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## INTRODUCTION

# Legal Belonging across the Mediterranean

THE QUESTION at the heart of the Shamama case seems, on its face, a simple matter of citizenship. Had Nissim successfully naturalized as an Italian national, in which case Italian law would apply to the estate? Or did he remain a subject of the bey of Tunis, forcing the courts to adjudicate according to Tunisian law? These alternatives are certainly beguiling. But reducing the fight over Nissim's inheritance to a straightforward application of nationality law would do a great disservice to the past. The puzzle at the heart of the lawsuit requires a different approach to belonging—one that changes our understanding of citizenship on both sides of the Mediterranean.

The Shamama case, in all of its messy glory, should be worth unearthing simply as a good story for the historically minded. For those invested in debates around the law of belonging, the Shamama lawsuit does more: it points to the imbalances and gaps in the way historians have approached citizenship itself. In trying to make sense of the battle over Shamama's estate, the very category of citizenship proves unequal to the task.

In place of citizenship—and near cognates like nationality and subjecthood—I view the Shamama case in light of a broader, even more abstract category. I call this “legal belonging.” Belonging, because it involves both the formal bonds that tie people to a state, as well as forms of membership that stray beyond the strict boundaries imposed by words like “citizen” and “national.” Legal, because it nonetheless concerns ligatures that produce some formal obligation on the part of a state—as opposed to, say, the kinds of belonging that are purely a matter of self-identification (such as soccer fans or intellectuals) or that transcend the state (religion or ethnicity). The state-based dimension of legal belonging is what makes this abstract concept an

attribute of sovereignty.<sup>1</sup> The belonging I am after accords rights—both to the individual, such as the right to vote, marry, and claim protection; and to the state, including the right to tax, conscript, and exercise jurisdiction. Just as sovereignty varied across time and space, so did the nature of the bonds of belonging. Some enjoyed the state's tight embrace—one that accorded all the political and civil rights of full citizenship. (In nineteenth-century Europe and North America, this was mostly Christian men of European descent.) Many others, however—especially women, religious others, and colonial subjects—found that the state kept them at arm's length.<sup>2</sup>

The neutral category of legal belonging frees us from the baggage of more familiar terms like citizenship and nationality. It allows us to observe the ways in which the furnace of nationalist fervor forged new molds of inclusion and exclusion, especially for Jews. And it permits us to view the modernization of state membership in both North Africa and Europe as an entangled process of legal change that played out across the Mediterranean—rather than an example of a Western invention exported abroad. The sprawling legal battle over the estate of a Tunisian Jew who died in Italy challenges old assumptions—about citizenship, Jews, and the Islamic world. It also offers new ways to think about what it means to legally belong.

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In the course of the lawsuit, lawyers threw doubt on almost every aspect of Nissim's life, with perhaps one exception: that he was Jewish. Yet even this undeniable fact generated extensive disagreement. Nissim's membership in the Jewish people produced more questions than answers when it came to his legal belonging. As religious others in both Europe and the Middle East, Jews had always occupied an outsized role in debates about belonging, equality, and rights. But as nationalism came of age in the nineteenth century, the powerful new ideology offered novel ways to exclude Jews—from the legal belonging they were accorded in polities on both shores of the Middle Sea, and from the shared narratives that bound people together in a normative world.<sup>3</sup>

Jews in medieval and early modern Europe had always been considered subjects of the local sovereign, even as the vast majority lacked full citizenship. Often the relationship between Jews and their ruler was a privileged one: the king, queen, or prince was seen as the ultimate protector of Jews.<sup>4</sup> But nationalist ideals of homogeneous nation-states gave new meaning to Jewish difference. According to the logic of nationalism, Jews were often considered

inherently foreign and thus unassimilable to the nation. If Judaism was its own nationality, then how could Jews be fully Italian (or French, German, etc.)? Among the most committed antisemites, one solution to Jews' inherent otherness was quite simple: deprive them of membership in the state through expulsion.<sup>5</sup> Even liberals accused Jews of constituting a "state within a state" and possessing "dual nationality"—as members of the Jewish nation and the nation-states in which they lived.<sup>6</sup> Nationalism required homogeneity; hence the slippage between nationality as a legal bond between individuals and states, and nationality as an ethnocultural form of affiliation.<sup>7</sup> Nor did Jews ever quite fit the image of sameness presumed by slogans like *fraternité* and *égalité*.

The lawyers arguing the Shamama case came up with a rather unusual twist on Jews' uneasy fit with nationalist-inflected legal belonging. As we have seen, the two most obvious answers to the question of Nissim's belonging placed him as a member of Italy or Tunisia; either he had become Italian or he had remained Tunisian. But as the case grew in complexity, a third possibility emerged: that Nissim's national law was neither Italian nor Tunisian but instead Jewish—and thus that his nationality *was* his Jewishness. Jews were frequently designated a "nation" in early modern Europe. In arguing over whether Jews constituted a nationality, both sides found themselves faced with basic questions about how nationalist ideas intersected with older versions of belonging.<sup>8</sup>

When applied to North Africa, the homogenizing impulse of nationalism became an accusation: Europeans found fault with Islamic states for privileging Muslims over Christians and Jews.<sup>9</sup> In the course of the Shamama case, Italian jurists questioned whether a Jew like Nissim could even possess Tunisian nationality. As dhimmīs (protected non-Muslim monotheists), these jurists maintained, Jews were not the equals of Muslims—and were thus excluded from the nation. The Muslim and Jewish North Africans working on the case disagreed: they refused the nationalist impulse to exclude Jews on the basis of religious difference. They also rejected the assumption that state membership required absolute equality. Instead, they asserted that Jews were full members of the Tunisian state, despite being legally distinct from Muslims. Tunisians' insistence on including Jews in the definition of who belonged would not last forever. Yet the story of nationalist calls for religious and ethnic homogeneity in the Middle East belongs almost entirely to the twentieth century, not the nineteenth.<sup>10</sup>

Nissim's Jewishness stood at the center of the lawsuit because it raised questions about the nature of equality and difference in an age of nationalism. The Shamama case offers an opportunity to think at the margins, as feminist critics

have been urging us to do for decades: to view the history of legal belonging through the lens of those whose very existence challenged emerging conceptions of modern citizenship.<sup>11</sup>

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Thinking at the margins similarly pushes us to reconsider the history of law in the modern Middle East. As with so much about the non-West, citizenship in the Islamic world has largely been described as an import from Europe. But seen through the lens of the Shamama case, modern belonging emerges from an entangled process of legal change across the Mediterranean.<sup>12</sup>

Historians have generally told the story of modern Middle Eastern citizenship in the mode of an older approach to modernization. In this narrative, modernity is a set of ideas, forces, and relations invented in Europe that radiated outward to the rest of the world.<sup>13</sup> At the same time, scholars imagined protocitizenship in the Islamic world as entirely dependent on religious status: whether one was a Muslim or dhimmī. Only Muslims had full rights, as close to full citizenship as one got under Islamic rule.<sup>14</sup> But these rights did not amount to state-based citizenship; rather, Muslims' rights derived from their membership in the *umma*, the community of Muslims worldwide—a group that transcended political boundaries.<sup>15</sup> Jews' status similarly depended on their religion; as dhimmīs, they had largely the same rights across the Islamic world. The only relevant law—*shari'a* for Muslims and *halakhah* for Jews—existed wherever an individual might travel; territorially based belonging supposedly had little impact on people's legal lives.<sup>16</sup> Because rights were presumably located in religious identity, scholars conclude that true, state-based citizenship could only emerge once states stopped defining personal status based on religion—a form of secularization imported from Europe.<sup>17</sup> In short, according to this approach, Middle Eastern citizenship required modernization and was necessarily a product of Westernization.<sup>18</sup>

But this narrative fails us when it comes to the Shamama case, particularly in grasping how Tunisian officials understood what it meant to belong to their state. If we view legal belonging as a dimension of sovereignty—an aspect of the authority exercised by a government over people under its jurisdiction—then there is no need to locate a moment of invention or importation. Husayn, the civil servant charged with overseeing the government's interests in the lawsuit, grounded his assertion that Shamama was Tunisian in classical Islamic law. For him, the 1861 laws outlining the duties and rights of Tunisian

nationals—usually viewed by Europeans as the beginning of Tunisian nationality—were an articulation of belonging already outlined in Islamic jurisprudence. Husayn's case for why Nissim died a subject of the bey was not grafted onto a rootstock of European ideology; it grew from Islamic soil.<sup>19</sup> If we are to take Husayn's conception of Tunisian nationality seriously, we must recognize that legal belonging in Tunisia existed well before the modernizing reforms of the mid-nineteenth century.

Following Husayn's lead, the framework of legal belonging frees us from the twinned teleologies of Westernization and secularization.<sup>20</sup> Put most simply, Jews and Muslims in Tunisia legally belonged to the bey because they were under his sovereignty. Even if they used Jewish or Islamic courts, both these institutions were under the bey's authority. Nor did these explicitly religious courts have a monopoly on the resolution of conflict: governors presided over their own tribunals, where they adjudicated in the name of the bey. While describing these governors' courts as secular would be anachronistic, they were nonetheless undeniably linked to the sovereignty of the state. And all subjects had the right to appeal to the bey as the ultimate arbiter of justice in the land.<sup>21</sup> The presumption that only religious courts mattered—and thus that religious identity was the only marker of belonging—simply ignores the reality of sovereignty in Tunisia and throughout the Middle East. Legal belonging may have looked different in premodern Tunisia, but it nevertheless existed.

Moving away from a centrifugal model of legal modernization does not require ignoring the power imbalance that overshadowed the modern Mediterranean. In this period, Muslim rulers undertook major centralizing reforms, which were mainly designed to stave off European threats to their sovereignty; the history of nationality law in the Middle East is undeniably bound up with these efforts. Beginning in the late eighteenth century, the Ottoman Empire experienced a series of devastating military defeats to Russia. In 1829, Greece declared its independence, backed by a concert of European states. And in 1830, France invaded Algeria, the Empire's westernmost province. Western states also used the painfully obvious dominance of their militaries to impose free trade, flooding local markets with imports and tipping the scales of economic power.<sup>22</sup> But the reality of European imperialism need not lull us into a diffusionist understanding of modernity.<sup>23</sup>

Putting Europe and the Middle East into a single analytic frame also forces us to rethink our assumptions about citizenship in the West. A Whiggish narrative of Western modernity relegates the fragmentation of legal belonging

along religious lines to an evolutionary stage. Belonging based on religion is considered a holdover from a premodern era when entire categories of people were regularly and unabashedly excluded from citizenship; in Europe, this was true of Jews, women, and the poor.<sup>24</sup> The promise of the age of revolutions was to transform society from a series of rigid social hierarchies to a flat, equal mass. Yet in the nineteenth-century Western world, this equality mostly remained limited to free men of European descent.<sup>25</sup> Society—and with it, legal belonging—remained hierarchical and fractured. Various groups continued to possess differentiated rights and distinct duties: enslaved Africans, Indigenous peoples, women, felons, colonial subjects, and in many places, Jews.<sup>26</sup> Even today, the spectrum of ways people might legally belong does not match the ideal of absolute equality. In the United States, Puerto Ricans are citizens, yet remain unrepresented in federal elections; American Samoans are nationals, but not citizens.<sup>27</sup> And of course the ideal type of equal citizenship conceals the profound fragmentation of society; there are many who on paper are full citizens, but whose race, ethnicity, sexual orientation, religion, class, and so on, prevent them from accessing the full promise of their citizenship. We have yet to recognize how the imagined boundary between “citizen” and “foreigner” obscures the range of ways one can legally belong to a state—in the past as well as the present.

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Nissim was a fabulously wealthy man; this, of course, is why his life—and even more so his death—spawned such an enormous paper trail. But the question of belonging at the center of the Shamama lawsuit was one asked over and over again across the Mediterranean. Shifting our gaze toward the indeterminacy of legal belonging frees us from attention to the political and civil rights that have largely preoccupied historians. Scholars interested in citizenship have usefully suggested moving beyond formal membership in a state, looking instead at the multiple ways in which individuals claim rights and duties vis-à-vis a range of state and nonstate actors.<sup>28</sup> Yet for all of this broadening, the focus remains on substantive citizenship.<sup>29</sup> These questions fail to capture the beating heart of the Shamama case—or dozens of similar cases that played out in both Europe and the Middle East.

A seemingly simple query—to which state did an individual belong?—frequently proved arduous to answer, even well into the twentieth century. Today we have paperwork to determine whether individuals are entitled to



the citizenship they claim, such as birth certificates and various forms of state-issued identification (passports, drivers licenses, social security cards, etc.).<sup>30</sup> But Western states did not even attempt universal regimes of identification until after World War I.<sup>31</sup> Even though nationality law in nineteenth-century Europe often presumed the existence of this documentation, everyone knew this was the theory, not the reality. Archives recording births, deaths, and marriages were incomplete at best, and more often than not completely absent.<sup>32</sup>

Little wonder, then, that Nissim was hardly alone in provoking basic questions about legal belonging. On both sides of the Mediterranean, countless individuals found that their status as a national, citizen, or subject was radically uncertain. Questions about legal belonging almost always arose in moments of transition or crisis; marriage or divorce frequently forced the issue, as did the arrival of a draft summons. Before they could tie the knot, Italians in France found themselves in need of documentation proving their birth and thus their citizenship.<sup>33</sup> Young men in Italy, fearing that life's pleasures and possibilities might be cut short by a bullet, claimed they were not Italian citizens and hence were exempt from military service; some invoked parents from Switzerland, others the jurisdiction of the Papal States, and still others their French origins. But it often took multiple rounds of appeal before courts could determine to which state these unwilling soldiers belonged.<sup>34</sup> The same thing happened further east; Jews and Christians in Romania wrote to the local Ottoman consulate in hopes of proving their status as subjects of the sultan, thereby exempting them from serving in the dreaded Romanian army. Youths throughout the Ottoman Empire attempted to avoid the equally unappealing Ottoman military by claiming foreign citizenship. Ottoman bureaucrats in the Nationality Bureau (*tabiiyet kalemi*) had their hands full trying to verify competing claims of belonging; as in the Italian courts, this was rarely a straightforward process.<sup>35</sup>

The most labyrinthine cases of indeterminate belonging frequently began with the death of a wealthy person. Antun Yussuf 'Abd al-Massih, a financially successful Iraqi Christian, died in Egypt in 1885; it took years to determine whether his estate was under Ottoman jurisdiction or that of the British consulate. These problems persisted into the twentieth century; the fortune of Silas Aaron Hardoon, a Jew who died in Shanghai in 1931, forced courts to decide whether the late millionaire had been an Iraqi citizen or British subject.<sup>36</sup> In this sense, the Shamama lawsuit was typical of a somewhat exceptional phenomenon; as in the cases of al-Massih and Hardoon, the fight over

Shamama's enormous inheritance opened a floodgate of contested claims about belonging, all pushed along by the promise of a hefty inheritance. The questions raised in these lawsuits, however, were simply better-funded versions of the ones asked in hundreds of more ordinary cases—in which young men trying to avoid the draft or lovers hoping to marry found that they first had to prove to which state they belonged.<sup>37</sup>

Many people lived their entire life without ever having to establish their belonging. Even those who moved across political borders rarely found their mobility inhibited by questions of state membership. In the world Nissim inhabited, the right to enter the territory of a state—a privilege most closely associated with state membership today—was largely decoupled from citizenship.<sup>38</sup> But the existence of mostly open borders hardly made belonging irrelevant. Across the Mediterranean, countless people had their lives put on hold because it proved difficult to answer this basic question: Under whose sovereignty are you? Turning our attention to the history of legal belonging exposes the urgency of this query and the deception of its simplicity.

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For historians invested in scholarly debates about law and citizenship, the human interest of Nissim's life and death may seem of secondary concern. Yet it is this story that forms the heart of the book: the tale of a man who rose to power only to die in self-imposed exile; a decade-long battle over his estate, in which courtrooms served as the front lines, legal memos as artillery, and famous jurists as generals commanding small armies of lawyers; and a cast of characters as varied as the Victorian novels depicting inheritance disputes. As Charles Dickens and Anthony Trollope discerned, there is nothing like a good fight over an estate to frame a slice of humanity.<sup>39</sup>

But telling this history as a story, with a beginning, middle, and end (of sorts), is not merely a stylistic choice. The arc of the book reflects a key insight into the way legal belonging was proved—not only in the Shamama lawsuit, but in countless cases both before and since: as a narrative. Legal belonging was not a fact to be discovered but rather a series of competing, overlapping, and intersecting tales, all attempting to make meaning of a life. Legal theorists have argued for decades that law is animated by storytelling. In Robert Cover's words, "The very imposition of a normative force upon a state of affairs, real or imagined, is the act of creating narrative."<sup>40</sup> The power of narration in law runs through the thousands of pages of legal briefs written for the Shamama

case. The task of the jurists, first and foremost, was to offer an interpretation of Nissim's life that would prove his belonging—whether to Italy, Tunisia, or the Jewish nation.

Understanding the centrality of narration to legal belonging requires (once again) shedding our twenty-first-century presumptions: today, the ubiquity of paperwork suggests that verifying citizenship is as easy as producing a birth certificate or passport.<sup>41</sup> But the Shamama case indicates that proving legal belonging was not so simple. For those arguing that Nissim died an Italian citizen, the failure to register his naturalization decree was a minor detail; it could not erase Nissim's claim of Livornese heritage, his good faith belief that he had become Italian, and the general consensus among others that he was a citizen of Italy. For those contending that Nissim died a subject of the bey, the continued use of his bureaucratic titles—receiver general and director of finances—proved that he considered himself a Tunisian government official, and thus a Tunisian, until the day he died.<sup>42</sup> The idea that one had to tell a plausible story in order to establish legal status is familiar to other fields, including scholars of citizenship in premodern contexts as well as historians of race and slavery.<sup>43</sup> Yet the glare of nationality legislation has prevented modernists from seeing the continued power of narrative in the quest to prove belonging.<sup>44</sup> Putting narration in the spotlight illuminates a more accurate—and far more intriguing—view of citizenship's past.

The Shamama case offers a way to peel back the siding from the machinery of legal belonging in both Europe and the Middle East, allowing us to observe the functioning of the gears inside.<sup>45</sup> The boundaries of the story are traced by the sources—legal briefs, rulings, and correspondence in Arabic, French, Hebrew, Italian, Judeo-Arabic, and Ottoman—gathered from archives and libraries in Tunisia, Italy, Turkey, Israel, and France. These sources largely ignore questions that would have interested me quite a bit. The possibility that Nissim died an Ottoman national is barely mentioned throughout the lawsuit. Tunisia was a semiautonomous province of the Ottoman Empire; it seems only natural that someone would have argued for Nissim's Ottoman nationality. Yet no one took this idea seriously.<sup>46</sup> In any case, it is the stories mobilized by those who sought to construct different versions of Nissim's life that most interest me. And it is the wonderfully twisting trail of evidence they left behind that I have largely followed—a path with the power to change how we think about belonging, across the Mediterranean and beyond.

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