
CHANGING THE LEBANESE CONSTITUTION: A POSTMODERN HISTORY

*John J. Donohue, s.j.**

Lebanon fits one of the models mentioned in the position paper for this conference as having serious shortcomings—“the millet based model in which priority is given to collective self-government by each religious community within the polity.”¹

Lebanon was often in the news during the civil war that extended over 15 years from 1975-1990, and accounts of that war often attribute the cause to its communitarian²-based constitution. A closer look at the “events” during those hectic years shows that much more than a constitutional change was at the base of it all. The change that took place in 1989 was much more of the same. The second republic begotten by the war looks much like the first. Communitarianism evidently is here to stay.³

Here I present the background of communitarian constitutionalism in Lebanon and its genesis, development and performance to illustrate that radical change in the system is next to impossible.

Constitutionality in the Middle East dates back to the 19th century in the Ottoman Empire.⁴ Constitutions were seen as a means to limit the power of the sovereign. The constitutions of the present states date from mandates from France and England at the end of World War I. Liberal constitutions were granted with elected parliaments and all that.

* Professor at the Faculty of Religious Sciences, Saint Joseph University, Beirut, Lebanon; director of the Observatory of the Euro-Lebanese Center for Intercultural Mediation (CIEL).

¹ See John J. Donohue, s.j., Religion and Public Reason: The Lebanese Case (Oct. 16, 2008) (unpublished position paper sent to conference participants in preparation for this symposium, on file with the Cardozo Law Review).

² See, e.g., FED. RESEARCH DIV., LIBRARY OF CONG., A COUNTRY STUDY: LEBANON (1987), available at <http://lcweb2.loc.gov/frd/cs/lbtoc.html> (scroll down and follow “The Civil War, 1975-76” hyperlink) (“For many observers, at the bottom of the conflict was the issue of confessionalism out of balance—of a minority, specifically the Maronites, refusing to share power and economic opportunity with the Muslim majority.”). The term “communitarian” is fairly recent; it duplicates the “millet based system” referred to in the first paragraph above.

³ Julia Choucair-Vizoso describes Lebanon as “the semblance of a modern state [with] no modern institutions. In short, Lebanon [is] a confessional oligarchy.” Julia Choucair-Vizoso, *Lebanon: The Challenge of Reform in a Weak State*, in BEYOND THE FACADE: POLITICAL REFORM IN THE ARAB WORLD 115, 119 (Marina Ottaway & Julia Choucair-Vizoso eds., 2008).

⁴ See 2 STANFORD J. SHAW & EZEL KURAL SHAW, HISTORY OF THE OTTOMAN EMPIRE AND MODERN TURKEY 130-33 (1977).

Although the initial years of Greater Lebanon under the mandate were fraught with tension, a quasi-consensus was arranged by the French until independence was granted in 1943. Things went along fairly well until 1948. The events of that year provoked military coups, followed by dictatorships to assure security. State socialism was the vogue and military juntas accordingly drew up new constitutions. Lebanon was the only state to have avoided this broad turnover in the region and it became a refuge for the opposition exiled from other states.

Lebanon and its constitution survived but Lebanon was certainly not a stable republic. Some Lebanese claimed that Lebanon's weakness was its strength. It lacked strong government and an army breeding colonels with ambitions to govern. Lebanon's inscape was that of a wily merchant adapting pragmatically to changing situations. Michael Hudson's study of Lebanon in 1968 was appropriately titled: *The Precarious Republic*.⁵

Lebanon, Syria, and Iraq all have an assortment of religious and ethnic communities, but Lebanon was the only state that recognized this in its constitution. The Lebanese Constitution of 1926 officially recognizes 17 religious families, Christian, Muslim and Jewish. All Lebanese are equal before the law (Article 7) and the State guarantees to the communities, no matter what rite, respect for their personal status laws and religious interests (Article 9). Article 10 grants them the right to decide on education.

The key article that gives the country its communitarian basis is Article 95: *Temporarily, with the intention of assuring justice and harmony, the communities will be equitably represented in public employment and in the composition of ministries.*

The reason for this is historical. Early on, in 1915, when the French and the English were discussing the future shape of the Middle East, the French delegate, Georges Picot, insisted that Lebanon with its privileged regime should not be immersed in the projected Arab state.⁶ At the Peace Conference, Clemenceau honored the requests of the Lebanese delegation for a separate entity: Greater Lebanon.⁷

France, in fact, approached its mandates for Lebanon and Syria from a "communitarian" perspective. Lebanon had a history of

⁵ MICHAEL HUDSON, *THE PRECARIOUS REPUBLIC: POLITICAL MODERNIZATION IN LEBANON* (1985).

⁶ I rely heavily on the two superb volumes of Edmond Rabbath. See EDMOND RABBATH, *LA CONSTITUTION LIBANAISE: ORIGINES, TEXTES ET COMMENTAIRES* (1982) [hereinafter RABBATH, *CONSTITUTION*]; EDMOND RABBATH, *LA FORMATION HISTORIQUE DU LIBAN POLITIQUE ET CONSTITUTIONNEL: ESSAI DE SYNTHÈSE* (2d ed. 1986) [hereinafter RABBATH, *ESSAI*].

⁷ See ANTOINE HOKAYEM & MARIE CLAUDE BITTAR, *L'EMPIRE OTTOMAN, LES ARABES ET LES GRANDES PUISSANCES, 1914-1920* (1981).

communitarian governance under the *Caimacamate* (1842-1860) and the *Mutasarrafiyya* (1861-1915); both administrations were based on community representation. In Syria the French attempts to establish autonomous regions for Alawites and Druze did not stick.⁸

BEGINNINGS

From the beginning, the projected community equilibrium in Lebanon was unstable. Muslim and Christian aspirations and identity moved in opposite directions. The Muslims wanted national sovereignty but in the framework of Syrian unity. The Christians were looking westward.⁹ Common disillusionment with the mandate led the Maronite president, Bishara al-Khoury, and the Sunni prime minister, Riyad al-Sulh, to come to an agreement in 1943 whereby the Christians would forsake Western tutelage and the Muslims their desire for unity with Syria and agree to live together in harmony. This was the famous National Pact.

Edmond Rabbath characterizes the Pact as “the Lebanonization of the Muslims and the Arabization of the Christians,” and points out an aspect seldom mentioned, namely that the Lebanese Constitution was innovative in that it extended the communitarian regime to Lebanese Muslims. The millet system of the Ottomans embraced only minorities.¹⁰

Article 95 of the Constitution calls for communitarian composition in the ministries and civil service. It says nothing concerning the chamber. The original constitution projected a bi-cameral system and Article 96 apportioned the seats in the Senate in the following manner: five Maronites, three Sunni, three Shia, two Greek Orthodox, one Greek Catholic, and one for Christian minorities. The Senate was abolished in 1927; the communitarian allotment would continue in the chamber in the proportion of six Christians to five Muslims based on an accord of 1943.

The number of deputies and the electoral districts depend on the prescriptions of the electoral law. Numbers varied from 25 to 77 until the number of 99 established by the electoral law of 1960 became rather permanent until 1989.

The electoral law, according to Rabbath, is subject to the

⁸ See CHIBLI MALLAT, *Constitutional Law: The Specificity of Middle Eastern Constitutionalism*, in *INTRODUCTION TO MIDDLE EASTERN LAW* 141 (2007).

⁹ For a thorough account of assertions of Phoenician identity among Christian Lebanese, see ASHER KAUFMAN, *REVIVING PHOENICIA: THE SEARCH FOR IDENTITY IN LEBANON* (2004).

¹⁰ RABBATH, *ESSAI*, *supra* note 6, at 121. For further information on the millet system, see RODERIC DAVISON, *REFORM IN THE OTTOMAN EMPIRE, 1856-1916* (1963).

manipulation of the president, who tailors it to fit his agenda and assure a chamber, comfortable and malleable, to favor the choice of a successor who will not be an adversary to his policies, his family or his friends, digging up the sordid details of his regime.¹¹

LEBANON AFTER 1948, AN ANOMALY IN THE REGION

The creation of the state of Israel in 1948 and the feeble Arab attempts to thwart it resulted in radical changes in the region. The military reacted against what they considered corrupt regimes, first in Egypt with Nasser, then in Iraq and Syria. Military coups established revolutionary command councils that rewrote constitutions and made efforts at state socialism, taking the Soviet Union as a model.

Lebanon was spared that experience but not the repercussions from popular pan-Arab opposition movements and the Soviet-American rivalry in the region. The United States proposed the Baghdad Pact in 1955 to fence out Soviet penetration. Lebanon ignored popular Arab sentiment and joined. Egypt violently objected to the Pact and nationalized the Suez Canal in 1956. The United States went even further with its proclamation of the Eisenhower Doctrine in 1957 offering to protect the states in the region against the "Red Peril." Again Lebanon signed on.

When a pro-Nasser insurrection broke out in 1958, allegedly against President Chamoun's maneuvering to prolong his mandate beyond the six-year term, Chamoun appealed for American help, without effect until July when a military coup in Baghdad upset Washington. Shortly thereafter, American marines landed on Lebanese shores to protect the regime and assure the election of a new president. The National Pact had fractured. The new President, Fouad Chehab, undertook to restore it. To assuage the Muslims, he decreed that more consideration be given them in public employment. His effort, referred to as "fifty-fifty," further entrenched confessionalism¹² in the system as it restored the National Pact.

ANALYSIS OF THE FIRST 25 YEARS

The Maronites and the Druze of Mount Lebanon provided the base for the new independent state of Greater Lebanon. Other religious

¹¹ RABBATH, CONSTITUTION, *supra* note 6, at 177.

¹² The term "confessionalism" is traditionally used in describing the Lebanese system. Citizens are classed according to religious affiliation or confession. It is equivalent to communitarianism but more focused on the religious foundation of community.

communities were added by the expansion of borders that were claimed to be “natural.”¹³ It was in the Sunni community that sentiments of Arab unity and ties to Syria were strongest. The Shiites at that time were not strong proponents of Arab unity. Yet, there were voices calling for some sort of unity with Syria in all communities. The rival candidates for the presidency, Bishara Khoury and Emile Edde, both Maronite, reflected the tension between Arab and West. Khoury was inclined to the Arab side, Edde towards French protection. And when, in November 1943, President Khoury and the government of Riad Sulh approved amendments to the constitution eliminating all references to the French mandate, the two along with the ministers and the president of the Chamber were arrested and imprisoned for nine days by the French authorities.¹⁴ The Maronite Patriarch Arida had earlier in 1935-36 expressed his conviction that Lebanon and Syria are joined by a community of language, customs, traditions and economic interests. Consequently, he considered it difficult to separate the two completely.¹⁵

The constitutional amendments of October 1927 gave the president powers that rendered the chamber a tributary of the presidency.¹⁶ Nonetheless, parliament and vested interests put limits to that power. When the first president, Charles Debbas, a Greek Orthodox, courageously exposed scandals behind the newly rich and sent high civil servants, lawyers and politicians to prison, his popularity rose. Slowly, family and community ties surfaced and with the aid of the press his victims became martyrs and were finally released by the Courts.¹⁷

Then, General Fouad Chehab co-opted to re-establish national unity in 1958, ruled with firmness and with the aid of the Second Bureau of the army. His successor, Charles Helu, attempted to follow suit and reform the civil service and the judiciary. His attempt was clumsy and finally dropped under pressure.¹⁸ The following president, Suleiman Frangieh, marked the end of the tight Chehabist era with public celebration, only to err in the opposite extreme.¹⁹

With hindsight one can understand the apparently exaggerated opinion expressed by Michel Chiha, one of the fathers of Lebanese constitutionalism, in a conference given in 1942:

In order to live and to last, Lebanon must raise a dissenting voice against the craze for making laws and imposing taxes in the West. It

¹³ See HOKAYEM & BITTAR, *supra* note 7.

¹⁴ RABBATH, ESSAI, *supra* note 6, at 482-87.

¹⁵ *Id.* at 418-19.

¹⁶ *Id.* at 404-06.

¹⁷ *Id.* at 418-19.

¹⁸ *Id.* at 574.

¹⁹ RABBATH, CONSTITUTION, *supra* note 6, at 433.

makes a plea for freedom to the utmost extent to which people can be free without harming their neighbor and, of course, their country. It is apprehensive of the mistakes that technicians from the West might, in all good faith, suggest to those who govern us. . . .

The West is superior to us in the exact sciences, in things mechanical and in statistics, and will remain so indefinitely. It is not superior to us in political philosophy, in knowledge of human nature and in economic and financial science.²⁰

The Lebanese system, fragile as it was, appeared strong and malleable enough to weather the minor clashes of interests and power plays that came from within. Interests, in general, coincided and there was talk of the Lebanese miracle.²¹ Nobody understood fully how it worked, but it did.

REGIONAL REPERCUSSIONS AND THE LIMITS OF CONSENSUS

The next threat would be the fallout from the 1967 defeat of the Arabs by Israel, the Six-Day War, that gave rise to the Palestinian Resistance. The Fedayeen became the Arab heroes, saving Arab honor from the disgrace of dysfunctional regimes. The Palestine Liberation Organization was a formal attempt to institutionalize the Resistance to better control it, but groups sprung up everywhere; there were Syrian fedayeen and Iraqi fedayeen, etc. as well as Palestinian fedayeen.

These groups developed unhindered in the free atmosphere of Lebanon where the refugee camps offered fertile ground for recruitment and training. Clashes with the Lebanese army were frequent and efforts to control the groups were stymied by Arab interference. Tensions finally led to the Cairo Accords (1969) granting extra-territorial status to Palestinians in the camps—a state within the state. In Jordan the hijacking operations the Palestinians carried out brought on Black September when the Jordanian army put an end to their tactics and reduced their presence in 1970. Many of them took refuge in Lebanon where they offered armed support to the Lebanese opposition. The assassination of three Palestinian leaders in the center of Beirut by an Israeli commando group in 1973 brought the government down and prepared the stage for the civil war of 1975-1990. The added weight of the Palestinian Resistance warped the equilibrium; the National Pact fell apart once again.²²

²⁰ MICHEL CHIHA, *LEBANON AT HOME AND ABROAD* 117 (Leo Arnold & Jean Montégu trans., 1966). KAUFMAN, *supra* note 9, gives a full account of Chiha's thought.

²¹ See Georges Corm, *The "Lebanese Miracle" in Danger*, *LE MONDE DIPLOMATIQUE* (English ed.), Apr. 1998, available at <http://mondediplo.com/1998/04/05liban>.

²² See FARID EL KHAZEN, *THE BREAKDOWN OF THE STATE IN LEBANON, 1967-1976* (2000).

The chronology of the years 1975 to 1982 reads like a series of gang wars. Murabitun, Tigers, Marada, Kata'ib, Lebanese Forces, Arab Socialist Union, Tanzim, etc., etc. Marun Baghdadi is said to have listed 80 groups. It was hardly Muslim left against Christian right as some would have it.; Muslim groups were often at one another's throat. Nor were Christian groups more unified. The first year or so of the war did appear as a threat to Christians and there was a popular mobilization. Later the war became institutionalized. All Arab countries as well as the Palestinians were sponsoring militias. A Sunni lieutenant would form an Arab Army and turn the national institution into groups of militias. Some religious leaders tried in vain to preserve unity. Communist and socialist groups thought they finally had their class war, but classes soon fused into communities and people were killed on the basis of their identity card. Churches were sacked, cemeteries violated and mosques attacked. A tribal spirit took over.

Syria entered as the moderator, but soon became the target of the Palestinians and the National Movement of the Druze leader Kamal Jumblatt. Arab efforts at mediation created an Arab Deterrent Force, a cover for the Syrian army.²³ The Druze would create their own canton, a Sunni spokesman wrote of the anomaly of Muslims living under Christian rule and Christians would start talking about federalism.

The system collapsed, but the initial shove—the events of April 13, 1975—remains somewhat mysterious. There was provocation. Some would talk about the war not as a civil war but a war for others. The United States sending an Ambassador to negotiate the entry of the Syrian army in 1976 sustains theories of a plot.²⁴ The truth is elusive. The Israeli army would enter in 1982 and a multi-national force in 1983 came to escort the PLO to a different exile. Negotiations between Israel and Lebanon were held only to be abrogated by the entry of some young Shiite upstarts backed by the Iranian Pasdaran on the scene. Suicide bombers would eliminate the Multinational Force. Hezbollah had taken form.

Israel had supported the election of President Bashir Gemayel, leader of the Lebanese Forces in 1982. Pro-Syrian elements assassinated him. His brother was chosen to succeed him and there followed periods of calm but no political equilibrium.

Finally an Arab Tripartite Committee was named in 1989 to bring

²³ Saudi Arabia, Sudan, Yemen, Libya and the United Arab Emirates sent token forces. But soon they withdrew and left only Syrian troops.

²⁴ Late in the morning on Sunday, April 13, 1975, a car drove past the Church in Ayn al-Rammane as Pierre Gemayel, leader of the Kata'ib, was leaving after attending Mass. The car fired on Gemayel but missed him and killed his bodyguard. Later in the afternoon, people in police uniforms set up roadblocks to force a busload of Palestinians coming from a celebration, to pass in front of the Church. The Kata'ib militia in the quarter, having mobilized after the morning's events, stopped the bus and executed the Palestinians.

the Lebanese war to an end. Syria's supporting the Shiite militia AML in its prolonged "War of the Camps" to eliminate Palestinians was further incentive for the Arab heads of state to intervene.²⁵

The committee submitted their report, then resigned in frustration because Syria refused to accept its recommendations concerning security arrangements and the withdrawal of Syrian troops. In Beirut, outgoing President Gemayel had failed to see through the election of a successor and left behind him two governments, one under his appointee, General Awn, the other supported by Muslim opposition. The solution came under American auspices in the Ta'if Conference of 1989, hosted by Saudi Arabia. The Ta'if accords would produce new constitutional amendments.

Was the war all about a deficient constitution? Perhaps for the leader of the National Movement this was uppermost. Kamal Jumblatt with his Palestinian and leftist allies had taken the upper hand over the traditional Muslim leaders. The National Movement's Reform Program announced in mid-August 1975 aimed at changing the political system. Jumblatt and his supporters claimed that the dominant ruling class had been unwilling or incapable of introducing reform into the system. To reform the system, the program proposed complete secularization, eliminating sectarianism from the various levels of political life, the civil administration and the army. The three presidencies (republic, government and chamber) would be open to all communities. The prime minister's powers would be increased, those of the president decreased. Fundamental changes in the electoral law would make all Lebanon one constituency and elections would be based on proportional representation.²⁶ The Maronites and the Sunni opposed secularism; they did not want to give up their places at the apex of the pyramid.

Syria would propose a compromise plan by sponsoring the elaboration of a Constitutional Document made public on February 7, 1976 on the occasion of the visit of President Frangieh and Prime Minister Rashid Karami to Damascus. The document incorporated some elements of the National Movement program but instead of leaving the top three presidencies open to any community as Jumblatt would have it, maintained the traditional distribution among Maronite, Sunni and Shiite. It did propose equal distribution of seats in the chamber between Muslims and Christians; election of the prime

²⁵ See Joseph Maila, *Jalons pour une crise continuée*, 16-17 LES CAHIERS DE L'ORIENT 220 (1989-1990).

²⁶ MARIUS DEEB, *THE LEBANESE CIVIL WAR 74-77* (1980). In 1975-76, the various communities presented plans for the Lebanon they desired. See 3 CTR. FOR THE STUDY OF THE MODERN ARAB WORLD, *RELIGION, STATE AND IDEOLOGY: CEMAM REPORTS 1975* (1976). There had been a serious call for more equal participation on the part of the Sunnis before the war broke out. And the Shiites were making their bid for more power behind the charismatic Imam Musa al-Sadr.

minister by the chamber; equal responsibility of the president and the prime minister for all decrees and laws; appointment to civil service would be on the basis of competence thus eliminating confessionalism completely; formation of a Constitutional Council and a Council for planning and development.²⁷

The compromise did not please Kamal Jumblatt and the National Movement; there are indications that later they wanted to go all the way and change the system by force. Their demand for the elimination of political confessionalism became a rallying cry transformed into “the elimination of political Maronitism.”²⁸

MEDIATION AND DIALOGUE

Earlier, in September 1975, Syria formed the National Dialogue Committee composed of 20 members with equal Muslim and Christian representation. The Muslims favored the committee; the Christians thought that the Chamber was the place for such dialogue.

For Syria, its control of the Lebanese scene was more important than constitutional reform. This led to conflict with Jumblatt and the National Movement. When the Riyadh Summit took place in October 1976, the National Movement was not invited.²⁹ Then in March 1977, Jumblatt would be eliminated.³⁰

In 1976, Jumblatt and the Palestinians opposed the entry of Syrian troops negotiated by the Americans. They were not alone; several Lebanese politicians and Arab countries as well were strongly opposed.³¹

As the first phase of the war closed at the end of 1976, the main question was not how to reform the political system, but rather how to assure that the Palestinians abided by the Cairo Accords. When Israel entered southern Lebanon in 1978 another item was added to the political agenda. Syrian presence in Lebanon was accepted and covered by the Arab Deterrent Force formed by the mini summit at Riyadh in 1976.

Arab mediation was not very effective. Several Summits would mention the Lebanese problem, the problem of the Palestinians, and how to force Israel to abide by U.N. Resolution 425 and withdraw from Lebanon. The PLO sought Arab support against Syrian domination and so the Tunis Summit in November 1979 declared that southern Lebanon

²⁷ I ANTWAN KHUWAYRI, *HAWADITH LUBNAN* 169-174 (1977).

²⁸ DEEB, *supra* note 26, at 85-88.

²⁹ The Summit was comprised of Saudi Arabia, Kuwait, Egypt, the PLO, Syria and Lebanon.

³⁰ His son and successor, Walid, cast suspicions on Syria.

³¹ See DEEB, *supra* note 26, at 93 (discussing the National Union Front formed in July 1976).

was an Arab responsibility as much as it was a Lebanese responsibility; aid was promised to Lebanon. At the Islamic Summit at Ta'if in January 1981, the accusation of the Lebanese President Elias Sarkis, against the National Movement for violating the 14-point solution approved by the Lebanese government, only provoked criticism and accusations of being "isolationist" from the Nationalist Movement. They demanded that he retract his speech. In May 1981, the Arab Foreign Ministers would meet in Tunis and Fu'ad Butrus, the Lebanese minister, would revive the Arab Quadripartite Committee of 1976, while envoys from France and the United States appeared to signal the "internationalization" of the crisis, especially after Syria had brought Sam 6 missiles into Lebanon to oppose Israeli overflights and attacks.

On the ground in Lebanon, efforts of President Sarkis and the government to re-establish the army and arrive at an accord were continually blocked by the National Movement. The 14 points of Sarkis were the result of broad consultation. On March 5, 1980, he addressed the nation announcing the 14 points: the unity of Lebanon and its institutions to be respected by all residents of Lebanon; a democratic parliamentary system developed to meet the aspirations of its people assuring basic liberties in the framework of the law; implementing social justice to create an atmosphere allowing future treatment of the subject of confessionalism; free economy and planned development; Lebanon is Arab; supports Palestinians; rejects Zionism; is open to the international community and has special relations with Syria; ties with the Lebanese emigration should be strengthened.³²

Much as the proposals of Frangieh and Asad in 1976, the system remains but should be adjusted in the future, the Palestinians are supported within limits, Israel is rejected, Syria accepted. Prime Minister Huss, in November 1981, addressing the Association of Arab Graduates (AAUG) in Houston, Texas, referred to the 14 points as a new Charter for Lebanon. But the National Movement would have none of it.

The assassination of Kamal Jumblatt left the National Movement divided. An effort to pull it together was made by resurrecting his reform program and attempting to form Popular Committees to replace the government. The religious establishment, Sunni, Shia and Druze was adamantly opposed, especially Shaikh Ahmad Assaf. He was assassinated in April 1982.

The Israeli invasion in June of 1982 marked the end of the second phase of the war. A Multinational Force was on the ground to assure

³² See 9 ANTWAN KHUWAYRI, HAWADITH LUBNAN 223-27 (1980). Lebanese emigrants tend to maintain close ties with their country of origin. Remittances to Lebanon are an important element in the economy, and there is a movement to allow emigrants to vote in Lebanese elections.

peace. The election of a new President and formal negotiations with Israel appeared to put an end to warring in Lebanon.

The Sunni religious establishment took stock of the past eight years of fighting and re-evaluated its position. The fact that the Israeli army had entered Beirut and not one Arab state had come to the rescue was a shock. A perusal of the editorials in the monthly review of Dar al-Fatwa illustrates the disillusionment and the shame felt when Muslims had to pass Israeli checkpoints in Beirut to go to Friday prayer.

The General Director Husain Quwatli, who had earlier published an article concerning the anomaly of Muslims living under Christian rule, wrote in the first issue to appear after the Israeli invasion:

The Muslims of Lebanon were devoted to Islam and its values to a degree surpassing Lebanon, and they were devoted to Arabism to a degree surpassing the capacities of the Arab world. They attempted to act as the plenipotentiaries of Islam and Arabism. They were niggardly and negligent about their affiliation to Lebanon. The summer of 82 showed clearly that the Muslims don't want our Islam and the Arabs are not interested in our Arabism. We have only one choice: to formulate an Islam and an Arabism to the measure of Lebanon.³³

The assassination of Shaikh Assaf had grouped the Muslim religious leaders, Sunni, Druze and Shiite. At the funeral all prayed behind the Mufti, irrefutable sign of their unity. On September 21, 1983, the Sunnite, Shiite and Druze leaders adopted a declaration in 10 points marking their "official" position after the war of the mountain. These 10 points underlined the desire of the Muslims to consider themselves fully Lebanese, respecting their country such as it was. Only two of the 10 points piqued the Christians: refusal of decentralization and suppression of political confessionism. For the rest, they were happy to see the Muslims recognize Lebanon as their definitive homeland. The Druze and the Shiite combatants, however, were not happy with this charter which they felt covered over the real problems and merely repeated "worn out generalities."³⁴

In May 1983, the Chamber approved the Lebanon—Israeli Accord. And then the cycle began all over again. The Left had not given up and was badgering Israelis in Beirut and the south until Islamic groups backed by the new Iranian Revolution co-opted their resistance and slowly eliminated the left.

On February 23, 1984, after the battle of West Beirut, the Sunni leaders grouped at Dar al-Fatwa to re-adjust their sights by adopting a

³³ Husain Quwatli, Editorial, *AL-FIKR AL-ISLAMI [ISLAMIC THOUGHT]* (Beirut), Oct. 1983 (translated from Arabic).

³⁴ The daily Arab press, for example *al-Nahar* and *al-Safir*, carried such accounts. See also 7 *ANNALES DE SOCIOLOGIE ET D'ANTHROPOLOGIE* 139-40 (1989).

new text, more engaged, which marked the alignment of the community with the opposition to President Amin Gemayel: call for the abrogation of the May 17th Accord with Israel, condemnation of the Army, denunciation of "sectarian hegemony."³⁵ The text concluded with a call for a new national dialogue.

Dialogue had already begun at the end of October 1983. President Gemayel presided at the meeting in Geneva. The participants reached accord on the identity of Lebanon: Arab in its affiliation and identity. They could not agree to abrogate the Accord with Israel. In fact, 37 deputies would meet and insist on keeping the accord lest the south be lost. At the second meeting for dialogue in Lausanne, March 12, 1984, there was agreement on abrogating the accord with Israel. The Christian leaders Pierre Gemayel and Camille Chamoun presented a work paper proposing a federation. Muslim participants adopted a common position calling for increasing the powers of the Prime Minister. The dialogue finally put off any radical reform, leaving that to the next president and a government of national unity and a committee that would be charged with drawing up a new constitution.

The fighting would continue in the south and in the north. In the south it was to force Israeli forces out, in the north it was pro-Syrian Forces against the Movement for Islamic Unity, a new comer set up by Yasir Arafat before his second departure from Lebanon. The fighting, as in Tripoli, would turn into intra-community and intra-factional combat. Hezbollah vs AML, AML vs Palestinians, Lebanese Forces vs the government of General Awn. Kidnapping and hijacking and suicide bombers became the mode. At times it appeared as if Syria had achieved dividing all communities. Meanwhile efforts at a national accord continued.

THE DAMASCUS TRIPARTITE ACCORD

In December 1985, Syria evidently gave up persuading Lebanese politicians and turned to militia leaders as the new power dealers in Lebanon. President Asad summoned to Damascus Nabih Birri (AML-Shiite), Walid Jumblatt (PSP-Druze) and Elie Hobeiq (Lebanese Forces-Maronite) to sign a Tripartite Accord laying out the details for an end to hostilities and the elaboration of a new constitution in which confessionalism would be eliminated. The document was divided into five chapters:

1. General Principles

³⁵ See the declaration in AL-NAHAR (Beirut), Feb. 23, 1984, at 3; see also 8 ANNALES DE SOCIOLOGIE ET D'ANTHROPOLOGIE 140 (1990).

2. Principles for the Political System
3. Principles for the Transition Period
 - realigning executive power,
 - reforming the economy,
 - elaborating a program for global development,
 - reforming education, and
 - setting out the mission of the army and security forces.
4. Privileged Relations between Lebanon and Syria
5. Dispositions for Ending the State of War

An analysis of the document in *Les Cahiers de l'Orient* suggests that the fourth chapter on privileged relations with Syria should actually be the first if one wishes to understand the motivations underlying the document. It appears somewhat naïve that the Syrians felt they could establish the new Lebanese Republic on the basis of three militias. Still the first national union government would give ministerial posts to the militia leaders who were willing to accept. There is strong insistence on Lebanon being an Arab country, and the notion of Arabism dominates the sections on the special relations with Syria, the objectives set out for the Army and for national education. True Arabism is being in accord with Syria.³⁶

The accord was rejected not only by the Lebanese Forces but also by Iran.

In September 1986 the government formed a ministerial committee to draw up a new national pact and the Prime Minister Selim al-Huss proposed a pact giving privileged relations to Syria, Christian spokesmen rejected it.

From mid-1975 through 1985 various government instances had been tapped to offer possible solutions: the presidents Frangieh (February 1976) and Sarkis (1980). Then the dialogue meetings of Geneva (1983) and Lausanne (1984) and various ministerial programs outlined some of the basic principles but without reaching full accord. The turn to militia leaders gave no better results.

CASABLANCA SUMMIT JUNE 1989

The process for a final solution began with the formation of a committee of six by the Arab League Council early in 1989. The committee convoked the two prime ministers, General Awn and Salim al-Huss, along with the speaker of the Chamber, Husain Husaini, to a

³⁶ Samy S. Hilal, *L'Accord de Damas: De la Négociation à La Non-Solution*, 1 LES CAHIERS DE L'ORIENT 61 (1986).

meeting in Tunis at the end of January 1989 to discuss the project for a national accord. P.M. Huss earlier sent a memo to the Council of the Arab League explaining that the solution for the crisis must be a national accord abolishing confessionalism, supplying a just form of participation and giving the council of ministers executive power.

Then in May the Arab Summit at Casablanca appointed a committee of three heads of state: Morocco, Algeria and Saudi Arabia, to refine the text of the accord and arrange for a meeting of the chamber, outside Lebanon, to approve the text. The committee of three published a report on August 2, 1989, and announced their resignation because of Syria's refusal to accept security arrangements and the retreat of Syrian forces from Lebanon. An amended text acceptable to Syria was published with United States insistence and finally the chamber met in Ta'if in September 1989 and approved the text, the basis for a new constitution.

General Awn refused the Ta'if Accord. He was not alone, but his position gave him prominence. Finally the Iraqi invasion of Kuwait was the international preoccupation. For Syrian cooperation in an American-sponsored multinational force to liberate Kuwait, President Asad was given the green light to bomb General Awn out of the presidential palace at Baabda.

Why did so many instances of dialogue and mediation fail until Syria was allowed to use its air force? Evidently, Syria's role in Lebanon was more important than any constitutional change. In fact, the committee of three mentioned that Syria was not the least bit interested in their proposed document save for the items concerning security and withdrawal of Syrian forces. Syria also made progress in co-opting the Palestinian Resistance. It had supported AML in its war against the Palestinian camps and had created its own Fath movement, "*Fath al-intifada*" to replace Arafat.

THE DOCUMENT OF NATIONAL UNDERSTANDING AND THE NEW CONSTITUTION

The Document voted at Ta'if follows the main lines of the Damascus Accord of 1985 and the proposals of Pres. Gemayel transmitted to Damascus through the Americans in 1988. It contains very little that had not already been debated in previous attempts.³⁷

It is divided into three parts:

³⁷ For the best analysis of the Accord, see Joseph Maila, *Le Document d'Entente Nationale: Un Commentaire*, 16-17 LES CAHIERS DE L'ORIENT 135 (1989-1990). For the American input, see *id.* at 168.

First: General Principles and reforms (political reforms and other reforms)

Second: Extending Lebanese sovereignty over all the territory

Third: Liberating Lebanon from Israeli occupation

The document as a whole is free of the over insistence on Arabism *à la baath syrienne* found in the Damascus Accord. Lebanon is a free, sovereign, Arab state; the definitive homeland of all its members (sons). It is a united country and

The people may not be categorized on the basis of any affiliation whatsoever and there shall be no fragmentation, no partition, and no repatriation [of Palestinians in Lebanon]

The political reforms inject the real change in the system that will no longer be “presidential.” Executive power is placed in the Council of Ministers. The President of the Republic, should he attend a meeting of the Council may participate but without the right to vote. He may name a Prime Minister based on consultations with the President of the Chamber.

Executive power is vested in the Council of Ministers:

The following are among the powers it exercises:

1. Sets the general policy of the State in all domains, draws up draft bills and decrees, and takes the necessary decisions for their implementation.
2. Watches over the implementation of laws and regulations and supervises the activities of all the state agencies without exception, including the civilian, military, and security departments and institutions.
3. The cabinet is the authority which controls the armed forces.

The Chamber is enlarged to 108 members and maintains its communitarian character: equally divided between Muslim and Christian, apportioned according to sect. The electoral law should be based on the circumscription of the province; that of 1960, which set a standard was based on the *caza*.³⁸

The presidency of the Chamber is strengthened in that a four-year term is practically assured. Previously the election was annual. In addition the president’s role is notably increased since it is he, with the president of the Republic, who chooses the prime minister.

Although the chamber maintains its communitarian character, this is to be provisional.

Reverting to the Constitution of 1926 and taking into consideration the document of the Druze Supreme Committee in May 1983, a senate will be created following the seating of the first chamber elected on a

³⁸ A *caza* is the smallest geographical unit of the country, somewhat similar to a county.

national, non-sectarian basis. The senate will be composed of the major communities with equal numbers from the Muslim and Christian communities. The president of the senate will be a Druze. Its powers will be confined to crucial issues.

Also among the political reforms is the abolition of political confessionalism (communitarianism). It is a fundamental national objective to be accomplished in phases set by a national committee headed by the three presidents aided by prominent political, intellectual and social personages. Meanwhile, all posts in the civil service except those of the first class, shall be accorded on the basis of competence, not on affiliation. And first class posts will be distributed equally between Muslims and Christians without giving any particular community particular posts.

The analysis of Joseph Maila sums up well the operation of Ta'if:

The communitarian point of view dominating Ta'if appears to have inverted the logic of institutions. In 1926, Lebanon was given political structures dictated by a coherent constitutional philosophy. The Constitution and the institutions put in place were also adapted to its communitarian [composition.] In 1989, at Ta'if, it was communitarian inspiration which dominated in reshaping the institutions. The institutions were no more than the tokens of a communitarian setting dressed up as constitutional instances. At Ta'if the community representatives went about constitutional reform in the manner of Lords redistributing fiefs. Rather than seeing to the contraction of communitarian rights, they set themselves to setting the communitarian boundaries of the institutions.³⁹

Other reforms proposed included administrative decentralization, a supreme court for judging presidents and ministers, a constitutional council and a council for economic and social development. Education and the media were also subjected to scrutiny. Section two on the restoration of Lebanese Sovereignty and section four on special relations with Syria had been amended and approved by Syria and were therefore immune to discussion. The former included defining the mission of the Army and Security Forces, disbanding militias, settling the displaced and the redeployment of Syrian troops.

In Lebanon the Ta'if agreement did not immediately find supporters. Of the two prime ministers, General Awn was, of course opposed. The Christians especially were divided. Thousands flocked to Baabda to declare their support for the General. He decreed the dissolution of the chamber on November 4, the eve of the scheduled election of the new president. Unable to convene in Beirut, the deputies met the following day at a military base, Qlay'at, and elected René Muawwad. On November 22, coming from a celebration for Lebanese

³⁹ See Maila, *supra* note 37, at 182-83.

independence, the president was assassinated in West Beirut in Syrian-controlled territory by explosions within and outside his armored car. Two days later the deputies were reassembled at Shtoura in the Bekka to elect Elias Hrawi.

He issued a decree removing General Awn from his position as military chief, but the supporters of the general kept on assembling en masse at the presidential residence.

On August 21, 1990, the Chamber approved the Constitutional reforms based on the Ta'if Agreement⁴⁰ and on September 21 President Hrawi signed the constitutional amendments into law—the basis of the Second Republic. On October 13, 1990, the Americans allowed the Syrians to bomb Gen. Awn out of Baabda. He took refuge in the French Embassy and finally was evacuated to France.

As noted, the extension of state sovereignty to all Lebanese territory, part two of the document, called for the dissolution of all militias, Lebanese and non-Lebanese and the surrender of their weapons to the state. In fact, Syria decided that Hezbollah was not a militia but a resistance force and should be allowed to keep and increase its armament.

In May of 1991, President Hrawi would go to Damascus to discuss with President Asad the form enshrining Syria's privileged relations with Lebanon: a supreme council, a general secretariat and three special committees. On May 28 the same year the Lebanese Chamber and the Syrian People's Assembly voted their approval of a Treaty of Brotherhood, Cooperation and Coordination.

The Agreement of Ta'if is credited with having brought an end to the war in Lebanon—the civil war? A close evaluation reveals that Ta'if was also, and perhaps mainly, the means of extricating Syria from the mess it had created in Lebanon. Its attempt to counter Camp David, control the Palestinians and take the lead of the Arabs left it isolated, with Iran its sole support. Ta'if, rather than a deliberation on the constitution, was a deal made possible by Saudi generosity to the hesitant to change the title from “Syrian occupation” to “Syrian hegemony.”⁴¹

On the international scene, there was relief to see the violence in Lebanon brought to an end. Locally, it marked a shift in power through a new alliance between traditional politicians and militia leaders. The latter were brought into the government.⁴²

⁴⁰ For the text of the Ta'if Agreement, see AL-NAHAR (Beirut), Aug. 22, 1990, at 8.

⁴¹ Maila, *supra* note 25, at 224.

⁴² *Id.* at 220.

THE FUNCTIONING OF THE SECOND REPUBLIC

The Chamber's full complement was achieved by appointments and finally the number was increased from 108 to 128. The first legislative elections were set for the summer of 1992. For several instances this was rushing matters. There was the problem of the displaced persons who could not vote in their home circumscription and the general atmosphere (continued Syrian occupation) was considered unfavorable. Then the electoral law was also a cause of contention. But the President went through with the project.

Ta'if called for the province (*muhafazah*) as the electoral circumscription to strengthen national unity because the province would embrace a diversity of communities unlike the smaller conscription (*caza*) where the numerical majority of a particular sect would skew results to its advantage. Such noble thoughts were put aside by those in command. The principal aim was to assure the election of Syria's allies. Several of the provinces were divided. Beirut was the only place where the province remained the circumscription. Mount Lebanon voted according to *caza*. The Biqa was divided into three electoral units, the north and the south, each, into seven units.

The Christians in great numbers boycotted the elections. Prime Minister Hariri threatened dire consequences as a result of the boycott. Final results, however, showed it was not only Christians who abstained, but also Muslims. The turnout was a mere 14%.

For the elections of 1996, the Christians decided to participate even though there were staggered arrangements to assure the election of Syria's allies.

An editorial in *al-Nahar*⁴³ said that the elections of 1992 and 1996 prepared the death of politics and transformed the parliament into a chamber for services. When the newly formed Constitutional Council received complaints concerning illegalities, the head of the Council asked the Minister of Interior for documents to verify the charges. The Minister refused.

Prior to the elections in May 1996, a mixed group of young Lebanese formed the Association for Democratic Elections (ADE) to oversee, to the extent possible, the electoral process. In 1996 the participation reached 44%, but according to the head of the head of the Association, the elections were "a joke. It was not at all a free and fair election by any stretch of the imagination. The manipulations were so blatant . . . the worst Lebanon has ever seen."⁴⁴

⁴³ Editorial, AL-NAHAR (Beirut), Nov. 2, 2000, at 2.

⁴⁴ See Gary C. Gambill & Elie Abou Aoun, *Special Report: How Syria Orchestrates*

The ADE had little effect on the legislative elections of 1996. Their attempt to assure municipal elections and end the comedy of extending mandates was more successful. The Minister of the Interior had put off Municipal elections in 1993 until 1997. The last elections had been held in 1961. Then later the chamber voted their postponement until 1999. The ADE formed an Encounter for Municipal and Mayoral Elections in July of 1997 after the chamber vote and set about collecting signatures demanding elections. Security Forces made attempts to break up the meetings scheduled by the Encounter until finally Syria gave its accord for the elections in December. Elections were held in May and June of 1998.

The half-hearted calls to abolish political confessionalism which were voiced from time to time were little more than political sloganeering. In fact, the religious head of the Shiite community, Shaikh Muhammad Mahdi Shams al-Din, would remark that "We did not get rid of political Maronitism to replace it with political Shiism," protesting the exaggerated efforts of Nabih Birri to place his clients in government service.

Opposition to Ta'if was stifled by events. In its place many a voice was raised concerning the deficient implementation of the Ta'if Agreement. The militia of Hezbollah was not dissolved but maintained by semantic manipulation. Syrian troops were not redeployed as stipulated. The three-headed government was humorously described as the Troika and Article 49 of the constitution concerning the qualification and tenure of the president of the republic was changed "once and only once" four times. First, the tenure of President Hrawi was extended three years, then the article was changed to allow General Lahud to be elected, and at the end of his reign, another three-year extension and in 2007 another amendment to allow the election of General Suleiman.

The first extension, of Hrawi passed without much opposition. Not so the extension of Lahud in 2004. The concerted efforts of the Americans and the French pushed through Security Council Resolution 1559 in September 2004, calling for the departure of foreign forces, the disarming of Hezbollah and free elections in Lebanon. But Syria balked and insisted on prolonging Lahud's mandate. Opposition to the extension led to the assassination of former prime minister Hariri in February 2005 and the mobilization of the population against Syrian presence. The U.N. Resolution served to leverage Syria's departure.⁴⁵

Lebanon's Elections, MIDDLE EAST INTELLIGENCE BULLETIN, Aug. 2000, http://www.meib.org/articles/0008_11.htm.

⁴⁵ For the Security Council Resolutions concerning Lebanon and the creation of the U.N. Independent Investigating Committee, see SECURITY COUNCIL REPORT, MONTHLY FORECAST: MARCH 2009, at 18-20 (2009), available at <http://www.securitycouncilreport.org/site/>

It was rather common for outsiders to consider that Syrian presence was necessary to keep the Lebanese communities from clashing. The Lebanese were incapable of governing themselves. Actually the Syrian intermezzo in Lebanon proved, as did the Egyptian hegemony in Syria in the 1960s, that sisterly Arab states are incapable of governing other sisterly Arab states. Ta'if did answer the Muslim demand for greater participation. Thirteen years previously that was granted in the constitutional document offered by President Frangieh. Regional factors completely external to Lebanon and its communitarian system explain why the war went on for so long.

In any case, the departure of Syrian forces from Lebanon was not an occasion for renewed hostilities. Though the society was divided in March 8 (opposition) and March 14 (majority) camps, an attempt at national dialogue without outside patronage was attempted in March of 2006. Some little progress was made but finally all was scattered by Hezbollah's kidnapping three Israeli soldiers and the ensuing war of Israel against Lebanon.

Legislative elections in 2006 marked a victory for the anti-Syrian forces. But instead of dialogue there was blockage. Pro-Syrian forces stymied the government and the speaker of the Chamber refused to convoke parliament for the election of a new president. All attempts at dialogue and mediation were frustrated by the pro-Syrians, who started a year long sit-in in the center of Beirut. The French Foreign Minister tried to break the logjam by convening an "inter-Lebanese" meeting in La Celle Saint Cloud in July 2007. That meeting was one of the first that included civil society actors along with the politicians and it did succeed in getting the antagonists to talk to one another. Still, it was not until Hezbollah made its second error that effective dialogue became possible in 2008. The first error was in kidnapping of Israeli soldiers in 2006; the second was the failed attempt at an armed takeover of Beirut and the Shuf in May 2008. Only then was Hezbollah amenable to the mediation offered by the Amir and Prime Minister of Qatar.

The Accord of Doha 2008 assured the convocation of the chamber, the election of a president and the formation of a government of national unity composed of 30 members, 11 of the opposition (a blocking minority). Participants agreed not to use arms to solve political problems and to dialogue to assure the extension of Lebanese sovereignty over all the territory. The electoral law of 1960 was accepted as the basis for the coming legislative elections in the spring of 2009.

There is no longer a question of eliminating confessionalism. Now the question is controlling the armament of Hezbollah. Dialogue is

proposed as the solution for that and other problems.⁴⁶ To date dialogue has produced nothing, though it does assure calm.

LEBANON: A MODEL FOR PLURALIST SOCIETIES?

The events of Lebanon during the last quarter century illustrate the strengths and weaknesses of its unique system. One commentator surmised that in Lebanon, the government's function is judicial: it adjudicates claims and petitions in accordance with unwritten rules.⁴⁷ That may be true for strictly internal problems, not so for regional struggles. A recent study of Lebanon carried as its title: *Liban entre Stabilité Intérieure et Sécurité Régionale*.⁴⁸ Some Lebanese emit the sigh: "If only they would leave us to ourselves." But such is not to be. In peaceful periods, Lebanon appears as the only Arab State that is open and democratic. In times of stress, the system borders on complete collapse.

Early in the 20th century, in the period of liberal democracy, Muhammad Abduh considered that Egypt was in need of a benevolent dictator. Dictators came to most of the Arab countries at the head of praetorian regimes. The Lebanese, prone as they were to political crises for lack of a strong government, considered they were better off than their neighbors. The strong presidents like Charles Debbas and Fouad Chihab who were putting order into the apparent chaos, were ushered out with a sigh of relief. The majority of Lebanese were happy to return to the old *laissez-faire*. On the other hand there have been and still are many Chihabists among the older generation.

The periods of turmoil illustrate the limits of weak government; they also illustrate the restraints on would be usurpers. No one community can take over the country. The Druze-Palestine tandem in the civil war failed, then the ambitions of the Christian Lebanese Forces ran aground in the second half of the war. Now the Shiite Hezbollah is attempting the same thing. As loose as the system is, it still sets limits on the complete usurpation of power. I suppose one could say that the present posture of Hezbollah illustrates the weakness of Nicholas Wolferstropp's semi-autonomous communities and several other forms

⁴⁶ See Doha Agreement para. 4, May 21, 2008 (Leb.), available at <http://bloggingbeirut.com/archives/1359-Full-Text-of-Doha-Agreement.html> (last visited June 30, 2009).

⁴⁷ See DAVID R. SMOCK & AUDREY C. SMOCK, *THE POLITICS OF PLURALISM: A COMPARATIVE STUDY OF LEBANON AND GHANA* 166 (1975) (citing the commentary of Malcolm Kerr).

⁴⁸ NORA BAYRAKDARIAN KABAKIAN, *LIBAN ENTRE STABILITE INTERIEURE ET SECURITE REGIONALE* (2008).

of communitarianism.⁴⁹

Political scientists classify Lebanon as a “consociational democracy” following the work of Arend Lijphart⁵⁰ that was based in part on the theory of John C. Calhoun. The theory explains democracy in several pluralist societies and includes the instrument of minority veto. The danger of minority tyranny which may strain cooperation is belittled on the premise that mutual interests should exclude such action. Lebanon in 2006-2007 must be the exception that proves the rule. The country was paralyzed by minority tyranny for over half a year.⁵¹

The most positive analysis of the system I have come across is that of the late Iliya Harik. He adopted the viewpoint of Charles Taylor and produced an article in the collective work *Lebanon in Limbo*.⁵² Harik redefines secularism since secularism as a neutral ideology does not resolve problems arising from multi-culturalism. Secularism, he claims, is a procedural matter, not a substantive doctrine. For him, the overlapping social spaces in Lebanon are indicative of secularism in a contextual model in that they represent an extension of the recognition of cultural differences into the public sphere. He describes the communal intermingling which has taken place, especially in Beirut, and which has formed an over-arching Lebanese identity. This he sees not as integration but as secularization.

His reflections on the State are also of interest. In the multicultural

⁴⁹ See *Rights and Wrongs: An Interview with Nicholas Wolterstorff*, CHRISTIAN CENTURY, Mar. 25, 2008, at 25-30.

⁵⁰ AREND LIJPHART, DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION (1977); see also ANTOINE NASRI MESSARRA, LE MODELE POLITIQUE LIBANAIS ET SA SURVIE: ESSAI SUR LA CLASSIFICATION ET L'AMENAGEMENT D'UN SYSTEME CONSOCIATIF (1983); Michael Hudson, *Trying Again: Power-Sharing in Post-Civil War Lebanon*, 2 INT'L NEGOTIATIONS 103 (1997); Antoine Messarra, *Etat et communautés au Liban*, 1 LES CAHIERS DE L'ORIENT 85 (1986).

⁵¹ Here, the reflection of Rabbath is pertinent:

L'analyse des éléments constitutifs du Liban sociologique à laquelle on vient de se livrer—par bien des raccourcis il est vrai—conduit à la constatation que le régime politique libanais repose entièrement sur des soubassements organiquement communautaires et que l'Etat ne saurait traduire, par conséquent, que la projection d'une structure, corporellement confessionnelle. Le Liban apparaît ainsi, en dernier ressort, sous la forme d'un agrégat de communautés qui s'assambent, en raison des liens que la géographie et l'histoire ont noués entre elles en une sorte de fédération tacite. Ce n'est certes pas l'Etat fédéral, en son sens constitutionnel, que le Liban a finalement réalisé. C'est plutôt une vie relationnelle dont les pré-supposés se composent d'unités qui sont fédérées comme par l'effet d'une génération naturelle. Fédération dont les unités s'imbriquent et s'étagent à des niveaux inégaux, leur importance dépendant étroitement du nombre des adeptes que comprend chaque communauté et parfois, comme pour le cas des Maronites, de son rôle historique.

RABBATH, ESSAI, *supra* note 6, at 147-48.

⁵² Iliya Harik, *Toward a New Perspective on Secularism in Multicultural Societies*, in *LEBANON IN LIMBO: POSTWAR SOCIETY AND STATE IN AN UNCERTAIN REGIONAL ENVIRONMENT* (Theodor Hanf & Nawaf Salam eds., 2003).

agglomeration which is Lebanon, it is the state which begets the nation: politics and civic relations are primary, culture has a secondary role.⁵³

I find the analysis of Harik interesting. It is a reply to the intellectuals, groups and political parties who are advocating traditional secularism and national allegiance. He argues that “The record of so-called progressive or modernist political parties in Lebanon. . . is worse than anything we have seen from the traditional and locally oriented politicians.”⁵⁴

His essay is more a defense of the Lebanese system than a solution for culturally pluralistic states. The fact is that while Lebanon has survived with its flexible system, the accompanying instability is provoking a substantial emigration of young educated Lebanese.

Internally the movement for eliminating religion from one’s identity card was successful, but few are the names that do not give away community identity. It is difficult to find Maronites named Muhammad, or Muslims named Elias. There is also a movement for civil marriage but religious leaders balk at this. Perhaps the Association for Democratic Elections is more to the point. People from the Association were taken into the Committee for Electoral Reform and succeeded in having several of their suggestions incorporated into the text of the electoral law agreed in Doha. One of the leading activists, instead of having landed in prison, the usual fate of political activists in Arab countries, is now Minister of Interior in the present government.

Perhaps it is not so much the system as it is the defective administration of the system that is at fault.⁵⁵ Ta’if stipulated that political confessionnalism should be abolished. In this regard, the attitude of the former head of the Shiite community, Shaikh Muhammad Mahdi Shams al-Din, is worthy of note. He was a dedicated Lebanese and a symbol of certain Shiite sentiments concerning Lebanon. Iranian pretensions in the wake of the Khumayni revolution did not seduce him; on the contrary, he publicly protested Iranian proposals to come to the

⁵³ In a similar vein, Theodore Hanf chose the following as the title of his monumental work on Lebanon: *COEXISTENCE IN WARTIME LEBANON: DECLINE OF A STATE AND RISE OF A NATION* (1993).

⁵⁴ See Harik, *supra* note 52.

⁵⁵ See Hyam Mallat, Editorial, *Le Confessionnalisme—Performance de L’Histoire et Infirmité des Politiques*, *L’ORIENT-LE JOUR* (Beirut), Apr. 18, 2009, at 5. Mallat writes:

Car finalement qu’est-ce donc que le confessionnalisme au Liban? Et ce confessionnalisme, est-il vraiment une tare et une honte de notre société? Il faut bien commencer par dire que ce ne sont pas nos politiciens qui ont inventé le confessionnalisme. Ils se contentent de le pratiquer au gré de leurs intérêts et de leurs humeurs. Car le confessionnalisme n’est pas une création administrative et bureaucratique. Il est en fait la résultante et, en somme, le matériau d’édification du Liban. C’est à force de le pratiquer mal qu’il apparaît comme une maladie de notre société, tant ceux qui y recourent sont à même d’en présenter les perversités plutôt que de mettre en valeur ses qualités.

Id.

aid of Lebanon in 1982. Nonetheless he was for change in Lebanon. For a period he advocated “numeric democracy.” In that perspective, the Shiites as the most numerous community stood to profit. He attempted to keep the community united and to rein in Hezbollah. He advocated resistance but opposed armed resistance because it had clearly proven itself dysfunctional. On his deathbed he dictated a last will and testament⁵⁶ in which he advocated keeping the confessional system intact to protect Christian presence—a presence he felt was essential for the complete development of society in the region. He even recommended that all Arab regimes protect the Christian presence in their states. He realized that changing the system was next to impossible and feared the projects for change which he saw would result in something worse.⁵⁷ This was a rather pertinent reflection some 90 years after the first constitution that used a communitarian base principally to protect Christian presence.

The dilemma is that the system should be changed because the government is so weak, but change is next to impossible with weak governments.⁵⁸ Shams al-Din’s reflection that changing the system was next to impossible does not, however, rule out the possibility of reforming the system to eliminate corruption and assure a turn over in political leadership. The committee for the electoral law proposed a mixed system of circumscriptions: six large circumscriptions in which the proportional system will be applied, and smaller circumscriptions in which the majority system will be used. The proportional system, according to some, will help eliminate several of the traditional political bosses and limit corruption—reasons explaining why the chamber has always objected to adopting the proportional system.

The judiciary should also be given its independence and cease being an arm of the executive.

DIALOGUE

In reading on public reason, I came across Fred Frohock’s *Public Reason: Mediated Authority in the Liberal State*.⁵⁹ His version of Public Reason is “mediated speech acts” that mitigate the effects of divisive beliefs in a pluralistic state. These acts are described as dialogues in which collective terms dominate simple merit adjudication. The book is a subtly argued defense of a public reason unlike that of

⁵⁶ MUHAMMAD MAHDI SHAMS AL-DIN, *THE TESTAMENT* (Hanadi Assaf trans., 2008).

⁵⁷ *Id.* at 32.

⁵⁸ See Choucair-Vizoso, *supra* note 3, at 115-36.

⁵⁹ FRED M. FROHOCK, *PUBLIC REASON: MEDIATED AUTHORITY IN THE LIBERAL STATE* (1999).

John Rawls. He has in mind approaches to differences in American society based on religious beliefs, for instance the arguments concerning abortion. No such differences enter into the debates in Lebanese society. Rather differences center on power sharing, budgetary allocations and outside political alliances. Questions of belief rarely enter political discourse, except when secularism is proposed in some or other form.⁶⁰

There is a National Committee for Islamo-Christian Dialogue composed of representatives from the main religious communities formed in 1993. It serves as a sort of emergency force in times of crisis but has little effect on political attitudes and positions.

One strong suggestion from a member of the Committee for Reforming the Electoral Law is to enlarge the dialogue committees to include civil society actors who do not represent vested interests.⁶¹ Such was done at the meeting of La Celle Saint Cloud mentioned above.

Externally, Lebanon is clearly a victim of its geographical location. It has used Arab mediation and Western mediation to rescue it from the grasp of its neighbors. Western mediation is not considered neutral and, especially since the American intervention in Iraq, offends the sentiments of many people and groups. Syria and Iran push in the opposite sense. Both the loyalists and the opposition try to profit from outside connections. Given the disequilibrium in the region caused by Israel's refusal of all peace proposals, that disequilibrium will no doubt last for some time, the region will continue to be one of the world's flashpoints and the Lebanese will continue exploring avenues of community dialogue, with or without outside help.

⁶⁰ Note that Muslim law—the *shari'a*— as a jurist's law is a personal rather than a territorial law.

⁶¹ See Paul Salem, Op-Ed, *Thoughts on a Truly National Dialogue*, DAILY STAR (Leb.), Sept. 16, 2008, available at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=22125&prog=zgp&proj=zme> (last visited June 30, 2009).