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### *Establishing a Lebanese Senate: Bicameralism and the Third Republic*

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## **ABOUT THE AUTHOR**

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## **EXECUTIVE SUMMARY**

Throughout its history, Lebanon has been governed by a unique political contract according to which the country's religious communities share power in a meticulously balanced and often unstable "consociational" arrangement. Many civil service posts—including all parliamentary seats and the top executive posts in government—are distributed according to sect, with the stated aim of maintaining a spirit of inter-communal harmony and coexistence. In practice, this system has promoted, at best, a weak central authority prone to repeated bouts of paralysis and breakdown, and, at worst, a government that functions primarily as a space for confessional elites to compete over parochial interests at the expense of general welfare.

How might Lebanon move beyond its system of political confessionalism toward a more representative and functional democratic model? One solution that has been proposed is a bicameral legislature, in which a newly created Senate would be reserved for the representation of religious communities while the lower house would represent individual citizens on a purely democratic, non-confessional basis. Despite the interest in this proposal, there have been very few attempts to explore the considerable range of options related to the upper chamber's possible basis of composition, method of election, powers, and its relationship to other government bodies.

This paper aims to address this lacuna. It begins by examining the constitutional texts and agreements that call for the implementation of bicameralism, and presents some of the relevant questions, obstacles, and potential compositional models for a Senate. It then addresses the issues of the Senate's powers, jurisdiction, and the impact of its creation upon the other branches of the government. It concludes by evaluating the arguments for and against bicameralism, and proposes that any credible process of reform will have to involve considerable changes to Lebanon's existing institutional landscape—not merely the newly created Senate—for bicameralism to be effective.

## 1. INTRODUCTION<sup>1</sup>

It has long been argued that one of the principal causes of the Lebanese state's vulnerability to paralysis and breakdown is the dilemma that has bedeviled its affairs since independence: the question of how to govern a society composed of eighteen confessional communities in a manner that protects minority rights and religious pluralism while retaining an effective central authority. In Lebanon, the solution to this problem has taken the form of a consociational government that distributes power among various sects through parliamentary quotas and government posts.<sup>2</sup> This unwieldy arrangement proved to be surprisingly stable during the first few decades of Lebanese statehood, however, the powerlessness of the government to halt the descent of its increasingly divided and radicalized communities into fratricidal war exposed the dangers of a weak unitary authority and transformed Lebanon from the embodiment of Muslim-Christian *convivencia* into an ominous cautionary tale.

Since the civil war, there have been repeated calls to cleanse Lebanon of its sectarianism and to promote a shared national identity through the decoupling of religion from politics. At the same time, concerns about evolving demographic balances have caused many to regard with suspicion any project that could erode their representation in Parliament and threaten Lebanon's identity as a mosaic of confessional communities. The tension between these two seemingly

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<sup>2</sup> In Lebanon, the three top executive government posts—President, Prime Minister, Speaker of Parliament—are reserved for Maronite Christians, Sunni Muslims, and Shiite Muslims, respectively. The country's legislative body—the Chamber of Deputies—is divided equally between Christians and Muslims: each of its 128 seats is assigned to a specific confession. See Table 1 below for a breakdown of the confessional distribution of seats.

irreconcilable positions has helped maintain the status quo for over twenty years, despite widespread public support for substantive reforms of some shape.

The ideal solution would seem to be a system that safeguards the rights and interests of religious (or other) minorities while providing an outlet for the will of a political majority. Other countries have deployed various means to achieve this ideal—from federalism and other forms of administrative decentralization, to quota systems more limited than those currently in place in Lebanon. But the classic mechanism to “amalgamate the preferences of different constituencies” within a single authority is a government “whose deliberations involve two distinct assemblies”: a bicameral legislature. (Tsebelis and Money 1997)

According to political theorists, the virtues of bicameral systems include increased stability, a tendency to pass legislation with higher degrees of consensus, and greater oversight between the two chambers and over the executive branch. It is a system that would seem well-suited to address the confessional deadlock that often paralyzes governance in Lebanon. In Beirut’s bicameral legislature, the Chamber of Deputies (*Majlis al-Nuwwāb*) would be elected without confessional quotas, while the Senate (*Majlis al-Shuyūkh*) could serve as the explicit guarantor of minority rights. Sequestering confessional interests in a dedicated institution could allow the Chamber of Deputies to be transformed from a marketplace of sectarian bartering into the primary locus of political authority whose constituent is the citizen, irrespective of his or her religion.

This idea is neither new nor particularly controversial. The Ta’if Accord (1989), which ended Lebanon’s civil war, called explicitly for the dismantling of political confessionalism through the election of a Chamber of Deputies on “a national, non-confessional basis” and the formation of a Senate representing “all of the spiritual families”. Leaders from across the

ideological and confessional spectrum have declared their support for this idea, and it is routinely raised whenever questions of institutional reform and “de-confessionalization” are discussed.

However, because Ta’if provides no details beyond the basic description of two legislative chambers elected on different bases, there is considerable ambiguity surrounding the potential formulas for bicameralism in Lebanon. The permutations of chamber size, basis of composition, length of terms, methods of election, powers, etc. are extensive and remain largely unexplored. A full treatment of these variables is beyond the scope of this paper. The goal, rather, is to develop the basis for a broader discussion about bicameralism by presenting some of the pertinent questions, challenges, and potential models encountered through discussions with Lebanese members of parliament, party leaders, and civil society figures.

## **2. THE SENATE IN LEBANESE POLITICAL HISTORY**

The modern state of Lebanon was born with a bicameral government, but it was short-lived. The Lebanese Constitution of 1926 decreed the formation of a Senate alongside a Chamber of Deputies, the former being composed of nine Christians (five Maronites, three Greek Orthodox, one Greek Catholic), seven Muslims (three Sunni, three Shiites, one Druze), and one seat reserved for the remaining minorities. Upon his departure from Lebanon following the adoption of the Constitution, the French High Commissioner Henri de Jouvenel is reported to have said: “I have given them a parliament because they are naturally talkative, and because they believe that a parliament is the privilege of the highest civilization” (Habachy 1964).

The bicameral experiment lasted just one and a half years. On October 17, 1927, the Senate was abolished through an amendment to the Constitution because it was viewed as “too expensive, too slow, and too weak” (Habachy 1964). In the current Constitution, a fossil of the

Senate's presence remains in the abrogated articles 23, 96-100, and in Article 22, which looks ahead to a post-confessional future for Lebanon:<sup>3</sup>

“With the election of the first Parliament on a national, non-confessional basis, a Senate is to be established in which all the spiritual families (*al-‘ā’ilāt al-rūḥiyya*) are represented. Its authority is limited to crucial issues (*al-qaḍāya al-maṣīriyya*).”

This vision of a bicameral legislature originated in the Ta’if Accord of 1989 (see Article II.A.7), which inaugurated a Second Republic that modified some of the institutions and procedures of the First Republic but did not alter “their basic character” (Hudson 1999). It also established certain parameters for a projected Third Republic in which the communitarian basis of Lebanese politics would be largely swept away. The system of quotas in the Chamber of Deputies would eventually be dismantled along with the sectarian distribution of first-class government posts (e.g. President, Prime Minister, Speaker of Parliament, Deputy Prime Minister, General of the Army, etc.) and a new legislative chamber would be established in order to provide representation for all of Lebanon’s religious communities. Neither the Ta’if Accord nor Article 22 of the Constitution specify the Senate’s confessional balance, its method of election, or its powers, except to say in a broad way that its jurisdiction would be limited to major issues (*al-qaḍāya al-maṣīriyya*).

Understandably, such a vague formulation has led to conflicting interpretations of the character of a post-confessional Lebanese state, as well as the Senate’s role within it. A poll

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<sup>3</sup> Tabbarah (1997) provides the original text of the abrogated articles. Notably, the original article 22 stated: “The Senate shall be composed of 16 members, seven of whom shall be appointed by the Prime Minister in consultation with the ministers. The remaining nine shall be elected. The term of Senators shall be six years, after which they shall be eligible for re-election or re-appointment.” The original article 19 stated: “In principle, no law may be published until it has been adopted by the two Chambers. But the bills proposed by the Government and ratified by the Chamber, or initiated and voted the Chamber in agreement with the Government, shall not be presented to the Senate except if it so desires. The above mentioned laws shall be made known to the Senate. If the Senate desires to discuss them, it must notify the Government within eight days. If within this period the Senate does not take any action, the bills shall be considered approved.”



conducted in 2009 revealed that while 58% of Lebanese were in favor of abolishing confessionalism, nearly a quarter did not know what this would entail.<sup>4</sup> Certainly the most commonly encountered idea associated with the proposed Senate is the baseless notion that it will have to be headed by a Druze. Why? Because, so the theory goes, the three largest sects (Maronites, Sunnis, and Shi`a) each have their own “presidencies” while the fourth-largest sect does not. Obviously, this idea which is based on the logic of apportioning power on a sectarian basis runs against the entire de-confessionalist project. Nonetheless, the “Druze Senate Leader” meme remains a stubborn component of the popular mythology surrounding the Senate.<sup>5</sup>

Among most professional political operatives and academics, the vision of the Senate is more developed, but not significantly so. President Michel Sleiman expressed his support in 2009 for bicameralism in line with the Ta’if Accord, without making any concrete specifications.<sup>6</sup> Nabih Berri, Walid Jumblatt, Amin Gemayel, and various other prominent politicians have made similarly vague statements in support of Ta’if and a bicameral transition towards a non-confessional system.<sup>7</sup> The Senate idea is uncontroversial and publicly supported largely because of its nebulosity: no model has yet to be proposed that is specific enough to raise anyone’s hackles.

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<sup>4</sup> The poll was conducted by Information International, a well-respected polling and research firm based in Beirut. Some of its findings can be found here: (<http://qifanabki.com/2010/02/23/abolishing-confessionalism-in-lebanon-a-poll-by-information-international/>)

<sup>5</sup> According to MP Ali Osseiran, at the time the Senate was first proposed, “the Druze and the Greek Orthodox were both vying for it.” The issue was that if the Druze got it, then there would be three “presidencies” for Muslims and only one for Christians, whereas if the Greek Orthodox got it, the system would be “balanced”.(Interview with the author, Nov. 23, 2011).

<sup>6</sup> Sleiman made this statement on an official visit to France in March 2009: “The Lebanese constitution establishes a senate, and a senate is the basic and salutary resolution to creating balance in states.” The process requires “setting up the national committee to abolish political confessionalism, which will naturally take a long time.” (See Maya Khourshid, “Sleiman Suggests a Senate,” *NOW Lebanon*, March 28, 2009.)

<sup>7</sup> Nabih Berri is the leader of the Shiite Amal Movement, and has been elected Speaker of Parliament multiple times. Walid Jumblatt is the leader of the country’s Druze community, and the head of the Progressive Socialist Party. Amin Gemayel is a former President and the current head of the Kata’ib, a right-wing Christian party. An archive of some of these statements, see the Lebanese Campaign for a Senate’s online site (<http://lebanonsenate.org>).

One exception is the recent proposal by former Minister of Economy Mohamad Chatah, who briefly discussed it in an interview in *An-Nahar* in October 2011.<sup>8</sup> Several aspects of Minister Chatah's proposal are worthy of careful consideration, based as they are on a sense of realism about the limits and pace of institutional reform. I discuss the plan below along with other models encountered in conversations with members of parliament, party leaders, political scientists, and civil society members. But first: a necessary word or two about the parameters of this project.

### **3. ENVISIONING A LEBANESE SENATE: THE BEGINNINGS OF A BLUEPRINT FOR INSTITUTIONAL REFORM**

Contemplating a transition from unicameralism to bicameralism in Lebanon requires confronting several elemental questions, which may be grouped under three rubrics. The first relates to the composition of the new chamber, the second relates to its powers, and the third explores the implications of a senate's establishment on the other branches of government. As discussed below, there is significant diversity in the size, bases of composition, methods of election, and legislative prerogatives of second chambers around the world. Even subtle differences can have profound influences on the strength and perceived legitimacy of an upper house. Therefore, each of these issues must be considered carefully. In what follows, I explore a few questions from each rubric by way of identifying some of the most pertinent and challenging aspects of the reform process. A few basic bicameral models are then put forward, followed by a presentation of arguments against adopting bicameralism.

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<sup>8</sup> Mohamad Chatah served as Ambassador to the United States from 1997 to 2000, and as Minister of Finance from 2008-09. See Pierre Atallah, "Shaṭaḥ: Majlis shuyūkh yu'ālīj hawājīs al-jamā'āt," *An-Nahar*, October 3, 2011.

### Composition of the Senate

1. How many members would the Senate have?
2. How long would Senate terms last?
3. What would be the Senate's basis of composition? (Confessional? Territorial-federal? Mixed?)
4. How would senators be chosen? (Direct or indirect election? Appointment? Some combination of election and appointment?)
5. Could the Senate be dissolved by another branch of government, and under what circumstances?
6. Would there be stipulations about the age, education, and/or professional experiences of senators?
7. Would there be quotas for women, civil society members, expatriates, or other groups?
8. Would the Senate have a leader? If so, would he or she be elected or appointed?

### Powers of the Senate

1. Could the Senate originate, amend, delay, and/or veto legislation? What kinds of majorities would be required for these operations?
2. Would there be areas of the law over which the Senate has no jurisdiction?
3. Would there be areas of the law over which the Senate has exclusive jurisdiction or a final say?
4. Would the Senate have the authority to call for referenda?
5. Could the Senate's authority be over-ruled by the lower house (via absolute or super majority vote, for example)?
6. What mechanisms would exist for the resolution of inter-cameral disputes (e.g. joint committees, joint sittings, etc.)?

### Impact on other Branches of Government and the Constitution

1. Broadly speaking, how might a Senate create opportunities for reform in the Chamber of Deputies, the executive branch, the municipalities, the electoral law, and the civil service?
2. How would the powers of the lower house and the executive branch be re-drawn, if at all, by the creation of a Senate?
3. How would the size, basis of composition, term length, and method of election for the lower house be affected, if at all, by the creation of a Senate?
4. What clauses of the Lebanese Constitution would need to be amended to introduce a Senate?
5. How would a Senate aid or impede efforts toward greater administrative decentralization?
6. How would a Senate aid or impede efforts towards the secularization of personal status laws?

### **3.1: COMPOSITION OF THE SENATE**

Most conversations about a Lebanese Senate begin and end with issue of its confessional makeup. How many seats will be given to each community? Will the chamber preserve the quotas currently in place in the Chamber of Deputies, or will each constituency have an equal number of representatives, as in the U.S. Senate? If neither of these models is adopted, then what calculus might be used to determine the sectarian balance of the chamber? Could it be tied to demographic realities, based on the results of a long-overdue census? Wouldn't this exacerbate anxieties about coexistence and power-sharing?

Important though these matters are, it is worth emphasizing that the broad issue of the chamber's composition includes other critical subjects, foremost among them the method with which senators are chosen. Second chambers around the world are composed using a diverse set of electoral frameworks. In 2012, the International Parliamentary Union listed 193 national parliaments, 115 of which were unicameral and 78 bicameral, or 60% and 40%, respectively. Of the bicameral parliaments, only 20 were composed entirely through direct election.<sup>9</sup> Other methods used include indirect election, in which senators are chosen by elected representatives (in the manner in which the Lebanese President is elected today). There are also chambers composed through appointment, in which senators are chosen by an executive figure such as a monarch or head of government, and other chambers that utilize some combination of election and appointment. In 2012, there were 21 chambers that had no elected members at all (like the British House of Lords) and 25 chambers that included senators chosen using a combination of methods. Such a diversity of compositional frameworks naturally leads to upper houses with widely differing memberships and characters.

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<sup>9</sup> See the very helpful online site of the International Parliamentary Union for up-to-date statistics on national parliaments around the world: <http://www.ipu.org>

### **3.1.1: Constituencies & District Sizes**

In the Lebanese case, there is an additional compositional challenge to contemplate, namely the identification of constituencies. As evidenced by the political discourse surrounding post-war elections up through 2005, the perceived “legitimacy” of a government representative has often been tied not just to their own particular confessional identity, but also that of their constituents. For example, Christian MPs elected on Future Movement lists in Sunni-majority districts have been accused in the past of “not counting” as true Christian representatives in Parliament, because their constituency was not primarily Christian. One could imagine a similar critique being leveled at Christian senators if they are elected on such a basis. This is partly why most proponents of Lebanese bicameralism have argued that senators should be elected by co-religionists.

Election by co-religionists makes intuitive sense if the purpose of the Senate is to provide representation to confessional communities, however, it raises the question of how such a system might work. Two general approaches suggest themselves, although there are certainly many others: 1) elections within multiple districts, which may or may not be the same as those used for the lower house; 2) elections using a single national district.

Under the first option, each district would elect a certain number of senators to confessionally-determined seats, similar to the current electoral law for the Chamber of Deputies. For example, a Mount Lebanon district might be represented by four Maronite senators, one Shiite, one Greek Orthodox, and two Druzes. Maronite residents of the district could only vote for the Maronite senators, Greek Orthodox for the Greek Orthodox, and so on. The problem with this model, of course, is that registered residents of the district who do not belong to any of the represented sects would not be eligible to vote, unlike the current model for the Chamber of

Deputies, where every citizen may cast a vote regardless of where they live and what sect they belong to. A Sunni registered in Mount Lebanon would not be able to vote for anyone in the proposed scenario above, even though the Senate would provide representation for Sunnis in other districts.

The second option—using a single national district—solves this problem by dispensing with the geographical distribution of seats. The disenfranchised Sunni voter in the previous example would have the same candidates to choose between as every other Sunni in the country, regardless of his place of registration. This would be particularly beneficial to members of the smaller sects, who, under the previous scenario, would have a greater chance of not being able to vote for a candidate because of their limited representation in the Senate. A single national district would ensure that everyone in the country could cast a vote, if not for a member of their own sect, then at least for a generic “minorities” category.<sup>10</sup>

Another possibility to consider is indirect election, which “normally involves some combination of local councillors, state legislatures or governments and/or members of the lower house of the national legislature” (Borthwick 2001). In Lebanon’s case, senators might be elected by members of municipalities, or some combination of lower house representatives, municipal council members, religious leaders, former senators, etc. In such a case, one would have to revisit the question of whether senators could only be elected by co-religionists, and if so, what district size and electoral system would have to be put in place to achieve this.

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<sup>10</sup> Even this single national district option runs into trouble, however, when we consider the growing number of people in Lebanon who are removing their confessional identity from the voter registration rolls. Who would such individuals be eligible to vote for in the Senate? At various points in recent Lebanese history, the idea of a “19<sup>th</sup> sect” has been mooted, namely the secular sect, which could be afforded representation in government just like the other communities. Certainly one could envision such a possibility in the Senate, along with quotas for women, disabled individuals, members of professional organizations, youth, expatriates, and others.

### **3.1.2: Election Methods & Political Balance**

Part of determining how the Senate is chosen is related to the impact that different methods of composition would have on the political balance in the chamber. As Russell (2001a) has noted: “In countries such as Spain and Italy, where the political balance in the second chamber tends to mirror that in the first, a change which has been agreed by the lower house will not generally hit problems in the upper house. However, in others, such as Germany and France, political tensions between the chambers can require careful negotiation of constitutional changes, and even result in total blockage of government proposals.”<sup>11</sup>

Given the ways in which political affiliations align with sectarian identity in Lebanon, it is reasonable to assume that the major political parties will seek to dominate the shares of their sect in the Senate, and will be successful in doing so if a majoritarian “first-past-the-post” law is used to elect senators. If proportional representation were to be adopted for senatorial elections as is the case in Australia for example, we might see a chamber with a rather different political balance than that of the lower house. In that case, the chamber may become a tool for parties with limited representation in the lower house to punch above their weight and influence important legislation. Because of the vulnerability of the current political system to legislative blockages, the election method of the Senate will have to be considered very carefully.

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<sup>11</sup> See also Russell (2001a): “In Italy and Spain, for example, the majority of upper house members are elected on the same day as the lower house, using a system which tends to advantage the parties that go on to form the government. Similarly in Ireland the Taoiseach’s nominees are used to guarantee the government a majority in the Seanad. This creates a very different political dynamic to that in Australia, for example, where the proportional system in the upper house tends to give no party overall control. In France the complex design of the electoral college and voting system for the Sénat gives a permanent advantage to parties of the centre-right. The Socialists have never had a majority in the upper house, and the parties supporting the 1997 government in the lower house held only 29 per cent of seats in the Sénat in 1999.” (63)

### **3.1.3: A Few Compositional Models for a Lebanese Upper Chamber**

Certainly the most widely accepted framework for a future Lebanese Senate is one that has a confessional basis of composition, as proposed in the Ta'if Accord. This is generally what Lebanese laypeople and experts think when they hear the word “Senate”. On the other hand, there is a potentially endless array of formulas dictating the Senate’s confessional balance. Should each community be given the same numbers of representatives? Should the composition be dictated by the current demographic balance in the country? Should it be split equally between Christians and Muslims, or between Christians, Sunnis, and Shiites? Each proposal has supporters and detractors. In what follows, I briefly consider two models: (A) The parity model, which distributes an equal number of seats to each one of Lebanon’s official sects regardless of its demographic weight; (B) The Chamber of Deputies model, which uses the formula adopted at Ta’if for the confessional breakdown of the current Parliament as a guide for the Senate’s composition.

#### **Model A: Parity Between All Sects**

This model would accord each of Lebanon’s 18 officially-recognized sects the same number of seats, just as each of the fifty states in the United States has the same number of representatives in the US Senate. Despite its formal elegance, it is practically impossible to imagine such a formula being adopted, as some of the communities are so small that they do not even have seats in the current parliament. According to the 2010 voter registration data, the unrepresented “minorities” in the electorate (comprising Syriac Orthodox, Syriac Catholics, Nestorians, Chaldean Catholics, Roman Catholics, Copts, Jews, and Ismailis) numbered only 48,347 (or 1.5%) of an electorate comprising 3,310,806 voters. If one were to award each official



sect an equal number of senators, the smallest nine sects (i.e. the eight listed above plus the Protestant sect) would control half the seats in the senate despite representing only 2% of the electorate. This seems extreme even in comparison with the United States, where the 25 least populous states actually comprise about 16% of the total US population. This is to say nothing of the fact that due to the much larger number of Christian sects, Muslim representation in the Senate would be less than 28% despite representing over 60% of the electorate. A breakdown of the proposed chamber's confessional makeup is presented below, with a hypothetical two seats per sect (see Table 1).

**Table 1: Parity Model**

<i>Current # of Parliament Seats</i>	<i>Sect</i>	<i># of Senate Seats</i>
27	Sunni	2
27	Shiite	2
8	Druze	2
2	Alawite	2
34	Maronite	2
14	Greek Orthodox	2
8	Greek Catholic	2
5	Armenian Orthodox	2
1	Armenian Catholic	2
1	Protestant	2
1	Syriac Orthodox	2
	Syriac Catholic	2
	Nestorian	2
	Chaldean Catholic	2
	Roman Catholic	2
	Coptic	2
	Ismaili	2
	Jewish	2

Of course, the objective of a parity model is to set aside demographics and treat the constituent elements of the chamber—in this case, confessional communities—on the same basis. To return to the U.S. example, Wyoming's 2011 population was roughly 1.5% of

California's (568,158 and 37,691,912, respectively) but it has always had the same number of senators. Similarly, one could argue that if the purpose of a Lebanese Senate is to provide representation for all of the country's "spiritual families" on an equal basis, then something like this model could be debated.

### **Model B: Quotas Based on Ta'if Formula for Chamber of Deputies**

In the course of my conversations about bicameralism, several individuals ruefully remarked to me that what Lebanon really needs is a lower house, not an upper house. The current Chamber of Deputies with its sectarian quotas is already a chamber that provides representation to Lebanon's various communities, and does so with only the loosest observation of the country's demographic balances. In view of this, various proponents of bicameralism have suggested that rather than trying to re-invent the wheel with an entirely new formula, one should base the Senate's composition on the parliamentary scheme adopted at Ta'if, a chamber divided equally between Muslims and Christians with proportional breakdowns thereafter. The Senate could be smaller than the Chamber of Deputies (perhaps 64 seats or even 32), and term lengths might also be different (perhaps five or six years rather than the lower house's current four-year term), but the vision of Lebanon as a country shared equally by Christians and Muslims, as formulated by Ta'if, would be embodied in the Senate.

To the extent that the average person has spent any time thinking about how to compose a Lebanese Senate, this formula is probably the most widely supported and would likely have the best chance of being adopted. The primary virtue of such a model, of course, is its familiarity. The misalignment of confessional representation in the current Chamber of Deputies with the demographic balance in the country is not the subject of much acrimonious debate in Lebanon

today. People have mostly accepted the 50-50 split (*munāṣafa*) in government as a fait accompli and even a symbol of the country's social contract between Christians and Muslims. As Mohamad Chatah put it to me: "We should keep *munāṣafa* [in the Senate] because on a practical level, we don't want to get into that debate. We should continue to have it for its ability to protect the basics of the national pact of coexistence: Muslims and Christians should have an equal ability to veto changes to that pact or to take the nation in a direction they don't want."<sup>12</sup>

The table below contains three possible distributions for a Senate based on the Ta'if formula with 32, 48, and 64 members. These distributions are obviously just suggestions; one could tweak the internal proportions among sects in different ways. My guiding principles have been to maintain a 50-50 split among Christians and Muslims and to retain at least one seat for minorities that do not have dedicated representation.

Another alternative could be to maintain the 50-50 split between Muslims and Christians without specifying the internal distributions among sects, and allowing Christians to vote only for Christians, and Muslims for Muslims. The attraction of such a system would be that it would give more citizens the right to vote for more candidates than a model with specific quotas for every sect. For example, in the hypothetical Mount Lebanon district described earlier (with four Maronite senators, one Shiite, one Greek Orthodox, and two Druzes), the Sunni voter would not have the right to vote for anyone if strict co-religionist voting were adopted. Under this looser interpretation of Ta'if, a Sunni in Mount Lebanon would be able to cast a vote for three Muslim senators (not necessarily Shiite or Druze) in this hypothetical election.

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<sup>12</sup> Interview with Mohamad Chatah, November 25, 2011 (Bayt al-Wasat, Beirut). For Chatah, the fundamental difference between the Senate and the current Chamber of Deputies would be the election of senators by co-religionists.

**Table 2: Ta'if Model (*munāṣafa*)**

Sect	# voters (2010) <sup>13</sup>	% voters	Current Parliament Seats	Ta'if 32	Ta'if 48	Ta'if 64
Sunni	907,137	27.4%	27	7	10	14
Shiite	897,969	27.1%	27	7	10	14
Druze	189,754	5.7%	8	2	3	4
Alawite	27,984	0.8%	2	0	1	0
<b>Muslim</b>	<b>2,022,844</b>	<b>61.1%</b>	<b>64</b>	<b>16</b>	<b>24</b>	<b>32</b>
Maronite	707,573	21.4%	34	9	13	17
Greek Orthodox	245,095	7.4%	14	3	5	7
Greek Catholic (Melkite)	158,826	4.8%	8	2	3	4
Armenian Orthodox (Gregorian)	89,533	2.7%	5	1	2	3
Armenian Catholic	20,789	0.6%	1	0	0	0
Protestants	17,799	0.5%	1	0	0	0
Minorities/others comprising the sects below:			1	1	1	1
Syriac Orthodox (Jacobite)			0	0	0	0
Syriac Catholic			0	0	0	0
Nestorian (Assyrian Church of the East)			0	0	0	0
Chaldean Catholic	48347	1.5%	0	0	0	0
Roman Catholic			0	0	0	0
Copts			0	0	0	0
Jews			0	0	0	0
Isma'ili (Seveners)			0	0	0	0
<b>Christian/Other</b>	<b>1,287,962</b>	<b>38.9%</b>	<b>64</b>	<b>16</b>	<b>24</b>	<b>32</b>
<b>TOTAL</b>	<b>3,310,806</b>	<b>100%</b>	<b>128</b>	<b>32</b>	<b>48</b>	<b>64</b>

<sup>13</sup> Voter registration is overseen by the Personal Status Directorate of the Ministry of Interior and Municipalities. The new figures (reflecting births, marriages, deaths, etc.) are published each year and made available on the Ministry of Interior's website: <http://www.moim.gov.lb>.

### **Model C: A Territorial Basis of Composition**

Confessional identity is not the only compositional basis that has been proposed for a Lebanese Senate. Proponents of administrative decentralization have suggested an upper chamber composed on the more common territorial basis, whereby senators would represent different regional units of a newly decentralized, and potentially federal, Lebanon. It is important to note that a territorial basis of composition for an upper house need not require the adoption of a federalist system. While every federal parliament at the turn of the 21<sup>st</sup> century was bicameral, 70% of bicameral governments were part of unitary systems. It is the generally the case, however, that the strongest upper houses tend to exist in federal systems (such as Switzerland, the US, Australia, and Germany) while “among unitary systems, only the Italian senate is accorded comparable legislative power” (Patterson and Mughan, 2001).

Tying bicameralism to federalism is likely to be an unproductive strategy in Lebanon, at least for the time being, given the contentiousness surrounding the latter issue. If the unitary republic is maintained, what might a territorially-based Senate look like? Amin Gemayel proposed the following sketch in his 1992 essay, “Rebuilding Lebanon”:

“The upper house, the Senate, would be elected by universal suffrage in the regions, with senators representing different regional units. The Senate would give each motion passed by the lower house a second reading, reflect on issues, and safeguard the political balance. It would consider questions bearing on the future of the country and would pronounce on all questions relating to laws on public freedom, laws modifying personal status, electoral laws, economic planning, international treaties and conventions, and it would declare a state of emergency, general mobilization, and war. The Senate's agreement would be necessary to nominate senior civil servants. Senators would be elected for six years and one third of them would be elected every two years.” (Gemayel 1992)

In this model, the upper house does not represent confessional communities but rather sub-national territorial units. These units need not have the autonomy of states or provinces in a

federal system, but could enjoy significantly more independence in setting their local agenda, spending on municipal projects, etc. than they do today. Senators would be elected by residents of the regions, but without confessional distributions.

The obvious disadvantage of such a model is that it would not fulfill the central purpose envisioned by the Ta'if Accord and by most Lebanese proponents of bicameralism, namely to guarantee representation for Lebanon's confessional communities in the absence of parliamentary quotas in the lower house. This is why the territorial model is less likely to appeal to minority groups who feel invested in the current consociational system, unless it is accompanied by decentralization legislation that puts the country on the path to de facto federalism.

### **Model D: A Mixed House**

Territory is the most common basis of composition for second chambers around the world, but one encounters other compositional principles as well. In Ireland, the Seanad contains representatives from five vocational panels, members of the two main universities, and various executive appointees. In Belgium, the purpose of the upper house is to represent linguistic communities. In Great Britain, the pre-1999 form of the House of Lords "reflected, however dimly, the idea, once much more common, that parliamentary chambers represented estates of the realm" (Borthwick 2001). In Botswana, the House of Chiefs represents various traditional ethnic groups, and in Burkina Faso's upper house, there are representatives from local councils, civil society organizations, and traditional leaders.

Similarly, Lebanon's Senate need not be a purely confessional or territorial chamber. It could bring together a mixed assortment of directly and indirectly elected and appointed

representatives of confessional communities, regional units, and other constituents such as workers' associations and labor unions, religious authorities, Lebanese expatriates, refugees, civil society members, and so forth. The options are many; a comparative study of other upper houses around the world is a necessary precursor to proposing a model along these lines.

### **3.2: POWERS OF THE SENATE**

The Abbé de Sieyès once famously remarked that “if a second chamber dissents from the first it is mischievous; if it agrees, it is superfluous” (Shell 2001). This maxim illustrates the difficulties in designing an upper chamber that fulfills a meaningful and productive role in a nation's politics, particularly in a country like Lebanon where legislation is notoriously prone to paralysis and blockages. Article 22 of the Lebanese Constitution proposes that the future Senate's powers would be confined to issues of crucial, indeed fateful importance (*qaḍāya maṣīriyya*). Nowhere are these issues enumerated, however the Constitution refers elsewhere to a set of similarly crucial matters (termed “basic national issues,” or *mawāḍi' asāsiyya*) in Article 65.5:

The Council of Ministers meets in a locale specifically set aside for it, and the President chairs its meetings when he attends. The legal quorum for a Council meeting is a majority of two thirds of its members. It makes its decisions by consensus. If that is not possible, it makes its decisions by vote of the majority of attending members. Basic national issues (*mawāḍi' asāsiyya*) require the approval of two thirds of the members of the Council named in the Decree forming the Cabinet. Basic national issues are considered the following: The amendment of the constitution, the declaration of a state of emergency and its termination, war and peace, general mobilization, international agreements and treaties, the annual government budget, comprehensive and long-term development projects, the appointment of Grade One government employees and their equivalents, the review of the administrative map, the dissolution of the Chamber of Deputies, electoral laws, nationality laws, personal status laws, and the dismissal of Ministers.

The basic national issues listed by the Constitution are as good a starting point as any in a discussion about the Senate's jurisdiction, but some would argue that this list is far too broad and risks bogging down legislation with an unnecessary layer of bureaucracy and deal-making. The spirit of Ta'if would seem to suggest that the Senate's purview should be limited to confessional issues such as freedom of religion and personal status laws. The trouble is, of course, that much legislation in Lebanon can be (and often is) viewed through a confessional lens. Whether the subject is educational reform, agricultural development, or overhauling the energy sector, political wrangling often takes on a sectarian dimension.<sup>14</sup>

Beyond the issue of jurisdiction, there is the question of precisely how the Senate would exercise its powers. Here, again, there are many options to weigh. Some upper houses have powers that put them on an equal footing with the lower house (e.g. the United States, Switzerland, Italy, Mexico, Nigeria, Liberia, and Romania). Others are co-equal with restrictions (e.g. Australia, Belgium, India, Malaysia, South Africa). Countries like Germany and Brazil have upper houses that can exercise vetoes but also have limited exclusive powers over regional legislation. Still others can delay or amend legislation, and act in an advisory capacity (Patterson and Mughan 2001).<sup>15</sup>

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<sup>14</sup> Samy Gemayel (son of former President Amin Gemayel, and a current MP) confirmed to me that he saw education as a prime example of a confessional issue. Mohamad Chatah suggested that identifying a confessional issue is a bit like some people's definition of pornography: "You know it when you see it." The senate's jurisdiction would cover things like education, foreign treaties, security pacts, presidential elections, and personal status laws, but not economic legislation or laws related to infrastructural development. The senate could play a supervisory role in such legislation, however, ensuring that there are no flagrant sectarian abuses taking place in government spending, or in the actions of a particular ministry or agency.

<sup>15</sup> "Amending activity can be particularly crucial for upper houses. The US Senate is a hotbed of amending activity – 'senators are free to offer as many amendments as they wish, and amending marathons are frequent'. In Germany, the upper house scrutinises government bills before they are introduced in the Bundestag, and upper house amendments may be incorporated into these bills prior to their consideration by the lower house. The Australian Senate has made liberal use of its amending power; during a session of the mid-1990s, '157 bills attracted 1,812 successful Senate amendments at an average of 11 amendments per bill'. Similarly, the French Sénat is heavily involved in amending activity, and 'the National Assembly accepts 50 to 85 percent of the amendments adopted by the Senate'." (Patterson & Mughan 2001, 49)



Virtually everyone interviewed for this project affirmed that a Senate’s representative function should not come at the expense of legislative efficiency. Indeed, it was suggested by many that a key function of the Senate should be to allow for a more functional executive branch and a more efficient lower house. By sequestering divisive issues such as foreign policy stances and electoral reform from the regular business of government, so the theory goes, the lower house would be free to propose and pass the legislation necessary to keep the trains on time. One political operative described the central problem of governance to me in the following way:

The problem is that the entire business of government today can be held up by a single issue, like the false witnesses.<sup>16</sup> Everything else—the budget, the electricity file, Sukleen payments, administrative appointments, etc.—can be frozen by disagreement on this one issue... Horsetrading has reached absurd levels, to the extent that in order to appoint a security guard in Akkar, we have to agree on the UN Tribunal funding.”<sup>17</sup>

It may be more productive, in fact, to address the question of the senate’s jurisdiction by identifying those areas of the law over which it could *not* exercise its veto. Alternatively, a system might be put in place whereby the lower house could vote down the objections to legislation put forward by the upper house via a super-majority. In certain cases, as Russell (2012) points out, this can lead to difficulties if the government controls less than the necessary seats to override an upper house veto, as is the case in Japan in recent years. Other mechanisms include delay functions (similar to that exercised by the Lebanese President), which can buy time to allow for public debate on contentious bills, but in the end amount to a fairly weak bulwark against a committed lower house. To resolve inter-cameral disputes, some governments utilize joint committees and/or joint sittings of the legislature. As with all of the issues discussed thus

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<sup>16</sup> The “false witnesses” issue relates to the accusation made by certain political parties in Lebanon that the UN investigation into the assassination of former Prime Minister Rafiq Hariri was compromised by false testimonies. These parties (notably, the Free Patriotic Movement, Hizbullah, and Amal) insisted that the government launch its own investigation into the affair, and threatened to block all cabinet-level votes until the matter was resolved.

<sup>17</sup> Interview with an anonymous political advisor and analyst, November 23, 2011 (Beirut).

far, comparative study of bicameral systems around the world can only enrich the search for solutions in Lebanon.

In a way, however, any discussion of the Senate's role in legislation is shortsighted without considering necessary changes to the other institutions and procedures of governance in Lebanon. To put it more bluntly, what would be the purpose of creating an upper house with obstructing capabilities if the lower house is not empowered to legislate effectively and efficiently? As it stands, the Chamber of Deputies is a deeply unrepresentative institution with very limited powers of its own. For a Senate to exercise a useful advisory, delaying, amending, or vetoing function in the politics of Lebanon, its partners in legislation must have their own prerogatives revised and expanded. This issue will be briefly addressed in the next section.

### **3.3: IMPACT OF A SENATE ON OTHER BRANCHES OF GOVERNMENT**

Establishing a Senate is not as cut and dry as creating a new chamber and adding it to the existing political structure. Nor is it enough simply to abolish confessional quotas in the Chamber of Deputies and transfer them to the Senate. What we are contemplating is an institutional change of enormous magnitude that has the potential to impact all of the existing institutions and procedures of governance in Lebanon. Such a shift should not be seen solely through the prism of abolishing confessionalism; just as important as the protection of minority rights in the upper house is the expression of political majorities in the lower house, the reform of checks and balances between the executive and legislative branches, the empowerment of the judiciary and the constitutional court, and so forth. In a way, therefore, the discussion about bicameralism is really a discussion about reimagining the Lebanese state from the ground up. As one civil society member put it to me:

“It is almost necessary to have a clear idea of what reforms are required within the Chamber of Deputies, the executive branch, the municipalities, the electoral law, and the civil service as a whole, before one sets out to establish a second legislative body. This is because the powers vested in the senate are contingent upon what the rest of the governmental structure looks like. Unless one is prepared to address the entire picture, one runs the risk of just creating a senate for its own sake.”<sup>18</sup>

At the very least, the establishment of a Senate would create an opportunity to rectify the inequalities of suffrage engendered by almost any electoral law adopted for the current Chamber of Deputies. Without a confessional quota system in place for the lower house, there would no longer be any justification for the wildly different ratios of voters-to-representatives in Lebanon’s electoral districts: each member of the lower house would ideally represent a roughly equal number of constituents. Furthermore, without the constraints of the quota system, it may make sense to revisit the size of the lower house and change the number and geographical distribution of representatives based on changing patterns of residence and population flows. Certainly the arcane system of tying voter registration to traditional family villages rather than places of residence could be changed, particularly if the Senate is elected on the basis of a single national district. Otherwise, the old system could be kept in place only for upper house elections, but citizens should still be permitted to change their place of registration more readily.

Turning to the executive branch, the addition of a Senate might have a major impact upon the mechanism with which governments are formed in Lebanon and allowed to function. In the recent past, political leaders have made regular recourse to the argument that Lebanon cannot be ruled by simple majorities because of its diverse sectarian make-up. The Constitutional requirement stipulating that “there is no constitutional legitimacy for any authority which contradicts the Pact of Communal Coexistence,” has been interpreted to mean not just that the

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<sup>18</sup> Interview with an anonymous longtime observer of Lebanese politics and civil society member, April 16, 2009 (Beirut).

sectarian makeup of the Council of Ministers must follow the same confessional logic as that of the Chamber of Deputies, but that ministers must be drawn from the political parties representing majorities of voters from each sect. As a result, what we have seen over the past several years is a deeply dysfunctional executive authority, hobbled by the abstract requirements of consensual decision-making and confessional representation. As one former minister put it to me:

The basic tools of democracy are not working today. All of the links between the people, the members of Parliament, the ministers, and their decisions are broken in Lebanon. Cabinets are formed in such a way that is not related to the outcome of the parliamentary elections, and cabinets can't take decisions even when they are eventually formed.

In other words, the main attractions of a parliamentary system—i.e., the strong ties between the executive and legislative branches that result in more efficient legislation—are all but nullified in the current Lebanese model because the country's chief executive must obey the two incompatible principles of majoritarianism and confessionalism. On the one hand, the Constitution grants an executive mandate to any prime ministerial candidate who gains the confidence of the Chamber of Deputies via a majority vote. On the other hand, that mandate is severely compromised by the confessional “filters” that distort the composition of both the Chamber of Deputies and the cabinet itself. In practice, confessional “coexistence” amounts to giving almost every confessional leader the ability to play spoiler by impeding legislation. This is a formula for perpetual stalemate.

Under the best circumstances, a Senate could create the space for a truly representative lower house that forms a government on the basis of political majorities, thereby removing the constant obstacles engendered by the current system. On issues of a constitutional nature—what Meg Russell (2001a) has called “organic bills”—and other matters of major importance, the

cabinet could be prevented from acting pending Senate approval. However, the main business of government would proceed unimpeded.

All of these issues and many more must be brought into the conversation about bicameralism in Lebanon. For this reason, many argue, the Senate is an unworkable solution because it depends on too many preliminary steps in order to have a chance to be effective at achieving its stated goal. I consider some of these arguments below.

#### **4. MINORITY REPORT: WHY BICAMERALISM MAY NOT BE A MODEL FOR LEBANON**

There are many reasons to oppose a move from unicameralism to bicameralism in a country like Lebanon. Most concretely, there is a question of cost. Legislatures in general are expensive, when one takes into account salaries, expenses, and pensions for the representatives, security requirements, budgets for elections, support staff, and so forth. The addition of a second chamber would have to be weighed carefully in light of the many millions of dollars it would cost to maintain per year. Furthermore, Lebanon would be bucking the trend in certain ways by creating a senate. While the number of bicameral governments is growing, most countries that choose to establish second chambers typically have larger populations or land areas, and the upper house is generally composed on a territorial basis. Lebanon is a tiny country with a small population. Its senate would almost certainly be formed on a confessional basis, a model which has no obvious precedents to build on, and would therefore be highly experimental.

Another point to take into account is that the flipside of bicameral governments' tendency to pass legislation with higher degrees of consensus is that second chambers have a way of producing legislative gridlock. Sometimes two decisions are in fact better than one (Levmore 1992), but in Lebanon's case we already have a status quo characterized by considerable

stagnation at every level of government. As of the publication of this paper, the number of items on the Cabinet agenda totaled 45 and it has been as high as 85 in recent months. If the net result of its deliberations is further paralysis on all legislative fronts, the Senate will be regarded as a failure.

Second chambers are also notoriously difficult to reform. Once a Lebanese senate has been created and vested with the authority to represent the confessional communities, it will be almost impossible to restructure over time or perhaps to do away with altogether.<sup>19</sup> Even in mature democracies, upper chambers are often regarded as superfluous and ineffective while being resistant to change. The British House of Lords—which, until 1999, had gone almost a century without any substantive changes to its structure or powers—is a classic example of an upper house viewed as an undemocratic archaism. Other notable examples include the senates of Ireland, Italy, and Canada. As Meg Russell and Mark Sandford (2002) have argued:

These examples suggest that the design of second chambers is very difficult to get right. They may be criticised for having too little power, or on the other hand for having too much; for being too democratic, or not democratic enough; for being sidelined and irrelevant, or for being a carbon copy of the lower house. When considering why upper house reform has not happened, one of the first answers has to be a lack of clarity over the purpose of the upper house...

Finally, it may be argued that institutional reform is an essentially myopic approach to Lebanon's political problems that misses the forest for the trees. Given such factors as the prevalence of confessionally-flavored patronage networks (Cammett and Issar 2010, Cammett 2011, Chen and Cammett 2012), the weakness of the central state, the persistence of foreign intervention, the cults of personality surrounding sectarian leaders all amounting to what has

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<sup>19</sup> Some have proposed that a Senate could gradually have its powers and prerogatives stripped over time, with the chamber being dismantled altogether when it is seen as superfluous. This is a worthy idea in theory, but perhaps not in practice, given the inertia of institutional structures.

been called a “confessional oligarchy” (Ottaway and Choucair-Vizoso 2008), it seems naïve to suggest that any kind of top-down institutional changes would have any meaningful effect on the political ecosystem. As one civil society leader put it to me:

Creating a Senate at any point in the near future would be the worst possible solution for Lebanon because we’d basically just be transferring our problems to a whole new institution. It would be stillborn and would solve nothing. It would only make matters worse by creating the worst problems of spoils-sharing (*muḥāṣṣaṣa*). A Senate should be the culmination of a natural process that will take a very long time. What is essential to work on is building democratic development in which a real political life emerges. Right now, Lebanon’s government is a complete joke. We have a Parliament but it’s just a building. We have no political infrastructure: no effective lobbies, no interest groups, no real mechanisms to monitor and hold the government to accountability. How can you create a bicameral system on top of this when there is not even a sense of true citizenship in this country?<sup>20</sup>

Echoing these sentiments, an MP with the Free Patriotic Movement suggested to me that the Senate could not be treated as “a spare part” that one adds to a government just to see if it works. The country’s political culture, he proposed, was “like a polluted glass of water; you cannot clean it by adding something to it. You have to remove the impurities.”<sup>21</sup>

There may in fact be other less costly, more direct methods to help abolish political confessionalism in Lebanon without the risks that may accompany the establishment of a new legislative body. A reformed Constitutional Court empowered to interpret the Constitution and to strike down legislation in much the same way that the U.S. Supreme Court does is one possibility. Another option would be to keep a unicameral system that provides some limited representation for confessional communities in Parliament while devoting most seats to popularly elected representatives on the basis of equal suffrage and no confessional quotas. Countries like Slovenia and Uganda may be useful comparative examples to study in this regard.

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<sup>20</sup> Interview on November 23, 2011 (Beirut).

<sup>21</sup> Interview on November 24, 2011 (Beirut).

## 5. CONCLUSION

Over the past seven years, with no Syrian hegemon to impose “stability” on a deeply dysfunctional political system, Lebanon has careened from one crisis to another. Almost all of these crises have been rooted in a fundamental political problem: how to distribute power fairly in a consociational system without sacrificing central authority. Unfortunately, the homespun efforts by Lebanese leaders to craft improvised solutions—by adducing contradictory constitutional proof-texts and historical precedents—have failed, and so Lebanon has found itself turning, once again, to foreign powers to broker short-term stability.

The aim of this paper has been to explore some of the implications of Ta’if’s bicameral proposal. In doing so, I hope to have shed some light on the complex range of options entailed in such a project of institutional reform. I also hope to have suggested the considerable risks involved and a sense that there is no guarantee that such a move would solve any of Lebanon’s governance problems. Creating a senate could prove to be a disastrous policy for Lebanon, one which would paralyze its government, adding new layers of costly bureaucracy and creating an additional arena for corrupt and reactionary politics. On the other hand, it could potentially free the government from its legislative gridlock, ushering in the possibility of issue-based politics and electoral laws that permit the emergence of liberal voices. Everything depends on the way the second chamber is designed, its constitutional powers, and the method of its election or appointment. This requires greater study and consultation before a viable plan for reform can be developed.



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