

“Personal Status” and “Statut Personnel”

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For the Continental lawyer, status (of persons) and “personal law” (or “personal statute” according to the traditional terminology) constitute quite distinct notions. The first refers to the condition of the individual, the second to a body of rules. The first is a concept relating to our own — or to another’s — legal system considered by itself; the second is a concept of private international law designating that which is deemed, in a given sphere, to be the competent legal system among more than one, by virtue of a personal connection (where the test may be citizenship or domicile). And just as the angles of vision do not coincide, there is no objective correspondence between the one sphere and the other.

But when the literature and case law of common law countries is considered, it is noticed that the concept of *status*, or *personal status*, sometimes assumes a hybrid aspect somewhere between the two notions, almost as if they were identical. It is true that this does not occur among writers who consider *status* within the ambit of jurisprudence or of private law. These writers refer to it without special regard to private international law and they endeavour to determine the notion of status in a way similar to what may be found in the literature on the subject in the Continental countries, with analogous doubts and differences. Anglo-American writers on private international law, on the other hand, often deem it opportune, when seeking to answer the question of the sphere in which extra-territorial efficacy may be attributed to a given system, to refer to personal status, as though the same jurisprudential concept were valid to that effect as well.

If we are not mistaken, an indication of the hybrid nature which is thus attributed in common law countries to status is to be found in the use — especially frequent among writers on private international law — of the expression “personal status” instead of simply “status”. The addition of the adjective “personal” would appear to be necessary in our argument if jurists were accustomed to talk of “status” in connection with things as well and to classify things in various “status” according to their different juridical regime. But that usage is not to be found, even in English-speaking countries,

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with a few exceptions such as in Admiralty judgments in which the attribution of a status to a ship was used as a subterfuge in order to bring its owners within the jurisdiction of the Admiralty Court.¹ It is true that in French the term "état" is usually accompanied by the addition of "personnel" or more often "des personnes" (and so, similarly, "stato" in Italian) but in Italian and French there would be a risk, if that were left out, of confusion between the status of the individual, and the state; this, however, does not occur in English, as the original form *status* has been kept in the accepted meaning which we are concerned with here, and the form has been changed to "state" to convey the accepted meaning of state which the original Latin word has acquired in modern European languages. Actually, in English there may still be the risk of confusion, due to the accepted meaning of the term in public law, such as dominion status, and also in a non-legal sense, such as social status. But so long as one is talking of definite juridical matters, there is usually no need to fear misunderstandings so that it is unnecessary to be more precise except in a case where it is desired to emphasize distinctions, such as *estate in land* — *personal status* or *proprietary estate* — *personal status*.

Nor can it be said, apparently, that *personal status* should convey a narrower concept than *status*, as some have thought.² No restriction of that kind is observed in the language used by judges or by writers; nor does it appear in legislative or international documents where the term is used rather — as we shall see — with a meaning wide enough to go beyond the notion of status.

As we have said, if we are not mistaken the addition of "personal" to "status" apparently attests to the tendency towards a synthesis or mixture between status (of persons) and personal statute (or law). And in fact, while such addition is seldom if ever to be found amongst writers on jurisprudence,³ it is often found amongst writers on private international law. But it is more useful to examine what those writers have in mind than to dwell on the expression itself.

¹ *The Mogileff*, [1921] P. 236, [1921] W.N. 124, (1920-21), 27 T.L.R. 549, (1921), 90 L.J.P. 329. See Graveson, *Status in the Common Law*, (London, 1953), p. 121 ff.

² See, e.g., E. Vitta, *Conflict of Laws in Matters of Personal Status*, (Tel Aviv, 1947), p. 14.

³ See, e.g., J. Austin, *Lectures on Jurisprudence*, 5th ed., vol. 2, (London, 1911); T. E. Holland, *The Elements of Jurisprudence*, 12th ed., (Oxford, 1917); Salmond, *Jurisprudence*, 2nd ed., (London, 1907). It does not seem to us that the addition of the word "personal" appears even once in the very ample treatises of Austin and Holland. In Salmond, it is found only in one of the Appendices (at p. 493 of the second edition).

Rabel has already observed that the concept of status, even if rather vague among writers on common law, "refers to situations subjected to personal law".⁴ A typical and extreme example, it seems to us, is the following test adopted by Cleveland to determine or deny the existence of a status: "that those relations are status whose existence in another jurisdiction is measured by the law of the home state..."⁵ And he affirms consistently: "...marriage... is the province of home law and is therefore a status"⁶; "...once a proper law has said that a child is legitimate there is a principle of the common law of conflicts which says that whatever is now the home law of this child will be borrowed... We shall, therefore, call legitimacy a status..."⁷ Beale also looks continually to the "personal law" to decide whether a given question is a question of status, and draws his reply from that criterion: "Insanity is not a status. If insanity is found at the domicile it does not affect the condition of the person in another state."⁸ And so also Professor Graveson: "The reference of a matter to the domiciliary or other proper law of the person concerned is... a test of whether the matter involves a question of status..."⁹

It is to be noted that the influence, conscious or unconscious, of the "personal law" leads not only to the affirmation or denial of the existence of a status according to a criterion extraneous to the argument, but also to the unification of the various *status* in a single whole called precisely *personal status*. *Status* according to customary usage is a specific *status*, one or other of the several status to be found in a given juridical system, such as the status of a married person, of a legitimate child, etc. It is true that there are some, like Salmond, who use the term status as a collective designation of all the different status of a given person, plurality of status, and that is, in Salmond's conception, of all his rights and duties which are not in the nature of property (thus in fact distinguishing status from property). And others, like Farwell, J., go further still, so far as to assert that status constitutes "one indivisible whole" which "cannot be altered but only completely changed."¹⁰ In reply to

⁴ E. Rabel, *The Conflict of Laws*, 2nd ed., vol. 1, (Ann Arbor, Mich., 1958), p. 113 ff.

⁵ R. F. Cleveland, *Status in Common Law*, (1924-25), 38 Harv. L. Rev. 1074, at p. 1075.

⁶ *Ibid.*, at p. 1080.

⁷ *Ibid.*, at p. 1084.

⁸ J. H. Beale, *A Treatise of the Conflict of Laws*, vol. 2, (New York, 1935), p. 658.

⁹ Graveson, *op. cit.*, *supra*, n. 1, at p. 119.

¹⁰ *In re Selot's Trust*, [1902] 1 Ch. 488, at p. 492, (1902), 71 L.J. Ch. 192, at p. 194.

that it has been rightly said that every status is an entity standing on its own feet. So much the more so that every status is different from every other by reason of its origin. But when status or personal status comes to describe, more or less, the field of application of the "personal law", it is understood that it is a single whole (comprising the several individual *status* or the different matters of *personal status*, however they may be described).¹¹

Perhaps there is a connection between these tendencies and the fact that in the common law countries, traditionally at least, "the doctrine of personal law as a unified conception is seldom explicitly formulated and has never been systematically elaborated", to use the words of Nussbaum.¹² And perhaps the use of the expression *personal status*, which seems to be particularly widespread amongst the writers on private international law, has been encouraged, consciously or unconsciously, by the familiar sound of the expression *personal statute*, which, especially in the past, was widely used even by Anglo-American jurists with the meaning of "personal law" or "statut personnel".¹³

All the same, even jurists, with the tendency which has been noted, do not go so far as to apply the label "status" to every question coming within the "personal law", like questions of inheritance of movable property, nor to deny the existence of a status every time that the extra-territorial efficacy of a rule does not receive recognition by a given system of law.¹⁴ The nature of status is not affirmed in the first example because there is no recognized status of heir in the field of civil law or in jurisprudence. Even Austin

¹¹ See the legislative and international texts mentioned *infra*.

¹² A. Nussbaum, *Principles of Private International Law*, (New York, London, 1943), p. 140.

¹³ See, e.g., *Polydore v. Prince*, (1837), 1 Ware (402) 411 (U.S.), per Ware, D.J., ("personal statutes"); E.H. Young, *The Status of Foreign Corporations and the Legislature, Part I*, (1907), 23 L.Q. Rev. 151, at p. 155; *Bouvier's Law Dictionary*, (Cleveland, 1940); Ballantine, *The College Law Dictionary*, (Rochester, N.Y., 1948); *Words and Phrases*, (St. Paul, Minn., 1956); in all these dictionaries, see the item "personal statute"; T. Baty, *Polarized Law*, (London, 1914), pp. 17, 40.

¹⁴ See, e.g., Beale, *op. cit.*, *supra*, n. 8, at p. 649: "The variety of status which consists of permanent personal quality was not considered in the restatement because... it has no extra-territorial connotation"; C.K. Allen, *Status and Capacity*, (1930), 46 L.Q. Rev. 277, at p. 293: "It is now reasonably safe to say... that, with certain exceptions, status is determined by the personal law..."; and also, Graveson, *op. cit.*, *supra*, n. 1, at p. 107, who, after reviewing English and American decisions, observes that: "In none of these cases, ... was there a refusal to recognize that a legal status had been created: the refusal was directed against giving extra-territorial effect...".

who enlarges the category of status enormously¹⁵ to the point of including in it rights and duties of public officials and traders, offences and civil rights of infants, and so on, nevertheless admits that "The aggregate... of the rights and duties which passes by testament or intestacy... has never been deemed a *status* or condition".¹⁶ No one dares to deny the nature of status in cases where it is recognized by tradition or doctrine. So the above-mentioned writers prefer to gloss over the condition constituted respectively by domicile and by citizenship (which Lord Westbury has called "civil and political status" in the well know judgment in *Udny v. Udny*)¹⁷ when treating of the various status. And they do not fail to admit, in general, that there is no exact correspondence between extraterritoriality and status, as we have already seen.

In any way, it is considered that this tendency does not seem logical. If it is a matter of applying the "personal law", it is certainly worth referring openly and directly to the requirements that a given judicial system lays down for such application instead of to the requirements appropriate to another purpose, that is to say to the connotation of a status. The use which is claimed to be made

¹⁵ The idea of Austin is that the concept of *status* derives only from convenience of exposition, *i.e.*, from the convenience of severing norms concerning only a certain category of persons from matters of fundamental and general interest. This idea, instead of easing the settlement of the subject, would prejudice it seriously. Austin himself admits that there are exceptional norms of status which may not be omitted in any treatise, because without them the other norms would not be intelligible. Moreover, the norms of the status interest not only those who bear the status but also all those who are, or may come, in contact with them. It may even be observed that if we consider as *jus singulare* the law concerning the minor or the spouses, why not consider likewise the law concerning, for instance, the mortgage — and therefore the law of mortgage? Austin's answer is that anyone can become a mortgagee but not the bearer of a status; which — to the extent it is true — does not in any way prevent the class of mortgagees from not being more numerous than those of minors and spouses. Moreover, if the law concerning a certain class of persons must be segregated from the *corpus juris*, why not sever also the law concerning a certain class of things a certain situation, *etc.*? And then what would there be remaining? It may be found at last that this idea leads logically to a complete obliteration of the concept of status. If for status we must understand a particular subjective condition, deprived of interest for the general body of citizens, what ought to be considered as such is not only a condition existing *erga omnes in rem* but also and even more a condition obtaining only *in personam*; not only a condition concerning rights and duties conspicuous in number and importance — as states Austin, *op. cit.*, *supra*, n. 3, at pp. 688, 944, but differently, at p. 722. — but, much more so, a condition which is insignificant.

¹⁶ Austin, *op. cit.*, *supra*, n. 3, at p. 703.

¹⁷ (1869), L.R. 1 Sc. & Div. 441 (H.L.).

of another concept (status) — a concept which then becomes distorted precisely in consideration of such use — contributes nothing to the clarity of juridical thought.

A kind of vicious circle forms, and it is impossible to know whether a given phenomenon should be termed status because the judicial system recognizes it as subject to the "personal law", or whether such subjection should be recognized inasmuch as it constitutes status. To make the extraterritoriality of the rules depend upon their connection with a status, and at the same time to make the existence of a status depend upon the extraterritorial application of the rules which govern it, cannot be allowed.

The concept of status is not strictly a concept of private international law (as are the concepts of "personal law", *lex rei sitae*, etc.) and should remain identical both in that sphere and in jurisprudence and private law. In fact, as we have observed, the Anglo-American writers on private international law do not go so far as to create a concept of status of their own, such as would come to constitute a reflexion of "personal law" and a duplicate of its objects, comprising all the questions of personal law and only those. So that their identification of the two stops half way: status ceases to be an independent concept but still does not become the true shadow of personal law.

The said tendency is to be found reflected — and in an even more marked form than in the writings of the Anglo-Saxons on private international law — in the English versions of certain international documents relating to territories of the former Ottoman empire or to nearby countries, and in legislative Acts of Great Britain as mandatory power in Palestine. Take for example Article 9 of the *Mandate for Palestine*¹⁸ and Article 6 of the *French Mandate for Syria and the Lebanon*¹⁹ and also Article 51 of the *Palestine Order in Council, 1922*.²⁰ There are, further, Article 16 of the *Lausanne Convention* of July 24, 1923,²¹ Article 28 of the *Montreux Convention* of May 28, 1924,²² and the *Notes* exchanged in 1928, between various

¹⁸ The text of the *Mandate* has been conveniently reprinted in both the French and English versions by the United Nations. See U.N. Doc., A/70. See also, Wright, *Mandates under the League of Nations*, (Chicago, 1930), pp. 600-611 (English version only).

¹⁹ *Id.*

²⁰ See the text in Stonyanovsky, *The Mandate for Palestine*, (London, New York, Toronto, 1928), p. 363 ff, at p. 374.

²¹ *Convention respecting Conditions of Residence and Business and Jurisdiction*, (1924), 28 L.N.T.S. 153, at p. 163.

²² *Convention respecting the Abolition of the Capitulations in Egypt*, (1937-38), 182 L.N.T.S. 37, at p. 61.

western states (including Great Britain, the U.S.A. and many others), and Persia.

All these documents deal with private international law or "inter-personal law". Matters to which the "personal law" of the parties applies are designated as matters of "personal status". This is so even when such matters have no connection with any *status* recognized by jurisprudence or civil law (for example, matters of inheritance at law, wills, dowry, etc.). It is true that a certain hesitation is noticeable in some of these documents in this regard and some matters, like that of inheritance, are not included there under the heading of *personal status*.²³ In other documents, however, even such reserve is lacking.²⁴

But even aside from the inclusion, in the sphere of questions of status, of matters not recognized as such by tradition and by juridical doctrine (and also the exclusion of matters that are recognized as such), there is another aspect to the matter — another "dimension" may we say — due to which the two terms cannot coincide.

²³ See Article 16 of the *Lausanne Convention* (in the English translation of the French original): "In matters of personal status, *i.e.*, all questions relating to marriage, conjugal rights, divorce, judicial separation, dower, paternity, affiliation, adoption, capacity, majority, guardianship, trusteeship and interdiction; in matters relating to succession, to personalty, whether by will or on intestacy, and the distribution and winding up of estates; and family law in general, . . ." On the debates which preceded the *Convention* on this point, concerning the previous situation in the Ottoman empire in matters of *statut personnel*, see *Conférence de Lausanne, Recueil des actes*, I, 1, (Paris, 1923), pp. 502 ff., 505 ff. and *passim*.

See also *Note respecting the Position of British Nationals in Persia*, May 10, 1928, which is similar in all respects with the *Notes* exchanged between the United States and Persia on July 11, 1928, (1928), 77 L.N.T.S. 377.

²⁴ See Article 28 of the *Montreux Convention* (and the *Rules concerning Judicial Organization in Egypt, R.J.O.*, appended to the *Convention*). Article 28: "Personal status comprises: suits and matters relating to the status and capacity of persons, legal relations between members of a family, more particularly betrothal, marriage, the reciprocal rights and duties of husband and wife, dowry and their rights of property during marriage, divorce, repudiation, separation, legitimacy, recognition and repudiation of paternity, the relation between ascendants and descendants, the duty of support as between relatives by blood or marriage, legitimization, adoption, guardianship, curatorship, interdiction, emancipation and also gifts, inheritance, wills and other dispositions *mortis causa*, absence and the presumption of death." See also, Article 51 of the *Palestine Order in Council, 1922, supra*, n. 20 and also in Drayton, *Laws of Palestine*, vol. 3, (London, 1934), p. 2581: ". . . For the purpose of those provisions matters of personal status mean suits regarding marriage or divorce, alimony, maintenance, guardianship, legitimization and adoption of minors, inhibition from dealing with property of persons who are legally incompetent, successions, wills and legacies, and the administration of the property of absent persons."

Status is understood in various ways by the jurists. For some it is a situation, a condition, a title with effect *erga omnes*. The legal system makes rights, obligations, capacity, etc. depend upon that title; but according to this school, properly speaking it is not the effects that constitute the status, neither the effects which proceed from it directly nor certainly those which proceed from it indirectly. For others, on the other hand, such as Austin and Salmond, status is the whole body of rights, duties, capacity, etc. which derive directly from a given juridical situation (*ex statu immediate*) or, in a broader sense, those deriving indirectly too, with the concurrence of other facts (*ex statu mediate*).²⁵

Now, it is clear — and the decisions regarding Article 51 of the *Palestine Order in Council, 1922* confirm it — that the extent of the concepts set forth is not, precisely, either the one or the other. It comprises not only the simple title (e.g. the married status) but also relationships deriving from it, yet not all the possible reflections, indirect or even direct. Thus, questions regarding the relationships between husband and wife are deemed to be questions of *personal status*, but the consequences of the married state in regard to third parties are not, nor, in particular, are its reflections on matters of liability in tort, or the fiscal or military fields.²⁶ So that the determination of the contents, in the cases we have examined, does not correspond to the concept of status — or rather, to any of the various concepts of it which are gathered from the various currents of thought — neither by extension nor, if it may be so expressed, by "thickness". It is accomplished, it seems, according to some other criterion.

The disparity is evident, from one point of view, from the very drafting in English of Article 28 of the *Montreux Convention* cited above, in which *personal status* seems the comprehensive term for all the matters provided for, and a particular class of them is then designated by the name of *status*.

If the French text of the international documents that have been mentioned is consulted,²⁷ it will be found that what is *personal status* in English is there termed *statut personnel*, so that the two expressions *statut personnel* and *personal status* are given as equivalents.

²⁵ See Austin, *op. cit.*, *supra*, n. 3, at p. 701.

²⁶ C.A. 16/1949, *Pesqim*, 3, 283, at p. 295 ff. Spec. Trib. 1/1950, *Pisqe Din*, 8, 1020, at p. 1032 ff.

²⁷ So also the French text of the *Notes* exchanged with Persia by France, (1928-29), 82 L.N.T.S. 51, and other states similar to those exchanged with Persia by Great Britain and the United States, *supra*, n. 23.

But in truth they are quite different, for the one designates the law that is competent and the other the condition of the individual. Moreover the spheres do not exactly coincide, as the "personal statute" comprises many matters which do not constitute status (according to the two "dimensions" spoken of above) and, conversely, does not comprise every status.²⁸ Nevertheless the authoritative presentation (in some cases at least) of the two formulae as equivalent presupposes that they have been so understood by the States and lays a duty on the interpreter to interpret them as such. To do so, given their objective discrepancy, will be possible only if the one or the other (or both) is interpreted not *sic et simpliciter* but *secundum quid*. The question then arises: is the expression *matters of personal status* used in the sense of *matière de statut personnel* or is it the other way around?

There appears to us to be no doubt that the first alternative is the right one, supported as it is by reasons deriving from the analysis of the provisions themselves as well as from their history.

The provisions of the French text of the Mandates for Palestine and for Syria and the Lebanon, on "respect du statut personnel",²⁹ are clear and sensible. In both cases the duty is laid upon the Mandatory power to preserve in future the "personal laws" for the local population in the matters already subject to such rules, that is to say, to preserve for every community its own religious law in those matters, instead of changing it by a new territorial and secular law (such as the law of France or of Great Britain). The anxiety was very understandable, whether justified or not. The connection between the two subjects treated in the same clause, respect for personal rules and respect for religious interests, is also quite clear.

²⁸ The inclusion of the *status civitatis* among matters of *statut personnel*, as it appears in Foelix, *Traité de droit international privé*, 4e éd., Ch. Demangeat, éd., t. 1, (Paris, 1866), p. 81 ff. was considered a *lapsus* of the learned author. (See also, Weiss, *Traité de droit international privé*, 2e éd., t. 3, (Paris, 1808-13), p. 57, n. 1). See R. Monaco, *L'Efficia della Legge nello Spazio*, 2nd ed., (Torino, 1964), p. 116.

²⁹ *Mandat pour la Palestine*, *supra*, n. 18, article 9, al. 2: "Le respect du statut personnel des diverses populations et communautés et de leurs intérêts d'ordre religieux sera entièrement garanti."

Mandat pour la Syrie et le Liban, *supra*, n. 19, article 5, al. 2: "Le respect du statut personnel des diverses populations et de leurs intérêts religieux sera entièrement garanti."

But if one then considers the English text of these provisions,³⁰ one cannot interpret "respect for the personal status" according to the more literal meaning of the expression. To do so would seem to make it necessary to understand such respect in the same way as we regard respect of contracts, mentioned in the Constitution of the United States and other basic legal documents. But is it probable that the authors of the Mandates were worried that the Mandatory powers would arbitrarily deny this or that status belonging to a class of citizens? Or that they would take it upon themselves to deem married people unmarried in the countries of the Levant, persons under disability as of full legal capacity, or *vice versa*?

With such an interpretation there would, in contrast to the guarantee against such imaginary dangers, be no safeguard against a change of the religious rules hitherto in force by a secular territorial law (provided that it also respected the *personal status* already existing, that is to say, the individual status of John Doe, and will continue to recognize such *status*, in general, in the future as well. In the same way, "respect of contracts" does not forbid legislation on the subject, provided that the new rules respect existing contracts and permit the making of future contracts. Moreover, according to the interpretation under discussion there would seem to be no connection in the two Mandates between this subject and the protection of religious interests, both of which are contained in the same proposition.

If one then examines the list of the matters dealt with in all the recorded documents, in the various versions collected, it is apparent that the collective designation of them as matters of *statut personnel* is in conformity with the tradition of private international law and is relevant to their delimitation, in extension and in "thickness". And so also in Article 28 of the *Montreux Convention*, the relationship is clear between that comprehensive designation and one of the classes of which it is composed, the "état des personnes". All things which, as we observed summarily, could not be said for the expression *personal status* understood in its proper significance.

³⁰ *Mandate for Palestine*, *supra*, n. 18, article 9, para. 2: "Respect for the personal status of the various peoples and communities and their religious interests shall be fully guaranteed."

Mandate for Syria and the Lebanon, *supra*, n. 19, article 5, para. 2: "Respect for the personal status of the various peoples and for their religious interests shall be fully guaranteed."

Thus the analysis leads to the conclusion that *personal status*, in the documents under examination, is a reflection of *statut personnel* and has come to take its meaning; and not indeed the other way around.

This result is also confirmed by historical considerations. There is no great difficulty in retracing the origin of the category of personal status ("statut personnel") placed, albeit not without wavering, in the international and mandatory rules which are on record.

In the background stands the tendency of Islam not to subject infidels to its own rules, regarding certain matters which it considers connected strictly with religion.³¹

A decisive turn was taken when Mohammed II, after the conquest of Constantinople, allowed the heads of the non-moslem communities to continue to exercise their jurisdiction over their own members. The famous Firman of 18th February, 1856, known by the name of Hatti Hamayun, alludes openly to the powers already conferred upon the bishops and patriarchs (and later extended to the heads of all the non-moslem communities).

For all who were not citizens of the Empire, the Capitulations ensured that they live under the law of their country and under consular jurisdiction; so that for them a system of personal and not territorial law was established.

It is plain that, in all these precedents, the *ratio* did not lie in the concept of status as such and that the application of the foreign or religious rules of the individual communities was not concerned with the different status — neither with all of them nor with them alone — but with a variable complex of matters, made up of status and other judicial relations. And it is also clear that in all the phenomena alluded to, in spite of the differences between them, there is a common element given by the concept of "personal law", law which comes to be considered more relevant than any other in the circumstances because of its close connection with the person.

To term such rules "personal statute" was usual among jurists of the French and Italian languages³² in the countries of the Eastern

³¹ However, the usual statement according to which Muslim law is considered personal law by its very nature and therefore not applicable to non-Muslims is an exaggeration. See on this point, H.A. Boghdadi, *Origine et technique de la distinction des statuts personnel et réel en Egypte*, (Le Caire, 1937), p. 72.

³² See, e.g., under the item "statut personnel", Young, *Corps de droit ottoman*, (Oxford, 1906); G. Péliissié du Rausas, *Le régime des Capitulations dans l'Empire Ottoman*, 2e éd., t. I, (Paris, 1910); S. Messina, *Traité de droit civil égyptien mixte*, t. 3, (Alexandrie, 1930); and also, De Jehay, *De la situation des sujets ottomans non-musulmans*, (Bruxelles, 1906), p. 12.

Mediterranean in the last century and the beginning of the present one, although it was undoubtedly already old-fashioned by then and had anyway lost the meaning of referring back to the traditional theory of the statutes. In this generic sense of "personal law", "statut personnel" took root in the juridical language of those countries and also became an expression used in legislation. In Egypt, when the legislators set to work on jurisdictional reforms in 1875, they officially designated as matters of personal statute those matters the ambit of which they determined by the example of the Italian Code, Articles 6 and 8 of the *Codice civile, 1865*, with small formal changes.³³ The reason for the preference given to the Italian rule (apart from its intrinsic merit) was the extended scope, in comparison with the French *Code civil*, which it gave to the personal statute, as it included the whole body of inheritance law. Such extension indeed was found to be in conformity with the tradition of the Capitulations³⁴ and with the demands of the European States as a condition of consent on their part to the reform being made in Egypt. So also the Egyptian legislator spoke of personal statute in relation to internal conflicts of law.³⁵ Even the Code published in Egypt by Kadri Pasha came to be called the *Code of personal statute*³⁶ although it only concerned Mohammedan law and not conflicts of law. The same term was used later in the Syro-Lebanese legislation during the French mandate.³⁷

³³ See article 9, para. 1 of the *Règlements d'organisation judiciaire pour les procès mixtes en Egypte*, (R.O.J.), September 15, 1875, in Martens, *Nouveau recueil général de traités*, 2nd series, vol. 2, at p. 681: "Ces tribunaux connaîtront seuls des contestations en matière civile et commerciale entre indigènes et étrangers et entre étrangers de nationalités différentes en dehors du statut personnel." And see article 4 of the Egyptian *Mixed Civil Code*: "Les questions relatives à l'état et à la capacité des personnes et au statut matrimonial, aux droits de succession naturelle ou testamentaire, aux tutelles et curatelles restent de la compétence du juge du statut personnel."

³⁴ See Péliissié du Rausas, *op. cit., supra*, n. 32, p. 422; C. Gardahi, *Le droit civil des pays sous mandat français dans le Proche Orient dans ses rapports avec la législation religieuse*, (1933), 28 Rev. de droit internat. privé, pp. 443-445; F. Chebat, *Les étrangers devant la justice en Syrie et au Liban*, (Paris, 1938), pp. 238 ff.; I.A. Khairallah, *The Law of Inheritance in the Republics of Syria and the Lebanon*, (Beirut, 1941), pp. XI, 344 ff.

³⁵ See Boghdadi, *op. cit., supra*, n. 31, pp. 215, 221 ff., 341 ff., and Messina, *op. cit., supra*, n. 32, pp. 139 ff.

³⁶ Mohammed Kadri Pacha, *Code du statut personnel et des successions d'après le rite hanafite*, (Alexandrie, 1875), (official translation) which has been translated in English under the title, *Code of Mohammedan Personal Law*, (London, 1914).

³⁷ See Chebat, *op. cit., supra*, n. 34, pp. 159 ff., 221 ff. and *passim*. Khairallah, *op. cit., supra*, n. 34, p. XI is a classic example of the confusion between *status* and *statut*.

The English expression *personal status*, on the other hand, appeared only later in the formulations relating to the countries of the region. It does not appear in the *Orders in Council* which were issued successively for the Ottoman Empire and Persia, nor even in the one for Egypt of the year 1930,³⁸ (probably due to the influence of the preceding formulations)³⁹ nor in various treaties such as the Anglo-Iraqi treaty of 1924. It is clear therefore that it was adopted later in the day and with some hesitation so that it appears probable that it came in as a reflection of the meaning of the French expression *statut personnel*, which was traditional and firmly rooted.

If the foregoing considerations are correct, it can be said that when the Palestine *Order in Council*, for instance, defines, in Article 51, matters of *personal status* in order, later on, to apply to them in other articles, the "personal law" of the parties in both the internal and the international sphere, it is substantially repeating itself, as the designation of certain subjects as *personal status* signifies already that the "personal law" applies to them. What is apparently a motivation (they are matters of personal status and are therefore subject to the personal law of the parties) amounts to a tautology. It was pointed out analogously above, with respect to some Anglo-American writers on private international law, that they recognize or deny the existence of a status according to whether the judicial system does or does not apply the "personal law".

To sum up, for subjecting a given relation to the "personal law", the consideration of the question whether or not it is a status is held to be neither conclusive, necessary, nor sufficient. Whatever be the conception one has of status, the common law and the other rules, we have examined, subject a greater or a lesser part of it, according to the cases, to the personal law. Well, then, is it not better to call a spade a spade?

³⁸ See *British and Foreign State Papers*, vol. 132, p. 81. See *Order in Council of July 28, 1930*, Part IV — Civil Matters —, *ibid.*, at p. 118.

³⁹ The expression *personal status* appears in the *Order in Council for Egypt, 1937*, issued in connection with the *Montreux Convention*. See *Abolition of the Capitulations in Egypt*, (1938), 19 Br. Y.B. Int. L. 160.