

ARTICLE

## Confessionalism in Lebanon: The Costs of Seeking Consensus Through Fragmentation

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*Confessional political systems are exceptional in that they seek to build consensus by reinforcing fragmentation of disparate groups. Such a tension is most evident in the case of Lebanon. The country's creation and history make it an interesting case study demonstrating the limitations of a confessional system. While most academics focus on the substantive merits of such a system and the theory of its creation, this Note goes a different route. Instead, applied law and economics principles provide insights on the effectiveness (or lack thereof) of confessionalism. This Note begins by outlining the modern history of Lebanon. The following subparts shine light on the usefulness of economic theory to better critique confessionalism. Part II uses bargain theory and voting rules to demonstrate how the infamous Lebanese Troika can be reconfigured to reach more efficient government. Additionally, it argues that familism consolidates power within the political ruling class, but simultaneously lowers the transaction costs of bargaining at the expense of damaging democratic institutions. Part III discusses elections, representation, and intransitive voting, demonstrating that the country's system breeds inefficiency, while showing that representation error undermines the ideas behind a confessionalist system. Part IV explains how entrenchment reinforces a status quo that externalizes costs to everyday citizens, while allowing the ruling class to internalize all the benefits. Ultimately, these economic principles provide a new perspective on how to view confessional systems and illustrate why change is needed in Lebanon.*

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## I. INTRODUCTION

On October 17th, 2019, Lebanese citizens united together in protest of the country's political organization.<sup>1</sup> Although the protests stemmed from a proposed twenty cents per day tax on using the popular application WhatsApp, it has become more and more clear that the revolution is fueled by a desire to transform the existing political landscape that has governed the country since the end of its civil war in 1991.<sup>2</sup> The demands of the citizenry are robust, tackling a number of key political, social, and economic issues, but many of the problems they seek to address stem from Lebanon's consociational government. Moving away from Lebanon's confessional form of government, as suggested by many protestors, would prove prudent for what is considered to be one of the only democratic nations in the Middle East.<sup>3</sup> To illustrate why, this Note will borrow law and economics concepts to illustrate the significant costs associated with Lebanon's existing political structure.

## II. HISTORICAL OVERVIEW

Proper evaluation of the implications of Lebanon's confessional system requires a brief overview of confessionalism, along with a discussion regarding the four main sources of structural design in Lebanon: the Constitution (1926),<sup>4</sup> the National Pact (1943),<sup>5</sup> the Taif Agreement (1989),<sup>6</sup> and the Doha Agreement (2008).<sup>7</sup> As you will see, these four agreements created a concentration of bargaining power, favorable to influential political elites which represent the main religious sects. Each agreement came at the heels of a major military or political crisis that necessitated foreign intervention.

### A. Confessionalism Basics

Consociationalism is identified by political scientist Arendt Lijphart as arising in states where society is “deeply divided among communal groups distinguished by strong linguistic, racial, religious, sectarian, or tribal

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1. *Lebanon to Start Government Formation Talks as Protests Persist*, AL JAZEERA (Dec. 4, 2019), <https://tinyurl.com/t5adrmc>.

2. *Lebanon Reverses Plans to Tax WhatsApp Calls*, AL JAZEERA (Oct. 18, 2019), <https://tinyurl.com/yx19h84l>.

3. See ECONOMIST INTELLIGENCE UNIT, ECONOMIST, DEMOCRACY INDEX 2019, at 37 (2020) (ranking Lebanon fourth in the Middle East and North Africa region).

4. LEB. CONST.

5. The National Pact is not a written document, but information about its background may be found at IMAD SALAMEY, THE GOVERNMENT AND POLITICS OF LEBANON 30-31 (2014).

6. The Ta'if Agreement of 4 Nov. 1989 (Leb.).

7. The Doha Agreement of 21 May 2008 (Leb.).

cleavages.”<sup>8</sup> It aims to form government through “elite cartel[s] designed to turn a democracy with a fragmented political culture into a stable democracy.”<sup>9</sup> For consociationalism to work in a democratic manner, Lijphart holds that there must be proportional representation of each of the major groups in the decision-making process.<sup>10</sup> Confessionalism is a type of consociationalism with its most distinctive feature being the power sharing between religious communities (also known as confessions). For example, in Lebanon, the power sharing occurs between, and within, the legislative and executive branches, as well as in key government positions below the Council of Ministers (cabinet) level and in all branches of the security forces.<sup>11</sup> Power is divided between Muslims and Christians.<sup>12</sup> The idea behind consociationalism regimes is to ensure that all subgroups are satisfied through an agreement that makes them all better off. It emphasizes a status quo as a means of preventing conflict within fragmented society.

### B. *The Founding Constitution*

Confessionalism, in its various forms, was present in Lebanon throughout Ottoman rule.<sup>13</sup> However, it was not memorialized in the Lebanese founding charter. Upon promulgation of its Constitution in 1926, Lebanon became a parliamentary republic.<sup>14</sup> Still under France’s specter, the document reflected France’s Third Republic.<sup>15</sup> In its original form, the document was fairly straightforward, calling for a parliament (known as the Chamber of Deputies), a cabinet (known as the Council of Ministers), and a President.<sup>16</sup> The President was to be chosen by the Chamber of Deputies for a six-year term.<sup>17</sup> Additionally, while the Constitution called for a

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8. SALAMEY, *supra* note 5, at 7. The Ottomans used a form of stratification based on religious affiliation known as the Millet System. See generally SAFIA ANTOUN SAADEH, THE SOCIAL STRUCTURE OF LEBANON: DEMOCRACY OR SERVITUDE? 33-41 (1993) (describing the original Millet System).

9. Arend Lijphart, *Consociational Democracy*, 21 WORLD POL. 207, 216 (1969).

10. Arend Lijphart, *Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories*, 15 PUBLIUS: J. FEDERALISM 3, 4 (1985).

11. ISSAM SALIBA, L. LIBR. CONG., LEBANON: CONSTITUTIONAL LAW AND THE POLITICAL RIGHTS OF RELIGIOUS COMMUNITIES 10-11 (2010), <https://tinyurl.com/y3mdmdpe>.

12. SALAMEY, *supra* note 5, at 31.

13. John J. Donohue, *Changing the Lebanese Constitution: A Postmodern History*, 30 CARDOZO L. REV. 2509, 2511 (2009).

14. Title II of the 1926 Lebanese Constitution outlined the branches of government and their powers, delineating it as a parliamentary republic. This was not explicit in the constitutional text until the Amendments in 1990 added the Preamble which contained the specific phrase “Lebanon is a democratic parliamentary republic . . . .” LEB. CONST. pmb1.

15. Saba Habachy, *The Republican Institutions of Lebanon: Its Constitution*, 13 AM. J. COMPAR. L. 594, 599-600 (1964).

16. LEB. CONST. art. 16, 17, 49. An amendment in 1927 abolished a proposed senate that was to be a sixteen-member body with nine elected members and seven appointed by the President. Donohue, *supra* note 13, at 2511.

17. LEB. CONST. art. 49.

separation of powers and independent judiciary, the document itself did not specify how to achieve those goals.<sup>18</sup> Other provisions included many of the kind we have in the United States, such as the freedom of religion, freedom of speech and equality under the law.<sup>19</sup> While the founding Constitution is necessarily an important document for any nation, in the case of Lebanon, it is certainly less important than the agreements which followed.

### C. The National Pact

There are not many other countries who can claim that one of the most pivotal pieces of their political institutions stems from an unwritten gentlemen's agreement—Lebanon's National Pact is one such agreement.<sup>20</sup> In 1943, Lebanon's National Pact became the foundation of the country's current confessional system.<sup>21</sup> It was a compromise emanating from the first Cabinet of the Sunni Muslim Prime Minister Riyad al-Sulh and Maronite Christian President Bishara al-Khoury.<sup>22</sup> Following years of division between the goals of the Christians and Muslims, the heads of each sect agreed to move to a confessionalist system with the intent to bring the country into consensus.<sup>23</sup> At the time, the Christians, who were a majority and relied heavily on "Mother France," were wary of the strengthening Arab nationalism and alliances forming around them in the region.<sup>24</sup> On the other hand, the Muslim population was fearful of continued Western control, which could be catalyzed through the Christian population's ties to France.<sup>25</sup> In essence, the National Pact solved this problem through "the Lebanonization of the Muslims and the Arabization of the Christians" by

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18. LEB. CONST. art. 20. This Note does not discuss the judiciary for a few reasons. One is that cases typically sit in courts for years, to the point that the judiciary is non-existent. In some instances, like when one wants to sue a corrupt official, complainants are required to deposit close to \$17,000 (approximately twenty-five million Lebanese Lira) just for the right to make a case. Additionally, the Lebanese employ a loser-pay-all system, so if the official is not convicted, the plaintiff will have to pay all the legal fees incurred by the official being accused of indictment. This means complainants may face a fine of nearly \$133,000 (approximately 200 million Lebanese Lira) or up to a year imprisonment. It deters citizens from bringing suits, particularly against government officials. Habib Battah, *A New Politics is Rising in Lebanon*, AL JAZEERA (Nov. 15, 2019), <https://tinyurl.com/yx3x8gqw>; "Illicit Wealth Law" Protects Corruption, MONTHLY MAG. (May 16, 2017), <https://tinyurl.com/yy4kw8xf>.

19. I won't go into detail regarding each of these, because it is not within the scope of this Note, but you can read more about these enumerated rights in the Lebanese Constitution. See LEB. CONST. pt. I, ch. 2.

20. See generally Imad Salamey & Rhys Payne, *Parliamentary Consociationalism in Lebanon: Equal Citizenship vs. Quotated Confessionalism*, 14 J. LEGIS. STUD. 451 (2008).

21. *Id.* at 453. Salamey and Payne refer to Lebanon's National Pact as "[t]he Constitution and the National Accord – an unwritten agreement." *Id.*; see also Donohue, *supra* note 13, at 2511; SALAMEY, *supra* note 5, at 30-31.

22. Donohue, *supra* note 13, at 2511.

23. *Id.*

24. SALAMEY, *supra* note 5, at 30-31.

25. *Id.*

characterizing Lebanon as a neutral and sovereign nation.<sup>26</sup> Essentially, it sought consensus through sectarian representation.<sup>27</sup>

The Pact itself reinforced and expanded the communitarian regimes that were in place during Ottoman rule.<sup>28</sup> And even though the Constitution mandates equality under the law with equal civil and political rights, the Pact called for a distribution of religious sects amongst the top levels of government.<sup>29</sup> The President would be a Maronite Christian, the Premier of the Council of Ministers (Prime Minister) would be Sunni Muslim, and the President of the National Assembly (Speaker of the House) would be Shi'ite Muslim.<sup>30</sup> Additionally, the agreement proportionally distributed government offices between the dominant sects based on the official census, taken most recently in 1932.<sup>31</sup> That census provided that Christians slightly outnumbered Muslims within the country, and therefore seats in parliament (along with “grade-one posts”) were apportioned at a ratio of six Christians to five Muslims.<sup>32</sup>

#### D. *The Taif Agreement*

For nearly three decades, the confessional system outlined in the National Pact provided relative stability and its durability was tested numerous times, until the civil war broke on April 13, 1975.<sup>33</sup> At its core, the civil war began when the Palestinian factions clashed with a Christian armed militia’s struggle for Lebanese territory against Israel.<sup>34</sup> The conflict “evolved rapidly into a fight over the Lebanese state and its political system,” which became clear when Israel sought to eject the Palestinian Liberation Organization (PLO) from Lebanon in 1982.<sup>35</sup> The PLO power amounted to a state within a state and stemmed from the disproportionate number of Palestinian refugees that flocked into the country since the

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26. Donohue, *supra* note 13, at 2510-11 (citing EDMOND RABBATH, LA FORMATION HISTORIQUE DU LIBAN POLITIQUE ET CONSTITUTIONNEL: ESSAI DE SYTHÈSE (2d ed. 1986)).

27. SALAMEY, *supra* note 5, at 30-31.

28. Donohue, *supra* note 13, at 2511. See generally SAADEH, *supra* note 8, at 33-41 (1993) (discussing the Millet System embraced by the Ottomans).

29. SAADEH, *supra* note 8, at 123 (describing the contradiction between equality of citizens and the consociational structure that guarantees various sects power within the system).

30. SALAMEY, *supra* note 5, at 30.

31. SAADEH, *supra* note 8, at 62 (noting that no census has been taken since 1932).

32. SALAMEY, *supra* note 5, at 30. There are currently eighteen officially recognized sects in Lebanon: five Muslim, twelve Christian, and one Jewish. See Salamey & Payne, *supra* note 20, at 453.

33. Florence Gaub, *Lebanon's Civil War: Seven Lessons Forty Years On*, EUR. UNION INST. FOR SEC. STUD. 1 (2015), <https://tinyurl.com/y5sh9ggl>.

34. Rex Brynen, *PLO Policy in Lebanon: Legacies and Lessons*, 18 J. PALESTINE STUD. 48, 49-52 (1989).

35. Gaub, *supra* note 33, at 1.

establishment of Israel in 1948 and the 1967 war.<sup>36</sup> Moreover, side agreements between the PLO and the weak Lebanese government gave the PLO the right for cross-border attacks which resulted in multiple Israeli incursions and invasions of the country in 1978 and 1982.<sup>37</sup> Increased latitude in the PLO's ability to conduct affairs impacting the Lebanese people created hostility between various groups within the country.<sup>38</sup> For seventeen years, the country experienced crippling conflict. It was the Taif Agreement which settled the discord (temporarily).<sup>39</sup>

Unlike its predecessor, the National Pact, the Taif Agreement was a written document. The agreement reconfigured the power sharing structure of the Lebanese government.<sup>40</sup> Namely, the Christian President lost significant amounts of executive power in lieu of strengthening the Sunni Muslim-led Cabinet.<sup>41</sup> This loss in power was partially offset by the mandatory approval of public policies by "the Troika" which sought to promote consensus between the three heads of government (President, Prime Minister, Speaker).<sup>42</sup> Without conducting a census, it also reapportioned the distribution of government offices between Muslims and Christians to a one-to-one ratio.<sup>43</sup> The Taif Agreement called for the creation of a Constitutional Court to hear constitutional questions and issues pertaining to elections.<sup>44</sup> There was also a recommendation to introduce a bicameral legislature, calling for the creation of a senate that was non-sectarian.<sup>45</sup> However, this has yet to come to fruition. Finally, and notably, parties to the agreement seemed to recognize the limitations of the confessional system by including a provision aimed at creating a national

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36. Brynen, *supra* note 34 at 49-52 (describing the PLO influence within Lebanon as creating a "para-state"). The exact number of Palestinian refugees within Lebanon at the time remains unclear. Approximations suggest that between 600,000 and 760,000 Palestinian Arabs were displaced in 1948. As of 2009, the United Nations Relief and Works Agency determined that Lebanon housed around 420,000 Palestinian refugees as recently as 2009. See Herbert C. Kelman & Lenore G. Martin, *Palestinian Refugees, in ISRAEL AND PALESTINE—TWO STATES FOR TWO PEOPLES: IF NOT NOW, WHEN?* 15, 15-16 (2009).

37. See generally Brynen, *supra* note 34 (discussing the impact of the PLO on the Lebanese and Arab conflict with Israel between 1967 and 1982).

38. *Id.* at 52-58.

39. Alasdair Soussi, *Thirty Years After Taif, Lebanese Seek End to Sectarian Politics*, AL JAZEERA (Oct. 22, 2019), <https://tinyurl.com/yy9yr46l>. See generally Salamey & Payne, *supra* note 20.

40. There were other provisions agreed upon, but I have selected the most salient measures here. See Salamey & Payne, *supra* note 20, at 456 (providing more information on the Taif Accords).

41. *Id.*; Soussi, *supra* note 39. Authors Salamey and Payne refer to this as the "Taef Accord" and Soussi refers to this as the "Taif Accord."

42. Hassan Krayem, *The Lebanese Civil War and the Taif Agreement*, in *CONFLICT RESOLUTION IN THE ARAB WORLD: SELECTED ESSAYS* 411 (Paul Salem ed., 1997), <https://tinyurl.com/yybkkbb6>.

43. SALIBA, *supra* note 11, at 11.

44. *Id.*; see LEB. CONST. art. 19.

45. The Ta'if Agreement of 4 Nov. 1989 (Leb.).

committee to examine steps to move away from this regime and toward a civil society.<sup>46</sup>

#### *E. The Doha Agreement*

After approximately two decades of relative stability, the country experienced another constitutional crisis. This time, all Shiite Muslim ministers resigned from the Cabinet, leaving the Cabinet with no Shiite representation, and therefore, in violation of the National Pact (although not necessarily against the written Constitution).<sup>47</sup> Once again, foreign nations intervened to help those same political and sectarian leaders (that were on the scene of the original civil war in 1974, or their descendants) reach a deal.<sup>48</sup> They agreed to the following: First, the Parliament, which had voted to extend its own term for two additional years, would “elect” the head of the Armed Forces, General Michel Suleiman, as President.<sup>49</sup> Second, the provision for an “obstructional third” in the Cabinet.<sup>50</sup> The obstructional third provision essentially ensured that the minority coalition in the cabinet had enough votes to veto any proposal put forth that is of “major importance,” which typically requires two-thirds of the cabinet to pass.<sup>51</sup> Finally, the parties agreed to hold elections on the basis of a 1960 electoral law which reverted back to smaller voting districts.<sup>52</sup> The gerrymandering emphasized sectarian consolidation in elections aimed at benefiting those same political actors who negotiated the Doha Agreement.<sup>53</sup>

### III. THE TROIKA, FAMILISM, AND BARGAINING

This Part applies bargain theory and voting rules to Lebanese government. In doing so, it demonstrates the limitations of the Troika and how adjusting veto power can lead to more efficient results. Additionally, this Part shows that private relationships may already help induce bargaining, but they do so at the high cost of harming democratic institutions. Ultimately, bargain theory explains some of the problems created by Lebanon’s fragmented system, while also helping us carve out potential areas to improve it.

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46. *Id.*

47. SALAMEY, *supra* note 5, at 73; Michael Slackman, *Lebanon Talks Collapse as Shiites Vacate Cabinet*, N.Y. TIMES (Nov. 12, 2006), <https://tinyurl.com/y4zyljf2>.

48. *Id.*

49. SALAMEY, *supra* note 5, at 74.

50. *Id.*

51. *Id.*

52. *Id.* at 75.

53. *Id.* at 75-76.

#### A. The Troika

Lebanon's Troika developed in the wake of division, seeking to remedy fractures between the three major religious sects. To accomplish the goal, each of those three sects was given a leader to represent them in the government—with the idea being that the leaders would be more likely to work together if they were given an “equally powerful” leadership role. However, as this subsection discusses, such an arrangement actually prevents efficient bargaining.

Bargaining promotes efficiency, and part of the theory behind consociationalism is to promote bargaining between groups in a fractured society.<sup>54</sup> The theory implicitly recognizes that transaction costs between various religious communities may be very high. It seeks to remedy those high costs by limiting the players at the table who ultimately make bargains.<sup>55</sup> However, due to the lack of fair representation and lack of accountability structures, the Lebanese government allocates rights to an elite few, and does so in a way that actually prevents efficiency.

First, broad agreements like the National Pact, the Taif Agreement, and the Doha Agreement changed the landscape of the country's political structure, yet they were decided upon without input from the Lebanese people. The oligarchs who entered those agreements did so in positions of power, giving them the tools to dictate their immediate and future payoffs by negotiating the deals. On an individual level, they acted rationally. But given the issues discussed below, elites cloaked seemingly externalized significant political costs onto the citizenry in exchange for power. But a second problem persists—the structure of the Troika itself fails to remedy the problem of high transactions between each of the three major religious sects.

The Troika requires that major policy decisions be signed off by the President, Prime Minister, and House Speaker—each representing a different religious group. This horizontal division of power between the three heads presents difficult problems. This is the case even though horizontal division of power usually increases the scope of bargaining because parties can bargain across issues. It is unlike a situation where power is siloed and divided among several legislative bodies that work independent of one another. And while bargaining may be easier in the sense of being

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54. Lijphart, *supra* note 9, at 217 (noting that balancing of power through consociationalism helps elites recognize the necessity of cooperation).

55. Fewer players in bargaining game usually implies lower transaction costs among them. See Robert D. Cooter & Michael D. Gilbert, *A Theory of Direct Democracy and the Single Subject Rule*, 110 COLUM. L. REV. 687, 697-700 (2010) (explaining that bargaining is generally easier among few representatives than among many private citizens); ROBERT D. COOTER, THE STRATEGIC CONSTITUTION 113-14 (2000) (discussing replacing unanimity rule, which has high transaction costs, with majority rule).

able to negotiate horizontally, it becomes more difficult in the context of the Troika because parties will need consensus from three individuals due to the minority veto. One can quickly see that striking a bargain is not easy because there are still substantial transaction costs due to religious loyalty held by each of the three. Plus, because the Troika applies unanimity rule, we are unable to apply the median voter theorem in this context.<sup>56</sup> The Taif Agreement that enshrined the Troika into Lebanese politics likely raised transaction costs by moving away from a more powerful executive. Providing each of the three heads with veto power exacerbates the chance of a holdout and increases the likelihood that parties will fail to strike a bargain.<sup>57</sup>

We see this same sort of issue with regards to the Lebanese cabinet, which today is comprised of twenty ministers (the number of ministers fluctuates with each new cabinet depending on the political reality of the day).<sup>58</sup> The ministers are jointly proposed by the President and Prime Minister and confirmed by Parliament.<sup>59</sup> As decided in 2008, through the Doha Agreement, representation should be distributed among the majority party, the opposition (given an obstructionist third),<sup>60</sup> and the President.<sup>61</sup> This guarantees the minority be given an absolute veto power when it comes to any major policy decision such as war and peace decisions, international treaties, the state budget, and election laws.<sup>62</sup> It is important to note that the veto empowering the minority may be used as a coercive maneuver, but it probably is not executed upon lightly. This is because the President has authority to fire ministers, so in practice, ministers may tend to act more favorably toward the President than one may initially think to avoid being pushed out.<sup>63</sup>

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56. Michael D. Gilbert, *The Law and Economics of Entrenchment*, 54 GA. L. REV. 61, 98 (2019) (discussing the basics of the median voter theorem). See generally Roger D. Congleton, *The Median Voter Model*, in THE ENCYCLOPEDIA OF PUBLIC CHOICE 707, 707-12 (Charles Rowley & Friedrich Schneider eds., 2003).

57. COOTER, *supra* note 55.

58. Nazih Osseiran & Dion Nissenbaum, *Lebanon Announces New Government*, WALL ST. J. (Jan. 21, 2020), <https://www.wsj.com/articles/lebanon-announces-new-government-11579637476>.

59. LEB. CONST. art. 64(2).

60. SALAMEY, *supra* note 5, at 74; see Permanent Observer of the League of Arab States to the United Nations, Letter dated Mar. 22, 2008 from the Permanent Observer of the League of Arab States to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2008/392 (June 10, 2008) (attaching the Doha Agreement of 21 May 2008 (Leb.)); see also Sunniva Rose, *Who Is in the New Lebanese Government?*, NATIONAL (Jan. 22, 2020), <https://tinyurl.com/y55a2rfg>.

61. Following the 2019 protests, minister representation is now considered “independent,” and therefore the obstructionist third exists in theory only. In reality, the new Prime Minister and President nominated twenty technocrats to the Cabinet. Timour Azhari, *Lebanon Gov’t Wins Parliament’s Confidence Vote Despite Protests*, AL-JAZEERA (Feb. 11, 2020), <https://tinyurl.com/upz2cj4>; Jeffrey Feltman, *What to Expect from a New Lebanese Government: ‘Anti-corruption’ as Witch Hunt*, BROOKINGS INST. (Jan. 25, 2020), <https://tinyurl.com/y6k4qf63>.

62. Major policy decisions require a two-thirds super-majority to pass. LEB. CONST. art. 65(5).

63. LEB. CONST. art. 53(4).

Ultimately, the parliamentary minority veto power constrains parties from coming to an efficient bargain—just like with the Troika. Major policy decisions require a supermajority, and effectively consensus, if the minority bloc agrees to vote together.<sup>64</sup> Moving away from a majority rule (like that mandated for minor legislation) toward a supermajority rule, narrows the scope of bargaining.<sup>65</sup> This has effects that push both ways, because inefficient laws may be vetoed by the minority, but efficient laws may also suffer the same fate.

Both the Troika and Cabinet would be better off moving to a system similar to that of the country's procedure when it comes to electing a President. In Parliament, electing a President requires a two-thirds supermajority.<sup>66</sup> This supermajority holds only in the first round of voting.<sup>67</sup> If no candidate meets this threshold, subsequent rounds only require a simple majority of fifty percent.<sup>68</sup> Moving from supermajority rule to majority rule likely makes all parties better off in this circumstance—it gets parties to agree on a President at a quicker rate—even if it goes against what some in the legislature initially wanted. If the Troika applied such a rule, it should increase bargaining between the parties on the front end (during the unanimity rule portion of voting) and lead to more efficient results. First, a party who would otherwise be left out in the second round of voting, may vote for the proposal in the first instance. This is because, if they play strategically, they are more likely to ensure a payoff greater in the long run, than they would have gotten had they been cut out of the deal altogether. One may speculate that incentives remain the same since the two parties in agreement can simply ignore the third party in the second round of voting. While this is true in the sense of a one-time game – basic game theory suggests that repeat games are different. When a repeat game occurs, there “may be an inducement to cooperate.” That is because strategy in how players cooperate will be considered across a number of games, not just in the immediate instance.

Consider a President (P), Prime Minister (PM) and Speaker (S). The three parties are voting on proposal #1 to increase defense spending by one million dollars while simultaneously reducing social safety net funding. P and S both favor these two proposals. While PM is neutral to the safety net funding, he wants to increase defense spending at a lower rate. PM knows that coming down the pipeline is proposal #2 which increases educational

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64. SALAMEY, *supra* note 5, at 74.

65. Michael D. Gilbert, *Entrenchment, Incrementalism, and Constitutional Collapse*, 103 VA. L. REV. 631, 647-51 (2017).

66. LEB. CONST. art. 49.

67. *Id.*

68. *Id.*; see Issam Michael Saliba, *Lebanon: Presidential Election and the Conflicting Constitutional Interpretations*, LIBR. CONG., <https://tinyurl.com/y5b4oxt7> (last updated June 9, 2015).

spending, something PM favors, S is neutral towards, and P slightly opposes. Given this hypothetical, PM has an incentive to vote “yes” on proposal #1.

First, PM may simply vote “yes” because it would not be worth the cost of protestation. Second, and more persuasively, PM could also use his vote as a bargaining chip to ensure that P votes for his proposal in the second instance, a vote trade of sorts. As mentioned above, if this process keeps going, parties may be more likely to work together and achieve efficient outcomes because, in theory, they are repeat players who will seek to maintain a bargaining relationship. If PM knows that unity behind defense spending is important to P and S, then it can be leveraged for a vote to ensure passage of later legislation.

Such a process necessarily has some perverse effects. For instance, two of the three in the Troika could easily align themselves against a minority member, effectively cutting them out. However, the current plenary veto power each member holds makes bargaining costly too, so it becomes an empirical question as to which is costlier. And, as explained, the reputational incentives remain to incentivize additional bargaining at the outset.

### B. *Familism*

One key feature of Lebanon’s political institutions is similar to many seen across the developing world—familism.<sup>69</sup> The concept of familism is simple: family serves as a pseudo-institution that is central to the political process.<sup>70</sup> Familism has two significant implications within Lebanon. First, it creates an oligarchy of political elites who ally with family over country, and whose power is consolidated with each generation.<sup>71</sup> Second, it lowers transaction costs of bargaining outside the political process at the expense of damaging democratic institutions.

Lebanon’s powerful oligarchy has been, and continues to be, incentivized to maintain power sharing structures favorable to themselves.<sup>72</sup> It is analogous to “the rich get richer” concept in western countries. One easy data point to consider is that Lebanon elected fifty-two Prime Ministers between the National Pact in 1943 and 2013.<sup>73</sup> Between those fifty-two elections, only eighteen families are represented.<sup>74</sup> Many of the political blocs are headed by families, which leads to reinforced power for the groups

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69. See Suad Joseph, *Political Familism in Lebanon*, in PATRIMONIAL POWER IN THE MODERN WORLD 150, 151-52 (Julia Adams & Mounira M. Charrad eds., 2011).

70. *Id.*

71. Suad Joseph has dubbed this the “kin contract.” See Suad Joseph, *The Kin Contract and Citizenship in the Middle East*, in WOMEN AND CITIZENSHIP 149, 159-60 (Marilyn Friedman ed., 2005).

72. See CANVAS, ANALYSIS OF THE CURRENT SITUATION IN LEBANON 21-22 (2015), <https://canvasopedia.org/wp-content/uploads/2015/12/lebanon-analysis.pdf>.

73. SALAMEY, *supra* note 5, at 145-46.

74. *Id.*

in the strongest positions of government.<sup>75</sup> In some ways akin to the Mafia, these families depend on loyalty and allegiances from smaller political segments and ordinary citizens.<sup>76</sup> Rather than use violence, the head families use corruption. They unabashedly use state resources to benefit their families and their allies in return for continuing support.<sup>77</sup> This concept is known in Lebanon as *wasta*.<sup>78</sup> And over the years, families become more entrenched in their loyalty to each other. Sons, and sometimes daughters, of former politicians are expected to step in for their fathers when they move away from politics.<sup>79</sup> Those familial networks can oftentimes be reinforced if children grow up together and see the benefits of this power structure develop at a young age.

A system of familism pushes bureaucrats to carve out specific areas of corrupt practice.<sup>80</sup> Consider a minister in charge of importing fuel oil for power generation. By virtue of his position, he can dictate who to buy from in a manner that can benefit him personally, his family, his political allies, and his constituency. Over the years, it becomes acceptable that a member of his family gets appointed to this same post, hence creating a vicious cycle of corruption that undermines the alleged democratic structure of the country. Because of the significant cost of suing corrupt officials, there is almost never any recourse provided by public law.<sup>81</sup>

Further, because of the insulated nature of ministers, it can be difficult to hold them accountable as a citizenry. Voters elect members of parliament based on a highly gerrymandered districting process that ensures, in large part, the same elite class gets elected time after time.<sup>82</sup> It is then the parliament, along with the President, who appoint the members of cabinet.<sup>83</sup> Therefore, voters have no legal recourse to directly vote out cabinet members. The accountability mechanism for cabinet members rests solely on how closely their goals align with the President's, since he may remove cabinet members.<sup>84</sup> If the President and ministers agree on the big picture, then the President may allow corruption to occur in order to ensure loyalty on the more pressing issues of the day or on a quid pro quo basis. If the President and minister's views diverge, there is the possibility that

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75. See, e.g., *id.* at 121 (“Walid Jumblatt succeeded his father Kamal Jumblatt in the leadership of the Progressive Socialist Party. Amin Jemayel succeeded his brother Bashir Jemayel as President of Lebanon . . .”).

76. SALAMEY, *supra* note 5, at 11, 117, 121-25.

77. ERIC LE BORGNE ET AL., WORLD BANK GRP., LEBANON: PROMOTING POVERTY REDUCTION AND SHARED PROSPERITY 4, 110 (2016), <https://tinyurl.com/y5yx22u8>.

78. *Id.* at vi, 12.

79. SALAMEY, *supra* note 5, at 143, 145-46.

80. BORGNE ET AL., *supra* note 77, at 60.

81. See *supra* text accompanying note 18.

82. SALAMEY, *supra* note 5, at 112, 130.

83. LEB. CONST. art. 64.

84. LEB. CONST. art. 53.

punishment (in this case removal) is used if a minister diverts and goes down a more corrupt path.<sup>85</sup>

*Wasta* rears its ugly head outside the political process as well—by creating a private mechanism for lubricating bargaining at the local level. Indeed, because of the stagnation that the national government experiences due to the Troika and proportional representation system, local interactions depend heavily on this brokerage exchange.<sup>86</sup> Often times gridlock at the national level prevents simple tasks from getting done. Things like contract enforcement take 721 days on average.<sup>87</sup> For this reason, *wasta* allows powerful families to use their broader political influence to pressure stakeholders to act.

An example helps illustrate this point. Ahmad lives in a village in North Lebanon overlooking the Mediterranean. He wants to build a small restaurant on the waterfront. Let's assume waterfront land is public land and illegal to build on. With the right connections, or *wasta*, Ahmad can pick up the phone and call his friend Bilal, who he went to high school with and who is now part of a powerful political machine. Ahmad essentially offers his future vote (and that of his own family) in exchange for Bilal making a phone call to pressure the municipality into issuing an otherwise illegal permit. A few days later, Ahmad can build on the land.

Consequently, the political elite repurpose their clout in a way that allows them to bargain with those who have not experienced desired outcomes in the political process. In a sense, the oligarchs use their political power to trade for votes and loyalty.<sup>88</sup> Both parties are likely better off on an individual level than they were before, but the democratic institutions are certainly harmed.<sup>89</sup> And even with a bargaining imbalance which favors the elite, relationships and reciprocity are still considered the rules of the game.<sup>90</sup> Repeated renegeing by a political elite could lead to a shifting in allegiance by a family or village which could be destructive in the long term for the oligarch. Therefore, the incentive remains to follow through on credible commitments in order to gain reciprocal trust over time.

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85. See COOTER, *supra* note 55.

86. BORGNE ET AL., *supra* note 77, at 75-77.

87. ANNE MARIE BAYLOUNY, PRIVATIZING WELFARE IN THE MIDDLE EAST: KIN MUTUAL AID ASSOCIATIONS IN JORDAN AND LEBANON 39 (2010).

88. JANA MOURAD & DANIEL GARROTE SANCHEZ, LEBANESE CTR. FOR POL'Y STUD., VOTER TURNOUT AND VOTE BUYING IN THE 2018 PARLIAMENTARY ELECTIONS 8 (2019), [http://www.lcps-lebanon.org/publications/1552660621-policy\\_brief\\_39\\_web.pdf](http://www.lcps-lebanon.org/publications/1552660621-policy_brief_39_web.pdf).

89. This sort of corruption likely contributes to Lebanon's ranking of 138 out of 180 countries on Transparency International's Corruption Perceptions Index 2018. The index ranks countries according to perceived public sector corruption. *Corruption Perceptions Index 2018*, TRANSPARENCY INT'L, <https://www.transparency.org/cpi2018> (last visited Aug. 30, 2020).

90. See Mehmet Karaçuka, *Religion and Economic Development in History: Institutions and the Role of Religious Networks*, 52 J. ECON. ISSUES 57, 66 (2018).

Ultimately, the consociational nature of the Lebanese system impedes bargaining across the political sphere. Lebanon's politics can be conceived as a never-ending zero-sum game where political elites continually seek to reinforce the benefits they receive, many times at the expense of other groups. The entire aim seems to be concerned with distributional effects—attempting to increase their slice of the pie rather than focusing on increasing the size of the pie.

#### IV. ELECTIONS, REPRESENTATION, AND INTRANSITIVE VOTING

Lebanon is typically characterized as a democratic parliamentary republic.<sup>91</sup> This is true in name only, as it is difficult to view what occurs in the country as being completely democratic. To better understand why this is the case, we consider the voting structure within Lebanon as well as representation issues present throughout its system.

##### A. Ballots and Elections

The complicated Lebanese electoral system empowers voters to choose a slate of candidates in their district that is equivalent to the allocated sectarian seats to their district, including their top pick for that slate.<sup>92</sup> Presumably, this system encourages candidates from different confessionalists to work together, while also minimizing inter-sectarian conflicts.<sup>93</sup> It is designed to promote greater alignment between candidates since each person needs a majority of the district to win election. Prior to 2018, Lebanon did not actually provide official preprinted ballots—so voters were tied to the ballots which political parties presented to them.<sup>94</sup> Political elites preferred this method of voting because it maximized their chances of winning regardless of political ideology.<sup>95</sup> While the changes in 2018 eliminated the bring-your-own ballot system, political elites still maintained some power through gerrymandering, as this Note discusses later on.<sup>96</sup>

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91. LEB. CONST. pmbL.

92. Ali Harb, *New Law, New Politics? Lebanon Voting Introduces Complex System*, MIDDLE EAST EYE (May 5, 2018), <https://tinyurl.com/y6eh7mqk> (outlining the voting system within Lebanon and the challenges presented by the most recent changes).

93. See Tarek Ali Ahmad, *Lebanon's New and Complex Electoral System Baffles Voters*, ARAB NEWS (May 6, 2018), <https://tinyurl.com/y6xn2g4t> ("Under the system voters cast ballots both for their favored list of candidates and a preferred candidate on that list. But the lists group together candidates who in many cases would traditionally have been rivals.").

94. SALAMEY, *supra* note 5, at 117.

95. The lack of campaign finance regulation also allows political elites to continue to dominate from a campaigning perspective. Nabih Bulos, *Amid Warnings About Vote Buying, Lebanon Holds First Parliamentary Elections in Nearly a Decade*, L.A. TIMES (May 4, 2018), <https://tinyurl.com/y2s7kq5o>.

96. Hady Amr, *Lebanese Elections: Good for the Country, Warts and All*, BROOKINGS INST. (May 1, 2018), <https://tinyurl.com/ycgx6xbm>.

Voters also tend to have less information about candidates outside their confession, so many may simply trust the recommended bloc voting slates to be the best outcome. Lack of information is especially true in Lebanon, and voters may just use predetermined slates as a heuristic, assuming that candidates within the slate likely share the same policy preferences. This is because government actors have a near stranglehold on releasing and withholding information.<sup>97</sup> For this reason, even when information on government officials is requested, bureaucrats may act like gatekeepers and release selective information. Some of this secrecy is constitutionalized. One can simply look at Article 49 which prescribes that a President be elected by secret ballot.<sup>98</sup> It is problematic when there is no way for voters to verify who their representative voted for. Lack of both information and reliable heuristics breeds inefficiency.<sup>99</sup>

With this being said, Lebanon's voting turnout since 2005 has been just around fifty percent, peaking at fifty-four percent in 2009 and dipping back to just below fifty percent in 2018.<sup>100</sup> Such strong participation leads to two observations. First, the civic duty theory of voting holds that self-satisfaction and social pressure may lead to higher than expected participation in national elections—particularly when the outcome affects many people.<sup>101</sup> Standing alone, the civic duty theory of voting may explain why voter turnout in Lebanese elections hovers around the fifty percent mark, especially when one considers the impact election outcomes have on the broader Middle East. The second observation is that voter participation may have dipped in 2018 due to the elimination of the bring-your-own ballot system. This is because using preprinted ballots increases transparency to verify bargains between voters and political parties.<sup>102</sup>

For instance, Walid is a voter for Party A in North Beirut. He agrees that he will bloc vote Party A's preferred candidates in exchange for Party A using their *wasta* to get the pothole in front of his home filled. Party A distributes preprinted cards that are yellow. Walid knows the party employs electoral machinery at polling stations to pressure voters to cast ballots for

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97. For instance, many standing committees have their sessions closed to the public, and there is no obligation to release information presented in those meetings. BEYOND REFORM & DEV., BRD/I GRP. S.A.L., CORRUPTION IN PUBLIC INSTITUTIONS: TOWARDS THE RIGHT FOR ACCESS TO INFORMATION 12 (2012), <https://tinyurl.com/yxqfog3s> ("Parliamentary Committees' Agenda and Minutes of Meetings: These are confidential per Parliament's by-laws, and deliberations within parliamentary committees are generally closed to civil society.").

98. LEB. CONST. art. 49.

99. See William Samuelson, *Bargaining Under Asymmetric Information*, 52 ECONOMETRICA 995 (1984).

100. Lebanon: *Voter Turnout in Parliamentary Elections*, INT'L IDEA, <https://tinyurl.com/y54k29go>.

101. See Robert S. Goldfarb & Lee Sigelman, *Does 'Civic Duty' 'Solve' the Rational Choice Voter Turnout Puzzle?*, 22 J. THEORETICAL POL. 275 (2010).

102. Michael D. Gilbert, *Transparency and Corruption: A General Analysis*, 2018 U. CHI. LEGAL F. 117 (discussing that this transparency is a feature of open ballots, but is not present in secret ballots).

their electoral lists. Walid was also given the ballot through his friend from high school, who is a part of Party A's political machine. When Walid goes to vote, he will make sure that one of Party A's agents sees him submit his vote on the yellow ballot. Obviously, this sort of engagement incentivizes vote trading, coercion, and ultimately undermines democratic norms.

Unfortunately, these incentives are taken advantage of in practice. Corrupt acts, like vote buying, are rampant within Lebanon—even after the move away from the bring-your-own ballot system.<sup>103</sup> This includes giving handouts to individual voters and their communities, voter intimidation, other uses of violence, and non-adherence to electoral silence periods.<sup>104</sup>

### B. *Representation Error*

One of the underlying problems that pertains to Lebanon's lack of true democracy comes under the heading of representation error, which occurs in overinclusive or underinclusive voting regimes. It's prevalent in a number of circumstances. For starters, many voters are not actually assigned to electoral districts in which they reside. Instead, voting is tied to place of birth, not residence.<sup>105</sup> One could posit that transaction costs for voting administration are lowered because the state does not have to keep track of where people move. But the representation error could be significant, since certain voters who cannot get to their voting locations will be excluded from participating in elections, leading to underrepresentation. In addition, this system may lead to inefficiency across the country because it prevents citizens from voting with their feet.

Assume Nadeem lives in Beirut, but moved there from a small village in Southern Lebanon. If he is forced to cast his vote in his home village, he is externalizing costs on that district. At the same time, those voting in Beirut are externalizing costs on him. Further, Nadeem may be disincentivized to vote in the local district because the costs may be too high for him to travel to vote. Effectively, an origin-based voting restriction likely leads to overrepresentation in smaller districts and underrepresentation in larger ones.

The broader purpose of confessionalism is also undermined by the practice of gerrymandering within Lebanon.<sup>106</sup> Political elites have the ability to change electoral laws, and do so regularly in ways which benefit those

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103. MOURAD & SANCHEZ, *supra* note 88, at 6-8 (finding that forty percent of voters reported incidents of vote buying in their neighborhoods and twenty percent admitted to receiving handouts).

104. *Id.* at 5.

105. DEMOCRACY REPORTING INT'L & LEBANESE ASS'N FOR DEMOCRATIC ELECTIONS, ASSESSMENT OF THE LEBANESE ELECTORAL FRAMEWORK: ELECTION OF THE MEMBERS OF THE PARLIAMENT LAW NO. 44 PUBLISHED ON 17 JUNE 2017, at 7 (2017), <https://tinyurl.com/y6yek6yw>.

106. Harb, *supra* note 92.

oligarchs in charge, even when such acts may be counter to the confessional ideal of equal representation.<sup>107</sup> For example, District A is overwhelmingly Sunni and District B has a slight majority of Greek Orthodox. District A is allotted one representative that is Muslim. District B is allotted one representative that is Christian. The Sunnis in power may broker a deal with the other sects in order to gerrymander District A and District B by combining the districts into District C. By merging the two districts, the Sunnis can ensure that their “constituency” of Sunni followers are the ones who actually elect the electoral seat dedicated to representing the Christian confession. This undermines the idea behind consociationalism that seeks consensus through representation. It can present underrepresentation of minority voters in bigger districts.

A final example of the representation error in Lebanon’s voting regime revolves around who can vote. Everyone over the age of twenty-one gets to vote if they are a citizen.<sup>108</sup> However, we should note that does not include the children of Lebanese women who marry foreign nationals because Lebanon does not extend the citizenship right to those children.<sup>109</sup> Consequently, there is significant representation error due to an under-inclusive voting regime. The downstream effects of the fact that citizenship only passes through your father are substantial.

Consider this: Gigi is a Lebanese woman who lives in Beirut. She marries a Syrian refugee and they remain in Lebanon. They have three children. In the next election, only one in a household of five gets to vote. This number remains the same even when all the children reach voting age. And upon future marriages, this could lead to starker results. Depending on who Gigi’s grandchildren marry, her entire bloodline may not be able to vote—even if they all of them remain living in Lebanon. By changing the citizenship law, Lebanon can thwart such ridiculous underrepresentation and prevent the voting public from externalizing their costs on so many others.

### C. Intransitivity

Outside of the typical citizenry voting structure, the government itself often suffers from a lack of consensus.<sup>110</sup> But, as economics suggests, intransitivity may be solved through bargaining or agenda setting.<sup>111</sup> The

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107. See SALAMEY, *supra* note 5, at 74.

108. Law 44 of 17 June 2017 (Election of Members of the Parliament) (Leb.).

109. Lebanon: Discriminatory Nationality Law, HUM. RTS. WATCH (Oct. 3, 2018), <https://tinyurl.com/y487x63k>; Virginie Le Borgne, Lebanon’s Misogynistic Citizenship Law, ALJAZEERA (Mar. 8, 2019), <https://tinyurl.com/yxbjocrk>.

110. See *supra* Part II.

111. Cooter & Gilbert, *supra* note 55, at 702.

Speaker of the House has broad discretion within Parliament, and at least in the first instance, can prevent intransitivity.<sup>112</sup> The Speaker of the House retains a sort of veto authority in Parliament through agenda setting. He refers bills to committees and calls Parliament into session for voting on legislation.<sup>113</sup> In fact, the Speaker is permitted to put aside proposed regulations if he so chooses.<sup>114</sup> From the perspective of solving intransitive cycles, the Speaker may simply choose not to hold a vote on legislation that he deems disadvantageous to him or his allies. Or, at the very least, the Speaker may *structure* a vote in a way which allows the preferred bill to move through Parliament. Because quorum is required for any voting to occur, the Speaker should always have the votes in the majority party.<sup>115</sup> And since the Speaker is “voted” on by the Chamber, one would think that it is necessarily the case that the Speaker’s views align with a majority of Parliament.<sup>116</sup>

As a whole, the lack of infrastructure ensuring fair voting procedures for the citizenry prevents Lebanon from achieving efficient government. Political elites who are concerned more about distributional wealth use power and influence to continue reinforcing their supremacy at the expense of representation by the people. Some easy fixes, like changing the citizenship law and eliminating origin-based voting can alleviate representation problems. When it comes to intransitive preferences within the government, bargaining between the Troika proves to be difficult. However, agenda setting by the House Speaker can prevent intransitivity at the Parliamentary level.

## V. CONFESSINALISM AND ENTRENCHMENT

One can see elements of entrenchment throughout the preceding discussions of voting and bargain theory. It is clear that the biggest impediment to moving away from the confessional system is the concentration of power in the Troika and the sectarian-based allotment of representatives within the legislature. When combined, this “consensus-

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112. See SALAMEY, *supra* note 5, at 131.

113. *Id.* at 139; *Lebanon Resource Page*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Oct. 18, 2010), <https://carnegieendowment.org/2010/10/18/lebanon-pub-41744>.

114. See SALAMEY, *supra* note 5, at 131.

115. LEB. CONST. art. 34.

116. This is true in theory, but has not necessarily been true in practice. Indeed, the Speaker of the House has been the Speaker since the Taif Agreement concluded in 1989. At twenty-seven years and counting, he remains one of the longest serving Speakers in the world. His longstanding place in the Lebanese Parliament signifies the oligarch-nature of the confessional regime as a whole, with extraneous political factors leading to his quarter-century tenure. See Bassem Mroue & Zeina Karam, *Speaker’s Long Tenure Embodies Lebanon’s Political Stasis*, AP NEWS (May 22, 2018), <https://tinyurl.com/y2fqubq2>.

based fragmentation” will require unanimity to change.<sup>117</sup> Given that there are a significant number of veto players within the government, parties will simply continue to entrench the status quo. There is essentially no incentive for those at the top to change the laws, and when they do so, it will likely only become a distributional exercise.

Effectively, the confessional system is entrenched because every single relevant player has the ability to veto.<sup>118</sup> And because voting is not truly representative, it is difficult for the citizenry to push for changes toward a full representative democracy.<sup>119</sup> Therefore, a change this big would require the Parliament, Cabinet, and the President (the Troika) to all agree. It is the perfect example of too much entrenchment—whereby the law fails to adequately respond to societal preferences. The system is so entrenched that the commitment to consensus through fragmentation imposes significant transaction costs when it comes to “higher lawmaking.” Changing the rule in a way that allows for a super-majority of the players may bring some flexibility to changing the system without a complete overhaul.<sup>120</sup>

Entrenchment runs deep even with what we can call “major” power shifts in Lebanon. Indeed, closer scrutiny of the political agreements throughout Lebanon’s history presents a landscape of incremental reform to get out of situational crisis. The shifts prove to be superficial and distributional in effect. For instance, the Taif Agreement merely codified the National Pact and shifted power slightly away from Christians. It made the ratio of grade one positions one-to-one and redistributed some power to the Prime Minister and the Speaker.<sup>121</sup> The Doha Agreement reorganized the distribution of power by presenting the Cabinet with an obstructing third.<sup>122</sup> In totality, the changes made over the last eighty years have done nothing but keep the norms of confessionalism entrenched at the expense of redistributing power at the margins.<sup>123</sup>

As far as deciding whether or not Lebanon should overhaul their political system, we should consider the transition costs of doing so. We know that the incremental changes since the National Pact have imposed significant transition costs, each one dealing with unrest within the

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117. See *supra* Part II.

118. See Gilbert, *supra* note 56, at 97-99 (demonstrating the difficulty of change under deep entrenchment schemes as compared to voting structures with majority rule or even super majority rule).

119. See *supra* Part III.

120. See Gilbert, *supra* note 56, at 97-99.

121. The Ta’if Agreement of 4 Nov. 1989 (Leb.); see Soussi, *supra* note 39.

122. Permanent Observer of the League of Arab States to the United Nations, Letter dated Mar. 22, 2008 from the Permanent Observer of the League of Arab States to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2008/392 (June 10, 2008) (attaching the Doha Agreement of 21 May 2008 (Leb.)).

123. SAADEH, *supra* note 8, at 115 (“[The confessional system] has stalled the development of a modernized government capable of organizing efficiently the resources of the country.”).

country.<sup>124</sup> The question becomes whether or not the transition costs of the confessionalist system are so high that the system should remain entrenched, even if it is unpopular.

One might posit that this level of entrenchment in the confessional system is a good thing because it brings stability.<sup>125</sup> It does bring stability to the status quo; however, the positive theory of entrenchment fails to consider that in a system like this one, stability is relative. Lebanon is caught in an infinite cycle of redistribution of power through the highest levels of government on a sectarian basis. The members of the Troika may claim to be “securing” the rights of various religious groups, but they are simply rearranging the chess pieces.<sup>126</sup> They are doing so, not because the citizens want change, but because of corruption within the political system itself. Maintaining confessionalism is the political elite entrenching a custom that is merely self-serving, one which allows them to internalize the benefits while externalizing the costs to the people. The effect is stability in name only.

Indeed, citizens appear to be suffering a “double loss.”<sup>127</sup> Normal people are suffering from the lack of policy change (through lack of representation, income inequalities, etc.) and from the transition costs (war, adjusting to a new political system) imposed through the negotiation of major power shifts. A change from a confessional system to true representational democracy would lead to an inverse asymmetry between the current political elite and the national population. The political elite would be the ones suffering a double loss through the policy change and transition costs. However, the people would also internalize quite a bit of transition costs adjusting to the new system.

Changing the system can help improve the overall welfare of the state. The reason for this is simple. Consider the Hobbesian idea that religious divisions impede bargaining because parties simply won’t cooperate.<sup>128</sup> If the confessional system moves to a “true” democracy, and consequently eliminates some of the entrenched religious divisions, representation issues should improve and lead to better outcomes for the average Lebanese citizen.

Moreover, the transition costs of changing the confessional system are high, but one could argue that they are fixed costs. As explained, under each significant political agreement, the cost of transition has typically been some

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124. Each of the foundational agreements of Lebanon’s political system arose after years of turmoil and fighting over political power. *See supra* Part I.

125. Gilbert, *supra* note 56, at 65–66.

126. One example is the electoral law passed prior to the 2018 elections. The law itself purported to give voters more of a say through a proportional list-voting system, it failed to do so in a meaningful way. *See* MOURAD & SANCHEZ, *supra* note 88; SALAMEY, *supra* note 5, at 74.

127. Gilbert, *supra* note 56, at 80.

128. *See* Robert Cooter, *The Cost of Coase*, 11 J. LEGAL STUD. 1 (1982).

sort of period of unrest, instability, and war. This would dictate that even something considered a “big” move of this sort will probably accrue quite a bit of transition costs.<sup>129</sup> Therefore, rather than getting stuck in a never-ending cycle of redistribution through small incremental shifts, economics suggests that Lebanon move for a sweeping change away from confessionalism and closer to the modern ideal.<sup>130</sup> Fixed transition costs mean that the country will pay the same price for a small or big change, so if the change gets us closer to the median, it is preferable.<sup>131</sup> Although such a significant change could undermine reliance interests in the short-term, in the long run, these reliance interests should be strengthened by a more democratic form of government.<sup>132</sup>

## VI. CONCLUSION

Lebanese politics are an enigma. The ideal set forth by those who crafted the Constitution sought to create a national identity by granting various groups representation in the government. However, the system is plagued with inherent bargaining failures, lack of effective voting procedures, and reinforcement of the status quo through entrenchment. As well intentioned as it may have been at the time of its birth as an independent state, the country’s history demonstrates that the system imposes significant costs on the Lebanese people. Costs that can only be addressed by uprooting institutional corruption and the transition to a non-sectarian system of government.<sup>133</sup>

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129. Transition costs are costs which people must incur when laws change. Gilbert, *supra* note 56, at 65.

130. *Id.* at 68 (“[F]ixed costs support larger legal change and shallower entrenchment.”).

131. *Id.* at 95-96.

132. Foreign investors already have a difficult time investing in Lebanon due to lack of functional institutions and the high level of corruption. See I. JAMIE ARABI, SHERVIN YOUSEF-ZADEH & ALEXANDRA ENSOR, LEADERSHIP & DEMOCRACY LAB, LEBANON: RISK ASSESSMENT REPORT 5-6 (2015).

133. My thoughts go out to all those affected by the tragedy in Beirut on August 4, 2020. It has been a difficult time for many, including my friends and loved ones, but I hope this incident becomes a catalyst for change in Lebanon. Jad Estephan, a resident of Beirut put it succinctly when he said, “Let us hope that this catastrophe doesn’t destroy us even further but rather gives us a much needed strength . . . [b]ecause this is our last chance. We must change today, or never” Karl Vick, ‘*This Is Our Last Chance.’ A Photographer Captures the Energy for Change in Beirut After the Explosion,* TIME (Aug. 15, 2020), <https://time.com/5879192/beirut-explosion-lebanon-reform/>.

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