, which is one of the cornerstones of any democracy according to Jürgen Habermas. Even though the state needs to be secular, this is not true for an ordinary citizen, who has the right to be religious and use religious argumentation for their actions. Minimal secularism therefore does not impose any special constrain on ordinary citizens, but only the state and state officials (Laborde, 2017, pp. 124–125). Laborde moreover aligns that accessible reasons cannot be set equal to “secular” reasons, as many political theorists do when discussing public deliberation⁶. Instead moral and religious beliefs should be seen as being on an epistemic continuum and accessibility being the key feature (Laborde, 2017, p. 128).

⁶ Her argument can thus not be set equal to Jürgen Habermas' (2008) argument, which demands the translation of religious reasons into secular ones.

The second point – inclusivity – states that a state has to be inclusive in its production of civility and citizenship and cannot symbolically center it around one religion. When religious identity is a part of the state identity, civic status is denied to those who do not endorse this identity. They would thus become second-class citizens. “Equal civic status requires, not simply a legal guarantee of equal rights and distributive fairness, but also appropriate expressive treatment as civic equals by state institutions” (Laborde, 2017, p. 135). This does not mean that all public spaces need to be cleared from religious symbolism and instead filled with secular or republican symbols, as is the case in France or the USA for example. In specific contexts also secular symbols can be interpreted as signs of divisiveness. It is thus not necessary to prohibit all kinds of symbolism from public spaces, but rather have inclusiveness of all identities within the state (Laborde, 2017, p. 141).

The third point – limitedness – states that religious (and non-religious) practices should not be enforced on citizens, when they relate to comprehensive ethics (Laborde, 2017, p. 143). This means that a liberal state cannot impose a comprehensive doctrine, such as a religious doctrine on any of its citizens because that would not respect citizens’ personal liberty as self-determining agents. Even though a liberal state cannot interfere in the personal freedom of its citizens, it can still pursue policies and laws that are inspired by religious doctrines, as long as they do not burden ordinary freedoms (Laborde, 2017, pp. 144–148). All in all, the liberal state only needs to be separate from religion when religion is not accessible, divisive, or comprehensive. There are thus more permissible forms of state-religion arrangements than many liberals have recognized (Laborde, 2017, pp. 150–151). It is furthermore important to note that citizens within a state also do not share one vision of the role of religion, the rights of

religious groups and the conceptualization of citizenship and equality (Laborde, 2017, p. 154). As citizens foundationally disagree about the role of religion, justice and equality, it is important to note that also the procedure of achieving a law has to be considered. If citizens agree on a process that the large majority perceives as legitimate and just, citizens might also accept to live under a set of laws that does not reflect their personal understanding of justice or citizenship (Laborde, 2017, pp. 155–156).

c. Kompetenz-Kompetenz

In the liberal state, religious groups have the right to organize themselves as religious associations based on the democratic principle of freedom of association. The religious associations should moreover be granted “a range of liberties, rights and immunities” if their religious doctrine requires them to do so. Religious associations nevertheless don’t have the right to unilaterally determine where the boundaries of these exemptions from state exemptions lie (Laborde, 2017, p. 170). Only the state has the competency to settle the content and limits of religious associations, because it is the only institution with sovereignty over all its people and can thus legitimately make settlements about justice. In other words, the state has the *Kompetenz-Kompetenz*, the competency to determine the competencies of other bodies within the state, including religious associations.

Even though, the state grants groups “a range of liberties, rights and immunities”, it is very important that the state doesn’t do so arbitrarily and unrestrainedly because collective exemption rights for associations allows these associations to exert great powers over their members, including discrimination (Laborde, 2017, p. 173). Laborde thus states that “the proper nature and scope of the authority of associations can only be

determined democratically, in reference to broadly liberal principles, and finally be settled by the state. Only the state can adjudicate the “rightful bounds of religious liberty,” as exercise of this liberty must be compatible with the exercise of other liberties, as well as the pursuit of other important interests such as equality and nondiscrimination” (Laborde, 2017, p. 170). It is a challenge to decide where to set these boundaries, which Laborde calls the *jurisdictional boundary* issue. The basic idea is that this is determined based on “interpersonal morality—what we owe to each other, politically speaking—and not with the pursuit of impersonal, extratemporal, and other goods” (Laborde, 2017, pp. 105–106). This also means that the state cannot be neutral (as has been demanded by some liberals), because the state needs to evaluate different beliefs, practices, and identities normatively in order to set these boundaries (Laborde, 2017, pp. 41, 197).

d. Discrimination in the name of religion

According to Laborde’s theory, religious associations have the right to discriminate against their members on the basis of characteristics such as gender or ethnicity, whereas individuals or companies don’t have the right to do so. This is one way in which religious associations are privileged in order to be accommodating of religion in a minimally secular state (Laborde, 2017, pp. 174–175). A religious association can nevertheless not discriminate against their members arbitrarily, but only when it is one of their core values or principles. According to Laborde, it is thus for example permissible for the Catholic church to discriminate against women and to prohibit them from becoming clergy, because they have the right to enforce their professed core standards (like any other association). It would nevertheless not be permissible for the Catholic church to not employ a woman in some of other forms of employment, as a

school teacher for example, because this is not a part of its doctrine and core values (Laborde, 2017, p. 175).

Even though religious associations have the right to discriminate against their members, it is important that they profess their doctrine and discriminatory practices. “If associations seek to exclude women or LGBTQ, they must “come out” as sexist or heterosexist institutions; they should not be allowed insidiously to perpetuate patterns of prejudice. [...] And they must live with the consequences, including to be criticized as patriarchal or heterosexist institutions.” (Laborde, 2017, p. 189). This means a secular minimal state can allow gender-based discrimination within religious associations and at the same time uphold its commitments to gender equality and publicly criticize gender discrimination in religious associations and advocate for gender equality. Moreover, the *kompetenz-kompetenz* needs to always stay with the state, meaning that it is not associations who can define in which areas they are allowed to discriminate against their members. The state, in contrast, does (Laborde, 2017, p. 195). Most importantly, membership in religious associations needs to be voluntary (and the costs for entering and exiting shouldn't be too high) in order to be granted exemptions by the state. This is a crucial element for the state to provide religious associations legal exemptions, because if individuals cannot leave an association, their individual freedom and protection from discrimination cannot be granted by the state (Laborde, 2017, p. 181).

e. Religious Courts

Based on Laborde's theory, the replacement of the religious PSL with a mandatory secular PSL is one way of secularizing the PSL. There are nevertheless also

other ways one could secularize the PSL – ways that consider both, individual and group rights. This could be realized by the introduction of an additional voluntary secular PSL that exists parallelly to the already existing religious ones for example, as well as defining the jurisdictional boundaries of the courts instead of giving them unlimited rights over personal status affairs. Laborde even briefly addresses the issue of legal pluralism herself. She states: “If forms of legal pluralism and regimes of personal law are allowed, they should be subjected to the common associational regime and to the ultimate sovereignty of civil law. The important point is to preserve individual freedom to enter and exit associations. This requirement is not easily met, but it is crucial for addressing the serious worry that exemption rights aggravate the vulnerability of “minorities within minorities” – sexual and gender minorities as well as children” (Laborde, 2017, p. 181).

The current PSL system of Lebanon does not fulfill the conditions set out by Laborde. The most important factor is that they do not fulfil the condition of strict voluntariness. Even though Lebanese can convert and legally opt out of a religious group, they can only enter another religious group. As explained in the first chapter, Lebanese people who remove their sectarian status from the registry, lose their access to personal status rights. In other words, membership in religious associations is mandatory (if a citizen wants to access their civil rights). Furthermore, a minimally secular state needs to be *justifiable* as explained above and the reasoning provided by state officials accessible to everyone (Laborde, 2017, p. 124). As long as personal and family issues are only regulated through religious courts, people who do not pertain to any of the officially recognized religions or consider themselves non-religious or atheists cannot access PSL rights that are accessible to them. Moreover, the religious

courts are not subject to any civil law or other control by the state, but their content is completely decided by the religious associations. In the analysis part, I will discuss these points specifically and present how civil society actors understand these issues and what responses they envision.

f. Avoiding the Trap of Groupism

In the discussion of the legitimacy of religious PSL as an institution in a liberal, democratic state, it is important to not fall into the trap of what Rogers Brubakers calls groupism. Groupism is “the tendency to take discrete, sharply differentiated, internally homogenous and externally bounded groups as basic constituents of social life, chief protagonists of social conflicts, and fundamental units of social analysis” and to see groups as “substantial entities to which interests and agency can be attributed” (Brubaker, 2002, p. 164). It is thus important to keep in mind that the 18 different sects in Lebanon are not a natural, primordial phenomenon and cannot be treated as such and for example granted rights, just on this basis. Allowing sectarian institutions to attribute a religious status, a *madhab* at birth, and to organize the PSL of their members is the mechanism through which religious groups in Lebanon are produced and reproduced. This means that religious groups do not represent natural, primordial groups that thus should be granted the right to rule their own family affairs on the basis of this wrong presumption. One can nevertheless also not negate the existence of religious groups within Lebanon, which manifest themselves in the political, social, and cultural life of Lebanese citizens. Brubaker (2002, 167) calls the forms in which groups actually appear as practical categories, cultural idioms, discursive frames, institutional forms and political projects.

Laborde acknowledges this problematic and says that religious groups should be treated differently for different purposes. “For some purposes, religious groups can be treated as loose communities; for other purposes, by contrast, they need to be construed as formal legal corporations. [...] When states seek to give political representation to ethno-religious diversity, to institutionalize interfaith dialogue (as in bioethics committees), or to protect members of vulnerable groups from certain forms of discrimination, the conception of “group” that does the work here is a loose notion of community, an ascriptive, transgenerational group with porous boundaries and a low level of institutional organization. By contrast, if religious groups seek to own and sell property, they must be treated like legal corporations with formal structures of authority, conditions of liability, and so forth” (Laborde, 2017, p. 173).

Moreover, Laborde argues that “The key feature of associations is that they are voluntary (they can be entered and left without excessive costs), they have reasonably formal structures of authority, and they are formed around a specific doctrine or purpose. The implication is that diffuse, loose religious communities – such as “the Hindu community” or “the Muslim community” – cannot qua communities be candidates for exemptions from general laws for differential treatment of individuals according to caste, gender, or sexuality” (Laborde, 2017, p. 181). I would argue that Lebanese religious associations are clearly not voluntary in nature, because the options one can choose from are limited to religious options and do not include a civil one. Other than that, they fulfill the criteria regarding having formal structures and a specific doctrine regarding their PSL systems.⁷ It is thus only the people who have a specific

⁷ One could argue that the Shia PSL does not fulfill this criterion, as its PSL code is not codified or recorded in written form, but varies greatly depending on the judge implementing the law.

madhab, legal sectarian status, and not a ta'ifiya, the social sectarian status that should be subject to the religious courts.

B. Methods

The literature review has shown that the problems with the current PSL and the opposition to it are well researched. I nevertheless argue that the alternative systems proposed are understudied. I would thus like to explore the political imaginaries of Lebanese civil society regarding the reform and secularization of the current PSL system. CSO actors are the ones shaping the discourse regarding the civil PSL system and the civil state in general and thus their opinions constitute a good entry point into the discourse. The main aim of this thesis is to answer the question of how civil society actors who demand an alternative PSL system envision it. This question is tightly related to other questions, such as: are the CSO actors in favor of legal pluralism – a system that incorporates the religious courts, but also offers civil alternatives or do they insist on a unified civil PSL code? What are the central characteristics of the envisioned civil PSL system and what rights do they think individuals and groups should have? The aim is to also explore why certain actors call for the envisioned PSL system they do, is it out of political or pragmatic considerations or does it reflect their ideal vision of the Lebanese state?

I will perform an analysis of the questions raised above, drawing on three sets of data – textual sources (1), interviews with members of civil society (2) and a quantitative survey on the topic based on a convenience sample with 300 students from Lebanese universities (3). I choose this mixed-methods approach because I argue that most campaigns by civil society mainly constitute a call for the abolishment or reform

of the current PSL system. Few of them actually line out the alternative system that they envision to replace the current PSL system with. The interviews with civil society actors thus allow for a better investigation of civil society's political imaginaries.

As I am interested in the current debate on the PSL, I will limit the time frame to the last ten years which I define as the current situation for the purpose of this thesis. My analysis is primarily qualitative in nature, and firstly draws on textual sources that represent some of the most important campaigns of the last 10 years but also includes a short third, quantitative part. The written sources I study include the draft laws for a civil personal status system by the *Shaml* association and the NGO *Kafa* and the civil love campaign by *Absolut*. I selected these specific campaigns because they either deal with the issue very extensively and go into much detail or because they have been very present in the public sphere and thus reached a wide audience. Together, they thus represent a good overview of the opposition to the religious PSL, its specific demands and how people envision an alternative PSL system. I use critical discourse analysis according to Fairclough (1995) to investigate some of the most important campaigns demanding a reform of the PSL.

Fairclough defines critical discourse analysis as a method for the study of language in its relation to ideology (and power), which is implicitly and explicitly embodied in discourse. As I am interested in the study of political imaginaries, which are a part of people's ideologies, this approach is useful for my study. Fairclough describes discourse as "a form of knowledge and a social construction of reality" (Fairclough 1995: 18). This means that discourse heavily influences sociocultural reproduction and change in a society and civil society actors are thus interested to shape the discourse because the *common-sense* produced within a discourse contributes to

how reality is shaped. Fairclough's conceptualization of critical discourse analysis is three-dimensional. It combines the analysis of spoken and written language (1), the production, distribution and consumption of the texts (2) and the sociocultural practice of discursive events (3) (Fairclough 1995, 2). These three central constructs of critical discourse analysis are intertwined. I will thus consider the combination of these three dimensions in the analysis of my sources in order to perform a profound discourse analysis.

In order to triangulate my evidence, I not only analyzed textual sources, but also performed 10 interviews with members of civil society who demand the change of the status quo of the religious PSL. I selected the interviewees based on purposive sampling (Lune and Berg 2017, 39) and conducted semi-structured, in-depth interviews centered around the research questions mentioned above. Some of the interviews were conducted in person, others were conducted online. The ten interviewees included two representatives from feminist organisations, two clerics, one member of an inter-religious organisation, two members of oppositional, non-sectarian political parties, two members of oppositional, non-sectarian political organisations and one scholar who is also a legal activist. Even though the sample is small, I would argue that it covers a relatively diverse set of civil society organizations that advocate for the introduction of a civil PSL system. Four of the interviewees were women and six were men. The gender ratio within the sample is thus relatively balanced. The main language of the interviews was Arabic because the legal field in Lebanon is in Arabic and it was thus the preferred language by most interviewees. Seven of the interviews were conducted in Arabic, two were conducted in English and one was a balanced mix between the two.

The qualitative analysis of the interviews is carried out within the framework of legal pluralism and the *minimally secular state* by Cécile Laborde (2017), which was presented in detail in the last chapter. This framework is very useful to think about how the Lebanese state could formulate its own conception of secularism, suitable for the country's specific context and history and how the PSL system could be modified to be secular and still accommodate religious associations' rights at the same time.

C. Limitations

There are several limitations to my study. Firstly, it could have been very interesting to also analyse the civil PSL draft law by the Beirut Bar Association from 2015 and 2017. Unfortunately, these drafts are not publicly available, and I was not able to access them. Furthermore, it could have been interesting to conduct more interviews to have a greater diversity of opinions. I only interviewed two clerics, and both are from the same sect and city; they are Sunnis from Saida. I furthermore was not able to conduct many expert interviews with academic scholars who work on the topic (I reached only one). The main language of the interviews was Arabic, because most interviewees preferred it. As I have only lived in Lebanon for two years and my Arabic language skills are not yet proficient, this limited the interviews to the prepared questions in some instances. In order to minimize the effect of this language barrier, Dr. Hanafi thus assisted in many interviews and enabled an active and critical exchange on the topic.

Furthermore, the results of this study are only preliminary and further research on the topic is needed. For the scope of my thesis, I focused only on the actors in favour of changing the religious PSL system. A discussion of the reasoning in opposition to

reform would nevertheless also be needed in order to present the whole discourse on the topic and to understand the reactions and interactions between proponents and opponents of the PSL system. Moreover, it would be interesting to explore the discourse on the attribution of a legal sect at birth in order to fully understand what rights civil society is willing to grant to religious associations. This is especially important as this is also the basis for the electoral and general political system of the country and thus constitutes the connection between legal and political sectarianism.

D. Positionality

In recent years scholarship has acknowledged that a researcher's objectivity is impossible, as the problematization, the choice of method, the way of conducting research, the analysis of the content and the interaction with the subjects of the study are determined by the socio-economic and political position of the researcher (Bourdieu & Wacquant, 2017). My interest to study alternative conceptualizations of the PSL in Lebanon and more broadly the question of secularism is informed by my positionality – I am from Europe, where the issue of multiculturalism and especially the accommodation of Muslim communities has become a topic of high interest in political debates. My academic background in political science and Islamic studies has further encouraged me to question Western-constituted, essentialized narratives on nationalism, sectarianism and secularism. I would thus like to complicate the narrative, which equates “secular” with “progressive” and “religious” with “backward orientated” and to instead reflect critically on how different models of secularism are suitable for different contexts. Moreover, I witnessed the October 2019 Popular Uprising and experienced the

vibrant landscape of CSOs and activists in Lebanon, including their call for the introduction of a civil PSL system. This is why I am particularly interested in the topic.

Due to my positionality, I choose to take a rather descriptive and not too normative approach in my thesis. Generally, I would say that I am in favor of changing the current PSL system because I think that is neither in line with human rights, nor in line with the will of the majority of the Lebanese population. I am thus looking at the opinions of people who are in favor of change. I nevertheless do not want to claim that I have the solution to how the Lebanese state should secularize its religious courts and thus I neither want to make concrete policy recommendations nor advise activists what strategies they should pursue. Instead, I keep the thesis rather descriptive, trying to highlight which issues need to be discussed and regulated, without clearly stating where the boundaries should be drawn. I am furthermore aware that my positionality enables me to write a thesis at a private institution like AUB and make the religious PSL system in Lebanon the subject of my study. This thesis thus reinforces a hierarchy of knowledge production, that might not be in favor of the people who are suffering from the consequences of the current PSL system.

CHAPTER V

ANALYSIS

A. Written Sources

The written sources I study include the draft laws for a civil personal status system by the *Chaml* association and the NGO *Kafa* and the civil love campaign by *Absolut*. I selected these specific campaigns because the first two deal with the issue very extensively and go into much detail and the last one has been very present in the public sphere and thus reached a wide audience. Whereas the first two texts are examples of clear visions and demands for an alternative PSL system, the third campaign illustrates how blurry and unclear many other campaigns are regarding the issue. Together, they thus offer a good overview of the opposition to the religious PSL, concrete demands and the vision (or lack thereof) of an alternative PSL system. I use critical discourse analysis to investigate the most important campaigns demanding a reform of the PSL.

1. *The 2011 Chaml Draft Law*

In 2011 the Chamel association (*shamal, shabāb muwāṭinūn lā ‘unfiyyūn lā ṭā’ifiyyūn*) proposed a draft of a civil personal status law to the Lebanese parliament. This draft got relatively high attention in the Lebanese public, as many other organizations discussed it and various newspapers reported on it (e.g. L’Orient Le Jour, al-Mudun, al-Nahar). At the beginning of the draft eleven reasons are listed explaining in detail why the Chamel association is proposing this law, which are followed by 244 articles covering all aspects of personal status, including marriage, divorce, alimonies and inheritance. The argumentation in favor of a new civil personal status law does not

criticize the religious PSL but claims that the current system does not meet the demands regarding marriage of the whole Lebanese population. Rather, the current system needs to be completed with an additional, optional civil law. The argumentation starts off with sociological reasons, stating that civil marriage has been strongly demanded by Lebanese society, especially younger generations and those who want to marry between different sects (Younan & Slaiby, 2011, p. 1). It combines this argumentation with a legal argument saying that the Lebanese state already recognizes civil marriages of Lebanese; namely, the civil marriages contracted outside of the country (Younan & Slaiby, 2011, p. 2). The argument that is brought forth on the basis of this idea is that the Lebanese already have the right to get civil marriage and even have their civil marriages acknowledged by the Lebanese government. They should thus also be able to get civil marriage in their home country, where they can receive their official documents in Arabic, their native tongue, stand before judges of their nationality and be surrounded by their families (Younan & Slaiby, 2011, p. 2). This means the authors use another sociological argument worded in nationalist language. Lastly, textual arguments in favor of civil marriage are mentioned, stating that the Lebanese constitution, as well as the universal human rights declarations which Lebanon signed demand the introduction of a civil marriage law (Younan & Slaiby, 2011, pp. 2–5). Moreover, the draft makes it clear that the authors consider the Lebanese parliament responsible to introduce a civil PSL, as the constitution attributes the duty of legislation to the parliament.

All in all, the introduction thus makes a clever combination of sociological, legal and textual arguments in favor of an optional civil law. Moreover, the tone is very neutral and mainly based on legal, right-based vocabulary. The draft does not directly

criticize the operating religious courts, religious scholars or specific laws, other than that it calls the laws in place outdated, not in accordance with society's needs or science's newest findings (Younan & Slaiby, 2011, p. 6). The current system is rather presented as being incomplete and it is highlighted that an additional civil court should be created in order to improve the flaws of the system:

“In principle, it can be said that the existing personal status systems in Lebanon are optional, as a number of laws (sectarian and spiritual) are presented to citizens, to which will be added the approval of this civil law by the Parliament, so that citizens actually have freedom of choice, not the obligation to submit exclusively to religious laws. Otherwise, it is mandatory to travel to replace the right inside the country with a partial right from outside the country.”
(Younan & Slaiby, 2011, p. 6)

This mild style is not surprising given that this draft was presented to the Lebanese parliament and such a tone would increase the chance that the draft would potentially be discussed and passed. Even though the Lebanese parliament accepted the draft, it was never actually discussed officially and nor even put onto the parliament (Hyndman-Rizk, 2019, p. 188).

The 244 articles that follow the reasoning in favor of the introduction of civil personal status laws cover the issues of personal status extensively. The code covers topics such as marriage, divorce, child custody, alimonies, adoption, inheritance and specifies to who these laws should apply to. The first few articles specify who the civil personal status laws should apply to. Only couples who got married under these laws can apply its articles, but people can still keep their religious status. Once a couple chooses to do so, it has to stick to its decision and also get a divorce under the provisions of the civil law. Additionally, couples who have got civil marriage abroad before a civil PSL was introduced, should be allowed to convert their contracts to these laws through a special regulation (Younan & Slaiby, 2011, p. 8). If somebody got a

religious marriage, they would have to redo a civil one and could not transfer it that easily. Moreover, it is not clearly specified that a marriage has to be between a man and a woman and given. Article 8: “Marriage can only take place with the consent of both spouses, each of whom has completed eighteen years of age.” This opens up the possibility for homosexual marriage, as marriage is not defined as a contract between a man and a woman.

The draft responds to the most prominent critiques by activists on the current system. It sets the minimum age for marriage at 18 years old (Younan & Slaiby, 2011, p. 8) and also considers child rights in a case of divorce. Child custody for example is decided with the goal of being in the interest of the child instead of setting a specific age based on a religious doctrine (Younan & Slaiby, 2011, p. 15). Women are guaranteed equal access to divorce like men are (Younan & Slaiby, 2011, p. 13) and have the right to the same share of the inheritance as men do (Younan & Slaiby, 2011, p. 23). Moreover, religion does not prevent inheritance (Younan & Slaiby, 2011, p. 23), which opposes the status quo where Muslims can’t inherit from Christians and vice versa. Moreover, couples can stay members of their religious communities even if they chose civil marriage and should still have the right to a religious ceremony (Younan & Slaiby, 2011, p. 8).

2. *The 2019 Kafa Draft Law*

In 2019, the NGO *Kafa* also published a civil PSL draft entitled Proposal for a Unified Personal Status Law, *Iqtirāḥ qānūn muwahhad li-l-aḥwāl al-shakhṣiyya*. It was published after the breakout of the October 2019 Revolution on 12 November 2019 (Kafa 2019). The alternative media outlet *Megaphone* described it as “a first step

towards the civil state demanded by the October 17 uprising” (Megaphone News 2021). This was also the intention of *Kafa*, as one of the organisations representatives told me: “We had the idea one day before the outbreak of the October 17 uprising (*thawra*). And the topic came up during the uprising, people were talking about divorce, custody... so we talked to the people and took some of their demands into the draft.”

The structure of the draft is similar to the one of Chaml organization; it starts off with an overview of reasons for the drafting of the document, followed by 107 articles regulating marriage, divorce, child custody, alimonies, adoption, inheritance. There are nevertheless numerous differences to the draft by Chaml organization. Firstly, the civil PSL is envisioned to be mandatory for all citizens and not optional. This is enshrined in article 26 which states that any marriage contract is void if it violates the rules of this law (Kafa, 2019, p. 11). Article 3 nevertheless states that individuals are allowed to have religious marriage ceremonies, as long as they do not influence the nature of the marriage contract (Kafa, 2019, p. 2). Secondly, the introduction, where the organization explains its reasons for the necessity of civil marriage differs strongly from the one by Chaml. The basic argument for the introduction of civil marriage according to Kafa is the discrimination of women in religious courts. They use the same legal references to strengthen their argument; they mention the Lebanese constitution, the international Convention on Human Rights, CEDAW and the Convention on the Rights of the Child (Kafa, 2019, pp. 2–9). Moreover, they make it clear that reform is the parliament’s responsibility to bring change in the field of the PSL.

The reasoning nevertheless differs drastically in its tone. Kafa’s tone is much harsher than the one by Chaml, as they use expressions like “oppression in the name of God” as can be seen in the following excerpt:

“The misapplication of this article of the Constitution led to the monopoly of the sects in the field of personal status [law] and prevented the issuance of a general civil law. This allowed giving priority to the rights of the sects at the expense of the rights of citizens; It also led to the expansion of the rights of the sects, which reduced on the one hand the state’s control over them, and on the other hand, put the citizen before laws that oppress them in the name of God, and in the name of God also robs him of the ability to review these laws, which corrupted the system and made it an obstacle to the emergence of the values of citizenship, which is the basis of the human relationship. The individual is with the state through law.”
(Kafa, 2019, p. 3)

It is important to keep in mind that this draft was written in order to be discussed by parliament. This draft law was published online and is part of a larger campaign for the secularization of the religious PSL system shortly after the largest anti-sectarian uprising in Lebanese history. The aim is thus not to present a compromise that might find popularity amongst parliamentarians. The tone and wording of the draft are thus likely provocative on purpose, as this generates stronger reactions and potentially wider reach amongst the population.

Despite the different tone and envisioned audience, the content of the draft addresses the same issues and proposes the same changes as the one by Chaml. A minimum age for marriage is introduced; in case of divorce, a child’s custody is determined on the basis of the child’s interests; women are guaranteed equal access to divorce; women’s inheritance share is equal to the one of men; an individual’s religion does not prevent them from inheriting from an individual from a different religion; and people remain members of their religious communities and can have ceremonial religious marriages even if they choose civil marriage (Kafa 2019, 6-36). The major difference is just that Chaml’s draft proposed an optional civil PSL code, whereas Kafa’s draft proposed a unified, mandatory civil PSL for all citizens.

3. *The 2019 Absolut Love Campaign – The Commercialization of Civil Marriage*

One example of how prominent the topic became in recent years is the large-scale, multi-media “Absolut Civil Love” campaign that was aired in late 2018 and early 2019. It included posters around the country, online advertisements on social media and on the radio and an art exhibition in Beit Beirut (Harbie, 2019). The international alcohol brand *Absolut*, most known for *Absolut Vodka*, made a large-scale advertisement campaign centered around the topic of civil marriage. The advertisement campaign put inter-sectarian love at its heart and only featured the brand’s products as a part of the set-up in the background. The campaign claimed that free and equal love was one of *Absolut*’s main pillars. It presented Lebanon as a nation deeply divided by religious sect, which was further entrenched by 15 years of civil war. The campaign claims that the youth in Lebanon are still indoctrinated into sectarian mindsets due to a civil war they never experienced, but that Lebanese society could be transformed through interreligious love. As love is still contained within religious boundaries, it encouraged the Lebanese youth to fall in inter-sectarian love, claiming that this was the best way for Lebanon to overcome its past of sectarian violence with the slogan “Civil love is the hope for a unified tomorrow” (Harbie, 2019).

The campaign included a one-minute advertisement video on the topic where the story of Anastacia, a Lebanese Christian, and Tarek, a Lebanese Druze, is shown and it is explained that they cannot get married under Lebanese PSL despite their love for each other. Thus, Absolut organized a civil marriage in international waters, 22 kilometers off the Lebanese coast. The video claims that “Civil marriage is the first place where we end the civil war mentality”, *Civil marriage huwa ’awal maḥall minballish nikhallas min ’aqliyyat al civil war*. During the marriage ceremony members

of the marriage party drink *Absolut* drinks, who appear more as a placed product in the setting of the scene, whereas civil love is really at the heart of the video. The video does not actively call for the introduction of civil marriage but says it does not make sense that interreligious couples need to go abroad to get married. In the end, the video invites the viewer to sign a declaration for civil marriage on civillove.com⁸ (Harbie, 2018).

Another important element of the campaign was an art exhibition at Beit Beirut at Sodeco square. The exhibition featured famous pictures from the civil war, but the weapons and wounds of the war were retouched with flowers, beautiful birds and symbols of love. These pictures were also displayed on posters and on online advertisement on social media. This campaign got high resonance with both Lebanese and international media and reached more than 30 million views and impressions online. The campaign moreover won international advertisement prizes, including the Cannes Lions 2019, MENA Effies 2019 and the Pikasso D'Or 2019 Grand Prix (Harbie, 2019).

This campaign lacked any clear vision of how civil marriage could be realized in the Lebanese context. It did not actually capture what the problem of the lack of civil marriage was and presented the current religious PSL system not only as a back-ward feature of the Lebanese state, but also as the main reason for the Lebanese civil war. It presented civil marriage as the absolute solution to all the social issues of Lebanon's "divided society" without delving into the complex questions crucial to the discourse on civil marriage. Moreover, the campaign was in English and sponsored by an alcohol brand. The art exhibition, that was a part of the campaign, took place in an upper-class neighborhood in Achrafieh. The envisioned audience thus is clearly from the upper

⁸ The website is not online anymore.

class, well-educated and alcohol drinking. This means they are thought to be mostly Christian or non-religious or not very religious Muslims. Given the large online component of the campaign, the audience is most likely also envisioned to be young and potentially outside of Lebanon. This shows how the quest for civil marriage has entered the mainstream culture of these specific social classes as it is not used in a political way, but instrumentalized for the commercial interests of an international alcohol brand instead. It is important to keep in mind that this is by no means the only campaign that deals with the issue in a simplified way that misrepresents the issue. It is just one example of how shallow and inconsiderate the public discourse is in certain circles. This example illustrates that some actors demanding a civil PSL system don't have a clear understanding or vision of the issue.



1 Absolut Civil Love Logo



2 Absolut Civil Love Poster in Beirut



3 Picture of the Exhibition on Civil Love of the Absolut Civil Love Campaign



4 Picture of the Exhibition on Civil Love of the Absolut Civil Love Campaign

B. Interviews

1. The Political Imaginary of Civil Society

a. Legal Pluralism in the Lebanese PSL system

All interviewees were in favor of the introduction of a civil PSL code, as this was a mandatory criterion for inclusion in this study. Out of the ten interviewees, eight were in favor of the introduction of an optional – and not mandatory – civil PSL. Only two interviewees insisted that the civil PSL needed to be mandatory and heavily opposed the idea of introducing an optional civil PSL that would coexist with the religious PSL. The CSO actors identified the same reasons for the necessity of a new PSL system as is identified by the literature. Primarily, they mentioned that the religious PSL entrenched sectarianism, prevented “true” Lebanese citizenship and did not respect women’s and children’s rights. This is not true for the clerics who only saw the rights of the non-religious violated in the current system as it does not offer a PSL that corresponds to their ideology. Most CSO members mentioned both issues (sectarianism and the lack of children’s and women’s rights) and saw them as interconnected, especially CSO actors representing political groups. CSO members from feminist groups’ primary concern was the violation of women’s rights. The fact that most interviewees perceived the struggle against sectarianism and for women’s rights as inseparable shows that Mikadashi’s (2018) rather abstract concept of understanding of Lebanese citizenship is as being *sectarian*. This, moreover, supports Hyndman Rizk’s (2019) thesis that the issue of religious PSL has brought the women’s movement and the civil rights movement closer together.

Even though the large majority was in favor of legal pluralism, they were not familiar with the concept of legal pluralism and none of the CSO actors proposed or

mentioned it as such. Considering that they were mainly in favor of an optional civil code, they de facto uttered themselves in favor of a system of legal pluralism in the Lebanese context. They differed in their reasoning for why they thought this would be the best PSL system for Lebanon and their support for legal pluralism. The main reason for the continuation of the religious courts next to an optional civil PSL was that they found it the most realistic version, that would be accepted by both the majority of the population and the political and religious elite. One political activist stated for example:

“I want religious court still existing because people will want this option. Even if we have a unified civil law, we can’t diminish the role of religions in Lebanon, because this country is built on religions. This country is built on heritage and culture and ethnicities and all of this mess that is around here. So technically asking for a unified civil law will not be implemented without the rights to exist to their courts.”

b. State-citizen Relationship

The main reason why civil society activists wanted to introduce a civil PSL was that they wanted to create national citizenship, a direct relationship between the state and the citizen that is not mediated through any sect. In the words of a member of a political organization: “The problem is that a modern society needs citizenship, and this is not attainable under sectarianism.” This quote also reflects the association of sectarianism and religion with backwardness and secularism with modernity which many historians (Clarke, 2018; Farha, 2015) have tried to debunk. Some went beyond this and questioned the existence of the Lebanese state as long as the religious PSL were in place: “Since the independence, do we really have a state? And does the community experience a state? Answering these questions is very important. The PSL is

one of the tools used by the regime. Since the independence of Lebanon, Lebanon could not make a state. The alternative tool was the sectarian regime.” Another political activist shared this opinion: “So, what we call for is a unified law that protects the citizens as citizens of the country, as citizens of the state not citizens whose rights are protected by religious entities, which is used for the sake of politics.” Generally speaking, there is a clear overlap between the primary focus of academia (e.g. Farha 2015; Mikdashi 2014; Salloukh et al. 2015) and activists, as both claim that there can’t be national citizenship as long the PSL are religious. Moreover, activists agree with the literature that the main purpose of the current PSL system is the reproduction and general interests of the sectarian regime.

One interviewee vehemently rejected the idea of the introduction of a voluntary civil PSL and insisted that a civil PSL had to be mandatory for all Lebanese citizens based her argument on the issue of citizenship too. She viewed the religious PSL system as a tool of the sectarian regime only and denied that it was also a state institution: “We need a unified personal status law and state that the actions from religious courts are illegitimate. [...] We consider the religious personal status law not a part of the Lebanese state. Religious personal status laws are a part of sectarianism, but not of the state.” For her thus the abolishment of the religious PSL is absolutely necessary for the creation of a non-sectarian, civil state. She not only based her argument on the criticism of the sectarian elite and the importance of the sectarian PSL as an important tool in their political economy to uphold the sectarian system. She also expressed absolute rejection of any form of legal pluralism and a strong conviction in legal uniformity being the only option to provide the rule of law in a state.

c. Extension versus Transformation of the Religious PSL

The majority of the interviewees wanted the introduction of an optional civil PSL without the abolishment of the religious PSL and leave Lebanese citizens the choice of what system they wanted to regulate their personal status affairs. Some of them also thought that religious associations had the right to regulate the PSL of their members, as long as the members chose religious marriage over civil marriage. They nevertheless imagined the degree of the transformation needed to turn the religious PSL system into a civil one differently. “They put us between two options and say we have to choose to be either a civil or religious country [...] But who said that these are the only choices and who said that one omits another, is it not possible that we build some mixture of both?” I suggest that the CSO actors conceptualizations of a new civil PSL system can be categorized into three different categories: first, non- or minimal transformation; second, partial transformation and third, complete transformation.

The first, non-transformative option was proposed by the clerics interviewed. They suggested the introduction of a 19th sect, a civil sect, that all Lebanese citizens had the right to convert which would allow them to access civil jurisprudence regarding personal status affairs. One of them said: “What about the 1% who are extremely secular and want civil marriage? This is the issue here, but don’t say the Lebanese. It is a certain number, it’s a real minority. [...] What about sect number 19? It can be considered like this and whoever thinks that he is a secular person and doesn’t want any religious interference in his life. Yes, he can have a civil law.” They moreover stressed, that people who chose to enter the civil status should lose their access to the religious group they formerly belonged to and for example only be allowed to vote for “civil”

candidates in elections. This would also mean that they should lose the right to have a ceremonial or symbolic wedding with their religious institution after they got civil marriage. This highlights that they did not envision a real change or transformation of the current system which they considered good the way it is currently. Instead, they only demanded an extension of the system that would grant rights to people who considered themselves nonreligious and have thus been neglected and discriminated against by the system so far.

Most CSO members advocated for a partial transformation that went beyond adding another “civil” sect to the current system. The introduction of a civil PSL was not considered to be enough but they also demanded increased oversight, regulation and institutional changes to the religious courts. They favored the introduction of a civil PSL that would operate on a legal level only and not interfere with a person’s religious affiliation. In other words, this system would give people the possibility to access civil marriage, divorce and inheritance laws but still be part of religious communities and for example have both a civil and religious marriage, whereas the latter would be purely ceremonial and not legally binding. Some of them furthermore proposed that the staff at religious courts should be replaced with civil servants, meaning that state-trained lawyers and judges would work in religious courts and execute religious laws. Others went further and also demanded that the state regulate the content of the religious courts and oversaw which laws were constitutional or not. One political activist even demanded that the civil law should be superior to the religious ones, meaning that one should be able to access civil PSL and leave the religious PSL at any moment. He proposed for example, that women who married under any religious law should still be able to get a civil divorce if they wanted to. “So, if you took these rights [right to regulate

inheritance issues] from them [religious leaders] and you just give them limited rights to do what they want to do for the people who believe in it. So, if you're a woman and you want to take this [religious] divorce package, you could take it. It's an option, but the state will protect you if you don't want it anymore."

The third option, which was also seen as a possible solution by many of the CSO actors, was the introduction of a civil court that would completely replace the religious PSL. Many stated that this was their preferred option on personal level, but also mentioned that they believed that the majority of the Lebanese population was in favor of the continuation of the religious PSL. Respecting the opinion of the majority they thus suggested the continuation of religious courts (as long as they met some criteria) One interviewee said: "We are sure that many will keep on resorting to the religious courts" and another CSO actor mentioned that their organization even conducted surveys on the topic: "As for the current reality, we have asked thousands of people in Lebanon about the issue of personal status [...]. When people were asked whether they are in favor or against the religious personal status system, they say they are in favor of it." All in all, the majority of CSO actors proposed that the system be transformed structurally and went beyond the demand of adding a "civil sect" to the system.

2. Setting the Jurisdictional Boundary of the PSL system

a. Replacement of religious personnel in religious courts

The most voiced critique was at the institution of the religious judges in the courts because they are not judicially liable. In other words, they legally cannot be counted accountable for their actions by any state institution. Activists criticized that the decisions of religious judges were sometimes arbitrary and against the custom of their

own legal system, but the decisions they had taken could not be overturned or fought. One feminist activist recounted that her association was trying to help a mother to prove the legality of her child to officially register it and enable it to access to Lebanese nationality and education. The father nevertheless did not recognize the child as his own, even though there was a DNA test that proved that the child was his. The judge ruled that this said man was not the father and despite extensive efforts, the mother could not fight this decision and register the child. The feminist activist thus said as long as religious scholars took legal decisions arbitrarily there could be no rule of law in Lebanon.

Generally, there were two different criticisms of religious staff in the courts, one on the personal level and one on the institutional level. This means, firstly that the currently active judges and their behavior were criticized and described as arbitrary and corrupt by activists, especially the feminist ones. They accused the religious scholars of collaborating with the sectarian regime and promoting their own interests instead of the ones by the general population. The criticism towards the religious staff went beyond that, as many CSO actors were against the use of clerics as court employees in general for the establishment of a civil PSL system. In other words, they even considered the non-corrupt clerics who implemented their laws according to their best and fairest capabilities as non-legitimate staff for courts. The CSO actors who shared this view proposed three different demands regarding the issue: religious scholars should be educated by the state (1), a mechanism should be introduced to hold them accountable for their actions (2) or they be completely replaced by civil lawyers and judges who would implement religious laws (3).

The third group which demanded that the religious personnel in religious courts should be replaced by civil personnel argued that civil judges and lawyers implementing religious laws would be more systematic and reliable and thus lead to higher legitimacy and rule of law in the courts. One of them nevertheless did not propose this as an ideal solution, but rather as a first step to achieve improved conditions in religious PSL courts: “At least it should be a civil judge who implements the religious laws, so that there is a limit to the power and human rights are respected.” This opinion was supported by another feminist activist who demanded that judges’ role in the PSL system should be reduced to an advisory, non-binding one: “Religious men should only be for religious affairs; religious education, for giving good morals, they should not be granted political and legal authority. They are interfering politically and legally and are granted this right by the Lebanese constitution. They even have the right to refute the constitutional council. And I am against that. [...] You can be a mediator (*wasīf*) as a religious man for marriage issues, but it can’t be legally binding.”

b. State Interference in the Religious PSL – The Question of Discrimination in the Name of Religion

In a minimal secular state, it is important that the state not only determines which groups are granted special rights, but that it also clearly sets up boundaries regarding the special rights and exemptions these groups are granted. This is necessary for the state to protect the rights of its citizens and to protect them from discrimination from a religious association (Laborde, 2017). In the words of a political activist: “You have to continue the sentence and say [...] you want justice for all citizens, not only justice within civil law. What do we mean by that? Are only those who choose civil law

entitled to human rights, and the rest are left to sectarian systems that do not have justice in which there is violence and discrimination?”

Except the clerics, all CSO members were clearly in favor of increased state regulation and interference within the PSL in order for the institutions to be considered legitimate. There was a high consensus that a state institution, as foreseen in the Martell Decree of 1936, should oversee the religious PSL and check the laws in conformity with the constitution. One CSO member of an interreligious organization said: “It is a logical idea that we should impose a control mechanism for religious courts [...] and how they relate to the state and the Judicial Council. Here, a mechanism can be created to improve the performance of religious courts. This is to guarantee the rights of people who remain under religious courts.” Moreover, the interviewees stressed the importance of strengthening the power of the Court of Cassation over religious courts: “The civil court [the Court of Cassation] refused to do anything in contradiction with the religious jurisdiction. The civil court [the Court of Cassation] obeys the religious [ones] and that’s a problem, that’s a big problem.”

Even though activists did not have an elaborated, clear idea regarding where the state should interfere with the jurisdiction of the PSL, they mentioned some core issues. Issues that were mentioned were state funding for religious courts that people wanted to be stopped. “Yes, let the people who believe in this pathway pay them [religious courts] fees. The government should not put fees on them. Let them have their fees and the people who want to take this decision, pay them taxes, pay them fees.” Moreover, it was proposed that religious institutions should only be able to officiate marriages and not control inheritance. “But they can’t control inheritance, because that belongs to the people, not to the sect.”

One activist proposed that the religious institutions should bring about change by themselves and the state should warn them that it would take away their competencies over their constituencies in case they did not establish laws that were more in line with human rights principles. She said: “You sects, do some diligence to your laws. You strive and you develop to become progressive with human rights, get involved in the civil state. We are trying to preserve your presence, but you also move forward, and don't wait for it to be imposed on you.”

c. Children’s Rights in Religious PSL

According to Laborde (2017), religious groups have the right to discriminate against their members, as long as membership in the association is voluntary and the discriminatory practices reflect a core value or principle of the religious doctrine. This opens up questions of which discriminatory practices within religious PSL are a part of the core religious doctrines. Are the set minimum age for marriage or the unequal shares in inheritance for men and women at the core of Islam? Is the implausibility of divorce at the core of catholic Christianity? The interviewees did not seem to have clear concept of where the line was to be drawn regarding these issues.

The lack of protection of children’s and women’s rights was the other domain where CSO members wished for more state interference. One political activist stated: “One of the main issues that crosses my mind is the Shia’s courts because of the kids that are lost from their mothers. The mothers don’t have any rights and they are taken to their fathers.” The example that was mentioned most was the setting of a minimum age (at 18 years) of marriage to protect children: “One of the preventions that could be done with a unified civil law... like the Shias are not eligible to make 12 years old girls get

married. The state protects the rights of these people. If she's 18 and she wants to get married in a Shia court, that's fine. It's an option, but the state would protect the rights, the general rights of the civilians. But they [religious courts] could still exist, I don't mind." The high awareness and importance attributed to this topic likely reflects the exposure to it through the numerous awareness-raising campaigns mentioned earlier. The issue of the protection of children is already fought in practice, as one of the clerics recounted. The domain of religious courts and civil courts are overlapping regarding child protection and whether it was better for them to live with their father or mother and thus people switch between the two courts in order to get custody over their child. If one of the parents is not happy with the decision of the religious court regarding who gets custody over the child, they will often go to a civil court concerned with the protection of children's rights in order to get custody.

d. Women's rights in Religious PSL

Regarding women's discrimination, the interviewees who were in favor of legal pluralism had different opinions. Some demanded that religious courts should not be able to discriminate against them in any way and enable women the same access to divorce as men do and the equal right to inheritance. This means that they do not tolerate any form of discrimination in the name of religion and do not want religious groups to be exempted from the gender equality principle enshrined in the constitution: "That's why I'm telling you it's better if everyone is subject to civil law. If they want to marry under religious law, it is their right, but the right to inheritance and divorce should be civil. [...] I know, but this is the only solution to have equality, non-discrimination and to end these problems."

The majority of interviewees nevertheless argued that as long as religious courts were voluntary, gender discrimination within them was tolerable. One activist said: “So, if you took these rights from them and you just give them limited rights to do what they want to do for the people who believe in it. So, if you’re a woman and you want to take this divorce package, you could take it.” This opinion was mainly shared by clerics and the members of political organizations and parties, whose main concern with the religious PSL is not the protection of individual’s rights but the creation of sectarian citizens through this.

e. Voluntariness of the Religious and Civil PSL

As explained above, there was one feminist activist who strongly opposed the idea of a voluntary civil PSL, whereas all the others favored an optional civil PSL. They argued that every Lebanese citizen should have the right to choose whether they wanted to follow one of the religious PSL or the civil one. One of them stated: “On the one hand, we should have a unified mandatory civil law, but there should be an option to get a sectarian marriage. One should be able to choose the form of their relationship mediated by their sect as an exception, that cannot contradict civil law.” Thus, they clearly demanded an opt-out option from the religious associations and a civil alternative. Being able to choose and easily leave one’s religious association is one of Laborde’s (2017) main conditions to grant religious associations exemptions from the constitution and the right to discriminate on the basis of gender for example. According to her, this is also the main mechanism to avoid the trap of groupism, the primordial attribution of individuals to specific groups, as it is currently practiced in the Lebanese legal system. The CSO members nevertheless offered different visions of what

voluntary membership in a religious group could mean and how the “opt-out option” could be realized.

3. Legal Pluralism as a Transitional Solution

A striking feature of many interviewees was that they claimed that their favored system was a PSL system where an optional civil PSL code would complement the religious ones. They moreover emphasized that they were not in favor of the abolition of the religious PSL. When delving more into the topic, it nevertheless became clear that the parallel existence of a religious and a civil PSL did not constitute the ideal vision of the Lebanese PSL system, but rather a temporary mode of organizing the PSL. They thus viewed legal pluralism not as the norm, but as an exceptional PSL system that could constitute an improvement to the current situation or open up the door for more change. This is illustrated by the following excerpt of a talk with a feminist activist, who first uttered her support for an optional civil law, but later clearly stated that this did not reflect her ideology, but rather presented what she considered feasible and an improvement to the status quo:

“You can have optional civil marriage. It’s my personal opinion. Because you have freedom to do anything you want. [...] I don’t know I prefer to have a civil court for all and it’s optional to you to have civil marriage or religious marriage. But either way, if you have religious or civil you have to go to civil law, under civil law I mean. [...] Yes, one unified civil law. That’s what I prefer, because if you go to the religious court, you will not have equal rights. [...] That’s why I’m telling you it’s better to all subject to one civil law. If they want to marry under religious law, ok it’s their right, but the right to inheritance, to divorce should all be civil.”

Another activist stated that marriage and the PSL should naturally be civil for all Lebanese civilians, but that they could be granted religious PSL as an exception: “On

the one hand side we should have a unified mandatory civil law, but there should be an option to get a sectarian marriage. One should be able to choose the form of their relationship mediated by their sect as an exception, that cannot contradict civil law.”

I think it is important to keep in mind that the current PSL system is definitely used by the sectarian regime of the country to reproduce the sectarian system. Moreover, one cannot forget that the current Lebanese system is not a liberal one and that change is thus not likely to occur according to liberal democratic principles. One cannot make use of a democratic tool to bring change within this domain right now and hold a referendum for example. It is not only the institutional setting that makes change difficult. Actually, the opposite is the case, as the historical context has shown; the legal basis for the introduction of a civil PSL system exists since 1936. There is not only distrust in the capabilities of religious staff at the PSL courts, but also their loyalties and interests. They are seen as playing an integral part in the upholding of the sectarian system, rightfully so. There is little resistance by them for change, but rather cooperation with the sectarian elite. Thus, many CSO actors seem to think that chances are highest for the introduction of an optional civil PSL. They hope that once civilians have this choice many individuals would leave their religious PSL and join the civil PSL once they had seen its benefits: “So having a civil law for the country that diminishes the rule of sects in the government and in the laws, constitution and everything would *eventually* lead to having a civil state, a unified civil law that the people believe in, that the people can refer to. But to abolish it now and make the people choose this, it’s impossible, because they haven’t seen the benefits of it. They haven’t seen the real impact of it. So, you see, it is a step-by-step process!” Another one stated: “Step by step is better. In other words, in Lebanon, I think it works step by step.

Optional civil marriage. Then I think most of the people will go to optional civil marriage and then they will see that it's more effective. They are getting their rights more.”

C. Student Survey

AUB students performed a survey on how students from Lebanese universities form ethical judgments regarding various topics, including religious PSL. They conducted a survey with 300 students from different universities, although the majority (66%) were AUB students. The survey included questions on civil marriage and the PSL system. It is important to keep in mind that the sample is a convenience sample, only includes young people who are highly educated and mainly from the upper-middle class and upper class. The sample nevertheless reflects the sectarian demographics of the country relatively approximately and includes 45% male and 55% female participants. Overall, the sample is thus indicative of the general opinion of this specific group in Lebanon which one day could be in positions of power and shape the politics of the country.

1 Approval for Civil Marriage

<i>I am in favor of civil marriage.</i>	
Answer	Percentage
Agree to be compulsory	12.4 %
Agree to be a choice	61.1 %
Neutral	15.8 %
Disagree	7.4 %

Strongly Disagree	3.4 %
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2 Approval of Adding "Civil" Sect

<i>I am in favor of adding a "civil" sect.</i>	
Answer	Percentage
Strongly Agree	20.4 %
Agree	35.8 %
Neutral	28.8 %
Disagree	12.0 %
Strongly Disagree	3.0 %

Civil marriage was favored by 73% of the students and 12% of them even wanted it to be mandatory. Only 11% of the students were against civil marriage. There was no significant difference in approval of civil marriage between the different sects or the religious as opposed to the non-religious. When asked whether they were in favor of adding a "civil" sect to the 18 existing sects, 56% agreed and 15% disagreed. The difference in approval for these two questions indicates that they do not consider having a "civil sectarian status" a condition for civil marriage. The lower approval for the introduction of a "civil sectarian status" could nevertheless also reflect lower prominence and familiarity with that topic as compared to civil marriage resulting in more people taking a neutral stance. Alternatively, it could also mean that some of the people are against attributing any sectarian status to Lebanese citizens and thus they also reject the idea of the introduction of a "civil" sect.

3 Approval for Having Religious PSL System

<i>I am in favor of having personal status laws by sect.</i>	
Answer	Percentage
Strongly Agree	6.4 %
Agree	15.8 %
Neutral	22.5 %
Disagree	26.5 %
Strongly Disagree	28.9 %

4 Approval for State Interference in Religious PSL

<i>Should the state interfere with this law?</i>	
Answer	Percentage
Yes	60.7 %
No	39.3 %

The students were also asked whether they were in favor of having personal status laws by sect and whether they think the Lebanese state should interfere with the PSL system. 22% of the students were in favor of maintaining the status quo of the PSL system and 39% stated that they were against state interference with the law. 55% of the students were against the PSL system, of which 29% said that they strongly opposed the system. 61% uttered support for state interference in the PSL system. In this question there were differences by religion: 27% of Muslim students were in favor of upholding the religious PSL system, whereas only 13% of Christian students favored it. This is in line with other surveys which have shown (Hyndman-Rizk, 2019) and most likely

reflects that religious family law is considered to be an important part of their religion by many Muslims, whereas for Christians this is less the case. Moreover, higher religiosity also had an impact on higher approval for the religious PSL system (throughout all religious groups). The fact that only 55% of the students were against the PSL system, but 61% of the students are in favor of state interference with the PSL system indicates that even some of the students who are in favor the PSL system (or at least feel neutral about it), are in favor of state interference and thus support change in the system.

These results indicate very high approval of civil marriage and low approval of maintaining the religious PSL system as it is today. These would most likely be much lower if a representative survey with the whole Lebanese population was conducted. They nevertheless indicate that the Lebanese university students are clearly in favor of changing the religious PSL system.

CHAPTER VI

CONCLUSION

This thesis suggests that there is broad support for the reform of the current PSL system in Lebanon, including the introduction of a civil PSL code. The student survey suggests that especially among the young and well-educated there is high support for a change in the system. Legal pluralism is not only the status quo but also the envisioned model for the future of the regulation of personal status affairs, as various CSO actors in Lebanon call for it. Most CSO actors don't consider legal pluralism as part of their ideology, but rather as a temporal necessity; they see the introduction of an optional civil PSL as the beginning or first necessary step for the transformation of the current religious PSL system into a civil one. This suggests that there is a broad call for legal pluralism, although it is mainly envisioned as a temporary legal pluralism that offers an improvement of the human rights situation, as well as the beginning of a transitional phase in the creation of a civil Lebanese state. It is nevertheless important to note, that CSO actors not only propose this solution for pragmatic reasons. They also believe in religious groups' rights granted in Article 9 of the Lebanese constitution and respect that the majority of the population is in favor of religious courts.

Moreover, this thesis argues that Laborde's framework of the *minimally secular state* is helpful to think through the topic. Her framework suggests that European-style secularism is not the only option for legitimate state-religion relationship and that the jurisdictional boundaries of religious associations need to be drawn carefully. Her theory allows for the rethinking of some of the points raised by other scholars and activists in a new way, as well as thinking through issues that have not yet been addressed in the Lebanese public discourse. Some of the guiding principles CSO actors

that demand a civil, but plural, PSL system could think through for the formulation of their alternative vision are kompetenz-kompetenz, discrimination in the name of religion, voluntary membership in a religious group and the creation of an institution that sets the jurisdictional boundary of the religious courts. One example is one of the most important issues in the debate on the religious PSL: the lack of protection of women's and children's rights in religious PSL. Laborde's theory suggests that one way of dealing with this issue is to prohibit the unequal laws on the basis of sex and introduce a mandatory civil PSL, as it is also suggested by many others and which would reflect the European realization of a *minimally secular state*. Another option is to recognize the discriminatory practices that are central to the ideology of the religious doctrines and allow religious institutions to discriminate against the people who choose to follow these practices. It is nevertheless necessary that the religious groups need to publicly announce the content of their doctrine and indicate their discriminatory practices (1) and that membership in religious groups is voluntary (2). The first point is something that neither came up in the reviewed literature nor was it brought up by the interviewees. It could nevertheless constitute an improvement as it would lead to increased public deliberation and might lead to reform from within the religious institutions.

The second point – voluntariness in group membership – sounds very easy in theory but is more difficult in practice. Theoretically speaking, an individual should have the right to leave any group, including a religious group, at any given moment and always have access to an opt-out option. This means, that an individual could get married under a religious PSL, but then decide to leave their religious group. In this

case the individual would have to follow the conditions of the contract they originally signed even if they did not believe in its content anymore.

One of the major questions regarding a civil, but legally plural PSL system in Lebanon remains: can religious courts exist (in parallel to civil ones) in a way that they serve the interest of the general population and not the sectarian regime? This question reflects the general dispute in academia on legal pluralism: does legal pluralism increase or decrease social cohesion in a multi-cultural society? It is needless to say that the current PSL system is used by the sectarian regime of the country and increases sectarian divisions. Furthermore, it does not reflect the wishes of the majority of the population. Nevertheless, this thesis has suggested that the system could actually become civil and secular if important changes and limitations would be introduced. Consequently, the question is whether the elite of the country would ever allow for these changes to happen. One should not forget that the current Lebanese system is not a liberal one and that change is thus not likely to occur according to liberal democratic principles but only if the elite decides to do so. One cannot make use of a democratic tool to bring change within this domain right now and hold a referendum for example. It is not only the institutional setting that makes change difficult. Actually, the opposite is the case, as the historical context has shown; the legal basis for the introduction of a civil PSL system exists. There is not only distrust in the capabilities of religious staff at the PSL courts, but also their loyalties and interests. They are seen as playing an integral part in the upholding of the sectarian system.

I think it is unlikely to happen that the current elite would allow reforms to the religious PSL system to the degree that it would become an overall civil system as envisioned by CSO actors or a *minimally secular state* according to Laborde. This view

is shared by a CSO member who recounted: “What you said could be a solution for a country whose representatives are active in the legislative process, and it cannot be applied in Lebanon because of the strong overlap of religious institutions in legislative institutions and in all corners of the state. For the success of your theory, specific elements must be present, including limiting the legislation of religious institutions to specific issues and not interfering in political legislation. State institutions have the ability to reject or accept the legislation of these religious institutions without fear of representatives from the domination of religious institutions over their political life.”

The demand for a civil PSL system that includes strictly regulated religious PSL codes could nevertheless be one of the major demands of civil society organizations and adapted as a new strategy. It could allow for the issuing of policies that are made in the interest of the majority of the population and not just a small elite and protect the rights of individuals and groups they are granted by the constitution.

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