

PART III



GENDER AND THE LEGAL BOUNDARIES OF THE COLONIAL CIVIC ORDER

Law is a principal means by which the terms of citizens' participation in the civic order are set. An influential and still useful model is that of T. H. Marshall, who categorized laws affecting citizens' status into those that establish political, civil, and social rights.¹ While Marshall argued that in Britain the state awarded these various rights progressively over a period of centuries, we have seen that the process in Syria and Lebanon was much more compressed and complex. Within their first decade, Syria and Lebanon adopted constitutions that set basic legal boundaries of political rights to vote and hold office; of civil rights to individual freedoms of speech, thought, faith, association and property; and of social rights, mainly to education. And while Marshall's model assumed that the expansion of rights progressively equalized the status of all citizens, we have already seen that the constitutional era in Syria and Lebanon instead established a hierarchy of citizens.

In other words, the legal boundaries of colonial civic order set a variety of gendered, class, and religious obstacles to full participation by all citizens. As in many other countries, citizens challenged these limits on their political, civil, and social rights. Two aspects of this struggle were distinctive in Syria and Lebanon. First, the state was not the sole lawmaker. Under the mandate charter, legal authority was split between the state's jurisdiction over civil law and religious patriarchs' supervision of religious law. Second, this dual legal system combined with the crisis of paternity and reshuffling of social hierarchies described in previous chapters to bring conflicts over rights to a focus on issues of gender.

Dualism in legal authority was rooted in the Ottoman era, when sultans decreed a body of civil law alongside the Islamic law that had organized life in the Middle East since medieval times. Theoretically, civil law (*kanun*) was intended merely to supplement Islamic law (*shari'a*), but it came to dominate it in the nineteenth century. Under the Tanzimat reforms, the Ottoman state steadily stripped the *ulama* of the authority they had formerly exercised in commercial, criminal, and other areas of law. These latter were incorporated into civil law codes administered directly by the state in special courts. The residual category of law left to the governance of Muslim and non-Muslim religious officials came to be called personal status law. It concerned mainly matters of marriage, divorce, and inheritance, and was handled in separate religious courts. The Ottoman state retained some influence over these courts by organizing Islamic law into a comprehensive code (the *Mecelle*) and by controlling the appointments of judges to Islamic courts. But the centralizing state remained jealous of even this degree of legal autonomy, and in its last years attempted to assert further control. For example, in 1917 it decreed revisions to the personal status laws of all religions in a new Family Law and it asserted, for the first time, the power to approve appointments in the Maronite Church, in theory making the Maronite patriarch a functionary of the state much as Muslim *ulama* were.²

The French mandate inherited this dual legal system, but with a difference. The mandate charter effectively reversed the Ottomans' drive toward legal unification by fixing strict limits on the state's power over religious law. The charter explicitly required the French to respect personal status laws and it prohibited them from all interference in the management of religious communities.³ The French did not, for example, have the Ottomans' power to ratify the elections of Muslim and non-Muslim religious patriarchs by their communities. The French also had little authority, in contrast to the Ottomans, to initiate reforms in personal status law, which was now left entirely in the hands of the *ulama* and clergy. This stood in sharp contrast to the powers of Mustafa Kemal's independent state in Turkey, which aggressively completed the Ottoman drive toward unification of all laws in the 1920s by abolishing Islamic law and religious courts altogether.

The mandate's dual legal system had profound implications for the definition of citizenship in the colonial civic order. First, it posed religious patriarchs as autonomous legal authorities in competition with the state. There were many grey areas over which the state and religious leaders would fight for jurisdiction. Second, all citizens would not enjoy the same status, because personal status laws varied among the religious sects. Moreover, those aspects of citizens' status determined by religious law were not a matter of right. Lay members of religious communities had no legislative mechanism that gave them the right to compel changes in religious laws governing marriage, divorce, and inheritance. As a result, many citizens opposed the dual legal system. Many nationalists, for example, viewed the truncation of universal rights by religious law as a fatal obstruction to the creation of a truly national and republican community. But because nationalist elites also found religious leaders useful in building political constituencies, they mounted no serious effort to abolish the dual legal system. It would instead be various subaltern groups who would mount open opposition. Islamic populists favored the abolition of civil law in favor of Islamic law, while Communists were profoundly secularist and anti-sectarian.

But it was the women's movement's demand for reforms to religious law and equal rights in civil law that ignited the most controversy, fanning the flames of the postwar crisis of paternity. Their demands sent tremors through the entire colonial civic order. They not only threatened the base of religious patriarchs' power, the dual legal system, but also the power of the state and nationalist elites who depended upon religious support, and the power of all men in all families. Part Three will study, then, not only how the dual legal system restricted women's citizenship within narrow boundaries, but also, conversely, how a gender perspective may be used to understand the broader process of negotiating the terms of citizenship in the colonial civic order. Most studies on the civic order in Syria and Lebanon have focused on class and sectarianism, and so have elucidated only one pillar of paternalism. A focus on gender conflict, however, reveals the fundamental linkage between both pillars of paternalism: mediated hierarchies of power, and the dominance of men

over women. Indeed, gender was so fundamental to the civic order that it became a primary arena for all battles to redefine citizens' rights. Chapters six through eight will examine how women's efforts to gain political and civil rights excited massive opposition from religious interests and their nationalist allies; chapter nine will examine men's and women's more successful campaign to claim social rights against paternalistic privileges, thereby laying the foundation of a colonial welfare state.