Constitutional and Institutional Concept of Legislature:

Lebanon as Middle East Case Study

Submitted for Award of

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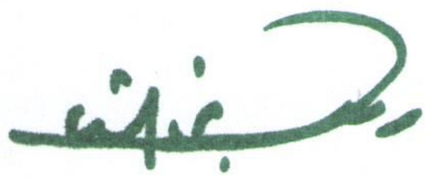
Rabie Narsh



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Preface

One of the most debated types of democracy is the consociational form. It has been variously analysed as being a complete failure or an overwhelming success. Lebanon remains the most debated model of the consociational form of democracy. Ironically scholars tend to pass a judgement on the democracy as practised in Lebanon without evaluating the legislative system that makes the democratic principle work on the ground. Broadly, there are two schools of thought on the issue of consociational legislative and democratic system in Lebanon. Both deal with Arend Lijphart's model for understanding, and both come to conclusions that contradict each other. Critics of the Lebanese consociational system of political and administrative governance argue that it is a faulty foundation in a plural society, indirectly putting the blame on a clash between Christians and Muslims or among Muslims being the root cause for instability and protests in the country. Supporters of the system point to the history of nationalism and the same pluralism as inclusive factors sustaining the system.

This thesis is an attempt to present a new prism for understanding the famous resilience of the Lebanese consociational democratic system. While taking the framework defined by Arend Lijphart in the late 1960s, the thesis is an attempt to explain how the country developed to withstand both internal and external challenges to the democratic framework. It begins with understanding the evolution of the legislative system in modern history, and the manner in which the indigenous Lebanese legislative systems (both pre-and during the Ottoman rule) absorbed the British and French legislative systems to evolve into a bicameral parliamentary system that exists today.

With the collapse of the Ottoman Empire and region's military occupation by British and French troops, Lebanon's chequered colonial history took roots.. The League of Nations divided Lebanon and Syria as mandates under the French. In 1920 the French Mandatory authorities established the Republic of Greater Lebanon by annexing to Mount Lebanon the former autonomous province of the Ottoman Empire, the areas around it including Tripoli, Sidon, Tyre and Beirut. True to its colonial character, the French attempted to play off the Maronites against the Muslims and emphasized on the religious power sharing arrangements in their mandate mission to prepare the region for self-government and independence. The role of religion in the polity of Lebanon has led to the consociational system of the country to be defined as confessionalism, whereby the eighteen known confessions or religious divisions of the population get equal representation in the political system.

Since its independence in 1943, the country has been adapting the consociational system to ensure that its identity and independence are not compromised. The elites have been retaining the consociational system for a political power sharing arrangement, while the administrative systems have evolved their own confessional systems. The country has gone through extreme internal and regional turmoil. It has been battling lack of resources, development and what is famously termed as the 'crisis of the Palestinian Refugees', on the domestic front. The refugees have graduated from being a strain on the economic resources to being tools at the hands of regional and international powers.

Externally, every regional and international power has attempted to intervene in the domestic politics of the country. The infamous civil wars of the 1970s that ended with the Taif Agreement, have been understood largely as the usage of the land of Lebanon by the major powers to fight their proxy wars. The extent of their intervention and armed strength are reflected in the fact that the fact that the truce talks had to take place miles away in Saudi Arabia.

Despite the numerous challenges, Lebanon has managed to retain and function with the consociational system. The resilience of the system needs to be understood in the context of its historical evolution and the ability of the population to understand its nuances. As the thesis will demonstrate adjustments to the system, be it through the political policy of neutrality or adoption of the liberal economic and social models of development, protests within the country have never been against the consociational system of democracy. Rather they have been against the political elite, their personal corruption and the administrative corruption that is patronized by the elites.

This thesis is an attempt to rectify the perception and narratives that project Lebanon as a country unhappy with the consociational power sharing system. The research shows that the country faces as many problems as any other country in the world, ranging from corruption to armed external intervention. It is the consociational legislative and administrative system however that provides stability to the polity. The ongoing unrest is proof of the fact that the protestors are demanding a change in the composition of the ruling elites (who are 1% and control 99% of the national reources), but do not want the legislative or the consociational administrative adjustments to end.

Introduction: Chapter One

Legislatures have shaped civilizations. Their imprints are very clear on the history of nations, societies and citizens. Great sociopolitical notions—like state building, society development, citizen integration, sovereignty, human rights and liberties—all owe their raison d'être to this significant institution. No wonder then it has instated itself as a main topic in the literature of the sciences of politics, sociology and governance. The history of Legislature has made it more than a constitutional institute on a political-sociological entity that embodies people's power and the relationship between individuals, societies, nation states and political conflict. Legislature has been an indispensable instrument of governance in organizing society and protecting citizens' rights by striking a balance between ruling and freedom. The study of Legislature has turned out to be an essential part in the study of the history of civilizations.

Legislature has been a subject of continuous debates and researches for around 750 years. Many successive civilizations and diverse cultures have delved deeply into the many different sciences, specifically human sciences, on top of which legislature has a big valuable share. Addressing its evolution is not a scientific precedence; related writings have filled up large volumes and shelves of various libraries and drawn interests of publishing houses. It is not a new sociological theory, nor is it one of the areas of political sociology.

Why then, have I chosen this research? Why the legislature in a political system, when the topic, as I already said, is such a redundant one? How to go about conducting this research with reference to Lebanon, which lies in the midst of the turbulent Middle East social, economic and political environment; and how should I approach it?

The topic may truly be repetitive, and it may have been touched upon countless times in the past. It is true that large volumes of writings exist on this topic; however, this does not discourage us from studying it and immersing into its deep waters. Studying a familiar topic, or a common phenomenon, represents a difficult yet interesting scientific challenge, adding even more importance to the topic and phenomenon. In this context, it is not a repetitive endeavor as long as it

shall involve new ideas, and will breathe new life into the topic. The research plans to revive a sound and healthy discussion on the topic, and hope to draw new lessons and conclusions. It attempts to refine and filter the topic or to approach it from a new and different point of view, illuminating certain aspects that had either previously been vague, or scattered within the many different writings. This new approach will be worthless if it does not take into consideration the society to which it is directed or the reader that it is supposedly addressing—if it does not serve the researcher's goals.

Survey of Literature: These are the necessary requirements for a novel research of academic value, which would contribute new dimensions to previously done works on the topic. The refinement and novelty promised in this study opines on the following foundations:

The subject of legislature is an extremely broad, profound and complex one. It represents a delicate link between political science, sociology and governance; therefore, it is at the core of political sociology. The systemic, methodical and automatic development and self-renewal are the milestones, which transform the notion of legislature from one that inertly sits on the fence of an academic study, to one that actively contributes to the making of a civilized sociopolitical link in human history. The natural progression of life and society affects this link, and develops as life progresses and adapts to the political and social changes. Therefore, it will always offer an element of newness that will tempt scholars, no matter what the subject has already embarked upon. The magnitude of this undiscovered newness becomes greater and gains more importance in third world countries; non-democracy, distortion of representative process, phoniness of legislative authorities and triviality of their role are the causes of the underdeveloped world countries.

In the same vein, Lebanon and its legislative and executive institutions have faced similar charges; thus, provoking our ardor to verify whether these charges are empty or are actually true. The stark truth is that legislative (and executive) institutions in Lebanon are radically different from those existing in other Arab

countries, which makes them unique. Indeed, they all share same negative aspects and obstacles, and face similar concerns. Nevertheless, the Lebanese case differs in its origins, establishment, evolution and history. The Lebanese legislature enjoys the longest and richest experience, and tends to be the most effective. Legislature in Lebanon has still not completed its journey, and has the potential to be much better reflecting on the executive and the society in general; however, this does not eliminate the fact that this institution has been working and has been resistant, and it continues to work.

A great deal of studies has dealt with political systems and their nature and characteristics. There also exist studies related to the constitutional institutions within these systems, along with their interlinked relationships, specifically the relationship between the executive and legislature. It seems that most of the literature deals with this relationship as constitutional and realistic phenomenon between two constitutional institutions, thus assigning equal importance to each institution. The literature, therefore, treats legislature as one of the many institutions within the overall political system, and considers it as a unit amongst many various units.

This research shall mainly focus on legislature and its importance to the political life and political systems, studying its history, evolution and its historical and modern day roles. The research shall also deal with the legislature role and position within the system, along with the concepts of supremacy and sovereignty of parliaments. These concepts have been the focus of heated debates, both in terms of general jurisprudence and political procedures. Lebanon has seen its share of such debates, especially in terms of political procedures, in addition to the relationship between parliament and other institutions, especially the executive.

Summarily, in a presidential system as in the US, the President (who is the chief executive as well as the symbolic head of government) is chosen by a separate election from that of the legislature. The President then appoints his or her cabinet of ministers. Because the senior officials of the executive branch are separately elected or appointed, the presidential political system is characterised by a

separation of powers, wherein the executive and legislative branches are independent of one another. Unlike the presidential systems, Parliamentary systems are typified by a fusion of powers between the legislative and executive branches. The Prime Minister is the leader of the party that wins the majority of votes to the legislature (either de facto, or in some cases through an election held by the legislature), and appoints Cabinet Ministers. Thus, if the ruling party is voted out of the legislature, the executive also changes. Continued co-operation between the executive and legislature is required for the government to survive and to be effective in carrying out its programs. The UK represents the strongest form of Parliamentarianism. All other systems that are based on combinations of the Presidential or Parliamentary systems generally deal with a system with a separately elected President who shares executive power with the Prime Minister. Depending on the power sharing between the two the systems are termed as either semi-presidential system or semi-parliamentary. The French system is the hybrid model most often cited as a semi-presidential system.[1]

The research also deals with political parties, the role of the opposition, and the differences between parliamentary and presidential systems. It discusses the different positions that legislature holds in each of these systems, along with the relationship between the Head of State and the Prime Minister (within the framework of the executive and as long as legislature is a factor). These issues will be tackled from the perspective of the legislature; that is to say, it will study the extent of the correlation and connectedness of these issues to legislature, starting from their composition reaching to their impact on the system, and dealing with their functions, roles, and powers.

. Most of the Arab political literature, specifically those that deal with issues related to constitutional laws or political systems and institutions, including the legislative institutions, resort to French references. Very few Arab studies are based on other Western references, specifically British. The importance of British bibliography of

[1] For a debate on the systems of governments see, https://web.archive.org/web/20081017164441/http://www.undp.org/governance/docs/Parl-Pub-govern.htm (accessed on 6 November 2019)

political systems and political institutions, particularly the legislatures, lies in the fact that the legislature was first established and evolved in England. More importantly, political systems in the world have shaped their legislative authorities after the British.

Real life development accompanied the jurisprudential evolution, helped to create an active movement, which contributed to upgrading and elevating the importance of the institutions within the British system as a whole, specifically the legislative branch of the system. All this led to Britain being the mother of modern democracy, in addition to being the mother of representative institutions and legislatures.

Montesquieu was one of the first to write about constitutional authorities, and his opinion influenced many writers when discussing the separation of powers. His writings remain a main reference within the many different branches of political science. However, it was the British political system of the era that heavily influenced the French Baron from which he was able to generate a new model of democracy in contrast to the prevalent despotic Bourbon political system. It was from the British political system that he was able to develop his famous theory on the separation of powers. The British praxis preceded French theory. John Locke, the British political philosopher, preceded Montesquieu in studying constitutional institutions along with their various interrelationships, and he wrote a large volume of work dealing with the separation of powers linking the concept of the separation of powers exclusively to Montesquieu involves grave injustice against John Locke who deserves the appropriate amount of credit.

The merit of Montesquieu lies in the level of detail that he portrayed when discussing the interrelationships between various authorities, and the clarity with which he drew the lines between these relationships. He also displayed a great deal of precision, as per the standards of his era, in setting the limitations and boundaries of the relationships. There is no doubt that French jurisprudence after Montesquieu, contributed to developing political sciences and constitutional institutions; however, British political theory remains to be the closest to real life practice.

British political theory developed from the heart of the event where the parliament was established, the theory of representation evolved and democracy grew. In this context, it is safe to say that the British system developed and closely linked the original institutions, rather than adopted versions or depictions.

It is terrible injustice that Arab readersare not adequately acquainted with the theories of British philosophers and constitutional institutions. It is also important to say that Arab literature and libraries lack the ideas and visions of great political scientist and theorists such as John Locke, Cook, Smith, Dicey, Mill, Austin, Marshall, Blackstone, Muir, Laski, Ogg, Moody, Wiseman, Jennings, Wheare, Bentham, Chadwick, Bernard Shaw, Bagehot, Wade and others. In this research therefore, the attempt would be to deal with the ideas of some of these great thinkers, and also track some of the debates that occurred amongst them, criticizing, defending or adopting each other's work and thoughts, within the framework and subject of this work.

A number of studies deals with the Lebanese legislature as an institution in its own right. There is no doubt that there are dozens of researches that have dealt with this topic but always within a much broader context such as researches that have studied the Lebanese political system, its constitutional institutions, interrelationships between the various authorities, constitutional amendments, or electoral laws, and so on and so forth. We, however, were unable to lay our hands on one piece of work that solely focuses on legislature in Lebanon. I could not locate researches that namely study legislature’s establishment, evolution, the role it has played within the political and social systems, or its position within the political system, particularly in an environment as turbulent as the Middle East where the issues of war and peace are oddly decided outside the corridors and chambers of parliaments.

I hasten to note that I do not claim to cover a full and comprehensive study on the legislature in Lebanon; however, I do try to offer something different from previous studies, and new thoughts on this subject as an independent stand-alone topic.

A rather good number of studies have dealt with the structure of the Lebanese legislature (the Chamber of Deputies), in terms of age, social, economic, class and geographical backgrounds—providing important statistics in this respect. Some studies have also discussed the concept of family inheritance in politics (ancestral and lineage), in addition to feudal inheritance of parliamentary seats. They have also dealt with how decision makers have changed throughout time, or how they have managed to hold on to their powers in parliament, or to their political and social positions. The role played by money, sectarianism, rate of literacy, electoral laws and tribal preference, have all been discussed.

All of these topics are of utmost importance, and all of them deserve to a more exclusive study and research; however, I found them more closely related to sociology, specifically political sociology. I do not desire to delve deeply into the details of these topics, due to the abundance of literature existing on these issues, and due to the weak relatedness to the subject of this research. Nevertheless, I will highlight these topics whenever they act as a clarifying factor in understanding the role of the Lebanese legislature, its position within the political system, or the extent of its strength or weakness in exercising its functions.

It is due to all of these reasons that I have chosen legislature as the main topic for my research. Backed by the theoretical paradigm under which I have structured this thesis as explained above, I propose consociational form of governance (consociational democracy) as a hypothesis test in this study. Yet again, and in line with the domain and framework of the research, the hypothesis will be proposed, discussed and tested through the prism of legislature, rather than the prism of the entire political system.

1- The Birth of Legislative Authority and its Journey

The Legislative assembly system was established as mankind became urbanized. It was only born after man moved towards a communal, more developed social style of life. Hunting and traditional agricultural communities did not know legislative authority. In this sense, the legislature differs from the executive, which existed amongst the first forms of human gatherings, beginning from families and

moving on to clans and tribes, whereby the strongest enjoyed the right to rule. This rule is no more than the executive authority itself.

Legislative authority however evolved gradually, along with the evolution of human consciousness, both socially and politically. The evolution of legislature as a concept was rather slow to emerge, until man's awareness of his rights began to develop. The existence of a community was enough for the executive to exist, regardless of how primitive this community was and what form it took, thus leading to different types of executive authorities, the most prominent of which is the individual rule. On the other hand, the legislative authority was a by-product of the complexities and requirements of society. Conclusively, the executive authority was born out of human gatherings and power. The legislative authority is a result of communities and awareness. The study of the legislative authority comprises little less than the study of the history of civilization.[2]

It is interesting to note, and somewhat paradoxical, that the earliest pioneers of the legislative authority were the monarchs of the middle Ages. These monarchs were definitely not keen on representing the people or on fostering democracy; rather their sole aim was to develop a system that would organize the collection of funds and to obtain advice on garnering the largest amount of resources with the least possible problems. This was the very beginning of the incipient existence of the legislative authority in Britain during the first half of the 13th century when the term ‘Parliament’, or ‘the place for talks’, was first dubbed to describe the meetings/councils the King would hold with representatives of provinces, dignitaries and his senior aides.

The intellectual awakening and the development of social consciousness that were influenced by philosophical theories and political and social revolutions—most notably the famous French Revolution—led to a slow yet steady transformation in the identities, nature and aims of these councils. They moved along going through critical phases facing ebbs and flows. They were transformed

[2]Menhennet and Palmer, *Parliament In Perspective*, Chester Springs, Pa :Dufour Editions, 1967p.23

from councils, which represented the upper echelons, property owners and nobles of society, to councils, which represented people of all different classes in society.

This authority, which has been termed as 'legislative', is the only institution amongst many others that is responsible for many different tasks, and takes, respectively, many different names. It is a legislature, a representative authority, an administration board, a council of deputies, a house of representatives, or a senate. It is responsible for shaping and enacting laws, supervising the government's implementation of these laws, representing the people and setting general policies. Other branches of government—such as the executive, judiciary or administrative branches—did not enjoy this level of pluralism.

Representation was one of the first, most important and long-standing tasks entrusted to the legislative authority. The concept of representation has been the subject of many debates and arguments, and has carried with it many questions of which I will tackle the most critical: What is the authority that is inherent within the representative body and granted to the representative? What are the limitations ad extents to this authority? How is the principle of responsibility invoked and applied to the authority?

The concept of representation has been embodied and applied in political systems through parliaments. A number of other institutions have participated alongside parliament in the process of representation, such as trade unions, professional chambers, syndicates, municipalities and other similar institutions. Nevertheless, parliament has singly sat at the throne of the representative system and played an extremely important role, not just within the political system, but also in terms of social and human development and evolution. Through parliament, the two principles of authority and freedom, dictatorship and chaos can achieve a historical and cultural balance. Thanks to parliament, governments have been transformed from being selective and acting under the sole command and guidance of the ruler, to parliamentary, representative governments working for the benefit of the people, and drawing upon the support of the people.

It is worthy to note that the parliament has faced many waves of criticism, which described it as a distracting mechanism that does nothing but talks. However, history has shown that talks within the premises of parliament may prevent perilous actions in the streets, and that parliamentary discussions would deter unrest outside the parliament.

2- The Establishment of Legislative Authority in Lebanon

Lebanon is a Levantine state located on the eastern side of the Mediterranean. With a land area of 10,230sq.km. As a territorial entity it was established after WWI by the French mandatory authority. It consisted of four Ottoman provinces: L Beirut, the North, the South and Bekka. They were joined to the traditional Mount Lebanon, which enjoyed partial autonomy under the Ottoman rule. In 1943, the country gained its independence from the French.

The social fabric of the country is complex and inter-woven with the history of its territorial structure. As communalism antedated the social formation of the Lebanese state, the identities remained a mesh of primordial and hereditary attachment to religion, sect, family and region. As the country came to terms with its independence and the concept of nation-state with boundaries, identification with it added a new layer of primordial attachments. Till date religion, family and region dictate the patterns of social interaction.

There are today 18 officially recognised sects – five Muslim, 12 Christian, and one Jewish. Although this diversity has contributed to the country's historic appeal, the reality of the matter is that it has proved exceedingly difficult for the Lebanese to govern themselves since the state of Greater Lebanon was proclaimed in 1920. The last official population census in the country taken in 1932 showing a slight Christian majority has been disputed by today's voter registration records and non-official censes. Beside the demographic factor, Lebanon's geostrategic position, in the midst of major regional and international battling powers, allowed the confessions to establish alliances with foreign countries and draw substantial

support from them. Historically, these alliances have been a key element in determining the domestic political balance between the different sects.[3]

Social dynamics of Lebanon however, is not marked by traditional traits of religion or the dominance of familial history. Social dynamics is a result of assimilation of modernity, pluralism and education. It has made the society multi-lingual and cosmopolitan. The impact of international institutions through state and non-state agencies make Lebanon a uniquely dynamic, plural and quirkily democratic country.

Lebanon's political and governmental apparatus mirror the society they emanate from blending traditional and modern institutions, focused on harmonizing the complexities of a national political system that accommodated multiple identities.

Against this backdrop, the research raises the following questions: What path did the legislative authority take in Lebanon? What were the most important phases it went through?

The path taken by the legislative authority in Lebanon has been interesting, volatile and dangerous. Lebanon has been acquainted with the representative system since the first half of the 19th century. However, its more recent roots are connected to the 'Kaymakam' political system (or Qaim Maqam is the title used for the governor of a provincial district), and more specifically the 'Mutasarrifate' system (one of the Ottoman Empire's subdivisions that existed after 1861 in an autonomous Mount Lebanon).

The Kaymakam political system introduced 'mixed representation council' within each of the two Kaymakams. These council's tasks were to assist the Kaymakams (governor) in running the affairs of their respective areas. These councils comprised representatives of each of the six main sects (Christian Maronites, Druze, Sunni Muslims, Shiite Muslims, Catholic Christians and

[3]See Imad Salamey and Rhys Payne, Parliamentary Consociationalism in Lebanon: Equal Citizenry vs. Quotated Confessionalism, *The Journal of Legislative Studies*, Vol.14, No.4, December 2008, pp.451–473

Orthodox Christians). The dignitaries and clerics of these sects had the right to play a role in choosing these representatives. The Kaymakamate, therefore, led to embedding the intertwining between politics and sectarianism. This phenomenon continued to grow and become stronger, and eventually engulfed all of Lebanon.

This indicates that the historical path taken by the legislative and representative authorities in Lebanon was the same general course taken in other countries. The ruling authority of that time feared the anger of the people and attempted to appease them, and this was what led to the inception of legislative authority in its original form. It was, therefore, the revolutions and disorder of that period of time that led to the establishment of the legislative authority in Lebanon, much in the same way as in Britain. Similarly, this, too, took place in France in the form of sectarian and religious fighting. Since the Kaymakamate, religious factions has had shares of the councils, and these were and still are untouchable. This has become one of the constants in the Lebanese representative system and in the general political and social system, and has continued to be a constant element to this day.

Was the Kaymakam form of governance a way to split up Lebanon, or was it a very basic form of federalization? Alternatively, was it an attempt to implement a broadly decentralized form of administration and politics? No matter how the situation is regarded, it is clear that this form of government has failed in ruling the Lebanese, and has not been able to fulfill their ambitions. This was then followed by the ‘Mutasarrifate’ system.

Modern day Lebanon's political system, and specifically the Lebanese legislative authority, can be traced back to the Mutasarrifate system. This system, along with its political and social institutions, and its population composition and complex social relationships, formed an early picture of the contemporary Lebanese state, in all of its elements, characteristics and institutions. It was not necessary for this system to start from scratch, as it was able to take advantage of the Kaymakamate experience. It, however, did make the political system more prone to sectarianism. The Mutasarrifate system bluntly enforced the idea of

political sectarianism in its published texts and in its daily actions. Each body that was established within the Mutasarrifate political system was sectarian in nature: from the Mutasarrif, to the Administrative Council, to the Judiciary Council, to the regional and local governors. All of these bodies established the bases of the sectarian and religious principle, which started to grow in effect as the Mutasarrifate system gradually abandoned the balance of power between the six different sects and started to lean towards a system of proportionality, with a clear bias to Christian Maronites.

This historical adjustment may be one of the main reasons that sectarianism has become so deeply embedded within the political system in Lebanon, and specifically within its legislative authority. Prior to these adjustments, different sects were represented regardless of their share of the population or the extent of their influence, and this was what had previously guaranteed representation for all segments of society. The proportional form of representation implies that the spoils of government are distributed amongst the different sects based on their respective degrees of influence, importance and strength. This would drive each sect to attempt increasing their respective influences by any means necessary, even by resorting to foreign powers. It is for this exact reason that sectarianism has imposed itself and stood above national pride.

Hence, the representative council, which was termed 'the Greater Administrative Council', was established in the Mutasarrifate political system and was composed of sectarian seats representing the same six main sects in Lebanon, but on a proportional basis. What matters here, is that this form of representation and composition placed the civilian's sense of belonging to the sect ahead of his sense of national belonging and pride. The council represents citizens as long as their sects are represented, regardless of whether the council covers their geographical area or not.

It is important to point out that this council, regardless of the extent to which it was actually representative, played a very pivotal role, whether internally, in dealing with the various affairs of Mount Lebanon inhabitants, or by facing and

resisting the foreign Mutasarrif, and maintaining the cultural identity and the 'semi-independence' of the Mountain. The council also played an effective role during the transitional period between the end of Ottoman rule and the beginning of the French mandate.

Events started to accelerate with the beginning of the French mandate. The legislative authority transformed from a powerless administrative committee to the first representative council whose functions were limited to expressing desires and suggestions. It further evolved to the second representative council, which in turn transformed into a constituent assembly responsible for drafting the constitution. This very same council then became a parliament, with the release of the constitution in 1926, and was also dissolved or suspended several times.

A number of parliamentary councils followed during the French mandate. These councils displayed many nationalistic characteristics and certain elements of resistance despite repeated interference from the French mandate authorities by trying to affect the composition of the councils through direct appointments. The constitution underwent amendments numerous times, leading to dissolution of the parliament a number of times and issuing, amending and cancelling electoral laws many times. This tumultuous period continued until the dawn of independence, whereby the confrontations between nationalistic parliamentary representatives—who had reached a realization of the true composition of Lebanon and the importance of its interaction with its surrounding environment—and the French mandate rulers, reached its peak.

This was the golden age of Lebanon's legislative authority, whereby it played the role of leader and gathered the Lebanese around it under the banner of national independence and a sovereign constitution. It was in these circumstances that the National Pact, which is an unwritten agreement that laid the foundation of Lebanon as a multi-confessional state, was born. This Pact, which came into being in the summer of 1943 following negotiations between the Shia, Sunni and Maronites leaderships, allowed Lebanon to be independent. However, it would

later prove to be nothing more than an agreement of the weak and a charter for concessions.

The parliament and the people were victorious in their battle for independence. It looked like this victory came sooner than had been expected by the people and politicians, which ushered in a political vacuum and a sense of being lost. After achieving its goal (the independence), parliament seemed to have lost its way, as it had not offered any other common vision to keep the Lebanese united. The Parliament neither formulated any strategic policies, nor devised a clear domestic policy.

The National Pact, itself, became the main concern of political life in Lebanon, whereby political discourse was minimal to the levels that this pact had delineated. This discourse became limited to agreements and understandings, which some may point to as nationalistic. Examples of these were the two correspondences no. 6 and no. 6 bis, and paragraph 95 of the constitution. Since then, political struggles have focused on parliamentary or cabinet seats here and there, and on narrow sectarian interests. The different sects became concerned with strengthening respective positions within a weak political system, and the citizen lost in the midst of all of this.

3- Functions of the Legislative Authority

It is a historical constant fact that parliament has failed in extending the scope of its authority outside the field in which it established itself, around three centuries ago, when it recognized its legitimate rights against the King. It might as well be that parliament did not attempt to expand its scope of functions due to its nature, composition and the modality of its formation; or the parliament might not have attempted to expand its scope due to the philosophy of the representative system it embodies, its strength, attractiveness and deep civilized impact. The main functions of parliament, therefore, have continued to be representation and legislation. These functions, however, have evolved with the passage of time, expanding and growing. The legislative function, for example, is no longer limited to setting and collecting taxes; instead, it has expanded to include setting general

policies in the broad sense, which has added an extra element of utmost importance to the function of legislation: monitoring the government and questioning it.

Based upon this, and after admitting that it is extremely difficult to define and specify the functions of legislative authority, it is appropriate to list these functions under three main titles: functions related to representing the people, functions related to setting general policies, and functions related to monitoring the executive.

4- Legislature's Role in Lebanese Consociationalism

Consociationalism is a system of government in plural societies, which aims to instate a special form of democracy based mainly on power sharing among the diverse groups of the state, for the goal of maintaining public security and political stability, and contributing to nation building. Being a plural society with a relatively stable form of government, Lebanon's political system has been commonly described as consociational democracy. In this vein, the Lebanese political institutions of the system reflect the consociational characteristics. The Lebanese cabinet does reflect, to a certain extent, consociational characteristics, as commonly agreed to.

This research will examine whether the Lebanese legislature is, per se, a consociational institution, and the extent to which it embodies consociational features as detailed in Arend Lijphart'sconsociational theory.

The aim of this study is to explain how the Lebanese legislature, as mother of all political institutions, reflects consociational characteristics as stipulated in the consociational theory. It also aims to underpin that despite the limitation of consociationalism, its undemocratic dimensions and the wide criticism against it, it might be still the form of government most suitable for Lebanon given its segmental cleavages, and the important role religion plays in the life of all Middle Easterners.

The following four characteristics define this type of democracy[4]:

1. Government by grand coalition of the political leaders of all significant segments of the plural society;
2. Mutual veto as a protection of vital minority interests;
3. Proportionality as the principal standard of political and other public services representation;
4. A high degree of autonomy for each segment to run its own internal affairs.

In order to cope with its plural society and religious segments, Lebanon, for years, has been tailoring a special form of democracy, a consensus democracy that accommodates the different religions and sects in order to preserve its national unity. Hence, Lebanon adopted consociational democracy since its independence in 1943, with the unwritten National Pact between the Maronite President and the Sunni Prime Minister, and bolstered this model until the Civil War broke out in 1975. The Taif Agreement that ended the war in Lebanon, on its part, strengthened the notion of consociational democracy and tried to institutionalize it.

Taif agreement formed the principle of mutual coexistence between Lebanon's different sects, an alternative Lebanese political expression of consociationalism. Mutual co- existence is the practical embodiment of grand coalition, the first characteristic of consociational democracy. Taif agreement also defined the proper political representation of all components of the Lebanese society as the main objective of post-civil war parliamentary electoral laws. It also restructured the National Pact political system by transferring some of the powers away from the Maronite Christian president, and conferred most of the executive powers upon the Council of Ministers. The Taif agreement bestowed the executive power on a collective body that comprises proportionally the different factions of the political and societal spectra, as it has made the decision-making a collective task and thus has given each component a share of the power. Hence, grand coalition and veto power were enforced and consociational democracy became

[4]Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration,* New Haven and London, Yale University Press, 1977, p. 25

more obvious. The Legislature, too, had its share of the Taif amendments. It made its presidency (speakership) more stable and gave it wide legislative and political powers. This section will mainly discuss the embodiment of consociational characteristics in Lebanon's legislature and the extent to which the legislative authority exemplifies consociational theory.

Consociational democracy claims to exist in a political system when the political institutions of the system reflect its characteristics; i.e., consociational democracy is conducive to consociational political institutions. The government (the executive) is the most obvious of such institutions and the Lebanese cabinet does reflect, to a certain extent, consociational characteristics, as commonly agreed to. The question, however, remains whether the Lebanese legislative authority—the legislature—is per se a consociational institution. Does the Lebanese legislature embodies the four features of grand coalition (elite accommodation), mutual veto, proportionality of representation and segmental autonomy?

The pluralistic structure of the Lebanese society has paved the way, through consociationalism, for a smooth democratization process and has prohibited authoritarian regimes to take its toll on the country. Although the model had its drawback, which was the inflexible institutionalization of the consociational principles, it generated a sound environment for democratic stability (except for the periods of civil war and regional upheaval, the two factors among others that counteract and deactivate the consociational theory structure). Consociationalism might not be the ideal form of governance in Lebanon, but it has proved to be the best available. Still, Lebanese consensual democracy must work out a way to introduce proper changes to the implementation of consociationalism in the political system, starting from the constitutional institutions, on top of which is the legislature.

5- The Two Assemblies: Bicameralism

The phenomenon of bicameral legislature has not been given much attention, especially from an Arab point of view, despite the fact that most modern-day legislative authorities consist of two chambers (lower houses and upper houses), and despite the fact that it has been studied as early as Montesquieu's time. A phenomenon should draw the attention of any researcher in political systems and constitutional institutions. This research deals with the inception of bicameralism, its raison d'être, the necessity for its existence and the powers granted to each of the chambers. Moreover, it specifically studies the relationship between the upper chambers and the lower chambers and the executive authority.

Montesquieu linked the existence of the upper houses (Senate, Lords) with the existence of certain special classes of people, which, through lineage, fortune, or familial links, have the right to monitor the institutions of the people to preserve their rights, insofar as these classes contribute to the strengthening of the state and its prosperity. There are many different justifications for the existence of the upper houses, the best of which is the federal system of governance. However, the importance of such councils poses the questions: Are they truly able to offer a different opinion? Do they truly represent important segments outside the council's representation?

In order for the upper house to play a justifiably important role, it is necessary that it differ from the lower house in terms of its composition, powers and duration. Therefore, if the lower chamber represents people based on where they live, the upper chamber should, for example and according to Montesquieu, represent people on how they earn a living. Furthermore, the electoral constituencies should be different, or else there will be no value for different elections of same constituencies.

The term of the upper house is usually longer than the term of the lower house, which makes it more conservative, stable and relatively more representative of long-term public opinion. This is in contrary to the lower house, which tends to be representative of current public opinion.

6 The Relationship between the Legislature and the Executive

The relationship between the legislature and the executive is the jewel in the crown of the political system. Without studying this relationship and stopping at the most precise of its details, it is impossible to understand the political system, no matter how deeply one studies its history, constitution or even the constitutional institutions and its functions. This relationship is what gives the political system its characteristics, and based upon it, political systems can be categorized in one way or the other. For instance, it is not enough for a nation's constitution to describe its political system as parliamentary in order to consider the system actually parliamentary.

Political science is greatly indebted to the two pioneers that first studied and researched this relationship and established its principles. These pioneers were the English philosopher John Locke, and the French thinker Charles Louis De Secondat – Montesquieu. Both did not leave much to their successors to say about, or add to, the principles and philosophy of this relationship. It is sufficient to look at the conclusions drawn by Montesquieu almost three centuries ago regarding this relationship to be able to understand how important his ideas are.

It’s interesting to note that, in contrast to popular assumption and to today’s understanding, the limits drawn for the relationship between these two authorities were primarily and mainly imposed over the powers of the legislature, i.e., by placing restrictions on the legislature not the executive. This came from an early awareness of the comprehensiveness of its powers, its broad reach and strength of its position. Based on this, old and contemporary authors alike agree on the fact that it is not the task of the legislature to execute decisions; rather, it is mainly responsible for enacting laws and monitoring their implementation. It is not the legislature's responsibility, either, to make decisions related to procedural issues; instead, it is responsible for ensuring that the decision maker is the most suitable for the job. Therefore, its task is not ruling the nation, but monitoring and questioning those who are.

Some opine that even with all of these restrictions on the legislature, the relationship between the two authorities embodies full control of the legislature. This relation makes of the parliament a sovereign authority, granting it full control over the government through the cabinet, which is termed as the parliament's executive committee. In addition to the control exerted by parliament over legislation and imposing taxes, it seems that every other body in society owes its existence to parliament, and derives its authority from it. On the other hand, other political scientists believe the opposite, pointing out that executive authorities are granted immense powers and that they have full control over parliaments. This group believes that the main objective of general elections is to select a government and send a group of supporters to parliament to back this government and facilitate the implementation of its program. This theory is in line with the views of some that the role of parliament is declining, and that parliament has become no more than an intermediary between voters and the government.

Obviously, these two theories form the opposite ends of the spectrum when discussing the relationship between the two authorities. The truth undoubtedly lies somewhere in between; though, in contemporary times, the truth is closer to the theory that sees the executive authority as having the upper hand. However, regardless of who is the superior authority, the main party that stands to gain from this relationship is the political system as a whole, the nation, and citizens. This is because the government would not head but to the sphere where it is sure to secure parliament support and confidence, and the parliament would not set any policy but that which guarantees the nation's consent and support.

Proceeding forward from this theoretical analysis, the three areas of legislative work, ministerial accountability and the dissolution of parliament manifest the relationship between the two authorities. All of this against the backdrop of differentiating between parliamentary and presidential political systems regarding the nature and scope of this relationship. While the relationship within legislative work shows the interference of the executive authority in the legislature's task, the ministerial responsibility aspect shows legislature is monitoring over the executive authority. Yet, a big change has taken place vis-à-

vis this concept in contemporary times. The parliamentary majorities enjoyed by modern day governments— especially when both the government and the parliamentary majority belong to the same party—have led to new forms of ministerial accountability, individually and collectively.

The third area in which this intricate and complex relationship is embodied is the most violent and extreme: the principle of parliament dissolution. It is a dangerous weapon, which leads to the abolition of the representative nature of people's representatives and to shortening the term duration of the legislature. It violates the foundations of the democratic representative system. This principle is a weapon in the hands of government to balance the power of parliament of withdrawing confidence from the government, and to give the people the power to arbitrate on any disputes that may arise between the parliament and the government. In fact, this analysis is outdated and no longer valid in justifying the principle or explaining its conditions.

In the parliamentary system, which is the only medium in which the principle of dissolution works, the government and parliamentary majority belong to one party or one coalition. Thus, it is no longer possible to talk about disputes between the government and the parliament. Why, then, does the principle of parliament dissolution still exist? How valid are the theories that view this principle as a means for the government—as a ruling party—to bolster its positions in the parliament? Does the government use this principle as a weapon against parliament members, of its own political party, in order to ensure their party allegiance?

7- Lebanese Parliamentarianism and the Relationship between the Two Authorities

The Lebanese system is rather confusing when trying to describe or study it. Perhaps, the ideal method to study the Lebanese case is to scrutinize the way the system works in praxis, along with all the social, sectarian, historical and even 'personal' factors. The conclusion would be that the system is 'simply Lebanese'.

Compared to the parliamentary system practiced in Britain, the Lebanese system is not parliamentary, and neither is it a presidential system when compared to the model practiced in the United States, nor is it semi–presidential or semi–parliamentary, as some would like to describe the political system in the French Fifth Republic. It is not a council system taking into accounts the characteristics of any known political model. It is simply a Lebanese system.

At face value, the Lebanese system is a sound and healthy political system. There is a parliament elected by the people for a specified term and exercises legislative powers. There is also a dual executive authority, with the President being one of its two branches, the Head of State and the symbol of its unity. The President exercises limited constitutional powers, which are ceremonial for the most part, entailing no responsibility on his part while carrying out his job. The second branch of the executive authority, the Council of Ministers (the government). The constitution stipulates that the Executive authority shall be vested in the Council of Ministers. The Prime Minister is the head of the Council, the Head of Government and its representative. He speaks in its name and is responsible for executing the general policy that set by the Council of Ministers. In one way or the other, this government stems from parliament, through a series of binding parliamentary consultations held by the President to nominate the Prime Minister.

The government is responsible before the parliament. This is both a collective political responsibility whereby the ministers shall be collectively responsible before the chamber for the general policy of the government, and an individual responsibility whereby the ministers are individually responsible for their personal actions. On the other hand, the executive has the power to dissolve parliament, with which it balances the powers of the legislature of questioning the government, withdrawing confidence from it and voting it down.

Therefore, the features of parliamentary system are clear in texts and in the general form. However, what does this system actually look like in practice? Is

the devil in the details that has subjected the Lebanese system to a series of trials and tribulation, which weakened it to the point where it almost destroyed it?

The unique characteristics of the Lebanese system—such as sectarianism, historical heritage, the National Pact, the regional circumstances and consociational form of democracy—have a much deeper effect on the structure of the system and in shaping its nature than the interchangeable relationship between the executive and the legislature, despite the otherwise critical importance of this relationship to the political systems in general. However, this research will scrutinize this relationship—as set in the Lebanese constitution, for this will indicate the intentions of the legislator to adopt one system or the other.

The last constitutional amendments were an attempt to correct the distortions of the system, and to bring it closer to parliamentary principles. Were these amendments truly successful? How does the Lebanese system embody parliamentary principles? Is there truly duality in the executive authority, or are there two executive authorities: the President and the Cabinet of Ministers? How can one talk about balance between authorities when the weapon of dissolving parliament is out of order and almost impossible to use? What are the constitutional conditions and procedures that permit to raise the concept of ministerial accountability?

8- Legislature, Political Parties and the Oppositions

Discussing the relationship between the legislature and the executive is not complete unless it deals with the roles of political parties within political systems, and their relationship with the legislature. Political parties play an important and indispensable role in the relationship between the two authorities, acting as mediator and regulator. The big difference between theory and praxis in the contemporary relationship of both authorities (classical parliamentarian model) is the result of the increasing magnitude of the role played by political parties in political life in general, and the legislature in particular.

The relationship between the legislature and political parties is an organic one. A legislature that is free of political parties is nothing more than a chaotic gathering of representatives following their own personal interests. On the other hand, political parties that are not under the umbrella of the legislature are either weak gatherings or temporary parties excluded from the system and its institutions.

The existence of political parties and their number have become one of the main characteristics to define the political system. Hence, terms such as 'bipartisan parliamentary system', or a 'multi party presidential system', or a 'single party system' have surfaced.

The richest experience of political parties and their relationship with the legislative authorities is, without a doubt, in the United Kingdom. The research studies this vital factor, in all its dimensions and complicated effects on the legislative authority, in particular, and the political system in general. Some important questions the thesis addresses are: Would the strength of party organization (particularly in parliamentary systems) actually pose a danger inherent in the possibility that the party system may itself dominate parliament? Has the balance of power tipped from the government towards party leaders? What is the efficiency of certain parliamentary concepts, such as ministerial accountability and dissolution of parliament, vis-à-vis political parties' consolidation of their control over the parliament? Is the result of weak political parties the inevitable rise of lobbies, pressure groups and even mafias? On the other hand, is the weakness of the party system a testimony to the legitimacy of popular representation, whereby representatives are elected based on their respective characteristics rather than their party affiliations?

As to the partisan experience in Lebanon, it is clear that the course of Lebanese political parties–until a very late stage – did not move in line with the course of the legislature. In contrast to the British example, Lebanese political parties were established outside the framework of the legislature. Even, most of these parties had orientations and ideologies that were in stark contrast with the newly born state. A bipartisan system did exist in Lebanon, and it seemed

promising for some time; however, it did not last for long and it was not destined to be successful. This period of bipartisanship refers to the experience of the two parliamentary blocs: the National Bloc and the Constitutional Bloc. What are the reasons for its failure? Why was the legislature composed of feudalists, tribal and sect leaders? How did this experience serve the National Pact? Alternatively, did the Pact itself hinder and harm the partisan experience?

It is interesting to note that instead of political parties having an effect on political discourse and the functioning of the system and its institutions, the political life and the surrounding environment have always influenced Lebanese parties. The parties gradually declined and became sectarian after letting go of their principles and slogans. Soon, these parties established their own militias, which picked up arms and fought against the State in the name of their respective parties and under their party slogans. No wonder that these parties have reached such a dismaying state of weakness, and are widely viewed with disrespect and suspicion by the general public.

What is the place and position of the Lebanese parties in the legislative system today? Not only can one say that there are no political parties in Lebanon, but can even assert that there is no party system in Lebanon. However, taking into account the fact that there is no other system than democracy that suits Lebanon, and since there can be no democracy without opposition that in turn cannot exist without parties; it is of utmost importance to resurrect the parties, and to reactivate the political party process in its entirety. This is a prerequisite to reform the political system in Lebanon. Some writers, on the other hand, do not attach much importance to political parties in Lebanon, casting doubt on the necessity for their existence and attaching little importance to them in the process of reform. What are the justifications for their opinions, and what are ours for the weight of political parties? How can the Lebanese system steer back on the right track?

The discussion of political parties automatically leads to discussing opposition within the political system, along with the relationship between this opposition and the legislature. If parliament is a main sanctuary for discussing and

transmitting popular opinions and points of view, it should also imply the right to object in a civilized manner. A system free of opposition, or no value attached to the opposition, is an autocratic system. The main principle, upon which opposition is based, is presenting itself as an alternative government. This principle suggests that the opposition is willing to bear responsibility for its success as an opposition, and that had it been given the opportunity, it would have acted in a better way as a government. Consequently, an accountable government and an accountable opposition do exist. This accountability is one of the conditions necessary for the success of opposition. What are the other conditions, and what are the methods with which the opposition can work successfully?

9- The Sovereignty of Parliament

Claims about the fall of legislative authority from its golden age and the loss of its importance and power in favor of the executive authority, parties and bureaucracy have been aplenty. In the age of digital technology, speed and decisiveness are required for better performance and these are more features of the executive than the legislature. However, speed and decisiveness are not the only ingredients needed for an effective political system. There are other essential values such as justice, soundness of representation, democracy, civil, political and human rights and freedoms (giving people a say in managing their affairs)—and these can only be guaranteed by legislature.

There is no doubt that the role of the legislative authority has regressed, and the depths of its powers have declined, especially in favor of the executive authority. Yet, legislature has proven to be indispensable. It has a role that goes beyond the two major tasks of legislating and monitoring the government. Being a sound and open forum for communication and settlements between various conflicting political interests, it acts as a mechanism for absorbing shocks. The legislative authority provides nations with an element of stability. It gives other political institutions legitimacy; hence granting legitimacy to the entire political system. By representing the conscience of the nation, legislature embodies the continuity of political institutions. Governments are only temporary and may

reflect the opinion of a certain political trend at a certain point of time. Legislatures, on the other hand, reflect the complete and entire opinions of the people and the image of the nation throughout various generations. It is due to this significance that even the most authoritarian regimes that hold on to executive authority, carefully preserve the position of legislature.

Parliament remains to possess sovereignty and it is still unrestricted. No matter what is claimed about other bodies, assemblies, special interest lobbies and pressure groups, and no matter how big their roles may be, and no matter how much the powers of executive authority may expand, the legislative authority shall remain to play a role that all of these bodies and institutions combined will never be able to play. The greatest proof of this is highlighted by the massive efforts made by lobbies and pressure groups to send their representatives to the parliamentary forum. This is because they are aware of the fact that their influence and strength shall remain limited unless they are able to manifest themselves through representatives within legislatures.

The unique significance the legislature enjoys is what led Montesquieu to believe that the United Kingdom will never vanish like the former empires of Rome, Sparta and Carthage, until its legislature becomes more corrupt than the executive does. In the same context, Burleigh concluded that it was "not possible to destroy England but by a parliament".

What about Lebanon? Legislative authority in Lebanon has played a very important and fateful role. Until independence, it was at the center of political life, whereby within its confines a highly complex network of relationships, interests, agreements, settlements and compromises were built. After independence, however, its role and position changed and other political, social, capitalist and sectarian institutions started to gain track and make their opinions heard through the very same legislative authority. Eventually, these institutions, at the forefront of which were the religious sects and their leaders, became stronger than the entire legislative authority.

The legislative authority in Lebanon, like its counterparts in the world, is still indispensable, yet it calls for essential improvements like fixing the representative system, eliminating the sectarian nature of this system by not allowing sectarianism to be the main standard for the composition of the legislative authority, consolidating the party system and establishing a responsible opposition. Reforming the system also entails getting rid of the hereditary and feudal mindset of political and financial powerhouses that have always marred the system. Ultimately, curing and reforming the Lebanese system would imply curing the entire society and putting the network of relationships within it on the right path.

Justice is the supreme political virtue. The mechanisms of government become truly effective when it becomes subject for criticism, and truly just when the government declares clearly and transparently its plans to serve the people. Good systems are established when their governments are in line with parliament, and, through parliament, in line with the people, who are the source of all authorities.

Conclusively, the research investigates whether Lebanon's plural society is congruent with the theory of consociationalism. It addresses the role of legislature in Lebanese consociational democracy, a subject that still needs thorough research in the study of consociationalism and political accommodation. As such, the research area will mainly be the Lebanese legislature as consociational institution. The aim of this research thesis is to explain how the Lebanese legislature, as mother of all political institutions, reflects consociational characteristics as stipulated in the consociational theory. The thesis also aims to underpin that despite the limitation of consociationalism, its undemocratic dimensions and the wide criticism against it, it might be still the form of government most suitable for Lebanon given its segmental cleavages, and the important role religion plays in the life of all Middle Easterners.

The research delves into both the quantitative and qualitative methods. Quantitatively, it aims to continue Lijphart's initial assessment of the study of Lebanese consociationalism along many other political systems he assessed, by

reviewing and analyzing the political behavior of communal elites within the legislature, and the outcome of the system. To this end, I draw my research upon consociational theory as advocated by Lijphart, later revised, and criticized by other political thinkers while attempting to assess it against certain societies. Qualitatively, it reviews the Lebanese constitution and amendments made to it, the National Pact and Taif Agreement, in congruence with the consociational model, in order to cope with developments in Lebanon and the region.

It is important to note that this thesis will take Lijphart's theory as a normative model, but the theory will be assessed, analyzed and criticized empirically vis-à-vis its outcome in Lebanon, by referring at the same time to other writer's input in this domain. In this context, it has to be pointed out that consociationalism has been applied in political societies long before Lijphart wrote about it. Thus, his theory is taken as a theoretical framework of this already-existed form of governance in Lebanon for the mere assessment of its characteristics in literature and praxis in this Middle Eastern country.

Objective:

The aim of this research pinpoints the importance of legislature as manifested by its role in shaping the political system and changing its outputs and features. A legislature provides a bridge between the political and the administrative machineries of a state. It is mainly the position, powers and structure of the legislative authority and its relationships with other political institutions in a political system—particularly the executive—that differentiate parliamentary from presidential systems, for example, and give the system its unique characteristics. Whatever the political system adopted, the legislature provides the link between the political aspirations of a democratic society and the resource management of the administration.

The Lebanese system of governance since independence has been developed along lines of consociational model. This research investigates whether the country's plural society is congruent with the theory of consociationalism in the model designed by political scientist Arend Lijphart, mainly by addressing the role of legislature in Lebanese consociational democracy. It is important to note,

however, that while this thesis takes Lijphart's theory as a normative model, it assesses, analyzes and is critical of the theory empirically vis-à-vis its outcome in Lebanon, by referring at the same time to other writer's input in this domain. The aim of this research, in this context, is to explain how the Lebanese legislature, as mother of all political institutions, is reflecting consociational characteristics as stipulated in the consociational theory.

The central area of research focuses on the Lebanese legislature from all aspects: inception, development, composition and the role it has played in developing the political system into the unique form it enjoys today. The consociational legislature defines the extraordinary democracy that Lebanon is characterized with. It has withstood the test of time, external intervention, colonialism, defining of nation-state boundaries, wars and a demographic change. The objective of this study is to tackle legislative authority from a new perspective that does not see it as just one of the other constitutional institutions in a political system. It will rather take legislature, the theme of the research, as the focus of political life and the axis of political systems.

The consociational model had been largely studied as a form of democracy in Europe. The case of Lebanon is unique, largely due to its chequered history and demographic composition. The system of confessions and political evolution of the confessional and then the consociational system from the Ottoman to the French to the post-independence period, has been marked with both domestic upheavals and international interventions.

This study aims to evaluate the major factors and variables that have shaped the existing consociational system, both as weakening factors and as strengthening forces. By the end, the study would be evaluating the variables that will allow the system to either last as a successful model of democracy for the future or fail as a political system.

Research Method:

The research delves into both quantitative and qualitative research methods. The approach is of deconstructive analysis based on developments that influenced

the evolution of the constitution and the legislature as a tool for making laws to implement socio-economic and political changes that define Lebanese democratic functioning. Quantitatively it aims to continue Lijphart's initial assessment of the study of Lebanese consociationalism along many other political systems he assessed, by reviewing and analyzing the political behavior of communal elites within the legislature, and the outcome of the system. Qualitatively, it reviews the Lebanese constitution and amendments made to it, the National Pact and Taif Agreement, in congruence with the consociational model, in order to cope with developments in Lebanon and the region.

In addressing the main question of this research on what role legislature has played in the history of Lebanon and in shaping the political system, the research will show how the consociational model of democracy in Lebanon resulted in legislature accommodating the elite cartel. Despite the limitation of consociationalism, its undemocratic dimensions and the wide criticism against it, it is still the form of government most suitable for Lebanon given its segmental cleavages, and the important role religion plays in the life of the country.

Chapter Two

Legislative Authority: Inception and Concept

History shows that the individual-based rule system or the autocratic one, was the first political system known to human communities. This form of rule was introduced after members of society moved from their own individualistic and chaotic lives to a more controlled social life, subject to rules and mutual principles imposed by collective coexistence. This is what later was known as the social contract.

Individual-based rule—which took on many different forms such as rule of kings, czars, emperors, caliphs, pharaohs and popes—was often criticized and subject to resistance, protests and rebellions. Consequently, this system proceeded to establish, under its own supervision, numerous advisory councils in order to better understand the orientations of the people and to absorb and appease their anger. How did this all start?

1. Inception

Most British writers,[1] date the beginning of the representative system back to ancient times, whereby they claim that it began with the Germanic and Celtics Teuton tribes, in addition to some Greek and Roman cities.However, the history of the representative system indicates that the spirit, principles and philosophy of representation were unknown during ancient times. This system began to emerge during the middle Ages. During ancient times, a number of monarchical, autocratic, aristocratic and tyrannical regimes of different forms were established. These regimes flourished and eventually fell.

Aristotle—the father of political science—said that some of the ancient democracies, such as the one that existed in Mantinea exercised a certain level of power in electing some leaders and representatives. However, this reference was somewhat casual and unique in nature that it cannot be generalized.[2]

[1]Some of the more important writers on the subject include Beard, Charles A.,"The Teutonic Origins of Representative Government", in ***The American Political Science Review, Vol. 26, No. 1 (Feb., 1932), pp. 28-44***

[2]Wahlke, John C. and Eulau, Heinz ed., *Legislative Behavior: A Reader in Theory and Research*, Glencoe, Illinois: The Free Press. 1959., reprint 1994, p. 24.

On the other hand, Greek democracy, which involved the election of some rulers and members of general bodies by people's assemblies, did not include principles of the representative theory upon which the inception of legislative authority was based.[3]

The concept of representation emerged only, vaguely, in Greek and Roman ideologies. It is true that Polybius[4] spoke of the accountability of the consuls to the Supreme Council and to the people, in addition to the responsibility of the Council and some of other representatives (the Tribunes) to the people. It is also true that some of the provisions in Roman law have been interpreted as an indication of the representative nature of the Supreme Council, as it speaks in the name of those who are not members in it. However, Polybius himself did not consider senior state officials as deputies or representatives of the people. Furthermore, the composition of the said Roman Supreme Council did not indicate, in any possible way, that it was a representative body in the modern or literal sense of the word.

This does not mean that the theory or practice of mandate (delegation, proxy or authorization) was unknown during these eras. The city-state did include several representative institutions and several political mechanisms for communication with these institutions. A good example of this was the Athenian Council that was considered to be an elected representative council. The council, however, did not possess representative powers: powers of deliberation and deciding on matters of interest for the public and its will.Thus, while it is incorrect to say that representation was a concept completely alien to the Romans and Greeks, its' practical application was rare whereby there were little experiences that can actually be pointed out.[5]

Legislative authority that first emerged during the Middle Ages, did not emerge simply because the people suddenly decided to govern themselves and appoint representatives, hence establishing parliament. It was the monarchs that called for

[3]G. Jellinik, "Das Recht des ModernenStaates", cited in Beard, Charles A. and Lewis, John D., "Representative Government in Evolution", *American Political Science Review*, XXVI, No. 2, April, 1932, pp.223-240.

[4]Polybius c200 B.C, was a Greek historian whose work describes the rise of Rome to the status of dominance in the ancient Mediterranean world

[5]Wahlke, John C. and Eulau, Heinz, n.2. p.36.

the establishment of representative institutions and brought them into being. Having achieved and maintained their rule by the sword, the monarchs were ruling with absolute political power over vast regions and large populations that were made up of myriad of different social communities, classes and backgrounds. They gathered representatives of various regions and groups in order to organize the process of tax collection. All that mattered to them, was preservation of a sense of internal harmony and security, and to dissemination of a sort of beneficial justice that would all lead to the avoidance of chaos and unrest. What mattered the most was to fill up their coffers.

Even the most abusive of kings were unable to impose taxes and excises on their subjects without restrictions, or without considering appropriate methods to collect them. Any sort of cooperation from the subjects, no matter how limited, would have rendered the monarchs a great benefit, and would have ultimately helped achieve their objectives in the fastest and shortest manner possible.

2. The Concept of Representation and its Embodiment

Representation is a deep and comprehensive concept and has, throughout history, taken a number of various theoretical and practical forms.

a- The Concept and the Challenge

It is not easy at all to define the concept of representation, nor is it easy to specify its meaning in a constant and comprehensive manner. Similar to most political theories, the theory of representation was also subjected to the inevitability of continuous evolution.

i- The Concept

Representation has taken on many different physical forms (assemblies and councils) and abstract concepts (principles or ideas) depending on factors created by economic and social changes taking place in the nation. Despite these difficulties in defining the concept of representation, it is, however, possible to pinpoint the following three elements of contemporary representation:

- A representative (an individual or group) who has the power to act for, or on behalf of, another individual or group.
- The representative should be elected by those whom he works on behalf of.
- The representative should be held accountable for his actions to those he represents.

Each one of the aforementioned elements poses a series of questions, and results in a number of assumptions and various ideas.

What is this authority inherent in the electoral body (constituents) which may be wholly or partially granted to the representative? What methods of candidacy and election should be applied in managing the process of selecting, and how do these methods work on the ground? What are the limits and scope of representation? In other words, which affairs of everyday life are included within the framework of representation and its function, and which of them remain to be exclusive to the represented as members of society? Moreover, what is the responsibility of the representative, and how is it implemented?

It is true that the idea of representation has in it the concept of bare agency, the substitution of one for many, but it is more than this oversimplified implication: the supreme representative body is supposed to mirror the whole movement of social and economic forces within the nation, to express the nation's will and its sentiments. Correctly conceived, representation "involves a philosophy of history."[6]

ii- The Challenge of the Concept of Representation

The representative system, in both of its aspects, theoretical and practical, has been subjected to many critiques. It has been the target of a concerted attack by many different parties with conflicting objectives and orientations.

Conservatives and rightists were opposed to representative democracy. In their view, it had started to foster a large taxation burden on the wealthiest, in addition to

[6]Beard and Lewis, n.3, p132.

demanding inappropriate social services. Those who were speaking on their behalf and promoting their ideas called for a rethinking of the concept of equal representation for all people, which had replaced the concept of representation for economic and social groups.

Alternatively, syndicate members, trade unionists and socialists also launched an attack on this same representative democracy, claiming that it was unable to eliminate large inequalities in wealth distribution. They believed that as long as these differences existed, individuals would never be able to realize equality and freedom. Hence, this process of social reform pushed forward by the representative system was condemned both by conservatives—on the basis of the fact that it was dangerous—socialists, workers and trade unions, on the premise that it was not enough. This dual attack reached its peak with the end of World War II. As soon as institutions of the representative system started to spread throughout the world, the real challenges started to emerge. The theory, which had once been true and as constant as the multiplication table, started to be subjected to critical testing everywhere.[7]

Despite all of this, the representative system stood the strain, survived and even continued to prosper. Flexibility was one of the characteristics of the system. Since it was a means rather than an objective in itself, it served many different causes, and displayed a great ability to adapt and continue. It did not take a constant political style, rather it continued to develop in an amazing manner. It offered statesmen a non-depleted tool that could render them great benefit.

b- The Content of Representation

The political and real life embodiment of representation can be summarized as follows: all adult members of society are equal, and each one of them has a right to an equal share of the power of governance (regardless of government form). This power is exercised through representatives elected by the voters for this specific purpose.

[7] In his book, Beard deals with the subject at length. See Beard , n.1.

Logically, this implies that representatives are spread over various regions, each containing an equal number of inhabitants, and that they are elected on the basis of majority (simple or relative). These representatives shall organize themselves within an assembly, and they will exercise their authorities based also on the principle of majority. In other words, representative authorities will no longer represent certain economic, social or feudal classes, instead free and equal individuals—each of an abstract political entity.

This democratic content of representation has not always been taken into consideration during the course of its evolution. Representative government began its journey as a political tool in the hands of the political authority against a backdrop of complex economic and social circumstances. Its main objective was to serve the interests of the ruling elite. It played a confusing role in terms of its form and content for a period of 500 years, until its role was finally clarified and took the form of a parliament with democratic dimensions.

Many writers viewed the king as the representative of the people, whereby all of his actions were considered to be done for and by the people, based on the representative characteristic which was ascribed to him. Although he was acting in the name of the populace, the king was not accountable to them and could not be held responsible. Rather, "he was responsible for the people, not to the people."[8] As long as the king held his position by direct delegation from God, he was not accountable except to God, or to the representatives of God.

The representative body continued to represent a limited segment of society, as was the case of the British parliament for around 600 years. Britain was able to preserve its monarchical system throughout all of the upheavals and parliamentary developments that took place in its long and extended history, except for a short period in the 17th century. A new dimension of reality emerged, adding to the facts that prevented linking the concept of representation to the concept of democracy. One of the main objectives of the Americans for establishing a federal system was to break

[8]See n.1

the strength of the quantitative majority base at its source in elections and in the functioning of the government.

c- The Embodiment of Representative System in Parliament

The long and difficult course of development the representative system went through ended with a modern representative institution. This institution—embodying the most up-to-date form of the concept of representation—sat at the helm of the representative system. Though a number of other institutions participated in the process of representative system, this institution remained to be the main participant and the reference for all others. It took on many different forms with various hierarchical structures, and was known by many different names. However, it was predominantly known by its most common and famous term, which remains to this day: parliament.

Initially neither the rulers nor the representative bodies were concerned with eventual power sharing. However, the overall constancy and regularity of representatives, in addition to their participation in discussions and enabling certain affairs, gave them a good deal of experience and knowledge in the affairs of government. It also awakened a sense of authority and power in them. Consequently, a general form of political awareness, spread from the centre to the peripheries, encompassing most of the social fabric.

Accordingly and under the influence of various circumstances previously discussed, selective governments, which operated under the command and directions of the monarch, transformed into a parliamentary government supported by a wide base of the populace. Moreover, the monarchy, which had previously ruled as a military dictatorship, established—for its own benefit—a representative institution, which eventually dispossessed the monarchy of most of its powers and deprived it of absolute sovereignty it had enjoyed for a rather long period of time.

This body had to balance between the requirements of the government and state affairs on one hand, and civilian rights and freedoms of the people it represented on the other.

The concept of parliament is embodied in this balance between authority and freedom, which go along together hand in hand to produce a fruitful result. In other words, it is the result of centuries-long continued search to find a balanced manner to combine citizen's dignity and rights with the requirements for social order, law and national regulations. The idea of parliament may be a political theoretical concept; however, parliament itself is a practical solution par excellence to the paradox of freedom and authority. It represents a middle road between chaos and dictatorship.

Parliament may not be the only solution to compromise between authority and freedom, yet it is definitely the most sophisticated and richest model. The study of the concept of parliament enriches social and human sciences as a whole, not to mention political and constitutional sciences. Discussing parliament and its embodiment of the interrelationship between authority and freedom would involve little less than the study of the history of civilization.[9]

John Stewart Mill's definition of parliament as a conference of opinions remains credible to this day. Dialogue and the exchange of views are not the only objectives of parliament; however, they are among its many instruments. The concept of a parliament entails so much more than just dialogue and general discussions. These two concepts, despite their importance, should not—nor do they have the ability- conceal the main constitutional role of parliament as a democratic instrument for ruling.

3- The Functions of Legislature

The aim is not to enumerate the tasks that the legislature performs, rather to show how the concept of representation is manifested as conventional functions that lie within the prerogative of the legislative authority.

Although the description and categorization of the functions of legislature may differ with different political scientists, the content remains the same regardless of the terminology or the span of time between one description and another. The reason

[9]Menhennet, David and Palmer, John, *Parliament In Perspective*, Chester Springs, Pa: Dufour Editions, 1967, p23

for this is that "whether we like it or not, parliament has never succeeded in expanding the scope of its functions and prerogatives beyond the field in which it established itself three centuries ago when it instituted its legitimate rights in the face of the monarch"[10].

These functions have always revolved around representation and legislation. Nevertheless, they have expanded and become more comprehensive, whereby the function of legislation has gone beyond simply suggesting and deciding on the best way to collect taxes, to include the process of making all laws. This enabled legislature to set general policies and control the work of the executive.

Consequently, and in full admittance that it is extremely difficult to categorize the functions of legislature, given their vastness, comprehensiveness and overlap, it is appropriate to list these functions under three main axes: representing the people, setting general policies and monitoring the government.

a- Functions of Representing the People

Functions of representing the people are among the earliest, most important and richest functions of parliament. They are among the earliest because historically parliament was established and derived as a result of the meetings convened between the king, his assistants, nobles and dignitaries of various regions. Although they were not elected by the people, the dignitaries and nobles were considered their representatives, since they ruled over these regions and their inhabitants. Moreover, the functions are the most important ones as they give the people a say in running their own and their nations' affairs—the main pillar of democracy. Furthermore, they are the richest as they have been the source and at the core of all other functions.

Parliament has been described as a conference of opinions and a place for talks. However, talks within parliaments must be necessarily responsible even when the conversers in parliament are not held accountable for what they say as long as it is

[10] In this regard, review the Committee of Procedures in the British House of Commons are available in, Wiseman, H.V, *Parliament and the Executive- an Analysis with Readings*, London: Routledge and Kegan Paul, 1966, reprint 1997, p.153.

within the limits of the law and regulations. It is a process of transforming differences in opinions and views from their state of violent dispute into a state of civilized dialogue.

The importance of parliament is also inherent in the fact that it relays the view of the people, all segments of society, no matter how small they may be. Parliament gives a sound to these points of view and makes them respected. All subjects are discussable within this institution. The value of the parliamentary dialogue does not lie in the victory of one opinion over another, but in the fact that it allows truth to prevail above all through discussions, arguments and proofs.

Many have stood up to the critics of parliament and its function of 'talking', ensuring that this function is of extreme and utmost importance. John Stewart Mill replied to some of these critics: "Representative assemblies are often taunted by their enemies with being places of mere talk and bavardage. There has seldom been more misplaced derision. I know not how a representative assembly can more usefully employ itself than in talk, when the subject of talk is the great public interests of the country, and every sentence of it represents the opinion either of some important body of persons in the nation, or of an individual in whom some such body have reposed their confidence. A place where every interest and shade of opinion in the country can have its cause even passionately pleaded, in the face of the government and of all other interests and opinions, can compel them to listen, and either comply, or state clearly why they do not, is in itself, if it answered no other purpose, one of the most important political institutions that can exist anywhere, and one of the foremost benefits of free government."[11] When there is a crisis of confidence, simple reforms only at the surface will most likely lead to violent revolutions bubbling from beneath[12].

Parliament consequently began to monitor the work of government in order to ensure that it respected the boundaries the constitution set, and to make sure that it

[11]Mill, *Considerations on Representative Government*, London: Parker, Son, and Bourn, 1st ed. 1860, Everyman's Edition, 2001 p.296.

[12]Wahlke, and Eulau, n.2 pp. 79-80.

was not encroaching on the rights of the people, nor was it harming their interests. The task of controlling the government developed, leading to the emergence of the concept of ministerial accountability.

Within this axis, the functions of legislature can be enlisted under these titles: a) Discussion and Relaying Views of the People, b) Information and Education, c)Electoral Services, and d) Election and Trial of the President of the Republic and Trial of Ministers.

b- Functions Related to Setting General Policies

Since it is the sole right of people to administer their own affairs, plan their future and follow their aspirations, and since their interests are the main goal of all political systems, it is natural to delegate the act of setting general policy for the nation—domestic or foreign and in any field whatsoever—to the people or their representatives. During the process of setting the general policy for the nation, or in drawing the outlines for economic and social policies, it is also only natural for parliament to do so, first and foremost, in line with the views, aspirations, cultural and social heritage of the people.

Parliament adopts this orientation, and sets public policy based on three main functions: legislation, the budget and recommendations.

c- Functions Related to Monitoring Government

As far back as Montesquieu, and even before, attention was given to the dangers of the corruption and abuse of power: This necessitated the creation of a solution in the form of checks and balances, whereby an authority is only checked by another parallel and independent authority with its own set of powers and special functions.

However, in my understanding Montesquieu's opinion that the greater danger is posed by the legislative authority as it has the ability to usurp all powers and to grant itself any power it desires.He also saw this as true because the power of the executive authority is limited by nature, and any attempt to further limit it would not be useful. However, for Montesquieu, the role of the

legislative authority is to monitor how the executive authority is implementing the laws and regulations that were previously established by the legislative authority.

Nevertheless, history has shown that the real danger has emanated from the abuse of power by the executive authority, as it is the body that possesses wide procedural powers. Legislative authority is the credible and long lasting guarantee, for it represents the people in all of its classes, orientations and interests.

The importance of this function (monitoring the government) is inherent in the notion of "government of the people, by the people, for the people". If it is impossible for all the people to participate in ruling themselves, this should not prevent them, through their representatives, from monitoring those rulers who are running the affairs of the nation and its people. Proper accountability cannot be accomplished unless the cycle between the programs setting and their monitoring is completed, in addition to ensuring that the cycle is kept active and fervent from one legislative session to the next.

Functions of reviewing and monitoring are also carried out by other public administrations such as the inspection, auditing and planning bodies. It is important to note, however, that the roles played by these administrative bodies are only supportive to the supervisory role of the legislature, and in no way are they considered to be its alternatives.

In this sense, the supervision of government is much more important than the many other functions of the legislative authority such as legislation, discussion and drawing up public policy. All of these other functions are tools and not the main target. They are instruments used by the legislature to control and monitor the executive and to preserve the peoples' rights.

The functions related to monitoring the government are not independent, stand-alone functions; they are inherent in every act of parliament. Monitoring the government is inherent in the acts of enacting legislations, passing the

budget, holding discussions, giving recommendations and relaying the views and complaints of the public. The direct instruments used by the legislature to monitor the executive authority are questioning and interrogation, parliamentary inquiries and question of confidence.

The inception of Legislature and its concept are two factors that shaped political regimes throughout the history and still have their imprints so obvious on today's regimes. However, there's no static form of Legislature. Countless variables and changing inputs of economic, demographic, social, religious, military or technologic dimensions and myriad others have changed the structure, functions and even the concept of legislative bodies. Thus, studying legislature cannot be complete unless framed in a certain political regime and then study all other political institutions therein along with the entire network that binds them together. Consequently, this research will draw upon the general outlines of legislature as a political entity and then compare and contrast them with the specifics of a given legislature in a given regime, mainly in Lebanon and its special consociational form of governance.

Chapter Three

Roots of Legislature in Lebanon and its Evolution

Researchers would try in vain to specify a certain date or event to pinpoint the historical point in time when legislative authority came into existence in Lebanon. The representative process—considered the cradle of legislative authority—has been a part of Lebanon's history.

The representative process is therefore considered to be older than the 'state of Lebanon' itself and all of its institutions. This feature is unique to Lebanon. The 'Representative Council' that existed prior to the foundation of Lebanon in 1920 is a clear example. This Council in itself embodied (transformed into) the representative authority in the newly born state before it transformed into a 'parliament', carrying out legislative authority with the 1926 Constitution.

There may be no direct relationship between modern day legislature and these outdated images. Perhaps this direct connection does not go further back than the Mutasarifate system that represented a link between the historical roots and the stages of contemporary evolution. Nevertheless, these images remain to be some of the depictions of representation, signifying the first lexemes in the legislative alphabet, which are deemed necessary to go over even briefly.

Therefore, this subject is split into three parts: the first deals with the historical roots starting from the first instances of representation up to the establishment of the state. The second deals with the phase spanning from the establishment of the state to the birth of the constitution. The third and final part deals with the phases of legislative authority after the establishment of the constitution, which constitutionally formed as a legislature.

1- Historical Roots

By historical roots I mean during the Kaymakam and Mutasarrifate eras, leading up to the collapse of the latter with Lebanon entering a new transitional phase prior to the mandate rule.

a- First Appearances of Representation

Putting aside the eras of the great civilizations that Lebanon experienced whereby the principles of representation, elections and consultation were some of the traits of the existing systems of rule at the time (such as the Greek, Roman,[1] Canaanite–Phoenician, and Arab civilizations….etc.)—some of the expressions of representation outlived these civilizations themselves when they fell apart or withered away. However, none of these images resembles the situation as it is today, nor was the representative process as comprehensive or deep.

One of the most prominent aspects of representation to emerge after the latest civilization experienced by Lebanon—the Arab civilization—was the 'Mukhtar' phenomenon, otherwise known as 'village sheikh' or the 'reconciliation sheikh'. The title—the Mukhtar—, which actually means the "selected individual" or "the individual that was chosen", is an indication of the representative feature of this position. The Mukhtar was not always chosen through elections, rather in many cases through consultations, general agreement, recommendation or petitions. These methods are not necessarily in contrast to the election process; rather they are different expressions of this process, and they do not nullify the representative character of the Mukhtar.[2] In a considerable number of cases, this representative process took a broader scope, whereby a 'Mukhtarate Council' was 'elected' to assist the Mukhtar in carrying out his functions.

The Mamluk era consolidated this system, which saw the introduction of the feudal system. The representative system became feudal in nature, whereby the village sheikh or the Mukhtar was mostly chosen from amongst the 'feudalists'; i.e., owners of properties that had been appropriated to them. Consequently, representation became trivial with no democratic dimensions.

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[1]The name given to Beirut during the Roman Era, **Berytus Nutrix Legum** (Mother of Laws) is an indicator of how important legislation was, noting that its law schools were considered to be the best.

[2]The inhabitants of Saida, Tyr and Tripoli had also laws that dealt with these elections, where they elected their emirs and muqaddems according to these laws; as mentioned by Saadeh,Faris, *The Encyclopedia of Elections of our Parliamentary Life* الموسوعة انتخابية*, Secrets and Positions***,** Part One, 1842 – 1920, Beirut: Dar Ashtar and Al Karim Modern Printing Press, 1994 – 1996, p 13.

With the advent of the Ottomans and the beginning of their empire, the feudal system was established and consolidated, leading to an expansion of the feudal regions beyond the boundaries of small villages to include vast geographical regions. The prerogatives and responsibilities of the feudalists increased, and 'selection' and 'representation' still existed at the levels of either villages or a wider geographical level[3], in addition to convening conferences as another civilized feature of democracy.[4] In general, it is possible to say that during that period, the executive and legislative authorities, and even judicial authority, were concentrated in the hands of the ruler of Mount Lebanon. A group of advisors, emirs and feudalists who drew power from the ruler himself directly assisted him.

During the Egyptian occupation (1840-1832), the administrative system in general and representative system in particular, took on their first institutional forms. As soon as Ibrahim Pasha's rule stabilized, he proceeded to create various administrative structures by establishing advisory councils, especially in the larger cities.[5] He also introduced far reaching judicial and financial reforms. All this was based on the principle of equality between the Muslims and non-Muslim subjects[6], and provided one of the first figures of the confessional system.

b- The Kaymakam system

Due to renewed clashes between the Druze and Maronites in 1845, the Sublime Porte sent his Foreign Minister, Shekib Effendi, to deal with the matter. He therefore introduced a number of reforms and instated a new system, known by his name. This

[3]It was as such even at the level of the Emirate itself. In 1697, when Emir Ahmad Bin Melhem, the last in his line of Emirs, passed away suddenly, the and Sheikhs were called to convene a meeting at Samqaniya, near Baakline. They consulted on the issue of succession and decided to choose the deceased Emir's nephew, Emir Bashir Al Chehabi, to succeed him as Emir over the Mountain. The Sublime Porte did not agree with this decision, and consequently replaced Bashir with Emir Haidar, the grandson of the Emir, under the pretext that he was more legitimate than Bashir.

[4]In addition to the afore mentioned meeting at Samqaniya, a number of conferences were convened, most important of which was the Barouk conference, which was held during the Chehabi Emirate era, especially when a group of these Emirs decided to step down from their rule of the Emirate.

[5]His fingerprints, along with those of one of his most senior aides, Prince Mahmoud Nehme are still present in the way the city of Beirut is administratively organized. He was the one that established the first municipal council for the city in 1833, and he laid down its modern administrative principles. One can read the Masters Dissertation on "the Municipality of Beirut", for the researcher, 1988, Library of the Lebanese University, Faculty of Law.

[6]Dr. Edmond Rabbat, الوسيط في القانون الدستوري, Beirut 1970, p. 94.

new system led to the establishment of two kaymakamates (a northern mostly Christian-populated district, and a southern Druze-populated district) and a mixed representative council in each Kaymakamate.

These councils had the task of assisting in the administration of their areas. In turn, the council was composed of two assemblies or chambers: the first was the Assembly of Advisors that comprised of the deputy Kaymakam and one member from each of the six main sects (Sunnis, Druze, Maronites, Roman Orthodox, Roman Catholics and Shiites). The second was the Council of Judges, made up of one judge from each sect, except for the Shiite sect, whereby the Sunni Sharia court rulings of the Hanafi sect decided their legal affairs. This council's task was to look into the lawsuits brought to it by the Kaymakam.

The two chambers were granted advisory and decision-making powers, while the Kaymakam was granted executive powers. As a whole, the powers of these councils were comprehensive as they dealt with all judicial, financial and administrative affairs, especially in affairs related to determining and distributing taxes, looking into disputes, and the settlement and resolution of complaints.

However, the process of 'nomination' of members of this representative council fell short of the ideals at the core of the principle of representation. The Druze sheikhs would nominate the Druze member, Bishops the Christian members, and the governor of Sidon the Sunni and Shiite members. The Kaymakam and the members of the mentioned council also participated in the nomination process. This is how the Kaymakam system merged religion with politics, where they became so intertwined that the confessional political system was firmly established.

Religious aspects and Shekib Effendi's confessional arrangements—especially the establishment of sectarian representative councils—constituted the base of this system. Religious leaders would choose the members of the councils, which required the inclusion of all the sects in the entire representative and legislative councils. This process engulfed the political, administrative and even judicial future of Lebanon

with a hazardous state[7]. The Kaymakam system introduced new forms of representation fraught with woes and sedition.

c- The Mutasarrifate System

In the 1861 'RèglementOrganique', Mount Lebanon became a semi-autonomous Mutasarrifate under a non-Lebanese Christian Mutasarrif (governor) appointed by the Ottoman sultan, with the approval of the European powers. An administrative council of twelve members from the various religious communities in Lebanon assisted the Mutasarrif. Each of the six religious groups inhabiting the Lebanon (Maronites, Druzes, Sunni, Shi'a, Greek Orthodox and Catholics) elected two members to the council.

The Mutasarrifate system formed a turning point and a major historical milestone in the course of the evolution of the Lebanese political system in general, and specifically in terms of the legislative authority. The Mutasarrifate system—in all of its geographical, demographic and institutional aspects, along with the norms that it carried—formed the nucleus for the future of the Lebanese state.

The Mutasarrifate system instituted a number of practices and norms that nurtured shyly within the Kaymakam system. This system stated loud and clear that it was a sectarian system. Indeed, the representative system grew more consolidated in the Mutasarrifate, and the core of a modern day legislative institution emerged then; however, its evolution occurred alongside the consolidation of sectarianism; i.e., legalizing and institutionalizing the inclusion of sectarianism in the political system and its institutions.

Each body the Mutasarrifate system created was sectarian. The Mutasarrif was always a Christian; the administrative councils, the judicial councils, the directors of the administrations and the district governors, etc. all rested on the principle of

[7]This system is credited for its attempts to establish equality amongst the farmers and the feudalist Sheikhs, especially in terms of imposing the same taxes on both. This led to a weakening of the feudalist system and the beginning of its end, which was eventually completed during the Mutasarrifate system. Nevertheless, feudalist families retained their economic, social, and even political-administrative influence.

equality between the six major sects in the initial stage, and later upon these sects' proportionality within the general population of Lebanon. However, this was not based on the numerical proportion of each sect, but on the relative level of each sect's 'influence'; i.e., the influence of each sect on Mount Lebanon's interests and administrative affairs, always with a "bias towards the Maronite sect above all others".[8]

After three years of trial, the first Mutasarrif, Daoud Pasha, came to realize the negative aspects of the 1861 protocol[9], especially its bright sectarian dimensions. When it was time to reconsider the protocol, he was summoned to Astana to discuss with his government and the Ambassadors of the five great nations[10], which aspects of the system were to be retained, and which were to be adopted. His agenda comprised a list of all the aspects of the system, which had fueled sectarianism and had constituted obstacles to the smooth running of administrative affairs. He suggested amending or canceling these items.

Of course, Daoud did not aim to abolish sectarianism. Instead, he was attempting to make the process of ruling Lebanon easier and less seditious. He relayed to those that were present in the meetings the resentment that he had felt "amongst certain Maronite circles as a result of the equality in representation amongst all of the sects within the administrative council"[11], thus suggesting to reconsider this issue. His request was accepted, and thus representation transformed to a non-equal quota basis[12].

[8]Dr.Rabbat, n 6, p. 126

[9] Issued in the form of a Sultan order on 9 June 1861.

[10]Britain, France, Russia, Prussia, and Austria.

[11]Rustom, Assad, *Lebanon during the Mutasarrifate Era*, Beirut: Dar Annahar for Publishing, 1973, p 56.

[12]This historic amendment is perhaps one of the main reasons for consolidating the sectarian quota system within the system of rule in Lebanon, especially in legislative authority. It is true that the sects had all been represented in government, however this was an equally split representation irrespective of their respective influence or numbers, which guaranteed their rights and thus representation. Relative distribution of power (numerically or influence based) meant the distribution of rule, along with its powers and privileges amongst the sects based on their importance. This is where the problem laid, the virus of the dominance of one sect over the others, along with national backwardness.

The first Mutasarrif system created three representative councils throughout Mount Lebanon, and these were Council of Sects' Representatives, Greater Administrative Council, and Greater Judicial Council. This is in addition to a number of other administrations that were established at the district level. What were the representative institutions established by the 1861 protocol, and how were they amended in the 1864 protocol[13]?

Alongside the Christian Mutasarrif, who was appointed by the Sultan and directly answerable to the Sublime Porte[14], the 1861 protocol stipulated the establishment of a Council of Sects' Representatives, whereby "each element of the Mountain would be represented by a representative appointed by the elders and dignitaries of each sect". This council comprised six individuals, each representing one of the six main sects (a sort of Senate). Nevertheless, the council was cancelled because of the 1864 amendments.

The 'representative' council was stipulated in article two under the title of 'the Greater Administrative Council'. This council comprised twelve members: two to represent each of the sects. They were elected and appointed by the leaders of their respective sects, who did so through deliberations with the elders and dignitaries of the sects. The council was tasked with "distributing the expenses and checking the imports of the Mountain and its various sub-districts, in addition to studying the issues brought up by the Mutasarrif". The functions of this council did not change with the amendments of 1864. Nevertheless, the structure and method of forming the council did change in a manner indicating a lot of political sectarianism, which since then has become an integral part of legislative authority. With this amendment, the council continued to be composed of twelve members, based on the following shares: four Maronites, three Druze, two Roman Orthodox Christians, one Muslim Sunni, and one Shiite. The number of members raised to thirteen in 1912, after adding a seat for one

[13]Sultan order issued on 6 September 1864.

[14]Article 1 of the 1861 protocol. However, a special protocol followed this one, in which the Sublime Porte committed to negotiate with the ambassadors to fill the Mutasarrif position three months prior to the end of his term.

Maronite member to represent Deir Al Qamar[15]. A third of the council members were subject to renewal every two years. The election of the members of the council was through indirect general elections, whereby the Sheikhs of the villages within each province[16] voted for these members. The inhabitants, in turn, voted for these Sheikhs. The amendments of 1912 adopted the method of secondary delegates. The amendments added a rate of one delegate for every 100 constituents to the village Sheikhs during election times.

Though the system stipulated periodical change of a third of the members of the council, it did not stipulate changing the village Sheikhs who were tasked with electing the members. This led to deeply entrenching the Sheikhs in their positions and gradually forming a rift between them and actual public opinion. In most cases, the Sheikhs ended up re-electing the same members. This all resulted in the council stagnating, with the same faces being reelected, and limiting representation to influential people and the feudal families.[17]

The members of council would elect a 'Secretary' for the Administrative Council from amongst themselves, who always had to be a Christian Maronite[18]. The protocol did not designate any special powers granted to the secretary. Furthermore, the secretary was not the head of the council as this privilege was reserved for the Mutasarrif. Nevertheless, the secretary would carry out the Mutasarrif's functions on his behalf, in the event of his absence from the country or his sudden death.[19]

The new protocol simplified the administrative hierarchy in addition to the hierarchy of legislative institutions. The first protocol divided the Mountain into six directorates, each of which was managed by a director (governor). The Mutasarrif

[15] I was unable to validate some of the references, which claimed a fourth Druze seat was added in exchange for this addition. What actually happened with this amendment was that the election of a Druze member on behalf of Jizeen was transferred to Al Chouf; i.e., a Druze seat was added in Al Chouf however one Druze seat was cancelled in Jizeen.

[16] This is a non-sectarian election to sectarian designated seats, as is the situation today.

[17] In this regards, review Michel Murcos, History of the life of Elections in Lebanon, 1843 – 1970, distributed by Orient Company for Publishing and Distribution, 1970, pgs 25 – 26.

[18]For the very first time, and for a very short period in 1862, the council was presided over by the Druze member, Said BekTalhouq, and from this date onwards until 1915, it was presided over by Maronite members.

[19] Some see this point as bearing the first historical roots for assigning the top position in politics to a Maronite Christian.

appointed these directors from the dominant sect, whether this was in terms of the number of inhabitants affiliated to the sect, based on numerical majority or based on the sect that owned the greater amount of properties (article 3) A local administrative body, made up of three to six members, representing the people and properties in the directorate assisted these directors (article 4). Each directorate was divided into towns led by a 'worker' appointed by the Mutasarrif at the recommendation of the director. These towns were made of "homogeneous groups from within the population as much as was possible". In turn, the towns were divided into groups of 500 men at the least. A Sheikh led each group or village. The people elect the Sheikh and the Mutasarrif appoint him (article 5). Furthermore, to add to the sectarian dimension, article 5 stipulated that each sect of a necessary number within multi sectarian towns or villages had the right to its own special Sheikh whose main function was to deal exclusively with the affairs of the people from his own sect.

The second protocol divided the mountain into seven provinces, towns and villages. Seven administrative directors, who assumed post by elections (and replaced at a later stage by Kaymakams), undertook the administration of each province. However, the directors were also elected by "the members of the dominant sects based either on population or properties" (article 3), leading to a decline in representative democracy and a retreat from the right of general voting down to a limited voting right restricted to specific classes within society. This was only at the level of the Kaymakam, whereas the village sheikh continued to be voted for by the villagers. The district/town director continued to be appointed by the Mutasarrif based on the proposal of the province director. The local administrative council was cancelled (at the provincial level), as was the Council of Sect Deputies, which had originally been established by the first protocol.

The judiciary was reorganized, whereby the village sheikhs were granted powers to act as 'justice of the peace' in specific cases. Three courts of the first level were established in the Mountain. Each one of these courts composed of a judge and a deputy, both of whom were appointed by the Mutasarrif, in addition to six formal prosecutors chosen by their respective sects. A 'greater judiciary council' was also

established at the Mutasarrifate level, and composed of six judges appointed by the Mutasarrif from amongst the six main sects, along with six prosecutors, one for each sect. An umpire appointed by the Mutasarrif[20], headed the judiciary council.

At the same time, the administrative and representative processes were moving forward in the provinces that were seceded from the Emirate of Lebanon after its fall. The 1864 state law stipulated the creation of a greater administrative council within each state, with each council to be headed by a governor. The council members were elected by the inhabitants of each sinjak/administrative district at a rate of four for each sinjak. Two of these members were Muslims and two were non-Muslims. Another administrative council was formed, made up of appointed members and four representatives of the people, two of which were Muslim inhabitants of the state, and two were non-Muslim inhabitants.

d- Direct Rule and Transitional Phase

In this direction, the system of government went on for a little over 60 years. This was how the 'representative process' was practiced—and I do not use the word 'legislative' but with a great deal of caution—which was not fully void of democracy. This democracy was limited and distorted in comparison to modern day standards, due to its heavy reliance on sectarian consideration instead of national concerns, in addition to its attempt to represent the sects and their interests instead of the people and their ambitions.

On the other hand, the Mutasarrifate system led to the end of the feudal system, after it had started to wither with the Kaymakam's. Though the feudal system ended as an institution and way of ruling, along with the privileges that came with it, feudalism remained in terms of influence and effect. The feudal families resisted with all their might and influence, and eventually survived after adapting to the newly

[20]Consequently, the judiciary was characterized as sectarian and independent. The act of selecting judges by their respective sects bolstered their sense of independence in the face of the Mutasarrifate; however, this gave them a sectarian nature. Their independence was increased following the amendment to the new protocol, which had stated, "all of the umpires and judges are considered employees…" (Article 12, 1861) to "all the umpires should be employees…" (Article 11, 1864). Hence, judges were no longer considered as employees, which was a courageous step, forming a precedent.

instated systems. They moved from control over lands and properties to that to influence over administrative affairs, and from these affairs, they moved into the world of politics. The feudalists were boosted and aided by the many attempts made by the Mutasarrifs and Kaymakams to appeal to them and to contain them by granting high positions of government to their dignitaries. The reason was to avoid any conflicts or disputes with the feudalists in order to consolidate the authority of the Kaymakams and Mutasarrifs.[21]

In October 1914, the Ottoman Empire entered the war alongside the German and Austrian Empires. From this date onwards, the privileges of Mount Lebanon were gradually withdrawn, thus cancelling Lebanon's independence and consolidating the direct rule of the Ottoman Empire over it. Under the command of Jamal Pasha, the Turkish army entered Mount Lebanon in November of the same year, and took the city of Aley as a center for their military command. The Turkish military set up customary courts and issued a number of death sentences against a large group of free Lebanese and Syrians.

On April 23, 1915, Jamal Pasha proceeded to dissolve the Administrative Council, accusing it of consorting with the allied nations. He also accused the council members of attempting to open channels of communication with the consuls of these nations. He, therefore, exiled a number of these members including the Head of the Council Habib Pasha Al Saad. In an unexpected move, Jamal Pasha established a new administrative council; however, there were no elections involved, rather he himself appointed the members.[22] It is important to note that in spite of all the exceptional circumstances that were taking place at that stage, Jamal still took into consideration the same proportionate sectarian distributions that had existed in the

[21]This is what the first Mutasarrif, Daoud Pasha did. He surrounded himself with an entourage of Emirs and Sheikhs. His secretary general was Emir FendiChehab, the Head of the Grand Judiciary Council was Emir Mansour Abi Lama, and the Commander of the Lebanese Regiment was Emir Said Saad Aldine Chehab. The Kaymakams were as follows: Keserwan and Batroun: Emir Majid Chehab, Al Koura: Emir Hasan Chehab, who converted to Orthodox Christianity for this purpose, Al Matin: Emir Murad Shadid Abi Lama, Al Chouf: Emir Melhem Arslan, Jizeen: Sheikh Qaadan Al Khazen (Dr. Assad Rustom, op. cit., pg 50). This also applied to the financial and administrative positions throughout the entire Mutasarrifate.

[22]Faris Saade ensures that elections did occur; it was a staged election with nominees being those who were planned to be appointed.

dissolved council. Is it possible that sectarian considerations were stronger than the exceptional circumstances imposed by a global war?

On June 5, the MutasarrifOhansQuyumjian resigned[23], and the Turkish government appointed one of its senior Turkish Muslim officials as Mutasarrif (Ali Munif). Consequently, Lebanon came under the direct rule of Astana. In order to consolidate this sovereignty over Lebanon, the Mutasarrif appointed three Lebanese as members in the Ottoman Council of Envoys[24].

Just as the Ottoman Empire had entered into the war in the month of October, it was defeated in the same month of 1918, marking the end of a mammoth empire whose geographical borders had spread over three continents. The empire had included an inexplicable number of people, in addition to a large number of ethnicities and languages. As such, the Turkish era in the Arab territories ended.

What ensued can be described as a period of chaos. Administrations were established, only to be dissolved days after. Conflicts arose between the allies of the past and enemies of the post-war era over expanding power and control. General Allenby divided the territories and placed them under the control of the French and British occupations whose interests were not necessarily compatible. The government of Prince Faisal in Damascus attempted to annex Beirut and Mount Lebanon to the Arab state, which was being established at the time. Faisal's government announced the establishment of an Arab government, and the revival of the Mutasarrifate in Mount Lebanon. It appointed the Head of the Administrative Council Habib Pasha Al Saad, who returned from exile, as the ruler of Lebanon and the Head of the Government. This government was the same administrative council,

[23]He did so to preempt the decision to remove him. He was of Armenian origin, and was undoubtedly distressed by the calamities and suffering that was inflicted on his ethnicity at the hands of a number Turkish and Kurdish gangs.

[24]These appointments were made under the pretext that war does not allow for holding elections. These appointees were Emir HarethChehab on behalf of the Maronites, Emir Adel Arslan on behalf of the Druze, and Rashid Al Rami on behalf of the Orthodox Christians.

which had previously been dissolved. However, it was reinstated under the sovereignty of the Arab State in Damascus, to which Habib Pasha swore allegiance[25].

Not all of this lasted. The Syrian Arab Kingdom, whose constitution and vision of its prospected king foretold what would have been a modern and organized state, did not survive, either, for more than two years, as it eventually succumbed to the never-ending colonial expansionist ambitions. Without blinking an eye, the occupation reneged on its commitments, and the Kingdom fell.

It is worth mentioning that the administrative council survived all the turbulence and chaos from the period spanning between direct Turkish rules, the transitional period, into the Arab rule and then the French mandate rule. It was able to impose itself as the representative of Mount Lebanon during the Versailles Peace Conference, where it also claimed the representation of 'Lebanon and the provinces which had seceded from it', 'the Lebanese nation' and the 'Lebanese people', as was declared in its statements and decisions at the time. It was the council, which formed the first Lebanese delegation to the Paris Peace Conference in order to demand the independence of Lebanon[26]. Even after Al Saad was removed from his position as the Head of the Arab government, he remained the Head of the Administrative Council, which continued until July 12, 1920 when General Gouraud dissolved the Council in response to its famous decision taken on July 10 demanding the full independence of Lebanon and the rejection of the French occupation. The Council members were arrested on the same day, while they were on their way to Damascus to negotiate with Prince Faisal. They were consequently prosecuted and exiled.

Article 2 of the said resolution (of dissolution) issued by Gouraud declared that pending the preparation of a new political law for Lebanon which would enable

[25]This occurred shortly after the two Emirs MalekChehab and Adel Arslan took over the management of affair in the mountain. It is based on general consensus amongst the employees and Sheikhs of the Mountain. They hastened to convene a meeting at BaabdaSarrail on the 2nd of October, 1918, which was a result of the Mutasarrif withdrawing from the Mountain, fearing the spread of chaos…. once again the role of sectarianism emerged, as it was not by chance the management of the affairs of the Mountain were assigned to a Maronite and a Druze at such a critical moment (regarding this point, review Dr.Rustom, op. cit., pgs 208 – 209).

[26]The delegation included three council members; DaoudAmmoun, who headed the delegation, Mahmoud Jumblatt and Abdel Halim Al Hajjar, and four non-council members; Emile Edde, Ibrahim Abu Khater, Tamer Hamadeh, and Abdou Al Khoury.

elections, a temporary committee was to be established, with the same authorities. I could not find any references related to this committee, and it is highly likely that it was not appointed at all. At the time, preparations were underway to issue a number of serious historical decisions, which changed the fate of Lebanon, in addition to the events within its neighboring countries. These decisions only took a little over a month to be declared.

On August 2, Gouraud issued decree no 299, annexing the districts of Hassbaya, Rachaya, Baalbek and Maallaka (Zahle/Beqaa) to Lebanon, in terms of its administrative system. On August 31, Gouraud issued three new resolutions[27]. The first was the famous resolution number 318, upon which the Lebanese state was established and had its geographical borders specified. These borders have remained until today. The state was known as the 'State of Greater Lebanon'. The second resolution was number 320, and stipulated the dissolution of Beirut Administrative Governorate along with all of its local administrative directorates. The third resolution number 321 stipulated the cancellation of the 'Independent' administrative region of Mount Lebanon along with its systems and directorates.

2- Between Establishing the State and Declaring Constitution

During this stage, the legislative authority went through three somewhat similar forms. These forms were the Administrative Committee, the First Representative Council, and the Second Representative Council.

a- The Administrative Committee

The State of Greater Lebanon was declared on September 1, 1920[28]. An important milestone was registered in the pages of history, and experiencing and living the political, constitutional, social, economic and—in particular—representative-legislative consequences of it are felt to this very day. After this

[27] *The Official Gazette* 1920, second edition.

[28] In a sarcastic manner, Dr. Edmond Rabbat states that the declaration took place during "an official reception with memories of the Phoenicians, Greeks and Romans scattered throughout, without any mention of the Arab era which followed…." n 6,.p 337

historical declaration and on the very same day, resolution number 336[29] was issued (pertaining to the organization of the State of Greater Lebanon), which was a form of constitution for the newly born state.

The resolution specified the administrative divisions throughout the state, and declared Beirut as the capital of Greater Lebanon. Executive authority was entrusted to a senior French official appointed by the High Commissioner. This official was given the title of Governor of Greater Lebanon (article 6). In another indicator of the lack of sovereignty of the state, this resolution did not mention anything about a legislative authority, nor did it even mention a representative authority. It only declared in its 16th article the establishment of a 15- member council that was named 'the Administrative Committee for Greater Lebanon'. The High Commissioner was responsible for appointing these 15 members from, once again, amongst the six main sects, and based on the following shares: six Maronites[30], three Orthodox Christians, two Sunni Muslims, two Shiite Muslims, one Druze, and one Catholic Christian. On September 22, 1920, Resolution 369 added two extra Sunni seats "after delving further into the results of the 1913 population consensus", as stipulated in the ground of the resolution, thus making the number of members 17. This committee was only granted advisory powers. "It was granted the right to voice its opinions in an advisory capacity, and it was necessary to invite it to offer its opinions on views related to legislative matters and regulations, setting the budget for the nation and deciding on the new taxes, fees or monopolies" (articles 16). These powers are broad and similar to those of a modern day legislative authority. Nevertheless, they remained to be pointless as long as the committee role was limited to a strictly advisory one and was considered non- binding.

The new system kept the legislative authority of the nation in the hands of the High Commissioner, who exercised this power by issuing decisions individually. The High Commissioner himself also held the reigns of executive authority, even though

[29] *Official Gazette* 1920, 2nd edition

[30] One of the seats representing Beirut was designated for "the Maronites or for the Christian minorities", and later "became designated for the Maronites who represented the minorities" (Amendment of 22nd of September, 1920)

this was indirect. He exercised "all of the powers of the French Republic in Syria and Lebanon, and was responsible for securing and strengthening the French Government's Mandate rule, as he was the only intermediary between the local governments and the Western consuls.[31] In summary, he was the ruling dictator.

b- The First Representative Council

It is understood that this situation did not suit the Lebanese, as they had grown accustomed throughout history to manage their own affairs, or at least to have a say in managing their own affairs. They had exercised representation and elections throughout various stages and eras. The French authorities grew aware of this issue and the importance of granting the Lebanese people a slightly wider margin of representation and exercising their rights.

On March 8, 1922, the Deputy High Commissioner issued Resolution 1304, which stipulated the cancellation of the Administrative Committee. This was followed by a resolution of the same number on the same date, stipulating the establishment of a body, which was way short of being a legislative authority[32]. Article 3 of the resolution provided for the establishment of an elected body named 'the Representative Council for Greater Lebanon'[33]. Members of this four-year term council were electable by public vote on two levels, and distributed, through a decision issued by the governor, under two categories: one based on sectarian considerations, and the other on geographical considerations.

The geographical distribution of the members was used to take into account the demographic makeup of the different provinces that Greater Lebanon constituted. Resolution 1307 dated April 10, 1922[34] (electing members of the representative

[31]Article 2 of the President of the French Republic decree (powers of the High Commissioner) dated 23rd of November, 1920 – *Official Gazette 30th of November, 1920*.

[32] This resolution is considered one of the important founding resolutions, the effects of which remain to this day, side by side with the previously mentioned resolution numbers 336, 1307 (election law), and 1240 related to distribution of council seats.

[33]Some references use the term "the parliamentary council", which carries the same meaning in this context.

[34]*Encyclopedia of Elections* الموسوعة الإنتخابية, previous reference, part 2, pgs 118 - 147

council) was considered to be an election law and remained in use until 1943, and after it had specified the number of council members by 30, adopted the electoral average for the distribution of council seats. This average is calculated by dividing the total number of voters by the number of council members to be elected. Each sect was given at least one delegate seat for each administratively independent city, or for each area, if the number of this sect within the city amounts to the stipulated election average (article 2).[35]

The sectarian distribution also adopted the average rule. However, there is no doubt that it also adopted the 'influence' rule. The Maronite sect was granted a third of overall seats, which was expected as the Maronite sect was reaping the fruits of the victory of its idea for an independent Greater Lebanon under the patronage of France[36]. The representative council was headed by a president who would be appointed through elections at the beginning of the council's term, and every year upon convening the October legislative session.[37] This would go on until the latest amendments that were agreed upon in the Saudi Arabia city of Taif.

The powers of this council were mostly advisory in nature, and were only of a decisive capacity in some very limited matters. The council was by no means, as I have previously mentioned, legislative, for the resolution, which stipulated its establishment did not grant it legislative functions in the first place. It only gave it the term 'representative' to indicate the nature and role that were desired and intended for it. The council has the right to "express its wishes which it deems as beneficial on all economic or general administrative matters, or on issues related to local interests" (article 43). Thus, there was no mention at all of political affairs because the council had no mandate to discuss or touch upon such affairs in one way or another. The members of council simply only had the right to ask the government

[35]Based upon this, the rule Trabeau issued resolution number 1240 on the 21st of March, 1922, distributing the seats as follows: 5 seats for Beirut, 1 seat for Tripoli, 8 seats for Mount Lebanon, 4 seats for North Lebanon, 6 seats for South Lebanon, and 6 seats of the Bekaa valley.

[36] The seats were distributed amongst the sects according to the following quotas (article 2 of the aforementioned resolution): 10 Maronites, 7 Sunnis, 5 Shiites, 4 Orthodox, 2 Druze, 1 Catholic, 1 for the minorities.

[37] Habib Basha Al Saad (Maronite) was elected as head of the council, and Dr. Halim BekKaddoura (Sunni) as his deputy. They were reelected in the October session. In 1923, NaoumLabki was elected as president of the council with Mohammad Al Mufti as his deputy. Emile Edde was elected as president and SobhiHaidar his deputy in 1924.

questions that were related to their council jurisdiction; i.e., questions related to the above-mentioned affairs. The government, in turn, reserved the right to decide either to answer or to 'delay' the answer indefinitely (article 6).

Legislatively, the governor of Greater Lebanon alone had the right to submit all draft proposals related to legislations (article 1). The governor would prepare the legislative texts, and then the representative councils would discuss and send them to the High Commissioner for ratification before being applicable. The discussions that take place within the council were no more than a series of "reports, wishes and suggestions" (article 19). It was prohibited to publish or declare any internal laws until after the council, in order for it "to express its opinion on them", had submitted them for review (article 36).

As for financial legislation, the council was tasked with discussing the budget prepared by the governor and then voting on it based on a report prepared by the council's finance committee (articles 26 and 27). It is important to note that the council enjoyed a very important power, which was that no new tax could be imposed nor was it permissible to increase taxes before obtaining the express approval of the council, provided that the budget balance was guaranteed (article 34). All of these financial powers were later waived in article 39, which stipulates that the High Commissioner "has the final say in setting the budget and initiates its execution based on a report presented by the governor".

In terms of the decision-making privileges that the council enjoyed, article 38 specifies that the council has the right to decide on specific matters such as building and maintaining roads, construction works, establishing public emergency institutes, pension funds and worker subsidies and few other.

c- The Second Representative Council

Before the first representative council had completed its first four-year term, General Sarrail issued Resolution 7, dated January 13, 1925, which declared the dissolution of the council. He did not explain the reasons for his decision, and was

not obliged to do so anyway; however, the dispute had become clear. Most members of the council did not agree with the way that Sarrail had imposed the appointment of the governor of Lebanon[38]. New elections were held in July 1925 resulting in the establishment of a second Representative Council[39]. It was the second council that was responsible for the creation of the constitution during its term, after discussing and giving its consent. This same council would also later transform into a founding assembly; consequently, it would constitutionally become a parliament after the constitution was promulgated in 1926.

The council relied on article 1 of the French mandate document. This article stipulated the necessity to involve 'local authorities' in the process of drafting a basic law (constitution) for Lebanon. Indeed, the council demanded the French occupation forces to immediately initiate the process and with its actual participation. Nevertheless, fearing an arousal of national patriotism amongst the members of the council, and in an attempt to guarantee the continuation of their influence and control, the French authorities did their best to avoid and delay the drafting of a constitution. Their excuse was that the term 'local authorities' did not necessarily mean the official-elected authorities. Instead, it meant individuals, bodies and spiritual and social authorities. Despite this, the council insisted on its view that it was the sole representative of the people, and that it had the express right to draft the constitution. During the session of October 17, the council voted in favor of a decision declaring itself as the representative of local authorities. It also demanded the French mandate to present it with a draft of the basic law, and mutually agree on enacting the constitution, as stipulated in article 1 of the mandate document.

Hence, the council elected 'a founding assembly' during the session of December 10, 1925[40]. Opinions differ about this phase. There are those who claim

[38]Most deputies, with the Lebanese behind them, desired an elected Lebanese president. Under pressure, Sarrail agreed, and issued resolution 3023-dated fifth of January, 1925. However, this was close to the method of appointing, whereby the council was to nominate three names, all of which were approved by the High Commissioner, and consequently, one of them would elected by the council.

[39]As a precedence, the second council composed of 30 members distributed geographically and based on sect with the same ratios. Moussa Daw was elected president and Omar Daouk his deputy.

[40]The assembly was made up of: Michel Chiha, Petro Trad, ChéblDamous, Omar Al Daouk, Fouad Arslan, Youssef Salem, GergiZouein, Rokoz Abu Nader, SobhiHaidar, Abboud Abdel Razzak, George Thabet, and Youssef Al Zein. FarisSaade

that the assembly, and therefore the council, did nothing but translate into Arabic the draft presented by the French mandate authorities. There are also those who claim that the council members did nothing but agree and place their stamp of approval on the draft, an opinion based on the sessions of the discussions of the constitution, and taking into consideration the speed of its adoption. On the other hand, various opinions claim that the council actually carried out very significant work in shaping the structure of the state and determining its future.

There is no doubt that the assembly did not draft the constitution on its own. It is true that the High Commissioner probably prepared and transferred the draft constitution to the assembly. It is also perhaps the same draft that was prepared by the committee of Joseph Paul—Boncour at the French foreign ministry. However, it is certain that the Lebanese council studied, discussed and 'Lebanonized' the draft. It did so within the slim margin of freedom that it had to undermine and contradict the French dictatorship occupation on one hand, and the flattery of certain 'educated elite' and those with social and political influence with these authorities, on the other.

One certain thing is that had it not been for the insistence of the council, the French authorities would not have agreed to the establishment of an assembly to discuss study and consult on a draft constitution[41]. France was not dealing with an uneducated group of people; instead, it was dealing with capable representatives coming from highly educated and culturally rich backgrounds with a high level of national awareness. These representatives were able to use the opposition of the annexed areas as a weapon to obtain compromises from the mandate authorities[42]. Had it been true that the committee members had no views at all, or that the constitution was set in accordance to the desires of the French authorities, the

describes in his Encyclopedia of Elections that the members elected Michel Chiha as president and Petro Trad as rapporteur. However, other sources (Rabbat, Baaklini, Al Khatib) state that the head of the assembly was the head of the council, Moussa Namour. It also seems from the records that the assembly elected CheblDammous as rapporteur, not Petro Trad. Most likely, this wide assembly formed a smaller assembly from its members, to prepare the draft, composed of Michel Chiha (likely its president), Petro Trad, and CheblDamous. Dr.Abdo Baaklini states that the smaller committee was established before the enlarged one.

[41]The committee drew up a questionnaire composing of 12 questions revolving around the system of rule, structure of government and its responsibilities. It is attention worthy that most of these questions were about parliament.

[42]Abdo Baaklini, *Legislative and Political Development: Lebanon 1842 – 1972,* Durham, N. Carolina: Duke University Press, 1976, pgs 73, 76, 90

constitution should have logically granted wider powers to the head of the executive authority, which was then under the influence and control of the Mandate. Furthermore, the powers of the representatives would have been largely curtailed and nothing more than a sham. There was nothing to prevent the French from doing this back then. The constitution was commonly known to be nothing like this[43], prompting the occupation to work diligently to amend it and grant wider powers to the executive authorities. These attempts were made over and over again[44].

3- Stages of Evolution Since the Birth of Constitution

On Sunday May 23, 1926[45], the High Commissioner Henry De Jouvenel who was the representative of the French occupation in Syria and Lebanon enacted the Lebanese constitution. I do not intend to discuss details of the content of the constitution; instead, our intention is to discuss the history of the legislative authority.

a- Legislature at the Birth of Constitution

The constitution assigned this authority, named 'legislating authority', to two bodies: the Senate and the House of Representatives (or Council of Deputies - article 16). The Senate was made up of 16 members distributed amongst the sects in accordance with paragraph 96 as follows: 5 Maronites, 3 Sunnis, 3 Shiites, 2 Orthodox, 1 Catholic, 1 Druze and 1 minority. The Prime Minister[46] was tasked with appointing 7 of these members after taking into consideration the ministers' views.

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[43]Baaklini states that the provisions of the constitution were drafted by lawmakers that were full of scepticism and even hostile to the concept of powerful executive authority that could be used as a tool by mandate authorities. They were therefore able to enact a constitution that established a political system with a formal president and a strong legislative branch. The delegates of the annexed areas realized that the president was to be a Maronite for an unspecified period…and therefore the constitution created a presidency under control of the legislative branch (he had no financial powers, his term was shortened to three years, and his powers to dissolve parliament were very constrained….) op. cit. pg 66 and pg 90.

[44] In a later book by Dr. Abdo Baaklini, he goes further than what he has said in previous books, stating that the constitution was prepared and enacted by the representative council. He stated that "fearing any negative reactions from the members appointed by the League of Nations, charged with overseeing the work of the mandate authorities, France requested a French parliamentary committee to decide on the right of the representative council to prepare the constitution. The committee's decision was in favour of the council, and accordingly the council acted as a constituent body and established and enacted the 1926 constitution. See Baaklini Abdo, Denoueux Guilain and Springborg Robert, *Legislative Politics in the Arab World, The Resurgence of Democratic Institutions,* Boulder Co: Lynne Reinner Publishers, 1999, p.81.

[45]Official gazette 1926, edition 1984.

[46]He is the head of the procedural authority; i.e., The President of the Republic, not the Prime Minister.

The remaining members had to undergo election process. All These members had a term of six years, with the possibility of reappointment or reelection. The Senate elected its president for a one-year term at the beginning of the October session.

In order to strengthen its control over the newly born council, and guarantee its direction from its inception, article 98 stated that "in order to enable the immediate enactment of this constitution, and to ensure its full implementation, His Excellency, the High Commissioner of the French Republic, is to be granted the right to appoint the first Senate president …".[47]

The powers of Senate and its counterpart, the House of Representatives, were equal, though the scales slightly tipped in favor of the latter. The President of the Republic and the House of Representatives possessed the right to propose laws, which was not within the authority of the Senate. The Senate, however, did have the same right as the House of Representatives to propose amendments to the constitution (articles 76 and 77).

In any case, no law was to be published unless it was approved by both chambers. However, the laws enacted by the House of Representatives in agreement with the government did not have to be submitted to the Senate unless the Senate specifically requested this. As for financial laws, these had to be submitted to the House of Representatives as a first step.

If the process of bringing charges against the president and the ministers was only possible through the House of Representatives, it is worthy of attention that bringing up the issue of ministerial accountability—which was individual—had to be done through both councils.[48] It is important to note that the 'dissolution' principle

[47] To enforce this article, Henri De Jouvenel issued resolution number 305. on the 24th of May, 1926, the following members to the Senate were appointed: Albert Kashou, Youssef Namour, Habib Basha Al Saad, Youssef Estefan, Emile Edi (Maronite), Mohammad Al Jisr, Abdullah Bayham, Sheikh Mohammad Al Kisti (Sunni), Hajj Hsein Al Zein, IbrahmHaidar (Shiite), NakhlaToueni, GebranNahas (Orthodox), Sami Arslan (Druze), Salim Najjar (Catholic) and AyoubThabet (Evangelical minority).

[48] Article 66 stipulated that all ministers should bear individual responsibility for their own actions in front of both councils. Article 68 stipulated that if one of the councils decides to withdraw confidence for a minister, the minister must offer his resignation.

owned by the President of the Republic was only applicable to the House of Representatives.

Article 24 of the constitution consolidated the method of electing the House of Representatives in accordance to Resolution 1307 dated March 8, 1922 and Resolution 1240, dated March 21, 1922, upon which the first and second representative councils had been elected and appointed. Moreover, article 97 of the constitution stated, "The current Council of Deputies (the second representative council) shall continue carrying out its work after approving the constitution, until its term has ended, and it shall be titled Chamber of Deputies".

Consequently, the body was transformed from a representative council into a Chamber of Deputies (parliament), made up of 30 representatives.[49] This chamber constituted one of the two chambers of the first legislative authority in the history of Lebanon.

On May 26, both chambers of the legislative authority convened a joint session or a 'parliamentary congress' as described by the constitution, to elect the first President of the Lebanese Republic. The Director General of the Ministry of Justice Charles Debbas was overwhelmingly elected as president, which strengthened speculation surrounding the influential role played by the High Commission and its instruments in this regard.

The Chamber of Deputies (parliament) enjoyed a very good position within the new system's hierarchy, and amongst its various institutions. Not only did it have control over every aspect of the legislative process (proposing, discussion and enactment of legislations), along with the right to amend the constitution[50], but it also enjoyed a clear right to monitor the government and question its ministers

[49]We do not see how Dr.Rabbat (n 6. p 368) and a number of various authors who seem to have quoted him, saw that the council was made up of 40 members. For further confirmation, resolution 3205-dated 13th of July, 1925, reviews the election results of second representative council, and it consisted of only 30 names. No amendments to the number of members were made after this, nor was there any other election, nor were any laws passed.

[50]Noting that legislation affecting state relations and its foreign policies, in addition to its national economics (which was linked to the French at the time), along with all defense policies, were all out of reach –not by law but as a matter of reality– of the legislative authorities during the entire French mandate rule.

individually. Moreover, it also had the power, though limited by certain conditions, to level charges against the President of the Republic (Impeachment).

On the other hand, the executive authority (the government) did not have wide powers to influence the parliament. The only weapon it had in its hands, the dissolution power[51], was conditional on the approval of three quarters of the Senate and on the fulfillment of three difficult conditions, which makes dissolution almost impossible to invoke.[52]

b- Amendments and Suspending the Constitution

The fact that nationalistic and patriotic deputies dominated the Chamber of Deputies, and that this Chamber enjoyed vast powers, did not sit well with the mandate authorities. Moreover, the deep-seated disaccord between the Chamber and the Senate (the other chamber of the legislature), which was entirely appointed by the head of the French mandate, and the incapacity of the executive authority, have all augmented the situation. Ultimately, the mandate authorities pushed the government to propose constitution amendments. Both chambers, which were subjected to immense pressure and threats, approved the amendments that abolished the Senate and strengthened the powers of the President and limited some of the powers of the legislature.

i- The 1927 Amendments

On October 17, 1927, President Charles Debbas issued a law amending the Lebanese constitution. Article 1 of this law abolished the Senate by amending article 16 of the constitution to state that "legislative authority is to be assigned to one body, the Chamber of Deputies", which would consequently be made-up of elected members in addition to members appointed by the President, through a decree taken

[51]In addition to other less striking forms of pressure, such as the President's right to request a revision of the law, or to delay the convening of parliament for a period not exceeding a month….

[52]These conditions were as follows: 1- if parliament abstains from attending ordinary or extra ordinary sessions, despite calls by the President two times in a row, 2- If parliament rejects the budget bill in order to paralyze the government and prevent it from functioning. 3- If parliament takes decisions that would cause the country. Furthermore, it is not possible to dissolve parliament a second time for the same reason it was dissolved the first.

in the Council of Ministers. The number of these appointees was set at half of the elected members. In this way, the French authorities guaranteed—in their opinion—influence over a third of the parliament, thus avoiding any troubles and conflicts.

Senate merged with the Chamber of Deputies, in accordance with the article 51 of the law, forming the first 'appointed third' of the parliament in the history of the Lebanese legislatures[53]. The 'novelty' of appointing deputies to parliament continued until March 18, 1943 when General Catroux issued a resolution to abrogate this principle.

Further limiting the powers of parliament, its right to request an increase in funding during budgetary discussions was cancelled. On the other hand, collective ministerial solidarity was recognized, whereby accountability and responsibility became collective such that "all ministers are to be collectively held responsible in front of parliament for the consequences of the government's public policies, whereas they will individually bear responsibility for their own personal actions …" (article 34). The majority required in parliament to withdraw confidence from a minister was reduced from three quarters to two thirds. Combining the membership of parliament with that of a government (Parliamentarian-cum-Minister) was possible on the condition that the total number of parliamentarian ministers would be exactly equal to the absolute majority.[54]

As expected, article 58 bolstered the President's powers. This article granted the President the right to issue laws through presidential decrees.[55] This was another

[53]In fact, after the amendment, the appointed part formed a little over a third, taking into consideration the number of senators was 16 and the number of delegates was 30. On the day that followed the merging, the Chamber of Deputies held a session during which they elected Sheikh Mohammad Al Jisr as President of the Parliament and Habib Basha Al Saad as his deputy.

[54]In a poorly worded and inaccurate manner, article 5 of the amendment law amended article 28 of the constitution to become as follows: "it is possible to combine parliamentarian and ministerial functions, as long as the total number of ministers that are selected from parliament is neither less nor more than the absolute parliamentary majority. Absolute majority in the case means half plus one". Based on this, the number of parliamentary ministers within the next government formed after this amendment (consisted of three members) was supposed to have been one and a half ministers, or three and a half in the second government, which consisted of five members.

[55]This right was structured in the form of a decree to implement a bill or a decree to put a bill into effect; i.e., it embraced the feature of a law. Article 32 of the amendment mentioned this. It replaced the provisions of article 58 as follows: "every bill deemed 'urgent' by the government and approved by the Council of Ministers may be enforced and enacted by the President through a Presidential decree after the passage of 40 days from its referral after obtaining approval of the Council of Ministers".

novelty leading to assigning legislative powers to the head of the executive because it was in direct contrast to article 19, which stipulated, "No law will be published unless ratified by parliament".

Consequently, the president enjoyed the authority to declare draft budgets through presidential decrees, and thus putting them into effect and implementation if non-ratified by parliament before the end of January. He also enjoyed the power to open new appropriations within the budget.

ii- The 1929 Amendments

These amendments did not reassure the mandate authorities, nor did they appease their fears. As the time for the 1929 parliamentary elections drew closer, these authorities grew aware of the wide spread nationalistic views that were opposed to their presence and policies. The French Mandate predicted the nature of the coming parliament and the difficulties it would face in controlling it. It therefore granted more and more powers to the President of the Republic (noting that the mandate authorities had secured his reelection for extra three years), in addition to further limiting the powers of parliament, and placing it at the mercy of the executive.

On May 8, 1929 during the final session convened by parliament and two months prior to the end of its term, the 1926 constitution was amended for the second time through the issuance of a constitutional amendment law. This amendment extended the president's term to become six years. It also gave him the ultimate freedom to appoint ministers, whether from within the parliament or from outside it, and without any limitations to the overall number. Even more importantly, it gave him the ultimate freedom to dissolve parliament without any preconditions or formalities, except for taking the decision with the approval of the Council of Ministers.

In return, parliament was able to obtain a few 'compromises' from the executive authority. The right to withdraw confidence was granted to each minister within ordinary and extraordinary sessions, after it had been confined to the ordinary

sessions. Article 69, which had stipulated a two- thirds quorum during the convening of sessions to withdraw confidence, was annulled. The quorum now became the same as that required for any regular session to be considered legally binding; i.e., more than half of the members.

iii- Suspending the First Constitution and the Provisional Arrangement

At the beginning of 1932, prior to the end of Charles Debbas's term as president, the competition over the presidential seat was heating up between many different figures. It eventually confined between Sheikh Mohammad Al Jissr (Sunni) and Sheikh Bechara Al Khoury (Maronite), with the odds clearly tilting in favor of Sheikh Al Jissr. It was a healthy and democratic competition; however, the French authorities interfered and spread the rumors that France would not accept a Muslim president over the Lebanese Republic[56]. It tried to dissuade Sheikh Jissr from his endeavors, and even tried—as a compromise—to have Charles Debbas reelected for a new term, but Debbas rejected the idea. When all of the mandate's attempts failed, it used the economic crisis as a pretext and suspended the constitution imposing its direct control over Lebanon.

On May 9, 1932, the High Commissioner Henry Ponsot issued resolution number 55/L.R[57], based on vague and confusing grounds (introductory). Its first article stated, "Implementation of the Lebanese constitution has been suspended with regards to organizing and functioning of the legislative and executive authorities". A Prime Minister, appointed by the High Commissioner and assisted by a council of directors of the public directorates,assumed the executive authority. Ponsot issued another resolution (number 56/L.R.) on the same day, in which he assigned 'Monsieur Charles Debbas', besides keeping his post as President, with the functions of Prime Minister. The High Commissioner completely took over the legislative authority.

[56]Some state that the French authorities promised the Maronite Patriarch that after the Orthodox Charles Debbas, who was elected in 1926 to avoid arousing suspicion and fear amongst the Muslim sects, the Presidency would be designated from then onwards to the Maronite sect.

[57]Official Gazette 1932, edition 2718.

At the end of 1933, Comte Damien De Martel was appointed as the new High Commissioner. He believed that the temporary situation must be amended, but only to be replaced with a new temporary situation[58]. On January 2, 1934, he issued resolution number 1, which was to regulate public authorities[59]. This resolution, which consisted of 49 articles, was in the form of an incomplete constitution structured according to De Martel's mood. Thus, and in contrast to what has been written and claimed by a great number of historians and constitutionalists, De Martel did not promulgate a new constitution, nor did he allow for the old one to be enacted again, rather he kept it suspended and issued new temporary arrangements.[60]

This resolution assigned procedural authorities to the appointed Prime Minister who would be given the title of President of the Republic. A State Secretary, accountable only to the President, and a 'government council' headed by the President, would assist the President of the Republic.[61] Legislative authority was assigned by the resolution to a parliament made up of 25 members, 18 of which were elected and 7 were appointed by a presidential decree.[62] The resolution gave the Parliament powers similar to those that were provided for in the 1926 constitution, and which were amended twice in 1927 and 1929. This was with the exception of one very important power, which was the power to monitor the government and withdraw confidence from it, whereby the new structure was void of any indication of such a prerogative.[63]

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[58]Encyclopaedia of Elections, الموسوعة الإنتخابية part three, pg. 435.

[59]Official Gazette 1934, edition 2916.

[60]The constitution was not released until 4 January 1937, after a decision by De Martel following the signing of the Lebanese – French treaty.

[61]The government council is made-up of public administration directors and the two highest-ranking judges in the judiciary.

[62]Auboire geographically distributed the elected seats, as per the decision on 3 January, as follows: 3 seats for Beirut, 5 seats for the North, 5 seats for the Mountain, 2 seats for the South, 3 seats for the Beqaa. In sectarian terms, 5 seats for the Maronites, 4 for the Sunnis, 3 for the Shiites, 2 for the Orthodox, 1 for the Druze, 1 for the Catholics, 1 for the Gregorian Armenians, and 1 for other minorities. The appointed delegates represented 2 for the Maronites, 1 Sunni, 1 Shiite, 1 Orthodox, 1 Catholic, and 1 Druze. It is worthy to note that Emile Edde, Bechara Al Khoury, and Charles Debbas were amongst the appointed delegates.

[63]Contrary to what Dr.Rabbat stated (pg. 381) the council had the right to discuss the budget and vote on it. Article 30 (and the articles that follow) enshrines this right.

President Debbas submitted his resignation on the same day, and De Martel accepted it. Consequently, he appointed Habib Pasha Al Saad as President of the Republic for a term of one year, starting after electing parliament, and from the date, the office of the parliament is elected.[64] Abdullah Bayhom was appointed as State Secretary.

Elections were held in accordance to resolution number 2 issued by the High Commissioner on January 2, 1934. This resolution made the elections direct—by cancelling elections through delegates—and of the two phases.[65] This led to the election of a parliament the majority of which was in support of the French mandate. The parliament continued its term until July 24, 1937.[66]

Because of the protests, demonstrations and riots that characterized 1935, De Martel issued resolution number 114 L.R. on January 3, 1936, through which he gave back to parliament—now guaranteed to be in support of the Mandate—the right to elect the president. During the session of January 20, the parliament elected Emile Edde, the preferred candidate of the mandate authorities, as the President of the Republic. Edde consequently went on to appoint AyoubThabet as the State Secretary.

Following the signing of the 1936 treaty between Lebanon and France, and the exchange of a number of letters and annexed protocols, the High Commissioner issued resolution number 1/L.R, dated January 4, 1937. The resolution ordained the reinstatement of the suspended constitution since May 2, 1932, and the cancellation of the temporary structure (arrangements) provided for in resolution 1, dated January 2, 1934. On January 5, President Edde issued his first decree after receiving his full

[64]Resolution number 3 dated 2nd of January, 1934. De Martel appointed PrevaAuboire to temporarily carry out the tasks of Prime Minister until Al Saad could assume his functions (resolution number 4, dated 2nd of January, 1934). On 31 December 1934, resolution number 300/L.R. Was issued, extending the term of President Habib Al Saad until the end of January 1936.

[65]Official gazette 1934, edition 2916, and the Encyclopedia of Elections, part 4, pg 16 and the following pages.

[66]The parliament elected Charles Debbas as its president and Najib Osseiran as his deputy during the session of 30th of January 1934. After the resignation of Debbas (for reasons related to protocols), Petro Trad was appointed as his replacement and he was elected as president of parliament (Speaker). As evidence of the influence that the French mandate authorities had on the parliament, we refer to what was mentioned in the Ayoub Thabet's letter directed to the acting Speaker during the session to elect the Speaker. This letter preceded the elections, and stated, **"Please accept my excuse for not attending the session. I congratulate my colleague, Mr. Petro Trad, on winning the presidency (Speakership)".** (Encyclopedia of Election الموسوعة الإنتخابية, part 4, pg. 118). during the 1935 session, Emir Khalid Chehab was elected as Speaker and Najib Osseiran as his deputy.

powers, and appointed Mr. Kheireddine Al Ahdab as President of the Council of Ministers (Prime Minister). This created a precedent whereby the president would always be a Maronite and the Prime Minister a Sunni Muslim.

From this date onwards, an opposition parliamentary bloc from amongst the Christians was formed. The bloc was made up of numerous figures, and though it was not necessarily opposed to the French mandate, it was looking into the distant future and the internal realities of Lebanon and its broad environment. This group understood that Lebanon would not resurrect unless its people unite around common national objectives. They also realized that this would not be possible if certain portions of society were under foreign protection, nor by threatening with foreign intervention. The bloc consequently started to build bridges of trust with certain Muslim communities that, in their turn, had grown convinced of the idea of Lebanon as their final homeland. One of the most prominent Christian personalities was a Maronite 'Sheikh Bechara El Khoury', and of the Muslims was a Sunni 'Riyadh El Solh'.

El Khoury, who was an appointed parliamentarian, along with 12 other parliament members, brought down the government of Al Ahdab, by withdrawing confidence from it on July 24, 1937 before its parliament appearance. Consequently, President Edde issued a decree dissolving the parliament. "He resorted to the High Commissioner as his last refuge after he had been let down by the people, and both agreed to dissolve parliament".[67]

iv- Suspending the Second Constitution and Pre-Independence Arrangements

New elections were held in October 1937 after the High Commissioner issued a resolution on the 7th of the same month to increase the number of members of parliament to 42 elected and 21 appointed, thus making the total number 63.[68]

[67]Encyclopedia of Elections, previous reference.

[68]High Commissioner's resolution number 135 dated 7/10/1937. The resolution number 1254, dated 1/10/1937, issued by the President of the Republic, designated the distribution of seats on a geographical basis as follows: 6 seats for Beirut, 9

This parliament[69] witnessed frequent changes in governments that were formed, amended, voted down or resigned at a very high frequency. In some cases, these changes in governments were due to actual democratic process, such as opposing a minister in person, his policies or the bloc to which he was affiliated (this was before the existence of political parties in parliament). In other cases, these changes were due to interferences from the mandate authorities, through their proxies within parliament, in an attempt to exert pressure and impose their will.

On September 21, 1939, the High Commissioner, Gabrielle Puaux, issued the resolution number 246 that dissolved parliament (article 2) and suspended implementation of the constitutional articles related to the legislative and executive authorities (article 1). The President retained his position and powers to issue decrees that have the power of the law, based on proposals submitted by the State Secretary (article 2). The powers of the Prime Ministers and the ministers were assigned to the State Secretary, assisted by a French advisor, with both the Secretary and the advisor appointed by the High Commissioner (article 3)[70]. All of this was done under the pretext of military necessity imposed by the outbreak of World War II.

Thus, legislative and executive authorities mixed with each other, and once again, mandate authorities seized all powers. This led to the start of the 'rule of the advisors', indicating the seizure of all powers by the French advisor during this transitional period.

Paris eventually fell to Nazi Germany. Gabriel Puaux, who had represented France before its occupation, continued to represent it after occupation, as per his assignment by the Government of Marshal Petain in Vichy. General Dentz succeeded

seats for the North, 12 seats for Mount Lebanon, 8 seats for the South, 7 seats for the Bekaa valley. Furthermore, the shares of the sects from the seats were as follows: 20 seats for the Maronites, (7 appointed), 13 seats for the Sunnis, (4 were appointed), 11 seats for the Shiites, (3 appointed), 4 seats for the Druze (1 appointed), 7 seats for the Orthodox, (3 appointed), 4 seats for the Catholics (1 appointed), 2 Orthodox Armenians (1 appointed), and 2 seats for the minorities (1 appointed). The delegates were appointed by Presidential decree number 1368, dated 26/10/1937.

[69]Petro Trad was Speaker and NajibOsseiran was his deputy, as was the case in the 1938 session.

[70]On the same day, Puaux issued three resolutions, the first being 247/L. R, which specified the functions that the President of the Republic must carry out. The second was 248/L. R, which appointed Abdullah Bayhom as State Secretary. The third was 249/L.R. that appointed Monsieur Chauflere, the retired governor of the French colonies, as advisor to the State Secretary.

him by at the end of 1940, representing occupied France. It was to him that president Edde and State Secretary Bayhom handed their resignations because of the rude interferences and expropriation of powers they experienced at the hands of the French advisors.

Dentz consequently assigned both the powers of the President of the Republic and the Secretary to the commander of the armed forces in Lebanon, General Arlabosse. The Prime Minister, appointed by the High Commissioner, assumed the charge of Executive authority. The Prime Minister was given the right to issue decrees that have the power of the law, provided that "laws which were relevant to the implementation of France's international obligations in Lebanon are only to be passed after being approved by High Commissioner" (resolution number 80/L.R, April 9, 1941)[71].

Nevertheless, the mandate rule of the Vichy Government did not last for long, whereby the British army occupied Lebanon and Syria. Dentz, along with his rule, left Lebanon and General Catroux, in his capacity as the General Commissioner of France, replaced him. It was not long before General Catroux declared the independence of Lebanon on November 26, 1941[72]. This declaration was made at a massive celebration similar to that of the 'declaration of Greater Lebanon'. Al Nakkash was appointed President of the Republic and Bayhom Prime Minister.[73]

This period witnessed a clear conflict between Britain, which desired to implement its declaration of independence by establishing two nationalist governments in Syria and Lebanon in order to appease their people and gain their support, and 'Free' France that was looking to preserve its rights and interests.[74] Under pressure from the British government's Counselor Minister General Spears—

[71]Based on this resolution, Mr. Alfred Nakkash, President of the Court of Appeals, was appointed as "Prime Minister and President of the State of Lebanon", (81/L.R., 9 April 1941). The following day, Mr. Nakkash appointed Mr. Ahmad Al Daouk as Deputy President of the Council of Secretaries of State.

[72]Because of the letters exchange between General Catroux and Nakkash, Catroux declared the independence of Lebanon. This was the second declaration, as Catroux had previously declared the independence of Lebanon in June of the same year when British troops, with the support of the Free France forces started to attack Syria and Lebanon.

[73]Succeeded by Sami Al Solh 8 months later.

[74]See Rabbat, n 6, p. 415 and after.

along with popular discontent with the French authorities who had worked to empty the declaration of independence from its content, coupled with movements of various politicians and their clear bias towards British policies and its representatives[75]—General Catroux issued the resolution number 129/FC on March 18, 1943. This resolution ordained the reinstatement of the 1926 constitution[76], after amending parts of it, the most important of which was abrogating the principle of appointing parliamentarians, making all parliament members elected.

Two other resolutions were issued on the same day: the first was numbered 130/FC, organizing constitutional authorities temporarily until the election of a parliament that would then elect a president for the republic. The first resolution also assigned the executive authority to the president of the state—head of the government—who was appointed by the High Commissioner, assisted by two ministers of state. The head of state was given legislative authorities to issue legally binding decrees. The second resolution number 131/FC appointed Dr. AyoubThabet as President of the State—Head of the Government of the Republic of Lebanon.[77]

Thabet carried out a sectarian policy, which irritated and aroused the anger of the Muslim sects. His failed policies, which aimed to give the Christians the upper hand in the administration and politics, was reflected in the issuance of resolution number 49/A.C on June 17, 1943.[78] The resolution distributed parliamentary seats based on 32 for the Christian sects and 22 for the Muslim sects[79]. This policy fueled the fires of sectarianism and opened up wounds that had not fully healed. A number of gatherings were held, followed by counter gatherings, all of which revolved around sectarian issues and ended up poisoning and polluting the atmosphere in the country.

[75]The most prominent amongst these faces was Camille Chamoun, and to a lesser extent, Bechara Al Khoury.

[76]The amendment to this resolution on 19March stipulated the reinstating of constitution the same day that a parliament is elected.

[77]The following day, Thabet issued a decree to appoint Emir Khalid Chehab and Mr. Jawad Boulos as State Ministers. Consequently, the High Commissioner was able to discharge the two leaders Al Nakkash and Al Solh without having to issue a resolution.

[78]Official Gazette 1943, edition 4086

[79]Distributed as follows: 18 Maronites, 7 Orthodox, 3 Catholics, 2 Armenian Orthodox, 2 minorities, 10 Sunnis, 9 Shiites, and 3 Druze.

General Spears' interference had the decisive effect. Thabet was removed from his position[80], and Petro Trad was appointed instead.[81]Trad made a statement directed to all Lebanese, through which he attempted to calm their anger and appease them, promising to issue a 'nationalism-based' resolution. Eventually, all parties accepted the compromise, though not with complete content. High Commissioner Jean Helleu[82] issued a resolution, stipulating the establishment of a parliament made up of 55 seats. The Christian sects were given 30 of these seats, and the Muslim sects were given 25; i.e., 5/6 ratio in favor of the Christians.[83] The 5/6 formula would dominate the political and constitutional life of Lebanon for half a century.

c- A Sophisticated Legislature (From Occupation to Independence)

Elections were carried out, and the first parliament since the 'declared' independence was formed. This parliament was made- up of an overwhelming majority of those supporting the revival of the constitution; i.e., supporters of the Constitutional Bloc led by Bechara El Khoury who had stood in stark opposition to the actions of the French Mandate and its representatives.

Glimpses of the National Pact began to appear. Bechara El Khoury built a number of bridges for dialogue and understanding with Arab countries and with Riyadh Al Solh who led pan-Arabists in Lebanon. This pact formed an unwritten constitution that paralleled the written constitution of 1926. The pact led to the election of Bechara Al Khoury as President of the Republic, during the first parliamentary session held on September 21, 1943[84]. Al Khoury, in turn, appointed Riyad Al Solh as Prime Minister, and both allocated seats of the first government after the independence to members of the six main sects.

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[80]Through a resolution issued by the French Ambassador and High Commissioner, Jean Helleu. The resolution number was 300/FC, dated 21 July 1943.

[81]Through resolution, 301/FC dated 21 July 1943, and Trad consequently appointed Abdullah Bayhom as his deputy.

[82]Resolution 312 dated 31 July 1943.

[83]The seats were distributed amongst the sects as follows: 18 Maronites, 6 Orthodox, 3 Catholics, 2 Armenian Orthodox, 1 minority, 11 Sunnis, 10 Shiites, and 4 Druze.

[84]SabriHamadeh was elected as Speaker and Nicolas Ghosn as his deputy in this session. This was another formula of the National Pact stipulating that the Speaker is to be a Shiite and his deputy is to be an Orthodox Christian.

This parliament played a unique role in the history of the young state and its new institutions. This parliament was the most committed to its promises for the Lebanese compared to previous parliaments, and perhaps compared to the future ones. It was the most genuine and enthusiastic in supporting the government, and in providing a cover for its sub-policies. This was, of course, all within the scope of their abilities (the government and the parliament), which were limited by the presence of the occupation, on one hand, and the complex nature of Lebanon's social makeup and the historical irreversible accumulations, on the other.

In line with its program, and despite the immense pressure and repeated threats by the High Commissioner, the government submitted a draft constitutional bill to parliament, during the session held on 5 November 1943. The bill aimed at amending the constitution by freeing it of the constraints put in place by the French Mandate. Enthusiastically, parliament ratified the law with an overwhelming majority of those present[85], and the President enacted it the following day[86]. This courageous amendment aroused the anger of the French mandate authority, which felt that it was rapidly losing control, and that the people and their representatives had reached a mature awareness of their interests and independence. Consequently, the High Commissioner Jean Helleu issued resolution no. umber 464 on 10 November, revoking the recent constitutional amendments in their entirety, stating, "These amendments have no legislative feature, and are therefore annulled and have no effect".

The resolution also dissolved the parliament and suspended the constitution until the new elections. It assigned executive authority to the president of the state—Prime Minister (head of government) appointed by the High Commissioner. The executive head (president) was given the required authorities to issue legally binding decrees, "on the condition that they took into consideration the reservations

[85]Emile Edde and George Aql withdrew from parliament, after they had both insisted on referring the bill to a special committee, whereby their request was rejected and parliament proceeded to vote.

[86]Lebanon was therefore declared independent, unified and fully sovereign state. The Arabic language was adopted as the official national language, and the provisions, which pointed to the powers of the French mandate, were cancelled or amended.

mentioned in the declaration of independence issued by General Catroux in Beirut". On the same day, Helleu issue another resolution numbered 465, through which he appointed "His Excellency Emile Edde, former President of the Republic, as president of the state, head of the Government of the Lebanese Republic…."

The nights of 10 and 11 November saw many events. The President and Prime Minister, along with a number of ministers and parliamentarians, were arrested and imprisoned at the Castle of Rashaya. This led to widespread popular protests and movements[87], with some ministers and parliamentarians mobilized to take action. Thus the Government of Bchamoun was formed, with the exiled parliament sending numerous memos to the Ambassadors of Britain, the United States, Egypt and Iraq. The exiled parliament supported the bipartite Bchamoun Government, which happened to be equally distributed between the two religions (Christian Orthodox and Muslim Druze).

During this period, Lebanon witnessed an era of two governments, an era that would be repeated 45 years later. The government of Edde would issue decrees and laws[88], while the Bchamoun government-which was in accordance with the constitution and enjoyed the support of the legislative authority (this support was of extreme importance and gave a government made up two ministers clear and genuine legitimacy)—carried out the presidential functions based on the constitution, also issuing decrees and laws. The most important of these decrees centered on the Public Treasurer, the Governor of the Central Bank of Syria and Lebanon and to all the directors and employees within the Lebanese Republic, informing them to restrict their dealings with the Bchamoun government, and prohibiting any dealings with the government of Edde.

[87]There is no doubt that a small number of Lebanese actually supported France's attacks on the constitution and its arrests of prominent parliamentarians and politicians. They had been put under the impression that BecharaKhoury and a number of his companions were traitors, and had sold Lebanon to the Arabs. In this context, we quote from the letter of support sent by the Bishop of Jbeil, BoulosAkl, to Edde, in which he stated "the Governorate of Jbeil prays … for the victory of France, and we declare our support of Edde in saving the nation... (*Encyclopedia of Elections*, part 8, pg 86).

[88]Most of the administrative directors appointed to the Government Council by Edde, rejected dealing with him, and declared their non-participation in the mentioned council.

The people were victorious, and the prisoners were released. The deputy High Commissioner Yve Chateneau was forced to issue a resolution cancelling Helleu's resolutions numbered 464 (dissolving parliament and suspending the constitution), and 465 (appointing Edde as President). Parliament convened its first session after the well-deserved independence on December 1, 1943.[89] It was in this way that parliament played a central role of resistance in Lebanon's independence. This role was no less important than armed resistance, noting that the nature of the occupation, the structure of society and the historical course of the evolution of the state all made the circumstances for an armed resistance unfavorable.

The valuable trust (of representation, legislation and guidance) was handed over to the generation of the Independence, and the legislative authority proved that it is a guarantee for the continuity of constitutional institutions, and that it is able to carry out its functions and bear its historical responsibilities.

This presentation of the historic turns of the Lebanese legislative authority shows one obvious fact: Lebanon's legislature has always reflected—almost mirrored—the segmental divide of the Lebanese society. Whether the foreign ruler or local authorities established this institution, by appointment or free elections, through normal constitutional process or under exceptional circumstances, it has always comprised representatives of all major religious sects of the population. As shown, the sects regardless of their numbers or influence equally shared the legislature's composition. Proportional quotas among the sects according to their numerical or influential attributes soon replaced this. Along the same lines, the executive authority was also composed of representatives of all societal factions during its historic progress. If this has any indication, it clearly expresses the consociational form of governance Lebanon adopted since the inception of its political institutions. There was strong belief from almost all the rulers of this country that for a stable democracy and for better conditions of state building in a plural

[89]During this session, it was approved to replace the Lebanese flag, as had been proposed in one of the exiled council's meetings.

society, like Lebanon's, consociationalism is the ideal—though not the perfect—form of governance.

One can claim that, except for the years of civil wars and regional upheavals that both were imposed upon fragile Lebanon by external powers, the relative stability and democratic nature of Lebanon's political regime throughout its history, is attributed to the form of governance it adopted: consociational democracy.

Chapter Four

Legislature's Role in Lebanese Consociational Democracy

1- Defining Consociationalism

Consociationalism is a system of government in plural societies which aims to instate a special form of democracy based mainly on power sharing among the diverse groups of the state, for the goal of maintaining public security and political stability, and contributing to nation building.

For consociationalism to regulate the political system of a certain state, some features and favorable conditions must exist in that state: the society comprises diverse groups (distinct ethnic, religious, political, national or linguistic groups); the system adapts democracy as a form of government; and elites from different social groups share power, in the form of elite cooperation or accommodation, while allocating these groups collective rights. In this sense, although consociationalism is often viewed as synonymous with power-sharing, yet it is technically only one form of power-sharing. Based on a number of factors, it takes different forms in different countries. When consociationalism is organised along religious confessional lines, it is known as confessionalism, as is the case in Lebanon.

Consociational democracy, therefore, was developed to reconcile societal fragmentation along religious, ethnic, racial or regional lines. It was founded to establish stable and sustainable democracy, and to avoid violence in states of diverse population. Thus, consociationalism contrasts profoundly with majority-rule democracy (majoritarianism). The raison d'être of consociationalism lies in the fact that profound social cleavages are seen as obstacles to establish stable democratic systems. To overcome these obstacles, elites coordinate in order to avoid conflict and come to a common ground of understanding in governing the state through agreed-upon power-sharing arrangements. Thus, an essential component of consociationalism is elite accommodation, which is a form of collaboration between the leaders of different communities. This accommodation is based on the notion that elites from opposing factions in society are capable of reaching common understanding in the face of a lack of consensus at the societal

level.[1] In other words, contrary to the wishes or sentiments of their own followers, leaders will strike agreements, often quietly or in secret, in order to preserve the overall stability of the system.

Consociationalism was developed by political scientist Arend Lijphart (1969, 1975, and 1977) as a theory of political stability in plural societies. Lijphart argues that democracy and political stability are possible in plural societies if elites engage in accommodative behavior that circumvents social cleavages in mutual understandings of power sharing. The political features of consociational democracy according to Lijphart are[2]:

1- Government by grand coalition of the political leaders of all significant segments of the plural society.
2- Mutual veto as a protection of vital minority interests.
3- Proportionality as the principal standard of political and other public services representation.
4- A high degree of autonomy for each segment to run its own internal affairs.

This chapter investigates whether Lebanon's plural society is congruent with the theory of consociationalism. It addresses the role of legislature in Lebanese consociational democracy, a subject that has not been thoroughly researched in the study of consociationalism and political accommodation. Although the characteristics of consociational democracy do not include a specific dimension for legislature, yet being the mother of all constitutional institutions, the reflection of consociational democracy in any body of the political system should have a link—direct or indirect—to the legislative authority.

This chapter examines whether and how Lebanese legislature meets consociational features and achieves political accommodation of societal differences. It does so by analyzing the process and structure of accommodation and representation inside the legislative authority (Lebanese Parliament or

[1]Lijphart, The Politics Of Accommodation: Pluralism And Democracy In The Netherlands, Berkeley: University of California Press, 1968.

[2]Lijphart, , 1977, Chapter 1, n 4, p. 25

Chamber of Deputies) and within the context of consociational elements in the political system in general. The leading question is whether representation and accommodation inside consociational legislature are, or can be, functional equivalents of elite-accommodation between segmental parties in prototypical consociational democracies as explained by Lijphart's theory referring at the same time to other writer's input in this domain.[3] The outcome of this investigation should provide indications about the prospects and conditions for accommodation of segmental differences within a consociational legislature.

Moreover, I shall deal with consociational democracy as a normative model that is of special importance to the plural societies of the Middle East, Lebanon in particular. However, since Liphart's features of consociationalism are not manifested directly in the legislative authority, it would be hard to gauge the normativity of consociationalism in the Lebanese parliament. As an alternative, the functions and role of Lebanese Chamber of Deputies (legislature) will be discussed and examined of any consociational elements embodied in them. Other constitutional institution, namely the government, will serve as the basis of comparison, and Lijphart's characteristics will be the yardstick against which consociational legislative features can be compared.

Being a plural society with a relatively stable form of government (except for the years of civil war and those of regional upheavals), Lebanon's political system has been commonly described as consociational democracy. If and when consociational democracy is claimed to exist in a political system, then its characteristics should be materialized in the political institutions of the system; i.e., consociational democracy is conducive to consociational political institutions. The government (the executive) is the most obvious of such institutions, and the Lebanese cabinet does reflect, to a certain extent, consociational characteristics as

[3] Writers like: Adrien Guelke, Nathaniel Harris, John McGarry, Brendan O'Leary, Robin Wright, ImadSalamat, Joseph Bahout, Michael W. Suleiman, Leonard Binder, Martin Wählisch, Edward Shils, John C. Calhoun, Robert Melson, Howard Wolpe, Sami Baroudi, Scott Bollens, Peter Harris, Ben Reilly, Michael Hudson, Joseph Jabra, Nancy Jabra, Ilan Kapoor, Malcolm Kerr… and many others.

commonly agreed to. The question, however, remains whether the Lebanese legislative authority—the legislature is, per se, a consociational institution.

2- Consociationalism in the Lebanese System

For years, Lebanon has been tailoring a special form of democracy, a consensus democracy that accommodates different religions and sects in order to preserve its national unity. That form has paved the way for a smooth democratization process and has prohibited authoritarian regimes to take its toll on the country. That process was nothing but the consociational form of governance.

Before Lebanon's independence, both the Ottomans and the French resorted to special arrangements to govern Mount Lebanon, the core of the Lebanon of today. Their arrangements always comprised participation of all segments of the Lebanese society in the ruling process. This meant the representation of all religious confessions in the political institutions that the occupier devised to govern pre-independent Lebanon.

After independence, the Lebanese constitution of 1926, and its amendments, continued to be in force (it is actually still in force today, with the major amendments executed in accordance to the Taif Agreement). The main feature of the constitution, around which the political life of Lebanon has since revolved, is the participation of the various religious communities in running the affairs of the state and the representation of these communities in the formation of government, the selection of the legislature and in public employment. This feature, as explained, constitutes the backbone of consociationalism.

The independence itself was shaped by the famous National Pact of 1943, which is an unwritten agreement between Lebanon's first President (a Maronite Christian) and first Prime Minister (a Sunni Muslim). The Pact that aimed to alleviate Christians' fear of being dominated by the Muslims, and the Muslims' fear of Western hegemony, was another medium of Lebanese consociationalism through which main religious factions agreed on power sharing.

The National Pact that laid the basic political foundations of consociationalism was unable to cope with the profound changes in the demographics of Lebanon and the political upheavals in the region. After the civil war, there was a need for a new context of common existence among the societal components, hence the Taif Agreement came into life. This accord that ended the war in Lebanon strengthened the notion of consociational democracy and tried to institutionalize it.

As a consequence, this study addresses Lebanese legislative consociationalism in three sections, each discusses a historic phase. The first tackles the period before Lebanon's independence; the second, the period after the independence up to Taif Agreement; and the third section discusses the consociational characteristics featured by Taif charter.

a- Consociationalism in Lebanon before Independence

This section will delve into the institutions established by the Ottoman rulers in their two political regimes devised for Mount Lebanon (the core entity of today's Lebanon), the Kaymakamate and the Mutasarrifate, and those established by the French Mandate after the defeat of the Ottoman Empire. It will check how each of Lijphart's four consociational characteristics was reflected in these institutions, particularly the legislative body.

i- Grand Coalition

With the establishment of two kaymakamates System, a northern mostly Christian-populated district and a southern Druze-populated district were created. A mixed representative council in each Kaymakamate was also established, and constituted a medium for coalition of societal segments. These councils were tasked with assisting in the administration of their areas. In turn, the council was composed of two assemblies or chambers: the first was the Assembly of Advisors which was made up of the deputy Kaymakam and one member from each of the six main sects (Sunnis, Druze, Maronites, Roman Orthodox, Roman Catholics and Shiites). This council acted as legislative authority in the respective district. The second was the Council of Judges, made up of one judge from each sect, except for

the Shiite sect, whereby their legal affairs were decided in accordance with Sunni Sharia court rulings of the Hanafi sect. This council was tasked with looking into the law suits brought to it by the Kaymakam.

After the utter failure of the Kaymakamate, a new system was devised in 1861, by RèglementOrganique. With this organic act, Mount Lebanon became a semi-autonomous Mutasarrifate under a non-Lebanese Christian Mutasarrif (governor) appointed by the Ottoman Sultan, with the approval of the European powers. The Mutasarrif was to be assisted by 'The Greatest Administrative Council' composed of twelve members from the various religious communities in Lebanon. Each of the six religious groups comprising Lebanon (Maronites, Druze, Sunni, Shi'a, Greek Orthodox and Catholics) elected two members to the council.

The 1861 protocol also stipulated the establishment of a Council of Sects' Representatives, whereby "each element of the Mountain would be represented by a representative appointed by the elders and dignitaries of each sect".[4] This council comprised six individuals, each representing one of the six main sects (a sort of senate). Here again the body acting as legislative authority in the new system reflected the consociational feature of grand coalition.

Nevertheless, the 1864 amendments cancelled the Council of Sects' Representatives, while the Greater Council continued to be composed of twelve members but based on the following shares: four Maronites, three Druze, two Roman Orthodox Christians, one Muslim Sunni, and one Shiite.

When Mount Lebanon was put under direct Ottoman rule with the advent of World War I, the Administrative Council was dissolved and a new council was established, the members of which were appointed by the military ruler. It is important to note that in spite of all the exceptional circumstances that were taking place at that stage, the Ottoman ruler still took into consideration the same proportionate sectarian distributions that had existed in the dissolved council. Is it

[4]Article VI of the protocol

possible that sectarian considerations were stronger than all of the emergency and exceptional circumstances imposed by a global war?

The French Mandate kept the formation of the legislative body delicately comprising all the major sects in the 'State of Greater Lebanon, as of September 1920. The French rulers established a council made up of 15 members and was named "the Administrative Committee for Greater Lebanon". The High Commissioner was responsible for appointing these 15 members from, once again, amongst the six main sects, and based on the following shares: six Maronites, three Orthodox Christians, two Sunni Muslims, two Shiite Muslims, one Druze, and one Catholic Christian. Similarly, the first and second Representative Councils under the French Mandate were also composed of same proportional numbers of sects' representatives.

The first constitution of Lebanon which was enacted in 1926 assigned the legislative authority to two bodies: the Senate and the Chamber of Deputies. The senate was made up of 16 members distributed amongst the sects as follows: 5 Maronites, 3 Sunnis, 3 Shiites, 2 Orthodox, 1 Catholic, 1 Druze and 1 minority. The Chamber of Deputies was the new title of the same old Council of Deputies (the second representative council) with the same composition and functions.

- Thus, from all the examples above, it is clear that the first principle of consociationalism, the grand coalition, was secured by both occupiers who recognized the importance of religion in the life of the Lebanese of those eras, and the necessity for each sect, as independent entity which does not necessarily lie in the hierarchical structure of the state, to have its say in running the affairs of; i.e., governing, Mount Lebanon. Hence, every single institution, be it legislative, executive, representative, judicial, administrative, auditory or advisory, was composed of members who belonged to the different components of the society. This practice, which was always categorized under the titles of 'co-existence' and 'power sharing', was the typification of today's grand coalition characteristic of consociationalism. It's noteworthy that although the communal representation was reflected in most of the political institutions of the

> system, it was particularly the legislature that the religious sects were definitely and delicately represented without any outage.

It is also significant to mention, here, that the foreign rulers of Lebanon found that the ideal way to guarantee the participation of sectarian communities was through their respective leaders, the elites. Those elites—most of them were feudalists, landlords and heirs of prominent tribes and families—were so powerful and in control of their respective communities that the occupier sought their satisfaction by maintaining their privileges and allocating them with some of the spoils of ruling power, the most significant of which is their continuous representation in the representative and legislative authorities. For the foreign rulers, dealing with a few elites was an easier task than seeking the contentment of the mass.

The occupier would appoint the elites themselves (leaders of communities) to the posts reserved to their respective groups. Since those leaders were mostly at a high level of education, knowledge and social awareness, they would communicate with each other positively for the interest of the Mountain and its inhabitants. In fact, the occupier initially forced the leaders to come to a common ground of understanding, at least on certain matters that were considered important for the foreign rulers to run the affairs of Mount Lebanon (mainly financial and administrative issues—as politics was exclusively reserved to the occupier). At a later stage, however, the leaders' cooperation became a normal practice; their existence in the same entity and concurrent presence at the different meetings helped them establish strong relations among each other, which was termed by some as corporate form of power sharing.[5] Thus, Lebanese elites of divergent factions in the society proved their ability to collaborate and reach mutual agreement on the basics of the Mountain governance, and elite accommodation feature was established and became part of the practice of consociational democracy in Lebanon.

[5]Salamey,Imad, "Failing Consociationalism in Lebanon and Integrative Options", *International Journal of Peace Studies*, Volume 14, Number 2, 2009, pp. 84-85.

ii- Mutual Veto

As to the second characteristic of consociationalism, mutual veto, which is meant to protect the interests of minorities, it was manifested in two different forms during the Ottoman rule and the French mandate. The first was through an external actor on behalf of the minority. The occupier reserved the right to veto any decision taken by the representative or legislative authority that represented the people of Mount Lebanon. Inasmuch as this veto exemplified the tyranny of the occupier who would revoke any decision that did not conform to their policy, it, at the same time, typified the mutual veto feature of consociationalism. The least concern of the foreign rulers was the interest and rights of a certain minority; they were only maintaining the interests of their country, at least by vetoing any decision that might trouble their rule by pitting one confession against the other. The same ruler who used veto one time ostensibly in favour of one faction might use it another time, ostensibly too, in favour of another faction. The result would look as if each religious faction owes the right to use the veto.

Under this form of exemplifying veto feature, which is executed by foreign actors, was the right given to the committee of representatives of the five big European countries to sanction the decisions of the Ottoman ruler of Mount Lebanon, as well as sanctioning basic laws issued by him or drafted by the Representative Council of the mountain.[6] The committee decisions were taken by consensus which automatically means a veto power to each member. This was done and justified under the pretext of defending the rights of Lebanon's minorities, and mainly by monitoring the legislative work.

The second form of mutual veto is reflected by majority voting. The logic behind majority voting is explained by the fact that the political stakes are often high in plural societies; therefore, a grand coalition is more appropriate than the classic government-versus-opposition pattern. In homogenous societies and under

[6]In 1860 an international commission composed of France, Britain, Austria, Prussia and the Ottoman Empire met and recommended a new administrative and judicial system for Lebanon. This commission kept meeting frequently acting as a grand supervisor of Lebanon's governance.

typical democratic systems where a classic form of ruling-versus-opposition parties prevails, the majority and minority are not very far apart, and consequently majority rule works well. But, in plural societies where cleavages between societal communities are grave, then almost all decisions involve high stakes, and strict majority rule would risk antagonizing minority groups and places serious strain on the system.[7]

Thus, among the challenges facing power sharing formulas is the achievement of a popular majority, while, at the same time, preserving groups' cultural autonomy.[8] The dilemma of favouring either consensus or majority rule is solved in most democratic constitutions by prescribing majority rule for the normal transaction of business when the stakes are presumably not too high, and extraordinary majorities for the most vital decisions, such as for adopting or amending constitutions.

The voting system within legislative authorities during the Ottoman and French rules was mostly executed by accord and simple majority. Accord is tantamount to unanimity which itself includes veto feature. On the other hand, simple majority reflects majority-versus-minority system which negates the veto feature in consociational democracy. At all rates, the voting system within the legislatures of the occupation era was not significant by itself, as it was revoked, modified, adopted or neglected by the ruler, which, as explained above, was a typification of veto feature of Lijphart'sconsociationalism.

iii- Proportionality

As pointed out in discussing grand coalition, the composition of modern-day Lebanese legislature has, since its inception, always included representatives of all religious factions in Lebanon. Significantly, the representation was not random or haphazard; it was, on the contrary, well studied and proportionate. This proportionality, however, did not follow a single pattern; it developed from parity;

[7] O'Leary, *Power Sharing, Pluralist Federation, and Federacy*, Philadelphia: University of Pennsylvania press, p. 27.

[8] Toby Dodge, "State Collapse and the Rising of Identity Politics", in Malone David, Bouillon Markus and Rosewel Ben l, *Iraq: Preventing a New Generation of Conflict*, Boulder, Lynne Rienner Publisher, Inc., p 38

i.e., equal number of representatives for each sect regardless of the number of their followers, to proportionality based on the number of the sect or proportionality relative to the influence or political sway of the sect.

It has to be mentioned here that the shifting of the representation formula from parity to proportionality is regarded as a historic amendment and one of the main reasons for consolidating the sectarian quota scheme within the political system of Lebanon, especially in the legislative authority. It is true that the sects had all been represented in the system of government; however, it was an equally split representation regardless of the sects' respective influence or numbers, which meant respecting their rights and guaranteeing their representation. On the contrary, proportional representation (whether numerical-based or influence-based) meant the distribution of the spoils of power amongst the sects was based on their importance. This lead to the dominance of one sect over the others, which planted the seeds of sectarian politics; i.e., confessionalism, in Lebanon and weakened patriotic loyalty.

iv- Autonomy

Segmental autonomy was not only another strong consociational feature of Lebanese democracy, throughout all historical phases discussed above, but a sacred factor that was respected and revered as the aim of all other factors of consociationalism. The presence of religious communities is the reason for adopting this form of governance[9]; therefore, maintaining the privacy and independent entity of these communities should be the core concept of consociational democracy. This is particularly true because "national integration requires the creation of a cultural-ideological consensus of a degree of comprehensiveness that has not yet been seen in these [developing] countries".[10]

The Lebanese pattern of segmental autonomy has its roots in the 'millet' system of the Ottoman Empire: the minority religious communities were accorded an

[9]McGarry, John and O'Leary, Brendan, Consociational Theory: Northern Ireland's Conflict, and its Agreement, Part I, Vol 41, No 1, p 43.

[10] Binder Leonard, "National Integration and Political Development", *American Political Science Review* 58, no.3, September 1964, p. 630.

autonomous status compatible with Islamic laws that guarantees their safety, independent entity, freedom of exercising their spiritual rights and autonomy in organizing religious affairs of their followers[11]. The French occupation followed suit of the same pattern with even wider jurisdiction and freedoms. Significant was the French mandate encouragement of missionary schools and colleges—mainly French and, to a lesser degree in the beginning, British and American—which were specified for a certain religious community, fortifying educational independence and segmental autonomy in general. This however, has spread social and political insecurity, forcing sectarian groups to rely on their own social and security networks and to look for support beyond Lebanon's borders.[12]

b- Consociationalism as Featured in the National Pact

The informal and unwritten National Pact was a compromise between two main religious segments which tried to define the national identity of the Lebanese and design a formula of power sharing among all factions of the plural society of Lebanon. The written document that organized the political life was the same as the 1926 constitution which continued to be in force. But the political life praxis was modified in line with the provisions of the National Pact.

The historic accord formalized consociational grand coalition in the form of allocating top system's political positions to the major sects. Thus, it reserved the presidency to a Maronite Christian, the prime ministership to a Sunni Muslim, the speakership of parliament to a Shi'ite Muslim, and deputy speakership and deputy prime ministership to a Greek Orthodox. It has to be noticed here that the numerical strength of the sects was reflected in the relative importance of theseoffices, in addition to the influential strength derived from the support of foreign powers.[13]

[11] Almost with every representative council created during the Ottoman rule a second Council of Judges was also created made up of one judge from each sect to look after the religious affairs of the communities.

[12] M Hudson, The Precarious Republic, Political Modernization In Lebanon, New York, Harvard University, 1968, p. 34.

[13] This explains the fact that Maronites enjoyed the lion share of the most senior posts in the state, and that the Druze, for instance, who were not the proxy of any foreign super power, and despite their fundamental role in the history of Lebanon, and despite their number which was almost equal to that of the Greek Orthodox were not assigned with one of those senior posts.

The Pact also reserved a proportional representation of religious sects in the different political and administrative state entities. It devised a proportional formula of confessional distribution of parliament and cabinet seats (favoring Christians 6:5 ratio)[14], as well as other top government posts (again favoring Christian Maronites).[15] Minorities were occasionally represented in the cabinet but always in the parliament.

The said reflection was designed by complementing electoral laws that adopted plurality and multimember constituency system. Candidates were nominated and grouped in lists in each constituency in such a way that each list reflected the sectarian composition of the constituency, and the voters chose among these different proportionally constituted lists. The number and size of the constituencies and the total number of legislators varied over the years, but an overall ratio of six Christian to five Muslim members of the legislature remained the same.[16]

Although the electoral laws adopted the majority winner-takes-all system, the 'consociational electoral arrangements' still begot proportional representation of the sects according to their numerical strength (overlooking the fact that Muslims had outnumbered the Christians). In other words, the methods used for the election of the president and the members of parliament do not belong to the usual proportional representation systems but were proportional in their effects.[17] The president was chosen by parliament by majority vote, but since it was predetermined that he be a Maronite, this majority method did not entail a contest among the different sects.

[14]Hanf, Coexistence in Wartime Lebanon, Decline of a State and Rise of a Nation, London: I. B. Tauris, 1993, p. 72.

[15]Article 95 of the Constitution (amended on November 8, 1943) regulated the distribution of cabinet seats and position in the civil services by stating: "As a provisional measure, and in keeping with the desire for justice and harmony, the religious communities shall be adequately represented in the civil service and in the cabinet, provided that it does not harm the interest of the state."

[16] Ibid., p.148

[17]See Lijphart Chapter 1, n 4, 1977, p. 148

This system, which was described as a "preset proportional representation system on a communal or religious basis,"[18] has also often been praised as a proportional system that produced compromise and harmony, because in order to be elected, a candidate needed the votes of members of both his own and other sects, which transferred the rivalry from between candidates of different confessions to those of the same religious sect, thus avoiding malicious sectarian frictions. As such, the two consociational elements of grand coalition and proportionality were firmly established in the Lebanese post-independence system, and the legislature was the first and most important medium in which this element was obviously reflected.

Mutual veto, on the other hand, may not have been explicitly manifested in a certain constitutional clause, law or procedural decision, but was a constant consensual practice that no law would be enacted, or procedural decree taken that would jeopardize the independent status, rights or privileges of any minority group. In continuation of the custom practiced during the Ottoman rule, and particularly from the enactment of the 1926 constitution onward, mutual veto was an equally basic but again unwritten provision of the political system.

Furthermore, mutual veto was guaranteed in the legislature by the voting system as explained above (consensus as a general rule or special majority for important decisions). It was also guaranteed by the practice that assured each sect the chairmanship of at least one parliamentary committee, as well as the membership of the Bureau of Parliament which runs the administrative and logistic affairs of the legislature.

As to the autonomy feature, remarkable is that the core theme of the National Pact was preserving the rights of communal factions of Lebanon. As such, it was only normal that its institutions and political system would reinforce segmental autonomy in education, civil registry and social welfare. Segmental autonomy in independent Lebanon was an integral, although unwritten, part of the constitution

[18] Suleiman, Political Parties in Lebanon: The Challenge ofa Fragmented Political Culture, Cornell, Cornell University Press, 1967, p.45

that the regime will not interfere in the area of intra-confessional social relationships. Each sect has its own schools and social, recreational, and welfare organizations[19]. Furthermore, the personal status laws, concerning such matters as marriage, divorce, and inheritance, differ from sect to sect and are administered in separate sectarian courts.

c- Consociationalism in Taif Agreement

In the early 1970's, domestic and regional changes in and around Lebanon became too severe for the meager National Pact to sustain and to keep the delicate consociational democracy working. It has been proven that civil war and regional instability are the two chief factors that counteract and deactivate consociational theory. Consociational democracies must meet certain conditions to function in a lasting way. These include a stable and peaceful regional environment, along with economic growth ensuring a socioeconomic balance between the various segments of the polity.[20]

The consociational structure of the Lebanese system totally collapsed with the eruption of civil war. But since Lebanon is a multi-sectarian society, then consociational democracy is its only feasible form of governance. A new structure had to be devised, and that was the Taif Agreement in 1989.

The agreement explicitly highlighted the principle of co-existence between Lebanon's different sects, an alternative Lebanese political expression of consociationalism. Co-existence is the practical embodiment of grand coalition, the first characteristic of consociational democracy. The Taif General Principles states that "Lebanon is… a final homeland for all its citizens" [item A, article1], and "culturally, socially and economically-balanced development of all Lebanon's regions is a mainstay of the state's unity and of the system's stability. The last item of the General Principles could not be more unequivocal when it stipulates that "No

[19]Binder, "Political Change in Lebanon," in Binder, L, ed., *Politics in Lebanon*, New York, Wiley, 1966, p.295.

[20]Bahout Joseph, The Unravelling of Lebanon's Taif Agreement: Limits of Sect-Based Power Sharing, Carnegie Endowment for International Peace, 2016, p. 8.

authority violating the common co-existence charter shall be legitimate" [item J, article 2].

Even when Taif drafters discussed the abolition of intense confessionalism in the political system (political sectarianism), they simultaneously introduced another medium that would secure the representation of the religious sects and guarantee their share of power and their inputs in running the state affairs. Item 7, article A2 states that "with the election of the first Chamber of Deputies on a national, not sectarian, basis, a senate shall be formed and all the spiritual families shall be represented in it. The senate powers shall be confined to crucial issues.

Similarly, Taif aimed at abolishing confessionalism in public sector, yet could not but maintain reserved quotas to each religious sect in senior level posts. The agreement stipulates the abolishment of "the sectarian representation 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".[21]

The charter also defined the proper political representation of all components of the Lebanese society as the main objective of post-civil war parliamentary electoral laws. Item c of article 3 states that "Parliamentary elections shall be held in accordance with a new law on the basis of provinces and in the light of rules that guarantee common coexistence between the Lebanese, and that ensure the sound and efficient political representation of all the people's factions and generations. This shall be done after reviewing the administrative division within the context of unity of the people, the land and the institutions".

Taif Agreement clearly featured another consociational characteristic, proportionality. Item 5, A, 2 stipulates that "until the Chamber of Deputies passes an election law free of sectarian restriction, the parliamentary seats shall be divided

[21] part 2, section G, item a of the Taif Agreement

according to the following bases: "a. Equally between Christians and Muslims, b. Proportionately among the denominations of each sect, and c. Proportionately among geographic regions".

Add to this the proportionality in representing the sects at the senior public sector posts, then Taif charter has given an unequivocal pattern of Lijphart'sconsociational proportionality.

In 2017, Lebanese leaders agreed, for the first time in the history of Lebanon, on an electoral law that implements proportional representation in contrast to the first-past-the-post, the winner-takes-all system.

Veto characteristic, which is meant to protect minorities' rights, has transformed, with Taif, from being a tacit customary practice into a written constitutional principle. Taif Agreement has resorted to the formula of a specified majority (as opposed to simple majority) on fundamental decisions related to the basics of state regime. Article 65 of the constitution states that "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 makes 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".[22] By invoking consensus as the first option in taking decisions within the cabinet, even before majority voting, Taif Agreement has established a consociational rule perceived as tantamount to veto power to each component of the cabinet, and consequently each community of the country.

Veto feature is also plainly introduced by Taif text when it stipulates in its article (3, B, 2) that "to ensure the principle of harmony between religion and state, the heads of the Lebanese sects may revise the constitutional council in matters

[22]The following issues are considered basic: The amendment of the constitution, the declaration of a state of emergency and its termination, war and peace, general mobilization, international, long-term comprehensive development plans, the appointment of employees of grade one and its equivalent, the reconsideration of the administrative divisions, the dissolution of the Chamber of Deputies, electoral laws, nationality laws, personal status laws, and the dismissal of Ministers.Moreover, a majority of ¾ is also required at a certain stage of amending the constitution.

pertaining to: 1. Personal status affairs, 2. Freedom of religion and the practice of religious rites, and 3. Freedom of religious education".

As to autonomy consociational characteristic, it has always been, as explained above, a sacred factor revered and protected by the consecutive regimes that governed Lebanon. Taif Agreement was no less respectful and protective. The first condition of autonomy of a certain faction is the recognition of this faction and then assign it with definite rights and privileges, the top of which is organizing its own affairs and its followers' civil status issues. Article 9 of the constitution stipulates that "there shall be absolute freedom of conscience. The state in rendering homage to the God Almighty shall respect all religions and creeds and shall guarantees, under its protection the free exercise of all religious rites provided that public order is not disturbed. It shall also guarantees that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected".

Arend Lijphart highlights the importance of segmental education and private schools in the context of communal autonomy. Taif and the Lebanese constitution confirms this importance and guarantees educational form of autonomy (item F, 3 of Taif).[23]This item was rephrased in article 10 of the constitution as follows: "Education shall be free insofar as it is not contrary to public order and morals and does not affect the dignity of any of the religions or sects. There shall be no violation of the right of religious communities to have their own schools provided they follow the general rules issued by the state regulating public instruction."

It is worth mentioning here that the demographic of Lebanon is characterized by good level of congruency between sectarian population and regional distribution, or to put it differently, each segment of the Lebanese society is territorially concentrated and separate from the other segment. Lijphart refers to

[23]Item F, 3 states that:

1. Education shall be provided to all and shall be made obligatory for the elementary stage at least.
2. The freedom of education shall be emphasized in accordance with general laws and regulations.
3. Private education shall be protected and state control over private schools and textbooks shall be strengthened.

this type of society as a 'federal society', a society in which the segmental cleavages coincide with regional cleavages.[24] He indicates that federalism, which is a special form of segmental autonomy and has a few significant parallels with consociational theory, can be used as a consociational method when the plural society is a federal society.

This has been a controversial issue in Lebanon and very sensitive political debate. Some Lebanese religious factions called for federalism during the civil war, only to be adamantly rejected by opposing segments. Thus, Taif drafters were keen to strike a delicate balance between granting religious sects functional autonomy and expanding the authority and jurisdiction of Lebanon's administrative provinces and districts, on one hand, and maintaining the unity of the state (soil, people and institutions), on the other hand. There has been a Lebanese political slogan commonly used during and after the civil war: 'Lebanon is too big to swallow and too small to partition'. Thus, Taif has come up with a consociational compromise in the form of wide decentralisation, or administrative decentralism with a strong central authority.[25]

Taif also restructured the National Pact political system in Lebanon by stripping off the Maronite Christian President part of his powers and conferred most of the executive powers upon the Council of Ministers. By vesting the executive power in a collective body that comprises proportionally the different factions of the political and societal spectra (i.e. the Council of Ministers), Taif agreement has made the decision-making a collective task and thus gave each component a share

[24] Lijphart, Chapter 1, n 4, 1977, p.42.

[25]This is done according to the following specifications (article 5, A, 3): 1. The State of Lebanon shall be single and united with a strong central authority. 2. The powers of the governors and district administrative officers shall be expanded and all state administrations shall be represented in the administrative provinces at the highest level possible so as to facilitate serving the citizens and meeting their needs locally. 3. The administrative division shall be recognized in a manner that emphasizes national fusion within the framework of preserving common coexistence and unity of the soil, people and institutions. 4. Expanded administrative decentralization shall be adopted at the level of the smaller administrative units [district and smaller units] through the election of a council, headed by the district officer, in every district, to ensure local participation. 5. A comprehensive and unified development plan capable of developing the provinces economically and socially shall be adopted and the resources of the municipalities, unified municipalities, and municipal unions shall be reinforced with the necessary financial resources.

of the power. Hence, grand coalition and veto power have been enforced and consociational democracy becomes more obvious.

Within this context of consociationalism introduced by the 1989 Agreement, the legislature also had its share of the Taif amendments. Its presidency (Speakership) was made more stable and given wide legislative and political powers.

d- Consociationalism outside Constitutional Institutions

Gauging Lebanese consociational democracy merely by Lijphart's four characteristics might turn out to be delusional given the distinctive features and special attributes of the Lebanese political system since its inception. In the Lebanese case, assessing the system by the letter of the constitution does not give the observer the proper comprehension of the system. There are myriad of factors, local and international, historical and geographical, political, social and economic, religious and ideological, that have their inputs deeply affect the nature of the political system of Lebanon and the functions of its institutions.

In this sense, consociationalism in the Lebanese democracy is the shadow constitution and regulatory laws that govern the political life. Beyond the letter of the constitution, consociationalism is embodied in the 'social contract' of the Lebanese society. After a hundred years of togetherness on the same territory, within the same borders, experiencing same ebbs and flows of history, a common spirit has prevailed among the People of Lebanon. This spirit is now embodied in their culture, way of thinking, behavior and political and social praxis. It might not be found in the texts of the constitution, laws or even the executive procedural decisions, but it is invoked on every historic turn, and every time a vital political issue surfaces. Indeed, political leaders' first resort is the constitution and other legal tools, but when the latter fail to accommodate with a pressing existential matter, then the shadow constitution is invoked. This shadow constitution is the first and most important feature of consociationalism.

The characteristics of consociational form of democracy, in Lebanon in particular, are not so much any particular institutional arrangement as the consensual governing of the plural Lebanese society by the leaders of all significant segments. The grand coalition cabinet, for instance, is the prototypal consociational device, but a variety of other forms can serve the same function. Even where the cabinet itself is a grand coalition, it may not be the only or the most important constitutional organ.[26]

Lebanese leaders invented the best examples of consociationalism in its prototypal form outside constitutional institutions, the most obvious of which is the Table of National Dialogue. National Dialogues have been part of the country's political and social fabric.[27] They have served as important discussion fora outside Parliament and the Council of Ministers to address core political divides that polarize the country.[28] The aim, therefore, is to find consensus among the ruling elites who can maintain peace and stability in the country, and to include in the decision-making process those factions' leaders who are not probably represented in conventional constitutional institutions. This corresponds to Lijphart's elite accommodation in the form of grand coalition.

National dialogues in Lebanon is a method to delegate the most difficult and faithful decisions to the top leaders of the segments. The advantage of this arrangement is that in intimate, limited and secret negotiations the likelihood of achieving a package deal is maximized and that of the imposition of a veto minimized. Since the Lebanese National Dialogue context decision-making is heavily based on the consensus principle, another characteristic of Lijphart consociationalism is displayed—mutual veto.

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[26]Lijphart, Chapter 1, n 4, p. 31

[27] Examples of Lebanese National Dialogue are: Geneva November 1983, Lausanne March 1984, March 2006 (Speaker Berri), July 2007 (sponsored by French President Nicolas Sarkozy at Saint-Cloud), Parliament National Dialogue 2008, and Doha National Dialogue August 2008, March 2010, Jan 2011, June 2012, March 2014, and September 2015.

[28]Wählisch, Martin, ,*The Lebanese National Dialogue: Past and present experience of consensus-building. National Dialogue Handbook Case Study*, Berlin: Bergh of Foundation. 2017 Online at: www.berghof-foundation.org/publications/national-dialogue-handbook (accessed June 2018)

Another example of consociational forum outside constitutional bodies is the Troika phenomenon. This refers to the top three ruling positions in the Republic of Lebanon, or more precisely, the occupants of these positions: the Maronite President, the Shiite Speaker and the Sunni Prime Minister. After Taif, it became a norm that thorny and vital issues are discussed and decided among these three leaders and then referred to their normal track only for formal ceremonial execution.

3- Assessing Consociationalism

Consociationalism as a form of democracy has been criticized on the ground of its purpose, process and outcomes. Consociational democracy has been associated with power sharing among diverse groups of a plural society, and at the same time has been linked to ordaining stability in a divided nation.

If power sharing amongst the factions of society is guaranteed by grand coalition characteristic, then questions on the scope of this sharing are raised, and the true representation of the factions it reflects. Since grand coalition is mainly attributed to the elites; i.e., leaders of the factions, then the result is that consociational government policies are more influenced by a small group of people who might not be specialist in the art of governance, and thereby the effectiveness is compromised, especially if a policy is technically sophisticated and the general public is inadequately informed. This result is aggravated by the fact that an elite, no matter their popularity among their faction, cannot claim to represent the aspiration of the entire community. Thus, consociational democracy may be criticized for not being democratic enough.

In Lebanon, the leaders are relatively educated and are the lineage of historic families, but these attributes are not anymore enough for modern leadership. Limited elite accommodation attaches more importance to personal character of the leader than to institutions. This has led to weak political institutions as well as severe inflexible institutionalization of consociational principles. The stability of culturally plural societies is threatened not by communalism, per se, but by the failure of national institution explicitly to recognize and accommodate

existing communal divisions and interests.[29]The segmental allocation of the highest offices and the present electoral proportionality, both of which favoured the Christian sects before Taif, were incapable of allowing a smooth adjustment to the new demographic realities since the Independence.

Consociational democracy in Lebanon has been also criticized for being insufficiently capable of achieving a stable and efficient government. By definition, the goal of this form of government is maintaining public security and political stability. Lebanese political life, particularly after Taif, has been fraught with immobility and power vacuum in constitutional institutions. All three top posts—presidency, prime ministership and parliament—have experienced lethal vacuum the effect of which was so severe it destabilized the country and threatened its peace and security. Edward Shils said that, Lebanon was "a country which must be kept completely still politically in order to prevent communal self-centeredness and mutual distrust from turning into active and angry contention".[30] It has been obvious in Lebanon that on different phases, the balance of power between different religious communities has come at the expense of true democratic values. However, any alteration in that balance of power, be it for the aim of enforcing straight democratic features, can cause paralysis to the political system as a whole and threaten public security and political stability. Lebanese consociational government has seen much of this alteration of power and, consequently, witnessed failure to bring about and maintain political stability, on few occasions.

Moreover, the mutual veto in Lebanon has represented negative minority rule. While such a veto may give each segment a complete guarantee of political protection, its great danger is that it might lead to minority tyranny, which may strain the cooperation in a grand coalition as much as the outvoting of minorities.[31] The confessional predetermination of state power among many sects, each having veto power over public decisions, undermine the realization of a functional and

[29] Robert Melson and Howard Wolpe, "Modernization and the Politics Communalism: A Theoretical Perspective", *American Political Science Review,* 64, no. 4 (December 1970): p.130.

[30]Shils Edward, "The Prospect for Lebanese Civility", in Binder, Leonard, n19, , pp. 1-11.

[31] Calhoun, *A Disquisition on Government,* New York: Liberal Arts Press, 1953, p. 28. See also Lijphart, Chapter1, n 4, p. 37.

strong government system[32]. Lebanon has had difficulties in passing laws, forming a government and naming a president. Its parliament was closed—indefinitely adjourned—by its speaker himself under the pretext that the government violated the common co-existence charter; i.e., grand coalition consociationalism.[33]

The weakness of opposition in consociational form of democracy is another field of its criticism. Grand coalition government necessarily entails either a relatively small and weak opposition or the absence of any formal opposition in the legislature. Given the fact that the presence of a strong opposition is an essential ingredient of democracy, consociational government is by definition less democratic than the conventional government-versus-opposition pattern. This is clearly felt and experienced in Lebanon.

Critics of consociationalism have tried to highlight that this form of governance yields to an ineffectual legislature. In Lebanon many essential issues, before presented to the parliament, are raised, discussed and decided upon in the cabinet, which is described as 'true Parliament on a small scale'. To top that off, two extra-constitutional bodies do also infringe on the jurisdiction of parliament: the Table of National Dialogue and Troika.

Having stated all the above critique against consociationalism, democracy itself has been criticized on the same ground of purpose, process and outcomes; yet, democracy is still the best available form of government until humanity progress comes out with a new form that heralds a new civilization.[34] In the same vein, political thinkers approach their critique of consociational form of democracy from different perspectives. Many do not necessarily oppose its four basic characteristics or its favourable conditions as explained above, but mainly criticized its promised outcome of political stability in plural societies. In this chapter, I have

[32]Bahout, n 20., p. 84.

[33]In 2006 five Shiite ministers resigned following the collapse of talks on the formation of a national unity government, rendering the government illegitimate, according to many politicians as it violated Taif's conditions that the government must contain members from the country's major sects.

[34]For instance, some critics would agree with Winston Churchill's famous remark, "No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time."

distinguished between democratic outcomes of effectively implementing consociational principles (grand coalition, minorities rights, power sharing), and undemocratic outcomes that are the distorted by-products of implementation of consociational principles (limited elite accommodation, minority tyranny, political system paralysis and power vacuums).

The accusation that implementing consociationalism in plural societies will result in a weak opposition or lack of opposition, hence undemocratic regime, overlooks the fact that implementing the conventional form of democracy might even lead to less democracy. The conventional assumption presupposes that political parties alternate in government and opposition. As discussed above, segmental cleavages tend to be inflexible and do not allow much movement of votes between parties. Political parties would coincide with religious or ethnical communities, not with ideological or political visions; which means fixed pre-defined followers of every party (and this is the case in Lebanon with all big parties). If conventional majority-versus-minority rule is to be applied, then minorities will not be represented in political institutions. It cannot be considered democratic to exclude the minority segment or segments permanently from participation in the government. It should also be pointed out that a grand coalition does not rule out opposition completely. As long as there is a parliament or other body to which a grand coalition is responsible, criticism may be directed against the entire coalition or against individual members of the coalition from any party.

As to the inflexibility of consociational institutions and the resulting power vacuum, it should be noticed here that even the staunchest advocates of consociational democracy admit that for consociationalism to work properly there have to be favourable conditions.[35] Worldwide economic crisis, regional turbulence, civil wars and domestic disorder are all factors that not only upset proper functioning of consociationalism, but negatively affect the outcomes and attributes of democracy itself. Lebanon, the small country it is, has always been the theatre where super powers play out their powerful cards against each other,

[35]Joseph Jabbra and Nancy Jabbra, "Consociational Democracy in Lebanon: a Flawed System of Governance", in Jamil E. Jreisati, *Governance and Developing Countries*, Leiden: Brill Academic Publishers, p41.

and where big regional countries maintain their interests and impose their sway through local or regional proxies.[36] The infamous 15-year civil war of Lebanon has been dubbed as 'the war of others over Lebanese soil'. Consequently, such exceptional periods should not be taken as examples of consociational democracy faltering.

4- Consociationalism Experiments

There will never be a consensus among political scientists on the feasibility of consociationalism in Lebanon. Some will judge it to have performed satisfactorily since the declaration of greater Lebanon, except for the years of civil wars. Others will view these same years as a proof of the failure of both the theoretical and normative dimensions of consociationalism. In the same sense, there are cases where consociational democracy has worked out in some countries and failed in others. The development and maintenance of consociational democracy in these plural societies was attributed to a number of factors, some of which were propitious and others were clearly negative.

The examples given below are meant to shed lights on this experiment and serve as case tests to which the Lebanese model is compared and contrast in the aim of getting a better understanding of this outstanding phenomenon.

In **Malaysia**, for example, the political process, since 1957, has generally been described as taking the form of consociationalism whereby communal interests are resolved in the framework of a grand coalition. Malaysia is anything but a homogenous society being the home of numerous ethnic groups (Malay, Chinese, Indians and others), each with their own sets of social mores and values. The unwritten political arrangements instated a consociational formula of governance whereby political power was placed in Malay hands and economic power in Chinese hands. This has achieved relative political and social stability until inter-racial riots and violence erupted in May 1969, when the Malay

[36] Gordon Anderson, "The Idea of a Nation State is an Obstacle to Peace" in *International Journal on World Peace*, Vol. 23, No. 1, 2006, pp. 75-85; and also Michel Kerr, *Imposing Power Sharing, Conflict and Consensus in Northern Ireland and Lebanon*, Dublin, Irish Academic Press, 2005, p. 104.

community revolted against their diminishing economic and social status.[37] Critiques to the arrangements claim that the racial problem in Malaysia has been so serious that consociational measures taken in the past to cope with it have not proved adequate.[38]

However, consociationalism advocates argued that Malaysia has had a multi-party system in a form of consociational grand coalition since the first direct election of the Federal Legislative Council of Malaya in 1955.[39] Had it not been to the consociational form of governance, Malaysia couldn't have surmounted the riots aftermaths and continued the peaceful transfer of power the last being following the 14th general elections in May 2018.

In **Cyprus**, the situation is different and almost all researchers agree upon the failure of consociationalism. With its independence in 1960, Cyprus adopted a thoroughly consociational constitution that set up a system of political accommodation for the highly plural Cypriot society (Orthodox Greek-speaking Greek majority [78%] and the Muslim Turkish-speaking Turk minority [18%]). The 1960 constitution[40] elaborately embodied all of the principles of consociational democracy. It provided for a presidential regime with a Greek president elected by the Greek community and a Turkish vice-president, with almost co-equal powers, elected by the Turkish community. The grand coalition principle materialised in a cabinet consisted of seven Greek ministers designated by the president and three Turkish ministers designated by the vice-president. This same ratio, which was an overrepresentation of the Turkish minority and a deviation from strict

[37] Fisk, Ernest Kelvin and Rani, H. Osman, *The Political economy of Malaysia*, Kuala Lumpur: Oxford University Press, 1982. FUNSTOW: also see J. Malay *Politics in Malaysia: A Study of UMNO and PAS* Singapore, 1980

[38] Gibbons, S. D., National Integration and Cultural Diversity: The Case of Malaysia, Development in SEA, 1971, p 116.

[39] The ruling party was the Alliance Party (Malay: *Parti Perikatan*) coalition and from 1973 onwards, its successor, the Barisan Nasional (National Front) coalition. Together with its predecessor, the Barisan Nasional (BN) government served for 61 years and was one of the world's longest serving governments until it lost power to the Pakatan Harapan (PH) coalition in the 14th general election that was held on 9 May 2018.

[40]Kiryakides,Stanely, *Cyprus: Constitutionalism and Crisis Government*, Philadelphia: University of Pennsylvania Pres, 1968, pp. 53-71.

proportionality, was applied to the composition of the legislature. Even a more deviated ratio (6:4) was adopted to the army and the police.[41]

Due to international circumstances, the Greek majority reluctantly accepted the consociational arrangements of the constitution and tried to amend them in the following years, which was faced with a fierce opposition from the Turkish community and Turkey. Civil war erupted, and the entire consociational experiment ended in 1963 in an utter failure.

To many analysts, the main reason why consociationalism failed in Cyprus was that it could not be imposed against the wishes of one or more segments in a plural society and, in particular, against the resistance of a majority segment.[42]

Another burgeoning, incomplete experiment of consociationalism in the Middle East is the imposed one that has been the result of the Anglo-American invasion of **Iraq.**[43] Observing the institutionalisation of liberal consociationalism in the new Iraqi political system shows that post-war Iraq has been forced to take crucial steps towards applying power-sharing arrangements in its political system. Nevertheless, years after the establishment of the constitution, political practices in Iraq have led to severe consequences destabilizing Iraq[44] and challenging peace and stability in the region. These misfortunes are mainly a result of the imposition of such form of governance after the invasion by the USA and UK, which meant coercive consociational provisions in the constitution, and not peoples' choice, to accommodate all elites from different communal background into the system.[45]

Moreover, the powers of the Prime Minister leave little room for accommodation, bargaining and power sharing between elites. Two of Lijphart's

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[41] Other consociational arrangements were also guaranteed: great deal of autonomy in religious, cultural, educational, and personal status fields; veto right to both the president and vice-president over the cabinet's or legislature's decisions in the fields of foreign affairs, defence and security… etc.

[42]Lijpahrt, Chapter 1, n 4, 1977, p 160.

[43] For further details on consociational experience in Iraq see McGarry,John and O'Leary, Brendan, "Iraq's Constitution of 2005: Liberal Consociation as Political Prescription" in *International Journal of Constitutional Law* 5(4), 2007, pp. 670-698.

[44] Mayer, Ann Elizabeth, "The Fatal Flaws in the U.S. Constitutional Project for Iraq", *Journal of International Affairs*, 61(1), 2007, p. 166.

[45]Some view the Iraqi war from the start was a demonstration by the great power to experiment the "model theory"; i.e., to divide Iraq into three entities of "Shia, Sunni and Kurds" to be a model applicable to the whole region. Abdul Fattah Ammourah*, Lectures on Middle East Politics*, O. P. Jindal University, 2018.

four conditions are absent in the consociational arrangements in Iraq: grand coalition and mutual veto, while two other characteristics of consociationalism, proportionality and autonomy, are strongly present but are not enough to preserve stability.[46]

Hence, the failure of Iraqi model of consociationalism is attributed to the lack of crucial consociational provisions, such as the grand coalition and the veto powers for cultural communities. Elites in Iraq have failed to continuously communicate, bargain and compromise to bridge the gap of aspirations of their cultural communities.[47]

A last example on consociational form of governance I give here is a First World experiment from **Belgium**. The intact success of the 'old' Belgian consociationalism has made it a copybook example of consociational democracy. Belgium is a federal state comprising overlapping three communities and three regions that are based on four language areas. In this context, grand coalition is based on linguistic factors ascribed to three different segments of a society that happen to exist, per se, as a result of the war, and is manifested by broad representation in the executive. It has been guaranteed by a constitutional requirement that the government be composed of equal number of Flemish and Walloons despite the cultural majority of the Flemish.

The continuous political stability of the system has made some analysts conclude that consociational decision-making was not a permanent feature of the system, but rather a technique of decision-making at moments where deep conflicts severely threatened the stability or even survival of the political system.[48] They argued that it is the federal construction that still displays the typical characteristics of consociational decision-making. However, Belgian political stability so far cannot be simply explained by referring to elite attitudes, but rather to institutional features making the absence of a negotiated compromise unattractive to all partners.

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[46]Abu Latif, Eduardo, "The Limitations of the Consociational Arrangements in Iraq", *Ethnoppolitics* Papers No. 38, University of Otago, 2015, pp. 2-4.

[47] See Eduardo, n 46

[48] Kris Deschouwer, "And the peace goes on? Consociational Democracy And Belgian Politics In The Twenty-First Century", *West European Politics*, 29 (5), 2006, pp. 895–911.

Notwithstanding the validity of this opinion, it remains clear that consociational arrangements were categorical in instating the political stability enjoyed by the highly plural Belgian society.

5- Conclusion

The religious resurgence across the Middle East has underscored the need for new formulas of power sharing and sectarian accommodation. Consociational form of governance could allow societal segments of different subnational identities to coexist in state entities, while at the same time maintain their preservation and sectarian autonomy[49]. Some theorists claim that "the Lebanese model of consociationalism may present a framework for conflict resolution in shattered Arab political societies facing problems of inclusion and power sharing, and serve as an example for their political reconstruction.[50]

However, this conclusion does not aim to prove the failure of the other forms of democracies that have been attempted to this troubled region, particularly the ones based on 'Arab Nationalism'. This is a secular political project that targets to build a modern nation state of trans-religious and trans-ethnic identity where minorities of all segments are protected and enjoy inalienable rights of full citizenship, in which Lebanon played a peer role. Arab Nationalism project has experienced chronic impediments and a campaign of defacing its true nature and objectives, with colonialism (both classic and modern) still abuse the diverse multicultural, multi-religious and multi-ethnic social constructs of the Middle Easterner societies with the objective of widening sectarian delineation and deepening demarcation lines among societies.

Although consociational form of governance had its drawback in the case of Lebanon, it generated a sound environment for democratic stability, except for the exceptional periods of civil war (1975 – 1989) and regional upheaval (Israeli aggressions and Arab Spring). There have been too many democratic failures in

[49] This arrangement might be the constitutional tool that external powers resort to in order to promote their interests and political agendas. Yet, it is, per se, a form of consociational governance based on power sharing among all groups of the society and aims at political stability.

[50] Bahout, n 20. p. 18.

plural societies in recent years (consociational model did not succeed in Cyprus), yet it is the best kind of democracy that can realistically be expected. On the whole, consociational democracy in Lebanon must be judged to have performed satisfactorily for more than thirty years. It has helped keep the country at peace and provided valuable lessons for the region.[51]As such, the case of Lebanon lends considerable support to the suggestion that the consociational model should be given serious consideration as an alternative to the British model of democracy in the plural societies of the Third World.[52]

It is due to this relative success that despite the limitation of consociationalism, its undemocratic dimensions and the wide criticism against it, it might be still the form of government most suitable for Lebanon given its segmental cleavages, and the important role religion plays in the life of Middle Easterners.[53]Also, due to this relative success some politicians, strategists and peace advocates have been suggesting to copy the Lebanese experience to war-ravaged plural counties like Iraq and Syria.[54]Lebanonisation, IraqiTaif[55] or Syrian Taif have been used as common political terms in Middle East war political settlement. Even political scientists who oppose the theory and reject consociationalism as a feasible form of democracy, consent to the fact that it might constitute a temporary settlement to the current situation in the Middle Eastern countries, and forms a way out of the current situation in their plural societies. On the other hand, there are writers who doubt consociationalism arguing that "such a model of democracy, if applied and practiced in countries of strong nationalist background such as Syria and Iraq, would entail and produce a non-coherent society with weak government to take decisive nationalist decisions because the leaders of the society's constituents who play the role in such democratic system. This could interpret the motive behind

[51]Bahout, n 20, p. 1.

[52]Lijphart, Chapter 1, n 4, pp. 149, 164.

[53] Religions in Middle East form societal cleavages despite the fact that religious beliefs and traditions comprise vertical relations among individuals of a society, while political relations are horizontal and are based on socio-economic and political factors.

[54]Others see this argument as "very naïve based on the fact that it would create chronic conflicts between nationalists, modernists and rationales". Ammourah, n 45

[55] Studying consociationalism in Iraq's political system, Abu Latif opines that the success of a power sharing provisions at all levels of state is worth comparing with Iraq. See Eduardo, n 46, p. 3.

western powers endeavor in their so-called "model theory" with Iraq as a starting point for the whole region."[56]

Having said that, Lebanese partial success of consociationalism must not overlook the root changes that should be made within the system in order to uphold a transparent and accountable regime. A balance must be struck between implementing consociational features in the Lebanese system of governance and implementing the conventional democratic rules and norms that keep the system working and prevent institutional paralysis and power vacuum.

One instrument to set this balance could be the institution already stated in the constitution as one of the Taif reforms, and by that I mean the Senate. Article 22 of the Constitution stipulates: "with the election of the first Chamber of Deputies on a national, non-confessional basis, a Senate shall be established in which all the religious communities shall be represented. Its authority shall be limited to major national issues." It's very significant that when the legislatures thought of obliterating sectarian representation in legislature, and thereby demolishing the grand coalition characteristic of consociational theory, they only established simultaneously another entity within the very same legislature that's completely sectarian and purely consociational.

The Senate shall represent all the religious segments equally (as the Taif Agreement indicated) and should decide upon major national issues, and, eventually, sectarian matters where each sect representatives would have the final say regarding their own sectarian issues. In this sense, the Senate would embody the consociational features of grand coalition, mutual veto, proportionality (parity representation is an odd form of proportionality which reflects minority overrepresentation) and autonomy. Thus, the senate would form a balance between maintaining the consociational elements in the legislative and eliminating the sectarian dimensions of the lower house in order to avoid the system immobility, ineffectiveness and power vacuum.

[56]Ammourah, n 45

Chapter Five

Relationship between Legislature and Executive

The study of any political system cannot be considered complete no matter how comprehensive the study is, how deep it goes into the detailsof authorities and their powers, or how inclusively it studies the constitution, political parties, social systems etc., unless it analyses the relationship between the legislative and executive authorities, both in the constitution and in practice.

This relationship is the core of the political system and its raison d'être. Without understanding this relationship, it would not be possible to understand the nature and features of various political systems. Every change in the relationship will lead to a change in the structure, form and nature of the political system.

Every political system comprises three authorities: legislative, executive and judicial. It is only the relationship between these three authorities, specifically between the first and the second, which will differentiate one political system from another. If all these authorities were to be concentrated with one individual or body, the system would be described as autocratic, dictatorial or authoritarian. If these authorities were distributed amongst three separate bodies, the system would take a democratic form.

If the relationship between the authorities is characterized by cooperation and mutual influence, the system will be described as a parliamentary system. However, if this relationship is limited, with weak mutual influence amongst the authorities, and powers were mostly vested in the President of the state, the system will take on the form of a presidential system. Whereas, if the legislative authority are granted broad powers and a body responsible for carrying out various executive functions stemmed from this legislative authority, the system will be described as a council system.

This brief narrative may be an oversimplified naïve description of the types of political systems and the differences between them. However, it is meant to highlight the importance of the relationship and how precise it is, such that any changes come upon it would lead to an overall change in the nature and scope of the system.

It should, therefore, come as no surprise to know that there are more than 190 political systems in the world today, which is almost the number of countries in the world, despite the fact that the number of theoretical political systems can be counted on the fingers of one hand.

1- Emergence and Evolution of Relationship

Since this relationship is of crucial importance, it is legitimate to question how it was established, and why this importance is limited to the relationship between the legislative and executive authorities, and does not extend to other authorities, organizations or bodies.

a- Historical Evolution

Fundamentally, this relationship stems from the fact that these two constitutional bodies exist within the framework of one political system. Each one of these bodies possesses certain dominion of jurisdictions and specialization. The relationship of one body with the other is framed in the context of these respective dominions. However, had these dominions been truly defined separately and independently, with the limits of jurisdictions clearly and unambiguously highlighted, there would have been no issues whatsoever, and the relationship between the two authorities would have taken on a simple and obvious form, as is the case with the other authorities and bodies.

Nevertheless, the historical evolution of legislature and the executive has led to an intertwining between their powers, to the extent where it has become, in many cases, very difficult to exclusively categorize various state functions within the powers of legislative or executive authorities. It is almost impossible to identify a state function that lies within the powers of one authority and is not influenced in any way by the powers of the other. As such, it is imperative to locate a portion of each authority's powers inextricably related to the powers of the other. The more it is attempted to make the powers of each authority clearer and detailed, the more confusion and overlapping between the two erupt. It is, therefore, easy to accuse each authority of infringing upon the powers of the other whilst carrying out its functions.

The reason for this historically complex relationship is that since the Middle Ages the legislative authority—especially in Britain, the birthplace of parliamentary system and the cradle of democracy—has been establishing itself and consolidating its powers in the face of the King. It attempted to do so by extracting a portion of the King's powers, or at least by sharing in some of his powers in certain fields. In the context of this development, the affairs and instruments of governance were distributed between both authorities. Consequently, a conflict—hidden or pronounced—began to emerge, revolving around the powers of each authority. It reached its peak in the first half of the 17th century in Britain, when the House of Commons rose as the representative of the people, thus retaining the right to supervise the process of enacting legislations; specifically, in imposing taxes and defining the ways to collect and spend them.

With the advent of the modern age, the importance of the executive authority grew as a result of the outbreak of wars and the increase in economic and social crises. It, therefore, became natural for the powers of the executive to expand at the expense of the legislatures, even if the infringement was upon those powers that were at the core of the legislature's very existence; i.e., legislating. This led to a pushing back of the hands of time, as though going back to the starting point.

b- Jurisprudential Development

That was the historical evolution of the subject of the relationship between the two authorities. The jurisprudential (literature) development of this relation, however, always took place in parallel with the development of the principle of separation of powers. The discussion related to the relationship between the two authorities has always taken place within the framework of this mentioned principle, and this is only logical. Discussing the relationship between the two authorities would never be proper if they were both integrated within one body, or if the authorities were both practiced by one person or one entity.

This separation, by no means, implies a complete and total disconnection or independence. The management of government affairs requires a continued friction between these two authorities. Consequently, cooperation and balance between the

two, and mutual influence they have on each other; i.e., their interrelationship must be addressed.

i- John Locke

The first to deal with the subject of separation of topic in an analytical manner was British thinker John Locke (1632 – 1704) in his Second TreatiseOf Civil Government.[1]A predominant figure in the history of political theory and philosophy with extensive work on jurisprudence. His pioneering work, *An Essay Concerning Human Understanding* (1690), formalized empiricism as a research method that focuses on the experience of the sense to gather knowledge, rather than speculation or intellectual deduction. He is also known for formulating the concept of the tabula rasa or the notion that people are born blank with no knowledge or faults. The idea remains a hugely influential philosophical concept till date.

In 1690, he anonymously published "Two Treatises of Government". Its background lays in the ouster of King James II in favour of King William the III and his wife Queen Mary in the Glorious Revolution, with the help of a group of wealthy noblemen known as the Whigs. Locke, had strong associations with the Whigs, and sought to justify the ascension of King William. Very briefly, in the Second Treatise, Locke's model consisted of a civil state, built upon the natural rights common to a people who need and welcome an executive power to protect their property and liberties. His primary argument lays in the fact that a government exists for the people's benefit and can be replaced or overthrown if it ceases to function toward that primary end. Locke's work also serves as a major counter-argument to Thomas Hobbes' Leviathan which argues in favour of absolutist government to keep people from abusing property and privacy. Many persistent rifts in political theory today stem from the fundamental disagreements between Locke's Second Treatise and Hobbes' Leviathan.

[1]Locke, *Second Treatise of Civil Government, Chapter 12,* published at www. constitution.org/jl/2ndtriz.htm (no copyrights mentioned) (accessed 2017).

Locke believed that the inherent nature of legislative authority does not presuppose its permanent existence. It is feared that their permanent presence in power, would entice some weak-minded members to use their broad powers to enact legislation for their own personal benefit, or they may exempt themselves from having to submit to these laws. However, since it only takes a short period of time to enact laws, it is necessary for these laws to be continuously enforced, and this enforcement needs to be monitored. This gives rise to the necessity for the existence of a 'permanent' authority which would be tasked with monitoring and ensuring the enforcement of laws after their enactment. This is the executive authority. Consequently, and based on this, it is necessary for the legislature and the executive to be separated.

ii- Montesquieu

The French thinker, Charles-Louis De Secondat[2], also known as Montesquieu (1689–1755), came after John Locke, to deal with this principle in his book 'Esprit de Lois' or 'The Spirit of the Laws' (1748). He did so with a level of accuracy and detail that no one else had previously done, rendering this principle closely attributed to his name. Montesquieu became firmly established as the father of the principle of separation of powers, and his book 'The Spirit of the Laws' became a historical reference.

Montesquieu views that every state has three forms of authority: a legislative authority, an executive authority which deals with affairs pertaining to the rights of the nation, and an executive authority which deals with affairs pertaining to civil rights, which he later termed as the judicial authority.[3]

Using the first authority, Montesquieu adds, the ruler or prince enacts laws for a specific period, or for an unspecified and open ended period of time, in addition to amending or abrogating previously enacted laws. By the second

[2] Charles Louis de Secondat, born in 1689 in the French town of Bordeaux. After the death of his father he was placed under the guardianship of his uncle, who passed on his wealth to him along with the position of the head of the Bordeaux parliament, in addition to the title "Baron de Montesquieu." He was consequently known as Montesquieu.

[3]See Montesquieu, "The Spirit of Laws*",* Translated and edited by Coher, Anne M.,Miller, Basia Carolyn and Stone, Harold Samuel*, Cambridge Texts in the History of Political Thought*, Cambridge, Cambridge University Press, 1989; Part 2 bk 11, Ch.6,pp 48-51).

authority, the ruler declares war or peace, sends and receives emissaries, preserves national security and stands against any aggressions. By the third authority, the ruler punishes offenders for their crimes, or arbitrates disputes between conflicting parties. This final authority is called the judicial authority, while the second authority is called the state's executive authority.

After opining that for an individual's political freedom to be secured, the government has to guarantee the lack of fear of each individual from another, Montesquieu goes on to describe the dangers of combining the two authorities in a simple conclusive deductive manner. This manner was so simple, that it was almost drawn in a comic fashion. Nevertheless, it was new, clear and valuable, and was and remains to be a foundation for many of the theories and ideas that came after it.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.[4]

If the legislative branch appoints the executive and judicial powers, as Montesquieu indicated, there will be no separation of powers, since the power to appoint carries with it the power to revoke.

Montesquieu goes on, 'the executive power ought to be in the hands of a monarch because this branch of government, having need of dispatch, is better administered by one than by many. On the other hand, whatever depends on the

[4]Montesquieu, n3, p.321.

legislative power, is oftentimes better regulated by many than by a single person. But, if there were no monarch, and the executive power should be committed to a certain number of persons, selected from the legislative body, there would be an end of liberty, by reason the two powers would be united as the same persons would sometimes possess, and would be always able to possess, a share in both.'[5]

However, who is it that should carry out these authorities, according to Montesquieu?Since in free countries, every person that possesses a free soul has the right to govern himself, the people therefore—as a body—have the right to exercise legislative authority. Since this is impossible in big nations, and problematic in smaller ones, the people would, therefore, assign to their representatives to carry out what they themselves are unable to.

While formulating his theory, Montesquieu was greatly impressed and influenced by the British system. This influence was clear when he called for two bodies to exercise legislative powers: one would be tasked with representing the nobles and preserving their status and gains, thus matching their roles in the legislative process with their importance in society. The other body would represent the rest of the people, on the condition that the role of the nobles' body would be confined to objecting; i.e., it was not to be involved in taking the initiative to legislate.[6]

The executive authority must be in the hands of the King, as this part of ruling, which usually required quick action, would be exercised by one person in a better fashion than if it was exercised by a group in sharp contrast to the legislative process. The representative body should not be selected for the purpose of enforcing decisions—a matter it does not know how to carry out—rather, for the purpose of making laws, or monitoring whether the laws it had previously enacted are being enforced properly and correctly. These latter are two functions the legislative authority knows very well how to exercise.

[5] Montesquieu, n3

[6] It was not a secret that Montesquieu's background and distinguished social status influenced his calls to distinguish the nobles.

It is important for Montesquieu to create three independent branches, with equal yet different powers. Consequently, the regime would avoid placing broad powers in the hands of one individual or body. Each branch of the political system would, therefore, draw limits to the powers of the two others (an authority checked by another authority), whereby neither one of these branches would have the ability to threaten the liberties of the people.

Baron Montesquieu was cautious to ensure that neither the executive nor the legislative authority would be tyrannical, especially the authorities responsible for representing the people. If the executive authority does not have the right to monitor the institutions of legislative authority, the latter would become oppressive, as it would be able to seize all powers and grant itself the powers that it desires.

At the same time the legislative authority should not enjoy the power to monitor the executive authority (the monarch), as the work of the executive authority is limited in nature, and any attempt to limit it would be futile. Furthermore, executive authority is exercised in matters of urgent and immediate nature. Nevertheless, the legislative power does retain the right to monitor the manner in which laws it has previously enacted are enforced, without possessing the right to hold accountable the individual in charge of enforcing the laws, who should always be considered as a sacred individual, so as to avoid tyranny and preserve liberty. However, it is not possible for a ruler to rule in a bad manner unless he has evil advisors—called ministers—who detest the law. These advisors maybe questioned and indicted.[7]

The executive authority (the monarch) may participate in the legislative process, through the use of veto right which it possesses, if it perceives itself as having been stripped of its powers. Consequently, the executive authority should not take part in the legislative process as an initiator, or by proposing laws, or else liberty would disappear. Instead, it may interfere with the process in order to defend itself. It should also do this by using its veto power. On the other hand, if the legislative authority shared the executive authority its powers, then the

[7]See Montesquieu, n3

legislative would overshadow the executive authority and weaken it to the point of vanishing.

He concluded that the legislative body being composed of two parts (chambers), they check one another by the mutual privilege of rejecting. Both of these chambers are also monitored by the executive authority, which in itself is monitored by the legislative authority. Montesquieu was aware of the problem that a system of government so nicely balanced might result in complete deadlock, that the three bodies (King, Lords, and Commons), by being poised in opposition to each other might produce a state of repose or inaction. However, he dismissed the problem by arguing that the three authorities are forced to move in the nature order of things (*par le mouvementnécessaire des choses*), and forced to move in concert.

iii- Modern Jurisprudence

This skilful intellection and logical analysis, though stemming from the reality of the British parliamentary system, has laid the first foundations within the parliamentary system theory, where there exists duality of executive power: a King who reigns but cannot be questioned and at a later stage, a King who reigns but does not rule, and a government accountable before the parliament.

Indeed, this parliamentary theory has gone through a substantial process of evolution, whereby some of its features have changed. However, if the era in which Montesquieu formulated the principle of the separation of powers, which was approximately two and a half centuries ago, and the halo of sanctity that engulfed the King, along with the noble class which Montesquieu himself belonged to, both were taken into consideration, then the value of this theory which has inspired most drafters of constitutions to this very day becomes clear. His theory, ultimately, led to Montesquieu being considered as one of the founders of the American Constitution.

This theory remains to be the main title for democratic systems to this day. It has displayed great resilience, despite its inability to adapt to modern day realities and to explain the various developments taking place in real life. Even though the theory has been attempted to restructure with the use of new ideas and more precise

details, it has always remained within its general framework which was initiated by the British philosopher and later delineated by the famous French baron.

The theoretical principle has been afflicted with change at its very core. What is striking and important to note here is that this radical change has taken place, on the ground, within the very system from which the theory of the separation of powers emerged, in Britain. While the cabinet gradually moved towards slowly reducing the King's powers and expanding its circle of powers, eventually reaching a point where it was exercising all of the powers of the executive authority, leaving the King with a few symbolic and formal powers, the theory remained, constitutionally—and more importantly jurisprudentially—as it was.

Separation of powers in a modern day nation state refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.

- The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government.
- The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch.
- The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.[8]

It is important to note that I'm not trying to take Locke's theory apart or to shake its foundations. I believe that it is one of the most important, richest and long lasting theories within political science in all of its branches. Perhaps the reason for its continued relevance is the genius with which it was first formulated at the hands of John Locke and Montesquieu, and in a way that may still be used to explain the developments in real life practice.

[8] http://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx (accessed 13 November 2019)

Locke's conceptualization of sovereignty and its uses, combining theological, social and political perspectives, testifies to his intellectual profundity that was spurred by his endeavour to re-traditionalize a changing world. Montesquieu's statement that the authorities of the system are governed by the natural order of things, and that the authorities will proceed alongside in harmony, is nothing short of a clever and far sighted indication from him which has kept the door open for further research, thus giving the theory another reason to be long-lived and allowing a new principle to be added besides the principle of separation of powers. This new principle is the principle of 'cooperation amongst powers' that currently forms a solid foundation upon which the relationship between the two authorities may be built, specifically within parliamentary systems.

This is what modern day jurisprudence has resorted to upon discussing the original theory, and this is what is adopted in this research after clarifying two issues in order to clear up any confusion or contradiction between the theory in its original form and the modern day reality of the relationship between the two authorities:

First, democracy is no longer simply the separation of powers; i.e., not merging them within one body. It is not either the rule of the people, by the people and for the people. This research is not here to define democracy or explain the modern day conditions for its existence. Nevertheless, it should be pointed out that one of democracy's most important conditions is the principle of succession of power. This is achieved with the existence of an active opposition which monitors and has the ability to hold the government accountable. This would guarantee the representation of everyone's views, and the selection of the most suitable and skilled individuals to rule the nation.

Second, the separation between the two authorities, within the framework of a parliamentary system, should be understood in its symbolic sense. Its content should be understood, not its shape. It should be viewed in terms of the separation between legislative and executive functions, without the necessity to separate those that are exercising these functions.

c- Establishing the Relationship and Drawing its Limits

Perhaps the most famous explanation and accurate understanding of the principle of separation of powers was declared by Judge Brandeis in 1926 in the Myers case, in which he stated that 'the principle of separation of powers was first adopted in the 1787 constitution, not to consolidate effectiveness of government, rather to prevent the arbitrary exercising of authority. The purpose was not to avoid friction, rather to immunize the people from autocracy through the same inevitable friction resulting from power sharing between the three institutions'. [9]

i- In Parliamentary System

Friction between the two authorities is inevitable as long as they are both exercising their powers; it is necessary as long as it is desired to prevent the possibility of arbitrary actions. The fundamental limitations to this relationship are inherent in understanding the spirit of the powers that each authority possesses, along with the instruments at their disposal to exercise these powers.

It is worthy to note that most writers, since John Locke and Montesquieu, up to contemporary writers, have set out to establish boundaries to this mentioned relationship by starting off with the legislative authority; i.e., by placing restrictions on the legislature.

This may be due to their awareness of the broad and comprehensive powers that the legislature possesses, in addition to their knowledge that legislative authority always has the final say and is considered sovereign and sacred—at least constitutionally. It is only logical to set boundaries for the strongest authority, or as Montesquieu viewed, that executive action is quite limited in its nature, and it is, therefore, futile to place restrictions on it.

John Locke and Montesquieu made it clear, as previously mentioned, that the purpose of instilling a representative body is not for the implementation of laws, rather for the enactment of laws, or to monitor the implementation of laws it has

[9]David M. Abshire, Ralph D. Nurberger, ***The Growing Powers of Congress,*** The Center for Strategic and International Studies,Georgetown University, Washington DC, 3rd Published 1981 P.25.

previously enacted. The actual and most suitable aim of the representative assembly, as viewed by John Stuart Mill, is not taking decisions in administrative and executive affairs, rather in ensuring that the individual chose to take these decisions is the most suitable.[10]

In this regard, for example, it is sufficient for the assembly to practically decide on the prime ministers, the next government and its program. The only mission that the legislative authority may excel at is not the actual fulfilment of work, rather being the cause behind accomplishing it.[11]

The words of Gladstone (Prime Minister of Britain) are always remembered when he addressed the House of Commons, stating 'your job is not to rule the nation, rather, if you find it appropriate, to hold those who rule accountable'. He carried on saying that the powers enjoyed by this House grant it with an undeniable ability to drive the entire nation into a state of confusion. Nevertheless, the prudent limitations set in place by the House itself over its own powers, have enabled it to express its broad influence and to exercise its authorities with the utmost level of genius without destroying the other institutions, which in turn are exercising their own powers and enjoy influence in this nation.[12]

Consequently, it becomes clear that the main function of legislative authority is to monitor and control the government, by shedding light on its activities. It will also expose certain questionable actions and, if any wrong doing is proven, it will impose the justifications of these actions and reprimand and punish them. If it becomes clear that government members have misused the trust vested in them, or have used this trust in a manner which goes against the public's national interests, it becomes the right of legislative authority (parliament), rather it is their obligation, to "expel these government officials and replace them". [13]

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[10] Mill, John Stuart,*Thoughts on Parliamentary Reform,* 1st publish 1859, republished on the international network under The Internet Encyclopedia of Philosophy, 2004. (https://oll.libertyfund.org/titles/mill-the-collected-works-of-john-stuart-mill-volume-xix-essays-on-politics-and-society-part-2#lf0223-19_head_002) accessed on 13 November 2018.

[11]Wiseman,H.V., Chapter 2, n10, p23.

[12] Cited in Wiseman, Chapter 2, n10 p25

[13]See Chapter 2, n10 p24.

This analysis entails many questions: to what extent can criticism and monitoring be effective, especially in the case of a single party system, or in the case of a presidential system, whereby the mutual relationship is at its lowest level? Furthermore, what is the possibility of the maximum punishment undertaken by parliament; i.e., the expulsion of individuals responsible for faulty actions and policies? [14]

It is important to note that the history of the relationship between the two authorities shows that the best understanding of the principle of the monitoring of legislative authority is embodied in influence and not direct authority, advice and not orders, criticize and not cripple, scrutiny rather than initiative.[15]

ii- In Presidential System

It goes without saying that the boundaries of the relationship I have just described stem from the mechanisms of the parliamentary system, and are embodied within them. Only within this system does the relationship between the two authorities manifest itself in its finest and most complex forms.

However, within presidential systems, where a rigid system of separation between legislative and executive authorities is in place, a relationship between the two authorities does exist, albeit at its lowest level. The controls on this relationship are strict and clear, legally and in praxis. In this sense, the restrictions are placed on both authorities. Although the mechanisms for mutual influence are limited, their effectiveness fluctuates depending on political circumstances, both domestically and internationally. Restrictions are usually downplayed and boundaries crossed mostly by the legislative authority.

2- Theoretical Manifestations of the Relationship

How did writers after Montesquieu deal with the principle of separation of powers, and how is the subject of the relationship between legislative and executive authorities viewed today? How is this relationship manifested in the context of

[14] There is an indication of ministerial accountability in the analysis, and we may deal with it in a separate section.

[15] See Wiseman, Chapter 2, n10, p.25

exercising powers and carrying out functions? Does this mentioned relationship reflect a balance between the two authorities, or does it reflect the superiority of one over the other? If one authority is truly dominant, which one is it? Or do the positions of these authorities change depending on circumstances, times and places?

a- Superiority of the Executive

This view of modern relationship corresponds with the view that parliament has lost a part of its glamour and its role has diminished to that of a mediator. Ramsay Muir views that the role of parliament, which should be that of monitoring government on behalf of the people, despite its importance, does not reflect parliament's feature of sovereignty. Furthermore, if the sovereignty of parliament was embodied in its absolute hegemony over legislating and taxes, this would actually mean that it possesses no kind of sovereignty. The governments of today enact most of the important legislations.[16]

The idea of parliament controls the government through the cabinet, which is considered to be a committee stemming from it, is also misleading. Parliament does not appoint this committee, nor does it receive periodical reports as it does from its other committees, unless this is imposed by law, or if the cabinet itself deem necessary to forward these reports to the parliament. Furthermore, should the parliament oppose the so-called committee; i.e., the cabinet, or for any other various reasons, this later has the ability to offer its advice to the King and get parliament dissolved.[17]

Those who do not view parliament as a sovereign authority consider what is said about parliament's control over the actions of the executive and the attempt to attach special importance to this function as oversimplification contrary to the truth and reality.[18] It is the government—except for when it does not lead a parliamentarian majority—which controls parliament. This is for the very logical

[16]Muir, Ramsay, *How Britain is Governed,* LondonConstable& co. ltd., 1933, (1st print 1930), p 37.

[17]See n 17, p. 122.

[18]Ogg ,*English Government and Politics*, N.Y, London 1934, Macmillan Edition 1936, p 450.

reason which is that parliament is incapable of monitoring all the actions of the government, and it is way beyond its reach to follow up on the large range of daily governmental executive actions. The most that legislative authority can do to a government is to change it; however, it will be unable to do so as long as the government possesses an organized parliamentarian majority.[19]

If a certain law does not function well, it is not the parliament to be blamed, rather the government which passed the law. Even if a court issues a ruling that displeases the government or its supporters, the government always has the right to annul this ruling or amend it through the enactment of a law by parliament, which supports the government, or rather, which is under its control.

The truth is that with the existence of a clear parliamentary majority, the role of parliament is narrowed down to two main functions[20]: it becomes, first, an election mechanism through which the opinion of the electoral body is transmitted regarding who shall undertake the many powers of the government (though this role is usually exhausted soon after elections when this issue is decided); second, it becomes an advisory body through which the government is able to assess public opinion and the layman expectations, in order to accordingly adjust its proposals, tone down its programs, so as to avoid angering the public opinion.

b- Superiority of Legislature

The opinions that argue that the government has acted as a dictatorship in its relationship with parliament, especially the views of Professor Muir—who asserted the diminishing role of parliament to the extent of being marginalised—have been criticised and refuted. Opposing opinions have asserted that the legislature remains to be the sovereign power, and that parliament—regardless of the fact that it may not be able to follow and keep up with the daily work details of the executive—still carries out its role of determining and controlling public policy through the processes of legislation and monitoring.

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[19]See Wiseman, Chapter 2, n10, pp. 88-91.

[20]See Muir, n 17., pp 127-133.

Although almost all laws are made at the initiative of the government who proposes, drafts and mobilizes public support for them, they do not become enacted, and consequently become laws, unless approved by parliament after following certain indispensable procedures.

As for the restrictions placed on parliament and its members, especially restrictions related to financial legislation and the budget, these are restrictions that have been instilled by parliament itself and with its full consent. Furthermore, the control exerted by the government over parliament's schedule, or the interference in the opening dates of its ordinary or extraordinary sessions, is only done after the approval of parliament.

The powers of the government are linked to the existence of this majority; moreover, the existence of the government itself depends on the existence of this majority. The questions that arise here is when does the government enjoy a majority in the parliament? It should not be overlooked that "there will always be a number of problems experienced in keeping parliamentary minorities unified or in complete harmony, and it is not wise to assume that the matter is easier with parliamentary majorities."[21]

Parliamentarians have their own set of principles which they stay committed to before their colleagues and constituents, or to themselves, and they defend them and live by them. There are no grounds for assuming complete blind obedience.

Government is limited by its fear of losing public opinion, and consequently losing the general election. This is a restriction on the so-called 'government dictatorship'. It is, therefore, necessary for government to determine the most appropriate time to compromise, negotiate and give concessions, or else it would be paving the way for its fall. It is natural for parliament members to not serve under the umbrella of a government that will most likely lead to their defeat in the next elections.[22] There are certain limits that the government doesn't dare to push its majority supporters past, even if it possesses the necessary mechanisms to

[21]Bassett, Essentials of Parliamentary Democracy, London: Macmillan, 1935, p. 25.

[22]See Laski, *Parliamentary Government In England,* London: George Allen & Unwin, , 1959 pp. 157-158 and 172-173

influence—such as the powers to dissolve parliament—and this is due to the fear that the government may lose its supportive majority. Governments which are not able to live without using the power of threats, especially the weapon of dissolving parliament, will not remain intact and will cease to exist.[23]

Therefore, according to these opinions, authority lies with the majority in the parliament, not within the cabinet or the government. Furthermore, in parliamentary systems, and especially cabinet systems, it is not possible to separate the government from its supporters when talking about the dictatorship of the government. This is because government officials are leaders or active members, within their party or parties which form a majority in the parliament.

Professor Muir's objection, in the opinion of Basset, doesn't seem to be directed at the dictatorship of the government; instead, it is directed against the situation which gives the government the support of a majority made up of only one party. The main target point of his criticism—whether intentionally or unintentionally— is the bipartisan system. While he asserts the necessity for harmony between the government and parliament, he all the same opposes this harmony with a single-party government, supported by the parliamentarian majority of this very same party.[24]

The proponents of this trend of thought did not stop at simply defending their views, but they also initiated a counter offense, calling for strengthening the procedures in place for the legislative authority's monitoring of government, not the opposite. This is because the opposite, in this situation, would lead to the abolition of ministerial accountability, one of the most important pillars of democratic parliamentary work. It would also lead to the disruption of the legislative process, and would, therefore, place it at the mercy of various pressure groups. Through their intricate organizations and massive capabilities, these pressure groups would probably even force the ministers and the government to take certain actions that it doesn't believe in; however, it would take these actions

[23]See Laski, n 22, pp 172-173

[24]See Bassett, n 22, pp. 24-28

under the threat of being defeated, or under the influence of temptation exerted by the different lobbies.[25]

c- A Relationship of Understanding and Cooperation

We have gone over two different views and two contradictory opinions. Some view that the constitutional theory makes parliament the sovereign authority, giving it absolute control over the government through the cabinet, which is actually considered to be parliament's executive committee. This would also give it absolute control over legislation and the process of imposing taxes. Every institution in the society owes its existence to the legislative authority, and they all draw their powers from it.[26] Other views have discussed the massive, independent powers of the government, along with it absolute control over parliament. It is as though the main objective of general elections is to first elect a government and then select a group of deputies that support this government and send them to parliament.

These two views lie at opposite ends of the concept of the relationship between the two authorities, and the contemporary role of parliaments. Some writers find that the truth lies somewhere in the middle of the spectrum, with a clear tendency towards the belief that it is the executive authority which is dominant and has a bigger role within political systems. The truth is that the relationship is not always extreme; instead, it is moderate and is governed by cooperation and understanding not by balance, as the relationship may sometimes tilt in the direction of either one of the authorities. Furthermore, the standards of this balance are unknown, so is the equilibrium point against which the imbalance is identified when it may occur.

The government will only go as far as it believes parliament will support it and continues to give it confidence. And parliament will only go as far as it believes

[25]See Laski, n 22, pp 172-173, See also Wiseman, Chapter 2, n10, p.101.Their main proof of this is the relationship between the American Congress and the executive authority. American senators are completely independent of the executive authority, and the instruments to influence them are highly limited. It is not cynical to say that this independence in itself led to the formation of professional, political and religious pressure groups (lobbies) and to the extension of their powers. These are the toxic and dangerous features of the American system.

[26]See Low, Sir Sydney, *The Governance of England,* London: T Fisher Unwin, 1904, pp.53-54.

the nation will follow. Hence, within the framework of a parliamentary system—specifically the cabinet—the relationship between the Chamber of Deputies and the government, especially the prime minister, is a continuing relationship. The deputies guide him and he leads them. He is, to them, just as they are to the nation, he will only go as far as he believes that they will follow[27].

Lord Lyndhurst used to reply to those who would say: "parliament has achieved nothing during this legislative session", by saying: "parliament has maintained me during this session, and this is probably one of its greatest achievements"[28].

3- Practical Manifestations of the Relationship

This section will deal with the more practical aspects of the relationship. It will deal with the subject of this relationship within the context of legislation, in addition to studying it within the framework of ministerial accountability and the act of dissolving parliament.

a- The Relationship within the Framework of Legislation

Most legislative authorities view the most effective means to push government to act; i.e., monitoring it, to stem from their role as law-making bodies. It is through enacting legislation that they are able to monitor the administration. They specifically take advantage of the opportunity to discuss financial legislations in order to see how the government spent previously allocated funds, and how the government plans to spend the funds under process.

This analysis may be more accurate within presidential systems—especially in the United States of America, and in some European parliamentary systems—than in the British cabinet system. Nevertheless, it remains a useful analysis to understand the relationship between the two authorities in both systems, in terms of the legislative function.

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[27]See Bagehot: *The English Constitution* / Smith, Paul edited, United Kingdom: University Press, Cambridge, 2001.(Cambridge texts in history of political thought), pp. 150-154.

[28]Cited in Wiseman,Chapter 2, n10, p.126.

i- Invitation of Elective Bodies

For a number of logical and practical reasons, and other reasons which Montesquieu considered important to prevent the tyranny and arbitrary actions of the legislature, it is the executive authority that elected members of the legislature. John Locke, who assigned this right to the executive authority, gave the monarch two options regarding the timing of inviting the elective bodies: the date may either be specified in the constitution, and in this case, the monarch's rights would be limited to issuing an executive decree in accordance with the legal procedures, or the date may be left to the discretion of the monarch to determine the most appropriate time to issue this invitation to the elective bodies, based on his assessment of the prevailing conditions or the emergency situations that the people may be facing.[29]But what if the executive authority impeded the invitation of the elective body to exercise its rights to select the members of the legislative authority? Locke considered this action as a declaration of war against the people who have the right to delegate the legislative powers to their representatives. Therefore, the people would have the right and would be obliged to resist this situation with the use of force. In all cases, and under any circumstances, unauthorized power becomes an aggressive force that should be dealt with through the use of force.[30]

Furthermore, the power to prepare and supervise the election process is also assigned to the executive authority.

ii- Inviting Legislature to Convene

After the process of selecting members of the legislature has been completed, who is responsible for inviting this authority to convene in order to carry out its functions?

Legislative authority is not permanently convened. Historically, this is probably due to the idea that legislators should not be differentiated from the rest of the people, as permanent sessions and continuous meetings could lead to the

[29]Locke, see n 1

[30] See n 30

formation of a class of people which may attempt to grant itself special powers and privileges, along with exempting themselves from the conditions of the law. This is in addition to the large financial burden that the rest of the people would have to bear as a consequence of these meetings, sessions and privileges. At the completion of their legislative work, members of the legislative authority should go back to being a part of the population and allow themselves to be subjected to the rule of law which they themselves helped to enact.

Since it is impossible to predict developments, and there is no level of certainty in the future of humanitarian affairs, whereby the convening of the legislative authority may sometimes be necessary, this power (to invite legislature to convene) was designated to a permanent body responsible for protecting the interests of the society. There are no other bodies more suited for this function than the executive authority that is assigned with the responsibility of implementing the law and protecting the interests of citizens.[31]

In modern times, the power to invite legislature to convene has become very important. The first step towards destroying a democracy is the act of refusing to invite the legislature to convene, or adjourning its sessions while it is in the process of meeting".[32] In order to avoid this possibility, the constitutions of many countries have stipulated that under certain circumstances the legislative authority should be invited to convene, in addition to identifying pre-specified dates for the legislature to convene. Some constitutions have even set the day and the date for these sessions to convene."[33]

The power of the executive differs from one political system to another or from one country to another.

[31]See n. 13, where Locke emphasises that assigning this power to the executive authority does not mean that it is superior to the legislative authority.

[32]Wheare, *Legislatures*, London: Oxford University Press, 1963, p.26.

[33] As is the case within the Lebanese, French and American constitutions.

iii- Setting the Agenda of Parliamentary Sessions

This brings us to the question who is responsible for setting the projects to be studied by the legislative authority and how are laws passed? In summary, the answer is that in Britain and the Commonwealth nations, and in parliamentary systems in general, it is the government which determines which projects are to be studied and which projects it supports. However, it goes without saying that the parliament preserves its right to propose bills (draft laws) to be discussed and enacted.

Even if we were to turn a blind eye to the role played by large labour unions, trade unions, cartels, lobbies and other pressure groups in the process of enacting draft bills, the legislature as a whole does not decide anything. Decisions are taken by a group of senior leaders within this authority. They are leaders of the majority bloc, especially the House Speaker, who also happens to be leader of the majority.[34]

As for the time it takes legislature to study laws, and the authority which specifies the allocated time allowed for this, it seems that these two issues are related to a basic principle within the legislative body, and this is the freedom of expression. It is extremely difficult to specify or allocate a specific period of time for studying a bill, or to set rules for ending discussions.

iv- Legislation and Making Laws

Despite the increasing role played by the executive in legislation, and its expansion in all types of systems without any exceptions, in order to keep up with the requirements of today, there is still a general difference between political systems. Some view that the proper function of representative assemblies is indeed to talk; it is a conference of opinions, a sort of grand questioning or interrogation conducted by the nation. Nevertheless, laws cannot be made without its approval, and the price to be paid by the government in exchange for this approval is to take into consideration the recommendations of the parliament.[35]

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[34] See Wheare, n 33, pp.149-150

[35] Mill, *Considerations on Representative Government*, 1st print 1860, Everyman's Edition, 2000,p.169.

b- Ministerial Responsibility

The concept of ministerial accountability is linked to the principle of duality of the executive authority, which is a main condition in the parliamentary system. It is known that the emergence of duality goes back historically to the British system since the middle of the 17th century. Throughout different historical intervals and for many various reasons, specifically the frequent wars that occurred one after the other[36], the King was obliged to leave the reins of the state's internal affairs to a group of ministers he selected from among the majority party within parliament; i.e., the party that is best able to secure funding for the monarch. This practice was gradually transformed into a norm instating a government that stems from the parliament and rules under the supervision of the King.[37] Since the King's position started off as being sacred; i.e., 'the King does no wrong', and was later transformed into 'the King reigns but does not rule', and since it is necessary to question everyone that carries out public functions or anyone that carries out constitutional work, it became necessary to establish another body, other than the King, that may be questioned about the actions carried out on his behalf. In this case, it was natural for the ministers—or the King's advisors as they were viewed—that they were held responsible either individually or collectively as one body, the cabinet.

The weakening of the position of the King led to consolidating the role and powers of the government and, consequently, to the emergence of the duality of the executive. This was a reason for the emergence of the principle of ministerial accountability, naturally resulting from the government carrying out its functions where it might do wrong or right.

[36]In addition to wars, many other issues led to consolidating the role of the ministry at the expense of the King. Amongst these reasons was the weak personality of the King, while some other Kings were wasteful and corrupt. Some Kings simply had no experience in ruling, and were indifferent to their rule. Moreover, George the first, who was the first King from the Hanover family to take over the throne of Britain, did not even know English, which made his participation in parliament and the discussions that took place within it a mere formality.

[37]Al-Majzoub, Dr Mohammad, القانون الدستوري والنظام السياسي في لبنان، وأهم النظم الدستورية والسياسية في العالم, Beirut, 4th Edition 2002, pg 123.

As the King was no longer responsible, and as it was necessary to select someone, or a group of individuals, bearing responsibility for the actions carried out on the king's behalf, led to the emergence of a group of advisors which was later named the cabinet. Members of the cabinet, each according to his specialization, would sign the monarch's decrees as a way of expressing his approval and his willingness to take responsibility for these decisions.

As was the case for other parliamentary principles, ministerial accountability only reached its current shape and form after going through different phases, and after it underwent a very long course of historical evolution. Ministerial accountability was first established as criminal (penal) responsibility. After the House of Commons refined its role as a grand jury, it invented a mechanism called 'impeachment', which was a way to charge ministers for actions viewed as criminal by the council, followed by bringing them to trial in front of the House of Lords.[38]

Eventually, the behaviour of ministers in their relationship with parliament stopped being governed by the fear of being impeached, and became governed by the desire to rule in accordance with constitutional principles and in line with the orientation and political program of the parliamentary majority.

i- Collective Ministerial Responsibility

Throughout the better part of the 18th century, the cabinet remained as a body composed of a group of individuals holding high positions. The relationship among these members was weak and not specified. This continued until the issuance of the Representation of the People Act in 1832, known as 'The Great Reform Bill', which led to the foundations of a principle stipulating the necessity of executive government representing the same political aspirations embodied by the parliamentary majority.

The cabinet, whose members were all correlated through party affiliations became a strong connecting link between the King and the parliament. It was, consequently, able to seize and control all aspects of public affairs, and to bear

[38]See n. 38, p126

responsibility for its actions as an independent entity with its own identity and legal status. In this way, collective ministerial responsibility evolved at a later stage after individual ministerial responsibility.

The Concept: Collective ministerial accountability does not require the active or direct participation of all of the members of government in formulating its policies, nor does it require the attendance of all members in the discussion rooms when decisions are taken.[39] However, ministers were supposedly informed in advance of any proposals, and allowed to give their opinion. However—and herein lies the essence of collective ministerial responsibility, especially within the cabinet system—every minister, even those that oppose the decision, is obliged to vote in favour of government in the parliament, and to defend its policy.

It's due to this situation that a veil of secrecy is necessary for the government discussions during its sessions. It is impossible for the government to remain unified as one front, if it allowed the differences that occurred during its sessions to be revealed.[40] Every single member of the cabinet that does not resign is held fully responsible for all the decisions taken by the cabinet. An opposing minister does not have the right to declare that he opposes the government's policies, neither does he have the right to claim that he agrees on one decision but oppose the other.[41]

Shift in Exercising Collective Responsibility: It is important to note that government's failure in passing a bill related to a basic law is considered as a loss of parliament confidence in the government.[42] However, this content is no longer clear and strict, nor does it occupy in modern day political systems the same space it used to occupy.

The modern concept considers that government does act responsibly not when it is subjected to the parliament supervision, but when it carries out effective

[39]Wade and Phillips , *Constitutional Law*, (Second edition), London: Longmans, Green & Co.1935 Reprint 1999, pp 66-67.

[40]See n 40., p. 67.

[41]Lord Salisbury, cited in Wade and Godfrey Phillips, n 40, p 114

[42]Marshall and Moodie, *Some Problems of the Constitution*, London: Hutchinson University Library, 1959, reprint 1989., p.93.

actions to lead and control parliament.[43] These days, the resignation of governments as a result of widespread opposition to their policies is not more likely than their resignation when things are progressing normally; it might even be less likely. Crises which used to lead to overthrowing the government until the beginning of the 20th century now present an opportunity to the government's supporters in the parliament to express their party obedience and full support. They also present leaders with an opportunity to strongly hold onto power, till public attention is drawn into other matters, thus allowing the government to readjust positions. [44]

Nonetheless, asserting this new concept does not mean that the concept of ministerial accountability has been abolished. It is only this parliamentary majority that governments enjoy today, whereby—in most cases—they are affiliated to one party, or the government stems from the womb of one party (as is the case in the cabinet system), that has led to a new practice of the concept of collective government accountability.

ii- Individual Ministerial Accountability

The Concept: While collective accountability means that government faces parliament as one unified front, individual accountability—in its political sense—means that for every action carried out by ministers, or for every time a minister is negligent in his duties, he is held accountable. A minister is also held accountable for every action taken, or negligence, by any individual or body within his ministry.

This definition highlights the importance of the rule of anonymity in the field of civil service.[45] For every action carried out by an anonymous employee, the minister is held accountable before the parliament. Since this employee is unable

[43]Birch, Representative and Responsible Government: An Essay on the British Constitution, London : Allen and Unwin, 1964. p.159.

[44]See n. 44, p.67.

[45]See n 40,p.67

to stand before parliament, he is protected from parliament.[46] This is the positive side to individual accountability, whereby ministers will not be able to defend themselves by blaming their employees. A minister is also unable to lay the blame on other ministers as long as the issue in question is within the jurisdiction of his administration.

Individual Responsibility in Practice: This theoretical concept of individual responsibility in its basic form is unable to withstand facts and reality. With the rapid pace of events, in addition to the outbreak of wars and crises, it is impossible to speak of ministerial isolationism or taking decisions without prior ministerial consultations, discussions or the exchange of views.

Since the government embodies a certain political orientation and adopts an agenda, every decision issued by any one of its members should be in line with this agenda and orientation. Laying blame as a form of individual accountability is normally only seen when the government is composed of a minority party (minority government), or when a minister seriously irritates parliamentarians of his own party who are supporters of the government.[47]

The minister's need to resign depends on three factors: himself, the prime minister and his party. In order for his resignation to become definite, it is necessary for it to occur as follows: compliance of the minister, consent of the prime minister along with the complaints of his party.[48] It is very rare for all of these factors to concur, and parliament is usually generous with ministers that are frank and admit and apologise for their mistakes.

According to this analysis, individual ministerial accountability doesn't lead to what it is supposed to in theory, especially with the existence of party and government solidarity. Quite the contrary, it may sometimes lead to completely illogical consequences. A minister may lose his position within government for

[46]However, this does not mean that the employee is relieved of being questioned by the minister, supervisory bodies and disciplinary bodies.

[47]Finer, 'The Individual Responsibility of Ministers' in *Public Administration*, Volume34, Issue 4, December 1956, pp. 393-394

[48]S.E. Finer, n 47

reasons completely unrelated to his performance, whereby his own low performance does not lead to his dismissal.[49]

c- Dissolving Parliament

Among the different forms the relationship between legislative and executive authorities takes, dissolving parliament is considered to be the most extreme. Ending the representative capacity of all the representatives of the people and annulling their membership in parliament, in addition to shortening the term of the legislative authority, the ultimate sovereign body within the political system, by another authority which owes its power and probably its existence to this very authority which it is dissolving, all of this seems to be completely illogical and contrary to the foundations of a democratic representative system. How would this be justified?

i- The Concept

In exchange for the right to overthrow the government, which legislative authority possesses as a part of ministerial accountability and a result of its lack of confidence in the government, the executive authority owns the power to dissolve parliament. The act of dissolving parliament, which leads to the ending of parliament's legislative term, in addition to the cancellation of the representative capacity of its members, aims to more than simply create a balance between the two authorities through which the government may exert influence over parliament.

In the context of carrying on their functions, differences may arise between the government and parliament, sometimes over fundamental issues. The various mechanisms of mutual influence may fail to lead to a solution. In order to prevent the situation from reaching a dead end and the emergence of political constitutional crisis, the mechanism of dissolving parliament is resorted to. It is not used as a weapon in the face of parliament, nor as a punishment directed against its members, rather as a means of empowering public opinion to arbitrate on the existing conflict.

[49]In this regards, Sir Sydney Low states that a minister may have cost his country thousands of lives and millions of pounds by launching a military campaign, the objectives and results of which haven't been carefully studied. However, he may be defeated as a result of one of the decisions taken by his colleagues—probably against his will—to increase taxes levied on bread or beer. Sir Sydney Low, *The Governance of England*, London: Longmans, 1904, pp.148-149.

For the executive authority to possess the right to dissolve parliament is one thing, while the actual exercising of this right is another thing. In Britain and other Commonwealth nations, it is considered to be a healthy practice to dissolve legislature (House of Commons) prior to the end of its term, if this was a desire for election considerations or in order to resolve a political crisis.

In other European countries, the mechanism of dissolution is not considered to be justified unless it is used as a last resort to resolve an ongoing political crisis. Every attempt made by the executive to dissolve the legislative authority in the absence of a political crisis will be met with discontent and suspicion, and will render the opposite results to what was desired by the executive.

ii- The Mechanism of Dissolution in Practice

This concept of dissolving parliament as mentioned above was criticised for oversimplifying the relationship between the two authorities. It is contrary to what is implied by the theoretical concept of dissolving parliament, a body which stems from legislative authority, and it owes its survival to it. Consequently, the government and the parliamentary majority are usually affiliated to one party or bloc. Moreover, within the parliamentary cabinet system, the situation is constant and stable: the government does not only belong to the majority party within the parliament, but its members are also a part of this majority and they are usually leaders in the party which controls the legislature. Therefore, the cabinet is considered to be an executive arm of the parliament.

There are two explanations for the use of dissolving parliament. The first states that the government uses its powers to dissolve parliament in order to strengthen its position within it.[50] The government monitors the public opinion and consequently determines the right time—in accordance with its electoral interests, and within the limits of what is called 'political courtesy'—to hold elections. This is all with the objective of obtaining the largest possible number of seats in parliament.

[50]See Wheare, n 33 pp.35-39

Sometimes the additional pressure exerted by the opposition to resolve a certain issue would impel the government to resort to public opinion as the only way to exit the vicious circle. In this case, dissolving parliament is used as a weapon against the opposition. It is important to note that this may carry with it the risk of miscalculating the trends in public opinion, which cannot always be depended on.

The second explanation states that the government today, which is usually composed of the leaders of the parliamentary majority party, may use the mechanism of dissolving parliament as a weapon in the face of parliament members from its own party in order to ensure their compliance with its stated policies.[51]

iii- Effectiveness of the Dissolution Weapon

There's much room for disagreement about the circumstances in which dissolution is proper, justifiable or effective as a weapon to guarantee party compliance and stability of the government. Some examples of government stability exist in various European countries, where the mechanism of dissolution hasn't been used.[52] Moreover, if the government is facing problems with its own party, how would it help to resort to the electoral constituency at such a time? The situation is not easy at all, nor are the results guaranteed for the leaders of the majority party – the leaders of the government. Perhaps the opposite is true; whenever the mechanism of dissolution is used as a weapon to ensure compliance, it may be transformed into double edged sword, cutting in the direction of the prime minister in most cases.[53] It is true that dissolving parliament forces the deputies to prepare for reelections. However, this would also force the prime minister to risk his own position.[54]

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[51] One of the main reasons that the "British cabinet dominates the House of Commons is that, at the sign of any trouble from his own party, the Prime Minister can threaten a dissolution. Part discipline, so lacking in the Third and Fourth Republics, is maintained in Britain by the threat of dissolution".

[52] This principle is not implemented in Norway, for example, where the government is stable. Its use in Sweden is extremely limited, since the first council elected after dissolution continues till the end of its term. Therefore, dissolution is not used as a weapon to ensure party compliance and government stability.

[53] Andrews, 'Some Thoughts on the Power of Dissolution'*, Parliamentary Affairs*, Volume XIII, Issue, March 1960.

[54] In more than half of the cases where British prime ministers have resorted to dissolving parliament since 1833, the prime minister has lost the elections or lost his position. Even in the cases where the prime minister has held onto his office, he

The prime minister and the party leadership possess a much more effective weapon that carry lesser risks than dissolution. This weapon is embodied in the right of the party leaders to strip the rebel members of parliament of their party status, and rejecting adoption of their nomination to the coming elections.[55] It is an effective weapon in the hands of party leaders, and they are not in need of any other weapons which may lead to unanticipated consequences.

Lord Atlee asserted that the weapon of dissolution *is* necessary, especially to ensure the compliance of parliamentarian party members. However, he goes on to state that when he was Prime Minister of Britain, he did not use this mechanism at all, nor did he threaten his party members with it to ensure their compliance. He attempts to explain the contradiction between his statement regarding the necessity of this weapon and the fact that he never used it once by stating that some of the most dangerous weapons are used the least.[56] The pioneering constitutionalist, Sir Ivor Jennings, considered the mechanism of dissolution as "a big stick which exists to never be used at all", whereby its existence has a purely psychological effect[57]: speak softly and carry a big stick.

The question still to be raised is whether this importance remains valid with plural societies, particularly those that adopt a consociational form of governance, the main theme of our study. With consociationalism, conventional rules stop to work and are replaced by exceptional regulations that render the system unique with special form of special inputs and outputs. The relationship between the two authorities also becomes unique and drastically changes in consociational regime whether presidential or parliamentary. In brief, the core of the relation shifts from being between two institutions into a personal relation between the elites who accommodate in a grand coalition in the regime.

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has continued with a weak rule. On the other hand, 4 out of 5 deputies within the prime minister's party have been able to win the elections after parliament was dissolved.

[55]Ever since World War II, no deputy has been re-elected to parliament after being evicted from his party due to his disobedience and non-compliance with the decisions and orientations of the party.

[56]See William G. Andrews, n. 54

[57]Jennings, Sir Ivor, *Parliament*, Cambridge: University Press, 1st published 1939, Ed. CPU 1987, p.23.

Grand coalition in plural societies, though manifested mainly in the executive, weakens the legislature which will see most of its functions confiscated by the elites accommodated in the government. When passing critical laws or legislative work that would affect a certain component of the state or the structure of coexistence in the society, and when it is hard to garner parliamentary majority support due to differences among various blocks, then the work is transferred to the government which in this case acts as a parliament on a small scale. Since it is easier for a small group to come to an agreement, the elites in the government, who happen to be the leaders or the representatives of their respective factions, will have the work done and refer it back to the legislature for its sanction and proper promulgation.

Thus, the relationship between the two authorities in this form of government is still there, and still important and critical, yet it drastically changes and follows a different procedures and rules. This will be clearer when studying the relationship between legislature and the executive in the Lebanese system, in the following chapter.

Chapter Six

Lebanese Parliamentarianism and the Relationship between the Two Authorities

The Lebanese constitution was made under the supervision of a mandate state whose political system is parliamentarian. It was, therefore, natural for this constitution to adopt and quote many principles of the constitution and system of that state. Regardless of whether this was the demand of the Lebanese people (or Lebanese dignitaries), or was the most suitable for a unique society such as the Lebanese (and this is another topic), Lebanese constitution was meant to include principles and mechanisms of Parliamentarianism, and it did.

1- The Uniqueness of the Lebanese System

These principles were not adopted exactly as they had been in their country of origin (Britain), or as they were applied in the country from which they were adopted (France)[1]. They were 'Lebanonized' to reflect the realities of the Lebanese system and all that it embodied in terms of exceptions and special cases. Consequently, the principles of the Lebanese political system were parliamentary—written with Lebanese ink, but with their own special characteristics. It is for this reason that I have described the political system of Lebanon as 'simply Lebanese'.

a- Reasons and Manifestations of the System's Uniqueness

The unique nature that characterizes the Lebanese social and political system in Lebanon was conceived along with the establishment of the system itself. This nature actually preceded the establishment of the system, as it had already been—and still is to this day—inherent within the society itself. It was, therefore, natural for this unique case to be reflected in the political system, its institutions and constitution.

The beginnings of this special system emerged with the promulgation of the 1926 constitution, which resulted in the creation of a peculiar form of parliamentarianism, and which granted the President of the Republic broad powers similar to those of his counterparts in presidential systems, along with a government

[1]Nor any of the countries from which it was claimed that the Lebanese constitution was adopted from, such as Belgium and Egypt.

appointed and dissolved by the president and accountable to both the president and the parliament. This was on the condition that the president's signature or approval was to be coupled with the signature of the concerned minister or ministers. The decision to dissolve parliament was, however, entrusted to the President of the Republic through the Council of Ministers; in other words, through a decision taken by the President during ministerial council sessions.

The process of representation was also based on a special electoral law which, in addition to the peculiar norms established by the National Pact of 1943 along with the process of distributing government portfolios amongst the various elements of the country, served to add to the level of uniqueness and to bolster the exceptional nature of the parliamentary system.

The consecutive amendments—most important of which were in 1927, 1929 and the independence amendments—did nothing but make an already bad situation worse, thus contributing to make the political system even more exceptional and unique. Even though the most recent amendments adopted in 1990 radically changed the relationship of the authorities and redistributed influence in addition to restricting powers, they were unable to dissipate the special and unique Lebanese character of the system which remained simply Lebanese.

It is, therefore, important to highlight that due to this Lebanese peculiarity, the relationship between the legislative and executive authorities, which otherwise bears a high level of importance in other political systems, is of mediocre importance in the Lebanese system. This is because the other various components of the system— such as social and political sectarianism, historical legacy, the political elite and the National Pact with its mechanisms, altogether fused into a consociational form of governance—have a much deeper impact on the nature, structure, orientation and determination of the outputs of the system than the impact of the mutual relationship between two constitutional authorities.

It is true that political systems can only be understood when we have conceived their operational mechanisms in application as well as those prescribed

in the constitution. However, the origins for these procedures and applied mechanisms in other systems can be found within the constitution itself. They can, consequently, be expanded (or constricted), modified or amended, leading to the creation of sub-procedures. However, these sub-procedures do not bypass the spirit of the constitution, nor are they alien to it. Where do the operational mechanisms of the Lebanese system lie with regards to this rule?

There is 'a certain thing' which goes beyond the constitution, in the sense of compelling rules which influence the political system, an unwritten and invisible constitution (a shadow constitution), which—alongside the May 23rd constitution—gives the Lebanese political systems the features of being a unique Lebanese parliamentary system.

b- The Unique Parliamentarianism

If this shadow constitution is left aside and its rules and mechanisms are ignored, while discussing only the 1926 constitution, what would the relationship between legislature and the executive look like? Rather, what would the parliamentary system look like, and how sound would it be? The Lebanese constitution did not dedicate a separate chapter or section identifying this relationship, though it is of utmost importance. In contrast to the French constitution, which allocated chapter 5 of the constitution and 19 articles to address the minute details related to the relationship between these two constitutional institutions[2], the Lebanese constitution dealt with this relationship in various scattered paragraphs under various titles.[3]

[2] The American Constitution does not include any special chapter for the relation between the authorities. This is natural since the Constitution established a presidential system based on the rigid separation of power between the authorities.

[3] The Lebanese constitution consists of many structural, organizational and even linguistic flaws (and we are not referring to the content). The scattering of articles dealing with one subject, the lack of logic in its chapters and paragraphs, their names and the weak language and phrases which are used, are all features of the Lebanese constitution which make it seem as though it was randomly put together by copying and pasting.

i- Parliamentarianism prior to Taif

Prior to the Taif amendments, that were issued through the constitutional law no. 18, dated 21/09/1990, there was nothing mentioned clearly within the constitution that indicated the parliamentary nature of the system. It was of course possible to deduce this parliamentary nature from various provisions and articles of the constitution. There was definitely an elected Council of Deputies, which constituted the legislative authority and which granted the government confidence or withdrew it. There was also an executive authority which, in turn, had the ability to dissolve the Chamber of Deputies.

However, these characteristics are not enough to describe a system as parliamentary. One of the prerequisites for a parliamentary system is the concept of duality of the executive authority, whereby there should be a head of the state (King, Emperor, President…etc.) who owns but does not rule, or presides but does not rule. In other words, he is the head of the state and the symbol of the nation's unity who should only carry out actions of a protocol nature. He shall safeguard the constitution and nation's independence and territorial integrity. Consequently, and in line with the philosophy behind the parliamentary system, the president is not to be held accountable to any constitutional authority, especially parliament (except for rare cases such as high treason where he becomes accountable to the people and the constitution).

The lack of authority, therefore, leads to the lack of accountability. It is also necessarily true that lack of accountability should lead to, and should be followed by, lack of authority. This latter deduction, alongside other various historic factors, is what led to the establishment of the parliamentary system in its cradle, Britain. Due to the fact that it was not permitted to question the king, a slow and gradual process of stripping off his powers was initiated, eventually leading to the stage of 'the King who owns, but does not rule'.

On the other hand, and as a part of this same parliamentary system philosophy, there is also a government—existing as a constitutional body in itself—

which exercises the powers of the executive authority and is presided over by the head of government (president of the council of ministers, prime minister, chancellor. . .). This head represents the government and speaks on its behalf, in addition to supervising the executive administration in the broad sense of the word. It is this government that can be questioned and held accountable. So long as the president—the head of the state and its sacred symbol—cannot be questioned, it is the government which is responsible for exercising executive powers that is held accountable for the consequences of its plans, projects and actions.

This duality of the executive authority is paralleled by a legislative authority (may be composed of one or two chambers) which makes the government; i.e., grants it confidence and supports it, or withdraw confidence and overthrow it. The government is only held accountable to the legislative authority, and more accurately, it is responsible before the representatives of the people. In order to counterbalance these dual functions of monitoring and questioning, the parliamentary philosophy stipulates granting the government the right to dissolve parliament. This is only carried out as a last resort and is the most hated option of all. It is a weapon in the hands of the government which aims to resort to the people's judgement, by overruling both institutions and giving the people the final say through the process of elections.[4]

Going back to the Lebanese constitution, the pre–Taif agreement phase, and comparing it with the provisions and principles just explained above, it becomes clear that describing Lebanese system as parliamentary would be a big mistake. The constitution did not include the principle of executive duality. Article no. 17 (before amendment) stipulated that Executive power is entrusted to the President of the Republic who exercises it with the assistance of Ministers, according to conditions established by the present constitution. There was no such thing as a government or a council of ministers as a constitutional body on its own. The status

[4] These are of course the principles of the classical parliamentary system. We have pointed out the evolution of these principles and the amendments which were made to the system's mechanisms and provisions, in addition to the fact that the application of this system in real life differed, though it retained the spirit and philosophy the theory.

of ministers— even the status of their president who was not constitutionally privileged with any special powers—was similar to the status of ministers and their president within presidential systems. In other words, they were accountable to the president of the republic. Article 53 came to destroy all parliamentary principles, whereby it stipulated that "The President of the Republic appoints and dismisses the Ministers among whom he designates a President for the Council of Ministers…" They were obviously very close to being the president's advisors and secretaries.

On the other hand, article 45 which stipulated that "Each of the acts of the President of the Republic must be counter-signed by the Minister or Ministers concerned, except however in the case of the nomination or revocation of a Minister", was at the very core of the parliamentary concept. As long as the Head of State—in a true parliamentary system—cannot be questioned, it is therefore necessary for another individual to take responsibility for decisions. It is for this reason that the minister's signature is necessary, as it is considered to be a form of recognition by the minister to take responsibility for these decisions. This is one of the few articles which gave the Lebanese system a parliamentary flavour. However, the flexible powers of the president, particularly those which granted him the authority to appoint and dismiss ministers, rendered the mentioned article meaningless. The president, for example, may dismiss a minister who opposes one of the president's decisions and refuses to sign it only to appoint another minister who would blindly sign and give his stamp of approval.

As for the act of dissolving parliament in pre-Taif phase, this was another anomaly. While the constitution enshrined the right for parliament to grant confidence to the entire government or individual ministers, it did not grant the government the mechanism to counter balance this right. The power to dissolve parliament was entrusted to the President of the Republic who—as stipulated by the old article no. 55—may, by motivated decree taken on the favourable advice of the Council of Ministers, dissolve the Chamber of Deputies before the expiry of its term of office. It was definite for this approval to be guaranteed within a Council

of Ministers whose members were appointed and dismissed by the President of the Republic himself.

I will not delve deeply into details pertaining to constitutional mechanisms, nor shall I highlight the areas of distortion in these mechanisms compared to those of conventional parliamentary systems. Neither shall I discuss the broad powers of the President of the Republic which resemble those of the president in a presidential system. I shall not either address the relationship between the President of the Republic and the Prime Minister, despite the importance of this relationship. Rather, I shall suffice with the constitutional provisions which addressed the relationship between the two authorities, keeping in line with the constraints of our research.

The unique Lebanese system was, therefore, not a parliamentary system. Neither was it a presidential system, in spite of the broad powers the president possessed. The president does not have the power to dissolve parliament in a presidential system, nor can parliament topple the government of the president or withdraw confidence from the president's ministers, thus forcing them to resign. It is neither a presidential nor a parliamentary system. It is, as I have mentioned before, simply a Lebanese system.

Imad Salamey and Rhys Payne, in their article Parliamentary Consociationalism in Lebanon: Equal Citizenry vs. Quotated Confessionalism echo a popular understanding of the Lebanese legislative system as being a flawed mechanism that would need major structural changes to survive. The authors state that their study concludes that the comprehensive implementation of consociational democracy in Lebanon awaits the eventual election of a parliament based on proportional representation (an essential condition proposed by Lijphart), which would allow the country to move away from the rigid 'confessionally quotated representation' towards the more responsive 'equal citizenry' model. They also state that the eventual realisation of proportional representation in the country should

remain the ultimate goal for reform so as to satisfy consociationalism as characterised by Lijphart.

However, the differentiation between proportional representation and confessionally-quotated representation is not clear here. The quotas allocated to each sect (in almost all institutions) is already based on proportional scheme regarding each sect within the same religion. In other words, the seats in the parliament, for example, are distributed equally between Muslims and Christians and "proportionally" among the sects of each religion. So the quota system that the authors criticize is itself based on proportionality that they propose to create a more responsive 'equal citizenry' model. They themselves admit that the consociational power-sharing scheme succeeded in moderating inter-denominational tension, allowing religious communities with varying histories and political aspirations to coexist for many years.[5]

As a result, in my view, the consociational form of governance in Lebanon, is still the best system suitable for the country, but needs some amendment and modification. At this point, it needs to be noted that the country has witnessed various uprisings against the government since its independence. None of the movements, including the current October revolution, is seeking an end to power sharing scheme or the elite accommodation in a consensual form of democracy. The demand is not for the destruction of the political or administrative systems.

Due to limitations of the topic, the thesis is not delving into the details of the corruption, nepotism and economic imbalance in the country. It touches upon the external influence in domestic politics, but refrain from making a detailed statement about the internal situation. An attempt at conceptual framework analysis, the thesis would limit itself to analysing the legislative system.

[5]See Salamey and Payne,'Parliamentary Consociationalism in Lebanon: Equal Citizenry vs. Quotated Confessionalism', in *The Journal of Legislative Studies*, Vol.14, No.4, December 2008, pp.451–473

ii- Parliamentarianism after Taif

Lebanese lawmakers who met in the Saudi city of Al Taif were fully aware of the abnormal and distorted nature which characterized the Lebanese system. There is no doubt that they wanted to correct these mechanisms and straighten out the system, bringing it closer to a parliamentary system. It is for this reason that they insisted on the parliamentary nature of the system, whereby the preamble of the constitution which was added in accordance with the Taif amendments in its third paragraph c stipulated that Lebanon is a parliamentary democratic republic, in addition to its 5th paragraph (e) which stipulated that "the political system is established on the principle of separation of powers, their balance and cooperation."

Separation of powers is the essence of democratic system regardless of the form or image it may take, keeping in mind the evolution that this principle has gone through as explained in the previous section. As for the balance between the two authorities, this is necessitated by the respect for every constitutional authority, in addition to the need for each authority to carry out its functions without the domination of either one over the other. Cooperation, which is one of the pillars of parliamentary system, and is embodied in the network of mutual relationships between the authorities with the aim of coordination and communication, remains to be in the interest of the people and the nation, for the noble objective of preserving the integrity of governance and protecting the political and social system. The separation of the system's authorities should not be too rigid, or else constitutional crises would arise and disrupt the process of government.

In summary, the intention of the Lebanese legislators to give the system a parliamentary nature is quite clear. However, this was not enough. A system does not become parliamentary just because the constitution describes it as such. So, how have the rules changed and what has become of the parliamentary principles?

To begin with, that the constitutional provisions after the 1990 amendments gave the system parliamentary principles and features which were more appropriate than those of the old constitution. A number of ambiguous points were removed,

and some distortions were rectified. However, did the system truly become parliamentary?

As mentioned, one key pillar for a parliamentary system to exist is the duality of the executive authority. The Lebanese constitution has adopted this principle. There is now a government which exists as a constitutional entity in its own right, embodied in the Council of Ministers which enjoys a position and defined powers within the constitution and to which the executive authority is entrusted, not to the President of the Republic (article 17). There is also a President of the Republic. However, unlike its counterpart in the classical parliamentary system, this position enjoys its own powers. The president's functions are not limited to simple formal protocols.

Not only is he the head of the state and the symbol of the nation's unity who shall safeguard the constitution and Lebanon's independence, unity and territorial integrity, but he also presides over the Supreme Defence Council and is the Commander-in-Chief of the Armed Forces (article 49). Moreover, article 53 assigned the president with a very important power. This article, in its first paragraph, states that "The President of the Republic presides over the Council of Ministers when he wishes without participating in voting." Furthermore, the 11th paragraph of the same article grants the president with the power to "introduce, from outside the agenda, any urgent matter to the council of Ministers." It is quite obvious how important these two powers are in consolidating the position and influence of the President. He may, for example, preside over all sessions of Council of Ministers[6], whereby his presence would obviously have an influence on the Council's decisions in the direction that the President desires, even if he is not allowed to vote. He also has the right to present to the Council any issue which he deems urgent, whereby he can ask the Council to take a decision on this issue after he has made clear his opinion and desire. It is highly unlikely for the ministers to

[6] President Emile Lahoud, for instance, insisted on attending all the Council's sessions—except one—of the Rafik Al Hariri's last two governments.

go against the desires of the symbol of the nation's unity and the protector of the constitution.

In addition to these two powers, other various powers were granted to the President by the constitution, such as negotiating and ratifying international treaties in agreement with the Prime Minister (article 52). The President also has the power to invite the Council of Ministers to extraordinary sessions whenever he deems this necessary, in agreement with the Prime Minister (article 53, paragraph 12). He also has the right to review and amend a draft law before it is passed (article 57), in addition to adjourning the Chamber for a period not exceeding one month. He may not do so twice during the same session. (Article 59).

Most of these powers contradict the role of the President of the Republic, the symbol of unity and neutral umpire. At the very least, these powers are in stark contrast to the role of the Head of the State in the classical model of parliamentary system[7]. Consequently, the amended constitution did not establish a dual executive authority as prescribed by the conditions of parliamentary system. Rather, it actually established two executive authorities: two established positions with each possessing broad powers and influence. Nevertheless, one of them- the President- is still considered non accountable.

As for the instrument of dissolving parliament, which is also considered as a pillar within the structure of the parliamentary system, it was expected of the legislators to put it within its correct framework and to remove any faults that the previous mechanism included. However, the result was only worse. While this mechanism had been entrusted to the President in the old constitution, whereby he had been able to take advantage of it for his own benefit and to further his own interests, the amended constitution distributed the power amongst the President and the Prime Minister in a random manner. As per the Taif-amended constitution, the

[7] When we say the system, we mean the classical parliamentary system which has evolved over the years and settled into the form in which it currently exists in Britain, the cradle and birthplace of this system. In this sense, this system differs from other parliamentary systems—such as the Lebanese and French systems—which are based on parliamentary principles but consist of various exceptions.

initiative comes from the President who may ask the Council of Ministers to dissolve the Chamber of Deputies before the expiration of its mandate. If the Council, based on this request, decides to dissolve the Chamber of Deputies, the President shall issue the Decree dissolving it… (Article 55).

This sequence does not only consist of an unjustified expansion of the President's powers within the parliamentary system, but it also represents a distortion of the principles and mechanisms of this system. The rules of parliamentary action make the initiative and the decision to dissolve within the powers of the government, leaving the issuance of the decree to the Head of the State. The right to dissolve parliament, regardless of the various objectives, whether it is to create a balance to the powers of the legislature or to resolve a dispute between the two authorities by resorting to public opinion or to control and organize the parliamentary majority in order to unify its ranks, should—logically and in practice—be left to the executive (the government). The government is in a better position than anyone else to determine the most appropriate time and circumstances to invoke the use of this weapon. Since the executive authority was assigned to the Council of Ministers in the constitution, it would have been better to designate the power to dissolve to the Council of Ministers in terms of taking the initiative and taking the decision.

The distortions in the mechanisms related to dissolving parliament did not stop here. Article 55 stipulated the existence of certain conditions in order for parliament to be dissolved; however, these conditions were almost impossible to be realized. The request by the President of the Republic to dissolve parliament is to be in accordance with the cases mentioned in articles 65 and 77 of the constitution. Article no. 77 pertains to the amendment of the constitution, whereby the mechanism of dissolving parliament may be used if parliament opposes an amendment to the constitution for the second time with a three quarter majority of the total members legally composing the Chamber. The conditions in article 65 are clearer, more stringent and difficult to realize. Dissolution will not be initiated in accordance to this article unless "the Chamber of Deputies, for no compelling

reasons, fails to meet during one of its regular sessions and fails to meet throughout two successive extraordinary sessions, each longer than one month, or if the Chamber returns the entire budget plan with the aim of paralysing the Government". Consequently, the mechanism of dissolution is effectively disabled.

The question that comes to mind is why did the legislator link the right to dissolve parliament with the fulfilment of these conditions? Rather, what was the point of keeping the mechanism of dissolution in the constitution if the legislator had actually desired it to keep it disabled? Why did legislators link the mechanism to only these conditions and none other? Wasn't the legislator's imagination able to come up with any situations related to political stalemates, or any unresolvable constitutional political crises, other than those which had been imagined by legislators approximately 65 years ago in the year 1926 when the constitution was first promulgated?

These conditions are almost the same as those stipulated in article 55 of the old constitution prior to the 1929 amendment, while the country was still under the French Mandate, with the exception of the third condition which links the dissolution to the attempt of the Chamber to free the country of the mandate rule. This condition clarifies the reason why the mandate authorities included these conditions. It is natural for the occupier to fear the will of the people and their representative. It is also natural for a patriotic parliament to abstain from meeting for one or two sessions, or for it to reject the budget plan with the aim of paralysing the government, which was at that time a representative of the mandate rule. Therefore, these conditions were understandable during the French Mandate when the legislature was under the control of the government. However, there is nothing to justify the legislators of 1990 linking dissolution to the fulfilment of these same conditions, nor is there anything to justify the revival of these conditions?

In return to the question posed in the beginning: has the Lebanese system after the 1990 amendments become a sound parliamentary system? No! As for the description of the system as parliamentary within the constitution's text, this is a

presumption, not a proof. It is nothing more than an expression of the legislator's intention to adopt a parliamentary system; however, texts and praxis indicate something different.

What about the other forms of relationship between the two authorities? What are the instruments provided by the constitution for each authority to monitor, influence, cooperate with and create a balance with the other. This relationship undoubtedly includes two faces whereby various instruments may be used in each face. The topic is, therefore, addressed in two sections: the first section discusses the instruments possessed by the executive to exert its influence over the legislature, while the second addresses the constitutionally available instruments for the legislative authority to exert its influence over the executive authority.

2- Executive's Instruments to Influence Legislature

These instruments, just as all the other instruments related to the mutual relationship, are scattered through the different articles, sections and chapters of the constitution. Nevertheless, they are framed here as follows:

a- In Legislation

Under the legislation instrument come the right to propose laws and the President's right to promulgate and propose laws.

i- Right to Propose Laws

This right is not restricted to the Chamber of Deputies in the Lebanese system. Article 18 of the constitution also granted this right to the Council of Ministers, whereby it states that "The Chamber of Deputies and the Council of Ministers have the right to propose laws. . ." However, if proposing legislation can be initiated by both sides, actual legislation, meaning the enactment of laws, can only be done through the Chamber of Deputies. Article 18 goes on to stipulate ". . . No law shall be promulgated until it has been adopted by the Chamber".

ii- President's Right to Promulgate and Review Laws

There might be no direct effect on legislature when the President of the Republic promulgates laws, even though this affects one of the legislature's functions—the law itself. Articles 51 and 56 stipulated this procedure, stating that The President of the Republic shall promulgate the laws after they have been approved by the Chamber in accordance with the time limits specified by the constitution. He asks for the publication or these laws, and he may not modify these laws or exempt anyone from complying with their provisions. Furthermore, the President must issue laws which were declared urgent by a Decision of the Chamber within five days and demand their publication. He shall issue decrees and demand their publication; he has the right to ask the Council of Ministers to reconsider any decision taken by the Chamber within fifteen days as of its registration with the Presidency. If the Council of Ministers insists on the adopted decision or if the time limit expires without the decree being issued or returned, the decision or decree shall be considered automatically operative and must be published.

President's right to review laws stems from the fact that he protects and ensures respect for the constitution. In this vein, the President may return back to the Chamber any law which he deems contradictory to the constitution, or any of the mutually agreed-upon supreme national principles, such as the principle of co-existence. Consequently, and based on this same spirit, the President of the Republic has no right to request from the Chamber to review a draft law which is sound both in terms of its content and form, especially if this review is requested with the aim of achieving special benefits, or to attain influence or to consolidate his position[8].

[8] In 2001, the President returned the draft law related to the Code for Ordinary Criminal Procedures to the Chamber of Deputies; however, the chamber insisted on it, in addition to introducing a number of minor amendments on top of those which had been suggested by the President. For reasons that have nothing to do with the constitutionality of the law, some considered this insistence as an insult to the President. The issue was uniquely settled by introducing an urgent amendment to the said law which included the President's proposals which had already been refused by the Chamber. The law was consequently approved and published.

The mechanism related to exercising this right has been regulated by article 57 as follows: "The President of the Republic, after informing the Council of Ministers, shall have the right to request the reconsideration of a law once during the period prescribed for its issue. This request may not be refused. When the President exercises this right, he shall not be required to issue the law until it has been discussed and approved by an absolute majority of all the members legally composing the Chamber. If the time limit expires without the law being issued or returned, the law shall be considered automatically operative and must be promulgated."

The inclusion of the last sentence within this article- based on the 1990 amendments- which stipulated the enactment and promulgating of a law after a certain period of time, came to put an end to the ambiguity relating to the powers of the President in this context, which had been exercised in a random manner by prior presidents. It is not possible anymore for the President to delay the enactment of the law after its approval by the Chamber of Deputies, as it was automatically considered to be promulgated a month after its referral to the Presidency and should be published by the official gazette.[9]

Within this same framework, i.e., with regards to the subject of reviewing and requesting to reconsider the law, one can include the right of the President of the Republic, the Prime Minister and the Parliament Speaker, along with any 10 members of parliament, to refer to the Constitutional Council matters related to the constitutionality of laws, as stipulated in article 19.

iii- Decrees which Ordain Enactment of Laws

This invention of the Lebanese constitution is the ultimate infringement of the Executive on the powers of the legislature. The 1927 amendments instilled this invention into the constitution in accordance with the will of the French mandate

[9]Bechara Menassa, منسى، بشارة ، الدستور اللبناني، أحكامه وتفسيرها الدراسات والوثائق المتعلقة به, published by the author in 1998, pg 320.

who wanted to consolidate the powers of the executive authority, especially the President of the Republic—which was fully under their control.

The famous article 58, which was amended through a constitutional law dated 17/10/1927, stipulated the following: "By a decree taken on the favourable advice of the Council of Ministers, the President of the Republic may render executory any project which has previously been declared urgent by the Government by the decree of transmission taken on the favourable advice of the Council of Ministers, and on which the Chamber has not adjudicated within the forty days following its communication to the Chamber."

It was very easy to take advantage of this article and the ambiguity related to the period of 40 days indicated in it, by which the executive authority would purposely refer more than one law to the Chamber, especially important ones, or laws which required a long period of time to study whereby 40 days would not be enough to study them. Furthermore, the executive authority would refer these laws as urgent. If the Chamber of Deputies was unable to decide upon these laws, the President of the Republic would proceed to issue them through decrees ordaining their enactment.

This article, which had been neglected in the political life for a long period of time, "was excessively put into use after 1958 as one of the normal methods to enact laws"[10]. Through the use of this article, the executive was eventually able to strip the legislature of one of its most important powers and the essence of the legislative process; i. e. , the discussion and making of laws. This was a clear violation of the old article no. 19 and the amended article no. 18, which stipulate that no law shall be promulgated until it has been adopted by the Chamber.

Taif amendments clarified the 40-day ambiguity, but didn't annul this infringement from the executive on the legislative authority. The new Article 58 states: "By means of a decree issued after the approval of the Council of Ministers,

[10]See n 9, p. 353.

the President of the Republic may put into effect any bill which has been previously declared to be urgent by the government with the approval of the Council of Minister in the decree of its transmission to the Chamber, and on which the Chamber has not given a decision within forty days following its communication to the Chamber, and including it in the agenda of a general meeting and reading it therein. ”

iv- Legislative Decrees

In the same context, legislative decrees are included as one of the means for the executive authority to interfere in the powers of the competent authority. These decrees, which are not mentioned in the Lebanese Constitution—in contrast to the French constitution[11]—were established as reality and became a norm, and would have become a custom had its use not been halted after the formation of the first Chamber of Deputies following the Al Taif amendments, which insisted, along with the other Chambers which followed it, on rejecting granting permission to the Government to issue any decrees that enjoy the powers of law.

The permission itself would be issued by a law, mostly made up of one article, allowing the government, for a specific period of time, to issue legislative decrees in exclusively specific matters. However, these matters were usually loosely specified and involved numerous fields. The legislative decrees are to be referred to the Chamber of Deputies after being issued, whom in turn was responsible for studying the compliance of the decrees with the delegation granted to the Government. The Chamber would, therefore, decide whether to ratify these decrees or not.

I will not go into the essence or the legal nature of these decrees; however, I will highlight two points. First, it is not possible to talk about infringement or violation of powers as long as the delegation itself—as mentioned above—is only

[11]This phenomenon of legislative decrees emerged during the era of the Third Republic in France, stemming from the concept of absolute necessity, whereas the constitutional law of 1875 did not mention anything about the concept of legislative decrees.

granted through a law enacted by the Chamber of Deputies; i. e., with the Chamber's consent. It is, therefore, in the Chamber's hands, not the Government's, to limit the exceptional powers delegated over to the Government from the Chamber's own field of jurisdiction.

Second, no matter what has been claimed regarding the disadvantages of legislative decrees, in most cases they are a practical and efficient solution to organize various fields, specifically whenever the organizing of these fields requires a large number of broad legislations which are of a highly technical nature and require skilled people to study and enact them. In reality, most modern legislation is prepared and coordinated by the government, or by one of its competent departments or by one of the many advisory and professional bodies. These bodies and departments have proven to be more capable of understanding the requirements of public utilities, and to deal with all the modern developments in a swift manner. Nevertheless, the final word remains with the legislative authority. No matter how many different entities take part in the proposal and preparation of draft bills, these bills may not be issued unless enacted by the legislative authority.

The French legislator was probably aware of this modern trend. However, he went too far in implementing it, and even went in the opposite direction of the general rules. In addition to the government's right to request a delegation from parliament to issue legally-binding decrees; i. e., legislative decrees, which was stipulated in article 38, the French constitution, in its 34th article, listed the exclusive issues that parliament may legislate. Legislation of all other issues was left to be dealt with through 'organizational decisions' issued by the government.

v- Revising the Constitution

This procedure is stipulated in articles 76 and 77 of the constitution. This can either be done based on the recommendation of the President of the Republic, whereby the government will propose a draft law to the Chamber of Deputies. It may also be done based on the request of the Chamber of Deputies, whereby the

Parliament Speaker will notify the Government of the Chamber's proposal requesting it to prepare a draft law regarding this issue. In both cases, the amendment is enacted through a draft bill prepared by the Government.

vi- Concluding International Treaties

Article 52 of the Lebanese constitution gives the President of the Republic the right to negotiate and ratify international treaties in agreement with the Prime Minister, on the condition that these treaties are not considered ratified except after approved by the Council of Ministers. In this context, these treaties fall within the executive authority's jurisdiction. Other treaties involving the finances of the state, commercial treaties, and in general treaties that cannot be renounced every year shall not be considered ratified until they have been approved by the Chamber of Deputies.

The process of negotiating and signing upon international treaties in these latter cases, remains to be within the functions of the executive, whereas the act of ratifying is not done unless endorsed by the legislature. Although this endorsement takes the form of a law, this law completely differs at its core from other ordinary laws. It is a mere license to ratify a certain treaty, which does not follow ordinary constitutional procedures related to proposing or publishing laws, particularly because the right to take the initiative in treaties is reserved for the government. Moreover, the approval granted by the Chamber to the Government to conclude the treaty does not restrict, rather it grants the government discretionary power to sign or reject the treaty. However, the refusal of the Chamber to grant the Government the relevant license totally restricts the latter and ends the entire treaty process.[12]

[12] Ratification of treaties is the stage which follows negotiation and signing of treaties, while the exchange of these treaties is considered to be the mechanisms which puts them into effect. This is a diplomatic and legal procedure at the same time, whereby a document is produced and signed by the Head of State to signify the approval of the concerned authority (parliament) on the treaty, and to ensure compliance with it. Furthermore, with this procedure, the President legally enforces the treaty and places it as a priority within the legal hierarchy of the country. (Review Dr. Antoine Baroud's memo on the agreement of 17th of May, 1983, cited in Mensa, n 9, pp, 292-299)

b- Procedures Related to Parliament's Work

The procedures related to the parliament's work include inviting the parliament to extraordinary sessions and adjourning the parliament.

i- Inviting the Parliament to Extraordinary Sessions

Since the Chamber of Deputies does not convene permanently, and as long as governance affairs are continuous, pressing and unexpected, inviting Parliament to convene extraordinary sessions becomes important and necessary. Assigning this task to the executive authority has found justifications ever since the times of John Locke, who—as previously mentioned—saw that the monarch was most suited to administer executive affairs of government and choose the best time to call upon the legislative authority to decide on issues of governance that falls within its competencies.

Nevertheless, the Lebanese constitution designated this mentioned right to the President of the Republic in agreement with the Prime Minister. The President of the Republic shall also be required to convene an extraordinary session of the Chamber if an absolute majority of the total membership so requests (article 33).

ii- Adjourning the Parliament

This right is considered to be a greater interference in the legislative authority's affairs than the right to convene extraordinary sessions. It is clear as day that the delay of adjourning/postponing the council's sessions may sometimes carry with it a number of serious consequences, not least of which would be the council's inability to carry out its functions, in addition to delaying its decisions regarding various legislations. Article no. 59 of our constitution assigned this right solely to the President of the Republic, on the conditions that the postponement period will not exceed one month and that this is not repeated more than once during one session.

c- Guidance and Expressing Opinions

We will talk in this subsection about addressing messages to the Chamber and ministers' attendance of parliamentary sessions.

i- Addressing Messages to the Chamber

This is one of the mechanisms through which the President of the Republic can express his views directly to the general public and specifically to the Chamber of Deputies. Paragraph 10 of article stipulates this mechanism, stating: "He shall, when necessary, address messages to the Chamber of Deputies". The President's message may clearly or implicitly contain a request to legislate in a certain matter which he deems important for the implementation of his and the government's policies. Even if resorting to this measure is highly limited in the Lebanese system, it is of high importance in the American system, for instance, since it is one of the very few and important mechanisms available to the American President through which he may communicate with the Congress and urge it to support the policies of his Administration through the enactment of necessary legislations.

ii- Ministers' Attendance of Parliamentary Sessions, Their Right to Speak

If addressing messages is one of the mechanisms used by the President to make his voice heard within parliament, the ministers also enjoy a similar right which is exercised more frequently. This is the right to attend parliamentary sessions, in addition to their right to request time to speak. Article 67 of the constitution stipulates that "ministers may attend the Chamber if they so desire and they shall have the right to be heard whenever they request to speak. They may be assisted by whomever they select from among the officials of their departments".

This right represents one of the finest means of direct communication between the two authorities. It embodies the spirit of the classical parliamentary system, specifically communication between the government and parliament. The meeting of the two authorities within the confines of the Chamber is one of the most important factors to differentiate the parliamentary system from presidential

systems. As previously indicated, the term 'parliament' itself was coined as a result of the meetings which took place under one roof between the executive authority, represented by the King, and the representatives of the people.

Ministerial attendance of parliament sessions in the Lebanese system, seems to be a middle stage between the cabinet government which exists in classical systems, whereby the cabinet is born from the womb of the parliament, and members of the cabinet are also members of parliament, and the administration which exists within presidential systems and is formed outside of congress, whereby meetings between the two authorities are extremely limited. This meeting, in either form, is therefore of high importance, and the Lebanese Constitution has enshrined this convergence in article 28 stating that a deputy may also occupy a ministerial position.

In this case, I do not see the same importance that some saw in separating parliamentary and ministerial functions, particularly taking into consideration the modern concepts related to separation of powers, as previously mentioned, in addition to the inevitable convergence which takes place in the cradle of parliamentary and democratic systems, Britain. Reforming the Lebanese system needs more than considering this act of convergence[13].

d- Appointing Deputies

Appointing deputies is the ultimate interference of the executive authority in the legislative authority's affairs. It contradicts the very essence and spirit of democratic representation embodied in elections. In reality, the act of appointing members of representative and legislative councils has always been a feature of Lebanese Chambers and representative councils, especially during the mandate rule era. This concept was first injected into the Lebanese constitution through article 22 which gave the Head of the Government the right to appoint 7 of the members

[13]Dr Mohammad Al Majthoub demanded separating the two, claiming that it is not right to "combine two jobs which differ from one another in nature (an administrative job which is the ministry, and a political job which is the Chamber), previous reference, p. 305. We pose the question: isn't the ministerial job also a political position?

of the Senate, in addition to the old article 98 which gave the French High Commissioner the right to appoint all of the members of the first Senate. After Senate was cancelled in the 1927 amendments, the French mandate authorities reserved their right to appoint some members of the legislative authority as one of its direct means to control it. Hence, article 24 stipulated the right of the President of the Republic to appoint a number of deputies equal to half the number of elected deputies. This situation continued until 1943, when the High Commissioner issued decision no. 129 cancelling the concept of appointment.

After the constitution got rid of this concept in the middle of last century, Lebanese legislators brought it back after half a century. The 1990 amendments gave the government the right to fill, through appointment, vacant parliament seats, in addition to the seats which were created after the first election law was issued following the amendment, as a means to implement the concept of equality between the Muslims and Christians. Even though this was stipulated as an exceptional case, and for one time only, the fact that it was kept in the constitution is an ugly stain and a reminder of the many exceptions which pushed the system far away from sound parliamentary principles.

e- Dissolving the Parliament

We have dealt with this mechanism in details in a previous section; therefore, it is sufficient to highlight that the 1990 amendments restricted the use of this mechanism by placing a number of conditions for its use. This was done in order to avoid provoking constitutional crises and political vacuums. After the right to dissolve parliament was transferred from the President of the Republic through the Council of Ministers to the Council of Ministers after being requested by the President of the Republic, and after a number of almost impossible conditions were stipulated to restrict the use of this mechanism, another stipulation was added stating that "if elections are not held within the time limit specified in Article 25 of the constitution, the Decree dissolving the Chamber shall be considered null and

void, and the Chamber of Deputies shall continue to exercise its powers according to the stipulations of the constitution" (last paragraph of article 55)[14].

The other inclusion of the second paragraph of article 55, which stipulated that "the bureau of the Chamber of Deputies shall continue to function until the election of a new chamber", helped solve an issue related to the continued functioning of the Chamber's bureau in event of dissolving the Chamber, or if the mandate term of the Chamber ended without holding new elections, or during the period extending between the end of the term of one chamber and the beginning of the new chamber[15].

3- Legislature's Instruments to Influence the Executive

The instruments of the legislature to influence the executive can be framed under the following three titles:

a- In forming the Executive Authority

By forming the executive authority, I mean the role played by the legislative authority in handing executive officials their functions. It is indeed an important role, with regards to the Presidency of the Republic, the Prime Ministership and the Ministership. The entire executive authority owes its existence to the legislative authority, starting from its inception, through its political life and to the end of its mandate term. It is because of this that parliament is considered the core of political life in all parliamentary systems.

i- Electing the President of the Republic

The Lebanese Constitution adopted the republic system. This system differs from the monarch system in the sense that it gives the people the right to choose the president of their country. This choice can either be exercised through direct

[14] Perhaps the immediate motive for this addition was to avoid any arbitrary dissolution of the Chamber, without calling for immediate elections. This is the situation that occurred when General Michel Aoun dissolved the 1989 Chamber, to prevent it from electing a President of the Republic. He did not issue a decree calling upon the electoral bodies to meet.

[15] Bechara Mensa, n 9. p. 315.

popular elections (as is the case in France), indirect popular elections (as is the case in the United States of America) or through proxy (non-popular/indirect). This latter method was adopted by the Lebanese Constitution when it delegated electing the President of the Republic to the Chamber of Deputies, which in turn is elected by the people[16].

There is no doubt that assigning this task to the Chamber is a basic natural task since it is the representative of the people. However, it is necessary to raise the following questions: to what extent does a deputy represent the will and opinion of the people when he votes for a certain individual to be president? Does the act of electing a deputy for parliament have a pre-determined effect on the deputy's choice for president? In other words, do people choose a certain deputy because he/she shall in turn elect the person that the people prefer to be president?

It is difficult to answer these questions briefly; however, it is sufficient here to say that direct popular elections are the most honest method for choosing the president, in addition to being the most suitable method to express and represent public opinion. Indirect popular election comes second. This method is applied in the United States; i. e., the Electoral College method, since these individuals are elected based on their pre-determined and declared nominee for the presidency. This is then followed by the elections through a representative council (the case of Lebanon).

ii- Nominating the Prime Minister

This is amongst the powers of the President of the Republic. Prior to the amendments inspired by the National Pact Document –Al Taif, this right was solely and fully within the jurisdiction of the President. Old article 53 stipulated that "the President of the Republic appoints and dismisses the Ministers among whom he designates a President for the Council of Ministers. . .". This was changed after

[16] Articles 49, 73, 74, and 75 of the constitution organized the process of electing the President of the republic by the Chamber of Deputies.

Taif and the Chamber of Deputies was given the final say in nominating the Prime Minister. The second paragraph of article 53 stipulated that "the President of the Republic shall nominate the Prime Minister in consultation with the President of the Chamber of Deputies based on binding parliamentary consultations, the content of which he shall formally disclose to the latter".

Is it possible for the President to go against the wishes of the Chamber by nominating someone else other than the individual agreed upon during these consultations? No! This would be a violation of the constitution and an inevitable failure in reality. The aforementioned article 53 was clear in stipulating that the nomination of the Prime Minister takes place based on parliamentary consultations conducted by the President of the Republic. It is not free of controls or restrictions. Furthermore, assuming that the President goes ahead and nominates an individual against the wishes of the majority, this individual will not be able to proceed and form a government. This is because the appointed Prime Minister will have to consult with Parliament when forming his Government. He will also have to obtain the confidence of the Chamber before he proceeds to execute his functions along with his Government.

This is a response to those that say the Presidency is not a ballot box in which the names of nominees are placed, neither is he an election register who records votes for one candidate or the other. The president is obliged, as mentioned above, to comply with the results of the consultations; yet, his role during these consultations is not like a ballot box, nor is it to record the votes for the candidates. He has the right to relay to the deputy, or the deputy's bloc which is being consulted with, his wishes and views, and he also has the right to discuss and debate. If he is able to convince the deputy of his choice for Prime Minister, he will get his way and the deputy or his bloc will take the initiative to nominate the President's choice for Prime Minister, or they will confide unto the President the decision on this matter (and this tends to be a sound action). However, if the deputies insisted on their choice for Prime Minister, the President is obliged to go along with their nomination.

There remains to be the situation where the votes are distributed and scattered, whereby none of the nominees is able to obtain an acceptable majority, or there may be a very slim margin between two or more nominees. In this case, the nomination of the Prime Minister is left to the prudence of the President, in addition to his further consultation with the Parliament Speaker. He may even repeat the process of consulting with the deputies[17].

Is it possible for a deputy or his bloc to leave nominating the Prime Minister up to the President? A lot has been said about this subject, and a great many viewpoints have emerged. It is permissible for a deputy to do this. There is nothing in the constitution to stipulate that deputies must nominate a Prime Minister, and hence leaving the nomination up to the President is not a constitutional violation. If there was to be anyone to hold the deputy accountable for this action, it would have to be his electoral constituency.

iii- Forming the Government

The Chamber of Deputies also plays an important role in this procedure. The designated Prime Minister must hold consultative meetings with the Chamber before forming his government. The deputies have the right to consequently express their opinions in all that is related to the future government, starting from its nature: parliamentary, mixed, extra parliamentary, or its size, to the names of the government officials, their affiliations, their geographical, partisan, and sectarian representativeness, ending with its dynamic role and programs.

What consolidates the importance of the Chamber's role in this capacity is the appearance of the Government before it to obtain confidence after its formation and prior to carrying out its functions. If the designated Prime Minister does not take into consideration the views and wishes of the parliamentary majority, he will

[17]Dr.WalidAbla reaches a similar conclusion after offering numerous examples supported by statistics, to show the extent to which the President of the Republic complies with the results of these consultations (Consultations: let's allow the President of the Republic to draw conclusions, Al Nahar 02/12/2003).

subject his Government to the risk of not being granted the Chamber's confidence, and therefore the Government will be considered resigned[18].

b- Monitoring the Work of the Executive

Though its name is derived from the function of legislating, Legislature plays a great role in monitoring the executive. This is one of the most precise and important aspects of the mutual relationship between the two authorities. It is even more important than the authority's legislative function.

i- Ministerial Statement and Obtaining Confidence

The Chamber of Deputies begins monitoring the executive authority immediately after the Government has been formed. In accordance to the second paragraph of article 64, the government must present its general statement of policy to the Chamber to gain its confidence within thirty days of the date of issuance of the Decree in which the government was formed. The deputies will consequently subject this statement, which is considered to be Government's agenda and action plan, to detailed discussions and inspection, based upon which the deputies will therefore decide whether to grant the Government their confidence or not. The Government shall not exercise its powers before it gains confidence nor after it has resigned or is considered resigned, except in the narrow sense of a care-taker government. In this same context comes the presentation of Government's general policy before the Chamber of Deputies stipulated in paragraph 3 of article 64.

ii- Budget and Taxes

If the ministerial statement represents the Government's agenda for the entire term of its rule, the budget represents its yearly action plan. Governments attach a great deal of importance to the budget because it places the necessary instruments

[18] Dr Salim Al Hoss goes far in the Chamber's role to form the government. He suggested, in order to avoid the paralysis of the Council of Ministers, the Chamber of Deputies should elect ministers from the various names presented by both the President of the Republic and the Prime Minister, and this should be done if an agreement was reached between the two within a week. Review Al Hoss' article "Ln Order for Participation Not to be a Quarrel", Al Safir 12/06/2003.

and capabilities in their hands to execute their plans. It is due to this that the process of approving the budget within the Chamber of Deputies is assigned much importance and is a very serious matter, to the extent that the legislator considers the act of returning the budget by parliament in order to paralyse the government as one of the reasons justifying the executive authority's decision to dissolve the parliament.

Article 83 of the constitution stipulates that "each year at the beginning of the October session, the Government shall submit to the Chamber of Deputies the general budget estimates of state expenditures and revenues for the following year. The budget shall be voted upon article by article". Within the same framework of monitoring, the constitution has also stipulated that the final financial accounts of the administration for each fiscal year must be submitted to the Chamber for approval before the promulgation of the budget of the second year which follows that year. This is a form of post-executing monitoring which is of high importance, yet less important than pre-executing monitoring.

iii- Raising Question of No-confidence

This principle is considered to be a summary of the monitoring process conducted by the legislature over the executive. In principle, this action is usually initiated and carried out by the Chamber of Deputies (one or more member) against one or more minister, or against the entire government. It, therefore represents, the Chamber's rejection of the government's policies or the policies of the concerned minister. Article 37 discusses this principle by stating that "every deputy shall have the absolute right to raise the question of no-confidence in the government during ordinary or extraordinary sessions…", and "when the Chamber, in accordance to article 37, passes a vote of no-confidence in a minister, the minister shall be required to resign", (article 68). Furthermore, article 69 considers the government resigned if it loses the confidence of the Chamber of Deputies based on the Chamber's initiative or based on the Council of Minister's initiative to seek confidence.

Granting confidence in the government or one of its ministers does not always have negative consequences for the government or the concerned minister. To the contrary, the result of this vote of confidence may be for the benefit of the government; i. e., the request for withdrawing confidence will be dropped, which, in conclusion, would imply that the government's policies are sound. It is for this reason that the issue of granting or withdrawing confidence may be proposed by the minister himself, his colleagues, parliament deputies that support the government or even by the Prime Minister in order to make clear the extent of the Chamber's support for the Government. This is especially true when the Government is sure that it enjoys a parliamentary majority.

Hence, article 138 of the Chamber's internal bylaws stipulates that the Government and each deputy have the right to raise the question of no-confidence, as it is also the right of the Government to attach confidence to a draft bill that it has referred to the Chamber. The refusal of this draft will mean an automatic vote of no confidence in the Government. Each minister also has the right to raise the question of confidence in himself as an individual, or to attach it to any draft bill being discussed. Consequently, and regardless of the result of raising the question of no-confidence, this principle constitutes one of the important mechanisms for monitoring the government, urging it to reconsider its policies, and making sure they are in line with its ministerial statement, based upon which it obtained a vote of confidence.

iv- Questioning, Interrogation, and Inquiries

The constitution has not mentioned anything about these instruments. Nevertheless, they are traditional parliamentary mechanisms which constitute the foundations of the relationship between the legislature and the executive. The internal bylaws of the Chamber address these instruments in its third chapter.

- Questioning: articles 124 – 130 deal with this instrument. A Deputy or more has the right to address questions verbally or in writing to the entire Government or to one of its ministers. If the Government doesn't respond within the allocated

legal time period, or if the Deputy is not satisfied with the Government's response, he has the right to upgrade his question into an interrogation. The effectiveness of questioning ends here; i.e. requesting clarifications from the Government, drawing its attention to various issues and warning it of issues that are important to the public.

- Interrogation: this instrument is organized in articles 131-138, and it is an advanced stage after questioning. It either occurs as a result of upgrading questioning to interrogation, or it may occur initially, whereby each Deputy or more has the right to request interrogating the entire Government or one of its ministers regarding a certain subject. Interrogation is always conducted in writing and requires stricter, more accurate, and longer procedures. The interrogation shall be included in the agenda of the first of a series of interrogatory sessions, according to the date of its submission. It is then distributed amongst the Deputies at least three days prior to the scheduled session. After it has been raised and discussed, the issue of confidence in the government may be raised. It is pertinent to note that article 139 of the Chamber's internal bylaws was amended in July 1999 to stipulate that "after a maximum of four work-sessions during ordinary or extraordinary legislative terms, a session is allocated for questioning and interrogations, or for a general discussion to the Government's policy.

- Parliamentary Inquiries: this instrument gives the Chamber of Deputies extremely broad powers to take any issue which it deems important and worthy of special attention, and delve deeply into its details to take a decision on it. According to articles 143-139, the Chamber of Deputies has the right to take a decision, in a general assembly, to conduct investigations related to a certain issue, based on a proposal presented to it for discussion, or as a continuation of questioning and interrogating. The committee appointed by the Chamber has the right to go over all documents within the various government departments. It also has the right to hear statements and request all clarifications which it may deem necessary for the investigation. The Chamber may also assign the inquiry committees with the powers of judicial investigative bodies, on the condition that the decision to do this

is issued during a general assembly session. The committee will then present its report to the Parliament Speaker, who shall in turn present it to the Chamber to take a decision on the subject[19].

c- Holding Executive Officials Accountable

It is not easy to separate the concept of accountability from monitoring. These two concepts move alongside each other. Nevertheless, I herein address each one separately in order to make the process of research easier. Monitoring comproses the procedures and instruments used by the executive, while accountability is the process that follows monitoring which is not raised unless it has been concluded, through monitoring, that a number of mistakes and violations have occurred.

i- Indicting the President of the Republic

While performing his functions, the President of the Republic shall not be held responsible except when he violates the constitution or in the case of high treason. However, responsibility with respect to ordinary crimes shall be subject to the ordinary laws. For such crimes, as well as for violation of the constitution and for high treason, he may not be impeached except by a two thirds majority of the total members of the Chamber of Deputies. He shall be tried by the Supreme Council which is composed of 7 Deputies elected by the Chamber, in addition to 8 of the most senior judges.

No Lebanese president has ever been accused or charged for any of these reasons. This issue was on the verge of being raised with President Emile Edde, who was appointed as President of the Republic– Prime Minister by Jean Helleu, on the 11th of November 1943, after he had arrested Presidents Al Khoury and Al Solh along with their colleagues. When they were released, a number of Deputies

[19] The Chamber's most famous work in this regard was the 1972 commission of inquiry which was assigned judicial investigative powers to investigate the allegations of military corruption, especially in 1967 – 1970 arms procurement deal (Crotale Rockets). The Chamber was also prominent in the allegations related to the procurement of Puma planes. The Chamber began its inquiry in 1993 and ended with assigning political responsibility on President Amin Al Gemayel, while the former Commander of the Army, General Ibrahim Tannous was charged with negligence, and referring the file to the public prosecutor's office. The Chamber also played a role in the recent wiretapping and spying on the intelligence services case.

demanded that Edde be charged with high treason, however the Parliament which was in session in April of 1944 sufficed with issuing a decision to dismiss Emile Edde from Parliament[20].

ii- Indicting the Prime Minister and Ministers

This differentiation between the Prime Minister and the Ministers did not exist prior to the Taif amendments. It was natural to add a text pertaining to the possibility of accusing the Prime Minister after his position was constitutionally created. Article 70 of the constitution states that "the Chamber of Deputies has the right to impeach the Prime Minister and Ministers for high treason or for breach of their duties. The decision to impeach may not be taken except by a two-thirds majority of the Chamber. A special law shall determine the conditions of the civil liability of the Prime Minister and the individual ministers". The impeached Prime Minister shall be tried by the Supreme Council (article 71). Meanwhile, article 72 states that "the Prime Minister or minister shall leave office as soon as the decision of impeachment concerning him is issued. If he resigns, his resignation shall not prevent judicial proceedings from being instituted or continued against him"

To this day, no Prime Minister or ministers have been tried by the Supreme Council. However, a number of ministers have been charged by ordinary courts. The jurisprudence related to this topic remains to be unstable and incomplete, whereas a number of contradicting judgements have been made[21], in addition to a number of conflicting opinions, some of which demanded the charging of ministers by the Supreme Council as soon as any violation occurs while they were carrying out their duties. Some opinions have requested to remove certain criminal offenses

[20] The decision to dismiss Edde was based on a legal text which stipulated that each member of parliament appointed to a public position and is paid a salary is considered dismissed from the Chamber as soon as he accepts this position and salary. Review the decision within Dr.Rabbat, Chapter 3, n 6.,, pp 637-638.

[21] For example, on 23/02/2003, the first public prosecutor of Mount Lebanon declared the authority of the ordinary judicial system to prosecute Fouad Al Seniora for wasting public funds. The Court of Cassation repealed this decision in November of 2000, in its decision no. 31/2000, and declared that it was not permitted from the ordinary judicial courts to address the mentioned case. Meanwhile, the prosecution of Minister Chahe Barsoumian, which led to him being charged and arrested occurred before the judiciary, has later been declared as legally void. This was raised again in the criminal courts of Beirut on the 5th of April 2003, when the formal appeal submitted by the former Minister of Agriculture, Ali Ajaj Abdulla, in which he raised the invalidity of the court's decision to prosecute him in the case of misappropriation of public funds entrusted to his administration. His appeal was rejected, and the said minister was tried before the judiciary in Beirut.

from within the powers of this mentioned Council, and to include them within the jurisdiction of regular courts. These opinions consider that article 70 of the constitution differentiate between two categories of actions when it comes to the Prime Minister and the ministers. One category comprises ministers' crimes while carrying out their duties, subjecting them to being charged by the Chamber of Deputies and prosecuted by the Supreme Council. This category derives its concept from the political nature of the minister's work, in addition to the essence of his ministerial functions as prescribed in the laws and rules. The other category includes ordinary crimes which are within the jurisdiction of the normal criminal justice[22].

Other views consider that the powers of the Supreme Council to prosecute presidents and ministers do not preclude the powers of the ordinary criminal justice when it comes to prosecuting the Prime Minister and the Ministers, as opposed to the situation when it comes to the President of the Republic[23]. It seems that the law related to the establishment of the Supreme Council for prosecuting presidents and ministers, issued on 18/08/1990, did not end the ongoing argument, and the powers of this body were not clearly defined; therefore numerous voices are raised every now and then demanding to amend the law.

iii- Responsibilities of Ministers before the Chamber of Deputies

This is a general parliamentary rule which was stipulated in the last paragraph of article 66 in the constitution, which states that "ministers shall be collectively responsible before the Chamber for the general policy of the government and individually responsible for their personal actions". Hence, the Lebanese Constitution has adopted the two aspects of responsibility, collective and individual. Withdrawing confidence from the Prime Minister entails withdrawing confidence from the entire government which will be considered to be resigned.

[22]Review the judiciary's verdict mentioned above.

[23]لائحة رئيس هيئة القضايا في وزارة العدل الجوابية بتاريخ ٢٠٠٠/٢/٢٥.

As for ministers, When the Chamber, in accordance with Article 37, passes a vote of no confidence in a Minister, then that Minister shall be required to resign (Article 68).

The anomaly of the relationship of the two authorities in the Lebanese system, as explained above, can be attributed to the special form of governance Lebanon's system adopted: Consociational democracy. In this form of governance constitutional institutions are reduced to a few elites who would, under the theme of accommodation in a grand coalition, attend to state affairs of all domains circumventing the relevant constitutional institutions, parliament in particular. Lijphart claimed that in Lebanon's plural society and with its special electoral system, "the legislature was rather ineffectual, the more important issues were moved up to the cabinet for decision"[24], and the cabinet was 'a true Parliament on a small scale' with a proportional composition and with the further advantage of conducting its deliberations in secret.[25]

It is worth noting, however, that transferring important issues to the elites might weaken the parliament, but does not necessarily imply strengthening the executive. The elites are accommodated in the government because it is the ideal venue of grand coalition between leaders of societal segments. Thus, state affairs are referred to the *elites in the government* and not to the government, which might also be sidelined in tackling national interests and might see itself reduced to a small group of its members who happen to be the segment leaders. In this sense, consociational democracy reduces the importance of the role of all political institutions, though it is more apparent on the legislature. Consequently, the relationship between the legislative and executive authorities in the Lebanese consociational system remains balanced to a certain degree, notwithstanding the favorable conditions for the executives of today in general.

[24]Lijphart, Chapter 1, n 4, p. 149

[25] Pierre Rondot, "The Political Institutions of Lebanese Democracy," in Binder,Leonarded., *Politics in Lebanon,* New York: Wiley, 1966 p. 133-135

Lebanese history of evolution of democracy has been unique. The country has witnessed changing internal and regional imbalances. As this chapter has dealt with the relationship between the executive and legislative authorities within the framework of the constitutional developments, the conclusion would focus briefly on the manner in which the constitutional developments adapted to ground realities. At this point an analysis of the variables that impact domestic politics and dynamics is important.If pluralism is a strength of the Lebanese political and social setup, it is also a variable that renders the polity vulnerable to external intervention. The most prominent feature under the French was the playing off of the Christians against the Muslims and every other possible minority against a majority.

While several authors have argued that the survival of the Lebanese confessional system throughout the 20th century has proved its efficiency and durability, the shortcomings of the system too have been highlighted. The role of the elites of the various confessions have been extremely marked.

With the creation of Israel, Lebanon was one of the largest recipients of the Palestinian refugee population. With the refugees came the additional elite and external factor that could unsettle the socio-political dynamic. The creation of the Hezbollah and its arming through the external forces are an example how the external players have been able to meddle in domestic affairs. Lebanon has also been able to accommodate new political elites in the post-civil war period, especially the Shia, which shows compromise and balance. Hezbollah's insertion into the system as a political party—which some originally feared would destroy this arrangement—has provided further evidence of the system's co-optation capacity and suitability for domestic reality, as they have abided by the rules of the confessional game.[26]

A range of permutations and combinations that allow the various confessions to make their presence felt in the system have adjusted with the demands of time.

[26]Calfat, Natalia Nahas, 'The Frailties of Lebanese Democracy: Outcomes and Limits of the Confessional Framework', in *Contexto Internacional* (*CINT)*, vol. 40(2) May/Aug 2018.

Briefly, today, the system is no longer based on the proportionality of the population with the representation. It is based on a pre-decided sharing of power between the various confessions. As a result, even if the Sunnis form 60% of the population, their share in legislative seats and administrative posts would be same as Christians who are about 30% of the population.

The Lebanese do not vote in the neighbourhoods where they live. Instead, they must return to the district where their families were first registered in the 1930s. Such movement reifies the communal bond and entrenches the electoral power of regionally based family elites, whose support was especially cultivated as a French Mandate policy, in areas such as the North, the Bekaa Valley and the South. Regional tensions and interventions have been closely related to the disruptions in the Lebanese confessional system. More important than demographic concerns, political and economic inequalities between Muslims and Christians have been the main reason for the disruptions in the system. Calfat argues that this reality shows that the problem has much less to do with consociationalism's applicability to Lebanon than to the inflexible subtype of consociationalism practised there. The issue does not lie with the depth of social cleavages in Lebanon, nor with irresolute individuals who are incapable of any form of pragmatism, but the institutional arrangements provide political benefits from maintaining sectarian practices and patronage mechanisms. The costs of these practices are low, which ends up maintaining the confessional political status quo.[27]

Though Calfat has attempted to back her conclusion with an empirical study, she makes the common mistake of generalizing consociationalism as a system. The attempt to study it as a model that should be applied or can be applied in different countries in the region and then compare the successes and failures of the different countries suffer from the drawback of over generalization.

[27]Calfat n26, details the mechanisms of how the system has reached where it is today. The demographic, political and economic details are dealt with in depth.

Chapter Seven

Legislature, Political Parties and the Opposition

There is no doubt that the relationship between political parties and legislative authority is clear-cut; it is an organic and existential relationship. During the long historical path taken by the parliament, various principles, ideas and institutions have been created, all revolving around the concept of parliament. Among these were the inception of a true representative assembly, the emergence of the opposition and the establishment of political parties.[1]

A legislature without political parties is nothing more than an unorganized group of representatives, each working to further their own special interests and the interests of the various groups they represent. Undoubtedly, this is a cartoonish depiction and almost does not exist. Moreover, political parties that do not have a legislative presence are either weak, unable to make their voices heard within the parliamentary platform or rogue parties that remain outside the political system and its institutions.

Many nations, even those of long history of democracy and Parliamentarianism, such as Britain and France, have seen their fair share of such parties before parties eventually reached the conclusion that their existence and attempts to function outside of the legislative authority were futile. They consequently regrouped under the umbrella of legislature and became loyal to the nation and its political system, regardless of their opposition to or support for the government. Political parties consequently became a main feature of the legislature's composition and of the overall form of the political system. This remains to be true as long the legislature represents the people in all of their various orientations, and as long it has the power to support or overthrow the government.

The discussion pertaining to the legislative authority and political parties, or rather political parties within the legislative authority, will inevitably lead us to discussing the opposition. The latter emerged prior to the establishment of political

[1]With regards to the role of parliament in establishing these parties, it is necessary to review: Menhennet and Palmer, *Parliament in perspective*, Chester Springs, Pa :Dufour Editions, 1967..

parties in the contemporary sense of the word. The opposition has existed ever since the existence of government; i.e., it existed alongside the first emergence of civil society. It is from the opposition existence and activities that political parties emerged and evolved, not the opposite.

Nevertheless, the opposition was not formally established nor did it take its modern day form until after the emergence of political parties. Thus, political parties and the opposition are structurally correlated. There is no opposition without political parties, or else it would simply be a disparate group of widely diffused oppositions with no clear vision or ability to achieve any of its plans.

1- Parties and Legislature

This section addresses the mutual relationship between parties and political systems and tackles the role of political parties in major political system.

a- Mutual Relationship between Parties and Political Systems

Despite the relationship between legislature and political parties and in spite of various attempts, no theory has been able to formulate a clear and fixed correlation between the party system and the strength of the political system within a nation. There have also been conflicting opinions and articles regarding the effect that the structure, number and roles of political parties have on the strength of the political system, or specifically the strength of the executive authority, in addition to the extent of stability of the governments. More importantly, there is no proof that the party system has an effect in determining the form of the system, parliamentary or presidential. It may be that the opposite is true, whereby the nature of the political system and its evolution may have an effect on the structure of, and roles played by, parties, albeit in a limited manner. One cannot, for example, definitely attribute a multiparty structure to the parliamentary system and a bipartisan scheme to the presidential system or the opposite. Neither can one assert that bipartisan system leads to the formation of a strong government, while a multiparty system would lead to a weak government.

There is only one relationship which has historically been proven to be true to a relatively acceptable extent, and this is the negative effect that the existence of many parties has on political stability. The existence of many parties relatively shortens the life of the government, while a bipartisan system relatively lengthens the life of the government, though this does not necessarily have any bearing on the strength or authorities of the government.

The party system is an integral part of the general political system and it functions within its framework. It influences the political system as it also influences its inputs, processes, results and the way it functions. It does not, however, have an effect on its nature; i.e., on its constitutional form. However, the party system is affected by the political system as a whole, influencing the way these political parties function, interact with each other and with civilians and political and constitutional life. However, the shape of the political system remains to have a limited effect on the number, structure and political doctrines of these parties.[2]

In political theory, parties offer practical means to organize and frame public opinion with the objective of promoting a new set of ideas and principles- or defending already existing principles- and obtaining wide spread support for them. Within the parliament, political parties provide stability and cohesion amongst the parliamentary majority, which forms the cornerstone of the principle of ministerial accountability. They also provide the same stability and cohesion amongst parliamentary minority through their supervision and criticism of the government, which is of no less importance than its role with the majority.[3]

Parties act as intermediaries between the general population on one hand, and the government and parliament on the other. The influence of political parties on political life, especially on legislature, has been so deeply growing that the number

[2]The economic, social and class composition of societies, in addition to the historical factors, all play a main role in the establishment of parties, the overall number of parties, their structure and doctrines.

[3]For further elaboration see Blondel, Jean, 'The Role of Parties and Party Systems in the Democratization Process,' in *Democracy, Governance, and Economic Performance*. New York: United Nation University Press, , 2000, pp 23-46.

and features of political parties became ingrained factors of the political system. It is therefore necessary, within this context, to refer to the rich experience of political parties in major political systems, the roles they played within legislatures, and finally, their relationships with the system.

b- Political Parties in Major Political Systems

Parties are a significant feature and a major component of the political systems. Any attempt to study the nature of these systems and to understand their mechanisms will remain incomplete and distorted unless it deals with the phenomenon of parties in full depth and detail.

i- Political Parties in British Parliamentary System

Since parliament has always been at the center of political life in the British parliamentary system and since the House of Commons- the center of parliament- is, first and foremost, an elected representative assembly, parties are therefore the core and spirit of the parliamentary system in Britain. 'There have never been, nor will there be elections without parties' in the United Kingdom.[4]

The bipartisan system—which has characterized the British parliamentary system and has given it its uniqueness, with the exception of a few intermittent periods of time—has served to secure a parliamentary majority in support of the government, which led to a stable system. Moreover, it has enabled the transfer of power from one government to another in a democratic manner with guaranteed results, which led to the continuity and renewal of political institutions. Consequently, British parties are, therefore, first and foremost parliamentary parties, searching for popular support for its work in parliament.[5]

As much as the strength of party organization within the framework of parliament is important, it also imposes danger of a potential dominance of the party

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[4]Walter Bagehot, Chapter 5, n 28, p 158.

Amery, L. S. ,*Thoughts on the Constitution*, New York: Oxford University Press, 3rd impression, 1949, p. 54[5].

system over parliament. With the control of the party congress over parliament, and through terminating the margin of independence of parliament members, parliament leaders would be transformed into party dictators, acting as intermediaries between parliament and external public opinion. In such a case, there will no longer be any importance attached to the personal attributes of parliamentarians, and parliamentary discussions would lose their true value".[6]

In the past, a party leader in the parliament used to be first amongst equals; today, however, he is the supreme leader of an organized army. He drew upon the support of his party's massive electoral base, since voters were highly influenced by personal considerations, whereby "the constituency do not vote for this party's candidate or the other, rather it votes for Mr. Gladstone or against Lord Salisbury".[7]

Traditional understanding of this principle revolves around the conditions and necessary requirements for the government to remain in power or leave. However, what is happening today is that governments leave power not as a result of this traditional principle of ministerial accountability, rather as a result of the decision by the ruling party to subject itself to elections. This clearly indicates the influence possessed by parties to amend the exercising of traditional political principles.[8]

Despite its relative validity and the possibility that its dangers and risks could actually be fulfilled, the level of immunity which the parliamentary system enjoys- especially in Britain- prevents the spread of party or party-leadership dictatorships. The importance and supremacy of parliament have been magnified with the stability and firm entrenchment of the party system within it.[9]

Additionally, political parties in the parliament would provide the political system with immunity against negative effects generated by lobbies, special-

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[6]Amery, n 5., p 58.

[7] Ostrogorski, M, *Democracy and the Organization of Political Parties*, London: Macmillan, 1902, Vol. 1, pp 215-216.

[8]Marshall, G and Moodie, G, *Some Problems of the Constitution*, London: Hutchinson & Co., 1959, reprint 1989. pp 101-102.

[9]Laski, H.J.,*Reflections on the Constitution*, Manchester: Manchester University Press, 1951. pp 92-93.

interest bodies, pressure groups, transnational corporations, financial and profession unions and even from certain religious segments. These groups tend to emerge—and actively perform—within environments that lack organized political parties, or where political parties are weak and ineffective.

The American political system, upon which pressure groups and lobbies exert pressure and influence as a result of the weak party system, is a perfect example of the importance of parties as an organic factor in the structure and role of the political system. Ultimately, party members in the British Parliament may be Conservatives, Laborers or Liberals, but they remain British before and above all. They are not willing to invoke their parties' beliefs to the extent of creating conflicts and deadlocks.[10] Party leaders are in constant contact with reality and with their constituents who have the final say in all matters.

British parties maybe of a weak dogmatic nature; they are not ideology-based parties. Each party has its own set of special views and political programs derived from certain ideologies, even though they are flexible to a certain extent. Since the will of the people is on top of all other considerations, political differences within a democratic nation are at their lowest levels.

As there are a great number of political theories or ideologies, and since each political theory or ideology will be represented in a party of its own, in addition to the inevitability of the establishment of a counter party with a counter ideology, such a system would be characterized by a large number of parties and a fragmentation of power. This would lead to an increase in political differences and disputes, thus widening the gap between the different segments of the people instead of repairing them and removing the sources for these disputes.

Party system has been subjected to many criticisms, the most prominent of which claims that it weakens the mechanisms for supervising and balance which exist between the two authorities, thus leading to a diminishing in the effectiveness

[10]Bagehot, Chapter 5, n 28, p 159.

of the system and the strength of the government. Nevertheless, this is a small price to be paid in exchange for a system which grants the people an effective and loud voice, and prevents the making of dictators who would attempt to destroy the people's government.[11]

ii- Political Parties in French System

Political parties in France enjoy a unique constitutional status. The 1958 Constitution dedicated its fourth article to political parties, stipulating that parties and political associations contribute to exercising the right to vote. They are established and carry out their activities with complete freedom, on the condition that they respect the two principles of national sovereignty and democracy. Based on this, political parties must function under the umbrella of national sovereignty: no loyalty to any outside entity and no dissidence against the political regime. French parties, similar to their counterparts, play an active role as intermediaries between the people and political authorities. However, contrary to the American, British or German systems, French parties are subject to continuous change. As a result, their stands regarding various political issues in addition to their alliances amongst each other, seem to be more complicated than in the aforementioned nations, where the structures and statuses of parties tend to be more stable.

What has been previously stated about the depth of the influence of parties in political life, and even on the nature and shape of the political system, is perfectly exemplified by the French system. This system, which is described as being semi-parliamentary or semi-presidential, is—according to many political scientists—transformed into a presidential system whenever the party to which the President belongs seizes control over parliament, and therefore over the government. On the other hand, it is transformed into a parliamentary system whenever any other party seizes control of parliament, thus the President is forced to cohabitate with a prime minister and a parliament that oppose him. I do not, however, adopt this view. There is no doubt that the mechanisms of political action along with its inputs and

[11]See Bagehot, Chapter 5, n 28

outputs would become much smoother with the control of one party, or one majority, over the Presidency of the Republic, the Government and the assembly. However, none of the President's, Prime Minister's or Parliament functions change when the ruling party changes. These functions have been stipulated clearly within the constitution. Both the President and the Prime Minister have their own respective set of powers, and their relationship with each other, on one hand, and their respective relationships with the Parliament, on the other hand, are organized by the Constitution.

More importantly, the features which differentiate the French system, whether those that grant it its semi-presidential characteristics (election of the President directly by the people, his wide range of executive powers, his special powers in emergency situations), or those that cause it to be described as a semi-parliamentary system (a Prime Minister with authorities stipulated in the constitution, a Government which is accountable to Parliament, the possibility of dissolving the Assembly, governmental draft bills and the mutual influence between the two authorities), all of these characteristics are not affected by whether the party to which the President belongs or the opposite party, owns a majority of seats within the legislative authority.

2- Opposition and Legislature

This section will tackle the concept of opposition and its establishment, as well as the opposition mechanism and conditions.

a- The Concept of Opposition and its Establishment

It has been said that people owe most of their knowledge to those that oppose their views not to those that agree with them. Opposing opinions are rich and are new sources of enlightenment; whereas, one uniform opinion does nothing but light up one candle and only opens up one door.

i- Concept and Importance

Ever since Aristotle, the core of self-rule in Athens was manifested in the fact that civilians were allowed to rule and be ruled. This rule was rotated amongst various groups of citizens which would represent—to a very acceptable extent at that time—the majority, whereby the minority would attempt to convince the majority in non-violent manners (or politically) of their point of view.

Some of these principles and procedures have of course changed, with the people's direct democracy replaced by representative democracy, and the emerging role of parties. However, what hasn't changed during modern times is the reliance of government on the approval and consent of those that are ruled. All in all, this means that the minority must accept the right of the majority to take decisions, while the majority must accept the right of the minority to object and oppose their decisions, in addition to their right to promote alternative policies.

The opposition, which seems to be the internal enemy of the government, unintentionally, supports and benefits the government. The continued criticism of the government by the opposition, in addition to its attempts to undermine its policies and weaken public confidence, will lead the government to adjust and reform its policies in order to make them more in line with public opinion. The government knows that its continuation in rule is dependent on the continued support of the electoral body. Therefore, in order for it to preserve the majorities support, it needs to remain in touch and in line with public opinion. Consequently, while the opposition also searches for support, it actually pushes the government to preserve the support which it enjoys; hence, resorting to public opinion and being responsive to what the public desires.

ii- Establishing Opposition in Political System

If every political system was to boast about what it has added to the art of governance. This establishment which was considered to be "the greatest

achievement of the 19th century"[12]—though it grew and took on an institutional form in the British system, was not actually born in Britain. The act of assigning the opposition a constitutional importance and granting the leader of the opposition with certain powers and privileges[13] was actually done by a number of commonwealth nations before Britain. Nevertheless, the British system beats every system in granting the opposition and its leader a unique position within the hierarchy of the political system. Thus the position of the British opposition leader became no less important than that of the Prime Minister's, though less coveted.

b- Opposition Mechanisms and Conditions

We discuss in this section the opposition mechanisms, methods and conditions for its success.

i- Opposition Mechanisms and Methods

If some of the primary functions of legislature is to push the government to act in addition to monitoring it and highlighting its mistakes in order to take corrective measures, then the bulk of this function lies with the opposition. As the role of parties has grown over time, the task of monitoring the executive, which was originally the responsibility of the legislature as a whole, has been transferred over to the opposition, especially within the parliamentary system.

There is no doubt that the government's supporters contribute to criticism and objection, as they are not supposed to simply be 'yes men'; however, they normally do this behind closed doors. Opposition can also come from outside the legislature, such as organized interest groups, unions and pressure groups, which causes the government to remain aware of the public opinion. These opposition and criticisms—whether they come from the government supporters or from outside the

[12]Lowell, A Laurence, *The Government of England (Vol.1)*, New York: The Macmillan Company. 1908. p276.

[13]Canada was considered to be the first nation in the world to grant the opposition leader privileges. In 1905, the House of Commons decided to grant the opposition leader some compensation during the convening of legislative sessions. It was followed by Australia, which, starting from 1920, granted the opposition leader at a federal level, a salary, noting that the State Council of New South Wales started to pay the opposition leader a salary in 1912.

legislature—will not materialize in reality as constitutional or legal procedures, but through an opposition within the legislature. Opposing parliamentarians translate their monitoring to the government through a number of procedures such as questioning, interrogating and raising question of confidence. They also translate it through discussions which accompany examination and ratification of financial legislation and so on.

There is no doubt about the effect that parliamentary discussions have on government projects. This is not due to the fact that parliament has control over the executive, rather it is due to the fact that what parliament objects and what the opposition expresses are reflections of what is rejected by public opinion. This is what makes parliament debates important. It is for this reason that the opposition is given a broad span of time to speak, debate and criticize. In most contemporary democracies, the risk of majority's tyranny has been taken into consideration. This tyranny is so malevolent it encroaches upon the rights of the minority and deforms democracy.[14]

Significantly, a different—but related—concept arises here. The majority's tyranny is a big possibility; however, what about the minority's tyranny? Isn't there a risk that the minority might impede and paralyze the work of the government? The government carries out its functions leaning on the people's support represented through parliamentary majority, which provides it with the necessary legal cover. It is, therefore, empowered to execute the programs which it proposed to the nation during elections.

Thus, the process of studying and debating programs should be carried out as follows: the opposing minority is given the opportunity to say whatever it wishes, and the government should be allowed to pursue its plans. The minority has the right to oppose; however, it should not be allowed to impede. On the other hand, the majority should not suppress; however, it has the right to win. The government's job is to rule, the job of its supporters is to support and the job of the

[14]For further details, see K.C. Wheare, Chapter 5, n 33. , p.159.

opposition is to criticize. If the government tends to view the opposition as breaks on a car going uphill, the opposition views the car going downhill.[15]

The main idea based upon which the opposition is formed and revolves around is that it presents itself as an alternative government. It criticizes according to the principle that had it been given the opportunity, it would have acted in a better manner, and that it is ready to bear responsibility for its success as an opposition. Consequently, there will not just be a responsible government, but there will also be a responsible opposition.

ii- Conditions for the Success of the Opposition

In order for the opposition to be successful, it is not enough for it to be organized, active or possess a comprehensive program. For the opposition to be successful it must first be constitutional; i.e., it should function within a constitutional framework and within the limits of the political system. It should second be loyal; i.e., loyal to the nation, the constitution and the norms regardless of its position to the government policies.

It is natural for the opposition to differ with the government on various important matters; however, it should agree with the government on the rules of the game. This means that there are certain fundamental matters which should be left outside the circle of partisan conflicts and the struggle for power. It is necessary for a general consensus to exist on the regime, the nation and the shape of the government. The opposition, as Lowell said, should not destroy the game to win the prize.[16] The situation has not always been like this, even in Britain. Disputes over issues such as religion, the political system and social (class) structure, made it impossible to describe opposition parties as His Majesty's Opposition.[17] The parties of that era were revolutionary, dissident and provocative; they were not

[15]See Sir Ivor Jennings, Chapter 5, n 58., p.176.

[16]Laurence Lowell, n 12, p.143.

[17]See Wheare, Chapter 5, n 33, p.120.

loyal. Under this same category, one may categorize some of the European socialist parties at the end of World War II and with the start of the Cold War, especially those parties which adopted political programs and principles that were not in line with the identities of their countries. Moreover, it is also possible to categorize a number of current European far right extremist parties as non-loyal parties. Even though these parties operate within the confines of their respective systems, their racist programs and fanatical policies directed against certain portions of the population pose a threat to the very fabric of the society, the unity and identity of the nation.

Another condition required for the opposition to be effective and successful is that it should be given a real opportunity to assume power. [18]. It wouldn't be able to criticize responsibly if it knew, and every civilian knew, that there is no hope for it to assume power. It has been said that those who make peaceful change impossible will make violent change inevitable.[19]

A third condition is that the opposition should be responsible and balanced. Once the opposition takes power, it is like a rival tradesman whose bills are due. Consequently, its criticism and opposition, while it is not in power, shouldn't go beyond certain realistic boundaries nor should it exceed the limits of its own capabilities had it been in power. Every action contrary to this will lead to the opposition losing its credibility. It presents itself to the electoral constituency in this manner, and it is in this image that it requests a delegation from the constituency to rule.[20]

When the opposition is truly responsible and when it takes the risk of defeating the government and is almost at the verge of taking power, it tends to be extremely cautious. At these precise moments, the leaders of the opposition tend to be more understanding and perhaps more sympathetic with government officials

[18]In some countries, where opposition parties are based on religious, linguistic and ethnic differences, these parties own a fixed number of followers and they have few opportunities to increase them.

[19]John Kennedy, from one of his speeches.

[20]Jennings, Chapter 5, n 58,.p 235.

and the leaders of the ruling party than they are with the members of their own party, especially the parliamentarians.[21] The trial or anticipation of responsibility enables the opposition to behave in a better manner, and to master the art of criticizing and offering alternatives.

3- Parties and Opposition in the Lebanese System

This section will be divided into two subsections, the first of which deals with political parties and the second studies the opposition.

a- Political Parties in Lebanon

This subsection discusses the establishment and evolution of political parties and their relationship with the legislature. The subsection will also criticize the party system in Lebanon.

i- Establishment and Evolution

The establishment and evolution of political parties in Lebanon did not coincide with the path taken by its legislative authority. Their paths were independent of each other. The two separate paths taken by the legislature and political parties did not cross until a later stage.

*Prior to Independence:*Tracking the course of the roots of legislative authority directly to the Mutasarrifate system or in a more direct and correlated manner to the French Mandate period and the declaration of independence, it becomes clear that the establishment of legislature preceded the oldest of the Lebanese political parties. Although some of these political parties were born immediately after the creation of the State of Greater Lebanon—such as the Lebanese Communist Party in 1924, and the Syrian Social Nationalist Party in 1932, followed by the Lebanese Phalanges Party in 1936—they were not born from within the legislature. Moreover, even after their inception, they did not work towards being assimilated

[21]See Wheare, Chapter 5, n 33,p 142.

within the parliamentary process. Even most of these parties had political orientations which contradicted the components of the newly born state or at least were not in line with them. Examples of these parties were the Communist Party which views stemmed from the philosophical ideas of Hegel, Engels and Marx; the Syrian Social Nationalist Party whose views pertaining to the Greater Syrian Nation; or the Lebanese Phalanges Party with its views that are related to the narrow Lebanese entity and identity.

There was an experience which remained incomplete and did not last for long. Had this experience been successful and continued, we would have seen in Lebanon a bipartisan system. Two parliamentary blocs were created during the period which preceded independence: The Constitutional Bloc which was led by Bechara Al Khoury, and the National Bloc which was led by Emile Edde. Nevertheless, the competition which existed between these two blocs over short term political programs, in addition to the personal dimensions the competition occasionally took, led to the failure of the experience.

Both blocs, of course, competed over reviving and amending the constitution, in the aim of speeding up the process of transferring the responsibilities of governance to the national authorities. The constitutional bloc tried to speed up these amendments, mobilizing public opinion behind it in the face of the occupation forces. Meanwhile, the National Bloc was trying to slow down these amendments in the hope that the situation of the newly born entity would stabilize with the help and support of the French Mandate. There is no doubt that this competition was generally patriotic in nature with noble objectives. However, the fact that this competition was restricted to one single objective, the independence—despite the importance of this objective—led to the end of this partisan experience with the achievement of independence.

Post Independence: The picture became clear after independence. The vanquished fell apart and dissipated, despite its following attempts to regroup and reform. Even the victor seemed to have no new objective; it did not transform into an organized

political party with comprehensive political vision. From that time onwards, the legislature would be made up of local leaders, new feudalists or revived old feudalists, influential and powerful groups, and leaders of tribes and sects. It was a chaotic, complex and intertwined group of people which opened the doors to sectarianism and narrow interests.

After the very short and aborted experiment of the two blocs, Lebanon entered the independence phase after a settlement agreement was signed. This agreement, the National Pact, which was made up of all the components that characterized the weaknesses of the nation, created an environment which did help enforcing political parties. The only active political parties that remained functioning were the religious sects, which were able to find a fertile soil for their existence. Political parties tried their best to adapt to this situation, whereby most of them were 'Lebanonized' and gradually became involved in the system. They attempted to reconcile between their own principles and general orientations on one hand, and the reality of the new state and its requirements on the other hand.

It is pertinent to mention here that both the new and old parties succumbed and adopted to their surrounding environment instead of attempting to change the makeup of the legislature and the way it functioned. Thus, the influence and hierarchical structure of parliament were stronger than the principles of these parties and, consequently, the parties—big and small—became interested in gaining seats in parliament from constituencies here and there. The election law and the general social and political makeup of the country forced these parties to indulge in the sectarian game, even though their charters and policies were totally in contradiction to this concept. As a result of this, the parties gradually regressed and turned towards its small constituencies in search for a fixed, non-changing bases which would not be influenced by daily policies or programs. They were able to find such bases in the religious sects and hence embraced them.

ii- Parties Relationship with Legislature

Conventional political parties do not exist in Lebanon. More accurately, Lebanon does not have a party system. The parliament rules and principles are almost void of any partisan organizational aspects, and this is definitely a main reason for the corruption and backwardness of the system. Moreover, even parties that are represented in the parliament do not function therein in their partisan capacities. Parliamentary blocs are very rarely party blocs; they are alliances amongst deputies belonging to various parties mostly with conflicting views and differing orientations. Most of these blocs are formed based on a small geographic basis and few of them last until the end of the legislative mandate.

Democracy is the only suitable system for government in Lebanon. There is no democracy without opposition, and there is no real opposition without the existence of parties. The only reason for the existence of political triviality and improvisation in the administration of public affairs, serving special interests and the control of sects over the nation, is the fact that the path taken by the political system and the surrounding environment has not helped to establish an active party system that would strengthen the democratic system.

The classical definition of democracy is no longer sufficient today to describe the real core of the concept along with its modern components which revolved around issues such as human rights and liberties, and most importantly, the right to express one's opinion freely. The spirit of modern day democracy is no longer based on rule of the people, by the people, and for the people. Nowadays, it is embodied in the rotation of power between the opposition and the majority party within a healthy system, which ventilates government with the best ideas and individuals and injects new blood into the nation's veins. There is no other system which is able to perform such a mission than the party system.

iii- Criticizing the Party System

The importance of such system, and the necessity for parliamentary work to revolve around political parties, is generally agreed upon by all political elites, thinkers and researchers. However, some Lebanese political essays and studies have criticized the party system, defended the current situation and even going as far as attacking the parliamentary party system, anticipating its failure. At the forefront of these writings are those by EliyaHariq, especially in his book "Who Rules Lebanon"[22], in which he considered that the legitimacy of independent (non-partisan) deputies cannot be doubted and is based on solid foundations; however, because of inferiority complex that controlled them, independent deputies would not defend this form of representation.

Though he theoretically acknowledges the importance of party representation, he claims that its application is different than the theory. The importance attached to party representation in reality is far less than what political writers care to admit. As a proof of his point, Hariq provides two examples which lack much accuracy and clarity. The first example pertains to the American bipartisan system. The weakness of the party system there embodies the big gap between theory and praxis, according to Hariq. Congressmen in the U.S enjoy a great deal of independence from their parties, and they usually propose their own political programs which are sometimes closer to the programs of the other party than they are to their own party's. Furthermore, congressmen in the U.S pay so close an attention to their constituencies and voters that they may actually vote against the desires of their party leaders in Congress. In spite of all of this—and this is where Hariq' s argument lies— the American congress is still one of the world's strongest legislatures in legislation. In his opinion, this is not due to the system of party representation; rather, to the American Constitution and the nature of the political forces in the American system.

[22]Iliya Harik, Who Rules Lebanon? Al Nahar Publishing House 1972, pp. 83 – 95.

The lack of accuracy in Hariq's example is due to the fact that he does not provide us with the complete picture of the Congress rules in the United States. To a large extent it is true that Congressmen are independent of their parties, though the degree of this independency increases in foreign policies and decreases in domestic affairs of the country. Congressman's independency, along with the weakness of the party system, is actually a source of Congress's weakness not its strength. It is for this reason that pressure groups, lobbies and even mafias are so pervasive in the U.S. This independency and the party weakness allow big corporations, cartels, arms dealers and multinational companies to have a voice in determining American policies, both domestic and foreign. In this case, questions are raised about democracy, rule of the people and strength of the Congress when there is this small group of people who have such great influence over the regime.

The second example Hariq gives is that of the party system within the British parliament. Hariq claims that the British parliament suffers from a grave inability to legislate and to balance the government. He deduces that the strong bond between the behavior of an individual MP and the decisions of his party is a matter of regret and sorrow.

Hariq concludes that despite its many disadvantages and problems, the non-party parliamentary system which exists in Lebanon is not a complete failure. As for the weakness of its parliament in both fields of legislation and monitoring, he claims that it is not due to the lack of parties, but to the circumstances of Lebanon as a country, which is still going through its middle stages of development. He opines that the Lebanese parliament is able, in spite of the large number of blocs and orientations it consists of, to change the government and influence its policies, even if this happens through "signals, the seriousness of which cannot be doubted that parliament has had enough of the government's policies and it is time to change", or by cajoling the President of the Republic to get him to change the government frequently and rapidly in order to give the chance to the greatest number of deputies to take up ministerial positions, according to Hariq.

This acknowledgement carries an implicit admittance that the non-partisan system, which was also responsible for individual rule in Lebanon (dictatorship) prior to the Taif amendments during the First Republic. It is also responsible, along with the consociational form of governance Lebanon adopts, for the minority or elite rule (the Troika) during the Second Republic. Finally, it is also responsible for the cajoling, personalism, absolutism and imposition in politics. The partisan life in Lebanon has degenerated to such a low level that party affiliation has become an accusation. To a very large extent, parties are responsible for this situation. The first step of correcting this deflection begins with modernization and opening up to all the people of all classes, religions and ages. No sound political system or effective parliamentary or governmental work exist without political parties.

b- The Opposition in Lebanon

Just like the Lebanese political system and its various institutions, the opposition in Lebanon has its own unique nature. It does not resemble any of the oppositions in the major political systems. Its structure, mechanisms, the extent of its influence over the work of the government and its effect on the system all differ. However, for more accuracy, it is necessary for us to differentiate between the two historical phases that the Lebanese opposition went through: the phase before the civil wars when the opposition was closer to the conventional principle of opposition, and the phase that came after these wars.

i- Opposition before Civil War

The push towards independence and the course it took manifested itself in two general political orientations. The first one saw the French mandate authorities as friends or allies, and thus made every effort to serve them and make their mission as smooth as possible. This group based its convictions on certain fundamentals and common dimensions with the mandate among which are cultural (Francophone), intellectual (Western Christian) and religious (Catholicism). Above all they based their conviction on their understanding of the identity of Lebanon. The proponents of this orientation, mainly Christians Maronite, had the

special status of Lebanon in mind and the necessity to preserve its cultural diversity and defend it against the potential dominance of the massive Islamic, Arab environment. Therefore, they were prepared to defend it by any means necessary, even by resorting to foreign powers. Eventually, they formed a bloc within the legislative authority known as the National Bloc, led by Emile Edde.

The second opposing movement was also aware of the uniqueness of Lebanon and desired to preserve it; however, it wanted to do so by immunizing Lebanon internally by building bridges of understanding between all components, and initiating candid dialogues with neighbors and regional powers. This political movement was able to find a middle ground between the two opposing extremist directions: an entity completely independent of its regional environment under the protection of foreign powers on one hand, or an entity totally integrated within the massive Arab and Islamic environment on the other. The group was consequently able to attract personalities from many different segments, and formed a bloc within parliament which called for the revival of the constitution and demanded the independence of Lebanon. This movement was known as the Constitutional Bloc, led by Bechara Al Khoury.

Hence, two political blocs were established. They were so comprehensive they were able to attract politicians from all the various segments and controlled the political life of the time. Though they did not take on a party nature in the true sense of the word[23], the political system was organized in a government-opposition manner. The registers and minutes of meetings of the Lebanese Parliament show that there was a quasi-party divide on the basis of these two blocs, around a considerable number of draft bills.

The opposition started to mature and the parties began to integrate and become active within the political life, yet always within the special Lebanese

[23]The National Bloc emerged in 1936, and it was not transformed into a political party until later, and in a gradual manner. The Constitutional Bloc which was formed in 1934 ceased to exist along with the end of Bechara Al Khoury's rule.

framework. Parliaments did not transform into party blocs, nor did the political parties take over all of political life.

In summary, there was no party system in the true sense of the word. However, the opposition was able to stand up to the government, or more correctly, the regime. It is important to make this distinction, as the Lebanese opposition was not entirely within the Parliament. A number of powerhouses had their say in politics, as did the Lebanese laymen, religious leaders, regions and specifically the sectarian communities. This perhaps explains the ability of the opposition to overthrow the President of the Republic and not being able once to overthrow the government by withdrawing confidence from it.

Prior to the Lebanese war, the political battles which polarized the pro-government and opposition forces revolved around the presidential elections.[24] This is attributed to the fact that the President of the Republic was at the heart of the executive authority. The government was not a 'council of ministers', rather it was made up of a group of advisors to the President appointed and dismissed by him, and among whom he designated a president for their council.

The presidents of that era were able to avoid the overthrowing of their governments by adopting a number of various approaches, such as formulating governments mostly from parliament members, frequent reshuffling and changing of governments, and exchanging portfolios, so as to ensure the participation of the largest number of parliament members within the governments and guarantee parliament support. In addition to all of this, the President was also cautious in his choice of the Prime Minister, who was responsible for building bridges with the opposition, to avoid serious criticism and make the opposition differentiate between his government and the President of the Republic.

[24]Farid Al Khazen deals with the subject of Lebanese Elections after the war 1992, 1996, 2000, *Democracy without options*, Beirut: Al Nahhar Publishing House, , pg. 199.

ii- Opposition after Civil War

We have not touched upon the disastrous years of war. During the war, the opposition was opposed to the nation and not the government; it was not constitutional and not loyal. The first parliamentary elections took place after the end of the war and after the Taif amendments in 1992, followed by the elections of 1996 and 2000, 2005, 2009 and 2018. The research will not analyze these elections and their results. It's more concerned with the situation of the opposition which resulted from these elections, in addition to the roles they played within the parliaments.

The loyalists and the opposition became intertwined with each other, whereby there were no right, no left and no center parties. Parties existed; however, they did not function as political parties. They were scattered amongst the various blocs who were affiliated to one leader, and it hence became difficult to determine which party was supportive for the government and which was from the opposition. A certain party may be represented within the government by a minister or more, and yet the same party statements would criticize the government, or would even call for its removal. The opposition of yesterday would be loyalist today and vice versa.

Even more perplexing was the phenomenon of the 'opposing minister'. This had never been witnessed in any of the sound parliamentary systems. Ministerial accountability—especially collective—assumes strong ministerial solidarity, as previously explained. This situation has become somewhat of a joke when the Prime Minister himself would not approve of his own government and describe its performance as 'normal' or the 'the best possible' government that could be formed or 'the least required'.[25] Or when the Prime Minister would express his discontent

[25]From Hariri's statements after he formed the last two governments, Lebanese newspapers.

with the state budget, which is supposedly prepared by his own government who would also garner the necessary support for ratifying it.[26]

In post-Taif Lebanon, it is futile to search for the real opposition within the Parliament, as it is simply not there. The unique structure of this system coupled with numerous domestic and regional considerations make the opposition, like all other political institutions, special and unique where general standards and conventional norms do not apply.

In post-Taif Lebanon, the government is in opposition to itself, through a very unique model represented by a tripartite leadership opposition at the 'Troika' level (President, Speaker and Prime Minister). When the three leaders are in agreement, the institutions are reduced down to the leaders' personalities.[27] However, if they disagree, the institutions are put out of work and paralysis, vacuum and sectarian fanaticism start to prevail.

The exceptionality in opposition and party system in Lebanon occupies wider space in praxis than normality and conventional rules. This can only be referred to the consociational form of democracy adopted in the Lebanese system. The weakness of the party system in Lebanon is due to the fact that in plural societies, segmental demarcation lines coincide with the party system demarcation lines.

In other words, each political party is mainly composed of members of a single community and, to a large extent, represents this single religious community. This will have two extremely important results. First, with such conformity between political parties and societal segments, floating votes will be of negligible importance and the party strength is always fixed and limited to the number of the community. This renders party programs, principles and ideologies weak factors in strengthening the party or increasing its membership. It also entails a conviction

[26] Late Rafik Hariri stated, after ratifying the 2004 budget which was passed by a majority of one vote "such a budget led to such voting", indicating that "this budget was not even satisfying for the government, who was supposedly its godfather". Lebanese newspapers, 9th of April 2004.

[27] Farid Al Khazen, الخازن، فريد، إنتخابات لبنان ما بعد الحرب ١٩٩٢، ١٩٩٦، ٢٠٠٠، ديمقراطية بلا خيار, pg. 27.

among party leaders that their leadership is not decided upon by their activities or political shrewdness, rather by their ability to mobilize their respective communities around them. This has a devastating effect on the party system, and this is exactly the reason of weak party life in Lebanon.

The second result of the party-sects' conformity is that the possibility of political parties to alternate between opposition and government is very unlikely. Minorities and majorities will remain the same until a drastic change in population demography occurs. If the conventional majoritarian government-versus-opposition political system is applied, then minorities will never assume power or participate in running state's affairs. This causes the isolation of minority segments of the society who lack the sense of political security, which will gravely impact the democratic system of the country. Therefore, it is necessary for all parties to be in a consociational grand coalition at the same time rather than in a diachronic government-opposition system. And this is exactly the reason of the weak opposition in Lebanon.

It should also be pointed out, however, that a grand coalition does not rule out opposition completely. As long as there is a parliament to which an executive grand coalition is responsible, monitoring and criticism may still be directed against the entire coalition or individual members of the coalition supporters.

The conundrum in the Lebanese political system—of choosing either a sound democratic system of genuine political parties and true opposition or a special system where all communities participate in state building—is solved by resorting to the consociational form of governance which might not be a perfect form of democracy, yet it is an ideal form of governance for Lebanon that balances between stability, minorities' rights and participation in state building on one hand, and the democratic values on the second.

Chapter Eight

Sovereignty of the Legislature

A lot has been written and said about the subject of the sovereignty of parliament. The concept of sovereignty has been linked to parliament ever since it first emerged, and has developed alongside with its evolution. Parliament was even conceived from this concept. In due course, sovereignty, as a concept, was embodied in its practical form in parliament—the legislative authority, the body that represents the people.

During and after the two World Wars, a lot was claimed regarding the decline in sovereignty and the regression of the legislative authority. How true are these claims?

1- The Concept and Embodiment of Sovereignty

The concept of sovereignty emerged towards the end of the middle ages as a way to promote the idea of a secular state and consolidate the rights of the people in the face of the Church. As long as the purpose of democratic rule—regardless of the type of system—is to further the interests of the people, the last word should be for the people. In other words, the people are the owners of sovereignty and the source of legitimacy. However, since the term "people" has always been used in its broad sense with no accurate legal definition, it hasn't been possible to define the concept of sovereignty of the people in practice. It was, therefore, almost impossible to practically embody this concept. For this reason, it was natural for the peoples' representatives, or more accurately, the body that represents the people, to inherit this concept of sovereignty. As a result, this feature became one of the most prominent features to be attributed to the parliament.

a- Defining Sovereignty

The principle of parliamentary sovereignty finds its classical formulation in Sir Edward Coke who says that the power and the jurisdiction of Parliament is so transcending and absolute that it cannot be confined with any bounds.[1] Parliament

[1]Sir Edward Coke, from Sir William Blackstone*, Commentaries in Dicey, Law of the Constitution*, London: Macmillan, 9th Edition, 1995, p.342.

enjoys a level of sovereignty which cannot be restricted when it comes to enacting, constraining, suspending, cancelling, reviving and interpreting laws, no matter what the field may be: civil or military, spiritual or temporal, maritime or commerce...etc. All measures, matters and remedies that exceed the extent of ordinary law are therefore in the hands of this extraordinary court. In summary, parliament can do anything which is not naturally impossible.[2]

The contemporary formulations of the principle are mainly paraphrases of A. V. Dicey's proposition, who says that the principle of parliamentary sovereignty is designated in two main parts: The first means that Parliament has, under the English Constitution, the right to make and unmake any law whatsoever, and, second, that no person or body is recognised by the law of England as having the right to override or set aside the legislation of Parliament.[3]

Austin, who was more concerned with where sovereignty lies than with the definition of the term, considered that the British parliament of his era actually possessed this sovereignty. However, in precise details, he claimed that the King, Lords and members of the House of Commons formed a sovereign and supreme tripartite body.[4]This definition of sovereignty, just as other concepts defined by Austin, seems to be based on his study of British law in general, and specifically the position of the British parliament. Though he was considered to be the first to point out the elective body (not the people as a whole), he did not differentiate between the sovereignty of parliament and the sovereignty of the elective body. Moreover, Austin's embodiment of sovereignty in the elective bodies was only attributed to his belief that the parliament (House of Commons) did not possess absolute sovereignty.

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[2] See n1

[3]Dicey defined the law within the framework of defining the concept of sovereignty as any rule imposed and implemented by the courts; see n 1

[4]John Austin, *Province of Jurisprudence Determined*, Wilfred E. Rumble ed., United kingdom: 1st publish 1832, ed. Prometheus Books, , Nov 2000, pp. 245-248.

Dicey criticized Austin's definition of sovereignty[5], as Austin used the concept of sovereignty as a mere legal principle, which simply implies the power to enact laws with no legal restrictions. However, the term sovereignty is usually used in its political sense more than in its pure legal sense. A body is considered sovereign, or politically superior, when its will is fully obeyed by all the citizens of the state. In this sense, it is the voters who are supposed to be the body in which the concept of sovereignty is embodied.[6]

Nevertheless, this analysis highlights a political rather than a legal reality. Indeed, the voters are capable of imposing their will and views; however, the courts will not assign them any importance or take them into consideration. Judges do not know anything about the will of the people, except to the extent of which this will is embodied in laws made by the parliament. The truth is that, as Dicey put it, not a single English judge would, or has the capacity to, acknowledge that in light of the British constitution, the parliament is the guardian body which represents the voters as the courts know nothing of this so-called guardianship.[7]

If law was taken as a standard, then parliament would be the sovereign authority, and if the will of the people was the standard, then voters would be the sovereign. In other words, voters are an essential component of the politically-sovereign authority. Legally-sovereign authority is none other than the parliament. Consequently, inasmuch as the language used by Austin was accurate in terms of the political concept of sovereignty, it was incorrect in terms of the legal concept.[8]

Writers who came after Austin viewed his definition of the sovereign authority as confusing and overlapping. They consequently adopted Dicey's

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[5] Albert Venn Dicey, *Introduction to the Study ofThe Law of the Constitution*, Oxford: All Souls College, 1st edition 1885, 8th 1914, Copyright ©: 2004, Liberty Fund, Inc. pp.66-67.

[6]Dicey, n 5, pp 52-54

[7]AL Schuler, Albert W, *Rediscovering Blackstone*, (William Blackstone's 'Commentaries'), United States: University of Pennsylvania Law Review, 1996.

[8]See Dicey, n 5

differentiation between legal sovereignty embodied in parliament (the King in the Parliament) and political sovereignty embodied in the elective bodies.[9]

Dicey's definition was also subjected to criticism, especially regarding the difficulty in distinguishing between the two groups of people exercising the two aforementioned types of sovereignty. Writers Marshall and Moodie, viewed that it is not possible to completely distinguish between legal and political sovereignty by differentiating between those who exercise legislation and those who exert political pressure to guarantee the enactment of legislations.

Exercising political powers is not restricted to the elective bodies or voters. Parliament members, government and the administration- in its various aspects- are, like the elective bodies, a part of political sovereignty. They all, including parliament, play roles in exercising political sovereignty. Moreover, legal sovereignty is not just possessed by, or embodied in, parliament independent of the elective bodies; rather, it is expressed by everyone in their own separate legal status and capacity, including the elective bodies.[10]

Though the two writers were able to raise a valid point regarding the concept of political sovereignty and expanded its scope to include parliament, government and the administration, they found it difficult to defend, and questioned, the notion of assigning the elective bodies with the status of legal sovereignty. They referred to Austin himself to indicate that by including the elective bodies in his definition of the legal sovereign authority, he acknowledged that these bodies possess legal capacity but delegated the task of legislation to their representatives in the parliament[11]. It is admissible that the people are unable to directly impose their will on the courts; therefore, they do so indirectly by legislating through their

[9] See Laski in his two books: Harold J. LASKI, *The Foundations of Sovereignty*, United States: Routledge, 1921. and Harold J. LASKI, *Studies in the Problem of Sovereignty*, US: Routledge, 1917.

[10]Marshall and Moodie, *Some Problems of the Constitution*, London: Hutchinson& Co., 1959, reprint 1989. pp. 36-38.

[11]see n 10

representatives, even if the constitution stipulates that the legislative authority derives its power from the people.

Other writers considered that Dicey's distinction between a legal sovereignty embodied by parliament and a political sovereignty embodied by the elective bodies, denied any constitutional (legal) role of the people. The fact that legislators are a by-product of a special legal process called elections (not any other process such as appointment, nomination, inheritance or coup) should not be overlooked.[12]

In his Second Treatise of Civil Government[13], and after a detailed explanation of social contract and civil society, John Locke stated that there is no sovereign authority other than the legislature, to which all other authorities are subject. However, since this authority is fiduciary in nature; i.e., dependent on the trust of the society and acts for a specific purpose which is the supreme interests of society, the people shall retain this supreme sovereign authority, through which they can overthrow the legislature if it acts against their interests, or betrays their trust. Accordingly, sovereignty would be transferred back into the hands of the people, who will entrust it to a new authority which they deem trustworthy and capable of defending their interests.

In other words, John Locke summarizes his theory by insisting that society is always the sovereign authority if it is not already under an existing political system of governance. This is because the people's authority will not exist unless the government (or the system of governance) does not exist. In all other cases, where the government and political system already exist, the legislature is the sovereign authority because who makes laws for others should be their superior.

Ignoring this standard by political writers—who came after Locke— might be attributed to the fact that they ruled out any political vacuum or regime collapse

[12] H.V. Wiseman, Chapter 2, n 10, p. 153.

[13] See Locke, Chapter 5, n 1, (Chapter 11).

in the Western societies they wrote about, or to the fact that this standard justifies popular and social revolutions that lean on people's sovereignty and rights.

b- Scope and Limitations of Sovereignty

John Locke pointed out that the final objective of human beings for organizing themselves in society is to enjoy their property in safety and peace. The greatest instrument to achieve this is the laws which are in place in that society. The first natural law is the protection of society, while the first status law is the establishment of a legislative authority.

i- Its Scope

This authority not only becomes a supreme sovereign authority, but also a sacred and irreplaceable authority. The scope of this sovereignty is therefore absolute as long as it is concerned with protecting society and protecting each and every individual in it. Talking about sovereignty, or a sovereign and superior authority, implies that its scope should be absolute.

Sir Ivor Jennings stated that according to the concept of sovereignty, parliament can, in theory, extend its life (its mandate term), restructure the British constitution, enact legislation retroactively, legalize the illegal, intervene in contracts, confiscation of properties, grant government dictatorial powers, break up the United Kingdom or the British Commonwealth, or adopt communism, socialism, autocracy or fascism, fully and without any legal impediments.[14]

ii- Limits of Sovereignty

When discussing sovereignty of parliament, legal principles are invoked, not facts. The supremacy of parliament, as an idea and a principle is a legal fiction that is capable of imagining anything.[15]

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[14]See Jennings ,Sir Ivor, *The Law and the Constitution*, London: 1st Publish C.U.P 1933, Ed. U.L.P, Macmillan, 1991, pp. 144-149, 170-171.

[15]Wiseman, Chapter 2, n10, pp. 61-62.

John Locke places four limitations to the sovereignty of legislative authority[16]: the first limitation is related to protecting the lives of people and their properties. It is not possible to exercise absolute and random authority in this field. John Locke raises the importance of natural law that he sees as an eternal law ruling over all mankind, legislators and non-legislators alike. Furthermore, objective laws are supposed to be in line with these natural laws; i.e., with the will of God.

The second limitation is promoting justice. A sovereign legislative authority cannot grant itself authoritarian powers; rather, it is obliged to assign citizens' rights within its laws and guarantee a fair judicial body. Third, it cannot confiscate properties, or levy taxes on them or on individuals, without the approval of the owners (society) themselves or their representatives. Fourth, John Locke tackled a very important limitation which highlighted his farsightedness. The power of legislation cannot be transferred or entrusted to any entity but to the body that was first entrusted to by the people. In other words, the legislative authority is forbidden from delegating the right to legislate, because it was the people that gave this right to the legislature, and it is only the people that have the right to designate it elsewhere. In this sense, John Locke raised a very important topic that modern day researchers are still addressing and debating about.

In praxis, there are limitations to the powers and sovereignty of parliament represented in what can be called political convenience. There exists an invisible bond, a spirit which connects individuals and gives the people a unique character which distinguishes from others. This spirit is an accumulation of history, based on cultural heritage, experiences that the people have gone through, general ethics inherited and acquired over time and societal behaviour and customs (of which politics is also a part). Consequently, the aspirations of the people are unified and the general framework is set for the nation to touch upon the future, which are passed down from one generation to the next. This binding spirit, the spirit of the people is what possesses sovereignty, supremacy and absolute authority. It is only

[16] See Locke, Chapter 5, n 1

this heritage that can form an insurmountable limit to parliamentary sovereignty. This is because the accumulation of historical experiences has given this bond a halo of sanctity, thus making it a pillar upon which the nation is built and one of the virtues of its very existence. Any attempt to ignore or surpass it would pose a great danger, not only to the democratic system and the interests of the people, but to the entire entity and existence of the nation itself.

No parliament in Lebanon can, for example, deprive one certain sect of its right to vote or remove the seats allocated for it in the parliament. No parliament, even if it was controlled by a single majority party or majority bloc, can withdraw Lebanon's membership in the League of Arab States (as long as the League remains in existence and affiliation to it embodies the Arab character of a country and the sense of belonging to the Arab Nationality). Neither can any Lebanese parliament allow same-sex marriages, at least in the foreseeable near and medium term future, even if a majority of parliament members do not object to this proposal on an individual basis. The social, political and moral heritage, embodied in the spirit of the people, will act as a large obstacle, making it impossible to enact such laws.

If sovereignty is the supreme authority, then parliament is not sovereign. Why is it that no majority party in parliaments of democratic nations has ever or will ever enact legislation pertaining to outlawing other parties, thus instilling a single-party system? Why would not a majority party simply cancel elections, elect its preferred president for lifetime, and ban opposition newspapers? There is no legal impediment against the achievement of these actions. They can materialise through sound constitutional and legal processes as long as the party owns a majority in parliament. It is undoubtedly this democratic heritage which is deeply rooted in the people (the spirit of the people) which prevents this from happening and acts as an obstacle to this virtual sovereignty.

It is important to note that, contrary to the claims of a number of authors, the constitution does not act as an obstacle to parliament, as this latter can amend it. The constitution is not, and should not be, sacred. It is a legal document put together by a group of people who saw in it—at their time—a general rule and

acceptable foundations to build up the nation. However, to what extent is it possible to rely on this group's future vision, and what was their actual ability to predict future events? How were they to know for fact that what they viewed as a constitution and supreme and sacred rules would be suitable for the ambitions of the future generations? The constitution is a loose, flexible and vague law, comprises a group of rules, each of which requires a set of detailed laws to explain and organize it. However, as long as this constitution embodies the spirit of the nation and its culture, this constitution will be a limit to parliamentary sovereignty. Theoretically, it embodies sovereignty.

c- Embodiment of Sovereignty in Major Political Systems

Almost all the constitutions of modern day political systems stipulated that all powers of the regime stem from the people. Generally speaking, all constitutions have acknowledged the sovereignty of the people (or sovereignty of the nation or the national sovereignty, depending on the terms and expressions used and their sociological explanations, which is beyond the scope of this research). Though all the constitutional powers of these political systems originate from the people, it is important to note that the various constitutions have set these powers with varying degrees of superiority. It is natural for the legislative authority, which represents the people, to be superior in general.[17]

2- Sovereignty in the Lebanese System

Sovereignty in the Lebanese system, like other concepts and principles of this system, has different concepts. It is not possible to compare it—especially in practical terms—to the concept and embodiment of sovereignty in the three major systems, nor can it be compared to any other system for that matter. Since the end

[17] The superiority of the executive authority which is currently clearly prevalent in the United States is considered to be an exceptional case which was brought on by a number of circumstances. Amongst the circumstances were the 11th of September 2001 terrorist attacks; it is well known that during times of national and international crises, the powers of executive authorities are expanded. Additionally, this was encouraged by the neo conservatives taking control of the American administration, whereby they created crises and magnified potential dangers in order to gain broader powers. This group of politicians would not have been able to gain these broad powers had they not had influence within the American congress.

of the civil war and the onset of the Second Republic, the expression "the Parliament is its own master" has been used frequently. This was to depict the supreme nature and independency of the Lebanese parliament, in addition to the fact that the will of the executive authority, specifically the President of the Republic and the Prime Minister, cannot be imposed on parliament.

a- In the Texts

When the 1926 Constitution was promulgated, the subject of sovereignty was not mentioned at all. In this regards, the first provision of the Constitution sufficed by declaring that "Greater Lebanon is an independent and indivisible state..." This was not odd, especially taking into consideration that this constitution was issued by the mandate authorities, regardless of the level of participation of national authorities and bodies in formulating this constitution. There was no such a thing as sovereignty while the state was under control of the mandate authorities. Moreover, though the legislative authority possessed relatively broad powers, its will remained dependent and its hand remained fettered. Furthermore, the many amendments which took place after this period came to further fetter its hands in favour of the executive authority of that period.

The constitutional amendment of 1943 amended the previous first article declaring that "Lebanon is an independent, indivisible and fully sovereign state...". This was the first time in the history of Lebanese constitution that the term sovereignty appeared. However, this amendment did not mention anything about where this sovereignty was embodied, or the source of constitutional powers. The situation remained the same for approximately half a century, until the latest amendments of 1990 which resulted from the Taif Agreement. The amendments added an introduction to the Constitution which stipulated in its fourth paragraph that "the people are the source of authority and sovereignty; they shall exercise these powers through the constitutional institutions". Consequently, Lebanon's amended constitution followed the example set by the constitutions of major systems when it proclaimed that sovereignty lies with the people, who are the

ultimate source of all powers. The embodiment of this sovereignty reflected the superiority of the legislative authority, at least in constitutional terms.

Prior to these amendments, it was inaccurate to speak of the superiority of the legislative authority, which was left to the mercy of the President of the Republic after the amendments of 1927 and 1929 (and always at the mercy of the French mandate authorities prior to Independence). The President was able to arbitrarily dissolve parliament whenever he desired. It was the executive authority which was superior at the time, especially the President of the Republic, both in terms of the constitution and in practice. After these amendments, the legislative authority occupied the first position amongst all authorities, constitutionally. It is worthy to note that ever since the promulgation of the Constitution, it deliberately stipulated this authority and its powers before any other authorities.

The priority that the legislative authority enjoys in the amended constitution is clear, in addition to its inherent points of strength: a parliament which is impossible to dissolve; it elects the President of the Republic; it is obligatory to consult with it upon nominating the Prime Minister and forming the Government; and its confidence in the government is the main condition for its formation and remaining in power. In addition to its traditional functions, it is within parliament that the followers and believers of the two major religions are equally represented, and to it the constitution confines with the task of taking "the appropriate measures to bring about the abolition of political confessionalism according to a transitional plan".

b- In Practice

To begin with, it is not possible to speak of constitutional practice. What is being applied today is a magical combination between the constitution and a number of customs generated mainly from the famous National Pact of 1943. The shadow of this Pact and the many amendments that took place gradually, which are of course unwritten like the charter itself, continue to engulf daily political actions.

Moreover, these customs also stem from the historical course of evolution that the nation has gone through, in addition to various geographical influences, and social relationships, especially those which are sectarian in nature. These customs were also influenced by international and regional changes, and even by the level of influence possessed by local individuals (leaders), groups and religious factions, who in turn were largely dependent on international and regional developments. This mixed practice which took place, especially after the latest constitutional amendments with their impetus, created a considerable amount of power for the legislative authority. However, is it correct to speak of the legislative authority superiority in practice, as is in the Constitution?

No! It is strong in practice; however, the executive authority is also strong: the Council of Ministers possesses broad and important powers. Additionally, the Prime Minister possesses enough powers to qualify him to be the first man in executive powers, and the President of the Republic also still enjoys powers which run parallel—in practice—to the powers of the Prime Minister.

All authorities are strong; the system itself is weak. It is an equation which cannot be mathematically, politically or constitutionally correct. However, in Lebanon, it is 100% correct. What is the secret behind the strength of all the authorities and the weakness of the system? What is the secret behind the lack of superiority and sovereignty of one authority over the other?

The practical reality of Lebanon is expressed as follows: the superiority of the President of the Republic's authority is Christian Maronites' superiority, while the sovereignty of the Speaker's power is Shiite's, and the supremacy of the Prime Minister is Sunni's, all of which are not acceptable by the other sects. Consequently, there was no way for the parliament (Chamber of Deputies) to be superior, as it is feared that its superiority would be translated as the superiority of its head (the Speaker), and hence the superiority of his Shiite sect. It is for the same reasons that there is no room for the Council of Ministers as an institution to be superior, nor for the Presidency of the Republic; hence, there is no room for the entire executive authority to be superior.

Consequently, neither one of the constitutional authorities is superior in the Lebanese system. The reason behind this fact is political confessionalism coupled with the special form of government Lebanon adopted for its regime, consociationalism. This form has created an extra-constitutional body (political elites accommodated in grand coalition).

3- Modern Day Challenges to Sovereignty

This section will discuss the challenges to the concept of sovereignty in general and further discusses the case in Lebanon particularly.

a- The Weakening or Stability of Sovereignty and of Legislature's Position

Some political scientists claim that parliament has declined from its golden age and has been stripped of the sovereignty it enjoyed at some point of time. They also claim that a lot of its powers have been transferred to the executive authority, parties and bureaucracy. Furthermore, there are claims that parliament no longer has any real authority over public finances and the government's treasury, and that it no longer takes the initiative when it comes to legislating in matters of high importance. In the view of these critics, parliament has become no more than a place where time is wasted by talking, and draft bills and decisions are delayed or disrupted. They go further by stating that the structure of parliament and the processes of its work are old and no longer suitable for our world today, which is based on rapidly developing technology, whereby only specialist are capable of making appropriate decisions.

How true are these charges, and what are is the current status of legislative authority?

To begin with, it is safe to state that the functions of legislative authority has indeed declined and its role weakened, to a certain level. However, it is necessary to question the nature and the cause of the regress. Is it in the powers of this authority, in its effectiveness, or in the public's respect for it (public opinion)? Is

this weakness perceived when the current position of the authority is compared with that of the past, or when it is compared with the current role and position of the executive authorities? Is the regress obvious in comparison to the roles of parties, trade unions and international organizations, or to the roles played by television, radio and the many modern means of conventional and digital communications?

It is clear that the status of the legislative authority has indeed declined in a number of important fields, especially in its powers in relation to the executive authority. One of the characteristics of the evolution of political institutions during the 20th century was the expansion of the powers of executive authority, which came as an inevitable result of the requirements of the two World Wars, economic crises, international and regional tensions, and the adoption of complex social policies.

Post world wars governments found themselves undertaking large functions which they never used to carry out prior to the two wars. However, it is important to note that these functions were also not previously carried out by any other bodies. To be precise, the legislative authority did not undertake these functions. Hence, the increase and expansion of the powers of the executive authority in this case did not come at the expense of legislative authority, except for enacting some legislations of certain mechanism. Quite the contrary, the functions of legislative authority increased and expanded, whereby legislative work gradually started to require more time and effort. Nevertheless, in relation to the tasks of executive authority, it is viewed that the functions undertaken by the legislative authority have indeed declined and diminished.

b- Between the Past and Present

Briefly, the roles of both authorities have expanded and become more complicated; however, the expansion of the executive authority's role was greater than that of the legislative authority, which led to this wide gap between the two. Let us take a look at the present role of legislative authority in order to study how

it carries out its traditional functions and deduce the reason for any diminishing role.

i-In Legislation

The legislative authority has retained its right to make laws. Nevertheless, in practice, it has delegated over to the executive authority a part of its powers in many fields. Thus, in the field of making laws, the executive authority stripped away a portion of the powers from the legislative authority. Yet, the legislative authority is still spending the same amount of time that it used to, if not more, in making laws. The legislature still deals with major issues, discusses public policies and embodies them in laws. However, it may not have the sufficient amount of time to effectively deal with the details of the functions of the executive and the administration, which have in turn expanded greatly. Nor does the legislature have the sufficient amount of time to deal with the regulations enacted by the executive authority within a legislative framework.

The executive authority, therefore, has not taken any of the functions that the legislative authority used to undertake, or was able to undertake. Comparing the amount of time allocated to enacting legislations and the amount of legislations passed, the legislative authority or its role is not considered to have declined. It is only in comparison with the executive authority and its relationship with it, that the legislative authority's role has diminished slightly.

This diminishment becomes very clear in the way that executive authority deals with draft laws, whereby it seems as though very important issues are decided upon, out of the of the precinct of legislature, through negotiations between the government and special interest groups, and the role of the legislature has been confined to simply providing a stamp of approval on these laws. The problem lies in the fact that when things are managed strictly and an agreement is reached between the administration and these external bodies, the end result of the agreement is presented to the legislative authority as faits accompli. Consequently,

it is not possible to make any amendments to these drafts, because the process of legislation is usually a compromise between many conflicting interests.[18]

It is natural for this development to provide an example to those who claim that there has been decline in the role of legislative authority. However, in the end, is not the final decision in the hands of the legislative authority? Does not the legislative authority have the ability to refuse any draft law if it was found faulty, problematic or against the public's interests? This may be an overly simple depiction of the situation due to the many various orientations existing within parliament, in addition to the presence therein of representatives of the pressure groups and labour unions.

The act of delegating legislation (legislative decrees) has also contributed to consolidating the opinion that the powers of parliament related to legislation have diminished. This is relatively true. However, had it not been for this delegation, the legislative authority, with its limited human capacity, would not have been able to expand the general administration field and it would not have been able to keep up with its development. It is important to highlight that this delegation of power has always been conditional in terms of the subject and the time frame, noting that parliament reserves the right to refuse the ratification of any legislations that violate the conditions of this delegation set by the parliament itself.

ii- In Questioning the Government

There are a number of critics and political thinkers who talked about the decline of the legislative authority's role in the process of making and unmaking governments in comparison to what it used to be in the past, pointing to the role of the legislative authority during the Third and Fourth French Republics, whereby governments were easily formed and overthrown.[19]

[18] E.C.S Wade, *Introduction to Dicey, Law of the Constitution*, London: Macmillan, 9th Edition, 1919, pp xii-xiv.

[19]See, K.C. Wheare, Chapter 5, n 33, pp. 223-224.

c- In Lebanon

Lebanese legislative authority has never really experienced a golden age in order for us to be able to correctly speak of its decline. Excluding the constitutional role it played during the days of the Kaymakamate and Mutasarrifate, in addition to the role of resistance it played during the French mandate rule and prior to independence—which were very important phases in which the legislative authority performed exceptionally well[20]—and following its development after the independence of Lebanon, especially in regards to the functions that have been previously mentioned, it's safe to conclude that its role, which has never been significant, has not changed at all.

iii- In Legislation

Its role in this field did not decline; on the contrary, it was consolidated. We have already seen how draft bills used to be passed, proposed and decided upon, in addition to the level of influence of the executive authority–especially the President of the Republic[21] –on this process. This was especially true of the exploitation of article 58 of the Constitution which made it possible to enact draft bills that had not yet been approved or studied by parliament, in addition to the frequent resorting to the use of legislative decrees.[22]

After the latest constitutional amendments inspired by the famous Taif Agreement, the situation changed, whereby the legislative authority was able to take more control over the legislative process. It became impossible to enact laws without the approval of parliament, especially after the amendment of article 58.

[20] However, these were extraordinary cases and it is not possible to measure against these instances for one very simple reason, being that the legislative authority was not sovereign at the time.

[21] The number of draft bills (proposed by governments and supported by the President) during the rule of President Chamoun reached 92.3% of the total number of draft bills (bills and proposals). This proportion gradually declined during the rules of Presidents Chehab, Helou, and Franjieh to become 75.7%, 68.1% and 52% respectively. The proportion of approved draft bills (government – President) reached 85%, whereas this proportion ranged between 20% - 50% with regards to proposed bills (Baalkini, previous reference).

[22] It is enough to remember that at the beginning of President Amin Al Gemayel's rule, 161 legislative decrees were issued between 1982 and 1983, based on the law no. 36/82 dated 17/11/1982. The proportion of "ordinary" laws adopted by the Chamber of Deputies from 1943 to 1972 reached 60%; i.e., the percentage of laws passed in the form of legislative decrees reached 40% (statistics collected and organized by the researcher, extracted from data kept in the archives of the Chamber of Deputies).

All the Chambers of the Second Republic, so far, have refused to give the Government the right to issue laws through legislative decrees.

ii -In Questioning the Government

We believe that statistics is not a good lead in this matter, as numbers will not help to reveal any information or clarify results. Therefore, I will not go into the number of questions, interrogations or discussions held in this regard. The results clearly indicate that not a single government has been overthrown since independence till today, as a result of the Chamber of Deputies withdrawing confidence. This is true prior to and after Taif. It is important to highlight a few instances during the First Republic when some of the Chambers were able to mobilize public opinion against governments and the President of the Republic personally, in addition to their ability to end the policies of the President and, sometimes, his tenure by preventing its renewal or extension.[23]

In this field, the Lebanese legislative authority remained at the same level of weakness, and even declined.

As deduced from the above, sovereignty is always entrusted with the people, the source of all political authorities in all regimes. However, the practical embodiment of this sovereignty may differ from one regime to another, whereas the superior authority is the parliament in most of them, while in the others is the King, or the King in the Parliament, or the executive.

In Lebanon, and due to the special regime it applies, the superior authority, as a concept, is the spirit of the people I mentioned above. This spirit is marred by sectarianism, but it finds its national embodiment in the delicate balance struck amongst the confessional segments of the society. Thus, the superior authority, in praxis, is the grand coalition of all segments which is mostly obvious in elite accommodation in the Government. As explained earlier (chapter 4), legislature also features consociational characteristics including grand coalition and elite

[23] We researched this topic in depth when we discussed parties and the opposition in Lebanon (chapter two, part two).

accommodation. Thus superior authority in the Lebanese system is also embodied in the consociational features that the legislature embodies.

While sovereignty will always be entrusted to the spirit of the people over consecutive generations, the temporal superior authority in the Lebanese system is this extra-constitutional entity composed of the leaders of the religious factions accommodated in grand coalition. The Government could be the most obvious embodiment of this authority, the legislature to a lesser degree. Still, other extra-constitutional forms also exist and embody superior authority in the Lebanese regime, like the Troika phenomenon, a fictitious non-constitutional body comprises the President, the Prime Minister and the Speaker, as well as the Tables of National Dialogue, discussion fora outside Parliament and the Council of Ministers to address issues of common national concern.

Chapter Nine

The Second Chamber and its Position in Political System

Most legislative authorities in modern democracies are composed of two chambers: lower and upper chambers, or first chamber and second chamber of different titles[1]. This bicameralism (bi, "two" + camera, "chamber") seems to generally be a part of federal systems. The existence of two chambers in such systems is clearly and simply justified. Nevertheless, this concept is not the offspring of federal system, nor is it confined to it.

1- The Concept of Bicameralism

What are the justifications for the existence of two chambers in the legislative authority? What is the importance of the second chamber, and what is its position in political systems?

a- Justification and Importance of Second Chamber

Montesquieu attributes bicameralism to the British parliament in his book "The Spirit of the Laws". After defining three types of authorities in each political system, he states that bicameralism is the result of the fact that there are certain people in every nation that are distinguished by birth, wealth or lineage. If these people were to become assimilated with the rest of the society, or if they were to be given just one vote like everyone else, they would be feared to be subject to the tyranny of public liberties. Accordingly, this segment's share of legislation should be proportional with the other privileges that they enjoy in the nation. This is only possible through the establishment of a body which has the right to monitor the people's institutions, just as the people have the right to monitor this segment's institutions.[2]

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[1]The terms first and second councils do not carry the same meanings in all the countries which have adopted this duality within the legislative authority. Hence, councils which are elected through general public elections in Britain, Canada and France for example are named first councils, while the other councils are named second councils. Meanwhile, in the United States and Australia for example, where both councils are formed through popular elections, the council of representatives is named the first council, in accordance to the portion of inhabitants, while the second council name is assigned to the senate, within which each states is equally represented regardless of the size of its inhabitants. In other nations such as Holland and Sweden, the council which is formed on the basis of general elections is considered to be the second council, while the council formed on the basis of indirect elections is considered as the first council.

2Charles Louis de Secondat, baron de Montesquieu, 'The Spirit of Laws', translated and edited by Anne M. Cohen, Basia Carolyn Miller and Harold Samuel Stone, *Cambridge texts in the History of Political Thought*, United Kingdom: Cambridge University Press, 1989, Part 2, bk11, Ch 6, p.63.

Thus, legislative powers must be vested in both the body which is composed of nobles and the body which is elected to represent the people. However, there is a risk that the nobles' body may be tempted to only further its own interests above the interests of the people. Consequently, it is important to restrict its participation in the legislative process to its right to vetoing, and stop short of initiating.

This justification was manifested clearly within the framework of the federal system. Bicameralism in this system functioned successfully and was able to, first, represent all the people of the federation in a proportionate manner through the assembly, the first chamber. Second, it was able to equally represent the states, districts or cantons, and members of the union, regardless of their size or populations, through the senate, the second chamber.

If this is the logic behind the establishment of dual chambers within the legislative authority, it becomes necessary to question the reason for the existence of this concept today and the importance of second chambers.

In addition to representing the rights and interests of the various classes within one nation, as well as representing the states, counties or districts within the federal union, the second chamber also acts as a platform for studying and scrutinizing. It is a second body within which other voices are raised and new ideas and views are heard, which may be in line with, or oppose to, the conclusions of the first chamber.

In this context, the second chamber seems as though it is a body for appealing that may nullify, ratify or amend the rulings of the first chamber, depending on what it is allowed to do by law.[3]

b- Foundations of Forming the Second Chamber

Upper chambers which are formed on the basis of regional electoral constituencies will not be able to offer different points of views on issues or draft bills referred to them by lower chambers which are also formed on the basis of

[3]The British House of Lords provides a good example of this case.

identical regional electoral constituencies. Hence, the idea of chambers elected on the basis of non-regional constituencies was proposed, thus presenting a non-regional form of representation on the basis of professional, functional or economic representation. If the lower chamber represents the people on the basis of where they live, the upper chamber should represent them in terms of how they earn their living and how they live.[4]

This form of representation will have a positive effect, even at the level of regional representation, whereby areas which are less densely populated than the city (such as rural areas, major agricultural areas and industrial areas), and which are considered to be treated with the same level of social and economic importance as other areas, shall find their interests represented within this council. As for other cases, and they are many, where upper councils are formed to guarantee a regional or class representation, indirect elections through local or segmental bodies tend to be the best way to elect their members.

It is pertinent to note that in some societies, such as those of certain African countries whereby tribal or other traditional groups are powerful, indirect elections through these groups is probably the best way to form second councils.[5] To the contrary, direct elections at a national level tend to be artificial and an unwise method to organize such elections.

Hence, choosing the members of the two councils through general direct elections, even if electoral constituencies were different or if the election laws were different (majority or proportional), would lead to two councils both representing the people, and both have the right to speak on behalf of the people. Consequently, the two councils are entitled to be assigned with the same powers. This would mean looking for problems. It is also preferable for the terms of senate members to be relatively longer than the terms of members of the chamber of representatives in order to ensure institutional stability and continuity.

[4]See Kenneth C. Wheare, Chapter 5, n 33, pp 213-214.

[5]Even when it comes to the structure of first councils and the entire legislative authority, according to Wheare, Chapter 5, n 33

There have been several debates over the nature of the second council, and the extent to which its members should be affiliated with parties within the system. Some viewed that members of the second council should be impartial, while others viewed them to have less party affiliations than the members of the first council. However, this view has no foundations and it is difficult to defend. As long as the upper council has the right to debate and vote on bills, even if this right is limited to the act of amending bills or delaying them for a certain period of time, then it will be obvious whether the second council consists of a majority that supports or opposes the government.

There is nothing wrong about this. The second council is supposed to express its opinions concerning the actions and policies of the government, which are supported by a party majority or bloc, and opposed by a minority, in the first council. How then, is the second council supposed to avoid party politics? Why should it do so in any case? The upper council is a part of the political system and its job is political. It is not necessary for it to be divided amongst party lines with the same intensity as the lower council. Nevertheless, it is supposed to express its opinions and views on the subjects it addresses, and this shall mean that it will have to take a side; i.e., it shall therefore support one party over the other.

In this context, one can speak of the economic, social or specialized professional councils, and the extent of their powers and their integration in the legislative process. In most cases, these councils are legal, sometimes constitutional, bodies of non-partisan advisory nature, and of no decision-making powers. These bodies will work and cooperate, as advisors and experts, with a partisan legislature. They present studies based on the request of the government (or the chamber), or sometimes on their own initiative. They express their opinions in these studies, which are of non-obligatory and non-executive nature.[6]

[6]This is what was stipulated in the law which established the Economic and Social Council in Lebanon, no. 389, dated 12/01/1995.

Some authors have suggested that these bodies should be treated as third councils within the hierarchy of the legislative authority.[7] In such a case, the partisan structure of these bodies will draw the interest of politicians. Sooner or later, they shall be transformed into councils with a party composition. A professional council, whether it was a second or third council, cannot function successfully within the legislative authority. The scope of its interests and powers lie outside the field of this authority.

2- The Second Council in Lebanon

Legislative life in Lebanon has experienced the practice of two councils. It was not, however, a rich experience. It's very short life span of one and a half years did nothing to enrich political life in general, or legislative life in particular.

a- A Historical Glimpse

This section addresses the Senate's establishment, abolishment and powers, tackling its role during its short lifespan.

i- Its Establishment

Article 16 of the Constitution originally vested the legislative power in a parliament composed of two separate bodies—a Senate and a House of Deputies. Article 22 provided that the Senate shall consist of sixteen members, seven of whom are appointed by the President of the Republic in consultation with the ministers, and the remaining nine of whom are elected. The mandate term of senate members was set at six years, with the possibility of being re-elected or reappointed.[8]

Hence, before the constitutional amendment, adopted in 1927, abolished it, a senate was established in Lebanon. It was made up of 16 members, distributed amongst the sects according to the following proportions: 5 Maronites, 3 Sunnis, 3 Shiites, 2 Orthodox Christians, 1 Roman Catholic, 1 Druze, and 1 from amongst

[7]Wheare, Chapter 5, n 33., p 214

[8]The old Article 22 of the constitution prior to the first amendment in 1927.

the remaining minorities[9]. All of the members were appointed, as the French High Commissioner reserved the right to appoint the entire first Senate[10]. During its first session, Sheikh Mohammad Al Jisr was appointed as the President of Senate.

ii- Its Powers

The one-time Lebanese Senate was granted relatively important powers. This is probably because the French mandate authorities were reassured of its character and expected it to be conservative and loyal to them. This was especially true since nearly half of its members were to be appointed by the President of the Republic, while all of the members of the first Senate were appointed by the French High Commissioner. Nevertheless, the greater portion of powers remained in favor of the Chamber of Deputies. Article 19 of the old constitution stipulated that laws were not to be published until they were passed by both chambers. However, laws that were proposed by the Government and ratified by the Chamber of Deputies were not to be referred to the Senate unless it was requested by it. Senate must be informed of the mentioned laws, and if it desired to discuss them, it must notify the government within eight days. If the Senate took no action within this period, then it was considered a consent of the Senate to the laws.

As for the right to propose laws, this was confined to the President of the Republic and the Chamber of Deputies by article 18. This was probably the most important advantage that the Chamber of Deputies had over the Senate.

Furthermore, the Chamber of Deputies was given the priority in enacting financial laws, whereby draft bills related to these laws had to be referred initially to the Chamber of Deputies in order for the Chamber to discuss them (article 18). Moreover, priority was also given to the Chamber of Deputies in enacting the

[9]According to what was stipulated in the old Article no. 96 (which was abolished by an amendment in 1947). In line with this article and Article no. 98, the French High Commissioner of Syria, Greater Lebanon and the Alawites and the Druze Mountain (as was his title at the time), issued Decision no. 305 bis on the 24th of May 1926, which appointed the 16 members of the Senate as follows: Albert Kashou, Youssef Namour, Habib Pasha Al Saad, Youssef Estafan, Emile Edde, Mohammad Al Jisr, Abdullah Bayhom, Sheikh Mohammad Al Kasti, Al Hajj Husein Al Zein, Fadel Al Fadel, Ibrahim Haidar, Nakhleh Al Toueni, GebranNahas, Salim Najjar, Sami Arslan, AyoubThabet, Fares Saade, *Encyclopedia of Elections* **(**From our Parliamentary Life, Secrets and Stands)**,** part 3, Beirut 1995, pp. 251.

[10]Article 98 of the Constitution (which was abolished by the 1947 amendment) stipulated that in order to ensure the full and immediate implementation of this Constitution, the High Commissioner of the French Republic shall be entitled to appoint the first Senate in accordance with the provisions of articles 22 and 96, for a period not exceeding 1928.

budget, whereby "the Government shall submit to the Chamber of Deputies the general budget estimates of state expenditures and revenues for the following year".

Senate shared equal powers with the Chamber of Deputies when it came to electing the President of the Republic. The two councils would meet in a joint session for this purpose[11].

The old Article 55 stipulated that the approval of senate must be obtained, by a three quarter majority of its membership, on the decision taken by the President of the Republic in the Council of Ministers to dissolve the Chamber of Deputies prior to the end of its mandate term. The importance of this power is obvious, especially that the President is bound by the Senate's decision, because it is not a mere consultation or recommendation, rather a binding act taken by designated majority.

iii- Its Abolishment

As opposed to the Chamber of Deputies, which inherited the Representative Council along with its relatively rich political legislative experience[12], neither the Senate nor its members had a sufficient level of experience. Hence, as the newly formed Senate was still establishing itself, it faced a group of problems and disputes that ultimately led to its abolishment. No sooner had the first parliamentary Government established on the 29th of May 1926, under the presidency of August Pasha Adib, than a number of disputes erupted between it and the Chamber of Deputies. Most of the Chamber deputies were pro-independence and preferred limiting the powers of the mandate authorities, rendering the entire Chamber of Deputies fall under the influence of the opposition, lead by the National Movement of Lebanon.[13] This was in contrary to Senate which, due to the fact that its members were appointed by the Mandate authorities, was loyal to the French occupation.

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[11]This meeting (a joint session between the two councils) is called the Parliamentary Congress, and is presided over by the President of the Senate, and the bureau of the senate is also the bureau of the Parliamentary Congress (the old article no. 78). Furthermore, the Parliamentary Congress shall not be considered to be legally convened unless the majorities from within each council are present in the Congress. Its decisions are issued with a two thirds majority of attending members (the old article no. 79)

[12]The first Chamber of Deputies was the very Representative Council stipulated in the newly promulgated constitution, and which was consequently transformed into the Chamber of Deputies according to article 97 of the constitution.

[13]Edmond Rabbat, الوسيط في القانون الدستوري, the educational house of the millions, first print, Beirut, 1970 pp. 370.

The disputes erupted between the two chambers, especially over legislations proposed by the Government, and over the budget which the Chamber of Deputies delayed its discussion and voting. The situation was made worse by the fact that the Constitution restricted the right to propose laws to the Chamber of Deputies, in addition to granting the Chamber the priority in financial laws, as previously mentioned.

The crisis between the two councils on one hand, and between the Chamber of Deputies and the Government on the other hand, reached its peak when the Chamber started to threaten the Government with withdrawing confidence if it insisted on its policies. At the same time, the Senate was urging the Government to speed up its projects.[14]

This duality in the Legislative authority (bicameralism) and the conundrum it produced worried the mandate authorities that viewed them as obstacles to the smooth functioning of the newly established institutions. They, therefore, decided to abolish Senate and merge its members with the Chamber of Deputies. They also decided to maintain this number of members as the appointed quota in the new expanded Chamber, seeing it a restriction to the independency leanings of the Chamber and a way to overcome the disputes with the Government and Mandate authorities.

Consequently, the French authorities instructed the Government to propose a draft law to amend the Constitution regarding this subject. The draft was approved by the Parliamentary Congress and became a constitutional law in accordance to the principles mentioned in the Constitution. It was then issued by the President of the Republic on the 17th of October 1927.

b- Incentives of Reviving the Second Council (after Taif)

It has been said that "had the British House of Lords not existed, it would have been difficult to invent it". This is an indicator of its complicated structure, long history and the many radical changes its position and role undergone. These changes have transformed the British House of Lords into a symbolic institution

[14]See n 13.

whose value is inherent in its rich history more so than its current status. Nevertheless, it is difficult to imagine the course of the British system and political life without the existence of the House of Lords.

What about Lebanon that did not experience the second council but for a very short period, and was marred with many difficulties? Senate does not exist; is it worth creating it? Why should an upper house be established in Lebanon, and what would its desired role be?

The latest constitutional amendments which were agreed upon during the famous conference, held in the Saudi city of Al Taif, and which were enacted through the constitutional law no. 18 issued on the 21st of September 1990, revived the idea of establishing a senate. I use the term 'idea' because the establishment of a senate was not decided upon. This establishment was conditioned upon a prerequisite that is very sensitive, has a special meaning attached to it and very difficult to materialize. This condition is the election of a Chamber of Deputies based on national, non-confessional basis.[15]

Hence, the purpose of establishing the senate was clear. It was restricted to protecting the rights of the sects and enforcing their representation in the legislative authority in a different modality after abolishing their quotas in the Chamber of Deputies once this Chamber is elected on a non-sectarian basis. This is a logical and sound measure. Religious sects are a reality that cannot be denied in Lebanon. Sectarianism is a phenomenon which is pervasive through almost every aspect of life in this country.

Being a plural society of segmental sectarian cleavages, Lebanon's political system has adopted since the very early years of inception a special form of governance based on grand coalition among the various components of the society: consociationalism. As discussed in previous chapters, consociational form of democracy is manifested in different forms and figures in the Lebanese political institutions, mainly the executive and the legislature.

[15]Article 22 of the 1990 constitution states that "with the election of the first Chamber of Deputies on a national, non-confessional basis, a Senate shall be established in which all the religious communities shall be represented. Its authority shall be limited to major national issues".

One of the most prominent manifestations of embracing this sectarian reality was the representation of sects in the legislative authority by allocating shares (quotas) to each sect in all of the representative councils, with no exceptions. Another manifestation was the distribution of the three top seats of power amongst the three major sects (Maronite President, Sunni Prime Minister and Shiite Speaker).

Ever since the first representative body in the history of Lebanon, which was the Greater Administrative Council also known as the Administrative Council in the Mount Lebanon Mutasarrifate, spiritual families[16] have been represented in the legislative authority regardless of the various names, forms and roles. Not a single electoral law over the past one and a half centuries does not take into consideration the proportional allocation of seats amongst various sects. Representation has always been with the specific purpose of ensuring that all the sects are represented in the legislative authority based on the respective sizes and influence. Sectarian permeation in the legislative authority has existed ever since the inception of this authority.

The raison d'être of Taif Agreement was to enforce consociational factors in the Lebanese political system and institutionalize its characteristics, particularly grand coalition of elites and leaders of societal segments. Within this context, Taif stipulated the establishment of an upper house in the legislative authority. Article 22 of the Constitution stipulates: "With the election of the first Chamber of Deputies on a national, non-confessional basis, a Senate shall be established in which all the religious communities shall be represented. Its authority shall be limited to major national issues."

It is very significant that when the legislatures thought of obliterating sectarian representation in legislature, and thereby demolishing the grand coalition characteristic of consociational theory, they only established simultaneously another entity that is completely sectarian and purely consociational within the very same legislature. This is an acknowledgment from the political class that there is

[16]A terminology used in the Lebanese politics referring to religious sects.

no other practical and credible system of governance for Lebanon better than consociationalism that accommodates sectarian elites in a coalition of proportional influence with enough guarantees of rights and power sharing for each societal component.

c- Conditions for its Success and its Desired Role

By establishing a sectarian upper house and liberating the lower house from confessional dimensions, religious sects—which have grown accustomed to the concept of being entitled to their rights by the state, especially in the legislative authority—will be able to preserve their representation in this authority but in a different form and with less influence. Meanwhile, the Chamber of Deputies, which is supposed to represent the people or the nation, and not the sects, will be released from the sectarian chains that have fettered it, whereby the seats will be distributed amongst various constituencies based on geographic, economic and demographic considerations; i.e., based on purely scientific considerations, which will not be ruined by the complications of sectarian calculations.

Just as the senate represents states in federal unions, the Lebanese senate is expected to represent the various religious sects in the country. Meanwhile, the Chamber of Deputies—similar to its counterpart in federal unions—will represent the people, whereby it shall be elected based upon national considerations.

Restricting the powers of senate to crucial issues, as stipulated in article 22, means that the sects will not be able to interfere in the ordinary daily affairs of political life. Although it is not clear what these crucial issues are, there is no doubt that this would give the final say to the Chamber of Deputies in legislation, the chamber that is elected based on purely national considerations.

The Senate shall represent all the religious segments equally (as the Taif Agreement indicated) and should decide upon major national issues, and eventually, sectarian matters where each sect representatives would have the final say regarding their own sectarian issues. In this sense, the Senate would embody the consociational features of grand coalition, mutual veto, proportionality (parity representation is an odd form of proportionality which reflects minority

overrepresentation) and autonomy. Thus, the senate would form a balance between maintaining the consociational elements in the Legislative and eliminating the sectarian dimensions of the lower house in order to avoid the system immobility, ineffectiveness and power vacuum.

Bassel F. Salloukh summarizes the foreign policy dilemma of Lebanon. He points out that Lebanon's geographic contiguity with Syria played into the hands of the latter's allies throughout the civil war. Syrian land routes served as arteries through which military supplies reached Syria's allies, and Hezbollah's armed resistance against Israel in southern Lebanon after the mid-1980s was predicated upon a steady flow of Iranian-supplied military hardware via Syria. This provided Damascus political capital with its Lebanese allies, and consolidated its influence in Lebanon throughout the civil war and after. It also allowed Syria to dominate the war to peace transition. The structure of Lebanon's economy also constrains its foreign policy choices. A lack of rent-generating natural resources, a lopsided laissez faire economy based on commerce and services, and state neglect of agriculture and industry necessitate amiable relations with major Western capitals as well as almost all Arab states, especially the Gulf countries. Capital inflow from Arab investors and tourism revenues, both overwhelmingly from the Gulf states, have been the prime sources of postwar economic growth. Remittances by Lebanese expatriates, many of whom reside in oil-rich Gulf countries, reached $4.5 billion in 2003, financing local consumption and contributing significantly toward Lebanon's balance of payments surplus. As a result, Lebanon's foreign policy toward the Gulf countries is shaped in large measure by these economic constraints. Lebanon's weak and multi-sectarian army has constrained the state's foreign policy choices in various ways. The Lebanese army is small, its military hardware is outdated and the country possesses no real air force or navy. The Lebanese government has confronted Israeli invasions in 1978 and 1982, and its multiple land, air and sea incursions into Lebanese territory mainly through diplomacy. Lacking a viable military option, the government has attempted to liberate land occupied by Israel by invoking UN Security Council Resolution 425, or by negotiation. Hezbollah is Lebanon's only viable deterrent to Israel's military superiority. This, in turn, gives Hezbollah veto power on foreign policy choices

vis-à-vis Israel. It has resisted attempts to reposition Lebanon in the American regional camp following Syria's withdrawal, and to adopt a confrontational foreign policy toward Damascus. With respect to the state's international foreign policy orientation, the Taif Accord limits itself to reiterating Lebanon's membership in the Nonaligned Movement. However, and until Syria's withdrawal from Lebanon, a pro-Syria regional orientation had a direct bearing on the state's international orientation and foreign policy choices. Lebanon's Arab foreign policy exhibits greater diversity. In the post-Taif period, Lebanon's foreign policy was oriented toward the liberation of Israeli-occupied Lebanese territory, the release of Lebanese prisoners in Israel and the repatriation of Palestinian refugees. However, sub-state foreign policy orientations fractured and became more complex.[17]

[17]See Saloukh, B, 'The Art of the Impossible: The Foreign Policy of Lebanon' in Bahgat Korany and Ali E. Hillal Dessouki, *The Foreign Policies of Arab States: The Challenge of Globalization*, Published to Cairo Scholarship Online: September 2011

Chapter Ten

Conclusion

When Oliver Cromwell[1] dissolved the long-term parliament, one of its members said, “We have heard what you have done this morning at the House, and in some hours all England will hear it. But you mistake, Sir, if you think the Parliament dissolved. No power on earth can dissolve the Parliament but itself, be sure of that." To that, Cromwell replied afterwards that Parliament is dissolved and its members are gone, adding that “we did not hear a dog bark at their going". He concluded that governmental affairs can be undertaken successfully without the existence of a parliament, for it is “truly an obstructing and ineffective mechanism for talk”.

These words came at a time when parliament was considered to be at its golden age, and there were no indications of any decline in its role or position. However, these words, which were new to political literature, gradually gained traction and became more frequent, reaching its climax during post-world War II period. A number of Western political thinkers began to question whether parliaments can survive and carry out their desired roles. Consequently, parliament, like any other constitutional concept or theory, began to be subjected to criticism and called into question. Many described parliament as being incapable of “doing anything but talking”, and that its main function is to “delay legislation process and impede government work”.

A lot was claimed about the fall of legislature from its golden age, and losing a lot of its importance and powers in favor of the executive authority, bureaucracy and political parties. The age of digital technology, the internet and the communication revolution require speed, decisiveness and keeping up with development. All of these issues are not part of the legislative authority’s features; rather, they are features of its counterpart, the executive authority.

However, is it true that decisiveness and speed are all that is required from a political system that aims to further the interests of the nation and its people?

[1]Oliver Cromwell (1599–1658), English soldier and political leader who led parliamentary forces in the English Civil Wars against King Charles I, and helped to overthrow of the Stuart monarchy. He served as Lord Protector of the commonwealth acting simultaneously as head of state and head of government of the new republic.

Where do other values like justice, soundness of representation, democracy and giving the people a say in managing their affairs, lie? Is the executive authority actually viewed as the grantor to these values without the need for a legislative authority?

There is no doubt that the role of legislature has regressed and its powers have declined, especially in favor of the executive authority. However, has this regression had an effect on its importance and position, thus supporting the idea of dispensing with it? This is highly doubtful. On the contrary, we have seen how some have insisted that its role and importance have actually expanded, exactly as the role and importance of the executive authority have also expanded.

Political history has indeed experienced insubordinate legislative authorities which deserved the anger of executive authority officials due to the lack of cooperation and defiance. There have also been times when the legislative authority lost the trust of public opinion as a result of the numerous impediments it had thrown in the face of the executive authorities and its frequent overthrowing of governments. This led to unrest and revolutions in several countries, resulting in the military taking over government, or interfering in its work, hence terminating or marginalizing the role of the legislative authority.

However, as recent experiences of a number of nations have obviously shown, it is not possible to dispense with an active legislative authority for a long period of time. A disruptive and constantly-criticizing parliament is less evil and dangerous than no parliament at all.

Indeed, when you abolish the parliament, you have inevitably moved the debate to the temples[2], streets, universities and various other civil institutions which are ineligible and inappropriate for political and state affairs discussions. Such debates will almost always take violent courses and culminate in

[2]Baaklini, Legislative and Political Development, Chapter 3, n 42, p.106.

unfavorable ends. Without parliament, a nation would face massive internal and external pressure.

Legislature has a role that goes beyond the process of legislation, and is even loftier than its role of monitoring the government. Legislature provides nations with an element of stability, a mechanism for absorbing shocks, a testing field for various differing opinions and conflicting orientations. Parliament is a wonderful and magical place where words may be spoken, the likes of which if spoken outside its precinct could lead to strife and clashes. Within parliament, these very same words help to prevent sedition and potential unrest.

The importance of legislature lies in the fact that it remains in touch with the people, hence opening up channels of communication between them and the government. These channels help to convey upwards to the government the realities of the society and its ambitions and views. It delivers the opinions and thoughts of men on the streets and in factories, women at homes and in offices, and students in universities. It pays special attention to their ambitions and interests, and reflects them all in discussions in parliament through recommendations made to the government and draft laws.

On the contrary, the executive's mechanism of communication are only concerned with relaying information downwards in the direction of society[3], through decrees and decisions, and through the general administration and the various other bodies affiliated to it. Consequently, the legislature, which represents the people, is the best suited to provide the government with data concerning social, political, economic, regional and especially domestic matters. It may not always represent the people completely; however, it remains to be a sound and open forum for communication and settlements between various conflicting political interests. At this mission, it is much better and more capable than the executive authority or its bureaucratic administration.

[3]See Baalkini, Chapter 3, n 42, p.8

This view of the legislature as an arbitrator of conflicts between special interest groups and the elective bodies on one hand, and the executive authority on the other, has been the subject of many studies pertaining to the legislative process. The role of mediation played by the legislative authority in this task involves much more than the literal meaning of the word. The legislative authority is itself an 'interest' group, and has displayed more awareness and sense of self-being than other bodies and authorities, whether official or non- official. These bodies need to take this into consideration if they desire to play a role in political life.

Legislative authority is not just a conference of delegates representing various conflicting interests, whereby each delegate defends the interests and opinions of its client in the face of other delegates. Parliament is a consultative assembly for one nation of one interest, the interest of the whole populace. Hence, local objectives and narrow conflicts should not take over parliament, except to the extent to which they complement public interests and allow national welfare to ultimately prevail.

Thus, even the most authoritarian regimes that firmly adhere to their executive authority, preserve and maintain the position of the legislative authority. They even try to highlight the role of their legislatures no matter how limited and insignificant it is. Those regimes view legislatures as a legal cover for their actions and a shield to fend off all types of pressure, whether internally or externally.

The legislative authority has also been criticized for its role in state building and the process of developing the political system and its institutions. Its role within this context has been accused of being purely negative, and that every attempt to develop legislative authorities in developing nations has led to hindering the modernization of the nation's themselves. This is because legislatures, unlike the executives, generally tend to lean towards conservatives and hardliners, even in democratic systems. This is true especially in presidential

systems. Therefore, it is illogical to strengthen the decision-making powers of an institution (legislature) which is expected to resist change.

Nevertheless, a number of studies have contrarily insisted on the importance of the legislative authority specifically in this context, assuring that it plays a unique role in developing the nation politically, institutionally and constitutionally; i.e., it plays a pivotal role in state building. Any exceptions that might justify the aforementioned accusations remain to be exceptions that prove the rule.

In this regard, one must always remember the resistance and steadfast postures taken by legislatures in Third World countries—specifically the Lebanese legislative authority. This authority has survived in spite of the many obstacles and difficult circumstances it has gone through, facing both local and, particularly, foreign pressure. It is enough to recall the enmity with which colonial powers dealt with any national institution of representative character.

The legislative authority, which gives legitimacy to other political institutions, rather to the political system as a whole, embodies the continuity of political institutions and constitutes an element of stability.

The legislative authority represents the conscience of the nation, in the sense that governments are only temporary and may reflect the opinion of a certain political trend which may have gained traction and strength at a certain point of time, for reasons which vary from local, regional, to international circumstances. These governments may reflect the views of a certain segment of the people for a specific period of time as a result of elections which were influenced by a certain orientation at the time when they were held. This orientation may be appropriate and in the interest of the nation at the time, or not. Perhaps it may have been a sweeping current that was difficult to go up against, or a new untried fashion that attracted the attention of people. It may also be the result of an emotion that the human mind cannot explain; an idea, ideology or trend that emerge throughout history, rise and fade away (like global liberation movements, ethnic nationalism,

McCarthyism, fundamentalism, neo liberalism, terrorism, neo conservatism and populism… etc.).

However, the legislative authority remains a long-lasting guarantee. It reflects the opinions of the people and the complete image of the nation throughout various generations. Even if the legislative authority is formed by elections influenced by these aforementioned trends and orientations, it—unlike the executive authority, which is committed to a specified program—will immediately find a way to correct direction and secure a path in which numerous points of convergence can be located through discussions and dialogue. Legislature creates an atmosphere where politicians would be able to think clearly and calmly, and remain in touch with the people who will one day undoubtedly regain their balance based on their general culture and future ambitions. Consequently, parliaments will reflect the latest orientations and overthrow governments that do not reflect new trends by adapting them in their programs.

This unique importance the legislature enjoys is what led Montesquieu to believe that England will never vanish like the former Empires of Rome, Sparta and Carthage did, until the legislative authority becomes more corrupt than the executive authority. In the same context, Lord Burleigh stated that "England could not be destroyed but by a parliament".

What about Lebanon?

It is equally pertinent to pose the same question about Lebanon's legislature, its importance, role and position in contemporary times. The difficult experiences and unparalleled circumstances that this authority went through make this question even more important and legitimate.

As we have seen, the Lebanese legislature has played a very important and fateful role. During the Mutasarrifate era, it was a main element in the birth and defense of the Lebanese identity. During the mandate era, it helped designing the future character of Lebanon. It was at the unrivalled center of political life within the confines of which a highly complex network of relationships, interests,

agreements, settlements and compromises were built. One of the most prominent manifestations of the importance enjoyed by the legislative authority during the mandate era was the fact that it was victorious in promulgating the Lebanese Constitution after a steady defiance. During the independence phase, it continued its political life leadership, and was able to resist and beat the French occupation. It was the legislature, as previously mentioned, that was able to unify the Lebanese people around the major national concepts of constitution, independence and nation's entity.

However, after the independence, the legislature's role changed and its position also differed. For a considerable period of time, it remained at the centre of Lebanese political life. Even when other political, social, capitalist and sectarian institutions started to raise their voices and make their opinions heard, they did so through the very same legislative authority.

The legislative authority eventually lost its ability to stand up to these pressures and interferences. Consequently, the institutions—at the forefront of which were the religious sects and even the leaders of these sects—became more important than the entire legislative authority, and their voices became louder.

The Troika phenomenon is nothing more than a manifestation of this skewed situation. The phenomenon emerged as a result of the regression of the legislative authority and the weakening of its role. Troika, which was born long before the term became known in the Lebanese political dictionary, still exists to this day though it is rarely referred to, and its nature and the number of which it is composed has changed[4]: two (with the inception of the National Pact and the independence stage), three (after the Taif constitutional amendments), four (depending on the balance of power between the various sects and their leaders,

[4] The word "Troika" is of Russian origin and it means the carriage which is pulled by three horses. However, in the Lebanese dictionary it refers to the politicians who have taken over the three seats of power, and their hold over the entire constitutional institutions. We have expanded here with regards to its significance concerning this process of reducing the three seats of power to include an unlimited number of individuals.

such as the situation between 2000 and 2016), or more (as was the situation during the civil war when then there were many different leaders).

The number of this elite class differs, but the concept is the same: an accommodation of leaders in a political coalition in the context of power sharing. It is the proper materialization of consociationalism, as a special form of governance in a plural society like Lebanon's. Troika is one form of grand coalition. Its failure as a tripartite body, however, is mainly attributed to its non-inclusiveness of leaders of all Lebanese societal segments and religious minorities.

The legislative authority in Lebanon is the core of the political system. If Lebanese political system is ever needed to reform, then the starting point should be the legislature. It might not be the only reform needed to fix the distortions and problems inherent within the Lebanese political system; however, it is the key of any change. Reforming legislature means fixing the representative system at its very core and abating the sectarian nature of this system—in the sense that sectarianism should not be the main standard for the composition of the legislative authority.

However, since consociationalism is the ideal form of governance in Lebanon as I have argued, then accommodation of factions' leaders is inevitable and consociational grand coalition is a must. As the government reflects this coalition whereby it includes proportional number of ministers from different sects, the legislature should also embody this concept by representing all societal segments proportionally. The solution would be through the establishment of a 'sectarian' senate where consociationalism would be clearly embodied by accommodating elites and representing all factions. At the same time, sectarian standards of forming the Chamber of Deputies could then be abolished.

Repairing the legislative authority also entails consolidating the political party system and establishing a responsible opposition. It also entails getting rid of the political and financial feudalism, and political hereditary mindset that the Lebanese system has always embraced. Finally, repairing the Lebanese

legislature would imply curing the entire society and putting the entire network of relationships on the right path.

What Do We Conclude?

Almost two hundred years ago, Sir William Blackstone spoke of the supreme and unrestricted authority of the British parliament that enables it to do anything which is not impossible by nature. How did it regress, why and to what extent?

It is probably easier to ask this question than to answer it. Here I'm trying to conclude, and yet still posing questions. This is an indication of how important and precise the subject is.

The parliament still possesses this sovereignty and is still unrestricted. It is still able to achieve anything which is not impossible in nature. Nothing has changed in the powers and fields of specialization of the legislative authority. Constitutional history has not proven any essential decline in the role of this authority since its inception, not in the constitution, or in customs or even in the jurisprudence (with the exception of a few limited theories). It is probably the manifestation of these powers which has declined to a certain extent.

It is true that parliament might not issue a legislation making all men women and vice versa; it did not do this in the past anyway. However, it is still carrying out the functions that it is supposed to do. It still legislates, monitors, holds accountable, discusses and controls public policies in line with public opinion and the principles inspired by the nation's history and culture.

The legislative authority remains to be the main building block upon which the nation is constitutionally, socially and politically built. No matter what is claimed about other bodies, assemblies, special interest and pressure groups; and no matter how essential their roles may be; and no matter how much the powers of executive authority may expand, the legislative authority shall remain to play a role that all of these bodies and institutions combined will never be able to play.

It shall always be important, and this importance shall never be diminished regardless of the increase in importance of other authorities or bodies; instead, this may fortify its status and position.

The greatest proof of our argument is highlighted by the massive efforts made by special interest groups to send their representatives of choice to the parliamentary forum, and the support they provide to individuals, parties, political blocs and groups that support their views and interests. Thus, they mobilize all their instruments to support them, collecting donations and finance their marketing campaigns. This is because they are aware of the fact that their influence and strength shall remain futile unless they are able to manifest themselves through representatives in legislature.

There is no doubt that the role of the executive authority has expanded and grown. In a world where thousands of issues are addressed on a daily basis, where millions of pieces of information and data pass from one country to another, and billions of dollars and millions of people cross the boundaries every day, it seems that everything revolves around the executive authority, and that it is the decisions of this authority which will decide the present and the future.

At face value, this is correct. However, one must not forget that the executive authority is born from the legislative authority, especially in parliamentary systems; therefore, the executive is a representation of the legislature. In other words, it is the executive arm of the legislative authority, even if it is given broad powers and a high level of independence. It is accurate to claim that it is the unrestricted powers of the legislative authority that allowed it to place these broad powers in the hands of the executive authority.

Indeed! It is the executive authority that decides, executes and takes action swiftly and effectively; however, speed and effectiveness—as I have mentioned before—are not the only conditions for government.

Justice is the supreme political virtue. Governments become truly just and effective when they are criticized, and announce their plans and projects to the

people. Good systems are established when their governments are in line with parliaments, and through parliaments, they are in line with the people, who are the source of all authorities.

Going back to Cromwell, I respond with what Sir Ivor Jennings said: "Indeed! Dogs may bark in parliament, however if there was no parliament, they would also bite".

Finally, why has consociationalism failed to build a sustainable stable democracy in Lebanon as the theory suggests? In chapter four I insisted that despite the limitation of consociationalism, its undemocratic dimensions and the wide criticism against it, it might be still the form of government most suitable for Lebanon given its segmental cleavages, and the important role religion plays in the life of all Middle Easterners. Yet Lebanese democracy has witnessed disturbing instability that not only did not contribute to sate-building, but shook the foundation of the political regime itself. Indeed, civil war and regional upheavals are the chief factors that counteract and deactivate consociational theory, but one cannot overlook flaws and discrepancies that have marred the application of this form of democracy even in times of peace, and the need to reform the system and its institutions, including those that accommodate consociational elements.

In theory, the term consociational democracy not only encapsulates a theory but also a programme: it suggests the imposition in a plural society, like the Lebanese, of a certain kind of rules and norms, both written and practiced, that can mend and put together a fragmented society on the track of building its own path of democracy tested by past experiences and trials.

It is true that the Lebanese decision makers (the elite cartel) have made use of the experiences they learned from the past civil war; however, consociationalism suggests that the elite governance would be a temporary phase in the gradual journey of establishing a stable democratic rule. The post-Taif-Agreement phase was supposed to be this temporary phase of elite accommodation and of building solid norms and rules towards the targeted phase

of stable consociational democracy. However, the Lebanese system is still governed by the same elite cartel that has been ruling it since the inception of the Lebanon's State; the phase of elite accommodation seems to be everlasting.

The Lebanese system has yet to develop the norms and customary rules necessary to walk down that path of stable democracy. Acknowledging the indispensability of the consociational form of governance, at least as interim governing democracy today more than ever with the ongoing wars and conflict in the Arab Levant, the Lebanese diverse society has to develop its post-Taif political system to the end of strengthening and purifying its consociational model of political system to avoid a relapse to stability in Lebanon.

Moreover, in the very near future and when the blazing fire in the Middle East is put off, Lebanon should resort to rationality and hold a corrective 'Taif conclave' that should be built on Taif Accord and devise a new set of regulations that make constitutional institutions more flexible and aid the system with new power-sharing formulas to overcome standoffs and avert power vacuum. A proper balance between a more unified national identity and sociological and political pluralism, as a prelude to democracy, must also be attained.

I see no better qualified institution to initiate this conclave than Lebanese legislature itself, given the consociational attributes it sports which present a guarantee to all Lebanese confessions. Lebanese legislature should trigger the reform, and it should start it with a self-reform. When legislature, the mother of political institutions, is reformed the entire system follows suit.

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