



Department of Political Science
Master's Degree in International Relations
Major in Global Studies
Chair of Comparative Public Law

Constitution, State and Religion:
Is the Lebanese de-confessionalization possible?

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ACADEMIC YEAR 2020/2021

*A mio nonno Gaetano, alla bambina che hai lasciato
e alla donna che hai cresciuto.*

*Questo percorso non sarebbe così pieno di gioia
se non fosse per te. Mi hai donato la voglia di trasmettere
qualcosa di nuovo e la capacità di non arrendermi mai davanti alle sfide.*

*L'avvio a questa "nuova vita" me lo hai dato tu,
e anche se oggi non è una mattina di dieci anni fa e tu non mi stai
accompagnando alla fermata dell'autobus, questa rimane la più grande verità.*

*La Giulia di oggi l'hai cresciuta tu. La persona che sono è merito tuo.
Noi saremo per sempre **noi**.*

“The difficulty lies, not in the new ideas, but in escaping the old ones, which ramify, for those brought up as most of us have been, into every corner of our minds.”

John Maynard Keynes

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Introduction

The reason behind this research is that of understanding if the Lebanese confessionalism can be overcome and through what means this system can be substituted. The idea of setting upon this work started in October 2019, after the Lebanese *thawra*¹ began to be broadcasted everywhere. Consequently, this research is meant to understand the reasons behind these protests,² by looking at a different perspective: the reform of the Lebanese Constitution to overcome the crises.³ Indeed, all the aspects leading to the present stalemate have as point of reference the Lebanese confessionalism, better known as *tayfiyya*. However, how this research is intended to show, *tayfiyya* is composed by several and different aspects that are intertwined between each other and it will be difficult not to analyse all of them. Namely, constitutional, political, religious, sectarian, sociological and historical aspects are extremely connected to create a unique *file rouge* to the question. Nevertheless, this research has not the objective of comprehensively inspecting and analysing all these aspects, but the focus is related to legal and constitutional frameworks to the subject.

The methodology used in this work is that of comparing the Lebanese pluralist system and its Constitution with other similar cases, before arriving to the in-depth analysis of *tayfiyya*, the controversy posed by it and if it can be overcome.

Chapter One is devoted to the analysis of the role of religions within constitutions by comparing different legal models. First and foremost, the case of the relationship between religion and constitutionalism which are bounded by a knot that cannot be broken, the example of the United States of America's Constitution dealing with freedom of religion and confessional questions with the analysis of some of the US Supreme Court's case studies, arriving to the question of the relationship between Islam and Constitutionalism, through a previous analysis of the separation of power between State and Church and to the consequent classification about constitutional approaches to religion. Moreover, the topic of secularity within constitutions has been analysed through the comparison

¹ *Thawra* is the Arabic term for revolution.

² Namely, the end of the confessional system and the renewal of the Lebanese political class.

³ Here, the adoption of the plural form of "crisis" is intentional. Lebanon is undergoing its most terrible crisis ever which is composed by different crises: political, economic, financial, humanitarian, difficulties to health system, pandemic, food and water scarcity, medicine supply and refugees crisis. All these difficulties have as the major cause the inability of the Lebanese confessionalism.

between the French strict system of *laïcité* and the Italian-type of secularity. Subsequently, the case of democracy in deeply divided societies has been investigated through the theory of Arend Lijphart and the famous Lijphart-Horowitz debate on the matter. This analysis is crucial to understand the subsequent case of Lebanon, being it a deeply divided country with a pluralist political system based on confessional quotas. Indeed, the consociational theory presented in Chapter One is meant to be the theoretical background useful to analyse the subsequent cases of Bosnia Herzegovina, Iraq, Israel and, later on, Lebanon.⁴ Furthermore, the constitutional design for divided societies has been examined through a study of the Constitutions of Bosnia Herzegovina, Iraq and the Basic Laws of Israel. A brief introduction to the Lebanese case has also been made in order to let the reader having a first impression about political culture as a result of sectarian or confessional loyalty.

Thereafter, the Lebanese case has been studied in a more detailed way in Chapter Two by analysing the Constitution of 1926, the National Pact of 1943 and the Ta'if Agreement of 1989. Being the case of Lebanon really peculiar in its nature, it is impossible to separate the historical aspects from the adoption of the Constitutions or Pacts. Consequently, the second Chapter deals also with the historical path leading to the adoption of the Constitutions and with the fifteen years of the Lebanese Civil War which still represents a starting point for the study of present Lebanon.

Chapter Three, instead, deals with the dysfunctions of the Lebanese pluralist system. In this chapter, the methodological approach does not use the comparative and historical analysis as in the previous chapters, rather the examination on the most relevant questions has been adopted by investigating the inherent reasons that led to the failure of the Lebanese system. The third Chapter is meant to give the reader the instruments to understand why the Lebanese *tayfiyya* does not work, through the description of the various variables that led the system to become even more deteriorated, after the end of the civil war. Moreover, the contradictions of the pluralist system through the examination of the different electoral reforms from 1992 to 2017 and the role that

⁴ The Lijphart's consociation is composed by four main components which are required in order to achieve stability in deeply divided societies. Namely, all-inclusive grand coalition, proportional representation, provision of minority veto power and cultural autonomy for subcultures. In this sense, all the cases mentioned hereabove have been analysed through these four components.

Hezbollah covers in the political scenario have been furtherly examined here.⁵ The Chapter's final idea is that the adoption of the Ta'if Agreement could have been a new possibility for Lebanon to be reformed, but eventually it resulted in a lost opportunity, which consequently led to the "fragility" of the legal text.⁶

Finally, the fourth Chapter is the result of a fieldwork carried out from July 16th to August 16th, 2021, in Lebanon, aimed at verifying some starting hypotheses: is there a system of division of political power in Lebanon as described by Lijphart? Is sectarianism at the root of the country's current stalemate? Is it possible to envisage constitutional reforms as a solution to overcome the crisis?

The methodology used for this fieldwork was based on semi-structured interviews which, on the one hand, allowed the collection of useful data and information for the purpose described at the beginning of this research, on the other hand it allowed for an involvement with the interviewed to comment upon the answers. The interviews were mainly addressed to Lebanese academics, along with the informal collection of the opinions and points of view of local people about confessionalism. The result is a mixed methodology that has made it possible to combine the points of view on the relationship between State and society and to draw some conclusions on the reform of Lebanese confessionalism through the Constitution.

In addition, Chapter Four deals also with the issue of the Lebanese national identity to understand if unification is an attainable goal. After that, this chapter has the aim of understanding how the Constitution can be amended in order to solve the stalemate and which will be the future perspectives to reform Lebanon. Indeed, the idea of transforming the Lebanese *tayfiyya* as a *de iure* and non-overcoming system might have positive effects in the long run, in what concerns democratic governance, better representation, and broader participation. Moreover, about reforming the country, the possibility of adopting a federal structure is also analysed in this Chapter, by comparing the theory of federalism and by demonstrating why the Lebanese federation would be a failure.

⁵ These variables are the exogenous and the élite collaboration ones

⁶ Section 3.3: "*The frail Constitution of Lebanon*".

I. Religions and Constitution

1.1 *Constitutional approaches to religions*

When dealing with constitutions and religions, we should take into consideration how remarkable it is that nowadays the protective mention of religion is presented in the vast majority of contemporary constitutions. The models of the relations of states to religion are the atheist state, the assertive secularism and the separation as state neutrality towards religion, weak religious establishment, formal separation with a de facto pre-eminence of the denomination, separation alongside multicultural accommodation and religious jurisdictional enclaves, as well as strong establishment.⁷ Ran Hirschl highlighted that a strong religious echo is present in each of these already cited models. Every constitution, from the most religious to the most laic one address the issue of religious belief. Yet, some constitutions disregard it, others defend it but not a single constitution abstains from the issues concerning or regarding religious matters. Indeed, according to Hirschl, “the only substantive domain addressed by all modern constitutions is religion.”⁸ Probably, the idea of the fear of religion as a theme included within constitutionalism can be understood as inspired by separationist views. There is to say, the fear that religion can be seen as a threat to the constitutional and political system, or the exact contrary. Indeed, constitutionalism does not represent a threat to religion itself, rather it is more accommodating to religious issues and to religious pluralism. At the same time, religion (or religions) do not jeopardize constitutionalism or constitutionalist polity. The two aspects are intertwined in a long lasting and solid relation.

If one wants to make a clear distinction and division of constitutions dealing with religions, it is necessary to consider that many exceptions arise from the categorization of the constitutions. Some obvious examples are the laic constitution and nature of the State in France and Belgium, where despite the strong separation between Church⁹ and

⁷ Venter, Francois. *Constitutionalism and Religion*, Cheltenham, Elgar, 2015, p. 87

⁸ Hirschl R., *Comparative Constitutional Law and Religion*, 2011, in: Ginsburg T. and Dixon R. (eds) *Comparative Constitutional Law*, Edward Elgar, Cheltenham and Northampton, pp. 438.

⁹ Here, Church is not associated with Christianity, but it is nevertheless used to indicate the tensions between law and religion in the phrase “Church and State”.

State, many clerics receive their salaries from the State and church-run institutions, together with the maintenance of church buildings from public funds.¹⁰

Despite what previously said about religion being the only substantive domain addressed by all modern constitutions all around the world, it would be impossible to cover all the existing constitutions dealing with religion. Therefore, this work has the intention to create a general understanding about how religion cannot be isolated from constitutionalism and how different States deal with religion and even religious pluralism in their own constitutions, by providing comparison among distinct models.

1.1.1 Constitutionalism and religions: a knot that cannot be broken

During the course of time, the world has experienced an escalation of religiosity, probably born from religion-related conflicts or the growth of intra-religious pluralism in the global demography, principally caused by a continuous flux of migration. Hence, religious pluralism has gradually become a characteristic of the populations of many states and not an exception anymore. This is an issue with which constitutions, courts, governments, and legislatures have to deal with.

During the course of time, religion and religious pluralism posed many challenges. Indeed, we can recall the period going from the exclusivity of a specific confession to the decisive outcome represented by the European religious wars. These wars were the product of the dissolution of the religious unity of Western Catholicity, officially launched with the Protestant Reformation. These religious wars reached their peak with the Thirty Years' War.¹¹ This tragic and long war ended with the Peace of Westphalia of 1648. This moment is considered as very decisive since a first version of systems of independent states, or nation-states, emerged. Furthermore, one of the greatest outcomes of the Peace of Westphalia was the definitive religious unification – albeit forced – of the

¹⁰ The topic of how France deals with religions will be further investigated in section 1.2 *How Constitutions regulate religions: France and Italy – a comparison*.

¹¹ The Thirty Years War (1618-1648) started as a war between the Protestant and Catholic states in the fragmented Holy Roman Empire. Then, it progressively developed into a more general conflict that involved most of the great European powers. The war began when the Holy Roman Empire sought to impose religious uniformity on its domains, but the Protestant states of the northern part of Europe formed the evangelical union. The war was represented an unprecedented catastrophe, in particular for the territories of central Europe. The conflict ended with the Osnabrück and Münster treaties, included in the broader peace of Westphalia in 1648.

Parker, G., *La Guerra dei trent'anni*, Milano, Vita e pensiero, 1994.

European populations. It was precisely the process initiated by the provisional Peace of Augusta in 1555 that the concept of *cuius regio eius religio* was then re-adopted. The population of a given State had therefore to follow the confession of the sovereign and whoever did not want to submit would have had emigration (*ius emigrandi*) as an option. In this period the important thing was to eliminate a potential cause of disorder through religious peace, therefore guaranteed by the uniformity of confession and faith.¹²

With the inauguration of secularism and especially after the French adoption of *laïcité*,¹³ the gradual development of the European distinction between State and Church led to competition for supremacy. However, despite the many difficulties this distinction might provide sometimes the knot between governmental and the religious authorities, or better the idea of the unification between law and religion cannot be dissolved. This is due to the fact that the law is not separated from religious normative aspirations such as ethics or justice. At the same time, this knot cannot be broken because both law and religion share the ideals provided by social order. Indeed, social order does not come without rules and the most visible forms of social regulation are law and religion.¹⁴

However, the course of time showed the complexity of this overlapping and nowadays the normal practice is that of a separation between State, governmental and religious leaderships. Despite that, it is certainly true (and would be wrong to state the contrary) that both law and religion share some features,¹⁵ thus having an impact on constitution as well. Even though they share different types of features, because law is more temporal while religion is transcendental, both express the form of norms that require obedience and are typified by procedural practices and by specific bodies or authorities entitled to make people obey to rules.¹⁶ However, while religion requires sincere adherence to its law and personal conviction, law is a normative construct and as such it does not require

¹² Formigoni, G., *Storia della politica internazionale nell'età contemporanea*, Il Mulino, 2018, pp. 29-30.

¹³ *Laïcité* is the principle of separation between the public life and the private sphere, where religion stands. The State is therefore neutral before any religion and State's institutions are independent from the Church or clergies. *Laïcité* does not recognize a State's religion, but the principle of separation between the two entities (State and Church) can be found in different applications in different countries.

For the definition of *laïcité*: <https://www.cnrtl.fr/definition/la%C3%AFcit%C3%A9>

¹⁴ Venter, F., *Constitutionalism and Religion*, p. 13

¹⁵ For instance, both religion and law have moral connotations. It is obvious that the implications of these connotations are basically different, because the religious ones are more transcendental, therefore related to the spiritual realm, while the second ones are more temporal and opposed to the spiritual affairs. However, both are expressed in forms and principles that require obedience: as a matter of religious conscience or obedience as enforced by the State.

¹⁶ Venter, F., *Constitutionalism and Religion*, p. 16

any belief in the content of the regulation itself and it is neither a personal or optional choice. On the contrary, it is an enforceable result.

Moreover, when dealing with religious pluralism and its knot to constitutionalism, it is important to consider the role played by globalization. One of the most characteristic phenomena of globalization is the mobility of populations that have inevitably brought to religious pluralism in different states in the modern era. Constitutional law has also been influenced by globalization since it has become more internationalized, with increased levels of constitutional comparison and absorption of constitutional principles in various jurisdictions throughout the world.¹⁷ Therefore, this mixture and novelty brought by globalization and internationalization has also provided a common constitutional language, where ideas such as fundamental rights, constitutional review and constitutionalism are presented in the global constitutional discourse. As a consequence, this influences the difficulties that State authorities have to face when dealing with religious pluralism, therefore adopting a similar language. Nowadays, religious pluralism represents constitutional challenges which were born with the rise of globalization and international migration.¹⁸

1.1.2 Constitutions and religions: the United States of America

The first example that can be made about constitutions dealing with religion regards the Constitution of the United States of America.¹⁹

¹⁷ Ferrarese, M., R., *Diritto sconfinato: inventiva giuridica e spazi nel mondo globale*, Roma, Laterza, 2009.

¹⁸ As a consequence of globalization, the State's authorities have to combine their national legal systems with an increasing religious pluralism. For example, it is very recent the (long-lasting) debate about the French laïcité and freedom of expression especially related to the media and newspapers' use of religious figures. Recent terroristic episodes have led the French authorities to present an amendment to the Senate, providing for the modification of article 952-2 of the education code "*Les enseignants-chercheurs, les enseignants et les chercheurs jouissent d'une pleine indépendance et d'une entière liberté d'expression dans l'exercice de leurs fonctions d'enseignement et de leurs activités de recherche, sous les réserves que leur imposent, conformément aux traditions universitaires et aux dispositions du présent code, les principes de tolérance et d'objectivité.*" Namely, the establishment of the full independence and complete freedom of expression of university professors, adding the clarification that the academic freedoms are exercised with respect for the values of the republic.

https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006525617/2020-10-28

The debate around the application of laïcité in a society who has become a religious pluralist one, as the French society is and as it will be showed in section 1.2, stimulates discussions about freedom of expression and religion in a modern and globalized world.

¹⁹ The United States Constitution is the world's longest surviving written charter of government. Indeed, it was written in 1787 and later ratified in 1789.

The Constitution of the United States of America is considered 'iconic' in dealing with the separation between State and religions. This was due to the fact that the framers of the US Constitutions were convinced in a separation of Church and State, therefore they favoured a more natural posture towards religion. Moreover, the members of the Constitutional Convention believed that the government had no right nor power to influence American citizens towards or against a religion. Thus, the framers connected the separation between State and Church to freedom of religion.²⁰ Indeed, they believed that any kind of intervention from the State or the government in its citizens' religious affairs would have inevitably resulted in the infringement of their freedom of religion. Consequently, the Constitution of the United States of America remains almost silent to the subject, with the exception of two main instances.

1) Article VI of the US Constitution deals with the proscription of any kind of religious test to be qualified for public service.²¹

2) The first amendment of the Bill of Rights, instead, states that:

*“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*²²

It is the Supreme Court of the USA that interprets the extent to which these rights are protected. The Supreme Court interpreted the First Amendment of the Bill of Rights dealing with freedom of religion, freedom of speech and of the Press, right to assemble and to petition as to be applied to the entire federal government, even though it can only be applied to Congress.²³

²⁰ Lupu, C., I., Keeping the faith: religion, equality and speech in the U.S. Constitution, Connecticut Law Review, Volume 18, 1985-1986.

²¹ Article VI of the US Constitution: *“All Debts contracted, and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.*

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”

Available at: <https://constitution.congress.gov/constitution/article-6/>

²² First Amendment of the Bill of Rights, 1791, available at:

<https://constitution.congress.gov/constitution/amendment-1/#:~:text=Congress%20shall%20make%20no%20law,for%20a%20redress%20of%20grievances.>

²³ Landmark examples of US Supreme Court case laws are:

Regarding freedom of religion in the First Amendment of the Bill of Rights, there are two clauses dealing with it. Namely, the Establishment Clause forbids the government to pass a legislation creating an official religion of the State, or even to prefer one religion to another one. Therefore, the Establishment Clause imposes the adoption of the separation between State and Church. Moreover, the Free Exercise Clause, forbids the government to interfere with a citizen's practice of his or her own religion. This Clause also protects the right of the individual of believing in what he or she likes and to practice it, therefore protecting them from laws prohibiting the free exercise of religious practice.²⁴

The influence that the US Constitution had during the course of time provided new and in line approaches elsewhere in the world. Moreover, the way in which the American law deals with religious matters in its constitutional context still has an important echo all around the world. Indeed, the jurisprudence of the Supreme Court of the United States of America in dealing with issues regarding constitutionalism and religions is remarkable. To cite again the First Amendment of 1791, "*Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof*" we can make some considerations in this regard. This is because the way in which this clause of non-establishment and of free exercise has been conceived has changed over the past two centuries. This is accompanied by the fact that since 1947, strict separationism invested the American law, thus leading to the division of the State actions from a possible religious influence in them.

In the 1971 *Lemon v Kurtzmann* judgement of the Supreme Court of the United States of America, the '*Lemon Test*' eventually stated that:

- **Engel v. Vitale (1962)**. The case presented the question of whether a public school should sanction prayers in a classroom. With a majority of 6 against 1, the Court decided that reciting prayers in public schools was a violation of the Establishment Clause, because any form of prayer was sufficient to trigger the principle of separation of church and state.
<https://supreme.justia.com/cases/federal/us/370/421/>

- **Lamb's Chapel v. Center Moriches Union Free School District (1993)**. This unanimous decision taken by the Supreme Court concerned whether the Free Speech Clause of the First Amendment was violated by a school district which decided not to give permission to a church to access school classrooms or premises in general, to watch movies family and child-rearing issues faced by parents. By a unanimous decision the Supreme Court decided it was a violation of the First Amendment.
<https://caselaw.findlaw.com/us-supreme-court/508/384.html>

²⁴ Hertzke, A., D., *Religious freedom in America: constitutional roots and contemporary challenges*, University of Oklahoma Press; First edition, January 13, 2015.

*“First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion.”*²⁵

Here, religion is conceived as a phenomenon, therefore schools were asked to concentrate their teaching methods on the secular education, leaving aside any kind of religious connotation. At the end, this result was approved in 1984 by Judge O’Connor, refining the first element as ‘*a secular legislative purpose*’. Judge O’Connor decided to refine the first element through an endorsement test in another case,²⁶ namely in *Lynch v Donnelly* in 1984.²⁷ However, in *Lemon v Kurtzman* the word ‘*secular*’ appears many times without a specific explanation on the offered meaning, thus the explanation of the ‘*secular legislative purpose*’ presented in the statement was not explained, apart from the distinction between the secular from the religious.

The American example on secularism or on the distinction among the State and religion as a phenomenon is not the only model followed by the modern constitutional States, but those following the non-establishment American model are interesting regarding the peculiar understanding of the separation among State and Church.

1.1.3 Separation of power between State and Church

There are at least four phases in the history of the separation among State and Church that can be identified as following:

- A pre-differentiation phase where State and Law, therefore also State and Church, overlapped.
- The rise of two cities, kingdoms and sword doctrines.
- The establishment of secular liberalism together with the emergence of the modern State.
- The post-liberal, post-secular current state of confrontation between the State entities and the realities of the religious pluralism.²⁸

²⁵ US Supreme Court, *Lemon v Kurtzman* case:

<https://globalfreedomofexpression.columbia.edu/cases/lemon-v-kurtzman/>

²⁶ Laycock D., *Religious Liberty* Vol. 1., Eerdmans, Grand Rapids, 2010.

²⁷ The US Supreme Court, *Lynch v. Donnelly* case dealt with the issue of constitutionality of a seasonal holiday display on a government property. This display included a religious manger scene. At the end, the US Supreme Court ruled that the display, even if on a government property, was not in violation with the Establishment Clause of the First Amendment.

²⁸ Venter, F., *Constitutionalism and Religion*, pp. 25-26

Nevertheless, the importance of the State over religion, despite being detached in the State and Church formula, is that the State itself is endowed with compelling powers including powers over matters directly or non-directly affecting the practices of religion. The way in which this specific State's power is exercised is based on the particular nature of the State in question, its legal order and the structures of the State itself.

Linking the authority of the State to religious beliefs or considerations, harbours the possibility of re-founding State and Church relationship. However, this re-emergence would not only be resulting as "impossible" but also as "unjust" to other religions. Because conceiving the State authority as an entity which is related or that emerged from religious beliefs would be incoherent with the sources of the authority of the State in pluralist societies. This is because religions have diverse explanations regarding the authority of the State. Indeed, this goes towards the explanation of secularism as a "refuge" to be taken at the cost of religious convictions.²⁹ However, in this way the religious belief would remain unrequited but, at the same time, making choices based on religious grounds would offend people who do not believe in the same convictions. At the same time, the opposite can also affect society or a part of the population of a country where the imposition of liberalism, secularism, atheism or agnosticism on the organs and the authority of the State affects human spirituality.

As a consequence, whenever State and Church are not properly separated, when – and if – the State tries to suppress religion or when the opposite happens with the attempt to prescribe a specific conduct to the ruling class by the religious authorities, or even when the State promotes a single religion as the State based one in an environment of religious plurality, tensions and conflicts are more likely to arise. However, the options of overcoming or even not considering the religious questions that society poses (being it a religious plural society or not) can profoundly affect the societal asset itself and especially the relationship among citizens, being them individuals who are in their existential nature religious. Consequently, the State would emerge as the bearer of compelling legal authority.³⁰

All in all, it is true to say that religions and the State represent embody sets of norms, but it is also accurate to say that there is a knot between the two that cannot be broken.

²⁹ Venter, F., *Constitutionalism and Religion*, p.28

³⁰ *Ibidem*, p. 30

1.1.4 Constitutionalism and Islam

When considering the constitutional and legal orders of a country's system, one should also take into account that the same indicators are the representation of citizenry where democracy is at the basis of the whole system. However, due to absorption of many religious stances by societies and systems, legal orders are asked to find ways to keep the religious peace by means of balanced justice. In some countries and in their related systems, the idea of allowing the law to be totally or even partially related to predominant religious stances is impossible. Thus, the idea of secularity and of the secular state has increased in some parts of the world as a solution creating an alternative to the religious character of the State and its legal system. However, this cannot be applied everywhere. The State and its legal system are constantly asked to maintain peace among its plural religious citizenry. Indeed, when dealing with some Middle East and North Africa countries the religious dimension remains an important factor to understanding law.

When dealing with something as capricious as religion is, subjectivity will be part of the game. Indeed, religion and religious subjectivity are part of a bigger social trend dealing with social regulation and all the other environments, being religion ubiquitous to the human race. On the other hand, the law is not ubiquitous, but it is the product of human culture, therefore it varies from culture to culture, it is subject to different leaders' opinions and to their related institutions. Nevertheless, law embodies norms, regulations, concepts and principles and even though they are not solid, neither immutable, one must always consider that law regulates religion in the social scenario and in the extent to which it can protect religious pluralism in a given territory. In addition, law and its institutions have always encountered religion by many means: justification for the content of legal norms, dogmatic approaches to the interpretation or the application of the law, motivation for the allocation of authority to the legal institutions and dealing with the diversity of the religious convictions.³¹ Following this scenario, it can happen that any regulation or position taken by the State on issues concerning religious pluralism might not meet the universal approach of the community. The challenge here is to present constitutionalism as a standard to measure the conduct of the State regarding religion and religion pluralism in society. In order to understand the knot or the relation between constitutionalism and religious plurality, one should undertake a useful comparison. However, comparing

³¹ Venter, F., *Constitutionalism and Religion*, p.48

different constitutional approaches to religious pluralism requires the clarification of the notion of constitutionalism as a *tertium comparationis*³² and how different forms of constitutionalism are adopted worldwide.

More in general, Constitutionalism is considered as the doctrine according to which the government's authority is determined by a body of laws or a constitution.³³ It is used to prevent arbitrary government. However, one must also bear in mind that all the current meanings given to constitutionalism tend to despair over the chances of finding an acceptable meaning for it. The more constitutionalism has been analysed over the course of the time, the more it has been filled with different significance and meanings. For instance, when analysing Islamic constitutionalism, it is also relevant to understand that there is not a unanimous agreement about the constitutional principles contained in the *shari'a*. Some jurists believe that these principles represent an ideal of justice, consultation and equality. While, others think that the principle of obedience to the established power must be added. The last group, instead, includes freedom or unity of the Muslim nation, along with legality and responsibility of the governor.³⁴

Moreover, we should also consider that within the Islamic legal tradition, the concept of the State is tied to religious beliefs. Indeed, the State derives from the law and the *shari'a* ties up both ruled and rulers and, at the same time, it regulates their relations.

From a theoretical point of view, the end of the Islamic Caliphate marked at the same time the close of the validity of the Islamic constitutional material, at the same time opening the path towards the constitutional process of nation-States. The constitutional debate in the Islamic world started with the *salafiyya* theories, which were mostly elaborated by Muhammad Rashīd Ridā.³⁵ The fundamental aspect, after the decline of the

³² The Latin expression *tertium comparationis* means “the third part of the comparison”. It mainly represents the quality that the two compared things have in common. It is therefore the main point of comparison.

³³ Bellamy, R., "Constitutionalism". Encyclopaedia Britannica, 30 Jul. 2019, <https://www.britannica.com/topic/constitutionalism>.

³⁴ Longo, P., Theory and Practice in Islamic Constitutionalism, 1st edn, Gorgias Press, 2019, p. 221. Available at: <https://www.perlego.com/book/1504853/theory-and-practice-in-islamic-constitutionalism-pdf>

³⁵ Muhammad Rashid Rida was a Syrian Salafi reformist, who together with Jamal al-Din al-Afghani and Muhammad Abduh was engaged in the reform and renovation of the spirit of faith. He was convinced in the necessity of a cultural renovation and of a juridical education.

Corrao, F. M., Islam, religione e politica: Una piccola introduzione, LUISS University Press, 2015, p. 99. Allen, R., La letteratura araba, Il Mulino, 2006.

Caliphate, was that any specific form of government planned by Islamic law was to be accepted.³⁶ In that period, the attention was on the creation of the Islamic State, rather than the dead Caliphate. This new State embodied the characteristics derived from the Qur'an and *sunna*, the sources of law. Consequently, the State became an instrument for the renewal of religiosity and spirituality, and it would have favoured the conditions to the enforcement of the *shari'a*.

In the aftermath of the transformation of the Ottoman Empire, Islamic constitutionalism underwent a process of change and renovation, where Islamic law as a whole included those norms and regulations related to public law. This wave of constitutionalism started in the middle of economic crises and diplomatic clashes. Indeed, by analysing the Ottoman Empire, the vast wave of reforms (*tanzīmāt*)³⁷ basically avoided the defeat of the State which was subjected to the threats of its neighbours. One aspect of the *tanzīmāt* was the codification of the law. Indeed, there was the attempt to transform the content of the *shari'a* and *fiqh* into written texts. It is indeed important to start from the influential role played by the Ottoman Empire and its 1876 Constitution to trace the path of the Islamic constitutionalism.

For the purpose of this research, the periodization of Islamic constitutionalism can be divided into three main stages:

- 1) The first Tunisian and Ottoman Constitution, respectively dated 1861 and 1876;
- 2) The external influences over Islamic constitutionalism;
- 3) The new wave of constitutionalism in Tunisia and Egypt in 2011 revolutions.

³⁶ Longo, P., Theory and Practice in Islamic Constitutionalism, p. 188.

³⁷ *Tanzīmāt* reforms included: universal conscription, the reform to the education system and of the governing institutions. The imperial decree declared the equality of Ottomans before the law, de facto abolishing the Millet system.

The Millet, in Arabic *milla*, was an independent tribunal dealing with personal law, under which a confessional community (Muslim under *Shari'a* law, Christians under the Canon Law or Jewish under Halakha), was allowed to rule for itself and under its own body of laws.

Corrao, F. M., Islam, religione e politica: Una piccola introduzione, p. 93.

a) The first Tunisian and Ottoman Constitutions (1861 and 1876)³⁸

The oldest Constitution adopted in the Muslim world was the Law of the Tunisian State, *Qānūn al-Dawla al-Tūnisiyya* of 1861, followed by the Ottoman Constitution of 1876. These constitutions can be linked to the so-called “liberal constitutionalism”, i.e., the philosophy that forms the background of both constitutions. The period, in fact, was that of the first half of the twentieth century, following the collapse of the Ottoman Empire. Therefore, the major aim of these constitutions was that of revitalizing the economic and administrative fate of the old imperial bodies, or rather to establish the legitimacy of the new nation states.³⁹

The Ottoman Constitution was particularly important because it was adopted as a model for future other charters. It fixed some elements of the Islamic constitutionalism, among which we find the confessional clause which depicts Islam as the official religion, designating also the requirements for the Head of State to profess Islam. Moreover, the principle of sovereignty was not in contradiction with *shari'a*, because the major aim of the constitutional doctrine was the affirmation of independence. Plus, the use of specific concepts such as *siyāsa shar'iyya*⁴⁰ justified the legislative procedure, which was called *sulta tashri'yya*, in accordance with both the Qur'ān and the *sunna*.⁴¹

The adoption of the Ottoman Constitution was a direct consequence of the tanzimat process, marking at the same time its conclusion. However, this is not the sole motivation or reason behind the adoption of the 1876 Constitution. There was a strong will of strengthening the already existing institutions or to transform the absolutist regime into a constitutional government.⁴² The Ottoman Constitution was the typical example of a

³⁸ It is worth noting that before the adoption of the Ottoman Constitution, two important steps were made. The first one is the Tunisian Constitution of 1861 which is described in this section. However, we should highlight also that the Law of the Tunisian State was not embodying a true constitutional text as we intend it today, since the country was not independent yet. Moreover, another important event was represented by the Egyptian Parliament in 1866. Indeed, in the second half of the 19th century the (almost) independence of the Khedive guaranteed a type of freedom which led Egyptians to experience a vast cultural activity. As a consequence, people started to travel, and the points of view exchanged with western people led to the discussion about “identity” and to the discussion about freedom from the colonial power. Liberal sentiments in Egypt led Khedive Isma'il (1863-1879) to inaugurate the first Parliamentary session in 1866.

Corrao, F. M., *Islam, religione e politica: Una piccola introduzione*.

³⁹ Longo, P., *Theory and Practice in Islamic Constitutionalism*, p. 86.

⁴⁰ *Siyāsa shar'iyya* is the administration of public affairs that is not in contradiction with *Shari'a*.

⁴¹ Botiveau, B., *Loi Islamique et droit dans les sociétés arabes*, Khartala, Paris 1993, pp. 62-63.

⁴² In this sense, we can recall the work of the first intellectual circles created to (also) spread constitutional theories embodying an Islamic character with the aim of restoring the Islamic Law. indeed, in 1865 the Company of Young Ottomans was created. It was initially composed by five members motivated by the aim of transforming the absolutist regime into a constitutional government. However, they did not have an easy life and because of their internal conflicts they eventually broke up. Despite their short and tumultuous life, we can summarize their suggestions into three main points:

legislation *octroyée*,⁴³ because the Sultan enjoyed his sovereignty by divine right, indeed according to Article 3 of the Constitution⁴⁴ he was identified as the Supreme Caliph in the line of succession of ‘Uthmān and according to “established standards”. Moreover, he was qualified as the protector of Islam (under Article 4).⁴⁵ The Sultan became a sacred personality, therefore irresponsible for the acts adopted while pursuing his powers. He was able to decide independently from the legal text, these provisions also gave him conformity with the Islamic law.

The justice system adopted with the new Constitution remained divided into two spheres: the civil courts and the *shari’a* courts. The first were responsible for cases related to the relations between people, while the second were entitled to judge over personal status’ issues.⁴⁶

The law of the Tunisian State of 1861, instead, was adopted as a reform of the country.⁴⁷ The major goals of the Constitution were related to the strengthening of the peripheral areas’ control and the prevention of a possible decline of the in-power dynasty targeted by the colonial powers.⁴⁸ Before the adoption of the legal text, in 1857 the Charter of the

1. the need of the adoption of a system of liberal government; 2. The adoption of a fundamental law; 3. The creation of representative bodies.

The Company of Young Ottomans indeed believe that the adoption of the *tanzimat* was more a means through which the Empire was trying to please European partners, rather than thinking of safeguarding the welfare of the State and its population. It was in their belief that in order to achieve great results, the specific proposals had to come from within the Empire, therefore reflecting popular sovereignty.

Corrao, F. M., Islam, religione e politica: Una piccola introduzione.

Longo, P., Theory and Practice in Islamic Constitutionalism.

⁴³ Legislation *octroyée* means, in this case, that the legislation was not drafted by popular will but by permission of the Sultan.

⁴⁴ Article 3 of the Ottoman Empire Constitution of 1876:

“The Ottoman sovereignty which is united in the person of the sovereign of the supreme Kalifat of Islam belongs to the eldest of the princes of the dynasty of Osman conformably to the rules established ab antiquo.”

<https://ia903202.us.archive.org/32/items/jstor-2212668/2212668.pdf>

⁴⁵ Article 4 of the Ottoman Empire Constitution of 1876:

“His majesty the Sultan is by the title of the Kalif the protector of the Mussulman religion. He is the sovereign and the Padishar of all the Ottomans.”

<https://ia903202.us.archive.org/32/items/jstor-2212668/2212668.pdf>

⁴⁶ Personal Status: The definition of status is missing in the codes as this is the result of doctrinal elaboration. According to the most widespread doctrine, the term status indicates the situation of the person connected with his or her belonging to a community. The status, in fact, is not an individual position, but qualifies the belonging of a subject to a group and is a suitable qualification to give life to prerogatives and duties, or to put it in the words of authoritative doctrine, it is *“the state of constraint in which the individual is in the aggregate”*.

Carleo, R., Martuccelli, S., Ruperto, S., Istituzioni di Diritto Privato, Dike Giuridica Editrice, 1 Ottobre 2014, p. 56.

⁴⁷ Tunisia was formally a province of the Ottoman Empire.

⁴⁸ Coulson, N., A history of Islamic Law, Edinburgh University Press, Edinburgh 1964, p. 150.

Faith was promulgated.⁴⁹ Despite a strong European influence over the Charter, it maintained an Islamic terminology.

The Tunisian Constitution of 1861 was considered as revolutionary in many fields. First of all, it was created before the adoption of the Ottoman's one, and it was divided in different sections, each of them devoted to diverse subjects. The first two dealt with the provisions regarding the royal family and the cooperation with ministers. By implementing the Islamic doctrine, these sections stated that the people had the right to suspend the loyalty to the sovereign when and if an act of reprehensible conduct was pursued by him. The third chapter dealt with the norms to the Grand Council, and its elections were described under chapters six and seven. The fifth instead regarded the ministries' authorities and their main tasks. The twelfth chapter dealt with a list of rights and freedoms, regardless from their religion. But the list did not include the freedom of expression or of association.⁵⁰

All in all, the Tunisian Constitution of 1861 was not an attempt to create a new political system based on the Islamic sources, rather it represented an experiment which aimed at making the Sultan responsible before the *shari'a* and by appointing a body of notables with the aim of protecting the interests of the community.⁵¹

b) The external influences over Islamic constitutionalism.

Since the fall of the Ottoman Empire, there were four main constitutional cycles that developed in the Muslim world. The first one saw the adoption of the different constitutions inspired by the colonial powers and with a great impact of the western legal system. In the late nineteenth century and in the first half of the twentieth century, liberal constitutionalism developed in North Africa and Middle East, as a consequence of colonial power or forms of protectorates.⁵² However, the constitutions which were born

⁴⁹ Charter of the Faith, in arabic '*Ahd al-Imān*', this provided for greater equity, the protection of the individuals, their property(-ies), establishing equality in taxation and military service. It also established the Grand Council, which was created to ensure that the country was administered in compliance with the principle of legal certainty and good governance.

Brown, N., *Constitutions in a nonconstitutional world, Arab Basic Laws and the prospects for accountable governments*, State university of New York Press, Albany 2002, p.16.

⁵⁰ Brown, N., *Constitutions in a nonconstitutional world, Arab Basic Laws and the prospects for accountable governments*, p. 18.

⁵¹ Longo, P., *Theory and Practice in Islamic Constitutionalism*, p. 97

⁵² This was particularly true for countries like Egypt, Iraq, Syria, Lebanon, Trans-Jordan, Morocco, Tunisia and Libya. These countries were particularly influenced by the French model with some British influences. Giannini, A., *Le Costituzioni degli Stati del Vicino Oriente*, Istituto per l'Oriente, Roma, 1932, p. 12.

during that period, and greatly influenced by colonial power, did not have the same strength as the European systems they wanted to imitate.⁵³

The Second phase, going from the beginning of the nineteenth century until 1950s, was more focused on the numerous changes that de-colonized and independent countries were undergoing which became evident in the constitutions, especially about the restoration of traditional institutions marginalized during the western rule. However, the outcome of this constitutional process resulted almost exclusively undemocratic, with the attribution of power to authoritarian organs. The rejection of the Western model resulted in the concentration of power in a national leader. This leader was often an expression of the armed forces, or he was particularly related to the values of Islam, or in certain cases, his intentions were linked to the ambitious project of an Arab nation.⁵⁴ In this case, constitutions were related to the personalities who promoted them. These people used the legal texts to strengthen their own powers. One of the consequences was that of derogating the principle of separation of powers, therefore the executive power was centralized in the hands of the Prime Minister. In some cases, the presence of multiple parties became illegal, and the constitution allowed for the presence of a single or hegemonic party.

The third cycle, starting from the sixties, was inspired by socialist tendencies, seen as the value of social justice, equality, and independence. The references were to socialist ideology and to the rejection of liberal capitalism.⁵⁵

In contrast with the third cycle, the fourth (and last one) saw the rejection of the socialist ideas and a gradual come back to the liberal ones. The path towards liberal constitutionalism started again during the end of the twentieth century. The constitutions in this moment tried to give space to the application of individual rights and democratic demands. Despite the many constitutional reforms in the fields of economy, free market

⁵³ Mainly the French and the British system. However, it should also be noticed that during this period, some principles and institutions, granted in the Western constitutionalism, were gradually integrated. Among them: the principle of popular sovereignty, separation of powers, federalism, citizenship and its rights (civil, political and social ones). Parliamentarianism was the predominant system, sometimes accompanied by monarchical institutions as in the case of Iraq in 1924 or in Jordan in 1946.

⁵⁴ Longo, P., *Theory and Practice in Islamic Constitutionalism*, p. 150.

⁵⁵ The State saw the centralization of bureaucracy and economy and the power was centralized in the hands of a small élite through different means: the principle of collegiality, the replacement of the executive in the legislative functions during the long intervals between the different parliamentary sessions. The most famous example is Algeria with the National Liberation Front (Front de Libération Nationale) which was described by the 1963 Algerian Constitution as the only revolutionary vanguard party under article 23. The secretary of the NLF was also the President of the Republic as stated under article 39.

⁵⁵ Longo, P., *Theory and Practice in Islamic Constitutionalism*, p. 153.

and private property, a strong political liberalism was not fully counterbalanced. A key element to understand the contrasts between the Western constitutionalism and the constitutional doctrine of Muslim states is related to a religious justification of power. Indeed, in some cases the sources of the Islamic law are mentioned in a specific way in the constitution.

c) The new wave of constitutionalism in Tunisia and Egypt in 2011 revolutions⁵⁶

We can indeed examine the inclusion of *shari'a* law in constitutions by focusing on both Egypt and Tunisia as the two main case studies. Plus, in order to better evaluate if the post-Arab Spring constitutional documents are more religious than the previous ones, one should also analyse the former Constitutions.

Egypt.

The main constitutional text establishing Islam as the State's official religion was the one of 1923, approved by King Fouad I under British power. The constitution of 1923 lasted until 1952. Article 149 of the 1923 Constitution states that "Islam is the State's religion and Arabic is its language".⁵⁷ This Article will be repeated in the following constitutions with the exception of the legal text of the period going from 1958 to 1962.⁵⁸ Nevertheless, this statement on the official religion of the State might also be perceived as formal or constitutionally meaningless without the tools and the policies to apply it, therefore making it effective. However, in the case of Egypt the turn to the formal "Islam is the State's religion" into the actual application of the same appeared during President Anwar Sadat's rule. Indeed, Article 2 of the 1971 Constitution stated that "the principles of Islamic *shari'a* are the principal sources of legislation".⁵⁹ This is related to the aspect that

⁵⁶ Commonly known as the Arab Springs, the revolts of 2010-2011 shook the Arab world and placed the role of religion as a central aspect in both national politics and in the constitution. The Islamist movements which had been banned, obtained great electoral results and, therefore, covered a relevant role in the political and constitutional order. However, the Islamic movements also face a strong opposition from state's institutions and laic politicians. In Tunisia, for example, the opposition asked for the dismissal of the governing coalition guided by Al-Nahda and the break of the Constituent Assembly. In Egypt, instead, the opposition expressed increasing fears concerning the role of the religious parties in the state institutions and in the constitutional order. Therefore, they opposed themselves to the Muslim Brotherhood's governance. On June 30th, 2013, the protests against President Mohammed Morsi and Muslim Brotherhood propagated in Egypt, and on July 3rd 2013 the army deposed the President, installing an ad-interim one with a civilian government and suspended the Constitution.

⁵⁷ Royal Decree No. 42 of 1923 on Building a Constitutional System for the Egyptian State
Available at: https://constitutionnet.org/sites/default/files/1923_-_egyptian_constitution_english_1.pdf

⁵⁸ From 1958 to 1962, under President Gamal Abdel Nasser's rule, the short-lived constitution omits the provision regarding Islam as the religion of the State with the unity between Egypt and Syria.

⁵⁹ Constitution of the Arab Republic of Egypt. 1971.

Islamism rose in Egypt after the Six Days War against Israel and also the increased religiosity after the Iranian revolution of 1979 along with the increased criticism which accompanied the figure of President Sadat after the signature of the Camp David Agreement with Israel in 1979.⁶⁰ The tools adopted by Sadat to implement the decision of applying the principles of the *shari'a* to the principal sources of legislation arrived when in 1979 there was the establishment of the Supreme Constitutional Court.⁶¹

By examining the 2012 Constitution, Article 4 results in a problematic article since it empowers Al-Azhar⁶² as a supreme authority on interpreting *shari'a* by granting it a consultative status.⁶³ Nevertheless, on the text is not clear when this consultative status will be applied and how it will coexist with the Court's interpretative power. Moreover, also article 219 deals with religion and it tries to influence the modalities of argumentation about *shari'a*.⁶⁴ In any event, the 2014 amendment of the Egyptian Constitution eliminates article 219.⁶⁵ According to Islamic constitutionalism, *shari'a* is both the objective and the fundamental law of the State, which determines the legislative framework of the norms approved by the Parliament. This ambiguity can be detected in the Egyptian Constitution of 2012 under article 12. The Article affirms that the State has the duty to preserve the religious and moral identity of the family, thus trying to underline the obedience to *shari'a* family code. While, Article 14 states that the aim of the government is that of guaranteeing the equality among the two sexes according to the norms established by *shari'a*. Following this line, Article 15 instead gives to the government the duty of preserving the ethics of Egyptians and to encourage the religious discipline, patriotism and ethical values.⁶⁶ Therefore, the 2012 Constitution gave to the government an extensive and invasive role. But in this sense, we cannot even say that the

Available at: <https://www.ilo.org/dyn/natlex/docs/electronic/34111/67289/f>

⁶⁰ Corrao, F. M., Islam, religione e politica: Una piccola introduzione.

⁶¹ The Supreme Constitutional Court had the power to review the constitutionality of laws and regulations, including whether they comply with the principle of the *shari'a*.

Sultany, N., Religion and Constitutionalism: Lessons from American and Islamic Constitutionalism, 28 EMORY INT'L REV. 345, 2014, p. 358.

⁶² Al-Azhar is a respected religious institution of learning

⁶³ Egypt's Constitution of 2012.

Available at: https://www.constituteproject.org/constitution/Egypt_2012.pdf?lang=en

⁶⁴ Egypt's Constitution of 2012.

Available at: https://www.constituteproject.org/constitution/Egypt_2012.pdf?lang=en

⁶⁵ Sultany, N., Religion and Constitutionalism: Lessons from American and Islamic Constitutionalism, p. 359.

⁶⁶ Egyptian Constitution of 2012.

Available at: https://www.constituteproject.org/constitution/Egypt_2012.pdf?lang=en

Colombo, M., La nuova Costituzione egiziana e il "costituzionalismo islamico", ISPI Commentary, November 5th, 2012.

2012 Constitution was fully religious. We can affirm that under Morsi's rule there were many discussions about religious and conservative manifestations. However, for what concerns the Constitution, despite the role and the exclusive control of the Islamist in the constitution making process leading to its draft in 2012, the change was quite limited.

The 2014 Constitution stated the freedom of religion in the Egyptian territory, despite declaring again that Islam is the religion of the State. However, differently from 2012 Constitution, the new one declared it is forbidden to create political parties based on religion, race, sex or geographic region.⁶⁷

Tunisia

Tunisia is the birthplace of the Arab constitutions, as already analysed above. However, the principal Tunisian Constitution is dated 1959, after the independence of the country from France. The 1959 Constitution stated that "*Tunisia is a free, sovereign and independent State. Islam is its religion and Arabic its language.*"⁶⁸ President Habib Bourguiba decided not to relegate religion to the private sphere and to completely separate it from State law and politics. He decided to do so also because he was convinced that in order to modernize society you should opt for a gradual approach and that modernization includes also modernizing religion through state control and regulation.

The draft of the 2013 Constitution still had the statement declaring Islam as the official religion of the State, but it also declared that Tunisia is "*a civilian State (madaniyya), based on citizenship, people's will and supremacy of the law*".⁶⁹ The drafting also designated the State as the guardian of freedom of religion and neutrality of religious places, as well as guardian of the sacred, as stated under Article 6.⁷⁰ However, Article 73 excludes non-Muslims from being eligible as President, affirming that the President must be a Muslim.⁷¹ Against all odds, Al-Nahda decided not to incorporate *shari'a* within the

⁶⁷ After the outbreak of the 2013 Revolution in Egypt, there was a need for a new constitution to be adopted in order to build a modern and democratic State. Therefore, the 2014 constitution was outlined by a 50-strong committee led by the former Arab league and ministry of foreign affairs, Amr Moussa. This committee decided to group all segments of the society (women, Copts and young people). The draft of the Constitution was submitted to the interim President Adli Mansour on December 3rd, 2013, and the following referendum held on January 14th approved the Constitution with the 98% of those who cast their ballots.

<https://www.sis.gov.eg/section/10/2603?lang=en-uk>

⁶⁸ Article 1 of the Tunisian Constitution.

Available at: https://www.constituteproject.org/constitution/Tunisia_2008?lang=en

⁶⁹ Draft Constitution of the Tunisian State of 2013, Articles 1 and 2. Available at:

https://constitutionnet.org/sites/default/files/tunisia_constitution-1_june_2013_-_fourth_draft_-english-idea.pdf

⁷⁰ Ibidem

⁷¹ Ibidem

Constitution in order to reinforce national consensus and to encourage democratic transition. However, the exclusion of *shari'a* does not necessarily mean that religious sentiments cannot be channelled through national policies or legislations or even sectarian violence, but its exclusion calmed down the fears of the secular parties or individuals in the aftermath of the elections.⁷²

After having analysed the issue of the introduction of the *shari'a* law into the constitution of emerging democracies after the Arab revolutions of 2011-2012, we can conclude that Islamic constitutionalism was not addressed for prudential reasons. To reach such an answer to this specific analysis it is necessary to go through a proper contextualization of the question and of the consequences of constitutional arrangement through time. Therefore, the religious clause has been examined through the analysis of political and constitutional processes in both Egypt and Tunisia.

As the Tunisian example clearly shows, it is almost realistic to expect that some of the constitutional and post-revolutionary provisions lacked of the *shari'a* clause. However, in line with what previously stated, it is a common understanding to say that the exclusion of the religious clause does not mean that religious sentiments cannot be challenged at the level of politics or sectarian violence.

Having said so, Islamic constitutionalism have experienced some changes during the course of this. From the Caliphate to the role played by the Ottoman Empire, leading to the colonial presence and influence, to the reaffirmation of identity with the independence and, finally, to the role of the Arab revolutions of 2011-2012. The Islamic Law is filled with meta-juridical characteristics, but it has not been able to escape to the different

⁷² During the preparatory work for the Tunisian Constitution of 2014 a social and political debate arose between the Islamic and the secular component. The Islamic component was represented by al-Nahda. Al-Nahda was the first party to win the elections after the Arab Spring, and the one which promoted the inclusion of the *shari'a* as one of the legal sources within the text of the Constitution. On the other side, the secular component wanted to maintain the secular nature of the Tunisian Constitution. Consequently, what the secularists asked was the non-reference to *shari'a* law within the new Tunisian Constitution. This debate - which polarized society as well - risked blocking the preparatory work for the Constitution. In the end, the leader of al-Nahda, Rashid Ghannouchi, decided to take a step backwards to ensure the democratic transition of the country and, above all, to overcome this stalemate by excluding references to *shari'a* in the Constitution. Nevertheless, the references to Islam are evident just by looking at Article 1 of the Constitution and Article 74. Respectively declaring that Islam is the religion of the country and that the President of the Republic must be a Muslim. It is therefore true that there is no reference to *shari'a* as an Islamic law, but there are references to Islam in the Constitution. So, in the end, a compromise was found. Ghannouchi, R., Islam and Democracy in Tunisia, Journal of Democracy, Johns Hopkins University Press, Vol. 29, No. 3, 2018. Torelli, S., La Tunisia Contemporanea, Bologna, il Mulino, 2015.

pressures it has experienced during time.⁷³ This also urged the reception by Muslim jurists of the principle of the positivity of the law. All the experienced interconnections gave birth to what is commonly known as the Islamic constitutionalism, or better Islamic *constitutionalisms*.

1.1.5 Constitutional approaches to religions: oscillating along a continuum

Coming back to the approaches towards religion(s), by using Hirschl's method, the constitutional approaches can be placed along a continuum which regards constitutionalism as a whole. By tracing this continuum, one can notice that most nations' constitutional approaches to religion are not placed in a precise zone of this hypothetical line. This is because there is no point alone that captures how a nation deals with religion or religions, or better how it uses constitutionalism to mediate between religion and the State.

The lack of a precise categorization of constitutionalism and religion is important to analyse, while understanding how a nation deals with religion and how it uses its constitution in order to mediate between society and religion. The "oscillation" along a continuum represents an important theme in this first chapter, therefore it is essential to understand how constitutions regulate or not religion.

A related theme is that of textual ambiguity in constitutions. Once starting to look deeply into the nature of single constitutions, it becomes clearer that the more complex or vague is to change or alter their formal language, the more weight is given to the interpretive procedures established by Courts. Furthermore, the resulting constitutional interpretations can take on legal and, as a result of this judicial arrogation of authority, they can become de facto aspects of the constitution, rather than simply interpretative methods and methodology in general. In this case, the constitution of the United States of America is an example of semantic complexity being interpretations of the document and,

⁷³ The intention here is not to say that the judicial and/or political doctrines of Islamic countries were born as a consequence of (for instance) the European influence on them. On the contrary, the Islamic juridical literature has always had the right terms to define the common and basic constitutional concepts. Among them: *dustur*, a persian word but adopted by Arabic speaking countries in order to indicate the terms "rule" and/or "regulation". While, *Qanunī* is a term used to indicate "the fundamental law".

as a result, being part of the constitution itself. Paradoxically, those interpretations result in “pulls” in one direction or another on the continuum. Constitutions with the sole purpose of establishing a theocracy, on the one hand, can play a secularizing role in the effort to entrench a single religion. On the other hand, and this is where the paradox lies, even ostensibly democratic constitutions will take on a pseudo-religious role.

Ran Hirschl believes that the return of the religious belief worldwide, from Islamic fundamentalism, Catholicism to the Global South⁷⁴ to the rise of the US’s Christian Right in the north is linked to the rapid growth of constitutionalism and judicial review.⁷⁵ Here, between these two major growths lies the Hirschl’s “constitutional theocracy”, which is different from a normal theocracy where the religious and the political leader is embodied by the same person and where law-making is akin to divine revelation, or even different from ecclesiocracy, where religious figures play important positions in the political functions of the State. Whilst constitutional theocracy has four distinguished characteristics described by Hirschl as followed:

- i. Adherence to some or all core elements of modern constitutionalism.*
- ii. The presence of a single religion or denomination that is formally endorsed by the State*
- iii. The constitutional enshrining of the religion and its texts, directives, and interpretations as a source, or The source, of legislation and interpretation; and*
- iv. A nexus of religious bodies and tribunals that operate in lieu of, or in uneasy tandem with, civil courts.*⁷⁶

The secularization and the restriction to religion undertaken by the Western world is different from the path taken by the Islamic world of the last forty years. Today, twenty-four Muslim countries live under the regulations of the *shari’a* law-based legal systems, while up to one billion people around the world live under secular based legal systems. A

⁷⁴ Global South has three different definitions. The first definition has been used by intergovernmental organizations to describe economically disadvantaged nation-states and as a post–Cold War alternative to “Third World.” A second definition, instead, describes the territories and the populations of the Global South as those most negatively influenced by contemporary and capitalist globalization. A third meaning refers to the Global South as the resistant imaginary of a transnational political subject that results from a shared experience of subjugation under contemporary global capitalism.

Mahler Garland, A., Global South, Oxford Bibliographies, available at: <https://www.oxfordbibliographies.com/view/document/obo-9780190221911/obo-9780190221911-0055.xml>

⁷⁵ Babie, P., Religion and Constitutionalism: Oscillations Along a Continuum, in: Journal of Religious History, Vol. 39, No. 1, March 2015.

⁷⁶ Hirschl, Constitutional Theocracy, Harvard University Press, 2010, p. 2

further two to three billion people live in countries without an official State religion but where religious affiliation is an important aspect of national identification, such as Indian states where laws against Hindu conversion have been enacted.

Moreover, Hirschl argues that the secular/religious divide is a continuum rather than a “*binary, dichotomous classification*”, and that what we are living today is, according to him, the development of “*sociopolitical order[s] under constant duress*”.⁷⁷

Any discussion on the constitutional approaches to religion must start with the USA Constitution. Indeed, it is the world's longest continually existing constitution, and its Bill of Rights is the first fundamental protection of human rights.

To begin, the American constitutional maintenance of religious freedom has been described as a decisive split from the European tradition of state-sponsored and secured variations of Christianity in its history. The setting up of the anti-establishment clause made it possible to prevent the government from imposing any sort of religious belief or practice to its citizens, to shield others from preferential treatment to maintain a religious equality, and finally to ensure the separation between the two entities (Church and State) with the prevention of the central government's intervention in religious matters. Therefore, we deal with the independence of religion facing the State. According to Durham the independence, or better autonomy of religion, has four main dimensions: horizontal (from core community to affiliated entities), vertical (from leaders at the top down to those doing essentially secular work), depth (the pluralistic depth of types of horizontal and vertical structures that a society allows), and temporal (the variation in the allowed institutions over time).⁷⁸

The purpose of this analysis is not to understand when the separation between State and religion started, or even when there was the first shift toward secularism or theocratic measures, but how these shifts can be classified and studied. Therefore, by taking into consideration the constitutional continuum adopted by Hirschl, the extremities of the same include both legal systems, adopting a separation between the State and religion and, to the other part of the same continuum, there is atheism or proactive elimination, followed by *laïcité*. In this case, atheism or proactive elimination represent those regimes

⁷⁷ Ibidem, p. 6

⁷⁸ Durham, W. C. Jr et al., eds, *Law, Religion, Constitution: freedom of religion, equal treatment and the law*, Routledge, 2016.

neglecting religion at all costs. Indeed, here one can find communist or totalitarian regimes, i.e., those connecting religion to backwardness. Next to atheism there is *laïcité* or assertive secularism, with the obvious example of France being it a republic emphasising an impartial or neutral position of the State toward any religion, and the lack of manifestation of any form of creed or belief in social life.

Near the centre of the continuum there is a ‘soft’ formal separation of power with multiculturalism and tolerance and an opposition to a strong and strict secularism. Next to it, the ‘weak’ religious establishment can be found today in many European countries (Greece, England and, somehow, Germany), having a formal State religion. At the centre of the continuum, the ‘de facto establishment’ describes those countries where separation and freedom of religion are both constitutionally protected, although models of religious centrality can be found as well and they can, sometimes, prevail. This can be considered the case of Catholic Ireland.

The last four points of Hirschl’s continuum are: selective accommodation, religious jurisdictional enclaves, secular jurisdictional enclaves and mixed systems of religious law and general legal principles. These four points are those corresponding more or less to what Hirschl calls ‘constitutional theocracy’. In the first of these four points, one can observe that the general law is secular, while a kind of jurisdictional independence is given to religious entities or communities, but only in some areas, such as that of discrimination. The religious jurisdictional enclaves can be found in countries like Nigeria, where the northern part of the country populated by Muslims can increase its jurisdiction for *shari’a* tribunals. While, in secular jurisdictional enclaves, the opposite to the religious one, most part of the law adopted in a given country is religious, however there are areas or subjects which are not under the jurisdiction of religion. In particular, in the Kingdom of Saudi Arabia, where religion plays a prominent jurisdictional role, in the case of economic policy, religion is isolated from the matter. Finally, at the very extremity of the continuum, Hirschl put the highest and closest point to his constitutional theocracy: mixed systems of religious law and general legal principles, at the opposite to atheism.⁷⁹

⁷⁹ All this classification was analysed through Hirschl’s theory in his book: Constitutional Theocracy.

However, what probably Hirschl did not consider is the fact that a strict and rigid classification like the one he proposed in this continuum is not applied everywhere. Indeed, it is highly probable that many countries fit in different points of the same continuum and that precise rules do not apply everywhere and in any of his cases. In this sense, maybe oscillations along the continuum are more likely to be linked to precise cases of constitutional approaches to religions, rather than a precise classification. This is also because there is so much variability in both law and religion to have a classification or a mere attribution along a continuum.

In order to better understand what has been said so far about the non-classification along points of a continuum, we can take as an example the United States of America. Indeed, the country may be considered as a de facto Christian nation, however this can be addressed as a “myth”⁸⁰, therefore this consideration undermines the classification or even the existence of a continuum.

How and why can someone call or affirm that the USA are a Christian nation? Marty said that there is not legal nor jurisdictional evidence of that,⁸¹ although in the decision of the US Supreme Court in *Church of the Holy Trinity v United States*, judge David Josiah Brewer declared:

*“[t]hese, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation.”*⁸²

However, in his *obiter dictum* he also wondered how the USA can be called a Christian nation, and after having analysed that Christianity is not the established religion in the country, that the Constitution set up freedom of religion without any constraint for citizens and that there is the separation between the State and the Church. Nonetheless, this declaration has always been seen as an *obiter*, therefore rejected by the Supreme Court itself.

All in all, the efforts to support America being a Christian nation or even a secular one, are doomed to fail. Therefore, where does America stand in Hirschl’s continuum? By adopting the abovementioned oscillation along the continuum, where three points can be found (secular zone of separation; mild secular separation zone and theocratic zone) the USA stands at the turn of both extremities.

⁸⁰ Marty, M., E., “Getting Beyond ‘The Myth of Christian America,’” in Gunn and Witte, Jr, eds., No Establishment of Religion, 364–378.

⁸¹Marty, M., E., “Getting Beyond ‘The Myth of Christian America’”

⁸² *Church of the Holy Trinity v United States*, 143 US 457, 471 (1892).

As for the secular separation, instead, the example of the People's Republic of China can be described here. The Chinese Constitution states the systematic protection of religious freedom containing, at the same time, different dispositions on the separation between the State and religion. However, this is stated in an unusual way: there is no explicit disposition about the separation between the two. The lack of a case law practice in China, as well as the constitutional status as a basis of law for domestic courts, are evidence of this lack of disposition in the text, which provides little or no guidance in general. China recognises five religions in total: Taoism, Buddhism, Catholicism, Islam and Protestantism. Each of these religions is controlled by the Communist Party of the People's Republic of China. However, other beliefs are not recognised nor protected by the ruling party.

As for the mild separation of powers, many countries of Latin American can be taken into consideration. Even though many constitutions declare a separation between State and Church, as well as the freedom of religion and equal treatment, the privileging of Catholicism over other religions takes these constitutions over the establishment side and causing an oscillation along the continuum.

Lastly, the theocratic establishment at the end of the continuum takes the constitution of Israel as an example. Israel does not have a written constitution, but it has a constitutional system based on Basic Laws.⁸³ Officially, Israel has been described as a secular state by many, but it is in practice a Jewish State, as the Declaration of Independence of 1948 also stated. The relation between the State and religion is described by many as “*labyrinthine*”⁸⁴. This is also because the policy of governmental non-intervention in religious matters clashes with the religious stances of the State itself, going from religious tribunals, the Law of Return, Israel's flag, Jewish heritage, the division between Orthodox and non-Orthodox Jewish, as well as the official language of the State.⁸⁵

⁸³ Buetiner, A. “religion as law: the israeli-nation state law and the palestinians. (Basic Law on Israel as a Nation State of the Jewish People 2018).” Washington University global studies law review. 19.1, 2020.

⁸⁴ UN Doc. CCPR/C/81/Add.13 quoted in Lerner, “Religion and the Basic Legislation in Israel,” p. 229

⁸⁵ The HRC, “Civil and Political Rights, Human Rights Council Consideration of Initial Report of Israel”, U.N. Doc. CCPR/C/81/Add.13, 9 April 1998 stated that:

There is no established religion in Israel, properly so-called. Nor, however, does Israel maintain the principle of separation between matters of religion and the institutions of Government. Rather, the law and practice of Israel regarding religious freedom may best be understood as a sort of hybrid between non-intervention in religious affairs, on the one hand, and on the other hand the interpenetration of religion and Government in several forms, most notably by legislation establishing the jurisdiction of religious courts of the different faiths in specified matters of „personal status“; by government funding of authorities which provide religious services to several of the religious communities, and by a series of legal institutions

These reviews of numerous national constitutions and their treatment of religion show that constitutions do not offer any guidance about how they can be read concerning religion, that is also why there is this oscillation along the Hirschl's continuum. In the case of the United States Constitution, a formalistic textual interpretation of the First Amendment will bring one to the correct conclusion that it provided a clear division between State and Church. However, the closer one looks to amendments on the US Constitution, the more the text itself appears ambiguous. Indeed, through an assessment of the various US Supreme Court interpretations over religious matters and the State, we can conclude that the establishment clause has provided a result that is far from straightforward regarding the relation between State and Church, therefore producing further ambiguity and oscillation along the continuum. This ambiguity is de facto the United States of America's present Constitution.

To conclude, constitutionalism has becoming increasingly adopted in the study of the relation between constitutions and religions. However, there are no straightforward answers to what a solution would look like by using a constitution to mediate the relationship between the State and religion. Indeed, although the text of a given constitution might seem clear in the relation between the State and religion, as it is read by Courts and judges, the final interpretation may result very different from what the drafters intended. Therefore, the most common interpretation about constitutional approaches to religion may eventually result in a non-strict classification along a continuum, rather in different oscillations and peculiarities. In fact, what seems to be a straightforward experiment in identifying how constitutions interact with religion turns out to be anything but.⁸⁶

1.2 *How Constitutions regulate religions: France and Italy – a comparison*

Peculiar cases of constitutions regulating religions are those concerning France and Italy. The aim of this section is that of describing the comparison between how the constitution

and practices which apply Jewish religious norms to the Jewish population. While it may be said that Israel has been quite successful in guaranteeing the freedom of religious practice and the use of sites to the three monotheistic faiths, particularly for the non-Jewish communities, it is more difficult to claim that „freedom from religion“ is fully protected, particularly for the Jewish population.

<https://www.un.org/unispal/document/auto-insert-188794/>

⁸⁶ Babie, P., Religion and Constitutionalism: Oscillations Along a Continuum, p. 146

of France regulates religions and the exposition of beliefs in social and public life in general, and how instead the Italian Constitution approaches the same subject in a different and probably more cautious way.

1.2.1 France: the first steps towards *laïcité*

Before analysing the French case, it is worth noting that its constitutional law and principles of gave the State the power to regulate public order, especially in matters of faith. These are known as *les principes fondateurs de la République* which formed what is commonly referred to as *bloc de constitutionnalité*, containing the Declaration of the Rights of Man and of the Citizen (1789), the Preamble to the 1946 Constitution, Article 1 of the 1958 Constitution, affirming the principle of *laïcité*, and the 1905 law effectively separating Church and State. These codified ideals reflect the French democratic ethos whereby the State treats everyone equally, strongly disregarding ethnic or religion categorizations.

To better understand the case of French *laïcité*, one must revisit its constitutional history regarding religion. The Constitution of 1958 remains somewhat silent on the topic as it simply states that France is an indivisible, secular, democratic, and social Republic.⁸⁷ This is not surprising *a priori* since the main purpose of a constitution is that of governing public life with general rules.

When the sense of secularity of the state, mainly known as *laïcité*, started in France takes us back to the period in between 1879 and 1905, when the action of the republicans sustained by an electoral majority installed the features of this strict separation that we know today, namely regarding both the organization of public schools, as well as that of social life and citizenry as a whole.⁸⁸ However, if we look furtherly back in time, religion has always been a topic of discussion in France also at the end of the XVIII century when the French Revolution started. From that moment on, the problem was not that of protecting freedom of religion, but to define the position of the State with regards to religion. Indeed, during the *Ancien Régime*, France was a catholic monarchy whose

⁸⁷ Article 1 of the French Constitution :

« *La France est une République indivisible, laïque, démocratique et sociale* », https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000019240997/

⁸⁸ Prélôt, P.-H., *La religion dans les constitutions françaises. De la Constitution civile du clergé à la laïcité constitutionnelle (1789-1958)*, April 7th, 2009.

origins can be related to the christening of Clovis in 496. There were close connections between the French Monarchy and the Catholic Church, which were governed by the Concordat of Bologna (1516).⁸⁹ Therefore, the French revolutionaries had many difficulties in understanding and addressing the issue of religion and Catholicism in the new system of national sovereignty. The desire of the revolutionaries of detaching from Catholicism and adopting a form of secularism of the State had some legal implications. The first implication was that of redefining the legal status of Catholicism and of other religions in general, as well as their places in politics and society.

The strong sense of *laïcité* began rising between 1879 and 1905 when the Republicans installed the features of this strict separation we have come to know, namely regarding both the organisation of public schools, as well as that of citizenry. However, religion has always been a subject of discussion in France, especially at the end of the 13th century when the French Revolution started. The issue was mainly that of defining the position of the State regarding religion. Indeed, during the *Ancien Régime*, France was a Catholic monarchy as the latter had a close relationship to the Church, which was governed by the Concordat of Bologna of 1516.⁹⁰ For this reason, the Revolutionaries had initially run into many difficulties in their effort of addressing the issue of separating religion from the new concept of secularism of the State.

⁸⁹ Throughout the 19th century, France was governed by the Concordat which was concluded in 1801 between Napoleon and the Catholic Church (almost 30 million Catholics and a clergy of 24,000 people) and promulgated the following year at the same time as the law on the Protestant Churches (Reformed Church, Church of the Confession of Augsburg, including almost 600,000 believers). The Jews (about 40,000) benefited from a similar regime starting from 1808. From that moment on, there was no more state religion. However, for what concerned the Catholic Church, the bishops were appointed by the Government and, for all the Churches, it had a right of control on the nomination of the ecclesiastics. In return, the government paid a salary to the three clergies. Places of worship remained the property of the state or municipalities. In addition, schools and hospitals were mostly run by the Catholic Church. This data were found in: Fromont, M., *La liberté religieuse et le principe de laïcité en France*, Universal Rights in a World of Diversity. The Case of Religious Freedom Pontifical Academy of Social Sciences, Acta 17, 2012.

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After the French Revolution, many questions were presented to the *Assemblée Nationale Constituante* (National Constituent Assembly), such as the identity of the nation. As a result, France saw the merging of *Les États Généraux* (Estates General) into a single National Assembly, thus bringing the idea of transforming the members of the three orders (Clergy, Nobility, Commoner) into equal citizens and representatives of France which saw the Church's political role greatly diminished.⁹¹

The Revolution brought forth the idea of making equal citizens in front of the State. However, the fact that a quarter of the population was represented by ecclesiastical figures led the Revolutionaries to an attempt to nationalise Catholicism.

Indeed, concerning citizenship, Article 1 and 10 of the decree for the election of the representatives of the Tiers aux États Généraux respectively stated that:

- *All citizens who will have the right to vote, will meet, not in parish or community assemblies, but in primary assembly by canton.* (Article 1)⁹²
- *[...] In France there is no longer any distinction of order; consequently, for the formation of the primary assemblies, the active citizens will meet without any distinction, of whatever state and condition they have.* (Article 10)⁹³

While, the new Constitution of 1791 declared:

[...] French citizens ... those who, born in a foreign country and descending, to any degree whatsoever, from a French or a French expatriate due to religion, come to live in France and take the civic oath. (Article 2)⁹⁴

This novelty set aside the idea of legal religious identity of French people, confining religion in the private sphere. To this end, Article 10 of the *Déclaration des droits de*

⁹¹ For instance, the Clergy Assembly, which was the direct representation of the Church in France, was gradually disappearing.

⁹² https://www.persee.fr/doc/arcpa_0000-0000_1880_num_11_1_5557_t1_0191_0000_8

« *Tous les citoyens qui auront droit de voter, se réuniront, non en assemblées de paroisse ou de communauté, mais en assemblée primaire par canton* »

⁹³ The new conception of citizenry not only stripped Catholics from their privilege, but also guaranteed other marginalized religious groups – such as the Jews and Protestants - equal treatment.

<https://www.assemblee-nationale.fr/histoire/images-decentralisation/decentralisation/loi-du-22-decembre-1789-.pdf>

« *[...] il n'y a plus en France de distinction d'ordre ; en conséquence, pour la formation des assemblées primaires, les citoyens actifs se réuniront sans aucune distinction, de quelque état et condition qu'ils soient* ».

⁹⁴ « *[...] citoyens français... ceux qui, nés en pays étranger et descendant, à quelque degré que ce soit, d'un Français ou d'une Française expatriés pour cause de religion, viennent demeurer en France et prêtent le serment civique* »

<https://www.giurcost.org/cronache/ORIGINALMEMORIE/link1869/Constitution1791.pdf>

l'Homme proclaims that from that moment on religion would be a legal matter of personal freedom and not of identity.⁹⁵

It is exactly on this principle of separation and national identity that citizenship has been built in France.

The peculiarity of the first French Constitution briefly described up to here is that it treated issues concerning the secularity of the State, the separation between State and Church, the secularization of the citizens and the Law responding only to the State itself and not to other religious entities, that made it not only a novelty but a possibility to consolidate these issues and not to furtherly come back to the subject in the next Constitutions. This first Constitution was able to completely identify the foundations of the modern state as it emerged from the revolutionary constitutionalism.⁹⁶

The real separation between State and Church happened with *La Convention* (the Convention), dated August 5th, 1794.⁹⁷ It was organized in 11 articles and it started with the freedom of religion clause, plus it added 3 points: elimination of all financial support for worship in any form whatsoever, in particular remuneration or provision of premises for worship (Articles 2, 3, 8, 9, 11); absolute privatization of religious practice (Articles 4, 5 and 7), and the close monitoring of religious practices by the public authority (art. 6).⁹⁸ As for the judicial value of this Decree of the Convention: it was considered as a law according to Article 6 of the *Déclaration des droits de l'Homme et du Citoyen 1789*. Therefore, it should be considered as being of both constitutional and legislative value; this is because it put an end to the Constitution of the Clergy and was, to some extent, included in the *Constitution du Directoire*.

Instead, Bonaparte considered religions as factors of social order therefore he intended to maintain and to furtherly and closely control it. On this new regime of worship, two

⁹⁵« no one should be worried about their opinions, even religious ones, as long as their manifestation does not disturb the public order established by law »

<https://www.legifrance.gouv.fr/contenu/menu/droit-national-en-vigueur/constitution/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789>

⁹⁶Prélot, P.-H., *La religion dans les constitutions françaises. De la Constitution civile du clergé à la laïcité constitutionnelle (1789-1958)*.

⁹⁷ From a legal point of view, the work of the Convention is that of realising for the first time the separation between State and Church. Moreover, this separation was linked to the conventions of that period, for instance the rejection of the project of nationalisation of the Church and many financial implications that anticipated the rupture. The complete separation was voted on February 1795 and later adopted with the Décret du 3 Ventôse-21 Février.

⁹⁸ Baubérot, J., *L'évolution de la laïcité en France : entre deux religions civiles*. *Diversité urbaine*, 9(1), 9–25, 2009. <https://doi.org/10.7202/037756ar>

peculiar things must be highlighted. First, it recognizes that Catholic, Apostolic and Roman religion is that of the great majority of French people. Therefore, Catholicism continued to be the privileged religion in the new regime due to its sociological superiority.⁹⁹ Secondly, this new regime did not jeopardize the major achievement of the revolutionary period: *laïcité*. Indeed, the regime established by Bonaparte inaugurated a sort of harmonization between the Concordat tradition, the Civil Constitution of the Clergy and separation. However, the separation regime fully established with the Law of December 9th, 1905 (*Loi de séparation des Églises et de l'État*) which abrogated the Concordat of 1801, gave the present consideration of the separation of power and how religions are treated at a public level, as well as the codification of *laïcité*.

It is the Fourth Republic of France that legally established *laïcité*. Indeed, it was thanks to an amendment presented by Étienne Fajon and Pierre Hervé¹⁰⁰ to the Commission – lately examined by the commissioners on August 9th, 1946 – that introduced the additional adjective, that of “*laïque*”, to Article 1¹⁰¹. According to Fajon and Hervé, this amendment provided the real essence of *laïcité* as intended by the revolutionaries, thus establishing the fundamental principles of the judicial regime on religions in French Law.¹⁰² Eventually, the amendment was unanimously adopted.

To sum up, the Secularism described in the French Constitution is fundamentally important from the perspective of the definition of the constitutional status of the Republican State, in the same way as its unitary, social republic character and, again, its principle of separation of powers.

⁹⁹ However, other confessions benefited from special care and status, ensuring their existence in France. Such as: the Reformed Church and the Church of the Augsburg Confession, as well as Judaism after 1808, are also the focus of a peculiar organization, which was not the case with the Civil Constitution of the Clergy previously. In general, the legal framework established for the Catholic Church is somewhat different from that established for other cults in France, taking into account their unique characteristics.

¹⁰⁰ Étienne Fajon was a French political man and member of the French Communist Party, while Pierre Marie Hervé was a member of the French resistance, a journalist and a philosophy professor, as well as a member of the French Communist Party,

¹⁰¹ *La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion. Elle respecte toutes les croyances. Son organisation est décentralisée.*

La loi favorise l'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives, ainsi qu'aux responsabilités professionnelles et sociales.

<https://www.assembleenationale.fr/connaissance/constitution.asp#:~:text=Article%201er,Son%20organisation%20est%20d%C3%A9centralis%C3%A9e.>

¹⁰² Prélot, P.-H., *La religion dans les constitutions françaises. De la Constitution civile du clergé à la laïcité constitutionnelle.*

1.2.2 Laïcité and religions in France

Before considering the problems posed by *laïcité* in France, I will provide some data about the religious situation in France in recent years.

There are many findings on religious composition of French population, each of them presents slightly different data. This is also because in France there is no official governmental data on religious plurality or composition of the population, since a Law passed in 1872, during the Third Republic, prohibiting the government from keeping census data on the beliefs of citizens, with the aim of promoting national unity.¹⁰³ Here, a descriptive table with the main data provided by independent agencies is showed in order to understand the religious plurality in current France.¹⁰⁴

Survey	Catholics or Christians	Protestants	Muslims	Jewish	Buddhists	None or Atheists or Agnostics	Other
<i>Ipsos MORI (2017)</i>	45	3	2	<1	<1	42	6
<i>CIAO World Factbook (2015)</i>	63	3	7-9	<1	<1	23-28	2
<i>Pew (2010-2020)</i>	63	-	7.5	<1	<1	28	3
<i>Eurobarometer (2010)</i>	44	-	2	1	*	42	11
<i>World Religion Database (2008)</i>	65	-	8.7	0.73	0.76	23.84	0.07

This table summarizes and presents the major elements of religious plurality in France and how they changed in the past few years until recently (2020). What catches the reader's attention is the role of Catholicism in France. As mentioned above, Catholicism (and Christianity) played the veiled role of the State religion for a long time, due to a great majority of the French population being it Catholic/Christian. Even though this

¹⁰³ Manuel, P.C., Religious Regulation in France, Oxford Research Encyclopedia of Politics, 2019.

¹⁰⁴ Data on religious plurality in France is from several sources: Ipsos Global Trends (Ipsos, 2016); CIA World Factbook (Central Intelligence Agency, 2018); Pew Forum, The Future of World Religions (Pew Forum, 2015A); Pew-Templeton Global Religions Future Project (Pew Forum, 2015B); European Union, Special Eurobarometer (European Union, 2012); World Religion Database (2008).

remains true even nowadays, what must be considered here is that religious practice among Catholics has experienced a drop in the past 50 years. This happened because part of the population gradually shifted toward being nonpracticing believers. Indeed, the table above provides the data confirming that the atheist/agnostic part of the population is the second largest category in France.

In order to better understand this division in society and the application of the separation and the *laïcité* of the State in different fields, we should attentively look at the field of education, or public schools in general. Here, the Law on Secularity and Cospicuous Religious Symbols of 2004 (*Loi sur le port de signes religieux ostensibles*) and the Law Banning Concealment of the Face in Public Space of 2010 (*Loi interdisant la dissimulation du visage dans l'espace public*) play an important role.

The efforts to continue a religious restriction in public life continued also during the 21st century, especially when the National Assembly passed two measures to keep all religion symbols out of the public sphere and, in particular, schools. In the two Laws mentioned above, the focus stands on *laïcité* of the State, although many French societal sectors take issue against them. These laws were intended to encourage equal citizenship by prohibiting any single confession from splitting people into opposing religious groups, despite that many consider them as being inspired by anti-Muslim sentiments as a result of Muslim girls wearing headscarves in schools or, similarly, the 2010 Law Banning Concealment of the Face in Public Space which prohibits individuals from hiding their faces in public, ostensibly discouraging Muslims from practicing their religion. This created a lot of opposition against *laïcité* by French Muslim citizens,¹⁰⁵ however even though it might seem understandable, at the same time these legislative measures are in line with the already mentioned Law of Separation of 1905, as well as consistent with the French *laïcité*.¹⁰⁶

The provisions of the new education compromise in France are the following: the state will pay teachers' salaries in private schools if they decide to teach the government-approved national curriculum in order to train students for their final graduation

¹⁰⁵ Fernando, M., *The Republic unsettled: Muslim French and the contradictions of Secularism*, Durham, NC: Duke University Press, 2014.

¹⁰⁶ Cesari, J., *Young, Muslim, and French: Islam and French secularism: The roots of the conflict*, WideAngle, 2004.

Alicino, F., *Freedom of expression, laïcité and Islam in France: The tension between two different (universal) perspectives*. *Islam and Christian-Muslim Relations*, 27(1), 2015, 51–75.

(*Baccalauréat*). These are the famous “on contract” with the government (*sous contrat avec le gouvernement*) schools, while those deciding not to teach their students following the national curriculum are called “outside the contract” (*hors contrat*) schools. This compromise worked so far and the first Muslim school in Lille, Lycée Averroès has received the statal approval to operate sous contract.¹⁰⁷

As *laïcité* has an important role in society, one has to consider that religion as well has its relevant role in the French societal structure.¹⁰⁸ Indeed, here, the role of Islam in France would be analysed. Historically, the main goal of the secular State was that of controlling and limiting the Catholic practices in public square. Nowadays, instead, recent legislative measures take into consideration Islam, even though not explicitly declaring this intention to limit these religious practices. As showed in the table above, Islam is the second largest religion in the country and French Muslims are the largest community of Muslims in any of the other Western European countries. This large presence of Muslim people in France started approximatively during the 60s when, after the decolonization many Muslims coming from North Africa and Middle East arrived in France looking for jobs. This number furtherly increased when the French government permitted the reunification of families. In 2017, the French National Institute of Statistics and Economic Studies reported that approximately 7.3 million people born in France have at least one immigrant parent, representing 11% of the total French population.¹⁰⁹

After the recent terroristic attacks happening in France, national authorities shut down several Mosques related to extremist practices and many Muslim leaders sustained this governmental approach while working to improve the relations with the State’s authorities. Indeed, an important medium for their work is the so-called *Conseil français du culte musulman*, working under the Ministry of the Interior and established by President Nicolas Sarkozy in 2003. This Council is elected by French Muslims and has the aim of engaging the State in the matters of the Muslim community, such as: contesting religious discrimination, collaboration toward social peace and order and free religious practice.¹¹⁰

¹⁰⁷ Manuel, P.C., *Religious Regulation in France*, p. 13.

¹⁰⁸ Davie, G., *Religion in Modern Europe: A Memory Mutates*, Oxford: Oxford University Press, 2000.

¹⁰⁹ Manuel, P., C., *Religious Regulation in France*, p. 14

¹¹⁰ Chelini-Pont, B., Ferchiche, N., *Religion and the Secular State: French Report. Religion and the Secular State: National Reports*, Publicaciones facultad derecho Universidad Complutense, 2015.

To conclude the discourse about France and its *laïcité*, the constitutional approach to religions in this country have always shown a separation among the statal institutions and the religious ones. Indeed, the French secularism has always been defined as a system in which there is a strict separation between the two entities. However, it does not convey any kind of indifference towards religion, since *laïcité* is a means to assure the free exercise of religion by all citizens.¹¹¹ Despite the many critics towards *laïcité*, this system of strict separation has proved to work so far. Any kind of prohibition at religious level in the social stratus of France is not related to discrimination over specific religions, but it is a way of preserving nationality and the so coveted separation between State and Church.

1.2.3 The Italian secularism

By making a comparison between two European countries, namely Italy and France, the first difference between the two lies on the concept of secular State. Indeed, while the Constitution of France immediately expresses the *laïcité* of the State in its first article, we can notice that Italy is a Democratic, secular and non-confessional Republic, therefore without an official religion, even though the principle of secularity or the French '*laïcité*' is not expressively or openly written in the Italian Constitution. However, Italy is a secular State and its jurisprudence confirms this,¹¹² making ordinary laws, regulations and the activity of the Italian public administration in compliance with the secular nature of the State. This secular nature, even though not explicitly expressed, has been interpreted through the different and various articles of the Italian Constitution dealing with religion, namely article 2, 3, 7, 8, 19 and 20.

The Italian secular state does not expressively mean total and complete indifference from any religion, but it ensures equal treatment of any kind of religious belief present in Italy. In this regard, the Italian Constitutional Court highlighted the following consequences to

¹¹¹ Hunter Henin, M., why the French don't like the burqa: *laïcité*, national identity and religious freedom, *The International and Comparative Law Quarterly* , July 2012, Vol. 61, No. 3, 2012.

¹¹² Italian Constitutional Court, sentences about secularity of the Italian State: Sentt. 203/1989; 259/1990; 13/1991; 195/1993; 421/1993; 149/1995; 440/1995; 178/1996; 334/1996; 235/1997; 329/1997; 508/2000; 327/2002; 389/2004; 168/2005.

Italian Constitutional Court sentences can be found at: <https://www.cortecostituzionale.it/default.do>

this principle of equal treatment, namely: *confessional pluralism, providing equal protection to each person that recognise himself/herself in a religious belief; ban on discrimination among different religions*¹¹³, *the non-imposition of religious moral obligations to the secular nature of the State*¹¹⁴ and *the impartiality of the jurisprudence regarding any religion*.¹¹⁵

When looking at the case of Italy, the difference between the secularity of the State and the Church (here intended as Catholic Church) is different from the strict *laïcité* characterizing France. Indeed, Article 7 of the Italian Constitution says:

“*Lo Stato e la Chiesa Cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani*”, namely that both the Italian State and the Catholic Church are independent and sovereign in their own jurisdiction. Therefore, the Constitution attributes the features of independence and sovereignty to the Holy See, as representative of the Catholic Church. This kind of relationship among Italy and the Catholic Church was constitutionally regulated by the Lateran Treaty (*Patti Lateranensi*), ratified by the Holy See and the Kingdom of Italy in 1929, establishing the papal State on the Italian Peninsula. Briefly, the Lateran Treaty represents the seal of the relationship among the Holy See and Italy. Indeed, Italy and the Holy See started some talks to deal with the “roman question”¹¹⁶ that culminated with the signature of the Lateran Treaty in a period going from 1923 to 1929.¹¹⁷ By virtue of this Treaty, the two entities recognized themselves as sovereign in a certain part of the territory of the Peninsula, reasserting Catholicism as the sole religion of the State. With this reaffirming, Italy de facto recognized the validity of marriage disciplined by the Canon Law and it granted a series of privileges to ecclesiastical institutions. Historically speaking the Lateran Treaty represented the solution on the dispute between the Catholic Church and Italy which began after the Capture of Rome in

¹¹³ Italian Constitutional Court, Sentence nr 440/1995, available at: <https://www.cortecostituzionale.it/actionPronuncia.do>

¹¹⁴ Italian Constitutional Court, Sentence nr 334/1996, available at: <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=1996&numero=334>

¹¹⁵ Italian Constitutional Court, Sentence nr 508/2000, available at: <https://www.cortecostituzionale.it/actionPronuncia.do>

¹¹⁶ Historically, this question is known as “roman question”, in Italian: *questione romana*. The question regarded the controversy between the status of the city of Rome, both capital of the Kingdom of Italy and, at the same time, the territory of the temporal power of the Pope.

¹¹⁷ The Lateran treaties were signed by King Victor Emmanuel III of Italy and Pope Pius XI.

1870 and the following annexation of Rome and Latium to the Kingdom of Italy, therefore putting an end to the Catholic Church State.¹¹⁸

In 1984 the Lateran Treaty was officially recognized in the Constitution of Italy under Article 7. Indeed, apart from clarifying the independence and the sovereignty of the two entities, State and Church, Article 7 also explains that the content of the Treaty can be amended with an ordinary law but only if the modifications on the text are equally negotiated and agreed among the two parties.¹¹⁹ Therefore, the State cannot unilaterally modify the Treaty without first having modified the Constitution. The constitutional revision is not needed when both Church and State agree upon the modification of the Treaty. According to the Constitutional Court's sentences number 30 and 31,¹²⁰ the

¹¹⁸ Casucelli, G., *Le laicità e le democrazie: la laicità della "Repubblica democratica" secondo la Costituzione italiana, Stato e Chiesa*, 2011.

¹¹⁹ Musselli, L., *Chiesa e Stato all'Assemblea Costituente: l'Articolo 7 della Costituzione Italiana, Il Politico*, vol. 53, nr.1, 1988.

¹²⁰ **Italian Constitutional Court, Sentence nr 30/1971:**

"La questione riguarda la celebrazione del matrimonio, e il suo esame non é precluso, come invece opina l'Avvocatura dello Stato, dall'art. 7 della Costituzione.

É vero che questo articolo non sancisce solo un generico principio pattizio da valere nella disciplina dei rapporti fra lo Stato e la Chiesa cattolica, ma contiene altresì un preciso riferimento al Concordato in vigore e, in relazione al contenuto di questo, ha prodotto diritto; tuttavia, giacché esso riconosce allo Stato e alla Chiesa cattolica una posizione reciproca di indipendenza e di sovranità, non può avere forza di negare i principi supremi dell'ordinamento costituzionale dello Stato.

Nondimeno, la questione promossa dal pretore di Torino, pur collocata nel quadro delle considerazioni su esposte, si prospetta infondata, perché non é esatto che la giurisdizione dei tribunali ecclesiastici abbia una natura speciale nel senso indicato nella norma costituzionale che il pretore invoca. Tale norma vuole assicurare l'unità della giurisdizione dello Stato; e il rapporto fra organi della giurisdizione ordinaria e organi della giurisdizione speciale deve ricercarsi nel quadro dell'ordinamento giuridico interno, al quale i tribunali ecclesiastici sono del tutto estranei. Analoghi concetti sono stati espressi nella sentenza 16 dicembre 1965 n. 98, a proposito della Corte di giustizia delle comunità europee, investita di giurisdizione su atti prodotti fuori dell'orbita giuridica dello Stato; che possono perciò costituire, secondo la detta sentenza, soltanto materia di ulteriore qualificazione giuridica da parte dell'ordinamento statale, nei limiti in cui esista un obbligo di non disconoscerne gli effetti."

<https://www.cortecostituzionale.it/actionPronuncia.do>

Italian Constitutional Court, Sentence nr 31/1971

"É incontestabile che, quanto all'impedimento dell'affinità di primo grado, v'è quella differenza di regime fra celebrazione del matrimonio civile e celebrazione del matrimonio concordatario che il tribunale di Milano ha denunciato: l'impedimento infatti può formare oggetto di dispensa secondo l'ordinamento canonico, non secondo l'ordinamento civile (salvo il caso di cui alla seconda parte dell'art. 87, quarto comma).

É parimenti esatto, come sostiene l'Avvocatura dello Stato, che il matrimonio canonico é riconosciuto dall'art. 7 della Costituzione; ma questa Corte, con sentenza in pari data n. 30, ha giudicato che la predetta norma non preclude il controllo di costituzionalità delle leggi che immisero nell'ordinamento interno le clausole dei Patti lateranensi, potendosene valutare la conformità o meno ai principi supremi dell'ordinamento costituzionale. La normativa concernente il matrimonio concordatario ha una sua giustificazione nell'ambito del disposto del menzionato art. 7; per cui la semplice differenza di regime riscontrabile fra matrimonio civile e matrimonio concordatario, che non importi violazione degli altri precetti costituzionali nel senso predetto, non integra di per sé una illegittima disparità di trattamento.

Lateran Treaty was placed as an atypical source of the Italian legal system. In this sense, the provisions contained in the text of the Treaty do not have the constitutional norms' nature, but it has a higher level of resistance than the ordinary sources. The ordinary procedure of the amendment of the Treaty can only be applied if both Church and State agree upon the modification, while if the State decides to unilaterally modify the text of the Treaty, then the aggravated procedure would be applied.¹²¹ Moreover, the constitutional illegitimacy of the provisions of the Treaty can be declared only if they are in conflict with the supreme principles of the Italian Constitution.

All in all, what is “constitutionalized” is not the essence of the Treaty but the principle behind it, differently we would assist to distinct constitutional norms being revised with dissimilar forms than those described in article 138 of the Italian Constitution.¹²² Anyhow, the norms in the Treaty can resist to the repeal of an ordinary law, because we are dealing with a treaty (*lex posterior generalis non derogat priori speciali*), while the only limit is represented by the supreme principles of the constitutional order of the Italian State.

Moreover, after years of negotiations a new agreement was signed in 1984, the so-called Villa Madama Agreement between the Italian State and the Holy See. In this case, modifications were made to the Lateran Treaty regarding those principles adopted during the fascist period, when the Treaty itself was signed, and making the essence of the Treaty in harmony with the Italian constitutional principles. As a consequence, the State's religion was abrogated, confirming the “neutrality” of the State in religious matters. In

La norma denunciata non ammette che, per la ragione dell'affinità dei nubendi, possa promuoversi opposizione alle pubblicazioni richieste per il matrimonio concordatario, volendo rispettare le basi confessionali sulle quali si fonda la dispensa di diritto canonico relativa agli impedimenti al matrimonio. Basi diverse ha essenzialmente il sistema della dispensa dagli impedimenti al matrimonio civile, informato, com'è, a valutazioni esclusivamente laiche, dalle quali possono razionalmente risultare difformità di determinazioni normative.

Né si vede come la celebrazione del matrimonio fra affini di primo grado, che il codice di diritto canonico consente, previa dispensa, possa ledere i principi supremi dell'ordinamento costituzionale dei quali si é fatta parola.”

<https://www.cortecostituzionale.it/actionPronuncia.do>

¹²¹ Normally, the aggravated procedure is used to modify constitutional laws.

¹²² Laws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each House in the second voting. Said laws are submitted to a popular referendum when, within three months of their publication, such request is made by one-fifth of the members of a House or five hundred thousand voters or five Regional Councils. The law submitted to referendum shall not be promulgated if not approved by a majority of valid votes. A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of two-thirds of the members.

[https://www.rightofassembly.info/assets/downloads/1948_Constitution_of_the_Italian_Republic_\(English_version\).pdf](https://www.rightofassembly.info/assets/downloads/1948_Constitution_of_the_Italian_Republic_(English_version).pdf)

addition, the principle considering the teaching of Catholic religion in public schools remained but students, from 1984 onward, have the possibility to choose whether or not to take part at the Catholic religion course.

1.2.4 Italy: Catholicism and public education

When dealing with other religions, following the principle contained in article 8, paragraph 2 of the Italian Constitution, any religion different from Catholicism have full autonomy and independence, therefore they can organize and determine themselves following the limits imposed by the Italian Laws.¹²³

To understand how Catholic religion plays an important role in the Italian jurisprudence, education, and society, it is interesting to note the sentence of the European Court of Human Rights in the case *Lautsi and Others v. Italy*, on March 18th, 2011.

This long and controverse legal battle was initiated by an Italian citizen (and parent) against the crucifix showed in schools. The case was discussed in November 2009 by Second Section judges who condemned Italy regarding the exposition of the crucifix being in contrast with the right to education reported in Article 2, protocol number 1.¹²⁴ Basically, the State is obliged to pursue an educational system that does not discriminate pupils in any sphere, including religion. Moreover, the Court states also that the State should ensure an objective, critical and pluralistic education in public schools. Despite that, the idea is not of a prohibition of religion in public schools, but it should be taught in a way in which pupils can reflect about their religious heritage and to that of anyone else, having an open-minded vision on the subject.¹²⁵ Consequently, the State has an obligation to guarantee a neutral school environment in order to avoid any indoctrination, as it was the case for Mrs. Soile Tuulikki Lautsi (the appellant) with the crucifix showed in her child's classroom. What the ECHR's Grand Chamber eventually declared was that the choice of the crucifix in public schools remains within the limits given to the States

¹²³https://www.cortecostituzionale.it/documenti/download/pdf/Costituzione_della_Repubblica_italiana_ag2014.pdf

¹²⁴ The right to education is protected by article 2, protocol 1: “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of the parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

https://www.echr.coe.int/Documents/Library_Collection_P1postP11_ET5009E_ENG.pdf

¹²⁵ Zucca, L., Lautsi: a commentary on a decision by the ECtHR Grand Chamber, *International Journal of Constitutional Law*, Volume 11, Issue 1, January 2013, p.219

in the field of education, therefore it did not infringe the principles guaranteed by the Convention¹²⁶ and that it does not have a sizeable impact on students.¹²⁷ Despite the consideration of the Court itself about the crucifix as a religious symbol, it declared that the nature of the symbol was not decisive in *Lautsi and Others v. Italy*, particularly because there is no evidence that this specific religious symbol has an influence on pupils neither it has an effect on the education and the convictions of the same.¹²⁸ In addition, the Court also described the crucifix as a “passive symbol”.¹²⁹ Notwithstanding, it also recognized that, by using this symbol in public schools, Italy gave importance to Catholicism or Christianity as the first religion in the Peninsula, although causing discontentment by those not being part of this specific religious belief. However, ECHR’s judges declared that what has been just said has only subjective denotations, i.e., it does not “[...] denote a process of indoctrination on the respondent State’s part and establish a breach of the requirements of art-2 Pr. n. 1”.¹³⁰

By explaining how the showing of the crucifix does not influence the education of the pupils, the European Court of Human Rights resorted to the case of *Følgero and Others v. Norway* and *Hasan and Eylem Zengin v. Turkey*. Both cases dealt with the presence of a specific religious influence in the syllabus of some courses at school. In the case of *Følgero and Others v. Norway*, the course “Christianity, religion and philosophy”, as the name suggests, gave a large share of knowledge to Christianity rather than other religions; while in the case of *Hasan and Eylem Zengin v. Turkey*, in the context of “religious culture and ethics” lessons there was a prevalence of Islamic thought. In both cases, the ECHR responded that the knowledge of Christianity (in the case of Norway) and that of Islam (in the case of Turkey) lies in “[...] the margin of appreciation left to it in planning

¹²⁶ Mancini, S., La sentenza della Grande Camera sul crocifisso: è corretta solo l’opinione dissenziente, Quaderni costituzionali, Fascicolo 2, giugno 2011, p.419

¹²⁷ Zucca, L., Lautsi: a commentary on a decision by the ECtHR Grand Chamber, p. 219

¹²⁸ “There is no evidence before the Court that the display of a religious symbol on class- room walls may have an influence on pupils, and so it cannot reasonably be asserted that it does or does not have an effect on young persons whose convictions are still in the process of being formed.”

European Court of Human Rights, Grand Chamber, Case of *Lautsi and Others v. Italy*, (Application no. 30814/06), p. 28.

¹²⁹ “Furthermore, a crucifix on a wall is an essentially passive symbol and this point is of importance in the Court’s view, particularly having regard to the principle of neutrality. It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities”

European Court of Human Rights, Grand Chamber, Case of *Lautsi and Others v. Italy*, (Application no. 30814/06), p. 29.

¹³⁰ European Court of Human Rights, Grand Chamber, Case of *Lautsi and Others v. Italy*, (Application no. 30814/06), p. 29.

and setting the curriculum".¹³¹ Also in the case of *Lautsi and Others v Italy* the term "margin of appreciation" was cited twenty-seven times in the whole decision.¹³² Indeed, the Grand Chamber considers Article 2 Pr. 1 as a central point to the case, focusing on the notion of respect towards parental convictions, declaring that the State must respect them. In this sense, the State as a positive obligation towards their convictions.¹³³ However, at the same time the Court also declares that the notion of respect varies according to the context and to the European consensus, consequently, "the Contracting States enjoy a wide margin of appreciation in determining the steps to ensure the compliance with the Convention".¹³⁴ The Court therefore recognizes that the religious symbol is the representation of the religious majority in Italy, but the fact of showing it in public schools is not enough for the symbol to be the means of the Catholic indoctrination on the respondent State, neither it represents a violation of Article 2, Pr. 1.¹³⁵

To conclude, by doing a comparison between France and Italy, we can see that there are evident differences on the secularity, or *laïcité* of the State. France is strictly detached

¹³¹ For further information, see: European Court of Human Rights, Grand Chamber, *Følgero and Others v. Norway*, (Application no. 15472/02), p. 55 and European Court of Human Rights, Former Second Section, *Hasan and Eylem Zengin v. Turkey*, (Application no. 1448/04).

¹³² Zucca, L., *Lautsi: a commentary on a decision by the ECtHR Grand Chamber*, p.226

¹³³ "The word "respect" in Article 2 of Protocol No. 1 means more than "acknowledge" or "take into account"; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State."

European Court of Human Rights, Grand Chamber, Case of *Lautsi and Others v. Italy*, (Application no. 30814/06), p. 26.

¹³⁴ "Nevertheless, the requirements of the notion of "respect", which appears also in Article 8 of the Convention, vary considerably from case to case, given the diversity of the practices followed and the situations obtaining in the Contracting States. As a result, the Contracting States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals."

European Court of Human Rights, Grand Chamber, Case of *Lautsi and Others v. Italy*, (Application no. 30814/06), p. 26.

¹³⁵ *The Court further considers that the crucifix is above all a religious symbol. The domestic courts came to the same conclusion and in any event the Government have not contested this. The question whether the crucifix is charged with any other meaning beyond its religious symbolism is not decisive at this stage of the Court's reasoning.*

There is no evidence before the Court that the display of a religious symbol on classroom walls may have an influence on pupils and so it cannot reasonably be asserted that it does or does not have an effect on young persons whose convictions are still in the process of being formed.

However, it is understandable that the first applicant might see in the display of crucifixes in the classrooms of the State school formerly attended by her children a lack of respect on the State's part for her right to ensure their education and teaching in conformity with her own philosophical convictions. Be that as it may, the applicant's subjective perception is not in itself sufficient to establish a breach of Article 2 of Protocol No. 1."

European Court of Human Rights, Grand Chamber, Case of *Lautsi and Others v. Italy*, (Application no. 30814/06), p. 27-28.

from any religion, while Italy, even though it is considered as a secular State, remains attached to one specific religion: Catholicism or Christianity, for historical reasons already mentioned here. However, coming back to the crucifix case and its presence in Italian public schools, it does not provide a sort of association to the moral obligations of Catholicism or Christianity. In fact, the attention of public schools towards other religions is still something relevant despite the presence of the crucifix and if one wants to make a comparison with the *laïcité* peculiar to France. Indeed, in Italian schools, pupils are free to wear religious symbols or clothes, they can also organize different and optional (other) religious courses, or they can celebrate religious festivities distinct from the Catholic's ones. Therefore, this suggests the presence of a pluri-confessional and cultural school environment, different from the one existing in France.

1.3 *Democracy in deeply divided societies and consociativism*

A consociation is, according to Lijphart, the description of the governmental system able to bring democracy and harmony to those states or regions affected by intercultural or ethnic conflicts, described as deeply divided societies. In Lijphart's consociation there are four components which are required in order to achieve stability in deeply divided societies: all-inclusive grand coalition, proportional representation, provision of minority veto power and cultural autonomy for subcultures.¹³⁶ The combination of all these four elements is essential in order not to exclude a group from the decision making, since this can create conflicts which consociation aims to eliminate.

In deeply divided societies, the demands of different groups can be accommodated only with power sharing. However, many scholars believe that the constitutional engineering in deeply divided societies can pose serious problems to democracy or that is difficult to maintain a democratic apparatus in these kinds of societies. At the same time, a point of agreement is that to fully establish a democracy in deeply divided societies. Here, two major aspects should be taken into consideration: power sharing and group autonomy. Respectively, "*power sharing denotes the participation of representatives of all significant communal groups in political decision making, especially at the executive level; group autonomy means that these groups have authority to run their own internal*

¹³⁶ Kelly, B., B., *Power-Sharing and Consociational Theory*, Palgrave Macmillan, 2020. p. 19

*affairs, especially in the areas of education and culture. These are the characteristics of the so-called, consociational system or democracy.*¹³⁷

One of the most famous critics to power sharing not being fully democratic is that of Horowitz. He proposed to design different mechanisms, such as the alternative vote or the instant runoff, encouraging the election of moderate representatives. This, applied to the Iraqi situation, that will be analyzed later in this chapter, would create a political system run exclusively by Shiites, but it would be difficult to imagine that in the very long run the other two minorities (Kurds and Sunnis) would be happy about the outcome of this decision. Therefore, Lijphart concludes that Horowitz arguments do not seem to have gathered assent.¹³⁸

Power sharing seemed to have been the most suitable system in deeply divided societies. In contrast with the “*one size fits all*” promoted by Horowitz, the different cases of consociational democracies in deeply divided societies deny this idea. Indeed, the ancient cases of power sharing differ from the more recent ones, namely from 1960 onward. Indeed, for example, the Lebanese consociational system is different from Bosnia Herzegovina’s recent one.

Lijphart describes the different characteristics of consociational democracies:

- 1) **The legislative electoral system:** the proportional representation appears to be the most suitable for deeply divided societies. For them, ensuring the election of a broadly representative legislature should be a crucial consideration to be taken into account.
- 2) **Guidelines with the proportional representation:** a high degree of proportionality with multimember districts not extremely large is preferable. Closed or partially closed lists where electors chose parties and not the single candidates.
- 3) **Parliamentary or presidential government:** in this case the choice should be based on different systems’ relatively potential for power sharing in the executive.
- 4) **Power sharing in the executive:** in the parliamentary systems, the collegial cabinets facilitate the formation of power sharing in the executive, although without the

¹³⁷ Lijphart, A., *Constitutional Design for Divided Societies*, Journal of Democracy, Volume 15, Number 2, April 2004, pp. 96-109, Johns Hopkins University Press, p. 97.

¹³⁸ Ibidem, p. 99

guarantee of the formation of the same. However, the disadvantage to this approach is that it requires specification on the groups having the right to obtain a share in power.

5) **Stability of the Cabinet:** a serious problem in deeply divided societies is that the support of the Cabinet comes from the majority support in Parliament. Therefore, if there is a lack of support, the Cabinet would reach a level of instability, resulting in the instability of the entire regime. This problem should not be overestimated in deeply divided societies.

6) **Selecting the Head of State:** the best option is not to elect the President through popular elections. Popular elections offer democratic legitimacy and, when combined with more than the constitution's minimal powers, this might attract presidents to become active political participants, possibly changing the parliamentary system into a semi-presidential one. As a consequence, parliamentary elections of the President are the preferred option in deeply divided societies.

7) **Federalism and decentralization:** for divided societies a federation with a strong decentralization of power is highly preferable and an excellent way to provide autonomy to the different groups existing in societies.

8) **Non territorial autonomy:** when there is a strong division in the country, the different groups tend to maintain control over distinct societal aspects. One of them can be the school system. A solution proposed by Lijphart is that of providing educational autonomy by giving equal state financial support to schools, as long as basic educational standards are met.

9) **Power sharing beyond the Cabinet and the Parliament:** actually, in divided societies the best option is to provide power sharing also in the civil service, judiciary, police, and military. This can be done by the creation of religious quotas.¹³⁹

The aim of this section is to examine whether the theory here described can be applied in all the cases of deeply divided societies or if antagonist parts of the same society cannot peacefully coexist, even though there is a separate but equal representation.

Coming back again to the idea of the division or separation of governmental power among the different groups in a society, Lijphart believes that policymakers should let groups define themselves instead of imposing a separation that cannot correspond to the real

¹³⁹ Lijphart, A., Constitutional Design for Divided Societies, *Journal of Democracy*, pp. 99-105.

division.¹⁴⁰ The problem with the definition of a consociation is that Lijphart's one evolved during time, however the evolution of the same was motivated to describe the qualitative nature of such systems adopting consociativism, without taking into account the quantitative nature: how the concept can be adopted and how it can work on a daily basis in deeply divided societies.

Lijphart and others firmly believe that wherever there is an extensive segmental organization and historical antagonism in society, the political choice is always between consociation democracy and no democracy at all.¹⁴¹ However, is it always true that consociation promotes peace in divided societies, or that it encourages stability in multi-plural societies?

As a category of both political and constitutional analysis, a divided society cannot be described as a mere society which is ethnically, religiously, linguistically, or even culturally different. Indeed, today it is hard to imagine a State presenting no differences in one or even more than these elements.¹⁴² But, what really makes a divided society is that all these differences are salient markers of political and communitarian identity, therefore creating a political fragmentation in a country that welcomes all of them. In a divided society, political claims are refracted through the lens of ethnic identity, and political conflict is a synonymous to conflict among ethnocultural groups, as it is in the case of Lebanon, Bosnia Herzegovina and Iraq.

The role of constitutions in deeply divided societies is crucial to mitigate the tensions between the different groups. Moreover, the constitution of a deeply divided country can create the common political identity that could had been lost due to ethnic conflicts or the lack of a shared existence between the groups. The constitution can also provide for a codification of a new vision of the political community, different from what the societal groups believe about it. For example, a Bill of Right can embody a conception of the political system as consisting in equal rights for citizens regardless of their religion, race, or ethnicity. The constitution in a deeply divided country has two main conceptions: the regulative and the constitutive ones. About the regulative conception, according to Stephen Holmes, constitutions can enable or even disable political decision making by

¹⁴⁰ Kelly, B., B., *Power-Sharing and Consociational Theory*, p. 20

¹⁴¹ *Ibidem*, p.21

¹⁴² Choudhry, S., *Constitutional design for divided societies: integration or accommodation?*. Oxford: Oxford Univ. Press., 2010, p. 5.

creating the institutions government, by allocating powers to them, by setting out rules of procedure to enable these institutions to make decisions, and by defining how they interact.¹⁴³ They can also disable political decision making by supermajority rules or through Bills of Rights. Both in non-divided societies and in the deeply divided ones, the national Constitution should fulfil the regulative conception described here.

Constitutions in deeply divided societies matter because they can respond to the challenges imposed by the diversification, the division and the different political identities by guiding the population and national politics towards reaching the national goal of unification without any kind of discrimination. Failing to respond to the challenges existing in these kinds of societies implies a corrosive effect on ordinary politics dealing with education, healthcare, environment etc. This is because in lack of a constitution regulating these issues at a national level, those policies can be perceived as distributed along sectarian lines, therefore in an uneven way. In this sense, if political decisions are made, they can easily be condemned as “discriminatory”.

1.3.1 The Lijphart – Horowitz debate

The famous debate between Arend Lijphart and Donald Horowitz has focused on a wide range of issues. Their confrontation is crucial to understand the idea of consociation and how it can differ from the imperative positions of Lijphart described above, at the same time weighting also for what concerns the issues of constitutional law and constitution-design in deeply divided societies.

The institutional paradigm used by both scholars is that of the majoritarian democracy modeled on the Westminster system.¹⁴⁴ The democratic competitive paradigm where the opposition parties rule together and the non-abuse of power by political parties are two

¹⁴³ Stephen H., *Passions and Constraint: On the Theory of Liberal Democracy*, Univ. Chicago Press 1995, cited in: Choudhry, S., *Constitutional design for divided societies: integration or accommodation?*.

¹⁴⁴ In the Westminster system elections are based on single-member plurality voting, with the governing party having the support of a majority of the legislature and an official opposition, as well as the presence of a unitary constitution with no other centers of political power. The opposition party focuses on providing legislative opposition from outside the government, and cabinets are created on a winner-take-all basis. The idea is that parties would cycle in and out of power as they build changing voter coalitions in their race for the political center. Because no section of society is permanently excluded from political power, losers in a competitive politics regime accept their defeat in the hope of winning again someday. To conclude, the political competition in the Westminster system does not threaten the political stability of the system itself. Lijphart, A., *Majority Rule Versus Democracy in Deeply Divided Societies*, 4 *Politikon* 113, 1977.

aspects that, according to Lijphart, cannot be applied in deeply divided societies. This is because in deeply divided societies cleavages are mutually reinforcing, not crosscutting,¹⁴⁵ resulting in political divisions on the basis of ethnicity, race and religion. Politics in deeply divided societies happen because of an identity and political segmentation, therefore parties organize themselves according to these aspects. This aspect challenges the assumption on competitive policies, therefore undermining the democratic electoral competition. The peculiarity of divided societies is that the elector would vote for his or her ethnic or religious political party, resulting in what Horowitz calls a “census”.¹⁴⁶

Both Lijphart and Horowitz firmly believe that the procedural aspects typical of democracies are inadequate for ethnically divided polities.¹⁴⁷ Nonetheless, both scholars’ propositions for divided societies appear to be very different. On the one hand, Lijphart’s proposal is that of a consociational democracy, because he believes that the idea behind the consociational model is that of sharing, decentralizing, and dividing power. On the other hand, Horowitz results to be very skeptical about the consociational model proposed by Lijphart. According to Horowitz, the consociational model is inadequate because it does not explain how different ethnic leaders should collaborate and share power. Indeed, he believes that the incentives towards cooperation are clearer for minority leaders than for majority ones in a deeply divided society, therefore a consociation is more likely to happen when there is not a majority. At the same time, what is most probable is not the creation of a grand coalition, but of a coalition that includes certain ethnic groups, while excluding others.

About the elections held on proportional representation, Lijphart believes that they would allow for the election of representatives from ethnic parties. However, elections held on proportional representation would also increase the intra-ethnic competition. Instead, Horowitz believes that successful consociations are the result of cross-cutting cleavages. Therefore, he suggests a sort of ethnic moderation in elections, where the key voting

¹⁴⁵ Choudhry, S., *Constitutional design for divided societies: integration or accommodation?.*, p. 17

¹⁴⁶ As Horowitz writes, “*this is not an election at all, but a census*”

Horowitz, *Ethnic Conflict Management for Policymakers*, in *Conflict and Peacemaking in Multiethnic Societies*, Joseph V. Montville ed., Lexington Books, 1990, p. 116.

¹⁴⁷ Choudhry, S., *Constitutional design for divided societies: integration or accommodation?.*, p. 18

mechanism is the so-called “alternative vote”.¹⁴⁸ This system would foster a better interethnic cooperation.

The academic discussion between the two scholars has covered the field of comparative politics and constitutional design for divided countries. In this sense, both Lijphart and Horowitz confronted their different ideas by analyzing examples on how federations or constitutions work in deeply divided societies. Indeed, both sustain that the wave of democratization that invested Western and Eastern European countries in the 90s has gradually sink, because the constitutional design did not properly consider the deep ethnic divisions in societies. Both scholars supported their narrative through the analysis of case studies, like the one on Nigeria and the Hausa ethnic group.¹⁴⁹

1.3.2 The case of Bosnia Herzegovina

Bosnia Herzegovina is the typical case of those States “à la charte”¹⁵⁰. These types of States are internally divided due to ethnic or religious conflicts. In cases like the one of Bosnia Herzegovina and that of Iraq after the US invasion, external actors played a fundamental role in the drafting of the Constitution and in the following societal and political structure of the State. However, the external role in these kinds of countries does not always present a solution to the problem. This is because in such deeply divided societies the role of the external actor is that of determining if the system and the Constitution they are supporting is suitable for a specific divided society. Briefly, the external actor would find itself in front of different ethnic or religious actors, having different solutions in mind for their country, or their community.

In Bosnia Herzegovina, the Dayton Agreement, concluded at the US military base in Dayton (Ohio) in December 1995, brought the end of the four years of mostly ethnic

¹⁴⁸ Alternative vote mechanism requires the winning candidates to secure a majority of the votes. If no candidate reaches the highest preference, the last candidate will be excluded and his or her votes will be distributed according to the second preference. The theory behind this voting system is that of creating a sort of incentive to the majoritarian ethnic groups to appeal across ethnic boundaries in order to secure an absolute majority through the second preferences.

Choudhry, S., Constitutional design for divided societies: integration or accommodation?., p.21

¹⁴⁹ According to Horowitz the first Nigerian constitution resulted in a failure because it granted a single province to the biggest ethnic group in the country, the Hausa. While, according to Lijphart the Constitution was a failure because it did not provide a complete consociation.

¹⁵⁰ Dirri, A., Lo state-building in Iraq e Siria tra conflitti interni e attori esterni: “is federalism the only way”?, Ordine internazionale e diritti umani, (2019), pp. 582-597.

conflict in the former Yugoslav Republic of Bosnia Herzegovina, happening from 1991 to 1995. Therefore, the Dayton Agreement was intended to put an end to the bloody war and its atrocities, but at the same time it also installed the consociational governance institutions and a legal framework for the reconciliation of the population and of the economy of the country.

When dealing with the case of Bosnia Herzegovina, we should always take into consideration the severe ethnic division affecting the country. With the Dayton Agreement, the institutional structures followed the model of Arendt Lijphart, i.e., the consociational democracy.¹⁵¹ Once again, consociation is a form of government that institutionalizes each group's voices and relies upon the cooperation among elites.¹⁵² In the case of Bosnia Herzegovina, the power was shared among Muslims, Serbs and Croats. In the aftermath of the ethnic conflict which displaced more than half of the Bosnian population, the international community (mainly USA and European countries) and the local parties representing the warring factions, were deeply convinced that after this specific conflict and its related atrocities, only an ethnic representation and power sharing would have preserved integrity, peace and stability in Bosnia Herzegovina. However, fifteen years after the conclusion of what it should have brought peace and stability in a so fragile and divided country, the Dayton Agreement was considered unsuccessful for the creation of a democratic construction of the State, based on an economic recovery and an ethnic and civil reconciliation. In the report of the High Representative of the United Nations, which covered the period from November 2009 to December 2010, there was a strong complaint by the High Representative himself towards the decision of the government and National Assembly of Republika Srpska to hold a referendum in 2009 about the decision to extend the mandates of international judges and prosecutors in the war crimes issues dealing with the Bosnian case at the Bosnian State Court. The High Representative declared that this decision posed a serious threat to the constitutional order

¹⁵¹ Marko, Joseph. "Defective Democracy in a Failed State? Bridging Constitutional Design, Politics and Ethnic Division in Bosnia-Herzegovina." In *Practising Self-Government: A Comparative Study of Autonomous Regions*, edited by Yash Gai and Sophia Woodman, 281-314. Cambridge: Cambridge University Press, 2013.

¹⁵²Stroschein, S., *Consociational Settlements and Reconstruction: Bosnia in Comparative Perspective (1995–Present)*. *The Annals of the American Academy of Political and Social Science*, November 2014, Vol. 656, *Aid and Institution-Building in Fragile States: Findings from Comparative Cases* (November 2014), pp. 97-115, Sage Publications, Inc. in association with the American Academy of Political and Social Science. p. 103

of this nation.¹⁵³ The situation furtherly deteriorated among the different ethnic groups in the Bosnian society, sometimes also reaching the level of hate speech and therefore undermining the unity of the nation and the possibility of creating a constitutional order capable of reconciling the population itself and the revival of the State's economy through democratic means.

At the end of the High Representative's report, there was the statement declaring that the decision taken by Republika Srpska represented the most serious violation of the Dayton Agreement, intended to bring peace in Bosnia.¹⁵⁴ However, the situation not only deteriorated in the Republika Srpska, but also in the Muslim-Croat entity, the so-called Federation of Bosnia and Herzegovina. Here, no government was formed until March 2011. Subsequently, when the newly elected government of national unity was finally endorsed by the High Representative of the United Nations, it was declared as "illegal" by the Croat counterpart. Croats believed that the newly elected government was not in conformity with the ethnic representation for the governmental positions as prescribed by the Constitution of the Federation of Bosnia and Herzegovina. As a consequence of this "illegality" declared by the Croats, in April 2011 a Croat National Assembly was finally founded, claiming the formation of a third – and Croat – political entity governing the part of the territory mostly populated by Croats. This not only created major problems at the national level regarding the division of the social stratus, but it also undermined the work of the Bosnian Parliament.

To sum up, the non-appointment of a delegate to the House of Peoples of the Federal Parliament¹⁵⁵ brought to the non-adoption of laws for more than six months, resulting in the impossibility for the Parliament to do ordinary work.¹⁵⁶

The rationale behind it is that the Dayton Agreement could have been brokered only due to the international intervention, but when a country so severely divided reaches a point at which leaders of each group stop talking, the only progress that can bring to stability may be a third-party brokerage. The logic is that in divided societies the most crucial

¹⁵³ Marko, Joseph. "Defective Democracy in a Failed State? Bridging Constitutional Design, Politics and Ethnic Division in Bosnia-Herzegovina."

¹⁵⁴ Ibidem.

¹⁵⁵ The House of People is an institution designed for the collective representation of the constituent peoples. It is the upper chamber and was primarily designed to account for the democratic political will of the constituent peoples. It has a tripartite Presidency composed of three members, namely Croat, Serb and Bosniak.

¹⁵⁶ Marko, Joseph. "Defective Democracy in a Failed State? Bridging Constitutional Design, Politics and Ethnic Division in Bosnia-Herzegovina."

mechanism to preserve peace is the requirement for elites to maintain communication with one another and to negotiate means to stop potential political conflicts. Despite that, if the communication line among the different groups breaks down, group grievances occur, and population expresses its discontentment. Here, the intervention of international actors can help to establish new institutions capable of preserving communication and national unity. If the international intervention brings to a peace agreement, the preconditions of it are various: first of all, each conflicting groups must have a starting point in common in order to negotiate and to eventually create the rules for governance.¹⁵⁷ Secondly, the international actor must always look at what parties desire, subsequently identifying a common point to reach equilibrium. Finally, understanding the needs of each party – minorities normally want to be protected from tyranny, while majorities' desire is that of making themselves as promoter of democratic functions of the State. Considering these conditions, consociational institutions provide means to give concessions to both sides.

1.3.4 Bosnia Herzegovina's Constitution¹⁵⁸

As stated before, following Arendt Lijphart's idea, there are four primary aspects of consociational governance structures: all-inclusive grand coalition, proportional representation, provision of minority veto power and cultural autonomy for subcultures. These features were important for international actors to broker the Dayton Agreement in 1995, also because the idea of granting concessions to each part might have provided a shift towards a durable settlement and in preserving the aims of each ethnic group and their identities. However, some provisions can lead to stalemates, such as the minority veto.

The constitutional system post-1995 is based on a strict and rigid system of power sharing in the institutions of the State, mainly the representation of Bosniacs, Serbs and Croats in both the presidency and in the House of Peoples, as well as in the veto power during decision making.¹⁵⁹ The power sharing existing in Bosnia Herzegovina is guaranteed by

¹⁵⁷ Stroschein, S., *Consociational Settlements and Reconstruction: Bosnia in Comparative Perspective*, p. 103

¹⁵⁸ The Constitution is available at <https://www.osce.org/files/f/documents/e/0/126173.pdf>

¹⁵⁹ Marko, J., *Defective Democracy in a Failed State? Bridging Constitutional Design, Politics and Ethnic Division in Bosnia-Herzegovina*. In: Ghai, Y. & Woodman, S., *Practising Self-Government A Comparative Study of Autonomous Regions, (Law in Context)*, Cambridge: Cambridge University Press, 2013.

the Constitution itself and it is based on the territorial autonomy. Indeed, Bosnia Herzegovina has in total thirteen constitutions and one statute,¹⁶⁰ because apart from the central constitution, the Entities and cantons have their own Constitutions. Moreover, although the Bosnia Herzegovina's Constitution assigns exclusive powers to the central level, these are limited, leaving the Entities with vast residual powers and sub-national autonomy.¹⁶¹ Here, new questions on the sustainability of the Dayton Agreement emerge: can this newly established territorial autonomy create new means for secession in the context of a quasi-confederal state?

In Article 1, paragraphs 1 and 3, annex 4 of the Dayton Agreement, the internationally recognized State of Bosnia and Herzegovina is balanced with the legal recognition of the different 'entities' populating the territory.¹⁶² In addition, the constitutional system is also based on the principle of parity between the constituent people, i.e., the ethnic groups.¹⁶³ They are the key ingredient of the constitutional system since they pierce through all level of government.¹⁶⁴ The compromise among the entities prescribe also the disposition of creating internal institutional structures for each of them, composed not only by the Dayton Agreement but also by those of the Federation of Bosnia Herzegovina. Moreover, the line dividing the entities, which is the product of the military atrocities happening during the conflict and the ethnic cleansing, has been legally recognized and the territorial division of Bosnia Herzegovina is therefore based on ethnic lines.

Article 3 of the Dayton Agreement instead deals with the division of power. It contains a system of allocation of powers describing the division in a list of enumerated powers of the institutions in paragraph 1. While, in paragraph 3, all those powers not assigned to the in common institutions are expressively declared to belong to the two entities. Most of the powers that normally are seen as essential elements of State sovereignty (i.e., defense, police or fiscal policy) do not belong to the umbrella of the State exclusive powers, but

¹⁶⁰ The Statute is the one of Brčko District, a small territorial unity situated in northeastern Bosnia and which emerged in 1999 after an arbitrary process.

¹⁶¹ Sahadzic, M., *Ethno-Territorial Politics and Sub-national Constitutionalism: Lessons from Bosnia and Herzegovina*. In: Belov M. (eds) *Territorial Politics and Secession. Federalism and Internal Conflicts*. Palgrave Macmillan, Cham., March 2021, pp. 245-246.

¹⁶² These entities are the Republika Srpska and the Federation of Bosnia and Herzegovina.

¹⁶³ The ethnic groups are Croats, Serbs and Bosnians.

¹⁶⁴ Indeed, they interfere with the territorial representation, they also influence voting procedures and enjoy veto powers.

Sahadzic, M., *Ethno-Territorial Politics and Sub-national Constitutionalism: Lessons from Bosnia and Herzegovina*, p. 246.

to the entities. In addition, Article 8 of the Dayton Agreement entrenches a total dependence of the state institutions on the financing from the revenues of both entities.¹⁶⁵ While Article 3, paragraph 2 expressively says that the two entities have the power to conclude international treaties with states or international entities only after the consent of the Parliament. They can also create bilateral ties with neighboring states without the previous consent of the Parliament but with the limit of acting in coherence with the sovereignty and the integrity of the country as a whole, Bosnia Herzegovina.

The partition of institutional powers is described in Article 4. It provides a bicameral parliament, a House of Representatives and House of Peoples. Two out of three members of the House of Representatives are directly elected by the population of the Federation of Bosnia Herzegovina, while a third is directly elected by the population of Republika Srpska. At the same time, for the House of Peoples, the Constitution prescribes that it must be composed by five Bosnians, five Serbs and five Croats indirectly elected: Bosnians and Croats from the respective caucuses of the House of Peoples of Federation of Bosnia and Herzegovina and Serbs from the National Assembly of Republika Srpska. Instead, for what concerns the veto mechanism, in Article 4, paragraph 3 and subparagraphs (d) and (e) of the Constitution, the model described is that of a double veto mechanism. This is called 'entity voting' and provides for an absolute veto in any decision-making process in the House of Representatives, if two thirds of the representatives from one of the Entities do not agree with a bill and if the Chair and deputy chairs have not brokered a compromise. The procedure seems to be convenient for decisions-making deadlocks, because the number of representatives from each entity is decisive in achieving a decision.¹⁶⁶ However, Bosnians and Serbs¹⁶⁷ usually use this provision to block the decision-making process, thus transforming this mechanism into another veto power of the constituent people. While paragraph (e) deals with the 'vital national interest' veto in the House of Peoples with a suspensive veto.¹⁶⁸ If a mixed commission cannot find a solution nor a compromise the case shifts towards the

¹⁶⁵ Marko, Joseph. "Defective Democracy in a Failed State? Bridging Constitutional Design, Politics and Ethnic Division in Bosnia-Herzegovina."

¹⁶⁶ Sahadzic, M., *Ethno-Territorial Politics and Sub-national Constitutionalism: Lessons from Bosnia and Herzegovina*, p.253.

¹⁶⁷ It is interesting to note that the same cannot happen with Croats, because due to their small number they cannot act like Serbs and Bosnians. Due to this reason, they are underrepresented and sometimes unable to influence the decision-making process.

¹⁶⁸ Marko, Joseph. "Defective Democracy in a Failed State? Bridging Constitutional Design, Politics and Ethnic Division in Bosnia-Herzegovina."

Constitutional Court to control the procedural regularity. Moreover, article 5, paragraph 2 provides for the possibility of a vital national interest veto for the presidency members. All these vetoes and the constitutional mechanisms behind it represent a serious threat to the good functioning of the institutions themselves. Indeed, a monoethnic party can stop any kind of Parliamentary decision, resulting in an inefficiency of the State system and institutions.

While, dealing with the composition of the legislative, executive and judicial bodies¹⁶⁹ the Constitution of Bosnia Herzegovina remains silent.

The consociational structures created for Bosnia were intended to put an end to the conflict itself. However, Bosnia's current difficulties, challenges as well as governance crisis emerge from the competing imperatives at the institutional structure, paradoxically created by the (then) considered solution to the many problems this territory has: the Dayton Agreement. There is no doubt that post-Dayton Bosnia is a fully-fledge consociational structure under international tutelage,¹⁷⁰ but the consensus on the consociational nature of Bosnia Herzegovina has not been reached by the communities themselves. Serbs and Croats link their minimum consensus on the consociational order of the State, while Bosnians believe that this order is not favorable for the survival of the State itself.

To conclude, Bosnia is a living example on how international or external aid revealed to be crucial to set the foundations for the governance of the country. However, despite the criticism that consociational structures may have in this country, the Dayton agreement provided for a non-violent or conflictual environment in Bosnia Herzegovina, therefore one can express the success of the international intervention in the short run linked to the 'peace' it brought at the national level. Despite that, the problem with the consociational nature and the Dayton agreement lies on the long run. Indeed, the governance tensions of the agreement emerged, such as the establishment of a democracy on the basis of specific and particular groups, as well as problems regarding tensions between single group

¹⁶⁹ Here I use the plural terms of "judicial bodies" because the Federation, Republika Srpska and Brčko District have different judicial bodies whose composition and functioning are described by their constitutions and statute.

Sahadzic, M., *Ethno-Territorial Politics and Sub-national Constitutionalism: Lessons from Bosnia and Herzegovina*, p. 252

¹⁷⁰ Kasapović, M., Lijphart and Horowitz in Bosnia and Herzegovina: Institutional Design for Conflict Resolution or Conflict Reproduction?, *Croatian Political Science Review*, Vol. 53, No. 4, 2016, p. 176

decision-making structures and human rights. Present Bosnia's Constitution does not fall within any of the ideal types of autonomy,¹⁷¹ but somewhere in between them and the legal design of the country puts more emphasis on the ethnic dimension rather than the territorial one.¹⁷² Thus, the territorial framework of Bosnia Herzegovina is based on ethnic lines and the constituent people constantly force their ways through all levels of government and given the fact that they obtained equal power ratio, the same parity they share is an ingredient of the governing system.¹⁷³

1.4 Confessionalism as a political system in the Middle East and the problem of Middle East constitutionalism: Lebanon, Iraq and Israel – a comparison

Confessionalism is a system of government of a given State characterized by a mix of religion and politics, entailing the distribution of institutional powers among the different religions populating the country. The distribution of power is normally apportioned according to the number of people belonging to a religion. This system should secure a peaceful co-existence among the different religious groups. However, confessionalism can also help creating conflicts among the different groups. This can happen because whoever holds the biggest political power of the country may use it at the expenses of other groups, just by favoring its own sect. In addition, another problem of this system is related to the continuous change of demography: the institutional position covered by a group may no longer reflect the size of the same, and vice versa.

The most known case of confessionalism is that of Lebanon, followed by Iraq and Israel. The last one may not be considered as a complete case of confessionalism in Middle East, although the presence of different religious groups may lead one to think it can be studied as a form of confessionalism.

1.4.1 Confessionalism in Lebanon

¹⁷¹ Being them territorial or non-territorial autonomies.

¹⁷² This is due to the identity differences which are inevitably linked to the territorial ones.

Sahadzic, M., *Ethno-Territorial Politics and Sub-national Constitutionalism: Lessons from Bosnia and Herzegovina*, p. 254

¹⁷³ Keil, S., & Kudlenko, A., *Bosnia and Herzegovina 20 Years After Dayton : Complexity Born of Paradoxes*, *International Peacekeeping*, 22(5), 471-489.

Lebanon is an atypical Middle Eastern country for its social composition and the important presence of Maronite-Christians that governed the country for years. It is of common belief that the confessional order of Lebanon was created in 1920,¹⁷⁴ however the roots to the peculiar Lebanese system are to be founded even before, during the Ottoman Empire.¹⁷⁵

Since the first adopted Constitution of 1926, under the French mandate, one can notice that the text is based on confessional principles with the sharing of political powers among the different religions in the country. Namely, the Maronites, having a special support from France, obtained more influence in Lebanon, but during the first half of the 20th century a continuously growing Muslim population asked for a greater share of political power in Lebanon.

Once Lebanon obtained its independence from France in 1943, the newly elected government created the first National Pact, *al-Mīthāq al-Waṭanī*. The National Pact equally divided the seats in Parliament according to the different sects and to the last national census of 1932. It also separated the governmental positions for the three largest confessions in the country. Indeed, the President of the Republic is a Maronite, the Prime Minister is a Sunni Muslim, and the speaker of the Chamber of Deputies is a Shia Muslim. However, starting from 1943 onward, demography changed in the whole territory of Lebanon, and those detaining the largest percentage of population are not a majority anymore.

Starting from the 1960s the confessional system fueled the tensions between the different sectarian groups. This was the atmosphere leading to the Lebanese Civil War in 1975 and culminated with the signature of the Ta'if Agreement (*ittifāqiyat al-Ṭā'if*) in 1989. This document inaugurated a new constitutional text which lasts until today.¹⁷⁶

¹⁷⁴ Under the French mandate in Lebanon. Indeed, in that period, France created the Greater Lebanon, which included Mount Lebanon, former Syrian areas of Tripoli and Akkar, the Beqaa Valley, as well as Sidon and Tyre, the incorporation of these areas under the French mandate meant the inclusion of new confessions in the country. Indeed, we talk about Greek Orthodox, Sunni and Shia Muslims.

¹⁷⁵ Indeed, the repartition of the assembly seats on confessional bases started to spread in Middle East, therefore arriving to Lebanon, during the Ottoman Empire.

Di Peri, R., *Il Libano Contemporaneo*, Storia, Politica, Società, Carocci Editore, 2017.

¹⁷⁶ The Ta'if Agreement restructured the political system of the unwritten National Pact and transferred some power away from the Maronite community, therefore accommodating the demographic shift to a Muslim majority.

The in-depth description of the constitutions of Lebanon will be further analysed in Chapter 2.

The Lebanese confessional system welcomes more consensus-based principles rather than majoritarian ones. Indeed, by following the scheme proposed by Arend Lijphart,¹⁷⁷ the concentration of the executive power in Lebanon is more consensus oriented rather than majoritarian. The creation of the executive branch of government like this one in Lebanon is quite unique.¹⁷⁸ Also the multi-party nature of the country¹⁷⁹ is another feature of consensus-based democracy, as well as the electoral proportionality of the country, although very different from the normal Lijphartian type of proportionality because it lays on confessional bases.¹⁸⁰ Again, the interest groups system of Lebanon is based on consensus. Indeed, politicians are both the representatives of the people of Lebanon, while promoting at the same time their own religious group's rights, therefore acting as interest groups. While, about the federal-unity dimension, in the Lebanese Constitution there is no mention on the decentralization of power, a trait of majoritarian democracies rather than consensual ones. The same happens if one looks at the unicameral nature of Lebanon,¹⁸¹ or at the Lebanese Central Bank, declared to be both autonomous but, at the same time dependent on the Lebanese government on a certain extent, about cooperation on fiscal and monetary policies. Hereby, for these differences the Lebanese democracy is more majoritarian. For what instead concerns the rigidity of the Constitution, being it amendable only if recommended by two-thirds of the majority of the Chamber of Deputies, and considering the long process for the modification, we can conclude that the Lebanese Constitution is a rigid one.¹⁸² While, concerning the existence of the judicial

¹⁷⁷ Lijphart, A., *Le democrazie contemporanee. Il mulino*, Bologna, 2014.

¹⁷⁸ In the Lebanese case, the executive power is vested in the President who should act in accordance with the Council of Ministers, which is the cabinet created by the President. The President is then elected by the Parliament with at least a majority of two-thirds. Subsequently, all the ministers including the Prime Minister are directly chosen by the President. However, the President cannot choose the cabinet he wants according to his preferences, he has to look at the proportionality of the various Lebanese sects. Therefore, the choice is among the proportional representation of the religious sects. This proportionality has been firstly introduced in 1926 and then reinforced with the National Pact in 1943.

Jabbara, J. G. & Jabbara N. W., *Consociational Democracy in Lebanon: A Flawed System of Governance. Perspectives on Global Development and Technology*, Vol. 17 (2), 2001, pp. 71-89

¹⁷⁹ The Constitution does not state any sort of imposition between the two-party system or the multi-party one. Although the multi-party one seems more suitable for a country like Lebanon, so deeply divided among different religious sects.

¹⁸⁰ The Lebanese confessional system is built on the proportional representation, however this proportionality is not intended to be based on proportional representation on votes percentage but parliamentary seats and ministries are divided among sectarian groups and based on their dimension or demography. Therefore, any group is represented through its dimension.

Lijphart, A., *Patterns of democracy*, Yale University Press: New Haven and London, 1999, pp.143-153.

¹⁸¹ Article 16 of the Lebanese Constitution:

“Legislative power shall be vested in a single body, the Chamber of Deputies”

<https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>

¹⁸² About the rigidity of the Constitution, the Lebanese one can only be modified if a two-thirds majority of the Chamber of Deputies recommends an amendment of the text. Then, the government is drawn in the

review, the 1990 amendments of the Constitution made it clear that once again Lebanon is a consensus based democracy with the creation of the Constitutional Council.¹⁸³

The Lebanese confessionalism has crossed a long path from the adoption of the first Constitution in 1926 to present days. Indeed, in 1926 Article 24 introduced for the first time the confessional proportion of seats in Parliament. Then, the National Pact increased and strengthened this proportional representation in Parliament described under article 95 of the Lebanese Constitution. Article 95 was then abrogated with the Ta'if Agreement in 1989. The nature of this article is “transitory”, so that the confessional system and division of power is intended to be overcome.¹⁸⁴

1.4.2 Confessionalism in Iraq

As for Bosnia Herzegovina, Iraq is a State “*à la charte*” where internal conflicts have gradually divided the Iraqi society and where the external intervention of the USA led to the adoption of the constitutional text. However, in this case, as in that of Bosnia Herzegovina, the constitution-drafting results in something problematic if the typical “*We, the People*”¹⁸⁵ does not really reflect the common sentiments of the different groups populating the country.¹⁸⁶

Following the invasion of Iraq by US troops in 2003, the American administration introduced a system of shared power among the three main religious and ethnic groups, namely Shiites, Sunnis and Kurds.

Due to the parliamentary system of Iraq and its original necessity for a supermajority in order to elect the President, the country's Constitution promoted such power-sharing

process of the amendment, and if it is accepted by the executive, the Chamber is called to vote for a constitutional change. This change can be accepted with the condition of the presence of two-thirds of the members of the Chamber and if a two-thirds majority exists. In the occurrence of a reject of the amendment by the government, the Chamber of Deputies has time to reconsider the amendment, although it can force the government to accept it. Moreover, amendments proposed by the President are likewise subject to the same two-thirds majority requirement.

Lijphart, A., *Patterns of democracy*, pp. 216-225.

¹⁸³ The Constitutional Council did not exist before the 1990 amendments. It is independent from both government and parliament.

¹⁸⁴ Article 95 of the Lebanese Constitution and the confessional power sharing system will be analysed in the following chapters.

¹⁸⁵ “*We, the people*” is considerably used in the Iraqi Constitution.

¹⁸⁶ Dirri, A., *Lo state-building in Iraq e Siria tra conflitti interni e attori esterni: “is federalism the only way”?*, p. 582

independently from the occupying administration. Indeed, even though the Constitution does not directly express it, Iraq's political tradition continued to date for the President to be a Kurd, while the Prime Minister is a Shiite, and the Speaker of the Parliament is a Sunni.

As previously stated, while talking about the external intervention in the constitution-making of Bosnia Herzegovina, the case of Iraq is peculiar because the United States had an almost complete influence over it. Without the military intervention there would probably be no change of regime or a different shift in the political structure of the country.¹⁸⁷ The USA had an important role in the constitution-making of Iraq and in the power sharing of the various religious-ethnic sects in the country. Indeed, the USA totally boycotted Sunni Muslims living in Iraq¹⁸⁸, making even more difficult to acknowledge the legitimacy of the two-stages Constitution-making process.¹⁸⁹ These two stages are divided in: the creation of an interim Constitution, having a temporary nature and the definitive Constitution of Iraq.

The interim Constitution¹⁹⁰ had an important impact in the redaction of the definitive Constitution, however the legitimacy of the same, or of those promoting it, was questioned. The first document was written following Lijphart's lines of consociativism, already described in this chapter. Furthermore, it inaugurated the Federal nature of the State of Iraq. Indeed, Article 4 states that:

*“The system of government in Iraq shall be republican, federal, democratic, and pluralistic, and powers shall be shared between the federal government and the regional governments, governorates, municipalities, and local administrations. The federal system shall be based upon geographic and historical realities and the separation of powers, and not upon origin, race, ethnicity, nationality, or confession”.*¹⁹¹

¹⁸⁷ The dismantling of the authoritarian regime through a pre-constituent decision was implemented by external actors, namely the United States of America.

Beaud, O., *La Puissance de l'État*, Paris, 2017, p.265.

¹⁸⁸ Saddam Hussein was a Sunni Muslim.

¹⁸⁹ Arato, A., *Post-Sovereign Constitution-making: Learning and Legitimacy*, Oxford, 2016, p. 75.

¹⁹⁰ Law of Administration for the State of Iraq for the Transitional Period or The Transitional Administration Law (TAL). This was the provisional Constitution of Iraq following the 2003 Iraqi War signed on March 8th, 2004 by the Iraqi Governing Council.

Bremer, P., L., *My Year in Iraq: The Struggle to Build a Future of Hope*, Simon & Schuster, 2006, pp. 307-308.

¹⁹¹ The Iraqi Constitution: https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en

The territorial organization of the State is peculiar as well, in this concerns Iraq refuses any sort of centralization of the State, therefore following the characteristics of a decentralized federation, with the recognition of Kurdistan as a regional entity having legal continuity.

The influence of the USA in the Constitution-making, or better in the creation of the interim Constitution was important for the decentralized nature of Iraq, for the exclusion of Sunnis and for the abetting of the Kurds' claims.¹⁹²

Finally, the Constitution, entered into force on October 15th, 2005,¹⁹³ developed the provisions of the interim Constitution.

The ethnic division of Iraq is described in the long preamble of the same Constitution of 2005. However, one can easily notice how Islam is declared to be the official religion of the State (Article 2, paragraph 1), while, at the same time, the Constitution of Iraq guarantees freedom of religion to Christians, Yazidis and Mandeans (Article 2, paragraph 2).¹⁹⁴

The State is divided into 19 governorates, plus Kurdistan. It is particularly important to notice how the legislative power is divided among State and governorships. Because if Articles 110 and 114 describe the exclusive powers of the federal government, such as in matters of foreign policies, security policies, fiscal and custom policies, issues of citizenship, the drawing of the budget, statistics and census etc., in practical terms Article 115 makes Iraq one of the most decentralized States in the world:

*“All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.”*¹⁹⁵

To conclude, more than a confessional system, that of Iraq is a strong decentralized federal State that was created under a foreign influence, that of the United States of

¹⁹² Phebe, M., *The Modern History of Iraq*, Boulder, Colorado, Westview Press, 2019, p. 280.

¹⁹³ The Constitution entered into force after the positive referendum's results. The participation rate resulted in 63% of the population. Those in favour were 73%, but the referendum was boycotted by the Sunni-Muslim minority.

¹⁹⁴ The Iraqi Constitution: https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en

¹⁹⁵ Ibidem.

America. Some scholars also argue that probably the best solution to Iraq would be that of a federation divided into three macro regions: apart from Kurdistan, the regions belonging to Sunnis and Shiites. This is because Sunni Muslims are bitter opponents to federalism, in view of the strong centralization operated by the Iraqi Shiites. In general, federalism is conceived by many to be a solution to many conflicts happening in Middle East. In the Iraqi case, the Kurds presence cannot be ignored. Not only because they are probably the first promoters to federalism, but also because this can lead towards a peace building in an area dotted with conflicts. Reconsidering the isolation of the Sunnis “imposed” by the USA, plus a re-division of power among the three communities populating Iraq can present a solution to the existing problems in the country.

1.4.3 Confessionalism in Israel

The relation between Israel and confessionalism revolves around the different religious presence in the country and not around a confessional political nature of Israel.

The State of Israel was created in 1948 and it declares himself as a “*Jewish and democratic State*”¹⁹⁶, resulting in the first and only country in the world with a majority of Jewish people. Despite that, the population of Israel is not only Jewish. Indeed, other faiths in the country include Islam, Christianity, and the religion of the Druze.

Religion plays a fundamental role in Israel, regarding both political and public life. The recognized religious communities in Israel have some privileges, but this does not apply to every religious community living in the country.

Pew Research Center placed Israel as one of the countries that adopted restrictions on the free exercise of religion, and fifth in terms of interreligious violence.¹⁹⁷ In addition, the 2004 International Religious Freedom Report drafted by the United States Department of State highlighted the continuous tensions among the different religious communities in Israel.¹⁹⁸

¹⁹⁶ As stated in the Declaration of Independence of the State of Israel.

¹⁹⁷ Freedom of Religion, PEW Research Center:

<https://web.archive.org/web/20160303223318/http://www.pewforum.org/files/2009/12/restrictions-fullreport.pdf>

¹⁹⁸ 2004 International Religious Freedom Report drafted by the United States Department of State: <https://2009-2017.state.gov/j/drl/rls/irf/2012/nea/208392.htm>

When Israel was founded in 1948, the intention was that of the creation of a Jewish State, in the famous “*national home for Jewish people*” formula¹⁹⁹. Israel is today a Jewish State with various (other) religious presences. However, Israel does not have a proper Constitution and its legal system is based on Basic Laws.²⁰⁰ The debate around the creation of a proper Constitution still exists, and it reflects the profound ideational divide over foundational issues, particularly the deep disagreement between a religious and a secular vision of Israel as a Jewish state.²⁰¹ This happens because the framers did not find a compromise between the creation of a profound Jewish religious law and the development of the institutions of a modern State and since the religious-secular debate still persists in Israel, the Israeli Parliament, the Knesset, avoids talking about the adoption of a real Constitution.²⁰² Therefore, choosing to adopt what Lerner calls “*the incrementalism approach*”, the emergence of consociational arrangements in the religious sphere of the country became inevitable. Moreover, despite the fact that other religious communities represent a big share of the population (Muslims 20%) the debate over the adoption of a constitution remains Jewish-based.

As said before, communities enjoy some privileges, however when the State of Israel was created in 1948, and in the following years, non-Jewish population has been constantly excluded from “nationhood issues” such as that of the drafting of the constitutional text. Some also believe that the refusal to adopt a constitution in 1950 was exactly related to this question: the Knesset wanted to limit civic rights to Palestinians living in Israel. The same Palestinian minority in recent years has never stopped its request of the redefinition of the identity of Israel, shifting from being a “Jewish and democratic State” to a liberal and democratic State where Palestinians can live with the recognition of being a national minority.²⁰³

In this regard, it is extremely important to stress how and to what extent the possible adoption of a constitution in the early years of the newly born State of Israel would had mitigated the bitter relationship among Jews and Arab minorities in the country.

¹⁹⁹ As in the Balfour Declaration of 1917: “*His Majesty’s Government view with favour the establishment in Palestine of a national home for Jewish people [...]*”

²⁰⁰ Groppi, T., Ottolenghi, E., Rabello, A.M. (a cura di), *Il sistema costituzionale dello Stato di Israele*, Giappichelli, Torino, 2006.

²⁰¹ Lerner, H., *Informal consociationalism in Israel*. In: *Making Constitutions in Deeply Divided Societies*, Cambridge: Cambridge University Press, 2011, p. 51.

²⁰² Toniatti, R., *Israele: una Costituzione a tappe*, in *Rivista trimestrale di Diritto pubblico*, n. 2/1977, pp. 510-35.

²⁰³ Lerner, H., *Informal consociationalism in Israel*, p. 53.

However, such answer is difficult to find, if not impossible. What can be analyzed here is that since the early years the constitutional discussions in Israel were based on the religious-secular conflict or vision of the Jewish State.²⁰⁴ The relation between the constitutional debate and therefore the definition of Israel as a Jewish State and the dispute over the Jewish majority and the Arab minority, cannot be separated. Indeed, they should be treated as part of the same discourse. Since it is difficult, if not impossible to answer to questions like – *what would have happened if Israel had adopted a written constitution in the 50s?* – we can try to provide some information to enable a clearer understanding about the relations between Israeli Arabs and the approach adopted by the Knesset, namely the incrementalist one.

The Israeli Declaration of Independence, proclaimed on May 14th, 1948, by David Ben Gurion clearly states that Israel is a Jewish State open for Jewish immigrants, ensuring equal social and political rights to all the inhabitants of the land, irrespectively from their religion, and that it will provide freedom of religion for all. However, despite these very positive intentions, the dispute between Jewish and local Arab population, as well as the way in which Israel obtained its independence gradually shaped the relationship between Jewish and Palestinian minority in the country.

The relationship between these two entities started with possibly the best intentions, although something went wrong during the years. Indeed, until 1966 Israeli Arabs lived under military rule, which inevitably limited their freedoms and political rights. With the abolition of the same, they started to enjoy some rights, although remaining constantly excluded from the nationhood, always described in terms of Jewish identity. Many Arabs started to live in Israel, becoming citizens of the State but they were never included in the discourse of citizenship. Their exclusion is not only seen in public and political life, but in the State's signs as well: the national anthem, the flag, the State ceremonies and so on. Another restriction is, for instance, that on participation in the parliamentary process if a party denies the definition of Israel as a “Jewish and democratic State”.²⁰⁵ This results in a clear definition of the State of Israel for Arabs despite living there for years: Israel is not their State, and they are not represented there.

²⁰⁴ Lerner, N., “Religious Liberty in the State of Israel”, *Emory Int’l L. Rev.* 21, 2007.

²⁰⁵ Lerner, H., *Informal consociationalism in Israel*, p. 99.

It is important to stress again the exclusion of the Arab minority from the constitutional debates in Israel. In 1948-1950, when there was the discussion about the foundational aspects to take into consideration to draft a Constitution, Arabs were excluded. The first constitutional committee did not include Arabs and did not take into consideration their proposals. Despite that, the role of Israeli Arabs was not as active as it became half a century later, when there was the renewed constitutional discussion. Indeed, Israeli Arabs presented three constitutional proposals in 2005 to be considered for the future Israeli Constitution. Each of the three documents reflected the Arab desire of a change in the types of demands for equality and full citizenship, demanding a recognition by the State of Israel of their nature: being a national minority. They asked for a transformation of Israel from being a “Jewish and democratic State”, into a liberal and democratic State where Palestinians can fit in as a minority. This is because there is no equality nor democracy if there is not a recognition of Palestinians as an Israeli Arab minority in a Jewish hegemonial State. The three documents proposed equal participation in the definition of the main characteristics of Israel, including national symbols and power sharing at institutional level. However, this project gradually lost importance since Arabs understood that the political atmosphere was not the best in order to promote the adoption of a constitution, therefore they decided to delay their propositions to better days. Nonetheless, it may be possible that in the future there would only be a pessimistic picture of the evolution of Palestinian minorities living in Israel, and this is linked to the increasing threats to Arab political and civic rights in the Jewish State. Indeed, the Knesset passed several laws with the intent of entrenching the exclusive Jewish nature of the State,²⁰⁶ making even more difficult for Palestinians to participate in the political life. For instance, the amendment of the citizenship law in 2002 was intended to prevent the family unification when the marriage happens between an Israeli-Jewish citizen and a person from an enemy state, Palestinian Territories included.²⁰⁷ This created a complete break between the individual citizenship of Israeli people and non-Israeli ones. Indeed, as stated by Lerner, here Israel demonstrated to be very far from fulfilling the

²⁰⁶ Dazzetti, S., *Forme e pratiche del pluralismo religioso nello Stato di Israele. L’eredità ottomana e la tutela dei rapporti familiari, Stato, Chiese e pluralismo confessionale*, fascicolo nr.19, 2020.

²⁰⁷ Rabello, A., M., *Introduzione al diritto ebraico. Fonti, matrimonio e divorzio, bioetica*, Giappichelli, Torino, 2002, pp. 137-138.

Maoz, A., *Matrimonio e divorzio nel diritto israeliano*, in *Daimon*, n. 2, 2002.

requirements of a liberal and democratic system, therefore the Israeli polity should be understood in terms of “ethnic democracy”, or even “ethnocracy”.²⁰⁸

The discussion around the Constitution entrenches the long-lasting aspects of the secular and religious conflict in the State of Israel, which does not focus on the issue of allocation of power and resources as it is in many Western countries. On the contrary, in Israel the religious parties are interested in leaving the imprint of Judaism on any of the State’s institutions, symbols, system and legislature. Indeed, those who opposed the immediate constitution making declared that the extreme diversity in Israeli society, resulting in a polarization of the same, would have had an extremely negative impact on ideological roots of the country. Those who declared to be contrary with any means to the adoption of a constitution were mostly Jewish Orthodox.

About citizenship in Israel, of recent development is the Nation State Bill passed as a Basic Law, therefore having legal nature, in 2018. This bill was proposed by Avi Dichter, from the *Likud* party²⁰⁹ and it has been one of the most controversial and discussed bills in the history of the State. Basically, it renovates the Jewish nature of the State. This Basic Law brought to a further escalation of internal controversies. As said before, according to the Israeli Declaration of Independence, the State is Jewish by nature, but it guarantees equal rights to its citizens, regardless of the differences based on sex, ethnicity and religion. However, many believe that is irrelevant to talk about a Jewish State when over 20% of the population is non-Jewish, but Muslim.

The Bill states:

“The State of Israel is the national home of the Jewish people, in which they realize their aspiration to self-determination in accordance with their cultural and historical heritage; the right to exercise national self-determination in the State of Israel is unique to the Jewish people; Jerusalem is the capital of Israel; the state’s language is Hebrew; the Arabic language has a special status, and its speakers have the right to language-accessible state services in their native language, as will be determined by the law; every citizen of Israel, regardless of their religion or nationality, has the right to actively preserve their culture, heritage, language and identity, and the holy sites shall be protected from desecration and all other harm, and from anything that may hinder access

²⁰⁸ Lerner, H., *Informal consociationalism in Israel*, p. 106

²⁰⁹ The Likud party is an Israeli right-wing party

to their holy places for members of a religion, or that may offend their sentiments toward those places.”²¹⁰

This Bill created many controversies regarding the status of Jerusalem, declared here as the capital of Israel but recognized as a divided city for the two contending parties, Israelis and Palestinians, by the United Nations. Moreover, the Bill does not take into consideration that many Palestinians, whose citizenship is not recognized by the State of Israel, live in East Jerusalem. In addition, the question of languages also was an aspect of controversy. When Israel was created in 1948, Arabic enjoyed the status of official language, together with Hebrew and English. Nowadays, the elimination of Arabic as “official language”, but as a language having a special status in the State of Israel, constitutes a social problem for Arabs living in the country.²¹¹ Israeli Arabs are a minority, but their language is not recognized as one of the official languages of the State where they live, resulting as unprivileged citizens.²¹²

The definition of the link between Israel and religions, the rules for a pacific coexistence and the rights of non-Jewish citizens in the Jewish States constitutes few of the urgent topics in a society characterized by very different and divergent needs.²¹³ The battles over citizenship in the Jewish State are intertwined with mechanisms of both inclusion and exclusion, from a judicial, social and political point of view. These kinds of conflicts exist in the Israeli society, and they create judicial disputes which can be both internal and external to the Jewish State.²¹⁴

As said before, when dealing with confessionalism in Israel, the point is not the division of State’s power as it happens in Lebanon and in Iraq. Confessionalism here is presented in the various and different religions populating the Jewish State and the diverse problems their presence entails.

²¹⁰ Full text of Basic Law: Israel as the Nation State of the Jewish People
https://main.knesset.gov.il/en/News/PressReleases/Pages/Pr13978_pg.aspx

²¹¹ Di Marco, M., L., *La Legge sullo Stato nazionale di Israele: una deterrenza preventiva politica*, Quaderni di diritto e politica ecclesiastica, Il Mulino, Fascicolo 2, agosto 2019.

²¹² Campelli, E., *Israele: stato ebraico o stato degli ebrei? Il dibattito sulla Nation State Law e le nuove minacce alla stabilità dell’esecutivo Netanyahu*, NOMOS – Le attualità nel diritto, 2018.

²¹³ Segre, V., D., *Le metamorfosi di Israele*. Torino, UTET, 2006.

Giuliani, M., *Il pensiero ebraico contemporaneo*, Brescia, Morcelliana, 2003, p. 176.

²¹⁴ Campelli, E., *Israele: stato ebraico o stato degli ebrei? Il dibattito sulla Nation State Law e le nuove minacce alla stabilità dell’esecutivo Netanyahu*.

1.5 *Political culture as result of a sectarian or confessional loyalty in the different communities*

The subject of the analysis here is not only the characterization of the political culture in a country, but more how political culture influences the confessional system of the same country. Here, the major reference will be given to Lebanon, its confessional system and the role played by political culture, as well as people's perception of confessionalism (politicians included). In dealing with Lebanon, I will not refer to political parties but to sects. Political parties exist in Lebanon, although sectarian loyalties are even stronger than political affiliation.

Political culture is a concept that can be defined in various and different ways. Heywood defines it as "*the people's psychological orientation, political culture is the "pattern of orientations" to political objects such as parties, government, the constitution, expressed in beliefs, symbols and values.*"²¹⁵

As for Lebanon, one should always come back to history to really understand how political culture is seen in a multiethnic and religious country as it is. When Lebanon was expanded under the French protectorate in 1920, the newly established Greater Lebanon saw the presence of seventeen different sects with profoundly different cultural and religious backgrounds. Thus, the drafting of the Constitution was very complicated since it was hard to combine the different aspects and to present a text that would have been considered acceptable for all the communities. In particular, Christian Maronites had at the time a strong connection with the West, especially with France, who gave its support to the community in Lebanon. On the other hand, the Druze appeared to be less happy with the French protectorate in Lebanon and grievances started to develop because of the French support to the Maronites. At the same time, the Shiites populated the rural areas of the south of Lebanon and most of them were illiterate and poor. They had less to say about the political situation that was going to be established in Lebanon. At the same time, their "counterpart", the Sunnis, found themselves very much into politics. They lived in urban areas, they were literate and very politically aware of the situation of their country, and they were not happy about the priority granted to Christian Maronites.²¹⁶

²¹⁵ Heywood, A., *Politics*, Palgrave Macmillian: Hampshire and New York, 2007, p.206.

²¹⁶ McDowall, D., *Lebanon: a conflict of minorities*, Minority rights group international: United Kingdom, 1996, p. 10.

When the Constitution was adopted in late 1926, it represented an attempt to satisfy all the different religious communities of the country, however the response given by the communities was far from being positive. What emerged was an internal conflict between Muslims and Christians, that ended up bringing privileges to Maronites. Christians wanted Lebanon to be a Western-type kind of State, while Muslims wanted to be part of a large Arab nation. Up to 1943, when the National Pact was adopted, many Muslims boycotted the elections claiming the illegitimacy of the President being a Christian Maronite, therefore not representing a share of the population, mainly the Muslim part. At the beginning the problem did not concern particularly the ethnic division considered as a sort of hate among the different community, rather it was about which identity should have taken the country towards the external world. Was it considered Christian, Arab or Muslim? Hence, also the distribution of power in Parliament and other institutions of the State. Therefore, the confessional system that was attempted to be implemented in the 20th century, despite the positive initial attitude towards unification of all confessions, in reality deepened the divisions among them.

It might sound unusual, but considering the young age of Lebanon, the loyalty toward a sect or a specific confession was even stronger than the one towards the country. Indeed, very few citizens had a strong national feeling, rather a confessional identity to preserve and promote.²¹⁷

By saying so, confessionalism helped strengthened the sectarian differences in the country, resulting in the very political culture of Lebanon. Despite that, this is something very common in the whole region. Indeed, Middle East is known for its great loyalty grounded in confession, thus rendering the role of the State as secondary, when facing religion. In the daily life of Lebanon, confession-loyalty is the strongest unit existing in society: education, employment, economic matters, social status, marriage and politics are all dominated by religious and sectarian loyalty. Therefore, the political system of Lebanon, with the protection of the sectarian nature of the State, confessionalized politics and society even more than it was before, and all the problems emerging at State level were solved in a confessional way.

According to Arend Lijphart, in order for a confessional system to work, the different parties should cooperate to make that system work. What happened in Lebanon is that the

²¹⁷ McDowall, D., Lebanon: a conflict of minorities, Minority rights group international, p. 7.

political élite did not cooperate, rather they preferred to preserve the interests of their communities. At the same time, when the National Pact was adopted in 1943 the intention was to bring people together, however it gave much more attention to what could not be done, rather than the future of the country. To stop the national policy based on sectarian interests, the mixed constituencies were created with the scope of political cooperation among the different groups. For instance, if a Maronite Christian needed to seek support in a Shia Muslim-dominated electorate, he could not operate simply in the interests of his sect. Despite that, not all the mixed constituencies worked and there were many cases of gerrymandering, undermining the nature of mixed constituencies.²¹⁸

To conclude, the confessional status of Lebanon formally inaugurated with the 1926 Constitution did not abolish the political culture that invested the country even before the constitutional text was adopted. Indeed, national unity was not the substantive goal of the Constitution, instead the stability among sects resulted in the real purpose. The lack of trust toward confessionalism together with the lack of a national sentiment by the citizens let the country being more vulnerable to conflicts. Internal upheavals gradually became more frequent because each sect started to follow its own political agenda, in accordance with their own interests.

However, it must be underlined that confessionalism did not create the clientelist political culture. The idea behind confessionalism was that of cooperation in order for the system to work properly in a country like Lebanon. The system did not fail because it was wrong for Lebanon, it failed because politicians did not cooperate, but they looked to what was in their own self-interest. If Lebanon would have had a diverse cooperation between the different sects, not only the political culture would have not been based purely on confessionalism, but it would have helped the country to deal with external factors undermining an already polarized country. As a consequence, politicians would have dealt with the problem of the PLO and Syrian presence in the country and the issues they eventually presented to the internal division of Lebanon.

The very political culture of Lebanon is based on the sectarian division. However, this must not be seen as solely imposed from above. As stated before, for power sharing to work, politicians should collaborate. However, at the same time when sectarianism is seen as the main loyalty within the different communities, it makes the society and its political

²¹⁸ Picard, E., *Lebanon: A Shattered Country*, Holmes and Meier Publishers Inc.: United States, 2002, p.52-53

class intrinsically confessional, sectarian, and non-cooperative. Indeed, in Lebanon the political confessionalism is the result of the societal division and sectarianism. The tendencies towards autonomy have always shaped the Lebanese politics and, at the same time, it has continued to crystallize the political life of the country.²¹⁹

²¹⁹ Charaf, G., *Communautés et État, communautés dans l'État. Le cas du Liban*, published on: *Statut et protection des minorités: exemples en Europe occidentale et centrale ainsi que dans les pays méditerranéens*, Bruylant, 2009, p. 300.

II. The Lebanese Confessionalism: from the beginning to nowadays

2.1 State, Constitution and Democracy in divided societies: the case of Lebanon in Middle East

Many of today's constitutions in the world begin with the following sentence "*We the People of...*". However, the "We" issue, as stated by Hannah Lerner, is a particular thorny issue when dealing with divided societies.²²⁰

By divided societies we are talking about divisions between groups living in the same State or territory, having deeply differences in terms of ethnicity, religion, politics or nationalism. Often, all these aspects are related, creating high level of violence and/or intra-state conflicts.

When dealing with deeply divided societies, we also deal with consociativism and power sharing mechanism, already described in Chapter One. Power sharing is referred as the means designated to manage conflicts in deeply divided societies. Consociativism, on the other hand, is the method through which there can be an establishment of political rule in ethnically and religiously divided societies, by organizing political relationship through constitutional provisions, proportional representation and autonomy of the different groups. Commonly, the most used term describing these societies is "*power-sharing democracies*". Much of the attention invested towards consociational approaches in divided societies is created as a consequent concern of a possible communal-based conflict between the different groups populating a State/territory. At the same time, some scholars believe that it is reasonable to promote the subordination of a segment or some segments of societies by another superordinate one. This is preferable to the chaos and disorder that normally accompanies deeply divided societies.²²¹ Where in deeply divided societies the consociational system's techniques cannot be properly applied, the control or the subordination represents a model for the organization of inter-groups relations. This is also applied in order to avoid terrible outcomes such as: civil war, deportation or extermination of minorities.

²²⁰ Lerner, H., *Constitution Making in Deeply Divided Societies: The Incrementalist Option*, 2006, Print.

²²¹ Lustick, I., *Stability in Deeply Divided Societies: Consociationalism versus Control*, *World Politics*, Apr., 1979, Vol. 31, No. 3 (Apr., 1979), Cambridge University Press, pp. 325-344.

The consociational democracy takes into consideration the presence of group affiliations, which, on its part, divides society into different segments. In this division, political decisions are made only if coalitions collaborate. If winning coalitions exclude the losing opposition from power, political decisions cannot be made. In this sense, the system of power sharing is deployed, and power sharing quotas decide who is in charge of taking part in the consensus decisions.

Lebanon – because of its peculiar social and political structures, together with its juridical body – represents a particular and original case concerning the exercise of power in a multi-communitarian society.²²² Indeed, Lebanon has a multi-plural and religious society that welcomes eighteen different ethnic-religious groups.²²³ All these groups adapt their identity on their religious affiliation, conceiving history, identity, and the relation with the “other” in a very different way. Considering the point of view of constitutionalism, the Lebanese State lies on the popular sovereignty as the only source of power and of legislation, but also on liberal democracy as the philosophy of action and of final scope. The Lebanese State works under a classical parliamentary regime, guaranteeing the fundamental rights to its citizens: freedom, equality, private property, freedom of initiative, etc.²²⁴

Because of the confessional quota and its power sharing system, the country is considered as a consociational democracy, based on consensus rather than majoritarian rule. The political system of Lebanon operates through power sharing organized along sectarian lines. This system provides political representation and groups autonomy in the field of personal status, education, marriage and other cultural affairs.

Power sharing and sectarian lines are underlying by two pacts: the National Pact of 1943 and the Taif Agreement of 1990. The first unwritten pact of 1943 allowed for the creation of a grand coalition government composed by the President being always a Maronite, the Prime Minister being always a Sunni Muslim and the Speaker of the Parliament being always a Shia Muslim. The various communities were to be proportionally represented

²²² Charaf, G., *Communautés et État, communautés dans l'État. Le cas du Liban.*

²²³ Lebanon's major Muslim constituent groups consist on the Shiite, Sunni, and Druze communities. The Christians are mainly Maronites, Greek Orthodox, Greek Catholics, Armenian Orthodox, Armenian Catholics, and Protestants. Officially recognized minorities are Alawites, Ismailis, Assyrians, Chaldeans, Copts, Roman Catholics, Syriac Catholics, Syriac Orthodox, and Jews.

²²⁴ Charaf, G., *Communautés et État, communautés dans l'État. Le cas du Liban.*

in the cabinet and a ratio of 6 to 5 between Christians and Muslims was eventually adopted for the legislature. The other pact, the Taif Agreement, put an end to the fifteen years Lebanese Civil War, which started in 1975 and ended in 1990 with the signature of the pact. Taif put the National Accord into writing and altered some power sharing arrangements previously established, stipulating parity between Muslims and Christians in the Parliament.

About democracy in Lebanon, or Lebanon's confessional political model, the discussion on the topic has never been straightforward. The instalment of the sectarian system in the country is described by many as the political miracle that carries the seeds of its own destruction.²²⁵ Many scholars have argued if the power-sharing presented in Lebanon can be described as the most suitable democratic design for a divided society as that populating the country, or if it is the representation of its own internal instability.

The consociational theory applied to the Lebanese case might result in some problems. It is clear that the power sharing model presented in Lebanon borrows heavily from consociational theory, although resulting in some incongruences. This is because the consociational model as a normative paradigm differs from the political application in the Lebanese case. On the one hand, the consociational theory is too contested to disentangle the approaches to Lebanon's political system, on the other hand the very consociational theory fails to capture the nature of the system.²²⁶

The terms cited before, i.e., power sharing, consociationalism and consociational democracy, sometimes are also accompanied by "political confessionalism or sectarianism". These are terms used to describe the Lebanese political system.

According to the sectarian perspective, the various Lebanese communities represent those drawing the boundaries in the social stratification of the country and in its political life. Therefore, the various sects are not only seen as religious actors, but as political ones in the national, regional and international arenas.

The Lebanese example of consociativism continues to grasp the attention of many scholars. It is seen by many as a successful attempt in the big realm of unsuccessful

²²⁵ Fakhoury, T., Debating Lebanon's power-sharing model: an opportunity or an impasse for democratization studies in Middle East?, *The Arab Studies Journal*, Spring 2014, Vol.22, No. 1, Special Issue: Cultures of resistance (Spring 2014), published by Arab Studies Institute, p. 231.

²²⁶ *Ibidem*

consociational stories. Despite that, the other reason why Lebanon is so fascinating for many scholars is the fact of having kept its consociational system even after fifteen long years of war. The power sharing system inaugurated with the 1943 National Pact was revived in the Taif Agreement in 1989, officially putting an end to the civil war which devastated the country. These two agreements are the basis for the Lebanese understanding of what has been called a “pacted democracy”, i.e., a conception of democracy based on an inter-communal consensus to safeguard coexistence through arrangements that share power among religious groups.²²⁷ Probably another aspect that intrigues scholars about the Lebanese political system is the fact that it offers little insight into authoritarianism. This is an important aspect if we consider the period before the famous 2011 Arab Revolutions, most commonly known as Arab Springs.²²⁸ During that period, Lebanon was seen as an exception in the MENA area.

The debate along consociationalism in Lebanon revolves around three major points. Each of these three points, different from one another, represents the strength and the deficiencies of the consociational system of this country. First, many scholars believe that the recourse toward sectarian lines have been so far the best solution for a divided society as Lebanon is; while others believe that power sharing mechanism along sectarian lines is not the best solution to Lebanon’s internal conflicts, therefore debating about whether consociationalism has been the best alternative for the country. Moreover, of the same school of thought are those believing that the Lebanese consociationalism is the main cause of the country’s internal division, associating it with disintegration and conflict. Others instead believe it is something that has been imported from abroad, as a sort of foreign presence or influence in the country, representing a conspiracy and an impediment to modernization. Lastly, many other scholars despite describing power sharing as a generally suited model for divided societies when there is collaboration between political parties, they also continue by emphasising the deficiencies of this model in Lebanon. In addition, more social scientists believe that sectarianism per se does not foment divisions

²²⁷ Fakhoury, T., Debating Lebanon’s power-sharing model: an opportunity or an impasse for democratization studies in Middle East?

²²⁸ Corrao, F., *Le Rivoluzioni Arabe. La transizione mediterranea*, Mondadori Education, September 1st, 2010.

within the country, however the problem lies in the fact that political representatives implement sectarianism as an instrument of power.²²⁹

2.2 The Lebanese Constitution and Political System

The actual constitutional structure of Lebanon results from the 1989 Ta'if Agreement. This document was signed with the aim of putting an end to the Lebanese Civil War which started in 1975. The major goal of the Ta'if Agreement was that of securing peace through internal political arrangements. Indeed, Taif represents the consensual power sharing structure of the Lebanese consociation. The constitution now provides two distinct consensus categories, a “confessional consensus” between the religious segments of society and a “political consensus” between the main political actors or interest groups.²³⁰

In order to better describe the confessional system of Lebanon and the consequences it has at the political level, the Constitution of the country will be analysed following the peculiar consociational structure of Lebanon.

As regard to the separation of power stated in the Constitution, the Lebanese one presents the legislative, the executive and the judiciary branches as bodies exercising the classical functions of legislating, governing, and resolving disputes. The interaction between these three branches evolved during time. Indeed, when the first Constitution was adopted in 1926, the separation of power was still present. With the subsequent amendments, the boundaries and the separation of power between two of the three branches, mainly the legislative and the executive, became more blurred.

The confessional representation of Lebanon started with the National Pact of 1943, that will be examined in depth in section 2.4. In brief, the 1943 National Pact paved the way for the Lebanese independence and defined the identity of the Lebanese State: nor Arab, neither belonging to the Western world. It distributed the political power among the different sects. Since then, the presidency of the country is hold by a Christian Maronite,

²²⁹ Fakhoury, T., *Debating Lebanon's power-sharing model: an opportunity or an impasse for democratization studies in Middle East?*, p.235

²³⁰ Koch, C., *The Separation of Powers in a Fragmented State: The Case of Lebanon*. In: *Constitutionalism in Islamic Countries: Between Upheaval and Continuity*. Edited by Rainer Grote and Tilmann J. Röder, Oxford University Press (2012), p. 387.

the Prime Minister is a Sunni Muslim and the Speaker of the Parliament is a Shia Muslim. Thus, resulting in a confessional nature and representation of the country.

However, it is with the Taif Agreement that the confessional representation of the country became more explicit. The explicit power sharing mechanism based on confessionalism is described in Article 24, Section 1, paragraph 2, where the Chamber of Deputies shall distribute its seats according to confessional principles, namely:

- a. *Equal representation between Christians and Muslims.*
- b. *Proportional representation among the confessional groups within each religious community.*
- c. *Proportional representation among geographic regions.*²³¹

The distribution of parliamentary seats based on a confessional quota has been acknowledged with the 1990 Taif Agreement, even though the attribution of the seats has been based on these principles since the 19th century.

Article 95 of the Lebanese Constitution puts itself in dissonance with Article 24. Indeed, at first glance, Article 95 seems to be written with the aim of ending the confessional representation of the country during a transitional phase. In this phase both Lebanese Christians and Muslims should be engaged in the abolition of political confessionalism. As stated in Article 95 of the Lebanese constitution:

- a. *The sectarian groups shall be represented in a just and equitable manner in the formation of the Cabinet.*
- b. *The principle of confessional representation in public service jobs, in the judiciary, in the military and security institutions, and in public and mixed agencies shall be cancelled in accordance with the requirements of national reconciliation; they shall be replaced by the principle of expertise and competence. However, Grade One posts and their equivalents shall be except from this rule, and the posts shall be distributed equally between Christians and Muslims without reserving any particular job for any sectarian group but rather applying the principles of expertise and competence.*²³²

²³¹ For further information on article 24 of the Lebanese constitution, please visit: <https://www.lp.gov.lb/backoffice/uploads/files/Lebanese%20%20Constitution-%20En.pdf>

²³² Ibidem, article 95 of the 1926 Lebanese Constitution.

However, even though Article 95 calls for the abolition of the confessional political representation, it organizes the representation based on confessions. This is because, if this article tries to eliminate confessionalism, on the other hand it strengthened it with a clear recognition of confessionalism as the political system in place in Lebanon, providing instructions for its implementation. Even more important is the fact that both articles reflect this brand-new attitude toward confessionalism and the reorganization of constitutional powers along confessional lines.²³³ Moreover, the issue of deconfessionalization does not only expressly appear in Article 95 of the constitution. The preamble introduced by the Constitutional Law of September 21st, 1990, at Section H states the desire of the abolition of political confessionalism as a “*national goal that should be achieved according to a staged plan.*”²³⁴ At the same time, in section J: “*There shall be no constitutional legitimacy for any authority which contradicts the pact of mutual existence*”, which refers to the Taif Agreement of 1989, strengthening the confessional division, therefore resulting again in a contradiction.

What happened in 1990 was the actual application of the National Pact rules in the written constitution, therefore redistributing the power among the President of the Republic (Christian Maronite), the Prime Minister (Sunni Muslim) and the President of the Parliament (Shia Muslim). This happened because the aim was that of a confessional equilibrium among religious political groups. The equilibrium among these three statal powers seems to support the Troika political system. In article 53 section 1, the Lebanese Constitution states that the President of the Republic must inform the Speaker of the Parliament about the parliamentary consultations on the designation of the next Prime Minister. Regarding the role of the President of the Parliament, the amendment of article 58 of the Lebanese Constitution provided him with discretionary power, obliging the Council of Ministries to take into consideration the position of the President of the Parliament before passing a law to the Chamber. This happened through the reservation of a certain number of ministerial seats to people representing the President of the Parliament. Consequently, the consensus mechanism between the executive and the legislative were eventually installed,²³⁵ as happened between the Prime Minister and the

²³³ Koch, C., The Separation of Powers in a Fragmented State: The Case of Lebanon, p. 398.

²³⁴ The preamble of the 1926 Lebanese Constitution. Available at:

<https://www.lp.gov.lb/backoffice/uploads/files/Lebanese%20%20Constitution-%20En.pdf>

²³⁵ Koch, C., The Separation of Powers in a Fragmented State: The Case of Lebanon, p. 399.

President of the Republic. As showed in Article 64 of the Constitution, the Prime Minister is put on equal terms with the President of the Republic, by having the countersignature of both political actors. In addition, the Constitution states the different areas where the two are on equal terms and they have to cooperate.

Regarding decision making by consensus, in Article 65, section 5 consensus mechanism is described as the core mechanism of governmental decisions.

*The Council of Ministers shall meet periodically in a special seat and the President of the Republic shall chair its meeting when he attends. The legal quorum for a Council meeting shall be a two-thirds majority of its members. It shall make its decisions by consensus. If that is not possible, it shall make its decisions by vote of the majority of attending members. Basic issues shall require the approval of two-thirds of the members of the Government named in the decree of its formation.*²³⁶

This is the main pillar of the consociational theory presented in the Lebanese Constitution of 1990. Power sharing and political decisions taken by consensus can be described as the pillar of consociational democracies, as described by Arendt Lijphart. Consensus decisions, in this sense, should guarantee inclusion of all political actors, opinions and political parties.

All in all, there is power sharing among the sects and a balance of power among the Muslim and Christian communities. The Constitution eventually put into writing the confessional representation, although with the aim of abolishing it. Power sharing is divided among the executive and the legislative branches, in this way the political decisions are taken by consensus, as it represents the main constitutional rule to consociational democracies.

2.3 The French Mandate in Lebanon and the Constitution of 1926

The Lebanese political system is based on the current norms on the constitutional organization of the country. At the same time, the historical and social evolution of Lebanon is of imperative importance in order to understand the main evolution the system experienced overtime. It is for this reason that the basis of the political organization and

²³⁶ The Lebanese Constitution:
<https://www.lp.gov.lb/backoffice/uploads/files/Lebanese%20%20Constitution-%20En.pdf>

the functioning of the political power see their evolution in a dualist socio-political and juridical system. The Constitution of 1926 regulated the juridical mechanisms of power sharing in Lebanon, which were then adjusted with the 1943 unwritten National Pact, creating an authority weighting between the different communities in the country.²³⁷

The history of Lebanon should be analysed in concordance with the other neighbouring countries. Indeed, at the end of World War I, and with the downfall of the Ottoman Empire, together with the inauguration of the mandates with the Paris Conference in 1919, the French mandate in Lebanon officially started in 1920 and endured until its decolonisation, in 1946. Although many scholars believe that the real process of confessionalization in Lebanon formally started with the 1943 National Pact, it is of great interest to notice that the disintegration of the society and the policies of the French mandate in the country accelerated the process of confessionalization.²³⁸ This is also because the League of Nations' *Mandat pour la Syrie et le Liban* (Mandate for Syria and the Lebanon) was signed in 1920, with the aim of providing a foreign administration in the country to let it govern by itself without any kind of external supervision. Indeed, the Mandate established that France should have had set up a judicial system capable of ensuring rights for each community populating Lebanon within a period of three years. The reorganization of the State in Lebanon mainly happened through the Constitution of 1926.

From 1920 to 1926, the French idea of the formation of the Greater Lebanon started to take place with the aim of enlarging the territory, reaching neighbouring areas such as the Beqaa Valley, Tripoli, and the Southern part of Lebanon. However, these territories had economic and historical relations very different from the rest of the Lebanese areas.²³⁹

²³⁷ Charaf, G., *Communautés et pouvoir au Liban*, CEDRE (Centre Libanais de Documentation et de Recherches), Beirut, 1981.

²³⁸ Di Peri, R., *Il Libano Contemporaneo: storia, politica, società*, p.27

²³⁹ It was mainly for this reason that some clashes between the different communities started, especially between Maronites and Muslims. The strong diversity of the newly incorporated territories worried the communities: the French and the Maronites were worried about the annexation of Tripoli, with a strong Sunni Muslim predominance, while the same Lebanese Sunni people encouraged the incorporation. At the same time, the Beqaa Valley area was mainly populated by Shia Muslims, and the territory was part of the Syrian *vilayet*. While, the southern part of Lebanon was populated by both Shia and Sunni Muslims and was an autonomous *vilayet*.

N.B. a *vilayet* was known as the province, or administrative division, of the Ottoman Empire. This was introduced with the Vilayet Law promulgated on January 27th, 1867.

Due to the drafting of the 1926 Constitution the administrative and political apparatus started to emerge as we know them today.

The formation of the Lebanese State, differently from other Arab or Middle Eastern countries, did not happen overnight and solely thanks to the French mandate or the influence of French politics in the territory. Rather, it was based and cultivated on historical and juridical aspects and foundations. The regional planning of Lebanon was eventually established with the Decree number 318, promulgated by the French General, Henri Gouraud.²⁴⁰ With the implementation of the regional planning, the division and the incrementation of the population gradually changed.²⁴¹

When the French Mandate officially started, the country was formally administrated by a Representative Council. This Council, created in 1922, was composed by 30 deputies from each confessional and religious community in the country.²⁴² From that moment on, the idea of drafting a Constitution became more concrete and in 1925 the consultations on the national text officially started.

It is important to notice that the drafting of the Lebanese Constitution should not be seen as an imposition from above, rather a form of negotiation between the communities and the French representatives in the country, resulting in a shared belief toward the autonomy of the country.

Two principal aspects led to the adoption of the 1926 Lebanese Constitution:

- 1) The first one was represented by the personal obligation of France to give an organic statute to Lebanon within three years, as it was declared in the *Pact du Mandat*, written on July 24th, 1922.²⁴³

²⁴⁰ Di Peri, R., *Il Libano Contemporaneo: storia, politica, società*, p. 29.

²⁴¹ Indeed, if before the first official Lebanese census the Maronites represented the vast majority of the population (79,4%), in 1932 they were slightly more than the 50% of the population. This was not only due to the “enlargement” of the portion of territory, but it was also linked to the big migration of Maronites abroad.

²⁴² The composition was: 10 Maronites, 6 Sunni Muslims, 5 Shia Muslims, 5 Orthodox, 2 Druse, 1 Greek-Catholic and 1 Armenian.

²⁴³ Le Pact du Mandat formulates this obligation as following: *France will elaborate within three years an organic statute for Syria and Lebanon. This organic statute will be prepared together with the indigenous authorities and it will take into consideration the rights, interests and wills of all the inhabitants of these territories. It will indicate the proper measures to facilitate the progressive development of both Syria and Lebanon as independent countries.*

- 2) The pressures from Syria and Lebanon about the independence of the two countries.²⁴⁴

The 1926 Lebanese Constitution was inspired by the French and the Belgian one, having a liberal understanding behind it. The Constitution was written mostly by a Maronite, Michel Chiha²⁴⁵ and with many contributions, especially those by Charles Debbas,²⁴⁶ who was a Greek-Orthodox constitutionalist and, after the adoption of the text, the first President of the Republic of Lebanon. While the first Prime Minister of the newly born Lebanese Republic was a Maronite, whose name was Auguste Adib Pacha.

On May 19th, 1926, the committee entitled to write the Constitution, presented the draft in front of the Regional Committee, which approved it after four days of consultations. Chiha's contribution was crucial to the drafting of the text. The intellectual and economist was convinced that the creation of a communitarian state, by ensuring proportional representation and, at the same time, equality of the different communities before the law, would have resulted in the enshrinement of the Lebanese nationalism, which the Christian intellectuals articulated during the period of the Great War, that could have had the possibility of unifying the different confessional loyalties into a big nationalist one.²⁴⁷ The State, according to Chiha, should had not intervene in the administration of the single communities, nor in the economic field.

2.3.1 The spirit of the 1926 Constitution

When the Constitution was adopted in 1926 it guaranteed equality of all citizens before the law, despite the religious affiliation (Article 7 and 8).²⁴⁸ Furthermore, it recognized

²⁴⁴ Indeed, the internal pressures of the two countries concerning independence, together with the reaction of the French authorities and the continuous insurrectionist movements in Syria led France to follow a favourable policy in line with the wills of the two countries and their inhabitants. The first exposition about the French projet constitutionnel in Lebanon and Syria was made public thanks to Aristide Briand, the French Prime Minister before the French Senate in December 1925.

²⁴⁵ Michel Chiha was a banker, politician and writer. Along with Charles Corm, Petro Trad and Oman Daouk is considered to be one of the fathers of the Lebanese Constitution of 1926.

²⁴⁶ Di Peri, R., *Il Libano Contemporaneo: storia, politica, società*, p. 29.

²⁴⁷ K. M. Firro, *Lebanese Nationalism versus Arabism: From Bulus Nujaym to Michel Chiha*, *Middle Eastern Studies*, Vol. 40, No. 5, Sep., 2004, Taylor & Francis, pp. 1-27.

²⁴⁸ Article 7: *“every Lebanese is equal before the Law. [...] Every Lebanese possesses equal civil and political rights, therefore being equally subject to charges and public duties, without any distinction.”* Article 8 of the 1926 Constitution poses the general principle of the individual freedom. *“personal freedom is guaranteed and protected for all citizens”*. As stated so, Article 8 made clear that *“no person shall be arrested or detained that accordingly to the dispositions of the Law”* and that *“no crime nor sentence shall be determined but by the Law”*.

the communitarian nature of the State in Article 9, and, at the same time, it guaranteed the respect for all the different confessional groups populating Lebanon. It ensured the protection of any religion, as well as free exercise.²⁴⁹

About confessions and education in Lebanon, Article 10 stated that: “*education is free as it is not in contrast with public order, and as far as it will not interfere with the dignity of confessions.*”

2.3.2 The statal political organization

After the constitutional provisions were adopted, we can notice the existence of three main powers in the country. Indeed, Article 16 stated that: “*the legislative power is exercised by a unique Assembly: the Chamber of Deputies*”. While, concerning the executive power, Article 17 declared that: “*the executive power is hold by the President of the Republic, whose exercise is shared with the assistance of the ministries, within the terms established by this Constitution.*”

The political system of Lebanon is based on a separation of powers, as it is classified in the series of parliamentary democracies. Indeed, this regime started to be based on the principle of organic and functional distinction of powers, at the same time having a necessary and active collaboration between the political powers based on complementarity.²⁵⁰ Indeed, according to the 1926 Constitution, the legislative could undertake the political and penal responsibility of the government and of the ministries (Articles 37 and 66). At the same time, the executive had the absolute right of dissolving the Chamber of Deputies (Article 55). The complementarity among the two powers could be seen in the participation of the executive in the legislative’s activities (Articles 18, 33, 56, 57, 59 and 67) and in the possibility for the executive to exercise the legislative function (Articles 58 and 86).

At the same time, the constitutional law of succession could be reached at three main levels:

²⁴⁹ “*freedom of conscience is absolute. [...] the State will therefore respect all confessions and it will guarantee and protect the right to free exercise.*”

The Lebanese Constitution of 1926, available at:

<https://www.lp.gov.lb/backoffice/uploads/files/Lebanese%20%20Constitution-%20En.pdf>

²⁵⁰ Charaf, G., *Communautés et pouvoir au Liban*, p. 228.

- 1) The presidential demise was based on the principle of parliamentary elections (Articles 49 and 73).
- 2) While, the legislative demise was based on the principle of public elections (articles 21 and 42).
- 3) The constitutional revision, instead, was to be done following a meticulous and detailed constitutional mechanism and with the collaboration between the legislative and the executive (from Article 76 to 79).

Article 95, recognized as one of the most important articles enshrining the confessional nature of State, explicitly declared the multi-communitarian nature of Lebanon, therefore legitimising a double confessionalism: the political and the personal one.²⁵¹ The political nature regarded the distribution of seats and of political and administrative positions of each religious community, while the personal one concerned the marriage, education and other type of personal aspects regulated according to religious tribunals was declared in Article 9 of the Constitution of 1926.

Article 95 is known to be one of the most controversial articles in the constitutional history of Lebanon. It had – and still has – a transitory measure which is at the foundation of all the ways at which the Lebanese system responds nowadays. This Article is known to have created the confessional nature of the country, which has always continued to enrich the juridical and social structure. The provisions enshrined in Article 95 of the 1926 Constitution were the following: *“on a transitory basis and within the intentions of justice and agreement, the Lebanese communities will be equally represented in the public administration and in the composition of the ministry without harming the authority of the State”*.

Automatically, everything was reduced to communitarianism, although this article undermined the legitimacy of the abovementioned articles dealing with equality in the public sector. For instance, the adoption of Article 95 is in contrast with Article 12 dealing with equality of all citizens in entering public office. Indeed, from the adoption of Article 95 onward, the public office became the object of a division or quota between the different religious communities of Lebanon. Moreover, citizenship started to be seen as a religious affiliation or belonging, power suffered of a confessional subdivision and, finally, social equality ceased before the adoption of the confessional equality.²⁵²

²⁵¹ Di Peri, R., *Il Libano contemporaneo: storia, società, politica*, p. 30.

²⁵² Charaf, G., *Communautés et pouvoir au Liban*, p.230

2.3.3 The following constitutional amendments

During the following years, many amendments were approved by the French representatives, such as the abolition of the Senate with the aim of making the President of the Republic the official arbitrator of the disputes between the Chamber of Deputies and the executive. Furthermore, with the amendment of Article 58 the legislative power was assigned to the President of the Republic, whose powers increased overtime with more amendments such as those modifying Articles 49, 28 and 55. Respectively, these articles gave more powers to the President of the Republic, because its mandate was extended from three to six years (Article 49); he was able to elect ministries outside the Parliament (Article 28) and he was able to dissolve the Parliament through a decree of the Council of Ministries (Article 55).

At the same time, the Constitution of 1926 highlighted the parliamentary nature of the Republic of Lebanon and the responsibility of the executive before the Parliament.²⁵³

2.3.4 The difficult path towards independence

The mutual acceptance between Maronites and Sunni Muslims gradually increased as a consequence of the communitarian nature of the State established by the Constitution. However, the path towards the independence resulted to be very difficult to achieve. Within the Maronite bloc, two different factions were born: the first, the so-called “National Bloc” recalled the idea of the Little Lebanon. This Bloc was guided by the Prime Minister, Émile Eddé.²⁵⁴ Whereas, the second bloc, the so-called “Constitutional Bloc” guided by Bechara al-Khoury,²⁵⁵ proposed the independence of the country,

²⁵³ About the parliamentary nature and the Chamber of Deputies of the Lebanese Republic, the candidates to the Chamber were expression of a confession within a constituency or a specific district. At the same time, the constituency was not the expression of the community, rather of a single confession. However, the constituency was not homogeneous from a communitarian point of view. Indeed, the constituencies of Lebanon under the French mandate and after the independence were not following a communitarian basis.

²⁵⁴ Eddé was a Maronite lawyer and politician. He was the Speaker of the Parliament from October 1924 to January 1925, under the French mandate. Then, he became Prime Minister from October 1929 to March 1930. He then became President of the Republic from 1936 to 1941. In 1943, when the Lebanese legislature decided to abolish the French mandate in the country, the High Commissioner installed Eddé as President of the Republic, although he was removed from office after 10 days and the government of Bechara al-Khoury was restored on November 21st, 1943. He is also known as the one who founded and led the Lebanese National Bloc party.

²⁵⁵ Al-Khoury was a strong nationalist who opposed the French mandate. For this reason, he was imprisoned, together with Riad al-Solh, Camille Chamoun and other personalities on November 11th, 1943 by the Free French forces, supporting the French mandate in Lebanon. They were all liberated ten days

governed by the different Lebanese religious communities. Many Maronites, and Christians in general, joined the second bloc guided by al-Khoury. Thus, the division within leadership of the Maronite community started and the rivalry between Eddé and al-Khoury became even stronger than before. Indeed, with the elections of 1932 and Eddé's fear of losing against al-Khoury, the head of the National Bloc convinced the Sunni Sheikh, Mohammed al-Jisr to become one of the candidates. Eddé made this decision in accordance with his idea that the Lebanese Muslim community was bigger than the Maronite one. Therefore, al-Jisr called for a national census, which confirmed that the majority of the population was still Maronite, even if enormously decreased than before. While, Muslims (Sunni and Shia together) represented the 42,3% of the population.

Hereby, the table briefly describes the trend of the Lebanese population divided by religious affiliation.²⁵⁶ However, it is important to stress that the 1932 national census was the last to be taken in an official and statal way.

<i>COMMUNITY</i>	<i>MUTASARRIFIYYA</i> ²⁵⁷ <i>(1911)</i>	<i>TOTAL %</i>	<i>GREATER LEBANON</i> <i>(1932)</i>	<i>TOTAL %</i>
Maronites	242.308	58.3%	227.800	29%
Greek-Catholics	31.936	7.7%	46.709	5.9%
Greek-Orthodox	52.356	12.6%	77.312	9.8%
Christians (other)	3.026	0.8%	45.125	5.7%
<i>TOTAL</i>	<i>329.626</i>	<i>79.4%</i>	<i>396.946</i>	<i>50.4%</i>
Sunni Muslims	14.529	3.5%	177.100	22.5%
Shia Muslims	23.413	5.6%	155.035	19.8%
Druse	47.290	11.5%	53.334	6.8%
<i>TOTAL</i>	<i>85.232</i>	<i>20.6%</i>	<i>385.489</i>	<i>49.1%</i>
Jews	86	-	3.518	0.5%

later, on November 22nd, now celebrated as Lebanon's national independence day. He is remembered, together with al-Solh, as one of the fathers of the National Pact of 1943.

²⁵⁶ The table was taken from: Akarli, E. D., *The Long Peace: Ottoman Lebanon, 1861-1920*, University of California Press, Berkeley, p. 107.

²⁵⁷ The Mount Lebanon Mutasarrifate, in Arabic "*mutasarrifiyya ghal Lubnān*", was one of the subdivisions created by the Ottoman Empire after the Tanzimat reforms. It lasted from 1861 to 1918. It was created due to the European diplomatic pressure to establish an autonomous Mount Lebanon with a Christian *mutasarrif* (an administrative authority directly appointed by the Sultan). This pressure was justified by the Christian massacres that happened in 1860, most commonly known as the 1860 Syrian Civil War.

<i>TOTAL</i>	<i>414.944</i>	<i>100</i>	<i>785.933</i>	<i>100%</i>

Even though this was a great revelation for the Maronite community, the French High Commissioner, Henri Ponsot, cancelled the presidential elections, dissolved the Parliament and suspended the Constitution in 1932. The presidential mandate of Charles Debbas was therefore prolonged for three more years.

The Constitution was reintroduced in 1936. However, at the beginning of World War II, the Constitution was suspended again and until 1941 the future of Lebanon remained blurred.²⁵⁸ Gradually, the French presence in Lebanon became less strong than before. This was due to the War but also to the stagnant economy of France and the involvement of the country into the armed conflict. In this period, the ideas of Riad al-Solh²⁵⁹ and al-Khoury about the building up of an independent country gradually gathered momentum.²⁶⁰

2.4 The First Constitutional Reform, the “National Pact” and the formation of the Lebanese State

To understand, and even to elaborate about the Lebanese State in its main structure, function and its final aim we have to analyse the non-written National Pact of 1943.²⁶¹ This Pact is seen as a resorption framework²⁶² to the “majority and minority conflict” that has always been present in Lebanon between Christians and Muslims. Indeed, it was

²⁵⁸ The economic crisis, along with the intellectual and the social one which were investing the West, arrived in Middle East too, hitting on Lebanon and its system until the independence of the country.

²⁵⁹ Solh is considered one of the fathers of the independent Lebanon. He struggled for the independence of his country from France. He was able to unite the various religious groups in the path towards independence. He became the first Prime Minister of Lebanon once the country officially decolonized from France, in 1946. Together with al-Khoury, he implemented the National Pact.

²⁶⁰ Consequently, their ideas became the basis to the search and the achievement of the independence of Lebanon from France.

²⁶¹ Indeed, the National Pact was never formally written. It was mainly based on an oral pact or agreement between Bechara al Khoury and Riad al-Solh. This agreement between the two was enshrined by the ministerial declaration (October 7th, 1943) and previously by many political speeches held by the President of the Republic.

²⁶² Charaf, G., *Communautés et État, communautés dans l’État. Le cas du Liban*, p. 285.

described as “the spontaneous effect of a reconciliation between two opposed (until that moment) poles: the Arab and the Lebanese identity”.²⁶³

Youssef Salem described the National Pact as “*an unwritten constitution, a gentlemen’s agreement between the two groups in which the Lebanese population was constituted: Christians and Muslims. The Pact is inspired by the Lebanese population as a whole. It is the result of all the Lebanese people who are aware of the fact that it represents the axis where the two religions meet in order to achieve a supreme goal: independence.*”²⁶⁴

Salem also says that thanks to two major figures of the period, namely al-Khoury and al-Solh, this Pact was made possible. According to the historian, they “realized” and “symbolized” the National Pact.²⁶⁵ Indeed, their idea was that of creating a free and independent Lebanon, seen as the homeland of all its inhabitants. The success that led to the Pact was also due to the fact that there was a feeling of collaboration and rapprochement among the population toward one major goal: independence.

In order to analyse the Lebanese National Pact, therefore the formation of the Lebanese State, we should also consider the period prior to the National Pact. Consequently to the creation of the State as we intend it today, we should also take into consideration the path towards independence from France.

The years in between 1941 and 1943 were characterized by a strong decentralization of the French power in Lebanon, as in all the rest of its colonies. This was due to the fact that France was directly involved in World War II and, as a consequence, it was affected by a stagnant economy and a weak currency that let it impossible to control the independentist ideas that were propagated in all the colonies and in Lebanon as well.

2.4.1 Towards the National Pact

On November 8th, 1943, the Lebanese Chamber of Deputies amended the Constitution and abrogated the articles related to the French mandate in Lebanon. They also decided to give to Arabic the status of the only official language of the country.²⁶⁶ This was because during that period, many politicians were against the French presence in

²⁶³ Rabbath, E., *La formation historique du Liban politique et constitutionnel*, Université Libanaise, Beyrouth, 1986, p. 518.

²⁶⁴ Salem J., *Le peuple libanais*, Librairie Samir, Beirut, 1969, pp. 153-154.

²⁶⁵ *Ibidem*, p. 154.

²⁶⁶ R. Di Peri, *il Libano Contemporaneo: storia, politica, società*, p. 37.

Lebanon, therefore they despise the use of French as the official language of their country. The legislative elections took place two months before the amendment of the Constitution with the eliminations of the articles related to the French mandate. These elections saw the formation of a Chamber of Deputies composed by a majority of representatives being hostile to the French mandate in Lebanon.²⁶⁷ As a consequence of this, the new High Commissioner of France in Lebanon, Mr. Jean Helleu suspended the Constitution, declaring the invalidity of the reforms, as well as he decided to imprison the President of the Republic, the Prime Minister and three of the most important Ministers. The new and temporary President of the Republic was directly chosen by the High Commissioner and succeeded to Bechara al-Khoury. The appointed substitute was Émile Eddé, who was keener to accept the French presence in the country, while al-Khoury was one of the major figures, together with al-Solh, who led the movements for the independence with his revolutionary ideas.²⁶⁸

However, even though many Maronites were still ideologically and culturally attached to France and its ideals, the common sentiment was that of the independence of Lebanon. Consequently, many revolts against the French forces in the country began with the involvement of the religious communities. The uprisings were supported by Britain, which was capable of convincing France of liberating the political prisoners. On November 22nd, 1943, the political prisoners were eventually liberated, sanctioning at the same time the date of the independence of the country. Despite that, the path towards the real independence of Lebanon was even longer. Indeed, they had to wait three more years to be considered as an autonomous and independent State, without any kind of external presence in the country. Officially, with the signature of the French Lebanese Pact on March 1946, the French presence in Lebanon ended and Lebanon became wholly independent. It had already become a member of the United Nations (24 October 1945) and the Arab League (22 March 1945).

2.4.2 The 1943 unwritten Pact

²⁶⁷ Yazbec, I. K., *Le pacte nationale et l'indépendance: pages oubliées*, published in *Arabies*, 83, 1996, pp. 9-14.

²⁶⁸ Donohue, J. J., *Changing the Lebanese constitution: A postmodern history*, 30(6) *Cardozo L. Rev.* 2509, 2009.

The National Pact of 1943 was a consequence of the ideas of both al-Khoury and Solh, respectively the President of the Republic and the Prime Minister. Riad al-Solh was the first to officially introduce the text in a ministerial declaration.²⁶⁹ It is a non-written Pact which modified the Constitution of 1926 in the summer of 1943, consequently creating the Lebanese State as we know it today, a multi-confessional State and a consociational parliamentary Republic.²⁷⁰ Moreover, the National Pact, more than being a real “Pact”, i.e., *a formal agreement between individuals and parties*, it was conceived as a *modus vivendi*, which had an enormous impact on the Lebanese social and political life.²⁷¹ It was more the meeting between two major political powers (Maronites and Sunni Muslims, *ndr*) that started to fight for a common purpose: a final and definitive independence from France.

The key points that led to the agreement were the following:

- 1) Maronites had to renounce to the idea of an independent State; at the same time Muslims had to abandon their aspiration of a possible unification of Lebanon with Syrian territories.
- 2) The divisions of the political roles must be respected.²⁷²
- 3) In the Lebanese Parliament there must always be the ratio of 6:5 in favour of Maronites to Muslims (and Druze).²⁷³

The National Pact was created by the “Constitutionalist Bloc” once they obtained independence from France. This National Pact amended and modified the Constitution of 1926, formally creating the Lebanese State. This Pact increased the influence of both Maronites and Muslims in the country and it furtherly strengthened the power of the different religious communities, also because the National Pact was the best

²⁶⁹ “We are going to proceed, through collaboration, to the constitutional reform. We should not ignore the fact that inside this constitution there are some articles where the existence of the State is in formal contrast with the identification of independence. There are articles allowing other people, not Lebanese ones or their representatives, to have the right of managing their rights, our rights. We will immediately ask our government to amend the articles dealing with this issue, with the aim of transforming our constitution in the constitution of an independent State”. This speech was translated from French and it can be consulted in: Rabbath, E., *La formation historique du Liban constitutionnel*, p. 456.

²⁷⁰ Donohue, J. J., *Changing the Lebanese constitution: A postmodern history*.

²⁷¹ R. Di Peri, *Il Libano contemporaneo: storia, politica, società*, p. 39, 40.

²⁷² Again, the division of the political roles were: the President of the Republic must always be a Maronite; the Prime Minister always be a Sunni Muslim; the Speaker of the Parliament always be a Shia Muslim; the Deputy Speaker of the Parliament and the Deputy Prime Minister always be Greek Orthodox Christian and the Chief of the General Staff of the Armed Forces always be a Druze.

²⁷³ L. Binder, “Politics in Lebanon”, John Wiley & Sons, Inc, New York, 1966.

representation of Article 95 of the Constitution, stating the confessionalist nature of the State.

The unwritten Pact distributed the public administration's positions in a proportional way and based on different legal status according to the religious community. Moreover, with the adoption of different electoral laws, the country was divided into confessional districts, with the aim of guarantying and promoting political integration within the diverse communities.²⁷⁴ The principals of the National Pact were those regarding the double identification of the country and the equal distribution of political powers. Regarding the first principle, we should always take into consideration that Lebanon has always been characterized by a strong Christian presence, at the same time it also recognises its Arab nature. Lebanon has social, historical, and cultural aspects which belong to the Christian community, at the same time the Arab nature, in which the country is invested, regards the cultural, religious and political aspects which may be linked to a certain extent to the Arab-Muslim world.

The year of the declaration of the National Pact should also be remembered as the year of the different constitutional amendments. Namely, the articles which were modified were: articles 1, 11, 52, 95 and 102 with the elimination of the specific relations between the Lebanese State and France. Plus, articles 90, 91, 92, 93 and 94, dealing with the direct powers of France in the country.²⁷⁵ Consequently, the various constitutional amendments had as a sole and principal aim: that of declaring the independence of Lebanon from France, by eliminating or modifying the legitimate articles dealing with the Mandatory powers in the country.

This Pact was recognised as the foundation of not only the newly independent Lebanese State, but of the recognition of the State by all the different religious communities. To a certain extent, and for some years, this unwritten Pact unified the communities in Lebanon, at the same time preventing the State from being attacked by confessionalist breaks, without denying the legitimacy and the existence of the statal authority. However, despite the good intentions of the National Pact, the legitimacy of the State was put into

²⁷⁴ R. Di Peri, *Il Libano contemporaneo: storia, politica, società*, p. 39

²⁷⁵ French version of the Constitution of Lebanon in: Giannini, A. (1931). *Le costituzioni degli stati del vicino oriente*, (French version), Istituto per l'Oriente, retrieved 31 March 2012.

danger and gradually culminated in the Lebanese Civil War of 1975. This can be considered by looking at the fact that many Lebanese politicians have always addressed the National Pact differently from its initial purpose. This is something that should be considered when analysing the current political crisis besetting the country.

2.5 The Lebanese Civil War: from the begging to the Ta'if Agreement

“Bellum omnium contra omnes”

The path leading to the Lebanese Civil War in 1975, was dotted with the activities and personalities of the different Presidents of the Republic. Indeed, as stressed hereabove, many politicians and most of the Presidents of the Republic addressed the principals of the National Pact differently from its initial purpose. This is because from the day of the independence onward, the political history of the country was relentlessly intertwined with the different and peculiar political personalities of its ruling class and, first and foremost, of its Presidents of the Republic. More specifically, there was a real identification of the State within the figure of the President of the Republic. It is for this reason that the Arabic term *'ahd*²⁷⁶ is commonly used to identify the period of the political activity of the Presidents of the Republic, going from 1943 to the outbreak of the Lebanese Civil War, in 1975.

2.5.1 Bechara al-Khoury (1943-1952)

Under the presidency of al-Khoury there was the modification of Article 49 of the Constitution, extending the presidential mandate from three to five years.

From a political point of view, al-Khoury's mandate was characterized by the entrance into the Arab-Israeli conflict by the Lebanese Army on May, 14th 1948.²⁷⁷ This led to the migration of thousands of Palestinians refugees and to the creation of many refugee camps in Lebanon. At the international scenario, instead, al-Khoury decided not to enter the anti-Soviet alliance.²⁷⁸ All in all, al-Khoury's *'ahd* was characterized by a strong

²⁷⁶ Objective, ideal, purpose.

²⁷⁷ Day of the creation of the Jewish State and/or the beginning of the Nakba, destruction, for Palestinians.

²⁷⁸ Many Arab countries during that period were still struggling with independence and many of them started to become close to the USSR that under the leadership of Nikita Khrushchev began to look at the MENA countries as territory of interest.

confessionalization of the State, as well as by the consequent creation of factionalism which led to nepotism and episodes of corruption, as well as favouritism within the public sphere.

2.5.2 Camille Chamoun (1952 – 1958)²⁷⁹

Chamoun's *'ahd* was organized into two specific aspects: on the one hand, restructuring Lebanon and, on the other hand, let out the country from the erosion caused by the National Pact. According to Corm, during the period of independence of the country there was a strong activism in enacting internal and institutional reforms²⁸⁰, although the same determination was not adopted for the promotion of economic and financial reforms.²⁸¹ The internal campaign for the renovation of Chamoun's mandate promoted by the Maronites in the Parliament was stopped despite the President's appeal to the United Nation to enter the country.²⁸² Despite that, Chamoun had to abandon the renovation of his mandate.

2.5.3 Fouad Chehab (1958 – 1964)

When Chehab started his presidential mandate in 1958 he found a divided country, therefore he tried to come up with new ideas to reconcile Lebanon until 1961. He created a national unity government, formed by both Muslims and Christians in Parliament. He asked and obtained full powers, consequently adopting decrees able to amend and modify the functions of the State and the public administration. The rule

²⁷⁹ Camille Chamoun succeeded to Bechara al-Khoury. He was elected as President of the Lebanese Republic on September 22nd, 1952. He did not belong to any of the most famous Lebanese families populating the political scenario of the country. His ideals were linked to the positions of the West and specifically to those of the United States of America, thus detaching his nation from a possible soviet influence which was propagating in other Middle East and North African countries. When Lebanon joined the Western bloc, many Muslim deputies threatened their resignations due to their conviction that the country should have adhered to Nasser's doctrine.

What particularly characterized Chamoun's *'ahd* and its external relations was the adherence to the Western and American doctrine, which was something that Muslims (both Sunnis and Shiites) did not accept. At the same time, this episode left an indelible mark in the social life of Lebanon and contributed to the break of the conditions that gradually led to the National Pact in 1943.

Rabbath, E., La formation historique du Liban politique et constitutionnel.

²⁸⁰ During Chamoun's mandate, many institutional reforms were enacted, among them: the reform of the Lebanese judiciary, increased freedom of the press, women's suffrage, a new electoral law and the reduction of parliamentary seats.

²⁸¹ Corm, G., Démographie et miracle libanaise, in: "Travaux et Jours", Octobre-Décembre, 1969.

²⁸² The entrance of the UN in Lebanon was officially accepted on July, 1958 and the military intervention of the USA stopped the violence between the different factions, although these interventions were localized in specific areas of the country (mainly Chouf area). Indeed, in that period the clashes between the different confessions started to become even more frequent and violent.

concerning the strict division of the institutional tasks and offices between Christians and Muslims was applied during all Chehab's mandate. His *'ahd* was devoted to the adoption of principles of dialogue and moderation coupled with public reforms, which came to be known as *Chehabism*.²⁸³ However, his *'ahd* was also characterized by a strong military presence in the life of Lebanese citizens. As a confirmation of this, the stopping of the possible coup d'état enacted by the Syrian National Party, strengthened the political role of the army in Lebanon, leading to the creation of the Bureau.²⁸⁴

2.5.4 Charles Helou (1964 – 1970)

The presidential mandate of Charles Helou is famous for the two legislations dealing with the inquisition of the judges and the State officials who were accused of corruption and nepotism, based on dossiers elaborated without the consultation of those who were charged of such crimes. This caused a bad political atmosphere in the country and an exacerbation of the sectarian divisions. Moreover, The presidential mandate of Helou was particularly characterized by the clashes between Palestinians and the central government of Lebanon.²⁸⁵ At the end of his mandate, in 1970, after a series of secret accords and political manoeuvres, Sleiman Frangié became the new President of the Republic.

2.5.5 From a difficult international position to the outbreak of the Lebanese civil war

From 1975 onward, Lebanon became the surrogate battlefield of the Palestinian cause. Lebanon tried to control the PLO in its territory in the period going from 1969 to 1973,

²⁸³ Chehab is credited with a slew of reform initiatives and legislations aimed at modernizing the country and improving public services. As a result, he came into confrontation with traditional feudal, confessional, and clan-based politicians, who saw their hold on power eroding.

²⁸⁴ The Military Bureau became a very intrusive body of control and intimidation in the Lebanese public sphere.

²⁸⁵ In 1967, the loss of the Six Days War against Israel led to the increased presence of Palestinian refugees in the Lebanese territory. Lebanon was the only country that did not lose part of its territory as a consequence of 1967 war against Israel, but the number of Palestinian refugees increased. It is estimated that after the war around 100.000 Palestinian refugees arrived in Lebanon. Their presence started to create problems in the country. Among these problems, we also find the famous formula of the Arabization of Lebanon, something that had never faded since independence. Moreover, the control of the PLO (Palestinian Liberation Organization) and the refugees' presence, were factors that gradually changed the structure of the country.

Petran, T., *The struggle over Lebanon*, Monthly Review Press, New York, 1987.

although this was unsuccessful because of the involvement of the other Arab states and the lack of interest coming from the external actors, particularly the United States.²⁸⁶

Both Israel and Syria demonstrated a different interest for the Palestinian presence. Israel was interested about it to the extent which it could have had a direct control over the blockade of the PLO operations. While the Syrian Ba'athist regime²⁸⁷ from 1967 onward tried to interfere in the relation between Lebanese and Palestinians, at the same time putting a strain to the relations between Syria and Lebanon and consequently increasing the Syrian influence over Lebanon.

Palestinians opted for creating an alliance with the Lebanese National Movement²⁸⁸ and the Muslim communities, thus creating a situation of interdependence between them and the beginning of hostilities with Christians.

The political classes – obeying more to the communitarian constraints than the national interested – along with the continuous clashes between the Palestinian and the Israeli militias in southern Lebanon were the elements that eventually laid the foundations of the Lebanese Civil War, which started on April, 13th 1975.²⁸⁹ The Civil War can be divided into two main phases. The first it is called “two years’ war”: it started in 1975 and ended in 1976. While, the second phase went from 1978 to 1989. If, on the one hand, the first phase of the war saw the confrontation between the right-wing Christians, i.e., the Lebanese Front and those belonging to the left wing in the National Movement, the longest part of the war was extremely fragmented because of the strong Arabization of the fighting. In addition, Syria underwent a process of gradual loss of power over

²⁸⁶ In 1969 the USA understood that Lebanon was unable to control the Palestinian presence in its territory, therefore in the drafting of a peace project they abandoned the possible idea of a peaceful solution and shifted toward a number of bilateral agreements between Israel and some Arab States. In that period, Henry Kissinger followed with great attention the peace process between Israel, Egypt, and Syria, while ignoring a possible new war in Lebanon. He considered Lebanon and the Palestinians as two sacrificial pawns to avoid a conventional war that would have involved the whole region.

Hanf, T., *Coexistence in wartime in Lebanon: Decline of a State and Rise of a Nation*, London, Centre for Lebanese Studies and I.B. Tauris, 1994,

²⁸⁷ The Arab Socialist Ba'ath Party («Ḥizb al-Ba'ath al-'Arabī al-Ishtirākī»). It was founded on April, 7th 1947 by Michel 'Aflaq and Ṣalāḥ al-Dīn al-Bīṭār, both Syrians. It was a political party embedded with panarabist ideals. In February, 23rd 1966 it was divided between the Syrian and the Iraqi section. In 1970 the Ba'athist leadership was held by Hafez al Assad.

²⁸⁸ The Lebanese National Movement was a coalition of political parties headed by Kamal Jumblatt (1917-1977). It was founded in 1969 and apart from political parties it gathered a number of organizations from the “Rejectionist Front”. The “Rejectionist Front” was an organization composed by those who refused to accept that Israel let Palestinians without a homeland.

²⁸⁹ The outbreak of the civil war happened because of a precarious situation in Lebanon: the presence of the Palestinian refugees, the Palestinian guerrilla and that of the PLO were one side of the coin. The other issue leading to the civil war was the continuous request by Lebanese Muslims to a more balanced distribution of political powers.

Lebanon, while the Israeli presence was strengthened, as it was confirmed by the invasions of the country in 1978 and 1982.

Another important aspect is that the civil war led to the birth and evolution of another destabilising actor: Hezbollah.

All in all, the Lebanese Civil War gradually shifted from being an internal conflict into a regional and international one. In this conflict, the Lebanese State, due to its limited possibilities and difficulties, resulted in a meaningless actor in the wider international confrontation between superpowers.

2.5.6 The Lebanese Civil War: from 1975 to 1976

On April 13th, 1975, in Ain Rumanneh²⁹⁰ during a religious service, Pierre Gemayel²⁹¹ was the target of a shooting. The consequence of this attack was the assault to a bus full of Palestinians by the Maronite army. Several attacks and assaults started to propagate in the whole Lebanese territory, delineating a system of alliances and rivalries: on the one hand, the Maronite front, on the other hand the National Movement affiliated with the Palestinian soldiers. All these issues had serious consequences at the political level: the National Movement published some condemnation lists on the members of the Phalange.²⁹² At the same time the Phalange requested the resignation of Rachid al-Solh, the Prime Minister of Lebanon, who was substituted by Rachid Karamé. The political instability which derived from these events was clear: the President of the Republic, Frangié, jeopardized the principles of the National Pact, once again. It confirmed that the Constitution is not sacred. At the same time, a reform to the Lebanese political system was proposed by the National Movement in order to abandon confessionalism. This uncertain scenario, filled with the various and violent bombing by the Israeli army in the southern part of Lebanon,²⁹³ led the situation to a further degradation and to the resignation of the President of the Republic, unable to control and mediate the conflicting factions. During summer 1975, the situation was still animated by internal conflicts and violence, but in this scenario the Maronite leaders expressed their willingness to create a “second

²⁹⁰ One of the Christian-Maronites predominant areas of Beirut.

²⁹¹ He was a politician and founder of the Kata'eb party, most commonly known as the Lebanese Phalanges. He is the father of both Bechir Gemayel and Amin Gemayel. He covered a fundamental role in the process of independence from France. During the Lebanese Civil War he was engaged in the establishment of the armed militia.

²⁹² A Maronite political party founded in 1936 by Pierre Gemayel (1905 – 1984).

²⁹³ Most of the Palestinian refugee camps are located in the southern part of Lebanon.

Israeli State” a sort of “Maronite Zionism” in Lebanon.²⁹⁴ At the same time, both the President of the Republic and the Prime Minister started to collaborate toward the same objectives: the diminishing of violence in the whole territory and the decrease of the Syrian influence. While, in the first half of 1976, and during a period of unprecedented violence, the Maronite leadership proposed to shift the nature of the State of Lebanon into a federal State. Consequently, Syria’s military intervention as a response to federalism was motivated by two main reasons:

- 1) Hafiz al-Assad’s²⁹⁵ willingness to create a Great Syria, including Lebanon.
- 2) The idea of imposing Syria as the regional most powerful State.

The ambition of a federal State, the attacks to refugee camps and the several clashes led to an increased violence and to the creation of the Arab Army of Lebanon,²⁹⁶ therefore to a gradual disintegration and collapse of the national army.²⁹⁷

At the end of January 1976, Muslim groups organized several meetings in order to analyse the situation and to come up with some solutions that could have been accepted by all parts. The outcome of these confrontations was a constitutional document that enshrined the following points:

- 1) First, an equal distribution of power between Maronites and Muslims.
- 2) Second, the appointment of the Prime Minister was to be found under the competencies of the Lebanese Parliament.
- 3) Finally, a written declaration identifying the Arab nature of Lebanon.

The Document was furtherly integrated with an important condition: Syria had to ensure that Palestinians would have obeyed with the conditions enshrined in the text of the Cairo Agreement of 1969.²⁹⁸ On February 14th, the President of the Republic, Frangié publicly

²⁹⁴ Odeh, B. J., *Lebanon: Dynamics of Conflict: A Modern Political History*, London, Zed Books, 1987, p. 142

²⁹⁵ Hafiz al-Assad was a Syrian statesman and military officer who served as President of Syria from 1971 to 2000. He was also Prime Minister of Syria from 1970 to 1971, as well as secretary of the regional command of the Syrian branch of the Arab Socialist Ba'athist Party and secretary general of the National Command of the Ba'athist Party from 1970 to 2000.

²⁹⁶ A military organization that had its military basis in the Beqaa Valley, whose leader was Ahmed Khatib.

²⁹⁷ The unity of the Lebanese army was put into danger when the Civil War started. Confessional contrasts, the mutiny of Ahmed Khatib and the following birth of the Arab Army of Lebanon, together with the impossibility of taking one side or the other in the different factions led to the dismantling of the Lebanese army.

²⁹⁸ Cairo Agreement is a secret document signed on November 3rd, 1969 by the Lebanese delegation and that of the PLO. Both gathered in Cairo to put into practice some solutions to the crisis that opposed Palestinians to the Lebanese authorities. Following the lines of this compromise, PLO was authorized to launch military attacks against Israel from their formal jurisdiction, i.e., the refugee camps, in exchange of the recognition of the authority of the Lebanese State by Palestinians.

described the new plan and created a new national unity government, including the members of the National Movement.

After an attempted coup d'état against Frangié,²⁹⁹ the country was falling into a deep and profound crisis which saw major contrapositions among the different communities.³⁰⁰ Moreover, the Lebanese Civil War provoked an atmosphere of terror that increased the confessional disagreements, emphasizing the difficult societal situation. Namely, the three different positions of Lebanon's religious communities were:

- 1) Christian Maronites were contrary to the National Pact and their ambition was that of creating a new and autonomous Maronite State.
- 2) The left-wing Muslim militias were living a disorienting moment which was caused by the Syrian intervention in the conflict. Indeed, Syria shifted from supporting the Muslim faction to the protection of Maronites. The assassination of Kamal Joumlatt³⁰¹, in March 1977 was a major setback for Muslims, also because he was deeply convinced about the possible gradual de-confessionalization of the country.
- 3) Palestinians refused to implement their disarmament, because of the strong presence of Israeli troops in the southern part of Lebanon and the Jewish support to the Christian-Maronite faction.

2.5.7 The Israeli invasions: 1978 and 1982

In March 1978 the Israeli government enacted the Operation Litani.³⁰² The long-term goal of the Israeli invasion was not clear to Lebanese: was the invasion promoting a kind of permanent Israeli instalment in Lebanon? If so, what were the selected areas and who were the actors involved in a possible negotiation? These queries led people believing that Israel's intention was that of annexing part of the national territory, as well as the complete control over natural resources, especially the water ones.³⁰³

²⁹⁹ The coup d'état was blocked by the Syrian military intervention.

³⁰⁰ In this scenario, both the National Movement and the Maronite forces faced each other in order to gain control over the situation. At the end, ceasefire was reached thanks to the military intervention of Syria on April 9th, 1976.

³⁰¹ He was a Lebanese politician of Druze origins. He founded the Lebanese Progressive Socialist Party (*al-Ḥizb al-Taqaddumi al-Ishirākī*), composed by Druze people.

³⁰² By Operation Litani it is intended the first Israeli invasion on the Lebanese territory dated March 14th, 1978. It takes the name by the Litani River (Nahr al-Litānī) in the southern part of Lebanon. This was a military operation with the aim of diminishing the Palestinian armed forces' attacks towards Israel.

³⁰³ Litani River represented a contentious issue between Israel and Lebanon because of its water resources. From 1978 to 2000 (the year when the Israeli troops officially left Lebanon), a great part of the water coming from Litani River was pumped into Israel.

In this scenario, Jimmy Carter³⁰⁴ was concerned about the impossible implementation of the Arab-Israeli peace agreement, therefore, he called for the UN intervention.³⁰⁵

If on the one hand the Israeli presence in Lebanon resulted in a reinforcement of the Palestinian presence in the territory, it also led to a further internal polarization in the Lebanese society. Indeed, the National Movement, the Ba'athist Party and the Shiites, together with some Sunni oligarchies, believed that the Israeli presence in the territory only had negative effects. According to them, Israel did not have to interfere in the internal politics of Lebanon. Contrary to this vision were the Maronites and some Shiites oligarchies. Indeed, both believed that the real problem was not the Israeli presence in the Lebanese territory, rather the Palestinian one and especially the PLO actions in the southern part of the country.

At the same time, a new national figure was gradually emerging in that period: that of Bechir Gemayel.³⁰⁶ On June 7th, 1980, after many internal fights, the Christian-Maronite militia guided by Bechir Gemayel defeated that of Camille Chamoun. With this win, Gemayel figured as the one representing the Maronite cause and a possible future President of the Lebanese Republic at the 1982 elections. The main goal of Gemayel was that of preserving the unity and the independence of Lebanon. In addition, he wanted to re-promote the primary position of Lebanese Christian-Maronites and to put aside the founding principles of the National Pact. Another pillar of Gemayel's internal politics was that of ensuring new relations with Israel.

The year 1979 made its mark in Lebanon and influenced the internal situation of the country. The two events influencing the Lebanese situation were the Camp David

³⁰⁴ 39th President of the United States of America. Its presidential mandate lasted from January 20th, 1977 to January 20th, 1981.

³⁰⁵ The UN presence in Lebanon is enshrined in Resolution number 425 approved by the UN Security Council on March 19th, 1978. The resolution stated the immediate withdrawal of Israeli troops from Lebanon and the enhancement of an interim force called UNIFIL (United Nation Interim Force in Lebanon). UNIFIL would have covered the borders between the southern part of Lebanon and Israel. Sarkis saw the adoption of this resolution as a positive and definitive outcome for the future of his country and the relations with Israel. At the same time, Syrians were worried about that the resolution would have undermined their presence in Lebanon, while Israelis believed that this would have led to the expansion of the Palestinian presence in the territory. At the same time, Palestinians felt isolated once again, since the resolution did not take into consideration their presence in Lebanon.

Di Peri, R., *Il Libano Contemporaneo: storia, politica società*, pp.79-82.

³⁰⁶ He was the son of Pierre Gemayel, founder of Kata'ib (Lebanese phalange). He became a member of the Phalange and he was nominated inspector of the paramilitary forces of the Kata'ib after his kidnap by some Palestinian militants in Lebanon. He became President of the Lebanese Republic. His mandate went from August 23rd, 1982 to September 14th, 1982 when he was assassinated in Ashrafiyyeh, a Maronite neighborhood in the eastern part of Beirut. His assassination caused the famous massacre of Shabra and Shatila, where seven hundred Palestinians were murdered.

Agreements between Egypt and Israel³⁰⁷ and the Iranian Revolution.³⁰⁸ On the one hand, the Camp David Agreements led to the rapprochement between Syria and the PLO, both worried because of the strong relation between the Lebanese Forces and Israel. In the second case, the Shiite community of Lebanon took advantage of the Iranian Islamic Revolution. In fact, until that moment, the Lebanese Shiites gathered around the figure of Musa al-Sadr.³⁰⁹

The beginning of 1981 saw the rocket attacks between Syria and Israel on the Lebanese territory. Israel entered into the Lebanese local conflict involving both Christians and Syrians: the Phalangists assaulted Zahlé, a city in the Beqaa Valley, provoking the Syrian response. Consequently, Syria's counterattack caused the block of the city which lasted three months.

The attacks between Israel and Palestinian armed forces continued overtime, and in this atmosphere of violence and destruction, Bachir Gemayel was elected President of the Republic on August 23rd, 1982. He wanted to reach a national reconciliation through the creation of a modern and united Lebanon, by strengthening the relation with the Sunni Muslim counterpart. However, this was not accepted by the Jewish State. In this confusing scenario, Gemayel was assassinated and after his death the Sabra and Shatila massacre occurred.³¹⁰

Despite the Israeli involvement in the Lebanese Civil War the two countries signed a Peace Treaty on May 17th, 1983.

2.5.8 The last years of the Lebanese Civil War and the conflict resolution.

At an internal level, the conflict kept going especially in the South, where many Palestinian refugee camps were settled. Instead, the statal administration was ulteriorly

³⁰⁷ These Agreements led to the peace accord signed by the Egyptian president Anwar al-Sadat and the Israeli Prime Minister Manachem Begin, through the mediation of the US President Jimmy Carter.

³⁰⁸ The Iranian Islamic Revolution led the country to abandon monarchy and to become an Islamic Shiite Republic, whose norms are based on the Quranic law.

³⁰⁹ He was a Shia Imam and the founder of AMAL, "hope", a Shia Muslim militia. AMAL became very famous during the Lebanese Civil War. Its development is also due to the great support received from Iran and Syria, but also due to the strong presence and support of internal Shia refugees in the southern part of Lebanon.

³¹⁰ Lebanese Forces, with the aim of vindicating the death of their leader, violently attacked the two Palestinian refugee camps, massacring from 500 to 3500 civilians, while Israelis remained still in front of the bloodshed.

Bourget, J.M. Sabra & Chatila, au coeur du massacre, Paris, Erick Bonnier, 2012.

weakened following the tripartite accord signed by the three main Lebanese militias (AMAL, Lebanese Forces and the Lebanese Socialist Progressive Party). This Accord paved the way for Syria to enter the internal affairs of Lebanon.³¹¹

Amine Gemayel's presidential mandate³¹² was characterized by many difficulties, particularly the attempted boycotting of his mandate by Syria. At the end, his mandate concluded on September 23rd, 1988, after forming a government composed by five military ministries (three Muslims and two Christians). These ministries were subordinated by General Michel Aoun who became an interim President of Lebanon from September 1988 to November 1989. Despite that, three of the Muslim ministries decided to resign from the newly formed government headed by Salim al-Hoss.³¹³ As a consequence of that, the Parliament formally became the only legitimate authority in the country. For more than a year, Aoun had to face the Syrian army until the liberation of Lebanon from its influence. Lebanon and Syria eventually reached cease fire on September 23rd, 1989.

After a month, on October 22nd, 1989, Ta'if Agreement ended fifteen years of civil war and attempted to tackle the problems linked to the reconstruction and the development of Lebanon by means of an action plan that aimed at abolishing confessionalism, while implementing a series of political and economic reforms. The aim of the Agreement was also that of liberating the national territory from foreign armies and redefining the relations between Syria and Lebanon.

2.6 The Ta'if Agreement and the birth of the Second Republic of Lebanon

Before analysing the Ta'if Agreement, we should take into consideration the main changes that happened in the period in between 1943 and 1990, mainly from the informal adoption of the National Pact and the end of the Lebanese Civil War.

³¹¹ The Accord was signed in Damascus in December 1985.

³¹² Amin Gemayel is one of Pierre Gemayel's sons. His presidential mandate is remembered as one of the most difficult in the history of Lebanon, due to the foreign armed forces occupying almost two-thirds of the country (Syria in the North and Israel in the South); while the para-military militia (Maronite, Druze, Shia, Sunni, and Palestinian ones) occupying the rest of the country.

³¹³ He was appointed Prime Minister of Lebanon three times: from 1976 to 1980; from 1987 to 1990; from 1998 to 2000. He was also appointed ad-interim President of Lebanon from November 22nd, 1989, to November 24th, 1989.

In this period there was a radical change concerning the political and communitarian scenario. Indeed, we can notice that there was a stronger integration of Muslims within the Lebanese State. This enshrined the instalment of Sunni Muslims into the political life of the country, as second biggest counterpart to the Maronites. In accordance with what just stated, the change that this “entrance” brought in the political scenario lead also to the sharing power between the two communities and the political role they covered: President of the Republic and Prime Minister. Moreover, from a methodological point of view, this new experience stressed another peculiarity of the Lebanese political regime. Indeed, from 1943 onward the political regime was regulated by a non-written pact, therefore without affecting the constitutional provisions, by comparison with the dualist principle of the Executive, normally divided between the Head of State and the Prime Minister, having (both of them) autonomous functions and status.³¹⁴

This new configuration, inaugurated in 1943, established a communitarian “co-direction” among the two political actors. This was more in line with the aim of the coexistence that both Khoury and al-Solh were seeking for, however without the formal enshrinement, i.e., without implementing suitable constitutional amendments.

Although many scholars and constitutionalists believe that the post Ta’if Agreement period represented the birth of the Third Republic of Lebanon, therefore identifying the First Republic as the one developed during the French mandate and the adoption of the 1926 Constitution of Lebanon,³¹⁵ here I am going to use the most common understanding of the post 1989 period as the one inaugurating the birth of the Second Republic.³¹⁶

The Ta’if Agreement³¹⁷ represented the end to the Lebanese Civil War which endured for fifteen years. However, apart from the name, the Agreement did not alter the basic characteristics that represented the First Lebanese Republic until that moment. Through

³¹⁴ Charaf, G., *Communautés et État, communautés dans l’État. Le cas du Liban*, p. 317.

³¹⁵ An example of how the post Ta’if period is understood as the birth of the Third Republic of Lebanon can be found in: Rondot, P., *Les communautés dans l’état libanaise*, Cahiers de l’Association France Nouveau Liban, 4, Beyrouth, 1979.

³¹⁶ In reality, the Second Republic of Lebanon officially started on September 23rd, 1990, after one year from the signature of the Ta’if Agreement. On September 1990, the Lebanese Parliament formally ratified the constitutional amendments contained in the Ta’if Agreement. The Republic was officially born after the clashes between the Christian Maronite militia and the Syrian one culminated with the ousting of General Aoun by the Syrian-Lebanese forces.

³¹⁷ The Ta’if Agreement is also called “The National Accord Document”, in Arabic *wathīqat al-wifāq*.

the Agreement signed in the Saudi city of Ta'if, from which it took the name, the Constitution of 1926 and the National Pact of 1943 were modified.

In the days before the signature of the Ta'if Agreements, the Arab countries found themselves in a delicate international position such that tolerating the Lebanese chaos resulting less time-consuming than trying to put an end to the various disasters it created.³¹⁸ However, the 1988 failed presidential elections radically changed the situation. The Iraqi involvement in the country started to become more evident through the army supply to General Aoun, thus increasing a (new) possible clash between Syria and Iraq in the territory.

It is important to notice that after a period of partial “cohabitation”, the societal division created after the presence of two different governments became even stronger in Lebanon. Together with that, the economic situation of the country continued to worsen over time, the immigration and the unemployment rates increased exponentially also due to an enormous crisis of the Lebanese public services.³¹⁹

This was the political, societal, and economic atmosphere that accompanied the signature of the Ta'if Agreement in Saudi Arabia, where sixty-two members of the Lebanese Parliament gathered together on September 30th, 1989. The aim was that of creating a national reconciliation conference giving birth to the Agreement. Ta'if was considered as the “new National Pact”, opening the way to the new constitutional amendments which were officially approved by the Chamber of Deputies on September 21st, 1990, and entered into force the following day.

The Ta'if Agreement was the result of different “reconciliation documents” which represented a solid juridical and legislative basis for the application of new principles in the Agreement itself.³²⁰

The aim of the Ta'if Agreement was that of tackling the problems linked to the reconstruction and the development of the Lebanese State, by means of an action plan

³¹⁸ Norton, A. R., Lebanon after Ta'if: is the civil war over?, “Middle East Journal”, 45, 3, Summer 1991, p.460.

³¹⁹ An in-depth analysis of the economic crisis before the de facto adoption of the Ta'if Agreement can be found in: Nasr, S., Lebanon's war: is the end in sight?, “Middle East Report”, January-February 1990, pp. 5-8.

³²⁰ These “reconciliation documents” were: the document elaborated after the Geneva Conference of 1983, the ministerial document signed by Rachid Karamé in 1984, the accord between the Lebanese militia in Damascus in 1984 and finally the proposition resulted in the consultation between Morocco, Algeria and Saudi Arabia, most commonly known as l'avant projet (Rapport du Haut Comité Tripartite Arabe). This information is contained in: R. Di Peri, *Il Libano Contemporaneo: storia, politica, società*, pp. 101-102.

that aimed at abolishing confessionalism, while implementing a series of political and economic reforms, liberating the national territory from foreign armies and redefining the Lebanese-Syrian relations. These are the four sections of the Ta'if Agreement document. Even if not explicitly reported in the document, the Agreement inaugurated a new form of political system in Lebanon. The tripartite system, mainly known as Troika³²¹, was inaugurated in this period, since the amendments brought by the text mutated the political equilibrium of power in Lebanon. The Troika system was never explicitly reported in any of the official documents, it was therefore the result of Lebanese political life in that period. This newly inaugurated system produced a very difficult mediation between the different political powers in the country, which endures to this day.

2.6.1 The Ta'if Agreement: Section One, “General Principles and Reforms”³²²

The first section represents the central body of the Agreement itself. Within this section the reader can find the new institutional and constitutional reforms.

The two principal aspects which are underlined in Section One are to be found in two main points: namely “B” and “G”. Respectively, these points emphasise Arab identity and belonging of Lebanon and the abolition of the State’s confessionalism. These two concepts have been reiterated through a series of political-institutional reforms which amended the 1926 Constitution, transforming the Lebanese presidential system in a system in which the Council of Ministries has more powers if compared to those of the President of the Republic and of the Parliament.³²³

The reforms brought by the Ta'if Agreement alter the balance of power between the different communities within the Lebanese Parliament. As a consequence, the Christian-Maronite political power was lowered, while that of the Sunni Muslims was increased. Therefore, the proportion shifted from 6 to 5 to 5 to 5.

³²¹ The term “Troika” became to be used in 1990 and it indicated the consultations happening between the three presidents before adopting important decisions.

³²² The Articles concerning the “General Principles and Reforms” Section can be found at: <https://www.presidency.gov.lb/Arabic/LebaneseSystem/Documents/TaefAgreementEn.pdf>

³²³ Di Pieri, R., *Gli accordi di Ta'if: seconda Repubblica Libanese o Occasione Mancata?*, published in: *Pace e guerra nel Medio Oriente in età moderna e contemporanea. Atti del Convegno SeSaMo, Congedo Editore, Lecce, 2004.*

Concerning the Political Reforms part in Section One of the 1989 Ta'if Agreement, there is the description of the main political roles of the country. An in-depth analysis on how the different roles changed with the adoption of the Document of the National Accord will be presented here:

- The **Chamber of Deputies** shifted from the former division of 99 parliamentary seats to the parity of seats (reaching a total number of 108) between Christians and Muslims. Moreover, the Speaker's mandate has been prolonged from being of an annual basis to four years, reaching the same level as the legislative power. Finally, if before the Chamber of Deputies shared with the President of the Republic the authority of dismissing ministries, from Ta'if onward it became the only authority to express a vote of confidence towards the resigned Ministries and towards the Council of Ministry.
- The Lebanese **Prime Minister** has always been nominated by the President of the Republic. This appointment happens based on a parliamentary consultation that, from the adoption of the Ta'if Agreement onward, shifted from being perceived as a non-binding consultation to a binding-nature one. In addition, the Prime Minister does not share anymore the authority of forming a government with the President of the Republic. Having said that, the Prime Minister has the right to form a government through parliamentary consultations which are not binding. To conclude, thanks to the new amendments, the Prime Minister chairs the Council of Ministries. On its part, the Council of Ministries develops the different political guidelines of the country, it drafts legislations and decides upon the realization of the laws approved by the Chamber of Deputies. Consequently, the role of the President of the Republic has been decreased by favouriting that of the Prime Minister.
- From Ta'if onward, the **President of the Republic** has not ultimate authority over the Council of Ministries. Moreover, he has no right to vote in the Council, but he can chair the meetings. If before the President of the Republic was seen as the sole authority capable of convening an extraordinary meeting of both the Council of Ministries and the Chamber of Deputies, from the new amendments onward, the President can convene extraordinary meetings of both bodies only through the approval of the Prime Minister.

In order to better understand how the political role of the President of the Republic was changed due to the Ta'if modifications, it is interesting to notice that if before the Lebanese armed forces were subjected to the role of the President, now this

authority is covered by the Council of Ministries. Despite that, the President of the Republic is still nowadays the head of the Lebanese armed forces. Moreover, the former tacit presidential veto power over the promulgation of new legislations does not exist anymore and the President of the Republic cannot bloc any legislative procedure.

Despite still having some of the most powerful duties to cover, the role of the President of the Republic sees his role enormously reduced if compared to the powers he had when the 1926 Constitution was adopted.

Having said that, the executive power went from the Presidential authority to that of the Prime Minister. From Ta'if onward the Prime Minister is, *de iure*, the head of the government and the one who chairs the Council of Ministries' meetings.

The **G point** (“*Abolition of Political Sectarianism*”) deals with the abolition of political confessionalism as one of the fundamental national final objectives.

[...] To achieve this goal, it is required that efforts be made in accordance with a phased plan. The Chamber of Deputies election the basis of equal sharing by Christians and Muslims shall adopt the proper measures to achieve this objective and to form a national council which is headed by the President of the Republic and which includes, in addition to the Prime Minister and the Chamber of Deputies Speaker, political, intellectual, and social notables.

The council's task will be to examine and propose the means capable of abolishing sectarianism, to present them to the Chamber of Deputies and the cabinet, and to observe implementation of the phased plan.

The following shall be done in the interim period:

- a. Abolish the sectarian representation base and rely on capability and specialization in public jobs, the judiciary, the military, security, public, and joint institutions, and in the independent agencies in accordance with the dictates of national accord, excluding the top-level jobs and equivalent jobs which shall be shared equally by Christians and Muslims without allocating any particular job to any sect.*
- b. Abolish the mention of sect and denomination on the identity card.³²⁴*

³²⁴ The National Accord – Ta'if Agreement – official text.
www.presidency.gov.lb/Arabic/LebaneseSystem/Documents/TaefAgreementEn.pdf

However, through the new proportion of seats in the Parliament (5 to 5), the Agreement *de facto* reaffirms and reinforces the confessional political nature of Lebanon, despite the formal rejection of the same. This part of Section One aims at abolishing sectarianism in the public administration and to rely only on competence and specialization without looking at one's religious affiliation. Moreover, in this section, the Ta'if Agreement stresses the need of the decentralization and independence of the administrative bodies and the judiciary, as well as the creation of a Constitutional Committee and of a Socio-Economic Committee. Moreover, there is also the description of the new Parliamentary Election Law based on new constituencies³²⁵ and in light of the rules guarantying peaceful coexistence among citizens by ensuring real political representation.

2.6.2 The Ta'if Agreement: Section Two, "Spreading the sovereignty of the State of Lebanon over all Lebanese territories"

This section deals with the general objective of spreading Lebanese authority all over the territory deploying the State's own forces and in compliance with the established one-year plan.

Section Two is the outcome of a prior accord between the *Haut Comité Tripartite Arabe* and Syria, with the obligation to the Lebanese Parliament of not modifying any part of the document.

Together with the spreading of the sovereignty all over the Lebanese State, the other object of this section deals with the dismantling of all the Lebanese and non-Lebanese militia from the territory, as well as the strengthening of the Security Forces and of the Armed Forces.

The militia problem was even more difficult than what they could have expected. This was linked to the incapacity and the impossibility to dismantle both Hezbollah's militia and the Palestinian ones, at least until Israel would had occupied the southern part of the country. Both militias were considered as "engaged" in the fight of the liberation of

³²⁵ With the new Parliamentary Election Law based on new constituencies I mean the shift from *qada'* to *muhāfaza* (departments or governorates).

Lebanon.³²⁶ Instead, the other militia underwent a strong resizing. Moreover, the most influential militias resulted to be capable of creating their own political parties.³²⁷

2.6.3 The Ta'if Agreement: Section Three, “Liberating Lebanon from the Israeli occupation”

This section deals with the final object of liberating Lebanon from the Israeli occupation by emphasising the necessity of applying UN Resolution number 425 taken on March 19th, 1978³²⁸ and the adherence to the truce agreement of 1949. Other resolutions are not explicitly cited in the document, namely number 508 and 509 dealing with the second Israeli occupation in 1982. Eventually, this section defaulted once the Israeli forces officially left Lebanon in 2000.

2.6.4 The Ta'if Agreement: Section Four, “Lebanese-Syrian Relations”

This section opens declaring, once again, the Arab nature of Lebanon and its strong relations with other Arab countries and especially with Syria, which ties derives from their roots, history, and brotherly relations. Therefore, in this section the future relations between the two countries are stated, with the aim of coming up with a bilateral accord in all sectors and the predisposition to create a strong cooperation between the two neighbours. The bilateral accord was meant to be accomplished in a very short period of time, through the signature of the Fraternity Accord on May 22nd, 1991.³²⁹ The cooperation accord presented itself as a document laying the foundations to the future Lebanese-Syrian relations.

2.6.5 The Ta'if Agreement: a conclusion

To conclude, the Ta'if Agreement official application happened in 1990, although they had to wait until 1992 for the new elections to be held.

³²⁶ Di Peri, R., *Il Libano contemporaneo: storia, politica, società*, p.107.

³²⁷ Maïla, J., *L'Accord de Taëf deux ans après*, *Cahiers de l'Orient*, n° 24, 4ème trimestre, 1991, p. 33.

³²⁸ The Resolution number 425 called for a full elimination of the Israeli occupation.

³²⁹ *Traité de Fraternité, de coopération et de coordination entre la république libanaise et la république arabe Syrienne*, “*Cahier de l'Orient*”, n° 24, 4ème trimestre 1991, Document.

The Ta'if Agreement newly established trade-off between Christians and Muslims was not so different from the one inaugurated with the National Pact in 1943, at least by looking at the general political architecture of Lebanon. Despite that, what resulted to be profoundly modified was the confessional equilibrium in terms of numbers. Indeed, the 5 to 5 proportion between Christian Maronites and Sunni Muslims and the idea of equally dividing power among the three principal communities (Maronites, Sunnis, Shiites) changed the perception of power among the communities, as well as the relations between them.³³⁰ Consequently, the Second Republic was influenced by an interconfessional equilibrium as it happened during the First Republic. However, some differences can be detected. Indeed, during the First Republic the interconfessional equilibrium was in favour of Christian Maronites and, as we have seen above, the role of the executive and that of the President of the Republic was more relevant. While, in the Second Republic, along with the desire of equilibrating the confessional communities, we can see that the Ta'if Agreement reached a power sharing system that works through cohabitation³³¹ and where the executive branch lost influence over the legislative one. Through cohabitation the Troika system was established, therefore transforming the three main political actors as incapable of making a self-choice. This gradually led to a very slow system of adoption of political decisions due to the continuous interference between the three powers. Many analysts have described the Lebanese Troika as “*a confusion among political powers*”.³³² This is because the Lebanese Troika made the political system of the country even more rigid than it was before. Indeed, when decisions have to be made, they require the consensus of the President of the Republic, that of the Prime Minister and that of the Speaker of the Parliament.

Even though it was initially perceived as the means through which the elimination of political confessionalism could have happened, the reforms brought by the Document of National Accord actually reinforced sectarianism. Indeed, with Ta'if there is the perception that political representation is strictly linked to the sectarian one. The sectarian

³³⁰ This resulted particularly true for the Maronite community which after Ta'if felt expropriated of its role of leading community in the country. This was because the demographic percentages gradually changed and, despite the last official census was held on 1932, the number of Christian Maronites decreased over time.

³³¹ Cohabitation of the three main political actors: President of the Republic (Maronite), Prime Minister (Sunni Muslim) and President of the Chamber of Deputies (Shia Muslim).

³³² Hudson, M. C., Lebanon after Ta'if: another reform opportunity lost?, “Arab Studies Quarterly”, 21, Winter, 1999, pp.27-40

or confessional system was therefore strengthened once the reforms were adopted. Consequently, the clientelist relation between citizens and their confessional élites has been furtherly fortified.

III. Dysfunctions of the Lebanese confessional system

3.1 Is Lebanon a consociational democracy?

Lijphart's description of a consociation is the most known and it has the aim of bringing true democracy and harmony to those states which are plagued by intra-ethnic or religious conflicts. The consociation is structured along four main components which are essential in order to achieve stability and democracy in deeply divided societies. The four main components are: all-inclusive grand coalition, proportional representation, provision of minority veto power and cultural autonomy for subcultures.

Rather than taking similar stances everywhere, consociational democracy can be different according to the case of a given State, therefore the division of power varies. The role of the political élites in deeply divided societies and consociational systems is crucial to respond to the interests and demands of the represented groups and, at the same time, ensuring collaboration and coordination with the other sub-groups to reach stability and reciprocal understanding.

In the case of Lebanon, we deal with a confessional consociation where the system is organized along religious division of power. Namely, the division is among the three biggest religious groups of the country: Christian Maronites, Sunni Muslims and Shia Muslims, respectively covering the role of President of the Republic, Prime Minister and Speaker of the Parliament of Lebanon. This separation of power was established in the first Constitution of the country, dated 1926, but *de facto* started in 1943 with the promulgation of the oral National Pact, therefore continued until nowadays through the adoption of the 1989 Ta'if Agreement. Indeed, talking about the consociational nature of Lebanon, if we take into consideration the year 1943, therefore the National Pact and the birth of the First Lebanese Republic, it is possible to say that if on the one hand the period of the Lebanese Civil War was going to find its gradual enhancement, on the other hand the political system of Lebanon was characterized by a *de facto* apparent democratic pluralism, which can be detected even today.³³³

³³³ Di Pieri, R., Gli accordi di Ta'if: seconda Repubblica Libanese o Occasione Mancata?, p. 151.

However, the final result of this consociational structure led the State to be perpetually captured by a political sectarian élite which lacks responsibility, collaboration, as well as common political commitment to the public good. In addition, the sectarian elites gradually became the oligopolistic patrons of their respective confessional groups and they inherited public offices. In Lebanon, this phenomenon is called “political feudalism” or *al-Ikta’a Seyasse*.³³⁴ The result is a spoil of the public sector by the political élites in order to trade alliances and allegiances with the final outcome of increasing or maximizing their influence. Consequently, the national problems and the necessity for an economic and political reform, as well as public accountability, are constantly facing a stalemate.

After all, we can also assess that the Lebanese pluralist system still represents nowadays a strong exception in Middle East scenario, because it embodies a political system having peculiar Lebanese democratic characteristics. Indeed, despite corruption, clientelism, the division of power based on confessional quotas and a strong control over the economic system and the media, the Lebanese model has been studied in terms of consociational democracy, as described by Arend Lijphart.³³⁵ According to the consociational theory, the confessional divisions within a society aim at balancing themselves when they are horizontal, rather they can create a conflict when they mutually reinforce. In this precise moment, the role of the political élite is fundamental. Indeed, they act as tiebreakers, capable or not to moderate the conflict or, rather to exacerbate it. Nonetheless, in the case of Lebanon the creation of a confessional power sharing system among the different sects, each one in possession of veto power towards public decisions, clearly undermined the creation of a strong system able to govern.³³⁶ Indeed, a divided and weak confessional system was eventually adopted, resulting in a lack of political trust from its own citizens and forcing them to rely on their own sectarian networks to feel protected. The State of Lebanon, acting as a trustee, became notorious for its inaction and inability to enact measures promoting progress and preventing deterioration.³³⁷ This led to sectarian and dynamic conflicts in the country with a continuous failure of the State.

³³⁴ Salamey, I., Failing consociationalism in Lebanon and integrative options, *International Journal of Peace Studies*, Volume 14, Number 2, Autumn/Winter 2009, p. 84.

³³⁵ In particular:

Lijphart, A., Consociational democracy, “*World Politics*”, XXI, 2, January 1969, pp. 2017-225.

Lijphart, A., Typologies of democratic Systems, “*Comparative Political Studies*”, I, April 1968, pp. 3-44.

³³⁶ The description of consociativism as a political system is described in section 1.3 “Democracy in deeply divided societies and consociativism”.

³³⁷ Kerr, M., *Political Decision Making in a Confessional Democracy*, 1966, p. 188. In Leonard Binder, ed., *Politics in Lebanon*, New York, Wiley.

In this sense, when dealing with the characteristics of the consociational model, capable of working to stop a possible open conflict deriving from confessional divisions and a deep societal fragmentation, Lijphart argues that if in plural societies the power sharing system is often selected as a mechanism to avoid conflict and violence, on the other hand the failure of the consociational system in Lebanon is the result of local, regional and international wrong efforts to help accommodating or moderating the political sectarianism in the country.³³⁸

In Lebanon, consociational democracy has been described as “corporate consociationalism”, i.e., the predetermination of power positions among sectarian groups in the country.³³⁹ Indeed, since independence in 1943 the Lebanese political system has been based on an oral accord concerning institutional power sharing between the different confessional communities of the country. As described in Chapter 2, the National Pact established the division of power in the 6 to 5 ratio in favor of Christian Maronites. Moreover, while it also specified for an equal representation in the public sector, as a matter of fact the Pact favored the representation of the Maronite community.

From the period after the independence from France and the pre-civil war, the Lebanese consociationalism brought a relatively high level of freedom of expression, parliamentary elections, multiple political parties, and a better collaboration between the different political élites. Indeed, prior 1975 the political structures of the Lebanese consociation were praised by many scholars, others instead recognized the deficiencies upon which the political regime rested. Following this line, according to Hudson, the brief civil war that Lebanon experienced in 1958³⁴⁰ was one of the indicators of the political system’s fragility.³⁴¹ Consequently, on the one hand the modernization that the Lebanese consociational system was seen as a successful episode in Middle East, also because the country was not experiencing the dominance of a single group leading the political scenario. On the other hand, the Lebanese system did not secure the political stability it wanted to reach, nor it led to the creation of a fully-fledged democracy. On the contrary,

³³⁸ Di Pieri, R., *Gli accordi di Ta'if: seconda Repubblica Libanese o Occasione Mancata?*, pp. 152-157.

³³⁹ Such as the predetermination of the Presidency of the Republic to a Christian Maronite.

³⁴⁰ Both known as Lebanon Civil War of 1958 or 1958 Lebanon Crisis. This civil war was caused by a political crisis between political and religious leaders in the country. The fight saw the opposition between those supporting Camille Chamoun, the Maronite President of the Republic and those supporting Kamal Jumblatt and its Progressive Socialist Party and Rashid Karamé, the Sunni Prime Minister.

³⁴¹ Hudson, M., C., *The Precarious Republic: Modernization in Lebanon*, New York: Random House, 1968; and Hudson, M., C., "Democracy and Social Mobilization in Lebanese Politics, *Comparative Politics* 1, January 1969, 245-63.

it resulted in a constraint democracy which did not provide for equal rights among its citizens.³⁴² Moreover, the Lebanese consociationalism lacked the most important principle according to Lijphart: once again, a consociation is crucial in deeply divided society in order to prevent intra-ethnic conflicts and/or civil wars. Therefore, even if the political system of Lebanon seemed to be the most successful form of consociation up to the pre-civil war period, it eventually failed with the long-lasting war that invested and destroyed the country and its social stratus.

The characteristics describing the Lebanese current consociation are one of the outcomes of the fifteen years civil war. The suggested principles for a consociation – i.e., government coalition, segmental autonomy, proportional representation, and veto power – are the same principles which guided the Lebanese Constitution in 1926 and those of the National Pact in 1943. Moreover, this peculiar consociation was strengthened with the adoption of the Ta'if Agreement in 1989, leading to the belief that this new chapter for Lebanon not only would have ended the civil war, but it would have been the starting point to a new Lebanese identity.³⁴³ However, the Ta'if Agreement were the result of the shared trust among the political élite that in 1989 decided to sustain and to reinforce the consociational government of Lebanon.³⁴⁴ Indeed, the Lebanese consociational model still present the same characteristics it had in the past, despite the fifteen years of civil war.

Some of the features of the Lebanese consociation – different from the stable ones described by Lijphart – were identified by Richard Hrair Dekmejian, and even though his theory is dated 1978, some of his considerations can still be detected in present Lebanese consociation.³⁴⁵

The first point of his analysis concerns the existence of a big élite cartel. Despite this cartel exists, it does not secure an internal and balanced representation. Rather, it acts in

³⁴² Makdisi, S. and El Khalil, Y., Lebanon: Sectarian Consociationalism and the Transition to a Fully Fledged Democracy, Working Paper Series 4, American University of Beirut, March 2013.

³⁴³ Hanf, T., Coexistence in wartime in Lebanon: Decline of a State and Rise of a Nation, London, Centre for Lebanese Studies and I.B. Tauris, 1994.

³⁴⁴ Maïla, J., The Document of National Reconciliation: A Commentary, Prospects for Lebanon 4, Oxford: Center for Lebanese Studies, 1992.

³⁴⁵ Dekmejian, H.R., Consociational Democracy in crisis. The case of Lebanon, "Comparative Politics", 10, 2, January 1978, pp. 259-261.

a way in which the most representative élites (both numerically and influentially speaking) are those who try to govern the cartel.

Secondly, the process of élite recruitment is based on the regularity of parliamentary elections. In Lebanon there is a high circulation of the élites and both élites and counter-élites are chosen within the same social backgrounds (particularly, high or medium-high social classes). As a consequence, the insignificant circulation of political élites results in a weak participation of Lebanese people in the political life of the country. In the case of Lebanon, this aspect is very decisive and plays an enormous role in the confessional system of the country. This is because the majority of the population and the absolute majority of the poorest social classes are today two overlapping categories defining the Shia Lebanese community.

Another aspect analysed by Dekmejian is the absence of a coercive component capable of ensuring an effective control over the élite cartel.³⁴⁶

Last but not least, the scholar takes into consideration the tumultuous surrounding regional area and a huge external influence over the internal politics of Lebanon.

Indeed, in conducting this analysis is important to take into consideration the role of external actors in the destruction of the country during the fifteen years of the Lebanese civil war, as well as the role they play today in the national politics and consociationism. It is particularly relevant how the Lebanon shifted from a quasi-harmonious and prosperous country at the beginning of the 60s and ended up being the soil for foreign wars starting from 1967.³⁴⁷

Indeed, the external actors have always played a role in the history of Lebanon both due to its geographical position but also due to its voluntary vulnerability. The external actors penetrate the internal politics of the country and in a certain way they also guide each Lebanese political élite in the protection of its piece of cake. The 1975 civil war was a triggering of foreign intervention within a weak system and their constitutional assets. Until today, there is no internal crisis that does not find its major cause and a possible solution by consulting external actors.

³⁴⁶ Dekmejian, H.R., *Consociational Democracy in crisis. The case of Lebanon*, p. 261.

³⁴⁷ 1967 is the year of the six days war between Israel and some Arab countries which resulted in the victory of the Jewish State.

3.1.2 The variables of the unsuccessful Lebanese consociational system

In Lebanon, political organization is formed through divisive lines of religious identities, whose allegiance derive from the memory of community clashes. These clashes formally terminated with the adoption of the Ta'if Agreement.

However, the power sharing system was not adopted after the conflict. Indeed, as said before we deal with a system that saw its first application after the independence from France and the adoption of the non-written National Pact in 1943. This Pact defined the division of power along religious sectarian lines and the Lebanese parliamentary democracy. However, the division of power was not equal, rather most seats were granted to the Christian Maronites, along with the Presidency. This arrangement and division of power induced resistance from the Muslim communities, which were willing to obtain a bigger representation within the institution of the State. Gradually, these tensions intensified due to the huge flow of Palestinian refugees into Lebanon after the six days war in 1967. In general, the Arab-Israeli conflict as a whole resulted in a huge destabilization to the Lebanese already fragile demographic balance.

From the start of the Lebanese Civil War in 1975, regular clashes between the different communities destroyed the country and made it even weaker to the intrusion of external actors in the Lebanese politics. After fifteen years of war, the Ta'if Agreement laid the foundations for the written constitutional amendments to the National Pact, *de facto* formalizing the consociational system.

Lijphart says that political élites in a consociational system should adopt a coalescent behaviour, therefore they are committed to cooperation with other sectarian élites and to avoid any kind of adversarial behaviour.³⁴⁸ Consequently, the adoption of consociational system in a deeply divided society aims at preventing mutual conflicts and sectarian élites are those in charge of moderating these conflicts. However, in Lebanon the consociational system proved to be widely inefficient in preventing the outbreak of confessional and ethno-national conflicts and it is still incapable of uniting the Lebanese population. Understanding the intrinsic problems related to the inefficiency of the Lebanese consociationalism would lead policymakers to assess whether this system is an appropriate approach to moderate or to prevent conflicts in a plural and divided society

³⁴⁸ Lijphart, A., *Consociational Democracy*, p. 175

as the Lebanese one is. As a consequence, here the system based on the consociational democracy's theory by Arend Lijphart would be questioned in the case of Lebanon. In particular, the Lebanese subject has always been analysed from an endogenous perspective without taking into consideration how exogenous influences impacted on the interaction between internal and external élites, and particularly, on the behaviour of the political ruling class of the country.

The success of a consociation can be studied according to different variables:

- 1) Political and social violence, including political assassinations and aggressive manifestations and upheavals.
- 2) How often and with which propensity a change of government happens.
- 3) Political instability leading to frequent political changes.
- 4) Tensions between the different religious or ethnic groups before and after the signature of an agreement or the adoption of constitutional amendments.

Following many studies on Lebanese consociationalism,³⁴⁹ it is univocal the fact that the political system in the country did not provide stability according to these four factors, neither it prevented clashes among the different confessions in societies. For instance, the 2005-2006 war and the political assassination of the former Prime Minister Rafiq Hariri,³⁵⁰ together with the political tensions after the collapse of Saad Hariri's government in 2011, the inability of the Lebanese Parliament to adopt policies and reforms, the massive and sometimes violent public manifestations all across the country calling for a systematic and immediate change facing the political élite corruption in October 2019 and, finally, the very frequent government's resignations and inability to form a new one are the factors describing how the Lebanese consociation failed.

³⁴⁹ The studies analysed here are those by Dekmejian, R. H., *Consociational Democracy in Crisis: The Case of Lebanon*, in: *Comparative Politics* 10, no. 2, 1978; Jabbara, J. G. & Jabbara N. W., *Consociational Democracy in Lebanon: A Flawed System of Governance*, *Perspectives on Global Development and Technology*, Vol. 17 (2), 2001; Salamey, I., *Failing consociationalism in Lebanon and integrative options*, *International Journal of Peace Studies*, Volume 14, Number 2, Autumn/Winter 2009.

³⁵⁰ Rafiq Hariri was twice Prime Minister of Lebanon. The first time from 1992 to 1998 and the second time from 2000 to 2004. Hariri was assassinated on February 14th, 2005 together with other 21 people while his car was crossing the street towards Saint George Hotel in Beirut. Considering the clashes between the Syrian political élite and Rafiq Hariri before his resignation in 2004, Damascus started to be prosecuted as instigator of the murder. However, on August 18th, 2020 the Special Tribunal for Lebanon, created by the UN Security Council Resolution 1757, concluded that there was no evidence to support Syrian nor Hezbollah's involvement in Rafiq Hariri's assassination.

Starting from the real and written agreement establishing the consociational system (the Ta'if Agreement, *ndr*), this responded to the growing opposition coming from the Muslim part of the population towards the political hegemony given to the Maronites. Indeed, Ta'if redistributed the seats among Christians and Muslims in the 5 to 5 formulae. However, even though this Agreement was conceived as the basis to end the civil war and to come back to the political normality in Lebanon,³⁵¹ what happened was that the sectarian environment was additionally strengthened. Moreover, the Ta'if's provisions were largely imposed and later re-interpreted by pro-Syrian political figures in the Lebanese political élite. Indeed, a *de facto* Syrian protectorate in Lebanon started in the post-civil war period.

Up to nowadays, the Lebanese consociational system remains under continuous and constant distress. Basically, what the Ta'if Agreement has left is not the idea of a durable peace and stability in the country, rather the priority was placed on the short-term absence of war, putting aside the possibility of a long-term stability in post-civil war Lebanon.³⁵² Indeed, since the adoption of the consociational model, the instability and the clashes between Lebanese Sunni Muslims and Shia Muslims were evident in society. Moreover, the development of these tensions was attributed to the political and societal outcomes deriving from Ta'if and the Syrian possessive grip over Lebanon.³⁵³ Unfortunately, the confessional tensions in the Lebanese society continued even after the constitutional amendments adopted after the civil war, as stated in the fourth point of this analysis, thus making impossible the idea of unity and peace in the long run.

Moreover, the assassination of Hariri in 2005 strengthened even more the tensions among Sunnis and Shiites. This was because Hariri's murder had two main short-term outcomes: the first was the famous Cedar Revolution, starting from the city of Beirut and spreading all over the country, and second the withdrawal of the Syrian troops from the Lebanese territory and the resignation of the Prime Minister Karamé were important factors to the process of creation of a new government.³⁵⁴ Indeed, the Syrian departure from the

³⁵¹ Kerr, M., *Imposing power-sharing: conflict and coexistence in Northern Ireland and Lebanon*, Vancouver, B.C.: Langara College, p. 185

³⁵² Ghosn, F., and Khoury, F., *Lebanon after the Civil War: Peace or the Illusion of Peace?*, in: *The Middle East Journal* 65, no. 3, 2011, p. 396.

³⁵³ Norton, A. R., *Lebanon after Ta'if: is the civil war over?*, in: *Middle East Journal* 45, no. 3 (Summer), 1991, p. 473.

³⁵⁴ All these aspects were at the basis of the manifestations happening at Hariri's funerals, even though Shia Muslims decided not to participate. Almost 200.000 people gathered together at Hariri's funeral, asking for clarifications on his death, the Syrian involvement over the assassination and its immediate withdrawal from Lebanon. Following the manifestants' intentions, Hezbollah called for a big manifestation on March

Lebanese territory together with the 2011 revolts all over the MENA area, contributed to the confessional and sectarian uncertainty and violence, consequently hurting the political situation in the country. In these cases of unstable political situation, with very frequent political changes and resignations, it is clear how the lack of a national reconciliation after the civil war led to continuous political clashes and confessional tensions between the different groups, together with a shared feeling of fear. Communities' grievances increased even more after the 2006 Lebanese War between Israel and Hezbollah,³⁵⁵ backed by both Bashar al-Assad and Iran. All these tensions can simply describe the Lebanese consociationalism as “*a term for a pathology of fragmentation and destruction*”.³⁵⁶

3.1.3 The exogenous variable

The external influence in the case of the Lebanese consociation, or even in general terms, has not always been taken into consideration as an influential variable that may threaten the system. Lijphart's theory does not take into account the role of exogenous factors in the shaping of a consociation. Instead, he considered all points as related to endogenous aspects, except one, i.e., the perception of an external threat that can increase the internal unity.³⁵⁷ Therefore, the idea that Lijphart had about the external pressure or presence in consociational societies may result in a positive outcome. However, a negative external climate was observable in the case of the drafting of the Ta'if Agreement.

The external presence in a consociation can be detected in different aspects. First, in the veiled or clear presence of external actors in the internal politics of the country. Second, in the possible limitation of the country's sovereignty. Third, through the country's political stability and national security. Each of these three points is important to

8th, 2005 asking for the truth on Hariri's death and the creation of a new government guided by Karamé. The manifestation was intended to represent all Lebanese citizens. The participation of Hezbollah to the manifestations was related to the fear of the Party of God to be marginalized from the public spectrum. To responde to Hezbollah's March 8th manifestation, on March 14th, the opposition forces called for a big gathering. The political slogans were related to the Syrian withdrawal from the country, the creation of a neutral government and the request for an International Court to rule about Hariri's assassination. These manifestations resulted in a polarization of public opinion which translated into the national politics of that moment.

³⁵⁵ 2006 Lebanese war was a 33 days-war between Hezbollah and Israel. The conflict began on July 12th, 2006 and lasted until the ceasefire was negotiated by the United Nations. The ceasefire entered into force the next morning on August 14th, 2006, although it was technically concluded on September 8th, 2006, when Israel removed its naval blockade on Lebanon.

³⁵⁶ Norton, A. R., Lebanon after Ta'if: is the civil war over?, p. 473.

³⁵⁷ Lijphart, A., Democracy in Plural Societies, New Haven: Yale, 1977, p. 124

understand the role of the external actors in the internal aspects of a consociation. Indeed, Lebanon is directly or indirectly influenced by the political and security stability of its regional environment, which also contributes to the shaping of internal political decisions. Indeed, Sections II and IV of the Ta'if Agreement were intrinsically designed to limit the Lebanese sovereignty and to bound the country to the political coordination with Syria. The Syrian presence in the country furtherly increased the clashes between some communities, especially between Christians and Sunnis. Indeed, the confessional representation of the groups determined by the Ta'if Agreement was reflective of their ties with external backers. This improves even more the fact that when Lebanese politicians lose in their élite cartel, they will try to broaden the scope of conflict in order to attract foreign support and, therefore, to defeat their opponents.³⁵⁸ It is not a surprise that some of the Lebanese religious communities perceived Ta'if as an illegitimate agreement. Moreover, the Syrian veto on some of the negotiated aspects in the city of Ta'if, in Saudi Arabia, left some concerns on the real functioning of the Lebanese consociation.

As stated before, the influence of regional aspects within the Lebanese consociationalism partially represent its inefficiency. Particularly, the Arab-Israeli conflict and its consequences has influenced the stability of the Lebanese consociation. More in particular, the problem is directly related to the turbulent environment of the conflict and, at the same time, to the Palestinian issue. Indeed, if the analysis of Lijphart on the well-functioning of consociations in deeply divided societies particularly focuses on European countries, what the Dutch scholar did not take into consideration were the consequences that a huge flux of migrants can bring to a consociation. The Palestinian presence and the Israeli one, even though in a different way, shaped the failure of the Lebanese consociation. This is also related to the fact that Palestinian refugees are frequently used as pawns by outside actors to disturb the communitarian balance in the country. Furthermore, we should also take into consideration that the social status of Palestinians in Lebanon is almost inexistent. They are confined in their permanent status of refugees, therefore incapable of being assimilated within the country.³⁵⁹ Somehow, we can say that the survival of consociational democracy in Lebanon is strictly related to the ultimate settlement of the Arab-Israeli conflict, and this might be true if we look at the 2006 war

³⁵⁸ Dekmejian, R. H., *Consociational Democracy in Crisis: The Case of Lebanon*, p. 255.

³⁵⁹ *Ibidem*, p. 261.

between Israel and Hezbollah or the continuous and still existing threats of escalation of violence between the two. However, as stated before, we should also consider that the regional background, excluding the Arab-Israeli conflict, still has a great influence in Lebanon. Indeed, to give an example, the current tensions between Saudi Arabia and Iran in the region play a large role in fuelling the sectarian divisions between Sunni and Shia inside Lebanon.³⁶⁰

Consequently, based on the analysis of the external influence in vetoing the adoption of some provisions during the drafting of the Ta'if Agreement, as well as the involvement in the confessional and political life of Lebanon, the related change of governments and, possibly, the involvement in political assassinations, reveal a negative external influence on the further destabilization of Lebanon and on the inefficiency of the consociational system. In this sense, the role that the Syrian civil war had in Lebanon will be analysed in the next section in order to understand how much the exogenous Syrian variable still weights in the social structure of the country along with the ineptitude of the Lebanese political class to deal with the issue.

3.1.4 The élite collaboration variable applied in the Lebanese consociation

Some authors believe that in order for a consociation to work, there should be a pre-existent social coexistence between the different religious, ethnical and/or linguistic communities. However, in the case of Lebanon, this factor appears to be irrelevant. Indeed, as analysed in the previous chapters, the Lebanese confessional communities lived a period of collaboration towards the independence from France, which brought to the adoption of the National Pact in 1943. Indeed, this Pact has been described as one of the most relevant accord between Christians and Muslims all over the world. Moreover,

³⁶⁰ To make an example, on May 2008 Hezbollah – backed by Iran – paralyzed Beirut as a protest campaign against the government's decision to take steps against the telecommunication network operated by the Party of God. Indeed, Hezbollah conducted a political campaign against Siniora's government. While, at the same time opposition gunmen took over an office of the Future political group led by Saad al-Hariri, leader of the governing coalition, Lebanon's most influential Sunni politician and a close ally of Saudi Arabia. Supporters of both sides (Shia and Sunni) pelted each other with stones in Mazraa, a Beirut district. This is remembered as one of the most violent episodes between Sunni and Shia Muslims after the civil war. Behind the fuelling of sectarian divisions between the two, a great role was played by both Iran and Saudi Arabia.

Perry, T., Lebanon political conflict turns violent, May 7th, 2008, Reuters. available at: <https://www.reuters.com/article/us-lebanon-strike-idUSL0761005520080507>

even after independence the different communities lived a period of coexistence based on the shared grievances deriving from years of colonialism. However, we should also take into consideration that these common grievances did not prevent the different communities from cultivating links with foreign patrons in order to reinforce their internal and national position.³⁶¹

Following this idea of cooperation, according to Lijphart one aspect describing a real consociation is the collaboration among the different political parties. A consociation works through operability and collaboration. However, with the adoption of the troika system together with the inter-confessional alliances and veto power it was impossible for the government to operate in favor of the nation as a whole, thus making the institutional process even more slow and weak than it was before. If the success or failure of a consociation should be measured according to the élite consensus, then the Lebanese one does not present a collaborative nor cooperative behaviour. However, it is worth arguing that although the consociational failure relies upon the non-collaboration among élites, in the case of Lebanon the exogenous variable and the weak political collaboration are intertwined. Indeed, antecedent episodes involving external factors contributed to the élite dissension and to the collapse of several governments in the last years. This idea of linking the precedent and current exogenous factors to the élite fragmentation in Lebanon aims to account for a deeper explanation of this disintegration and power sharing instability.

To conclude, Lebanon can be considered a consociation in theoretical terms. Nonetheless, from 1943 onward, the aim of the Lebanese consociation is that of freezing group identity to maintain the sectarian power balance between the different groups. Indeed, the rigid shared power quota system between the executive and the legislative, along with the veto power granted to groups for important issues decided by the cabinet, have built a non-effective consociation, incapable of adapting to the changing environment of Lebanon, like those related to demography.³⁶² Furthermore, the failure of the Lebanese consociation

³⁶¹ Kerr, M., *Imposing power-sharing: conflict and coexistence in Northern Ireland and Lebanon*.

³⁶² According to CIA World Factbook right now Muslims are the majority of the population representing 61.1% (30.6% Sunni, 30.5% Shia, smaller percentages of Alawites and Ismailis), Christians are 33.7% (Maronite Catholics are the largest Christian group), Druze 5.2%, very small numbers of Jews, Baha'is, Buddhists, and Hindus (2018 est.)

note: data represent the religious affiliation of the citizen population (data do not include Lebanon's sizable Syrian and Palestinian refugee populations).

is linked to the fluidity of population and of space: the demographic changes and the inflexibility of the power-shared system gradually led to a conflictual form of consociational democracy. Consequently, the sectarian and confessional State is unable to cope with sectarian and geopolitical struggles. Moreover, the combined and external dynamics have contributed to the downfall of Lebanon's consociation. Indeed, the exogenous variable is strictly connected with the internal consociational problems of the country due to past grievances and to present political or ideological alliances.

3.2 Contradictions of the Lebanese pluralist system

Modern Lebanon is characterized by the centrality of the confessional features in both politics and society. And it is the same confessionalism that reveals the contradictions of the Lebanese political system.

Indeed, despite the (few) big achievements between the different religious political élites of the country, in everyday life there is a strong vacuum of the features of a well-working pluralist system. Among them: ability to compromise, political tolerance and willingness to negotiate about sectarian differences. The presence of these features may help the country to overcome the controversies posed by its own political system.

Probably another aspect that influences the political vacuum is represented by the non-congruence between the prevalent political ideals and values and the political and cultural expectations of Lebanese people. This led to a reinforcement of the role of civil society, but it happened in order to cope with a weak and frail State. In this context, the strengthening of the old, but modern, clientelist dynamics have always precluded the development of fully democratic frameworks.

Examples of the contradictions of the Lebanese pluralist system can be related to different aspects that still affect the political crisis happening in the country. First of all, the “innovative provisions” brought by the Ta'if Agreement in 1989 and the real willingness of the political class to completing these provisions.³⁶³ Second of all, the complete

<https://www.cia.gov/the-world-factbook/countries/lebanon/#people-and-society>

³⁶³ At the moment of the adoption of the Ta'if Agreement the elements considered as those leading to a possible “nationalization” (namely, the Constitution, the electoral process, and the élite cohesion) became the same means towards disintegration. Indeed, they contributed to a further fragmentation of political and societal life and to consequent contradictions of the pluralist system. The real question after Ta'if was in fact that of understanding whether the political actors signing the agreement were capable of completing its provisions, but also if they were willing to do so. Indeed, when talking about the political élite signing what would have become the new constitutional text of Lebanon, we should always consider that they were

ineptitude of Lebanese politicians to find a way of collaborating between each other, led the people realise that the complete lack of interest and of conscience coming from the political class were the direct representation of the “ideal country” completely detached from the real one. An example of this can be seen in the 2006 Lebanese management of humanitarian aid.³⁶⁴ During the thirty-three days of war, the political leaders resulted as the missing piece in the then ongoing conflict. They rather presented themselves as weak mediators and negotiators, instead of forefront actors capable of defending and sustaining their citizens’ needs. This eventually led to another reinforcement of clientelist relationships and to a weak, if not inexistent, democratic competition between the élites. All these aspects led the Lebanese population having a strong disillusionment and lack of trust towards politicians. A third aspect is instead represented by the numerous attempts by the Lebanese political class to modify the electoral reforms in a way in which they would have gradually become less confessionalized, although still following sectarian lines.³⁶⁵ This aspect of the electoral reforms will be analysed in the following section, along with some of the constitutional amendments enacted during the course of time. The fourth aspect, instead, deals with the role of Hezbollah in the Lebanese political scenario and the inability of the different élites to deal with the issue of disarmament or the great social welfare network that the Party of God was able to build over time, leading to stabilize its role at a political level. The case of Hezbollah will be described in section 3.2.2, with a brief analysis of the Party of God and the inability of the Lebanese élite to promote and enact effective policies to decrease the role of the Party.

3.2.1 The electoral reforms: from 1992 to 2017.

in Parliament since 1972, prior the beginning of the civil war and they remained in charge until 1992, the year of the first elections.

³⁶⁴ After the 2006 war with Israel, Lebanon received international humanitarian aid in response to the large number of victims and, at the same time, the massive environmental damage in the Mediterranean Sea. However, the Lebanese State was not able to manage the crisis from an international relations’ perspective and neither from an internal politics and consensual one. Indeed, the government led NGOs to deal with the huge number of internal refugees and displaced persons in the territory, even those organizations that had never operated in Lebanon causing enormous problems. Moreover, the government interfered in the management of humanitarian aids by sourcing some of them and subsequently selling them to the black market, leading to a serious of internal political scandals and to the successively arrest of some politicians. Quilty J., *Politics and Business, State and Citizenry. Preliminary Thoughts on the Response to Lebanon’s Humanitarian Crisis*, in “MIT Electronic Journal of Middle East Studies, 6, Summer, 2006, pp. 80-95.

³⁶⁵ This idea of enacting an electoral law free of sectarian restrictions is actually contained in the Ta’if Agreement provisions, although never achieved by the Lebanese political class.

When talking about the contradictions of the Lebanese politics, we should also consider the different and controverse electoral reforms.

In 1992 the first electoral reform was adopted. According to Article 1 of the new reform, in line with the provisions contained within the Ta'if Agreement, the Lebanese Parliament changed the number of its deputies, from 108 to 128. The electoral constituencies were based on the *muhāfaza* (governorate) and the number of constituencies was distributed as following: one for the Beirut's governorate, one for the Southern part of Lebanon and Nabatiyyeh, one for the Northern part of Lebanon, one for each Mount Lebanon's *qadā'* (district) and for the Beqaa Valley, with the exception of Baalbek and Hermel districts which had their own governorate.³⁶⁶ As a consequence, the new electoral system was conceived so that each deputy could simultaneously represent his own constituency and his own religious community. The seat was reserved for his community, but he should be elected by the entire constituency which is usually multi-confessional.

The Parliament approved the electoral law which was different from the Ta'if's projections: the basis of the constituency was only in the *muhāfaza*, with the consequent abolition of the *qadā'*. With the constituency enlargement any candidate would have had a broader electoral basis.³⁶⁷ In this way, broader and bigger coalitions would have born, enhancing national integration dynamics, both socially and politically, at élite's level.

What happened in the 1992 elections was the result of a mass discontentment. The elections, which should have been the starting point for a new Lebanese political scenario, were instead opposed by several actors. The reasons behind were varied: there were those who believe that national elections should have been held only when Syrian troops had withdrawn from Lebanon; there were instead other opponents who believed that the new electoral law was very different from the Ta'if provisions, and they were afraid this would have undermined the already fragile equilibrium reached in 1989. As a result, the elections had an abstention rate of 70%.

After the elections, the big and old Lebanese families kept occupying parliamentary seats, but at the same time there were several changes in the political scenario. One of them was represented with the entrance into Parliament of the representatives of the militias, such as Amal and Hezbollah.³⁶⁸ Furthermore, Nabih Berri was elected President of the Chamber of Deputies once again. After the elections, 24% of parliamentary deputies

³⁶⁶ Di Peri, R., *Il Libano contemporaneo: storia, politica, società*, p. 110.

³⁶⁷ Broader in terms of confessions and less localized from a political point of view.

³⁶⁸ They both represented the majoritarian bloc in Parliament having 9 and 25 deputies, respectively

represented parties which were directly involved during the war. The newly elected Prime Minister was instead Rafik Hariri, strongly supported by the President Elias Hrawi.³⁶⁹

The antecedent period to the 1996 elections saw institutional problems related to the Hariri's government crisis³⁷⁰ and to the new electoral law. Indeed, the 1996 electoral law should have regulated the elections but many controversies and oppositions started to emerge. The topics of discussion were several, among them:

- The constituencies.³⁷¹
- Preparation and revision of the electoral lists.
- Registration to the electoral lists.
- The electoral certificate.
- The right to vote to non-residing Lebanese people.
- The elections in the occupied South.
- Supervision and monitoring of the elections to avoid fraud and manipulation.³⁷²

Ironically and despite all the new proposals, the 1996 electoral law presented just few adjustments to the 1992 one. For instance, the new electoral law gave a special status to Mount Lebanon dividing the area into six different electoral districts.

When Émile Lahoud³⁷³ became President of the Republic in 1998, he modified the electoral law once again. Indeed, on December 22nd, 1999, Lahoud approved a draft

³⁶⁹ Elias Hrawi was elected President of the Republic of Lebanon on November 24th, 1989. He was the one in charge of signing into law amendments to the Constitution that formalized the Taif Agreement reforms. He also signed the treaty of fraternity and cooperation with Syria in 1992 and the one who appointed Rafik Hariri as Prime Minister in the same year.

³⁷⁰ When Rafik Hariri was appointed, the direction taken by Lebanese politics was clear: to implement a revaluation of the Lebanese pound, to bring down inflation, the economic recovery, but above all to launch an unprecedented architectural reconstruction plan, SOLIDERE (Société Libanaise pour le Développement et la Reconstruction de Beyrouth). However, about the economic reforms, Hariri's plans did not foresee any concrete form of aid for the poorest sections of the population. This was because, according to the Prime Minister, the influx of foreign investments deriving from the reconstruction project would have generated positive effects. Hariri's projects mainly involved the area of Beirut, rather than the entire country, and focused on the financial sector, while stopping the development of the industrial and agricultural sectors. A great importance was given to monetary stability, preferred to a real process of global growth of the country's economy. The Prime Minister was also accused of financial speculations by the Lebanese authorities. This led to the huge wave of accusation between the legislative and the executive branches concerning corruption of both institutional and public administration authorities. These accusations became public knowledge starting from 1994.

³⁷¹ About this topic there were three main opinions: the first was that of creating a unique district for the whole country; the second, instead, provided for the elections at a *muhāfaẓa* level, finally, the idea of having small electoral constituencies.

³⁷² Di Peri, R., *Il Libano contemporaneo: storia, politica, società*, p. 116.

³⁷³ When Émile Lahoud became President of the Republic in 1998, he aligned himself with Hezbollah, and picked Selim al-Hoss as Prime Minister. All of this led to strong tensions between Rafiq Hariri and Lahoud.

legislation concerning the modification of 1996 electoral law through the addition of fourteen more constituencies.³⁷⁴ This electoral law was at the top of the political agenda of Lahoud, because it had the aim of facilitating the democratic process of the country and, at the same time, to respond to the need of political reforms.³⁷⁵ Nevertheless, once again the new electoral law did not comply with the provisions contained within the new Constitution and, at the same time, a new hybrid system emerged. As a matter of fact, in some areas such as those of the Chouf, Metn and Beqaa the principle of the small constituency prevailed. On the other hand, in the South of Lebanon the principle of the big constituency predominated, while the medium one was used in some other areas, embodying two or three small constituencies. All these aspects were useful in order to support one or more candidates.³⁷⁶

The 2005 new electoral law was extremely controversial. The country was undergoing a strong economic and institutional crisis, which along with the political assassination, led to an increased public awareness about corruption and controversies in Lebanon.³⁷⁷ The new draft legislation provided for a constituency division that should have had the *qadā'* as the administrative basis. The *qadā'* resulted as “damaged” by the previous electoral law, because in the biggest Lebanese districts trans-confessional alliances were the only way to get elected. This electoral law was not approved, due to the opposition’s idea that this would have led to an increased confessional division. Therefore, the 2005 elections were held with a new electoral law, although very similar to the one adopted in 2000.³⁷⁸

Moreover, during his term, he exerted more control over government decision-making than both Prime Minister and Speaker of the Chamber. He is known for modifying the limits on the executive authority of the presidency which were stipulated in the 1989 Ta'if Agreement. After that, he ordered security forces to launch a massive arrest against nationalist dissidents without informing the Prime Minister nor the ministries.

³⁷⁴ 3 in Beirut, 2 in the North of the country, 4 in Mount Lebanon, 3 in the Beqaa Valley and 2 in the South of Lebanon. Those in the South were exceptionally united, creating just one constituency because of the Israeli occupation.

³⁷⁵ Nassif N., Les élections législatives de l'été 2000, in “Monde Arabe Maghreb-Machrek”, 169, 2000, p. 116.

³⁷⁶ Di Peri, R., Il Libano contemporaneo: storia, politica, società, p. 118.

³⁷⁷ The year 2005 was marked by many important events concerning the internal politics and social life of the country. It was the year of the assassination of Rafik Hariri which caused a shock in the population. After Hariri, the new government was headed by Najib Mikati, who had as main goal that of preparing the next elections and to secure they were not surmounted by the already well-established wave of political corruption.

³⁷⁸ According to the Constitutional text, the formalities should have been completed no later than May 2005 together with a new electoral law. Due to the situation in the country and the lack of time the institutions had, the new electoral law, as reported above, remarked almost the same characteristics of the previous one. Some of the small modifications regarded the inclusion of new *muhāfaza*, such as Akkar e Baalbek-Hermel. The system was composed by some constituencies at the *qadā'* level, the rest were all *muhāfaza*.

Furthermore, the 2005 electoral law potentially increased the confessional divisions. Indeed, many parties feared the exclusion from Parliament, therefore they tried to seek for new – and controverse – alliances.³⁷⁹

The 2009 electoral law maintained the status quo and the division of power following a communitarian point of view. The new electoral law strengthened it even more and it laid the foundations for an élite preservation, corruption and the institutional stalemates that were at the basis of the political crisis which Lebanon was undergoing. Indeed, the 2009 results to the elections reinforced these aspects: the maintenance of the status quo was essential for the political class and the promotion of self-interested or confessional policies was even more important than adopting a consensual action for the entire country. Another time, the possibility of unifying Lebanon faded away and clientelism prevailed once again.

After the parliamentary elections held in 2009, the life of the Lebanese Parliament was extended on several occasions, and Presidents, Prime Ministers and governments have come and gone. Following years of discussions and political turmoil, the 2017 electoral law was bringing something new into the Lebanese scenario. Indeed, unlike the former “winner takes all” system, the proportional representation was promoted for the first time in Lebanon. This new electoral law allowed every citizen to vote wherever he or she wanted, without resorting to his or her *muhāfaza*. This electoral law was praised as the first fully home-grown electoral law.³⁸⁰

The article dealing with the proportional representation is Article 98 of the electoral law.³⁸¹ The new system adopted in 2017, differentiated from the one of 2008. Something

³⁷⁹ one of the most important turning point in this period was the return of General Michel Aoun from his exile in France after the Syrian attack to the Presidential Palace in Baabda in 1990. The return of the General was a matter of concern both for Saad Hariri and for the Maronites, who feared a further internal fragmentation caused also by the creation of these new and controverse alliances. Namely, that involving the Sunni Muslim, Saad Hariri and the Druze, Walid Joumblatt along with the one composed by Lebanese Forces and the Kataeb Party; on the other side instead Michel Aoun decided to create an alliance with Hezbollah and other Maronite forces, such as the one of Michel Murr. At the same time, the alliance created between Amal and Hezbollah led the two political parties to present themselves as a joint force at the 2005 elections. These new alliances were the cause of the non-presence of a political agenda in Parliament. This hybrid government increased the confessional divisions and the use of political slogans in religious keys became the new reality.

³⁸⁰ Lebanese electoral law of 2017: Full text in English, The Daily Star Lebanon, May 5th, 2018. Available at: <https://www.dailystar.com.lb/News/Lebanon-News/2017/Jul-07/411988-lebanese-electoral-law-2017-full-text-in-english.ashx>

³⁸¹ To see the text of Article 98 of the 2017 electoral law, please visit: https://www.ifes.org/sites/default/files/lebanons_2017_parliamentary_election_law_final.pdf

that both had in common was the division of constituencies and the allocation of seats among the same constituencies through a representative table included the text of the law. However, both in the case of 2008 and 2017 electoral law, there was no information given about the specific criteria used to determine constituencies and allocations of seats. This electoral law made the country shifting from a majoritarian to a proportional representation, even though the electoral threshold was quite high (10%) and the permanence of the division of seats was still based on the confessional affiliation of the candidates.

To conclude, the aim of these numerous electoral laws had as the main objective that of diminishing the confessional basis of elections. However, as hereabove analysed, despite the many modifications, what endured overtime was the very strengthening of the confessional divisions therefore in contrast with the Ta'if provisions. It is indeed evident that new electoral law presented just few adjustments to the previous ones. The controversy lays exactly in the idea of responding to the need of new political reforms through the modification of electoral laws, although they eventually resulted into the reinforcement of a pluralist political system based on élite preservation, corruption, nepotism, clientelism and institutional stalemate.

3.2.2 A State within a State: the case of Hezbollah in Lebanon³⁸²

“We are often asked: who are we? The Hizbillah, and what is your identity? We are the sons of the Umma, the Party of God (Hizb Allah), the vanguard of which was made victorious by God in Iran.”³⁸³

³⁸² “A State within a State” refers to Hezbollah in the way in which the organization is able to provide social services and basic needs in areas which are abandoned by the Lebanese State. There, Hezbollah serves as a State for the population. This led some scholars to describe the Party of God as “a State within a State” or at least as holding an autonomous status of its own. Despite that, it is also important to notice that it is not a real statehood, rather its nature resembles that of an organization or a political party which developed its own idea during time, shifting from resistance to politics. It should also be emphasized that Hezbollah was directly legitimized by the Lebanese State after the adoption of the Ta'if Agreement. Moreover, the Party of God still remains dependent on the State.

Sharara, W., *Dawlat Hizballah: Loubnan Moujtamaan Islamiyan, The State of Hezbollah: Lebanon as an Islamic Society*, Dar Annahar, 1996.

³⁸³ This is a translation of the “*Nass al-Risala al-Maftuha allati wajahaha Hizbillah ila-Mustad'afin fi Lubnan wa-l-Alam*”, the Hezbollah's open letter to the oppressed citizens of Lebanon and those all around the world, published on February 16th, 1985, in al-Safir (Beirut). The translation was made by the ICT (International Institute of Counter Terrorism). The Hezbollah Program, ICT, 1988, available at: <https://www.ict.org.il/UserFiles/The%20Hizballah%20Program%20-%20An%20Open%20Letter.pdf>

Hezbollah was born in Lebanon following a series of historical, political, societal, and ideological aspects.³⁸⁴

When nine delegates from different Shia groups gathered in Baalbek, they decided upon a common policy and the redaction of a final document, describing the pillars of the new organization:

- The ideological and religious bases should follow the Islamic rules;
- The use of jihad against the Israeli occupation and against the USA;
- And the adherence to the *Wilayat al faqih* doctrine, recognising its necessary use for the Islamic nation.³⁸⁵

The Manifesto here described was directly approved by Ayatollah Khomeini who formally gave birth to the Party of God.³⁸⁶ Despite the formal creation of Hezbollah happened in 1982, the real birth of the organization as we know it today, embodying ideological principles and clear objective to pursue³⁸⁷ that can be linked to the promulgation of the 1985 Manifesto.³⁸⁸

³⁸⁴ The Israeli invasion of the country in 1978 certainly favoured the gradual creation of Hezbollah. This was also because during the same period, the Lebanese Shia community was living a moment of loss from political and religious point of views. From a religious point of view, the Shia Lebanese community was shocked by the sudden disappearance of Imam Musa al Sadr on August 28th, 1978, after his trip to Libya. Instead, from a political point of view, the problem was related to the decision of al Sadr's successor, Nabih Berri, to sustain Gemayel's government. Berri's decision resulted in the further destabilization to the Shia community in Lebanon, along with several repercussions within its own party, AMAL. Indeed, some members of the Parliament, guided by Hussein Moussawi and together with Hasan Nasrallah, decided to abandon Berri's movement and to create the Amal Islamic Movement. This resulted in the triggering factor to the birth of Hezbollah, because it was very difficult to believe that the Islamic activism enacted by Imam Musa al Sadr would have been vanished during the years of the Lebanese Civil War, or that the Shia community did not follow the wave of success caused by the Iranian and Khomenian Revolution of 1979 and the Islamic possibility offered by the *Wilayat al faqih*. The relation between Iran and Hezbollah was not causal at that time, because a great part of what would have been the leading Iranian ruling class established itself in Lebanon and collaborated with Fatah, AMAL, and Dawa'a Party.

³⁸⁵ Stivala, I., Hezbollah: un modello di resistenza islamica multidimensionale, CRST, 2019.

³⁸⁶ In line with the *Wilayat al faqih*, there was the explicit dependence from the Ayatollah Ruhollah Khomeini's guidelines. Ayatollah Khomeini was recognized as the most influential *wali al faqih* (jurist-theologian) and supreme religious and political authority.

³⁸⁷ Hezbollah has five main ideological pillars: 1. The full commitment to the Shia Islamic principles; 2. Armed resistance to the Israeli invasion; 3. The Islamic Jihad, by emphasising the role of the martyrdom as a central element to its vision of the surrounding world; 4. The defence of the oppressed against the oppressor(s), regardless from its status or religious affiliation; 5. The creation of an Islamic state based on the Khomeinist principles of *Wilayat al faqih*.

Norton, A., R., Hezbollah: A Short History, Princeton, Princeton University Press, 2018.

³⁸⁸ With its Manifesto, Hezbollah formally declared its detachment from the AMAL's program. If on the one hand Berri's AMAL was laic and reformist, on the other hand Hezbollah was following the new and revolutionary clerical government of Iran.

In addition, after the end of the civil war in 1990, Hezbollah was the only authorized militia to keep fighting against the Israeli forces in the southern part of Lebanon. In 2000, after the Israeli withdrawal from the territory, the Lebanese government confirmed the right to Hezbollah to maintain its armed forces with the aim of liberating the last disputed areas with Israel. However, Hezbollah's possession of weapons has always been a topic of discussion at an international level, especially when in 2004 the United Nation's Security Council adopted the resolution number 1559, calling for immediate disarmament to all Lebanese militias.

From a political and social point of view, Hezbollah has been capable of installing its ideological perspectives in Lebanon, becoming a key point of reference not only for the Shia community in the country, but also for the other religious confessions. According to Massimo Campanini, this has been possible due to a visionary political action, accompanied by wise communication strategies, together with a strong solidarity commitment.³⁸⁹ The Party of God's capacity to sustain those "abandoned" areas by the State, surely results today as one of the main contradictions of the Lebanese pluralist system, along with the incompetence – or unwillingness – in finding a solution to its disarmament. Indeed, during time Hezbollah gained more support and it was able to build its extensive political organization, security apparatus and social services networks, fostering its reputation as "*a State within a State*".³⁹⁰

Hezbollah became a member of the Lebanese Parliament when eight of its members were elected in 1992. From that moment on, Hezbollah's Secretary General – Sheikh Hassan Nasrallah – reorganized the Party, adding new bodies to handle its political, social, and military work, as well as the expansion of the social welfare activities to sustain its support within the Shia Lebanese community.³⁹¹

³⁸⁹ Campanini, M, *L'alternativa Islamica*, Bruno Mondadori editore, ed. 2016.

³⁹⁰ Robinson, K., on Council on Foreign Relations: What is Hezbollah?, September 1st, 2020, available at: <https://www.cfr.org/backgrounder/what-hezbollah>

³⁹¹ Blanford, N., Lebanon: the Shiite Dimension, Wilson Centre, August 27th, 2015, available at: <https://www.wilsoncenter.org/article/lebanon-the-shiite-dimension>

Moreover, it has been holding cabinet positions since 2005 and the most recent national elections³⁹² granted to the Party thirteen seats in the Lebanese parliament. Its gradual deepening political engagement has also transformed the organization into the main representative of Lebanon's Shiites.

The entrance of the organization into the Lebanese Parliament changed Hezbollah's position, at the same time marking its integration into national politics in 2009, when Hassan Nasrallah read the new Manifesto in the city of Beirut, on November 30th, 2009.³⁹³ This manifesto was less Islamist than its predecessor and it called for "*true democracy*"³⁹⁴ and nuanced deliberations on a future Lebanese State.³⁹⁵

If the organization's former key objective was solely the Resistance against Israel, the willingness to foresee a political path became a fundamental step for Hezbollah itself. At the same time, it reinforced the Resistance against the Jewish State all over Lebanon, also becoming a point of reference in Middle East. Consequently, Hezbollah built its organizational hierarchy. Due to the completeness of its hierarchic model, Hezbollah was able to pursue all the functions of a real autonomous State and to be involved in the social, educational, healthcare system, as well as in the economic support and in the reconstruction project in the southern part of Lebanon. Where the State is not present, Hezbollah makes its appearance, consequently strengthening its political role. In this sense, Hezbollah is a contributing factor to the weakness of the Lebanese State, but it is also the product of the Lebanese political system.³⁹⁶ Indeed, the great role that the Party of God has

³⁹² The most recent national elections were held in 2018.

³⁹³ Berti, B., The rebirth of Hezbollah, Strategic Assessment Vol.12, Feb.2010.

³⁹⁴ Moreover, in this new document, Hezbollah constantly repeated its long-standing rejection of Lebanese sectarianism in the political system of the country. Until political sectarianism is abolished, the organization argued that "*consensual democracy will remain the fundamental basis of governance in Lebanon. [...] The consensual democracy constitutes an appropriate political formula to guarantee true partnership and contributes to opening the doors for everyone to enter the phase of building the reassuring State that makes all its citizens feel that it is founded for their sake*". This Manifesto represented the natural consequences of Lebanese events, society and geopolitical issues in both country and the whole region.

The New Hezbollah Manifesto, November 2009, available at:

<http://www.lebanonrenaissance.org/assets/Uploads/15-The-New-Hezbollah-Manifesto-Nov09.pdf>

³⁹⁵ Robinson, K., What is Hezbollah?.

³⁹⁶ Khatib, L., How Hezbollah holds sway over Lebanese State, Research Paper, Chatham House, June 2021, available at:

<https://www.chathamhouse.org/sites/default/files/2021-06/2021-06-30-how-hezbollah-holds-sway-over-the-lebanese-state-khatib.pdf>

today is the result of ineffective policies towards the diminishing of its power from the State's institutions.³⁹⁷ Hezbollah's organizational and funding capacity, along with its physical resources and the support it has, threatens the country and let the other parties to seek alliances with the Party of God, even the most improbable ones. This is also due to the fact that despite the Israeli withdrawal and the end of the conflict, Hezbollah was able to maintain its powerful role reaching a military capability that is, to a certain extent, even stronger than that of the Lebanese Armed Forces, while none of the other political actors in Lebanon has a militia that could rival Hezbollah.³⁹⁸

All these aspects lay behind the contradictions of the Lebanese pluralist system. Even though some political actors are involved in reforming the country, they always find the same obstacle: Hezbollah, its role and its disarmament.

3.3 The frail Constitution of Lebanon

The evolution of the Lebanese Constitution and its best practices – in particular those governing the application of the text – show how the institutional balances constantly shift in order to adapt to the social and political dynamics of the country and its regional scenario. Indeed, the increase in the demographic and social weight of the Muslim part

³⁹⁷ An example of this is represented by the aftermath of the 2005 elections, when Amal and Hezbollah presented themselves as a joint force. The new government by Fahoud Siniora had to face its incapacity of dealing with Hezbollah's disarmament. The uncertainty caused by a period of political assassinations, big and astonishing comeback, and the impossibility to govern without the Syrian patronage convinced people that a new possible militarization of the society was becoming real, once again. This was strengthened also by the fact that the government was unable to disarm the Party of God.

Instead, in 2008, the violence used by Hezbollah led to an internal conflict with Siniora's government and with the Lebanese Army in Beirut. This was because Siniora authorized for inspections to the telephone networks of the Party of God and, at the same time, dismissed the in-charge security chief at the airport. The man was loyal to Hezbollah, and this exacerbated the internal battle between the Party and the government. After two weeks of internal conflicts between Hezbollah and Siniora, the government decided to put aside the accusations. This led to a new communitarian accord, signed at Doha on May 21st, 2008, putting an end to the eighteen months political crisis that threatened a new possible advent of a civil war. Afterwards, a shared feeling that the Doha Accord was only partially mitigating the Lebanese problems was related to the fact that from 2008 onward, both politicians and civil society understood that the role of Hezbollah was becoming even stronger in the country and played a crucial role in the confessional equilibriums. The Doha compromise did not solve the most important political issues: the Hezbollah's disarmament after the withdrawal of the Israeli forces from the territory.

Di Peri, R., *Il Libano contemporaneo: storia, politica, società*.

Di Peri, R., *Islamist Actors from an Anti-system Perspective: The Case of Hizbullah, Politics, Religion & Ideology*, Routledge, 2014, pp. 487-503.

Di Peri, R., *Determinanti storiche e politiche della nascita e dell'evoluzione di Hizbullah*, Il Politico, Rubbettino Editore, Maggio-Agosto 2009, Vol. 74, No. 2 (221), pp. 27-61.

³⁹⁸ Khatib, L., *How Hezbollah holds sway over Lebanese State*.

of the population³⁹⁹ in the last seventy years is having an enormous impact on power sharing and distribution of political offices of each institutional figure. As a matter of fact, the Lebanese institutional framework shifted from the centrality of the Maronite President of the Republic to a diarchy which gradually integrated Sunni Muslims, guaranteeing them the leadership of the executive. Moreover, the increment of distribution of power was also adopted for the Shiite President of the Chamber, whose powers have been reinforced with the adoption of the Ta'if Agreement.

As reported in section 3.1, the exogenous aspects and the regional Middle Eastern scenario contributed to affect the socio-political evolution of Lebanon, having repercussions into the institutional life of the country and into the development of the Constitution. With the end of the French mandate in Lebanon the pair Parliament-Head of State shifted from a Maronite prevalence to a shared one with the division of power among Maronites and Sunnis and the following emersion of the Head of Government figure. The following vicissitudes gave great institutional visibility and exposure to the Shiites, granting them the Presidency of the Chamber.

In the context of substantial constitutional adjustments, we can observe the continuity that has characterized some constitutional articles. Indeed, some of them have been retouched – even though it was mainly a cosmetic operation,⁴⁰⁰ which have not changed their inner substance – while provisions have remained the same since 1926, the year in which the Constitution was officially born under the French mandate. In particular, three are the articles that represent the basis of the Lebanese institutional framework. These three articles denote a particular framework if compared to the classic idea of constitutionalism and to the Middle East judiciary and legal landscape.

The first pillar lies in Article 9 of the Constitution, guaranteeing freedom of conscience. This freedom gives the opportunity to anyone to choose their own personal status, deciding to adhere to a specific religious confession, with the exclusion of laic people who want to leave their confession without embracing another: current legislation, in fact, does not allow them to avoid the norm of the confessional statute.⁴⁰¹ All in all, freedom

³⁹⁹ Both Sunni Muslims and Shia Muslims in Lebanon.

⁴⁰⁰ Pin, A., *La gracile Costituzione del Libano*, Quaderni costituzionali, 2008, p. 189.

⁴⁰¹ *Ibidem*, p. 189.

of conscience gives the opportunity to decide to which religious community a Lebanese wants to adhere to, and not to choose whether to join it or not.

The second pillar, instead, lies in the provisions of Article 10 of the Constitution. This article provides for freedom of teaching, and, above all, it deals with the right given to the religious communities to run their own schools. This provision was considered as essential by all the religious communities in Lebanon, with the final aim of guaranteeing their own cultural presence and survival through education. Up to present time, this subject represents a thorny issue in Lebanon, because Article 10 requires the State to indicate the general rules on education. Indeed, the common political discussion on the matter constantly relies on the guidelines that the State should adopt concerning liberal arts teaching, such as literature or history.⁴⁰²

The third pillar is instead represented by the multi-confessional nature of the State, stated in Article 95. This article provides for a parliamentary representation of both Christians and Muslims and a proportional distribution among the various confessions of the ministries and public administration's positions. Article 95 has been present in the Constitution of Lebanon since the first text was adopted in 1926, under the French mandate. Representing probably the most discussed article, it has been revised several times, although without ever changing the approach of the same, i.e., the overcoming of Lebanese confessionalism as final (and continually postponed) aim.⁴⁰³ This is because the confessional nature of the State regulates the political, institutional, and constitutional life of Lebanon. The confessional system constantly gives rise to the greatest internal discussions about the de-confessionalization or not of the State. In this sense, the major discussions revolve around the democratic dialectic and the distribution of powers among the confessions, relying on the idea of majority and minority. However, from a constitutional point of view – which first of all provides for the qualified majority of the Chamber for its election – majority and minority play an almost equal role, although of course the majority weighs more in terms of votes.⁴⁰⁴

⁴⁰² For instance, giving priority to the teaching of the Lebanese Arab history rather than the western or Mediterranean one represents a difficult political choice. Another example is that of teaching Islamic literature (both *Jāhiliyya*, pre-Islamic literature, and post-Islamic one). All these subjects represent a political controversy between the different religious actors, and a final agreement on the matter is really difficult to find.

⁴⁰³ The details on the matter can be found in M. Tabet, *Religion et fonction publique*, in AA. VV., *Droit et religion*, 2003.

⁴⁰⁴ Pin, A., *La gracile Costituzione del Libano*, p. 190.

When dealing with confessionalism and the law, the current Lebanese system based on a religious power sharing results to be inadequate for both institutional life and social one because it can be easily interconnected with an easy grip on the population about political thorny issues that can translate into open and violent conflict. Confessions are the interface of the population with the public institution and with the law. Consequently, this understanding undermines the creation of a social cohesion based on the concept of citizenship.⁴⁰⁵ Article 95 endured over time, and it reinforced the religious identity of Lebanese people, over the national one.

It seems that the multi-juridical dimension of the modern Lebanese Constitution has played a role in defusing tensions by engaging former excluded but emerging religious groups in the political life of the country. The Constitution also tried to secure an ordered civic life than can be undermined if shifted towards a classic constitutionalism.⁴⁰⁶ If that would happen, it would trigger the reaction of the minorities concerning the political representation and, at the same time, it would not be accepted by the Islamic part of population which prefers a personal status based on confessions.⁴⁰⁷

However, the system reported in the Lebanese Constitution presents two big issues. The first one deals with the already cited impossibility of the formation of a unitary national identity, the second instead deals with the intrusion in national affairs of external actors. This aspect is particularly related to the legitimacy of the presence of Hezbollah in the Lebanese territory, as reported within the Constitution. However, when dealing with Hezbollah we should also consider a bigger picture, i.e., the involvement of external actors such as the Islamic Republic of Iran with its proxy: Hezbollah. The Party of God plays a double game: on the one hand, it participates in the political life of the country and on the formation of the executive, on the other side it plays the role of a State within the State. The Party has indeed organised a big network of welfare in the south of Lebanon, controlling the territory and securing the area, but also creating new hospitals and assistance services. This social function that Hezbollah was able to create by itself, without any type of legal or juridical restriction, led the Party obtaining a considerable number of seats in Parliament.

⁴⁰⁵ Salem, J., *Religion et Constitutionnalisme au Liban, Droit et religion. Colloque de Beyrouth mai 2000*, Bruxelles, 2003, p. 488, cited in Pin, A., *La gracile Costituzione del Libano*.

⁴⁰⁶ Classic constitutionalism provides for the same personal status for all citizens, as well as the non-role of religion in the selection of the political élite and power sharing on the basis of virtue.

⁴⁰⁷ Pin, A., *La gracile Costituzione del Libano*, p. 191.

Another aspect to be taken in consideration when dealing with the frail nature of the Lebanese Constitution relies on the preservation of the political confessional system based on demography. In fact, the demographic aspect in Lebanon relies on an instable element, that of the *fictio iuris* shared demographic weight between Christians and Muslims.⁴⁰⁸ However, we should consider that the possibility of a new national and official census is not only opposed by Christians, right now representing a minority in the country, but by Muslims too. This is intrinsically related to the deep division between Sunni and Shia Muslims in Lebanon and the consequent fear of losing position. As a consequence, today's distribution of seats is based on the 1932 census that does not represent the real demographic percentages in the country. However, if the Constitution would speak about this specific issue, there would be triggering political reactions that would undermine the distribution of the supreme political offices and, consequently, the maintenance of constitutional practices.

To conclude, the constitutional revisions adopted with the Ta'if Agreement balanced the demographic weight of the various religious components of the Lebanese society, consequently giving space to the Muslim community and reducing the role of the Christian one, both from an electoral and institutional point of view. Indeed, Article 24 of the Constitution formally eliminates the decades-long Christian parliamentary prevalence. This is not only the result of a change in the demographic percentages among the different religious communities, but it is first of all one of the major results of the Lebanese Civil War events.

The probably most fragile aspect of the Lebanese Constitution relies upon the *sine die* overcoming of the sectarian system, which the political agenda has always postponed. As a matter of fact, Ta'if did not differentiate from the National Accord, and the interconfessional equilibrium was modified and strengthened even more. This was because the constitutional reported division of power and equal proportion among Christians and Muslims, modified the perception of power among the different communities and their relationship with political leaders. From the adoption of the new constitutional text onward, the institutional equilibrium of the Second Republic found itself even more influenced by confessionalism than it was during the First Republic.

⁴⁰⁸ Pin, A., *La gracile Costituzione del Libano*, p. 191.

Moreover, the newly inaugurated troika is the direct representation of the inherent difficulties of the Lebanese Constitution. The troika issue makes difficult the decision-making process, determining a sort of “confusion of powers”.⁴⁰⁹

3.4 Taif Agreement: a new possibility or a lost opportunity?

In the past, Lebanon was considered as an avant-garde country in Middle East, however the bloody civil war and the perpetual institutional scandals within the Lebanese political élite, gradually shadowed the future of this country. In the political, institutional, and even constitutional scenario, the biggest role has been played by the Ta'if Agreement, signed on October 22nd, 1989. This Agreement signed the end of the Lebanese Civil War and, at the same time, the beginning of the Second Republic. Through Ta'if both the Constitution of 1926 and the unwritten Nation Pact of 1943 were amended.

But what is the final goal behind the Agreement? And, above all, has the Ta'if Agreement contributed to change the system or has it just furtherly legitimated an-already existing political and confessional situation? The analysis provided here, has the main intention of answering to these questions in order to understand whether or not Ta'if has represented a new possibility for Lebanon or, instead, a lost opportunity.

To understand Ta'if, a brief analysis of the last years of the Lebanese Civil War seems to be essential for the final result of this research. Indeed, during the fifteen years civil war, international powers and regional ones tried to present themselves as the negotiators to find a solution to the conflict.⁴¹⁰ In this panorama, the Palestinian cause was one of the major issues during the civil war. In particular, starting from 1970, the PLO used Lebanon as logistic and military base for its operations.⁴¹¹

In 1988 the political situation of Lebanon was really complicated, but a wave of optimism started to spread all over the country, probably marked by the last moments of the long-lasting civil war and the opportunity for new reforms to be adopted. In this period, both Syria and the USA played a major role in Lebanon. The USA adopted a traditional vision for the Lebanese internal politics, based on the independence of the country by reducing

⁴⁰⁹ Hudson, M. C., Lebanon after Ta'if: Another reform opportunity lost?, in “Arab Studies Quarterly”, 1999, pp. 27-40.

⁴¹⁰ In particular, we remember the United States of America, Syria, The Islamic Republic of Iran and Iraq.

⁴¹¹ 1970 is the year in which the PLO decided to install its headquarter in Lebanon.

Di Pieri, R., Gli accordi di Ta'if: seconda Repubblica Libanese o Occasione Mancata?, p. 149.

and limiting the regional conflicts in the Lebanese territory or, at least, avoiding expanding even more. While, Syria started to be seen as a complete negative actor in the Lebanese politics, not only by the population itself but also by the regional actors. Indeed, the Syrian efforts to impose a candidate as the new President of the Republic triggered the hostility of Iraq, PLO, Egypt and Jordan which created an axis against the hegemonic presence of Syria in Lebanon.

1988 was the year of an intense diplomatic activity by regional and international actors, with the final aim of finding a new candidate for the presidency. However, this objective was constantly thwarted by the obstructive policy adopted by the Lebanese Parliament which was unable to reach the final consensus for the election. At the end of the presidential mandate, Amin Gemayel, in the guise of outgoing President, nominated a new government composed by five military ministries (two Christians and three Muslims) under the direction of General Michel Aoun, notwithstanding the tradition of reserving it for a Sunni Muslim. This is possible because the Lebanese Constitution states that in the event of a presidential vacancy, the outgoing President can appoint a temporary Prime Minister acting as a President. However, the three Muslim ministries refused to be nominated and what remained of the previous Parliament is a self-proclaimed legitimacy under the leadership of Salim El-Hoss. Starting from September 23rd, 1988, Lebanon found itself with two different governments, but only one of them was in compliance with the Ta'if provisions: that of Aoun.

The internal political situation became very instable and Aoun started its personal battle against the Syrian hegemony in Lebanon reaching high consensus in the population. The fighting triggered by Michel Aoun lasted for six months, then transforming into an intra-Christian conflicts until October 13th, 1990. Only the end of the conflicts paved the way for the application of the Ta'if Agreement, from which General Aoun contested three major points:

- 1) The established combination between the powerful families and militia.
- 2) The division of power between communities.
- 3) The Syrian role and influence over Lebanon.⁴¹²

As already described, Ta'if continued with the confessional nature of the State, but it was not a simple renovation of it, rather it seemed a strong commitment that at the beginning

⁴¹² Maila, J., L'Accord de Taëf: deux ans après, in Perspectives et réalités du Liban: les actes du colloque des 13 et 14 décembre 1991 à Paris, Paris, Cariscript, 1992, p.15.

was perceived as remarkable. However, the real question is: were those involved in the process of renovation of Lebanon through Ta'if really convinced in its liberal-reform provisions?⁴¹³ Surely Ta'if was able to welcome the new realities and issues that the Lebanese societies was posing even before the civil war, despite its renovation of the provisional nature of confessionalism. Despite that, the external influence within the National Accord Document were evident: Syrians, Americans and Saudis preferred to make tactical adjustments rather than reforming an entire system and this can be also noticed by the fact that those legitimising the Agreement were well-known hostile to radical reforms. Therefore, the idea that Ta'if was formally adhering to the liberal reform is undeniable, and even up to now the idyllic Agreement greatly differentiates from the actual application of the reforms contained in it.⁴¹⁴

When the application of Ta'if was completed in 1990, the features concerning the Second Republic of Lebanon were already evident. In this sense, it is important for this analysis to understand that the Lebanese politics do not only revolve around the sectarian division of the society and, therefore, power-sharing, but they are also a matter of socioeconomic cleavages, clientelism, nepotism, ideological movements and, last but not least, great external influence. However, no one really escapes from the centrality of the sectarian division. Instead, sectarianism and confessionalism became even stronger than the pre-civil war period and Ta'if restored an already established consociational sectarian order, but it also provided an explicit procedure concerning the overcoming of the issue. That said, it is undeniable that Ta'if reinforced this system, taking it to its extremes. In particular, this happens in the top executive institutions, where power is distributed through the troika system, whose leaders are more narrowly identified with their respective sectarian constituencies.⁴¹⁵

One of the aspects that makes Ta'if a failure comes from the general mood and concerns of the various Lebanese religious sects. The lack of trust in the reconstituted institutions and the concern about the sectarian status and the confessional security are some of the shared feelings among the different religions in the country. Probably, those who resulted as the most affected by Ta'if, sanctioning *de facto* their status as losing party of the war, were the Maronites. Up to nowadays, Maronites are significantly disaffected and hit by

⁴¹³ Hudson, M. C., Lebanon after Ta'if: Another reform opportunity lost?, p. 28.

⁴¹⁴ Ibidem, pp. 28-29

⁴¹⁵ Ibidem, p. 33.

the diminution of their formal hegemony since the adoption of the Agreement. They shifted from a sentiment of pride to a sentiment of defeat and marginalisation. That said, the National Accord Document failed in its most important commitment, that of national and inter-confessional reconciliation after fifteen years of bloody civil war.

On the other side, instead, those who gained more from the Ta'if Agreement were probably the Shiites. Indeed, the role of the President of the Chamber was reinforced through a longer mandate and a major influence over decision making.⁴¹⁶ However, the Shiites are basically divided and not proportionally represented. On balance, probably the Shia community does not feel that they have gained enough from the outcome of the civil war, especially since they are the largest sectarian community in the country.

Sunni Muslims are probably the ones who should be happy about the outcome of the National Accord Document, because it strengthened their community's position in politics. Indeed, they resulted as the winners of the sectarian building inaugurated with Ta'if. The Sunni Prime Minister is the *primus inter pares* in the troika system together with the Maronite President of the Republic and the Shia Speaker of the Parliament.

Even if with Ta'if there was the conviction that a certain confessional equilibrium was eventually been established, on the contrary, the governing coalition composed by warlords with clientelist ideas and influenced by Syria has generated new problems and, at the same time, it has worsened the already existing ones. The troika system did not work since the beginning because the clientelist issues on the Lebanese public policies made the governmental performances ineffective. Moreover, the involvement of the institutions of civil society does not appear to be relevant in the Lebanese scenario. Many NGOs have been gradually created but they do not seem to have voice in the policymaking process.

After more than thirty years from the adoption of the Ta'if Agreement, Lebanon stands at a crossroad. The Lebanese people want to receive clarity and realism about their political future. If in the last thirty years no move has been made to overcome the

⁴¹⁶ With the adoption of Ta'if Agreement the role of the Parliament and of the Speaker of the Chamber were increased. The political mandate was increased at four years, while before Ta'if it was of one year only and his role was subordinated to the role of the Prime Minister and the President of the Republic. This last, does not appear in the constitutional text of 1989. The Prime Minister is appointed through the President of the Republic but only after the designation of the Speaker of the Chamber of Deputies, whose decision is based on parliamentary consultations with binding results.

difficulties posed by confessionalism, why would anyone think that it will probably happen in the future? Present political system based on power sharing and on a strong confessional chauvinism does not present solutions to overcome the political stalemate. Indeed, weak institutions and political collaborations, along with the limits posed by the troika system are just some of the problems generated by the unclarity system born after the Ta'if Agreement. Today's Lebanon is not capable of facing the increasing economic and financial problems and it is still affected by the socio-economic inequalities of the post-civil war period, furtherly exacerbated by a difficult regional security environment.

Consequently, to answer the question posed at the beginning of this section, the final goal of the Ta'if Agreement was that of overcoming confessionalism. If at the beginning this objective was considered as remarkable, after a while it was clear that no one in the political élite really wanted to overcome it. Politicians gradually became even more attached to clientelist purposes, and the reinforcement of the confessionalist system increased also the process of popular identification towards the corresponding religion-political élites. Therefore, Ta'if contributed to the reiteration of the confessional idea, according to which access to any resource can be reached only through sectarian relations. That said, Ta'if has not contributed to change the system, rather it legitimated the already existing political and confessional situation that led to the outbreak of the civil war in 1975.

To conclude, it can be affirmed that the aim behind the Ta'if Agreement has not been completely achieved, even if some constitutional reforms were adopted.⁴¹⁷ Nonetheless, after all, the presence and influence of Syria in Lebanon's internal scenario conditioned the effective development of the new system, and the electoral laws were not able to overcome the confessional and sectarian issues. The development of the Lebanese system based on a layered and widespread consensus even included the control over media and press.⁴¹⁸

⁴¹⁷ Particularly those concerning the redistribution of power within the executive and between the sections of both executive and legislative.

⁴¹⁸ About media and press freedom, the 2020 annual report of Freedom House states that: *"Press freedom is constitutionally guaranteed but inconsistently upheld. While the country's media are among the most open and diverse in the region, nearly all outlets depend on the patronage of political parties, wealthy individuals, or foreign powers, and consequently practice some degree of self-censorship. Books, movies, plays, and other artistic works are subject to censorship, especially when the content involves politics, religion, sex, or Israel, and the artists responsible for work deemed controversial by the government or major religious groups face official interference."*

Therefore, we can conclude that the political development in the aftermath of the signature of the National Accord Document did not allow for the change that it should had guaranteed through the creation of a new Lebanese political system in terms of democracy. Today's Lebanon is at a crossroad and only a possible redefinition of the confessional system through a constitutional reform can save the country from new internal and violent conflicts.

IV. Is the Lebanese de-confessionalization possible?

This chapter is the result of a fieldwork and research work about a possible de-confessionalization of Lebanon. The results of the various academic interviews will be reported here.⁴¹⁹ Each interview was intended to gather all the different opinions among the three most influential religious groups of the country: Christians and Muslims. The idea behind this research is that of coming up with a comprehensive solution to reform Lebanon.

After having collected the various information, this chapter will answer to the following questions: how can a divided country like Lebanon, where religious identity overcomes national one, be de-confessionalized? In what way the Constitution can be amended in order to overcome the current political stalemate? What will be the future nature of the reformed Lebanese State? And, finally, is de-confessionalization a real option for Lebanon?

4.1 Minorities and majorities, from conflict to cohabitation

Understanding and explaining the conflict between majorities and minorities in Lebanon brings us back to the National Pact of 1943. In particular, there are two points to take into consideration:

- 1) To face the ideological exclusivism of the majority (first religious majority, then national one), supported by an overwhelming demographic superiority which has two main consequences: the first one touches the social hierarchy, where majority and minority are placed in a position of superiority or inferiority; the second one is political, by the maintenance of a relationship based on domination from one side to the other.
- 2) To enshrine the autonomy of the group as a constant and founding principle of the structure of society and of power itself, and at the same time as a functional coexistence as the principle regulating the relations between communities.

As we have seen in the previous chapters, the Pact revitalized the hegemonic impact of the majority by setting aside the exclusive relationship of the same majority with society

⁴¹⁹ The transcripts of the interviews are reported in the appropriate section, “Transcripts”.

and the State. This allowed for the development of the social and political pluralism. The political hegemony of the majority is reduced to an identification principle but also to an internal structure and operation of it. The demographic preponderance which kept the hegemony of the majority over national power is therefore neutralized as a political factor which sets aside the *dominant vs dominated* relationship.

The dialect that runs around the majority and minority issue is the result of historical events. The desire to marginalize the minority away from the social and political life of the majority results in discriminatory and unequal attitudes, which are the souvenirs of past events and political decisions.

Indeed, autonomy from France had two inner faces that maybe no one really understood, and which are at the basis of the current divisions in societies. If at an early stage, the desire to independence had the objective of unification, this last was achieved through isolation. As a matter of fact, once obtained, self-sufficiency was absorbed in the structures of *dominant vs dominated* – or *majority vs minority* – issue. Autonomy became the symbol and the general principle of singularity which characterizes all the communities in their common relations and, most importantly, in their relations with the State. Majority and minority eventually merged and became part of the unique statute of equivalent communities which recognized each other and were consequently recognized by the State. From that moment on, a new pluralist society emerged, and it was founded on the parallelism between the equivalent status from a legal point of view, and at the same time, different from a structural and organizational point of view. Namely, the societal communitarianism. Simultaneously, a pluralist State was formed. This is the exact political reflection of society, founded on a shared power and participation of the ruling communities. Namely, the political communitarianism.

For what concerns the societal communitarianism, it has always been a reserved domain from a structural point of view. Indeed, to respect this imperative aspect, the Lebanese State has always abstained from interfering into the personal and internal affairs of the eighteen different communities. Moreover, another point to take into consideration is that the State has always abstained from taking the initiative to integrate the communities. It starts from a principle of common recognition of the different autonomies, where majorities and minorities are perceived as equivalent groups which, on their part, enjoy an equal treatment following a legal plan. The respect of the communities' autonomy has always been seen as a prerequisite to a pacific relation between State and communities

and, at the same time, any violation of these principles becomes a possible face-to-face between the two entities. As a confirmation of this, the respect of the autonomies of the communities is stated under Articles 9 and 10 of the Lebanese Constitution. In addition, as already analysed in this research, the Ta'if Agreement reinforced these provisions.

At a functional level, the relations between State and communities can be seen under the rationale of a “personal federalism”, where two main areas of expertise emerge:

- A common and political area where all communities can participate.
- A communitarian field in which its affairs are directed by the communities and all their internal affairs are managed by them. We can therefore say that in this field they have a complete sovereignty on the matter of personal status, as well as organization and function of the confessional community.⁴²⁰

4.1.1 The national identity and citizenship discourse

Citizenship in the Lebanese State is not a matter of restriction nor of exclusion,⁴²¹ but at the same time it is not a common citizenship, which includes all equal citizens. Rather, we deal with a conditional citizenship. It has a mixture of differentiations which makes the legal membership dependent on the criteria of community membership.

In order to understand this discourse that revolves around the combination of *religious community and citizenship* we should make two main considerations. The first one is that each Lebanese has a juridical double membership or affiliation: a social-communitarian and a political-communitarian membership. However, it is also important to note that citizenship, as well as civil and political rights cannot exist outside from the mandatory affiliation to a religious community. Consequently, this affiliation is not a deliberate choice, rather a legal obligation which influences the whole legal status of the citizen. Briefly, the citizen is not considered socially, politically, and legally in its human and civilian nature, rather he is considered as member of a religious community within the State. As a consequence, all the legal rules contained in the personal and civil rights are as many as the number of communities living in Lebanon. Therefore, citizenship – intended as the body of rules which determines the forms of membership to society and to the State – is various. We can, in fact, say that there is not a typical Lebanese citizen,

⁴²⁰ Charaf, G., *Communautés et État, communautés dans l'État*, p. 288-289.

⁴²¹ Meaning that it is reserved to a specific group

but different types of citizens whose rights and obligations are different and follow their affiliation to a community or another.

From a legal perspective, this situation is reflected in the recognition by the State of a personal status and of an inheritance law of each community. This is particularly motivated by different aspects. First of all, Article 9 of the Lebanese Constitution guarantees freedom of conscience and of religion. However, this liberty results limited. Indeed, the contrary to freedom of religion is exactly that of not believing in anything. By creating the mandatory religious affiliation to one of the Lebanese communities, the State limits freedom of religion itself. Yet, citizens have the right to believe and to exercise their religious convictions, but they also have the obligation of believing in something. Therefore, it is impossible for them to demonstrate publicly or legally their atheist nature. Legally speaking, the citizen is obliged, even if formally, to profess a religious confession, otherwise he can find himself in a situation of legal vacuum regarding the personal status. We should also take into consideration that the logic behind this personal status was inspired by the theological and spiritual doctrines of each community. This better explains the differentiation among the religious groups.⁴²² Moreover, the application of the rules of the personal status are under the legal jurisdiction of the communities, which sentences have a direct legal effect, while the State just takes note of the decision taken subsequently performing the substance of the same decision. At the same time, controversies deriving from the application of the personal and civilian status are under the competences of the religious tribunals.⁴²³

We can draw some conclusions about the civil communitarianism in Lebanon. The societal and communitarian division blocks the formation of a common social platform

⁴²² Maronites and Greek-Orthodox follow the Roman Church; Sunni and Shia Muslims refer to the Holy Quran.

⁴²³ There are different laws for the delimitation of competences of the confessional authorities. For instance, the one concerning Christian and Jewish communities was established on April 2nd, 1951, the so-called *Motu Proprio "Crebrae Allatae"* and then revised in 1990 by Pope John Paul II with the title "*codice dei canoni delle chiese orientali*". They include everything that approaches the personal status from a legal and extensive perspective: family, finance, marriage, parentage, parental authority, custody of minors and their education, alimony between spouses, etc.

The "*codice dei canoni delle chiese orientali*" can be found at the web page:
<http://www.intratext.com/X/ITA1881.HTM>

While, the personal status of Muslim communities in Lebanon is regulated by their own legislative system. Sunni Muslims follow the Hanafi school, which is one of the *madhabat* (schools) of the Islamic jurisprudence, or *fiqh*. On the other hand, Shia Muslims and Alawites follow the Islamic jurisprudence under the Ja'fari *fiqh*.

About the theory about Islamic jurisprudence: Corrao F., *Islam: religione e politica*, LUISS University Press, October 2015.

and makes it almost impossible to let emerge an ideology of unification of Lebanese people. However, this dimension of social but legal division can be understood also (and primarily) in historical terms. Despite the course of time and the different events that society and State have experienced, the autonomy of the different communities remains a central aspect in the citizenship discourse. This maintenance has to be seen not only from a top-down perspective, rather it is highly encouraged from a bottom-up point of view. The autonomy of each community is intended to control and to shape the relationship with the other communities and with the State. The willingness of maintaining this autonomous supremacy over the State is strictly related to the idea of identity. The Lebanese identity is secondary to the religious one.

The creation of a civilian citizenship cannot be imposed by the State, because right now this would probably lead to a harsh conflict between State and religious communities. In the event of a possible conflict, the outcome will be that of major consequences and severing of relations (already damaged) between the different communities. The differentiation or the separation between “religious” and “civilian” seems to be far from becoming reality.

At the same time, the recognition of a political identity must be linked to the political and civilian communitarianism. Indeed, the pair political and communitarian autonomy cannot be broken. The religious community presents itself as the defining and constant element of a diverse society into a different political and statal structure of Lebanon. Indeed, the communitarian inclusion in the political structure of the State (the political pluralism and power sharing, *ndr*) is the result of its social autonomy. This autonomy, as already analysed, is an historical outcome of years of claimed independence and it presents itself in the effective political participation to which the State is submitted to.⁴²⁴ The contraposition between autonomy and cohabitation has always been one of the major reasons, since the Lebanese development and political life is extremely polarized. The difficult cohabitation can therefore be seen as a permanent point to the Lebanese question. It must also be said that periods of living together did exist in Lebanon, but they were destroyed by conflicts and by a never accomplished, neither considered, process of transitional justice or national amnesty after the civil war.

⁴²⁴ Charaf, G., *Communautés et État, communautés dans l'État*, pp. 299-300.

Cohabitation, as the new principle that regulates the majority and minority dispute, presents itself in a difficult and new situation. If at the beginning the State was the place in which there could have been a sort of consolidation and grouping of the different and antagonist communities – concerning their political and ideological disagreement – the possible insertion of the dynamic of cohabitation required the transformation of the State as common land for the communities. However, nor history neither present nor future perspectives led society to live together. The conflict between majority and minority exacerbated even more at the political level, creating a conflictual history made of open political clashes, different interests and objectives, as well as divergent and parallel evolutions. Even today, both majority and minority nourish mistrust among them. On the one hand, the majority sees the pain of having lost its power and the impossibility to realize their continuous demands. They also fear the future evolution of the minority from autonomy to self-determination and independence. On the other hand, instead, minority must settle for a minoritarian position in national politics, facing the political power of a no-longer majority.

The cooperation born with the National Pact of 1943, is giving way to the pair autonomy-conflict which creates a very weak social and political subdivision. We can also say that the reconciliation and the mutual coexistence is not even considered as an option by the ruling class of the country. This can also be seen from an historical perspective. Indeed, since the beginning of Great Lebanon, the different communities were in a way “obliged” to live together. This transforms itself in ideological and political ideas very different from one another, although they put aside their irreducible differences to come up with a new and tumultuous path towards reconciliation and nationality, never really achieved.

4.1.2 The Lebanese identity discourse: is unification an achievable goal?

The perception of the State where the Lebanese national identity is found, or better the population’s sentiment of identity, are two important aspects to consider when analysing the current situation in Lebanon and the best future perspectives for the country.

Historically speaking, the idea of a spontaneous creation of a Lebanese identity during the pre-1920 period was an absurdity. However, what can be said is that at least the basis for a Lebanese identity were created very early in its history, but what stopped it to become the real national identity is related to the communitarian polarization of politics

and society.⁴²⁵ The division of the Lebanese identity emerged from the different conflicts happening during time and with the objective of finding and concretizing a real Lebanese identity. In spite of that, what was ripping apart was the very same reason behind the fight, and what was going to become disintegrated was motivated by another unity. Therefore, the Lebanese identity was becoming basically one: confessional.

It is also true that the communitarian polarization and the consequent crystallization of the communities defeat the possibility towards a national identity. The division was also translated into politics and the Lebanese Civil War, along with its consequences, represented a stage of controversies, where violence imposed two specific outcomes: no national identity and a growing fear that is still shared by all the communities. Indeed, these elements can be related to an enormous lack in the Lebanese history. After fifteen years of bloody and violent war, where everyone was against everyone else, there was not a process of transitional justice nor of national amnesty. Rather, the same people belonging to different religious groups and those fought against each other during the war are now representing the political élite of the country.

About transitional justice, what is getting even more attention at the international level about Lebanon is the idea that the adoption of a new Constitution is not enough for the text to be enforced or respected if it is not related to the loyalty given by people and institutions towards it. In deeply divided countries, where the constitutional transition was seen as the outcome of a civil war or apartheid (as in the case of South Africa), the mere adoption of the text resulted as insufficient for both societal pacification and institutional work. Indeed, Lebanon needed a process of pacification and a common elaboration of the past in order to build a collective memory of what occurred during the fifteen years of conflict. Many things remained unsolved in the aftermath of the Lebanese Civil War and what endured was a common sentiment of fear, which was then passed on from generation to generation. Today, this fear transforms itself in sectarian belonging and territorial one. Many people fear of moving in their own country and they prefer to be confined in the territories populated by a majority of their religion. The process of amnesty and transitional justice through the deployment of criminal prosecutions, truth-seeking, reparations and even reforms can be useful for Lebanese population to participate in the

⁴²⁵ Beydoun A., *La Dégénérescence du Liban ou la Réforme orpheline*, Sindbad-Actes Sud, Arles, 2009, pp. 61-62.

process of collective re-elaboration of what occurred and, most importantly, how to move forward.

All in all, today's deep societal and political crisis in which the communitarian system finds itself is a consequence of non-achievement of a national or even common identity, which in its part is the result of an inexistence process of national or even communitarian pardon.

4.2 A possible reform of the Lebanese Constitution

As already analysed in the previous chapters, the 1989 Lebanese Constitution, or the Ta'if Agreement, was born as a consequence of the fifteen years of civil war which devastated the country. The most famous and controverse article of the new Constitution is Article 95, concerning the de-confessionalization of the country or, better, the transitory nature of confessionalism which should be overcome.

However, many differences, disputes and fighting characterize modern Lebanese society. The social and the constitutional spheres are two elements which cannot be separated because the Constitution should be the mirror of its citizens, of their needs and, above all, their identities. Again, in Lebanon there are different identities which diverge from having a common, national, and Lebanese one. Therefore, the questions to be addressed here will be the following: should confessionalism take transitory stances or should it be included as a *de iure* system within the text of the Constitution? Plus, how can the Constitution be amended to overcome the problems of a non-working system?

The conclusions to this final section will be drawn from personal reasoning together with the results of the research and local interviews.

4.2.1 The Constitution as the mirror of society

The rationale behind a possible reform of the Constitution is once again related to the social sphere, more specifically to the relation between society and State. In Lebanon there is no complementarity between the societal structure and the political regime, and this is one of the reasons that consolidates the pluralist nature of Lebanese society. Consequently, the constitutional mentality which governs the country has as a final objective that of a centralized State. In reality, the State right now is not exactly

centralized, but the background which governs the political life of Lebanon since 1943 is that of overcoming confessionalism as a system to reach a centralized nature of the State. This contradiction is present in the same Constitution. In both formal Constitutions (1926 and 1989) Lebanese maintained the societal confessionalism: each community has its own internal organization and its own freedoms and personal status. The problem lies in the same confessional division: preserving the complementarity between State apparatus and society or, rather, isolating the State from the society. This is because if the possibility of abolishing the political confessionalism becomes reality, Lebanese people and politics will face a major contradiction, i.e., that of having a pluralist and divided society within a centralized State. The focus point here is that there can be specific amendments to the Constitution, but is the present Constitution responding to the societal structure? The answer to this question is negative. Some believe that this is the result of an established Lebanese élite mentality which approaches the issue with the final objective of reaching the classic principle of nation-state. However, Lebanon cannot be considered a nation-state.⁴²⁶

If we think about amending the Constitution taking as an example Article 24, we can suppose that, in light of the objective of the Ta'if Agreement (overcoming of confessionalism, *ndr*), the Lebanese Parliament will be appointed according to a national report. Despite this, are Lebanese ready for such a change? For this amendment to be put forward, as for any other modification concerning the overcoming of confessionalism, there should be a shared common culture between the communities.

Indeed, taking as an example Article 95 of the Lebanese Constitution, we see that “*The Chamber of Deputies that is elected on the basis of equality between Muslims and*

⁴²⁶ State and Nation are not two coextensive notions. State and nation are not coextensive concepts. The first refers to a space of common legislation and policy without implying anything about the characteristics of the people who populate the state. In the second, instead, the State coincides with a “particular” population identified by a community of language, culture, history, or even of religion and ethnicity. In the nineteenth and part of the twentieth century, the lack of freedom in many European States led to the belief that States had to be “national” in order to give voice to the people and therefore there were widespread battles for liberation which were based on the idea of nation-State.

Negri Zamagni, V., Stato nazionale, Enciclopedia Treccani (Online), available at:

[https://www.treccani.it/enciclopedia/stato-nazionale_\(Il-Contributo-italiano-alla-storia-del-Pensiero:-Economia\)/](https://www.treccani.it/enciclopedia/stato-nazionale_(Il-Contributo-italiano-alla-storia-del-Pensiero:-Economia)/)

The Italian jurist Arangio Ruiz described it as a collective body of a sociological nature which, when it exists in law, produces consequences having legal nature.

Sinagra, A., Bargiacchi, P., *Lezioni di Diritto Internazionale Pubblico*, Giuffr  Editore, 2009.

Christians shall take the appropriate measures to bring about the abolition of political confessionalism according to a transitional plan.”

The transitory nature of this article is probably the central problem of the confessional system itself. Transforming the Lebanese *tayfiyya* into a legal and definitive system for the country will probably change the situation in the long run. With this, it is not asserting that current confessional system does not have its deficiencies and inner problems. The exact contrary given the fact that the system does not work properly, trying to legitimize the same political sectarianism in line with the social one and, at the same time, reforming it, will result in a possible positive outcome for the country both in terms of identity (which always plays a great role) and in terms of good governance.

In order to imagine a possible future amendment of the Constitution that can overcome the stalemate problems caused by an ineffective confessional system, we can look at the example of Belgium.

In the Belgian Constitution, at the federal level, there is the so-called “federal majority”. This majority is related to the problem of imbalance between Flemings and Walloons. Consequently, at a decision-making level the Constitution formally eliminates this imbalance in order to obtain a double majority for certain subjects. In this way, a majority is needed in the federal parliament among Flemings and Walloons.⁴²⁷

4.2.2 Reforming Lebanon: future perspectives to make that happen

Victim of a political system overtaken by different crises and plagued by corruption and nepotism; Lebanon is literally suffocating.

⁴²⁷ Belgium is culturally and politically divided into Flemings and Walloons.

The road to power sharing in this country started with the political and linguistic emancipation of Flemings, gradually obtaining the same linguistic and constitutional status as their counterpart, the Walloons. Belgium became therefore subdivided into three linguistic regions (one bilingual, which is Brussels and the other two bilingual regions which are the Flanders and Wallonia). Consequently, several constitutional revisions transformed Belgium from a unitary and centralized State to a federation. Indeed, the reform of 1970 turned central institutions into a fully-fledged power sharing system. The Council of Ministries had to have an equal number of Flemish and French-speaking ministers according to the principle of parity, applying therefore the same rule to the other bodies, such as: the highest courts, the Permanent Language Commission and to the upper ranks of the army. Instead, the Parliament was divided into two linguistic groups. Each linguistic group obtained its constitutional status and special veto rights, in order to prevent major decisions against the will of one side.

Schnecken U., “Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation.” *Journal of Peace Research*, vol. 39, no. 2, 2002, pp. 203–228.

The failure of a State is nothing new in the international scenario. However, the case of Lebanon is quite peculiar. Indeed, we can say that the failure of the State is not related to a civil war nor to natural disasters, but we deal with a situation in which the political class cannot provide minimum conditions for its population: from good governance, internal peace and public order to the complete lack of services such as electricity, fuel, gas, food and medicine supply and even water. Following the academic Robert Jackson's definition, failed states suffer from an adverse condition which is self-inflicted. In this sense, we deal with political failures: the government has failed the citizens and maybe the citizens have failed the government too.⁴²⁸

In Lebanon, the situation has gradually deteriorated that even national pride or religious and communitarian one does not seem to be enough when it comes to resorting or thinking to the worst alternatives for the country.

After the Port of Beirut explosion on August 4th, 2020, the international community started to lay its eyes on Lebanon in a more concrete way. Indeed, the French deputy Gwendal Rouillard asked for the creation of "*international task force under the aegis of the United Nations and the World Bank in order to increase humanitarian and development actions*".⁴²⁹ This idea of creating a UN task force is also part of the organization's rich experience in peacekeeping operations, humanitarian interventions and the so-called "duty to intervene". Despite that, the normal intervention of the United Nations is usually placed in those areas where there is a threat to international peace and security or where crimes or atrocities happen. Lebanon does not suffer from any type of concrete war or any natural disaster, neither it feels oppressed from a form of totalitarian regime. Rather, we deal with a "*long and difficult depression*" caused by "*intentional absence of political action*", by recalling one of the World Bank's statements on the Lebanese situation.⁴³⁰

Moreover, the UN missions or task forces are framed under the decisions of the United Nations Security Council, but the internationalization of the Lebanese situation can also

⁴²⁸ Jackson, R. H., "*Failed States and International Trusteeship*" in *The global covenant: Human conduct in a world of states*, Oxford: University Press, 2006, p. 2.

⁴²⁹ Samrani A., Rouillard : Nous recommandons l'installation à Beyrouth d'une « task force » internationale, in *L'Orient-Le Jour*, July 10th, 2021, available at: <https://www.lorientlejour.com/article/1268022/rouillard-nous-recommandons-linstallation-a-beyrouth-dune-task-force-internationale.html>

⁴³⁰ Hage Boutros P., La Banque mondiale excédée par l'irresponsabilité « délibérée » des dirigeants libanais, in *L'Orient-Le Jour*, December 2nd, 2020, available at: <https://www.lorientlejour.com/article/1243192/la-banque-mondiale-excedee-par-lirresponsabilite-deliberee-des-dirigeants-libanais.html>

cause a worsen global and regional political polarization that can give Lebanon the final *coup de grace*.

Considering the Lebanese situation, probably the best option would be that of operating under the rule of another United Nations' apparatus: United Nations Trusteeship Council.⁴³¹ Today, the country lacks of any kind of sovereignty, because the Lebanese political élites do not exercise it, in what is considered a continuous institutional negligence over the country.⁴³² Thus, resorting to the UNTC seems to be one of the most working and best solutions.⁴³³ Contrary to the Security Council, the UNTC responds to the UN General Assembly, which can be described as more representative of a multilateral operations and lacking in double standard policies.

The Council does not provide for the use of force, which lays under the decisional power of the UNSC. Indeed, we do not deal with an intervention that wants to interfere within the internal affairs of a nation with the intention of changing its system and structure. On the contrary, as stated under article 75 of the UN Charter:

“The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories⁴³⁴ as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.”⁴³⁵

In this sense, the outcome to this trusteeship system would be that of finding a solution or definitive way out from the Lebanese crisis. Indeed, Article 81 of the UN Charter, states that:

⁴³¹ The United Nations Trusteeship Council is one of the six principal organs of the United Nations, which was established to ensure administration in the best interests of the inhabitants of some given territories, under the maintenance of international peace and security, founding principles of the organization. Most of its operations concluded with the achievement of self-government or independence.

⁴³² To support this statement, please refer to the interviews to Dr. George Charaf, Dr. Elie Elias and Dr. Francisco Barroso Cortes at section “Transcripts”.

⁴³³ When the UNCT was created, its main responsibility was to guide the post-World War II former colonies towards independence. Most of the territories where the UNCT has worked have obtained self-government or independence. The last case is that of Palau which was a former part of the Trust Territory of the Pacific Islands and then became a member of the United Nations in 1994.

El-Mufti, K., Faut-il placer le Liban sous tutelle onusienne ?, L’Orient-le-Jour, 21 août 2021, available at: <https://www.lorientlejour.com/article/1272329/faut-il-placer-le-liban-sous-tutelle-onusienne-.html>

⁴³⁴ Here, it should be noticed that “territories” is different from “State”. However, as recalled hereabove, the trusteeship council was created with the aim of guiding former colonies towards self-government. The study of placing Lebanon under the UN supervision was inspired by L’Orient-le-Jour’s article by El Mufti, K., Faut-il placer le Liban sous tutelle onusienne ? and later analysed and explored through a personal point of view and perspective on the given case.

⁴³⁵ Charter of the United Nations. Chapter XII — International Trusteeship System. Article 75, available at: <https://legal.un.org/repertory/art75.shtml>

*“The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more States or the Organization itself.”*⁴³⁶

Thereby, the UNTC – through the support of the administering authority composed by one or more States of the UN – will realize the final objectives of its mission, described under Article 76 as for the promotion of *“the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned”*.⁴³⁷

A particular problem can emerge if one looks at Article 78, establishing that the trusteeship system cannot be applied to the already members of the organization and that the relations between the two (the State and the UN) must be based on the principle of sovereign equality.⁴³⁸ However, following the same rationale as reported hereabove, Lebanese political élite and institutions gave up on statal sovereignty and, by virtue of Article 104 of the Charter of the United Nations, the organization enjoys legal capacity in the territory of each member, because it can be necessary for the exercise of its functions and the achievement of its objectives.⁴³⁹ In this sense, Lebanon can be considered as a State on the brink of disintegration due to the crisis and the rampant corruption among its political class so that it can be inserted in the definition of non-autonomous territory, consequently addressing the problem posed by Article 78 about the *“principle of sovereign equality”*.

⁴³⁶ Charter of the United Nations. Chapter XII — International Trusteeship System. Article 81, available at: <https://legal.un.org/repertory/art81.shtml>

⁴³⁷ Charter of the United Nations. Chapter XII — International Trusteeship System. Article 76, available at: <https://legal.un.org/repertory/art76.shtml>

⁴³⁸ Charter of the United Nations. Chapter XII — International Trusteeship System. Article 78, available at: <https://legal.un.org/repertory/art78.shtml>

“The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.”

⁴³⁹ Charter of the United Nations. Chapter XVI — Miscellaneous Provisions. Article 104, available at: https://legal.un.org/repertory/art104_105.shtml

“The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.”

All in all, the activation of the United Nations Trusteeship Council can internationalize the internal good governance of Lebanon. This temporary mechanism provided for by international law would result in the necessary and best authority to put an end to the Lebanese political stalemate and to unblock the fundamental reforms which are still pending due to the internal crisis. Through an effective coordination between the United Nations and its Humanitarian Agencies, the UNTC can be able to guide public and administrative services. Most importantly, it will consider the needs of civil society and, especially of the youth, in the rescue of a sinking ship: Lebanon.

4.3 Is a Lebanese federalism possible?

During the activity of research that I conducted in Lebanon, it was possible to ask for opinions on the future legal structure of the country once it will be reformed. The results of the research demonstrated that a federalized system is aspired by some parts of the population, while others believe that a reform of the consociational system will be more suitable for Lebanon.

This section tries to answer to the question “*is a Lebanese federalism possible?*” by taking into consideration the theory of successful federations and if – and to what extent – it can be applied to Lebanon.

4.3.1 The Lebanese federalist utopia

In order to understand if there will ever be a fully-fledged and effective federation in Lebanon, we can examine the conditions for a federation to work.

More in particular, the definition of federation is “*a country consisting of a group of individual states that have control over their own affairs but are controlled by a central government for national decisions, etc.*”⁴⁴⁰ Or, instead, federalism as referring to a plurality of historical experiences having both a static-structural and a dynamic-procedural dimension. The first one is linked to the concrete organizational forms

⁴⁴⁰ Federation. Oxford Lerner’s Dictionaries, available at: <https://www.oxfordlearnersdictionaries.com/definition/english/federation>

assumed by federalism, while the second deals with federal processes,⁴⁴¹ i.e., the historical evolution and the progressive development of a union between several communities.⁴⁴²

There are two forms of federalism, the first concerns the so-called “coming-together federalism”, which regarded those federal states emerging during the eighteenth or nineteenth century and which had common features because they were created through association into a single entity composed of pre-existing smaller ones.⁴⁴³ While, the most recent “holding together federalism” were born thanks to the disintegration of pre-existing state units.⁴⁴⁴

Normally, the features leading to the creation of federations were identified in the protection against external threats or the need to prevent an internal conflict. This applies particularly in “classic federations”, although the external threat is not seen as the major consequence to the creation of a federation. Rather, this threat has also led other entities to come up with centralized solutions and did not consider federalism as an option.⁴⁴⁵ In addition, conflict management and resolution are seen as two major aspects leading to the formation of a federalism-by-dissociation and in the creation of regional states having spatial, historical, economic, socio-cultural, political-cultural, and ethnic conflicts.⁴⁴⁶

In federal States, the main role is held by the central entity, thus having a decisive and preponderant role in the functioning of the federal system.⁴⁴⁷ Indeed, in a federation we normally find the definition of the exclusive powers, namely national defence policy, foreign policy, and the management of public finance. At the same time, this mandatory list of Union competences is accompanied by the allocation of all the remaining powers to the Member States (*residual clause*).⁴⁴⁸ While, in the event these three areas of competence should shift under the umbrella of the member states, then we are not dealing with a federation but with a process of separation to create independent political entities. Furthermore, in a federation we also find shared or concurrent powers, in which both orders of government (the federation and the member states) can make laws. Nonetheless,

⁴⁴¹ Friedrich, C., J., Trends of federalism in Theory and Practice, Praeger, New York, 1968.

⁴⁴² Bifulco, F., Federalism, In R. Masterman & R. Schütze (Eds.), The Cambridge Companion to Comparative Constitutional Law, Cambridge University Press, 2019, p. 312.

⁴⁴³ Namely the United States, Switzerland, Australia, Canada, Germany and Austria.

⁴⁴⁴ Stepan A., ‘Toward a New Comparative Politics of Federalism, (Multi) Nationalism, and Democracy: Beyond Riker Federalism’, in Stepan A. (ed.), Arguing Comparative Politics, Oxford University Press, 2001, p. 315.

⁴⁴⁵ Bifulco, F., Federalism, pp. 319-320.

⁴⁴⁶ Ibidem.

⁴⁴⁷ Beaud, O., Théorie de la fédération, Presses Universitaires de France, 2007, p. 108.

⁴⁴⁸ Bifulco, F., Federalism, p. 327.

where powers are concurrent, generally the federal law is paramount, meaning that it prevails in the possibility of a conflict.⁴⁴⁹

Instead, at the member states' level, the entities govern themselves in different fields such as health, education, housing, urban master plan and, to a certain extent, a competent legal apparatus. There are therefore two different levels of governance in what we call a federal system. The first one, that of the member states, has legislative and executive powers in the field recognized by the federal Constitution; while the central power will in turn have a legislative and an executive body.⁴⁵⁰ That said, the whole system is based on double representation. In this sense, citizens to a federation must have the double choice of electing their political parties locally and to represent their own segment at the central level. Indeed, the other institution characterizing classical federal states is the second chamber filled with representatives of the member states.⁴⁵¹ Last but not least, in some classic federations the member states enjoy personal Constitutions, which must be – in any case – in homogeneity with the federal Constitution, which requires the compliance with certain principles adopted by the central legal text. Having said that, we can also touch another point of discussion, which is that of secession in federations: a right to secession is incompatible with the very nature of the federal phenomenon.⁴⁵²

This federal scheme cannot be applied in present Lebanon for different reasons. The first one, is that the Lebanese society has its own basis on their religious identity as it was already explained in this chapter. However, apart from this aspect which remains the heart of the matter, the Lebanese territory is not uniformly divided. Indeed, probably as a consequence of the civil war, today's Lebanese regions contain preponderant "majorities" and "strong minorities". When dealing with the exclusive powers of a federation, the current Lebanese political problems concern precisely foreign policy, national defence, and management of public finance. In the case of a federal system, these three spheres of competence cannot be vetoed by communities. Moreover, there is another element which is extremely important, and which makes present Lebanon unsuitable to pursue the federalist project: the Hezbollah's disarmament. The Party of God controls some parts of

⁴⁴⁹ Anderson, G., *Federalism: an introduction*, Oxford University Press, 2008, p. 22.

⁴⁵⁰ *Ibidem*, p. 23.

⁴⁵¹ Elazar, D., J., *Exploring Federalism*, The University of Alabama Press, 1987, pp. 183-184.

⁴⁵² Bifulco, F., *Federalism*, p. 330.

the country, and it is impossible to create a federal State without first restoring the central State sovereignty in the whole territory.

Nevertheless, current Lebanese federalists believe that the social identities are at the basis of the political tensions. Therefore, they declare themselves in favour of a territorial division of Lebanon into different confessional cantons.⁴⁵³ However, no one really advances such proposition. This is also linked to the fact that many political personalities have already understood that federalism is rather a utopia than being a possible near future reality.⁴⁵⁴ In the local context – and by looking at it from a detached and neutral point of view – federalism will create secessionist intentions rather than a pacific way to live together, even if territorially and administratively separated. In addition, if the emergence of Hezbollah as a very influential political actor in the whole country is the symptom of the decadence of the Lebanese State, what will happen if the south starts to approve its own system and regulations?

It is of unquestioned truth that Lebanon should be reformed through the adoption of modern, liberal, and democratic ideas and decentralization. Nevertheless, federalism in this precise moment will create an enormous threat, along with the risk of secession.

4.4 Is de-confessionalization possible?

The identitarian contradiction, along with – and connected to – the ideological and political one, is at the origins of the majority and minority conflict. Despite the (almost) common idea of not considering such topic as a relevant one in the present Lebanese crisis, this has actually become an insoluble question.

Indeed, the “pacification” rationale that lied behind the civil war conflict was that of finding a political transition at the State’s level. The restructuring of the State has in fact

⁴⁵³ On the FedLeb website – which reports the thesis of Iyad Boustany, a political activist in favour of the federalist project – Lebanon is divided into 1,633 villages. Those villages which are landlocked and in a canton of a different sect would be subject to the regulations of their canton of confessional affiliation. In other words, if a Christian village is landlocked in a Shia canton, it will follow Christian jurisdiction and does not have to apply the other confession’s regulations.

This project can be found at: <https://fedleb.org>

⁴⁵⁴ After being one of the most influential supporters of federalism, even Bashir Gemayel understood that the application of a federal system in Lebanon was rather a utopia. It is for this reason that he presented himself as the President of Lebanese people, promoting unification rather than divisive policies.

Currently, no one forwards the federalist proposition. Indeed – even though he does not declare himself against this project – Samir Geagea recognizes that its application would be impossible, because the other parties do not agree with the same proposition. As a matter of fact, at a local level, the idea of a federation hides secessionist desires rather than the creation of a real form of well-functioning federation.

gone from a moment of fear and hate, erupted in the fifteen years of civil war, towards a temporary application of what characterized the conflict itself: division. It was perceived as necessary, as a sort of matter of life or death, to integrate one part to the other one at the political level, leaving aside the sociological part of the question. However, the reconciliation that was put in place lacked from its inseparable counterpart: the historical reconciliation between majority and minority to end the conflict and the state of tension that has remained to present day. Therefore, the State turned into an entity meant to control and manage the communitarian *vivre ensemble* and the shift from a conflictual to a pacific society. Nevertheless, both *vivre ensemble* and pacific society were just apparent conditions. Moreover, as many academics firmly believe, there is no legal apparatus in Lebanon. Or better, the parallelism that exists between the legal Constitution and the National Pact of 1943 confirms once again that the historical supremacy that the oral pact has obtained still prevails over the legal, consequently emarginating the Constitution from the constraints of the Muslims – Christians accord.⁴⁵⁵

The confessional structure of the State is something that communities have organized at their convenience, on the basis of the prevalence of the communitarian structure over the State one. As a matter of fact, they organized a political equilibrium which allows them to live as separate entities, but with the State as a sort of intermediary. Indeed, there is not a common interest, but different communitarian interests. There is to say, the State is represented as the place in which the confessional divisions are identified and therefore it is the subordinate place where different identities and communitarian structures try to coexist, delimitating the State's field of action as very weak. This is confirmed by a constitutional trick which affects the structure, but also the objectives and the function of the State. Indeed, on the one hand we find a constitutional uniqueness over the institutional unity and its decisions through the existence of the Chamber of Deputies and of the Council of Ministries. At the same time, there is a constitutional duality which is purely communitarian of the functions of the State's institutions. As a matter of fact, there is a confessional decision-making plurality within the internal structures of the State. For this reason, it is impossible to conciliate a *de facto* federalist society with an inefficient and *de iure* unitarian structure of the State. The unitarian structure of the State is inefficacious for different reasons:

⁴⁵⁵ Charaf G., *Communautés et État, communautés dans l'État*.

- 1) It should represent, without any sort of distinction as it is reported within the Constitution, the interests of the nation.
- 2) It should harmonise and meet the communities' intentions.
- 3) It should reflect the principle of equal representation in the State's institutions.

Reality tells us that there is no national interest without a pure Lebanese identity, and there is no harmonisation of intentions because communities always resort to religious differences rather than committing to few but existing common roots. Last but not least, equal representation might also exist in Lebanon, but the focus of the problem is that within the logic of coexistence the divisions in the institutions represent a right for each community. This right translates the communitarian autonomy into politics.

The formula they decided to adopt after the civil war, even if not new in the Lebanese scenario, is a sort of hybrid. It is in-between being a unified State à la carte, although without knowing how to adapt to new realities, and a *de facto* non-effective federal State. This is the result of the confusion between political coexistence and political unity and of the idea of the State as a structure that embodies the different communitarian identities and its institutions as those in charge of the development of political unity. The present state of communitarian relations makes coexistence impossible because it is the result of an ideological and political conflict filled with mutual mistrust and hate. The difficulties and ruptures generated from the conflict has made the State powerless before the communities. The hierarchy is not represented by the State as the most influential entity and then communities being one step lower. The reality reflects the exact opposite. The sectarian interests prevail over the national ones, as the sectarian identity is even stronger than the Lebanese one.

The Lebanese confessional system presents many aspects that are difficult to be replaced by other types of systems. I have analysed the different aspects that explain the deviations of the Lebanese system for what concerns democracy, sovereignty, and equality. The absence of a national civil status raises the issue of the double loyalty: towards the community and towards the State. However, when in conflict, the first will always prevail at the expenses of the second. Moreover, in line with the double loyalty discourse we can also emphasise the presence of the communitarian judiciary which is independent from the State's one and often perceived as the only "legal". Finally, the contradictions of the Lebanese pluralist system linked to the communitarian and clientelist requests are in

contrast with the legal text of the country and they cause a perpetual stalemate. As a consequence, we can say that the Lebanese reality does not obey to the constitutional law nor to the rule of law as we normally intend both of them, from a European perspective. Rather, citizens look at institutions from a confessional point of view, instead of considering their constitutional functioning.

However, it is far from true to say that the Lebanese situation is hopeless and beyond repair. The most important aspect to reform is the radical evolution of society and its mentality towards a new system based on a unique citizenship. This will be the turning point and hope to change current situation, which has very old roots. Unfortunately, we should also face the facts: currently such change is impossible in Lebanon. This is particularly related to the attachment and devotion of communities towards their religions. Indeed, presently a de-confessionalization of society and then of politics is unfeasible. Every step taken towards the de-confessionalization of Lebanon has never seen the light of the day. Nothing appears as more difficult and riskier as to separate the entities from their sociological and historical roots.

The abolition of confessionalism can happen as a result of a process of change that starts from the collective and then reaches the political sphere. The decrease in the societal communities will be the efficient cause of the overcoming of political confessionalism. This will be the result of years of gradual instalment of a new mentality, related more to the human sphere than to the religious one and, above all, of a process of pardon and common interest to overcome the sentiment of fear that has affected society since 1990. Any constitutional reform in this respect will be null and void without first changing people's mentality.

In the end, after having analysed the different aspects from which the discourse over confessionalism and power sharing in Lebanon arose (sociological, historical, political and constitutional aspects), I can conclude this analysis by saying that the Lebanese confessionalism cannot be overcome; at least for the time being. Thinking about eliminating confessionalism in present Lebanon without primarily preparing the ground for society to live together, means basically to give rise to a new civil war. No one really lives together, until everyone understands how to live together.

Conclusion

When I started the analysis on the Lebanese confessionalism I tried to come up with some results on the issue of overcoming the confessional nature of the State and to shift towards a more secular apparatus. However, once arrived in Lebanon to conduct interviews and to analyse the current political situation, I realized that a possible de-confessionalization of the country would be impossible to achieve at present day. Indeed, without the on-sight experience it would have been unfeasible to understand that in order to study the Lebanese confessionalism, one should opt for a different point of view, compared to those already used in this field of research.⁴⁵⁶ It has been for this exact reason that I started to analyse the subject by using an approach based on the dialectical relationship between State and society.⁴⁵⁷ This method has also been supported and accompanied by several analyses on different sectarian societies and constitutions,⁴⁵⁸ to come up with the conviction that the Lebanese pluralist and confessional system represents a true rarity in the world. This rarity is the result of historical and religious roots, as well as relations which started with the Ottoman Empire, then translated into the French Constitution of 1926, reinforced with the unwritten National Pact of 1943, and eventually strengthened with the adoption of the Ta'if Agreement in 1989. The critical analysis of all these aspects led to the conclusion that when dealing with Lebanon we should treat the subject in its entirety:⁴⁵⁹ from a constitutional and public law's point of view, along with the importance of historical events, political ones, and even sociological perspectives on the matter. Indeed, it is only

⁴⁵⁶ Normally, the most used approach to the reform of confessionalism is the secular one. Despite at the beginning this approach appeared to me as the most suitable one, I understood that in order to comprehend every country's inner problems, one should analyse the locals' perspectives, even if different because of diverse religious affiliations, as in the case of Lebanon. It was for this precise reason that I wanted to conduct interviews with both Christians and Muslims in the country, in order to analyse all the different perspectives about the Lebanese *tayfiyya* and to come up with a comprehensive and exhaustive idea on the subject of this research.

⁴⁵⁷ This approach has been suggested by Professor George Charaf who, on his part, has analysed the Lebanese *tayfiyya* through the connection of State and society in his books.

Charaf, G., *Communautés et État, communautés dans l'État. Le cas du Liban*, published on: *Statut et protection des minorités: exemples en Europe occidentale et centrale ainsi que dans les pays méditerranéens*, Bruylant, 2009.

Charaf, G., *Communautés et pouvoir au Liban*, CEDRE (Centre Libanais de Documentation et de Recherches), Beirut, 1981.

⁴⁵⁸ Namely, Bosnia Herzegovina, Iraq and Israel as reported in Chapter One. At the same time, an analysis on the secular nature of the State has been made through the examples of the French *laïcité* and the secular nature of the Italian Republic, again reported in Chapter One.

⁴⁵⁹ This research takes into account all the different features cited hereabove, although the exact focus is related to legal and constitutional aspects.

through the analysis of all these fields that one can really understand that in Lebanon there is no complementarity between the structure of society and its political class.

For decades now, the decentralization theme has been very recurrent in the Lebanese political scenario. Decentralization is characterized by the establishment of locally elected legal entities, each of them enjoying administrative and financial autonomy and having a legal personality. Until now, decentralization in Lebanon has been achieved at the level of municipalities. It was from Ta'if onward that decentralization has shattered the political scenario of the country, this is related to the fact that decentralization is perceived being not neutral by each of the confessional communities in Lebanon. Indeed, it adversely affects the political arena by shifting the balance of power from the central government to a possible local one and by restricting the provision of resources vital to the interests of the Lebanese political class. This might result in the voluntary inability to implement decentralization after more than three decades since the adoption of the Ta'if Agreement.⁴⁶⁰ It is exactly here that lies the problem of present-day Lebanon: a (still) centralized State in a decentralized, pluralist and deeply divided society, at a confessional basis.

Consequently, “*is the Lebanese de-confessionalization possible?*”. Through the analysis posed in the final chapter, it is impossible to say that today's Lebanon can overcome *tayfiyya*. This is because the abolishment of political confessionalism requires the dissolution of social confessionalism first. It is exactly in this precise moment that the Constitution should play the most relevant role.

If constitutions should be conceived as the mirror of society embodying an idea of unity, of belonging to the same values, costumes or to feel represented by a national identity

⁴⁶⁰ In 1989, the Taif Agreement gave a push to decentralization, attempting to enforce this new system as a part of a fairly broad national consensus. Therefore, this could have been perceived by political, partisan and sectarian groups as neutral in the fact that it did not upset the balance of their “vested rights”. This can explain the stalemate that decentralization keeps facing today: some would like to see it narrowed down to a technicality, while others firmly believe it can bring a major shift in the Lebanese politics. In the former sense, it can be neutral but in the latter one it is not. This is because decentralization can reshape the national landscape with the beginning of new dynamics and leading to a broader participation and democratic governance, apart from being a great anticorruption and anti-clientelism strategy, since it will improve accountability and reduce the political élites' discretion.

This analysis on decentralization is taken from the former Minister of Interior and Municipalities of the Republic of Lebanon between 2008 and 2011, Ziyad Baroud. This analysis can be found at: Baroud, Z., Decentralization in Lebanon is not neutral, MEI, April 5th, 2021. Available at: <https://www.mei.edu/publications/decentralization-lebanon-not-neutral>

before being separated by ethnic, religious, or even linguistic differences, one should also look at one of the main points of discussion: who are the people of Lebanon? Moreover, how the Lebanese Constitution can be amended to embody all the differences which Lebanon still has today? And to what extent is it possible to overcome confessionalism as being the main objective of Article 95 of the Lebanese Constitution? In the perspective that Constitution should provide for democratic means of governance, probably the idea of overcoming the Lebanese *tayfiyya* is not the best solution to solve the country's stalemate. Indeed, probably the major problem of the current Lebanese legal text lays exactly on the idea of overcoming confessionalism.⁴⁶¹ Instead, the possibility of transforming confessionalism as a *de iure* and non-overcoming system will potentially have positive outcomes in the long run.⁴⁶²

That said – and as a result of this on-site research project – is it of paramount importance to overcome confessionalism? Or is it better to organize the system in a more rational way and without never forgetting about the complementarity between State and society? Moreover, is this current popular idea of a Lebanese federation possible?

To answer to this last question, after having analysed the different and successful aspects that led to the creation of classic federations in Chapter Four, it is necessary that before thinking about a huge project as the federal one is, we should face reality: Lebanese people lack the culture of *vivre ensemble*. This is the precise consequence of the end of the civil war and the non-adoption of a system of transitional justice, as already described in Chapter Four. One can also argue that many old federations did not know how to live together, and this is true. However, in the case of Lebanon we deal with a country which

⁴⁶¹ As already described, Lebanese people differ in their identities. Indeed, the religious and confessional identities prevails over the national one. Even in the preamble of the Constitution, at paragraph B the statement “Lebanon is Arab in its identity and in its affiliation” does not reflect all communities’ belonging to that. This was something that characterized all the Lebanese Constitutions, starting from the first one in 1926. The topic of the “*arabicity*” contained in the legal text has been analysed in Chapter two. Moreover, in the Preamble of the Constitution one can also find the fundamental provisions of the legal text. The most discussed ones are those at paragraphs E and H, describing the political pluralist system of Lebanon, its balance and cooperation and the national goal of overcoming confessionalism. Despite all of these aspects, as analysed in this work, the Lebanese political system even if pluralist by nature it lacks of balance and cooperation among the different political and confessional élites, creating a constant political stalemate characterized by the frequent use of veto power due to the troika system. Moreover, the idea of overcoming the Lebanese confessionalism as being the national goal appears, at the same, as something unattainable due to the very confessional identity of the Lebanese society.

⁴⁶² The positive outcomes of rendering the confessional system of Lebanon as the *de iure* system of the country, without the articles stating its overcoming, would create a decentralized system that can, at the same time, ensure a greater local participation more accountability, and a more sustainable and enduring democracy. This should be seen as the path towards the reform of the country as a whole.

experienced a legal apparatus since 1926, or even before under the Ottoman Empire. We cannot say it has always worked properly, but it surely had its glory days. While, today the memory of the civil war translates itself into fear of moving inside their own country, of leaving their majoritarian-confessional neighbourhoods, along with a complete lack of trust between the different religions. Moreover, in this huge discourse about the Lebanese federation, the most important pawn is Hezbollah and the possibility of really transforming itself into “*a State within a State*”. Basically, there are not concrete basis to create a democratic federation in today’s Lebanon.

Moreover, considering the will of people as well as the role played by the *thawra*, this revolution was certainly considered as the most audacious and ambitious to date. With the slogan “*Killon yaani killon*”⁴⁶³, Lebanese people took the streets demanding the removal of all the political class for its systematic corruption and the direct role they have in leading the country to financial and economic ruin, as well as humanitarian catastrophe.⁴⁶⁴ The famous *thawra* had a huge echo all over the country: from Beirut to Tripoli and Sidon, people started to realize that in order for a change to happen, they have to separate religion from politics. The *thawra* was basically a spontaneous reaction to an unbearable situation, which created awareness in the population. Indeed, since October 2019, new political parties were created, along with new associations and the rise of innovative initiatives with cross-sectarian and secular proposals. Nevertheless, this new wave of protests – even though revolutionary in the creation of a common awareness about the limits of *tayfiyya* – did not create feasible alternatives at a political level because they lack of a unified program and of coordination, along with the absence of a strong leadership. Despite these last few aspects, the youth will play a great role in the reshaping of Lebanon, since they represent – as stated by Dr. Ahmad Beydoun – *the strength that will lead to change*.⁴⁶⁵

The final aim of this research has always been that of coming up with a comprehensive understanding of the Lebanese *tayfiyya* and if, and to what extent, it can be overcome. I

⁴⁶³ “*All of them means all of them*”. This slogan was invented by the Lebanese poet Jumana Haddad.

⁴⁶⁴ Moreover, as analysed in Chapter Three dealing with the dysfunctions of the Lebanese confessional system, the strong sectarian divisions in the Lebanese society have also an influence in the economic differences among the confessions. This has also been strengthened by the diverse regional powers’ interests in the Land of the cedars, which consequently fuel the economic and confessional divisions.

⁴⁶⁵ Dr. Ahmad Beydoun’s interview can be found at section “*Transcripts*”.

can conclude this work with the conviction that any solution taken to reform the country, without firstly preparing the ground for the Lebanese society to live together in peace and without any kind of fear, will lead to a point of no return and the rise of a new – and possibly even more violent – civil war which will probably mark the end of the country.

Transcripts

Interview with Dr. Francisco Barroso Cortés

Interview with Dr. Francisco Barroso Cortés – Associate Professor, Head of the Department of Political and Administrative Sciences at Holy Spirit University of Kaslik (USEK).

1) To what extent do you think that power sharing system is applied in Lebanon, and which are the future perspectives to solve the political crisis and stalemate in the country?

This is the 1-million-dollar question. Concerning the power-sharing system, I think that one of the main problems that we are facing nowadays consists in the following: we don't have a fully-fledged consociational system, what we have is a semi-consociational system, which makes things even worse because, out of the 4 variables that Lijphart put forth, only the proportionality and segmental autonomy are met, but the grand coalition and power veto are not working. What we are facing now is an intra-level of analysis within the consociational system, where "grand coalition" is concerned. We can take Saad Hariri's example, he resigned from his duties (Prime Minister), and now the Sunni community feels left out. This is also something that happened in Iraq. So, nothing can work here unless the Sunni community recovers its predominance. The problem we are facing at the same time is the lack of leadership within the Sunni community, and they have moderates such as Hariri and Siniora, and radicals such as the Jihadists and the Salafists (Harakis who are Salafists that do not mind meddling in politics). So, we can see that the grand coalition cannot work because part of the Christian community has been left out as well. We can see how there is an intra-Christian competition between Frangieh and Bassil, one is pro-Syria and the other is pro-Iran (respectively), which is why Hezbollah did not push much for the formation of a government. You see, in each community you can notice sharp divisions...but not in the Druze community, because they realized that if they don't work together, they will be finished. This is the feeling that the Christian community is starting to perceive because their leaders are implementing what we call "*populist policies*". Bassil, for example, presented himself as

the protector of the Christians, but you know we have four main political parties in the Christian community: FPM, LF, Kataeb, Marada... they are highly divided.

Shia Muslims, instead, are extremely pragmatic; while Amal and Hezbollah dislike each other, they do not show their discord to the “outside” and they act as partners. The Christians, however, are losing everything. We are losing all our political and institutional positions of authority or influence. In Lebanon, your friends give you power, not only your merits. So, we have the issue of the system being semi-consociational and now we have to think about what are the ways out to this system. In this, we have 4 options: 1. Decentralization 2. Federalism 3. Partition 4. Coming back to the fully-fledged consociational system (all 4 variables).

Everything the President and his son-in-law are doing is imploding the system from inside. In my opinion, everything is working very well in order to unfold the red carpet for Hezbollah, it's getting more prominent and powerful in situations of instability and chaos, the worse the situation, the stronger Hezbollah is because the people will turn to it instead of the State. Some people here are talking about a relation between Mafia (Corrupt political class) and Militia (Hezbollah) where the latter has monopoly in the use of force, not the official armed forces. This is what Aoun thought when he signed the Memorandum of Understanding with Hezbollah in 2006, which at the time resulted as a first attempt to eliminate sectarianism from the political life, since it allied Christians with Shias and it was good. But the Christians at that time relied on the demonic possession of Hezbollah. What they later realized is that if they don't dance on Hezbollah's music, they will be replaced, they cannot control the Party of God.

So, now we're in a transitional period of time: some people like Nassim Nicholas Taleb proposed a Localist system (local governance), while others propose Federalism and here is the problem, because when speaking of a power-sharing system, the most important thing for the State to survive is to guarantee the balance between the communities, and the problem is that there is no more balance. Indeed, Christians are losing ground while the other communities always complain about the phenomenon of “Maronitism”. It concerns the mentality of “who are you to sit with me here?”. Federalism has been a trending subject nowadays, but the State is not mature enough to take the next step as some intellectuals are calling for it. Because on the basis that, if Hezbollah wants to fight Israel, let them do it themselves without destroying the rest of us in the process. There are negative and positive elements to this option.

The other option is more radical: Partition because it means Secession. Joseph Kashishian, an Armenian-American professor wrote an interesting article about foreign policy asking, “why we keep leaving this land?”, the answer is: because we want different things. What Hezbollah wants is different than what Patriarch Al Rahi wants. So, Federalism and Partition are difficult options because the State is not mature enough.

I was previously talking about the lack of balance between communities. Remember that here in Lebanon, we have a different kind of governance that Dr. Imad Salameh called “*communitocracy*”, and it means that communities are more important than the State. It is a mere formality: who has the real power is the community and the law helps this sectarianism because the majority of our daily life will be ruled by personal status laws that differ from sect to sect.

On that note, we also need to consider the imposition of recognition: Hezbollah is not asking to be considered an equal (it was the same with Maronitism), they want to be recognized as something *superior*, and there lies the problem. Lebanon is based on a balance of communities, no one can be superior to the others. However, Hezbollah has the political upper hand since it is in a partnership with the FPM (Aoun and Bassil) who is the party that is in power within the institution of the State today. Consequently, nobody is going to talk about Hezbollah’s weapons or how to integrate it into the army. Politically speaking, there is the connection of Mafia-Militia, for this reason, applying a fully-fledged consociational system is the best option since Federalism is going to take a while and Partition is nearly impossible.

So the solution to the current situation is going to take a while, especially because we are talking about external sponsorship and this is something that the Lebanese political class is guilty of; every important decision must be taken outside of Lebanon, even if Lebanese people are very smart, they don’t rely on themselves, they prefer to go outside. Take as an example Hariri “*I have to go to Riyadh, and ask for permission*”, the Shias will go to Tehran, the Maronites will go to France... if a decision is taken on the national level, nothing will change. The issue today is that Lebanon is seen in light of the Iran nuclear deal, it’s another card, it’s something they use on the table of negotiation, they play with us because we allow that because we don’t have the courage to take a decision to form a real State.

2) Do you think that sectarianism is the main problem in Lebanon or not? Or is it this problem directly related to the system itself?

I think the system is one of the main problems but it's not the only one. Sectarianism, in my opinion, is what defines your political behavior. There's no national identity but people are proud of it. But what is being Lebanese? What are the main features of your identity? If you ask a Christian, he will tell you something, and if you ask a Muslim, he will tell you something else. When we don't have a strong national identity, or strong State, and we are suffering from "*communitocracy*". What happens is that people think that they can rely only on their own community. Therefore, the way they behave in politics is lacking of critical thinking "*my leader is saying A, I say A*". On this phenomenon there is a conflict of generations because the youth are rejecting this idea, and this leads to political clientelism because it ignores State institutions and pushes people to ask for personal favors. Citizens are not citizens, they are clients, so you cannot ask for your rights. If you ask 70% of the Lebanese population, they will answer that they don't trust the judicial system. Consequently, you have to rely on yourself and your community because no one else will help you when in need. This is why the Salafist movements gained traction in the north of the country, because "there is no State". Instead, the Salafist movements are paying all your children's fees, so they have to be loyal to them. So, sectarianism is both the fuel and the outcome of the system, with time it became the blood of the system.

3) According to CIA World Factbook, right now Muslims are the majority of the population (61%), how can this aspect influence the dynamics of power sharing in Lebanon?

This is extremely important, especially for the Christians. To check properly, for the demographic census that we have in 2021, this is taboo. Just as you don't do anything about the disarming of Hezbollah, you don't talk about how many Christians we have in the country. According to the power-sharing system, you're going to have a share of power in the administration proportionated to the population, and we know that the Christians are overrepresented based on historical identities. Today, this is being used against those proposing Federalism; they say that if you want Federalism, we need a demographic census.

The interesting thing is how the public institutions are overcrowded with employees that do not go to work, they are called absentees, so there are around 320 000 people that shouldn't be working, and that's political clientelism, the leaders give people jobs and in exchange get loyalty and votes.

4) *If the aim is to overcome confessionalism as a political system, the amendment of article 24 and 95 dealing with the subject can lead to other political systems capable of overcoming confessionalism?*

Maybe the answer would be Federalism, but we are not ready for that yet. In article 24, they intentionally put aside the question of confessionalism as to how to overcome it. Instead, they decided to focus on the borders with Israel and Syria. In my opinion, I think this country needs a full audit, from the bottom up, a complete study to see what our needs are and what are the abusive practices and excess employees, etc.

Example: in the public budget, we have a sum for the train stations and railroads that no longer work. So, the international community pays for services we don't have, and this is why we are in trouble now, because the international community eventually understood how things work in Lebanon and cut us off from aid. Because of the principle of representation in public administration and of clientelism, the audit must be performed by someone outside of Lebanon; the public servants are loyal to their employers (leaders) and won't betray their friends or family.

5) *Talking about a possible reform of the constitution, what can be the role of external actors in the drafting of the amendments? Is there an effective will of reforming Lebanon or saving the country from becoming an effective failed state by external actors?*

The role of the external actors is everything, because, for example, they cannot include a word that hurts the image of Iran, or France, or Saudi Arabia. Change will happen with the approval of the external actors. The Lebanese are very smart, but they are ruled by idiots who have no education: if you are so smart, why do you accept that? The willingness of the external actors does exist, but it depends on actors such as France or USA who lately decided to make a move against Gebran Bassil by applying economic sanctions. Lebanon needs to be ruled temporarily by external actors, if not, nothing's going to change, and the options that exist are always terrible: Syria or Iran. So, we need to be ruled by the international community through the U.N., because we need

independent people who will not be bribed, but this is extremely difficult. When dealing with this situation, Europeans cannot threaten the political class with sanctions, they must impose them harshly through freezing all the assets of the Lebanese political class. We are facing a problem with the renewal of the political elite, and with gerontocracy, which is when old people rule. Every crisis in Lebanon is a political competition (e.g.: the trash crisis) and the leaders have no strategy or vision.

6) *Are there intermediate bodies, local trade unions, and if so, what is their role? More specifically, is civil associationism capable of overcoming the difficulties imposed by sectarianism in order to come up with political implications or solutions?*

We do have (civil society), but everything is in the hands of a few people. For example, those who get medicine are about 7 companies, or those who sell cement for construction about 5 companies, and if you check who the owners of these companies are, you will find them to be either politicians or their relatives. We are in the hands of cartels. The supply of medicine? Cartel. Food? Cartel. Electricity? Cartel. The corruption system is stronger than the State system. So, there are intermediate bodies, but they belong to the élite; the independent ones prefer not to provoke the authorities. The problem with fighting corruption in Lebanon is that members of the same community would not punish one of their own if they made a mistake but would be the first to point out someone's mistake if they were from another community.

7) *When power sharing is introduced in a divided society a possible and initial status quo is common to different countries sharing similitudes in politics and society. However, over time power sharing in divided societies can furtherly increase internal division, creating stalemate and even external interference among the different factions. Having said that, do you think there is any kind of similarity between the situation in Lebanon and other examples of power sharing in divided societies around the world?*

Yes, I would say Iraq and Bosnia-Herzegovina.

The real question here is how we can strengthen the national identity and the State institutions. I think these two elements are extremely important. In 100 years, we haven't been able to consolidate a State; the only national institution that's capable of creating the idea of unity is the army, and people are throwing many narratives at it to hurt its

reputation. The only institution that can be useful in order to recuperate the idea of a State or union. It does not matter if you are Maronite or Druze or Shia or Atheist, you are Lebanese. That's why we need generations to change the mindset. There is an interesting concept put forth by Theodor Hanf, the concept of ethnurgy, i.e., how politicians are using the ethnic factor to promote hatred, and we have to connect the ethnurgy with the problem of memorial trauma: "look what happened with the Druze, they killed the Christians" or "The Christians killed the Palestinians in Sabra and Shatila", they use this to scare people in order to control them. Another example is: "72 000 jihadis are coming to Lebanon".

8) *How might Palestinian and/or Syrian presence in Lebanon can influence the process of change in the country? And what is the role of the international community within the process of change in Lebanon?*

There is a kind of narrative of fear: the process of naturalization of the Syrian refugees in Lebanon. And some people think that the Syrians will control the country because we have around 1.5 million refugees. These people are not Lebanese, but they will not go back home because they do not feel safe, they will be socialized here. This bothers a lot of people because many think that the Palestinian and Syrian refugees are taking their jobs, because they ask for less money. Lebanon is using the card of the refugees very intelligently: "okay, you want me to handle the refugees, you have to send me money". Erdogan is doing the same thing, he uses the refugees as a threat. Gebran Bassil publicly stated that the presence of the Syrian refugees is a danger to the Lebanese identity.

As for the Palestinians, they are still suffering from many stereotypes. They don't have opportunities, they can't work anywhere, and they live in ghettos. But they got used to live this way, although now the situation is getting worse because Syrians are getting more financial aid from the U.N. than the one received by Palestinians.

Everything is politicized, and the integration of the Syrians is going to be a huge long-term problem, because they are considered as a threat. The international community doesn't understand that paying the refugees in dollars, the result is that they live better than the Lebanese people. Consequently, they are not leaving because they live better than in Syria.

9) *How there can be a process of change if the political class doesn't change?*

Without the political class changing, there can be no change.

If you look at the money invested by the international community, you see how we could have had 24/7 electricity, but we don't. So, I see 3 scenarios now: 1. the political class gives an opportunity to a new Sunni leader that is not going to have Hariri's blessing, and the Sunnis will hate him; 2. we continue this way, failure of the government, etc. and the situation will get worse; 3. total breakdown; no coup d'état because the army belongs to the élite as well, maybe temporary partition is the most probable scenario.

The situation is extremely negative, I can't see a reaction from the international community and the politicians are putting maximum pressure on the citizens (power cut, medicine shortage, etc.). I cannot see organized political violence, what I can see is sporadic violence (individual acts of violence).

10) Can Lebanon be effectively conceived as a consociation in the terms described by Lijphart?

No, as I said before, we have proportionality and segmental autonomy working but grand coalition and power veto are not working.

11) Are there new political perspectives coming out from the popular revolts (thawra) and what can be the role of the youth in solving the crisis in Lebanon?

Yes, we have new political parties, we have new associations, we have very interesting initiatives, popular initiatives cross-sectarian lines, secular proposals. Even some politicians like Michel Aoun have stated publicly that the only solution is for Lebanon to be a civil state. And it's interesting to know what "civil state" means for Christians and what it means for Muslims. The youth will play a big role in the future since most of them are taking action and are separating religion from politics.

Interview with Dr. Elie Elias

Interview with Dr. Elie Elias – Lecturer at the Holy Spirit University of Kaslik (USEK) and the Lebanese American University.

1) To what extent do you think that power sharing system is applied in Lebanon, and which are the future perspectives to solve the political crisis and stalemate in the country?

You have to differentiate between Constitution and National Pact. The latter is not written but it's actually the hidden Constitution. Everything that has been happening for the last 10 years, is that there is no respect for the Constitution. For example right now, about the nomination of the Prime Minister, the process is not respected, but what is respected is the National Pact, how? The President should name the Prime Minister, but he has to ask the deputies to give a name, then the name that takes the majority will be asked to form a cabinet with the President of the Republic, and this cabinet should also be approved by the Parliament in order to become official. What is happening today, instead, is that the President waited for the majority of the Sunni leaders to name Prime Minister, so the meeting with the deputies is only becoming folklore, because everyone knows that Mikati will become the Prime Minister, but the consultations are taking place right now because the Constitution obliges the President to make them. However, the National Pact is respected when the Sunnis named their own candidate. So, the power-sharing is there but not in the Constitution, rather in the National Pact. The latter is more respected, we call it in history "*the gentleman's agreement*". We are sharing power based on the "gentleman's agreement" not on the Constitution, it's only a reference for small things, but the Pact is directing everything in the country, even though it's not written. The fear today, especially for the Christians, is that – since the Constitution is not applied and it has become in its later stages a guarantee for the National Pact – the Pact itself would be discussed and changed. The Pact equally divided the power between Muslims and Christians. But now, if we want to negotiate over it, it will change, maybe 80% to 20% or 70% to 30% for the Muslims.

The Constitution was actually a guarantee of the National Pact by defining the process, but it was questioned all the time (the National Pact), during the 1975 War and 1989 Ta'if Agreement, and now with this crisis, it's questioned again...the Constitution is not

respected, it's not the reference, the only way they use it is when they want to run away from any accusation, and this is actually a Mediterranean mentality.

Maybe they will negotiate the National Pact. This is why the Christians rallied behind the Patriarchate's call for Neutrality and Decentralization. Why? Because neutrality will eliminate any reason for alliances between Muslims in Lebanon and the surrounding countries: Syria for Sunnis, and Iran for Shiites. As for Decentralization, if Muslims become the majority in the country, at the least the Christian regions will be governed by Christians themselves. This is also a crisis: it is not only a crisis of corruption, of waste management, of electricity, etc. It is also a crisis of existence for Christians and Muslims. It has been like that for 14 centuries.

2) *Do you think that sectarianism is the main problem in Lebanon or not? Or is it this problem directly related to the system itself?*

Sectarianism has historical roots in Lebanon, it started during the Ottoman time, before the *Mutasarrifiya* which was a success for Sectarianism. The Ottoman Empire was a Sunni empire but before the 17th century, before they conquered the Middle East, they did not actually give any power for the minorities. In Turkey today, in Georgia and Armenia, as well as in Northern Iraq, all the minorities were crushed by the Ottomans. But when they conquered Middle East, the question of minorities started to be raised by the Europeans. The reason for this is related to their economic and trade interests. "*La question pour l'Orient*", i.e., the question of the minorities. The first meeting in which they talked about that was in Westphalia, in Austria. It is important to read the statement that was published there. But what actually forced the Ottomans to respect the minorities is their war with Russians in the 19th century. When Russians conquered Crimea, there was Sunni Muslims living there (*Tatars*). At this point the Ottomans raised the question of the minorities in Russia, and the Russians said, "*okay so we have to take care of the Orthodox in your empire*". This was how the minorities in the Ottoman Empire began securing their places in power, through the "*the millet system*", and through the conquest of Egypt by Napoleon Bonaparte who gave more power to the Christians there. Bonaparte founded an administrative council representing all the religious communities in Egypt, and this system was reflected in the *Mutasarrifiyya* in 1860. It represented an achievement for the minorities, especially for the Maronites who wanted to create a Nation from that time.

Now, as for Sectarianism, since it has historical roots, I do not think it is the problem. I think the problem is the system because it does not reflect the sectarian identity. You cannot ask a Christian or Muslim to forget about his own identity. Because here history is still alive: the Muslims-Christians war, the Muslims-Muslims war, etc. So, in my opinion, the system did not reflect the sectarianism that exists in Lebanon. The National Pact reflected it but the Constitution did not respect it. A strong centralized State like the French model does not work, because the mentality in governing was very Jacobian. No matter your religion, or belonging, you are a number in the State, so they created a system similar to theirs without understanding the differences between the people. So, what happened was that people like Michel Chiha and Charles Corm, who were businessmen, and when you're a businessman, you don't think about your religion, you think about your business. What happened is that the élite of Beirut – composed mainly by Sunni Muslims and Greek Orthodox, which were very rich and did not look at religion as something extremely important – created this system because they had their own club, they only cared about their business, not religion. But after the Communist movements in the 60's, the representation of the community became in the hands of the poor people and the workers who were and still are more religious. So, they said that it was unfair for the Muslims to be poorly represented in the system. Therefore, it is not sectarianism, it is a system: if you have a more decentralized system, you will ease the tension on the public offices. The war ended with the Christians accepting that their power would have been reduced, they accepted this reform because Decentralization is mentioned in Ta'if. However, the way they mention it is ambiguous.

3) According to CIA World Factbook, right now Muslims are the majority of the population (61%), how can this aspect influence the dynamics of power sharing in Lebanon?

The Ta'if Agreement mentioned something: that Muslims and Christians stopped counting their numbers. I don't think this is a point to discuss anymore, the question of minority and majority is not important anymore. Today it is not a question of Muslims and Christians, it is a question of Shiites wanting to take more seats or power from the Islamic part of the government, this is the crisis now. They are allying themselves with some Christians and have problems with other Christians because they have a different agenda. Shias are looking for more representation in the Islamic part (Sunnis and Druze).

What has been happening lately is that Sunnis and Shias agreed on empowering the Prime Minister (who is Sunni) but in return, Shias have to take critical seats in the government (e.g.: minister of finance) or get 2/3 of the seats in the government, both of which are not mentioned in any agreement before. They are asking more shares in the executive power. Even if Muslims are 61%, of the people living on the Lebanese territory, it does not reflect this percentage, Christian immigrants are no longer the majority.

4) If the aim is to overcome confessionalism as a political system, the amendment of article 24 and 95 dealing with the subject can lead to other political systems capable of overcoming confessionalism?

For these two articles, it's important to read the commentaries of the people who wrote them, like Michel Chiha who mentioned that article 24 is only temporary to construct the State, and later we can eliminate it. But it stayed until now, because Lebanon witnessed peaceful moments only for 15 years, between 1943-1957. In 1958 we had a war between Arabs and Lebanese, so indirectly Muslims and Christians. Then you had a semi-military government with Fouad Chehab when he governed with the intelligence services. So, you cannot consider this as a power-sharing system, because Chehab governed and implemented many legal and institutional reforms. Then after his mandate Charles Helou came into power while a regional war was taking place (Six Days War) which ended the leadership of Abdel Nasser and pushed Palestinians to take leadership of the Arabist movement, and they decided to take Lebanon as a base to attack Israel from. Lebanon did not have any normal phase throughout its history.

So, the Lebanese system has only been experienced for 10 years, then we had the civil war and the Ta'if and now...I don't know what it is. The system is not respected. So, every question about articles 24 and 95, you cannot reach any result because they will give you the same answer, and it is related to the 1st and 3rd questions. Let's say that Muslims are saying that they are majority, you will then have to eliminate articles 24 and 95. However, we cannot say for sure it is a majority because there is no official census since 1932, it is a taboo subject. All the questions on reform today are not actually taken into consideration and people who are asking about it, are also asking to implement different reforms. They have hidden agendas, especially the Shiites. Their hidden agenda is to have more power in the government by asking for more Secularism. Why? Because if you eliminate the religion, the majority that stays here can be naturalized (look at

Afghans, Iraqis, Iranians, etc.). They can take over and declare an Islamic State, but they have something called “secret intentions” or “*taqiyya*”. It is a religious principle for the Shia, the Alawites and the Druze. The Shia did not witness a revolution in their religion until 1979, they are witnessing now the Golden Age for their religion, and they have been oppressed for 14 centuries, Their time is now. They managed to create a political system that is a “theocracy”, so they are still in the process of experiencing their invented system and they are trying to gain more power in the region by using their religious presence. Their real war is with Saudi Arabia. They want to control the holy place for the Muslims (Mecca and Medina). So, in Lebanon, they are very good at using terminology, especially in Arabic, they say something but then they mean something different. For example, if Hassan Nasrallah, the Hezbollah leader, says “we need a strong State”, the “strong State” in the Arabic that he is using is actually a religious terminology, it means their State will become strong when the Mahdi (the Chosen One) will appear in Mecca and control the region. But as non-religious citizens living in Lebanon, this means he wants a strong army and more rule of law. If you don’t know Arabic, you will never understand the region properly, which is why all the scholars don’t really tackle the Lebanese situation.

5) Talking about a possible reform of the constitution, what can be the role of external actors in the drafting of the amendments? Is there an effective will of reforming Lebanon or saving the country from becoming an effective failed state by external actors?

It's a political question. The role of external actors is being the “guarantors” of any reform in the Constitution, and this is what the Patriarch publicly called for. Neutrality with the support of the international community.

In my opinion, for now, there is no will of reforming Lebanon, they only want to stabilize the situation which is why they are only supporting the army to control the security situation. I don’t think they have an interest in Lebanon now. Lebanon is like two streets in New York, the economic crisis can be solved in 6 months if there’s a will to do so. So, I don’t think that they have any role now. But, French people, since 2008, they presented an agreement whereby the National Pact would change in order to give more power to the Shiites. At the time, the French Minister of Foreign Affairs in the meetings in Doha and Beirut, said that we should give 2/3 of the government to the Shia. From that time on, this is what is happening in Lebanon.

So, what is the interest of France? In my opinion, it is purely economic, because they have their companies (Peugeot, Renault, etc.) in Iran and they want the oil and gas, etc. So, I do not think they have any positive impact.

It should be an internal decision to reform the Constitution. Applying the reform of decentralization can be a step. If you ask any politician or any real activist, the door for any real reform for a more stable and developed country should be decentralization, maybe Federalism in the future, but for now decentralization.

6) *Are there intermediate bodies, local trade unions, and if so, what is their role? More specifically, is the civil associationism capable of overcoming the difficulties imposed by sectarianism in order to come up with political implications or solutions?*

Their role now is only raising their voice and asking for more reforms from the State. But unfortunately, all the local trade unions or syndicate leaders are politically affiliated. For example, the workers' syndicate which has around 220 syndicates under it, they are all for Speaker of the Parliament, Nabih Berri who has been in his seat for 30 years and this is how the Syrians governed in Lebanon. They appointed people loyal to them in the main positions and then they controlled the local syndicates. So, no role for these guys, they are corrupted.

It is a fact that the different economic sectors in Lebanon are controlled by communities, it is an historical fact. For example, the banking sector is controlled by the Christians because they were the first bankers, even under the Ottoman Empire. The trading sector is controlled by the Sunnis whereas Agriculture is controlled by the Shia and Druze. This is why the civil associations have no role, because it is not a secular system, it is purely sectarian. So, these organizations do not play a major role, they are playing a supporting role for the system. But if you have a change in the system, it can be directly reflected on these associations.

7) *When power sharing is introduced in a divided society a possible and initial status quo is common to different countries sharing similitudes in politics and society. However, over time power sharing in divided societies can furtherly increase internal division, creating stalemate and even external interference among the different factions. Having said that, do you think there is any kind of similarity*

between the situation in Lebanon and other examples of power sharing in divided societies around the world?

You can take the example of Belgium, or that of Bosnia-Herzegovina. We are looking to have a system similar to Belgium's. Last year or the last 2 years, Belgium stayed without a government, but all the public services and sectors of the State were functioning normally, and no one felt the absence of a government, this is what we are looking for. Because fighting over the powers and the system in Lebanon will remain even if it was federal, centralized, or decentralized. What we are looking for is to give more power the local authorities or bodies, that way we can solve some of the problems we've been facing for 100 years. Our mentality is similar to the Swiss people, they have something really interesting, it's called the "*citoyen-gendarme*", that means that every citizen is at the same time a police officer. It reflects the reality of our society, because every citizen here is actually a militant, he is always aware, and the police is the last thing they rely on.

8) How might Palestinian and/or Syrian presence in Lebanon can influence the process of change in the country? And what is the role of the international community within the process of change in Lebanon?

The international community represented by the UNRWA and UNHCR only looks at the Palestinian and Syrian refugees through a humanitarian lens. They don't think they have any role in the political crisis in Lebanon. But the Lebanese have a different perception of the Syrians and Palestinians. The Palestinians' demographic tension in Lebanon has ended because their numbers are officially less than 100.000 units. But how is the international community playing a role here? By raising the number of the Palestinians. They are securing more fund for the government, they are still counting them over 100.000 units, so that the government can take more money from these international organizations. So, there are no political implications for the Palestinians.

As for the Syrians, that is a real political question. Their presence here is used by the Syrian regime as a way to pressure the political leaders in Lebanon to obey to the regime's conditions. How? Right now, they are securing Gebran Bassil's election as next President. They promised him that once he will become President, they will help him to win more voters and support from the Lebanese to deal with the Syrian refugee question, but until then they are keeping them there so people can feel uncomfortable in their presence. Like they did with the Europeans. For two years, Syrian refugees were heavily crossing the

borders to Europe, and that was a purely political question. The Turkish government put pressure on the EU to deal with different things and the Syrians were also using refugees to put more pressure on the Christian part of Europe, saying that “*we will overload your territories with non-Christian refugees*” and in return you will stop putting pressure on our government, and this what happened, until the Americans interfered.

Unfortunately, the Palestinian refugees were used by the PLO as a political card, and now the Syrian refugees are being used by the Syrian regime as a political card. It is naïve to think that the international community would deal with the refugee situation, because its personnel here is just represented as “employee”, therefore they want to secure their jobs.

9) How there can be a process of change if the political class doesn't change?

The elite of both communities reached what we call the National Pact, which I believe is unique in history. It's the only Pact between Christians and Muslims in the world. Now we have something new “Fratelli Tutte” with the Pope and Sheikh Al Azhar, which is actually similar. The Lebanese communities' elite reached this agreement, and of course they had common economic interests and they wanted to make the system work. The elites had a booming economy since WW2 until 1952. Today, in 2021, you still need the elite of the different communities to deal with the new arrangement in the system, but not the corrupted ones. So, in order to make real change, you don't have to attack the system, you have to attack the leaders of the system. You have to preserve this sectarian system and remove the corrupted people who made an agreement with the militia (Hezbollah). When you remove them democratically, then you can ask, as a first step, to implement the Ta'if Agreement and then see what you can reform in the system. We are living in a State where there is no system, nothing is respected. So, for any reform, we have to change the ruling class for now, not the system. Because if you want to change the system, you will start asking demographic questions: who will rule the new system? Then you will enter a vicious cycle and would prefer keeping the same corrupt elite without changing anything. So, the first step is to change the ruling elite and then go for negotiations over a new system.

10) Are there new political perspectives coming out from the popular revolts (thawra) and what can be the role of the youth in solving the crisis in Lebanon?

There is no *Thawra*, there is a movement. The Lebanese people woke up. Let's hope they will stay awake until election time. The youth should become candidates, they should believe in the system now, and they should say that we should change the system once we are there, so we have to participate in power. Few people are interested in politics, most are interested in making money, in how to adapt or break the system, a very Mediterranean mind. But what happened on October 17th 2019, is that people realized that they have to be politically involved if they want change. There is awareness now.

Interview with Dr. George Charaf

Interview with Dr. George Charaf – Professor at the faculty of law and administrative & political sciences at the Lebanese University of Beirut.

- 1) *Jusqu'à quel point pensez-vous que le système de partage du pouvoir entre les différentes communautés (power-sharing system) est appliqué au Liban. Quelles sont les solutions possibles envisagées pour résoudre la crise politique du pays ?*
- 2) *Croyez-vous que le confessionnalisme (الطائفية) soit le problème principal au Liban ? Ou est-ce que c'est directement lié au système même ?*

L'approche méthodologique sur lequel je travaille sur le régime libanais, c'est le rapport dialectique entre la société et l'État. Je crois que le grand problème du Liban, du régime politique libanais, c'est qu'il n'y a pas une complémentarité entre la structure de la société et le régime politique. Donc, la société libanaise est une société pluraliste alors que la mentalité constitutionnelle qui règne au Liban a comme objectif d'arriver à un État centralisé. Effectivement, l'État actuellement n'est pas centralisé, mais l'arrière-fond qui dicte tous les aspects de la vie politique, c'est qu'il faut dépasser le confessionnalisme pour arriver à un État centralisé au Liban. C'est pour cela que je trouve que le problème – avant tout – est une approche méthodologique erronée. Cette contradiction se trouve essentiellement dans la Constitution elle-même. C'est ce qui aboutit à ce que j'appelle le confessionnalisme politique et le confessionnalisme sociétal. Alors, dans la Constitution de 1926 et même l'accord de Taef, on a conservé le confessionnalisme sociétal ; chaque communauté a préservé son autonomie dans son organisation intérieure, dans les rapports intérieurs à la communauté, et sa liberté d'avoir ses écoles et ses universités. Donc, on a conservé le confessionnalisme sociétal, mais – et c'est là où se trouve la contradiction – on s'achemine d'autre part vers l'abolition du confessionnalisme politique. C'est là le problème ; il ne faut pas étudier le régime libanais à partir des techniques confessionnelles. Le problème c'est : est-ce qu'on va sauvegarder le rapport de complémentarité entre la société et l'État, ou bien va-t-on isoler l'État de la société ? Parce que si on arrive à abolir le confessionnalisme politique, on va aboutir à cette contradiction méthodologique essentielle : celle d'une société pluraliste et en face un État centralisé. D'après moi, on peut faire des aménagements techniques dans la Constitution, mais ce n'est pas là le problème ; le problème c'est : est-ce que la Constitution doit

répondre à la structure de la société ou non ? Oui, mais au Liban c'est tout à fait le contraire. La mentalité politique, les élites politiques libanaises, on toujours cette mentalité qu'il faut arriver au principe classique de l'État-Nation, alors que le Liban n'est pas un État-Nation. Je crois que c'est ça l'essentiel de l'approche.

3) *Selon le « CIA World Factbook », les musulmans constituent actuellement 61% de la population libanaise ; comment cela pourrait-il influencer la dynamique du système de partage du pouvoir au Liban ?*

Au Liban, la vie politique est basée sur un rapport de force essentiellement démographique, et actuellement il y a l'aspect militaire avec le Hezbollah. Donc, là, dans une société pluraliste, on ne peut pas gouverner à partir d'un rapport de force, parce qu'il y aura des gens qui vont gagner et des autres qui vont perdre, alors que dans une telle société, il faut que tout le monde soit gagnant sinon les conflits seront répétitifs et c'est ce qui se passe au Liban. En 1943 et en 1958 quand il y a eu une révolution et puis la guerre de 1975, et maintenant on risque de retourner à une guerre civile. La motivation psychologique chez les communautés, pour une guerre civile, est prête ; on est dans une guerre larvée.

4) *Si le but est de surmonter le système politique confessionnel, quelle est l'importance de la révision constitutionnelle des articles 24 et 95 de la Constitution Libanaise ?*

Supposant qu'on va abolir le confessionnalisme politique, ce problème n'est pas simplement un problème technique, on peut amender la Constitution et dire, dans l'article 24, que le parlement libanais sera désigné selon un rapport national, mais est-ce que la société libanaise est prête ? Pour qu'elle le soit, il faut une culture qui va dans le sens d'une culture unique chez toutes les communautés. Alors que les communautés ont, chacune, une base philosophique différente et une structure sociale complètement différentes les unes des autres, etc. C'est là la contradiction de base : avec l'abolition du communautarisme, on va élargir ce faussé entre l'État et la société. Parce qu'il n'est pas question dans tous les amendements constitutionnels d'abolir le confessionnalisme social. Plus avec le Taef, on a renforcé ce confessionnalisme social en donnant aux chefs religieux le pouvoir d'intervenir auprès du conseil constitutionnel pour l'abolition de

toutes lois qui pourrait toucher à l'autonomie des communautés. Donc, d'une part on renforce le confessionnalisme sociétal, d'autre part on s'achemine vers l'abolition du confessionnalisme politique.

Par exemple, en Europe, il y a plein d'ethnies et de langues mais il y a un tronc commun culturel : la culture des droits de l'Homme. Tout le monde s'accorde que les droits de l'Homme est un tronc commun à tous. Nous, on n'a pas ça, on n'a pas un minimum de culture commune à toutes les communautés. Pour moi, abolir le confessionnalisme politique sans avoir préparé les conditions valables pour l'abolir, c'est aboutir à une guerre civile.

Est-ce que c'est absolument nécessaire d'abolir le confessionnalisme ? Ou bien de l'organiser de façon plus rationnelle ? Il faut toujours avoir cette complémentarité entre l'État et la société... et si on parle d'abolition de confessionnalisme, c'est en principe faux. Bon, la société civile peut rapprocher les comportements des gens ; si un chrétien et un musulman participent à une manifestation, ou bien à des revendications pour améliorer l'électricité, etc... ce sont des questions qui ne touchent pas à l'identité des communautés, ce sont des problèmes techniques. Alors, ce rapprochement peut aider à refroidir cette tension intérieure entre les communautés. Mais, malheureusement, les leaders des communautés arrivent bien à manipuler les gens et à les distraire avec des choses qui n'ont rien à faire avec la situation économique ou social.

5) Sur ce, que pourrait être le rôle des acteurs externes (communauté internationale) dans la rédaction d'une nouvelle Constitution ? Est-ce que ceux-là ont une volonté véritable de réforme au Liban ?

Dans la situation du Liban, les ingérences extérieures existent depuis la création du Grand Liban. A l'intérieur du Liban on agit selon un rapport de force ; chaque communauté cherche à avoir la priorité dans ce rapport. Si elle n'arrive pas à dominer intérieurement le rapport de force, elle cherche un support à l'extérieur. Les forces extérieures interviennent au Liban par le billet des communautés libanaises, parce que chacune des dernières cherche à dominer la scène politique alors que l'extérieur a ses propres intérêts (que ce soit l'Israël, la Syrie, l'Iran, la France, etc.). Si on arrive, au Liban, à trouver des solutions à nos problèmes sans se basé sur le rapport de force, alors les ingérences extérieures vont cesser. C'est nous qui provoquons les interventions extérieures.

Dans la Constitution Belge, au niveau de l'État fédéral, il y a ce qu'on appelle « la double majorité », c'est parce qu'il y a un déséquilibre démographique entre Flamands et Wallons, alors on a cherché – au niveau de la prise de décision – à éliminer ce déséquilibre en cueillant la double majorité pour certains sujets. Donc, il faut une majorité au parlement fédéral, chez les Wallons comme chez les Flamands.

6) En général, ce qui caractérise les sociétés multiculturelles est l'existence d'un système de partage du pouvoir. Celui-ci présente autant d'avantages que de désavantages ; notamment, le renforcement des divisions internes aboutissant à une impasse politique et parfois même invitant les interventions externes. Cela dit, pensez-vous qu'il existe des similarités entre la situation au Liban et dans d'autres pays multiculturels où est appliqué le « power-sharing system » (Iraq, Bosnie, etc.)?

Le Liban n'est pas un cas unique de ce sens-là : il y a la Suisse, la Belgique, le Canada, les États de l'ex-Yougoslavie. C'est ça le problème des sociétés pluralistes partout. Mais, quand même, chaque société a ses spécificités, et il faut avoir le talent de trouver des solutions qui répondent aux spécificités d'une société ; il n'y a pas un régime fixe, il y a des principes constitutionnels généraux mais pas de régime-type, valable pour tout le monde. Or, le principe c'est qu'il faut avoir une complémentarité entre État et société, prenant en considération les spécificités de chaque pays. Ce qui est très singulier au Liban, c'est que c'est le seul État au monde où il y a une tentative de conjugalité entre chrétiens et musulmans sur pied d'égalité musulmane, c'est le seul cas ; il n'y a pas d'autres États où les chrétiens et musulmans participent à la gestion de l'État à pied d'égalité, il est unique dans ce sens. Et j'espère que les européens comprennent cela parce que si le Liban arrive à éclater définitivement, il n'y aura aucun laboratoire de conjugalité islamo-chrétienne. L'Islam libanais est incomparable à l'Islam des autres pays ; ici l'Islam politique libanais a créé un concept politique de l'Islam qui est différent de tous les autres pays, 1) les musulmans libanais acceptent l'égalité avec le non-musulmans 2) ils acceptent de gouverner ensemble avec des non-musulmans, ce qui n'est pas le cas dans d'autres pays où il y a des chrétiens.

7) *Comment peut la présence des réfugiés Palestiniens et Syriens influencer le processus de changement au Liban ? A ce sujet, quel est le rôle de la communauté internationale en ce qui concerne les réfugiés ?*

En 1975, les Palestiniens faisaient partie du rapport de force en présence, donc ils soutenaient les musulmans, alors que l'armée a été considérée par les musulmans comme étant l'armée des chrétiens. Mais les Palestiniens avaient des objectifs propres à eux ; ils voulaient créer une sorte de mini-États au Liban pour le dominer. Il faut toujours rapprocher le rôle de l'extérieur avec les rapports de force de l'intérieur ; toute force extérieure qui intervient au Liban, le fait pour modifier le rapport de force ou pour l'équilibrer, et cela aussi pour ses propres intérêts...c'est ça qui complique les choses au Liban.

8) *Serait-ce possible d'aboutir à un changement de la situation politique libanaise sans que la classe politique actuelle ne change ?*

L'élite politique qui gouverne le Liban est complètement pourrie. En même temps, c'est une élite politique ignorante ; les leaders libanais ne comprennent rien à l'histoire et la structure sociétale du Liban, ils vivent – constitutionnellement – dans l'esprit de l'État-Nation qui a prévalu en Europe à la fin du 19ème et début 20ème siècle. Ce qui les intéresse ce n'est pas de créer un État, c'est le clientélisme, ils n'ont même pas le concept de service public. Je suis convaincu qu'avec cette élite, on ne peut rien changer, parce qu'il ne suffit pas de changer les hommes, il faut aussi changer la mentalité, la culture. Les élections ne vont pas changer le fond du problème ; le fond du problème n'est pas les hommes, c'est quand on arrive à créer un tronc culturel commun entre les Libanais, un comportement politique commun, au moins qu'on se mette d'accord que, quand on a un problème à résoudre, qu'on ne le fasse pas par un rapport de force, mais par le dialogue. Les élites qui gouvernent une société pluraliste doivent toujours avoir une balance dans leurs comportements et leurs discours, pour qu'ils sachent quoi faire/dire ; c'est tellement fragile qu'il faut avoir des visionnaires, non des comptables. L'idée même de l'intérêt général n'existe pas au Liban.

9) *Pourrons nous considérer le Liban comme une « consociation », telle qu'elle est décrite par Lijphart ?*

Dans la structure même du Liban, on trouve une société consociative. En effet, le Liban est une société pluraliste, mais au niveau constitutionnel et politique, ce n'est pas le cas. Parce que les leaders qui dirigent le pays n'ont pas, dans leur tête/comportement/discours politique, les exigences pour la réussite d'une société pluraliste, ils ont toujours l'idée de l'État-Nation qui correspond à un État centralisé ; alors que, quand on dit une société pluraliste, on dit État composé, qu'il soit fédéral, ou confessionnalisme politique, ou décentralisation.

10) *Est-ce qu'il y a de nouvelles perspectives politiques issues des révoltes (Thawra) ? Quel est le rôle des jeunes dans la résolution de la crise au Liban ?*

Parler de révolutions au Liban n'est pas précis ; une révolution est la résultante d'un processus historique et culturel. Par exemple, la Révolution française qui a été précédée par 200 ans d'idées politiques et philosophiques. Là (au Liban), c'est un soulèvement, c'est une réaction à une situation qui devient insupportable. Le libanais aime utiliser les gros mots « la révolution » ; elle n'a ni leader, ni idéologie politique, ni programme politique. Pour moi, c'est une réaction spontanée à une situation insupportable. Il y avait plusieurs groupes, chacun d'un programme totalement différent ; la révolution doit être la résultante de quelque chose. Une réaction ne peut pas être une révolution. Il y a trois solutions : 1. soit amendement constitutionnel ; 2. soit que la classe politique s'écarte elle-même ; 3. soit la classe politique est écartée par la force.

Pour moi, il n'est pas clair qui va succéder l'élite actuelle puisqu'il n'y a pas d'organisation chez le peuple.

Interview with Dr. Wahhad Sharara

Interview with Dr. Wahhad Sharara – Professor of social sciences at the Lebanese University of Beirut.

1) Jusqu'à quel point pensez-vous que le système de partage du pouvoir entre les différentes communautés (power-sharing system) est appliqué au Liban. Quelles sont les solutions possibles envisagées pour résoudre la crise politique du pays ?

Je pense que le problème n'est pas uniquement et seulement un problème de nomenclature ou de définition. C'est un problème, spécialement, d'opération ou de caractère effectivement opérationnel de la consociation. Je pense que le terme a été repris et adopté essentiellement du corpus constitutionnel belge et, probablement, dans d'autres cas où il y a plusieurs communautés linguistiques, ou ethniques, ou religieuses pour décrire une réalité qui est tout à fait différente. Le cas du Liban ne semble pas s'appliquer à cette forme de définition du régime politique pour une raison très simple : c'est que, au départ, personne n'a reconnu le caractère communautaire distinct des diverses communautés. Vous savez qu'en adjoignant au Mont-Liban historique des régions dominantes essentiellement islamique, on n'a pas pensé que ces communautés musulmanes avaient un caractère constitutionnellement différent, on croyait que c'était une sorte de différences mineure à l'intérieur de différences transitoires, ou secondaires. Par rapport au caractère national, on pensait que les communautés à caractère islamique et les communautés à caractère chrétien étaient des manières d'exprimer les différences tout à fait inopérantes face au caractère national commun. Donc on croyait que, contrairement aux néerlandais et francophones belges où il y a des communautés historiquement, ethniquement, linguistiquement, culturellement et politiquement différentes, la consociation était une sorte d'association entre des entités autonomes, des entités différentes. Là, au Liban, on n'en croyait absolument pas. On croyait que le caractère fondamental était un caractère arabe donc non-religieux, ou tout à fait ethnique, parce que culturellement et historiquement arabe, mais pas ethniquement arabe parce qu'on faisait semblant de ne pas savoir qu'il y avait d'autres ethnies comme les Kurdes. On pensait que ce seraient des différences secondaires en attendant une fusion nationale. Ceci est un peu le cadre du problème. Je pense que l'article 95 de la Constitution libanaise qui souligne le caractère provisoire de la répartition des postes de l'administration, pouvait

être résolu par une mesure qui ne dérange pas profondément le caractère homogène de la nation (arabe). Donc c'était une manière de ménager la diversité en attendant (comme l'écrit l'article 95) une homogénéité dans les capacités des individus appartenant à ces communautés, ceci devait aboutir de facto à la chose suivante ; la manière d'opérer de cette répartition devait aboutir à une forme de veto réciproque. C'est-à-dire ce sont des capacités, non seulement de répartition de ressources, mais une répartition des cas de blocage ; on a une capacité de bloquer beaucoup plus qu'une capacité de distribuer.

2) *Croyez-vous que le confessionnalisme (الطائفية) soit le problème principal au Liban ? Ou est-ce que c'est directement lié au système même ?*

Le confessionnalisme n'est, objectivement, pas le problème principal. Mais, subjectivement, c'est le problème principal puisqu'une des parties, pour moi, le prétend. Je pense que le confessionnalisme, comme la consociation, était une réponse à une question sociologique et historique posée par le problème de la formation des États du Moyen-Orient, parce que dans les cultures politiques de ces sociétés, le pouvoir ne peut être qu'unitaire et concentré, et la division des pouvoirs entre législative, judiciaire et exécutive, c'est des choses – jusqu'à maintenant – très difficilement intégrables au fonctionnement des États de la région parce que nos pouvoirs ont un caractère essentiellement charismatique. Vous savez, la division wébérienne entre pouvoir transitionnel, pouvoir démocratique légal et pouvoir charismatique : le pouvoir est presque toujours vu comme étant une force indivisible et qui ne doit pas être divisé ; le confessionnalisme a été une réponse circonstancielle à un problème sociologique et historique fondamental, c'est que les communautés non-musulmanes sont traitées selon le paradigme politique charismatique, c'est communautés là seront des communautés mises à l'écart, et hiérarchiquement inférieure aux autres. Alors, pour que ce ne soit pas le cas, l'histoire a pensé – à travers deux siècles – à formuler et concrétiser cette réponse en disant que, cette fois, le pouvoir doit être divisé. Il y aura une répartition des prérogatives, une répartition des ressources et, à partir de cette répartition-là, on associe les communautés à leur rang respectif : on aura les Maronites au premier rang, les Shiites au deuxième rang, etc... en cette perspective-là, le confessionnalisme n'est pas le problème essentiel. Mais, la culture politique dominante dans la société libanaise, comme dans les autres sociétés Proche Orientales, on pense qu'un pouvoir non-unifier, voir

séparer et repartit, n'est pas un vrai pouvoir... donc la culture politique des musulmans, grosso-modo, pense que ce qui a été repartit et donner aux chrétiens devrait leur appartenir et revenir en fin de compte, et c'est cela qui est le facteur essentiel de la virulence de la question communautaire.

3) *Selon le « CIA World Factbook », les musulmans constituent actuellement 61% de la population libanaise ; comment cela pourrait-il influencer la dynamique du système de partage du pouvoir au Liban ?*

Ça l'a déjà influence énormément ; en fait, à partir des années 1970 cet équilibre démographique c'est fait sentir par des exigences politiques, économiques et sociales tendant à rééquilibrer ; autrement dit, à liquider la politique de répartition et d'équilibre entre les communautés, et tendant donc à faire des Chrétiens des citoyens de secondes zones, parce que sa délégitime les revendications des Chrétiens, sa délégitime l'idée même de citoyenneté, et l'idée d'un État autonome, et sa revient à considérer le vrai problème libanais comme le reflet des problèmes régionaux en réduit ; le problème de la démocratie libanaise c'est la lutte entre les saoudiens et les iraniens. C'est comique, parce qu'on a donné aux syriens le droit d'écrire la Constitution de l'État libanais, par un régime fasciste... ce qui fait qu'il n'y a pratiquement plus, ni de vie politique nationale, ni de débat politique national, et ça revient à cette manière de discuter le confessionnalisme, par exemple, « conspiration impérialiste », « conspiration communaliste », « des agents des français », enfin tout ce que la presse actuelle politique libanaise montre de superficialité et de jugement tranchant.

4) *Si le but est de surmonter le système politique confessionnel, quelle est l'importance de la révision constitutionnelle des articles 24 et 95 de la Constitution Libanaise ?*

Formuler ton terme purement constitutionnel, même linguistique, le problème du dépassement du confessionnalisme est une manière d'éliminer la question au lieu d'éliminer le problème. S'attaquer à la répartition et à l'équilibre voulu, revient en fait à résoudre le problème en éliminant la question. Par exemple, ce qui est souvent dit dans les discussions libanaises octroyées aux jeunes de 18 ans, le droit de voter ; on fait semblant que, donner le droit de vote aux jeunes qui seraient moins confessionnalistes

que leurs parents, permettrait de modérer les tendances confessionnelles. Mais, en fait, il y a deux problèmes : il y a le problème démographique ; les jeunes de 18 ans au Liban font une partie capitale de la population et son une double majorité musulmane, parce que la moyenne des naissances musulmanes est le double de celle des chrétiens. De l'autre côté, les milieux éducatifs et culturels et familiaux musulmans sont beaucoup plus polarisés que les milieux chrétiens qui tendent beaucoup plus à une sécularisation de la vie personnelle. Sous ce couvert d'une proposition constitutionnelle (donner le droit de vote aux jeunes de 18 ans), ce cache stratégie politique tout à fait contraire à l'objectif voulu ou prétendu. En fait, cette tendance ou cette prétention à laïciser n'est pas du tout réelle, ce sont des slogans, et quand ceux-là coïncident avec des tendances qui penchent du côté des musulmans.

5) Sur ce, que pourrait être le rôle des acteurs externes (communauté internationale) dans la rédaction d'une nouvelle Constitution ? Est-ce que ceux-là ont une volonté véritable de réforme au Liban ?

Je pense que la communauté internationale est totalement perdue dans le labyrinthe libanais, et surtout les États qui n'ont pas d'expérience directe, les États qu'ils l'ont, tel que la France et la Grande-Bretagne, ne peuvent pas jouer un rôle décisif parce que ceux qui ont la capacité de jouer ce rôle, subordonnent toujours la perception du Liban, de la vie politique libanaise à des intérêts régionaux qui sont totalement inapte à traiter ces problèmes. La vie politique intérieure libanaise est perçue comme un conflit entre l'Iran et l'Arabie Saoudite, mais aussi on donne des intérêts à des blocs d'intérêts, on donne des prérogatives, on soutient des interventions, quand en fait c'est forces-là n'ont absolument pas les moyens de voir la situation à partir d'un point de vue, à la fois historique et synthétique (ex : Syrie) et ces forces-là, quand ils interviennent, sont toujours imbriquées dans les luttes intérieures, ils manquent de distances et de neutralité, mais aussi de compréhension historique. Parce que, que veut dire une structure politique telle que la libanaise pour les têtes des Saoudiens ou bien des Iraniens ? Ils ne peuvent pas comprendre ça.

6) *Quel est le rôle que joue la société civile (les syndicats, les coopératives, etc.) dans l'effort visant à dépasser le confessionnalisme ?*

Si on prend un cas concret de la formation de la société civile tel que celui des syndicats : il n'y a qu'à voir l'histoire syndicale ; elle a connu une sorte de floraison dans les années 40, parce que les années 40 ont vu l'essence du code du travail (1947 au Liban) tenant compte des intérêts des ouvriers et des employés. À partir du moment où la vie politique libanaise a été polarisée par les luttes communautaires, y compris la lutte nationaliste, la vie syndicale a décliné d'une manière dramatique, et ce déclin atteint son summum à partir de 1975, début de la guerre, et surtout à partir de 1989-90, à ce moment-là, les syndicats ont été liquidés dans les organisations confessionnelles. La personne qui a joué un rôle clé dans ce déclin est Nabih Berri avec ses hommes de mains. Les Communistes jouaient un rôle assez actif, à partir des années 50 ils commençaient à décliner, et eux ont adaptés la pratique syndicale à des normes totalement asphyxiantes, ils ont asphyxié le travail syndical en adoptant des statuts intérieurs qui bloquaient les recrutements et n'effectuaient aucun travail d'agitation, et tout cela a abouti à leur digestion par les partis confessionnels et complètement éliminé. C'est aussi, d'ailleurs, le cas des Phalanges ; les phalangistes étaient parmi les promoteurs de l'action syndicale, très actifs dans les années 50, ils avaient aussi un département syndical qui jouait un rôle important... et l'idée d'une démocratie sociale faisait l'objet de débat avec les Gemayels.

Au Liban, l'identité est sociale, et non politique. Donc, l'identité communautaire est une identité qui se nourrit de l'identité sociale. Alors la société au Liban, même si elle est très fragmentée, a un rôle très comparable au rôle joué par les sociétés très passives comme en Syrie, Jordanie, Iraq, etc... même si dans ces pays-là (Iraq spécialement), la société civile n'est pas clanique, mais pas étatique non plus.

7) *En général, ce qui caractérise les sociétés multiculturelles est l'existence d'un système de partage du pouvoir. Celui-ci présente autant d'avantages que de désavantages ; notamment, le renforcement des divisions internes aboutissant à une impasse politique et parfois même invitant les interventions externes. Cela dit, pensez-vous qu'il existe des similarités entre la situation au Liban et dans d'autres pays multiculturels où est appliqué le « power-sharing system » (Iraq, Bosnie, etc.)?*

Je peux parler relativement de la comparaison avec l'Iraq d'une manière très conditionnelle ; il y aurait des traits comparables, mais ces traits comparables sont à l'intérieur d'une différence assez importante. Par exemple, la communauté Shiite, numériquement, démographiquement, politiquement, culturellement - dans les deux cas - a des traits assez divergents. Par exemple, le poids de la « *marjaaiya* », même les Shiites libanais du Hezbollah sont beaucoup plus sécularisés sur le plan du comportement social que les Iraquiens qui sont des Shiites, à la fois, religieusement, politiquement, culturellement et socialement. Tandis que les Shiites libanais le sont beaucoup moins, s'ils le sont énormément politiquement, ils le sont beaucoup moins socialement, encore moins culturellement. Vous voyez, il y a une hiérarchie des aspects qui est différentes des autres.

8) *Comment peut la présence des réfugiés Palestiniens et Syriens influencer le processus de changement au Liban ? A ce sujet, quel est le rôle de la communauté internationale en ce qui concerne les réfugiés ?*

Ceux sont deux catégories radicalement différentes. Les Palestiniens ont été intégrés socialement en partie, par exemple à Saida et Tyr, et politiquement et militairement d'une manière très brute et radicale entre 1968 et 1985-86 avec des tendances beaucoup plus faibles actuellement. Et donc, ils ont une histoire de 75 ans. Alors que les réfugiés syriens ont un caractère double : il y a, d'une part, une vague très lente et faible d'émigration syrienne au Liban qui date du début du siècle dernier, celle-ci a permis l'intégration totale. D'autre part, il y a la vague d'immigration depuis l'occupation syrienne du Liban de 1976, elle amené des dizaines de milliers de Syriens qui se sont installés au Liban, mais souvent ils sont repartis. Et depuis 2011, c'est tout autre histoire : c'est des réfugiés instables et forcés, et qui pèsent très lourdement sur le plan économique, et actuellement, politique ou socialement parce qu'il vivent dans un ghetto...les Palestiniens beaucoup moins.

9) *Serait-ce possible d'aboutir à un changement de la situation politique libanaise sans que la classe politique actuelle ne change ?*

10) *Est-ce qu'il y a de nouvelles perspectives politiques issues des révoltes (Thawra) ? Quel est le rôle des jeunes dans la résolution de la crise au Liban ?*

Je pense que le blocage politique au Liban n'est pas essentiellement un blocage de système, je pense que la classe politique dominante est un facteur de blocage important, mais elle ne l'est pas seule, d'une manière plus importantes que la culture politique libanaise ; je pense que les classes populaires libanaise jouent un rôle décisif dans le blocage du système, ce sont ces masses populaires qui ont permis, même demandé au départ, une solution aux problèmes économiques, sociaux et politiques libanaise en 1989 lors de la signature de l'accord de Taef où on penchait énormément vers une solution distributive. C'est-à-dire, « donnez-nous vite, le plus possible » de l'argent, du faux travail, appuyez-vous sur l'étranger (les Syriens et les Saoudiens surtout) pour liquider les problèmes de chômage, du budget et des ressources. Tout ça a été résolu dans 4-5 ans aux dépens de tout débat politique et de toute solution réellement politique... les administrations publiques ont été gonflées, la livre libanaise a été « stabilisée » d'une manière totalement artificielle qui a épuisé les ressources du pays. Tout cela, sans la moindre discussion politique.

La *Thawra* est un foi très contradictoire, très pauvre en contenu politique et historique, et probablement incapable de répondre aux exigences de la situation...

Interview with Dr. Abdel-Raouf Sinno

Interview with Dr. Abdel-Raouf Sinno – Professor of Modern and Contemporary History. President of Makassed University of Beirut.

1) To what extent do you think that power sharing system is applied in Lebanon and which are the future perspectives to solve the political crisis and stalemate in the country?

What was mentioned in the Ta'if Agreement in 1989 about parity between Christians and Muslims in Parliament, the Council of Ministers, and in the first-class jobs, is not enough for the power sharing to be actually implemented on the ground. During the Syrian occupation of Lebanon, the manipulation of electoral districts determined which Christians or Muslims would go to cover parliamentary seats. In the 2018 elections, political Shiites were able to get 6 Sunni deputies to parliament with Shiite votes, specifically by preferential vote. In southern Lebanon and the Beqaa, no political and partisan force can resist the hegemony of Hezbollah and the Amal movement in any elections, because the organizations have the ability to “bribe” people with aid, protection, employment and not less than using his militia force.

As for the prospects for solving the political crisis and the impasse in the country, it is certain that the "Authority-Mafia" does not want and cannot solve the crisis, because it is corrupt, and it is not in its interest to undertake political and economic reforms that put the country on the right path. The corruption system must first be overthrown, prosecuted, and the looted funds placed in foreign bank with the knowledge of the authorities of their countries should be recovered.

2) Do you think that sectarianism is the main problem in Lebanon or not? Or is it this problem directly related to the system itself?

According to Lijphart, Lebanon is going through a dilemma with the application of “consensual democracy”, because demography has upset the balances and consensus that prevailed in the twenties, thirties, and forties. When the Muslims saw themselves as having become the sectarian majority, they began to bypass the national pact and demand other opportunities, including the presidency, on the grounds that they are the most

numerous sect. Hence, political sectarianism and societal sectarianism led to the fears of Christians, especially Maronites, that they would lose their positions and achievements in favour of Muslims.

In the Lebanese Constitution, there is Article 95, which spoke of a temporary state of power-sharing on the basis of proportionality, but it did not satisfy the Muslims who wanted to hold Lebanon with the support of the Nasserites, the Palestinians, and the Syrians, which made the Maronites seek help from Israel and Syria in 1975.

3) According to CIA World Factbook, right now Muslims are the majority of the population (61%), how can this aspect influence the dynamics of power sharing in Lebanon?

The ratio is very old. Christians today constitute a quarter of the population of Lebanon. It is true what you say, this affects the dynamics of power. Before Lebanon war, most of the Muslims demanded an improvement in their representation in the government and a balanced development that focused on the Christian regions and the Beirut governorate. After Ta'if, the Maronites became demilitarized, while Palestinian militias affiliated with Syria kept their weapons in the camps and outside, while Hezbollah was established in 1985 through its resistance to Israel, and kept its weapons after the liberation of south Lebanon and turned it inside out by bullying all sects.

Since that date, political Shiites sometimes demand the democracy of the majority and at other times “the third”, and in both cases it means the submission of the Christian minority to the hegemony of the Islamic Shiism and even the Sunnism. This system, which is based on the rule of the majority, differs from what is applied in Western countries, where there is a civil state and not a state based on a sectarian and societal sectarian system.

4) If the aim is to overcome confessionalism as a political system, the amendment of article 24 and 95 dealing with the subject can lead to other political systems capable of overcoming confessionalism?

All the political parties allege that they want a civil state and an end to the sectarian system, but this is a lie. The authority and the ruling parties live on sectarianism because it helps them to hold their own group and partisans. The situation will only be changed by the establishment of a civil state, which is out of reach, because the religious establishments do not want to wrest powers from their hand, while most Muslims reject a civil state that they consider destroying their law.

As for federalism, it is a project that leads to division, because the Lebanese differ in Lebanon alone on foreign and defence policies, so how will you agree to them in federal Lebanon?

The Lebanese lack the culture of living with the other and recognizing their rights, so how will they become overnight protectors of minorities within their cantons? And the central council of the federation will consist of the heads of the six sects in a unified Lebanon, so how will they turn into democracy and justice in the federation? And what will we do with the wealth and the inland areas that do not overlook the sea, and oil and gas, or if a religious minority in a canton, over time, turns into a numerically balanced one?

And most importantly: Will Hezbollah be disarmed in the federation, which we rule out, because it serves Iran's interests?

5) *Talking about a possible reform of the constitution, what can be the role of external actors in the drafting of the amendments? Is there an effective will of reforming Lebanon or saving the country from becoming an effective failed state by external actors?*

If there was an effective external will, the foreign countries would have stopped making Lebanon an arena for them, settling scores among them, and accepting its neutrality. All regional countries, especially Syria, Iran and Israel, rejected Lebanon's neutrality. I do not think that the Western countries that have always recognized the corrupt political class in Lebanon, and the militias that ruled during the Lebanon War and after Taif, want Lebanon to be stable.

6) *Are there intermediate bodies (i.e. local trade unions) and if so, what is their role? More specifically, is civil associationism capable of overcoming the difficulties imposed by sectarianism in order to come up with political and constitutional implications or solutions?*

Everything in Lebanon is politicized. And do not believe, my dear, that we have trade unions and syndicates, as in Europe, nor an impartial judiciary, nor student movements far from politicization. We do not even have a strong civil society to impose a civil state or a transition to a civil one.

7) *When power sharing is introduced in a divided society a possible and initial status quo is common to different countries sharing similitudes in politics and society.*

However, over time power sharing in divided societies can furtherly increase internal division, creating stalemate and even external interference among the different factions. Having said that, do you think there is any kind of similarity between the situation in Lebanon and other examples of power sharing in divided societies around the world?

This is what Lijphart said about the advantages and disadvantages of consensual democracy.

8) *How might Palestinian and/or Syrian presence in Lebanon can influence the process of change in Lebanon? And what is the role of the international community within the process of change in Lebanon?*

In the United Arab Emirates, the majority of the population is represented by foreigners. But within the authority there are unified and security services which are active and hold on to the situation. In a divided Lebanon, as long as sectarianism and sectarian tensions, as well as dependency on the outside exist, there will no State that holds on to its people. The Palestinians and the Syrians will be a bomb that could explode at any moment.

9) *How there can be a process of change if the political class doesn't change?*

There is no hope for change in the presence of the current political élite because it is the root of the affliction since the Lebanon war. Worse yet, Western countries have been dealing with this corrupt class for decades.

10) *Can Lebanon be effectively conceived as a consociation in the terms described by Lijphart?*

After the Lebanon war, and the change in political balances according to the Ta'if Agreement, there are regions that are restricted to certain sects, and there are those who say that there is a real undeclared federation. As for consensual democracy, it did not survive, due to the absence of the culture of coexistence among the Lebanese and the preservation of covenants.

11) *Are there new political perspectives coming out from the popular revolts (thawra) and what can be the role of the youth in solving the crisis in Lebanon?*

A serious attempt was made in October 2019 to eliminate the ruling political class and its various sects, but it quickly failed, due to the lack of a unified program, or coordination

between religions, and the lack of a unified leadership, in addition to the concerted efforts of all the various political parties among themselves to eliminate the Lebanese uprising. Today, the uprising that was taking place in Martyrs Square, Riad El Solh Square, Zouk, Tripoli and Sidon disappeared. Even hunger, poverty, unemployment, theft of depositors' money by banks, total darkness, water cuts, services and medicines, and the "flight" of dollar, no longer move people. Political, social, economic, and psychology scholars must study the case of the Lebanese uprising, in comparison with the changes that have occurred in other countries.

Interview with Dr. Ahmad Beydoun

Interview with Dr. Ahmad Beydoun – Historian and Sociologist; professor at the Lebanese University of Beirut.

1) Jusqu'à quel point pensez-vous que le système de partage du pouvoir entre les différentes communautés (power-sharing system) est appliqué au Liban. Quelles sont les solutions possibles envisagées pour résoudre la crise politique du pays ?

Je crois qu'il existe un système de partage du pouvoir entre les communautés et il est appliqué, mais aussi entre deux états : soit il y a une certaine dose d'inégalité ou même une hégémonie communautaire qui mine l'égalité du principe entre les communautés ; soit cette communauté est reconnue ou imposée comme c'était le cas dans un certain temps, après 2005. Dans les deux cas, ça a été un générateur de crise. Parce que s'il y a une hégémonie, elle est nécessairement contestée et on va profiter de n'importe quelle conjoncture favorable pour la remettre en question. Et s'il y a, au contraire, une situation d'égalité même relative qui est reconnue, alors on fait face à une multiplicité de veto et cela aboutit, plus au moins vite, à la paralysie du système. Dans les deux cas, ça ne marche pas, et surtout, ça ouvre la voie à des interventions extérieures, puisque dans l'un et l'autre cas consensus ou une solution entre les partenaires communautaires ne semble pas probable.

Quant à la solution à la crise politique libanaise, actuellement il y a plusieurs formules qui sont lancées par-ci par-là, mais aucune ne semble jouir d'une force politique suffisante pour l'imposer. Du côté du mouvement populaire qui a été déclenché par la crise financière de l'automne 2020, ce qu'il a été répété et qui continue à être plus au moins accepté par les groupes qui constituent le leadership du mouvement populaire c'est l'appel à un gouvernement transitoire avec prérogative législative qui prendrait les mesures nécessaires à la sortie de la crise, et qui ensuite organiserait des élections législatives. Ce qui est moins clair c'est de savoir quelles sont exactement les mesures à prendre pour sortir de la crise, et là il y a des différends qui commencent à pointer à cette question. La deuxième chose c'est sur la base de quelle loi électorale on doit organiser des élections législatives : c'est bien sûr une très grande question et une source de litige très considérable. De l'autre côté, c'est-à-dire du côté du pouvoir en place, on se contente de ce grand poignet à la situation catastrophique qui est en cours. On ne voit pas des

programmes pour sortir de la crise qui est réduite de ce côté-là à son aspect financier, et donc on se contente de dire « on va dialoguer avec le FMI la banque mondiale, on doit essayer de trouver de l'argent » ça afin de renflouer le système bancaire et la finance publique. C'est tout à fait absurde et insuffisant mais il n'arrive pas à trouver autres choses.

2) *Croyez-vous que le confessionnalisme (الطائفية) soit le problème principal au Liban ? Ou est-ce-que c'est directement lié au système même ?*

Oui, je crois que c'est le confessionnalisme qui constitue le problème principal. Je ne vois pas qu'on puisse distinguer le système du confessionnalisme puisque le système est basé sur le confessionnalisme. Pour ma part, le problème ne réside pas dans le fait que le confessionnalisme, comme on le dit souvent, est détestable, ou qu'il est rétrograde etc., le problème est que ce système, basé sur le confessionnalisme ne fonctionne plus, il est tout simplement mort. Il faut trouver, à mon avis, une alternative.

Bien sûr qu'il y a des problèmes de principe que pose le confessionnalisme, par exemple le problème d'inégalité entre les citoyens, problèmes de ce qu'on peut appeler la camisole de force confessionnelle puisque chacun est obligé de se reconnaître dans sa religion de naissance, même s'il ne croit plus à rien de ce qui fait le credo de cette communauté. Il y a des problèmes de principe qu'il y a même en ce qu'on peut diagnostiquer comme contraire au droit de l'homme et contraire à la liberté de conscience dans le système confessionnelle pratiqué au Liban. À mon avis, tant que ça s'agit d'un consensus suffisant, et tant que ça fonctionne en permettant d'éviter une tyrannie mono confessionnelle dans le pays, il est bien, on pouvait le tolérer et passer outre les problèmes que je viens de mentionner. Mais, depuis très longtemps déjà, ce système ne fonctionne plus. On peut penser jusqu'à la veille de la guerre de 1975 – 1990, même jusqu'à l'année 1967 ou 1968, la date de la mort de ce système. Ça signifie que depuis de plus de 50 ans le système ne fonctionne pas et qu'il ne s'agit pas d'une crise qui est possible d'en à voir d'un n'importe de quel système politique. Non, il ne s'agit pas de ça. Il s'agit d'une certaine dynamique que fait que l'homme se dirige à quelques années des distances vers une crise majeure, tout à fait impossible à réduire à des problèmes de fonctionnement plus au moins acceptables. C'est le pays qui est à terre à chaque fois et en façon différente. Voilà ce qui est vraiment inacceptable et c'est nécessaire de trouver une alternative.

3) Selon le « CIA World Factbook », les musulmans constituent actuellement 61% de la population libanaise ; comment cela pourrait-il influencer la dynamique du système de partage du pouvoir au Liban ?

Depuis un certain nombre d'années, la confrontation en cours dans le pays, n'est plus entre les musulmans et chrétiens. Du fait, de la confrontation chiites-sunnites qui traverse toute la région, nous sommes au Liban une présence de trois groupes communautaires qui se partagent le pouvoir et le pays. Ce qu'on a appris à appeler les chrétiens, sans distinction de communauté, cela est une chose qui date seulement de la guerre civile. Parce qu'avant il y avait une certaine tendance de mettre face à face les Maronites et les Grecs-Orthodoxes. Mais là on parle des chrétiens en générale. Mais, de l'autre côté il n'y a plus des musulmans, pour ainsi dire, et il n'y a plus que des chiites and des sunnites. Et bien sûr les druzes sont toujours là. Donc, il n'est pas plausible que dans le cadre du confessionnalisme politique le système tend à faire prévaloir dans le fait la situation majoritaire des musulmans, parce qu'ils sont divisés et que les chrétiens tendent et que chacune des deux parties musulmanes tend aussi à s'allier à une autre partie contre la troisième. Et donc, il est difficile d'imaginer, jusqu'à nouveau ordre au moins, une remise en question de la situation actuelle. Par exemple, un partage en trois tiers consiste avec le fait qu'il s'agit plus au moins effectivement de trois tiers sur le plan strictement démographique.

4) Si le but est de surmonter le système politique confessionnel, quelle est l'importance de la révision constitutionnelle des articles 24 et 95 de la Constitution Libanaise ?

Les deux articles de la constitution permettent déjà le dépassement de la formule confessionnelle. Donc, je crois qu'ils ne seront pas soumis à les modifiés. Je crois qu'à partir du moment où on changerait de système ils seront devenus caduques et ils pourront être surpassés ou supprimés. Quant à savoir qui supervisera la révision constitutionnelle, c'est une question purement de principe, et il est trop tôt de la poser et encore plus tôt d'y répondre. Je ne crois pas qu'on puisse trouver dans des circonstances actuelles ou il n'y a pas pratiquement et concrètement des tendances véritablement effectives vers le dépassement du confessionnalisme alors parler des parties ou de la partie qui va à surveiller ou superviser la révision constitutionnelle c'est comme parler dans le vide.

5) *Quel est le rôle que joue la société civile (les syndicats, les coopératives, etc.) dans l'effort visant à dépasser le confessionnalisme ?*

Le secteur associatif au Liban est lui-même divisé entre deux principes de solidarité : un principe civil et un principe confessionnel. Même les associations qui représentent une collectivité multiconfessionnelle ont été pendant les derniers décennies assujettie à des pressions confessionnelles. Ils se sont plus au moins convertis au modèle d'organisation et de partage de tâches et des fonctions sur une base confessionnelle. Là il faut procéder à une analyse du terrain tel qu'il se présente. On ne peut pas généraliser ou parler sans distinction de société civile comme s'il se glisse d'un ensemble homogène. Il y a eu une tendance au durcissement du confessionnalisme dans le secteur civil, comme je viens de le dire, mais depuis quelque temps (au moins depuis le début de la crise en cours) on assiste au développement d'un nouveau courant. C'est à dire à l'apparition au développement de tendances laïque et laïcistes dans le secteur associatif. Un autre problème de la société civile au Liban est le financement étranger. La plupart des ressources des associations sont de provenance extérieure. C'est qui bien sur pose un problème : le problème de l'Indépendance des associations, des ONG, le problème du rôle qu'elles jouent dans le pays et de la concurrence entre le rôle et les intérêts libanais. Par ailleurs, ce secteur-là est lui-même très divers, parce qu'un financement extérieur n'a pas le même effet ou impact de la source du financement. Par exemple, si on a un financement suédois il a des implications déterminées, et s'il y a un financement saoudien ça peut avoir des implications bien différentes. Il faut être attentifs au terrain et éviter les généralisations sur ce point-là.

6) *En général, ce qui caractérise les sociétés multiculturelles est l'existence d'un système de partage du pouvoir. Celui-ci présente autant d'avantages que de désavantages ; notamment, le renforcement des divisions internes aboutissant à une impasse politique et parfois même invitant les interventions externes. Cela dit, pensez-vous qu'il existe des similarités entre la situation au Liban et dans d'autres pays multiculturels où est appliqué le « power-sharing system » (Iraq, Bosnie, etc.) ?*

Au Liban il y a un système de power sharing confessionnel. Ce système c'est montré extrêmement rigide, dans le sens que les structures du pouvoir politique et administratif ne se sont pas montrés apte à suivre les évolutions sociales. La société libanaise a beaucoup évolué sur tous les plans, il y a eu des changements d'ordre démographique

relatifs à la distribution de richesse, donc économique, donc aussi éducative et relative à l'éducation etc. et bien le système politique est de la même façon, le principe de l'organisation de l'administration se sont démontrés extrêmement rigide et n'ont jamais réussi à suivre les évolutions sociales, à s'adapter au changement dans la société. À chaque fois qu'il y a eu une contestation qui avait ces sources dans le changement social, et bien il a fallu que l'appelle à la violence ou que ça provoque un affrontement tel que la structure de pouvoir soit portés, soit forcés à obéir aux implications de l'évolution sociale. Il y a une extrême rigidité là.

En autre remarque concernant le même point c'est que ce discours sur le power sharing me paraisse être le plus suivant. Il est trop formel et trop politique. C'est-à-dire que ce discours semble mettre de côté l'histoire de la société et sa sociologie. On parle politique mais on ne parle pas sociologie ou on ne parle pas d'historien, ils vont de pair. Ce qui fait qu'on ne tient pas compte dans le temps des relations entre les groupes concernés, on ne tient pas compte de l'héritage que ces groupes quant à leurs relations mutuelles et on ne tient pas compte de divergences des structures entre ces groupes, c'est-à-dire des tendances très difficilement conciliables et se manifestant au sein de chacun des groupes et qui pose problèmes dès que les groupes sont mis en rapport les uns avec les autres. Il faut, à mon avis, être très prudent en parlant d'un model supposé d'être généralement le même. Il ne s'applique pas identiquement ni essentiellement de la même façon.

Pour les exemples cités ici, je crois que tous se sont tenu compte des sociétés et de l'histoire, tous très différents de l'exemple libanais. Il y a, à mon avis, intérêt à manier avec une extrême prudence les comparaisons. Le point de vue comparatiste doit tenir compte de l'histoire et des différences entre les sociétés, ou bien alors si ça s'agit d'une chose simplement politique et bien il risque de faire fiasco.

7) Comment peut la présence des réfugiés Palestiniens et Syriens influencer le processus de changement au Liban ? A ce sujet, quel est le rôle de la communauté internationale en ce qui concerne les réfugiés ?

Il est évident que l'évolution du problème que pose la présence d'un nombre de réfugiés au Liban ne dépend pas seulement ni essentiellement du Liban lui-même, ou du système libanais, ou de la société libanaise. Simplement parce que ce qui va arriver à ces réfugiés dépend de l'évolution du problème qui a fait qu'ils sont devenus réfugiés et qu'ils sont venus au Liban. La communauté internationale a bien sûr - pour un petit pays comme le Liban qui est actuellement dans de très grandes difficultés économiques - un rôle essentiel

à jouer concernant le problème des réfugiés. La situation des réfugiés palestiniens, qui sont là depuis 3/4 des siècles approximativement, est très différente de la situation des réfugiés syriens, très nombreux mais qui sont encore dans une situation mouvante. C'est à dire, pouvant connaître une évolution qui n'est pas possible de prévoir exactement mais qui fait qu'il est peu probable que leur situation reste ce qu'elle est maintenant.

8) *Serait-ce possible d'aboutir à un changement de la situation politique libanaise sans que la classe politique actuelle ne change ?*

Ma réponse est non. On ne peut rien espérer de la persistance du monopole de pouvoir par la classe politique en place. Peut-être que, si le mouvement populaire arrive à développer un contre-pouvoir, les élections pourrait déboucher sur une situation mixte, une situation où certaines forces traditionnelles et confessionnelles conserveront une place mais où une nouvelle logique devrait être installée si le pays est promis à une stabilité économique et sociale.

9) *Pourrons nous considérer le Liban comme une « consociation », telle qu'elle est décrite par Lijphart ?*

Le modèle duquel Lijphart part, à partir de l'expérience néerlandaise, me semble, doit être manipulé avec prudence. Chacun doit être analysé pour ce qu'il est, c'est-à-dire on doit tenir compte des différentes dimensions politiques, sociales et historiques avant de se prononcer sur une formule ou sur une solution. Le même donné constitutionnelle peut aboutir à des résultats tout-à-fait opposés dans deux cas et sociétés différentes. Dans le cas du Liban, je crois que la situation a justement évolué et parler d'histoire, d'histoire proche et récente dans ce cas a un sens très fort. Il faut voir que le système confessionnel qui a maintenant exactement un siècle d'âge n'a pas été au cours de ses 50 premières années ce qu'il est devenu au cours de 50 dernières années et surtout à partir de la guerre civile. Ce système c'est beaucoup formé et donc la même identité qui voudrait le considérer et en faire une consociation, la même identité n'a pas le même sens, les mêmes implications dans la réalité socio-historique.

10) Est-ce qu'il y a de nouvelles perspectives politiques issues des révoltes (Thawra) ?

Quel est le rôle des jeunes dans la résolution de la crise au Liban ?

Bien sûr on compte sur les jeunes. Ils sont concernés par les développements de la situation dans le pays. Ils sont, essentiellement, ceux qui vont supporter les conséquences à l'interne et ils sont ceux qui constituent la force qui doit porter le changement.

Maintenant, est-ce qu'il y a des perspectives nouvelles ouverte par le mouvement populaire ? Évidemment, il y en a. Mais ce mouvement a eu, dans sa dernière phase et deux années d'âge, des hauts et des bas et il continuera à les avoir. Je ne veux pas faire des pronostics, parce que la situation a plusieurs dimensions qui sont intriquées les unes dans les autres, y compris la situation régionale et y compris l'évolution à l'extérieur de chaque communauté en place et y compris les possibilités pratiques de développer des forces organisées et laïques. Il y a un programme qui peut prendre l'initiative dans le processus de changement.

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Acknowledgments

English version

When I started this research in October 2020, I would have never believed that I would have loved this topic so much. Surely, I did not know I would have had the opportunity to spend a whole month in Lebanon to study each small and big characteristic of this beautiful country and of its people. Lebanese were always ready to help me whenever I needed and despite all the huge difficulties they are still facing nowadays. I would like to put an end to this journey with the awareness of having taken on new challenges and to have started a new – and at the same time unknown to me – path. Indeed, public law and constitutionalism in general did not represent my daily bread before October 2020, but right now the interest towards this discipline has grown very much. In this, I have to say thank you to my supervisor, Professor Cristina Fasone, who welcomed this challenge as much as I did and the one who guided me in this innovative research project. A special thanks is dedicated to my co-supervisor, Professor Francesca Maria Corrao, who encouraged me to begin with this project and for having always supported me from the beginning. I would like to thank Doctor Adriano Dirri, who has been the one who helped me and supported me from day one. He listened to my doubts, and he guided me step by step, chapter by chapter. If today I can conclude this project showing great pride towards it, it is also for you.

My special thanks also to Professors Francisco Barroso Cortes, Elie Elias, George Charaf, Wahhad Sharara, Abdel-Raouf Sinno and Ahmad Beydoun, who showed their willingness to be interviewed, as well as they helped me with the topic of my research.

First of all, a special thank is dedicated to my family: to my dad Corrado, my mum Cristina and my little sister Sofia. You have made a lot of sacrifices in these last two years in order to build my wings and to make me fly. You are the co-pilots of this long journey which we have lived hand by hand, despite the so hurtful distance. Every achievement is also a victory for you, and I am so proud of having you next to me, step by step.

Thanks also to my grandmother Rosetta and to her capacity to love me unconditionally and to be always so proud of me, something that warms my heart very much. To my other grandmother Margherita and to her kind presence in every moment of shared happiness, always there to remind me about her love. To my aunt Mariella and to every time in which, by reading me a story, she knew she was contributing to my growth, and so it has been. Thanks to my aunt Simona and to all the moments she made me feel special even when I did not believe it anymore.

To my grandfather Giorgio, instead, I dedicate the joy of this moment so he can share it with me, today, even if in a place so far away from here. I can imagine you smiling, with your beautiful

blue eyes full of tears while holding my hand and without telling me anything, you still know how to communicate to me. I miss you so much, but today you are here with me.

Thank you to my aunt Serenella. One day you wrote me “everything seen from a great distance, does not have a real dimension. The mountains taught me so: when I saw them from the bottom, I thought I would have never been capable, that I would have not had the energy to reach the top. After all, it is enough just to start and then, step by step, you are climbing. Good start, good path, I will be there at every step you will take.” It was September 28th, 2016. Five years after, I am a grown up woman, always so scared about distance but with a big mentor with me: you!

Thanks to Beatrice, knowing that you are with me after everything and despite the always so present distance makes this moment even more special. Step by step, year by year and achievement after achievement you are always here to celebrate with me.

Thanks to Federico and Raffaele, who despite distance have always spent beautiful words for me and have almost cancelled the kilometres which separate us.

To Silvia, the partner to this new Roman adventure. I still remember the fear we had before taking this path together. Look at us today, distant but grown-up side by side. We have always been ready to help each other when needed and we have always been capable of being happy about our achievements without any resentment nor envy. In these two years you have been a steady reference point and in this precise long-awaited day, distance makes me miss you even more than it normally does. But, after all, you’re not so far from me.

To Giulia, who sweated with me for this research. You heard me crying, being happy and getting angry. You’re a friend and a great partner, before being my flatmate. In these days I would have never wished for a better company and for a better shoulder to lean on. A bonding that would be difficult to vanish.

Thanks to Brando, who in these years has always known how to encourage me, even in very bleak and discouraging moments. You have always been a so present friend, who has had the capacity to set aside his problems to solve mine.

Thanks to new friendships and to my two Alessandros. This last year I discovered two exceptional people, and I am proud of calling you ‘my friends’.

Thanks to my friend Oumaima, today is exactly one of those days in which we were waiting for ‘the good weather’ to come. And eventually it arrived. I am so happy to share this special moment with a friend like you by my side.

To Arianna, who in a so short period of time has been able to be by my side and to support me: thank you!

To Gloria, my “*forever coinqui*”. I know you would be here with me to celebrate, but we go beyond every distance’s logic, and we know how to be always present for each other. These two years in which we have been separated have not changed our willingness to stand by each other. Today, you are here with me.

Thanks to Marco, who makes the 605 kilometres that separate us, as a meaningless distance compared to our friendship.

Last, but not least, I would like to thank my Lebanese family. To Cedric goes the most special and heartfelt thanks. You were the guide to this research project, and the one who did everything to leave me the best souvenir about Lebanon I could have asked for, despite the many difficulties you have faced. You are one of my greatest friends and a constant presence in my life. I will never forget about the kindness you showed to me and your willingness to let me experience the best adventure ever. Thanks also to Henriette, Walid, Marc and Nathalie, who welcomed me as I was their daughter and sister. I will always be grateful for what you have done for me. To Elissa, the kindest soul I know and to the loving person you are, thank you for your support and for always saying good words for me. To Maria, who in a so short period of time has represented so much to me; thank you because my Lebanese adventure could not have ended better also because of you. I am grateful because I have met a beautiful person and friend like you, Maria. See all of you very soon. I love you all unconditionally. Thank you!

To Lebanon and to the Lebanese all around the world. Be strong and never lose hope and love for your beautiful country. The sun will rise again, inshallah!

Italian version

Quando ho iniziato questo percorso di tesi, più o meno nel mese di ottobre 2020, non avrei mai pensato che questo tema mi avrebbe appassionata così tanto e sicuramente non avrei mai immaginato di avere l'opportunità di passare un mese in Libano a studiare ogni piccola e grande caratteristica di questo stupendo Paese e dei suoi cittadini, sempre pronti a tendermi una mano ogniqualvolta io ne avessi bisogno e nonostante le immense difficoltà in cui tutt'ora si trovano. Voglio terminare questo percorso con la consapevolezza di essermi messa in gioco fino all'ultimo istante e di aver intrapreso un percorso nuovo e sconosciuto allo stesso tempo. Il diritto pubblico e il costituzionalismo non saranno di certo stati il mio pane quotidiano prima dell'ottobre 2020, ma ora l'interesse verso questa materia si accresce sempre di più. In questo, mi sento in dovere di ringraziare la mia relatrice, Professoressa Cristina Fasone, la quale ha accolto questa sfida tanto quanto me e mi ha guidata in questo progetto di tesi innovativo. Un grazie speciale va anche alla correlatrice, Professoressa Francesca Maria Corrao, che mi ha spronata ad intraprendere questo progetto e che ha sempre speso parole di incoraggiamento nei miei confronti sin dall'inizio. Un grazie particolare però va al Dottor Adriano Dirri. Dal primo giorno di stesura di questo lavoro mi ha aiutata e supportata, ha ascoltato i miei dubbi e mi ha guidata passo per passo, capitolo dopo capitolo. Se oggi arrivo a terminare questo percorso con un grande orgoglio, è anche merito suo.

Grazie anche ai professori Francisco Barroso Cortes, Elie Elias, George Charaf, Wahhad Sharara, Abdel-Raouf Sinno e Ahmad Beydoun che sono stati disponibili ad essere intervistati e pronti a rispondere ad ogni mio dubbio sulla questione.

Grazie soprattutto alla mia famiglia: a papà Corrado, mamma Cristina e alla mia sorellina, Sofia. Questi ultimi due anni avete fatto tanti sacrifici per costruire le mie ali e per farmi spiccare il volo. Siete i co-piloti di questo grande viaggio che abbiamo vissuto mano nella mano, nonostante la distanza che tanto ci fa male. Ogni mio traguardo è anche una vostra vittoria e io sono fiera di avervi sempre al mio fianco, passo dopo passo.

Grazie anche a mia nonna Rosetta e alla sua capacità di amarmi incondizionatamente e della sua fierezza nei miei confronti che mi ha sempre scaldato tanto il cuore. A mia nonna Margherita e alla sua sempre tenera presenza in ogni momento di gioia condivisa, sempre a ricordarmi il suo amore. A mia zia Mariella e ad ogni volta che, leggendomi una storia della gatta Pilù, sapeva che stava contribuendo alla mia crescita, e così è stato. Grazie

anche a mia zia Simona e ad ogni volta che mi ha fatta sentire speciale nei momenti di sconforto.

A mio nonno Giorgio, invece, dedico la gioia di questo momento in modo che possa dividerla assieme a me, oggi, anche se in un posto molto lontano. Ti immagino sorridente, con gli occhi azzurri colmi di lacrime mentre mi stringi la mano e senza parlare già sai dirmi tutto. Mi manchi tanto, ma oggi sei un po' più qui con me.

Grazie a mia zia Serenella. Un giorno mi scrivesti "tutte le cose, viste dalla distanza hanno dimensioni che non sono reali. Me lo ha insegnato la montagna: quando la guardavo dal basso pensavo che non sarei stata capace, non avrei avuto le energie per arrivare fino in cima. Poi basta iniziare e, passo dopo passo, si fa ogni scalata. Buon inizio, buon cammino, io ci sarò ad ogni passo che farai." Era il 28 settembre 2016. Cinque anni dopo, sono una donna un po' cresciuta, sempre spaventata dalla distanza ma con un grande mentore alle mie spalle, tu!

Grazie a Beatrice, sapere di averti accanto dopotutto e nonostante la ormai onnipresente distanza, rende questo momento ancora più speciale. Passo dopo passo, anno dopo anno, conquista dopo conquista, sei sempre qui al mio fianco a festeggiare.

Grazie anche a Federico e Raffaele, che nonostante la distanza hanno sempre avuto delle belle parole nei miei confronti e hanno quasi annullato i chilometri che ci separano.

A Silvia, alla mia compagna di questa nuova avventura romana: ricordo ancora la paura che avevamo prima di intraprendere questo percorso. Guardaci oggi, distanti ma cresciute insieme. Sempre pronte ad aiutarci nei momenti del bisogno e a saper gioire dei nostri traguardi senza rancori o invidia. In questi due anni sei stata un punto fisso di riferimento e proprio in questo giorno così tanto atteso da entrambe, la tua mancanza si fa sentire ma, in fin dei conti, tu non sei mai troppo distante.

A Giulia, che ha sudato insieme a me per questa tesi. Mi ha sentita piangere, gioire e arrabbiarmi. Una coinquilina, un'amica, una complice. In questi anni non avrei potuto chiedere compagnia migliore e una spalla su cui contare come la tua. Un legame che difficilmente riuscirà a spezzarsi.

Grazie a Brando, che in questi anni ha saputo come spronarmi, anche in tempi di grande sconforto. Sei stato un amico sempre presente e che ha saputo mettere da parte i propri problemi per poter risolvere i miei.

Grazie anche alle nuove amicizie e ai miei due Alessandro. Quest'ultimo anno in voi ho scoperto delle persone eccezionali, di cui sono fiera di poterne essere amica.

Grazie alla mia amica Oumaima, oggi è proprio uno di quei giorni in cui è arrivato il bel tempo che aspettavamo. Sono felice di poter condividere questo momento così speciale con accanto una persona come te.

Ad Arianna, che in così poco tempo è riuscita a restarmi accanto e a supportarmi, grazie!

A Gloria, la mia *forever coinqui*, lo so che vorresti tanto essere qui con me a festeggiare ma noi andiamo anche oltre ogni logica della distanza e sappiamo essere presenti, sempre! Questi due anni distanti non hanno mai cambiato la nostra voglia di esserci ancora più vicine. Oggi, anche tu sei qui con me.

Grazie a Marco, che fa sembrare i 605 chilometri una distanza irrisoria in confronto alla nostra amicizia.

E, infine, ma non meno importante, vorrei ringraziare la mia famiglia libanese. A Cedric va il ringraziamento più sentito, in quanto guida del mio percorso e colui che ha fatto di tutto per lasciarmi un ricordo stupendo del Libano, nonostante le avversità. Sei stato, e sei, un grande amico e una presenza costante nella mia vita. Non dimenticherò mai la gentilezza che hai dimostrato nei miei confronti e la tua volontà di farmi vivere una fantastica avventura. Grazie anche a Henriette, Walid, Marc e Nathalie, che mi hanno accolta in casa loro come una figlia e una sorella. Ve ne sarò per sempre grata. Ad Elissa, la persona dall'animo più gentile che io conosca, grazie per il tuo supporto e per le sempre così belle parole che hai nei miei confronti. A Maria che in poco tempo ha rappresentato così tanto per me; grazie perché la mia esperienza libanese si è conclusa nel migliore dei modi anche per merito tuo, per aver trovato un'amica stupenda come te. Ci vediamo molto presto. Vi voglio un bene immenso. Grazie di tutto!

Al Libano e ai libanesi di tutto il mondo. Siate forti e non perdetevi mai la speranza e l'amore per questo stupendo Paese. Il sole sorgerà di nuovo, inshallah!

Summary

I. Religions and Constitution

Chapter One is devoted to the analysis of the role of religions within constitutions by comparing different legal models.

Today, the protective mention of religion is presented in the vast majority of contemporary constitutions. Indeed, religion (or religions) do not jeopardize constitutionalism or the constitutional polity since the two aspects are intertwined and create a knot that cannot be broken.

During the course of time, religious pluralism became characteristic for many States until it also became an issue with which constitutions, courts, governments, and legislatures have to deal with. Indeed, the process of religious unification of nation-states emerged thanks to the Peace of Westphalia of 1648, when the process of *cuius regio eius religio* was adopted, as well as the *ius emigrandi* one. Nowadays the normal practice is that of a separation between State, governmental and religious leaderships. Despite that, it is certainly true – and would be wrong to state the contrary – that both law and religion share some features, thus having an impact on constitution as well. Even though they share different types of features, because law is more temporal while religion is transcendental, both express the form of norms that require obedience and are typified by procedural practices and by specific bodies or authorities entitled to make people obey to rules.

Concerning the topic of separation between State and religions, the Constitution of the United States of America is considered ‘iconic’ in dealing with this issue. The framers of the US Constitution connected this separation to freedom of religion. Indeed, they believed that any kind of intervention from the State or the government in its citizens’ religious affairs would have inevitably resulted in the infringement of their freedom of religion. Consequently, the Constitution of the USA remains almost silent to the subject, with the exception of two main instances: Article 6 and the First Amendment of the Bill of Rights. The Establishment Clause contained within the First Amendment forbids the government to pass a legislation creating an official religion of the State, or even to prefer one religion to another one, therefore imposing the separation between State and Church. Moreover, the Free Exercise Clause, forbids the government to interfere with a citizen’s

practice of his or her own religion. Furthermore, apart from the huge influence that the US Constitution had in providing new and in line approaches to religion elsewhere in the world, we should also consider the echo that the jurisprudence of the US Supreme Court still has in dealing with issues regarding religion and constitutionalism. Indeed, the case of *Lemon v Kurtzmann* of 1971 has been analysed, dealing with religion as a “phenomenon”, consequently binding schools to concentrate their teaching methods on the secular education and by leaving aside any kind of religious connotation.

Always concerning the separation between State and Church, whenever they are not properly separated or if the State tries to suppress religion or vice versa, or even when the State promotes a single religion as the State based one in an environment of religious plurality, tensions and conflicts are more likely to arise. However, the options of overcoming or even not considering the religious questions that society poses (being it a religious plural society or not) can profoundly affect the societal asset itself and especially the relationship among citizens, being them individuals who are in their existential nature religious. Consequently, the State would emerge as the bearer of compelling legal authority.

The idea of secularity has increased in some parts of the world as a solution creating an alternative to the religious character of the State and its legal system. However, this cannot be applied everywhere. The State and its legal system are constantly asked to maintain peace among its plural religious citizenry. Indeed, when dealing with some Middle East and North Africa countries the religious dimension remains an important factor to understanding law. The more constitutionalism has been analysed over the course of the time, the more it has been filled with different significance and meanings. For instance, when analysing Islamic constitutionalism, it is also relevant to understand that there is not a unanimous agreement about the constitutional principles contained in the *shari'a*. Some jurists believe that these principles represent an ideal of justice, consultation, and equality. While, others think that the principle of obedience to the established power must be added. The last group, instead, includes freedom or unity of the Muslim nation, along with legality and responsibility of the governor.

The periodization of Islamic constitutionalism can be divided into three main stages:

1) The first Tunisian and Ottoman Constitutions (1861 and 1876). These constitutions can be linked to the so-called “*liberal constitutionalism*”, i.e., the philosophy that forms the background of both Constitutions. The period, in fact, was that of the first half of the

twentieth century, following the collapse of the Ottoman Empire. Therefore, the major aim of these Constitutions was that of revitalizing the economic and administrative fate of the old imperial bodies, or rather to establish the legitimacy of the new nation states. The Ottoman Constitution has the confessional clause which depicts Islam as the official religion, designating also the requirements for the Head of State to profess Islam. The justice system adopted with the new Constitution remained divided into two spheres: the civil courts and the *shari'a* courts. The first were responsible for cases connected to the relations between people, while the second were entitled to judge over personal status' issues. At the same time, the Tunisian Constitution of 1861 was considered as revolutionary in many fields. Indeed, it was divided into different sections. However, it was not an attempt to create a new political system based on the Islamic sources, rather it represented an experiment which aimed at making the Sultan responsible before the *shari'a* and by appointing a body of notables with the aim of protecting the interests of the community.

2) The external influences over Islamic constitutionalism, which developed in North Africa and Middle East, as a consequence of colonial power. When countries tried to decolonize from the West, the sentiment of independency became evident in the Constitutions. This period had different phases: the first was related to the de-colonization and independence from Western power which had as major outcome that of the concentration of power in the figure of a national leader, who was often the expression of armed forces. In this case, Constitutions were related to the personalities who promoted them. A second period was inspired by socialist tendencies and in rejection to capitalism. While the last period saw a comeback towards liberal ideas and liberal constitutionalism.

3) The new wave of constitutionalism in Tunisia and Egypt in 2011 revolutions. This part describes how the two countries represent two important case studies about the role of Islam and *shari'a* in the post-2011 Constitutions. Namely, the constitutional path of Egypt was analysed through its legal texts from 1923 to those of 2012 and 2014. The 2012 Egyptian Constitution was not fully religious, despite *shari'a* played an important role for what concerned the obedience to family code and the guaranteeing of equality among the two sexes according to its norms. Under Morsi's role there were many discussions about religious manifestations but for what concerns the Constitution, an "Islamic shift" was quite limited. The 2014 Constitution instead stated about freedom of religion in Egypt, at the same time declaring that Islam is the religion of the state.

For what concerns Tunisia, instead, the principal Tunisian Constitution of 1959 stated that Islam is the religion of the country. President Bourguiba decided not to separate religion from State law and politics, because in order to modernize society he decided to opt for a gradual approach. In the 2013 Constitution, Islam is still presented as the official religion of the State, whose President must be a Muslim. Moreover, in order to encourage national consensus and democratic transition, Al-Nahda decided not to incorporate *shari'a* within the Constitution.

About the constitutional approaches to religions placed along a continuum it is really important to notice that there is no point alone that captures how a nation deals with religion or religions, or better how it uses constitutionalism to mediate between religion and the State. The lack of a precise categorization of constitutionalism and religion is essential to analyse, while understanding how a nation deals with religion and how it uses its Constitution in order to mediate between society and religion. Here, the categorization has been made through the analysis of Ran Hirschl and it has been divided into: atheism or proactive elimination, *laïcité*, secularism, soft or formal separation, weak religious establishment, de facto establishment, selective accommodation, religious jurisdictional enclaves, secular jurisdictional enclaves, secular jurisdictional enclaves and, finally, mixed systems of religious law and general legal principles. The result to this analysis is that eventually the most common interpretation about constitutional approaches to religion may result in a non-strict classification along a continuum, rather in different oscillations and peculiarities.

After having analysed the historical and constitutional steps leading to the French *laïcité*, the description of the division of society related to different religious – or even non-religious – affiliation has been made, in order to present the case of *laïcité* in the public education's sector. In this case, both the Law on Secularity and Cospicuous Religious Symbols of 2004 and the Law Banning Concealment of the Face in Public Space of 2010 have a relevant role. The National Assembly passed two measures to keep all religion symbols out of the public sphere and, in particular, schools. In the two Laws the focus stands on *laïcité* of the State, although many French societal sectors take issue against them. These laws were intended to encourage equal citizenship by prohibiting any single confession from splitting people into opposing religious groups, as well as being in line with the Law of Separation of 1905, as well as consistent with the French *laïcité*. The

constitutional approach to religions in this country have always shown a separation among the statal institutions and the religious ones. However, it does not convey any kind of indifference towards religion, since *laïcité* is a means to assure the free exercise of religion by all citizens. Any kind of prohibition at religious level in the social stratus of France is not related to discrimination over specific religions, but it is a way of preserving nationality and the so coveted separation between State and Church.

By making a comparison between two European countries, namely Italy and France, the first difference between the two lies on the concept of secular State. Indeed, while the Constitution of France immediately expresses the *laïcité* of the State in its first article, we can notice that Italy is a Democratic, secular, and non-confessional Republic, therefore without an official religion, even though the principle of secularity or the French '*laïcité*' is not expressively or openly written in the Italian Constitution. However, Italy is a secular State, and its jurisprudence confirms this, making ordinary laws, regulations and the activity of the Italian public administration in compliance with the secular nature of the State. The secular nature of the State is described in the Italian Constitution under articles 2, 3, 7, 8, 19 and 20. Moreover, the Constitution attributes the features of independence and sovereignty to the Holy See, as representative of the Catholic Church. This kind of relationship among Italy and the Catholic Church was constitutionally regulated by the Lateran Treaty, ratified by the Holy See and the Kingdom of Italy in 1929. As in the case of France, the field of education dealing with religion has been analyzed in the Italian part. Namely, in this section the European Court of Human Rights' case *Lautsi and Others v. Italy*, of March 18th, 2011, was examined about the showing of the crucifix in public schools. The Court eventually concluded that the symbol does not denote any process of indoctrination of pupils, nor it influences their education.

About democracy in deeply divided societies and consociativism, the theory of Arend Lijphart has been analysed here. Indeed, A consociation is, according to Lijphart, the description of the governmental system able to bring democracy and harmony to those states or regions affected by intercultural or ethnic conflicts. In Lijphart's consociation there are four components which are required in order to achieve stability in deeply divided societies: all-inclusive grand coalition, proportional representation, provision of minority veto power and cultural autonomy for subcultures. The combination of all these four elements is essential in order not to exclude a group from the decision making, since this can create conflicts which consociation aims to eliminate. These components have

been discussed in the famous debate between Lijphart and Horowitz. Their confrontation is crucial to understand the idea of consociation and how it can differ from the imperative positions of Lijphart, at the same time weighting also for what concerns the issues of constitutional law and constitution-design in deeply divided societies. Indeed, the case of Bosnia Herzegovina being it a deeply divided society has been described following the Lijphart's elements of a consociation and through the description of the Constitution adopted after the ethnic conflict, namely the Dayton Agreement. The same has been done for Iraq, presenting some in common features to Bosnia Herzegovina, being both States "*à la charte*". These States are internally divided due to ethnic or religious conflicts. In both cases, external actors played a fundamental role in the drafting of the Constitution. However, the external role does not always present a solution to the problem. This is because in such deeply divided societies the role of the external actor is that of determining if the system and the Constitution they are supporting are suitable for a specific divided society. Briefly, the external actor would find itself in front of different ethnic or religious actors, having different solutions in mind for their country, or their community.

After that, the case of confessionalism as a political system in the Middle East has been presented through an introduction of the most peculiar case of Lebanon, then with the description of the Iraqi and the Israeli case. However, for what concerns the last cited country, the relation between Israel and confessionalism revolves around the different religious presence in the country and not around a strict confessional nature of Israel. In this sense, some Israeli Basic Laws dealing with citizenship have been examined here. The battles over citizenship in the Jewish State are intertwined with mechanisms of both inclusion and exclusion, from a judicial, social and political point of view. These kinds of conflicts exist in the Israeli society, and they create judicial disputes which can be both internal and external to the Jewish State.

Lastly, it was worth to deal with the topic of political culture as result of sectarian or confessional loyalty in the different communities in order to later understand the case of Lebanon. The subject of the analysis here is not only the characterization of the political culture in a country, but more how political culture influences the confessional system of the same country.

II. The Lebanese Confessionalism: from the beginning to nowadays

Lebanon – because of its peculiar social and political structures, together with its juridical body – represents a particular and original case concerning the exercise of power in a multi-communitarian society. Indeed, Lebanon has a multi-plural and religious society that welcomes eighteen different ethnic-religious groups, all of them adapting their identity to their religious affiliation and culture. Considering the point of view of constitutionalism, the Lebanese State lies on the popular sovereignty as the only source of power and of legislation, but also on liberal democracy as the philosophy of action and of final scope. The Lebanese State works under a classical parliamentary regime, guaranteeing the fundamental rights to its citizens: freedom, equality, private property, freedom of initiative, etc. Because of the confessional quota and its power sharing system, the country is considered as a consociational democracy, based on consensus rather than majoritarian rule. The political system of Lebanon operates through power sharing organized along sectarian lines. This system provides political representation and groups autonomy in the field of personal status, education, marriage and other cultural affairs. Power sharing and sectarian lines are underlying by two pacts: the National Pact of 1943 and the Taif Agreement of 1989. The first unwritten pact of 1943 allowed for the creation of a grand coalition government composed by the President being always a Maronite, the Prime Minister being always a Sunni Muslim and the Speaker of the Parliament being always a Shia Muslim. The various communities were to be proportionally represented in the cabinet and a ratio of 6 to 5 between Christians and Muslims was eventually adopted for the legislature. The other pact, the Taif Agreement, put an end to the fifteen years Lebanese Civil War, which started in 1975 and ended in 1990. Ta'if put the National Accord into writing and altered some power sharing arrangements previously established, stipulating parity between Muslims and Christians in the Parliament in a ratio of 5 to 5. As regard to the separation of power stated in the Constitution, the Lebanese one presents the legislative, the executive and the judiciary branches as bodies exercising the classical functions of legislating, governing, and resolving disputes. The interaction between these three branches evolved during time. Indeed, when the first Constitution was adopted in 1926, under the French rule, the separation of power was still present. With the subsequent amendments, the boundaries and the separation of power between two of the three branches – mainly the legislative and the executive – became more blurred. The confessional representation of Lebanon started with the National Pact of 1943. This Pact

paved the way for the Lebanese independence and defined the identity of the Lebanese State: nor Arab, neither belonging to the Western world. It distributed the political power among the different sects. However, it is with the Taif Agreement that the confessional representation of the country became more explicit. The explicit power sharing mechanism based on confessionalism is described in Article 24, Section 1, paragraph 2, where the Chamber of Deputies shall distribute its seats according to confessional principles and proportional representation. Moreover, Article 95 is in dissonance with Article 24. Indeed, at first glance, Article 95 seems to be written with the aim of ending the confessional representation of the country during a transitional phase. In this phase both Lebanese Christians and Muslims should be engaged in the abolition of political confessionalism. At the same time, it organizes the representation based on confessions. This is because, if this article tries to eliminate confessionalism, on the other hand it strengthened it, providing instructions for its implementation. Moreover, the Constitution of 1989 implemented also the *Troika* political system. In article 53 section 1, the Lebanese Constitution states that the President of the Republic must inform the Speaker of the Parliament about the parliamentary consultations on the designation of the next Prime Minister. Regarding the role of the President of the Parliament, the amendment of Article 58 of the Lebanese Constitution provided him with discretionary power, obliging the Council of Ministries to take into consideration his position before passing a law to the Chamber. The consensus mechanism between the executive and the legislative were eventually installed, as happened between the Prime Minister and the President of the Republic in some areas. Regarding decision making by consensus, in Article 65, section 5 consensus mechanism is described as the core mechanism of governmental decisions, being it the main pillar of the Lebanese consociation.

The Lebanese civil war represented one the most important aspect leading to the new constitutional provisions adopted in the city of Ta'if, as well as it still has a weight on the current situation of the country. The period before the advent of the civil war saw many events that eventually led to the conflict in 1975. All these events embodied the '*ahd*⁴⁶⁶ of the different Presidents of the Republic from 1952 to 1975. However, what weighted the most in the period before – and during – the civil war was the external presence in the country, especially the Palestinian, the Syrian and the Israeli ones. During that period,

⁴⁶⁶ Objective, ideal, purpose.

Lebanon became the battleground of some “external” confrontations which affected the already fragile social equilibrium of the country and transformed the civil war into a *bellum omnium contra omnes*. The Ta’if Agreement put an end to the Lebanese Civil War and, at the same time, it inaugurated the Second Republic of Lebanon.

III. Dysfunctions of the Lebanese confessional system

Chapter Three, instead, deals with the dysfunctions of the Lebanese pluralist system. In this chapter, the methodological approach does not use the comparative and historical analysis as in the previous chapters, rather the examination on the most relevant questions has been adopted by investigating the inherent reasons that led to the failure of the Lebanese system.

The consociational structure of Lebanon led the country to be perpetually captured by a political sectarian élite which lacks responsibility, collaboration, as well as common political commitment to the public good. In addition, the sectarian elites gradually became the oligopolistic patrons of their respective confessional groups and they inherited public offices. In Lebanon, this phenomenon is called “political feudalism”. Indeed, a divided and weak confessional system was eventually adopted, resulting in a lack of political trust from its own citizens and forcing them to rely on their own sectarian networks to feel protected. The State of Lebanon, acting as a trustee, became notorious for its inaction and inability to enact measures promoting progress and preventing deterioration. Some of the features of the Lebanese consociation were identified by Richard Hrair Dekmejian. The first point of his analysis concerns the existence of a big élite cartel. Despite this cartel exists, it does not secure an internal and balanced representation. Second, the insignificant circulation of political élites results in a weak participation of Lebanese people in the political life of the country. Third, the absence of a coercive component capable of ensuring an effective control over the élite cartel. Finally, the tumultuous surrounding regional area and a huge external influence over the internal politics of Lebanon. This last aspect has not always been taken into consideration as an influential variable that may threaten the system. The external presence in a consociation can be detected in different aspects. First, in the veiled or clear presence of external actors in the internal politics of the country. Second, in the possible limitation of the country’s sovereignty. Third, through the country’s political stability and national security. Indeed, Lebanon is directly or indirectly influenced by the political and security stability of its regional environment,

which also contributes to the shaping of internal political decisions. Indeed, Sections II and IV of the Ta'if Agreement were intrinsically designed to limit the Lebanese sovereignty and to bound the country to the political coordination with Syria. The Syrian presence in the country furtherly increased the clashes between some communities, especially between Christians and Sunnis. In addition, also the Arab-Israeli conflict and its consequences has influenced the stability of the Lebanese consociation. More in particular, the problem is directly related to the turbulent environment of the conflict and, at the same time, to the Palestinian refugees issue. Both presences, even though in a different way, shaped the failure of the Lebanese consociation. We should also consider that the regional background, excluding the Arab-Israeli conflict, still has a great influence in Lebanon. Indeed, to give an example, the current tensions between Saudi Arabia and Iran in the region play a large role in fuelling the sectarian divisions between Sunni and Shia inside Lebanon.

According to Lijphart, one aspect describing a real consociation is the collaboration among the different political parties. A consociation works through operability and collaboration. However, with the adoption of the troika system together with the inter-confessional alliances and veto power it was impossible for the government to operate in favor of the nation as a whole, thus making the institutional process even more slow and weak than it was before. If the success or failure of a consociation should be measured according to the élite consensus, then the Lebanese one does not present a collaborative nor cooperative behaviour. However, it is worth arguing that although the consociational failure relies upon the non-collaboration among élites, in the case of Lebanon the exogenous variable and the weak political collaboration are intertwined.

Confessionalism and the pluralist system present some contradictions, such as the “innovative provisions” brought by the Ta'if Agreement in 1989 and the real willingness of the political class to completing these provisions, or the ineptitude of Lebanese politicians to find a way of collaborating between each other, leading to clientelism. Another aspect is instead represented by the numerous attempts by the Lebanese political class to modify the electoral reforms in a way in which they would have gradually become less confessionalized, although still following sectarian lines. Namely the electoral reforms analysed here went from the post Ta'if adoption to 2017, i.e., the last parliamentary elections in Lebanon. Last but not least, the role of Hezbollah in the Lebanese political scenario and the inability of the different élites to deal with the issue

of disarmament or the great social welfare network that the Party of God was able to build over time, lead to stabilize its role at a political level.

About the “fragility” of the Lebanese Constitution, its most fragile aspect relies upon the *sine die* overcoming of the sectarian system, which the political agenda has always postponed. As a matter of fact, Ta’if did not differentiate from the National Accord, and the interconfessional equilibrium was modified and strengthened even more. This was because the constitutional reported division of power and equal proportion among Christians and Muslims, modified the perception of power among the different communities and their relationship with the political leaders. From the adoption of the new constitutional text onward, the institutional equilibrium of the Second Republic found itself even more influenced by confessionalism than it was during the First Republic. Moreover, the newly inaugurated troika is the direct representation of the inherent difficulties of the Lebanese Constitution, determining a sort of “*confusion of powers*”.

About the wasted opportunity presented by the Ta’if Agreement, its final goal was that of overcoming confessionalism, but if at the beginning this objective was considered as remarkable, after a while it was clear that no one in the political élite really wanted to overcome it. Politicians gradually became even more attached to clientelist purposes, and the reinforcement of the confessional system also increased the process of popular identification towards the corresponding religion-political élites. Therefore, Ta’if contributed to the reiteration of the confessional idea, according to which access to any resource can be reached only through sectarian relations. That said, Ta’if has not contributed to change the system, rather it legitimated the already existing political and confessional situation that led to the outbreak of the civil war in 1975. Consequently, it can be affirmed that the aim behind the Ta’if Agreement has not been completely achieved, even if some constitutional reforms were adopted, like those concerning the redistribution of power within the executive and between the sections of both executive and legislative.

IV. Is the Lebanese de-confessionalization possible?

This chapter is the consequence of a research work conducted in Lebanon about a possible de-confessionalization of the country from July 16th to August 16th. The results of the various academic interviews are reported here.

About the majority and minority issue, the dialect that runs around it is the result of historical events. The desire to marginalize the minority away from the social and political life of the majority results in discriminatory and unequal attitudes, which are the souvenirs of past events and political decisions.

For what concerns the societal communitarianism, it has always been a reserved domain from a structural point of view. Indeed, to respect this imperative aspect, the Lebanese State has always abstained from interfering into the personal and internal affairs of the eighteen different communities. Moreover, another point to take into consideration is that the State has always abstained from taking the initiative to integrate the communities. It starts from a principle of common recognition of the different autonomies, where majorities and minorities are perceived as equivalent groups which, on their part, enjoy an equal treatment following a legal plan. The respect of the communities' autonomy has always been seen as a prerequisite to a pacific relation between State and communities and, at the same time, any violation of these principles becomes a possible face-to-face between the two entities. As a confirmation of this, the respect of the autonomies of the communities is stated under Articles 9 and 10 of the Lebanese Constitution.

Citizenship in the Lebanese State is not a matter of restriction nor of exclusion,⁴⁶⁷ but at the same time it is not a common citizenship, which includes all equal citizens. Rather, we deal with a conditional citizenship. It has a mixture of differentiations which makes the legal membership dependent on the criteria of community membership. Each Lebanese has a juridical double membership or affiliation: a social-communitarian and a political-communitarian membership. However, it is also important to note that citizenship, as well as civil and political rights cannot exist outside from the mandatory affiliation to a religious community. Consequently, this affiliation is not a deliberate choice, rather a legal obligation which influences the whole legal status of the citizen. Briefly, the citizen is not considered socially, politically, and legally in its human and civilian nature, rather he is considered as member of a religious community within the State. Therefore, citizenship – intended as the body of rules which determines the forms of membership to society and to the State – is various. The societal and communitarian division blocks the formation of a common social platform and makes it almost impossible to let emerge an ideology of unification of Lebanese people. However, this dimension of social but legal division can be understood also (and primarily) in historical

⁴⁶⁷ Meaning that it is reserved to a specific group

terms. Despite the course of time and the different events that society and State have experienced, the autonomy of the different communities remains a central aspect in the citizenship discourse. This maintenance has to be seen not only from a top-down perspective, rather it is highly encouraged from a bottom-up point of view. The autonomy of each community is intended to control and to shape the relationship with the other communities and with the State. The willingness of maintaining this autonomous supremacy over the State is strictly related to the idea of identity. The Lebanese identity is secondary to the religious one. However, what can be said is that at least the basis for a Lebanese identity were created very early in its history, but what stopped it to become the real national identity is related to the communitarian polarization of politics and society. The division of the Lebanese identity emerged from the different conflicts happening during time and with the objective of finding and concretizing a real Lebanese identity. In spite of that, what was ripping apart was the very same reason behind the fight, and what was going to become disintegrated was motivated by another unity. In this sense, the discourse about transitional justice in Lebanon can have an echo in this situation. Indeed, what is getting even more attention at the international level about Lebanon is the idea that the adoption of a new Constitution is not enough for the text to be enforced or respected if it is not related to the loyalty given by people and institutions towards it. As a matter of fact, Lebanon needed a process of pacification and a common elaboration of the past in order to build a collective memory of what occurred during the fifteen years of conflict. Many things remained unsolved in the aftermath of the Lebanese Civil War and what endured was a common sentiment of fear, which was then passed on from generation to generation. Today, this fear transforms itself in sectarian belonging and territorial one. All in all, today's deep societal and political crisis in which the communitarian system finds itself is a consequence of non-achievement of a national or even common identity, which in its part is the result of an inexistence process of national or even communitarian pardon.

About a possible reform of the Lebanese Constitution, the constitutional mentality which governs the country has as a final objective that of a centralized State. In reality, the State right now is not exactly centralized, but the background which governs the political life of Lebanon since 1943 is that of overcoming confessionalism as a system to reach a centralized nature of the State. However, the transitory nature of Article 95 is probably the central problem of the confessional system itself. Transforming the Lebanese *tayfiyya* into a legal and definitive system for the country will probably change the situation in the

long run. With this, it is not asserting that current confessional system does not have its deficiencies and inner problems. The exact contrary, given the fact that the system does not work properly, trying to legitimize the same political sectarianism in line with the social one and, at the same time, reforming it, will result in a possible positive outcome for the country both in terms of identity and of good governance.

About a possible reform of Lebanon, the option of a UN intervention in the country might be one of the options. Considering the situation, probably the best option would be that of operating under the rule of the United Nations Trusteeship Council. The outcome to this trusteeship system would be that of finding a solution or definitive way out from the Lebanese crisis, as well as it can internationalize the internal good governance of Lebanon. Through an effective coordination between the United Nations and its Humanitarian Agencies, the UNTC can be able to guide public and administrative services. Most importantly, it will consider the needs of civil society and, especially of the youth, in the rescue of a sinking ship: Lebanon.

Instead, for what concerns the theme of federalism as applied in Lebanon, the conditions for a federation to work have been analysed in this research with the objective of understanding if the same system can be applied in the country or not. As a matter of fact, the “classic” federal scheme cannot be applied in present Lebanon for different reasons. The first one, is that the Lebanese society has its own basis on their religious identity. Secondly, the Lebanese territory is not uniformly divided. Thirdly, when dealing with the exclusive powers of a federation, the current Lebanese political problems concern precisely foreign policy, national defence, and management of public finance. Lastly, there is another element which is extremely important, and which makes present Lebanon unsuitable to pursue the federalist project: the Hezbollah’s disarmament. It is of unquestioned truth that Lebanon should be reformed through the adoption of modern, liberal, and democratic ideas, as well as decentralization. Nevertheless, federalism in this precise moment will create an enormous threat, along with the risk of secession.

The Lebanese confessional system presents many aspects that are difficult to be replaced by other types of systems. I have analysed the features explaining the deviations of the Lebanese system for what concerns democracy, sovereignty, and equality. The absence of a national civil status raises the issue of the double loyalty: towards the community and towards the State. However, when in conflict, the first will always prevail at the expenses of the second. Eventually we can state that the contradictions of the Lebanese pluralist

system – linked to the communitarian and clientelist requests – are in contrast with the legal text of the country, causing a perpetual stalemate. As a consequence, the Lebanese reality does not obey to the constitutional law nor to the rule of law as we normally intend both of them, from a European perspective. Rather, citizens look at institutions from a confessional point of view, instead of considering their constitutional functioning.

However, it is far from true to say that the Lebanese situation is hopeless and beyond repair. The most important aspect to reform is the radical evolution of society and its mentality towards a new system based on a unique citizenship. This will be the turning point and hope to change current situation, which has very old roots. Unfortunately, we should also face the facts: currently such change is impossible in Lebanon. Indeed, a de-confessionalization of society and then of politics is unfeasible. Every step taken towards the de-confessionalization of Lebanon has never seen the light of the day. Nothing appears as more difficult and riskier as to separate the entities from their sociological and historical roots. The abolition of confessionalism can happen as a result of a process of change that starts from the collective and then reaches the political sphere. The decrease in the societal communities will be the efficient cause of the overcoming of political confessionalism. This will be the result of years of gradual instalment of a new mentality, related more to the human sphere than to the religious one and, above all, of a process of pardon and common interest to overcome the sentiment of fear that has affected society since 1990. Any constitutional reform in this respect will be null and void without first changing people's mentality.

In conclusion, thinking about eliminating confessionalism in present Lebanon without primarily preparing the ground for society to live together, means basically to give rise to a new civil war.