

## Lebanon, or the Impossible Revolution

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### ABSTRACT

Commonly depicted as a textbook example of ‘failed state’, postwar Lebanon has drawn a cumbersome political and economic trajectory throughout the last three decades. However, neither the perceived inefficiency and corruption of its politico-administrative machinery nor the inability of its élites to engender a modicum of prosperity have managed to jeopardize the foundations whereupon the Lebanese system is anchored, whereas other—apparently more solid—régimes fell down amid public outcry. Unaffected by the winds of change blowing during the Arab Spring, the defining elements of Lebanon’s political structure have remained basically unchanged in spite of civil war, foreign occupation, and popular protests. This paper, in analyzing the guidelines of such a political construction, will argue that the consuetudinary power-sharing practices and gradualist approach to change enshrined within the so-called ‘National Pact’ have turned an apparently weak system into an ironclad construction, where radical transformations and revolutionary upheavals are comparatively hard to achieve.

## Lübnan ya da İmkânsız Devrim

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### ÖZ

Genellikle ders kitaplarında 'başarısız devlet' olarak gösterilen savaş sonrası Lübnan, son otuz yılda hantal bir siyasi ve ekonomik yörünge çizdi. Bununla birlikte, ne siyasi-idari mekanizmasının algılanan verimsizliği ve yozlaşması ne de seçkinlerinin bir nebze de olsa refah artışına katkısının olmaması, rejim gibi sağlam olduğu düşünülen unsurların halkın tepkisi altında yıkılırken Lübnan sisteminin demirlediği vakıfları tehlikeye atmayı başaramadı. Arap Baharı sırasında esen değişim rüzgarlarından etkilenmeyen Lübnan'ın siyasi yapısının belirleyici unsurları, iç savaşa, yabancı işgaline ve halk protestolarına rağmen temelde değişmeden kaldı. Bu makale, böyle bir siyasi yapının ana hatlarını analiz ederken, sözde 'Ulusal Pakt' içinde yer alan ardışık güç paylaşımı uygulamalarının ve kademeli değişim yaklaşımının, radikal dönüşümlerin ve devrimci ayaklanmaların başarılmasının oldukça zor olduğu bir ortamda nasıl görünüşte zayıf bir sistemi sağlam bir yapıya dönüştürdüğünü tartışmaktadır.

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## INTRODUCTION

On February 11, 2011, the long-standing Egyptian president, Muhammad Husni Mubarak<sup>1</sup> resigned amid an unheard wave of protests that shook the foundations of the *Bilad al-Nil*, opening the door to democracy for the first time in the country's history as a sovereign state. Following on the footsteps of the Tunisian president, Zayn al-'Abidin bin 'Ali, Mubarak would not be the last Arab head of state in leaving his office in the course of a year that challenged hallowed paradigms and dispelled widely-held assumptions in Middle Eastern Studies and beyond.

Paradoxically enough, Lebanon, a country which has been traditionally depicted as the weakest link in the Arab state chain, emerged virtually unscathed from a revolutionary wave that brought about the demise of, or at least jeopardized, the solid *Mukhabarat* politics ruling not only over Tunisia or Egypt, but also over Libya, Syria, and Yemen, its tremors being felt from the Atlantic to the Gulf. Thus, it could appear as shocking to underline how Lebanon's main weakness, namely, its cumbersome constitutional structure, has played a major part in the solidification of an otherwise awkward, scarcely representative and even less efficient political system.

Following on the footsteps classically trodden by Helmut Coing and, more recently, by Ronald Dworkin, this paper is constructed upon a hermeneutical approach to constitutional legality that understands the fundamental law as a living reality, transcending the text bearing such name (Dworkin, 1986: 362-363). Or, as Heidegger had originally explained, "[t]he hermeneutical process in its essence comes not in the scientific explication of what is already in the text," but, he continues, "it is rather the process of originitive thinking by which meaning comes to the light which was not explicitly present" (Palmer, 1969: 157-158). Therefore, the law of the constitution cannot be reduced to the will of the historical legislator (Coing, 1956: 20), but has a will in and of itself, that can only be properly understood by contextualizing it within its social and historical reality (Coing, 1956: 22). In Gadamerian words, "the *mens auctoris* is no possible measure of the meaning of a work," (Gadamer, 1965: xvii), which, translated to the constitutional sphere, imposes the need to develop an omnicomprehensive and supra-textual approach to the study of the constitution, beyond the specific intentions of the *Gesetzgeber*.

In the Lebanese context, this interpretative framework allows this paper to transcend the reductionist schemes that have analyzed the country's politico-constitutional system from a text-centered perspective, to study it as a conglomerate of textual and non-textual products, whose interaction, across history, has given way to the Lebanese constitution *as is*. Thus, the National Pact is no longer a momentary transaction or a mere power-sharing arrangement, but becomes both an interpretative tool and an essential part of the Lebanese constitutional edifice. As Helmut Coing has expressed (1956: 24-25), societal ethics—and political practices, it can be added—can transform a legal system in ways completely unforeseen by the original legislator.

Within this qualitative methodological framework, this paper has made use of both primary and secondary literature, including books, articles, and official documents, with a particular emphasis on Lebanese voices written in various languages. Structured in three parts plus a reflective conclusion, this article begins by analyzing the present condition of the Lebanese polity, whose failure to fulfill its essential tasks as a sovereign polity has led prominent members of the academic community to argue for its definition as a 'failed state'. The second section of this text explores the essential phases in Lebanon's constitutional history and argues that its complex constitutional structure, built upon a delicate balancing game between written laws and unwritten understandings, has endowed the

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<sup>1</sup> All Arabic names have been transliterated according to a modified version of IJMES rulers that does away with diacritics. In those cases where another transliteration has become usual in the literature (e.g. Nasser, Chamoun), this has been preferred.

apparently weak Lebanese polity with an almost unshakable foundation. The study of the National Pact, as *Lebanon's constitution in action* forms the third part of this endeavor, serving to underline the importance of immanent rules as building blocks of a supra-textual understanding of constitutional legality. The long conclusion that closes this paper explores the awkward evolution of the Bilad al-Arz in its post-war era, providing a detailed analysis of the politico-constitutional factors underpinning the crisis currently laying waste to the country. Following a well-established hermeneutical tradition (Lavery, 2003), this paper ends by offering a way out of the impasse whereupon Lebanon is presently enmeshed via reform within the existing system.

### **1. BETWEEN THE FAILED STATE AND THE BATTERED STATE: REFLECTIONS ON THE LEBANESE CRISIS**

All scholars of Lebanon are bound to find, at some point in their research, the work of the banker, politician, and even occasional poet, Michel Chiha (1891-1954). From the pages of *Le Jour*, the French-speaking journal he bought in 1934, and where he was to develop an extensive editorial output throughout more than twenty years, Chiha crafted the political philosophy that inspired Lebanese independence in 1943. However, beyond the theoretical and ideological framework his articles developed, they also bring forward themes wherewith the contemporary reader is usually familiar: protests against corruption and venality in public office, indignation about the lack of foresight of the political élite in foreign affairs and, last but not least, despondent analyses on the cumbersome evolution of the internal Lebanese context. Shockingly, reading any Lebanese newspaper today brings forth analogous themes, analogous analyses, analogous recipes for the regeneration of national life, all unheeded by a disconnected élite which is seemingly unconcerned by the crippling economic crisis—and no-less crippling-political paralysis currently suffered by the country.

These journalistic assessments seem to underscore the well-known trope of Lebanon as a failed state. Writing shortly before the outbreak of the Arab Spring, Amaia Goenaga and Elvira Sánchez (2009: 305-339) compared the weakness of Lebanese state institutions against the powerful sway held by oligarchic, confessional and tribal leaders, whose own personal preferences and private pursuits hold undisputed paramountcy over national interest. Nothing new, it can be argued, for back in 1985, the prominent scholar Edmond Rabbath (1985: 85-88, 231, 517-519, 523-524), undisputed father of contemporary Lebanese Constitutional Law, emphasized the lack of national integration in a Lebanon constructed as an uneasy communal confederation. Whereas, in 1975, Richard H. Dekmejian (1975: 100) pointed out at the role of crises as a “permanent fixture of the Lebanese system,” while also underlining the inability of the heterogeneous Lebanese élites to withstand external pressures (Dekmejian, 1975: 241-242). Far more recently, in 2016, Valérie Azhari (2016: 281) stressed the risk of Lebanon becoming a “banana republic,” a “faulty”—if not yet, at the time, failed (Azhari, 2016: 282)—state, toyed around by a disordered juxtaposition of oligarchical and confessional élites, “genetically prone,” in her own words, “to call upon foreign intervention” (Azhari, 2016: 279).

However, in the context of the present Lebanese predicament, with the inability of the state to cope with the consequences of Beirut's harbor blast (August 4, 2020) and the long-lasting effects of the COVID-19 pandemic as the ultimate examples of its ineffectiveness, the gist of the conversation has swayed to nominalism. Thus, Nadim Shehadi (2021), in a recent article, asked himself whether Lebanon was a ‘failed state’, which would imply a failed national project, a defective and inherently faulty construction since its inception, or a ‘battered state’, i.e. an originally viable entity whose prospects were ruined by foreign intervention. Notwithstanding the importance of such debates, it is evident that the Lebanon of 2022 is a state “that can no longer meet the basic responsibilities and fulfill the essential tasks that define a functional sovereign government” (Yassine, 2021). Beyond the nominalist debate, it

is undeniable that at no other time in its history as a sovereign state has Lebanon experienced such grave a crisis as nowadays, barring the 15-year long civil war that ravaged the country between 1975 and 1990.

It could be counterargued, though, that the performative ability of the Lebanese state, that is, its ability to effectively act—to intervene in the lives of its citizens—should not be taken as the sole measurement standard to assess Lebanon’s political health. In fact, Lebanon unashamedly embraced economic and social *laissez-faire* back in the early 1950s (and, very specifically, after the breakdown of the Syro-Lebanese customs union) (González Fernández, 2018: 219-222; Malsagne, 2014: 10-16), a non-interventionist policy construed as a deliberate choice which was replicated in the post-war era in the ultimate hope of reviving the “phenomenal prosperity,” which, in the words of Samir Khalaf (2002: 161), had characterized the First Republic. The inability of Rafiq al-Hariri to do so, despite the economic rebound he engineered in the late 1990s, and the sluggish evolution of the economy thereafter, (World Bank, 2021; Bisat, Cassard & Diwan, 2021) coupled with the scandalous corruption of public officials, who systematically siphon off up to a quarter of GDP (Harris, 2015: 262; Corm, 2006; Ammoun, 2004: 924-926), have led the way to an unprecedented legitimacy crisis which threatens to unravel the basic foundations of the Lebanese political edifice.

The rapid deterioration of the economic situation has led to a social malaise translated into roadblocks, demonstrations and protests, which, ever since fall 2019, have become a regular feature of Lebanese life (Chehayeb & Sewell, 2019; Yee, 2019), alongside blackouts, credit crunches and skyrocketing inflation. However, quietism has hardly ever been a constituent element of Lebanon’s social fabric. Ever since independence—and before—the country has seen an almost uninterrupted succession of revolts, demonstrations and skirmishes of varied intensity: from the 1952 ‘Rosewater Revolution’ to the 1958 ‘Revolt of the Pashas’ or the revolutionary wave which agitated the country in the years immediately preceding the outbreak of the 1975 civil war. More recently, the so-called ‘Cedar Revolution’ or ‘Independence Intifada’ (2005-2006), heralded by many as a forerunner to the Arab Spring (Rosiny, 2018; Fakhoury, 2014: 509-510; Bortolazzi, 2013: 13; Gelling, 2012), failed to effect real change and promote national integration despite its initial success in restoring Lebanese sovereignty after decades of Syrian occupation (Harris, 2015: 269-276; Knudsen & Kerr, 2012; Kurtulus, 2009: 195-214; Zisser, 2006: 460-483). Even less successful were the 2011 protests which, propelled by the revolutionary movements then igniting elsewhere in the Arab world and with their focus on deconfessionalization, did not gain momentum beyond a minority of students, *engagé* intellectuals and the Beirut upper-middle classes, scarcely representative of Lebanon as a whole (Abi Yaghi, Catusse & Younes, 2017: 76-78; Raï & Dillmann, 2016: 68; Fakhoury, 2014: 514; Fakhoury, 2011: 1-11; Bortolazzi, 2013: 4-5, 11-13, 22).

Against this background, characterized by political and economic instability coupled with a vibrant and restive civil society (Bortolazzi, 2013: 3), there seems to be a real paradox between the apparent weakness of the Lebanese state and its actual ability to withstand pressure without cracking, its institutions remaining largely unscathed almost a century after their inception. The resilience of the penetrated Lebanese system at the same time that the solidly authoritarian power blocs in Egypt, Libya, Syria or Tunisia crumbled under popular pressure has been explained by pointing out at sociological, confessional, and political factors (Fakhoury, 2016). However, it is essential, to underline how, beyond these criteria, the constitutional superstructure of the Lebanese Republic has endowed it with an ironclad foundation which, if tampered with, could not only fail to yield the expected results, but jeopardize the very existence of Lebanon itself.

The Lebanese constitution, first promulgated in 1926 and thence amended shortly after its inception (in 1927 and 1929), again in 1943 and, more importantly, after the 1989 Ta’if Agreement, has

been frequently maligned as a byproduct of French imperialism—nothing but a carbon copy of the laws which established the III Republic. This perspective, however, does not correspond to the reality of a norm which, while certainly influenced by the French paradigm—as it also was by the Belgian and Egyptian constitutional models, received and incorporated the “legal traditions bequeathed by Mount Lebanon’s long institutional history” (González Fernández, 2018: 156). In fact, the 1926 Constitution can be construed as the most polished example of Lebanese legal ingenuity, its authors adapting the sources at their disposal to their national idiosyncrasy in order to create a *Hegelian* instrument, a flexible and adaptive document reflective of the *spirit of the people* and free from the corsets of normative overreach (González Fernández, 2018: 156), which perhaps explains its longevity (Pendás García, 2014; Elkins, Ginsburg & Melton, 2009). As Edmond Rabbath expressed:

The genius of this constitution is to have been as subtle and flexible as to survive the Mandate and adapt itself to the imperatives of independence. It looks almost as if the preservation of the constitution’s physiognomy from the subordination and tight control exercised by the mandatory power to the — diametrically opposed— era of independence was there to offer further proof of the fact that the constitution is, certainly, the political regime stemming out from real life, rather than the text, which is but its formal support. (1985: 61)

Naturally enough, the 1926 Constitution did not appear spontaneously, in the context of a utopic, ahistorical normative void, but was the result of a long and fruitful legal tradition which, without any claim to exhaustiveness, will be now sketched.

## 2. LEBANESE CONSTITUTIONAL HISTORY: AN INTRODUCTION

Historiographical mythology has tended to locate the origins of a separate Lebanese polity in the reign of Fakhr al-Din Ma’an (1572-1635) (Salibi, 2011: 126-128), widely praised as the precursor and founder of Maronite-Druze unity and Lebanese nationhood (Touma, 1986: 47-52), as a kind of *providential ruler* “point[ing] to the Lebanese their destiny and establish[ing] a clear-cut break between their country and Syria,” in Philip Hitti’s well-known—and quite dithyrambic—dictum (Hitti, 1965: 52). Notwithstanding Fakhr al-Din’s role as a *mythomoteur*, in the sense defined by Anthony Smith (1988) and John Armstrong (1982), truth is that the Lebanese mountain, favored by its complex terrain and its proximity to the sea, managed to largely escape the direct control of the different imperial powers which, successively, held control over the Eastern Mediterranean basin. This isolation favored the development of certain political practices and norms stemming out from the traditions and customs of its inhabitants rather than the formalized law—civil and religious—predominating in urban centers.

Neither the dualism between *urf* and *qanun* nor the relative isolation of the Lebanese Mountain vis-à-vis the imperial rulers holding sway over the Levant make it specially original. After all, “[t]hroughout the wider Mediterranean region, [...] mountains have protected the dissident and the rebel” (González Fernández, 2018: 122). Technological constraints, political expediency and an almost permanent lack of resources confined pre-modern polities—despite their claims to universal rule—to limit their direct authority to cities and plains, thus leaving wide swaths of territory to fend for themselves, as long as “imperial authority was not openly challenged and the required amount of taxes was punctually paid” (González Fernández, 2018: 122). In this context, the Lebanese originality rests upon the ability of its political entrepreneurs to maintain, by a shrewd combination of regional and international maneuvering, their legal and political distinctiveness across history and to, ultimately, construct a separate state identity upon these very traditions.

This process can be broken down into two clearly delineated phases: the first one comprises the Shihabi emirate (1699-1841); the second one, the various institutional frameworks devised during the Lebanese revolutionary era and going on until the eventual dissolution of Lebanese autonomy in 1915.

Called in 1699 to occupy the position formerly held by the Ma'anid dynasty as paramount rulers of the Lebanese Mountain by an assembly of the “notables of al-Shuf, emirs, muqaddams and shaykhs” (Touma, 1986: 63), the Shihab-s came to rule as delegates of an aristocratic assembly, “their power being confined within the strict limits defined by the authority of the remaining members of a nobility operating in the context of a dynamic and pyramidally-structured hierarchy” (González Fernández, 2018: 697). Thus, notwithstanding the specific position they occupied in the Ottoman *cursus honorum*, Shihabi rule over Lebanon was not established upon a *hierocratic* imperative constructed around an *a priori* divinely-ordained right to rule, but on a factual, almost parliamentary, power-sharing framework reflecting the balance of power among the Mountain’s aristocratic *foci* of power.

The 1711 ‘Ayn Dara battle, where the Shihab-s and their allies rooted out their enemies (González Fernández, 2018: 94), in putting an end to the squabbles characterizing Mount Lebanon’s politics during the second half of the seventeenth century (Touma, 1986: 63; Harris, 2015: 109; Rabbath, 1985: 184), allowed the new régime to stabilize and brought a much-needed spell of peace to the agitated existence of the Lebanese *Imara*. Furthermore, the half-century of political tranquility enjoyed under the early Shihab-s allowed the consolidation of the principles of their rule as fundamental tenets within the customary legality of the Lebanese Mountain (Chebli, 1984: 64-65). By the time when the régime started to fall apart in the later decades of the eighteenth century, “amidst the turbulent waves of demographic change, rapid social modernization and powerful foreign interferences” (González Fernández, 2018: 698), the master lines of Shihabi rule (powerful, yet arbitral leadership; secularism, understood as a non-hierocratic approach to legitimacy; and dynamism, i.e. a flexible approach to constitutional legality) had already been consecrated as the fundamental principles of Lebanon’s *unwritten constitution*.

As if written in stone, these principles managed to withstand the final demise of feudalism in the context of the succession of revolts, massacres and social strife that affected the Lebanese Mountain between the beginning of the Egyptian occupation (1832) and the final establishment of the *Mutasarrifiyya Jabal Lubnan* (1861), as an autonomous entity encompassing the core of the Mountain. In fact, the formalization of these principles in the *Mutasarrifiyya*’s constitution of sorts, the 1861 *Règlement Organique*—subsequently amended in 1865 and 1912—serves as further proof of their vitality. The *Règlement* thus upheld the well-established principles of arbitral leadership (art. 1), parliamentarism (art. 2), and secularism, while also incorporating new guidelines soon to be incorporated within the Lebanese *constitutional compact*: confessionalism, which had already been established during the period of the Double *Qa’imaqamiyya* (1841) (Khair, 1973: 103-106); proportional representation; basic democratic guarantees, including the popular election of local sheikhs and an independent judiciary; and equality, by definitely abolishing feudalism and fostering the development of a meritocratic tradition in the administration. The *Mutasarrifiyya* can, therefore, be understood as Lebanon’s first attempt at formalizing the operationalization of a full-fledged *Rechtstaat*, where Law—both written and unwritten—reigned supreme.

Within Lebanon’s constitutional evolution, the *Mutasarrifiyya* emerges, therefore, as a formative period. In fact, it can be argued that:

[f]or the first time in Lebanese history, a written document with normative value—the *Règlement*—had compiled, albeit in a non-exhaustive fashion, several of the traditional principles of Mount Lebanon’s *unwritten constitution*, while also contributing to consecrate several others which had risen to relevance in the last decades of the Shihabi Emirate. The coexistence between the formal constitution (the *Règlement* and its different protocols), which provided the basic administrative framework and guaranteed a modicum of fundamental rights, and the para-constitutional superstructure defined by the traditional principles and institutions of the Mountaineers was construed through a *lato sensu* interpretation of the former, whose

textual dispositions were understood and applied within the context provided by the latter. (González Fernández, 2018: 702-703)

Hence, the *unwritten constitution* came to define and delimit the political field. A mechanism for constitutional review being absent (Rabbath, 1985: 149-151), the tacit understandings and customary institutions of the Lebanese Mountain were systematically applied to curtail the arbitrariness of public authorities and to provide an acceptable framework for the interpretation of dubious clauses in the written norm. The effectiveness of this system, with its eminently political enforcement mechanisms, explains its continuity under the 1926 constitution.

The 1926 can, therefore, be conceptualized as a logical outcome of the *Règlement*, where “the process of formalization of para-constitutional principles which had already begun under the *Mutasarrifiyya*” was consolidated (González Fernández, 2018: 703), at the same time that the Lebanese institutional apparatus was refurbished in order to fulfill the needs and requirements of an independent polity in the twentieth century. The constitution, understood as a subtle and flexible document expressing parliamentary sovereignty and readily adaptable to political reality (Rabbath, 1985: 61), not only incorporated several principles of the *unwritten constitution* within its text, but also guaranteed their continued operation as General Principles of Lebanese Constitutional Law—analogue to the ‘conventions of the constitution’ of British Law, which Dicey had classically defined as:

[...] customs, practices, maxims, or precepts which are not enforced or recognized by the courts, [and] make up a body not of laws, but of constitutional or political ethics. [...] a whole system of political morality, a whole code of precepts for the guidance of public men, which will not be found in any page of either the statute or the common law, but which are in practice held hardly less sacred than any principle embodied [therein]. In short, by the side of our written Law, there has grown up an unwritten or conventional constitution. (1979: 417, 418-419)

### 3. THE NATIONAL PACT AS LEBANON’S UNWRITTEN CONSTITUTION IN ACTION

In this context, the National Pact (*al-Mithaq al-Watani*) represents the ultimate embodiment of the *unwritten constitution*, a para-constitutional norm providing the political operators with the required legitimacy to interpret and adapt the formal legality to the changing circumstances of political life.

Traditionally depicted as “the a-national agreement of the élites meeting in the marketplace to ensure business as usual in an independent Lebanese Republic” (González Fernández, 2018: 707), as classically affirmed by Albert Hourani (1981: 138-148) and Farid el-Khazen (1991: 6), the Lebanese National Pact escapes easy definitions and simple conceptualizations. Following Samir Khalaf, the Pact should be understood as “a pragmatic *modus operandi*, an entente between religious groups whose political orientations and frames of reference are basically different,” as a straightforward way of referring to the General Principles of Lebanese Law, which perhaps explains its lack of “populist, ideological (and emotional) appeal” (el-Khazen, 1991: 39). As Antoine Messarra (1984: 23) explained, the National Pact and the Constitution conform a synchronous and internally coherent legal structure, connected to Lebanon’s historical and cultural reality. Thus conceived, the National Pact permits an open and ductile understanding of constitutional legality, able to adapt and conform formal legality to the changing geopolitical and social conditions of the time, thereby avoiding the ossification of state structures and favoring their continued public legitimacy.

The operation of the National Pact as the embodiment of the para-constitutional principles underpinning the Lebanese system was organized around three procedural rules, complementing such principles in their application and directly derived therefrom. These rules, which should be properly defined as “managing tools allowing for the effective implementation of unwritten constitutionality”

(González Fernández, 2018: 711), possess a fundamental importance, insofar they define the limits of the political arena. Such rules are: 1) permanent grand coalition; 2) double veto arrangements; 3) enforcement mechanisms, “emergency brakes” guaranteeing the stability and integrity of the political system (González Fernández, 2018: 711). Such ‘brakes’ were the paramount authority of the head of state as the arbiter of the political game and the blocking veto held by the opposition in the prewar era, which has turned into the ‘blocking third’ of the postwar republic (Ta’if Agreement, 1989).

The 1989 Ta’if Agreement putting an end to the Civil War did not alter significantly the consensual basis of the Lebanese constitutional compact, limiting itself to redistributing power within the participants in the political equation without questioning its basic structure beyond a pious call for deconfessionalization (Dalla, 2015: e22-e23; Traboulsi, 2007: 244), which had already been included in article 95 of the constitution. While incorporating an important symbolic aspect in its explicit acknowledgment of Lebanon’s Arab identity—a point which had already been undertaken by the 1976 Constitutional Document issued by President Frangié to try to put an end to the civil war (González Fernández, 2018: 603-605)—Ta’if, in fact, reinforced the operational mechanisms of the National Pact. Thus, it constitutionalized the role of the executive as a permanent grand coalition (Blouet, 2020: 997), extended veto powers within the system and reorganized confessional ratios while substantively maintaining the sectarian distribution of seats in parliament, the cabinet and beyond. It could be, therefore, argued that Ta’if came to confirm several consuetudinary practices that had long ago become part and parcel of Lebanon’s constitutional tradition, including the 50/50 distribution of governmental seats and public office positions (very particularly, in the Courts of Justice (Dalla, 2015: e18)) between Christians and Muslims or the countersignature of all bills and decrees by both the President and the Prime Minister (González Fernández, 2018: 604).

More importance resides in the establishment of a Constitutional Council tasked with exerting a concentrated constitutional review modeled on the Kelsenian paradigm typical of continental Europe (Gannagé, 2015: 2). While breaking with the Lebanese tradition which, inspired by French models, had categorically rejected any kind of constitutional review and consecrated the principle of parliamentary sovereignty (Rabbath, 1985: 150-151), thus guaranteeing a “flexible approach to constitutional legality, open to the incorporation of unwritten principles and political arrangements [...] within the constitutional compact” (González Fernández, 2018: 704), the Council has, in its twenty-eight years of effective operation (it was set up in 1993 by law 250 of July 14), explicitly validated the constitutional role of Lebanese tradition in its interpretation of textual legality (Blouet, 2020: 1.006-1.008). The Constitutional Council, which observers have characterized by its restraint in delivering resolutions and its flexibility in interpreting the *Magna Charta* (Gannagé, 2015: 7-9, 11), has, therefore, become the upholder of a constitutional understanding going beyond the textual corsets and strict adherence to written Law typical of continental constitutionalism: it has turned into “the guardian of the institutions, whose functioning and balance it preserves” (Gannagé, 2015: 9).

The 2008 Doha Agreement, which put an end to the political maelstrom opened in the aftermath of the *Cedar Revolution*, continued down the path of putting in writing the principles of the immanent constitution that had been opened by Ta’if two decades earlier. Whereas foreign observers focused their analyses on the regional geopolitical consequences of Doha (Schenker, 2008; Sharbel, 2008), with Lebanon having turned, just like before the outbreak of the civil war, into the favorite turf for regional players to dispute their game of power politics, the agreement had profound consequences in the long-time functioning of the Lebanese constitutional compact as well. Reinforcing the role of the ‘blocking third’, as explicitly enunciated by Doha (United Nations Security Council, 2008; Harris, 2008), has certainly turned the Lebanese Cabinet into a cumbersome, slow and conflict-prone mechanism, as affirmed by Nadim Shehadi (2020), and further proven by the crisis of Mikati’s government in March

2013 (Fakhoury, 2016: 25), but remains a necessity in order to manage the ‘agreement to disagree’ which characterizes the operation of its élites and the growing polarization of society at large (Yadav, 2008).

The forums of national dialog that followed Doha and the ensuing Ba‘abda Declaration (June 2012), while attempting to disentangle Lebanon from the regional conflicts arising from the so-called ‘Arab Spring,’ reconfirmed the internal policy trends that had become evident ever since Ta’if and, very particularly, the sliding of Lebanon into a fully consensual régime, where all major decisions have to be agreed by the main players in the political arena—more often than not proxies of regional powers (United Nations, 2012; Voltaire Network, 2012). As former President Michel Sulayman did not fail to point out: Lebanon “is ruled by the logic of consensus on a rooted confessional foundation,” which necessarily implies that “it is impossible for a confessional or sectarian group to prevail over another” (Wählisch, 2017: 10), thus forcing the political class into the laborious and—oftentimes—scarcely rewarding task of constructing unanimity across extremely complex issues.

Ever since the Ba‘abda Declaration, Lebanon lived another two years of stalemate and political infighting before the election, on October 31, 2016, of General Michel Aoun as new president of the Republic. His election had, once again, exemplified the complexities of the consensual model governing the Lebanese Republic, insofar as the new head of State brought with him a reconfiguration of the ruling coalition which reflected the criss-crossing and interconnected interests linking the Lebanese arena with regional and global powers (BBC News, 2016; Chulov, 2016; Nakhoul & Perry, 2016). Welcomed by many in the hopes that he, with his well-known military background (Geisser, 2017: 93-113) and ability to command wide support among Lebanon’s Christian communities—who had felt politically disenfranchised and ideologically unrepresented in the aftermath of Ta’if (Muhanna, 2016; Felsch, 2016: 70-86; Fakhoury, 2007: 423), would be able to restore a semblance of order and stability in the country (Nakhoul & Perry, 2016), Aoun’s presidency—shocked by an unprecedented economic and financial crisis compounded with the strong incidence of the Coronavirus crisis on a country with a largely privatized healthcare sector, and deeply affected by regional tensions—has been unable to deliver on most of its promises, which helps to understand the current surge in public discontent.

#### 4. CONCLUSION

This paper began by asking itself how it was possible that the weak Lebanese state, with its quarreling politicians, its cumbersome coalitions and its meddlesome religious leaders had managed to survive the Arab Spring unscathed when its authoritarian neighbors, with all their sophisticated intelligence systems and powerful security apparatuses did not. The answer lies, among other factors that must also be borne in mind, in Lebanon’s complex constitutional system.

Throughout these pages, a rapid and necessarily summarized overview of Lebanon’s constitutional history has been sketched. In so doing, what stands out more sharply is the perpetual organization of Lebanese politics around wide-ranging coalitions integrating the main players in the game—be it for their demographic volume, their landholdings, their economic importance or their international contacts. Thus, the basically Druze emirate of the Ma‘ans, characterized by the uneasy balance of power between the Yemeni and Qaysi parties,<sup>2</sup> was transformed into a fractious Maronite-Druze partnership coinciding with the rise of the Church in the late eighteenth and early nineteenth centuries. Following on an analogous pattern, the *Mutasarrifiyya* was constructed upon the dialectics

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<sup>2</sup> For the long-standing debate on the historiography of Qays and Yemen, see Patricia Crone (1994: 1-57). For a particular view of these *political parties* in Lebanese history, see William Harris (2015: 109) and Toufic Touma (1986: 63).

between a Church which considered herself the embodiment of Mount Lebanon (Akarli, 1993), and the governor, representative of Ottoman legality. In the Republic, independence was achieved upon the basis of an agreement between the urban oligarchies—Christian and Sunni—which grew increasingly integrative until the outbreak of the civil war, whereas the post-war era was initially characterized by the political isolation of the main Christian parties in favor of a Sunni-Shi'i entente which was overturned by Hariri's assassination in 2005. Afterwards, and well into the present, the uneasy partnership/rivalry between the March 8 and March 14 groupings has dominated the scene.

The system's integrative qualities, favored by a flexible constitution and the handy reference to unwritten constitutional conventions provided by the *National Pact*, have been demonstrated by its ability to co-opt and incorporate outlying groups and opposing parties into the formal political edifice. It happened during the First Republic, when Arab nationalists of various persuasions achieved election at the expense of prominent political *prime donne*, with the 1972 elections standing out as an example of political pluralism (González Fernández, 2018: 539-544); and it happened as well under the Second Republic when, the Syrian occupier ousted and expelled, the Assembly witnessed the incorporation of thitherto marginalized actors—basically, the main Christian groupings—propelled again into the center of the political arena.

In this constitutionally dynamic context, constructed around political pluralism and wide coalition governments, a revolution could hardly be successful because there was no single enemy to blame for all national ills, whereas in Egypt, Tunisia, or Syria the régime embodied a univocal, single and easily identifiable target to protest movements. In the Lebanese case, moreover, it is undeniable that the classical élites still command much popular allegiance, as proven by the support the *zu'ama'* of the postwar era keep on receiving in elections which, at least since the withdrawal of Syrian troops in 2005, can be qualified as free and fair. Even if its admitted that turnout remains low by European standards (not so much so when compared to the United States),<sup>3</sup> it must also be taken into account that the electoral rolls should be interpreted with the cautions already put forward by Iliya Harik (1980: 27-48) back in 1972, when he argued that they were “highly inflated” and that those inexactitudes brought down the real participation levels by a quarter of the total.

It can be further argued that the discourse in favor of deconfessionalization, while holding a place of honor in academic discussions, lacks popular support among the Lebanese rank and file (Ostermann, 2020: 88-90). Even the political class, despite their paying lip service to the aspirations embodied by article 95 of the Constitution, remains attached to a power-sharing formula serving handsomely their long-term political interests, which lends further legitimacy to a political system constructed around confessional apportionment. In fact, several factors seem to imply a recent reinforcement of confessional boundaries (the ban on selling or renting property to Muslims in Hadath (Farelli, 2019), the electoral bill put forward by the *Orthodox Gathering* back in 2011,<sup>4</sup> the reaction to ISIS's menace in the Christian and Druze sections of the population). However, such a phenomenon represents no novelty in the Lebanese scenario and is, perhaps, reflective of the inefficiency of State institutions to fulfill their duties. In times of crisis—now as in the past, religious communities appear as

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<sup>3</sup>According to [electproject.org](http://electproject.org), turnout in 21st century US congressional elections averages 51.62% of the total voting population, albeit oscillations between midterms and regular elections are very evident. In the Swiss case, the six elections to the Federal Council that have taken place between 1999 and 2019 averaged a 46.48% turnout (Office Fédéral de la Statistique), which stands in sharp contrast with Germany, with rates approaching 80% in the last six federal elections (Statista), and Spain, with a median turnout of 73.3% in the elections held ever since 2000.

<sup>4</sup> A study of the proposal can be found in Elias Muhanna's blog *Qifa Nabki*.

ersatz providers of basic social services and, conversely, receivers of popular support, the role of the Maronite Patriarch as a kind of intercommunal arbiter and political mediator being but a case in point.<sup>5</sup>

In fact, the survival of confessionalism in the Lebanese scenario is, by no means, an exception. For the last fifty years, a substantial literature has been instrumental in proving the resilience of ‘confessional political cultures,’ even in apparently secularized countries. Following Hans Geser, it must be underlined how “confessional impacts have remained particularly strong” in what reveals the prevalence “of implicit confessional socialization patterns which survive even in periods of declining belief and practice” (Geser, 1997: 3) giving rise to the formation of specific confessional sub-cultures, including segregated educational, healthcare and social institutions catering mainly—if not exclusively—to their own coreligionists. Prominent political scientists, the likes of Arend Lijphart (1977) and Robert Dahl (1989: 102-103), have underlined how religious cleavages remain, by far, the single most dominant attachment determining the political behavior of voters in poly-segmented societies, far ahead language or class.

Together with its endogenous systemic guarantees, the Lebanese system is also entrenched by powerful international actors, ranging from international organizations, like the United Nations, to regional powers and global superpowers, which have historically found in Lebanon a safe space to vent regional tensions and play their game of power politics (Ranstorp, 2016: 32-49; Salamey, 2009: 90-94). Thus understood, the deep penetration of foreign interests within Lebanon’s multi-segmented social and political scenario has complicated the consensus-making process and jeopardized the country’s national unity, as Ghassan Salame (1988: 347) did not fail to point out, while also putting in doubt the integrity of Lebanese sovereignty by limiting the country’s “capacity to formulate an independent foreign policy,” in Henrietta Wilkins’ (2016: 256) words. However, at the same time that these foreign interferences threaten to unravel the basic fabric of the country and complicate the proper functioning of its political system, they have had the paradoxical effect of keeping it united even at times of great incertitude, for allowing the partition of Lebanon could easily throw the entire Middle East into a balkanization process of unknown consequences, despite the oft-repeated calls in favor of such partitioning schemes coming from different quarters (Kéchichian, 2020).

As a final conclusion to this paper, it could be argued that Lebanon escaped the turbulences of the Arab Spring because its constitutional system was flexible enough as to incorporate most major players into the formalized political structure and the decision-making process. In fact, the Lebanese power-sharing system, even if admittedly cumbersome and hard to operate, guarantees elementary representation to all segments of this extremely polarized society, thus avoiding the formation of extra-systemic oppositional groupings. Moreover, the restoration of full democratic guarantees in the aftermath of the 2005-2006 *Independence Intifada* lent further legitimacy to a system which appeared to safeguard at least a modicum of fundamental rights and personal freedoms, while the still vivid memories of the 1975-1990 civil war hamper the development of radical protest movements aspiring to a clear-cut breach with the regime and favor gradualist approaches, prone to work within the existing system.

In fact, and despite the political and economic plight wherein the Lebanese polity is presently enmeshed, a compelling case could be made for reform within the country’s present constitutional structure. While it is undeniable that consensus-based systems harden the decision-making process—as proven by such well-established institutions as the Swiss Federal Council, where unanimity has been

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<sup>5</sup> As affirmed by Mgr. Bishara al-Ra’i himself (Raï & Dilman, 2016: 180-183, 258-259). For the recent proposal of the Patriarch in favor of an internationally recognized neutralization of Lebanon, vid. Jenny Lafond (2021), as well as Newsdesk Libnanews (2020).

broken in unprecedented rates in recent years, or the Northern Irish and Belgian Cabinets, where government formation has been considerably delayed amid partisan discussions (Linder & Mueller, 2021: 167-208; Arcq, de Coorebyter & Istasse, 2012: 11-25; Klöti, 1994)—it is no less true that the very nature of Lebanese society requires the existence of ‘emergency brakes’ and ‘representation quotas’ in order to guarantee that all confessional sub-cultures participate, even if only aesthetically, in the conformation of national policy. This single issue of representation and common participation in the political process is, in itself, so salient in the Lebanese scenario that any departure from the constitutional conventions embodied by the National Pact could easily unravel the fabric of Lebanese society.

Moreover, as the First Republic demonstrates, the fact that Lebanon has to live under such a complex politico-constitutional system does not necessarily bring about economic paralysis and political corruption. On the contrary, Lebanon’s economy can readily grow and prosper under its current political structure, while also extending welfare support to impoverished, backwards or peripheral social sectors as happened during General Fu’ad Shihab’s presidency (González Fernández, 2018). Any attempt at economic restructuring would require, however, a committed effort to fight corruption, which has, doubtless, become the country’s single most pressing issue in the internal agenda.

Finally, neutralizing Lebanon, as suggested by the Maronite Patriarch, could also offer a possibility to defuse internal tensions by blocking the constant spillover of regional conflicts into the internal arena. If Lebanon went from being the region’s “playground” to its “battleground” as Samir Khalaf denounced back in 2002, perhaps its long-term viability rests upon its becoming a ‘closed ground’.

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