



Lebanon and the Pluralism Governance A Constitution or Regime Crisis?

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Introduction

Since it was promulgated and through its numerous amendments, the Lebanese Constitution has maintained a complex balance between the parliamentary and sectarian systems, hence reflecting the essence of the fabric of the Lebanese society. Indeed, the Constitution has recognized, along with the presence of individuals and their rights, the existence of religious groups, which created a constitutional political and philosophical balance. Despite the transformations that the Lebanese system has witnessed, whether before or after the Taëf Accord, it has remained essentially parliamentary regardless of the evolution of some constitutional norms that have imposed themselves, such as the sectarian distribution of powers and the electoral laws, as well as the distribution of Grade One posts according to the sectarian system.

This philosophy was reflected in the distribution of powers, especially within the Executive Authority, between the President of the Republic, elected by the deputies, and the Prime Minister, whose powers were broadened at some stages. This disparity in powers became more evident after **2005**, which shed light on problems related to the balance within the Executive Power.

Over the years, the balance between the Lebanese Parliamentary system and the Sectarian system has witnessed several changes, whereas Constitutional texts remained unchanged. These shifts have revealed new concepts, such as the dependence on the National Pact and how the latter is explained by different parties, reinforced by interpretations and jurisprudence as well as legal texts supporting their views.

The last three decades have shown that the incapacity to resolve chronic issues has been fatalistically presented as the ideal irreversible balance. However, it is a fragile balance between the sectarian and the individual rights, between agreement on the **National Pact** and the practice of the Constitutional democracy, between independence and sovereignty, between internal victories and external support, between national unity and civil peace, between Arab solidarity and the politics of regional axes.

This study aims at delving into the question of how to achieve a balance between applying the rules of Parliamentary democracy and ensuring the respect of sectarian and political pluralism. When carefully looking into the reality of the Lebanese Constitution, we discover a combination between the balance stipulated in the Constitution and the actual practices that have evolved into customs and norms. These changes, that have affected individuals and communities, have led some to label the Lebanese system as hybrid, or consider it a system in constant transformation despite its established rules of balance.

1. The Complex Nature of the Lebanese Regime: Parliamentary Democracy Featuring Consensual Traits

Through Constitutional texts and customs, Lebanon's political regime combines two sets of rules that differ in dimensions and backgrounds. In fact, it appears that Lebanon's Constitution adopts the democratic parliamentary system as the official political system in Lebanon on the one hand, and insists on respecting the sectarian system on the other.

Parliamentary Democracy

The Cornerstone of the Lebanese Constitutional System

Despite all the transformations that happened either before or after the Taëf Accord, Lebanon's political system has been able to preserve the essence of the Parliamentary system. Along with the Parliamentary system were self-imposed Constitutional customs adopted in the sectarian distribution of powers, in electoral laws, and even in the distribution of Grade One posts, without necessarily implying breaking the rules of Parliamentary Democracy. The Preamble of the Constitution stipulates that **Lebanon is a Parliamentary Democratic Republic**, based on the respect for public liberties and on the separation of powers, their balance and cooperation, i.e. the flexible separation of powers. The Constitution also stipulates that the people are the source of authority which is one of the most important pillars of democracy, and the people are the source of sovereignty and they shall exercise these powers through the constitutional institutions. In order to apply the principle of "**The people are the source of authority**", the Lebanese system introduced indirect democracy, that is manifested in the existence of a people-elected Parliament, representing the Legislative power that enacts laws as well as monitors the Executive power.

Through a quick reading of the Constitution, in this context, it can be concluded that the Lebanese system did not diverge from the general principles of Parliamentary systems with regards to this dual Executive power. Indeed, the redistribution of powers between the President of the Republic and the Council of Ministers, was considered a key part of "**The National Reconciliation Accord**" and the Constitutional amendments that followed. When Lebanon adopted the Parliamentary system, two fundamental principles were adopted as well: the dual Executive power and the flexible separation of the Legislative and Executive powers. In general, Parliamentary systems are based on the duality of the Executive System, i.e., a President whose executive powers are limited, and who does not have political responsibilities, and a Council of Ministers that forms the pillar of the Executive Power and that is accountable to the Parliament. The same applies to the principle of flexible separation of powers, for the Preamble of the Constitution clearly stipulates a balance and cooperation between powers. Moreover, several articles stipulate the cooperation between the Executive and Legislative powers, including but not limited to the contribution of the Executive power in the legislative work through the preparation of draft laws, the possibility of having members of the Parliament contributing to the Government, and the mechanism of the promulgation of laws.

2. Consociational Characteristics of the Lebanese Parliamentary System

The theory of Consociational Democracy was primarily developed by the Dutch political scientist **Arend Lijphart** with the aim to explain how political stability can be achieved in countries with multi-ethnic, multi-religious and multicultural societies, identifying four elements that distinguish the

characteristics of a Consociational Democracy¹: Formation of grand coalition governments, the right of mutual veto given to the components of society, segmental autonomy, and the adoption of the principle of proportionality in parliamentary elections and Government appointments in order to represent all categories of society.

When applying the elements of this theory to the Lebanese Constitutional system, it appears indeed that the Lebanese Parliamentary system, with its sectarian characteristics, carries in the text as in practice, characteristics in common with the theory of Consociational Democracy, **among which:**

- **Sectarian distribution of the key political positions, consecrated as a constitutional custom.**
- **Proportional representation between sectarian groups and regions in the distribution of parliamentary seats according to Article 24 of the Constitution, and the same applies to the Council of Ministers (Article 95).**
- **Common governance through consensus: Article 65 of the Lebanese Constitution stipulates that decisions in the Council of Ministers shall be made by consensus, a fundamental pillar of the Lebanese consensus system. In case a consensus is not reached, decisions shall be made by vote, but there are basic issues that shall require the approval of two-thirds of the members of the Government, such as the amendment of the Constitution, the declaration of a state of emergency or war, international agreements, the annual budget, the electoral laws, and the dissolution of the Parliament.**
- **Implicit Veto Right: The major political sectarian groups hold a veto right in sensitive decisions: a two-third quorum to elect the President of the Republic (Article 49) and a two-third majority for certain issues.**

However, **Dr. Azmi Bishara** indicates that **Lijphart's** theory did not sufficiently differentiate between consensus and Consociational Democracy in the Lebanese case, because this democratic consensus was not based on equal citizenship or did not come with a democratic culture, but rather, it was managed by ruling families within sectarian groups. Moreover, some sectarian political parties that do not believe in parliamentary democracy, have recently replaced the ruling families, hence reinforcing the ties between leadership, the sectarian parties, and the regional countries, therefore often making the consensus depend on the balance of international and regional forces².

Bottom line, the Lebanese political system, in its essence, is a Parliamentary system, based on the rule of majority and minority, despite all the transformations that have taken place, whether before or after the Taif Agreement. Along with the Lebanon's Parliamentary system were constitutional norms

¹ **Lijphart Arend**, "Democracy in Plural Societies", translated by Hosni Zeina, Strategic Studies Institute, Iraq, 2006, p.25-44, 47, 90-92.

² **Azmi Bishara**, "The Development of the Consociational Democracy and its Aptitude to Resolve Sectarian Conflicts: The Example of Ireland and Lebanon", Arab Policies, N.30, January 22nd, 2018, p. 21.

and self-imposed constitutional texts that emerged when distributing powers according to sectarian entities or within the electoral laws and constitution of governments.

3. The Growing Violation of the Constitution Amid Transitioning from a Permanent Change to a Temporary One

Despite the importance of the theoretical debate about the nature of the Lebanese political system, the Constitution tackles the sectarian system (carrying Consociational characteristics) as a temporary situation. However, unlike the dominant point of view, the 1990s constitutional amendments based on the National Reconciliation Accord document (The Taëf Accord) consecrated the sectarian system, although the comprehensive reading of the Constitution shows the exact opposite.

These amendments were based on the following philosophy: ending the civil war through a Constitutional Amendment that establishes equality (the past equation was 5/6) for a transitional phase, gradually putting an end to the sectarian system as the ultimate goal. This is referred to in many texts and in different places in the Constitution: **paragraph H** of the Constitution Preamble emphasized that abolishing political sectarianism shall be a basic national goal and shall be achieved according to a gradual plan; Articles **22 & 24** emphasize that the sectarian nature of the Parliament is temporary, as long as the parliamentary elections on a non-sectarian basis coincide with establishing a Senate in which all religious communities (and not confessional groups) are represented. Its authority shall be limited to major national issues. Finally, Article **95** whose importance lies in the fact that it clearly states the temporary nature of the sectarian system in the distribution of parliamentary seats. Therefore, the norm would be establishing an electoral law on a non-sectarian basis, while the political sectarian system would be the temporary exception. In this sense, Article **95** is the cornerstone of the road map to the abolition of political sectarianism through considering that the Parliament elected based on equality was the 1992 Parliament, which means that this Parliament should have taken the necessary measures to abolish sectarianism, which has not happened for the past **32** years. Things become clearer in the second paragraph of this Article with the use of the very important term “**Transitional Phase**”.

When combining all these points together, it is confirmed that the sectarian system is a transitional phase and not the final status of the Lebanese political system. The Constitution entrusted this task to a so-called National Committee that develops a gradual plan to study and suggest ways to abolish sectarianism. Therefore, based on the abovementioned, the goal of the gradual abolition of political sectarianism is the indispensable appropriate implementation of the Constitution. In other terms, the political authority that has governed Lebanon since **1992** has been unconstitutional considering that it failed to initiate such gradual measures (like having a certain percentage in each electoral round for deputies elected on a non-sectarian basis, provided that these percentages gradually increase with each election).

The transition from the temporary to the permanent resulted in a permanent clash between democratic principles and sectarian representation. On the one hand, when comparing democratic principles to sectarian representation, Lebanon’s political power favors the sectarian side at the expense

of fundamental rights and freedoms, hence distorting the democratic system and disrupting the possibility of building a rule of law and institutions. On the other hand, sectarian groups were dealt with as citizens are supposed to be dealt with, in the context of the State. In plural societies, rights shall be given to citizens and guarantees to communities.

Over time, sectarian groups acquired a larger scope of authority. Instead of granting these groups some guarantees that protect their specificities and beliefs, their scope of influence was widened to include participation to citizens' governance, and the Lebanese system granted them some rights that are usually considered individual rights enjoyed by citizens. Finally, at a time when the sectarian formula had to be overcome, at different phases, to allow for a transition to a purely democratic civic order, regardless of the means and steps adopted to achieve this goal, Lebanon's transitional period has become de facto permanent. Therefore, Lebanon's political system continues to linger under the weight of continuous opposition and clash between democratic-like rules and sectarian-like rules, which has evolved into a conflict between the rights of individuals – citizens and the rights of communities- sectarian groups³.

4. The Pretext of respecting the National Pact to Disrupt the Parliamentary Democratic Course

In this context, the recent years have witnessed political changes and conflicts that have attempted to redefine concepts such as **National Pact** or **Consociational Democracy** and the way each group understands these concepts, equipped with texts and Jurisprudence, not to mention that these changes have been manifested in some practices within the Systems of power⁴.

Therefore, this has led to consecrate practices that distort the spirit and letter of the Constitution. The most significant of these erroneous practices, in form and content, would be the adoption of the consensual formula in forming governments; the emergence of the Troika as a shortcut to Constitutional institutions in the decision-making process; assigning certain public service posts to specific sectarian groups, in violation of Article **95** of the Constitution; the concept of the one-third blocking minority in governments' formation; the repeated presidential vacuum and consecrating the concept of unanimity to elect the **President**; and the so-called legislation of necessity during a presidential vacancy.

³ For example, regarding the principle of equal representation in the public service positions, it appears that political authorities have not only made distinctions as stipulated in Article 95 of the Constitution during the transitional phase, but they even bypassed them through their practices. Indeed, they continued to apply sectarian representation in most of the public service, even when the Constitution enforced relying on only expertise and competence. Moreover, the principle of not assigning any post to a certain sectarian group was violated, as they adopted a consistent distribution of Grade One posts according to sectarian groups, and then any change in the sectarian affiliation of the candidate caused a political crisis difficult to overcome. These practices not only violate the principle of equality, but also lead to the loss of many competences in the public administration under the pretext of maintaining sectarian balance.

⁴ **Abdel Majid Hussein Awwad**, *Sectarian Influences on the Democratic Practices in Lebanon after 2005*, Thesis presented in order to obtain a PhD in Law, Faculty of Law and Political Science, Beirut Arab University, 2022, p.12.

All these practices have led to the practical overthrow of one the most important foundations of the Parliamentary system, namely the rule of the majority and opposition by the minority. As a result of the nature of this political composition, no government has fallen by vote of no confidence. In Lebanon, governments are usually formed in a way to include both pro-government and opposition groups under the umbrella of national unity, which makes the withdrawal of confidence from the Government almost impossible, because the opposition is often represented within the Council of Ministers. The same applies to the dissolution of the Parliament, which, in Parliamentary systems, is considered an instrument used by the Executive power to pressure the Legislative power. However, after the **1990s** Constitutional amendments, the dissolution of the Parliament was linked to complex conditions and became very difficult, hence limiting the possibility of the Executive Power to pressure the Parliament.

5. The Challenges of Managing Pluralism while Abolishing Political Sectarianism

The delay in launching the process of abolishing political sectarianism as stipulated in the Constitution is the direct result of the selective application of the Taëf Accord, which pushed some to consider that what was written three decades ago has become inapplicable, due to the passage of time and the shifts in balances. However, the Taif Agreement and the relative Constitutional amendments remain, until further notice, the solid constitutional and social ground that shelters all the Lebanese.

In this context, experience has shown that the issue of sectarian pluralism in Lebanon has been addressed with simplistic mindsets and absolute positions. If a completely secular system that prohibits any expression of religion or identity in the public space is not an applicable practical option, sectarian political representation cannot be recognized either as a guarantee for sectarian communities, since it led to the fall of Parliamentary democracy at the hands of sectarian consensus, which disrupted the Constitutional institutions and completely shattered both Legislative and Executive powers.

As for today, under the actual political tide, it is important to question how to manage pluralism during and after the course of abolishing political sectarianism. It is true that the Taëf Accord, and the Lebanese Constitution provided for a mechanism and a roadmap to abolish political sectarianism, yet the issue becomes more complex if we start to look at it as a set of applicable constitutional rules, which raises several problems:

- **The limits of the abolition of political sectarianism**, as stipulated respectively in Articles **22 and 24** and Article **95**. Will the scope of abolishing political sectarianism be limited to abolishing sectarianism or sectarian representation in the Council of Ministers and Parliament and transfer the sectarian/pluralistic representation to the Senate? Or will it go beyond that, to include the three or even five presidencies? Should such representation be maintained or should the principle of confessional rotation be adopted, or even completely overridden?
- **How to manage pluralism during the political sectarianism post-abolition phase**: If political sectarianism is an expression of constitutional administration, constitutional interaction, or even constitutional recognition of pluralism, has pluralism become only limited to representation of sectarian communities in the Senate? Or does pluralism in Lebanon need

other means to ensure its application, particularly after more than three decades of failure to implement Article 95?

- **How to start the process of abolishing political sectarianism:** should a National Committee be formed to abolish political sectarianism according to a Constitutional text? Or should other mechanisms be resorted to, such as the election of a constituent body from the people or suggest Constitutional amendments through a popular referendum?
- **How to apply Article 22** of the Constitution and establish a Senate, and to what extent is it related to Article 95? Is there a causal relation between the two?
- **The timing of Parliamentary elections** on a non-sectarian basis according to Articles 22 and 24; does it precede, follow, or coincide with the creation of the Senate? Does it take place at once or throughout different stages?

Raising these questions publicly goes beyond the limits of a direct answer to open a public debate about the kind of country we want, the relationship that governs the Lebanese and their relationship with the State. While the political practice since 2005 has completely disrupted democratic mechanisms leading to the degradation of the State, threatening the social and political cohesion of the whole country, the management of pluralism in Lebanon cannot therefore be systematic, stable, nor sustainable if it is not done within the mechanisms of the democratic parliamentary system. A parliamentary democracy, based on the idea of a majority and a minority is the only guarantee for this balance, and this represents the complex nature of the Lebanese politic system and the Lebanese constitutional system, oscillating between a parliamentary democracy permanently consecrated by the Constitution and a temporary sectarian system. Therefore, the challenge remains for the Lebanese political system to install a balance between completing the construction of the Civic State on the one hand, and managing pluralism on the other, in the context of a real and effective parliamentary democratic system, establishing equality between all citizens.

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