

The German Contribution to Constitutional Dialogue and Development in Lebanon since 1980

Legal acculturation case study: 1926-2020

Antoine Messarra¹

The German contribution to research on the Lebanese constitutional regime, by its profundity and authenticity, is as essential as that of France as a mandatory authority during the drafting of the Constitution of 1926 and before the Independence of November 22, 1943.

French authors of the past have always considered the religious and cultural pluralism. On the other hand, subsequent French authors are influenced by the conventional and Jacobin culture of nation-building.

When American or Americanized authors look at Lebanon, they produce works which deny the viability of any pluralist national entity².

Arab authors are most often victims of cultural alienation from the Arab heritage of legal pluralism. Many of them are now waking up to ideologies of radicalism and exclusion³.

Israeli authors fully perceive the incompatibility between the Lebanese constitutional structure and the Zionist ideology of identity space. One calls Lebanon a "historical and geographic error"⁴, what contradicts the resistance of Lebanon and its return to unity despite demarcations and multinational wars in 1975-1990.

On the other hand, German authors, thanks to comparative approaches and sociological perspectives are better able to grasp the issue of managing religious and cultural pluralism⁵. My friendship and relationship with Theodor Hanf since 1960 have been the occasion for authentic, innovative and comparative works⁶. Several seminars have been organized within the framework of the Arnold Bergstraesser Institut and the Euro-Arab Research Group-EASRG in partnership with the Konrad Adenauer Foundation especially on the 21-24 November 1981. After several years of field research, Theodor Hanf published his book⁷. The Deutsches Institut für Internationale Pädagogische Forschung in Frankfurt has also published a number of works.⁸

1- Assessment of the German contribution to Lebanese constitutional research

The most important conference is the one organized in Freiburg im Breisgau (Germany) on 20-25 March 1983 which gathered researchers from several countries whose regimes are considered sui generis in the classification of political regimes. I published a summary of the conference under the title: "Unique cases come together"⁹. This conference was followed by the international conference at the Lebanese University in partnership with the Goethe Institute in Beirut and the participation of researchers from Germany, the United States and South Africa on pluralist parliamentary regimes, mainly Theodor Hanf, Heribert Adam, Arend Lijphart, on 17-21 December 1984¹⁰.

Among the Lebanese-German research during the years of the wars in Lebanon, in partnership with the Konrad Adenauer Foundation, we must mention the research at the Holy Spirit University of Kaslik in 1982-1984¹¹ and the Association of Makassed¹². One of the fruits of this work is also my thesis defense of the 3rd cycle at the University of Human Sciences of Strasbourg in 1974, then my thesis defense at the same University in 1982 under the supervision of Julien Freund, a great German speaker and specialist of Max Weber along with Toufic Fahd¹³.

During the years of war in Lebanon in 1975-1990, meetings were organized thanks to the support of the Konrad Adenauer Foundation and within the framework of the Center for Study and Research on the Christian Orient-CEDROC.

¹ Prof. Antoine Messarra is Former member of the Lebanese Constitutional Council, 2009 -2019 and Professor at the UNESCO Chair in Comparative Studies of Religions, Mediation, and Dialogue, Saint-Joseph University.

Their work and other investigations show that the Taif Agreement is fully an endogenous Lebanese production with the exception of the clause relating to the redeployment of the Syrian armed forces in Lebanon¹⁴.

After the Tripartite Agreement between three militias in Lebanon and the difficulties of pacification, a German-Vatican-European mediation was undertaken by the minister-president of Bavaria, Franz Josef Strauss, with two collaborators Dieter Holzer and Heinrich Schoeller, for the elaboration of a constitutional document, from 9/24 to 10/5/1986. The Lebanese press spoke at that time of a "Lebanese-German Committee". The examination of this document continued within the framework of this diplomatic mediation from September 1986 to the end of 1987¹⁵.

I was the mediator in this operation, which allowed me to deepen the difficult Lebanese problematic of the reconciliation between the sharing of power and the separation of powers. The constituents of Taif, thanks to constitutional imagination and wisdom, placed the Head of State above the *salâhiyyât* (attributions) and power relations as supreme magistrate who "looks after the respect of the Constitution" (art. 49 of the Constitution), with initiatives based on this role. This implies a radical change in the Lebanese imagination about the Presidency of the Republic¹⁶.

The cooperation between the Lebanese Foundation for Permanent Civil Peace and the Konrad Adenauer Foundation dates back to 1980. Here we note the pioneering role of Hubert Dobers. More than twenty books have been published in cooperation with the Konrad Adenauer Foundation, the fruits of this cooperation, were in particular on democratic construction, electoral geography, social policies, the construction of collective and shared memory. A conference was also organized as part of the Master in Islamic-Christian Relations at Saint Joseph University regarding the democratic management of religious and cultural pluralism¹⁷.

2- Problem of constitutional acculturation in Lebanon

By acculturation we mean here the adequacy between acquired knowledge and mental structures. As for constitutional acculturation, it means the match between the learned constitutional science and the specificity of the endogenous Lebanese national experience. Lack of adequacy leads to cultural alienation.

Constitutional acculturation in Lebanon poses a number of problems relating to the nature of knowledge and praxis in public life. I report two cases in order to clarify. The first case concerns the course I was given when I was in the 1st year of law at the Faculty of Law at Saint Joseph University in 1958-1959. I scored 18/20 on the written exam at the end of the year in Constitutional Law. However, I said to myself: what I learned is useful, but unrelated to the particularities of Lebanon! From that age I launched myself in investigations and comparative research which go beyond known and conventional cases.

The second case concerns my teaching in a law school (other than Lebanese University and Saint Joseph University) where, in addition to general constitutional norms, I wanted to devote two sessions to Articles 9 and 95, based on my comparative research on positive discrimination or quota. I explained the cases of application, the purpose and the standards of application. Students then reported to me the remarks of the Director of the Faculty, who was a well-known lawyer and magistrate: "Teach them constitutional law"! Is not article 95 of the Lebanese Constitution a constitutional provision? Academics and intellectuals without experience throw away articles 9, 10, 95 of the Constitution in the trash bin of « confessionalism » without looking at diagnosis and therapy.

When reading works on the Lebanese constitutional regime, the classification seems like a fiction! Parliamentary, presidential, assembly? It used to be said *sui generis*, which means it's a one-time mystery or a strange, unelucidated thing!¹⁸

When, from the 1970s, comparative work was undertaken, especially with regard to nation-building by *consociatio*, or pact, it was then the conceptual mess consisting in considering that these regimes are outlaw! Even suffering from stomach pain, there are many medical standards, a therapeutic diet! Worse than the mess, it was the instrumentalization of the best-developed theories in the history of mankind: pact, consensus, participation, understanding...! Everything is flouted for the establishment of a sectarian hegemony.

I then had to, after laborious and normative research, spend almost all the rest of my career cleaning up programmed minds and denouncing impostures! The Pact of 1943 and the contractual nations are oddities in the dominant Jacobin culture! However, the Pacts are a normative category in constitutional law and in comparative historiography. Nation-building by a center that forcibly extends to the entire periphery is not the exclusive model of nation-building¹⁹. In addition to the organization of seminars in Lebanon to remedy the complex of intellectuals in relation to the constitutional structure of Lebanon, works have been translated into the Arabic language²⁰.

Is the alienation in our constitutional culture due to the French Mandate? The French authors of the time of the Mandate understood well the nature of the Lebanese constitutional regime, with experimental wisdom and realism, including Pierre Rondot (06/01/1904 – 04/06/2000) in his writings on the Lebanese constitutional regime. He was a member of the jury for my 3rd cycle doctoral thesis (1974) and my doctoral thesis (1982) at the University of Human Sciences in Strasbourg²¹.

My first writings about the Lebanese constitutional regime, which date back to the years 1972-1975, raised the irony of some authors, while Edmond Rabbath and Antoine Azar approached them with curiosity and interest.

My doctoral thesis in 1982 on the classification of the Lebanese constitutional regime, published in the Lebanese University publications, provoked long debates and comments. There are those who said that the approach is imported, while it is the other approaches that should be considered imported, as Lebanon was seen, along with other countries, as a founding case. Subsequently, authors and politicians interpreted pluralism, depending on the economic situation and the positioning in conjunctural political life, to justify the blocking of institutions under the pretext of *tawâfug* (consensus), while the whole approach proposes the rationalized democratic management of pluralism for the safeguard of unity and governability.

After 1990, the occupying powers and internal collaborators resorted to the manipulation of the deepest constitutional notions in order to provoke institutional emptiness or the blockage and management of the regime. However, pluralist parliamentary regimes are governed by all the standards of classical parliamentarism. Articles 9, 10, 65, 95 of the Constitution are governed by constitutional norms.

It is explicitly stated in the Constitution that the Lebanese constitutional regime is parliamentary and therefore governed by the norms of separation of powers, ministerial solidarity and the universal voting law, with the adoption of a qualified majority in limited cases as articulated in art. 65. Pluralist parliamentary systems combine both competitive and cooperative processes. The methodology of diagnosis and therapy was continued with comparative research on Switzerland and Lebanon²².

Lebanese and foreign researchers today, who present themselves to be trendy, criticize these regimes! However, any organization, like the human body, has its pathologies and therapies. These are the pathologies that have taught doctors medical science. Besides, there is no need for people who criticize this kind of research, but there is a need for more in-depth analysis through case studies. Lebanon is a founding case where the legal dimension has often been neglected²³. Pluralist parliamentary regimes are a general constitutional category with several variations of arrangement.

Notes

1. A. Messarra, « Authenticité et aliénation dans la culture constitutionnelle (Lebanon-France since the Revolution), ap. A. Messarra, *La gouvernance d'un système consensuel (Lebanon after the constitutional amendments of 1990)*, Beirut, Librairie Orientale, 2006, p. 123-134.
2. A. Messarra, « Tanawu'lubnânî... » (Lebanese pluralism and American mental structure ...), *al-Hayat*, 5/8/1990 et 9/11/1990.
3. A. Messarra, « Azamatal-marja'iyya fî al-fikr al-siyâsî al-'arabî... » (Landmark crisis in Arab political thought ...), *Association arabe des sciences politiques*, 3rd Congress, Cairo, 1/4/2/1989.
4. Moshe Shamir, « Yûjad hal : taqâsîm Lubnân » (There is a solution: The partition of Lebanon), translated by al-Safir, 24/10/1983. Shamir also writes on "Israeli engineering of Lebanon", *Wall Street Journal*, 11/6/1982.
And about the Israeli vision of Lebanon: Israeli correspondence published by Davar (Israel) in October 1971 and translated : *Beyrouth al-Masâ'*, no 97-98, 9 et 16/12/1975, and also published in *Hehren* in the *Memoirs of Moshe Sharet*, 8 vol., Tel Aviv, Publications Maariv, 1978 : « Meeting report between Ben Gorion, Dayan and Lavon about the partition ». Meir Zamir, "Politics and Violence in Lebanon", *Jerusalem Quarterly*, no 25, 1982.
5. Gerhard Lehbruch, *Proporzdemokratie (Politisches System und politische Kultur in der Schweiz und in Osterreich)*, Tübingen, J.C.B. Mohr, "Recht und Staat", Heft 335/336, 1967, 60 p.
Otto Bauer, *La question des nationalités et la social-démocratie*, Paris, FDI, 2 vol., 1987, 334 p. et 524 p.
Otto Bauer, *Die Nationalitätenfrage und die Sozial-demokratie*, Vienne, Wiener, Volksbuchhandlung, 1907, pp. 353-363.
Karl Renner, *Das Selbstbestimmungsrecht der Nationen in besonderer Anwendung auf Osterreich*, Leipzig, Deuticke, 1918.
Jürg Steiner, "Majorz und Proporz", *Politische Vierteljahresschrift*, vol. 2, 1970, p. 139-146.
, "The Principles of Majority and Proportionality", ap. Kenneth McRae, ed., *Consociational Democracy (Political Accommodation in Segmented Societies)*, Toronto, McClelland and Stewart Limited, Canada, 1974, 312 p., pp. 98-106.
6. Theodor Hanf, *Erziehungswesen in gesellschaft und politik des Libanon (Education in Lebanese society and politics)*, Bertelsmann Universitätsverlag, Germany, 1969, 400 p.
7. Theodor Hanf, *Lebanon-Koexistenz im Krieg (Vom Staatszerfall zur Entsehung einer Nation)*, Euro-Arabisches studienzentrum, Paris, 1992, Arabic translation by Maurice Saliba, *Markaz al-dirâsât al-'arabî al-uruppi*, Paris, 1993, 832 p.
8. "Materialien zu Gesellschaft und Bildung in Multikulturellen Gesellschaften", *Deutsches Institut für Internationale Pädagogische Forschung*, Frankfurt, program directed by Wolfgang Mitter and Theodor Hanf, 1989-1998:
A. Messarra, *La religion dans une pédagogie interculturelle (Comparative essay on the concept of secularism in education and its application to multicomunity societies)*, Frankfurt, *Deutsches Institut für Internationale Padagogische Forschung*, 1988, 136 p.
, *Conflit et concordance au Liban, 1975-1989*, Selected bibliography, Frankfurt,
9. Antoine Messarra, "Les cas uniques se rejoignent", *L'Orient-Le Jour*, 25/12/1983.
10. A. Messarra, Theodor Hanf et Hinrich R. Reinstrom (dir.), *La société de concordance (Comparative approach)*, Proceedings of the international symposium organized by the Goethe-Institut on "The democratic regulation of conflicts in plural societies", Beirut, Lebanese University publications, « Section des études juridiques, politiques et administratives », XI, 1986, 168 p.
11. Coll. dir. Joseph Mouannes, *La nouvelle société libanaise dans la perception des fa'aliyât (Decision makers) des communautés chrétiennes*, Holy Spirit University of Kaslik in cooperation with the Konrad Adenauer Foundation, USEK, 3 vol., 1984.
12. Association: Makassed, *Awdâ'al-muslimîm fî Lubnân*, 1re part : *al-Mu'asasât al-islâmiyya al-'amila fî Lubnân... (Muslim institutions operating in Lebanon ...)*, dir. Tamam Salam, Muhammad Machnouk, Zouhair Hatab, Radwan al-Sayyed, 1982-1984, 212 p., with presentation by Tamam Salam.
13. A. Messarra, *La structure sociale du Parlement libanais, 1920-1974*, Institute of Social Sciences, Lebanese University, 1976.
Le modèle politique libanais et sa survie (Essay on the classification and development of a consociational system), Beirut, Lebanese University publications, « Legal, Political and Administrative Studies Section », VII, 1983, 534 p.
14. A. Messarra, *La genèse de l'Accord d'entente nationale de Taëf (22/10/1989 et 5/11/1989) et l'amendement constitutionnel (21/9/1990)*, Lebanese Foundation for Permanent Civil Peace, series « Documents », no 4, 5th limited edition, 2019, 548 p.
15. A. Messarra, *Médiation constitutionnelle allemande-vaticane-européenne après l'Accord tripartite de Damas du 28/12/1985 (24 September to 3 October 1986)*, Lebanese Foundation for Permanent Civil Peace, series « Documents », no 107, 2nd limited edition, 2019, 202 p.

R. S. Schulz, Franz Josef Strauss. The Man and the Statesman, R.S. Schulz, 1986, 216 p. (décédé le 3/10/1988, L'Orient-Le Jour, 4/10/1988).

16. A. Messarra et Rabih Kays (dir.), Transition démocratique et processus constitutants (Comparative experiences), Lebanese Foundation for Permanent Civil Peace and Konrad Adenauer Foundation, no 34, Beirut, Librairie Orientale, 2014, 128 p. + 294 p.
17. A. Messarra, Rabih Kays, Tony Atallah (dir.), La gestion du pluralisme religieux au Liban et dans le monde arabe, Master in Islamic-Christian Relations, Saint Joseph University in cooperation with Konrad Adenauer Foundation, 2010, 288 p.
18. A. Messarra, " La Constitution libanaise dans la foire des classifications », L'Orient-Le Jour, 22, 24, 27/8/2011.
19. Hans Daalder, " On Building Consociational Nations: The Cases of the Netherlands and Switzerland", International Social Science Journal, vol. 23, no 3, 1971, pp. 355-370., " La formation des nations par consociatio: The case of the Netherlands and Switzerland », in L'édification nationale dans diverses régions, no spécial de la Revue internationale des sciences sociales, Unesco, XXIII (3), 1971. Arend Lijphart, The Politics of Accommodation (The case of Netherlands), Yale University Press. A. Messarra, « Authenticité et aliénation dans la culture constitutionnelle (Lebanon-France since the Revolution), ap. A. Messarra, La gouvernance d'un système consensuel (Lebanon after the constitutional amendments of 1990), Beirut, Librairie Orientale, 2006, pp. 123-134.
20. Evelyne Abou Mitry Messarra, al-Dimuqrâtiyya fî al-mujtama'al-muta'addid, Arabic translation from the book of Arend Lijphart with Arend Lijphart Preface, Beirut, Librairie Orientale, 1984, 320 p.
21. Pierre Rondot, Les institutions politiques du Liban: Des communautés traditionnelles à l'Etat moderne, Publications of the « Institut d'études de l'Orient chrétien », Paris, 1947, 148 p.
22. A propos des documents fondamentaux sur les régimes parlementaires pluralistes : Antoine Messarra (fundamental documentation classified and compiled by Consensual systems of government : Basic documentation. Consensual model of Democracy: Fundamental Documentation, Beirut, Lebanese Foundation for Permanent Civil Peace, Librairie Orientale, 3 vol., 2007, 594, p., 370 p. et 712 p. A. Messarra (dir.), Comprendre la Suisse (The practice of plural unity), Beirut, Swiss Embassy in Lebanon and Lebanese Political Science association, Librairie Orientale, 2008, 200 p. + 56 p. in arabic. , La gestion du pluralisme (Comparative experiences: Switzerland and Lebanon), Beirut, Swiss Embassy in Lebanon, Carnegie Middle East Center and Lebanese Political Science Association, Librairie Orientale, 2011, 208 p. A. Messarra, Théorie juridique des régimes parlementaires pluralistes, Beirut, Librairie Orientale, 2012, 246 p. A. Messarra, "Qui sont les libanologues?", ap. A. Messarra, La culture citoyenne dans une société multicommunautaire (Lebanon in comparative perspective), Beirut, Gladic publications, Librairie Orientale, 2013, 560 p., pp. 515-519.

Konrad-Adenauer-Stiftung e. V.

Dr. Michael Lange

Head of the Rule of Law Programme Middle East / North Africa

www.kas.de

michael.lange@kas.de



The text of this publication is published under a Creative Commons license: "Creative Commons Attribution- Share Alike 4.0 international" (CC BY-SA 4.0), <https://creativecommons.org/licenses/by-sa/4.0/legalcode>