

AGENCY FOR INTERNATIONAL DEVELOPMENT WASHINGTON, D. C. 20523 <b>BIBLIOGRAPHIC INPUT SHEET</b>	<b>FOR AID USE ONLY BATCH 76</b>
---	--------------------------------------

<b>1. SUBJECT CLASSIFICATION</b>	<b>A. PRIMARY</b> <b>Population</b>	<b>PA00-0000-6710</b>
	<b>B. SECONDARY</b> <b>General--Lebanon</b>	

<b>2. TITLE AND SUBTITLE</b> <b>Law and population in Lebanon</b>
--

<b>3. AUTHOR(S)</b> <b>Dib, G.M.</b>
---

<b>4. DOCUMENT DATE</b> <b>1975</b>	<b>5. NUMBER OF PAGES</b> <b>52p. 56p.</b>	<b>6. ARC NUMBER</b> <b>ARC</b>
--	---	------------------------------------

<b>7. REFERENCE ORGANIZATION NAME AND ADDRESS</b>
---

<b>Tufts</b>
--------------

<b>8. SUPPLEMENTARY NOTES (Sponsoring Organization, Publishers, Availability)</b>
---

<b>(In Law and Population monograph ser.no.29)</b>
--

<b>9. ABSTRACT</b>
--------------------

<b>10. CONTROL NUMBER</b> <b>PA-AAF-173</b>	<b>11. PRICE OF DOCUMENT</b>
<b>12. DESCRIPTORS</b>  <b>Law</b> <b>Lebanon</b>	<b>13. PROJECT NUMBER</b>
	<b>14. CONTRACT NUMBER</b> <b>CSD-2810 GTS</b>
	<b>15. TYPE OF DOCUMENT</b>

USD-2810 GTS  
TUFTO

Law and Population Monograph Series  
Number 29 (1975)

PN-AAF-173

# Law and Population in Lebanon

By George M. Dib



Law and Population Programme  
**THE FLETCHER SCHOOL OF LAW AND DIPLOMACY**  
Administered with the Cooperation of Harvard University  
Tufts University  
Medford, Massachusetts

50

### **Law and Population Book Series**

- 1/ *Population and Law*, Luke T. Lee and Arthur Larson (eds.) (Leyden: A. W. Sijthoff; Durham, North Carolina: Rule of Law Press, 1971).
- 2/ *International Migration Law*, Richard O. Plender (Leyden: A. W. Sijthoff, 1972).
- 3/ *Population in the United Nations System: Developing the Legal Capacity and Programs of UN Agencies*, Daniel G. Partan (Leyden: A. W. Sijthoff; Durham, North Carolina: Rule of Law Press, 1973).
- 4/ *World Population Crisis: The United States Response*, Phyllis T. Piotrow (New York: Praeger, 1973).
- 5/ *Human Rights and Population: From the Perspectives of Law, Policy and Organization* (Medford, Massachusetts: Law and Population Programme, 1973).
- 6/ *The Abortion Experience*, Howard J. Osofsky and Joy D. Osofsky (eds.) (New York: Harper & Row, 1973).
- 7/ *The United Nations and Population: Major Resolutions and Instruments* (New York: United Nations Fund for Population Activities, 1974).
- 8/ *Le Droit et la Croissance de la Population en Roumaine*, Ioan Ceterchi, Victor D. Zlatescu, Ioan M. Copil, and Petre Anca, (Bucarest: Commission Nationale de Démographie de la République Socialiste de Roumaine, 1974).
- 9/ *Law and Population in the Philippines* (Medford, Massachusetts: Law and Population Programme, 1974).
- 10/ *La Ley y la Población en Colombia*, Oscar Lopez Pulecio (Medford, Massachusetts: Law and Population Programme, 1975).
- 11/ *Symposium on Law and Population: Proceedings, Background Papers and Recommendations* (New York: United Nations Fund for Population Activities, 1975).

### **Law and Population Monograph Series**

- 1/ *Law and Family Planning*, by Luke T. Lee (1971).
- 2/ *Brief Survey of U.S. Population Law*, by Harriet F. Pilpei (1971).
- 3/ *Law and Population Growth in Eastern Europe*, by Peter B. Maggs (1972).
- 4/ *Legal Aspects of Family Planning in Indonesia*, by the Committee on Legal Aspects of the Indonesian Planned Parenthood Association (1972).
- 5/ *Law and Population Classification Plan*, by Morris L. Cohen (1972).
- 6/ *Law, Human Rights and Population: A Strategy for Action*, by Luke T. Lee (1972).
- 7/ *Population in the UN System: Developing the Legal Capacity and Programs of UN Agencies*, by Daniel G. Partan (a summary of a book, see item 3 above.) (1972).
- 8/ *The World's Laws on Voluntary Sterilization For Family Planning Purposes*, by Jan Stepan and Edmund H. Kellogg (1973).
- 9/ *Law and Population Growth in Singapore*, by Peter Hall (1973).
- 10/ *Law and Population Growth in Jamaica*, by Robert C. Rosen (1973).
- 11/ *Law and Population Growth in the United Kingdom*, by Diana M. Kloss and Bertram L. Raisbeck (1973).
- 12/ *Law and Population Growth in France*, by Jacques Doublet and Hubert de Villedary (1973).
- 13/ *Medical Considerations for Legalizing Voluntary Sterilization*, by F. I. D. Konotey-Ahulu, M.D. (1973).
- 14/ *Brief Survey of Abortion Laws of Five Largest Countries*, by Luke T. Lee (1973).
- 15/ *Anti-Contraception Laws in Sub-Saharan Francophone Africa: Sources and Ramifications*, by Bernard Wolf (1973).
- 16/ *International Status of Abortion Legalization*, by Luke T. Lee (1973).
- 17/ *The World's Laws on Contraceptives*, by Jan Stepan and Edmund H. Kellogg (1973).
- 18/ *Population and the Role of Law in the Americas, Proceedings of a Seminar of the Human Rights Committee at the 18th Conference of the Inter-American Bar Association* (1974).

*Continued on inside back cover*

This monograph is one in a continuing series published under the auspices of the Law and Population Programme, the Fletcher School of Law and Diplomacy. / The Law and Population Programme and its field work are supported in part by the International Planned Parenthood Federation, the United Nations Fund for Population Activities, and the U. S. Agency for International Development, among others. The Programme is under the general direction of an International Advisory Committee on Population and Law, whose members are listed at the end of this monograph. / The conclusions and opinions of this monograph are the sole responsibility of the author, and do not necessarily reflect those of the Law and Population Programme, the Fletcher School, or any of the supporting agencies. / Printed in the U.S.A.

**LAW AND POPULATION IN LEBANON**

**George M. Dib\***

**\*Professor of International Law at the Faculty of Law, Lebanese University.**



## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION . . . . .	1
II. LAWS DIRECTLY AFFECTING FERTILITY . . . . .	4
A. Sterilization . . . . .	4
B. Abortion . . . . .	5
C. Contraception . . . . .	8
III. BACKGROUND TO UNDERSTANDING THE FAMILY LAW . . . . .	11
IV. FAMILY LAW RELATING TO MARRIAGE . . . . .	15
A. Entry into Marriage . . . . .	15
1. Restrictions and Prohibitions . . . . .	15
a. The Catholic Communities . . . . .	15
b. The Greek Orthodox . . . . .	16
c. The Armenian Orthodox . . . . .	17
d. The Syriac Orthodox . . . . .	17
e. The Protestants . . . . .	18
f. The Jewish Community . . . . .	18
g. The Moslem Communities . . . . .	19
2. Age Restrictions . . . . .	20
3. Consent Requirements . . . . .	21
a. Soundness of Mind . . . . .	21
b. Absence of Legal Defects . . . . .	21
c. Conditional Consent . . . . .	22
d. Consent of Parents . . . . .	23
4. Waiting Periods, Public Notice, and Registration . . . . .	23
5. Polygamy . . . . .	25
B. Termination of Marriage . . . . .	25
1. Divorce . . . . .	25
a. Catholic Communities . . . . .	25
b. The Orthodox Communities . . . . .	26
c. The Protestant Community . . . . .	27
d. The Jewish Community . . . . .	27
e. Moslem Communities . . . . .	27

	<u>Page</u>
2. Separation . . . . .	28
3. Annulment . . . . .	30
4. Alimony and Child Support . . . . .	31
 V. FAMILY LAW RELATING TO CHILDREN AND OBLIGATIONS OF PARENTS . . . . .	 33
A. Breast-Feeding . . . . .	33
B. Child Care . . . . .	33
C. Guardianship . . . . .	34
D. Expenses . . . . .	34
E. Illegitimacy . . . . .	35
 VI. CHILD LABOR . . . . .	 36
 VII. PUBLIC WELFARE . . . . .	 37
A. Family Allowances and Maternity Leaves . . . . .	37
B. Old-Age, Retirement Benefits, and Labor Protection . . . . .	38
C. Civil and Human Rights . . . . .	39
 VIII. CONCLUSIONS AND RECOMMENDATIONS . . . . .	 41
A. Sterilization . . . . .	43
B. Abortion and Contraception . . . . .	44
C. Minimum Marriage Age . . . . .	45
D. Minimum Working Age and Compulsory Education . . . . .	46

## LAW AND POPULATION IN LEBANON

### I. INTRODUCTION

This work covers two concurrent studies: One is a compilation of laws (including judicial decisions and administrative decrees), using the "Law and Population Classification Plan" prepared by Morris Cohen for the Fletcher School of Law and Diplomacy; the other is a sociological study, including a description of family planning practice and the extent to which behavior is influenced by law, particularly in the areas of voluntary sterilization, abortion, contraception, minimum marriage age, maternity leaves, family allowances, minimum working age and education. This sociological study is based upon a survey of 201 Lebanese families resident in a Bourj-al-Brajini, a suburban area of Beirut. In addition, there are conclusions and recommendations with regard to what might be done to change laws or the interpretation of laws in Lebanon.

A brief discussion of the development of the study plan is in order. The original plan for studying the effect of law on family planning practice was to conduct 200 interviews with leading citizens (politicians, judges, lawyers, policemen, students, etc.) to ascertain their views on the relationship between laws and family planning behavior. However, as the work of compiling the laws progressed, it became apparent how very limited knowledge is in this area. A direct relationship seems clear with regard to laws on sterilization, abortion and contraception, but not with regard to laws governing marriage, divorce, polygamy, inheritance, etc. It should also be noted that in Lebanon each religious sect has its own laws on personal status. We may ask whether Sunni Moslem families are larger than Christian families because the minimum marriage age for Sunni girls is nine, while the minimum marriage age for Christian girls is fourteen or because in inheritance law the share of one boy equals the share of one girl for Christians, while the share of two girls equals the share of one boy for Moslems? The effect of economic benefits such as maternity leaves and family allowances is also uncertain.

Thus, it became obvious that, in addition to a compilation of laws, there should be a study to test the hypothesis that these laws do influence family planning behavior, although this influence may vary among different countries and laws.

The original plan to interview two hundred leading citizens was changed to a plan to study a sample of families (201) in Bourj-al-Brajini. With the help of Professor Fuad Khuri, Chairman of the Department of Sociology and Anthropology at the American University of Beirut, and after consultation with a demographer, a research methodologist, a medical doctor, and people trained in field work, a pre-coded questionnaire was developed to measure factors, other than law, which seem to influence family planning behavior, such as income, level of education, occupation and religion. (A copy is an appendix to this study.) The use of this



questionnaire in Bourj-al-Brajini served as a pilot study for purposes of developing a larger study not reported on here.<sup>1</sup>

It is important to stress that because of the size and composition of the sample, the findings of this pilot study cannot be generalized to the total Lebanese population.

Some description of the study population is now appropriate. About 75 per cent have always lived in Bourj-al-Brajini. The rest were immigrants who settled in the area recently. The distribution by religion was as follows:

Moslem:	Shiite	51
	Sunni	16
Christian:	Maronite	19
	Other	14
Total		<u>100</u>

The level of education of both men and women was relatively low. Over half of the husbands interviewed and a third of the wives had had some education but had not been educated beyond elementary level. With respect to both husbands and wives, only one per cent of the total had had any college education and two per cent had had no schooling. Twenty per cent of the children were not currently attending school; their parents said that they could not afford to educate them.

Very few of the women in the population were employed outside the household. Men's occupation varied: 37 per cent were self-employed entrepreneurs; 19 per cent were in skilled services and 14 per cent in unskilled services. Only 6 per cent were employed in jobs such as civil administration and private management. The remaining twenty-four per cent were in other occupations.

The annual family income of the 201 families interviewed was relatively low.

Most of the married respondents had been married only once. Only one case of polygamous marriage was recorded. About one-third of the marriages were endogamous (marriage of related individuals); nine per cent were parallel cousin, 12 per cent cross-cousin, and the rest were between more distant relatives.

The number of pregnancies, births and living children varied between one and nine. The average number of living children was four. Among those

---

<sup>1</sup>On the basis of this pilot study a grant was received from the Ford and Rockefeller foundations for further investigation of the relationship between family law and fertility among the four major religious sects in Lebanon.

currently married, about 63 per cent of the men and 83 per cent of the women wanted three to five children. Fifteen per cent of the men and 2 per cent of the women desired seven or more children.

Almost two-thirds of the female respondents were using some method of contraception.<sup>2</sup> Twenty-seven per cent were using either withdrawal or the rhythm method; 18 per cent were taking the pill; and 11 per cent were using the condom, diaphragm or vaginal aspros. Very few were using the IUD. Most of the women said they had heard of three to five contraceptive methods, often from their discussions with friends, neighbors or husbands. Few of the women had heard about contraception from doctors. This finding is consistent with what one would expect because of the law which forbids doctors to instruct their patients on the use of contraceptives. It is also consistent with the fact that in Lebanon neither males nor females receive any population or sex education in school.

---

<sup>2</sup>This is an unusually high proportion for Lebanon and almost definitely is a reflection of the fact that Bourj-al-Brajini was one of the few areas served by an active local family planning clinic.

## **II. LAWS DIRECTLY AFFECTING FERTILITY**

### **A. Sterilization**

There is no state law which regulates sterilization in Lebanon. Therefore, the position of the law in relation to sterilization is permissive on the ground that what is not prohibited by law is permitted.

Sterilization is practiced, and since 1970 the Family Planning Association has been running a sterilization program with the cooperation of a major hospital in Beirut. An interview with the doctor responsible for this program revealed that 500 sterilizations were carried out during the years 1971 and 1972. Certain conditions have to be met before an operation of this kind can be performed. These are:

1. Both husband and wife must give consent in writing.
2. The interval between the first visit to the clinic and the actual operation must be at least one month.<sup>3</sup>
3. The wife must be over age 30 and have three or more children.

Of the 500 patients operated upon in the hospital, 493 were females and 7 were males. All the males were Westerners--a fact which could be expected on the basis of the findings of the Bourj-al-Brajini study. Some data from this study on attitudes toward sterilization are the following:

1. In this study no wives and only eight per cent of husbands said they would like their spouses to be sterilized. Nearly half of the respondents disapproved of sterilization altogether. However, their reasons for disapproval varied. Wives were most likely to disapprove for health reasons, but husbands for religious reasons, e.g., "absolutely forbidden."

2. Moslems were more likely to disapprove of sterilization than were Christians, with Moslem husbands disapproving generally for religious reasons and Christian husbands for health reasons. There was not much difference among wives by religion.

3. Female opinion on sterilization was related to level of education. Women with secondary or higher education were more likely than others to approve of it. Male opinion, on the other hand, was unrelated to educational level but showed some relationship to wives' education. Men whose wives had only elementary education were more likely to disapprove of sterilization on religious grounds than were others. Husbands whose wives had had an intermediate or secondary education were more likely than others to base their disapproval on health reasons.

---

<sup>3</sup>This allows enough time for careful consideration by the patient, particularly after being told during the first visit that the operation is irreversible.

4. There was some variation in attitudes towards sterilization according to occupation. Men employed in unskilled jobs tended to disapprove of sterilization, while men employed in skilled jobs and civil administration tended not to express any strong opinions either for or against it. This would seem to be due in part to education differences. The inadequacy of the data prevents any conclusions about the influence of family income on attitudes towards sterilization.

5. Frequency and type of marriage didn't seem to influence male opinion. Women in endogamous marriages, however, were more likely to disapprove of sterilization than other women.

## B. Abortion

Abortion is governed by eight articles in the Penal Code which make abortion illegal. However, a 1969 Presidential Decree permits abortion if it is the only means of saving the life of the pregnant woman. The following are the texts of the relevant articles:

### Penal Code<sup>4</sup>

Article 539--All propaganda carried out through one of the means specified in Article 209, second and third paragraphs,<sup>5</sup> for the purposes of propagating or facilitating the use of abortive practices, shall be punished by imprisonment from two months to two years and by a fine of fifty to two hundred and fifty Lebanese pounds.

Article 540--The same punishment shall be inflicted upon whoever sells, displays, or holds for the purpose of selling, objects aimed at producing abortion or who facilitates using them by any means.

Article 541--Any woman who, by whatever means, whether utilized by herself or a third person with her consent, aborts herself, shall be punished by imprisonment from six months to three years.

Article 542--Whoever aborts, or attempts to abort, a woman with her consent by whatever means, shall be punished by

---

<sup>4</sup>Legislative Decree No. 340/NI, issued on March 1, 1943 and put into effect on October 1, 1943.

<sup>5</sup>For the text of these two paragraphs, see the section on contraception, pp. 8-10.

imprisonment from one to three years. If the abortion or the methods leading to the abortion result in the death of the woman, the abortionist shall be sentenced to hard labour from four to seven years. The punishment shall be imprisonment from five to ten years if the death was caused by methods more dangerous than those which the woman accepted for the purpose of abortion.

Article 543--Whoever deliberately causes the abortion of a woman without her consent shall be sentenced to hard labour for at least five years. If the woman dies as a result of the abortion or the means utilized for that purpose, the punishment shall not be less than ten years.

Article 544--Punishments provided for in Articles 542 and 543 shall be applied even if the woman who was subjected to abortive practices was not pregnant.

Article 545--The woman who aborts herself to save her honour, and the guilty person under Articles 542 and 543 who acts with the purpose of saving the honour of his descendant or relative to the second degree, shall benefit from a mitigating excuse.

Article 546--If any of the crimes mentioned in this section were committed by a doctor, surgeon, midwife, drugstore keeper, pharmacist, or by any of their employees, whether as a principal or accessory, the punishment shall be increased by the application of Article 257. The punishment shall be the same if the committor of the crime habitually sells pharmaceutical products or objects meant to procure abortion. In addition, the criminal shall be forbidden to practice his profession or activity even if this required no certificate or licence authorization. The closing of the place of business may also be ordered.

Presidential Decree No. 13187<sup>6</sup>

Article 31--The performance of abortion is legally forbidden. Where abortion may be medically desirable without prejudice to religious convictions, it may be performed only subject to the following conditions and reservations:

1. That abortion shall be the only means of saving the mother whose life is in grave danger.
2. That the attending physician or surgeon shall consult two physicians who jointly give their approval by signing, after medical examination and consultation, four copies of a statement

---

<sup>6</sup>Issued on October 20, 1969 and entitled "Ethics of the Medical Profession."

to the effect that it is possible to save the life of the mother only through abortion. A copy of this statement shall be given to the attending physician; a copy shall be kept by the patient; and a copy shall be given to each of the two consulting physicians. A record containing a statement of the facts, excluding the name of the patient, shall be sent to the President of the Physician's Association.

Abortion shall not be performed except with the approval of the pregnant woman after she has been informed of her situation.

In the case where a pregnant woman is in a very dangerous condition and unconscious, and an abortion is necessary to save her life, the physician shall perform it in spite of the opposition of her husband or relatives.

If the physician's religious conviction does not allow him to recommend an abortion or to perform it, he may withdraw and let a colleague, a specialist, continue the treatment of the pregnant woman.

Article 32--The physician shall act as he deems fit, in accordance with medical procedures, in the interests of the mother and child during the prolonged or abnormal delivery without being influenced by family considerations.

A question may arise as to the exact position of the law in the face of this conflict between the Penal Code and the Presidential Decree. There are two possibilities: one possibility is to discard the Presidential Decree in favor of the Penal Code, thus making abortion illegal under any and all circumstances. The second possibility is to ask for an advisory opinion from the Conseil d'Etat as to whether the Presidential Decree contradicts the Penal Code or is a correct interpretation of it. To date, no advisory opinion has been requested.

It is submitted here that the Presidential Decree is not inconsistent with the Penal Code in that the Code provides in Article 229 an exception to punishment for the act of killing in the case of killing done to protect a life. It is a reasonable inference that this exception could also be applicable to an act of abortion.<sup>7</sup>

The pilot study in Bourj-al-Brajini found the following in regard to

---

<sup>7</sup>Article 229 states that: "The doer of an action shall not be punished under this law for that action to which necessity made him resort for the purpose of defending his life or the lives of others or for the purpose of defending his property or the property of others against a great imminent danger which he himself did not purposely cause, provided that the action is commensurate with the danger."

**opinion on abortion:**

1. Less than 8 per cent of the population openly stated that they approved of abortion under one or more circumstances. Most of the population expressed strong disapproval of abortion on religious grounds. Only 4 per cent gave as their reason the danger to a woman's health. It is possible, however, that the respondents' answers on this topic may have reflected the community's normative position more than real individual opinion.

2. A higher proportion of Christians than Moslems was among the 8 per cent who approved of abortion. The Moslems tended to approve of abortion to save a woman's life and health or to prevent defective births. The latter ground is not covered by the Presidential Decree, and it probably reflects a problem related to the Islamic law's acceptance of consanguinous marriages. Such marriages increase the probability of defective births. In fact, respondents whose marriages were endogamous were more likely to approve of abortion than those whose marriages were exogamous.

3. Approval of abortion was only expressed by respondents who were relatively well-educated. Among the women who expressed disapproval, those with little education tended to give religious reasons for their position, while the more educated were more likely to give health reasons.

4. Reasons for disapproval were also related to number of pregnancies. Couples with fewer than four pregnancies tended to cite health risks, while others were more likely to give religious reasons. This probably reflects the social influences mentioned before.

5. Neither occupation nor family income showed any relationship to attitudes towards abortion.

**C. Contraception**

Contraceptives are regulated by Articles 537 and 538 and paragraphs 2 and 3 of Article 209 of the Penal Code, as follows:

Article 537--Whoever uses one of the methods mentioned in paragraphs 2 and 3 of Article 209 to prescribe, or spread the means of, contraceptives, or whoever attempts to propagandize these methods for the purpose of preventing pregnancy shall be punished by imprisonment from one month to one year and by a fine of 25 to 100 Lebanese pounds.

Article 538--The same punishment shall be inflicted upon whoever sells or offers to sell, or whoever stocks for the purpose of selling any means of contraceptives or whoever facilitates their use through whatever method.

Article 209--The following are considered means of publicity:

1. . . . .
2. Talking or shouting whether made by people or transformed

through mechanical machines in such a way as to be heard, in both cases, by those who have nothing to do with the act.

3. Writings, drawings, pictures made by hand, photographs, films, symbols, and all kinds of illustrations, if displayed in public places, or open places, or sold, or offered to be sold, or distributed to one person or more.

As indicated by the above text, the wording of the law on contraception is very restrictive. Nevertheless, it was observed in the Bourj-al-Brajini study that over one-half of the couples had used some method of contraception. Twenty-seven per cent had used withdrawal or rhythm, 18 per cent the pill, and 11 per cent the condom, diaphragm, IUD or vaginal tablets. Several methods of contraception--pills, condoms and vaginal aspro--are sold in pharmacies without prescription. Pills are also distributed free by the Family Planning Association at its central headquarters and nine clinics. Pamphlets on the use of contraceptives are also distributed widely by the Association.

How does this almost totally uncontrolled contraceptive business--importing, distributing, selling, and propagandizing--manage to operate under such a prohibitive law? The circumvention of the law began on a large scale only in 1969. In that year the International Planned Parenthood Federation donated 25,000 boxes of Eugynon pills to the Lebanese Family Planning Association. The gift was confiscated at the customs on the grounds that the law forbids the import of such products. After all means of releasing the Eugynon from customs had been attempted without success, the Family Planning Association submitted to the Minister of Health an official request for his approval of the release from customs of 25,000 boxes of the "medicament," Eugynon, to be used for the regulation of the menstrual cycle of women. The following was the answer of the Minister of Health:

TO: The Family Planning Association in Lebanon.

SUBJECT: Request to Import Medicaments.

With reference to your request mentioned above, this Ministry wishes to inform you that it approves, as an exception, your request to import 25 thousand boxes of the medicament, Eugynon, being a gift given to your Association by the International Planned Parenthood Federation, on the condition that it will be distributed gratis by the clinics of your Association, within the rules laid down by (Ministerial) Decree No. 340/1 dated 10/10/1968 which relates to this type of medicament.

Signed

Minister of Health

The Eugynon gift was released and distributed with a leaflet in each box that listed medical and psychological contraindications, as required



by the Decree.

Since that date the Family Planning Association has been submitting the same request to the Minister of Health, and the Minister has reissued the reply, changing only the dates. There have been five Ministers of Health since then, and all of them have followed the same procedure.

Dealers in medicaments were quick to grasp the new opportunity. In the lists of medicaments they submit to the Ministry of Health for importation approval they include all types of contraceptive pills but describe them as medicaments rather than as contraceptives. The Ministry of Health has approved these lists. The whole procedure has become automatic.

The Bourj-al-Brajini data on attitudes toward the contraceptive pill were as follows:

1. Over half of the respondents approved of it. The rest disapproved primarily because they believed that it is dangerous. A few disapproved on religious grounds.
2. Opinions varied by age. The younger the respondent, the more he or she tended to favor the pill. Men under forty-nine and women under forty-four years of age, if they disapproved, usually gave health reasons, while the older men and women gave religious reasons.
3. With regard to religion, the Christians consistently disapproved. Among the Moslems the men disapproved, but the women on the whole approved.
4. With regard to education, men with a high level were more likely to approve of the pill than other men. Women's approval showed no relationship to education but showed an inverse relationship to parity.
5. Level of income and type of marriage were unrelated to opinions about the pill.

### **III. BACKGROUND TO UNDERSTANDING THE FAMILY LAW**

Family law or personal status law as it is called in Lebanon is a system of laws enacted by the competent authorities of each religious sect to regulate the personal status of its own followers. There are seventeen religious sects, and with the exception of the Nestorians there is a different system of family laws for each. The Nestorians do not have a family law of their own because of their small population size. The sects are as follows:

#### **1. Christians**

##### **a. Eastern Catholics**

Maronites	(1)
Roman Catholics	(2)
Armenian Catholics	(3)
Syriac Catholics	(4)
Latins	(5)
Chaldeans	(6)

##### **b. Christians of the Eastern Rite**

Greek Orthodox	(7)
Armenian Orthodox	(8)
Syriac Orthodox	(9)
Nestorians	(10)

##### **c. Protestants (11)**

#### **2. Moslems**

The Sunni	(12)
The Shiite	(13)
The Druze	(14)
The Alawite	(15)
The Ismalite	(16)

#### **3. Jews (17)**

The 1926 Constitution guarantees respect for the systems of laws enacted by each religious sect relating to the personal status of its followers (Article 9) and to the establishment of private educational institutions (Article 10). Decree No. 60/L.R. of March 13, 1936 promulgated by the then French High Commissioner de Martel reaffirmed and added to the prerogatives of the religious sects. The Decree granted to the sects, among other things, the right to establish and organize their own religious courts, as well as the right to formulate their own systems of family law. Lebanese who did not belong to one of the sects recognized

by the Decree were made subject to a civil family law (a family law to be enacted by the state).<sup>8</sup> Articles 5 and 6 of the Decree required the sects to submit their systems of laws to the state for approval and provided that the state would give its approval if the systems of laws submitted were constitutional, conformed to public ethics and did not disturb public order.

The Decree met with strong opposition by all religious sects on the grounds that it provided for the enactment of a civil family law. In addition, the Moslems' opposition was the strongest because they believed that the requirement of approval by the state was interference by the state in their internal, religious affairs. Consequently, the state issued Decree No. 53/L.R. of March 30, 1939, stating that Decree No. 60/L.R. of March 13, 1936 was not applicable to Moslems.

With respect to the Moslems no new legal instruments were issued until November 4, 1942, when a legislative Decree No. 241 of 4/11/1942 was promulgated to regulate the establishment of Moslem religious courts and their jurisdiction and procedure. However, the decree was modified in 1946 and then abrogated altogether and was replaced by the law of July 16, 1962. Article 242 of the new law of 1962 adopted Article 111 of the Legislative Decree No. 242 of 4/11/1942.<sup>9</sup> With respect to the Druzes, a new family law was promulgated for them on February 24, 1948.

In regard to the Christian sects and the Jews, no new legal instrument was issued until the law of April 2, 1951. Under this law, the area of jurisdiction of the Christian and Jewish laws included marriage and all matters related to it, e.g., engagement, divorce, separation, annulment, adoption, tutelage, etc. The law of inheritance, however, was put outside their jurisdiction. The 1951 law was met with very strong opposition. Violent demonstrations, backed by religious authorities, took place in major cities protesting that the new law undermined the religious sects by limiting their field of jurisdiction. On the other hand, lawyers went on a strike which lasted for three months protesting against the law on the ground that it gave the religious authorities too much jurisdiction and was therefore reactionary and against the spirit of the age.

Article 33 of the 1951 law is of relevance. Under this article all Christian and Jewish sects were requested to submit their systems of family

---

<sup>8</sup>It is of importance to mention here that the promised civil family law never came into existence for reasons which will be given later.

<sup>9</sup>Article 111 of the Decree revived the Ottoman Family Code of October 25, 1917. This Code was enacted just before the fall of the Ottoman Empire and the withdrawal of the Turks from the Arab countries. For this reason, the Code was never put into effect, until the Decree No. 241 of 4/11/1942 revived it.

law and the structure of their religious courts within one year, and the state would make a decision regarding approval of these legal systems within six months after the end of the year. With the exception of the Nestorians, all the sects complied, but the government has not yet given its approval. Nevertheless, religious authorities have continued to apply their laws.

The question as to whether these legal systems have the force of a public law without approval by the government was taken to the High Court of Appeals. The verdict was that these systems are a codification of the customs and traditions by which each religious sect has always bound itself and, therefore, that they have the force of public law in so far as they do not conflict with the Constitution or disturb public order.

It has become clear now that there is a basic difference between the attitude of Moslems and Christians towards family law. For the Christians as well as the Jews, family law is essentially the outgrowth of religious doctrines. That is, only religious authorities have the right to modify, change or enact a new family law. The role of the state is so secondary that its approval has become a mere formality, the absence of which does not make the current family law of the Christians any less enforceable. Furthermore, in the case of the structure of the courts, the state role is completely absent. Christian and Jewish religious courts are formed and dissolved by the religious authorities; judges are also appointed and dismissed by the religious authorities; expenses incurred by these courts are met by funds (called WAQF Funds) held in common by each religious sect. This situation explains a peculiar fact which is that decisions taken by religious courts in Lebanon are subject to appeal to higher religious courts outside Lebanese territory.

In the Moslem family law the role of the state is more important. The law is religious law legislated by the state. The Parliament has the right to modify, change or enact new family laws. Similarly, Moslem religious courts are established and dissolved by Parliament, and as such, they are a part of the judicial system of the state. Judges sitting on the bench of Moslem religious courts are appointed by the state, and the budget for these courts is a part of the state budget. The Moslems have never complained about this situation. The reason is not difficult to see. Islam has never differentiated between temporal power and divine power. The Caliph was always the political as well as the religious leader. It was the Caliph of the Ottoman Empire, as the political and the religious leader of the Moslems, who promulgated in 1917 the Ottoman Family Code which was adopted and readopted by the Parliament of Lebanon as the family law for the Moslems. Christian history, on the other hand, centered around the struggle between church and state. Therefore, while Moslems accepted the state acting as a legislator of their religious affairs,<sup>10</sup> Christians

---

<sup>10</sup>The protest of Moslems against Decree No. 60/L.R. of 13/3/1936 was not against the role of the state as much as it was against France, the mandatory power, legislating for Moslems in their religious affairs.

tended to resist this. This observation is of great relevance for understanding the evolution of family law in the countries of this area. For countries with a Moslem population, or a majority of Moslems, the state was able to introduce progressive changes into their system of family law, as for example, the abolition of polygamy and the raising of the minimum marriage age. However, in Lebanon the state could not play this role, and no major changes have been introduced into the family law either for Christians or Moslems.

#### IV. FAMILY LAW RELATING TO MARRIAGE

##### A. Entry into Marriage

##### 1. Restrictions and Prohibitions

##### a. The Catholic Communities

Marriage for the Catholic communities is regulated by the family law of 1951, which is common to all the Eastern Catholics,<sup>11</sup> and by the "Matu Proprio, Crebrae Allatae, of 22 February 1949" with regard to the discipline of marriage in the Eastern church.<sup>12</sup> The second document was issued by Pope Pius XII under the title "The Sacrament of Marriage," and it is composed of 131 Canons. These two legal instruments describe prohibitions against marriage as follows:

1) Canon 48 of the Sacrament of Marriage states that marriage is prohibited for the Christian who vows, either temporarily or permanently, to live a life of chastity, celibacy or virginity. This is called a simple vow of chastity to distinguish it from the ceremonial vow which involves a religious ceremony in church. The simple vow of chastity can be repudiated by the granting of a dispensation.

2) Canon 49 states that adoption and guardianship form two prohibitions in marriage, if the civil law of the country in question considers them as such. Lebanese civil law does not state whether adoption and tutelage are prohibitions of marriage.

On the other hand, Article 111 of the family law for Eastern Catholic communities does state that adoption gives rise to a legal kin-relationship between the adoptor and the adopted which prohibits marriage between them or their descendants.

3) Marriage between a Catholic and a Christian non-Catholic is prohibited. Dispensation can be granted if the non-Catholic party to the marriage declares his willingness to help the Catholic party to keep his or her faith and if both parties to the marriage declare their intention to baptize their children and bring them up according to the teachings of the Catholic Church (Canon 50).

4) Prohibitions relative to age: Marriage of a man less than 14 or a woman less than 12 cannot be validated by dispensation. Canon 57 states that the minimum age for marriage is 16 for men and 14 for women. The age can, however, be reduced two years by a dispensation granted by the archbishop. Such a dispensation is limited to cases of extreme necessity,

---

<sup>11</sup>See p. 12 supra.

<sup>12</sup>The texts of both documents are in Documents Huvelin I, Statut Personnel, Textes En Vigueur au Liban (Beyrouth, 1970), pp. 353-535.

and no further dispensation is possible.

5) Prohibitions relative to impotence: All that is needed to invalidate a marriage for impotence is that it should be permanent, not temporary. Impotence should be differentiated from sterility, which neither annuls nor prohibits a marriage (Canon 58).

6) Prohibitions related to previous valid marriages: Under Canon 59 an undissolved, valid marriage annuls any marriage that comes after it. It is the duty of the religious authority to investigate whether a prior marriage is extant.

7) Marriages entered into by persons in a religious order are null, except that a dispensation can be granted by a special decree from the Pope provided that the persons leave the clerical order (Canons 62 and 63).

8) No man can marry the woman whom he kidnapped or arranged to have kidnapped and sequestered in a place for the purpose of getting her consent to marry him. If, however, the woman is separated from her kidnapper and gives her consent without duress, then the two can marry (Canon 64).

9) Prohibitions arising from the act of adultery: A person who commits adultery is never allowed to marry the person with whom the act of adultery was committed (Canon 65).

10) Prohibitions arising from consanguinity or blood kinship: Marriage between persons whose blood kinship follows a straight line is prohibited. Those whose blood kinship is on an oblique line within the sixth degree cannot marry. However, a dispensation is possible to obtain when the kinship is of the sixth, fifth or fourth degree (Canon 66). Marriage to an in-law is prohibited to the fourth degree, but dispensation is again possible, depending upon the degree of kinship (Canons 67 and 68).

11) Prohibitions arising from spiritual parenthood (parente spirituelle): Marriage is prohibited between the baptized and the godparent and between the godparent and the parents of the baptized (Canon 70).

Neither the "Sacrament of Marriage" of February 22, 1949 nor the family law of 1951 for the Catholic communities contains any provisions relative to the retreat period (required period of delay between the dissolution of a first marriage and a second marriage). However, a widow who wants to marry must obtain the permission of the proper authorities in the Church, and it is left to the judgment of these authorities to fix the time of the retreat period by delaying the permission. Moreover, Article 484 of the Penal Code considers marriage within the retreat period a crime.

b. The Greek Orthodox

The family law of 1951 for the Greek Orthodox community<sup>13</sup> deals

---

<sup>13</sup>Text in Documents Huvelin I, op. cit. (fn. 9), pp. 621-664.

with prohibitions in marriage in Articles 22 and 23. Marriage is prohibited in the following cases:

- 1) Consanguinity: There is blood kinship which follows a straight line or blood kinship which follows an oblique line up to the 4th degree.
- 2) The parties are already related by marriage: up to the 4th degree.
- 3) Parente spiriuelle: marriage between a baptized person and the godparent or between the latter and the parents of the baptized.
- 4) Pre-existing marriage: any polygamous marriage is prohibited.

In addition to the above, there are two more prohibitions which are dealt with in Articles 25 and 79. Article 25 prohibits a marriage between a Greek Orthodox and a non-Greek Orthodox Christian unless the latter submits a written request to join the Orthodox Church. Article 79 requires a four month retreat period.

c. The Armenian Orthodox

Section 1 of Chapter 2 of the family law of 1951 for the Armenian Orthodox<sup>14</sup> regulates prohibitions of entry into marriage. These prohibitions are the same as those for the Greek Orthodox with the following additions:

- 1) Marriage is forbidden for persons who suffer severe mental or physical illness (Articles 16 and 17).
- 2) No person can marry a child born to his or her spouse by a previous marriage (Article 22).
- 3) Guardianship prohibits marriage (Article 22).
- 4) The period of retreat is three hundred days (Article 19).

d. The Syriac Orthodox

The family law of 1951 for the Syriac Orthodox<sup>15</sup> has marriage prohibitions very similar to these of the Greek and Armenian Orthodox, with the addition that two persons who were nursed (fed by the breast) by the same woman can't marry.

---

<sup>14</sup>Ibid., pp. 665-726.

<sup>15</sup>Ibid., pp. 727-768.



e. The Protestants

For the Protestants, prohibitions against entry into marriage are regulated by Articles 22-24 of their family law of 1951.<sup>16</sup> Marriage is prohibited in the case of:

- 1) Those who lack the mental and physical faculties necessary for a natural marriage.
- 2) Those who have hereditary diseases, tuberculosis or mental sickness.
- 3) Men less than 18 years of age and women less than 16.
- 4) Those who are related by adoption or guardianship.
- 5) Those who are bound by an existing valid marriage.
- 6) Marriages between Protestants and non-Protestants.
- 7) Those who have a relationship by blood or marriage listed in Article 24.

f. The Jewish Community

The family law of 1951 for the Jewish community<sup>17</sup> prohibits marriage between a Jew and a non-Jew (Article 37).

Article 60 states that the parents have the right to prohibit their son from marrying a woman who is not legally competent to marry him (disparité légal de condition de l'épouse). An existing valid marriage prohibits the entry into a new marriage, and a woman whose divorce is not yet certain or whose husband's death is not certain is forbidden to marry again (Article 61). Article 62 states that a woman, whose husband dies without leaving her any children, becomes the legal wife of the brother of the deceased husband or his uncle. However, this brother or uncle may release the widow from this relationship (Article 72). Prohibitions arising from blood kinship or in-law relationships are specified in Articles 63 through 68. Article 74 prohibits marriage to illegitimate children. Marriage with the mentally disordered is also prohibited (Article 87). The period of retreat is 92 days (Article 90). Article 91 prohibits a pregnant woman from marrying before she gives birth, and a mother who is breast-feeding is forbidden to marry before her child reaches the age of 24 months, even if the breast-feeding stops before that time. Article 92 prevents marriage on Saturdays, during religious feasts, during the first nine days of August, and during the 24 days which follow Pass-over.

---

<sup>16</sup>Ibid., pp. 727-768.

<sup>17</sup>Ibid., pp. 835-955.

#### **g. The Moslem Communities**

Prohibitions of marriage for the Moslem communities are regulated by Articles 13 through 19 of the Ottoman Family Code of 1917,<sup>18</sup> as follows:

1) A man is not allowed to marry the wife of another man (Article 13). A man who has four wives is not allowed to marry a fifth one (Article 14).

2) The time limit for the period of retreat varies between 3 menstrual periods and the period of gestation. There is no period of retreat if a divorce takes place before the marriage is consummated (Articles 13 and 14).

3) A husband who repudiates his wife "by three," that is, who declares his wife divorced "three times," is not allowed to remarry her as long as this repudiation exists (Article 15). As for the Druze, no man is allowed to remarry a woman he has divorced. (Article 11 of the Druze family law of February 24, 1948).

4) Among the Sunni, a man is prohibited from marrying his wife's sister, her aunt, or her niece while his wife is alive. The Shiites restrict this prohibition to sisters-in-law. For the Druze the question does not arise, because they forbid polygamy (Article 16).

5) Prohibitions arising from kinship relations are of three types:

a) Blood kinship: A man is not allowed to marry his grandmother, daughter, grand-daughter, sisters, the daughters of his brothers, sisters or aunts. All Moslem communities approve of these prohibitions (Article 17).

b) Except for the Druze, those who were breast-fed by the same woman are forbidden to marry. Moslem sects differ on the definition of breast-feeding (Article 18).

c) A man is not allowed to marry the wives of his sons or their grandmothers, the wives of his father or grandfather, or the daughters of these wives or their grand-daughters. All Moslem sects agree on these prohibitions (Article 19).

6) Prohibitions of marriage between persons who have committed adultery: The Ottoman Family Code does not have such a prohibition. The Shiites do, and for the Sunni the prohibition includes the descendants of the female party.

7) Prohibitions arising from marriage of Moslems with non-Moslems: Islamic law allows the Moslem man to marry a woman who is a Christian or a Jew and allows her to retain this religious affiliation.

---

<sup>18</sup>Ibid., pp. 59-86.

Islamic law does not allow a Moslem man to marry a woman without a religion, an atheist, or a woman who has left Islam. A marriage between a Moslem woman and a non-Moslem is, by contrast, always null (Article 58 of the Ottoman Family Code). The Shiite add two other prohibitions: First, if a divorce results from a man's accusation that his wife has committed adultery, but the accusation cannot be proved in court, then the man can never remarry his former wife. Second, no man or woman is allowed to marry during a pilgrimage to Mecca.

## 2. Age Restrictions

Table I gives the minimum marriage ages set by the laws of different religious sects:

**Table I: Minimum Age at Marriage under Family Laws of Different Religious Sects in Lebanon**

Sect	Age prescribed by law		Reduced age that may be authorized		Source: Articles in respective legal instruments
	Male	Female	Male	Female	
Sunni	18	17	17	9	4,5,6,7
Shiite	age of puberty		15	9	494,495
Druze	18	17	16	15	1,2,3
Catholic commun.	16	14	14	12	32,57
Greek Orthodox	18	18	17	15	5,18
Armenian Orthodox	18	15	16	14	15
Syriac Orthodox	18	14	—	—	4
Protestants	18	16	Age of puberty		22,23
Jews	18	12½	13	12½ for orphan girls under 12½	43,44,46

Data on age at marriage from Bourj-al-Brajini: One the whole, age at marriage was higher for men than for women. Whereas 11 per cent of women married at the age of 14 or less, and 54 per cent married at the age of 15 to 19, only 9 per cent of men married at the age of 19 and below.

Women who married either at age 14 or less or at 30 or more were more likely than other women to have husbands who were their relatives.

With respect to religion, Moslems on the whole married at a younger age than Christians.

The younger the husband's age at marriage the higher was his level of education, apparently because the higher the level of education the greater was the financial capacity to marry at a young age. With respect to wives, the younger her marriage age, the lower was her level of education.

The marriage age of the wife was related to her fertility. The younger her marriage was, the greater was the number of pregnancies, births and living children which she reported at the time of her interview.

### 3. Consent Requirements

All religious sects, without exception, require the consent of the parties or their parents, when necessary, for the conclusion of a valid marriage.

However, under the law of all religious sects consent, in itself, is not sufficient. Rather, consent must come from a person with a sound mind and contain no legal defects or conditions.

#### a. Soundness of Mind

Loss of mind is of two types: permanent and temporary. As a general rule, under the laws of the Christian sects a permanent loss of mind invalidates the consent to marriage. On the other hand, temporary insanity does not invalidate a marriage, unless it is proved that the consent was given at a time when the person was insane. This position is shared by the Shiites, the Druze and the Jews. Following the Ottoman Family Code, the Sunnis do not make this distinction; it is permissible for those with permanent loss of mind to enter into marriage in cases of necessity and if and when the judge permits it. In these cases, the consent should be given by the persons legally responsible. These are usually the parents.

#### b. Absence of Legal Defects

Consent may be given in ignorance or in error with regard to the meaning of marriage or the identity of the parties involved, or under coercion or seduction. All these constitute legal defects which invalidate

consent in varying degrees.

With regard to Catholics, ignorance concerning the unity and indissolubility of marriage does not affect consent (Canon 75). However, an error with regard to the identity of parties is grounds for invalidating marriage (Canon 74). Its possibility exists where marriages are concluded through agents or where couples get to know each other through correspondence.

Canon 78 states that any consent obtained through violence or great fear provoked by another person is legally defective. However, any consent obtained through fear other than the one mentioned above, is not necessarily defective. Seduction alone does not make consent legally defective.

For the Greek Orthodox and other religious sects of the Eastern Rite, consent obtained through violence or seduction is legally defective (Article 68).

For the Protestants, consent is legally defective, if it is obtained through violence or deception (Article 35).

For the Jews, consent obtained through error, violence or seduction is legally defective (Articles 122, 123, 124).

For the Moslems, consent obtained through deception gives the right for the wife to ask for a divorce. The same is true of seduction (Article 48). Also, under Article 57 of the Ottoman Family Code, consent obtained through violence is legally defective.

#### c. Conditional Consent

The question arises as to whether consent to a marriage can be made dependent on the fulfillment of certain conditions laid down by one or both of the parties.

Among the Christians, the trend is against attaching conditions to a marriage. For the Catholic communities, Canon 83 of the Sacrament of Marriage states: "It is not possible to conclude a marriage with conditions." Non-Catholic Christians, on the other hand, do not have any legal provisions on this matter.

For the Jews, a consent to marriage can include conditions, provided that these conditions are not against the institution of marriage or against the religious law which regulates marriage for the Jews (Article 127).

For the Moslems, Article 38 of the Ottoman Family Code states that a marriage contract is valid, if it includes a condition put down by the wife that her husband cannot take a second wife and that if he does, she

or the second wife is divorced. Article 48 of the same legal instrument gives the right to the wife to demand potency in her husband and that such a demand can be put as a condition in the marriage contract. These principles are applicable to all the Moslem sects.

**d. Consent of Parents**

In the distant past, the will of the head of the family was sufficient for a child to enter into marriage without the child's consent. At a later stage the consent of the children was required alongside the consent of the parents. No distinction was made, however, between the children who had attained the age of maturity and those who had not. Thus, until 1913, French law required the consent of the parents for any woman who wanted to marry before the age of 25, and for any man who wanted to marry before the age of 30. In 1913 the French law made a distinction for persons above age 21 between those who were considered mature and those who were not. For the mature consent of the parents was not required.

The family laws for all the religious sects in Lebanon require the consent of the parents for the marriage of their children who are under the age of maturity. In addition, Article 483 of the Penal Code inflicts a punishment of 25 to 250 Lebanese pounds on any authorized religious agent (priest or sheikh) who performs the marriage of a person who has not attained the age of 18 without the consent of the parents or the permission of the court. Article 486 of the same legal instrument inflicts the same punishment on all those who are officially involved (e.g., witnesses) in such a marriage.

It is proposed that any provision in the family law of any religious sect which allows marriage without the consent of the parents or the permission of the court for children who have not yet attained the age of 18 is contrary to Articles 483 and 486 of the Penal Code and, therefore, that such a provision is invalid.

**4. Waiting Periods, Public Notice, and Registration**

Before concluding a marriage, the proper religious authorities must ascertain that there are no prohibitions against such a marriage.<sup>19</sup>

In Catholic communities the ascertainment is composed of two steps: "status libertas" and public notice (Canons 9 to 24 from the Sacrament of Marriage). Status libertas involves the investigation to ascertain whether any prohibitions prevent the marriage. The public notice states that if any believer has an objection or knows of an obstacle which prevents the proposed marriage, it is his duty to inform the parish priest or the local

---

<sup>19</sup>See the section on "Restrictions and Prohibitions," pp. 15-19.

head of the church. If the marriage does not take place within six months after the investigation, then the whole process must be repeated. The bishop has the right to dispense with public notice (Canons 93, 94, 95, 96).

Other Christian communities do not have legal provisions outlining the procedures for status libertas and public notice. In practice, however, they follow a procedure similar to the one outlined above for the Catholics.

For the Moslem communities, the procedures for status libertas and public notice are included in an annex to the Ottoman Family Code of 1917. Each prospective spouse must get a certificate from the competent local government official, showing his full name and those of his parents, his place of residence, profession, religion, and whether there is any obstacle which prevents the marriage. The certificate of each party together with their identity cards are submitted to the appropriate religious court. If the court finds nothing which prevents the marriage, it puts a public notice on its door. The public notice remains on the door of the court for a period of fifteen days after which the court gives permission or withholds it according to the information it receives.

As to the registration of marriages and the agency which performs marriage, it is important to reiterate that there is no civil law that regulates personal status, and consequently, civil marriage does not exist. Accordingly, a marriage is registered by the religious authority which is entitled to bring two persons into wedlock. With the exception of the Greek Orthodox (Article 20), none of the sects' family laws require the transfer of the registration data to the government's books. This fact and the fact that documents required for marriage can be obtained easily from a local religious authority open the door wide for people to change their place of residence, to deny any previous marriage, and thereby to be able to marry more than once. In order to close this door, the government issued the law of December 7, 1951 relative to the registration of marriages and applicable to all Lebanese and all religious sects. The law was modified in 1954 and 1955. It requires that all religious sects keep books for the registration of marriages and divorces and that these books conform to the books held by the government at the Bureau of Personal Status Affairs in the Ministry of Interior. Under Article 22 a person must submit a certificate of marriage to the office of the Bureau of Personal Status Affairs in the area of his residence within a month from the date of his marriage. This certificate must be signed by the religious authority which performed the marriage, by the local government executive (Mokhtar) and by two witnesses. If the husband refuses to submit this certificate, then the wife is required to submit it, and if both refuse, then the religious authority which performed the marriage is required to submit it. Article 23 of the same law deals with the information which the certificate of marriage should include.

Article 26 provides for marriages that take place outside Lebanese territory.

## 5. Polygamy<sup>20</sup>

All Christian religious sects prohibit polygamy.

Of the Moslem religious sects, only the Druze prohibit polygamy. The Sunni and the Shiite sects permit up to four wives, Article 14 of the Ottoman Family Code of 1917 prohibits a man from marrying a fifth wife if he already has four.

Those Moslems who advocate polygamy make reference to the Third Verse in "Sourat An-Nissa" in the Holy Koran which states: "Marry women of your choice, two, three, or four, but if you fear that you shall not be able to deal justly with them, then only one...." Advocates of monogamy argue that it is not possible to satisfy this condition of dealing "justly" with more than one wife. They also argue that the impossibility of being just and fair to more than one wife is explicitly stated in the One Hundred and Twenty Ninth Verse in "Sourat An-Nissa" in the Holy Koran which provides: "...you are never able to be fair and just between women, even if it is your ardent desire...."

Article 100 of the family law of the Jews (Oriental) states that a wife can give permission to her husband to take a second wife for a legally acceptable reason. Article 101 of the same legal instrument permits a Jew, if he is well-to-do, to marry two women, provided he is able to treat them justly.

### B. Termination of Marriage

#### 1. Divorce

##### a. Catholic Communities

Catholics do not permit divorce. Physical separation ("separation de corps") may be permitted, but it has no effect on the principle of the indissolubility of marriage.

The Catholic communities, however, have two exceptions to the general rule that marriages may not be dissolved.

1) The first exception relates to the full and valid but not consummated marriage. This marriage can be dissolved by a special dispensation given by the Pope for "just" reasons, e.g., for reasons which make married life impossible (Canon 108), as for example, the impotence of the man.

---

<sup>20</sup>Some of the law on polygamy was included in section A.1. of this chapter. Because of its importance, it is treated here as well.



2) The second exception relates to St. Paul's Privilege (Privilege Paulin). Canon 109 states that a full, consummated marriage between non-baptized persons can be dissolved by virtue of St. Paul's Privilege. It has been noted previously in section A.1. of this chapter that the Catholic Church does not recognize a marriage between a Christian and a non-Christian. On the other hand, the Church does recognize a marriage concluded between two non-Christians by virtue of the law of nature and rules that such a marriage, like a marriage between Catholics, is indissoluble. Thus, a problem arises when one of the partners in a non-Christian marriage converts to Christianity. Such problems were very common during the early spread of Christianity, particularly at the time of St. Paul. St. Paul believed that if one of the partners in a marriage between non-Christians converts to Christianity, then for the sake of preserving his or her Christianity, the converted partner should have the right to dissolve the marriage. For example, if a man is married to more than one wife and one of the wives converts, her marriage should be dissolved, even if her husband declares his willingness to respect her new faith, because Christianity prohibits polygamy (Canons 109-116).

b. The Orthodox Communities

For the Greek Orthodox divorce by the mutual consent of the couple is not permitted (Article 69). Divorce can be obtained only by a judicial judgment based on one or more other specific grounds. Both husband and wife have the right to ask for a divorce on the grounds of adultery or any other reason that can be associated with adultery. The husband may obtain a divorce on the following additional grounds (Article 71):

- 1) His wife was, unknown to her husband, not a virgin at the time of her marriage.
- 2) The wife has intentionally destroyed the sperm of her husband.
- 3) The wife has not obeyed the husband's order not to visit a particular house or associate with particular persons by virtue of their bad reputation.
- 4) The wife has refused, without reason, to comply with a court order to follow her husband to his place of residence.

The wife may obtain a divorce on several grounds other than adultery, as follows (Article 72):

- 1) The husband has induced her to commit adultery; he insisted upon her committing adultery; or he imposed upon her relations contrary to nature.
- 2) The husband accused her of committing adultery without furnishing proof.

It is also grounds for divorce under Article 68 if either spouse--

- 1) has converted to another religion;
- 2) has made an attempt on the life of the other;
- 3) has lost his or her mind fully and permanently, and medical specialists have certified this;
- 4) has been sentenced to imprisonment for a period not less than three years;
- 5) has refused to have sexual intercourse with the other for three continuous years;
- 6) has chosen to lead a religious life of asceticism and poverty.

Grounds for divorce also exist if--

- 1) it is medically proven that the man is permanently impotent or continuously impotent for three years; or
- 2) the consent to the marriage was obtained under duress or by seduction.

The Syriac and Armenian Orthodox communities adopt the same view as the Greek Orthodox towards divorce.

c. The Protestant Community

Like the Orthodox communities Protestants can only obtain a divorce through judicial judgment. Articles 32-42 provide that it is grounds for divorce if a spouse--

- 1) has committed adultery;
- 2) suffers permanent loss of mind;
- 3) has made an attempt on the life of the other;
- 4) has converted to a non-Christian religion;
- 5) has disappeared, and his or her whereabouts have not been known for a continuous period of five years;
- 6) has refused marital relations for a period not less than three years.

d. The Jewish Community

For the Jews grounds for divorce are many and complex. They may be divided into two general categories. One is ten grounds which the law views as requiring divorce, i.e., making it relatively obligatory or non-discretionary. The other category is eleven grounds which make divorce discretionary or permissible.

e. Moslem Communities

For all the Moslem communities except the Druze, repudiation is one form of terminating a marriage. Repudiation is defined as the authority vested in the man to terminate his marriage at any time he wants and for any reason by making an oral or written statement three times that he

repudiates his wife (Articles 108-109). Although such a repudiation terminates the marriage immediately, it will not have any legal effect unless it is registered in the court. Also, the authority to repudiate is not absolute.

The Ottoman Family Code of 1917 states that repudiation is not effective if made under the influence of alcohol (Article 104) or force (Article 105).

"Tafriq" is a right given to both the man and the woman to terminate their marriage through a court judgment on grounds laid down by the law. Article 130 of the Ottoman Family Code gives the right to either the man or woman to ask for a divorce whenever their married life has become so troubled as to be impossible to reform. This principle of "troubled married life," was reiterated and further elaborated by Article 337 of the law of 16/7/1962 relative to the structure of Sunni and Shiite religious courts. Article 337 states that the husband or the wife has the right to ask for a divorce on grounds of damage caused by their troubled married life, such as damage from hitting, cursing or forcing the other party to do things that are forbidden by Islam.

In addition, under several articles of the Ottoman Family Code as reiterated and elaborated in Article 337 of the law of 16/7/1962, a woman can ask for a divorce from her husband on the following grounds:

- 1) Impotence of the husband (Article 120 of the Ottoman Family Code).
- 2) Contagious disease (Article 122).
- 3) Full loss of mind (Article 123).
- 4) Continuous absence of the husband (Articles 126, 127).

The grounds for divorce for the Druze are different from the above in the following respects:

- 1) No repudiation is allowed.
- 2) Through a judicial judgment a marriage can be dissolved by the mutual consent of the husband and wife (Article 42).

## 2. Separation

Separation is totally absent in the legal systems of the Jews and the Moslems. Only Christian communities have provided for it. Separation means physical separation with regard to housing, eating and cohabitation.

The Catholic communities accept separation in marriage, if the common marriage life becomes so troubled as to make living together impossible. Separation is of two types: permanent and temporary.

Permanent separation can be granted on grounds of adultery. Canon 118 of the Sacrament of Marriage states that if one of the parties to a marriage commits adultery, the innocent party has the right to separate

permanently from the guilty party unless the innocent party agreed to the act of adultery committed, was the cause of it, had himself or herself committed adultery, or forgave the guilty party expressly or tacitly. Under the same Canon, adultery includes homosexual relations, but adultery committed before baptism is not a cause for separation on the grounds that baptism erases all effects of adultery.

Since the innocent party has a right but not a duty to request permanent separation on the above grounds, it is equally the right of the innocent party to forgive the guilty party at any time, and to ask for an end to the separation (Canon 119).

As to temporary separation, it can be granted on the following grounds (Canon 120):

- 1) Either spouse has become a follower of a non-Catholic religious sect.
- 2) The children have been brought up contrary to Catholic teachings.
- 3) Either spouse has committed a crime.
- 4) Either spouse has put the other in great psychological or physical danger.
- 5) Either spouse has treated the other cruelly.
- 6) Any other reason similar to the reasons stated above.

It is important to mention that by virtue of the same Canon 120, it is up to the court to decide the nature of the charge, the degree of its seriousness, the necessity for a separation and its time period.

Article 56 of the family law of the Greek Orthodox lays down the following grounds for separation:

- 1) Important, grave differences.
- 2) Daily quarrels.
- 3) Common married life has become impossible, even temporarily.
- 4) One spouse poses a danger to the other.

The court determines whether separation is justified and its time period.

The family law of the Armenian Orthodox rules that the grounds for divorce as enumerated in Article 62 and discussed above (pp. 26-27) are themselves grounds for separation. Article 63 states that the party which demands a divorce also has the right to demand a separation. Article 65 allows the court to choose either divorce, separation or neither.

Article 50 of the family law of the Syriac Orthodox gives the following grounds for separation:

- 1) It is established that one party to a marriage is purposely causing damage to the other party or that one party has stopped conjugal

relations with the other for a period of three years.

2) The husband has committed adultery in his marriage home or has brought a concubine to live with him in his marriage home.

3) A spouse has conspired with a third party to cause damage to the other spouse.

4) The husband has lead his wife into corruption, related either to her body or to her religion.

5) The court has ordered the wife to return to her husband, and she has refused.

6) The husband has imposed on the wife conjugal relations contrary to nature.

7) The court finds a separation necessary for emergency reasons consistent with the church law.

The Protestants define separation as the physical separation of two parties to a marriage for reasons of discord (Article 46). Article 47 provides that if the life of one spouse to a marriage becomes unbearable because of continuous maltreatment by the other and if attempts at reconciliation fail, a court may order separation for a limited period of time or until reconciliation occurs.

### 3. Annulment

There are three types of annulment:

- 1) The non-existence of the marriage contract ("cas d'inexistence").
- 2) Absolute annulment ("cas de nullité absolue").
- 3) Relative annulment ("cas de nullité relative").

In the first case the marriage is deemed never to have existed. If children are born, they are illegitimate. An annulment proceeding is not necessary because such legal action presupposes the existence of a marriage contract. The case of non-existence arises legally when there is no law which states that a marriage contract is null even though it lacks an essential requirement. Thus, for example, a marriage between two persons of the same sex is non-existent.

Absolute annulment applies to any marriage contract concluded in the absence of a priest or by a civil authority, on the grounds that civil marriage does not exist in Lebanon (Article 16 of the law of 2/4/1951). In addition, for the Catholic communities marriages are absolutely annulled when there is a prohibition of the marriage for which dispensation is not possible or for which dispensation has not been obtained.

For the Orthodox communities absolute annulment is granted on the following grounds:

- 1) One of the parties is tied to a previous valid marriage.
- 2) There has been non-observance of basic church laws like blood kinship prohibitions.

3) The marriage was officiated at by a religious authority who does not belong to the religious sect of either the husband or the wife (Article 67).

For the Protestants, any marriage is absolutely null on the first two grounds mentioned above for the Orthodox communities.

For the Moslems, under Chapter IV of the Ottoman Family Code, the grounds for absolute annulment are in general the violation of any prohibition of marriage as enumerated earlier in section A.1. of this chapter, which cannot be removed by any action, e.g., consent, by the spouses or their parents.

For the Jews, marriages which are absolutely null are those prohibited.

Relative annulment of marriage contracts applies when there is non-observance of a rule of the type which is required for the benefit of the husband, wife or their parents and which can be remedied either by the partners to the marriage or by their parents. After this remedy the proper religious authorities are asked to recognize the marriage.

#### 4. Alimony and Child Support

There are few legal provisions relative to alimony and support. They hardly go beyond stating that the court has the right to decide the alimony which should be paid by the guilty party to the innocent party.

Under Article 57 of the Greek Orthodox family law the court determines alimony and matters relating to education of the children and child support payments. Article 58 states that children should be put in the custody of their mother unless the law deprives her of the right and that, if so, the court will give custody to the father or a third party appointed by the court. In all cases the father pays the expenses of the children.

The Armenian Orthodox and the Syriac Orthodox have similar provisions in their Articles 67 and 50.

The Protestant family law conditions alimony on the mode of termination of marriage. If the marriage is annulled by the court, then all duties, rights and obligations cease. The court may, however, make the party responsible for the annulment pay an indemnity to the innocent party (Article 36). If the marriage is terminated through a divorce, the guilty party pays an indemnity to the innocent party (Article 43). If the marriage is terminated through separation, the husband is obliged to pay alimony to his wife and to the children who are entrusted to her care (Article 47).

In the Jewish community it is the duty of the husband to pay alimony to his wife in all cases, except when a husband has requested a divorce and the wife has refused to give it (Article 630).

For the Moslems it is the duty of the husband to pay alimony to his wife throughout her period of retreat (Article 97 of the Ottoman Family Code).

## **V. FAMILY LAW RELATING TO CHILDREN AND OBLIGATIONS OF PARENTS**

Parental obligations to children fall within the domain of religious law, rather than civil law. Consequently, such obligations are regulated by the family law of each religious sect. These obligations can be classified under four headings: breast-feeding, child care, guardianship and expenses.

### **A. Breast-Feeding**

All family laws require the mother to breast-feed her child until he or she is two years of age, unless there is a legally valid reason which prevents her from doing so such as that her milk stops flowing, that her milk is spoiled or that her physical or mental condition does not permit breast-feeding.<sup>21</sup>

The duty of the mother to breast-feed continues as long as the marriage is valid. After divorce, separation or annulment, the mother cannot be forced to breast-feed her child except for a fee to be paid either by the child from an inheritance, by the father or by whomever legally represents the child.<sup>22</sup>

On the other hand, all religious sects agree that the right of the mother to breast-feed her child cannot be taken away from her, even if the marriage is dissolved. In case of divorce it is the duty of the father to permit the mother to breast-feed her child, if she so wishes, unless there is a legally valid reason which prevents her from doing so.<sup>23</sup>

### **B. Child Care**

Obligations to care for a child are divided into two time periods. The first is called the "child care" period. Religious sects disagree on its length. The period extends up to the age of seven for the boy and nine

---

<sup>21</sup>Articles 122-125 of the family law of the Catholic communities. Articles 128-129 of the family law of the Armenian Orthodox. Articles 71-73 of the family law of the Protestants. Articles 142, 144, 680, 682 and 685 of the family law of the Jewish community. Verse 233 of Sourat al-Bagara of the Holy Koran: "The mothers shall give suck to their offspring for two whole years,...."

<sup>22</sup>Article 126 of the family law of the Catholic communities and Article 685 of the Jewish community.

<sup>23</sup>See for example Article 128 of the Armenian Orthodox family law and Article 72 of the Protestant family law.



for the girl in the Moslem Sunnis and the Orthodox communities.<sup>24</sup> For the Moslem Shiite it is the age of two for the boy and seven for the girl. For the Protestants, it is the age of seven for both sexes (Article 7).

#### C. Guardianship

The second time period during which there are legal obligations to care for a child is the "guardianship" period. Guardianship extends from end of the child care period to the age of maturity. Such guardianship is of two types: (1) guardianship of the person which includes his education, ethics, consent for marriage and the like, and (2) guardianship of the estate which includes the right of the guardian to use the estate for the child's benefit. The law distinguishes between the term, "guardian," which is used for the father and the grandfather, and the term "trustee" which is used for another person appointed by the court to be guardian.

The right to be both types of guardian is given to the father by all the religious sects. The Moslems give guardianship to the grandfather after the father and then to the mother but without her having guardianship of the estate (Article 434 of the Hanafite Doctrine). In the Catholic communities the guardian after the father is a person appointed by the father or, if none is appointed, a person appointed by the religious court. After the father the Orthodox give the guardianship to the grandfather. After that the court appoints guardians (Chapter 2 of the Greek Orthodox family law). Among the Protestants, the court appointment of guardians comes immediately after the father (Article 81).

#### D. Expenses

The general rule is that the expenses a parent or guardian is obliged to pay for the support, education, medical care, etc. of a child are determined by reference to the needs of the particular child and the financial ability of the party who pays the expenses. This determination is subject to change according to the change in the situation of the parties.

All religious sects consider blood kinship as legal grounds which oblige the father to pay expenses for his children, unless the children have their own financial sources. The father is legally bound to pay these expenses for his son until he becomes economically active and for his daughter until she marries.

---

<sup>24</sup>See Article 391 of Hanafite Doctrine, Code de Quadri Pasha which is applied to Sunni Moslems. Also see Articles 64, 130, and 61 of the Greek, Armenian, and Syriac Orthodox family laws, respectively.

If the father is poor and not capable of working, then the obligation to pay expenses is transferred to the mother, if she is well-to-do, or to other blood relatives according to their degree of kinship, if the mother cannot pay these expenses.<sup>25</sup>

In return, the older children are legally bound to pay some expenses of their parents, if the parents are in need and are not capable of working either because of illness or because of old age.<sup>26</sup> Any breach of their duties by either children or parents is punishable under the Penal Code by fine or imprisonment (Article 501, 502).

Article 617 of the Penal Code also provides for punishment of parents who leave children under the age 15 loafing and begging for food or shelter or who force their children who are under the age of 18 to beg for profit. Punishment is either a fine, imprisonment or both.

#### E. Illegitimacy

The Christian law relative to the illegitimacy is fundamentally different from the Moslem law.

Christian law distinguishes between two types of illegitimate children: natural and unnatural. Natural illegitimate children are those who are conceived out of wedlock but whose parents can marry either during pregnancy or after the birth of the child. Unnatural illegitimate children are those who are born of parents who cannot marry because of a prohibition. Examples of unnatural illegitimates are:

- 1) A child born of adultery (one or both of the parents are still married to other person(s)).
- 2) A child born to parents who are within the prohibited degrees of blood kinship (l'enfant incestueux).

A child may be legitimated either by marriage of the parents, by voluntary admission by one or both of the parents or through a court proceeding.

Under Islamic law every child born out of wedlock is illegitimate, and legitimation cannot be carried out through the father. It can only be carried out by voluntary admission of the mother or through a court proceeding establishing relation to the mother. Islamic law is interested in tracing back the blood kinship of the illegitimate child rather than in his situation and his circumstances.

---

<sup>25</sup>See, for example, Chapter 4 of the Hanafite Doctrine, Code de Qadri Pasha, Chapter 10 of the Druze family law, and Chapter 3 of the family law of the Catholic communities. Also see Article 70 of the family law of the Druze.

<sup>26</sup>Ibid.

## **VI. CHILD LABOR**

Child labor is regulated by the Lebanese Labor Code. Article 21 distinguishes two groups of children: (1) those under 13 years of age and (2) those 13 to 15. Article 22 forbids employment of these two groups in various mechanical industries and other types of work, as specified in two annexes to this law. Under no circumstances may children under the age of eight be employed. Some of the types of work included in the annexes are the following:

- 1) Underground mining.
- 2) Industrial furnaces.
- 3) Work with explosives.
- 4) Glass factories.
- 5) Alcohol industries.
- 6) Tannery work.
- 7) Fertilizers.

Article 23 of the labor code states that it is forbidden for children to work more than seven hours per day, that after every four hours of work they should be given one hour's rest, that they should not work after seven p.m. and that they should be given only work suitable for their age.

Among the respondents interviewed in the Bourj-al-Brajini pilot study, only four per cent had children below the age of 14 working in order to support the family. It was found also that the number of children employed was directly related to the size of the family and inversely related to education of the father and family income. Also, a higher proportion of Moslem families than other families had children under 14 working.

Most of the respondents did not have an opinion about what should be the minimum working age. In their view, it should vary with the needs of each family.

The preferred minimum working age was related to fertility behavior. As the number of children increased it was more likely that both husbands and wives believed that the minimum working age should vary according to the family's needs. With respect to the desired number of children, husbands and wives who preferred fewer than five children tended more than others to say that the minimum working age should be high.

## **VII. PUBLIC WELFARE**

### **A. Family Allowances and Maternity Leaves**

The first legal provision relative to family allowances appeared in the legislative decree of May 12, 1943. Article 8 limited the number of children who were entitled to family allowances to five and limited the amount of the allowance as follows:

1) One child	=	10	L.L. (Lebanese pounds)
2) Two children	=	17.50	L.L.
3) Three children	=	25	L.L.
4) Four children	=	30	L.L.
5) Five children	=	35	L.L.
6) Wife if not working	=	10	L.L.

The maximum family allowance was 45 L.L. Employers, however, were able to avoid this law simply by refusing to hire married people.

Consequently, the Social Security law promulgated on September 26, 1963 separated family allowances from salaries, established a special fund for family allowances, and made each employer contribute to the fund in amounts proportionate to his number of employees, irrespective of the employees' marital statuses.

The Social Security Law of September 26, 1963 included (Article 7):

- 1) Health and maternity security.
- 2) Security against accidents during work.
- 3) Family allowances.
- 4) Indemnities paid at the age of retirement.

The new system of family allowances was put into effect in November 1965, in accordance with a government decree issued October 20, 1965. This decree raised the family allowances but kept at five the limit on the number of children in one family who could benefit from these allowances.

The family allowances were again raised by a government decree issued on May 1, 1974. The new scale is:

1) One child	=	15	L.L. (Lebanese pounds)
2) Two children	=	13	L.L.
3) Three children	=	10	L.L.
4) Four children	=	9	L.L.
5) Five children	=	8	L.L.
6) Wife if not working	=	15	L.L.

This scale of family allowances does not apply to government employees. In their case, the maximum amount of family allowance is 90 L.L. (Government Decree No. 3950 of 1960).

The pilot study at Bourj-al-Brajini revealed that 60 per cent of the 200 families interviewed were not entitled to family allowances. It also found that husbands who were employed in government administration or who had salaried jobs were entitled to family allowances, while those who worked as managers or owners of small enterprises, as tradesmen or on a commission basis were not entitled to family allowances. Because of the relationship between type of occupation and fertility, large families were therefore less likely than others to be receiving family allowances.

Almost all respondents were familiar with the law on family allowances, and their attitude towards such a law tended to be unfavorable. Only 14 per cent of the respondents approved of the current law, while 75 per cent were against it. The latter demanded that the amount of family allowances be increased and/or that all families be eligible to receive allowances. Disapproval of the law was unrelated to religion, occupation or income. However, those who had an intermediate or college education were more likely than others to disapprove of the law.

Eighty-seven per cent of the families interviewed believed that the law on family allowances had no effect on family size. Only 7 per cent said that it may decrease the number of children, and none said that it may lead to an increase in the number of children in a family.

Articles 28 and 29 of the Labor Law of September 23, 1946 regulate maternity leaves for working women. Article 28 entitles women to maternity leaves of 40 days, including periods before and after delivery. Such a leave is given upon presentation of a medical report stating the probable date of delivery. Article 28 further states that no employer may permit an employed mother to go back to work within 30 days after her delivery. Article 29 states that the 40 days of maternity leave shall be fully paid and that no employer is allowed to dismiss a woman during her 40 days of leave, unless it is proved that she engaged in other work.

The Social Security Law of September 26, 1963 increased maternity leaves to mothers from 40 days to ten weeks (Article 26) and gave them a maternity indemnity equal to two-thirds of their salary during those ten weeks (Article 23).

In the pilot study data from Bourj-al-Brajini, the number of employed wives (3 per cent of total) was too small to permit any disaggregated analysis. When all wives were asked about their attitude towards maternity leave law, 25 per cent of the two hundred women interviewed said that they were unfamiliar with such a law, 50 per cent were in favor of the law, and 22 per cent were against it, since they thought that the leave should be extended to three months.

#### **B. Old-Age, Retirement Benefits, and Labor Protection**

Legislative Decree No. 113 of June 12, 1959 regulates old-age and retirement benefits for government employees or civil servants. Article

3 states that every government employee who has worked for the government for 20 years or less is entitled to an indemnity at the age of retirement (64), and that if he has worked for more than 20 years, he can choose between an indemnity and a pension. The pension is paid on a monthly basis as long as he lives. The indemnity is a lump-sum computed as the total of one month's salary for each of the first ten years of service and two months' salary for each year of service thereafter (Articles 10 and 11).

For non-government employees a new system was put into effect in May 1965 based on the Social Security Law of September 26, 1963. Article 50 of the law states that a non-government employee is entitled to an indemnity if he or she retires from work after fulfilling any one of the following requirements:

- 1) The number of actual working years has been not less than 20.
- 2) The employee is incapacitated.
- 3) The employee has reached the age of retirement (60 years for men and 55 years for women).

Also, if the employee is a woman, she is entitled to an indemnity when she marries, provided that she stops working during the first year of her marriage. Article 51 states that the indemnity is equivalent to one month's salary for each year of work based on the last salary the employee received before retiring. If the employee has not received a monthly salary but was paid per day of work or received a commission, then the gross income from work during the last whole year of work is divided by 12, and the result is treated as equivalent to one month's salary.

With respect to labor protection, the Labor Law of 1946, which still regulates the protection of employees, does not do much to enhance job security. Article 50 of the law gives the employer the right to dismiss an employee on any ground, provided only that the employee receives one month's notice. This article has been a central issue for the last five years in negotiations between labor unions and the government.

### **C. Civil and Human Rights**

The Lebanese Constitution describes the rights and duties of the Lebanese in Chapter 2, Articles 6 to 15. A synopsis of them is as follows:

Article 6--This relates to Lebanese nationality.

Article 7--All the Lebanese are equal before the law.

Article 8--Individual liberty is guaranteed and protected. No one can be arrested or detained, except in accordance with the provisions of the law. No infringements and no sanctions can be established, except by the law.

Article 9--Liberty of conscience is absolute. By rendering homage

to the Almighty, the state respects all creeds and guarantees and protects their free exercise, on the condition that they do not interfere with public order. It also guarantees to individuals, whatever their religious allegiance, the respect of their personal status and their religious interests.

Article 10--Education is free, so long as it is not contrary to public order and to good manners and does not touch the dignity of creeds. The right of communities to have their own schools, subject to the general prescriptions on public education dictated by the state, shall not be derogated.

Article 11--Arabic is the official national language. A law shall determine the cases where the French language is to be used.

Article 12--This relates to admission to public functions.

Article 13--Freedom of expression by word or pen, freedom of the press, freedom to hold meetings and freedom of association are guaranteed within the framework of the law.

Article 14--The domicile is inviolable.

Article 15--Property is under the protection of the law.

In addition to the Constitution, there are laws which protect the rights of the individual citizen. Foremost among them is the Penal Code.

On the level of international instruments relative to human rights, Lebanon has not yet ratified the Universal Declaration on Human Rights; nor has it ratified any of the other supplementary international instruments except the following:

- 1) The Convention on the Prevention and Punishment of the Crime of Genocide.
- 2) The Convention on the Political Rights of Women.
- 3) The International Convention on the Elimination of all Forms of Racial Discrimination.
- 4) The Convention Against Discrimination in Education.

Equality of the sexes is one principle common to the Universal Declaration of Human Rights and other supplementary international instruments. Furthermore, legal systems of almost all countries of the world guarantee this equality. One can say that equality of the sexes has become a general rule of international law binding upon all states. Lebanon is one of the countries which has legal provisions guaranteeing the equality of the sexes, as for example Article 7 of the Constitution as described above. Nevertheless, there are still many laws which discriminate against women, particularly in the fields of family law and religious allegiance.

The following are instances in which laws discriminating against women are still in force.

1) With the exception of the Druze sect, all Moslem sects permit a man to have up to four wives, despite the fact that Turkey and Tunis have enacted laws which prevent polygamy and that Iraq, Syria, Egypt and Maghreb have enacted laws which make it almost impossible for a man to have more than one wife. Nevertheless, in Lebanon polygamy is still practiced, and the laws permitting it are still in force.

2) The husband's right to divorce by repudiation still exists for Moslem Lebanese husbands, excepting the Druze.

3) According to the Moslem law of inheritance the share of one female (whether she is a daughter, a sister or a wife) equals half the share of one male.

4) No woman is allowed to have a commercial business without the consent of her husband (Article 11 of the Law of Commerce).

5) Article 562 of the Penal Code gives a mitigating excuse to the man but not to the woman who commits murder or assault upon discovery of the spouse in the act of committing adultery.

6) The system of giving religious law the status of public law is responsible in many instances for the legal denial of equality simply because not all women (or men for that matter) belong to the same religious sect and because the different religious laws treat women differently. For example, if a man dies leaving only one daughter and one male cousin, the estate is divided equally between the daughter and the cousin if the deceased is a Sunni Moslem, whereas the estate is inherited totally by the daughter if the deceased is a Moslem Shiite or a non-Moslem.

Also, a difference in religion between husband and wife leads to a legal difference in inheritance. Thus, Article 9 of the Law of Inheritance of June 1959 for the non-Moslems states that when a Christian wife married to a Moslem dies, neither her husband nor her children can inherit from her.



### VIII. CONCLUSIONS AND RECOMMENDATIONS

The last general census of the Lebanese people was taken in 1932.<sup>27</sup> It determined the political strength of each religious group according to the number of its followers. The Maronite Christian sect was found to be the majority sect. In descending order by size, the other population subgroups were the Sunni Moslems, the Shiite Moslems, the Greek Orthodox, the Druze, and the rest of the sixteen religious sects. (There are now seventeen, since the Protestants have been added.)

When Lebanon became independent in 1943, Christian and Moslem political leaders made a national pact, rightly called the unwritten constitution of Lebanon, which gave the presidency of the republic to the Maronites, the premiership to the Sunnis, and the leadership of the parliament to the Shiites. Also, cabinet members and members of parliament were to be distributed according to the ratio of six Christians for every five Moslems. This ratio was also applied to civil servants until 1974, when there was a change to dividing positions equally between Christians and Moslems.

No official general census of the Lebanese population has ever been taken since 1932, because there has been fear that the results might lead to a change in the whole political structure of the society.

Recently, national surveys have been made to help officials formulate development plans. Given the sample designs, the size of the total population could be estimated. An estimate of 2,126,325 was obtained from the survey done by the Central Bureau of Statistics in 1970 for a study of the labor force in Lebanon. The results were announced in 1972.<sup>28</sup> Because these population estimates are only approximations and, more important, are unofficial, they cannot be used by any religious sect as a ground for demanding a change in the political structure.

The history of census-taking in Lebanon indicates how difficult it may be for the political authorities to adopt any recommendations that facilitate or encourage family planning. Any religious group would probably interpret such recommendations as an attempt to reduce the number of its followers and thereby to change the distribution of political power among the groups.

While it is difficult to make the political authorities support family planning, it is even more difficult to make them accept any change in the

---

<sup>27</sup>The total Lebanese population count was 793,396.

<sup>28</sup>Sample studies made by the Ministry of Planning in 1964 gave the figure 2,179,634 as the total population of Lebanon. Lebanon's area is 10,000 square kilometers.

law. The law has been made to preserve the distribution of power among the different religious groups in the society. Thus, for example, it was easier to get the political authorities to close their eyes to the illegal importation and distribution of the pill than to make them accept a change in the law to make the pill legal (see above, p. 9 ). Moreover, this fear that any change in the law may lead to an upsetting of the power distribution extends even to changes that have nothing to do with family planning.

All of this goes to show that any recommendation to change the law in favor of family planning is doomed to failure. What then is the solution?

One possible solution is to call attention to international legal instruments which declare that family planning is a human right and argue that a nation's support of such a declaration obligates it to change those of its laws which are contrary to family planning or at least not to promulgate new laws contrary to family planning.

Unfortunately, international legal instruments relative to family planning as a human right are still viewed as recommendations, not binding upon those who accept them. Also, there are religious, political, social, and economic obstacles which prevent many nations, Lebanon included, from changing their laws to make them more supportive of family planning, even if the responsible authorities in those nations want very much to do so.

A second solution that would be more effective in Lebanon is to look for general principles of law in the existing Lebanese legal system and to use these principles in a manner which would enhance and promote family planning as a basic human right. Most of these general principles derive from basic human rights which are already recognized and incorporated in the legal systems of the civilized nations, like the individual's basic right to life and property, the inviolability of the individual's person and his right to privacy, including the inviolability of his domicile. These principles are not peculiar to the Lebanese legal system. They are general principles of law recognized by civilized nations.

Most of the following recommendations are made in the light of the approach just outlined.

#### A. Sterilization

Sterilization is a relatively new phenomenon. Like most countries Lebanon has no laws to regulate it. From the following general principles of law it may be inferred that sterilization should be permitted.

1. Where there is no law forbidding an act, it is permissible.
2. Some national constitutions guarantee to each individual the

freedom of choice to control his or her own fertility.<sup>29</sup>

As a practical matter, the doctor must obtain the written consent of the spouse who is being sterilized, and while the doctor is not liable for damage to the non-consenting spouse, the non-consenting spouse has a right of action against the sterilized spouse, because under some sects' family laws, sterilization is a ground for divorce. Therefore, it is advisable (but not mandatory) for the doctor and the sterilized spouse to obtain the written consent of the other spouse. This is the present position of the law. No change is recommended.

#### B. Abortion and Contraception

Given that the law is restrictive and forbids abortion on any grounds and that there is no hope in the near future of changing the law, it is submitted that the "defense of necessity" clause in Article 229 of the Lebanese Penal Code section on abortion<sup>30</sup> offers sound legal grounds for the issuing of a ministerial or presidential decree that declares that an abortion is permissible when it is the only means to save the life of the pregnant woman or when the continuation of the pregnancy constitutes a great and imminent danger to her health. The defense of necessity clause justifies the defense of one's life and the lives of others as well as one's property and the property of others against a great imminent danger. It stands to reason that a woman's body is her property and that abortion should be legal on grounds of defense when the continuation of the pregnancy is likely to damage her body either severely or permanently. Presidential Decree No. 13187 of October 20, 1969<sup>31</sup> which permitted abortion in Lebanon only to save the life of the mother did not, therefore, make full use of the "defense of necessity clause." It is proposed that the Presidential Decree should be amended to permit abortion when the continuation of a pregnancy is likely to cause severe or permanent damage to the health of the pregnant woman.

The importance of a decree that permits abortion on the grounds of the health of the woman cannot be underestimated. With this defense, and in the absence of negligence, a doctor who performs an abortion to prevent damage to a woman's health, is protected by the well-established rule of law that the doctor has an unquestionable right to choose the treatment

---

<sup>29</sup>Examples are: (1) Mexico: Article 4 of the Mexican Constitution, as amended in January 1975, includes the following: "...every person has a right to decide in a free, responsible and informed manner as to the number and spacing of his or her children." (2) U.S.A.: Eisenstadt v. Baird 31 L. Ed. 2d 349, 362 (1972).

<sup>30</sup>See above, p. 7.

<sup>31</sup>See above, pp. 6-7.

which is best for his patient's health.

With regard to contraception, the opening statements in this chapter on recommendations show that a recommendation for a change in the law of contraception is unlikely to be adopted. However, it should be reiterated that contraceptives are being freely imported as medicaments and are being sold and distributed by family planning centers.

### C. Minimum Marriage Age

In the introduction to this study, the question was asked as to whether there is any relation between fertility, on the one hand, and family law and law pertaining to economic incentives, on the other hand. Although the survey in Bourj-al-Brajini cannot be the basis for generalizations, it is worth noting that it revealed a marriage pattern which seems to have been shaped almost exclusively by the law. This pattern includes the following:

1. Girls who marry at ages under 14 and over 30 are overwhelmingly Moslems.
2. Girls who marry under 14 and over 30 tend to enter into endogamous marriages (marriages of related individuals).

It is submitted that this pattern of marriage has developed in the Moslem community because their law is permissive, while Christian law is restrictive. Moslem girls marry under the age of 14 because their law permits it, while Christian girls cannot marry under the age of 14 because their law forbids it, except in very exceptional circumstances. With regard to marriage at ages over 30, we should note that Christian heritage tolerates the idea of celibacy. In fact, St. Augustine considered a life of celibacy as the ideal life. On the other hand, in Islamic heritage celibacy is not tolerated. If a Moslem girl is still unmarried at the age of 30, her parents find her a husband from one of her immediate relatives. Similarly, if a girl marries under the age of 14 it is also because her parents planned this marriage with one of her immediate relatives. Now, according to Moslem law, blood kinship marriages are permitted in the 3rd, 4th, 5th and 6th degrees, while for Christians blood kinship marriages are forbidden in the 3rd and 4th degrees and are permitted in the 5th and 6th degrees only after a dispensation is obtained.

The endogamous marriages for women under 14 and women above 30 account for the relatively high rate of defective births in Islamic communities. Hence, those Moslems in the Bourj-al-Brajini survey who approved of abortion tended more than Christians to give prevention of defective births as a reason for their approval.

In the light of the above facts, it becomes imperative to change the law relative to age restrictions and to consanguinous marriages. Were this law a civil and not a religious law, changing it would be much easier.

It is recommended that the most effective way to raise the marriage age is by amendment of Articles 483 and 486 of the Penal Code which state that a fine of 25 to 250 Lebanese pounds shall be imposed on any authorized religious agent and on all those who are officially involved (witnesses) in the marriage of any person under the age of 18 which has taken place without the consent of the parents or the permission of the court. It is proposed that these articles be amended to remove the phrase "without the consent of the parents or the permission of the court." Such an amendment would not nullify marriages entered into by persons under the age of 18 nor stop persons from attempting to marry under that age. All that happens is that such marriages would involve a breaking of the law by more than five people (bride, groom, priest or sheikh, and two witnesses) who therefore would be obliged to pay a fine upon registering the marriage with the government. Failure to pay the fine would prevent the registration of the marriage. Such a measure would have a significant effect on the authority performing the marriage.

#### D. Minimum Working Age and Compulsory Education

All religious sects in Lebanon have a provision in their family laws to the effect that children have a duty and a legal obligation to support their parents in their old age. In other words, parents find security against old age in their children. Many parents see in a large number of children not only a guarantee of security but also a more immediate source of income when the children at even an early age can be economically active.

According to the Lebanese Labor Code, the minimum working age for a child is eight years. There is an urgent need to amend the Labor Code to raise the minimum working age to at least 14 years.

It is the opinion of the writer that education, whether sex education or general education, is the most effective long-term policy to control population growth.

Making education compulsory for all children up to and including the intermediate level is a sound long-term population policy. It is also a good short-term population policy, because it will automatically tend to raise the working age and marriage age from the legal minimums of eight and nine years, respectively, to more than the age of fifteen years, to the extent that school attendance interferes with employment and marriage.

It is perhaps of relevance to mention here that education is now free and that the Constitution guarantees free education to all, irrespective of sex or religion. Article 10 of the Constitution gives all religious sects the right to have their own educational institutions.

Education is available at all levels. Public education is free; private education is not. Although there are government subsidies given to

private educational institutions, they are too small to significantly lower the cost of private education. Both private and public education offer equal opportunities to men and women. At no level, however, is education compulsory.



- 19/ *Legal Aspects of Menstrual Regulation*, by Luke T. Lee and John M. Paxman (1974).
- 20/ *Symposium on Law and Population: Text of Recommendations*, Tunis, June 17-21, 1974.
- 21/ *Law and Population Growth in Iran*, Parviz Saney (1974).
- 22/ *Law and Population Growth in Kenya*, U. U. Uche (1974).
- 23/ *Law and Population Growth in Mexico*, by Gerardo Comejo, Alan Keller, Susana Lerner, Leandro Azuara (1975).
- 24/ *The Impact of Law on Family Planning in Australia*, by H.A. Finlay (1975).
- 25/ *The World's Laws and Practices on Population and Sexuality Education*, by Edmund H. Kellogg, David K. Kline and Jan Stepan (1975).
- 26/ *Pregnancy and Abortion in Adolescence: Legal Aspects*, by Luke T. Lee and John M. Paxman (1975).
- 27/ *Law and Population Policy: Some Suggestions for Determining Priorities and Estimating Impact*, by John U. Farley and Steven S. Tokarski (1975).
- 28/ *Legal Implications of the World Population Plan of Action*, by Luke T. Lee (1975).
- 29/ *Law and Population in Lebanon*, by George M. Dib (1975).



## **International Advisory Committee on Population and Law**

The Programme is under the general supervision of an International Advisory Committee on Population and Law, which is on the roster of non-governmental organizations accredited to the U.N. Economic and Social Council. The Committee meets annually in different regions of the world. Its members are:

- Professor Georges Abi-Saab (Institute of International Studies, Geneva)
- Professor Richard Baxter (Harvard University)
- Mr. Robert Black (Organization for Economic Cooperation and Development)
- Dr. Jean Bourgeois-Pichat (Comité International de Coordination des Recherches Nationales en Démographie)
- Mr. Philander Claxton, Jr. (U.S. Department of State)
- Lic. Gerardo Cornejo M. (Fundación para Estudios de la Población, A.C., Mexico)
- Dean Irene Cortes (University of the Philippines)
- Dr. Jean de Moerloose (World Health Organization)
- Mr. Kaillas C. Doctor (International Labour Organisation)
- Mr. Carl M. Frisén (U.N. Economic and Social Commission for Asia and the Pacific)
- Mr. Robert K. A. Gardner (U.N. Economic Commission for Africa)
- Professor Richard Gardner (Columbia University)
- Mr. Halvor Gille (U.N. Fund for Population Activities)
- Professor Leo Gross (Fletcher School of Law and Diplomacy)
- Dean Edmund A. Gullion (Fletcher School of Law and Diplomacy)
- Miss Julia Henderson (International Planned Parenthood Federation)
- Mr. Edmund H. Kellogg (Fletcher School of Law and Diplomacy)
- Professor Dudley Kirk (Stanford University)
- Dean Peter F. Krogh (Georgetown University)
- Dr. Arthur Larson (Duke University)
- Dr. Luke T. Lee (Fletcher School of Law and Diplomacy)
- Mr. Thomas C. Lyons, Jr. (U.S. Agency for International Development)
- Vice-Chancellor O. Roy Marshall (University of the West Indies)
- Mr. Bertil Mathsson (U.N.E.S.C.O.)
- The Reverend Arthur McCormick (Vatican)
- Mr. Robert Meserve (American Bar Association)
- Dr. Minoru Muramatsu (Institute of Public Health, Japan)
- Mrs. Harriet F. Pilpel (U.S. Planned Parenthood-World Population)
- Dr. Rafael Salas (U.N. Fund for Population Activities)
- Mr. Marc Schreiber (U.N. Human Rights Division)
- Mrs. Helvi Sipilä (Assistant Secretary-General for Social and Humanitarian Affairs, U.N.)
- Mr. Leon Tabah (U.N. Population Division)