

The politicization of the *demos* in the Middle East:
Citizenship between membership and participation in the state

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“We are not born equal; we become equal
as members of a group on the strength of our
decision to grant ourselves mutually equal rights.”

Hannah Arendt, *The Origins of Totalitarianism*, 1973:301

“groups cannot be assigned rights unless they are
first assigned members”

Michael Walzer, *Pluralism in Political Perspective*, 1982:20

Map of Middle East and North Africa (MENA)*



* The map shows Sudan before partition into Sudan and South Sudan, i.e. prior to July 2011.

Source: University of Notre Dame, http://ocw.nd.edu/arabic-and-middle-east-studies/islamic-societies-of-the-middle-east-and-north-africa-religion-history-and-culture/Images/middle-east-and-north-africa-political-map/image_view_fullscreen, accessed 26 August 2012.

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"The Lebanese Census of 1932 Revisited. Who are the Lebanese?," *British Journal of Middle Eastern Studies* 26, no. 2 (1999)

Chapter 3

"Tune in Religion, Turn on Pluralism, Drop Out Citizenship? Membership and Political Participation in Jordan, Kuwait and Lebanon," in *The Middle East in a Globalized World*, ed. Bjørn Olav Utvik and Knut Vikør (Bergen: C. Hurst & Co and Nordic Society for Middle Eastern Studies), 2000

Chapter 4

"Gender, family law and citizenship in Syria," *Citizenship Studies* 14, no. 5 (2010)

Chapter 5

"Female citizenship in the Middle East: Comparing family law reform in Morocco, Egypt, Syria and Lebanon 1990-2010," forthcoming in *Middle East Law and Governance*, Spring 2013.

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A note on transliteration

Arabic names of places and persons are rendered as they appear in common usage in western media in order to make it easier to read for those unfamiliar with Arabic conventions of Arabic transliteration. I have left out diacritical marks except for ‘*ayn* (‘) and ‘*hamza* (‘).

Epilogue

Patti Smith: “Citizen Ship”, *Wave* (1979)

Nizar Qabbani: *ana untha* [I am a female] and *thuri* [Rebell] from *yawmiyyat imara’a la-mubaliya* [Diary of an indifferent woman], (1968) in *al-a’mal as-shi’riyya al-kamila*, part 1, manshurat Nizar Qabbani, Beirut, n.d.

Naji al-Ali, *ar-risha al-qatila* [The lethal quill] drawing, poetry by Mahmoud Darwish. Postcard issued by the Egyptian solidarity Committee with Palestinian People, 30.3. – 2.4.1984

Preface and acknowledgements

One of the findings of my Cand. polit. thesis on how the Kuwaiti Sabbah regime reinstalled its internal grip on power after the Iraqi occupation (August 1990 – January 1991) was that the Kuwaiti citizenry was reconfigured after liberation. Statistical figures issued by the Ministry of Planning in Kuwait provided during my fieldwork at the time (May – June 1992), showed between 210,000 – 280,000 persons (depending on which official figures were used), previously officially enumerated as ‘Kuwaitis’ before the war, were officially re-enumerated as ‘non-Kuwaitis’ after the war.¹ The mass-meetings I witnessed where Kuwaiti women married to non-Kuwaitis (particularly Iraqis and *biduns* – i.e. stateless Kuwaiti residents – whose residency permits and identity cards had been annulled) desperately presented the plight of their families after the war, left unforgettable images in my mind.

These experiences were not the first images that made a lasting impression on me with regards to how people are categorized as citizens, non-citizens and refugees according to the political priorities of power holders. Born in 1963 and raised in Beirut until the age of 12, I attended school at *Greenfield College* located beside the Sabra and Shatila refugee camps. Between 1966 and 1975 the school bus drove daily beside the camps, and I still remember that Palestinian camp refugees lived in dwellings made of carved oil barrels amidst the beautiful pine trees that were at the time plentiful in the camps. As schoolchildren we never learnt of the political armageddon that had caused the drama around us, but we learnt a lot about vikings. Little did I then know that Norway would eventually become my new home in 1976 after the civil war broke out.

The tragedy of the Sabra and Shatila massacres in September 1982 occurred at the same time as I arrived at Distrikthøyskolen in Molde where I had decided to take a year off to “learn something about politics” before indulging in my main interest, biology. The majestically beautiful western parts of Norway were a turning point: there I made life-long friends, plunged into the historical background of the Palestinian-Israeli conflict, had the privilege to be tutored by Ingunn Norderval – a Nordic pioneer with her study on women in Norwegian politics, and biology was abandoned for the sake of the social sciences. I continued my studies in Oslo and Cairo the following years. In Oslo I was tutored by Norway’s finest expertise on the Middle East whom I hereby thank: Nils A. Butenschøn, Per A. Christiansen, Einar Berg, Kari Vogt, Gunvor Mejdell and Anne Aabakken. Living and studying in Cairo was indeed a civilizing process: thanks to Cynthia Nelson and Walid Kazziha at the American University in Cairo who made lasting impressions on what teaching is about. The friendship made in Cairo with Gerd Marie Ådna, Nora Stene and Anne Marie Borgvad is still cherished.

During my work as a researcher at Fafo² (1993 – 1999), and as teacher at Ostfold University College since 2004 until date, I benefitted from many short-term fieldworks

¹ Rania Maktabi, "The Gulf crisis (1990-1991) and the Kuwaiti regime: Legitimacy and stability in a rentier state" (Cand. polit. thesis, Department of Political Science, University of Oslo, 1992), 98-101.

² Fafo is a Norwegian research institute previously known as Institute for Applied Social Research. It is now known as Institute for Applied International Studies.

ranging from 2 – 4 weeks in Kuwait, Jordan, Lebanon and Syria.³ I am indebted to discussions and collaboration with previous colleagues at Fafo – Åge Arild Tiltnes (particularly during my fieldwork in Syria in 2006), David Drury, Marie Arneberg, Dag Henrik Tuastad, Are Hovdenak, Geir Øvnsen, Lena Endresen, Signe Gilen, Jon Pedersen, and Jon Hanssen-Bauer.

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³ In Lebanon (July 1994, October 1995, December 2008, December 2009, and January-March 2011), Jordan (March-April 1994, November 1995), Kuwait (May-June 1992, March-April 1997), Syria (November-December 2006 and April 2007).

I cherish the memory of my aunts Batoul Maktabi and Ismat Annan who provided me with warm hugs and loving homes during my visits to Beirut over the years. Special thanks to aunt Ferial and her husband Abdel-Ghani Mroueh for the sun and the daily morning juice during the last three fieldworks in Beirut in December 2008, December 2009 and January – March 2011.

My family and my hometown Fredrikstad are two main anchors in my life. I thank my mother Rafah (born in Legos, Nigeria in 1943 and equipped with a British passport upon birth by parents – Nimri and Ali Mansour – who came from the South Lebanese village of Jwayya. Though located in Beirut, they made their livelihood from commerce in textiles in Western Africa and Manchester), my father Reza (born in Damascus in 1937 by a Damascene mother – Izdihar Isfahani – and an Iranian father – Ali Akbar Maktabi – who migrated from his hometown Isfahan during the 1920s and became a carpet dealer in the Levant where the British and French Mandate had been established), my brother Rami and my sister Racha for stretching out many helping hands over the years.

Soulmate Lone: warm hugs for the music, run & talk-therapy, and yearly 'skriveuker'.

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Fredrikstad, 15th March 2012

Dedicated to the memory of Cynthia Nelson (1933 – 2006)
fabulous teacher at The American University in Cairo

Abstract

The four articles that constitute the thesis are qualitative case-oriented comparative studies of the politics of citizenship in the Middle East and North Africa region (MENA). The 'politics of citizenship' refers to the relationship between forms of membership in the state and patterns of participation in the polity, as reflected in six Arab states. Two articles are case studies on Lebanon and Syria respectively. Two articles are comparative studies. One compares the politics of citizenship in Jordan, Kuwait and Lebanon. The other compares female citizenship in light of family law reform in Egypt, Lebanon, Morocco and Syria.

The thesis looks into the process of state formation and analyzes the political impact of the organization and distribution of power along gendered and religious lines in Arab states. The emphasis on the state's *demos*, the Greek word for 'population', seeks to highlight how 'the people' is constituted upon which *kratos*, the Greek word for governance, is carried out. A theoretical and analytical focus on the constitution of the *demos* challenges democratization theories and analytical approaches that do not account for degrees of exclusiveness or inclusiveness of those who constitute members of contemporary Arab polities (citizens and denizens), and residents in territorial states (stateless, refugees, noncitizen workforce). Hence, the 'politicization of the demos' reflects that individuals and groups are included or excluded from the citizenry, as well as from full membership in the polity, in ways that are continuously addressed, reframed and sought settled within contemporary Arab states since the establishment of territoriality as organizing principle in MENA after 1920.

Among the main conclusions of the thesis is that the legal status of women as full members of the polity in MENA is a political cursor that reflects the *comprehensive* democratization of society. Female civil rights are not only 'women's issues'. The use of state power in institutionalizing and distributing civil rights among and between citizens in society reflects central issues of consent and dissent pertaining to how, and in which ways, power is organized and allocated within the polity. Seen from a state formation perspective, female citizens are 'the masses' in present-day Arab polities. The thesis provides analytical and theoretical tools that enable researchers and observers to understand and explore further political development in the aftermath of the 2011 Arab uprisings.

1 Introduction

In this thesis I analyze how the politics of citizenship (independent variable) represents a central strategy that contributes to the survival of the regime (dependent variable) in different states in the Middle East.⁴ The ‘politics of citizenship’ is seen in terms of forms of membership in the state which are separate from, but intimately related to, patterns of participation in the polity. The politics of citizenship is furthermore analytically defined as encompassing a relationship between structural and procedural elements of citizenship.

My main argument throughout the thesis is that the politics of citizenship structures the relationship between rulers and ruled in Arab states in ways which enable the political regime to ensure its control over the state. A central analytical approach is the political impact of the organization and distribution of power along gendered lines. I argue that variations in the politics of citizenship account for distinctions in the organization of political power in different Middle Eastern states, and that these variations reflect central features of regime survival.

The thesis takes as its point of departure the universal recognition of territorial sovereignty as the organizing principle of contemporary Arab states as well as international politics. This understanding, though sometimes challenged by insurgent groups at the domestic level, is well entrenched and accepted by incumbent rulers in contemporary states in the Middle East. The establishment of territorial states in the Middle East in the aftermath of the First World War involved political and legal decisions which merged the geopolitical and economic interests of great powers as well as local nationalist ideologies in creating independent and sovereign political entities in MENA.⁵

⁴ The ‘Middle East’ refers here to 18 (out of a total of 22) members of The Arab League: Morocco, Algeria, Tunisia, Libya, Egypt, Sudan, Syria, Lebanon, Jordan, Iraq, Yemen, Palestinian Authorities, Kuwait, Bahrain, Qatar, the United Arab Emirates (hereafter UAE), Oman, and Saudi Arabia. The terms ‘Middle East’ and MENA, i.e. the Middle East and North Africa region, are here used interchangeably. A regional subdivision in MENA is a distinction between a western part, in this thesis including Egypt, usually referred to as *Maghreb* in Arabic, and an eastern part that includes Jordan, Syria, Lebanon, The Palestinian Territories and Iraq, usually referred to as *Mashreq* in Arabic. ‘Gulf states’ includes the six member states of the Gulf Co-Operation Council (GCC): Saudi Arabia, Kuwait, Oman, Qatar, UAE and Bahrain.

⁵ Inga Brandell, ed. *State frontiers: borders and boundaries in the Middle East* (London: Tauris, 2006), 14. The ‘territorial state’ is defined along Max Weber’s understanding as stretching over specific geographical space within which political authority is exercised through the use of more or less degrees of coercive force that often include – among other measures – taxation, conscription and abiding to state laws that power holders form and enforce. Roger Owen, *State, power and politics in the making of the modern Middle East* (London: Routledge, 2004).

In each of the four chapters that constitute the thesis, I point at how state power is both a precondition for establishing membership policies, and a main distributor of membership status whether we seek to address questions pertaining to membership in the state, membership in a religious group, or as means to analyze the structuring of legal capacity of citizens based on gender differences. The thesis illuminates intersections where varying degrees and forms of membership in Middle Eastern states are legally and politically constitutive. These variances shed light on how the politicization of the demos, i.e. the ways in which individuals and groups are included or excluded from the citizenry (non-citizens), as well as from full membership in the polity (female citizens) are continuously addressed, reframed and sought settled in Middle Eastern states.

The four articles that constitute the thesis are qualitative case-oriented as well as a comparative studies of the politics of citizenship as reflected in six Arab states – Egypt, Jordan, Kuwait, Lebanon, Morocco and Syria. Two articles are case studies: one is on Lebanon (chapter 2), the other on Syria (chapter 4). Two articles are comparative studies: In chapter 3, the politics of citizenship in Jordan, Kuwait and Lebanon is compared, while chapter 5 is a comparative study of female citizenship in light of family law reform in Egypt, Lebanon, Morocco and Syria.

The case study on Lebanon discussed in [chapter 2](#) addresses the enumeration process of the Lebanese citizenry in 1932, the ensuing politicization of demographic figures, and its impact on the establishment and perpetuation of sectarianism at the representational level. The Lebanese state is analysed as a membership organization where both formal-legal and political objectives control admission. The 1932 census played a fundamental role in the state-building process of the Lebanese state: political representation was grounded on its findings, it was the basis for personal registration of the population residing on Lebanese territories, and it formed one of the cornerstones for obtaining citizenship in the Lebanese state. My main finding is the mere presentation of the results of the 1932 census itself – a well-preserved and mystified ‘non-topic’, judging from the significance the findings have had on the political construction of power-sharing in the Lebanese state. In chapter 2 I show how the results of the census and the way the census figures were presented and analysed embody issues of contest regarding the identity of the Lebanese state and who its members should be. Restrictive citizenship policies practiced by

the Maronite-dominated regime until the outbreak of the civil war in 1975 were, I argue, means to sustain political domination of a particular group in an ethnically divided society.

Lebanon provides an example of the political sensitivity of demographic figures in polities where fixed proportional representation constitutes the main principle of representative political organization. The article presents a critical assessment of the consociational democracy thesis, initially presented by the Dutch American political scientist Arend Lijphart, which supports power-sharing formulas among political leaders in divided societies. I argue that consociationalism can at best be seen as a viable mode of governance which ensures stability rather than democracy. My main argument in support of this understanding is that the self-evident definition process of 'the master group' of people which Lijphart implicitly builds his theory on consociational democracy upon, is itself a political composition. I emphasize how state power is instrumental in defining, organizing and sustaining confessional groups, or more precisely, the political significance of institutionalizing citizens as members of confessional groups. As such, membership in a 'primordial' religious group does not only reflect and represent an individual's ascriptive identity. Membership in religious groups is itself a result of membership policies that structure citizens' inclusion in polity and state in ways that establish, sustain and perpetuate oligarchic and sectarian rather than democratic forms of political representation.

The discussion in [chapter 3](#) is a critique of a hypothesis presented by the Lebanese political scientist Ghassan Salamé who proposed that the organization and recognition of societal difference in Lebanon and Kuwait has promoted democratization and political pluralism as observed in the experiences of these states with regards to their democratic experiences of power-sharing since independence. I discuss how democratic forms of governance in Jordan, Kuwait and Lebanon are linked to the processes of state-building of these states. My main argument is that the relationship between pluralism and democratization is more complex and problematic than Salamé accounts for because we can identify both inclusive and exclusive forms of political pluralism in Jordan, Kuwait and Lebanon at different historical points in the modern history of the three states. I argue that political pluralism as found in these divided states is multifaceted and dependent on how we define and approach political pluralism theoretically and analytically. The politics of citizenship as established and practiced in these divided states reflects variations in forms of

membership in the polity, and patterns of political participation since the establishment of the state which can be seen in terms of regime survival.

Along with the other chapters in the thesis, chapter 3 presents a contribution to debates regarding multiculturalist formulas of group-based citizenship. The salience of political models that prescribe the distribution of rights in a polity in ways that conform to a group-based citizenship regime have since 1995 been proposed by Canadian political philosopher Will Kymlicka in his seminal book *Multicultural citizenship: a liberal theory of minority rights*. The merits of power-sharing and the legacy of group-based citizenship are likewise emphasized by contemporary proponents of conflict resolution based on consociationalist formulas.⁶ Among the conclusions drawn in chapter 3 is that membership policies in the state should be focused upon because the question of defining the state's demos has gone – and is still going – through different consolidation phases. It is, I argue, important to be aware of the instrumental role and impact of the politics of citizenship in divided states because membership policies and participatory projects in these states provide a comprehensive picture of the nature and transitions of different forms of political pluralism.

Chapter 4 explores the impact of legal pluralism⁷ through family law⁸. I discuss how the proliferation of mutually contradictory legal rules at the state level impacts on the structuring of gendered citizenship in Syria where the state's family law accords male and female citizens different legal status. The result is the ordering of the distribution of basic rights and duties along sectarian and gendered lines. Syria differs from other Muslim majority states in the Arab world in that the shari'a, i.e. the set of Islamic laws, tenets and jurisprudence, do not represent the main corpus of religious laws that exist as legitimate sources of legislation and promulgation of family law in the state. In Syria, there are eight different family laws that regulate the rights and duties of citizens in private legal matters (eg. marriage, divorce, inheritance, custody and maintenance). Plurality in family laws results in segmented autonomy in the

⁶ Sid Noel, *From power sharing to democracy: post-conflict institutions in ethnically divided societies* (Montreal: McGill-Queen's University Press, 2005).

⁷ 'Legal pluralism' denotes the existence of a multiplicity of legal sources that prevail parallel with state laws. See Maurits Berger, Laila al Zwaini, and Baudouin Dupret, *Legal pluralism in the Arab world* (The Hague: Kluwer Law International, 1999). The impact of the phenomenon of legal pluralism in Arab polities is elaborated upon particularly in part 4.

⁸ 'Family law' refers to rules that regulate marriage, divorce, inheritance, custody and maintenance. The terms 'family law' and 'personal status law' are used interchangeably in the thesis.

regulation of personal affairs of citizens who are thereby seen by the state apparatus as members of religious groups rather than as citizens.

My two main findings are first that, seen in theoretical terms, family law plays a crucial role in structuring gendered citizenship in ways that limit the legal authority of female citizens as full members of the polity; second, that the partial centralization and fragmented secularization of judicial authority related to the accommodation of religious groups under the auspices of religious freedom provides powerful venues for the secular Baathist regime in maintaining authoritarian rule. The impact of family law on citizenship is exacerbated in that membership in religious groups is mandated and monitored by the state apparatus. In chapter 4 I point at how pressures to expand female citizenship as part of the political regime's liberalization efforts after 2003 reflects how the Syrian regime sustains and nurtures a patriarchal bargain with the conservative religious establishment in order to ensure its rule at the expense of bolstering women's civil and citizenship rights.

Most studies on family law in the Middle East focus on the position of women within Islam and Islamic shari'a. Chapter 4 provides a theoretical contribution, as well as an empirical study, to discussions pertaining to family law in a divided and multireligious state in the Middle East where Islamic law constitutes one among several other religious laws. The article emphasizes the role in which state power plays in sustaining segmented autonomy of different confessional groups in the sphere of family law. It emphasizes also the impact of political calculations among majority and minority groups in society and how these permeate the organization of political power in a multireligious state.

Chapter 5 is a comparative study of female citizenship in light of pressures for reform in family law in Egypt, Morocco, Syria and Lebanon since 1990 until 2010. I present a pairwise most similar approach by comparing two Muslim majority states in the Maghreb (Egypt and Morocco) and two multireligious states in the Levant (Syria and Lebanon). The article explores the relationship between type of court system, pressures for parliamentary reform and expanded female citizenship in the four states. My main finding is that female citizens have acquired wider civil rights through parliament in relatively homogenous states with unitary court systems than in multireligious states with dual court systems. Seen in a state-building perspective, reforms during the 1950s in Egypt and Morocco established

unitary courts, curbed the clerical judicial authority over family law, and weakened the resilience of conservative religious authorities. In Morocco and Egypt, renewed pressures for reform after 1990, particularly through the impact of economic globalization, yielded a sharper focus on female civil rights. In Syria and Lebanon, by contrast, the sustaining of dual courts since the establishment of independent states in the 1940s safeguard the judicial autonomy of clerics and enable them to resist pressures for family law reform more forcefully. In these states little or no change occurred because the interests of political and religious authorities converge and bolster group-based citizenship in ways that perpetuate sectarian group membership which constrain the civil rights of female citizens.

1.1 Elaboration of main thematic issues discussed in the thesis

The four articles that constitute the thesis address two main themes and a subset of theoretical problems related to both themes.

One main theme evolves around what I identify as problems related to the formation and establishment of 'legal citizenship'. The establishment and formation of legal citizenship is related to the state-building process of territorial states and reflects processes whereby state power and force is used as means through which individuals are classified as members of the state. In the thesis, I argue that the establishment of the citizenry in different states in the Middle East has been politicized since the establishment of independent states. Particularly in divided states such as Lebanon, Kuwait and Jordan, naturalization and denaturalization policies have included and excluded members of the state in ways which is in accordance with the survival strategies of the political regimes.

The subset of theoretical issues related to the formation and establishment of legal citizenship are addressed and elaborated on further in parts 3 and 6 of this chapter. Some of these questions are related to processes of state formation, conditions related to power-sharing as governance strategy in divided states, and analytical approaches related to defining and understanding the concept of 'pluralism' in divided states.

The other main theme discussed throughout the thesis evolves around what I identify as particular challenges and problems related to establishing 'civil citizenship' in Arab states. Civil citizenship reflects processes related to the distribution of equal civil rights among citizens in the polity. I emphasize the importance of analyzing states in the Middle East as

predominantly non-liberal polities where state power is central in establishing, sustaining and perpetuating the unequal distribution of civil rights among the citizenry. At center here is the political regime's management of religious law as part of state law through the organization and institutionalization of clerical authority, the codification and re-codification of religious tenets as part of the state's family law, and the contractual relationship between rulers and ruled pertaining to type of citizenship regime that is to permeate the normative principles of the allocation of rights within the polity. I focus particularly on the challenges related to the inclusion of female citizens as full members of the polity in different Arab states. I dwell more on analytical and theoretical aspects related to addressing questions pertaining to civil citizenship in part 4 of this chapter.

My main point of departure with reference to addressing the challenges pertaining to civil citizenship in Middle Eastern states is the gendered and unequal distribution of civil rights in the polity between male and female citizens. I argue that the unequal distribution of civil rights between males and females should also be seen in terms of the use of state power in institutionalizing and distributing civil rights in contemporary Arab states. The subset of theoretical and analytical issues related to pressures and counterpressures against the establishment of civil citizenship include the impact of legal pluralism in the realm of family law in Arab societies, the fruitfulness of drawing an analytical distinction between 'group-based citizenship' and 'individually-based citizenship' as two ideal models that distinguish forms of membership in the polity, the impact of globalization and transnational pressures as societal transformation forces, and the points of intersection between human rights and citizenship rights as two different but potentially mutually constitutive sets of rights.

1.2 The citizenship approach

In *Citizenship and the state in the Middle East: Approaches and applications*, Butenschøn argued that a theoretical and analytical perspective where citizenship constitutes a level of analysis is particularly relevant to the Middle East, "a region where the purpose of state power seems to be an unresolved question today as at any time before."⁹ A decade and

⁹ Nils A. Butenschøn, "State power and citizenship in the Middle East: A theoretical introduction," in *Citizenship and the State in the Middle East*, ed. Uri Davis Nils A. Butenschøn, and Manuel Hassassian (New York: Syracuse University Press, 2000), 6.

numerous revolts later, this observation still stands true. Radical changes in the stagnant political leadership have put the established Arab political order in question. At the time of writing, citizens in several Arab states are demanding constitutional reforms, carving out new electoral laws, shaping new political parties and parliaments, and reformulating the relationship between rulers and ruled. In other words, Arab citizens are redefining the rules of the game of citizenship seen as a political participatory project.

Rather than the inclusionary traits with which citizenship is ideally connoted with in liberal democracies, the relationship between rulers and ruled in the Middle East has been characterized by predominantly exclusionary traits since the establishment of independent Arab states. Constitutional rules have existed in form but not in essence, political participation has been severely restricted, and different forms of coercive measures – including the use of violence on a systematic basis – have been applied in order to sustain rulers' grip on power through the state apparatus. These measures have paved the way for an array of authoritarian and non-democratic political regimes characterized by remarkable long-term stability.¹⁰ What in this thesis is understood as 'the politics of citizenship' has, in other words, been primarily based on the use of force by those holding power over the state in ways that have yielded continuous resentment and opposition among the ruled.

In this thesis, the 'politics of citizenship' is defined as encompassing a relationship between structural and procedural elements of citizenship. Structural elements relate to policies that regulate membership in the state such as enumeration processes, censuses, citizenship laws, family laws, naturalization and immigration policies and resident permits. Political participation is understood broadly as the involvement of citizens and long term residents in the formation of rules and laws that are to apply in society.¹¹ Participation occurs through pressures and demands presented by social groups (eg. occupational, economic, religious, ethnic, tribal, human rights and women's associations) as well as through electoral and parliamentary processes. The politics of citizenship is seen in terms of

¹⁰ Kjetil Selvik and Stig Stenslie, *Stabilitetens pris: stat og politikk i Midtøsten [The price of stability: state and politics in the Middle East]* (Bergen: Fagbokforlaget, 2007). In the Norwegian original edition published in 2007 the authors placed emphasis on the remarkable stability of political regimes in the Middle East. In the English edition published in 2011, 'change' was added in the title, reflecting the revolutions and uprisings in the Arab world which started that year. See Kjetil Selvik, Stig Stenslie, and John Meyrick, *Stability and change in the modern Middle East* (London: I.B. Tauris, 2011).

¹¹ To define a particular time limit that denotes what 'long term' implies raises many problems related to involuntary and voluntary forms of residence. I define here, nevertheless, a decade as an approximate measure of 'long term residency'.

forms of membership in the state which are separate from, but intimately related to, patterns of participation in the polity.

The questions dealt with in the four articles that constitute this dissertation can be summarized as follows:

- i) How does the politics of citizenship reflect the organization and distribution of power in the polity in ways that impinge on the survival of the regime?
- ii) Where do we find political arenas of contestation through which inclusionary and exclusionary forms of citizenship are established, sustained and redefined?
- iii) In which ways do external and internal pressures for change impact on the politics of citizenship in different states in the Middle East?

1.3 Outline of this chapter

In this chapter I introduce the theoretical and analytical foundation – the *qa'ida*¹² so to speak – on which my research on citizenship in the Middle East builds upon. Chapter 1 allows a presentation of the methodological choices applied in the different articles. Although these differ according to the case study at hand and the various themes chosen, the methodological tools and analytical perspectives can be viewed as part of an encompassing theoretical framework which permits me to situate my research within the larger body of research on citizenship. This chapter offers thus an opportunity to reflect on some of the arguments presented in the four published articles, and to indicate how these relate to broader questions pertaining to political order in the Middle East and the relationship between rulers and ruled.

The concept of citizenship is central in the dissertation and constitutes as such a level of analysis through which the abovementioned questions are addressed and discussed. In part 1 of this chapter, I elaborate on the use and application of the concept of citizenship as a level of analysis. I present a table that illustrates points of entanglement between

¹² The Arabic word '*qa'ida*' means 'fundament' or 'basis'. For more on Arabic as language, see Rania Maktabi, "Arabisk i verden," in *Fokus på språk*, ed. Johanne Ostad og Gunvor Mejdell (Halden: Fremmedspråksenteret, 2010). The report can be retrieved at <http://www.fremmedspraksenteret.no/nor/fremmedspraksenteret/forskning-og-utvikling/fokus-pa-sprak/fullstendig-publikasjonsliste>, accessed 8 January 2012.

inclusionary and exclusionary forms of membership and participation pertaining to citizenship as analytical concept.

The two first articles, chapters 2 and 3 of this thesis, were published more than a decade ago. A glimpse back in time where I trace the initial links between the four articles is therefore provided in part 2 entitled 'On membership'. There, I comment on reflections evoked in the course of reading Michael Walzer's inspirational *Spheres of Justice*, particularly chapter 2 in that book entitled 'membership'. I parry Walzer's explicit limitations to who and how members are included in a particular polity by problematizing the term 'demos'¹³ and presenting a figure entitled 'spheres of membership'. This figure may serve as a visual guideline that reflects various forms of legal status categories and forms of membership in MENA.

In part 3 I elaborate on themes related to the establishment of legal citizenship as discussed in chapters 2 and 3. The process of constituting the citizenry and establishing the state's legitimate members is viewed as a conundrum of citizenship. Establishing legal citizenship involves particular problems in states that are often referred to as 'plural' or 'divided', and I discuss the term 'pluralism' with reference to citizenship in these states. In this part I present a critique of consociationalism as political agenda and multiculturalist approaches that bolster group-based citizenship.

In part 4 I elaborate on what is perceived as a second conundrum of citizenship pertaining to dilemmas and conflicts related to attempts at forming civil citizenship, i.e. the establishment of equal civil rights among citizens in the polity. I focus on two main themes discussed in chapters 4 and 5: first, the impact of the codification of religious law as state law in the judicial and legal institutions of the state; second, the relationship between family law and female citizenship in MENA. In a typology over female citizenship I differentiate between individually-based and group-based citizenship regimes and point at the analytical relevance of viewing political regimes in light of policies that include female citizens in MENA as full members of the polity.

As a concept, citizenship is heavily associated with the historical experiences of western democracies. In part 5 I point out that this historical link impels ontological and epistemological considerations towards the study of citizenship in states in the Middle East

¹³ 'Demos' is the Greek word for 'people' and refers broadly to those who are full and legitimate members of the polity. I elaborate more on the term in part 2.

which are basically illiberal polities. I discuss the epistemological approach applied by the Arabist legal historian Gianluca Parolin in *Citizenship in the Arab world: kin, religion and nation-state*.¹⁴ His is, I argue, a ‘culturalist’ study which limits the focus of ‘kinship’ and ‘religion’ to their cultural features. In contrast to Parolin’s epistemological approach, my approach can be seen as ‘structuralist’, in the sense that variables such as individuals’ membership in groups (whether ethnic, religious or tribal) is problematized as part of my analysis on the politicization of the demos. The exploration on the significance of different ontological and epistemological approaches serves as backdrop to the theoretical outline and the methodological choices I have made in the course of imploring into the politics of citizenship in the Middle East.

In [part 6](#), I situate my research on citizenship in the Middle East within a wider theoretical context on state formation and democratization as outlined by Stein Rokkan and Reinhard Bendix. I comment on two of Rokkan’s tables on state-formation and nation-building by supplementing them with two additional analytical concepts – ‘legal citizenship’ which refers to the constitution of the citizenry, and ‘civil citizenship’ which refers to the equalization of civil rights among the citizenry, particularly the equalization of civil rights between male and female citizens. I point out that a distinction between legal citizenship and civil citizenship is significant in two respects: first, it highlights central features pertaining to the establishment of political order; second, it reflects points of conflict pertaining to the proliferation of legal pluralism in the judicial sphere in contemporary states in the Middle East.

In [part 7](#), I introduce and discuss the methodological approaches applied in the different articles that constitute the thesis and discuss some of their strengths and weaknesses. I comment on some of the advantages and disadvantages in perceiving political processes within a Rokkanian analytical framework, and then point at the sets of instruments used to operationalize the politics of citizenship.

In [part 8](#), I present a set of conclusions over the three broadly outlined questions pointed at the beginning of the introduction. In this conclusive part I discuss how the politicization of the demos relates to what some researchers have pointed out at as a

¹⁴ Gianluca P. Parolin, *Citizenship in the Arab world: kin, religion and nation-state* (Amsterdam: Amsterdam University Press, 2009).

tension between citizenship and human rights. Finally, I draw conclusions with reference to understanding democratization as a political process in the Middle East.

1.4 Citizenship as level of analysis

How can the concept of citizenship be used in order to examine the relationship between rulers and ruled in states of the Middle East? In which ways does citizenship represent a fruitful level of analysis that throws light on political structures of power in Arab polities?¹⁵

The application of a 'level of analysis' approach is usually related to studies pertaining to international relations. A level of analysis approach reflects an analytical framework where events are sought described and explained by separating between three particular levels of analysis – the individual level, the state level and the international system level.¹⁶ In this thesis, the use of citizenship as level of analysis differs from the traditional way whereby researchers seek to distinguish between these particular three levels.¹⁷ Evidently, a focus on citizenship understood as membership in the state and as contractual relationship between rulers and ruled is state-centered. Nevertheless, approaching citizenship through a level of analysis is helpful in orienting my focus on looking for structural and procedural aspects pertaining to the politics of citizenship, and in suggesting appropriate and relevant types of evidence to explore.

An application of citizenship as a level of analysis in this thesis is to be understood as analytical means to explore into various categories of perspectives and explanations that display and reflect the structures and procedures of the politics of citizenship. Among the procedures discussed in depth as part of the theoretical and methodological deliberations in parts 6 and 7 are processes of state formation, the establishment of judicial institutions, the codification of family law within the polity and the use of power by rulers in defining and redefining the citizenry of the state.

Given the nature of the thesis as comprising four separate but interrelated articles, the set of independent and dependent variables vary for each article. However, throughout the articles, membership and procedural aspects pertaining to citizenship are highlighted in

¹⁵ Butenschön, "State power and citizenship in the Middle East: A theoretical introduction," 12.

¹⁶ Kenneth N. Waltz, *Man, the state and war: a theoretical analysis* (New York: Columbia University Press, 2001).

¹⁷ Karen A. Mingst, *Essentials of international relations* (New York: Norton, 2008), 57-59.

order to point at the variety in patterns of citizenship policies and citizenship regimes that define and redefine the demos of the state. Hence, the politics of citizenship varies in each state under study and contributes in diverse ways to strategies for the survival of the regime, analytically seen as the dependent variable in the four articles.

Applying citizenship as level of analysis helps, in other words, developing appropriate questions with reference to each article as well as with respect to comparison across cases. The level of analysis approach towards the studying of the politics of citizenship is furthermore useful in searching for fruitful variables in each case and with reference to considering various types of evidence explored in the analysis of the relationship between rulers and ruled in states in the Middle East.

Basically denoting a contractual relationship between a person and a sovereign state, citizenship grew historically out of the development of royal sovereignty into popular sovereignty following the decline of feudalism in western societies.¹⁸ The emancipatory and participatory political project introduced by the French revolution through the Declaration of the Rights of Man and Citizen (*Déclaration des droits de l'Homme et du Citoyen*) of 1789 is intimately connected with the concept of citizenship whereby new subject / citizen constellations were created and where a citizen was distinguished “*as an individual* and not as a member of a community, manor, guild or parish.”¹⁹ As such, citizenship can be seen as one of several ‘modes of membership’, so to say, in which an individual can belong to and participate in a social group, a community or a polity. Forms of membership characterize thus central features of citizenship both in terms of who is included as members, on what terms, and the extent of their participation.

Kymlicka and Norman captured these distinctions when they defined citizenship as comprising two compatible but separate aspects. According to them, ‘citizenship-as-legal-status’ denotes “*full membership* in a particular political community”, while ‘citizenship-as-desirable-activity’ reflects a process “where the extent and quality of one’s citizenship is a

¹⁸ Reinhard Bendix, *Kings or people: power and the mandate to rule* (Berkeley, Cal.: University of California Press, 1978), 5-9.

¹⁹ John Tehranian James C. Scott, and Jeremy Mathias, "The Production of Legal Identities Proper to States: The Case of the Permanent Family Surname," *Comparative Studies in Society and History* 44, no. 1 (2002): 16, emphasis in original.

function of one's participation in that community."²⁰ This distinction overlaps partly with the inherent structural and procedural elements of citizenship. It corresponds also with the Arabic terminological pairs '*jinsiyya*' and '*muwatana*', defined by Davis as 'passport citizenship' and 'democratic citizenship' respectively.²¹

At the time, Kymlicka and Norman alerted us of two hazards when it came to applying citizenship as an analytical concept: first, the scope of a monolithic 'theory of citizenship' is potentially limitless, they argued, since "almost every problem in political philosophy involves relations among citizens or between citizens and the state"²²; second, they warned against the danger of conflating the two different concepts of citizenship, i.e. 'citizenship-as-legal-status' and 'citizenship-as-desirable-activity'.

I deal with the first warning, which is both relevant and appropriate as part of my discussion on the theoretical framework under part 6. The second warning, however, constitutes a cornerstone in my elaboration on citizenship seen through the lens of legal status categories in the Middle East. For, Kymlicka and Norman explicitly exhibited quite plainly one particular blind spot in their own definition: they assume 'full membership' when they define citizenship in terms of a 'legal status'. This premise fails to problematize the different shades of membership statuses, and the conflicts embedded in 'less than full membership' as observed in most states in the Middle East.

The distinction Kymlicka and Norman made between membership and participation is nevertheless analytically constructive, despite – or perhaps precisely *because of* – their assumption of 'full membership' as an implicit part of the institution of citizenship. What I view as the two authors' shortcoming constitutes, in other words, my main point of intervention into what I address as questions related to the politicization of the demos in Middle Eastern political systems. This refers to the ways in which individuals and groups are included or excluded from the citizenry (non-citizens), as well as from full membership in the

²⁰ Will Kymlicka and Wayne Norman, "Citizenship and national identity: Some reflections on the future of Europe," in *Theorizing citizenship*, ed. Ronald Beiner (Albany, N.Y.: State University of New York Press, 1995), 284, my emphasis.

²¹ Uri Davis, *Citizenship and the state: a comparative study of citizenship legislation in Israel, Jordan, Palestine, Syria and Lebanon* (Reading: Ithaca, 1997), 6. Parolin points that the Arabic term '*jinsiyya*' is "an abstract term built on *jins*, a borrowing from the Greek term *ghènos* which in Arabic kept the meaning of 'genus', 'race', 'species'." Parolin, *Citizenship in the Arab world: kin, religion and nation-state*: 124. In Norwegian, there exist a similar lexical distinction between '*statsborgerskap*' which reflects membership aspects as in the English term 'nationality', and '*medborgerskap*' which emphasizes participatory aspects in the state.

²² Norman, "Citizenship and national identity: Some reflections on the future of Europe," 284.

polity (such as the majority of female citizens), and how questions related to these inclusions and exclusions are addressed, sought settled and reformed in each state.

The demarcation between ‘legal status’ and ‘desirable activity’ with regards to citizenship explains the distinction I make between aspects related to membership in the state and aspects related to participation in the polity. Certainly, the two features of citizenship – membership and participation – are intimately connected, and I expand on the obvious links and their fusion throughout the dissertation. Nevertheless, I make the point that not only are the two aspects of citizenship separable, but that their separation is of ontological, epistemological and methodological, and – therefore evidently – of political significance.²³

The separation is, for instance, fruitful for analytical purposes for typologizing political regimes, modes of governance – both democratic and non-democratic –, as well as type of citizenship regime sustained through state power.²⁴ At the center here are patterns of contractual relationships between rulers and ruled. These reflect the boundaries that are invariably set and continuously shaped and reshaped in support of, or in opposition to the political regime’s citizenship policies regarding non-citizens and stateless on the one hand, and female citizens on the other. As pointed at in table 1 presented further below, different patterns of inclusions and exclusions based on the expansion or contraction of those included as the demos of the polity give rise to different forms of political regimes dependent on the degrees of inclusiveness or exclusiveness of modes of participation.

A second approach follows from the introduction of the process of *democratization* of a polity as normative political goal. O’Donnell, Schmitter and Whitehead emphasize, for instance, that “[d]emocracy’s guiding principle is that of citizenship”, adding:

Democratization, thus refers to the processes whereby the rules and procedures of citizenship are either applied to political institutions previously governed by other principles (e.g. coercive control, social tradition, expert judgement, or administrative practice), or expanded to include persons not previously enjoying such rights and obligations (e.g., nontaxpayers, illiterates, women, youth, ethnic minorities, foreign residents), or extended to cover issues and institutions not previously subject to

²³ I deliberate further on ontological and epistemological considerations in relation to the study of citizenship in non-western and non-liberal polities in part 5.

²⁴ I differentiate between ‘individually-based citizenship’ where civil and political rights are distributed on an individual basis, and ‘group-based citizenship’ whereby civil and political rights are contingent on a citizen’s membership in a religious, ethnic and / or religious group. I elaborate more on ‘citizenship regimes’ in part 2.

citizens participation (e.g., state agencies, military establishments, partisan organizations, interest associations, productive enterprises, educational institutions, etc.).²⁵

At the center in this approach towards citizenship is democratization understood as a process based on models of membership configurations where broader segments of residents in or inhabitants of, the state are included as full members of the polity on the one hand, or the broadening of arenas and issues subject to participation on the other.

Butenschøn provides a third approach that underpins the distinction between membership and participation. In a discussion on ethnic conflict and democracy, he indicates the logical ranking between 'first-order problems' and 'second-order problems' which reflect and substantiate aspects related to membership and participation at two different levels. While first-order problems relate to the "constitution of the *demos*, the political entity's demographic identity and extent", second-order problems refer to the constitution of political order based on a particular definition of who constitutes the *demos* where agreement is reached regarding an organizing principle for the political system, i.e. the regime that is to rule in the name of the state. At the center here is the establishment and sustaining of a particular state idea, that is normatively guiding conceptions regarding the identity of the state that express and reflect what the purpose of the state should be and who should constitute its members.²⁶

Whichever approach towards studying citizenship: i) the 'descriptive analytic' which reflect typologies regarding contractual relationships between rulers and ruled and variances in patterns of inclusion and exclusion in polity and state; ii) the democratization perspective that looks at particularly inclusionary patterns of expansion of the citizenry and extension of issues defined as political; and iii) an approach that seeks to distinguish and analyze problems related to first-order issues pertaining to the constitution of the *demos*, and

²⁵ Guillermo O'Donnell, Philippe C. Schmitter, and Laurence Whitehead, "IV. Tentative Conclusions about Uncertain Democracies," in *Transitions from Authoritarian Rule: Prospects for Democracy*, ed. Philippe C. Schmitter Guillermo O'Donnell, and Laurence Whitehead (Baltimore and London: The John Hopkins University Press, 1986), 7-8.

²⁶ 'State-idea' refers to conceptions regarding the identity of the state and to normative foundations expressing what the purpose of the state should be and who constitute its members. The state idea of a polity can sometimes be read in the state's Constitution according to Nils A. Butenschøn, "The politics of ethnocracies: strategies and dilemmas of ethnic domination," in *Working paper 01/93* (Oslo: Department of Political Science, University of Oslo, 1993), 15-18. Butenschøn refers to Richard Hartshorne, "The functional approach in political geography," *40 Annals: Association of American Geographers* (1950). On 'first-order problems' and 'second-order problems', see Nils A. Butenschøn, "Etnisk konflikt og demokrati," in *Demokrati: vilkår og virkninger*, ed. Bjørn Erik Rasch and Knut Midgaard (Bergen-Sandviken: Fagbokforl., 1998), 249, emphasis in original, my translation.

second-order issues related to shaping the political order, it is my belief that whether and how we as researchers distinguish between questions related to membership and those related to participation, and the relation between them, impacts on our understanding of the state in the Middle East as a unique membership organization endowed with sovereign powers.

1.5 Citizenship between membership and participation

Pressures for political change after 2011 herald potential structural reforms and transformation in the relationship between and among rulers and ruled in the Middle East. However, potential political reforms are dependent on the historical experiences of these states with regards to the impact of the politics of citizenship on the survival of the regime. The politics of citizenship is seen as a complex interplay between structural and procedural aspects whereby citizenship is applied as a level of analysis in order to highlight how rulers seek to establish and sustain their rule in different states in the Middle East.

Common to both the structural and procedural elements of citizenship is the inclusionary and exclusionary policies that evolve, and their impact on the survival of the regime and the perpetuation of incumbent rulers' hold on power over the state apparatus. A main impact of the politics of citizenship on regime survival is, I argue, the politicization of the demos in the Middle East, i.e. the various ways in which long-term resident individuals and groups are included and excluded from full membership in the state.

Ayubi points at the fruitfulness of applying 'inclusion' and 'exclusion' as concepts when studying politics in Arab states:

[t]he concept of inclusion / exclusion is more useful than restricted concepts of representation and participation because it implies both socio-economic *and* political involvement [...] We have a whole variety of 'arrangements' [...] for sorting out the relationship between the groups and the state. Some of these arrangements are collaborative and inclusionary: tribal confederations, national fronts, populist coalitions, ethnic consociations, etc.; while some are more conflictual and exclusionary: subordination, encapsulation and segmentary 'capture' of the state apparatus.²⁷

In the Middle East, the politics of citizenship can, on the one hand, be inclusive in character in the sense that more segments of the population are able to partake in decision-making

²⁷ Nazih N. Ayubi, *Over-stating the Arab state: politics and society in the Middle East* (London: I.B. Tauris, 1995), 33-34.

pertaining to the formation of rules that are to apply within the boundaries of the territorial state.

I argue that the expansion of the demos occurs either through the inclusion of non-citizens as members of the state and / or through expanding the membership basis by including women as full members of the polity. The politics of citizenship can also be inclusive in the sense that participation evolves around wider sets of issues and/or that social institutions are subject to political decisions along more democratic lines (extending “issues political”). Such issues include the politicization of membership issues that impinge on family law, citizenship or immigration policies in ways that expand the demos of the state.²⁸

On the other hand, the politics of citizenship can be exclusionary in the sense that particular segments of the resident population are exempted from full membership in the state. Contracted demos constellations impacts on the proliferation of segments of the population who are citizens with less than full membership in the polity, alien long-term residents such as refugees and stateless, as well as severely disproportionate numbers of non-national workforce. The politics of citizenship can likewise be exclusionary in the sense that less issues and institutions are subject to decision-making processes.

With reference to the Middle East, we may note the following: the narrower the demos basis and the more restricted arenas that are subject to democratic decision-making (political representation, parliamentary elections), the more it reflects a high degree of exclusionary practice such as different types of control regimes and various degrees of coercive measures in terms of membership policies (citizenship laws, naturalization, entry procedures). The Gulf states represent the most extreme cases where membership as well as participation are characterized by predominantly exclusionary traits, although there are significant differences pertaining to internal varieties among the GCC states.

Conversely, the wider the demos basis is, the more the politics of citizenship may be inclusionary. Depending on how the demos is defined, inclusion may pertain to larger segments of the citizenry who enjoy civil and political rights (such as post-independence Tunisia in 1956, and Morocco after the 2004 family law reform), or inclusion may pertain to

²⁸ The elaboration on inclusionary and exclusionary traits pertaining to membership and participation, as illustrated in table 1, builds on what O’Donnell et al. present as processes of ‘democratization’, a point I expand on further below. See O’Donnell, “IV. Tentative Conclusions about Uncertain Democracies,” 7-8.

the naturalization of non-citizens such as Palestinian refugees who became Jordanian citizens in 1949, or long-term non-citizens in Lebanon who were naturalized through a decree in 1994.

Table 1 renders a conceptual model which reflects the politics of citizenship in the Middle East seen in terms of exclusion and inclusion and in terms of membership and participation:

Table 1: The politics of citizenship in the Middle East: a conceptual model

<i>Politics of citizenship</i>	Inclusion	Exclusion
Membership	expansion of demos	contraction of demos
Participation	extension of “issues political” and institutions subject to democratic decision-making	restriction of “issues political” and institutions subject to democratic decision-making

The table reflects modes of addressing different types of problems related to inclusionary and exclusionary citizenship policies pertaining to either membership or participation.

For instance, how do we deal theoretically with the phenomenon of statelessness whereby long-term residents in the region are exempted from membership in a state. It is not the legal aspects of statelessness *per se* that is discussed in the thesis, but rather the phenomenon of statelessness that evolves out of the politicization of the demographic structure of some states in the Middle East, particularly those labeled as ‘plural’ or ‘multireligious states’ where nationalistic, ethnic and/ or tribal allegiances intersect with the political aspirations of rulers. In which ways do membership and participation aspects pertaining to the politics of citizenship reveal variances in the political structure of these states that shed light on the survival of the regime?

Another example of the politicization of the demos in the Middle East is the way through which citizenship certificates, naturalization and denaturalization policies that target both individuals and collective groups have emerged as significant instruments of control at the hands of rulers who shape and reshape the constitution of their citizen and non-citizen

populations in ways that sustain their rule. In Lebanon, Jordan and Kuwait, citizenship certificates, i.e. legal citizenship, have been granted and withdrawn at different points in time in ways that conform with the political aspirations of power holders through decrees or through amendments to existing citizenship laws.

A third example of regarding the politicization of the demos is the anomaly of enfranchised female citizens who have political rights but who do not share equal civil rights with male citizens in the Middle East? One way of approaching this problem, I suggest, is by looking at the exclusion of women from full membership in the state as a demos issue whereby female citizens are denizens²⁹ of the state: they are enfranchised citizens who are excluded from basic civil rights which impinge on their political participation.

²⁹ I find 'denizenship' to be a fruitful concept that sheds considerable light on the paradoxical legal status of female citizens in contemporary states in the Middle East. I was first acquainted with the term 'denizens' through literature on immigration policies where Tomas Hammar denotes 'denizens' as privileged resident aliens. See, Tomas Hammar, *Democracy and the nation state: aliens, denizens and citizens in a world of international migration* (Aldershot: Avebury, 1990), 12-14. Lately, the term 'denizens' has been used by scholars in urban studies to denote marginalized citizens such as the homeless and long-term unemployed who are excluded from public space. See Clifford Shearing and Jennifer Wood, "Nodal Governance, Democracy, and the New 'Denizens'," *Journal of Law and Society* 30, no. 3 (2003); Marc Schuilenburg, "Citizenship Revisited - Denizens and Margizens," *Peace Review* 20, no. 3 (2008).

2 On membership

“Citizenship is a neat category [...] Membership [...] is a messy category”.³⁰

States are sovereign in distributing membership, limited only by international conventions that they may be legally bound by. In contemporary states, state power is authoritative with reference to distributing membership in the state. Indeed, among the most important traits of state sovereignty is the state’s capacity in defining its citizens.

Seen from a legal-ideal perspective, the distribution of membership in the state and the acquisition of legal citizenship in the Middle East is based on two main principles: one granted through the ‘blood principle’ (*jus sanguinis*) whereby the offspring of one – often the male citizen father – or both parents, and one based on territorial residence (*jus soli*) whereby those born within the state’s territorial boundaries are granted citizenship in the state.³¹ The discussions in the different articles seek to look beyond such a legal-ideal perspective with regards to membership in the state. Membership is sought analyzed in terms of the complex and conflicting manner in which legal-ideal principles are formed, applied, challenged, forcefully abrogated – and in some cases – renegotiated such as the case is when citizenship decrees and new nationality laws expand and contract the citizenry of the state, or in cases where female citizens are enabled to give their legal citizenship (*jinsiyya*) to their children unconditionally.

Throughout the thesis I seek to illuminate points of intersection where varying degrees and forms of membership in the state are legally and politically constitutive. Differential forms of membership shed light on how the politicization of the demos in Middle Eastern states both impact on and constitute the politics of citizenship.

2.1 The ‘group’: which group?

How is a group constituted? When I first read this sentence in a chapter entitled ‘Membership’ in Michael Walzer’s *Spheres of Justice*, I was fascinated by its simplicity. Walzer pointed out that by assuming an established group or a fixed population we miss

³⁰ William Rogers Brubaker, "Immigration and the politics of citizenship in Europe and North America" (Lanham, c1989), 15.

³¹ Rogers Brubaker, *Citizenship and nationhood in France and Germany* (Cambridge, Massachusetts and London, England: Harvard University Press, 1992), 81-82.

“the first and most important distributive question”.³² Nearly two decades later, I look back and assess that what lies as a thick red thread throughout my research on citizenship in the Middle East has been filtered through this one question. Elegant in its simplicity – a Gordian knot in the richness of theoretical and analytical approaches embedded in attempts at addressing it. Walzer’s question did not only trigger a fascination. His book ignited a stubbornness born out of sheer irritation by what he wrote thirty pages later when he acknowledged that

[i]ndeed, the rule of citizens over non-citizens, of members over strangers, is probably the most common form of tyranny in human history. [...] I won’t say much more than this about the special problems of non-citizens and strangers: henceforth I am talking about the distribution of security and welfare or about hard work or power itself, *I shall assume that all the eligible men and women hold a single status*. This assumption doesn’t exclude other sorts of inequality further down the road, but it does exclude the piling up of inequalities that is characteristic of divided societies. The denial of membership is always the first of a long train of abuses.³³

Walzer built his intriguing insights regarding membership on a building block entitled ‘single status’.³⁴ This delimitation, I immediately figured out, was irrelevant to my focus on the multifaceted conglomerate of non-citizen, stateless and migrant inhabitants, as well as the differential ways in which citizens – eligible and non-eligible – are categorized along gendered, religious, tribal or ethnic lines in the Middle East.

Walzer’s explicitly stated reservations with regards to ‘single status’ made me feel, to put it bluntly, as if somebody had flirted wildly with me at a party and then informed me that he was actually married. Going through the rest of the book felt like a sort of liaison between us: I continued reading, but had the uneasy informed understanding that I had been cheated upon.

Cheated upon, but far from disillusioned, and considerably inspired for four reasons – all related to Walzer’s chapter on membership in *Spheres*.

First, I understood that the concept of membership was to be central around which my focus on citizenship would evolve. What eventually was coined as ‘the politics of citizenship’ would thus not only include membership, but *premise* membership – or more precisely, forms of membership – as a necessary element for analyzing restricted or

³² Michael Walzer, *Spheres of justice: a defense of pluralism and equality* (Oxford and Cambridge: Blackwell, 1994), 31.

³³ *Ibid.*, 62, my emphasis.

³⁴ ‘Status’ implies a particular position of an individual in society that is contingent on the distribution of legal rights. See Bryan S. Turner, *Status* (Milton Keynes: Open University Press, 1988), 5-13.

extended patterns of political participation in the polity. 'Polity' corresponds here roughly to what is inferred to when thinking of the Greek ideal of the *polis* – a bounded political entity characterized by more or less restricted or extended forms of participation through which norms, rules and regulations are formed and enforced. In several states in the Middle East we find significant numbers of long term residents, refugees and immigrants. Non-citizens comprise distinct groups that are not part of the polity although they reside within the state's borders.

Second, Walzer introduced me to the fascinating status of 'metics' who were resident aliens in ancient Athens.³⁵ In contrast to slaves who did the everyday necessary hard work of economic life, metics were migrants from other Greek city-states drawn to Athens by economic opportunity, many from other Greek states. They were required to defend the city, but neither they nor their offspring gained political rights. Some metics became wealthy merchants, scientists and potters, while others developed into a leisured stratum of inhabitants who followed political life without being part of it. Aristotle (384 B.C. - 322 B.C.) himself was, Walzer mentions *en passant*, a metic who observed the unfolding of the *polis*, i.e. the realm whereby decisions were taken regarding Athens as a polity, but was never part of its *demos*, i.e. the eligible segments of Athen's inhabitants.³⁶ While Walzer likens metics with contemporary non-citizen guest workers, I envisaged an array of present day metics in the contemporary Middle East.³⁷ I asked myself whether the existence of inhabitants in Lebanon and Kuwait – persons holding '*jinsiyyat qayd ad-dars*' (literarily, 'citizenship under study') documents and the '*bidun*' (literarily 'without', meaning 'without citizenship documents') count as metics? What about enfranchised female citizens who nevertheless

³⁵ Walzer, *Spheres of justice: a defense of pluralism and equality*: 53-55. For more on metics and the Athenian *metoikia* institution, see David Whitehead, *The ideology of the Athenian metic*, vol. 4, Proceedings, Supplementary volume (Cambridge: The Society, 1977). See also Dahl's description of metics, Robert A. Dahl, *Democracy and its critics* (New Haven, Conn.: Yale University Press, 1989), 22.

³⁶ A metic himself, Aristotle provides the classic defense of exclusion from participation on the polis in *The Politics*. He responded to critics who argued that co-residence and shared labor were sufficient basis for political membership by arguing that "[a] citizen does not become such (...) merely by inhabiting a place." (as quoted in Walzer, *Spheres of justice: a defense of pluralism and equality*: 54.

³⁷ On contemporary examples of present day metics, which in my view encompasses fourth generation migrant, refugee and stateless individuals and groups denied a right to stay in territories where they were born and raised, see Peter J. Spiro, "Mandated membership, diluted identity: Citizenship, globalization, and international law," in *People out of place: globalization, human rights, and the citizenship gap*, ed. Alison Brysk and Gershon Shafir (New York: Routledge, 2004); Brad K. Blitz and Maureen Lynch, *Statelessness and citizenship: a comparative study on the benefits of nationality* (Cheltenham: Edward Elgar, 2011). See also the comprehensive UN report on statelessness in the Middle East by Laura van Waas, "The situation of stateless persons in the Middle East and North Africa," (United Nations High Commissioner for Refugees, October 2010).

are under legal guardianship of male relatives, as is the case in most states in MENA? What of naturalized citizens who are either exempted of political participation – as the case was for naturalized Kuwaiti male citizens until 1996 –, or who are continuously subject to arbitrary naturalization and denaturalization policies at the hands of the ruling regime – as is the case with former or current Jordanian citizens of Palestinian background since 1949? In short, insight into the category of metics led me to contemplate on the conglomerate groups of stateless residents, long-term refugees, undocumented inhabitants, along with disenfranchised children of marriages between female citizens and male non-citizens observed in several states in the Middle East.

Third, Walzer insisted on the political nature of determining who is included and excluded from membership, and how non-members can be admitted to belong to a polity. He points that “the distribution of membership [...] in any ongoing society, is a matter of political decision.”³⁸ Given the political nature of the distribution process itself, I was able to formulate questions such as: what constitutes the arenas and institutional frameworks through which the political distribution of membership occurs? Who are the key players – those we may call the ‘master group’ of members in these arenas and institutions – that undertake the political choices regarding membership in the political community? How is that master group constituted as members in the first place?

In the Middle East, the answers to these questions lead to one constitutive principle, that of territoriality, i.e. the principle upon which state sovereignty and political authority is embedded. The territorial principle was established in the Middle East in the aftermath of the downfall of the Ottoman Empire during and after World War 1. This point explains why the process of state building and state formation constitute the epicenter around which my theoretical discussion regarding the politicized distribution of membership in the state and the ensuing forms of participation in the Middle East spur around.

Fourth, when Walzer emphasized the “piling up of inequalities that is characteristic of divided societies” following different or unequal legal status, what sort of divisions and what kind of societies and polities did he specifically have in mind?³⁹ When and why are societies

³⁸ Walzer, *Spheres of justice: a defense of pluralism and equality*: 40.

³⁹ *Ibid.*, 31. Walzer is vague on the subject of what constitutes ‘divided societies’ although the term is frequently applied in his works. He points, for instance, at ethnic, religious and national features which in some states, he argues, form particularist and tribal identities. According to him, these give rise to national divisions that challenge the territorially based, in contrast to a culturally based, political unit. Michael Walzer, “The New

and polities, I wondered, sometimes labeled 'plural' or 'multicultural', often inferring agreeable normative connotations of peaceful coexistence, while the same societies and polities at other times are labeled 'divided' or 'segmented', often inferring less agreeable connotations of ethnic and religious strife as well as chronic violent social and political upheavals?⁴⁰

Indeed, the analytical importance of defining a phenomenon on whether and in which ways a society is 'plural' and / or 'divided' came to be of paramount importance for analyzing the politics of citizenship. I eventually settled on using 'divided' and 'deeply divided' rather than 'plural' as conceptual term in order to emphasize the segmental ways in which divisions are organized in states in the Middle East.

I build on Rabushka and Shepsle's definition of 'plural societies', and define divided societies as those identified by societal diversity in which communities are politically organized, and where ethnicity is a salient characteristic.⁴¹ 'Ethnicity' is defined broadly as a "collective identity and solidarity based on such ascriptive factors as imputed common descent, language, customs, belief systems and practices (religion), and in some cases race and color."⁴² To this definition I add one significant characteristic to ethnicity in divided societies in the Middle East, and that is the *systematic use of state power* in organizing and institutionalizing communal groups. With the agency of state power as means to organize membership in communal groups, we are no longer dealing with communal identities as defined by individuals that belong to the group, I argue. In divided states in the Middle East, state power impacts on administering, regulating and perpetuating divisions among and

Tribalism," *Dissent*, no. Spring (1992): 164-66. In other works where Walzer uses the term 'divided societies' he does not define the term explicitly but takes it rather as a generic description of unequal access to resources (money, jobs); differences based on sex or color (men / women; black / white), or ethnic, religious and tribal belonging – all which give rise to different forms of inequality within a society which leads to strife and violence (civil war and invasion). See Michael Walzer and David Miller, *Thinking politically: essays in political theory* (New Haven, Conn.: Yale University Press, 2007). In *On Toleration*, Walzer presents Israel as a 'deeply divided state', a point which I comment on further under part 3 of this chapter. See Michael Walzer, *On toleration* (New Haven, Conn.: Yale University Press, 1997), 41-42.

⁴⁰ The terms 'multicultural', 'plural' and 'divided' are sometimes used interchangeably, see for instance Majid Al-Haj "Multiculturalism in deeply divided societies: the Israeli case" in *International Journal of Intercultural Relations*, 2002, vol. 26, issue 2, pp. 169-183.

⁴¹ Rabushka and Shepsle distinguish between 'plural' and 'pluralistic' societies. According to their definition, both plural and pluralistic societies are characterized by cultural diversity, but plural societies are identified by two additional traits: they are "politically organized cultural communities" permeated by "the salience of ethnicity". Alvin Rabushka and Kenneth A. Shepsle, *Politics in plural societies: a theory of democratic instability* (Columbus, Ohio 1972), 62.

⁴² Milton J. Esman and Itamar Rabinovich, eds., *Ethnicity, pluralism, and the state in the Middle East* (Ithaca: Cornell University Press; published in cooperation with the Dayan center for Middle Eastern and African studies at Tel Aviv university, 1988), 3.

between the state's inhabitants – citizens and non-citizens – in ways that 'ethnicize' inhabitants as members of groups, along religious, ethnic, tribal and / or gendered lines.⁴³

At the time – in 1972 – Rabushka and Shepsle presented a critique with reference to understanding the salience of communal sentiments and the impact of ethnicity on the creation of the modern state. They argued that ethnicity is a variable where 'politics' evolves as an independent variable; ethnicity institutionalizes and hardens along ethnic dimensions in divided states.⁴⁴ My understanding of ethnicity is likewise one where the politics of citizenship evolves as an independent variable which institutionalizes particular demos as well as citizen configurations in the state and hardens along religious, ethnic or tribal divisions in divided states in the Middle East. This understanding follows from Cynthia Enloe's insight in applying a 'situational' and an 'ascriptive' theoretical approach to the study of ethnicity. Commenting on the state power and the political significance of ethnicity she differentiated between an 'ascriptive' and a 'situational' approach towards the study of ethnicity. Through an ascriptive approach a person's descent and primordial bonds are emphasized and taken as defining ethnic belonging. A situational approach, however, "does not imagine ethnicity to be a package of fixed attributes and lineage patterns. It presumes that ethnicity is open to changing collective definitions and fluctuating emotional intensities. [...] Situational theorists also suspect that politics can shape as well as simply mirror ethnic pluralism."⁴⁵ In other words, the politics of citizenship in the Middle East can be seen as both shaping as well as mirroring societal divisions in society and state.

⁴³ Cynthia H. Enloe, *Police, military and ethnicity: foundations of state power* (New Brunswick: Transaction Books, 1980), 167-68; Paul Brass, *Ethnic groups and the state* (London: Croom Helm, 1985), 3-10. See also especially chapter 7 "Ethnic groups and the state" in Paul R. Brass, *Ethnicity and nationalism: theory and comparison* (New Delhi: Sage, 1991), 241-99.

⁴⁴ Rabushka and Shepsle, *Politics in plural societies: a theory of democratic instability*: 64-66. Judging from their insights four decades ago, Rabushka and Shepsle retain a refreshingly accurate assessment regarding the problems and challenges pertaining to defining 'plural societies': "political scientists, like sociologists and anthropologists, neither have a uniform notion of cultural diversity (e.g., what constitutes a plural society?) nor concur on its political implications." *Ibid.*, 19.

⁴⁵ Cynthia H. Enloe, *Ethnic soldiers: state security in divided societies* (Athens: University of Georgia Press, 1980), 1-2. Esman and Rabinovich draw a similar distinction between 'primordialism' and 'instrumentalism'. According to them, 'primordialists' emphasize the deep-rootedness of ethnic and religious solidarities and that such loyalties should be regarded as continuing realities, while 'instrumentalists' "emphasize the adaptive and opportunistic quality of communal identities and solidarities". Milton J. Esman and Itamar Rabinovich, "The study of ethnic politics in the Middle East," in *Ethnicity, pluralism, and the state in the Middle East*, ed. Milton J. Esman and Itamar Rabinovich (Ithaca: Cornell University Press; published in cooperation with the Dayan center for Middle Eastern and African studies at Tel Aviv university, 1988), 12-13. Judging from the views and perspectives of these authors as presented in their article, particularly the discussions pertaining to the subsections 'integration vs. conflict models' and 'conflict management', I would argue that the authors represent predominantly primordialist analytical approaches and views regarding group membership.

2.2 Spheres of membership in the Middle East

The abovementioned four considerations form points of associations between Walzer's explicit reservation with regards to 'single status', and my reflections with regards to the distribution of differential legal status categorizations in the Middle East in general and in divided societies in particular. In short, Walzer put me on the track of probing more closely into the disparate distribution of membership and the grey zones of status categorization within contemporary states of the Middle East which I eventually envisaged as 'spheres of membership' in the Middle East.

Indeed, lack of membership, or more precisely, the different forms and categorization of membership in the state resulting from inclusionary and exclusionary practices through state power, is part of a long list of exclusionary rules and practices in state and society in the Middle East.

Two questions arise: First, who is 'the people' of the state, i.e. those who constitute the state's citizenry?⁴⁶ Second, inferring perspectives whereby democratic forms of governance are implied with regards to participation: who is the people in which name the 'democracy game' shall be played? Given that the term 'democracy' is coined on the Greek words *demos* ('people') and *kratos* ('governance' or 'rule'), any elaboration on the latter part of the word needs careful attention to the former. Who, then, constitutes the *demos* in which name *kratos* shall be carried out?

In contemporary states in the Middle East, who constitutes 'the people' in some states represents challenges regarding contested, and therefore conflicting, views regarding who shall compose the state's legitimate members. Hence, the politicization of the *demos* refers to the problematized, contested and conflicting ways in which the population of the territorial state is constituted, shaped and potentially reformed.

In contemporary political philosophy, the term 'demos' is used and understood in different ways. According to Held, the *demos* "held sovereign power, that is, supreme authority, to engage in legislative and judicial functions" during the period that corresponds with the classical ideal of the *polis*, the Athenian city-state democracy as it evolved around

⁴⁶ Robert A. Dahl asked "who constitute 'the people'?" at a lecture held The Nobel Institute in Oslo 8 October 1992, and added that "[t]his is a basic question for contemporary theories of democracy." Quoted in Butenschøn, "The politics of ethnocracies: strategies and dilemmas of ethnic domination," 1.

500 – 350.⁴⁷ He points, however, that “[t]he peculiar modern distinctions which began to emerge with Niccolo Machiavelli (1469 - 1527) and Thomas Hobbes (1588 -1679) between state and society, specialized officials and citizens, ‘the people’ and government, are not part of the political philosophy of the Athenian city-state.”⁴⁸ Held explains some pages later that the *polis* was marked by participation, public deliberation and a highly restricted citizenship which embraced a small proportion of the population that made Athenian democracy “intimately connected to what might call the ‘tyranny of citizens’.”⁴⁹

Habermas views ‘demos’ as a civic association based on equal rights.⁵⁰ Dahl emphasizes that a member of an association has to be taken “a better judge of his or her interests than others would be” in order to satisfy a set of conditions that do not involve the principle of guardianship in decision-making, and calls “adult members who satisfy this presumption citizens; collectively the citizens constitute the *demos*, *populous* or *citizen body*.”⁵¹ In practice, however, Dahl applies the term ‘demos’ and ‘citizen’ interchangeably in his analysis. For instance, he writes that “[w]ell into the last century most advocates of democracy assumed that women were rightly excluded from the suffrage, that is, from the *demos*”⁵², and “[e]very person subject to a government and its laws has an unqualified right to be a member of the *demos* (i.e., a citizen).”⁵³

Linz and Stepan addressed the terms ‘demos’ and ‘polis’ in their analysis of political transitions. They point that “[t]here are many sorts of polis/demos incongruence, and all of them create problems for democratic consolidation unless carefully addressed.”⁵⁴ Their observations focus, however, primarily on national aspirations of political leaders which do not concur “with the empirical realities of the *demoi* (populations) in their state” as witnessed in post-communist states such as Estonia and Latvia.⁵⁵ Also, as they explain with reference to separatist movements by Basques and Catalons: “the question of *demos*, of who was a citizen in the Spanish state, never became for the Spanish state an issue. The

⁴⁷ David Held, *Models of democracy* (Cambridge: Polity, 2006), 14.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, 19.

⁵⁰ Øyvind Østerud, "Democracy beyond borders? The European Case," in *Power and democracy: critical interventions*, ed. Øyvind Østerud, Fredrik Engelstad, and Robert E. Goodin (Aldershot: Ashgate, 2004), 174-75.

⁵¹ Dahl, *Democracy and its critics*: 108, emphasis in original.

⁵² *Ibid.*, 115.

⁵³ *Ibid.*, 124.

⁵⁴ Juan J. Linz and Alfred Stepan, *Problems of democratic transition and consolidation: Southern Europe, South America, and post-communist Europe* (Baltimore, Md.: Johns Hopkins University Press, 1996), 26.

⁵⁵ *Ibid.*, 26, 428-29.

legal status of being a Spanish citizen was never denied to any Basque or Catalan armed militant or separatist.”⁵⁶ Linz and Stepan’s example illustrates well how the constitution and distribution of membership in the state, what is here seen as ‘legal citizenship’, underpins the politicization of membership in newly established territorial states, whether we are dealing with post-Soviet states in the aftermath of 1990, or post-Ottoman states in the Middle East in the aftermath of 1920.

The variations and partially unclear ways in which the term demos has been understood and defined opens up opportunities to determine what the demos reflects in specific settings in a Middle East context. Figure 1 entitled ‘spheres of membership’ is thus an attempt to present a conceptual guideline in the form of circles that inform my discussions on forms of membership.⁵⁷

The envisaged border of the territorial state is at center. The borders of the territorial state mark off those who reside in the state and include citizens, i.e. members of the state, and non-citizens, i.e. those excluded from membership from the state (stateless and immigrants). Each ring includes thus residents, i.e. both citizens and non-citizens. With respect to membership, however, residents belong to different legal class categories: those included as full members of the state constitute the state’s demos; they enjoy equal rights and duties depending on the scope, degree and distribution of material and non-material goods in society. Members of the state who enjoy less than full membership status are part of the polity, but they do not form part of the polity’s demos.⁵⁸

The figure indicates that the demos and the polity configurations are two separate entities in contemporary states in the Middle East: they may overlap, but not necessarily. The majority of female citizens in MENA are, for instance, members of the polity but they are not full members of its demos. This anomaly follows from the situation that most female

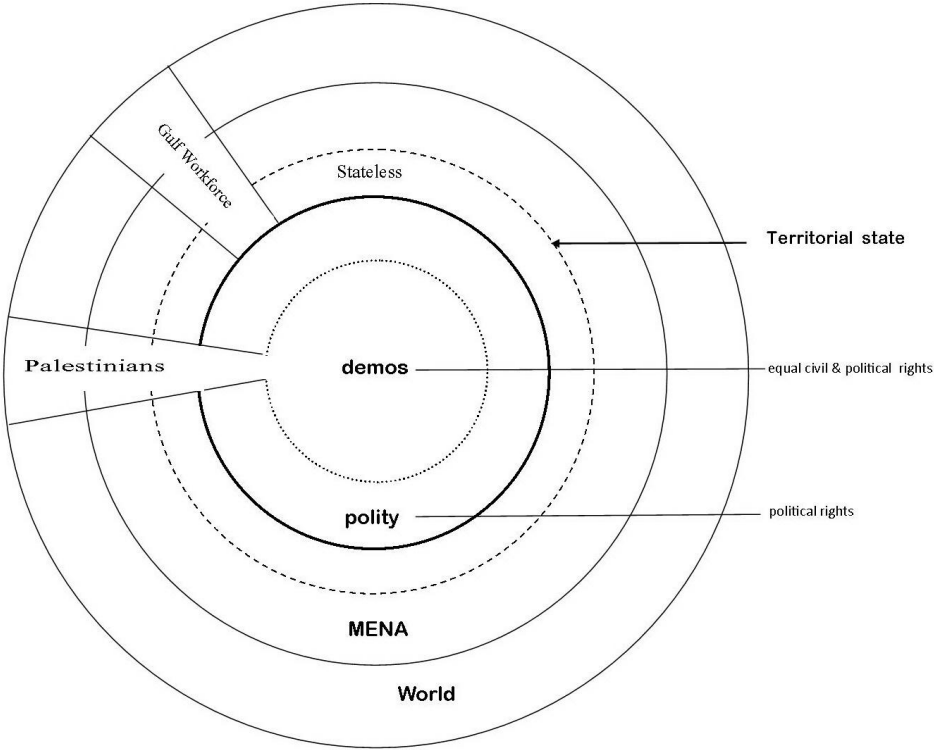
⁵⁶ Ibid., 28.

⁵⁷ For an informative discussion on how categories constitute and produce different forms of inequality, see chapter 3 in Charles Tilly, *Durable inequality* (Berkeley, Calif.: University of California Press, 1998), 74-116. On the “larger categorical system to which citizenship belongs”, Tilly remarks that it “includes further distinctions such as native-born citizen/ naturalized citizen / legal resident / illegal resident / legal visitor / excluded foreigner. Such systems always include formal procedures to transfer persons from one category to another.” Ibid., 198.

⁵⁸ Heywood defines ‘polity’ as “[a] society organized through the exercise of political authority” while ‘state’ is defined as “[a] political association that establishes sovereign jurisdiction within defined territorial borders”. Andrew Heywood, *Politics* (Basingstoke: Palgrave, 2002), 429, 31. Held reserves the term ‘state’ to “the notion of an impartial or legally circumscribed system of power, separate from the ruler or ruled, with supreme jurisdiction over a delimited territory” and points that this idea of the state is “best thought of as a late sixteenth-century invention” Held, *Models of democracy*: 32.

citizens in the Middle East enjoy political rights, but these rights are severely constrained by restrictions on women’s civil rights mainly through the state’s institutionalization and management of family law as state law. I propose that female citizens be analytically seen as denizens; a category of citizens who are neither full members of the polity nor strangers. In short, female citizens are not members of the polity’s demos. The exclusion of enfranchised citizens from the demos – i.e. female citizens who have equal political rights but not equal civil rights with men – is a theoretical anomaly. The distinction is nevertheless fruitful because it captures the essence of the boundaries of the membership status in which female citizens are mantled with through state power in most states in MENA.

**Figure 1:
Spheres of membership in the Middle East**



“Stateless” reflect the existence of residents within and at the borders of territorial states, such as Lebanon’s *qayd ad-dars* population, Kuwait’s *Bidun* population⁵⁹ and Syria’s stateless Kurds⁶⁰ who – for various reasons – were not enlisted (by the authorities) or did not (as a result of individual or collective voluntary avoidance and involuntary negligence) enlist themselves in enumeration processes.⁶¹

Some rough numbers may be helpful in providing a demographic assessment of persons involved. Female citizens in MENA constitute around half of the population estimated to be around 330 million, making the number of women around 165 million.⁶² The number of the non-citizen workforce in GCC states is estimated to be around 11 million persons which equals 70 per cent of the total labor force population.⁶³ The non-citizen workforce in the six oil-rich Gulf states equals thus roughly the total number of stateless persons in the world, estimated to be at around 12 million persons.⁶⁴

On the outer flanks of figure 1 we find the sizeable migrant population which in some Gulf states, such as Kuwait, Qatar and the UAE, constitute a demographic non-citizen majority of the resident population.⁶⁵ They are, as Walzer views it, present day or soon to be

⁵⁹ ‘Bidun’ means literally ‘without’ in Arabic, and refers to ‘without citizenship’. The term ‘Bidun’ should be distinguished from the term ‘beduin’. Van Waas reports of “several hundred thousand Bidoon in the Gulf region”, whereof the Biduns residing in Kuwait are estimated at 92,000, i.e. approximately a third of the total number of stateless Bidun population in the region. Waas, “The situation of stateless persons in the Middle East and North Africa,” 5-7. See also Abbas Shiblak, “Arabia’s Bidoon,” in *Statelessness and citizenship: a comparative study on the benefits of nationality*, ed. Brad K. Blitz and Maureen Lynch (Cheltenham: Edward Elgar, 2011). On the exclusion of the Bidun population from census-enumerations in 1985 and after the liberation of the Kuwait in 1991, see Rania Maktabi, “Liberated Kuwait and the Regime’s Quest towards Internal Stability,” in *Golfkrisen 1990-1991 i perspektiv [The Gulf Crisis 1990-1991 in perspective]*, ed. Nils A. Butenschøn (Oslo: Department of Political Science, 1993), 164-67.

⁶⁰ Van Waas reports over 300,000 stateless Kurds in Syria and Lebanon. Waas, “The situation of stateless persons in the Middle East and North Africa,” 5. For more on statelessness, see the special edition of *Refugees Magazine* “The excluded: the strange hidden world of the stateless”, n. 147, issue 3, 2007; and *Forced Migration Review*, issue 32, April 2009.

⁶¹ The different categories of refugees, denizens and stateless in Jordan, Kuwait and Lebanon are presented further in chapters 2 and 3.

⁶² “Ara Human Development Report 2009: Challenges for human security in the Arab region,” (New York: United Nations Development Programme, Regional Bureau for Arab states), 271.

⁶³ Nasra M. Shah, “Recent labour immigration policies in the oil-rich Gulf: How effective are they likely to be?,” in *ILO Asia Regional Programme on Governance of Labour Migration, Working paper no. 3* (Bangkok: International Labour Organization and European Union, January 2008), 20.

⁶⁴ Stateless persons are estimated to count around 12 million persons worldwide. Blitz and Lynch, *Statelessness and citizenship: a comparative study on the benefits of nationality*: 1.

⁶⁵ Shah estimates that expatriates constitute approximately 65 per cent of the total population and 82 per cent of the labor force in Kuwait; 78 per cent of the total population and 82 per cent of the expatriate labor force in Qatar; and 71 per cent of the total population and 90 per cent of the labor force population in UAE. Shah, “Recent labour immigration policies in the oil-rich Gulf: How effective are they likely to be?,” 20.

metics: long-term residents and migrant workers who constitute inseparable parts of the socio-economic structure of Gulf states.⁶⁶

2.2.1 A note on the non-citizen workforce in the Middle East

Demographic figures pertaining to the non-citizen workforce shed light on the magnitude of the sheer number of individuals concerned with reference to demos / polity perspectives. Undertheorization pertaining to this anomaly is, according to Kapiszewski, related to the contractual nature of work permits, and the fact that the majority of migrants have membership in home states.⁶⁷

The rights of migrant workers are, in principle, the prerogative of three bodies: i) the contracting agency with whom the worker has signed a labor contract with; ii) the state (or states in case of dual citizenship) which a worker belongs to through a citizenship document; and iii) the international community through the United Nations' International Labour Organization (ILO).⁶⁸

The *kafala* system is, with reference to the citizen / non-citizen divide in the Gulf states, particularly significant to the sustaining of the institution of citizenship in states where citizens constitute demographic minorities (such as in Kuwait, Qatar and UAE). The *kafala* system is a sponsorship system which permeates the working conditions of non-Kuwaitis and where citizenship and resident documents play central parts in establishing and maintaining social orders where citizens and non-citizens are stratified along economic lines which emphasize and bolster tribo-ethnic citizen identities. Only persons holding a Kuwaiti citizenship can operate as '*kafil*', i.e. a sponsor or guarantor of the residency of non-citizens

⁶⁶ For an excellent case study on citizen / non-citizen dynamics, see Anh Nga Longva, *Walls built on sand: migration, exclusion and society in Kuwait* (Boulder, Colo.: Westview Press, 1997). For a rare analysis of the economic and demographic structures that underpin the relationship between nationals and non-nationals in the GCC states, see Andrzej Kapiszewski, *Nationals and expatriates: population and labour dilemmas for the Gulf Cooperation Council states* (Reading: Ithaca Press, 2001). For two updated studies on non-national labor force in GCC-states, see Shah, "Recent labour immigration policies in the oil-rich Gulf: How effective are they likely to be?"; Nasra M. Shah, "The management of irregular migration and its consequence for development: Gulf Cooperation Council," in *Asian Regional Programme on Governance of Labour Migration, ILO Regional Office for Asia and the Pacific, working paper no. 19* (Bangkok: International Labour Organization and European Union, March 2009).

⁶⁷ See Kapiszewski, *Nationals and expatriates: population and labour dilemmas for the Gulf Cooperation Council states*.

⁶⁸ See Gay W. Seidman, "Deflated citizenship: Labor rights in a global era," in *People out of place: globalization, human rights, and the citizenship gap*, ed. Alison Brysk and Gershon Shafir (New York: Routledge, 2004); Kristen Hill Maher, "Globalized social reproduction: Women migrants and the citizenship gap," in *People out of place: globalization, human rights, and the citizenship gap*, ed. Alison Brysk and Gershon Shafir (New York: Routledge, 2004).

in the state. Among the impacts of the *kafala* system is that it creates a financially rewarding market of visa trading for local national sponsors which is resilient to official GCC-policies that aim at restricting labor force immigration: there exist a potentially unsatiable market of workers who are willing to pay in order to become part of the *kafala* system and thus be able to get jobs in GCC states.⁶⁹ Seen from the perspective of citizenship, the *kafala*-system provides a powerful basis for establishing the institution of citizenship as based on a political clientelistic contract between rulers and ruled. Through this contract rulers provide for welfare services and material goods that are not based on taxation and acquire the political support of citizens in ways that secure the basis of the princely dynastic rulership. Among the material goods enjoyed by nationals is rent income that accrues nationals and which enables them to operate as sponsors based on their capitalization of their very legal status as citizens of the state.⁷⁰

The economic significance and political salience of the presence of a disfranchised majority of non-citizen workforce is, indeed, relevant to understanding and analyzing the politics of citizenship in MENA in general and the Gulf states in particular. However, given the main focus in this thesis, I concentrate here on discussing questions pertaining to citizenship and human rights with reference to two main groups, primarily female citizens and stateless.⁷¹

2.2.2 A note on Palestinians and Kurds

Kurds and Palestinians provide ample empirical cases for research agendas with reference to the politics of citizenship in their own right. Indeed, from an analytical perspective, they

⁶⁹ Shah points out that through the *kafala* system of visa trading, a work visa for an Indian is sold for 2042 USD while a work visa for an Iranian is sold for 4084 USD. She concludes that "a fundamental difficulty in the implementation of any policies aimed at curbing visa trading is therefore the ease with which an ordinary local sponsor can have a continuous source of income coupled with a market in sending countries where many are eager to buy such visas at any cost." Shah, "Recent labour immigration policies in the oil-rich Gulf: How effective are they likely to be?," 9.

⁷⁰ On the *kafala* system as structure of dominance, see Longva, *Walls built on sand: migration, exclusion and society in Kuwait*: 78-111. On an analysis of political clientelism, citizenship and the *kafala* system, see Maktabi, "The Gulf crisis (1990-1991) and the Kuwaiti regime: Legitimacy and stability in a rentier state," 6-8, 45-47.

⁷¹ In a forthcoming paper I address questions related to the citizens / non-citizen divide with reference to pressures for reform in family law in Kuwait and Qatar. My hypothesis is that Gulf states have more in common with Levantine states in the Mashreq than with Maghreb states with regards to contained and contracted forms of female citizenship, partly because of the non-taxed based welfare and the abundance of low-paid and unskilled non-citizen workforce which nurture what I would call 'Victorian Islamist ideals'. The current working title of the paper is "Family Law and female citizenship in Kuwait and Qatar: A comparative perspective in light of globalization in the MENA region", to be presented at the *2012 Gulf Research Meeting*, "Women and Globalization in the GCC: Negotiating States, Agency and Social Change", Gulf Research Centre, Cambridge University, 11 – 14 July 2012.

represent 'litmus cases' with reference to the politicization of the demos in the region. This endeavor lies, however, outside the realm of this thesis. In as far the legal status of Palestinians and Kurds is addressed, they exemplify how and in which ways they are included or excluded in different territorial states. The political situation of Palestinians and Kurds differs significantly on one point: Kurds⁷² obtained, with the exception of segments in Lebanon and Syria⁷³, legal citizenship in the territorial states of their abode. The majority of Palestinians are *de jure* and *de facto* stateless.

Palestinians represent a conglomerate and multi-faceted body of inhabitants with an array of legal – at times incongruent, at other times overlapping – statuses (stateless, citizen, non-citizen, long-term migrant workers, naturalized, denaturalized) contingent on shifting political interests of power-holders in each of the states where Palestinians reside.⁷⁴ Significant segments of the Palestinian population share similar legal and socio-economic traits with both stateless residents and migrant workforce in the MENA region. The situation of Palestinian refugees and Palestinians defined as 'displaced persons'⁷⁵, differs nevertheless, from the majority of migrant non-Arab workforce for two main reasons: First, while the latter reside in the MENA region, they are not of the region. The majority of non-Arab workers have homelands that are recognized as territorial states by the international

⁷² On Kurds, see Nicole F. Watts, "Institutionalizing Virtual Kurdistan West: Transnational networks and ethnic contention in international affairs," in *Boundaries and belonging: states and societies in the struggle to shape identities and local practices*, ed. Joel S. Migdal (Cambridge: Cambridge University Press, 2004); Denise Natali, *The Kurds and the state: evolving national identity in Iraq, Turkey and Iran* (Syracuse, N.Y.: Syracuse Univ. Press, 2005); Khalid Khayati, "From victim diaspora to transborder citizenship?: diaspora formation and transnational relations among Kurds in France and Sweden" (Institutionen för Tema, Linköpings universitet, 2007).

⁷³ Kurds number approximately 10 per cent of the Syrian population. An estimated 300,000 Kurds born in Syria remain, According to Human Rights Watch, subject to arbitrary denial of citizenship following a census carried out in 1962. Human Rights Watch, *World Report 2011: Syria*, URL: <http://www.hrw.org/world-report-2011/syria>, accessed 12 December 2011. Following the uprisings in Syria in 2011, Syrian authorities issues Legislative Decree nr. 49 on 7 April 2011 granting Syrian citizenship to persons registered in the registers of (predominantly Kurdish populated town of) Hasaka as 'foreigners'. See "Syria to grant citizenship to some of its stateless Kurds", URL: <http://kurdishrights.org/2011/04/07/syria-to-grant-citizenship-to-some-of-its-stateless-kurds>, accessed 12 December 2011.

⁷⁴ See my "The formal relations to the states: Givens and strategies", chapter 3 in Signe Gilen et al., "Finding Ways: Palestinian Coping Strategies in Changing Environments," (Oslo: Fafo Institute for Applied Social Science, 1994), 23-41. On Palestinians, see Ingvild Hauge, "The political dynamics of citizenship: an analysis of demographic structure, state-idea, and regime as determinants of citizenship policies regarding the Palestinians in Israel, Jordan and Lebanon" (Universitetet, 1997). See also Roula El-Rifai and Rex Brynen, *Palestinian refugees: challenges of repatriation and development* (London: I.B. Tauris, 2007); Rex Brynen and Roula al Rifai, *Compensating Palestinian refugees: legal economic and political perspectives* (I. B. Tauris, 2011).

⁷⁵ The term 'displaced' refers to Palestinians who became refugees following the 1967 war and who do not have a 1948 refugee status as defined by The United Nations Relief and Works Agency for Palestine Refugees (UNRWA).

community represented by the United Nations (hereafter UN). Second, stateless Palestinians, who also constitute a sizeable body of migrant Arab speaking workers in MENA, have legal rights to a homeland in international law through UN Resolutions 194 and 242, but no sovereign territorial state to be members of yet. The political plight of Palestinians with refugee and/or stateless legal status remains therefore enshrined in international law, and as such, the legal responsibility of the international community, and not only the legal prerogative of single states.⁷⁶

2.3 Citizenship regimes and the distribution of rights within the polity

A central rule of inquiry that informs my analysis on the politics of citizenship is an assessment of overall type of ‘citizenship regime’ that exists within the state. Citizenship regimes refer to an analytical distinction between individually-based and group-based citizenship which permeate the normative principles of the allocation of rights within a polity: In an individually-based citizenship regime, civil and political rights are conferred to members of the state on an individual basis. Individual citizenship rights imply thus a direct membership in the state where rights are granted and guaranteed on the basis of a citizen’s autonomy and full legal capacity. Group-based citizenship implies indirect membership in the state through an ‘identity group’. Group-based citizenship reflects notions of nationhood and belonging to the state in ways where female and male members are normatively regarded as part of larger kinship structures ideologically bound by descent or membership in a religious and / or ethnic group. In states characterized by a group-based citizenship regime, civil and political rights are conferred to citizens as members of a group (e.g. religious, ethnic, tribal).

The distinction between group-based and individually-based citizenship regimes builds further on Butenschøn’s delineation pertaining to the distribution of rights along ‘discriminatory’ or ‘non-discriminatory’ lines. According to him, this delineation distinguishes between “whether the organizational principle of state institutions is based on *collective* or *individual* membership”, and “whether or not the state applies a *systematic principle of*

⁷⁶ See especially chapter 3 “The International Law Framework” in Donna E. Arzt, *Refugees into citizens: Palestinians and the end of the Arab Israeli conflict* (Washington, D.C.: The Council, 1997), 63-79. For scholarly insights into the Palestinian national struggle, see *Blaming the victims: spurious scholarship and the Palestinian question*, ed. Christopher Hitchens and Edward Wadie Said (London: Verso, 2001).

differentiation between individuals or groups in its allocation of rights and duties."⁷⁷

Butenschøn focuses particularly on the political organization of state territories with reference to the distribution of rights: 'hegemonic systems' are categorized as having more or less 'discriminatory features' which reflect neither equality between groups, nor the neutrality of the state, whereas 'consociational democracies' (where governance is based on power-sharing among elite groups) and 'majoritarian systems' are categorized as 'non-discriminatory'.⁷⁸

In parts 3 and 4 of this chapter, I point at problems related to viewing consociational democracies as 'non-discriminatory', and emphasize the theoretical challenges inherent in the existence and sustaining of legal pluralism as a characteristic feature in polities of the Middle East.

Questions regarding differential civil rights between female and male citizens as enforced through family law, and group-based citizenship as reflected and interpreted by state authorities, are intimately linked: without establishing and controlling through state power – and thereby enforcing – the distribution of disparate civil status between male and female citizens through family law, the political importance of group-based citizenship along religious lines weakens considerably.⁷⁹

Below, I concentrate primarily on the role which state power plays in structuring the allocation of differential civil rights among female and male citizens through the state's management of religious law. By extension, the institutionalization and organization of family law at the hands of the state sustain and bolster differential civil rights among the citizens of different religious groups.

⁷⁷ Butenschøn, "State power and citizenship in the Middle East: A theoretical introduction," 17-18, emphasis in original.

⁷⁸ *Ibid.*, 17, 26.

⁷⁹ Ayalet Shachar, "Should church and state be joined at the altar? Women's rights and the multicultural dilemma," in *Citizenship in diverse societies*, ed. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000); Susan Moller Okin et al., *Is multiculturalism bad for women?* (Princeton, N.J.: Princeton University Press, 1999); Suad Joseph, "Civic myths, citizenship and gender in Lebanon," in *Gender and citizenship in the Middle East*, ed. Suad Joseph (Syracuse, N.Y.: Syracuse University Press, 2000).

2.4 State power and the structuring of group-based citizenship along religious lines

The uniqueness of state power stems from the state being an entity that is ‘more than an umpire’. Day refers to S.I. Benn and R. S. Peters who emphasize that while the government is in the position of an umpire, “the state is more than an umpire, because it not only enforces the rules, but also – and to an even greater extent – makes them.”⁸⁰

With reference to the Middle East, Migdal argues that forms of inclusions and exclusions produce boundaries that create identity and status which do not precede, but often result, from state power.⁸¹ He points at categorizing and monitoring devices which are used by the state to create and sustain particular forms of collective group identities. Migdal emphasizes that control over marriage and divorce has over time proved to be important arenas of contest. “Being a part of society, right into the bedroom, is fraught with problems for the state”, he argues.⁸²

What I refer to as a conundrum of citizenship in MENA region reflects the set of problems related to the embedment, literarily speaking, of the state with religious law through family law.⁸³ Enacted through the state as codified canonical law, or through autonomous clerics, the organization and institutionalization of family law – either as state law or as part of the state’s legal structure – represent central arenas of conflict related to the organization and distribution of state power.

Seen from the perspective of citizenship as a relationship between citizen and state, these problems are reflected at the state, group and individual levels in a variety of ways that highlight how individuals’ group-based membership in religious groups is structured and sustained through state power. The following presentation adopts a top-down perspective with regards to the structuring of membership in religious groups in the Middle East. As

⁸⁰ ‘Umpire’ in the sense of arbitrator, principle adjudicator or judge. John P. Day, *Liberty and justice* (Aldershot: Gregg Revivals, 1987), 187.

⁸¹ See Joel S. Migdal, "Mental Maps and Virtual Checkpoints," in *Boundaries and belonging: states and societies in the struggle to shape identities and local practices*, ed. Joel S. Migdal (Cambridge: Cambridge University Press, 2004), 14-15, 20-23. See also Brandell, *State frontiers: borders and boundaries in the Middle East*, 12-14.

⁸² Migdal, "Mental Maps and Virtual Checkpoints," 19. See particularly the article which Migdal refers to by P. J. Woods, "Gender and the reproduction of group boundaries: Why the “secular” state matters to religious authorities in Israel?," in *Boundaries and belonging: states and societies in the struggle to shape identities and local practices*, ed. Joel S. Migdal (Cambridge: Cambridge University Press, 2004).

⁸³ Throughout the thesis I refer to ‘religious law’ in a generic sense, implying and including forms and interpretations of sacred text and jurisprudence pertaining to different confessional religious groups that are subgroups of the three monotheistic religions, Islam, Christianity and Judaism.

such, it highlights state-mandated forms of group formation on the basis of what Clifford Geertz termed as 'primordial attachments'.⁸⁴

2.4.1 The state level: Codifying and institutionalizing religious law as state law

The codification of law implies a process whereby rules and norms are explicitly recorded as state laws.⁸⁵ The centralization of judicial authority in the Middle East began with the reformation of the Ottoman legal system in the 19th century, i.e. in the period before the establishment of territorial states following the dissolution of the Ottoman Empire in 1918. While most legal and judicial fields were modernized in ways that incorporated Western legal standards (such as constitutional, commercial and criminal laws), the Ottoman Law of Family Rights of 1917 maintained the authoritative legitimacy of religious jurists and laws by perpetuating the autonomy of religious groups in defining rules of personal status.⁸⁶

The institutionalization of religious law as state law persisted after independence under the influence and control of national rulers.⁸⁷ In most states the codification of family law occurred through decrees at different points in time.⁸⁸ In general, governmental

⁸⁴ Geertz explains: "By a primordial attachment is meant one that stems from the "givens" – or more precisely, as culture is inevitably involved in such matters, the assumed "givens" – of social existence: immediate contiguity and kin connection mainly, but beyond them the givens that stems from being born into a particular religious community, speaking a particular language, or even a dialect of a language, and following particular social practices. These congruities of blood, speech, custom, and so on, are seen to have an ineffable, and at times overpowering, coerciveness in and of themselves." Clifford Geertz, "The integrative revolution: Primordial sentiments and civil politics in the new states," in *Old societies and new states: the quest for modernity in Asia and Africa*, ed. Clifford Geertz (New York: Free Press, 1963), 109.

⁸⁵ Customary law and traditional law are examples of *uncodified* laws. So is the case with Islamic *shari'a* which should be understood as a complex body of a set of legal norms that reflect changing jurisprudence (*rettspraksis* in Norwegian), rather than a unified body reflecting 'a religious law' often referred to in the singular. Codified laws are explicitly formulated state laws formed under the auspices of a political regime. A codified family law as state law is subject to change and is thus secular and temporal in nature, although its articles may be based and derived from religious laws or customary norms.

⁸⁶ George N. Sfeir, "The place of Islamic law in modern Arab legal systems: A brief for researchers and reference librarians," *28 Int'l J. Legal Info.* 117(2000).

⁸⁷ A presentation of the ways in which religious law and the judicial system was institutionalized and organized under colonial rule is outside the frameworks of this thesis. For an informative insight into the variety of policies applied with reference to the institutionalization of the judicial system and the impact of religious law on the legal system under the British and French colonial period, see Pierre-Jean Luizard, *Le Choc colonial et l'islam: les politiques religieuses des puissances coloniales en terre d'islam* (Paris: La Découverte, 2006). On the importance of European colonial influence on the millet system and how early nineteenth century economic and cultural developments undermined traditional patterns of relations between Muslims and non-Muslims in ways where different communities "drifted into sharper competition and mutual suspicion", see Jonathan P. Berkey, *The formation of Islam: religion and society in the Near East, 600-1800* (Cambridge: Cambridge University Press, 2003), 266.

⁸⁸ See table 2 in part 4 where years of codification of family law is rendered in the typology on female citizenship according to political regime and type of citizenship regime.

committees included political representatives of the state, legal advisors in civil law and religious clerics who epitomized the expertise on religious law.

In chapter 3 I point, for instance, at how the Syrian family law was codified. As in other Arab states where Islam dominates, Syria shaped its family law out of nationally and politically defined mixtures of *shari'a* principles and profane civil laws. The current Syrian family law of 1953 was prepared by a government commission which included both Muslim religious scholars, civil lawyers and political representatives who codified the Syrian family law on the basis of five sources: 1) the 1917 Ottoman family law, 2) the unofficial code prepared by the Egyptian jurist Qudri Pasha, 3) various Egyptian laws enacted between 1920 and 1946, 4) a treatise on personal status law drafted by the Damascene judge Ali al-Tantawi, based on his choices among different law schools according to principles most suitable to changing conditions, and 5) the choice of the committee members of various Islamic jurisprudence regulations in accordance with the Hanafi school.⁸⁹ Similar legal textual mixtures can be traced in the codified family laws of each state. Such processes illustrate that the codification process and the end product, the state's family code, had a distinct national flavour.⁹⁰

With regards to the institutionalization of the judicial system, i.e. the state's court system, religious law became primarily institutionalized in two modes: a unitary court system – as found in Egypt and Morocco – where verdicts on family law are made by civil judges, and a dual court system with parallel civil and religious courts – as found in Syria and Lebanon – where religious courts have various degrees of autonomy.⁹¹ The institutionalization of the court system informs the pairwise most similar systems design applied in chapter 4 when Egypt and Morocco are seen as 'Muslim majority states' and compared to Lebanon and Syria categorized as 'multi-religious states'. One of the main findings in this article is that female citizens have acquired wider civil rights through parliament in relatively homogenous states with unitary court systems than in multireligious states with dual court systems. In Egypt and Morocco, unitary courts curbed clerical judicial

⁸⁹ See M. F. Shafaqa, *sharh al-ahkam ash-shakhsiyya [Explaining personal status laws]* (Damascus: al-Nuri, 1998), 15.

⁹⁰ See Aharon Layish, "The Transformation of the Shari'a from Jurists' Law to Statutory Law in the Contemporary Muslim World," *Die Welt des Islams* 44, no. 1 (2004); Lynn Welchman, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy* (Amsterdam: Amsterdam University Press, 2007).

⁹¹ I use the terms 'dual court system' and 'multiple court systems' interchangeably; both indicate the lack of centralized judicial system in the state.

authority over family law and weakened the resilience of conservative religious authorities. In these states renewed pressures for reform after 1990 yielded strengthened female civil rights. In Syria and Lebanon, dual courts safeguard the judicial autonomy of clerics and enable them to resist pressures for family law reform more forcefully. Reforms in Syria and Lebanon were limited because the interests of political and religious authorities converge in ways that bolster group-based citizenship and constrain the civil rights of female citizens.

2.4.2 The group level: Autonomy of religious groups

Family law remains the main legal arena where non-state actors, such as religious groups and scholars, have partial autonomy in interpreting and applying religious tenets and rules as state law.

Particularly religious groups in multi-religious states have maintained autonomy in regulating family law. In Lebanon and Syria, for instance, the ‘legal link’ between the Constitution and religious law occurs through assertions that the state shall respect the ‘religious rites’ of religious communities.⁹² In both states, more than 15 religious groups are recognized.⁹³ The powers of clerical authority in Syria and Lebanon have distinctive historical backgrounds intimately linked to the historical legacy of the Ottoman *millet*-system whereby

⁹² Article 35 of the Syrian constitution states that “[t]he state guarantees the freedom to hold any religious rites, provided they do not disturb the public order.” Article 9 of the 1926 Lebanese constitution asserts that “[t]he State [...] shall respect all religions and creeds and guarantees, under its protection, the free exercise of all religious rites provided that public order is not disturbed. It also guarantees that the personal status and religious interests of the population, to whatever religious sect they belong, is respected.” Art. 19 reads: “The officially recognized heads of religious communities have the right to consult [the Constitutional Council] only on laws relating to personal status, the freedom of belief and religious practice, and the freedom of religious education.”

(<http://www.nowlebanon.com/Library/Files/EnglishDocumentation/Official%20Documents/Lebanese%20Constitution.pdf>). Art. 9 and 19 of the Lebanese Constitution are read as safeguarding the authority in personal status laws to heads of the officially recognized religious communities.

⁹³ There are five Muslim denominations in both states (Sunni, Shi’a, Druze, Ismaelite and Alawite), a small Jewish community and a plethora smaller and bigger Christian denominations (12 in Lebanon and 10 in Syria): Greek Orthodox, Syriac Orthodox, Armenian Orthodox, Oriental Nestorian (known previously as ‘Assyrian Chaldean Nestorian’), Greek Catholics (also called ‘Melchites’), Armenian Catholics, Syriac Catholic, Maronite and Latins. In Lebanon, Protestants and Copts are two officially recognized Christian denominations. Akram Yaghi, *qawanin al-ahwal ash-shakhsiyya lada al-tawa’if al-islamiyya wal-masihyya*. (Beirut: manshurat zein al-huquqiyya, 2008), 59-60. The size of the different religious groups in both states is not officially known. Lebanon has not had an official census since 1932 and Syria stopped releasing statistics on the distribution of the population according to ethnic and religious identity in 1956. Rough estimates indicate that Christians in Lebanon comprise 40 % and Muslims 60 % of the population, while the Syrian population comprises of 74% Sunni Muslims, 16% Alawite, Druze and other Muslim sects, and 10% various Christian denominations (CIA Factbook 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/sy.html>), accessed 15 March 2011.

religious groups maintained autonomy with regards to regulating internal affairs. Today, this historical legacy is safeguarded through state measures that seek to preserve the communal rights of groups by ensuring autonomy in the domains of family law and education.⁹⁴

Control over family law is thus only partly under state authorities who thereby accommodate religious groups in maintaining certain social arenas under the jurisdiction of the religious groups. By 'accommodation' I refer to the delegation of certain social spheres, such as education and family law, which religious groups perceive as vital for their constitution and perpetuation as an identity group that share a distinct culture, history or world view. Shachar terms identity groups as '*nomoi* communities' referring to "religiously defined groups of people that 'share a comprehensive world view that extends to creating a law for the community'".⁹⁵ The autonomy of these identity groups is usually facilitated by a state or a political regime through accommodating multireligious or multicultural policies that enable the identity group to be governed by its own institutions and according to its own traditions.

The maintenance of group-based membership in religious groups is less visible, but no less significant in states where Islam is dominant religion with regards to its impact on the distribution of rights in the polity through state power. An implicit membership in religious groups is related to the influence of religious law on the state's family law which impacts on the civil legal status of all citizens in the MENA region. This condition is not unique to Arab states. Family laws are based on religious law in about 1/3 of contemporary states (the majority member states of the Islamic conference, India and Israel).⁹⁶ These states are characterized by the clerical imprint on the state's family law, dual court systems, state-mandated registration of religious identity, and - in Arab states - the '*shar'i* postulate'⁹⁷ in

⁹⁴ Ayelet Shachar, *Multicultural jurisdictions: cultural differences and women's rights* (Cambridge: Cambridge University Press, 2001), 17.

⁹⁵ *Ibid.*, 2.

⁹⁶ On Israel, see page 280 in A. & Shmueli Blecher-Prigat, B., "The interplay between tort law and religious family law: The Israeli Case," *Arizona Journal of International & Comparative Law* 26, no. 2 (2009), <http://www.law.arizona.edu/Journals/AJICL/AJICL2009/BlecherPrigatShmueli.pdf>; Shachar, "Should church and state be joined at the altar? Women's rights and the multicultural dilemma," 215-26. On Muslim dominated states in Africa and South Asia, see B. Krawietz, Reifelt, H. (ed.), "Islam and the rule of law: between shari'a and secularization." (Berlin: Konrad Adenauer Stiftung, 2008), http://www.kas.de//db_files/dokumente/7_dokument_dok_pdf_13008_2.pdf?080214130352, accessed 18 June 2008. See also Sindre Bangstad, *Sekularismens ansikter. [The faces of secularism]*. (Oslo: Universitetsforlaget, 2009).

⁹⁷ Welchman, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy*: 16.

the Constitution which asserts that Islamic jurisprudence shall inform the application of state laws. In many of these states, non-voluntary registration of every citizen's religious identity is significant for three reasons: *First*, without registration, state authorities are unable to ordain the rules necessary to regulate a citizen's legal affairs with regards to family law. *Second*, mandated registration structures group-based citizenship rights, bolstering the understanding that a citizen's membership in an identity group is a primal identity not subject to negotiation.⁹⁸ *Third*, a citizen's choice of membership in a religious group, including conversion, is constrained and susceptible to allegations of apostasy by fellow citizens or by the state apparatus.⁹⁹

One of the politically significant consequences of the non-secularization of the legal and judicial systems is that citizens are categorized *qua* members of a religious group. American anthropologist Suad Joseph argues rightly that an implication of the inclusion of religious law as part of state law is the "elevation of religious identity to civil status" which certifies religious law as the state's public law.¹⁰⁰

⁹⁸ Compulsory membership in religious groups is state policy in Syria, Lebanon, Israel and Jordan. Among the salient state-mandated policies are Regulation 2851 of 2 December 1924, issued during the French Mandate rule, which made the registration of the confessional personal status of each citizen compulsive. In 1951, the authority of Christian clerics was significantly strengthened through Law of 2 April 1951 which widened the autonomy of churches in matters related to marriage and divorce. Aref Zeid Az-Zein, ed. *qawanin wa qararat al-ahwal as-shakhsiyya lil-tawa'if al-masihyya fi lubnan [Laws and regulations on personal status for Christian confessional groups in Lebanon]* (Beirut: manshurat al-halabi al-huquqiyya, 2003), 45, 53. While Muslim and Christian clerics strongly supported the introduction of the 1951 law, members of the Order of Lawyers reacted by organizing an 84-day strike arguing that the delegation of judicial powers from civil courts to religious courts weakened the state's authority. Sherifa Zuhur, "Empowering women or dislodging sectarianism? Civil marriage in Lebanon," *Yale Journal of Law and Feminism* 14, no. 1 (2002): 178; Yaghi, *qawanin al-ahwal ash-shakhsiyya lada al-tawa'if al-islamiyya wal-masihyya*: 55.

⁹⁹ As witnessed, for instance, through the Egyptian state ruling in 1995 and legal proceedings against Professor in Islamic thought Nasr Hamid Abou Zeid (1943 – 2010) who was forced to divorce his wife. The divorce ruling came about when an Egyptian citizen with fundamentalist political leanings filed a suit against Abou Zeid by raising a *hisba*-case, i.e. allegations of insulting God as deity, activating thereby articles 89 and 110 of the Egyptian regulations that govern courts. These laws were amended in Egypt in 1998. However, allegations of apostasy arise recurrently in different Arab states, and can be seen as powerful instruments of social and political control over individuals' religious belief systems. In Syria, attempts at reforming the 1953 Syrian family law by inferring clauses that open up for cases of apostasy leaked through the press in May 2009 and caused an uproar among intellectuals as well as religious clerics. See Rania Maktabi, "Female Citizenship in Syria: Framing the 2009 controversy over the draft laws on personal status," in *paper presented in the conference "Bashar Al-Asad's first decade: A Period of Transition", 7 - 9 October 2010* (The Center for Middle Eastern Studies (CMES), Lund University: forthcoming in a book edited by Raymond A. Hinnebusch and Tina Zintl).

¹⁰⁰ Joseph, "Gendering Citizenship in the Middle East," 11, 19.

2.4.3 The individual level: Distinguishing between *hala shakhsiyya* and *hala madaniyya*

Contemporary Western legal systems do not distinguish between the legal status of a person in the public and private spheres, i.e. an individual's legal and social position within or outside the realm of the family as a kinship system. In most Arab legal systems, however, this distinction is central; an individual's rights and obligations in the public sphere are regulated by civil law, while a person's relationship within the family is regulated by personal status law – more commonly known as 'family law'.¹⁰¹

In legal matters related to a person's private sphere where family law regulates 'private legal affairs', a citizen is ordained a legal status termed *hala shakhsiyya* in Arabic, i.e. a 'personal status'.¹⁰² A citizen's status in the public sphere is, in distinction, termed *hala madaniyya*, referring to a primarily *civil* status.¹⁰³ In practice, civil status excludes matters of personal status and addresses only matters pertaining to civil law in the public sphere such as constitutional, political and social rights of citizens regarding waged labour, education, political representation, freedom of speech and organization in civil societies, political parties and labour unions. The distinction between 'civil status' (*hala madaniyya*) and a 'personal status' (*hala shakhsiyya*) substantiates that a secular civil legal status is a non-option for citizens in Arab states.

¹⁰¹ Mustafa al-Siba'i, *sharh qanun al-ahwal as-shakhsiyya. [Explaining the law of personal status]* (Damascus: Dar al-Warraq, 2001), 11.

¹⁰² 'shakhs' in Arabic means 'person' or 'individual' and is, as the case is in English, a gender neutral noun.

¹⁰³ The Arabic root to the term '*madaniyya*' is '*madana*' which refers to the noun 'town', called '*madina*' in Arabic. By extension 'town' represents literarily the epicenter of the *polis*, the arena whereby political community is exercised.

3 Legal citizenship: Constituting membership in divided societies

“Pluralism is a great comfort, at least, the doctrine of pluralism is a great comfort.”¹⁰⁴

In *Democracy and its critics*, Robert Dahl turns our attention to the historical constitutive legacy of a particular demos. He argues that “who should be included in the demos” represents an intractable domain in democratic theory and practice.¹⁰⁵ The inclusiveness or exclusiveness of the demos of a particular political system has, according to him, implications on forms and procedures of decision-making in a polity. Dahl introduces the distinction between citizenship as a categorical principle, and citizenship as a contingent principle. Citizenship as a categorical principle implies that “[every person subject to a government and its laws has an unqualified right to be a member of the demos (i.e. a citizen)”, while citizenship as a contingent principle implies that “[o]nly persons who are qualified to govern, but all such persons, should be members of the demos (i.e. citizens).”¹⁰⁶ Dahl differentiates between a political system that is democratic in relation to its own demos, and a political system that is democratic in relation to everyone subject to its rules. The first category is *procedurally democratic in a narrow sense*, he argues. The second category is democratic in a wider sense because it meets the criterion of an inclusive demos which has the opportunity to have final control over the political agenda in the decisionmaking process. According to Dahl, only if the demos is inclusive enough to meet this latter criterion could the process of decision-making be described as *fully democratic*.¹⁰⁷

Despite the distinction Dahl provides with reference to restrictive and expansive democratic political systems, he is – as noted earlier – not clear on the differentiation between the terms ‘demos’ and ‘citizens’. Dahl uses the terms interchangeably when he juxtaposes exclusion from suffrage as being equal to exclusion from the demos, and equates thus membership in the demos with being a citizen.¹⁰⁸ The gendered dimension of those who constitute full members of the demos in a Middle East context, i.e. male citizens, is thus implicitly included in Dahl’s elaboration. Dahl’s distinction between expansive and restrictive political systems is in other words helpful to a certain degree, but it is not sharp enough with

¹⁰⁴ Michael Walzer, *Obligations: essays on disobedience, war, and citizenship* (Cambridge, Mass.: Harvard University Press, 1970), 218.

¹⁰⁵ Dahl, *Democracy and its critics*: 116.

¹⁰⁶ *Ibid.*, 124.

¹⁰⁷ *Ibid.*, 108-14, 30.

¹⁰⁸ *Ibid.*, 115, 24.

reference to who is regarded as *member of the state*, i.e. a citizen who has legal citizenship, in distinction to citizens who are members of the demos, i.e. *full members of the polity*. For instance, Dahl summarizes the relationship between aspects of membership and aspects of participation as follows:

[t]he demos being given, the scope of its agenda can be determined. The scope of an agenda being given, the composition of an appropriate demos to make decisions on those matters can be determined. But in principle, it seems, the one cannot be finally determined independently of the other.¹⁰⁹

Dahl presents here clearly the problem of the demos as what I view as a veritable conundrum of citizenship with tautological features.

Butenschøn's presentation of a logical distinction between 'first-order problems' and 'second-order problems' with reference to ethnic conflict provides a clearer elaboration on legal citizenship and how a demos is identified and constituted. He perceives first-order problems as related to the constitution of the demos which delineates the polity's demographic identity. Second-order problems, on the other hand, relate to the constitution of political order that is based on an already agreed upon definition and delineation of the demos. It is, according to the distinction made between the two sets of problems, this agreement that is reached which constitutes an organizing principle for the political system, i.e. the regime that is to rule in the name of the state.¹¹⁰

Walzer presents yet other perspectives with reference to who the demos is or should be. He poses the same questions as Dahl, and offers an exclusionary perception as to who may be included in a polity. According to Walzer, it is those already included that have supreme authority in determining inclusion in the demos: "What kind of community do the citizens want to create? With what other men and women do they want to share and exchange social goods? [...] The members decide freely on their future associates, and the decisions they make are authoritative and final."¹¹¹

But, then again, the question arises, who are those 'members', and – more importantly – how are they constituted as such?

¹⁰⁹ *Ibid.*, 119.

¹¹⁰ Confer with my elaboration on first-order and second-order problems with reference to membership and participation under part 1 of this chapter, see Butenschøn, "Etnisk konflikt og demokrati."

¹¹¹ Walzer, *Spheres of justice: a defense of pluralism and equality*: 40.

Although Walzer does not provide examples of what he defines as ‘deeply divided societies’ in *Spheres of Justice*, he identifies Israel as a ‘deeply divided state’¹¹² in one of his later works. In *On Toleration* Walzer alludes clearly to ‘first-order’ and ‘second-order’ problems as distinguished by Butenschøn whereby the former addresses questions pertaining to the constitution of the demos, while the latter addresses questions pertaining to the constitution of the political order. According to Walzer “the central issue in dispute between Jews and Arabs was immigration policy. It was not a question of how to organize a regime of toleration (Within what structures might Jews and Arabs most readily tolerate each other?) but of who should be the participants in the regime (How many Jews and Arabs were there going to be?).”¹¹³ Among the main instruments used in order to the latter question were the enactment of Law of Return (1950) and Law of Nationality (1952) which constituted the demos of the state by guaranteeing every individual of Jewish background the opportunity to become a citizens, while simultaneously denying the same right to Palestinian refugees who had fled their homes following the war in 1948.

Dahl’s, Butenschøn’s and Walzer’s theoretical observations regarding the interrelatedness between membership and participation constitutes the point of departure to the discussions pertaining to the politics of citizenship as elaborated upon in chapter 2 where membership in the Lebanese state is discussed, and chapter 3 which is a comparative study of the politics of citizenship in Jordan, Kuwait and Lebanon.

In the following, I elaborate on some problems related to the politics of citizenship in Lijphart’s theory on consociational democracy in particular, and problems related to the concept ‘pluralism’ as understood and applied in shedding light on political processes in divided societies in general.

¹¹² According to Walzer, Israel is ‘deeply divided’ in three ways: i) it contains a Palestinian Arab citizen minority who “do not find their history or culture mirrored in its public life”; ii) it has retained autonomous religious courts for family law; iii) it is an immigrant society with different histories and cultures where Zionism, although “a strong nationalizing force [...] has not had the assimilative powers of French republicanism.” Walzer, *On toleration*: 41-42.

¹¹³ *Ibid.*, 41.

3.1 The politics of citizenship in Lebanon

Benedict Anderson points out that the census – along with the map and the museum – represents “institutions of power [...] which changed their form and function as the colonized zones entered the age of mechanical reproduction.”¹¹⁴

In Lebanon the enumeration process carried out in 1932 under French Mandate rule remains until date the only official census that exists. In a state where political representation is based on the proportional representation of religious groups in parliament, the government and the state apparatus – the bureaucratic administrative as well as judicial bodies – the census constitutes a significant political document.

The genesis of the 1932 census reflects political questions pertaining to the idea of the Lebanese state and who its legitimate members should be. These questions were discussed and only partially resolved under Mandate rule. They continue to entangle and therefore aggravate conflicts related to political representation and decision-making over a wide range of second-order issues. The sensitivity accorded to the demographic structure of the country is illustrated in the politics of citizenship that reflects the authorization process where legal regulations as well as political considerations determined membership upon the establishment of the territorial state.

During the process of statebuilding, citizenship policies in the newly established state were applied to reinforce the size of the Christian citizen population through the naturalization of Christian emigrants and refugees such as Armenian refugees (and later, during the 1950s, Christian Palestinians). At the same time, the regime undermined the size of the Muslim citizen population by excluding stateless persons from membership in the state, such as beduin populations living in border-areas, and by denying citizenship to long-term immigrants of Muslim background such as Kurds. With the pass of time, the number of stateless and long-term non-citizen residents increased rapidly. The increase was paralleled by the number of legal requests and growth in the number of disputes where non-citizen residents and stateless persons demanded Lebanese citizenship.

Disputes regarding naturalization did not end before Law 67/68 in December 1967 was issued requiring the presence of the state in cases pertaining to naturalization. Seen in

¹¹⁴ Benedict Anderson, *Imagined communities: reflections on the origin and spread of nationalism* (London: Verso, 1991), 163. Anderson discusses the findings of Charles Hirschman on how the population of Malaysia was counted and categorized during and after British rule, see *ibid.*, 164-70.

judicial terms, Law 67/68 changed the character of lawsuits regarding citizenship from being handled as appeals of request to being considered as appeals of dispute which necessitated the presence of the state. Seen in political terms, the introduction of Law 67/68 froze the legal procedures pertaining to citizenship applications and empowered the President, the state's supreme representative, to issue citizenship certificates. From then on, the application of citizenship laws and judicial procedures pertaining to naturalization and the acquiring of citizenship were shelved into bureaucratic oblivion: a tradition was instituted whereby Lebanese citizenship was bestowed by decree on selected applications at the end of each president's term.¹¹⁵

The premises pertaining to who are the state's legitimate members and to what political end the territorial entity shall serve were already in place when the Lebanese unwritten National Pact was formed in 1943 convened between political elite figures at the time. The National Pact's until date enduring political significance is that it sealed the principle of basing political representation and the distribution of power according to the proportional size of each confessional sect as rendered in the 1932 census. The census, i.e. the document whereby the Lebanese citizenry was categorized and granted membership in the state, provided thus the demographic as well as the political cement that molded the principle of power-sharing under Christian dominance, based on the representation of six Christians to five Muslims in the government, parliament and the civil services.¹¹⁶

The empirical findings I point at related to the politicization of the demos and the politics of citizenship in Lebanon as reflected in the way the Lebanese citizenry was established and maintained, suggest that the importance of the 1943 National Pact and power-sharing as elements that ensure democratic governance in Lebanon as reflected in theories on consociational democracy need to be reconsidered. My main argument is that power-sharing pacts serve well as means to ensure stability, but that the kind of stability consociational arrangements ensure are not necessarily democratic – neither in terms of inclusionary membership aspects, nor in terms of non-elite participatory aspects.

¹¹⁵ I deal more with the presence of the state in court appeals, the role of the President and the importance of administrative personal registries as control instruments in Rania Maktabi, "State formation and citizenship in Lebanon: The politics of membership and exclusion in a sectarian state," in *Citizenship and the state in the Middle East: approaches and applications*, ed. Nils A. Butenschøn, Uri Davis, and Manuel S. Hassassian (Syracuse, N.Y.: Syracuse University Press, 2000), 171-75.

¹¹⁶ The 1989 Taif Accords which ended the Lebanese civil war changed the ratio to an equitable fifty-fifty representation between Lebanese Christians and Muslims.

3.2 On consociationalism: Lebanon in perspective

In political science literature, the importance of national pacts as unifying building blocks in divided societies, and the merits of power-sharing among elites is especially prominent within the ‘consociational school’ established by the Dutch American political scientist Arend Lijphart.¹¹⁷ The theory on consociational democracy has, since it was presented and developed, attracted considerable academic attention. Many researchers perceive ‘consociational democracies’ as an undergroup of democratic governance.¹¹⁸ Since the mid-1990s theories on consociationalism have furthermore attracted new academic interest which is reflected in literature on multicultural citizenship.¹¹⁹ The logic on which consociationalism and multiculturalism rests is by some researchers seen as a prescription for governance strategies in divided polities in Europe and the Middle East, such as Kosovo and Northern Ireland as well as Iraq, Israel / Palestine and Afghanistan.¹²⁰

Coined over time by Lijphart, ‘consociationalism’ came to describe divisions in society, termed ‘segmental cleavages’, as divisions that run along religious, ideological, linguistic, regional, cultural, or ethnic lines.¹²¹ In societies characterized by such cleavages, political parties, interest groups, the media, schools and voluntary associations “tend to be

¹¹⁷ See Arend Lijphart, “Consociational democracy,” *World politics* 21 (January 1969); Arend Lijphart, *Democracy in plural societies: a comparative exploration* (New Haven: Yale University Press, 1977).

¹¹⁸ Linz and Stepan consider ‘consociational democracy’ as an “important category” of variation within democracy. Linz and Stepan, *Problems of democratic transition and consolidation: Southern Europe, South America, and post-communist Europe*: 40. See also Arend Lijphart, *Patterns of democracy: government forms and performance in thirty-six countries* (New Haven, Conn.: Yale University Press, 1999). Brendan O’Leary argues of the enduring importance of consociational politics as a realistic necessity in divided societies.

¹¹⁹ Will Kymlicka, *Multicultural citizenship: a liberal theory of minority rights* (Oxford: Clarendon Press, 1995), 34 -35, 174-75. See also Will Kymlicka and Bashir Bashir, *The Politics of reconciliation in multicultural societies* (Oxford: Oxford University Press, 2008), 12.

¹²⁰ See for instance, the list over ‘classic’, ‘past’ and ‘contemporary’ cases of ‘strong consociational cases’ discussed by Rupert Taylor in Rupert Taylor, *Consociational theory: McGarry and O’Leary and the Northern Ireland conflict* (London: Routledge, 2009), 6. The works by proponents of the consociational democracy school include Noel, *From power sharing to democracy: post-conflict institutions in ethnically divided societies*. See especially Brendan O’Leary, “Debating consociational politics: Normative and explanatory arguments,” in *From power sharing to democracy: post-conflict institutions in ethnically divided societies*, ed. Sid Noel (Montreal: McGill-Queen’s University Press, 2005), 8. Michael Kerr, *Imposing power-sharing: conflict and coexistence in Northern Ireland and Lebanon* (Dublin: Irish Academic Press., 2006). See also Sammy Smooha and Theodor Hanf, “The diverse modes of conflict-regulation in deeply divided societies,” *International Journal of Comparative Sociology* 33, no. 1-2 (1992), 6. On US administration politics in Afghanistan and Iraq, and towards The Israeli Occupied Palestinian Territories and a critique of what is termed as ‘post-conflict’ international relations, see Nadjie Al-Ali and Nicola Christine Pratt, *Women and war in the Middle East: transnational perspectives* (London: Zed Books, 2009), 17, 21, 225.

¹²¹ Lijphart, *Democracy in plural societies: a comparative exploration*: 3-4. Lijphart clarifies that he borrows the term ‘segmental cleavage’ from Harry Eckstein, *Division and cohesion in democracy: a study of Norway* (Princeton, N.J.: Princeton University Press, 1966), 34.

organized along the lines of segmental cleavages”, Lijphart pointed.¹²² His theory on consociational democracy focuses on power-sharing between elites who are able to transcend and solve conflicts that arise between and among different sects despite the existence of social, economic, and political cleavages in deeply divided societies. Through ‘consociational accommodation’, elites are able to reach agreements that stabilize the political system and ensure democratic governance.¹²³

In the late 1960s and late 1970s, consociationalism was discussed in light of political instability and violent upheavals witnessed in the Third World where ethnic, religious and tribal divisions gained political salience after independence and threatened the likelihood of the development of representative forms of democracy.¹²⁴ Consociationalism offered an alternative democratic model which, proponents argued by referring to Belgium, Switzerland and the Netherlands as comparable cases, took heed of existing divisions in divided societies and the likelihood that the cooperation between elites could bring about political stability. Consociational democracies enjoyed political stability, it was argued, because they premised the existence of cleavages in society rather than ignoring societal divisions.¹²⁵

The Middle East enters our discussion with the case of Lebanon which Lijphart presented as a “plural society with a large number of rigidly self-contained religious segments.”¹²⁶ Lebanon was, moreover, seen as a reasonably successful consociationalist model “against which other countries can be compared”.¹²⁷ Despite the outbreak of the Lebanese civil war (1975-1990), Lijphart, along with proponents of consociational models of

¹²² Lijphart, *Democracy in plural societies: a comparative exploration*: 4.

¹²³ More on the institutionalization of elite cooperation as reflected in horizontal and vertical lines in Lebanon in light of Arend Lijphart, Robert Putnam and Joel S. Migdal’s views on state-society relations, see Rania Maktabi, “Citizenship and the quest for membership in Lebanon: The sectarian society and its state,” in *Weak? Strong? Civil? Embedded? New Perspectives on State-Society Relations in the Non-Western World*, ed. Mette Halskov Hansen and Arild Engelsen Ruud (Oslo: Centre for Development and the Environment, University of Oslo, 1996), 164-66.

¹²⁴ Ian S. Lustick, “Lijphart, Lakatos and consociationalism,” *World Politics* 50, no. 1 (October 1997): 96.

¹²⁵ Kenneth McRae, ed. *Consociational democracy: political accommodation in segmented societies* (Toronto: McLelland and Stewart, 1974).

¹²⁶ Lijphart, *Democracy in plural societies: a comparative exploration*: 147. Proponents of the consociational model of democracy include Lebanese political scientists and politician Antoine Messarra. See Antoine Messarra, “Concordant democracy: A necessity for Lebanon and a model for other societies,” *Plus*, no. 2 (1985); Antoine Messarra, “The accommodation between communities in Lebanon: Parliament and paraparliaments in plural societies,” *Social compass* xxxv, no. 4 (1988).

¹²⁷ Lijphart, *Democracy in plural societies: a comparative exploration*: 165. See also Gerhard Lehmbruch, “A non-competitive pattern of conflict-management in liberal democracies: The case of Switzerland, Austria and Lebanon,” in *Consociational democracy: political accommodation in segmented societies*, ed. Kenneth McRae (Toronto: McLelland and Stewart, 1974).

democracy, continued to argue that consociationalist political arrangements represent viable political paths to democratic forms of representation and participation in Lebanon and other polities in the Middle East. Lijphart attributed, for instance, the collapse of the consociational formula following the outbreak of the civil war to “the intrusion of external forces: substantial Palestinian involvement in Lebanese politics followed by Syrian and Israeli interventions. In addition, a *number of internal weaknesses* in Lebanon’s consociational government must share the blame for the 1975 breakdown.”¹²⁸

Seen in terms of the logical ordering of first- and second-order problems, Lijphart views problems related to political participation as a ‘first-order’ issue rather than a second-order issue. This is explicitly portrayed in his definition of what constitutes the four basic components of consociational democracy: i) a government by grand coalition which includes the political leaders of “all significant segments of the plural society”; ii) mutual veto in order to guard vital minority interests; iii) proportionality as principle of political representation; and iv) a “high degree of autonomy for each segment to run its own internal affairs”.¹²⁹ What constitutes ‘significant segments of the plural society’, and how these segments are established or formed are not problematized and remain unclear in Lijphart’s definition.

There are two ways of making sense of the diffuse way in which Lijphart addresses first-order questions – i.e. the constitution of membership in a particular group: these are either taken as obvious and self-evident facts, reflecting ‘primordial attachments’, or – more probably the case, as I see it – a conscious and deliberate resolved understanding on the part of Lijphart that questions pertaining to the constitution of the demos are second order issues because the ‘master group’ of people is already self-evidently defined, and therefore, not a subject to be problematized. The question pertaining to ‘who constitutes the group’ arises thus out of different perceptions and qualified understandings pertaining to what constitutes first-order issues and second order issues.

In chapter 2 I argue that the self-evident definition process of ‘the master group’ of people which Lijphart implicitly builds his theory on consociational democracy upon, is itself a political composition because state power has been instrumental in defining, organizing and sustaining confessional groups. More precisely, state power was instrumental in

¹²⁸ Arend Lijphart, *Power-sharing in South Africa* (Berkeley, Calif.: University of California, 1985), 12, my emphasis.

¹²⁹ Lijphart, *Democracy in plural societies: a comparative exploration*: 25.

establishing and bolstering the political significance of institutionalizing and categorizing the citizenry as members of confessional groups according to the nationalist aspirations of the powerful Maronite community. In Lebanon, state power is still instrumental in establishing and creating population segments grouped along religious lines as witnessed by the opposition against efforts at forming an alternative optional civil family law in 1997 (discussed in chapter 5). Among the salient state-mandated policies are Regulation 2851 of 2 December 1924 issued during the French Mandate rule which made the registration of the confessional personal status of each citizen compulsive.¹³⁰ As such, membership in a 'primordial' religious group does not only reflect and represent an individual's ascriptive identity, but acquires a potency which renders membership in a particular confessional group similar to membership in an ethnic group.

As a model for conflict resolution and power-sharing in Lebanon, consociationalism is still viewed as representing a viable model of governance for Lebanon and a 'unique' experience of democracy.¹³¹ Among its benefits, Makdisi, Kiwan and Marktanner point at: the opportunity to share power; ensuring the inclusion of smaller communities; negotiation as decision-making strategy; promotion of moderate politics; freedom of expression; and "finally, one can say that the consociational model helped to maintain the pluralism of Lebanese society".¹³² As a reader one wonders whether the "myth of pluralism" is here presented as an asset, rather than its manifestation as part of the structural fabrics of state power itself which by extension is at center when the authors point at the weaknesses of consociationalism in Lebanon. For, according to these authors, the drawbacks of consociationalist political arrangements include: growing allegiance to socio-religious divisions; the facilitation of external intervention; incapability of accommodating political differences; the abolishment of equal opportunity among citizens in the public sphere; and finally that "familialism, nepotism, clientelism and favouritism [are] entrenched features of political practice."¹³³ Evidently, these researchers still view consociationalism as a guarantee

¹³⁰ *al-jinsiyya wal-ihsa' wa watha'iq al-ahwal ash-shakhsiyya* [Citizenship, the census and the documents on personal status], *al-majalla al-qada'iyya* [The legal Magazine], n.d. 51. See also Davis, *Citizenship and the state: a comparative study of citizenship legislation in Israel, Jordan, Palestine, Syria and Lebanon*: 146.

¹³¹ Ibrahim Elbadawi and Samir Makdisi, *Democracy in the Arab world: explaining the deficit* (London: Routledge, 2011), 1-6. See also Fadia Kiwan and Marcus Marktanner Samir Makdisi, "Lebanon: the constrained democracy and its national impact," in *Democracy in the Arab world: explaining the deficit*, ed. Ibrahim Elbadawi and Samir Makdisi (London: Routledge, 2011).

¹³² Samir Makdisi, "Lebanon: the constrained democracy and its national impact," 132.

¹³³ *Ibid.*, 133.

to Lebanon's 'pluralism', but fail to sufficiently problematize the tenets on which consociational pluralism is based upon.

Depending on which approach a researcher adopts, one may view state mandated registration of religious membership as reflecting a person's religious identity and belonging, or – in contrast – as a factor that shapes, reproduces and sustains the significance of religious membership in a polity. My argument with reference to the politics of citizenship in Lebanon is that the significance of group-based citizenship supports and underpins ruling strategies that concur with the political interests of the ruling regime pertaining to its survival. The discussion in chapter 2 on the politics of citizenship surrounding the establishment and constitution of the citizenry in Lebanon lends support to the latter understanding – that politics shapes and mirrors citizens' membership in religious groups in ways that maintain the salience of collective definitions of group membership.

Seen from the perspective of the enduring salience of group-based citizenship as a necessary condition for consociationalism, power-sharing among groups remain at best a remedy or an instrument for stability. As a model for organizing political power it serves its purpose in preventing the politicization of issues political, such as gendered citizenship or policies that establish and maintain group-based citizenship. As such, consociationalism *depoliticizes* issues that cut across group boundaries such as class, gender and economic issues.

Pressures at forming an optional civil law on personal status in 1997-1998 can well be understood as demands that address first-order issues pertaining to sustaining structures that define and regulate membership in the polity. When the incumbent power-holder, former PM Hariri resorted to mobilize an alliance with internal and external conservative clerical authorities, he acted in ways that immediately politicized the question pertaining to an optional personal status code. What was then supported was a vested interest among powerful groups in society (financial, clerical, political) in defining *fundamental issues of dispute pertaining to first-order problems as if they were second-order problems*. The Taif Accords define explicitly that questions related to the citizenship law and the personal status laws are two out of thirteen 'major issues'. At the time, PM Hariri exercised the supreme authority granted to him through article C.5. of the Taif Accords. Article C.5. nullifies article

D.6. which enables a majority of the Cabinet by vote to adopt a resolution on whether or not to send proposals regarding family law issues to parliament.¹³⁴

Kerr argues that “Lebanon has always had external political referees, which its communities defer to for arbitration over internal and external disputes”. While this is a valid argument in explaining disputes over security issues, the point remains that, in order to solve internal domestic issues, authorities do not hesitate to use debatable and unconstitutional means to secure their main vested interest, and that is to ensure the survival of the political regime they head, as well as the Lebanese political order on which the political regime – whatever its members may be through parliamentary elections – rests upon. In chapter 5 I point at the dire deadlock the legacy of power-sharing reached at an important historical juncture pertaining to addressing sectarianism by suggesting an optional and unified civil law for the Lebanese. The verdict of a clear majority in the government in 1998 – 21 against 6 ministers – was ignored by the late PM’s show of force who pressed the ‘clerical button’ and called for support from conservatively orthodox Sunni clerics in Syria and Saudi Arabia.

In their study of power-sharing and electoral quotas in Nepal, Bosnia and Herzegovina, and Lebanon, Butenschøn and Vollan point at the risk involved in sustaining democratic politics based on consociational power-sharing formulas. They warn of the danger of power-sharing arrangements that “tend to empty the *formal* political institutions of decision-making power, leaving it in the hands of informal power structures that are controlled by the most important groups.”¹³⁵ What can be read out of PM Hariri’s veto in the governmental voting procedure represents an example of such politically undermining

¹³⁴ Article C.5. regarding the prerogatives of the Prime Minister reads that he shall exercise the power to “[s]ign the decree calling for a special session and decrees issuing laws and requesting the reexamination of laws.” Article D.6. pertaining to the Cabinet reads: “When the president of the republic is present, he heads cabinet sessions. The cabinet shall meet periodically at special headquarters. The legal quorum for a cabinet meeting is 2/3 the cabinet members. The cabinet shall adopt its resolutions by consent. If impossible, then by vote. The resolutions shall be adopted by a majority of the members present. As for major issues, they require the approval of 2/3 the cabinet members. The following shall be considered major issues: The state of emergency and its abolition, war and peace, general mobilization, international agreements and treaties, the state’s general budget, comprehensive and long-term development plans, the appointment of top-level civil servants or their equivalent, reexamination of the administrative division, dissolving the Chamber of Deputies, the election law, the citizenship law, the personal status laws, and the dismissal of cabinet ministers.” Retrieved at <http://www.mideastinfo.com/documents/taif.htm>, accessed 26 February 2011.

¹³⁵ Nils A. Butenschøn et al., *Electoral quotas and the challenges of democratic transition in conflict-ridden societies* (Oslo: Norwegian Centre for Human Rights, University of Oslo, 2011), 7, emphasis in original.

measures that empty political institutions of their capability to reform political systems built on consociationalist formulas of power-sharing.

Such a governance strategy allows the perpetuation of a political structure that resembles more an autocratic oligarchy of leaders whose main objective is to perpetuate oligarchy rather than democracy. In as far as external groups are involved, these both lend support and are supported by representatives of the Lebanese oligarchic leadership with respect to whether an alliance formation supports or runs contrary to their political interest at a given historical moment. In Lebanon, political leaders who participate in power-sharing are unable (at best) and/or unwilling (at worst) to engage in a process that redefines a fundamental key that determines membership in the state along religious lines: state mandated membership in religious groups and clerical sovereign autonomy in matters pertaining to family law.

What is argued to represent a 'consociational democracy' in Lebanon does not offer sufficient fruitful interpretations of the impact of political interests that not only seek to 'accommodate difference' between societal groups but also support efforts that block out putting on the political agenda questions pertaining to a political order based on group membership. Rupert Taylor questions therefore rightly whether

consociationalism's reading of ethnicity as a key independent explanatory factor, which is unquestionably taken to set the parameters for social engineering, is sociologically correct? What of the body of social-scientific scholarship that sees ethnicity as in interdependent socially-constructed, fluid factor – mediated by class, status, and education (amongst other influences)?¹³⁶

Lustick suggests that consociationalist regimes act as 'umpires' which F.G. Bailey distinguished from 'leaders'. While a leader acts on behalf of his group, an umpire does not have a group. What an umpire preserves is, according to Bailey

the structure of rules which regulate political competition. His concern is not a team, but an arena. [...] most of an umpire's time is spent seeing that existing rules are obeyed and that deviant competitors are brought back into line. But the role also includes modifying the existing rules and even making new rules to cope with unanticipated disorders which may break out in the arena. But his goal is always the preservation of that arena¹³⁷

This description fits well with a judicial move that was perceived as a 'systems shock' in 2009

¹³⁶ Rupert Taylor, "Introduction: The promise of consociational democracy," in *Consociational theory: McGarry and O'Leary and the Northern Ireland conflict*, ed. Rupert Taylor (London: Routledge, 2009), 10.

¹³⁷ As cited in Ian Lustick, "Stability in Deeply Divided Societies: Consociationalism versus Control," *World Politics* 31, no. 3 (April 1979): 331. Lustick cites F. G. Bailey, *Stratagems and spoils: A social anthropology of politics* (New York: Schocken Books, 1969), 135.

following Judge John Azzi's unanticipated court ruling on 16 June 2009. Azzi ruled in favor of allowing the registration of four children under the name of their Lebanese mother, Samira Sweidan, in the state's personal registries. This step would allow the children to obtain Lebanese citizenship. Widowed after her Egyptian husband died, Sweidan raised a case against the state, objecting the fees demanded for the yearly residence permits required of her children who were born and raised in Lebanon.¹³⁸ Minister of Interior Ziad Barud declared that he will not oppose the ruling, while Minister of Justice Ibrahim Najjar objected on the grounds that "[p]oliticians should make laws, not judges".¹³⁹ A year later, on 18 May 2010, the nationality ruling was reversed through a debatable appeal on behalf of the Ministry of Justice and judge Azzi lost his position as judge through internal displacements.

In a series of articles before and after the 2009 nationality ruling, journalist Ali al-Musawi who has reported on legal issues in Lebanese courts since 1997, followed the citizenship rulings in Lebanese courts. Al-Musawi argues that the Ministry of Justice's internal Court of Appeal, *hay'at al-qadaya wan-niyaba al-'amma*, can only raise an appeal on behalf of the concerned ministry. Since cases of citizenship are under the auspices of the Ministry of Interior who had publicly declared that he will not oppose the ruling, the Ministry of Justice had no judicial authority to raise a case. Knowing that the state's appeal against Azzi's nationality ruling cannot be signed by him as Minister of Justice, Minister of Justice Ibrahim Najjar appointed junior female judge Arlette Thabit, who had no previous experience in issuing a ruling, to proceed with the appeal. She was eventually promoted to the position of – among lawyers much desired – judge in the Mount Lebanon Court of Appeal. The withdrawal of the citizenship ruling was appealed by Sweidan who is supported by the main civil society group, the CRTD-A "My nationality campaign". It is still being handled by the High Court [*mahkamat at-tamyiz*], but – according to al-Musawi – should be understood as *de facto* shelved.¹⁴⁰

In other words, the Lebanese state reacted to Judge Azzi's ruling as an umpire: the most important objective was to preserve the structure of rules in a vital legal arena, that which regulates membership in the state. Deviant actors, i.e. the judge who ruled in favor of

¹³⁸ See "*mahkamat al-bidaya tataqallabu 'ala al-ijtihadat al-qada'iyya*" in *as-safir*, 17 June 2009.

¹³⁹ http://www.al-shorfa.com/en/article/090722_political_nws/, and <http://english.aljazeera.net/focus/2009/08/2009826105950433205.html>, accessed 2 September 2009. See also interview with al-Najjar in *al-akhbar*, 21 March 2011 where he reiterates on the citizenship ruling.

¹⁴⁰ Interview with author 15 March 2011. See also *as-safir* 19 May 2010 and 2 January 2011.

a Lebanese female citizen's legal capacity to pass over her citizenship to her children, and unacceptable acts, i.e. the 2009 nationality ruling which might have established precedence, were brought into line by arguably making new rules to cope with the disorder created in the political arena of citizenship rulings.

3.3 Pluralism and the politics of citizenship in Jordan, Kuwait and Lebanon

The discussion in chapter 3 takes as its point of departure a hypothesis which Ghassan Salamé, a noted Lebanese political scientist, presents that it is in the small and plural states in the Middle East we find the most noteworthy emergence of democratic practices. His conviction spurs around an understanding that "democratization is to a great extent brought about through a recognition of [...] ethno-cultural pluralism, rather than by its rejection".¹⁴¹ Writing in 1994, he pointed that "Lebanon and Kuwait have been practically the only Arab countries to hold legislative elections [...] in which genuine competition between candidates could be discerned, despite some tough limitations and more or less justified accusations of malpractice."¹⁴² Salamé argues that the experiences of these two countries are exceptional and that they may be regarded as in "a category of their own in the authoritarian nebula which has been typical of most Arab countries" since independence.¹⁴³

He then presents the hypothesis that Kuwait and Lebanon's 'exceptionalism' is related to their democratic experiments characterized by power-sharing among groups where none is dominant and to a free press where political interests and dissent have been articulated openly. Salamé deduces his conviction on the merits of recognizing difference in Lebanon and Kuwait rather than suppressing it after presenting what he sees as two logics that are in opposition:

one that takes into account the basic social pluralism and tries to organize its political expression into consociative institutions, and another – more common – logic that ignores this basic pluralism in the name of national unity. It seems that the first logic has more easily prevailed in those small countries where [...] the management of *liberal/confessional pluralism* (rather than its negation) is viewed as an asset [...].¹⁴⁴

¹⁴¹ Ghassan Salamé, ed. *Democracy without democrats?: the renewal of politics in the Muslim world* (London: I.B. Tauris, 1994), 87.

¹⁴² Ghassan Salamé, "Small is pluralistic: democracy as an instrument of civil peace," in *Democracy without democrats?: the renewal of politics in the Muslim world*, ed. Ghassan Salamé (London: I.B. Tauris, 1994), 84.

¹⁴³ *Ibid.*, 85.

¹⁴⁴ *Ibid.*, 87, my emphasis. I comment on Salamé's terminological coinage later.

Although presented in the mid-1990s, Salamé's hypothesis is still salient and academically potent. His argumentations run parallel with Lijphart's in viewing consociationalism as a valid model for democratic governance in divided societies. They are likewise echoed in analytical approaches that have different labels such as the 'politics of difference', 'multicultural politics', 'identity politics' or 'politics of difference' advocated by Canadian professor of philosophy Will Kymlicka. These theoretical approaches have attracted considerable academic interest the past fifteen years, and have in some states legitimized governance strategies that support and bolster group-based citizenship.¹⁴⁵

Kymlicka maintains that societies and polities can (and should) recognize group-differentiated rights that substantiate the essence of citizenship as more than individually-based rights. He suggests that the group-differentiated rights by ethnic and national minorities be seen as viable political paths to democratic forms of representation, participation in western democratic states as well as measures to achieve reconciliation in divided societies.

Seen from the perspective of first-order and second-order problems in divided states in the Middle East, the line of reasoning presented by Salamé, Kymlicka and other proponents of group-based citizenship, evolves around second-order issues concerning aspects related to political participation. Aspects related to membership – be it in a religious or ethnic group, an indigenous minority group, in the demos, in the polity, or in the territorial state – are not addressed. As is the case with Lijphart's analysis, the ascriptive and given nature of "who constitutes the group" is taken as an implicit part of the analysis, and therefore disregarded.

My main argument discussed and elaborated upon in chapter 3 is that the 'exceptional' experiences of political participation in Kuwait and Lebanon cannot be understood fully without including a focus on fairly high degrees of exclusionary membership policies as practiced by the ruling regime in these states. One particular characteristic shared by Kuwait, Lebanon and Jordan is the central role in which membership policies play in constituting, shaping, reshaping and sustaining distinct citizenry constellations at different historical moments since the establishment of the territorial state in ways that are in accordance with the interests and aspirations of powerholders.

¹⁴⁵ Kymlicka, *Multicultural citizenship: a liberal theory of minority rights*: 34 -35, 174-75. See also Kymlicka and Bashir, *The Politics of reconciliation in multicultural societies*: 12.

In chapter 3 I argue that the manner in which the citizen and non-citizenship populations of these states was established, and how these states have managed the high exogenous population influx, through enumeration processes, the settlement of refugees, as well as the incorporation of overwhelmingly large numbers of non-national workforce compared to citizens (in the case of Kuwait), sheds light on the variances between these states' inclusionary and exclusionary participatory experiences. The politics of citizenship in Jordan, Kuwait and Lebanon highlights variances in the political participatory experiences which are inseparably related to the way in which rulers have organized, categorized and molded their populations through membership policies.

In table 1 rendered in chapter 3 I show how different modes of membership policies impinge, at different historical stages in time, on the character of political participation in the form of pact formation between rulers and ruled in each state. The table shows that in Kuwait and Lebanon, we find that political pluralism has been, for a substantial period of time, exclusive in terms of the demos subject to the polity's rules, while Jordan has been particularly inclusive in terms of expanding the body of its citizenry. In the three states we find that the inclusive and exclusive character of the demos has been maintained or attempted changed in each state in different ways over time: Each demos configuration resulting out of the membership policies applied affects the nature of the patterns of participation in the polity. The political pluralism we find in Jordan, Kuwait and Lebanon has therefore to take heed of the expansion and contraction of the citizenry at different points in time.

In part, my discussion addresses problems related to viewing pluralism as an explanatory factor that sheds light on the participatory formulas which render Lebanon and Kuwait as more democratic than other polities in the region. My argument is that pluralism in these states is embedded in fairly exclusionary traits for two reasons: first, pluralism, as portrayed by Salamé, builds on group-based membership in the polity which hardly sorts under the label democratic as Salamé's innovative term 'liberal/confessional' suggests¹⁴⁶; second, pluralism at the societal and political levels are not necessarily compatible, as pointed in the following discussion on political regime typologies.

¹⁴⁶ I elaborate more on the significance of viewing Arab polities as illiberal polities in part 5 of this chapter.

3.3.1 On pluralism: a descriptive or analytical concept?

What counts as ‘good’ or ‘bad’ pluralism? When does pluralism, understood as embodying or reflecting modes and forms of societal differences in kind or degree, develop into a liability rather than an asset with reference to society and state in MENA?

In *Getting to pluralism: Political actors in the Arab World*, Hamzawy and Ottaway point that the imbalance of power between ruling establishments, secular parties and non-violent Islamist movements limits the degree of pluralism, and argue that “pluralist politics in the Arab world is not yet democratic politics.”¹⁴⁷ Though not clearly defined, ‘pluralist politics’ encompasses mainly the proliferation of political parties, and the report presents an understanding that political pluralism is good.

The implicit positive connotations related to the concept ‘pluralism’ is affirmed by Linz and Stepan who, in their study on problems of democratic transition highlight ‘pluralism’ as one of four central variables along with ‘ideology’, ‘mobilization’ and ‘leadership’ that define variances in the five regime ideal types they outline.¹⁴⁸ The authors do not, however, clarify what they imply by ‘pluralism’. They differentiate, for instance, between forms and degrees of ‘political pluralism’ as opposed to ‘social pluralism’. Nevertheless, there is an implicit understanding as to the characteristics of what ‘pluralism’ which is not immediately clear: Democracy is, for instance, typologized as including

[r]esponsible political pluralism reinforced by extensive areas of pluralist autonomy in economy, society, and internal life of organizations. Legally protected pluralism [that is] consistent with ‘societal corporatism’, but not with ‘state corporatism’¹⁴⁹

If pluralism in a democracy is to be a yardstick against which types of pluralism in other political regimes is to be compared, then Linz’s and Stepan’s definition is not clear on what ‘societal corporatism’ and ‘state corporatism’ encompass. Nor are the authors keen on defining ‘pluralism’, although the term is central in their typology. However, they apply the term in their discussions on different states illuminating the distinctions they seek to

¹⁴⁷ Marina Ottaway and Amr Hamzawy, *Getting to pluralism: political actors in the Arab world* (Washington, D.C.: Carnegie Endowment for International Peace, 2009), 12.

¹⁴⁸ See table 3.1. entitled “Major modern regime ideal types and their defining characters” where Linz and Stepan differentiate between five ideal types of political regimes: democracy, authoritarianism, totalitarianism, post-totalitarianism and sultanism. Linz and Stepan, *Problems of democratic transition and consolidation: Southern Europe, South America, and post-communist Europe*: 44.

¹⁴⁹ *Ibid.*, 40. The authors state moreover that “we believe that such important categories as “consociational democracy” and “majoritarian democracy” are subtypes of democracy and not different regime types. Democracy as a regime type seems to us to be of sufficient value to be retained and not to need further elaboration”.

establish between 'democratic', 'authoritarian' and 'sultanistic' regimes with reference to 'pluralism'.

An authoritarian regime is, for instance, according to Linz and Stepan, a "[p]olitical system with limited, not responsible political pluralism ... [o]ften quite extensive social and economic pluralism [where] most pluralism had roots in society before the establishment of the regime." With reference to sultanistic regimes, the authors point that pluralism is characterized by no rule of law, low institutionalization, high fusion of private and public in which "[e]conomic and social pluralism does not disappear but is subject to unpredictable and despotic intervention. No group or individual in civil society, political society, or the state is free from sultan's exercise of despotic power."¹⁵⁰

Based on the distinction the authors make between pluralism in these three types of political regimes, states in the Middle East fall somewhere between 'authoritarian' and 'sultanistic', depending on how the authors define 'societal' and 'state' corporatism. To the degree that pluralism in terms of 'societal corporatism' includes religious group autonomy in personal law, I would argue that this type of pluralism should be classified as an aspect of authoritarian political regimes. Pluralism in the Middle East is, furthermore, authoritarian rather than 'sultanistic' for two main reasons: first, 'social pluralism' in terms of more or less institutionalized forms of religious differentiation is extensive and was, as Linz and Stepan point, in place before the establishment of the political regime; second, there exists 'rule of law', even in states where rulers act as sultans such as in the Gulf states. But, in as far as family law permeates the fabrics of societal pluralism in most states in the Middle East, it is a legal arena which, in some states, can be seen as battleground between different contenders regarding who has or shall have the authority to interpret and regulate family law.

The institutionalization of religious pluralism in multireligious states such as Lebanon, Jordan and Syria, and the codification of family law as state law in most states in MENA impel a theoretical and analytical distinction between different types of pluralism, including a differentiation between the boundaries and point of intersection between 'political pluralism', 'societal pluralism' and 'religious pluralism' in society. Societal divisions that arise as a result of the prevalence of religious pluralism and the embedment of legal pluralism as part of state law in illiberal polities in the Middle East are, in other words, of a categorically

¹⁵⁰ *ibid.*, 44.

different sort than societal divisions based on religious, geographical or linguistic lines in liberal societies such as contemporary western democracies.

Indeed, “[p]lural regimes may not always be as plural as the definition would indicate.”¹⁵¹ It is therefore worthwhile to dwell on the term ‘pluralism’ and emphasize the importance pertaining to how ‘pluralism’ is defined, and the impact of the clarification of nuances that follow from its definition in liberal and illiberal polities.

3.3.2 Consociationalist and multiculturalist group-based citizenship: a critique

The salience of models that prescribe the distribution of rights within a polity in ways that conform to a group-based citizenship regime have made their impact on deliberations pertaining to statebuilding and prescriptions to conflict resolution in divided societies. It follows from discussions that permeate this thesis that consociationalist as well as multiculturalist approaches address societal divisions as *apriori* givens.¹⁵² Critique against such approaches has, since the turn of the millennia been presented both within the liberal school of thought¹⁵³, and by feminist researchers who have emphasized intra-group oppression with reference to female members of minority groups as well as inter-group differences between religious groups.¹⁵⁴ Criticism towards the application of ‘pluralism’ as analytical concept has also gained wider support among social anthropologists such as Richard Jenkins who argues that:

By the end of the day, the notion of pluralism is theoretically vapid. The best that can be said is that it is merely profoundly descriptive, going no further than the extensive cataloguing of concrete situations by reference to a classificatory scheme of ideal-typical plural societies [...] This is all the more reason for treating the concept with caution in academic discussions of inter-ethnic relations.¹⁵⁵

¹⁵¹ Butenschön, "State power and citizenship in the Middle East: A theoretical introduction," 25.

¹⁵² In his 1979 article on consociationalism in divided societies Lustick states for instance that “I shall consider society as deeply divided if ascriptive ties generate and antagonistic segmentation of society, based on terminal identities with high political salience, sustained over a substantial period of time and a wide variety of issues. As a minimum condition, *boundaries between rival groups must be sharp enough so that membership is clear, and with few exceptions, unchangeable.*” Lustick, "Stability in Deeply Divided Societies: Consociationalism versus Control," 325, my emphasis. Lustick offers here not only little interest into how boundaries between social groups are created, he clearly *premises* the static perpetuation of these boundaries.

¹⁵³ Brian Barry, "Review Article: Political accommodation and Consociational democracy," *British Journal of Political Science* 5(1975); Brian Barry, *Culture and equality: an egalitarian critique of multiculturalism* (Cambridge: Polity, 2001).

¹⁵⁴ Okin et al., *Is multiculturalism bad for women*; Shachar, "Should church and state be joined at the altar? Women's rights and the multicultural dilemma."; Shachar, *Multicultural jurisdictions: cultural differences and women's rights*.

¹⁵⁵ Richard Jenkins, *Rethinking ethnicity* (London: Sage, 2008), 30-31.

It is with reference to such criticism against understandings of pluralism that my discussions on consociationalism and legal pluralism in family law fall. I find the salience of consociationalist approaches towards understanding and conceptualizing societal divisions in 'multireligious' and / or 'plural' societies – depending on how these are defined and operationalized – intriguing. To a certain extent, 'multicultural citizenship' appears to be the Trojan horse with which illiberal practices take their form in presumably democratic settings, and which go hand in glove with views that underpin theories of 'consociational democracy'. There are a number of significant, and politically devastating, deficiencies related to multiculturalism as a relevant school of thought or political compass as this is theorized and applied in the Middle East.

Ian Lustick presented a prudent discussion of consociationalism in 1979.¹⁵⁶ Two decades later, he produced a full-fledged critique of Lijphart's project from a history of philosophy perspective where he points that "Lijphart's struggle over time [...] emerges as mainly political, to affirm consociationalism as valid (almost) regardless of its scientific status, because it serves the ends he values."¹⁵⁷

Within consociationalist approaches, arguments pertaining to conflict resolution and the political accommodation of difference builds on a point of view where the 'group' (linguistic, religious, ethnic or tribal) is seen as an established variable emanating mainly as a result of voluntary association by individual members. My discussions in the four articles that constitute the thesis point at the importance of emphasizing the role in which state power plays at the hands of ruling elites and governing regimes through the politics of citizenship in creating and sustaining legal and institutional social boundaries along gendered, religious and tribal lines in ways that support regime survival.

¹⁵⁶ Lustick, "Stability in Deeply Divided Societies: Consociationalism versus Control."

¹⁵⁷ Lustick, "Lijphart, Lakatos and consociationalism," 111.

4 Civil citizenship: The ‘woman question’ reinterpreted

“Women were protected because they were not citizens. If they wished to enjoy full and responsible citizenship, they must forego protection.”¹⁵⁸

What I term as challenges pertaining to the establishment of ‘civil citizenship’ is, as I elaborate on in part 6, related theoretically with processes of state formation. These challenges are connected to the equalization of civil rights among citizens, as well as the equalization of civil rights between female and male citizens in the polity. In the thesis, my main emphasis is on the latter set of problems, i.e. questions that involve the gendered and unequal distribution of civil rights in the polity. I discuss the political significance of the interrelatedness between clerical and judicial autonomy, particularly in multireligious states, which impacts on the unequal distribution of civil rights among all citizens as well as between male and female citizens. In chapters 4 and 5, I discuss how the relationship between clerical and judicial autonomy gives rise to variances pertaining to alliance formation between societal groups that underpin particular citizenship regimes and support regime survival.

The discussion in this part spins mainly around questions pertaining to the expansion of female citizenship in MENA. ‘Female citizenship’ is here defined as the set of civil rights that regulate the legal capacity of a female citizen in the polity. I reflect and comment on the use of the term ‘the woman question’ which is widely used as a descriptive concept to denote the marginalization of women in Arab polities. I then address the intersection of questions related to family law and the autonomy of religious groups on the one hand, and the impact of state power on the distribution of civil rights among the citizenry and on the other hand. For, as I discuss in chapters 4 and 5, what is often defined and portrayed as ‘women’s issues’ in the Middle East reflect variances in the distribution of power in society and state in ways that highlight political alliance formation and power constellations at the state level. Finally, I propose a typology on female citizenship in MENA which categorizes political regimes with regards to whether the distribution of civil rights occurs along individually-based or group-based lines.

¹⁵⁸ T. H. Marshall, *Class, citizenship, and social development: essays* (Chicago: University of Chicago Press, 1977), 89.

4.1 The 'woman question' in MENA: equalizing civil rights within the polity

Moghadam points that 'the woman question' is a term used by leftist parties and nationalist movements since the nineteenth century to describe the oppression of women and to prescribe alternative visions offered in order to include women in social development.¹⁵⁹ The term is still in vogue.

The fourth Arab Human Development Report *Towards the rise of women in the Arab World* aimed, for instance, "to dislodge traditional views still clinging to the women's question".¹⁶⁰ The term is also used to express reformist efforts within Islamist movements in the contemporary Middle East. "Certainly, the "women's question" will remain a central object of reformist concern"¹⁶¹ point Vogt et al., while Utvik discusses whether elements in the ideological agenda of Islamists may pressure for reform, including reforms concerning the woman question.¹⁶² With reference to different approaches towards Islamic feminism in Sudan and Iran, Bøe and Tønnessen point likewise that "[s]ecular approaches to the woman question have been [...] systematically suspended the past 22 years" and that "[t]he ideological framework for the woman question was established in 1989 up to 2000."¹⁶³

What unites these diverse perceptions is a common understanding that women represent a 'problem of a sort' – female citizens are reduced to 'a question'. I suggest that the socio-economic and political marginalization of women in Arab polities be theoretically addressed as a classical demos issue which is inseparably related to the state formation process of modern Arab polities and the partial inclusion of female citizens in the polity.¹⁶⁴ I

¹⁵⁹ Valentine M. Moghadam, *Globalization and social movements: islamism, feminism, and the global justice movement* (Lanham, Md.: Rowman & Littlefield, 2009), 72.

¹⁶⁰ Arab Human Development Report 2005, "Towards the rise of women in the Arab World," ed. United Nations Development Program (Amman: National Press, 2006), 11.

¹⁶¹ Kari Vogt, Lena Larsen, and Christian Moe, eds., *New directions in Islamic thought: exploring reform and Muslim tradition* (London: Tauris, 2009), 5. See also Nazife Sisman, "Historical and political dynamics of the "women and Islam" issue – The Turkish case," in *New directions in Islamic thought: exploring reform and Muslim tradition*, ed. Kari Vogt, Lena Larsen, and Christian Moe (London: Tauris, 2009), 113.

¹⁶² Bjørn Olav Utvik, *Islamismen* (Oslo: Unipub, 2011), 345. The original sentence is: «[E]r det elementer i islamistenes ideologiske kjernepakke som i samspill med samfunnsmessige endringer driver fram endringer også i kvinnespørsmålet?».

¹⁶³ Marianne Bøe and Liv Tønnessen, "Nye utfordringer til islamsk feminisme: Kvinneaktivismens mange ansikter i Sudan og Iran [New challenges to Islamic feminism: The multiple faces of women's activism in Sudan and Iran]," *Tidsskrift for kjønnsforskning*, no. 4 (2011): 332, my translation.

¹⁶⁴ Evidence on the socio-economic and political marginalization of women in the MENA-region compared to other regions in the world is ample. See for instance Leigh Tomppert and Sameena Nazir, *Women's rights in the Middle East and North Africa: citizenship and justice* (Lanham, Md.: Freedom House, 2005); Laura D. Tyson Ricardo Hausmann, Saadia Zahidi, "Global Gender Gap Report 2011," (Cologny/ Geneva: World Economic Forum, 2011). The report is available at <http://reports.weforum.org/global-gender-gap-2011/>, accessed 29 November 2011. For informative and updated case studies for each country, see *Women's Rights in the Middle*

argue that limited and conditional inclusion in the demos restrains the legal capacity of female citizens and impinges on their political participation in Arab states. Moreover, I emphasize the significance of perceiving contracted female citizenship in relation to the organization and distribution of power within the polity. These questions pertain to the field of politics in as much as they involve questions related to 'women' or 'religion'. Rather than concentrating on women's position within 'Islam' as majority religion in MENA, I maintain that there is need for social scientists to make use of the rich studies provided by social anthropologists and scholars within history of religion in order uncover the alliance patterns and power play at hand between and among religious or confessional groups. Indeed, there is dire need to probe into the points of intersection whereby 'religion' becomes 'politics' in ways that surpass what may be primarily seen as matters pertaining to religious faith.¹⁶⁵

There are several arenas in which the marginalization of women in MENA is continuously reproduced in the Middle East: the kinship structure, the educational system, the waged labor market, and representative political channels such as local municipalities as well as parliaments. Nevertheless, family law is an arena of particular relevance to the marginalization of women in the Middle East for two main reasons: first, family law conditions a range of other civil, economic and political rights that are embedded in the kinship system; second, state power plays a central role in constituting and sanctioning the institutionalization and organization of family law. In other words, the principle of guardianship which permeates family law is bolstered, maintained and reproduced with state power as legitimizing force.

4.2 Religious law as the state's family law

With reference to Islamic laws and jurisprudence, Vikør points that "[i]n spite of the attention it has received, criminal law is not, [...], the most widely used part of Islamic law [...]. The area of the Shari'a that has the widest application, directly or through codifications based on the Shari'a rules, is clearly family and personal law. It is also the most controversial

East and North Africa 2010, available at <http://freedomhouse.org/template.cfm?page=383&report=86>, accessed 15 September 2011.

¹⁶⁵ An excellent compilation of articles is provided by professor at London School of Economics and Social Sciences John T. S. Madeley, *Religion and politics* (Aldershot: Ashgate, 2003).

area in relation to 'modern', Western norms, in particular on issues of the position of women and gender."¹⁶⁶

In general, religious law reflects conservative interpretations with regards to gender in ways that underpin patriarchal family models.¹⁶⁷ What evolves around the inclusion of religious law as part of state law is, furthermore, the institutionalizing and sustaining of the principle of guardianship¹⁶⁸ of male citizens over female citizens in various ways in the legal and judicial systems in most polities in the Middle East. The inclusion of the principle of guardianship in various parts of the state's legal codes is a common problem exhibited in states where Islam dominates, as well as in multireligious states where different confessional groups have various degrees of autonomy. While Islam predominates in studies on family law in the Arab world¹⁶⁹, the scope of analysis is here widened and includes the impact of non-Muslim communities, as well as different Muslim and Christian confessional subgroups on the state's management of religious law.

4.2.1 Impact of institutionalization of religious law as state law

The inclusion and institutionalization of religious law as part of state law serves as a central element in the constitution of the legal status of all citizens in MENA. In chapter 5 I emphasize the political significance of unitary and dual court systems on the manoeuvring

¹⁶⁶ Knut S. Vikør, *Between God and the Sultan: a history of Islamic law* (London: Hurst, 2005), 299.

¹⁶⁷ Buskens defines 'a patriarchal family model' as a "model of family life in which senior men are entitled to a dominant position over subordinate women and children. This male dominance, grounded in their position as husbands and fathers, is expressed in norms about gender, descent, obedience, sexuality, the use of space and freedom of movement, as well as about the economy of the household." Léon Buskens, "Recent debates on family law reform in Morocco: Islamic law as politics in an emerging public sphere," *Islamic Law & Society* 10, no. 1 (2003): 75.

¹⁶⁸ The Oxford thesaurus of English explains that 'custody' refers to 'care', 'guardianship' and 'protection' as well as 'possession', 'supervision' and 'control'. The term is also connected with 'imprisonment' as in "he has been in custody for 12 moths" referring thus to 'detention', 'confinement', and 'captivity' (accessed 19 November 2010). Joseph has captured these nuances in what she refers to as the 'care/control paradigm' whereby younger and elder females consent to, support and sustain such dependency relationships within the family. Joseph, "Civic myths, citizenship and gender in Lebanon," 116-25. Kandiyoti terms the mutually dependent relationship between male providers and female caretakers as constituting a 'patriarchal contract', see Deniz Kandiyoti, "Islam and Patriarchy: A Comparative Perspective," in *Feminist Approaches to Theory and Methodology*, ed. Christina Gilmartin Sharlene Hesse-Biber, Robin Lydenberg (New York / Oxford: Oxford University Press, 1999), 228-31.

¹⁶⁹ Lynn Welchman, ed. *Women's rights and Islamic family law: perspectives on reform* (London: Zed Books, 2004); Welchman, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy*; Ziba Mir-Hosseini, *Marriage on trial: Islamic family law in Iran and Morocco* (London: I.B. Tauris, 2000); Annelies Moors, "Debating Islamic family Law: Legal texts and social practice," in *Social history of women and gender in the modern Middle East*, ed. Margaret L. Meriwether and Judith E. Tucker (Boulder, Colo.: Westview Press, 1999).

room of societal pressure groups that push for reforms which expand the civil rights of women. States with unitary court systems are predominantly homogenous states where Islam dominates. There, the codification of family law on the basis of religious law is perceived as safeguarding the cultural, historical and religious identity of the state. In multireligious states with dual court systems, the delegation of judicial autonomy to religious groups is perceived as a measure of accommodation which facilitates and safeguards the interests of communal groups, enabling them to be governed by their own institutions. By 'accommodation' I refer to the entrusting of certain social spheres, such as education and family law, which religious groups perceive as vital for their constitution and perpetuation as an identity group with a distinct culture, history and world view.¹⁷⁰

In both homogenous and multireligious states in the Middle East, statutory and communal family laws grant differential civil rights to citizens *qua* members of religious groups. Family law differentiates not only between the legal status of citizens who belong to different confessional groups. It accords also male and female citizens with differential rights within each confessional group. Moreover, membership in religious groups – while not involuntary due to the comparably high degree of voluntary association – nevertheless is encumbered by the non-existence of exit opportunities in illiberal states: a citizen in MENA can be a believer / non-believer, or a faithful / unfaithful member of a confessional group to different degrees.¹⁷¹ He or she does not, however, have the opportunity of exit from confessional group membership because the state accords every citizen with a religious membership status in order to ordain an appurtenant family law in matters pertaining to personal status. As such, 'exit' and 'entry' costs into an association based on confessional belief are less relevant measures pertaining to voluntary or involuntary association: without exit opportunities offered by the state in the form of a civil personal status code, a citizen is *de jure* member of a religious group.¹⁷²

The proliferation of legal pluralism resulting from the political accommodation of religious pluralism is a structural facet of politics in the Middle East. In most Arab states

¹⁷⁰ Shachar, *Multicultural jurisdictions: cultural differences and women's rights*: 2.

¹⁷¹ Confer with the study on religiosity in Morocco, Algeria, Lebanon, Palestine (West Bank and Gaza), Jordan, Kuwait and Yemen by Mark Tessler, "Religion, religiosity and the place of Islam in political life: Insights from the Arab Barometer Surveys," *Middle East Law and Governance* 2, no. 221-252 (2010).

¹⁷² Confer with the discussion on individual and collective participation in western liberal societies and the exit / entry choice opportunities depending on high cost / low cost versus voluntary / involuntary modes of association as sketched out by Reinhard Bendix John Bendix, Norman Furniss, "Reflections on modern western states and civil societies," *Research in Political Sociology* 3(1983): 18-23.

citizens may be equal *before* the law, but not *in* the law, complicating the ideal of 'rule of law' principles.¹⁷³

The institutionalization of religious pluralism and the sustaining of group-based citizenship regimes in contemporary states in the Middle East represent a double-edged sword with reference to democratization: Religious pluralism safeguards in principle freedom of belief and minority group rights.¹⁷⁴ However, the price paid is intra-group infringement of individual citizen rights. This point has been emphasized in discussions on multicultural citizenship within liberal polities.¹⁷⁵ To a lesser degree is intra-group infringement of individual citizenship rights been analyzed with reference to Middle Eastern states as illiberal polities. Focus has, moreover, remained on a unitary representation of Islam as dominant religion, rather than the plurality in confessional faiths within Islam as well as the multitude of Christian confessional denominations. The academic discourse on gender justice within Islam, and feminist readings and interpretations of religious canonical text, approach the question of unequal distribution of civil rights.¹⁷⁶ However, as long as the main emphasis is on at the confessional group level ('Islam' and 'Muslims'), a more comprehensive analysis of intra-group relationships (minority – majority constellations such as in Syria and in Egypt, or intra-minority relations such as in Lebanon and in Syria) is either lost or remains critically undertheorized. We need more research on state-church¹⁷⁷ relationships and constellations in order to unravel the political dimensions pertaining to the state's management and organization of religious belief systems.

¹⁷³ This distinction is made by professor Rabéa Naciri, president of the Association Démocratique du femmes du Maroc (ADFM/Rabat) in her article on Morocco. See Rabéa Naciri, "Country report on Morocco," in *Women's rights in the Middle East and North Africa: Citizenship and justice* (Freedom House, April 2006). She points that "Article 8 of the Moroccan constitution provides for equality of citizens "before the law" rather than "in law", a subtle but important distinction that in no ways guarantees equal rights for women and men.", <http://www.freedomhouse.org/template.cfm?page=178>, accessed 6 November 2011.

¹⁷⁴ *Religious minorities in the Middle East: domination, self-empowerment, accomodation*, ed. Anh Nga Longva and Anne Sofie Roald (Leiden: Brill, 2012).

¹⁷⁵ Okin et al., *Is multiculturalism bad for women*; Shachar, "Should church and state be joined at the altar? Women's rights and the multicultural dilemma."; Ayelet Shachar, "What we owe women: The view from multicultural feminism," in *Toward a humanist justice: the political philosophy of Susan Moller Okin*, ed. Debra Satz and Rob Reich (Oxford: Oxford University Press, 2009).

¹⁷⁶ Ziba Mir-Hosseini, "Muslim women's quest for equality: Between Islamic law and feminism," *Critical Inquiry* 32(2006); 'Abd Allāh Aḥmad an-Na'im, *Muslims and global justice* (Philadelphia: University of Pennsylvania Press, 2010).

¹⁷⁷ I use the term 'state-church' as a generic term which denotes institutional and organizational constellations between temporal state power and authority on the one hand and organized religiously sanctioned power and authority on the other.

My main objective in analyzing the politicization of family law debates in multireligious Syria and to compare family law debates and pressures for reform in four Arab states is to emphasize the intimate relationship between inter-group and intra-group dynamics related to the politics of citizenship and the ensuing variation in the politicization of the demos. What at first glance appear as 'gender issues' or disputes regarding 'the woman question' in the Middle East is profoundly related to political calculations and patterns of alliance formation pertaining to regime survival in non-democratic and authoritarian polities. Moreover, I argue that particularly in multi-religious states, the institutionalization of group-based citizenship *defines* and *structures* the distribution of power at both the group as well as the state level in ways that bolster the survival of the regime.¹⁷⁸

Bryan S. Turner discusses questions related to the management of religions in liberal and illiberal states in contemporary societies. He concentrates his analysis on what he terms as "various authoritarian responses to religious pluralism and the rise of religious radicalism" because, as he explains, "[p]essimistically, authoritarian solutions are likely to become the dominant mode of the modern management of religions."¹⁷⁹ With reference to the Middle East, I would argue that religious pluralism is not only managed. Religious pluralism permeates the political order as this was formed upon the establishment of the territorial state system after 1920. Neither nationalism as driving force for change, nor secular political programs projected by different movements supported demands made by for strengthened civil rights among and between citizens within family law.¹⁸⁰ Indeed, as Moghadam notes, nationalist and revolutionary movements, including those who came to power, perpetuated and sustained traditional gender roles and bolstered group-based citizenship along gendered lines.¹⁸¹

Writing persuasively already in the late 1980s, P.J. Vatikiotis argued with reference to Egypt that

¹⁷⁸ I reflect on the post-2011 uprisings in the Arab world in part 8 where I discuss variances pertaining to the politics of citizenship and regime survival.

¹⁷⁹ Bryan S. Turner, *Religion and modern society: citizenship, secularisation and the state* (Cambridge: Cambridge University Press, 2011), 184.

¹⁸⁰ Elizabeth Thompson, *Colonial citizens: republican rights, paternal privilege, and gender in French Syria and Lebanon* (New York: Columbia University Press, 2000).

¹⁸¹ With the notable exception of the radical changes induced in Tunisia in 1956 and South Yemen during the revolutionary rule in PDRY between 1974 -1990. Valentine M. Moghadam, *Gender and national identity: women and politics in Muslim societies* (London: Zed Books, 1994); Valentine M. Moghadam, "Gender and Revolutions," ed. John Foran (London: Routledge, 1997).

the conflict is between a basically secular state authority and those who deny its legitimacy because it refuses to establish a purely Islamic order. Yet the conflict is characterized by the *hesitation of state authority to impose a functioning, institutionalized secular system*. This hesitation accentuated the problem of ethnicity and pluralism. Moreover, the state itself has tended to impose a political uniformity of its own that is in effect a practical denial of pluralism.¹⁸²

Vatikiotis' insights hits head on the crux of contemporary challenges related to religious pluralism in Egypt and other Arab states where post 2011-revolting citizens are pressuring for the establishment of new contractual forms of citizenship between rulers and ruled. Vatikiotis prescribes, in my view, a fruitful approach to understanding problems related to establishing a secular order in the Middle East. Nevertheless, his argumentation falters on the grounds that, he too, is not sensitive enough with regards to uncovering the inherent problems related to enhancing 'political pluralism'. Not unlike other researchers, Vatikiotis defines pluralism in terms of a political order which does not separate, but tolerates *dhimmi*, i.e. non-Muslims, as part of the same political community.¹⁸³ Vatikiotis points out explicitly that he is mostly occupied by highlighting the "doctrinal basis and confusion of religious pluralism and its political negation – that is, the failure to accommodate it politically."¹⁸⁴ My understanding of his critique of pluralism is therefore that Vatikiotis defines, understands and seeks to address pluralism along the same group-based lines as Ghassan Salamé (discussed in chapter 3) and – to a certain degree – Arend Lijphart; pluralism should be accommodated politically by 'secular state authority' on a more equitable basis between Muslims and non-Muslims in Egypt. Vatikiotis does not question, nor does he problematize, the very essence or the impact of organizing or institutionalizing citizens' membership in the state along religious lines.

A closer look at inter-group and intra-group relationships is, I argue, needed because of the politicization that arises out of the inherent conflicts related to sustaining and bolstering group-based citizenship at the expense of individually-based citizenship. Such a focus helps explain why pressures for reform in family law, emanating partly at the

¹⁸² P. J. Vatikiotis, "Non-Muslims in Muslim society: A preliminary consideration of the problem on the basis of recent published works by Muslim authors," in *Ethnicity, pluralism, and the state in the Middle East*, ed. Milton J. Esman and Itamar Rabinovich (Ithaca: Cornell University Press; published in cooperation with the Dayan center for Middle Eastern and African studies at Tel Aviv university, 1988), 70, my emphasis. See also P. J. Vatikiotis, *Islam and the state* (London: Croom Helm, 1987).

¹⁸³ Vatikiotis, "Non-Muslims in Muslim society: A preliminary consideration of the problem on the basis of recent published works by Muslim authors," 61.

¹⁸⁴ *Ibid.*, 59.

international level in the 1990s, have transcended in the form of transnational pressures for reform at the domestic level in different Arab polities. These pressures reflect the importance of turning attention to the dilemmas pertaining to individual rights and group rights which are not only observable at the domestic level, but which are equally inherent at the international level within conflicting and mutually contrasting norms of human rights.

4.3 Family law as political battlefield in contemporary Arab states

Incongruence between international law and state laws within Arab states are reflected on three levels: First, pressures for change has generated spheres of consent and dissent between fundamentalist, conservative and liberal forces that compete in expanding individually-based citizenship or bolstering existing group-based citizenship. Second, the state's domestic autonomy has come under increasing pressure. To the extent that state authorities respond to international or domestic pressures for change, their sovereignty as autonomous producers and implementers of laws is constrained. Third, family law has become a battlefield where political authorities approached opposing groups in a variety of ways: aligning with some groups and distancing support from others, spearheading changes in the law, and, at times, changing support towards different factions. This polarization is reflected in pressures for change in family law after 1990 which in some cases proceeded to parliament and ended in reform.

Contemporary debates over family law in the Middle East are multifaceted. On the one hand, they should be understood as fundamental individual and group struggles for welfare, since in the absence of expansive welfare states, family remains the essential guarantor of individual welfare in Arab states. The primacy of kinship-based social and political systems thus accentuates the importance of family laws due to the profound social and economic impact of these laws on the quality of life of all family members, including females who are predominantly outside the waged labour market. On the other hand, it is important to note that the struggle over gendered citizenship is related to the authority of communal leaders. Their influence on interpreting family law is crucial in maintaining the boundaries of communal groups which ultimately lay the basis for gendered citizenship. Finally, these debates should also be understood as struggles over the fundamental nature of citizenship: whether it should be *primarily* entrenched in an individually-based

relationship between citizen and state, or based on kinship and gender roles as expressed through group-based citizenship rights.

4.3.1 Family law between individually-based and group-based citizenship

The tension between women's rights and religious rights has been a recurrent and widely addressed problem with reference to the Middle East as well as in other regional parts of the world. Tensions sharpened after several Arab states signed CEDAW, the UN's Women Convention, with reservations to article 16 which excludes matters related to marriage and divorce. The reservations ensure the autonomy of religious groups in regulating internal affairs and maintain orthodox clerical interpretations of family law.¹⁸⁵

Political regimes in Arab states are not the only powers that reduce the potency of efforts at equalizing civil rights between male and female citizens. Part of the international human rights corpus of international law safeguard state policies that accommodate gender inequality based on the principle of preserving religious autonomy in regulating internal affairs. Lundberg and Eide point at the International Covenant on Civil and Political Rights (ICCPR) which became an integral part of the international human rights framework in 1966. Article 27 of the Covenant reads that in states where minorities exist, members of these minorities "shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language".¹⁸⁶

International law gives thus a normative legitimation basis to both individually-based citizenship rights as reflected in CEDAW, and to group-based citizenship rights, as reflected in ICCPR. Both proponents and opponents towards reform in gendered family laws in the Middle East find support for their views. In other words, demands for the equalization of civil rights between males and females, as well as demands for maintaining gendered citizenship

¹⁸⁵ For a comparative case study on Egypt, Bangladesh and Tunisia, see Michele Brandt and Jeffrey A. Kaplan, "The tension between women's rights and religious rights," *The Journal of Law and Religion* 12, no. 1 (1995-1996). See also the special issue of *Al-Ra'ida* on "Arab Countries and CEDAW", particularly the article by Ann Elizabeth Mayer, "Rhetorical strategies and official policies on women's rights: The merits and drawbacks of the new world hypocrisy," *Al-Ra'ida* XV, no. 80-81 (1998). For an excellent discussion on the inherent dilemmas pertaining to gender justice in a Norwegian context, see Tordis Borchgrevink, "Religionsfrihetens kjønn [The gender of religious freedom]," in *Sekularisme - med norske briller [Secularism - with Norwegian glasses]*, ed. Oddbjørn Leirvik, Sindre Bangstad, and Ingvill Thorson Plesner (Oslo: Unipub, 2012).

¹⁸⁶ Maria Lundberg and Asbjørn Eide, "Accommodating difference: A legal human rights perspective," in *Working paper: Accommodating Difference: approaches and applications*, ed. Trude Holme and Nils A. Butenschøn ([Oslo]: [Universitetet i Oslo, Juridisk fakultet], 2001), 11.

through the doctrine of religious freedom find support in international human rights norms and conventions.

This dilemma is dealt with by Anat Scolnicov who discusses whether the doctrine of religious freedom should be understood as an individual right or a group right from a normative legal perspective.¹⁸⁷ She argues that the doctrine of religious freedom is powerful and that without a sensitive eye to legal prerogatives that safeguard individually-based civil rights independent of group-based rights, women's rights are abrogated. Scolnicov addresses particularly the role of the state in the delicate political balance where state authorities have relegated autonomy for religious groups in family law. She argues that "[t]here exists a strong case for concluding that the prohibition of gender discrimination must be regarded as a norm of customary international law, at least if the discrimination is systematic and state endorsed."¹⁸⁸ Scolnicov points further:

States give legal status to religious law by relegation of state authority to religious communities, usually in the arena of family law. This legal structure directly pits the rights of religious communities against the rights of individuals, with specific implications for the rights of women in those instances in which the religious laws is discriminatory to women. [...] It seems easier for states to assuage political group aspirations by conceding to religious groups' jurisdiction over the family, often compromising the rights of women, rather than risking a political confrontation and power struggle between subgroups in the state.¹⁸⁹

What I analyze as the politics of citizenship with reference to family law and demands to reform family law in Morocco, Egypt, Syria and Lebanon highlight the circumstances and conditions under which rulers in each state address or respond to demands for expanded female citizenship. Evidently, rulers in predominantly homogenous states in North Africa have, at critical moments (Egypt in 2000 and Morocco in 2004) conceded to pressures that strengthen female civil rights despite the anticipated resistance and opposition towards reform; they took the risk at confronting power struggles between and among subgroups in the state. These power struggles include groups that support conservative interpretations of family law against groups that endorse widened civil rights for female citizens. At the time, the political steps at supporting women-friendly policies were, I argue, taken by the Mubarak regime and King Mohammad in Morocco, as means to strengthen their

¹⁸⁷ Anat Scolnicov, *The Right to Religious Freedom in International Law: Between Group Rights and Individual Rights* (London and New York: Routledge, 2011), 75.

¹⁸⁸ *Ibid.*, 129.

¹⁸⁹ *Ibid.*, 130.

authoritarian rule.¹⁹⁰ In multi-religious states, by contrast, rulers did not run the risk to support pressures that would strengthen female civil rights. They avoided the potential risk to confront powerful clerical groups and chose to perpetuate their alliance with them. Clerical autonomous groups of all confessional subgroups not only nurture predominantly conservative political groups; the former groups guarantee the degree of strength with which the latter groups can ensure their power basis and perpetuate their survival upon.¹⁹¹ The result is powerful conservative constellations which are able to resist pressures for reforms that widen individually-based civil rights more forcefully.

The case of Egypt is particularly interesting. I categorize Egypt as a predominantly homogenous state where Islam dominates as religion. Nevertheless, Egypt features similar multireligious traits as the cases of Lebanon and Syria because of the sizeable Coptic minority.¹⁹² The Egyptian state's management of religious law with reference to its Coptic minority reflects a mode of alliance which resembles a governance strategy identified in Syria and Lebanon. The Egyptian regime's management of religion at the turn of the millennia is particularly interesting when contrasted to how the Syrian regime responded selectively towards demands for reform presented by the Syrian Catholic Christian minority after 2003.

4.3.2 Comparing the case of Catholics in Syria and Copts in Egypt

Minority status in a multi-religious state compared to a homogeneous state impacts on reform in family law. Syria and Egypt represent two examples whereby Christian confessional groups are minorities in a state where Islam dominates. Syria and Egypt reflect

¹⁹⁰ Witness the Egyptian regime's controversial constitutional amendments pertaining to 34 articles approved by parliament in March 1996. The term '*muwatana*' inferred in the Constitution through the amendment to article 1 which read that "Egypt is a state with a democratic system that is based on citizenship." Michele Dunne Nathan Brown, and Amr Hamzawy, "Egypt's Controversial Constitutional Amendments," (2007), http://carnegieendowment.org/files/egypt_constitution_webcommentary01.pdf.

¹⁹¹ For interesting accounts of church-state relations in terms of electoral turnouts in Latin American polities where the Catholic Church nurtures and sustain comparable conservative political alliance patterns see Anthony J. Gill, "Rendering unto Caesar? Religious competition and Catholic political strategy in Latin America, 1962-79," in *Religion and politics*, ed. John T. S. Madeley (Aldershot: Ashgate, 1994 / 2003). See also Juan J. Linz, "Church and state in Spain from the civil war to the return of democracy," in *Religion and politics*, ed. John T. S. Madeley (Aldershot: Ashgate, 1991 / 2003).

¹⁹² The size of the Coptic minority in Egypt is not precisely known, but is widely estimated at comprising approximately ten per cent of the Egyptian population which counts around 80 million. At any rate, Copts in Egypt constitute the largest Christian minority in any Arab state in the Middle East.

different examples whereby the intersection between individual and group rights have led to expanded female citizenship.¹⁹³

In Syria, the Catholic Church strengthened the civil rights of Catholic women in 2006, while the Coptic Orthodox Church in Egypt has repeatedly resisted reform. In these two cases, reform concurs less with type of court system and more with the governance strategies of political rulers and their choice of ally. In chapter 4 I point out that reform in the Catholic family law in Syria fit well with the political liberalization agenda professed by the new president Bashar al-Asad at the turn of the millennia. Proposals for change started in 2003 when the Catholic Council of Churches endowed Bishop Mousleh and two lawyers with the task of drafting a new law. The drafters took into consideration the Law of Oriental Churches dated 18 October 1990, international conventions on the rights of women and children, and social cases within a Syrian context that required adjustments in the law. The small size of the Christian groups in Syria – around 10 per cent of the population – proved to be an asset in negotiating with the ruling majority. The centralist Syrian regime, eager to accommodate religious pluralism – and more importantly – present itself as a proponent of religious freedom internationally, supported internal changes within the family law of a minority group.

By contrast, internal resilience towards change within the Coptic Church is partly related to the support of conservative governance strategies of the Egyptian political rulership. In the 1950s, the unification of the court system was accompanied by a transformation of political power from the Coptic *majlis al-milli*¹⁹⁴, an elected consultative council that represented the lay orders of the Coptic community, to the clerical leadership of the Coptic Church. As a result, the Coptic patriarch became *the* representative of the Coptic community and the church assumed the position of mediator between Copts and the

¹⁹³ I leave it to historians of religion and students of theology to probe into the historical background and forces of internally generated theological reform and the human rights' discourse within Catholic and Orthodox churches in contemporary western and non-western states. I focus here on the social and political contexts within which contemporary pressures for and resilience against reform occur.

¹⁹⁴ The *majlis* was established in 1874 as a parallel institution to the Coptic Church. It had a mandate to oversee Coptic endowments (*awqaf*), Coptic schools and institutions, and Copts' personal status courts, resulting in a fierce competition between the clergy and the *majlis* leadership around which body shall represent the Coptic community vis-à-vis the state. For centuries, prior to the establishment of the *majlis* - the church had been the sole representative. Mariz Tadros, "Vicissitudes in the entente between the Coptic Orthodox Church and the state in Egypt (1952-2007)," *International Journal of Middle East Studies* 41, no. 2 (2009): 270.

state.¹⁹⁵ Tadros argues that an entente was forged between the church and the government whereby the church was provided with concessions in return for its political allegiance.¹⁹⁶ In Egypt, thus, a secular political regime supported and bolstered the powers of the orthodox and conservative Coptic clergy.

The *khul'* law of 2000 allows Copts – both males and females – to obtain divorce and remarry. The church, however, sees these rights as infringement to its sovereignty over its followers. Following public outcries among Copts in June 2010 who question the containment of Coptic papal authority by the Egyptian state¹⁹⁷, the government announced that a working group would be established in order to work on a new marriage and divorce law for Egypt's religious minorities. Kaiser points that controversy over Coptic family law "underscores the tension between collective and individual notions of religious freedom and offers an opportunity for the state to advance the civil liberties of all Egyptian citizens."¹⁹⁸ The ongoing transformational period in Egypt contains thus the seeds of politicized considerations around group-based and individually-based citizenship that precede the February 2011 revolution.

4.4 Political regimes and female citizenship in MENA: a typology

Portrayed as a region where the 'freedom deficit'¹⁹⁹ for women is particularly high, MENA countries are those where "the gap between the rights of men and those of women is the

¹⁹⁵ The entente was forged when the Egyptian regime removed the mandate over Coptic *awqaf* from the authority of the *majlis* to the *waqf* organization of the Coptic Church, and by decreeing new bylaws in 1957 which stipulated that an elected patriarch must be at least 40 years of age and ordained as monk for at least fifteen years. With these state measures, the *majlis* was not only deprived from financial control, but also emptied from reformist pressures by the younger layers within the Coptic community. Ibid., 271-72.

¹⁹⁶ Ibid., 269.

¹⁹⁷ In May 2010, an Egyptian civil court (the Supreme Administrative Court) ruled in favor of Hani Wasfi, a Copt who had divorced and remarried against the rulings by Pope Shenouda who had refused to legitimize Wasfi's divorce. Katherine Kaiser, "Coptic marriage law and the church-state divide in Egypt," *The Review of Faith & International Affairs* (2010). Retrieved at <http://rfiaonline.org/extras/articles/678-coptic-marriage-law-and-the-church-state-divide-in-egypt>, accessed 19 January 2011.

¹⁹⁸ Ibid.

¹⁹⁹ The Arab Human Development Report 2005, "Towards the rise of women in the Arab World." Retrieved at <http://www.arab-hdr.org/publications/other/ahdr/ahdr2005e.pdf>. The Global Gender Gap Report 2010, *World Economic Forum*, http://www3.weforum.org/docs/WEF_GenderGap_Report_2010.pdf, accessed 20 August 2011. For case studies, see Women's Rights in the Middle East and North Africa 2010, *Freedom House*. <http://freedomhouse.org/template.cfm?page=383&report=86>, accessed 20 August 2011.

most visible and significant and where resistance against women's equality has been most challenging."²⁰⁰

How do we as researchers deal with polities where female and male citizens have equal political rights of participation but where civil rights are unequally distributed? This situation is observable in polities in the MENA region where religious law is part of state law. What evolves is the partial inclusion of females as members of the polity in ways that I argue necessitate analytical approaches where both membership aspects as well as participatory aspects related to citizenship are included and addressed.

In 2000, Joseph commented on the scarcity of comparative research in her introduction to *Gender and Citizenship in the Middle East*: "[a] generation of feminist theorists have been investigating Middle Eastern state structures [18 works listed]. Few studies [...] have established a systematic basis for comparative analysis of the rules and practices of citizenship throughout the Middle East."²⁰¹

Indeed, scholars have analysed female citizenship²⁰²; addressed advocacy of women's rights as part of the human rights agenda within particularly Islamic thought²⁰³; engaged in textual studies²⁰⁴ and focused on social and legal disadvantages of women within family law.²⁰⁵ My attempt at comparing reform in family law in four states in chapter 5 builds heavily on the work of these researchers who have strengthened the possibility of comparing family law reform in contemporary Arab states.

A focus on the politicization of the demos with reference to the partial membership of female citizens in the polity as discussed in chapters 4 and 5 generates an impetus in

²⁰⁰ Tompsett and Nazir, *Women's rights in the Middle East and North Africa: citizenship and justice*: 2.

²⁰¹ Joseph, "Gendering Citizenship in the Middle East," 29.

²⁰² See Deniz Kandiyoti, ed. *Women, Islam, and the state* (Basingstoke: Macmillan, 1991); Deniz Kandiyoti, ed. *Gendering the Middle East: emerging perspectives* (Syracuse, N.Y.: Syracuse University Press, 1996); Laurie A. Brand, *Women, the state, and political liberalization: Middle Eastern and North African experiences* (New York: Columbia University Press, 1998).

²⁰³ See Welchman, *Women's rights and Islamic family law: perspectives on reform*; Ann Elizabeth Mayer, "Internationalizing the conversation on women's rights: Arab countries face the CEDAW committee," ed. Yvonne and Freyer Stowasser Yazbeck Haddad, Barbara (2004); Vogt, Larsen, and Moe, *New directions in Islamic thought: exploring reform and Muslim tradition*.

²⁰⁴ See Moors, "Debating Islamic family Law: Legal texts and social practice."; 'Abd Allāh Aḥmad an-Na'īm, *Islamic family law in a changing world: a global resource book* (London: Zed Books, 2002); Welchman, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy*; Judith E. Tucker, *Women, family and gender in Islamic law* (Cambridge: Cambridge University Press, 2008).

²⁰⁵ For two excellent comparative studies, see Mir-Hosseini, *Marriage on trial: Islamic family law in Iran and Morocco*; Mounira Charrad, *States and women's rights: the making of postcolonial Tunisia, Algeria, and Morocco* (Berkeley: University of California Press, 2001); Janine A. Clark and Amy E. Young, "Islamism and Family Law Reform in Morocco and Jordan," *Mediterranean Politics* 13, no. 3 (2008); Barbara Drieskens, ed. *Les métamorphoses du mariage au Moyen-Orient* (Beyrouth: Institut Français du Proche-Orient, 2008).

presenting a typology of political regimes which takes heed of conditions that structure female citizenship in MENA. Table 2 below indicates variances pertaining to the distribution of civil rights in distinction to the distribution of political rights in Arab states as well as in three non-Arab states – Turkey, Israel and Iran. The latter three states are included in order to juxtapose diverse patterns of membership in the state more clearly.

The typology categorizes states according to type of political regime and whether the citizenship regime is based on predominantly group-based citizenship rights or individually-based citizenship rights. ‘Female citizenship’ refers to the set of civil rights that regulate the legal capacity – and as such – the membership of a female citizen in the polity, and the set of political and social rights that enable a female to participate in the polity on an equal footing with male citizens. ‘Gendered citizenship’ reflects the legal incongruence between constitutional laws and gendered state laws that are found in four main legal spheres: i) family law – by far the most extensive set of laws regulating women’s civil rights in the polity – which principles guardianship of male citizens over female citizens; ii) nationality law where a female citizen is unable to pass citizenship to her children if married to a non-national; iii) criminal law where femicide²⁰⁶ – the killing of a female by a male relative – is either pardoned or legitimized through milder prison sentences compared to homicide; and iv) customary law where non-official normative rules challenge state laws without being subject to penalization by state authorities (eg. patriarchal inheritance laws and marital violence).

4.4.1 Female citizenship: group-based or individually based?

With reference to principles of distribution of rights within the polity and type of citizenship regime (pointed at in part 2) I argue that pressures for reform in family law entail a contest between two fundamentally different notions of citizenship rights in the Middle East: first, *group-based* citizenship rights reflect notions of citizens as members of kinship structures organized along patriarchal lines, often privileging male citizens over females; and second, *individually-based* citizenship rights are grounded in a citizen’s direct membership in the state where she (or he) has autonomous rights guaranteed by state authorities regardless of religious or ethnic group affiliation. Individually-based citizenship is in line with governance

²⁰⁶ See Sara Hossain and Lynn Welchman, *"Honour": crimes, paradigms and violence against women* (London: Zed Books, 2005).

according to rule of law criteria and embodies core elements in CEDAW which profess gender equality.²⁰⁷

The distinction between individually-based and group-based citizenship rights builds further on comparable differentiation made by feminist researchers. Joseph, for instance, differentiates between 'individual' and 'communal' citizenship where the latter "includes constructs of citizens as members of subnational communities" and points that the "intersection of religion, state and patriarchy [...] reinforces communalist views of citizenship that tend to diminish women's roles and rights as citizens."²⁰⁸ Also, Moghadam presents a two-fold typology on gendered outcomes of revolutions in fourteen states. She differentiates between a 'women's emancipation model' and a 'woman-in-the-family model'. While the first model grants women individual freedoms, the latter embodies, according to her, "an ideological linkage between patriarchal values, nationalism and the religious order".²⁰⁹

These researchers' distinction between rights granted on an individual basis and rights derived from group membership overlaps and corresponds with notions of individually-based and group-based citizenship with reference to female citizenship as understood in table 2.

²⁰⁷ On 'rule of law' and Islam, see Ann Elizabeth Mayer, "Islamic law as a core for political law: The withering of an Islamist illusion," in *Shaping the current Islamic reformation*, ed. B. A. Roberson (London: Frank Cass, 2003). On 'rule of law' and gender, see Anna Loretoni, "The rule of law and gender difference," in *The Rule of law: history, theory and criticism*, ed. Pietro Costa, Danilo Zolo, and Emilio Santoro (Dordrecht: Springer, 2007). For CEDAW work and reports 1979 - 2007, see <http://www.un.org/womenwatch/daw/cedaw/>. Since 2008 CEDAW has been under the UN High Commissioner for Human Rights, see <http://www2.ohchr.org/english/bodies/cedaw/index.htm>. For the lifting of CEDAW reservations in Arab states, see the website of the "Coalition Equality without Reservations" launched in 2006: <http://cedaw.wordpress.com/>, accessed 18 August 2009.

²⁰⁸ Suad Joseph, "Gender and Citizenship in Middle Eastern States," *Middle East Report*, no. 198 (1996): 51.

²⁰⁹ Moghadam, "Gender and Revolutions," 143.

Table 2: Typology on female citizenship in the MENA region 1920-2010²¹⁰

		Type of political regime		
		Hereditary monarchy	One-party dominated regime	Semi-democratic
Citizenship rights	Individually-based	Morocco (2004)	Tunisia (1956) South Yemen ⁱ (1974-1990)	Turkey (1926)
	Group-based	Morocco (1957-2003) Jordan (1951) Kuwait (1984) Oman (1997) UAE (2005) Qatar (2006)	Egyptⁱⁱ (1920/1938) Syria (1953) Iraq (1959/ <i>Resolution 2003</i>) ⁱⁱⁱ Libya (1972) Algeria (1984) Sudan (1991) ^{iv} Yemen (1992) Iran (1967 / draft 2007) ^v	Lebanon^{vi} (1951/1962) Palestinian Territories (<i>draft law 2005</i>) ^{vii} Israel^{viii} (1992)

Table 2 renders year of codification of family law in brackets. Nearly all states have issued substantive amendments or new laws since first year of codification. Saudi Arabia and Bahrain are not included; Saudi Arabia does not have a codified family law, and in Bahrain only Bahrainis who belong to the Sunni population have a codified family law.²¹¹

Differentiating between individually-based and group-based citizenship rights serves three analytical purposes: *First*, rather than proposing that individually-based citizenship rights lead to less gendered citizenship, my purpose is to point that what is often referred to as ‘the woman question’ in Arab polities can thereby be theoretically handled as a classical demos issue pertaining to different degrees of affiliation to the polity which reflects less than full membership. *Second*, aspects related to change in gendered citizenship are fruitful

²¹⁰ The text of references rendered in Roman numbers in table 2 is found at the very end of chapter 1, i.e. *after* the list of references on pages 149-150.

²¹¹ See an-Na’im, *Islamic family law in a changing world: a global resource book*; Welchman, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy*: 15, 157-60.

in evaluating the degree of legal reform that accrues to female citizenship. Along with other indicators, legal reforms regarding consent, minimum age of marriage, divorce, nationality, polygyny, guardianship, and violence against women can thereby be assessed as necessary, though not sufficient, steps toward expanded female citizenship in Arab states.

Third, debates over reforms in family law that establish individually-based rights can be fruitfully seen as efforts and pressures at democratization whereby female citizenship is sought expanded.

It is important to emphasize that the typology does not represent an understanding that women living in contemporary Morocco, Turkey or Tunisia where female citizens have individually-based civil rights are those who also enjoy the ‘best’ citizenship regime in MENA. *De jure* equal civil rights reflect by no way *de facto* well-being in terms of material or non-material conditions. I argue nevertheless that unequal distribution of civil rights between male and female citizens structure gender-specific scopes of action in MENA which are sustained and perpetuated through state power to the disadvantage of female citizens.²¹² To the degree that the typology reflects theoretical viewpoints as well as normative perspectives it is by emphasizing and pointing attention to three objectives: *First*, equal civil rights between members of the demos are necessary but not sufficient conditions for the practice of political rights. *Second*, equal civil rights for male and female citizens are fundamental ‘rule of law’ principles whereby the agendas of political parties and groups in MENA should be scrutinized against. *Third*, democratization involves a two-tiered process where citizenship encompasses not only *extended forms* of participation in parliamentary elections, voting patterns and party politics, but also in terms of *expansive forms* of membership whereby female citizens in MENA are included as full members of the demos.

4.4.2 Position of female citizens in multireligious versus homogenous states

Chapter 5 represents a discussion of the following observation: states that have group-based citizenship – such as Lebanon and Syria – do worse on women's rights than states that

²¹² The coining of ‘gender-specific scope of action’ builds on Swedish political sociologist Walter Korpi’s terms ‘gendered inequality’ and ‘gendered limitations in scope of action’ – my translation of ‘*kjønnnet ulikhet*’ and ‘*kjønnsbestemt mangel på handlingsrom*’ – which Korpi in his comparative analysis of welfare regimes in 18 OECD-states. See Walter Korpi, “Kjønn og klasse i ulike velferdsstater [Gender and class in different welfare states],” in *Virker velferdsstaten? [Does the welfare state function?]*, ed. Bjørn Hvinden, et al. (Kristiansand: Høyskoleforl., 2001), 66, 71. See also Walter Korpi, *Gender, class and patterns of inequalities in different types of welfare states*, vol. no.224, Working paper series (Walferdange: LIS, 2000).

address and promote individual rights – such as Morocco and Egypt – because states that are ethnically and religiously divided are more likely to promote group rights to ensure representation of ethnic and religious groups. On the other hand, states that are more homogenous have, for different reasons, partially succeeded in “escaping” the need to represent religious and traditional groups or communities. For that reason, it is argued that pressures that strengthen individually-based rights, and thereby female citizenship, are more likely to appear in states where Islam is dominant religion and where controversy is publicly expressed.

The conclusions drawn from the discussion in chapter 5 point that, to a certain extent, the homogeneous / heterogeneous divide among states in the contemporary Middle East is as salient as the homogeneous / heterogeneous divide envisaged by Rokkan with reference to western European states (discussed in part 7 of this chapter). With reference to challenges which newly established non-western states were confronted with, Rokkan suggested that independent states in the making “may learn more from the smaller countries than from the large [and] more from the multiculturally consociational polities than from the homogenous dynastic states”.²¹³

My discussions with reference to family law reform draw different conclusions. Evidently, homogeneous states such as Morocco and Egypt may learn more from the democratization process in fairly homogeneous societies in western Europe rather than the democratization process of what has been termed ‘consociational democracies’ in western European states. Multireligious societies in the Middle East have, likewise, something to learn from their multireligious western counterparts. States such as the Netherlands, Austria and Belgium manage, for instance, to combine equal civil rights between female and male citizens. Interestingly, the ensuing citizenship regime in these states portrays comparatively marked elements of group-based citizenship as reflected in the strong family-oriented welfare regimes professed by conservative oriented Christian democratic parties.²¹⁴

In the Middle East, the centralization of judicial authority and the expansion of female citizenship appear to go hand in hand. Strengthened civil rights for Arab female citizens in both homogenous and multireligious states are, moreover, contingent on

²¹³ Stein Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe," in *The Formation of national states in Western Europe* ed. Charles Tilly, Gabriel Ardant, and Stein Rokkan (Princeton, N.J.: Princeton University Press, 1975), 600.

²¹⁴ Korpi, "Kjønn og klasse i ulike velferdsstater [Gender and class in different welfare states]," 69, 73.

weakened political alliance coalitions between conservative political parties and orthodox clerical authorities and groups.

5 Ontological and epistemological considerations

“Feminism is much more than an ideology driving organized political movements. It is, above all, an epistemology. It is an attitude, a frame of mind that highlights the role of gender in understanding the organization of society.”²¹⁵

As a concept, citizenship is historically heavily linked with the development of western liberal democracies, and the bulk of what can be termed as ‘classical theories’ on citizenship is therefore primarily based on the socio-economic and political experiences of these polities.²¹⁶

Looking at citizenship related issues in the Middle East, we can observe that the institution, practice and politics of citizenship challenge basic tenants and premises of classical theories on citizenship. In the Middle East, rather than being a hallmark of gradual inclusion and membership in the political community, citizenship has emerged as a legal marker of exclusion and stratified membership in the state. The proliferation of legal status categories that differentiate between citizens and non-citizens as well as between different categories of citizens has turned the institution of citizenship into a political instrument of control at the hands of ruling elites. Citizenship in the Middle East has featured predominantly exclusionary traits since the establishment of modern states in the region.²¹⁷

Can we – and if so, how – are we able to make use of the rich theoretical heritage primarily based on and embedded in the experiences of western democracies into a non-western context?

As observers and researchers we face two separate but related problems which have to do with science of philosophy considerations when we seek to make use of theories based and developed on western historical experiences. On the one hand, we are confronted with

²¹⁵ Speaking truth to power, as she puts it. Miriam Cooke, *Women claim Islam: creating Islamic feminism through literature* (New York: Routledge, 2001), ix-x.

²¹⁶ I must immediately clarify that ‘classical’ is here applied not in terms of history of philosophy, but in terms of primary references within the social sciences on citizenship. ‘Classics’ include thus the works of political sociologists and historians such as T.H. Marshall, Reinhard Bendix, Charles Tilly and Stein Rokkan who have contributed to studies on nation-building and state formation. For an insightful introduction to the concept of citizenship from a Western liberal perspective, see J. M. Barbalet, *Citizenship: rights, struggle and class inequality* (Milton Keynes: Open University Press, 1988). See Turner and Hamilton for a wide range of critical approaches to theoretical debates on citizenship, Bryan S. Turner and Peter Hamilton, *Citizenship: critical concepts* (London: Routledge, 1994). For an anthology of old and new texts on citizenship, see Paul Barry Clarke, *Citizenship* (London / Boulder Colorado: Pluto Press, 1994).

²¹⁷ On the exclusionary traits of citizenship in the Middle East, see particularly Butenschön, "State power and citizenship in the Middle East: A theoretical introduction," 5-8.

a 'translation' problem which logically opens up a discussion on sociological and cultural relativism regarding distinct political and social entities with different historical courses. On the other hand, we may point out that certain observations reveal inherent shortcomings and inadequacies within classical theories on citizenship that do not clarify the puzzling empirical anomalies detected in the Middle East. These shortcomings include the systematic and perpetual exclusion of particular segments of the resident population from citizenship, the arbitrary use of naturalization and denaturalization policies in expanding and contracting the citizenry, and the partial inclusion of female citizens as full members of the polity.

The latter kinds of concerns, i.e. the potential inherent shortcomings of classical theories of citizenship, have notably been raised within in the wake of three particular historical events in western states: i) the women's movement in the late 1970s saw the onset of feminist theories where the 'blind spots' regarding gendered citizenship and the exclusion of female citizens from full membership in the polity were pointed at²¹⁸; ii) non-western migration to western states had by the 1980s enforced re-evaluation of what constitutes a 'nation' albeit 'multicultural' democratic polities with reference to the integration of new citizens of non-western background²¹⁹; and iii) the establishment of new European states following the collapse of the Soviet Union in the 1990s revealed the

²¹⁸ Feminist approaches – themselves emanating primarily in western liberal polities – highlighted the blind spots which classical theories were embedded in, and which did not take into consideration the full personhood of females. The contribution of feminist scholars provide significant critical viewpoints on the dynamics of gender relations within the family as an institution, and the diverse experiences men and women have had with regards to political inclusion as members and participants in the polity. The canonical philosophical work of modern feminist theories, first published in 1949, remains Simone de Beauvoir, *The Second Sex* (New York: Knopf, 2010). Feminist theorists who comment on and criticize theoretical shortcomings within liberal contractual theories and the problems related to the private / public dichotomy include Carole Pateman, *The disorder of women: democracy, feminism and political theory* (Cambridge: Polity Press, 1989); Susan Moller Okin, *Justice, gender, and the family* (New York: Basic Books, 1989). See also Anne-Hilde Nagel, "The development of citizenship in Norway: Marshall remodelled," in *Women's politics and women in politics: in honour of Ida Blom*, ed. Sølvi Sogner, Gro Hagemann, and Ida Blom (Oslo: Cappelen akademisk forl., 2000). On gendered citizenship in western welfare states, see Helga Maria Hernes, *Welfare state and woman power: essays in state feminism* (Oslo: Norwegian University Press, 1987); Helga Hernes, "Kvinnens medborgerskap i den skandinaviske velferdsstaten," in *Virker Velferdsstaten?*, ed. Bjørn Hviden Ann-Helen Bay, Charlotte Koren (Kristiansand: Høyskoleforlaget, 2001). On women's rights within religious jurisdictions, see Shachar, *Multicultural jurisdictions: cultural differences and women's rights*.

²¹⁹ See the works of Hammar, *Democracy and the nation state: aliens, denizens and citizens in a world of international migration*; Gershon Shafir, *The Citizenship debates: a reader* (Minneapolis, Minn.: University of Minnesota Press, 1998); Brubaker, "Immigration and the politics of citizenship in Europe and North America." On a defense for minority group rights within liberal democracies, see Kymlicka, *Multicultural citizenship: a liberal theory of minority rights*. On immigration and the politics of inclusion in Norway, see Knut Kjeldstadli, *Sammensatte samfunn: innvandring og inkludering* (Oslo: Pax, 2008). For an excellent anthology on central works on citizenship with reference to western liberal democracies since the mid-1980s where the scope is widened to include immigration, gender and multicultural issues, see Richard Bellamy and Antonino Palumbo, eds., *Citizenship* (Farnham: Ashgate, 2010).

exclusionary facets of citizenship as an institution, and the violent creation and establishment of the demos when territorial borders were redefined in each state.²²⁰

Literature and research on citizenship has since the 1990s therefore reflected the academic absorption and analytical efforts at exploring and explaining these major political issues in western societies. All arising from western experiences and based on critical observations, these events challenged previously latent and theoretically unproblematized features within classical theories on citizenship. Kofman was among those who pointed at the inadequacy of (at the time) existing models of citizenship:

it is not simply the disparity between the normative and the real [models and forms of citizenship] that lies at the heart of some problems, but that we also need to rethink the civil society and the state, the public and the private, and the mechanisms of exclusion and inclusion that regulate membership of socio-cultural and political communities²²¹

The same kind of problems that I encountered when trying to explain citizenship related issues in the Middle East through the perspective of classical theories were, in other words, shared by other researchers who tried to analyze changes related to citizenship in the western world.

Earlier perspectives on citizenship which implicitly analyzed inclusive elements (such as studies of nation-building, the development of social and political rights, democratic political participation) were, following a redirection of focus and the development of new theoretical questions, enriched with new perspectives that problematized the exclusionary traits of citizenship not previously discussed within the classical citizenship literature: gender-specific issues, the violent and coercive aspects state formation, debates over supranationality, globalization and human rights, and problems of control following border closures. In short, the 'anomalies' observed in the Middle East found similar counterparts in contemporary European thought, politics and states.

²²⁰ The establishment of new states brought particularly the potential exclusionary traits of citizenship policies. These arose in the wake of the violent processes that evolved out of the formation of *demos* and *polis* configurations following the dissolution of the Soviet Union and the Yugoslavia and the ensuing wars in Bosnia and Kosovo. See André Liebich, Daniel Warner, and Jasna Dragović-Soso, *Citizenship, East and West* (New York: Kegan Paul International, 1995); Rainer Bauböck, Bernhard Perchinig, and Wiebke Sievers, *Citizenship policies in the new Europe* (Amsterdam: Amsterdam University Press, 2007). For a theoretical discussion of what constitutes the geographical outline of the term 'people' in light of nationalism as political project, see chapter 3, "Democratic theory: government by the people", Margaret Canovan, *Nationhood and political theory* (Cheltenham: Edward Elgar, 1996), 16-26.

²²¹ Eleonore Kofman, "Citizenship for some but not for others: Spaces for citizenship in contemporary Europe," *Political Geography* 14, no. 2 (1995): 134.

Seen from a philosophy of science perspective, we may therefore partially conclude that particular historical events permitted the formation of new theories and enlarged the scope of analysis of classical theories on citizenship. Ontological questions related to the nature of 'personhood', 'membership', 'citizenship' and 'the state' were posed, along with epistemological questions as to how we as researchers come to know and contribute to our knowledge on particular fields of interest, what knowledge about this field of interest is possible, and what rules of inquiry we follow to probe into it.²²²

5.1 The liberal / non-liberal divide

The enlarged scope with regards to a widened range of analytical and theoretical perspectives since 1990 allows, I maintain, the use and applicability of terms, concepts and analytical approaches related to citizenship in western and non-western contexts. What I believe poses more serious analytical problems in terms of comparing citizenship in a western and non-western context, is the liberal / non-liberal divide reflected in western liberal polities on the one hand, and in non-liberal polities in general on the other hand.²²³

By 'liberal' I imply the sustaining of rule of law standards where equality in legal status among individual citizens and principles such as freedom of association and expression are endorsed in the legal framework of the state. Moreover, the prevalence of liberal norms and ideals in society reflect that legal boundaries assure individual rights along with group rights without the latter violating the former.²²⁴

In most states in the Middle East, religious law permeates state law in ways that render the polity basically non-secular, and by extension illiberal. In part 4 I dealt with problems related to the inclusion of religious law as state law and argued that what can be seen as the abdication of the state in family law renders citizens de facto members of religious groups. Structurally illiberal practices such as mandated membership in religious groups and the existence of legal pluralism at the state level limit and constrain rule of law

²²² Berth Danermark, *Explaining society: critical realism in the social sciences* (London: Routledge, 2002), 15-18.

²²³ I use the terms 'non-liberal' and 'illiberal' interchangeably although there may well be analytical reasons for making fruitful distinctions between the two.

²²⁴ See Barry, *Culture and equality: an egalitarian critique of multiculturalism*: 7,129, 63; Brian Barry, *Why social justice matters* (Cambridge: Polity, 2005), 23. On the relationship between civil liberty and rule of law, see chapter 7 in Day, *Liberty and justice*. For a popularized but to the point discussion on differences between liberalized autocracies and illiberal democracies, see Farid Zakariyya, "The rise of illiberal democracy," *Foreign Affairs* 76, no. 22 (November / December 1997).

standards in the polity. While the option of 'exit' is available for citizens in western liberal states who wish to opt out of his or her membership in a particular religious group, this option is non-existent for citizens in most states in the Middle East.

Does the illiberal nature of polities in the Middle East, then, permit a theoretical and analytical application of concepts that are embedded in a liberal context when observing or imploring into state and society relations in the Middle East?

Halliday discusses these problems and relates them to what he observes as some social scientists' tendency to limit the application of universal concepts such as human rights and norms of justice in non-liberal and non-western settings.²²⁵ He criticizes particularly John Rawls' proposition of 'the law of peoples' which, according to Halliday, implies "not international law as we now have it but those laws which all peoples have in common, that is, a set of principles shared across frontiers and cultures."²²⁶ In making such a proposition, Halliday maintains that Rawls "demonstrates that liberalism respects non-liberal societies".²²⁷ Halliday proposes another perspective: one that does not assume historical separateness between cultures, religions or communities, but takes as a point of departure the variety of sources from which states, nations and communities of today present as particular and indigenous. These include international ideas and concepts such as universal suffrage, national independence and territorial integrity which "[s]tates give national form and allege national histories for their political institutions when these are neither traditional nor indigenous institutions."²²⁸ He emphasizes that the most difficult and divisive disputes are not *between* communities, but rather *within* them, and argues that discussions on the relationship between liberal and non-liberal societies cannot avoid the issue of a shared modern history in which both the non-liberal and the liberal world were "created as part of the modern state system and owe much to it."²²⁹

²²⁵ Among those Halliday perceives as representing views and perspectives that deny universalist approaches to moral issues and rights are Alasdair MacIntyre, Charles Taylor, Michael Walzer, Amitai Etzioni and John Rawls. Fred Halliday, *Nation and religion in the Middle East* (Boulder, Colo.: Rienner, 2000), 16. See chapter 1 entitled "Liberal Theory and the Middle East" in *ibid.* Halliday builds upon and enlarges this line of reasoning in chapter 5 entitled "Human Rights and the Islamic Middle East" in Fred Halliday, *Islam and the myth of confrontation: religion and politics in the Middle East* (London: Tauris, 2003).

²²⁶ Halliday, *Nation and religion in the Middle East*: 20. For the original text of John Rawls' article "The Law of Peoples" Halliday refers to Stephen Shute and Susan Hurley, *On human rights* (New York: Basic Books, 1993), 59, 67.

²²⁷ Halliday, *Nation and religion in the Middle East*: 21.

²²⁸ *Ibid.*, 26.

²²⁹ *ibid.*, 27-28.

The approach followed in this thesis builds on Halliday's perspectives with regards to maintaining a universalist approach towards the study of political processes in both liberal and non-liberal polities. I problematize the notion of universalism further and comment on the schism between human rights and citizenship rights in part 8 of this chapter. At this stage, I make the note that a liberal / non-liberal divide exists with reference to basically liberal European states and illiberal polities in the Middle East. Moreover, one of the objectives I seek to problematize and discuss is precisely how and in which ways this divide sheds light on the politics of citizenship and the impact of the ensuing politicization of the demos in the Middle East on regime survival.

5.2 Ontological and epistemological reflections

Partly related to the liberal / non-liberal divide, but nonetheless separate, I find it important to clarify that the epistemological approach applied towards the study of membership and citizenship in the Middle East is based on certain assumptions of ontological relevance which permeate the fabrics of the thesis: This study is grounded in a belief that observable and non-observable objects of study such as membership, power, religion, justice, personhood, communities, rights, and human dignity exist in and for themselves, and "by extension [constitute] observable events [that] exist in and for themselves."²³⁰ A political scientist by training, with plausible insight in social anthropology and history, I seek to account for and understand why particular events happened, how they happened, and the likelihood of them happening again. As such, I accept that there are certain regularities in the world that we as researchers seek to describe and explain.

Some of the observable regularities sought explored in this thesis evolve around the unequal distribution of membership in the state following constitutive acts such as enumeration processes and the formation of citizenship laws which lay the basis for establishing the demos of the state²³¹; variances in state formation and democratization processes in three Arab states which are characterized as 'plural societies'²³²; the

²³⁰ Todd Landman, *Issues and methods in comparative politics: an introduction* (London: Routledge, 2003), 16.

²³¹ Discussed in chapter 2 of the dissertation entitled "The Lebanese Census of 1932 Revisited: Who are the Lebanese?"

²³² Discussed in chapter 3 of this dissertation: "Tune in Religion, Turn on Pluralism, Drop Out Citizenship? Membership and Political Participation in Jordan, Kuwait and Lebanon".

establishment, sustaining and political pressures for reforming gendered citizenship whereby female citizens are sought included as full members of the demos.²³³

From this ontological cognition springs an epistemological approach that guides this thesis and takes as its point of departure the following: Despite observable differences in religious, cultural and historical experiences of contemporary western liberal and non-liberal states in the Middle East, I maintain that there are nevertheless common features that relate to legal structures, kinship as social organizational principle, modes of production and reproduction, as well as bureaucratic institutionalization which implicate choices and considerations that are political in nature. 'Political' in the sense that choices and considerations involve the exercise of power through human agency in relation with structures²³⁴, and in the sense that the exercise of power is visible at certain historical critical moments²³⁵. These choices, conditions and structures permit comparative analysis of social events and phenomena across time and space. As such, I distinguish between religion (eg. Islam, Christianity, Judaism) understood as faith and as a system of belief about a deity wherein moral and ethical meaning is derived on the one hand, and 'religion' as comprising social and political systems and as objects of study where little can be explained by reference to a unitary faith without taking into consideration the study of particular events and places.²³⁶ In this thesis, it is the latter understanding of 'religion' I adapt.

I elaborate further on some of the methodological challenges related to the ontological and epistemological approaches outlined here in part 7. What follows below is a discussion of the impact of applying different epistemological approaches to the study of citizenship in the Middle East.

²³³ Discussed in chapter 4 entitled "Gender, Family Law and Citizenship in Syria" and in chapter 5 entitled "Female Citizenship in the Middle East: Family law reform in Morocco, Egypt, Syria and Lebanon".

²³⁴ Steven Lukes, "Power and Structure," in *New Critical Writings in Political Sociology, volume 1*, ed. Kate Nash Alan Scott, Anna Marie Smith (Burlington: Ashgate, (1977) 2010); Chantal Mouffe, *The return of the political* (London: Verso, 2005).

²³⁵ Charles Tilly builds on the Gramscian notion of 'moment' and calls these spatial moments where the use of power is displayed as 'choice points', Charles Tilly, *Big structures, large processes, huge comparisons* (New York: Russell Sage Foundation, 1984), 14. Stein Rokkan recognizes such 'moments' as 'historical junctures'. For an analysis of Rokkan's understanding of 'critical junctures' within a western European context, see Stein Kuhnle et al., *State formation, nation-building, and mass politics in Europe: the theory of Stein Rokkan based on his collected works* (Oxford: Oxford University Press, 1999), 303-19.

²³⁶ Halliday, *Islam and the myth of confrontation: religion and politics in the Middle East: 2*.

5.3 Two epistemological approaches: ‘culturalist’ or ‘structuralist’ studies

Studies on membership and citizenship in the Middle East can be carried out by applying a ‘culturalist’ or a ‘structuralist’ approach. What can be termed as a ‘structuralist’ epistemological approach applied in this thesis towards the study of citizenship and state in the Middle East differs from what can be termed as ‘culturalist’ approaches where social phenomena are sought explained by emphasizing traits pertaining to ascriptive identities such as religion or kinship.²³⁷

The Arabist legal comparative scholar Gianluca Parolin exemplifies, as I argue below, a culturalist approach towards the study of citizenship in his *Citizenship in the Arab World: Kin, Religion and Nation-State*.²³⁸ I dwell on this particular study as part of my discussion on ontological and epistemological approaches to the study of citizenship for two reasons: First, Parolin proceeds to study citizenship in Arab states through the lens of membership. He argues, for instance, that “[a]pproaching citizenship through ‘membership’ seems a viable and promising option, especially in the Arab world, where ‘subject’ and ‘rights’ depend even more crucially upon it.”²³⁹ Second, in his study Parolin presents a set of analytical and theoretical concepts that – at first glance – are compatible with the ones I use. Parolin’s analysis on forms of membership and the ensuing formation of citizenship patterns in the Middle East proceeds, nevertheless, along another epistemological line of reasoning which emphasize disparate kinds of insights, and therefore conclusions, than the one I adapt.²⁴⁰

5.3.1 Parolin’s study on membership and citizenship in MENA: a critique

Parolin starts his analysis by pointing at Aristotle’s distinction between man, his relation to family (*oikia*) as a ‘natural’ form of membership, and man’s participation in the political community (*polis*). Looking at citizenship as an ellipsoid, he states that the individual and the

²³⁷ On features of ‘culturalist analysis’, see Simon Bromley, *Rethinking Middle East politics: state formation and development* (Cambridge: Blackwell, 1994), 16-19. See also Selvik and Stenslie, *Stabilitetens pris: stat og politikk i Midtøsten [The price of stability: state and politics in the Middle East]*: 24-25, 54-57. For the English version, see Selvik, Stenslie, and Meyrick, *Stability and change in the modern Middle East*: 15.

²³⁸ Parolin, *Citizenship in the Arab world: kin, religion and nation-state*. Parolin’s book is the result of five years’ research sponsored by the Italian National Research Council and the EU as part of the prestigious *International Migration, Integration and Social Cohesion in Europe* (IMSCOE). ‘IMSCOE Network of excellence’ unites 500 European institutes who specialize in studies of international migration. See the network’s website on www.imscoe.org.

²³⁹ *Ibid.*, 25.

²⁴⁰ For a short version of this critique in Norwegian, see my review of Parolin’s book in *Babylon*, no. 2, 2011, p. 104-105.

political community can be seen as basic coordinates of citizenship where concepts such as membership, rights, participation and status represent intersection points: “When the models of each focus change, the entire figure reshapes.”²⁴¹ Parolin thus elegantly captures basic elements of the individual and a political community, and presents fruitful analytical categories that may, in methodological terms, be applied in different historical and regional settings.

Nevertheless, instead of holding on to the basic coordinates of citizenship he initially presents (man and political community), and their points of intersection (membership, rights, status and participation), Parolin proceeds to examine membership in the Arab world through a historical account of membership in three arenas where ‘Islam’ is main focal point: membership in the kin group from pre-Islamic time, membership in the religious community with the onset of Islam, and membership in the nation state with the demise of the Ottoman Empire and the Islamic Caliphate. Nowhere is the term ‘Islam’ – so central to Parolin’s analysis – defined. He implicitly presents Islam as a religious belief system and basis for jurisprudence at the individual, group and political community level.

The analysis and discussion offered fall short of the analytical model initially presented when Parolin, relatively early in the book, juxtaposes the historical experiences of the Latin and the Islamic worlds (his terms) as two inherently different experiences with regards to the development of citizenship. Indeed, the author maintains that “[e]xploring citizenship in the Arab world requires a disentanglement from all those ideas, images and suggestions that have settled into the concept in the course of European thought.”²⁴² According to him, the two worlds followed ‘different civilizational paths’. In the Latin world, “a major watershed in the history of citizenship [saw that] the individual came to the center of the stage, possessing natural rights prior to and irrespective of his affiliation in a political community. Thus membership in a political community became a way of ensuring such rights, not their basis.”²⁴³ Parolin specifies some of the intellectuals who participated in that paradigmatic transformation. In addition to the ‘philosophical father’ of the principle of sovereignty as theoretical innovation, Jean Bodin (1530-1596), these include Althusius

²⁴¹ Parolin, *Citizenship in the Arab world: kin, religion and nation-state*: 19.

²⁴² *Ibid.*, 25.

²⁴³ *Ibid.*, 21-22.

(1563-1638), Hobbes (1588-1679), Grotius (1583-1645), Pufendorf (1632-1694) and Locke (1632-1704).

Parolin does not provide the dates of birth and death of these thinkers. I here add them in order to make the following argument: The intellectual legacy of these thinkers is that they lived through, and were engaged in, addressing questions raised before, in the course of, and in the aftermath of the Lutheran Reformation initiated by Martin Luther (1483 – 1546).²⁴⁴ What binds the collective efforts of the intellectuals referred to by Parolin with regards to “bringing the individual to the center of the stage” is, as I argue further below and in part 6, indivisibly related to bringing the sovereign territorial state at the center of the stage of world politics.

The philosophers Parolin points at provide us with a wealth of perspectives with regards to drawing boundaries between religious and political authority, and by extension the nature and limits of authority, autonomy and powers of king, Catholic church and reformist forces (within the incumbent Catholic church itself, as well as between and among proponents of Lutheran teachings). As historical event, the peace treaty reached in Westphalia in 1648 was a ‘moment’ of politico-legal reverberations that ended a long trail of civil wars in and between European political entities: The Treaty settled two questions related to manifestation and exercise of political authority: first, it established the territoriality of the state as a basic boundary in which the principle of sovereignty was vested; second, it manifested the supremacy of political authority, i.e. the king’s, over clerical authority, i.e. religious power, in becoming the main (though not singular nor exclusive) arbitrator of state politics. While Parolin maintains that the philosophers he referred to “proposed different solutions on how to frame the power, but all agreed on the individual’s centrality and his ‘absolute’ natural rights”²⁴⁵, I argue that this process occurred in close connection with the demarcation of the territorial state itself as sovereign entity related to, but not dependent on, the sovereignty of the king.²⁴⁶

²⁴⁴ The year 1517 is usually referred to as a ‘moment’ during the lifetime of Luther since it marks the year in which he presented his theses against clerical abuses, particularly through the sale of indulgences, i.e. allegedly sacred salvation remedies and edifices that had by the 15th century been institutionalized and legitimized by the Roman Catholic Church.

²⁴⁵ Parolin, *Citizenship in the Arab world: kin, religion and nation-state*: 22.

²⁴⁶ The two processes are so intimately connected to the degree that I leave it to philosophers of history and philosophers of religion to agree or disagree on which process is the cause or effect of the other. What I seek to emphasize is that the individualization of the self and the ‘territorialization’ of the state as two interconnected processes.

My argument here is to emphasize the importance of establishing and embedding a basic immaterial component – that of Bodin’s concept on sovereignty – and a material component – that of the principle of territoriality, i.e. the demarcation of land and the establishment of state structures (and by extension variances in church-state relations) in European states, as profoundly significant defining moments inside and outside the ‘Latin world’. At the time, the establishment of the territorial state as organizing principle was, in other words, a paradigmatic shift and occurred in parallel with, and inseparable from, the demarcation of the self along individualistic lines.²⁴⁷

Turning back to our discussion on the Arab Islamic world, Parolin maintains that a new order did not manifest itself there because – he explains – internal and external challenges to Abbaside rule (appr. 750 – 1258) were settled through an understanding of how the foundations of political authority were to be sorted out, particularly influenced through the “masterpiece of literature on Islamic political authority (*wilayah*) – *al-Ahkam al-sultaniyya* (The Ordinances of Government) – [...] written by al-Mawardi (d. 1058 AD)”²⁴⁸:

Once fixed, the rules of Islamic *wilayah* remained uncontested, whereas the development of the Western notion of sovereignty and of the underlying concepts of citizenship had a much more intricate story. (...) The Arab-Islamic world did not suffer the kind of destruction brought about by the European Wars of Religion, and was thus not compelled to look to sources of legitimacy other than the religious one, which is the pivot of *wilayah*. (...) Even after the caliphate disappeared, Islam inflexibly maintained the ideal of the caliphal *wilayah* and did not develop any alternative theory; indeed, every once in a while the prospect of reinstating the caliphate is raised once again.²⁴⁹

In his brief account of Islamic political history, Parolin does not identify when the Islamic caliphate starts and ends in historical time, and has therefore no need to specify when its rules regarding the organization and distribution of political authority were ‘fixed’. Apparently, an authoritative historian and philosopher delineated the rules of ‘Islamic political authority’ during the 11th century, and these rules and norms guided rulers and ruled in the Islamic Arab world through 900 years and brought some kind of order which ended by the breakdown of the Caliphate through the dissolution of the Ottoman Empire

²⁴⁷ For an interesting philosophical discussion around the concept of citizenship and individualism with references to Ibn Khaldoun and the Middle East, see Jean Leca, "Individualism and citizenship," in *Citizenship: critical concepts* (vol. 1), ed. Bryan S. Turner and Peter Hamilton (London: Routledge, 1994), 151-54.

²⁴⁸ Parolin, *Citizenship in the Arab world: kin, religion and nation-state*: 21.

²⁴⁹ *Ibid.*

around 1920.²⁵⁰ 'Islam' is implicitly applied as a central parameter through which change, or more notably 'non-change', with regards to rights and status is measured from pre-Islamic time until date.

It is, for instance, "[c]lassical Islamic law [which] finally fixed the forms of membership in the Islamic community"²⁵¹, and then, "[c]enturies after the formation of the Islamic community (...), a new form of membership (nationality or *jinsiyya*) in a new form of political organization (the nation-state or *al-dawla al-wataniyya*) took shape in the Arab world."²⁵² 'Islam' as faith, as canonical body of law, or as represented and interpreted by different political adversaries over the centuries is addressed as 'a given'.

Halfway in his analysis Parolin shifts focus from discussing the status and rights of inhabitants of the Arab world seen as *individuals* with relation to kin and religious membership, to a thorough focus on discussing the 'nationality of detached territories'²⁵³, that is of contemporary *states*, after which he concentrates on a presentation of each of the independent state's nationality legislation. Interestingly, with the presentation of each state's legislation (18 in all), we easily get the impression that diversity, rather than unity, characterizes the fairly different nationality laws of Arab states.²⁵⁴ Now, given the presumed common traits that characterize Islamic law and the Islamic Arab world in general, differences in nationality legislation trigger questions such as: why are national legislations on citizenship so different? Parolin comes with the following explanation:

Responses to the actual content of nationality regulations, conversely, follow the rules of model circulation in comparative law. *Some regulations matching Arab mentality* have been fully implemented and some were rejected by the legal environment, *while other local rules even prevailed on foreign model.*²⁵⁵

The legislation of citizenship laws reflects a remarkable use of 'foreign models', as Parolin sees it, regarding citizenship legislation along with considerations that have to do with a

²⁵⁰ For historical accounts on the development of political and clerical authority under the Umayyads (appr. 630 – 1030), the Abbasids (appr. 750 – 1258), and during Ottoman Empire (appr. 1417-1918), see Vikør, *Between God and the Sultan: a history of Islamic law*. For an interesting presentation of religion and society, see Berkey, *The formation of Islam: religion and society in the Near East, 600-1800*. For a discussion on the relationship between law and power, see Sami Zubaida, *Law and power in the Islamic world* (London: Tauris, 2003). For approaches where economic aspects pertaining to the development of the state in pre-Ottoman periods, see Ayubi, *Over-stating the Arab state: politics and society in the Middle East*: 49-85.

²⁵¹ Parolin, *Citizenship in the Arab world: kin, religion and nation-state*: 47.

²⁵² *Ibid.*, 71.

²⁵³ *Ibid.*, 76.

²⁵⁴ *Ibid.*, 76-95.

²⁵⁵ *Ibid.*, 127, my emphasis.

particular 'Arab mentality', which – by extension – lie at the heart of the arbitrariness and exclusionary practices with regards to the distribution of membership in the state, naturalization and denaturalization policies. With respect to the Gulf states, for instance, he points at Kuwait where the stateless *bidun* population has been deprived from citizenship since 1959, Qatar where the Ghufraan tribe were denaturalized for lack of loyalty to the Emir in 2005, and Bahrain where large segments of the Sunnite Dawasir tribe who migrated to Saudi-Arabia in the 1920s were collectively naturalized in 2002.²⁵⁶ Within Parolin's approach, these inclusionary and exclusionary acts reveal that

[k]in affiliation is a resilient and vital feature of Arab society, in spite of all endeavours of the religious communities, and later the nation-states, to do away with it. (...) Limitations of certain kin groups' rights are usually carried out by communal denial or deprivation of nationality (*jinsiyah*), even *disregarding national legislation*.²⁵⁷

In Parolin's citizenship matrix the element of power and its evident practice by rulers in distributing or withdrawing citizenship certificates is non-existent. Parolin sees exclusionary practices, communal deprivation and the naturalization and inclusion of groups of citizens through the lens of kin affiliation. The primacy of membership in kin groups is related to, and implicitly explains, according to him, the resilience of kinship as an organizational principle in the Middle East. Parolin gives kinship – a central social organizational principle in Arab societies – explanatory force and turns it thereby into a 'culturalist' trait by neglecting to probe into the power by rulers who distribute or withhold citizenship certificates as means of coercion in order to strengthen their survival strategies as rulers.²⁵⁸

Seen through a structuralist epistemological approach, the powers of rulers in constituting and defining demos constellations would be emphasized in shedding light on the resilience of kinship organization for two reasons: first, the use of coercive power at the hands of state authorities who obviously include some inhabitants and exclude others on the basis of kinship and religious affiliation; second, the authoritative nature of the distributive process itself. Here the disclosure of citizenship status indicates how kinship and religious affiliation is used by those holding state power as active ingredients in extending and

²⁵⁶ *Ibid.*, 116-17.

²⁵⁷ *Ibid.*, 116.

²⁵⁸ For three excellent studies on the political dynamics of state formation and tribal organization in the Gulf, see Philip S. Khoury and Joseph Kostiner, eds., *Tribes and state formation in the Middle East* (London: Tauris, 1991); Jill Crystal, *Oil and politics in the Gulf: rulers and merchants in Kuwait and Qatar* (Cambridge: Cambridge University Press, 1995); Shelagh Weir, *A tribal order: politics and law in the mountains of Yemen* (London: British Museum Press, 2007), chapters 10 and 11.

solidifying their hold over the state. As such, applying a structuralist approach impels identifying and problematizing constitutive features of citizenship such as the formation and application of principles for membership in a social group (religious, ethnic, tribal).

Through a structuralist epistemological approach I look particularly at state power in forming and sustaining various modes of membership policies in sub-state units, particularly religious groups, and discuss the implication of state policies on the distribution of power in the polity along gendered lines.²⁵⁹

What Parolin achieves, in what I have described as a 'culturalist' approach, is an informative presentation and historical description of citizenship patterns where he builds his explanation on what he seeks to explain. He contrasts different civilisational paths in the Latin and the Arab Islamic world with 'membership' and 'citizenship' as terminological points of departure, without providing empirical controls to the generalizations he assumes with regards to each of the civilizational paths followed. In Parolin's analysis, modes of membership in the kin group and in the religious community are seen as pertaining to the Islamic world in ways that differ in essence from religious and kinship structures found in 'the Latin world'. In his study, historical events and political processes in the Muslim world are characterized as fairly unchanging and stagnant. If we are to follow Parolin's epistemological approach towards understanding citizenship paradigms in contemporary states in the Middle East, the continued salience of Islamic *umma* is characteristic of contemporary societies and states. He is surprised that inhabitants or citizens in the region opt for the formation of national entities:

Remarkably, some local 'Islams' have supported the formation of national communities (*al-umma al-wataniyyah*) by projecting onto them what *Islam declared as constitutive of the Islamic community (al-umma al-islamiyyah)*, and have presented the centralization of power of the nation-state as fully compliant with the classical Islamic doctrine of the *wilyah*. Such a stance is now questioned on many sides. On the one hand, radical Islamists believe that the nation-state openly challenges the unity of the Islamic *umma*, and on the other hand, ethnic and religious minorities condemn an Islam that denies their traditional peculiarities. Supranational Islamic movements still need to overcome serious obstacles in order to take root, but processes of political and administrative decentralisation, conversely, are quickly developing and may even breathe some new life into the kin organization.²⁶⁰

²⁵⁹ Butenschøn, "State power and citizenship in the Middle East: A theoretical introduction," 5, 12. 'Structuralist' approaches are applied by scholars such as Paul Brass who discusses the impact of state strategies on ethnic group formation. Brass, *Ethnic groups and the state*: 24-27. See also the works of Cynthia Enloe who insists on emphasizing the impact of the state as autonomous structure of public authority on the sustaining of ethnic boundaries. Enloe, *Ethnic soldiers: state security in divided societies*: 12.

²⁶⁰ Parolin, *Citizenship in the Arab world: kin, religion and nation-state*: 119, my emphasis.

In this paragraph, Parolin implies that there exists a sovereign authoritative body which is, or represents, 'Islam proper'. He is, moreover, somehow startled that some of these 'local Islams' assert territorial notions of belonging to national states which, according to him, are issues which "Islam declared as constitutive of the Islamic community". What this (monolithic) community presumably is or who represents it, is not clarified. 'Religion' – implicitly 'Islam' – in the Arab world is portrayed as having an acting capacity, that is an agency, not connected with individuals or groups.²⁶¹

In short, Parolin falls epistemologically in the trap of essentializing the Middle East. He sees kinship and religion as explanatory variables rather than variables which themselves are subjects of study. What is lost in his analysis is a contextualization of kinship, ethnic and religious affiliation in relation to the power dynamics at play between and among social groups and rulers who include or exclude members as citizens of the state according to political objectives centered around maintaining the political power of rulers. In Parolin's study, kin formation grounded in pre-Islamic times are seen as key elements in maintaining – thereby understanding and implicitly *explaining* – social order as reflected in contemporary states; religion – confined and limited to Islam – is treated as virtually unchanging and stagnant until introduced and confronted by western norms and ideas.

The result is a historical and linguistic descriptive account with little analytical vigor that extends our knowledge on the formation of citizenship in the Middle East because the presentation implicitly and systematically builds its assumptions on the *differences* rather than *similarities* between the experiences of the Latin and Arab worlds. These similarities evolve around, I would emphasize, spheres of influence, power, coercion and manipulation that fuse events and considerations we find in both worlds. Such similarities have to do with conflicts between individuals, groups and institutions vested in religious and/or political authority; adversaries that hold ideological opinions regarding different topics, at times in alignment and mutual interests, at other times in conflict or violent upheavals. Other similarities at the macro level include the dissemination of capitalist modes of ownership, production and reproduction since the 15th century, the establishment and diffusion of

²⁶¹ 'European Wars of Religion' during the 16th and 17th century were, in contrast, carried out by adversaries – kings, princes, representatives of the Catholic church, priests and clerical authorities of different confessional shades, along with members of the nobled classes.

territoriality as an organizing principle in world politics, and the struggle of females in obtaining ownership over their own personhood since the 19th century.

With reference to the Middle East, the conflicts that rise out of the continuing struggle between and among representatives of religious and political authority is an ongoing and salient struggle. As such, I would argue that the sum of violent and non-violent struggles and clashes witnessed in different states in contemporary states in the Middle East today are part of events that resemble and correspond with, those that occurred during European state-making following the Reformation. These struggles are, in other words, currently taking place and can fruitfully be seen as part of a violent creation of political order in the region.²⁶² Cohen et al. indicate, for instance, that

Many of the new states of today are engaged in struggles whose logic is similar to that of the European period of primitive central power accumulation. [Many conflicts] evidence antagonisms between central state-makers and subnational collectivities. The theoretical language of “cleavages” – ethnic, religious, tribal – tends to obscure their intimate connections with competitive political conflicts for control over the power resources of the respective territories and populations. Increasing central state claims for resources – for material means of state-making and domination – intrude and compete with pre-existing structures of rights and obligations which tie those resources to subnational collectivities and or “polities”. Conflict, resistance and violence are as they were in Europe, often the result.²⁶³

Seen through a state formation perspective, contemporary strife in the Middle East center around the organization and institutionalization of Islam as state religion or the use of Islam as means to provide authoritative canonical understandings on how to organize social and political life. These struggles reflect comparatively similar forms of conflicts of interest between and among those who seek to assert political authority in alliance with or in opposition to those who seek to assert power based on religious authority as witnessed in earlier periods of European state formation. The results are both non-violent as well as violent forms of upheavals within and among states. Not yet a hundred years old, the institutionalization of the territorial state system in the Middle East is, indeed, still in the making.

Having laid out what distinguishes ‘culturalist’ and ‘structuralist’ epistemological approaches and the implications these have when seeking knowledge on a particular subject

²⁶² Youssef Cohen, Brian R. Brown, A.F.K. Organski, "The Paradoxical nature of state making: The violent creation of order," *The American Political Science Review* 75(1981).

²⁶³ *Ibid.*, 902.

of study – such as citizenship in the Middle East, I turn attention to situating my research within the theoretical body of studies on citizenship.

6 The theoretical framework: State formation and democratization

“What if everything we have said about Western Europe is valid, but irrelevant to the contemporary world?”²⁶⁴

Theoretical studies on the Middle East where citizenship is applied as conceptual or theoretical framework are scarce. Little has been published since 2000 after the two-volume publication of *Citizenship and the state in the Middle East: Approaches and applications* edited by Nils A. Butenschøn, Uri Davis and Manuel Hassassian, and *Gender and Citizenship in the Middle East* edited by Suad Joseph.²⁶⁵ To the extent that the contributions in these two books remain influential, it is by drawing attention to the theoretical complexities and analytical fruitfulness of applying the concept of citizenship as a level of analysis in a non-western and non-liberal context. The articles that constitute this thesis are attempts at extending some of the theoretical perspectives introduced in these books.

Evidently, considerable research on citizenship related issues in the Middle East is carried out, without researchers introducing the concept of citizenship as a level of analysis. Works on political representation and participation²⁶⁶; political regimes²⁶⁷; the state²⁶⁸; Islamism as political force²⁶⁹; labor immigration²⁷⁰; Islam, justice and human rights²⁷¹, and

²⁶⁴ Charles Tilly, "Western state-making and theories of political transformation," in *The Formation of national states in Western Europe*, ed. Charles Tilly, Gabriel Ardant, and Stein Rokkan (Princeton, N.J.: Princeton University Press, 1975), 601.

²⁶⁵ Suad Joseph, ed. *Gender and citizenship in the Middle East* (Syracuse, N.Y.: Syracuse University Press, 2000); Nils A. Butenschøn, Uri Davis, and Manuel S. Hassassian, eds., *Citizenship and the state in the Middle East: approaches and applications* (Syracuse, N.Y.: Syracuse University Press, 2000).

²⁶⁶ Saloua Zerhouni and Ellen Lust-Okar, *Political participation in the Middle East* (Boulder, Colo.: Lynne Rienner, 2008); Marsha Pripstein Posusney and Michele Penner Angrist, *Authoritarianism in the Middle East: regimes and resistance* (London: Lynne Rienner, 2005); Samir Makdisi, "Lebanon: the constrained democracy and its national impact."

²⁶⁷ Michael C. Hudson, *Arab politics: the search for legitimacy* (New Haven: Yale University Press, 1977); Owen, *State, power and politics in the making of the modern Middle East*; Selvik, Stenslie, and Meyrick, *Stability and change in the modern Middle East*.

²⁶⁸ Giacomo Luciani, *The Arab state* (Berkeley, Calif.: University of California Press, 1990); Ayubi, *Over-stating the Arab state: politics and society in the Middle East*; Bromley, *Rethinking Middle East politics: state formation and development*; Khoury and Kostiner, *Tribes and state formation in the Middle East*.

²⁶⁹ Nazih N. Ayubi, *Political Islam: religion and politics in the Arab world* (London: Routledge, 1993); Sami Zubaida, *Islam, the people and the state: political ideas and movements in the Middle East* (London: Tauris, 1993); Beverley Milton-Edwards, *Islam and politics in the contemporary world* (Cambridge: Polity, 2004); Utvik, *Islamismen*; Zubaida, *Law and power in the Islamic world*.

²⁷⁰ Longva, *Walls built on sand: migration, exclusion and society in Kuwait*; Kapiszewski, *Nationals and expatriates: population and labour dilemmas for the Gulf Cooperation Council states*; F. Eelens, T. Schampers, and J. D. Speckmann, *Labour migration to the Middle East: from Sri Lanka to the Gulf* (London: Kegan Paul International, 1992).

²⁷¹ See Tore Lindholm and Kari Vogt, *Islamic law reform and human rights: challenges and rejoinders*, ed. Rights Seminar on Human and Law the Modern Application of Islamic, Proceedings of the Seminar on Human Rights

the position of women within Islamic law²⁷², provide ample examples of studies that discuss the politics of citizenship without referring to 'citizenship' as a central analytical concept. Indeed, Kymlicka and Norman's warning of the potential hazard of limitless possible fields of application with reference to a 'monolithic theory of citizenship' is valid: most questions and problems regarding the distribution of power and the organization of political authority concern relations among and between rulers and ruled, and by extension citizenship.²⁷³

Why, then, insist on using citizenship as a level of analysis? Where does the theoretical impact area of this thesis fall into?

I place my research on the politics of citizenship in the Middle East within an overarching theoretical and analytical framework related to theories of state formation, nation-building and democratization as mapped out by the Norwegian political sociologist Stein Rokkan (1921-1979)²⁷⁴ and German American political sociologist Reinhard Bendix (1916-1991)²⁷⁵. The works of these scholars contributed significantly to my alertness in conceiving political development through an eye on historical processes without which scholars on the Middle East stand chanceless in exploring into and understanding contemporary politics. The legacy of these scholars permeate my thinking around the politics of citizenship and the politicization of the demos in the Middle East, and lies as a foundation to what eventually developed into an interdisciplinary exercise; the imprint of academic fields such as history, law and social anthropology are – hopefully – discernible in the various articles. My insistence on holding to citizenship as a level of analysis springs thus from an interest in making an effort to apply some of the approaches provided by Rokkan and Bendix to the Middle East, and from viewing the works of these scholars as both applicable and relevant to our contemporary world.

and the Modern Application of Islamic Law, Oslo 14 -15 February 1992 (Copenhagen ; Oslo: Nordic Human Rights Publications, 1993); Vogt, Larsen, and Moe, *New directions in Islamic thought: exploring reform and Muslim tradition*; 'Abd Allāh Aḥmad an-Na'im, *Islam and human rights: selected essays of Abdullahi An-Na'im*, ed. Mashood A. Baderin (Farnham: Ashgate, 2010); an-Na'im, *Muslims and global justice*.

²⁷² Welchman, *Women's rights and Islamic family law: perspectives on reform*; Welchman, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy*. More references on the position of women in the Middle East is provided in part 7.

²⁷³ Norman, "Citizenship and national identity: Some reflections on the future of Europe," 284.

²⁷⁴ Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe."; Stein Rokkan and Bernt Hagtvet, *Stat, nasjon, klasse: essays i politisk sosiologi* (Oslo: Universitetsforl., 1987); Kuhnle et al., *State formation, nation-building, and mass politics in Europe: the theory of Stein Rokkan based on his collected works*.

²⁷⁵ Reinhard Bendix, *Nation-building and citizenship: studies of our changing social order* (Berkeley, Calif.: University of California Press, 1977).

6.1 Rokkan and Bendix on state formation and democratization: an outline

In their joint work entitled “The extension of citizenship to the lower classes”²⁷⁶, Bendix and Rokkan elaborated upon the threefold typology and historical development of citizenship rights as presented by British sociologist Thomas Humphrey Marshall (1893-1981) and blended these in their studies on the democratization of Western European states: the development of *civil rights* during the 18th century included individual protection of arbitrary rule by state authorities, freedom of speech, thought and faith, the right to own property, equality before the law, and the right to justice; *political rights* during the 19th century encompassed the right to vote and to run for political office; and *social rights* during the 20th century which included social welfare services and benefits according to an (undefined) standard of living common in society. The authors accorded four public institutions that correspond to the three types of rights: courts for safeguarding civil rights; representative bodies in public decision-making and legislation for the exercise of political rights; schools for basic education; and social service institutions to provide minimum of protection against poverty and underpin social rights.

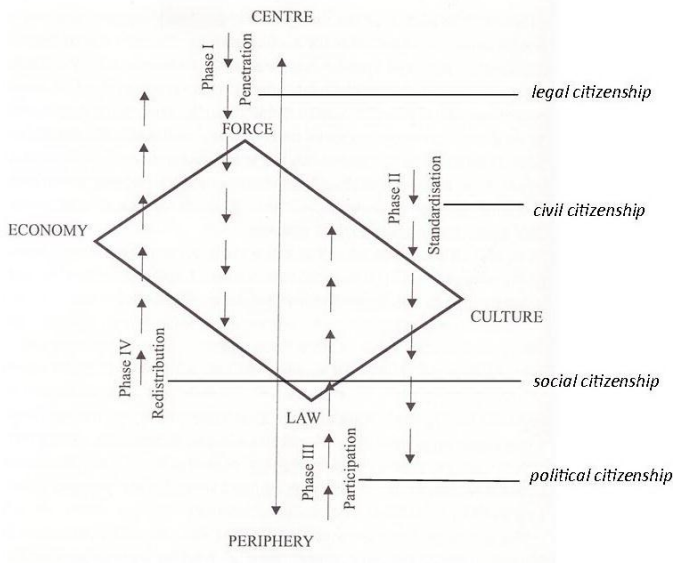
Rokkan linked the development of these rights and their bearing in public institutions to variances in state formation and nation-building in the political development of western European states. While state formation was seen as a process which involved the establishment of political order through the use of force by means of extracting resources within a particular territorial entity, nation-building was perceived as reflecting the set of pressures for and counterpressures against standardizing cultural, religious and linguistic distinctions within that territory.

Figure 2 and table 3 indicate how he visualized a four-phased time dimension which spans around a centre-periphery axis that reflects processes of state formation and nation-building: i) the dimension of *force* initiated the state building process through a penetration phase characterized by extractive and military capacities of rulers; ii) the dimension of *culture* reflected a standardization phase characterized by processes of nation-building which “brings larger sectors of the *masses* into the [political] system” by generating

²⁷⁶ This chapter is found in *ibid.*, 89-93. For T.H. Marshall’s original text on “The development of citizenship to the end of the nineteenth century”, see Marshall, *Class, citizenship, and social development: essays*: 78-91.

“widespread feelings of identity”²⁷⁷; iii) the dimension of *law* highlighted the strength of center-imposed legal traditions as well as opposition towards legal centralization; and iv) the dimension of *economy* reflected the degree of integration or separation of primary economy with / from city networks, as well as the degree of openness versus closedness of the territorial economy.²⁷⁸

Figure 2
Four types of citizenship plotted in Rokkan’s model on state formation and nation-building²⁷⁹



In the original figure, Rokkan identified two forms of citizenship: ‘political citizenship’ and ‘social citizenship’. He linked the establishment of ‘political citizenship’ to the dimension of law which was characterized by ‘the equalization of rights of participation’, and ‘social

²⁷⁷ Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe," 572.

²⁷⁸ *ibid.*, 563-72.

²⁷⁹ I have plotted in the four forms of citizenship to the original model. For Rokkan’s original figure entitled “The Time Dimension: A Scheme of Four Phases”, see *ibid.*, 571. For an edited and updated presentation of Rokkan’s original figure, see Kuhnle et al., *State formation, nation-building, and mass politics in Europe: the theory of Stein Rokkan based on his collected works*: 132. For the Norwegian translation, see Rokkan and Hagtvet, *Stat, nasjon, klasse: essays i politisk sosiologi*: 355.

citizenship' with the dimension of economy whereby the redistribution of resources and benefits occurred.²⁸⁰

To Rokkan's original conceptual map I add two forms of citizenship – 'legal citizenship' which refers to a process through which individuals are classified as members of the state, and 'civil citizenship' that reflects the equalization of *civil rights* under state law in distinction to *political rights* of participation.²⁸¹ With reference to contemporary states in the Middle East, external and internal pressures that seek to equalize civil rights among citizens or maintain existing differences constitute politicized arenas of conflict and violent upheaval that are intimately related to the organization of state power and the distribution of rights within the polity.

I argue that the two additional types of citizenship clarify significant features pertaining to the entanglement of law, religion and state power in contemporary states in the Middle East. These reflect various points of engagement that highlight the relationship between political regime and mosque/church-state relations as reflected in the institutionalization of the judicial system. Various patterns pertaining to institutionalization and management of religion in different states impact on the distribution of rights and obligations among the citizenry in ways that shed light on the organization and distribution of power in different states.

²⁸⁰ Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe," 566-67.

²⁸¹ The equalization of civil rights encompasses theoretically male and female citizens as well as members of different confessional groups although I focus primarily on the former in this thesis.

Table 3: A simplification of Rokkan’s table on state formation and nation-building ²⁸²

FORCE	CULTURE	LAW	ECONOMY
strength of extractive agencies extent of opposition to such agencies	strength of standardizing agencies strength of counteragencies	strength of centre-imposed versus local/regional legal traditions	Integration / separation of primary economy with / from city network
internal versus external resources of military agencies	distinctiveness vs sharedness of religious and / or linguistic standards	distinctiveness vs sharedness of territorial legal system	openness versus closedness of territorial economy
penetration state-building <i>constitution of the citizenry</i>	standardization nation-building <i>equalization of civil rights</i>	equalization of rights of participation	redistribution of resources / benefits
<i>Legal citizenship</i>	<i>Civil citizenship</i>	Political citizenship	Social citizenship

By specifying and including ‘legal citizenship’ and ‘civil citizenship’ as two analytical forms of citizenship that differ from political and social citizenship, I seek to emphasize some central points of political dispute that surround the politics of citizenship and the politicization of the demos in contemporary states in the Middle East. While conflicts pertaining to ‘legal citizenship’ are related to the inclusion of non-citizens as members of state, conflicts pertaining to ‘civil citizenship’ are related to the equalization of civil rights under the auspices of the state as sovereign authority.

In the following I point at some of the challenges embedded in Rokkan’s conceptual map with reference to particularly the politics of citizenship in the Middle East as framework. It is important to emphasize that I do not view characteristics pertaining to citizenship in the Middle East as deviations from a particular ‘standard’ European model regarding state formation and the development of citizenship. The main reason for applying Rokkan’s ‘way of seeing’ is that I find the conceptual maps and theoretical perspectives

²⁸² For Rokkan’s original table, see Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe," 567. I have removed parts of the original table and marked my additions in italics. In the original table Rokkan builds further on Talcott Parson’s paradigm of functional differentiation, see Kuhnle et al., *State formation, nation-building, and mass politics in Europe: the theory of Stein Rokkan based on his collected works*: 125. For the Norwegian translation, see Rokkan and Hagtvet, *Stat, nasjon, klasse: essays i politisk sosiologi*: 351.

fruitful methodological guidelines in an attempt at applying citizenship as a level of analysis as reflected in various junctures related to state-building and state formation in MENA.²⁸³

I discuss methodological considerations regarding the use of Rokkan's conceptual maps and variables in section 7 (entitled 'Methodological considerations') and concentrate here on the theoretical challenges related to distinguishing the four types of citizenship pointed at above.

6.2 Forms of citizenship in the Middle East within a Rokkanian framework

Neither Bendix nor Rokkan dealt with the Middle East in particular.²⁸⁴ Nor did they discuss gender issues specifically, although they did deliberate about the extension of political rights to women by noting that the term "the lower classes" is used in a classificatory sense:

the extension of citizenship occurred with reference to broadly and abstractly defined groups such as all adults over 21, or women or adults having specified property holdings, fulfilling certain residence requirements, etc. Such groups encompass many people other than those who have few possessions, low income, little prestige, and who because of these disabilities are understood to "belong" to the lower classes. The reference here is to the larger, classificatory group of all those (including the "lower classes") who were excluded from any direct and indirect participation in the political decision-making process of the community.²⁸⁵

The gendered dimension of excluding women from political participation is, in other words, addressed theoretically although not discussed empirically.²⁸⁶

Other more challenging and analytically intriguing problems are related to the implicit inclusion of the impact of the Reformation in state formation theories as embedded in Rokkan's conceptual models. I concentrate here on three interlinked challenges with reference to the Middle East: an embedded post-Westphalian political order; an under-theorization of the 'force' dimension related to state formation; and an overall emphasis on

²⁸³ For an interesting presentation and a constructive critique of Rokkan's conceptual maps and his 'ways of seeing', as Tilly coins it, see Tilly, *Big structures, large processes, huge comparisons*: 131-39. For a recent analysis of the democratic deficit within the European Union in light of Rokkan's conceptual map, see Øyvind Østerud, Fredrik Engelstad, and Robert E. Goodin, *Power and democracy: critical interventions* (Aldershot: Ashgate, 2004), 176-78.

²⁸⁴ Both authors included the Islamic Empire as part their historical analysis. Bendix, for instance, investigated variances of political authority in the Islamic empire Bendix, *Kings or people: power and the mandate to rule*: 35-49.

²⁸⁵ Footnote 29 in Bendix, *Nation-building and citizenship: studies of our changing social order*: 90.

²⁸⁶ Nagel points at some of the weaknesses in Marshall's model but sees its fruitfulness in her analysis of the development of female citizenship in Norway. See Nagel, "The development of citizenship in Norway: Marshall remodelled."

the 'culture' dimension related to nation-building. Each of these three points is dealt with below.²⁸⁷

First, an embedded post-Westphalian political order permeates the original model on state formation which thus *premises* the political outcome of the Reformation on European state formation based on territoriality as organizing principle and the monarch's gradual sovereignty over extra-territorial clerical / papal authority. It should be noted that Rokkan introduced 'outcome of the Reformation' as an additional variable in later works where he observed and commented on differences pertaining to states where the Catholic Church, for instance, "proved able to slow down processes of democratization and mass mobilization".²⁸⁸ However, in general, Rokkan was more occupied with variances in the *outcome* of the Reformation as reflected in the formation of counterforces (such as the upsurge of pious and linguistic vernacular movements). To a lesser degree was he occupied with historical processes that led to the Reformation.²⁸⁹ Also, political views pertaining to the secularization²⁹⁰ of society was an element in Rokkan's and Lipset's study on electoral support to parties who adopted ideological positions towards secularization of society.²⁹¹ In other words, Rokkan was primarily concerned with the European nation state and its *democratization* as reflected in patterns and differences in the developmental paths

²⁸⁷ It should be noted that Rokkan stated explicitly six 'givens' with reference to his analysis on the history of center formation and periphery incorporation, among these he points at the "heritage of the *Roman Empire*, the supremacy of the Emperor, the systematization of legal rules, [and] the idea of citizenship" as only *one* of these 'givens'. Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe," 575. In other words, Rokkan seeks to analyze fairly huge historical processes. What I have attempted to do with reference to the Middle East is to *concretize* and explicitly point at some of the 'givens' which Rokkan makes, and try to perceive these in terms of contemporary politics in the Middle East.

²⁸⁸ Kuhnle et al., *State formation, nation-building, and mass politics in Europe: the theory of Stein Rokkan based on his collected works*: 27.

²⁸⁹ Rokkan pointed thus that the "great upheavals of the Reformation and the Thirty Years' war left Western European states divided in three parts": a protestant North, a belt of religiously mixed territories (includes Ireland, the Low countries, the Rhineland, large sections of France until 1658 and the Swiss cantons); the Counter-Reformation countries in the east and the south (Habsburg territories, Spain, the Italian territories, France after 1685). *Ibid.*, 304.

²⁹⁰ 'Secularization' refers here to societal processes that free institutions from clerical and church power, while 'secularism' – as other 'isms' is connoted to political programs that seek to enhance the process of secularization. Oddbjørn Leirvik, "Religionsdialog, sekularitet og eit felles forpliktande språk [Religion dialogue, secularity and a common binding language]," in *Sekularisme - med norske briller [Secularism - with Norwegian glasses]*, ed. Oddbjørn Leirvik, Sindre Bangstad, and Ingvill Thorson Plesner (Oslo: Unipub, 2012), 8-9.

²⁹¹ Rokkan and Lipset saw secularization as including "the conflict between the centralizing, standardizing, and mobilizing nation-state of the historically-established corporate privileges of the Church", as cited by Janda who discusses the religious structure of party support towards issues pertaining to secularization. See Kenneth Janda, "Regional and religious support of political parties and effects on their issue positions," in *Religion and politics*, ed. John T. S. Madeley (Aldershot: Ashgate, 2003), 386.

pursued, rather than processes of *secularization* which was implicitly taken as part of his 'grander thesis' pertaining to democratization as a normative outfall witnessed in the case of Western European states, notwithstanding the nationalist-socialist and fascist periods in Germany and South Europe.

Second, an under-theorization of the 'force' dimension related to state formation. The development of the state apparatus and modern bureaucracy in the Middle East, particularly after 1920, offered authoritarian rulers with formidable instruments and means to extract resources and to use coercive power to control and shape the demos in ways that sustain their rule. Flora points, for instance, that Rokkan was "primarily interested in the nation and democracy and hardly interested in state formation in a stricter sense".²⁹² Therefore, "[s]tate-building, the formation of military states and, later, of welfare states, though central to [Rokkan's] theory, concerned him much less in his historical-comparative studies."²⁹³

Thirdly, a logical result of the two previous points: an overall emphasis on the 'culture' dimension related to nation-building. At center here is Rokkan's linking of aspects and structures related to religion as mainly belonging to the 'culture' dimension. In the Middle East, the domain of 'religion' includes both the culture dimension, but spans also over the 'law' dimension because religious law permeates the legal and judicial structures of the state.

The non-secularization of the state's legal and judicial systems in most states in the Middle East in the arena of family law requires therefore that the standardization of the legal structure be related to the dimension of 'law' rather than the culture dimension as envisaged by Rokkan. The persistence and proliferation of the phenomenon of legal pluralism²⁹⁴, i.e. the existence of several parallel and not always overlapping legal and judicial norms and rules in the region reflects, to use Rokkan's terminology, variances in the strength of centralizing agencies towards standardizing the legal and judicial structures of the state and the power of counteragencies towards such pressures. I discuss some of these differences in chapter 5. There I point at variances in the institutionalization of the judicial

²⁹² Peter Flora, "Introduction and interpretation," in *State formation, nation-building, and mass politics in Europe: the theory of Stein Rokkan : based on his collected works*, ed. Stein Kuhnle, et al. (Oxford: Oxford University Press, 1999), 86.

²⁹³ *Ibid.*, 4.

²⁹⁴ Berger, Zwaini, and Dupret, *Legal pluralism in the Arab world*.

systems in unitary courts as found in Egypt and Morocco where Islam dominates as religion, as compared with states with dual courts as found in Syria and Lebanon where the autonomy of religious groups in multireligious states is judicially institutionalized.

I address some of these three challenges as part of my discussion below on state formation in the Middle East and the four forms of citizenship – legal citizenship, civil citizenship, political citizenship and social citizenship.

6.2.1 Legal citizenship and penetration: emphasizing the force dimension

Rokkan does not refer explicitly to the structural dimension of citizenship, i.e. the distribution of membership in the state. Building on his model, however, the constitution of the citizenry falls logically under the force dimension that characterizes the penetration phase of state formation. The reason being that the constitution of the citizenry is a political act that expresses the sovereignty of the state over those it defines as its subjects, rather than a process of equalization of rights that falls under the dimension of law.

An example which reflects the intertwinement of the dimension of ‘law’ and ‘force’ as portrayed by Bendix and Rokkan is when they state that “a core element of nation-building is the codification of rights and duties of all adults who are *classified as citizens*”.²⁹⁵ In contemporary states of the Middle East, what appears as politicizing elements with regards to constituting the demos is *the very classification process* of adults as citizens. This process is evidently related to the ‘force’ dimension pertaining to the penetrating process whereby the demos is constituted, and not with the ‘law’ dimension pertaining to the process of participation in the polity.

In the Middle East, the constitution of the citizenry, that is the distribution of legal status (citizens, non-citizens, aliens, stateless), occurred with the establishment of the state and as a result of efforts at categorizing the population in ways that fit the nationalist ideals and professed state-idea of competing ethnic, religious and / or tribal groups. Once war and violent strife settled the territorial borders of the state, enumeration processes, censuses and the formation of citizenship laws were formed and applied in ways that created the demographic realities envisaged by groups who gained power over the state apparatus. It is

²⁹⁵ Bendix, *Nation-building and citizenship: studies of our changing social order*: 90, my emphasis.

these sets of questions I discuss with reference to particularly Lebanon as case study in chapter 2.

6.2.2 Civil citizenship and standardization: reassessing the culture dimension

Inasmuch as Rokkan dealt with the concept of rights, these were primarily seen in terms of political rights. His main focus was thus on aspects of citizenship seen as a desirable activity where the “equalization of rights of participation” was particularly emphasized.

The biased focus on political rights which Rokkan displayed in the chapter published as part of *The Formation of national states in Western Europe* in 1975 was later enriched and refined with a more sensitive discussion on the significance of legal equality in civil rights in the chapter written jointly with Bendix and published in 1977. In their discussion entitled “The extension of citizenship to the lower classes”, both authors addressed issues regarding the equalization of civil rights and emphasized that “rights of citizenship emerge with the establishment of equal rights under the law” adding further that:

Legal equality advances at the expense of legal protection of inherited privileges. Each man now possesses the right to act as an individual unit; however, the law only defines his legal capacity, but is silent on his ability to use it. In addition, civil rights are extended to illegitimate children, foreigners and Jews; *the principle of legal equality helps eliminate hereditary servitude, equalize the status of husband and wife, circumscribe the extent of parental power, facilitate divorce, and legalize civil marriage.* Accordingly, the extension of civil rights benefits the inarticulate sections of the population, giving a positive libertarian meaning to the legal recognition of individuality.²⁹⁶

Aspects pertaining to – in a Middle East context – matters related to family law, and an emphasis on individually-based civil rights, are here clearly emphasized.

My unqualified guess regarding a more refined focus on the legal aspects related to civil status in Bendix’s book – and by extension civil rights – is the legacy which Bendix bears to Max Weber who, it should be reminded, started his academic work in the fields of law and legal history. The sensitive eye to political aspects at the individual level can also be seen as related to Bendix’s and Rokkan’s different ‘ways of seeing’. According to Tilly, the work of Bendix bears mark of ‘individualizing comparisons’ while Rokkan’s work is characterized by ‘universalizing’ and ‘encompassing’ comparative analysis.²⁹⁷

²⁹⁶ Ibid., 92-93, my emphasis.

²⁹⁷ Tilly, *Big structures, large processes, huge comparisons*: 81, 84. On Max Weber and studies in law, see Reinhard Bendix, *Max Weber: an intellectual portrait* (New York: Doubleday, 1960), 1.

The significance of civil citizenship, i.e. the establishing of civil rights in a polity, reminds us that the non-secularization of the state's legal and judicial system in the Middle East impacts not only on the institutional level of the state (legal and court systems), but also at the individual level where the distribution of civil rights among and between citizens occur along communal religious lines as part of the legacy of religious freedom for minority groups in multireligious states, and along gendered lines.

6.2.3 Political citizenship and participation: framing the law dimension

Rokkan is unclear on what the 'law' dimension encompasses in his original grid.²⁹⁸ The dimension of law evolves around the strength of center-imposed versus local legal traditions that are characterized by the distinctiveness or sharedness of territorial legal system. The law dimension included furthermore 'organizations for adjudication' and 'internal representation', which I figure are courts and representative political organization such as parliaments. The 'law' dimension becomes all the more complex in as far as Rokkan turns to the individual level and links the equalization of rights of participation and the establishment of 'political citizenship' to the 'law' dimension.

The lack of focus on the 'law' dimension with reference to state formation in *The Formation of national states in Western Europe* was commented upon by Tilly who admitted that a chief omission which researchers who contributed to the book "came to regret was the judicial system. Because courts, judges, and judicial proceedings antedate national states and appear in so many unstately guises, it is easy to forget how large a part certain kinds of courts played in the day-to-day construction of Western states. [...] the volume as a whole treats the judicial system much less adequately than we would have liked."²⁹⁹

While a theorist on state formation regrets the omission of the judicial system as an area of analysis in probing into western European state formation, researchers on the politicization of religious law in contemporary states in the Middle East have since the turn of the millennia been increasingly sensitive to the establishment of centralized power and the institutionalization of a territorially based legal system. Legal scholar on Islamic law, Lynn Welchman, cites her colleague Leon Buskens who points that the "study of the process of

²⁹⁸ Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe," 566-67.

²⁹⁹ Tilly, "Western state-making and theories of political transformation," 6.

state formation, in which a central government claims the monopoly on the imposition of uniform and generally valid legal norms, offers a key to understanding the constantly changing relationships” between state, religion and society in the Middle East.³⁰⁰

The Norwegian historian and scholar on Islamic law Knut S. Vikør discusses likewise the proximity of the law and force dimensions in his analysis of the development of Islamic law during the Ottoman Empire. Pointing at the historical conflicts regarding which authoritative body can codify religious law, he emphasizes that “[t]he monopoly of force which centralizing agents are eager to obtain is usually conferred upon the ruler by a system of law. Control over the legal system is therefore one of the definitions of political power, making the legal system an executive branch of the state.”³⁰¹

Seen through Rokkan’s conceptual map on state formation, the persistence of legal pluralism within the state’s corpus of laws in the Middle East exhibits the power of counterforces against the centralization of the state’s legal system. The influence which religious authorities exert on sustaining conservative readings and interpretations of religious text varies, however, with the limits and opportunities which those holding political power are able to set. The contemporary Arab state has thus ‘abdicated’, so to say, in centralizing its legal system. The state’s abdication in the legal sphere follows from what Vikør sees as a ‘containment strategy’ where the state creates protected spheres in which religious groups and communities have partial autonomy in regulating the group’s ‘internal affairs’, most often in the arenas of education and family law.³⁰²

In his studies on the development of Norwegian pious movements, Rokkan sees their rise as a consequence of the efforts by centralized government and urban elites into creating standardized religious institutions under the auspices of urbanized elites. I see interesting parallels, and better analytical glasses, in analyzing the rise of radical religious groups (such as ultra-conservative and Salafist³⁰³ groups, some who do not refrain from the use of

³⁰⁰ Lynn Welchman, "Islamic law: Stuck with the state?," in *Religion, law and tradition: comparative studies in religious law*, ed. Andrew Huxley (London: RoutledgeCurzon, 2002), 61.

³⁰¹ Knut S. Vikør, "The shari'a and the nation state: Who can codify the divine law?," in *The Middle East in a Globalized World*, ed. Bjørn Olav Utvik and Knut S. Vikør, *Nordic research on the Middle East* (Bergen: Nordic Society for Middle Eastern Studies, 2000), 223. For a comprehensive historical analysis, see Vikør, *Between God and the Sultan: a history of Islamic law*.

³⁰² Vikør, "The shari'a and the nation state: Who can codify the divine law?," 234.

³⁰³ Often portrayed as religious revivalists, Salafists – i.e. those who call for orthodox and textually-based interpretations of Islamic doctrines without abstaining from the use of force – can and should, I argue, be analytically distinguished from other groups of ‘religious revivalists’ who oppose the use of force as means to obtain political objectives (such as the Egyptian Muslim Brotherhood after 1995, for instance). In cases where

violence) in contemporary states in the Middle East along these analytical terms rather than viewing them as 'cultural representations' that give rise to clashes of civilizations.³⁰⁴

Rokkan's center-periphery approach towards counterforces in Norway maintained that three particular movements – one anchored in religious pietistic movements (*lekmannsbevegelsen*), another in an anti-alcohol movement (*avholdssaken*) and the third based on linguistic vernaculars (*målstriden*) – characterized the democratization process of political development in Norway.³⁰⁵ There is thus nothing particularly 'Islamic' about the political force or the role which 'religion' in general, or pious religious movements in particular, have played – and continuously play – as societal transformational agents.³⁰⁶

Despite the unclear delineations between the law and culture dimensions, Rokkan viewed that the phase of participation "brings subject masses into *active participation* in the

Muslim puritans oppose state authority, as the case is with the strand of Islamists referred to as 'jihadists', these are ipso facto not only 'puritans' but also political dissidents because they oppose state authority altogether, and some profess the use of violence in challenging the principles on which the current world political order is based upon, i.e. the territorial sovereignty of individual states.

³⁰⁴ Samuel Huntington, "The Clash of civilizations?," *Foreign Affairs* 72(Summer 1992). See the discussion on various authoritarian responses to religious pluralism and the rise of religious radicalism at the international level in Turner, *Religion and modern society: citizenship, secularisation and the state*: 184-93, 271-84. See particularly chapter 14 entitled "The globalization of piety" in *ibid*. For an excellent Rokkanian study on countercultural forces and the rise of the Norwegian right-wing party Fremskrittspartiet which became Norway's biggest party in the 2001 and 2005 parliamentary elections, see Tor Bjørklund, "Fremskrittspartiets suksess og kulturell standarisering," *Nytt Norsk Tidsskrift*, no. 2 (2007). Bjørklund argues that the standardization of the three countercultural movements in Norway has occurred at the regional level in contemporary politics, but that we can still find pockets of counterforces in contemporary religious movements among ethnic Norwegian in Western Norway, among immigrants and citizens of immigrant background, as well as among followers of new-age worldviews. *Ibid.*, 157.

³⁰⁵ See chapter 8 («Sentrum og periferi, økonomi og kultur: Modeller og data i klonometrisk sosiologi») in Rokkan and Hagtvet, *Stat, nasjon, klasse: essays i politisk sosiologi*: 229. See also the Norwegian historian Jens Arup Seip's critique of Rokkan's center - periphery analysis of Norwegian politics, «Modellenes tyranni: Analyse av Stein Rokkan's anvendelse av en sentrum-periferi modell på norsk historie», chapter 12 in Jens Arup Seip, *Problemer og metode i historieforskningen: [artikler, innlegg, foredrag 1940-1977]* (Oslo: Gyldendal, 1983). For the original articles by both scholars, see "Periferi og sentrum i historien: Utdrag av foredrag ved Nordisk fagkonferanse for historisk metodelære på Røros 16. - 20. juni 1974", (paper presented at the Nordisk fagkonferanse for historisk metodelære på Røros 16. - 20. juni 1974, Røros, 1974). Seip and other Norwegian historians point at the establishment of the *Konventikkelplakaten* in 1741 while Norway was under Danish rule as an important element which laid the bases for the democratization of Norwegian politics. 'Konventikler' were religious meetings led by laymen which were arranged without obtaining the authority of the local priest (*sognepresten*). The ordinance prohibited thus religious gatherings without the authoritative permission by state authorities, i.e. Norwegian bureaucratic officials (*embettsmenn*) who ruled by proxy of the Danish king. Internal opposition against the ordinance created an upsurge in national counterforces of religious puritans and political dissidents in both rural and urban areas which are referred to as '*lavkirkelige bevegelse*' (low-church movements) in contrast to '*høykirkelige bevegelse*' (high-church movements, i.e. religious groups and movements legitimized by state officials). The ordinance was abolished in 1842 and spurred the establishment of mass religious groups and movements, including radical revivalists, moderates and conservatives, which served as significant roots to the democratization of Norwegian domestic politics.

³⁰⁶ See, for instance, Bjørn Olav Utvik, *Islamist economics in Egypt: the pious road to development* (Boulder, Colo.: Lynne Rienner, 2006); Lara Deeb, *An enchanted modern: gender and public piety in Shi'i Lebanon* (Princeton, N.J.: Princeton University Press, 2006).

workings of the territorial political system".³⁰⁷ As such, the politicization of matters related to family law and demands for reform in Arab states since the 1990s can be seen as encompassing a political participatory process whereby conflicts of interest span along a continuum between pressures to equalize civil rights between citizens and pressures to sustain and strengthen conservative interpretations of religious law as state law. From a citizenship regime perspective, this struggle centers around pressures for reform that seek to establish an individually-based citizenship regime and counterforces against change that seek to bolster and sustain group-based citizenship.

6.2.4 Social citizenship and redistribution: the economy dimension

Aspects pertaining to social citizenship, i.e. the distribution of resources and benefits as envisaged by Rokkan, are focused upon in terms of the impact of economic globalization in terms of presenting powerful pressures for change. Economic factors enter the analysis on the politics of citizenship in chapters 4 and 5 through a focus on female citizenship and the impact of economic forces of change towards political liberalization with reference to gendered state laws. In these chapters, I point that economic globalization paved the way for the introduction of human rights standards, including the strengthening of women's rights through the framework of the Women's Convention, CEDAW.³⁰⁸ Also, with the increase in female labour, employed women and labour unions began to highlight economic, social and legal issues and present demands in order to improve their living conditions.³⁰⁹ Pressures for change in family law are presented as part of these demands.

Debates over family law and pressures to change existing gendered laws in Arab states are multifaceted. On the one hand, the primacy of kinship-based social and political systems accentuates the importance of family laws due to the profound social and economic

³⁰⁷ Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe," 572, emphasis in original.

³⁰⁸ CEDAW is the acronym of The United Nations Convention on the Elimination of all forms of Discrimination Against Women. 'CEDAW' and 'The Women's Convention' are used interchangeably in the thesis.

³⁰⁹ On general features of economic globalization, see Ngaire Woods and Andrew Hurrell, *Inequality, globalization, and world politics* (Oxford: Oxford University Press, 1999). For the impact of globalization on female economic rights, see Eleanor Abdella Doumato and Marsha Pripstein Posusney, "Introduction: The mixed blessings of globalization," in *Women and globalization in the Arab Middle East: gender, economy, and society*, ed. Eleanor Abdella Doumato and Marsha Pripstein Posusney (Boulder, Colo.: Lynne Rienner, 2003). See also Valentine M. Moghadam, *Women, work, and economic reform in the Middle East and North Africa* (Boulder, Colo.: Lynne Rienner, 1998); Valentine M. Moghadam, *Modernizing women: gender and social change in the Middle East* (Boulder, Colo.: Lynne Rienner, 2003).

impact of these laws on the quality of life of all family members, including females who are predominantly outside the waged labour market. On the other hand, they should be understood as fundamental individual and group struggles for welfare, since in the absence of expansive welfare states, family remains the essential guarantor of individual welfare in Arab states. Karshenas and Moghadam point, for instance, that “family law is social policy” in their analysis of the impact of economic globalization on variances in the development of economic citizenship in MENA.³¹⁰ Moghadam observes, moreover, that it is “employed women who have been the ones to recognize gender injustices and to mobilize for women’s participation and rights” by entering into coalitions with trade unions and human rights organizations to obtain social and economic rights.³¹¹

Researchers on women and economic participation emphasize that economic liberalization led to an increase in female labour participation. Karshenas and Moghadam point that the increase in labour participation in MENA has been the highest in the world between 1960 and 2000, and indicate that MENA women’s share of this increase is strikingly high at 4,7 per cent, while it is 2,6 per cent in Latin America and 1,1 in South East Asia.³¹² The authors argue that although Arab women’s labour participation is the lowest in the world, the overall increase in female labour participation reflect two central moments: first, more people were outside the waged labour market in MENA compared with other regions in the world as reflected in considerably higher shares of unemployment. Second, poverty has been feminized: partly because the salaries of unskilled labour in the private sector has been reduced to an extent that women to a higher degree choose the lowest paid jobs, and partly because more unemployed men are not able to fulfil their role as breadwinners for their families.³¹³

Writing already in 1991, i.e. before the forces of economic globalization were visible a decade later, Kandiyoti theorized on the breakdown of ‘the patriarchal contract’ in times of crisis which is bolstered on traditional gender roles of male providers and female caretakers.

³¹⁰ Massoud Karshenas and Valentine M. Moghadam, eds., *Social policy in the Middle East: economic, political, and gender dynamics* (Basingstoke: Palgrave Macmillan, 2006), 222.

³¹¹ Moghadam, V. M., 2008. “Globalization, the state and women’s economic citizenship in the Maghreb”. Paper presented at the *Societal Transformations in the Middle East* conference, Yale University, 30-31 January 2009. See also Valentine M. Moghadam, “States and Social Rights: Women’s Economic Citizenship in the Maghreb,” *Middle East Law and Governance* 2, no. 2 (2010): 186.

³¹² Karshenas and Moghadam, *Social policy in the Middle East: economic, political, and gender dynamics*, 13.

³¹³ I elaborate more on the economic dimensions of labor participation in Rania Maktabi, “Arabiske kvinners statsborgerskap [Arab Women’s Citizenship],” *Babylon*, no. 2 (2011): 13-15. The article can be retrieved at <http://www.tidsskriftet-babylon.com/Maktabi.pdf>, accessed 16 February 2012.

During economic transformational processes women may find themselves caught between their active support for maintaining and sustaining conservative gender roles, and a “genuine personal tragedy, since they have paid the heavy price of an earlier patriarchal bargain, but are not able to cash in on its promised benefits.”³¹⁴

Economic crisis can thus be seen as significant incentives for pressures made by women’s associations to demand changes in conditions that limit and contain women’s economic position.³¹⁵ The economic and financial impetus of reforms in family law on individually-based rights for females and women’s social citizenship is, in other words, significant.

³¹⁴ Kandiyoti, "Islam and Patriarchy: A Comparative Perspective," 230.

³¹⁵ The Norwegian historian Hilde Sandvik points at an interesting parallel to the financial crisis in Norway during the 1860s which prompted previously reluctant male politicians to support parliamentary reforms that gave female citizens full independent legal authority over property and revenues. See “Der, hvor de ikke driver handel, selger de heller ikke sin sjarme», <http://kilden.forskningsradet.no/c17251/artikkel/vis.html?tid=61040>, accessed 10 August 2011. See also Hilde Sandvik, "Kvinnens rettslige handleevne på 1600- og 1700-tallet, med linjer fram til gifte kvinners myndighet i 1888 [Women's legal capacity in the 17th and 18th century, with lines towards married women's full legal capacity in 1888]" (Det humanistiske fakultet, Universitetet i Oslo, 2002).

7 Methodological considerations

“Our final question: How do politicians know on which issues to generate demands?

An answer to this question requires a careful definition of political astuteness, a topic we dare not entertain! At this point politics becomes art, not science.

Or at any rate it becomes psychology, not political science.”³¹⁶

Having stated the theoretical framework of the thesis, I have implicitly presented certain perceptions and understandings of social and political processes in contemporary states in the Middle East.

In this section I comment on some of the advantages and disadvantages in perceiving political processes within a Rokkanian analytical framework. I also point at the sets of instruments used to operationalize the politics of citizenship, and then reflect over implicit assumptions and weaknesses in my methodological approach. After all, our methods “dictate the problems we study rather than vice versa.”³¹⁷

7.1 Making Rokkan’s conceptual maps relevant: strengths and weaknesses

One of the disadvantages of applying a Rokkanian approach to the politics of citizenship and state formation from a methodological point of view is that the conceptual maps serve simultaneously as methodological compasses. Indeed, at times it is difficult to distinguish between theoretical perceptions and methodological outlines when one indulges into Rokkan’s developmental phases, dimensions, paradigms and conceptual maps on state formation and nation-building. What I presented as a fruitful theoretical approach in part 6 embodies thus at the same time some constraints.

Among the problems related to the relevance and applicability of Rokkan’s state formation and nation-building theories in a non-western context is that the phases which Rokkan delineated as separate occurred simultaneously in the majority of Arab states. In some states, such as the GCC states, they did not occur at all. The accumulation of conflicts in states established after the dissolution of the Ottoman Empire are furthermore entangled in ways that complicate political analysis and reduce the validity and applicability of the conceptual models in a non-European context. Indeed, Tilly commented plainly that

³¹⁶ Rabushka and Shepsle, *Politics in plural societies: a theory of democratic instability*: 61.

³¹⁷ Hubert M. Blalock, *Basic dilemmas in the social sciences* (Beverly Hills, Calif.: Sage, 1984), 29.

“European state-building experiences will not repeat themselves in new states. The connections of the new states to the rest of the world have changed too much.”³¹⁸

Another evaluation of Rokkan’s conceptual models is their lack of emphasis on aspects of change. In a critical but constructive review, Tilly states that Rokkan’s conceptual maps “lack dynamism” because they tend to “reduce the known facts of international power to effects of similar positions within an abstract grid”³¹⁹. Which external variables give rise to the transformation of social and political processes that eventually manifest themselves in cleavages at the national level in contemporary states? What are the kinds of pressures for change that in due course form the patterns of internal divisions within states? Such questions remain less articulated in Rokkan’s analytical approach and render his conceptual maps static.

A third critique is that Rokkan takes ‘very large’ and comprehensive political processes as givens. I have already pointed at the weaknesses that follow from analyzing the impact of the process of secularization on democratization processes as envisaged by Rokkan. With reference to my own analysis of the politics of citizenship, one factor that is dealt with as a given is the impact of warfare on population movements and demographic changes within and between states in the Middle East. In the thesis I do not address warfare as a catalyzer of change, although warfare – including civil war – and violent civil strife impact on the formation and amendments made to citizenship, naturalization and denaturalization policies. Immigration, emigration and massive demographic movements internally as well as across territorial borders following war or nationalist political agendas, impinge clearly on political calculations which are part and parcel of the establishment and regulation of the polity’s demographic constitution. Inasmuch as war is pointed at (the 1948 war following the establishment of the state of Israel, civil war in Jordan in 1970 and in Lebanon in 1975, the Iraqi invasion of Kuwait in 1990), it is the *impact* of these wars and violent upheavals on the politics of citizenship that is in focus. Demographic changes are, in other words, assumed. My analysis focuses thus on the instruments and political objectives involved in the political calculations regarding who the demos of the state is or ought to be.

External pressures led to three different forms of state formation in Jordan, Kuwait and Lebanon. Such pressures include colonial rule as exercised by the French Mandate

³¹⁸ Tilly, "Reflections on the history of European state-making," 81.

³¹⁹ Tilly, *Big structures, large processes, huge comparisons*: 139.

power in Lebanon, and British colonial rule in Transjordan and Kuwait. Colonial power was, indeed, decisive for the establishment of particularly these three polities as territorial entities. Moreover, the social and economic legacy of colonial rule held sway over consequent political development in each state: a predominantly francophone Lebanese state with close ties to France until the outbreak of the civil war in 1975; an oil-rentier Kuwaiti economy linked internationally with the interests of British and eventually American petroleum companies as well as American geopolitical interests in the Gulf region; and a Jordanian state based on the tribal allegiance of Transjordanians to a pro-western monarch whose rule was enhanced by conforming to British great power interests, and later to American superpower interests.

Other kinds of external pressures in the contemporary Middle East include international pressures for embedding human rights norms such as strengthened women's rights at the national level. The critique regarding the potency of external factors and their impact on internal change is addressed in chapters 4 and 5. There I discuss the impetus of transnational pressures for change following economic globalization in strengthening female citizenship after 1990. Although no references are made to Rokkan's conceptual maps in these two chapters, pressures for establishing equal civil rights between male and female citizens are analytically seen through a state formation perspective. The process of secularization and the centralization of the judicial and legal systems in which reform in family law is a central political battlefield are, in other words, seen as conflicts embedded in processes of state making and nation-building as theorized in Rokkan's and Bendix's works. The table which renders factors that impact on change in family law in four states (appendix 1 in chapter 5) reflects thus a 'way of seeing' where the inclusion of female citizens as part of the demos in Arab states is at center. As such, the approach in chapters 4 and 5 is permeated by a perspective in which variables such as 'strength of religious authority', 'agents of reform' and 'resilience to reform' with regards to family law are linked to Rokkan's conceptual terminology pertaining to 'forces of change' and 'counterforces against change'.

The discussions regarding expanded female citizenship in chapters 4 and 5 evolve around the inclusion of female citizens as full members of the polity in Arab states. In terms of state formation, I argue that the expansion of civil rights for female citizens reflects a process of including Arab female citizens, i.e. 'the masses', as full members of the polity in contemporary states in the Middle East. 'The masses' is a terminology used by Rokkan and

Bendix in their analysis of the inclusion of disenfranchised workers, also termed as 'lower classes', in the political participation process which impacted on the democratization of the political order in western European states.³²⁰ Bendix and Rokkan applied the term to describe those who protested against their second-class citizenship, mainly the industrialized proletariat in western European states, and their demand to "the right of participation on terms of equality in the political community of the nation-state."³²¹

Rokkan is aware of the limits of his conceptual maps and emphasized their potential applicability:

The European sequence cannot be repeated in the newest nations; the new nation-builders have to start out from fundamentally different conditions, they face an entirely different world. But they can learn to develop new combinations of policies from a detailed analysis of the many facets of the European experiences of state-building and national consolidation. They may learn more from the smaller countries than from the large, more from the multiculturally consociational polities than from the homogeneous dynastic states, more from the European latecomers than from the old established nations: what is important is that these experiences be sifted and evaluated, not just case by case, but within an effort of cross-regional systematization.³²²

What is, then, analytically possible is to sift and evaluate contemporary experiences in light of older paradigms, and make attempts at systematizing and categorizing knowledge in new ways. Rather than providing theoretical roadmaps of political development, the distinctions, dividing lines and variances Rokkan points at with reference to state formation and citizenship can be discerned and examined in non-western contexts. Not necessarily in the sequential manner as they were initially laid out, but in the identification and categorization of significant variables and principles of variation that can be applied in studies of particular states and in comparative analysis. I maintain thus that Rokkan's dimensions, concepts and models remain relevant and the analytical architectural legacy is applicable as methodological means to describe and conceive political processes such as state formation, democratization and secularization in a Middle Eastern context.

³²⁰ Rokkan envisaged, for instance, that the phase of standardization "brings in larger and larger sectors of the masses into the system: the conscript armies, the compulsory schools, the emerging mass media [which] would create channels for direct contact between the central elite and parochial populations of the peripheries" Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe," 572.

³²¹ Bendix, *Nation-building and citizenship: studies of our changing social order*: 89.

³²² Rokkan, "Dimensions of state formation and nation-building: A possible paradigm for research on variations within Europe," 600.

7.2 On comparison

Comparison lies as a thick thread throughout the thesis. As pointed at in the previous section, comparison is embedded in the theoretical framework as a “conceptual map” also when analyzing single case studies.

By introducing and applying Rokkan’s conceptual maps on state formation and nation-building, I seek to follow what Bromley suggests as a comparative endeavor when attempting to compare political processes with the Middle East as reference. In order to avoid the pitfalls of implicitly building elements into our discussions which themselves are in need of explanation, he suggests that “we must apply a *common* theoretical framework, using an empirically open methodology, to *different* societies.”³²³

Dogan and Pelassy point that “comparison is the engine of knowledge” because the comprehension of a single case is linked to the understanding of many cases.³²⁴ Ragin indicates more explicitly that qualitative comparative studies aim in general at being historically interpretive and causal analytic in their approach.³²⁵ This study seeks to conform to these two objectives. It is historically interpretive in the sense that it seeks to account for and understand the historical foundations and outcomes of the politics of citizenship applied in Arab states in the course of the modern – and still ongoing – state formation process. The study is causal-analytic in the sense that it seeks to analyze the significance of the patterns of historical outcomes of the politics of citizenship on the organization of political order in Arab states.

The uniqueness of the qualitative comparative studies is the attention they allow to analyzing complexity – both the heterogeneity and particularity – of each case. Ragin identifies two dominant ways that enable us to simplify complex social relations: the case-oriented strategy where similarities and differences among a limited number of cases are analyzed, and the variable-oriented strategy where general features of social structure are conceived as variables, and the distribution among and between these variables is studied.³²⁶ Both strategies are, according to him, complementary either through a combination of major elements of the case-oriented and variable-oriented comparative

³²³ Bromley, *Rethinking Middle East politics: state formation and development*: 30-31, emphasis in original.

³²⁴ Mattei Dogan and Dominique Pelassy, *How to compare nations: strategies in comparative politics* (Chatham, N.J.: Chatham House Publishers, 1984), 8.

³²⁵ Charles C. Ragin, *The comparative method: moving beyond qualitative and quantitative strategies* (Berkeley, Calif.: University of California Press, 1987), xv.

³²⁶ *Ibid.*, xiii.

methods (combined strategy), or through a synthetic integration of features of both methods (synthetic strategy).³²⁷ A combined strategy is sought in this study, with emphasis on a case-oriented approach. The survival of the regime is sought understood by identifying and analyzing features pertaining to the politics of citizenship that characterize the particular state / states under study in each article, and the ensuing citizenship regime that sustains rulers' hold on power.

7.3 Operationalizing the politics of citizenship

Ragin calls the analytical research process a “dialogue between the investor’s theory and the data”, and indicates that this dialogue is shaped by the techniques of data analysis used by the investigator.³²⁸ What then are the means used in organizing the dialogue between theory and data in the articles that constitute the thesis? How do I best discern and apply fruitful indicators when I attempt to define and analyze aspects of membership and participation in the state in the Middle East? Which problems are connected with the variables I have selected and the data I have used?

The empirical material which the thesis builds upon is relatively compound given the necessity of underpinning each of the published articles with a theoretical and methodological basis. A common pool of empirical material and methodological approaches have, however, been used to discern and implore into the components of the politics of citizenship.

In analyzing the relationship between aspects pertaining to citizenship seen as membership in the state on the one hand, and aspects pertaining to participation in the state on the other, I have operationalized the politics of citizenship by approaching its dynamics through i) demographic figures and population censuses; ii) citizenship legislation; iii) family laws and court appeals; iv) fieldworks and interviews; v); analysis of public discourses pertaining to citizenship legislation and legislation on family law. I comment shortly on each below:

³²⁷ *Ibid.*, 69.

³²⁸ *Ibid.*, xi.

7.3.1 Demographic figures and population censuses

The demographic structure and the constitution of the ratio of citizens to non-citizens in each state provide an avenue to probe into fluctuations regarding those included and those excluded from the citizenry, and to some extent – collective naturalization and de-naturalization such as in the case of individuals who hold 1948 Palestine refugee status, tribal groups, Christian minority groups (such as Copts and Armenians) and Kurds. Official statistical demographic data issued by the Ministry of Planning or Central Bureaus of Statistics on the composition of the population at the aggregate level is, with the exception of Lebanon, fairly easily available through the internet. However, figures that are available are subject to alterations (changing population categories and total numbers, or entering new population categories) at the time of gathering, or over time through citizenship decrees and policies regulating admission and residence permits. These changes in demographic re-assessments are political in nature, and the rationale behind cannot be grasped only by taking crude numbers at face value.

Kapiszewski's comments on the gathering of demographic and statistical data in the Gulf states are relevant to other states in the Middle East:

the value of information collected and analysed by inexperienced personnel is sometimes questionable. [...] official figures often leave out the large numbers of illegal workers living in the GCC and do not deal successfully with the problem of who should be counted as national and who should not. [...] The figures published by different official sources, ministries included, often vary considerably as no unified accounting methodology is used. Furthermore, the available population figures often refer to different periods of time, making any comparative analysis more difficult.³²⁹

Notwithstanding the problems related to demographic data in general, data on the ethnic and / or religious composition of the population is not publicly available and researchers have to rely on estimates.³³⁰ It should be emphasized that this is not an anomaly for the Middle East. Collecting data on the religious and ethnic composition of the citizenry in Norway is prohibited. Compared to the Middle East, data on membership in religious

³²⁹ Kapiszewski, *Nationals and expatriates: population and labour dilemmas for the Gulf Cooperation Council states*: 27.

³³⁰ Modern population enumeration processes do not have to be carried out by means of 'counting every head'. Statistical sampling can be applied and may result in reliable demographic figures pertaining to the composition of the resident population provided that ruling authorities – through the Ministry of Planning – support the sampling process with basic data on governorates, households and the geographical distribution of inhabitants. Such an authorization has been granted, for instance, in surveys on the Palestinian refugee populations in the West Bank and Gaze, Jordan and Lebanon to Fafo, previously known as The Norwegian Institute for Applied Social Sciences, currently The Institute for Applied International Studies. For studies on living conditions in the Middle East since 1993, see www.fafo.no.

organizations and associations that represent ethnic, religious and national groups, is however public. The difference between Norway, for instance, and states in the Middle East, is that data on the religious and ethnic composition on the population in Arab states is registered in public records, particularly through the state mandated official documentation and registration of each citizen's patrilineal religious status.³³¹ This information is, however, not publicly available.

Syria, for instance, stopped releasing data on the religious and ethnic composition of its population in 1956. Likewise, Jordanian statistics do not disclose the proportional numbers of Jordanians with Palestinian background compared to Jordanians with Transjordanian background, although the breakdown and composition of Palestinian refugees (both 1948 Palestine refugees who are Jordanian citizens and 1967 Palestinian refugees labeled 'displaced persons') are available.³³² No data has been accessible for the Lebanese citizenry since the last population census was carried out in 1932, a point which is elaborated upon in chapter 2. Kuwait has, comparably, the most easily accessible and composite data.³³³ However, as the case of the Bidun population clearly illustrates, they were included as part of the citizenry prior to 1985 although they never acquired legal citizenship. The Bidun were stripped of their citizen-privileges after 1985, and eventually labeled as 'illegal residents and rendered *de facto* stateless in the aftermath of the liberation of Kuwait from the Iraqi occupation in 1991.³³⁴

In short, demographic statistics on religious, ethnic or tribal groups in four of the six states dealt with in this thesis – Syria, Lebanon, Jordan and Kuwait – are perceived as internal security issues by ruling regimes and are treated as such.

³³¹ 'Patrilineal', i.e. in the case of mixed confessional marriages, for instance, the confessional faith of the father determines the confessional status of the child in the Arab Middle East. Lebanon is the only Arab state where the state allows by law, and thereby legitimizes, a citizen's conversion to one of the 18 confessional groups. Patrilineal descent is, nevertheless practiced, until the child reaches 18 years and can freely choose confessional membership.

³³² For official population statistics in Jordan, see The Department of Statistics, Hashemite Kingdom of Jordan: <http://www.dos.gov.jo>, accessed 20 December 2011. For estimations on the Palestinian refugee and non-refugee population in Jordan, see Marie W. Arneberg, *Living conditions among Palestinian refugees and displaced in Jordan*, vol. 237, FAFO-rapport (Oslo: Fafo, 1997), 14-16.

³³³ For Kuwaiti official demographic data, see The Central Statistical Office (CSO) under The Ministry of Planning <http://www.cso.gov.kw/>. For the last population census in 2005, see [http://mopweb4.mop.gov.kw/statistics/CPD/Pop.Census2005\(Preliminary%20Results\)/2.pdf](http://mopweb4.mop.gov.kw/statistics/CPD/Pop.Census2005(Preliminary%20Results)/2.pdf), accessed 20 December 2011.

³³⁴ See table 7.1. entitled "The population of Kuwait as rendered in official statistics before and after the Crisis: 1990 versus 1992-figures" in Maktabi, "The Gulf crisis (1990-1991) and the Kuwaiti regime: Legitimacy and stability in a rentier state," 98. See also Shiblak, "Arabia's Bidoon."

What evolve over time in these plural and multireligious societies are various forms of the “numbers game” whereby power holders adopt policies in order to control and shape different forms of minority and majority constellations.³³⁵ The political nature of the constellation of demographic data lies at the heart of what I term as the ‘politicization of the demos’. Given the nature of this stated problem, what then is available official statistical demographic data on the size and composition of the population cannot be taken as reliable information. Changes are made over time with regards to who is counted and under which category. Such changes have occurred, and still do, following the introduction of new categories of ‘residents’ or ‘foreigners’ after censuses³³⁶; the introduction of new population categories³³⁷; the issuing of citizenship decrees which either grant or strip individuals and groups of citizenship according to the political interest of decision-makers at a given historical time³³⁸; and difficulties pertaining to renewing resident permits or issuing new citizenship documents³³⁹.

It is by reading the political rationale behind crude demographic data and the changes that occur when bureaucratic policies are applied in administrating the population and thereby gaining control over it, that we as researchers may get a glimpse of patterns of inclusionary and exclusionary stratification, where demographic configurations evolve into instruments of control at the hands of rulers.

³³⁵ On the ‘numbers game’, see Jr. Theodore P. Wright, “The ethnic numbers game in India: Hindu-Muslim conflicts over conversion, family planning, migration, and the census,” in *Culture, ethnicity, and identity: current issues in research*, ed. William C. McCready (New York: Academic Press, 1983), 405-07.

³³⁶ As was the case with Syrian Kurds living in the North-Eastern parts of Syria who were not counted as ‘residents’, but registered as ‘foreigners’ during the 1962 census. For more, see the Human Rights Watch Report *The Silenced Kurds*, issued in October 1996.

³³⁷ As was the case following the annexation of the West Bank by Jordan in 1951 and the naturalization of 1948 Palestine refugees as Jordanian citizens.

³³⁸ As was the case with the communal deprivation of citizenship to al-Ghufran tribe in Qatar in March 2005 for lack of loyalty to the Emir, and the mass naturalization of Sunni tribes and expatriate workers in Bahrain and Saudi Arabia before local elections. Parolin, *Citizenship in the Arab world: kin, religion and nation-state*: 116-17. In June 1994 decree 5247 granted Lebanese citizenship to an unknown number of residents in Lebanon which included a conglomerate of stateless persons, long-term residents and children of Lebanese mothers, but excluded Palestinians is also an example.

³³⁹ See the 60-page report by Human Rights Watch entitled “Stateless Again: Palestinian-Origin Jordanian Deprived of their Nationality” issued on 1 February 2010, <http://www.hrw.org/news/2010/02/01/jordan-stop-withdrawing-nationality-palestinian-origin-citizens>, accessed 28 October 2011.

7.3.2 Citizenship legislation

Official records – such as the text of laws, decrees³⁴⁰ and official statements – constitute sources to what can be labeled as documents on citizenship legislation in the state which are essential in understanding the politics of citizenship. In general, works on citizenship legislation are written almost exclusively by law scholars who do not discuss political, social and historical factors that influence and affect the formulation and development of citizenship regulations. Questions that address membership aspects in the state are thus mostly Arabic publications with a predominantly legal textual approach to citizenship legislation, i.e. *jinsiyya*-related issues. Citizenship is approached in terms of laws and regulations pertaining to naturalization and the regaining of citizenship.³⁴¹

Though rare to come by, some of these legal books on citizenship legislation render case law studies as examples in the appendix or in the course of discussion of a particular theme related to the acquisition of citizenship or naturalization. Case law studies render claims by individuals and disputes over citizenship and the court's decisions on behalf of the state on whether to grant or oppose demands for citizenship. These examples proved to be valuable pieces of information in getting a picture of the types of claims and the decisions made – or not made, when requests were, for example, shelved into bureaucratic oblivion – as was the case for many claimants for Lebanese citizenship after 1967. These studies were essential in shedding light over how and why litigants win or lose their case because they reflect representations of inclusionary and exclusionary forces related to the distribution of membership in the state.

7.3.3 Family laws and court appeals

Family laws represent legal texts of another nature than citizenship legislation because different confessional groups have formed their own family law as is the case with regards to

³⁴⁰ Decrees are official documents that have the power of law which are issued by elite members of ruling authorities such as the monarch, the President, or a Minister. Decrees are usually issued to bypass parliamentary processes or voting procedures and are thus expressions of authoritative direct rule.

³⁴¹ The list of mainly legal scholars who have produced books on citizenship legislation in different Arab states is exhaustive. Here are some examples: Hasan al-Haddawi, *al-jinsiyya wa markaz al-ajanib fil-qanun al-kuwaiti* (n.a.: n.a., 1973); Hasan al-Haddawi, "al-jinsiyya wa ahkamiha fil-qanun al-urduni," (Amman: dar majdalawi, 1993); Jaber Jad Abdelrahman, *majmu'at qawanin al-jinsiyya fid-duwal al-'arabiyya* (Cairo: ma'had al-buhuth wad-dirasat al-'arabiyya, 1970); Rashid Hamad al-Enezi, *al-jinsiyya al-kuwaitiyya* (Kuwait City: Kuwait University, 1995); Hasan 'Alawiyya, *al-jinsiyya al-lubnaniyya wa turuq isti'datiha* (n.a.n.d.); Sami Abdallah, *al-jinsiyya al-lubnaniyya* (Darayya: maktabat wa matabi' al-shouf al-haditha, 1986).

the numerous confessional denominations in Syria and Lebanon. There does not, in other words, exist official publications on family law, and a researcher has to get hold of compilations of legal regulations and laws issued by publishers who specialize on legal literature (such as *mansurat al-halabi al-huquqiyya* in Lebanon and *mu'assasat an-nuri* in Syria), or the headquarters of religious organizations and larger churches or mosques in capital cities which often have a library and book sales.

In Lebanon and Syria, family law is officially taught under the auspices of law faculties at public universities such as the Lebanese University in Beirut and the University of Damascus in Syria, or private universities such as the Université St. Joseph in Beirut where the principle language of teaching is French. Books on family law that are used in law courses are usually written by current or previous professors in charge of the courses. For a social scientist not trained in law, these books proved to be essential in 'decoding' the legal language in which religious family laws is rendered. With additional help of professors in law who teach family law, and practicing lawyers who raise family law cases on behalf of litigants, I was able to get an insight into the complex labyrinth of processing cases pertaining to family law by citizens who belong to different confessional groups in Lebanon and in Syria.

In general, academic specialization in legal matters pertaining to family law in Arab states is not a prioritized legal arena in higher education, nor is it in law firms where in depth studies in other legal arenas – such as finance or business – are financially considerably more rewarding for students. This situation is comparable to western states, too, with the important difference that research and studies in private law pertaining to personal status and women's law ('*kvinnerett*' in Norwegian) is minimal in Arab states. Most academic research or high quality reports on personal status issues in the Middle East have since the turn of the millennia been done or are sponsored by 'outsiders', i.e. visiting scholars and researchers who are commissioned either by western NGOs or academic institutions. NGOs also commission local authoritative researchers to contribute with reports and analysis on women's position in society.³⁴² It is this observation which convinced me on the importance

³⁴² See for instance, Tomppert and Nazir, *Women's rights in the Middle East and North Africa: citizenship and justice*. Of the states under study, Morocco emerges by far the state where external support has strengthened domestic and transnational pressures for change since the early 1990s. In Syria and Lebanon, the EU, Canada and Norway have been major financial contributors since the late 1990s in support of women's and human rights' groups through national cultural and economic organizations (such as the Goethe Institute, Friedrich

of probing into the significance of transnational forces for change in family law as discussed in chapters 4 and 5.

7.3.4 Fieldwork and interviews

As a native Arabic speaker and reader I do not encounter problems related to language. As an Arab educated in a western academic institution and living permanently in Norway I am, however, not vaccinated against the scholarly biases I carry when analyzing social and political structures in the Middle East. While some truth lies in Dogan and Pelassy's statement that "[expatriation has always been perceived as a key to more objective judgement]"³⁴³, I am aware that the analytical glasses I put on to look at the region have been formulated in a western academic context. At the same time, I would add that my root-affiliation also makes me less scared of comparing among Arab states and across continents. For, as pointed out in part 5, despite evident differences in the constitution of political order in predominantly authoritarian and illiberal states in the Middle East compared to western liberal states, I find it challenging to highlight the fruitfulness of applying the same analytical concepts when analyzing political processes in both settings. Particularly relevant from a social anthropologist point of reference is that some anthropologists remind us that the similarities in the distribution and stratification of political power, socio-economic processes such as urbanization, and the development of states, are more evident among human societies than the differences between them.³⁴⁴

I rely mainly on secondary literature for my analysis on Morocco and Egypt in chapter 5 where I compare reform in family law in four states. For Lebanon, Syria, Kuwait and Jordan, I have been able to obtain primary data of different kinds. In Lebanon and Syria, I

Ebert Stiftung and Konrad-Adenauer-Stiftung). In Lebanon, for instance, regional campaigns entitled "My nationality Campaign" advocate the case of gendered nationality law and is fronted by CRTD-A (www.crt-da.org.lb), *kafa* (www.kafa.org.lb) and *nasawiyya* (www.nasawiyya.org). External financial support is not only western: in all six states, Islamic institutions registered in the Gulf are major financial supporters of welfare and educational related institutions and programmes, including women's associations. Egypt represents a 'special' case, however, in that external financial sponsorship of local NGOs was made illegal by law since the mid-1990s. See Neil Hicks, "Transnational human rights networks and human rights in Egypt," in *Human Rights in the Arab World*, ed. Anthony Tirado and Hamzawy Chase, Amr (Philadelphia: University of Pennsylvania Press, 2006), 82-83; Nadjie Al-Ali, *Secularism, gender and the state in the Middle East: the Egyptian women's movement* (Cambridge: Cambridge University Press, 2000).

³⁴³ Dogan and Pelassy, *How to compare nations: strategies in comparative politics*: 6.

³⁴⁴ Georges Balandier, *Political anthropology* (London: Allen Lane, 1970). See particularly chapter 4 "Social stratification and power" and "chapter 5 "Religion and power". See also Roger M. Keesing, *Cultural anthropology: a contemporary perspective* (Fort Worth, Tex.: Holt, Rinehart and Winston, 1981), 49-62.

obtained copies of court appeals, pertaining both to persons who raise cases against the state (in Lebanon), and persons who raise cases in personal status matters in Syria and Lebanon. These cases were provided for by lawyers who anonymized the names of litigants.

In order to get an idea of how litigants present their cases in a religious court, I conducted two fieldworks at the Shi'a Court of First Instance (*al-mahkama al-bida'yya*) and the Shi'a High Court (*al-mahkama al-'ulya*) in Beirut in December 2007 and in December 2008 (three weeks each year) where I interviewed judges and lawyers at both courts. Shi'a family law tribunals are open to the public in contrast to family law cases in Syria where both civil and religious courts are closed to the public. In December 2009 I attended six sessions where three religious judges and a civil judge who represents the Lebanese state listened to the cases of litigants as presented through their lawyers and where the religious judges gave rulings. During that period I read all 65 cases handled by the Shi'a High Court in Lebanon for the year 2007 to get an idea of the type of cases raised and the decisions made by a religious court.³⁴⁵

During my fieldworks I interviewed state officials, civil lawyers and judges, religious clerics who represent different confessional groups (in Lebanon and Syria), judges in religious courts, women's groups, human rights groups, representatives in labor unions in Syria, representatives of pressure groups who lobbied for the citizenship decree in Lebanon prior to and after the citizenship decree was issued in 1994, as well as members of the Phalangist political party (*al-kata'ib*) and representatives of the Maronite League in Lebanon (*ar-rabitat al-maruniyya*) who opposed the decree.³⁴⁶ These interviews were unstructured and focused mainly on the subject of expertise which the persons interviewed represented. In Jordan I had the opportunity to partake in training sessions held by the Ministry of

³⁴⁵ After using approximately two weeks in order to obtain an official permission to get access and read the files on family law at the Shi'a High Court in Beirut, the clerk was puzzled: "Do you want to read last year's protocol? All the others [visiting researchers] want to read the old protocols [dating from the 1930s]. They are more valuable. Are you sure you want to read the new ones?". I mention this because it illustrates how little contemporary research is done on family law in Lebanon. Nisrine Mansour's Ph.D. thesis entitled "Governing the personal: Family law and women's subjectivity and agency in post-conflict Lebanon" (London School of Economic and Political Science, 2011) provides valuable insight into family law in contemporary Lebanese politics.

³⁴⁶ "Who are the Lebanese? Some political aspects of citizenship legislation in Lebanon" is the title of an unpublished paper on the Decree 5247 of 30 June 1994 (popularly referred to as the 'Citizenship Decree of 1994') in Lebanon which I presented at the conference "Redefinition of national identity and citizenship in the age of culturalist politics in Germany, Israel, Lebanon and Turkey" held at Bogazici University, 17-19 June 1999. The analysis of the 1994 nationality Decree is not included in the thesis, but serves as a historical event which highlights the politicization of membership policies in contemporary Lebanon.

Planning where enumerators were being trained in order to carry out the 1994 census. In retrospect, such insights into how households and individuals are categorized and counted have proved fruitful in widening the scope of understanding how state apparatuses 'think' in politico-bureaucratic terms.³⁴⁷

My choice of interviewees in matters related to family law is to a certain extent biased. I have mainly focused on representatives and organizations, including religious associations, who convey conservative and liberal interpretations of religious text, and not those who represent ultra-conservative and fundamentalist interpretations of religious text. I have thus not approached individuals and associations that represent extra-official religious bodies nor civil societies with neo-conservative leanings such as Islamist revivalist groups and Salafist associations.³⁴⁸ While this choice may be seen as a weakness in my analysis on particularly counterpressures against reform in family law, I had to draw a limit with regards to meeting and interviewing persons and associations that voice arguments against strengthening women's civil rights within family law by referring to a particular religious faith. Such arguments are plentiful in the press and on the internet.³⁴⁹

In other words, I have approached and extracted knowledge from what I labeled as 'concerned conservative catalyzers' (CCC). This is the term I applied for my own personal usage when I interviewed individuals or groups who were concerned representatives within their confessional communities. They not only acknowledged gender injustices within family law regulations, for instance, but – more importantly – the social injustice and psychological as well as financial disarray of those affected, mainly children. Indeed, CCCs, though at times marginalized and ostracized, are present as members of their confessional groups and voice their demands for change.³⁵⁰ These representatives should not be viewed as demanding

³⁴⁷ James C. Scott, *Seeing like a state: how certain schemes to improve the human condition have failed* (New Haven: Yale University Press, 1998); James C. Scott, "The Production of Legal Identities Proper to States: The Case of the Permanent Family Surname."

³⁴⁸ It is important to note that I interviewed state officials and leaders of religious associations who represent and portray conservative as well as ultra-conservative views pertaining to gender differences in state agencies such as the Ministry of Religious Endowments (*awqaf*), the Faculty of Shari'a at the University of Damascus, the Shi'a High Court in Lebanon, the Maronite League in Lebanon, as well as the Greek Orthodox religious court in Damascus.

³⁴⁹ For references on Islamic websites, confer with Bettina Gräf and Jakob Skovgaard-Petersen, *Global mufti: the phenomenon of Yusuf al-Qaradāwī* (London: Hurst, 2009). Relevant articles in Norwegian, "Medier i Midtøsten: Regimets stemme eller folkets røst?," *Babylon*, no. 1 (2011).

³⁵⁰ This is the case, for instance within the Druze community in Syria as well as in Lebanon. Internal schism was particularly noticeable within the Shi'a clerical leadership in Lebanon where Lebanese religious scholar and judge Mohammad Hussein Fadlallah (1935 - 2010) had public authority in issuing divorce, to the annoyance of

radical changes. They are often deeply religious individuals who do not conceive themselves as revolutionaries. Many of the CCCs have – seen from a Norwegian perspective – fairly traditional and conservative views regarding gender differences; they perceive women ideally as mothers and homemakers, and males as breadwinners. What these representatives demand is ‘change from within’, i.e. reforms that strengthen the position of women through new interpretations of religious text and by pointing at canonical law references and text that emphasize justice, fairness and righteousness, be it within Christian church laws of the different confessional denominations, Islamic shari’a laws and jurisprudence, or Druze family laws.³⁵¹

7.3.5 Analyzing discourses on citizenship law and family law

Reading legal text has been a torturing ordeal. Whether the legal texts concerned citizenship legislation or family law, I perceived entering the field of law as much more challenging than entering the field of economics and petroleum finance which I had known equally little about before imploring into Kuwait’s rentier economy in my Cand. polit. thesis.

One fruitful avenue in overcoming some of the problems I encountered in reading the political grammar of inclusion and exclusion in the state through legal texts such as citizenship legislation, and the gendered citizenship which permeates family law, has been to approach legal text through discourse analysis. Through a course in qualitative methodology I was introduced to Norman Fairclough’s *Critical Discourse Analysis* which provided useful insights in perceiving power struggles through textual analysis. A ‘discourse’, according to Fairclough is “analysis of how texts work within a sociocultural practice”³⁵². Fairclough introduces a three-dimensional analytical framework for analyzing a particular discourse: First, ‘textual analysis’ of spoken or written texts; second, ‘discourse practice’ which refers to

the religious judges at the Beirut Shi’a Court of First Instance as subtly articulated to me during my fieldworks at the Court. Lara Deeb comments on this schism, see Deeb, *An enchanted modern: gender and public piety in Shi’i Lebanon*: 54-55, 60, 71,78. Witness also the popularity of Greek Catholic (Melchite) priest Gregoire Haddad who maintained his faith although he was banished as priest from his church in Lebanon after calling for the political development towards the establishment of a secular polity in Lebanon. See Gregoire Haddad, *al-’ilmaniyya al-shamila [Comprehensive secularism]* (Beirut: mukhtarat, 1978 / 2005).

³⁵¹ I elaborate more on the different political and ideological views of individuals and groups who participated in the public debate on family law reform in Syria in 2009 in Maktabi, "Female Citizenship in Syria: Framing the 2009 controversy over the draft laws on personal status." For an interesting article on three divergent standpoints on female advocacy groups and women’s political agency in Iran and Sudan, see Tønnessen, "Nye utfordringer til islamsk feminisme: Kvinneaktivismens mange ansikter i Sudan og Iran [New challenges to Islamic feminism: The multiple faces of women's activism in Sudan and Iran]."

³⁵² Norman Fairclough, *Critical discourse analysis: the critical study of language* (Harlow: Longman, 1995), 7.

analysis of processes of text production, distribution and consumption; third, 'sociocultural practice' that reflects analysis of the sociocultural setting in which a discourse is formed, and which it influences.³⁵³ According to Fairclough, these are "three complementary ways of reading a complex social event."³⁵⁴

I must immediately infer that I have *not* chosen particular texts where I have applied textual discourse analysis method as Fairclough sketched out. His insights have however served as useful tools and a guide to analyzing discourses on citizenship by ordering texts and questions at different levels of analysis. For instance, Fairclough argues that what is absent from a text is as significant as what is rendered explicitly in a text: "Analysis of implicit content can provide valuable insight into what is taken as given, as common sense. It also gives a way into ideological analysis of texts, for ideologies are generally implicit assumptions."³⁵⁵

In chapter 2 I present a re-reading of a one-page document which renders the results of 1932-census in Lebanon. The political re-reading of the enumeration process grew out of sheer curiousness related to the dates rendered, the enlisted categories of residents and emigrants, along with the careful counting of individual members of the different religious groups. This particular document eventually led me to the analysis of the political ideas baked into the census document and the enumeration process which reflect the methods used in order to materialize particular objectives regarding the distribution of power in the Lebanese state, and the means used – among these the politics of citizenship and the politicization of the demos – to maintain and bolster the survival of the regime until the outbreak of the civil war in 1975.

The discussion on family law debates in Syria in chapter 4 represents an example of a multi-levelled discourse: a textual level where religious law appears as codified legal text in the form of state law; a discourse practice whereby codified law is institutionalized in ways that regulate the distribution of civil and economic rights in society; and yet another level where the sociocultural practice of these authoritative laws impact on the establishment and sustaining of group-based citizenship rights on the one hand, and gendered differences in society on the other.

³⁵³ *Ibid.*, 2-3.

³⁵⁴ *Ibid.*, 133.

³⁵⁵ *Ibid.*, 6.

Building on Fairclough's insights I differentiated between three types of official, i.e. state and governmental documents, and text that reflect the opinions of state officials: i) rule bounded texts; ii) authority related texts; and iii) court appeals.

7.3.5.1 Rule-bounded texts

Citizenship laws, regulations and decrees are examples of rule-bounded text. Legal texts have an imperative vocabulary and are among the most reliable sources of text because of their very nature as publicly known and recorded binding rules intimately linked to the exercise of sovereignty of the state. Jordan's citizenship legislation serves here as an example of rule-bounded text:

In 1928, Transjordan – as present-day Jordan was then called – issued its first Nationality law which stated that “All Ottoman subjects habitually resident in Transjordan on the sixth day of August shall be deemed to have acquired Transjordanian nationality”. Following the creation of the state of Israel in 1948, Palestinian residents of the West Bank were naturalized as Jordanian citizens through Law 56/1949. Following Jordan's formal annexation of the West Bank of the River Jordan in 1950 a new citizenship law was passed in 1954 which specified that four categories of persons shall be regarded as Jordanian citizens: i) those who obtained citizenship according to the Law of 1928; ii) Non-Jews who had Palestinian citizenship prior to 15 May 1948 and resided in Jordan between 20 December 1949 and 16 February 1954; iii) Those born to Jordanian fathers; iv) Foundlings born of unknown parents. Jordan's citizenship law was once again amended following Jordan's disengagement from the West Bank where article 2 of the disengagement statement reads “[e]very person residing in the West Bank before 31 July 1988 is considered a Palestinian, not a Jordanian citizen.” The article renders the population of the West Bank *de facto* stateless since there does not exist a ‘State of Palestine’.³⁵⁶

Jordan's citizenship legislation reflects political decisions made as to who constitutes a Jordanian citizen at a particular point in time. The amendments made over time show how territorial expansion and contraction is accompanied by political decisions as to who is included and who is excluded from the Jordanian citizenry. The decisions are recorded as rule-bounded texts which serve as legislation that form and regulate the citizenry.

³⁵⁶ See al-Haddawi, "al-jinsiyya wa ahkamiha fil-qanun al-urduni," 211, 16-17; Davis, *Citizenship and the state: a comparative study of citizenship legislation in Israel, Jordan, Palestine, Syria and Lebanon*: 67-70, 76.

Another example that can be pointed at is references to terms which correspond with 'guardianship' or 'custody', *wali* in Arabic in state laws and regulations pertaining to family law (in Morocco, Egypt and Syria), and in the uncodified religious law of the Sunni and Muslim confessional groups in Lebanon. It is not explicitly stated in these texts that female citizens are systematically under the custody of male citizens. What is, nevertheless, revealed by reading "between the lines" is that the *principle* of male guardianship over females permeates clauses, sentences and references that regulate not only questions pertaining to marriage and divorce where reference to a male guardian is explicit and frequent. The principle of guardianship is implicitly 'baked into' inheritance law, criminal law, and nationality laws where males are valorized and empowered with legal authority not to conveyed to females.

7.3.5.2 Authority-related texts

Authority-related texts are authoritative in the sense that they represent centers of power. They differ from rule-bounded texts in that they reflect the opinions of persons in position of power and involve various degrees of interpretation. Authority-related texts implicitly underline what the current policy *should be* by emphasizing how it *is*. Official documents such as governmental announcements in gazettes or in newspapers represent one type of authority-related texts that substantiate current policies. Another type of authority-related texts is rendered in interviews or comments by ministers and public officials through the media on matters concerning family law or citizenship legislation where persons in authority declare viewpoints and justify them.

A comment made by Kuwait's president of parliament in 1997, Ahmad as-Sa'doun, illustrates how he refutes the need for amendments in the citizenship law that grants Kuwaiti citizenship to the offspring of Kuwaiti women married to non-national male Biduns whose children, born and raised in Kuwait, are categorized as 'non-national', while the offspring of Kuwaiti men married to non-national women gain Kuwaiti citizenship:

The 1959 citizenship law is to a great extent refined and balanced, it takes care of most humane and legal aspects. However, the numerous amendments that have been introduced after its issuing, and the failure of the executive power in applying some of its articles have resulted in its abuse.³⁵⁷

³⁵⁷ *Al-Qabas*, 7 November 1997.

In his answer, as-Sa'doun shies away from a clear standpoint, implying that the reform is not necessary because amendments have already been made and further amendments complicate the situation even further.

7.3.5.3 Court appeals

Court appeals are authority-related texts that put citizenship laws as well as family law tenets to the test. As Alexander Hamilton, one of the founding fathers of the American Constitution, noted: "Laws are a dead letter without courts to expound and define their true meaning and operation."³⁵⁸

Both citizenship legislation and family law legislation are powerless without civil as well as religious courts that provide premises for their functioning and without judges who interpret laws in different ways.

For instance, exclusionary practice is baked into citizenship legislation with regards to 'proof of residence' in Kuwaiti territories in 1920, or 'proof of residence' in 1924 in Lebanese territories in the case of litigants who are the offspring of residents in these territories at the time, but who were not listed in enumeration lists. Litigants who raise cases where 'proof' is either non-existent or no longer possible to oblige, is a recurring theme in cases which are continuously presented in court in Lebanon and Kuwait.

Analyzing the explicitly stated and material components of the politics of citizenship demanded more than mere reading of legal texts, imploring into demographic statistics or studying petitions where non-citizen litigants raise cases to obtain legal citizenship, or female citizens who raise cases for divorce, custody over children or economic maintenance through court. It is rather, the *multiplicity* and *complexity* of relations that evolve out of conferring with legal texts, demographic data, institutional settings, economic indicators and ideological orientations that together shed light on the power dynamics at hand with reference to the politics of citizenship.

Ayubi touches upon the unveiling of complex social relations where power is at play by indicating that

[s]overeignty of the state, the form of law or the units of domination, are the 'terminal forms' that power takes on. What matters more are the discreet power relations of ceaseless struggles and

³⁵⁸ See "The Federalist no. 22, 14 December 1787". James Madison Alexander Hamilton, John Jay "The Federalist Papers," ed. G. Wills (New York/Toronto/London/Sydney/Auckland: Bantam Books, 1982), 109.

confrontations or of transformations and reverses, as well as the relations of mutual reinforcement or disjunction among the relations. The various social hegemonies, the formulations of law, and the state apparatus, come in the final instance to be the institutional crystallizations of these more complex relations.³⁵⁹

Through the discussions rendered in the four articles that constitute the thesis, I have attempted to portray and analyze some of these complexities.

³⁵⁹ Ayubi, *Over-stating the Arab state: politics and society in the Middle East*: 98.

8 Conclusions

“at certain periods of social transformation, what was structural ceases to be so and becomes subject to human agency”³⁶⁰

The relationship between the politics of citizenship and regime survival is complex and defies easy summary across the broad range of issues pertaining to membership in the polity and the state as discussed in the four articles. More empirical-oriented and comparative studies and theoretical elaborations are needed in order to synthesize the impact of inclusionary and exclusionary practice with reference to the relationship between structures of membership and processes of participation. Nevertheless, a provisional summary and reflections over some of what I perceive as key findings is possible.

The discussion in the four chapters that follow are attempts at applying citizenship as a level of analysis with reference to the following questions delineated at the beginning of this introduction: i) How does the politics of citizenship reflect the organization and distribution of power in the polity and impinge on the survival of the regime?; ii) Where do we find political arenas of contestation through which inclusionary and exclusionary forms of citizenship are established, sustained and redefined? iii) In which ways do external and internal pressures for change impact on the politics of citizenship in different states in the Middle East?

The empirical material which my analysis is based upon was gathered before the revolts and upheavals in the Arab world made their toll in 2011. Massive political mobilization challenged the authoritarian governance strategies of regimes in two of the states discussed in this thesis: the thirty-year rule of the Mubarak regime in Egypt was overthrown, while the forty-year rule of the Assad regime in Syria is – at the time of writing – struggling to survive. Can the politics of citizenship, as defined and discussed in this thesis shed light on the background and impact of the forces of change that led to the political upheavals evidenced the past year?

I believe the fruitfulness of a citizenship approach lies in revealing variances pertaining to governance strategies of rulers where political considerations related to membership and participation policies represent the analytical axis. To a lesser degree can a

³⁶⁰ Lukes, "Power and Structure," 10.

citizenship approach *explain* regime survival. In this conclusive part I reflect on the relevance, as well as weaknesses, embedded in holding to citizenship as a level of analysis when discerning and shedding light on contemporary politics in the Middle East.

8.1 The politics of citizenship: the organization and distribution of power

Seen from the perspective of state formation in six states in the Middle East – Lebanon, Syria, Jordan, Morocco, Kuwait and Egypt – I point at three provisional conclusions regarding the politics of citizenship in the Middle East:

First, the constitution of the citizenry is of paramount importance for ensuing patterns of participation in the polity. Particularly in divided societies, the distribution of legal citizenship is a significant mechanism applied by rulers to ensure regime survival. The distribution of legal citizenship conditions the terms upon which political participation rests. In three states divided along ethnic, religious and tribal lines – Lebanon, Jordan and Kuwait – institutionalized participatory projects have, indeed, seen light at different points in time since independence. Participation is, however, limited in scope, and has structurally contained agendas that reproduce and sustain power distribution based on oligarchic rather than democratic forms of participation. In these states inclusionary and exclusionary practices pertaining to membership in the state reflect more than mere regulation of immigration, naturalization and residence policies. These policies permeate the structure and distribution of power within the polities. The politics of citizenship in the Middle East portrays a range of patterns whereby forms of membership in the territorial state and / or the polity on the one hand, and forms of participation in the polity on the other hand, are intimately linked.

In *Kuwait*, it is the haves against the have nots in terms of those holding Kuwaiti citizenship certificates. Legal citizenship guarantees directly (through the dispersion of social welfare goods) and indirectly (through the economically lucrative *kafala* system) the non-taxation based welfare of a minority citizenry based on the contracted and indentured servitude of a majority of non-citizens. The stateless *Biduns* represents a politically bounded limbo population that was at a time included in the citizenry and which represent a demographically significant problem of inclusion in the polity. Kuwait shares some common features with Lebanon, although the parameters and structures that define and regulate the

politics of citizenship differ. In both states, the organization and distribution of power reflect overt exclusionary traits, which are part and parcel of the democratic participatory projects portrayed at different historical periods.

In *Lebanon*, the political leadership of the four main confessional groups – the Sunnis, the Shia, the Druze and the Maronites – are internally divided in politico-religious subgroup alliances. These are in continuous power-brokering at the national and international levels. Power-sharing sustains the political stalemate established by former PM Hariri after the civil war ended in 1990. State structures that organize and institutionalize membership in confessional groups may well be seen and analyzed as illiberal and non-democratic measures that sustain and solidify oligarchical rather than democratic forms of governance. The Lebanese political order rests upon group-based citizenship which is intimately related to the tenets on which the Lebanese political order is organized. Political representation is based on the illiberal practice of state mandated membership in religious groups. Political elite groups support and legitimize state policies that grant clerical authorities judicial autonomy as institutionalized through separate court systems which regulate family law issues. Maintaining group-based citizenship is therefore equal to supporting and perpetuating the current distribution of political power along confessional lines in ways that recurrently and continuously *depoliticize* conflicts of interest such as efforts at centralizing the state's judicial system, conflict based on class interest and pressures to equalize the distribution of civil rights among citizens of different confessional groups and between male and female citizens.

In *Jordan*, citizens of Transjordanian background are perceived as the monarchy's 'ethnic soldiers'³⁶¹ – its legitimate supporters and what Butenschøn terms as 'titular group of which the state is the embodiment'.³⁶² The reconfiguration of the Jordanian citizenry following Jordan's disengagement of the West Bank in 1988 (*fakk al-irtibat*) initiated an era of political participation, which has nevertheless been manipulated in order to substantiate the power of citizens with Transjordanian background. Electoral participation in 1989, 1993, 1997 and 2003 reflects, as Lust-Okar argues, how the delineation of electoral districts has "clearly shifted political weight away from Jordanians of Palestinian origins towards those of

³⁶¹ Enloe, *Ethnic soldiers: state security in divided societies*. See also Ellen Lust-Okar, "Reinforcing informal institutions through authoritarian elections: Insights from Jordan," *Middle East Law and Governance* 1, no. 1 (2009).

³⁶² Butenschøn, "State power and citizenship in the Middle East: A theoretical introduction," 25.

Transjordanian origin. [...] By gerrymandering, the government pushed seats and opportunities to access state resources toward traditional bases of support for the regime."³⁶³

Indeed, a higher degree of participation is observable in these three states, but various degrees of participatory projects *presuppose* exclusionary practices that hardly fall under the label 'democratic'. Scrutinized against political as well as bureaucratic deficiencies related to the enumeration of the population, structures of involuntary association at the group level, and the systematically gendered distribution of civil rights among female and male citizens, the politics of citizenship is characterized not only by its exclusionary traits, but also by its exclusiveness.

A second provisional conclusion is that the expansion of the demos in terms of including female citizens as full members of the state has notably occurred in the Maghreb, and to a lesser extent in the Mashreq. Tunisia was the first Arab state that standardized the distribution of civil citizenship within family law in 1956, the first to grant a woman the right to confer her nationality to her children if married to a non-national and the first Arab state to withdraw all its reservations to CEDAW in 2011.³⁶⁴ In terms of expanded female citizenship, notwithstanding the exception of South Yemen between 1974 - 1990, Morocco is the other state that embarked on a paradigmatic shift towards individually-based citizenship in 2004. Partial changes gave Egyptian women of all confessional denominations an independent, though financially conditional, right to divorce in 2000 – a fundamental civil right over a female human's agency over her body which is no less politically important than the franchise which Egyptian women got in 1956.

In terms of perceiving state formation from a citizenship approach it can be argued that conflicts pertaining to legal citizenship and the equalization of civil rights between male and female citizens have been addressed in these three North African states and partially solved by weakening the ties of group-based citizenship to the benefit of individually-based citizenship rights. An individually-based citizenship regime in Morocco is most probably not a sufficient measure to ensure the monarch's autocratic rule. As argued in chapter 5, the most important factor that distinguishes the governance strategy of the Egyptian and Moroccan

³⁶³ Lust-Okar, "Reinforcing informal institutions through authoritarian elections: Insights from Jordan," 23-25.

³⁶⁴ Brian Whitaker, "Tunisia is leading the way on women's rights in the Middle East," *The Guardian*, 10 September 2011.

regime during the 1990s is the entry of an Islamic political party (PJD) in 1997 in Morocco as legitimate participant in parliamentary elections. The PJD was also the first Islamist party ever to be represented as a political association in parliament in an Arab state – a critical factor which gives additional sustenance to securing a more inclusive basis for the monarch's autocratic rule. Once pressures to change the family law reached parliament, what was previously perceived as a unanimous Islamist opposition was split into one branch that did not oppose monarchical rule and one that did. The monarch had thus co-opted reluctant but willing Islamists in redefining the tenets of gendered citizenship. More importantly, after 1993 the monarch in Morocco refrained to resort to violent means of persecution against Islamists as did the Mubarak regime in Egypt and the Ben Ali regime in Tunisia.³⁶⁵

This last point leads to the third provisional conclusion pertaining to the politics of citizenship in the six states under study and which has to a certain degree been undercommunicated and therefore not given sufficient attention in my discussions pertaining to the relationship between membership and participation in the Middle East: the variations pertaining to the use of force by the ruling regime in supporting and sustaining its preferred citizenship regime. Ian Lustick points out that the variable 'control' represents an underdeveloped concept in studies of deeply divided societies, as well as in other non-consociational but stable and deeply divided societies. He argues:

There are likely to be many different kinds of control systems; they may involve different mixes of coercive and noncoercive techniques; emerge under particular socio-cultural, ideological, economic or political conditions; have different implications for the political and social evolution of their societies; and be more or less attractive as prescriptive models.³⁶⁶

In the Middle East, 'control' as an analytical variable represents – along the lines that Lustick draws – an essential component that sheds light on the distribution of legal and civil citizenship, and by extension, the organization of power in the polity along more or less authoritarian lines. Non-coercive techniques of control are institutionalized through citizenship laws and family laws. Even in states with variant degrees of political representation, participation has a strong oligarchic rather than democratic flavor to it. Following my critique of consociational forms of power-sharing, I would argue that

³⁶⁵ Sieglinde Gränzer, "Changing discourse: transnational advocacy networks in Tunisia and Morocco," in *The power of human rights: international norms and domestic change*, ed. Kathryn Sikkink, Thomas Risse, and Steve C. Ropp (Cambridge: Cambridge University Press, 1999).

³⁶⁶ Lustick, "Stability in Deeply Divided Societies: Consociationalism versus Control," 333-34.

consociational political arrangements cannot be understood as 'non-discriminatory'³⁶⁷ in so far as group-based political accommodation in a Middle Eastern context evidently discriminates on the basis of gender as well as on the basis of freedom of dissociation in religious groups.

Of the six states under study, the Syrian regime has most notably applied the highest degrees of violent means of force in order to ensure its rule. Systematic detentions of political dissidents, imprisonment and torture have been widely used measures of persecution in ways that find little parallel in the other five Arab states under study.³⁶⁸ Marginalized long-term stateless residents of mainly Kurdish background and their descendants who lacked Syrian citizenship following their deliberate non-registration in the 1962 census proved to be central opponents against the Syrian regime in the upheavals that started in March 2011.³⁶⁹ Evidently, Syrian authorities applied a policy of exclusion in their efforts at centralizing authority in periphery areas and as means to control potential threats which, in combination with failed societal pressures for reform, have resulted in the prolonged destabilization of internal security.³⁷⁰ Seen through the perspective of the expansion of female citizenship in Syria, the Syrian regime perpetuated its Janus-faced politics of citizenship articulated through a political agenda that lends ideological lip service to universalist secularist ideals, but which staunchly supported and sustained particularistic clerical interpretations of civil citizenship as means to ensure the reluctant support of Sunni majority groups in maintaining authoritarian rule of the Alawite minority regime. In retrospect, it is possible to perceive the political liberalization pertaining to pressures that sought to widen female citizenship in Syria between 2003 and 2006 as discussed in chapter 4 as a short lived exercise. Demands for strengthened individually-based citizenship were finally and firmly aborted by 2009 to the benefit of group-based civil and economic citizenship in accordance with the interests of conservative clerical groups.³⁷¹

³⁶⁷ Butenschøn, "State power and citizenship in the Middle East: A theoretical introduction," 17, 26.

³⁶⁸ Fred H. Lawson, "Syria resists the end of history," in *Middle East and North Africa: governance, democratization, human rights*, ed. Paul J. Magnarella (Aldershot: Ashgate, 1999), 80-81.

³⁶⁹ See the report by Maureen Lynch and Perveen Ali "Buried alive: Stateless Kurds in Syria" published in February 2006 by Refugees International, retrieved at <http://www.refintl.org/policy/in-depth-report/buried-alive-stateless-kurds-syria>, accessed 21 December 2011.

³⁷⁰ On the inability of oppositional groups to formulate political agendas of reform other than agreeing to oppose the Asad regime, see particularly Joe Pace and Joshua Landis, "The Syrian opposition: The struggle for unity and relevance, 2003 - 2008," in *Demystifying Syria*, ed. Fred H. Lawson (London: Saqi, 2009).

³⁷¹ In a forthcoming article I discuss the internal power struggle within the Syrian regime between the Ministry of Social Affairs and the Syrian Commission for Family Affairs (SCFA) on the one hand, and the Ministry of

8.2 Arenas of contestation

The arenas of contestation over principles of inclusion and exclusion pertaining to membership in the state and membership in the polity are numerous. What constitutes an arena, and the forces that consequently politicize it, are in themselves contingent on the institutional characteristics of each state and the specific historical settings that surround it. Seen from the perspective of state formation I focused on arenas of contestations related to two main focal points: the distribution of legal citizenship on the one hand, and the distribution and equalization of civil citizenship between male and female citizens on the other hand. A third additional point emerged out of my discussions on pressures to expand female citizenship; the forces of economic globalization have in some states impacted positively on pressures pertaining to the equalization of civil rights.

8.2.1 Legal citizenship

With reference to the distribution of legal citizenship, enumeration processes and the categorization and institutionalization of each citizen's 'primordial' membership in identity groups are latent arenas of contestation. This is particularly evident in divided states where state-mandated registration of group-identities is required, and where inhabitants particularly on the peripheral boundaries (Kurds in Syria, the *qayd ad-dars* population in Lebanon and the Bidun in Kuwait) have been systematically denied nationality in their place of residence and remain stateless.

Questions pertaining to the distribution of legal citizenship remain under the discretion of state authority and in the hands of the government. Rulers issue new regulations or change existing citizenship legislations through decree. The expansion of the citizenry through political deliberations on reform in citizenship legislation in divided states remains a marker of state authorities. Rulers in states in the Middle East reserve the right to define who is and who is not eligible to membership in the state according to political priorities that concur with their survival strategies.

Justice and the Ministry of Endowments and Religious Affairs (the *awqaf*) on the other hand. While the former two institutions pressured for individually-based citizenship rights as means to ameliorate poverty schemes, the latter two institutions pressured for group-based citizenship rights where male guardians were seen as primal protectors of families with reference to economic destitution. See Maktabi, "Female Citizenship in Syria: Framing the 2009 controversy over the draft laws on personal status."

In Lebanon, for instance, the two civil court decisions which overruled the verdict by a Sunni religious court in 2006 were not challenged and opened thereby room for precedence-setting rulings that strengthened the civil rights of mothers and minor in family law issues. However, the Lebanese state could not lose a nationality law case where a Lebanese woman gained the right to confer citizenship to her children through court in 2009. Through debatable legal and judicial steps the ruling was withdrawn a year later, safeguarding the sovereignty of the state in presiding over nationality cases.

8.2.2 Civil citizenship

In the six states discussed in the thesis the government and parliament have since 1990 constituted institutional arenas of contest whereby demands regarding the distribution civil citizenship with reference to the equalization of rights between male and female citizens are discussed. Even in fairly authoritarian states such as Syria and – to a lesser degree Egypt – public deliberations on issues pertaining to strengthened female civil rights indicate that the use of decrees issued by rulers in order to address gender inequality subsided. Human rights norms regarding gender equality made their toll in all MENA states. Institutional conditions impacted however differently on whether female civil rights were expanded, and to what degrees.

The institutionalization of courts, for instance, and variances in the organization of clerical autonomy in Morocco, Egypt, Syria and Lebanon indicate that the centralization of the court system represents an important arena of struggle. Particularly in Lebanon and Syria, both majority and minority confessional groups resist institutional change which potentially decreases their relative strength as autonomous confessional groups. Maintaining the judicial prerogatives of clerics is therefore a means to ensure autonomy in regulating internal affairs for religious groups.

In Morocco and Egypt where institutional centralization in matters related to personal status has occurred, textual re-interpretation of particularly Islamic religious doctrines and shari'a jurisprudential tenants have been a vibrant exercise among particularly feminist Islamist thinkers. Pressures since the late 1990s indicate that what was perceived as 'sacred text' was subject to political deliberations and discussions in the public sphere. Debates that evolved following the re-reading of religious text created contested field of

dissent and consent regarding the basic principles on which the state's family law shall be based: a citizenship regime characterized predominantly by aspects and regulations that emphasize group-based membership in the polity; or a citizenship regime which enhance and strengthen the distribution of rights and obligations in the polity on an individual basis?

One particular arena within family law, that of a woman's independent right to divorce without raising case in court, appears to be of particular importance. The independent and judicial right to divorce, though severely hampered by the condition of financial buy-out on the part of women in Egypt, appears to have been an important threshold. Female citizens in Tunisia, Morocco and Egypt strengthened their civil rights within nationality law and criminal law after gaining an independent right to divorce.

8.2.3 Social citizenship and economic globalization

Although I have not focused particularly on how economic globalization has affected female labor participation in the MENA region, I point at the importance of the *impact* of economic globalization on female labor participation and the ensuing pressures for reforms that strengthen female citizenship. Despite Arab women's comparatively low labor participation rates, the percentage of employed women rose considerably between 1960 and 2000. As such, the labor market represents a significant arena of struggle whereby women's groups and labor unions have pressured for strengthened civil rights. With economic liberalization, employed women and labour unions have highlighted economic, social and legal issues and presented demands in order to improve their living conditions. In all four states, the result is a pattern of alliances in which unions, governmental and non-governmental groups have cooperated in order to improve what are regarded as legal aspects of social injustice.

Economic liberalization and globalization have since the late 1980s been based on neo-liberal principles of free trade, increased export-oriented economic activities coupled reductions in public expenditure and abolishment of state-subsidized goods and services.³⁷² What characterizes economic liberalization in the Middle East compared to other regions in the world is that economic liberalization has been state-centred and characterized by adaptation and what Selvik and Stenslie term as 'reformism' in ways which have maintained existing economic, social and political structures. The authors argue that through reformism,

³⁷² Woods and Hurrell, *Inequality, globalization, and world politics*.

rulers promised economic and political reforms, and sought adaptation strategies as means to adjust their policies towards new global environment by abiding to new norms. According to them, Arab regimes

used the reform idea as a replacement for its weakened ideology. Because Arab nationalism and socialism failed to legitimise them, the regimes hope to construct a new ideological legitimacy. What is essential in this context is not whether the specific economic and political measures succeed but to give the impression that the state has a mission.³⁷³

With reference to reforms in family law, I maintain that this perspective explains only to a certain extent political regime's interest in supporting reform. For, how do we account for *which* reforms are introduced, neglected or opposed, particularly with reference to women-friendly reforms that are both challenged and disputed in all states?

Brand presents here a more fruitful approach. She relates reforms with political regimes' insecurity regarding their strength. Brand points out that reforms occur as results of considerations regarding potential partners where the principle objective is to strengthen the regime's governance strategy and its grip on power.³⁷⁴ In other words, through reforms the regime opts to strengthen its grip on power without necessarily increasing its legitimacy. The women-friendly reforms in North African states after 2000 appear to be part of such political strategies. More overt opposition against reforms in Syria and Lebanon than in Morocco and Egypt is, as I argue in chapter 5, related to institutional aspects pertaining to the organization of the judicial system and policies that establish group membership in multireligious states in distinction to states where Islam is dominant religion.

Among the challenges created by economic and political globalization are increased transnational pressures which fused international human rights norms and standards at the domestic level. As such, economic globalization represents a powerful transitional force which impelled rulers in Egypt, Morocco, Lebanon and Syria to sign CEDAW, albeit with reservations, in 1981, 1993, 1997 and 2003 respectively. Reservations to CEDAW gave leaders the benefits of economic liberalization without obliging them to engage in comprehensive reforms. Nevertheless, transnational pressures for change evolved. These were characterized by a socialization process between and among domestic and international actors whereby national authorities are pressured to change their behaviour

³⁷³ Selvik, Stenslie, and Meyrick, *Stability and change in the modern Middle East*: 107.

³⁷⁴ Brand, *Women, the state, and political liberalization: Middle Eastern and North African experiences*: 3-6.

and abide to rule of law principles, even though they do not necessarily believe in their validity.³⁷⁵

The political framework that evolves around pressures for and counterpressures against the fusing of international human rights norms pertaining to gender equality on the one hand (in this thesis understood as 'civil citizenship'), and the right to a nationality on the other (in this thesis discussed as 'legal citizenship'), represents a 'meta-arena' so to speak, which – according to some researchers –, has the potential to transform the paradigm in which a rights-oriented discourse operates and manifests itself in the Middle East. This theme is discussed further in the next section.

8.3 Citizenship and rights: Transnational pressures for change after 1990

Østerud refers to the processes and forces of globalization as the 'global shift' which since the 1990s signal the internationalization of problems, societies and decisions where "[r]ights and law assume an increasingly supranational character, and the borderline between domestic and foreign policy is gradually eroding". This general description is not contested, he argues, but "the degree of transformation, the implications, and the forces behind certainly are."³⁷⁶

In the Middle East, the post 1990 'global shift' has in the past decade been particularly visible with regards to questioning and problematizing exclusionary practices pertaining to citizenship with reference to three main legal-demographic categories of persons and their appurtenant rights as based in human rights norms and rules: the equalization and strengthening of female civil rights; a sharpened focus on the perpetual deprivation of citizenship in the region that create different forms of statelessness; and the legal plight and workers' economic as well as protection rights against maltreatment and exploitation of the non-citizen workforce, particularly but not exclusively in the Gulf states.

Within the framework of the thesis, international conventions, emanating primarily at the international level can be understood as transnational means through which legal citizenship is sought established and consolidated. With reference to gender equality, CEDAW adopted by the UN in 1979 represents the most important and comprehensive set of

³⁷⁵ Kathryn Sikkink, Thomas Risse, and Steve C. Ropp, eds., *The power of human rights: international norms and domestic change* (Cambridge: Cambridge University Press, 1999), 10-14.

³⁷⁶ Østerud, "Democracy beyond borders? The European Case," 169-70.

human rights that endorse women's rights within a human rights agenda. With reference to statelessness, the most important rules regarding statelessness and the right to a nationality in international law are: article 15 of the Universal Declaration of Human Rights (UHDR) which states that "no one shall be arbitrarily deprived of his nationality nor denied the right to change nationality"; the 1954 Convention Relating to the Status of Stateless Persons; and the 1961 Convention on the Reduction of Statelessness which asserts that nationality should be granted by "operation of law to a person born in the State's territory" and to anyone who would otherwise be stateless.³⁷⁷

Two main questions arise out of the juxtaposition of a focus on international conventions pertaining to human rights on the one hand, and a citizenship centered focus on the other: first, do these two sets of rights mutually reinforce each other in expanding forms of citizenship in the Middle East?; and second, if so – how do citizenship rights and human rights concur with each other and under what conditions?

8.3.1 Human rights versus citizenship rights: Two alternative traditions?

Gershon Shafir juxtaposes human rights and citizenship rights and sees them as two sets of rights. He argues that they represent 'two alternative rights traditions': one which anchors rights in membership in a political community through the institution of citizenship, and another which disconnects rights from membership and universalizes them through the human rights regime. Whereas citizenship is contingent on the state, human rights are inherent rights in humans *qua* individuals irrespective of state membership.³⁷⁸

Peter Spiro agrees with Shafir on the difference in rationale that underpins the two traditions. Spiro spurs further on the argument by stressing the need to extend rights to those excluded from citizenship through the potential development of an international human rights regime. He points out that citizenship is increasingly being framed as a right in itself, and that as a result of the increased salience of human rights at the domestic state level "there may be some baselines to which states will have to adhere. Unlike past constraints on citizenship practice, those baselines will constrain a state's core capacity to

³⁷⁷ Blitz and Lynch, *Statelessness and citizenship: a comparative study on the benefits of nationality*: 2.

³⁷⁸ Gershon Shafir, "Citizenship and human rights in an era of globalization," in *People out of place: globalization, human rights, and the citizenship gap*, ed. Alison Brysk and Gershon Shafir (New York: Routledge, 2004), 11,13.

define its citizenry.”³⁷⁹ For, he explains, “[a]s international norms have aggressively invaded virtually every sinew of domestic governance, nationality law has remained largely immune to any acknowledged constraint from beyond.”³⁸⁰ He concludes his argument by stating that

nationality law is the fallen last bastion in the citadel of sovereignty [...] indeed, states will retain important discretionary powers into the future. But no function of governance will be shielded from national law as a categorical matter, membership decisions included.³⁸¹

Spiro’s and Shafir’s observations are relevant to my discussions on the politics of citizenship and the ensuing inclusion and exclusion of individuals from membership in the polity and in the state for two main reasons. First, with reference to gender and the equalization of rights, the juxtaposition of citizenship and human rights as two different rights traditions enforces reflections on whether family law reforms in MENA are to be understood as expanded *citizenship rights*, or – by contrast – that these reforms are to be understood as processes that embed international norms of human rights with regards to gender equality in national legislation? Second, Spiro’s and Shafir’s arguments regarding citizenship laws as ‘the last bastion of state sovereignty’ contribute to sharpening the distinction I make with reference to differentiating between questions pertaining to *membership in the state* as analytically and substantially distinct from questions related to *membership in the polity*. While the first addresses the rights of non-citizens and stateless, the second addresses the rights of female citizens.

With reference to the first point: My observations support a perspective which sees strengthened civil rights for female citizens as expressions of primarily – but not exclusively – expanded citizenship at the domestic level. A significant evidence is that strengthened civil rights occurred though parliamentary reforms. This understanding does not reduce the importance of human rights as driving force for change emanating at the international level, but it does accentuate the significance of unraveling the dynamics of political alliance formation at the domestic level.

With reference to the second point: Based on my observations and reflections over the two sets of rights – citizenship and human rights –, and the two categories of persons; those who lack full membership in the polity (Arab female citizen), and those who lack membership in the state (non-citizens and stateless), I argue that there is a politicized

³⁷⁹ Spiro, "Mandated membership, diluted identity: Citizenship, globalization, and international law," 88.

³⁸⁰ *Ibid.*, 87.

³⁸¹ *Ibid.*, 104.

dimension whereby Arab polities are more eagerly addressing widened female citizenship than addressing the plight of stateless residents. Widened female citizenship in family law can be seen in light of a sharper political conviction among rulers that maintaining, bolstering and enforcing nationality laws are prerogative decisions that shall be made by the state, particularly in divided societies. I elaborate further on these partial conclusions below.

8.3.2 State formation between human rights and citizenship

Seen from the perspective of state formation – the overarching theoretical and analytical framework within which my analysis of the politics of citizenship falls into – I would suggest that there are three features related to transnational pressures of change emanating from a human rights perspective:

First, there is an observable gendered dimension to pressures pertaining to the expansion of particularly female citizenship in all MENA states. States have, to different degrees, been more responsive towards equalizing civil rights between male and female citizens and focusing on issues related to gendered inequalities and violence, than to pressures that address questions related to statelessness or non-citizens. The distribution and withdrawal of legal citizenship is – and will most probably continue to be – practiced as control instrument under the discretion of state authority.

Second, there is a marked regional Mashreq-Maghreb divide where females in North African states have succeeded in extracting more rights than female citizens in Mashreq states. This is to a large degree related to the centralization of the judicial system in Maghreb states which strengthened the powers of decision-makers, independent of political regime, to introduce reforms in family law. Reforms that extend or contract female citizenship are, nevertheless, prone for withdrawal also through parliamentary reform following ‘free and fair elections’. This is not particular to states in the Middle East, nor to Islam as religion. Reversals and withdrawals of female civil rights are the result of contracted forms of democratization processes. In both democratic and non-democratic polities, expansion and contraction of female citizenship are subject to continuous governance strategies that aim at winning executive power with the support of conservative nationalist and orthodox clerical forces. In European states, the support of conservative forces within Catholic churches has invariably led to powerful patriarchal contracts which bolster group-

based citizenship. Competitive democratic elections in Ireland since independence in 1922, Poland in 1993 and Nicaragua in 2006 rendered abortion illegal, hampered the reproductive health of female citizens and resulted in the contraction of female citizenship. Illiberal outcomes are thus obtained through democratic means.

Third, ruling regimes are more able to disregard pressures to strengthen the political plight of statelessness and non-citizens by emphasizing and safeguarding their sovereign authority in defining who is admitted as members. The principle of sovereignty is, after all, rooted in exercising authority over geographical borders and over persons who reside within them. Ruling regimes in divided states are, moreover, able to sustain authoritarian, oligarchic and non-democratic forms of governance that ensures their survival with the tacit as well as vocal acquiescence of the citizenry.

In the Levantine Mashreq states as well as in the Gulf states where most states are divided, regimes are less responsive towards issues pertaining to statelessness so that their nationality policies become more in agreement with international human rights norms on nationality. Female citizens in divided states have obtained meager results in the form of tangible reforms that ensure strengthened civil rights. Nevertheless, ruling regimes in divided states are more eager to give nominal and potential support to pressures that strengthen female civil and social rights through education, health programs, and small-scale private enterprises, than to put questions that address the non-citizen population higher on the political agenda.

I shall substantiate the last argument further because it resonates with how and in which ways the politicization of the demos in the Middle East serves different purposes which strengthen regime survival in particularly divided societies.

The debates on family law reflect, as argued in chapters 4 and 5, a sharpened *public* as well as *internally divisive arena* at the domestic level in different states. Reinterpretation of sacred text and a widened sphere of actors perceived as legitimate participators in that endeavor have resulted in the politicization of issues by defining these as *conflicts of interest* pertaining to divorce, custody over children, poverty alleviation, waged labor and working conditions, rather than defining these *primarily* in terms of conflicts pertaining to 'religion' in a narrower sense, i.e. doctrinal understandings on gender differences and the sustaining of conservative and orthodox definitions of religious text. The result is an implicit, though notably not overtly accentuated secularization process of contested issues: clerical authority

is to a lesser degree seen as authoritative and sovereign in defining family law tenets that regulate gender relations in the form of the state's family law.³⁸²

Kiddie notes that "[i]n the Middle East, the dominant form of secularization – that initiated by the states – was not at all liberal and was rarely democratic."³⁸³ I believe that Kiddie's observation is both valid and fruitful in shedding light on reform processes. What we are currently seeing in the Middle East in the field of family law reform is that forces of change and counterforces against change lead to a more or less violent democratization process by way of pressures to redefine the contractual relationship between rulers and ruled and – by extension – citizens' civil rights through the institution of citizenship. The pattern of variation pertaining to the different outcomes of this process is unclear: further outcomes may most probably show a wider variety of responses and challenges pertaining to the organization and distribution of civil rights, with significant economic consequences pertaining to inheritance and authority over the disposition of conjugal material and immaterial assets, most importantly male sovereignty over children.

In divided states, the distribution of legal citizenship as well as civil citizenship is intimately related to sustaining group-based citizenship. Group-based citizenship accentuates tribal traits in Kuwait, confessional traits in Lebanon and Syria, and tribo-nationalist traits in Jordan. In these states, gendered issues pertaining to unequal distribution of civil rights between males and females are easily politicized because they serve as means that sustain the salience of kinship, confessional and / or nationalist ties. Gender differences are, seen from a family law perspective, based on the principle of structuring group boundaries through the use of state power.

With reference to the discussion presented in chapter 5 I would anticipate that the reform trajectory pertaining to wider female citizenship – within family law as well as citizenship law – to occur at a much slower and conflicting pace in the Mashreq, i.e. the

³⁸² Leirvik points that 'secularization' refers to societal processes that have particular characteristics such as freeing institutions from clerical and church power, while 'secularism' – as other 'isms' is connoted to political programs that seek to enhance the process of secularization. Leirvik, "Religionsdialog, sekularitet og eit felles forpliktande språk [Religion dialogue, secularity and a common binding language]," 8-9. For discussions on 'secularization' and 'secularity' in a Norwegian contemporary context, see Oddbjørn Leirvik, Sindre Bangstad, and Ingvill Thorson Plesner, *Sekularisme - med norske briller* (Oslo: Unipub, 2012). See also the discussion various authoritarian responses to religious pluralism and the rise of religious radicalism at the international level in Turner, *Religion and modern society: citizenship, secularisation and the state*: 184-93, 271-84.

³⁸³ Nikkie R. Keddie, "Secularism and the state: Towards clarity and global comparison," in *Religion and politics*, ed. John T. S. Madeley (Aldershot: Ashgate, 1997 / 2003), 248. Originally published in 1997 in *New Left Review*, 226, pp. 21-40.

Levantine and Gulf states. A hypothesis I am working on is that the impact of rentierism, that is the comparatively high proportion of externally generated financial capital in for example the Lebanese, Jordanian and Gulf economies coupled with strong *laissez-faire* economic state sanctioned policies are powerful forces against pressures for further reforms in family law and expanded female citizenship. The same powers impact, I believe, even more forcefully on preserving strict distinctions between citizens and non-citizens in the state.³⁸⁴

In 1996, Carole Pateman argued in favor of substantiating human rights rather than citizenship:

The major problem with citizenship has been and remains, its exclusionary character, both within states in the case of women, and many other peoples and categories of inhabitants, and internationally, because citizenship has been tied to inclusion in particular states. Human rights are crucial because, in principle, at least, they give standing to individuals irrespective of their citizenship or lack of citizenship, and so help open the way for democratization and membership to become less state-centered.³⁸⁵

Pateman shares, in other words, the same view as Shafir and Spiro in emphasizing the relevance of human rights as vehicles for change and the shortcomings of citizenship rights as impediments for reforms which lead to more expanded forms of democratization in the polity.

I believe that the insights of these authors resonate well with reference to consolidated territorial states where legal citizenship and civil citizenship are institutionalized to different degrees. However, in the Middle East and in other states where legal citizenship is contested, state formation is still in the making. I would therefore argue that a state-centered and realist perspective is imperative if and when we seek to uncover and analyze forces and pressures for change that aim to expand human dignity and rights, whether these are pressured for by means of embedding human rights standards in domestic politics, or by means of pressures for widened or expanded forms of citizenship. By a 'realist and state-centered perspective' I mean one which is sensitive to the variety of patterns pertaining to pressures for reform at the domestic level. What is required – in terms of statemanship or in terms of advocacy – is a sensitiveness towards analytical

³⁸⁴ The current working title of the paper is "Family Law and female citizenship in Kuwait and Qatar: A comparative perspective in light of globalization in the MENA region", to be presented at the *2012 Gulf Research Meeting*, "Women and Globalization in the GCC: Negotiating States, Agency and Social Change", Gulf Research Centre, Cambridge University, 11 – 14 July 2012.

³⁸⁵ Carole Pateman, *Democratization and citizenship in the 1990s: the legacy of T.H. Marshall*, vol. 96:17, Rapport (Oslo: Institutt for samfunnsforskning, 1996), 24.

perspectives pertaining to *opposition* towards reform, and how and in which ways domestic resistance dovetails with or is in opposition to significant counterpressure groups. Counterpressure groups are found both within and outside the state apparatus, and these are able to form alliance patterns that are sustained and reproduced in collaboration with powerful international actors.

Alliance patterns between international security interests, such as the US administration and the EU, and domestic conservative and orthodox politico-economic interests are only recently being profiled and criticized more boldly.³⁸⁶ Critics point at the double agendas presented – one which emphasizes women’s emancipation and ‘freedom’ on the one hand, and the merits of strengthening and widening capitalist forms of entrepreneurial and commercial interests as well as ‘religious freedom’ on the other. Such agendas have both strengthened and bolstered conservative and orthodox political alliances in other parts of the world in formerly Eastern Europe (such as Poland after 1993) and in Latin America (such as Nicaragua after 2006). These alliances bolster existing patterns of unequal power distribution among female and male citizens in ways that is in accordance with politically and economically salient societal groups who support the survival of existing political regimes.

The proliferation of women’s rights as part of the human rights agenda have evidently proved to be significant contributors for supporting domestic pressures for reform, as argued in chapters 4 and 5. Nevertheless, reforms need to find resonance in each state in ways that harmonize with the political agendas of supporters and – perhaps more intriguing and challenging, but no less important – opponents at the national level. The single most significant supporter for reforms that strengthen female civil rights is, as concluded in chapter 5, a political regime that advocates expanded female citizenship.

States – and by extension state power – remain *enforcers* of rights and, thereby, *guarantors* of rights, whether these are defined as citizenship rights or human rights. International institutions still lack the authority and sovereign mandate to dictate a state in the Middle East to guarantee citizen rights that resonate with strengthening and expanding legal citizenship and civil citizenship.

³⁸⁶ Al-Ali and Pratt, *Women and war in the Middle East: transnational perspectives*.

8.4 Female citizens as ‘the masses’: gendering the democratic deficit

In their introductory to *Democracy in the Arab World: Explaining the deficit*, published in the same year as the Arab uprisings made their toll, Elbadawi and Makdisi point out that “[w]ith the exception of Lebanon and early isolated engagements that did not last long, Arab political regimes since independence have generally been characterized by varying forms of authoritarian rule”.³⁸⁷ They reiterate their verdict by stating that:

[w]ith or without greater gender equality, [...], the Arab countries (with the exception of Lebanon) remain autocratic and the question of explaining the persistent Arab democracy deficit remains to be addressed. [...] There is plenty of evidence that the political and civic rights record in Arab countries has been marred by serious violations, attested by various reports of Arab and human rights organizations. All this lends evidence to the empirical support that, excepting one case (Lebanon), various shades of autocracy have prevailed in these countries since independence.³⁸⁸

The case of Lebanon is discussed in three of four articles in this thesis. In none of the articles does the impact of the politics of citizenship, as defined here, lend support to the uniform understanding that Lebanon represents an exception – a ‘special case’ – of a democratic safe haven amidst an autocratic and authoritarian region. At best, Lebanon provides a prescription of how a cartel of power-holders can maintain stability under implicit overt structures of control which discriminate on the basis of gender as well as with reference to the freedom of belief. At worst, Lebanon is an extreme case where illiberal membership structures condition an oligarchic and patriarchal power-sharing formula that ensures stability through means that should not be conflated with ‘democracy’.

If and when we as researchers seek to address ‘democracy deficits’ in MENA, we have to keep an eye on the arenas and battlefields through which state power is applied by governing elite groups to define and regulate the demos of the state. We need to continuously ask questions such as: who constitutes the citizenry of this particular state?; who constitute full members of the polity?; under which terms of membership constellations are those included and those excluded from the polity able or permitted to exercise potential civil or political rights, albeit prevented from participation if they lack legal and / or civil citizenship?

³⁸⁷ Elbadawi and Makdisi, *Democracy in the Arab world: explaining the deficit*: 1.

³⁸⁸ *Ibid.*, 6. In footnote 2 on page 7 the authors admit that, due to data limitation they “could only account for the gender question through the share of females in the labour force, which is only one aspect of women’s empowerment.”

If Lebanon is still apprehended as a 'model' against which other states in the region shall measure their degree of democratic rule against, then I hold the opinion that researchers need to introduce a more complex and comprehensive set of indicators. These may reflect and highlight the politicization of the demos not only in Lebanon, but also in other states in the Middle East in order to highlight the particularly inclusionary and / or exclusionary conditions on which political participation rests upon. Through such an enlarged scope of analysis where membership aspects are juxtaposed against participation aspects we can discern important features that shed light on the constitution of the political order and the distribution of power in the polity which sustains and secures regime survival.

Writing in 1963, Max Rheinstein commented on the challenges facing new states in Africa:

Status of women and land tenure are but two topics of customary law with respect to which changes will have to be made. [...] But in many respects the customary rules of succession will have to be adapted to the conditions of modern society, including rules that, like those of Islam, constitute parts of sacred traditions. Reforms recently in such strictly Islamic countries as Morocco, Tunisia, or Egypt, indicate that the shari'a is not incapable of adaption to change.³⁸⁹

In my table pertaining to female citizenship, Morocco and Tunisia, and to a certain extent Egypt, currently represent the only three Arab states where female civil rights are individually based. One final conclusion to draw is that democratization can be seen as a dependent rather than an independent variable: the expansion of the demos by including female citizens as full members of the polity is a necessary though not a sufficient condition for the democratization of the polities in the Middle East. A focus on 'democratization' as an independent variable, operationalized by selecting variables such as electoral procedures, party structures or power-sharing formulas, does not necessarily lead to better governance in terms of more equitable distribution of power in a polity.

The status of women is a political cursor that reflects the *comprehensive* democratization of society. Female civil rights in the Middle East are not only 'women's issues'. The use of state power in institutionalizing and distributing civil rights among and between citizens in society reflects central issues of consent and dissent pertaining to how and in which ways power is organized and allocated within the polity. Seen from a state

³⁸⁹ Max Rheinstein, "Problems of law in the new nations of Africa," in *Old societies and new states: the quest for modernity in Asia and Africa*, ed. Clifford Geertz (New York: Free Press, 1963), 240.

formation perspective, Arab female citizens are, indeed 'the masses' in present-day Arab polities.

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ⁱ Under the rule of the revolutionary government in South Yemen (1967-1990) women obtained an independent and equal civil status with men in marriage and divorce through Law of the Family (Law no. 1, 1974). The law was abolished upon the unification of North and South Yemen in 1990 and the introduction of Law no. 20 regarding Personal Status in 1992. See Welchman, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy*: 160.

ⁱⁱ Regulations for the personal status of Muslims were formed in 1920 and a family law for Copts was formed in 1938. In 1955, dual judicial courts were abolished and the family law of Copts is promulgated by in secular courts. where civil judges apply – to a certain extent – Coptic family law. *Shari'a* based jurisdiction is, however, often applied either due to negligence, ignorance or repression by predominantly Muslim judges who can point at the '*shari'a*' stipulation in the Constitution

ⁱⁱⁱ In 2003 Iraq's at the time Governing Council passed Resolution 137 which aimed at abrogating the existing unified code of 1959. Welchman, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy*: 25. This Resolution is, at the time of writing, still 'at play'. Al-Ali and Pratt point that "[s]ince family law is not the preserve of central government and the wording of the constitution is substantially loose, this devolves authority to the regions to specify family law. [...] the current constitution enables a system in which women are not necessarily divided by sect that allows different regions of Iraq to implement different family laws." Nadjie Al-Ali and Nicola Christine Pratt, "The United States, the Iraqi women's diaspora and women's 'empowerment' in Iraq," in *Women and war in the Middle East: transnational perspectives*, ed. Nadjie Al-Ali and Nicola Christine Pratt (London: Zed Books, 2009), 89. The authors point further that "[t]his realizes the worst fears of many women's rights activists in that it opens the way for a Lebanese-type system, in which family law is governed according to respective membership of a religious sect." *Ibid.*, 88. See also "Women and the Law in Iraq," (December 2010), iilhr.org/documents/womenandlawiniraqEN.pdf.

^{iv} Sudan's 1991 family law codified in 1991 prevails in Northern Sudan after the establishment of the state of South Sudan in 2011. See Tønnessen, "Nye utfordringer til islamsk feminisme: Kvinneaktivismens mange ansikter i Sudan og Iran [New challenges to Islamic feminism: The multiple faces of women's activism in Sudan and Iran]."

^v Iran's Family Protection Law of 1967 was suspended with the Iranian revolution in 1979 and replaced with a conglomerate of transitional Islamized laws and *fatwas* that are deemed 'Islamic' by the Judicial Supreme Council. See an-Na'im, *Islamic family law in a changing world: a global resource book*: 108. According to Marianne Bøe, recent changes include art. 946 regarding rights of inheritance to widows changed in 2009. Deliberations concerning a draft law presented in 2007 are controversial and not likely to be promulgated in the near future (personal communication, 5 December 2011, forthcoming Ph.D. University of Bergen).

^{vi} Each of the 18 officially acknowledged religious denominations in Lebanon has independent jurisdiction in family law. A common institutional judicial framework for Christian denominations was established 1951 and a similar setup was established for Muslim denominations in 1962. Az-Zein, *qawanin wa qararat al-ahwal ash-shakhsiyya lil-tawa'if al-masihyya fi lubnan [Laws and regulations on personal status for Christian confessional groups in Lebanon]*; Aref Zeid Az-Zein, ed. *qawanin wa nusur wa ahkam al-ahwal ash-shakhsiyya wa tanthim al-tawa'if al-islamiyya fi lubnan [Laws and texts and rulings on personal status and the organization of Muslim confessional groups in Lebanon]* (manshurat al-halabi al-huquqiyya, 2003).

^{vii} A draft text on Palestinian code for personal status was presented in 2005 which is viewed by women's activists as limiting the civil rights of women and presenting a conservative profile which does not reflect the achievements and contributions of Palestinian women in the continuing national struggle for an independent Palestine. The draft law explicitly requires a guardians' consent in matters related to marriage which the "Chief Islamic Justice has explained as primarily protective of women" and includes a provision for judicial *khul'* "giving the judge a substantive role in assessing the need for such a divorce." See Welchman, *Women and Muslim family laws in Arab states: a comparative overview of textual development and advocacy*: 74, 119.

^{viii} Israel is defined as a semi-democracy due to ethnocratic dimensions in the legal system where Law of Nationality and Law of Return establish group-based civil rights exclusively for the state's Jewish citizens. See Anis F. Kassim, "The Palestinians: From hyphenated to integrated citizenship," in *Citizenship and the state in the Middle East: approaches and applications*, ed. Nils A. Butenschøn, Uri Davis, and Manuel S. Hassassian (Syracuse, N.Y.: Syracuse University Press, 2000), 210, 33. In 1992 the Basic Law of Human Dignity and Freedom was legislated. Swirski points that this law "came short of removing the main legal obstacle to the attainment of gender equality in Israel – the jurisdiction of religious courts in personal status matters" Barbara

Swirski, "The citizenship of Jewish and Palestinian Arab women in Israel," in *Gender and citizenship in the Middle East*, ed. Suad Joseph (Syracuse, N.Y.: Syracuse University Press, 2000), 320. On the institution of the 'get' and female civil rights in the Jewish family law in Israel, see Blecher-Prigat, "The interplay between tort law and religious family law: The Israeli Case".

Chapter 2

"The Lebanese Census of 1932 Revisited. Who are the Lebanese?," *British Journal of Middle Eastern Studies* 26, no. 2 (1999)

Chapter 3

"Tune in Religion, Turn on Pluralism, Drop Out Citizenship? Membership and Political Participation in Jordan, Kuwait and Lebanon," in *The Middle East in a Globalized World*, ed. Bjørn Olav Utvik and Knut Vikør (Bergen: C. Hurst & Co and Nordic Society for Middle Eastern Studies), 2000

Chapter 4

"Gender, family law and citizenship in Syria," *Citizenship Studies* 14, no. 5 (2010)

Chapter 5

"Female citizenship in the Middle East: Comparing family law reform in Morocco, Egypt, Syria and Lebanon 1990-2010," forthcoming in *Middle East Law and Governance*, Spring 2013.

Epilogue

Citizen Ship

by Patti Smith (*Wave*, 1979)

I was nothing. It didn't matter to me.
Ah, there were tags all over my sleeve.
There was water outside the windows
and children in the streets [] rats with
tags.

Ain't got a passport.
Ain't got my real name.
Ain't got a chance, sport,
at fortune and fame.
And I walk these endless streets,
won't you give me a lift.
A lift. A lift. On your citizen ship.

They were rioting in Chicago,
movement in L.A.
Sixty-eight it broke up the yardbirds.
We were broke as well.
Took it underground, M.C. borderline, up
against the wall.
The wall. The wall.
Show your papers, boy.

Citizen ship we got mem'ries.
Stateless, they got shame.
Cast adrift from the citizen ship,
lifeline denied, exiled this castaway.

Blind alley in New York City,
in a foreign embrace.
If you're hungry you're not too particular
about what you'll taste.
Men in uniform gave me vinegar,
spoon of misery.
But what the hell, I fell, I fell.
It doesn't matter to me.

Citizen ship we got mem'ries
Citizen ship, we got pain.
Cast adrift from the citizen ship,
lifeline denied, exiled this castaway.

I was caught like a moth with its wings
outta sync.
Cut the chord. Overboard. Just a refugee.
Lady liberty, lend a hand to me,
I've been cast adrift.
Adrift. Adrift. Adrift. Adrift. Adrift. Adrift.

On the citizen ship we got mem'ries
Citizen ship, we got pain.
Lose your grip on the citizen ship,
you're cast, you're cast away.
On the citizen ship you got mem'ry.
Citizen ship you got pain.
Citizen ship you got identity.
A name. A name. A name. . .

What's your name, son?
What's your name? . . .
What's your name? []
Nothing. I got nothing [].
Give me your tired, your poor
Give me your huddled masses
your wartorn []
Give me your wartorn and your []
Lift up your [] unto me.
Ah, mythology.

rebell! I would like you to rebell..
rebell at the east of [] and incense
rebell against history,
and vindicate the great imagination
do not be afraid of anybody,
for the sun is the graveyard of eagles
rebel against an east that sees you as prey on a bed

Nizar

ثُوري !. أحبّك أن تتُوري ..
ثُوري على شرق السبايا .. والتكايا .. والبخُورِ
ثُوري على التاريخ ، وانتصري على الوهمِ الكبيرِ
لا ترهبني أحداً. فإنّ الشمسَ مقبرةُ النسورِ
ثُوري على شرقِ يراكِ وليمةٌ فوقَ السريرِ ..
نزار

(٢)

I am a female ..
I am female
The day I arrived to this world
I obtained my execution sentence
I did not see the door of my court
I did not see the face of my judges

أنا أنثى ..
أنا أنثى
نهاراً. أتيتُ للعُدنيا
وجدتُ قرارَ إعدامي
ولم أرَ بابَ محكمتي
ولم أرَ وجهَ حُكّامي

Nizar Qabbani: *thuri* [Rebell] and *ana untha* [I am a female], both excerpts are found in *yawmiyyat imara'a la-mubaliya* [Diary of an indifferent woman], first issued in 1968. They are here reprinted from the compilation *al-mal as-shi'riyya al-kamila*, part 1, manshurat Nizar Qabbani, Beirut, n.d., p. 573 (*thuri*) and 585 (*ana untha*), my (rather incomplete and hasty) translation.

Nizar Qabbani (b. 1923 – d. 1998) was a Syrian poet who served as ambassador to China for several years and lived large parts of his life in Beirut. Among the most revered poets in the Arab world, he holds a bachelor's degree in law from the University of Damascus from 1945. When Nizar was 15, his sister who was 25 at the time, committed suicide because she refused to marry a man she did not love. *yawmiyyat imara'a la-mubaliya* [Diary of an indifferent woman] consists of 36 paragraphs that were read to me by my father in the courtyard on 19 August 2012 while my mother was gardening.



Naji al-Ali, *ar-risha al-qatila* [The lethal quill] drawing, poetry by Mahmoud Darwish.

Postcard issued by the Egyptian solidarity Committee with Palestinian People, 30.3. – 2.4.1984

Naji al-Ali (b. 1938 – d. 1987) is a Palestinian political cartoonist, born in the village of al-Shajara in the vicinity of Nazareth. At the age of ten his family fled to Lebanon and he grew up in the Ain el-Hilwe refugee camp in Sidon. His work is rendered in Arabic media, and he is still cherished, loved and honored by Arabs all over MENA. Naji was killed by still unknown murders outside the premises of the London offices of the Kuwaiti newspaper *al-Qabas*.

Mahmoud Darwish (b. 1941 – d. 2008) is a Palestinian poet, renowned for his voice as part of the Palestinian national struggle. Born in al-Birwe near Haifa, he fled his village together with his family in 1948, but they returned a year later and settled in Deir al-Asad in the Galilee. The text around the drawing reads (my quite hasty translation): "I lost a beautiful dream, I lost the print of [zanabeq, lillies?], my night was long, at the fences of gardens. And I did not lose the purpose. And I did not lose the purpose."

